

APPENDIX TABLE OF CONTENTS

Opinion of the Eleventh Circuit (August 2, 2017)	1a
Judgment in a Criminal Case (January 27, 2017).....	5a
Plea Agreement (September 29, 2014).....	14a
Order of the Eleventh Circuit Denying Petition for Rehearing (October 11, 2017).....	32a

OPINION OF THE ELEVENTH CIRCUIT
(AUGUST 2, 2017)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN J. HANLON, JR.,

Defendant-Appellant.

No. 16-17457

D.C. Docket No. 2:14-cr-00018-JES-MRM-1

Appeal from the United States District Court
for the Middle District of Florida

Before: Ed CARNES, Chief Judge,
Julie CARNES and Jill PRYOR, Circuit Judges.

PER CURIAM:

John Hanlon, Jr. appeals from his sentence of 84 months' imprisonment, which was imposed after he pled guilty to one count of distribution of child pornography, in violation of 18 U.S.C. § 2252(a)(2), (b)(1), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B), (b)(1). Hanlon contends that the district court erred by granting enhancements to his sentence and by failing to grant him a variance

under the 18 U.S.C. § 3553(a) factors. He also contends that counsel was ineffective at sentencing for failing to seek a downward departure or a reduction for substantial assistance, properly file written objections to the PSI, argue against improper enhancements, and seek a downward variance. Hanlon also contends that his trial counsel was ineffective during plea negotiations because counsel did not investigate his mental competency before advising him to enter into his plea agreement and had him sign a plea agreement with language counsel had objected to.

The government filed a motion to dismiss Hanlon's appeal based on the sentence appeal waiver in his plea agreement, arguing that the plea agreement and plea colloquy make clear that Hanlon knowingly and voluntarily waived his right to appeal the sentence he received on any ground other than specific exceptions that are not relevant to his appeal. The government alternatively argues that the record is insufficiently developed for us to decide Hanlon's ineffective-assistance claims on direct appeal.

I.

We review the validity of a sentence appeal waiver *de novo*. *United States v. Johnson*, 541 F.3d 1064, 1066 (11th Cir. 2008). A sentence appeal waiver will be enforced if it was made knowingly and voluntarily. *United States v. Bushert*, 997 F.2d 1343, 1351 (11th Cir. 1993). To establish that the waiver was made knowingly and voluntarily, the government must show either that: (1) the district court specifically questioned the defendant about the waiver during the plea colloquy; or (2) the record makes clear that the defendant otherwise understood the full significance of the

waiver. *Id.* We strongly presume that a defendant's statements at a plea colloquy are true. *United States v. Gonzales-Mercado*, 808 F.2d 796, 800 n.8 (11th Cir. 1987).

We have held that an appellant waived his ineffective assistance of counsel claims regarding sentencing where he entered into a knowing and voluntary appeal waiver of both direct and collateral appeals of his sentence on any ground, because “a contrary result would permit a defendant to circumvent the terms of the sentence-appeal waiver simply by recasting a challenge to his sentence as a claim of ineffective assistance, thus rendering the waiver meaningless.” *Williams v. United States*, 396 F.3d 1340, 1342 (11th Cir. 2005). A valid appeal waiver does not, however, waive a claim that the defendant received ineffective assistance of counsel in entering into a plea agreement because that claim goes to the heart of whether the guilty plea, including the waiver, is enforceable. *United States v. Puentes-Hurtado*, 794 F.3d 1278, 1284-85 (11th Cir. 2015).

For these reasons, Hanlon's sentence appeal waiver bars his sentence claims and his claims that his trial counsel was ineffective at sentencing, which is an indirect challenge to his sentence. *Bushert*, 997 F.2d at 1351. *Williams*, 396 F.3d at 1342. The government's motion to dismiss is granted as to these claims. However, because Hanlon's arguments that his counsel was ineffective in negotiating his plea are outside the scope of his appeal waiver, *Puentes-Hurtado*, 794 F.3d at 1284-85, the government's motion to dismiss is denied as to these claims.

II.

We “will not generally consider claims of ineffective assistance of counsel raised on direct appeal where the district court did not entertain the claim nor develop a factual record.” *United States v. Bender*, 290 F.3d 1279, 1284 (11th Cir. 2002). The preferred method of raising claims of ineffective assistance of counsel is in a motion pursuant to 28 U.S.C. § 2255. *See Massaro v. United States*, 538 U.S. 500, 505-06 (2003). The record is not sufficiently developed for us to address in this direct appeal Hanlon’s claims that his counsel was ineffective at the plea negotiation. *Bender*, 290 F.3d at 1284. For that reason, those claims are dismissed without prejudice to his raising them in a § 2255 motion to adjudicate them. *Massaro*, 538 U.S. at 505-06.

The appeal from the judgment of conviction and sentence is, with the reservation stated in the preceding sentence of this opinion, DISMISSED.

**JUDGMENT IN A CRIMINAL CASE
(JANUARY 27, 2017)**

UNITED STATES DISTRICT COURT MIDDLE
DISTRICT OF FLORIDA FORT MYERS DIVISION

UNITED STATES OF AMERICA,

v.

JOHN J. HANLON, JR.,

Case Number: 2:14-cr-18-FtM-29MRM

USM Number: 60311-018

Before: John E. STEELE,
Senior United States District Judge

The defendant pleaded guilty to Counts One and Two of the Indictment. Accordingly, the Court has adjudicated that the defendant is guilty of the following offenses:

Title & Section:

18 U.S.C. § 2252(a)(2), 2252(b)(1)

Nature of Offense:

Distribution of Child Pornography

Date Offense Concluded: June 12, 2013

Count Number(s): One

Title & Section:

18 U.S.C. § 2252(a)(4)(B), 2252(b)(1)

Nature of Offense:

Possession of Child Pornography

Date Offense Concluded: June 12, 2013

Count Number(s): Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, as modified by *United States v. Booker*, 543 U.S. 220 (2005).

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

January 5, 2015 and re-sentenced on December 5, 2016

/s/ John E. Steele

Senior United States District Judge

January 27, 2017

Imprisonment

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 84 Months as to each count, to be served concurrently.

The Court makes the following recommendations as to incarceration:

Participation in any and all drug/alcohol programs available, to include the Intensive 500 Hour Drug Treatment Program, if and when eligible.

The defendant is remanded to the custody of the United States Marshal.

Supervised Release

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 years as to each count, to be served concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The mandatory drug testing requirements of the Violent Crime Control Act are waived. However, the

Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

Standard Conditions of Supervision

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;

App.9a

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. As directed by the probation officer, the defendant shall notify third parties of risks that may

be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Additional Conditions of Supervised Release

1. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the Probation Officer base on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.

2. You shall provide the probation officer access to any requested financial information.

3. The defendant shall register with the state sexual offender registration agency(s) in any state where you reside, visit, are employed, carry on a vocation, or are a student, as directed by your probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title. I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct you to report to these agencies personally for required additional process-

ing, such as photographing, fingerprinting, and DNA collection.

4. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.

5. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.

6. The defendant shall not possess or use a computer with access to any online service at any location (including employment) without written approval from the probation officer. This includes access through any Internet service provider, bulletin board system, or any public or private computer network system. The defendant shall permit routine inspection of your computer system, hard drives, and other medial storage materials, to confirm adherence to this condition. This inspection shall be no more intrusive than is necessary to ensure compliance with this condition. The defendant shall inform your employer, or other third party who may be impacted by this condition, of this computer-related restriction and the computer inspection provision of the condition.

7. The defendant shall submit to a search of his person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of

a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

8. The defendant shall cooperate in the collection of DNA, as directed by the Probation Officer.

9. The mandatory drug testing requirements of the Violent Crime Control Act are waived. However, the Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

Criminal Monetary Penalties

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

Total Assessment	\$200.00
Total Fine	Waived
Total Restitution	\$0.00

Schedule of Payments

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

Special Assessment in the amount of \$200.00 is due in full and immediately.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

Forfeiture

Defendant shall forfeit to the United States those assets previously identified in the Preliminary Order of Forfeiture, that are subject to forfeiture, as follows:

- a. Dell XPS red and silver with 2 Hitachi 1TB hard drives, serial number BKMF5G1;
- b. Alienware P18G red with Seagate hard drive, serial number 7K79HV1; and
- c. Nook tablet, serial number 2014050112672012.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

**PLEA AGREEMENT
(SEPTEMBER 29, 2014)**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

v.

JOHN J. HANLON, JR.,

Case Number: 2:14-cr-18-FtM-29 DNF

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, JOHN J. HANLON, JR., and the attorney for the defendant, Joseph Viacava, mutually agree as follows:

A. Particularized Terms

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Count One and Two of the Indictment. Count One charges the defendant with Distribution of Child Pornography in violation of 18 U.S.C. §§ 2252(a)(2), (b)(1), and Count Two charges the defendant with Possession of Child Pornography, in violation of 18 U.S.C. §§ 2252(a)(4)(B), and (b)(1).

2. Minimum and Maximum Penalties

Count One is punishable by a mandatory minimum term of imprisonment of five (5) years, but not more than twenty (20) years, a fine of \$250,000.00, a term of supervised release of at least five (5) years up to life, and a special assessment of \$100. Count Two carries a maximum sentence of not more than ten (10) years' imprisonment, a fine of \$250,000.00, a term of supervised release of at least five (5) years up to life, and a special assessment of \$100. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s).

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

- 1) The Defendant knowingly distributed material that contained an image of child pornography, as defined in Title 18, United States Code, Section 2256(8); and
- 2) That such child pornography has been shipped or transported in or affecting interstate or foreign commerce; and
- 3) The Defendant knew that such items contained child pornography.

The elements of Count Two are:

- 1) That the Defendant knowingly possessed one or more matters containing visual depictions;
- 2) That such visual depictions were produced using materials which have been shipped

and transported in or affecting interstate or foreign commerce;

- 3) That the production of such visual depictions involved the use of a minor engaged in sexually explicit conduct;
- 4) That such visual depictions are of a minor engaged in sexually explicit conduct; and
- 5) That the Defendant knew that at least one of the performers in such visual depiction was a minor and knew that the visual depictions were of such minor engaged in sexually explicit conduct.

4. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

5. Mandatory Restitution to Victims of Offense of Conviction

Pursuant to 18 U.S.C. § 2259, defendant agrees to make restitution to known victims of the offense for the full amount of the victims' losses as determined by the Court. Further, pursuant to 18 U.S.C. § 3364(d)(5), the defendant agrees not to oppose bifurcation of the sentencing hearing if the victims' losses are not ascertainable prior to sentencing.

6. Acceptance of Responsibility—Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 2428 and 2253, whether in the

possession or control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following: a) Dell XPS red and silver with two (2) Hitachi 1TB hard drives, serial number BKMF5G1; b) Alienware P18G red with Seagate hard drive, serial number 7K79HV1; and c) Nook tablet, serial number 2014050112672012, which contain contraband.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that promptly after accepting this Plea Agreement, the Court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the

notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

The defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this Plea Agreement. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially

diminished in value; or has been comingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. The Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

8. Abandonment of Property—Computer Equipment

The United States of America and defendant hereby agree that any computer equipment as defined in 18 U.S.C. § 2256, seized from the defendant and currently in the custody and/or control of the Federal Bureau of Investigation or other appropriate agency,

were properly seized and are subject to forfeiture to the government according to 18 U.S.C. §§ 2253 or 2254, and/or that the computer equipment and peripherals constitute evidence, contraband, or fruits of the crime for which he has pled guilty. As such, defendant hereby relinquishes all claim, title and interest he has in the computer equipment and peripherals to the United States of America with the understanding and consent that the Court, upon approval of this agreement, hereby directs the Federal Bureau of Investigation, or other appropriate agency, to cause the computer equipment described above to be destroyed forthwith without further obligation or duty whatsoever owing to defendant or any other person.

As part of the plea agreement in this case, defendant hereby states under penalty of perjury that he is the sole and rightful owner of the property, and that defendant hereby voluntarily abandons all right and claim to and consents to the destruction of: a) Dell XPS red and silver with two (2) Hitachi 1TB hard drives, serial number BKMF5G1; b) Alienware P18G red with Seagate hard drive, serial number 7K79HV1; and c) Nook tablet, serial number 2014050112672012.

9. Sex Offender Registration and Notification

The defendant has been advised and understands, that under the Sex Offender Registration and Notification Act, a federal law, the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment; and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name,

residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations subjects the defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, 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.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's

counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the

defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including

the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or *in camera*, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty

freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

Facts

On June 12, 2013, FBI Task Force Agent (TFO) Christopher Tissot accessed a peer-to-peer network via an internet connected FBI undercover computer. Tissot observed a computer system with the unique Internet protocol (IP) address of 76.101.167.161 which geo-located to the Fort Myers, Florida area and owned by internet service provider Comcast Cable. This IP address was advertising files available for direct download. The files advertised had names indicative of child pornography. A browse was completed of the suspect's "shared folder" and 100 files were located which were child pornography notable.

Between the dates of June 12, 2013 and June 27, 2013, TFO Tissot was able to obtain 32 direct downloads from the suspect IP address. 30 of the files were videos and 2 were still images.

An administrative subpoena was issued to Comcast Cable to obtain subscriber information for the listed IP address during the date and times of the direct connection and downloads of child pornography. The residence the IP address was assigned to was listed as 14815 Laguna Drive, Apt. 601, Ft. Myers, Florida 33908 with a billing address in New Jersey.

Between the dates of July 5, 2013 and July 14, 2013, Tissot received additional partial downloads from the same IP address.

On July 14, 2013, Tissot contacted New Jersey investigator Jason Anderson with the Passaic County Sheriff's Department. Anderson advised he was investigating a JOHN J. HANLON, Jr. in reference to child pornography in New Jersey when HANLON resided there. Anderson was able to browse and obtain downloads of child pornography from a New Jersey IP address assigned to Hanlon in May and June of 2013.

A federal search warrant was obtained for the Fort Myers residence of 14815 Laguna Avenue, Apartment 601, which was executed on July 15, 2013. JOHN HANLON, Jr., DOB: XX/XX/92, was the only occupant home during the execution of the warrant. HANLON agreed to be interviewed after he was advised of the nature and circumstances of the warrant. HANLON provided the following non-inclusive statements. HANLON stated he utilized Comcast to access the Internet via a password protected router in his residence. He stated he primarily utilized the computers, however, occasionally his father, John Hanlon, used the desktop computer using a password protected profile. HANLON admitted that he downloads child pornography. He stated he uses the peer-to-peer program Lemonwire to download child pornography. HANLON admitted he was aware he was downloading child pornography and knew it was illegal. HANLON stated he used the desktop computer in his bedroom to download child pornography and does not use any other computer in the home for child pornography purposes. HANLON stated he is not sexually attracted to children and the only reason he downloads child porno-

graphy is to locate a pedophile and seek revenge on them. HANLON was deceptive at first as to how long he has been downloading child pornography, but later admitted he has been downloading child pornography for approximately a year and a half.

A forensic review of the computer evidence seized from the home, a) Dell XPS red and silver with 2 Hitachi 1TB hard drives, serial number BKMF5G1; b) Alienware P18G red with Seagate hard drive, serial number 7K79HV1; and c) Nook tablet, serial number 2014050112672012; was completed which revealed 389 child pornography images and videos, 32 of which are consistent with the downloads TFO Tissot received from HANLON's IP address in June and July 2013. Also located within HANLON's computer were 38 child nudity images, five (5) child other images (example: adult male touching toddler male's underwear and rubbing back of toddler), and 110 other images (example: adult male engaging in sexual intercourse with a dog).

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 29 day of September, 2014.

A. Lee Bentley, III
United States Attorney

/s/ Tama Koss Caldarone
Assistant United States Attorney

/s/Jesus M. Casas
Asistant United States Attorney
Chief, Criminal Division

/s/ John J. Hanlon, Jr.
Defendant

/s/ Joseph Viacava
Attorney for Defendant

**ORDER OF THE ELEVENTH CIRCUIT
DENYING PETITION FOR REHEARING
(OCTOBER 11, 2017)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN J. HANLON, JR.,

Defendant-Appellant.

No. 16-17457-AA

Appeal from the United States District Court
for the Middle District of Florida

Before: Ed CARNES, Chief Judge,
Julie CARNES and Jill PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by JOHN
J. HANLON, JR., is DENIED.

ENTERED FOR THE COURT:

/s/ Edward Earl Carnes
Chief Judge