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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 32 (JPC)

5 SETH ANDREW,

6 Defendant.

7 -----x
8 New York, N.Y.
9 January 14, 2022
1:15 p.m.

10 Before:

11 HON. JOHN P. CRONAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
16 Southern District of New York

RYAN B. FINKEL

Assistant United States Attorney

17 EDWARD Y. KIM

18 MICHAEL L. YAEGER

TIMOTHY DOHERTY II

19 VARUN ANAND GUMASTE

Attorneys for Defendant

20 ALSO PRESENT: MELODY SHEN, FBI Special Agent
21
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23
24
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M1EKANDP

1 (Case called)

2 MR. FINKEL: Good afternoon, your Honor. Ryan Finkel,
3 for the government. I'm joined at counsel table by Special
4 Agent Melody Shen, of the FBI.

5 THE COURT: Great. Good afternoon, Mr. Finkel and --
6 Ms. Shen, was it?

7 MS. SHEN: Shen, yes.

8 THE COURT: Good afternoon, Mr. Finkel and Ms. Shen.
9 For the defendant?

10 MR. KIM: Good afternoon, your Honor. Edward Kim,
11 from KKL. Seated to my right is Mr. Seth Andrew. And I will
12 allow my colleagues to introduce themselves.

13 THE COURT: Good afternoon, Mr. Kim and Mr. Andrew.

14 MR. DOHERTY: Good afternoon, your Honor. Tim
15 Doherty, from Downs Rachlin Martin, for Mr. Andrew.

16 THE COURT: Good morning.

17 MR. GUMASTE: Good morning, Judge. Varun Gumaste,
18 from Krieger Kim & Lewin, for Mr. Andrew.

19 THE COURT: Good afternoon. And good to see you
20 again, Mr. Gumaste.

21 We are here, I understand, Mr. Kim, for two reasons,
22 first to determine whether your client, Mr. Andrew, knowingly
23 and voluntarily waives his right to be charged by indictment
24 and agrees to be prosecuted by a criminal information, and, if
25 so, whether he pleads guilty to that information.

M1EKANDP

1 Is that right?

2 MR. KIM: That's correct, your Honor.

3 THE COURT: Let me actually take my mask off. Under
4 the protocols, when I'm speaking, I'm able to take them off,
5 and counsel, as well, if you're vaccinated and at the podium,
6 although, given the nature of this proceeding, that may not be
7 the most convenient to bounce back and forth.

8 Before we start, can we put on the record, like I
9 usually do, my work at the Department of Justice before taking
10 the bench. I know some folks in the room are well aware of it.
11 I was a prosecutor at the U.S. Attorney's Office for the
12 Southern District of New York until August 2017. That is the
13 office that Mr. Finkel is in. I then worked at the Department
14 of Justice's criminal division until August of 2020.

15 I don't believe, Mr. Finkel, we overlapped when I was
16 at the U.S. Attorney's Office, I'm not sure.

17 MR. FINKEL: That's correct, your Honor.

18 THE COURT: I did overlap with Mr. Kim for much, if
19 not most, of my time at the U.S. Attorney's Office did before
20 he entered private practice. We worked closely together on a
21 large number of cases, including one trial, and we were in the
22 same unit in the office for a period of time. We remained
23 friends since he left the office.

24 The information in the complaint alleges a wire fraud
25 conspiracy that occurred from around at least March 2019 to

M1EKANDP

1 May 2020, so the alleged conduct would have occurred while I
2 was at the Department of Justice's criminal division. I
3 reviewed the complaint very closely, and I'm aware of no
4 involvement I had in this case while I was at the Department of
5 Justice, whether it be any involvement in the investigation or
6 consultation role or an approval role.

7 Mr. Finkel, do you have any reason to think otherwise?

8 MR. FINKEL: No, your Honor.

9 THE COURT: Let me just ask a little more about that.
10 Are you aware of any involvement that the criminal division's
11 fraud section or the money laundering and asset recovery
12 section had in this case even as in a consulting role?

13 MR. FINKEL: I'm not, your Honor.

14 THE COURT: I take it there are no Title 3 wiretaps?

15 MR. FINKEL: Correct.

16 THE COURT: Given all that, I don't see any reason I
17 cannot hear this case. If any party feels differently, they
18 are welcome to raise any issues. Obviously, today, we may be
19 having a guilty plea, so let me just confirm that there's no
20 motion for my recusal at this point.

21 Government?

22 MR. FINKEL: Not from the government, your Honor.

23 THE COURT: Mr. Kim?

24 MR. KIM: No, your Honor.

25 THE COURT: Let me turn now to make sure I understand

M1EKANDP

1 where we are in terms of background.

2 Mr. Finkel, it appears that Mr. Andrew was originally
3 arrested in April of 2021 and he's been released on a bail
4 package since then?

5 MR. FINKEL: That's correct, your Honor.

6 THE COURT: Have there been any issues with respect to
7 his release on bail?

8 MR. FINKEL: Not that I'm aware, your Honor.

9 THE COURT: I know there's restitution in the plea
10 agreement. Can you just speak to efforts to comply with victim
11 notification requirements under the law?

12 MR. FINKEL: Yes, your Honor.

13 The government has been in touch – in fact, I can tell
14 the Court I've been personally in touch – with counsel for the
15 victim in this case. They're aware of this proceeding today.
16 They're aware of the restitution obligation that Mr. Andrew
17 has, so that victim has been fully apprised of these events,
18 your Honor.

19 THE COURT: Thank you.

20 Even though we may have a guilty plea later this
21 afternoon, I think it still would be appropriate for me to put
22 on the record the required reminder under Rule 35(f) under the
23 Federal Rules of Criminal Procedure. Last October, the former
24 president signed into law the Due Process Protection Act. That
25 statute has as provisions that amend Rule 5, such that

M1EKANDP

1 Rule 5(f) now Requires me to remind the parties of the
2 prosecutor's obligations under the Supreme Court decision in
3 *Brady v. Maryland*. Pursuant to that statute and Rule 5(f), I
4 direct the prosecution to comply with its obligations under
5 *Brady v. Maryland* and its progeny to disclose to the defense
6 all information, whether admissible or not, favorable to the
7 defendant, material to either guilt or punishment, and known to
8 the prosecution, and possible consequences for noncompliance
9 may include dismissing of individual charges or the entire
10 case, exclusion of evidence, and professional discipline or
11 court sanctions on the attorney or attorneys responsible.

12 As I usually do, I'll enter a written order on the
13 docket that more fully describes its obligations and possible
14 consequences, and I direct the government to review and comply
15 with that order, but for now, Mr. Finkel, does the prosecution
16 confirm that it understands its obligations and will fulfill
17 them?

18 MR. FINKEL: Yes, your Honor.

19 THE COURT: Let's turn to the waiver of indictment
20 first.

21 Mr. Andrew, is it correct you wish to waive your right
22 to be indicted and enter a plea to a criminal information
23 today?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Really, whatever you're more comfortable

M1EKANDP

1 with. Other than that, you're welcome to sit down during this
2 proceeding as well.

3 I'm going to ask you now, Mr. Andrew, a number of
4 questions. The first ones will be to ensure, to my
5 satisfaction, that you understand what it means to waive your
6 right to be charged in an indictment and that you are waiving
7 that right knowingly and voluntarily. If you don't understand
8 any of my questions, or if you want to consult with your
9 lawyers at any time for any reason, just let me know. I'll
10 give you as much time as you need to speak with Mr. Kim and his
11 colleagues in private as well. Don't hesitate to do that
12 because it's very important today that you understand the
13 rights you would be waiving.

14 So let me ask you to stand back up again, and,
15 Ms. Henrich, will you administer the oath to Mr. Andrew?

16 (Defendant sworn)

17 THE COURT: Mr. Andrew, you are now under oath. What
18 that means is that if you answer any of my questions falsely,
19 you may be prosecuted for a separate crime of perjury, and any
20 false answer you give under oath may be used against you in
21 such a prosecution.

22 Do you understand that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: What is your full name?

25 THE DEFENDANT: Seth Aaron Gross Andrew.

M1EKANDP

1 THE COURT: How old are you?

2 THE DEFENDANT: Forty-three.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: I received a Master's degree.

5 THE COURT: Could you tell me about your work

6 experience maybe in the past ten years?

7 THE DEFENDANT: I started my career as a teacher and
8 became a principal, superintendent, and then policy advisor and
9 then a social entrepreneur.

10 THE COURT: Have you ever been hospitalized or treated
11 for any mental illness?

12 THE DEFENDANT: Treated, yes.

13 THE COURT: How long ago was that?

14 THE DEFENDANT: Recently.

15 THE COURT: Are you currently under the care of a
16 doctor or a psychiatrist for that?

17 THE DEFENDANT: I am.

18 THE COURT: Are you taking any medication?

19 THE DEFENDANT: I do.

20 THE COURT: Does that medication affect your ability
21 to understand and follow what is going on?

22 THE DEFENDANT: No, it does not.

23 THE COURT: Do you think you're able to understand and
24 follow today's proceeding?

25 THE DEFENDANT: I do.

M1EKANDP

1 THE COURT: How do you feel physically?

2 Obviously, it's not the most pleasant experience, you
3 pleading guilty, but do you feel well today?

4 THE DEFENDANT: I do.

5 THE COURT: What about addiction? Have you ever been
6 treated or hospitalized for any drug or alcohol addiction?

7 THE DEFENDANT: I have not.

8 THE COURT: Does your mind feel clear today?

9 THE DEFENDANT: It does.

10 THE COURT: I may have asked you this, but you think
11 you understand what is occurring this afternoon?

12 THE DEFENDANT: I do.

13 THE COURT: Mr. Kim, I assume you've discussed this
14 matter with your client?

15 MR. KIM: I have, your Honor.

16 THE COURT: Do you think he's capable of understanding
17 the nature of today's proceeding?

18 MR. KIM: I do, your Honor.

19 THE COURT: Do you think he understands the rights
20 that he would be giving up if he waives indictment and pleads
21 guilty?

22 MR. KIM: I do believe that, your Honor.

23 THE COURT: Does either counsel have any doubts as to
24 the defendant's competence to plead at this time?

25 MR. FINKEL: Not from the government, your Honor.

M1EKANDP

1 MR. KIM: Not from the defense, your Honor.

2 THE COURT: Mr. Finkel, are there any additional
3 questions you would like me to ask?

4 MR. FINKEL: Not on this topic, your Honor.

5 THE COURT: On the basis of Mr. Andrew's responses to
6 my questions, my observations of his demeanor here in court,
7 and the representations of counsel, I find that he is fully
8 competent to waive indictment and to enter an informed plea of
9 guilty.

10 Now, Mr. Andrew, the document that contains a criminal
11 charge against you is called an information. It has been
12 issued by the United States Attorneys for this district, Damian
13 Williams, who is the head federal prosecutor in this judicial
14 district.

15 You have a constitutional right to be charged by a
16 grand jury in an indictment instead of by the prosecutor in an
17 information. In other words, you have a right to be charged in
18 a different way.

19 Do you understand that?

20 THE DEFENDANT: I do.

21 THE COURT: And you understand that a grand jury has
22 23 people, at least 16 of them must be present to conduct
23 business, and you cannot be charged unless at least 12 of them
24 find there's probable cause to charge you and vote for an
25 indictment?

M1EKANDP

1 THE DEFENDANT: I do.

2 THE COURT: And the grand jury might or might not
3 indict you. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you discussed waiving your right to
6 indictment by a grand jury with your lawyers?

7 THE DEFENDANT: I have, your Honor.

8 THE COURT: Do you understand that you have the right
9 to be indicted by a grand jury?

10 THE DEFENDANT: I do.

11 THE COURT: Have you seen a copy of the information?
12 Again, that's a document that the U.S. Attorney has signed to
13 charge you.

14 THE DEFENDANT: I have.

15 THE COURT: That information would charge you in one
16 count, from at least March 2019 to at least May 2020, with the
17 commission of wire fraud, in violation of 18, United States
18 Code, Sections 1343 and 2. The information also includes a
19 forfeiture allegation.

20 Have you read the entire information?

21 THE DEFENDANT: I have.

22 THE COURT: Have you discussed the charge in the
23 information with your attorneys?

24 THE DEFENDANT: I have.

25 THE COURT: Do you understand that charge?

M1EKANDP

1 THE DEFENDANT: I understand the charge, yes, your
2 Honor.

3 THE COURT: Would you like me to read the information
4 to you out loud now, or do you waive this reading?

5 MR. KIM: Your Honor, we'll waive the public reading
6 of the information.

7 THE COURT: I also received a waiver of indictment
8 form in this case captioned United States v. Seth Andrew, which
9 I'll mark as Court Exhibit 1.

10 Have you read this form, Mr. Andrew?

11 THE DEFENDANT: I believe that's the form I signed
12 today, yes.

13 MR. KIM: Yes, your Honor, we don't have a signed copy
14 in front of us.

15 THE COURT: Okay.

16 I have a copy here.

17 (Pause)

18 THE COURT: Is that your signature on the form,
19 Mr. Andrew?

20 THE DEFENDANT: That is.

21 THE COURT: And did you read it before you signed it?

22 THE DEFENDANT: I did.

23 THE COURT: Was it explained to you?

24 THE DEFENDANT: It was.

25 THE COURT: Do you understand it?

M1EKANDP

1 THE DEFENDANT: I do.

2 THE COURT: Do you understand that if you do not waive
3 being charged by an indictment, and if the government wants to
4 prosecute you, they will have to present the case to a grand
5 jury, which, like I said, may or may not indict you?

6 THE DEFENDANT: I do understand that.

7 THE COURT: Do you understand you're under no
8 obligation to waive indictment?

9 THE DEFENDANT: I understand that as well.

10 THE COURT: And you understand that by signing this
11 waiver and waiving indictment, you will be giving up your right
12 to have your case presented to the grand jury?

13 THE DEFENDANT: I do.

14 THE COURT: Did anyone make any threats or promises to
15 get you to waive indictment?

16 THE DEFENDANT: No.

17 THE COURT: Do you, in fact, waive and give up your
18 right to be indicted by a grand jury?

19 THE DEFENDANT: I do.

20 THE COURT: Do either counsel know of any reason I
21 should not find Mr. Andrew has knowingly voluntarily and
22 intelligently waived his right to be indicted by a grand jury?

23 MR. FINKEL: No, your Honor.

24 MR. KIM: No, your Honor.

25 THE COURT: Now, we'll give the waiver of indictment

M1EKANDP

1 form to Ms. Henrich and ask her to sign it as a witness.

2 I agree that Mr. Andrew is fully competent and aware
3 of the nature of his right to require the government to proceed
4 by way of an indictment. I find that this waiver is being made
5 freely, intelligently, knowingly, and voluntarily. The waiver
6 is accepted. I will so order it and enter it on the docket.

7 So, Mr. Andrew, you're now charged by the information.

8 How do you plead to Count One of the information?

9 MR. KIM: Your Honor, just as a technicality, should
10 he enter the guilty plea now, or plead not guilty and then
11 change the plea? What's your preference?

12 THE COURT: I think half the time, it's one way, half
13 the time, the other way, so I have no preference.

14 THE DEFENDANT: Guilty, your Honor.

15 THE COURT: Now, before I can accept that guilty plea,
16 Mr. Andrew, I'm going to ask you some more questions. Those
17 questions, again, are to ensure that you understand what you
18 will be doing by pleading guilty and that you wish to plead
19 guilty because you are, in fact, guilty and not for some other
20 reason.

21 Again, the same rules apply. If at any point, you
22 want to talk to your attorneys or have any questions about any
23 of the rights, just please let me know because it's very
24 important that you understand those rights because these are
25 important constitutional rights you'll be giving up.

M1EKANDP

1 Under the Constitution and laws of the United States,
2 you have a right to plead not guilty to the charge in the
3 information. And you have that right to plead not guilty even
4 though you just, moments ago, waived your right to be indicted
5 by a grand jury.

6 Do you understand that?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: And if you did plead not guilty, you would
9 be entitled to a speedy trial and a public trial by a jury on
10 the charge contained in the information. Do you understand
11 that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: At trial, you would be presumed to be
14 innocent and the government would be required to prove your
15 guilt by competent evidence beyond a reasonable doubt before
16 you could be found guilty.

17 Do you understand that?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: A jury of 12 people would have to agree
20 unanimously that you were guilty, and you would not have to
21 prove that you were innocent if you were to go to trial. Do
22 you understand that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: And, at trial, and at every stage of your
25 case, you would be entitled to be represented by an attorney,

M1EKANDP

1 and if you could not afford a lawyer, one would be appointed at
2 public expense, meaning free of cost, to represent you.

3 Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: And during the trial, witnesses for the
6 government would have to come to court and testify in your
7 presence. Your lawyers could cross-examine the witnesses for
8 the government, object to the evidence offered by the
9 government, and offer evidence on your own behalf if you so
10 desired, and you would have the right to have subpoenas issued
11 or other legal process used to compel witnesses to testify in
12 your defense.

13 Do you understand that?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: And, at trial, although you would have the
16 right to testify if you chose to do so, you also would have the
17 right not to testify, and if you decided not to testify, no
18 one, including the jury, could draw any inference or suggestion
19 of your guilt from the fact that you did not testify.

20 Do you understand that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Have you had a full opportunity to discuss
23 with your lawyer whether there is a basis to seek suppression
24 of some or all of the evidence against you on the grounds that
25 your constitutional rights were violated?

M1EKANDP

1 THE DEFENDANT: I -- yes, I spoke to him.

2 THE COURT: Do you understand that by pleading guilty,
3 you will be giving up your right to seek suppression of any of
4 the evidence against you?

5 THE DEFENDANT: Yes.

6 THE COURT: If you were convicted after a trial, you
7 would have a right to appeal that verdict. Do you understand
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: And even now, as you're entering the plea,
11 you have the right to change your mind and plead not guilty and
12 go to trial on the charge contained in the information. Do you
13 understand that?

14 THE DEFENDANT: I do.

15 THE COURT: Mr. Andrew, if at any point, you want to
16 take a moment, just please let me know.

17 Mr. Andrew, if you plead guilty, and I accept your
18 guilty plea, you will be giving up your right to a trial and
19 the other rights I have discussed other than the right to your
20 lawyer, which you'll have regardless of whether or not you
21 plead guilty. There will be no trial, and I will enter a
22 judgment of guilty, and, at a later date, sentence you based on
23 your plea after I've considered the presentence report prepared
24 by the probation department and whatever submissions I get from
25 your attorneys and from the government. There will be no

M1EKANDP

1 appeal with respect to whether the government could use the
2 evidence it has against you or with respect to whether you did
3 or did not commit the crime charged in the information.

4 Do you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: And if you plead guilty, you'll also have
7 to give up your right to not incriminate yourself because later
8 on in this proceeding, I would be asking you questions about
9 what you did in order to satisfy myself that you are guilty as
10 charged, and that means you will have to admit and acknowledge
11 your guilt.

12 Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand each and every right I
15 told you?

16 THE DEFENDANT: I believe so.

17 THE COURT: Do you have any questions for me?

18 THE DEFENDANT: Not right now. Thanks.

19 THE COURT: Are you willing to give up your right to a
20 trial and all the other rights I mentioned to you?

21 THE DEFENDANT: I am.

22 THE COURT: Now, I've received from the parties a
23 signed plea agreement dated January 3rd, 2022. I will mark
24 that as Exhibit 2.

25 And I know, Mr. Andrew, you're a bit far away from me,

M1EKANDP

1 but have you seen the plea agreement?

2 THE DEFENDANT: I have.

3 THE COURT: And it appears to have a signature above
4 your name. Is that your signature?

5 THE DEFENDANT: That is.

6 THE COURT: Did you read the plea agreement before you
7 signed it?

8 THE DEFENDANT: I did.

9 THE COURT: Did you also discuss it with your attorney
10 before you signed it?

11 THE DEFENDANT: I did.

12 THE COURT: And, Mr. Kim, is that right, did you
13 discuss the plea agreement with your client?

14 MR. KIM: We did, your Honor.

15 THE COURT: Mr. Andrew, do you fully understand the
16 plea agreement?

17 THE DEFENDANT: I believe I understand it, yes.

18 THE COURT: Under the plea agreement, you will be
19 pleading guilty to Count One of the information, which, again,
20 charges you with wire fraud, in violation of 18, United States
21 Code, Section 1343 and 2.

22 Mr. Finkel, let me ask you to please state the
23 elements of the offense.

24 MR. FINKEL: Yes, your Honor.

25 If this charge were to go to trial, the government

M1EKANDP

1 would be required to prove beyond a reasonable doubt the
2 following elements:

3 First, that the defendant devised a scheme to defraud
4 or obtain money or property by using materially false or
5 fraudulent pretenses;

6 Second, that the defendant acted with the intent to
7 defraud;

8 And, third, in furtherance of the scheme, the
9 defendant transmitted, or caused to be transmitted, any
10 writing, signal, sound or sounds by means of wire in interstate
11 commerce.

12 And in addition, your Honor, the government would have
13 to prove venue was proper in this district by a preponderance
14 of the evidence.

15 THE COURT: Mr. Andrew, do you understand that if you
16 were to go to trial, the government would have to prove all of
17 those elements beyond a reasonable doubt, aside from venue,
18 which it would have to prove by a lower standard of a
19 preponderance of the evidence?

20 THE DEFENDANT: I do.

21 THE COURT: Now, Mr. Andrew, I'm going to tell you now
22 about the maximum penalties for this crime. The maximum means
23 just that, it means the most that I could possibly impose. It
24 doesn't mean that is what you necessarily will receive, but
25 it's important that you understand that by pleading guilty, you

M1EKANDP

1 are exposing yourself to the possibility of receiving any
2 combination of punishments up to the maximum I'm about to
3 describe.

4 Do you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: Let me first begin with the possible
7 restrictions on your liberty.

8 The maximum term of imprisonment for the crime charged
9 in Count One of the information, wire fraud, is 20 years in
10 prison. Do you understand that?

11 THE DEFENDANT: I do.

12 THE COURT: Now, any term of imprisonment on Count One
13 can be followed by up to a three-year term of supervised
14 release. Supervised release means that you will be subject to
15 supervision by the probation department. There will be rules
16 of supervised release that you will have to follow. If you
17 violate those rules, you can be returned to prison without a
18 jury trial, to serve additional time, with no credit for time
19 you served in prison as a result of your sentence, and no
20 credit for any time you spent on postrelease supervision.

21 Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: There's also no parole in the federal
24 system, and if you are sentenced to prison, you will not be
25 released early on parole. There is a limited opportunity to

M1EKANDP

1 earn credit for good behavior, but you will have to serve at
2 least 85 percent of the time that you're sentenced to.

3 Do you understand that?

4 THE DEFENDANT: I do.

5 THE COURT: Now, in addition to these restrictions on
6 your liberty, the maximum possible punishment also includes
7 certain financial penalties. The maximum allowable fine for
8 Count One is the greatest of \$250,000 or twice the gross
9 pecuniary gain derived from the offense or twice the gross
10 pecuniary loss to persons other than yourself.

11 Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: Now, I also can order restitution to any
14 person or entity injured as a result of your criminal conduct.
15 The plea agreement provides that you agree to make restitution
16 in the amount of \$218,005, and you agree to make that full
17 payment on the date of your sentencing.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: Now, I also can order you to forfeit all
21 property derived from the offense or used to facilitate the
22 offense.

23 Mr. Finkel, I want to make sure I understand the
24 forfeiture paragraph correctly in the plea agreement.

25 Can you explain what that requires of the defendant?

M1EKANDP

1 MR. FINKEL: Yes, your Honor.

2 Under the terms of the plea agreement, the parties
3 have agreed that the proper forfeiture amount is \$240,542.47.
4 However, under the terms of the agreement, it was agreed
5 between the parties that if the defendant remits a full
6 restitution payment to the victim in this case in the amount
7 your Honor just described, as well as a forfeiture payment to
8 the government in the amount of \$22,537.47 on or before the
9 sentencing date, then the government will have deemed
10 Mr. Andrew's forfeiture obligation satisfied.

11 THE COURT: Thank you, Mr. Finkel.

12 And, Mr. Andrew, do you understand your agreement to
13 forfeiture as explained by Mr. Finkel?

14 THE DEFENDANT: I believe so.

15 THE COURT: So, just to make sure there's no
16 confusion, my understanding of the terms of the plea agreement
17 would be that while the full amount of forfeiture is
18 \$240,542.47, if, by the date of sentencing, you both pay full
19 restitution in the amount of \$218,005 and a portion of that
20 forfeiture in the amount of \$22,537.47, your restitution and
21 forfeiture obligations will be satisfied.

22 Do you understand that?

23 THE DEFENDANT: I do.

24 THE COURT: And if you do not do that, and if you do
25 not make those payments by the date of sentencing, your

M1EKANDP

1 forfeiture obligation would be the full amount of \$240,542.47.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: And that would be in addition to your
5 restitution obligation. Do you understand that?

6 THE DEFENDANT: I do.

7 THE COURT: Did I explain that right?

8 MR. FINKEL: Yes, I think that's right, your Honor. I
9 think I should add that although the government has been in
10 touch with the victim in this case, it is theoretically
11 possible, and I think appropriate, in this proceeding to note
12 that the Court may disagree on this restitution figure agreed
13 to by the parties and impose additional restitution, and that
14 would be within the Court's discretion and not up to the
15 parties.

16 THE COURT: Understood.

17 Do you understand that, as well, Mr. Andrew?

18 THE DEFENDANT: No.

19 THE COURT: Okay.

20 There is an agreement to the restitution amount in the
21 plea agreement. When I receive the presentence investigation
22 report from the probation department, I will be provided
23 information regarding restitution for victims. As with other
24 provisions in the plea agreement, this is an agreement between
25 you and the government. I'm not saying I will, but in the

M1EKANDP

1 event that I think a different restitution amount is
2 appropriate, I may potentially order a different restitution
3 amount, but, obviously, if that's the case, I would be hearing
4 from the parties, including your attorney, as to what is
5 proper.

6 Do you understand that?

7 THE DEFENDANT: I believe I do.

8 When we're referring to the victim, who are we
9 speaking of?

10 THE COURT: Mr. Finkel, I don't know what is public or
11 not. I believe it's been anonymized largely in the filings.

12 MR. FINKEL: The government's -- the Department of
13 Justice's policy is not to announce the names of victims. We
14 have not done so in this case. The government would prefer to
15 leave it at that.

16 THE COURT: Are you able to explain, just for the
17 benefit of Mr. Andrew, not the name of the victim, but what the
18 entity would be, so he understands what we're referring to?

19 MR. FINKEL: Your Honor, I should say that the
20 government and Mr. Andrew's counsel have had very explicit
21 conversations about who the victim is, so it is the
22 government's understanding that Mr. Andrew is well aware of who
23 the victim is and has intimate knowledge of the victim.

24 Given that, your Honor, I don't think there's anything
25 that the government needs to disclose in this proceeding, and,

M1EKANDP

1 certainly, Mr. Kim is free to discuss additional information
2 with his client.

3 THE COURT: Mr. Kim?

4 MR. KIM: Yes, your Honor, I think I've clarified it
5 with Mr. Andrew. I don't think we need any further inquiry on
6 this.

7 THE COURT: Thank you.

8 Mr. Andrew, is that right?

9 THE DEFENDANT: Yes.

10 THE COURT: The plea agreement also mentions a consent
11 order of forfeiture that you agreed to. I have received from
12 the parties a consent preliminary order of forfeiture and money
13 judgment, which also appears to be signed by you.

14 Is that right, Mr. Andrew?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you also review this document before
17 you signed it?

18 THE DEFENDANT: I did.

19 THE COURT: The consent order of forfeiture does not
20 mention the arrangement that we discussed earlier regarding a
21 portion of forfeiture being paid by sentencing.

22 Do the parties agree that doesn't need to be there and
23 its memorialization in the plea agreement is sufficient?

24 MR. FINKEL: That's the government's view.

25 MR. KIM: Yes, your Honor.

M1EKANDP

1 THE COURT: Do the parties also agree that I can enter
2 this consent -- preliminary consent order of forfeiture after
3 today's proceeding?

4 MR. FINKEL: Yes, your Honor.

5 MR. KIM: Yes, your Honor.

6 THE COURT: And, Mr. Andrew, we've talked a lot about
7 forfeiture and other financial consequences.

8 Do you also understand that any forfeiture that you
9 pay in this case will not be treated as satisfaction of any
10 fine, restitution, cost of imprisonment, or any other penalty
11 that I may impose in addition to forfeiture?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And, also, I must order a mandatory
14 special assessment of \$100. Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: Do you have any questions about any of the
17 maximum penalties?

18 THE DEFENDANT: I do not.

19 THE COURT: Are you a U.S. citizen, Mr. Andrew?

20 THE DEFENDANT: I am.

21 THE COURT: The reason I ask that is because if you
22 are not, there might be consequences on your immigration status
23 as a result of your guilty plea.

24 Do you also understand that as a result of your guilty
25 pre, you may lose certainly valuable civil rights, to the

M1EKANDP

1 extent you have them or otherwise could obtain them now, such
2 as the right to vote, the right to hold public office, the
3 right to serve on a jury, or the right to possess any type of
4 firearm?

5 THE DEFENDANT: I do.

6 THE COURT: Are you serving any other sentence, state
7 or federal, or being prosecuted by any other court -- in any
8 other court?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Do you understand, Mr. Andrew, that if
11 your lawyer or anyone else has attempted to predict what your
12 sentence will be, their prediction could be wrong?

13 THE DEFENDANT: Yes.

14 THE COURT: And there's a reason for that. No one -
15 not your lawyer, not the government's lawyer - can give you an
16 assurance what your sentence will be because I'm going to be
17 the one deciding your sentence, and I am not going to do that
18 today. I'm going to wait until I receive a presentence report
19 from the probation department, do my own calculation of the
20 sentencing guidelines, and receive submissions from your
21 attorney and the government, and determine what a reasonable
22 sentence would be for you based on the factors in the
23 sentencing statute that I must consider.

24 Do you understand that?

25 THE DEFENDANT: I do.

M1EKANDP

1 THE COURT: Have you discussed those issues with your
2 lawyer, too?

3 THE DEFENDANT: We have.

4 THE COURT: Do you understand that even if your
5 sentence ends up being different from what your lawyer, you, or
6 anyone else hopes it would be and told you it might be, you
7 will still be bound by your guilty plea, and you will not be
8 able to withdraw your guilty plea?

9 THE DEFENDANT: I do.

10 THE COURT: Let me go back to the plea agreement. In
11 the plea agreement, Mr. Andrew, it appears that you and the
12 government have stipulated to an advisory sentencing guideline
13 range of 21 to 27 months.

14 Is that right?

15 THE DEFENDANT: I believe so, yes.

16 THE COURT: I said something like this before, but I
17 emphasize that this agreement, as to the guidelines range
18 between you and the government, is binding on you and the
19 government; it's not binding on me. As the Judge in this case,
20 I have my own obligation to determine what the correct
21 guidelines range is and what the appropriate sentence will be.

22 I'm not saying that I will come up with any range
23 different than the one agreed to in the plea agreement, but if
24 I do, you will not be able to withdraw your guilty plea, even
25 if the range I determine is higher than the one you agreed to

M1EKANDP

1 with the government.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: Even if I agree with that range of 21 to
5 27 months, it is not mandatory under the law, it is only
6 advisory. I may sentence you to less than 21 months in prison
7 or more than 27 months, and I will only know if that's going to
8 happen after I consider the presentence report, submissions
9 from your lawyer and the government, and the relevant factors
10 under 18, United States Code, Section 3553(a).

11 Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: In your plea agreement, you will be
14 waiving your right to appeal or otherwise challenge any
15 sentence that entails a term of imprisonment that is 27 months
16 or less, and that includes bringing a collateral challenge,
17 such as a habeas position, to challenge your sentence.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: So that means if I sentenced you to
21 27 months in prison or anything less than that, you would have
22 no right to appeal or challenge your sentence. Do you
23 understand that?

24 THE DEFENDANT: I do.

25 THE COURT: As part of your plea agreement, you have

M1EKANDP

1 agreed not to appeal any term of supervised release that is
2 less than or equal to three years. Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: You also have agreed not to challenge or
5 appeal any fine that is less than or equal to \$95,000. Do you
6 understand that?

7 THE DEFENDANT: I do.

8 THE COURT: And in the plea agreement, you also agree
9 not to appeal or bring a collateral challenge to any
10 restitution amount that is less than or equal to \$218,005, any
11 forfeiture amount equal to or less than \$240,542.47, and any
12 special assessment that is less than or equal to \$100.

13 Do you understand that?

14 THE DEFENDANT: I do.

15 THE COURT: And have you discussed these issues with
16 your lawyer?

17 THE DEFENDANT: I have.

18 THE COURT: Does this plea agreement constitute your
19 complete and total understanding of the entire agreement
20 between you and the government?

21 THE DEFENDANT: It does.

22 THE COURT: Has anything been left out?

23 Are there any agreements between you and the
24 government that have been left out?

25 THE DEFENDANT: No.

M1EKANDP

1 THE COURT: Other than what has been written in the
2 plea agreement, has anyone made any promises or offered you any
3 inducements to plead guilty or to sign the plea agreement?

4 THE DEFENDANT: No.

5 THE COURT: Has anyone threatened or forced you to
6 plead guilty or to sign the plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: Has anyone promised you what your sentence
9 will be?

10 THE DEFENDANT: No.

11 THE COURT: Mr. Finkel, are there any other questions
12 you would like me to ask about the plea agreement?

13 MR. FINKEL: No, your Honor.

14 THE COURT: Mr. Andrew, now is the point where I'm
15 going to ask you to tell me, in your own words, what you did
16 that makes you believe you are guilty of the charge in the
17 information.

18 THE DEFENDANT: Would you like me to stand?

19 THE COURT: I think it might be easier for the
20 reporter if you sit because of the microphone, so I'm fine with
21 you sitting.

22 THE DEFENDANT: Thank you, your Honor.

23 I am the founder of Democracy Prep Public Schools.

24 My former employment with Democracy Prep Public
25 Schools ended in January 2017.

M1EKANDP

1 In March, April, and October of 2019, I transferred
2 funds from three dissolution accounts associated with the
3 Democracy Prep network to other bank accounts that I opened. I
4 ultimately transferred those funds into the account of another
5 nonprofit, Democracy Builders Fund.

6 I transferred the funds to the Democracy Builders Fund
7 without the written authorization of DPPS.

8 I sent emails in order to facilitate the account
9 opening and transfer of funds.

10 I represented to bank employees that I was authorized
11 to transfer these funds.

12 I'm truly sorry for what I have done. I deeply regret
13 my actions. And as I'm here today, I have tremendous remorse
14 for the impact that it has had on the schools, the alumni, and
15 my own family.

16 THE COURT: Thank you, Mr. Andrew.

17 (Pause)

18 THE COURT: Where were you located when you performed
19 these acts? What county of New York?

20 THE DEFENDANT: Primarily Manhattan, but, also,
21 Baltimore, Maryland.

22 THE COURT: When you say "primarily Manhattan," what
23 did you do in Manhattan? Of the conduct you just discussed,
24 what occurred in Manhattan?

25 THE DEFENDANT: I withdrew funds from the dissolution

M1EKANDP

1 account, and I deposited funds into the new Democracy Prep New
2 York accounts.

3 THE COURT: New Democracy Prep, did you say?

4 THE DEFENDANT: Yes.

5 THE COURT: When you did that, did you have the -- was
6 it your intention to deceive?

7 THE DEFENDANT: I represented to bank officials that I
8 had authorization, and I chose not to dwell on that.

9 And I did so without written authorization from DPPS.

10 THE COURT: When you represented to bank officials
11 that you had authorization, did you know that you did not, in
12 fact, have authorization?

13 THE DEFENDANT: I think -- I knew I did not have
14 written authorization from DPPS.

15 THE COURT: You say "written authorization." Did you
16 think you had any other type of authorization?

17 THE DEFENDANT: I did so without authorization from
18 the DPPS leadership at that time.

19 THE COURT: Mr. Finkel, are there additional questions
20 you'd like me to ask -- maybe before I ask you that, you said
21 without the authorization of the -- I'm sorry, is it DP --

22 THE DEFENDANT: DPPS leadership.

23 THE COURT: At the time, was it your understanding
24 that anyone other than leadership of DPPS could give you
25 authorization?

M1EKANDP

1 THE DEFENDANT: Can you ask the question again, your
2 Honor?

3 THE COURT: Sure.

4 I believe what you said was that you did so without
5 authorization from DPPS leadership, so I wanted to ask about
6 the word "leadership" there.

7 At the time, were you under the impression that anyone
8 other than leadership of DPPS could give you the necessary
9 authorization?

10 THE DEFENDANT: At the time, I did not dwell on those
11 details, your Honor.

12 THE COURT: What do you mean by that?

13 MR. KIM: Your Honor, may we have one moment?

14 THE COURT: Of course.

15 (Pause)

16 THE DEFENDANT: Your Honor, can I clarify? I'm sorry,
17 I did not have authorization from DPPS.

18 THE COURT: Mr. Finkel, are there any further
19 questions?

20 MR. FINKEL: Your Honor, I'd just ask if the Court
21 would just sort of clean this up, if the Court is willing to,
22 and ask that when Mr. Andrew represented that he had
23 authorization, did he at that time know he did not, in fact,
24 have authorization? I think if we got there, I think it would
25 be helpful.

M1EKANDP

1 THE COURT: I think there's no harm in asking that.

2 When, Mr. Andrew, you represented that you had
3 authorization to bank officials to transfer the funds, did you
4 know that you did not, in fact, have that authorization?

5 THE DEFENDANT: Correct, your Honor.

6 THE COURT: Anything further, Mr. Finkel?

7 MR. FINKEL: Thank you, your Honor.

8 THE COURT: Mr. Kim, do you know of any valid defense
9 that would prevail at trial?

10 MR. KIM: No, your Honor.

11 THE COURT: And do you know of any reason why your
12 client should not be permitted to plead guilty?

13 MR. KIM: No, your Honor.

14 THE COURT: Mr. Finkel, will you summarize what the
15 government's evidence would be if the defendant were -- if the
16 defendant were to go to trial?

17 MR. FINKEL: Yes, your Honor.

18 If this case were to proceed to trial, the
19 government's evidence would include, among other things, emails
20 sent by Mr. Andrew to bank officials, records from the victim
21 establishing that Mr. Andrew was no longer part of the victim's
22 school network, and bank records, among other things.

23 THE COURT: And, Mr. Andrew, did you hear what the
24 prosecutor said about what the evidence would consist of?

25 THE DEFENDANT: Yes.

M1EKANDP

1 THE COURT: Do both counsel agree that there is a
2 sufficient factual predicate for a guilty plea?

3 MR. FINKEL: Yes, your Honor. There's also a proffer
4 that the emails that were just discussed by the government, the
5 government also would introduce evidence that the emails
6 traveled in interstate commerce.

7 MR. KIM: We would stipulate to that, your Honor.

8 THE COURT: Thank you.

9 Let me just make sure the parties agree. Do the
10 parties agree that there's a sufficient factual predicate?

11 MR. FINKEL: Yes, your Honor.

12 MR. KIM: Yes, your Honor.

13 THE COURT: Does either counsel know any reason I
14 should not accept Mr. Andrew's guilty plea?

15 MR. FINKEL: No, your Honor.

16 MR. KIM: No, your Honor.

17 THE COURT: Mr. Andrew, let me ask you again now: How
18 do you plead to Count One of the information?

19 THE DEFENDANT: I plead guilty, your Honor.

20 THE COURT: Mr. Andrew, because you acknowledge that
21 you are, in fact, guilty as charged in Count One of the
22 information, because I am satisfied that you know of your
23 rights, including your right to go to trial, and that you're
24 aware of the consequences of your plea, including the sentence
25 which may be imposed, and because I find that you are knowingly

M1EKANDP

1 and voluntarily pleading guilty, I accept your guilty plea and
2 enter a judgment of guilty on Count One of the information.

3 As I mentioned earlier, I will also sign and enter the
4 consent preliminary order of forfeiture shortly after this
5 proceeding.

6 Mr. Andrew, the probation department will want to
7 interview you in connection with the presentence report that it
8 will prepare. This is the report that I mentioned a few times
9 during today's proceeding.

10 Mr. Kim, do you wish to be present for any interview
11 in connection with that report?

12 MR. KIM: I would like to, your Honor.

13 THE COURT: I will order that no interview should
14 occur unless counsel is present with Mr. Andrew.

15 Mr. Andrew, if you choose to speak to the probation
16 department, it is the important that anything you say is
17 truthful and accurate. I will read that report carefully, and
18 it will be very important to me in deciding what the
19 appropriate sentence should be. You and your attorneys will
20 have a chance to review the report, examine it, and comment on
21 the report at the time of your sentencing. So I urge you to
22 read it and talk with your attorney about it, and if there are
23 any mistakes in that report, point them out, so Mr. Kim can
24 bring them to my attention at or before your sentencing.

25 Mr. Kim, 90 days from now would bring us to

M1EKANDP

1 April 14th, 2022. Do you wish for a sentencing date then, a
2 later date?

3 MR. KIM: I think it's fine to set it for that date,
4 your Honor.

5 THE COURT: On that date, I expect to be -- I may be
6 on trial, depending if the trial is still going then, so I
7 would want to schedule it outside the trial day. The option
8 would be 9:00 a.m. or 4:00 p.m.

9 Does either counsel have a preference as to that?

10 MR. KIM: 4:00 p.m., your Honor, would be preferable.

11 THE COURT: Does that work for the government as well?

12 MR. FINKEL: Yes.

13 THE COURT: So it will be 4:00 p.m. on April 14th,
14 2022.

15 The sentence will be here. Again, conditions
16 permitting, I certainly intend to hold the sentencing in
17 person, in courtroom 12D here.

18 Mr. Finkel, I ask that the government provide the
19 probation officer with its factual statement within seven days
20 of today's proceeding.

21 And, Mr. Kim, please arrange for your client to be
22 interviewed by the probation department within the next two
23 weeks.

24 I refer the parties to my individual rules and
25 practices for criminal cases for sentencing submissions.

M1EKANDP

1 There's nothing really out of the ordinary there. Defense
2 submissions will be due two weeks before sentencing; the
3 government's submission, one week before sentencing.

4 Are there any other matters we should address this
5 afternoon?

6 MR. FINKEL: Your Honor, I think just one. I just ask
7 the Court to inquire of Mr. Andrew whether he admits to the
8 forfeiture allegation in the information. I apologize if that
9 was covered, but I don't have it in my notes.

10 THE COURT: Sure.

11 Mr. Andrew, we talked a bit about the forfeiture
12 requirements in the plea agreement and consent order of
13 forfeiture.

14 Let me first make sure you know what I'm referring to.
15 Do you have any questions about your forfeiture obligations?

16 THE DEFENDANT: I believe I understand the
17 obligations, your Honor.

18 THE COURT: Do you admit to the forfeiture allegation
19 that's contained in the information?

20 THE DEFENDANT: I consent to forfeiture, your Honor.

21 THE COURT: Mr. Kim, do you think anything further is
22 required?

23 MR. KIM: No, your Honor, I don't.

24 THE COURT: Anything further, Mr. Finkel?

25 MR. FINKEL: No, thank you, your Honor.

M1EKANDP

1 THE COURT: Anything further from defense?

2 MR. KIM: No, your Honor.

3 THE COURT: Great.

4 Well, thank you, all. Have a good weekend. I'll see
5 the parties again on April 14th. Take care.

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