

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 08-CR-00215-CKK**
 :
 v. :
 :
 EMERSON VINCENT BRIGGS :

GOVERNMENT'S JUSTIFICATION OF PLEA AGREEMENT AND SENTENCE

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following for the Court’s consideration in imposing sentence in this case.

On September 8, 2008, defendant pled guilty to one count of receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) and 2256, pursuant to a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). The parties agreed to a sentence of 70 months’ imprisonment, a fine of \$12,500, and a ten-year term of supervised release. Sentencing is scheduled for November 24, 2008.

I. STIPULATED FACTS:

The facts stipulated by the parties were submitted to the Court in connection with the plea proceedings and are contained in the Presentence Report (“PSR”). The following is a summary of the stipulated facts relevant to the calculation of the sentence under the plea agreement.

At all times relevant to this offense, defendant was employed as an attorney at “Firm A,” a law firm located in Washington, DC. Beginning in November 2005 or earlier and continuing until his discovery in April 2006, defendant used his work laptop to deliberately download and

store multiple videos of child pornography while in his office at Firm A in the District of Columbia. He obtained the images using the peer-to-peer software application LimeWire. Defendant entered search terms associated with child pornography, including “childlover pedo rape 11yo nude”, to receive images of child pornography through the LimeWire program. The images of child pornography that defendant knowingly received and possessed on his laptop computer had been mailed, shipped or transported in interstate commerce. Defendant periodically opened and viewed the videos of child pornography contained on his laptop, including while he was traveling outside the District of Columbia.

Defendant used a computer to obtain and store the child pornography images that he knowingly possessed and received, a number of which involved prepubescent minors or minors who had not attained the age of 12 years. Furthermore, several of the video files knowingly possessed and received by defendant portrayed sadistic and masochistic conduct or other depictions of violence, *i.e.*, images showing the penetration of prepubescent children by adult males.

The Information specifies that, between on or about November 1, 2005, and on or about April 24, 2008, the defendant knowingly received and attempted to receive child pornography including but not limited to two video files.

II. ADDITIONAL FACTS:

The Information and stipulated facts for purposes of the plea stated that defendant received at least two videos containing child pornography. More broadly, the offense conduct in this case involved approximately ten videos containing child pornography. *See* PSR ¶ 18.

III. GUIDELINE CALCULATION AND PLEA AGREEMENT:

The determination that this case would be properly resolved by a binding plea to 70 months' imprisonment was based, in part, on the fact that this sentence is in line with the advisory range under the United States Sentencing Guidelines, when calculated according to the stipulated facts.¹ The only difference between the Guidelines calculation based on the stipulated facts and the calculation based on the broader offense conduct, of which the government notified the Probation Office, is the enhancement for number of images. Because the Guidelines instruct that each video should be treated as seventy-five images, the defendant's receipt of ten videos rather than two videos leads to a five-level enhancement under U.S.S.G. §2G2.2(b)(7). *See* PSR ¶18.

It is the view of the government that the agreement, including a sentence that does not reflect the maximum possible enhancement for number of images, is justified under the facts of this case. Defendant approached the government prior to indictment and indicated a willingness to accept responsibility and plead guilty in this case. As part of the plea negotiations, defendant agreed to several enhancements that sharply increased the advisory Guidelines calculation, including a four-level enhancement for material that portrayed sadistic or masochistic conduct

¹ As noted in the Plea Agreement, the parties agreed that, if the Court rejects the binding plea and defendant does not withdraw his guilty plea, the parties would stipulate to the following:

Section 2G2.2

<u>Base Offense Level</u>	22
<u>Applicable Specific Offense Characteristics</u>	
2G2.2(b)(1) (no intent to distribute)	-2
2G2.2(b)(2) (material involved a prepubescent child)	+2
2G2.2(b)(4) (material portrayed sadistic or masochistic conduct)	+4
2G2.2(b)(6) (offense involved the use of a computer)	+2
2G2.2(b)(7)(B) (offense involved at least 10 images)	<u>+2</u>
	30

and a two-level enhancement for material involving a prepubescent child. The incentive offered by the government in exchange was a binding plea that reflected a two-level enhancement for number of images, rather than the five-level enhancement that could apply because of the ten videos that the government believes are part of the offense conduct in this case.

In addition to the usual considerations of the certainty of a conviction and the conservation of government and judicial resources, the plea before the Court also helps to ensure that the defendant remains under supervision for a lengthy period after his release from incarceration. The binding plea agreement provides for a ten-year period of supervised release. The minimum term of supervised release otherwise would have been five years. *See* PSR §51.

Without question, it is within the Court's discretion to accept a plea agreement under Fed. R. Crim. P. 11(c)(1)(C) that contains an agreed sentence outside the Guidelines range. *See United States v. Goodall*, 236 F.3d 700, 703-05 (D.C. Cir. 2001). In the present case, the plea agreement secures defendant's pre-indictment plea, to receipt rather than possession of child pornography, provides for a sentence that is above the mandatory minimum, and includes important factual concessions by defendant such as his receipt of images of prepubescent children. In addition, the plea agreement includes a ten-year period of supervised release upon defendant's release from prison.

