

FILED
MAY - 1 2018
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

1 ADAM L. BRAVERMAN
United States Attorney
2 SHERRI WALKER HOBSON
Assistant U.S. Attorney
3 California Bar No.: 142947
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101
5 Tel: (619) 546-6986
Sherri.hobson@usdoj.gov

7 Attorneys for Plaintiff
United States of America

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SKY JUSTIN GORNIK,
15 Defendant.

Case No.: 17CR2796-AJB
PLEA AGREEMENT

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,
18 through its counsel, Adam L. Braverman, United States Attorney, and
19 Sherri Walker Hobson, Assistant United States Attorney, and defendant,
20 SKY JUSTIN GORNIK, with the advice and consent of Michael Berg, counsel
21 for defendant, as follows:

22 //
23 //
24 //
25 //
26 //
27 //

28 swH4/9/18

Def. Initials

1 I

2 THE PLEA

3 A. The Charge. Defendant agrees to waive Indictment and plead
4 guilty to the SUPERSEDING INFORMATION charging defendant with:

5 COUNT ONE
6 **(CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE BY INTERNET)**

7 Beginning at a date unknown and continue to June 9, 2017,
8 within the Southern District of California, and elsewhere,
9 defendant SKY JUSTIN GORNIK did knowingly and intentionally
10 agreed with others, to delivery, distribute, and dispense
11 controlled substances, to wit: 400 grams and more of fentanyl
12 (a Scheduled II Controlled Substance), carfentanil (a
13 Scheduled II Controlled Substance), ketamine (a Scheduled III
14 Controlled Substance), oxycodone (a Scheduled II Controlled
15 Substance), and ecstasy (a Scheduled I Controlled Substance),
16 by means of the internet, in a manner not authorized by law;
17 in violation of Title 21, United States Code, Sections 841(h),
18 841(b) (1) (A) and 846.

13 COUNT TWO
14 **(CONSPIRACY TO LAUNDER MONEY)**

15 Beginning at a date unknown and continue to June 9, 2017,
16 within the Southern District of California, and elsewhere,
17 defendant SKY JUSTIN GORNIK did knowingly and intentionally
18 agreed with others, to conduct financial transactions
19 affecting interstate commerce, to wit: purchasing and selling
20 controlled substances by internet using digital currencies,
21 which transactions involved proceeds of specified unlawful
22 activity, with the intent to promote the carrying on or the
23 specified unlawful activity, and that while conducting and
24 attempting to conduct such financial transactions, knew that
25 the property involved in the financial transactions
26 represented proceeds of some form of specified unlawful
27 activity, in violation of Title 18, United States Code,
28 sections 1956(a) (1) (A) (i) and 1956(h).

22 CRIMINAL FORFEITURE

23 B. Criminal Forfeiture. The defendant consents to the forfeiture
24 allegations of the Superseding Information and agrees that the
25 provisions of the attached forfeiture addendum shall govern the
26 forfeiture in this case.
27
28

1 II

2 NATURE OF THE OFFENSE

3 A. ELEMENTS EXPLAINED

4 Defendant understands that the offense to which defendant is
5 pleading guilty has the following elements:

6 Count 1

- 7 1. Beginning at a date unknown and continuing to June 9,
8 2017, and elsewhere, there was an agreement between two
9 or more persons to deliver, distribute and dispense
10 controlled substances by means of the internet in a
11 manner not authorized by law;
- 12 2. The defendant became a member of the conspiracy knowing
13 of its objects and intending to help accomplish it.
- 14 3. The offense involved multiple controlled substances, to
15 wit: 400 grams and more of fentanyl (a Scheduled II
16 Controlled Substance), carfentanil (a Scheduled II
17 Controlled Substance), ketamine (a Scheduled III
18 Controlled Substance), oxycodone (a Scheduled II
19 Controlled Substance), and ecstasy (a Scheduled I
20 Controlled Substance).

21 Count 2

- 22 1. Beginning at a date unknown and continue to June 9, 2017,
23 within the Southern District of California, and
24 elsewhere, there was an agreement between two or more
25 persons to conduct financial transactions, knowing that
26 the property involved represented drug proceeds, while
27 acting with the intent to promote the carrying on or such
28 activity;
- 29 2. The defendant became a member of the conspiracy knowing
30 of at least one of its objects and intending to help
31 accomplish it.

32 As to the forfeitures, the defendant understands the Government would
33 have to prove by a preponderance of the evidence that the properties it
34 seeks to forfeit are proceeds of the offense set forth in Count 1, are
35 property used or intended to be used to commit or facilitate the
36 commission of the offense set forth in Count 1, or are property involved
37 in the offense set forth in Count 2.

38 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

39 Defendant has fully discussed the facts of this case with defense
40 counsel. Defendant has committed each of the elements of the crime, and

1 admits that there is a factual basis for this guilty plea. The following
2 facts are true and undisputed:

3 Counts 1 & 2

- 4 1. From 2014 and continuing up to June 7, 2017, defendant SKY
5 JUSTIN GORNIK, using anonymous screen names and monikers,
6 was a vendor/seller and a buyer of controlled substances on
7 the "dark web" or "dark net" internet. Defendant used
8 multiple Darknet Marketplaces over the internet to purchase
9 controlled substances (like AlphaBay, Trade Route, Abraxas,
10 Evolution, Outlaw Market, Dream Market and others) to buy
11 and sell controlled substances.
- 12 2. Defendant agreed with the buyers and sellers over the
13 Darknet Marketplaces to deliver, distribute and dispense,
14 multiple types of controlled substances, by means of the
15 internet in a manner not authorized by law, and did so using
16 multiple digital currencies to conduct these financial
17 transactions.
- 18 3. Using the Darknet Marketplaces, defendant agrees that he
19 purchased and sold fentanyl (at least 400 grams of fentanyl
20 and up to 9 kilograms of fentanyl), sold thousands of vials
21 of ketamine, and purchased and sold oxycodone and ecstasy,
22 and purchased carfentanil, using a variety of digital
23 currencies. Defendant would then blend and transfer the
24 various digital currencies to other wallets and accounts.
25 Defendant also purchased multiple other controlled
26 substances, including Dimethyltryptamine (DMT),
27 Dimethyltryptamine (DMT), Psilocybin and Psilocin,
28 Amphetamine, Buprenorphine, Methamphetamine, and Naloxone.

1 4. Through the use of various digital currencies to buy and
2 sell controlled substances over the Darknet Marketplaces,
3 defendant conducted these financial transactions to promote
4 the carrying on of such criminal activity.

5 5. The various digital currencies and U.S. currency described
6 in the attached forfeiture addendum are proceeds of
7 Defendant's trafficking in controlled substances and are
8 properties he used to commit and to facilitate the
9 commission of the drug trafficking, and are properties
10 involved in the Defendant's offense of money laundering.

11 **III**

12 **PENALTIES**

13 Defendant understands that the crime to which defendant is pleading
14 guilty carries the following penalties as to the following count:

15 **COUNT 1**

- 16 A. a maximum life in prison (**10 year minimum mandatory**);
17 B. a maximum \$1,000,000 fine;
18 C. a mandatory special assessment of \$100.00 per count; and
19 D. a term of supervised release up to life. Defendant understands
20 that failure to comply with any of the conditions of supervised
21 release may result in revocation of supervised release,
22 requiring defendant to serve in prison, upon any such
23 revocation, all or part of the statutory maximum term of
24 supervised release for the offense that resulted in such term
25 of supervised release;
26 E. possible ineligibility for certain Federal benefits; and
27 F. forfeiture to the United States of all property, real and
28 personal, that constitutes or is derived from proceeds of the
offense, and all property, real and personal, that was used
to commit or to facilitate the commission of the offense.

COUNT 2

- 1 A. a maximum 20 years in prison;
2 B. a maximum \$500,000 fine (or twice the value);
3 C. a mandatory special assessment of \$100.00 per count;
4 D. a term of supervised of 3 years. Defendant understands that
5 failure to comply with any of the conditions of supervised
6 release may result in revocation of supervised release,
7 requiring defendant to serve in prison, upon any such
8 revocation, all or part of the statutory maximum term of
9 supervised release for the offense that resulted in such term
of supervised release;
E. possible ineligibility for certain Federal benefits;
F. forfeiture to the United States of all property, real and
personal, involved in the offense.

10 IV

11 **DEFENDANT'S WAIVER OF TRIAL RIGHTS**

12 Defendant understands that this guilty plea waives the right to:

- 13 A. continue to plead not guilty and require the Government to
14 prove the elements of the crime beyond a reasonable doubt;
15 B. a speedy and public trial by jury;
16 C. the assistance of counsel at all stages of trial;
17 D. confront and cross-examine adverse witnesses;
18 E. testify and present evidence and to have witnesses testify on
19 behalf of defendant; and,
20 F. not testify or have any adverse inferences drawn from the
failure to testify.

21 V

22 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

23 The Government represents that any information establishing the
24 factual innocence of defendant known to the undersigned prosecutor in
25 this case has been turned over to defendant. The Government will
26 continue to provide such information establishing the factual innocence
27 of defendant.
28

1 Defendant understands that, if this case proceeded to trial, the
2 Government would be required to provide impeachment information relating
3 to any informants or other witnesses. In addition, if defendant raised
4 an affirmative defense, the Government would be required to provide
5 information in its possession that supports such a defense. Defendant
6 acknowledges, however, that by pleading guilty defendant will not be
7 provided this information, if any, and defendant also waives the right
8 to this information. Finally, defendant agrees not to attempt to
9 withdraw the guilty plea or to file a collateral attack based on the
10 existence of this information.

11 VI

12 **DEFENDANT'S REPRESENTATION THAT GUILTY**
13 **PLEA IS KNOWING AND VOLUNTARY**

14 Defendant represents that:

- 15 A. Defendant has had a full opportunity to discuss all the facts
16 and circumstances of this case with defense counsel, and has
17 a clear understanding of the charges and the consequences of
18 this plea. Defendant understands that, by pleading guilty,
19 defendant may be giving up, and rendered ineligible to
20 receive, valuable government benefits and civic rights, such
21 as the right to vote, the right to possess a firearm, the
22 right to hold office, and the right to serve on a jury.
23 Defendant further understands that the conviction in this case
24 may subject defendant to various collateral consequences,
25 including but not limited to deportation, removal or other
26 adverse immigration consequences; revocation of probation,
27 parole, or supervised release in another case; debarment from
28 government contracting; and suspension or revocation of a
professional license, none of which will serve as grounds to
withdraw defendant's guilty plea;
- 23 B. No one has made any promises or offered any rewards in return
24 for this guilty plea, other than those contained in this
agreement or otherwise disclosed to the court;
- 25 C. No one has threatened defendant or defendant's family to
26 induce this guilty plea; and,
- 27 D. Defendant is pleading guilty because in truth and in fact
28 defendant is guilty and for no other reason.

VII

1 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**
2 **SOUTHERN DISTRICT OF CALIFORNIA**

3 This plea agreement is limited to the United States Attorney's
4 Office for the Southern District of California, and cannot bind any
5 other federal, state or local prosecuting, administrative, or regulatory
6 authorities, although the Government will bring this plea agreement to
7 the attention of other authorities if requested by the defendant.

8 **VIII**

9 **APPLICABILITY OF SENTENCING GUIDELINES**

10 Defendant understands the sentence imposed will be based on the
11 factors set forth in 18 U.S.C. § 3553(a). Defendant understands further
12 that, in imposing the sentence, the sentencing judge must consult the
13 United States Sentencing Guidelines (Guidelines) and take them into
14 account. Defendant has discussed the Guidelines with defense counsel
15 and understands that the Guidelines are only advisory, not mandatory,
16 and the court may impose a sentence more severe or less severe than
17 otherwise applicable under the Guidelines, up to the maximum in the
18 statute of conviction. Defendant understands further that the sentence
19 cannot be determined until a presentence report has been prepared by the
20 U.S. Probation Office and defense counsel and the Government has had an
21 opportunity to review and challenge the resentence report. **Defendant**
22 **agrees to request that a presentence report be prepared.** Nothing in
23 this plea agreement shall be construed as limiting the Government's duty
24 to provide complete and accurate facts to the district court and the
25 U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that, if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable), based on the November 1, 2016 guidelines:

- | | |
|--|-------|
| 1. Base Offense Level [USSG § 2D1.1/2S1.1] | 34/34 |
| 2. Conviction for 18/1956 | +2 |
| 3. Acceptance of Responsibility [§ 3E1.1] | -3 |
| 4. Waiver of Appeal | -2 |

1 B. ACCEPTANCE OF RESPONSIBILITY

2 Notwithstanding paragraph A.3 above, the Government will not
3 recommend any adjustment for Acceptance of Responsibility if defendant
4 materially breaches this plea agreement by any of the following:

- 5 1. Fails to truthfully admit a complete factual basis for
6 the plea at the time it is entered, or
7 2. Denies involvement in the offense, gives conflicting
8 statements about that involvement, or is untruthful with
9 the Court or probation officer, or
10 3. Falsely denies prior criminal conduct or convictions; or
11 4. Fails to appear in court, or
12 5. Engages in additional criminal conduct, or
13 6. Attempts to withdraw the plea, or
14 7. Fails to abide by any lawful court order, or
15 8. Contests or assists any third party in contesting the
16 forfeiture of property(ies) seized or forfeited in
17 connection with this case.

18 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS
19 INCLUDING THOSE UNDER 18 U.S.C. § 3553

20 The parties agree that defendant may request or recommend
21 additional downward adjustments, departures, or sentence reductions
22 under 18 U.S.C. § 3553. The Government may oppose any such downward
23 adjustments, departures and sentence reductions not set forth in Section
24 X, paragraph A above.

25 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

26 The parties have no agreement as to defendant's Criminal History
27 Category - but expect that his criminal history will score in category
28 IV.

29 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

30 The parties agree that the facts in the "factual basis" paragraph
31 of this agreement are true, and may be considered as "relevant conduct"

1 under USSG § 1B1.3 and as the nature and circumstances of the offense
2 under 18 U.S.C. § 3553(a)(1).

3 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

4 The Government will recommend that defendant be sentenced to the
5 low end of the advisory guideline range as calculated by the Government
6 pursuant to this agreement.

7 G. SPECIAL ASSESSMENT

8 The parties will jointly recommend that defendant pay a special
9 assessment in the amount of \$100.00 to be paid forthwith at time of
10 sentencing. The special assessment shall be paid through the office of
11 the Clerk of the District Court by bank or cashier's check or money
12 order made payable to the "Clerk, United States District Court."

13 H. SUPERVISED RELEASE

14 The Government is free to recommend a period of supervised release.
15 If the Court imposes a term of supervised release, defendant agrees that
16 he will not later seek to reduce or terminate early the term of
17 supervised release until she has served at least two-thirds of his term
18 of supervised release and has fully paid and satisfied any special
19 assessments, fine, criminal forfeiture judgment and restitution
20 judgment.

21 **XI**

22 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

23 In exchange for the Government's concessions in this plea agreement,
24 defendant waives, to the full extent of the law, any right to appeal or
25 to collaterally attack the conviction and any lawful restitution order,
26 except a post-conviction collateral attack based on a claim of
27 ineffective assistance of counsel. Defendant also waives, to the full
28 extent of the law, any right to appeal or to collaterally attack the

120

1 sentence, unless the court imposes a custodial sentence greater than 11
2 months. If the defendant appeals, the Government may support on appeal
3 the sentence imposed. If defendant believes the Government's
4 recommendation at the time of sentencing is not in accord with this
5 agreement, defendant will object at the time of sentencing; otherwise
6 the objection will be deemed waived and cannot be raised on appeal.

7 If defendant breaches this plea agreement, at any time, in any way,
8 including, but not limited to, the reasons set forth in section X.B.
9 above, the Government may prosecute defendant for any counts, including
10 those with mandatory minimum sentences, dismissed or not charged
11 pursuant to this plea agreement. Additionally, the Government may use
12 any factual admissions made by defendant pursuant to this plea agreement
13 in any such prosecution.

14 XII

15 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**
16 **THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA**

17 This plea agreement is based on the understanding that, prior to
18 defendant's sentencing in this case, defendant has not committed or been
19 arrested for any offense not known to the Government prior to defendant's
20 sentencing. This plea agreement is further based on the understanding
21 that defendant has committed no criminal conduct since defendant's
22 arrest on the present charges, and that defendant will commit no
23 additional criminal conduct before sentencing. If defendant has engaged
24 in or engages in additional criminal conduct during this period, or
25 breaches any of the terms of any agreement with the Government, the
26 Government will not be bound by the recommendations in this plea
27 agreement, and may recommend any lawful sentence. In addition, at its
28 option, the Government may move to set aside the plea.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is defendant's independent opinion, and his/her counsel did not advise him/her about what to say in this regard.

Respectfully submitted,

ADAM L. BRAVERMAN
United States Attorney



SHERRI WALKER HOBSON
Assistant U.S. Attorney

4/23/2018

DATED

4/21/18

DATED



MICHAEL BERG
Defense Counsel

1 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER
2 PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE
3 ARE TRUE.

4 4/21/18
DATED

Sky J. Gornik
SKY JUSTIN GORNIK
Defendant

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28