

Approved:

Amanda L. Houle

AMANDA L. HOULE

Assistant United States Attorney

16 MAG 5476

Before: THE HONORABLE JAMES C. FRANCIS IV
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA

- v. -

YOUSIF MOSLEH,

Defendant.

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X

SEALED COMPLAINT

Violations of 21 U.S.C.
§§ 812, 841(a)(1) and
841(b)(1)(C);
18 U.S.C. § 371

COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

LISA M. BARRETTI-SYMONDS, being duly sworn, deposes and says that she is a Special Agent with the United States Department of Agriculture ("USDA") and charges as follows:

COUNT ONE

1. On or about June 29, 2015, in the Southern District of New York and elsewhere, YOUSIF MOSLEH, the defendant, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. The controlled substance involved in the offense was a quantity of mixtures and substances containing a detectable amount of N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide ("AB-CHMINACA"), which is a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1), (b)(1)(C).)

COUNT TWO

3. On or about July 9, 2015, in the Southern District of New York and elsewhere, YOUSIF MOSLEH, the defendant, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

4. The controlled substances involved in the offense were a quantity of mixtures and substances containing (i) a detectable amount of N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide ("AB-CHMINACA") and (ii) a detectable amount of 1-[(5-Fluoro-pentyl)1Hindol-3-yl](2,2,3,3-tetramethylcyclopropyl) methanone ("XLR-11"), each of which is a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1), (b)(1)(C).)

COUNT THREE

5. From at least in or about April 2015 up to and including in or about October 2015, in the Southern District of New York and elsewhere, YOUSIF MOSLEH, the defendant, and others known and unknown, knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Title 7, United States Code, Section 2024.

6. It was a part and an object of the conspiracy that YOUSIF MOSLEH, the defendant, and others known and unknown, knowingly would and did present, and cause to be presented, Supplemental Nutrition Assistance Program ("SNAP") benefits for payment and redemption of the value of \$100 and more, knowing the same to have been received, transferred, and used in a manner in violation of the provisions of Chapter 51 of Title 7 of the United States Code and regulations issued pursuant to such chapter.

Overt Act

7. In furtherance of the conspiracy and to effect the illegal objects thereof, YOUSIF MOSLEH, the defendant committed the following overt act, among others, in the Southern District of New York and elsewhere:

a. On or about June 29, 2015, MOSLEH, exchanged SNAP benefits for controlled substances at the request of a cooperating witness posing as a store customer.

(Title 18, United States Code, Section 371.)

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

8. I have been a Special Agent with the USDA for approximately seven years. I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with law enforcement agents and others, and my examination of reports and records. 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.

Background

9. Congress established the Federal Food Stamp Program in 1977 for the purpose of alleviating hunger and malnutrition. In 2008, the program was renamed the Supplemental Nutrition Assistance Program ("SNAP" or "the Program"). The Program uses tax dollars to subsidize low-income households, helping low-income individuals and families to maintain more nutritious diets by increasing the food purchasing power of eligible households.

10. The USDA Food and Nutrition Service ("FNS") administers the SNAP program through retail food stores that have been approved for participation in the Program to sell food in exchange for SNAP benefits. Under Chapter 51, Title 7 of the United States Code, and regulations issued thereunder, a business that accepts SNAP benefits must do so only in connection with retail sales of certain eligible food products, and must be authorized by FNS as a retail food store. According to USDA regulations, items such as cigarettes, hot foods for immediate consumption, and controlled substances, among other items, are ineligible for purchase with SNAP benefits ("Ineligible Items").

11. To participate in the Program, the owner/operator of a retail food store must first apply for authorization and complete an application. In addition, before a store can redeem

SNAP benefits, the store's owner or a designated representative must watch an instructional orientation DVD which is mailed to the retail food store with its SNAP license. The pertinent rules and regulations relating to the Program are explained in the instructional DVD. In the application itself, Program rules and regulations are listed in bullet-point form on the last page. A retail applicant is required to certify his or her understanding of the listed rules and regulations, including the rules prohibiting the exchange of SNAP benefits for Ineligible Items.

12. A SNAP benefit recipient is issued a card, similar to a debit card, called an electronic benefits transfer card (an "EBT Card"). To make an eligible item purchase, the recipient's EBT Card is swiped through an EBT terminal provided to the retailer pursuant to the Program. After the recipient enters a Personal Identification Number (a "PIN"), the EBT terminal verifies the PIN, determines whether the recipient's account balance is sufficient to cover the proposed purchase, and informs the retailer whether the transaction should be authorized or denied. If the transaction is authorized, the amount of the purchase is deducted electronically from the SNAP benefits reserved for the recipient. The retailer subsequently is paid the amount of the EBT purchase through an electronic transfer of funds from the United States government to the retailer's designated bank account.

MOSLEH's Knowledge of and Participation in the SNAP Program

13. Based on my review of FNS records and law enforcement records as detailed below, I know the following, in substance and in part:

a. There is a deli located in and around the area of Lexington Avenue between East 124th Street and East 125th Street in Manhattan, New York ("Deli-1"). According to FNS records, Deli-1 received a license to accept and redeem SNAP benefits in or about December 2007.

b. Based on my review of video recordings and my review of records from the New York City Police Department (the "NYPD") and the New York City Sheriff's Office (the "Sheriff's Office"), I know that YOUSIF MOSLEH, the defendant, frequently works behind the counter at Deli-1, operating the cash register and the EBT terminal.

c. In the immediate vicinity of Deli-1 is another deli ("Deli-2"). In records filed with FNS, the listed owner/operator of Deli-2 is MOSLEH. According to FNS records, MOSLEH submitted an application for a license for Deli-2 to accept and redeem SNAP benefits on or about December 16, 2013, and Deli-2 received such license on or about June 23, 2014. The December 16, 2013 application completed by MOSLEH included a notification that SNAP benefits may not be exchanged for Ineligible Items.

MOSLEH's Sales of K2 for SNAP Benefits

14. Based on my experience, participation in this investigation, my review of reports and regulations issued by the Drug Enforcement Administration, and my review of reports issued by a chemist from the Department of Homeland Security ("HSI"), I have learned the following, in substance and in part:

a. "K2" is a street name applied to a synthetic cannabinoid, in green leafy form, that is intended to mimic the effects of marijuana. Historically, the stimulant effects of K2 were provided by a substance known as JWH-018, among other substances. In or about November 2010, JWH-018 and several other related substances were classified as Schedule I controlled substances. After that point, K2 frequently contained other synthetic cannabinoids, such as AB-CHMINACA and XLR-11. K2 is frequently sold to consumers in small packets that purport to contain incense and that feature a disclaimer that the incense should not be consumed by humans.

b. XLR-11 was classified as a Schedule I controlled substance on or about May 16, 2013, and AB-CHMINACA was classified as a Schedule I controlled substance on or about January 30, 2015.

15. As part of this investigation, USDA has worked with two cooperating sources ("CS-1" and "CS-2"),¹ who assisted the USDA in making controlled purchases of K2 and other Ineligible Items from targets of this investigation. Those controlled purchases were video recorded covertly. Based on my

¹ CS-1 is paid in exchange for providing information to law enforcement agents. CS-1 has provided reliable information in the past. CS-2 is paid in exchange for providing information to law enforcement agents. CS-2 has provided reliable information in the past.

review of those recordings, and my conversations with CS-1, I know the following, in substance and in part:

a. On or about June 29, 2015, at the direction of law enforcement, CS-1 entered Deli-1 in which YOUSIF MOSLEH, the defendant, was working behind the counter, operating the cash register and the EBT terminal. CS-1 observed customers purchasing K2 from MOSLEH. CS-1 requested and received from MOSLEH four packages of "Avalanche," which is a brand of K2. CS-1 paid MOSLEH for the Avalanche K2 using an EBT Card provided by the USDA. MOSLEH swiped the EBT Card, and charged CS-1 \$28.50 for the four Avalanche packages and a hot beverage. The four Avalanche packages were later determined to contain approximately 23 grams of mixtures and substances containing a detectable amount of AB-CHMINACA, based on laboratory testing of the packets.

b. On or about July 9, 2015, at the direction of law enforcement, CS-1 entered Deli-1, where MOSLEH was working behind the counter, operating the cash register and EBT terminal. CS-1 requested to purchase United States currency using an EBT Card, but was denied by MOSLEH. CS-1 then asked MOSLEH, in sum and substance, whether MOSLEH sold brands of "K2" other than a commonly known brand called "Bob Marley." MOSLEH responded, in sum and substance, that he sold everything except "Bob Marley" and then showed CS-1 a variety of brands of K2 for sale. CS-1 paid MOSLEH using an EBT Card provided by the USDA, and purchased the following brands of K2: (i) one package of "AK-47" K2; (ii) one package of "Xtreme" K2; (iii) one package of "Kisha Cole" K2; and (iv) one package of "Phantom" K2, for a total of four packages of K2. MOSLEH swiped the EBT Card, and charged C1-2 \$28.50 for the four K2 packages. These four packages were later determined to contain approximately 25 grams of mixtures and substances containing a detectable amount of XLR-11 and AB-CHMINACA, based on laboratory testing of the packets.

Other Seizures of Apparent K2 from MOSLEH

16. Based on my review of records from the Sheriff's Office and the NYPD, I know that on or about July 23, 2015, pursuant to an inspection of Deli-1, law enforcement recovered approximately 1,000 packages of what appeared to be K2 from Deli-1, including packages labeled "Xtreme," "Kisha Cole," and "AK-47." At the time of the seizure, YOUSIF MOSLEH, the defendant, was present and working at Deli-1. A New York City

Department of Health and Mental Hygiene Notice was issued to MOSLEH noting that Deli-1 was in possession of synthetic cannabinoids.

17. Based on my review of NYPD records, I know that, on or about July 30, 2015, in the course of arresting YOUSIF MOSLEH, the defendant, at Deli-1 on charges unrelated to this investigation, NYPD recovered approximately 1,396 packages of what appeared to be K2 from behind the counter where MOSLEH was working at Deli-1, including packages labeled "Xtreme."

Sales by MOSLEH and Others of Other Ineligible Items for
SNAP Benefits

18. Based on my review of recordings of controlled purchases of Ineligible Items at Deli-1 and Deli-2 by CS-1 and CS-2, and my conversations with CS-1 and CS-2, I know the following, in substance and in part:

a. On or about March 13, 2015, under the instruction and supervision of federal agents, CS-2 engaged in a controlled purchase of cigarettes using an EBT Card provided by the USDA. An individual working at Deli-1 ("Individual-1") swiped CS-2's EBT Card, and charged the EBT Card \$11.00 for the cigarette purchase. CS-2 was provided with a stamped receipt and instructed to present the stamped receipt at Deli-2. CS-2 proceeded to Deli-2 and presented the stamped receipt. The individual working behind the counter at Deli-2 ("Individual-2") took the receipt, placed it in a garbage bag behind the counter, and handed CS-2 a package of cigarettes. CS-2 requested the receipt but was denied.

b. On or about June 22, 2015, under the instruction and supervision of federal agents, CS-1 engaged in a controlled purchase of cigarettes using an EBT Card provided by the USDA. An individual working at Deli-1 ("Individual-3") swiped CS-1's EBT Card, charged the EBT Card \$10.50 for the cigarettes and a hot beverage, and provided CS-1 with a stamped receipt. Something had been written on the receipt that CS-1 could not decipher. CS-1 proceeded to Deli-2 and presented the stamped receipt to YOUSIF MOSLEH, the defendant, who was working behind the counter at Deli-2. MOSLEH took the receipt and handed CS-1 a package of cigarettes.

c. In total, purchases made by CS-1 and CS-2 for Ineligible Items at Deli-1 and Deli-2 have exceeded \$100.

WHEREFORE, the deponent respectfully requests that a warrant be issued for the arrest of YOUSIF MOSLEH, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

SA G M. Barrett-Symonds
LISA M. BARRETTI-SYMONDS
SPECIAL AGENT
USDA

Sworn to before me this
30th day of August, 2016

James C. Francis IV
THE HONORABLE JAMES C. FRANCIS, IV
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK