



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

October 24, 2022

BY EMAIL

Michael F. Bachner, Esq.
Bachner & Associates, PC
111 Broadway Suite 701
New York, New York 10006

John A. Garland, Esq.
Donald F. Samuel, Esq.
Amanda R. Clark Palmer, Esq.
Garland, Samuel & Loeb, P.C.
3151 Maple Drive
Atlanta, Georgia 30305

Re: *United States v. James Zhong*, 22 Cr. () ^{pg 6}

Dear Messrs. Bachner, Garland, and Samuel and Ms. Clark Palmer:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from James Zhong ("the defendant") to Count One of the above-referenced to-be-filed Information (the "Information").

Count One of the Information charges the defendant with committing wire fraud in or about 2012, in violation of Title 18, United States Code, Sections 1343 and 2. Count One carries a maximum sentence of twenty years; a maximum term of supervised release of three years; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.¹

It is understood and agreed that the defendant will waive venue and any statute of limitations defense with respect to the charge in Count One of the Information.

¹ It is further understood and agreed that restitution is not applicable because all victim losses are directly forfeitable crime proceeds in *United States v. Ross Ulbricht*, S1 14 Cr. 68 (LGS).

In consideration of the defendant's plea to the above offense, 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 the wire fraud scheme described in Count One of the Information, 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.* In addition, at the time of sentencing, the Government will move to dismiss any open counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Count One of the Information and agrees to forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c): (i) a sum of money equal to \$42,747,425.95 in United States currency, representing the value of certain proceeds traceable to the commission of said offense (the "Money Judgment"), namely, the approximate value, based on the lowest spot price of BTC on October 6, 2022, of the 2148.10214197 Bitcoin (out of the defendant's 53,500 Bitcoin in total fraud proceeds) that the defendant dissipated; and (ii) all right, title, and interest of the defendant in the following specific property: the defendant's 80% interest in RE&D Investments, LLC, EIN: 84-1727241 (the "Specific Property").

The defendant further agrees to forfeit to the United States as substitute assets pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), all right, title, and interest of the defendant in the following property: (i) 11.1160005300044 BTC that the Government recovered from the defendant's residence on or about November 9, 2021; (ii) 23.7112850 BTC that the Government recovered from the defendant on or about April 27, 2022; (iii) 115.02532155 BTC that the Government recovered from the defendant on or about April 28, 2022; (iv) 4.57427222 BTC that the Government recovered from the defendant on or about June 8, 2022; (v) \$661,900 in United States currency recovered from the defendant's residence on or about November 9, 2021; (vi) 25 Casascius coins (physical bitcoin) with an approximate value of 174 BTC, collectively, recovered from the defendant's residence on or about November 9, 2021; and (vii) metal items recovered from the defendant's residence on or about November 9, 2021, consisting of four one-ounce silver-colored bars, three one-ounce gold-colored bars, four 10-ounce silver-colored bars, and one gold-colored coin (collectively, the "Substitute Assets").

The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving (a) the Specific Property; (b) the Substitute Assets; (c) the defendant's 53,500 total Bitcoin fraud proceeds; and (d) any Bitcoin the Government seeks to forfeit in *United States v. Ross Ulbricht*, S1 14 Cr. 68 (LGS), including 50,491.06251844 BTC that the Government recovered from the defendant's residence on or about November 9, 2021, 825.38833159 BTC that the Government recovered from the defendant on or about March 25, 2022, and 35.4470080 BTC that the Government recovered from the defendant on or about May 25, 2022, and will not cause or assist anyone else in doing so. The defendant also agrees to take any and all necessary steps to pass clear title to the Specific Property and the Substitute Assets to the United States, including, but not limited to, the execution of all necessary documentation. The defendant agrees to retain and provide to this Office all financial information in his possession

regarding RE&D Investments, LLC, including all assets and liabilities associated with the company, including but not limited to any real property in which the company has a direct or indirect interest.

It is further understood that any 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 him in addition to forfeiture.

The defendant further agrees to make reasonable best efforts to help the Government locate and access the 2148.10214197 Bitcoin of the defendant's 53,500 Bitcoin fraud proceeds that the defendant dissipated, including by providing any passphrases or private keys, as well as providing any technical assistance to unlock, access, and operate the defendant's devices, including those recovered from the defendant's residence on or about November 9, 2021. Further, should the Government obtain any of this 2148.10214197 Bitcoin, the defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving this 2148.10214197 Bitcoin and will not cause or assist anyone else in doing so.

The defendant consents to the entry of the Consent Preliminary Order of Forfeiture as to Specific Property and Substitute Assets/Money Judgment annexed hereto as Exhibit A and agrees that the Consent Preliminary Order of Forfeiture as to Specific Property and Substitute Assets/Money Judgment shall be final as to the defendant at the time it is ordered by the Court.

If the defendant is in compliance with the foregoing provisions of this Agreement and makes a payment in the amount of \$400,000 in United States currency on or before December 6, 2022 (the "Payment") by wire transfer to the United States Marshals Service pursuant to the wire instructions to be provided to the defendant by the Government, this Office agrees to accept the Payment in full satisfaction of the Money Judgment, upon the condition that the Court enter Final Orders of Forfeiture forfeiting the Specific Property and Substitute Assets to the Government.

The defendant understands and agrees that failure to comply with any of the forfeiture provisions in this Agreement constitutes a material breach of this Agreement.

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 November 1, 2021 edition of the Guidelines Manual is applicable to the offense charged in Count One of the Information.
2. The sentencing guideline applicable to Count One of the Information is U.S.S.G. § 2B1.1.
3. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7.

4. Pursuant to U.S.S.G. § 2B1.1(b)(1)(H), because the loss amount was more than \$550,000 but less than \$1,500,000, the offense level is increased by 14 levels.

5. 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 18.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has one criminal history point, calculated as follows:

1. On or about May 19, 2014, in Athens Clarke County State Court in Georgia, the defendant was convicted of DUI – driving under the influence of alcohol, in violation of O.C.G.A. 40-6-391(a)(1), a misdemeanor, and sentenced to 24 hours' confinement, 40 hours of community service, a \$500 fine, and 12 months' probation. Pursuant to U.S.S.G. § 4A1.1(c), this sentence results in one criminal history point.

2. On or about March 7, 2017, in Athens Clarke County Superior Court in Georgia, the defendant was convicted in a deferred disposition of possession of cocaine, in violation of O.C.G.A. 16-13-30(a), a felony, and sentenced to a conditional discharge, \$2,000 fine, and 3 years' probation. On or about December 12, 2019, upon completion of the conditional discharge sentence, the case was dismissed and the conviction expunged. Pursuant to U.S.S.G. § 4A1.2(j), this sentence is not counted.

In accordance with the foregoing, the defendant is in Criminal History Category I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 27 to 33 months' imprisonment (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 offense level 18, the applicable fine range is \$10,000 to \$100,000.

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 offense 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, of any sentence within or below the Stipulated Guidelines Range of 27 to 33 months' imprisonment 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 or bring a collateral challenge of any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal or bring a collateral challenge of any fine that is less than or equal to \$100,000, and the Government agrees not to appeal any fine that is greater than or equal to \$10,000. The defendant also agrees not to appeal or bring a collateral challenge of any forfeiture amount equal to or less than \$42,747,425.95, and the Government agrees not to appeal any forfeiture amount equal to or greater than \$42,747,425.95. Further, the defendant agrees not to appeal or bring a collateral challenge of any forfeiture of the Specific Property and Substitute Assets, and agrees not to appeal or bring a collateral challenge of any provisions in the Consent Preliminary Order of Forfeiture as to Specific Property and Substitute Assets/Money Judgment. The defendant further agrees not to appeal or bring a collateral challenge of any special assessment that is less than or equal to \$100. 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.

In connection with his plea of guilty, the defendant, in consultation with counsel, has chosen not to request discovery materials pursuant to Fed. R. Crim. P. 16 ("Rule 16 Material"). The defendant understands that if not for entering this plea of guilty, the Government would be required to produce Rule 16 Material, and would further be required to produce material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and Fed R. Crim. P. 5(f), and, if the defendant proceeded to trial, impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), and *Jencks* Act material. The defendant acknowledges that he has not and will not receive such information because he has decided to plead guilty, waives the right to this information, and agrees not to withdraw his plea or to attack his conviction or sentence, either on direct appeal or collaterally, on the ground that the Government has failed to produce any such information, apart from any information establishing the factual innocence of the defendant.

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 removal from the United States is presumptively mandatory and that, at a minimum, he is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, he recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. Under federal law, an individual may be subject to denaturalization and removal if his naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that he has discussed the possible immigration

consequences (including removal or denaturalization) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including his attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. 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 removal or denaturalization) 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 removal or denaturalization) resulting from his guilty plea and conviction.

It is further agreed that should the 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 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,

DAMIAN WILLIAMS
United States Attorney

By:



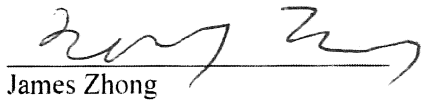
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APPROVED:



Tara M. La Morte
Chief, Money Laundering & Transnational
Criminal Enterprises Unit

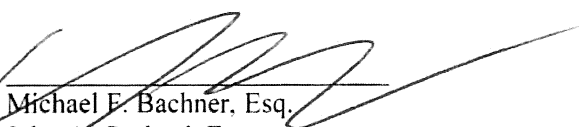
AGREED AND CONSENTED TO:


James Zhong

10-26-22

DATE

APPROVED:


Michael F. Bachner, Esq.
John A. Garland, Esq.
Donald F. Samuel, Esq.
Amanda R. Clark Palmer, Esq.

10-26-22

DATE

Attorneys for James Zhong