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Criminal Tax Fraud*

&

*7th National Institute
on Tax Controversy*

*Criminal Tax Workshop
Exhibits*

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Moderators

*Sandra R. Brown, Acting U.S. Attorney
U.S. Attorney's Office (C.D. Cal.)
Los Angeles, California*

*Caroline D. Ciraolo
Kostelanetz & Fink, LLP
Washington, D.C.*

Panelists

*Lawrence S. Feld
Law Offices of Lawrence S. Feld
New York, New York*

*David W. Foster
Skadden, Arps, Slate, Meagher & Flom LLP
Washington, D.C.*

*Autumn K. Woodard
Special Agent
Criminal Investigation
Internal Revenue Service
Dallas, Texas*

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ADMINISTRATIVE SUMMONS

Exhibit A



Provisions of the Internal Revenue Code

Sec. 7602. Examination of books and witnesses

(a) Authority to Summon, etc. - For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized -

- (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry.
- (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
- (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense. - The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties. -

- (1) General Notice. - An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.
- (2) Notice of specific contacts. - The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.
- (3) Exceptions. - This subsection shall not apply-
 - (A) to any contact which the taxpayer has authorized,
 - (B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person, or
 - (C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral.-

- (1) Limitation of authority. - No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.
- (2) Justice Department referral in effect. - For purposes of this subsection-
 - (A) In general. - A Justice Department referral is in effect with respect to any person if-
 - (i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws or
 - (ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.
 - (B) Termination. - A Justice Department referral shall cease to be in effect with respect to a person when-
 - (i) the Attorney General notifies the Secretary, in writing, that -
 - (I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,
 - (II) he will not authorize a grand jury investigation of such person with respect to such an offense, or
 - (III) he will discontinue such a grand jury investigation.
 - (ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or
 - (iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in sub paragraph (A)(ii).
- (3) Taxable years, etc., treated separately. - For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income. - The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

Authority to examine books and witness is also provided under sec. 6420 (e)(2) - Gasoline used on farms: sec. 6421(g)(2) - Gasoline used for certain nonhighway purposes by local transit systems, or sold for certain exempt purposes; and sec. 6427(j)(2) - Fuels not used for taxable purposes.

Sec. 7603. Service of summons

(a) In general - A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty

(b) Service by mail to third-party recordkeepers. -

- (1) In general. - A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.
- (2) Third party record keeper. - For purposes of paragraph (1), the term *third-party recordkeeper* means -
 - (A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501 (c)(14)(A));
 - (B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)));
 - (C) Any person extending credit through the use of credit cards or similar devices;
 - (D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));
 - (E) any attorney;
 - (F) any accountant;
 - (G) any barter exchange (as defined in section 6045(c)(3));
 - (H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof;
 - (I) any enrolled agent; and
 - (J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)). Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which source code relates.

Sec. 7604. Enforcement of summons

(a) Jurisdiction of District Court. - If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement. - Whenever any person summoned under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States Commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or Commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States Commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

* * * * *

Sec. 7605. Time and place of examination

(a) Time and place. - The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421 (g)(2) or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

Sec. 7610. Fees and costs for witnesses

(a) In general. - The Secretary shall by regulations establish the rates and conditions under which payment may be made of -

- (1) fees and mileage to persons who are summoned to appear before the Secretary, and
- (2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions. - No payment may be made under paragraph (2) of subsection (a) if -

- (1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or
- (2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies. - This section applies with respect to any summons authorized under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602.

Sec. 7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda or other papers, as required under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

* * * * *

Notice of Payment Information for Recipients of IRS Summons

If you are a third-party recipient of a summons, you may be entitled to receive payment for certain costs directly incurred which are reasonably necessary to search for, reproduce, or transport records in order to comply with a summons.

This payment is made only at the rates established by the Internal Revenue Service to certain persons served with a summons to produce records or information in which the taxpayer does not have an ownership interest. The taxpayer to whose liability the summons relates and the taxpayer's officer, employee, agent, accountant, or attorney are not entitled to this payment. No payment will be made for any costs which you have charged or billed to other persons.

The rate for search costs is limited to the total amount of personnel time spent locating and retrieving documents or information requested by the summons. Specific salaries of such persons may not be included in search costs. In addition, search costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search costs may include the actual costs of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies. Time for computer search may be paid.

Rates for reproduction costs for making copies or duplicates of summoned documents, transcripts, and other similar material may be paid at the allowed rates. Photographs, films, and other material are reimbursed at cost.

The rate for transportation costs is the same as the actual cost necessary to transport personnel to locate and retrieve summoned records or information, or costs incurred solely by the need to transport the summoned material to the place of examination.

In addition to payment for search, reproduction, and transportation costs, persons who appear before an Internal Revenue Service officer in response to a summons may request payment for authorized witness fees and mileage fees. You may make this request by contacting the Internal Revenue Service officer or by claiming these costs separately on the itemized bill or invoice as explained below.

Instructions for requesting payment

After the summons is served, you should keep an accurate record of personnel search time, computer costs, number of reproductions made, and transportation costs. Upon satisfactory compliance, you may submit an itemized bill or invoice to the Internal Revenue Service officer before whom you were summoned to appear, either in person or by mail to the address furnished by the Internal Revenue Service officer. Please write on the itemized bill or invoice the name of the taxpayer to whose liability the summons relates.

If you wish, Form 6863, Invoice and Authorization for Payment of Administrative Summons Expenses, may be used to request payment for search, reproduction, and transportation costs. Standard Form 1157, Claims for Witness Attendance Fees, Travel, and Miscellaneous Expenses, may be used to request payment for authorized witness fees and mileage fees. These forms are available from the Internal Revenue Service officer who issued the summons.

If you have any questions about the payment, please contact the Internal Revenue Service officer before whom you were summoned to appear.

Anyone submitting false claims for payment is subject to possible criminal prosecution.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

- (a) Notice-
 - (1) In general. - If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.
 - (2) Sufficiency of notice. - Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.
 - (3) Nature of summons. - Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.
- (b) Right to intervene; right to proceeding to quash. -
 - (1) Intervention. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.
 - (2) Proceeding to quash. -
 - (A) In general. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.
 - (B) Requirement of notice to person summoned and to Secretary. - If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).
 - (C) Intervention, etc. - Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).
- (c) Summons to which section applies. -
 - (1) In general. - Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.
 - (2) Exceptions. - This section shall not apply to any summons
 - (A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;
 - (B) issued to determine whether or not records of the business transaction or affairs of an identified person have been made or kept;
 - (C) issued solely to determine the identify of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);
 - (D) issued in aid of the collection of-
 - (i) an assessment made or a judgment rendered against the person with respect to whose liability the summons is issued, or
 - (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause; or
 - (E) (i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws, and
 - (ii) served on a person who is not a third-party recordkeeper (as defined in section 7603(b)).
 - (3) John Doe and Certain Other Summonses. - Subsection (a) shall not apply to any summons described in subsection (f) or (g).
 - (4) Records. - For purposes of this section, the term records includes books, papers, and other data.
- (d) Restriction on examination of records. - No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made -
 - (1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or
 - (2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.
- (e) Suspension of Statute of Limitations. -
 - (1) Subsection (b) action. - If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.
 - (2) Suspension after 6 months of service of summons. - In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period-
 - (A) beginning on the date which is 6 months after the service of such summons, and
 - (B) ending with the final resolution of such response.
- (f) Additional requirements in the case of a John Doe summons. - Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that -
 - (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,
 - (2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and
 - (3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.
- (g) Special exception for certain summonses. - A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.
- (h) Jurisdiction of district court; etc. -
 - (1) Jurisdiction. - The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceedings brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.
 - (2) Special rule for proceedings under subsections (f) and (g). - The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.
- (i) Duty of summoned party. -
 - (1) Recordkeeper must assemble records and be prepared to produce records. - On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.
 - (2) Secretary may give summoned party certificate. - The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.
 - (3) Protection for summoned party who discloses. - Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.
 - (4) Notice of suspension of statute of limitations in the case of a John Doe summons. - In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).
- (j) Use of summons not required. - Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

To:

Date: XXXXXXXX

Address:

Enclosed is a copy of a summons served by the IRS to examine records made or kept by, or to request testimony from, the person summoned. If you object to the summons, you are permitted to file a lawsuit in the United States district court in the form of a petition to quash the summons in order to contest the merits of the summons.

If you are the taxpayer, see important information below on the suspensions of your periods of limitation under I.R.C. section 7609(e)(1) and (e)(2).

General Directions

1. You must file your petition to quash in the United States district court for the district where the person summoned resides or is found.
2. You must file your petition within 20 days from the date of this notice and pay a filing fee as may be required by the clerk of the court.
3. You must comply with the Federal Rules of Civil Procedure and local rules of the United States district court.

Instructions for Preparing Petition to Quash

1. Entitle your petition "Petition to Quash Summons."
2. Name the person or entity to whom this notice is directed as the petitioner.
3. Name the United States as the respondent.
4. State the basis for the court's jurisdiction, as required by Federal Rule of Civil Procedure. See Internal Revenue Code Section 7609(h).
5. State the name and address of the person or entity to whom this notice is directed and state that the records or testimony sought by the summons relate to that person or entity.
6. Identify and attach a copy of the summons.

7. State in detail every legal argument supporting the relief requested in your petition. See Federal Rules of Civil Procedure. Note that in some courts you may be required to support your request for relief by a sworn declaration or affidavit supporting any issue you wish to contest.
8. Your petition must be signed as required by Federal Rule of Civil Procedure 11.
9. Your petition must be served upon the appropriate parties, including the United States, as required by Federal Rule of Civil Procedure 4.
10. At the same time you file your petition with the court, you must mail a copy of your petition by certified or registered mail to the person summoned and to the IRS. Mail the copy for the IRS to the officer whose name and address are shown on the face of this summons. See 7609(b)(2)(B).

The court will decide whether the person summoned should be required to comply with the summons request.

Suspension of Periods of Limitation

If you are the taxpayer being examined/investigated by this summons and you file a petition to quash the summons (or if you intervene in any suit concerning the enforcement of this summons), your periods of limitation for assessment of tax liabilities and for criminal prosecutions will be suspended pursuant to I.R.C. section 7609(e)(1) for the tax periods to which the summons relates. Such suspension will be effective while any proceeding (or appeal) with respect to the summons is pending. Your periods of limitation will also be suspended under section 7609(e)(2) if the summoned person fails to fully respond to this summons for 6 months. The suspension under section 7609(e)(2) will begin 6 months after the summons is served and will continue until the summoned person finally resolves the obligation to produce the summoned information. You can contact the IRS officer identified on the summons for information concerning the suspension under section 7609(e)(2). If you contact the IRS officer for this purpose, please provide the following information: (1) your name, address, home and work telephone numbers and any convenient time you can be contacted and (2) a copy of the summons or a description of it that includes the date it was issued, the name of the IRS employee who issued it, and the name of the summoned person.

The relevant provisions of the Internal Revenue Code are enclosed with this notice. If you have any questions, please contact the Internal Revenue Service officer before whom the person summoned is to appear. The officer's name and telephone number are shown on the summons.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Suspension of Corporate Taxpayer's Period of Limitations on Assessment If a Court Proceeding is Brought Regarding a Designated or Related Summons

The IRS may issue designated or related summonses to examine the tax liability of certain corporations. A designated summons will be identified by a statement at the top of the summons that reads: "This is a designated summons pursuant to IRC 6503(j)." A related summons will be identified by a similar statement at the top of the summons indicating that it is a related summons issued pursuant to I.R.C. sec. 6503(j).

If you are a corporate taxpayer and the IRS has issued a designated or related summons to investigate your tax liability, your period of limitations on assessment will be suspended if a court proceeding concerning the summons is begun. This suspension will be effective on

the day the court proceeding is brought. If the court orders any compliance with the summons, the suspension will continue until 120 days after the summoned person finally resolves his response to the summons. If the court does not order any compliance with the summons, then the period of limitations will resume running on the day after final resolution (but the period of limitations will not expire before the 60th day after final resolution).

To obtain information about the dates of the suspension under section 6503(j), you can contact the IRS officer before whom the person summoned is to appear. The officer's name and telephone number are identified on the summons.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Part E — to be given to the corporate taxpayer only if
this is a designated or related summons

(1) In General—

If any designated summons is issued by the Secretary to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended—

(A) during any judicial enforcement period--

- (i) with respect to such summons, or
- (ii) with respect to any other summons

which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120 day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

(A) In General -- The term "designated summons" means any summons issued for purposes of determining the amount of any tax imposed by this title if--

(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,

(ii) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions), and

(iii) such summons clearly states that it is a designated summons for purposes of this subsection.

(B) Limitation -- A summons which relates to any return shall not be treated as a designated summons if a prior summons which relates to such return was treated as a designated summons for purposes of this subsection.

(3) Judicial Enforcement Period -- For purposes of this subsection, the term "judicial enforcement period" means, with respect to any summons, the period --

(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

(B) which ends on the day on which there is a final resolution as to the summoned person's response to such summons.

GRAND JURY SUBPOENA

Exhibit B

UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF CONNECTICUT

REQUEST FOR GRAND JURY

SUBPOENA DUCES TECUM

GRAND JURY MATTER NO.: [REDACTED] CONTROL NO. [REDACTED]

GRAND JURY/DATE RETURNABLE: April 5, 2016 at 9:00 a.m.

AGENT: Special Agent George Babycutty, IRS-CI

DIRECTED TO: Custodian of Records
[REDACTED]
Certified Public Accountants
[REDACTED]
Bohemia, New York 11716

DOCUMENTS/EVIDENCE DEMANDED: Documents only.

Order or Letter of Non-disclosure: Non-disclosure letter.

DATED: March 8, 2016

Approved By: 
Christopher W. Schmeisser
Assistant United States Attorney



United States Department of Justice

United States Attorney
District of Connecticut

Connecticut Financial Center
157 Church Street, 25th Floor
New Haven, Connecticut 06510

(203)821-3700
Fax (203) 773-5376
www.justice.gov/usao/ct

March 8, 2016

Custodian of Records

Certified Public Accountants

Bohemia, New York 11716

Re: Non-Disclosure of Subpoena

Dear Custodian of Records:

The attached grand jury subpoena issued on March 8, 2016 is returnable on April 5, 2016, before the federal grand jury sitting that date in New Haven, Connecticut.

The subpoena requests that the custodian of records produce certain documents described in Attachment A to the subpoena. In lieu of appearing before the grand jury, the Custodian of Records may comply with the subpoena by producing the responsive records to Special Agent George Babykutty, 135 High Street, Stop 220, Hartford, CT 06103, on or before the grand jury date.

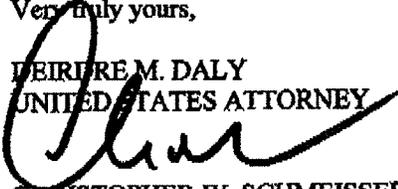
Title 12, United States Code, Section 3413(j), exempts subpoenas issued by a Federal Grand Jury from the disclosure provisions of the Right to Financial Privacy Act of 1978. You are requested not to disclose the existence of this subpoena or its contents. Disclosure of the subpoena, or its contents, may impede an ongoing federal grand jury investigation into the possible commission of a felony, and consequently may interfere with the enforcement of federal law. **Therefore, before you disclose the existence and/or the contents of this subpoena, please contact Special Agent Babykutty at 203-887-1337.**

We also request that the custodian of records at your financial institution complete the attached declaration for any business records that are produced pursuant to this subpoena, to the extent that such records meet the conditions set forth in the declaration—that is, (1) that the records were made at or near the time of the occurrence of the matters set forth in the records, by a person with knowledge of those matters or from information transmitted by such a person, and (2) that these records are made, and are kept, as a regular practice in the ordinary course of business.

Completion of this declaration will significantly reduce the chances that you will be called as a witness at any future trial, where these documents might be offered as evidence.

Very truly yours,

HEIDI M. DALY
UNITED STATES ATTORNEY


CHRISTOPHER W. SCHMEISSER
ASSISTANT UNITED STATES ATTORNEY

CWS:ers

UNITED STATES DISTRICT COURT

for the
District of Connecticut

GJ N-15-1-109(2)
S/A George Babycutty, IRS-CI

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

Custodian of Records

To: [Redacted]
Certified Public Accountants
[Redacted]
Bohemia, New York 11716

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: Robert N. Giaimo Federal Building 150 Court Street, Room 125 New Haven, CT 06510	Date and Time: Grand Jury Room April 5, 2016 at 9:00 a.m.
---	--

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

See Attachment A.

Note: Please include a copy of this subpoena with any materials or records produced. In lieu of personally appearing before the Grand Jury, these records may be provided to Special Agent George Babycutty, 135 High Street, Stop 220 Hartford, CT 06103, tel: (203)887-1337, on or before the Grand Jury date.

Date: 03/08/2016

CLERK OF COURT



Signature of Clerk of Court

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Christopher W. Schmeisser, Assistant United States Attorney
U.S. Attorney's Office, District of Connecticut
157 Church Street, 25th Floor
New Haven, CT 06510 Tel. 203-821-3700 Control No. 694

ATTACHMENT A - GRAND JURY N-15-1-109(2) – Page 1 of 1

TO: Custodian of Records
[REDACTED]
Certified Public Accountants
[REDACTED]
Bohemia, New York 11716

For the years: December 01, 2008 through January 31, 2015

Any and all documents in your custody or control relative to the financial transactions of:

[REDACTED], SSN: [REDACTED];
[REDACTED], SSN: [REDACTED];
[REDACTED], SSN: [REDACTED];
[REDACTED], LLC, EIN: [REDACTED];
[REDACTED] Corp, EIN: [REDACTED];
[REDACTED] Corp, EIN: [REDACTED];
[REDACTED] Group, EIN: [REDACTED];
[REDACTED] Corp, EIN: [REDACTED].

Including but not limited to the following:

All books, records, bank statements, canceled checks, deposit tickets, work-papers, financial statements, correspondence and other pertinent documents furnished by or on behalf of the above named client(s) for the preparation of state and federal income tax returns and for any other entity in which either or both of them have a financial interest, including but not limited to:

All records used in or resulting from the preparation of federal and state income tax returns consisting of but not limited to work-papers, notes, papers, memoranda and correspondence used or prepared by you relative to the preparation of the aforementioned returns.

Copies of federal and state income and payroll tax returns, state sales tax returns and amended tax returns.

All records, books of account and other documents or papers relative to financial transactions of the principals.

All client billing records relative to this client to include records disclosing the dates and types of service rendered; client account cards; billing invoices; records reflecting the dates, amounts, purpose, and method of all payments (cash or check); and all correspondence with this client.

RECORD FORMAT: In addition to hard copies, records are requested in the form of magnetic media. Data may be provided in compact disks (CDs).

CERTIFICATE OF RECORDS

I, _____, hereby certify that:

1. I am the custodian of records at _____ ("the Company"), located at _____.

2. I have examined the records of the Company, and they contain the attached documents, each of which is the original or the duplicate of the original records, described more particularly as

3. These records were made at or near the time of the occurrence of the matters set forth therein, by a person with knowledge of these matters or from information transmitted by such a person.

4. These records were kept in the course of a regularly conducted activity of the Company.

5. Making these records was a regular practice of that activity.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, in _____, _____.
(date) (state) (city)

name: _____

address: _____

telephone number: _____



United States Department of Justice

United States Attorney
District of Connecticut

INSTRUCTIONS FOR PRODUCTION OF ELECTRONICALLY (DIGITAL) STORED RECORDS

This document details the data formatting specifications required for data submitted to the U.S. Attorney's Office (USAO) in response to litigation. The Government currently uses Concordance (ver 10.06) and IPRO (ver 8.6).

ANY VARIANCE FROM THESE STANDARDS MUST BE PRE-APPROVED.

A. MEDIA

All data and image deliveries must be made on CD, DVD, or USB 2.0 external hard drive.

B. DATA FORMAT

Data should be delivered in one of two formats:

1. As a Concordance database (.dcb)

- ❖ In most instances, the StartBates should be the Image Key field unless another field has been designated the key field by the Government.
- ❖ All fields should be indexed.

Note: If this method is chosen, and there will be more than one production, please confirm the database fields and structure remain consistent between data deliveries.

2. As an ASCII delimited text file (.dat)

If this method is chosen, please adhere to the following:

- ❖ The first line of the text file must contain the field names.
- ❖ The delimiters used should be the Concordance standards, of: comma (ASCII character 020), quote (ASCII character 254), and newline (ASCII character 174).
- ❖ Produce a page header indicator in the following format, <<batesno>>, on a separate line for every page of OCR.

C. DELIVERED FIELDS

The database or load file provided must contain, at minimum, the first and last Bates number for each document, and all applicable OCR text. OCR text should be incorporated directly in either the Concordance database or the ASCII load file, and not delivered in separate text files.

D. IMAGE/CROSS REFERENCE FILE GUIDELINES

I. IMAGE FORMAT

1. TIFF – Single page (Preferred) OR

- ❖ Documents should be scanned at 300 dpi, as single-page CCITT Group IV TIFF files. TIFF file names should match the assigned Bates number of the underlying document page, should be unique, and sequentially numbered. PDF files will be accepted only after a consultation between the provider and USAO technical support staff. Multi-page TIFF files are strongly discouraged.
- ❖ Bates numbers should be electronically “endorsed” onto images. The file name assigned to the image should match the underlying document’s Bates number. Bates numbers should be alpha-numeric, with the numeric portion of the stamp being “zero-filled”. As an example, an assigned Bates numbered series of documents such as “ABC1”, “ABC2”, “ABC3” would be unacceptable, whereas “ABC000001”, “ABC000002”, “ABC000003” is preferred.
- ❖ Images should be placed on delivered media in a master folder named XIMAGES.

2. PDF – Multi-page (text searchable)

II. CROSS-REFERENCE FILE

1. Tiff files must be accompanied with an image “cross-reference file”, preferably in IPRO® .lfp format. This file associates each bates number with its corresponding single-page TIFF file name and indicates its location on the media provided. The file should contain one line for every page in the collection, and must contain the document Bates number and the full DOS path to the image, beginning with the media volume. Below is a sample IPRO file:

```
IM,ABC-000001,D,0,@VOL01;IMG_0000001;ABC-000001.tif;2,0
IM,ABC-000002,,0,@VOL01;IMG_0000001;ABC-000002.tif;2,0
IM,3542-S-000001,D,0,@VOL01;IMG_0000001;3542-S-000001.tif;2,0
IM,3542-S-000002,,0,@VOL01;IMG_0000001;3542-S-000002.tif;2,0
IM,3542-S-000003,,0,@VOL01;IMG_0000001;3542-S-000003.tif;2,0
```

E. NATIVE FILES

With the exception of spreadsheets, electronic files should not be provided in their original or “native” format, but should be put through an electronic conversion (e-conversion) process, in which single-page TIFF images are created from all underlying document pages, and all text and applicable metadata from these files is extracted. Data, images, and image cross-reference files resulting from this process should follow the formatting specifications detailed in the sections above.

Spreadsheets (such Microsoft Excel or Lotus 1-2-3) should be provided in both e-converted and native format.

F. SECURITY

All submissions of electronic data to the USAO must be free of computer viruses. In addition, any passwords protecting files or media must be removed or provided.

Rev. October 2013

CONFERENCE REQUEST LETTER TO IRS CI

Exhibit C



CAROLINE D. CIRAOLLO
Direct Dial: 410.547.7852
E-mail: cciraolo@rosenbergmartin.com

January 10, 2011

*Via Facsimile (703.756.6020)
and First Class Mail*

James D. Havrilla, Special Agent
Internal Revenue Service
5205 Leesburg Pike, Suite 800
Falls Church, Virginia 22041

Re: [REDACTED]

Dear Special Agent Havrilla:

As you know, this office represents [REDACTED] with respect to your pending criminal investigation. In the event the Internal Revenue Service, Criminal Investigation Division makes the preliminary decision to submit a report to the Department of Justice, Tax Division, recommending that [REDACTED] be prosecuted for any offense under title 26 of the United States Code, I request a conference with your office prior to any final recommendation.

Thank you for your time and consideration.

Very truly yours,

Caroline D. Ciralo

cc: [REDACTED] (via first-class mail)



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

October 7, 2011

Ms. Caroline D. Ciraolo
Rosenburg, Martin & Greenburg, LLP
25 South Charles Street
Suite 2115
Baltimore, Maryland 21201-3305

Re: [REDACTED]

Dear Ms. Ciraolo:

This office has under consideration a recommendation that criminal proceedings be instituted against your client for tax evasion in violation of 26 U.S.C. § 7201 for the years 2005 through 2009 and willful filing of false tax returns in violation of 26 U.S.C. § 7206(1) for the years 2006 through 2009.

If you desire a conference in this matter to discuss or present any information you think we should have in considering your client's case, it will be held on Thursday, October 27, 2011 at 11:00 a.m. in my office which is located at 1200 1st Street, N.E., Suite 4100, Washington, D.C. 20002.

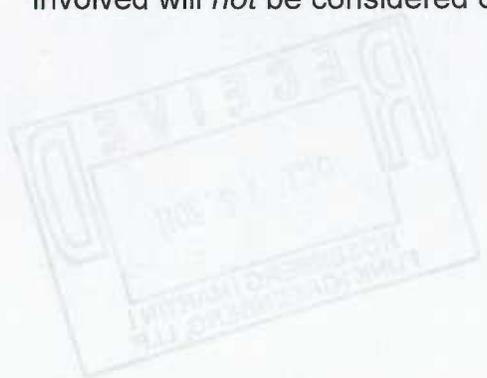
Please contact me by October 18, 2011 indicating whether or not you plan to attend the conference. If we do not hear from you by then, we will assume that you do not wish to attend a conference. If you prefer, you may submit in writing any defenses or other information that you may want this office to consider in lieu of a face-to-face conference. Please forward any such information before the conference date. Please be advised that our review process cannot be delayed beyond the above conference date. I can be reached at (202) 435-5898 or in writing at the above letterhead address.

This conference is not an opportunity for discovery. Please be advised that plea bargaining, civil settlement, negotiations, and/or compromises of the tax liabilities involved will *not* be considered or discussed at this conference.

Sincerely,

A handwritten signature in black ink, appearing to read "James I. Hite, Jr.", followed by a stylized flourish.

James I. Hite, Jr.
Assistant Special Agent in Charge



**CONFERENCE REQUEST LETTER TO
DOJ TAX DIVISION**

Exhibit D

KOSTELANETZ & FINK, LLP
7 WORLD TRADE CENTER, 34TH FLOOR
NEW YORK, NEW YORK 10007

TEL: (212) 808-8100
FAX: (212) 808-8108
www.kflaw.com

April 7, 2017

BY FEDERAL EXPRESS

Rosemary E. Paguni
Chief, Northern Criminal Enforcement Section
Department of Justice, Tax Division
601 D Street, NW
Room 7334
Washington, D.C. 20530

Re: [REDACTED]

Dear Ms. Paguni:

We are the attorneys for [REDACTED], who may be under investigation by the Department of Justice and/or the United States Attorney's Office for the Southern District of New York. In the event that this matter is referred to your office, we respectfully request a conference with your office.

To complete our file, we would appreciate your acknowledging receipt of this letter. Thank you.

Very truly yours,



Megan L. Brackney

RECEIVED & ACKNOWLEDGED:

U.S. Department of Justice



Rosenberg
Martin
Greenberg^{LLP}

CAROLINE D. CIRAOLLO
Direct Dial: 410.547.7852
E-mail: cciraolo@rosenbergmartin.com

February 27, 2013

Via Facsimile (202.616.1786) and First Class Mail

Rosemary E. Paguni, Esquire
Chief, Northern Counsel/Enforcement Section
Department of Justice/Tax Division
Post Office Box 972
Ben Franklin Station
Washington, D.C. 20044

Re: [REDACTED]

Dear Ms. Paguni:

This office represents [REDACTED], SSN [REDACTED]. Our Power of Attorney (Form 2848) is enclosed. We have been advised by the Internal Revenue Service, Criminal Investigation Division, that it has recommended prosecution of [REDACTED] for tax offenses under Title 26 of the United States Code.

I am writing on [REDACTED] behalf to request a conference with the Tax Division prior to any final determination by the Tax Division with respect to prosecution. Please contact me at your convenience to schedule this conference.

Thank you for your time and consideration.

Very truly yours,

Caroline D. Ciruolo

Enclosure

cc: [REDACTED] (via electronic mail)



U.S. Department of Justice

Tax Division

*Northern Criminal Enforcement Section
P.O. Box 972, Ben Franklin Station
Washington, D.C. 20044*

*(202) 514-5150
FAX: (202) 514-8455*

REP:TKM
2011200556

Caroline D. Ciralo
Rosenberg, Martin, Greenberg, LLP
25 South Charles Street
Suite 2115
Baltimore, MD 21201

JAN 20 2011

Re: 

Dear Ms. Ciralo:

The Tax Division has received a letter dated January 10, 2011, requesting a conference in connection with the above-captioned case.

A record has been made of your request. An attorney will contact you with regard to a conference, if and when this office receives the case, and if this office determines that a conference is appropriate.

Sincerely yours,



ROSEMARY E. PAGUNI, Chief
Northern Criminal Enforcement Section

**LETTER FROM IRS CI
RECOMMENDING PROSECUTION**

Exhibit E



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

February 25, 2013

Caroline Ciraolo
Rosenburg, Martin, Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, MD 21201-3305

Re: [REDACTED] Criminal Tax Violations

Dear Ms. Ciraolo

A report recommending your client be prosecuted for evading Federal Income Taxes for the years 2006 through 2009 in violation of Title 26, United States Code, Section 7201, was forwarded to Department of Justice, Tax Division on this date.

Department of Justice, Tax Division will review this matter and make the final determination as to the disposition of this prosecution recommendation.

Any further inquiry concerning your investigation should be made to:

The Honorable Kathryn M. Keneally
Assistant Attorney General for the Tax Division
United States Department of Justice
601 D Street, NW Room 7334
Washington, DC 20530

ATTN: Chief
Northern Enforcement Section

Sincerely,

Thomas J. Kelly
Special Agent in Charge
Washington DC Field Office
Criminal Investigation



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

June 9, 2014



Dear [REDACTED]:

A report recommending you be prosecuted for filing a false tax return and preparing false tax returns for the years 2009 through 2012 and in violation of Title 26, United States Code, Section 7206(2), was forwarded to Department of Justice, Tax Division on this date.

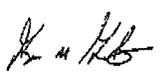
Department of Justice, Tax Division will review this matter and make the final determination as to the disposition of this prosecution recommendation.

Any further inquiry concerning your investigation should be made to:

The Honorable John A. DiCicco
Acting Assistant Attorney General
Department of Justice, Tax Division
601 D. Street N.W.
Washington, DC 20004

ATTN: Rosemary Paguni, Chief
Northern Criminal Enforcement Section

Sincerely,

 
Shantelle P. Kitchen
Special Agent in Charge
New York Field Office
290 Broadway, 4th Floor
New York, NY 10007

cc: Megan Brackney (Defense Attorney)
250 Greenwich St 34th Floor
New York, NY 10007

**LETTER FROM IRS CI
DISCONTINUING INVESTIGATION**

Exhibit F



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 26, 2010

Caroline D. Ciraolo
25 South Charles Street
Suite 2115
Baltimore, MD 21201

CERTIFIED MAIL
Return Receipt Requested

Dear Ms. Ciraolo

Your client, [REDACTED], is no longer the subject of a criminal investigation by our office regarding his federal tax liabilities for the years 2005 through 2008. However, this does not preclude re-entry by Criminal Investigation into this investigation.

The matter is presently in the Examination Function of the appropriate Operating Division for further consideration. If you have any questions, please contact Wade Cassamajor, Special Agent, at 410-962-9117.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca Sparkman".

Rebecca Sparkman
Special Agent in Charge, CI



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

October 31, 2011

[REDACTED]
Washington, D.C. 20019

CERTIFIED MAIL
Return Receipt Requested

Dear Mr. [REDACTED]:

Both you and [REDACTED] Corporation are no longer the subject of a criminal investigation by our office regarding your federal tax liabilities for the year(s) 2006 through 2009. However, this does not preclude re-entry by Criminal Investigation into this investigation.

The matter is presently in the Examination Function of the appropriate Internal Revenue Service operating division for further consideration. If you have any questions, please contact the person whose name and telephone number are shown below.

If you have any questions, please contact Guy Ficco, Supervisory Special Agent, at 703-647-5502.

Sincerely,

Handwritten signature of Jeannine A. Hammett, with a small "E" above the signature and the word "Acting" written vertically to the right.

Jeannine A. Hammett
Acting Special Agent in Charge

cc: Caroline D. Ciruolo

**LETTER FROM DOJ TAX DIVISION
AUTHORIZING PROSECUTION**

Exhibit G



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

KK:REP:JRLaraia:lp
5-35-12102
2013201252

JUL 19 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Caroline D. Ciraolo, Esquire
Brandon N. Mourges, Esquire
25 South Charles Street, 21st Floor
Baltimore, Maryland 21201-3305

Re: [REDACTED]

Dear Ms. Ciraolo and Mr. Mourges:

The Tax Division has authorized prosecution in this case and has transmitted it to the United States Attorney for the District of Maryland.

Sincerely yours,

Kathryn M. Keneally
Assistant Attorney General
Tax Division

By: *Rosemary E. Paguni*
ROSEMARY E. PAGUNI, Chief
Northern Criminal Enforcement Section

cc: United States Attorney
District of Maryland

PROFFER AGREEMENT

Exhibit H



U.S. Department of Justice

Channing Phillips
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

August 25, 2017

Caroline Ciruolo, Esq.
Counsel for [REDACTED]

Re: [REDACTED]

Dear Ms. Ciruolo:

I understand that your client is interested in meeting with members of law enforcement and representatives of this Office for a voluntary, “off-the-record” debriefing.

In order to assure that there are no misunderstandings concerning the meaning of “off-the-record,” I am writing to clarify the ground rules of this and any subsequent voluntary “off-the-record” debriefing(s) with your client.

(1) First, except as provided for in paragraphs two and three below, no statements made by or other information provided by your client during the voluntary “off-the-record” debriefing(s) will be used directly against your client in any criminal proceeding.

(2) Second, the Government may make derivative use of and may pursue any investigative leads suggested by any statements made by, or other information provided by, your client. (Because any statements made during this “off-the-record” debriefing are voluntarily made on the part of your client, rather than compelled, it is the government’s position that *Kastigar* protections do not apply. Nevertheless, your client understands that based on the terms of this agreement there will be no *Kastigar* hearing at which the government would have to prove that the evidence it would introduce at trial is not tainted by any statements made by or other information provided by your client.

(3) Third, in the event your client is ever a witness at any trial or presents evidence through other witnesses and your client's statements or that evidence contradicts statements made in your client's debriefing, the attorney for the Government may cross-examine your client and other witnesses concerning any statements made or other information provided by your client during the "off-the-record" debriefing(s). Evidence regarding such statements may also be introduced in rebuttal. (This provision is to assure that your client does not abuse the opportunity for a voluntary "off-the-record" debriefing(s), does not make material false statements to a government agency, and does not commit perjury when testifying at a trial or another judicial proceeding.)

(4) Fourth, it is understood and agreed to by your client and the United States that this agreement and the debriefing(s) conducted pursuant to this agreement do not constitute plea bargaining sessions. However, if this agreement or the debriefing(s) conducted pursuant to this agreement are subsequently construed as plea bargaining sessions, your client knowingly and voluntarily waives or gives up any rights your client has pursuant to Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure. In the absence of your client's waiver, these rules might prohibit the use of your client's statements and information provided by your client in accordance with the provisions set forth in paragraphs two and three above.

(5) Finally, this debriefing agreement does not obligate the United States Attorney's Office for the District of Columbia to enter into any future plea bargain with your client or to file any motion regarding cooperation provided by your client. In addition, your client understands that this office has made no additional promises to your client not contained in writing herein, including whether or not to prosecute.

I trust that you will find these ground rules fair and reasonable. If your client wishes to engage in a voluntary "off-the-record" debriefing under these ground rules, would you and your client both sign this letter where indicated below. Once signed, please return the original to me and retain a copy for your file.

Sincerely yours,

CHANNING PHILLIPS
United States Attorney

BY: _____

Zia Faruqui
Assistant United States Attorney

ACKNOWLEDGMENT

I have read every word of this debriefing agreement, and its meaning has been fully explained to me by my attorney. After consultation with my attorney, I understand and agree to the contents of this letter.

8-25-2017
Date

[Redacted]

[Redacted]

ATTORNEY'S ACKNOWLEDGMENT

I acknowledge that I have read each page of this debriefing agreement, reviewed it in its entirety with my client, and discussed fully with my client each of the provisions of the agreement.

8-25-2017
Date

Caroline Ciralo
Caroline Ciralo, Esq.
Attorney for [Redacted]

INDICTMENT

Exhibit I

MJG
07/11/17

PAS: USAO#2014R00240

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

FILED ENTERED
LOBBED RECEIVED

JUL 11 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

AT BALTIMORE
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

CLERK'S OFFICE
AT BALTIMORE

BY

Deputy

UNITED STATES OF AMERICA

UNDER SEAL

v.

BY

*

*

*

*

*

*

*

*

DEPUTY

Criminal No.

MJG-17-0367

TYNISHA MARTIN KADIRI
a/k/a "Martin Kadiri," a/k/a "T D
Martin" a/k/a "Tynisha Martin," a/k/a
"Shug,"

((Aiding or Assisting in the Filing of
False Income Tax Returns, 26 U.S.C. §
7206(2); Willful Failure to File a
Return, 26 U.S.C. 7203)

Defendant.

INDICTMENT

The Grand Jury for the District of Maryland charges that at all times relevant to the
Indictment:

Introduction

1. The Internal Revenue Service ("IRS") is an agency of the United States Department
of the Treasury charged by law with collecting and assessing income, employment, and other taxes
and investigating possible violations of the federal tax laws.

2. The tax laws of the United States, as set forth in the Internal Revenue Code (Title
26 of the United States Code), require every citizen and resident of the United States who receives
gross income in excess of the minimum filing amount to file a tax return.

3. **TYNISHA MARTIN KADIRI, a/k/a "Martin Kadiri," a/k/a "T D Martin"**
a/k/a "Tynisha Martin," a/k/a "Shug," ("KADIRI") was a resident of Maryland and a Tax
Preparer licensed by the State of Maryland's Department of Labor, Licensing and Regulation and
regulated by the Maryland Board of Individual Tax Preparers.

4. **KADIRI** was the president, owned and operated The Community Tax (“Community Tax”), a tax return preparation business incorporated in the state of Maryland. Community Tax was located at three locations in Baltimore, Maryland: 17 S. Carrollton Avenue, Baltimore Maryland, 4007 Frederick Avenue, Baltimore, Maryland and 2532 Washington Boulevard, Baltimore, Maryland.

5. Through Community Tax, **KADIRI** prepared and caused to be prepared U.S. Individual Income Tax Returns, Forms 1040 (“Forms 1040”) and related IRS Schedules for submission to IRS on behalf of client-taxpayers, using among other means, the Preparer Electronic Filing Identification Number (“PTIN”) assigned to **KADIRI**.

6. Forms 1040 were individual income tax returns, which taxpayers submit to the IRS on a yearly basis, wherein taxpayers report items including income, certain expenses, and tax. A Schedule C, “Profit or Loss from Business (Sole Proprietorship)” (“Schedule C”) was an IRS form that is attached to a Form 1040 when applicable and is used by taxpayers to report gross receipts, expenses, and profit and loss from a business operated by the taxpayer as a sole proprietorship.

7. For tax years 2012 through 2016, **KADIRI** prepared false and fraudulent Forms 1040, and accompanying Schedules C for client-taxpayers of Community Tax. The false and fraudulent tax returns contained, among other falsities, business receipts the taxpayers did not receive, business losses the taxpayers did not incur and false and/or completely fictitious businesses on Schedules C. These falsities resulted in the client-taxpayers receiving larger refunds than they were otherwise entitled to receive.

8. **KADIRI**, acting as the president, owner and operator of Community Tax, has not filed federal corporate income tax returns for Community Tax for tax years 2013 through 2015.

COUNTS ONE THROUGH EIGHTEEN
(Aiding or Assisting in the Filing of False Tax Returns)

9. The allegations contained in paragraphs one through eight are realleged and incorporated as if fully set forth in this paragraph.

10. On or about the dates set forth below, in the District of Maryland and elsewhere, the defendant **KADIRI** did willfully aid and assist in, and procure, counsel and advise the preparation and presentation to the IRS of Forms 1040, along with accompanying Schedules C, for the taxpayers and tax years specified below, which were false and fraudulent as to material matters, in that they represented that: (1) the taxpayers had business income or losses resulting from businesses, whereas the defendant then and there knew the taxpayers did not operate businesses that earned business income or sustained business losses in the claimed amounts; and (2) the taxpayers operated businesses that incurred expenses in the amounts hereinafter specified, whereas the defendant then and there knew the taxpayers did not operate businesses that incurred expenses in the claimed accounts, as set forth below:

Count(s)	Taxpayer(s)	Tax Year	Approximate Filing Date	Falsely Reported Item(s)	Approximate Amount Reported
1	T.B.	2012	03/05/2013	Schedule C – gross receipts – line 1	\$14,000
				Schedule C – total expenses – line 28	\$44,000
				Form 1040 – business income or loss – line 12	(\$30,000)
2	T.B.	2013	02/13/2014	Schedule C – gross receipts – line 1	\$6,200
				Schedule C – total expenses – line 28	\$38,672
				Form 1040 – business income or loss – line 12	(\$32,472)

Count(s)	Taxpayer(s)	Tax Year	Approximate Filing Date	Falsely Reported Item(s)	Approximate Amount Reported
3	D.B.	2013	02/11/2014	Schedule C – gross receipts – line 1	\$6,441
				Schedule C – total expenses – line 28	\$49,457
				Form 1040 – business income or loss – line 12	(\$43,016)
4	D.B.	2014	03/28/2015	Schedule C – gross receipts – line 1	\$2,100
				Schedule C – total expenses – line 28	\$43,587
				Form 1040 – business income or loss – line 12	(\$41,487)
5	S.H.	2012	02/28/2013	Schedule C – gross receipts – line 1	\$5,012
				Schedule C – total expenses – line 28	\$70,010
				Form 1040 – business income or loss – line 12	(\$64,998)
6	S.H.	2013	02/17/2014	Schedule C – gross receipts – line 1	\$12,875
				Schedule C – total expenses – line 28	\$59,371
				Form 1040 – business income or loss – line 12	(\$46,496)
7	M.P.	2012	02/01/2013	Schedule C – gross receipts – line 1	\$8,806
				Schedule C – total expenses – line 28	\$71,606
				Form 1040 – business income or loss – line 12	(\$62,800)
8	M.P.	2013	02/02/2014	Schedule C – gross receipts – line 1	\$17,540
				Schedule C – total expenses – line 28	\$77,123
				Form 1040 – business income or loss – line 12	(\$59,583)

Count(s)	Taxpayer(s)	Tax Year	Approximate Filing Date	Falsely Reported Item(s)	Approximate Amount Reported
9	S.P.	2013	02/05/2014	Schedule C – gross receipts – line 1	\$6,600
				Schedule C – total expenses – line 28	\$65,000
				Form 1040 – business income or loss – line 12	(\$58,400)
10	T.R.	2014	04/09/2015	Schedule C – gross receipts – line 1	\$1,390
				Schedule C – total expenses – line 28	\$38,300
				Form 1040 – business income or loss – line 12	(\$36,910)
11	T.R.	2016	02/27/2017	Schedule C – gross receipts – line 1	\$178
				Schedule C – total expenses – line 28	\$19,251
				Form 1040 – business income or loss – line 12	(\$19,073)
12	L.S.	2015	01/30/2016	Schedule C – gross receipts – line 1	\$2,150
				Schedule C – total expenses – line 28	\$33,338
				Form 1040 – business income or loss – line 12	(\$31,188)
13	L.S.	2016	02/01/2017	Schedule C – gross receipts – line 1	\$1,982
				Schedule C – total expenses – line 28	\$32,673
				Form 1040 – business income or loss – line 12	(\$30,691)
14	F.W.	2014	02/23/2015	Schedule C – gross receipts – line 1	\$2,300
				Schedule C – total expenses – line 28	\$27,105
				Form 1040 – business income or loss – line 12	(\$24,805)

Count(s)	Taxpayer(s)	Tax Year	Approximate Filing Date	Falsely Reported Item(s)	Approximate Amount Reported
15	F.W.	2015	01/30/2016	Schedule C – gross receipts – line 1	\$798
				Schedule C – total expenses – line 28	\$21,204
				Form 1040 – business income or loss – line 12	(\$20,406)
16	F.W.	2016	02/28/2017	Schedule C – gross receipts – line 1	\$788
				Schedule C – total expenses – line 28	\$13,333
				Form 1040 – business income or loss – line 12	(\$12,545)
17	D.W.	2012	02/01/2013	Schedule C – gross receipts – line 1	\$12,918
				Schedule C – total expenses – line 28	\$37,395
				Form 1040 – business income or loss – line 12	(\$24,477)
18	D.W.	2013	01/30/2014	Schedule C – gross receipts – line 1	\$7,942
				Schedule C – total expenses – line 28	\$31,942
				Form 1040 – business income or loss – line 12	(\$24,000)

26 U.S.C. § 7206(2)

COUNTS NINETEEN THROUGH TWENTY-ONE
(Willful Failure to File Return)

11. The allegations of paragraphs one through eight are hereby realleged and incorporated by reference.

12. During the tax years 2013 through 2015, in the District of Maryland, the defendant,

TYNISHA MARTIN KADIRI,
a/k/a "Martin Kadiri," a/k/a "T D Martin,"
a/k/a "Tynisha Martin," a/k/a "Shug,"

was the president, owner and operator of Community Tax, a corporation not expressly exempt from tax, with its principal place of business in Baltimore, Maryland. After the close of each of the tax years set forth below, specifically on or before March 15, the defendant was required by law to file a corporate income tax return, for and on behalf of Community Tax to the Internal Revenue Service Center in Cincinnati, Ohio, or to the person assigned to receive returns at the local office of the Internal Revenue Service in Cincinnati, Ohio, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, she did willfully fail, on or about March 15, of each of the years set forth below, in the District of Maryland and elsewhere, to file a corporate income tax return at the time required by law, as set forth below:

Count(s)	Taxpayer(s)	Tax Year	Filing Date that was not Satisfied
19	KADIRI	2013	3/15/2014
20	KADIRI	2014	3/15/2015
21	KADIRI	2015	3/15/2016

26 U.S.C. § 7203

Stephen M. Schenning
 Stephen M. Schenning
 Acting United States Attorney
 District of Maryland

Date: *7/11/17*

A TRUE BILL:

SIGNATURE REDACTED

**INFORMATION AND
WAIVER OF INDICTMENT**

Exhibit J



FILED
CLERK

2015 OCT 19 PM 2: 58

SA:RCH

F. [REDACTED]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

-----X

UNITED STATES OF AMERICA

INFORMATION

- against -

Cr. No. [REDACTED]
(T. 26, U.S.C., § 7206(2); T. 18, U.S.C. §§
3551 et seq.)

[REDACTED],

Defendant.

-----X

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

1. The defendant [REDACTED] owned and operated [REDACTED] [REDACTED], a tax return preparation business with an office located in [REDACTED].

2. Through [REDACTED] [REDACTED] [REDACTED], the defendant [REDACTED] [REDACTED] [REDACTED] prepared and caused to be prepared U.S. Individual Income Tax Returns, Forms 1040 ("Forms 1040") and related Internal Revenue Service ("IRS") Schedules and Forms on behalf of clients for submission to the IRS.

3. A Form 1040 was an annual income tax return filed with the IRS by citizens or residents of the United States that reports income and deductions to determine the amount of tax owed or the amount to be refunded to the taxpayer. A Schedule A, "Itemized Deductions" ("Schedule A"), was an IRS form that was attached to a Form 1040 when

applicable and was used by a taxpayer to claim certain permissible deductions from taxable income. Deductions to be claimed on a Schedule A include, among other things, gifts to charity, job-related and other miscellaneous expenses, such as unreimbursed employee expenses, tax preparation fees, and state and local taxes paid.

4. The defendant [REDACTED] prepared false Forms 1040 and related Schedules and Forms for [REDACTED] clients for tax years 2009, 2010, 2011 and 2012. To Forms 1040, [REDACTED] attached Schedules A that reported inflated or fictitious deductions.

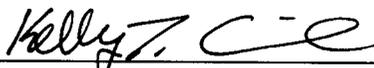
5. The defendant [REDACTED] preparation of false Forms 1040 and related Schedules and Forms resulted in clients improperly benefitting from a decrease in the amount of tax due and owing to the IRS.

AIDING AND ASSISTING IN THE PREPARATION OF FALSE TAX RETURNS

6. The allegations contained in paragraphs one through five are realleged and incorporated as if fully set forth in this paragraph.

7. On or about March 20, 2010, within the Eastern District of New York and elsewhere, the defendant [REDACTED] did willfully aid and assist in, and procure, counsel and advise the preparation and presentation to the IRS under the internal revenue laws, of a U.S. Individual Income Tax Return, Form 1040 and attached Schedules and Forms for Taxpayer #1, a person whose identity is known to the United States Attorney, for the tax year 2009. The return was false and fraudulent as to material matters in that the Form 1040 and related Schedules and Forms claimed unreimbursed employee expenses of \$10,907, as listed on Schedule A, Line 21, which [REDACTED] then and there well knew and believed to be false and fraudulent.

(Title 26, United States Code, Section 7206(2); Title 18, United States Code, Sections 3551 et seq.)



KELLY T. CURRIE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

[REDACTED]

Defendant.

INFORMATION

(T. 26, U.S.C., § 7206(2); T. 18, U.S.C. §§ 3551 et seq.)

A true bill.

Foreperson

Filed in open court this ----- *day,*

of ----- *A.D. 20* -----

Clerk

Bail, \$ -----

Ryan C. Harris, Assistant U.S. Attorney (718) 254-6489

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT

2012 MAY 22 P 4 02

-----DISTRICT OF MARYLAND-----

CLEVER
APPLAUS

BY *[Signature]*

UNITED STATES OF AMERICA

v.

WAIVER OF INDICTMENT

[REDACTED]

CASE NUMBER: [REDACTED]

I, [REDACTED] the above-named defendant, who is charged with TAX EVASION in violation of 26 U.S.C. § 7201 and being advised of the nature of the charge, the proposed Information, and of my rights, have waived in open court on the _____ day of May, 2012, prosecution by Indictment and consent that the proceeding may be by Information rather than by Indictment.

[Signature]
[REDACTED]
[REDACTED]
Defendant

Before *James K. Bredar*
James K. Bredar
United States District Judge

ORDER SETTING TERMS OF RELEASE

Exhibit K

UNITED STATES DISTRICT COURT

for the District of Maryland

FILED U.S. DISTRICT COURT DISTRICT OF MARYLAND

2012 MAR 22 P 5:01

United States of America)

v.)

[redacted])

Defendant)

Case No. CCB-12-030

CLERK'S OFFICE AT BALTIMORE

BY: NM DEPUTY

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate any federal, state or local law while on release.
(2) The defendant must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C. § 14135a.
(3) The defendant's residence must be approved by the U.S. Pretrial Services Officer (USPTO) supervising the defendant's release and the defendant must advise the court, defense counsel, and the U.S. attorney in writing before any change in address or telephone number.
(4) The defendant must appear in court as required and must surrender to serve any sentence imposed

The defendant must appear at (if blank, to be notified) US Courthouse TD 101 W. Place Lombard St Baltimore on Oct 5, 2012, 10:00 am Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released on condition that:

- [X] (5) The defendant promises to appear in court as required and surrender to serve any sentence imposed.
[] (6) The defendant executes an unsecured bond binding the defendant to pay to the United States the sum of _____ dollars (\$ _____) in the event of a failure to appear as required or surrender to serve any sentence imposed.

ADDITIONAL CONDITIONS OF RELEASE

Upon finding that release by one of the above methods will not by itself reasonably assure the defendant's appearance and the safety of other persons or the community,

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- [] (7) The defendant is placed in the custody of (name of person or organization): _____ at an address approved by the Pretrial Services Office. The defendant must not change that address without advance approval by the Pretrial Services Office who agrees (a) to supervise the defendant in accordance with all of the conditions of release, (b) to use every effort to assure the defendant's appearance at all scheduled court proceedings, and (c) to notify the court immediately if the defendant violates any condition of release or disappears.

Signed: _____ Custodian or Proxy

Date _____

Tel. No (only if above is an organization) _____

- (8) The defendant must:
 - (a) report to the _____
telephone number _____, no later than _____
 - (b) report on a regular basis to the supervising officer. The defendant shall promptly obey all reasonable directions and instructions of the supervising officer.
 - (c) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property: _____
 - (d) post with the court the following proof of ownership of the designated property, or the following amount or percentage of the above-described sum _____
 - (e) execute a bail bond with solvent sureties in the amount of \$ _____.
 - (f) maintain or actively seek employment as approved by the U.S. Pretrial Services Officer.
 - (g) maintain or commence an education program.
 - (h) surrender any passport to: Clerk of Court when found
 - (i) obtain no passport.
 - (j) abide by the following restrictions on personal association, place of abode, or travel:
no travel outside U.S. without prior agreement of government
 - (k) avoid all contact, directly or indirectly, with any person who is or may become a victim or potential witness in the investigation or prosecution, including but not limited to: _____
 - (l) undergo medical or psychiatric treatment: _____
 - (m) abide by a curfew from _____ to _____
 - (n) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.
 - (o) refrain from possessing a firearm, destructive device, or other dangerous weapons.
 - (p) refrain from any excessive use of alcohol.
 - (q) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
 - (r) submit to any testing required by the pretrial services office or the supervising officer to determine whether the defendant is using a prohibited substance. Any testing may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of release.
 - (s) participate in a program of inpatient or outpatient substance abuse therapy and counseling if the pretrial services office or supervising officer considers it advisable.
 - (t) submit to a location monitoring program
 - (i) as directed by the supervising officer; or
 - (ii) restricted to the residence except for employment, education, religious services, medical purposes, substance abuse testing/treatment, mental health treatment, attorney visits, court appearances, or other court ordered obligations; or
 - (iii) restricted to the residence except for medical purposes, court appearances, or other activities specifically approved by the court.
 - (u) Refrain from the use of computer systems, Internet-capable devices and/or similar electronic devices at any location (including employment or educational program) without the prior written approval of the U.S. Probation or Pretrial Services Officer. The defendant shall cooperate with the U.S. Probation and Pretrial Services Office monitoring of compliance with this condition. Cooperation shall include, but not be limited to, participating in a Computer & Internet Monitoring Program, identifying computer systems, Internet-capable devices and/or similar electronic devices the defendant has access to, allowing the installation of monitoring software/hardware at the defendant's expense, and permitting random, unannounced examinations of computer systems, Internet-capable devices and similar electronic devices under the defendant's control.
 - (v) _____
 - (w) _____

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (i.e., in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more - you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years - you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony - you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor - you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

[REDACTED]

[Handwritten Signature]
Defendant's Signature

City and State

Directions to the United States Marshal

- The defendant is ORDERED released after processing.
- The United States Marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: March 22, 2012

[Handwritten Signature]

Judicial Officer's Signature

Catherine C. Blake, United States District Judge

Printed name and title

SENTENCING ORDER

Exhibit L

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

United States of America

*

v.

*

Criminal Case No. RDB-12-066

Chung K. Choi

*

REGULAR SENTENCING ORDER

(1) On or before May 9, 2012 (*not more than 40 days from the date of this order*), the Probation Officer shall serve two copies of the presentence report upon counsel for the Defendant, who shall review the report with and, provide one of the copies to, the Defendant. The Probation Officer shall also serve one copy of the presentence report upon counsel for the Government.

(2) On or before May 23, 2012 (*not less than 14 days from date in paragraph 1*), counsel shall submit, in writing, to the Probation Officer and opposing counsel, any objections to any material information, sentencing classifications, advisory sentencing guideline ranges, or policy statements contained in or omitted from the report.

(3) After receiving counsel's objections, the Probation Officer shall conduct any necessary further investigation and may require counsel for both parties to meet with the Probation Officer to discuss unresolved factual and legal issues. The Probation Officer shall make any revisions to the presentence report deemed proper, and, in the event that any objections made by counsel remain unresolved, the Probation Officer shall prepare an addendum setting forth those objections and any comment thereon.

(4) On or before June 4, 2012 (*not less than 11 days from date in paragraph 2*), the Probation Officer shall serve two copies of any revisions and addendum to the presentence report upon counsel for the Defendant, who shall provide one of the copies to the Defendant. The

Probation Officer shall also serve one copy of any revision and addendum to the presentence report upon counsel for the Government. The Probation Officer shall then submit the report (and any revisions and addendum thereto) to the Court.

(5) If counsel for either party intends to call any witnesses at the sentencing hearing, counsel shall submit, in writing, to the Court and opposing counsel, on or before **June 4, 2012** (*not less than 14 days before sentencing*), a statement containing (a) the names of the witnesses, (b) a synopsis of their anticipated testimony, and (c) an estimate of the anticipated length of the hearing.

(6) Sentencing memoranda are not required unless a party intends to request a sentence outside the advisory guidelines range on the basis of a non-guideline factor. If submitted, they shall be filed with the Clerk and a copy delivered to chambers on or before **June 4, 2012** (*not less than 14 days before sentencing*). Opposing or responding memoranda are not required. If submitted, they shall be delivered to chambers on or before **June 11, 2012** (*not less than 7 days before sentencing*). Copies of all memoranda must be sent to the Probation Officer.

(7) Sentencing shall be on **Monday June 18, 2012** at 3:00 PM.

(8) The presentence report, any revisions, and any proposed findings made by the Probation Officer in the addendum to the report shall constitute the tentative findings of the Court under section 6A1.3 of the sentencing guidelines. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government, and the Court may issue its own tentative or final findings at any time before or during the sentencing hearing.

(9) Nothing in this Order requires the disclosure of any portions of the presentence report that are not discloseable under Federal Rules of Criminal Procedure 32.

(10) The dates of service set forth in this Order refer to the date of receipt of the paper being served. If the Probation Officer or counsel are making service of a paper by mail, they must mail the paper at least three days before the date set forth in the Order.

March 30, 2012
Date


Richard D. Bennett
UNITED STATES DISTRICT JUDGE

PRETRIAL SERVICES INTERVIEW WORKSHEET

Exhibit M

United States District Court Worksheet for Pretrial Services Report

PACTS Client ID No.:	Docket/Defendant No.:	Arrest Date:	Interviewing Officer:	Interview Date:
CLIENT PERSONAL DATA - General				
Prefix:	Title: (Dr., PhD., etc.)	Court Name: First Middle Last Generation		
SSN/EIN:		State Identification No.:	FBI No.:	
Register/Marshal's No.:		ICE (INS) No.:	Driver's License No.: (Include state)	
CLIENT PERSONAL DATA - Alternate Names and Ids (If more than four, attach list)				
First	Middle	Last	Generation	<input type="checkbox"/> Also Known As <input type="checkbox"/> Alternate Name
				<input type="checkbox"/> Maiden Name <input type="checkbox"/> True Name
First	Middle	Last	Generation	<input type="checkbox"/> Also Known As <input type="checkbox"/> Alternate Name
				<input type="checkbox"/> Maiden Name <input type="checkbox"/> True Name
First	Middle	Last	Generation	<input type="checkbox"/> Also Known As <input type="checkbox"/> Alternate Name
				<input type="checkbox"/> Maiden Name <input type="checkbox"/> True Name
First	Middle	Last	Generation	<input type="checkbox"/> Also Known As <input type="checkbox"/> Alternate Name
				<input type="checkbox"/> Maiden Name <input type="checkbox"/> True Name
Alternate IDs: (List any other alien numbers, state ID numbers, SSNs, DOBs)				
Distinguishing Characteristics: (Scars, tattoos, etc.)				
CLIENT PERSONAL DATA - Demographics				
Sex: (Check one)	Race: (Check one)	Hispanic: (Check one)	Height:	Weight:
<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Unknown	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Middle Eastern <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Other Race <input type="checkbox"/> Unknown <input type="checkbox"/> White	<input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown		
		Eye Color:	Age:	Date of Birth:
		<input type="checkbox"/> Blue <input type="checkbox"/> Brown <input type="checkbox"/> Green <input type="checkbox"/> Hazel <input type="checkbox"/> Other		
			Hair Color:	
			<input type="checkbox"/> Black <input type="checkbox"/> Blonde <input type="checkbox"/> Brown <input type="checkbox"/> Grey <input type="checkbox"/> None <input type="checkbox"/> Other <input type="checkbox"/> Red <input type="checkbox"/> White	
Place of Birth:	Country of Birth:	Citizenship: (Check one)	Other: (Check one)	
		<input type="checkbox"/> Illegal Alien <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Legal Alien <input type="checkbox"/> Unknown	<input type="checkbox"/> Permanent Resident <input type="checkbox"/> Refugee <input type="checkbox"/> Temporary Visa <input type="checkbox"/> U.S. National	
Do you possess a passport/visa? <input type="checkbox"/> Yes <input type="checkbox"/> No		Country of Citizenship:	Date Naturalized: _____	
Location: _____				
Have you traveled outside the U.S.? <input type="checkbox"/> Yes <input type="checkbox"/> No Countries: _____ Purpose: _____				
Date Immigrated to the United States: _____ Date Entered the United States: _____				
CLIENT PERSONAL DATA - Remarks				
Include in PACTS? <input type="checkbox"/> Yes <input type="checkbox"/> No				

CLIENT PERSONAL DATA - Addresses				
Current Address:			Phone (Residence):	Phone (Mobile):
City:	State:	Zip Code:	County:	Phone (Pager/Fax):
Address Type: <input type="checkbox"/> Residence <input type="checkbox"/> Legal Address <input type="checkbox"/> Mailing Address	Date Moved to This Address (From Date):			E-Mail:
	Time in Community of Residence: (Client Personal Data/Profile)			
Name on Lease/Mortgage:		Name on Utilities:		Monthly Payment:
Have you ever lived outside the state/country? <input type="checkbox"/> Yes <input type="checkbox"/> No Explain:			Do you own any firearms? <input type="checkbox"/> Yes <input type="checkbox"/> No Are there any firearms where you live? <input type="checkbox"/> Yes <input type="checkbox"/> No Any dogs or dangerous animals where you live? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Other/Prior Residences	Start Date	End Date	With Whom?	
CLIENT PERSONAL DATA - Collateral Contacts (Family, Friends, Other Frequent Contacts, etc.)				
(Check box if living with defendant)				
Name/Age	Relationship/Frequency of Contact	Citizenship Status	Address and Phone Number	Miscellaneous Notes/ Occupation
<input type="checkbox"/>				

MARITAL HISTORY (Including cohabitation)					
<i>(Check box if living with defendant)</i>					
Current Marital Status: <input type="checkbox"/> Cohabiting <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Single <input type="checkbox"/> Widowed <input type="checkbox"/> Unknown (Current Personal Data/Profile)					
Name	Marital Status	Citizenship	Address/ Telephone No.	Dates of Marriage	No. of Children
<input type="checkbox"/> Current:					
CHILDREN					
<i>(Check box if living with defendant)</i>					
Name/Age of Children	Children Live With Whom?	Citizenship	Address/ Telephone No.	Frequency of Contact	Support?
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
EDUCATION			MILITARY HISTORY		
Education Level: (Client Personal Data/Profile)			Branch of Service:		
<input type="checkbox"/> No High School Diploma/GED <input type="checkbox"/> Associate's Degree <input type="checkbox"/> Unknown <input type="checkbox"/> Graduate Equivalency <input type="checkbox"/> Bachelor's Degree <input type="checkbox"/> Vocational/Apprentice Graduate <input type="checkbox"/> Master's Degree <input type="checkbox"/> High School Diploma <input type="checkbox"/> Doctorate			<input type="checkbox"/> Yes <input type="checkbox"/> No		
Date Education Obtained/Last Year Attended: _____			Type of Discharge:		
Name/Location of Current School: _____			Were you court-martialed?		
Grade Completed: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No		
Certificates/Degrees: _____			Was any disciplinary action taken?		
English Language Skills: (Client Personal Data/Profile)					
<input type="checkbox"/> Fluent in English as Primary Language		<input type="checkbox"/> Mute - Fluent in International Sign Language			
<input type="checkbox"/> Fluent in English as Secondary Language		<input type="checkbox"/> Mute - Limited or No Fluency in International Sign Language			
<input type="checkbox"/> Limited Fluency in English		<input type="checkbox"/> Unknown			
<input type="checkbox"/> No Fluency in English		Primary Language (if not English): _____			

FINANCIAL INFORMATION																																							
EMPLOYMENT INCOME: Yearly/Monthly/Weekly \$ _____ PAYMENT METHOD: (Circle One) Cash Check Commission Other SPOUSE/SIGNIFICANT OTHER'S OCCUPATION: _____ Yearly/Monthly/Weekly \$ _____ Yearly/Monthly/Weekly \$ _____		Other Source of Income: (Client Personal Data/Employment) <table style="width:100%; border: none;"> <tr> <td style="width: 50%;">Alimony</td><td style="width: 10%;">\$ _____</td><td style="width: 20%;">Payback on Loans</td><td style="width: 10%;">\$ _____</td></tr> <tr> <td>Child Support</td><td>\$ _____</td><td>Retirement Pension</td><td>\$ _____</td></tr> <tr> <td>Disability Insurance/</td><td>\$ _____</td><td>Severance Pay</td><td>\$ _____</td></tr> <tr> <td>Employee Benefit</td><td></td><td>Trust</td><td>\$ _____</td></tr> <tr> <td>Dividend</td><td>\$ _____</td><td>Unemployment Comp.</td><td>\$ _____</td></tr> <tr> <td>Family Support</td><td>\$ _____</td><td>Unknown</td><td>\$ _____</td></tr> <tr> <td>Food Stamps</td><td>\$ _____</td><td>Other</td><td>\$ _____</td></tr> <tr> <td>Investments</td><td>\$ _____</td><td>Social Security</td><td>\$ _____</td></tr> <tr> <td>Lawsuit Payout</td><td>\$ _____</td><td>Social Security (disability)</td><td>\$ _____</td></tr> </table>		Alimony	\$ _____	Payback on Loans	\$ _____	Child Support	\$ _____	Retirement Pension	\$ _____	Disability Insurance/	\$ _____	Severance Pay	\$ _____	Employee Benefit		Trust	\$ _____	Dividend	\$ _____	Unemployment Comp.	\$ _____	Family Support	\$ _____	Unknown	\$ _____	Food Stamps	\$ _____	Other	\$ _____	Investments	\$ _____	Social Security	\$ _____	Lawsuit Payout	\$ _____	Social Security (disability)	\$ _____
Alimony	\$ _____	Payback on Loans	\$ _____																																				
Child Support	\$ _____	Retirement Pension	\$ _____																																				
Disability Insurance/	\$ _____	Severance Pay	\$ _____																																				
Employee Benefit		Trust	\$ _____																																				
Dividend	\$ _____	Unemployment Comp.	\$ _____																																				
Family Support	\$ _____	Unknown	\$ _____																																				
Food Stamps	\$ _____	Other	\$ _____																																				
Investments	\$ _____	Social Security	\$ _____																																				
Lawsuit Payout	\$ _____	Social Security (disability)	\$ _____																																				
ASSETS		LIABILITIES	BALANCE	MONTHLY PAYMENT																																			
Cash	\$ _____	Rent or Mortgage Payment																																					
Savings Account	\$ _____	Other Mortgage																																					
Checking Account	\$ _____	Past Due/Pending Foreclosure?																																					
Stocks/Bonds/Retirement Accounts?	\$ _____ <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No																																					
Describe:	\$ _____	Utilities																																					
		Groceries																																					
		Child Care																																					
Other Accounts	\$ _____	Child Support (Ordered or Voluntary?)																																					
	\$ _____	Alimony																																					
	\$ _____	Personal Loans																																					
Valuable Property (collections, jewelry, etc.)	\$ _____	Business Liabilities																																					
Business Assets	\$ _____																																						
Motor Vehicles - Ownership		Motor Vehicles - Loans/Leases																																					
Year	Make	Model	Amount	Creditor																																			
Real Estate:		Auto Insurance																																					
Date Purchased:		Total Credit Card Debt																																					
Address:		School Loans																																					
Current Market Value	\$ _____	Outstanding Medical Bills																																					
Equity	\$ _____	Outstanding Taxes/Fines/Restitution																																					
Down Payment	\$ _____	Other Debts/Monthly Expenses																																					
Have you ever filed for bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No		Type of Bankruptcy Filed: _____																																					
Location of Court:		Year Filed: _____ Amount Discharged: _____																																					
ADDITIONAL NOTES																																							

HEALTH					
Physical Health					
Brief Description:					
Physical Health Status: (Client Personal Data/Profile)					
<input type="checkbox"/> Minor Medical Problems Only		<input type="checkbox"/> Diagnostic Evaluation or Specific Treatment in Progress			
<input type="checkbox"/> Significant Medical Disorder (Under control but follow-up care required)		<input type="checkbox"/> None			
<input type="checkbox"/> One or More Chronic or Recurrent Medical Problems		<input type="checkbox"/> Unknown			
<input type="checkbox"/> Uncontrolled Significant Disorder					
Names of Medications and Reason(s) for Use:					
Mental Health					
Current Mental Health Status: (Check all that apply) (Client Personal Data/Profile)					
<input type="checkbox"/> No evidence of a current or past mental health condition.					
<input type="checkbox"/> History of a mental health condition. No active symptoms.					
<input type="checkbox"/> Mental health condition requiring ongoing treatment.					
<input type="checkbox"/> Has been in therapy within the last 12 months for a mental health condition.					
<input type="checkbox"/> Currently taking medication for a mental health condition (psychotropic drug).					
<input type="checkbox"/> Has seen a physician within the last 12 months for a mental health condition.					
<input type="checkbox"/> Has been hospitalized within the last 24 months for a mental health condition.					
Have you ever seen a doctor for any emotional or psychiatric problems? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, when, where, and last visit?					
Have you ever been hospitalized for emotional problems? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, when and where?					
Have you ever thought of or attempted suicide? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, when, and what method was used or thought of?					
Have you ever been prescribed medication for emotional or psychiatric problems? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, name of medication(s) and how long you used it:					
Do you have current thoughts of suicide, hearing voices, or seeing things? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, explain.					
Do you have a history of gambling? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, describe the type of gambling activities, frequency, and amount:					
Do you have a history of domestic violence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Explain:					
Mental Health Treatment					
Dates	Name of Program	Location	Purpose	Inpatient/Outpatient	Completed? If no,
					<input type="checkbox"/> Yes <input type="checkbox"/> No
					<input type="checkbox"/> Yes <input type="checkbox"/> No

SUBSTANCE ABUSE HISTORY (Client Personal Data/Profile)						
Drug Use	Indicate Drugs of 1 st , 2 nd , and 3 rd Choice	Current	History of	Age Use Began	Last Used	Frequency Used
Alcohol		<input type="checkbox"/>	<input type="checkbox"/>			
Amphetamines		<input type="checkbox"/>	<input type="checkbox"/>			
Benzodiazepines		<input type="checkbox"/>	<input type="checkbox"/>			
Cannabinoids		<input type="checkbox"/>	<input type="checkbox"/>			
Club/Designer Drugs		<input type="checkbox"/>	<input type="checkbox"/>			
Cocaine		<input type="checkbox"/>	<input type="checkbox"/>			
Hallucinogens (PCP, LSD)		<input type="checkbox"/>	<input type="checkbox"/>			
Heroin		<input type="checkbox"/>	<input type="checkbox"/>			
Methamphetamines		<input type="checkbox"/>	<input type="checkbox"/>			
Prescription Opiates		<input type="checkbox"/>	<input type="checkbox"/>			
Other		<input type="checkbox"/>	<input type="checkbox"/>			
Substance Abuse Treatment						
Substance Abuse Treatment History (Check all that apply)		Current	History of	Notes		
Inpatient Treatment		<input type="checkbox"/>	<input type="checkbox"/>			
Outpatient Treatment		<input type="checkbox"/>	<input type="checkbox"/>			
Self-Help (AA/NA)		<input type="checkbox"/>	<input type="checkbox"/>			
Confined Treatment Program (BOP)		<input type="checkbox"/>	<input type="checkbox"/>			
Dates	Name of Program	Location	Purpose	Inpatient/ Outpatient	Type of Discharge (Satisfactory/Unsatisfactory)	
If a drug test were taken today, would it reveal any illegal substance or medications? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If so, what illegal drugs/medications?						
Would you like to receive treatment? <input type="checkbox"/> Yes <input type="checkbox"/> No						
ADDITIONAL NOTES						

SELF-REPORTED CRIMINAL HISTORY (including juvenile adjudications)					
Date Arrested/Age	Agency/Location	Offense Charged and Bail	Disposition or Next Court Date		
Probation/Parole History? <input type="checkbox"/> Yes <input type="checkbox"/> No		Where?	Any violations?		
Probation/Parole Officer's Name, Address, and Telephone No.: _____					
Are you a member of, or have you ever been in a gang? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Gang Name	Initiation Date	When did you get out?			
Will this information bring harm to you or your family? <input type="checkbox"/> Yes <input type="checkbox"/> No					
INTAKE - Prior Tab					
Prior Failures to Appear:		Prior Escapes:		Prior Abscondings:	
Prior Record	Charges (No.)	Convictions (No.)	Drugs (No.)	Violent (No.)	Pending Cases (No.)
Misdemeanors					
Felonies					
INVESTIGATION - General Tab (Complete when an investigation is completed)					
Docket No.: (e.g., 1:07M101 or 1:07CR101)		Defendant No.:		Type of Investigation: <input type="checkbox"/> Pretrial Services <input type="checkbox"/> Material Witness <input type="checkbox"/> Pretrial Diversion	
Investigation Officer:	Date Assigned:	Date Due:		Date Report Submitted:	
Temporary Duty? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Judicial Officer: (Leave blank if pretrial diversion)			Jurisdictional Authority: <input type="checkbox"/> Court (District Court) <input type="checkbox"/> Other District <input type="checkbox"/> Magistrate <input type="checkbox"/> U.S. Attorney (Use for PTD)		
ADDITIONAL NOTES					

INTAKE - Opening Tab			
Case Activation Date:	Assigned Officer:	Juvenile? <input type="checkbox"/> Yes <input type="checkbox"/> No	Sealed? <input type="checkbox"/> Yes <input type="checkbox"/> No
Was the instant offense committed while under the criminal justice system? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Was the case diverted post-charge? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Referral Type: <input type="checkbox"/> Arrest <input type="checkbox"/> Summons <input type="checkbox"/> Verbal Notice <input type="checkbox"/> Writ-Release Not Possible	Type of Case: (Intake Type) <input type="checkbox"/> Diversion <input type="checkbox"/> Material Witness <input type="checkbox"/> Pretrial Services	Charging Document: <input type="checkbox"/> Citation <input type="checkbox"/> Complaint <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input type="checkbox"/> Not Applicable <input type="checkbox"/> Violation Petition	
Rule 5 Transfer In? <input type="checkbox"/>		Rule 20 Transfer In? <input type="checkbox"/>	
		Courtesy In? <input type="checkbox"/> Yes (Transfer district information not required)	
Transfer District:	Transfer District Docket No.:	Transfer District PACTS No.:	

Arrest is used when: 1) the defendant appears in court following an arrest, with or without a warrant, 2) the defendant turns himself/herself in or self-surrenders on a warrant. **Writ** is used when the defendant appears in federal court but remains under the jurisdiction of another agency with no eligibility for release within 90 days. **If the defendant appears pursuant to a writ but is eligible for release within 90 days, use "arrest."** **Verbal Notice** is used when the defendant's appearance in court is not a result of any of the above procedures—for example, if the defendant voluntarily appears in court pursuant to agreement with the government and no formal summons, warrant, or writ has been issued.

INTAKE - Interview/Report Tab		
Interview Status: <input type="checkbox"/> Interviewed <input type="checkbox"/> Refused Interview <input type="checkbox"/> Unable to Interview	When was a bail report submitted? (N/A if Report Type = None) <input type="checkbox"/> Pre-Initial Hearing <input type="checkbox"/> Pre-Detention Hearing <input type="checkbox"/> Post-Release	How was the bail report submitted? (N/A if Report Type = None) <input type="checkbox"/> Oral <input type="checkbox"/> Written
Report Type: <input type="checkbox"/> Full <input type="checkbox"/> Modified <input type="checkbox"/> Addendum (Rule 5) <input type="checkbox"/> None	PSO Recommendations: <input type="checkbox"/> Detention <input type="checkbox"/> Release With Supervision <input type="checkbox"/> Release Without Supervision <input type="checkbox"/> No Recommendations	AUSA Recommendations: <input type="checkbox"/> Detention <input type="checkbox"/> Release With Supervision <input type="checkbox"/> Release Without Supervision <input type="checkbox"/> No Recommendations
Defense Counsel's Name and Telephone No.:		AUSA's Name and Telephone No.:

ADDITIONAL NOTES

INTAKE - Offense Tab/Charged Offense					
Class of Offense:			<input type="checkbox"/> Felony-Class A - life or death <input type="checkbox"/> Felony-Class B - 25 years or more <input type="checkbox"/> Felony-Class C - Less than 25 years but 10 or more years <input type="checkbox"/> Felony-Class D - Less than 10 years but 5 or more years <input type="checkbox"/> Felony-Class E - Less than 5 years but more than 1 year		
<input type="checkbox"/> Misdemeanor-Class A - 1 year or less but more than 6 months <input type="checkbox"/> Misdemeanor-Class B - 6 months or less but more than 30 days <input type="checkbox"/> Misdemeanor-Class C - 30 days or less but more than 5 days <input type="checkbox"/> Infraction - 5 days or less, or no imprisonment is authorized					
Citation: (In CM/ECF format)					
Check ONE appropriate Charge Classification/Category/Subcategory for the charged offense:					
Charge Classification	Charge Category	Charge Subcategory	Charge Classification	Charge Category	Charge Subcategory
<input type="checkbox"/> Drugs	<input type="checkbox"/> Distribution/Trafficking <input type="checkbox"/> Import/Export <input type="checkbox"/> Manufacture/Cultivation <input type="checkbox"/> Possession <input type="checkbox"/> Other	<input type="checkbox"/> Heroin <input type="checkbox"/> Other Opiate <input type="checkbox"/> Methamphetamine <input type="checkbox"/> Cocaine <input type="checkbox"/> Marijuana <input type="checkbox"/> MDMA <input type="checkbox"/> Prescription Drugs <input type="checkbox"/> Other Drug	<input type="checkbox"/> Public Order	<input type="checkbox"/> Civil Disorder <input type="checkbox"/> Contributing to Delinquency of a Minor <input type="checkbox"/> Criminal Mischief <input type="checkbox"/> Disorderly Conduct <input type="checkbox"/> Driving Under Influence <input type="checkbox"/> Driving While License Suspended/Revoked <input type="checkbox"/> Environmental Violations <input type="checkbox"/> Leaving Scene of Acc. <input type="checkbox"/> Lewd Conduct <input type="checkbox"/> Littering <input type="checkbox"/> Loitering <input type="checkbox"/> Open Container Violation <input type="checkbox"/> Prostitution <input type="checkbox"/> Public Intoxication <input type="checkbox"/> Reckless Driving <input type="checkbox"/> Trespassing <input type="checkbox"/> Other Public Order	
<input type="checkbox"/> Immigration	<input type="checkbox"/> Illegal Entry <input type="checkbox"/> Fraudulent Papers <input type="checkbox"/> Smuggling Aliens <input type="checkbox"/> Other Immigration		<input type="checkbox"/> Violence	<input type="checkbox"/> Animal Cruelty	
				<input type="checkbox"/> Assault	<input type="checkbox"/> Aggravated <input type="checkbox"/> Simple <input type="checkbox"/> With Battery
				<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Child Abuse <input type="checkbox"/> Child Neglect <input type="checkbox"/> Spouse Abuse
				<input type="checkbox"/> Extortion, Threats	
				<input type="checkbox"/> Kidnaping	
				<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Vehicular
				<input type="checkbox"/> Murder	<input type="checkbox"/> First Degree <input type="checkbox"/> Second Degree
				<input type="checkbox"/> Negligent Homicide	
				<input type="checkbox"/> Racketeering	
				<input type="checkbox"/> Robbery	<input type="checkbox"/> Armed <input type="checkbox"/> Unarmed
<input type="checkbox"/> Property	<input type="checkbox"/> Arson		<input type="checkbox"/> Sex Offense	<input type="checkbox"/> Child Molestation	
	<input type="checkbox"/> Bribery			<input type="checkbox"/> Rape	
	<input type="checkbox"/> Burglary	<input type="checkbox"/> Bank <input type="checkbox"/> Postal <input type="checkbox"/> Residential		<input type="checkbox"/> Sexual Abuse	
	<input type="checkbox"/> Counterfeiting	<input type="checkbox"/> Currency		<input type="checkbox"/> White Slave Traffic	
	<input type="checkbox"/> Embezzlement	<input type="checkbox"/> Bank <input type="checkbox"/> Postal			
	<input type="checkbox"/> Forgery	<input type="checkbox"/> Checks <input type="checkbox"/> Instruments/Securities			
	<input type="checkbox"/> Fraud	<input type="checkbox"/> Bank <input type="checkbox"/> Computer <input type="checkbox"/> Credit Card Fraud <input type="checkbox"/> False Claims <input type="checkbox"/> Mail			
	<input type="checkbox"/> Gambling/Lottery				
	<input type="checkbox"/> Identity Theft				
	<input type="checkbox"/> Tax	<input type="checkbox"/> Evasion <input type="checkbox"/> Failure to File <input type="checkbox"/> Liquor			
<input type="checkbox"/> Theft	<input type="checkbox"/> Auto <input type="checkbox"/> Bank <input type="checkbox"/> Failure to Pay Child Support <input type="checkbox"/> Mail <input type="checkbox"/> Transportation of Stolen Property <input type="checkbox"/> Worthless Checks				
<input type="checkbox"/> Other Property					
			<input type="checkbox"/> Weapons/Firearms	<input type="checkbox"/> Concealed Weapon <input type="checkbox"/> Felon in Possession <input type="checkbox"/> Other Unlawful Poss. <input type="checkbox"/> Other Weapon	

RELEASE/DETENTION ORDERS					
Hearing	Order Date	Release/Detention Outcome	Type of Bond (if released)	Release Date	Detained Due to/ Judge Issuing Order
Initial		<input type="checkbox"/> Released <input type="checkbox"/> Detained	<input type="checkbox"/> Collateral Bond <input type="checkbox"/> Percentage Bond <input type="checkbox"/> Personal Recognizance <input type="checkbox"/> Surety Bond <input type="checkbox"/> Unsecured Bond		<input type="checkbox"/> Temporary Detention <input type="checkbox"/> Held for Detention Hearing <input type="checkbox"/> Consent to Detention Judge:
Detention (if held)		<input type="checkbox"/> Released <input type="checkbox"/> Detained	<input type="checkbox"/> Collateral Bond <input type="checkbox"/> Percentage Bond <input type="checkbox"/> Personal Recognizance <input type="checkbox"/> Surety Bond <input type="checkbox"/> Unsecured Bond		<input type="checkbox"/> Preventive Detention <input type="checkbox"/> Flight <input type="checkbox"/> Danger <input type="checkbox"/> Both <input type="checkbox"/> Consent to Detention Judge:
PSA SUPERVISION					
Date Released to Pretrial Supervision:		Supervising Officer:	Courtesy Pretrial Services Out? <input type="checkbox"/> Yes <input type="checkbox"/> No		District Providing Courtesy Pretrial Services or Courtesy Diversion Supervision:
PTD Months:		PTD Expiration Date:			
COURT-ORDERED RELEASE CONDITIONS					
Check all conditions that were ordered by the court: (See PACTS Conditions Module for definitions) TREATMENT/COUNSELING/ TRAINING-RELATED CONDITIONS <input type="checkbox"/> Substance Abuse Evaluation <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Alcohol Treatment Only <input type="checkbox"/> Substance Abuse Testing <input type="checkbox"/> No Illegal Use of Controlled Substances <input type="checkbox"/> No Excessive Alcohol Use <input type="checkbox"/> Alcohol Abstinence <input type="checkbox"/> Mental Health Treatment <input type="checkbox"/> Sex Offender Assessment <input type="checkbox"/> Sex Offender Treatment <input type="checkbox"/> Life Skills Counseling <input type="checkbox"/> Education/Training Requirements <input type="checkbox"/> Other Treatment/Training/Education			SUPERVISION REPORTING/ CUSTODIAN CONDITIONS <input type="checkbox"/> Third-Party Custody <input type="checkbox"/> Pretrial Services Supervision <input type="checkbox"/> Report Any Change of Address <input type="checkbox"/> Personal Reporting Frequency Amount: <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Yearly <input type="checkbox"/> Telephone Reporting Frequency Amount: <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Yearly <input type="checkbox"/> Report to Law Enforcement		LOCATION/EMPLOYMENT ASSOCIATION RESTRICTIONS <input type="checkbox"/> Home Confinement Without Electronic Monitoring <input type="checkbox"/> Home Confinement With Electronic Monitoring <input type="checkbox"/> Curfew <input type="checkbox"/> Remote Location Monitoring <input type="checkbox"/> Re-Entry Center - Full Time <input type="checkbox"/> Re-Entry Center - Part Time <input type="checkbox"/> Work Release From Secure Facility <input type="checkbox"/> Residential Requirements/Restrictions <input type="checkbox"/> Travel Restrictions
			FINANCIAL/SERVICE-RELATED CONDITIONS <input type="checkbox"/> Restitution <input type="checkbox"/> Community Service		<input type="checkbox"/> Surrender Passport <input type="checkbox"/> Obtain No New Passport <input type="checkbox"/> Employment Requirements/Restrictions <input type="checkbox"/> No Contact With Victim
			<input type="checkbox"/> Other Financial Obligations <input type="checkbox"/> Other Service Obligations OTHER <input type="checkbox"/> Weapons Restrictions <input type="checkbox"/> Search/Seizure <input type="checkbox"/> Computer Search <input type="checkbox"/> Computer/Internet Restrictions		<input type="checkbox"/> No Contact With Minors <input type="checkbox"/> Association Restrictions <input type="checkbox"/> Report Contact With Law Enforcement <input type="checkbox"/> Other Location/Employment/ Association Restrictions

INTAKE-Closing			
Closing Date:	Disposition:	<input type="checkbox"/> Acquitted <input type="checkbox"/> Close-Courtesy Only <input type="checkbox"/> Deferred Judgment <input type="checkbox"/> Dismissed <input type="checkbox"/> Diversion Denied <input type="checkbox"/> Diversion Terminated by Gov't <input type="checkbox"/> Execution of Sentence <input type="checkbox"/> Found NGBRI <input type="checkbox"/> Fugitive FTA <input type="checkbox"/> Other <input type="checkbox"/> PTD Satisfied <input type="checkbox"/> Transferred Out	
Transfer District:	Docket No.:	Defendant No.:	Voluntary Surrender Date:

ADDITIONAL NOTES

PRESENTENCE REPORT INTERVIEW WORKSHEET

Exhibit N

UNITED STATES DISTRICT COURT
Federal Probation System

WORKSHEET FOR PRESENTENCE REPORT
(See Publication 197 for Instruction)

1. FACESHEET DATA		
Defendant's Court Name:		
Defendant's True Name:		
Docket No.:	District:	
Judge/Magistrate:	Sentencing Date:	
USPO:	Arrest Date:	
Assistant U.S. Attorney (Name, address, telephone)	Defense Counsel (Name, address, telephone)	
DEFENDANT'S IDENTIFICATION		
Defendant's Names: (List every name the defendant has used, e.g., name given at birth, name given at adoption, nickname, alias, names used as a result of marriage, etc.)		
Date of Birth:	Age:	Place of Birth:
Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> Unknown Hispanic Origin: <input type="checkbox"/> Hispanic <input type="checkbox"/> Not Hispanic <input type="checkbox"/> Unknown		
Sex:	Country of Citizenship:	Immigration Status:
No. of Dependents:	Education:	SSN:
FBI No.:	U.S. Marshal's No.:	Other ID No.:
Defendant's Legal Address: _____ <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> (Number and Street) (Apartment) </div> <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> (City) (State) (Zip) </div> Defendant's Current Address: _____ <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> (Number and Street) (Apartment) </div> <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> (City) (State) (Zip) </div>		

Referral Date: _____

Interview Date: _____

2. OFFENSE DATA (Presentence Report Part A)

CHARGES AND CONVICTIONS	RELEASE STATUS
<p>Date Information/Indictment Filed: _____</p> <p>Date of Conviction: _____</p> <p>Count No.(s): _____</p> <p>Conviction by (Check one):</p> <p><input type="checkbox"/> Guilty Plea/Plea of Nolo Contendere</p> <p><input type="checkbox"/> Court Trial Verdict</p> <p><input type="checkbox"/> Jury Trial Verdict</p>	<p>Check the Appropriate Box(s):</p> <p><input type="checkbox"/> In federal custody since _____</p> <p><input type="checkbox"/> In non-federal custody since _____</p> <p>Released on _____</p> <p><input type="checkbox"/> Unsecured personal recognizance</p> <p><input type="checkbox"/> \$ _____ personal recognizance bond since _____</p> <p><input type="checkbox"/> \$ _____ cash security since _____</p> <p><input type="checkbox"/> \$ _____ corporate security since _____</p> <p><input type="checkbox"/> \$ _____ property bond since _____</p> <p><input type="checkbox"/> Pretrial services supervision</p>

COUNTS OF CONVICTION

Count Nos.	Offense and Statutes	Offense Classification	Minimum/Maximum Statutory Penalty

DETAINERS

No Detainers

Agency or Court	Type of Detainer	Case Number

CODEFENDANTS

No Codefendants

Codefendant(s) Name(s): _____

RELATED CASES (Co-offenders)

No Related Cases

Docket No.	Defendant(s) Name(s)

PLEA AGREEMENT			
Check One: <input type="checkbox"/> Written <input type="checkbox"/> Accepted <input type="checkbox"/> Oral <input type="checkbox"/> Deferred <input type="checkbox"/> No Agreement <input type="checkbox"/> Binding		Notes:	
Substantial Assistance Motion: <input type="checkbox"/> No <input type="checkbox"/> Yes			
OFFENSE CONDUCT			
VICTIM IMPACT			
<input type="checkbox"/> No Loss			
Victim's Name	Financial Loss	Victim's Address	Victim's Phone
	\$		
Loss to All Victims:	\$		
Describe any social, psychological, or medical impact upon the victim of the offense behavior.			
ACCEPTANCE OF RESPONSIBILITY			
Defendant's statement regarding offense:			

3. DEFENDANT'S CRIMINAL HISTORY (Presentence Report Part B)

None

Date of Arrest, Prosecution, Referral, or Detention	Charge/Conviction	Court City/County/State Action No.	Date Sentenced or Case Disposed	Sentence	Defendant Represented by or Waived Counsel (Y) or (N)

PENDING CHARGES AND SUPERVISION STATUS

The defendant has no pending charges.

Charge(s)	Court	Docket/Action No.	Next Appearance Date

The defendant is not currently under supervision.
(division, probation, supervised release, or parole supervision)

The defendant is currently under criminal justice sentence. Type of Supervision:

- | | | |
|------------------------------------|--|---|
| <input type="checkbox"/> Diversion | <input type="checkbox"/> Probation | <input type="checkbox"/> Supervised Release |
| <input type="checkbox"/> Parole | <input type="checkbox"/> Escape Status | <input type="checkbox"/> In Custody |

Jurisdiction(s): _____

Supervising Officer's Name and Telephone Number: _____

4. OFFENDER CHARACTERISTICS (Presentence Report Part D)

DEFENDANT

Residential History: (List every town or city where the defendant has lived.)

PARENTS AND SIBLINGS

(List the defendant's biological parents. If defendant was reared by persons other than his natural parents, add the surrogate parent's names immediately below the space allocated to Father and Mother. After the parents, list all siblings, living or dead.)

Name	Relationship and Age	Present Address and Telephone Number	Occupation
	Father		
Current Name: Maiden Name:	Mother		

Notes regarding family history; identify any significant problems:

MARITAL STATUS

The defendant is presently single and has no marital history.

Spouse or Domestic Partner	Date and Place of Marriage	Status	Date of Separation	Date of Divorce	Court Where Divorce was Granted	Number of Children

Employment status of current spouse:

CHILDREN

The defendant has never had any children.

Child's Name	Name of Other Parent of this Child	Age	Custody/Support	Child's Address and Telephone Number (If different from defendant)

Note health problems, criminal history, substance abuse, or any other significant information.

DEFENDANT'S PHYSICAL CONDITION		
PHYSICAL DESCRIPTION		
Height:	Weight:	Eye Color:
Hair Color:	Tattoos:	Scars:
PHYSICAL HEALTH		
<input type="checkbox"/> The defendant is healthy and has no history of health problems.		
List the date(s) and nature(s) of any serious or chronic illnesses and medical conditions.		
List all current prescriptions.		
Provide the name, address, and telephone number of the defendant's physician.		
MENTAL AND EMOTIONAL HEALTH		
<input type="checkbox"/> The defendant has no history of mental or emotional problems, and no history of treatment for such problems.		
Describe any past or present mental, emotional, or gambling problems. Include the diagnosis of any problems (if known) and the dates of any treatment. List the name and address of the treatment provider.		

SUBSTANCE ABUSE

The defendant has no history of alcohol or drug use and no history of treatment for substance abuse.

Which of the following substances has the defendant used?

- | | |
|--|---|
| <input type="checkbox"/> Alcohol | <input type="checkbox"/> Heroin/Opiates |
| <input type="checkbox"/> Marijuana | <input type="checkbox"/> Barbiturates |
| <input type="checkbox"/> Cocaine | <input type="checkbox"/> Hallucinogens |
| <input type="checkbox"/> Crack | <input type="checkbox"/> Inhalants |
| <input type="checkbox"/> Amphetamine/
Methamphetamine | <input type="checkbox"/> Other: _____ |

When was alcohol or any controlled substance last used? _____

Which substance does the defendant prefer? _____

Which substance has caused the defendant the most problems? _____

Urine test results:

Describe in detail the defendant's history of substance abuse and treatment.
(Overdose, daily cost to support habit, frequency and quantity of use, treatment programs and dates)

EDUCATION AND VOCATIONAL SKILLS				
Highest grade completed: _____				
SCHOLASTIC HISTORY				
Name and Location of School (List most recent school first)	Dates Attended	Degree, Diploma, or Certificate Received		
<p>Does the defendant have any specialized training or skill(s)?</p> <p> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what training or skill(s)? </p> <p>_____</p> <p>_____</p>				
<p>Does the defendant have any professional license(s)?</p> <p> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what license(s)? </p> <p>_____</p> <p>_____</p>				
<p><input type="checkbox"/> None</p>				
MILITARY				
Branch of Service:	Service Number:	Entered:	Discharged:	Type of Discharge:
Highest Rank:	Rank at Separation:	Decorations and Awards:		VA Claim Number:
<p>Summarize the defendant's military service. Describe any courts martial or non-judicial punishments. Describe any foreign or combat service. Describe any special training or skills acquired in the service. Describe previous VA claims.</p>				

EMPLOYMENT		
Defendant's usual occupation: _____		
Defendant's employment status:		
At the time of the offense, the defendant was (select the appropriate number from the categories below) _____		
At present, the defendant is (select the appropriate number from the categories below) _____		
1. Employed full-time	2. Employed part-time	
3. Unemployed temporarily, looking for work	4. Unemployed seasonal worker	
5. Unemployed due to disability	6. Unemployed, history of extensive unemployment	
7. Incarcerated or confined	8. Student	
9. Homemaker	10. Retired	
11. Other (Specify): _____		
FINANCIAL CONDITION/ABILITY TO PAY		
<input type="checkbox"/> Refer to Form 48A.		
<input type="checkbox"/> Defendant has few assets and liabilities.		
EMPLOYMENT HISTORY		
(Describe the defendant's employment history for the last ten years)		
Dates	Name and Address of Employer	Job, Monthly Wage, Reason for Leaving
From:		
To Present		
Phone No.:		
From:		
To:		
From:		
To:		
From:		
To:		

EMPLOYMENT HISTORY (Continued)		
From:		
To:		
From:		
To:		
From:		
To:		
From:		
To:		
From:		
To:		
From:		
To:		
Summarize any employment history over 10 years old:		

**U.S. OFFICE OF PROBATION –
AUTHORIZATION FORMS**

Exhibit O

**UNITED STATES PROBATION SYSTEM
AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION
SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT PROGRAMS**

I, _____, the undersigned,
(Name of Client)

hereby authorize _____ to release confidential
(Name of Program)
information in its records, possession, or knowledge of whatever nature may now exist or come to exist to the United States Probation Office of the District of _____
Maryland
(State)

The confidential information to be released will include: date of entrance to program; attendance records; urine testing results; type, frequency and effectiveness of therapy (including psychotherapy notes); general adjustment to program rules; type and dosage of medication; response to treatment; test results (psychological, vocational, etc.); psychotherapy notes; date of and reason for withdrawal from program; and prognosis.

The information which I now authorize for release is to be used in connection with the preparation of a court-ordered report.

I understand that the probation office may use the information hereby obtained only in connection with its official duties, including total or partial disclosure of such, to the District Court.

I understand that this authorization is valid until I have been sentenced and my sentence is final, at which time this authorization to use or disclose this information expires. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

I understand that I have the right to revoke this authorization, in writing, at any time by sending such written notification to the program's privacy contact at:

(Name and Address of Program)

I understand that if I revoke this authorization to release confidential information, I will thereby revoke my authorization to further disclosure of such information. I also understand that revoking this authorization before the completion of the presentence investigation will be reported to the court.

(Signature of Parent or Guardian if Client is a Minor)

(Signature of Client)

(Date Signed)

(Date Signed)

(Name & Title of Witness)

(Date Signed)

**AUTHORIZATION
TO RELEASE GOVERNMENT (STATE OR FEDERAL) INFORMATION
TO PROBATION OFFICER**

I, _____, the undersigned, hereby waive my rights under the Privacy Act, 5 U.S.C. 552a (Supp. IV, 1974), and authorize the disclosure to the United States Probation Office of the District of _____ Maryland _____,

or its authorized representative(s) or employee(s), any and all information pertaining to me, contained in the files or systems of records maintained by any government agency subject to the Privacy Act, which such agency sees fit to convey, either orally or in writing, to the aforementioned Probation Office.

I hereby waive any rights I may have under the Privacy Act to prior notice of such disclosure, or of any rights I may have to an accounting of such disclosure to the aforementioned Probation Office.

I understand that this authorization will be used by the aforementioned Probation Office to request disclosure of information pertaining to me from any or all federal or state agencies.

This information is to be obtained for the purpose of conducting a presentence investigation and making a report or for supervision.

Regarding protected health information, I understand that this authorization is valid until my release from supervision, at which time this authorization to use or disclose this information expires. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

Regarding protected health information, I understand that I have the right to revoke this authorization, in writing, at any time by sending such written notification to the program's privacy contact at:

(Name and Address of Program)

Regarding protected health information, I understand that if I revoke this authorization to release confidential information, I will thereby revoke my authorization to further disclosure of such information. I also understand that revoking this authorization before I satisfy the condition of my supervision that requires this information will be reported to the court. My revocation of authorization under such circumstances could be considered a violation of a condition of my post-conviction supervision.

 _____ Authorizing Signature (full name)	_____ Full Name (printed or typed)	_____ Date
	_____ Parent/Guardian Signature, if Required	
	_____ Attorney Signature, if Available	
WITNESS —	_____ Probation Officer	_____ Date

AUTHORIZATION TO RELEASE INFORMATION
(PRIVATE PERSON OR ORGANIZATION)
TO PROBATION OFFICER

TO WHOM IT MAY CONCERN:

I, _____, the undersigned, hereby authorize the United States Probation Office for the District of Maryland, or its authorized representative(s) or employee(s), bearing this release or copy thereof, to obtain any information in your files pertaining to my:

- Employment
- Education Records (including, but not limited to academic achievement, attendance, athletic, personal history, and disciplinary records)
- Medical Records
- Psychological and Psychiatric Records

I hereby direct you to release such information upon request of the bearer. This release is executed with full knowledge and understanding that the information is for the United States Probation Office's official use.

I hereby release you, as custodian of such records, any school, college, or university, or other educational institution; hospital or other repository of medical records; social service agency; any employer or retail business establishment, including its officers, employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind which may at any time result to me, my heirs, family, or associates because of compliance with this authorization and request for information or any other attempt to comply with it.

Regarding protected health information, I understand that this authorization is valid until my release from supervision, at which time this authorization to use or disclose this information expires. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

Regarding protected health information, I understand that I have the right to revoke this authorization, in writing, at any time by sending such written notification to the program's privacy contact at:

(Name and Address of Program)

Regarding protected health information, I understand that if I revoke this authorization to release confidential information, I will thereby revoke my authorization to further disclosure of such information. I also understand that revoking this authorization before I satisfy the condition of my supervision that requires me to participate in the program will be reported to the court. My revocation of authorization under such circumstances could be considered a violation of a condition of my post-conviction supervision.

(Authorizing Signature - Full Name)	(Full Name - Printed or Typed)	(Date)
WITNESS —	(Probation Officer)	(Date)

**U.S. OFFICE OF PROBATION –
FINANCIAL FORMS
PROB 48 AND 48B**

Exhibit P

Last Name	First Name	Middle Name	Social Security Number

Instructions for Completing Net Worth Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer an affidavit fully describing your financial resources, including a complete listing of all assets you own or control as of this date and any assets you have transferred or sold since your arrest. Amendments were made to 18 U.S.C. §§ 3663(a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant, and liabilities are all relevant to the court's decision regarding the ability to pay. Your Net Worth Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) that you enjoy the benefits of or make occasional contributions toward.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Please complete the Net Worth Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Net Worth Statement Financial Records (Prob. 48A)). Initial and date each page (including any attached pages). Also, sign, date, and attach the Declaration of Defendant or Offender Net Worth & Cash Flow Statements (Prob. 48D).

Last Name -

NET WORTH STATEMENT

NOTE: I = Individual J = Joint S = Spouse/Significant Other D = Dependent

ASSETS

BANK ACCOUNTS (Include all personal and businesses checking and savings accounts, credit unions, money markets, certificates of deposit, IRA and KEOGH accounts, Thrift Savings, 401K, etc.)

Section A	I/J S/D	Name of Institution	Address	Type of Account	Account Number	Personal or Commercial	Balance	

SECURITIES (Include all stocks in public corporations, stocks in businesses you own or have an interest in, bonds, mutual funds, U.S. Government securities, etc.)

Section B	I/J S/D	Name and Kind of Security	Location of Security	Number of Units	Fair Market Value	

MONEY OWED TO YOU BY OTHERS (Include all money owed to you by any person or entity.)

Section C	I/J S/D	Name and Address of Debtor	Amount Owed to You	Reason Owed to You	Date Money Loaned	Relationship to Debtor (if any)	Monthly Payment or Date Full Payment Expected	Is Debt Collectible ?

Initials _____ Date _____

Last Name -								
Section D	LIFE INSURANCE (Include type of policy [whole life, variable, or term], face amount [the stated amount of coverage] and cash surrender value [the value of the investment portion of a whole life or variable policy].)							
	I/J S/D	Name and Address of Company and Name of Beneficiary	Policy Number	Type of Policy	Face Amount	Cash Surrender Value	Amount Borrowed	Amount You Can Borrow
Section E	SAFE DEPOSIT BOXES OR STORAGE SPACE FACILITY (Include all safe deposit boxes or storage space you rent or places you have access to in which others are holding assets or items belonging to you.)							
	I/J S/D	Name and Address of Box or Facility Location		Box Number or Space	Contents		Fair Market Value	
Section F	MOTOR VEHICLES (Include all cars, trucks, mobile homes, motorcycles, all terrain vehicles, boats, airplanes, etc.)							
	I/J S/D	Year, Make & License Number/Vehicle Identification Number	Mileage	Loan/Lease Balance (if any)	Date Loan/Lease Will be Paid Off or Ends	Monthly Payment	Fair Market Value	
Section G	REAL ESTATE (Include property, parcels, lots, timeshares, and developed land with buildings.)							
	I/J S/D	Real Estate Address (include county and state)/ Mortgage Company or Lien Holder	Purchase Date	Purchase Price	Mortgage Balance (if any)	Date Mortgage Will be Paid Off	Monthly Payment	Fair Market Value
Section H	MORTGAGE LOANS OWED TO YOU (Include name, address, and relationship [if any] to the mortgagee [the party that bought the real estate you sold and is making payments to you].)							
	I/J S/D	Mortgagee (name & address)/ Relationship to Mortgagee	Mortgage Balance	Date Mortgage Will be Paid Off	Balloon Payment? If Yes, Date?	Monthly Payment	Is Debt Collectible?	

Initials _____ Date _____

Last Name -								
Section I	OTHER ASSETS (Include any cash on hand, jewelry, art, paintings, coin collections, stamp collections, collectibles, antiques, copyrights, patents, etc.)							
	I/J S/D	Description	Loan Balance (if any)	Date Loan Will be Paid Off	Monthly Payment	Where is Asset Located?	Fair Market Value	
Section J	ANTICIPATED ASSETS (Include any assets you expect to receive or control from lawsuits for compensation or damages, profit sharing, pension plans, inheritance, wills, or as an executor or administrator of any succession or estate.)							
	I/J S/D	Amount Received or Expected to Receive	Date Expected to Receive	Reason You Expect This	Name and Address of Person or Company That Can Verify This (e.g., attorney, financial institution, executor)			
Section K	TRUST ASSETS (Include all trusts in which you are a grantor or donor [the person who establishes the trust], the trustee or fiduciary [who controls the trust assets and income or the beneficiary who has or will receive benefits from the trust].)							
	I/J S/D	Name of Trust/ Taxpayer ID#	Value of Trust	Your Annual Income From Trust	Your Interest in Trust Assets			
Section K	BUSINESS HOLDINGS (Include all businesses in which you have an ownership interest or with which you had an affiliation within the last three years; e.g., self-employed sole proprietor, officer, shareholder, board member, partner, associate, etc.) Complete Section N (attach additional pages, if necessary).							
	I/J S/D	Name and Address of Business/ Taxpayer I.D.#	Type of Business Entity	Industry of Business	Date Business Started	Capital Investment to Start	Your Ownership Interest Percentage	Sale Price or Fair Market Value of Your Interest

Initials _____ Date _____

Last Name -							
Section L	INCOME TAX RETURNS						
	Type of Income Tax Return Filed		Last Filing Year		Years of Last 5 Income Tax Returns You Will Submit to the Probation Officer		
	Individual (Form 1040)						
	Partnership/Limited Liability Company (Form 1065)						
	S Corporation (Form 1120S)						
Section M	TRANSFER OF ASSETS (Include any assets you have transferred or sold since the date of your arrest with a cost or fair market value of more than \$500.00. Also list any assets that someone else is holding on your behalf.)						
	I/J S/D	Description of Asset/ Reason Transferred/Sold	Date of Transfer/Sale	Original Cost	Amount You Received, if Any	Name of Purchaser or Person Holding the Asset	Sale Price or Fair Market Value at Transfer
Section N	NAMES OF SHAREHOLDERS OR PARTNERS (Include all shareholders, officers, and/or partners, indicating each respective ownership interest.)						
	Name of Business		Names of Shareholders/Partners			Ownership Interest Percentage	

Initials _____ Date _____

Last Name -			
Section O	ASSETS YOU WILL LIQUIDATE (Include all assets you intend to liquidate to satisfy any criminal monetary penalties that may be imposed.)		
	Asset Description	Estimated Value of Asset	Date You Will Liquidate
Section P	PROSPECT OF INCREASE IN ASSETS (Give a general statement of the prospective increase of the value of any asset you own.)		

Initials _____ Date _____

Last Name -							
Section A	LIABILITIES						
	CHARGE ACCOUNTS AND LINES OF CREDIT (Include all bank credit cards, lines of credit, revolving charge accounts, etc.)						
	I/J S/D	Type of Account or Card	Name and Address of Creditor	Credit Limit	Amount Owed	Credit Available	Minimum Monthly Payment
Section B	OTHER DEBTS (Include mortgage loans, notes payable, delinquent taxes, and child support.)						
	I/J S/D	Owed To	Address	Relationship (if any)	Amount Owed	Reason Owed	Monthly Payment
Section C	PARTY TO CIVIL SUIT (Include any civil lawsuits you have ever been a party to.)						
	I/J S/D	Name of Plaintiff in the Case	Court of Jurisdiction and County	Case Number	Date of Suit Filed	Date of Judgment	Judgment Amount/ Unpaid Balance
Section D	BANKRUPTCY FILINGS (Include information requested for any Chapter 7, 11, or 13 bankruptcy filings you have ever been a party to as an individual or as a business entity.)						
	I/J S/D	Type of Bankruptcy (Voluntary or Involuntary)/ Name and Address of Trustee	Bankruptcy Case Number	Bankruptcy Court of Jurisdiction	County and State of Discharge	Date Filed	Date of Discharge

Signature _____ Date _____

Last Name	First Name	Middle Name	Social Security Number

Instructions for Completing Monthly Cash Flow Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer a statement fully describing your financial resources, including a complete listing of all monthly cash inflows and outflows.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your spouse, significant others, or dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Amendments were made to 18 U.S.C. §§ 3663 (a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant; liabilities, and the financial needs and earning ability of a defendant and a defendant's dependents are all relevant to the court's decision regarding a defendant's ability to pay. Your Cash Flow Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) living in your home that you enjoy the benefits of or make occasional contributions toward.

Please complete the Monthly Cash Flow Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Cash Flow Statement Financial Records (Prob. 48C)). Initial and date each page (including any attached pages) and sign and date the last page of the Cash Flow Statement.

Last Name -		
MONTHLY CASH FLOW STATEMENT		
Monthly Cash Inflows		
Defendant	Gross	Net
Your Salary/Wages (List both monthly gross earnings and take-home pay after payroll deductions.)		
Your Cash Advances (List all payroll advances or other advances from work.)		
Your Cash Bonuses (List all payments from work in addition to your salary that are not an advance.)		
Commissions (List all non-employee earnings as an independent contractor.)		
Business Income (List both monthly gross income and net income after deducting expenses.)		
Interest (List all interest earned each month.)		
Dividends (List all dividends earned each month.)		
Rental Income (List all monthly income received from real estate properties owned.)		
Trust Income (List all trust income earned each month.)		
Alimony/Child Support (List all alimony or child support payments received each month.)		
Social Security (List all payments received from Social Security.)		
Other Government Benefits (List all amounts received from the government not yet reported (e.g., Aid to Families with Dependent Children.)		
Pensions/Annuities (List all funds received from pensions and annuities each month.)		
Allowances-Housing/Auto/Travel (List all funds received from housing allowances, auto allowances, travel allowances, and any other kind of allowance.)		
Gratuities/Tips (List all gratuities and tips received each month from any and all sources.)		
Spouse/Significant Other Salary/Wages (List all gross and net monthly salary and wages received by your spouse or significant other.)		
Other Joint Spousal Income (List any monthly income jointly earned with your spouse or significant other [e.g., any income from spouse or income from a business owned or operated by the spouse that you have a joint ownership interest in or control]).		
Income of Other In-House (List all monthly income of others living in the household or the monthly amount actually paid for household bills by these persons.)		
Gifts from Family (List all amounts received as gifts from family members each month.)		
Gifts from Others (List all gifts received from any sources not yet reported.)		
Loans from Your Business (List all loan amounts received each month from all businesses owned or controlled by you.)		
Mortgage Loans (List all amounts received each month from mortgage loans owed to you.)		
Other Loans (List all other loan amounts received each month not yet reported.)		
Other (specify) (List all other amounts received each month not yet reported.)		
TOTALS		

Last Name -	
Necessary Monthly Cash Outflows	
	Amount
Rent or Mortgage (List monthly rental payment or mortgage payment.)	
Groceries (List the total monthly amount paid for groceries and number of people in your household.) #	
Utilities (List the monthly amount paid for electric, heating oil/gas, water/sewer, telephone, and basic cable.)	
Electric	
Heating Oil/Gas	
Water/Sewer	
Telephone	
Basic Cable (no premium channels)	
Transportation (List monthly amount paid for gasoline, motor oil, necessary auto repairs, or the cost of public transportation.)	
Insurance (List the monthly amount paid for auto, health, homeowner/rental, and life insurance.)	
Auto	
Health	
Homeowner/Rental	
Life	
Clothing (List the monthly amount actually paid for clothing.)	
Loan Payments (List all monthly amounts paid toward verified loans, other than loans to family members, which are non-allowable expenses.)	
Credit Card Payments (List all monthly credit card or charge card payments.)	
Medical (List all monthly payments for necessary medical care or treatment.)	
Alimony/Child Support (List all alimony or child support payments made each month.)	
Co-payments (List the total monthly payments made for electronic monitoring and drug and mental health treatment.)	
Other (specify) (List all other necessary monthly amounts paid each month not yet reported.)	
Other Factors That May Affect Monthly Cash Flow (Describe)	
TOTAL	
NET MONTHLY CASH FLOW: \$ (CASH INFLOWS LESS NECESSARY CASH OUTFLOWS)	
MONTHLY CRIMINAL MONETARY PENALTY PAYMENT: \$	
PROSPECT OF INCREASE IN CASH INFLOWS (Give a general statement of the prospective increase of the value of any cash inflows reported.)	

Signature _____

Date _____

DISCOVERY AGREEMENT

Exhibit Q



U.S. Department of Justice

United States Attorney
District of Maryland
Northern Division

Rod J. Rosenstein
United States Attorney

Stefan D. Cassella
Assistant United States Attorney

36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

DIRECT: 410-209-4986
MAIN: 410-209-4800
FAX: 410-962-5130
TTY/TDD: 410-962-4462

April 13, 2012

Gerard Patrick Martin, Esquire
Rosenberg Martin Greenberg LLP
25 S. Charles Street, Suite 2115
Baltimore, Maryland 21201

Re: Discovery Agreement in the Case of
[REDACTED]
Criminal No. [REDACTED]-RDB

Dear Counsel:

I write to set forth the conditions on which the Government is willing to make discovery in this case. Under Rule 16 of the Federal Rules of Criminal Procedure, discovery is to be given "upon request", and I understand that you do request discovery. Therefore, I also request discovery pursuant to Rule 16(b).

The Government will provide discovery pursuant to and as defined in Rule 16 on the following basis:

Jencks material as defined in 18 U.S.C. § 3500, along with related Giglio material such as witness' plea agreements, criminal convictions and prior inconsistent statements, will be provided no later than April 27, 2012. Brady material which is not otherwise included in the Rule 16, Jencks or Giglio material referred to above will be provided if and when discovered. Jencks material is defined for purposes of this agreement in accordance with the specific provisions of 18 U.S.C. § 3500. Jencks material is given on agreement that reciprocal Rule 26.2 material will be provided by you at the same time I provide Jencks material.

The government agrees that at the same time that it provides Rule 16 material, it will provide notice of the existence of alleged other crimes, wrongs or acts committed by your client pursuant to Rule 404(b) of the Federal Rules of Evidence, along with copies of all physical and documentary evidence believed by the government to fall within the ambit of Rule 404(b) which the government intends to introduce at trial in its case-in-chief. The government acknowledges its continuing duty to disclose Rule 404(b) evidence as it is recognized as such after the time period in which the government has provided Rule 16 material.

The government reserves the right to provide later notice of Rule 404(b) material if the government believes that disclosure of such information will pose a security risk to any witness. As to any such witness, the government will disclose all **Jencks** material and all Rule 404(b) evidence at the same time.

All discovery is provided on the condition that counsel will not give copies of this material to the client or to anyone outside counsel's office, absent prior approval of this office. Counsel may of course review this material with the client at any time or place, and may provide copies to any expert consulted by the defense. If copies are provided to an expert, defense counsel must instruct the expert that further disclosure of the documents is prohibited absent prior approval of this office.

Should counsel file any routine motion with the Court which seeks discovery pursuant to Rule 16 or Brady, then this discovery agreement will be void, and the Government is not bound by any of the provisions herein. Specifically, Jencks and Giglio material may not be provided until the first day of trial if the defendant should file such a motion.

Should counsel file any motion with the Court which seeks material under the Jencks Act, then this agreement is void and Jencks and Giglio material may not be provided until the first day of trial.

The Government may be providing, as a courtesy, material which is not discoverable under Rule 16, Jencks, Giglio or Brady. The fact that certain non-discoverable materials are provided in no way obligates the Government to provide all non-discoverable materials, and the fact that certain non-discoverable materials are provided should never be taken as a representation as to the existence or non-existence of any other non-discoverable materials.

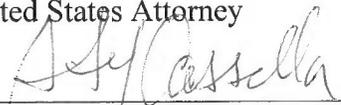
Please note that it is the policy of this Office that the government will not stipulate to a three level reduction in offense level pursuant to §3E1.1 of the United States Sentencing Guidelines unless the defendant has entered into a signed written plea agreement with the government on or before the date set for the filing of pretrial motions.

Please indicate your consent to this discovery agreement by signing and returning to me a copy of this letter. I urge you to call or write me with any questions that arise, as we may be able to resolve any questions without the filing of motions and responses with the Court.

Very truly yours,

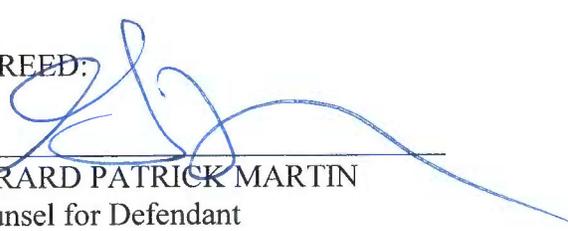
Rod J. Rosenstein
United States Attorney

By:



Stefan D. Cassella
Assistant United States Attorney

AGREED:



GERARD PATRICK MARTIN
Counsel for Defendant

cc: S.A. Wade Cassamajor, IRS
Court File

PLEA AGREEMENT

Exhibit R



U.S. Department of Justice

*United States Attorney
District of New Jersey*

970 Broad Street, Suite 700
Newark, NJ 07102

(973) 645-2700

July 3, 2014

Via Electronic Mail
Megan L. Brackney
Kostelanetz & Fink, LLP
7 World Trade Center
New York, New York 10007

Re: Plea Agreement with [REDACTED]

Dear Ms. Brackney:

This letter sets forth the plea agreement between your client, [REDACTED] and the United States Attorney for the District of New Jersey ("this Office"). This offer is contingent upon approval by the Department of Justice, Tax Division.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from defendant [REDACTED] to Count Five of a five-count Information, which charges him with knowingly making and subscribing a return, statement or other document, which contained and was verified by a written declaration that it was made under penalties of perjury, which he did not believe to be true and correct as to every material matter for the tax year [REDACTED], in violation of 26 U.S.C. §7206(1). If [REDACTED] enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against [REDACTED] for knowingly making and subscribing false returns for the tax years [REDACTED] provided: (1) that [REDACTED] admits under oath at the time of his guilty plea to making and subscribing false personal income tax returns for the tax years [REDACTED], inclusive; (2) making and subscribing to

false corporate income tax returns for [REDACTED], [REDACTED] for the tax years [REDACTED] and (3) that defendant [REDACTED]'s conduct for the tax years [REDACTED] is taken into account as relevant conduct by the Court at the time of sentencing pursuant to U.S.S.G. §1B1.2(c). However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by [REDACTED] [REDACTED] may be commenced against him, notwithstanding the expiration of the limitations period after [REDACTED] signs the agreement.

Sentencing

The violation of 26 U.S.C. § 7206(1) to which [REDACTED] agrees to plead guilty carries a statutory maximum prison sentence of 3 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon [REDACTED] is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence [REDACTED] ultimately will receive.

Further, in addition to imposing any other penalty on [REDACTED] [REDACTED] the sentencing judge: (1) will order defendant to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order defendant [REDACTED] to pay the costs of prosecution; and (3) pursuant to 18 U.S.C. § 3583, may require defendant [REDACTED] to serve a term of supervised release of not more than one year per count, which will begin at

the expiration of any term of imprisonment imposed. Should defendant [REDACTED] be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, defendant [REDACTED] may be sentenced to not more than one years' imprisonment per count in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition to the foregoing, and pursuant to 18 U.S.C. § 3663(a)(3), defendant [REDACTED] agrees to pay restitution in the amount of [REDACTED] to the Internal Revenue Service. The restitution amount shall be paid according to a plan established by the Court. If the Court orders defendant [REDACTED] to pay restitution to the Internal Revenue Service for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the Internal Revenue Service will use the restitution order as the basis for a civil assessment. See 26 U.S.C. § 6201(a)(4). Defendant [REDACTED] does not have the right to challenge the amount of this assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor defendant [REDACTED]'s timely payment of restitution according to that schedule will preclude the Internal Revenue Service from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on defendant [REDACTED] by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of defendant [REDACTED]'s activities and relevant conduct with respect to this case.

Stipulations

This Office and defendant [REDACTED] agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or defendant [REDACTED] from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and defendant [REDACTED] waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense may result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any

immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against defendant [REDACTED]. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service) or any third party from initiating or prosecuting any civil or administrative proceeding against defendant [REDACTED].

Prior to the date of sentencing, defendant [REDACTED] shall: (1) file accurate amended federal personal tax returns or enter into a Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and acceptance of Overassessment signed by defendant in lieu of filing returns or amended returns, for calendar years [REDACTED]; (2) provide all appropriate documentation to the Internal Revenue Service in support of such returns, upon request; (3) pay to the Internal Revenue Service in readily available funds made payable to the "US Treasury" all taxes and any penalties owed on those returns or Form 870 Waiver; and (4) fully cooperate with the Internal Revenue Service and comply with the tax laws of the United States. Defendant [REDACTED] agrees not to contest or seek to abate penalties or interest assessed by the Internal Revenue Service for defendant's failure to make timely payments of taxes for the years [REDACTED]. Further, defendant [REDACTED] agrees to allow the contents of his IRS criminal file to be given to civil attorneys and support staff of the Internal Revenue Service to enable them to investigate any and all civil penalties that may

be due and owing by defendant [REDACTED]. With respect to disclosure of the criminal file to the Internal Revenue Service, defendant [REDACTED] waives any rights under Title 26, United States Code, Section 7213 and Fed. R. Crim. P. 6(e), and any other right of privacy with respect to defendant [REDACTED]'s tax returns and return information.

No Other Promises

This agreement constitutes the plea agreement between defendant [REDACTED] and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: MICHAEL H. ROBERTSON
Assistant U.S. Attorney

APPROVED:



JACOB T. ELBERG
Chief, Health Care and Government Fraud Unit

I have received this letter from my attorney, Megan L. Brackney, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:



Date: 7/9/14

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge(s), sentencing, stipulations, waiver, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


Megan L. Brackney, Esq.

Date: 7/9/14

Plea Agreement With [REDACTED]

Schedule A

1. This Office and defendant [REDACTED] agree to stipulate to the following facts:

a. The tax loss for the calendar years [REDACTED] [REDACTED] is relevant conduct as defined in U.S.S.G. §1B1.3(a)

b. The tax loss caused by [REDACTED] was more than \$80,000 but not more than \$200,000.

2. In exchange for the undertakings made by the government in entering this plea agreement, defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. Notwithstanding this waiver provision, the parties reserve any right they may have under 18 U.S.C. § 3742 to challenge any aspect of the sentence that falls outside of any applicable statutory minimum or maximum term of imprisonment, term of supervised release, or fine. The parties also reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category.

3. None of these provisions, however, shall preclude defendant from pursuing, when permitted by law, an appeal, collateral attack, writ, or motion claiming that defendant's guilty plea or sentence resulted from constitutionally ineffective assistance of counsel.

JUDGMENT IN A CRIMINAL CASE

Exhibit S

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

[Redacted]

JUDGMENT IN A CRIMINAL CASE

Case Number: [Redacted]

USM Number: [Redacted]

Megan L. Brackney
Kostelanetz & Fink, LLP
530 5th Avenue
22nd Flr.
New York, NY 10036

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One of a single - count Information

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
26 U.S.C. § 7206(2)	Aiding and Assisting In the Preparation of False Tax Returns, Class E Felony	10/19/2015	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 17, 2016

Date of Imposition of Judgment

s/KAM

Signature of Judge

Kiyo A. Matsumoto, USDJ

Name and Title of Judge

March 17, 2016

Date

DEFENDANT:
CASE NUMBER:



IMPRISONMENT

The defendant is hereby committed to the custody of the Federal States Bureau of Prisons to be imprisoned for a total term of:

Five (5) months in custody.

The court makes the following recommendations to the Bureau of Prisons:

The court respectfully request that the defendant be designated close to Fort Dix to facilitate family visits

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____ .

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2:00p.m. on June 1, 2016.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT:
CASE NUMBER:

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

One (1) year with special conditions.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment; or if such prior notification is not possible, then within forty eight hours after such change. defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: [REDACTED]
CASE NUMBER: [REDACTED]

SPECIAL CONDITIONS OF SUPERVISION

- A. [REDACTED] shall maintain full-time verifiable employment and/or shall participate in an educational or vocational training program as selected by the Probation Department.
- B. [REDACTED] shall abstain from the consumption or ingestion of any drugs and/or other intoxicants, including illicit drugs unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The defendant shall submit to testing to ensure abstinence from drugs. In the event that [REDACTED] tests positive for any illegal substance, the U.S. Probation Department at its discretion may require his participation in an outpatient drug treatment program.
- C. [REDACTED] shall comply with his restitution obligation set forth below.
- D. [REDACTED] shall not possess a firearm, ammunition or destructive device.
- E. Upon request, from the Probation Department, [REDACTED] shall provide the truthful and complete disclosure of his financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns to the Probation Department. With the exception of the financial accounts reported and noted within the presentence report, the defendant is prohibited from maintaining/and or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. The defendant shall cooperate with the Probation Office and U.S. Attorney's Office in the investigation of his financial dealings and shall provide truthful monthly statements of his income and expenses. The defendant shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office and U.S. Attorney's Office to access to his financial information and records.
- F. [REDACTED] shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of release may be found. The search must also be in a reasonable manner and at a reasonable time. Failure to submit to a search may be grounds for revocation, and [REDACTED] shall inform any other residents that the premises may be subject to search pursuant to this condition.

RESTITUTION

The Court imposes an Order and Judgment of restitution in the amount of \$237,097, in favor of the IRS-RACS, payable as set forth herein: to the "Clerk of Court," U.S. District Court, 225 Cadman Plaza East, Brooklyn, New York 11201 for payment to the victim. The Clerk of Court shall forward the restitution payments of \$237,097 to IRS-RACS. Attn: Mail Stop 6261 Restitution, 333 W. Pershing Avenue, Kansas City, MO 64108. While in custody, defendant shall make restitution payments of at least \$25 per quarter. Starting the first day of the first month after Mr. Marcelin's release from custody, he shall continue making restitution payments at a minimum monthly rate of not less than 10% of his gross income per month, after deductions required by law, to begin immediately. This amount may be adjusted if [REDACTED]'s income increases.

DEFENDANT:
CASE NUMBER:

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 237,097

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Clerk shall forward payment to IRS-RACS Attn: Mail Stop 6261 Restitution 333 W. Pershing Avenue Kansas City, MO 64108	\$237,097	\$237,097	

TOTALS	\$ 237,097	\$ 237,097
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Restitution amount ordered pursuant to plea agreement \$ 237,097

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT:
CASE NUMBER:



SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

RESTITUTION

The Court imposes an Order and Judgment of restitution in the amount of \$237,097, in favor of the IRS-RACS, payable as set forth herein: to the "Clerk of Court," U.S. District Court, 225 Cadman Plaza East, Brooklyn, New York 11201 for payment to the victim. The Clerk of Court shall forward the restitution payments of \$237,097, to IRS-RACS. Attn: Mail Stop 6261 Restitution, 333 W. Pershing Avenue, Kansas City, MO 64108. While in custody, defendant shall make restitution payments of at least \$25 per quarter. Starting the first day of the first month after Mr. Marcelin's release from custody, he shall continue making restitution payments at a minimum monthly rate of not less than 10% of his gross income per month, after deductions required by law, to begin immediately. This amount may be adjusted if Mr. Marcelin's income increases.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN RE GRAND JURY MATTER #3
DOCKET NO. 15-2475 (3D CIR.)
JANUARY 27, 2017

Exhibit T

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-2475

IN RE: GRAND JURY MATTER #3

John Doe,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(No. 2:14-gj-631-003)
District Judge: Honorable R. Barclay Surrick

Argued: January 12, 2016

Before: McKEE, Chief Judge*, AMBRO and
SCIRICA, Circuit Judges

(Opinion filed: January 27, 2017)

* Judge Theodore McKee concluded his term as Chief of the United States Court of Appeals for the Third Circuit on September 30, 2016. Judge D. Brooks Smith became Chief Judge on October 1, 2016.

Scott A. Resnik, Esquire (Argued)
Michael M. Rosensaft, Esquire
Katten Muchin Rosenman LLP
575 Madison Avenue
11th Floor
New York, New York 10022

Karl S. Myers, Esquire
Andrew K. Stutzman, Esquire
Stradley Ronon Stevens & Young
2005 Market Street
Suite 2600
Philadelphia, PA 19103

Counsel for Appellant

Zane David Memeger, Esquire
Robert A. Zauzmer, Esquire
Joel M. Sweet, Esquire
Mark B. Dubnoff, Esquire (Argued)
Office of the United States Attorney
615 Chestnut St., Suite 1250
Philadelphia, PA 19106

Counsel for Appellee

PER CURIAM.¹

¹ In response to Appellant John Doe's Petition for *En Banc* Rehearing (which also requests panel rehearing, a

This appeal presents an unusual question of appellate jurisdiction: May we continue to exercise jurisdiction over an appeal of an evidentiary ruling in a grand jury proceeding even after the grand jury has returned both an indictment and a superseding indictment? We conclude that, so long as the grand jury investigation continues, we retain jurisdiction and thus can resolve the controversy.

With jurisdiction, we turn to an important question involving the limits of the exception to the confidentiality normally afforded to attorney work product. It loses protection from disclosure when it is used to further a fraud (hence the carve-out is called the crime-fraud exception). The District Court stripped an attorney's work product of confidentiality based on evidence suggesting only that the client had thought about using that product to facilitate a fraud, not that the client had actually done so. Because an actual act to further the fraud is required before attorney work product loses its confidentiality and we know of none here, we reverse.

I.

Company A, John Doe, his lawyer, and Doe's business associate are the subjects of an ongoing grand jury investigation into an allegedly fraudulent business scheme.² After the Government obtained access to an email Doe claims

presumption in any event under Third Circuit Internal Operating Procedure 9.5.1), the panel grants panel rehearing, vacates its earlier opinion, and issues this opinion.

² We use pseudonyms to refer to the grand jury subjects to protect the secrecy of the grand jury investigation and the anonymity of the subjects.

was privileged, it asked the District Court for permission to present it to the grand jury. The Court granted permission, finding that, although the email was protected by the work-product privilege, the crime-fraud exception to that privilege applied. Doe then filed an interlocutory appeal, requesting that our Court reverse the District Court's order.

While the appeal was pending, the grand jury viewed the email in question. It then indicted Doe, his lawyer, and Doe's business associate for conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), conspiracy to commit fraud, mail fraud, wire fraud, and money laundering. Thereafter the grand jury was discharged and a new grand jury was empaneled. It too saw the disputed email, and in December 2016 returned a superseding indictment that did not contain new charges but revisions to the previous ones. The grand jury investigation, however, continues still. What follows fleshes out this factual and procedural backdrop.

Doe was the sole owner of Company A and its president. Nonetheless a November 2008 document purports to memorialize Doe's sale of 100% of the shares of Company A to Company B for \$10,000. Doe's business associate is the sole owner of Company B. Following this purchase agreement, Doe claims that the business associate engaged Doe to be responsible for Company A's day-to-day operations. However, numerous filings and tax documents suggested that Doe maintained control and ownership of Company A even after Doe's stock in it was purportedly transferred.

Over the last decade and a half multiple individuals have sued Doe and his businesses in state courts around the country based on Doe's business practices. One such lawsuit was a class action filed against Company A in Indiana state

court. In it the plaintiffs alleged that Company A's business practices violated various Indiana state laws. They sought to hold Doe accountable for these violations. However, during this litigation Doe stated in a deposition in 2014 that he had transferred ownership of Company A to Company B. Doe's business associate then represented that Company A was no longer in business and had limited assets. Shortly after Doe's deposition, the Indiana plaintiffs settled their claims for approximately \$260,000, about 10% of the value attorneys for the plaintiffs had put on them.

Thereafter the Government empaneled a grand jury to investigate Doe and his business associate. Its theory is that Doe owned Company A but tricked the plaintiffs into thinking that he had sold it to his business associate to encourage the plaintiffs to settle for a lower value. This relies on the premise that Doe has deep pockets but his business associate does not.

In the course of its investigation, the grand jury subpoenaed Doe's accountant requesting that he provide the Government with Doe's personal and corporate tax returns. Among other things, these tax documents revealed that Doe had claimed 100% ownership of Company A every tax year from 2008 through 2012. The accountant also told an IRS agent that, at some time in 2013, Doe's lawyer informed him that Doe had sold Company A in 2008. He also informed investigators that he might have taken notes on this conversation. The Government requested them, and the accountant's attorney sent the Government three documents.

One of the documents was an email Doe had sent to the accountant on July 16, 2013, forwarding an email that Doe's lawyer had sent to Doe four days earlier that referenced an ongoing litigation. The attorney email advises Doe of the steps he needed to take to correct his records so that they

reflect that the business associate, not Doe, owned Company A since 2008. When Doe forwarded this email to his accountant, he simply wrote: “Please see the seventh paragraph down re; my tax returns. Then we can discuss this.” There is no evidence that Doe ever amended his returns or did anything else, apart from forwarding the email, to follow up on his attorney’s advice. Indeed, the accountant’s recollection is that Doe’s attorney later said not to go through with the amendments by telling the accountant to “stand by” for further guidance. It never came.

The day after the accountant provided this email to the Government, the accountant’s attorney sought to recall it on the ground that it was privileged and had been inadvertently included in his client’s production. The accountant’s counsel, however, also told the Government that his client believed the email was asking the accountant to perform an accounting service, not a legal service. The Government argued that under these circumstances Doe waived any privilege that might have otherwise attached to his lawyer’s email. It did, however, temporarily refrain from presenting it to the grand jury and asked the District Court in January 2015 for permission to do so, which Doe opposed.

The Court ruled in the Government’s favor. Its rationale was that Doe did not forward the email to his accountant to seek legal advice. Lacking that precondition, no attorney-client privilege attached to the document. However, the Court did find that the attorney work-product privilege attached to the email because the accountant could not be considered an adversary. It then concluded that the crime-fraud exception to the work-product privilege applied. On this basis, the Government could present the email to the grand jury.

Immediately after the District Court made its decision, Doe filed an interlocutory appeal requesting that we reverse its order. As noted above, while the appeal to our Court was pending the grand jury saw the email and later returned a 17-count indictment charging Doe, his lawyer, and Doe's business associate with RICO conspiracy, conspiracy to commit fraud, mail fraud, wire fraud, and money laundering.

We requested supplemental briefing from the parties on whether Doe's appeal was moot in light of the indictment. We also asked the Government to inform us whether the grand jury had been discharged. In response, it explained that the grand jury had been discharged shortly after it returned the indictment. The Government also informed us that a new grand jury had been empaneled, was investigating new charges against Doe and others, and it was considering a superseding indictment. Accordingly, both Doe and the Government asserted that the appeal was not moot due to the continuing investigation (though the Government still challenged our jurisdiction³). We issued an opinion holding that we lacked jurisdiction, and Doe sought rehearing.

³ It argued that the collateral order doctrine does not supply a basis for appellate jurisdiction. We agree. The doctrine allows us to hear an appeal of an interlocutory order that “(1) conclusively determine[s] the disputed question; (2) resolve[s] an important issue completely separable from the merits of the action; and (3) [is] effectively unreviewable on appeal from a final judgment.” *Bines v. Kulaylat*, 215 F.3d 381, 384 (3d Cir. 2000) (internal quotation marks omitted). The third requirement cannot be met here because “flawed grand jury proceedings can be effectively reviewed by [our] court and remedied after a conviction has been entered and all criminal proceedings have been terminated in the district court.” See *In re Grand Jury Proceedings (Johanson)*, 632

Following the rehearing petition, the Government changed its mind and contends that Doe’s appeal is now moot. It has informed us that it showed the disputed email to the new grand jury in September 2016 (before the initial opinion of our panel issued), and the grand jury returned a superseding indictment in December 2016 (after our initial opinion). However, that grand jury is still investigating other charges relating to ownership of Company A, though the Government represents that it currently has no plans to seek additional charges based on the email.

II.

This appeal thus presents a novel procedural fact pattern that complicates the issue of our appellate jurisdiction. Generally, courts of appeals have jurisdiction over “final decisions” of the district courts. 28 U.S.C. § 1291. But “[w]hen a district court orders a witness—whether a party to an underlying litigation, a subject or target of a grand jury investigation, or a complete stranger to the proceedings—to testify or produce documents, its order generally is not considered an immediately appealable final decision under § 1291.” *See In re Grand Jury (ABC Corp.)*, 705 F.3d 133, 142 (3d Cir. 2012) (internal alterations, citations, and quotation marks omitted). Thus disclosure orders are not final and cannot typically be challenged by an immediate—that is, interlocutory—appeal.

To obtain immediate appellate review of a disclosure order, the order’s target must ordinarily comply with what is known as the “contempt rule”: he “must refuse compliance, be held in contempt, and then appeal the contempt order.” *Id.*

F.2d 1033, 1039 (3d Cir. 1980). As we discuss below, however, a different doctrine confers appellate jurisdiction.

at 142-43 (citations and quotation marks omitted). The party may immediately appeal a district court's contempt order because it is a final judgment imposing penalties on the willfully disobedient party in what is effectively a separate proceeding. *Id.* at 143.

However, in *Perlman v. United States*, 247 U.S. 7 (1918), the Supreme Court carved out an exception to the contempt rule. It applies when a "disinterested" third party controls a privilege holder's documents and is ordered to produce them. *See ABC Corp.*, 705 F.3d at 138. Because the third party is unlikely to risk contempt to obtain an immediate appeal, and because the privilege holder may not refuse to obey a court order to which he is not subject, *Perlman* allows the privilege holder to take an immediate appeal. *Id.*

In this context, *Perlman* provided appellate jurisdiction at the beginning of our case. The email before us was produced in response to a subpoena addressed exclusively to Doe's accountant, who "lack[s] a sufficient stake in the proceeding to risk contempt." *Id.* at 145. Indeed, the accountant gave the email to the Government without telling Doe, so Doe was "powerless to avert the mischief."⁴ *Id.* at

⁴ The Government, in opposing rehearing, now argues that *Perlman* does not apply because it already had possession of the document from the accountant and the District Court merely permitted the grand jury to read it. Thus "[n]obody ever faced a threat of contempt." Pet. Reh'r. Opp. at 6. True enough, there was no threat of contempt because Doe never had the opportunity to challenge or prevent the accountant's production to the Government in the first place. But if *Perlman* permits a privilege holder to sue immediately without the threat of contempt in play because that holder cannot himself disobey a disclosure order not directed at him,

144 (quoting *Perlman*, 247 U.S. at 13). The Government contends, however, that we should no longer exercise jurisdiction because the first grand jury returned an indictment and the succeeding grand jury returned a superseding indictment.

The grand jury proceedings have yet to conclude, however. On at least two occasions we have continued to exercise jurisdiction even after grand juries returned indictments. In the first case, the Government appealed an adverse ruling on a grand jury subpoena. At the outset of the appeal, our jurisdiction was clear because Congress had specifically given the Government the right to seek immediate review. See *In re Grand Jury Proceedings (Johanson)*, 632 F.2d 1033, 1040 (3d Cir. 1980) (citing 18 U.S.C. § 3731). As the appeal was pending, however, the grand jury returned an indictment. We nonetheless concluded that, as long as the indictment did not render the appeal moot, we had jurisdiction to reach the merits. Because in that case the indictment “did not bring the grand jury’s proceedings to [their] conclusion,” a live controversy remained and our jurisdiction was intact. *Id.*

The second decision, which involved Congressman Chaka Fattah and was issued less than two years ago, is even more compelling because it, like our case, arose because of *Perlman*. At the time Fattah filed his *Perlman* appeal, he was, like Doe, being investigated by a grand jury. Just as in our case, his status changed when the grand jury, after oral arguments in our Court but before we reached a decision, returned an indictment. See *In re Search of Elec. Commc’ns in the Account of chakafattah@gmail.com at Internet Serv.*

the lack of a contempt threat here does not take this principle out of play.

Provider Google, Inc., 802 F.3d 516, 521 n.2 (3d Cir. 2015) (“*Fattah*”). However, because his appeal related to the still-ongoing review of his emails (thus giving us a live controversy), we continued to exercise jurisdiction per *Perlman* even after the indictment. *Id.* at 529–30.

Sound judicial efficiency concerns underlie our *Johanson* and *Fattah* decisions and weigh in favor of continuing to exercise jurisdiction even post-indictment. When we are able to dismiss an appeal for lack of jurisdiction as soon as it is filed, the process continues uninterrupted in the trial court, and we are able to wait until all the appellate issues are wrapped up after a final judgment. But because in limited circumstances we take pre-indictment appeals and begin to decide them, we should not reflexively dismiss those appeals—wasting the parties’ effort as well as ours—simply because an indictment is filed. Instead, if grand jury proceedings continue, we may still exercise jurisdiction in order to remedy future harm.

Consider our case, which has been on our docket since June 2015. By the time Doe was indicted nearly ten months had passed, and the parties had fully briefed the case and presented oral arguments to us. If we then send the case back to the District Court on the rationale that our jurisdiction was pulled by the indictment, we would do so with it likely that the issue would return if there is a conviction. And if Doe is convicted and files an appeal, the parties will need to re-brief and re-argue the same issue that we could have resolved already. Thus in cases where we accept an appeal when it is filed, efficiency favors finishing what we started.

To be sure, an intervening indictment can (and often will) moot an interlocutory appeal. For instance, through this appeal Doe asks us to prevent the grand jury from relying on an email that he argues is confidential. If after the indictment

the grand jury investigation had ended, any harm from exposure to the email already would have occurred. It would make sense in those circumstances to hold off until after the criminal proceedings are over before determining whether the grand jury proceeding were tainted.

But those are not our facts. The grand jury investigation continues, even after the new grand jury saw the email and issued a superseding indictment. Although the Government contends that the “grand jury easily can continue investigating questions relating to the ownership of [Doe’s company] without reexamining the email or considering any charges related to the email,” it may yet return another indictment based on the issue of the company’s ownership—the very subject of that email. Gov’t 28(j) Letter (Dec. 29, 2016). The grand jury cannot erase from its memory an email about Company A’s ownership while evaluating new charges relating to that issue. And though the Government contends it currently “has no plans” to put this email to further use during the continuing investigation, there is no guarantee that its plans will not change. Pet. Reh’g Opp’n at 4. Therefore, in our case, as in *Johanson*, these two indictments “did not bring the grand jury’s proceedings to [their] conclusion,” so there is still potential harm we can prevent. *Johanson*, 632 F.2d at 1040. The purpose of this appeal thus remains the same as when it was first filed: deciding whether an email that was inadvertently disclosed may be used as part of an ongoing grand jury investigation when that disclosure plausibly violates the attorney work-product privilege.

As long as we had jurisdiction at the outset, Doe’s case is guided by our analysis of the Government’s appeal in *Johanson* and by our decision in *Fattah*. As in those cases, the indictment and superseding indictment did not destroy

jurisdiction that properly existed beforehand.⁵ If the controversy is live enough that the case is not moot, we should decide it.

III.

Having concluded that our appellate jurisdiction continues, we now address the merits and hold that the crime-fraud exception to the attorney work-product doctrine does not apply to the email at issue. One of the exception's two requirements—the use of the communication in furtherance of a fraud—is lacking. The use-in-furtherance requirement provides a key safeguard against intrusion into the attorney-client relationship, and we are concerned that contrary reasoning erodes that protection.

Without the crime-fraud exception allowing the Government to show it to the grand jury, the email from Doe's lawyer is protected by the attorney work-product doctrine. That doctrine (often referred to as a privilege from or exception to disclosure), which is a complement to the attorney-client privilege, preserves the confidentiality of legal

⁵ The Government also contends this appeal is moot for an unrelated reason. It argues that Doe has waived attorney-client protections because his pretrial memorandum indicates that he might rely on the advice-of-counsel defense. *See Travelers Cas. & Sur. Co. v. Ins. Co. of N. Am.*, 609 F.3d 143, 164 (3d Cir. 2010) (recognizing that attorney-client confidentiality protections may be waived if the client asserts a defense based on his reasonable reliance on the attorney's advice) (citation omitted). We disagree. That Doe's trial strategy has changed given the development of this case does not mean he has waived the issues he continues to challenge on appeal.

communications prepared in anticipation of litigation. Shielding work product from disclosure “promotes the adversary system by enabling attorneys to prepare cases without fear that their work product will be used against their clients.” *Westinghouse Elec. Corp. v. Republic of Phil.*, 951 F.2d 1414, 1428 (3d Cir. 1991). Though Doe waived the attorney-client privilege by forwarding the email to his accountant, the document still retained its work-product status because it was used to prepare for Doe’s case against those suing him. *See id.*

Yet work-product protection, though fundamental to the proper functioning of the legal system, is not absolute. As relevant here, the crime-fraud exception operates to prevent the perversion of the attorney-client relationship. It does so by allowing disclosure of certain communications that would otherwise be confidential. “[A] party seeking to apply the crime-fraud exception must demonstrate that there is a reasonable basis to suspect (1) that the [lawyer or client] was committing or intending to commit a crime or fraud, and (2) that the . . . attorney work product was used in furtherance of that alleged crime or fraud.” *ABC Corp.*, 705 F.3d at 155.

The Government can readily satisfy the first requirement. Though ultimately it will be up to a jury to determine whether Doe committed fraud, there is at least a reasonable basis to believe he did. Even setting aside the email, the Government has a recording where Doe allegedly brags about defrauding the class action plaintiffs in the Indiana suit. He purportedly admits in that recording to telling his associate—the same one who was supposed to have already purchased Company A—“I’ll pay you ten grand a month if you will step up to the plate and say that you [own the company] and upon the successful completion of the lawsuit [I’ll] give you fifty grand.”

This evidence is strong, but it is not sufficient by itself to pierce the work-product protection. We have been clear that “evidence of a crime or fraud, no matter how compelling, does not by itself satisfy both elements of the crime-fraud exception.” *In re Chevron Corp.*, 633 F.3d 153, 166 (3d Cir. 2011). Rather, the second requirement—use in furtherance—exists for the same reason that certain conspiracy statutes require proof that a defendant engaged in an overt act to further the crime. In both settings we want to make sure that we are not punishing someone for merely thinking about committing a bad act. Instead, as Justice Holmes noted in the conspiracy context, we ask for evidence that the plan “has passed beyond words and is [actually] on foot.” *Hyde v. United States*, 225 U.S. 347, 388 (1912) (Holmes, J., dissenting).

To illustrate, if a client approaches a lawyer with a fraudulent plan that the latter convinces the former to abandon, the relationship has worked precisely as intended. We reward this forbearance by keeping the work-product protection intact. If, by contrast, the client uses work product to further a fraud, the relationship has broken down, and the lawyer’s services have been “misused.” *In re Grand Jury Investigation*, 445 F.3d 266, 279 (3d Cir. 2006). Only in that limited circumstance—misuse of work product in furtherance of a fraud—does the scale tip in favor of breaking confidentiality.

Here the only purported act in furtherance identified by the District Court was Doe forwarding the email to his accountant. If he had followed through and retroactively amended his tax returns, we would have no trouble finding an act in furtherance. Even if Doe had told the accountant to amend the returns and later gotten cold feet and called off the plan before it could be effected, there might still be a case to be made. That is because the Government “does not have to

show that the intended crime or fraud was accomplished, only that the lawyer's advice or other services were misused." *Id.* (quoting *In re Public Defender Serv.*, 831 A.2d 890, 910 (D.C. 2003)).

But none of that happened. Doe merely forwarded the email to the accountant and said he wanted to "discuss" it. There is no indication he had ever decided to amend the returns, and before the plan could proceed further the lawyer told the accountant to hold off. Thus Doe at most thought about using his lawyer's work product in furtherance of a fraud, but he never actually did so. What happened is not so different than if Doe merely wrote a private note, not sent to anyone, reminding himself to think about his lawyer's suggestion. The absence of a meaningful distinction between these scenarios shows why finding an act in furtherance here lacks a limiting principle and risks overcoming confidentiality based on mere thought.

The District Court gave two reasons for its conclusion that Doe used his lawyer's work product in furtherance of a fraud. First, it suggested that Doe, in forwarding the email to his accountant, "took [his lawyer's] advice" about amending the tax returns. J.A. 16. It is not clear what the Court meant by this because, as it acknowledged, Doe "never followed through with amending" the returns. *Id.* Second, the Court said that the failure to follow through "is of no consequence" as long as Doe intended, as of the time he forwarded the email, to amend the returns. *Id.* This is no doubt an accurate statement of the law. *See ABC Corp.*, 705 F.3d at 155. The problem is that there is simply no record evidence suggesting that Doe had ever made up his mind.

None of this should suggest that, in the event Doe is convicted (based on the superseding indictment) and appeals, he should automatically get a new trial because the

Government used the protected work product. That is because the Government could avoid a retrial by showing the error was harmless. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255–56 (1988). We express no opinion on that question.

* * * * *

Many appeals involving grand jury proceedings will become moot after the return of an indictment. But the presence of a new grand jury that is continuing to investigate even after issuing a superseding indictment makes this case out-of-lane. As a live controversy remains, an indictment does not automatically preclude us from deciding it. When we do so, we conclude that the crime-fraud exception to the attorney work-product privilege does not apply to the email at issue. We therefore reverse the decision allowing the breach of that privilege.

IN RE GRAND JURY SUBPOENA MARCH 2, 2015
DOCKET NO. 15-1976 (2D CIR.)
OCTOBER 6, 2015

Exhibit U

15-1976

In re: Grand Jury Subpoenas Dated March 2, 2015

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of October, two thousand fifteen.

PRESENT: ROBERT D. SACK,
DENNY CHIN,
CHRISTOPHER F. DRONEY,
Circuit Judges.

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IN RE: GRAND JURY SUBPOENAS DATED
MARCH 2, 2015

15-1976

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FOR INTERVENOR-APPELLANT: BRIAN D. LINDER, Clayman & Rosenberg
LLP, New York, New York.

FOR APPELLEE: STANLEY J. OKULA, JR., Michael A. Levy,
Assistant United States Attorneys, *for* Preet
Bharara, United States Attorney for the
Southern District of New York, New York,
New York.

Appeal from the United States District Court for the Southern District of New York (Caproni, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the district court is **AFFIRMED**.

Intervenor-appellant is an investment company (the "Company") whose president and owner (the "Owner") is the subject of an ongoing grand jury investigation into tax fraud. On June 5, 2015, the United States District Court for the Southern District of New York issued an order compelling the Company's attorneys to produce certain attorney-client communications between the attorneys and the Owner. The district court held that the crime-fraud exception to the attorney-client privilege applied to their communications relating to a tax protest because there was probable cause to believe that the Owner was using the lawyers to further his fraudulent scheme. The Company appeals. We assume the parties' familiarity with the facts, procedural history, and issues on appeal.

First, we consider the issue of subject matter jurisdiction. Our Circuit has not yet determined how *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009), affects our jurisdiction under the *Perlman* doctrine to hear a *non-party's* appeal of a non-final order compelling disclosure of communications protected by the attorney-client privilege in the context of an ongoing grand jury proceeding. See *Perlman v. United States*, 247 U.S. 7, 13 (1918) (permitting jurisdiction where appellant is "powerless to

avert the mischief of the order"). In *Mohawk*, the Supreme Court held that "collateral order appeals are not necessary to ensure effective review of orders adverse to the attorney-client privilege" because "postjudgment appeals generally suffice to protect the vitality of the attorney-client privilege." 558 U.S. at 108-09. Several courts have noted tension between *Perlman* and *Mohawk*. See, e.g., *In re Naranjo*, 768 F.3d 332, 343 n.14 (4th Cir. 2014); *United States v. Punn*, 737 F.3d 1, 11 n.8 (2d Cir. 2013); *United States v. Copar Pumice Co.*, 714 F.3d 1197, 1207-08 (10th Cir. 2013). Several of our sister Circuits, meanwhile, conclude that *Perlman* may continue to permit non-party privilege holders to appeal in particular circumstances. See, e.g., *Doe No. 1 v. United States*, 749 F.3d 999, 1005-07 (11th Cir. 2014); *In re Grand Jury*, 705 F.3d 133, 145-46 (3d Cir. 2012); *Holt-Orsted v. City of Dickson*, 641 F.3d 230, 239 (6th Cir. 2011); *United States v. Krane*, 625 F.3d 568, 573 (9th Cir. 2010). We need not decide whether *Perlman* would apply in the circumstances of this case, however, because the only restriction on jurisdiction here is a statutory and not a constitutional one, see 28 U.S.C. § 1291, and "the Supreme Court has barred the assumption of 'hypothetical jurisdiction' only where the potential lack of jurisdiction is a constitutional question." *Fama v. Comm'r of Corr. Servs.*, 235 F.3d 804, 816 n.11 (2d Cir. 2000) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)). As both sides urge us to reach the merits and it would be more efficient for us to do so, we assume we have jurisdiction to hear this appeal.

Second, as to the merits, we review the district court's determination that the crime-fraud exception applies for clear error. *United States v. Jacobs*, 117 F.3d 82, 87 (2d Cir. 1997), *abrogated on other grounds by Loughrin v. United States*, 134 S. Ct. 2384 (2014). The crime-fraud exception removes the protection of the attorney-client privilege from "client communications in furtherance of contemplated or ongoing criminal or fraudulent conduct." *In re John Doe, Inc.*, 13 F.3d 633, 636 (2d Cir. 1994) (quoting *In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983*, 731 F.2d 1032, 1038 (2d Cir. 1984)). A party wishing to invoke the exception must prove (1) "that the client communication or attorney work product in question was *itself* in furtherance of the crime or fraud" and (2) "probable cause to believe that the particular communication with counsel or attorney work product was *intended* in some way to facilitate or to conceal the criminal activity." *In re Richard Roe, Inc.*, 168 F.3d 69, 71 (2d Cir. 1999) (internal quotation marks omitted). But "[w]here the very act of litigating is alleged as being in furtherance of a fraud," we adopt a more stringent probable cause standard, that is, "the party seeking disclosure . . . must show probable cause that the litigation or an aspect thereof had little or no legal or factual basis and was carried on substantially for the purpose of furthering the crime or fraud." *Id.*

Even assuming, as the district court did, that the heightened probable cause standard applies to communications made in tax protests, we find no error. Based on the facts before it, the district court did not clearly err in finding that there was

probable cause to conclude that the tax protest was based on a false, undocumented transaction and that the Owner engaged in the tax protest as part of a strategy to further conceal that tax fraud and shirk his tax liabilities. The district court conducted an *in camera* review of the privileged communications at issue and concluded that those communications supported its determination that the crime-fraud exception applied. We have examined those privileged communications, the facts in the record, and the parties' *ex parte* submissions, and hold that the district court did not clearly err.

We have reviewed the Company's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the order of the district court. Because the grand jury investigation is still ongoing, the mandate shall issue forthwith.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

*MEMORANDUM OPINION
IN RE GRAND JURY PROCEEDINGS
DOCKET NO. 17-2336 (D.D.C.)
OCTOBER 2, 2017*

Exhibit V

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

In Re GRAND JURY INVESTIGATION

Misc. Action No. 17-2336 (BAH)

Chief Judge Beryl A. Howell

FILED UNDER SEAL

**FILED TEMPORARILY EX PARTE,
PENDING REVIEW BY THE SPECIAL
COUNSEL'S OFFICE**

MEMORANDUM OPINION

This is a matter of national importance. The United States, through the Special Counsel's Office ("SCO"), is investigating foreign interference in the 2016 presidential election and potential collusion in those efforts by American citizens. The SCO has uncovered evidence that Target 1, who was associated with the campaign of one presidential candidate—now the President—and Target 2, who was Target 1's employee (collectively, "the Targets") at Target Company, may have concealed from the government the extent of their lobbying actions on behalf of a foreign government and foreign officials, in violation of federal criminal laws, by submitting two letters through their former counsel, the Witness, containing false and misleading information to the U.S. Department of Justice ("DOJ").¹ The SCO seeks to compel the Witness to testify before a grand jury regarding limited aspects of her legal representation of the Targets, which testimony the SCO believes will reveal whether the Targets intentionally misled DOJ

¹ For the purposes of this opinion, "Target 1" refers to Paul J. Manafort, Jr., "Target 2" refers to Richard W. Gates, "Target Company" is DMP International, LLC, and "the Witness" is [REDACTED], an attorney at [REDACTED] SCO's Motion to Compel ("SCO Mot.") at 1, ECF No. 1.

about their work on behalf of a foreign government and foreign officials. The Witness has refused to testify unless directed by a court order, due to professional ethical obligations, because the Targets have invoked their attorney-client and work-product privileges. The SCO posits that the crime-fraud exception to both privileges applies and, alternatively, that the Targets have waived the attorney-client privilege to the extent of disclosures made in the submissions to DOJ, and that the work-product privilege is here overcome by a showing of adequate reasons to compel the Witness's testimony.

The attorney-client and work-product privileges play vital roles in the American legal system, by encouraging persons to consult freely and candidly with counsel, and counsel to advocate vigorously on their clients' behalves, without fear that doing so may expose a client to embarrassment or further legal jeopardy. The grand jury, however, is an essential bedrock of democracy, ensuring the peoples' direct and active participation in determining who must stand trial for criminal offenses. "Nowhere is the public's claim to each person's evidence stronger than in the context of a valid grand jury subpoena." *In re Sealed Case*, 676 F.2d 793, 806 (D.C. Cir. 1982) (citing *Branzburg v. Hayes*, 408 U.S. 665, 688 & n.26 (1972)). When a person uses the attorney-client relationship to further a criminal scheme, the law is well established that a claim of attorney-client or work-product privilege must yield to the grand jury's investigatory needs.

Based on consideration of the factual proffers made by the SCO, as well as the arguments articulated by the SCO, the privilege holders and the Witness over multiple filings and three hearings held during the past two weeks, the Court finds that the SCO has made a sufficient *prima facie* showing that the crime-fraud exception to the attorney-client and work-product privileges applies. Additionally, the Targets have impliedly waived the attorney-client privilege

concerning their communications with the Witness to the extent those communications formed the basis of the disclosed text of the Witness's letters to DOJ. Finally, the SCO overcomes any work-product privilege by showing that the testimony sought from the Witness is necessary to uncover criminal conduct and cannot be obtained through other means. Thus, the SCO may compel the Witness to testify as to the specific matters delineated more fully below.

I. BACKGROUND

On May 17, 2017, Acting Attorney General Rod Rosenstein appointed Robert S. Mueller III to serve as Special Counsel for the United States Department of Justice.² U.S. Dep't of Justice, Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017), available at <https://www.justice.gov/opa/press-release/file/967231/download>. The Special Counsel was authorized to conduct an investigation into "(i) any links and/or coordination between the Russian government and individuals with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a)." *Id.*

As part of its investigation, the Special Counsel's Office ("SCO") is scrutinizing representations made by the Witness in two letters submitted in November 2016 and February 2017 respectively, on behalf of her clients, the Targets, to the Foreign Agent Registration Act's ("FARA") Registration Unit of DOJ's National Security Division. SCO's Motion to Compel

² Deputy Attorney General Rod Rosenstein served as Acting Attorney General for the purposes of the Special Counsel appointment due to Attorney General Jeff Sessions' recusal "from any existing or future investigations of any matters related in any way to the campaigns for President of the United States" in 2016. Press Release, U.S. Dep't of Justice, Attorney General Sessions Statement on Recusal (Mar. 2, 2017), available at <https://www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal>.

(Sept. 19, 2017) (“SCO Mot.”) at 1, ECF No. 1. The factual background pertinent to this matter is summarized first before turning to the relevant procedural history.

A. Factual Background

1. The Targets’ Work on Behalf of Ukraine’s Party of Regions

On September 13, 2016, Heather H. Hunt, the Chief of the FARA Registration Unit, wrote separately to Target Company and Target 1, noting that “[n]umerous published sources raise questions” that Target Company and Target 1 may have engaged in activities on behalf of the European Centre for a Modern Ukraine (“ECFMU”), the Ukrainian government, the Ukrainian Party of Regions, or other foreign entities, thus requiring registration under FARA. *See* Target 1’s Opp’n to SCO Mot. (Sept. 25, 2017) (“Target 1 Opp’n”), Ex. A, DOJ Requests to Target 1 (Sept. 13, 2016), ECF No. 9. Ms. Hunt requested that Target 1 and Target Company provide documents and information for review and, shortly thereafter, Target 1 retained the Witness as counsel for the purposes of responding to these requests. Target 1 Opp’n at 2.

2. The 2016 and 2017 FARA Submissions to DOJ

The SCO has advised that the information sought from the Witness focuses on two letters, dated November 23, 2016 and February 10, 2017, respectively, that the Witness sent to the FARA Registration Unit on behalf of her clients, Target Company, Target 1, and Target 2. SCO Mot. at 1. The November 23, 2016 letter explained that Target Company is a “single-member, wholly-owned, limited liability company . . . controlled by [Target 1],” that engaged in political consulting, for both foreign and domestic clients, and provided “strategic guidance on democratic election processes, campaign management, and electoral integrity.” Target 2’s Opp’n to SCO Mot. (Sept. 20, 2017) (“Target 2 Opp’n”), Ex. C, Letter from Witness to Heather H. Hunt, Chief, FARA Registration Unit, Nat’l Security Div., U.S. Dep’t of Justice (Nov. 23,

2016) (“2016 FARA Submission”) at 1, ECF No. 3. As to ECFMU, the submission stated that Target Company, Target 1, and Target 2 “did not have an agreement to provide services to the ECFMU,” and “[f]urthermore, my Clients were not counterparties to any service agreement(s) between [two government relations companies (“GR Company 1” and “GR Company 2”)] and the ECFMU.” *Id.* According to the submission, a “search ha[d] been conducted for correspondence containing additional information related to the matters described in” the FARA Registration Unit’s inquiries, but “as a result of [Target Company’s] Email Retention Policy, which does not retain communications beyond thirty days, the search . . . returned no responsive communications.” *Id.*³ A copy of that written policy was enclosed in the November 2016 letter. *Id.*

The Witness wrote a more fulsome explanation of her clients’ work on behalf of the Party of Regions in the second FARA submission on February 10, 2017. According to that submission, Target Company, along with Target 1 and Target 2, were “engaged by the Party of Regions to provide strategic advice and services in connection with certain of the Party’s Ukrainian and European-facing political activities.” SCO Mot., Ex. A, Letter from Witness to Heather H. Hunt, Chief, FARA Registration Unit, Nat’l Security Div., U.S. Dep’t of Justice (Feb. 10, 2017) (“2017 FARA Submission”) at 1, ECF No. 1. The submission continued by describing the “scope of this work” as consisting “of two principal components: (1) [Target Company] provided assistance in managing the Party of Regions’ party building activities and

³ The Targets rely on Target Company’s Email Retention Policy to advance an argument that, to the extent the Witness’s letters to DOJ on their behalves materially omit or misstate facts, these failings occurred due to imperfect memory, unaided by contemporaneous emails which could have refreshed their recollection. *See* Nov. 23 Ltr. at 1–2 (“we are seeking to determine whether there are alternative sources of such information that would assist in ensuring that any responses are complete and accurate.”). As discussed more fully, *infra*, this argument is belied by evidence gathered by the SCO.

assisted in the development of its overall party strategy and political agenda, including election planning and implementation of the Party's political plan; and (2) [Target Company] provided counsel and advice on a number of policy areas that were relevant to the integration of Ukraine as a modern state into the European community." *Id.*

Despite this scope of work, the 2017 FARA Submission downplayed Target Company's U.S. activities for the Party of Regions. In particular, the 2017 FARA Submission stated that Target Company's "efforts on behalf of the Party of Regions and Opposition bloc did not include meetings or outreach within the U.S." *Id.* at 2. Further, the 2017 FARA Submission minimized any relationship between the Targets and the ECFMU, stating that "neither [Target Company] nor [Target 1 or Target 2] had any agreement with the ECFMU to provide services." *Id.* While Target Company provided the ECFMU "with a list of potential U.S.-based consultants," the 2017 FARA Submission states that ECFMU "contracted directly with" GR Company 1 and GR Company 2. *Id.* Further, the 2017 FARA Submission indicates that Target 2 "recall[ed]" interacting with ECFMU's consultants "regarding efforts in the Ukraine and Europe," but neither Target 1 nor Target 2 "recall[ed] meeting with or conducting outreach to U.S. government officials or U.S. media outlets on behalf of the ECFMU, nor do they recall being party to, arranging, or facilitating any such communications." *Id.* Instead, the 2017 FARA Submission explained that Target 1 and Target 2 recalled that any "such communications would have been facilitated and conducted by the ECFMU's U.S. consultants, as directed by the ECFMU, pursuant to the agreement reached between those parties (to which [Target Company] was not a party)." *Id.* at 2-3.

3. The Targets Register Under FARA

On June 27, 2017, the Witness made another submission to DOJ on behalf of her clients, the Targets, in response to “guidance and assistance offered by the FARA Registration Unit in this matter.” Target 2 Opp’n, Ex. E, Letter from Witness to Heather H. Hunt, Chief, FARA Registration Unit, Nat’l Security Div., U.S. Dep’t of Justice (June 27, 2017) at 1, ECF No. 3. While stating that the “Clients’ primary focus was directed at domestic Ukrainian political work, consistent with our discussions, we understand that the FARA Registration Unit has taken the position that certain of the activities conducted and/or contacts made by my Clients between 2012 and 2014 constituted registerable activity under FARA.” *Id.* Accordingly, the submission states that the Targets “submitted the registration and supplemental statements with respect to their activities on behalf of the Party of Regions.” *Id.*

4. The Grand Jury Subpoenas to the Witness

On August 18, 2017, a subpoena was issued, as part of the SCO’s investigation, for the Witness’s testimony before the grand jury. *See* Target 2 Opp’n at 2; Hr’g Tr. (Sept. 20, 2017) (“Sept. 20 Tr.”) at 12:24–25, ECF No. 8. In the discussions that ensued, the Targets, through counsel, asserted to the Witness’s counsel and the SCO “the protections of attorney-client privilege, attorney work product doctrine, the Rules of Professional Conduct,” including “those addressing client-lawyer confidentiality and duty of loyalty.” Target 2 Opp’n at 2.

The SCO responded to the objections raised by Target 2’s counsel in a letter, dated September 11, 2017, outlining both the scope of the questions to be posed to the Witness and the bases for the government’s position that the information sought by those questions is not shielded by the attorney-client privilege or the work product doctrine. Target 2 Opp’n, Ex. B, SCO Letter to Target 2 (Sept. 11, 2017) at 1, ECF No. 3. Further, the SCO argued that even if

the communications at issue were initially protected, those privileges “would be overcome by the crime-fraud exception.” *Id.*

With respect to the planned questions to the Witness before the grand jury, the SCO stated that the witness would be asked “narrow questions to confirm the source of the facts she submitted to the government, including whether her clients gave her the information represented in the letter as coming from them and/or reviewed a draft of the letter for accuracy.” *Id.*

With respect to the Targets’ invocation of attorney-client privilege, the SCO set out several bases for why the Targets’ communications with the Witness underlying the 2017 FARA Submission were not protected. First, the SCO expressed the view that the communications were not privileged to begin with because the submission “expressly and repeatedly attributed the information to her clients” and “[t]hat sourcing makes clear that the [submission was] intended to convey information from her clients,” such that “the underlying communications were intended to be revealed to the government.” *Id.* at 1–2. Second, “[e]ven if the privilege initially attached, the [Witness’s] letter waived it” because the submission’s contents did “more than simply present facts that were likely learned from clients; it attributes many of these facts to the ‘recollections’ and ‘understandings’ of named clients,” “[a]nd because the letter did so to benefit the clients in their interactions with the FARA Unit, waiver would be implied based on objective considerations of fairness.” *Id.* at 2. Third, the SCO dismissed the applicability of the work-product doctrine, stating that the doctrine did “not apply at all to the issue of whether [the Witness] showed her clients the [2017 FARA Submission] before submitting it to DOJ.” *Id.* at 3. “Just as asking a lawyer whether she provided her client a document given to her by the government does not seek protected work product,” the SCO continued, “neither does asking the lawyer whether she showed the client a document that the lawyer had drafted for submission to

the government.” *Id.* (internal citation omitted). Additionally, the SCO asserted that “[t]he same is true for the source of factual representations in the [2017 FARA Submission] about the recollections and understandings of named individual clients,” because “[t]he work product doctrine does not shield ‘factual confirmation concerning events the attorney personally witnessed,’ including ‘as the receiver . . . of information.’” *Id.* (citing *In re Grand jury Proceedings*, 616 F.3d 1172, 1185 (10th Cir. 2010) and 8 Charles Alan Wright & Mary Kay Kane, *Federal Practice and Procedure* § 2023 (3d ed. 2017)). The SCO emphasized that it was not seeking the Witness’s “witness interview notes or to probe which witnesses she believed.” *Id.* at 4. Rather, the SCO was “just seeking to confirm that the source of the factual representations is what it purports to be: the clients’ recollections.” *Id.*

Finally, the SCO stated that the crime-fraud exception to attorney-client privilege applied to the testimony sought from the Witness since “[t]he information known to the government establishes a prima facie showing that [the Targets] violated federal law by making materially false statements and misleading omissions to the FARA Unit,” including violations of 18 U.S.C. § 1001(a) (false statements to the federal government); 22 U.S.C. § 618(a)(2) (false or misleading statements and omissions “in any . . . document filed with or furnished to the Attorney General under” FARA), and 18 U.S.C. § 2(b) (willfully causing another to commit a criminal act). *Id.* at 5–6. In particular, the SCO pointed to specific text in the 2017 FARA Submission that contained either “false statements or misleading omissions,” *id.*, bolstering this assertion with general information about the nature of the contradictory evidence gathered. In particular, the 2017 FARA Submission contained: (1) a statement that “misrepresented the relationship among [the Targets], the Ukrainian government, the European Centre for a Modern Ukraine (ECFMU), and two U.S. lobbying firms [(‘GR Company 1 and GR Company 2’)],” *id.*

at 6, as shown by “[d]ocumentary evidence and witness testimony [] that both [Target 1 and Target 2] played a materially different role than these representations describe and that they knew so at the time they conveyed their alleged recollections to counsel,” *id.*; (2) a statement that neither Target 2 nor Target 1 “recall[ed] meeting with or conducting outreach to U.S. government officials or U.S. media outlets on ECFMU, nor do they recall being party to, arranging, or facilitating any such communications,” *id.* (quoting Feb. 10 Letter at 2), which was demonstrably contrary to “evidence establish[ing] that [Target 2], on his own and on behalf of [Target 1], engaged in weekly and at times daily calls and emails with [GR Company 1 and GR Company 2] to provide them directions as to specific lobbying steps that should be taken and to receive reports back as to the results of such lobbying,” *id.*; (3) statements regarding the Targets’ relationship with the GR Companies, which “convey[ed] to the FARA Unit that [Target 1] and [Target 2] had merely played matchmaker between the U.S. consultants ([GR Company 1 and GR Company 2]) and ECFMU,” which was contrary to “evidence show[ing] that [Target 1 and Target 2] solicited [GR Company 2 and GR Company 1] to represent the Ukraine and directed their work,” *id.* (citing *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1329 (2015) (an omission can make a statement misleading under securities laws)), and “the FARA violations were part of a sustained scheme to hide funds in violation of the applicable money laundering and tax statutes, among others,” *id.*; and (4) the statement “represent[ing] that there were no documents to refresh recollections because of an alleged [Target Company] corporate policy on document retention,” was not consistent with the government’s “evidence to prove otherwise,” *id.* at 6–7 (internal citation omitted).

B. Procedural History

In a letter, dated September 19, 2017, the Witness's counsel stated that the Witness was "committed to complying with the grand jury subpoena directed to her for testimony" but only to the extent such compliance was "within the bounds of her ethical obligations to her former clients, [Target 2 and Target 1]." Letter from Witness's Counsel to SCO (Sept. 19, 2017) at 1, Ex. B, SCO Mot., ECF No. 1. Relying on American Bar Association Formal Opinion #473, counsel for the Witness stated that the Witness was "ethically bound not to disclose any attorney-client communications, even after receiving a grand jury subpoena, based on any reasonable grounds articulated by the client, absent a Court Order," and that, in this matter, her clients had directed the Witness "not to respond to those questions by invoking the privilege." *Id.*

That same day, the SCO moved to compel the Witness's testimony, relying on three theories. SCO Mot. at 1. First, the SCO asserts a so-called "conduit theory," under which the communications at issue are not covered by the attorney-client privilege because the clients provided information to the Witness with the expectation and understanding that the Witness would convey that information to the government. SCO Mot. at 2 (citing *United States v. (Under Seal)*, 748 F.2d 871, 875 (4th Cir. 1984); *United States v. Tellier*, 255 F.2d 441, 447 (2d Cir. 1958)). Second, the SCO argues that even if attorney-client privilege attached, the FARA Submissions impliedly waived the privilege when information was voluntarily disclosed to the government, and that the work product privilege is overcome by a showing of substantial need. *Id.* at 2–3. Finally, the SCO asserts that the crime-fraud exception applies to the Targets' assertion of attorney-client privilege, because the communications at issue "were made with an 'intent' to 'further a crime, fraud or other misconduct.'" *Id.* at 3 (citing *United States v. White*, 887 F.2d 267, 271 (D.C. Cir. 1989)).

That same day, the Court held a hearing with counsel from the SCO and for the Witness. *See* Minute Entry (Sept. 19, 2017).⁴ A second hearing was held on September 20, 2017 for the purpose of hearing from Target 1 and Target 2, as the privilege holders, in opposition to the SCO's motion. At the second hearing, the SCO summarized the scope of questions to be posed to the Witness before the grand jury:

The gist is, basically, we're trying to tie the statements in [the Witness's] letters, one in February of 2017, one in November of 2016 to her various clients. The letters are written on behalf of [Target Company, Target 1, and Target 2]. We're trying to understand who the source of those statements were. . . . [I]n some instances, statements are attributed to [Target 2] [him or herself]; but, certainly, we'd also want to ask if all the clients reviewed letters for the purposes of accuracy before it was submitted. So that's the gist.

Sept. 20 Tr. at 12:7–17. At the conclusion of this hearing, the government was directed to submit any written proffer supporting application of the crime-fraud exception to the attorney-client privilege as well as to address the scope of questions to be posed to the Witness. *Id.* at 29:18–25. Counsels for Target 1 and Target 2 were also given an opportunity to supplement their prior submissions. *Id.* at 30:4–5.

The Targets subsequently “engaged in discussions” with the SCO regarding the Witness's testimony. Target 2's Suppl. Opp'n to SCO Mot. (Sept. 25, 2017) (“Suppl. Target 2

⁴ At the September 19, 2017 hearing, the Witness's counsel asserted that the SCO had taken the position that the privilege holders lacked standing to move to quash a subpoena “unless and until a motion to compel is filed.” Hr'g Tr. (Sept. 19, 2017) (“Sept. 19 Tr.”) at 11:8–10. The SCO responded by making clear that the SCO had no objection to the privilege holders' counsel “being heard on behalf of their clients, given the fact that the privilege is theirs. The Special Counsel's office doesn't object to that.” *Id.* at 14:15–19. Here, the Targets seek to assert their personal right to attorney-client and work-product privilege, and neither the SCO nor the Witness's counsel objected to the Targets' right to be heard. Accordingly, the Court concludes that the Targets have standing to assert their claim of privilege in this proceeding. *See, e.g., United States v. Idema*, 118 F. App'x 740 (4th Cir. 2005) (“Ordinarily, a party does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena.”); *Langford v. Chrysler Motor Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975) (“In the absence of a claim of privilege a party usually does not have standing to object to a subpoena directed to a non-party witness.”); 9A Wright & Miller, Federal Practice & Procedure § 2459 (2017) (“Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action, unless the objecting party claims some personal right or privilege with regard to the documents sought.” (internal quotation marks omitted)).

Opp'n") at 1, ECF No. 7. While not conceding, as a matter of law, that the government is entitled to elicit from the Witness any information about her representation of the Targets, including (1) "the source of the representations in the November 23, 2016 and February 10, 2017 letters" to DOJ, or (2) whether the Witness's "clients saw the final letters before they were sent to DOJ," the Targets informed SCO that, "in order to avoid further litigation regarding these issues," the Targets consented to the government asking the Witness those questions in connection with the two letters (*i.e.*, (1) "Who gave you *x* information?" and (2) "Did [Target 1 or Target 2] see the final letter before it was sent to the FARA unit?"). *Id.* According to Target 2's counsel, the SCO declined this offer.⁵ *Id.*

On September 26, 2017, the SCO supplemented its *ex parte* proffer of evidence supporting application of the crime-fraud exception, and a third and final hearing was held, as requested by the counsel to the Targets. At this hearing, the SCO confirmed eight topics to be posed to the Witness about portions of the 2017 and 2016 FARA submissions that the SCO alleges are fraudulent or misleading:

- 1) "[W]ho are the sources of the specific factual representations in the November 2016 and the February 2017 letters that [the Witness] sent to the FARA Registration Unit at DOJ?" Hr'g Tr. (Sept. 26, 2017) ("Sept. 26 Tr.") at 23:8–11, ECF No. 13-1
- 2) "Who are the sources of [Target Company's] e-mail retention policy that was attached to the November 2016 letter to the FARA Registration unit at DOJ?" *Id.* at 23:13–16;
- 3) "Whether --or if, [Target 2], [Target 1] or anyone else within [Target Company] approved the [November 2016 or February 2017] letters before [the Witness] sent the two letters to the FARA Registration Unit at DOJ?" *Id.* at 23:7–23;

⁵ The SCO explained the reason for declining to limit questions to those stipulated by the privilege holders, stating that "[t]here was, in our view, an effort to narrow the questions." Hr'g Tr. (Sept. 26, 2017) ("Sept. 26 Tr.") at 22:1-2, ECF No. 13-1. Further "unlike the privilege holders, we don't know what [the Witness] is going to say" and SCO "wanted to . . . have the latitude to be able to ask the right questions." *Id.* at 22:6-9. Moreover, although the SCO explained that generally "the same information" was sought under any of its theories, the SCO would likely have "more latitude if there was a ruling with respect to the crime fraud" exception, *id.* at 22:10-13, since the kinds of questions permissible to pose under the crime-fraud exception were "slightly broader" than under a waiver theory, *id.* at 22:15-18. In short, the SCO expressed its interest in being "prepared for any follow-ups based on what [the Witness] answers" to questions. *Id.* at 22:18-21.

- 4) “For each of the sources that are identified in response to th[e] prior three questions, what did the source say “to [the Witness] about the specific statement in the letter?” *Id.* at 23:24–25, 24:1–3;⁶
- 5) “When” and “how” the Witness received communications from her clients, including whether the conversations were by “phone, telephone, [or] e-mail[?]” *Id.* at 25:14–25, 26:1;
- 6) “[D]id anyone raise any questions or corrections with respect to the letter[?]” *Id.* at 26:13–15;
- 7) “[D]id [the Witness] memorialize [the conversations with her clients] in any way?” *Id.* at 26:15–16;
- 8) Whether [the Witness] “was careful with submitting these representations to the Department of Justice? And if that was her practice, to review the submissions with her clients before she did so[?]” *Id.* at 26:12–20.⁷

The arguments by the SCO, Witness and privilege holders were taken under advisement and the Court reserved decision.

II. ANALYSIS

The SCO is correct that a limited set of questions about the Witness’s representation of Targets 1 and 2 and Target Company may be posed to the Witness in the grand jury because the attorney-client and work product privileges have been vitiated by operation of both the crime-fraud exception and implied waiver. Each of those exceptions are addressed *seriatim* below.

A. Crime-Fraud Exception

Following review of the legal principles governing the crime-fraud exception and the SCO’s *ex parte* submission, analysis of this basis for compelling the testimony of the Witness before the grand jury is reviewed.

⁶ When the Court inquired as to whether the SCO intended to ask this fourth question, the SCO responded by saying that SCO was not “planning on asking about those specific communications from the client” but confirmed that they want to be “authorized to do that should [SCO] decide [to] want to pursue a follow up with that question.” Sept. 26 Tr. at 24:4–14.

⁷ The SCO stated that it was not “presently” intending to ask the Witness for any of her notes, but assured the Court that “[w]ithout any additional application to the Court, we wouldn’t ask [for] the notes from” the Witness. *See* Sept. 26 Tr. at 27:14–21. The SCO disclaimed any plan to ask what the Witness “thought about what her clients told her,” “what advice she gave to her clients,” or anything “about any of the clients’ communications to [the Witness] about matters outside specific statements in the two letters[.]” *Id.* at 29:10–21.

1. Overview of Crime-Fraud Exception

“The attorney-client privilege ‘is the oldest of the privileges for confidential communications known to the common law,’” aiming “to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 169 (2011) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)). The privilege “applies to a confidential communication between attorney and client if that communication was made for the purpose of obtaining or providing legal advice to the client.” *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014).

The doctrine of the crime-fraud “[e]xception comes into play when a privileged relationship is used to further a crime, fraud, or other fundamental misconduct.” *In re Sealed Case*, 676 F.2d at 807. “Attorney-client communications are not privileged if they ‘are made in furtherance of a crime, fraud, or other misconduct.’” *In re Grand Jury*, 475 F.3d 1299, 1305 (D.C. Cir. 2007) (quoting *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985)). “To establish the exception . . . the court must consider whether the client ‘made or received the otherwise privileged communication with the intent to further an unlawful or fraudulent act,’ and establish that the client actually ‘carried out the crime or fraud.’” *In re Sealed Case*, 223 F.3d 775, 778 (D.C. Cir. 2000) (quoting *In re Sealed Case*, 107 F.3d 46, 49 (D.C. Cir. 1997)).

To satisfy its burden of proof as to the crime-fraud exception, the government may offer “evidence that if believed by the trier of fact would establish the elements of an ongoing or imminent crime or fraud.” *In re Grand Jury*, 475 F.3d at 1305 (internal quotation marks omitted). It “need not prove the existence of a crime or fraud beyond a reasonable doubt.” *In re Sealed Case*, 754 F.2d at 399. “The determination that a prima facie showing has been made lies

within the sound discretion of the district court,” *id.* at 400, which must “independently explain what facts would support th[e] conclusion” that the crime-fraud exception applies. *Chevron Corp. v. Weinberg Grp.*, 682 F.3d 96, 97 (D.C. Cir. 2012). The D.C. Circuit has “approved the use of ‘*in camera, ex parte*’ proceedings to determine the propriety of a grand jury subpoena or the existence of a crime-fraud exception to the attorney-client privilege when such proceedings are necessary to ensure the secrecy of ongoing grand jury proceedings.” *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1179 (D.C. Cir. 2006) (quoting *In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1075 (D.C. Cir. 1998)). “[*In camera, ex parte* submissions generally deprive one party to a proceeding of a full opportunity to be heard on an issue, and thus should only be used where a compelling interest exists.” *In re Sealed Case No. 98-3077*, 151 F.3d at 1075 (internal citation and quotation marks omitted).

2. SCO’s Ex Parte Proffer

The SCO intends to ask the Witness about five distinct portions of the 2017 FARA Submission, two of which portions are also reflected in the 2016 FARA Submission. *See Hr’g Tr. (ex parte)*(Sept. 26, 2017) at 15:1–14. In its two declarations, submitted *ex parte*, the SCO offers witness testimony and documentary evidence to show that these statements are false, contain half-truths, or are misleading by omission. The veracity of these five portions of the 2017 FARA Submission are assessed before turning to the applicability of the crime-fraud exception to the underlying communications that may have served as a basis for these five statements contained in the Witness’s 2017 FARA Submission. The underlined portion of each set of statements indicates the text that the SCO believes is “either false or constitutes a half-truth.” Gov’t’s Ex Parte Suppl. Decl. of Brock W. Domin, Special Agent, Federal Bureau of

[REDACTED]

b) “[N]either [Target Company] nor [Target 1 or Target 2] had any agreement with the ECFMU to provide services.” 2017 FARA Subm’n at 2.

Although no evidence presented reflects any formal written contract between the Targets and ECFMU, Target 1 and Target 2 clearly had an informal agreement with ECFMU to direct the government relations and public affairs activities of GR Company 1 and GR Company 2, and also to fund these activities. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The 2017 FARA Submission attempts to paint the Targets as mere spectators in a game when they actually were integral players. Far from mere matchmakers, the Targets were significantly involved in U.S.-based advocacy efforts on behalf of ECFMU and the Ukrainian government.

d) “To [Target 2’s] recollection, these efforts included providing policy briefings to the ECFMU and its consultants on key initiatives and political developments in Ukraine, including participation in and/or coordination of related conference calls and meetings. Although [Target 2] recalls interacting with ECFMU’s consultants regarding efforts in the Ukraine and Europe, neither [Target 2] nor [Target 1] recall meeting with or conducting outreach to U.S. government officials or U.S. media outlets on behalf of the ECFMU, nor do they recall being party to arranging, or facilitating any such communications. Rather, it is the recollection and understanding of [Targets 1 and 2] that such communications would have been facilitated and conducted by the ECFMU’s U.S. consultants, as directed by the ECFMU, pursuant to the agreement reached between those parties (to which [Target Company] was not a party).” 2017 FARA Subm’n 2–3.

Based on the evidence already discussed, [REDACTED] evidence confirming the level of regular contact by the Targets with the GR Companies, the representation above that neither Target 1 nor Target 2 could recall “being party to, arranging, or facilitating any such communications” with U.S. government officials or U.S. media outlets, strains credulity. [REDACTED]

e) **“With respect to other specific matters on which [Target 2] interfaced with the ECFMU and its consultants, . . . [Target Company’s] Email Retention Policy does not retain communications beyond thirty days, and the information that would be contained in such correspondence is vital to refreshing recollections regarding these matters.” 2017 FARA Subm’n at 3.**⁹

Both the 2016 and 2017 FARA Submissions refer to the Target Company’s undated Email Retention Policy, which states that Target Company “does not retain communications beyond thirty days.” 2016 FARA Subm’n at 1; 2017 FARA Subm’n at 3. [REDACTED]

[REDACTED]

⁹ The 2016 FARA Submission included a similar claim. *See* 2016 FARA Subm’n (“[A] search has been conducted for correspondence containing additional information related to the matters described in your letters. However, as a result of DMP’s Email Retention Policy, which does not retain communications beyond thirty days, the search has returned no responsive communications.”).

[REDACTED]

3. Conclusion

Through its *ex parte* production of evidence, the SCO has clearly met its burden of making a *prima facie* showing that the crime-fraud exception applies by showing that the Targets were “engaged in or planning a criminal or fraudulent scheme when [they] sought the advice of counsel to further the scheme.” *In re Grand Jury*, 475 F.3d at 1305 (quoting *In re Sealed Case*,

754 F.2d at 399); *see also In re Sealed Case*, 107 F.3d at 49 (same). This evidence establishes that Target 1 and Target 2 likely violated federal law by making, or conspiring to make, materially false statements and misleading omissions in their FARA Submissions, which may constitute violations of, *inter alia*, 22 U.S.C. § 618(a)(2) (false or misleading statements and omissions “in any . . . document filed with or furnished to the Attorney General” under FARA); 18 U.S.C. § 1001(a) (false statements to the executive branch); and 18 U.S.C. § 371 (conspiracy to commit any offense against the United States or to defraud the United States).¹⁰

“Communications otherwise protected by the attorney-client privilege are not protected if the communications are made in furtherance of a crime, fraud, or other misconduct.” *In re Sealed Case*, 754 F.2d at 399. Generally, the crime-fraud exception reaches communications or work product with a “relationship,” *In re Sealed Case*, 676 F.2d at 814–15 (opinion of Wright, J.), to the crime or fraud. *See In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985) (requiring “some relationship between the communication at issue and the prima facie violation”). With respect to work product protection, the crime-fraud exception applies where “some valid relationship between the work product under subpoena and the prima facie violation” is present. *In re Sealed Case*, 676 F.2d at 814–15 (opinion of Wright, J.). The inquiry focuses on the “client’s intent in consulting the lawyer or in using the materials the lawyer prepared.” *In re Sealed Case*, 107 F.3d at 51. “The question is: Did the client consult the lawyer or use the material for the purpose of committing a crime or fraud.” *Id.*

¹⁰ The list provided by the SCO of federal criminal statutes that would be violated by submission of false and fraudulent or misleading representations to DOJ’s FARA unit in the course of its investigation whether a FARA registration was required, is not exhaustive. *See, e.g.*, 18 U.S.C. § 1519 (criminalizing knowing conduct that “conceals, covers up, falsifies, or makes a false entry in any record, document . . . with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States”).

Given the *prima facie* showing of crime, fraud, or misconduct with respect to the five areas of false or misleading statements in the 2017 FARA Submission, the Witness may be compelled to answer the following seven questions with respect to these statements:

1. Who were the sources for each of the specific factual representations alleged to be false or misleading in the submissions, dated November 23, 2016 and February 10, 2017, made by the Witness on behalf of her clients, Targets 1 and 2 and Target Company, to the Foreign Agent Registration Act's ("FARA") Registration Unit of the National Security Division of the U.S. Department of Justice?
2. Who were the sources of information regarding the Target Company's email retention policy that the Witness attached to the November 23, 2016 FARA Submission?
3. Did Target 1, Target 2, or anyone else within the Target Company, if anyone, approve the November 23, 2016 and February 10, 2017 FARA Submissions before the Witness sent each such submission to the FARA Registration Unit at the U.S. Department of Justice?
4. For each source of information identified in response to the prior three questions, what did that source tell the Witness about the specific factual representations alleged to be false or misleading in the November 23, 2016 and February 10, 2017 FARA Submissions?
5. When and how did the Witness receive communications from Target 1, Target 2, or anyone else within Target Company regarding the specific factual representations alleged to be false or misleading in the November 23, 2016 and February 10, 2017 FARA Submissions?
6. Did Target 1 or Target 2, or anyone else within Target Company, raise any questions or corrections with the Witness regarding the specific factual representations alleged to be false or misleading in the November 23, 2016 and February 10, 2017 FARA Submissions before the Witness sent those submissions to the FARA Registration Unit at the U.S. Department of Justice?
7. Was it the Witness's practice to review with her clients written submissions prior to sending such submissions to the FARA Registration Unit at the U.S. Department?

The first six questions call for answers regarding communications that have, at the very least, "some relationship" with the "prima facie violation" of law. *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985); *see also In re Sealed Case*, 676 F.2d at 814–15 (opinion of Wright, J.)

(explaining that for the crime-fraud exception to apply to the work-product doctrine, there must be “some valid relationship between the work product under subpoena and the prima facie violation”).¹¹ The final question calls for general information—not specific to the Witness’s representation of any particular client—that does not fall within the scope of any privilege.

B. Implied Waiver of the Attorney-Client Privilege

The SCO also contends that the Targets impliedly waived the attorney-client privilege as to the testimony sought from the Witness by disclosing the 2016 and 2017 FARA Submissions to DOJ. The waiver extends to the Targets’ specific conversations with the Witness that were released in substance to DOJ in these FARA Submissions.

1. Implied Waiver Generally

The scope of the implied waiver comports with the D.C. Circuit’s “adhere[nce] to a strict rule on waiver of [the attorney-client] privilege[,]” requiring a privilege-holder to “zealously protect the privileged materials” and “tak[e] all reasonable steps to prevent their disclosure.” *SEC v. Lavin*, 111 F.3d 921, 929 (D.C. Cir. 1997) (quoting *In re Sealed Case*, 877 F.3d 976, 980 (D.C. Cir. 1989)). As such, “disclosure will waive the privilege.” *In re Sealed Case*, 877 F.3d at 980. A client waives the privilege by disclosing privileged information’s “substance . . . before an investigative body at the pretrial stage.” *White*, 887 F.2d at 271; *see also In re Subpoenas Duces Tecum*, 738 F.2d 1367, 1370 (D.C. Cir. 1984) (a client waives the privilege entirely as to all “material that has been disclosed to [a] federal agency”); *Permian Corp. v. United States*, 665 F.2d 1214, 1219 (D.C. Cir. 1981) (a client “destroy[s] the confidential status of . . . communications by permitting their disclosure to the SEC staff”). Waiver of the privilege

¹¹ As discussed above, the SCO also seeks to also ask the Witness whether she “memorialized” any of her communications with the Targets. The propriety of asking this question is addressed *infra* Part II.C.

“extends to all other communications relating to the same subject matter.” *In re Sealed Case*, 29 F.3d 715, 719 (D.C. Cir. 1994); *see also Williams & Connolly v. SEC*, 662 F.3d 1240, 1244 (D.C. Cir. 2011) (“[One who] voluntarily discloses part of an attorney-client conversation . . . may have waived confidentiality—and thus the attorney client privilege—for the rest of that conversation *and* for any conversations related to the same subject matter.”); *In re Sealed Case*, 877 F.2d at 980–81 (“[W]aiver of the privilege in an attorney-client communication extends ‘to all other communications relating to the same subject matter.’” (quoting *In re Sealed Case*, 676 F.2d at 809)).

2. Analysis

Upon sending the FARA Submissions to DOJ, the Targets waived, through voluntary disclosure, any attorney-client privilege in their contents.¹² *White*, 887 F.2d at 271; *In re Subpoenas Duces Tecum*, 738 F.2d at 1370; *Permian Corp.*, 665 F.2d at 1219. In fact, the FARA Submissions made specific factual representations to DOJ that are unlikely to have originated from sources other than the Targets, and, in large part, were explicitly attributed to one or both Targets’ recollections.¹³ *See* 2017 FARA Subm’n at 1–3; 2016 FARA Subm’n at 1–2. Additionally, the Targets impliedly waived the privilege as to their communications with the

¹² The government also argues that the attorney-client privilege never attached to the communications with the Witness reflected in the FARA Submissions in the first place because the Targets intended to disclose the information to DOJ from the outset. SCO Mot. at 1–2; SCO Suppl. Mem. in Supp. of Mot. (“SCO Suppl. Mem.”) at 4, ECF No. 11; *see In re Sealed Case*, 877 F.2d at 979 & n.4 (“[D]ata that [a client] intends to report [to the IRS] is never privileged in the first place” so long as it does not “reveal directly the attorney’s confidential advice.”); *(Under Seal)*, 748 F.2d at 875; *In re Grand Jury Proceedings*, 727 F.2d 1352, 1356 (4th Cir. 1984); *Naegele*, 468 F. Supp. 2d 165, 170 (D.D.C. 2007). This “conduit theory” need not be addressed, as the SCO’s motion to compel is granted on alternative grounds.

¹³ Target 1 argues that the SCO has not shown that the 2016 FARA Submission contained representations sourced to the Targets themselves rather than to publicly-available sources such as “media reports, or a corporate registry or similar database,” Target 1 Opp’n at 5, but even a cursory review of this letter shows otherwise. The 2016 FARA Submission contained representations the Witness could not plausibly have gathered solely from publicly-available sources, such as that the Targets had no agreement to provide the ECFMU services or were counterparties to any service agreements between ECFMU and the GR Companies. *See* 2016 FARA Subm’n at 1. The Targets repeated these representations in the 2017 FARA Submission. *See* 2017 FARA Subm’n at 2.

Witness to the extent that these communications related to the FARA Submissions' contents. *Williams & Connolly*, 662 F.3d at 1244; *In re Sealed Case*, 29 F.3d at 719; *In re Sealed Case*, 877 F.2d at 980–81; *In re Sealed Case*, 676 F.2d at 809.

In re Sealed Case (1994) is instructive. There, the target, who was subject to a grand jury investigation of his financial transactions with a foreign government, disclosed to the government details about his conversations with a lawyer “in connection with” the transactions, thereby waiving the privilege as to the disclosed conversations. 29 F.3d at 716–17. The government “subpoenaed the [l]awyer to appear before the grand jury to testify and to produce any and all documents relating to and/or generated as a result of discussions and/or consultation with the” target, the target’s business partner, “and/or any representative or agent of” a company the target had created to accept payments from the foreign government. *Id.* at 717 (alterations and internal quotation marks omitted). The D.C. Circuit determined that the target’s waiver “extended to all conversations between the [l]awyer and him relating to the same subject matter, specifically including documents in the case files,” as “the material sought has an obvious relationship to the subject matter of [the target’s] admissions.” *Id.* at 719–20 (internal quotation marks omitted). Here, the testimony sought from the Witness has a similarly “obvious relationship” to the subject matter of the disclosures to DOJ. *Id.*; see also *In re Martin Marietta Corp.*, 856 F.2d 619, 623–24 (4th Cir. 1988) (holding that submission of a Position Paper by counsel on behalf of the client urging the U.S. Attorney not to indict waived the privilege as to “audit papers” and “witness statements” from which factual statements in the Position Paper “were derived”). For these reasons, the attorney-client privilege does not prevent the SCO from compelling the Witness’s testimony about the limited subjects already disclosed in the 2016 and 2017 FARA Submissions.

C. The Work-Product Privilege

Even if the Targets impliedly waived the attorney-client privilege with respect to the communications as to which the SCO seeks to compel the Witness's testimony, the Targets are partially correct that the work-product privilege would still apply. *See* Target 1 Opp'n at 5; Target 2 Opp'n at 5–10. In the Targets' view, the work-product privilege operates to block SCO from compelling testimony from the Witness on all questions that the SCO seeks to pose. The SCO's proposed questions, however, with one exception, seek production only of fact work product, which may be compelled upon a showing of adequate reasons.

1. The Work-Product Privilege Generally

The work-product privilege protects “material ‘obtained or prepared by an adversary’s counsel’ in the course of his legal duties, provided that the work was done ‘with an eye toward litigation.’” *In re Sealed Case*, 676 F.2d at 809 (quoting *Hickman v. Taylor*, 329 U.S. 495, 511 (1947)). This material includes the attorney’s “interviews, statements, memoranda, correspondence, briefs, mental impressions,” and “personal beliefs.” *Hickman*, 329 U.S. at 511. The work-product privilege affords greater protection to “*opinion* work product, which reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation,’” than to “*fact* work product, which does not.” *FTC v. Boehringer Ingelheim Pharm., Inc.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting FED. R. CIV. P. 26(b)(3)(B)). Fact work product is discoverable “upon showing a substantial need for the materials and an undue hardship in acquiring the information any other way,” *Dir., Office of Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304, 1307 (D.C. Cir. 1997), a test we equate with a requirement “to show ‘adequate reasons’ why the work product should be subject to discovery,” *Boehringer*, 778 F.3d at 153 (quoting *In re Sealed Case*, 676 F.2d at 809).

Opinion work product, in contrast, “is virtually undiscoverable.”¹⁴ *Vinson & Elkins*, 124 F.3d at 1307.

Where information “contains both opinion and fact work product, the court must examine whether the factual matter may be disclosed without revealing the attorney’s opinions.” *Boehringer*, 778 F.3d at 152. The D.C. Circuit has rejected “a virtually omnivorous view” of opinion work product, cautioning that “not every item which may reveal some inkling of a lawyer’s mental impressions . . . is protected as opinion work product.” *Id.* at 151–52 (quoting *In re Sealed Case*, 124 F.3d 230, 237 (D.C. Cir. 1997), *rev’d on other grounds sub nom. Swidler & Berlin v. United States*, 524 U.S. 399 (1998); *In re San Juan Dupont Plaza Hotel Fire Litig.*, 859 F.2d 1007, 1015 (1st Cir. 1988)). Rather, information constitutes opinion work product only if it “reflects the attorney’s focus in a meaningful way.” *Id.* at 151. “[T]o convert [a] fact into opinion work product . . . there must be some indication that the lawyer ‘sharply focused or weeded the materials.’” *Id.* (quoting *In re Sealed Case*, 124 F.3d at 236).

2. Analysis

The Targets argue that the Witness’s testimony sought by the SCO calls for production of opinion work product, and that the SCO has made no sufficient showing of necessity and burden to overcome the privilege regardless of whether fact or opinion work product is to be disclosed. In the Targets’ view, the work-product privilege attached to the information sought by the eight questions the SCO proposes to pose to the Witness because those questions will elicit testimony as to her communications with the Targets, including “statements” made during and her “mental

¹⁴ The SCO acknowledges that opinion work product withstands even the force of the crime fraud exception to remain privileged unless the attorney knows of or participates in the crime or fraud. SCO Suppl. Mem. at 1 n.* (citing *In re Grand Jury Subpoena*, No. 16-4096, 2017 WL 3567824, at *3 (4th Cir. Aug. 18, 2017)). Here, the Witness was an unwitting participant in the crime alleged. See Sept. 26 Tr. at 20:13–23.

impressions” of them. *Hickman*, 329 U.S. at 511. With one exception, discussed below, the testimony the SCO seeks is fact work product only, not opinion work product, as the SCO’s proposed inquiry would not require the Attorney do disclose her “personal beliefs,” *id.*, “opinions,” or information that “reflects [her] focus in a meaningful way.” *Boehringer*, 778 F.3d at 151.

The Targets rely on a recent Fourth Circuit decision holding that the question “What did [the Witness] tell you?” sought opinion work product. *In re Grand Jury Subpoena*, No. 16-4096, 2017 WL 3567824, at *3 (4th Cir. Aug. 18, 2017). There, the government, after securing a criminal defendant’s conviction, observed that an exhibit the defendant had introduced appeared to be a forgery. *Id.* at *1. The defendant’s attorney gave the government a higher-quality copy of the exhibit, which confirmed that the exhibit was in fact forged. *Id.* The government sought to interview the attorney and her investigator, both of whom declined to be interviewed, and then issued grand jury subpoenas compelling their testimony. *Id.* The attorney and investigator invoked the work-product privilege and moved to quash. *Id.* The Fourth Circuit determined that the government could ask two questions—“(1) Who gave you the fraudulent documents?” and “(2) How did they give them to you, specifically?”—as these sought only fact work product, but that a third question—“(3) What did [a specific party under investigation] tell you?”—required production of opinion work product. *Id.* at *1, **3–4 (alterations in original). “To answer this question,” the Fourth Circuit reasoned, would require lawyers “to disclose their recollections of witness statements and reveal what they deemed sufficiently important to remember from those discussions.” *Id.* at *3. This information “contain[s] the fruit of the attorney’s mental processes,” the Fourth Circuit held, and thus “falls squarely within the category of . . . opinion work product.” *Id.* (alterations and internal quotation marks omitted). In making this

determination, the Fourth Circuit relied on *Hickman*, where the Supreme Court had deemed improper under the work-product privilege a “functionally equivalent . . . interrogatory . . . which asked the attorney to ‘set forth in detail the exact provisions of any such oral statements or reports [from witnesses].’” *Id.* (quoting *Hickman*, 329 U.S. at 499).

Judge Niemeyer, dissenting, described the panel’s assumption “regarding the nature of memory” as “shaky,” noting the myriad factors at play in why an attorney might recall a conversation with a client, including “[p]erhaps the attorney remembers what the Witness told her about the document because she found it significant to her client’s defense . . . [or] because the Witness made a joke or was wearing an interesting shirt or used a strange turn of phrase[;] [o]r maybe the attorney simply has a good memory and is able to relate accurately what was told to her.” *Id.* at *7 (Niemeyer, J., concurring in part and dissenting in part). Whatever the reason, “[t]he grand jury will never know,” even though “[t]here thus remains an important difference between an attorney’s present memory of a witness’s statement and her contemporaneous notes and memoranda of a witness’s statement, which are written specifically *to document the portions* of the statement that she considered relevant to her client’s case—*i.e.*, what she ‘saw fit to write down.’ Only the latter provides a window into the attorney’s thought process.” *Id.*

Judge Neimeyer’s analysis both is more persuasive and better comports with D.C. Circuit work-product privilege jurisprudence, which rejects “a virtually omnivorous view” of opinion work product, *Boehringer*, 778 F.3d at 152 (quoting *In re Sealed Case*, 124 F.3d at 237), than that of the majority of the Fourth Circuit panel. The Fourth Circuit panel majority appears to conflate as the same question asking “What did the client tell you?” and “What of importance did the client tell you?” These are different questions, and only the latter implicates opinion work product.

Boehringer is on point. The D.C. Circuit held there that documentary materials “contain[ing] only factual information . . . produced by non-lawyers . . . d[id] not reveal any insight into counsel’s legal impressions or their views of the case” and thus was not opinion work product, even though the information was “requested or selected by counsel.” 778 F.3d at 152. Here, the SCO seeks to compel the Witness to testify only as to “factual information”—that the Witness may have selected which of the Targets’ disclosures to include in or omit from the FARA Submissions does not bring the proposed testimony within the scope of opinion work product protection. *Id.*

In any event, *Hickman* is inapposite, as the Supreme Court did not characterize the information sought as opinion work product—indeed, no such distinction between fact and opinion work product was then recognized, as that doctrinal development occurred later. *See generally Hickman*, 329 U.S. 495; *see also In re Grand Jury Subpoena*, No. 16-4096, 2017 WL 3567824, at *6 (Niemeyer, J., concurring in part and dissenting in part) (“In the years since *Hickman*, courts have distinguished between ‘opinion work product’ and ‘fact work product’ when assessing the nature of the showing necessary to justify production of attorney work product.”). *Hickman*, if anything, suggested that the material sought to be produced more properly was characterized as fact than opinion work product by determining that the petitioner had not made the requisite showing of necessity and undue hardship for discovery of fact work product, but which showing is more or less irrelevant to discovery of opinion work product. *Hickman*, 329 U.S. at 508–09; *see also Vinson & Elkins*, 124 F.3d at 1307.

Thus, the first six questions amount, if anything, to only fact work product. They each seek only factual information—testimony as to the Witness’s mere “present memory of a [client’s] statement,” *id.*—and thus do not require the Witness to reveal her “mental processes,”

id. at *3. The mere fact that the Witness can recall things the Targets told her provides, by itself, no “indication that [she] ‘sharply focused or weeded the materials.’” *Boehringer*, 778 F.3d at 152 (quoting *In re Sealed Case*, 124 F.3d at 236). At most, it reveals “some inkling of [the Witness’s] mental impressions,” which itself is not “protected as opinion work product.” *Id.* at 151 (quoting *San Juan*, 859 F.2d at 1015); *see also id.* at 152 (“[T]he mere fact that an attorney had chosen to write a fact down [i]s not sufficient to convert that fact into opinion work product.”). The eighth question does not seek work product at all, for reasons discussed *supra* Part II.A.6.

Without additional foundation, however, the SCO’s proposed seventh question—whether the Witness “memorialize[d]” her conversations with the Targets regarding the FARA Submissions, Sept. 26 Tr. at 26:15–16—seeks opinion work product. While the mere fact that an attorney can recall something her client told her does not necessarily “reveal what [she] deemed sufficiently important to remember from those discussions,” *In re Grand Jury Subpoena*, No. 16-4096, 2017 WL 3567824, at *3, as Judge Nieyemer ably explained, the fact that an attorney memorialized, in writing or another form, particular client communications reveals her “thought processes,” *id.* at *7 (Niemeyer, J., concurring in part and dissenting in part), by showing her “focus in a meaningful way,” *Boehringer*, 778 F.3d at 151, particularly if the attorney only recorded a client’s communication that she considered significant in some way. In that circumstance, an attorney’s “contemporaneous notes and memoranda of a [client’s] statement . . . provides a window into [her] thought process” precisely because they show “that she considered” the statement “relevant to her client’s case” and “saw fit to write [them] down.” *In re Grand Jury Subpoena*, No. 16-4096, 2017 WL 3567824, at *7 (Niemeyer, concurring in part and dissenting in part) (internal quotation marks omitted).

Thus, with the exception of the seventh question, the SCO seeks to compel production of fact work product only, and thus must show “a substantial need for the materials and an undue hardship in acquiring the information any other way.” *Vinson & Elkins*, 124 F.3d at 1307. This, in turn, requires a showing only that “adequate reasons” exist to compel the Witness’s testimony. *Boehringer*, 778 F.3d at 153 (quoting *In re Sealed Case*, 676 F.2d at 809). The SCO has satisfied this burden here by showing that any protected material is relevant to establishing criminal activity, as already explained *supra* Part II.A, and that the only other persons who plausibly could describe the Witness’s communications with the Targets are the Targets themselves, who likely would be unwilling to testify before the grand jury, for obvious reasons.

Target 2 disputes whether the SCO can demonstrate substantial need for the Witness’s testimony, asserting that the SCO already has the FARA Submissions, which purported to be written on the Targets’ behalves, as well as evidence of inconsistencies between the FARA Submissions’ representations and the Targets’ behavior, *see* Gov’t Ex Parte Decl.; Gov’t Ex Parte Suppl. Decl., and thus that the SCO seeks merely “corroborative evidence.” Suppl. Target 2 Opp’n at 7–8. The Court disagrees. The Witness’s testimony would not be merely corroborative because the SCO does not possess direct evidence that the Targets knew of or approved the FARA Submissions’ contents before the Witness disclosed them to DOJ, nor can the SCO plausibly obtain such evidence from sources other than the Witness or the Targets themselves. For these reasons, the work-product privilege does not prevent the SCO from compelling the Witness’s testimony.

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*

To summarize, the SCO may pose to the Witness the first six and eighth proposed questions. The first six questions seek testimony that (1) falls within the scope of the crime-

fraud exception, (2) is unprotected by the attorney-client privilege, which the Targets have impliedly waived as to the information targeted by those questions, and (3) constitutes fact work product, which the SCO overcomes by showing adequate reasons. The eighth question seeks testimony that neither the attorney-client nor work-product privileges shield from disclosure at all. The seventh question seeks opinion work product, and the SCO has not made the extraordinary showing necessary to justify posing it, nor shown (or even alleged, see SCO Suppl. Mem. at 1 n.*) that the Witness knew of or participated in the Targets' crimes, a precondition to compelling production of opinion work product under the crime-fraud exception.

III. CONCLUSION

The SCO's motion to compel the Witness's testimony is granted. The SCO may compel the Witness to answer seven of the eight questions enumerated at the September 26, 2017 hearing. The SCO is directed, by October 3, 2017, to review this Memorandum Opinion and propose to the Court any redactions that should be made prior to making the opinion available under seal to the Witness and privilege holders. The order will be stayed until October 4, 2017, on which date, if not earlier, the Witness and privilege holders will be provided a copy of this Memorandum Opinion, with any necessary redactions, under seal. The Witness or the privilege-holders may seek a further stay of this Order pending any appeal.

An appropriate Order, which is filed under seal, accompanies this Memorandum Opinion.

Date: October 2, 2017



Beryl A. Howell

BERYL A. HOWELL
Chief Judge

UNITED STATES V. FALLAH EL FALLAH

*DOCKET NO. 15-612 (C.D.C.A.)
PLEADINGS RE ATTORNEY CLIENT
PRIVILEGE*

Exhibit W

1 SANDRA R. BROWN
 Acting United States Attorney
 2 THOMAS D. COKER
 Assistant United States Attorney
 3 Chief, Tax Division
 ROBERT F. CONTE (SBN 157582)
 4 CHARLES PARKER (SBN 283078)
 Assistant United States Attorneys
 5 Federal Building, Suite 7211
 300 North Los Angeles Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-6607/2740
 7 Facsimile: (213) 894-0115
 E-mail: Robert.conte@usdoj.gov

8 Attorneys for Plaintiff
 9 United States of America

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

<p>13 UNITED STATES OF AMERICA, 14 Plaintiff, 15 v. 16 FALLAH AL FALLAH, 17 Defendant.</p>	<p>NO. CR 15 - 612 DMG GOVERNMENT'S POSITION WITH RESPECT TO DISPUTED ITEMS RE: ANTICIPATED QUESTIONS TO ATTORNEY J.D. AND THE MAY 22, 2008 EMAIL</p>
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18
 19 GOVERNMENT'S POSITION¹

20 One of the pillars of the attorney-client privilege is that
 21 the communication between attorney and client be made in
 22 confidence with the intent that it remain in confidence. In
 23 this case, the communications between J.D. and defendant
 24 regarding the preparation of individual tax returns were not
 25 intended to remain in confidence. They were intended to be

26 ¹ In its opposition (Doc 59) to defendant's motion in limine, the
 27 government argued that questions to J.D. relating to defendant's
 28 tax return preparation and the May 22, 2008 email are not barred
 by the attorney-client privilege. Those arguments are
 incorporated herein by reference.

1 transmitted to Pamala Mora, a CPA, to assist in preparing tax
2 returns for defendant. These communications therefore are not
3 privileged. See United States v. Abrahams, 905 F.2d 1276, 1284
4 (9th Cir. 1990).

5 The May 22, 2008 email (Gov. Ex. 1) and a related May 22,
6 2008 email string (Gov. Ex. 2)² clearly show that defendant, J.D.
7 and Mora were engaged in an email discussion about preparing tax
8 returns for defendant. The very subject matter headings of the
9 emails makes this clear. They read "Fallah Alfallah's Tax
10 Return" (email from J.D. to Mora, Gov. Ex. 1), and "Finalizing
11 Tax Information" (email string including a discussion that
12 includes defendant, J.D., and Mora, Gov. Ex. 2).

13 Defendant was actively involved in providing information to
14 J.D. so that information could be used to prepare tax returns
15 for him. See Gov. Ex. 1 and 2. There was no expectation that
16 this information would remain confidential, and accordingly the
17 privilege does not apply. The privilege only applies to
18 communications "made in *confidence*" to obtain legal advice.
19 United States v. Gurtner, 474 F.2d 297, 298 (9th Cir. 1973).

20 J.D. asks defendant in Gov. Ex. 2 "I need the following data
21 before the tax returns can be filed" and defendant provides a
22 set of responses for the purpose of finalizing his tax returns
23 which are to be prepared by Mora. For example, to the question
24 "[o]ccupation - exact title," defendant responds "[s]elf
25 [e]mployed, business [a]dvisor." These communications are not

26 ² The May 22, 2008 email string at Gov. Ex. 2 was not the subject
27 of defendant's motion in limine. The government nonetheless
28 includes it here to support its position that the communications
between defendant, J.D. and Mora relating to the preparation of
tax returns were not intended to be confidential.

1 privileged. Defendant also tells J.D. that he did not make any
2 income in 2004, which J.D. communicates to Mora for the purpose
3 of preparing tax returns. See Gov. Ex. 2. Again, these
4 communications are not privileged because they were not intended
5 to be kept confidential. The information was to be passed on to
6 Mora to prepare tax returns. The defendant cannot meet his
7 burden of showing that communications were intended to remain
8 solely with J.D. - a proposition that is unsupported by the
9 facts because J.D. did not prepare tax returns and defendant
10 knew the information was going to be transmitted to Mora to
11 prepare tax returns. See In re Fischel. 557 F.2d 209, 211 (9th
12 Cir. 1977) (communication must be made in confidence between
13 attorney and client); United States v. Layton, 855 F.2d 1388,
14 1406(9th Cir. 1988) (defendant has burden to establish
15 privilege). Defendant must come forward with facts to support a
16 claim of privilege, not simply assert it.

17 The underlying information in the May 22, 2008 email from
18 J.D. to Mora (Gov. Ex. 1) is likewise not privileged because it
19 was provided to J.D. by defendant for the purpose of having Mora
20 prepare tax returns for defendant, and then communicated to Mora
21 by J.D. for that purpose by email.³ Further, any privilege with
22 respect to Gov. Ex. 1 (or any of the Mora emails) has been
23 waived. As set forth in the government's opposition (Doc 59),
24 the Mora emails were produced to the government during the

25 _____
26 ³ In support of its position, the government makes the following
27 offer of proof based on statements by J.D. and Mora: 1) J.D. was
28 not in the business of preparing tax returns; 2) J.D. referred
defendant to Mora to have tax returns prepared; 3) before the
May 22, 2008 email exchanges, defendant had already engaged Mora
to prepared trust tax returns (Forms 1041) for him.

1 investigation with the knowledge of defendant's counsel. The
2 Mora emails have also been the subject of litigation and
3 stipulation by the parties. See Doc 27, 36, 40, 43, 52, and 53.
4 No effort by defendant has been made to claw back any of the
5 Mora emails. See Rule 502(b), Fed. R. Evid.; In re Pacific
6 Pictures, 697 F.3d 1121, 1130 (9th Cir. 2012); Gov. Opposition
7 (Doc 59) pp. 11-13.

8 The government's anticipated questions to J.D. in Appendix
9 A that are in dispute are not barred by the attorney-client
10 privilege. Questions 2 and 3 do not seek confidential attorney-
11 client communications, they merely lay the foundation for the
12 relationship between defendant, J.D. and Mora, and Mora's
13 involvement with defendant's tax returns.

14 Questions 4 and 6 likewise do not seek confidential
15 communications. J.D.'s advice to defendant that he had to file
16 tax returns is not privileged because the advice was given in
17 the context of referring defendant to Mora to have tax returns
18 prepared.⁴ Also, defendant's statement to J.D. that his company
19 did not provide income information is not privileged because
20 this information was communicated in the context of having Mora
21 prepare defendant's tax returns. This conclusion is
22 particularly clear when the communication is placed in the
23 context of the email exchanges at Gov. Ex. 1 and 2, which
24 include defendant, J.D., and Mora under the subject headings
25 "Fallah Alfallah's Tax Returns" and "Finalizing Tax
26 Information".

27
28 ⁴ This advice was also disclosed in the May 22, 2008 email (Gov. Ex. 1) which defendant has not sought to claw back.

1 Question 7 does not seek privileged communications. The
2 question only seeks to lay a foundation for J.D.'s income
3 computation as reflected in the May 22, 2008 email (Gov. Ex. 1),
4 which, as argued above, is not privileged.

5 Finally, with respect to defendant's position that the May
6 22, 2008 email (Gov. Ex. 1) is subject to hearsay exclusion, the
7 government asserts as follows.⁵

8 The May 22, 2008 email contains four disputed statements as
9 follows:

- 10 1. Fallah never filed an individual return for 2004,
11 2005, 2006 and 2007 because he did not live in the
12 country.
- 13 2. I explained to him his mistake and as a US Citizen
14 he would like to rectify it as soon as possible.
- 15 3. He has no proof of income earned because the company
16 he works for in Dubai does not provide that
17 information.
- 18 4. I can tell you based on check stubs that in 2004 he
made \$65,662
- | | |
|-------|--------------|
| 2005- | \$98,523.00 |
| 2006 | \$128,422.43 |
| 2007 | \$138,234.00 |

19 The May 22, 2008 email was provided to the government by
20 defendant's tax return preparer Pamela Mora with the knowledge
21 of defendant's counsel. The statements in the May 22 email are
22 not excludable hearsay because the government is not offering
23 any of the email statements to prove the truth of the matter
24 asserted. See United States v. Arteaga, 117 F.3d 388, 396 (9th
25 Cir. 1997) (if an out of court statement is not considered for
26 its truth, it is not hearsay); see also United States v.

27 ⁵ Defendant asserts that the May 22, 2008 email (Gov. Ex. 1) is
28 excludible as hearsay. Although not raised in defendant's
motion in limine, the government addresses the objection herein.

1 Johnson, 71 F.3d 539, 543 (6th Cir. 1995) (out of court statement
2 offered to show defendant's statement of mind is admissible).
3 As was previously observed by the Court, the email statements
4 contain two levels of hearsay.

5 Statement 1: Fallah never filed an individual return
6 for 2004, 2005, 2006 and 2007 because he did not live
in the country.

7 The first level of hearsay is the statement from defendant
8 to J.D. that defendant did not file returns because he did not
9 live in the country. This is non-hearsay because the statement
10 is a party admission by defendant. Fed. R. Evid. 801(d).

11 The second level of hearsay is the written email statement
12 from J.D. to Mora. This is non-hearsay because the government
13 is offering it to show only that the defendant knew he did not
14 file returns for each of these years. It is not being offered
15 for the truth - that defendant failed to file the returns and
16 his reason for failing to file.

17 Statement 2: I explained to him his mistake and as a
18 US Citizen he would like to rectify it as soon as
possible.

19 The first level of hearsay is J.D.'s statement to defendant
20 that defendant was mistaken and that he was required to file tax
21 returns. The Court previously found this statement to be non-
22 hearsay because it put defendant on notice of his duty to file
23 tax returns. (Doc 65 p. 4.) Also within the first level of
24 hearsay is the statement from defendant to J.D. that he would
25 like to rectify his error as soon as possible. This is non-
26 hearsay because the statement is a party admission by defendant.
27 Fed. R. Evid. 801(d).

28

1 The second level of hearsay is J.D.'s written email
2 statement to Mora. This statement is offered to show that
3 defendant knew his filing requirements, and not to prove whether
4 defendant's mistake was honest or whether he rectified his
5 error. Thus, it is admissible for this non-hearsay purpose.

6 Statement 3: He has no proof of income earned because
7 the company he works for in Dubai does not provide that
information.

8 The first level of hearsay contains statements from
9 defendant to J.D. that defendant has no proof of income and that
10 his employer does not provide proof of income. This is non-
11 hearsay because they are party admissions by defendant. Fed. R.
12 Evid. 801(d).

13 The second level of hearsay is the written email statement
14 from J.D. to Mora. The statement is being offered to show that
15 defendant misled J.D. into thinking UIB did not provide proof of
16 income information and is probative of defendant's state of
17 mind. It is not offered to show whether UIB could provide proof
18 of income information or to show whether defendant actually
19 possessed such information.

20 Statement 4: I can tell you based on check stubs that
21 in 2004 he made \$65,662
22 2005- \$98,523.00
2006 \$128,422.43
2007 \$138,234.00

23 The first level of hearsay is the information provided on
24 the check stubs to J.D. This is non-hearsay because defendant
25 provided the information to J.D. and it is therefore a party
26 admission under Rule 801(d).

27 The second level of hearsay is the written email statement
28 from J.D. to Mora. The email statement is offered to show that

1 defendant misrepresented his income to J.D. and Mora, and is
2 probative of defendant's state of mind. It is not offered to
3 prove the truth of the statements - the amount of income
4 defendant earned during each year.

5 CONCLUSION

6 For the reasons stated herein, and in the government's
7 opposition (Doc 59) to defendant's motion in limine, the
8 government requests that the Court find that the disputed items
9 are not subject to exclusion by reason of the attorney-client
10 privilege, and that the May 22, 2008 email is not excludible as
11 hearsay.

12
13 Respectfully submitted,

14 SANDRA R. BROWN
Acting United States Attorney
15 THOMAS D. COKER
Assistant United States Attorney
16 Chief, Tax Division

17 Dated: 8/25/17

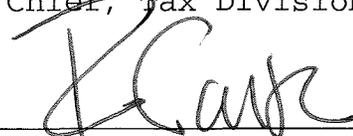
18 
ROBERT F. CONTE
19 CHARLES PARKER
Assistant United States Attorneys
20 Attorneys for the United States
21
22
23
24
25
26
27
28

EXHIBIT 1

Pamela Mora

From: J [redacted] D [redacted] [redacted]@dickerlaw.com]
Sent: Thursday, May 22, 2008 11:04 AM
To: pam@pmoracpa.com
Subject: Fallah Alfalah's Tax Return

Pam:

How are you? I feel like I have not talked to you in ages. I hope business is great and you are great.

I need help. Fallah never filed an individual return for 2004, 2005, 2006 and 2007 because he did not live in the country. I explained to him his mistake and as a US Citizen he would like to rectify it as soon as possible. The only significant events that you need to know other then financial information is that he had another kid in 2008 by the name of [redacted] Alfalah (I will get you her SS #). He also purchased a house in 2007 with gifts given to him by his parents who are not US Citizens. He has no proof of income earned because the company he works for in Dubai does not provide that information.

I can tell you based on check stubs that in 2004 he made \$65,662.00

2005-	\$98,523.00
2006	\$128,422.43
2007	\$138,234.00

These amounts are based on my best ability to figure out the exchange rate. Please let me know what you need. I really appreciate it.

J [redacted] D [redacted]
DICKER & DICKER, LLP
21550 Oxnard Street, Suite 550
Woodland Hills, California 91362
(818) 704-1000

Exhibit 1

EXHIBIT 2

Pamela Mora

From: J [redacted] D [redacted] [jrd@dickerlaw.com]
Sent: Friday, May 23, 2008 9:09 AM
To: pam@pmoracpa.com
Subject: RE: Finalizing Tax Information

I am sending you the 2003 return. They did not make any money in California in 2004. He got laid off his job and that is why they moved. He did not even collect unemployment

From: Pamela Mora [mailto:pam@pmoracpa.com]
Sent: Thursday, May 22, 2008 3:41 PM
To: J [redacted] D [redacted]
Subject: RE: Finalizing Tax Information

1. I still need everyone's date of birth please.
2. If they didn't move until 6/04 were they working in the US in 2004?
3. The last return I have in the file is 2002, did they file in 2003?

P

From: J [redacted] D [redacted] [mailto:jrd@dickerlaw.com]
Sent: Thursday, May 22, 2008 1:33 PM
To: pam@pmoracpa.com
Subject: FW: Finalizing Tax Information

Thank you again.

From: fallah alfallah [mailto:falfallah@yahoo.com]
Sent: Thursday, May 22, 2008 12:17 PM
To: J [redacted] D [redacted]
Subject: Re: Finalizing Tax Information

I would think u know most of this by now. comments in red below.

----- Original Message -----

From: J [redacted] D [redacted] <jrd@dickerlaw.com>
To: fallah alfallah <falfallah@yahoo.com>
Sent: Thursday, May 22, 2008 10:28:39 PM
Subject: Finalizing Tax Information

I need the following data before the tax returns can be filed:

- Occupation—exact title—Self Employed, business Advisor
- Employer's name and address p.o.box 102554 Dubai UAE
- Employer a foreign entity? Not a subsidiary of US?
- Date became resident of UAB? 6/2004
- Own a house in UAB or was it given to you by employer? rent
- Dates left and came on vacation in those years. (Approximate OK) every Christmas and summer from that date
- Do you have a VISA for UAB? If so, what is the VISA number US citizen dont require a visa
- Dates of Birth for you and Alana and the kids u should know this

The documents for 2004, 2005 and 2006 are complete except for these questions.

We filed for an extension for 2007 a while back. I will have her complete it as soon as possible.

J [REDACTED] C [REDACTED]
DICKER & DICKER, LLP
21550 Oxnard Street, Suite 550
Woodland Hills, California 91362
(818) 704-1000

1 SANDRA R. BROWN
Acting United States Attorney
2 THOMAS D. COKER
Assistant United States Attorney
3 Chief, Tax Division
ROBERT F. CONTE (Cal. Bar No. 157582)
4 CHARLES PARKER (Cal. Bar No. 283078)
Assistant United States Attorneys
5 Federal Building, Suite 7211
300 North Los Angeles Street
6 Los Angeles, California 90012
Telephone: (213) 894-6607
7 Facsimile: (213) 894-0115
E-mail: Robert.Conte@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 FALLAH AL FALLAH, a.k.a FALAH
17 NASSER AL FALAH,
18 Defendant.

No. CR 15-0612 DMG
SUPPLEMENTAL BRIEFING RE MAY 22,
2008 EMAIL
[Declaration and evidence filed
herewith]

19
20
21 SUPPLEMENTAL BRIEFING

22 I. Introduction

23 The government continues to maintain that the communications
24 revealed in the May 22, 2008 are not privileged because they relate
25 to tax return preparation. Neither J.D. nor Mora were providing tax
26 planning advice as defendant argues in his briefing, they were
27 attempting to prepare individual tax returns for defendant. Further,
28 Mora was not acting as consultant to J.D. for the purpose of J.D.

1 giving legal advice as defendant's argues on Section B of his
2 Supplemental Memorandum (Doc 74). The government rebuts that
3 argument in Section III below.

4 II. Attorney J.D. was given Implied Authorization to Waive
5 Defendant's Attorney-Client Privilege

6 An attorney can waive the attorney-client privilege when
7 "impliedly authorized" to do so by the client. See Himmelfard v.
8 United States, 175 F.2d 924, 939 (9th Cir. 1949); see also Tasby v.
9 United States, 504 F.2d 332, 336 (8th Cir. 1974) ("It has long been
10 the law that a client may waive protection of the privilege, either
11 expressly or impliedly."). In Himmelfard, the court found the
12 defendants waived their privilege with respect to documents produced
13 during a meeting at which the defendants, the attorney, and the
14 accountant were present. Id. The court likewise held the defendants
15 waived privilege to the documents disclosed by the attorney directly
16 to the accountant outside the presence of the defendants because the
17 defendants had "impliedly authorized" their disclosure. The court
18 reasoned that the defendants knew the accountant had been hired by
19 the attorney for income tax purposes so it was reasonable to conclude
20 that the disclosures made by the attorney were authorized by the
21 defendants. Id.

22 Here, defendant impliedly authorized attorney J.D. to disclose
23 information to Mora for the purpose of tax return preparation. Mora
24 was initially retained by J.D. to prepare trust tax returns on behalf
25 of defendant and, prior to the May 22, 2008 email, Mora had prepared
26 defendant's trust returns for two separate tax years. In addition to
27 the trust returns, Mora had prepared an extension to file defendant's
28 2007 tax return prior to May 22, 2008. Although Mora had prepared

1 and filed numerous trust returns for defendant, Mora and defendant
2 did not directly communicate with each other.¹ Rather than
3 communicating directly, all information necessary to prepare the tax
4 returns was provided to J.D., who then forwarded the information to
5 Mora.

6 Another email string that took place on May 22, 2008, further
7 evidences this arrangement wherein J.D. received information directly
8 from defendant with the intent that the information be forwarded to
9 Mora for tax preparation purposes. Attached to the Carmona
10 Declaration at Exhibit 4 is a true and correct copy of the email
11 string involving defendant, J.D., and Mora that begins May 22, 2008
12 and ends May 23, 2008. In this email string that is nearly
13 concurrent with the email at issue, J.D. asked defendant via email to
14 provide information necessary to file defendant's personal income tax
15 return. Specifically, defendant provided information relating to his
16 occupation, his employer's name and address, whether his employer is
17 a foreign entity, the date he became a resident of the United Arab
18 Emirates ("UAE"), whether he owns a home in the UAE, dates he
19 vacationed, whether he has a VISA, and dates of birth for family
20 members. [Ex. 4.] During an interview with the government, Mora
21 reviewed this email and explained that all of this information was
22 relevant to the preparation of defendant's tax return. [Carmona
23 Decl. Ex. 1C ¶12.]

24 J.D. had been acting as an intermediary between defendant and
25 Mora for over a year before the May 22, 2008 email. Any
26 communication, whether verbal or written, that was made by J.D. to
27

28 ¹ Mora believes the first time she communicated directly with
defendant was in April 2009. [Carmona Decl. Ex. 1C ¶19.]

1 Mora, was therefore done with the implied authorization of defendant.
2 Defendant knew that this information was being provided to Mora for
3 the non-privileged purpose of preparing tax returns. This
4 information extended to communications related to defendant's
5 individual income tax returns because at the time of the email Mora
6 had been retained to prepare defendant's personal income tax returns.
7 It follows that the necessary element of confidentiality is also
8 lacking because defendant knew the information was going to be
9 disclosed to Mora - a third party.

10 III. The Privilege does Not Extend to any Communications made to Mora

11 It is well settled that there is no accountant client privilege.
12 Couch v. United States, 409 U.S. 322, 335 (1973) ("no confidential
13 accountant-client privilege exists under federal law"). Accordingly,
14 courts have been careful not to expand the attorney-client privilege
15 to include routine accounting and tax return preparation discussions.
16 Olender v. United States, 210 F.2d 795, 806 (9th Cir. 1954). To do
17 so would contravene the narrow purpose of the privilege, to foster
18 confidential communications between attorney and client. See Upjohn
19 Co. v. United States, 449 U.S. 383, 389 (1981).

20 Here, defendant seeks to impermissibly expand the privilege to
21 include routine communications made for tax preparation purposes.
22 The contents of the May 22, 2008 email contain communications that
23 were made for the purpose of preparing defendant's tax return. This
24 is self-evident from the content of the email itself and the related
25 communications between J.D. and Mora. The day after the May 22, 2008
26 email, J.D. disengaged defendant and asked Mora to send an invoice
27 for her services. [Carmona Decl. Ex. 3A.] Mora prepared an invoice
28 for "Preparation of 2004 through 2007 Individual Income Tax Returns

1 and Research related to Foreign Income Exclusion."² [Carmona Decl.
2 Ex. 3B.] The bill does not refer to any services beyond the scope of
3 tax preparation. This is consistent with J.D.'s previous statements
4 that her practice consists of estates and trusts, she does not
5 prepare tax returns, she is not a tax practitioner, her practice does
6 not include individual income taxes, and that Mora was retained to
7 handle defendant's individual income taxes and other tax issues.

8 [Carmona Decl. Ex. 1D ¶¶30, 31.]

9 A close look at each of the communications contained in the May
10 22, 2008 email also show Mora was acting as a return preparer. The
11 third sentence of the May 22, 2008 email contains two statements
12 related to the preparation of defendant's income tax return. The
13 first is the statement by J.D. to defendant that it was a mistake not
14 to file tax returns for years 2004 through 2007. This is directly
15 related to the preparation of the 2007 income tax return because J.D.
16 is informing defendant that it needs to be filed. This is not tax
17 planning advice and was thereafter communicated to Mora via email
18 during the attempted preparation of defendant's 2007 income tax
19 return. The second statement was made by defendant to J.D. wherein
20 defendant stated that he would like to rectify his failure to file
21 income tax returns. Again, this statement was made by defendant to
22 J.D. for the purpose of initiating the preparation of his tax returns
23 - a non-privileged communication. That information was thereafter
24 forwarded by J.D. to Mora to begin the preparation of defendant's
25

26 ² Determination of whether the foreign exclusion applied was
27 necessary for the completion of defendant's income tax return because
28 defendant to J.D. he had earned foreign income. To determine whether
the exclusion applies, taxpayers must complete IRS Form 2555 that is
attached to and submitted with the taxpayer's return. A Form 2555 is
attached to the Carmona Declaration at Exhibit 3D.

1 income tax returns. Defendant did not provide this information to
2 obtain legal advice. Rather, it was provided with the intent to have
3 returns prepared to rectify defendant's failure to file his income
4 tax returns.

5 The remainder of the statements contained in the May 22, 2008
6 email were also made for the specific purpose of preparing tax
7 returns. This includes information regarding: 1) the birth of an
8 additional dependent; 2) the receipt of a gift to purchase a house;
9 3) whether defendant has proof of income; and 4) defendant's income
10 for years 2004 through 2007. All of this information is necessary
11 for the preparation of defendant's income tax returns and the
12 privilege does not attach to any of the communications contained in
13 the May 22, 2008 email.

14 Defendant argues that the attorney-client privilege applies here
15 because Mora was hired for tax preparation and "to provide assistance
16 in comprehending Al Fallah's financial situation and tax liability."
17 [Doc 74 p. 7.] Defendant's contention that Mora was engaged by J.D.
18 to provide tax advice is in stark contrast to the fact that on May
19 22, 2008, Mora was actively working with J.D. to obtain the
20 information necessary to file defendant's 2007 income tax return.
21 This is also consistent with Mora's invoice that states she billed
22 defendant for tax preparation services. [Carmon Decl. Ex. 3B.]
23 Further, in all discussions the government had with Mora during the
24 course of this investigation, Mora continually stated she was hired
25 to prepare tax returns. Mora's statements, her invoice, and the
26 concurrent May 22, 2008 email show that Mora was in the process of
27 filing returns for defendant on May 22, 2008, not assisting J.D. with
28 tax advice.

1 To the extent that Mora was hired to provide legal advice about
2 defendant's taxes or assist J.D. with such advice, which the
3 government contends was not occurring in the May 22, 2008 email, the
4 privilege does not apply. Any tax advice is a "legal" issue because
5 the Internal Revenue Code controls how income is taxed. United
6 States v. ChevronTexaco Corp., 241 F. Supp. 2d 1065, 1072 (N.D. Cal.
7 2002). It therefore follows that the attorney-client privilege does
8 not extend "where the accountant is hired merely to give additional
9 legal advice about complying with the tax code even where doing so
10 would assist the attorney in advising the client." Id. citing United
11 States v. Ackert, 169 F.3d 136, 139 (2d Cir. 1999) ("a communication
12 between an attorney and a third party does not become shielded by the
13 ... privilege solely because the communication proves important to
14 the attorney's ability to represent the client). Even if Mora was
15 assisting J.D. in the advisement of defendant, which there is no
16 evidence of, the communications between the two were not privileged
17 because it was advice from an accountant about tax compliance.
18 Further, the privilege does not apply "if the advice sought is the
19 accountant's rather than the lawyer's." United States v. Kovel, 296
20 F.2d 918, 922 (2d Cir. 1961). Thus, even legal advice provided by
21 Mora is exempt from the privilege.

22 Defendant relies on United States v. Kovel, 296 F.2d 918 (2d
23 Cir. 1961), United States v. Judson, 322 F.2d 460 (9th Cir. 1963),
24 and United States v. Jacobs, 322 F. Supp. 1299 (C.D. Cal. 1971) for
25 the contention that the attorney-client privilege should extend to
26 Mora because Mora was retained by J.D. to assist with defendant's
27 financial advisement. The Kovel court noted that "[n]othing in the
28 policy of the privilege suggests that attorneys, simply by placing

1 accountants... on their payrolls," extends the attorney-client
2 privilege to such accountants. Kovel, 296 F.2d at 921. Rather, the
3 privilege extends only to "persons who act as the attorney's agents."
4 Id. citations omitted.³ Here, Mora was not acting as an agent of
5 J.D. nor assisting J.D. while defendant was "relating a complicated
6 tax story to the lawyer..." Here, the exact opposite occurred, where
7 J.D. was providing information to Mora for the preparation of tax
8 returns and Mora was not directly involved with defendant's
9 discussions with J.D.

10 The facts of Judson and Jacobs are distinguishable because the
11 accountants in Judson were hired to assist the attorney with an
12 ongoing criminal investigation of the clients. Judson, 322 F.2d at
13 462. In order for the attorney to "carry on an adequate
14 representation" of the clients, the attorney requested the
15 accountants prepare the clients' net worth statement. Id. The court
16 found that the net worth statement was prepared at the attorney's
17 request for the purpose of advising and defending the clients. Id.
18 Likewise, in Jacobs, the accountant was employed by the attorney to
19 assist the attorney to give a legal opinion to the clients. Jacobs,
20 322 F. Supp. at 1301. Here, the information disclosed by J.D. to
21 Mora was not related to the advisement or defense of defendant, nor
22 was Mora acting in a role as an advisor to J.D. The information
23 disclosed by J.D. in the May 22, 2008 email was related to the
24 preparation of defendant's personal income tax returns and had no
25 relevance to any legal advice J.D. may have provided defendant.

27
28 ³ The court did not have facts sufficient to determine whether
the information provided by the client to the accountant was
privileged.

1 IV. The Privilege Was Waived By Defense Counsel Gary Slavett

2 Rule 502(b) of the Fed. Rule of Evidence (Rule 502(b)) is clear,
3 an inadvertent disclosure of an attorney-client communication waives
4 the privilege if the holder of the privilege does not take reasonable
5 steps to prevent the disclosure and does not promptly take reasonable
6 steps to rectify the error. Rule 502(b), Fed. Rule of Evidence
7 (emphasis added). Rule 502 applies to documents produced pursuant to
8 a federal grand jury subpoena during a criminal investigation. See
9 In re Pacific Pictures, 679 F.3d 1121, 1125, 1129 (9th Cir. 2012)
10 (documents produced pursuant to a grand jury subpoena). And without
11 the threat of contempt, the subpoena itself does not render the
12 production of documents compelled. Id. at 1130.

13 By its plain language, the Rule is not limited to disclosures by
14 the holder of the privilege, and appears to include inadvertent
15 disclosures by third-parties of which the holder is aware of. See
16 Rule 502(b)(1) (first element of test is not limited to holder of
17 privilege). The Rule's admonitions apply to all federal proceeding,
18 both civil and criminal.

19 Here, although defendant's CPA produced the May 22, 2008 email
20 to the government, defendant (through his attorney Slavett) was in
21 the loop as to its production, was contemporaneously provided with a
22 copy of the May 22, 2008 email that had been produced, and did not
23 take reasonable steps to claim privilege and claw the email back.
24 Accordingly, the Court should find that any privilege with respect
25 the May 22, 2008 email has been waived.

26 The facts in the record that support this conclusion are as
27 follows:

- 28 1. Slavett represented defendant during the criminal

1 investigation and appears to have been aware that Mora had been
2 served with a subpoena seeking all e-mail communications with
3 defendant. [Carmona Decl. ¶3a.]

4 2. Slavett was aware that Mora complied with the subpoena by
5 searching the term "Fallah" in the subject heading, and he was
6 provided with a copy of the May 22, 2008 email (and other Mora
7 emails) that were produced to the government. [Carmona Decl. ¶3b.]

8 3. Slavett was initially present at the interview with Mora in
9 March 2014 during which the Mora emails were discussed (though he did
10 not participate in the interview.) [Carmona Decl. ¶2c.]

11 4. Slavett responded to a subpoena asking for copies of all
12 emails in which the duty to file tax returns was addressed with
13 defendant, the very subject of the May 22, 2008 email. [Carmona
14 Decl. ¶3c.]

15 Further, copies of a non-exclusive set (bates US 8385 - 8396) of
16 the Mora emails in which tax return preparation was discussed were
17 filed with the Court at Doc 27-1 in 2016. Although the May 22, 2008
18 email was not included in this set, it was within 40 pages (bates
19 8345) of those filed with the Court. The defendant stipulated and
20 the Court has ordered that the emails included in Doc 27-1 may be
21 admitted at trial. See Doc 53. The May 22, 2008 email was not
22 buried in tens of thousands of nondescript documents as defendant
23 contends. [See Doc 74 p. 10.]

24 At no time, until just recently, has defendant raised any
25 objection to the May 22, 2008 email, or taken any steps, let alone
26 reasonable efforts, to claw the email back. By the plain language of
27 Rule 502, to the extent that the May 22, 2008 email contains
28 privileged communications, the privilege has been waived.

1 Waiver is a bedrock principle of the privilege itself. See In
2 re Fischel, 557 F.2d 209, 211 (9th Cir. 1877) (in order to establish
3 the privilege, party must show it has not been waived). If a party
4 does not does not take reasonable steps to protect the communication
5 and keep it confidential, he cannot later attempt to block it from
6 the finder of fact. The communication is no longer in confidence.
7 If a client wishes to preserve the privilege, the confidentiality of
8 the communication must be treated like a "crown jewel." In re Sealed
9 Case, 877 F.2d 976, 980 (D.C. Cir. 1989).

10 Here, the Court should find that defendant (through his lawyer)
11 has waived the privilege (to the extent one exists) with respect to
12 the May 22, 2008 email. During the long course of this matter, no
13 steps have been taken to keep the email in confidence, and
14 accordingly the privilege has been waived.⁴

15 In many Circuits it used to be the rule that virtually any
16 disclosure of a communication protected by the attorney-client
17 privilege, even if inadvertent, worked as a waiver of the privilege.
18 See In re Grand Jury Proceeding, 727 F.2d 1352, 1356 (4th Cir. 1984);
19 In re Sealed Case, 877 F.2d 976, 980 (D.C. Cir. 1989); Elliot v. Fed.
20 Bureau of Prisons, 521 F.Supp.2d 41, 58 (D.D.C. 2007). Congress,
21 however, partially changed this strict approach by enacting Rule
22 502(b) in 2008. The Rule now addresses how to evaluate the question
23 of waiver where there has been an inadvertent disclosure in a federal
24 proceeding, as defendant contends is the case here. See Williams v.
25 Dist. of Columbia, 806 F.Supp.2d 44, 48 (D.D.C. 2011). As with the
26

27 ⁴ Defendant's reliance on United States v. Gurtner to support
28 the timeliness of his objection is misplaced. At issue in Gurtner
was the timeliness of trial objections, not the timeliness of Rule
502(b) objections.

1 privilege itself, the party claiming that that the disclosure was
2 inadvertent bears the burden of establishing that the three elements
3 of Rule 502(b) have been met. Id. Even if the document at issue is
4 privileged and inadvertently disclosed, if the "disclosure is not
5 excused by the application of Rule 502, then the privilege protecting
6 it from production is gone." Id. citing Amobi v. D.C. Dep't of
7 Corrections, 262 F.R.D. 45, 53 (D.D.C. 2009). Under the Rule, a
8 party must take reasonable steps to prevent the disclosure and
9 rectify any error once discovered. Rule 502(b); Williams, 806
10 F.Supp.2d at 51. In this case, defendant took no steps to prevent
11 the disclosure of the email, and no steps to claw it back. Defendant
12 asserts he acted reasonably but has not come forward with any
13 evidence that he acted reasonably and with due diligence, which is
14 his burden to do. Defendant's lack of evidence should be construed
15 against him and the Court should find that the privilege has been
16 waived.

17 CONCLUSION

18 For the reasons set forth herein, and in the government's
19 related pleadings and evidence, the Court should find that the May
20 22, 2008 email is admissible at trial.

21 Respectfully by:

22 SANDRA R. BROWN
23 Acting United States Attorney
24 THOMAS D. COKER
25 Assistant United States Attorney
26 Chief, Tax Division

27 Dated:

28 /s/ RC and CP
ROBERT F. CONTE/CHARLES PARKER
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES—GENERAL

Case No. CR 15-612-DMG Date October 19, 2017

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

Interpreter N/A

<u>KANE TIEN</u> <i>Deputy Clerk</i>	<u>NOT REPORTED</u> <i>Court Reporter</i>	<u>NOT PRESENT</u> <i>Assistant U.S. Attorney</i>
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<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendant(s):</u>	<u>Present</u>	<u>Appt.</u>	<u>Ret.</u>
FALLAH AL FALLAH	NOT		X	Adam H. Braun	NOT		X

Proceedings: **IN CHAMBERS – ORDER RE ATTORNEY-CLIENT COMMUNICATIONS [57]**

On July 11, 2017, Defendant Fallah Al Fallah filed a motion *in limine* (“MIL”) seeking, *inter alia*, to exclude certain testimony of attorney J.D. under Rule 501 as privileged attorney-client communications. [Doc. # 57.] On August 3, 2017, the Court issued an order ruling on Defendant Al Fallah’s MIL, which included a requirement that counsel (1) meet and confer regarding the admissibility/exclusion of the items listed by the Government regarding subject areas and anticipated questions it seeks to ask Defendant’s attorney, J.D., which the Government contends are not privileged and (2) file a joint statement indicating their remaining disputes. [Doc. # 65.]

On August 25, 2017, counsel filed their joint statement listing the items as to which the parties are in agreement as to admissibility and listing those items as to which dispute remains (“Joint Statement”). [Doc. # 68.] On that same date, the Government filed its Position with respect to the disputed items. [Doc. # 69.] On August 28, 2017, the Government filed its Supplemental Position Re: the May 22, 2008 Email. [Doc. # 70.] On September 1, 2017, Defendant Al Fallah filed his Position regarding the disputed items. [Doc. # 71.]

On September 20, 2017, the Court issued an order requesting further briefing regarding whether there was a waiver of the attorney-client privilege. [Doc. # 73.] On September 27, 2017, Defendant filed his supplemental memorandum [Doc. # 74], and on October 4, 2017, the Government filed its responsive memorandum [Doc. # 75].

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The Government listed the subject areas and anticipated questions it seeks to ask J.D. in Appendix A, attached to its opposition to Defendant's MIL. [Doc. # 59.] According to their Joint Statement, the parties are in agreement and Defendant has no objection to the admissibility as to the following: (1) questions 1 through 8 of the Questions Relating to Q8 LLC, (2) questions 1 through 8 of the Questions Relating to Q8 Trust, and (3) questions 1 and 5 of the Questions Relating to Tax Returns. Disputes remain as to the admissibility of responses to questions 2, 3, 4, 6 and 7 of the Questions Relating to Tax Returns. Additionally, a dispute has arisen as to the admissibility of a May 22, 2008 email sent by attorney J.D. to tax advisor Pam Mora. Defendant challenges the admissibility of this email based on hearsay and the attorney-client privilege. Having considered the papers filed herein, the Court has determined the admissibility as to those remaining issues as set forth below.

I.

LEGAL STANDARD

A. ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege protects "(1) communications (2) made in confidence (3) by the client (4) in the course of seeking legal advice (5) from a lawyer in his capacity as such, and applies only (6) when invoked by the client and (7) not waived." *United States v. Abrahams*, 905 F.2d 1276, 1283 n. 10 (9th Cir. 1990). "Although communications made *solely* for tax return preparation are not privileged, communications made to acquire legal advice about what to claim on tax returns may be privileged." *Id.* at 1284.

A "disclosure does not operate as a waiver in a federal or state proceeding if: (1) the disclosure is inadvertent; (2) the holder of the privilege . . . took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error" Fed. R. Evid. 502(b).

As with all evidentiary privileges, the burden of proving that the attorney-client privilege applies rests not with the party contesting the privilege, but with the party asserting it. *United States v. Bump, supra*, 605 F.2d at 551; *United States v. Landof*, 591 F.2d 36, 38 (9th Cir. 1978); *In re Horowitz, supra*, 482 F.2d at 82. One of the elements that the asserting party must

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prove is that it has not waived the privilege. [Citations omitted.]

Weil v. Investment/Indicators, Research and Management, Inc., 647 F.2d 18, 25 (9th Cir. 1981).

B. HEARSAY

As a general rule, an out-of-court statement offered to prove the truth of the matter asserted is inadmissible hearsay. Fed. R. Evid. 802. A statement offered against an opposing party and “made by the party’s agent or employee on a matter within the scope of that relationship and while it existed,” however, is not hearsay. Fed. R. Evid. 801(d)(2)(D).

II.

DISCUSSION

A. THE MAY 22, 2008 EMAIL FROM J.D. TO PAM MORA

1. Attorney-Client Privilege: J.D.’s Disclosure to Mora

The May 22, 2008 email contains the following statements:

1. Fallah never filed an individual return for 2004, 2005, 2006 and 2007 because he did not live in the country.
2. I explained to him his mistake and as a U.S. Citizen he would like to rectify it as soon as possible.
3. He has no proof of income earned because the company he works for in Dubai does not provide that information.
4. I can tell you based on check stubs that in 2004 he made \$65,662.00

2005-	\$98,523.00
2006	\$128,422.43
2007	\$138,234.00

[Doc. # 69, Exh. 1]

UNITED STATES DISTRICT COURT
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Defendant argues that J.D.'s email statements to Mora are privileged in that they were made by J.D. in the course of Defendant's having sought legal advice from J.D. If that is the case, the question is whether J.D.'s disclosure to Mora results in a waiver of the attorney-client privilege. It is Defendant's burden to prove the existence of the privilege and that it has not been waived. From the evidence provided, however, it appears that J.D., on behalf of Defendant, sought Mora's assistance for purposes of preparing tax returns for Q8 LLC, Q8 Corporation and four trusts, that Defendant was aware of Mora's retention for that purpose, and that Mora communicated with Defendant for tax return preparation purposes through J.D. (i.e., J.D. relayed Mora's tax return questions to Defendant and, after obtaining Defendant's responses, relayed Defendant's responses to Mora). Thus, Defendant was aware of, and authorized, J.D.'s communication with Mora about his tax returns on his behalf.

The evidence in the record indicates that Mora was retained by J.D. for the purpose of preparing tax returns for Defendant's companies and that Defendant authorized J.D. to retain Mora for this purpose on his behalf. There is no evidence that Mora's tax expertise was used to assist J.D. in the provision of legal advice to Defendant. Because retaining and using Mora, an accountant, for tax return preparation purposes is not covered by the attorney-client privilege, J.D.'s communication to Mora is not covered by the attorney-client privilege to the extent it was for the purpose of having Mora prepare tax returns.

In *Himmelfarb v. United States*, 175 F.2d 924, 939 (9th Cir. 1949), the court held that when a client impliedly authorizes his attorney to make disclosures to a third person, such as an accountant outside the protection of the attorney-client privilege, the disclosure by the attorney to that third person "is no different than where the communication is made to the attorney in the presence of a third person who is not indispensably necessary to the communication" – i.e., not protected by the attorney-client privilege due to an implied authorization to make the disclosure. In the instant case, Defendant knew and approved of J.D.'s retention of Mora to prepare Defendant's tax returns and Defendant communicated with Mora through J.D. As such, Defendant impliedly authorized J.D. to make disclosures to Mora, thereby waiving the attorney-client privilege. The issue remains as to the scope of this implied waiver or authorization.

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Statement ## 3 and 4 in the email provide information that would typically be relevant and helpful for tax return preparation purposes and, therefore, are not confidential communications between an attorney and her client made for purposes of providing/receiving legal advice. Even if they could be considered marginally within the purview of privileged communications, the evidence indicates an implied waiver of the privilege in that their disclosure by J.D. to Mora, was impliedly authorized by Defendant. Accordingly, Statement ## 3 and 4 in the email are not protected by the attorney-client privilege.

No doubt, Defendant would argue that Statement ## 1 and 2 in the email are not the kind of information typically communicated between an accountant and her client for tax return preparation purposes and are, instead, privileged communications that are beyond the scope of any disclosure that Defendant could have impliedly authorized J.D. to make. The Court need not reach this issue, however, because the Court finds, below, that even if the attorney-client privilege protects these statements, the privilege was waived when Mora disclosed the email to the Government.

2. Attorney-Client Privilege: Mora's Disclosure to the Government

Even if the Court assumes that Statement ## 1 and 2 in the May 22, 2008 email to Mora remain protected by the attorney-client privilege after the above analysis, Mora's production of the email to the Government with the knowledge of Defendant's counsel, resulted in a waiver because neither Defendant nor his counsel took any steps to rectify the error, as required by Fed. R. Evid. 502(b)(3). The Government has provided an uncontroverted declaration of Internal Revenue Service Agent Geronimo Carmona, who states that on March 18, 2014, Mora informed him "that all the documents she provided me in response to two government subpoenas, including the email she produced, were also sent to defendant's attorney Gary Slavett." [Doc. # 59 at 26.] As such, it is uncontroverted that Defendant's attorney was notified of the content of J.D.'s email that was being disclosed to the government.

Defendant contends that the July 11, 2017 filing of his MIL, more than three years after Defendant's attorney was informed of the disclosure, was the "earliest possible

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opportunity” for Defendant to make an objection to the disclosure because of the voluminous discovery received from the Government.¹

For support, Defendant cites *United States v. Gurtner*, 474 F.2d 297, 299 (9th Cir. 1973), which held that defendant’s objection to disclosure of privileged communications was untimely because it was not raised when the disclosure was made, during the direct testimony of a testifying witness at trial, and was only made later when the defendant was testifying on cross-examination. Defendant contends that because *Gurtner* held that objecting during direct testimony at trial is sufficiently prompt, his objection raised months before trial is sufficient. In *Gurtner*, however, the disclosure occurred *during* the direct testimony of a witness at trial, and the court held that an objection not made during that direct testimony was not sufficiently prompt. While objection is timely when raised during the direct testimony of a witness whose testimony discloses the privileged communication, that certainly does not mean that raising such an objection is always timely if raised during direct testimony at trial regardless of when the disclosure was made. What constitutes prompt reasonable steps to rectify the error of disclosure, of course, depends on the circumstances.

Here, notice of the disclosure was given to Defendant’s counsel in 2014. Thereafter, more than three years elapsed during which time neither Defendant nor his attorneys took any steps to claim the privilege and claw the email back, and Defendant provides no explanation or excuse for such inaction. Given that this is Defendant’s burden, the Court finds that Defendant has failed to show that a waiver did not occur.

Accordingly, the attorney-client privilege does not preclude the admissibility of the four statements contained in J.D.’s May 22, 2008 email to Mora.

3. Hearsay

There are two levels of potential hearsay contained in J.D.’s May 22, 2008 email: (1) the first level – the entire email as a statement by J.D. to Mora and (2) the second level – each of the four statements listed in J.D.’s email. The first level, J.D.’s email to Mora, is not hearsay because it is a statement offered against Defendant and made by

¹ Defendant’s MIL, however, did not raise an objection to the admissibility of J.D.’s May 22, 2008 email. In fact, admissibility of the email was not even challenged until supplemental briefing on the MIL was filed in response to the Court’s August 3, 2017 order.

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Defendant's agent on a matter within the scope of the relationship and while that relationship existed. Fed. R. Evid. 801(d)(2)(D).

The second level of potential hearsay is analyzed as follows:

Statement #1: Statement by Defendant to J.D. that he had not filed returns:

Defendant's statement that he had not filed returns is not hearsay because it is a party admission. Fed. R. Evid. 801(d)(2)(A).

Statement #2: Statement by J.D. to Defendant that Defendant had made a mistake he would like to rectify:

J.D.'s statement to Defendant is not hearsay because it is not offered to prove the truth of the matter asserted. Instead, it is offered to prove that the statement was made to Defendant to prove that Defendant was put on notice of his obligation to file individual tax returns.

Statement #3: Statement by Defendant to J.D. that Defendant has no proof of income:

Defendant's statement that he had no proof of income is not hearsay because it is a party admission. Fed. R. Evid. 801(d)(2)(A).

Statement #4: Statement about Defendant's income based on check stubs:

The information based on the check stubs is not hearsay because it was provided to J.D. by Defendant and, as such, it is a party admission. Fed. R. Evid. 801(d)(2)(B).

Accordingly, the hearsay rule does not preclude the admission of the four statements contained in J.D.'s May 22, 2008 email to Mora.

B. QUESTIONS RELATING TO TAX RETURNS

The questions relating to tax returns that remain in dispute are as follows:

2. Did J.D. refer Defendant to Mora for the preparation of tax returns;
3. Does J.D. prepare tax returns as part of her legal practice;

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4. Did J.D. advise Defendant he needed to report his foreign income because he was a U.S. citizen;
6. Did Defendant tell her that the company he worked for overseas did not provide him with income information; and
7. Did Defendant provide her with payroll stubs in Kuwaiti dinar, which then she attempted to convert to U.S. dollars as reflected in the May 22, 2008 email.

Question ##4, 6, and 7 are addressed in the four statements contained in J.D.'s May 22, 2008 email to Mora. Because the Court has concluded that admissibility of the four statements contained in J.D.'s May 22, 2008 email to Mora is not precluded by the attorney-client privilege, responses to Question ##4, 6, and 7 are also not precluded.

Defendant contends that responses to Question ##2 and 3 are inadmissible because they will reveal Defendant's privileged communications – J.D.'s legal advice that Defendant needed to file returns for his overseas employment income and Defendant's communication to J.D. that he did not file tax returns. But the Court has determined that the privilege as to those alleged attorney-client communications has been waived. Thus, any basis for precluding Question ## 2 and 3 also has been eliminated.

III.
CONCLUSION

Based on the foregoing, the attorney-client privilege and the hearsay rule do not preclude the admissibility of the May 22, 2008 email from J.D. to Mora. The attorney-client privilege also does not preclude the admissibility of the responses to Question ##2, 3, 4, 6, and 7 of the Questions Relating to Tax Returns.

Accordingly, IT IS ORDERED that Defendant's motion to exclude the May 22, 2008 email from J.D. to Mora and the responses to Question ##2, 3, 4, 6, and 7 of the Questions Relating to Tax Returns is DENIED.

JEREMY H. TEMKIN, ESQUIRE
MORVILLO, ABRAMOWITZ, GRAND IASON & ANELLO, P.C.

***EVER-EXPANDING SCOPE OF THE
IRS OBSTRUCTION STATUTE***

NEW YORK LAW JOURNAL
NOVEMBER 2016

Exhibit X

The Ever-Expanding Scope of the IRS Obstruction Statute

By Jeremy H. Temkin
New York Law Journal
November 17, 2016

One of the weapons in the arsenal of prosecutors pursuing tax offenders is 26 U.S.C. §7212(a), which criminalizes "[a]ttempts to interfere with [the] administration of the internal revenue laws." Section 7212(a) consists of two clauses: The first addresses conduct directed against IRS agents and employees enforcing the Internal Revenue Code, while the second, known as the Omnibus Clause, makes it a crime to "in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstruct[] or impede[], or endeavor[] to obstruct or impede, the due administration of this title."

In recent years the government has used the Omnibus Clause to reach acts beyond those that obstruct IRS audits or investigations. Last month, the U.S. Court of Appeals for the Second Circuit joined other courts of appeals in reading the Omnibus Clause expansively, holding in *United States v. Marinello*, 2016 WL 5956687 (2d Cir. Oct. 14, 2016), that Section 7212(a) can be violated without proof that there was a pending IRS investigation or proceeding, let alone that the defendant was aware of the IRS's activity.

Background

First adopted in 1954, Section 7212(a) appears on its face to be focused on conduct aimed at obstructing investigations being conducted by IRS agents. This is supported by the legislative history, which describes the proposed statute as covering "all cases where the [IRS] officer is intimidated or injured; that is, where corruptly, by force or threat of force, directly or by communication, an attempt is made to impede the administration of the internal-revenue laws." H.R. Rep. No. 83-1622, pt. O, at 4781 (1954).

Notwithstanding this apparent focus, prosecutors have long recognized the potential application of the Omnibus Clause to conduct occurring outside of any audit or investigation being conducted by the IRS. See, e.g., *United States v. Williams*, 644 F.2d 696 (8th Cir. 1981) (affirming Section 7212(a) conviction of defendant who assisted in preparing and filing false W-4 forms as endeavoring to impede or obstruct due administration of the Internal Revenue Code). In 1989, the Tax Division of the Department of Justice issued a policy directive aimed at limiting the expansive application of the Omnibus Clause. This policy directive, which is cited in the U.S. Attorney's Manual, provides that "[i]n general, the use of the 'omnibus' provision of Section 7212(a) should be reserved for conduct occurring after a tax return has been filed-typically conduct destined to impede or obstruct an audit or criminal tax investigation, when 18 U.S.C. 371 charges are unavailable due to insufficient evidence of conspiracy." The policy directive, however, goes on to note that the Omnibus Clause is not limited to activity after filing tax returns, suggesting that the Omnibus Clause could be used to prosecute continual assistance in

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filing false tax returns, activity designed to obstruct audits, and other "large scale" violations. Thus, even after the policy directive, prosecutors continued using the Omnibus Clause to attack conduct unrelated to any IRS investigation or audit. For example, in *United States v. Popkin*, 943 F.2d 1535 (11th Cir. 1991), the U.S. Court of Appeals for the Eleventh Circuit affirmed a conviction under the Omnibus Clause based on evidence that the defendant, an attorney, created a shell corporation to assist a client avoid his tax obligations.

The government's expansive use of Section 7212(a) has not been entirely unimpeded. In 1998, the U.S. Court of Appeals for the Sixth Circuit reversed a conviction and held that a defendant must be aware of an ongoing IRS investigation in order to be charged with having violated the Omnibus Clause. *United States v. Kassouf*, 144 F.3d 952 (6th Cir. 1998). However, in *United States v. Bowman*, 173 F.3d 595 (6th Cir. 1999), the Sixth Circuit limited *Kassouf* to its particular facts, and other circuit courts of appeals have declined to follow *Kassouf*'s narrow application of Section 7212(a). See, e.g., *United States v. Massey*, 419 F.3d 1008, 1010 (9th Cir. 2005), cert. denied, 547 U.S. 1132 (2006)). Until recently, the Second Circuit had not explicitly addressed this issue.

'United States v. Marinello'

In *Marinello*, the defendant, Carlo Marinello, owned a freight service that couriered documents and packages between the United States and Canada. Between 1992 and 2010, Marinello did not keep records reflecting his business income or expenses, often destroying or shredding documents. In addition, he often paid his employees in cash and failed to issue either W-2 or 1099 forms reporting their income to the IRS. Similarly, he also paid personal expenses, such as his mortgage and payments to his mother's senior living home, out of the business. Finally, and perhaps most significantly, Marinello did not file personal or corporate tax returns, and therefore he did not report any income or deductions.

In December 2004, the IRS initiated an investigation into Marinello's tax compliance. However, the agency eventually closed this inquiry because it could not determine whether the unreported income was significant. While Marinello was apparently unaware of the investigation, in 2005, he sought advice regarding his non-compliance from both an attorney and a certified public accountant.

While the CPA asked Marinello for documentation of his business receipts and expenses in order to prepare corporate tax returns, because he had not maintained the necessary records, Marinello was unable to provide them as requested. Moreover, despite having received advice regarding the importance of good documentation, Marinello continued his practice of not keeping necessary books and records.

In 2009, the IRS re-opened its investigation, and an IRS agent interviewed Marinello who eventually admitted that he had earned income and should have paid taxes but that he "never got around to" filing returns. Marinello also admitted paying personal expenses out of his business and confirmed that he had not kept (or had shredded) records of the business' income and

expenses. Following the second investigation, the government charged Marinello with one felony count of interference with the administration of the Internal Revenue Code in violation of Section 7212(a) and six misdemeanor counts of failure to file returns in violation of 26 U.S.C. §7203.

The 7212(a) charge was predicated on Marinello's (1) failure to maintain proper books and records; (2) failure to provide information to his accountant; (3) destruction of records; (4) cashing of checks issued to the business; (5) concealment of business income in non-business accounts; (6) transferring assets to another person to conceal their improper use; (7) paying employees with cash; and (8) paying personal expenses out of the business. At trial, Marinello conceded that he had failed to file the returns, but argued that an affirmative act, such as filing false returns, was required to support a conviction under Section 7212(a).

After the jury convicted him on all counts and the district court denied his post-trial motions, Marinello argued on appeal that a conviction under the Omnibus Clause requires that the government establish both (a) the existence of a pending IRS investigation and the defendant's knowledge of that investigation, and (b) an affirmative act as opposed to the failure to keep books and records. The Second Circuit rejected both arguments.

The court first declined to follow the Sixth Circuit's narrow reading of Section 7212(a) set forth in *Kassouf* and found that the Omnibus Clause could be violated even in the absence of an IRS investigation or proceeding. In this regard, the court noted that, unlike the first clause of Section 7212(a), which refers broadly to the activities of an IRS official or employees, the Omnibus Clause "is a catch-all provision that criminalizes 'any other way' of corruptly obstructing or impeding the due administration of the Internal Revenue Code."

The court, citing to prior Second Circuit decisions, noted that the word "corruptly" encompasses any conduct that is intended to "secure an unlawful advantage or benefit either for one's self or for another." Given its conclusion that the IRS's administration of the tax code is not limited to investigations or proceedings, but rather extends to conduct predating the filing of any return, the court rejected Marinello's argument that a conviction under section 7212(a) requires a showing that the defendant was aware of a pending IRS action.

The Second Circuit also rejected Marinello's claim that a violation of the Omnibus Clause required proof that the defendant engaged in an affirmative act, as opposed to omissions such as the failure to maintain books and records. Rather, the court concluded that a defendant could not escape liability merely because he delayed the IRS in the administration of its duties through a corrupt omission, as opposed to an affirmative act. Significantly, however, the Second Circuit acknowledged in a footnote that the Omnibus Clause was not without limit and suggested that a mere failure to file tax returns would not give rise to liability under Section 7212(a).

Conclusion

Marinello is a recent example of the continued expansion of Section 7212(a), and lawyers representing individuals in criminal tax investigations need to be conscious of its potential for blurring the line between careless business practices and criminal obstruction of the IRS. Defense counsel should be especially attentive to any evidence that their clients acted with the requisite "intent to secure an unlawful advantage or benefit" and be prepared to argue that the client did not act "corruptly," but rather that the conduct or omissions at issue were due to negligence or bad business practices.

IRS CRIMINAL INVESTIGATION

ANNUAL BUSINESS PLAN
2016

Exhibit Y



INTERNAL
REVENUE
SERVICE

CRIMINAL
INVESTIGATION

2016 ANNUAL REPORT



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FROM THE CHIEF'S OFFICE



Richard Weber
Chief

When we speak at different events around the country, we talk about our past successes as an agency so that audiences – both internal and external – remember our great and proud history. That connection between our past and our present has never been clearer. Whether we are talking about complex offshore tax evasion cases, employment taxes, other core mission tax cases, or even a cyber case involving the dark net – the investigative methods are basically the same. We follow the money and there is simply no one better at doing that than Internal Revenue Service–Criminal Investigation (IRS–CI) special agents and the professional staff that support and carry out our mission on a daily basis. The connection to our past was very real this year as we unveiled a new Wall of Remembrance Memorial at headquarters in Washington, DC. This stunning tribute is a solemn reminder every day of the sacrifices that are made on behalf of the men and women of IRS–CI.



Don Fort
Deputy Chief

We have seen first-hand the great work that is being done in field offices throughout the country and abroad. With diminishing resources, we asked you to stay mission-focused and open only those highest priority cases that would have the greatest impact on tax administration. Not a day goes by that we do not read a news story about a great case being worked by one of our field offices. While the number of cases we open each year is directly impacted by the size of our organization, the quality and the impact of those cases is significant and our relevance as a law enforcement agency cannot be overlooked. We simply cannot underestimate the impact or the deterrent effect we are having on would-be criminals around the world.

This annual report includes just a sampling of case summaries that represent the diversity and complexity we have come to expect from CI agents and professional staff. Focusing on core mission tax investigations, tax-related identity theft, money laundering, public corruption, cybercrime and terrorist financing, you continue to pile up some of the most successful cases in CI history and continue to make us proud.

Congratulations and great job! We are excited about our future and thank you for your continued dedication and commitment to CI.

VISION & PRIORITIES

VISION FOR IRS-CRIMINAL INVESTIGATION

Through strategic investments in personnel, increased communication, enhanced technology, and collaboration with domestic and global law enforcement partners, Criminal Investigation (CI) will continue to be the worldwide leader in tax and financial criminal investigations.

INVESTIGATIVE PRIORITIES

Criminal Investigation's highest priority is to enforce our country's tax laws and support tax administration to ensure compliance with the law. Criminal Investigation focused on high impact criminal investigations to promote deterrence worldwide and industry-wide. Fiscal Year 2016 investigative priorities were:

TAX CRIMES

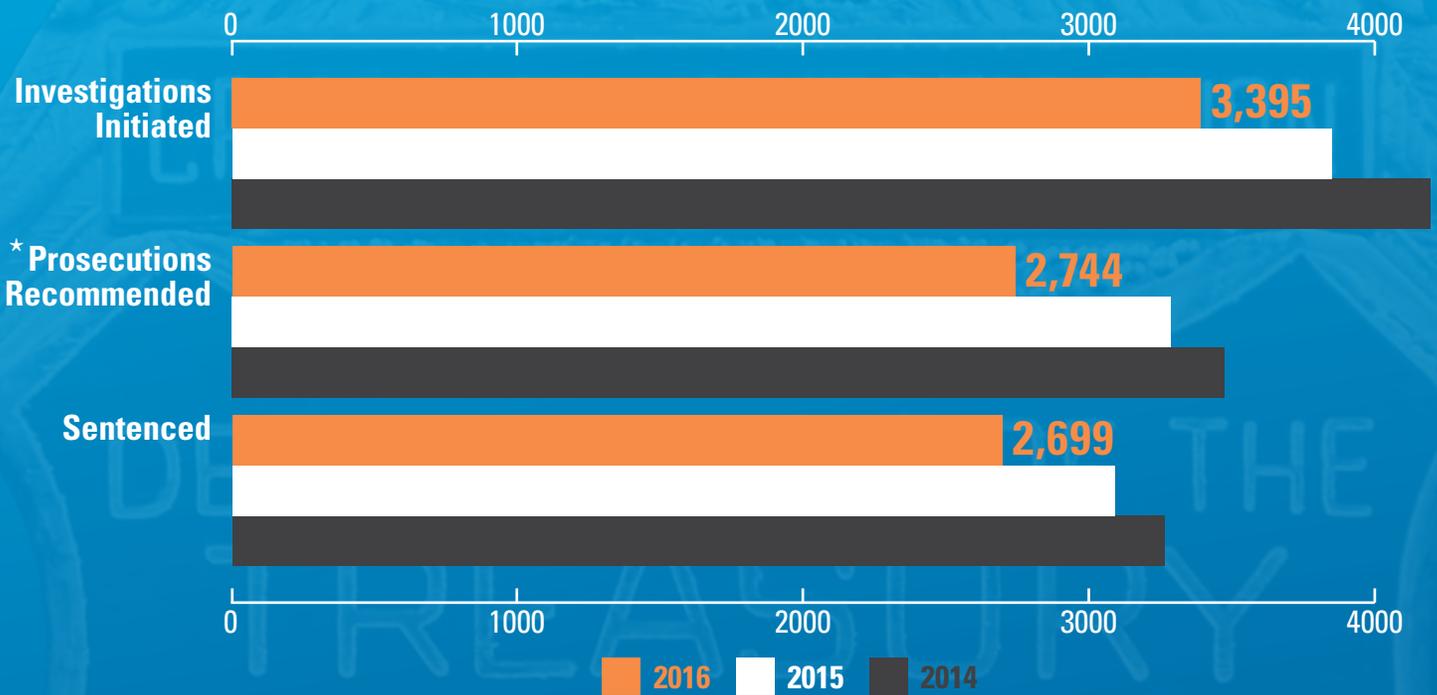
- Abusive Return Preparer Fraud
- Abusive Tax Scheme Fraud
- Employment Tax Fraud
- Fraud Referral Program
- Identity Theft Fraud
- International Tax Fraud
- Questionable Refund Fraud

OTHER FINANCIAL CRIMES

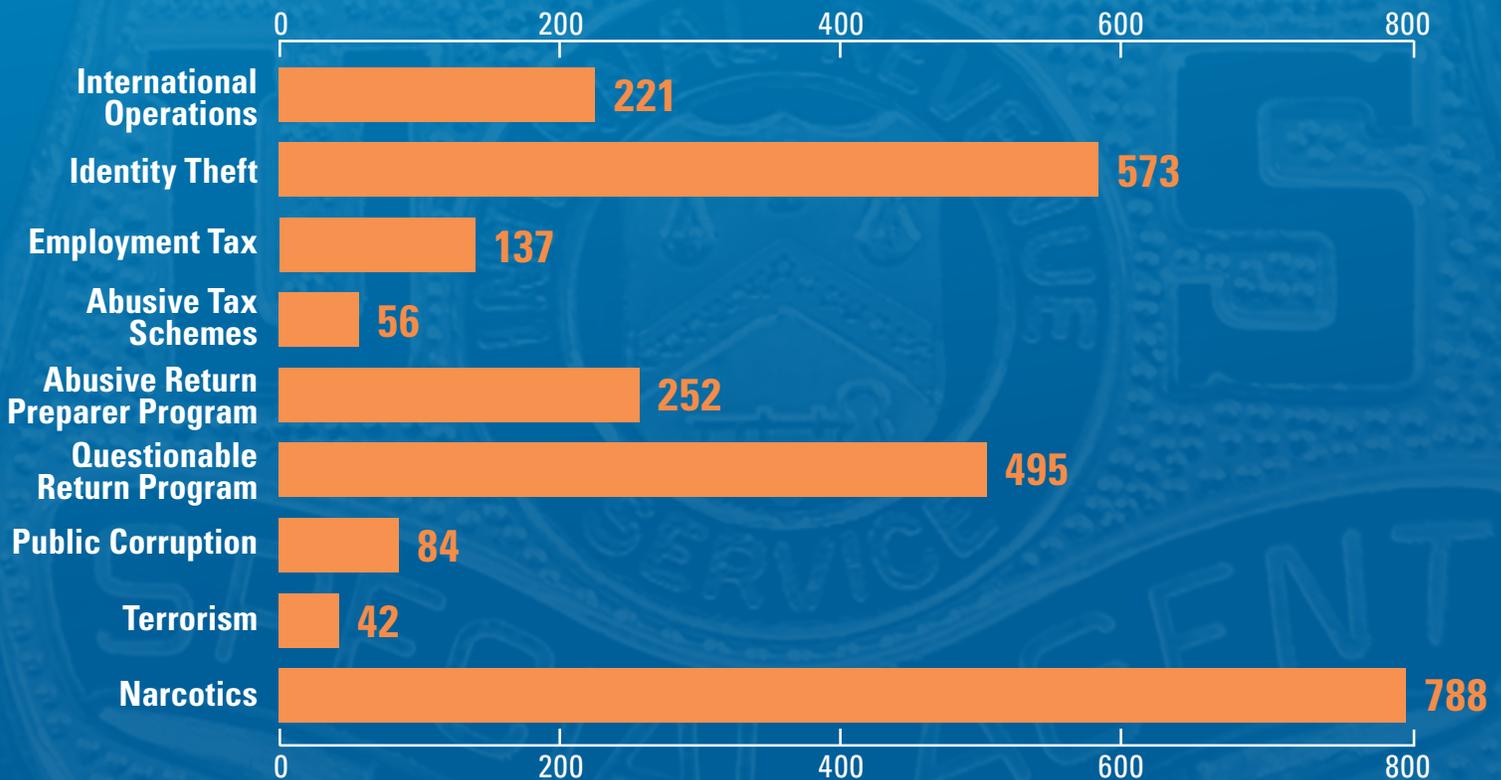
- Counterterrorism / National Security / Terrorist Financing
- Cyber-crimes (including Virtual Currency)
- OCDETF / HIDTA / Transnational Organized Crime
- Public Corruption

BUSINESS RESULTS

FY 2016 BUSINESS RESULTS



HIGH IMPACT AREA CASES INITIATED



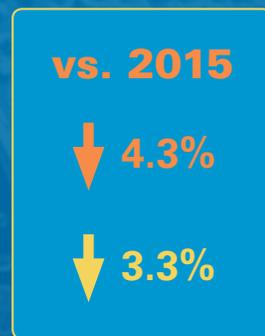
*Sentence includes confinement to federal prison, halfway house, home detention, or some combination thereof.

A fiscal year runs from October 1 through September 30. Data Source: Criminal Investigation Management System. How to interpret Criminal Investigation data: Actions on a specific investigation may cross fiscal years, the data shown in investigations initiated may not always represent the same universe of investigations shown in other actions within the same fiscal year.

STAFFING

As of September 30, 2016, IRS-CI had 2,217 special agents, a 4.3% decrease compared to the number of special agents at the conclusion of FY 2015. Professional staff personnel were 907 reflecting a decrease of 3.3% compared to FY 2015. Total CI Staffing in FY 2016 was 3,124, a 4.0 % decrease compared to FY 2015. Over the past five years (FY 2011-FY 2016), staffing levels for special agents and professional staff have decreased by 522 and 251 respectively representing 19.1% and 21.7% reductions respectively.

SPECIAL AGENTS



PROFESSIONAL STAFF

STAFFING

The data in the following graphs illustrates CI's staffing patterns from 1995-2016. The staffing levels are based on the Employee Master Database, as reported in the IRS Human Resources Reporting section.

Historical Agent Staffing

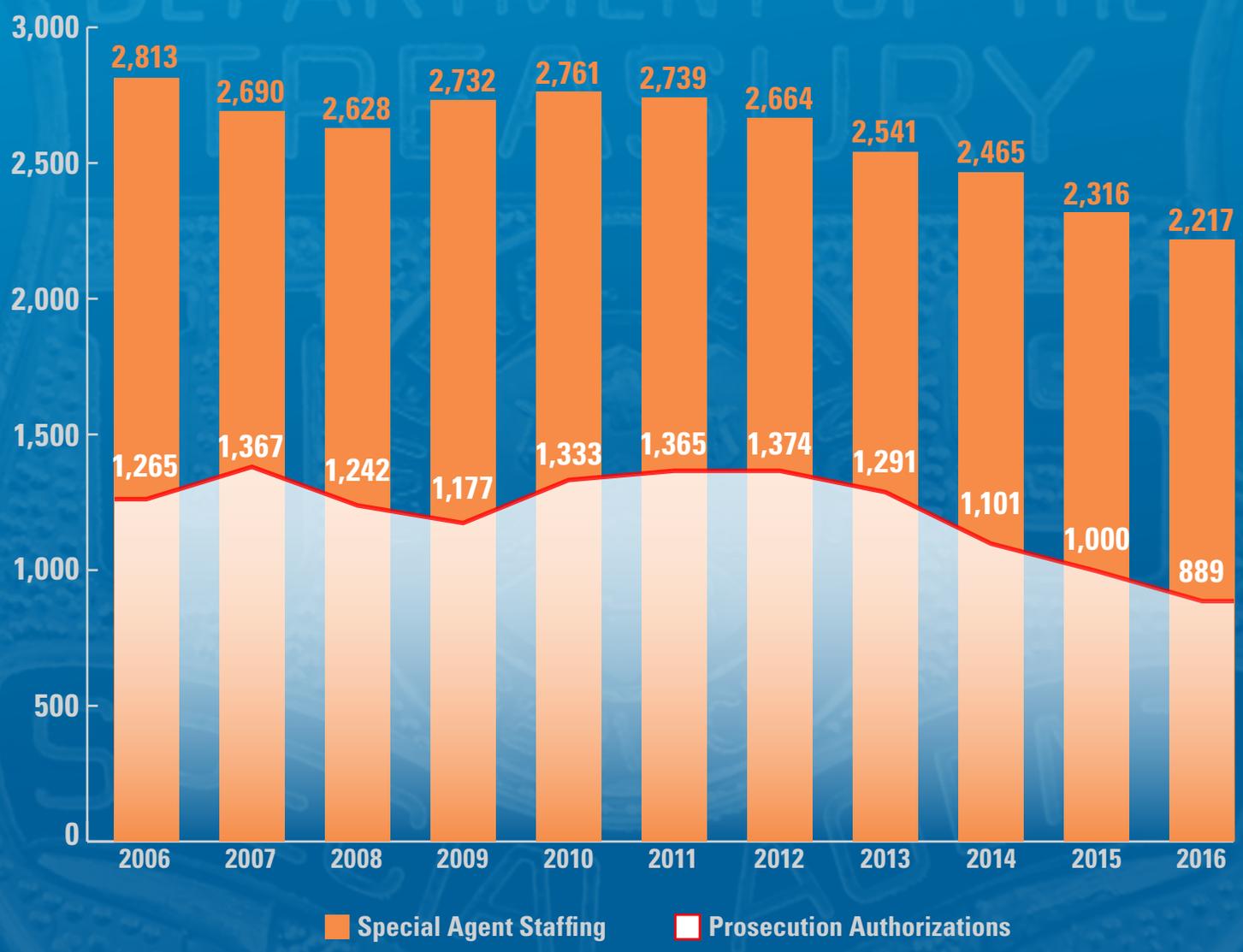


Historical Professional Staffing



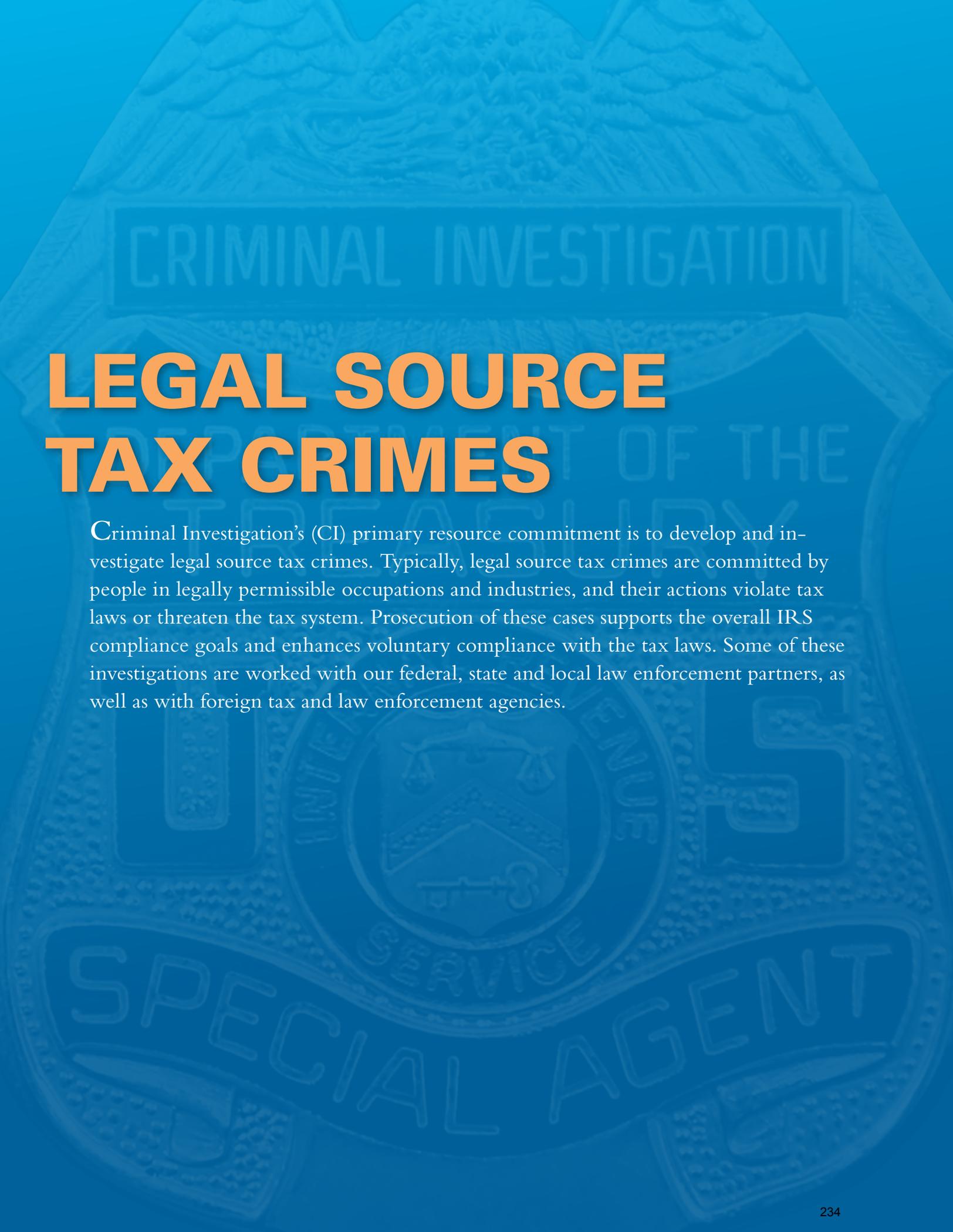
CORE MISSION CHALLENGES

- Tax prosecutions directly impact voluntary compliance via criminal deterrence and are a critical component of a strong tax system.
- There is a clear trend of IRS-CI staffing decline affecting our core mission tax work.
- Between FY12 and FY16 our net attrition was 447 agents and we processed 485 fewer tax prosecution authorizations.



ORGANIZATION CHART





LEGAL SOURCE TAX CRIMES

Criminal Investigation's (CI) primary resource commitment is to develop and investigate legal source tax crimes. Typically, legal source tax crimes are committed by people in legally permissible occupations and industries, and their actions violate tax laws or threaten the tax system. Prosecution of these cases supports the overall IRS compliance goals and enhances voluntary compliance with the tax laws. Some of these investigations are worked with our federal, state and local law enforcement partners, as well as with foreign tax and law enforcement agencies.

FRAUD REFERRAL PROGRAM

Criminal Investigation places a high degree of emphasis on the fraud referral program. One source of investigations comes from civil IRS divisions in the form of a fraud referral. Criminal Investigation works closely with the civil divisions of Small Business/Self-Employed (SB/SE), Wage and Investment (W & I), Large Business & International (LBI) and Tax Exempt and Government Entities (TEGE). It is through these fraud referrals that CI gets some of our core mission tax investigations. Criminal Investigation is committed to the timely evaluation of each fraud referral.

REFUND FRAUD PROGRAM

Refund fraud poses a significant threat to the tax system. Criminal attempts to obtain money from the government under false pretenses via the filing of a fraudulent tax return not only results in the loss of funds needed for vital government programs but can also impact taxpayer's confidence in the tax system and their willingness to voluntarily meet tax filing obligations. The Refund Fraud Program is broken down into identity theft investigations, the Questionable Refund Program and the Abusive Return Preparer Program.

The primary focus of the Questionable Refund Program is to identify fraudulent claims for tax refunds. Generally, these schemes involve individuals filing multiple false tax returns supported by false information or using the identifiers of other individuals knowingly or unknowingly.

The Return Preparer Program investigations generally involve the orchestrated preparation and filing of false income tax returns, in either paper or electronic form, by dishonest preparers who may claim inflated personal or business expenses, false deductions, excessive exemptions, and/or unallowable tax credits. The preparers' clients may or may not have knowledge of the falsity of the returns.

IDENTITY THEFT

Identity theft-related crimes continue to be a priority area of investigation for CI. During FY 2016, CI remained committed to investigating egregious identity theft schemes through administrative and grand jury investigations utilizing various field office and multi-regional task forces including state/local and federal law enforcement agencies. Currently, CI participates in more than 60 task forces/working groups throughout the country that investigate both financial crimes as well as identity theft crimes.

Criminal Investigation's level of commitment towards the fight against identity theft continues to be evident. There is a designated management official who serves as the National Identity Theft Coordinator. This position is responsible for overseeing CI's national identity theft efforts including formulating policy and procedures. In addition to a national coordinator, there are identity theft coordinators within each of CI's 25 field offices. Criminal Investigation is a key partner on the Commissioner's Security Summit, which includes the IRS, State Divisions of Taxation, and private sector entities who joined in a collaborative effort to share critical information and ideas to combat tax-related identity theft.

Data Compromises

Data compromises, more commonly referred to as data breaches, have impacted all sectors of society. During FY 2016, CI continued to see tax-related identity theft linked to compromises targeting detailed financial records maintained by tax professionals and payroll administrators. Most notably was an increase in phishing attempts to acquire payroll records. Throughout the year twenty-three field offices were actively pursuing investigations linked to computer intrusions, account takeovers, and data compromises affecting tax administration. Criminal Investigation continued outreach efforts within the IRS, the law enforcement community, and the private sector to acquire information regarding com-

promised data that could impact tax administration. This information helped CI to proactively identify or prevent successful false claims for refunds utilizing the stolen data. Additionally, CI continues to participate in a cross-functional working group within the IRS to develop new analytical filters, as well as enhanced victim assistance.

Identity Theft Clearinghouse

The Identity Theft Clearinghouse (ITC) continues to develop and refer identity theft refund fraud schemes to CI field offices for investigation. The ITC serves as a centralized focal point to address incoming identity theft leads from throughout the country. The ITC’s primary responsibilities are analyzing identity theft leads and facilitating discussions between field offices with multi-jurisdictional issues.

Law Enforcement Assistance Program

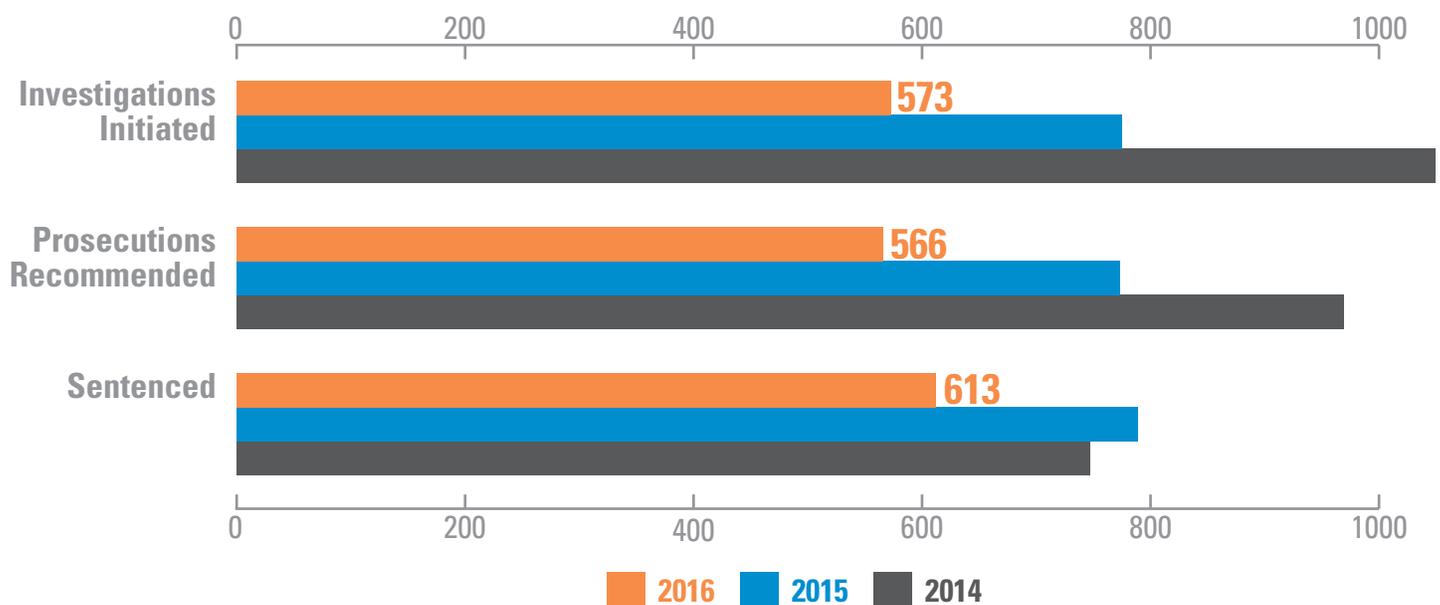
In March 2013, IRS announced that the Law Enforcement Assistance Program (LEAP), formerly known as the “Identity Theft Pilot Disclosure Program,” was expanding nationwide. This program was developed jointly by CI and other IRS counterparts as a result of a significant increase in requests from state and local

law enforcement agencies for tax return documents associated with identity theft-related refund fraud. The program allows for the disclosure of tax returns and return information associated with accounts of known and suspected victims of identity theft with the express written consent of those victims. To date, more than 1,400 state and local law enforcement agencies from 48 states have participated in this program

Outreach

Criminal Investigation’s outreach strategy included hosting or attending educational events focusing on enhanced IT security efforts, tax-related identity theft investigative techniques and other refund-related frauds. Target audience groups included law enforcement partners, private sector entities involved in tax preparation, payroll service industries and IRS personnel. Local and national events included presentations at the International Association of Financial Criminal Investigators, National Association of Attorneys General, American Payroll Association training seminars and tax practitioner events throughout the country. Additional efforts included creating educational materials regarding LEAP and information on the impact of identity theft/data compromises on tax administration. These included fraud alerts,

IDENTITY THEFT INVESTIGATIONS



bulletins, and training materials to regional law enforcement information sharing systems, the International Association for Chiefs of Police and the National Sheriff's Association.

Proactive Prevention

Criminal Investigation continues to receive information from private and public sector sources involving compromised personally identifying information. This information is shared with W&I and allows the IRS to analyze and make necessary adjustments to accounts of taxpayers that are likely victims of identity theft. Additionally, CI collaborates with cross functional partners in the development and implementation of analytical filters designed to identify fraudulent claims at filing and prevent further victimization of impacted individuals.

Examples of identity theft investigations adjudicated in FY 2016 include:

Nine Defendants Sentenced for \$11.1 Million Tax Refund, Food Stamp Conspiracy

On June 23, 2016, in Tallahassee, Florida, nine Florida residents were sentenced for conspiracy, theft of government funds and aggravated identity theft. The defendants were sentenced as follows

- John Walter Simmons, Tampa - 168 months in prison;
- Daria Patrice Simmons, Tampa - 65 months in prison;
- Jazzman Shabazz Simmons, Tallahassee - 65 months in prison;
- Anre' Juardon Davis, St. Petersburg - 36 months in prison;
- Rashard LaVonta McMillian, Quincy - 36 months in prison;
- Ronald Edward Brown, Quincy - 30 months in prison;

- Addrain Montez McMillan, Overland Park, Kansas - 18 months in prison;
- Ja'baree Vazquez Allen, Tallahassee - 36 months of probation
- Mercedes Shevon Sutton, Tampa - 36 months of probation

Another defendant, Jasmine Junae Robinson, is scheduled to be sentenced at a later date. The defendants conspired to file fraudulent income tax returns using stolen personally identifying information (PII) from approximately 2,800 individuals. The stolen PII was used to file 1,466 fraudulent income tax returns, claiming refunds of approximately \$11.1 million and resulting in \$2,695,253 being issued by the IRS. Sutton, John Simmons, and Jazzman Simmons were also involved in a scheme to file fraudulent Supplemental Nutrition Assistance Program applications. Between August 2013 and January 2014, stolen PII was used to electronically submit 165 fraudulent food stamp applications, seeking \$176,704 in benefits.

Five Sentenced in Connection with a Fraudulent Multi-Million Dollar Income Tax Refund Scheme

On August 12, 2016, in Austin, Texas, five individuals, including three sisters, were sentenced to federal prison for their roles in a scheme that involved over 3,200 fraudulent income tax returns that claimed refunds totaling more than \$9 million.

Sentenced were:

- Natividad Mercado Medina, a Mexican national, 121 months;
- Elizabeth Mercado Medina, a Mexican national, 108 months;
- Sofia Mercado Medina, a Mexican national, 108 months;
- Bertin Sanchez Garcia, a Mexican national, 33 months; and
- Yajaira Limon Lopez, a Mexican national, 51 months.

All five defendants, who have remained in federal custody since their arrests in February 2016, entered guilty pleas to one count of conspiracy to commit mail fraud earlier this year. In addition to prison, the defendants will pay, joint and severally, \$3,888,519 restitution to the IRS; and serve three years of supervised release. Sophia's and Elizabeth's residences in Georgia and \$93,000 in U.S. currency will also be forfeited to the U.S. government. Beginning in 2014, under the direction of Natividad Medina, the defendants conspired to steal money from the U.S. Treasury by exploiting the Individual Taxpayer Identification Numbers (ITIN) system. The Medina sisters collected Mexican identification documents from unknown people in Mexico and used those to fraudulently obtain ITINs. The Medina sisters then used those ITINs to submit false and fraudulent income tax returns to the IRS Center in Austin. They requested that the IRS mail refund checks to residences or to one of more than 200 post office boxes in and around the Houston area which Lopez had rented and maintained on behalf of the Medina sisters.

Mexican Business owner Sentenced for Stolen Identity Tax Refund Fraud Scheme

On August 30, 2016, in El Paso, Texas, Elizabeth "Betty" Garcia de Nieto, aka Elizabeth Jurado, of Delicias, Chihuahua, Mexico, was sentenced to 192 months in prison and ordered to pay \$3,009,999 in restitution to the U.S. government for her role in an income tax return scheme that resulted in fraudulent refunds being issued by the IRS. Garcia was convicted by jury trial on March 23, 2016, for conspiracy to defraud the United States; mail fraud; aiding and abetting aggravated identity theft; and conspiracy to defraud the United States with respect to claims. From January 2010 to February 2015, Garcia used stolen identities to create fraudulent U.S. tax returns. Each return claimed an approximate \$5,000 refund from the IRS. Garcia gave some of the IRS refund checks to individuals to bring into the U.S. to be cashed at money service businesses in El Paso. She mailed others to individuals residing in the U.S. to be

converted to U.S. currency. All monies derived from the scheme, minus agreed-to-fees retained by co-defendants, were wired back to Garcia. In September 2014, U.S. Customs agents at the Paso del Norte Port of Entry seized 10 fraudulent tax returns from an employee of Garcia. Co-defendant Rodolfo Ramirez-Estrada of El Paso, also pleaded guilty to conspiracy to defraud the U.S. and was sentenced to 18 months in prison for his part in the conspiracy. Additional co-conspirators, Christina Perez Altamirano of Oklahoma City, Oklahoma, and Alberto Altamirano Armendarie of Montgomery, Alabama, pleaded guilty to conspiracy to commit mail fraud and were sentenced to one year in prison and time served, respectively.

Florida Man Sentenced for Identity Theft Scheme Involving Income Tax, Unemployment, and Credit Card Frauds

On October 22, 2015, in Miami, Florida, Leonce V. Jeudy, of Plantation, was sentenced to 111 months in prison and three years of supervised release for his participation in a scheme utilizing stolen identities to commit income tax, unemployment, and credit card frauds. A restitution hearing is scheduled for January 2016. Jeudy previously pleaded guilty to possession with intent to distribute controlled substances, access device fraud and aggravated identity theft. On January 7, 2015, the Sunrise Police Department initiated a traffic stop of a vehicle driven by Jeudy. After smelling the odor of marijuana emanating from the vehicle, the detective conducted a search of the car and found a loaded handgun, ammunition, approximately 20 credit cards in various names, new iPhones and iPads, bank records of an unrelated individual, and receipts of four Visa debit cards purchased earlier that day for approximately \$2,000. During the execution of a search warrant, officers found more than 100 credit and debit cards in the names of various individuals, numerous documents with the personally identifying information (PII) of different individuals, along with various electronic devices including computers, thumb drives and cellular telephones. Subsequent forensic analysis by

federal law enforcement revealed more than 8,000 sets of PII was found on the recovered digital devices. In addition, an analysis revealed that some of the recovered debit cards had received approximately \$30,000 in fraudulent income tax refunds and were associated with fraudulent unemployment insurance claims. Law enforcement further determined that Judy was responsible for filing unemployment insurance benefits claims totaling \$100,000.

Former Louisiana Public Health Care Employee Sentenced for Participating in Tax Refund Scheme

On April 6, 2016, in Lafayette, Louisiana, Ta'sha Thomas was sentenced to 36 months in prison, three years of supervised release and ordered to pay \$464,765 in restitution to the IRS. Thomas worked for a health unit where she stole personal identifying information (PII) of patients and sold the PII to Mona Hill. Hill used the stolen PII to prepare and file false tax returns. Between January and August of 2012, she also sold more than 400 access devices to Hill. In 2014, Hill was sentenced to 65 months in prison and ordered to pay \$491,268 in restitution to the IRS.

QUESTIONABLE REFUND PROGRAM

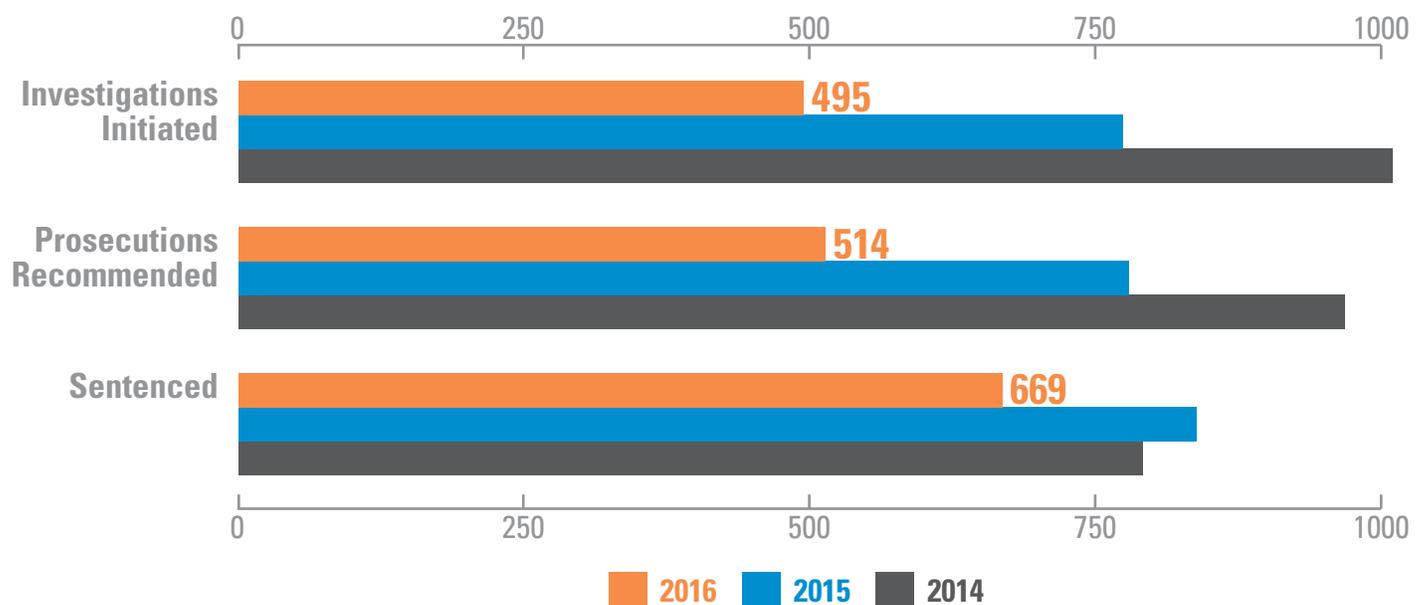
The primary focus of the Questionable Refund Program is to identify and prosecute those that file fraudulent claims for tax refunds. Generally, these schemes involve individuals filing multiple false tax returns supported by false information or using the identifiers of other individuals knowingly or unknowingly.

Examples of questionable refund program investigations adjudicated in FY 2016 include:

Texas Man Sentenced for Filing False Tax Claims and Obstructing the IRS

On June 22, 2016, in Houston, Texas, Kenneth Robert Bruce was sentenced to 180 months in prison, three years of supervised release and ordered to pay more than \$3.3 million in restitution to the IRS for willfully filing a false claim and impeding the IRS. Bruce prepared 26 false income tax returns or amended income tax returns claiming a total of more than \$9 million in false income tax refunds. One return was for himself and 25 were for other taxpayers. As part of the scheme, Bruce attached false IRS forms 1099-OID (Original

QUESTIONABLE REFUND INVESTIGATIONS



Issue Discount) to the tax returns, falsely reporting the taxpayers had received huge amounts of income from OID and had all or nearly all of the false amounts of income withheld for federal income taxes.

Eight Sentenced in Massive Stolen Identity Tax Refund Fraud Scheme

On November 4, 2015, in Houston, Texas, eight defendants were sentenced to prison after pleading guilty for their roles in a stolen identity and fraudulent tax return scheme. Travis White, Jalan Willingham, U.S. postal carrier Calvin Shelton, all of Atlanta, Georgia were ordered to serve 224, 132 and 57 months in prison, respectively, for conspiracy, wire fraud and aggravated identity theft. Postal carriers Edward Dwayne Vallier, of Houston, Shawn Phillip Thornton, of Atlanta, and Tangela R. Jackson-Lezeau, of Port Saint Lucie, Florida, received sentences of 27, 45 and 46 months in prison, respectively, for mail fraud, wire fraud and aggravated identity theft. Kerry Lionel Ruffin, and Rance Hunter, both of Atlanta, were sentenced to 50 and 84 months in prison for. All the defendants will serve three years of supervised release. In addition, the court ordered restitution in the total amount of \$7,845,652, with the defendants paying varying amounts in accordance with their roles in the scheme. The case against a ninth defendant - Dwayne Biggs - was transferred to the Northern District of Georgia. He also pleaded guilty and is awaiting sentencing. According to court documents, from 2010 through 2014, the co-conspirators used stolen personally identifiable information (PII) to file thousands of fraudulent tax returns claiming more than \$12 million in refunds. According to IRS records, the National Treasury paid out more than \$7 million before the scheme was discovered. Ringleader White recruited Shelton and Thornton, and gave instructions to co-conspirators on what to do in this scheme, acquired stolen information and filed the false tax returns. Also, once he recruited letter carriers, he instructed them to mail refund cards to him or Willingham. He also moved the scheme to Houston when he realized law enforcement was on their trail. Hunter had access

to the Fulton County, Georgia, Sheriff's Office database that contained PII of arrestees, inmate and employees. He sold the PII to Biggs, who then provided it to Ruffin. Ruffin acted as a conduit, funneling the stolen PII to the co-conspirators in Houston. Vallier, Jackson-Lezeau and Shelton allowed fraudulent refunds to be mailed to addresses on their routes. After gathering the mail containing the refund debit cards, they sent them to their co-conspirators in Houston.

ABUSIVE RETURN PREPARER PROGRAM

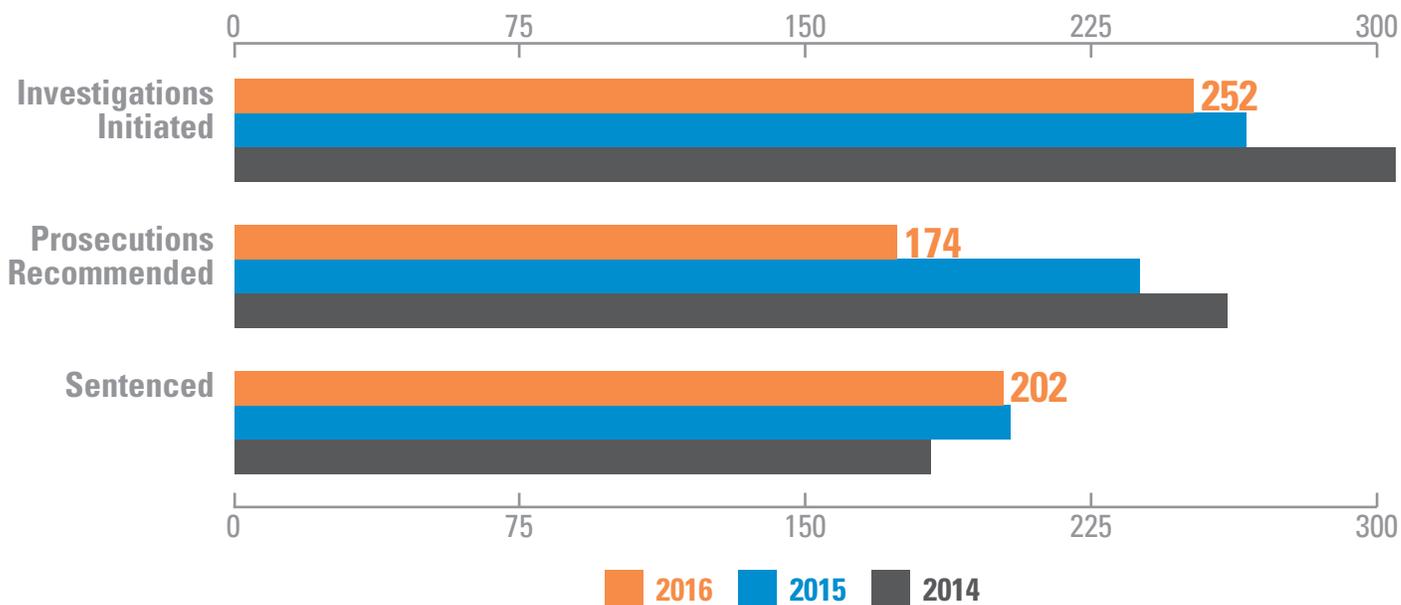
The Abusive Return Preparer Program investigations generally involve the preparation and filing of false income tax returns by dishonest preparers who may claim: inflated personal or business expenses, false deductions, excessive exemptions, and/or unallowable tax credits. The preparers' clients may or may not have knowledge of the falsity of the returns.

Examples of abusive return preparer program investigations adjudicated in FY 2016 include:

Georgia Tax Preparers Sentenced for Tax Fraud

On March 24, 2016, in Atlanta, Frederick Jenkins and Willie Jenkins, both of Douglasville, were sentenced to 78 and 75 months in prison, respectively. Each was also sentenced to three years of supervised release and ordered to pay restitution of \$3.5 million to the IRS. Between 2009 and 2012, the two men prepared and filed thousands of tax returns at Global Tax Service, a business they managed together. The Jenkins created fictitious, unprofitable businesses that they listed on their clients' tax returns as a way to generate fraudulent deductions. Those deductions lowered the clients' taxable income and made their refunds larger. Ultimately, however, the clients were left to resolve their situations with the IRS and state authorities, while the

ABUSIVE RETURN PREPARER INVESTIGATIONS



defendants kept the fees they charged for preparing the returns. In the end, the Jenkins conspired to create fraudulent business deductions that resulted in a tax loss of over \$3.5 million.

deductions or credits against taxes; or hiding or transferring assets to avoid payment.

Examples of general tax fraud investigations adjudicated in FY 2016 include:

GENERAL TAX FRAUD

General tax fraud investigations are the backbone of CI’s enforcement program and have a direct influence on the taxpaying public’s compliance with the Internal Revenue Code. Compliance with the tax laws in the United States depends heavily on taxpayer self-assessment of the amount of tax, voluntary filing of tax returns and remittance of any tax owed. This is frequently termed “voluntary compliance.” There are individuals from all facets of the economy, whether corporate executive, small business owner, self-employed or wage earner, who through willful non-compliance do not pay their fair share of taxes. Criminal Investigation special agents use their financial investigative skills to uncover and quantify many different schemes, including deliberately under-reporting or omitting income (“skimming”); keeping two sets of books, or making false entries in books and records; claiming personal expenses as business expenses; claiming false

New Jersey Man Sentenced for Biodiesel Fraud Scheme

On January 7, 2016, in Indianapolis, Indiana, Joseph Furando, of Montvale, New Jersey, was sentenced to 240 months in prison, three years of supervised release and ordered to pay more than \$56 million in restitution and forfeit a Ferrari, a million-dollar home and other property. Furando and his companies, Caravan Trading Company and CIMA Green, began supplying Indiana-based E-biofuels, LLC with biodiesel that was actually made by other companies and had already been used to claim tax credits and renewable identification number (RIN). Furando and his co-conspirators claimed that E-biofuels made the fuel making it eligible for the tax credits despite the fact that the credits were already utilized. Over approximately two years, the defendants fraudulently sold more than 35 million gallons of fuel for over \$145.5 million realizing \$55 million in gross profits. Furando’s companies, CIMA Green LLC, and

Caravan Trading LLC, were both sentenced to pay \$56 million in restitution and million dollar fines. E-bio-fuels LLC, operated by Furando's co-defendants Craig, Chad and Chris Ducey, was also sentenced to pay \$56 million in restitution. E-biofuels is in bankruptcy and its few remaining assets are being distributed to creditors and victims through the bankruptcy process. All of the other defendants in this case have pleaded guilty and are awaiting sentencing. Another co-conspirator, Brian Carmichael, was sentenced to five years in prison.

Florida Business Entrepreneur Sentenced for Tax Evasion

On June 24, 2016, in Pensacola, Florida, Trenton S. Sommerville of Destin, Florida, was sentenced to 51 months in prison for wire fraud and tax evasion. Sommerville pleaded guilty in January 2016. According to court documents, Sommerville obtained funds from investors for ventures he controlled, including that of an insurance provider and companies involved in gambling initiatives in the Caribbean. Sommerville concealed from investors that he would take a salary and pay for personal expenses with investment funds. He also did not invest any of his own capital in his ventures. Between January 2011 and December 2014, Sommerville embezzled investment funds by making personal expenditures directly from corporate accounts, transferring investment funds to his personal account, and writing corporate checks to a family member. As of May 2012, Sommerville owed approximately \$549,789 in taxes to the IRS for the tax years 2004 through 2010. He tried to evade paying taxes by concealing income and assets from the IRS through the use of nominee names and accounts, by using a cashier's check to pay off the mortgage on his residence, and by selling his personal shares and instructing the buyer to wire the money into another bank account. Sommerville failed to file federal income tax returns for the tax years 2011 through 2013, despite earning approximately \$585,214 in income and owing approximately \$103,279 in taxes for those years.

Former Oklahoma State Senator Sentenced for Wire Fraud and Tax Evasion

On March 11, 2016, in Tulsa, Oklahoma, Ricky L. Brinkley, a former Oklahoma State Senator, was sentenced to 37 months in prison and ordered to pay \$1,829,033 in restitution. On August 20, 2015, Brinkley, of Owasso, pleaded guilty to five counts of wire fraud and one count of subscribing to a false tax return. According to court documents, Brinkley represented the 34th District in Oklahoma. From August 2, 1999, to April 26, 2015, Brinkley was employed as the President and Chief Executive Officer and then the Chief Operations Officer of the Better Business Bureau (BBB). From November 2005 to February 2015, Brinkley diverted in excess of \$1.2 million dollars through the creation of fraudulent invoices for services not rendered, and improperly represented these invoices as reimbursement for legitimate expenses. He fraudulently signed checks, transferred, used, and disbursed funds to pay personal expenses and debts. Brinkley also used his employer's credit card to make cash withdrawals at automated teller machines in casinos to support his gambling habit. In addition, Brinkley failed to report approximately \$165,625 in income for tax year 2013 to the IRS.

ABUSIVE TAX SCHEMES

Within the Abusive Tax Schemes program, CI focuses on the investigation of promoters and clients who willfully participate in domestic and/or offshore tax schemes for the purpose of violating the tax laws. Participants in these abusive schemes usually create structures such as trusts, foreign corporations and partnerships for the purpose of making it appear that a trustee, nominee, non-resident alien or other foreign entity is the owner of the assets and income, when in fact the true ownership and control remains with a United States taxpayer.

Examples of abusive tax scheme investigations adjudicated in FY 2016 include:

Massachusetts Investment Advisor Sentenced for Hedge Fund Fraud

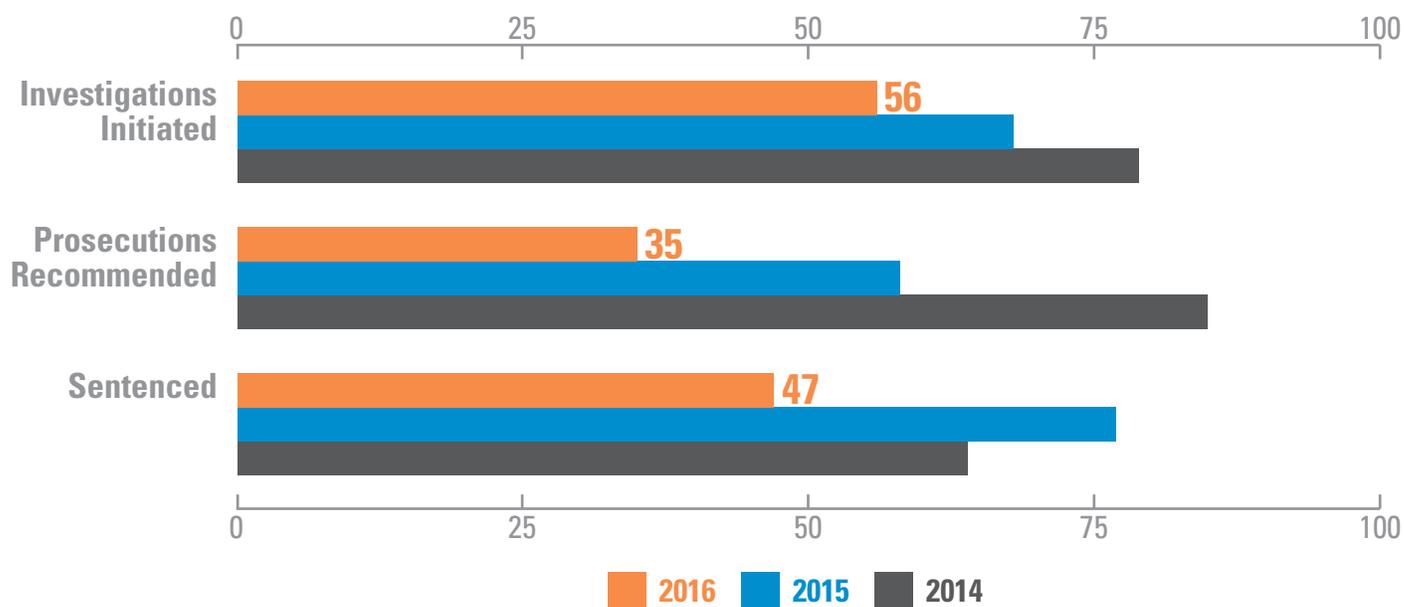
On July 27, 2016, in Boston, Massachusetts, Rosalind Herman, of Woburn, was sentenced to 84 months in prison, three years of supervised release and ordered to pay restitution of \$1,819,391. In April 2016, Herman was convicted of investment adviser fraud, tax fraud, wire fraud and conspiracy charges. Herman owned and controlled companies in Massachusetts and Nevada that provided investment advice and sold insurance products to individual investors. From 2008 to March 2013, Herman and her business partner, Gregg Caplitz, pitched a new hedge fund company investment to existing clients. The purported investment was billed by Caplitz and Herman as a hedge fund company owned by Herman. No hedge fund ever existed, however, and the more than \$1.3 million in investment funds obtained from clients were used to pay personal expenses for Herman, her family and Caplitz. In addition, from 2003 to 2012, Herman failed to file accurate tax returns for herself and her companies, including the \$1.3 million in investor funds she took from investors, and also by fabricating business expenses. In many instances during this time period, Herman failed to file any tax returns for herself or her companies. In May

2016, Caplitz was sentenced to 42 months in prison after pleading guilty to fraud and tax charges.

California Return Preparer Sentenced for Creating Fraudulent Tax Shelters

On January 21, 2016, in Santa Ana, California, Randall Craig Hutchens, former Chief Executive Officer and President of Accounting Services, Inc. (“ASI”), was sentenced to 57 months in prison and ordered to pay \$1.4 million in restitution to the IRS. From approximately May 2010 until October 2013, Hutchens sold fraudulent tax shelters to numerous clients through his tax preparation company, by promoting them as legal ways to reduce their prospective tax liabilities. For customers who bought the shelters, Hutchens would then prepare their tax returns, including in them false losses related to the tax shelter. Hutchens prepared and filed with the IRS at least 125 false federal income tax returns that resulted in tax losses to the United States of at least \$1,622,512.

ABUSIVE TAX SCHEME INVESTIGATIONS



Arkansas Man Sentenced for Wire Fraud Relating to Fraudulent Refund Coal Tax Credits

On October 7, 2015, in Little Rock, Arkansas, Stephen K. Parks was sentenced to 27 months in prison, three years of supervised release and ordered to pay \$845,000 in restitution to the IRS. Additionally, Parks will forfeit approximately \$7.5 million. On May 27, 2015, Parks pleaded guilty to wire fraud relating to a fraudulent investment scheme involving the sale of refined coal tax credits. According to court documents, on or about June 1, 2010, Parks formed Global Coal, LLC, and served as its CEO, President and Manager. He was also President of Ecotec Coal, LLC and King Coal, LLC. Global Coal has never refined any coal or sold any refined coal to an unrelated third party. Global Coal has never had a facility in place to refine coal. As of March 2015, Global Coal has failed to file any federal income tax returns and has never purported to create refined coal tax credits in any federal tax return. Despite knowledge of these facts, Parks approved and facilitated the sale of nonexistent Global Coal refined coal tax credits through a broker to the investor, representing that the tax credits were valid and available for sale. On January 9, 2012, an investor agreed to purchase 845,000 Global Coal tax credits and 268,000 Ecotec Coal tax credits for total payment of \$723,450. Parks subsequently used a large portion of the proceeds of that sale for his personal use and the use of his family.

NON-FILER INVESTIGATIONS

Taxpayers who fail to file an income tax return pose a serious threat to tax administration and the American economy. Their actions undermine public confidence in the Service's ability to administer the tax laws fairly and effectively. Criminal Investigation devotes investigative resources to individuals who simply refuse to comply with the law.

Examples of non-filer investigations adjudicated in FY 2016 include:

Two Sentenced for Conspiracy to Avoid Paying Federal Taxes

On March 2, 2016, in Springfield, Missouri, Wesley Vernon Delpert, of Ozark, was sentenced to 46 months in prison and ordered to pay a \$5,000 fine and \$585,733 in restitution to the IRS. Co-defendant Alton Louis Vaughn Sr., of Greene County, was sentenced to 42 months in prison and ordered to pay \$585,733 in restitution to the IRS and \$3,595 in restitution to a victim. Delpert was the owner of Abundant Health & Wellness. Between January 1, 2004 and December 31, 2013, Delpert received approximately \$4.7 million in gross receipts that he did not report to the IRS or pay taxes on. Delpert submitted documents to the IRS consisting of frivolous arguments in order to impede and delay an IRS examination. He also attempted to place his funds and assets beyond the reach of IRS collection efforts. Delpert and Vaughn also attempted to impede a federal grand jury in its investigation of Delpert by refusing to comply with federal grand jury subpoenas for tax and business records, by sending correspondence to the U.S. Attorney's Office falsely stating that an IRS Revenue Officer had personally seized and collected all of Delpert's original income documents for the years 2003 through 2009 and by Vaughn falsely testifying before the grand jury. Both also attempted to impede a federal grand jury in its investigation by counseling an employee to refuse to testify.

Former Insurance Agent Sentenced for Investment Fraud Scheme and Tax Fraud

On February 22, 2016, in Columbia, South Carolina, Timothy David Mays, of Walterboro, was sentenced to 42 months in prison, three years of supervised release and ordered to pay restitution of \$583,087 to his victims and \$127,051 to the IRS. From late 2008 through 2011, Mays was an insurance agent licensed to sell life insur-

ance and accident/health insurance, who also touted himself as a “licensed” investor and CEO of Life Trust Financial, LLC, and Mays Group Financial investment companies. Mays received approximately \$1,089,000 from investors under false pretenses. Mays invested only \$200,000 of the funds and returned approximately \$203,000 to clients who asked for their money back. He spent approximately \$583,000 on a variety of personal and business expenditures. Approximately \$104,000 of funds he had left in his accounts were turned over to federal authorities during the investigation. In addition, Mays filed a false U.S. Individual Income Tax Return in February 2007 for calendar year 2006 that understated his total income, and he willfully failed to file U.S. Individual Income Tax Returns for calendar years 2007, 2008, and 2009.

EMPLOYMENT TAX FRAUD

Employment tax schemes can take a variety of forms. Some of the more prevalent methods include employee leasing, paying employees in cash, filing false payroll tax returns, failing to file payroll tax returns or “pyramiding.” Pyramiding is when a business withholds taxes from its employees, but intentionally fails to remit

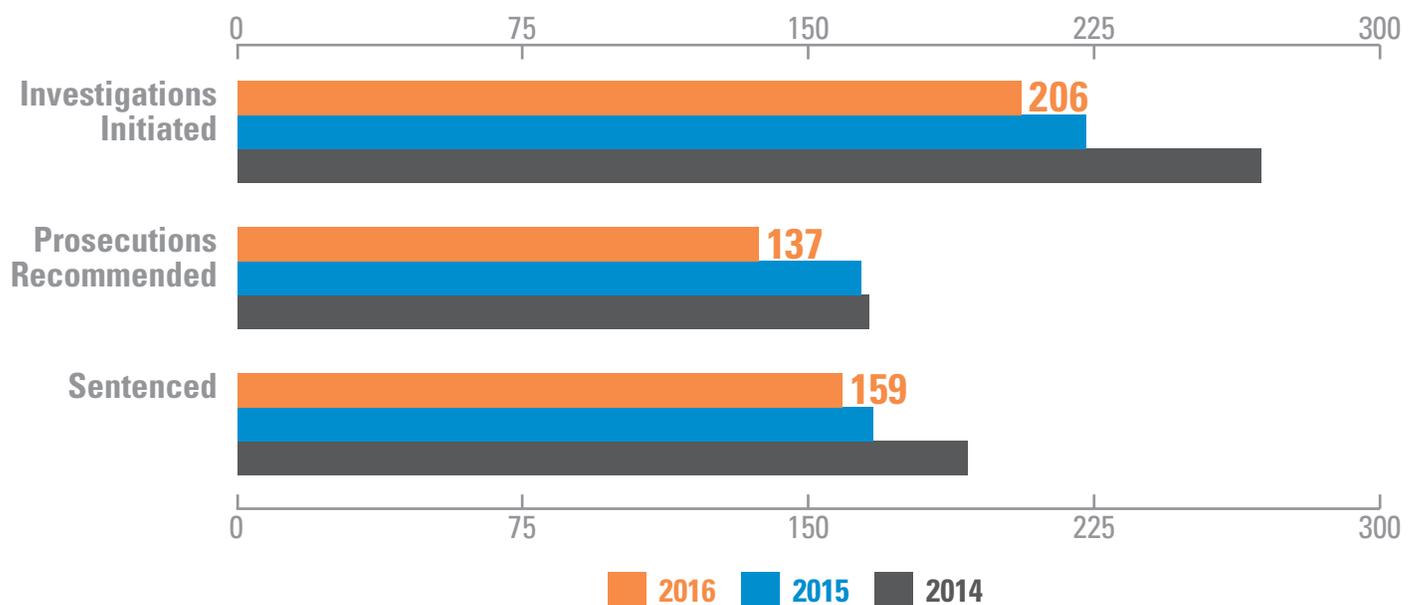
payment to the IRS. After a liability accrues, the individual starts a new business and begins to accrue a new liability. Employment taxes include federal income tax withholding, Social Security taxes, and federal unemployment taxes. Some business owners withhold taxes from their employees’ paychecks, but intentionally fail to remit those taxes to the IRS.

Examples of employment tax fraud investigations adjudicated in FY 2016 include:

Operator of Third Party Payroll Company Sentenced For Embezzling from Client Companies

On December 15, 2015, in Charlotte, North Carolina, James William Staz was sentenced to 135 months in prison, two years of supervised release and ordered to pay over \$17 million in restitution. Staz pleaded guilty in March 2015, to wire fraud, transactional money laundering and tax evasion. Staz operated a third-party payroll company, “Employee Services.Net, Inc.” (ESN) that provided services to client companies. Staz was ESN’s vice president and later the company’s president. ESN had access to the clients companies’ bank accounts to cover expenses associated with the services

NON-FILER INVESTIGATIONS



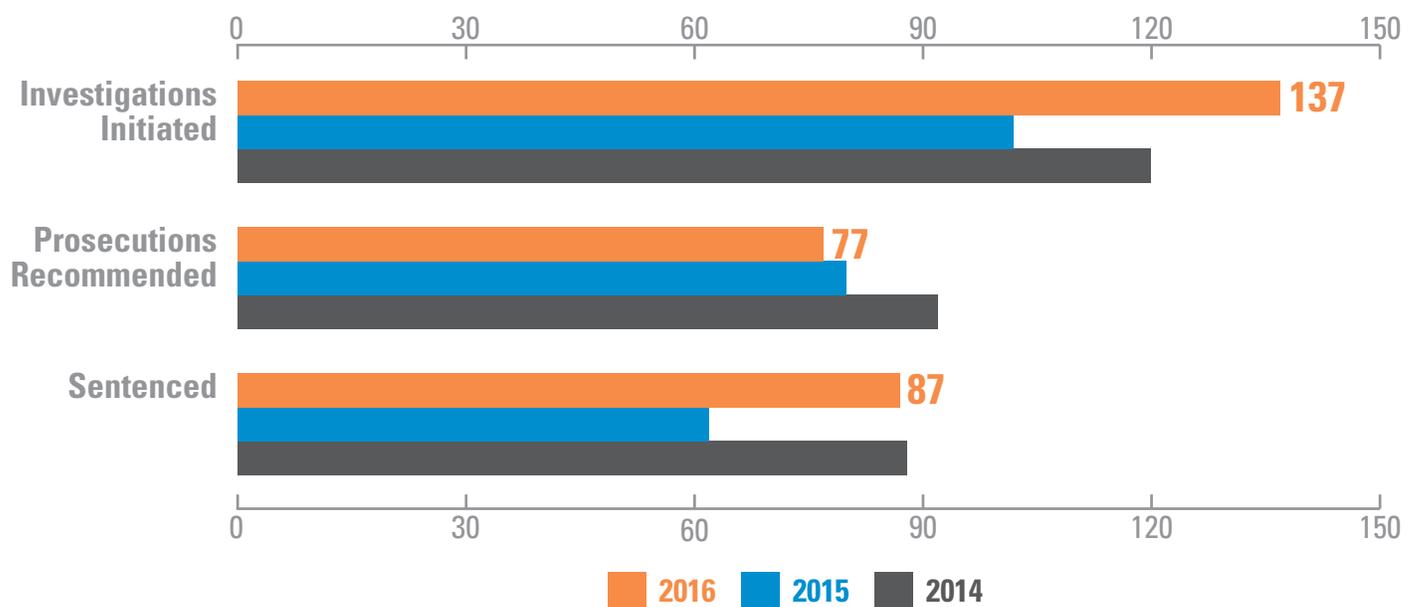
it provided. From 2008 to March 2014, Staz defrauded at least 113 ESN clients of almost \$17 million dollars intended for payroll and employment tax payments and used it to support his personal lifestyle. Staz stole at least \$3.7 million in client funds and used the money to pay for alcohol, strip club entertainment, jewelry, a Mercedes Benz and a luxury home. To conceal his embezzlement, Staz made false entries into ESN's accounting system to make it appear as though the funds were used for legitimate client expenses.

Colorado Man Sentenced for Failure to Pay Millions in Employment Taxes

On March 24, 2016, in Denver, Colorado, Lucilious J. Ward was sentenced to 26 months in prison, three years of supervised release and ordered to pay \$5,955,231 in restitution to the IRS. Ward pleaded guilty on January 3, 2014, to failure to account for and pay over the employment taxes withheld from his employees' paychecks and making a false claim against the United States. Since at least 2004, Ward owned and operated Global Access, which provided public and private transportation services. From January 2005 through the second quarter in 2011, Ward withheld employment taxes from Global Access's employees' paychecks. Ward know-

ingly and willfully failed to file with the IRS Forms 941 (employment tax forms) as required by law, failed to pay to the IRS the employment taxes that Ward had withheld from their paychecks and failed to pay the required employer's matching portion of FICA. Rather than paying the IRS the employment taxes owed by Global Access, Ward spent it on a variety of expenses. Additionally, in 2010, Ward filed with the IRS an amended personal tax return (Form 1040X) for the tax year 2007 which falsely claimed that \$76,479 of federal income tax withholdings had been withheld from his paychecks by Global Access and paid to the IRS. Ward intentionally filed this false return so that he would be assessed a refund of \$76,479 to which he was not legitimately entitled.

EMPLOYMENT TAX INVESTIGATIONS



ILLEGAL SOURCE TAX CRIMES

The Illegal Source Financial Crimes Program encompasses tax and tax-related, money laundering and currency violations. These investigations are focused on individuals deriving income from illegal sources, such as dollars obtained through embezzlement, bribery, and illegal gambling operations. The individuals can be legitimate business owners but obtain their income through illegal means. These investigations are also focused on methods through which individuals seek to “launder” their ill-gotten income by making it appear that the income is from a legitimate source. Frequent money laundering techniques include the manipulation of currency reporting requirements, layering of transactions and international movement of funds. In these types of investigations, CI Special Agents work hand-in-hand with our federal, state, and local law enforcement partners, as well as with foreign tax and law enforcement agencies.

FINANCIAL INSTITUTION FRAUD

This program addresses criminal violations involving fraud against banks, savings and loan associations, credit unions, check cashers, and stockbrokers. Criminal Investigation’s ability to bring income tax and money laundering charges augments prosecutors’ effectiveness in combating fraud committed against financial institutions, whether the violators work within or outside of the institution. The United States Attorneys’ recognize CI’s financial investigative expertise in this complex area.

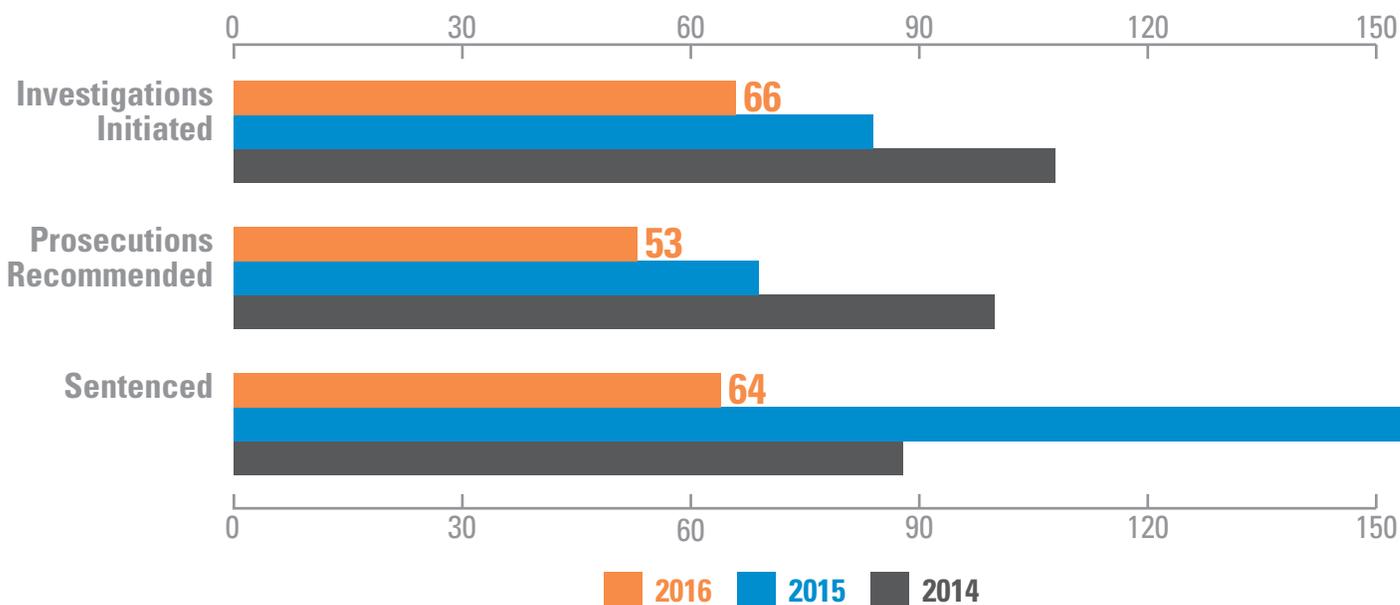
Examples of financial institution fraud investigations adjudicated in FY 2016 include:

Former Florida CEO Sentenced in Scheme to Defraud Investors

On February 22, 2016, in Key West, Florida, Fred Davis Clark Jr., aka Dave Clark, the former Cay Clubs Chief Executive Officer, was sentenced to 480 months in prison for his participation in a \$300 million dollar vacation rental fraud scheme. In addition, forfeiture money judgments were entered against Clark that includes \$303,800,000 for the bank fraud and \$3,300,000 for the SEC obstruction. There is also court-ordered

forfeiture of specific overseas assets of approximately \$2.6 million. Clark was convicted on December 11, 2015, of three counts of bank fraud and three counts of making a false statement to a financial institution. The scheme involved sales at Cay Clubs Resorts and Marinas (Cay Clubs), to approximately 1,400 investors. Clark also was convicted of obstruction of the U.S. Securities and Exchange Commission (SEC), in connection with the SEC’s efforts to investigate his conduct related to Cay Clubs. From 2004 through 2008, Cay Clubs marketed vacation rental units for locations in Florida, Las Vegas and the Caribbean, to investors throughout the United States. Despite its promises, Cay Clubs never developed the properties but operated as a Ponzi scheme, using proceeds from sales to new investors to pay overdue obligations to earlier investors. In order to meet Cay Clubs’ financial obligations and obtain funds for himself, Clark engaged in a series of fraudulent mortgage transactions totaling more than \$20 million worth of bank loans. Clark also used proceeds from the investor sales to purchase a gold mine, a coal reclamation project and a rum distillery for his personal benefit. Clark’s co-conspirators Barry J. Graham, and Ricky Lynn Stokes, both of Ft. Myers, Florida, were both previously sentenced to 60 months in prison and ordered to pay restitution of \$163,530,377 to numerous individual and financial institution victims.

FINANCIAL INSTITUTION FRAUD INVESTIGATIONS



Ohio Man Sentenced for Credit Union Fraud

On December 22, 2015, in Cleveland, Ohio, Gezim Selgjekaj, of Avon Lake, was sentenced to 300 months in prison and was ordered to pay \$16 million in restitution. Previously, Selgjekaj was found guilty of one count of conspiracy, 15 counts of financial institution fraud, five counts of bribery and six counts of money laundering. Selgjekaj fraudulently obtained more than \$10.6 million in loan proceeds from the St. Paul Croatian Federal Credit Union between 2003 and 2010. Selgjekaj obtained the loans by providing more than \$200,000 in bribes to Anthony Raguz, the chief operating officer of the credit union. Selgjekaj is the latest of more than two dozen people convicted of crimes related to the collapse of St. Paul Croatian Federal Credit Union. The credit union was closed and then liquidated in 2010 after sustaining approximately \$170 million in total losses, with approximately \$72.5 million of those losses tied to individual criminal fraud schemes, making it the largest credit union failure in American history. Raguz is currently serving a 14 year prison sentence.

PUBLIC CORRUPTION

Criminal Investigation continues the pursuit of both elected and appointed individuals who violate the public's trust. These individuals are from all levels of government including local, county, state, federal and foreign officials. Public corruption investigations encompass a wide variety of criminal offenses including bribery, extortion, embezzlement, illegal kickbacks, tax fraud and money laundering.

Examples of public corruption investigations adjudicated in FY 2016 include:

Former County Chief Deputy Auditor Sentenced for Embezzling Government Funds, Tax Fraud and Wire Fraud

On March 2, 2016, in South Bend, Indiana, Mary Ray, of LaPorte, was sentenced to 84 months in prison and was ordered to forfeit \$137,249 and pay \$801,315 in restitution. On Sept. 17, 2015, Ray was convicted of two counts of theft of government monies, two counts of making false statements on a tax return and seven counts of wire fraud. According to court documents, from September 2011 through December 2012, while she served as chief deputy auditor for LaPorte County, Ray embezzled more than \$150,000 from county coffers and underreported her income on her U.S. Individual Tax Returns by failing to report the embezzled funds. Ray also defrauded her father-in-law, an 86-year-old disabled veteran, out of more than \$600,000 in funds that he entrusted her to oversee. Ray used the illegally-obtained funds to gamble at casinos.

Former New York City Police Department Detective Sentenced

On January 21, 2016, in Central Islip, New York, Rafael Astacio, of Copiague, was sentenced to 72 months in prison, three years of supervised release and ordered to pay a \$200,000 forfeiture money judgment and restitution of \$1.8 million. Previously, Astacio, a former detective with the New York City Police Department, pleaded guilty to conspiracy to commit interstate transportation of stolen property and filing a fraudulent tax return. Between 2010 and 2012, Astacio was a member of a burglary crew that committed approximately three dozen commercial burglaries and ten residential burglaries stealing approximately \$8,000,000 in cash and property. Astacio personally participated in six of the commercial burglaries and five residential burglaries stealing more than \$5.3 million in cash and property. Astacio used his position with the NYPD to locate potential burglary targets' home addresses.

Former State Senator Leland Yee and Three Others Sentenced on Racketeering Conspiracy Charges

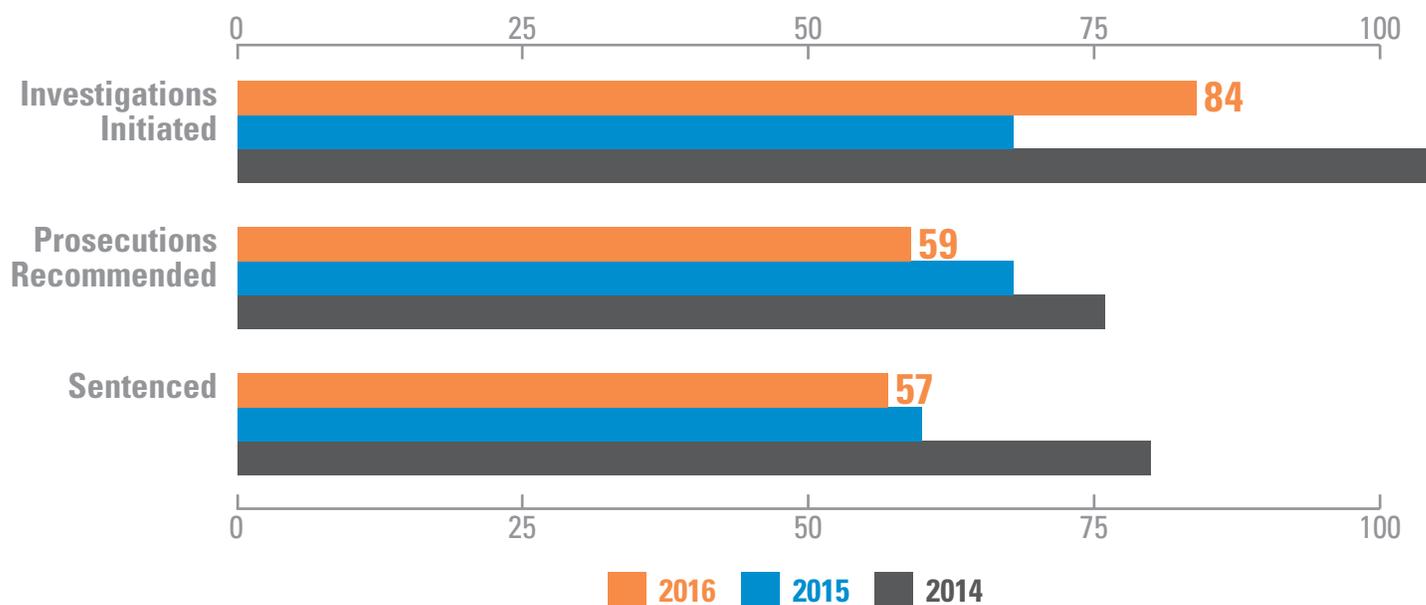
On February 24, 2016, in San Francisco, California, former State Senator Leland Yee was sentenced to 60 months in prison, three years of supervised release, fined \$20,000, and forfeiture of certain property. Co-conspirator, Keith Jackson was also sentenced to 108 months in prison, three years of supervised release, and forfeiture of certain property. On July 1, 2015, Yee and Jackson pleaded guilty to using the Leland Yee for Mayor 2011 campaign and the Leland Yee for Secretary of State 2014 campaign to conduct RICO crimes. According to government filings, the conspiracy involved three different, but related, areas of criminal activity: (1) honest services fraud in which he exchanged official acts for money, (2) a weapons trafficking conspiracy, and (3) money laundering. In November of 2012, Yee devised extortion schemes in which he planned to obtain campaign contributions by leveraging his Senate committee vote on an upcoming decision to dissolve the California State Athletic Commission. Yee requested campaign contributions from individuals interested in keeping the Commission alive. In the second scheme, Yee was prepared to vote for or against pending legislation on workers compensation for professional athletes

playing in California depending on which competing interest gave him the most money. Keith Jackson participated in the RICO conspiracy with Yee. Jackson accepted cash and checks for bribes and committed wire fraud, money laundering and conspiracy to illegally import firearms and ammunition from the Philippines. Brandon Jamelle Jackson and Marlon Sullivan were also sentenced to 54 and 66 months respectively, for their roles in a separate, but related conspiracy.

Connecticut Man Sentenced for Bribing Housing Authority Official

On February 26, 2016, in Hartford, Connecticut, Andrew Ross, of New Haven, was sentenced to 12 months and one day in prison and three years of supervised release. Restitution will be determined at a later date. On Sept. 3, 2015, Ross pleaded guilty to conspiracy to commit bribery in connection with a program receiving federal funds. According to court documents, Ross paid nearly \$350,000 in bribes to Michael Siwek, the former executive director of the West Haven Housing Authority (WHHA) in exchange for government contracts and business. As part of his duties, Siwek had substantial discretion over awarding WHHA business and contracts. Siwek also owned and controlled

PUBLIC CORRUPTION INVESTIGATIONS



Four Star Development Company, LLC (“Four Star”). Between January 2007 and February 2012, Ross, who controlled business entities that received WHHA business and contracts for financial and consulting services, made approximately \$349,500 in corrupt payments to Siwek and Four Star. In total, Siwek received approximately \$1.5 million in bribes from individuals who received business with the WHHA and the entities that the WHHA controlled. On September 4, 2014, Siwek pleaded guilty to related charges.

CORPORATE FRAUD

The Corporate Fraud program concentrates on violations of the Internal Revenue Code (IRC) and related statutes committed by publicly traded or private corporations, and/or by their senior executives. Some of the specific criminal acts within a corporate fraud investigation include falsifying and fabricating or destroying company records for the purpose of falsifying tax returns, financial statements or reports to regulatory agencies or investors. It also includes conduct by executives to enrich themselves by attempting to derive unauthorized compensation through unapproved payments or bonuses, payment of personal expenses with corporate funds or bogus loans. Many cor-

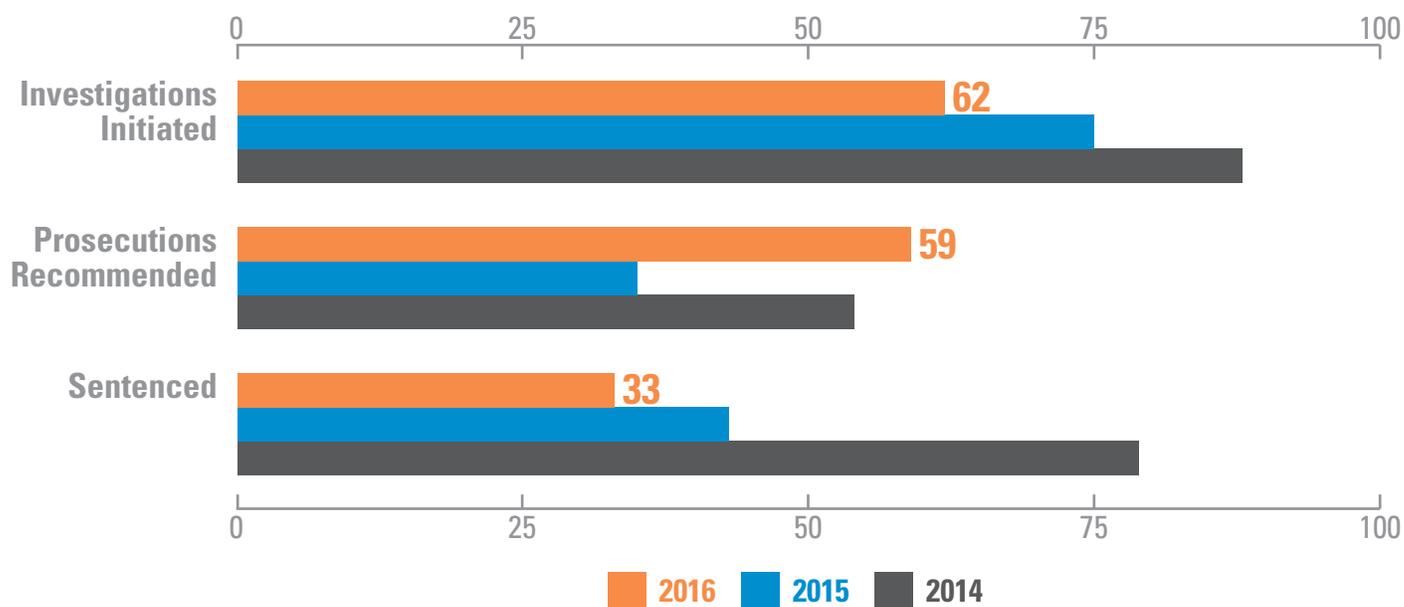
porate fraud investigations are joint efforts involving other federal agencies.

Examples of corporate fraud investigations adjudicated in FY 2016 include:

Former Samsung America Director Sentenced for Embezzling More Than \$1 Million

On June 29, 2016, in Newark, New Jersey, John Y. Lee, a/k/a “Yong Kook Lee,” of West New York, was sentenced to 75 months in prison, three years of supervised release and ordered to pay restitution to Samsung America Inc. of \$1,693,271. Lee previously pleaded guilty to wire fraud and subscribing to false individual income tax returns. According to court documents, Lee was involved in an elaborate scheme to embezzle funds from Samsung America, a Ridgefield Park-based global trading and investment company and American subsidiary of the Korean conglomerate Samsung Corp. In September 2000, Lee created a fictitious entity that he called the Engelhard Supple (sic) Co. to make it appear as though that entity was actually Engelhard Corp., a provider of metal refining services. Lee created numerous false financial documents to make it appear that Samsung Corning Precision Glass Ltd., a joint venture

CORPORATE FRAUD INVESTIGATIONS



involving the Samsung Corporation and Corning Inc., had ordered services from Engelhard when in fact, no real services had been ordered or provided. Lee induced Samsung America to wire money directly into a bank account Lee controlled. The loss to the company was between \$1 million and \$2.5 million. Lee also signed and filed a 2006 Individual Income Tax Return that failed to include \$339,138 he had embezzled from Samsung America in 2006.

Former Maryland Businessman Sentenced for \$7 Million Bond Scheme and Tax Fraud

On November 10, 2015, in Baltimore, Maryland, Wilfred T. Azar III, formerly of Queenstown, was sentenced to 63 months in prison and three years of supervised release for securities fraud and filing a false tax return. In addition, Azar was ordered to pay restitution of \$7,219,362 to victim investors and \$469,936 to the IRS. According to court documents, in 1999, Azar became president and majority owner of Empire Corporation and exercised complete control over the operations of Empire. From January 2006 to April 2010, Azar caused Empire Corporation to sell bonds to 64 individual investors for more than \$7 million. Azar diverted millions of dollars of proceeds from the bond sales to his own bank account and the bank accounts of other companies that he controlled. Azar also diverted more than \$1.07 million in Empire funds as “loans” to other unrelated businesses he controlled, which were never repaid and another \$3.31 million to make lulling payments. Finally, Azar failed to report approximately \$1,959,250 of embezzled income on his 2009 tax return.

CEO of “Green” Cleaning Product Company Sentenced for Defrauding Investors

On January 21, 2016, in Sacramento, California, Brent Lee Newbold, of Granite Bay, was sentenced to 51 months in prison and ordered to pay more than \$2.9 million in restitution. On September 3, 2015, Newbold

pleaded guilty to a scheme to defraud investors that ran from October 2007 to January 2010. Newbold was the chief executive officer of Holy Cow, a business that produced a “green” cleaning product. According to court documents, Newbold made a variety of misrepresentations to investors about the financial health of the company, including the company’s debt levels and how invested funds would be used. Between July 2008 and January 2010, Newbold solicited 13 individual investors and falsely claimed that he was authorized to act on behalf of Holy Cow; that he owned Holy Cow; that he owned the majority of Holy Cow stock; and that Holy Cow was financially sound, stable and profitable. In some cases, Newbold provided his individual investors with false Holy Cow stock certificates, false Holy Cow purchase order reports, and corporate promissory notes. In fact, Holy Cow bore a significant amount of debt, and Newbold continued to take additional debt related to Holy Cow. Newbold used investor funds for nonbusiness purposes, diverting it to himself and his wife, paying his mortgage, and paying previous investors. By December 2009, Spence Enterprises put Holy Cow into bankruptcy as a result of the unauthorized and undisclosed debt. The loss amount was over \$2.9 million.

Former Executive of Nuclear Power Company Sentenced

On January 7, 2016, in Boise, Idaho, Jennifer R. Ransom, of Meridian, was sentenced to 30 months in prison and three years of supervised release, the first six months in home confinement. Ransom was also ordered to forfeit \$580,780 and pay \$116,138 in restitution to victim-investors. Ransom pleaded guilty to securities fraud on April 21, 2015. According to the plea agreement, Ransom was the Senior Vice President of Administration of Alternate Energy Holdings, Inc. (“AEHI”). Ransom, along with co-defendant, Donald L. Gillispie, the former President and CEO of AEHI, and other “nominees,” participated in a scheme to defraud or deceive AEHI investors. The scheme involved Gillispie and Ransom recruiting nominees to

make purchases of AEHI stock on the market for the express purpose of artificially inflating the market price of AEHI stock. Ransom received shares of AEHI stock as executive compensation. From June 2010 through September 2010, a period during which attempts were being made to artificially inflate the market price of AEHI stock, Ransom sold approximately 1,000,000 of her shares and received approximately \$675,326 in return, of which approximately \$580,780 was the proceeds of securities fraud.

GAMING

CI focuses on the enforcement of tax, money laundering and related financial crimes to combat illegal activity within the gaming industry, as well as to uncover and shutdown illegal gaming operations. The use of the Internet has greatly increased the reach of domestic and international gaming operations. Illegal gambling operations can be found in a number of different forms, including bookmaking, numbers, online gaming and some charitable gaming operations. Criminal Investigation's gaming program consists of a two-faceted, proactive approach to industry compliance. First is the investigation of entities suspected of violating tax, money laundering, or related laws. Second are liaison activities with federal, state, and tribal gaming boards, licensing commissions, industry regulators, gaming operators, gaming industry suppliers, and other law enforcement. A critical component of both facets is CI's coordination with the civil functions of the IRS in addressing trends and concerns in the gaming industry.

Examples of gaming investigations adjudicated in FY 2016 include:

Video Poker Business Owner Sentenced

On February 24, 2016, in Columbia, South Carolina, Larry Flynn, aka L.W., of Richland County, was sentenced to 15 months in prison; three years supervised

release and ordered to pay \$251,000 in restitution. Flynn ran an illegal video poker business called Magic Minutes from 2011 through 2013. Magic Minutes placed video poker machines throughout the state, generally in gas stations, liquor stores and party shops. For a fee, the machines allowed gamblers to play games of chance – with the ability to cash out their winnings with the owners of the stores where the machines were housed. Magic Minutes was a profitable illegal gambling business, in two years making well over a million dollars. However, during this same time, the defendant paid no taxes and had members of his family on Medicaid.

Pennsylvania Bookmaker Gets Prison Term for Tax Charges

On October 2, 2015, in Philadelphia, Pennsylvania, Jacob Corropolese, Sr., of Norristown, was sentenced to 12 months and a day in prison and one year of supervised release for tax charges in connection with his sports bookmaking operation. Corropolese was also ordered to pay \$238,000 in taxes, interest, and penalties to the IRS. On May 6, 2015, Corropolese pleaded guilty to two counts of filing false tax returns. According to court documents, Corropolese received more than \$500,000 in proceeds from bettors when he ran a sports bookmaking operation but did not report any of the income on his federal income tax returns for 2010 and 2011. As a result he substantially underreported his income resulting in a total tax loss of \$120,002.

INSURANCE FRAUD & HEALTHCARE FRAUD

The Insurance Fraud Program addresses criminal tax and money laundering violations relative to insurance claims and fraud perpetrated against insurance companies. Insurance fraud covers a wide variety of schemes, including phony insurance companies, offshore/unlicensed Internet companies and staged auto accidents.

The Healthcare Fraud Program involves the investigation of individuals who bill healthcare insurance companies for medical expenses never incurred or for unnecessary medical procedures and medical equipment.

Examples of insurance fraud and healthcare fraud investigations adjudicated in FY 2016 include:

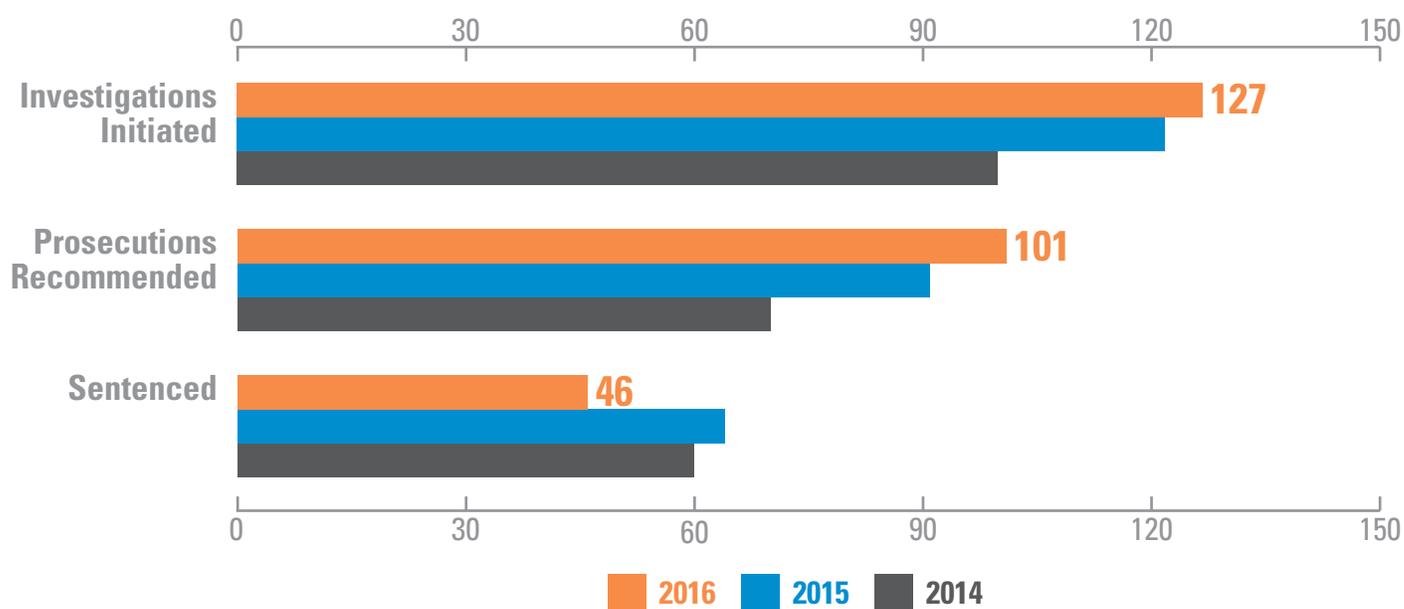
North Carolina Behavioral Health Businessman Sentenced for Medicaid Fraud

On March 22, 2016, in Wilmington, North Carolina, Terry Lamont Speller, of Winterville, was sentenced to 240 months in prison, three years of supervised release and ordered to pay restitution of \$5,962,189 to the victims of the offense, which included the North Carolina Medicaid program and a physician. Between 2010 and 2015, Speller used Carter Behavior Health Services, a Medicaid provider he operated, and other providers to fraudulently bill Medicaid millions of dollars in fraudulent claims. Speller and others fraudulently caused Medicare to pay out some \$4.9 million in funds. Speller converted approximately \$1 million of the fraud proceeds into alleged loan payments to a third party however, no documentation supported the loans. The loan proceeds were then transferred back to Speller.

Texas Chiropractor Sentenced for Receiving Millions in Kickbacks and Money Laundering

On June 10, 2016, in Austin, Texas, Garry Wayne Craighead, a chiropractor from Leander, Texas, was sentenced to 168 months in prison, three years of supervised release and ordered to pay \$17,908,170 restitution to the U.S. Department of Labor (DOL); forfeit to the Government property located in Williamson County as well as an aircraft. On December 4, 2015, Craighead pleaded guilty to one count of solicitation and receipt of illegal remunerations in federal health programs and one count of engaging in monetary transactions in property derived from specified unlawful activity. Craighead acknowledged that he operated several medical and rehabilitation clinics that treated injured workers, particularly postal employees, covered by federal worker's compensation program (FECA), in Austin, San Antonio, Killeen, Corpus Christi, Dallas, Fort Worth, and Weslaco. From 2008 through 2015, Craighead solicited and received millions in kickbacks from health care providers, including multiple pharmacies, hospitals, ambulatory surgical centers, and affiliated businesses, in return for referring his FECA patients to those providers for medical items and services, including prescription drugs, surgeries, and other

HEALTHCARE FRAUD INVESTIGATIONS



procedures. The DOL paid millions as a result of the tainted referrals made by Craighead. In addition to the kickbacks, Craighead admitted to laundering the proceeds of his illegal conduct. Craighead was arrested on March 2, 2016 for continuing to receive approximately \$600,000 in kickbacks, dissipating the funds, lying to government investigators, and testing positive for illegal drug use while on bond.

Doctor Sentenced in \$20 Million Health Care Fraud Scheme

On January 6, 2016, in Los Angeles, California, Dr. Kenneth Johnson, of Ladera Heights, was sentenced to 108 months in prison. Johnson is one of three people found guilty in 2014 and one of 16 defendants who have been convicted in relation to the scheme that generated fraudulent billings of more than \$20 million. Johnson fraudulently prescribed expensive anti-psychotic medications and then repeatedly re-billed the government for the drugs. Johnson pre-signed thousands of prescriptions that were later used to fill millions of dollars in fraudulent prescriptions for anti-psychotic drugs. Using prescriptions that were pre-signed by Johnson, employees of Manor Medical generated thousands of prescriptions for identify theft victims – such as elderly Vietnamese beneficiaries of Medicare and Medi-Cal, military veterans who were recruited from drug rehab programs, and others. Members of the conspiracy created or doctored patient files to make it falsely appear the drugs were necessary and the patients were legitimately treated. After the prescriptions were filled at pharmacies and paid for by Medicare and Medi-Cal, they were sold on the black market and redistributed to pharmacies, where the drugs would be subject to new claims made to Medicare and Medi-Cal as though they were new bottles of drugs.

Owner of Home Health Care Agency Sentenced for Role in \$7 Million Scheme

On March 22, 2016, in Newark, New Jersey, Irina Krutoyarsky, of Springfield, was sentenced to 60 months in prison and three years of supervised release. Krutoyarsky was also ordered to pay \$7 million in restitution and a forfeiture order was entered for \$7 million. Krutoyarsky and her conspirators defrauded Medicaid by submitting fraudulent bills for services and false documentation regarding the certifications of home health aides. Krutoyarsky also directed certain home health aides to establish checking accounts at a bank near HHCH's office and then took control of their checkbooks. After Medicaid paid the claims and transferred the funds into HHCH accounts, Krutoyarsky then transferred portions of the money into the aides' accounts and used the money for her and her family's use and benefit. Krutoyarsky paid two bribes totaling approximately \$25,000 to an employee of the N.J. Department of Labor (NJDOLE) to obstruct and unlawfully influence NJDOLE investigations. Finally, between 2007 and 2011, Krutoyarsky cheated the IRS out of \$907,150 in taxes.

Michigan Physician Sentenced for Role in \$5.7 Million Medicare Fraud Scheme

On March 23, 2016, in Detroit, Michigan, Laran Lerner, of Northville, was sentenced to 45 months in prison and ordered to pay \$2,789,409 in restitution. Lerner lured patients into his clinic with prescriptions for medically unnecessary controlled substances and then caused Medicare to be billed for a variety of unnecessary prescriptions, diagnostic tests and office visits. Medicare was billed \$5,748,237 as a result of Lerner's unnecessary prescriptions, office visits and diagnostic testing. Lerner also structured cash deposits he received as a result of his scheme in \$5,000 increments on consecutive days at various bank locations in the Detroit

area to avoid the requirement that domestic banks file a currency transaction report for all currency transactions over \$10,000.

BANKRUPTCY FRAUD

According to the United States Bankruptcy Court, there were 860,182 bankruptcy filings in FY 2015. Bankruptcy fraud results in serious consequences that undermine public confidence in the system and taint the reputation of honest citizens seeking protection under the bankruptcy statutes. Since the IRS is often a creditor in bankruptcy proceedings, it is paramount that tax revenues be protected.

Examples of bankruptcy fraud investigations adjudicated in FY 2016 include:

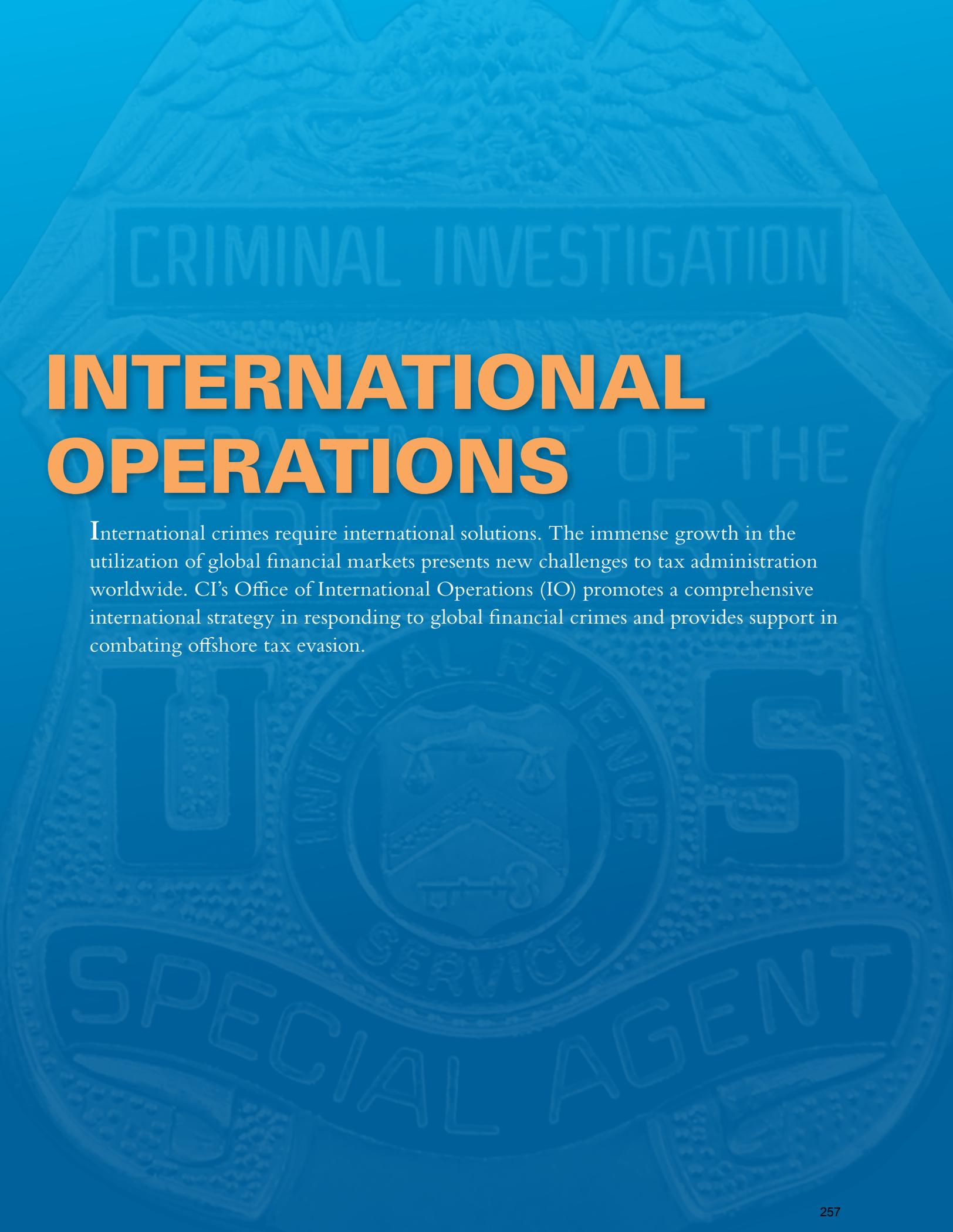
Developer Sentenced for Investment and Bankruptcy Fraud

On January 27, 2016, in Phoenix, Arizona, John Keith Hoover, of Mohave Valley, was sentenced to 120 months in prison. His wife, Deborah B. Hoover, was convicted of conspiracy to commit bankruptcy fraud and was sentenced to 12 months of home confinement and five years of supervised release. John Hoover was a homebuilder and created nearly two dozen companies that he used to solicit money from Arizona and California investors for bogus real-estate developments beginning in 1997. Several investors were widows who gave Hoover control of the bulk of their estates based on his friendship with their families and because of the

trust he developed as an attorney. Hoover told investors their money would go to specific real-estate developments and encouraged investors to liquidate retirement accounts, life-insurance policies, mutual funds and securities, and Social Security death benefits to fund their investments with him. Hoover then used investor money to pay his living expenses. When Hoover ran out of money, he refinanced properties with false representations about salary, assets, liabilities, employment, and sources of down payments. Then, he and his wife hid their assets and filed for bankruptcy.

North Carolina Man Sentenced for Bankruptcy and Tax Fraud

On March 16, 2016, in Greensboro, North Carolina, Faiger Blackwell, of Burlington, was sentenced to 24 months in prison, three years of supervised release and ordered to pay \$404,619 in restitution. Blackwell owned several businesses, including a funeral home. In 2007, Blackwell filed for bankruptcy for himself and his funeral home after accumulating more than \$300,000 in outstanding federal taxes and more than \$1 million in other debts. During the bankruptcy proceedings, Blackwell concealed rental income from the bankruptcy court and used the money to pay for business and personal expenses. In July 2009, after the IRS levied one of Blackwell's business bank accounts, he set up another company created solely for banking purposes and corresponding bank accounts in order to divert funds and circumvent the levy. Blackwell concealed these funds from the bankruptcy court, the IRS and other creditors and used them to pay for business and personal expenses.



INTERNATIONAL OPERATIONS

International crimes require international solutions. The immense growth in the utilization of global financial markets presents new challenges to tax administration worldwide. CI's Office of International Operations (IO) promotes a comprehensive international strategy in responding to global financial crimes and provides support in combating offshore tax evasion.

INTERNATIONAL OPERATIONS

New patterns and trends emerging in complex international tax avoidance schemes and cross-border transactions have heightened the IRS' concern about tax compliance. Individuals may attempt to use foreign accounts, trusts, and other entities to commit criminal violations of U.S. tax laws as well as narcotics, money laundering and BSA violations. Independent pursuit of international financial crimes has revealed a more global interdependent approach is necessary to combat crimes that have no borders.

CI has special agent attachés strategically stationed in 10 foreign countries. Attachés continue to build strong alliances with our foreign government and law enforcement partners. These strong alliances provide CI with the ability to develop international case leads and to support domestic investigations with an international nexus. CI attachés are especially focused on promoters from international banking institutions who facilitate United States taxpayers in evading their United States tax requirements. Additionally, CI has personnel assigned to Interpol and the International Organized Crime Intelligence and Operations Center (IOC-2) to combat the threats posed by international criminal organizations, assist in joint investigations and the apprehension of international fugitives.

The growth of the CI's footprint internationally has also increased the opportunities for CI to educate foreign governments and agencies on crime detection, investigative techniques, emerging trends, and best practices. CI plays a significant role in the International Visitor's Program (IVP) that is administered by IRS Large Business & International (LB&I) division. In FY2016, CI hosted and presented to various international visitors from over thirty (30) countries.

Since the means to evade taxes and commit fraud is not limited by sovereign borders, CI has partnered with the Department of Justice - Tax Division to aggressively pursue those who attempt to evade the law by hiding their assets outside of the United States. CI

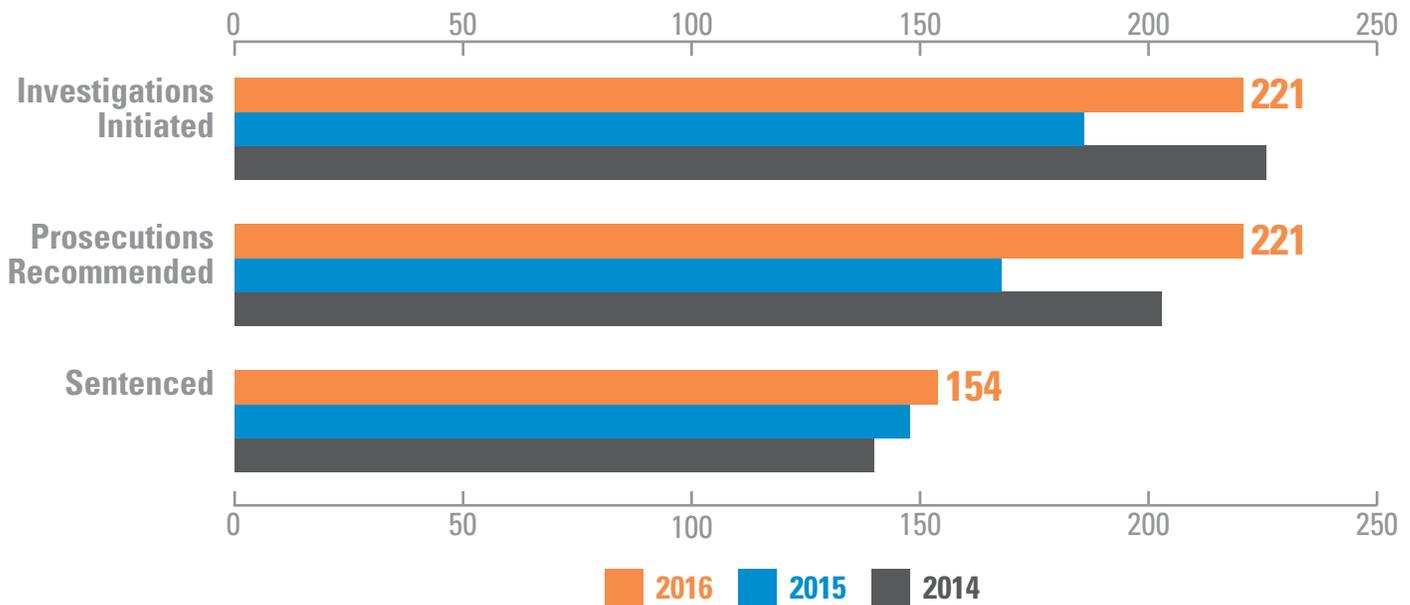
special agents were detailed to the Swiss Bank Program and assisted the Tax Division with the mitigation phase of the program. In January 2016, the final non-prosecution agreement under Category 2 of the Swiss Bank Program was signed bringing the total banks with executed agreements to eighty (80). These agreements have resulted in more than \$1.36 billion in penalties being imposed on the banks. The primary focus of the program has shifted to the development of investigative leads involving taxpayers that have a high probability of committing criminal tax violations. Since then, numerous investigative leads have been referred to CI field offices and LB&I division.

Examples of international investigations adjudicated in FY 2016 include:

Two Cayman Island Financial Institutions Plead Guilty to Conspiring to Hide More Than \$130 Million

On March 9, 2016, in Manhattan, New York, Cayman National Securities Ltd. (CNS) and Cayman National Trust Co. Ltd. (CNT), two Cayman Island affiliates of Cayman National Corporation, pleaded guilty to conspiring with many of their U.S. taxpayer-clients to hide more than \$130 million in offshore accounts from the IRS and to evade U.S. taxes on the income earned in those accounts. CNS and CNT will pay a total of \$6 million to the U.S. and provide the account files of non-compliant U.S. taxpayers who maintained accounts at CNS and CNT. According to court documents, from at least 2001 through 2011, CNS and CNT assisted certain U.S. taxpayers in evading their U.S. tax obligations to the IRS and otherwise hiding accounts held at CNS and CNT from the IRS. CNT set up sham trusts and shell companies for U.S. taxpayer-clients and permitted these clients to trade in U.S. securities without requiring them to submit Form W-9s as required. CNS and CNT agreed to maintain these structures for U.S. taxpayer-clients after many of them expressed concern that their accounts would be detected by the IRS. In 2009, CNS and CNT had approximately \$137 million in assets under management relating to undeclared

INTERNATIONAL OPERATIONS INVESTIGATIONS

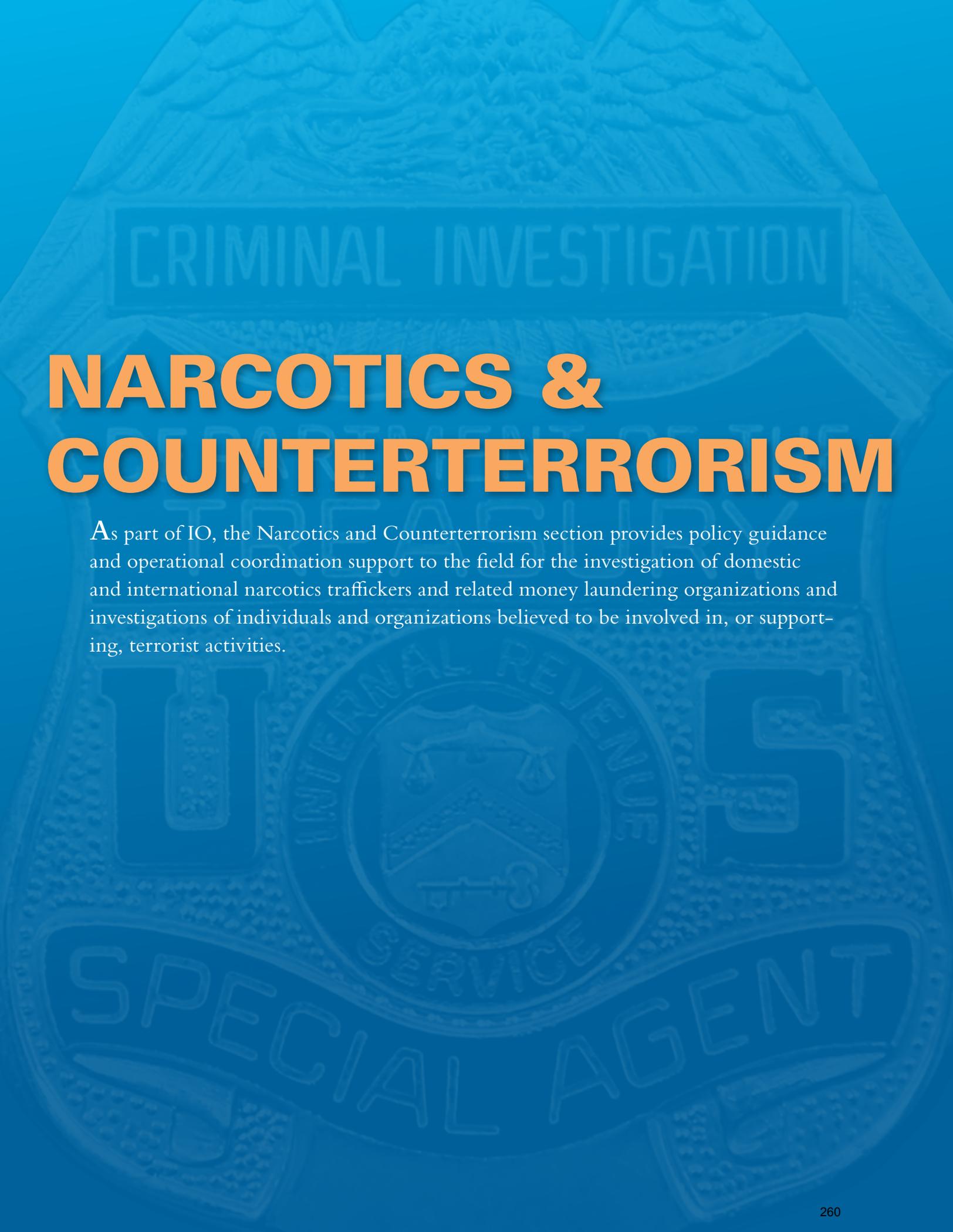


accounts held by U.S. taxpayer-clients. From 2001 through 2011, CNS and CNT earned more than \$3.4 million in gross revenues from the undeclared U.S. taxpayer accounts that they maintained.

Liberty Reserve Founders Sentenced for Laundering Hundreds of Millions of Dollars

On May 13, 2016, in Manhattan, New York, Vladimir Kats was sentenced to 120 months in prison and three years of supervised release. Kats previously pleaded guilty to conspiracy to commit money laundering, two counts of conspiracy to operate an unlicensed money transmitting business, receipt of child pornography and marriage fraud. On May 6, 2016, Arthur Budovsky was sentenced to 240 months in prison and ordered to pay a \$500,000 fine. Budovsky previously pleaded guilty to conspiring to commit money laundering. According to court documents, Kats and Budovsky ran a massive money laundering enterprise through their company Liberty Reserve S.A. (“Liberty Reserve”). Liberty Reserve billed itself as the Internet’s “largest payment processor and money transfer system” and allowed

people all over the world to send and receive payments using virtual currency. Kats and Budovsky directed and supervised Liberty Reserve’s operations, finances, and business strategy and were aware that digital currencies were used by other online criminals. Liberty Reserve grew into a financial hub for cybercriminals around the world, trafficking the criminal proceeds of Ponzi schemes, credit card trafficking, stolen identity information and computer hacking. By May 2013, when the government shut it down, Liberty Reserve had more than 5.5 million user accounts worldwide and had processed more than 78 million financial transactions with a combined value of more than \$8 billion. United States users accounted for the largest segment of Liberty Reserve’s total transactional volume – between \$1 billion and \$1.8 billion – and the largest number of user accounts – over 600,000. Co-defendants Mark Marmilev and Maxim Chukharev were sentenced to 60 months and 36 months in prison, respectively. Co-defendant Azzeddine El Amine pleaded guilty and is scheduled to be sentenced. Charges remain pending against Liberty Reserve and two individual defendants who are fugitives.



NARCOTICS & COUNTERTERRORISM

As part of IO, the Narcotics and Counterterrorism section provides policy guidance and operational coordination support to the field for the investigation of domestic and international narcotics traffickers and related money laundering organizations and investigations of individuals and organizations believed to be involved in, or supporting, terrorist activities.

NARCOTICS

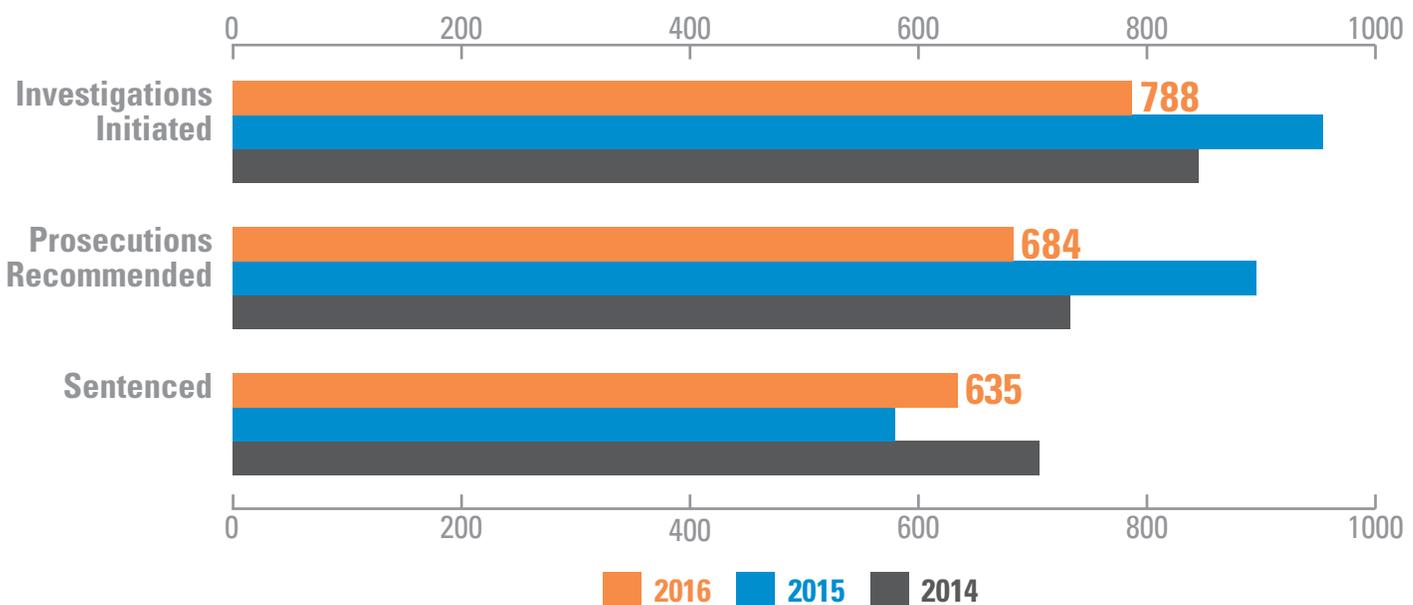
Criminal Investigation’s Narcotics and Counterterrorism Program support the goals of the President’s Strategy to Combat Transnational Organized Crime (TOC), the U.S. National Drug Control Strategy, the National Money Laundering Strategy, and the U.S. Government’s National Counterterrorism Strategy. Criminal Investigation contributes to the strategies by seeking to reduce or eliminate the profits and financial gains of individuals, entities, and Transnational Criminal Organizations involved in the financing of terrorism, narcotics trafficking, and money laundering. Criminal Investigation special agents expertise in “following the money” is vital to fulfilling the goals of U.S. government narcotics and counterterrorism strategies. Criminal Investigation special agents utilize their unique financial investigative expertise to trace the profits from an illegal activity back to an individual or criminal organization with the intent to dismantle, disrupt, and prosecute the criminal.

Criminal Investigation is an integral partner in combatting the trafficking of narcotics and the financing of terrorism by investigating criminal violations of the Internal Revenue Code, Bank Secrecy Act and Federal Money Laundering statutes. Since its inception in 1982,

CI has participated in the Organized Crime Drug Enforcement Task Force (OCDETF) program by focusing its narcotics efforts almost exclusively on high-priority OCDETF cases where its contributions have the greatest impact. The FY 2016 goal for CI’s Direct Investigative Time (DIT) in narcotics investigations ranged between 11-12.5% of the agency’s total DIT. At fiscal year-end, CI achieved its goal with a final rate of 11.6% of DIT charged to narcotics investigations. In addition, the FY 2016 goal of 90% of all narcotics investigation dedicated to the OCDETF program was reached with a final 92.5%.

Criminal Investigation’s Narcotics Program also supports the National Drug Control Strategy and the National Money Laundering Strategy through the assignment of CI personnel to the White House Office of National Drug Control Policy as well as the assignment of personnel to multi-agency task forces, including OCDETF, OCDETF Fusion Center (OFC), High Intensity Drug Trafficking Area (HIDTA), High Intensity Financial Crimes Area (HIFCA), Drug Enforcement Administration Special Operations Division, (SOD), and the El Paso Intelligence Center (EPIC).

NARCOTICS INVESTIGATIONS



Examples of narcotics investigations adjudicated in FY 2016 include:

El Monte Flores Gang Member Sentenced on Multiple Racketeering Charges

On May 19, 2016, in Los Angeles, California, Christian “Bossy” Lafargo, was sentenced to 210 months in prison. Lafargo pleaded guilty to multiple charges, including Racketeer Influenced and Corrupt Organizations (RICO) conspiracy, violent crime in aid of racketeering – attempted murder, violent crime in aid of racketeering – conspiracy to commit murder, and discharging a firearm during and in relation to a crime of violence. According to indictment, Lafargo, a long-time El Monte Flores (“EMF”) gang member, participated in drug distribution, extortion, and crimes of violence on behalf of the enterprise and the most aggravating aspect of defendant’s offense conduct was his violent activity on behalf of the gang. Even during his periods of incarceration, LaFargo continued to participate in criminal activity on behalf of the gang and Mexican Mafia within the walls of the state prison. Five others have been sentenced in this case receiving prison terms ranging from 27 to 130 months in prison. James Gutierrez, a Mexican Mafia member who was a “shotcaller” of the gang also pleaded guilty to conspiring to violate the RICO Act, conspiring to distribute controlled substances, including methamphetamine and heroin, and conspiring to launder money. Gutierrez has also agreed to a sentence of 15 years in prison and will be sentenced later this year.

Largest cocaine supplier to Alaska sentenced to 16 years imprisonment Infiltrated airport security to send over 250 kilograms of cocaine to Alaska from 2010 to 2014

On March 25, 2016, in Anchorage, Alaska, Clarence Anthony Hatton, aka “C-Money,” of Las Vegas, Nevada, was sentenced to 192 months in prison, fined \$40,000 and ordered to forfeit expensive vehicles and

over \$700,000 in drug proceeds. Hatton previously pleaded guilty to conspiring with others to distribute cocaine and launder the proceeds of cocaine trafficking. Hatton, who lived in Las Vegas, would obtain large quantities of cocaine from California, where he was from. He then paid employees at Las Vegas McCarran International Airport to take the cocaine into the employee entrance at the airport so it was not subjected to normal security. The employee would then meet with a traveler to Alaska (or Michigan) in the men’s bathroom in the secure area of the terminal and transfer the cocaine. Over 250 kilograms of cocaine were sent to Alaska in this manner, and over 100 kilograms of cocaine were sent to Michigan using the same scheme. Hatton had been sending cocaine to Alaska for the past 20 years, and had amassed great wealth in doing so.

Drug Trafficker Sentenced for Conspiracy and Money Laundering Convictions

On August 11 2016, in Dallas, Texas, Jose Guerrero, a/k/a “J.D.,” one of the principal defendants charged in a major drug distribution conspiracy that operated in the Dallas–Fort Worth area and elsewhere, was sentenced to 425 months in prison. Guerrero will also forfeit \$20,970 in U.S. currency found by federal agents in his safety deposit box, \$40,276 seized from a bank account, a firearm and a 2007 Hummer H3 vehicle. Guerrero pleaded guilty in September 2015 to one count of conspiracy to possess with intent to distribute and distribute 500 grams or more of methamphetamine and one count of laundering of monetary instruments. According to documents, beginning in November 2012, Guerrero, along with Tony Ruvalcaba, a/k/a “Lil Tony,” Eusebio Martinez Ramirez Jr., a/k/a “Sip,” “Eduardo Ruvalcaba, a/k/a “Lalo,” Kenneth Johnson, a/k/a “KJ,” Noel Escamilla, Octavius Donnel Williams and Kenneth Johnson, a/k/a “KJ,” conspired to possess with intent to distribute 500 grams or more of methamphetamine. Guerrero admitted he was being supplied multi-kilogram amounts of methamphetamine, which he then worked to distribute to various individuals. In addition, Guerrero admitted that on Feb.

22, 2013, he accepted \$13,000 cash from co-defendant Ernest Olivarez, knowing that the money he received was illegal drug proceeds. Guerrero also admitted that, in August 2013, he provided \$17,040 in drug money to an undercover officer so that it could be laundered.

Convicted Drug Trafficker and Money Launderer Sentenced to Prison

On April 7, 2016, in Boston, Massachusetts, Miguel Fernandes, aka Orlando Sanchez, of Brockton and formerly of Los Angeles, California, was sentenced to 144 months in prison, four years of supervised release and ordered to forfeit \$1 million and a 2007 Ferrari. In January 2016, Fernandes pleaded guilty to conspiracy to possess with intent to distribute 500 grams or more of cocaine, possession with intent to distribute 100 kilograms or more of marijuana, and conspiracy to launder monetary instruments. According to court documents, Fernandez, as the organizer and leader, oversaw all aspects of a well-organized conspiracy responsible for the transportation and distribution of cocaine and marijuana from Los Angeles to Boston. Fernandes obtained the drugs from sources in Los Angeles, and utilized various means to ship the drugs to various cities in the greater Boston area. Fernandes and his co-conspirators also laundered the proceeds made from the sale of those drugs. The conspiracy utilized “funnel accounts” controlled by individuals in Los Angeles who allowed deposits for Fernandes to be made to their accounts in Massachusetts and withdrawn in Los Angeles. As many as 40 funnel accounts were utilized, through which Fernandes and his co-conspirators laundered as much as \$5 million in drug sale proceeds. Co-defendants Nelson Teixeira, Michael Alves and Alex Gomes were sentenced to terms ranging from 24 to 30 months in prison.

including but not limited to harnessing every tool at the U.S. Government’s disposal, including intelligence, military, and law enforcement. Criminal Investigation special agent’s expertise in tracking financial records is vital to the goal to disrupt, dismantle, and prosecute individuals, entities and TOC groups that finance terrorism. Criminal Investigation contributes to the strategy’s goal by having its special agents use their financial investigative expertise to identify and investigate terrorism financing schemes.

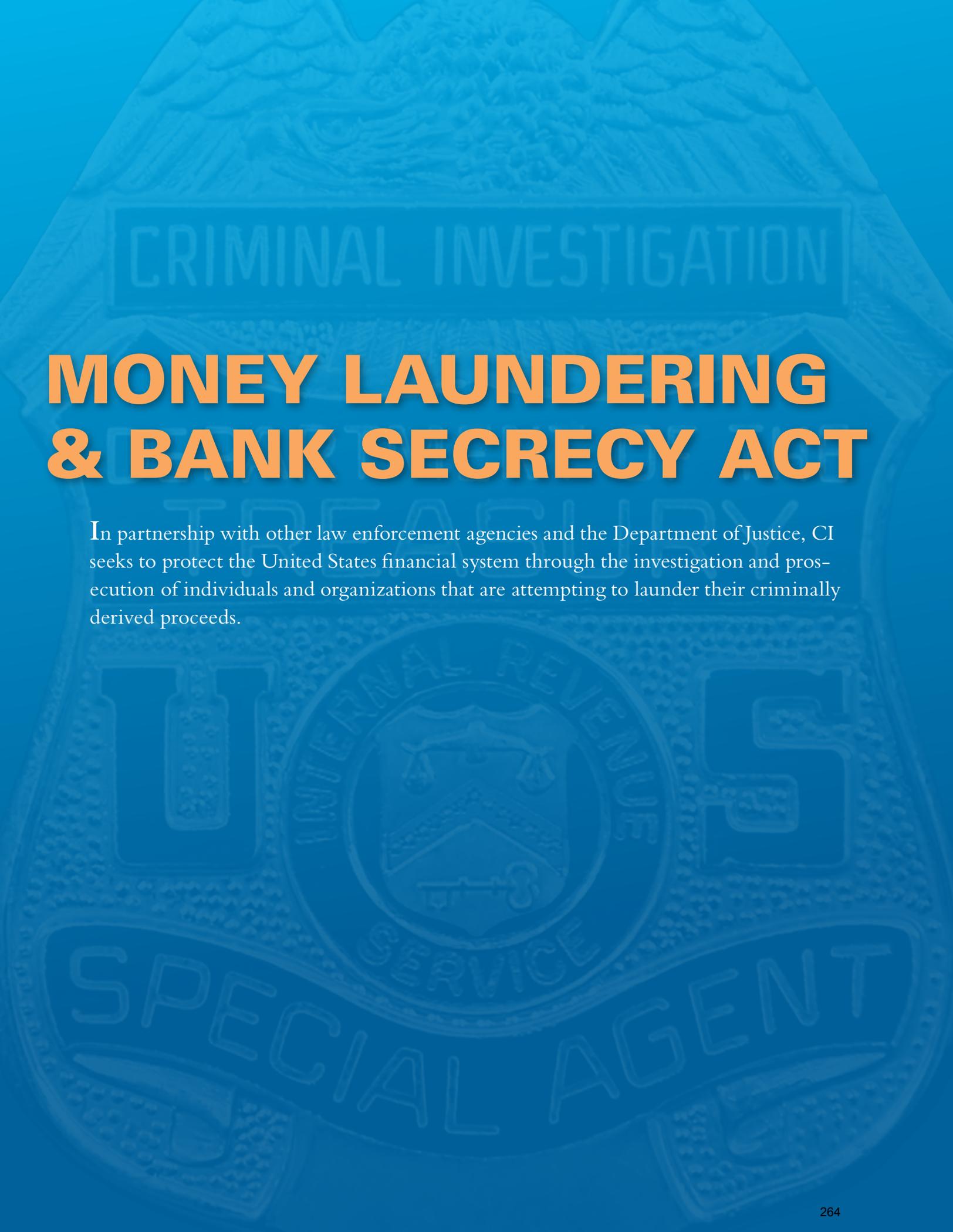
As the threats to our national security continue to emerge and evolve, CI will continue to vigorously support our nation’s whole of government approach. In FY 2016, CI re-doubled its efforts to support counterterrorism initiatives, updated our counterterrorism strategy, and established a new counterterrorism training program.

Through our participation on the Joint Terrorism Task Forces around our nation, CI has actively been involved in the investigations into the attacks on the homeland by homegrown violent extremists. Criminal Investigation stands ready to continue flowing the money and keeping our nation safe.

While CI’s involvement may not always result in a tax charge, the financial investigative expertise brought by CI special agents to these types of investigations is invaluable. Criminal Investigation has been involved in every recent investigation involving domestic terrorist threats or incidents and continues to support the other federal law enforcement agencies in this way.

COUNTERTERRORISM

The goals of the U.S. Government’s National Counterterrorism Strategy are guided by several key principles,



MONEY LAUNDERING & BANK SECRECY ACT

In partnership with other law enforcement agencies and the Department of Justice, CI seeks to protect the United States financial system through the investigation and prosecution of individuals and organizations that are attempting to launder their criminally derived proceeds.

MONEY LAUNDERING

Criminal Investigation seeks to deprive individuals and organizations of their illegally obtained cash and assets through effective use of the federal forfeiture statutes. In money laundering cases, the money involved is earned from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source. Money laundering is one means by which criminals evade paying taxes on illegal income by concealing the source and the amount of profit.

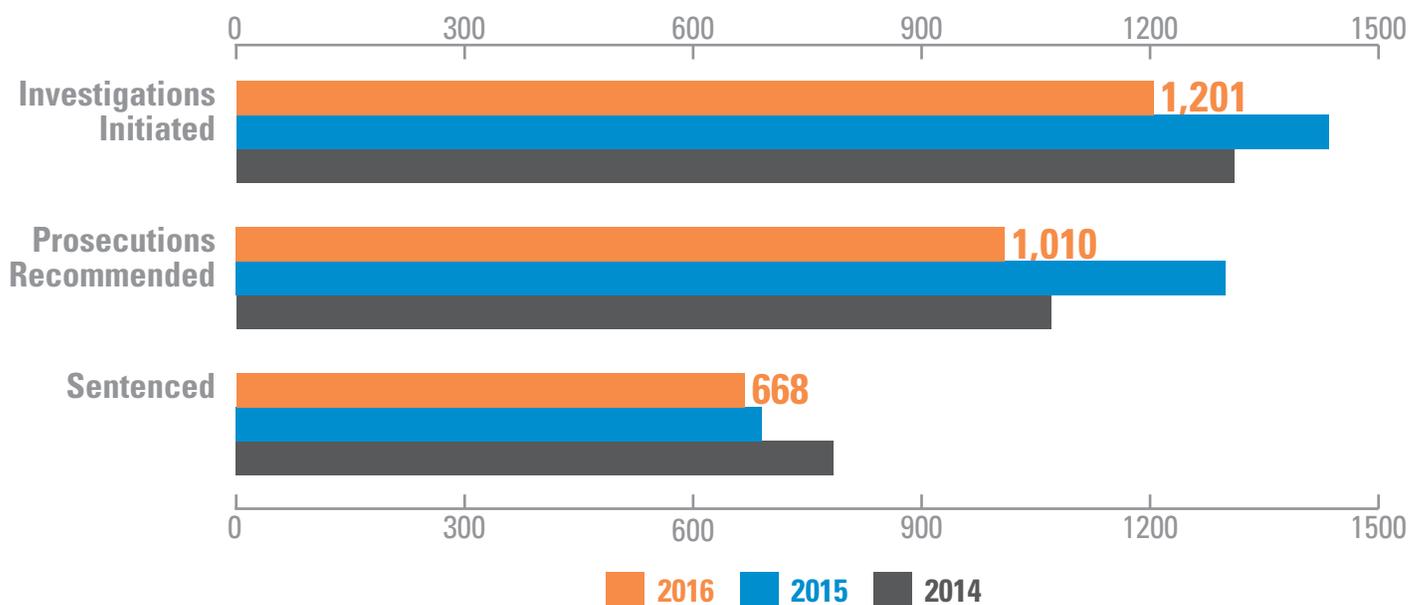
Examples of money laundering investigations adjudicated in FY 2016 include:

Former Prosecutor Sentenced for Massive Wire Fraud and Money Laundering Scheme

On May 23, 2016, in Anchorage, Alaska, Mark Avery was sentenced to 160 months in prison, five years of supervised release, ordered to pay a \$100,000 fine, and pay restitution to the May Smith Trust of \$45,925,737. Avery was convicted on February 29, 2016, of three counts of wire fraud, six counts of money laundering, one count of bank fraud and one count of making false statements to a bank. Avery served as a trustee

and lawyer to the May Smith Trust from early 2002, and received yearly compensation in the amount of \$600,000 in trustee fees for his fiduciary role. Avery engaged in a scheme wherein he pledged assets of the May Smith Trust as collateral to secure a \$52 million loan for himself. The jury's verdicts found that Avery defrauded May Wong Smith and the May Smith Trust by using the \$52 million loan funds for his personal use and to invest in various businesses without any indicia of normal business practices. The money was obtained and spent with no written business plan, no controls over how the money was to be spent, no repayment terms, no promissory note and none of the common safeguards of commercial investments. Avery exhausted the \$52 million he obtained from the trust in six months using the funds on various purchases for himself. Avery was also convicted of bank fraud and making false statements to Wells Fargo Bank in October 2006 in connection with a \$500,000 line of credit in which he failed to list the \$52 million dollar debt when applying for the loan. This is the largest wire fraud and money laundering conviction by amount ever prosecuted in Alaska.

MONEY LAUNDERING INVESTIGATIONS



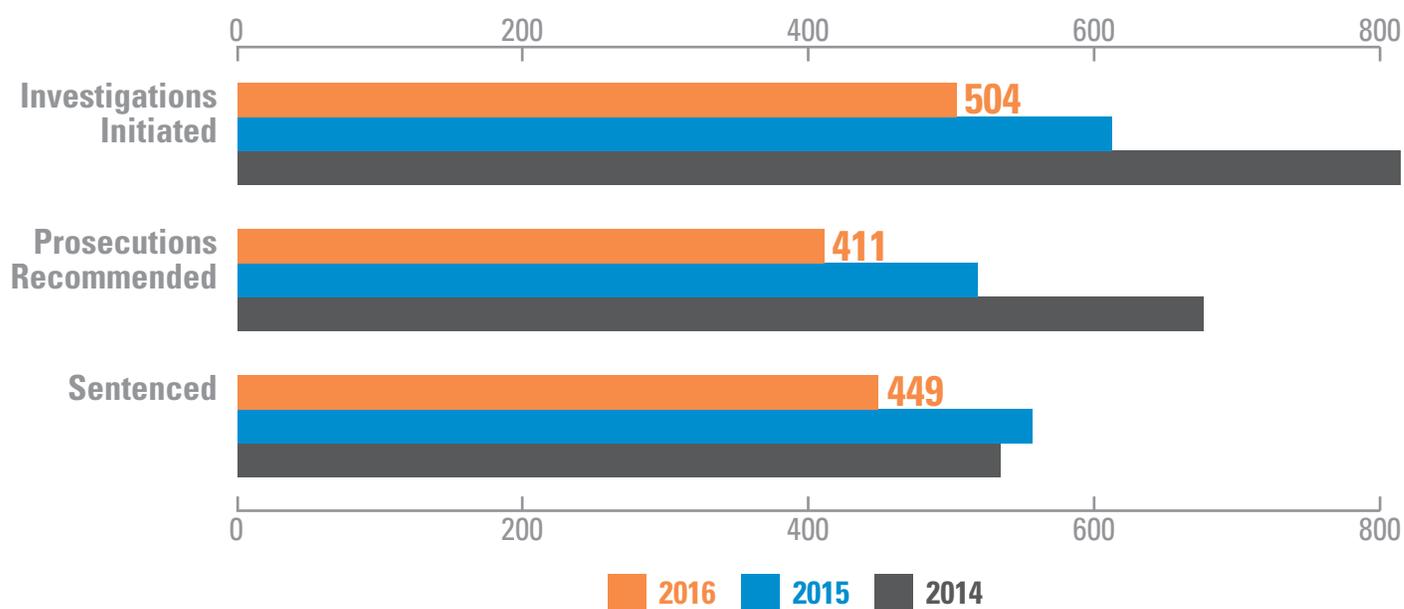
Nevada Man Sentenced for Shipping Illegal Drugs and Money Laundering

On December 29, 2015, in Las Vegas, Nevada, Damien Williams, was sentenced to 151 months in prison, plus two additional consecutive years in prison. Williams pleaded guilty to conspiracy to distribute a controlled substance, conspiracy to launder money, and aggravated identity theft. According to the plea agreement, between May 2012 and October 2013, Williams used the identification documents of “Goldie Cage” to obtain a Nevada identification card, rent an apartment, obtain an automobile loan, and open bank accounts. During the same period, Williams was sending packages of controlled substances, including codeine and marijuana, to people in Tennessee and Texas. Williams received approximately \$856,000 in proceeds, which were deposited by others into the bank accounts that Williams had opened under Cage’s name. Williams would then withdraw the funds and use them in furtherance of additional illegal drug activities. The deposits and withdrawals were structured in amounts of less than \$10,000 in order to avoid federal bank reporting requirements.

BANK SECRECY ACT

The Bank Secrecy Act (BSA) mandates the reporting of certain currency transactions conducted with a financial institution, the disclosure of foreign bank accounts, and the reporting of the transportation of currency across United States borders. Through the analysis of BSA data, CI has experienced success in identifying significant and complex money laundering schemes and other financial crimes. CI is the largest consumer of BSA data. The CI BSA Program has grown substantially since its inception in early 2000. The mission is a continued focus to scrutinizing BSA data to identify significant illicit financial criminal activity. The current CI BSA program is comprised of joint partnerships in 94 judicial districts led by the respective U.S. Attorney Office and sponsorship and management of 55 Financial Crimes Task Forces (FCTF) throughout the country. The FCTF involves collaboration between CI and state or local law enforcement agencies for the purpose of identifying and investigating specific geographic area illicit financial crimes, including BSA violations, money laundering, narcotics trafficking, terrorist financing and even tax evasion. More than 150 state or local agencies have joined FCTFs across the country and have detailed more than 250 law enforcement of-

BANK SECRECY ACT INVESTIGATIONS



ficers to assist in this effort. CI strengthens the BSA program area by maintaining excellent working relationships with anti-money laundering officials within the financial industry. Additionally, CI maintains excellent relationships with IRS civil functions responsible for BSA Compliance and other external sources. These relationships are developed at the headquarters and field office levels through outreach activities.

In addition, during FY 2016, CI hosted two bank forums to help strengthen relationships with officials within the financial industry. The bank forums provide an opportunity for CI and the Anti-Money Laundering officials to discuss emerging trends of criminal activity.

In January of 2016 and July of 2016, The Financial Crimes Enforcement Network (FinCEN) issued Geographic Targeting Orders (GTO) that will temporarily require certain U.S. title insurance companies to identify the natural persons behind companies used to pay “all cash” for high-end residential real estate in selected US counties. FinCEN will require certain title insurance companies to identify and report the true “beneficial owner” behind a legal entity involved in certain high-end residential real estate transactions

The GTO is assisting IRS-CI identify possible illicit activity, in particular, a significant portion of covered transactions have indicated possible criminal activity associated with the individuals reported to be the beneficial owners behind shell company purchasers and has provided greater insight on potential assets held by persons of investigative interest. This corroborates Federal Law Enforcements concerns that the transactions covered by the GTOs (i.e., all-cash luxury purchases of residential property by a legal entity) are highly vulnerable to abuse for money laundering and other financial crimes to include tax evasion

VIRTUAL CURRENCY

Since 2013, CI has pursued investigations into the use of virtual currency for illicit purposes. Virtual cur-

rency is any medium of exchange that operates like a fiat currency but does not have legal tender status in any jurisdiction. As with any money, virtual currency can be used in a wide variety of crimes involving tax fraud, money laundering, and other financial crimes. CI has had substantial roles in many virtual currency investigations. Some examples include the Liberty Reserve investigation, the Silk Road investigation and the related corruption investigation into corrupt Drug Enforcement Administration and U.S. Secret Service agents who transferred bitcoins into their personal wallet while investigating Silk Road. Using old-fashioned “follow the money” techniques, CI was able to successfully trace the bitcoin transfers through the “blockchain”.

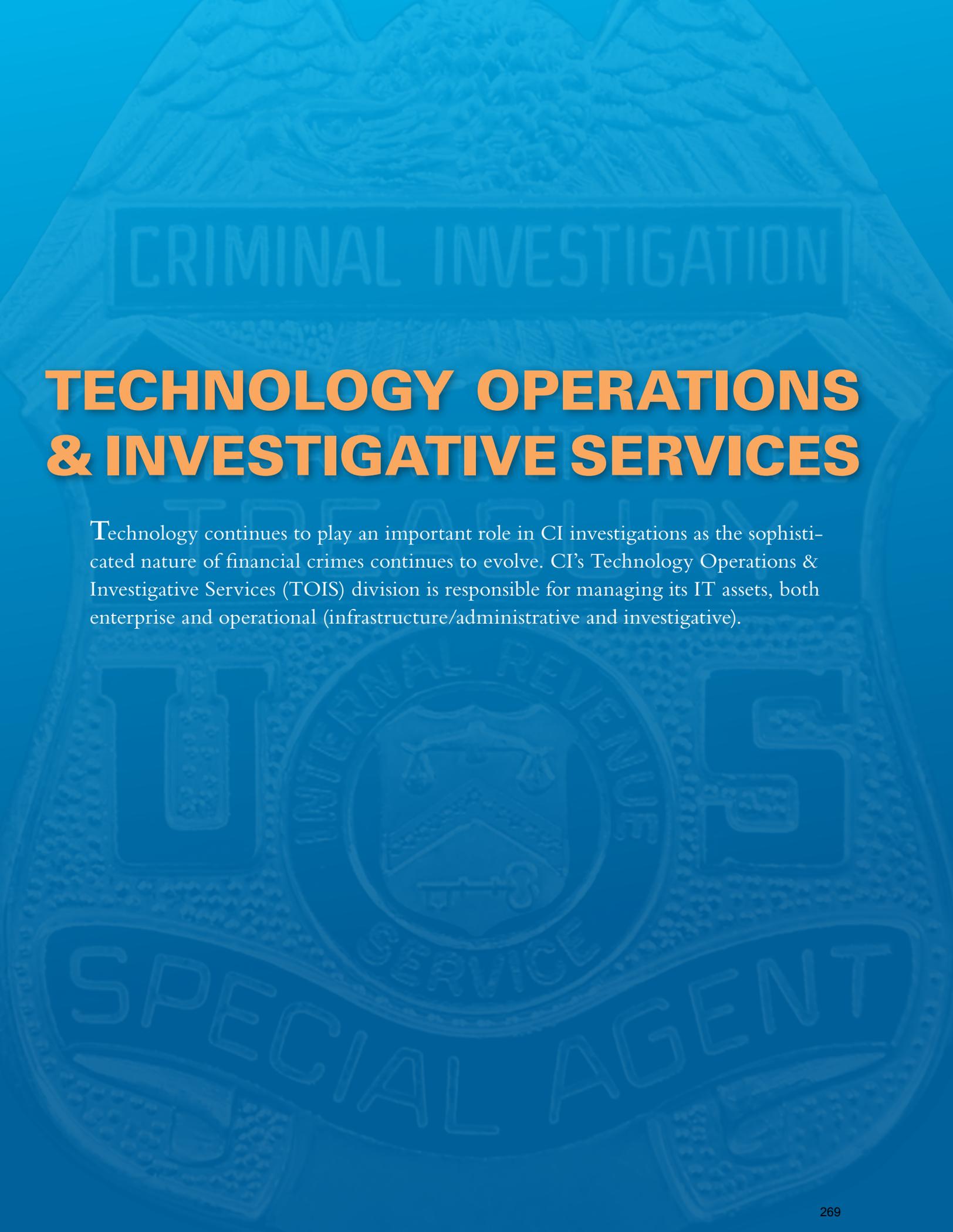
Criminal Investigation is a member of the IRS’ Virtual Currency Issue Team that studies issues related to virtual currency, including how taxpayers can use virtual currency as a tool to evade the payment of taxes. During the past year, CI has placed an emphasis on educating investigators on cybercrimes and virtual currency trends. All of CI’s 25 field offices attended training on cybercrimes and virtual currencies in fiscal year 2016. CI has partnered with the civil division to create training material that was presented to the Fraud Technical Advisors. This training is available to all of IRS. Criminal Investigation will follow the virtual currency trends and disseminate that information.

In FY 2017, CI will continue to focus on financial crimes that involve virtual currency by collaborating with the Financial Crimes Enforcement Network (FinCEN) and other federal law enforcement agencies to identify the movement of illegal monies utilizing virtual currency. In addition, IRS-CI continued its collaboration efforts with other Business Operating Divisions (BOD) within IRS to include SB/SE and LB&I to promote voluntary compliance and to investigate those individuals who use virtual currency as a tool to evade taxes. CI will work with private companies and organizations to strengthen our public-private partnership and to stay current with the threats posed by the use of virtual currency.

NATIONAL FORENSIC LABORATORY

The IRS National Forensic Laboratory (NFL) has been examining evidence and supporting IRS investigations for more than 40 years. Forensic scientists in a state-of-the-art laboratory help support field investigations by offering forensic testing or technical services in electronics, imaging, latent prints, polygraph, questioned documents, ink chemistry, and trial illustration. Examiners at the NFL report the results of forensic testing or technical services to investigators for use in the investigation of potential criminal violations of the Internal Revenue Code and related financial crimes. Furthermore, when called upon to do so, examiners provide expert testimony in judicial proceedings. Although the NFL is a small branch of CI, its work is critical in ensuring the efficient processing of crucial evidence in our investigations.

Since 2015, the NFL's questioned document, chemistry and latent print forensic disciplines have been accredited to internationally recognized standards by ANSI-ASQ National Accreditation Board (ANAB). The NFL's polygraph program has been accredited for more than 20 years through the National Center for Credibility Assessment (NCCA) Quality Assurance Program (QAP). In FY2016, the NFL received a total of 111 cases which resulted in 171 assignments, or work requests. Trial Illustration worked on a total of 131 trial presentations and special projects.



CRIMINAL INVESTIGATION

TECHNOLOGY OPERATIONS & INVESTIGATIVE SERVICES

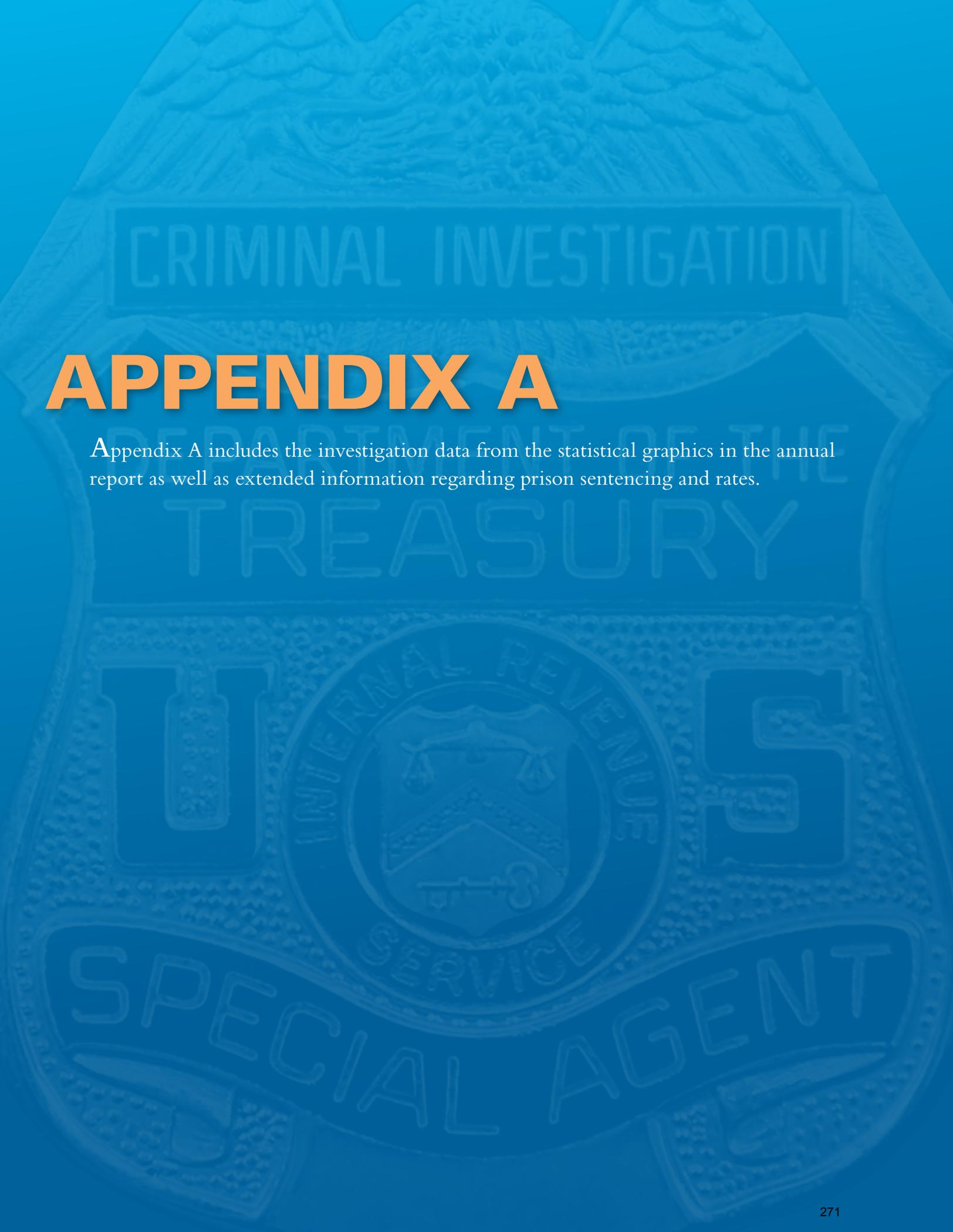
Technology continues to play an important role in CI investigations as the sophisticated nature of financial crimes continues to evolve. CI's Technology Operations & Investigative Services (TOIS) division is responsible for managing its IT assets, both enterprise and operational (infrastructure/administrative and investigative).

TOIS ensures that special agents and professional staff are equipped with the most effective technologies to do their job. The TOIS Electronic Crimes section also directly supports CI's financial investigations by forensically acquiring and analyzing large volumes of seized digital evidence. In FY 2016, special agent computer investigative specialist (SA-CISs) saw a 27% annual increase in the amount of data to be forensically analyzed from thousands of systems, at nearly 2,000 terabytes for FY 2016. TOIS is unique as a technology organization in that it includes a mix of information technology specialists and law enforcement agents with specialized technology skills who work closely together to provide mission critical services to CI employees nationwide.

Each year TOIS prioritizes and updates its IT investments to focus on meeting the emerging challenges of cyber enabled financial crimes, the prevalence of digital evidence, and increasing data sharing requirements. In FY 2016, TOIS developed five Program Goals to address these challenges.

In addition to meeting these accomplishments, TOIS continues to focus on ways to leverage cost effective alternatives to balance its limited resources and technological capabilities while maintaining the highest level of service possible to its CI customers.

TOIS FY16 accomplishments included implementing Operation Helping Hand (OHH) nationwide. OHH decreased the core hours a Computer Operations Administrator (COA) would directly respond to field issues and allowed administrative work to be completed. OHH also introduced the Service Request Email (SRE) system allowing the field to request COA support via email with the requests automatically tracked. Lead and Case Analytics successfully deployed two new field agent workflows. Over 2000+ special agents received training. Electronic Crimes developed and delivered greater Internet investigation capabilities and a training curriculum to educate special agents on cyercrimes. TOIS delivered the FY16 Release Plan illustrating all TOIS projects and dependencies.



APPENDIX A

Appendix A includes the investigation data from the statistical graphics in the annual report as well as extended information regarding prison sentencing and rates.

FY 2016 Business Results

	2016	2015	2014	2013
Investigations Initiated	3395	3853	4297	5314
Prosecution Recommendations	2744	3289	3478	4364
Informations/Indictments	2761	3208	3272	3865
Sentenced	2699	3092	3268	2812
Incarceration Rate	79.9	80.8%	79.6%	80.1%
Average Months to Serve	41	40	42	44

Abusive Return Preparer Program

	2016	2015	2014	2013
Investigations Initiated	252	266	305	309
Prosecution Recommendations	174	238	261	281
Informations/Indictments	204	224	230	233
Sentenced	202	204	183	186
Incarceration Rate	72.8%	80.4%	86.3%	78.0%
Average Months to Serve	22	27	28	27

Abusive Tax Scheme

	2016	2015	2014	2013
Investigations Initiated	56	68	79	119
Prosecution Recommendations	35	58	85	88
Informations/Indictments	35	51	72	80
Sentenced	47	77	64	64
Incarceration Rate	76.6%	67.5%	81.3%	68.8%
Average Months to Serve	25	21	24	31

Bank Secrecy Act (BSA)

	2016	2015	2014	2013
Investigations Initiated	504	613	809	922
Prosecution Recommendations	411	519	677	771
Informations/Indictments	399	533	608	693
Sentenced	449	557	535	453
Incarceration Rate	74.8%	72.4%	74.8%	70.6%
Average Months to Serve	36	31	35	36

Corporate Fraud

	2016	2015	2014	2013
Investigations Initiated	62	75	88	60
Prosecution Recommendations	59	35	54	66
Informations/Indictments	49	29	65	60
Sentenced	33	43	79	40
Incarceration Rate	97.0%	81.4%	72.2%	90.0%
Average Months to Serve	37	35	40	67

Employment Tax

	2016	2015	2014	2013
Investigations Initiated	137	102	120	140
Prosecution Recommendations	77	80	92	97
Informations/Indictments	71	87	78	78
Sentenced	87	62	88	84
Incarceration Rate	70.1%	77.4%	73.9%	79.8%
Average Months to Serve	14	24	17	24

Financial Institution Fraud

	2016	2015	2014	2013
Investigations Initiated	66	84	108	156
Prosecution Recommendations	53	69	100	128
Informations/Indictments	46	73	91	122
Sentenced	64	160	88	146
Incarceration Rate	75.0%	80.6%	64.8%	78.8%
Average Months to Serve	37	44	30	32

Healthcare Fraud

	2016	2015	2014	2013
Investigations Initiated	127	122	100	122
Prosecution Recommendations	101	91	70	107
Informations/Indictments	90	79	79	98
Sentenced	46	64	60	52
Incarceration Rate	84.8%	82.8%	81.7%	78.8%
Average Months to Serve	41	54	45	33

Identity Theft

	2016	2015	2014	2013
Investigations Initiated	573	776	1063	1492
Prosecution Recommendations	566	774	970	1257
Informations/Indictments	649	732	896	1050
Sentenced	613	790	748	438
Incarceration Rate	87.8%	84.6%	87.7%	80.6%
Average Months to Serve	40	38	43	38

International Operations

	2016	2015	2014	2013
Investigations Initiated	221	186	226	284
Prosecution Recommendations	221	168	203	214
Informations/Indictments	187	166	199	184
Sentenced	154	148	140	125
Incarceration Rate	83.1%	78.4%	80.0%	70.4%
Average Months to Serve	45	43	46	51

Money Laundering

	2016	2015	2014	2013
Investigations Initiated	1201	1436	1312	1596
Prosecution Recommendations	1010	1301	1071	1377
Informations/Indictments	979	1221	934	1191
Sentenced	668	691	785	829
Incarceration Rate	84.1%	84.1%	82.2%	85.4%
Average Months to Serve	62	65	66	68

Narcotics

	2016	2015	2014	2013
Investigations Initiated	788	955	846	991
Prosecution Recommendations	684	897	734	888
Informations/Indictments	721	872	688	795
Sentenced	635	580	707	611
Incarceration Rate	85.5%	85.3%	83.6%	88.4%
Average Months to Serve	69	71	71	84

Non-Filer

	2016	2015	2014	2013
Investigations Initiated	206	223	269	279
Prosecution Recommendations	137	164	166	223
Informations/Indictments	157	166	167	211
Sentenced	159	167	192	233
Incarceration Rate	79.9%	83.2%	80.7%	85.8%
Average Months to Serve	38	36	35	48

Public Corruption

	2016	2015	2014	2013
Investigations Initiated	84	68	106	93
Prosecution Recommendations	59	68	76	67
Informations/Indictments	61	69	66	67
Sentenced	57	60	80	57
Incarceration Rate	80.7%	73.3%	85.0%	91.2%
Average Months to Serve	29	25	35	36

Questionable Refund Program

	2016	2015	2014	2013
Investigations Initiated	495	775	1028	1513
Prosecution Recommendations	514	780	969	1267
Informations/Indictments	594	767	928	1056
Sentenced	669	839	792	485
Incarceration Rate	84.6%	83.6%	85.5%	76.7%
Average Months to Serve	34	34	37	35

Terrorism

	2016	2015	2014	2013
Investigations Initiated	42	18	17	33
Prosecution Recommendations	33	6	12	22
Informations/Indictments	19	5	16	22
Sentenced	1	16	19	21
Incarceration Rate	100%	75.0%	73.7%	61.9%
Average Months to Serve	84	42	36	54

FINCEN 105

*REPORT OF INTERNATIONAL
TRANSPORTATION OF
CURRENCY OR MONETARY INSTRUMENTS*

Exhibit Z

FinCEN Form **105**
March 2011
Department of the Treasury
FinCEN



DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

**REPORT OF INTERNATIONAL
TRANSPORTATION OF CURRENCY
OR MONETARY INSTRUMENTS**

► To be filed with the Bureau of
Customs and Border Protection
► For Paperwork Reduction Act
Notice and Privacy Act Notice,
see back of form.

31 U.S.C. 5316; 31 CFR 1010.340 and 1010.306

► Please type or print.

PART I FOR A PERSON DEPARTING OR ENTERING THE UNITED STATES, OR A PERSON SHIPPING, MAILING, OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS. (IF ACTING FOR ANYONE ELSE, ALSO COMPLETE PART II BELOW.)

1. NAME (Last or family, first, and middle)		2. IDENTIFICATION NO. (See instructions)		3. DATE OF BIRTH (Mo./Day/Yr.)	
4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD				5. YOUR COUNTRY OR COUNTRIES OF CITIZENSHIP	
6. ADDRESS WHILE IN THE UNITED STATES				7. PASSPORT NO. & COUNTRY	
8. U.S. VISA DATE (Mo./Day/Yr.)		9. PLACE UNITED STATES VISA WAS ISSUED		10. IMMIGRATION ALIEN NO.	
11. IF CURRENCY OR MONETARY INSTRUMENT IS ACCOMPANIED BY A PERSON, COMPLETE 11a OR 11b, not both					
A. EXPORTED FROM THE UNITED STATES COMPLETE "A" OR "B" NOT BOTH			B. IMPORTED INTO THE UNITED STATES		
Departed From: (U.S. Port/City in U.S.)		Arrived At: (Foreign City/Country)		Departed From: (Foreign City/Country)	
				Arrived At: (City in U.S.)	
12. IF CURRENCY OR MONETARY INSTRUMENT WAS MAILED OR OTHERWISE SHIPPED, COMPLETE 12a THROUGH 12f					
12a. DATE SHIPPED (Mo./Day/Yr.)		12b. DATE RECEIVED (Mo./Day/Yr.)		12c. METHOD OF SHIPMENT (e.g. u.s. Mail, Public Carrier, etc.)	12d. NAME OF CARRIER
12e. SHIPPED TO (Name and Address)					
12f. RECEIVED FROM (Name and Address)					

PART II INFORMATION ABOUT PERSON(S) OR BUSINESS ON WHOSE BEHALF IMPORTATION OR EXPORTATION WAS CONDUCTED

13. NAME (Last or family, first, and middle or Business Name)	
14. PERMANENT ADDRESS IN UNITED STATES OR ABROAD	
15. TYPE OF BUSINESS ACTIVITY, OCCUPATION, OR PROFESSION	15a. IS THE BUSINESS A BANK? <input type="checkbox"/> Yes <input type="checkbox"/> No

PART III CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE)(To be completed by everyone)

16. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS		17. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B.	
Currency and Coins	► \$	A. Currency Name	
Other Monetary Instruments (Specify type, issuing entity and date, and serial or other identifying number.)	► \$	B. Country	
(TOTAL)	► \$		

PART IV SIGNATURE OF PERSON COMPLETING THIS REPORT

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

18. NAME AND TITLE (Print)		19. SIGNATURE		20. DATE OF REPORT (Mo./Day/Yr.)	

CUSTOMS AND BORDER PROTECTION USE ONLY

THIS SHIPMENT IS <input type="checkbox"/> INBOUND <input type="checkbox"/> OUTBOUND		PORT CODE	CBP QUERY? Yes <input type="checkbox"/> No <input type="checkbox"/>	COUNT VERIFIED Yes <input type="checkbox"/> No <input type="checkbox"/>	VOLUNTARY REPORT Yes <input type="checkbox"/> No <input type="checkbox"/>
DATE	AIRLINE/FLIGHT/VESSEL	LICENSE PLATE STATE/COUNTRY NUMBER		INSPECTOR (Name and Badge Number)	

GENERAL INSTRUCTIONS

This report is required by 31 U.S.C. 5316 and Treasury Department regulations (31 CFR Chapter X).

WHO MUST FILE:

(1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and

(2) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to the person from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES, WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS, IS NOT REQUIRED TO BE REPORTED.

Exceptions: Reports are not required to be filed by:

- (1) a Federal Reserve bank,
- (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier,
- (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned,
- (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier
- (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers,
- (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper
- (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public,
- (8) a person with a restrictively endorsed travel's check that is in the collection and reconciliation process after the traveler's check has been negotiated, nor by
- (9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

WHEN AND WHERE TO FILE:

A. Recipients—Each person who receives currency or other monetary instruments in the United States shall file FinCEN Form 105, within 15 days after receipt of the currency or monetary instruments, with the Customs officer in charge at any port of entry or departure or by mail with the **Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.**

B. Shippers or Mailers— If the currency or other monetary instrument does not accompany the person entering or departing the United States, FinCEN Form 105 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the **Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.**

C. Travelers—Travelers carrying currency or other monetary instruments with them shall file FinCEN Form 105 at the time of entry into the United States or at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or the monetary instruments is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any Bureau of Customs and Border Protection office.

PENALTIES: Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than ten years, are provided for failure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See 31 U.S.C. 5321 and 31 CFR 1010.820; 31 U.S.C. 5322 and 31 CFR 1010.840; 31 U.S.C. 5317 and 31 CFR 1010.830, and U.S.C. 5332.

DEFINITIONS:

Bank—Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, and building and loan

association organized under the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any State or of the United States; (7) any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State other than a money service business; (8) a bank organized under foreign law; and (9) any national banking association or corporation acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections 611-632).

Foreign Bank—A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities— A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Currency: The coin and paper money of the United States or any other country that is (1) designated as legal tender and that (2) circulates and (3) is customarily accepted as a medium of exchange in the country of issuance.

Identification Number—Individuals must enter their social security number if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number

Monetary Instruments—(1) Coin or currency of the United States or of any other country (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery (4) incomplete instruments (including checks, promissory notes, and money orders) that are signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include (i) checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements; (ii) warehouse receipts, or (iii) bills of lading.

Person—An individual, a corporation, partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

SPECIAL INSTRUCTIONS:

You should complete each line that applies to you **PART I. — Complete 11A or 11B, not both.** Block 12A and 12B; enter the exact date you shipped or received currency or monetary instrument(s). **PART II.** -Block 13; provide the complete name of the shipper or recipient on whose behalf the exportation or importation was conducted. **PART III.** — Specify type of instrument, issuing entity, and date, serial or other identifying number, and payee (if any). Block 17, if currency or monetary instruments of more than one country is involved, attach a list showing each type, country or origin and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE:

Pursuant to the requirements of Public law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 105 in accordance with 5 U.S.C. 552a(e)(3) is Public law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, revised, as amended; 31 CFR Chapter X; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Bureau of Customs and Border Protection and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also be provided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

Disclosure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Chapter X. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 1010.306(d). The social security number will be used as a means to identify the individual who files the record.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of this information is mandatory pursuant to 31 U.S.C. 5316, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FINCEN).

Statement required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden associated with this collection of information is 11 minutes per respondent or record keeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, RD, Box 39 Vienna, Virginia 22183. **DO NOT send completed forms to this office—See When and Where to File above.**

STIPULATION REGARDING DEFENDANT'S
KNOWLEDGE OF GRAND JURY INVESTIGATION
UNITED STATES V. PREZIOSO,
DOCKET NO. 16-0712 (AUGUST 4, 2017)

Exhibit AA

1 SANDRA R. BROWN
 Acting United States Attorney
 2 THOMAS D. COKER
 Assistant United States Attorney
 Chief, Tax Division
 3 BENJAMIN L. TOMPKINS (SBN 305024)
 Assistant United States Attorney
 4 PAUL H. ROCHMES (SBN 077928)
 Assistant United States Attorney
 5 Federal Building, Suite 7211
 300 North Los Angeles Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-6165
 7 Facsimile: (213) 894-0115
 8 E-mail: benjamin.tompkins@usdoj.gov

9 Attorneys for Plaintiff
 United States of America

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15
 16 v.
 17 WALTER DANIEL PREZIOSO,
 18 Defendant.

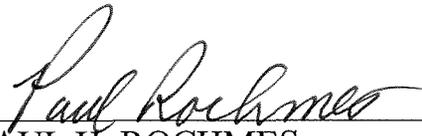
NO. CR 16-0712 (A)-JFW
 STIPULATION REGARDING
 DEFENDANT'S KNOWLEDGE OF
 GRAND JURY INVESTIGATION

1 Plaintiff, United States of America, by and through its attorneys, Assistant
2 United States Attorneys Benjamin L. Tompkins, Paul H. Rochmes, and James C,
3 Hughes, and defendant Walter Daniel Prezioso (“defendant”), by and through his
4 counsel, Stephen D. Demik and Gabriel Pardo, hereby stipulate that the following
5 statement may be read to the jury at trial:

6 Beginning on August 6, 2015 and continuing thereafter, the defendant,
7 Walter Daniel Prezioso, knew that he was being investigated by a grand jury
8 with respect to charges that he had subscribed to false income tax returns, in
9 violation of Title 26, United States Code, Section 7206(1).

10
11 SANDRA R. BROWN
Acting United States Attorney
12 THOMAS D. COKER
Assistant United States Attorney
13 Chief, Tax Division
14

15 Date: August 4, 2017


16 _____
PAUL H. ROCHMES
Assistant United States Attorney
Attorneys for Plaintiff United States of America
17
18
19

20 Date: August 4, 2017

/s/ Stephen D. Demik
21 _____
STEPHEN D. DEMIK
Deputy Federal Public Defender
Attorney for Defendant,
22 WALTER DANIEL PREZIOSO
23
24
25
26
27
28

**TRANSCRIPT OF GOVERNMENT WITNESS
(COUNSEL FOR DEFENDANT)**

Exhibit BB

1 JEFFREY HACKER,

2 GOVERNMENT'S WITNESS, SWORN:

3 DIRECT EXAMINATION

4 BY MR. ROCHMES:

5 Q Good afternoon, Mr. Hacker.

6 A Good afternoon.

7 Q Do you work for a living?

8 A I do.

9 Q What do you do?

10 A I'm an attorney.

11 Q Are you licensed in the state of California as an
12 attorney?

13 A I am.

14 Q How long have you been a practicing attorney in
15 this state?

16 A 36 years or so.

17 Q At one time did you represent Walter Prezioso in
18 a lawsuit?

19 A Yes.

20 Q Had he been named as a defendant in the lawsuit?

21 A Yes.

22 Q Who had brought the lawsuit?

23 A The Gottardi family, spelled G-o-t-t-a-r-d-i.

24 Q Were they plaintiffs?

25 A Yes.

1 Q Could you explain to the jury what a plaintiff
2 is?

3 A A plaintiff would be a party that caused a
4 lawsuit to be filed.

5 Q What was the nature of the lawsuit?

6 A It was a business dispute.

7 Q Did the lawsuit have anything to do with
8 GSP Precision, Inc., payment of the defendant's personal
9 expenses?

10 MR. DEMIK: Objection, Your Honor. 403.

11 THE COURT: Overruled.

12 THE WITNESS: That was, my opinion, a minor issue
13 in that case.

14 Q BY MR. ROCHMES: But did the lawsuit have
15 anything to do with that issue?

16 A Yes.

17 Q I'm going to ask you to please look at
18 Exhibit 165 which there is a binder there for you.

19 A Just give me a minute because the book came
20 undone. I have that in front of me.

21 Q Okay. So do you recognize that exhibit?

22 A I do.

23 Q Can you tell us what it is?

24 A It's Defendant Walter D. Prezioso's supplemental
25 responses to plaintiff's special interrogatories, set one.

1 Q Okay. And in that lawsuit that we've been
2 talking about?

3 A In the state court lawsuit.

4 Q What are interrogatories?

5 A Interrogatories are questions that are sent to a
6 party to a lawsuit.

7 Q Okay. So in this instance were where the
8 questions had been sent to the defendant Walter Prezioso?

9 A Yes.

10 Q What are responses to interrogatories?

11 A Responses to interrogatories would be a party's
12 answers or objections as the case may be.

13 Q Would you please --

14 A Or I would say also a combination of both.

15 Q Would you please turn to page 11 of Exhibit 165.
16 Let me know when you have it in front of you, please.

17 A I do.

18 Q Do these responses at page 11 contain a written
19 verification signed under penalty of perjury?

20 A Yes.

21 Q Whose name is on the verification?

22 A It indicates Walter Prezioso.

23 Q Is there a signature, or is it simply typed?

24 A Well, they're two places. So I'm not sure what
25 you're referring to.

1 Q So is there a place where the defendant's name
2 appears, Walter Prezioso's name appears in type?

3 A Yes.

4 Q And is there also a signature on a signature line
5 for the verification?

6 A There's a signature on a line as well.

7 Q Did you have a standard practice at this time
8 these responses were prepared with respect to getting
9 interrogatory responses signed by clients?

10 A Yes.

11 Q What was that practice?

12 A Standard practice that I had would be to go over
13 interrogatory responses with a client, first the questions.
14 Then responses would be prepared in draft, and my standard
15 operating practice would be for those responses to be reviewed
16 with the client either by me or another person -- another staff
17 member.

18 Q And what was your practice with respect to
19 getting clients to sign verifications on interrogatory
20 responses?

21 A Typically the responses or the draft responses
22 would be reviewed by a client, and they would sign a
23 verification. A verification form would be previously sent to
24 a client along with questions with a form letter to, in
25 essence, do the best they can to provide their own answers to

1 the questions.

2 Q Did you arrange for these responses to
3 interrogatories in Exhibit 165 to be sent to the attorneys for
4 the Gottardi family?

5 A I'm not sure if it was myself personally, but it
6 would have been somebody in my office.

7 Q What is a proof of service?

8 A A proof of service is a document that gets
9 attached to most legal documents in a lawsuit confirming that a
10 particular document had, in fact, been sent to the other side.

11 Q Does this Exhibit 165 -- please turn to pages 12
12 and 13.

13 Does it have a completed proof of service form?

14 A It does.

15 Q And is that located on those pages?

16 A Yes.

17 Q Were these responses, Exhibit 165, intended to be
18 kept confidential between you and your staff on the one hand
19 and Walter Prezioso on the other hand?

20 A No.

21 MR. ROCHMES: At this time I'm going to move
22 Exhibit 165 into evidence. There is an objection.

23 THE COURT: Any objection?

24 MR. DEMIK: None that are not already noted,
25 Your Honor.

1 THE COURT: All right. Those objections will be
2 overruled. 165 will be received into evidence.

3 (Marked for identification and received
4 into evidence Exhibit No. 165.)

5 MR. ROCHMES: Okay. I would like now to be able
6 to display.

7 Q I'd like to turn your attention to
8 interrogatory 5 on page 6. And while you're looking, I'll get
9 it up on the screen. All right.

10 Do you have interrogatory 5 in front of you?

11 A I do.

12 Q Could you please tell the jury what the
13 interrogatory was or what it asks for?

14 A Interrogatory No. 5 provides the following
15 question: *State the dollar amount of shareholder distributions*
16 *that you have received from GSP Precision, Inc., for each year*
17 *from 2002 through 2012. For purposes of this interrogatory,*
18 *"you" or "your" shall mean Defendant Walter D. Prezioso.*

19 Q All right. Is interrogatory just another word
20 for question?

21 A In essence. There's a more technical
22 distinction.

23 Q Now, is there a response on the same page to that
24 question?

25 A There is.

1 Q Could you read the actual response? I'm not
2 asking about the objections.

3 A Would you like me to proceed?

4 Q Yes.

5 A *Without waiving said objections, responding party*
6 *responds as follows: Responding party did not receive any*
7 *shareholder distributions from 2002 through 2006. Although the*
8 *word through isn't there. It's a hyphen. In 2007 responding*
9 *party received \$59,500. In 2008 responding party received*
10 *\$94,000. In 2009 responding party received \$51,000. In 2010*
11 *responding party received \$39,000. In 2011 responding party*
12 *received \$44,000. In 2012 responding party received \$42,000.*

13 Q All right. Thank you.

14 I'm going to turn to another exhibit now. Please
15 look in the exhibit book for Exhibit 54.

16 A I have it.

17 Q Okay. Do you recognize that exhibit?

18 A Yes.

19 Q Could you tell us what it is?

20 A It's Defendant Walter D. Prezioso's fourth
21 supplemental responses to plaintiff's special interrogatories,
22 set one.

23 Q Now, were these in the same lawsuit or in a
24 different lawsuit?

25 A Same.

1 Q Please turn to page 23, please. Page 23 of the
2 exhibit.

3 I apologize, Your Honor. I didn't want him to
4 display it.

5 At page 23 -- is the verification at that page?

6 A Yes.

7 Q And whose name is on the verification?

8 A The typed name is Walter Prezioso.

9 Q And does there also appear to be a signature?

10 A There is.

11 Q Did you arrange for these responses, Exhibit 54,
12 to be sent to the attorneys for Mr. Gottardi?

13 A It would have been somebody in my office that
14 would have sent that.

15 Q Please turn to pages 24 and 25.

16 A I have that in front of me.

17 Q Does that set of interrogatory responses have a
18 proof -- a completed proof of service form?

19 A It does.

20 Q And is that at pages 24 and 25?

21 A Yes.

22 Q Were these responses in Exhibit 54 intended to be
23 kept confidential between you and your staff on one hand and
24 Walter Prezioso on the other hand?

25 A No.

1 MR. ROCHMES: Government moves 54 into evidence.

2 THE COURT: Any objection than otherwise already
3 stated?

4 MR. DEMIK: No.

5 THE COURT: Those objections will be overruled.
6 Exhibit 54 will be received into evidence.

7 (Marked for identification and received
8 into evidence Exhibit No. 54.)

9 MR. ROCHMES: At this point, Your Honor, I'd like
10 to display page 23.

11 THE COURT: You may display any part of an
12 exhibit that's been received into evidence.

13 Q BY MR. ROCHMES: All right. Is this, what I'm
14 circling, the verification name typed and signature?

15 A Yes.

16 Q And is the verification the same language as in
17 the other set of interrogatories that are essentially the same?

18 A I haven't compared them, but I assume it would be
19 the same or virtually identical.

20 Q Please turn to page 3 of the exhibit at
21 interrogatory No. 12.

22 A Yes.

23 Q Could you tell the jury by reading it what that
24 interrogatory asked the defendant to do?

25 A Do you want me to read it verbatim, or do you

1 want me to paraphrase it?

2 Q Read it verbatim, please.

3 THE COURT: We don't need to read it verbatim.
4 It's on the screen. As an alternative, why don't you just
5 summarize it.

6 THE WITNESS: Interrogatory No. 12 asks the
7 responding party, in this case, Mr. Prezioso, to identify
8 transactions in which he used GSP funds to pay for expenses for
9 him and his family. And then it goes on to specifically
10 identify, in essence, whether any GSP checks were used to pay
11 for improvements to his home, personal expenses, or cars or
12 other vehicles used by him or members of his family.

13 Q BY MR. ROCHMES: In the responses did the
14 defendant list a number of transactions to that question?

15 A It appears that it does.

16 Q Are those lists in the responses, Exhibit 54, at
17 pages 4 through 22?

18 A Yes.

19 Q Please display page 4. I want to refer your
20 attention or call your attention to the columns.

21 The first one indicates date. Is that simply the
22 date of the transaction?

23 A I don't recall, but I would assume that it does.

24 Q Okay. And the next is payee. Is that the person
25 or entity to which the payment or transaction was directed?

1 A I would have the same response.

2 Q And under amount?

3 A Same response.

4 Q And under comments?

5 A Same response.

6 Q What's your response?

7 A My response is I don't have a recollection, but I
8 assume that the information, in essence, speaks for itself.

9 Q Okay. And then the transactions are listed by
10 year; is that correct?

11 A That is correct.

12 Q Now, under the comment section, do you see the
13 phrase for where it says, *In lieu of 1099* -- perhaps you could
14 enlarge it. *In lieu of 1099 received by George and Pablo?*

15 A Yes.

16 Q Is George a reference to George Gottardi?

17 A That is my assumption.

18 Q Is Pablo a reference to Juan Pablo Prezioso?

19 A That is my assumption.

20 Q Was he one of your clients as well?

21 A At one time, yes.

22 Q Is he the defendant's father?

23 A Yes.

24 Q Do you have an understanding as to what the words
25 in lieu of mean?

1 A I know how I use it which would be instead of.

2 Q Okay. And by 1099, is that in reference to a
3 form 1099?

4 A I assume so.

5 Q Now I'm going to be asking you about a different
6 exhibit and something else.

7 In addition to the interrogatories that I just
8 questioned you about, did the Gottardi family's attorney serve
9 the defendant Walter Prezioso with a set of requests for
10 production of documents?

11 A I believe so.

12 Q What are requests for production of documents?

13 A It is a fancy way of saying to someone in a
14 lawsuit let me either inspect or give me certain documents that
15 I want to either review or have.

16 THE COURT: Presumably relevant to the lawsuit.

17 THE WITNESS: Presumably. Not always true
18 though.

19 Q BY MR. ROCHMES: Did you, on behalf of
20 Walter Prezioso, provide any documents to the Gottardi family's
21 attorneys in response to requests for production of documents?

22 A I believe I did.

23 Q Please look at Exhibit 171.

24 A I have it in front of me.

25 Q Do you recognize that exhibit?

1 A I do.

2 Q Can you tell us what it is?

3 A It's Defendant Walter Prezioso's responses to
4 plaintiff's first set of requests for production of documents,
5 set one.

6 Q Please turn to pages 54 and 55 of that
7 Exhibit 171. Is there --

8 A 54 and 55?

9 Q Yes.

10 Is there a completed proof of service form on
11 those pages?

12 A Yes.

13 Q Did you arrange to send Exhibit 171 to the
14 attorneys for the Gottardis --

15 A I'm not sure if I arranged it or my assistant
16 would have just done that on her own.

17 Q But were they sent? Yes?

18 A Yes, they were.

19 Q Were these responses, Exhibit 171, intended to be
20 kept confidential between you and -- or you and your firm and
21 Walter Prezioso?

22 A No.

23 Q Was it intended to be sent to the attorneys for
24 the plaintiffs?

25 A Yes.

1 Q Please look at page 54 of that same exhibit.

2 A I have it in front of me.

3 Q Is that a verification form?

4 A Yes.

5 Q Were these responses verified under penalty of
6 perjury?

7 A Yes.

8 Q Whose name is on the verification?

9 A The typed name is Walter Prezioso.

10 Q Then is there a typed signature?

11 A Yes.

12 Q Would you have caused this response to the
13 document request to have been sent to the attorneys for the
14 Gottardis if at this time you did not believe the defendant
15 Walter Prezioso had signed them?

16 A No.

17 Q What about the interrogatories I questioned you
18 about before? Would you have sent those to the attorneys for
19 the plaintiffs, the Gottardi family, if you did not believe the
20 defendant had signed them?

21 A No.

22 MR. ROCHMES: The Government moves Exhibit 171
23 into evidence. There is an objection.

24 THE COURT: Any additional objections?

25 MR. DEMIK: None further, Your Honor.

1 THE COURT: All right. 171 will be received into
2 evidence.

3 (Marked for identification and received
4 into evidence Exhibit No. 171.)

5 MR. ROCHMES: Can we now display pages 3 through
6 26 of Exhibit 171. We will start with page 3.

7 Q Focusing your attention on document request
8 No. 1, the request is simply -- is this simply a description of
9 the category of documents that the defendant was asked to
10 provide?

11 A Yes.

12 Q And then where it says "Response," that's the
13 defendant's response indicating whether or not he's got
14 objections or whether or not with or without objections
15 documents are going to be produced; is that correct?

16 A Yes.

17 Q All right. If you just take a second -- we won't
18 display all the pages. If you look at pages 3 through 26 and
19 then tell me whether the specific requests, in other words, the
20 specific categories of documents and the defendant's responses
21 are set out on those pages.

22 A (Witness reviewing documents.)

23 Yes.

24 Q Now, turn your attention to pages 28 through 53
25 of those -- of the same exhibit, and after you've reviewed it,

1 I'm going to ask you in general what those pages contain.

2 A (Witness reviewing documents.)

3 Okay.

4 Q What do those pages contain?

5 A They appear to be documents that were produced
6 that my firm believed were responsive to the document requests
7 of this exhibit.

8 Q Okay. Please turn to page 5. That one I'd like
9 to display, please.

10 A Page 5 of the exhibit?

11 Q Page 5, Exhibit 171.

12 A Thank you.

13 Q I want to focus your attention on document
14 request 8. What did that ask for?

15 A It asked for documents that Mr. Prezioso had
16 received from GSP Precision, Inc., for the period of 2002
17 through 2012 that he had identified in his response to
18 interrogatory No. 5 in the first set of special
19 interrogatories.

20 Q Okay. If we can go back to --

21 THE COURT: Let's go back to document request
22 No. 8. What were those documents related to according to the
23 request?

24 THE WITNESS: 8 would have been documents that
25 Mr. Prezioso had received from GSP Precision, Inc., for each

1 year from 2012 -- I'm sorry -- 2002 through 2012 that he had
2 identified in his response to interrogatory No. 5.

3 THE COURT: And they relate to what? Pursuant to
4 the document request No. 8?

5 THE WITNESS: I'm not sure I know the answer.

6 THE COURT: If you read it, it says, *Relate to*
7 *shareholder distributions*.

8 THE WITNESS: I'm sorry. Your Honor, I'm not
9 following you. My apologies.

10 THE COURT: That's all right.

11 So the documents that are called for are the
12 documents that relate to shareholder distributions received
13 during those time periods; correct?

14 THE WITNESS: Now I see what you're referring to.
15 I see in the answer, yes.

16 THE COURT: All right. Go ahead.

17 MR. ROCHMES: Thank you, Your Honor.

18 Q Please turn to pages 28 through 35 again on
19 Exhibit 171.

20 A 28 through?

21 Q 35.

22 A I have it.

23 Q Did the defendant provide those documents through
24 this exhibit to the attorneys for the plaintiffs in response to
25 that request, request No. 8?

1 A I would say that my office would have been the
2 ones who provided that to the other side.

3 Q But he signed off on it -- correct? -- by signing
4 the verification?

5 A Presumably.

6 Q Now, focus --

7 THE COURT: Let me ask you a question. Does your
8 office prepare these charts of accounts, or were those prepared
9 and provided to your office to attach to the document request?

10 THE WITNESS: They were prepared and provided to
11 my office to attach.

12 THE COURT: Okay.

13 Q BY MR. ROCHMES: Please look at page 28.

14 We can display this, please. Page 28.

15 Now, I want to turn your attention to the top
16 right-hand corner of the first page. Do you see where it
17 appears to say *I5DR8*?

18 A I do.

19 Q Does "I5" refer to interrogatory No. 5?

20 A That would be my assumption.

21 Q And does "DR" refer to document request No. 8?

22 A Yes.

23 Q And under that is the document?

24 A Correct.

25 Q Now look at pages 36 through 53 of the

1 Exhibit 171.

2 A Yes.

3 Q Do those pages include other documents that were
4 produced in response to other requests?

5 A Yes.

6 Q And in each case was the number of the document
7 request being responded to written in the top right-hand corner
8 of the document?

9 A Yes.

10 Q And in each case the specific document request
11 can be found by simply going back to the earlier pages?

12 A Yes.

13 MR. ROCHMES: I don't have any further questions,
14 Your Honor.

15 THE COURT: All right. Cross-examination.

16 **CROSS-EXAMINATION**

17 BY MR. DEMIK:

18 Q Hi, Mr. Hacker.

19 A Good afternoon.

20 Q You're a civil lawyer; right?

21 A Try to be civil when I'm lawyering, yes.

22 Q And I'm I guess what they would call a criminal
23 lawyer -- right? -- even though I'm not a criminal?

24 A Got it, yes.

25 Q And all of these documents that the prosecutor

1 asked you about pertain to a civil case; right?

2 A Correct.

3 Q And that's different than what we're doing here,
4 isn't it?

5 A Yes.

6 Q Now, these interrogatories, those are questions
7 being asked to Walter Prezioso by a man that's suing him;
8 correct?

9 A Yes.

10 Q And you're his lawyer.

11 A Yes.

12 Q And so you're trying to comply with the request,
13 but it's not exactly a friendly process.

14 Would you agree?

15 A I'm not sure what you're referring to. If you're
16 referring to the dynamic of a lawsuit with people being
17 adversarial, I agree with you.

18 Q I guess what I'm saying is these interrogatories
19 and the documents that the prosecutor showed you, this isn't a
20 judge asking Mr. Prezioso for documents; right?

21 A Correct.

22 Q It's a plaintiff, and that's a man who is suing
23 him; right?

24 A In this case I think it was technically both a
25 man and the company if my memory is correct.

1 Q Right. Now, you represented Walter Prezioso in
2 that civil lawsuit, and Walter Prezioso's position was that GSP
3 had an arrangement that they would pay his personal expenses;
4 correct?

5 A That's what I recall.

6 Q And he was consistent with that; correct?

7 A To the best of my knowledge, yes.

8 Q And as the prosecutor asked you, he didn't share
9 that with you in secret. He told you that position, and that
10 position was put out in public through these responses and
11 through this lawsuit.

12 Does that make sense?

13 A Yes. It makes sense, and yes, that's what
14 occurred.

15 Q So in the civil lawsuit, he explained that GSP
16 had an arrangement to pay his personal expenses; correct?

17 A That's what I recall.

18 Q And that goes as far back as what year, would you
19 say?

20 A I don't recall the exact time period, but in just
21 flipping through the documents that I was referred to on direct
22 examination, it appears to be 2002.

23 Q 2002?

24 A Yes.

25 Q Okay. Now, a little bit more about civil versus

1 criminal.

2 In civil court, can you explain to the jury what
3 the burden of proof is or the standard of proof?

4 A It depends upon the type of claim, but more often
5 than not, it is is it more likely than not? In other words, a
6 lot of times trial lawyers will refer to it as you have to
7 prove ever so slightly more, whether it's 51 percent or some
8 other figure, to show that the scales of justice sort of just
9 tip a little bit in favor of one party or another.

10 Q And all the documents that the prosecutor
11 introduced were a civil lawsuit with that standard of proof; is
12 that right?

13 A Yes.

14 Q What about a criminal case?

15 MR. ROCHMES: Objection. Lacking foundation.
16 Beyond the scope.

17 THE COURT: Sustained.

18 Q BY MR. DEMIK: Fair to say that a criminal case
19 is much different?

20 MR. ROCHMES: Objection. Same objection.

21 THE COURT: Same ruling. Sustained.

22 MR. DEMIK: Okay.

23 Q Mr. Hacker, were you aware that that civil
24 lawsuit has, to date, today, not been resolved?

25 A No.

1 Q During your involvement in the case and your
2 knowledge afterward, there was no finding of any wrongdoing by
3 Walter Prezioso in that lawsuit, was there, by a judge or jury?

4 MR. ROCHMES: Objection. Beyond the scope.

5 THE COURT: Overruled.

6 THE WITNESS: Not that I'm aware of.

7 Q BY MR. DEMIK: So just, if I may, in the civil
8 court with the civil documents that were produced, there has
9 been no finding by a judge or jury that Walter Prezioso engaged
10 in any wrongdoing; correct?

11 A Not that I'm aware of.

12 MR. DEMIK: Thank you. No further questions,
13 Your Honor.

14 THE COURT: All right. Do you have any
15 additional questions?

16 MR. ROCHMES: No, Your Honor.

17 THE COURT: All right. This witness may be
18 excused?

19 MS. MAKAREWICZ: Yes, Your Honor.

20 MR. DEMIK: Yes, Your Honor.

21 MR. ROCHMES: Yes.

22 THE COURT: All right. Thank you very much.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Call your next witness.

25 MS. MAKAREWICZ: Government calls Lorraine Ayers

*SELECT PROVISIONS
U.S. ATTORNEYS MANUAL*

*SUBPOENAS TO ATTORNEY
AND SEARCH WARRANTS OF LAW OFFICES*

Exhibit CC

9-11.255 - Prior Department of Justice Approval Requirements— Grand Jury Subpoenas to Lawyers and Members of the News Media

Prior approval of the Assistant Attorney General or a Deputy Assistant Attorney General for the Criminal Division generally is required before a grand jury subpoena may be issued to an attorney for information relating to the representation of a client. See [USAM 9-13.410](#).

Prior approval of the Attorney General generally is required before a grand jury subpoena may be issued to obtain information from, or records of, a member of the news media. See 28 C.F.R. § 50.10; [USAM 9-13.400](#).

[updated April 2016]

9-13.410 - Guidelines for Issuing Subpoenas to Attorneys for Information Relating to the Representation of Clients

A. **Authorization of the Criminal Division.** Because of the potential effects upon an attorney-client relationship that may result from the issuance of a subpoena to an attorney for information relating to the attorney's representation of a client, the Department exercises close control over such subpoenas. Such subpoenas (for both criminal and civil matters) must first be authorized by the Assistant Attorney General or a Deputy Assistant Attorney General for the Criminal Division before they may issue, *unless* the circumstances warrant application of one of the exceptions set forth in subsection D below. **However, any subpoena to be issued to an attorney in a civil or criminal matter arising principally under the internal revenue laws must be submitted to the Tax Division for authorization pursuant to Tax Division policies and procedures.** In instances requiring Department approval in which the matter arises under both the internal revenue and non-tax laws, the submission must be made to the Criminal Division for authorization, which will consult with the Tax Division *unless* the circumstances warrant application of one of the exceptions set forth in subsection D below.

This policy extends to proposed subpoenas to paralegals, investigators, or other employees or agents of attorneys, if the information sought relates to the attorney's representation of a client, including information that the employee or the agent of the attorney, rather than the attorney personally, acquired.

The authorization requirement applies only to subpoenas for information related to the

representation of a client. It does not apply to all subpoenas involving attorneys or their employees or agents. For example, Criminal Division authorization is *not* required to issue:

- A subpoena to a bank for the records of an attorney's trust account, because trust accounts tend to hold the pooled funds of numerous clients, and records related to such accounts ordinarily do not relate to individual clients, and do not contain or reflect privileged or confidential attorney-client communications.
- A subpoena for internal law office business documents (pay records of law office employees, law firm tax returns, etc.), because it relates to the day-to-day business operations of the law firm, and not to the representation of a client. Subpoenas for billing and payment records related to the representation of a client, however, must be authorized by the Criminal Division.
- A subpoena seeking information regarding the attorney's personal activities, and not regarding his/her representation of a client.
- A subpoena seeking corporate business information, and which is directed to an attorney who serves as a corporate officer. To make clear that the attorney is being subpoenaed in his/her capacity as a corporate officer, and that no attorney-client information is being sought, the subpoena should be addressed to "John Doe, in his capacity as secretary of the XYZ Corporation."

B. Preliminary Steps. When determining whether to issue a subpoena to an attorney for information relating to the attorney's representation of a client, Department personnel must strike a balance between an individual's right to the effective assistance of counsel and the public's interest in the fair administration of justice and effective law enforcement. To that end, all reasonable attempts shall be made to obtain the information from alternative sources before issuing the subpoena to the attorney, unless such efforts would compromise the investigation or case. These attempts shall include reasonable efforts to first obtain the information voluntarily from the attorney, unless such efforts would compromise the investigation or case, or would impair the ability to subpoena the information from the attorney in the event that the attempt to obtain the information voluntarily proves unsuccessful.

C. Evaluation of the Request. In considering a request to approve the issuance of a subpoena to an attorney for information relating to the representation of a client, the Assistant Attorney General or a Deputy Assistant Attorney General for the Criminal Division applies the following principles:

1. The information sought shall not be protected by a valid claim of privilege.
2. All reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful.

3. In a criminal investigation or prosecution, there must be reasonable grounds to believe that a crime has been or is being committed, and that the information sought is reasonably needed for the successful completion of the investigation or prosecution. The subpoena must not be used to obtain peripheral or speculative information.
4. In a civil case, there must be reasonable grounds to believe that the information sought is reasonably necessary to the successful completion of the litigation.
5. The need for the information must outweigh the potential adverse effects upon the attorney-client relationship. In particular, the need for the information must outweigh the risk that the attorney may be disqualified from representation of the client as a result of having to testify against the client.
6. The subpoena shall be narrowly drawn and directed at material information regarding a limited subject matter and shall cover a reasonable, limited period of time.

D. Exceptions to Criminal Division Authorization

1. **Friendly Subpoenas for Client-Related Information.** The United States Attorney or Assistant Attorney General responsible for a matter may authorize the issuance of a “friendly subpoena” for client-related information, that is, in a situation in which an attorney witness expressly agrees in writing (including by email) to provide the information, but requests the formality of a subpoena. Before issuing any such subpoena, the responsible United States Attorney or Assistant Attorney General must evaluate the request consistent with subsection C of this policy. If the friendly subpoena seeks testimony, information, or materials identified in Items (D)(2)(a)-(h) below, the federal prosecutor handling the case may authorize the issuance of the subpoena.
2. **Information Not Protected by Privilege or Circumstances Not Offending Attorney-Client Relationship.** In addition, authorization by the Criminal Division is not required where the contemplated subpoena is limited to seeking one or more of the following categories of information, since such subpoenas do not raise concerns regarding the potential application of the attorney-client privilege or the potential for negative impact upon the attorney-client relationship:
 - a. Records of property transactions, including real estate closing statements, sales contracts, and payment records.

- b. Information or materials provided by a client to an attorney for the purpose of disclosure to third parties, including information or materials provided for disclosure in bankruptcy proceedings, tax filings, immigration proceedings, or similar matters and transactions.
- c. Publicly filed documents not reasonably available from other sources.
- d. Testimony or materials necessary to respond to a claim of ineffective assistance of counsel, including, but not limited to, petitions filed pursuant to 28 U.S.C. § 2255 and D.C. Code § 23-110.
- e. Testimony or materials necessary to probe the viability of, or respond to, a formal, written claim or assertion by a civil litigant or a criminal defendant that he or she reasonably relied on the advice of counsel in engaging in the conduct at issue in the specific matter in which the information is sought. This exception does not apply to subpoenas intended to probe the possibility or viability of an advice-of-counsel defense that has not formally been claimed or asserted by a civil litigant or criminal defendant.
- f. Testimony or materials within the scope of an explicit and unchallenged waiver, or other express form of consent by the attorney's client to disclosure of the subject information.
- g. Information or materials produced or created in discovery, including deposition testimony, if such information or materials are not subject to a protective order.
- h. Testimony or materials that the court presiding over the underlying proceeding has ordered a party to produce or provide.

E. Submitting the Request. Requests for authorization should be submitted to the Policy and Statutory Enforcement Unit (PSEU), Office of Enforcement Operations, Criminal Division. When documents are sought in addition to the testimony of the attorney witness, a draft of the subpoena duces tecum, listing the documents sought, must accompany the submission.

F. No Rights Created by Guidelines. These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

G. **Questions.** Questions regarding the applicability of the authorization requirement or any of its exceptions should be directed to the Policy and Statutory Enforcement Unit, Office of Enforcement Operations at 202-305-4023 or pseu@usdoj.gov.

[updated March 2016] [cited in [USAM 9-11.255](#); [USAM 9-13.420](#)]

9-13.420 - Searches of Premises of Subject Attorneys

NOTE: For purposes of this policy only, "subject" includes an attorney who is a "suspect, subject or target," or an attorney who is related by blood or marriage to a suspect, or who is believed to be in possession of contraband or the fruits or instrumentalities of a crime. This policy also applies to searches of business organizations where such searches involve materials in the possession of individuals serving in the capacity of legal advisor to the organization. Search warrants for "documentary materials" held by an attorney who is a "disinterested third party" (that is, any attorney who is not a subject) are governed by 28 C.F.R. 59.4 and [USAM 9-19.221](#) *et seq.* See also 42 U.S.C. Section 2000aa-11(a)(3).

There are occasions when effective law enforcement may require the issuance of a search warrant for the premises of an attorney who is a subject of an investigation, and who also is or may be engaged in the practice of law on behalf of clients. Because of the potential effects of this type of search on legitimate attorney-client relationships and because of the possibility that, during such a search, the government may encounter material protected by a legitimate claim of privilege, it is important that close control be exercised over this type of search. Therefore, the following guidelines should be followed with respect to such searches:

A. **Alternatives to Search Warrants.** In order to avoid impinging on valid attorney-client relationships, prosecutors are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney actively engaged in the practice of law. Consideration should be given to obtaining information from other sources or through the use of a subpoena, unless such efforts could compromise the criminal investigation or prosecution, or could result in the obstruction or destruction of evidence, or would otherwise be ineffective.

NOTE: Prior approval must be obtained from the Assistant Attorney General for the Criminal Division to issue a subpoena to an attorney relating to the representation of a client. See [USAM 9-13.410](#).

B. **Authorization by United States Attorney or Assistant Attorney**

General. No application for such a search warrant may be made to a court without the

express approval of the United States Attorney or pertinent Assistant Attorney General. Ordinarily, authorization of an application for such a search warrant is appropriate when there is a strong need for the information or material and less intrusive means have been considered and rejected.

C. **Prior Consultation.** In addition to obtaining approval from the United States Attorney or the pertinent Assistant Attorney General, and before seeking judicial authorization for the search warrant, the federal prosecutor must consult with the Criminal Division.

NOTE: Attorneys are encouraged to consult with the Criminal Division as early as possible regarding a possible search of an attorney's office. Telephone No. (202) 305-4023; Fax No. (202) 305-0562.

To facilitate the consultation, the prosecutor should submit the attached form (see [Criminal Resource Manual at 265](#)) containing relevant information about the proposed search along with a draft copy of the proposed search warrant, affidavit in support thereof, and any special instructions to the searching agents regarding search procedures and procedures to be followed to ensure that the prosecution team is not "tainted" by any privileged material inadvertently seized during the search. This information should be submitted to the Criminal Division through the Office of Enforcement Operations. This procedure does not preclude any United States Attorney or Assistant Attorney General from discussing the matter personally with the Assistant Attorney General of the Criminal Division.

If exigent circumstances prevent such prior consultation, the Criminal Division should be notified of the search as promptly as possible. In all cases, the Criminal Division should be provided as promptly as possible with a copy of the judicially authorized search warrant, search warrant affidavit, and any special instructions to the searching agents.

The Criminal Division is committed to ensuring that consultation regarding attorney search warrant requests will not delay investigations. Timely processing will be assisted if the Criminal Division is provided as much information about the search as early as possible. The Criminal Division should also be informed of any deadlines.

D. **Safeguarding Procedures and Contents of the Affidavit.** Procedures should be designed to ensure that privileged materials are not improperly viewed, seized or retained during the course of the search. While the procedures to be followed should be tailored to the facts of each case and the requirements and judicial preferences and precedents of each district, in all cases a prosecutor must employ adequate precautions to ensure that the materials are reviewed for privilege claims and that any privileged documents are returned to the attorney from whom they were seized.

E. **Conducting the Search.** The search warrant should be drawn as specifically as possible, consistent with the requirements of the investigation, to minimize the need to search and review privileged material to which no exception applies.

While every effort should be made to avoid viewing privileged material, the search may require limited review of arguably privileged material to ascertain whether the material is covered by the warrant. Therefore, to protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a "privilege team" should be designated, consisting of agents and lawyers not involved in the underlying investigation.

Instructions should be given and thoroughly discussed with the privilege team prior to the search. The instructions should set forth procedures designed to minimize the intrusion into privileged material, and should ensure that the privilege team does not disclose any information to the investigation/prosecution team unless and until so instructed by the attorney in charge of the privilege team. Privilege team lawyers should be available either on or off-site, to advise the agents during the course of the search, but should not participate in the search itself.

The affidavit in support of the search warrant may attach any written instructions or, at a minimum, should generally state the government's intention to employ procedures designed to ensure that attorney-client privileges are not violated.

If it is anticipated that computers will be searched or seized, prosecutors are expected to follow the procedures set forth in the current edition of *Searching and Seizing Computers*, published by CCIPS.

F. **Review Procedures.** The following review procedures should be discussed prior to approval of any warrant, consistent with the practice in your district, the circumstances of the investigation and the volume of materials seized.

- Who will conduct the review, i.e., a privilege team, a judicial officer, or a special master.
- Whether all documents will be submitted to a judicial officer or special master or only those which a privilege team has determined to be arguably privileged or arguably subject to an exception to the privilege.
- Whether copies of all seized materials will be provided to the subject attorney (or a legal representative) in order that: a) disruption of the law firm's operation is minimized; and b) the subject is afforded an opportunity to participate in the process of submitting disputed documents to the court by raising specific claims of privilege.

To the extent possible, providing copies of seized records is encouraged, where such disclosure will not impede or obstruct the investigation.

- Whether appropriate arrangements have been made for storage and handling of electronic evidence and procedures developed for searching computer data (i.e., procedures which recognize the universal nature of computer seizure and are designed to avoid review of materials implicating the privilege of innocent clients).

These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

See the [Criminal Resource Manual at 265](#), for an attorney office search warrant form.

[updated October 2012] [cited in [Criminal Resource Manual 265](#)]