IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

UNITED STATES OF AMERICA v. MARY MOONEY	Criminal No: 9:14-00054

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING AND CONDITIONAL MOTION FOR AN UPWARD VARIANCE

The United States asks this Court to vary upward and sentence defendant Mary Mooney within the range of 51-60 months. Mooney pleaded guilty to lying on accreditation forms needed to operate a legitimate child adoption agency. As a result of her lies, co-defendant James Harding – who was not qualified to receive an accreditation and had been denied accreditation for another adoption agency – was able to operate an adoption agency that preyed upon hundreds of families. While the current Presentence Report suggests a guideline range of 0-6 months, such a sentence would grossly underrepresent the seriousness of the defendant's actions and fail to take account of the harm she caused to children and families across the globe. Thus, whether through sustaining the Government's objections to the PSR or by varying upward, this Court should sentence Mooney to between 51-60 months.

The defendant's criminal actions enabled a tragic fraud that has harmed hundreds of families. IAG's business was matching American families who wanted to adopt children with orphans who lived in foreign countries. IAG lied to many of these families, falsely claiming that children who lived with their parents were orphans living in orphanages. Those children were then "adopted" by American parents who believed that the children were orphans. The purpose

of U.S. and foreign regulations for intercountry adoptions, including the accreditation requirements that the defendant lied about, is to protect children and to prevent "child laundering" — the practice whereby children are taken from their home countries unlawfully and adopted by foreign parents as putative orphans. The defendant's accreditation fraud enabled the child laundering scheme detailed in the indictment and described herein because she lied to circumvent rules designed to prevent such practices and lied to cover up the violations. Her actions contributed to a significant worldwide problem by nullifying these protections and jeopardizing children's safety.

Although the Presentence Report suggests that court-supervised probation is an appropriate sentence, the PSR incorrectly calculated the applicable guidelines range because it did not include several enhancements that apply as relevant conduct, including the child laundering scheme discussed above. Additionally, most of the enhancements apply even if the court were to find that the child laundering scheme is not relevant conduct. First, the PSR did not include an enhancement for committing the offense overseas or using sophisticated means even though much of this crime took place in Ethiopia and Kazakhstan. Second, the PSR ignores that the families and adopted children whom the defendant and her co-conspirators tricked into believing that IAG was an accredited adoption agency are victims in this case. Third, the PSR does not include an enhancement for the loss amount based on IAG's profits from adoptions that it would not have received if the defendant had not lied on the accreditation form. In addition to the more than $400,000 that the defendant tricked families into paying IAG, the loss amount should also include money that these adopted children and their families spent on therapy and counseling to help them overcome the psychological pain from child laundering. If the Court

rejects the Government's objections and applies the PSR's suggested guideline calculation, then the government will move for an upward variance from that guideline range.

I. FACTUAL BACKGROUND

International Adoption Guides, Inc. ("IAG") was an international adoption service provider ("ASP") that offered consulting and logistical services to families seeking to adopt children from developing countries, including Ethiopia and Kazakhstan. PSR ¶ 6. The defendant founded IAG in 2005 and served as its Executive Director from 2005 to 2008. Hundreds of families relied on the defendant and IAG to assist them in legally adopting children they believed to be orphans. IAG identified children for adoption in Ethiopia and Kazakhstan and matched them with families in the United States who were seeking to adopt. The defendant owned IAG until 2008, when, as explained in more detail below, she sold the company to co-defendant James Harding. PSR ¶¶ 6-7.

Prior to 2008, co-defendant Harding operated an ASP called World Partners Adoption ("WPA"), which facilitated adoptions from Kazakhstan and other countries. In 2008, WPA was denied accreditation from the Council on Accreditation ("COA"), a non-profit organization designated by the Department of State to review accreditation applications and make accreditation decisions. PSR ¶ 6; *see* C.F.R. § 96.12-96.14. COA denied WPA's application for accreditation because Harding lacked the requisite level of education, experience, and professional qualifications necessary to serve as head of an ASP. PSR ¶ 7. The COA's denial of WPA's accreditation application was going to devastate WPA's business because Kazakhstan required ASPs to have COA accreditation. In the United States, ASPs operating in countries party to the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption ("Hague Convention") must obtain accreditation from the COA. Even

in countries that are not party to the Hague Convention, ASPs often must have accreditation from COA to facilitate adoptions. Many adoptive families insist on using ASPs with COA accreditation because it evidences that the company is ethical, law abiding, and reliable. PSR ¶ 7.

IAG, however, held a valid COA accreditation in 2008, so the defendant agreed to sell IAG to Harding and to falsely represent to COA, South Carolina, and Kazakhstan that she continued to serve as IAG's Executive Director so that Harding could conduct foreign adoptions. PSR ¶ 7; Attach. A, Letter to Consul;[1] Attach. B, App. for SC License. In reality, Harding was the functional head of the company and controlled its day-to-day operations. PSR ¶ 7. Harding wanted to purchase IAG for two reasons: (1) IAG had a valuable COA accreditation that Harding could not obtain himself, but needed if he was going to continue operating his Kazakhstan adoption business; and (2) IAG had a valuable portfolio of adoptions from Ethiopia which could generate additional profits for Harding where the defendant already had an illegal system in place to make the adoption process less costly for IAG. The defendant agreed to sell IAG to Harding for $100,000, most of which was to be paid as a monthly "salary" over a three-year period. PSR ¶ 7. As early as July 2008, the defendant agreed with Harding to have Harding conduct all Kazakhstan adoptions under IAG's name, under the false pretense that she was supervising him, and thus could use IAG's accreditation, when in truth and in fact, Harding had purchased the company from Mooney. See Attach. C, Email "Re: Kids Names and ages". When clients accurately observed that Harding was using IAG's accreditation to run WPA, they filed complaints with COA. COA investigated the complaints, but Mooney provided a signed statement that Harding may have inadvertently used WPA's documents, but that Harding was

[1] Because many of the attachments contain private information related to children, redacted hard copies will be provided to the court and counsel.

hired by her to work for IAG, attaching a document showing that she was the Executive Director of the company. See Attach. D, Pollock Complaint.

As the defendant admitted when she pleaded guilty, she made the three false statements to COA that were charged in the Information. First, in September of 2007, the defendant failed to include Alisa Bivens as an employee on her COA accreditation filing. Like Harding, Bivens was not qualified to hold her position at IAG because she did not have a college degree. Second, on April 10, 2010, the defendant signed the COA annual attestation form for accreditation in which she stated that IAG had been in "substantial compliance" with all applicable COA standards which are prescribed by the Department of State. 22 C.F.R. Part 96; PSR ¶ 8. That statement was false because, as the defendant admitted, James Harding was serving as the functional Executive Director of IAG in violation of Section 96.32 of part (f), governing internal structure and oversight. PSR ¶ 8. Third, on November 21, 2011, the defendant re-submitted the same false statement to COA, in which she continued to falsely represent that she was the Executive Director of IAG, when in fact Harding was the Executive Director. PSR ¶ 9. Based on the defendant's false statements, IAG obtained and maintained accreditation from COA. IAG then advertised to its clients that it had COA accreditation and conducted adoptions in Kazakhstan, which required Hague accreditation. PSR ¶ 10. The falsely-secured COA accreditation therefore allowed IAG to facilitate adoptions from Kazakhstan, and the defendant was aware that Harding used the falsely secured accreditation for that purpose. PSR ¶ 10. Additionally, IAG was able to obtain clients for Ethiopia adoptions who would not have used IAG but for the fraudulently obtained COA accreditation. PSR ¶7. While the 2010 certification is the one listed in the Information, Mooney made the same false certification on April 1, 2009, and revised on October 12, 2009, which attested that IAG had been in compliance with the

certification requirements for the previous year, including back to April of 2008. Attach. E, 2009-2012 COA Certifications; Attach. F, Schmidt MOI.

In addition to these specific false statements listed in the Information, Mooney made other false statements in order to secure COA accreditation for IAG on the same document. The defendant authorized and approved pay-offs to individuals who worked for Ethiopian orphanages to sign sham contracts of adoption for children who never resided at those orphanages. Attach. G, Email "[Family Name] and [Family Name] will travel"; Dkt.3, Indictment pg. 5. The defendant and her co-conspirator in Ethiopia, Haile Mekkonnen, then used a secret off-books account to hide from Ethiopian regulators the payments to the orphanages. Attach. H., Email "wired money today". Nonetheless, the defendant lied in two other COA applications in 2006 and 2011 and each renewal between then when she stated that IAG did not pay for services that were not actually rendered; that IAG never provided compensation on an "incentive fee" or "contingent fee" basis for children it placed for adoption; and that IAG did not allow its employees and agents to give money or other consideration to a child's parents or anyone else as payment for the child or as an inducement to release the child. Attach. I, COA Requirements; Attach. J, 02/07/2007 COA Application; Attach. K, 03/13/2012 COA Application. Mooney falsely attested to each of these, failing to disclose the child laundering scheme.

When Harding was negotiating with Mooney concerning the sale of the company in 2008, this child laundering scheme to obtain children, specifically infants that were otherwise difficult to acquire was a primary object of the purchase. At the outset, Harding sought assistance from Mooney to procure accreditation that would enable to him to continue conducting adoptions in Kazakhstan and sought to purchase the IAG scheme in Ethiopia, where Mooney indicated that she already had a system in place to "grease the wheels." Attach. L, Email "Hague

Issues – again," pg. 7. In response to Harding's questions about the accreditation problem and the Ethiopia program, Mooney responded that Harding could have the South Carolina IAG non-profit and continue to pay Alisa Bivens to do the work in Ethiopia. Attach. L, Email "Hague Issues – again," pg. 6.

As the negotiations continued, Mooney spelled out the "greasing the wheels" child laundering scheme to Harding in more detail. "We have an agreement with [Orphanage 2] for the infants we pay them quarterly $5,263 and this gets us 15 babies under the age of 3 per quarter. And it pays her to sign off on all our children from the North that we get more kids from. We are going to try this for 3 months and see if we get more kids." Dkt. 3, Indictment pg., 21; Attach. M, Email "Re: just things see fee sheet", pg. 2. Harding responded, "agreed." Harding and Mooney were conducting this scheme at the same time they were falsely reporting to COA and Kazakhstan that Mooney was supervising Harding and thus Harding could conduct adoptions under IAG's accreditation. See Attach. N, Email "Ethiopia Foreign Side," pg. 4 (Bivens responding that she understood Harding's delay in responding to an email involving the wiring of money for the orphanage contract scheme because she knew Harding was working on COA accreditation).

Additionally, part of the child laundering scheme involved Mooney and Bivens working with and paying a teacher at a government school in Ethiopia to locate children whose parents agreed to allow IAG to put them up for adoption and to provide IAG with their private health information. Dkt. 3, Indictment; Attach. O, Email "FW: [Gov't Official 1] from [Gov't School] for the Deaf"; Attach. P, Bivens MOIs. These children, including Children 3, 5, and 6 listed in the Indictment, never lived in orphanages and were moved directly from their parents to IAG for adoption. IAG then paid to procure false adoption contracts for these children as well. Harding

also took over the scheme to pay this woman for finding children. Attach. Q, Email "Deaf School Donation".

On January 21, 2014, a grand jury indicted the defendant and three others: Harding, Alisa Bivens, and Haile Mekonnen for conspiracy to defraud the United States government in connection with fraudulent adoptions based on many of the facts listed above.[2] Rather than working with orphanages in Ethiopia to match true orphans waiting to be adopted with families in the United States, the defendant and her co-conspirators paid off two orphanages to fraudulently sign contracts of adoption on behalf of children being placed by IAG even though those children had never resided there and the orphanages could not contract for the children's adoption. See Attach. G, Email "Re: [Family Name] and [Family Name] will travel"; Attach. H, Email "Re: wired money today". IAG would then use the orphanages' sham contracts of adoption to secure adoption decrees—unlawfully—from Ethiopian courts which were submitted to the U.S. Embassy in Ethiopia in support of visa applications for the "adoptees" to travel to the United States. See e.g., Attach. R, Orphanage Contract Child 1; Attach. S, Court Decree Child 1; Attach. T, Petition to Classify Orphan as an Immediate Relative Child 1; Attach. U, Email "Re: Kids in Mekelle" (regarding Child 4); Attach. V, Orphanage Contract Child 4; Attach. W, Court Decree Child 4; Attach. X, Petition to Classify Orphan as an Immediate Relative Child 4; Attach. Y, Orphanage Contracts Child 5 & 6; Attach. Z, Court Decrees Child 5 & 6; Attach. AA, Petition to Classify Orphan as an Immediate Relative Child 5 & 6; Attach. BB, Email "RE: FW: Follow up letter on submission of documents regarding adoption immigrant cases". The defendant authorized, approved, and participated in all aspects of the conspiracy in connection with numerous adoptions.

[2] Harding and Bivens have also pleaded guilty to conspiring to defraud the United States. Neither Harding nor Bivens has been sentenced.

On January 8, 2015, the government filed a notice of intent to use certain evidence related to the COA accreditation fraud against the defendant, explaining that the COA fraud was intrinsic to the orphanage contract fraud. Dkt. 126, Attach. CC, Notice of Gov't's Intent. On January 14, 2015, the day of jury selection, the defendant pled guilty to a one-count Information charging her with violating 42 U.S.C. § 14944(c), a federal statute that criminalizes making false and fraudulent misrepresentations to COA. The defendant moved to withdraw her guilty plea on March 12, 2015, but the Court denied the motion.

II. THE APPROPRIATE SENTENCE IS BETWEEN 51-60 MONTHS IN CUSTODY

A. Legal Standard

The Court should begin the process of determining an appropriate sentence by calculating the correct guidelines range. *Gall v. United States*, 552 U.S. 38, 49 (2007). Those sentencing guidelines are not binding on the Court and merely reflect a rough approximation of the appropriate sentence in most cases. *United States v. Rita*, 551 U.S. 338, 350 (2007). Ultimately, however, the Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *Gall*, 552 U.S. at 50 & n.6.

B. The Properly Calculated Sentencing Guidelines Range Should be 51-60 Months

The appropriate sentencing guidelines range is 51-60 months in prison based on an offense level of 24 and a criminal history category of I. The PSR proposes a lower sentencing guidelines range because it does not include several enhancements that are appropriate in this case. The following chart shows the appropriate sentencing guidelines calculation and whether the PSR includes each section.

U.S.S.G. Section	Explanation	In PSR	Levels
§ 2B1.1	Base offense level	Yes	6
§ 2B1.1(b)(10)	Either overseas conduct or special skill	No	+2

§ 2B1.1(b)(2)(A)(i)	At least ten victims	No	+2
§ 2B1.1(b)(1)(F)	Loss was between $250,000 and $550,000	No	+12
§ 3B1.3[3]	Defendant used a special skill	Yes	+2
TOTAL			**24**

The PSR has improperly concluded that the scope of relevant conduct for purposes of sentencing should be limited to only the false statements filed by the defendant without regard to the broader scheme into which those false statements fit. (PSR Addendum at 2-4.) The law says otherwise.

"[T]he applicability of subsection (a)(2) does not depend upon whether multiple counts are alleged." U.S.S.G. §1B1.3 cmt. 9 "Background." Two offenses are part of a common scheme or plan if they are substantially connected by at least one common factor, including commonality of offenders and "similarity of modus operandi (the same or similar . . . manipulations were used to execute the scheme." U.S.S.G. § 1B1.3 cmt. 5(B)(i). Additionally, "[o]ffenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses." U.S.S.G. § 1B1.3 cmt. 5(B)(ii). Factors to consider in determining whether the crimes are part of the same course of conduct are degree of similarity of the offenses, the regularity or repetition of the offenses, and the time interval between offenses. U.S.S.G. § 1B1.3 cmt. 5(B)(ii). *See also, e.g., United States v. Pineda*, 770 F.3d 313, 319 (4th Cir. 2014) (affirming inclusion of uncharged sale of drugs and firearm which led to defendant's subsequent investigation and conviction as "relevant conduct"). Uncharged

[3] If an upward adjustment under § 3B1.3 "is based solely on the use of a special skill, it may not be employed in addition to an adjustment under § 3B.1.1. (Aggravating Role)." U.S.S.G. § 3B1.3. The government maintains that should this Court find a special skill adjustment does not apply, the defendant should still receive a two-level upward adjustment under U.S.S.G. § 3B1.1(c) for her role as an organizer, leader, manager, or supervisor in the criminal activity.

In this case, Mooney and Harding's scheme was for Mooney to falsely report that she was supervising and overseeing Harding to all authorities, including COA, so that Harding could conduct foreign adoptions, and to actually sell her company to Harding for $100,000. Mooney's willingness to commit accreditation fraud was integral to a transaction in which Harding effectively purchased the ability to facilitate foreign adoptions he was otherwise unqualified to conduct and acquired a child laundering scheme that was already up and running in Ethiopia. Such a scheme is properly considered "jointly undertaken criminal activity" even if it is not charged against either Mooney or Harding as a conspiracy. U.S.S.G. § 1B1.3 Application Note 2. The defendant's plea agreement even provides that the full scope of the criminal conduct described in the Indictment can be considered relevant conduct for purposes of the sentencing guidelines. *See* Plea Agreement (Dkt. 132) at 3 ("The Defendant understands that the Court may consider the dismissed counts as relevant conduct pursuant to § 1B1.3 of the United States Sentencing Guidelines."). The disputed sentencing guidelines are discussed in detail below.

Furthermore, the Guidelines require that in cases of jointly-undertaken criminal activity "specific offense characteristics . . . shall be determined on the basis of . . . all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant" and "within the scope of the jointly taken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in connection with that criminal activity." U.S.S.G. § 1B1.3. In this case, the victims of the crimes are overlapping, families of children that would not have used IAG but for the accreditation and whose children never lived in orphanages but rather were procured by payment to individuals for child finding and approved for adoption because of false orphanage contracts, including Client D. Furthermore, the modus apprendi for concealing the fraud is the same, both regarding the child laundering scheme and permitting an

unqualified person to run IAG, Mooney made false attestations to COA on the same forms. Both the COA false statements and the child laundering scheme involved the same participants, the defendant and Harding, and they were both the purpose of Harding's purchase of IAG.

1. The Scheme Was Committed Outside of the United States or by Sophisticated Means

A two-level increase to the defendant's Offense Level is appropriate under U.S.S.G. § 2B1.1(b)(10). That guideline applies whenever "a substantial part of a fraudulent scheme was committed from outside the United States" or "the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." *Id.*

Mooney and Bivens concocted an intricate scheme to pretend that Mooney was supervising and directing Harding, allowing Harding to conduct foreign adoptions under IAG's accreditation, which Harding purchased from Mooney. This scheme involved the defendant falsely reporting her relationship with the business to COA, South Carolina, and Kazakhstan. Attach. E, COA Certifications 2009-2012; Attach. DD, 2011 COA Chart; Attach. B, App. for SC License; Attach. A, Letter to Consul; Attach. D, Pollock Complaint, pg. 4. One of the primary purposes of the scheme was to defraud the Kazakhstani government, by falsely asserting that Harding worked under the defendant and therefore could lawfully conduct adoptions using IAG's accreditation.

Furthermore, "'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B1.1(b)(10) Application Note 9(B). As noted above, the defendant filed numerous documents with at least three authorities falsely claiming she oversaw Harding. The farce also included falsely reporting the relationship on IAG's website to countless potential clients as well as phone

calls and discussions with these regulatory and governmental bodies to conceal the offense. IAG maintained a website and solicited clients nationwide; indeed, the victims in this case live in no less than six different states. IAG maintained its registration in South Carolina, but also had operations in North Carolina where the defendant had an office and Georgia where Harding had an office. *See id.* ("locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means."). Even if the court chooses not to view the Ethiopia orphanage contract fraud scheme as relevant conduct, this crime involves both a sophisticated scheme and facilitated fraud outside the United States.

Additionally, the defendant participated in a long-running scheme to submit fraudulent documents to courts in Ethiopia in order to obtain adoption decrees. Indictment ¶¶ 38-40. The defendant directly participated in that scheme by facilitating adoptions for all seven children described in the Indictment by, at a minimum, aiding and abetting other conspirators who were directly involved in the submission of fraudulent documents to Ethiopian courts. *See* Indictment ¶ 41 at Overt Acts (3), (9), (10), (17), (18), (19), (26), (33)-(35). The orphanage contract fraud scheme was the other primary object of Harding's purchase of IAG from Mooney. Further, after James Harding assumed day-to-day control of IAG, the defendant continued to enable IAG's fraudulent adoptions from Ethiopia by falsely attesting to COA that she continued to serve as IAG's executive Director. *See* Indictment ¶ 41 at Overt Act (75) ("neither defendant MOONEY nor defendant HARDING notified the [COA] of the change" in IAG's leadership); Information (Dkt. 131) (charging the defendant with making a false statement that she remained the Executive Director of IAG). Thus, the defendant directly participated in and facilitated a fraudulent scheme committed "from outside the United States," and a two-level increase to the defendant's offense level is warranted under the Guidelines. U.S.S.G. § 2B.1.1(b)(10). The

defendant's false statements in order to obtain COA accreditation were necessary to perpetuate the scheme and to conceal the scheme from the relevant licensing authority.

Alternatively, the Court should apply the guidelines adjustment for the use of "sophisticated means" in connection with her crimes in Ethiopia. In the case at bar, the defendant's scheme involved navigating a web of domestic and foreign laws. It required submitting false statements to foreign courts and to the U.S. Embassy in Ethiopia.

2. The Offense Involved More Than 10 Victims

It is staggering to think of the number of people whose lives have been directly impacted by the crimes in this case. During the past year, the government has had contact with hundreds of families who used IAG to facilitate their intercountry adoption from Ethiopia or Khazakstan. Many of those families have expressed anger, frustration, and sadness to learn that the defendant had broken the law. No less than twenty-nine victim families from Ethiopia have expressed that they would have never used IAG as an ASP for their adoption and would have never paid IAG even a dime had those families known that IAG did not have a valid COA accreditation. *See* Attach. EE, Questionnaire Summary. The sentencing guidelines define a victim as "any person who sustained any part of the actual loss" without regard to whether that person has been identified in a charging document. U.S.S.G. § 2B1.1 Application Note 1. Even if the court did not view the children in the Indictment as victims of the scheme, the enhancement for more than 10 victims is appropriate.

Additionally, the PSR disregards the victims' losses in the Indictment, saying that there was "no evidence that her false statements on the accreditation application interfered with or impacted any of the adoptions outlined in the original Indictment." (PSR Addendum at 3.) As a factual matter, the PSR's assertion is inaccurate. The defendant falsely stated in both her 2006

and 2011 applications to COA that IAG was not involved in child-buying in its foreign operations. Thus, the defendant made false statements to COA about the precise criminal conduct described by the grand jury in its Indictment, as discussed in the Notice of Intent to Use Certain Evidence at Trial. Dkt. 126; Attach. CC. At least thirteen children victims identified anonymously in the Indictment have had their lives irreparably impacted. *See* Indictment ¶ 31-36. Therefore, the defendant should receive a victim-related adjustment of two points under U.S.S.G. § 2B1.1(b)(2)(A)(i) because the offense involved at least ten victims.

3. The Loss Was more than $250,000 but not more than $550,000

A twelve-level increase applies under § 2B1.1 because the loss in this case is more than $250,000. The government must establish the relevant "amount of loss" by a preponderance of the evidence. *United States v. Miller*, 316 F.3d 495, 503 (4th Cir. 2003).[4] The appropriate measure of loss for the defendant consists of the money made by her company as a result of her unlawful conduct and should include three discrete components.

First, the loss calculation should include the money that the defendant and her co-conspirators received from families for adoptions from Kazakhstan after she sold her company to James Harding.[5] IAG was required by Kazakhstan to have a COA accreditation in order to facilitate adoptions from that country and unlawfully collected fees from families for adoption services that IAG could not lawfully provide. *Cf.* U.S.S.G. § 2B1.1 Application Note 3(F)(v) (special rule for cases involving services fraudulently provided by purported licensed

[4] "The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based on that evidence. For this reason, the court's loss determination is entitled to appropriate deference."

[5] The government has not requested calculation of loss for families that suffered financial loss from the child laundering scheme prior to the defendant's scheme to lie about her supervision of Harding, though courts have approved such calculations. *See, e.g.*, *United States v. Kieffer*, 681 F.3d 1143, 1166 (10th Cir. 2012) (holding that lies that attorney was licensed prior to the lie of conviction regarding the license were relevant conduct).

professionals).[6] The government has analyzed the books and records of IAG and Harding's company, WPA, which IAG claimed to supervise in its Kazakhstan adoptions beginning in August 2008. The total amount of money received by IAG for Kazakhstan adoptions after August 2008 was $217,976.04.[7] A chart that summarizes these losses is attached at Attachment FF hereto.

Second, the loss calculation should include the money that IAG received from families who used IAG to facilitate a adoptions from Ethiopia, but would not have used IAG for adoption services had they known that IAG was not COA accredited. The defendant and her co-conspirators would not have obtained that money had the defendant not lied to obtain a COA accreditation. Twenty-five families have informed the government that they would not have used IAG for their Ethiopia adoption had they known IAG was not properly accredited.[8] The government has reviewed the books and records of IAG and WPA and concluded that this loss is

[6] The PSR reasons that no loss-related adjustment is appropriate because "adoption fraud in Ethiopia does not fit into the parameters of relevant conduct when considering her instant offense of conviction is False Statements in Accreditation." (PSR Addendum at 2.) This reasoning ignores the sentencing guidelines' provision for cases "involving services fraudulently rendered to the victim by persons falsely posing as licensed professionals." U.S.S.G. § 2B1.1 Application Note 3(F)(v). In such cases, "loss shall include the amount paid for the property services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services." This application note has been applied by numerous courts in cases like this in which the defendant used a fraudulent license or certification to obtain money from an unsuspecting victim. *See, e.g.*, *United States v. Giovenco*, 773 F.3d 866, 870-71 (7th Cir. 2014) (loss amount for company that fraudulently obtained minority-ownership certification from municipality properly included money paid to that company by persons who relied on company having such a certification); *United States v. Bennett*, 453 Fed. App. 395, 397-98 (4th Cir. 2011) (loss amount for defendant who falsely stated to victims that he was a licensed physician included all money paid to defendant by victims who relied on defendant being licensed).

[7] The government previously informed the probation office that the amount of this loss was $44,060. However, that earlier calculation was only partially correct because it was based on a review of only IAG's books and records—not the full accounts of both IAG and Harding's predecessor company, WPA.

[8] The government previously informed the probation office that twenty-eight families had reported that they would not have used IAG for their Ethiopia adoption had they known that IAG did not have a valid COA accreditation. However, three of those families had completed their adoptions through IAG by August 2008. Although those three families have restitution requests that the Court should consider, we have excluded those three families from the loss calculation out of an overabundance of caution.

approximately $205,789.74.[9] A chart that summarizes these losses is attached hereto as Attachment GG.[10] The court in *United States v. Marcus*, 82 F.3d 606 (4th Cir. 1996) affirmed an even more aggressive loss calculation that the government requests in this case. In *Marcus*, the Fourth Circuit upheld an economic enhancement based on gross sales of a drug where the president and CEO failed to request modification approval from the FDA. The court ruled that all sales of that product should be counted, equaling over $10 million because the failure to inform the FDA of the change "had an unknown effect on the safety and efficacy of the drug, and as such, consumers did not receive that for which they bargained – an FDA-approved drug of known safety and efficacy." *United States v. Marcus*, 82 F.3d at 610. Here, the government is only requesting loss calculated for families that specifically said that what they bargained for was a COA approved company to conduct adoptions, which would ensure the ethical and approved adoptions based on truthful reporting to COA.

Third, the loss amount for sentencing purposes should include any other pecuniary harm not set forth above that the victims in this matter incurred that were "reasonably foreseeable" as a result of the offense. U.S.S.G. § 2B1.1 Application Note 3(A)(i). The government has provided the probation office with a spreadsheet that summarizes the statements of fifty-four (54) families who used IAG for their adoptions and have now suffered pecuniary harm in the form of, for

[9] The government previously informed the probation office that this loss amount was $196,362.45. However, that earlier calculation was only partially correct because it was based on a review of only IAG's books and records—not the full accounts of both IAG and Harding's predecessor company, WPA.

[10] The loss estimate for these twenty-five families consists of three discrete sub-components. (1) The company's accounting records show that nine of these families who completed Ethiopia adoptions with IAG paid the company $120,284.22. (2) The company's accounting records further show that eight families who did not complete adoptions with IAG nonetheless paid $70,705.52 for IAG's services. (3) One family completed an Ethiopia adoption but their payments to IAG do not appear in the company's accounting records. For this one family, the government submits that it is reasonable to assume that the family incurred a loss of $14,800, which was the standard cost of an adoption from IAG, which total $59,200. For the remaining seven families who did not complete an adoption through IAG/WPA, the government has not identified any payments on their behalf. For purposes of this loss estimate, we have assumed a loss amount of zero—although this assumption of a "zero" dollar loss should not impact their claim for restitution. It is worth noting that the total of these estimated losses for Ethiopia, $205,789.74, likely understates the financial harm to these twenty-five families. Indeed, these same families have requested more than $340,000 in restitution.

example, therapy and counseling services. Attach. EE. For instance, Child 5 and Child 6 lived with their families until they were moved into intermediate care at IAG while their adoptions were being approved, though the co-conspirators falsely submitted that the children had lived in orphanages prior to their adoptions. Child 5 has suffered anger and anxiety problems and has consistently reported that he feels that he was taken from his family, specifically expressing anger that he was robbed of growing up with his sister. He has been in counseling for anger, depression, and other conditions for years, and currently resides at a facility away from the adoptive family due to violence and bullying toward other family members. The government notes, however, that this category of losses will not materially impact the sentencing guidelines analysis.

In short, the loss amount for purposes of calculating the appropriate sentencing guidelines range is $468,165.78, and thus a twelve-level upward adjustment is appropriate. *See* U.S.S.G. § 2B1.1(b)(1)(F).

4. Acceptance of Responsibility

The PSR correctly notes that a downward adjustment for acceptance of responsibility should not apply in this case. PSR ¶ 15. The defendant has not appropriately accepted responsibility as evidenced by her efforts to withdraw her guilty plea and, more particularly, by her general denials of criminal responsibility in connection with her motion to withdraw her guilty plea.

A defendant who enters a guilty plea "is not entitled to an adjustment [for acceptance of responsibility] as a matter of right." U.S.S.G. § 3E1.1 Application Note 1. Rather, the downward adjustment is appropriate where a defendant "truthfully admit[s] the conduct comprising the offense(s) of conviction and truthfully admit[s] any additional relevant conduct

for which the defendant is accountable under § 1B1.3 (Relevant Conduct)." *Id.* Since her plea, the defendant has claimed that she is innocent, has refused to acknowledge that her false statements to the COA constituted a crime or were even false, and attempted to withdraw her guilty plea by asserting her actual innocence. In support of her motion to withdraw her guilty plea, the defendant attested, "I have always asserted that I am innocent" and that there were "insufficient facts to support the accusations in the Information." Mooney Aff. (Dkt. 142-2) at ¶¶ 2-3. She also asserted, "I am not aware of any violations during the year 2009, or that IAG was out of compliance with any part of 22 C.F.R. Part 96." *Id.* at ¶ 21. Such conduct is hardly tantamount to the truthful admission of criminal wrongdoing required by the Guidelines in order to "clearly demonstrate" acceptance of responsibility. U.S.S.G. § 3E1.1(a).

Furthermore, the additional one-point reduction permitted under U.S.S.G. § 3E.1.1(b) is only appropriate where the government has made a motion stating that "the defendant has assisted authorities in investigation or prosecution of [her] intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial." *See also* Application Note 6 ("[A]n adjustment under subsection (b) may *only* be granted upon a formal motion by the Government at the time of sentencing." (emphasis added).) No such motion has been filed here, nor is such a motion appropriate for the reasons stated above. Additionally, the defendant entered her guilty plea on the afternoon of jury selection. At that time, the government had already incurred considerable time and expense in preparing witnesses to testify, arranging witness travel (including the case agent who traveled to Charleston from a post in Afghanistan), and filing pre-trial motions. Therefore, a downward adjustment for acceptance of responsibility is not warranted under the circumstances.

5. Recommended Sentence

As discussed above, the defendant's Offense Level is 24. The PSR notes that the defendant has no known criminal history, which places her in Criminal History Category I. PSR ¶ 18. For the defendant's criminal history, applying an Offense Level of 22 results in a sentence in Zone C with a guideline-recommended sentence of between 51-60 months' incarceration. As discussed further below, the defendant should receive a sentence based on this calculation.

C. Sentencing Factors under 18 U.S.C. § 3553

The sentencing guidelines are but one factor that this Court should consider in determining an appropriate sentence. The Court should also consider the factors set forth in 18 U.S.C. § 3553. As set forth below, these additional considerations provide a basis for a 51-60 month term of incarceration.

1. Nature and Circumstances of the Offense and Its Seriousness

It is evident that the defendant's crimes are serious. The defendant submitted fraudulent documents to a non-profit accrediting organization so that she and her co-defendants could profit from "child laundering" overseas. Rather than use her education and expertise in intercountry adoptions to help others lawfully adopt orphan children, the defendant used those skills to commit crimes. As stated above, hundreds of families relied on the defendant and IAG to assist them in adopting children. The defendant has hurt every one of those families.

The accreditation process is meant to help secure protection for some of the most vulnerable people in the world: children in developing countries who are both economically and socially disadvantaged and who may find themselves targeted for intercountry adoption by persons with corrupt motives. These victims do not have a voice for themselves, and in this case had difficulty communicating because of language and disability barriers since IAG targeted deaf

children for adoptions from Ethiopia. The defendant circumvented the protections of the accreditation system, and her actions directly harmed numerous children and their families.

2. History and Characteristics of the Defendant

Although the defendant has no known criminal history, her conduct prior to the 2008 sale of IAG as explained in the Indictment, weighs in favor of a substantial period of incarceration. The defendant's participation in the child laundering scheme, which she consistently lied to COA about was long running and calculated. As mentioned above, before selling her company to Harding, the defendant knowingly planned a scheme to make money by submitting false adoption contracts to courts in Ethiopia, which resulted in fraudulent representations being made to the U.S. government in numerous adoption applications. During that time, the defendant exercised full control over IAG, made personnel decisions, directed others who worked in the company's Ethiopia program, and maintained all professional licenses, including COA accreditation. The defendant traveled to Ethiopia and visited a deaf school which many of the children attended while living at home with their families. The defendant worked with her co-conspirator to pay a teacher to locate children who lived with their parents for adoption. Therefore, the defendant had already organized, supervised, and led an unlawful adoption scheme before passing on the company to Harding at which point she began making false statements to COA to perpetuate the scheme, and intended this scheme to be carried on. This troubling pattern of making fraudulent statements to the U.S. government shows that the defendant has no reservations about lying to suit her interests.

3. The Need to Promote Respect for the Law and Provide Deterrence

An appropriate sentence in this case must promote respect for the law and provide deterrence for similar types of conduct. International adoption fraud of this type is difficult to

uncover. The children and families who are victimized by the fraud are ill-positioned to report the fraud if they even become aware of it. Children who were fraudulently adopted as infants cannot state whether they had families or not. Deterrence through prison sentences in the United States is a realistic policy solution that will help prevent future crimes of this sort because it is difficult for the government to charge many individuals who commit these crimes overseas.

The loss amount in this case—which is only a fraction of the money IAG made—shows that the potential monetary benefit to a conspirator is great, and thus, a sentence must show potential future offenders that the gain is not worth the risk.

4. The Need to Provide Restitution to Victims of the Offense

The defendant has agreed to make restitution "to each and every identifiable victim who may have been harmed by her scheme or pattern of criminal activity." Dkt. 132, Plea Agreement at 3. Thus, the Court may order restitution pursuant to 18 U.S.C. § 3663(a)(3) ("The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement."). The government has provided the probation office with a spreadsheet that summarizes requests for restitution that fifty-four families have submitted to the government. *See* Exhibit 4 hereto. These are not all of the families affected by IAG, rather, they are the families that were located by the government and chose to respond to a questionnaire. The government respectfully requests that the Court rule on their claims for reimbursement. Although, as explained further below, the defendant does not have the financial resources to pay restitution, this Court should consider the harm suffered by the fifty-four families who trusted and relied upon the defendant in determining an appropriate sentence.

5. Incarceration as the Only Meaningful Sentencing Option

Realistically, the usual plate of sentencing options is unavailable in this case. The defendant agreed in her plea agreement to make restitution to each identifiable victim harmed by her criminal conduct. Plea Agreement (Dkt. 132) at 3. However, as noted in the PSR, the defendant's current financial position shows that she would be unable to pay restitution. PSR ¶ 46. The defendant filed for Chapter 7 bankruptcy in North Carolina in 2013 toward which she was paying $750 monthly until her arrest in 2014. PSR ¶ 46. Therefore, restitution is not a meaningful option in this case. Rather, incarceration is the only sentencing tool that the Court can employ to promote the sentencing aims of specific and general deterrence and to heal the wounds caused by the defendant's crimes.

III. CONDITIONAL REQUEST FOR AN UPWARD VARIANCE

In the event that the court disagrees with the government's assessment of the applicable guidelines—by, for example, adopting all or some of the PSR's sentencing guidelines recommendations over the government's objection—the government requests that the court vary upward pursuant to Section 3553(a). In such a situation, the applicable guidelines would "substantially understate the seriousness of the offense." U.S.S.G. § 2B1.1 Application Note 20(A). An upward variance is appropriate where "[t]he offense caused or risked substantial non-monetary harm" such as "psychological harm [ ] or severe emotional trauma." *Id*. at Application Note 20(A)(2).

If the guidelines recommended in the PSR are adopted by the court, a guidelines sentence will not adequately meet the purposes of punishment established in 18 U.S.C. § 3553(a). The defendant lied about the way in which an international adoption agency was handling its governance and obtaining children. The children in question were from Kazakhstan and

Ethiopia. Some of the children were babies. Some of the children were deaf. Some of the children did not understand English. All of them were vulnerable. The specific lie to which the defendant pleaded guilty—that she was the executive director of an adoption agency, when in fact, the person who was the executive director was denied accreditation due to his lack of qualifications—enabled a person with inadequate training and experience to fulfill the role of safeguarding children and their adoptive parents in the intercountry adoption process. People who, like the defendant and her co-defendants, lie on COA forms are the same people who take advantage of vulnerable victims. Harm to these vulnerable victims was clearly foreseeable.

Additionally, an upward variance would be appropriate to avoid a sentencing disparity as to the defendant's other co-conspirators. As discussed above, the defendant was originally charged in an Indictment to defraud the U.S. government in the course of facilitating international adoptions along with her co-conspirators, James Harding and Alisa Bivens. Harding and Bivens pled guilty to the offense, and both will face sentencing guidelines calculations suggesting substantial periods of incarceration at sentencing.

CONCLUSION

For the foregoing reasons, a sentence of 51 to 60 months of incarceration is appropriate and warranted in this case. Such a sentence would properly serve the interests of justice.

Respectfully submitted,

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