

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
v.)	Case No. 1:09-mj-00015-JMF-1
)	
DWAYNE F. CROSS,)	18 U.S.C. § 1030(a)(2)(B)
)	(Unauthorized Computer Access)
Defendant.)	
_____)	

PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through the undersigned attorneys within the United States Department of Justice, Criminal Division, Public Integrity Section (hereinafter “Public Integrity Section”), and DWAYNE F. CROSS (hereinafter “defendant”) enter into the following agreement:

Charges and Statutory Penalties

1. The defendant agrees to waive indictment and plead guilty to an Information charging him with exceeding his authorized access to a U.S. Department of State computer in violation of Title 18, United States Code, Section 1030(a)(2)(B). The defendant admits that he is guilty of this crime, and the defendant understands that he will be adjudicated guilty of this offense if the Court accepts his guilty plea.

2. The defendant understands that the criminal offense charged in the Information has the following two essential elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

a. The defendant intentionally accessed a computer without authorization or exceeded his authorized access; and

b. The defendant obtained information from a department or agency of the United States.

3. The defendant understands that the offense charged in the Information carries a maximum sentence of one year of imprisonment pursuant to 18 U.S.C. § 1030(c)(2)(A), a maximum fine of \$100,000 pursuant to 18 U.S.C. § 3571(b)(5), and a mandatory special assessment of \$25 pursuant to 18 U.S.C. § 3013(a)(1)(A)(iii). The defendant also understands that the Court may impose a term of supervised release of not more than one year following any term of incarceration pursuant to 18 U.S.C. § 3583(b)(3). The defendant also understands that the Court may order the payment of restitution as well as the costs of incarceration, supervision, and prosecution.

4. If the Court accepts the defendant's plea of guilty in this matter, and if the defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the defendant for crimes arising from the conduct set forth in the Factual Basis for Plea. Nothing in this agreement is intended to provide any limitation of liability arising out of any acts of violence.

Factual Stipulations

5. The defendant knowingly, voluntarily, and truthfully admits the facts set forth in the accompanying "Factual Basis for Plea." The defendant further agrees that the facts contained therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

Sentencing

6. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an

advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the U.S. Probation Office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise that advisory sentence up to and including the statutory maximum sentence or lower that advisory sentence. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph one and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

7. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The defendant is aware that any estimate of the probable sentence or the probable sentencing range relating to the defendant pursuant to the advisory Sentencing Guidelines that

the defendant may have received from any source is only a prediction and not a promise, and is not binding on the United States, the Probation Office, or the Court, except as expressly provided in this plea agreement.

Sentencing Guidelines Stipulations

9. The defendant understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual (2007) (hereinafter “Sentencing Guidelines” or “U.S.S.G.”). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

Offense Level under the Guidelines

10. The offense to which the defendant has agreed to plead guilty – Unauthorized Computer Access in violation of 18 U.S.C. § 1030(a)(2)(B) – is governed by U.S.S.G. § 2B1.1 (2007).

11. The Base Offense Level for this offense is six pursuant to U.S.S.G. § 2B1.1(a)(2).

Acceptance of Responsibility

12. Provided that the defendant clearly demonstrates acceptance of responsibility to the satisfaction of the United States through the defendant’s allocution and subsequent conduct prior to the imposition of sentence, the United States agrees that a two-level reduction would be appropriate pursuant to U.S.S.G § 3E1.1(a).

13. If the defendant has accepted responsibility as described above, and the defendant’s offense level is sixteen or greater, the United States agrees that an additional

one-level reduction would be appropriate, pursuant to U.S.S.G. § 3E1.1(b), because the defendant has assisted authorities by providing timely notice of the defendant's intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

14. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant: (a) fails to admit a complete factual basis for the plea at the time the defendant is sentenced or at any other time; (b) challenges the adequacy or sufficiency of the United States' offer of proof at any time after the plea is entered; (c) denies involvement in the offense; (d) gives conflicting statements about that involvement or is untruthful with the Court, the United States, or the Probation Office; (e) fails to give complete and accurate information about the defendant's financial status to the Probation Office; (f) obstructs or attempts to obstruct justice, prior to sentencing; (g) has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement; (h) fails to appear in Court as required; (i) after signing this Plea Agreement, engages in additional criminal conduct; or (j) attempts to withdraw the plea of guilty.

15. In accordance with the above, the applicable Guidelines Offense Level is four.

Criminal History Category

16. The defendant understands that his Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the Probation Office. The defendant acknowledges that the United States has not promised or agreed that the defendant will or will not fall within any particular Criminal History Category and that such determinations

could affect his Sentencing Guideline range and/or offense level as well as his ultimate sentence. Based upon the information now available to the United States (including representations by the defense), the parties anticipate that the defendant's Criminal History Category is I.

Applicable Guideline Range

17. Based upon the calculations set forth above, and the assumption made pertaining to the defendant's Criminal History Category, the defendant's stipulated Sentencing Guidelines range is zero to six months (the "Stipulated Guidelines Range"). In addition, the parties agree that should the Court impose a fine at Guidelines level four, in accordance with U.S.S.G. § 5E1.2(c)(3), the applicable fine range is \$250 to \$5,000.

18. The parties agree that under the Sentencing Guidelines neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Court consider such a departure or adjustment.

Agreement as to Sentencing Allocution

19. The parties further agree that a sentence within the Stipulated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a). In addition, although not binding on the Probation Office or the Court, neither party will seek a sentence outside of the Stipulated Guidelines Range or suggest that the Court consider a sentence outside of the Stipulated Guidelines Range, unless otherwise provided in this Agreement. Nothing in this Agreement limits the right of the parties to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced or to seek an appropriately adjusted sentencing

range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above.

Release Pending Sentencing

20. The United States agrees that it will not ask that the defendant be detained pending sentencing. The defendant acknowledges, however, that the final decision regarding the defendant's bond status or detention will be made by the Court at the time of the defendant's plea of guilty. Moreover, should the defendant engage in further criminal conduct or violate any conditions of release prior to sentencing, the United States may move to change the defendant's conditions of release or move to revoke the defendant's release.

Cooperation

21. The defendant agrees that he will cooperate fully, completely, and truthfully with the Public Integrity Section and the law enforcement agents working with the Public Integrity Section on the present investigation by truthfully providing all information in his possession relating directly or indirectly to all criminal activity and related matters which concern the subject matter of this investigation and of which he has knowledge. This includes:

a. The defendant agrees to participate in a full debriefing by attorneys and investigators within the Public Integrity Section, the U.S. Department of State Office of Inspector General, and the Federal Bureau of Investigation prior to sentencing.

b. The defendant agrees to provide all documents, records, writings, and materials of any kind, except those protected by the attorney-client privilege, in his possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

c. The defendant agrees that the accompanying Factual Basis for Plea is limited to information to support his guilty plea. The defendant will provide more detailed facts relating to the case during his debriefing.

d. Pursuant to U.S.S.G. § 1B1.8(a), the United States agrees that self-incriminating information provided by the defendant pursuant to this agreement to cooperate will not be used in determining the applicable guideline range, except as may be provided in this Agreement and under U.S.S.G. § 1B1.8(b).

22. The defendant agrees that for three years from the entry of his guilty plea he will not apply for or seek a United States government security clearance. This paragraph does not prevent the United States from unilaterally granting the defendant a security clearance at any time or providing other access to classified information. The defendant may accept such security clearance or other access to classified information.

Court Not Bound by the Plea Agreement

23. It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B), the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines range, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court.

24. The parties agree that if the Court does not accept defendant's plea of guilty, then this agreement will be null and void.

Appeal Waiver

25. The defendant is aware that the he has the right to challenge his guilty plea and sentence on direct appeal. The defendant is also aware that he may, in some circumstances, be able to argue that his guilty plea should be set aside, or sentence set aside or reduced, in a collateral challenge (such as pursuant to a motion under 28 U.S.C. § 2255). Knowing that, and in consideration of the concessions made by the United States in this Agreement, the defendant knowingly and voluntarily waives his right to appeal or collaterally challenge: (a) the defendant's guilty plea and any other aspect of the defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues; and (b) the defendant's sentence or the manner in which his sentence was determined pursuant to 18 U.S.C. §3742, except to the extent that the Court sentences the defendant to a period of imprisonment longer than the statutory maximum, or the Court departs upward from the applicable Sentencing Guideline range pursuant to the provisions of U.S.S.G. § 5K.2 or based on a consideration of the sentencing factors set forth in 18 U.S.C. §3553(a).

26. The defendant further understands that nothing in this agreement shall affect Public Integrity Section's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with the United States, to request that the Court enter a specific finding that the waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing

and voluntary.

27. The defendant's waiver of rights to appeal and to bring collateral challenges shall not apply to appeals or challenges based on new legal principles in the District of Columbia Circuit or Supreme Court cases decided after the date of this Agreement that are held by the District of Columbia Circuit or Supreme Court to have retroactive effect.

Breach of Agreement

28. The defendant understands and agrees that if, after entering this Plea Agreement, the defendant fails specifically to perform or to fulfill completely each and every one of the defendant's obligations under this Plea Agreement, or engages in any criminal activity prior to sentencing, the defendant will have breached this Plea Agreement. In the event of such a breach:

- a. The United States will be free from its obligations under the Agreement.
- b. The defendant will not have the right to withdraw the guilty plea.
- c. The defendant shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice.
- d. The United States will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements made by the defendant and any of the information or materials provided by the defendant, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Agreement, including the defendant's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

29. The defendant understands that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these rules.

30. The defendant understands and agrees that the United States shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The defendant further understands and agrees that the United States need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

31. Nothing in this Agreement shall be construed to permit the defendant to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the defendant from prosecution for any crimes not included within this Agreement or committed by the defendant after the execution of this Agreement. The defendant understands and agrees that the United States reserves the right to prosecute the defendant for any such offenses. The defendant further understands that any perjury, false statements or declarations, or obstruction of justice relating to the defendant's obligations under this Agreement shall constitute a breach of this Agreement. However, in the event of such a breach, the defendant will not be allowed to withdraw this guilty plea.

Waiver of Statute of Limitations

32. It is further agreed that should any conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement – including any counts that the United States has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement – may be commenced or reinstated against the defendant,

notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

Complete Agreement

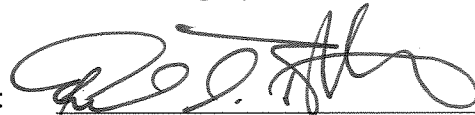
33. No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, defense counsel, and a prosecutor for the Public Integrity Section.

34. The defendant further understands that this Agreement is binding only upon the Public Integrity Section, Criminal Division, United States Department of Justice. This Agreement does not bind the Civil Division or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the defendant.

Respectfully submitted,

WILLIAM M. WELCH II
Chief
Public Integrity Section

By:



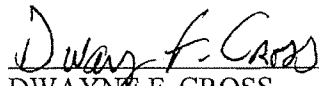
ARMANDO O. BONILLA
Trial Attorney
Public Integrity Section
Criminal Division
U.S. Department of Justice

January 12, 2009

DEFENDANT'S ACCEPTANCE

I have read this agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crime to which I have agreed to plead guilty, the maximum penalties for that offense, and the Sentencing Guideline penalties potentially applicable to it. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charge against me, possible defenses I might have, the terms of this Plea Agreement, and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offense to which I am pleading guilty, and I believe this Agreement is in my best interest.

Date: January 8th, 2009

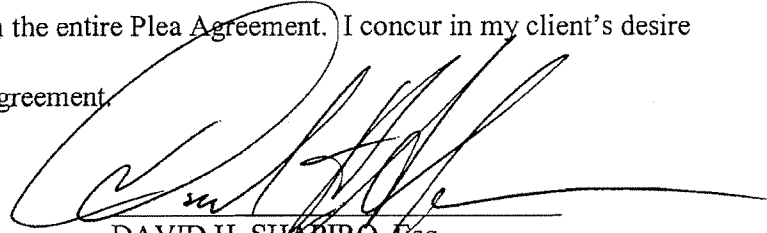


DWAYNE F. CROSS
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read each of the pages constituting this Plea Agreement, reviewed them with my client, and discussed the provisions of the Agreement with my client, fully. These pages accurately and completely sets forth the entire Plea Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: January 8th, 2009



DAVID H. SHAPIRO, Esq.
Swick & Shapiro, PC
Attorney for the Defendant