

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of July, two thousand twenty-four.

United States of America,

Appellee,

v.

Latique Johnson, Ines Sanchez, AKA Meth, Donnell
Murray, AKA Don P, Thomas Morton, AKA 10 Stacks,
Saeed Kaid, AKA O-Dog, Eric Grayson, AKA Gistol,
Marques Cannon, AKA Paper Boy, Manuel Rosario, AKA
Top Dolla, Michael Evans, AKA Puff, Terrell Pinkney,
Patrick Daly, David Cherry, AKA Showtime,

Defendants,

Brandon Green, AKA Light, AKA Moneywell,

Defendant - Appellant.

ORDER


Docket Nos: 21-1896 (Lead)
21-1923 (Con)

Appellant, Brandon Green, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




APPENDIX B

21-1896(L); 21-2244
United States v. Green

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of January, two thousand twenty-four.

PRESENT:

**GUIDO CALABRESI,
ALISON J. NATHAN,**
Circuit Judges.
PAUL A. ENGELMAYER,
*District Judge.**

United States of America,

Appellee,

v.

**Nos. 21-1896 (L),
21-1923 (con);
No. 21-2244**

*Judge Paul A. Engelmayer, of the United States District Court for the Southern District of New York, sitting by designation.

Latique Johnson, Ines Sanchez, AKA
Meth, Donnell Murray, AKA Don P,
Thomas Morton, AKA 10 Stacks, Saeed
Kaid, AKA O-Dog, Eric Grayson, AKA
Gistol, Marques Cannon, AKA Paper Boy,
Manuel Rosario, AKA Top Dolla, Michael
Evans, AKA Puff, Terrell Pinkney, Patrick
Daly, David Cherry, AKA Showtime,

Defendants,

Brandon Green, AKA Light, AKA
Moneywell,

*Defendant-Appellant.**

FOR DEFENDANT-APPELLANT:

JAMES KOUSOUROS (Stuart Gold *on the*
brief), Law Office of James
Kousouros, New York, NY.

Brandon Green, pro se.

FOR APPELLEE:

ANDREW K. CHAN (Jessica Feinstein,
Allison Nichols, Stephen J. Ritchin, *on*
the brief), Assistant United States
Attorneys, *for* Damian Williams,
United States Attorney for the
Southern District of New York, New
York, NY.

*The Clerk of Court is directed to amend the caption as set forth above.

* * *

Appeal from a judgment of the United States District Court for the Southern District of New York (Gardephe, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant Brandon Green appeals from a July 26, 2021 judgment of the United States District Court for the Southern District of New York (Gardephe, J.) following his conviction for racketeering conspiracy in violation of 18 U.S.C. § 1962(d) (Count One); conspiracy to distribute and possess with intent to distribute cocaine, crack cocaine, heroin, and marijuana in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A), and 841(b)(1)(D) (Count Four); and using and carrying firearms during and in relation to, and possessing firearms in furtherance of, the narcotics conspiracy, as well as aiding and abetting the same, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2 (Count Five). The district court sentenced Green to a term of 295 months imprisonment followed by 10 years of supervised release and a \$300 mandatory special assessment.

In these appeals heard in tandem, Green raises numerous challenges to the district court's rulings during and after trial, and to his convictions. Green is represented by counsel in two consolidated cases, but has raised additional arguments in supplemental briefing, and in a third appeal he is proceeding pro se. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

I. Counseled Claims

A. Sufficiency of the Evidence for Firearms Offense

Beginning with Green's counseled claims, he challenges the sufficiency of the evidence underlying his conviction on Count Five, the firearms offense related to the narcotics conspiracy charged in Count Four. Sufficiency of the evidence challenges are reviewed *de novo*, "but defendants face a heavy burden, as the standard of review is exceedingly deferential." *United States v. Baker*, 899 F.3d 123, 129 (2d Cir. 2018) (cleaned up). "[W]e must view the evidence in the light most favorable to the Government, crediting every inference that could have been drawn in the Government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight of the evidence." *United States*

v. Brock, 789 F.3d 60, 63 (2d Cir. 2015) (cleaned up). Moreover, “[w]e will sustain the jury’s verdict if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Pierce*, 785 F.3d 832, 838 (2d Cir. 2015) (cleaned up).

Green alleges that the “only evidence of drug trafficking committed by [him]” that supports his conviction for the charged narcotics conspiracy is “the April 2017 marijuana texts” between Green and an individual named Rube. Appellant’s Br. at 42–43. Cell phones containing those text messages, as well as drug paraphernalia and various firearms, were recovered in a May 16, 2017 search of Green’s apartment after the federal charges against Green and his co-defendants were unsealed. That evidence is insufficient for his firearm conviction, according to Green, because “there is no evidence that Green was associated” with the Blood Hound Brims (BHB) gang after the middle of 2016 and “there is no evidence that Rube was ever associated with the BHB.” *Id.* at 43. As a result, Green claims there is no gun-drug nexus and that no rational jury could “find that the guns found in May 2017 advanced a hard drug operation” that he alleges ended years prior. *Id.* We reject Green’s argument.

A conviction under § 924(c) “requires the government to establish a ‘nexus’ between the charged firearm and the charged drug selling operation.” *United States v. Willis*, 14 F.4th 170, 184 (2d Cir. 2021) (citation omitted). “That nexus is established where the firearm afforded some advantage (actual or potential, real or contingent) to the drug trafficking.” *Id.* (cleaned up). If the “charged weapon is readily accessible to protect drugs, drug proceeds, or the dealer himself,” § 924(c) applies. *Id.* Notably, § 924(c)’s “language sweeps broadly, punishing any use of a firearm so long as the use is during and in relation to a drug trafficking offense.” *Smith v. United States*, 508 U.S. 223, 229 (1993) (cleaned up).

Sufficient evidence was presented to the jury establishing the requisite gun-drug nexus to support Green’s § 924(c) conviction. Contrary to Green’s argument, it is not evident that the jury based its § 924(c) conviction solely on the guns seized in the search of Green’s apartment. That is because additional evidence was presented to the jury establishing that Green used a gun in furtherance of or in relation to the charged narcotics conspiracy at earlier dates. For example, the Government presented testimony that in 2011, Green gave an individual named Adams about 60 grams of cocaine and a handgun, from which the jury could

reasonably conclude that Green gave Adams the cocaine to sell and the gun to use in furtherance of that crime. Furthermore, another witness named Jones testified that Green's role in the gang was to "provide[] drugs[and] guns" and that Green was seen in possession of a gun. App'x at 453.

B. Constructive Amendment or Prejudicial Variance

Green also claims that the terms of the indictment were constructively amended or that there was a prejudicial variance when the government entered the evidence from the May 2017 search. Green alleges that the text messages between him and Rube concern a marijuana conspiracy separate from the narcotics conspiracy charged because Rube "had no connection to the BHB." Appellant's Br. at 49. Moreover, the predicate crime for Green's § 924(c) conviction was only the charged narcotics conspiracy, as the jury acquitted Green of a § 924(c) charge predicated on the racketeering conspiracy. Green alleges that the May 2017 evidence—the text messages, drug paraphernalia, and guns—was "[t]he only alleged drug-related evidence against Green that was unconnected to the [racketeering] conspiracy." Appellant's Reply Br. at 3. Admitting that evidence, according to Green, "broadened the § 924(c) Count by allowing the jury to convict

Green of possessing guns to further the alleged [Green-Rube] marijuana trafficking,” conduct for which he was not indicted, in addition to the charged narcotics conspiracy. Appellant’s Br. at 50. We disagree.

As an initial matter, Green failed to object below to any constructive amendment or prejudicial variance. Plain error review thus applies. When reviewing for plain error, we consider whether “(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant’s substantial rights; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *United States v. Miller*, 954 F.3d 551, 557–58 (2d Cir. 2020) (citation omitted).

For his constructive amendment claim, Green must show that “the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify *essential elements* of the offense charged that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment.” *United States v. D’Amelio*, 683 F.3d 412, 416 (2d Cir. 2012) (citation omitted). On the other hand, “[a] variance occurs when the charging terms of the indictment are left unaltered, but the evidence offered at

trial proves facts materially different from those alleged in the indictment.” *United States v. Salmonese*, 352 F.3d 608, 621 (2d Cir. 2003) (quoting *United States v. Frank*, 156 F.3d 332, 337 n.5 (2d Cir. 1998)). For reversal on a variance claim, the defendant must demonstrate that the variance caused “substantial prejudice at trial.” *United States v. McDermott*, 245 F.3d 133, 139 (2d Cir. 2001) (cleaned up).

Applying plain error review, this record does not demonstrate that either a constructive amendment or prejudicial variance occurred. As the Government identifies, both the narcotics conspiracy and racketeering conspiracy counts charged Green with selling marijuana, in addition to cocaine, crack cocaine, and heroin. The evidence at trial established that the BHB sold marijuana as part of the conspiracy, through BHB paperwork and testimony from former members. Moreover, evidence demonstrated that Green texted a contact named “Gotti” in April 2017 regarding a different individual’s debt for marijuana. “Gotti” was a name that appeared in an address book found in Ines Sanchez’s residence, a member of the BHB, along with other BHB member names. At trial, the Government presented the April 2017 texts between Gotti and Green, which discussed a debt someone owed to Green, just before presenting the April 2017

texts between Green and Rube regarding Rube's debt to Green from the marijuana transaction between the two. As a result of this evidence, the jury could reasonably have inferred that Green's texts with Rube regarding the debt owed, which Green alleges were about a separate conspiracy, were actually related to Green's membership in the BHB and the charged narcotics conspiracy. The record does not support Green's argument that the marijuana conspiracy was separate and independent.

On plain error review, we see no error in the admission of the evidence and we observe no constructive amendment or prejudicial variance.¹

C. Ineffective Assistance of Counsel

Next, Green identifies several moments at trial that he claims rise to the level of ineffective assistance of counsel. Specifically, Green points to trial counsel's decision not to pursue certain defenses, move to suppress evidence, impeach or challenge witness testimony, and raise certain objections. Green especially

¹ Relatedly, Green argues that should we reverse his § 924(c) conviction, we would be obligated to vacate his convictions under § 846 and § 1962(d) based on spillover prejudice. Because we do not reverse Green's § 924(c) conviction on sufficiency of the evidence or Fifth Amendment grounds, we similarly reject this argument. See *United States v. Coplan*, 703 F.3d 46, 92 (2d Cir. 2012).

identifies trial counsel's failure to object based on a constructive amendment or prejudicial variance when the May 2017 search evidence was admitted.

On direct appeal of Green's ineffective assistance of counsel claims, we "may (1) decline to hear the claim[s], permitting the appellant to raise the issue as part of a subsequent 28 U.S.C. § 2255 motion; (2) remand the claim to the district court for necessary fact-finding; or (3) decide the claim on the record before us." *United States v. Doe*, 365 F.3d 150, 152 (2d Cir. 2004) (cleaned up). "[I]n most cases a motion brought under § 2255 is preferable to direct appeal for deciding claims of ineffective assistance." *Massaro v. United States*, 538 U.S. 500, 504 (2003).

Given Green's acknowledged need for further fact-finding on his ineffectiveness claims, and the lack of an adequate record before us, especially as to Green's constructive amendment or prejudicial variance argument, we decline to address his ineffective assistance claims here.

D. Rule 33 Motion

Green argues that the district court erred when it denied his Federal Rule of Criminal Procedure 33 motion for a new trial. We review his claim for abuse of discretion, *United States v. Snype*, 441 F.3d 119, 140 (2d Cir. 2006), and see none

here. That is so because the district court's decision contains no errors of law and Green's convictions do not present an "extraordinary circumstance[]" warranting a new trial. *See United States v. Ferguson*, 246 F.3d 129, 134 (2d Cir. 2001).

E. Summation Errors

Green claims that six statements in the Government's summation amounted to a due process violation, depriving him of a fair trial. We reject Green's argument because he identifies brief and minor misstatements of the record in a complex conspiracy case. Nothing suggests that the remarks in summation here constituted "egregious misconduct" sufficient to grant a new trial. *See United States v. Shareef*, 190 F.3d 71, 78 (2d Cir. 1999).

F. In-Court Identification

For his final counseled claim, Green argues that his due process rights were violated when one of the cooperating witnesses, Jones, was allowed to identify Green in court. Green claims that "Jones's viewing of Green at trial is the only possible explanation for how Jones was initially unable to make an in-court identification of Green," but then was later able to identify Green in court.

Appellant's Br. at 74. We review the admissibility of identification evidence for clear error. *United States v. Gershman*, 31 F.4th 80, 93–94 (2d Cir. 2022).

We observe no error here. That is because the record makes clear that Jones had prior experiences with Green, which would be sufficient for an in-court identification, and defense counsel was permitted to cross examine Jones regarding his in-court identification.²

II. Pro Se Claims

A. Sufficiency of the Evidence for Racketeering and Narcotics Conspiracies

In his pro se briefing, Green argues that the evidence was insufficient to support his underlying conviction on Count One, the racketeering conspiracy, and Count Four, the narcotics conspiracy.

As with the sufficiency challenge above, the Government's evidence presented on Green's racketeering and narcotics conspiracy counts was plainly sufficient to prove beyond a reasonable doubt that Green knowingly joined and participated in those conspiracies as a member of the BHB gang.

² Raising a cumulative error claim, Green also argues that the cumulative effect of the errors at trial denied him the right to a fundamentally fair trial. Because we observe no error, we reject this claim accordingly.

Five cooperating witnesses—Michael Adams, Thomas Morton, Rayshaun Jones, Kenneth Moore, and Manuel Rosario, members of the BHB—testified that: Green was a member of the gang; held various leadership positions; attended gang meetings; supplied and distributed drugs as a member of the gang; and was close with and had regular conversations with the gang leader, Latique Johnson. *See United States v. Zemlyansky*, 908 F.3d 1, 11 (2d Cir. 2018). Several witnesses also explicitly linked Green to the BHB’s drug operations, identifying him as the BHB’s chief supplier of “crack,” cocaine, heroin, and marijuana. *See United States v. Barret*, 848 F.3d 524, 534–36 (2d Cir. 2017).

Given the substantial evidence presented on the racketeering and narcotics charges, we reject the claim that there was insufficient evidence for the jury to convict him of those crimes.

B. Fourth Amendment

Green next argues that the district court erred when it denied his pretrial motion to suppress the evidence seized during the search of his Bridgeport, Connecticut apartment on May 16, 2017. The district court held an evidentiary hearing and credited the testimony of the Government’s witnesses. Based on these

credibility determinations, the district court denied Green's motion to suppress and admitted the seized evidence.

On appeal, Green alleges that law enforcement entered his apartment illegally without a warrant and executed a pretextual and overextended protective sweep. He further claims that his girlfriend did not voluntarily consent to the search. We review Green's challenge to the "district court's findings of fact for clear error, and its resolution of questions of law and mixed questions of law and fact *de novo*," *United States v. Bohannon*, 824 F.3d 242, 247–48 (2d Cir. 2016), and observe no error here.

Even assuming that Green has not waived his argument that the officers illegally entered his apartment because they only possessed an arrest warrant by failing to raise it below, *see United States v. Yousef*, 327 F.3d 56, 126 (2d Cir. 2003), his claim would fail. Credited testimony from the hearing demonstrates that law enforcement reasonably believed Green was inside the apartment while executing the arrest warrant, granting the officers authority to enter. *See Payton v. New York*, 445 U.S. 573, 603 (1980) ("[A]n arrest warrant founded on probable cause implicitly

carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.”).

Green also challenges law enforcement’s protective sweep of his apartment, claiming that the officers lacked reasonable suspicion and exceeded the scope of the sweep. When making an arrest on private premises, law enforcement is permitted to search areas beyond the space immediately adjoining the place of arrest where there are “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325, 334 (1990).

Here, the district court did not clearly err when it determined that, based on the testimony presented at the suppression hearing, the officers validly conducted a protective sweep of the apartment, including the second floor, due to the risk of attack from that area. There were numerous articulable facts presented, including that the living room area was exposed “to possible fire from someone above,” and that there was “no ceiling separating part of the living room from the bedroom.” Supplemental App’x at 321. Nor is there merit in Green’s other arguments, as the

protective sweep was not unreasonably long, and the incriminating evidence seized was in plain view. *See Buie*, 494 U.S. at 330.

Finally, Green argues that Jennifer Turcios, his girlfriend who also lived in the apartment, did not voluntarily consent to the search of the apartment beyond the protective sweep. A search authorized by voluntary consent is a well-recognized exception to the Fourth Amendment's prohibition on warrantless searches. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). When determining whether consent to search was voluntarily given, we consider the totality of the circumstances, but "the ultimate question presented is whether the officer had a reasonable basis for believing that there had been consent to the search." *United States v. Garcia*, 56 F.3d 418, 423 (2d Cir. 1995) (cleaned up).

Applying clear error review, we see no basis to disturb the district court's finding that Turcios voluntarily consented to the search. At the suppression hearing, Officer Eric Kushi testified that he asked Turcios for consent to search, he made no show of force, nor did he make Turcios believe she was in legal jeopardy or handcuff her. According to Officer Kushi, Turcios instantly consented to the search and stated she had no problem with it. Moreover, Turcios signed a consent

to search form which provided that she had a constitutional right not to have a search of the premises, and that she gave her consent “voluntarily and without any threats or promises of any kind.” Supplemental App’x at 299. The district court thus committed no error when it denied Green’s suppression motion.

C. Prosecutorial Misconduct

Green claims that the proceedings against him were infected with prosecutorial misconduct and that he is entitled to vacatur of all his convictions and dismissal of his indictment. Green does not point to any record evidence demonstrating that the Government knowingly or recklessly misled the jury, which is the required showing for such an “extraordinary remedy,” *United States v. Lombardozzi*, 491 F.3d 61, 79 (2d Cir. 2007) (cleaned up). We reject his argument accordingly.

D. Ineffective Assistance of Counsel Claims Pre-Sentencing

Green argues that the district court abused its discretion when it vacated its initial decision to hear his ineffective assistance of counsel claims before sentencing, and later denied Green’s motion to reconsider on the same issue. We

review his claim for abuse of discretion, and observe none here. *Cf. United States v. Brown*, 623 F.3d 104, 112 (2d Cir. 2010).

Green's challenge to the district court's order stems from his belief that he did not need to submit a form waiving his attorney-client privilege or an affidavit detailing the allegations against his three prior attorneys. Despite the district court permitting Green to raise his ineffective assistance of counsel claims before sentencing in a November 19, 2020 order, Green refused to submit the requisite forms. Green's continued failure to comply with the district court's requirement led the district court to inform Green, for a final time, that it could not "delay [Green's] sentencing forever" and that if Green wanted to proceed, he needed to submit the waiver form and affidavit by February 9, 2021. No. 21-2244 App'x at 37, 174. Once that deadline had passed, the district court reversed its prior decision and ordered that the parties proceed to sentencing.

As we have held, "district courts face competing considerations in deciding whether it is appropriate to inquire into the merits of [ineffective assistance of counsel] claims prior to judgment, including principally the potential disruption of the proceedings." *Brown*, 623 F.3d at 113. Here, the district court chose to avoid

“delay” and the “needless expenditure of judicial resources” in continuing to push back Green’s sentencing. *See Chang v. United States*, 250 F.3d 79, 86 (2d Cir. 2001). Green’s steadfast refusal to comply with the district court’s request ensured that sentencing would have been deferred into perpetuity. We therefore conclude that the district did not abuse its discretion when it denied Green the opportunity to raise his ineffective assistance of counsel claims before sentencing.

E. Recusal Motion

Green additionally argues that the district judge demonstrated bias when he declined to hear Green’s ineffective assistance of counsel claims pre-sentencing and therefore, he should have recused himself. “We review a district court’s decision not to recuse itself for abuse of discretion,” and “we will rarely disturb a district court’s decision not to recuse itself.” *United States v. Rechnitz*, 75 F.4th 131, 142 (2d Cir. 2023).

Under 28 U.S.C. § 455, a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or “[w]here he has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a), (b)(1). Recusal under § 455(a) is evaluated “on an *objective* basis, so that what matters is not the

reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U.S. 540, 548 (1994). In the recusal analysis, “we consider whether a reasonable person, knowing all the facts, would conclude that the trial judge’s impartiality could reasonably be questioned.” *Rechnitz*, 75 F.4th at 142–43 (cleaned up).

No reasonable person could conclude that the district judge’s impartiality could reasonably be questioned. The record reflects that the district judge carefully considered Green’s arguments throughout the entire case. He exhibited neither antagonism nor bias towards Green and there is no indication in the record that the district court prejudged Green’s claims. The district judge’s repeated attempts to enforce “courtroom administration ... remain immune from challenge.” *United States v. Wedd*, 993 F.3d 104, 115 (2d Cir. 2021) (cleaned up). We observe no abuse of discretion.³

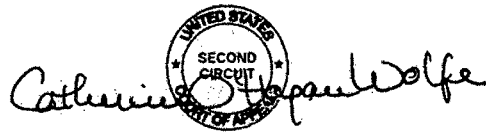
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³ Green briefly argues that the district court violated his Sixth Amendment right to counsel when it appointed standby counsel over his objections. There was no Sixth Amendment violation, as a district court may appoint standby counsel over a defendant’s objection. *See Fareta v. California*, 422 U.S. 806, 834 n.46 (1975).

We have considered Green's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED.**

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

APPENDIX C

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

Brandon Green

JUDGMENT IN A CRIMINAL CASE

Case Number: (S5) 1:16 CR 00281- 002(PGG)

USM Number: 56400-054

Defendant's Attorney:

THE DEFENDANT:

☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) 1, 4, 5
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1962(d)	Racketeering Conspiracy	4/20/2016	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Judgment 7/22/2021

Signature of Judge

Paul G. Gardephe

Hon. Paul G. Gardephe, U.S.D.J.

Name and Title of Judge

Date 7/26/2021

C-1

DEFENDANT: **Brandon Green**CASE NUMBER: **(S5) 1:16 CR 00281- 002(PGG)****ADDITIONAL COUNTS OF CONVICTION**

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A) 21 U.S.C. § 851	Narcotics Conspiracy	4/20/2016	4
18 U.S.C. § 924(c)(1)(A) (i)	Use/Possession of a Firearm in Connection with the Racketeering and Narcotics Conspiracies	4/20/2016	5

DEFENDANT: **Brandon Green**

CASE NUMBER: (S5) 1:16 CR 00281- 002(PGG)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

235 months' imprisonment on each of Counts One and Four, with those terms to run concurrently, and 60 months' imprisonment on Count Five, to run consecutively to the terms of imprisonment imposed on Counts One and Four.

☐ The court makes the following recommendations to the Bureau of Prisons:

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

C-3

DEFENDANT: **Brandon Green**

CASE NUMBER: (S5) 1:16 CR 00281- 002(PGG)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 years' on each of Counts One and Five, and 10 years' on Count Four, with all terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

C-4

DEFENDANT: Brandon Green

CASE NUMBER: (S5) 1:16 CR 00281- 002(PGG)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Brandon Green

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SPECIAL CONDITIONS OF SUPERVISION

The Defendant will participate in an outpatient drug and alcohol treatment program approved by the United States Probation Office, which program may include testing to determine whether he has reverted to using drugs or alcohol. I authorize the release of available drug treatment evaluations and reports to the substance abuse treatment provider.

The Defendant will participate in a mental health treatment program as directed by the Probation Officer.

The Defendant shall submit his person, residence, place of business, vehicle, electronic devices or any other property under his control to a search on the basis that the probation officer has a reasonable suspicion that contraband or evidence of a violation of the conditions of supervised release may be found. Any search must be conducted at a reasonable time and in a reasonable manner. 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 search pursuant to this condition.

DEFENDANT: Brandon Green

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 300.00	\$	\$	\$	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine 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 Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

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DEFENDANT: Brandon Green

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SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 300.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.