

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

SEP 10 2010 *jd*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**MATTHEW J. DYKMAN**  
CLERK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 **HENRY JAGER,** )  
 )  
 Defendant. )

CRIMINAL NO. 10-CR-1531 JB

**PLEA AGREEMENT**

Pursuant to Federal Rule of Criminal Procedure 11, the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, **HENRY JAGER**, and the defendant's counsel, Darrell Allen:

**REPRESENTATION BY COUNSEL**

1. The defendant understands his right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with his attorney and is fully satisfied with that attorney's legal representation.

**RIGHTS OF THE DEFENDANT**

2. The defendant further understands his rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
  - b. to have a trial by jury; and
  - c. at a trial:
    - 1) to confront and cross-examine adverse witnesses,
    - 2) to be protected from compelled self-incrimination,

- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The defendant hereby agrees to waive these rights and to plead guilty to an Indictment charging Count 1 as a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2), and 2256, that being possession of matter containing visual depictions of minors engaged in sexually explicit conduct. The Defendant further agrees to admit to the criminal forfeiture in the Indictment. The United States will move to dismiss Counts 2 at the time of sentencing.

**SENTENCING**

4. The defendant understands that the maximum penalty the Court can impose is:
  - a. up to ten (10) years imprisonment;
  - b. a fine not to exceed \$250,000;
  - c. a lifetime term of supervised release. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked--even on the last day of the term--and the defendant could then be returned to another period of incarceration and a new term of supervised release.);
  - d. a mandatory special penalty assessment of \$100.00; and
  - e. restitution as may be ordered by the Court.

5. The parties recognize that the United States Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The United States hereby expressly reserves the right to make known to the Court and the United States Pretrial Services and Probation Office, for inclusion in the presentence

report prepared pursuant to Federal Rule of Criminal Procedure 32, any information that the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G § 1B1.3.

**DEFENDANT'S ADMISSION OF FACTS**

7. By my signature on this plea agreement, I, **HENRY JAGER**, am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of the facts are true and correct:

A. On September 15, 2009, Special Agent (SA) Brital with Immigration and Customs Enforcement (ICE) and other ICE Agents contacted me at my residence of 3608 Ladera Drive NW, Apartment C205, Albuquerque, Bernalillo County, New Mexico. SA Brital and other agents asked if they could speak with me about child pornography images on my computer based upon an investigation concerning individuals exchanging child visual depictions of minors engaged in sexually explicit conduct (hereafter "child pornography") on a website "www.free6.com." I agreed to speak with agents and permitted them to conduct an onsite preview of my computers for evidence of child pornography.

B. During the forensic preview, agents found child pornography on my Hewlett Packard Pavilion Desktop Computer, Serial Number 0801S0033121, with a Seagate Internal Hard Disk Drive, Serial Number 6QG3R3AW and my Hewlett Packard Laptop Computer, Serial

Number CNF5391VVG, with a Toshiba 80 GB Internal Hard Disk Drive, Serial Number 96GU491S. I gave the agents permission to seize these computers.

C. I voluntarily agreed to speak with the ICE agents. On September 15, 2009, I told agents that I was the only person to use the computers. I described "child pornography" as nude pictures of individuals 16 years or younger and admitted to viewing child pornography. I told agents I had been to "www.free6.com" approximately six (6) months prior to the interview and that this site was primarily devoted to child pornography. I admitted I received the child pornography, which agents found on my computers, during MSN Messenger chats from an individual named "Mike." I also admitted I saved child pornography from the website "free6.com." I told agents I began to view images of child pornography a couple of years ago and most recently viewed such images a couple of weeks prior to this interview with agents. I provided a tape-recorded summary of these statements which I made to agents.

D. On February 25, 2010, I participated in a tape-recorded interview the Kirtland Air Force Office of Special Investigations (OSI). After being advised of my Miranda rights, I admitted to investigators that I possessed child pornography images utilizing MSN Messenger. I told investigators I began to look at child pornography a few years prior.

E. I now know that agents conducted a forensic examination of my Hewlett Packard Pavilion Desktop Computer, Serial Number 0801S0033121, with a Seagate Internal Hard Disk Drive, Serial Number 6QG3R3AW and my Hewlett Packard Laptop Computer, Serial Number CNF5391VVG, with a Toshiba 80 GB Internal Hard Disk Drive, Serial Number 96GU491S which were seized from my residence on September 15, 2009. Agents found child pornography images and videos on both the desktop and laptop computers. The registry report

related to the desktop and laptop computers had a default domain name of "Henry" and the default user listed "Hank."

F. I now know the agents sent the found child pornography images and videos from my computers to the National Center for Missing and Exploited Children (NCMEC) in an attempt to identify real, known children. According to NCMEC, there were 133 known images from 31 different series and 69 known videos from 15 different series on my computers.

G. I now know that the computers and internal hard drives, which produced the child pornography images and videos, were manufactured outside the state of New Mexico so as to satisfy interstate nexus. Additionally, agents confirmed that I had Comcast as my Internet service provider since August 25, 2008. I utilized Comcast to possess child pornography images from the website of "free6.com" and MSN Messenger. I also now know that Comcast does not have servers in New Mexico to also satisfy interstate nexus.

8. By signing this agreement, the Defendant admits all the foregoing facts and admits that there is a factual basis for each element of the crime(s) to which the Defendant will plead guilty. Specifically, the defendant agrees that on or about September 15, 2009, I, **HENRY JAGER** knowingly possessed a matter which contained visual depictions that had been mailed, shipped, or transported in interstate or foreign commerce by means of computer, the production of which involved the use of minors engaged in sexually explicit conduct and is of such conduct. I stored on my Hewlett Packard Laptop Computer, Serial Number CNF5391 VLG, with a Toshiba 80 GB Internal Hard Disk Drive, Serial Number 96GU491S, which were manufactured outside of New Mexico, pictures of minor children engaged in sexually explicit conduct. I knew it was illegal for me to possess these images.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which Defendant will plead guilty. The Defendant also recognizes and accepts responsibility for his criminal conduct. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

**STIPULATIONS**

10. The United States and the Defendant stipulate as follows:

a. The parties agree the applicable United States Sentencing Guidelines (U.S.S.G) is §2G2.2(a)(1). The parties further agree the cross reference in U.S.S.G § 2G2.2 is not applicable.

b. The parties agree that U.S.S.G. § 2G2.2(b)(4) is applicable as some of the possessed images involved sadistic, masochistic or other depictions of violence so as to increase the offense level by an additional four (4) levels.

c. The parties agree that U.S.S.G § 2G2.2(b)(2) is applicable as the material involved a prepubescent minor or a minor who had not attained the age of twelve (12) years to increase the offense level by an additional two (2) levels.

d. The parties agree that U.S.S.G §2G2.2(b)(6) is applicable as the offense involved the use of computer or interactive computer services for the possession, transmission, receipt of distribution of the material, to increase the offense level by an additional two (2) levels.

e. The parties agree that U.S.S.G §2G2.2(b)(7)(D) is applicable as the

offense involved at least 600 images or more, so as to increase the offense level by an additional five (5) levels. According to the commentary, "each video, video-clip, or similar visual depiction shall be considered to have 75 images." The parties agree with the summation of images and videos, the defendant possessed at least 600 images. In this case, NCMEC identified 133 known child pornography images and 69 known child pornography videos of identifiable minors

f. The parties agree as of the date of this agreement, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for his criminal conduct, the Defendant is entitled to a reduction of three (3) levels from the base level as calculate under the sentencing guidelines. This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement to which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in court as required, and/or failing to abide by conditions of release.

g. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering into this agreement, the Defendant agrees not to seek a downward departure or variance from the applicable guideline range as determined by the Court (after the Court resolves any objections by either party to the presentence report) below 36 months term of imprisonment.

Although the Defendant is permitted to seek a departure or variance to 36 months imprisonment, the Defendant agrees that a sentence within the applicable guideline range as determined by the Court is a reasonable sentence. If the Defendant, in violation of this paragraph, should nevertheless seek a downward departure or variance below 36 months, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on any and all charges which includes distribution and receipt of visual depictions of minors engaged in sexually explicit conduct.

h. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rules of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with the plea agreement.

11. The United States and the defendant understand that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Furthermore, the Defendant understands that the Court may choose to deviate from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the

Defendant, or if the Court deviates from the advisory guideline range, the Defendant will not seek to withdraw the plea of guilty. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

**DEFENDANT'S OBLIGATIONS**

12. The defendant understands his obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The defendant hereby represents that he has complied with and will continue to comply with this obligation.

13. If requested to do so by the United States Attorney's Office, the Defendant will submit a personal financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding Defendant's capacity to satisfy any fines and/or restitution.

14. The Defendant agrees not to seek a departure or variance below 36 months imprisonment in this case. If the Defendant should violate this obligation and seek a downward departure or variance below 36 months, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on any and all charges in this case.

**FORFEITURE**

15. The Defendant voluntarily and immediately agrees to forfeit any interest and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offenses in this case.

16. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title and interest in the following assets and properties:

- (A) Hewlett Packard Pavilion Desktop Computer, Serial Number 0801S0033121, with a Seagate Internal Hard Disk Drive, Serial Number 6QG3R3AW; and
- (B) Hewlett Packard Laptop Computer, Serial Number CNF5391VLG, with a Toshiba 80 GB Internal Hard Disk Drive, Serial Number 96GU491S.

17. The Defendant agrees to waive the right of notice of any forfeiture proceeding involving the above-described property.

18. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States, any State or its subdivisions.

**SEX OFFENDER REGISTRATION AND NOTIFICATION**

19. The Defendant agrees that the Defendant has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, the Defendant must register and keep the registration current in each of the following jurisdictions: where the Defendant resides; where the Defendant is an employee; and where the Defendant is a student. The Defendant agrees that the Defendant understands that the requirements for registration include providing the Defendant's name, the Defendant's residence, address, and the names and addresses of any places where the Defendant is or will be an employee or student, among other

information. The Defendant agrees that the Defendant understands that the requirement to keep registration current includes informing at least one jurisdiction in which the Defendant resides, is an employee, or is a student not later than three business days after any change of the Defendant's name, residence, employment, or student status. The Defendant agrees that the Defendant has been advised, and understands, that failure to comply with these obligations subjects the Defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

**UNITED STATES' AGREEMENT**

20. Provided that the defendant fulfills his obligations as set out above, the United States agrees that:

a. The United States will not bring additional charges against the Defendant arising out of the facts forming the basis of the present Indictment. The facts that form the basis of the present Indictment do not include any allegations of hands-on abuse of children.

b. The United States will move to dismiss Count 2 of the Indictment at the time of sentencing.

c. This plea agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

**WAIVER OF APPEAL RIGHTS**

21. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence

at or under the maximum statutory penalty authorized by law. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

**VOLUNTARY PLEA**

22. The defendant agrees and represents that his plea of guilty is freely and voluntarily made and not the result of force, threats or promises apart from those set forth in this plea agreement. There have been no representations or promises from anyone as to what sentence the Court will impose. The Defendant represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

**VIOLATION OF PLEA AGREEMENT**

23. The defendant understands and agrees that if the Defendant violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the charges filed in this case, as well as perjury, false statement, obstruction of justice and any other crime committed by the Defendant during this prosecution.

**SPECIAL ASSESSMENT**

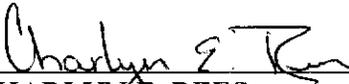
24. At the time of execution of this plea agreement, the defendant will tender a money order or certified check payable to the order of the United States District Court, District of New Mexico, 333 Lomas Blvd., NW, Suite 270, Albuquerque, New Mexico 87102, in the amount of \$100.00 in payment of the special penalty assessment described above.

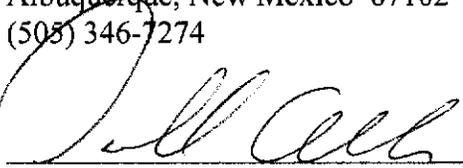
**ENTIRETY OF AGREEMENT**

25. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

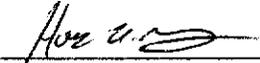
AGREED TO AND SIGNED this 10 day of September, 2010.

KENNETH J. GONZALES  
United States Attorney

  
\_\_\_\_\_  
CHARLYN E. REES  
Assistant United States Attorney  
P.O. Box 607  
Albuquerque, New Mexico 87102  
(505) 346-7274

  
\_\_\_\_\_  
DARRELL ALLEN  
Attorney for Defendant

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand the plea agreement and voluntarily sign it.

  
\_\_\_\_\_  
HENRY JAGER  
Defendant