

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.)	
_____)	

FACTUAL BASIS FOR PLEA

The United States of America, by and through its undersigned attorneys within the U.S. Department of Justice, Criminal Division, Public Integrity Section, and the defendant, DWAYNE F. CROSS, personally and through his undersigned counsel, hereby stipulate to the following facts pursuant to U.S. Sentencing Guideline § 6A1.1 and Federal Rule of Criminal Procedure 32(c)(1):

1. From August 2001 through February 2008, defendant DWAYNE F. CROSS served as an Administrative Assistant in the Abduction Unit for Diplomatic Security, Counter Intelligence within the U.S. Department of State (hereinafter "State Department"). Thereafter, from March 2008 through October 2008, defendant CROSS worked as a Contract Specialist for the State Department Acquisitions Office while employed by a private company identified herein as "Firm A."

2. The State Department is a department and agency within the executive branch of the U.S. Government. At all times relevant hereto, the office space where defendant DWAYNE F. CROSS worked as an Administrative Assistant was physically located in the District of Columbia.

3. In the regular course of his employment as a State Department contract employee, defendant DWAYNE F. CROSS had access to official State Department computer databases, including the Passport Information Electronic Records System (PIERS). This computer database contained all passport data and consular personnel records maintained by the State Department Passport Services dating back to 1978, and all imaged passport applications dating back to 1994. The imaged passport applications on PIERS contain, among other things, a photograph of the passport applicant as well as certain personal information including the applicant's full name, date and place of birth, current address, telephone numbers, parent information, spouse's name, and emergency contact information.

4. Prior to his use of PIERS, and throughout his tenure with the State Department, defendant DWAYNE F. CROSS was made aware of and understood: (a) the confidential nature of PIERS and the confidential personal data contained therein; (b) that the information contained in the passport records maintained by the State Department in PIERS is protected from unauthorized disclosure by the Privacy Act of 1974, 5 U.S.C. § 552a; and (c) that passport applications maintained by the State Department in PIERS should be accessed only in connection with an employee's official government duties and not the employee's personal interest or curiosity.

5. At all times relevant hereto, upon logging onto a State Department computer, the following warning banner was displayed to the user:

This computer is a Department of State computer system. It should be used for official U.S. Government work only. Use by unauthorized persons, or for personal business, is prohibited and constitutes a violation of 18 U.S.C. 1030 and other Federal laws.

The banner also provided the user with a clear warning that he/she had “NO REASONABLE EXPECTATION OF PRIVACY while using th[e] computer” and that all computer activity was subject to monitoring and retrieval by State Department and law enforcement officials. To gain access to the State Department computer, defendant DWAYNE F. CROSS was required to click the icon marked “OK” directly below the following directive and acknowledgment:

IF YOU DO NOT CONSENT, PLEASE PRESS ESCAPE AND SHUTDOWN THIS COMPUTER NOW.

PRESS OK TO AGREE TO ALL THE CONDITIONS STATED ABOVE.

6. At all times relevant hereto, upon logging onto PIERS, the following warning banner was displayed to the user of the State Department computer database:

You are permitted access to passport and consular personal records on a need to know basis. Whether viewed or printed via PIERS, these are privileged records and are subject to the provisions of the Privacy Act of 1974. They are not public records and may be released for use outside of the Department of State only in accordance with applicable Department regulations. As a user of PIERS you are responsible for the protection of the record subject’s privacy. . . .

DO NOT REPRODUCE OR PROVIDE COPIES of documents viewed or printed via PIERS for use outside of the Department of State. Unauthorized release of these documents to non-Department staff may be subject to penalty of Federal law.

To gain access to the PIERS database and the passport application files contained therein, defendant DWAYNE F. CROSS was required to click the icon marked “yes” directly below the following acknowledgment: “I have read the aforementioned Privacy warning and understand my responsibilities regarding the protection of passport and consular records.”

7. Between January 2002 and August 2007, defendant DWAYNE F. CROSS logged onto the PIERS database and viewed the passport applications of well over 150 celebrities, actors, musicians, comedians, models, politicians, athletes, members of the media, family members,

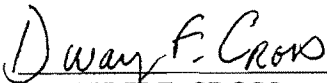
friends, associates, and other individuals. Defendant CROSS had no official government reason to access and view these passport applications; rather, defendant CROSS' sole purpose in accessing and viewing these passport applications was idle curiosity.

8. Each time defendant DWAYNE F. CROSS logged onto the PIERS database and accessed and viewed each of the over 150 passport applications identified in the preceding paragraph, defendant CROSS knowingly and intentionally exceeded his authorized access of State Department computer files.

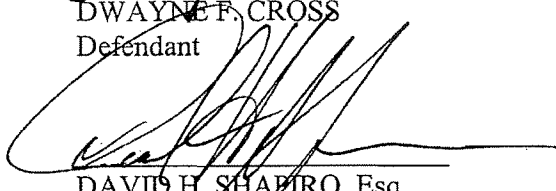
9. Defendant DWAYNE F. CROSS did not download, copy, print, forward, share, market, sell, or otherwise disseminate the passport applications he unlawfully accessed on PIERS.

Dated: January 8th, 2009

FOR THE DEFENDANT:



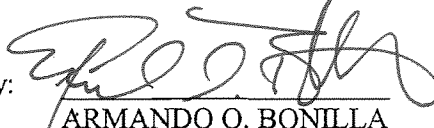
DWAYNE F. CROSS
Defendant



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