

15-1815-CR

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

——
UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD,
AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

—
*On Appeal from the United States District Court
for the Southern District of New York (New York City)*

**APPENDIX
VOLUME I OF VI
Pages A1 to A261**

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Table of Contents**Page****Volume I**

District Court Docket Entries	A1
Sealed Complaint, dated September 27, 2013	A48
Exhibit A to Complaint - Printout of Silk Road Anonymous Market Search	A81
Exhibit B to Complaint - Printout of Silk Road Anonymous Market High Quality #4 Heroin All Rock	A83
Indictment, entered February 4, 2014	A87
Opinion and Order of the Honorable Katherine B. Forrest, dated July 9, 2014	A99
Superseding Indictment, entered August 21, 2014	A150
Order of the Honorable Katherine B. Forrest, dated October 7, 2014	A167
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated October 7, 2014	A169
Endorsed Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated October 8, 2014, with Handwritten Notes	A172
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated October 8, 2014	A175
Opinion and Order of the Honorable Katherine B. Forrest, dated October 10, 2014	A176
Opinion and Order of the Honorable Katherine B. Forrest, dated October 24, 2014	A214

Table of Contents
(Continued)

	<u>Page</u>
Excerpts from the Pre-Trial Conference, dated December 15, 2014	A224
 Volume II 	
Opinion and Order of the Honorable Katherine B. Forrest, dated January 7, 2015	A262
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated January 19, 2015	A307
Exhibit A to Letter - Printout from Silk Road Anonymous Marketplace	A320
Exhibit B to Letter - Email, dated March 18, 2011	A321
Exhibit C to Letter - Printout from silkroadmarket.org	A322
Exhibit D to Letter - Printout from AccessData FTK Imager 3.0.0.1443	A323
Exhibit E to Letter - Various Emails	A324
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated January 19, 2015	A326
Endorsed Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated January 21, 2015	A334
Annexed to Letter - Highlighted Excerpts of Transcript	A336
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated January 29, 2015	A342

Table of Contents
(Continued)

	<u>Page</u>
Letter from Lindsay A. Lewis to Serrin Turner and Timothy T. Howard, dated January 26, 2015	A349
Annexed to Letter - <i>Curriculum Vitae</i> of Andreas Antonopoulos	A351
Letter from Timothy T. Howard to the Honorable Katherine B. Forrest, dated January 31, 2015	A354
Letter from Joshua L. Dratel to Serrin Turner and Timothy T. Howard, dated January 30, 2015	A360
Opinion and Order of the Honorable Katherine B. Forrest, dated February 1, 2015	A362
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated January 31, 2015	A380
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated February 1, 2015	A385
Opinion and Order of the Honorable Katherine B. Forrest, dated January 31, 2015	A390
Order of the Honorable Katherine B. Forrest, dated January 31, 2015	A391
Opinion and Order of the Honorable Katherine B. Forrest, dated January 31, 2015	A392
Opinion and Order of the Honorable Katherine B. Forrest, dated January 31, 2015	A394
Letter from Joshua L Dratel to the Honorable Katherine B. Forrest, dated February 2, 2015	A395
Letter from Serrin Turner to Joshua L. Dratel, dated December 29, 2014	A397

Table of Contents
(Continued)

	<u>Page</u>
Annexed to Letter - Proposed Stipulation	A399
Excerpts from Trial Transcript, dated January 14, 2015 [pages 121 and 125]	A402
Excerpts from Trial Transcript, dated January 15, 2015 [pages 347, 509, 531-537, 545-547 and 554-555]	A404
Excerpts from Trial Transcript, dated January 20, 2015 [pages 562, 567-591, 594-614, 619, 642-649, 652, 656-657, 663, 669, 671, 677, 681, 684, 712, 714, 717, 719 and 723-725]	A418
Excerpts from Trial Transcript, dated January 21, 2015 [pages 780, 844, 873, 890-891, 895 and 1017]	A490
Excerpts from Trial Transcript, dated January 22, 2015 [pages 1011, 1064-1068, 1071-1073, 1084 and 1089]	A497
Excerpts from Trial Transcript, dated January 28, 2015 [pages 1314, 1403-1404, 1435-1436 and 1449-1450]	A508

Volume III

Excerpts from Trial Transcript, dated January 29, 2015 [pages 1562, 1661-1664, 1669-1677, 1680-1687, 1690-1705, 1733-1734, 1738-1740, 1743 and 1834-1836]	A515
Excerpts from Trial Transcript, dated February 2, 2015 [pages 1843, 1855-1860, 1866-1873 and 1985]	A562
Excerpts from Trial Transcript, dated February 3, 2015 [pages 2050, 2052-2066 and 2084-2097]	A578
Defendant's Exhibit C - Conversation from East India Traitor on Forum	A608

Table of Contents
(Continued)

	<u>Page</u>
Defendant's Exhibit J - Printout from Support.php	A624
Excerpts of Notice of Motion for a New Trial, dated March 6, 2015	A628
Memorandum of Law in Support of Motion, dated March 6, 2015	A630
Declaration of Joshua L. Dratel, in Support of Motion, dated March 6, 2015 (Omitted Herein)	
Exhibit 1 to Dratel Declaration - 3500 Material Chart	A643
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated March 31, 2015 (Omitted Herein)	
Annexed to Letter -	
(i) Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated November 21, 2014, with Attachment	A649
(ii) Sealed Order of the Honorable Katherine B. Forrest, dated December 12, 2014	A657
(iii) Letter from Timothy T. Howard to the Honorable Katherine B. Forrest, dated December 12, 2014	A659
(iv) Endorsed Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated December 17, 2014	A661
(v) Letter from Timothy T. Howard to the Honorable Katherine B. Forrest, dated December 18, 2014	A663
(vi) Endorsed Letter from Lindsay A. Lewis to the Honorable Katherine B. Forrest, dated December 18, 2014	A669
(vii) Redacted Memorandum and Decision of the Honorable Katherine B. Forrest, dated December 22, 2014	A673
(viii) Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated December 30, 2014	A701
(ix) Endorsed Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated December 31, 2014	A704

Table of Contents
(Continued)

	<u>Page</u>
Annexed to Letter - (cont'd)	
(x) Letter from Timothy T. Howard to the Honorable Katherine B. Forrest, dated February 1, 2015, with Exhibits	A707
Excerpts from Reply Memorandum of Law, dated April 16, 2015	A722

Volume IV

Exhibit 1 to Reply Memorandum of Law - Email from Jared DerYeghiayan to Marc Krickbaum, dated May 29, 2013, with Attachments	A769
Exhibit 2 to Reply Memorandum of Law - Various Emails, with Attachments	A780
Exhibit 3 to Reply Memorandum of Law - Redacted History of Anand Nathan Athavale	A812
Exhibit 4 to Reply Memorandum of Law - Immigration and Customs Enforcement (ICE) Details of Investigation	A823
Exhibit 5 to Reply Memorandum of Law - Email from Jared DerYeghiayan to Phillip Osborn, dated May 15, 2013	A842
Exhibit 6 to Reply Memorandum of Law - Redacted Silk Road Investigation Report	A846
Exhibit 7 to Reply Memorandum of Law - Various Redacted Emails	A854
Exhibit 8 to Reply Memorandum of Law - Statement from East India Traitor on Forum	A857
Exhibit 9 to Reply Memorandum of Law - Redacted Personal History Information	A874

Table of Contents
(Continued)

	<u>Page</u>
Opinion and Order of the Honorable Katherine B. Forrest, dated April 27, 2015	A876
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated April 28, 2015	A901
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated May 15, 2015	A903
Declaration of Lindsay A. Lewis, in Support of Defendant Ross Ulbricht’s Pre-Sentencing Submission, entered May 15, 2015	A916
Exhibit 11 to Lewis Declaration - Declaration of Tim Bingham, dated May 14, 2015	A929
Exhibit 12 to Lewis Declaration - Declaration of Dr. Fernando Caudevilla, dated May 14, 2015	A940
Exhibit 13 to Lewis Declaration - Declaration of Dr. Monica J. Barratt, dated May 14, 2015	A946
Exhibit 14 to Lewis Declaration - Declaration of Meghan Ralston, dated May 14, 2015	A951
Exhibit 15 to Lewis Declaration - <i>Curriculum Vitae</i> of Mark L. Taff, M.D.	A956
Order of the Honorable Katherine B. Forrest, dated May 20, 2015	A971
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated May 22, 2015	A973

Table of Contents
(Continued)

Page

Volume V

Exhibit 1 to Letter - Letter from Ross Ulbricht to the Honorable Katherine B. Forrest	A1051
Exhibit 2 to Letter - Letters in Support of Defendant Ross Ulbricht	A1054
Exhibit 3 to Letter - Email to Joshua Dratel, dated May 21, 2015	A1291
Exhibit 4 to Letter - Various Photographs	A1293

Volume VI

Government Sentencing Submission, dated May 26, 2015	A1314
Exhibit A to Sentencing Submission - Fake Identification of Different States	A1332
Exhibit B to Sentencing Submission - Printout from The Armory	A1340
Exhibit C to Sentencing Submission - Photograph of Computer Printout	A1344
Exhibit D to Sentencing Submission - Photograph of Needle and Razor	A1346
Exhibit E to Sentencing Submission - Photograph	A1347
Exhibit F to Sentencing Submission - Photograph of Insulin Syringes	A1348
Exhibit G to Sentencing Submission - Text Messages	A1349

Table of Contents
(Continued)

	<u>Page</u>
Exhibit H to Sentencing Submission - Redacted Email from Ross Ulbricht, dated February 10, 2013	A1351
Exhibit I to Sentencing Submission - Printouts of the Cost of Drugs	A1352
Exhibit J to Sentencing Submission - Printouts of the Cost of Drugs	A1360
Letter from Serrin Turner to the Honorable Katherine B. Forrest, dated May 26, 2015	A1362
Annexed to Letter - (i) Redacted Letter to the Honorable Katherine B. Forrest, dated April 20, 2015	A1363
(ii) Redacted Letter to the Honorable Katherine B. Forrest, dated April 23, 2015	A1366
(iii) Redacted Victim Impact Statement, dated February 2013	A1368
(iv) Redacted Story titled "Our Perfect Life"	A1372
(v) Redacted Statement of Witness, dated April 8, 2015	A1379
Letter from Lindsay A. Lewis to the Honorable Katherine B. Forrest, dated May 27, 2015	A1386
Exhibit 1 to Letter - Weekly Report to DPR	A1392
Exhibit 2 to Letter - Buyer Questionnaire	A1397
Exhibit 3 to Letter - Vendor Questionnaire	A1399
Exhibit 4 to Letter - Dr. X Thread Excerpts	A1401

Table of Contents
(Continued)

	<u>Page</u>
Letter from Joshua L. Dratel to the Honorable Katherine B. Forrest, dated May 28, 2015	A1414
Exhibit 5 to Letter - Statement from Michael Van Praagh, dated May 21, 2015	A1428
Exhibit 6 to Letter - Letter from Joseph Ernst to the Honorable Katherine B. Forrest	A1432
Letter from Lindsay A. Lewis to the Honorable Katherine B. Forrest, dated May 29, 2015	A1435
Exhibit 1 to Letter - Excerpt from Torchat Log gx5	A1436
Exhibit 2 to Letter - Excerpts from Torchat Log tv32	A1437
Sentencing Hearing, dated May 29, 2015	A1447
Judgment of the United States District Court, Southern District of New York, entered May 29, 2015, Appealed From	A1545
Notice of Appeal, entered June 4, 2015	A1554

1/6/2016

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CLOSED,APPEAL,ECF,PRIOR

**U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:14-cr-00068-KBF-1**

Case title: USA v. Ulbricht
Magistrate judge case number: 1:13-mj-02328-UA

Date Filed: 02/04/2014
Date Terminated: 06/01/2015

Assigned to: Judge Katherine B. Forrest

Defendant (1)

Ross William Ulbricht

TERMINATED: 06/01/2015

also known as

Dread Pirate Roberts

TERMINATED: 06/01/2015

also known as

Silk Road

TERMINATED: 06/01/2015

also known as

Sealed Defendant 1

TERMINATED: 06/01/2015

also known as

DPR

TERMINATED: 06/01/2015

represented by **Joshua Lewis Dratel**

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Designation: Retained

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Fax: (212)-571-3792

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ATTORNEY TO BE NOTICED

Designation: Retained

Pending Counts

Disposition

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

1/6/2016

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21:841A=CD.F AIDING AND
ABETTING DISTRIBUTION OF
DRUGS OVER INTERNET
(2s)

of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

21:848.F CONTINUING CRIMINAL
ENTERPRISE
(4s)

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

18:1030A.F COMPUTER HACKING
CONSPIRACY
(5s)

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

18:1028A.F FRAUD WITH

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently;

1/6/2016

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IDENTIFICATION DOCUMENTS

(6s)

18:1956-4999.F MONEY
LAUNDERING CONSPIRACY
(7s)

Highest Offense Level (Opening)

Felony

Terminated Counts

21:846=CD.F DRUG TRAFFICKING
CONSPIRACY
(1)

21:841G=CI.F DRUG TRAFFICKING
(1s)

21:848.F CONTINUING CRIMINAL
ENTERPRISE
(2)

18:1030B.F COMPUTER HACKING
CONSPIRACY
(3)

21:846=CD.F DRUG TRAFFICKING
CONSPIRACY
(3s)

18:1956-6801.F MONEY
LAUNDERING (DRUG
TRAFFICKING CONSPIRACY)
(4)

Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

Disposition

Count is dismissed on the motion of the United States.

Count is dismissed on the motion of the United States.

Count is dismissed on the motion of the United States.

Count is dismissed on the motion of the United States.

Count is dismissed on the motion of the United States.

Count is dismissed on the motion of the United States.

1/6/2016

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Highest Offense Level (Terminated)

Felony

Complaints

21:846=CD.F CONSPIRACY TO
DISTRIBUTE CONTROLLED
SUBSTANCE, 18:1030A.F FRAUD
ACTIVITY CONNECTED WITH
COMPUTERS, , 18:1956-4999.F
MONEY LAUNDERING- FRAUD,
OTHER

Disposition**Plaintiff**

USA

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/27/2013		SEALED ORAL ORDER as to Sealed Defendant 1. (Signed by Magistrate Judge Frank Maas on 9/27/2013)(dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
09/27/2013	1	COMPLAINT as to Sealed Defendant 1 (1). In Violation of 21 U.S.C. 846, 18 U.S.C. 1030 & 1956 (Signed by Magistrate Judge Frank Maas) (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
10/01/2013		Arrest of Ross William Ulbright in the United States District Court - Northern District of California. (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
10/18/2013	3	Rule 5(c)(3) Documents Received as to Ross William Ulbright from the United States District Court - Northern District of California. (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)

1/6/2016

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11/05/2013		Arrest of Ross William Ulbright. (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/06/2013	4	NOTICE OF ATTORNEY APPEARANCE: Retained Attorney Joshua Lewis Dratel appearing for Ross William Ulbright. (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/06/2013		Minute Entry for proceedings held before Magistrate Judge Ronald L. Ellis: Initial Appearance as to Ross William Ulbright held on 11/6/2013., Deft Appears with Retained Attorney Joshua Dratel and AUSA Serrin Turner for the government. Detention Hearing Scheduled for 11/21/13 at 11:00 AM; (Preliminary Hearing set for 12/6/2013 at 10:00 AM before Judge Unassigned.) (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/21/2013		Minute Entry for proceedings held before Magistrate Judge Kevin Nathaniel Fox: Detention Hearing as to Ross William Ulbright held on 11/21/2013. Deft Appears with Retained Attorney Joshua Dratel and AUSA Serrin Turner for the government. Detention. The Defendant Did Not Overcome The Presumption That There Are No Conditions That Can Be Fashioned to Permit Him To Be At Liberty While The Criminal Action is Pending. Clear and Convincing Evid That The Defendant Sought To Have Several Persons Murdered Was Presented To The Court Which Demonstrate The Defendant Presents As A Danger To The Community. In Addition Considerable Un-Rebutted Evid Was Presented That The Defendant Has The Resources To Flee and Previously Acquired Many False Identification Documents That Would Permit Him to Flee. Furthermore He Has Used an Alias Previously. (dif) [1:13-mj-02328-UA] (Entered: 11/21/2013)
11/22/2013	5	SEALED DOCUMENTS FILED as to Ross William Ulbright.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013)(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	6	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua Dratel, Esq dated 11/19/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File)(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	7	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua Dratel, Esq dated 11/20/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File)(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	8	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from AUSA Serrin Turner dated 11/20/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File)(dif) Modified on 12/4/2013 (jm). [1:13-mj-02328-UA] (Entered: 11/26/2013)
12/06/2013	9	AFFIRMATION of Serrin Turner in Support by USA as to Ross William Ulbright, the government is requesting a 30-day continuance until 1/6/14.(jbo) [1:13-mj-02328-UA] (Entered: 12/09/2013)
12/06/2013	10	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Ross William Ulbright. Time excluded from 12/6/13 until 1/6/14. (Signed by Magistrate Judge James C. Francis on 12/6/13)(jbo) [1:13-mj-02328-UA] (Entered: 12/09/2013)

1/6/2016

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01/06/2014	11	AFFIRMATION of AUSA Serrin Turner in Support by USA as to Ross William Ulbright, the Government is requesting a 30 continuance until 2/4/2014. (ajc) [1:13-mj-02328-UA] (Entered: 01/07/2014)
01/06/2014		ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Ross William Ulbright re: 10 Order to Continue - Interest of Justice. Time excluded from 1/6/2014 until 2/4/2014. Follows oral order of 1/6/2014. (Signed by Magistrate Judge Sarah Netburn on 1/6/2014) (ajc) [1:13-mj-02328-UA] (Entered: 01/07/2014)
02/04/2014		Case Designated ECF as to Ross William Ulbright. (jbo) (Entered: 02/04/2014)
02/04/2014	<u>12</u>	INDICTMENT FILED as to Ross William Ulbright (1) count(s) 1, 2, 3, 4. (jbo) (Entered: 02/04/2014)
02/07/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Arraignment as to Ross William Ulbright (1) Count 1,2,3,4Ross William Ulbright (1) Count 1,2,3,4 held on 2/7/2014., Plea entered by Ross William Ulbright (1) Count 1,2,3,4Ross William Ulbright (1) Count 1,2,3,4 Not Guilty. Defendant present with attorneys Joshua Dratel and Lindsay Lewis. AUSA Serrin Turner present. Special Agent Ilh Wan Yum and Special Agent Gary Alfred present. Court Reporter present. Defendant arraigned on the Indictment and enters a plea of not guilty. Order to follow. Defendant remand continued. (jp) (Entered: 02/10/2014)
02/10/2014	<u>13</u>	ORDER as to Ross William Ulbright (Discovery due by 2/27/2014., Motions due by 3/10/2014., Replies due by 3/31/2014., Responses due by 3/24/2014, Jury Trial set for 11/3/2014 at 09:00 AM before Judge Katherine B. Forrest., Status Conference set for 4/30/2014 at 01:00 PM before Judge Katherine B. Forrest.) Time excluded from 2/7/14 until 4/30/14. Not later than 2/13/2014, defense counsel shall provide the Government with hard drives of sufficient storage size so that the Government can copy the electronic discovery and turn it over to the defendant. Not later than 2/27/2014, the Government shall provide to the defendant the above electronic discovery. Non electronic discovery shall be provided to the defendant not later than 2/20/2014. All discovery is to be completed not later than 2/27/2014. Motions relating to the Indictment are to be filed not later than 3/10/2014. Responses are due not later than 3/24/2014. Replies, if any, are due 3/31/2014. Trial is scheduled to commence on 11/3/2014, at 9:00 a.m. Six weeks have been allocated at this time. A final pretrial conference will be held on 10/28/2014, at 1:00 p.m. Upon application of the Government and consented to by defendant, and as set forth on the record, time pursuant to 18 U.S.C. 3161 (h)(7)(A) of the Speedy Trial Act, is hereby excluded from 2/7/2014, to 4/30/2014. The Court finds the ends of justice are served by such an exclusion and that these ends outweigh the interests of the public and defendant in a speedy trial (Signed by Judge Katherine B. Forrest on 2/10/14)(jw) (Entered: 02/10/2014)
02/24/2014	<u>14</u>	PROTECTIVE ORDER as to Ross William Ulbright...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Katherine B. Forrest on 2/24/14)(jw) (Entered: 02/24/2014)
02/24/2014	15	SEALED DOCUMENT placed in vault. (nm) (Entered: 02/24/2014)
02/25/2014	<u>16</u>	ENDORSED LETTER as to Ross William Ulbright addressed to Judge Katherine B. Forrest from Serrin Turner dated 2/25/2014 re: To request that the discovery

1/6/2016

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		deadline set by the Court in this matter for February 27, 2014 be extended by 12 days until March 11, 2014.ENDORSEMENT: SO ORDERED (Discovery due by 3/11/2014.) (Signed by Judge Katherine B. Forrest on 2/25/14)(jw) (Entered: 02/25/2014)
03/10/2014	<u>17</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated March 7, 2014 re: For the reasons set forth in this letter, counsel requested that the Court grant a ten-day extension until Thursday, March 20, 2014, for the filing of the Defendant's Pre-Trial Motions. Assistant United States Attorney Serrin Turner has informed me that the government consents to this request as long as the government's time to respond is extended until April 10, 2014, which includes an additional week beyond the mere adjustment of the motion schedule because AUSA Turner will not be available the week of March 24th. ENDORSEMENT: Application granted. Dates adjusted as set forth above. (Signed by Judge Katherine B. Forrest on 3/7/2014)(bw) (Entered: 03/10/2014)
03/19/2014	<u>18</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 3/19/14 re: For the reasons set forth below, it is respectfully requested that the Court grant an additional eight-day extension until Friday, March 28, 2014, for the filing of the Defendant's Pretrial Motions. Assistant United States Attorney Serrin Turner has informed me that the government consents to this request as long as a corresponding extension, until April 18, 2014, is provided for the government..ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/19/14)(jw) (Entered: 03/19/2014)
03/28/2014	<u>19</u>	FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment</i> . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 03/28/2014)
03/28/2014	<u>20</u>	DECLARATION of Joshua L. Dratel, Esq. in Support as to Ross William Ulbricht re: <u>19</u> FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment</i> .. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2)(Dratel, Joshua) (Entered: 03/28/2014)
03/29/2014	<u>21</u>	MEMORANDUM in Support by Ross William Ulbricht re <u>19</u> FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment</i> .. (Dratel, Joshua) (Entered: 03/29/2014)
03/31/2014	<u>22</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 3/28/14 re: The Government therefore respectfully requests that the Court extend the time for the Government to file any superseding indictment by 60 days, i.e., until May 30, 2014..ENDORSEMENT: Application granted (Signed by Judge Katherine B. Forrest on 3/31/14)(jw) (Entered: 03/31/2014)
04/10/2014	<u>23</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 2/7/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/5/2014. Redacted Transcript Deadline set for 5/15/2014. Release of Transcript Restriction set for 7/14/2014. (Rodriguez, Somari) (Entered: 04/10/2014)

1/6/2016

SDNY CM/ECF Version 5.1.1

		04/10/2014)
04/10/2014	<u>24</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 2/7/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 04/10/2014)
04/16/2014	<u>25</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 4/16/14 re: The Government requests that the briefing schedule for the motion to dismiss be extended.ENDORSEMENT: Application granted. (I did not use the Govt's proposed order because it has the Court's signature line of a page by itself -- causing certain concerns) (Defendant Replies due by 5/5/2014., Government Responses due by 4/28/2014) (Signed by Judge Katherine B. Forrest on 4/16/14)(jw) (Entered: 04/16/2014)
04/28/2014	<u>26</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>19</u> FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment..</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Turner, Serrin) (Entered: 04/28/2014)
04/29/2014	<u>27</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 4/25/2014 re: For the reasons stated in this letter, defense counsel writes to request an adjournment of the pretrial conference scheduled for February 19, 2014. ENDORSEMENT: Adjourned to 6/2/2014 at 2:00 p.m. (Signed by Judge Katherine B. Forrest on 4/28/2014)(dnd) . (Entered: 04/29/2014)
05/09/2014	<u>28</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated May 9, 2014 re: submitted to request an extension until May 23, 2014, for the filing of Mr. Ulbricht's Reply to the Government's Response to the Defendant's Pre-Trial Motions challenging the face of the Indictment. This adjustment in the briefingschedule will not impact the next pre-trial conference in this case, which is currently scheduled for June 2, 2014, at 2 p.m., and at which time the motions will be fully briefed. ENDORSEMENT: Application granted. (Signed by Judge Katherine B. Forrest on 5/9/2014)(bw) (Entered: 05/12/2014)
05/22/2014	<u>29</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 22, 2014 re: Extension of Time for File of Reply (Dratel, Joshua) (Entered: 05/22/2014)
05/22/2014	<u>30</u>	NOTICE OF ATTORNEY APPEARANCE Timothy Turner Howard appearing for USA. (Howard, Timothy) (Entered: 05/22/2014)
05/23/2014	<u>31</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on re: <u>29</u> Letter filed by Ross William Ulbricht. ENDORSEMENT: ORDERED: Application Granted. (Signed by Judge Katherine B. Forrest on 5/23/2014)(ft) (Entered: 05/23/2014)
05/23/2014		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Replies due by 5/27/2014. (ft) (Entered: 05/23/2014)

1/6/2016

SDNY CM/ECF Version 5.1.1

05/27/2014	<u>32</u>	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: <u>19</u> FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment.</i> . (Dratel, Joshua) (Entered: 05/27/2014)
06/02/2014	<u>33</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 5/30/14 re: The Government is continuing to investigate other charges against the defendant and requires additional time to pursue its investigation before determining whether to seek a superseding indictment. The Government therefore respectfully requests that the Court extend the time for the Government to file any superseding indictment by 30 additional days, i.e., until June 30, 2014. The Government does not anticipate that any further extension will be needed after June 30, 2014. The Government submits that this schedule will still afford the defense ample time to review any additional discovery and prepare for trial, which is set to begin on November 4, 2014.ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 6/2/14)(jw) (Entered: 06/02/2014)
06/02/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Status Conference as to Ross William Ulbricht held on 6/2/2014. Defendant present with attorneys Joshua Dratel and Lindsay Lewis. AUSAs Serrin Turner and Tim Howard present. Conference held. Order to follow. Detention continued. (jp) (Entered: 06/02/2014)
06/03/2014	<u>34</u>	ORDER as to Ross William Ulbricht (Motions due by 7/15/2014., Replies due by 8/27/2014., Responses due by 8/15/2014, Status Conference set for 9/5/2014 at 12:00 PM before Judge Katherine B. Forrest.) The Court hereby ORDERS the parties to comply with the following schedule for the remainder of this litigation: Dispositive motions shall be filed by July 15, 2014; oppositions are due August 15, 2014, and replies, if any, shall be filed by August 27, 2014; The parties shall together determine the date by which trial exhibits are to be exchanged to allow adequate time for objections to be interposed (if a date cannot be agreed upon, the Court will set one at the next status conference); The parties shall confer as to whether they believe juror questionnaires would be helpful in this case. They shall submit a joint letter setting forth their views on this topic by August 1, 2014 (if they believe questionnaires would be helpful, the August 1 letter should contain a proposed date for submission of a draft to the Court); A status conference shall occur on September 5, 2014 at 12:00 p.m. Rule 404(b) motions shall be submitted by October 3, 2014; Motions in Limine shall be submitted by October 17, 2014; oppositions are due October 24, 2014. 3500 material shall be submitted not later than October 31, 2014; and A final pretrial conference shall occur on October 29, 2014 at 2:00 p.m. (the Court has reserved three hours). (Signed by Judge Katherine B. Forrest on 6/3/14)(jw) (Entered: 06/03/2014)
06/26/2014	<u>35</u>	MOTION To Intervene Solely For The Purpose right To Access Judicial Proceeding Records. Document filed by Intervenors. (dnd) (Entered: 06/26/2014)
06/27/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: Conference as to Ross William Ulbricht held on 6/27/2014. Defendant waives his appearance. Counsel for defendant, Joshua Dratel and Lindsay Lewis present. AUSAs Serrin Turner and Tim Howard present. Court Reporter present. Conference held. (jp) (Entered: 06/27/2014)
06/27/2014	<u>36</u>	Waiver of Appearance as to Ross William Ulbricht. I have spoken with my

1/6/2016

SDNY CM/ECF Version 5.1.1

		attorney, Joshua L. Dratel, Esq., and he has advised me of thenature of the June 27, 2014, Court conference scheduled in the above-captioned matter. I hereby knowingly waive my right to appear in person June 27, 2014, at 2:30 p.m., before the Honorable Katherine B. Forrest, United States District Judge for the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, in the above-captioned matter. I authorize my attorneys Joshua L. Dratel, Esq., and Lindsay A. Lewis, Esq., to appear on my behalf at that conference. (jw) (Entered: 06/27/2014)
06/27/2014	<u>37</u>	ORDER as to Ross William Ulbricht. On June 27, 2014, a status conference was held in the above-referenced matter. (Mr. Ulbricht was not in attendance; he waived his right to appear in person. That waiver has been filed electronically.) As was discussed, the Court hereby ORDERS the following: -The parties shall submit a letter (jointly, if possible) that sets forth the status of Mr. Ulbricht' s access to discovery by the close of business on July 7, 2014. In particular, the letter shall set forth the number of hours Mr. Ulbricht requested to view the electronic discovery and the number of hours he actually had such access from June 28, 2014 through July 6, 2014. -Defendant's counsel shall notify the Court no later than the close of business on July 2, 2014 if Mr. Ulbricht has not yet received access to the hard drives. -The schedule has been adjusted as follows: defendant shall file any dispositive motion by July 29, 2014; the Government's response is due by August 26, 2014; and the reply, if any, shall be filed by September 12, 2014. Separately, the Court notes that on June 26, 2014, it received a letter motion from four incarcerated individuals seeking permission to intervene in this action (the letter is included herein). Because there is no provision that allows for such intervention in criminal actions, the Court DENIES the request.(See Footnote 1). SO ORDERED. (Signed by Judge Katherine B. Forrest on 6/27/2014) [*** FOOTNOTE 1: The Court notes that as a matter of policy and practice, the proceedings that occur and the submissions that are made in this matter are, generally speaking, publicly available - it is an open courtroom and a public docket. ***] (bw) (Entered: 06/30/2014)
07/02/2014	<u>38</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 6/2/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: William Richards, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/28/2014. Redacted Transcript Deadline set for 8/7/2014. Release of Transcript Restriction set for 10/3/2014. (Rodriguez, Somari) (Entered: 07/02/2014)
07/02/2014	<u>39</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 6/2/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 07/02/2014)
07/07/2014	<u>40</u>	ORDER as to Ross William Ulbricht. On July 3, 2014, the Court sent the attached letter via email to Nicole McFarland, Senior Staff Attorney at the Metropolitan

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1/6/2016

SDNY CM/ECF Version 5.1.1

		Detention Center. (Signed by Judge Katherine B. Forrest on 7/7/14)(jw) (Entered: 07/07/2014)
07/08/2014	<u>41</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Timothy T. Howard dated 7/7/2014 re: Status Update. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 7/8/2014)(ft) (Entered: 07/08/2014)
07/09/2014	<u>42</u>	OPINION AND ORDER #104494: as to Ross William Ulbricht re: <u>19</u> FIRST MOTION to Dismiss <i>Challenging the Face of the Indictment</i> . filed by Ross William Ulbricht. For the reasons set forth on this Opinion and Order, the defendant's motion to dismiss is DENIED in its entirety. The clerk of the Court is directed to terminate the motion at ECFNo. 19. (Signed by Judge Katherine B. Forrest on 7/9/2014)(jp) Modified on 7/11/2014 (ca). (Entered: 07/09/2014)
07/15/2014	<u>43</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 7/14/2014 re: Status Update. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 7/14/2014)(ft) (Entered: 07/15/2014)
07/25/2014	<u>44</u>	ENDORSED LETTER: As to Ross William Ulbricht addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua L. Dratel dated 7/24/2014 re: Defense counsel writes to request a two day extension until July 31, 2014 to file the defendant's motions. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Magistrate Judge Kevin Nathaniel Fox on 7/25/2014)(dnd) (Entered: 07/25/2014)
07/31/2014	<u>45</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 7/30/2014 re: Extension of Time to File Motion. ENDORSEMENT: Ordered: Application granted. (Motions due by 8/1/2014.) (Signed by Judge Katherine B. Forrest on 7/31/2014)(ft) (Entered: 07/31/2014)
08/01/2014	<u>46</u>	MOTION to Suppress <i>Certain Evidence</i> ., MOTION for Discovery ., MOTION for Bill of Particulars . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 08/01/2014)
08/01/2014	<u>47</u>	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (Dratel, Joshua) (Entered: 08/01/2014)
08/01/2014	<u>48</u>	MEMORANDUM in Support by Ross William Ulbricht re <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (Dratel, Joshua) (Entered: 08/01/2014)
08/04/2014	<u>49</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 4, 2014 re: Juror Questionnaire (Dratel, Joshua) (Entered: 08/04/2014)
08/05/2014	<u>50</u>	ORDER as to Ross William Ulbricht. The Court has received defendant's application for an extension of time to subject a proposed juror questionnaire and accompanying letter motion. Without taking a position on the ultimately utility, if any, of a juror questionnaire in this action, the Court hereby GRANTS defendant's request. The Government is ORDERED to respond to any submission by

1/6/2016

SDNY CM/ECF Version 5.1.1

		defendant not later than September 5, 2014 at 8:30 a.m. SO ORDERED. (Signed by Judge Katherine B. Forrest on 8/5/2014)(bw) (Entered: 08/05/2014)
08/08/2014	<u>51</u>	NOTICE OF ATTORNEY APPEARANCE: Lindsay Anne Lewis appearing for Ross William Ulbricht. Appearance Type: Retained. (Lewis, Lindsay) (Entered: 08/08/2014)
08/21/2014	<u>52</u>	(S1) SUPERSEDING INDICTMENT FILED as to Ross William Ulbricht (1) count(s) 1s, 2s, 3s, 4s, 5s, 6s, 7s. (jbo) (Entered: 08/21/2014)
08/22/2014	<u>53</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 22, 2014 re: Respectfully Requesting that the Court Order the Use of a Juror Questionnaire . Document filed by Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit Defendant's Proposed Questionnaire)(Dratel, Joshua) (Entered: 08/22/2014)
08/29/2014	<u>54</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 8/29/2014 re: On August 1, 2014, the defendant filed a 90-page suppression motion. The Governments opposition is presently due today, August 29, 2014... the Government respectfully requests that the briefing schedule for the motion to dismiss be extended by one week, as follows: Governments opposition due: September 5, 2014. Defendants reply due: September 23, 2014. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 8/29/2014)(dnd) (Entered: 08/29/2014)
09/03/2014	<u>55</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated September 3, 2014 re: Update To the Court on the Discovery Review Process (Dratel, Joshua) (Entered: 09/03/2014)
09/05/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Arraignment as to Ross William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7sRoss William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7s held on 9/5/2014., Plea entered by Ross William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7sRoss William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7s Not Guilty. Defendant present with attorneys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSA Serrin Turner present. Court Reporter present. Defendant arraigned on the Superseding Indictment and enters a plea of not guilty to all counts. Order to follow. Pretrial detention continued. (jp). (Entered: 09/05/2014)
09/05/2014	<u>56</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (Turner, Serrin) (Entered: 09/05/2014)
09/05/2014	<u>57</u>	DECLARATION of Christopher Tarbell in Opposition by USA as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (Turner, Serrin) (Entered: 09/05/2014)
09/08/2014	<u>58</u>	ORDER as to Ross William Ulbricht (Motions due by 9/26/2014., Replies due by 9/23/2014., Responses due by 9/9/2014, Status Conference set for 10/17/2014 at 11:00 AM before Judge Katherine B. Forrest.) The Government shall submit a response to defendant's submission regarding a proposed juror questionnaire not later than Tuesday, September 9, 2014. Any motion by defendant regarding additional counts in the Superseding Indictment shall be made by letter not later

1/6/2016

SDNY CM/ECF Version 5.1.1

		than Friday, September 26, 2014. The Government shall respond as soon as practicable, but not later than Tuesday, September 30, 2014. The government shall provide a proposed exhibit list to defendant not later than Tuesday, October 21, 2014. Defendant shall provide a proposed exhibit list to the Government not later than Friday, October 24, 2014, indicating any objections to the Government's exhibits. Parties shall submit final pretrial materials by Friday, October 31, 2014. Those materials include (a) trial witness lists; (b) joint proposed voir dire; (c) joint proposed requests to charge, and verdict form; (d) exhibit lists; (e) objections to proposed exhibits; and (f) a list of stipulations. The final pretrial conference is now scheduled to occur on Wednesday November 5, 2014 at 2:00pm. The parties shall set aside three hours. The trial is now scheduled to commence Monday, November 10, 2014. (Signed by Judge Katherine B. Forrest on 9/8/14)(jw) (Entered: 09/08/2014)
09/08/2014	<u>59</u>	NOTICE OF ATTORNEY APPEARANCE: Joshua Jacob Horowitz appearing for Ross William Ulbricht. Appearance Type: Retained. (Horowitz, Joshua) (Entered: 09/08/2014)
09/09/2014	<u>60</u>	LETTER RESPONSE in Opposition by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 09/09/2014 re: <u>53</u> LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 22, 2014 re: Respectfully Requesting that the Court Order the Use of a Juror Questionnaire .. (Turner, Serrin) (Entered: 09/09/2014)
09/15/2014	<u>61</u>	MEMO ENDORSEMENT granting <u>53</u> LETTER MOTION Respectfully Requesting that the Court Order the Use of a Juror Questionnaire as to Ross William Ulbricht (1). ENDORSEMENT: Ordered: Defendant's application for a questionnaire is granted. However, the Court does not all of defendant's questions and will put out a revised questionnaire and schedule for use of such shortly. (Signed by Judge Katherine B. Forrest on 9/15/2014) (ft) (Entered: 09/15/2014)
09/16/2014	<u>62</u>	ORDER as to Ross William Ulbricht. In accordance with the Court's Order on September 15, 2014 granting the use of a juror questionnaire (ECF No. 61), defendant shall provide by Friday, September 19, 2014 one Excel spreadsheet (using a template similar to that employed in United States v. Mostafa) with columns corresponding to those questions the Court has indicated it is considering including. The Court plans to finalize the juror questionnaire by Friday, September 26, 2014. The process shall be as follows: Potential jurors will be given the questionnaire on Wednesday, November 5, 2014. 2. It is anticipated that the parties will have access to the questionnaires by 1:00 p.m. on that day. 3. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later than Thursday, November 6, 2014 at 7:00p.m. (The Court must call prospective jurors who do not need to appear.). The Court shall review all agreed cause-strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The

1/6/2016

SDNY CM/ECF Version 5.1.1

		Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave of potential jurors shall only be called to the courtroom if necessary. (Signed by Judge Katherine B. Forrest on 9/16/14)(jw) (Entered: 09/16/2014)
09/16/2014	<u>63</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (<i>Supplemental Memorandum</i>) (Turner, Serrin) (Entered: 09/16/2014)
09/19/2014	<u>64</u>	ORDER as to Ross William Ulbricht. The Court has attached Version 1 of the juror questionnaire spreadsheet. The parties shall submit additional questions (not already proposed) and changes by Wednesday September 24, 2014. The Government shall provide its summary of the case by Wednesday, October 8, 2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 9/19/2014)(bw) (Entered: 09/22/2014)
09/22/2014	<u>65</u>	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/22/2014)
09/22/2014	<u>66</u>	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/22/2014)
09/23/2014	<u>67</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated September 23, 2014 re: Request for an Extension of Time for Filing Mr. Ulbricht's Reply motion (Dratel, Joshua) (Entered: 09/23/2014)
09/24/2014	<u>68</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 9/23/2014 re: This letter is in regard to the Reply papers on behalf of defendant Ross Ulbricht, whom I represent, and that are due today, September 23, 2014. For the reasons set forth below, it is respectfully requested that the due date be adjourned until September 30, 2014. It is also respectfully requested that the due date for the motions challenging the Superseding Indictment be extended from this Friday, September 26, 2014, until next Thursday, October 2, 2014. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 9/24/2014)(dnd) (Entered: 09/24/2014)
10/01/2014	<u>69</u>	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars . . (Dratel, Joshua) (Entered: 10/01/2014)
10/01/2014	<u>70</u>	DECLARATION of Joshua J. Horowitz, Esq. in Support as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars .. (Attachments: # <u>1</u> Exhibit Government's March 21, 2014, Discovery Production Letter, # <u>2</u> Exhibit Mtime and Sites-Enabled Directory For Item 1 of March 21, 2014, Discovery Production, # <u>3</u> Exhibit Defense Counsel's September 17, 2014, Letter Demand for Discovery, # <u>4</u> Exhibit Government's September 23, 2014 Reponse to Defense Counsel's September 17, 2014, Letter, # <u>5</u> Exhibit Nginx Logs, Attachment 1 to the Government's September 23, 2014, Letter, # <u>6</u> Exhibit Full Text of live-ssl Configuration File, # <u>7</u> Exhibit Full Text of phpmyadmin Configuration File, # <u>8</u> Exhibit phpmyadmin Login Page, # <u>9</u> Exhibit Silk Road Login Page, # <u>10</u> Exhibit Example of Wireshark Packet Capture, # <u>11</u> Exhibit Screenshot of Wireshark Exit Prompt) (Dratel, Joshua) (Entered: 10/01/2014)

1/6/2016

SDNY CM/ECF Version 5.1.1

10/02/2014	<u>71</u>	MOTION to Dismiss <i>Counts One through Four of hte Superseding Indictment.</i> , SUPPLEMENTAL MOTION for Bill of Particulars <i>as to the New Charges and Allegations Contained in the Superseding Indictment.</i> Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 10/02/2014)
10/02/2014	<u>72</u>	MEMORANDUM in Support by Ross William Ulbricht re <u>71</u> MOTION to Dismiss <i>Counts One through Four of hte Superseding Indictment.</i> SUPPLEMENTAL MOTION for Bill of Particulars <i>as to the New Charges and Allegations Contained in the Superseding Indictment.</i> .. (Lewis, Lindsay) (Entered: 10/02/2014)
10/03/2014	<u>73</u>	ORDER as to Ross William Ulbricht. Defendant has submitted a declaration from Joshua Horowitz in support of his motion and request for an evidentiary hearing.If the Government has any response to the factual statements (and/or relevance of the factual statements) asserted therein, it should file such response by C.O.B., October 6, 2014 (if possible). (Signed by Judge Katherine B. Forrest on 10/3/14) (jw) (Entered: 10/03/2014)
10/03/2014	<u>74</u>	ORDER as to Ross William Ulbricht. Defendant has submitted a motion dismissing Counts One through Four of the Superseding Indictment and a motion directing the Government to produce the requested Bill of Particulars. The Government shall respond to these motions not later than Tuesday, October 7, 2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/3/2014)(bw) (Entered: 10/03/2014)
10/06/2014	<u>75</u>	RESPONSE in Opposition by USA as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence.</i> MOTION for Discovery . MOTION for Bill of Particulars .. (<i>Response to Declaration of Joshua Horowitz</i>) (Turner, Serrin) (Entered: 10/06/2014)
10/07/2014	<u>76</u>	ORDER as to Ross William Ulbricht: The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts. The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow, and to specify the particular items it will cover. (Signed by Judge Katherine B. Forrest on 10/7/2014)(jp) (Entered: 10/07/2014)
10/07/2014	<u>77</u>	ORDER: As to Ross William Ulbricht. The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not

1/6/2016

SDNY CM/ECF Version 5.1.1

		submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts. The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow, and to specify the particular items it will cover. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/7/2014)(dnd) (Entered: 10/07/2014)
10/07/2014	<u>78</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 9/5/2014 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Kristen Carannante, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/31/2014. Redacted Transcript Deadline set for 11/10/2014. Release of Transcript Restriction set for 1/8/2015. (McGuirk, Kelly) (Entered: 10/07/2014)
10/07/2014	<u>79</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 9/5/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 10/07/2014)
10/07/2014	<u>80</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated October 7, 2014 re: the Court's October 7, 2014, Order (Lewis, Lindsay) (Entered: 10/07/2014)
10/07/2014	<u>81</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 10/7/2014 re: Accordingly, it is respectfully requested that defense counsel be pemlitted to respond to the Court's Order after Mr. Dratel's trial is concluded.ENDORSEMENT: The Court intends to rule on the suppression motion before Thurs. -- since you represent Mr. Ulbricht, perhaps you should meet with him. Ultimately, I assume you folks have considered the various issues relating to the declaration as an accommodation, the Court is providing you a last clear chance. (Signed by Judge Katherine B. Forrest on 10/7/14)(jw) (Entered: 10/07/2014)
10/07/2014	<u>82</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>71</u> MOTION to Dismiss <i>Counts One through Four of hte Superseding Indictment</i> .SUPPLEMENTAL MOTION for Bill of Particulars <i>as to the New Charges and Allegations Contained in the Superseding Indictment</i> .. (Turner, Serrin) (Entered: 10/07/2014)
10/07/2014	<u>83</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated October 7, 2014 re: the government's October 6, 2014, filing and the Court's October 7, 2014, Order (Lewis, Lindsay) (Entered: 10/07/2014)

1/6/2016

SDNY CM/ECF Version 5.1.1

10/08/2014	<u>84</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 10/7/14 re: This letter is submitted on behalf of defendant Ross Ulbricht, in response to the government's October 6, 2014, filing pursuant to the Court's October 3, 2014, Order inviting the government to respond to the factual statements contained in the Declaration of Joshua J. Horowitz, Esq..ENDORSEMENT: Does the Government agree that no declaration is required is this case with regard to establishing Ulbricht's privacy interest in his Facebook, GMAIL accounts, and laptop? (Could you let me know today " yes" or "no" will do.) (Signed by Judge Katherine B. Forrest on 10/8/14) (jw) (Entered: 10/08/2014)
10/08/2014	<u>85</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/08/2014 re: Defendant's Motion to Suppress Document filed by USA. (Turner, Serrin) (Entered: 10/08/2014)
10/08/2014	<u>86</u>	ORDER as to Ross William Ulbricht. Understanding that Mr. Dratel is currently on trial, the Court would like the parties to meet and confer, and inform the Court as soon as practicable, but in any event, not later than C.O.B., October 13, 2014 on the following: 1. What is the best estimate of the total trial duration -- real estimate -- including both direct and cross of witnesses. 2. Will the trial likely run into the Christmas holidays? 3. If it does seem that we will run into the holidays, without in any way suggesting the trial will be delayed, what is the soonest after January 1, 2015, the parties would be able to try the case? SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/8/2014)(bw) (Entered: 10/08/2014)
10/08/2014	<u>87</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Proposed Voir Dire Questions by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> proposed case summary)(Turner, Serrin) Modified on 10/9/2014 (ka). (Entered: 10/08/2014)
10/09/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document <u>87</u> Proposed Voir Dire Questions. Use the document type Letter found under the document list Other Documents. (ka) (Entered: 10/09/2014)
10/09/2014	<u>88</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/08/2014 re: Proposed Case Summary for Voir Dire Document filed by USA. (Attachments: # <u>1</u> Proposed Case Summary)(Turner, Serrin) (Entered: 10/09/2014)
10/10/2014	<u>89</u>	OPINION AND ORDER #104893 as to Ross William Ulbricht re: <u>46</u> MOTION to Suppress <i>Certain Evidence</i> . MOTION for Discovery . MOTION for Bill of Particulars . filed by Ross William Ulbricht: For the reasons set forth above, defendant's motion to suppress, for a bill of particulars and to strike surplusage is DENIED. The Clerk of Court is directed to close the motion at ECF No. 46. (Signed by Judge Katherine B. Forrest on 10/10/2014)(jp) Modified on 10/16/2014 (ca). (Entered: 10/10/2014)
10/15/2014	<u>90</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated October 13, 2014 re: This letter is submitted on behalf of defendant Ross Ulbricht in conjunction with a corresponding letter submitted today by the government in response to the

1/6/2016

SDNY CM/ECF Version 5.1.1

		questions posed in the Court's October 8, 2014, Order. This letter is being transmitted via electronic mail to the Court, but can filed via ECF if the Court wishes.ENDORSEMENT: Trial adjourned to January 5, 2015. We will discuss other dates and logistics of jury selection at the conference on Friday (10/17/14) (Signed by Judge Katherine B. Forrest on 10/15/14)(jw) (Entered: 10/15/2014)
10/15/2014	91	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/15/2014)
10/16/2014	<u>92</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner and Timothy Howard dated 10/8/2014 re: Please find attached a proposed summary of the case to be used in connection with voir dire at trial..ENDORSEMENT: Defendant shall provide any proposed modifications to the summary attached no later than 10/23/14. (Signed by Judge Katherine B. Forrest on 10/16/14)(jw) (Entered: 10/16/2014)
10/17/2014	<u>93</u>	ORDER as to Ross William Ulbricht (Motions due by 12/3/2014., Responses due by 12/10/2014, Pretrial Conference set for 12/17/2014 at 02:00 PM before Judge Katherine B. Forrest.) The Government shall provide a proposed exhibit list to defendant not later than Monday, December 1, 2014 at 4:00 p.m. Defendant shall provide a proposed exhibit list to the Government not later than Friday, December 5, 2014 at 4:00 p.m., indicating any objections to the Government's exhibits and setting forth any known exhibits defendant intends to offer. Parties shall file any motions in limine by Wednesday, December 3, 2014; opposition briefs are due by Wednesday, December 10, 2014; no replies. Parties shall submit final pretrial materials by Wednesday, December 10, 2014. Those materials include (a) trial witness lists, in approximate order, with names and expected duration of direct examination; (b) joint proposed voir dire (taking into account the juror questionnaire); (c) joint proposed requests to charge; (d) joint proposed verdict form; (e) exhibit lists; (f) objections to proposed exhibits; and (g) a list of stipulations. The final pretrial conference is now scheduled to occur on Wednesday December 17, 2014 at 2:00 p.m. The parties shall set aside three hours. The juror questionnaire shall be filled out by the potential jurors the weeks of December 22 and 29, 2014. 3500 materials for non-cooperating witnesses shall be submitted by Monday, December 29, 2014. 3500 materials for all other witnesses shall be submitted by Friday, January 2, 2015. Upon receipt from the Jury Department, the Government shall work with defense counsel to copy/scan the questionnaires, fill out the juror questionnaire summary spreadsheet, and confer on joint strikes. Not later than Friday, January 2, 2015 at 10:00 a.m., the parties shall file the spreadsheet in both hard copy and electronic format (Excel) and a letter containing (1) jointly agreed-upon strikes; (2) proposed but not agreed-upon strikes. The trial shall commence on Monday, January 5, 2015. (Signed by Judge Katherine B. Forrest on 10/17/14)(jw) (Entered: 10/20/2014)
10/17/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Status Conference as to Ross William Ulbricht held on 10/17/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and Tim Howard present. Court Reporter present. Conference held. Order to follow. Remand continued. (jp) (Entered: 10/20/2014)
10/24/2014	<u>94</u>	OPINION & ORDER #104931: as to (14-Cr-68-01) Ross William Ulbricht. On February 4, 2014, a federal grand jury returned Indictment 14 Cr. 68 (the "Original Indictment"), charging Ross Ulbricht ("defendant" or "Ulbricht") on

1/6/2016

SDNY CM/ECF Version 5.1.1

		<p>four counts---all stemming from the creation, administration, and operations of an online marketplace known as "Silk Road." (ECF No. 12 ("Orig. Ind.")). On March 28, 2014, Ulbricht moved to dismiss the Original Indictment in its entirety. (ECF No. 19.) That motion became fully briefed on May 27, 2014 (ECF No. 32), and on July 9, 2014, the Court denied the motion (ECF No. 42). On August 21, 2014, the Government filed Superseding Indictment S1 14 Cr. 68 (KBF) (the "Superseding Indictment") containing three additional charges. (ECF No. 52 ("Sup. Ind.")). Ulbricht's trial is scheduled to begin on January 5, 2015. Pending before the Court is defendant's motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and "for any such other and further relief... which to the Court seems just and proper." (ECF No. 71.) For the reasons set forth below, the motion is DENIED...[See this Opinion And Order]... IV.</p> <p>CONCLUSION: For the reasons set forth above, defendant's motion is DENIED. The Clerk of the Court is directed to terminate the motion at ECF No. 71. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/24/2014)(bw) Modified on 11/4/2014 (ca). (Entered: 10/24/2014)</p>
11/04/2014	<u>95</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 11/04/2014)
11/18/2014	<u>96</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated November 17, 2014 re: The Government respectfully requests that the deadline for the Government's disclosure of trial exhibits be extended by two days to December 3, 2014, and that the deadline for defense exhibits be correspondingly extended by two days to December 9, 2014. ENDORSEMENT: Application granted. (Signed by Judge Katherine B. Forrest on 11/18/2014)(bw) (Entered: 11/18/2014)
11/25/2014	<u>97</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 10/17/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sonya Ketter Huggins, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2014. Redacted Transcript Deadline set for 12/29/2014. Release of Transcript Restriction set for 2/26/2015. (Rodriguez, Somari) (Entered: 11/25/2014)
11/25/2014	<u>98</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 10/17/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 11/25/2014)
12/01/2014	<u>99</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/01/2014)
12/01/2014	<u>100</u>	ORDER as to Ross William Ulbricht. The Court has conferred with the Jury Department to implement a process for calling potential jurors to be given the juror questionnaire. The process shall be as follows: Potential jurors will be given the questionnaire on Monday, December 29, 2014. It is anticipated that the parties will have access to the questionnaires by 1:00 p.m. on that day. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel

1/6/2016

SDNY CM/ECF Version 5.1.1

		spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later than Thursday, January 1, 2015 at 5:00p.m. (The Court must call prospective jurors who do not need to appear.) The Court shall review all agreed cause- strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave of potential jurors shall only be called to the courtroom if necessary. (Signed by Judge Katherine B. Forrest on 12/1/2014)(jw) (Entered: 12/01/2014)
12/01/2014	<u>101</u>	ORDER as to Ross William Ulbricht. The Court hereby notifies the parties that it intends to provide the enclosed Juror Questionnaire to the Clerk's Office on December 4, 2014. If either party has concerns, it should let the Court know not later than December 3, 2014. (Signed by Judge Katherine B. Forrest on 12/1/2014)(jw) (Entered: 12/01/2014)
12/03/2014	<u>102</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 12/3/2014 re: Court's proposed jury questionnaire Document filed by USA. (Howard, Timothy) (Entered: 12/03/2014)
12/03/2014	<u>103</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 12/3/2014 re: This letter is submitted on behalf of defendant Ross Ulbricht in response to the Court's December 1, 2014, Order requesting that the parties convey any concerns with the existing questionnaire to the Court by today, December 3, 2014. This letter is being transmitted via electronic mail to the Court, but can filed via ECF if the Court wishes. ENDORSEMENT: Does the Government object to the changes noted in PP 1-5 above? Please inform the court by 5:00 p.m. 12/4/2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/3/2014)(dnd) (Entered: 12/03/2014)
12/04/2014	<u>104</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/04/2014)
12/05/2014	<u>105</u>	ORDER as to Ross William Ulbricht. Attached as Exhibit A is the juror questionnaire, as provided to the Jury Department. SO ORDERED (Signed by Judge Katherine B. Forrest on 12/5/14)(jw) (Entered: 12/05/2014)
12/05/2014	<u>106</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated December 5, 2014 re: This letter is submitted on behalf of defendant Ross Ulbricht, and respectfully requests that the Court permit the motions in limine, the deadline for which the Court graciously extended until Monday, December 8, 2014, to be filed Tuesday, December 9, 2014, while leaving the time for any replies - due December 12, 2014 - unchanged. ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/5/2014)(bw) (Entered: 12/08/2014)
12/09/2014	<u>107</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSAs Timothy T. Howard / Serrin Turner, dated December 9, 2014 re: On October 17, 2014, the Court ordered that the parties submit final

1/6/2016

SDNY CM/ECF Version 5.1.1

		pretrial materials by Wednesday, December 10, 2014, to include trial witness lists. The Government submits this letter to respectfully request leave from the Court to redact the names of cooperating witnesses from the list of Government witnesses. ENDORSEMENT: Defendant to respond to the instant letter request as soon as practicable (not later than 12/11 at 10am). (Signed by Judge Katherine B. Forrest on 12/9/2014)(bw) (Entered: 12/09/2014)
12/09/2014	<u>108</u>	MOTION in Limine - <i>Government's Pretrial Motions in Limine</i> . Document filed by USA as to Ross William Ulbricht. (Howard, Timothy) (Entered: 12/09/2014)
12/10/2014	<u>110</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Forrest Chambers from Lindsay Lewis dated 12/10/14 re: Motion in Limine & Objections to Government Exhibits...ENDORSEMENT...Post to docket. Redacted versions of all docs, which can be filed possibly in such form should be. File redacted versions by COB today. (Signed by Judge Katherine B. Forrest on 12/10/14)(jw) (Entered: 12/10/2014)
12/10/2014	<u>111</u>	ORDER as to Ross William Ulbricht (Status Conference set for 12/15/2014 at 10:00 AM before Judge Katherine B. Forrest.) One of the issues defendant raises in his motion in limine relates to a currently non-public matter. To discuss and resolve this issue requires receipt of the Government's response, and a conference dedicated to that issue. Accordingly, the Court has set a conference for Monday, December 15, 2014 at 10:00a.m. for this purpose. In advance of that conference, the parties shall confer regarding whether (1) the Courtroom should be sealed, or (2) the matter can/should be taken up in the robing room. The parties shall inform the Court not later than C.O.B. Friday, December 12, 2014, as to their views regarding the same. (Signed by Judge Katherine B. Forrest on 12/10/14)(jw) (Entered: 12/10/2014)
12/10/2014	<u>112</u>	FIRST MOTION in Limine <i>to Preclude Certain Evidence and Proposed Government Exhibits</i> . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	<u>113</u>	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: <u>112</u> FIRST MOTION in Limine <i>to Preclude Certain Evidence and Proposed Government Exhibits</i> .. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	<u>114</u>	MEMORANDUM in Support by Ross William Ulbricht re <u>112</u> FIRST MOTION in Limine <i>to Preclude Certain Evidence and Proposed Government Exhibits</i> .. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	<u>115</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Proposed Voir Dire Questions by Ross William Ulbricht. (Dratel, Joshua) Modified on 12/10/2014 (ka). (Entered: 12/10/2014)
12/10/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document <u>115</u> Proposed Voir Dire Questions. Use the document type Letter found under the document list Other Documents. (ka) (Entered: 12/10/2014)
12/10/2014	<u>116</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated December 10, 2014 re: Defendant's Proposed Voir

1/6/2016

SDNY CM/ECF Version 5.1.1

		Dire (Lewis, Lindsay) (Entered: 12/10/2014)
12/10/2014	<u>117</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSAs Serrin Turner and Tim Howard dated 12/10/2014 re: Pre-trial Order Document filed by USA. (Turner, Serrin) (Entered: 12/10/2014)
12/10/2014	<u>118</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 12/10/2014 re: This letter is submitted on behalf of defendant Ross Ulbricht, in regard to the Joint Proposed Request to Charge, due today, December 10, 2014. We are currently finishing our redlining of the governments proposed Request to Charge. After consulting with the government, two options exist: we can either send the redlined version of the Request to Charge to the court tonight, or we can send it to the government to see if there are any additional areas in which we are able to reach agreement. ENDORSEMENT: Submit tonight to the Government. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/10/2014)(dnd) (Entered: 12/11/2014)
12/10/2014		***DELETED DOCUMENT. Deleted document number 109 Endorsed Letter, as to Ross William Ulbricht. The document was incorrectly filed in this case. (dnd) (Entered: 12/18/2014)
12/11/2014	<u>119</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on E-Mail sent to Joseph Pecorino of Judge Forrest's Chambers from Attorney Lindsay Lewis on 12/10/2014 7:45PM re: Attached please find a letter to the Court in opposition to the government's December 9, 2014, letter requesting leave from the Court to redact the names of the cooperating witnesses from the list of government witnesses. ENDORSEMENT: All letters and filings with the Court must be filed via ECF unless there is some truly important reason not to. If something cannot be filed publicly, then it must be filed in redacted form simultaneously on within the same business day. (Signed by Judge Katherine B. Forrest on 12/11/2014)(bw) (Entered: 12/11/2014)
12/11/2014	<u>120</u>	MEMORANDUM DECISION & ORDER as to Ross William Ulbricht. Ross Ulbricht ("defendant" or "Ulbricht") is charged with a variety of crimes relating to his alleged design, administration, and operation of an online marketplace known as "Silk Road." (ECF No. 52.) Trial is scheduled to commence on January 5, 2015. Before the Court is the Government's request for leave to redact the names of cooperating witnesses from the list of witnesses provided as part of the Government's final pretrial materials. (ECF No. 107.) The Government has agreed to provide the identities of such witnesses on January 2, 2015. According to the Government, disclosure on that date will provide at least ten days' notice regarding the witnesses' identities prior to their testimony at trial. Defendant has opposed this application. (ECF No. 119.). The Government has represented that it will provide the identities of the cooperating witnesses on January 2, 2015, and it has disclosed the identities of its first two witnesses, both of whom are multi-day witnesses. The Court weighs defendant's need to prepare for trial against the Government's proffered reason for withholding the identities of its cooperating witnesses until January 2, 2015. And while the Court currently has no view as to the merit of the Government's contention regarding defendant's alleged solicitations of murders-for-hire, it is in no position to find that they are baseless or that witnesses who are known to be preparing to testify against defendant would not be at risk of some retaliatory act. While defendant has limited access to

1/6/2016

SDNY CM/ECF Version 5.1.1

		the outside world, that has been true of many defendants in many cases who have creatively managed around such limitations. (Signed by Judge Katherine B. Forrest on 12/11/14)(jw) (Entered: 12/11/2014)
12/11/2014	<u>121</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Request To Charge by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Joint RTCs (redline))(Turner, Serrin) Modified on 12/12/2014 (ka). (Entered: 12/11/2014)
12/12/2014	<u>122</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Government dated 12/12/2014 re: Joint Proposed Verdict Form Document filed by USA. (Attachments: # <u>1</u> Joint Proposed Verdict Form - Redline)(Turner, Serrin) (Entered: 12/12/2014)
12/12/2014	<u>123</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - Request To Charge by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Joint RTCs - revised redline)(Turner, Serrin) Modified on 12/12/2014 (ka). (Entered: 12/12/2014)
12/12/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document <u>121</u> Request to Charge. Use the document type Letter found under the document list Other Documents.***NOTE: Proposed Jury Instructions must be filed individually. Use event code Proposed Jury Instructions located under Trial Documents. (ka) (Entered: 12/12/2014)
12/12/2014		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document <u>123</u> Request to Charge. Use the document type Letter found under the document list Other Documents.***NOTE: Proposed Jury Instructions must be filed individually. Use event code Proposed Jury Instructions located under Trial Documents. (ka) (Entered: 12/12/2014)
12/12/2014	<u>124</u>	ORDER as to Ross William Ulbricht. It is hereby ORDERED that in advance of, but to be discussed at the final pretrial conference, the parties shall confer on a list of terms likely to arise and determine whether there is any likelihood of stipulations to definitions. In prior trials involving complex matters, the Court has requested the parties to confer on definitions of terms and a handout has sometimes been provided to the jury with those terms. A witness in the ordinary course has then explained the terms. The Court has allowed the jury to retain the handout at their seats throughout the trial. Among the types of terminology the parties will want to consider including in such a "glossary" are the following: Online chats, Application(s), Log, Browser, Tor, IP address, Servers, Server side, Bitcoin, bitcoin process: ledger, bitcoin value, PIN, PTH, Codebase, Configuration files, Controllers, Support controllers, Administrator, administrative/administrator privileges, Path, Scripting language. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/12/2014)(ft) (Entered: 12/12/2014)
12/12/2014	<u>125</u>	CORRECTED MEMORANDUM DECISION & ORDER as to Ross William Ulbricht. Ross Ulbricht ("defendant" or "Ulbricht") is charged with a variety of crimes relating to his alleged design, administration, and operation of an online

1/6/2016

SDNY CM/ECF Version 5.1.1

		marketplace known as "Silk Road." (ECF No. 52.) Trial is scheduled to commence on January 5, 2015. Before the Court is the Government's request for leave to redact the names of cooperating witnesses from the list of witnesses provided as part of the Government's final pretrial materials. (ECF No. 107.) The Government has agreed to provide the identities of such witnesses on January 2, 2015. According to the Government, disclosure on that date will provide at least ten days' notice regarding the witnesses' identities prior to their testimony at trial. Defendant has opposed this application. (ECF No. 119.) The Government has represented that it will provide the identities of the cooperating witnesses on January 2, 2015, and it has disclosed the identities of its first two witnesses, both of whom are multi-day witnesses. The Court weighs defendant's need to prepare for trial against the Government's proffered reason for withholding the identities of its cooperating witnesses until January 2, 2015. And while the Court currently has no view as to the merit of the Government's contention regarding defendant's alleged solicitations of murders-for-hire, it is in no position to find that they are baseless or that witnesses who are known to be preparing to testify against defendant would not be at risk of some retaliatory act. While defendant has limited access to the outside world, that has been true of many defendants in many cases who have creatively managed around such limitations. Disclosure on January 2, 2015 is sufficient. (Signed by Judge Katherine B. Forrest on 12/12/2014)(ft) (Entered: 12/12/2014)
12/12/2014	<u>126</u>	MEMORANDUM in Opposition by Ross William Ulbricht re <u>108</u> MOTION in Limine - <i>Government's Pretrial Motions in Limine..</i> (Dratel, Joshua) (Entered: 12/12/2014)
12/12/2014	<u>127</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>112</u> FIRST MOTION in Limine to <i>Preclude Certain Evidence and Proposed Government Exhibits..</i> (Howard, Timothy) (Entered: 12/12/2014)
12/15/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: Conference as to Ross William Ulbricht held on 12/15/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and Timothy Howard present. Court Reporter present. Conference held. Detention continued. (jp) (Entered: 12/15/2014)
12/15/2014	<u>128</u>	ORDER as to Ross William Ulbricht. The Court has made several minor non-substantive edits to the juror questionnaire. The revised version, as provided to the Jury Department, is attached as Exhibit A. The Court will email the parties a revised version of the Excel spreadsheet, which the parties shall fill in and provide to the Court as set forth in the Court's December 1, 2014 order. (ECF No. 100.) SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/15/2014)(dnd) (Entered: 12/15/2014)
12/16/2014	<u>129</u>	ORDER as to Ross William Ulbricht. Further to the Court's questions and concerns as expressed on the record on December 15, the court needs to further understand the government's legal theory as to the following: 1. Does the government contend that the defendant was the hub in a hub and spoke conspiracy -- or would the government characterize his alleged position otherwise? 2. If the defendant is alleged to be at the center of the conspiracy as a hub or occupying a position akin to a hub, does the government agree that it must prove the existence of a rim to connect the various co-conspirators to each other? If not, please

1/6/2016

SDNY CM/ECF Version 5.1.1

		provide case law support for the government's position. 3. Does the government contend that all sellers of all types of drugs during the entire conspiracy timeframe were part of a single conspiracy? If so, please provide case law support. 4. What does "mutual dependence" mean as a matter of law and what must the government prove to demonstrate this? Put another way, apart from asserting mutual dependence, must the government show that a seller of LSD on day one of the launch was mutually dependent on a seller of heroin on day 250? 5. How does mutual dependence work when buyers and sellers are targeting particular drugs only? (That is, why does a seller of LSD care about the vibrancy of the marketplace for heroin? What type of proof could establish any necessary inference?) The court would like to have the government's responses before or at the final pre-trial conference. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/16/2014)(bw) (Entered: 12/16/2014)
12/16/2014	<u>130</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 12/16/2014 re: Court's Order Regarding List of Defined Terms Document filed by USA. (Howard, Timothy) (Entered: 12/16/2014)
12/17/2014	<u>131</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/17/2014 re: <u>129</u> Order,,,,, re: Response to the Court's December 16 Order . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 12/17/2014)
12/17/2014	<u>132</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on re: <u>130</u> Letter filed by USA. ENDORSEMENT: Ordered: Fine. I just want us to discuss the concept at the FPTC today. I don;t need the stip. before 12/30. (Signed by Judge Katherine B. Forrest on 12/17/2014)(ft) (Entered: 12/17/2014)
12/17/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: FinalPretrial Conference as to Ross William Ulbricht held on 12/17/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and Timothy Howard present. Court Reporter present. Conference held. Detention continued. (jp) (Entered: 12/18/2014)
12/18/2014	<u>133</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Forrest NYSD Chambers from NYSD Help Desk dated 12/10/2014 re: Letter received from attorney Joshua Dratel to have document number 109 removed from docket. Document was inadvertently filed on the CM/ECF system, and should have instead been filed under seal. ENDORSEMENT: ECF No. 109 to be removed from the public docket. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/17/2014)(dnd) (Entered: 12/18/2014)
12/19/2014	<u>134</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/19/2014 re: Request for One-Week Adjournment of Trial . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 12/19/2014)
12/19/2014	135	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	136	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	137	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)

1/6/2016

SDNY CM/ECF Version 5.1.1

12/19/2014	<u>138</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	<u>139</u>	ORDER as to Ross William Ulbricht. Potential jurors will be given the questionnaire on Monday, January 5, 2015. It is anticipated that the parties will have access to the questionnaires by 3:00 p.m. on that day. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later than Thursday, January 8, 2015 at 5:00 p.m. (The Court must call prospective jurors who do not need to appear.) The Court shall review all agreed cause-strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave of potential jurors shall only be called to the courtroom if necessary. The updated juror questionnaire (reflecting the change in trial start date) is attached. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/19/2014)(ft) (Entered: 12/19/2014)
12/19/2014	<u>140</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on re: <u>134</u> LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/19/2014 re: Request for One-Week Adjournment of Trial filed by USA. ENDORSEMENT: ORDERED: Application Granted. Trial adjourned to Tuesday, January 13, 2015, at 9:00 am. Order re jury selection process to follow. (Jury Trial set for 1/13/2015 at 09:00 AM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 12/19/2014)(ft) Modified on 12/19/2014 (ft). (Entered: 12/19/2014)
12/29/2014	<u>141</u>	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/29/2014)
01/07/2015	<u>142</u>	OPINION & ORDER as to Ross William Ulbricht. Defendant's motion to preclude certain evidence regarding Silk Road product listings and transactions is DENIED, subject to the ruling in subpart F. Defendant's motions to preclude evidence of defendant's murder-for-hire solicitations and to strike references to such solicitations as surplusage are DENIED. The Government's corresponding motion to allow the murder-for-hire evidence is GRANTED. Defendant's motion to preclude certain Government exhibits as insufficiently authenticated is DENIED. Defendant can renew this motion as to any particular exhibit when it is offered at trial. Defendant's motion to preclude evidence that he ordered fraudulent identification documents from Silk Road is DENIED. The Government's corresponding motion to allow this evidence is GRANTED. Defendant's motion to preclude a variety of government exhibits not covered by the other motions in limine is GRANTED in part and DENIED in part. The specific rulings are set forth above. DENIED. The Government's motions to preclude argument and evidenceregarding (1) any potential consequences of conviction, and (2) defendant's political views or other excuses is DENIED as moot. The Clerk of Court is directed to terminate the motions at ECF Nos. 108 and 112. (Signed by Judge Katherine B. Forrest on 1/7/2015)(ft) (Entered: 01/07/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

01/08/2015	<u>143</u>	SEALED DOCUMENT placed in vault. (rz) (Entered: 01/08/2015)
01/09/2015	<u>144</u>	ORDER as to Ross William Ulbricht. The Court has reviewed the list of strikes to which both parties have consented. The Court agrees, and hereby strikes the following prospective jurors: 3, 9, 13, 18, 22, 24, 25, 34, 35, 36, 40, 42, 44, 47, 48, 54, 57, 67, 68, 69, 71, 72, 74, 76, 78, 79, 80, 82, 83, 84, 88, 94, 95, 96, 99, 100, 103, 105, 108, 109, 125, 126, 128, 129, 131, 132, 133, 142, 145, 147, 149, 150, 151, 161, 172, 174, 177, 179, 182. Based on its review of the questionnaires, the Court also strikes the following prospective jurors: 6, 7, 8, 14, 16, 20, 31, 37, 39, 45, 46, 56, 58, 60, 62, 64, 86, 91, 117, 118, 120, 122, 123, 130, 139, 144, 148, 152, 157, 158, 160, 167, 183. The parties shall provide the Court with printed copies of all filled-out juror questionnaires, marked with each jurors number, as soon as is practicable, but not later than Saturday, January 10, 2015. (Signed by Judge Katherine B. Forrest on 1/9/15)(jw) (Entered: 01/09/2015)
01/09/2015	<u>145</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 12/17/2014 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/2/2015. Redacted Transcript Deadline set for 2/12/2015. Release of Transcript Restriction set for 4/13/2015. (McGuirk, Kelly) (Entered: 01/09/2015)
01/09/2015	<u>146</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 12/17/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 01/09/2015)
01/09/2015	<u>147</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 9, 2015 re: the reading of internet communications during trial (Dratel, Joshua) (Entered: 01/09/2015)
01/12/2015	<u>148</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serkin Turner dated 10/13/2014 re: The Government respectfully submits this letter in response to the Court's order dated October 8, 2014. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	<u>149</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay Lewis dated 1/8/2015 re: As per the Court's September 16, 2014, Order, attached please find (1) the Excel spreadsheet prepared from the juror questionnaire submitted on behalf of Mr. Ulbricht in the above-captioned case; and (2) s a cover letter explaining the contents of the spreadsheet. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	<u>150</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serkin Turner dated 8/21/2014 re: The Government respectfully

1/6/2016

SDNY CM/ECF Version 5.1.1

		requests that the defendant's arraignment on the Superseding Indictment be scheduled for the same time as the upcoming pretrial conference presently scheduled for September 5, 2014, at 12:00 p.m. ENDORSEMENT: Ordered: Post to docket. Dealt with in ordinary course. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	151	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/12/2015	152	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/12/2015	153	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/13/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Voir Dire held and Jury Trial begun on 1/13/2015 as to Ross William Ulbricht. (jp) (Entered: 02/05/2015)
01/14/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/14/2015. (jp) (Entered: 02/05/2015)
01/15/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/15/2015. (jp) (Entered: 02/05/2015)
01/19/2015	<u>154</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/19/2015 re: Striking/Preclusion of Testimony . Document filed by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Turner, Serrin) (Entered: 01/19/2015)
01/19/2015	<u>155</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 19, 2015 re: <u>154</u> LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/19/2015 re: Striking/Preclusion of Testimony . re: the governments January 19, 2015, letter seeking preclusion of certain questioning of Homeland Security Investigations Special Agent Jared Der-Yeghiayan . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 01/19/2015)
01/20/2015	<u>156</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 1/19/15 re: About twenty minutes ago, while eating dinner, I broke a tooth. Obviously, I would very much like to get to the dentist as quickly as possible but of course there's the ongoing trial. I'm confident I could get in to see my dentist tomorrow morning at 9 a.m. but don't know anything beyond that. I also don't know how I would feel in the morning. If anyone (including AUSA's) sees this e-mail tonight, please let me know everyone's position on how to proceed..ENDORSEMENT: It is too late to have the jury stay home so they will be here. Go to the dentist and let us know ASAP what your schedule/status is. (Signed by Judge Katherine B. Forrest on 1/20/15) (jw) (Entered: 01/20/2015)
01/20/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/20/2015. (jp) (Entered: 02/05/2015)
01/21/2015	<u>157</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 1/20/15 re: Please find attached highlighted excerpts of SA Der-Yeghiayan's testimony that the Government respectfully

1/6/2016

SDNY CM/ECF Version 5.1.1

		requests be stricken from the record in accordance with the Court's ruling from this morning...ENDORSEMENT...Post to docket. (Signed by Judge Katherine B. Forrest on 1/21/15)(jw) (Entered: 01/21/2015)
01/21/2015	158	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	159	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	160	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	161	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/21/2015. (jp) (Entered: 02/05/2015)
01/22/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/22/2015. (jp) (Entered: 02/05/2015)
01/23/2015	<u>162</u>	ORDER as to Ross William Ulbricht. Attached to this Order are draft jury instructions. The Court will separately e-mail a Word version of these instructions to the parties. The parties shall submit any proposed revisions to the instructions not later than Monday evening, January 26, 2015. The Court will hold the first charging conference on Tuesday, January 27, 2015, at 9 a.m. (Signed by Judge Katherine B. Forrest on 1/23/2015)(bw) (Entered: 01/23/2015)
01/26/2015	<u>163</u>	ENDORSED LETTER as to Ross William Ulbricht on E-Mail addressed to Judge Forrest's Chambers from AUSA Serrin Turner dated 1/22/2015 08:40 AM re: Please see the attached letter concerning the admissibility of the statement from the Complaint that was raised yesterday morning. The Government will plan to file the letter later today on ECF. Also attached is a relevant case. ENDORSEMENT: Post to docket. (Signed by Judge Katherine B. Forrest on 1/23/2015)(bw) (Entered: 01/26/2015)
01/26/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/26/2015. (jp) (Entered: 02/05/2015)
01/28/2015	<u>164</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/28/2015 re: <u>162</u> Order, Set Deadlines/Hearings,, re: Modification of Jury Charges . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 01/28/2015)
01/28/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/28/2015. (jp) (Entered: 02/05/2015)
01/29/2015	<u>165</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony . Document filed by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit A)(Turner, Serrin) (Entered: 01/29/2015)
01/29/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/29/2015. (jp) (Entered: 02/05/2015)
01/30/2015	<u>166</u>	ORDER as to Ross William Ulbricht. Any party wishing to submit additional materials regarding the jury instructions shall do so not later than 5 p.m. today, January 30, 2015. This applies to all proposed changes except those that cannot be reasonably anticipated because the evidentiary record has not yet been closed. SO

1/6/2016

SDNY CM/ECF Version 5.1.1

		ORDERED. (Signed by Judge Katherine B. Forrest on 1/30/2015)(ft) (Entered: 01/30/2015)
01/30/2015	<u>167</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/30/2015 re: Requests to Charge and Defense Exhibits Document filed by USA. (Howard, Timothy) (Entered: 01/30/2015)
01/30/2015	<u>168</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated January 30, 2015 re: Requests to Charge (Dratel, Joshua) (Entered: 01/30/2015)
01/30/2015	<u>169</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 01/30/2015 re: Defense Letter re: Requests to Charge Document filed by USA. (Turner, Serrin) (Entered: 01/30/2015)
01/31/2015	<u>170</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin . Document filed by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit A)(Howard, Timothy) (Entered: 01/31/2015)
01/31/2015	<u>171</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 31, 2015 re: <u>165</u> LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony . re: To Permit the Expert Testimony of Defense Witness Andreas Antonopoulos . Document filed by Ross William Ulbricht. (Dratel, Joshua) Modified on 2/3/2015 (ka). (Entered: 01/31/2015)
01/31/2015	<u>178</u>	OPINION & ORDER as to Ross William Ulbricht. Any further submissions regarding defendants proposed expert witness Andreas M. Antonopoulos shall be submitted not later than 2:00 p.m. today, January 31, 2015. Any other motions regarding experts must be received by 4:00 p.m. today, January 31, 2015. Any response to any such new motions shall be submitted not later than 12:00 p.m. tomorrow, February 1, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
01/31/2015		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Motions due by 1/31/2015. Responses due by 2/2/2015. (ft) (Entered: 02/05/2015)
01/31/2015	<u>179</u>	ORDER as to Ross William Ulbricht. The defense shall disclose any exhibits it proposes to use with experts or otherwise to the Government not later than 5 p.m. today, January 31, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
01/31/2015	<u>180</u>	OPINION & ORDER as to Ross William Ulbricht. The Court is unclear as to whether there is an additional expert who has been disclosed. Any additional expert would have to have been disclosed before now if such a disclosure has not been made by now, it is untimely and shall not be allowed. All exhibits relating to defense witnesses shall be made not later than 10:00 p.m. this evening, January 31, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015) (ft) (Entered: 02/05/2015)
01/31/2015	<u>181</u>	OPINION & ORDER as to Ross William Ulbricht. The Court has just learned that

1/6/2016

SDNY CM/ECF Version 5.1.1

		on January 30, 2015, defendant noticed an additional expert witness, Mr. Steven M. Bellovin. The Government has moved to preclude Bellovin from testifying. (ECF No. 70.) Defendant shall respond to the Government's motion to preclude Bellovin's testimony not later than Sunday, February 1, 2015 at 9:00 a.m. Today's 10:00 p.m. deadline for defendant's response to the Government's motion to preclude the testimony of Andreas M. Antonopoulos (ECF No. 165) remains in place. SO ORDERED. (Responses due by 2/1/2015) (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
02/01/2015	<u>172</u>	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated February 1, 2015 re: <u>170</u> LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin . re: To Admit the Expert Testimony of Defense Witness Dr. Steven Bellovin . Document filed by Ross William Ulbricht. (Dratel, Joshua) Modified on 2/3/2015 (ka). (Entered: 02/01/2015)
02/01/2015	<u>173</u>	OPINION & ORDER as to Ross William Ulbricht. Lawyers and clients make tactical decisions. The Court cannot always understand why certain decisions are made, nor need it. But when tactical decisions run contrary to established rules and case law, the Court's duty is clear. The Court is duty-bound to apply the law as it exists, not as any party wishes it to be....[See this Opinion & Order]... Why did the defense choose to proceed as it has? This Court cannot know.Perhaps a tactical choice not to show the defenses hand; perhaps to try andaccumulate appeal points; perhaps something else. In any event, the outcome ofthese choices is that the Court hereby GRANTS the Government's motions topreclude the testimony of both experts. (ECF Nos. 165, 170.)...[See this Opinion & Order]... II. CONCLUSION: For the reasons set forth above, the Government's motions to preclude are GRANTED. The Clerk of Court is directed to close the motions at ECF Nos. 165 and 170. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/1/2015)(bw) (Entered: 02/02/2015)
02/02/2015	<u>174</u>	OPINION & ORDER as to (14-Cr-68-1) Ross William Ulbricht. Pending before the Court are several applications by the parties to modify the proposed jury instructions circulated by the Court on January 23, 2015. (ECF No. 162.) This Opinion & Order sets forth the Court's determinations as to several proposed modifications.(See Footnote 1 on page 1 of this Opinion & Order)....[See Opinion & Order]... The Clerk of Court is directed to terminate the motion at ECF No. 164. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/2/2015)(bw) (Entered: 02/02/2015)
02/02/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 2/2/2015. (jp) (Entered: 02/05/2015)
02/03/2015		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document <u>172</u> LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated February 1, 2015 re: <u>170</u> LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Ex. Use the document type Response to Motion found under the document list

1/6/2016

SDNY CM/ECF Version 5.1.1

		Replies, Opposition and Supporting Documents. (ka) (Entered: 02/03/2015)
02/03/2015		NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document 171 LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 31, 2015 re: 165 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimo. Use the document type Response to Motion found under the document list Replies, Opposition and Supporting Documents. (ka) (Entered: 02/03/2015)
02/03/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 2/3/2015. (jp) (Entered: 02/05/2015)
02/04/2015	<u>175</u>	LETTER RESPONSE to Motion by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated January 31, 2015 re: <u>165</u> LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony .. (Dratel, Joshua) (Entered: 02/04/2015)
02/04/2015	<u>176</u>	LETTER RESPONSE to Motion by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated February 1, 2015 re: <u>170</u> LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin .. (Dratel, Joshua) (Entered: 02/04/2015)
02/04/2015	<u>177</u>	ORDER as to Ross William Ulbricht. Attached are the jury instructions as delivered on February 4, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/4/2015)(bw) (Entered: 02/04/2015)
02/04/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held and concluded on 2/4/2015. (jp) (Entered: 02/05/2015)
02/05/2015	<u>182</u>	Jury Note docketed as Court Exhibit 1 as to Ross William Ulbricht filed. (jp) (Entered: 02/05/2015)
02/05/2015	<u>183</u>	JURY VERDICT as to Ross William Ulbricht (1) Guilty on Count 1s,2s,3s,4s,5s,6s,7s. (jp) (Entered: 02/05/2015)
02/05/2015	<u>184</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 2/2/2015 re: Statement by Andrew Jones. ENDORSEMENT: Ordered: Post to Docket. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)
02/05/2015	<u>185</u>	ORDER as to Ross William Ulbricht. Attached to this order as Exhibit A is the resume of Steven M. Bellovin, which was submitted by the Government in connection with their motion to preclude him from testifying as an expert. (ECF No. 170.). SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)
02/05/2015	<u>186</u>	MEMO ENDORSEMENT on DEFENDANT'S SUPPLEMENTAL REQUESTS TO CHARGE as to Ross William Ulbricht. ENDORSEMENT: Ordered: Post to docket. All handwriting is the Court's. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

02/06/2015	<u>187</u>	ORDER as to Ross William Ulbricht. This Order recites and, where necessary, attaches the various drafts and requests in connection with the jury instructions. 1. The parties' initial joint requests to charge, filed on December 12, 2014, are at ECF No. 123. 2. The draft jury charge provided to the parties on January 23, 2015, is at ECF No. 162. 3. The blackline draft jury charge provided to the Court by the parties on January 27, 2015 is attached as Exhibit A. This blackline reflects the parties' proposed edits to the January 23, 2015 draft jury charge. Appended to the blackline is a list specifying who made each change. 4. The draft jury charge provided to the parties on February 1, 2015 is attached as Exhibit B. 5. Defendant's Supplemental Requests to Charge and proposed jury instruction with respect to character evidence, both submitted to the Court on February 2, 2015, are attached as Exhibit C. 6. The jury charge as delivered is at ECF No. 177.(See Footnote 1 on page 2 of Order). 7. The verdict form provided to the jury is attached as Exhibit D. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/6/2015)(bw) (Entered: 02/06/2015)
02/06/2015	<u>188</u>	ORDER as to Ross William Ulbricht. The Court requires that post-trial motions be fully briefed one (1) month prior to sentencing, which is currently scheduled for May 15, 2015, at 10:00 a.m. The parties are directed to confer and not later than February 10, 2015, submit to the Court a schedule in which to accomplish the above. In the absence of a proposed schedule from the parties, the Court will set one (Signed by Judge Katherine B. Forrest on 2/6/15)(jw) (Entered: 02/06/2015)
02/06/2015	<u>189</u>	ENDORSED LETTER as to Ross William Ulbricht re: You have reputation evidence about the defendant's character trait for peacefulness and non-violence. You should consider character evidence together with and in the same way as all the other evidence in the case..ENDORSEMENT: Requested by defendant. Post to docket. (Signed by Judge Katherine B. Forrest on 2/6/15)(jw) (Entered: 02/06/2015)
02/09/2015	<u>190</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - SIGNATURE ERROR - LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated January 31, 2015 re: Extension for Time for Filing of Response to the government's motion to preclude expert testimony and for the production of defense exhibits to the government (Lewis, Lindsay) Modified on 2/10/2015 (ka). (Entered: 02/09/2015)
02/09/2015	<u>191</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 02/09/2015 re: briefing schedule for post-trial motions Document filed by USA. (Turner, Serrin) (Entered: 02/09/2015)
02/10/2015		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Lindsay Anne Lewis as to Ross William Ulbricht: to RE-FILE Document <u>190</u> Letter. ERROR(S): Attorney s/signature missing from document. (ka) (Entered: 02/10/2015)
02/10/2015	<u>192</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated January 31, 2015 re: Extension for Time for Filing of Response to the government's motion to preclude expert testimony and for the production of defense exhibits to the government (Lewis, Lindsay) (Entered: 02/10/2015)
02/10/2015	<u>193</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on re: <u>191</u> Letter filed by

1/6/2016

SDNY CM/ECF Version 5.1.1

		USA. ENDORSEMENT: Ordered: The Government's schedule is adopted. Briefing shall be: defense motions: March 6, 2015, Gov't response: April 3, 2015, defense reply: April 15, 2015. (Signed by Judge Katherine B. Forrest on 2/10/2015)(ft) (Entered: 02/10/2015)
02/10/2015		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Motions due by 3/6/2015. Replies due by 4/15/2015. Responses due by 4/3/2015. (ft) (Entered: 02/10/2015)
02/18/2015	194	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/18/2015)
02/20/2015	195	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/20/2015)
02/25/2015	<u>196</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/13/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>197</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/13/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>198</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/14/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>199</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/14/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>200</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/15/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for

1/6/2016

SDNY CM/ECF Version 5.1.1

		4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>201</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/15/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>202</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/20/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>203</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/20/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>204</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/21/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>205</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/21/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>206</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/22/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

02/25/2015	<u>207</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/22/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>208</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht held on 1/22/2015 corrected trial before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>209</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/22/2015 corrected trial has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>210</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/26/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>211</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/26/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>212</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/29/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

02/25/2015	<u>213</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/29/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>214</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/28/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>215</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/28/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>216</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/2/15 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>217</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 2/2/15 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>218</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/3/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>219</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht.

1/6/2016

SDNY CM/ECF Version 5.1.1

		Notice is hereby given that an official transcript of a Trial proceeding held on 2/3/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>220</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/4/15 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<u>221</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 2/4/15 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
03/06/2015	<u>222</u>	MOTION for New Trial <i>Pursuant to Rule 33, Fed.R.Crim.P.</i> . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 03/06/2015)
03/06/2015	<u>223</u>	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: <u>222</u> MOTION for New Trial <i>Pursuant to Rule 33, Fed.R.Crim.P.</i> ... (Attachments: # <u>1</u> Exhibit 3500 Material Chart, # <u>2</u> Exhibit Government Exhibit Chart, # <u>3</u> Exhibit 1/8/15 Email)(Dratel, Joshua) (Entered: 03/06/2015)
03/06/2015	<u>224</u>	MEMORANDUM in Support by Ross William Ulbricht re <u>222</u> MOTION for New Trial <i>Pursuant to Rule 33, Fed.R.Crim.P.</i> ... (Dratel, Joshua) (Entered: 03/06/2015)
03/13/2015	<u>225</u>	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/13/2015)
03/30/2015	<u>226</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner and Timothy T. Howard dated 3/30/2015 re: The Government writes respectfully to inform the Court that the complaint attached hereto as Exhibit A, which concerns a corruption investigation conducted by the U.S. Attorneys Office for the Northern District of California (NDCA), was unsealed today..ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/30/2015)(jw) (Entered: 03/31/2015)
03/31/2015	<u>227</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 03/31/2015 re: Sealed Filings Document filed by USA. (Attachments: # <u>1</u> Sealed Filings)(Turner, Serrin) (Entered: 03/31/2015)
03/31/2015	<u>228</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 03/31/2015 re: unsealing of trial transcripts Document filed by USA. (Turner, Serrin) (Entered: 03/31/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

03/31/2015	<u>229</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on re: <u>228</u> LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government (by AUSA Serrin Turner / Timothy T. Howard) dated 03/31/2015 re: unsealing of trial transcripts. Yesterday, at the request of the Government, the Court ordered the unsealing of certain sealed filings relating to a corruption investigation by the U.S. Attorney's Office for the Northern District of California (the "NDCA Investigation"). For the same reasons underlying its original request, the Government additionally requests that any courtroom transcripts that were previously sealed due to the existence of the NDCA Investigation now be unsealed. The defense consents to this request. The transcripts at issue include: the sealed portion of the pre-trial conference held on December 15, 2014; and the sealed portions of the trial transcripts, to include: pages 118-19 (January 13, 2015); pages 594-614 (January 20, 2015); pages 1440-42 (January 28, 2015); and pages 2084-97 (February 3, 2015). ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/31/2015)(bw) (Entered: 04/01/2015)
04/01/2015		Transmission to Sealed Records Clerk: as to Ross William Ulbricht. Transmitted re: <u>229</u> Memo Endorsement, to the Sealed Records Clerk for the unsealing of document. (bw) (Entered: 04/01/2015)
04/03/2015	<u>230</u>	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re <u>222</u> MOTION for New Trial Pursuant to Rule 33, Fed.R.Crim.P... (Attachments: # <u>1</u> Exhibit A)(Turner, Serrin) (Entered: 04/03/2015)
04/15/2015	<u>231</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 4/15/2015 re: Adjournment of Reply. ENDORSEMENT: Ordered: Application granted. (Replies due by 4/16/2015.) (Signed by Judge Katherine B. Forrest on 4/15/2015)(ft) (Entered: 04/15/2015)
04/16/2015	<u>232</u>	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: <u>222</u> MOTION for New Trial Pursuant to Rule 33, Fed.R.Crim.P... (Attachments: # <u>1</u> Exhibit 1: 5/29/13 Email, # <u>2</u> Exhibit 2: 8/15/13 Email, # <u>3</u> Exhibit 3: Athavale Report 1, # <u>4</u> Exhibit 4: Athavale Report 2, # <u>5</u> Exhibit 5: Undated Report, # <u>6</u> Exhibit 6: Silk Road Investigation Report, # <u>7</u> Exhibit 7: 9/20/13 Emails, # <u>8</u> Exhibit 8: Defense Exhibit C, # <u>9</u> Exhibit 9: Defense Exhibit E) (Dratel, Joshua) (Entered: 04/16/2015)
04/17/2015	<u>233</u>	ORDER as to Ross William Ulbricht. The Government shall notify the Court as soon as practicable as to whether any victims intend to speak at Mr. Ulbrichts sentencing; and, if so, the number and the likely duration. The Government shall update the Court on an ongoing basis until the sentencing. (Signed by Judge Katherine B. Forrest on 4/17/2015)(jw) (Entered: 04/17/2015)
04/17/2015	<u>234</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 04/17/2015 re: Sentencing Document filed by USA. (Turner, Serrin) (Entered: 04/17/2015)
04/24/2015	<u>235</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated April 24, 2015 re: Sentencing Adjournment . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 04/24/2015)
04/24/2015	<u>236</u>	MEMO ENDORSEMENT granting <u>235</u> LETTER MOTION Adjournment of Sentencing as to Ross William Ulbricht (1). ENDORSEMENT: Ordered: The

1/6/2016

SDNY CM/ECF Version 5.1.1

		Government shall provide the Court with its view as to the request not later than 4/28/15. (Signed by Judge Katherine B. Forrest on 4/24/2015) (ft) (Entered: 04/24/2015)
04/27/2015	<u>237</u>	OPINION & ORDER denying <u>222</u> Motion for New Trial as to Ross William Ulbricht (1). For the reasons set forth above, Ulbricht's motion for a new trial is DENIED. The Clerk of Court is directed to terminate the motion at ECF No. 222. SO ORDERED. (Signed by Judge Katherine B. Forrest on 4/27/2015) (ft) (Entered: 04/27/2015)
04/28/2015	<u>238</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 04/28/2015 re: Defendant's Request for an Adjournment of Sentencing Document filed by USA. (Howard, Timothy) (Entered: 04/28/2015)
04/28/2015	<u>239</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 4/24/15 re: Reschedule Sentencing...ENDORSEMENT: The Court shall have a Fatico Hearing on May 22 at 9am. Defendant shall inform the Court and the Government not later than May 15. The matters as to which the hearing is requested; defendant shall provide any evidence in support of his position and a list of witnesses also by May 15. The sentencing is adjourned only until 5/29/15 at 1pm., as to Ross William Ulbricht (Fatico Hearing set for 5/22/2015 at 09:00 AM before Judge Katherine B. Forrest., Sentencing set for 5/29/2015 at 01:00 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 4/28/15)(jw) (Entered: 04/28/2015)
05/15/2015	<u>240</u>	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position. (Dratel, Joshua) (Entered: 05/15/2015)
05/15/2015	<u>241</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 05/15/2015)
05/15/2015	<u>242</u>	DECLARATION of Lindsay A. Lewis, Esq. in Support as to Ross William Ulbricht re: <u>241</u> LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position .. (Attachments: # <u>1</u> Exhibit 1--Bingham Article: Single Case Study, # <u>2</u> Exhibit 2-- Bingham Article: Study of User Experiences, # <u>3</u> Exhibit 3-- Bingham Article: Responsible Vendors, # <u>4</u> Exhibit 4- Ask a Drug Expert Physician SR Forum Thread, # <u>5</u> Exhibit 5-- Dr. X Private Msgs, # <u>6</u> Exhibit 6-- Weekly Report ro DPR of Thread Topics, # <u>7</u> Exhibit 7-- Msgs Btwn DPR and Dr. X, # <u>8</u> Exhibit 8-- Barratt Article: Use of SR, # <u>9</u> Exhibit 9-- Ralston Article: End of SR, # <u>10</u> Exhibit 10-- Ralston Article: SR Was Better, Safer, # <u>11</u> Exhibit 11-- Declaration of Tim Bingham, # <u>12</u> Exhibit 12-- Declaration of Dr. Fernando Caudevilla (Dr. X), # <u>13</u> Exhibit 13 -- Declaration of Dr. Monica Barratt, # <u>14</u> Exhibit 14-- Declaration of Meghan Ralston, # <u>15</u> Exhibit 15 -- Curriculum Vitae for Dr. Mark Taff, # <u>16</u> Exhibit 16-- List of Documentary Evidence Provided to Dr. Taff) (Lewis, Lindsay) (Entered: 05/15/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

05/18/2015	<u>243</u>	ORDER as to Ross William Ulbricht. Please respond by C.O.B. 5/19/2015 or sooner to the following: 1. Does the Government request a Fatico hearing on the facts proffered by the defendant? -- Will the Government be offering any responsive factual materials on those topics? 2. The Court assumes the parties understand that even if they waive a Fatico hearing, the Court will make any necessary findings of fact based on the evidence before it as to matters relevant to sentencing. 3. The Court would like information within five (5) days the parties may have as to whether Silk Road transactions typically involved personal use quantities or resale quantities of narcotics. SO ORDERED: (Signed by Judge Katherine B. Forrest on 5/18/2015)(bw) (Entered: 05/18/2015)
05/18/2015	<u>244</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated May 18, 2015 re: Fatico hearing Document filed by USA. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Turner, Serrin) (Entered: 05/18/2015)
05/19/2015	<u>245</u>	ORDER as to Ross William Ulbricht. The parties are advised that the Court shall review a number of sources cited in the articles submitted by the defense and, to the extent appropriate, refer to them. Among those is Not an Ebay for Drugs: The Cryptomarket Silk Road as a Paradigm Shifting Criminal Innovation by Judith Aldridge and David Dcary-Htu. (Signed by Judge Katherine B. Forrest on 5/19/15)(jw) (Entered: 05/19/2015)
05/19/2015	<u>246</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 5/18/2015 re: Fatico Letter. ENDORSEMENT: Ordered: Post on Docket. (Signed by Judge Katherine B. Forrest on Lindsay A. Lewis)(ft) (Entered: 05/19/2015)
05/19/2015	<u>247</u>	ORDER as to Ross William Ulbricht. As neither side is seeking a Fatico hearing in this matter, the hearing currently scheduled for Friday, May 22, 2015, at 9:00 a.m. is adjourned. Sentencing is scheduled for Friday, May 29, 2015, at 1:00 p.m. Sentencing submissions from the defendant are due May 22, 2015. Government submissions are due May 26, 2015. SO ORDERED. (Brief due by 5/22/2015, Responses due by 5/26/2015, Sentencing set for 5/29/2015 at 01:00 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 5/19/2015) (ft) (Entered: 05/19/2015)
05/19/2015	<u>248</u>	ORDER as to Ross William Ulbricht. The Government has indicated that it has access to a computer with a searchable copy of the Silk Road website. On May 20, 2015, at 4:40 p.m., the Court will hold a conference in Chambers to view the website and run various searches. If defense counsel believe that defendant's presence is necessary, they shall make appropriate arrangements. SO ORDERED. (Status Conference set for 5/20/2015 at 04:40 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 5/19/2015)(ft) (Entered: 05/19/2015)
05/20/2015	<u>249</u>	ORDER as to Ross William Ulbricht. The Court has been reviewing the mitigation materials provided by defendant and has several questions. (***) See this Order complete text. (***) (Signed by Judge Katherine B. Forrest on 5/20/2015)(bw) (Entered: 05/20/2015)
05/20/2015	<u>250</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Timothy T. Howard dated 5/19/2015 re: Please find a copy of the article

1/6/2016

SDNY CM/ECF Version 5.1.1

		requested. (ft) (Entered: 05/20/2015)
05/26/2015	<u>252</u>	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 22, 2015 re: CORRECTED Sentencing Letter on Behalf of Ross Ulbricht. (Attachments: # <u>1</u> Exhibit 1-- Letter of Ross Ulbricht, # <u>2</u> Exhibit 2-- Letters on Behalf of Ross Ulbricht (Part 1), # <u>3</u> Exhibit 2-- Letters on Behalf Of Ross Ulbricht (Part 2), # <u>4</u> Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 3), # <u>5</u> Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 4), # <u>6</u> Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 5), # <u>7</u> Exhibit 3-- Email Re Dr X, # <u>8</u> Exhibit 4 -- Photos of Mr. Ulbricht With Family and Friends)(Dratel, Joshua) (Entered: 05/26/2015)
05/26/2015	<u>253</u>	ORDER as to Ross William Ulbricht. Do defense counsel have, and can they allow the Court to temporarily borrow, the following book in hard copy: Jonathan P. Caulkins et al., Rand Drug Policy Research Center, Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers Money? (1997). This book is cited at page 54 of defendants sentencing submission. SO ORDERED. (Signed by Judge Katherine B. Forrest on 5/26/2015)(ft) (Entered: 05/26/2015)
05/26/2015	<u>255</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 5/26/2015 re: Removal of #251. ENDORSEMENT: So ordered. Dkt. #251 to be removed (& replaced). (Signed by Judge Katherine B. Forrest on 5/26/2015)(ft) (Entered: 05/26/2015)
05/26/2015	<u>256</u>	SENTENCING SUBMISSION by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Turner, Serrin) (Entered: 05/26/2015)
05/26/2015		***DELETED DOCUMENT. Deleted document number 254, as to Ross William Ulbricht. The document was incorrectly filed in this case. (jp) (Entered: 05/26/2015)
05/26/2015	<u>257</u>	Sentencing Letter by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/26/2015 re: Victim Impact Letters. (Attachments: # <u>1</u> victim letter from father of Bryan B, # <u>2</u> victim letter from sister of Bryan B, # <u>3</u> victim letter from mother of Preston B, # <u>4</u> victim letter from father of Preston B, # <u>5</u> victim letter from mother of Jacob L)(Turner, Serrin) (Entered: 05/26/2015)
05/27/2015	<u>258</u>	ORDER as to Ross William Ulbricht: The parties are advised that the Court is considering whether any of Counts 1 to 4 are duplicative for sentencing purposes and whether Congress intended separate punishments for each. See, e.g., Rutledge v. United States, 517 U.S. 292 (1996) (even concurrent sentences may create issues). In particular, the Court is considering whether Counts 1 and 2, which are based on the same conduct, are duplicative for sentencing purposes, and whether Counts 3 and 4 are. If the parties have views on this issue, they should provide their views in writing not later than May 28, 2015 at noon. (Signed by Judge Katherine B. Forrest on 5/27/2015)(jp) (Entered: 05/27/2015)
05/27/2015	<u>259</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/27/2015 re: Lesser Included Offenses to Be Dismissed at Sentencing Document filed by USA. (Turner, Serrin) (Entered: 05/27/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

		05/27/2015)
05/27/2015		As requested in the Government's submission, dated May 18, 2015, the DVD-ROM accompanying the submission will be filed under seal. (jp) (Entered: 05/27/2015)
05/27/2015	<u>260</u>	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 27, 2015 re: questions posed in the Court's May 20, 2015, Order regarding the mitigation materials relevant to Mr. Ulbricht's sentencing. (Attachments: # <u>1</u> Exhibit 1-- Additional Weekly Reports to DPR, # <u>2</u> Exhibit 2-- Buyer Questionnaire, # <u>3</u> Exhibit 3-- Vendor Questionnaire, # <u>4</u> Exhibit 4-- Dr. X Thread Excerpts)(Lewis, Lindsay) (Entered: 05/27/2015)
05/28/2015	<u>261</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: whether certain Counts in the Superseding Indictment are duplicative for sentencing purposes (Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	<u>262</u>	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/28/2015 re: Proposed Order of Forfeiture Document filed by USA. (Attachments: # <u>1</u> Text of Proposed Order)(Turner, Serrin) (Entered: 05/28/2015)
05/28/2015	<u>263</u>	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: Reply to the Government's Sentencing Letter. (Attachments: # <u>1</u> Exhibit 5 -- Letter of Michael Van Praagh, # <u>2</u> Exhibit 6 -- Letter of Joseph Ernst, # <u>3</u> Exhibit 7 -- Dr. Mark L. Taff Formal Report)(Lewis, Lindsay) (Entered: 05/28/2015)
05/28/2015	<u>264</u>	REDACTION by Ross William Ulbricht to <u>263</u> Letter - Sentencing, filed by Ross William Ulbricht (Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	<u>265</u>	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: Additional Letter in Support of Ross Ulbricht from Elizabeth Oden. (Attachments: # <u>1</u> Exhibit Letter of Elizabeth Oden)(Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	<u>267</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 5/28/2015 re: Removal of Exhibit #7 to Docket #263. ENDORSEMENT: ORDERED. Application granted. (Signed by Judge Katherine B. Forrest on 5/28/2015)(ft) (Entered: 05/29/2015)
05/29/2015	<u>266</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 29, 2015 re: Torchat Logs referenced in Mr. Ulbricht's reply to the government's sentencing letter (Attachments: # <u>1</u> Exhibit 1 - - Excerpt from Torchat Log gx5of53tpzvjjwn, # <u>2</u> Exhibit 2--Excerpts from Torchat Log "tv32")(Lewis, Lindsay) (Entered: 05/29/2015)
05/29/2015	<u>268</u>	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 29, 2015 re: Correction Regarding the Requested Designation Recommendation by the Court to the Bureau of Prisons (Lewis, Lindsay) (Entered: 05/29/2015)
06/01/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest: Sentencing

1/6/2016

SDNY CM/ECF Version 5.1.1

		held on 6/1/2015 for Ross William Ulbricht (1) Count 2s,4s,5s,6s,7s. (ajc) (Entered: 06/01/2015)
06/01/2015		DISMISSAL OF COUNTS on Government Motion as to Ross William Ulbricht (1) Count 1,1s,2,3,3s,4. (ajc) (Entered: 06/01/2015)
06/01/2015	<u>269</u>	JUDGMENT as to Ross William Ulbricht (1), Count(s) 1, 1s, 2, 3, 3s, 4, Count is dismissed on the motion of the United States. Count(s) 2s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of. For a Count(s) 4s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. The court makes the following recommendations to the Bureau of Prisons: PLEASE SEE ADDITIONAL IMPRISONMENT TERMS PAGE FOR RECOMMENDATIONS. ADDITIONAL IMPRISONMENT TERMS; It is respectfully recommended that the defendant be designated to FCI Petersburg I in Virginia in the event that the Bureau of Prisons waive the public safety factor with regard to sentence length. However, if the Bureau of Prisons is not inclined to waive the public safety factor, it is respectfully recommended that the defendant be designated to USP Tuscon, in Arizona, or, as a second choice, USP Coleman II, in Florida. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.; Count(s) 5s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to runconcurrently. ADDITIONAL SUPERVISED RELEASE TERMS; The defendant shall submit his computer, person and place of residence to searched as deemed appropriate by the Probation Department. The defendant must pay the total criminal monetary penalties, \$500 special assessment, lump sum payment of \$500 due immediately, balance due. ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES; Forfeiture in the amount of \$183,961,921.00 is Ordered. (Signed by Judge Katherine B. Forrest on 6/1/15)(ajc) (Entered: 06/01/2015)
06/02/2015	<u>270</u>	MOTION for an Order, pursuant to Rule 38(b)(2), Fed.R.Crim.P., recommending that Mr. Ulbricht's custody be retained at the Metropolitan Correctional Center in New York City pending his direct appeal . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 06/02/2015)
06/02/2015	<u>271</u>	DECLARATION of Lindsay A. Lewis, Esq. in Support as to Ross William Ulbricht re: <u>270</u> MOTION for an Order, pursuant to Rule 38(b)(2), Fed.R.Crim.P., recommending that Mr. Ulbricht's custody be retained at the Metropolitan Correctional Center in New York City pending his direct appeal .. (Attachments: # <u>1</u> Exhibit 1-- Judgment)(Lewis, Lindsay) (Entered: 06/02/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

06/03/2015	<u>272</u>	ORDER granting <u>270</u> Motion, Custody Location as to Ross William Ulbricht (1). SO ORDERED. New York, New York June 3, 2015, KATHERINE B. FORREST, United States District Judge. (Signed by Judge Katherine B. Forrest on 6/3/15) (ajc) (Entered: 06/03/2015)
06/03/2015	<u>273</u>	PRELIMINARY ORDER OF FORFEITURE/MONEY JUDGMENT as to Ross William Ulbricht. NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT: 1. As a result of the offenses charged in Counts One through Seven of the Indictment, to which the defendant was found guilty, a money judgment in the amount of \$183,961,921 in United States currency (the "Money Judgment") shall be entered against the defendant, representing (a) proceeds obtained as a result of, and property used or intended to be used in any manner or part to commit or to facilitate the commission of, one or more of the offenses alleged in Counts One through Four of the Indictment; (b) proceeds obtained directly or indirectly as a result of the offenses alleged in Counts Five and Six of the Indictment; and (c) property involved in the offense alleged in Count Seven of the Indictment, or property traceable to such property. Pursuant to Rule 32. 2(b)(4) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture/Money Judgment, this Preliminary Order of Forfeiture/Money Judgment is final as to the defendant, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith. (Signed by Judge Katherine B. Forrest on 6/3/2015)(jw) (Entered: 06/03/2015)
06/04/2015	<u>274</u>	NOTICE OF APPEAL by Ross William Ulbricht from <u>269</u> Judgment, <u>273</u> Preliminary Order for Forfeiture of Property. Filing fee \$ 505.00, receipt number 465401127234. (nd) (Entered: 06/04/2015)
06/04/2015		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ross William Ulbricht to US Court of Appeals re: <u>274</u> Notice of Appeal - Final Judgment. (nd) (Entered: 06/04/2015)
06/04/2015		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ross William Ulbricht re: <u>274</u> Notice of Appeal - Final Judgment were transmitted to the U.S. Court of Appeals. (nd) (Entered: 06/04/2015)
06/05/2015	<u>275</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/05/2015)
06/05/2015	<u>276</u>	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/05/2015)
06/10/2015		Payment of Special Assessment \$500 from Ross William Ulbricht in the amount of \$500. Date Received: 6/10/2015. (ew) (Entered: 06/10/2015)
06/30/2015	<u>277</u>	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Sentence held on 5/29/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Pamela Utter, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/24/2015. Redacted Transcript Deadline set for 8/3/2015. Release of Transcript Restriction set for 10/1/2015. (McGuirk, Kelly) (Entered: 06/30/2015)

1/6/2016

SDNY CM/ECF Version 5.1.1

06/30/2015	<u>278</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Sentence proceeding held on 5/29/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 06/30/2015)
07/28/2015	279	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/28/2015)
08/31/2015	<u>280</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 08/31/2015 re: Corrections to Transcript and Unsealing of Certain Materials . Document filed by USA as to Ross William Ulbricht. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Turner, Serrin) (Entered: 08/31/2015)
09/02/2015	<u>281</u>	LETTER MOTION addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated September 2, 2015 re: opposing the government's request to unseal the redacted portions of the Courts December 22, 2014, Memorandum Opinion and the two ex parte letters from Mr. Ulbrichts counsel referenced in the Opinion . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 09/02/2015)
09/04/2015	<u>282</u>	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 9/2/2015 re: Reschedule Telephonic conference....ENDORSEMENT: Conference adjourned to 9/16/2015 at 5:15pm. Answer/response to complaint extended to 9/21/15(Answer/ Responses due by 9/21/2015, Telephone Conference set for 9/16/2015 at 05:15 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 9/3/2015)(jw) (Entered: 09/04/2015)
09/11/2015	<u>283</u>	ORDER terminating <u>280</u> LETTER MOTION as to Ross William Ulbricht (1); terminating <u>281</u> LETTER MOTION as to Ross William Ulbricht (1). The Court has reviewed the Governments letter motion dated August 31, 2015 and defendants letter in opposition dated September 2, 2015. As to the requested corrections to the transcript, the Court notes that there arepage and line number discrepancies and typographical errors in the proposedcorrections. The parties shall make the appropriate changes and submit a new version to the Court. The Clerk of Court is directed to terminate the motions at ECF No. 280 and 281. (Signed by Judge Katherine B. Forrest on 9/11/15) (jw) (Entered: 09/11/2015)
10/05/2015	284	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/05/2015)
10/07/2015	<u>285</u>	ORDER as to Ross William Ulbricht. The Court notes that there are page and line number differences between the transcripts that the Court has and the ones that the U.S. Attorneys Office has. The parties shall work with the Court Reporters to make the appropriate changes on the attached pages; such changes are allowed (Signed by Judge Katherine B. Forrest on 10/7/2015)(jw) (Entered: 10/07/2015)
10/07/2015	<u>286</u>	MEMO ENDORSEMENT as to Ross William Ulbricht on E-Mail addressed to Chambers of Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/5/2015 05:32 PM re: Proposed revised corrections. Pursuant to discussions with chambers, I am attaching a revised version of the Government's proposed corrections to the Ulbricht trial transcript. Changes to the original version (which

1/6/2016

SDNY CM/ECF Version 5.1.1

are slight) are reflected in red. If there are any additional revisions to the corrections that chambers believes should be made, please let me know and I can make them before filing the revised corrections on ECF. ENDORSEMENT: Post to docket. (Signed by Judge Katherine B. Forrest on 10/7/2015)(bw) (Entered: 10/07/2015)

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13 MAG 2328

Approved: Serrin Turner
Serrin Turner
Assistant United States Attorney

Before: HONORABLE FRANK MAAS
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

SEALED COMPLAINT

Violations of
21 U.S.C. § 846;
18 U.S.C. §§ 1030 & 1956

COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

Christopher Tarbell, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Narcotics Trafficking Conspiracy)

1. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

3. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a

"DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

4. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A).

Overt Acts

5. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," that provided a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 29, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, solicited a Silk Road user to execute a murder-for-hire of another Silk Road user, who was threatening to release the identities of thousands of users of the site.

(Title 21, United States Code, Section 846.)

COUNT TWO

(Computer Hacking Conspiracy)

6. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate

Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking offenses in violation of Title 18, United States Code, Section 1030(a)(2).

7. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, in violation of Title 18, United States Code, Section 1030(a)(2).

Overt Acts

8. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," providing a platform facilitating the sale of illicit goods and services, including malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools.

COUNT THREE

(Money Laundering Conspiracy)

9. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

10. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 841, and Title 18, United States Code, Section 1030, respectively, with the intent to promote the carrying on of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

11. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 841, and Title 18, United States Code, Section 1030, respectively, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

Overt Acts

12. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," providing a platform facilitating the sale of controlled substances and malicious software, among other illicit goods and services, and further facilitating the laundering of proceeds from such sales, through the use of a

payment system based on Bitcoins, an anonymous form of digital currency.

b. At some point during the time period from January 2011 to September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, added a Bitcoin "tumbler" to the Silk Road payment system to further ensure that illegal transactions conducted on the site could not be traced to individual users.

(Title 18, United States Code, Section 1956(h).)

* * *

The bases for my knowledge and for the foregoing charges are, in part, as follows:

13. I have been a Special Agent with the FBI for approximately five years. I am currently assigned to a cybercrime squad within the FBI's New York Field Office. I have been personally involved in the investigation of this matter, along with agents of the Drug Enforcement Administration, the Internal Revenue Service, and Homeland Security Investigations. This affidavit is based upon my investigation, my conversations with other law enforcement agents, and my examination of reports, records, and other evidence. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

OVERVIEW

14. As detailed below, from in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, has owned and operated an underground website known as "Silk Road." Throughout that time, the Silk Road website has served as a sprawling black-market bazaar, where illegal drugs and other illicit goods and services have been regularly bought and sold by the site's users.

15. In creating Silk Road, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, deliberately set out to establish an online criminal

marketplace outside the reach of law enforcement or governmental regulation. ULBRICHT has sought to achieve this end by anonymizing activity on Silk Road in two ways. First, ULBRICHT has operated Silk Road on what is known as "The Onion Router" or "Tor" network ("Tor"), a special network on the Internet designed to make it practically impossible to physically locate the computers hosting or accessing websites on the network. Second, ULBRICHT has required all transactions on Silk Road to be paid with "Bitcoins," an electronic currency designed to be as anonymous as cash.

16. Based on my training and experience, Silk Road has emerged as the most sophisticated and extensive criminal marketplace on the Internet today. The site has sought to make conducting illegal transactions on the Internet as easy and frictionless as shopping online at mainstream e-commerce websites. The Government's investigation has revealed that, during its two-and-a-half years in operation, Silk Road has been used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers, and to launder hundreds of millions of dollars deriving from these unlawful transactions. All told, the site has generated sales revenue totaling over 9.5 million Bitcoins and collected commissions from these sales totaling over 600,000 Bitcoins. Although the value of Bitcoins has varied significantly during the site's lifetime, these figures are roughly equivalent today to approximately \$1.2 billion in sales and approximately \$80 million in commissions.

17. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, has controlled and overseen all aspects of Silk Road. ULBRICHT has maintained the computer infrastructure and programming code underlying the Silk Road website; he has determined vendor and customer policies, including deciding what can be sold on the site; he has managed a small staff of online administrators who have assisted with the day-to-day operation of the site; and he alone has controlled the massive profits generated from the operation of the business. ULBRICHT has assumed these roles fully aware of the illegal nature of his enterprise. He has sought throughout to ensure the anonymity of the drug dealers and other illegal vendors operating on Silk Road, as well as to conceal his own identity as the owner and operator of the site. Moreover, ULBRICHT has been willing to pursue violent means to maintain his control of the website and the illegal proceeds it generates for him.

BACKGROUND ON SILK ROAD

Design of the Silk Road Website
and the Tor Network

18. In the course of this investigation, I have gained extensive familiarity with the Silk Road website through various means, including undercover activity on the website by myself and other law enforcement agents, as well as forensic analysis of computer servers used to operate the Silk Road website that have been located and imaged during the investigation. Based on my familiarity with the Silk Road website, I know the following about the site's design:

a. The Silk Road website provides a sales platform that allows vendors and buyers who are users of the site to conduct transactions online. The basic user interface resembles those of well-known online marketplaces.

b. However, unlike mainstream e-commerce websites, Silk Road is only accessible on the Tor network. Based on my training and experience, I know the following about Tor:

i. Tor is a special network of computers on the Internet, distributed around the world, that is designed to conceal the true IP addresses of the computers on the network, and, thereby, the identities of the network's users.¹

ii. Although Tor has known legitimate uses, it also is known to be used by cybercriminals seeking to anonymize their online activity.

iii. Every communication sent through Tor is bounced through numerous relays within the network, and wrapped in numerous layers of encryption, such that it is practically impossible to trace the communication back to its true originating IP address.

iv. Tor likewise enables websites to operate on the network in a way that conceals the true IP addresses of the computer servers hosting the websites. Such "hidden services" operating on Tor have complex web addresses, generated by a

¹ Every computer device on the Internet has an Internet protocol or "IP" address assigned to it, which is used to route Internet traffic to or from the device. A device's IP address can be used to determine its physical location and, thereby, its user.

computer algorithm, ending in ".onion." For example, the address for the Silk Road website is currently "silkroadvb5piz3r.onion."

v. Websites with such ".onion" addresses can be accessed only using Tor browser software. However, such software can be easily downloaded for free on the Internet.

c. In order to access the Silk Road website, a user need only download Tor browser software onto his computer, and then type in Silk Road's ".onion" address into the user's Tor browser. Silk Road's ".onion" address can be found in various online forums and other websites on the ordinary Internet.

d. Upon being directed to the Silk Road website, a user is presented with a black screen containing a prompt for a username and password, as well as a link that says "click here to join." No further explanation about the site is given. Based on my training and experience, such cryptic login screens are often used by criminal websites in order to restrict access to users who already know about the illegal activity on the site (typically through word of mouth on Internet forums) and deliberately seek to enter.

e. Upon clicking the link on the Silk Road login screen to join the site, the user is prompted to create a username and password, and to identify the country where he is located. No other information is requested, and the country-location information entered by the user is not subject to any type of verification.

f. After entering a username and password, the user is then directed to Silk Road's homepage, a sample printout of which, printed on September 23, 2013, is attached hereto as Exhibit A.

g. At the top left corner of the homepage is a logo for the site, labeled "Silk Road anonymous market."

h. On the left side of the screen is a list titled "Shop by Category," which contains links to the various categories of items for sale on the site.

i. In the center of the screen is a collection of photographs reflecting a sample of the current listings on the site.

j. At the top of the screen is a link labeled "messages," which the user can click on to access Silk Road's "private message" system. This system allows users to send messages to one another through the site, similar to e-mails.

k. At the bottom right of the screen is a link labeled "community forums," which leads to an online forum where Silk Road users can post messages to "discussion threads" concerning various topics related to the site (the "Silk Road forum").

l. Also at the bottom right of the screen is a link labeled "wiki," which leads to a collection of "frequently asked questions" and other forms of guidance for site users (the "Silk Road wiki").

m. The bottom right of the screen also contains a third link labeled "customer service," which leads to a customer support page where users can "open a support ticket" and contact an "administrator," who, the page says, "will take care of you personally."

n. Clicking on any of the links to items for sale on the site brings up a webpage containing the details of the listing, including a description of the item, the price of the item, the username of the vendor selling it, and "reviews" of the vendor's "product" posted by previous customers. An example of such a listing is attached hereto as Exhibit B.

o. To buy an item listed, the user can simply click the link in the listing labeled "add to cart." The user is then prompted to supply a shipping address and to confirm the placement of the order.

p. Once the order is placed, it is processed through Silk Road's Bitcoin-based payment system, described further below.

Illegal Goods and Services
Sold on the Silk Road Website

19. Based on my familiarity with the Silk Road website, I know the following about the illegal nature of the goods and services sold on the site:

a. The illegal nature of the items sold on Silk Road is readily apparent to any user browsing through its offerings. The vast majority of the goods for sale consist of illegal drugs of nearly every variety, which are openly advertised on the site

as such and are immediately and prominently visible on the site's home page.

b. As of September 23, 2013, there were nearly 13,000 listings for controlled substances on the website, listed under the categories "Cannabis," "Dissociatives," "Ecstasy," "Intoxicants," "Opioids," "Precursors," "Prescription," "Psychedelics," and "Stimulants," among others. Clicking on the link for a particular listing brings up a picture and description of the drugs being offered for sale, such as "HIGH QUALITY #4 HEROIN ALL ROCK" or "5gr UNCUT Crystal Cocaine!!"

c. The narcotics sold on the site tend to be sold in individual-use quantities, although some vendors sell in bulk. The offerings for sale on the site at any single time amount to multi-kilogram quantities of heroin, cocaine, and methamphetamine, as well as distribution quantities of other controlled substances, such as LSD.

d. In addition to illegal narcotics, other illicit goods and services are openly sold on Silk Road as well. For example, as of September 23, 2013:

i. There were 159 listings on the site under the category "Services." Most concerned computer-hacking services: for example, one listing was by a vendor offering to hack into Facebook, Twitter, and other social networking accounts of the customer's choosing, so that "You can Read, Write, Upload, Delete, View All Personal Info"; another listing offered tutorials on "22 different methods" for hacking ATM machines. Other listings offered services that were likewise criminal in nature. For example, one listing was for a "HUGE Blackmarket Contact List," described as a list of "connects" for "services" such as "Anonymous Bank Accounts," "Counterfeit Bills (CAD/GBP/EUR/USD)," "Firearms + Ammunition," "Stolen Info (CC [credit card], Paypal)," and "Hitmen (10+ countries)."

ii. There were 801 listings under the category "Digital goods," including offerings for pirated media content, hacked accounts at various online services such as Amazon and Netflix, and more malicious software. For example, one listing, titled "HUGE Hacking Pack **150+ HACKING TOOLS & PROGRAMS**," described the item being sold as a "hacking pack loaded with keyloggers, RATs, banking trojans, and other various malware."²

² A "keylogger" is a type of malicious software designed to monitor the keystrokes input into an infected computer and to transmit this data back to the hacker. A "RAT," or "remote

iii. There were 169 listings under the category "Forgeries," placed by vendors offering to produce fake driver's licenses, passports, Social Security cards, utility bills, credit card statements, car insurance records, and other forms of identity documents.

e. Not only are the goods and services offered on Silk Road overwhelmingly illegal on their face, but the illicit nature of the commerce conducted through the website is candidly recognized in the Silk Road wiki and the Silk Road forum. For example:

i. The Silk Road wiki contains a "Seller's Guide" and "Buyer's Guide" containing extensive guidance for users on how to conduct transactions on the site without being caught by law enforcement. The "Seller's Guide," for instance, instructs vendors to "vacuum seal" packages containing narcotics, in order to avoid detection by "canine or electronic sniffers." Meanwhile, the "Buyer's Guide" instructs buyers to "[u]se a different address" from the user's own address to receive shipment of any item ordered through the site, "such as a friend's house or P.O. box," from which the user can then "transport [the item] discreetly to its final destination."

ii. The Silk Road forum likewise contains extensive guidance on how to evade law enforcement, posted by users of the site themselves. For example, in a section of the forum labeled "Security - Tor, Bitcoin, cryptography, anonymity, security, etc.," there are numerous postings by users offering advice to other users on how they should configure their computers so as to avoid leaving any trace on their systems of their activity on Silk Road.

20. Since November of 2011, law enforcement agents participating in this investigation have made over 100 individual undercover purchases of controlled substances from Silk Road vendors, including purchases made from, and substances shipped to, the Southern District of New York. The substances purchased in these undercover transactions have been various Schedule I and II drugs, including ecstasy, cocaine, heroin, LSD, and others. Samples of these purchases have been laboratory-tested and have typically shown high purity levels of

access tool," is a type of malicious software designed to allow a hacker to remotely access and control an infected computer. A "banking Trojan" is a type of malicious software designed to steal an infected user's bank-account login credentials.

the drug the item was advertised to be on Silk Road. Based on the postal markings on the packages in which the drugs arrived, these purchases appear to have been filled by vendors located in over ten different countries, including the United States. Agents have also made undercover purchases of hacking services on Silk Road, including purchases of malicious software such as password stealers and remote access tools.

Silk Road's Bitcoin-Based Payment System

21. Based on my familiarity with the Silk Road website, I know the following concerning the payment system used to process purchases made through the site:

a. The only form of payment accepted on Silk Road is Bitcoins.

b. Based on my training and experience, I know the following about Bitcoins:

i. Bitcoins are an anonymous, decentralized form of electronic currency, existing entirely on the Internet and not in any physical form. The currency is not issued by any government, bank, or company, but rather is generated and controlled automatically through computer software operating on a "peer-to-peer" network. Bitcoin transactions are processed collectively by the computers composing the network.

ii. To acquire Bitcoins in the first instance, a user typically must purchase them from a Bitcoin "exchanger." In return for a commission, Bitcoin exchangers accept payments of currency in some conventional form (cash, wire transfer, etc.) and exchange the money for a corresponding number of Bitcoins, based on a fluctuating exchange rate. Exchangers also accept payments of Bitcoin and exchange the Bitcoins back for conventional currency, again, charging a commission for the service.

iii. Once a user acquires Bitcoins from an exchanger, the Bitcoins are kept in a "wallet" associated with a Bitcoin "address," designated by a complex string of letters and numbers. (The "address" is analogous to the account number for a bank account, while the "wallet" is analogous to a bank safe where the money in the account is physically stored.) Once a Bitcoin user funds his wallet, the user can then use Bitcoins in the wallet to conduct financial transactions, by transferring Bitcoins from his Bitcoin address to the Bitcoin address of another user, over the Internet.

iv. All Bitcoin transactions are recorded on a public ledger known as the "Blockchain," stored on the peer-to-peer network on which the Bitcoin system operates. The Blockchain serves to prevent a user from spending the same Bitcoins more than once. However, the Blockchain only reflects the movement of funds between anonymous Bitcoin addresses and therefore cannot by itself be used to determine the identities of the persons involved in the transactions. Only if one knows the identities associated with each Bitcoin address involved in a set of transactions is it possible to meaningfully trace funds through the system.

v. Bitcoins are not illegal in and of themselves and have known legitimate uses. However, Bitcoins are also known to be used by cybercriminals for money-laundering purposes, given the ease with which they can be used to move money anonymously.

c. Silk Road's payment system essentially consists of a Bitcoin "bank" internal to the site, where every user must hold an account in order to conduct transactions on the site.

d. Specifically, every user on Silk Road has a Silk Road Bitcoin address, or multiple addresses, associated with the user's Silk Road account. These addresses are stored on wallets maintained on servers controlled by Silk Road.

e. In order to make purchases on the site, the user must first obtain Bitcoins (typically from a Bitcoin exchanger) and send them to a Bitcoin address associated with the user's Silk Road account.

f. After thus funding his account, the user can then make purchases from Silk Road vendors. When the user purchases an item on Silk Road, the Bitcoins needed for the purchase are held in escrow (in a wallet maintained by Silk Road) pending completion of the transaction.

g. Once the transaction is complete, the user's Bitcoins are transferred to the Silk Road Bitcoin address of the vendor involved in the transaction. The vendor can then withdraw Bitcoins from the vendor's Silk Road Bitcoin address, by sending them to a different Bitcoin address, outside Silk Road, such as the address of a Bitcoin exchanger who can cash out the Bitcoins for real currency.

h. Silk Road charges a commission for every transaction conducted by its users. The commission rate varies, generally between 8 to 15 percent, depending on the size of the sale, i.e., the larger the sale, the lower the commission.

i. Silk Road uses a so-called "tumbler" to process Bitcoin transactions in a manner designed to frustrate the tracking of individual transactions through the Blockchain. According to the Silk Road wiki, Silk Road's tumbler "sends all payments through a complex, semi-random series of dummy transactions, . . . making it nearly impossible to link your payment with any coins leaving the site." In other words, if a buyer makes a payment on Silk Road, the tumbler obscures any link between the buyer's Bitcoin address and the vendor's Bitcoin address where the Bitcoins end up - making it fruitless to use the Blockchain to follow the money trail involved in the transaction, even if the buyer's and vendor's Bitcoin addresses are both known. Based on my training and experience, the only function served by such "tumblers" is to assist with the laundering of criminal proceeds.

Volume of Business Activity
Reflected on Silk Road Servers

22. During the course of this investigation, the FBI has located a number of computer servers, both in the United States and in multiple foreign countries, associated with the operation of Silk Road. In particular, the FBI has located in a certain foreign country the server used to host Silk Road's website (the "Silk Road Web Server"). Pursuant to a Mutual Legal Assistance Treaty request, an image of the Silk Road Web Server was made on or about July 23, 2013, and produced thereafter to the FBI. From personally participating in the forensic analysis of the image of the Silk Road Web Server, I have confirmed that Silk Road hosts a large volume of user activity and processes a huge number of financial transactions on a daily basis. For example:

a. As of July 23, 2013, there were approximately 957,079 registered user accounts reflected on the server.³ This does not necessarily equal the number of actual users of the

³ According to the country-location information provided by these users upon registering, 30 percent represented they were from the United States, 27 percent chose to be "undeclared," and the remainder claimed to hail from countries across the globe, including, in descending order of prevalence, the United Kingdom, Australia, Germany, Canada, Sweden, France, Russia, Italy, and the Netherlands.

website, since nothing prevents a user from creating multiple accounts. However, based on my training and experience, this volume of user accounts indicates that the site has been visited by hundreds of thousands of unique users.

b. During the 60-day period from May 24, 2013 to July 23, 2013, there were approximately 1,217,218 communications sent between Silk Road users through Silk Road's private-message system. Based on my training and experience, this volume of private messages reflects a large and highly active user base.

c. From February 6, 2011 to July 23, 2013, there were approximately 1,229,465 transactions completed on the site, involving 146,946 unique buyer accounts, and 3,877 unique vendor accounts. The total revenue generated from these sales was 9,519,664 Bitcoins, and the total commissions collected by Silk Road from the sales amounted to 614,305 Bitcoins. These figures are equivalent to roughly \$1.2 billion in revenue and \$79.8 million in commissions, at current Bitcoin exchange rates, although the value of Bitcoins has fluctuated greatly during the time period at issue.

d. The computer code used to run the Silk Road website reflects the use of certain Bitcoin wallets in the operation of Silk Road's escrow system. The balances in these wallets (obtained from another Silk Road-associated server located in the investigation) show hundreds of thousands of dollars passing in and out of the escrow system on a regular basis, as in the following sample of balances associated with the wallets taken over a two-day time period:

<u>Date/Time</u>	<u>Total Bitcoins</u>	<u>Approx. USD</u>
9/14/2013 6:00 UTC	18205.50649	\$2,548,770.91
9/14/2013 12:00 UTC	17420.92877	\$2,438,930.03
9/14/2013 18:00 UTC	17088.67959	\$2,358,237.79
9/15/2013 0:00 UTC	13950.06159	\$1,911,158.44
9/15/2013 6:00 UTC	16143.52567	\$2,195,519.49
9/15/2013 12:00 UTC	15955.46307	\$2,217,809.37
9/15/2013 18:00 UTC	16069.43546	\$2,233,651.53

Based on my training and experience, this flow of funds reflects a brisk business being conducted within Silk Road's illegal marketplace, with users regularly adding funds to their accounts and vendors regularly cashing out.

BACKGROUND ON "DREAD PIRATE ROBERTS,"
OWNER AND OPERATOR OF SILK ROAD

23. Based on my knowledge of the Silk Road website, I am familiar with an administrator of the site who goes by the username "Dread Pirate Roberts," commonly referred to by Silk Road users as "DPR" (hereafter, "DPR"). Based on my review of DPR's communications on the Silk Road website, as described more fully below, it is clear that DPR is the owner and operator of Silk Road and has been ultimately responsible for running the criminal enterprise it represents. DPR has controlled every aspect of Silk Road's operation, including: the server infrastructure and programming code underlying its website; the user policies governing, among other things, what can be sold on the site; the administrative staff responsible for customer support and other day-to-day functions; and the profits generated as commissions from vendor sales. Moreover, DPR's communications reveal that he has taken it upon himself to police threats to the site from scammers and extortionists, and has demonstrated a willingness to use violence in doing so.

Control of Server Infrastructure

24. Based on my familiarity with the Silk Road forum, I know that DPR has an account on the forum, and that his postings from the account reflect his control of the servers and computer code used to run the Silk Road website. Specifically, from reviewing DPR's postings to the forum from this account, I know the following:

a. The Silk Road forum, in its current form, was created on or about June 18, 2011. DPR's first posting to the forum was made the same day. At that time, DPR's username on the forum was simply "Silk Road." His June 18 posting apologized for a recent service outage, explaining that the forum had been changed and that now "[w]e have it running on a separate server." The message thanked users for their patience and was signed "Silk Road Staff."

b. DPR continued posting messages to the forum under the username "Silk Road" until early February 2012, when he changed his name to "Dread Pirate Roberts." Specifically, in or about early February, 2012, DPR posted the following message from his forum account, still associated with the username "Silk Road" at the time:

Who is Silk Road? Some call me SR, SR admin or just Silk Road. But isn't that confusing? I am Silk Road,

the market, the person, the enterprise, everything. But Silk Road has matured and I need an identity separate from the site and the enterprise of which I am now only a part. I need a name.

On February 5, 2012, DPR announced, from this same account, "drum roll please..... my new name is: Dread Pirate Roberts." Thereafter, the username associated with the account changed from "Silk Road" to "Dread Pirate Roberts." The moniker is an apparent reference to a fictional character from the movie "The Princess Bride."

c. Throughout the period from June 18, 2011 to the present, DPR's postings from his Silk Road forum account, under both the username "Silk Road" and the username "Dread Pirate Roberts," make clear that he has controlled the technical infrastructure underlying Silk Road's operation. Among other things, DPR has regularly used the forum to post information concerning service problems with the Silk Road website and his efforts to resolve such problems. For example:

i. On or about February 13, 2012, DPR posted a message on the forum in response to problems users were having withdrawing Bitcoins from their Silk Road accounts. DPR acknowledged the problem and explained what was being done to fix it: "[W]e are still having problems. I am going to roll back the withdrawal system to a configuration known to work and re-evaluate the whole thing. . . . I'll keep this thread updated with progress." In an update posted the next morning, DPR stated: "We are looking at up to 24 more hours until withdrawals can start flowing again. . . . Really sorry, but I think we'll be good to go after this." Later in the day, DPR provided a further update: "Withdrawals are now flowing again. Thank you everyone for your patience throughout this process." Based on my training and experience, these postings and others like them, announcing service changes to the Silk Road website prior to their implementation, show that DPR has been responsible for these changes and has controlled the server infrastructure necessary to make them.

ii. On or about December 1, 2011, DPR announced that he had changed the .onion address for the Silk Road website, stating: "Silk Road now resides at a new, more easily remembered url [i.e., URL address]. Please update your bookmarks and memorize it: silkroadvb5piz3r.onion." One user responded to the posting to suggest that DPR "leave the old addy [address] pointing at the site for a week or two as well so folks get used to it." DPR responded, "I wanted to do that, but

it conflicts with the site code : (" Based on my training and experience, this posting reflects that DPR himself has been responsible for programming the computer code underlying the Silk Road website.

iii. On or about October 19, 2011, DPR posted a message concerning an outage of the Silk Road website, explaining: "We are having to rebuild the site from a backup." DPR assured the site's users: "There was no security breach or anything to worry about that lead [sic] to this situation. We lease server space in different locations around the globe through unaware 3rd parties. We do this to hide the identities of those that run Silk Road in the event of a security breach in one of the servers. Unfortunately this means we have to deal with some unreliable people" In an update posted two days later, on October 21, 2011, DPR stated: "The light at the end of the tunnel is getting bigger! We have a full capacity server online and are in the process of configuring it." The next day, October 22, 2011, DPR posted another update, stating: "The site just went live. The new server is more powerful and secure than the one we were on before the outage and is leased through a much more professional proxy, so I have high hopes that it will last us a long time." Based on my training and experience, these postings evidence that DPR has been responsible for leasing and maintaining the computer servers used to operate the Silk Road website. Moreover, based on my training and experience, DPR's references to leasing servers through third-party "proxies" in order to "hide the identities of those that run Silk Road" reflect his awareness of the illegal nature of the Silk Road enterprise.

Control of Site Policy

25. DPR has used the Silk Road forum to announce not only technical updates to the Silk Road website, but also changes to Silk Road customer policies - evidencing that he has been the one who sets those policies. For example:

a. On January 9, 2012, DPR posted a message titled, "State of the Road Address," in which he announced, among other things, a change to Silk Road's commission rate: whereas Silk Road had previously charged a "flat commission rate," DPR explained that the site now planned to "charge a higher amount for low priced items and a lower amount for high priced items." The next day, after many users complained about the change, DPR posted a reply, stating: "Whether you like it or not, I am the captain of this ship. You are here voluntarily and if you don't

like the rules of the game, or you don't trust your captain, you can get off the boat."

b. On August 5, 2011, DPR posted a message titled, "forgeries," stating: "We are happy to announce a new category in the marketplace called Forgeries. In this category, you will find offers for forged, government issued documents including fake ids and passports. This category comes with some restrictions, however. Sellers may not list forgeries of any privately issued documents such as diplomas/certifications, tickets or receipts. Also, listings for counterfeit currency are still not allowed in the money section." This posting evidences that DPR has controlled the types of goods and services allowed to be sold on Silk Road, and that he knowingly has permitted the sale of illegal items, such as fraudulent identity documents, on the site.

c. On February 27, 2012, DPR posted a message announcing "a new feature called Stealth Mode," targeted at the site's "superstar vendor[s]" who consider themselves at particular "risk of becoming a target for law enforcement." The posting explained that the listings of a vendor operating in "stealth mode" would not be visible to users searching or browsing the site. Instead, only users who already knew the specific address of the vendor's page on Silk Road would be able to access the vendor's listings, by traveling to the vendor's page directly. This posting again evidences not only that DPR has been aware that the vendors on Silk Road are engaged in illicit trade, but also that he has specifically designed the site to facilitate such trade.

Management of Administrative Staff

26. The communications recovered from the Silk Road Web Server also show that DPR manages a small staff of administrators who assist with the day-to-day operation of the site. Based on my familiarity with these administrators' forum postings and private messages, I know that they have been responsible for monitoring user activity on Silk Road for problems, responding to customer service inquiries, and resolving disputes between buyers and vendors. Moreover, forensic analysis of the Silk Road Web Server confirms that these administrators have special permission settings associated with their Silk Road accounts, allowing them to take various administrative actions on the Silk Road marketplace, such as closing user accounts, removing user postings, reversing transactions, or resetting passwords.

27. From reviewing DPR's private-message communications with these administrators, I know that DPR has functioned as their supervisor and that the administrators have reported to and taken instructions from DPR on a regular basis. For example, the communications show the administrators regularly asking DPR for guidance on how to respond to particular user inquiries or how to handle particular problems that have arisen on the site. The communications also include "weekly reports" sent to DPR by the administrators, summarizing actions they have taken with respect to particular vendors and customers over the course of the week, and listing any important issues requiring DPR's attention. DPR's communications also reflect the administrators routinely checking in with him concerning their work schedule, asking him in advance for permission to take leave, and otherwise addressing him as employees would an employer. One of the administrators, for example, has specifically referred to DPR as "boss" and "captain" in communicating with him.

28. Further, I have reviewed the account pages of these administrators, recovered from the Silk Road Web Server, which reflect the history of their Bitcoin transactions on the site. Their transaction histories reflect that they have received regular weekly payments of Bitcoins, equivalent to \$1,000 to \$2,000 per week, on average. The payments have been sent to them from a Silk Road account labeled "admin," indicating that the payments have been compensation for their services as administrators. Moreover, from reviewing the administrators' private messages, I know that, after receiving such payments, the administrators sometimes have sent messages to DPR thanking him for the money.

Control over Silk Road Sales Proceeds

29. The contents of the Silk Road Web Server include DPR's own user account page, which reflects, among other things, his history of Bitcoin transactions on the site. DPR's transaction history indicates that he receives a continuous flow of Bitcoins into his Silk Road account. For example, on July 21, 2013 alone, DPR received approximately 3,237 separate transfers of Bitcoins into his account, totaling approximately \$19,459. Virtually all of these transactions are labeled "commission" in the "notes" appearing next to them, indicating that the money represents commissions from Silk Road sales. DPR's account page further displays the total amount of Bitcoins deposited in his Silk Road account, which, as of July 23, 2013, equaled more than \$3.4 million. Based on analysis of the Silk Road Web Server,

this was, by far, the largest account balance held by any Silk Road user at the time.

DPR's Willingness to Use Violence
to Protect His Interests in Silk Road

30. DPR's private communications recovered from the Silk Road Web Server further reveal that DPR has acted as a law unto himself in deciding how to deal with problems affecting Silk Road, and that he has been willing to pursue violent means when he deems that the problem calls for it.

31. For example, DPR's private-message communications from March and April 2013 reveal at least one occasion when DPR solicited a murder-for-hire of a certain Silk Road user, who was attempting to extort money from DPR at the time, based on a threat to release the identities of thousands of Silk Road users. Specifically, the messages reveal the following:

a. Beginning on March 13, 2013, a Silk Road vendor known as "FriendlyChemist" began sending threats to DPR through Silk Road's private message system. In these messages, FriendlyChemist stated that he had a long list of real names and addresses of Silk Road vendors and customers that he had obtained from hacking into the computer of another, larger Silk Road vendor. FriendlyChemist threatened to publish the information on the Internet unless DPR gave him \$500,000, which FriendlyChemist indicated he needed to pay off his narcotics suppliers.

b. In one message to DPR dated March 14, 2013, FriendlyChemist elaborated on the consequences for Silk Road if he followed through on this threat:

what do u . . . think will happen if thousands of usernames, ordr amounts, addresses get leaked? all those people will leave sr [Silk Road] and be scared to use it again. those vendors will all be busted and all there customers will be exposed too and never go back to sr.

c. On March 15, 2013, FriendlyChemist provided DPR a sample of the usernames, addresses, and order information he intended to leak. Also, as proof that he had obtained the data from the vendor whose computer he claimed to have hacked, FriendlyChemist supplied the vendor's username and password on Silk Road so that DPR could verify it.

d. On March 20, 2013, DPR wrote to FriendlyChemist, stating: "Have your suppliers contact me here so I can work something out with them."

e. On March 25, 2013, a Silk Road user named "redandwhite" contacted DPR, stating: "I was asked to contact you. We are the people friendlychemist owes money to. . . . What did you want to talk to us about?"

f. On March 26, 2013, DPR wrote to redandwhite, stating, "Just to be clear, I do not owe him any money. . . . I'm not entirely sure what the best action to take is, but I wanted to be in communication with you to see if we can come to a conclusion that works for everyone. FriendlyChemist aside, we should talk about how we can do business. Obviously you have access to illicit substances in quantity, and are having issues with bad distributors. If you don't already sell here on Silk Road, I'd like you to consider becoming a vendor."

g. Later on March 26, 2013, redandwhite responded: "If you can get FriendlyChemist to meet up with us, or pay us his debt then I'm sure I would be able to get people in our group to give this online side of the business a try."

h. On March 27, 2013, DPR wrote back: "In my eyes, FriendlyChemist is a liability and I wouldn't mind if he was executed I'm not sure how much you already know about the guy, but I have the following info and am waiting on getting his address." DPR provided a name for FriendlyChemist and stated that he lived in White Rock, British Columbia, Canada, with "Wife + 3 kids." DPR added: "Let me know if it would be helpful to have his full address."

i. Meanwhile, after not hearing anything back from DPR since March 20, 2013, FriendlyChemist sent a message to DPR on March 29, 2013, stating: "u leave me no choice i want 500k usd withn 72hrs or i am going to post all the info i have. . . . i hate to do this but i need the money or im going to release it all. over 5000 user details and about 2 dozen vender identities. wats it going to be?"

j. Several hours later on March 29, 2013, DPR sent a message to "redandwhite," stating that "FriendlyChemist" is "causing me problems," and adding: "I would like to put a bounty on his head if it's not too much trouble for you. What would be an adequate amount to motivate you to find him? Necessities

like this do happen from time to time for a person in my position."

k. After redandwhite asked DPR what sort of problem FriendlyChemist was causing him, DPR responded, in a message dated March 30, 2013: "[H]e is threatening to expose the identities of thousands of my clients that he was able to acquire [T]his kind of behavior is unforgivable to me. Especially here on Silk Road, anonymity is sacrosanct." As to the murder-for-hire job he was soliciting, DPR commented that "[i]t doesn't have to be clean."

l. Later that same day, redandwhite sent DPR a message quoting him a price of \$150,000 to \$300,000 "depending on how you want it done" - "clean" or "non-clean."

m. On March 31, 2013, DPR responded: "Don't want to be a pain here, but the price seems high. Not long ago, I had a clean hit done for \$80k. Are the prices you quoted the best you can do? I would like this done asap as he is talking about releasing the info on Monday."

n. Through further messages exchanged on March 31, 2013, DPR and redandwhite agreed upon a price of 1,670 Bitcoins - approximately \$150,000 - for the job. In DPR's message confirming the deal, DPR included a transaction record reflecting the transfer of 1,670 Bitcoins to a certain Bitcoin address.

o. Several hours later on March 31, 2013, redandwhite wrote back: "I received the payment. . . . We know where he is. He'll be grabbed tonight. I'll update you."

p. Approximately 24 hours later, redandwhite updated DPR, stating: "Your problem has been taken care of. . . . Rest easy though, because he won't be blackmailing anyone again. Ever."

q. Subsequent messages reflect that, at DPR's request, redandwhite sent DPR a picture of the victim after the job was done, with random numbers written on a piece of paper next to the victim that DPR had supplied. On April 5, 2013, DPR wrote redandwhite: "I've received the picture and deleted it. Thank you again for your swift action."

32. Although I believe the foregoing exchange demonstrates DPR's intention to solicit a murder-for-hire, I have spoken with

Canadian law enforcement authorities, who have no record of there being any Canadian resident with the name DPR passed to redandwhite as the target of the solicited murder-for-hire. Nor do they have any record of a homicide occurring in White Rock, British Columbia on or about March 31, 2013.

Identification of "Dread Pirate Roberts"
as ROSS WILLIAM ULBRICHT, the Defendant

33. As described in detail below, DPR has been identified through this investigation as ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant. According to ULBRICHT's profile on "linkedin.com" ("LinkedIn"), a professional networking website where members can post information about their work backgrounds and interests, ULBRICHT, 29 years old, graduated from the University of Texas with a Bachelor of Science degree in Physics in 2006. From 2006 to 2010, he attended graduate school at the University of Pennsylvania School of Materials Science and Engineering. However, ULBRICHT states in his LinkedIn profile that, after this time in graduate school, his "goals" subsequently "shifted." ULBRICHT elaborates, obliquely, that he has since focused on "creating an economic simulation" designed to "give people a first-hand experience of what it would be like to live in a world without the systemic use of force" by "institutions and governments." Based on the evidence below, I believe that this "economic simulation" referred to by ULBRICHT is Silk Road.

34. First, I have spoken with another agent involved in this investigation ("Agent-1"), who has conducted an extensive search of the Internet in an attempt to determine how and when the Silk Road website was initially publicized among Internet users. The earliest such publicity found by Agent-1 is a posting dated January 27, 2011, on an online forum hosted at www.shroomery.org, an informational website catering to users of "magic mushrooms" ("Shroomery"). The posting, titled "anonymous market online?," was made by a user identified only by his username, "altoid." The posting stated as follows:

I came across this website called Silk Road. It's a Tor hidden service that claims to allow you to buy and sell anything online anonymously. I'm thinking of buying off it, but wanted to see if anyone here had heard of it and could recommend it. I found it through silkroad420.wordpress.com, which, if you have a tor browser, directs you to the real site at <http://tydgccykixpбу6uz.onion>. Let me know what you think...

This was the only message ever posted on the Shroomery forum by "altoid," indicating, based on my training and experience, that he had joined the forum solely to post this message.

35. In the Shroomery posting, "altoid" stated that he "found out" about Silk Road through "silkroad420.wordpress.com," where he stated that Tor users could be redirected to Silk Road on Tor. The address "silkroad420.wordpress.com" is an account on a blogging site known as "Wordpress." According to records obtained from Wordpress, the "silkroad420" account was created on January 23, 2011 - only four days before the posting by "altoid" on the Shroomery blog. (The account was created anonymously by someone who, based on the IP address they used, was using a Tor connection to access the Internet.)

36. After the Shroomery posting made on January 27, 2011, the next reference to Silk Road on the Internet found by Agent-1 is a posting made two days later, on January 29, 2011, at "bitcointalk.org," an online discussion forum relating to Bitcoins ("Bitcoin Talk"). This posting, too, was made by someone using the username "altoid." The posting appeared in a long-running discussion thread started by other Bitcoin Talk users, concerning the possibility of operating a Bitcoin-based "heroin store." In his posting, "altoid" stated:

What an awesome thread! You guys have a ton of great ideas. Has anyone seen Silk Road yet? It's kind of like an anonymous amazon.com. I don't think they have heroin on there, but they are selling other stuff. They basically use bitcoin and tor to broker anonymous transactions. It's at <http://tydgcckixpbu6uz.onion>. Those not familiar with Tor can go to silkroad420.wordpress.com for instructions on how to access the .onion site.

Let me know what you guys think

37. Based on my training and experience, the two postings created by "altoid" on Shroomery and Bitcoin Talk appear to be attempts to generate interest in the site. The fact that "altoid" posted similar messages about the site on two very different discussion forums, two days apart, indicates that "altoid" was visiting various discussion forums around this time where Silk Road might be of interest and seeking to publicize the site among the forum users - which, based on my training and experience, is a common online marketing tactic for new

websites. Moreover, the fact that "altoid" ended both messages with "Let me know what you guys think" indicates that "altoid" was not merely interested in sharing his own experience with Silk Road but wanted to collect feedback from other users, again, consistent with an effort to market and improve the site.

38. From further reviewing the Bitcoin Talk forum, Agent-1 located another posting on the forum by "altoid," made on October 11, 2011, approximately eight months after his posting about Silk Road. In this later posting, made in a separate and unrelated discussion thread, "altoid" stated that he was looking for an "IT pro in the Bitcoin community" to hire in connection with "a venture backed Bitcoin startup company." The posting directed interested users to send their responses to "rossulbricht at gmail dot com" - indicating that "altoid" uses the e-mail address "rossulbricht@gmail.com" (the "Ulbricht Gmail Account").

39. According to subscriber records obtained from Google, the Ulbricht Gmail Account is registered to a "Ross Ulbricht." The records indicate that Ulbricht has an account at Google+, a Google-based social networking service. From visiting Ulbricht's publicly accessible profile on Google+, I know that Ulbricht's Google+ profile includes a picture of him, which matches a picture of the LinkedIn profile for "Ross Ulbricht" referenced above in paragraph 33.

40. From visiting Ulbricht's Google+ page, I also know that it contains links to a specific website that DPR has regularly cited in his forum postings. Specifically:

a. Ulbricht's Google+ profile includes a list of Ulbricht's favorite YouTube videos, which includes a number of videos originating from "mises.org," the website of an entity dubbed the "Mises Institute." According to its website, the "Mises Institute" considers itself the "world center of the Austrian School of economics." The website allows visitors to sign up for user accounts on the site and to create a user profile. Through visiting a publicly accessible archived version of the site, I have found a user profile for a "Ross Ulbricht" on the site, which contains a picture of the user that matches the picture of "Ross Ulbricht" appearing on his Google+ profile and LinkedIn profile.

b. Based on my familiarity with DPR's postings on the Silk Road forum, I know that DPR's user "signature" in the forum includes a link to the "Mises Institute" website (one of only two links included in his signature). Moreover, in certain

forum postings, DPR has cited the "Austrian Economic theory" and the works of Ludwig von Mises and Murray Rothbard - economists closely associated with the "Mises Institute" - as providing the philosophical underpinnings for Silk Road.

41. The investigation has also uncovered evidence that, in early June 2013, Ulbricht was residing in San Francisco, California, near an Internet café from which someone logged into a server used to administer the Silk Road website on June 3, 2013. Specifically:

a. I have reviewed records obtained from Google containing logs of the IP addresses used to log into the Ulbricht Gmail Account from January 13, 2013 to June 20, 2013. The IP logs show the account being regularly accessed throughout this time period from a certain Comcast IP address. According to records obtained from Comcast, this IP address was assigned at the time of these logins to a certain address located on Hickory Street in San Francisco, California. The address is associated with another individual whom I know to be a friend of Ulbricht in San Francisco (the "Friend"), whom Ulbricht went to live with when he moved to San Francisco in or about September 2012, according to a video posted on YouTube in which they both appear and make statements to that effect.

b. Based on my review of DPR's private-message communications recovered from the Silk Road Web Server, I know that DPR has regularly specified the Pacific time zone when referring to the time. For example, in one private message, dated April 18, 2013, DPR told another Silk Road user, "It's nearly 4pm PST. I need to run some errands." Based on my training and experience, I believe this tendency indicates that DPR is located in the Pacific time zone - which, of course, is the time zone for San Francisco, California.

c. Further, based on forensic analysis of the Silk Road Web Server, I know that the server includes computer code that was once used to restrict administrative access to the server, so that only a user logging into the server from a particular IP address, specified in the code, could access it. Based on my training and experience, and my familiarity with how server access is commonly configured, I believe this IP address was for a virtual private network server ("VPN Server") - essentially a secure gateway through which DPR could remotely login to the Silk Road Web Server from his own computer. The IP address for the VPN Server resolves to a server hosted by a certain server-hosting company, from which I have subpoenaed

records concerning the VPN Server. The records show that the contents of the VPN Server were erased by the customer leasing it.⁴ However, the records reflect the IP address the customer used to access the VPN Server during the last login to the server, which was on June 3, 2013. This IP address is a Comcast address that, according to records subpoenaed from Comcast, resolves to an Internet café on Laguna Street in San Francisco, California. This café is located less than 500 feet away from the Friend's address on Hickory Street regularly used by Ulbricht to log in to the Ulbricht Gmail Account - including at various times on June 3, 2013, according to Google records.

d. Based on my training and experience, this evidence places the administrator of Silk Road, that is, DPR, in the same approximate geographic location, on the same day, as Ulbricht.

42. The investigation has also uncovered evidence that, by July 2013, Ulbricht had moved to a different San Francisco address, where he was shipped a package containing multiple counterfeit identification documents, at the same time that DPR is known to have been seeking such documents on Silk Road. Specifically:

a. From reviewing an investigative report obtained from U.S. Customs and Border Protection ("CBP"), I have learned the following:

i. On or about July 10, 2013, CBP intercepted a package from the mail inbound from Canada as part of a routine border search. The package was found to contain nine counterfeit identity documents. Each of the counterfeit identification documents was in a different name yet all

⁴ The code containing the IP address for the VPN Server is "commented out" on the Silk Road Web Server, meaning that it was no longer active as of July 23, 2013, when the image of the server was made. From reviewing DPR's private-message communications recovered from the Silk Road Web Server, I know that, on May 24, 2013, a Silk Road user sent him a private message warning him that "some sort of external IP address" was "leaking" from the site, and listed the IP address of the VPN Server. Based on my training and experience, I believe that in light of this warning DPR deactivated the code containing the VPN Server IP Address, deleted the contents of the VPN Server, and changed the way he accessed the Silk Road Web Server thereafter.

contained a photograph of the same person. The package was directed to an address located on 15th Street in San Francisco, California (the "15th Street Address").

ii. On or about July 26, 2013, agents from Homeland Security Investigations ("HSI") visited the 15th Street Address to investigate further. Agents found a residence there, where they encountered ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, who matched the photographs on the counterfeit identification documents in the package.

iii. The agents showed ULBRICHT a photo of one of the seized counterfeit identity documents, which was a California driver's license bearing ULBRICHT's photo and true date of birth, but bearing a name other than his. ULBRICHT generally refused to answer any questions pertaining to the purchase of this or other counterfeit identity documents. However, ULBRICHT volunteered that "hypothetically" anyone could go onto a website named "Silk Road" on "Tor" and purchase any drugs or fake identity documents the person wanted.

iv. ULBRICHT provided the agents with his true government-issued Texas driver's license. He explained that he sublet a room at the 15th Street Address for \$1,000 in monthly rent, which he paid in cash. ULBRICHT stated that there were two other housemates currently residing with him in the house, both of whom knew him by the fake name "Josh."

v. The agents also spoke with one of ULBRICHT's housemates at the address, who stated that ULBRICHT, whom he knew as "Josh," was always home in his room on the computer.

b. Based on my review of DPR's private messages recovered from the Silk Road Web Server, I know that, in June and July 2013, DPR had several communications with other Silk Road users in which he expressed interest in acquiring fake identity documents. For example:

i. In one exchange of messages, dated July 8, 2013, DPR told another Silk Road user that he "needed a fake ID" that he intended to use to "rent servers," explaining that he was "building up my stock of servers." Based on my training and experience, I know that server-hosting companies often require customers to provide some form of identity documents in order to validate who they are. Accordingly, I believe that DPR was seeking fake identity documents that he could use to rent servers under false identities.

ii. In another exchange of messages, dated June 1, 2013, DPR and another Silk Road user - "redandwhite," the same user with whom DPR solicited the murder-for-hire described above - agreed to communicate at a certain time on an Internet chat service, with DPR telling redandwhite, "I have something to discuss with you." Four days later, on June 5, 2013, DPR sent redandwhite a message stating, "hey, just wanted to find out where you are with the dummy ID idea." Redandwhite responded, "I have ran it by my worker and he is working on it."

43. Finally, the investigation has uncovered evidence implicating Ulbricht in running a Tor hidden service, and linking Ulbricht to certain programming code and a certain encryption key found on the Silk Road Web Server. Specifically:

a. Based on my training and experience, I know that the website "stackoverflow.com" ("Stack Overflow") is a website used by computer programmers to post questions about programming problems and to receive suggested solutions from other programmers. According to records obtained from Stack Overflow:

i. On March 5, 2012, a user established an account on Stack Overflow with the username "Ross Ulbricht." Ulbricht provided the Ulbricht Gmail Account as his e-mail address as part of his registration information.

ii. On March 16, 2012, at approximately 8:39 p.m. PDT, Ulbricht posted a message on the site, titled, "How can I connect to a Tor hidden service using curl in php?" Based on my training and experience, I know that "PHP" refers to a programming language used for web servers and "curl" refers to a set of programming commands that can be used in the language. In the contents of the message, Ulbricht quoted twelve lines of computer code involving "curl" commands that he stated he was using "to connect to a Tor hidden service using . . . php," but he reported the code was generating an error. Based on my training and experience, Ulbricht's posting reflects that he was writing a customized computer code designed for a web server operating a Tor hidden service, such as Silk Road.

iii. When a user posts a message on Stack Overflow, the user's username appears along with the post. However, less than one minute after posting the message described in the previous paragraph, Ulbricht changed his username at Stack Overflow from "Ross Ulbricht" to "frosty." Based on my training and experience, I know that criminals seeking to hide their identity online will often use

pseudonymous usernames to conceal their identity. Thus, given the timing, I believe that Ulbricht changed his username to "frosty" in order to conceal his association with the message he had posted one minute before, given that the posting was accessible to anyone on the Internet and implicated him in operating a Tor hidden service.

iv. Several weeks later, Ulbricht changed his registration e-mail on file with Stack Overflow as well, from the Ulbricht Gmail Account to "frosty@frosty.com." According to centralops.net, a publicly available e-mail address lookup service, "frosty@frosty.com" is not a valid e-mail address. Again, based on my training and experience, I know that criminals seeking to hide their identity online will often use fictitious e-mail addresses in subscribing to online accounts. Thus, I believe Ulbricht changed his e-mail address on file with Stack Overflow to a fictitious e-mail address in an attempt to eliminate any connection between his true e-mail address and his posting reflecting his operation of a hidden Tor service.

b. Based on forensic analysis of the Silk Road Web Server, I know that the computer code on the Silk Road Web Server includes a customized PHP script based on "curl" that is functionally very similar to the computer code described in Ulbricht's posting on Stack Overflow, and includes several lines of code that are identical to lines of code quoted in the posting. Based on my training and experience, it appears that the code on the Silk Road Web Server is a revised version of the code described in Ulbricht's posting (which Ulbricht stated in his posting he was seeking to fix given that it was generating an error).

c. Further, again, based on forensic analysis of the Silk Road Web Server, I know the following:

i. As of July 23, 2013, the Silk Road Web Server was configured to allow the administrator of the site, that is, DPR, to log in to the server without the need for a password, so long as the administrator logged in from a computer trusted by the server.

ii. Specifically, based on my training and experience, I know that this configuration involves the use of key-based secure shell ("SSH") logins. To set up this configuration, the administrator must generate a pair of encryption keys - a "public" key stored on the server, and a "private" key stored on the computer he logs into the server from. Once these keys are created, the server can recognize the

administrator's computer based on the link between the administrator's private key and the corresponding public key stored on the server.

iii. Based on my training and experience, I know that SSH encryption keys consist of long strings of text. Different SSH programs generate public keys in different ways, but they all generate public keys in a similar format, with the text string always ending with text in the format "[user]@[computer]." The computer in this substring represents the name of the computer that created the public key, and the user represents the username of the user who created it. For example, if someone creates an SSH key pair using a computer named "MyComputer," while logged into the computer as a user named "John," the public key generated as a result will end with the substring "John@MyComputer."

iv. I have examined the SSH public encryption key stored on the Silk Road Web Server that is used to authenticate administrative logins to the server. The key ends with the substring "frosty@frosty." Based on my training and experience, this means that the administrator of Silk Road has a computer named "frosty," on which he maintains a user account also named "frosty," which he uses to log in to the Silk Road Web Server. Based on my training and experience, I know that computer users often use the same username for different types of accounts. Thus, I believe, particularly given the other ties between "Ross Ulbricht" and "DPR" described above, that the Stack Overflow user "Ross Ulbricht," who changed his username to "frosty" and his e-mail address to "frosty@frosty.com," is the same person as the administrator of Silk Road, that is, DPR, who logs into the Silk Road Web Server from a computer named "frosty," on which he maintains a user account named "frosty."

44. I have obtained from the Texas Department of Motor Vehicles a copy of the driver's license of ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, bearing the same number as the driver's license that ULBRICHT showed to HSI agents during the July 26, 2013 interview described above. The photograph on the license depicts the same person appearing in the photographs of "Ross Ulbricht" on his profiles at Google+, the "Mises Institute," and LinkedIn described above.

45. Accordingly, I believe that the owner and operator of Silk Road is ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant.

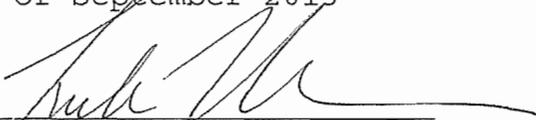
A80

WHEREFORE, I respectfully request that an arrest warrant be issued for ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and that he be arrested and imprisoned or bailed, as the case may be.



Christopher Tarbell
Special Agent
Federal Bureau of Investigation

Sworn to before me this
27th day of September 2013



HON. FRANK MAAS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

A81

EXHIBIT A

Silk Road
anonymous market

Shop by Category

- Drugs 12,338
- Cannabis 2,780
- Dissociatives 136
- Ecstasy 1,210
- Intoxicants 75
- Opioids 327
- Other 81
- Precursors 76
- Prescription 4,382
- Psychedelics 1,673
- Stimulants 1,441
- Tobacco 217
- Apparel 702
- Art 14
- Books 1,285
- Collectibles 32
- Computer equipment 34
- Custom Orders 39
- Digital goods 507
- Drug paraphernalia 475
- Electronics 229
- Erotica 577
- Fireworks 34
- Food 12
- Forgeries 169
- Hardware 48
- Home & Garden 28
- Jewelry 100
- Lab Supplies 33
- Lotteries & games 163
- Medical 51
- Money 260
- Musical instruments 7
- Packaging 105
- Services 158
- Sporting goods 3
- Tickets 4
- Writing 6

messages 0 orders 0 account B0.0000

Search

the Dread Pirate Roberts

Hi,  logout

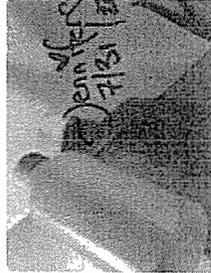
Go



1g High Quality Cocaine
B0.8856



HYDROPHOBIC BUD
224g(12lb) BULK BUY -
B17.1880



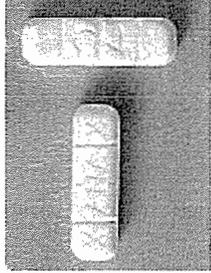
5 liters GBL 99.99% pure
B0.9474



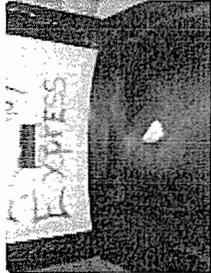
1g 3-FA / crystalline powder
B0.1863



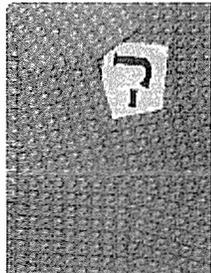
25i-HBOMe (hcl) 50mg
B0.2794



10 Xanax 2mg bar's --USA
stock--
B0.3425



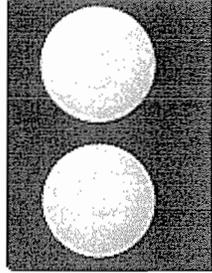
1.0 g Amphetamine Paste HQ
German Lab
B0.1057



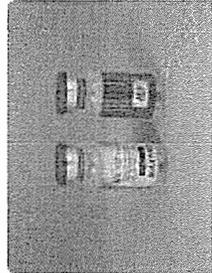
25 LSD Blisters (United
Kingdom)
B1.4835



SG FLINSTONE
MEPHEDRONE, Yabba Dabba
B0.7761



10 x 10mg Oxycodone - OC
Formula Crush
B0.8522



1xX 197 (Max Proc), 10ml,
197mg/ml
B0.8522



Custom Listing 50g HQ Pure
Cocaine
B40.7900

From the forum

- Buyer ratings discussion
- Feedback system changes
- HOW TO: Run your own relay and help the Tor network.
- Ask a drug expert physician about drugs and health
- Winning the war on drugs
- New display currencies
- Try Tails for a more secure OS

EXHIBIT B

HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY | Sil...

http://silkroadvb5piz3r.onion/silkroad/item/99d2ca5694



Silk Road
anonymous market

messages 0 orders 0 account B0.0000

Search

Go

a few words from
the Dread Pirate Roberts



Hi, [redacted] [logout](#)

Shop by Category



HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY

B1.7198

[add to cart](#) [bookmark](#) [discuss 0](#) [report](#)

Item info:

seller gotsital 5.0
ships from United States of America
ships to United States of America
category Heroin

postage options:

[COMBINE SHIPPING NC ?](#)

Description

-NEW BATCH 9/15/13 HIGH QUALITY # 4 HEROIN - THIS IS THE USUAL STUFF THAT I NORMALLY HAVE THAT IS WHY THE PRICE HAS GONE DOWN, LAST BATCH WAS THE KILLER FIRE H AND THAT HAS ENDED, I REPEAT THIS NEW BATCH IS THE NORMAL STUFF I USUALLY HAVE.

-THIS IS A MONDAY SHIPPING TUESDAY DELIVERY+ LISTING

-ALL ROCK

-NO POWDER

VACUUM SEALED

-STEALTH SHIPPING

-199\$/GRAM

-6 PM UTC CUTOFF TIME IF U ORDER AFTER YOUR ORDER WILL BE SHIPPED NEXT DAY.

---INSURANCE 12.00\$---

- BECAUSE OF CERTAIN PEOPLE GIVING ME PROBLEMS WITH SOME ORDERS I AM NOW OFFERING INSURANCE TO COVER YOUR PACKAGE IN THE EVENT THAT SOMETHING LISTED BELOW HAPPENS, INSURANCE WILL COVER EVERYTHING THAT HAPPENS AFTER I SHIP YOUR PACKAGE OUT, IF YOU DO NOT PURCHASE INSURANCE I WILL NOT RESHIP YOUR PACKAGE. INSURANCE WILL COVER EVERYTHING ONLY WHAT IS LISTED BELOW

-PACKAGE DID NOT RECIEVE ITS FIRST SCAN (LOST PACKAGE)

-PACKAGE WAS LOST IN THE MAIL (LOST AFTER INITIAL SCAN)

-PACKAGE WAS DAMAGED

-PACKAGE WAS MISSING CONTENT

-I TAKE A PICTURE OF EVERY PACKAGE MORE THEN 2 GRAMS SO JUST REMEMBER THAT BEFORE U CLAIM A MISSING CONTENT CLAIM I WILL MATCH WHAT U SAY TOWARD THE PICTURE I TAKE.

-PLEASE REMEMBER TO PURCHASE INSURANCE AS A PRECAUTION IF SOMETHING HAPPENED TO YOUR PACKAGE BECAUSE I WILL NOT RESHIP ANYTHING IF U DID NOT PURCHASE INSURANCE

-PGP KEY

---BEGIN PGP PUBLIC KEY BLOCK---

```
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```

HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY | Sil...

http://silkroadvb5piz3r.onion/silkroad/item/99d2ca5694

c2IDYwXsQHRvcm1haWwub3JnPokBFPQQTAAQoAJwUCUbm64glbLwUJB4YfgAULCQgH
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=Ryy3
-----END PGP PUBLIC KEY BLOCK-----

Reviews:

sort by: weight go ?

- themanwhocan review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 1 price: \$1+ 2d 14h old 5 of 5
orders spent vendors next day delivery made it the next day. was in transit shortly after i ordered. product is the
100+ \$100+ 10+ same stuff as in picture and came in big chunks. Quality is superb, definitely worth the
high price to get a more pure product which makes it more cost effective. best stuff ive seen in awhile. its the
real deal too non of that fent bullshit. just snorted a small bump and my pain is greatly reduced. thanks alot
gotsital ill be back!

Cobia review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: \$1+ 3d 18h old 5 of 5
orders spent vendors As others have made abundantly clear, gotsital is an all around stand up guy. He has
10+ \$100+ 10+ AMAZING products at more than reasonable prices and his customer support is some of
the best I have ever encountered, I was missing some product, and he was just helpful and respectful the entire
time, without the typical defensive anger most vendors would display any time there is any mention that product
is missing. Through our discussions I was able to figure out what exactly went wrong (Sketchy asshole junky
FOAF), and gotsital was sympathetic and supportive thorough the whole process, even trying figure out how to
help me to avoid withdrawal.

TL;DR:
Product 7/5 Awesome Dope (Best domestic stuff I've seen in a while)
Customer Suppoprt/Attitude: 10/5 Just amazing.
Shipping 6/5 Ordered Express Friday at 4pm. Order arrived Monday at 10am.
Stealth 5/5 Nothing lacking here, sealed to be smell/detection proof, wrapped to look like standard mail.

alias hidden review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 7d old 5 of 5
stats: (hidden) horrible shipping time! but decent product and it was heavy. despite the b.s shitty shipping
i will give 5/5 i feel it is a 5/5

alias hidden review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 4d old 5 of 5
stats: (hidden) leaving a 5/5 cuz GIA has never done me wrong so i dont want 1 hick up to reflect his
legitimacy because he is the man but my last order was a bit weak for GIA's reputation,
had to snort almost triple the amount of this new stuff to get where i was with the old. the product wasnt all rocks
like stated(half powder half small rock)vendor didnt even address the fact that i was unhappy with my order but
w.e this isnt walmart i guess. Either way GIA always come through and even when the product isnt his best its
still probly top 2 of anything else on SR

alias hidden review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 9d old 5 of 5
stats: (hidden) Three cheers for GIA. Best vendor on SR! Got my product fast, at a killer price, with great
customer service. A++++

A Friend review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: \$1+ 3d 19h old 5 of 5
orders spent vendors Yeah!! ALL chunks off the brick as stated, definitely the GOODS, didn't start the day off

HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY | Sil...

<http://silkroadvb5piz3r.onion/silkroad/item/99d2ca5694>

10+ B100+ 10+

with it for the most accurate strength rating, but a very small shot cut through the fog admirably, dissolved completely in cool water, weight was on point or maybe 50mg. over, and delivery was speedy - what more could you ask, aside from quantity discounts?
Thanks and praises be upon you!

alias hidden

stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY

1m 4d old 5 of 5

Great vendor, there was a mix up with the order but gotsitall took care of everything and fixed the situation. Will order again.

AKMedSupply2013

orders spent vendors

10+ B100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY

15d 18h old unrated

qty: 1 price: B1+
5/5 everytime!! Perfect stealth and perfect dope to match.Got product in less than 24 hours! Thanks again

radioheadfan5

orders spent vendors

100+ B100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: B1+

10d 17h old 5 of 5

Very fast shipping, great stealth, awesome product. You can't do better then GiA!

alias hidden

stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY

1m 11d old 5 of 5

on point. as always

1 2 3 > Last ›

A87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE FORREST

UNITED STATES OF AMERICA

- v. -

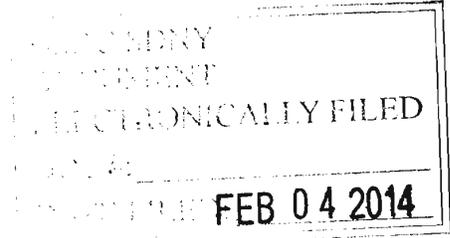
ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

INDICTMENT

14 Cr. **CRIM068**

ORIGINAL



COUNT ONE

(Narcotics Trafficking Conspiracy)

The Grand Jury charges:

BACKGROUND

1. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created an underground website known as "Silk Road," designed to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement.

2. From in our about January 2011 through in or about October 2013, when the Silk Road website was shut down by law enforcement authorities, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated Silk Road. During that time, Silk Road emerged as the most sophisticated and extensive criminal

marketplace on the Internet. The website was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers worldwide, and to launder hundreds of millions of dollars deriving from these unlawful transactions.

3. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised. Through his ownership and operation of Silk Road, ULBRICHT reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site.

4. In seeking to protect his criminal enterprise and the illegal proceeds it generated, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise.

STATUTORY ALLEGATIONS

5. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known

Case 1:14-cr-00068-KBF Document 12 Filed 02/04/14 Page 3 of 12

and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

6. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

7. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

8. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, would and did knowingly and intentionally use a communication facility in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, United States Code, Sections 841, 846, 952, 960, and 963, in violation of Title 21, United States Code, Section 843(b).

9. The controlled substances that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, conspired to distribute and possess with the intent to distribute included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A).

Overt Acts

10. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created the Silk Road website, providing a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 29, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, solicited a Silk Road user to execute a murder-for-hire of another Silk Road user, who was threatening to release the identities of thousands of users of the site.

c. On or about October 1, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, logged on as a site administrator to the web server hosting the Silk Road website.

(Title 21, United States Code, Section 846.)

COUNT TWO

(Continuing Criminal Enterprise)

The Grand Jury further charges:

11. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

12. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, engaged in a continuing criminal enterprise, in that he knowingly and intentionally violated Title 21, United States Code, Sections 841, 843 and 846, which violations were part of a continuing series of violations of the Controlled Substances Act, Title 21,

United States Code, Section 801, et seq., undertaken by ULBRICHT, in concert with at least five other persons with respect to whom ULBRICHT occupied a position of organizer, a supervisory position, and a position of management, and from which such continuing series of violations ULBRICHT obtained substantial income and resources.

(Title 21, United States Code, Section 848(a).)

COUNT THREE

(Computer Hacking Conspiracy)

The Grand Jury further charges:

13. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

14. In addition to providing a platform for the purchase and sale of illegal narcotics, the Silk Road website also provided a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such products.

STATUTORY ALLEGATIONS

15. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known

and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking in violation of Title 18, United States Code, Section 1030(a)(2).

16. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, in violation of Title 18, United States Code, Section 1030(a)(2).

(Title 18, United States Code, Section 1030(b).)

COUNT FOUR

(Money Laundering Conspiracy)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 4 and paragraph 14 of this Indictment are repeated and realleged as if fully set forth herein.

18. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including

by concealing the identities and locations of the users transmitting and receiving funds through the site.

STATUTORY ALLEGATIONS

19. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

20. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Section 1030, respectively, with the intent to promote the carrying on

of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

21. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Section 1030, respectively, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

(Title 18, United States Code, Section 1956(h).)

FORFEITURE ALLEGATIONS

22. As a result of committing the controlled substance offenses alleged in Counts One and Two of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United

States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the offense and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offenses.

23. As a result of committing the computer hacking offense alleged in Count Three of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained directly or indirectly as a result of the offense.

24. As a result of committing the money laundering offense alleged in Count Four of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in the offense, or any property traceable to such property.

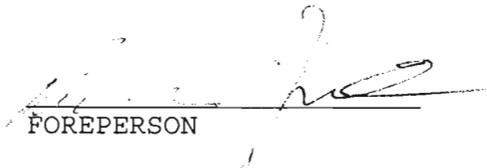
Substitute Asset Provision

25. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.

(Title 18, United States Code, Sections 981 and 982, Title 21, United States Code, Section 853; Title 28, United States Code, Section 2461.)


FOREPERSON


PREET BHARARA^{RT}
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

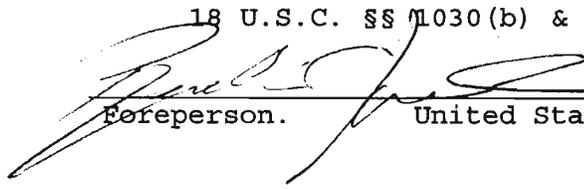
ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

INDICTMENT

14 Cr.

(21 U.S.C. § 846, 848(a);
18 U.S.C. §§ 1030(b) & 1956(h))

 PREET BHARARA
Foreperson. United States Attorney.

2/4/14 - Filed Indictment
cc. Case assigned to Judge Forrest
Judge Leimigh Fox
VAMJ.

A conspiracy claim is premised on an agreement between two or more people to achieve an unlawful end. The Government alleges that by designing, launching, and administering Silk Road, Ulbricht conspired with narcotics traffickers and hackers to buy and sell illegal narcotics and malicious computer software and to launder the proceeds using Bitcoin. There is no allegation that Ulbricht conspired with anyone prior to his launch of Silk Road. Rather, the allegations revolve around the numerous transactions that occurred on the site following its launch.

The Government alleges that Silk Road was designed to operate like eBay: a seller would electronically post a good or service for sale; a buyer would electronically purchase the item; the seller would then ship or otherwise provide to the buyer the purchased item; the buyer would provide feedback; and the site operator (i.e., Ulbricht) would receive a portion of the seller's revenue as a commission. Ulbricht, as the alleged site designer, made the site available only to those using Tor, software and a network that allows for anonymous, untraceable Internet browsing; he allowed payment only via Bitcoin, an anonymous and untraceable form of payment.

Following the launch of Silk Road, the site was available to sellers and buyers for transactions. Thousands of transactions allegedly occurred over the course of nearly three years – sellers posted goods when available; buyers purchased goods when desired. As website administrator, Ulbricht may have had some direct contact with some users of the site, and none with most. This online marketplace thus allowed the alleged designer and operator (Ulbricht) to be

anywhere in the world with an Internet connection (he was apprehended in California), the sellers and buyers to be anywhere, the activities to occur independently from one another on different days and at different times, and the transactions to occur anonymously.

A number of legal questions arise from conspiracy claims premised on this framework. In sum, they address whether the conduct alleged here can serve as the basis of a criminal conspiracy – and, if so, when, how, and with whom.

Question One: Can there be a legally cognizable “agreement” between Ulbricht and one or more coconspirators to engage in narcotics trafficking, computer hacking, and money laundering by virtue of his and their conduct in relation to Silk Road? If so, what is the difference between what Ulbricht is alleged to have done and the conduct of designers and administrators of legitimate online marketplaces through which illegal transactions may nevertheless occur?

Question Two: As a matter of law, who are Ulbricht’s alleged coconspirators and potential coconspirators? That is, whose “minds” can have “met” with Ulbricht’s in a conspiratorial agreement? What sort of conspiratorial structure frames the allegations: one large, single conspiracy or multiple smaller ones?

Question Three: As a matter of law, when could any particular agreement have occurred between Ulbricht and his alleged coconspirators? Need each coconspirator’s mind have met simultaneously with Ulbricht’s? With the minds of the other coconspirators? That is, if Ulbricht launched Silk Road on Day 1, can he be said, as a matter of law, to have entered into an agreement with the user who

joins on Day 300? Did Ulbricht, simply by designing and launching Silk Road, make an enduring showing of intent?

Question Four: As a matter of law, is it legally necessary, or factually possible, to pinpoint how the agreement between Ulbricht and his coconspirators was made? In this regard, does the law recognize a conspiratorial agreement effected by an end user interacting with computer software, or do two human minds need to be simultaneously involved at the moment of agreement?

Question Five: If Ulbricht was merely the facilitator of simple buy-sell transactions, does the “buyer-seller” rule apply, which in certain circumstances would preclude a finding of a criminal conspiracy?

The defendant also raises the following additional arguments with respect to Counts One, Two, and Three: the rule of lenity, the doctrine of constitutional avoidance, the void-for-vagueness doctrine, constitutionally defective over-breadth, and a civil immunity statute for online service providers. The Court refers to these collectively as the “Kitchen Sink” arguments. While this is a case of first impression as to the charged conduct, the fact that the alleged conduct constitutes cognizable crimes requires no legal contortion and is not surprising. These arguments do not preclude criminal charges.

With regard to Count Two, the defendant alleges that, as a matter of law, his conduct cannot constitute participation in a CCE (under the so-called “kingpin” statute). The defendant argues that the Indictment fails to allege that he had the

requisite managerial authority in the conspiracy and that the Indictment fails to allege a sufficient “continuing series” of predicate violations. The Court disagrees and finds that the allegations in the Indictment are sufficient.

With regard to Count Three, the defendant contends that the allegations in the Indictment are insufficient to support the type of conduct covered by a computer hacking conspiracy. The defendant confuses the requirement for establishing the violation of the underlying offense with the requirements for establishing a conspiracy to commit the underlying offense; he finds ambiguity where there is none. The Government alleges a legally cognizable claim in Count Three.

Finally, with respect to Count Four, the defendant alleges that he cannot have engaged in money laundering because all transactions occurred through the use of Bitcoin and thus there was therefore no legally cognizable “financial transaction.” The Court disagrees. Bitcoins carry value – that is their purpose and function – and act as a medium of exchange. Bitcoins may be exchanged for legal tender, be it U.S. dollars, Euros, or some other currency. Accordingly, this argument fails.

I. THE INDICTMENT

Rule 7(c)(1) of the Federal Rules of Criminal Procedure provides that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c). It need not contain any other matter not necessary to such statement. *Id.* (“A count may allege that the

means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means.”).

An indictment must inform the defendant of the crime with which he has been charged. United States v. Doe, 297 F.3d 76, 87 (2d Cir. 2002). “By informing the defendant of the charges he faces, the indictment protects the defendant from double jeopardy and allows the defendant to prepare his defense.” Id.; United States v. Dhinsa, 243 F.3d 635, 667 (2d Cir. 2001). Rule 7(c) is intended to “eliminate prolix indictments,” United States v. Carrier, 672 F.2d 300, 303 (2d Cir. 1982), and “secure simplicity in procedure.” United States v. Debrow, 346 U.S. 374, 376 (1953). The Second Circuit has “consistently upheld indictments that do little more than track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime.” United States v. Walsh, 194 F.3d 37, 44 (2d Cir. 1999) (internal quotation marks and citation omitted); see also United States v. Cohen, 518 F.2d 727, 733 (2d Cir. 1975).

Nevertheless, “[a] criminal defendant is entitled to an indictment that states the essential elements of the charge against him.” United States v. Pirro, 212 F.3d 86, 91 (2d Cir. 2000). “[F]or an indictment to fulfill the functions of notifying the defendant of the charges against him and of assuring that he is tried on the matters considered by the grand jury, the indictment must state some fact specific enough to describe a particular criminal act, rather than a type of crime.” Id. at 93.

“An indictment must be read to include facts which are necessarily implied by the specific allegations made.” United States v. Stavroulakis, 952 F.2d 686, 693

(2d Cir. 1992) (internal quotation marks and citations omitted). “[C]ommon sense and reason prevail over technicalities.” United States v. Sabbeth, 262 F.3d 207, 218 (2d Cir. 2001) (“[A]n indictment need not be perfect.”). While an indictment must give a defendant “sufficient notice of the core of criminality to be proven against him,” United States v. Pagan, 721 F.2d 24, 27 (2d Cir. 1983) (citation omitted), the “core of criminality’ of an offense involves the essence of the crime, in general terms,” and not “the particulars of how a defendant effected the crime.” United States v. D’Amelio, 683 F.3d 412, 418 (2d Cir. 2012) (citation omitted).

As with all motions to dismiss an indictment, the Court accepts as true the allegations set forth in the charging instrument for purposes of determining the sufficiency of the charges. See United States v. Sampson, 371 U.S. 75, 78-79 (1962); United States v. Goldberg, 756 F.2d 949, 950 (2d Cir. 1985).

The Indictment here alleges that Ulbricht designed, created, operated, and owned Silk Road, “the most sophisticated and extensive criminal marketplace on the Internet.” (Ind. ¶¶ 1-3.) Silk Road operated using Tor, software and a network that enables users to access the Internet anonymously – it keeps users’ unique identifying Internet Protocol (“IP”) addresses obscured, preventing surveillance or tracking. All purchases occurred on Silk Road using Bitcoin, an anonymous online currency.

Silk Road allegedly functioned as designed – tens of thousands of buyers and sellers are alleged to have entered into transactions using the site, violating numerous criminal laws. Over time, thousands of kilograms of heroin and cocaine

were allegedly bought and sold, as if the purchases were occurring on eBay or any other similar website.

Count One charges that, from in or about January 2011 up to and including October 2013, the defendant engaged in a narcotics trafficking conspiracy. To wit, “the defendant . . . designed [Silk Road] to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement.” (Ind. ¶ 1.) The defendant allegedly “controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised.” (Ind. ¶ 3.) “It was part and object of the conspiracy” that the defendant and others “would and did deliver, distribute, and dispense controlled substances by means of the Internet” and “did aid and abet such activity” in violation of the law. (Ind. ¶ 7.) The controlled substances allegedly included heroin, cocaine, and lysergic acid diethylamide (“LSD”). (Ind. ¶ 9.) The defendant allegedly “reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site.” (Ind. ¶ 3.) According to the Indictment, the defendant “pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise.” (Ind. ¶ 4.)

Count Two depends on the conduct in Count One. Count Two alleges that Ulbricht’s conduct amounted, over time, to his position as a “kingpin” in a continuing criminal enterprise (again, “CCE”). (Ind. ¶ 12.) Ulbricht is alleged to have engaged in a “continuing series of violations” in concert “with at least five other persons with respect to whom Ulbricht occupied a position of organizer, a

supervisory position, and a position of management, and from which . . . Ulbricht obtained substantial income and resources.” (Id.)

Count Three charges that Ulbricht also designed Silk Road as “a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools.” (Ind. ¶ 14.) “While in operation, the Silk Road website regularly offered hundreds of listings for such products.” (Id.) The object of this conspiracy was to “intentionally access computers without authorization, and thereby [to] obtain information from protected computers, for purposes of commercial advantage and financial gain.” (Ind. ¶ 16.)

Count Four alleges that Ulbricht “designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including by concealing the identities and locations of the users transmitting and receiving funds through the site.” (Ind. ¶ 18.) “[K]nowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity,” Ulbricht and others would and did conduct financial transactions with the proceeds of specified unlawful activity, “knowing that the transactions were designed . . . to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds.” (Ind. ¶ 21.)

II. THE LAW OF CONSPIRACY

A. Elements of a Conspiracy

“The essence of the crime of conspiracy . . . is the agreement to commit one or more unlawful acts.” United States v. Praddy, 725 F.3d 147, 153 (2d Cir. 2013)

(emphasis in original) (citation omitted); see also Ianelli v. United States, 420 U.S. 770, 777 (1975) (“Conspiracy is an inchoate offense, the essence of which is an agreement to commit an unlawful act.”); United States v. Falcone, 311 U.S. 205, 210 (1940); United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1191 (2d Cir. 1989) (“The gist of conspiracy is, of course, agreement.”); United States v. Rosenblatt, 554 F.2d 36, 38 (2d Cir. 1977). Put differently, a conspiracy is the “combination of minds for an unlawful purpose.” Smith v. United States, – U.S. –, 133 S.Ct. 714, 719 (2013) (quoting United States v. Hirsch, 100 U.S. 33, 34 (1879)).²

1. Agreement

A meeting of the minds is required in order for there to be an agreement. Krulewich v. United States, 336 U.S. 440, 447-48 (1949) (Jackson, J. concurring); Rosenblatt, 554 F.2d at 38. Two people have to engage in the “act of agreeing” in order for this requirement to be met. Rosenblatt, 554 F.2d at 38 (internal quotation marks and citation omitted). The conspirators must agree to the object, or unlawful end, of the conspiracy. Id. While the coconspirators need not agree to every detail, they must agree to the “essential nature” of the plan. Blumenthal v. United States, 332 U.S. 539, 557 (1947); Praddy, 725 F.3d at 153 (internal quotation marks and

² There is no overt act requirement to establish a violation of a drug conspiracy prosecuted under 21 U.S.C. § 846. See United States v. Shabani, 513 U.S. 10, 11 (1994); United States v. Anderson, 747 F.3d 51, 60 n.7 (2d Cir. 2014). Similarly, a conviction for conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) does not require proof of an overt act in furtherance of the conspiracy. Whitfield v. United States, 543 U.S. 209, 219 (2005).

citations omitted); United States v. Geibel, 369 F.3d 682, 689 (2d Cir. 2004)

(internal quotation marks and citations omitted); Rosenblatt, 554 F.2d at 38.³

“It is not necessary to prove that the defendant expressly agreed with other conspirators on a course of action; it is enough, rather, to show that the parties had a tacit understanding to carry out the prohibited conduct.” Anderson, 747 F.3d at 61 (internal quotation marks, alteration, and citation omitted). However, “a defendant’s mere presence at the scene of a crime, his general knowledge of criminal activity, or his simple association with others engaged in a crime are not, in themselves, sufficient to prove the defendant’s criminal liability for conspiracy.” Id. (citations omitted).

2. Object of the Conspiracy

To be convicted of a conspiracy, a defendant must know what “kind of criminal conduct was in fact contemplated.” Rosenblatt, 554 F.2d at 38 (quoting United States v. Gallishaw, 428 F.2d 760, 763 n.1 (2d Cir. 1970)). That is, the defendant has to know what the “object” of the conspiracy he joined was. A “general agreement to engage in unspecified criminal conduct is insufficient to identify the essential nature of the conspiratorial plan.” Rosenblatt, 544 F.2d at 39. Indeed, “[t]he government must prove that the defendant agreed to commit a particular offense and not merely a vague agreement to do something wrong.” United States v. Salameh, 152 F.3d 88, 151 (2d Cir. 1998) (citation and internal quotation marks omitted) (emphasis in original). That said, “[t]he government need not show that

³ In Rosenblatt, the Second Circuit overturned a conspiracy conviction on the basis that while two individuals agreed to commit offenses against the United States, they did not agree to commit the same offenses and therefore were not conspirators. 554 F.2d at 40.

the defendant knew all of the details of the conspiracy, so long as he knew its general nature and extent.” United States v. Huezco, 546 F.3d 174, 180 (2d Cir. 2008) (citation and internal quotation marks omitted).⁴

3. Participation

The crime of conspiracy requires that a defendant both know the object of the crime and that he knowingly and intentionally join the conspiracy. United States v. Torres, 604 F.3d 58, 66 (2d Cir. 2010). The requisite knowledge can be proven through circumstantial evidence. Id.

The quantum of proof necessary at trial to sustain a finding of knowledge varies. “A defendant’s knowing and willing participation in a conspiracy may be inferred from, for example, [his] presence at critical stages of the conspiracy that could not be explained by happenstance, . . . a lack of surprise when discussing the conspiracy with others, . . . [or] evidence that the defendant participated in conversations directly related to the substance of the conspiracy; possessed items important to the conspiracy; or received or expected to receive a share of the profits from the conspiracy.” United States v. Aleskerova, 300 F.3d 286, 293 (2d Cir. 2002) (citations omitted). Indeed, under the appropriate circumstances, “[a] defendant’s participation in a single transaction can suffice to sustain a charge of knowing

⁴ A defendant may also be found culpable under the conscious avoidance doctrine. Under such circumstances, a crime’s “knowledge element is established if the factfinder is persuaded that the defendant consciously avoided learning [a given] fact while aware of a high probability of its existence, unless the factfinder is persuaded that the defendant actually believed the contrary.” United States v. Finkelstein, 229 F.3d 90, 95 (2d Cir. 2000). “The rationale for imputing knowledge in such circumstances is that one who deliberately avoided knowing the wrongful nature of his conduct is as culpable as one who knew.” Id.

participation in an existing conspiracy.” United States v. Zabare, 871 F.2d 282, 287 (2d Cir. 1989); see also United States v. Murray, 618 F.2d 892, 903 (2d Cir. 1980).

B. Types of Conspiracies

Conspiracies come in myriad shapes and sizes: from a small conspiracy involving two people to achieve a limited end to a large one involving numerous participants and with an expansive scope. Similarly, a defendant may participate in a single conspiracy or multiple conspiracies. Most questions as to size and number are left to trial. Here, the Court addresses these issues only insofar as they inform whether and how the Government might ultimately prove the conspiracies alleged in the Indictment.

“Whether the government has proven the existence of the conspiracy charged in the indictment and each defendant’s membership in it, or, instead, has proven several independent conspiracies is a question of fact for a properly instructed jury.” United States v. Johansen, 56 F.3d 347, 350 (2d Cir. 1995); see also United States v. Barret, 824 F. Supp. 2d 419, 445 (E.D.N.Y. 2011) (citing cases); United States v. Ohle, 678 F. Supp. 2d 215, 222 (S.D.N.Y. 2010); United States v. Rajaratnam, 736 F. Supp. 2d 683 (S.D.N.Y. 2010) (citing cases). Where an indictment charges a single conspiracy and the evidence later shows multiple conspiracies, the court will only set aside a jury’s guilty verdict due to the variance if the defendant can show “substantial prejudice, i.e. that the evidence proving the conspiracies in which the defendant did not participate prejudiced the case against him in the conspiracy in which he was a party.” Johansen, 56 F.3d at 351 (emphasis in original).

1. Overview of Single Conspiracies

“[A]cts that could be charged as separate counts of an indictment may instead be charged in a single count if those acts could be characterized as part of a single continuing scheme.” United States v. Aracri, 968 F.2d 1512, 1518 (2d Cir. 1992) (internal quotation marks and citations omitted). In determining whether a single conspiracy involving many people exists, the question is whether there is a “mutual dependence” among the participants. Geibel, 369 F.3d at 692 (citation omitted); United States v. Williams, 205 F.3d 23, 33 (2d Cir. 2000). The Government must show that each alleged member of the conspiracy agreed to participate “in what he knew to be a collective venture directed towards a common goal.” United States v. Eppolito, 543 F.3d 25, 47 (2d Cir. 2008) (quoting United States v. Berger, 224 F.3d 107, 114 (2d Cir. 2000)); see also Geibel, 369 F.3d at 692 (explaining that when two participants do not mutually benefit from the other’s participation, a finding of a single conspiracy is less likely).

A “single conspiracy is not transformed into multiple conspiracies merely by virtue of the fact that it may involve two or more spheres or phases of operation, so long as there is sufficient proof of mutual dependence and assistance.” Geibel, 369 F.3d at 689 (quoting Berger, 224 F.3d at 114-15). Neither changing membership nor different time periods of participation by various coconspirators precludes the existence of a single conspiracy, “especially where the activity of a single person was ‘central to the involvement of all.’” Eppolito, 543 F.3d at 48 (quoting United States v. Langford, 990 F.2d 65, 70 (2d Cir. 1993) (citations omitted)); United States v.

Jones, 482 F.3d 60, 72 (2d Cir. 2006) (“Changes in membership, differences in time periods, and/or shifting emphases in the location of operations do not necessarily require a finding of more than one conspiracy.”).

The Second Circuit has outlined three “hypothetical avenues” for establishing a single conspiracy:

1. The scope of the agreement was broad enough to include activities by or for persons other than the small group of core conspirators;
2. The coconspirators reasonably foresaw, “as a necessary or natural consequence of the unlawful agreement,” the participation of others; or
3. “Actual awareness” of the participation of others.

Geibel, 369 F.3d at 690 (citing United States v. McDermott, 245 F.3d 133, 137-38 (2d Cir. 2001); United States v. Carpenter, 791 F.2d 1024, 1036 (2d Cir. 1986)).

Alternatively, a jury may find a single conspiracy provided “(1) that the scope of the criminal enterprise proven fits the pattern of the single conspiracy alleged in the indictment, and (2) that the defendant participated in the alleged enterprise with a consciousness as to its general nature and extent.” Eppolito, 543 F.3d at 48 (quoting United States v. Rosa, 11 F.3d 315, 340 (2d Cir. 1993) (internal citation omitted)).

2. Types of Single Conspiracies

Courts often conceptualize single conspiracies using either a “chain” or a “hub-and-spoke” metaphor. United States v. Borelli, 336 F.2d 376, 383 (2d Cir. 1964).

a) Chain conspiracies

A chain conspiracy refers to a situation in which there are numerous conspiring individuals, each of whom has a role in a “chain” that serves the conspiracy’s object. For example, in a narcotics conspiracy, a chain may be comprised of producers, exporters, wholesalers, middlemen, and dealers. The success of each “link” in the chain depends on the success of the others, even though each individual conspirator may play a role that is separated by great distance and time from the other individuals involved. Id.; United States v. Mallah, 503 F.2d 971, 984 (2d Cir. 1974); United States v. Agueci, 310 F.2d 817, 826 (2d Cir. 1962).⁵

For a chain conspiracy to exist, the ultimate purpose of the conspiracy must be to place the “forbidden commodity into the hands of the ultimate purchaser.” Agueci, 310 F.2d at 826 (citation omitted). This form of conspiracy “is dictated by a division of labor at the various functional levels.” Id. In Agueci, the Second Circuit found that “the mere fact that certain members of the conspiracy deal recurrently with only one or two other conspiracy members does not exclude a finding that they were bound by a single conspiracy.” Id. “An individual associating himself with a ‘chain’ conspiracy knows that it has a ‘scope’ and that for its success it requires an organization wider than may be disclosed by [one’s] personal participation.” Id. at 827. That is, to support a chain conspiracy, a participant must know that combined efforts are required. Id.

⁵ The extreme ends of such a conspiracy – for instance, numerous narcotics dealers who each obtain the narcotics they sell from a single wholesaler or middleman – may have elements of a hub-and-spoke conspiracy. Borelli, 336 F.2d at 383.

b) Hub-and-spoke conspiracies

In a hub-and-spoke (or “wheel”) conspiracy, one person typically acts as a central point while others act as “spokes” by virtue of their agreement with the central actor. See Kotteakos v. United States, 328 U.S. 750, 754-55 (1946). Put another way, in a hub-and-spoke conspiracy, “members of a ‘core’ group deal with a number of contacts who are analogized to the spokes of a wheel and are connected with each other only through the core conspirators.” United States v. Manarite, 448 F.2d 583, 589 (2d Cir. 1971).

To prove a single conspiracy in such a situation, the Government must show that there was a “rim” around the spokes, such that the “spokes” became coconspirators with each other. To do so, the Government must prove that “each defendant . . . participated in the conspiracy with the common goal or purpose of the other defendants.” United States v. Taggert, No. 09 Cr. 984 (BSJ), 2010 WL 532530, at *1 (S.D.N.Y. Feb. 11, 2010) (internal quotation marks and citation omitted).

In the absence of such a “rim,” the spokes are acting independently with the hub; while there may in fact be multiple separate conspiracies, there cannot be a single conspiracy. See Zabare, 871 F.2d at 287-88; see also Dickson v. Microsoft Corp., 309 F.3d 193, 203 (4th Cir. 2002) (“A rimless wheel conspiracy is one in which various defendants enter into separate agreements with a common defendant, but where the defendants have no connection with one another, other

than the common defendant's involvement in each transaction." (citing Kotteakos, 328 U.S. at 755)).

C. The Buyer-Seller Exception

Of course, not all narcotics transactions occur within a conspiracy. A conspiracy to distribute narcotics does not arise between a buyer and seller simply because they engage in a narcotics transaction. That is, the mere purchase and sale of drugs does not, without more, amount to a conspiracy to distribute narcotics. See, e.g., United States v. Parker, 554 F.3d 230, 234 (2d Cir. 2009) (explaining that the buyer-seller rule is a narrow one). "[I]n the typical buy-sell scenario, which involves a casual sale of small quantities of drugs, there is no evidence that the parties were aware of, or agreed to participate in, a larger conspiracy." United States v. Hawkins, 547 F.3d 66, 71-72 (2d Cir. 2008) (citations omitted); see also United States v. Mims, 92 F.3d 461, 465 (7th Cir. 1996) (clarifying that "a buyer-seller relationship alone is insufficient prove a conspiracy"); United States v. Medina, 944 F.2d 60, 65 (2d Cir. 1991); United States v. Valencia, 226 F. Supp. 2d 503, 510-11 (S.D.N.Y. 2002) (Chin, J.). "It is sometimes said that the buyer's agreement to buy from the seller and the seller's agreement to sell to the buyer cannot 'be the conspiracy to distribute, for it has no separate criminal object.'" Parker, 554 F.3d at 235 (quoting United States v. Wexler, 522 F.3d 194, 208 (2d Cir. 2008) (internal alterations omitted)).

When wholesale quantities are involved, however, the participants may be presumed to know that they are involved in a venture, the scope of which is larger

than the particular role of any individual. Murray, 618 F.2d at 902; see also Valencia, 226 F. Supp. 2d at 510-11.

D. The Role of Middlemen

In some cases involving narcotics trafficking, defendants are alleged to have acted as middlemen. Middlemen may be found to have conspired with a buyer, a seller, or both. United States v. Bey, 725 F.3d 643, 649 (7th Cir. 2013). “Evidence that the middleman had a clear stake in the seller’s sales is typically sufficient to permit the jury to infer the existence of an agreement with the seller.” Id. at 650; United States v. Colon, 549 F.3d 565, 568-70 (7th Cir. 2008) (citations omitted). There is no legal doctrine that defines a middleman as having a lesser role than other conspiracy members. Indeed, there is no legal reason why someone characterized as a middleman cannot be a powerful, motivating force behind a conspiracy.

III. DISCUSSION OF CONSPIRATORIAL AGREEMENT

The Indictment alleges that Ulbricht designed Silk Road specifically to enable users to anonymously sell and purchase narcotics and malicious software and to launder the resulting proceeds. On this motion to dismiss, the Court’s task is a narrow one – it is not concerned with whether the Government will have sufficient evidence to meet its burden of proof as to each element of the charged conspiracies at trial. Instead, the Court is concerned solely with whether the nature of the alleged conduct, if proven, legally constitutes the crimes charged, and

whether the defendant has had sufficient notice of the illegality of such conduct.

See D'Amelio, 683 F.3d at 418; Pagan, 721 F.2d at 27.

The defendant argues that Counts One and Three in the Indictment are legally insufficient for failure to allege a cognizable conspiratorial agreement. (Def.'s Reply at 2-3.) He does not make the same argument with regard to Count Four, but certain aspects of the issue apply to that Count as well.

The Court has set forth five questions that concern the potential existence of a conspiratorial agreement in this case. Each question is now taken up in turn.

Question One: Can there be a legally cognizable “agreement” between Ulbricht and one or more coconspirators to engage in narcotics trafficking, computer hacking, and money laundering by virtue of his and their conduct in relation to Silk Road? If so, what is the difference between what Ulbricht is alleged to have done and the conduct of designers and administrators of legitimate online marketplaces through which illegal transactions may nevertheless occur?

The “gist” of a conspiracy charge is that the minds of two or more people met – that they agreed in some manner to achieve an unlawful end. For the reasons explained below, the design and operation of Silk Road can result in a legally cognizable conspiracy.

According to the Indictment, Ulbricht purposefully and intentionally designed, created, and operated Silk Road to facilitate unlawful transactions. Silk Road was nothing more than code unless and until third parties agreed to use it. When third parties engaged in unlawful narcotics transactions on the site, however, Ulbricht's design and operation gave rise to potential conspiratorial conduct. The subsequent sale and purchase of unlawful narcotics and software on Silk Road may,

as a matter of law, constitute circumstantial evidence of an agreement to engage in such unlawful conduct. See United States v. Svoboda, 347 F.3d 471, 477 (2d Cir. 2003) (“A conspiracy need not be shown by proof of an explicit agreement but can be established by showing that the parties have a tacit understanding to carry out the prohibited conduct.”) (internal quotation marks and citation omitted); United States v. Miranda-Ortiz, 926 F.2d 172, 176 (2d Cir. 1991) (“The defendant’s participation in a single transaction can, on an appropriate record, suffice to sustain a charge of knowing participation in an existing conspiracy.”) (citations omitted); United States v. Roldan-Zapata, 916 F.2d 795, 803 (2d Cir. 1990) (affirming the conviction of a defendant based on his admitted “involvement in narcotics dealing and [] a pattern of trafficking,” combined with other circumstantial evidence). Additionally, the Indictment charges that Ulbricht obtained significant monetary benefit in the form of commissions in exchange for the services he provided via Silk Road. He had the capacity to shut down the site at any point; he did not do so. The defendant allegedly used violence in order to protect the site and the proceeds it generated.

Ulbricht argues that his conduct was merely as a facilitator – just like eBay, Amazon, or similar websites.⁶ Even were the Court to accept this characterization of the Indictment, there is no legal prohibition against such criminal conspiracy charges provided that the defendant possesses (as the Indictment alleges here) the requisite intent to join with others in unlawful activity.

⁶ While the defendant refers to Amazon and eBay as similar, there are certain important factual differences between them. For instance, Amazon has warehouses which may fulfill certain orders. Silk Road is not alleged to have ever possessed products for fulfillment.

Moreover, in this case, the charges in the Indictment go further than Ulbricht acknowledges. The Indictment alleges that Ulbricht engaged in conduct that makes Silk Road different from other websites that provide a platform for individual buyers and sellers to connect and engage in transactions: Silk Road was specifically and intentionally designed for the purpose of facilitating unlawful transactions. The Indictment does not allege that Ulbricht is criminally liable simply because he is alleged to have launched a website that was – unknown to and unplanned by him – used for illicit transactions. If that were ultimately the case, he would lack the mens rea for criminal liability. Rather, Ulbricht is alleged to have knowingly and intentionally constructed and operated an expansive black market for selling and purchasing narcotics and malicious software and for laundering money. This separates Ulbricht's alleged conduct from the mass of others whose websites may – without their planning or expectation – be used for unlawful purposes.

It is certainly true that the principles set forth in this Opinion would apply to other third parties that engaged in conduct similar to that alleged here; but it is also true that the essential elements for (by way of example) a narcotics conspiracy would be absent if a website operator did not intend to join with another to distribute (for instance) narcotics. Thus, administrators of an eBay-like site who intend for buyers and sellers to engage in lawful transactions are unlikely to have the necessary intent to be conspirators.

Question Two: As a matter of law, who are Ulbricht's alleged coconspirators and potential coconspirators? That is, whose "minds" can have "met" with Ulbricht's in a conspiratorial agreement? What sort of conspiratorial structure frames the allegations: one large single conspiracy or multiple small conspiracies?

The Indictment charges a single conspiracy in each of Counts One, Three, and Four. Ulbricht's alleged coconspirators are "several thousand drug dealers and other unlawful vendors." (Ind. ¶ 2.) If these individuals possessed the requisite intent, there is no legal reason they could not be members of the conspiracies charged in the Indictment.

A more complicated question is whether any or all of Ulbricht's coconspirators also conspired with each other, so as to create a potentially vast single conspiracy. In this regard, the Government may argue that the conspiracy was a "chain" conspiracy or that it was a "hub-and-spoke" conspiracy (in which case it would be necessary for the Government to prove the existence of a "rim"). Each approach has its own complexities regarding the (largely anonymous) inter-conspirator relationships on the Internet. While this is not an issue the Government need address at this stage, see D'Amelio, 683 F.3d at 418; Pagan, 721 F.2d at 27, it will be relevant as the proof comes in at trial.

Of course, ultimately, the form of the conspiracy is not as important as a determination that at least one other person joined in the alleged conspiratorial agreement with Ulbricht. With respect to the narcotics conspiracy charge, to prove that the drug types and quantities alleged in the Indictment were the objects of a conspiracy Ulbricht knowingly and intentionally joined, the Government will have

to prove either a single such conspiratorial agreement or an aggregation of conspiracies.⁷ While, as explained, proof of participants' intent could involve numerous complexities, these are issues for trial and not for this stage.

Question Three: As a matter of law, when could any particular agreement have occurred between Ulbricht and his alleged coconspirators? Need each coconspirator's mind have met simultaneously with Ulbricht's? With the minds of other coconspirators? That is, if Ulbricht launched Silk Road on Day 1, can he be said, as a matter of law, to have entered into an agreement with the user who joins on Day 300? Did Ulbricht, simply by designing and launching Silk Road, make an enduring showing of intent?

The issue here is one of temporal proximity. For the sake of illustration, assume that Ulbricht launched Silk Road on Day 1. A narcotics trafficker posted illegal drugs on the site on Day 2 and another posted on Day 300. Does the Day 2 trafficker enter into a conspiratorial agreement with Ulbricht on Day 2 and the Day 300 trafficker on Day 300? More importantly, can Ulbricht have agreed to a conspiracy on Day 1 with an alleged coconspirator who, at that time, had not even contemplated engaging in an unlawful transaction, and determined to do so only on, for example, Day 300?⁸

One way of thinking about this issue is to look to the basic contract principles of offer and acceptance. On Day 1, according to the Indictment, Ulbricht "offers" to work with others to traffic illegal narcotics, engage in computer hacking, and launder money. He makes this offer by creating and launching a website specifically designed and intended for such unlawful purposes. Ulbricht's continued

⁷ There are additional complexities when other factors such as differences in types of drugs, temporal proximity, and the roles of coconspirators are taken into account. These too are questions for trial.

⁸ As suggested in connection with Question One, another question is whether the Day 2 and the Day 300 trafficker could ever enter into a conspiracy with each other.

operation of the site evinces an enduring intent to be bound with those who “accept” his offer and utilize the site for its intended purpose. It is as though the defendant allegedly posted a sign on a (worldwide) bulletin board that said: “I have created an anonymous, untraceable way to traffic narcotics, unlawfully access computers, and launder money. You can use the platform as much as you would like, provided you pay me a percentage of your profits and adhere to my other terms of service.” Each time someone “signs up” and agrees to Ulbricht’s standing offer, it is possible that, as a matter of law, he or she may become a coconspirator.

To put this another way, the fact that Ulbricht’s active participation may occur at a different point in time from the agreement by his coconspirator(s) does not render the conspiracy charges legally defective. Courts have long recognized that members of a conspiracy may be well removed from one another in time. See, e.g., Borelli, 336 F.3d at 383-84. The law has similarly recognized that coconspirators need not have been present at the outset of a conspiracy in order to be found criminally responsible; they may join at some later point. See, e.g., id.; United States v. Nersesian, 824 F.2d 1294, 1303 (2d Cir. 1987). A lapse in time – in particular in a narcotics chain conspiracy, where a manufacturer creates a substance months prior to a wholesale or retailer selling it, not knowing (and perhaps never knowing) who, precisely, will ultimately distribute it – does not ipso facto render the alleged conspiracy defective as a matter of law. Similarly, the law long ago accepted that coconspirators may not know each other’s identity. Blumenthal, 332 U.S. at 557-58. The alleged conduct here is another step along

this established path. The common law anticipates and accepts application to new fact patterns.

Question Four: As a matter of law, is it legally necessary, or factually possible, to pinpoint how the agreement between Ulbricht and his coconspirators was made? In this regard, does the law recognize a conspiratorial agreement effected by an end user interacting with computer software, or do two human minds need to be simultaneously involved at the moment of agreement?

Another issue raised by this case is whether a conspiratorial agreement may be effected through what are primarily automated, pre-programmed processes. This is not a situation in which Ulbricht is alleged to have himself approved or had a hand in each individual transaction that occurred on Silk Road during the nearly three-year period covered by the Indictment. Instead, he wrote (or had others write) certain code that automated the transaction. Yet, as a legal matter, this automation does not preclude the formation of a conspiratorial agreement. Indeed, whether an agreement occurs electronically or otherwise is of no particular legal relevance.

It is well-established that the act of agreeing, or having a meeting of the minds, may be proven through circumstantial evidence. United States v. Rodriguez, 394 F.3d 539, 544 (2d Cir. 2004). There is no requirement that any words be exchanged at all in this regard, so long as the coconspirators have taken knowing and intentional actions to work together in some mutually dependent way to achieve the unlawful object. See Diaz, 176 F.3d at 97. In this regard, “how” any agreement between two coconspirators may be proven at trial depends solely on the evidence presented. See Anderson, 747 F.3d at 61. Though automation may enable

a particular transaction to take place, it is the individuals behind the transaction that take the necessary affirmative steps to utilize that automation. It is quite clear, for example, that if there were an automated telephone line that offered others the opportunity to gather together to engage in narcotics trafficking by pressing “1,” this would surely be powerful evidence of the button-pusher’s agreement to enter the conspiracy. Automation is effected through a human design; here, Ulbricht is alleged to have been the designer of Silk Road, and as a matter of law, that is sufficient.⁹

Question Five: If Ulbricht was merely the facilitator of simple buy-sell transactions, does the “buyer-seller” rule apply, which in certain circumstances would preclude a finding of a criminal conspiracy?

Ulbricht is not alleged to have been a buyer or seller of narcotics or malicious software. Following the design and launch of Silk Road, his role is alleged to have been that of an intermediary. While it will be for the Government to prove the defendant’s specific role vis-à-vis his alleged coconspirators at trial, one issue that may arise is whether the participation of an intermediary could itself (all other factors remaining the same) eliminate the applicability of the “buyer-seller” rule to a given narcotics transaction involving a small quantities bought and sold on the site. In other words, can mere buyers and sellers of small quantities of narcotics –

⁹ Acceptance of the terms of service, the payment of commissions, placing Bitcoins in escrow, and other intervening steps involved in the transactions that allegedly occurred on Silk Road could, in this regard, perhaps constitute evidence that Silk Road users entered into an unlawful conspiracy with Ulbricht (and others). It will be for the Government to prove which conduct in fact occurred, and how, at trial. See, e.g., United States v. Lorenzo, 534 F.3d 153, 161 (2d Cir. 2008) (noting that “a defendant’s knowing agreement to join a conspiracy must, more often than not, be proven through circumstantial evidence” and there are “cases where the circumstantial evidence considered in the aggregate demonstrates a pattern of behavior from which a rational jury could infer knowing participation”) (internal quotation marks and citations omitted).

who might not otherwise legally be coconspirators if the transactions occurred in the brick-and-mortar world – become conspirators due to the interposition of a website or website administrator? Plainly, the level of involvement in any transaction by the website would be relevant. And there are certainly instances in which the participation of three participants renders what might otherwise be a simple purchase or sale into a conspiracy. See, e.g., Medina, 944 F.2d at 65. There can be no hard and fast rule that answers this question – its ongoing relevance will depend on how the proof comes in at trial.

IV. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT ONE

The defendant argues that while Count One charges him with conspiracy to possess with intent to distribute various controlled substances (i.e., heroin, cocaine, and LSD), Ulbricht is not alleged to have himself been a buyer, seller, or possessor of any of the controlled substances at any point during the conspiracy. (Def.'s Mem. at 9.)¹⁰ And, by alleging only that he designed, launched, and operated a website, the Government has not described the conduct of a coconspirator in a narcotics conspiracy. (Id. at 10.) At most, argues the defendant, the Government has alleged that Ulbricht has acted in a manner akin to that of a landlord, and the law is clear that merely acting as a landlord to drug dealers is itself insufficient to make one a coconspirator in narcotics transactions occurring on the premises. (Id. at 10-13.)

¹⁰ The defendant argues that imposing criminal liability for Ulbricht's alleged conduct would constitute "an unprecedented and extraordinarily expansive theory of vicarious liability." (Def.'s Mem. at 1.) This is incorrect. The Government alleges direct – not indirect – participation in the crimes charged. The law of conspiracy (see supra) has long recognized the many varied roles participants may play.

According to the defendant, the statutory violation that occurs when one “knows” his premises have been or are being used for unlawful activities is either civil forfeiture pursuant to 21 U.S.C. § 881(a)(7) or the “crack house” statute passed by Congress in 1986, 21 U.S.C. § 856. (*Id.* at 11.) The statute outlaws the knowing operation, management, or leasing of premises where crack cocaine and other illicit drugs are manufactured, distributed, or used. 21 U.S.C. § 856(a). The defendant argues that because Silk Road is, at most, a type of “premise” for the distribution of narcotics, he should have been charged under either §§ 881 or 856, not with a narcotics conspiracy under §§ 841 or 846. (Def.’s Mem. at 12.) Alternatively, the defendant argues that his conduct should be analogized to that of a “steerer” in a drug transaction, not a coconspirator.¹¹ (*Id.* at 13.)

The defendant’s arguments stem from an incorrect set of assumptions: first, that conduct may constitute only one type of statutory violation or must seek civil forfeiture relief to the exclusion of criminal liability. While the defendant may be chargeable with a violation of the “crack house” statute, he may well be chargeable with other crimes as well. How a defendant is charged is within the discretion of the prosecution. *United States v. Batchelder*, 442 U.S. 114, 124 (1974); *United States v. Stanley*, 928 F.2d 575, 580-81 (2d Cir. 1991). Additionally, no legal principle prevents the Government from seeking to impose civil forfeiture along

¹¹ Conduct demonstrating that an individual merely helps a willing buyer find a willing seller, and is therefore acting as a mere “steerer,” is, without more, insufficient to establish a conspiratorial agreement. See *United States v. Tyler*, 758 F.2d 66, 69 (2d Cir. 1985); *United States v. Hysohion*, 448 F.2d 343, 347 (2d Cir. 1971). However, when a defendant steers buyers to sellers as part of a continuing business arrangement, or is otherwise the “conduit” for the transaction, criminal liability may attach. See, e.g., *United States v. Vargas-Nunez*, 115 F. App’x 494, 495-96 (2d Cir. 2004) (discussing defendant’s purported role as a “steerer” in the sentencing context); *United States v. Esadaille*, 769 F.2d 104, 108-09 (2d Cir. 1985).

with criminal liability – and it is done all the time. Here, in addition to criminal conspiracy, the Government has separately sought civil forfeiture under 18 U.S.C. § 982(a)(1)(A), see Case No. 13-cv-6919 (JPO), as well as in the Indictment itself. (Ind. ¶¶ 22-24.)

Nor is the Government limited to charging a violation of the “crack house” statute simply because facilities (whether electronic or physical) are alleged to be at issue. It may well be that the Government could have charged such a violation – but that does not mean it is necessarily limited to that. When conduct allows for multiple charges – as is alleged here – a court does not second guess which charge is chosen. See Stanley, 928 F.2d at 581.

In this case, the Government has alleged that more is in play than the conduct which is encompassed by the “crack house” statute, or in the context of a non-conspiratorial “steerer.” The Government has alleged that the defendant set up a platform for illicit drug transactions designed with the specific needs of his buyers and sellers in mind. Thus, Ulbricht’s alleged conduct is not analogous to an individual who merely steers buyers to sellers; rather, he has provided the marketing mechanism, the procedures for the sale, and facilities for the actual exchange. He is alleged to know that his facilities would be used for illicit purposes and, in fact, that he designed and operated them for that purpose. In this regard, he is alleged to have “intentionally and knowingly” “combine[d], conspire[d], confederate[d], and agree[d]” with others to violate United States criminal law. (Ind. ¶ 5.) Ulbricht’s alleged conduct is more akin to a builder who designs a house

complete with secret entrances and exits and specially designed traps to stash drugs and money; this is not an ordinary dwelling, but a drug dealer's "dream house."

The defendant argues that Count One must be dismissed because he is not alleged to have distributed or possessed any controlled substance. No such allegation is required. The law of conspiracy recognizes that members of a conspiracy may serve different roles. See United States v. Santos, 541 F.3d 63, 72 (2d Cir. 2008); United States v. Garcia-Torres, 280 F.3d 1, 4 (1st Cir. 2002) ("[A] drug conspiracy may involve ancillary functions (e.g., accounting, communications, strong-arm enforcement), and one who joined with drug dealers to perform one of those functions could be deemed a drug conspirator."); United States v. Burgos, 94 F.3d 849, 859 (4th Cir. 1996) (explaining that "a variety of conduct, apart from selling narcotics, can constitute participation in a conspiracy sufficient to sustain a conviction"). There are numerous examples of participants in narcotics conspiracies who did not themselves intend physically to possess or distribute narcotics; an individual may have been a middleman, the protective muscle, the lookout, a decoy, a person with information or contacts, etc. – in any event, the individual may nonetheless be found to be part of the conspiratorial enterprise. See, e.g., United States v. Pitre, 960 F.2d 1112, 1121-22 (2d Cir. 1992) (affirming conviction of defendant where evidence revealed that defendant was acting as a lookout and was carrying a beeper to facilitate narcotics transactions); United States v. Barnes, 604 F.2d 121, 161 (2d Cir. 1979) (explaining that defendant's "actions as a 'middleman'

in three transactions . . . constituted sufficient evidence of knowledgeable participation in the operations of the conspiracy with an expectation of benefiting from them”).

Finally, Ulbricht expresses surprise that the Government states in its opposition brief that by operating Silk Road, Ulbricht “entered into a joint venture with thousands of drug dealers around the world to distribute drugs online.” (Gov’t Opp’n at 9.) This characterization of the defendant’s alleged conduct is substantively no different than the allegation in the Indictment that several thousand drug dealers and hundreds of thousands of buyers used the site. (Ind. ¶ 2.) However, the fact that such an allegation falls within a reasonable reading of the Indictment is a separate question from whether the Government will in fact be able to prove one joint venture or single conspiracy at trial. As noted above, proving that thousands of dealers were in a single joint venture together with each other as well as with Ulbricht presents numerous challenges due to temporal and other considerations.

Count One adequately alleges both the elements of a narcotics conspiracy as well as the conduct alleged underlying the charges; the defendant is sufficiently on notice of the charges against him so as to preclude later issues of double jeopardy.

V. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT TWO

Count Two alleges that the defendant’s conduct amounted to participation in a CCE in violation of 21 U.S.C. § 848(a). As an initial matter, a “continuing criminal enterprise” requires a determination that a provision of the Controlled

Substances Act has been violated. Ulbricht's liability under this provision is therefore premised on a conviction on Count One, the narcotics conspiracy. Next, the trier of fact will need to determine if the violation of the Controlled Substances Act (that is, the narcotics conspiracy) was one of a series of such violations. 21 U.S.C. § 848(c). The law has defined "a series" as constituting at least three violations. See United States v. Flaharty, 295 F.3d 182, 197 (2d Cir. 2002) (explaining that the Second Circuit has "interpreted 'a continuing series' to mean at least three felony drug violations committed over a definite period of time") (citation omitted).

Finally, Ulbricht must have undertaken this series of violations in concert with five or more persons with respect to whom he occupied a position of organizer, supervisor, or manager, and he must have obtained substantial income or resources from such conduct. 21 U.S.C. § 848(c).

Ulbricht argues (1) that the Indictment fails to allege sufficiently that he occupied the requisite position vis-à-vis five persons, and that, in this regard, the Government has failed to allege (and could not allege) that he acted in concert with the buyers and sellers on the site; and (2) that the Indictment fails to enumerate a predicate series of violations. (Def.'s Mem. at 13.) Ulbricht is correct that Count Two does not explicitly identify the five individuals whom he is alleged to have organized, managed, or supervised. He similarly is correct that the Government has not specified the dates, times, or transaction details of the "series" of violations. Nonetheless, the allegations of the Indictment are sufficient. Paragraphs 11 and 12

recite the necessary statutory language to charge a continuing criminal enterprise; and the allegations set forth in Paragraphs 1 through 4 (which are incorporated by reference into Count Two) set forth necessary factual detail.

The law is clear that the Indictment should be read to incorporate those facts that while not explicitly stated, are implicit in the existing allegations. United States v. Silverman, 430 F.2d 106, 111 (2d Cir. 1970). In terms of the facts alleged, here the Indictment asserts that “several thousand drug dealers” and “well over a hundred thousand buyers worldwide” used the site. (Ind. ¶ 2.) With the “assistance of various paid employees whom he managed and supervised” (Ind. ¶ 3), Ulbricht is alleged to have controlled all aspects of Silk Road.

From these facts, the Government argues that by owning, operating, and controlling all aspects of the operation of the site (Ind. ¶¶ 2-3), Ulbricht occupied the necessary position as organizer, manager, or supervisor of the “vendors selling drugs on the site.” (Gov’t Opp’n at 15.) Ulbricht is alleged not only to have designed the online structure which enabled and allowed transactions, but, in controlling all aspects of its operations, to have set the rules the vendors and buyers had to follow, policed accounts for rule violations, determined commission rates, and taken commissions on every transaction. In addition, Ulbricht allegedly oversaw the efforts of others who assisted him in the administration and operation of the site. Thus, the Government contends that it has set forth sufficient allegations of Ulbricht’s occupying the requisite position as organizer, manager, or supervisor. This Court agrees.

The “continuing criminal enterprise” statute is broadly worded – and broadly intends to encompass those who are leaders of a criminal enterprise which engages in a series of violations of the narcotics laws. See United States v. Scarpa, 913 F.2d 993, 1007 (2d Cir. 1990) (explaining that the operative words in the statute – “organize,” “manage,” and “supervise” – should be given their ordinary, everyday meanings) (citation omitted). That is precisely what the Government has alleged here. The statute does not require that Ulbricht have had a particular form of contact with each of the five or more individuals that he purportedly organized, managed, or supervised. United States v. Cruz, 785 F.2d 399, 407 (2d Cir. 1986); see also United States v. Joyner, 201 F.3d 61, 71 (2d Cir. 2000) (affirming a conviction where a defendant sold to otherwise independent resellers but required them, *inter alia*, to obtain permission from him to discount their prices and sell in certain locations so that he could monitor their activity).

Here, Ulbricht also argues that he cannot have had the requisite role with respect to individuals who merely assisted him with administering the site. (Def.’s Mem. at 15.) This, however, is a question of fact, not law. Whether those who assisted Ulbricht had the requisite mental state to be acting “in concert” with him is a factual inquiry. If those who assisted Ulbricht had the requisite state of mind, there is no legal reason why they could not constitute the necessary group of “five or more.”

Ulbricht argues that he cannot separately have had the requisite position vis-à-vis the buyers and sellers, as they are referred to as having “used” the site, and

not, for instance, as employees. (Ind. ¶ 2).¹² In this regard, the defendant argues that, at most, his alleged conduct amounted to his being a conduit or facilitator for those engaging in illegal activity. This is, again, a factual argument cast as a legal one. There is no legal reason why one who designs, launches, and operates a website or any facility for the specific purpose of facilitating narcotics transactions that he knows will occur, and acts as the rule-maker of the site – determining the terms and conditions pursuant to which the sellers are allowed to sell and the buyers are allowed to buy, taking disciplinary actions to protect that enterprise (allegedly including murder-for-hire on more than one occasion) – could not be found to occupy the requisite position. See Cruz, 785 F.2d at 407 (no distinction between salaried employees and independent contractors). In this regard, the allegations amount to Ulbricht acting as a sort of “godfather” – determining the territory, the actions which may be undertaken, and the commissions he will retain; disciplining others to stay in line; and generally casting himself as a leader – and not a service provider. Again, whether the Government can prove the facts alleged is not a question at this stage of the proceedings.

Ulbricht also argues that Count Two fails to allege the specific series of continuing violations. The Indictment does allege thousands of separate transactions. (Ind. ¶ 2.) The type of specificity the defendant urges is not required. Flaharty, 295 F.3d at 197 (granular particularity not required). The Government need not enumerate the specific who, when, or where of the series in the

¹² Ulbricht also argues that he cannot have engaged in a CCE merely by aiding and abetting drug dealers. This is not, however, the Government’s allegation. The Government contends that Ulbricht was the leader of a vast criminal enterprise.

Indictment; it is enough that it is clear from the face of the Indictment that he is alleged to have engaged in a continuing series of narcotics conspiracies punishable under 21 U.S.C. §§ 841, 843, 846. (Ind. ¶ 12). See United States v. Simmons, 923 F.2d 934, 952 (2d Cir. 1991).

VI. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT THREE

The defendant argues that the allegations in the Indictment are insufficient to support the type of conduct covered by a computer hacking conspiracy in 18 U.S.C. § 1030 (the “Computer Fraud and Abuse Act”). (Def.’s Mem. at 21.) According to the defendant, the allegations are “only that the Silk Road website ‘provided a platform for the [exchange] of malicious software.’” (Id. (quoting a portion of the Indictment at ¶¶ 15-16).)

The Indictment in fact alleges more. It alleges that “Silk Road . . . provided a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such products.” (Ind. ¶ 14.) It also alleges that the defendant conspired with others to “intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for commercial advantage and private financial gain.” (Ind. ¶ 16.)

The defendant correctly states that to establish a violation of 18 U.S.C. §1030(a)(2)(C) requires “proof that the defendant intentionally accessed information from a protected computer.” United States v. Willis, 476 F.3d 1121, 1125 (10th Cir.

2007). However, the defendant incorrectly extends this to the requirements for sufficiently alleging a computer hacking conspiracy. At this stage, such a claim requires not proof – as the defendant argues (see Def.’s Mem. at 22) – but rather, only allegations that the defendant agreed with another to “(1) intentionally access[] a computer, (2) without authorization . . . (3) and thereby obtain[] information.” Willis, 476 F.3d at 1125. As with any conspiracy, the actual success or failure of the venture is irrelevant. See United States v. Perry, 643 F.2d 38, 46 (2d Cir. 1981) (“It is unnecessary to show that the conspiracy actually aided any particular sale of heroin since a conspiracy can be found though its object has not been achieved.”).

It is, of course, axiomatic – as set forth at length above – that to charge a conspiracy the Government must allege that two or more people agreed to achieve an unlawful end. See Stavroulakis, 952 F.2d at 690. Each conspirator must knowingly and intentionally enter the conspiracy, Torres, 604 F.3d at 66, though it is common for coconspirators to have different roles. See, e.g., United States v. Sanchez, 925 F. Supp. 1004, 1013 (S.D.N.Y. 1996) (“There are many roles in a conspiracy.”).

The defendant argues that the Government’s charge must fail as it relies upon a concept of “transferred intent” – that is, that Ulbricht himself is not alleged to have had the intent to obtain unauthorized access, but only to have conspired with another who did. (Def.’s Reply at 13.) According to Ulbricht, he could not know the buyer’s intent. (Id.)

As an initial matter, the law of conspiracy does not require that both participants intend to access a computer – but they must both intend that one of them will. Questions as to how the Government will prove its case as to the buyer's intent are reserved for trial.¹³

Ulbricht also argues that the statutory term “access without authorization” is undefined. (Def.'s Mem. at 39-41 (discussing § 1030(a)(2)(C).) Describing the 1996 amendments to the statute and the addition of the term “any” to unauthorized access of computers over the Internet, the defendant argues that the “ubiquitous use of computers, smartphones, tablets, or any other Internet-enabled device in today's world” places special emphasis on the meaning of the word “authorization” and may criminalize a broad amount of routine Internet activity. (*Id.* at 41.) The Government counters this argument only in a footnote. (Gov't Opp'n at 31 n.10.)

The defendant's argument is misplaced, or at least premature. The term “authorization” has a plain and ordinary meaning and requires no special construction. That the statute may implicate a broad swath of conduct is an issue for Congress. Whether this issue has any special significance can only be determined at trial. That is, whether Ulbricht's and his coconspirators' alleged conduct falls into the suggested grey area must await the Government's proof.

¹³ The defendant's arguments that potentially lawful uses of malicious software also fail. There are numerous examples of lawful products put to unlawful use, resulting in criminal liability. *See, e.g., United States v. Zambrano*, 776 F.2d 1091, 1092, 1096 (2d Cir. 1985); *United States v. Orozco-Prada*, 732 F.2d 1076, 1080 (2d Cir. 1984); *Perry*, 643 F.2d at 44.

VII. THE “KITCHEN SINK” ARGUMENTS

Ulbricht also alleges that since his alleged conduct in Counts One, Two, and Three has never before been found to constitute the crimes charged, a variety of legal principles preclude criminal liability. Those principles include the rule of lenity, the doctrine of constitutional avoidance, void-for-vagueness, and overbreadth. In addition, the defendant argues that the presence of a civil immunity statute for online providers indicates congressional “support for a free-wheeling [I]nternet, including one in which providers or users of interactive computer services can operate without fear of civil liability for the content posted by others.” (Def.’s Mem. at 28.) These arguments do not preclude the criminal charges here.

As an initial matter, as set forth above, the conduct charged fits within existing law. It is certainly true that case law to date has not been applied to the type of conduct that forms the basis for the Government’s charges¹⁴ – but that is not fatal. Throughout the history of the common law system there have been times when laws are applied to new scenarios. At each new stage there were undoubtedly those who questioned the flexibility of the law. But when the principles underlying a law are consistent and clear, they may accommodate new fact patterns. See Williams v. Taylor, 529 U.S. 362, 384-85 (2000) (Opinion of Stevens, J.) (“[R]ules of law often develop incrementally as earlier decisions are applied to new factual situations.”); see also, e.g., ABC, Inc. v. Aereo, Inc., – U.S. – , 2014 WL 2864485, at

¹⁴ The Government argues that a conspiracy and CCE have previously been charged in the context of online marketplaces. (Gov’t Mem. at 30.) Those cases have entirely different facts from those alleged here.

*10 (2014) (applying copyright laws customarily imposed upon cable companies to a new type of distributor). The fact that a particular defendant is the first to be prosecuted for novel conduct under a pre-existing statutory scheme does not ipso facto mean that the statute is ambiguous or vague or that he has been deprived of constitutionally appropriate notice.

The defendant's Kitchen Sink arguments are also premised on a view of his alleged conduct as being sufficiently common – i.e., that he is doing nothing more than that done by other designers and operators of online marketplaces – that he could not have known or been on notice of its illegality.

The Court disagrees. Again, on a motion to dismiss an indictment, the Court accepts as true the Government's allegations; whether and how those allegations can be proven is not a question for this stage in the proceedings.

A. The Rule of Lenity and the Doctrine of Constitutional Avoidance

The defendant's arguments with respect to the rule of lenity and the doctrine of constitutional avoidance are based on the incorrect premise that the statutes under which he has been charged in Counts One, Two, and Three are ambiguous when applied to his alleged conduct.

The rule of lenity provides that when a criminal statute is susceptible to two different interpretations – one more and one less favorable to the defendant – “leniency” requires that the court read it in the manner more favorable. See Rewis v. United States, 401 U.S. 808, 812 (1971); United States v. Ford, 435 F.3d 204, 211 (2d Cir. 2006) (explaining that “restraint must be exercised in determining the

breadth of conduct prohibited by a federal criminal statute out of concerns regarding both the prerogatives of Congress and the need to give fair warning to those whose conduct is affected”).

The rule of lenity is a principle of statutory construction: it comes into play only if and when there is ambiguity. United States v. Litchfield, 986 F.2d 21, 22 (2d Cir. 1993). It should not be viewed as a general principle requiring that clear statutes be applied in a lenient manner. Callanan v. United States, 364 U.S. 587, 596 (1961) (explaining that the rule of lenity, “as is true of any guide to statutory construction, only serves as an aid for resolving an ambiguity; it is not to be used to beget one”).

In Skilling v. United States, 561 U.S. 358 (2010), the Court addressed the type of conduct encompassed by the ambiguous term “honest services.” The Court reiterated the principle that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity,” and refused to agree with the Government’s broad interpretation of the statute. Id. at 410. Instead, the Court limited its coverage to bribery and kickback schemes. Id. at 412. The Court noted that if “Congress desires to go further . . . it must speak more clearly than it has.” Id. at 411.

Here, with regard to Counts One and Two, the defendant does not allege that a word or phrase in a statute requires construction or is susceptible to more than

one interpretation.¹⁵ Instead, he argues that even if the elements of, for instance, a narcotics conspiracy are well known, his particular conduct in designing and operating the website does not clearly fall within what the statute is intended to cover. The Court disagrees.

Sections 841 and 846 are intended to cover conduct in which two or more people conspire to distribute or possess with the intent to distribute narcotics. If the Government can prove at trial that Ulbricht has the requisite intent, then these statutory provisions clearly prohibit his conduct. These statutory provisions do not, for instance, require that only one type of communication method be used between coconspirators (for instance, cellular telephone versus the Internet); they do not prescribe what the various roles of coconspirators must be or are limited to; and they have been applied in the past to individuals alleged to be middlemen in drug transactions. See generally Pitre, 960 F.2d at 1121-23. Here, there is no statutory ambiguity and thus no basis for application of the rule of lenity.

The doctrine of constitutional avoidance provides that when a “statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court’s] duty is to accept the latter.” United States ex rel. Attorney General v. Del. & Hudson Co., 213 U.S. 366, 408 (1909); see also Jones v. United States, 526 U.S. 227, 239-40 (1999); Triestman v. United States, 124 F.3d 361, 377 (2d Cir. 1997).

¹⁵ As discussed supra, the defendant does argue ambiguity with regard to aspects of § 1030; as the Court has stated, whether that alleged ambiguity (or really, breadth) plays any role here is a question for trial.

This doctrine is inapplicable for the same reason as the rule of lenity: there is no ambiguity; the Court is not struggling with dueling interpretations as to whether the alleged conduct, if proven, would be covered. Thus, there are no grave constitutional issues on either side of this question.

B. Void-for-Vagueness and Constitutional Overbreadth

The defendant also argues that the statutes, as applied to his conduct in particular, are void on the basis that they are either unconstitutionally vague or overbroad. (Def.'s Mem. at 32-38.) The Court disagrees.

The void-for-vagueness doctrine is inapplicable. It addresses concerns regarding (1) fair notice and (2) arbitrary and discriminatory prosecutions. Skilling, 561 U.S. at 412 (citation omitted). To avoid a vagueness challenge, a statute must define a criminal offense in a manner that ordinary people must understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Id. at 402-03. The question, in short, is whether an ordinary person would know that engaging in the challenged conduct could give rise to the type of criminal liability charged.

The Government argues that this prosecution is not particularly novel. “[B]oth the narcotics conspiracy statute and continuing criminal enterprise statute have specifically been applied in a previous prosecution of defendants involved in operating online marketplaces for illegal drugs.” (Gov’t Opp’n at 30.) “[T]he computer hacking statute has previously been applied to persons involved in providing online services used by others to distribute malicious software.” (Id.) The

citations by the Government in support of these assertions are, however, merely to indictments. (*Id.*) And neither case has yet resulted in a published decision which could reasonably have provided notice to the defendant, or which demonstrates an ineffectual legal challenge.

As the Supreme Court has recognized, however, “due process requirements are not designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.” United States v. Lanier, 520 U.S. 259, 271 (1997) (internal quotation marks and citations omitted). Here, the charged conduct is not merely designing some benign marketplace for bath towels. The conduct is alleged to be specific and intentional conduct to join with narcotics traffickers or computer hackers to help them sell illegal drugs or hack into computers, and to be involved in enforcing rules (including using murder-for-hire) regarding such sales and taking commissions. No person of ordinary intelligence could believe that such conduct is somehow legal. Indeed, no reasonable person could assume that such conduct is in any way equivalent to designing and running eBay, for example. There is nothing vague about the application of the statute to the conduct charged.

Ulbricht also argues that his alleged conduct also constitutes protected free speech and that the imposition of criminal liability would be overbroad as applied. (Def.’s Mem. at 35-38.) This argument stems from an incorrect premise as to the nature of the criminal charges here.

The defendant does not explain how such conduct could amount to protected speech; even if this Court were to agree that such conduct has a speech element, the law is clear that speech which is part of a crime is not somehow immunized. See United States v. Rahman, 189 F.3d 88, 116-17 (2d Cir. 1999). For instance, no one would doubt that a bank robber's statement to a teller – “This is a stick up” – is not protected speech.

The thrust of the defendant's overbreadth argument appears to be similar to his vagueness, constitutional avoidance, and rule of lenity claims. All are premised in part on the incorrect view that the challenged conduct occurs on a regular basis by many people, that therefore enforcing these criminal statutes as to Ulbricht amounts to arbitrary enforcement and that the umbrella or tent of the statutes would be stretched beyond reason in order to encompass the alleged conduct.

For all of the reasons set forth above, this is incorrect.

C. Civil Immunity for Online Service Providers

The defendant argues that the existence of a civil statute for certain types of immunity for online service providers expresses a congressional intent to immunize conduct akin to that in which Ulbricht is alleged to have engaged. This Court disagrees. Even a quick reading of the statute makes it clear that it is not intended to apply to the type of intentional and criminal acts alleged to have occurred here. See 47 U.S.C. § 230. It is inapplicable.

VIII. COUNT FOUR

Count Four charges the defendant with participation in a money laundering conspiracy in violation of 18 U.S.C. § 1956(h). (Ind. ¶¶ 17-21.) The Government has alleged the requisite statutory elements. (See Ind. ¶ 19.) First, the Government has alleged that a conspiracy existed between the defendant and one or more others, the object of which was to engage in money laundering. In paragraph 20, the Indictment recites the specific elements required for money laundering:

It was a part and an object of the conspiracy that . . . the defendant, and others known and unknown, . . . knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking . . . with the intent to promote the carrying on of such unspecified unlawful activity

(Ind. ¶ 20.) The defendant argues that the factual allegation that Bitcoins constituted the exclusive “payment system that served to facilitate [] illegal commerce” on Silk Road cannot constitute the requisite “financial transaction.” (Def.’s Mem. at 3, 45.) The Court disagrees.

As an initial matter, an allegation that Bitcoins are used as a payment system is insufficient in and of itself to state a claim for money laundering. The fact that Bitcoins allow for anonymous transactions does not *ipso facto* mean that those transactions relate to unlawful activities. The anonymity by itself is not a crime. Rather, Bitcoins are alleged here to be the medium of exchange – just as dollars or Euros could be – in financial transactions relating to the unlawful activities of

narcotics trafficking and computer hacking. It is the system of payment designed specifically to shield the proceeds from third party discovery of their unlawful origin that forms the unlawful basis of the money laundering charge.

The money laundering statute defines a “financial transaction” as involving, inter alia, “the movement of funds by wire or other means, or [] involving one or more monetary instruments, [] or involving the transfer of title to any real property, vehicle, vessel, or aircraft.” 18 U.S.C. § 1956(c)(4). The term “monetary instrument” is defined as the coin or currency of a country, personal checks, bank checks, and money orders, or investment securities or negotiable instruments. 18 U.S.C. § 1956(c)(5).

The defendant argues that because Bitcoins are not monetary instruments, transactions involving Bitcoins cannot form the basis for a money laundering conspiracy. He notes that the IRS has announced that it treats virtual currency as property and not as currency. (Def.’s Mem. at 46-47 (citing I.R.S. Notice 2014-21, <http://www.irs.gov/pub/irs-drop/n-14-21.pdf>, and U.S. Dep’t of Treasury, Fin. Crimes Enforcement Network (“FinCEN”), “Guidance, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” March 18, 2013, http://www.fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html.) The defendant argues that virtual currencies have some but not all of the attributes of currencies of national governments and that virtual currencies do not have legal tender status. (See id. at 45-46.) In fact, neither the IRS nor FinCEN purport to amend the money laundering statute (nor could they). In any event, neither the

IRS nor FinCEN has addressed the question of whether a “financial transaction” can occur with Bitcoins. This Court refers back to the money laundering statute itself and case law interpreting the statute.

It is clear from a plain reading of the statute that “financial transaction” is broadly defined. See United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1995) (citation omitted). It captures all movements of “funds” by any means, or monetary instruments. “Funds” is not defined in the statute and is therefore given its ordinary meaning. See Taniguchi v. Kan Pacific Saipan, Ltd., – U.S. –, 132 S.Ct. 1997, 2002 (2012) (citation omitted). “Funds” are defined as “money, often money for a specific purpose.” See Cambridge Dictionaries Online, <http://dictionary.cambridge.org/us/dictionary/american-english/funds?q=funds> (last visited July 3, 2014). “Money” is an object used to buy things.

Put simply, “funds” can be used to pay for things in the colloquial sense. Bitcoins can be either used directly to pay for certain things or can act as a medium of exchange and be converted into a currency which can pay for things. See Bitcoin, <https://bitcoin.org/en> (last visited July 3, 2014); 8 Things You Can Buy With Bitcoins Right Now, CNN Money, <http://money.cnn.com/gallery/technology/2013/11/25/buy-with-bitcoin/> (last visited July 3, 2014). Indeed, the only value for Bitcoin lies in its ability to pay for things – it is digital and has no earthly form; it cannot be put on a shelf and looked at or collected in a nice display case. Its form is digital – bits and bytes that together constitute something of value. And they may be bought and sold using legal tender. See How to Use Bitcoin, <https://bitcoin.org/en/getting->

started (last visited July 3, 2014). Sellers using Silk Road are not alleged to have given their narcotics and malicious software away for free – they are alleged to have sold them.¹⁶

The money laundering statute is broad enough to encompass use of Bitcoins in financial transactions. Any other reading would – in light of Bitcoins' sole raison d'être – be nonsensical. Congress intended to prevent criminals from finding ways to wash the proceeds of criminal activity by transferring proceeds to other similar or different items that store significant value. With respect to this case, the Government has alleged that Bitcoins have a value which may be expressed in dollars. (Ind. ¶ 3 (alleging that Ulbricht “reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site”).)

There is no doubt that if a narcotics transaction was paid for in cash, which was later exchanged for gold, and then converted back to cash, that would constitute a money laundering transaction. *See, e.g., United States v. Day*, 700 F.3d 713, 718 (4th Cir. 2012).

One can money launder using Bitcoin. The defendant's motion as to Count Four is therefore denied.

¹⁶ Recently, the U.S. Government auctioned off nearly 30,000 Bitcoins as part of a civil forfeiture proceeding related to Silk Road. *See* Sydney Ember, [After Bitcoin Auction, Winning Bidders Remain Elusive](http://dealbook.nytimes.com/2014/06/30/after-bitcoin-auction-winning-bidders-remain-elusive/), N.Y. Times Dealbook (June 30, 2014 6:59 P.M.), http://dealbook.nytimes.com/2014/06/30/after-bitcoin-auction-winning-bidders-remain-elusive/?_php=true&_type=blogs&_r=0.

IX. CONCLUSION

For the reasons set forth above, the defendant's motion to dismiss is DENIED in its entirety. The clerk of the Court is directed to terminate the motion at ECF No. 19.

SO ORDERED.

Dated: New York, New York
July 9, 2014



KATHERINE B. FORREST
United States District Judge

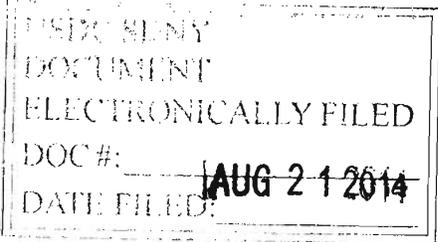
ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
:
- v. - :
:
ROSS WILLIAM ULBRICHT, :
a/k/a "Dread Pirate Roberts," :
a/k/a "DPR," :
a/k/a "Silk Road," :
:
Defendant. :
----- x

SUPERSEDING INDICTMENT

S1 14 Cr. 68 (KBF)



COUNT ONE
(Narcotics Trafficking)

The Grand Jury charges:

BACKGROUND

1. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created an underground website known as "Silk Road," designed to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement.

2. From in or about January 2011 through in or about October 2013, when the Silk Road website was shut down by law enforcement authorities, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated Silk Road. During that time, Silk Road emerged as the most sophisticated and extensive criminal

marketplace on the Internet. The website was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers worldwide, and to launder hundreds of millions of dollars derived from these unlawful transactions.

3. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised. Through his ownership and operation of Silk Road, ULBRICHT reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site.

4. In seeking to protect his criminal enterprise and the illegal proceeds it generated, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise.

STATUTORY ALLEGATIONS

5. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, distributed and

possessed with the intent to distribute controlled substances, and aided and abetted such distribution and possession with the intent to distribute, in violation of Title 21, United States Code, Section 841(a)(1).

6. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); and Title 18, United States Code, Section 2.)

COUNT TWO

(Distribution of Narcotics by Means of the Internet)

The Grand Jury further charges:

7. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

8. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts,"

a/k/a "DPR," a/k/a "Silk Road," the defendant, delivered, distributed, and dispensed controlled substances by means of the Internet, in a manner not authorized by law, and aided and abetted such activity, in violation of Title 21, United States Code, Section 841(h).

9. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Sections 812, 841(h)
and 841(b)(1)(A).)

COUNT THREE

(Narcotics Trafficking Conspiracy)

The Grand Jury further charges:

10. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

11. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and

elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

12. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

13. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

14. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, would and did knowingly and intentionally use a communication facility in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, United States Code, Sections 841, 846,

952, 960, and 963, in violation of Title 21, United States Code, Section 843(b).

15. The controlled substances that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, conspired to distribute and possess with the intent to distribute, and to deliver, distribute, and dispense by means of the Internet, in a manner not authorized by law, and to aid and abet such activity, included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 841(h).

Overt Acts

16. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"

the defendant, created the Silk Road website, providing a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 31, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, paid a Silk Road user ("User-1") approximately \$150,000 to murder another Silk Road user ("User-2") who was threatening to release the identities of thousands of users of the site.

c. On or about April 8, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, paid User-1 approximately \$500,000 to murder four additional persons, whom ULBRICHT believed were associated with User-2.

d. On or about October 1, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, logged on as a site administrator to the web server hosting the Silk Road website.

(Title 21, United States Code, Section 846.)

COUNT FOUR

(Continuing Criminal Enterprise)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

18. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, engaged in a continuing criminal enterprise, in that he knowingly and intentionally violated Title 21, United States Code, Sections 841, 843 and 846, which violations were part of a continuing series of violations of the Controlled Substances Act, Title 21, United States Code, Section 801, et seq., undertaken by ULBRICHT, in concert with at least five other persons with respect to whom ULBRICHT occupied a position of organizer, a supervisory position, and a position of management, and from which such continuing series of violations ULBRICHT obtained substantial income and resources.

(Title 21, United States Code, Section 848(a).)

COUNT FIVE

(Conspiracy to Commit and Aid and Abet Computer Hacking)

The Grand Jury further charges:

19. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

20. In addition to providing a platform for the purchase and sale of illegal narcotics, the Silk Road website also provided a platform for the purchase and sale of computer-hacking services and malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such services and software.

STATUTORY ALLEGATIONS

21. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking, and to aid and abet the same, in violation of Title 18, United States Code, Sections 1030(a)(2) and 2.

22. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a

"DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, and would and did aid and abet such unauthorized access, in violation of Title 18, United States Code, Sections 1030(a)(2) and 2.

(Title 18, United States Code, Section 1030(b).)

COUNT SIX

(Conspiracy to Traffic in Fraudulent Identification Documents)

The Grand Jury further charges:

23. The allegations contained in paragraphs 1 through 4 and paragraph 20 of this Indictment are repeated and realleged as if fully set forth herein.

24. In addition to providing a platform for the purchase and sale of illegal narcotics and computer-hacking services and software, the Silk Road website also provided a platform for the purchase and sale of fraudulent identification documents, such as fake driver's licenses and passports. While in operation, the Silk Road website regularly offered hundreds of listings for such products.

STATUTORY ALLEGATIONS

25. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to traffic in fraudulent identification documents, and to aid and abet the same, in violation of Title 18, United States Code, Sections 1028(a)(2).

26. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did knowingly transfer, in and affecting interstate and foreign commerce, false identification documents and authentication features, knowing that such documents and features were produced without lawful authority, including driver's licenses, personal identification cards, and documents that appeared to be issued by and under the authority of the United States, and would and did aid and abet such transfers, in violation of Title 18, United States Code, Sections 1028(a)(2) and 2.

(Title 18, United States Code, Section 1028(f).)

COUNT SEVEN

(Money Laundering Conspiracy)

The Grand Jury further charges:

27. The allegations contained in paragraphs 1 through 4 and paragraphs 20 and 24 of this Indictment are repeated and realleged as if fully set forth herein.

28. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including by concealing the identities and locations of the users transmitting and receiving funds through the site.

STATUTORY ALLEGATIONS

29. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

30. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and

foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, computer hacking, and identification document fraud, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Sections 1030 and 1028, respectively, with the intent to promote the carrying on of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

31. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, computer hacking, and identification document fraud, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Sections 1030 and 1028, respectively, knowing that the transactions were designed in

whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

(Title 18, United States Code, Section 1956(h).)

FORFEITURE ALLEGATIONS

32. As a result of committing the controlled substance offenses alleged in Counts One through Four of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the offenses and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offenses.

33. As a result of committing the computer hacking and identification fraud offenses alleged in Counts Five and Six of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained directly or indirectly as a result of the offenses.

34. As a result of committing the money laundering offense alleged in Count Seven of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in the offense, or any property traceable to such property.

Substitute Asset Provision

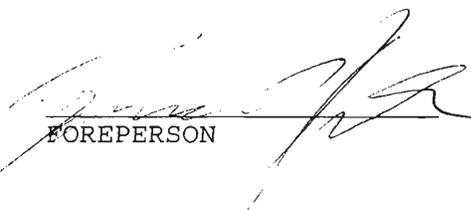
35. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

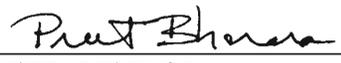
it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property

of the defendant up to the value of the above-described
forfeitable property.

(Title 18, United States Code, Sections 981 and 982,
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461.)



FOREPERSON



PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

INDICTMENT

S1 14 Cr. 68 (KBF)

(21 U.S.C. §§ 812, 841(a)(1),
841(b)(1)(A), 841(h), 846, & 848(a);
18 U.S.C. §§ 1030(b), 1028(f),
1956(h) & 2)

PREET BHARARA

Foreperson.

United States Attorney.

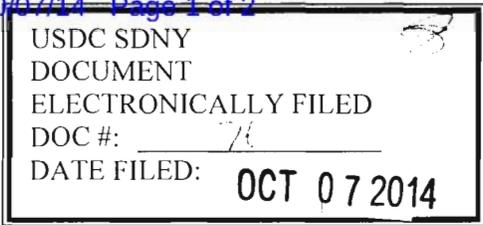


8/21/14
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Final Superseding Indictment
Judge Gormelen
U.S.M.

A167

Case 1:14-cr-00068-KBF Document 77 Filed 10/07/14 Page 1 of 2



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 :
 UNITED STATES OF AMERICA :
 :
 -v- :
 :
 ROSS WILLIAM ULBRICHT, :
 a/k/a "Dred Pirate Roberts," :
 a/k/a "DPR," :
 a/k/a "Silk Road," :
 :
 Defendant. :
 -----X

14-cr-68 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

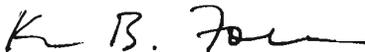
The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts.

The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must

be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow,
and to specify the particular items it will cover.

SO ORDERED.

Dated: New York, New York
October 7, 2014



KATHERINE B. FORREST
United States District Judge

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JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
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NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

October 7, 2014

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht,*
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, in response to the government's October 6, 2014, filing pursuant to the Court's October 3, 2014, Order inviting the government to respond to the factual statements contained in the Declaration of Joshua J. Horowitz, Esq.

In response to the Court's Order, however, the government chose not to address Mr. Horowitz's Declaration, but instead to file a surreply arguing issues completely unrelated to Mr. Horowitz's Declaration, *i.e.*, standing, the *Auernheimer* case.¹ Thus, the technical analysis and

¹ In response to the one issue from Mr. Horowitz's Declaration the government does address, millions of web servers worldwide run "phpmyadmin" to administrate MySQL databases. The fact that "phpmyadmin" was installed on the Silk Road Server, and thus that the Server was using a MySQL database, does not in any way suggest, let alone corroborate, illicit activity taking place on that Server.

Moreover, the government is incorrect even in its basic premise as to how "phpmyadmin" operates: "php" is a server-scripting language, not a database, contrary to what the government suggests in its response. It apparently confuses "php" with MySQL, which *is* a

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
October 7, 2014
Page 2 of 3

conclusions in the Horowitz Declaration remain uncontroverted.

The government's position appears to be that it can engage in criminal conduct with impunity in its pursuit of investigative objectives, and not be held accountable therefor. Yet the exclusionary rule was designed to address that very dangerous, and legally and constitutionally insupportable, attitude. For example, as the Supreme Court acknowledged in *Herring v. United States*, 555 U.S. 135, 144 (2008), “the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *See also id.* (“to trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system”); *United States v. Calandra*, 414 U.S. 338, 348 (1974) (the exclusionary rule is “a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect”).

In addition, the government's attempt to distinguish its position in *United States v. Auernheimer*, No. 13-1816 (3d Cir.), is unavailing. The government did not limit its broad construction of 18 U.S.C. §1030 to someone who impersonates a unique authorized user. In fact, the quotes from the government's Brief on Appeal in *Auernheimer* demonstrate the expansiveness of the government's interpretation of §1030, which was not confined to the facts of that case. Indeed, it was the government's insistence on the breadth of §1030 that generated amicus briefs on Auernheimer's behalf in the Third Circuit.

Thus, the government posits two standards of behavior: one for private citizens, who must adhere to a strict standard of conduct construed by the government, and the other for the government, which, with its elastic ability to effect electronic intrusion, can deliberately, cavalierly, and unrepentantly transgress those same standards. Yet neither law nor the Constitution permits rank government lawlessness without consequences.

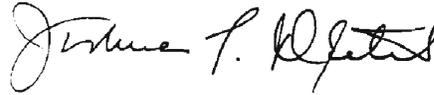
database.

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Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
October 7, 2014
Page 3 of 3

Also, regarding the Court's October 7, 2014, Order, Mr. Ulbricht rests on his papers already submitted.²

Respectfully submitted,



Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

² For purposes of clarity, since the government has not challenged Mr. Ulbricht's expectation of privacy in his laptop, Google or Facebook accounts – for which his expectation of privacy is manifest – there does not appear to be an issue with respect to these categories. If the Court requires a declaration from Mr. Ulbricht with respect to these three items it would be forthcoming, but neither the Court's October 7, 2014, Order nor the government's papers would seem to make it necessary.

A172

Case 1:14-cr-00068-KBF Document 84 Filed 10/08/14 Page 1 of 3

Case 1:14-cr-00068-KBF Document 83 Filed 10/07/14 Page 1 of 3

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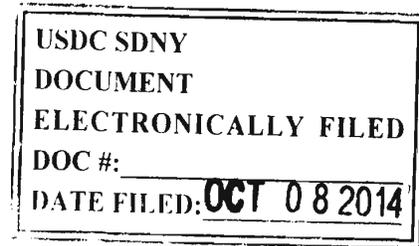
STEVEN WRIGHT

Office Manager

October 7, 2014

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007



Re: United States v. Ross Ulbricht,
14 Cr. 68 (KBF)

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JOSHUA L. DRATEL, P.C.

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
October 7, 2014
Page 2 of 3

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database.

A174

Case 1:14-cr-00068-KBF Document 84 Filed 10/08/14 Page 3 of 3

Case 1:14-cr-00068-KBF Document 83 Filed 10/07/14 Page 3 of 3

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
October 7, 2014
Page 3 of 3

Also, regarding the Court's October 7, 2014, Order, Mr. Ulbricht rests on his papers already submitted.²

Respectfully submitted,



Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

Ordered
Does the Government agree that no
declarations is required in this case
with regard to establishing Ulbricht's
privacy interest in his Facebook,
gmail accounts and laptop? (Could you
let me know today -- "yes" or "no" will do.)
10/8/14 K B. Forrest
USDJ

² For purposes of clarity, since the government has not challenged Mr. Ulbricht's expectation of privacy in his laptop, Google or Facebook accounts – for which his expectation of privacy is manifest – there does not appear to be an issue with respect to these categories. If the Court requires a declaration from Mr. Ulbricht with respect to these three items it would be forthcoming, but neither the Court's October 7, 2014, Order nor the government's papers would seem to make it necessary.



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 8, 2014

By ECF

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

Given defense counsel's representation that the defendant would proffer a declaration attesting to his expectation of privacy in his laptop, email, and Facebook accounts if the Court so required, and given that the declaration would likely be uncontested by the Government since Ulbricht's expectation of privacy in these items seems clear, the Government is willing to stipulate, in the interest of efficiently resolving the defendant's motion, that the defendant has standing to move to suppress these items. However, for the reasons set forth in the Government's memorandum in opposition, the motion is meritless.

Respectfully,

PREET BHARARA
United States Attorney

By: 

SERRIN TURNER
TIMOTHY HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: **OCT 10 2014**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
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 -v- :
 :
 ROSS WILLIAM ULBRICHT, :
 a/k/a "Dread Pirate Roberts," :
 a/k/a "DPR," :
 a/k/a "Silk Road," :
 :
 Defendant. :
----- X

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

On February 4, 2014, Ross Ulbricht ("defendant" or "Ulbricht") was indicted on four counts. (ECF No. 12.) On September 5, 2014, he was arraigned on superseding indictment S1 14 Cr. 68 (KBF) (the "Indictment"). The Indictment charges Ulbricht with the following crimes: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), Continuing Criminal Enterprise ("CCE") (Count Four), Conspiracy to Commit and Aid and Abet Computer Hacking (Count Five), Conspiracy to Traffic in Fraudulent Identification Documents (Count Six), and Money Laundering Conspiracy (Count Seven). (ECF No. 52 ("Ind.")) Ulbricht's trial is scheduled to commence on November 10, 2014.

Before this Court is defendant's motion to suppress virtually all evidence in the case, for a bill of particulars, and to strike surplusage. (ECF No. 46.) For the reasons set forth below, the motion is DENIED.

I. BACKGROUND

A. Allegations against Ulbricht

Ulbricht is charged with seven separate crimes—all involving the creation, design, administration and operations of an online marketplace known as “Silk Road.” The Government alleges that Ulbricht created Silk Road (Ind. ¶ 1) and that he has been in control of all aspects of its administration and operations (Ind. ¶ 3). The Government’s charges against Ulbricht are premised upon a claim that through Silk Road, defendant enabled and facilitated anonymous transactions in a variety of illicit goods and services including, *inter alia*, narcotics, fake identification documents, and materials used to hack computers, and that he conspired, participated directly in, or aided and abetted others in substantive crimes.

Silk Road is alleged to have operated on the Tor network (“Tor”). (Declaration of Christopher Tarbell ¶¶ 4-5, ECF No. 57 (“Tarbell Decl.”).) The Tor network is designed to conceal the Internet Protocol (“IP”) addresses of the computers operating on it, “including servers hosting websites on Tor, such as Silk Road.” (Tarbell Decl. ¶ 4.) The Government alleges that Silk Road also supported anonymity through its reliance on “Bitcoin” as a method of payment.¹ (Ind. ¶ 28.) The use of Bitcoins concealed the identities and locations of users transmitting and receiving funds. (Ind. ¶ 28.) The Government alleges that over the period of time it was up and running, Silk Road was used by several thousand drug dealers and well over one hundred thousand buyers worldwide to purchase illegal narcotics and

¹ Bitcoin is the name of an encrypted online currency. It is managed through a private network and not through any Government, central bank or formal financial institution. The Government does not allege that the use of Bitcoin itself is illegal.

illicit goods, and that it was also used to launder hundreds of millions of dollars derived from these transactions. (Ind. ¶ 2.) Ulbricht himself is alleged to have made commissions worth tens of millions of dollars from these sales. (Ind. ¶ 3.)

B. The Investigation of Ulbricht

The instant motion is primarily concerned with whether the Government's methods for investigating Ulbricht violated his Fourth Amendment right to be free from unreasonable searches and seizures. Importantly, while the Government alleges that Ulbricht and Silk Road are one and the same, Ulbricht has not conceded that he created Silk Road, or that he administered or oversaw its operations, or even that he used or accessed it at all. Ulbricht has not submitted a declaration or affidavit attesting to any personal privacy interest that he may have in any of the items searched and/or seized and as to which his motion is directed. Ulbricht's lawyer has, however, argued that his "expectation of privacy in his laptop, Google or Facebook accounts" is "manifest" (ECF No. 83 at 2 n.2), and the Government has stipulated to his "expectation of privacy" in those (ECF No. 85).²

The Government's investigation involved, inter alia, the imaging and subsequent search of a server located in Iceland (the "Icelandic server") in July 2013. Based in large part on the results of information learned from the Icelandic server, the Government then obtained various court orders for pen-registers and trap and trace devices (the "Pen-Trap Orders"), and warrants to seize and then

² On October 7, 2014, the Court issued an order in which it provided the defendant a "final opportunity" to submit a declaration or affidavit establishing some privacy interest in the items searched and/or seized. (ECF Nos. 76-77.) By letter dated October 7, 2014, his lawyer responded that "Mr. Ulbricht rests on his papers already submitted." (ECF No. 83.)

search a number of other servers located within the United States, as well as a laptop associated with Ulbricht and his Facebook and Gmail accounts. In total, the Government obtained 14 warrants and court orders over the course of its investigation. (Declaration of Joshau L. Dratel ¶ 3(a)-(n), ECF No. 47 (“Dratel Decl.”).) Those warrants and orders are as follows:

Warrant No. 1: Windstream “JTan” server #1 (Pennsylvania) (9/9/13);

Warrant No. 2: Windstream “JTan” server #2 (Pennsylvania) (9/9/13);

Warrant No. 3: Voxility server (California) (9/19/13);

Warrant No. 4: Windstream servers assigned host numbers 418, 420 and 421 (Pennsylvania) (10/1/13);

Warrant No. 5: Voxility server with IP addresses 109.163.234.40 and 109.163.234.37 (California) (10/1/13);

Warrant No. 6: Samsung laptop with MAC address 88-53-2E-9C-81-96 (California) (10/1/13);

Warrant No. 7: Premises at 235 Monterey Boulevard (California) (10/1/13);

Warrant No. 8: The Facebook account associated with username “rossulbricht” (California) (10/8/13);

Warrant No. 9: The Gmail account rossulbricht@gmail.com (10/8/13);

Pen-Trap Order No. 1: To Comcast re IP address 67.170.232.207 (9/16/13);

Pen-Trap Order No. 2: To Comcast re IP address 67.169.90.28 (9/19/2013);

Pen-Trap Order No. 3: Re the wireless router with IP address 67.169.90.28 located at 235 Monterey Boulevard (California) (9/20/13);

Pen-Trap Order No. 4: Re certain computer devices associated with MAC addresses including 88-53-2E-9C-81-96, (9/20/13); and

Pen-Trap Order No. 5: Re the wireless router with IP address 67.169.90.28 located at 235 Monterey Boulevard (California) (9/19/13).

According to defendant, virtually all of the Government's evidence stems from the initial search of the Icelandic server in July 2013, which occurred before any of the above warrants issued.³ The vast bulk of defendant's submission is concerned with raising questions regarding how the Government obtained the information that led it to the Icelandic server. One of defendant's lawyers, Joshua Horowitz, has some technical training, and he asserts that the Government's explanation of the methods it used is implausible. (See Declaration of Joshua J. Horowitz ¶¶ 4-8, 17-51, ECF No. 70 ("Horowitz Decl.")). Defendant insists that this Court must therefore hold an evidentiary hearing to determine whether the methods the Government asserted it used and that led it to the Icelandic server were in fact its actual methods or not. (See Memorandum of Law in Support of Defendant Ross Ulbricht's Pre-Trial Motions to Suppress Evidence, Order Production of Discovery, for a Bill of Particulars, and to Strike Surplusage at 28-34, ECF No. 48 ("Def.'s Br."); Reply Memorandum of Law in Support of Defendant Ross Ulbricht's Pre-Trial Motions to Suppress Evidence, Order Production of Discovery, for a Bill of Particulars, and to Strike Surplusage at 4-8, ECF No. 69 ("Def.'s Reply Br.")). Defendant argues that if that search of the Icelandic server was only possible

³ U.S. law enforcement began working with law enforcement in Iceland on this investigation as early as February 2013. A server—later determined to no longer be in primary use—was imaged in the spring or early summer of 2013 ("Icelandic Server #1"). Ulbricht asserts that the process leading to the imaging of the server may also have been constitutionally infirm. But Icelandic Server #1 is in all events irrelevant, as the Government has represented that it does not intend to use any evidence obtained from that server.

because of a preceding constitutionally infirm investigation, then all subsequent warrants and court orders based on that search constitute fruits of the poisonous tree and must be suppressed.

In addition, defendant also asserts that the warrants relating specifically to the servers located in Pennsylvania (nos. 1, 2 and 4) as well as the warrants relating to Ulbricht's laptop, Facebook and Gmail accounts (nos. 6, 8 and 9) are unconstitutional general warrants; and finally that the Pen-Trap Orders were unlawful because a warrant was required and they failed to include appropriate minimization procedures. Defendant has retained experienced counsel who certainly understand Fourth Amendment jurisprudence. It has long been established—indeed, it is a point as to which there can be no dispute—that (1) the Fourth Amendment protects the constitutional right of an individual to be free from unreasonable searches and seizures; (2) the rights conferred by the Fourth Amendment may not be vicariously asserted; and (3) the Fourth Amendment does not confer any general right available to anyone impacted by an investigation to pursue potentially or actually unlawful law enforcement techniques. The only exception to that is extremely narrow: when law enforcement techniques are so egregious (defined as actions such as torture, not simply unlawful conduct) as to violate the Fifth Amendment, a court may suppress the evidence.

Defendant has not asserted a violation of the Fifth Amendment—nor could he. Defendant has, however, brought what he must certainly understand is a fatally deficient motion to suppress. He has failed to take the one step he needed to

take to allow the Court to consider his substantive claims regarding the investigation: he has failed to submit anything establishing that he has a personal privacy interest in the Icelandic server or any of the other items imaged and/or searched and/or seized. Without this, he is in no different position than any third party would be vis-à-vis those items, and vis-à-vis the investigation that led U.S. law enforcement officers to Iceland in the first place.

There is no doubt that since defendant was indicted and charged with seven serious crimes resulting from that initial investigation and the searches that followed it, he has a “personal interest” in the Icelandic server in a colloquial sense. But longstanding Supreme Court precedent draws a stark difference between that sort of interest and what the law recognizes as necessary to establish a personal Fourth Amendment right in an object or place. To establish the latter, defendant must show that he has a personal privacy interest in the object (e.g., a server) or premises searched, not just that the search of the specific object or premises led to his arrest. Were this or any other court to ignore this requirement in the course of suppressing evidence, the court would undoubtedly have committed clear error.

Further, defendant could have established such a personal privacy interest by submitting a sworn statement that could not be offered against him at trial as evidence of his guilt (though it could be used to impeach him should he take the witness stand). Yet he has chosen not to do so.

In short, despite defendant’s assertions and the potential issues he and his counsel raise regarding the investigation that led to the Icelandic server, he has not

provided the Court with the minimal legal basis necessary to pursue these assertions. Thus, the declaration submitted by Joshua J. Horowitz, Esq. (ECF No. 70) along with all the arguments regarding the investigation and the warrants based on it are not properly before this Court. The only arguments that this Court must consider as a substantive matter are those concerning property and accounts as to which defendant has an arguable and cognizable (though itself not legally established) personal privacy interest: the laptop, the Gmail account, and the Facebook account.⁴

II. SEARCHES AND SEIZURES

A. The Fourth Amendment

Ulbricht's motion to suppress evidence is premised upon an assertion that the Government has, or may have, engaged in one or more unreasonable searches and seizures in violation of the Fourth Amendment of the U.S. Constitution. The Fourth Amendment protects the people against unreasonable searches and seizures. U.S. Const. amend. IV. "Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct." Terry v. Ohio, 392 U.S. 1, 12 (1968). In the absence of a warrant or the applicability of an exception, law enforcement does not have a general right to enter one's home, rifle through drawers, and take what might be found therein. See, e.g., United States v. Jenkins, 876 F.2d 1085, 1088 (2d Cir. 1989).

⁴ For reasons the Court does not understand, Ulbricht chose not to submit a declaration claiming any personal privacy interest and expectation of privacy in the search of 235 Monterey Boulevard or the wireless router located at those premises.

Evidence seized in violation of the Fourth Amendment is subject to exclusion at trial—hence, references to “the exclusionary rule” in Fourth Amendment jurisprudence. See, e.g., Terry, 392 U.S. at 13. Exclusion ensures judicial integrity and protects courts from being made a party to “lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasion.” Id. Direct and indirect evidence may be subject to preclusion: all evidence that flows directly or indirectly from unlawfully seized evidence is considered “fruit of the poisonous tree.” Wong Sun v. United States, 371 U.S. 471, 484-85 (1963) (the exclusionary rule of the Fourth Amendment extends to indirect evidence as well as direct evidence).

“[T]he Fourth Amendment protects people, not places.” Katz v. United States, 389 U.S. 347, 351 (1967). In Katz, petitioner sought to suppress evidence of his end of a telephone call, obtained by the FBI after it placed a listening device on a public telephone booth. Id. at 348-50. The Supreme Court defined the issue not as one regarding whether a particular physical space was a constitutionally protected area, or whether physical penetration of a protected area was required for a Fourth Amendment violation. Id. at 350-51. This is important for this Court’s consideration here of Ulbricht’s claims. The Supreme Court in Katz then stated that the Fourth Amendment cannot be translated into a general constitutional “right to privacy,” nor does it cover some nebulous group of “constitutionally protected area[s].” Id. A person’s general right to privacy—his right to be let alone by other people—is, like the protection of his property and his very life, left largely

to the law of the individual states. Id. Thus, “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” Id.

1. Foreign searches and seizures.

The law has long been clear that the protections of the Fourth Amendment do not extend to searches conducted outside the United States by foreign law enforcement authorities. See, e.g., United States v. Lee, 723 F.3d 134, 139 (2d Cir. 2013) (“[T]he Fourth Amendment’s exclusionary rule, which requires that evidence seized in violation of the Fourth Amendment must be suppressed, generally does not apply to evidence obtained by searches abroad conducted by foreign officials.”); United States v. Busic, 592 F.2d 13, 23 (2d Cir. 1978) (“[T]he Fourth Amendment and its exclusionary rule do not apply to the law enforcement activities of foreign authorities acting in their own country.”); accord United States v. Peterson, 812 F.2d 486, 490 (9th Cir. 1987).

An exception to this rule is when foreign law enforcement authorities become agents of U.S. law enforcement officials. See Lee, 723 F.3d at 140 (constitutional requirements may attach “where the conduct of foreign law enforcement officials rendered them agents, or virtual agents, of United States law enforcement officials” (quoting United States v. Maturo, 982 F.2d 57, 61 (2d Cir. 1992))). If, for instance, U.S. law enforcement was able to and did command and control the efforts of foreign law enforcement, an agency relationship might be found. United States v. Getto, 729 F.3d 221, 224 (2d Cir. 2013) (holding that “ongoing collaboration between an American law enforcement agency and its foreign counterpart in the course of

parallel investigations does not—without American control, direction, or an intent to evade the Constitution—give rise to a relationship sufficient to apply the exclusionary rule to evidence obtained abroad by foreign law enforcement”). The foreign searches must, however, be “reasonable.” In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 157, 167 (2d Cir. 2008) (holding that “foreign searches of U.S. citizens conducted by U.S. agents are subject only to the Fourth Amendment's requirement of reasonableness”).⁵ As the Supreme Court has explained:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Bell v. Wolfish, 441 U.S. 520, 559 (1979).

2. Personal privacy interest.

Supreme Court precedent, binding on this and all courts in this land, establishes that the “capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the [Fourth] Amendment has a legitimate expectation of privacy in the invaded place.” Rakas v. Illinois, 439 U.S. 128, 143 (1978); see also United States v. Watson, 404 F.3d 163, 166 (2d Cir. 2005) (affirming denial of a suppression motion on the basis that the

⁵ It is unclear whether foreign searches of objects or premises in which only non-citizens have a privacy interest are subject to the Fourth Amendment's reasonableness requirement. See United States v. Bin Laden, 126 F. Supp. 2d 264, 276 (S.D.N.Y. 2000) (collecting cases).

defendant had failed to show an expectation of privacy). This principle derives from the Supreme Court's holding in Katz v. United States, in which the Court found that while common law trespass had long governed Fourth Amendment analysis, the capacity to claim the protection of the Fourth Amendment depended first and foremost on a personal expectation of privacy in the invaded place. 389 U.S. at 352-53. The Court found that even though petitioner was located in a public telephone booth when the search occurred, "the Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied . . . and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment." Id. at 353.

The law therefore leaves no doubt that Fourth Amendment rights are based on a personal, subjective expectation of privacy; they are rights of a person, not rights of a "thing"—whether that thing be a server, a car, or a building. If a person—a human—cannot establish a cognizable personal expectation of privacy in the place or thing searched, there is no Fourth Amendment issue and no reason to undertake a Fourth Amendment analysis.

How, then, is one's interest in a place or thing established? It must be established by a declaration or other affirmative statement of the person seeking to vindicate his or her personal Fourth Amendment interest in the thing or place searched. See, e.g., United States v. Smith, 621 F.2d 483, 487 (2d Cir. 1980) (defendants had no legitimate expectation of privacy in trunk of car where they did not assert ownership of car, knowledge of trunk's contents, or access to trunk);

United States v. Montoya-Echevarria, 892 F. Supp. 104, 106 (1995) (“The law is clear that the burden on the defendant to establish [Fourth Amendment] standing is met only by sworn evidence, in the form of affidavit or testimony, from the defendant or someone with personal knowledge.”); United States v. Ruggiero, 824 F. Supp. 379 (S.D.N.Y. 1993) (“It is well established that in order to challenge a search, a defendant must submit an affidavit from someone with personal knowledge demonstrating sufficient facts to show that he had a legally cognizable privacy interest in the searched premises at the time of the search.”). The Supreme Court has also established that the defendant—not the Government—bears the burden of proving that he has a legitimate expectation of privacy. Rawlings v. Kentucky, 448 U.S. 98, 104 (1980); see also Watson, 404 F.3d at 166.

The requirement that one must have a personal expectation of privacy at the time of the search in the thing or place searched is not novel and has been repeatedly litigated. One can easily see why: even if one did not have an expectation of privacy at the time of the search, the search might lead to inculpatory evidence. At that point, the now-defendant might certainly desire that the thing or place searched had been left alone.

In Rakas, the Supreme Court reviewed the question of whether passengers in a vehicle that was searched could move to suppress the evidence obtained thereby. 439 U.S. at 130-32. In that case, the police received a report of a robbery and the description of a getaway car. Id. at 130. Shortly thereafter, an officer stopped and searched a vehicle matching that description. Id. The search revealed ammunition

and a firearm. Id. Petitioners had been passengers in the vehicle and were arrested following the search. Id. Neither the car nor the evidence seized belonged to them. Id. at 131. They moved to suppress the evidence on the basis that the search violated their rights under the Fourth Amendment. Id. at 130-31.

The question before the Court was presented as whether petitioners had “standing” to bring the suppression motion. Id. at 131-32. Petitioners urged the Court to relax or broaden the rule of standing so that any criminal defendant at whom a search was “directed” would have standing to challenge the legality of the search. Id. at 132. The Court recognized that prior case law (including Jones v. United States, 362 U.S. 257 (1960)) had discussed the concept of standing as whether the individual challenging the search had been the “victim” of the search. Petitioners in Rakas urged the Court to broaden the “victim” concept to a “target theory” of standing for Fourth Amendment purposes. Id. at 132-33. The Supreme Court declined to do so, reiterating that the law has long been clear that Fourth Amendment rights were personal rights which may not be vicariously asserted. Id. at 133-34. The Court recited numerous instances over time in which courts had rejected defendants’ assertions that they were aggrieved by unconstitutional searches of third parties’ premises or objects. Id. at 134 (collecting cases). “A person who has been aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.” Id. “[I]t is proper to permit only defendants whose Fourth Amendment rights have been

violated to benefit from the rule's protections." Id. The Court stated, "[c]onferring standing to raise vicarious Fourth Amendment claims would necessarily mean a more widespread invocation of the exclusionary rule during criminal trials." Id. at 137. The Court further reasoned that "[e]ach time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights," in that "[r]elevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected." Id.

The Court also concluded that whether a defendant has the right to challenge a search and seizure is best analyzed under "substantive Fourth Amendment doctrine," and not standing, though the inquiry ought to be the same under either. Id. at 139.

Rakas and the case law on which it is based and which has followed it thus require this Court to ask whether a defendant who is challenging a search or seizure has established a sufficient personal privacy interest in the premises or property at issue. A defendant may make such a showing by asserting that he owned or leased the premises (for example, the leasing of a server would count) or had dominion or control over them. Watson, 404 F.3d at 166; United States v. Villegas, 899 F.2d 1324, 1333 (2d Cir. 1990). Indeed, to a limited extent, yet to be defined by the courts, an authorized user of a premises might have a sufficient expectation of privacy. See Rakas, 439 U.S. at 142-43 ("[A] person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that

place.”). Factual claims made in an affirmation by defendant’s counsel may be an insufficient basis upon which to challenge a search if they are made without personal knowledge or are otherwise insufficiently probative. See Watson, 404 F.3d at 166-67.

There are limited situations—“extreme case[s],” United States v. Rahman, 189 F.3d 88, 131 (2d Cir. 1999) (per curiam)—in which a government practice might be “so outrageous that due process principles would absolutely bar the [G]overnment from invoking judicial processes to obtain a conviction” United States v. Russell, 411 U.S. 423, 431-32 (1973); see also United States v. Christie, 624 F.3d 558 (3d Cir. 2010) (“The pertinent question is whether the government’s conduct was so outrageous or shocking that it amounted to a due process violation.”); Czernicki v. United States, 270 F. Supp. 2d 391, 394-95 (S.D.N.Y. 2003). However, only conduct that “shocks the conscience” amounts to a due process violation in this context. Rahman, 189 F.3d at 131 (quoting Rochin v. California, 342 U.S. 165, 172 (1952)).

Defendant cites U.S. v. Gelbard, 408 U.S. 41 (1972), and United States v. Ghailani, 743 F. Supp. 2d 261 (S.D.N.Y. 2010), for the proposition that “a defendant is entitled to know whether a Government’s investigation was predicated on illegal government conduct, and [obtain] relief therefrom.” (Def.’s Reply Br. at 7.) That is only so to the extent that the issues concern a defendant’s personal Fourth Amendment rights, or if “extreme conduct” is involved. Unlawful conduct alone is not enough. See, e.g., United States v. Payner, 447 U.S. 727, 729-31 (1980). In

Ghailani, the issue concerned whether the court would allow testimony from a cooperating witness who had been tortured. 743 F. Supp. 2d at 267. The court ruled that it would not, id. at 287-88, but importantly, Ghailani was “not a Fourth Amendment search and seizure case,” id. at 285.

A defendant seeking both to establish an interest in items seized, and to put the Government to its proof of establishing a connection, is protected to the extent that any declaration or affidavit he submits may not be offered against him at trial. Simmons v. United States, 390 U.S. 377, 393-94 (1968) (“[W]hen a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection.”). This does not insulate the defendant from all risk, however. His statement may nonetheless be used to impeach him should he take the witness stand in his own defense and, at that time, open the door to the statement. United States v. Jaswal, 47 F.3d 539, 543 (2d Cir. 1995); United States v. Beltran-Gutierrez, 19 F.3d 1287, 1291 (9th Cir. 1994). (Of course, perjury in a declaration or on the stand is never permitted; so there are reasons to expect consistency.) It is certainly true, therefore, that the requirement of a statement of a personal privacy interest in an item seized requires a defendant to make choices.⁶

⁶ The order of proof at trial is known in advance: the Government bears the burden of proof, which means the Government goes first. If, after the Government rests, it has failed to present sufficient evidence, the defendant can move pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal. Ulbricht would not take the witness stand (if at all) until those prior steps had occurred, and so the impeachment, if any, of Ulbricht with a statement setting forth a privacy interest in the Icelandic server would not occur until that point. (The Court recognizes that trial strategy is often cemented during open statements.)

Simply asserting a personal privacy interest in a premises or an object does not—even when a warrantless search has occurred—require a finding of a Fourth Amendment violation. A court asks a second question: whether society is willing to recognize that this expectation is, in turn, reasonable. California v. Ciraolo, 476 U.S. 207, 211 (1986); Katz, 389 U.S. at 360. For instance, that an individual has taken measures to restrict third-party viewing of his activities in a space that he owns or leases does not necessarily mean that that privacy interest is one society is prepared to recognize as reasonable. See Ciraolo, 476 U.S. at 209-10, 215 (finding no Fourth Amendment violation when aerial photographs had been taken above a property whose owner had taken fairly extensive measures to shield from view); see also Oliver v. United States, 466 U.S. 170, 182-84 (1984) (placement of “No Trespassing” signs on secluded property does not create legitimate privacy interest in marijuana fields).

Assuming a cognizable privacy interest, the court can then turn to whether the search was lawful.⁷

3. Warrants.

Searches not incident to arrest or exigent circumstances are generally based on a warrant. Kentucky v. King, 131 S. Ct. 1849, 1856 (2011). The Warrant Clause of the Fourth Amendment provides that “no Warrants shall issue, but upon

⁷ In the absence of a cognizable privacy interest, the Court has no basis to proceed with a suppression motion, and therefore no basis on which to hold an evidentiary hearing. Evidentiary hearings are only necessary when a defendant makes a sufficient offer of proof with respect to his allegation that a false statement was made knowingly and intentionally, or with reckless disregard for the truth, by an affiant in a warrant affidavit, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no evidentiary hearing is required. Franks v. Delaware, 438 U.S. 154, 171 (1978).

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. An application for a warrant must state under penalty of perjury facts supporting probable cause. See U.S. Const. amend. IV (warrant may not issue unless supported by probable cause, supported by “oath or affirmation”). A magistrate judge then reviews the warrant, determines whether the showing of probable cause and particularity is sufficient, and if so, signs it. See United States v. George, 975 F.2d 72, 76 (2d Cir. 1992) (“The particularity requirement prevents this sort of privacy invasion and reduces the breadth of the search to that which a detached and neutral magistrate has determined is supported by probable cause.”). A magistrate judge’s review is based on the totality of the circumstances. Illinois v. Gates, 462 U.S. 213, 238-39 (1983). In later reviewing such determination on a motion to suppress, the reviewing court is to give the magistrate judge’s review a high degree of deference. See id. at 236 (“A magistrate’s ‘determination of probable cause should be paid great deference by reviewing courts.’” (quoting Spinelli v. United States, 393 U.S. 410, 419 (1969), abrogated on other grounds by Gates, 462 U.S. 213))).

In addition to its probable cause requirement, the Warrant Clause contains a prohibition against “general warrants.” Andresen v. Maryland, 427 U.S. 463, 480 (1976). “The problem (posed by a general warrant) is not that of intrusion Per se, but of a general, exploratory rummaging in a person’s belongings . . . (the Fourth Amendment addresses the problem) by requiring a ‘particular description’ of the

things to be seized.” Id. at 480 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)). General warrants are therefore prohibited; the particularity requirement is to ensure that nothing is left to the discretion of the officer when a warrant is being executed—if the item is described as among those to be seized, it may be seized. See Andresen, at 480; see also Stanford v. Texas, 379 U.S. 476, 485 (1965).

B. The Riley, Jones, and Kyllo Cases

Defendant refers to the decisions in Riley v. California, 134 S. Ct. 2473 (2014), United States v. Jones, 132 S. Ct. 945 (2012), and Kyllo v. United States, 533 U.S. 27 (2001), as supportive of his motions to suppress and as responding to the “essential privacy imperatives of the digital age.” (Def.’s Reply Br. at 1, 13, 19, 21-28; see also Def.’s Br. at 3, 13-15, 17-19, 22-28, 42, 45-49, 59.) These cases do not help defendant on this motion. They are consistent, not inconsistent, with the above longstanding Fourth Amendment principles.

Riley concerned the search of data on a seized cell phone. The lawfulness of the seizure of the object itself—the cell phone—was not contested. The subsequent search of the data on the cell phone was. In Riley, the defendant was stopped for a traffic violation which resulted in his arrest on weapons charges. 134 S. Ct. at 2480. A cell phone was seized as a result of a lawful search of Riley’s person incident to his arrest. Id. The arresting officer reviewed the contents of the cell phone without a warrant, and another officer conducted a subsequent and further review of those contents. Id. at 2480-81. The Supreme Court articulated the issue before it as how the requirement of “the reasonableness of a warrantless search

incident to a lawful arrest” applies to “modern cell phones.” Id. at 2482, 2484. The Court acknowledged that the rationale of prior cases dealing with searches incident to arrest involving physical objects (such as those typically found on an arrestee’s person) did not have as much force in the digital context. A “search of the information on a cell phone bears little resemblance to the type of brief, physical search considered in [United States v. Robinson, 414 U.S. 218 (1973)].” Id. at 2485. Because the data on a cell phone are generally far more extensive than the contents of physical objects and do not present the same type of safety issues, the Court determined that warrants are generally required to search the contents of cell phones. Id. at 2485-86. The Court based its decision both on the potential breadth of the information a cell phone might contain, as well as on the fact that digital data generally cannot be used as a weapon or to cause immediate physical danger. Id. Nothing in the Court’s opinion in Riley suggests any departure from any of the principles regarding the need to establish a personal privacy interest, as discussed above, and as is obvious, the opinion says nothing concerning searches by foreign law enforcement officers outside the United States.

Jones concerned the warrantless attachment of a Global-Positioning-System (“GPS”) tracking device to a Jeep vehicle and the subsequent monitoring of the movements of that vehicle. 132 S. Ct. at 948. The Supreme Court examined the question of whether the physical placement of the GPS device constituted a search within the meaning of the Fourth Amendment and found that it did. There, the Supreme Court returned to age-old concepts of physical trespass and the Fourth

Amendment. See id. at 949-54. In this context, the physical attachment of the device was found to unreasonably intrude on the defendant's reasonable expectation of privacy and, "[b]y attaching to the device to the Jeep, officers encroached on a protected area." Id. at 952. The Court acknowledged that more nuanced cases—such as situations involving the transmission of electronic signals without trespass—were different from the case then at hand and would be subject to analysis under the factors set forth in Katz. Id. at 953. Jones neither alters nor extends Fourth Amendment law in light of the digital era. Indeed, the majority opinion looks more to the past than it does to the future.

In Kyllo, the Supreme Court did find that relatively new technology—thermal imaging used on the exterior of a private residence, and which provided information as to what was occurring in that private residence—constituted a search for purposes of the Fourth Amendment. Kyllo, 533 U.S. at 40. The thermal imaging was performed from the exterior of the house and occurred over a span of just a few minutes. Id. at 29-30. Based upon the information obtained, the investigating agent drew the conclusion that the residence functioned in part as a grow-house for marijuana. Id. at 30. There, too, the Court applied longstanding principles of law to find that the defendant had a reasonable expectation of privacy in his residence—the sanctity of which has long been the concern of Fourth Amendment jurisprudence. Id. at 34-40. The Court held that “[w]here, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the

surveillance is a ‘search’ and is presumptively unreasonable without a warrant.” Id. at 40.

C. Discussion

Here, the Government obtained nine warrants and five pen-trap orders. Ulbricht argues that all of the warrants and orders suffer from one overarching infirmity: they are based on the cursory recitation of an “investigation” that was only possible as the result of the search that led to the authorities to Iceland. Ulbricht argues that how that search was conducted is unknown, and that if it was conducted in an unlawful manner, then all of the warrants are constitutionally defective.⁸

Ulbricht’s motion is largely, therefore, directed at an investigation and search of objects (servers) and premises in which he has carefully avoided establishing a personal privacy interest. As the above principles make clear, just because the investigation eventually led to his arrest on criminal charges does not ipso facto give him a privacy interest in any Silk Road servers. Katz, 389 U.S. at 351 (“[T]he Fourth Amendment protects people, not places.”).

As the Court has set forth above, Ulbricht was provided ample opportunity to establish such an interest—including an additional and specific request by this

⁸ Ulbricht also argues that the magistrate judges who received the warrant applications failed appropriately to inquire into how the preliminary investigation was conducted. (Def.’s Br. at 36-37.) For all of the reasons discussed throughout this opinion, he has not established a personal privacy interest that would allow him to pursue this argument. Nevertheless, even if this Court were to perform a substantive review of the merits it would find that there is no deficiency. This Court is to give a receiving magistrate’s determination of probable cause a high degree of deference. See Gates, 462 U.S. at 236. It is apparent from the face of the affidavit in support of Warrant No. 1—which contains a handwritten addition by the affiant and the initials of the reviewing magistrate—that the application was carefully reviewed and probable cause established.

Court on October 7, 2014. (ECF Nos. 76-77.) He elected to “rest[] on his papers.” (ECF No. 83.) This is either because he in fact has no personal privacy interest in the Icelandic server, or because he has made a tactical decision not to reveal that he does.

The requirement to establish a personal privacy interest might appear to place Ulbricht in a catch-22: if the Government must prove any connection between himself and Silk Road, requiring him to concede such a connection to establish his standing the searches and seizures at issue could be perceived as unfair. But as Ulbricht surely knows, this is not the first court, nor is he the first defendant, to raise such an issue. See, e.g., Payner, 447 U.S. 727. In Payner, the Government obtained evidence against a defendant based on a “flagrantly illegal search of a [third party’s] briefcase.” Id. at 729. The Supreme Court referenced having decided Rakas the prior term, reaffirming the “established rule that a court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful seizure violated the defendant’s own constitutional rights.” Id. at 731 (collecting cases). “And the defendant’s Fourth Amendment rights are violated only when the challenged conduct invaded his legitimate expectation of privacy rather than that of a third party.” Id. (emphasis in original) (citing, inter alia, Rakas, 439 U.S. at 143.)

While the district court and the circuit court in Payner recognized this rule, they directly stated that a federal court should use its supervisory power to suppress evidence tainted by gross illegalities that did not infringe the defendant’s constitutional rights. Id. at 733. The Supreme Court disagreed—and found that

the extension of the supervisory power would “enable federal courts to exercise a standardless discretion in their application of the exclusionary rule to enforce the Fourth Amendment.” *Id.* at 733. The Supreme Court reiterated that it did not condone lawless behavior—but nor did lawless behavior command “the exclusion of evidence in every case of illegality.” *Id.* at 734. “Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of government rectitude would impede unacceptably the truth-finding functions of the judge and jury.” *Id.* The Court concluded that “the supervisory power does not authorize a federal court to suppress otherwise admissible evidence on the ground that it was seized unlawfully from a third party not before the court.” *Id.* at 735.

Ulbricht and other defendants seeking to both establish an interest in items seized, and put the Government to its proof of establishing a connection, are protected to the extent that any declaration or affidavit may not be offered against the defendant at trial. *See Simmons*, 390 U.S. at 393-94 (a defendant’s sworn statements offered in support of a motion to suppress may not thereafter be admitted against him at trial on the issue of guilt unless defendant does not object). This does not insulate the defendant from all risk, however. His statement may nonetheless be used to impeach the defendant should he take the witness stand in his own defense and, at that time, open the door to the statement on direct. *United States v. Jaswal*, 47 F.3d 539, 543 (2d Cir. 1995); *United States v. Beltran-Gutierrez*, 19 F.3d 1287, 1291 (9th Cir. 1994). It is certainly true, therefore, that the requirement of a statement of a personal privacy interest in an item seized

requires a defendant to make hard choices. One choice is to establish an interest if such exists to enable a court to take up important issues. That could not or was not done here.

Here, the Court does not know whether Ulbricht made a tactical choice because he is—as they say—between a rock and a hard place, or because he truly has no personal privacy interest in the servers at issue.

It is clear, however, that this Court may not proceed with a Fourth Amendment analysis in the absence of the requisite interest. If a third party leased a server on which the Government unlawfully intruded in the investigation that led to the Icelandic server, under Katz, Rakas, Payner, and a host of other case law, that is no basis for an assertion by Ulbricht that his Fourth Amendment rights were violated. Thus, whatever methods used—lawful or unlawful—are beyond this Court’s purview. Payner, 447 U.S. at 735. Ulbricht therefore has no basis to challenge as violations of his Fourth Amendment rights: (1) the investigation that preceded and led to the Icelandic server, (2) the imaging and search of the Icelandic server, and (3) Warrant Nos. 1, 2, 3, 4, 5, and 7.⁹

Ulbricht has not proffered a statement that he had a personal expectation of privacy in the laptop (Warrant No. 6), Facebook (Warrant No. 8) or Gmail accounts (Warrant No. 9). While his lawyer stated that his privacy interest in the accounts and his laptop is “manifest” (ECF No. 83 at 2 n.2), the law has long held that

⁹ Ulbricht has also argued that Warrant Nos. 1, 2, 3, 4, 5, and 7 are unlawful “general warrants.” (See Def.’s Reply Br. at 3.) For the same reasons that he lacks a sufficient Fourth Amendment interest to challenge the investigatory technique that underlies the probable cause recited in the warrants, so too he lacks a sufficient interest as to this argument.

statements submitted by attorneys that are merely conclusory or that do not allege personal knowledge on the part of the attorney are insufficient to create an issue of fact. See United States v. Motley, 130 Fed. App'x 508, 510 (2d Cir. 2005) (summary order) (citing Lipton v. Nature Co., 71 F.3d 464, 469 (2d Cir. 1995); United States v. Gillette, 383 F.2d 843, 848-49 (2d Cir. 1967). While the Court may assume based on his attorney's statement and the Government's stated intention not to contest that position that these accounts and the laptop belong to Ulbricht, that does not necessarily mean that he has a reasonable expectation of privacy as to their respective contents. There are, of course, many ways in which users may set up the privacy settings or password protection for their Facebook and Gmail accounts, as well as access to their laptops—and these settings and protections are relevant to a Katz analysis. See United States v. Meregildo, 883 F. Supp. 2d 523, 525 (S.D.N.Y. 2012) (“When a social media user disseminates his postings and information to the public, they are not protected by the Fourth Amendment. However, postings using more secure privacy settings reflect the user's intent to preserve information as private and may be constitutionally protected.” (citations omitted)). It is also possible for more than one individual to have access to a single shared Facebook or Gmail account. It also seems likely that many of Ulbricht's emails were to individuals other than himself, which could defeat an expectation of privacy in them. See United States v. Lifshitz, 369 F.3d 173, 190 (2d Cir. 2004) (explaining that emailers generally lose a legitimate expectation of privacy in an email that has already reached its recipient (citing Guest v. Leis, 255 F.3d 325, 333 (6th Cir.

2001))).¹⁰ The Court has no idea whether Ulbricht had a reasonable subjective expectation that all aspects of his Facebook and Gmail accounts would be private, or none. The Court has no idea whether his laptop was password protected or not. And that makes a difference. The Court cannot just assume a subjective expectation of privacy.¹¹

In any event, the warrants relating to these three items were lawful. As the Court has set forth above, Ulbricht cannot challenge the initial investigation that led to the Icelandic server. Information obtained from the search of that server led law enforcement to other servers within the United States (as to which Ulbricht similarly has no demonstrated privacy interest), and the information gathered as a result of those searches undoubtedly found its way into the probable cause analysis for Warrant Nos. 6, 8 and 9. That probable cause supported Warrants 6, 8 and 9 was well and solidly established—even without the deference this Court must give to the reviewing magistrate judge. See Gates, 462 U.S. at 236; United States v. Martin, 426 F.3d 68, 73 (2d Cir. 2005) (courts must afford a presumption of validity to the affidavits supporting a search warrant); United States v. Carpenter, 341 F.3d

¹⁰ The Court does not here decide that Ulbricht could never have an expectation of privacy in an email he sent to a third party.

¹¹ It is particularly inappropriate to do so in light of published user terms for both Gmail accounts and Facebook which indicate that under certain circumstances the accounts may be turned over, without notice, to law enforcement. See Privacy Policy, Google, <http://www.google.com/policies/privacy/> (last modified Mar. 31, 2014) (“Your domain administrator may be able to . . . receive your account information in order to satisfy applicable law, regulation, legal process or enforceable government request. . . . We will share personal information with companies, organizations or individuals outside of Google if we have a good-faith belief that . . . the information is reasonably necessary to: meet any applicable law, regulation, legal process, or enforceable governmental request.”); Information for Law Enforcement Authorities, Facebook, <https://www.facebook.com/safety/groups/law/guidelines/> (last visited October 9, 2014) (explaining that under certain circumstances Facebook may provide a user’s information to law enforcement authorities without notice to the user).

666, 670 (8th Cir. 2003) (“[S]uppression remains an appropriate remedy where ‘the issuing magistrate wholly abandoned his judicial role.’” (quoting United States v. Leon, 468 U.S. 897, 923 (1984))). Thus, the warrants do not suffer from any probable cause deficiency.

Nor are these general warrants. A general warrant is one that lacks particularity as to the item to be seized or as to what should be searched. George, 975 F.2d at 75. Here, they were specific as to both. The warrants identified the laptop and the accounts by name. There was no lack of specificity as to the items to be seized. Thus, the entirety of the laptop and data on the hard drive of that laptop was seized, along with the entirety of the accounts.

The warrants were also specific, however, as to what type of evidence should be searched for. Each of the warrants listed specific categories of items, including evidence of aliases, evidence concerning attempts to obtain fake identification, writings which can be used as stylistic comparisons for other “anonymous” writings, evidence concerning Ulbricht’s travel patterns or movement, communications with co-conspirators regarding specified offenses, evidence concerning Bitcoin in connection with the specified offenses, and other evidence relating to the specified offenses. (See Dratel Decl. exs. 11, 13, 14.)

It is certainly true that in order to search for the specified items, the Warrants sought to seize the entirety of the laptop, the Facebook account, and the Gmail account. But this does not transform the warrants into general warrants. Indeed, it is important not to confuse the separate concepts of the seizure of an

item—which were quite specifically identified but which were seized in their entirety—with the search itself. The search is plainly related to the specific evidence sought. It has long been perfectly appropriate to search the entirety of a premises or object as to which a warrant has issued based on probable cause, for specific evidence as enumerated in the warrant, which is then to be seized. For instance, warrants have long allowed searching a house high and low for narcotics—indeed, it is rare that drug dealers point out the hidden trap in the basemen—or reviewing an entire file cabinet to find files that serve as evidence of money laundering activity, which might be intermingled with files documenting lawful and irrelevant activity. This case simply involves the digital equivalent of seizing the entirety of a car to search for weapons located within it, where the probable cause for the search is based on a possible weapons offense.

In In the Matter of a Warrant for All Content and Other Information Associated with the Email Account at xxxxx@Gmail.com Maintained at the Premises Controlled by Google, Inc., No. 14 Mag. 309, 2014 WL 3583529 (S.D.N.Y. Aug. 7, 2014) (“Gmail”), Magistrate Judge Gorenstein comprehensively reviewed the current state of the law in this area. In that case, the Government sought a warrant in connection with an investigation to allow it to search the entirety of a Gmail account for specified evidence of a crime, as to which sufficient probable cause had been demonstrated. Id. at *1. The warrant did not contain a particular search protocol and did not limit the amount of time the Government could take to review the information Google would provide in response to the warrant. Id. The

warrant also did not provide for later destruction of the material. Id. The court reviewed Fourth Amendment principles with a particular focus on the requirement that courts assess the “reasonableness” of a search. Id. at *2. The court noted that courts in Washington, D.C. and Kansas had denied applications seeking warrants for entire email accounts, at least without protocols in place. Id. at *3. The court found that under long established precedent, when officers executing warrants went, for instance, to a home or office, and were authorized to seize particular types of documents, they generally were required to look into the places where any and all documents were stored; there was no practice and certainly no requirement that people universally applied to the organization of their documents to assist in quick and direct location of responsive documents should they ever be the subject of a warrant. That was not real life. Some latitude for searches had to be allowed; this was particularly true with regard to electronic evidence would could be even more voluminous and undifferentiated than paper documents. See id. at *5.

Judge Gorenstein applied these principles to the warrant before him and determined that because it specified the particular crimes as to which evidence was sought—and as to which probable cause had been established—it was not overbroad. Id. at *7. He noted that the Federal Rules of Criminal Procedure had been amended in 2009 to provide for a procedure in which a warrant could authorize the seizure of electronic storage media or the seizure or copying of electronically stored information—and that unless the warrant otherwise requires it, a later review of the media or information is allowed. Id. at *6 (citing Fed. R.

Crim. P. 41(e)(2)(B)). The decision also noted the Second Circuit's ruling in United States v. Ganas, 755 F.3d 125 (2d Cir. 2014), in which the Second Circuit held that while wholesale removal of all tangible papers from a premises was not generally acceptable, electronic media posed a different set of issues. Gmail, 2014 WL 3583529, at *6. In Ganas, the Court stated that “[i]n light of the significant burdens on-site review would place on both the individual and the Government, the creation of mirror images for offsite review is constitutionally permissible” 755 F.3d at 135.

This Court agrees entirely with Judge Gorenstein's rationale. Warrants 6, 8 and 9 are substantially similar to the warrant before Judge Gorenstein, and similarly have the necessary particularity.¹²

III. PEN-TRAP ORDERS

Defendant argues that the Pen-Trap Orders were deficient for two reasons:

(1) the information obtained through the Pen-Trap Orders should have been the

¹² Even if this Court were to find that the magistrate judges who issued the warrants erred by approving the clauses to which Ulbricht objects as overly broad, the application of the exclusionary rule here would still be inappropriate, as the law enforcement agents who executed the searches and seizures at issue were entitled to rely in good faith upon the magistrate judges' probable cause determinations, and the warrant applications here were not so “lacking in indicia of probable cause” nor so “facially deficient” that reliance upon the warrant was “entirely unreasonable.” Id. at 921-23 (quotation omitted).

The Court further notes that while it is certainly true that there circumstances under which a warrant that authorizes a seizure of “any communications or writings” in the email account of a defendant would be overbroad, it is also true that a magistrate judge's review of a warrant application must be based on the totality of the circumstances. Gates, 462 U.S. at 238-39. Here, these circumstances included many steps taken by members of the alleged conspiracy to maintain their anonymity while creating, designing, administering, operating, and using the Silk Road website, and they included the use of idiosyncratic linguistic patterns by the website's administrator. Given the high degree of deference that this Court must afford the review of the magistrate judge, see id. at 236, it is not this Court's place to second-guess their decision that the warrants were not overly broad in the context of a case where anonymity and the usage of idiosyncratic linguistic patterns are key issues.

subject of a warrant application, and (2) the orders failed to include appropriate minimization procedures. Both arguments are meritless.

The law is clear—and there is truly no room for debate—that the type of information sought in Pen-Trap orders 1, 2, 3, 4, and 5 was entirely appropriate for that type of order.¹³ See 18 U.S.C. §§ 3121 et seq. In Smith v. Maryland, 442 U.S. 735 (1979), the Supreme Court found that the use of a pen-register did not constitute a search for Fourth Amendment purposes, id. at 745-46. To the extent Ulbricht wants to make novel Fourth Amendment arguments with regard to the Pen-Trap Orders,¹⁴ he has not established the requisite privacy interest (as discussed at length above) to do so. The Court will therefore not consider those arguments.

Ulbricht's minimization argument is similarly off-base. Minimization refers to protocols and is used in the wiretap context to prevent investigators from listening to conversations irrelevant to their investigation. See 28 U.S.C. § 2518 (wiretaps must be conducted "in such a way as to minimize the interception of communications not otherwise subject to interception"). Minimization is directed at content. See United States v. Rizzo, 491 F.2d 215, 216 n.3 (2d Cir. 1974) (federal

¹³ The information related to the IP addresses of individual packets of data sent to and from a particular IP address. The content of the communications was not requested. Pen-trap devices have frequently been used to obtain precisely that which was sought here. Before the Internet became widely used, pen-trap devices were used to obtain information regarding the telephone numbers associated with incoming and outgoing telephone calls. Smith v. Maryland, 442 U.S. 735 (1979).

¹⁴ Defendant argues that the scope of information that can be gleaned from Internet routing information "allows for a profile of an individual's activity far more concrete and comprehensive" than what the telephone numbers associated with a telephone call would reveal. (Def.'s Reply Br. at 25.) He urges that as a result, Smith v. Maryland—which occurred in the context of landline telephones—is inapposite. This Court cannot consider that argument in light of the lack of a demonstrated privacy interest.

minimization laws do not apply “to mere interception of what telephone numbers are called, as opposed to the interception of the contents of the conversations”). The Pen-Trap Orders do not seek the content of internet communications in any directly relevant sense.

IV. BILL OF PARTICULARS

Defendant moves for an order requiring the Government to provide a bill of particulars. (Def.’s Br. at 65-79.) Defendant argues that in the absence of additional factual detail not contained in the Indictment, he will be unable to prepare his defense and will have an insufficient basis to make double jeopardy challenges to potential future charges. (Id. at 65.) Defendant argues that the volume of discovery weighs in favor of a bill of particulars. (Id. at 65-66.)

Rule 7(f) of the Federal Rules of Criminal Procedure provides that a court may direct the Government to file a bill of particulars. Fed. R. Crim. P. 7(f). However, a bill of particulars is required “only where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused.” United States v. Walsh, 194 F.3d 37, 47 (2d Cir. 1999) (quoting United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990)).

A bill of particulars is also unnecessary when the Government has produced materials in discovery concerning the witnesses and other evidence. See id. (“[A] bill of particulars is not necessary where the government has made sufficient disclosures concerning its evidence and witnesses by other means.”) In Torres, the Second Circuit affirmed the district court’s denial of a bill of particulars in part because the defendants were provided with considerable evidentiary detail outside

of the indictment. 901 F.2d at 233-34; see also United States v. Panza, 750 F.2d 1141, 1148 (2d Cir. 1984). Thus, in determining whether to order a bill of particulars, a court must examine the totality of the information available to defendant, both through the indictment and through pre-trial discovery. United States v. Bin Laden, 92 F. Supp. 2d 225, 233 (S.D.N.Y. 2000). The purpose of the bill of particulars is to avoid prejudicial surprise at trial and give defendant sufficient information to meet the charges against him. Id. (citing Torres, 901 F.2d at 234).

In Bin Laden, the court granted the defendants' motion for a bill of particulars. Id. at 227. There, however, the indictment charged 15 named defendants with 267 discrete criminal offenses, it charged certain defendants with 229 counts of murder, it covered a period of nearly ten years, and it alleged 144 overt acts in various countries. Id. at 227-28. The court noted that the "geographical scope of the conspiracies charged in the indictment is unusually vast." Id.

There is no provision in the Federal Rules of Criminal Procedure for the type of broad, sweeping discovery Ulbricht seeks here. Neither the nature of this indictment or the produced discovery calls for a departure from these general rules. That this case has a high profile does not mean that it requires special treatment. Moreover, there can be no doubt that the Indictment here is specific enough to advise Ulbricht of the acts of which he is accused, namely creating, designing, administering and operating the Silk Road website, which allegedly served as an

online one-stop-shop for narcotics, fake identification documents, and materials used to hack computers, and which was specifically designed to rely on Bitcoin, a method of payment designed to conceal the identities and locations of users transmitting and receiving funds. This case is unlike Bin Laden, which concerned hundreds of offenses associated with over one hundred alleged actions committed in far corners of the globe—it concerns a single defendant who is alleged to have run a single and clearly identified website. Further, the Court has gone to considerable lengths to ensure that Ulbricht has access to evidentiary detail outside of the Indictment, including ensuring that a laptop preloaded with certain discovery materials was provided to Ulbricht for use at the Metropolitan Detention Center (“MDC”) and particular accommodations regarding the length of time he can routinely access the information. (ECF No. 40.) A bill of particulars is wholly unnecessary to avoid prejudicially surprising Ulbricht at trial.

V. SURPLUSAGE

Rule 7(d) of the Federal Rules of Criminal Procedure provides that, upon a motion by defendant, a court may strike extraneous matter or surplusage from an indictment. Fed. R. Crim. P. 7(d). However, “[m]otions to strike surplusage from an indictment will be granted only where the challenged allegations are not relevant to the crime charged and are inflammatory or prejudicial.” United States v. Mulder, 273 F.3d 91, 99 (2d Cir. 2001) (quoting United States v. Scarpa, 913 F.2d 993, 1013 (2d Cir. 1990)).

Courts have held that statements providing background are relevant and need not be struck. Id. at 99-100 (in action charging extortion relating to labor

coalitions, upholding district court's decision not to strike background on tactics and purposes of labor coalitions).

The surplusage issues defendant has raised relating largely to the murder for hire assertions need not be fully addressed at this time. Courts in this district routinely await the presentation of the Government's evidence at trial before ruling on a motion to strike surplusage. See, e.g., Scarpa, 913 F.2d at 1012; United States v. Persico, 621 F. Supp. 842, 861 (S.D.N.Y. 1985); United States v. Ahmed, No. 10 CR. 131(PKC), 2011 WL 5041456, at *3 (S.D.N.Y. Oct. 21, 2011).

In Ahmed, the defendant's motion to strike surplusage related to background information regarding civil and sectarian violence in Somalia and the anti-American animus of Al Shabaab, which was designated by the Secretary of State as a "foreign terrorist organization." Ahmed, 2011 WL 5041456, at *1-2. The court held that it would await presentation of the Government's evidence at trial, and stated further that the Government would have some latitude to "demonstrat[e] the nexus between defendant's conduct and American interests, as well as the background of others who are members of the charged conspiracies." Id. at *3. The Court noted that denial of the motion without prejudice to renew might also allow the parties to reach a pre-trial stipulation, as had occurred in United States v. Yousef, No. S3 08 Cr. 1213(JFK), 2011 WL 2899244 (S.D.N.Y. June 30, 2011). Ahmed, 2011 WL 5041456, at *3. Here, as in Ahmed, the Court will await the Government's presentation at trial.

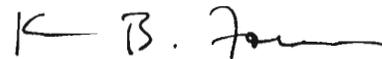
VI. CONCLUSION

For the reasons set forth above, defendant's motion to suppress, for a bill of particulars and to strike surplusage is DENIED.

The Clerk of Court is directed to close the motion at ECF No. 46.

SO ORDERED.

Dated: New York, New York
October 10, 2014



KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: **OCT 24 2014**

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UNITED STATES OF AMERICA :
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ROSS WILLIAM ULBRICHT, :
a/k/a "Dread Pirate Roberts," :
a/k/a "DPR," :
a/k/a "Silk Road," :
:
 Defendant. :
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14-cr-68 (KBF)
OPINION & ORDER

KATHERINE B. FORREST, District Judge:

On February 4, 2014, a federal grand jury returned Indictment 14 Cr. 68 (the "Original Indictment"), charging Ross Ulbricht ("defendant" or "Ulbricht") on four counts—all stemming from the creation, administration, and operations of an online marketplace known as "Silk Road." (ECF No. 12 ("Orig. Ind.")). On March 28, 2014, Ulbricht moved to dismiss the Original Indictment in its entirety. (ECF No. 19.) That motion became fully briefed on May 27, 2014 (ECF No. 32), and on July 9, 2014, the Court denied the motion (ECF No. 42). On August 21, 2014, the Government filed Superseding Indictment S1 14 Cr. 68 (KBF) (the "Superseding Indictment") containing three additional charges. (ECF No. 52 ("Sup. Ind.")). Ulbricht's trial is scheduled to begin on January 5, 2015.

Pending before the Court is defendant's motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and "for any such other and further relief . . . which to the Court seems just and proper." (ECF No. 71.) For the reasons set forth below, the motion is DENIED.

I. THE INDICTMENTS¹

The Original Indictment charged Ulbricht with four crimes: Narcotics Trafficking Conspiracy (Count One), Continuing Criminal Enterprise (“CCE”) (Count Two), Computer Hacking Conspiracy (Count Three), and Money Laundering Conspiracy (Count Four). (Orig. Ind. ¶¶ 1-21.)

The Superseding Indictment, filed on August 21, 2014, charges Ulbricht with seven crimes: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), Continuing Criminal Enterprise (Count Four), Conspiracy to Commit and Aid and Abet Computer Hacking (Count Five), Conspiracy to Traffic in Fraudulent Identification Documents (Count Six), and Money Laundering Conspiracy (Count Seven). (Sup. Ind. ¶¶ 1-31.) The Superseding Indictment differs from the Original Indictment in the following three respects:

1. The Superseding Indictment contains three new charges (Counts One, Two, and Six).
2. Counts One, Two, Three, Five, and Six of the Superseding Indictment include an allegation that Ulbricht aided and abetted the commission of the charged crime. (Sup. Ind. ¶¶ 5, 8, 13, 15, 21, 22, 25, 26.)
3. Count Three of the Superseding Indictment alleges that Ulbricht paid a Silk Road user (“User-1”) approximately \$150,000 to murder another Silk Road user (“User-2”) who was threatening to release the identities

¹ The Court assumes familiarity with the facts of this case, and recites only those relevant to this motion.

of users of the site, and approximately \$500,000 to murder four additional persons believed to be associated with User-2. (Id. ¶ 16(b), (c).)

On October 2, 2014, Ulbricht filed a motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and “for any such other and further relief . . . which to the Court seems just and proper.” (ECF No. 71.) That motion is the subject of this Opinion & Order.

II. LEGAL STANDARDS

A. Sufficiency of an Indictment

Rule 7(c)(1) of the Federal Rules of Criminal Procedure provides that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). “[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” Hamling v. United States, 418 U.S. 87, 117 (1974) (citations omitted); see also United States v. De La Pava, 268 F.3d 157, 162 (2d Cir. 2001) (“An indictment must sufficiently inform the defendant of the charges against him and provide enough detail so that he may plead double jeopardy in a future prosecution based on the same set of events.” (citation omitted)). “[A] facially valid indictment returned by a duly constituted grand jury” will, absent unusual circumstances, suffice “to call for a trial on the merits of the charges set forth therein.” United States v. Bodmer,

342 F. Supp. 2d 176, 179 (S.D.N.Y. 2004) (citing Costello v. United States, 350 U.S. 359, 363 (1956)).

B. Aiding and Abetting

The law has long provided that aiders and abettors are punishable as principals. See 18 U.S.C. § 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”). 18 U.S.C. § 2(a), the statute criminalizing aiding and abetting, “abolishe[d] the distinction between principals and accessories and [made] them all principals.” Standefer v. United States, 447 U.S. 10, 19 (1980) (alterations in original) (quoting Hammer v. United States, 271 U.S. 620, 628 (1926)) (internal quotation marks omitted); see also id. (recounting the legislative history of § 2). As the Second Circuit has explained,

18 U.S.C. § 2 abolished the differentials in punishment between an accessory before the fact and a principal. Under common law an aider and abettor had to be present at the site of the crime. An accessory before the fact is one who, though absent, procures, counsels or commands another to commit an unlawful act. 18 U.S.C. § 2(a) combines these two classifications, making each such defendant equally as guilty as the principal.

United States v. Molina, 581 F.2d 56, 61 n.8 (2d Cir. 1978). Aiding and abetting an offense “does not constitute a discrete criminal offense but only serves as a more particularized way of identifying ‘persons involved.’” United States v. Smith, 198 F.3d 377, 383 (2d Cir. 1999) (quoting United States v. Oates, 560 F.2d 45, 54 (2d Cir. 1977)) (internal quotation marks omitted). “In fact, ‘when a person is charged with aiding and abetting the commission of a substantive offense, the “crime charged” is . . . the substantive offense itself.” Id. (quoting Oates, 560 F.2d at 55).

Because “aiding and abetting is not a separate offense,” it “may be charged in the same count as a substantive crime.” Novak v. United States, No. CV-07-4361(DGT), 2009 WL 982429, at *4 (E.D.N.Y. Apr. 13, 2009); cf. United States v. Droms, 566 F.2d 361, 363 (2d Cir. 1977) (explaining that a single count may allege that “an offense has been committed in a multiplicity of ways”).²

III. DISCUSSION

C. Motion to Dismiss Counts One through Four of the Superseding Indictment

In moving to dismiss Counts One through Four of the Superseding Indictment (the “narcotics counts”), Ulbricht does not dispute that the Superseding Indictment informs him of the charges against him and provides sufficient detail to enable him to plead double jeopardy in a future prosecution. See De La Pava, 268 F.3d at 162. Rather, Ulbricht seeks to dismiss the narcotics counts on the ground that these counts rest on inconsistent theories of liability. Specifically, Ulbricht argues that by charging him “on the basis that he was either a drug ‘kingpin,’ as alleged in Count Four . . . or merely aiding and abetting others in violating narcotics laws, which the government presents as a theory of liability for the offenses charged in Counts One, Two and Three,” “the government has crossed [the] lines of judicial fairness by presenting irreconcilably inconsistent theories regarding Mr. Ulbricht’s alleged commission of the offenses charged in Counts One through Four, and thus

² For this reason, an indictment charging aiding and abetting in the same count as a substantive offense is not duplicitous. See United States v. Aracri, 968 F.2d 1512, 1518 (2d Cir. 1992) (“An indictment is duplicitous if it joins two or more distinct crimes in a single count.” (emphasis added) (citation omitted)).

violating his Fifth Amendment right to due process.” (Memorandum of Law in Support of Defendant Ross Ulbricht’s Pre-Trial Motions Aimed at the Superseding Indictment at 3-4, ECF No. 72 (“Def.’s Mem.”).) In addition, Ulbricht argues that in presenting these inconsistent theories, “the prosecution shirks it[s] ‘Special Responsibilities’ mandated by the ABA Model Rules and New York State Rules of Professional Conduct.” (*Id.* at 1.) These arguments are without merit.

The Superseding Indictment does not advance any legally inconsistent theories of liability. In particular, the CCE charge in Count Four is consistent with the aiding-and-abetting allegations relating to the crimes set forth in Counts One through Three. Ulbricht’s assertion that a “mere aider and abettor” cannot be a “drug ‘kingpin’”³ (Def.’s Mem. at 9) is incorrect. The law does not distinguish between principals and aiders and abettors. See *Standefer*, 447 U.S. at 19. One who aids and abets a federal narcotics crime is “equally as guilty as the principal” who commits it, *Molina*, 581 F.2d at 61, and equally susceptible to CCE liability. The law is clear that “that aiding and abetting the violation of federal narcotics laws may serve as a predicate offense in support of a CCE conviction.” *United States v. Joyner*, 313 F.3d 40, 47 (2d Cir. 2002) (collecting cases); see also *United States v. Aiello*, 864 F.2d 257, 264 (2d Cir. 1988) (“We do not read our earlier opinions to shield kingpins from CCE liability solely because they are convicted as aiders and abettors rather than as principals with regard to the predicate crimes. We therefore hold that a drug felony violation based upon aiding and abetting may

³ The CCE statute is sometimes referred to as the “kingpin” statute.

qualify as a ‘series’ predicate where, as here, the aider and abettor is a kingpin.”⁴ Therefore, as long as the remaining elements of CCE liability are alleged—that is, as long as it is alleged that a defendant aids and abets as part of a “continuing series” of federal narcotics offenses, undertaken in concert with at least five other people whom the defendant organizes, supervises, or otherwise manages, and from which he derives substantive income or resources, see Aiello, 864 F.2d at 263-64; 21 U.S.C. § 848—the Government has satisfied its pleading obligations. The Government has not “shirked” any special responsibilities (see Def.’s Mem. at 1) by alleging the Ulbricht is such a defendant, and Ulbricht does not cite any authority to the contrary.

Ulbricht’s premise appears to be that an indictment cannot allege alternative theories of liability. This is incorrect. “An indictment is not defective simply because it charges a defendant with alternative offenses.” Whitfield v. Ricks, No. 01 Civ. 11398 LAK, 2006 WL 3030883, at *12 (S.D.N.Y. Oct. 24, 2006).⁵ In fact, the Government not only may charge a defendant based on alternative theories of liability, it may present those alternative theories to a jury. See United States v. Masotto, 73 F.3d 1233, 1241 (2d Cir. 1996) (“When the jury is properly instructed on two alternative theories of liability, as here, we must affirm when the evidence is sufficient under either of the theories.” (citing, inter alia, Griffin v. United States, 502 U.S. 46 (1991))). It is not uncommon to charge aiding and abetting and

⁴ Whether aiding and abetting a violation of federal narcotics laws may serve as a predicate offense in support of a CCE conviction—the question presented here—is an issue distinct from whether one may be convicted under the CCE statute for aiding and abetting a kingpin. The Second Circuit has answered the latter question “no.” See Aiello, 864 F.2d at 264.

⁵ Whitfield was a habeas corpus case, but this proposition is true more generally.

principal liability as alternative theories. See, e.g., Rosemond v. United States, 134 S. Ct. 1240, 1243-44, (2014); United States v. Fitzgerald, 542 F. App'x 30, 34 (2d Cir. 2013); United States v. Huezio, 546 F.3d 174, 179 (2d Cir. 2008); United States v. Frampton, 382 F.3d 213, 224 (2d Cir. 2004). The Second Circuit has even suggested that, when that happens, a verdict is valid if some jurors convicted on a theory of principal liability while others convicted based on an aiding-and-abetting theory. See United States v. Ferguson, 676 F.3d 260, 279 (2d Cir. 2011); United States v. Peterson, 768 F.2d 64, 67 (2d Cir. 1985).⁶ Therefore, it is entirely proper for the Superseding Indictment to include counts alleging principal and aider-and-abettor-liability as alternative theories of liability.

Ulbricht claims that “the doctrine that a prosecutor’s advancement of inconsistent irreconcilable theories denies due process has been endorsed by multiple circuits and jurisdictions.” (Def.’s Mem. at 6.) His citations are inapposite. In the cases he cites, the Government pursued two factually irreconcilable positions to convict two different defendants of the same crime. See, e.g., Stumpf v. Mitchell, 367 F.3d 594, 611 (6th Cir. 2004) (“[S]everal of our sister circuits have found, or implied, that the use of inconsistent, irreconcilable theories to secure convictions against more than one defendant in prosecutions for the same crime violates the due process clause.”), rev’d in part, vacated in part sub nom., Bradshaw v. Stumpf, 545 U.S. 175 (2005); In re Sakarias, 106 P.3d 931, 941-42 (Cal. 2005)

⁶ In fact, Ferguson extended this principle even further. See Ferguson, 676 F.3d at 279 (“Nothing limits the Peterson analysis to principal versus aiding-and-abetting liability. The four theories[, principal, aiding and abetting, willfully causing, and Pinkerton,] are compatible—they are zones on a continuum of awareness, all of which support criminal liability.”).

("[F]undamental fairness does not permit the People, without a good faith justification, to attribute to two defendants, in separate trials, a criminal act only one defendant could have committed."); see also Thompson v. Calderon, 120 F.3d 1045, 1058 (9th Cir. 1997), rev'd, 523 U.S. 538 (1998); Smith v. Groose, 205 F.3d 1045, 1054 (8th Cir. 2000); Drake v. Kemp, 762 F.2d 1449, 1478 (11th Cir. 1985) (Clark, J., concurring). The circumstances here are quite different: here, one defendant is charged with several different narcotics offenses. Contrary to Ulbricht's contention, there is nothing improper about a prosecutor seeking "multiple convictions against a single defendant in a single trial." (Def.'s Mem. at 10.)

Accordingly, Ulbricht's motion to dismiss Counts One through Four is DENIED.

D. Request for a Bill of Particulars and Other Relief

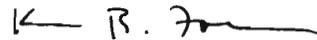
Ulbricht seeks a bill of particulars with respect to the Superseding Indictment based on the same arguments made in support of his request for a bill of particulars with respect to the Original Indictment. For the reasons set forth in the Court's Opinion & Order dated October 10, 2014 (ECF No. 89), Ulbricht's request for a bill of particulars is DENIED. The Superseding Indictment, coupled with the Complaint and discovery produced in this case, are sufficient to put Ulbricht on notice of the charges against him and to enable him to prepare a defense.

IV. CONCLUSION

For the reasons set forth above, defendant's motion is DENIED. The Clerk of the Court is directed to terminate the motion at ECF No. 71.

SO ORDERED.

Dated: New York, New York
October 24, 2014



KATHERINE B. FORREST
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

14-cr-68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

New York, N.Y.
December 15, 2014
(Sealed Excerpt)

10 Before:

11 HON. KATHERINE B. FORREST
12 District Judge

14 APPEARANCES

15 PREET BHARARA
United States Attorney for the
16 Southern District of New York
BY: TIMOTHY T. HOWARD, ESQ.
17 SERRIN A. TURNER, ESQ.

18 JOSHUA DRATEL, ESQ.
LINDSAY LEWIS, ESQ.
19 Attorneys for Defendant
Law Offices of Joshua Dratel, P.C
20 -and-
JOSHUA HOROWITZ, ESQ.
21 Attorneys for Defendant
Tech Law Ny

23 Also Present: Nicholas Evert
24 Molly Rosen
Paralegals, U.S. Attorney's Office

25

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1 All right, folks. So I reviewed the letters. Here is
2 one of the issues that I think we're confronting, which is,
3 when the government presented the letter, it presented it in
4 terms of, you didn't really need to, but in an abundance of
5 caution you were going to make a disclosure. And there are a
6 number of times when what I'm going to refer to generically as
7 *Brady*-type disclosures are made and they're not necessarily
8 even really *Brady* disclosures because they are not necessarily
9 material or exculpatory but, in an abundance of caution, the
10 government just wants to get certain things out there. That
11 happens with relative frequency. Here of course we have the
12 unusual situation where this could never be that kind of
13 disclosure because the defendant isn't able to use the
14 information. So in order to obtain the protection of an "even
15 if" *Brady* disclosure, the defendant would have to be able to
16 utilize the information in some manner. Otherwise, it's as if
17 he never told them, because his hands are completely tied. So
18 one issue is, I just want to make sure that nobody has any case
19 law. I've looked extensively on sealed disclosures like this
20 where the defendant can't even use the name or any of the
21 pieces, as opposed to a portion which is sealed, which happens,
22 with more frequency, and that therefore I think we need to go
23 on to -- we're going to have to grapple with the *Brady* issue, I
24 think, right now. Because if he can't use it, then we've got
25 to be sure that the defendant is protected, and that there is

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1 no basis for use that's -- and he has asserted that it is --
2 there is an ex -- you know, he has asserted he would like to
3 have it unsealed because he would like to use it. And you
4 folks have seen that letter. And I want to be careful,
5 Mr. Dratel, not to disclose things in the ex parte letter. I
6 must say I think you're going to need to say a little more in
7 order to get this discussion going.

8 But first, Mr. Howard, let me just ask you, do you
9 think it is not possible, from the government's point of view,
10 to disclose not the letter, which had lots of detail, but the
11 following facts: Carl Force, who was involved in the Silk Road
12 investigation, who utilized the user name Nob, is under
13 investigation by the DOJ or however you want to phrase that,
14 *inter alia* with regard to his role in investigating Silk Road.
15 That, I think, would give the defendant an ability to use the
16 information, to use that information, and to conduct whatever
17 investigation he deems appropriate. But from your letter this
18 morning, I understand that there is lots of sensitivity, even
19 around perhaps even that.

20 MR. HOWARD: Yes, your Honor. The public disclosure
21 of even the fact of the investigation would incur great damage
22 to the San Francisco investigation. We have consulted directly
23 with them. This would be a very high-profile investigation.
24 And we are concerned about flight, dissipation of assets, and
25 destruction of evidence at this point. And that's what San

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1 Francisco affirmed to us very strongly.

2 THE COURT: Why don't you give me a sense as to
3 whether -- you said Mr. Carl Force does know he's under
4 investigation. He knows he's a target.

5 MR. HOWARD: Yes, your Honor, he is aware because he
6 was interviewed. But the scope of the investigation, he is not
7 familiar with that. He does not know what the government or
8 the grand jury is looking at. It's an active investigation in
9 its early steps.

10 I think what we need to focus on is, there is really
11 no basis, based on what the government is presented at trial,
12 that this could be exculpatory. Because the only place where
13 Nob is referenced at all is with respect to the first murder
14 for hire. And the fact is it's irrelevant whether or not he
15 stole the bitcoins. The question is, what did Mr. Ulbricht
16 think from his point of view.

17 THE COURT: Tell me -- and this is what I didn't get
18 from the various submissions -- as I understand it, Nob, acting
19 as Nob, was not supposed to have administrative privileges. He
20 was supposed to be just pretending to be a user of the site and
21 then engaged in additional conduct.

22 MR. HOWARD: That is correct, your Honor.

23 THE COURT: But he obtained administrative privileges
24 as part of his what I'm going to call going rogue.

25 MR. HOWARD: That is actually under investigation at

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1 this point. We're not able to confirm that. All we know is
2 that San Francisco and the grand jury is looking into that.
3 But I think the point we were trying to make in our opposition
4 is that, let's assume that that investigation reveals that in
5 fact those allegations are accurate and that he obtained the
6 access of Flush, that he got his user credentials, and he used
7 those credentials to steal bitcoins from the site.

8 THE COURT: Could he have used those credentials to
9 have faked any other conduct of Flush, or could he have used
10 those credentials to have faked any conduct by Cimon? I don't
11 know how you pronounce his name, C-i-m-o-n.

12 MR. HOWARD: He had access to his account. Cimon,
13 Cimon, was TorChat. Those weren't communications that occurred
14 over the website. That was over a different facility, using
15 TorChat communications, that were recovered from Mr. Ulbricht's
16 computer.

17 THE COURT: No. I understand. What I'm trying to
18 figure out is the extent to which this could -- which I think
19 is part of the defendant's position -- unravel if it turns out
20 that -- I mean, just tell me if it's possible or not -- could
21 Nob, this fellow, if he did obtain some inside ability to use
22 the site, does it throw into doubt all the evidence relating to
23 that particular murder for hire?

24 MR. HOWARD: Your Honor, we believe that it does not.
25 We have independent evidence, in terms of TorChat

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1 communications that did not occur over the Silk Road servers,
2 over the Silk Road messaging system -- a separate system, in
3 which he spoke with two other employees, other co-conspirators,
4 Inigo and Cimon, regarding --

5 THE COURT: "He" being Mr. Ulbricht?

6 MR. HOWARD: Yes, your Honor.

7 THE COURT: But do you know that Inigo and Cimon were
8 not Nob, and they could not have been Nob? Do you know, is
9 there enough that you would be able to show, that would satisfy
10 that Cimon and Inigo are not aliases for Nob? He wasn't acting
11 in multiple capacities?

12 MR. HOWARD: We would show that they were two separate
13 people, your Honor.

14 THE COURT: All right. So the government's, as I
15 understand it from the letter, the government's position is
16 that you're not going to introduce any evidence directly from
17 or between Nob and Mr. Ulbricht. The references to Nob would
18 be -- the only way Nob is even going to enter the case is by
19 references in the context of Inigo and Cimon and Mr. Ulbricht's
20 separate communications. Is that right?

21 MR. HOWARD: That is correct, your Honor. Even though
22 they are highly incriminated in the conversation with Nob over
23 TorChat and the private message system, we're taking a step
24 away from those chats involving Nob, given the ongoing grand
25 jury investigation, and focusing solely on the communications

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1 he had with others about the murder for hire. It would be also
2 interesting to note that with respect to Cimon, there is not
3 only, in the chats directly that were excerpted as an exhibit
4 to our opposition, but previously, Cimon and Mr. Ulbricht
5 talked about whether or not Nob is actually an undercover
6 officer. It's speaking against Nob. He speaks against Nob's
7 purpose. So they're not the same person. They are two
8 different people.

9 MR. TURNER: Can I just add one point on this thought,
10 your Honor? This is not an issue where Nob is supposed to have
11 hacked into Flush's account, hacked into the site, anything
12 like this. This is an undercover agent who arrested this
13 person who actually controlled a Flush account and then got
14 consent to take it over, to some extent. And that's how he
15 would control it. So he wouldn't have had access to other
16 people's accounts.

17 THE COURT: No, but I understand that he apparently
18 went rogue, and when he went rogue, he apparently did certain
19 things that caused another user's account to act in a certain
20 way, as I understand it, potentially taking bitcoins and moving
21 them out of one account and into other.

22 MR. TURNER: Still, your Honor, that's with respect to
23 the Flush account. That was the user's account, the user that
24 he arrested. That user happened to be an administrator. So
25 that user had extra privileges that a normal user would not

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1 have.

2 THE COURT: Right. So could Nob, once he took over --
3 and maybe the chronology is the answer here, I don't know what
4 the chronology is -- but when Nob became Flush, whatever
5 consents and agreements with people he had, when he became
6 Flush, did he obtain Flush's administrative privileges?

7 MR. TURNER: Yes. But those would have been limited
8 administrative privileges.

9 THE COURT: Could he have faked being somebody else?

10 MR. TURNER: No, you can't do that. No. And, as
11 Mr. Howard said, in terms of the chat to Cimon, that didn't
12 occur on the Silk Road system. That occurred on a whole
13 separate TorChat that's not associated with Mr. Ulbricht, not
14 controlled by Mr. Ulbricht. There were TorChat e-mail
15 services, that were TorChat services. It's completely
16 different. That would be like saying, you know, you had taken
17 somebody's AOL account and now all of a sudden you could create
18 Gmail accounts. It is a completely different system.

19 THE COURT: All right. Mr. Dratel.

20 MR. DRATEL: Your Honor, first we object to that
21 letter being filed ex parte. The Court's order did not suggest
22 that it be ex parte. I think certainly the questions --

23 THE COURT: Hold on. Which letter?

24 MR. DRATEL: The letter that the Court received today,
25 that was submitted ex parte. I don't have that.

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1 THE COURT: Did I say anything that treads upon that?
2 I had not focused on the fact that it was ex parte.

3 MR. DRATEL: I think --

4 THE COURT: Hold on. Let me see -- you have not seen
5 the government's letter today?

6 MR. DRATEL: No.

7 THE COURT: Mr. Howard and Mr. Turner, have I -- stop
8 me if I'm about to do something that's going to be a problem.
9 Have I said anything today that's a problem? Because I was not
10 focused on the distinction.

11 MR. HOWARD: You have not, your Honor.

12 THE COURT: All right. So, Mr. Dratel, it didn't
13 form -- it wasn't so important that it formed the basis of all
14 of my comments. I had not yet realized --

15 MR. DRATEL: They may just be not remembering, or
16 just --

17 THE COURT: Oh, your letter was ex parte.

18 MR. DRATEL: No, no, no. The Court has already said,
19 in answer to one of the questions in the letter, that we
20 haven't seen it. So regardless of what the government says, it
21 has informed the Court, in terms of what we're discussing
22 today. The answer to the question, the answer to question 2.

23 THE COURT: Let me see whether or not -- yes.

24 MR. DRATEL: The answer to question 2.

25 THE COURT: Yes. Government has actually --

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1 MR. DRATEL: I didn't know that until the Court said
2 it.

3 THE COURT: Well, the government has also confirmed it
4 today.

5 MR. DRATEL: Well, because the Court mentioned it to
6 them. You know.

7 THE COURT: All right. Let me just ask Mr. Howard,
8 Mr. Turner if you have a copy of your letter right there?

9 MR. HOWARD: Yes, your Honor.

10 THE COURT: Are there pieces of it which can be shown
11 to defense counsel in light of the fact that the other,
12 November 21st letter was also shown?

13 MR. HOWARD: If you can just give us a minute, your
14 Honor?

15 THE COURT: Sure, yes.

16 (Government counsel confer)

17 MR. HOWARD: Your Honor, at the current stage, based
18 on our consultation with the U.S. Attorney's Office in San
19 Francisco, we believe that the parsed letter could be disclosed
20 under seal in this proceeding at this time. But what we would
21 ask not be disclosed would be paragraph 1, which references
22 certain witnesses that have appeared before the grand -- that
23 have been part of the investigation, and paragraph 4.

24 THE COURT: All right.

25 MR. HOWARD: But in terms of the reasons that perhaps

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1 would inure that were addressed more generally in the other
2 paragraphs, we believe that those may be disclosed.

3 THE COURT: All right. And so can you summarize for
4 Mr. Dratel, and then provide afterwards an exact copy of the
5 letter, but can you summarize for the defense the information
6 which you believe can be disclosed, under seal, in the context
7 of today's hearing?

8 MR. HOWARD: Yes, your Honor. I'll just read the
9 paragraphs. Paragraph 2 says that "Carl Force is aware that
10 he's under investigation insofar as he has been interviewed in
11 connection with the grand jury investigation. He is not,
12 however, aware of the full range of misconduct for which he is
13 being investigated."

14 Paragraph 3 reads as follows: "USAO San Francisco
15 briefs that the ongoing grand jury investigation would be
16 harmed by public disclosure of the investigation at this time
17 for the following reasons."

18 "(a) As noted before, although Carl Force is aware
19 that he is under investigation, he is not aware of the full
20 range of misconduct that is the subject of the investigation.
21 Public disclosure of the full scope of the investigation could
22 threaten the integrity of the investigation, as it might cause
23 Mr. Force or any potential subjects, co-conspirators, or aiders
24 and abettors to flee, destroy evidence, conceal proceeds of
25 misconduct and criminal activity, or intimidate witnesses."

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1 " (d) Based on the significant level of media attention
2 that the allegations against Carl Force would likely generate,
3 there is a serious risk that media report could influence the
4 information or testimony provided by witnesses, bias grand jury
5 members, or otherwise impact the integrity of the investigative
6 process.

7 " (c) The grand jury investigation is ongoing and the
8 scope of any charges the government may end up pursuing against
9 Carl Force is not yet known. Disclosure of the investigation
10 at this juncture would risk publicly airing suspicion or
11 allegations of wrongdoing that may not ultimately be charged
12 due to lack of evidence.

13 And paragraph 5 reads, "At present, for the reasons
14 set forth above in answer no. 3, the government does not
15 believe there are any facts that could be released regarding
16 Mr. Force's conduct that may be revealed without jeopardizing
17 the grand jury investigation."

18 THE COURT: All right. My deputy has redacted
19 paragraphs 1 and 4, and if it meets with the government's
20 approval, we could hand that in written form to Mr. Dratel.

21 Let's go on. Mr. Dratel, I interrupted you because I
22 wanted to resolve that issue to the extent we were able to.

23 Mr. Dratel is being handed a redacted copy of that
24 letter, with paragraphs 1 and 4 redacted.

25 MR. DRATEL: Thank you, your Honor.

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1 So the Court, to some extent, has recognized a problem
2 in this sense. We have information -- the government doesn't
3 know the full scope of what it's going to learn in the course
4 of its investigation of Mr. Force. But we're not permitted to
5 pursue it ourselves. That is unfair. That is a huge problem
6 under *Brady*, under the Sixth Amendment in terms of counsel, the
7 effective of assistance of counsel. It's a huge problem. What
8 they're saying is, this is off limits. So even though at the
9 end of the day -- I think right now we have enough. But I'm
10 just focusing on what they have said --

11 THE COURT: He's speaking about, in terms of the
12 exculpatory nature of the conduct, what could be material and
13 exculpatory about this? Just give me -- I've given you my
14 hypotheticals. Apparently mine don't meet the way the world
15 would work. What is it that could be material and exculpatory?

16 MR. DRATEL: Well, I'm not going to reveal that here
17 with the government. I put it *ex parte* for a specific reason.
18 I'm very, very disciplined about not giving the government an
19 opportunity to do something it doesn't have the right to.

20 THE COURT: I understand. But let me tell you my
21 conundrum, OK --

22 MR. DRATEL: And we have more, your Honor.

23 THE COURT: -- I cannot test -- I have on the one hand
24 the government, who is making a very vigorous argument that
25 there would be prejudice if there was disclosure of the facts

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1 that are the subject of this hearing. And I take that very
2 seriously. And I don't know any more than they tell me about
3 that. Then I have what you're saying, which they may or may
4 not agree with factually. And I want to -- in other words, I
5 don't know whether or not --

6 MR. DRATEL: Factually? I mean, but they don't think
7 it's exculpatory at all. So what's the difference in what they
8 think about what we put to the Court? They acknowledge it,
9 they give it because it is exculpatory, and this is the way
10 *Brady* material is provided by the government, except in capital
11 cases if it's a statutory mitigating factor. They don't say,
12 hey, this is *Brady*. They say, oh, this is Rule 16 but we're
13 not saying what it is. It's *Brady*. And the fact is that at
14 the end of the day, when this investigation is concluded and
15 this guy is indicted and it all comes out and it's all
16 exculpatory and material and relevant to this case and we
17 weren't able to use it, that's not fair.

18 THE COURT: Maybe --

19 MR. DRATEL: It's not just about now. By the way,
20 they can't say, we're going to put in this whole transaction
21 with Nob but you can't touch Nob, Nob is off limits. That's
22 not fair. That's not the way the system works. He's in play.
23 That's number one.

24 Number two is, you have all these other screen names,
25 you have French Maid, you have Al Pacino, you have Albert

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1 Pacino. You have all the Pacino derivatives. You have more
2 than that. There may be more. We believe there may be more
3 screen names that he used, accounts that he took over. And
4 this administrative-privilege thing, the government doesn't
5 know what the extent was. And they have told you they're at
6 the beginning of stages of their investigation. But it's off
7 limits to us and we can't use it, in a trial that's supposed to
8 start in three weeks. They can't have it both ways. I want
9 the information. If I can't get the information, we should at
10 least wait until the grand jury investigation is over so I can
11 use it. I want it. They can't keep it from me and then have a
12 grand jury investigation, that has gone on for nine months, and
13 then say, oh, yeah, you can't use it but -- what are we going
14 to do? Delay the trial. I mean, that's their choice. It's
15 not mine. It's theirs. We need this.

16 THE COURT: Let me ask you -- I need to know a bit
17 about the chronology, and I also want to be very careful not to
18 reveal strategic items. But I don't think the chronology gets
19 into that. Can the government tell me when, approximately, Nob
20 first engaged with the defendant in the acts which resulted in
21 the murder-for-hire solicitation allegedly?

22 MR. DRATEL: Dread Pirate Roberts, your Honor?

23 THE COURT: For hire. This is all about allegations.
24 I don't know. They'll prove whatever they're going to prove.
25 But that's the allegation. So what's the chronology, and then

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1 when did he allege -- what is the earliest that you could tell
2 me that this individual had access to the administrative
3 aspects, whatever limitations there were on them, of the Flush
4 world? That chronology may help me a lot.

5 MR. HOWARD: Your Honor, this would be the chronology.
6 As we set forth in the November 21st letter on page 3, when --
7 which was disclosed to the defense -- Mr. Green was arrested by
8 Special Agent Force and other agents on January 17th. At this
9 point Nob was already engaged in communications with
10 Mr. Ulbricht about other matters unrelated to the murder for
11 hire. If you look at Exhibit A, which was filed under seal in
12 conjunction with the motion to suppress -- sorry -- the motion
13 in limine filed by defense, on January 26th, about nine days
14 later, is when Inigo, over TorChat, again, a separate
15 communication system that then was provided by the Silk Road
16 site, informed the defendant, or Dread Pirate Roberts, that
17 they had identified the fact that 350,000 in bitcoins had been
18 withdrawn from the site through the Flush account. Later that
19 day, approximately six hours later, is the first time over
20 TorChat at which the defendant and Nob start discussing this
21 theft of bitcoins. And this is where the defendant informs Nob
22 about the theft and gives him a copy of the scanned photo ID
23 that the defendant had for Flush, otherwise known as Curtis
24 Green, so that he could be identified. At that point, that's
25 when the conversation starts about how to deal with the

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1 situation, how to deal with Green, that ultimately escalates
2 into the murder for hire solicited by the defendant.

3 THE COURT: Green was arrested, you said, on January
4 17th. When did the administrative privileges, so far as you
5 know, when did the special agent obtain those?

6 MR. HOWARD: Right. Your Honor, it would have
7 happened sometime after that. If proven --

8 THE COURT: Before the 26th, do you think?

9 MR. HOWARD: That's correct, your Honor. And let's
10 just also make sure we're clear, that he didn't receive root
11 administrator privileges. He didn't have privileges to do
12 anything on the site. He only had privileges to do what Flush
13 was able to do on the site. In that way, Flush or whoever was
14 controlling the account reset vendor passwords in order to make
15 withdrawals from those vendor accounts.

16 THE COURT: And what was the list of what Flush could
17 do?

18 MR. HOWARD: At this point I don't think we can give
19 you a list. But he had the ability, I believe, to review
20 customer disputes. He had the ability to reset passwords,
21 which is how -- and PIN numbers -- which is how he was able to
22 access the funds held by certain vendors and withdraw them.

23 THE COURT: And if he could reset passwords and PIN
24 numbers, just -- I don't know enough about the way this
25 technology, or any technology works, to understand the answer

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1 to the question. Could he have utilized their accounts to have
2 sent messages through any of the messaging facilities?

3 MR. HOWARD: We would have to look into that. If --
4 hold on.

5 Your Honor, we would have to check into that.
6 However, the fact is that the evidence that we were looking to
7 use, again, was -- were not communications that occurred over
8 the Silk Road site. So Flush would not have had access, or
9 whoever was controlling Flush, would not have access to the
10 TorChat accounts of Cimon, who was already -- and Inigo, who
11 were already engaged for months over the same channel and
12 communications with the defendant. And those were recovered
13 directly from his laptop, who was seized at the time of his
14 arrest.

15 THE COURT: Would he have been able to reset any user
16 account or password, so far as you know? There may be
17 limitations that you don't yet know about. But so far as
18 you're aware, could he have reset any user name and password on
19 the Silk Road account?

20 MR. HOWARD: Certainly it appeared in terms of vendors
21 and buyers. Beyond that we don't believe he had authority.
22 But that's something we would have to confirm and look at. We
23 do know from the evidence, from the communications the
24 defendant had, that he had the ability to reset vendor
25 accounts.

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1 THE COURT: All right. How much of the government's
2 evidence at trial, putting aside the Nob murder-for-hire event,
3 how much of your evidence at trial -- and I can go back and
4 look, I've got it loaded on my machine -- but of your trial
5 exhibits, just give me a sense, because you'll be more familiar
6 with the dates than I am -- will postdate January 17th? How
7 much of your affirmative evidence?

8 MR. HOWARD: Your Honor, there is evidence of
9 transactions that occurred after that date. There is evidence
10 from the defendant's arrest himself, from the commuter that he
11 possessed at the time of his arrest, and stuff recovered from
12 that. There are communications that were recovered from the
13 Silk Road server between the defendant and other
14 co-conspirators that occurred after that date.

15 It appears that there was only a very small window of
16 time in which this was occurring. Inigo, in the chats, does
17 indicate to the defendant that he reset Flush's access and
18 password after he realizes -- as he realized this was
19 happening, as the theft was ongoing. So the period of time in
20 which force would have had access to the Flush account was
21 fairly limited.

22 MR. TURNER: Your Honor, could I add one more thought
23 to that?

24 THE COURT: Yes.

25 MR. TURNER: If the allegation, essentially, is that

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1 this undercover agent took over the account of DPR and was
2 running the site, then basically what that would come down to
3 is it would affect any private messages from the Silk Road
4 marketplace that were from DPR. We actually plan to use very
5 few of those private messages. The bulk of the statements of
6 alleged defendant will be from his own computer, the TorChat
7 messages from his own computer, and his forum posts, which were
8 not part of the Silk Road marketplace server. That was a
9 separate server. And moreover, the forum posts that DPR posted
10 were PGP-signed. So that means you have to have DPR's private
11 key to sign those messages. And that was not something you
12 would get off the Silk Road computer. That was in fact found
13 on Ulbricht's laptop computer. But just by taking over his
14 account, which we have absolutely no evidence occurred, by
15 taking over his private message account on the Silk Road
16 marketplace server, you could have no control over what DPR
17 said on the Silk Road forum server.

18 So if the defense theory is, this undercover agent was
19 controlling Silk Road and putting all sorts of things into
20 DPR's mouth, then you're talking about a very small number of
21 messages, private messages, that the government is actually
22 planning on introducing at trial.

23 THE COURT: Do you need them?

24 MR. TURNER: We would certainly like to use them, your
25 Honor. I actually am not even certain that they postdate

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1 January 2013. We'll have to look at it.

2 THE COURT: Could you go back and perhaps -- you might
3 have it in a database of some sort that would be sortable --
4 and just give me a list of exhibit numbers so I've got them? I
5 may have them in the pile that you've given me, of the exhibit
6 numbers which postdate January 17th? Just so I can get a sense
7 of --

8 MR. TURNER: The exhibit numbers, sure.

9 THE COURT: Yes, the exhibit numbers that relate in
10 any way to materials from the Silk Road server.

11 MR. TURNER: Silk Road marketplace server, which is
12 where the private message system resided.

13 THE COURT: Versus the Silk Road --

14 MR. TURNER: Silk Road forum server. That's where the
15 bulk of the evidence is.

16 THE COURT: Whatever Flush had access to.

17 MR. TURNER: That would be the marketplace server, if
18 we're talking about resetting passwords.

19 THE COURT: I'm just trying to figure out, just trying
20 to get a lay of the land.

21 MR. DRATEL: That's their opinion.

22 THE COURT: No, I understand. I'm going to give you a
23 chance to respond. Hold on a second. Mr. Howard stood up.
24 And then we're going to have a chance to respond.

25 MR. HOWARD: I just wanted to discuss the prior point.

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1 It's January 26, 2013 at about 3:30 in the morning when Inigo
2 starts telling the defendant about the fact that -- the
3 detective -- the fact that the Flush account was being used to
4 steal bitcoins. On page 2 of the excerpts we have provided as
5 Exhibit A, Inigo, at 10:58 a.m., which is about ten minutes
6 after the defendant started interacting with Nob about this
7 issue, he indicates that he stopped the theft by resetting the
8 password to Flush's account. And as soon as that happened, no
9 more bitcoins were being stolen. So at that point, whoever was
10 controlling the Flush account, whether it be Flush or whether
11 the investigation ultimately reveals that it was Force at the
12 time, that stopped as of 10:58 a.m. on January 26, 2013.

13 THE COURT: Let me ask you, are you going to have the
14 Inigo person, is that person somebody who you know the human
15 identity of?

16 MR. HOWARD: Yes. In fact Inigo has been fully
17 identified and he has been charged in a separate indictment in
18 this district.

19 THE COURT: All right. And he was charged in
20 connection with some of that conduct?

21 MR. HOWARD: With his role as an administrator, an
22 employee of Mr. Ulbricht on Silk Road.

23 THE COURT: All right. How about Cimon, whoever the
24 person's name is, Cimon?

25 MR. HOWARD: He has not at this point been charged.

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1 There is a continuing investigation into that investigation.

2 THE COURT: All right. Now, Mr. Dratel.

3 MR. DRATEL: All of these murder-for-hire allegations
4 are at issue here because they were on private messages. The
5 second episode, the red-and-white episode, is a private
6 message.

7 And also, we're talking about the government's theory.
8 I am not bound by the government's theory. That's what a trial
9 is about. Just because they don't want to think of it in terms
10 of what his -- is capable in terms of the defense, they don't
11 even know what their investigation is going to uncover at the
12 end of the day with Mr. Force. So I can't subpoena Mr. Force
13 to testify, which is a Sixth Amendment right that Mr. Ulbricht
14 has, which is basically being compromised here, because I can't
15 subpoena him.

16 THE COURT: The question, the preliminary question, is
17 whether or not Mr. Force could have any material exculpatory
18 evidence. Because as you understand, the kind of --

19 MR. DRATEL: It's actually beyond that, though,
20 because he's relevant. We could identify about 15 or 16
21 government exhibits that talk about him directly, that involve
22 him directly. And whether, as Nob or as Al Pacino or -- so --
23 and there's stuff that, it's not a government exhibit. But we
24 can use it. And there's a ton of stuff that he's relevant to.
25 I have a right to call him. What you're saying now, or what

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1 the government is saying now, I don't have a right to call him,
2 because they have a grand jury investigation. And I understand
3 that. But they can't have it both ways. We have to have a
4 fair trial that's not confined to the government's theory and
5 the government's sense of what's possible, because they don't
6 know.

7 And I don't know why we waited to the eve of trial for
8 this to begin with. I don't know what the status of the
9 investigation is in terms of, temporally, whether they're going
10 to finish in a month? two months? as soon as this trial is
11 over? It's not fair. They can't do that. And there is a
12 solution. You know, I --

13 THE COURT: Well, there are several solutions.

14 MR. DRATEL: Yes. I'm saying, yes, there are several
15 solutions. But to say that the government is in charge of my
16 investigation is not fair. And not only is in charge. I can't
17 even investigate at all. It's bad enough that they are in
18 charge of it solely. I can't even do it. It's an impossible
19 situation to try a case in, where this guy is all over this
20 case, in many different ways. Not just as Nob. As Al Pacino.
21 As French Maid. There's a lot going on here. And to airbrush
22 him out because he's under investigation, fine. Finish the
23 investigation. Or let us have it.

24 THE COURT: Mr. Howard.

25 MR. HOWARD: Your Honor, I think the fact is, the

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1 disclosure that we did provide in the November 21st letter was
2 extremely extensive regarding what we were able to disclose
3 about what the U.S. Attorney's Office in San Francisco is
4 currently aware of. We've discussed it at length with them, if
5 there's any other allegations they're looking into with respect
6 to Nob. And at this point they don't have that information.
7 They don't have anything -- as far as it intersects our case,
8 it's with respect to these \$350,000 of bitcoins.

9 THE COURT: But, Mr. Howard, the point that I think
10 we're struggling with is, while you disclosed it, they can't
11 use it.

12 MR. HOWARD: Yes.

13 THE COURT: And so it's as if the disclosure never
14 occurred. Because in fact it's even more frustrating, because
15 they have information that's been put in their pocket, if you
16 will, so that government can say you disclosed it, but they
17 can't use any of it, that includes the most basic information,
18 which is just Carl Force under investigation.

19 MR. HOWARD: Your Honor, first of all, we're not
20 saying that it can't use anything. If they want it use the Nob
21 chats to prove, to show something --

22 THE COURT: No, but they could not go out and try to
23 talk to Carl Force, because they can't use that -- they know
24 that Carl Force is under investigation. And if they did talk
25 to Carl Force -- presumably his lawyer anyway would tell them

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1 not to talk to him, but that's a different issue, right. But
2 they can't conduct -- they can't take any action in response to
3 your November 21st letter at all. Right?

4 MR. TURNER: Your Honor, no, that's not the case.

5 THE COURT: So what -- tell me what they can do.

6 MR. TURNER: Let's just be clear. We released Carl
7 Force's undercover reports to them long ago. They could have
8 reached out to him as a witness and talked to him long ago.
9 They can still do so today. What they can't reveal is that he
10 is under a grand jury investigation. They know, for example,
11 about the \$350,000 in bitcoins. They could ask him about that.
12 They know about the chats at issue. They can look those up in
13 the Silk Road server. But what they can't do -- and it's
14 really hearsay anyway -- they can't just ask somebody, is this
15 guy under investigation. Any answer that they solicit, A, how
16 is that relevant? It's not a proven fact that he actually did
17 these things. It's just a matter that he's being investigated
18 for them.

19 THE COURT: So tell me -- and I don't understand
20 exactly what you've disclosed and haven't disclosed about what
21 you've mentioned in terms of the Carl Force investigative
22 reports. Tell me what information the government has disclosed
23 in some manner which can be used about Carl Force. You may
24 have just recited all of it. Is there any more?

25 MR. TURNER: Just to be clear, when we're talking

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1 about "can be used," it's a question of, does 6(e) prohibit it,
2 and is it in their possession? Then there is the next
3 question; is it relevant to anything. So in terms of what 6(e)
4 prohibits, we think it prohibits them eliciting somehow that
5 he's under a grand jury investigation. That's the basic point.
6 I mean, that's what 6(e) requires be kept secret while the
7 investigation is pending. They still have many facts in their
8 possession. They've had them in their possession long ago.
9 Now they have the additional fact --

10 THE COURT: They have the fact that he went broke.

11 MR. TURNER: That's what I keep getting concerned
12 about. It is not a fact. It is a matter under investigation.
13 And in terms of eliciting that, I don't know what they expect
14 to do. Are they going to have an investigator investigating
15 this guy? That is not admissible evidence.

16 THE COURT: No, I hear your point. It's no not, oh,
17 there was an investigator who went rogue. That in and of
18 itself is not, I think, the point. It's whether or not -- it
19 actually, I think, is, you folks were saying, you, Mr. Turner,
20 were saying before, what if, in the context of having gone
21 rogue, he did things which, at that point in time, and later,
22 you don't know and/or they don't know, but it could impact on
23 what you are alleging the defendant did. What if the
24 defendant -- I think part of the issue is -- and I don't know
25 either, in terms of what is possible -- but the defendant may

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1 not have done certain things because you've got an investigator
2 who is inside the system doing certain things instead.

3 MR. TURNER: I think that characterization is badly
4 overdrawn. But in terms of what this investigator had access
5 to, again, we've provided the undercover reports. The
6 undercover reports say that he took over this person's account,
7 that Flush provided his log-in credentials, and that gave him
8 access to that account.

9 THE COURT: Are those --

10 MR. TURNER: Those reports were produced, again, to
11 the defense long ago, because all of those reports have
12 statements of the defendant.

13 THE COURT: Can you produce them to me?

14 MR. TURNER: Absolutely, your Honor.

15 THE COURT: All right. Then give those to me so I can
16 understand what the scope is in my fact pattern.

17 MR. TURNER: If they wanted to bring that out, putting
18 aside its relevance, if they want to bring that out,
19 theoretically I guess they could call Carl Force to the stand
20 and ask him whether he took over the account. They could call
21 Curtis Green to the stand, ask him whether Agent Force took
22 over the account, and establish that, by doing so, he gained
23 certain administrative access, which was limited, by the way,
24 but he gained certain administrative access to the Silk Road
25 marketplace at the time that these chats occurred. Agent Force

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1 obviously might invoke his Fifth Amendment privilege. I have
2 no idea.

3 But point is, we're not trying to say certain
4 witnesses, certain evidence is off limits. It's the fact that
5 this is a grand jury investigation. That's what they're
6 prohibited from disclosing. I don't know how they would elicit
7 that in the form of admissible evidence in any event. But
8 that's what we're saying can't be disclosed. So I don't think
9 we're really tying their hands in any way here.

10 THE COURT: Well, I hear what you're saying. And it's
11 like ships passing in the night. Because on the one hand it's
12 the content of the investigation. And what you're suggesting
13 is it's really not the content, it's the fact of.

14 Mr. Dratel.

15 MR. DRATEL: The reports don't say this is a guy who
16 then stole 350,000. Besides which, we don't know what the full
17 extent of his conduct or misconduct is, because they're still
18 investigating it. And we're not in a position, because we
19 don't have access to all that information, and it's grand jury
20 information, we're going to be hamstrung, we're going to be
21 fighting this fight, with hands tied behind our backs, with
22 respect to this guy. So, in other words, none of the facts in
23 the letter are sealed now. Is that what the government is
24 saying? None of the facts. Other than the fact he's under
25 investigation by the grand jury. I can pursue every one of

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1 those facts in a public manner.

2 MR. TURNER: So, a couple things, your Honor. First
3 of all --

4 MR. DRATEL: This is an easy one. It's yes or no, to
5 me.

6 MR. TURNER: And that's unclear. Because if we're
7 talking about, for example, chats that appear in the Silk Road
8 server, we're already given to them those chats. If we're
9 talking about reports that this man filed where he said he got
10 these log-in credentials for the Flush account, already
11 produced that. It's under a protective order, as is all of the
12 discovery in the case, so we have to have discussions about
13 what can be revealed. But, in terms of there being facts that
14 are off limits, all that is evidence that has been produced in
15 discovery and they are free to use it the same way that they
16 would use other evidence. But it's a different matter just to
17 have allegations publicly aired that a U.S. Attorney's Office
18 somewhere suspects that this person did something, or an
19 investigator suspects they did something. The underlying facts
20 have been made clear, have been spelled out in the letter, have
21 been in the defendant's possession really all this time. We
22 just connected the dots based on the investigation.

23 MR. DRATEL: What facts? What facts? The hundred
24 thousand dollars that he got from DPR was where in the
25 discovery? The fact that he's Al Pacino and the fact that he's

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1 these other people, where is that in the discovery? No. Is
2 that out there now in the public that I can use? No. We're
3 not getting that. This is tactical at this point. This is
4 completely tactical. It's designed to keep this information
5 from our use at a trial that's going to come in three weeks, so
6 that they can then publicize it two months down the road, when
7 they indict this guy, and we are prohibited from using it in
8 defense, when it's -- it's just a violation. The underlying
9 material is *Brady* material and we should have that as well.

10 MR. TURNER: Just to make clear, your Honor, there is
11 no evidence specifically that this man, Carl Force, received a
12 hundred thousand dollars based on leaking information. What we
13 have available are chats under the name French Maid, where it
14 appears, based on evidence obtained from Ulbricht's computer,
15 which it had the whole time, that resulted in Ulbricht paying
16 him a hundred thousand dollars for this information. That's
17 what it says in the log chat -- or, excuse me -- in a log file
18 on Mr. Ulbricht's computer, "paid French Maid a hundred
19 thousand dollars." That's how we know. And then what we did,
20 what we did in the letter is explain some of the reasons why
21 Carl Force might be this user. But it's not like you have a
22 proven fact or a formal charge or something like that. We've
23 laid out the evidence that the grand jury investigation has
24 uncovered. We're not hiding the ball here.

25 Again, the whole -- it's all irrelevant. The murder

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1 for hire is being used to show that this defendant had a
2 certain criminal state of mind. He had knowledge that he was
3 running a criminal enterprise, and an intent to control others
4 in that criminal enterprise.

5 THE COURT: What if the court, to get around this,
6 Mr. Turner, what if the Court was to preclude the government
7 from using any evidence after January 17, 2013? What does that
8 do to your case?

9 MR. TURNER: That would definitely cause problems for
10 our case, your Honor. For example, if you're talking about the
11 totals of drug transactions that occurred, a lot of those drug
12 transactions occurred after January 2013. That was the busiest
13 year of the site. The defendant was arrested after January
14 2013. There's lots of evidence on his computer that postdates
15 that date. There is absolutely no evidence that --

16 THE COURT: How about the murder for hire? How about
17 the Nob-related murder for hire? There are six, right?

18 MR. TURNER: There are six.

19 THE COURT: What is that one -- just tell me, I want
20 to understand how it impacts -- if that one, if every one
21 having to do with Nob was -- and I think Mr. Dratel had a
22 response to this, as he previewed before, but just tell me the
23 impact.

24 MR. TURNER: The impact of that would be much more
25 limited, your Honor. It still would be useful for the

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1 government to explain sort of the full story of the murders for
2 hire. But the remaining five murders are relatively separate,
3 and they have all been gone into. The first murder for hire
4 does show him trying to discipline an employee specifically.
5 So it shows his control over his employees relevant to the
6 continuing enterprise charge. The remaining five have to do
7 with a user who was trying to blackmail him. It's still
8 relevant because it shows that he was going to leak information
9 out, the identities of users, and he was trying to prevent
10 that, and retaliating against them for having done so. So
11 they're relevant, but they are relevant in different ways.

12 Again, I just think in order to establish -- in order
13 to find the government really should not be able to use that
14 Nob evidence is just pure conjecture and speculation that
15 somehow this undercover agent took control of the Silk Road
16 website, notwithstanding all of the evidence we got from the
17 computer at the time of his arrest, where Mr. Ulbricht logged
18 in as the mastermind of Silk Road, logged in as Dread Pirate
19 Roberts, had the Dread Pirate Roberts private key in his
20 computer. I mean, there are troves of evidence on his computer
21 establishing his identity as the DPR. So for them just to say,
22 oh, there's this -- you know, somehow this man took control and
23 put all sorts of words into DPR's mouth, that's a very
24 speculative basis to strike that evidence which we think is
25 relevant.

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1 MR. DRATEL: Obviously we think it goes to more than
2 that? We've set forth to the Court we have additional
3 materials involved that we're comparing as we go through
4 government exhibits and other materials going back, looking at
5 things, because this has opened up a whole new avenue of review
6 for us, because it's obfuscation really to say that we knew
7 anything about what we're talking about today until November
8 21. Because all of that, that's in there, is new, and that's
9 why it's in the letter, because the government knew it was new.

10 THE COURT: All right. Does the government object to
11 the fact that the defendant, through counsel, has submitted to
12 the government a letter ex parte --

13 MR. DRATEL: To the Court.

14 THE COURT: To the Court -- ex parte a letter which
15 describes his trial strategy relevant to this issue? Because I
16 need to consider this. And you haven't said one way or the
17 other whether or not that's a problem for you.

18 MR. HOWARD: Your Honor, I guess the trouble that we
19 have is, on the one hand, we have no issues theoretically with
20 the defense disclosing certain evidence ex parte to your Honor
21 regarding the trial strategy. We're in a position where we
22 can't effectively respond to any hypothetical arguments
23 regarding how this material could be both material and
24 exculpatory. We've set forth our position, how we do not
25 believe it can be, though without even a shred of that we

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1 cannot effectively respond.

2 THE COURT: I understand.

3 MR. DRATEL: But, your Honor, you also -- the standard
4 is not materially exculpatory. That's for disclosure. For the
5 purpose of allowing us to use material and keeping it secret,
6 it's not that. I don't have to -- you know, if I want to put
7 on a witness, I don't have to prove that he's material and
8 exculpatory. I just have to prove it's relevant. I just have
9 to establish relevance.

10 THE COURT: I think the issue is whether or not the
11 disclosure of the information in the November 21st letter needs
12 to be made, needed to have been made in the first instance.

13 MR. DRATEL: I understand there are two levels. I'm
14 just saying there are two different levels. I understand that.

15 THE COURT: All right. I have to go back and think
16 about this, again. And I can't promise you I won't need to
17 talk about it again. If I do, it will be part of the final
18 pretrial. I'll do it in a segment that can be carved out.

19 Yes.

20 MR. DRATEL: Just one other issue that, while we're
21 still sealed, I would like to address -- and I think the
22 government will understand why I want to do it in a sealed
23 context -- is, and I'm sure the Court is aware that, on the
24 Internet, issues about threats against the Court. And I just
25 want to know, because I know how those issues are handled in

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1 the context of security, whether there is anything that the
2 defense should know with respect to what the Court has been
3 informed that could have an impact on the Court, on the case,
4 in that regard. It's really because it would be derelict of me
5 not to do so simply because it's something -- we're all human
6 beings and we need to know where we stand.

7 And let me just also say that I don't know whether the
8 Court has been informed, but I've been informed by the
9 government, the government knows Mr. Ulbricht had nothing to do
10 with that, really isn't connected to that. So it's a court
11 issue.

12 THE COURT: In any event, let me just say that I
13 personally have treated these reports as nothing more than a
14 lot of people who take issue with rulings of mine. 50 percent
15 of the people often, those who don't obtain the result they
16 want, you know, they often have issues. And I have had other
17 cases that have been high-profile cases in the past where there
18 are supporters of individuals or groups, sometimes groups, and
19 people state their opinion on the Internet and say things on
20 the Internet that are ill advised. I have not personally
21 learned of any information that should in any way, Mr. Dratel,
22 cause you to be concerned about the Court's state of mind or
23 whether or not the Court has any view as to any connection of
24 any participant in this case on any side, any issue that's
25 relevant, and actually, I think personally the answer is no.

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1 MR. DRATEL: Thank you, your Honor.

2 THE COURT: All right. So I really -- that's over and
3 done with.

4 MR. DRATEL: My practice as well.

5 THE COURT: All right. Now, I'm going to think about
6 this particular issue that we've been discussing in terms of
7 the November 21st letter more, obviously. I'm hamstrung a
8 little bit because you each are disclosing some things but not
9 others. But I'll figure it out. And we will come back --
10 we're on for Wednesday?

11 MR. DRATEL: At 2.

12 THE COURT: At 2 o'clock. And I will, unless you hear
13 from me, I'll see you folks then.

14 Anything else that you would like to raise?

15 We will now end the sealed portion of this transcript.

16 THE COURT: Counsel, is there anything else that you
17 folks would like to raise with me at this time?

18 MR. TURNER: Could I have one moment, your Honor?

19 THE COURT: Yes.

20 (Government counsel confer)

21 MR. TURNER: Can we just go back to the sealed, for a
22 moment, your Honor?

23 THE COURT: Sure, yes.

24 MR. TURNER: I guess what would be helpful to the
25 government in this whole discussion is what testimony and what

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1 exhibit do they want to use with respect to Carl Force? That
2 would make the discussion much more concrete, because, as I've
3 said, the underlying evidence has been in their hands for
4 months. I understand that they didn't see these issues, and,
5 again, it's not like we knew them months ago either. But we
6 have connected the dots between those pieces of evidence. It
7 would just be helpful to know what they want to introduce at
8 trial and how they plan to introduce it. And then we can have
9 a reasoned, concrete discussion about how it is or is not
10 relevant.

11 MR. DRATEL: We'll consider what we can reveal, your
12 Honor, in that regard.

13 THE COURT: All right. That would be helpful. The
14 sooner the better.

15 (End of sealed excerpt)

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APPENDIX CONTINUED
IN FOLLOWING VOLUME