

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

ZACHARY RODRIGUEZ

No. 15 CR 50016

Judge Philip G. Reinhard

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant ZACHARY RODRIGUEZ, and his attorney, JOHN M. NELSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The indictment in this case charges defendant with production of child pornography, in violation of Title 18, United States Code, Section 2251(a).

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 production of child pornography, in violation of Title 18, United States Code, Section 2251(a).

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:

a. With respect to the Indictment, in or about November 2014, in Loves Park, in the Western Division of the Northern District of Illinois, and elsewhere, defendant did knowingly use, persuade, induce, and entice, a minor, Victim A, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which visual depiction the defendant knew and had reason to know would be transported and transmitted using any means or facility of interstate commerce, in violation of Title 18, United States Code, Sections 2251(a) and (e).

b. Specifically, on or about November 6, 2014, the defendant knowingly used, persuaded, induced, and enticed Victim A to engage in sexually explicit conduct, specifically the lascivious exhibition of the minor's genitals, for the purposes of having Victim A use a cellular telephone to take photographs of the sexually explicit conduct and having Victim A transmit the images to the defendant by cellular telephone from Iowa to Loves Park, Illinois, specifically for example, an image entitled 035a38ea-31B3-4820-9985-dc7d26212168.

c. The defendant was aware that Victim A was 14 years of age at the time the pictures were produced and transmitted. The defendant was also aware that Victim A would take the pictures in Iowa where she resided. The

defendant sought the pictures from Victim A for the purpose of arousing or gratifying the defendant's sexual desire.

7. Defendant, for purposes of computing his sentence under Guideline § 1B1.2, stipulates to having committed the following additional offenses:

a. In or about August 2014, in Loves Park, in the Western Division of the Northern District of Illinois, and elsewhere, defendant did knowingly use, persuade, induce, and entice, a minor, Victim B, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which visual depiction the defendant knew and had reason to know would be transported and transmitted using any means or facility of interstate commerce, and in and affecting interstate commerce, and which was transported and transmitted using a means or facility of interstate commerce, and in and affecting interstate commerce, in violation of Title 18, United States Code, Sections 2251(a) and (e).

Specifically, on or about August 9, 2014, the defendant knowingly used, persuaded, induced, and enticed Victim B to engage in sexually explicit conduct, specifically the lascivious exhibition of the genitals, for the purposes of having Victim B use a cellular telephone to take photographs of the sexually explicit conduct and having Victim B transmit the images to the defendant by cellular telephone from Ohio to Illinois, specifically for example, an image entitled 0809141659-00.jpg.

The defendant was aware that Victim B was 15 years of age at the time the pictures were produced and transmitted. The defendant was also aware

that Victim B would take the pictures in Ohio where she resided. The defendant sought the pictures from Victim B for the purpose of arousing or gratifying the defendant's sexual desire.

b. In or about August 2014, in Loves Park, in the Western Division of the Northern District of Illinois, and elsewhere, defendant did knowingly use, persuade, induce, and entice, a minor, Victim C, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which visual depiction the defendant knew and had reason to know would be transported and transmitted using any means or facility of interstate commerce, and in and affecting interstate commerce, and which was transported and transmitted using a means or facility of interstate commerce, and in and affecting interstate commerce, in violation of Title 18, United States Code, Sections 2251(a) and (e).

Specifically, on or about August 16, 2014, the defendant knowingly used, persuaded, induced, and enticed Victim C to engage in sexually explicit conduct, specifically the lascivious exhibition of the minor's genitals, for the purposes of having Victim C use a cellular telephone to take photographs of the sexually explicit conduct and having Victim C transmit the images to the defendant by cellular telephone from Arizona to Illinois, specifically for example, an image entitled 0816142112_2.jpg.

The defendant was aware that Victim C was 16 years of age at the time the pictures were produced and transmitted. The defendant was also aware that Victim C would take the pictures in Arizona where she resided. The defendant

sought the pictures from Victim C for the purpose of arousing or gratifying the defendant's sexual desire.

c. In or about January 2015, in Loves Park, in the Western Division of the Northern District of Illinois, and elsewhere, defendant did knowingly use, persuade, induce, and entice, a minor, Victim D, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which visual depiction the defendant knew and had reason to know would be transported and transmitted using any means or facility of interstate commerce, and in and affecting interstate commerce, and which was transported and transmitted using a means or facility of interstate commerce, and in and affecting interstate commerce, in violation of Title 18, United States Code, Sections 2251(a) and (e).

Specifically, on or about January 20, 2015, the defendant knowingly used, persuaded, induced, and enticed Victim D to engage in sexually explicit conduct, specifically the lascivious exhibition of the minor's genitals, for the purposes of having Victim D use a cellular telephone to take photographs of the sexually explicit conduct and having Victim D transmit the images to the defendant by cellular telephone from Connecticut to Illinois, specifically for example, an image entitled 925ee6a4-5ed5-44a5-886f-ab79f1d0dad4.jpg.

The defendant was aware that Victim D was 14 years of age at the time the pictures were produced and transmitted. The defendant was also aware that Victim D would take the pictures in Connecticut where she resided. The

defendant sought the pictures from Victim D for the purpose of arousing or gratifying the defendant's sexual desire.

d. In or about the period between March 2014 and January 1, 2015, in Loves Park, in the Western Division of the Northern District of Illinois, and elsewhere, defendant did knowingly use, persuade, induce, and entice, a minor, Victim E, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which visual depiction the defendant knew and had reason to know would be transported and transmitted using any means or facility of interstate commerce, and in and affecting interstate commerce, and which was transported and transmitted using a means or facility of interstate commerce, and in and affecting interstate commerce, in violation of Title 18, United States Code, Sections 2251(a) and (e).

Specifically, in or about the period between March 2014 and January 1, 2015, the defendant knowingly used, persuaded, induced, and enticed Victim E to engage in sexually explicit conduct, specifically the lascivious exhibition of the minor's genitals, for the purposes of having Victim E use a cellular telephone to take photographs of the sexually explicit conduct and having Victim E transmit the images to the defendant by cellular telephone from Wisconsin to Illinois, specifically for example, an image entitled 99100fc5-23a6-4ae2-a061-35ffd9387b9.

The defendant was aware that Victim E was 17 years of age at the time the pictures were produced and transmitted. The defendant was also aware that Victim E would take the pictures in Wisconsin where she resided. The

defendant sought the pictures from Victim E for the purpose of arousing or gratifying the defendant's sexual desire.

Maximum Statutory Penalties

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

a. A maximum sentence of 30 years' imprisonment, and a statutory mandatory minimum sentence of 15 years. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also must impose a term of supervised release of at least five years, and up to any number of years, including life.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court. The Court also may order restitution to any persons as agreed by the parties.

c. In accord with 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

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

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 2015 Guidelines Manual.

b. **Offense Level Calculations.**

Offense of Conviction

i. The base offense level for the offense of conviction is 32, pursuant to Guideline § 2G2.1(a).

ii. The offense level for the offense of conviction must be increased by 2 levels to level 34, pursuant to Guideline § 2G2.1(b)(1)(B), because the offense involved a minor who had not attained the age of 16.

iii. The offense level for the offense of conviction must be increased by 2 levels to level 36, pursuant to Guideline § 2G2.1(b)(6)(B)(i), because the offense involved the use of a computer to persuade, induce, and entice a minor for the purpose of producing sexually explicit material.

Stipulated Offenses

iv. Victim B: The base offense level for the stipulated offense conduct described in Paragraph 7(a) above is 32, pursuant to Guideline § 2G2.1. The offense level must be increased by 2 levels to level 34, pursuant to Guideline

§ 2G2.1(b)(1)(B), because the offense involved a minor that had not attained the age of 16. The offense level must be increased by 2 levels to level 36, pursuant to Guideline § 2G2.1(b)(6)(B)(i), because the offense involved the use of a computer to persuade, induce, and entice a minor for the purpose of producing sexually explicit material.

v. Victim C: The base offense level for the stipulated offense conduct described in Paragraph 7(b) above is 32, pursuant to Guideline § 2G2.1. The offense level must be increased by 2 levels to level 34, pursuant to Guideline § 2G2.1(b)(6)(B)(i), because the offense involved the use of a computer to persuade, induce, and entice a minor for the purpose of producing sexually explicit material.

vi. Victim D: The base offense level for the stipulated offense conduct described in Paragraph 7(c) above is 32, pursuant to Guideline § 2G2.1. The offense level must be increased by 2 levels to level 34, pursuant to Guideline § 2G2.1(b)(1)(B), because the offense involved a minor that had not attained the age of 16. The offense level for the count of conviction must be increased by 2 levels to level 36, pursuant to Guideline § 2G2.1(b)(6)(B)(i), because the offense involved the use of a computer to persuade

vii. Victim E: The base offense level for the stipulated offense conduct described in Paragraph 7(d) above is 32, pursuant to Guideline § 2G2.1. The offense level must be increased by 2 levels to level 34, pursuant to Guideline § 2G2.1(b)(6)(B)(i), because the offense involved the use of a computer to persuade, induce, and entice a minor for the purpose of producing sexually explicit material.

Grouping

viii. Pursuant to Guideline § 3D1.2, none of the offenses group. Because each of the offenses is equally serious, or from 1 to 4 levels less serious than the highest offense level of 36. There are 5 units pursuant to Guideline § 3D1.4(a). Therefore, pursuant to Guideline § 3D1.4, the offense level must be increased by 4 levels to a combined offense level of 40.

ix. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions 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 or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

x. 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 37, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 210 to 262 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant also acknowledges that he is subject to a statutory minimum sentence of 15 years' imprisonment.

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.

11. 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

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

13. 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.

14. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 2259, the Court must order restitution in the full amount of the losses of any victim of defendant's offense, as the terms "victim" and

“loss” are defined in that section. The amount of restitution shall be determined by the Court at sentencing.

15. Defendant also acknowledges that in addition to restitution due pursuant to Title 18, United States Code, Section 2259, he is liable for restitution pursuant to Title 18, United States Code, Section 3663A, and defendant also agrees to pay additional restitution, arising from the stipulated offense conduct set forth above, in an amount to be determined by the Court at sentencing, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664.

16. 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.

17. 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.

18. 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.

19. Defendant acknowledges that on or about July 15, 2015, administrative forfeiture proceedings were commenced against certain property,

including Samsung cell phone-SCH R740C-268435463113248531. By signing this plea agreement, defendant acknowledges that he had notice of the administrative forfeiture proceeding, relinquishes any right, title, and interest he may have had in this property, withdraws any previously filed claims, and understands that an administrative decree of forfeiture has been entered, or will be entered, thereby extinguishing any claim he may have had in the seized property.

20. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the forfeiture allegation as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

21. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15CR50016.

22. 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.

Waiver of Rights

23. 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.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

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 and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

24. 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

25. 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.

26. 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.

27. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release 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 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).

28. Defendant understands that pursuant to Title 18, United States Code, Sections 3583(d) and 4042(c), the Court must order as an explicit condition of supervised release that defendant register as a sex offender in compliance with the requirements of the Sex Offender Registration and Notification Act. Defendant also understands that he will be subject to federal and state sex offender registration requirements independent of supervised release, that those requirements may apply throughout his life, and that he may be subject to state and federal prosecution for failing to comply with applicable sex offender registration laws. Defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his duties to comply with current or

future sex offender registration laws. Defendant nevertheless affirms that he wants to plead guilty regardless of any sex offender registration consequences that his guilty plea may entail.

29. Defendant agrees to participate in psychological counseling and sex offender treatment as directed by the Probation Office as a condition of any sentence of probation or supervised release imposed.

Other Terms

30. 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.

31. 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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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: _____

ZACHARY T. FARDON
United States Attorney

ZACHARY RODRIGUEZ
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

JOHN M. NELSON
Attorney for Defendant