

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ELZA BUDAGOVA.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

**APPENDIX (VOLUME II) – PRESENTED SEPARATELY UNDER S. CT.
R. 14.1(i)**

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1 disputed matters at sentencing)). This Court need not resolve
2 factual disputes if the matter will not affect sentencing. United
3 States v. Jordan, 256 F.3d 922, 927-29 (9th Cir. 2001) (holding a
4 district court does not need to resolve all factual disputes to the
5 PSR, only those that will effect sentencing).

6 **A. Defendant acted as an unlicensed medical practitioner at**
7 **the Clinic, as such, her objection to paragraph 47 should**
be overruled.

8 Defendant objects to paragraph 47 of the PSR. According to the
9 USPO, "Budagova was a medical assistant at the Clinic from in or
10 about December 2008 until the Clinic closed in or about August 2010.
11 While at the Clinic, Budagova acted as an unlicensed Physician's
12 Assistant and created medical files for patients purportedly seen by
13 a doctor or a physician's assistant at the Clinic" (PSR ¶ 47).
14 Defendant denies this description and claims instead that "she
15 recorded information into the patients' files as she was directed" by
16 defendant Julie Shishavlosky. (Def. Objections at 2). Defendant's
17 claim is belied by the evidence in this case.

18 First, defendant admits that she was trained as a medical doctor
19 and a registered nurse in Armenia. (Def. Set. Pos. at 8; PSR ¶ 113-
20 115). While not licensed to practice medicine in the United States,
21 defendant's education provided her with both the means and expertise
22 to perpetrate the crimes. Defendant worked in the medical field in
23 the United States for over ten years. (Def. Sent. Pos. at 3; PSR ¶
24 119). Defendant knew enough about medical treatment and terminology
25 to be more than a simple scribe. The jury rejected defendant's claim
26 that she was merely a scribe at trial, and the Court should similarly
27 reject defendant's argument now.

1 Defendant held herself out as "Dr. Elza". (Ex. 1; RT
2 10/16/14: 136:9-11; Trial Ex. 141).¹ According to defendant Eleanor
3 Santiago, defendant saw "patients alone" and did the "history and
4 physicals" and "physical exam on Armenian-speaking patients" as well
5 as other patients." (Ex. 7, RT 10/3/14 at 27-28).² Defendant
6 Santiago's testimony is corroborated by the information contained in
7 the medical charts seized during this case. For example, according
8 to Special Agent Chau Tran, defendant's handwriting was in almost
9 every one of the nearly 2,000 medical files SA Tran examined. (Ex.
10 1; RT 10/16/14: 115, 140:2-8). As the Court is well aware, the
11 information contained in the Clinic's fraudulent medical charts was
12 not identical; instead, the medical files contained information
13 attempting to justify the medical tests, where applicable, as well as
14 the prescriptions for OxyContin. By way of example only, the medical
15 file for Bernard Harris contains at least two examples of defendant's
16 handwriting. (Trial Ex. 281, p. 44 & 46). The two entries are not
17 identical; one claims Mr. Harris complained of severe low back pain,
18 while the other lists "itching" all over body as the chief complaint.
19 (Id.). The information, including the manner in which it was
20 written, was designed to give the appearance of legitimate medical
21 care in order to justify the OxyContin and fraudulent medical tests.
22 It is not credible for defendant to claim that someone instructed her
23 regarding the specific information she was to write in the fraudulent
24 medical files. Instead, the files, the testimony, and other evidence

26 ¹ Unless otherwise noted, all exhibits referred to herein were
27 attached and filed with the government's sentencing position on March
30, 2015.

28 ² Attached hereto as an additional exhibit.

1 demonstrate that defendant used her medical training to provide the
2 veneer of legitimacy to the medical files and prescriptions.

3 **B. Defendant's Knowing Participation in the OxyContin drug**
4 **Conspiracy Requires She Be Held Responsible for the Entire**
5 **Drug Quantity**

6 Defendant objects to PSR paragraphs 79 and 81, which both hold
7 defendant responsible for the entire quantity of OxyContin
8 distributed during defendant's participation in the drug conspiracy.
9 (Def. Sent. Pos. at 2). According to defendant, based on defense
10 counsel's review of the medical files, defendant personally wrote 500
11 prescriptions for OxyContin and should only be responsible for those
12 prescriptions.³ (*Id.*). As an initial matter, defendant's
13 participation in the drug conspiracy was not limited to writing
14 fraudulent prescriptions; instead, defendant wrote out bogus medical
15 information in the majority of the fraudulent medical files in order
16 to provide the veneer of legitimacy to the illegal OxyContin
17 prescriptions. Therefore, an unsubstantiated count of the number of
18 prescriptions defendant personally issued does not end the inquiry.

19 In sentencing a defendant convicted of conspiracy to distribute
20 a controlled substance, such as defendant here, a court must find the
21 quantity of drugs that either (1) fell within the scope of the
22 defendant's agreement with his coconspirators or (2) was reasonably
23 foreseeable to the defendant. United States v. Reed, 575 F.3d 900,

24 ³ In this case, the government produced over 7,000 patient
25 files. Of those, SA Tran reviewed approximately 2,000 and found
26 defendant's handwriting in nearly all of them, and so testified at
27 trial without defendant providing any contrary evidence. (Ex. 1; RT
28 10/16/14: 115, 140:2-8.) Defendant now for the first time claims
that she only wrote 500 prescriptions. Yet defendant does not
support this claim with any specifics or even a declaration. Absent
supporting evidence, defendant's bald claim that she only wrote 500
prescriptions should not be credited.

1 925 (9th Cir. 2009) (citing United States v. Garcia-Sanchez, 189 F.3d
2 1143, 1147-48 (9th Cir. 1999)).

3 To reach the base offense level of 38 contained in the PSR, the
4 government need only establish a drug quantity of 1,868 bottles of
5 OxyContin. CURES data shows that between August 2008 and September
6 2010, the Clinic issued prescriptions resulting in the dispensing of
7 12,579 bottles of OxyContin, which is more than seven times the
8 amount required to reach an offense level of 38.

9 It is not reasonable to conclude that defendant was unaware of
10 the scope of the conspiracy to distribute more than 1,868 bottles of
11 OxyContin. Even if the Court were to credit defendant's claim that
12 she completed 500 of the fraudulent OxyContin prescriptions, and that
13 was the only involvement she had, 500 prescriptions is nearly a third
14 of the prescriptions necessary to reach an offense level 38.
15 Defendant was well aware that she was working alongside her co-
16 conspirators, defendants Garrison, Santiago, Shishalovsky, Halfon and
17 others in generating thousands of fraudulent prescriptions.
18 Consequently, the substantial weight of the evidence demonstrates
19 that defendant was a knowing participant of the conspiracy and that
20 the quantity of drugs dispensed both fell within defendant's
21 agreement and was reasonably foreseeable to defendant.

22 **C. Defendant's Remaining Objections are Not Substantive and**
23 **the government takes no position.**

24 Defendant's remaining objections to the PSR address non-
25 substantive issues related to defendant's medications, medical
26 history and work history. The government takes no position on
27 defendant's objections.
28

1 **III. THE USPO PROPERLY CALCULATED DEFENDANT'S TOTAL OFFENSE LEVEL**

2 **A. Defendant, as One of the Trained Medical Professionals at**
 3 **the Clinic, was Not a Minor Participant in the Conspiracy**

4 Defendant next seeks a two-level downward adjustment for minor
 5 role pursuant to U.S.S.G. § 3B1.2. (Def. Sent. Pos. 7). According
 6 to defendant, she was recruited by the leaders of the conspiracy and
 7 instructed on how to complete the fraudulent prescriptions and
 8 medical files; therefore, based on this assertion, defendant is "less
 9 culpable than defendants "Mikaelian, Sanamian and Shishalovsky" and a
 10 two level reduction is appropriate. (*Id.*). Defendant's submission
 11 that she should be awarded a minor role adjustment is meritless.

12 Under § 3B1.2, an offense level should be decreased by two
 13 levels if the "defendant was a minor participant in any criminal
 14 activity." USSG § 3B1.2(b) (2014). "The comments to the Guidelines
 15 clarify that a minor participant is one who 'plays a part in
 16 committing the offense that makes him substantially less culpable
 17 than the average participant.'" United States v. Rodriguez-Castro,
 18 641 F.3d 1189, 1193 (9th Cir. 2011) (quoting U.S.S.G. § 3B1.2(b) cmt
 19 n.3(A)). The defendant bears the burden of proving that she is
 20 entitled to the downward adjustment based on her role. United States
 21 v. Toro-Barboza, 673 F.3d 1136, 1154 (9th Cir. 2012). Here,
 22 defendant has not, and cannot, demonstrate that she is "substantially
 23 less culpable than the average participant." Instead, defendant is
 24 claiming that she was less culpable than the leaders of the
 25 organization. The government does not dispute this claim. However,
 26 just as the Court did not apply a minor role adjustment for defendant
 27 Garrison, that adjustment is likewise inapplicable here.
 28

1 The charged conspiracy involved; (1) patients, who allowed their
2 identities to be used to generate fraudulent prescriptions for
3 OxyContin; (2) marketers or cappers who recruited patients to the
4 Clinic; (3) office staff at the Clinic who acted as receptionists, or
5 medical assistants who assisted in generating fraudulent medical
6 files and prescriptions to support the illegal OxyContin; (4) drug
7 runners who brought the patients and/or the prescriptions to the
8 pharmacies; (5) absent medical doctors who essentially sold their
9 medical license and pre-signed prescriptions, but rarely visited the
10 Clinic; (6) licensed and unlicensed medical staff who completely pre-
11 signed prescriptions and performed cursory medical examinations, or
12 at times performed no examination at all and simply generated
13 fraudulent medical files and illegal prescriptions; (6) pharmacists
14 who filled bogus prescriptions; and (7) the clinic managers who
15 organized the clinic, recruited the staff, fraudulently billed
16 Medicare and Medi-Cal, and sold the OxyContin on the streets.

17 Defendant was one of the few people who was at the Clinic on a
18 daily basis and had any medical training. Defendant was responsible
19 for issuing and justifying thousands of fraudulent prescriptions and
20 writing in thousands of fraudulent medical charts. Defendant is
21 simply not "substantially less culpable than the average
22 participant." While the government agrees that defendant is not a
23 leader or organizer, defendant played a crucial role in the
24 conspiracy.

25
26
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28

1 Because defendant is not a minor participant in the conspiracy,
 2 U.S.S.G. § 2D1.1(a)(5)(ii) does not apply.⁴

3 **B. Defendant is not Currently Eligible for Safety-Valve**

4 Defendant admits that she is not currently eligible for a two-
 5 level downward adjustment pursuant to U.S.S.G. § 5C1.2 because
 6 defendant has not yet arranged, despite the government's offer, to
 7 meet with the government. (Def. Sent. Pos. at 2). Section 5C1.2
 8 applies only when "not later than the time of the sentencing hearing,
 9 the defendant has truthfully provided to the Government all
 10 information and evidence the defendant has concerning the offense or
 11 offenses that were part of the same course of conduct or of a common
 12 scheme or plan." Defendant has not yet scheduled or agreed to meet
 13 with the government and is therefore not eligible for the two-level
 14 downward adjustment. The government will update the Court should
 15 defendant meet with the government and satisfy the safety valve
 16 eligibility requirements.

17 **IV. DEFENDANT'S SENTENCE SHOULD INCLUDE A SUBSTANTIAL PERIOD OF**
 18 **INCARCERATION**

19 **A. Defendant's Role in the Offense Warrants Substantial**
 20 **Custodial Sentence**

21 Defendant claims that a probationary sentence is "sufficient but
 22 not greater than necessary to achieve the goals of sentencing."
 23 (Def. Sent. Pos. at 5-6). Defendant supports her requested sentence
 24 by minimizing her role in the offense. Defendant maintains that she
 25 was "an unwitting, unknowing, ignorant and oblivious" participant in
 26 the two separate conspiracies. (Def. Sent. Pos. at 7). In

27 ⁴ Section 2D1.1(a)(5)(ii) is applicable only when a defendant
 28 receives a mitigating role adjustment. As discussed above, the
 requested minor role adjustment is not applicable.

1 convicting defendant of knowing and intentionally participating in
2 the two conspiracies, the jury rejected defendant's claims at trial.
3 While defendant was not a leader or organizer, neither did she play
4 an insignificant role. Defendant used her medical training to issue
5 fraudulent prescriptions and prepare fake medical information to
6 defraud government funded health care programs and further the drug
7 conspiracy. Defendant's conduct and role warrant a substantial
8 custodial sentence.

9 **B. Defendant's Lack of Acceptance of Responsibility Warrants a**
10 **Substantial Sentence**

11 When fashioning an appropriate sentence the Court may properly
12 consider defendant's failure to take any responsibility for her
13 conduct. See United States v. Smith, 424 F.3d 992, 1016 (9th Cir.
14 2005) (finding that considering the defendant's lack of remorse was
15 appropriate). Defendant's failure to acknowledge the harm she caused
16 to the community and to the government funded programs that she
17 herself benefits from, only exacerbates defendant's risk of
18 recidivism and the need to protect the community from defendant's
19 criminal conduct. A non-custodial or insignificant custodial
20 sentence will only serve to reward defendant's lack of acceptance or
21 remorse. Instead, the Court can provide both individual and general
22 deterrence by sentencing defendant to a substantial custodial
23 sentence.

24 **C. Defendant's Personal Characteristics Warrant a Substantial**
25 **Custodial Sentence**

26 Defendant relies on her personal characteristics as a means to
27 justify her requested probationary sentence. However, the only
28 mitigating factors in defendant's personal characteristics are her
age and health. Defendant was in her late 60's when she committed

1 the instant offenses. Her age did not deter her from the criminal
2 conduct or profiting from that conduct. Instead, defendant reaped
3 the benefits of her criminal conduct unabated for nearly two years.
4 While the government agrees that this Court should consider
5 defendant's health and age in mitigation, the government submits that
6 a sentence of 78 months does just that. Absent mitigation,
7 defendant's advisory Guidelines range is 235 to 268 months. The
8 government's recommendation nearly cuts that advisory range in by
9 two-thirds, no further variance is warranted. A substantial
10 custodial sentence would properly balance defendant's mitigating
11 circumstances against the criminal conduct which stand in
12 aggravation.

13 **D. A Probationary Sentence Would Create Unwarranted Sentencing**
14 **Disparity**

15 To date, twelve of defendant's co-defendants have been
16 sentenced. Importantly, this Court has sentenced only one defendant
17 to a non-custodial sentence. Namely, defendant Rosa Garcia "Maria"
18 Suarez received a probationary sentence. Defendant Suarez
19 immediately admitted culpability, cooperated, and was only convicted
20 of the health care fraud conspiracy, of which she was a member for
21 only a few months. Moreover, defendant Suarez made approximately
22 \$800 during her participation as a patient recruiter. Finally,
23 defendant Suarez was 67 years old, will likely be deported, and
24 suffered incredible loss during her life.

25 Defendant Budagova, on the other hand, stands in stark
26 contradiction to the only defendant in this case to receive a
27 probationary sentence. First, defendant's role in the conspiracy was
28 integral to the success of the conspiracy. The Clinic needed

1 medically trained individuals who were willing to assist in
2 generating thousands of fraudulent prescriptions and medical files;
3 defendant willingly filled that role. Second, defendant participated
4 for the entire span of the conspiracy. Indeed, on the date the
5 Victory location was shut down by law enforcement, defendant was
6 found writing out prescriptions. (See Ex. 6). Third, defendant was
7 convicted of participating in two separate conspiracies to both flood
8 the illegal market with OxyContin and to defraud Medicare and Medi-
9 Cal of millions of dollars. Fourth, defendant lied to law
10 enforcement when she was interviewed and to this day has taken no
11 responsibility for her conduct. Even defendant's sentencing position
12 downplays defendant's role in the offense. Finally, defendant's
13 personal characteristics, aside from her age and health, are not
14 particularly mitigating. A probationary sentence, or anything short
15 of a substantial custodial sentence, would fail to adequately address
16 the seriousness of defendant's criminal conduct.

17 Instead, the government submits that a sentence of 78 months,
18 which is six months more than this Court imposed for Clinic runner
19 Edgar Hovanissyan,⁵ is the appropriate sentence after consideration
20 of the advisory Guidelines sentencing range and the 18 U.S.C. § 3553
21 factors.

22 **V. CONCLUSION**

23 For the foregoing reasons, the government respectfully
24 recommends that defendant Budagova be sentenced to 78 months
25 imprisonment, a three-year term of supervised release, pay
26

27 ⁵ Defendant Hovannisyan had no criminal history and unlike
28 defendant had little to no education.

1 restitution to the Medicare and Medi-Cal programs in the total amount
2 of \$1,236,988, and pay a \$200 special assessment.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

- - -

HONORABLE DEAN D. PREGERSON, DISTRICT JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
Plaintiffs,)
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)
)
vs.) No. CR 11-00922
)
)
ELZA BUDAGOVA,)
)
Defendants.)
)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARING

LOS ANGELES, CALIFORNIA

THURSDAY, AUGUST 20, 2015

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I N D E X

SENTENCING HEARING:

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1 LOS ANGELES, CALIFORNIA; THURSDAY, AUGUST 20, 2015

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3 (COURT IN SESSION AT 11:40 A.M.)

4 COURTROOM DEPUTY: Calling item one,

5 CR 11-00922(B)-DDP: *United States of America v. Budagova*,
6 defendant number 15.

7 Counsel, may we have appearances, please.

8 MS. MORTON-OWENS: Good afternoon, Your Honor.

9 Lana Morton-Owens and Jill Feeney on behalf of
10 the United States.

11 THE COURT: Good afternoon.

12 MR. CANTALUPO: Good afternoon, Your Honor.

13 Dominic Cantalupo, appearing with Elza Budagova. She is
14 present. She is being assisted by Russian-language
15 interpreter. And, Your Honor, also in the courtroom are
16 Ms. Budagova's family, her son, her daughter-in-law.

17 THE COURT: If I could have you both up there,
18 please.

19 MR. CANTALUPO: Is it okay for Ms. Budagova to stay
20 there?

21 THE COURT: Does she need to sit?

22 MR. CANTALUPO: I don't think so.

23 THE COURT: Okay. Then all of you, please.

24 Ms. Budagova, today is your sentencing hearing.

25 And I want to make sure that you have had enough time to get

1 ready. So you should have reviewed the presentence
2 report, the addendum to the presentence report, the
3 probation officer's recommendation letter to me, the
4 papers that were filed by Mr. Cantalupo and the papers
5 that were filed by the Government.

6 Did you review all of those documents?

7 THE DEFENDANT: Yes.

8 THE COURT: And were they translated for you?

9 THE DEFENDANT: Yes.

10 THE COURT: And did you discuss those documents
11 and your sentencing hearing with your attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: And have you had enough time to
14 prepare for today's hearing?

15 THE DEFENDANT: Yes.

16 THE COURT: And, Mr. Cantalupo, you have
17 prepared your client by reviewing those important
18 documents with her and discussing with her all of the
19 other strategies and issues that will come up or may
20 come up today?

21 MR. CANTALUPO: Correct, Your Honor.

22 THE COURT: And, Ms. Morton-Owens, you're
23 prepared to go forward as well?

24 MS. MORTON-OWENS: Yes, Your Honor.

25 THE COURT: The advisory sentencing guideline

1 range issue, the Court is inclined to adopt the
2 calculations and reasoning of the probation officer. I
3 know you've made a minor role and drug quantity
4 objection. The tentative is to overrule those
5 objections. The Court believes that the probation
6 officer for the reasons stated in the addendum and the
7 presentence report got it right, but I certainly want to
8 hear from you on those issues.

9 MR. CANTALUPO: First with regard to the drug
10 quantity: Ms. Budagova worked in the clinic in the role
11 of a transcriber. And I know the Government's position
12 is that evidence presented at trial showed that she was
13 acting as a fake physician, seeing patients. And I
14 would submit, Your Honor, that that's just not true.
15 That's not what the evidence showed. And I don't
16 believe the jury had to find that in order to convict
17 her. The only evidence that she acted in that capacity
18 was from the security parking lot guard who claimed she
19 was wearing a white coat, from the cooperating
20 witnesses, who have their own veracity problems. And
21 the contrary evidence I think is the most telling is the
22 only video capture from inside the clinic in where
23 Ms. Budagova was working; saw her walking without a
24 white coat on. And the Government did not present any
25 beneficiary witnesses who testified that they actually

1 saw Ms. Budagova in the capacity of --

2 THE COURT: Did anyone testify that she was
3 present as a scribe -- anybody?

4 MR. CANTALUPO: I don't believe so.

5 THE COURT: Okay.

6 MR. CANTALUPO: I don't believe so. The
7 documents themselves present that --

8 THE COURT: Does it seem logical to you though,
9 Mr. Cantalupo, aside from just what you believe the
10 evidence shows? Your client has either medical training
11 or was an MD in Eastern Europe and Russia, perhaps
12 Armenia. She worked in the medical field for ten years
13 in the United States before joining this clinic where
14 she worked for about two years. Does it seem logical
15 that her function was a scribe?

16 MR. CANTALUPO: I believe it does. I believe
17 that the leaders of this conspiracy used her education
18 and her knowledge and her training and experience to
19 convince her to complete these patient files without the
20 patients being present with the -- as the Government
21 presented during trial. The doctors had pre-signed the
22 prescription forms, and these were filled out in the
23 absence of a patient. I do believe that if she had
24 acted as the Government had said, there would have been
25 at least one beneficiary who would have been called to

1 testify that she treated that beneficiary as -- as if
2 she was a doctor.

3 THE COURT: Well, Okay. I mean, I don't
4 necessarily disagree with the characterization that the
5 principal defendants in this case were very good at
6 manipulating people and perhaps assuaging fears and
7 using them, but, you know, her name, even with
8 Mr. Harris, right, appears to have writing where it
9 indicates I think "itching," and I think there was
10 another description of back pain in another report. I
11 guess -- I mean, I don't know -- I mean, just the whole
12 scribe concept doesn't -- I just don't see that there
13 was a necessity for a scribe, and it seems like it seems
14 to me that it's unlikely that that was her role. So I
15 don't know where we go from there, other than it just
16 doesn't seem very likely.

17 MR. CANTALUPO: I just --

18 THE COURT: But the fact that she was
19 manipulated and certainly was elderly and -- like a lot
20 of folks that sort of got dragged into this, made bad
21 choices and were maybe swayed by the -- you know, the
22 sort of presence and whole program that the primary
23 defendants put together, I can understand that. I mean,
24 your client made a couple thousand dollars a month;
25 right?

1 MR. CANTALUPO: Again, Your Honor, the only
2 evidence presented was one document that showed she
3 received some money just shortly before the clinic was
4 shut down. And on cross-examination Ms. Shishalovsky
5 said she created that document in anticipation of future
6 problems. So I don't -- I don't --

7 THE COURT: Well...

8 MR. CANTALUPO: -- I don't think the
9 evidence --

10 THE COURT: I guess what I'm saying is, there's
11 no evidence your client made a lot of money.

12 MR. CANTALUPO: No, I don't think she made
13 any --

14 THE COURT: She made some, but not a lot.

15 MR. CANTALUPO: If she made any money, it
16 certainly was not the quantity of money that the lead
17 defendants were making.

18 I'll leave that issue of whether or not she was
19 acting as a doctor, but just reminding the Court again,
20 this was a long investigation; a lot of undercover
21 video; a lot of interviews of beneficiaries, and none of
22 that evidence proved that she was acting as a doctor
23 inside the clinic.

24 THE COURT: Well, okay. So your issue then
25 this goes to role?

1 MR. CANTALUPO: I do believe it goes to role in
2 the sense that she was not privy to the lead defendant's
3 conspiracies, the Medicare fraud conspiracy and the drug
4 conspiracy. She had no intimate knowledge of the
5 billings that were going to Medicare. She had no --
6 provided no assistance, other than writing in the
7 patient's file these nerve conductive test referrals;
8 that's as far as her knowledge --

9 THE COURT: Isn't her handwriting on several
10 thousand medical records?

11 MR. CANTALUPO: It's on a lot. I can't deny
12 that. It's on a lot of patient files, which, again,
13 doesn't seem that she could see that many patients for
14 the few hours each day that she was working.

15 THE COURT: That doesn't help your client
16 though.

17 MR. CANTALUPO: Also, with regard to the drug
18 trafficking conspiracy, she had no intimate dealings
19 with Mike Mikaelian. She had no knowledge of the street
20 transactions that -- that were occurring. There's been
21 no evidence presented whatsoever that she knew what was
22 happening to the OxyContin pills after she wrote the
23 prescriptions. And, you know, probation is asking the
24 Court to hold her responsible for all of the
25 prescriptions that were written. And by the

1 Government's count, it was over 12,000, closer to 13,000
2 prescriptions. She did not write all of those
3 prescriptions. I believe one of the Government's
4 witnesses, Dr. Santiago, admitted to writing 6,000
5 prescriptions herself.

6 THE COURT: I don't recall that, but in any
7 event --

8 MR. CANTALUPO: That's in the plea agreement.
9 It's the factual --

10 THE COURT: Okay. That's -- okay.

11 MR. CANTALUPO: Ms. Budagova did not write more
12 than 500 prescriptions, and to hold her liable for more
13 than what was reasonably foreseeable to her and she
14 could only foresee what she was doing. She had no idea
15 what the other doctors or --

16 THE COURT: But how do you explain away her
17 handwriting on 2,000 medical charts for a clinic that
18 had no legitimate basis?

19 MR. CANTALUPO: Again, I could only say that
20 she believed she was complying with the directives that
21 she was given by the lead defendants in filling out --
22 in filling out the prescriptions.

23 THE COURT: Sure.

24 MR. CANTALUPO: Um, I do think that the -- the
25 drug quantity is overstated. It goes beyond the scope

1 of her agreement. Even if her handwriting is on the
2 2,000 patient files, there is not 2,000 prescriptions
3 with her handwriting on there. I had gone through those
4 prescriptions myself and counted a little over 500
5 prescriptions that I saw with her handwriting on it.
6 Her handwriting was in a large number of patient files'
7 charts that didn't contain a prescription that she
8 wrote. So not every patient file is attributed to a
9 prescription she wrote. So with regard to the advisory
10 guidelines, I believe that they are overstated by
11 probation and the Government. I think that the starting
12 point in the Court's analysis should end up at a level
13 29. She has no prior criminal history. So the -- and
14 just to be clear, we're not asking for a safety valve
15 reduction. And that's an adjustment to the base offense
16 level for the prescriptions that were within the scope
17 of her agreement and reasonably foreseeable to her;
18 brings it to a level 34; a role adjustment for two
19 levels and no safety valve.

20 THE COURT: So you -- so that's -- that's adds
21 out to a 29?

22 MR. CANTALUPO: I believe so, Your Honor.

23 THE COURT: Yes?

24 MS. MORTON-OWENS: Can I have one moment with
25 Defense counsel?

1 THE COURT: Yes.

2 MS. MORTON-OWENS: Thank you, Your Honor.

3 MR. CANTALUPO: I think it should be 34; a
4 minor role adjustment of two levels and then an
5 additional further lower reduction of three levels, gets
6 us to a 29 --

7 THE COURT: Okay. Well, you know, I'm going to
8 affirm my adoption of the probation officer's
9 calculations and assumptions and methodology. Having
10 said that, even if I were to accept your methodology,
11 you would still be at a level above what the Government
12 is recommending in this case; right?

13 MS. MORTON-OWENS: Yes, Your Honor.

14 THE COURT: And in terms of the role issue, I
15 just -- I don't see the minor role when you work in a
16 business for two years. And, you know, to me, I just
17 don't see that. The drug quantity, I don't know how
18 many pills it takes to trigger the Government's -- the
19 probation officer's calculation. Do you,
20 Ms. Morton-Owens?

21 MS. MORTON-OWENS: Yes, Your Honor. It takes
22 1,868 bottles of OxyContin which are the 80 milligrams
23 90-pill bottles in this case.

24 THE COURT: 1,000 how many?

25 MS. MORTON-OWENS: 1,868.

1 THE COURT: Okay. And how do you get to that
2 calculation above that?

3 MS. MORTON-OWENS: The total number of
4 prescriptions issued in this cases is just below 13 --
5 I'm sorry -- just over 13,000 total bottles of OxyContin
6 were issued in the totality of this case, but in -- to
7 reach an offense level of 38, we would only need just
8 under 2,000.

9 THE COURT: Okay. So anything further on that
10 issue, Mr. Cantalupo?

11 MR. CANTALUPO: No, Your Honor.

12 THE COURT: Okay. So, again, I'm going to
13 stick with the original statement on -- on the guideline
14 range. So that results in a guideline of 38 and a
15 criminal history category of one. And the Government
16 has requested a variance down, I believe ten levels --
17 8, 10...

18 MS. MORTON-OWENS: Ten levels, Your Honor.

19 THE COURT: Ten, which results in -- so we're
20 at a 28-1 then; right?

21 MS. MORTON-OWENS: Yes, Your Honor. That would
22 be an advisory guideline range of 78 to 97 months.

23 THE COURT: 78 to 97 -- 28-1. Okay. That's
24 the Government's recommendation. Why don't I continue
25 then and let you be heard further.

1 MR. CANTALUPO: Okay. I guess we can move on
2 to 3553(a) factors.

3 THE COURT: Sure.

4 MR. CANTALUPO: Even at 78 months, Your Honor,
5 I believe this is an unreasonable sentence. We have an
6 individual who is in her mid-70's as the PSR describes
7 in detail; has a number of medical and health issues;
8 lawfully immigrated into this country more than 12 years
9 ago; has always been a law-abiding citizen without any
10 criminal history. And as the Court recognized --

11 THE COURT: What happened here then? What's
12 the big picture? Why did your client work for these
13 people for two years? Why is her name on 2,000 charts?
14 What's it all about?

15 MR. CANTALUPO: I think it is about an elderly
16 individual, wanting to go somewhere where she felt like
17 she was a part of something; not the criminal aspect of
18 it, but just going somewhere to fill up her days, to do
19 something. She had retired a few years before. She
20 started working for the clinic. I think that the
21 perpetrators of these conspiracies recognized very
22 quickly that she could be a value to them and guided her
23 along and misguided her along into believing she was
24 helping these patients. I do believe at some point, it
25 probably occurred to her that something criminal was

1 happening, but she didn't withdraw. She continued on
2 most likely because she didn't believe she had any real
3 knowledge of what was going on. She might have
4 suspected something was going on, but she believed she
5 was helping these patients and helping these leaders
6 operate their clinic. Um, as the Court recognized, she
7 didn't make a lot of money, if she made any money from
8 this conspiracy. I think this was more of a desire to
9 feel needed and to participate in -- in some social
10 activity. And it got to a point -- and it was something
11 that was way beyond her capacity to -- to be involved
12 with.

13 Unfortunately, these perpetrators concealed it
14 very well from all of the people who were there.
15 There's a lot of people who worked in the clinic who
16 were not charged -- a lot of doctors who were not
17 charged.

18 THE COURT: Um, well a lot were though. And
19 the ones -- and some of the ones who weren't, testified.
20 And they -- at least, one or two -- I don't know. Maybe
21 at least one, I recall, seemed pretty out of it.

22 MR. CANTALUPO: Doctors?

23 THE COURT: Yeah.

24 MR. CANTALUPO: Yeah, yeah. I mean, that seems
25 to be the MO of these perpetrators, is they were looking

1 for people -- elderly people who wouldn't question what
2 they were doing. They would just take direction.

3 THE COURT: You know, your client's asked, Do
4 you know Mikaelian and all that, and she says no. You
5 know, so it just -- you start getting the impression
6 maybe it's cultural. I don't know -- some upbringing in
7 different cultures where it's dangerous to tell the
8 truth. I don't know. You know, starts -- starts
9 denying things that seem obvious. And that's -- so that
10 creates -- why -- why did that happen?

11 MR. CANTALUPO: I can't answer that question,
12 Your Honor.

13 THE COURT: I'm not demeaning her cultural
14 heritage or anything. I'm just saying, you know, some
15 people that grow up or have experiences in nondemocratic
16 regimes, sometimes they're very afraid of authority and
17 they don't talk or they don't tell the truth.

18 MR. CANTALUPO: I certainly can't go into my
19 relationship with my client, but I believe that the
20 culture played a large part in analyzing this case
21 and -- and not being able to recognize the red flags
22 that -- that popped up.

23 She doesn't need to go to prison for 78 months
24 in order to be punished for this case or even in order
25 for the Court to send a message out to society.

1 Medicare fraud, drug trafficking are serious crimes.
2 The public knows that; but there are individuals who
3 will continue to perpetrate these crimes. What we're
4 asking for the Court to do is to fashion the sentence
5 specifically toward Ms. Budagova. We're asking for a
6 period of probation with home confinement if the
7 Court --

8 THE COURT: She hasn't really done anything to
9 help herself in this case. Pretty -- you know, I mean,
10 not that she had to plead or do anything like that, but
11 it just -- there's been no sort of acceptance or
12 acknowledgement of responsibility. She believes she was
13 innocent. She was a scribe. Fine; I understand.
14 The -- the lack of candor on some of the -- you know,
15 when she was interviewed, that's the -- I'm processing
16 that. She's elderly, I process that. She didn't make a
17 lot of money, I process that. If you look at her in
18 terms of disparity issues, you got Dr. Santiago, who is
19 probably a good baseline to think about what is
20 appropriate for Ms. Budagova. She's received a 20-month
21 sentence, but she also received the benefit of a 5K1.1
22 and cooperated. On the negative side, she was probably
23 more important to this conspiracy than your client
24 because she had a -- I think she had a valid DEA license
25 and your client didn't. And Ms. Santiago sort of

1 presented this mixed picture of somebody who had done
2 good things in her life, but, you know, then fell in
3 this situation, and also because of her age, didn't seem
4 to me to be that cognitively 100 percent. So -- but,
5 you know, she received a 20-month sentence and
6 cooperated. So there's the -- the runner. The
7 Government brings up the runner. What's his name?

8 MS. MORTON-OWENS: Edgar Hovannisyan.

9 THE COURT: Hovannisyan got 72 months,
10 something like that, but -- is that right?

11 MS. MORTON-OWENS: Yes, Your Honor, 72.

12 THE COURT: But he had a prior conviction where
13 he served 46 months for healthcare fraud.

14 MS. MORTON-OWENS: It was not calculated as a
15 prior conviction. He had a parallel conviction. So he
16 was still a criminal history category one when you
17 sentenced him, but he did get a 46-month consecutive
18 sentence.

19 THE COURT: Correct. For conduct that
20 occurred --

21 MS. MORTON-OWENS: It occurred right after the
22 conduct in this case.

23 THE COURT: Right. Right. Well, did it occur
24 at the same time at all?

25 MS. MORTON-OWENS: I saw some --

1 THE COURT: I thought it was -- it's in the
2 presentence report. I reviewed it this afternoon

3 that he -- I believe your brief says "prior conviction."

4 MS. MORTON-OWENS: He was convicted -- this was
5 the case in front of Judge Otero. He was convicted of
6 that count, but as I recall the sentencing -- and,
7 Your Honor, I would have to go back to my notes which I
8 don't have, I believe that you adjusted his criminal
9 history to take into account the fact that his conduct
10 in the Otero case actually came after, but it -- it
11 didn't matter, because regardless, all recommendations
12 in that case were below what his guidelines would have
13 been.

14 THE COURT: Right. But if I'm looking sort of
15 criminal culpability, he's involved in an entirely
16 separate conspiracy.

17 MS. MORTON-OWENS: Yes, Your Honor.

18 THE COURT: Even -- did he do that having been
19 aware of the investigation in this case?

20 MS. MORTON-OWENS: Not that I know of,
21 Your Honor.

22 THE COURT: Okay. When did this conspiracy
23 end?

24 MS. MORTON-OWENS: For defendant Hovannisyan,
25 the conspiracy ended in -- as the Government alleges,

1 the conspiracy ended in 2010. For this defendant, it
2 was slightly after that.

3 THE COURT: Okay. Well, I'm just trying to
4 understand and recall Mr. Hovannisyan's situation.

5 MS. MORTON-OWENS: And just one point,
6 Your Honor, defendant Hovannisyan did plead guilty and
7 accepted responsibility and allocuted to the Court as
8 such.

9 THE COURT: Right. But he had -- at the time
10 of sentencing, he had another conviction for essentially
11 the same conduct. So he -- he -- right?

12 MS. MORTON-OWENS: Yes, yes, Your Honor,
13 although, he -- yes, he did.

14 THE COURT: But -- so is what happened that
15 this clinic shut down the Mikaelian one and then he went
16 and did the same thing in another clinic?

17 MS. MORTON-OWENS: Yes, Your Honor. But at the
18 same time, the defendant, Hovannisyan was at Manor,
19 which is the clinic involved in the Otero case.

20 THE COURT: Yes.

21 MS. MORTON-OWENS: Defendant Budagova was at
22 the Victory location when law enforcement shut that
23 clinic down. So there -- does that make sense?
24 Defendant Hovannisyan went to a different clinic.
25 Defendant Budagova stayed with the Mikaelian group.

1 THE COURT: Even after?

2 MS. MORTON-OWENS: Defendant Budagova was there
3 on the day that search warrants were executed and the
4 clinic was shut down. She was writing prescriptions.

5 THE COURT: She stopped at that point,
6 obviously.

7 MS. MORTON-OWENS: We believe so, yes.

8 THE COURT: Okay. And Mr. Hovannisyan, tell me
9 the timing of his involvement again then at the time of
10 that search warrant. Was he already working at the
11 other clinic?

12 MS. MORTON-OWENS: That is my understanding,
13 although, I'm not as familiar with the facts of that
14 case.

15 THE COURT: Okay. Okay. Okay.

16 All right. Go ahead, Mr. Cantalupo.

17 MR. CANTALUPO: Again, an additional downward
18 variance under 3553(a) for her health, for her age, for
19 her scope of involvement in the conspiracy or -- or lack
20 of full knowledge of these conspiracies all warrant a
21 downward variance from the otherwise applicable
22 guideline range of 78 to 97 months. We're asking for
23 probation. If the Court needs to punish her in terms of
24 confining her, home confinement for a period of
25 12 months would be sufficient. And that, Your Honor, we

1 believe is a -- is a particularized sentence to this
2 defendant and for her conduct in this offense.

3 THE COURT: Right. So to be specific, she's
4 74 years old. She has diabetes which requires insulin.
5 She's -- she has a history of heart disease. She takes
6 about ten or more medications per day. She has some
7 neurological issues, and this is her first criminal
8 conviction; right?

9 MR. CANTALUPO: Correct.

10 THE COURT: Okay. Ms. Morton-Owens?

11 MS. MORTON-OWENS: Yes, Your Honor. One issue
12 with the defendant's guidelines calculation...

13 I know the Court is not going to adopt it, but
14 I just want to be clear that the defendant is asking for
15 a base offense level of 34. And because the defendant
16 does not qualify for a safety valve, even if the Court
17 were to go along with the defendant's recommendation
18 because she did not qualify for safety valve, the total
19 offense level even with a minor role would be 32, not
20 29. I just want to make sure that's on the record for
21 appeal purposes.

22 As to defendant's specific arguments, I believe
23 these have all been briefed, but I would point the Court
24 to two pieces of important evidence. The first is the
25 prescription for Edgar Hovannisyan which defendant

1 Budagova herself filled out. Defendant Hovannisyan was
2 approximately 20 years old when he committed the offense
3 in this case, and she wrote a prescription for him for
4 OxyContin, 80 milligrams. And you will recall when she
5 was interviewed, she claimed that Mr. Hovannisyan needed
6 the drugs. So to -- to defendant's point that she
7 believes she was helping patients, it's very clear she
8 does not believe that she was actually helping patients.
9 She was a member of the conspiracies for which she was
10 convicted.

11 I would also point the Court to her own
12 prescription and the testimony that defendant Budagova
13 went to the pharmacy and actually dropped off a
14 prescription for OxyContin in her own name, despite the
15 fact that the records showed she didn't need OxyContin
16 herself. And then just one point on defendant Santiago
17 and the 20-month sentence, I would just like to point
18 out the overwhelming amount of cooperation that
19 defendant Santiago participated in. She testified twice
20 in two different cases -- and that was the Government on
21 numerous occasions. I just want to point that out.

22 THE COURT: I understand that, but she was also
23 far more heavily involved and much more important to
24 this conspiracy than this lady.

25 MS. MORTON-OWENS: Yes, Your Honor, true.

1 THE COURT: Yeah.

2 MS. MORTON-OWENS: Thank you, unless the Court
3 has questions.

4 THE COURT: No, thank you. Would your client
5 like to say anything?

6 MR. CANTALUPO: I'm sorry?

7 THE COURT: Would your client like to say
8 anything?

9 MR. CANTALUPO: May I have a minute...

10 THE DEFENDANT: Yes.

11 Your Honor, this is the first time that I'm in
12 a situation. There are many issues and questions that I
13 did not understand at the time; therefore, I probably
14 committed many mistakes, even knowing that it is a
15 mistake or not knowing that it is a mistake. I believed
16 that this is a regular and legitimate clinic. And I
17 worked in these clinics during seven years in
18 Los Angeles. After some time, I started to suspect that
19 there's something wrong with this clinic; but please
20 understand I needed that job.

21 First of all, the state of my health is very
22 bad. And I always needed regular assistance to be under
23 supervision of doctors. I would wake up every morning;
24 take a shower, put my clothes on; and don't go to work.
25 I reside by myself alone. And that job fulfilled my

1 life.

2 Now I am very sorry for what I have done.
3 I'm -- during this process what was it? Four years? I
4 understand that I was simply used. Never tell any
5 truth. Now during this process, I realized there were
6 wrongdoings. The question asked by the Government that
7 I was taking -- I have to clarify something -- the
8 prescription for that medication was prescribed by
9 Julie Shishalovsky, the manager, without my knowledge.
10 I did not know about it. The others that the deliveries
11 were made, assuming they were made, it was the others
12 where I did not reside for already two years. It was
13 false. On that paper was written by my hand is the
14 number of the telephone and in the e-mail. The rest was
15 fabricated by Julie and written by her hand. Besides I
16 have Medicare and usually that medication prescribed to
17 me, they were receiving money from Medicare.

18 I have massive kidneys and but I do not take
19 any pain killers. OxyContin was not needed by me. This
20 was a farce. With regards to -- the acting, the
21 Government accuses me of that issue. There was a young
22 man who worked as a driver and he had significant lower
23 back trauma. He would lie down in the office, and he'll
24 scream because of the pain he'll have; prescribed
25 OxyContin for him and that's what I did and that's it.

1 In other words, I apologize very much for what
2 I have done -- I want to mention for friends and for all
3 those people who made decisions and comments.
4 Specifically want to apologize and thank the members of
5 my family because they have to survive through all these
6 misfortunate events. They were supporting me. And I
7 ask you to show some lenient decision and whatever I
8 have earned, then all these unfortunate events, I will
9 perform with full responsibility and diligence and this
10 is it.

11 THE COURT: Okay. Thank you. The defendant
12 shall pay a special assessment of \$200 due immediately.
13 Any unpaid balance shall be due during the period of
14 imprisonment of not less than \$25 per quarter. And
15 pursuant to the Bureau of Prisons Inmate Financial
16 Responsibility Program, defendant owes restitution in
17 the total amount of \$1,236,988, payable 640,437 to
18 Medicare part B and 400 -- rather 546,551 to Medi-Cal.

19 MR. CANTALUPO: Your Honor, that's jointly and
20 severally liable; correct?

21 THE COURT: Correct. I'll get to that. Thank
22 you.

23 Restitution shall be due during imprisonment of
24 not less than \$25 per quarter. If any amount remains
25 unpaid after release, nominal payments of at least ten

1 percent of gross monthly income but not less than \$50,
2 whichever is greater, shall be due during supervised
3 release, commencing 30 days after supervision begins.
4 Restitution ordered shall be paid as set forth in the
5 list attached to this judgment, and the list will
6 include -- or includes -- or is Anjelika Sanamian,
7 Eleanor Santiago, Julie Shishalovsky, Lilit Mekteryan,
8 Keith Pullman, David Smith, Rosie Garcia Suarez,
9 Edgar Hovannisyan and Miran Derderian.

10 The victims' recovery is limited to the amount
11 of their loss, and liability ends when the victim is
12 paid. Interest on restitution is waived, and the amount
13 of restitution shall be paid such that if a defendant
14 makes a partial payment, each payee shall receive
15 approximately proportional payment.

16 And if it wasn't clear, I said, the defendants
17 are severally liable -- this defendant rather, is
18 jointly and severally liable with the defendants' names
19 who I just recited.

20 Fines are waived. It is the judgment of the
21 Court that the defendant is committed on Counts 1 and 2
22 of the second superseding indictment to the Bureau of
23 Prisons for a term of 36 months. This term consists of
24 36 months on Count 1 of the second superseding
25 indictment and 36 months on Count 2 to be served

1 concurrently.

2 The Court considered carefully all of
3 mitigating factors. I looked to Ms. -- Dr. Santiago as
4 a baseline; considered the fact that her involvement,
5 Dr. Santiago, was much more extensive but that she did
6 provide meaningful cooperation. I also felt it was
7 important that Dr. Santiago had a DEA license and really
8 was much more instrumental and important to this overall
9 conspiracy.

10 In some ways, I thought they were similarly
11 situated as elderly individuals who exercised very poor
12 judgment, and I believe started to understand that what
13 they were doing was wrong but continued to do it anyway.
14 In many ways their situations are equally sad but both
15 clearly violated the law.

16 I note that -- that Ms. Budagova is 74 years
17 old. The sentence will have her essentially being
18 released when she's 77 years old. She has significant
19 health issues. She presents essentially zero risk of
20 recidivism; but the Court balanced that against her
21 long-time involvement in the conspiracy involving very
22 serious narcotic and, you know, some what the Court
23 believes lack of candor and minimalization of what I
24 think her logical role was. So the Court would arrive
25 at the same sentence regardless of whether it used the

1 Government's calculation or the Defense calculation in
2 terms of the guidelines.

3 So upon release, the defendant shall be placed
4 on supervised release for three years; this is three
5 years on each of Counts 1 and 2, the second superseding
6 indictment. All such terms to run concurrently under
7 the terms and conditions: One, the defendant shall
8 comply with the rules and regulations of the U.S.
9 Probation office, General Order 05-02 and General Order
10 01-05 and including the three special conditions in
11 01-05.

12 I don't think I'm going to require drug
13 testing. She is on a million medications. So delete
14 that.

15 Number two, during the supervision, the
16 defendant shall pay the special assessment and
17 restitution in accordance with this judgment's orders.
18 Number three, defendant shall provide DNA.

19 Four, the defendant shall apply all funds
20 received from income tax refunds to the financial
21 obligation; also, any funds received from such things as
22 the lottery or inheritances, shall be applied. The
23 defendant shall surrender herself to the institution
24 designated by the Bureau of Prisons on or before 12:00
25 noon, 60 days.

1 COURTROOM DEPUTY: That date is
2 October 19, 2015.

3 THE COURT: You know, there's been some concern
4 that the BOP doesn't deal with people that have health
5 concerns as quickly. So I think I'm going to make it 90
6 days, just so she doesn't end up in San Bernardino.

7 COURTROOM DEPUTY: Yes, Your Honor.

8 THE COURT: So 90 days, John.

9 COURTROOM DEPUTY: That day is
10 November 20, 2015.

11 THE COURT: And...

12 MR. CANTALUPO: Your Honor, would the Court
13 consider -- it's so close to Thanksgiving -- to allow
14 her to spend Thanksgiving with her family and then
15 surrender?

16 THE COURT: What's the date, John?

17 COURTROOM DEPUTY: The date I had 90 days from
18 today is the 20th of November.

19 THE COURT: Just add a week.

20 COURTROOM DEPUTY: Then the -- after
21 Thanksgiving is the 1st day of the -- that would be
22 Monday the 30th.

23 THE COURT: That's fine.

24 In the absence of designation, the defendant
25 shall report to the U.S. marshal located in the

1 Roybal federal building. And, ma'am, you have the right
2 to appeal your sentence and your conviction. You have
3 the right to apply for leave to appeal without the
4 payment of fees. I note that the sentence is something
5 like 20 percent at the bottom end of the guideline
6 range, and it's half of what the Government recommended.
7 So I have tried hard to balance all of the concerns
8 you've raised; but in any event, the Court feels that's
9 the appropriate sentence. So anything further?

10 MS. MORTON-OWENS: Yes, Your Honor. Just a
11 couple of things: First, in the interest of justice,
12 the Government moves to dismiss the underlying
13 indictment in this case as to this defendant.

14 Also, the defendant made several objections to
15 the PSR. The Government did not address them because
16 they were --

17 THE COURT: Yes, thank you for reminding me.

18 The Court finds that it is unnecessary to
19 resolve those objections and does not consider those
20 issues in issuing its judgment.

21 MS. MORTON-OWENS: Yes, Your Honor, to both of
22 the underlying indictments. And also would the Court
23 consider in this case, given that it is a custodial
24 sentence and the nature of the crimes, that she be
25 placed on electronic monitoring until she surrenders?

1 THE COURT: I don't think it's necessary.
2 She's made all court appearances, and it's not a
3 ten-year sentence. So I don't think she's going to
4 leave. Okay.

5 MS. MORTON-OWENS: Yes, Your Honor.

6 MR. CANTALUPO: With regard to the objections
7 to the PSR, there is one objection I would ask the Court
8 to direct probation to include. And it had to do with
9 an additional medication that she is taking. And I know
10 when the time comes for her designation and for her
11 treatment at the MDC, they're going to want a complete
12 description of all of her medications. I don't recall
13 the exact medication, but I remember there was one that
14 was not included in the PSR.

15 THE COURT: I don't think that -- I'm sure that
16 they -- they'll take an independent history. She would
17 just have to bring all the medications with her.

18 MR. CANTALUPO: Okay.

19 THE COURT: Okay.

20 MR. CANTALUPO: Then Your Honor, I just want to
21 mention to the Court and to the Government, if an appeal
22 is filed, it will probably be just on the conviction
23 dealing with the *Brady* issues as the Court I'm sure and
24 everybody remembers. If the appeal is filed, I would
25 ask that she remain on bond pending appeal. And would

1 the Court like the formal written motion?

2 THE COURT: There would have to be such.

3 MR. CANTALUPO: Very well.

4 THE COURT: Thank you.

5 (Whereupon the proceeding adjourned.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA

:

vs.

: No. CR 11-922-DDP

ELZA BUDAGOVA

:

I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES. FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/MARIA R. BUSTILLOS
OFFICIAL REPORTER//

DATE

1 use defendant's statements against her. Consequently, defendant's
2 motion should be denied in its entirety.

3 **II. STATEMENT OF FACTS**

4 **A. Defendant's Fraudulent Activities at the Clinic**

5 Defendant Budagova is an unlicensed medical practitioner who has
6 worked at fraudulent clinics for years. (Declaration of Lana Morton-
7 Owens ("Morton-Owens Decl.") at ¶ 14, Exh. 8.) Her responsibility at
8 the clinics was to falsify medical charts and to write prescriptions
9 for unnecessary medications. (Morton-Owens Decl. at ¶¶ 9, 14, Exhs.
10 3, 8 .) Beginning in fall 2008, defendant began working for co-
11 defendants Mike Mikaelian and Angelika Sanamian who operated a
12 purported medical clinic at 2120 West 8th Street, Los Angeles.
13 (Morton-Owens Decl. at ¶ 20.) While the clinic claimed to be a "pain
14 management clinic," in reality, it was an OxyContin prescription
15 mill.

16 In furtherance of the conspiracy, defendant Budagova held
17 herself out as a Physician's Assistant who had been a doctor in
18 Russia. (Morton-Owens Decl. at ¶¶ 7-8, Exhs. 1-2.) Defendant's job
19 was to distort medical records to give the appearance that patients,
20 who were brought to the clinic by paid recruiters, needed OxyContin.
21 (Morton-Owens Decl. at ¶¶ 9, 19, Exh. 3, 13.) Many times, Budagova
22 would falsify the medical records to make it appear that a patient
23 had been treated on a particular day when, in fact, the patient was
24 not even at the clinic to receive medical attention. (Id.)
25 Defendant would also use the prescriptions, which were pre-signed by
26 medical professionals, to issue the patient an unnecessary
27 prescription for OxyContin. (Morton-Owens Decl. at ¶ 10, Exh. 4.)
28

1 the phone list as "Doctor Elza" and test results were directed to her
2 attention. (Morton-Owens at ¶ 16, Exh. 10.) Defendant refused to
3 answer questions regarding the blank prescriptions that were found at
4 the Victory location. (Id. at Exh. 6.)

5 **C. Defendant's July 19, 2011 Interview**

6 During the first two weeks of July 2011, Special Agent Chau Tran
7 of the California Department of Justice located defendant's known
8 residence and attempted to make contact with her. (Tran Decl. at ¶
9 2.) At the time, defendant was not home, so Agent Tran left a
10 business card at the door. (Id.) A few days later, Agent Tran spoke
11 with defendant on the phone and made arrangements to interview her
12 about medical clinics where defendant had worked. (Id. at ¶ 3.)
13 Defendant agreed, and invited the agents to her home on July 19,
14 2011. (Id.) On July 19, 2011, Agent Tran, along with Federal Bureau
15 of Investigation ("FBI") Special Agent Tim Stanislawski, arrived at
16 defendant Budagova's home. The two agents were dressed in street
17 clothing and did not display any weapons. (Id. at ¶ 5.) As
18 previously arranged, when they arrived at the home, defendant invited
19 them inside her home and into the living room for the interview.
20 (Id.) At the beginning of the interview, Agent Tran again explained
21 that she wanted to ask defendant about work defendant had done at a
22 medical clinic. (Id.) The interview, which was audiotaped, took
23 place in defendant's living room while defendant's son and daughter-
24 in-law were present. (Id.) At no time did defendant indicate she
25 was uncomfortable with the interview. (Id. at ¶ 9.) The agents did
26 not threaten or coerce defendant in any way. (Morton-Owens Decl. at
27 ¶ 20 (July 19 Audio Recording).) At the outset of the interview,
28 defendant claimed that she was a "volunteer" who had found out about

1 the clinic when she went there herself as a patient. (Id. at 1:20-
2 2:26.) Defendant contended that she acted as a "translator" for
3 English, Armenian and Russian.² Defendant told the agents that she
4 volunteered "one, two or three days" a week. (Id. at 3:25.)
5 Defendant claimed that "when [she] had time" she would help "copy"
6 the files because the doctors were very busy and she would
7 "help...write" the prescriptions. (Id. at 4:30-5:00.) She claimed
8 that she worked with Dr. Santiago [co-defendant Eleanor Santiago] and
9 that Dr. Santiago was the person who hired her. (Id. at 5:35-6:00.)
10 Defendant claimed she did not know who owned the clinic. (Id. at
11 6:45-49.) Defendant also claimed she did not know "Angelika" [co-
12 defendant Angelika Sanamian] because the clinic was so large. (Id.
13 at 8:10-9:40.) Defendant contended that she did not know co-defendant
14 Mike Mikaelian, despite volunteering his last name. (Id. at 9:45.)

15 After approximately ten minutes, Agent Tran stopped the
16 interview and explained that law enforcement "knows what's going on
17 at the clinic" and had been investigating the clinic for two years.
18 (Id. at 10:01-11:29.) Defendant continued to answer questions,
19 telling the agents she was a "doctor in Russia" and had studied in
20 the United States to be an ultrasound technician. (Id. at 14:01-
21 15:55.) Agent Tran confronted defendant Budagova with medical charts
22 and explained that the charts were false. Defendant admitted that
23 the charts contained her handwriting. (Id. at 16:24-46.) Defendant
24 claimed that she was merely copying the doctors' notes and was a
25 "historian" and a "translator." (Id. at 17:36-51.) Agent Tran

26
27 ² At times, defendant's son would offer translations, but
28 defendant answered all the agent's questions in English. (Morton-
Owens Decl. at ¶ 20 (July 19 Audio).)

DECLARATION OF SPECIAL AGENT CHAU TRAN

I, Chau Tran, declare as follows:

1. I am a Special Agent ("SA") with the California Department of Justice, Bureau of Elder Abuse and Medi-Cal Fraud. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness.

2. I am one of the case agents assigned to the investigation that lead to the indictments in this case.

3. Sometime during the first two weeks of July, I drove to where I understood Elza Budagova lived at [redacted] in Los Angeles, California. When I rang the doorbell, no one answered. I then left my business card on the door. A few days later, I received a phone message from Elza Budagova on my voicemail. I returned the phone call shortly thereafter and spoke with Ms. Budagova on the phone. During the call, I explained that I wanted to ask her some questions about a place that she used to work. Ms. Budagova agreed that she would answer my questions and I arranged to go to her house for the interview.

4. On July 19, 2011, I along with another agent assigned to the case, FBI Special Agent Tim Stanislawski drove to Elza Budagova's home for the arranged interview. I did not go to the interview with the intention of inviting Ms. Budagova proffer to a second interview with the prosecutor on the case. I went to interview Ms. Budagova because I knew that she worked at the clinic and I was in the process of attempting to interview everyone who worked at the clinic that was willing to speak with me.

5. At the time, I and SA Stanislawski were dressed in plain clothes and did not display any weapons.

1 all with the California Pharmacy Board?

2 A Yes.

3 Q How frequently do you work with the
4 Pharmacy Board?

5 A On occasion.

6 Q And what about the Medical Board?

7 A Yes, on a regular basis.

8 Q And, Sergeant Opferman, what about street drug
9 cases, have you worked street drug cases?

10 A Yeah, that's really our primary mission.

11 Q So when I say "street drug cases," does that
12 apply to pharmaceuticals, as well as to other illicit
13 drugs?

14 A Yes. Our focus is pharmaceuticals sold on the
15 street. You know, we do regular undercover operations
16 where we deal -- we call "by bus." We go out and
17 actually purchase these drugs on the street and arrest
18 the sellers.

19 Q What is a Scheduled Controlled Substance? What
20 does that mean?

21 A Yeah. The Uniform Controlled Substances Act
22 classifies narcotics, schedules I through V, Schedule I
23 being the most addictive, and drugs that are typically
24 not used for any legitimate medical purpose.

25 Schedule II goes into narcotics that are used

1 for medical purposes that are highly addictive and then
2 down to a Schedule V which are the less addictive
3 controlled substances.

4 Q Are you familiar with a drug called
5 "OxyContin"?

6 A Yes.

7 Q What is OxyContin?

8 A The best way to describe it is synthetic
9 heroin. It's a very powerful pain reliever.

10 Q And are you familiar with the dosage of
11 80 milligrams of OxyContin?

12 A Yes.

13 Q And in 2008 through 2010, was 80 milligrams the
14 strongest dosage available at the time?

15 A Not the strongest but the most popular that we
16 saw sold on the streets --

17 MR. MESEREAU: Objection, Your Honor --

18 THE WITNESS: Oh, I'm sorry.

19 MR. MESEREAU: -- foundation, Your Honor.

20 THE COURT: You know, if you could just stand
21 when you state an objection, then I will know that
22 you're objecting, because I couldn't hear you. So the
23 objection is foundation?

24 MR. MESEREAU: Yes, Your Honor.

25 THE COURT: Sustained.

1 BY MS. MORTON-OWENS:

2 Q How many cases did you investigate involving
3 specifically OxyContin?

4 A I'd say probably -- approximately more than 50.

5 Q And when did you begin investigating cases
6 involving OxyContin?

7 A I would say in the mid 2000's, when it was
8 becoming very popular.

9 Q And based on your experience in investigating
10 cases, your work with the Pharmacy Board and the Medical
11 Board, are you familiar with whether or not
12 80 milligrams was the strongest dosage available?

13 MR. MESEREAU: Objection; foundation.

14 THE COURT: Sustained.

15 BY MS. MORTON-OWENS:

16 Q Are you familiar with a purported medical
17 clinic that operated at 2120 West 8th Street?

18 A Yes.

19 MS. MORTON-OWENS: At this time, I'd ask that
20 the agent be able to place the exhibits in front of the
21 witness.

22 THE COURT: Very well.

23 COURTROOM DEPUTY: Numbers of those exhibits
24 are?

25 MS. MORTON-OWENS: Yes. There are several

1 exhibits. I was going to identify them as he pulls them
2 out, if's that's all right. In front of him has been
3 placed, I believe, approximately 15 different exhibits.

4 I'll go one by one.

5 BY MS. MORTON-OWENS:

6 Q Sergeant Opferman, can you look in that box at
7 Exhibit 1 which has been placed before the witness.
8 It's a folder marked Exhibit 1.

9 And have you looked at Exhibit 1 -- please,
10 don't show it yet. Have you looked at Exhibit 1?

11 A Yes.

12 Q Yes. And are you familiar with what is
13 depicted in Exhibit 1?

14 A Yes.

15 Q How are you familiar with that?

16 A This is a medical building, which located
17 within that building was the Lake Medical Group.

18 MS. MORTON-OWENS: Your Honor, at this time,
19 the Government would move Exhibit 1 into evidence?

20 THE COURT: No objection?

21 MR. NASATIR: No objection.

22 MR. MESEREAU: No objection, Your Honor.

23 THE COURT: Very well.

24 (Whereupon Government's Exhibit 1 is admitted hereto.)

25 THE COURT: It's admitted.

1 MS. MORTON-OWENS: Thank you, Your Honor.

2 May I publish?

3 THE COURT: Yes.

4 MS. MORTON-OWENS: Will you show Exhibit 1,
5 please.

6 BY MS. MORTON-OWENS:

7 Q Sergeant Opferman, can you explain for the jury
8 what they're seeing in Government's Exhibit 1.

9 A Again, this is a medical plaza that had various
10 medical clinics and other stores located near MacArthur
11 Park. That's why it was called Lake Medical Group.
12 There's a small lake across the street, north of that
13 building.

14 Q Can you turn to the folder marked Government's
15 Exhibit 3, which has also been placed before the
16 witness?

17 Yes, Government's Exhibit 3 and Government's
18 Exhibit 1.

19 Without identifying them, are you familiar with
20 what is depicted in Exhibit 3?

21 A Yes.

22 Q What is that?

23 A This is a map showing the location of the 8th
24 Street clinic, 2120 West 8th Street.

25 MS. MORTON-OWENS: Your Honor, at this time,

1 the Government seeks admission of Government's
2 Exhibit 3.

3 THE COURT: Very well.

4 (Whereupon Government's Exhibit 3 is admitted hereto.)

5 MS. MORTON-OWENS: May we publish?

6 THE COURT: Yes. You know, I'm not going to
7 require that you ask permission to publish. We have so
8 many exhibits. So unless, there's some issue, just
9 publish.

10 MS. MORTON-OWENS: Thank you, Your Honor.

11 THE COURT: By the way, if I say "very well"
12 too quickly, please jump up and say you object if you
13 think there's an exhibit that shouldn't be admitted.
14 Okay.

15 BY MS. MORTON-OWENS:

16 Q Sorry. Sergeant Opferman, how many times had
17 you been to the location of 2120 West 8th Street?

18 A Approximately a dozen times.

19 Q And based on that familiarity, are you familiar
20 with the neighborhood where the clinic was located?

21 A Yes.

22 Q Can you describe for the members of the jury
23 what kind of neighborhood is this?

24 A We call this the MacArthur Park area. That's
25 one of the names of that particular location in

1 Los Angeles.

2 I describe it as a very low income; high
3 immigration population of mainly Salvadorian, Guatemalan
4 immigrants and so forth.

5 Q Can you now turn to Government's Exhibit 2.
6 And unless there's an objection, we'd seek to admit it.

7 THE COURT: Very well.

8 (Whereupon Government's Exhibit 2 is admitted hereto.)

9 MS. MORTON-OWENS: Can you publish
10 Government's Exhibit 2, page two.

11 BY MS. MORTON-OWENS:

12 Q And, Sergeant Opferman, what's depicted in
13 Government's Exhibit 2? It's also on the screen in
14 front of you, sir?

15 A This would be the -- the rear of the
16 building -- the south side of the building -- that same
17 plaza.

18 Q Is this how individuals entered the building in
19 order to get to the 8th Street clinic location?

20 A Yes. The times I was there, I saw people
21 entering that rear entrance.

22 Q Do you know what WIC stands for?

23 A Um, I forget the acronym, but it's a -- it's a
24 Government aid program that deals with food items for
25 the indigent.

1 Q And, Sergeant Opferman, you mentioned that
2 you've been to the 8th Street clinic location
3 approximately 12 times. Did you surveil the clinic at
4 that time?

5 A Yes, I had.

6 Q And can you explain that you saw while you and
7 your team were surveilling the clinic?

8 A At various times, there was a lot of activity
9 in the rear parking lot, you know, concerning both the
10 WIC office, as well as activities that we believe were
11 associated with the clinic itself.

12 Q Are you familiar with the term "capping"?

13 A Yes.

14 Q What does "capping" mean?

15 A "Capping" would be a -- kind of a slang term
16 that we use in law enforcement which describes people
17 that recruit patients for medical services. It is
18 illegal. It's -- both federal and state laws do not
19 allow payment or gifts for people in exchange to go to
20 medical service providers. So cappers are people that
21 actually -- we've seen various methods -- but they go
22 out on the street typically, looking for people that are
23 willing to go to clinic, for instance, to get medical
24 services. It could be prescriptions. It could be like
25 an electric wheelchair or something expensive that their

1 medical benefits will ultimately pay for.

2 Q And in August of 2009, did your team conduct an
3 undercover investigation?

4 A Yes.

5 Q And did you use a confidential informant in
6 order to do that investigation?

7 A Yes.

8 Q What did the confidential informant pose as?

9 A He pretended to be what we would call "a
10 capper." He went into the clinic with one of our
11 investigators to see if he could get paid for patient
12 referrals.

13 Q And was he paid?

14 A No.

15 Q Was the undercover operation recorded?

16 A Yes.

17 Q And can you turn now to

18 Government's Exhibit 1701,

19 Mr. Clerk. And it's already been placed before the
20 witness.

21 COURTROOM DEPUTY: I'm sorry, exhibit?

22 MS. MORTON-OWENS: 1701.

23 COURTROOM DEPUTY: 1701?

24 MS. MORTON-OWENS: Yes, sir.

25 BY MS. MORTON-OWENS:

1 Medical Group?

2 A We did conduct some related investigations
3 involving cappers.

4 Q Did you also, based on your surveillance and
5 your investigation, begin to identify individuals that
6 worked at the Lake Medical Group?

7 A Yes.

8 MS. MORTON-OWENS: Can you turn to Government's
9 Exhibit 9. And unless there's any objection, we'd seek
10 to admit Government's Exhibit 9.

11 THE COURT: Very well.

12 (Whereupon Government's Exhibit 9 is admitted hereto.)

13 BY MS. MORTON-OWENS:

14 Q Sergeant Opferman, who is depicted in
15 Government's Exhibit 9?

16 A That's Mr. Mike Mikaelian.

17 Q And based on the investigation, did you
18 determine what Mr. Mikaelian did for Lake Medical Group?

19 A Yes. Based on our investigation, we determined
20 that he was one of the clinic managers. We also learned
21 later on that he was instrumental in repurchasing --
22 or -- OxyContin tablets and then redistributing them to
23 other sellers or dealers.

24 MS. MORTON-OWENS: Turning your attention now
25 to -- and I'll do this as a group, unless there's an

1 objection, Government's Exhibit 10, Mr. Clerk, 11, 12,
2 13, 15, and 16. And unless there's an objection, I seek
3 to admit
4 them.

5 THE COURT: Very well.

6 (Whereupon Government's Exhibits 11, 12, 13, 15, and 16
7 are admitted hereto.)

8 MS. MORTON-OWENS: And turning now to
9 Government's Exhibit 10.

10 BY MS. MORTON-OWENS:

11 Q And, Sergeant Opferman, it's also on your
12 screen for ease if you'd like. Who is depicted in
13 Government's Exhibit 10?

14 A Anjelika Sanamian.

15 Q And based on your investigation, were you able
16 to determine what Anjelika Sanamian did for Lake Medical
17 Group?

18 A She was the bookkeeper; one of the managers.

19 Q Did you -- did your investigation find that
20 doctors worked for Lake Medical Group?

21 A Yes.

22 Q And can you show in Government's
23 Exhibit 12 who's depicted in Government's Exhibit 12?

24 A I'm sorry, I don't recall. I've got a couple
25 of them confused.

1 Q Okay. What about Government's Exhibit --

2 A I -- I've never had personal contact with that
3 gentleman.

4 Q What about Government's Exhibit 13?

5 A That's Dr. Eleanor Santiago.

6 Q And did you determine whether or not
7 Dr. Santiago worked at the Lake Medical Group?

8 A Yes, we did determine that she worked there.

9 Q And did other doctors also work at Lake Medical
10 Group?

11 A Yes, but she was there most of the time.

12 Q I'm going to draw your attention to
13 November 2nd of 2009. Were you participating in a
14 surveillance operation of the Lake Medical Group at that
15 time?

16 A Yes.

17 Q And specifically, who were you surveilling?

18 A Mike -- I'm sorry -- but yeah, we call him
19 Big Mike Mikaelian.

20 Q And did anything of note occur on September --
21 of November 2nd, 2009?

22 A Yes. We observed what we believed to be a
23 narcotics' transaction.

24 Q What specifically did you see?

25 A We saw a -- we saw Big Mike pull into a parking

1 lot; met briefly with another person. There appeared to
2 be a quick exchange and then they separated.

3 Q Did law enforcement actually stop the other
4 person; not Mr. Mikaelian but the other person?

5 A Yes, that's correct. A marked patrol unit
6 stopped that person.

7 Q What was found, if anything?

8 A Several bottles containing OxyContin tablets.

9 Q Can you turn to Government's Exhibit 1737.
10 Mr. Clerk...

11 And that's a bag in front of you. It's not
12 admitted yet. It is a bag in that box marked 1737...

13 A Yes.

14 Q Do you recognize that bag?

15 A Yes, I do.

16 Q And what is it?

17 A In the first bag is numerous 80-milligram
18 OxyContin tablets. And in the second bag is numerous
19 empty vials.

20 Q And when you -- when the original stop of the
21 individual who purchased the OxyContin from
22 Mr. Mikaelian, when that occurred, were the pills
23 separated from the bottle?

24 A No, they were -- the pills were contained
25 within the bottles at that time.

1 Q And, Sergeant Opferman, were the labels on the
2 bottles or were they -- already been removed?

3 A They had -- most of them had been removed -- or
4 non-existent.

5 MS. MORTON-OWENS: Your Honor, at this time,
6 the Government seeks to admit Government's Exhibit 1737.

7 THE COURT: Very well.

8 (Whereupon Government's Exhibit 1737 is admitted
9 hereto.)

10 BY MS. MORTON-OWENS:

11 Q After stopping that individual, what happened?

12 A That individual was detained and then
13 interrogated.

14 Q And after the interrogation did they agree to
15 cooperate?

16 A Yes.

17 Q And what did they do?

18 A They agreed to cooperate in establishing what
19 we call a "by-walk" with Mike Mikaelian. That person
20 had been doing business with Mike Mikaelian and had
21 agreed to set up a future meeting.

22 Q How did the -- the CI -- the confidential
23 informant, how did she communicate with Mr. Mikaelian,
24 if you know?

25 A I'm sorry -- by cell phone.

1 Q And based on that, did you observe telephone
2 calls between this individual and Mr. Mikaelian?

3 A Yes, I did.

4 Q Because of that, did you learn Mr. Mikaelian's
5 telephone number -- or at least one of the phones he was
6 using?

7 A Yes.

8 MS. MORTON-OWENS: Can you turn to Government's
9 Exhibit 156, Mr. Clerk...

10 It's not admitted yet.

11 So, Sergeant Opferman, it's in that box in a
12 folder marked 156.

13 And I apologize. This is my fault.

14 Actually, Government's Exhibit 157...

15 Do you have Exhibit 157 in front you?

16 A Yes.

17 Q And do you recognize the phone number on that
18 document as being that of Mr. Mikaelian's?

19 A Yes.

20 Q Can you explain to the jury what is that phone
21 number?

22 A It's area code (818) 306-7553.

23 Q And is that the same phone number that was used
24 by your team to make telephone calls between the
25 confidential informant and Mr. Mikaelian?

1 A Yes.

2 MS. MORTON-OWENS: The Government seeks
3 admission of Government's Exhibit 157.

4 THE COURT: Very well.

5 (Whereupon Government's Exhibit 157 is admitted hereto.)

6 BY MS. MORTON-OWENS:

7 Q Was there a controlled buy between this
8 confidential informant and Mr. Mikaelian?

9 A Yes, there was.

10 Q And drawing your attention to December 9th of
11 2009...

12 Is that when the drug buy took place?

13 A Yes.

14 Q Was that drug buy recorded?

15 A Yes.

16 Q And what was the deal between Mr. Mikaelian and
17 the confidential informant?

18 A He agreed to sell the informant approximately
19 450 OxyContin tablets for -- they agreed on a price of
20 \$23 each, which was a total of 10,350.

21 Q Can you turn now to Government's Exhibit 1739
22 and 1740...

23 And they're CD's in folders in front you.

24 And do you recognize Government's Exhibit 1739?

25 A Yes.

1 Q How do you recognize it?

2 A My initials are on the outside of the CD.

3 Q And is that a recording of the drug buy that
4 took place in approximately December 9, 2009?

5 A Yes.

6 Q If you'd now turn to Government's Exhibit 1740,
7 which is in evidence -- or I'm sorry -- which is not yet
8 in evidence.

9 And is that a clip containing the drug buy?

10 A Yes.

11 MS. MORTON-OWENS: The Government seeks
12 admission of Government's Exhibit 1740.

13 THE COURT: Very well.

14 (Whereupon Government's Exhibit 1740 is admitted
15 hereto.)

16 MS. MORTON-OWENS: Your Honor, at this time,
17 we'd like to publish Government's Exhibit 1740. It does
18 have a transcript that goes along with it, and we have
19 binders for the jurors.

20 THE COURT: Very well.

21 Ladies and gentlemen, you're going to listen to
22 a recording. There's a transcript that you're going to
23 be given, so you can follow along. The recording is the
24 evidence; not the transcript. If what you hear is
25 different than what you read, what you hear is the

1 evidence, and it's the only evidence.

2 MS. MORTON-OWENS: May I proceed?

3 If you could please publish Government's
4 Exhibit 1740...

5 (Whereupon video is played in open court.)

6 MS. MORTON-OWENS: And, Sergeant Opferman,
7 based on that buy, did the Government seize
8 approximately 450 pills that were purchased from
9 Mikaelian.

10 THE WITNESS: Yes.

11 MS. MORTON-OWENS: Mr. Clerk, the witness is
12 now going to turn to Government's Exhibit 1743 which has
13 also been placed in front of him, and it's in the box
14 that say "bag."

15 BY MS. MORTON-OWENS:

16 Q Do you have Government's Exhibit 1743 in front
17 of you?

18 A Yes.

19 Q What is that?

20 A One envelope containing several empty pill
21 vials and then a second envelope containing numerous
22 80-milligram OxyContin tablets.

23 Q And based on your involvement in this
24 undercover operation, were the pills and the bottles
25 actually together at the time and the Government

1 A Like 23.

2 Q Do you have medical insurance?

3 A I have Medi-Cal, yes.

4 Q And what is Medi-Cal?

5 A I get it through the county.

6 Q Do you know how you qualified for Medi-Cal?

7 A Well, I have children. So I got qualified from
8 having them.

9 Q And have you ever given anyone permission to
10 use your Medi-Cal information?

11 A No.

12 Q In 2009, did you have a medical doctor?

13 A Yes.

14 Q And who was your medical doctor?

15 A Dr. Pickett.

16 Q And in 2009, did you have any serious health
17 issues?

18 A No.

19 Q Did you ever have a caretaker?

20 A No.

21 Q Ever have anyone pick up your prescriptions for
22 you besides a family member?

23 A No.

24 Q And in 2009, did you go to a specific pharmacy?

25 A Yes.

1 Q What pharmacy did you go to?

2 A Rite-Aid.

3 Q How close, Ms. Obed, was your primary care
4 physician from where you lived in 2009?

5 A Probably like a couple of blocks -- maybe a
6 mile.

7 Q And what about the pharmacy that you went to in
8 2009, how close was that from your home?

9 A A mile, also.

10 Q Have you ever taken a drug called OxyContin?

11 A No.

12 Q Have you ever been prescribed any pain
13 medications at all?

14 A No.

15 Q What's the strongest pain medication you've
16 ever taken?

17 A Ibuprofen.

18 Q Let me show you Government's Exhibit 2, which
19 is already in evidence...

20 Have you ever been to a medical clinic located
21 at 2120 West 8th Street?

22 A No.

23 Q Did you ever give anyone permission to go to a
24 clinic and use your name?

25 A No.

1 MS. MORTON-OWENS: Can you pull up Government's
2 Exhibit 11, which I believe is already in evidence, as
3 well...

4 THE COURT: Yes.

5 BY MS. MORTON-OWENS:

6 Q Do you recognize this man at all?

7 A No.

8 Q Can you now turn to Government's Exhibit 271.
9 It's in a folder in front you. It's a pink file.

10 MS. MORTON-OWENS: And, Your Honor, the
11 Government seeks admission of Government's Exhibit 271.

12 THE WITNESS: Yes.

13 BY MS. MORTON-OWENS:

14 Q Aside from -- in connection when you were
15 interviewed in this case, had you ever seen that medical
16 file?

17 A No.

18 Q Can you turn to page eight -- can you --

19 THE COURT: You know, I haven't admitted it
20 yet.

21 MS. MORTON-OWENS: Oh, I apologize.

22 THE COURT: You're moving it?

23 MS. MORTON-OWENS: Yes, Your Honor.

24 THE COURT: You said you seek admission, but
25 you didn't say you were actually at the moment seeking

1 admission.

2 MS. MORTON-OWENS: Yes, Your Honor. The
3 Government moves Government's Exhibit 271 into evidence.

4 THE COURT: Very well.
5 (Whereupon Government's Exhibit 271 is admitted hereto.)

6 MS. MORTON-OWENS: I'm going to publish page
7 eight, please.

8 BY MS. MORTON-OWENS:

9 Q Ms. Obed, is that your handwriting?

10 A No.

11 Q What about that address listed there, was that
12 your address in 2009?

13 A No.

14 Q The social security, is that your social
15 security number?

16 A No.

17 Q What about the date of birth, is that your date
18 of birth?

19 A Yes.

20 Q Do you know how someone had your name and date
21 of birth to put on this form?

22 A No.

23 Q If you could turn to page ten of the file...

24 And blow up the top again...

25 Do you see where it says, "Patient is a male

1 21 years old, complaining of a cough," do you see that?

2 A Yes.

3 Q Have you ever been a man?

4 A No.

5 Q And did you go to any clinic at that time,
6 complaining of a cough?

7 A No.

8 Q What about painful respiratory?

9 A No.

10 Q Been in an accident?

11 A No.

12 Q If you could turn to page 14...

13 If you go back, as well...

14 Aside in connection from being interviewed in
15 this case, have you ever seen a prescription bearing
16 your name for OxyContin, 80 milligrams?

17 A No.

18 Q Now, turn to go Exhibit 13, which is also in
19 evidence... Have you ever seen this woman before?

20 A No.

21 Q Do you know a Dr. Eleanor Santiago?

22 A No.

23 Q I'm going to ask, looking in the back, this
24 woman sitting in the front bench -- and if I could
25 indicate more closely, in the black -- have you ever

1 seen that woman before?

2 A No.

3 Q Has she ever treated you for any medical
4 condition?

5 A No.

6 Q Have you ever been to a pharmacy called
7 Huntington Pharmacy?

8 A No.

9 MS. MORTON-OWENS: Your Honor, at this time,
10 the Government would seek admission -- or moves to admit
11 Government's Exhibit 272...

12 THE COURT: Very well.
13 (Whereupon Government's Exhibit 272 is admitted hereto.)

14 MS. MORTON-OWENS: If you could publish page
15 two of Government's Exhibit 272... and blow up the
16 center part... Have you ever filled out a HIPAA release
17 form for a pharmacy called Huntington Pharmacy.

18 THE WITNESS: No.

19 MS. MORTON-OWENS: And looking at the bottom of
20 that page -- Agent Zavala...

21 Is that your handwriting where it says
22 "Dominique Obed."

23 THE WITNESS: No.

24 BY MS. MORTON-OWENS:

25 Q And does the name Ashot Sanamian mean anything

1 to you?

2 A No.

3 Q Was he ever your caretaker?

4 A No.

5 Q Turn to -- or page four of that same exhibit,
6 is that a copy of your identification card?

7 A Yes.

8 Q And were you able to locate the original
9 identification card?

10 A Yes.

11 Q And that was still in your possession?

12 A Yes.

13 Q Can you turn to Government's Exhibit 274 -- oh,
14 sorry -- 254 -- Government's Exhibit 254. It should
15 also be in a folder in front of you.

16 A Yes.

17 Q And is that your original identification?

18 A Yes.

19 MS. MORTON-OWENS: The Government moves to
20 admit Government's Exhibit 254.

21 THE COURT: Very well.

22 (Whereupon Government's Exhibit 254 is admitted hereto.)

23 MS. MORTON-OWENS: If you could publish page --
24 republish Government's Exhibit page four of
25 Government's Exhibit 272.

1 Ms. Obed, how old were you when this picture
2 was taken?

3 THE WITNESS: Probably like 15.

4 BY MS. MORTON-OWENS:

5 Q And when did that identification card expire?

6 A 2007.

7 Q If you could turn to page six of
8 Government's Exhibit 272...

9 And blow that up...

10 And the date on that is -- the date on the
11 bottom of that prescription is September 18th of 2009;
12 is that right?

13 A Yes.

14 Q And at that time your identification card had
15 been expired for almost two years?

16 A Yes.

17 Q And turn to Government's Exhibit 52. That's in
18 the box in front of you, as well.

19 MS. MORTON-OWENS: The Government would move to
20 admit Government's Exhibit 52.

21 THE COURT: Very well.

22 (Whereupon Government's Exhibit 52 is admitted hereto.)

23 MS. MORTON-OWENS: Okay. If you could publish
24 page three of it...

25 Have you ever seen this receipt from

1 Huntington Pharmacy for OxyContin from September of
2 2009.

3 THE WITNESS: No.

4 Q And, Ms. Obed, did you ever have 12,000 -- or
5 I'm sorry -- \$1245 and 50 cents to purchase OxyContin?

6 A No.

7 Q Have you ever paid cash for a prescription at
8 all?

9 A No.

10 Q I'm going to ask if you can take a look at the
11 second individual at this front table in the black suit.
12 Do you recognize this man at all?

13 A No.

14 Q Has he ever been your pharmacist?

15 A No.

16 Q And turn to Government's Exhibit 57. It's also
17 in a folder in front of you.

18 MS. MORTON-OWENS: Mr. Clerk, Government's
19 Exhibit 57...

20 And the Government would move to admit
21 Government's Exhibit 57.

22 THE COURT: Yes. Very well.

23 (Whereupon Government's Exhibit 57 is admitted hereto.)

24 MS. MORTON-OWENS: Aside from in connection
25 with this case, have you ever seen that bottle of

1 OxyContin in your name?

2 THE WITNESS: No.

3 BY MS. MORTON-OWENS:

4 Q And at the bottom there, the initials PK, do
5 you recognize those initials at all?

6 A No.

7 Q Has anyone from a pharmacy ever called you to
8 ask you if you received your medications?

9 A No.

10 Q Did anyone ever call and tell you that someone
11 was arrested with a bottle of OxyContin in your name?

12 A No.

13 Q Did anyone ever call to question whether or not
14 you received your medications?

15 A No.

16 MS. MORTON-OWENS: May I have a moment, Your
17 Honor?

18 THE COURT: Yes.

19 MS. MORTON-OWENS: Nothing further from this
20 witness.

21 THE COURT: Any cross?

22 MR. CANTALUPO: Yes.

23 **CROSS-EXAMINATION**

24 MR. CANTALUPO: Government counsel asked you
25 how old you were in 2009.

1 Q And are you -- if you would move the mic just a
2 little bit closer.

3 With the Los Angeles Sheriff's Department do
4 you work in any specific division?

5 A I currently work for the Major Crimes Bureau,
6 yes.

7 Q Do you work for a task force called HALT?

8 A Yes, I do.

9 Q How long have you been assigned to HALT?

10 A I've been assigned there since January of 2009.

11 Q And how long have you been a sworn peace
12 officer?

13 A Approximately 19 years.

14 Q When did you first become involved in an
15 investigation involving Lake Medical Group at 2120 West
16 8th Street?

17 A Shortly after I was assigned to HALT.

18 Q So that would be in around January of 2009?

19 A That's correct.

20 Q I'm going to draw your attention to September
21 of 2009; do you remember an operation that took place in
22 relationship to Lake Medical Group?

23 A Yes, I do.

24 Q What happened?

25 A My team was notified by a pharmacist in regards

1 to some OxyContin in possible fraudulent prescriptions.

2 Q What pharmacy was that at, do you remember?

3 A I believe Arcadia Pharmacy.

4 Q And based on that call from the pharmacist,
5 what did your team do?

6 A Based on the call, we actually went to the
7 location there at the pharmacy and contacted the
8 pharmacist and basically set up in the pharmacy to see
9 who was actually going to come to the location and
10 filled up that -- the prescriptions that were going to
11 be filled there from the pharmacy.

12 Q And if you could locate Government's
13 Exhibit 11, which is already in evidence. Do you
14 recognize the -- oh, I apologize -- do you recognize
15 that individual?

16 A Yes, I do.

17 Q Then who is depicted in Government's Exhibit
18 11?

19 A That was the individual that came into the
20 pharmacy to pick up the medications.

21 Q Do you know that individual's name?

22 A Yes, I do.

23 Q What is it?

24 A Ashot Sanamian.

25 MS. MORTON-OWENS: Could I have a moment with

1 my agent. You look in the box in front of you for
2 Exhibit 54.

3 Mr. Clerk...

4 THE WITNESS: 54, you said?

5 MS. MORTON-OWENS: Yes, ma'am.

6 THE COURT: Can you assist?

7 BY MS. MORTON-OWENS:

8 Q Do you have it in your computer? Is it a
9 physical exhibit or is it something --

10 MS. MORTON-OWENS: Yes. The Government would
11 seek admission to Government's Exhibit 54...

12 THE COURT: Is there any objection?

13 THE WITNESS: Oh, here we go. I found it,
14 Your Honor. Yes. Thank you.

15 THE COURT: Okay.

16 BY MS. MORTON-OWENS:

17 Q Can you look at Government's Exhibit 54?

18 A Yes.

19 Q And what is that?

20 A These are items that were faxed over to the
21 clinic and were received by the clinic in a fax.

22 Q I just want to make sure I understand you.
23 Where did you first see this fax packet?

24 A This was actually faxed at -- to the pharmacy.

25 Q From the clinic?

1 A Correct.

2 MS. MORTON-OWENS: Government's seeks admission
3 of Government's Exhibit 54.

4 MR. JOHNSTON: Your Honor, I'd object on
5 foundation grounds.

6 THE COURT: Sustained.

7 BY MS. MORTON-OWENS:

8 Q Detective Schmidt, were you personally at the
9 pharmacy when this operation took place in September of
10 2009?

11 A Yes, I was.

12 Q And when you were there, were prescriptions
13 faxed over or did the pharmacist hand you a packet that
14 was faxed from the pharmacy?

15 A No. I actually saw this fax packet faxed over
16 directly to the pharmacy.

17 Q And at the top of that faxed packet, does it
18 indicate where it's being faxed from?

19 A Yes, it does.

20 MS. MORTON-OWENS: Your Honor, the Government
21 seeks admission of Government's Exhibit 54.

22 MS. PODBERESKY: Objection, Your Honor,
23 relevance as to the pharmacy --

24 THE COURT: Overruled.

25 MS. MORTON-OWENS: Has it been admitted,

1 Your Honor?

2 THE COURT: Yes.

3 MS. MORTON-OWENS: Publish Exhibit 54, page
4 one.

5 BY MS. MORTON-OWENS:

6 Q And, Detective Schmidt, if -- scrolling through
7 these pages, how many prescriptions were faxed to this
8 pharmacy in Arcadia from Lake Medical Group?

9 THE WITNESS: There was four.

10 Q And based on receiving those prescriptions,
11 what did you see happen?

12 A Based on these prescriptions that were faxed
13 over, the pharmacist went ahead and filled the
14 prescriptions.

15 Q Did they fill the prescriptions using real
16 OxyContin?

17 A No.

18 Q What did they use?

19 A Placebos.

20 Q Can you turn to Government's Exhibit 59.
21 That's --

22 MS. MORTON-OWENS: Mr. Clerk Exhibit 59...

23 I apologize. If my agent could approach the
24 witness with the packet.

25 THE COURT: Yes.

1 BY MS. MORTON-OWENS:

2 Q Detective Schmidt, do you have Government's
3 Exhibit 59 in front of you?

4 A I do.

5 Q And what is that?

6 A These were the bottles of placebos that were
7 filled at -- I'm sorry -- Colonial Pharmacy.

8 Q And how do you know those are the same placebos
9 that were filled at Colonial Pharmacy in Arcadia?

10 A Because I was present at the time they were
11 filled; but in addition, they were recovered from Ashot,
12 the person arrested.

13 MS. MORTON-OWENS: GOVERNMENT seeks admission
14 of Government's Exhibit 59.

15 MR. JOHNSTON: I'll object on relevance
16 grounds.

17 THE COURT: Overruled.

18 (Whereupon Government's Exhibit 59 is admitted hereto.)

19 BY MS. MORTON-OWENS:

20 Q And how many bottles of OxyContin placebo were
21 filled at the Colonial Pharmacy?

22 A There are four.

23 MS. MORTON-OWENS: Let me turn to Government's
24 Exhibit 60, six zero...

25 I apologize. If the agent could approach

1 again.

2 THE WITNESS: Okay.

3 BY MS. MORTON-OWENS:

4 Q Do you have Government's Exhibit 60 in front
5 you?

6 A Yes.

7 Q And what is that?

8 A These are the receipts from the pharmacy that
9 go along with the medications that were filled.

10 Q You mentioned that placebo was used. Where did
11 the pharmacy get the placebo to put in the bottles?

12 A We actually provided the pharmacist with the
13 placebos.

14 Q And where did you get placebo?

15 A Actually, my supervisor was -- was the one who
16 went ahead and provided those to me.

17 Q Turning to Government's Exhibit 60, those are
18 the receipts for the OxyContin?

19 A Yes.

20 MS. MORTON-OWENS: Government seeks admission
21 of Exhibit 60 into evidence.

22 THE COURT: Very well.

23 (Whereupon Government's Exhibit 60 is admitted hereto.)

24 MS. MORTON-OWENS: And publish...

25 BY MS. MORTON-OWENS:

1 Q And, Detective Schmidt, when you were in the
2 pharmacy, what did you observe happening after the
3 pharmacist used the placebo to fill the prescriptions?

4 A After he filled them, we just waited for the
5 person to come in to pick up the medication that was --
6 that had been filled.

7 Q And who came in to get the prescriptions?

8 A Ashot Sanamian.

9 Q And that's the person in Government's Exhibit
10 11?

11 A Yes.

12 Q What happened when Ashot Sanamian came into the
13 pharmacy in Arcadia?

14 A When he came into the pharmacy, he came up to
15 the front counter, stated that he had been there to pick
16 up the medication at which time he told him how much it
17 was going to be and he then left the pharmacy and went
18 out to his vehicle to get some money and then returned.

19 Q If you could look at the receipts from Colonial
20 Pharmacies, how were these prescriptions paid for?

21 A All of them say zero, except for one item which
22 was 1253.95 on here. And -- but I do recall him paying
23 cash.

24 Q In the faxed packet was there information
25 pertaining to supposed Medicare and Medi-cal

1 identifications?

2 A Yes, there was.

3 Q And was Medicare and Medi-cal billed for some
4 of these medications?

5 A Yes there was.

6 Q You mentioned there was one prescription that
7 was filled for approximately \$1200 in cash. Did I get
8 that right?

9 A Correct.

10 Q And who paid that cash?

11 A Ashot did.

12 Q After -- and I'm sorry -- did Ashot Sanamian
13 actually receive the drugs?

14 A He did.

15 Q After he received the drugs, what did you see
16 him do?

17 A After he received the drugs, he then proceeded
18 to exit out of the pharmacy and walk in the direction of
19 his vehicle.

20 Q Did he actually drive away from the pharmacy?

21 A No, he did not.

22 Q What happened?

23 A He was then detained by the rest of our team.

24 Q Was his car searched?

25 A Yes, it was.

1 Q And were -- were items recovered from his
2 vehicle?

3 A Yes, they were.

4 Q Turning your attention -- I think they're in
5 front of you --

6 MS. MORTON-OWENS: May the agent approach
7 again?

8 THE COURT: Yes.

9 MS. MORTON-OWENS: And could you look,
10 Detective Schmidt, at Government's Exhibit 50.

11 Mr. Clerk... through 57.

12 So 51, 52, 53, 55, and 56, and 57...

13 BY MS. MORTON-OWENS:

14 Q And are all those items that were seized from
15 Ashot Sanamian's car in September 18, 2009?

16 A Yes, they are.

17 MS. MORTON-OWENS: The Government seeks
18 admission of Government's Exhibit 50, 51, 52, 53, 55, 56
19 and 57?

20 THE COURT: Very well.

21 (Whereupon Government's Exhibits 50, 51, 52, 53, 55, 56,
22 57 are admitted hereto.)

23 BY MS. MORTON-OWENS:

24 Q If we could publish Government's Exhibit 50,
25 page one...

1 How many prescriptions in total did your team
2 seize from Ashot Sanamian's car -- and I'm sorry --
3 original prescriptions?

4 A The original pre- -- I would have to count. I
5 don't know offhand. I'd have to count these.

6 Q Was it more than five?

7 A Yes.

8 Q And in addition to the prescriptions that were
9 seized, were there also faxed packets that were seized?

10 A Yes.

11 MS. MORTON-OWENS: One moment, Your Honor.

12 BY MS. MORTON-OWENS:

13 Q Was this one of the faxed cover sheets that was
14 seized from Ashot Sanamian's car?

15 A Yes, it was.

16 Q And you see that Ontario mat?

17 A Yes.

18 MR. JOHNSTON: Can we have an Exhibit Number?

19 MS. MORTON-OWENS: Government's Exhibit 54.

20 And do you see where it says "ten patients for
21 Rancho"?

22 THE WITNESS: Yes.

23 MS. MORTON-OWENS: I apologize 50 -- I'm
24 sorry -- 50, Mr. Johnston.

25 BY MS. MORTON-OWENS:

1 Q Did you seize other faxed packets also from
2 Ashot Sanamian's car?

3 A Yes.

4 Q Turning your attention now to Government's
5 Exhibit 51 -- starting with page one. And blow that up,
6 as well...

7 Did you seize a stack of purported confirmation
8 of receipts all from September of 2009 from Ashot
9 Sanamian's car?

10 A Yes.

11 Q Publishing now, Government's Exhibit 52...

12 Did you seize original receipts from
13 Huntington Pharmacy again for OxyContin and other drugs?

14 A Yes.

15 Q Included in those receipts, was there one for a
16 Dominique Obed?

17 A Yes.

18 Q And do you know what the initials "PKL" mean?

19 A No, I don't.

20 Q Publishing Government's Exhibit 53...

21 In addition to seeking the faxed packet and
22 other documents, did you also fax -- seize
23 acknowledgements of privacy protections from Ashot
24 Sanamian's car?

25 A I believe this was actually from the

1 pharmacy -- inside the pharmacy.

2 Q Oh, I apologize. Tell us about that.

3 A Okay. When he actually purchased the
4 medications, he actually signed these right from the --
5 for each of the patients that he recovered some of the
6 medications from.

7 Q So Ashot Sanamian signed on behalf of the
8 patients?

9 A Correct.

10 Q The patients were not there?

11 A The patients were not there, no.

12 Q Turning now to Government's Exhibit 55, page
13 one.

14 You can blow that up...

15 It says to Ontario again for September of 2009,
16 "10 F/UP patients," did you seize these faxed packets
17 from
18 Ashot Sanamian's car?

19 A Yes.

20 Q Government's Exhibit 55...

21 And attached to these faxed packets, were there
22 prescriptions with copies of drivers' licenses?

23 A Yes, there was.

24 Q More than five?

25 A Yes.

1 Q More than ten?

2 A On this packet here?

3 Q In total.

4 A In total? Yeah -- yes.

5 Q Turning to Government's Exhibit 56, page one --
6 blow that up.

7 THE COURT: Oh -- is it hard to see the monitor
8 the way it's turned that way? Is it normally turned
9 that way, John?

10 COURTROOM DEPUTY: We have the alternates.

11 THE COURT: We need to figure something out.
12 Maybe we can get another monitor, because I see -- we'll
13 talk about it during the break.

14 We need another monitor. Okay.

15 BY MS. MORTON-OWENS:

16 Q Another faxed packet from September 18, 2009,
17 from

18 Ash to Cucamonga. Do you know what that means?

19 A No.

20 Q In addition to all of these documents, did you
21 also seize actual bottles of OxyContin from Ashot
22 bSanamian's car?

23 A Yes.

24 Q Can you turn to Government's Exhibit 62. I
25 believe it is an envelope. And that is Government's

1 Exhibit 62.

2 BY MS. MORTON-OWENS:

3 Q Do you recognize Government's Exhibit 62?

4 A Yes, I do.

5 Q What do you recognize it as?

6 A As the pill bottles that were recovered from
7 Ashot's vehicle.

8 Q And was there actually OxyContin in those pill
9 bottles?

10 A Yes.

11 MS. MORTON-OWENS: Government seeks
12 admission -- or Government's moves Government's
13 Exhibit 62 into evidence.

14 THE COURT: Very well.

15 (Whereupon Government's Exhibit 62 is admitted hereto.)

16 BY MS. MORTON-OWENS:

17 Q How many bottles of OxyContin were seized?

18 A These are six bottles -- six bottles.

19 Q And of those six bottles, how many of those
20 were for 80-milligram strength?

21 A It looks like six.

22 Q And of those, how many of them were for 90
23 pills of 80-milligram strength?

24 A Six bottles.

25 Q And from what pharmacy were those bottles of

1 80-milligram 90-pill OxyContin issued?

2 A Huntington Pharmacy.

3 Q Included in those pills, is there an original
4 bottle for a Dominique Obed?

5 A Yes.

6 Q And did your team or agents from law
7 enforcement keep possession of those pills until they
8 were brought to court here today?

9 A Yes.

10 Q So those -- that bottle was never provided to
11 the patients?

12 A No.

13 Q Dominique Obed never received those
14 medications?

15 A No, she didn't.

16 Q Aside from the records and the bottles of
17 OxyContin you seized, did you actually also seize Ashot
18 Sanamian's phones?

19 A Yes.

20 Q And what was done with the phones when you
21 received them?

22 A They were actually given over to a DEA for --
23 to pull records off of his phone.

24 Q And did you receive those records back?

25 A Yes, I did.

1 Q Can you turn to Government's Exhibit 67...

2 MS. MORTON-OWENS: It should be a CD marked 67,
3 Mr. Clerk.

4 COURTROOM DEPUTY: Thank you.

5 MS. MORTON-OWENS: I apologize, Your Honor, if
6 the agent could approach?

7 THE COURT: Yes. And, actually, just to speed
8 things up, you don't need to ask permission, unless they
9 want to do something unusual.

10 MS. MORTON-OWENS: Yes, Your Honor.

11 BY MS. MORTON-OWENS:

12 Q And, Detective Schmidt, you might as well look
13 at Government's Exhibit 67, Government's Exhibit 68 and
14 69.

15 A Okay.

16 Q Do you recognize Government's Exhibit 67?

17 A I do.

18 Q What do you recognize it as?

19 A This is the CD or DVD regarding information
20 from
21 Ashot cell phone.

22 Q And how do you know that that's the same CD
23 that you received from the DEA pertaining to Ashot's
24 Sanamian's cell phone?

25 A It says Ashot's cell phone, but it was what I

1 was given.

2 Q I'm just asking how do you know that's the same
3 CD you were given?

4 A It has my initials on it.

5 Q And if you look at Government's Exhibit 68 and
6 69, are those printouts of what was contained on the CD?

7 A Yes.

8 MS. MORTON-OWENS: Government moves to admit
9 Government's Exhibit 68 and 69.

10 THE COURT: Very well.

11 (Whereupon Government's Exhibits 68, 69 are admitted
12 hereto.)

13 MS. MORTON-OWENS: 67 is a CD. We're just
14 moving to admit 68 and 69.

15 Publish 68...

16 Page 205...

17 Can you blow up the center where it says

18 "PK"...

19 BY MS. MORTON-OWENS:

20 Q Do you know who PK is, Detective Schmidt?

21 A No.

22 Q And you were never investigating any
23 pharmacists in this case, were you?

24 A No.

25 Q At some point, did the 8th Street location of

1 Lake Medical Group close?

2 A Yes.

3 Q And did that terminate your involvement in that
4 investigation?

5 A Yes.

6 Q Turning your attention to September of 2010...

7 Did you actually learn that the 8th Street
8 Medical Group had not closed, but it just relocated?

9 A That's correct.

10 Q And did you search the new location?

11 A Yes.

12 Q Can you look at Government's Exhibit 6 and 8.
13 The Government would move Government's Exhibit 6 and 8
14 into evidence...

15 THE COURT: Very well.

16 (Whereupon Government's Exhibits 6, 8 are admitted
17 hereto.)

18 MS. MORTON-OWENS: Publish Government's
19 Exhibit 6.

20 BY MS. MORTON-OWENS:

21 Q Detective Schmidt, do you recognize this
22 picture?

23 A Yes.

24 Q And what is it?

25 A That's the location on Victory Boulevard.

1 Q Is that -- sorry. Go ahead.

2 A 13746 Victory Boulevard.

3 Q Is that where you discovered that the Lake
4 Medical Group had relocated to?

5 A Yes.

6 Q If you could show Government's Exhibit 8 and
7 blow it up...

8 BY MS. MORTON-OWENS:

9 Q Where is 13746 Victory Boulevard?

10 A It's in the city of Van Nuys.

11 Q And how far away approximately was that from
12 the original location as 8th and Lake in Los Angeles?

13 A Mile-wise, I'm not quite sure but probably
14 about 45 minutes, I guess.

15 Q Did you and your team execute a search of 13746
16 Victory Boulevard in Van Nuys?

17 A Yes, we did.

18 MS. MORTON-OWENS: May I approach your clerk
19 for one moment?

20 Q When you got to the Victory location, who did
21 you find?

22 A There were several patients waiting in the
23 lobby in addition to a receptionist that was behind the
24 counter who had previously worked at the 8th Street
25 clinic.

1 MS. MORTON-OWENS: Government moves
2 Government's Exhibit 19 into evidence.

3 THE COURT: Very well.

4 (Whereupon Government's Exhibit 19 is admitted hereto.)

5 BY MS. MORTON-OWENS:

6 Q Do you recognize that individual?

7 A I do.

8 Q And who is that?

9 A That's Julie.

10 Q Is her last name Shishalovsky?

11 A Yes.

12 Q And how do recognize Julie Shishalovsky?

13 A I had come in contact with her when I
14 interviewed Dr. Santiago back after his arrest when I
15 arrested him.

16 Q So Julie Shishalovsky worked at the 8th Street
17 location of Lake Medical Group, as well as 13746 Victory
18 Boulevard?

19 A That's correct.

20 Q Aside from Julie Shishalovsky, did you find
21 anyone else at the Victory location?

22 A Yes. There was a female that was in one of the
23 rooms behind the desk and I believe one other person who
24 was there, as well.

25 Q And the female that was working behind a desk,

1 do you see her in this courtroom today?

2 A I don't see her right now.

3 Q Can you look at Government's Exhibit 17?

4 It's in a folder in front of you.

5 A 17?

6 Q Yes, ma'am.

7 A Yes.

8 Q And do you recognize the person in Government's
9 Exhibit 17 -- Mr. Clerk?

10 A Yes.

11 Q And who is that?

12 A That was the individual that was there the day
13 of the search warrant.

14 Q Did you ever know her name?

15 A I did not know it that day, but I do now, yeah.

16 Q Government moves to admit Government's
17 Exhibit 17.

18 THE COURT: Very well.

19 (Whereupon Government's Exhibit 17 is admitted hereto.)

20 BY MS. MORTON-OWENS:

21 Q And who is that?

22 A That is Elza.

23 Q And Elza was working at the one -- at the
24 Victory location?

25 A Yes.

1 Q In addition to seeing Julie Shishalovsky and
2 defendant Budagova, did you also seize various records?

3 A Yes.

4 Q And in preparation for your testimony today,
5 did you take note of all the various exhibits that you
6 seized -- or your team seized from the Victory location?

7 A Yes.

8 Q And did you actually write them down -- did you
9 sign a paper that had all those exhibits on them?

10 A Yes.

11 Q And after doing that, did you confirm that each
12 one of those exhibits was seized from the Victory
13 location?

14 A Yes.

15 MS. MORTON-OWENS: Your Honor, we've already
16 shown this list to the Defense. I heard no objection.
17 If I can read them...

18 MR. CANTALUPO: Your Honor, I have an
19 objection --

20 THE reporter: Your Honor, I can't hear.

21 (Pause in the proceedings.)

22 MS. MORTON-OWENS: Your Honor, I understand
23 without objection, the Government moves to admit
24 Government's Exhibit 100 through 103.

25 THE COURT: Very well.

1 Q Detective Schmidt, can you please look at
2 Government's Exhibit 141-A. It's a box.

3 And what is that?

4 A This is a Rolodex.

5 Q Was that Rolodex seized from the Victory
6 location of Lake Medical Group?

7 A Yes, it was.

8 Q And the Government had already admitted it, but
9 the Government moves Exhibit 141-A into evidence.

10 MR. JOHNSTON: I will reserve my objection to
11 that exhibit, Your Honor, until I have an opportunity to
12 examine it.

13 THE COURT: Okay. Same rule though, I'm going
14 to admit it, unless I hear that you state an objection
15 later.

16 MR. JOHNSTON: Thank you.

17 THE COURT: Thank you.

18 So at this point in time, it's admitted. Is
19 that -- just so we're on the same wavelength.

20 MR. JOHNSTON: Right. Without prejudice.

21 THE COURT: Without prejudice. Correct.

22 MR. JOHNSTON: Yes.

23 BY MS. MORTON-OWENS:

24 Q Do you see -- this is Government's Exhibit 139,
25 the date of August 20th of 2010 is on your screen, as

1 well. Do you see where it says "Elza paid" and then has
2 the number \$1,000?

3 A Yes.

4 Q Did you find any other Elza at the Victory
5 location?

6 A No.

7 Q And when you executed the search, was were
8 there any doctors at the Victory location?

9 A No.

10 MS. MORTON-OWENS: One moment, Your Honor.

11 THE COURT: I think I'll probably break in five
12 minutes. We'll take our final break. So just head's up
13 on that.

14 MS. MORTON-OWENS: Nothing further from this
15 witness.

16 THE COURT: Okay. Why don't we break right now
17 then. Let's do that right now. We'll take a 20-minute
18 break.

19 (The following held outside the presence of the jury:)

20 MR. GELBERG: Good afternoon. We just wanted
21 to take up the issue of what was going to be the
22 Government's third witness, Mark Burston, who is the
23 pharmacist at Colonial Pharmacy about which Detective
24 Schmidt is talking about and is the subject -- and his
25 testimony is the subject of the motion in limine.

1 MR. MESEREAU: No further questions,
2 Your Honor.

3 **CROSS-EXAMINATION**

4 MR. CANTALUPO: Good afternoon, Detective.

5 THE WITNESS: Good afternoon.

6 BY MR. CANTALUPO:

7 Q You were part of the investigation of
8 Lake Medical Clinic; correct --

9 A Yes.

10 Q -- when it was on 8th Street?

11 A Correct.

12 Q And at some point, that clinic closed. And I
13 believe your testimony was that you were no longer part
14 of the investigation?

15 A Once it closed down, yes, that's correct.

16 Q And you did reenter the investigation in terms
17 of the Victory clinic --

18 A Yes.

19 Q -- which was part of Lake. You executed the
20 search warrant and seized the documents; correct?

21 A Correct.

22 Q You didn't have any other function in the
23 investigation of the Victory clinic?

24 A As far as -- what do you mean -- I'm sorry?

25 Q Investigative tasks, you didn't have any

1 others, other than executing the search warrant -- in
2 other words, you didn't do any surveillance, did you, of
3 the Victory Boulevard clinic?

4 A Our team did, yes.

5 Q Did you personally?

6 A I -- I don't know if I did personally, but I
7 know our team did.

8 Q And when you say your team, you didn't execute
9 the search warrant at the Victory clinic by yourself?
10 You had other members of law enforcement with you;
11 correct?

12 A That's correct.

13 Q Other than the surveillance that the team did,
14 are you aware of any other investigation of the Victory
15 clinic?

16 A Not that I'm aware of.

17 Q Okay. Now, you testified on direct examination
18 that there were no doctors at the clinic. And just to
19 clarify, you're referring to the day you executed the
20 search warrant there was no doctors at the clinic;
21 correct?

22 A From my understanding, when my partner went and
23 was doing --

24 Q I'm asking you when you --

25 A Me personally?

1 A That's the clinic on 8th and Lake.

2 Q How did you first learn of the clinic on
3 8th and Lake?

4 A When I was at the nursing home in Pasadena --
5 South Pasadena, I met a person there named, Tom. And he
6 asked me did I want to make some money, and he said that
7 he would take me to this clinic and that they would give
8 me some tests and it would take from a half hour to an
9 hour, and I said yes; and he took me to the clinic.

10 Q Did you know how or why you were going to be
11 making this money?

12 A Um, with my -- well, first, he asked me did I
13 have a red, white and blue card.

14 Q And what is a red, white and blue card?

15 A That's the Medi-Cal card. And I told him yes.
16 And he said, Well, I can get you some money if -- if you
17 want to go to this clinic with me.

18 Q And did you understand that that was because
19 someone was going to bill medicare for services?

20 A Yes.

21 Q Did this man, Tom, tell you anything about
22 medications when he approached you to go to the Lake
23 Medical Group?

24 A No.

25 Q And, Mr. Harris, have you signed a plea

1 agreement to cooperate with the Government?

2 A Yes.

3 Q And did you sign that agreement in May of 2009?

4 A Yes.

5 Q Mr. Harris, have you been convicted of bank
6 robbery?

7 A Yes.

8 Q How many banks have you been convicted of
9 robbing?

10 A I think four.

11 Q And you've actually been in trouble with the
12 law a lot of times, haven't you?

13 A Yes.

14 Q And you've been in and out of prison most of
15 your life?

16 A Yes.

17 Q Have you violated supervised release or
18 probation?

19 A Yes.

20 Q And that includes the supervised release that
21 this Court put you under; is that right?

22 A Yes.

23 Q Have you ever taken any illicit drugs --
24 illegal drugs?

25 A Yes.

1 Q What drugs were you -- did you take?

2 A Heroin.

3 Q And how frequently in 2008, 2009 were you
4 taking heroin?

5 A At least three times a day.

6 Q And as part of your involvement with the clinic
7 depicted in Government's Exhibit 2, did you allow your
8 Medi-Cal and Medicare cards to be used fraudulently?

9 A Yes.

10 Q And did you allow your name to be used on
11 prescriptions for OxyContin?

12 A Yes.

13 Q You said a moment ago that you were recruited
14 to go to the clinic and that you went there. I want to
15 talk to you about your first visit to the clinic. May I
16 have Government's Exhibit 258 placed in front of the
17 witness, please.

18 MS. MORTON-OWENS: And, Mr. Clerk, this is
19 Exhibit 258.

20 And, Your Honor, I don't believe there's any
21 objection. The Government would move Government's
22 Exhibit 258 into evidence.

23 THE COURT: Very well.

24 (Whereupon Government's Exhibit 258 is admitted hereto.)

25 MS. MORTON-OWENS: And publish page two.

1 BY MS. MORTON-OWENS:

2 Q Mr. Harris, do you have that purple file in
3 front you? If you open that up right there... Keep it
4 right there. It's also on the screen; maybe you can see
5 that easier.

6 Mr. Harris, is that your medicare card and your
7 driver's license?

8 A Yes.

9 Q And did you give that to the people at the
10 clinic on 8th and Lake?

11 A Yes.

12 Q Okay. And turn to page two.

13 Mr. Harris, is that your handwriting?

14 A Yes.

15 Q And when you went to the clinic the first time,
16 were you asked to complete forms?

17 A Yes.

18 Q When you went to the clinic just on the first
19 visit, Mr. Harris, what happened?

20 A I was asked to -- to complete -- this -- one of
21 the ones in front of me. And anything that I didn't
22 understand, Tom would help me with it. And I completed
23 it, and I put my thumbprint on it.

24 Q Did you get any actual medical care at the
25 Lake Medical Group -- the 8th and Lake clinic -- not

1 for -- I'll withdraw -- back up. On that first visit --
2 the first time you went to the clinic on 8th and Lake,
3 did anyone render any actual medical care to you?

4 A No.

5 Q Do you see a doctor -- did you see a doctor
6 when you went on the first visit?

7 A Yes.

8 MS. MORTON-OWENS: Turn to -- show Government's
9 Exhibit 12, please.

10 THE CLERK: Which is in evidence.

11 MS. MORTON-OWENS: Yes, it is, Government's
12 Exhibit 12.

13 BY MS. MORTON-OWENS:

14 Q Do you recognize this man?

15 A Yes.

16 Q Is that the doctor you saw?

17 A It's -- it -- it looks like him. It was two
18 doctors, and -- and they both look similarly -- they
19 both was older, and they had white hair.

20 MS. MORTON-OWENS: Can you show Government's
21 Exhibit -- Your Honor, at this time, the Government
22 would seek admission of Government's Exhibit 15. I
23 don't believe there's an objection. It's also a
24 photograph.

25 THE COURT: Very well.

1 (Whereupon Government's Exhibit 15 is admitted hereto.)

2 MS. MORTON-OWENS: Can you publish Exhibit 15.

3 Yeah, can you put them next to each other...

4 BY MS. MORTON-OWENS:

5 Q And, Mr. Harris, it's also going to be on the
6 screen in front you. Is that the other doctor with
7 white hair?

8 A Yes.

9 Q Did you ever know his name?

10 A No.

11 Q And showing you Government's Exhibit 13 that's
12 already in evidence...

13 What about that doctor; do you know who that
14 is?

15 A Um, it looks like Dr. Santiago.

16 Q Did Dr. Santiago ever render any medical care
17 to you?

18 A No.

19 Q Talking now about your first visit at the
20 clinic, did the clinic run any tests on you?

21 A They -- they put some -- some patches; stick
22 'em on my chest. And they put some kind of jelly and --
23 and ran -- ran something across my stomach.

24 Q When you were talking to any of the people at
25 Lake Medical Group, did you indicate that you had any

1 health conditions that required those tests?

2 A No.

3 MS. MORTON-OWENS: The Government would seek
4 admission of Government's Exhibit 281.

5 THE COURT: Very well.

6 MS. MORTON-OWENS: Can you publish 281.

7 (Whereupon Government's Exhibit 281 is admitted hereto.)

8 BY MS. MORTON-OWENS:

9 Q Can you go to page seven.

10 Mr. Harris, in 2009, were you on supervised
11 release from this Court?

12 A Yes.

13 Q And did you want to get off supervised release?

14 A Yes.

15 Q And did the clinic help you create a
16 fraudulent -- fraudulent patient file to submit to this
17 Court?

18 A Yes.

19 Q And is Government's Exhibit 281 -- that packet
20 in front of you, is that part of what was submitted to
21 this Court on your behalf?

22 A Yes, I -- I really never actually looked at the
23 packet, that they was going to make; but they said that
24 when my ex-lawyer Mr. McLane, when he came up to the
25 clinic and he was looking around and taking pictures --

1 Q Mr. Harris I hate -- I hate to cut you off
2 right now -- and just listen to my question, if you can.

3 Is that what the -- what was submitted to the
4 Court to help get you off supervised release?

5 A Yes.

6 Q And is the information in that, fake?

7 A Yes.

8 Q Pulling up page one of that document...

9 Is this a letter from someone named
10 Julie Shishalovsky, saying that she's taking care of
11 you?

12 A Will you repeat that, please.

13 Q Sure. Is that a letter from Ms. Shishalovsky
14 that was submitted to the Court saying that she was
15 taking care of you, Julie?

16 A Yes.

17 Q Mr. Harris, did you have medicare part D or
18 coverage for prescription drugs in 2008, 2009?

19 A Yes.

20 Q And were you ever prescribed OxyContin for
21 actual pain you suffered?

22 A No.

23 Q Did you ever tell anyone at the clinic that you
24 had such substantial pain that you needed OxyContin?

25 A No.

1 Q After that first visit to the clinic, did you
2 go back to the clinic?

3 A Yes, I did.

4 Q How soon after?

5 A About a month.

6 Q Why did you go back a month later?

7 A To -- to do the same thing -- to use my
8 Medi-Cal card. You could only use it every 30 days to
9 get what they wanted to get.

10 Q And when you say, "what they wanted to get,"
11 what are you referring to?

12 A OxyContin.

13 Q How much were you paid to go to the clinic?

14 A Whenever -- when it was just me -- when it was
15 Tom that helped me, I was paid \$300 altogether. It was
16 \$400. He kept a hundred and I got three.

17 Q So did you get \$300 the first time you went
18 into the clinic?

19 A Yes.

20 Q And then after that, did you start making more?

21 A Yes.

22 Q Did you begin to work for the clinic?

23 A Yes.

24 Q And what did you do for them?

25 A I did the same thing that Tom did. I was a

1 recruiter.

2 Q When you say "recruiter," what do you mean?

3 A I went to -- down around Skid Row or to the
4 convalescent home that I was living in and asked did
5 they have a red, white and blue card.

6 Q Who hired you to work at the clinic?

7 A Um, Mike.

8 MS. MORTON-OWENS: Can you publish Government's Exhibit 9,
9 that's already in evidence.

10 BY MS. MORTON-OWENS:

11 Q Is that Mike, Mr. Harris?

12 A Yes.

13 Q And is Mike that paid you to recruit the
14 patients?

15 A At first, yes.

16 Q And then did somebody else begin paying you?

17 A Yes.

18 Q Who paid you?

19 A The driver.

20 Q We'll get to the driver in just a minute. When
21 you would recruit patients, what would you do with those
22 recruited patients?

23 A I would bring them up to the clinic, and I
24 would give them the same form that I had. And I would
25 have them fill out the form and give them to Julie.

1 MS. MORTON-OWENS: Okay. One moment. Can you
2 publish Government's Exhibit 19; it is also in evidence.

3 BY MS. MORTON-OWENS:

4 Q Is this a photograph of Julie?

5 A Yes.

6 Q Did there ever come a time when the clinic was
7 so crowded you were told not to bring the patients to
8 the clinic?

9 A Yes.

10 Q Who told you not to bring the patients to the
11 clinic?

12 A Mike -- Big Mike and Julie.

13 Q What did they tell you to do instead?

14 A They said to take them down to MacArthur Park.

15 Q And as far as you know, did each one of these
16 patients get a prescription for OxyContin?

17 A Yes.

18 Q And did the patients actually get the bottles
19 of OxyContin?

20 A No, the -- the bottles was at -- at one clinic.
21 The bottles was all put in one -- one bag, and at
22 another clinic they gave to the patients, but as soon as
23 they came out to the car, they was taken and put into a
24 bag, and then the bag was put into the trunk of the car.

25 Q And, Mr. Harris, you've just said "clinic."

1 Did you mean clinic or pharmacy?

2 A I mean pharmacy -- excuse me.

3 Q Was part of your job at the clinic to actually
4 make pharmacy runs and go to the pharmacies?

5 A Yes.

6 Q And did you go to specific pharmacies when you
7 were doing these pharmacy runs?

8 A Yes.

9 Q And did you go alone or did you go with people?

10 A I went with two different drivers.

11 MS. MORTON-OWENS: Government moves
12 Government's Exhibit 29 into evidence. It's also a
13 photograph.

14 THE COURT: Very well.

15 (Whereupon Government's Exhibit 29 is admitted hereto.)

16 MS. MORTON-OWENS: And publish that.

17 BY MS. MORTON-OWENS:

18 Q Do you recognize the man in Government's
19 Exhibit 29?

20 A Yes, that's Edgar.

21 Q And who is Edgar?

22 A He was the driver that was taking me to the
23 pharmacy and in the Valley.

24 Q And how frequently did you go to the pharmacy
25 in the Valley?

1 A I think at least three to four times a week.

2 MS. MORTON-OWENS: The Government moves
3 Government's Exhibit 26. It's also a photograph into
4 evidence. I don't think there's any objection.

5 THE COURT: Very well.

6 (Whereupon Government's Exhibit 26 is admitted hereto.)

7 MS. MORTON-OWENS: Publish 26.

8 BY MS. MORTON-OWENS:

9 Q And do you recognize that man?

10 A Yes, that's Little Mike.

11 Q And did you also accompany Little Mike to
12 pharmacies to pick up the OxyContin?

13 A Yes, that was the pharmacy by -- by the blue
14 water tank.

15 Q So you -- do you know the name of the pharmacy
16 that was by the blue water tank?

17 A No. I know that we went down Alameda and we
18 turned left, and I remember the big blue water tank and
19 the alley.

20 MS. MORTON-OWENS: The Government would move
21 Government's Exhibit 1125, Mr. Clerk, 1159, and 1160.
22 Those are also photographs. I've talked to
23 Mr. Johnston. He has no objection.

24 THE COURT: Very well.

25 (Whereupon Government's Exhibits 1125, 1159, 1160 are

1 admitted hereto.)

2 MS. MORTON-OWENS: Will you publish 1160.

3 Mr. Harris, is that the water tank you're
4 referring to?

5 THE WITNESS: Yes.

6 Q And can you publish 1159... Can you blow that
7 up.

8 And is that the pharmacy that you went to that
9 was near the water tour?

10 A It's -- it's kind of far away. I can't --

11 Q Can you look at 1125. Is that a close-up of
12 that same pharmacy?

13 A Yes.

14 Q St. Paul's Pharmacy?

15 A Yes.

16 Q Can you explain for the members of the jury,
17 how do the pharmacy runs work for St. Paul's Pharmacy?

18 A I would -- I would bring five -- anywhere from
19 four or five to seven -- sometimes eight people up to
20 the clinic, and I would get the forms and we used to
21 fill them out there, but that's when they told me that
22 it was too much traffic. And so I had to take them down
23 to MacArthur Park. So I would go -- I would take the
24 patients to MacArthur Park. And then I would go get the
25 forms, and I would get an ink pad, and I would go down;

1 they would fill them out; put their thumbprint on them
2 and give me their California ID and. They had to have a
3 California ID, because these was paid for by cash.

4 Q The OxyContin was paid for in cash at
5 St. Paul's Pharmacy?

6 A Yes.

7 Q Did you actually accompany the patients and the
8 driver, Little Mike, to St. Paul's Pharmacy?

9 A Yes.

10 Q And how frequently would you do that when you
11 working at the 8th Street clinic?

12 A Three -- four times a week.

13 Q And these were people you had recruited mostly
14 from Skid Row?

15 A Yes.

16 Q Can you describe the general condition of the
17 people?

18 MR. JOHNSTON: Objection; vagueness, Your
19 Honor.

20 THE COURT: Overruled.

21 BY MS. MORTON-OWENS:

22 Q You can answer. Can you describe the condition
23 that these people were in.

24 A Not too clean looking. The type of person that
25 you would assume that lives on the streets; not

1 well-dressed; well-groomed; I wouldn't say they looked
2 like they was alcoholics or winos, but they looked like
3 they was homeless people.

4 Q And when you take the people that -- that
5 looked homeless to St. Paul's Pharmacy, would you be in
6 the parking lot and see them go into the pharmacy?

7 A Yes. Mike when he did take one or two in, and
8 when those two came out, I would put them in the car and
9 send two more in.

10 Q Did you ever go into the pharmacy with the
11 patients?

12 A No, I went in -- I went in one time to -- to
13 get a bottle of water and -- but the majority of the
14 time, my -- my job was to make sure that they didn't
15 loiter around the parking lot, and when they came out to
16 put them back into the car.

17 Q Did you ever go into St. Paul's and try to get
18 your own prescription for OxyContin filled?

19 A Yes, very -- the very first time I went there.

20 Q And when you went there the very first time to
21 get a prescription for OxyContin filled, was that
22 prescription from the 8th Street clinic?

23 A Yes.

24 Q And when you went in to St. Paul's Pharmacy did
25 you go in with any other patients?

1 A No.

2 Q You went in by yourself?

3 A And -- and Little Mike.

4 Q Little Mike the driver?

5 A Yes.

6 Q Did you see how the pharmacist or whoever was
7 in the pharmacy would deliver the OxyContin to Little
8 Mike?

9 MR. JOHNSTON: Objection, Your Honor. That
10 assumes facts not in evidence.

11 THE COURT: Sustained.

12 BY MS. MORTON-OWENS:

13 Q Do you know how the prescriptions were paid
14 for?

15 A Um, they was paid for in cash.

16 Q How do you know that?

17 A Little Mike would -- would have a bundle of --
18 of cash with him when he went there.

19 Q And did you see Little Mike come out with the
20 bottles of OxyContin?

21 A Yes.

22 Q How were they packaged?

23 A They was in a bag.

24 Q All together?

25 A Yes.

1 Q When you went the first time to
2 St. Paul's Pharmacy to get your own prescription filled,
3 did you interact with the pharmacist?

4 A Um, he was mostly talking to Mike.

5 Q Little Mike?

6 A Yes.

7 Q And how did you try to pay for the prescription
8 of OxyContin that you had from the clinic?

9 A With my Medi-Cal card.

10 Q And what happened when you tried to pay with
11 your Medi-Cal card?

12 A He didn't want to -- he didn't want to -- to
13 use it. He didn't -- he said it was too much trouble
14 messing with Medi-Cal -- with the Government. He didn't
15 want to do it that way.

16 Q When you would bring the patient to
17 St. Paul's Pharmacy, when would you get paid for having
18 recruited that patient?

19 A When we got back to the clinic.

20 Q And that was after the bottle of OxyContin was
21 issued in their name?

22 A Yes.

23 Q So based on that, would you know whether or
24 not, a bottle was issued in their name?

25 A Yes, because if -- if a bottle was not issued,

1 I wouldn't get paid.

2 Q And for St. Paul's Pharmacy, did you ever have
3 a situation where you didn't get paid for a patient you
4 brought?

5 A No.

6 MS. MORTON-OWENS: One moment, Your Honor. No
7 further questions, Your Honor.

8 MR. JOHNSTON: May I, Your Honor?

9 Thank you.

10 **CROSS-EXAMINATION**

11 BY MR. JOHNSTON:

12 Q My name is Tom Johnston.

13 You testified at the beginning of those
14 questions about your prior drug use.

15 A Yes.

16 Q After your first couple visits to the 8th
17 Street or the Lake clinic, when you started being a
18 recruiter for them and accompanying Little Mike on trips
19 to St. Paul's Pharmacy, what time was that? Do you
20 remember what years that was?

21 A What year it was?

22 Q Yes.

23 A It was in --

24 Q Well, it was around 2009; right?

25 A Yeah, I started I think in -- in February.

1 people for -- for the 8th Street clinic, that at a
2 certain point where it got too crowded, you would bring
3 them over to MacArthur Park; right?

4 A Yes, sir.

5 Q And you'd bring the paperwork from the clinic
6 for them to fill out in the park; right?

7 A Yes, sir.

8 Q And you said -- you had a -- they had to have a
9 California ID card; right?

10 A Yes, sir.

11 Q And that's because the prescriptions were going
12 to be paid for in cash; not through medicare; correct?

13 A Yes, sir.

14 Q So I take it then that that meant the pharmacy
15 was going to require some identification from the
16 patients you were recruiting, so that they knew that
17 this is the --

18 MR. MORTON-OWENS: Objection. This is going to
19 call for speculation.

20 THE COURT: Sustained.

21 BY MR. JOHNSTON:

22 Q Well, do you know why they needed an ID?

23 A All I was told is that to find people that had
24 a valid California identification --

25 Q And when you -- I'm sorry --

1 A -- and either a driver's license -- that was a
2 California driver's license or a regular ID card.

3 Q And when you brought people -- drove people to
4 the pharmacies, those ID cards were taken in with the
5 prescriptions; correct?

6 A Yes.

7 Q Okay. And I believe you testified that when
8 Little Mike went into the pharmacy, then they would have
9 patients come in maybe two at a time; correct?

10 A Right.

11 Q And then at the end, Little Mike came out with
12 everyone's prescriptions in a bag and everyone's ID;
13 correct?

14 A Yes.

15 Q And then after they left the pharmacy, he would
16 return the ID's -- the identifications to each of the
17 recruited patients; correct?

18 A Correct.

19 Q But after they left the pharmacy, he didn't
20 return the individual prescriptions to the patients; he
21 kept those in a bag; right?

22 A Right. They was put in the trunk of the car.

23 Q And your understanding is in that bag were
24 individual bottles labeled with the names of each of the
25 recruited patients; correct?

1 A Yes.

2 Q So -- so that the total amount of prescriptions
3 weren't just dumped together in one big jar; they were
4 originally prescribed bottles of medications; right?

5 A Right.

6 Q And apparently, the pharmacist had lined those
7 up with the ID -- identification. That's why the
8 patients were brought in, so that they could say, okay.
9 You're patient number one. This is your ID. This is
10 you. This is your prescription; this is your
11 prescription -- you know --

12 MS. MORTON-OWENS: Objection. Calls for
13 speculation.

14 THE COURT: Sustained.

15 MS. MORTON-OWENS: Move to strike.

16 THE COURT: Sustained.

17 BY MR. JOHNSTON:

18 Q You also said the first time you went in -- you
19 actually went in to St. Paul's you tried to fill your
20 own prescription for OxyContin; is that right?

21 A Yes.

22 Q Do you remember when that was?

23 A Not exactly, no.

24 Q And when you tried to use your Medi-Cal card,
25 was it medicare card or Medi-Cal card?

1 A It was the one from SSI.

2 Q Okay. And the pharmacist -- I believe you
3 testified said it was too much trouble; right?

4 A Yes.

5 Q Did he explain to you why it was too much
6 trouble?

7 A He wasn't talking to me; he was talking to
8 Mike.

9 Q Okay. Were you there?

10 A Yes, I was standing right there.

11 Q Okay. Did he explain to you or Michael why it
12 was too much trouble?

13 A Like I said, he said he didn't want to mess
14 with the Government. It was -- it was too many
15 safeguards and too many checks.

16 Q Did he talk about what he would get paid by the
17 Government if he did the transaction that way?

18 A Did who?

19 Q Did the pharmacist say anything about what he
20 would get paid if he did it through your SSI, medicare
21 or Medi-Cal card?

22 A No, but I'm assuming -- I'm assuming if he
23 paid --

24 Q Well, I'm sorry, sir. I'm -- I'm not asking
25 you to assume anything. Let me get to my next question,

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ELZA BUDAGOVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

PROOF OF SERVICE

I, David A. Schlesinger, declare that on April 17, 2019, as required by Supreme Court Rule 29, I served Petitioner Elza Budagova's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to him, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

The Honorable Noel J. Francisco, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

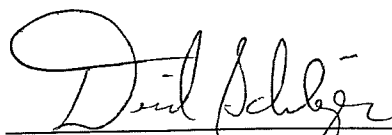
Additionally, I mailed a copy of the motion and the petition to my client,
Petitioner Elza Budagova., by depositing an envelope containing the documents in
the United States mail, postage prepaid, and sending it to the following address:

Elza Budagova
c/o Armen Shahbyza

Los Angeles, CA 90029

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

Executed on April 17, 2019

A handwritten signature in cursive script, reading "David Schlesinger", written over a horizontal line.

DAVID A. SCHLESINGER
Declarant