



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*

May 3, 2011

David Gordon, Esq.
148 East 78th Street
New York, NY 10075

Re: Nikita Kuzmin
11 Cr. 387(LBS)

Dear Mr. Gordon:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Nikita Kuzmin (the "defendant") to a criminal information (the "Information") charging him in six counts.

Count One charges the defendant with conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 1349. Count Two charges the defendant with bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2. Counts One and Two each carry a maximum penalty of 30 years' imprisonment, a maximum term of 5 years' supervised release, a maximum fine of \$1,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

Count Three charges the defendant with conspiracy to commit access device fraud, in violation of Title 18, United States Code, Sections 1029(a)(2), (a)(3), (a)(5), and (a)(6), all in violation Title 18, United States Code, Section 1029(b)(2), and carries a maximum penalty of 7½ years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

Count Four charges the defendant with access device fraud, in violation of Title 18, United States Code, Sections 1029(a)(5), 1029(b)(1), 1029(c)(1)(A)(ii), and 2, and carries a maximum penalty of 15 years' imprisonment, a maximum term of 5 years' supervised release, a maximum fine of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

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Count Five charges the defendant with conspiracy to commit computer intrusion, in violation of Title 18, United States Code, Sections 1030(a)(2) and (a)(4), all in violation of Title 18, United States Code, Section 1030(b). Count Six charges the defendant with computer intrusion obtaining information, in violation of Title 18, United States Code, Sections 1030(a)(2), 1030(b), 1030(c)(2)(B)(i)-(iii), and 2. Count Seven charges the defendant with computer intrusion furthering fraud, in violation of Title 18, United States Code, Sections 1030(a)(4), 1030(b), 1030(c)(3)(A), and 2. Counts Five, Six, and Seven each carry a maximum penalty of 5 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

The total maximum sentence of incarceration on all counts is 97½ years' imprisonment.

The defendant agrees to waive any challenge to venue in the Southern District of New York as to all of the charges in the Information.

It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

The defendant furthermore admits the forfeiture allegations with respect to Counts One through Seven of the Information and agrees to forfeit to the United States, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2)(A), 982(a)(2)(B), 982(a)(2), and 28 U.S.C. § 2461 : (i) any property constituting, or derived from, proceeds obtained directly or indirectly as a result of such violation, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Seven of the Information (the "Money Judgment"). It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. The Defendant consents to the entry of a consent order of forfeiture and agrees that the consent order of forfeiture shall be final as to the defendant at the time it is ordered by the Court.

It is understood that the defendant (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, which information can be used for any purpose; (b) shall cooperate fully with this Office, the Federal Bureau of Investigation, and any other law enforcement agency designated by this Office; (c) shall attend all meetings at which this Office requests his presence; (d) shall provide to this Office, upon request, any document, record, or

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other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which this Office may request his testimony; (f) shall bring to this Office's attention all crimes which he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance Nikita Kuzmin may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

It is understood that this Office cannot, and does not, agree not to prosecute the defendant for criminal tax violations. However, if the defendant fully complies with the understandings specified in this Agreement, no testimony or other information given by him (or any other information directly or indirectly derived therefrom) will be used against him in any criminal tax prosecution. Moreover, if the defendant fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by this Office for any crimes, except for criminal tax violations, related to his participation in the following, to the extent that he has disclosed such participation to this Office as of the date of this Agreement: (i) a conspiracy to commit bank fraud, as well as substantive bank fraud, from at least in or about 2005 through in or about November 2010, as charged in Counts One and Two of the Information; (ii) a conspiracy to commit access device fraud, as well as substantive access device fraud, from at least in or about 2005 through in or about November 2010, as charged in Counts Three and Four of the Information; (iii) a conspiracy to access computers without authorization, as well as substantive unauthorized computer access, from at least in or about 2005 through in or about November 2010, as charged in Counts Five, Six and Seven of the Information; (iv) stealing and unlawfully trafficking in means of identification of other people from in or about 2005 to in or about 2006, in connection with the defendant's theft and resale of "ICQ" numbers belonging to other people; (v) a conspiracy to unlawfully traffic in unauthorized access devices and means of identification, and substantive access device fraud and identity theft from in or about 2005 to in or about 2006, in connection with the defendant's sale, on behalf of a co-conspirator, of a database of the stolen personal bank account information of other people, and the defendant's use of information from that database to steal money from other people's bank accounts; and (vi) a conspiracy to access computers without authorization, in connection with the defendant's participation in a scheme to access secretly computers of individuals in Italy, and thereby cause those individuals to incur and pay certain fees to the defendant and his co-conspirators, to which they were not entitled. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

It is further understood that all of the conduct set forth in subsections (iv) through (vi) of the preceding paragraph constitutes either relevant conduct, pursuant to United States Sentencing

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Guidelines ("U.S.S.G.") Section 1B1.3, or other conduct of the defendant, pursuant to U.S.S.G. § 1B1.4, that the Court may consider at the time of sentencing.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of the defendant to the attention of other prosecuting offices, if requested by him. Nor does this Agreement bind the Bureau of Immigration and Customs Enforcement (ICE), although this Office will bring the cooperation of the defendant to the attention of ICE, if requested by him.

It is understood that the sentence to be imposed upon the defendant is within the sole discretion of the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive, and will not recommend any specific sentence to the Court. However, this Office will inform the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which this Office deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with this Office. In so doing, this Office may use any information it deems relevant, including information provided by the defendant both prior to and subsequent to the signing of this Agreement. In addition, if this Office determines that the defendant has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this Agreement, this Office will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, requesting the Court to sentence the defendant in light of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed, the sentence to be imposed on the defendant remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits this Office's right to present any facts and make any arguments relevant to sentencing to the Probation Department and the Court, or to take any position on post-sentencing motions. The defendant hereby consents to such adjournments of his sentence as may be requested by this Office.

It is understood that, should this Office determine either that the defendant has not provided substantial assistance in an investigation or prosecution, or that the defendant has violated any provision of this Agreement, such a determination will release this Office from any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle the defendant to withdraw his guilty plea once it has been entered.

It is understood that, should this Office determine, subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. §3553(e), that the defendant has violated any provision of this Agreement, this Office shall have the right to withdraw such motion.

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It is understood that, should the defendant commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, the defendant shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is understood that in the event that it is determined that the defendant has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated any provision of this Agreement, (a) all statements made by the defendant to this Office or other designated law enforcement agents, and any testimony given by the defendant before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against the defendant; and (b) the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

It is further understood that this Office will not object to the defendant's continued release on the bail conditions as set forth at the December 7, 2010 hearing, that is, the defendant is to remain in the custody of the Federal Bureau of Investigation until his cooperation is complete, and adherence to all other standard conditions of release. This Office reserves the right to move without notice to the defendant for a revocation or modification of the above bail conditions should it determine that the defendant has violated any provision of this Agreement or condition of his release, or should it determine that such a revocation or modification is otherwise appropriate. The defendant hereby consents to any such revocation or modification.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

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The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

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This Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA
United States Attorney

By: Thomas G.A. Brown
Nicole Friedlander
Thomas G.A. Brown
Assistant United States Attorneys
(212) 637-2211/2194

APPROVED:

Richard B. Zabel
RICHARD B. ZABEL *jk*
Chief, Criminal Division

AGREED AND CONSENTED TO:

Nikita Kuzmin
Nikita Kuzmin

5/5/11
DATE

APPROVED:

David Gordon
David Gordon, Esq.
Attorney for Nikita Kuzmin

5/5/11
DATE

Certified Russian interpreter

DATE