

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JAMES MASSEY, also known as “Steve  
Nash”

No. 21 CR 142

Judge Matthew F. Kennelly

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant JAMES MASSEY, and his attorney, ILIA USHAROVICH, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(a)(2). The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The indictment in this case charges defendant with inciting a riot, and participating in, and carrying on, a riot, in violation of Title 18, United States Code, Sections 2101(a)(1) and 2101(a)(2).

3. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the indictment, which charges defendant with inciting a riot, and

participating in, and carrying on, a riot, in violation of Title 18, United States Code, Sections 2101(a)(1) and 2101(a)(2).

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

From on or about August 9, 2020 to on or about August 10, 2020, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant JAMES MASSEY, also known as “Steve Nash,” used a facility of interstate commerce, namely, a telephone and the internet, including Facebook, with intent (1) to incite a riot; and (2) to participate in, and carry on, a riot; and during the course of such use, and thereafter, performed and attempted to perform any other overt act, including those described below, for the purpose of inciting a riot and participating in, and carrying on, a riot.

More specifically, on August 9, 2020, defendant used his cellular phone, a facility of interstate commerce, to post videos to and send messages from his Facebook account that were viewable on the internet, a facility of interstate commerce, by Facebook users. Defendant acknowledges that when he engaged in this activity on his Facebook account set out below, he did so for the purpose of inciting a riot, meaning he wanted to organize a group of 3 or more people to create a public disturbance by committing acts of violence that cause damage to the property of

another individual. On August 9, 2020, defendant posted a live video to his Facebook account with the accompanying caption: “ATTENTION ATTENTION LOTTING [*sic*] START AT 12am tonight ...WE WILL NOT BE FUCKING UP THE SOUTH SIDE EAST SIDE OR WEST SIDE DOWNTOWN AREA AND UP NORTH AREA ONLY BRING YA TOOLS SKI MASK AND GLOVES #LETSGOOOOO.”

Later on August 9, 2020, defendant sent the following messages from his Facebook account to a group of Facebook users: (a) “Bro im hitting phone store”; and (b) “WE LIVE TOGETHER WE DIE TOGETHER.” Later that night, defendant also posted a picture on his Facebook account with the caption, “Lets get ready to steal bitch.” After posting this picture, defendant posted live videos on his Facebook account in which he said: (a) “I finna link up with everybody. I driving [Individual A] right now, y’all. I driving [Individual A] right now. Y’all ready? I sent everybody the location to link up at bro. I trying to get something. I need to hit a couple stores” and (b) “Fitting to go fuck them up. I ain’t missing out. I am ready to steal.”

Later that night, on August 9, 2020, defendant and other individuals traveled in defendant’s vehicle to Store A, Store B, Store C, and Store D (collectively, “the Stores”). Defendant acknowledges that in committing these acts he intentionally participated in, and carried on, a riot, namely a public disturbance carried out by 3 or more individuals that carried out acts of violence against the property of another individual. Defendant further acknowledges that while at Store A, Store B, Store C,

and Store D, an assemblage, which consisted of three or more persons, damaged the property of the Stores.

Defendant and the assemblage gathered near Store A, which was in the area of the 900 block of West Weed Street in Chicago. There, defendant and the assemblage used tools that were inside defendant's vehicle to enter Store A. Defendant acknowledges that the assemblage broke the window of Store A, damaged the property of Store A to gain entry to Store A, and that after entering Store A, stole merchandise and store property from Store A.

In the early morning on August 10, 2020, defendant and other individuals assembled near Store B, which was located in the area of the 800 block of North Michigan Avenue in Chicago. Defendant acknowledges that the assemblage damaged the property of Store B by breaking a window of Store B to gain entry to Store B. Defendant and others in the assemblage then entered Store B and stole Store B's merchandise.

Several hours later, defendant and other individuals assembled near Store C, which was in the area of the 700 block of South Clark Street in Chicago. Defendant acknowledges that the assemblage broke in through the front door of Store C to gain entry to Store C, that defendant and the assemblage entered Store C and stole certain Store C merchandise. Defendant acknowledges that others in the assemblage damaged Store C's property while inside Store C.

Several hours after damaging Store C, defendant and other individuals assembled near Store D, which was located in the area of the 300 block of West Washington Street in Chicago. Defendant acknowledges that the assemblage damaged the property of Store D by breaking a window to gain entry to Store D. The assemblage, including defendant, entered Store D and stole certain Store D merchandise.

### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider

that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree and disagree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2021 Guidelines Manual.

b. **Offense Level Calculations.**

i. Because 18 U.S.C. § 2101 is a felony for which no guideline expressly has been promulgated, Guideline § 2X5.1's direction to apply the most

analogous offense guideline applies. The most analogous offense guideline is Guideline § 2B1.1. Pursuant to Guideline § 2B1.1(a)(2), the base offense level is 6.

ii. It is the government's position that pursuant to Guideline § 2B1.1(b)(1)(F), 10 levels are added because the loss exceeded \$150,000. Defendant reserves the right to oppose this enhancement, and each party is free to present evidence and argument on the issue at sentencing.

iii. It is the government's position that pursuant to Guideline § 3B1.1(a), four levels are added because defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. It is the defendant's position that this enhancement does not apply.

iv. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine and restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 17 which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 24 to 30 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. It is the defendant's position that the anticipated offense level is

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to

conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

#### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum

penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full restitution to the victims in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

## **Acknowledgments and Waivers Regarding Plea of Guilty**

### **Nature of Agreement**

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 21 CR 142.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Conditional Plea of Guilty**

19. The government agrees that defendant's plea of guilty is entered pursuant to Fed. R. Crim. P. 11(a)(2). Pursuant to that Rule, the parties agree that defendant, with the consent of the Court, may enter a conditional plea of guilty, reserving his right to appeal the Court's Order of January 7, 2022, denying defendant's motion to dismiss the indictment. Only in the event of a reversal of that decision will defendant be permitted to withdraw his plea. The government does not consent to an appeal on any other pretrial issue, and defendant reserves the right to

appeal only the identified pretrial ruling and any issues relating to sentencing. Defendant acknowledges that in the event of a reversal of the Court's order denying the motion to dismiss the indictment, the government may reinstate and prosecute any charges against defendant, including but not limited to the charge to which he is pleading guilty under this Agreement. Defendant understands that the Court decides whether or not to approve the entry of this conditional plea under Fed. R. Crim. P. 11(a)(2). If the Court refuses to accept the conditional term of this Agreement, this Agreement shall be null and void.

### **Waiver of Rights**

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove

prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty, the Court's order of January 7, 2022 referenced above, and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

21. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

### **Other Terms**

25. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

26. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### **Conclusion**

27. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant,

any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

30. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

31. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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JOHN R. LAUSCH, JR.  
United States Attorney

\_\_\_\_\_  
JAMES MASSEY  
Defendant

\_\_\_\_\_  
SHERI L. WONG  
Assistant U.S. Attorney

\_\_\_\_\_  
ILIA USHAROVICH  
Attorney for Defendant