

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count Three, which charges defendant with transporting a minor in interstate commerce with the intent that the minor engage in prostitution, in violation of Title 18, United States Code, Section 2423(a).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Three of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

In or about February 2011, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant CARL BRANDON SMITH (“SMITH”) knowingly transported Victim B, a minor under the age of 18, in interstate commerce, from the State of Wisconsin to the State of Illinois, with the intent that Victim B engage in prostitution, in violation of Title 18, United States Code, Section 2423(a).

Specifically, in or about December 2010, SMITH met Victim B through Victim B’s relative in Wisconsin. Over the next several weeks, SMITH contacted Victim B via phone, text, and facebook, asking her to move to Chicago, intending that Victim B be his girlfriend and also engage in commercial sex acts under his employ. In or about February 2011, SMITH drove from Chicago to Victim B’s residence in Lake Geneva, Wisconsin. He then

drove Victim B from Wisconsin to his apartment in Chicago. At the time SMITH traveled to Wisconsin to pick up Victim B, SMITH acknowledges that Victim B was under the age of 18.

Once in Chicago, Victim B and SMITH “dated” for approximately one week before Victim B began working as a prostitute under SMITH’s employ as further described in paragraph 7(b) below and incorporated here. From in or about February 2011 through on or about July 27, 2011, at SMITH’s direction, Victim B engaged in commercial sex acts. SMITH acted as Victim B’s pimp, advertised her for commercial sex on internet sites such as backpage.com, and instructed her to have sex with customers in his apartment and in Chicago-area motels. During this period, Victim B had sex with numerous men per week and gave a portion of the money she earned to SMITH.

7. SMITH, for purposes of computing his sentence under Guideline § 1B1.2, stipulates to having committed the following additional offenses:

- a. Stipulated Offense One: Sex Trafficking of Victim A, a Minor, By Force

Beginning no later than in or about August 2010 and continuing until in or about November 2010, in the Northern District of Illinois, Eastern Division, and elsewhere, SMITH, in and affecting interstate commerce, knowingly recruited, enticed, harbored, transported, provided, obtained, and maintained by any means a person, namely Victim A, in reckless disregard of the fact that (1) means of force, threats of force, fraud, and coercion, and any combination of such means would be used to cause Victim A to engage in a

commercial sex act, and (2) Victim A had not attained the age of 18 years and would be caused to engage in a commercial sex act, in violation of Title 18, United States Code, Sections 1591(a)(1), (b)(1) and (b)(2).

Specifically, in the summer of 2010, SMITH met Victim A at a mutual friend's house. After this encounter, SMITH contacted Victim A via phone and text, and began a sexual relationship. Shortly after, Victim A and SMITH moved to Chicago, where Victim A worked as a prostitute, and SMITH served as her pimp. From in or about August 2010 through in or about November 2010, at SMITH's direction, Victim A engaged in commercial sex acts. Using a computer and smart phone, Victim A was advertised for commercial sex on internet sites such as backpage.com. At SMITH's instruction, Victim A had sex with customers in his apartment and in Chicago-area motels. During this period, Victim A had sex with several men per week and gave a portion of the money she earned to SMITH. SMITH inflicted physical violence on Victim A when Victim A gave him "attitude" or when she indicated she no longer wanted to work for him as a prostitute. On one occasion SMITH beat Victim A, causing her eye to swell shut, and on another occasion, he hit her with his belt. SMITH also threatened to kill Victim A if she ever left him. SMITH acknowledges that at the time Victim A worked as a prostitute for SMITH, she was under 18 years old.

- b. Stipulated Offense Two: Sex Trafficking of Victim B, a Minor, By Force

Beginning in or about February 2011 and continuing until on or about July 27, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere, SMITH, in and affecting interstate commerce, knowingly recruited, enticed, harbored, transported, provided, obtained, and maintained by any means a person, namely Victim B, in reckless disregard of the fact that (1) means of force, threats of force, fraud, and coercion, and any combination of such means would be used to cause Victim B to engage in a commercial sex act, and (2) Victim B had not attained the age of 18 years and would be caused to engage in a commercial sex act, in violation of Title 18, United States Code, Section 1591(a)(1), (b)(1) and (b)(2).

Specifically, as discussed above, Victim B worked as a prostitute under SMITH's employ. SMITH functioned as Victim B's pimp from approximately February 2011 until approximately July 27, 2011. During this period, SMITH advertised Victim B for commercial sex on internet sites such as backpage.com, and he instructed her to have sex with customers in his apartment and in Chicago-area motels. SMITH acknowledges that at the time that Victim B worked as a prostitute for SMITH, Victim B was under 18 years old.

c. Stipulated Offense Three: Sex Trafficking of Victim C By Force

Beginning in or about May 2011 and continuing until in or about July 2011, in the Northern District of Illinois, Eastern Division, and elsewhere, SMITH, in and affecting interstate commerce, knowingly recruited, enticed, harbored, transported, provided, obtained, and maintained by any means a person, namely Victim C, knowing and in reckless disregard of the fact that means of force, threats of force, fraud, and coercion, and any combination of

such means would be used to cause Victim C to engage in a commercial sex act, in violation of Title 18, United States Code, Sections 1591(a)(1) and (b)(1).

Specifically, SMITH functioned as Victim C's pimp from approximately May 2011 through approximately July 2011. SMITH advertised Victim C for commercial sex on internet sites such as backpage.com and instructed her to have sex with customers in exchange for money in his apartment and in Chicago-area motels. During this period, Victim C had sex with several men per week and gave a portion of the money she earned to SMITH. SMITH inflicted physical violence on Victim C on at least one occasion when Victim C gave him "attitude." Specifically, when Victim C was uncooperative, SMITH punched Victim C in the mouth, tearing Victim C's braces and causing her to sustain facial lacerations.

d. Stipulated Offense Four: Sex Trafficking of Victim D By Force

Beginning in or about November 2011 and continuing until in or about March 2012, in the Northern District of Illinois, Eastern Division, and elsewhere, SMITH, in and affecting interstate commerce, knowingly recruited, enticed, harbored, transported, provided, obtained, and maintained by any means a person, namely Victim D, knowing and in reckless disregard of the fact that means of force, threats of force, fraud, and coercion, and any combination of such means would be used to cause Victim D to engage in a commercial sex act; in violation of Title 18, United States Code, Section 1591(a)(1) and (b)(1).

Specifically, SMITH functioned as Victim D's pimp from approximately November 2011 through approximately March 2012. SMITH advertised Victim D for commercial sex on internet sites such as backpage.com, and instructed her to have sex with customers in

exchange for money in Chicago-area motels. During this period, Victim D had sex with several men per week and gave a portion of the money she earned to SMITH. On a few occasions, SMITH inflicted physical violence on Victim D when Victim D gave him “attitude.” On at least one occasion, SMITH hit Victim D in the face causing Victim D to sustain bruising and a black eye. On one occasion, SMITH took Victim D to New York, where he directed her to have sex with multiple men per day, causing Victim D to sustain internal injuries that required her to go to the hospital twice. SMITH also threatened Victim D when she was uncooperative.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of life imprisonment, and a statutory mandatory minimum sentence of 10 years. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also must impose a term of supervised release of at least five years, and up to any number of years, including life.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court. The Court also may order restitution to any persons as agreed by the parties.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Offense Level Calculations.**

Count Three: Interstate Transportation of Victim B

i. The base offense level is 28, pursuant to Guideline § 2G1.3(a)(3).

ii. Pursuant to Guideline § 2G1.3(b)(2)(B), the offense level is increased by two levels because defendant unduly influenced a minor to engage in prohibited sexual conduct.

iii. Pursuant to Guideline § 2G1.3(b)(3)(B), a two-level enhancement applies because the offense involved the use of a computer or interactive computer service to (A) persuade, induce, entice, and facilitate the travel of, the minor to engage in prohibited

sexual conduct; and (B) entice, encourage, and solicit a person to engage in prohibited sexual conduct with the minor.

iv. Pursuant to Guideline § 2G1.3(b)(4)(A), the offense level is increased by two levels because the offense involved the commission of a sex act and sexual contact.

v. Thus, the total offense level for the charge in Count Three is 34.

Stipulated Offense One: Sex Trafficking of Victim A, a Minor, And By Force

vi. The base offense level is 34, pursuant to Guideline § 2G1.3(a)(1).

vii. Pursuant to Guideline § 2G1.3(b)(2)(B), the offense level is increased by two levels because defendant unduly influenced a minor to engage in prohibited sexual conduct.

viii. Pursuant to Guideline § 2G1.3(b)(3)(B), a two-level enhancement applies because the offense involved the use of a computer or interactive computer service to (A) persuade, induce, entice, and facilitate the travel of, the minor to engage in prohibited sexual conduct; and (B) entice, encourage, and solicit a person to engage in prohibited sexual conduct with the minor.

ix. Pursuant to Guideline § 2G1.3(b)(4)(A), the offense level is increased by two levels because the offense involved the commission of a sex act and sexual contact.

x. Thus, the total offense level for Stipulated Offense One is 40.

Stipulated Offense Two: Sex Trafficking of Victim B, a Minor, And by Force

xi. The base offense level is 34, pursuant to Guideline § 2G1.3(a)(1).

xii. Pursuant to Guideline § 2G1.3(b)(2)(B), the offense level is increased by two levels because defendant unduly influenced a minor to engage in prohibited sexual conduct.

xiii. Pursuant to Guideline § 2G1.3(b)(3)(B), a two-level enhancement applies because the offense involved the use of a computer or interactive computer service to (A) persuade, induce, entice, and facilitate the travel of, the minor to engage in prohibited sexual conduct; and (B) entice, encourage, and solicit a person to engage in prohibited sexual conduct with the minor.

xiv. Pursuant to Guideline § 2G1.3(b)(4)(A), the offense level is increased by two levels because the offense involved the commission of a sex act and sexual contact.

xv. Thus, the total offense level for Stipulated Offense Two is 40.

Stipulated Offense Three: Sex Trafficking of Victim C by Force

xvi. The base offense level is 34, pursuant to Guideline § 2G1.1(a)(1).

Stipulated Offense Four: Sex Trafficking of Victim D by Force

xvii. The base offense level is 34, pursuant to Guideline § 2G1.1(a)(1).

Grouping:

xviii. The offenses in Count Three and Stipulated Offense Two constitute one group, pursuant to Guideline § 3D1.2(a). The offenses in Stipulated Offenses One, Three, and Four constitute an additional three groups, pursuant to Guideline §3D1.2(d). Pursuant to Guideline §§ 3D1.4, 2G1.1(d)(1), and 2G1.3(d)(3), the units are totaled as follows: (1) Stipulated Offense One counts as a unit because it has the highest offense level, 40; (2) the group comprising Count Three and Stipulated Offense Two counts as an additional unit because Stipulated Offense Two's offense level is equally as serious as the offense level for Stipulated Offense One; (3) because Stipulated Offenses Three and Four have offense levels that are six levels less serious than the offense level for Stipulated Offense One, one-half unit is added for each of those two offenses. Therefore, the combined offense level is calculated by adding three levels to the highest offense level, pursuant to Guideline § 3D1.4. As a result, the combined offense level is 43.

Acceptance of Responsibility and Timely Notice of Plea:

xix. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

xx. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Repeat and Dangerous Sex Offender.** Pursuant to Guideline § 4B1.5(b), a five-level increase to defendant's offense level applies because defendant's instant offense of conviction is a covered sex crime, and defendant engaged in a pattern of activity involving prohibited sexual conduct.

d. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

e. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 43 (pursuant to Application Note 2 to Chapter 5, Part A, an offense level of more than 43 is to be treated as an offense level of 43), which, when combined with the anticipated criminal history category

of I, results in an anticipated advisory Sentencing Guidelines range of life imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant also acknowledges that he is subject to a statutory minimum sentence of 10 years' imprisonment.

f. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

g. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall

not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant acknowledges that he owes restitution to Victim B in an amount to be determined by the Court at the time of sentencing, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full restitution in the amount outstanding at the time of sentencing.

14. Defendant also agrees to pay additional restitution, arising from the stipulated offense conduct set forth above, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664. Defendant agrees to pay restitution to Victims A, C, and D in amounts to be determined by the Court at the time of sentencing, minus any credit for funds repaid prior to sentencing.

15. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's

Office of any material change in economic circumstances that might affect his ability to pay restitution.

16. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

17. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

18. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

19. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 12 CR 246.

20. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District

of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree

unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant

understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

25. Defendant understands that pursuant to Title 18, United States Code, Sections 3583(d) and 4042(c), the Court must order as an explicit condition of supervised release that defendant register as a sex offender in compliance with the requirements of the Sex Offender Registration and Notification Act. Defendant also understands that he will be subject to federal and state sex offender registration requirements independent of supervised release, that those requirements may apply throughout his life, and that he may be subject to state and federal prosecution for failing to comply with applicable sex offender registration laws. Defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his duties to comply with current or future sex offender registration laws. Defendant nevertheless affirms that he wants to plead guilty regardless of any sex offender registration consequences that his guilty plea may entail.

Other Terms

26. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

27. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

30. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

31. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

GARY S. SHAPIRO
Acting United States Attorney

CARL BRANDON SMITH
Defendant

CHRISTOPHER GROHMAN
Assistant U.S. Attorney

KENT CARLSON
Attorney for Defendant