

## UNITED STATES DISTRICT COURT

for the

Northern District of California

United States of America

v.

GREGORY BORBOA

Case No.

**CR 22-70313-MAG***Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 19, 2020 in the county of Santa Clara in the  
Northern District of California, the defendant(s) violated:

*Code Section**Offense Description*

18 U.S.C. §§ 2252(a)(4)(B) &amp; (b)(2)


Possession of Child Pornography

This criminal complaint is based on these facts:

See attached affidavit of HSI Special Agent Brian Benson.

☒ Continued on the attached sheet.

Approved as to form

  
 AUSA \_\_\_\_\_

/s/ Brian Benson/SvK w/permission

*Complainant's signature*

Brian Benson, HSI Special Agent

*Printed name and title*

Sworn to before me by telephone.

Date: March 11, 2022
  
*Judge's signature*
City and state: San Jose, CA

Hon. Susan van Keulen, U.S. Magistrate Judge

*Printed name and title*

**AFFIDAVIT OF HSI SPECIAL AGENT BRIAN BENSON**  
**IN SUPPORT OF CRIMINAL COMPLAINT**

I, Brian Benson, being duly sworn, depose and hereby declare as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. This affidavit is made in support of a complaint charging Gregory BORBOA (“BORBOA”) with a violation of Title 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2), Possession of Child Pornography, occurring on May 19, 2020.

2. I am an “investigative or law enforcement officer of the United States” within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in 18 U.S.C. §§ 2252 and 2252A.

3. I am a Special Agent with the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, Homeland Security Investigations (HSI) and have been so employed since September 2019. Prior to my employment with HSI, I served as a Special Agent with the Naval Criminal Investigative Service (NCIS) from 2014 to 2019 and prior to that I held employment with the United States Park Police in Washington, D.C. from 2011 to 2012. I additionally served in the United States Air Force as an intelligence officer, from which I honorably separated at the rank of captain in 2009.

4. I am a graduate of the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. I have received criminal investigator training and advanced investigative training related to violations of federal law. I have investigated and assisted in the investigation of hundreds of criminal cases relating to violations of state and/or federal law. Additionally, while employed with NCIS, I served as a representative to the San Diego Internet Crimes Against Children (ICAC) task force and I am currently affiliated with the Silicon Valley ICAC

task force. Accordingly, I have experience investigating criminal violations relating to child exploitation and child pornography, including violations pertaining to the illegal production, distribution, receipt and possession of child pornography, in violation of 18 U.S.C. §§ 2251, 2252 and 2252A. In the course of these investigations, I have observed and reviewed numerous examples of child pornography as defined in 18 U.S.C. § 2256.

5. The information set forth in this affidavit is not intended to detail each and every fact and circumstance of the investigation or all information known to me and other law enforcement investigators. Rather, this affidavit serves to establish probable cause for arrest. The facts set forth in this affidavit are based upon my personal observations, my training and experience, information obtained from other agents and witnesses, and my review of law enforcement reports.

#### **STATEMENT OF PROBABLE CAUSE**

6. On January 21, 2020, Homeland Security Investigations (HSI) received a report from Kik which indicated that on August 18, 2019, Kik user “guidosarducci1990” used Kik to send a sexually explicit image of a minor. Kik further reported that the user account had been created that same day, August 18, 2019, using an Android OS on a Samsung Galaxy J3 Orbit cellular phone. Kik was alerted to the image through Microsoft’s PhotoDNA technology, which sent a report to Kik. The PhotoDNA report was reviewed by a Kik law enforcement team member who is trained on the Canadian statutory definition of child pornography. Kik removed the image and closed the user’s account. The Kik report to HSI included the sexually explicit image at issue and stated that the image’s hash value matched the hash value of a known child pornography image identified by the National Center for Missing and Exploited Children (NCMEC).

7. The Kik report provided the internet protocol (IP) address for guidosarducci1990. This IP address was connected to Gregory BORBOA at his residence in San Jose, California.

Facebook records further linked BORBOA to Kik user guidosarducci1990: BORBOA had posted on Facebook a YouTube video of Father Guido Sarducci (a sketch comedy character from the 1980's). An Instagram account for user guidosarducci1990 also followed profiles for female child models, child cheerleaders, and hashtags for kid models, tween girls, tween beachwear, and similar tags.

8. The Honorable Nathanael Cousins issued a search warrant for BORBOA's residence in San Jose, California on May 15, 2020 (Case No. CR 20-70520 NC). The search warrant was executed at BORBOA's residence on May 19, 2020. During the search warrant, agents seized a laptop, two discs and three phones, including a Samsung Galaxy J3 Orbit smartphone ("Samsung Phone").

9. Forensic analysis of the Samsung Phone found significant evidence of child pornography. The phone contained 1,605 images and 36 videos that appeared to depict questionable content (specifically, media content depicting possible minors posing nude, partially clothed, or fully clothed in a sexually suggestive or explicit manner). Of these, nearly all of the images and approximately half the videos displayed content identified as child pornography, including depictions of infants, toddlers and preteen females engaged in sexually explicit conduct such as sexual intercourse, masturbation, and lascivious exhibition of the genitals or pubic area. 485 images and 8 videos had previously been identified by NCMEC as known series of child pornography. The materials did not include the image identified by Kik that had been the subject of the search warrant.

10. The Samsung Phone also contained Snapchat communications from May 18, 2020, the day before the search warrant was executed, where BORBOA traded pornographic videos with another Snapchat user. During the exchange, BORBOA sent the other Snapchat user a video depicting prepubescent females being vaginally penetrated by an adult male penis. BORBOA commented on the video, stating "Oldest is 12."

11. During the execution of the search warrant on May 19, 2020, BORBOA was interviewed by law enforcement. BORBOA stated that the guidosarducci1990@gmail.com email address and guidosarducci1990 Instagram account belonged to him. He further stated that he had used Snapchat on May 18, 2020, to exchange images of minors with another Snapchat user. He acknowledged that the females he viewed in the child pornography materials were minors and stated, "You can't look at them and not know they're not underage."

### CONCLUSION

12. Based on the foregoing, there is probable cause to believe that on May 19, 2020, BORBOA possessed child pornography, in violation of 18 U.S.C §§ 2252(a)(4)(B) and (b)(2).

13. I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

/s/ Brian Benson/SvK w/permission  
Brian Benson  
Homeland Security Investigations

Sworn and subscribed to before me over the telephone pursuant to Fed. R. Crim. P. 4.1 and 4(d) and signed by me on this 11th day of March 2022.

  
\_\_\_\_\_  
HON. SUSAN VAN KEULEN  
United States Magistrate Judge

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**
 BY: ☒ COMPLAINT ☐ INFORMATION ☐ INDICTMENT  
☐ SUPERSEDING
**OFFENSE CHARGED**
 Count One: 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2) - Possession  
 of Child Pornography

- ☐
- Petty
- 
- ☐
- Minor
- 
- ☐
- Misdemeanor
- 
- ☒
- Felony

 PENALTY: Max Imprisonment: 20 years  
 Max Fine: \$250,000  
 Supervised Release: Minimum 5 years, Maximum Life  
 Special Assessment: \$100  
 Restitution, Potential Deportation, Forfeiture

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

**DEFENDANT - U.S.**

▶ GREGORY BORBOA

DISTRICT COURT NUMBER

**CR 22-70313-MAG****PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

HSI Special Agent Brian Benson

☐ person is awaiting trial in another Federal or State Court,  
 give name of court

☐ this person/proceeding is transferred from another district  
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of  
 charges previously dismissed  
 which were dismissed on motion  
 of:

☐ U.S. ATTORNEY ☐ DEFENSE
SHOW  
DOCKET NO.
☐ this prosecution relates to a  
 pending case involving this same  
 defendant
MAGISTRATE  
CASE NO.
☐ prior proceedings or appearance(s)  
 before U.S. Magistrate regarding this  
 defendant were recorded under

Name and Office of Person

Furnishing Information on this form Stephanie M. Hinds

☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.  
 Attorney (if assigned)

AUSA Maia Perez

**DEFENDANT****IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

- 1)
- ☒
- If not detained give date any prior
- 
- summons was served on above charges ▶
- 
- 2)
- ☐
- Is a Fugitive
- 
- 3)
- ☐
- Is on Bail or Release from (show District)

**IS IN CUSTODY**

- 4)
- ☐
- On this charge
- 
- 5)
- ☐
- On another conviction }
- ☐
- Federal
- ☐
- State
- 
- 6)
- ☐
- Awaiting trial on other charges
- 
- If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes  
 been filed? ☐ No

 If "Yes"  
 give date  
 filed

**DATE OF  
 ARREST** ▶

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

**DATE TRANSFERRED  
 TO U.S. CUSTODY** ▶

Month/Day/Year

☐ This report amends AO 257 previously submitted
**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**
☐ SUMMONS ☐ NO PROCESS\* ☒ WARRANT

Bail Amount: None

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

 \* Where defendant previously apprehended on complaint, no new summons or  
 warrant needed, since Magistrate has scheduled arraignment

Date/Time: Before Judge:

Comments: