



U.S. Department of Justice

United States Attorney
District of New Jersey

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SAA/DVC/PL AGR
2015R00580

May 5, 2017

Teri Lodge, Esquire
Afonso Baker Archie Foley & Lodge
21 Rt. 130 S.
Cinnaminson, NJ 08077

Re: Plea Agreement with Alexander Capasso,
Criminal No. 16-318 (JBS)

Dear Ms. Lodge:

This letter sets forth the plea agreement between your client, Alexander Capasso, and the United States Attorney for the District of New Jersey ("this Office"). This plea offer supersedes all prior offers.

CHARGE

Conditioned on the understandings specified below, this Office will accept a guilty plea from Alexander Capasso, **pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure**, to Count 1 of the Indictment, Criminal No. 16-318 (JBS), that charges him with conspiring with Janine Kelley to engage in the sexual exploitation of children in violation of 18 U.S.C. §§ 2251(a) and (e).

If Alexander Capasso enters a guilty plea and is sentenced on this charge and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Alexander Capasso for his participation in the sexual exploitation of Minor Girl 1 and Minor Boy 1, and Alexander Capasso's possession and distribution of images of minors engaged in sexually explicit conduct during the time period from in or about October 2011 to on or about July 20, 2015.

The covered conduct includes Alexander Capasso's role in distributing two images/videos of child pornography on or about July 7, 2015 (specifically, the images identified by 002.JPG and 003.JPG) as well as Capasso's role in distributing three images/videos of child pornography on or

about July 9, 2016 (specifically, the images identified by IMG_0364.PNG, IMG_0365.PNG, and IMG_0367.PNG), provided that Alexander Capasso admits under oath at the time of his guilty plea to committing each of the above-enumerated distribution offenses, and provided that the distribution offenses that are not part of the count of conviction are taken into account as relevant conduct by the Court at the time of sentencing pursuant to U.S.S.G. § 1B1.2(c).

In addition, if Alexander Capasso fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts 2 through 6 of the Indictment, Criminal No. 16-318 (JBS), against Alexander Capasso. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, Alexander Capasso agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Alexander Capasso may be commenced against him, notwithstanding the expiration of the limitations period after Alexander Capasso signs the agreement.

SENTENCING

Maximum Potential Penalties

The violation of 18 U.S.C. §§ 2251(a) and (e) to which Alexander Capasso agrees to plead guilty carries a statutory mandatory minimum sentence of 15 years, a statutory maximum prison sentence of 30 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000, or (2) twice the gross amount of any pecuniary gain that any persons derived from the offense, or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

Pursuant to 18 U.S.C. § 2251(e), if the Court determines that Alexander Capasso has a prior conviction under this Chapter, Section 1591, Chapter 71, Chapter 109A, or Chapter 117, or under Section 920 of Title 10 (Article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual conduct involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the violation of 18 U.S.C. §§ 2251(a) and (e) to which Alexander Capasso agrees to plead guilty instead carries a mandatory minimum sentence of 25 years and a statutory maximum prison sentence of 50 years. Moreover, pursuant to 18 U.S.C. § 2251(e), if the Court

determines that Alexander Capasso has 2 or more convictions under this Chapter, Chapter 71, Chapter 109A, or Chapter 117, or under Section 920 of Title 10 (Article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, the violation of 18 U.S.C. §§ 2251(a) and (e) to which Alexander Capasso agrees to plead guilty instead carries a mandatory minimum sentence of 35 years and a statutory maximum prison sentence of life.

Further, in addition to imposing any other penalty on Alexander Capasso, the sentencing judge: (1) will order Alexander Capasso to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) will order Alexander Capasso to pay restitution to the victims of his offenses, including any victims who are identifiable at the time of sentencing, pursuant to 18 U.S.C. § 2259; (3) must order forfeiture pursuant to 18 U.S.C. § 2253; and (4) pursuant to 18 U.S.C. § 3583(k), may require Alexander Capasso to serve a term of supervised release on each offense of any term of years not less than 5, or life, which will begin at the expiration of any term of imprisonment imposed. Should Alexander Capasso be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Alexander Capasso may be sentenced to not more than 3 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release. However, if Alexander Capasso has two prior predicate convictions, such that the maximum term of imprisonment would be life, then the maximum term for a violation of supervised release is 5 years' imprisonment.

If Alexander Capasso is required to register under the Sex Offender Registration and Notification Act and commits any criminal offense under Chapter 109A, 110, or 117, or Section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require Alexander Capasso to serve a term of imprisonment of any term of years not less than 5, or life.

Pursuant to the Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014, if the sentencing judge finds the defendant to be non-indigent, the court shall impose a mandatory special assessment of \$5,000 per count; this amount shall not be payable until the defendant has satisfied all outstanding court-ordered fines, orders of restitution, and any other obligation related to victim compensation.

Rule 11(c)(1)(C) Agreed Upon Sentence

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, this Office and Alexander Capasso agree that the sentence to be imposed on Alexander Capasso should be as follows: (1) a period of imprisonment within the range of at least 180 months but not more than 240 months; (2) a lifetime of supervised release to follow the period of imprisonment; (3) a special assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid at the time of sentencing; (4) an additional mandatory special assessment of \$5,000, unless the Court finds the defendant to be indigent; (5) any fine within or below the applicable Guidelines range, at the Court's discretion, or no fine, if the Court finds that the defendant lacks the ability to pay a fine; (6) full restitution to the victims of Alexander Capasso's offenses, including any victims who are identifiable at the time of sentencing, pursuant to 18 U.S.C. § 2259, as discussed more fully herein; and (7) forfeiture as discussed more fully herein. Pursuant to Rule 11(c)(1)(C), this Office agrees no other sentence or fine is appropriate besides those set forth in this paragraph. **If the Court accepts this plea agreement, Alexander Capasso must be sentenced in accordance with all of its terms, including to a sentence within the range of 180 to 240 months' imprisonment and a lifetime term of supervised release.**

Should the Court at any time reject this plea under Federal Rule of Criminal Procedure 11(c)(1)(C) or act contrary to its terms, either party may elect to be relieved of the terms of this plea and the parties will be returned to the status prior to the entry of the plea.

RIGHTS OF THIS OFFICE REGARDING SENTENCING

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Alexander Capasso by the sentencing judge consistent with the terms of this plea agreement and in support of the sentence agreed to by the parties, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Alexander Capasso's activities and relevant conduct with respect to this case.

STIPULATIONS

This Office and Alexander Capasso agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Alexander Capasso from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

WAIVER OF APPEAL AND POST-SENTENCING RIGHTS

As more fully discussed in Schedule A, if the Court accepts this agreement and imposes a sentence permitted by this agreement, neither this Office nor Alexander Capasso will appeal, and Alexander Capasso will not file any collateral attack, writ, or motion challenging his conviction or sentence.

No provision of this agreement shall preclude Alexander Capasso from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Alexander Capasso received constitutionally ineffective assistance of counsel.

FORFEITURE

Alexander Capasso agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 2253, he will forfeit to the United States the following property seized from his home on or about July 20, 2015: Toshiba Laptop bearing serial number Y7091035Q, iPhone (in Otterbox case) bearing serial number 356964063373283, Blackberry (with cracked screen)

bearing serial number 80210C2D and two mini-tapes (hereinafter the "Forfeitable Property").

The defendant acknowledges that the Forfeitable Property is subject to forfeiture as property, real or personal, used or intended to be used to commit or to promote the commission of an offense in violation of 18 U.S.C. § 2251, or any property traceable to such property.

The defendant further agrees to waive all interest in the Forfeitable Property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for the Forfeitable Property and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands that the forfeiture of the Forfeitable Property is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Alexander Capasso hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

RESTITUTION

The defendant agrees that pursuant to Title 18, United States Code, Section 3663, defendant will be required to pay restitution to the victim(s) of the offense to which defendant is pleading guilty. The defendant also agrees that the Court may also order restitution to any victim of any of the following: (a) any relevant conduct, as defined in United States Sentencing Guidelines, Section 1B1.3, in connection with the offenses to which the defendant is pleading guilty and (b) any counts dismissed pursuant to this agreement as well as all relevant conduct, as defined in United States Sentencing Guidelines, Section 1B1.3, in connection with those counts. Specifically, the defendant agrees to pay restitution related to the defendant's sexual exploitation of Minor Girl 1 and Minor Boy 1. The defendant also agrees to pay restitution to any victims of the defendant's possession and distribution of video and photographic images of child pornography from in or about October 2011 to on or about July 20, 2015, which includes (but is not limited

to) the defendant's distribution of the following images and videos:

DATE	IMAGE/VIDEO
July 7, 2015	002.JPG
July 7, 2015	003.JPG
July 9, 2015	IMG_0364.PNG
July 9, 2015	IMG_0365.PNG
July 9, 2015	IMG_0367.PNG

IMMIGRATION CONSEQUENCES

Alexander Capasso understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. Alexander Capasso understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. Alexander Capasso wants and agrees to plead guilty to the charged offenses regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. Alexander Capasso understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, Alexander Capasso waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

REGISTRATION CONSEQUENCES

Alexander Capasso understands that his guilty plea to the charged offenses will likely result in a requirement that he register as a sex offender under federal and state law, and he will be subject to the registration law's requirements and penalties. Alexander Capasso wants and agrees to plead guilty to the charged offenses regardless of any registration consequences of that plea. Alexander Capasso understands that he is bound by his guilty plea regardless of any registration consequences of the plea. Accordingly, Alexander Capasso waives any and all challenges to his guilty plea and to his sentence based on any registration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any registration consequences of his guilty plea.

ADAM WALSH CHILD PROTECTION AND SAFETY ACT

Alexander Capasso has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, he must register and keep the registration current in each of the following jurisdictions: where Alexander Capasso resides; where he is an employee; and where he is a student. Alexander Capasso understands that the requirements for registration include providing his name, his social security number, the address of any place where he resides or will reside, the names and addresses of any places where he is or will be an employee or a student, and the license plate number and a description of any vehicle owned or operated by him, among other information. Alexander Capasso further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of his name, residence, employment, or student status. Alexander Capasso has been advised, and understands, that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which carries a statutory maximum prison sentence of 10 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

OTHER PROVISIONS

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

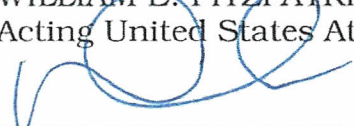
This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Alexander Capasso. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service) or any third party from initiating or prosecuting any civil or administrative proceeding against Alexander Capasso.

No Other Promises

This agreement constitutes the plea agreement between Alexander Capasso and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

WILLIAM E. FITZPATRICK
Acting United States Attorney

By: 
DIANA VONDRA CARRIG
SARA A. ALIABADI
Assistant U.S. Attorneys

APPROVED:



MATTHEW J. SKAHILL
Supervisory Assistant U.S. Attorney, Camden


I have received this letter from my attorney, Teri Lodge, Esquire. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, immigration consequences, registration consequences and the impact Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure has upon this agreement. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


ALEXANDER CAPASSO

Date: 5/24/17

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, immigration consequences, registration consequences and the impact Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure has upon this agreement. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


TERI LODGE, ESQUIRE

Date: 5/24/17

Plea Agreement with Alexander Capasso

Schedule A

1. This Office and Alexander Capasso recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Alexander Capasso nevertheless agree to the stipulations set forth herein.

2. The version of the United States Sentencing Guidelines effective November 1, 2016 applies in this case.

3. The defendant acknowledges that from in or about November 2011 to in or about October 2012, he conspired with Janine Kelley to engage in the sexual exploitation of children in violation of 18 U.S.C. §§ 2251(a) and (e).

4. The defendant acknowledges that he distributed the following images/videos of child pornography on or about the dates indicated with the expectation that, in return, he would receive something of value, including but not limited to other images of child pornography:

DATE	IMAGE/VIDEO
July 7, 2015	002.JPG
July 7, 2015	003.JPG
July 9, 2015	IMG_0364.PNG
July 9, 2015	IMG_0365.PNG
July 9, 2015	IMG_0367.PNG

5. The defendant acknowledges that the offense and relevant conduct involved a prepubescent minor and minors who had not attained the age of 12 years.

6. The defendant acknowledges that the offense and relevant conduct involved the use of a computer.

7. Alexander Capasso has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged and has notified the government, through counsel, in a timely fashion, of his intention to plead guilty which has allowed the government to avoid preparing for trial in this matter.

8. In accordance with the above, and pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that a sentence within the range of at least 180 months but not more than 240 months, and a

lifetime term of supervised release, in addition to the other terms of this agreement, is reasonable and appropriate pursuant to the statutory factors enumerated in Title 18, United States Code, Section 3553(a), and neither party will argue for a sentence outside of that range. However, this Office and Alexander Capasso reserve their respective rights to argue, consistent with the Section 3553(a) factors as to where within the range of 180 months to 240 months that Alexander Capasso should be sentenced. Furthermore, should the Court reject the terms of this agreement and so advise the parties pursuant to Rule 11(c)(5) of the Federal Rules of Criminal Procedure, neither party will be bound by this agreement – Alexander Capasso may withdraw his plea of guilty and the United States may pursue this charge and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Alexander Capasso, notwithstanding the expiration of the limitations period after Alexander Capasso signs the agreement.

9. Alexander Capasso knows that he has and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the conviction or the sentence imposed by the sentencing court if that sentence is imposed in accordance with the terms of this agreement and the term of imprisonment imposed does not exceed 240 months. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing court if that sentence is imposed in accordance with the terms of this agreement. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

10. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.