

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

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

OCT - 5 2010



MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAKE SKINNER, aka JACK SKINNER,

Defendant.

Criminal No.

10cr 2766 MCA

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **JAKE SKINNER aka JACK SKINNER**, and the Defendant's counsel, Zachary Ives and Molly Schmidt-Nowara.

REPRESENTATION BY COUNSEL

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

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to be charged by an Indictment, presented to a Grand Jury;

- b. to plead not guilty, or having already so pleaded, to persist in that plea;
- c. to have a trial by jury; and
- d. 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 agrees to waive these rights and to an Information to be filed in this case charging, a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256: Possession of Matter Containing Visual Depictions of Minors Engaged in Sexually Explicit Conduct. The Defendant further agrees to admit to the criminal forfeiture charged in the information.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256 is::

- a. Imprisonment for not more than ten (10) years;
- 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
- c. restitution as may be ordered by the Court.

5. The parties recognize that the federal 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 Probation Office, for inclusion in the presentence report to be prepared under Rule 32, Fed. R. Crim. P., any information 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.

7. The Defendant fully understands the agreement included in this document determines the sentence in this case and whether the Court accepts the plea described herein and enters that agreed upon sentence, is solely in the discretion of the Court. Both parties understand that should the Court choose not to accept this plea agreement, as fully laid out in this document, the United States may withdraw from this plea agreement and proceed to trial on the Indictment in this case previously filed with the Court as solely within the discretion of the United States. It is expressly understood and agreed by and between the Defendant and the United States that:

a. The United States has made an agreement with the Defendant pursuant to Rule 11(c)(1)(c), FED. R. CRIM. P., that a specific sentence is agreed to in this plea agreement. The specific sentence shall be 43 months imprisonment on a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256: Possession of Matter Containing Visual Depictions of Minors Engaged in Sexually Explicit Conduct. Both parties agree

that the Special Penalty Assessment is \$100 and the term of supervised release will be determined by the Court.

b. The United States and the Defendant agree that the nature and circumstances of this crime warrant this plea agreement pursuant to Rule 11(c)(1)(c), FED. R. CRIM. P., and as provided for in the United States Sentencing Guideline §6B1.2(c).

c. Both the United States and the Defendant recognize that this agreement identifies a definite term of imprisonment as appropriate in this case. Both parties agree a Presentence report shall be prepared to determine Defendant's applicable criminal history category. Both parties agree that neither a request for an upward departure nor a request for downward departure is permitted by either of the parties. Should either party seek a departure from the agreed upon sentence, the other party may withdraw from the plea agreement and proceed with the case without regard to this agreement as it shall be null and void.

d. The United States and the Defendant understand that the above agreements and stipulations shall not be binding on the Court until such time as the Court may choose to accept this agreement.

FACTUAL BASIS

8. By my signature on this plea agreement, I, **JAKE SKINNER**, am acknowledging that I am pleading guilty because I am in fact guilty of the offenses 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 to the charges to which I am pleading guilty beyond a reasonable doubt. I admit the following facts related to the charges against me, and declare under penalty of perjury that all facts are true and correct:

A. Between April 2007 and July 2007, an agent with the New Mexico Attorney General's Office (NMAGO) was performing a forensic examination on a suspect's computer in a separate investigation. During this examination, the agent found several email messages containing visual depictions of minors engaged in sexually explicit conduct (hereafter "child pornography") which were sent from an email address from her suspect to my email address of "TradeHottPixxx@aol.com."

B. I now know that an Immigration and Customs Enforcement (ICE) Agent sent a subpoena to America Online (AOL) for subscriber information related to "TradeHottPixxx@aol.com." AOL identified that the subscriber for this account was Jake Skinner in Albuquerque, New Mexico.

C. On or about October 5, 2007, agents with the NMAGO, ICE and the Federal Bureau of Investigation (FBI) executed a search warrant at my residence located at 752 2nd Street NW, Albuquerque, New Mexico 87114 to look for evidence related to possession of child pornography. Agents seized multiple computers and computer-related media, which was later determined to contain child pornography. The seized items, which contained child pornography, included the following:

- 1). Gateway Laptop Computer, Serial Number T355C110006481 containing a Hitachi Travelstar 80 GB Hard Disk Drive, Serial Number AQGD3GVB;

- 2). Sony VIO Laptop Computer, Serial Number 283324303525693 containing a Hitachi Travelstar 20 GB Hard Disk Drive, Serial Number DMJ746EE; and
- 3). Hot Drive Mobile 2.5" HDD casing containing an IBM Travelstar 20 GB Hard Disk Drive, serial Number 631E3840.

D. On October 5, 2007, I spoke with ICE and FBI Agents. Agents advised me of my Miranda Rights . I signed a waiver of my rights and agreed to speak with agents. I admitted to FBI and ICE Agents that I received child pornography for ten (10) years and only utilized my AOL accounts to receive and possess child pornography.

E. I know now that AOL servers are located in Alexandria, Virginia, thus any child pornography images which I possessed on my computers and computer-related media would satisfy interstate nexus.

F. I now know that a N MAGO Forensic Examiner analyzed the above described computers and computer related media (described in paragraph 8C) and found approximately 1,059 child pornography images and 31 child pornography videos.

G. I now know the N MAGO Agent sent the child pornography images and videos to the National Center For Missing and Exploited Children (NCMEC). According to NCMEC, there were 107 known files from 23 different series and 3 known videos from 2 different series. One such known image was titled "bbondage209a.jpg" which was found on my Gateway Laptop Computer, Serial Number T355C110006481 containing a Hitachi Travelstar 80 GB Hard Disk Drive, Serial Number AQGD3GVB. The full path of this identified file was titled "Hitachi 80GB HDD s_n AQGD3GVB\Part_1\NONAME-NTFS\Documents and Settings\All Users\Application

Data\AOL\C_America Online 9.0\organize\nadalisababe> >nadalisababe> >newmail> > MessageOl96> >aoladp://MA132295 17-0046/bbondage209a.jpg." This file is from the "Hotel" series and depicts a nude boy, who appears less than 16 years of age. The boy is sitting down with a rope tied around his upper arms, while an adult male is standing in front of the minor. The adult male has his penis in the boy's mouth.

9. By signing this agreement, I, **JAKE SKINNER**, the Defendant admit all the foregoing facts and admit that there is a factual basis for each element of the crime(s) to which I will plead guilty. Specifically, I agree that on or about October 5, 2007, in the District of New Mexico, I unlawfully and knowingly possessed a matter which contained visual depictions that had been mailed, shipped, or transported in interstate or foreign commerce by means of a computer, the production of which involved the use of minors engaged in sexually explicit conduct and is of such conduct. I knew it was illegal for me to possess these images.

10. By signing this agreement, I admit that there is a factual basis for each element of the crime to which I will plead guilty. I recognize and accept responsibility for my criminal conduct. I agree the Court may rely on any of these facts, as well as facts in the presentence report, to determine my sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

11. 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's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant 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 the Defendant's capacity to satisfy any fines and/or restitution.

FORFEITURE

14. The Defendant agrees to forfeit, 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. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain

possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

15. 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 property:

- A). Gateway Laptop Computer, Serial Number T355C110006481 containing a Hitachi Travelstar 80 GB Hard Disk Drive, Serial Number AQGD3GVB;
- B). Sony VIO Laptop Computer, Serial Number 283324303525693 containing a Hitachi Travelstar 20 GB Hard Disk Drive, Serial Number DMJ746EE; and
- C). Hot Drive Mobile 2.5" HDD casing containing an IBM Travelstar 20 GB Hard Disk Drive, serial Number 631E3840.

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

17. 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

18. 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.

WAIVER OF APPEAL RIGHTS

19. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a the Defendant the right to appeal a conviction and the sentence imposed.

Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's convictions and any sentence imposed in conformity with this plea agreement. 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.

UNITED STATES' AGREEMENT

20. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that the United States will not bring additional criminal charges against the Defendant arising out of the Defendant's conduct now known to the United States Attorney's Office for the District of New Mexico.

21. This 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.

DEFENDANT'S RIGHT TO WITHDRAW GUILTY PLEA

22. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), if the Court rejects this plea agreement, the Defendant shall have the right to withdraw the Defendant's plea of guilty.

VOLUNTARY PLEA

23. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this 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, and for no other reason.

VIOLATION OF PLEA AGREEMENT

24. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this 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 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

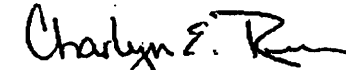
25. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100.00 in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

ENTIRETY OF AGREEMENT

26. 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 5th day of October, 2010.

KENNETH J. GONZALES
United States Attorney



CHARLYN E. REES
Assistant United States Attorney
Post Office Box 607
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(505) 346-7274



ZACHARY IVES
MOLLY SCHMIDT-NOWARA
Attorneys for Defendant

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



JAKE SKINNER
Defendant