

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Before The Honorable JON S. TIGAR, Judge**

United States of America,	)	
	)	
Plaintiff,	)	NO. CR-19-0491 JST
	)	
VS.	)	Friday, June 26, 2020
	)	
James Heyward Silcox III,	)	Oakland, California
	)	
	)	Change of Plea
Defendant.	)	
_____	)	

**REPORTER'S TRANSCRIPT OF ZOOM PROCEEDINGS**

**APPEARANCES:**

For Plaintiff: DAVID L. ANDERSON, Esquire  
United States Attorney  
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BY: **Sarah Griswold,**  
**Assistant United States Attorney**

For Defendant: **Michael W. Levinsohn, Esquire**  
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Reported By: Diane E. Skillman, CSR 4909, RPR, FCRR  
Official Court Reporter

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

Friday, June 26, 2020

10:09 a.m.

P R O C E E D I N G S

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**THE CLERK:** Your Honor, there's feedback.

(Pause in the proceedings.)

**THE COURT:** May I ask, anybody who is not speaking to mute his or her microphone please.

**THE CLERK:** Okay. Your Honor, now calling -- Nope.

(Pause in the proceedings.)

**THE CLERK:** Is that better?

Your Honor, now calling Criminal matter 19-491 United States of America V. James Heyward Silcox.

If counsel could please state their appearances for the record starting with the Government.

**MS. GRISWOLD:** Good morning, Your Honor. Sarah Griswold for the United States.

**MR. LEVINSOHN:** Good morning, Your Honor.

**THE CLERK:** Mr. Levinsohn, one moment. Could you unmute and repeat yourself?

**MR. LEVINSOHN:** Good morning, Your Honor. My name is Michael Levinsohn and I represent Mr. Silcox.

**THE COURT:** Very good. Good morning everybody.

The matter is on calendar for a change of plea. I understand in just a little while Mr. Silcox will be entering a plea without the benefit of a plea agreement. So we will

1 get to that in just a moment.

2 I wanted to start by acknowledging how unusual the  
3 proceedings are. Everybody is wearing a mask. We are  
4 proceeding in a hybrid fashion. So some persons are appearing  
5 by video and some persons are here live in court. That makes  
6 these proceedings, I think, more intimidating and more formal  
7 than they would otherwise be. I'm sorry about that. I wish  
8 there was a way around it.

9 I see there's some people here in the audience. I welcome  
10 you. I wish we could have more people in this room at one  
11 time. The public health considerations prevent me from doing  
12 that. And, again, I wish we were able to run things the way  
13 we used to, but for now this is really the best we can do.

14 Mr. Silcox, can you hear me okay?

15 **THE DEFENDANT:** Yes, your honor.

16 **THE COURT:** Very good. If at any time you cannot  
17 hear me or you can't hear somebody else, whether they are --  
18 actually, all the people on the screen are here in the  
19 courtroom. But if you can't hear anybody or you can't  
20 understand them, either because you didn't hear what they said  
21 clearly or you understood what they -- you are able to hear  
22 them clearly but you didn't understand the words they used,  
23 would you please let me know that?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** And, Mr. Levinsohn, have you and

1 Mr. Silcox had a sufficient opportunity to talk this morning  
2 so that you can be confident that you are both ready to  
3 proceed?

4 **MR. LEVINSOHN:** Yes, Your Honor.

5 **THE COURT:** All right. Very good. All right. Then  
6 we will get going.

7 Mr. Levinsohn, is it still the case that Mr. Silcox wishes  
8 to change his plea this morning?

9 **MR. LEVINSOHN:** Yes, Your Honor.

10 **THE COURT:** Ms. Lee, would you administer an oath to  
11 Mr. Silcox, please?

12 **THE CLERK:** Yes, sir.

13 I guess I shouldn't stand. Sorry.

14 (Defendant sworn.)

15 **THE DEFENDANT:** I do.

16 **THE CLERK:** Thank you.

17 **THE COURT:** Mr. Silcox, do you understand that you're  
18 now under oath and that if you answer any of my questions  
19 falsely, your answers could later be used against you in a  
20 prosecution for perjury or making a false statement?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** Would you state your full name for the  
23 record, please?

24 **THE DEFENDANT:** James Heyward Silcox III.

25 **THE COURT:** Mr. Silcox, where were you born?

1           **THE DEFENDANT:** Fayetteville, North Carolina.

2           **THE COURT:** How old are you, sir?

3           **THE DEFENDANT:** Forty-two.

4           **THE COURT:** How far did you go in school?

5           **THE DEFENDANT:** Graduate school.

6           **THE COURT:** Okay. This is the part of the script  
7 where I say, so I guess reading and writing is pretty strong,  
8 but we will skip over that one.

9           **THE DEFENDANT:** Yes, sir.

10          **THE COURT:** Have you been treated recently for any  
11 mental illness or addiction to narcotics or drugs of any kind?

12          **THE DEFENDANT:** Yes, Your Honor.

13          **THE COURT:** Tell me about that, please.

14          **THE DEFENDANT:** I self-referred to New Bridge on  
15 October 3rd of last year for Tramadol addiction. Tramadol is  
16 an opiate. And I'm proud to say today's day 257 clean.

17          **THE COURT:** Very good. Congratulations on that  
18 period of sobriety.

19          **THE DEFENDANT:** Thank you, Your Honor.

20          **THE COURT:** Madame Clerk, I do get a little bit of an  
21 echo loop. I don't know if you are getting that also. I  
22 don't know what that might be attributable to. Just thought I  
23 would mention it.

24               Mr. Silcox, I gather from that extended period of sobriety  
25 that you are sober today. Are you -- Madame Clerk, whatever

1       you did it worked like a charm. Now I can -- it's fantastic.

2       Are you currently under the influence of any other drug,  
3 medication, or alcohol this morning?

4       (Response cannot be heard by the court reporter.)

5       **THE COURT:** I want to ask you about a document --

6       **COURT REPORTER:** Excuse me. Your Honor, I did not  
7 hear the defendant's answer. He is muted.

8       **THE COURT:** Oh, I see. Okay. Ms. Lee, did you hear,  
9 Ms. Skillman?

10       I will ask, the question again even though you've already  
11 answered it.

12       Mr. Silcox, this morning, putting Tramadol to one side,  
13 are you currently under the influence of any drug or  
14 medication or alcohol?

15       **THE DEFENDANT:** No, Your Honor.

16       **THE COURT:** You feel okay?

17       **THE DEFENDANT:** Yes, sir. Yes, Your Honor.

18       **THE COURT:** I want to ask you about the charging  
19 document in the case, which is the written statement of the  
20 charges against you. We call that an indictment.

21       The indictment in this case charges you with three counts  
22 of the importation of a Schedule IV narcotic drug, which in  
23 your case was Tramadol. Did you get a copy of the indictment  
24 in the case?

25       **THE DEFENDANT:** I have seen it, Your Honor. I have a

1 copy, yes, sir.

2 **THE COURT:** Okay. Did you read that document?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** And have you discussed the written  
5 charges against you and the case in general with Mr. Levinsohn  
6 as your lawyer?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Have you been fully satisfied with the  
9 counsel representation and advice that Mr. Levinsohn has given  
10 you?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Mr. Levinsohn, is it accurate there's no  
13 plea agreement in this case?

14 **COURT REPORTER:** He is muted.

15 **MR. LEVINSOHN:** Your Honor, there is no agreement.  
16 It's an open plea. I do have a form that was filled out, but  
17 it's not an agreement.

18 **THE COURT:** Okay. We'll get to the form in just a  
19 moment.

20 At any time did Ms. Griswold or any of her colleagues  
21 extend a plea offer to you?

22 **MR. LEVINSOHN:** It was discussed.

23 **THE COURT:** I don't want the details. I just want to  
24 know if that happened.

25 **MR. LEVINSOHN:** It was discussed, yes, Your Honor.

1           **THE COURT:** Did you convey that offer to Mr. Silcox?

2           **MR. LEVINSOHN:** Yes. I hesitate to answer that  
3 completely in affirmative because a formal offer wasn't made,  
4 but it was discussed what it would be if it were to be made.  
5 That's a better way to put it.

6           **THE COURT:** The Government said something like, we're  
7 not ready to make you a formal offer yet, but the way we see  
8 the case is, that if it ever were going to resolve, it would  
9 have to be something in the neighborhood of "X" months.

10          **MR. LEVINSOHN:** It was -- if I may, Your Honor. It  
11 wasn't so much months, it was, frankly, eligibility for a  
12 diversion, which the Government -- at least until -- I guess  
13 until -- perhaps not as of today, but at the time this was  
14 being discussed did not -- required that a stipulation not to  
15 be allowed in a diversion was part of their plea agreement, so  
16 that's why the decision was made to plead open.

17          **THE COURT:** Okay. I'm trying to avoid getting  
18 into -- hold on.

19          It's hard to report these.

20          I'm trying not to get into the details of what the offer  
21 was. I'm required to make sure that the defendant receive the  
22 information that the Government had extended an offer before  
23 he enters a plea this morning. And so that's the point on  
24 which I was trying to obtain clarity.

25          So let me ask it this way: Whatever your discussions were



1 about the circumstances, if any, under which the Government  
2 would permit your client to plead guilty, were all of the  
3 material facts of those discussions relayed to Mr. Silcox?

4 **MR. LEVINSOHN:** Yes. I can represent that that's  
5 correct.

6 **THE COURT:** Very good.

7 Mr. Silcox, returning my questioning back to you, I  
8 understand that you're intending to plead guilty a little bit  
9 later this morning. Has anybody attempted to force you to  
10 plead guilty or threatened you in any way?

11 **THE DEFENDANT:** No, Your Honor.

12 **THE COURT:** Has anybody threatened anybody close to  
13 you, any members of your family or friends?

14 **THE DEFENDANT:** No, Your Honor.

15 **THE COURT:** Has anybody made you a promise of any  
16 kind that if you enter a guilty plea, they will do something  
17 for you or something else will happen for you?

18 **THE DEFENDANT:** No, Your Honor.

19 **THE COURT:** You know what a side deal is?

20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** I gather from what you said, there are no  
22 side deals in this case; is that correct?

23 **THE DEFENDANT:** Correct, Your Honor.

24 **THE COURT:** Mr. Silcox, I don't know whether you have  
25 a criminal record or not. But there's no question that the

1 offenses that you will be pleading guilty to this morning are  
2 felonies. And if I accept your plea, you will be found guilty  
3 of those crimes. And when you are guilty of a felony, that  
4 can deprive you of certain valuable civil rights, such as the  
5 right to vote, the right to hold public office, and the right  
6 to serve on a jury, and the right to possess any kind of  
7 firearm.

8 Are you aware of that?

9 **THE DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Ms. Griswold, would you please state for  
11 the record the maximum possible penalties provided by law for  
12 the crimes in the indictment and any mandatory minimum  
13 penalties?

14 **MS. GRISWOLD:** Yes, Your Honor.

15 (Audio fail) -- counts as Your Honor indicated. They all  
16 carry the same penalties, which the Court could impose on  
17 concurrent or consecutively. For each count, the maximum term  
18 of imprisonment is five years. There's a minimum supervised  
19 release term of one year, a maximum supervised release term of  
20 life, a maximum fine of \$250,000, and a \$100 special  
21 assessment. There is also a forfeiture allegation in the  
22 indictment.

23 **THE COURT:** Thank you, Ms. Griswold.

24 Mr. Silcox, the forfeiture allegation means that the Court  
25 has the authority, if you're convicted of these crimes, to

1 order that you forfeit any drugs or other contraband, any  
2 firearms or ammunition and any cash the Government seized as a  
3 part of your arrest in this case.

4 Do you understand that?

5 **COURT REPORTER:** No answer.

6 **THE DEFENDANT:** Yes, Your Honor, I understand.

7 (Pause in the proceedings.)

8 **THE COURT:** I apologize for these delays at the  
9 bench. I'm having some issues with my laptop.

10 Mr. Silcox, do you understand that because these are  
11 narcotics offenses the Court might also have the discretion to  
12 order that you be ineligible for certain federal benefits?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** I want to talk for just a second how the  
15 Sentencing Guidelines will apply in your case and also a  
16 statute called Section 3553(a).

17 Have you talked to Mr. Levinsohn about the sentencing  
18 guidelines and how they might work in your case, Mr. Silcox?

19 **THE DEFENDANT:** No, Your Honor, but I'm aware of the  
20 sentencing guidelines.

21 **THE COURT:** Mr. Levinsohn, hold on.

22 Mr. Silcox, would you give me your rough understanding, if  
23 you have one, of how the sentencing guidelines work?

24 **THE DEFENDANT:** Your Honor, they set the standard,  
25 the minimum and maximum for sentencing for each offense.

1           **THE COURT:** That's not bad, actually. That's true.  
2           And that's how they work.

3           There is a Sentencing Commission that has been established  
4           that every year, although not last year, they publish  
5           sentencing guidelines. And they set a range, a sentencing  
6           range for every federal crime. And the ranges go up as the  
7           crimes get more serious or as the Sentencing Commission or  
8           Congress view the crimes as being more serious, they go down  
9           as the crimes get less serious.

10          For somebody who has a higher criminal history, again, the  
11          ranges are higher. And for someone with a lower criminal  
12          history, the ranges are lower. So for the same crime,  
13          somebody with a higher sentence will have a higher recommended  
14          sentence for the same -- that didn't come out right.

15          For the same crime, a defendant with a lengthier criminal  
16          history of a higher recommended sentence than a defendant with  
17          less of a criminal history.

18          You follow me?

19                 **THE DEFENDANT:** Yes, Your Honor.

20                 **THE COURT:** And those guidelines aren't mandatory.  
21                 In other words, I don't have to impose the sentence that it  
22                 says in the guidelines, but I have to start there. That  
23                 really has to be the starting point of any sentencing  
24                 calculation that I do.

25                 Do you understand me so far?

1           **THE DEFENDANT:** Yes, Your Honor.

2           **THE COURT:** Now, the way it works is that if you  
3 enter a guilty plea, I will refer the case to the Probation  
4 Department, and they will prepare a written presentence  
5 report. And there will be a sentencing guidelines calculation  
6 in there. The united States Attorney's Office, the  
7 prosecutor, they will also do a calculation. Your lawyer will  
8 do a calculation. I'll do a calculation. It's not until that  
9 calculation has been done that I have any idea what the  
10 appropriate sentencing range is under the guidelines.

11           Understand?

12           **THE DEFENDANT:** Yes, Your Honor.

13           **THE COURT:** So that means, as I sit here right now, I  
14 actually have no idea what an appropriate sentence in your  
15 case is. Do you follow me?

16           **THE DEFENDANT:** Yes, Your Honor.

17           **THE COURT:** Do you understand that because that range  
18 has not been -- well, strike that.

19           Do you understand that after the calculation has been  
20 performed, I have to look at all the facts and have had a  
21 chance to listen to what everybody has to say, that I might  
22 impose a sentence that could be higher or lower than any  
23 estimate your lawyer might have given you.

24           **THE DEFENDANT:** Yes, Your Honor, I understand.

25           **THE COURT:** And you understand because there is not a

1 plea agreement in this case, that if it comes to the day of  
2 sentencing and I impose a sentence, and it's a higher sentence  
3 than the one you thought you were going to get, you are not  
4 going to be able to withdraw your plea.

5 Do you understand that?

6 **THE DEFENDANT:** Yes, Your Honor.

7 **THE COURT:** The Court also, after it's done a  
8 guidelines calculation, looks at all the sentencing factors  
9 that are listed in a statute called, Title 18, United States  
10 Code, Section 3553(a). And commonly people just don't say all  
11 the stuff in the beginning and they say 3553(a). I won't list  
12 every factor in there, but the point of the statute is to have  
13 the Court look at the whole case and the whole defendant.

14 And so it will think about things like the defendant's  
15 personal characteristics, how likely it appears that the  
16 defendant would offend again if they were released from  
17 custody earlier rather than later. How other defendants who  
18 committed the same crime have been treated because that's a  
19 basic fairness point. Two people did the same crime and they  
20 have more or less equal criminal histories, you would want the  
21 Court to at least start by considering whether those people  
22 ought to be treated the same. What are the policies  
23 underlying the sentencing statutes? How much harm did the  
24 crime cause the community to suffer? And all these other  
25 factors that are not captured in the sentencing guidelines.

1 Does that makes sense?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** And it is not until I have considered all  
4 those factors, and your lawyer has told me the factors that he  
5 thinks is relevant, and Ms. Griswold has told me the factors  
6 she thinks is relevant, and I've listened to their arguments  
7 and done my own thinking, it's not until I have done all of  
8 that until I finally know what an appropriate sentence is.

9 Does that make sense?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** And, again, because of the discretion I  
12 get and the consideration of these factors, the sentence I  
13 ultimately impose could be higher than a guideline sentence  
14 but it could also be lower.

15 Do you understand?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** Mr. Silcox, you have several very  
18 important rights because you are being charged with a crime in  
19 a Federal Court in the United States. These rights make our  
20 system much fairer than the systems of other countries that do  
21 not have these rights. And you could insist on those rights  
22 as a defendant in a Federal Court.

23 When you plead guilty, you give those rights up and you  
24 are essentially voluntarily ending the case yourself. So I  
25 just want to go over those rights with you. I'm not going to

1 stop after each one, but I would ask that you listen carefully  
2 because as I said, these rights are very important and they  
3 are what makes our system fairer than systems that don't have  
4 them.

5 First, you have the right to plead not guilty to any crime  
6 charged against you and to persist in that plea. "Persist"  
7 means you never have to change your plea. You can just say  
8 not guilty and see if the Government can prove its case.

9 You have the right to a trial by jury. At that trial, you  
10 would be presumed to be innocent and the Government would have  
11 to prove your guilt beyond a reasonable doubt. You wouldn't  
12 have to prove anything because you don't have any burden.

13 You'd have the right to the assistance of a lawyer for  
14 your defense, and if you couldn't afford a lawyer, we would  
15 appoint one for you. Not just at the trial, but at every  
16 other stage of the case.

17 You have the right to see and hear all the witnesses and  
18 have them cross-examined in your defense. You have the right  
19 on your own part to decline to testify unless you voluntarily  
20 elect to do so in your own defense. That means, shorthand,  
21 you never have to testify unless you want to. Nobody can call  
22 you as a witness. Your own lawyer can't do that, the  
23 prosecutor certainly can't do that. Nobody can do that. That  
24 decision remains with you all the time.

25 I told you a moment ago you don't have any burden of



1 proof. And that's true. You and your lawyer can just sit  
2 quietly at the defense table, cross-examine the Government's  
3 witnesses, see if they can make their case, and not put on one  
4 shred of evidence or one shred of testimony. But if you want  
5 to testify, you can. And if you want to put on evidence, you  
6 can.

7 And you can use the Court's subpoena power to make people  
8 come in and testify as a witness, and you can make them bring  
9 in documents or other evidence that you think might be helpful  
10 to your case.

11 Do you understand that you have all these rights,  
12 Mr. Silcox?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Do you understand that if you plead  
15 guilty in front of me this morning, that you are giving up  
16 those rights?

17 **THE DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** Do you understand that because you will  
19 have waived those rights, there won't be a trial in your case,  
20 and we will just enter a conviction?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** One last thing you should be aware of:  
23 Let's say that you didn't testify or you didn't put on any  
24 evidence, and you did have a trial, nobody could say anything  
25 about that. I couldn't, the prosecutor couldn't, nobody could

1 say to the jury, for example, how come we haven't heard from  
2 Mr. Silcox. If he's not guilty, what's his side of the story?

3 And they also couldn't say, well, you know, we put in all  
4 this evidence, and maybe Mr. Levinsohn wants to talk about how  
5 our evidence is not very good, Mr. Silcox didn't put in any  
6 evidence.

7 The reason the prosecutor couldn't make comments like that  
8 is, that would make it seem like you had some obligation to  
9 testify, which you don't have. Or make it seem like you have  
10 an obligation to prove something, which you don't have.

11 Do you understand that if you decided not to testify or  
12 put on any evidence, that those facts couldn't be used against  
13 you?

14 **THE DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** Give me just a moment. I should have  
16 pulled up the Ninth Circuit jury instructions on my computer.  
17 I am going to do it right now.

18 (Pause in the Proceedings.)

19 **MR. LEVINSOHN:** It occurred to me that we didn't --  
20 it wasn't discussed if I either wanted to consult briefly with  
21 Mr. Silcox or he wants to ask me a question during that -- so  
22 far it seems he's doing okay -- mechanically how do we do  
23 that?

24 **THE COURT:** Well, I don't know if Mr. Silcox has a  
25 text-capable phone or iPad with him. He could communicate

1 with you that way. If you needed a lengthier consultation  
2 than that, then I suppose we would have to recess the  
3 proceedings.

4 **MR. LEVINSOHN:** Okay.

5 **THE COURT:** Let me know if that happens. And,  
6 Mr. Silcox, you also let me know if that happens. I don't  
7 want you to be in a situation where you think I'm not sure  
8 about the Judge's question, I'm not sure about something else,  
9 I need to talk to my lawyer, if that happens, will you please  
10 let me know?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** We will figure it out.

13 **MR. LEVINSOHN:** Thank you, Your Honor. I think  
14 that --

15 **THE COURT:** Mr. Silcox, has that happened so far?

16 **THE DEFENDANT:** No, Your Honor, I'm good.

17 **THE COURT:** Okay.

18 As we were saying earlier, you are charged with three  
19 counts in this indictment of unlawful importation of a  
20 controlled substance pursuant to Title 21, United States Code,  
21 Section 952 and 960(b) subpart 6.

22 I have the Ninth Circuit jury instruction for that offense  
23 in front of me right now. In order to get a conviction on  
24 those counts for each separate count, the Government would  
25 have to prove the following elements beyond a reasonable

1 doubt:

2 First, you knowingly brought tramadol into the United  
3 States from a place outside of the United States. Secondly,  
4 you knew that the substance you were bringing into the United  
5 States was tramadol or some other prohibited drug.

6 The Government would not need to prove any specific amount  
7 or quantity of tramadol in order to get a conviction on any of  
8 these counts. They would have to prove only beyond a  
9 reasonable doubt that there was a measurable or detectable  
10 amount of tramadol in the substance that you imported.

11 Also, the Government would not need to prove that it  
12 was -- that you knew exactly that it was tramadol, they would  
13 only need to prove that it was some kind of a prohibited drug.

14 Those are the elements set out in the pattern jury  
15 instruction that this court would use if your case went to  
16 trial.

17 Do you understand that if you plead guilty this morning  
18 your --

19 **COURT REPORTER:** You froze.

20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** Mr. Silcox, is there a form,  
22 Mr. Levinsohn, that Mr. Silcox would be submitting to the  
23 court this morning?

24 **MR. LEVINSOHN:** Yes, Your Honor. I have it here. I  
25 have it here, yes.

1           **THE COURT:** Okay. Well, Ms. Lee has a device that  
2 she will use to accept your paper. I'm just going to bring it  
3 up on the bench with me. That's what I'm going to do. You  
4 are wearing a mask so that's fine. I need to see it.

5           **MR. LEVINSOHN:** May I approach?

6           **THE COURT:** Please.

7           **MR. LEVINSOHN:** Thank you, Your Honor.

8           **THE COURT:** Please maintain whatever distances still  
9 allows you to hand Ms. Lee that document.

10                               (Document handed to Court.)

11           Great. Thank you.

12           I'll wash my hands when we are done. I just want to make  
13 sure there is enough of a factual basis in here.

14           Okay. Here's what paragraph 5 of this form says.

15           "I know that this Court must be satisfied that there is a  
16 factual basis for a plea of guilty before my plea can be  
17 accepted. I represent to the Court that I took the following  
18 actions in connection with the charges made against me in  
19 Counts 1, 2, 3, and these facts are true and correct:"

20           And then written onto the form, it states, "On the dates  
21 alleged, I knowingly and unlawfully imported a Schedule IV  
22 narcotic drug to wit: Tramadol."

23           I want to put just a little bit of meat on those bones,  
24 and here's why, Mr. Silcox. This isn't just I'm following the  
25 script, I'm doing this for drill kind of thing. I would never

1 want somebody to come into my courtroom and plead guilty to  
2 something they didn't do. So I just need a minimum assurance  
3 that they actually did some conduct that makes them guilty of  
4 the thing they are pleading guilty to.

5 Now, it may sound crazy to you that anybody would plead  
6 guilty to a federal crime they didn't commit, but I promise  
7 you it has happened. So, let me get the indictment in front  
8 of me, and I'll just -- I think I just need to look at the  
9 dates.

10 Because as we said earlier, it really is -- it's the same  
11 crime and the dates that are given there are July 11, 2019 in  
12 Count 1, August 28, 2019 in Count 2, and September 13, 2019 in  
13 Count 3.

14 What did you do on those dates that makes you guilty of  
15 this crime?

16 **THE DEFENDANT:** Your Honor, I'm not -- as far as the  
17 dates go, I'm not sure if those are the dates they were seized  
18 or the dates they're saying I purchased and ordered the  
19 tramadol, but I ordered tramadol from overseas to feed my  
20 addiction.

21 **THE COURT:** I see. Okay. Then that's the answer.

22 And there was somebody overseas who was supplying  
23 tramadol. And is that something you can just order over the  
24 internet?

25 **THE DEFENDANT:** Yes, Your Honor.

1           **THE COURT:** All right. And are you confident that  
2           you did that on at least three different dates within that  
3           period of time described -- you know, over that period of  
4           time?

5           **THE DEFENDANT:** It would undermine my recovery not to  
6           be honest.

7           **THE COURT:** So the answer is, yes, you did it on at  
8           least three dates?

9           **THE DEFENDANT:** At least. Yes, Your Honor.

10          **THE COURT:** All right. Then I'm satisfied there is a  
11          factual basis for the plea.

12          Ms. Griswold, would you please make a representation  
13          concerning the facts the Government would be prepared to prove  
14          at trial if Mr. Silcox did not enter a guilty plea this  
15          morning?

16          **THE DEFENDANT:** Yes, Your Honor. Thank you.

17          **THE COURT:** Ms. Griswold, I believe your microphone  
18          is muted.

19          **MS. GRISWOLD:** Thank you.

20          If the parties were to proceed to trial, the Government  
21          would prove the following facts beyond a reasonable doubt  
22          through evidence, including Government witnesses, Government  
23          records, and the defendant's own post-*Miranda* interview.

24          In September and October 2017, the defendant opened two  
25          P.O. Boxes at different Post Offices. He opened them to use

1       them to retrieve tramadol shipments from overseas. Tramadol  
2       is a Schedule IV narcotic drug.

3           During a post-Miranda interview, the defendant said he  
4       began purchasing tramadol in 2017 online from an unknown  
5       person he believes is in Singapore. The defendant said he has  
6       received shipments for tramadol from three separate overseas  
7       suppliers from 2017 to 2019. He estimated that he shipped 500  
8       to 1,000 pills per month to downstream buyers, which he  
9       received from his overseas suppliers at his P.O. Boxes.

10       The defendant communicated with his oversea suppliers  
11       through end-to-end encrypted communication applications  
12       WhatsApp and Wickr, and with downstream domestic customers  
13       through the end-to-end encrypted email service ProtonMail.

14       Import history research and records checks linked to the  
15       defendant -- linked the defendant to at least eight seizures  
16       of narcotics inbound to the United States --

17           **THE COURT:** Ms. Griswold, Mr. Levinsohn, would you  
18       mute your microphone, please, and also Mr. Silcox?

19       This will make it easier for Ms. Skillman.

20       Go ahead.

21           **MS. GRISWOLD:** Thank you.

22       Import history research and records checks linked the  
23       defendant to at least eight seizures of narcotics inbound from  
24       to the United States from Germany and Singapore. The seizures  
25       have included tramadol, modafinil, and cocaine, and were all



1 bound to various U.S. Post Office Boxes in the San Francisco  
2 Bay Area.

3 The defendant did all of this in exchange for payments via  
4 cryptocurrency, Venmo, and PayPal, as well as in tramadol.

5 As to the specific counts, Count 1 charges that on or  
6 about July 11th of 2019, in the Northern District of  
7 California and elsewhere, the defendant knowingly imported  
8 tramadol into the United States from a place outside knowing  
9 it was tramadol he was importing.

10 Specifically, on or about July 11th, 2019, Custom and  
11 Border Protection officers assigned to the JFK International  
12 Air Mail Facility inspected a package inbound for the United  
13 States from a shipper in Singapore. CBP officers discovered  
14 approximately 865 grams of tramadol inside the package. It  
15 was addressed to a variation of the defendant's name Jim  
16 Sicox, at one of the defendant's Post Office Boxes in Alameda.

17 As to Count 2, alleging the importation of tramadol on or  
18 about August 28th, 2019: Specifically, on that date, CBP  
19 Officers assigned to the San Francisco Air Mail Facility  
20 intercepted a package inbound to the United States from  
21 Germany. The package contained 650 200-milligram tablets of  
22 tramadol. The package was addressed to another variation of  
23 the defendant's name James Silox at a second P.O. Box rented  
24 by the defendant in Alameda.

25 On September 16th of 2019, Special Agents of DHS, HSI, the

1 U.S. Postal Inspection Service, DHS Office of Inspector  
2 General, and the Coast Guard Investigation Service conducted a  
3 controlled delivery of the second package which contained by  
4 then a substitute material in lieu of the tramadol. It was  
5 delivered to the defendant's second P.O. Box. It contained  
6 the original packing material and label.

7 The defendant went into the Post Office and collected that  
8 package from the counter. He then took it back to his car,  
9 returned to the Post Office asking about a second package he  
10 was expecting. And when he was told there was no second  
11 package he left.

12 The third count alleges importation of tramadol on or  
13 about September 13th of 2019. Specifically, on September 13th  
14 of 2019, CBP Officers assigned to the San Francisco Air Mail  
15 Facility intercepted a package inbound to the United States  
16 from Singapore. According to CBP, the package contained 458  
17 grams of tramadol in tablet form. The package was addressed  
18 again to a variation of the defendant's name, James Silcox, at  
19 the defendant's second P.O. Box in Alameda.

20 Those are the facts the Government would prove beyond a  
21 reasonable doubt at trial.

22 **MR. LEVINSOHN:** Your Honor, if I may, Mr. Silcox  
23 indicated a desire to consult with me briefly. Is there a  
24 way -- I hate to do this to the court, but if we can just  
25 recess for a few minutes, I know that he wanted to ask me a

1 couple of questions. He indicated --

2 **THE COURT:** I have to tell you --

3 **COURT REPORTER:** Excuse me. I can't hear you, Your  
4 Honor. You're muted.

5 **THE COURT:** Thank you, Ms. Skillman. Let me repeat  
6 what I said.

7 Of course Mr. Silcox can do that. I'm not going to take  
8 his plea if he needs to consult with his lawyer.

9 I do have an in-custody sentencing that was scheduled at  
10 10:30, so I just need -- I need you to consult, and then if it  
11 appears a lengthier consultation is required, we are going to  
12 need to continue the plea.

13 But why don't you do that and then we'll see where that  
14 leaves us.

15 **MR. LEVINSOHN:** Thank you, Your Honor. I don't think  
16 it will take terribly long. If we can step out briefly.

17 **THE COURT:** Sure.

18 **MR. LEVINSOHN:** I will mute my --

19 (Pause in the Proceedings.)

20 **THE COURT:** All right. The record will reflect that  
21 Mr. Levinsohn and Mr. Silcox are now back in the courtroom.

22 Mr. Levinsohn, did you and Mr. Silcox have an adequate  
23 opportunity to confer?

24 **MR. LEVINSOHN:** Yes, Your Honor.

25 **THE COURT:** Mr. Silcox, was Mr. Levinsohn able to

1 answer whatever questions or concerns you had?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Okay.

4 I want to ask you about another document, now that I have  
5 it at the bench, Mr. Silcox. I am going to hold it up.

6 This is the Application for Permission to Enter Plea of  
7 Guilty and Order Accepting Plea that your lawyer handed to my  
8 courtroom deputy who then handed it to me.

9 Have you seen this document before?

10 **THE DEFENDANT:** I have, Your Honor.

11 **THE COURT:** And the document is printed as a blank  
12 form, and then it's filled out in blue ink -- it's filled out  
13 in blue ink with the particulars of this particular case,  
14 correct?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** It actually indicates there, you  
17 indicated that you had attended graduate school. You have a  
18 Juris Doctor degree.

19 **THE DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** And you were a United States Coast Guard  
21 Officer.

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** It's neither here nor there, but I think  
24 the branches of the military do a pretty good job training  
25 their officers so I thought I would put that on the record.

1           **THE DEFENDANT:** Thank you.

2           **THE COURT:** Did you read this form thoroughly?

3           **THE DEFENDANT:** Yes, Your Honor.

4           **THE COURT:** And did you have a chance to talk to  
5 Mr. Levinsohn about the form before you signed it?

6           **THE DEFENDANT:** I did, Your Honor.

7           **THE COURT:** Did he answer any questions that you had  
8 about the form?

9           **THE DEFENDANT:** He did, Your Honor.

10          **THE COURT:** To the extent that this form says  
11 anything about your conduct or what you knew or what you  
12 intended to do, is this form accurate?

13          **THE DEFENDANT:** Yes, Your Honor.

14          **THE COURT:** On page 6 there are two signatures. One  
15 of them appears to be your lawyer's signature. The other one  
16 above that has today's date and what looks to me to be your  
17 signature. Is it your signature?

18          **THE DEFENDANT:** It is, Your Honor.

19          **THE COURT:** Did you place your signature there only  
20 after reading this form thoroughly?

21          **THE DEFENDANT:** Yes, Your Honor.

22          **THE COURT:** Mr. Levinsohn, is that also your  
23 signature?

24          **MR. LEVINSOHN:** Yes, it is, Your Honor.

25               One moment.

1 Yes, it is, Your Honor.

2 **THE COURT:** Do counsel agree that the Court has  
3 discharged its obligations under Rule 11?

4 Ms. Griswold?

5 **MS. GRISWOLD:** Yes, Your Honor.

6 **THE COURT:** Mr. Levinsohn?

7 **MR. LEVINSOHN:** Yes, Your Honor.

8 **THE COURT:** Before I ask Mr. Silcox to enter a change  
9 of plea, is there anything further that we should be --

10 **COURT REPORTER:** You've frozen.

11 **MS. GRISWOLD:** Not from the Government, Your Honor.

12 **THE COURT:** Mr. Levinsohn?

13 **MR. LEVINSOHN:** Your Honor, Mr. Silcox does want to  
14 make an application to the Court about his -- where he can be  
15 in the interim period between now and sentencing. I have  
16 discussed that with counsel. We need a moment to address that  
17 after the plea, but that is something he wants the Court to  
18 consider.

19 **THE COURT:** He will ask not to be taken into custody  
20 this morning.

21 **MR. LEVINSOHN:** That is correct. He also -- his  
22 family is moving to the state of Florida, and he would like  
23 the Court's permission to -- this has been discussed ahead of  
24 time with counsel, and Pretrial Services has made arrangements  
25 for him to be supervised in Florida.

1           So with the Court's permission, he would like to reside  
2           there and then return for the sentencing and then  
3           ultimately -- if he is granted probation or diversion, serve  
4           that in Florida.

5           **THE COURT:** Both for matters of substance and also  
6           for appearance, I am going to take that issue up after I  
7           determine whether he's going to plead guilty. Otherwise it  
8           might make it appear that he's prepared to plead guilty only  
9           if he gets to move to Florida, which is not really the order  
10          of proceedings this morning.

11          **MR. LEVINSOHN:** Understood. That's why I inquired.  
12          Other than that, I have nothing else to bring up.

13          **THE COURT:** Other matters for the record? You said  
14          there's nothing else.

15          Mr. Silcox, have you heard and understood all of the  
16          proceedings this morning?

17          **THE DEFENDANT:** Yes, Your Honor.

18          **THE COURT:** Are you ready to enter a change of plea?

19          **THE DEFENDANT:** Yes, Your Honor.

20          **THE COURT:** Do you understand that when you enter a  
21          change of plea, that I will immediately thereafter find for  
22          the record that you have been convicted of these offenses?

23          **THE DEFENDANT:** Yes, Your Honor.

24          **THE COURT:** I will ask you with regard to each count  
25          of the indictment separately, just to produce a clear

1 record -- and while I am on that, Ms. Griswold, as a courtesy  
2 to the court reporter, it appeared to me that in order to be  
3 complete and accurate, you were reading from a prepared  
4 summary of the facts when I asked for what the Government  
5 could prove.

6 Could you please email that to Ms. Skillman?

7 **MS. GRISWOLD:** Yes, Your Honor.

8 **THE COURT:** I think that would be helpful to her in  
9 preparing a transcript of the proceedings.

10 All right. In the United States of America versus James  
11 Heyward Silcox III, that's case number 19-CR-491, to Count 1  
12 of the indictment, which charges you with importation of a  
13 Schedule IV narcotic drug, how do you plead?

14 **THE DEFENDANT:** Guilty, Your Honor.

15 **THE COURT:** To Count 2 of the indictment, which also  
16 charges you with a violation of 21, United States Code,  
17 Section 952 and 960, importation of a Schedule IV narcotic  
18 drug, how do you plead?

19 **THE DEFENDANT:** Guilty, Your Honor.

20 **THE COURT:** And to Count 3, which charges you with  
21 the same offense, how do you plead?

22 **THE DEFENDANT:** Guilty, Your Honor.

23 **THE COURT:** I accept those pleas.

24 I find that you are fully competent and capable of  
25 entering an informed plea; that you are aware of the nature of



1 the charges against you and the consequences of your plea; and  
2 that your guilty pleas are knowing and voluntary pleas  
3 supported by an independent basis in fact containing each of  
4 the essential elements of the offense. I accept your guilty  
5 pleas, and I find you guilty of each of those three offenses.

6 Ms. Griswold, you heard what Mr. Levinsohn said a moment  
7 ago about the defendant's desire to relocate to Florida  
8 pending a sentencing determination.

9 Do you wish to be heard?

10 **MS. GRISWOLD:** Yes, Your Honor. Thank you.

11 I've communicated with the defendant's Pretrial Services  
12 Officer, Brad Wilson, and from my discussions with him, I  
13 understand that Pretrial Services has no objection to this  
14 request. And based on the information I am about to provide,  
15 the Government also has no objection.

16 So, first, Pretrial Services here has been in contact with  
17 the supervision -- the supervisor in the Middle District of  
18 Florida's Orlando office who has approved the transfer of the  
19 defendant to their supervision.

20 And so Mr. Wilson suggested that the modification to the  
21 defendant's pretrial release would be that he be allowed to  
22 relocate permanently to the Middle District of Florida. And  
23 then we would ask only that his travel be restricted to that  
24 district, and then to the Northern District of California for  
25 court.

1           **THE COURT:** All right.

2           **MS. GRISWOLD:** I'm sorry, one more thing.

3           Pretrial Services wants prior approval restriction for any  
4           travel outside of the Middle District.

5           **THE COURT:** I will incorporate my approval of this  
6           request into my remarks, which are as follows:

7           Mr. Silcox, I will not remand you into the custody now  
8           pending sentencing, rather I will leave you at liberty as you  
9           have been up until this point, and you will be subject to all  
10          the same conditions of pretrial release that you have been  
11          subject up until now, and that will be true pending sentencing  
12          or until further Court order.

13          I will also allow you to relocate to the state of Florida  
14          provided that you have obtained the permission of Pretrial  
15          Services and that that permission is contained in writing and  
16          that any conditions that Pretrial Services has placed on your  
17          relocation to Florida also are in writing.

18          I do that just so there is a clear record and it  
19          doesn't -- we don't get down the road and then you have done  
20          one thing and they thought you were supposed to do another  
21          thing. I am understanding that they have granted you this  
22          permission. And if you have it in writing, then you are good  
23          to go. If you don't have it in writing, you just need to get  
24          it in writing.

25          One comment I want to make is that we don't have --

1     although we don't have a program called Diversion, we do have  
2     a program called ATIP. It is my belief that that is the  
3     program that Mr. Levinsohn is going to ask you be referred to.

4             My knowledge of that program extends only as far as this  
5     District, meaning in each of our three courthouses, we have a  
6     judge who supervises that program, our district designed that  
7     program, and all of the services that are provided through  
8     that program are provided here in the Northern District.

9             I'm not saying that Florida doesn't have a similar  
10     program, I'm not saying that it's not possible to apply for --  
11     I'm not saying that a program with similar goals is not  
12     available in Florida or that there isn't some way of putting  
13     you into that program. I'm just saying it's not clear to me  
14     that there is either. That's just something I don't know.

15            I mention this only because Mr. Levinsohn mentioned his  
16     desire to put you into a program like that, and I don't want  
17     you to think that just because we held this hearing, I heard  
18     what Mr. Levinsohn said, I let you move to Florida, that I was  
19     concluding that you are eligible for a program down there  
20     because I don't know anything about it.

21            Does that make sense? Any questions about that?

22            Okay.

23            **COURT REPORTER:** Excuse me, Your Honor. His  
24     microphone was mute so I did not hear an answer to those  
25     questions.

1           **THE COURT:** I see. All right.

2           Mr. Silcox, would you unmute for just a second. And I'll  
3 just ask you, is it correct that you stated a moment ago that  
4 you understood everything I said and you didn't have any  
5 questions about that?

6           **THE DEFENDANT:** I understand, Your Honor. No  
7 questions.

8           **THE COURT:** Very good. I do want to set a sentencing  
9 date. I am gathering, Mr. Levinsohn, that you are requesting  
10 a referral to Pretrial Services for ATIP evaluation?

11          **COURT REPORTER:** Excuse me, Your Honor.  
12 Mr. Levinsohn is muted.

13          **MR. LEVINSOHN:** The Court asked me if I was  
14 requesting a referral to ATIP, and my answer was yes.

15          **THE COURT:** I make that referral.

16          I want to say that we should put this over at least eight  
17 weeks based on past experience. And I guess -- I don't want  
18 to make -- I don't want to ask the Probation Office to do a  
19 PSR yet because it might turn out that I don't need it and  
20 they have enough to do.

21          My suggestion, unless counsel want to say otherwise, is  
22 let's send the matter to Pretrial Services. Let's let them do  
23 their evaluation. I -- the lawyers and I and Mr. Silcox can  
24 receive the evaluation, we can have a hearing, parties can  
25 make their views known as to whether placement in that program

1 is appropriate one way or the other, and then if it turns out  
2 I'm not going to make that referral, then I can refer it to  
3 Probation.

4 Mr. Silcox is going to be out of custody and so it seems  
5 to me there's no reason to rush this. We can do it in  
6 sequence.

7 Mr. Levinsohn, does that make sense?

8 **MR. LEVINSOHN:** It does, Your Honor. I don't know if  
9 the Court wants to address dates yet, but what the Court says  
10 makes imminent sense.

11 **THE COURT:** Ms. Griswold, does that make sense to you  
12 also?

13 **MS. GRISWOLD:** Yes, Your Honor.

14 **THE COURT:** Let's err on the side of giving Pretrial  
15 enough time. Let's make it about ten weeks. That would take  
16 us out to mid-September. And we could do either the 11th or  
17 the 25th of September. The 18th is not available on the  
18 Court's calendar.

19 **MR. LEVINSOHN:** Let me check, if I may. I should  
20 know this offhand, but I don't. What day is Yom Kippur? If I  
21 could have just a moment.

22 (Pause in the Proceedings.)

23 **MR. LEVINSOHN:** I apologize. The 25th is fine.

24 **THE COURT:** Ms. Griswold, does that work on your  
25 calendar also?

1           **MS. GRISWOLD:** Yes, Your Honor.

2           **THE COURT:** The Court will set the matter for --  
3 we'll just call it sentencing status on September 25th. And  
4 the minutes of today's hearing will reflect that the Court  
5 will receive the ATIP recommendation, and we can discuss it on  
6 that day.

7           **MR. LEVINSOHN:** Thank you, Your Honor.

8           **THE COURT:** Mr. Silcox, I wish you the best of luck.

9           In the meantime, I will order you to be personally present  
10 on that date at 9:30 a.m. I'm not worried that you won't be  
11 there, but I'm required to tell you that if you don't show up,  
12 that that is separately a crime and we will come looking for  
13 you.

14          **THE DEFENDANT:** Yes, Your Honor.

15          **THE COURT:** And there is a reason they make movies  
16 about the United States Marshals' ability to find people and  
17 that is they are really good at it. Make sure you are here on  
18 that date.

19          All kidding aside, the penalties for failing to appear are  
20 quite severe.

21          That concludes this proceeding. We will see everybody in  
22 September.

23          **MR. LEVINSOHN:** Thank you very much, Your Honor.

24          **MS. GRISWOLD:** Thank you, Your Honor.

25                       (Proceedings adjourned at 11:04 a.m.)

**CERTIFICATE OF REPORTER**

I, Diane E. Skillman, Official Reporter for the  
United States Court, Northern District of California, hereby  
certify that the foregoing is a correct transcript from the  
record of proceedings in the above-entitled matter.

A handwritten signature in black ink, reading "Diane E. Skillman", is written over a horizontal line.

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

Tuesday, November 3, 2020