



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

May 31, 2017

***By Email and Hand Delivery***

Mark Gombiner and Jullian Harris-Calvin  
Assistant Federal Defenders  
Federal Defenders of New York, Inc.  
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New York, NY 10007  
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**Re: *United States v. Juan Thompson*, S1 17 Cr. 165 (PKC)**

Dear Mr. Gombiner and Ms. Harris-Calvin:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a plea of guilty from Juan Thompson ("the defendant") to Counts One and Two of the above-referenced Information. Count One charges the defendant with cyberstalking, in violation of Title 18, United States Code, Section 2261A(2), and carries a maximum term of imprisonment of five years; a maximum term of supervised release of three years; a maximum fine of \$250,000; and a \$100 mandatory special assessment. The Court must also order restitution as specified below. Count Two charges the defendant with conveying false information and hoaxes, in violation of Title 18, United States Code, Section 1038, and carries a maximum term of imprisonment of five years; a maximum term of supervised release of three years; a maximum fine of \$250,000; and a \$100 mandatory special assessment.

The total maximum term of imprisonment on Counts One and Two is ten years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for his cyberstalking of a victim ("Victim-1") as charged in Count One, and the hoax threats the defendant made in Victim-1's name and his own name to bomb, or commit acts of violence against, at least twelve Jewish Community Centers, other organizations that provide service to and on behalf of the Jewish community, schools, and police departments, as charged in Count Two, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.*

The defendant further agrees to make restitution in an amount ordered by the Court.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

**A. Offense Level**

1. The applicable Guidelines manual is the November 1, 2016 Guidelines Manual.

**Count One**

2. Pursuant to U.S.S.G. § 2A6.2(a), the base offense level for Count One is 18.

3. Pursuant to U.S.S.G. § 2A6.2(b), the Government believes the base offense level is increased by four levels because the offense involved a violation of a court protection order as well as a pattern of activity involving stalking and harassing the same victim. The defendant reserves his right to argue to the Court that the offense did not involve a violation of a court protection order, which would result in the base offense level being increased by two levels, instead of four levels, under U.S.S.G. § 2A6.2(b).

**Count Two**

4. Pursuant to U.S.S.G. § 2A6.1(a)(1), the base offense level for Count Two is 12.

5. Pursuant to U.S.S.G. § 2A6.1(b)(2)(A), the base offense level is increased by two levels because the offense involved more than two threats.

6. Pursuant to U.S.S.G. § 2A6.1(b)(3), the base offense level is increased by two levels because the offense involved the violation of a court protection order. The defendant reserves his right to argue to the Court that the offense did not involve a violation of a court protection order.

7. Pursuant to U.S.S.G. § 2A6.1(b)(4)(A), the base offense level is increased by four levels because the offense resulted in a substantial disruption of public, governmental, or business functions or services.

8. Pursuant to U.S.S.G. § 3A1.1(b)(1), the base offense level is increased by two levels because the defendant knew or should have known that victims of the offense were vulnerable victims.

**Multiple Offense Assessment for Counts One and Two**

9. Pursuant to U.S.S.G. § 3D1.2, Counts One and Two do not group. Pursuant to U.S.S.G. § 3D1.4, the combined offense level for Counts One and Two referenced above is determined by taking the offense level applicable to the count with the highest offense level, and increasing that offense level as described in § 3D1.4. The offense level for both Count One and Count Two is



either 22, if the offenses involved the violation of a court protection order, or 24, if the offenses did not involve the violation of a court protection order. Accordingly, pursuant to U.S.S.G. § 3D1.4(a), there are a total of two units, and two levels are added, making the combined offense level either 24 or 22.

10. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice 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.

In accordance with the above, the applicable Guidelines offense level is 21, if the offenses involved the violation of a court protection order, or 19, if the offenses did not involve the violation of a court protection order.

#### **B. Criminal History Category**

Based upon the information now available to this Office (including representations by the defense), the defendant has zero criminal history points and is in Criminal History Category I.

#### **C. Sentencing Range**

Based upon the calculations set forth above, if the Court adopts the defendant's view as to the applicability of Sections 2A6.2(b) and 2A6.1(b)(3), the defendant's stipulated Guidelines range is 30 to 37 months' imprisonment; if the Court adopts the Government's view as to the applicability of Sections 2A6.2(b) and 2A6.1(b)(3), the defendant's stipulated Guidelines range is 37 to 46 months' imprisonment (respectively, following the Court's ruling, the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 19, the applicable fine range is \$10,000 to \$100,000. At Guidelines level 21, the applicable fine range is \$15,000 to \$150,000.

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

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties

(i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) 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 and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of



imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$150,000, and the Government agrees not to appeal any fine that is greater than or equal to \$15,000. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

It is further agreed that should the convictions 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 Government has agreed 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.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

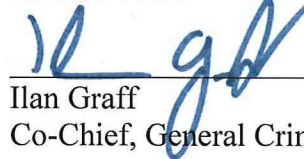
JOON H. KIM  
Acting United States Attorney

By:



Jacob Warren  
Assistant United States Attorney  
(212) 637-2264

APPROVED:



Ilan Graff  
Co-Chief, General Crimes Unit

AGREED AND CONSENTED TO:

\_\_\_\_\_  
Juan Thompson

\_\_\_\_\_  
DATE

APPROVED:

\_\_\_\_\_  
Mark Gombiner and Jullian Harris-Calvin  
Attorneys for Juan Thompson

\_\_\_\_\_  
DATE