

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:17-cr-18

v.

Hon. Paul L. Maloney  
United States District Judge

JUSTIN MATTHEW DALEY,

Defendant.

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**PLEA AGREEMENT**

This constitutes the plea agreement between Justin Matthew Daley ("Defendant") and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. The Defendant Agrees to Plead Guilty. The Defendant agrees to plead guilty to Count 3 of the Indictment charging the Defendant with distribution of child pornography, in violation of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(b)(1). mjm  
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2. The Defendant Understands the Crime. In order for the Defendant to be guilty of violating Title 18, United States Code, Section 2252A(a)(2)(A), the following must be true: mjm  
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- A. the Defendant knowingly distributed child pornography;
- B. the Defendant knew that the material was or contained child pornography;  
and
- C. the child pornography was, using any means or facility of interstate commerce, shipped or transported in or affecting interstate commerce by any means, including by computer.

The Defendant is pleading guilty because he is guilty of the charge described above.

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3. The Defendant Understands the Penalty.

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A. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(b)(1), is the following: twenty years' imprisonment; at least five years and up to a lifetime of supervised release; probation of not less than one year nor more than five years; a fine of \$250,000; and a mandatory special assessment of \$100. The Defendant agrees to pay the special assessment at or before the time of sentencing unless the Defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

B. Mandatory Minimum Sentence. The Defendant understands that the statutory mandatory minimum sentence that the Court must impose for a violation of Title 18, United States Code, Section 2252A(a)(2) is five years' imprisonment.

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C. Mandatory Restitution. The Defendant understands that he will be required to pay full restitution as required by law. In addition, the Defendant agrees that the restitution order is not restricted to the amounts applicable to the count to which the Defendant is pleading guilty, and he agrees to pay full restitution to any victims of his distribution or possession of child pornography as charged in Counts 1, 2, and 4 in this case, including, but not limited to, the victims identified by the National Center for Missing and Exploited Children in his case.

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D. Supervised Release. Supervised release is a period of time following imprisonment during which the Defendant will be subject to various restrictions and requirements. The Defendant understands that if he violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised release, which could result in the Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

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4. Consent To Have United States Magistrate Judge Preside Over Guilty Plea. The Defendant hereby acknowledges the following:

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- A. That he understands the charge against him and the possible penalty;
- B. That he desires to enter a plea of guilty pursuant to this plea agreement;
- C. That he has the right to have all proceedings, including the plea hearing, conducted by the United States District Judge assigned to this case; and
- D. That a United States Magistrate Judge may conduct the plea hearing with the Defendant's consent and the consent of his attorney and the United States Attorney's Office.

Understanding these rights, the Defendant freely and voluntarily consents to having a United States Magistrate Judge preside over the guilty plea hearing and gives up his right to proceed before a United States District Judge. The Defendant understands that the United States District Judge will accept or reject the plea, accept or reject the plea agreement, and will impose sentence.

5. The Defendant Agrees to Register as a Sexual Offender. The Defendant acknowledges and agrees that he must register as a sex offender in all applicable jurisdictions, including, but not limited to, the jurisdictions where he was convicted, resides, works, and attends school. The Defendant understands that failure to register may subject him to prosecution under applicable state law as well as federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment or both.

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6. Factual Basis of Guilt and Relevant Conduct. The Defendant and the United States Attorney's Office agree and stipulate to the following statement of facts, which need not be proven at the time of the plea or sentencing:

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Beginning in or about 2014, an undercover agent from Homeland Security Investigations (HSI) located in Portland, Maine began communicating with the Defendant through a file-sharing website. This communication then moved to email. On October 7, 2014, the undercover agent received email communication from the Defendant asking him if he wanted to “trade” images or video. On October 10, 2014, the Defendant sent the video file listed in Count 1 of the Indictment to HSI. This video contains child pornography.

In December 2014, the Defendant asked if the undercover agent wanted to “trade vids?” noting that he has “a playful niece.” On January 7, 2015, the Defendant sent an email to the undercover agent stating, in part, “if you send me a few I got this new pic of my nieces boobs the other day guaranteed you’ve never seen it.” On January 9, 2015, the Defendant sent a link to the undercover agent containing nine video files, including the seven video files containing child pornography named in Count 2 of the Indictment. On January 15, 2015, the Defendant sent the undercover agent a link to 15 video files, including the nine video files containing child pornography named in Count 3 of the Indictment.

On March 18, 2015, HSI agents executed a federal search warrant at the Defendant’s residence, located in Chippewa County, Michigan. Agents seized a Dell Inspiron computer containing a Seagate hard drive, both manufactured outside of the United States. A forensic examination of the hard drive revealed approximately 94 images of child pornography.

The videos and images containing child pornography were forwarded to the National Center for Missing and Exploited Children (NCMEC), which identified five video files and 35 image files involving known minor victims. Some of the videos and images involve prepubescent minor children and sadistic or masochistic conduct.

At all times relevant to the Indictment, the Defendant used a web-based email address utilizing local internet service in Chippewa County, Michigan, to distribute child pornographic videos via the internet.

7. The United States Attorney's Office Agrees:

A. Acceptance of Responsibility. The United States Attorney's Office agrees to not oppose the Defendant's request for a reduction of his offense level for acceptance of responsibility under §3E1.1 of the Sentencing Guidelines, provided the Defendant satisfies the criteria for such a reduction. Should the Court grant a two-level reduction as provided herein, the government states that the Defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying it of his intention to enter a guilty plea, thereby permitting the government to avoid preparing for trial, and hereby moves the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater.

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B. Dismissal of Other Count/Charge. The United States Attorney's Office agrees to move to dismiss Counts 1, 2, and 4 of the Indictment against the Defendant at the time of sentencing. The Defendant agrees, however, that in determining the sentence the Court may consider the dismissed counts in determining the applicable Sentencing Guidelines range, where the sentence should fall within the applicable guidelines range, and the propriety of any departure from the calculated guidelines range. In addition, the Defendant agrees that the Court may consider any victim impact statements or restitution requests submitted by victims of the dismissed counts in determining an appropriate sentence and restitution amount. By this agreement the Defendant does not concede that an increased sentence or an upward departure is, in fact, warranted.

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C. Non-Prosecution/Non-Enhancement Agreement. The United States Attorney's Office for the Western District of Michigan agrees, except for other crimes of violence and criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), not to further prosecute the Defendant for violations of 18 U.S.C. §§ 2252 or 2252A arising out of the Defendant's receipt, distribution, or possession of child pornography known to the government as of the date of this agreement. The Defendant understands that the United States Attorney's Office is free to prosecute the Defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement.

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8. The Sentencing Guidelines. The Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing the Defendant. The Defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. The Defendant understands that the Defendant and the Defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. The Defendant further understands that the Court shall make the final determination of the Guideline range that applies in this case, and may impose a sentence within, above, or below the Guideline range, subject to the statutory minimum and maximum penalties described elsewhere in this agreement. The Defendant further understands that disagreement with the Guideline range or sentence shall not constitute a basis for withdrawal of the plea.

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9. Waiver of Constitutional Rights. By pleading guilty, the Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the

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Court. As a result of the Defendant's guilty plea, there will be no trial. At any trial, whether by jury or by the Court, the Defendant would have had the following rights:

- A. The right to the assistance of counsel, including, if the Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent the Defendant.
- B. The right to be presumed innocent and to have the burden of proof placed on the government to prove the Defendant guilty beyond a reasonable doubt.
- C. The right to confront and cross-examine witnesses against the Defendant.
- D. The right, if the Defendant wished, to testify on the Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.
- E. The right not to be compelled to testify, and, if the Defendant chose not to testify or present evidence, to have that choice not be used against the Defendant.

By pleading guilty, the Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

10. Waiver of Appeal.

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A. Waiver. In exchange for the promises made by the government in entering this plea agreement, the Defendant waives all rights to appeal or collaterally attack the Defendant's conviction, sentence, or any other matter related to this prosecution, except as listed below.

B. Exceptions. The Defendant may appeal or seek collateral relief to raise a claim, if otherwise permitted by law in such a proceeding, on the following grounds:

- 1. the Defendant's sentence on any count of conviction exceeded the statutory

maximum for that count;

2. the Defendant's sentence was based on an unconstitutional factor, such as race, religion, national origin, or gender;

3. the guilty plea was involuntary or unknowing;

4. the attorney who represented Defendant during the course of this criminal case provided ineffective assistance of counsel.

If Defendant appeals or seeks collateral relief, he may not present any issue in the proceeding other than those described in this subparagraph.

11. The Court is Not a Party to This Agreement. The Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the United States Attorney's Office or the parties regarding the sentence to be imposed. The Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, the Defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. The Defendant understands that no one – not the prosecutor, the Defendant's attorney, or the Court – can make a binding prediction or promise regarding the sentence the Defendant will receive, except that it will be within the statutory minimum and maximum.

12. FOIA Requests. The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.



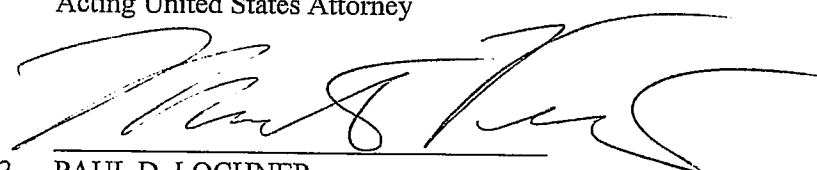
13. This Agreement is Limited to the Parties. This agreement is limited to the United States Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority. This agreement applies only to crimes committed by the Defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.

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14. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements, understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

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ANDREW BYERLY BIRGE  
Acting United States Attorney



FOR PAUL D. LOCHNER  
Assistant United States Attorney

Date: 10/5/2017

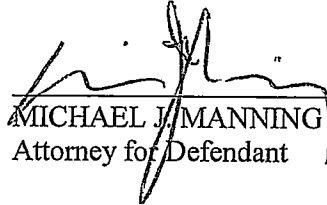
I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

Date: 9/19/2017

  
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JUSTIN MATTHEW DALEY  
Defendant

I am Justin Matthew Daley's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 9-19-2017

  
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MICHAEL J. MANNING  
Attorney for Defendant