

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18-3597 and 18-3653

UNITED STATES OF AMERICA

v.

MICHAEL WOOD,
Appellant in No. 18-3597

UNITED STATES OF AMERICA

v.

MARY WOOD,
Appellant in No. 18-3653

On Appeal from the United States District Court
for the District of New Jersey
(Nos. 1-16-cr-00271-001 & 1-16-cr-00271-002)
District Judge: Hon. Robert B. Kugler

Submitted pursuant to Third Circuit L.A.R. 34.1(a)
November 20, 2019

Before: CHAGARES, MATEY, and FUENTES, *Circuit Judges*.

(Opinion filed: February 6, 2020)

OPINION*

MATEY, *Circuit Judge*.

A jury found Michael and Mary Wood guilty of alien harboring and conspiracy. While they raise a host of arguments seeking to overturn their convictions, we conclude all lack merit. So we will affirm.

I. BACKGROUND

On June 9, 2016, a grand jury returned an indictment alleging that Michael and Mary Wood used an unlawful alien to provide domestic help, conduct amounting to alien harboring and a conspiracy to commit alien harboring, among other federal crimes.¹ As alleged in the indictment, the Woods illegally transported a Kenyan woman—known as “P.I.”—to the United States and forced her to care for their children and home in isolating and controlled conditions. At trial, P.I. testified her ordeal began in July 2005 when the Woods met her in Africa, confiscated her Kenyan passport, and required her to use another individual’s passport to fly to their home in New Jersey. Once there, the Woods forced her

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

¹ Count I charged the Woods with “conspir[ing] and agree[ing] with each other,” in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I), to: (1) “encourage and induce” P.I. to “come to, enter, and reside in the United States,” in violation of 8 U.S.C. § 1324(a)(1)(A)(iv); (2) “transport and move P.I. within the United States,” in violation of 8 U.S.C. § 1324(a)(1)(A)(ii); and (3) “conceal, harbor, and shield from detection P.I. in any place,” in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). (App. at 35–38.) And Count II charged the Woods with “conceal[ing], harbor[ing], and shield[ing] from detection P.I.” in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). (App. at 38.) The indictment also charged that all crimes were done “for the purpose of private financial gain” in violation of 8 U.S.C. § 1324(a)(1)(B)(i). (App. at 36, 38.)

to cook, clean, and care for their four children for nearly a year. P.I. eventually decided to leave and, with help from Mary's relatives, relocated to Mary's sister Anne's home in Pennsylvania.

At the close of the Government's case, the Woods moved for a judgment of acquittal, arguing that the charges were barred by a ten-year statute of limitations. Asserting that the criminal conduct ended when P.I. moved to Anne's home, they noted that testimony showed only that the move occurred sometime in June 2006,² insufficient for a jury to find that the charged conduct continued until at least June 9, 2006—that is, ten years before the indictment. In response, the Government pointed to testimony showing that Mary came to Anne's home “a few weeks” after P.I. moved, at which time P.I. finally told Mary she “wasn't coming [back] with her.” (App. at 235, 401.) The Court found this evidence enough for the jury to convict and thus denied their motion. The jury later found the Woods guilty on both charges,³ and this appeal followed.⁴

II. DISCUSSION

The Woods raise several arguments in their attempt to overturn their convictions. Writing only for the parties, we address each in turn.⁵

² P.I. testified that she “moved [to] Anne's house [in] 2006, June[.]” (App. at 402.) Anne's then-husband testified that P.I. came “in June of 2006.” (App. at 233.)

³ Besides the harboring and conspiracy counts, the indictment also charged Mary with unlawful procurement of naturalization (Count III) and a false statement to a federal agent (Count IV). The District Court entered judgment of acquittal on Count III, and the jury acquitted Mary on Count IV. Neither are raised in this appeal.

⁴ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291.

⁵ We exercise plenary review over properly preserved claims of constructive amendment, variance, duplicity, and sufficiency of the evidence. *See United States v.*

A. Constructive Amendments

The Woods press two arguments on constructive amendment.⁶ First, they challenge the conspiracy charge because the indictment did not allege that the Woods agreed to bring P.I. back from Anne's home. But nothing required the jury to find such an agreement, and the jury could have found that Mary's attempt to retrieve P.I. advanced one of the charged agreements, such as the agreement to "transport and move" P.I.⁷ Relatedly, the Woods assert that their conspiracy would not have contemplated bringing P.I. back if she escaped their control, noting they terminated a previous housekeeper when she became disgruntled. Possibly, but the evidence does not compel that finding.

Second, they challenge the harboring charge, arguing that Mary's visit with P.I. could only be interpreted as an attempt to commit a new, uncharged harboring offense. For that same reason, the Woods also argue that the harboring charge was impermissibly duplicitous.⁸ But the statute does not require continuous physical or constructive

Vosburgh, 602 F.3d 512, 531 (3d Cir. 2010); *United States v. Root*, 585 F.3d 145, 150 (3d Cir. 2009). For claims that are raised for the first time on appeal, however, we review for plain error only. *Vosburgh*, 602 F.3d at 531.

⁶ "An indictment is constructively amended when, in the absence of a formal amendment, the evidence and jury instructions at trial modify essential terms of the charged offense in such a way that there is a substantial likelihood that the jury may have convicted the defendant for an offense differing from the offense the indictment returned by the grand jury actually charged." *United States v. Daraio*, 445 F.3d 253, 259–60 (3d Cir. 2006).

⁷ The availability of this finding disposes of the Woods' argument that no evidence showed the conspiracy continuing into the limitations period.

⁸ "Duplicity is the joining of two or more distinct offenses in a single count, so that a general verdict does not reveal exactly which crimes the jury found the defendant had committed." *United States v. Moyer*, 674 F.3d 192, 204 (3d Cir. 2012).

possession of an alien.⁹ And the jury could have found that Mary’s attempt to retrieve P.I. was part of one unbroken course of conduct designed to keep P.I. “conceal[ed], harbor[ed], and shield[ed] from detection.”¹⁰ (App. at 38.)

B. Prejudicial Variance

The Woods argue that allowing the jury to consider Mary’s visit with P.I. as offense conduct created a prejudicial variance.¹¹ But Mary’s conversation with P.I. fits comfortably within the indictment’s allegation that the Woods “prohibited [P.I.] from . . . leaving their residence without permission” and “engaged in conduct intended to make P.I. believe that she would be arrested and deported if she . . . left their residence without permission.” (App. at 37–38.)

C. Objects of the Conspiracy

The Woods state that some or all of the charged conspiracy’s object offenses were legally invalid.¹² They note that all the crimes charged require facilitating an alien’s illegal presence in the United States.¹³ In contrast, they argue Mary’s attempt to move P.I. from

⁹ Cf. *United States v. Rodriguez-Moreno*, 526 U.S. 275, 281 (1999) (noting that the crime of kidnapping ends when “the victim is free”); see also *United States v. Benjamin*, 711 F.3d 371, 378 (3d Cir. 2013).

¹⁰ Likewise, this disposes of the Woods’ argument that no evidence showed the harboring offense continuing into the limitations period.

¹¹ “A variance occurs where the charging terms of the indictment are not changed but when the evidence at the trial proves facts materially different from those alleged in the indictment.” *Vosburgh*, 602 F.3d at 532.

¹² “[I]f one of two or more alternative theories supporting a count of conviction is . . . legally invalid, then the reviewing court should vacate the jury verdict and remand for a new trial.” *United States v. Syme*, 276 F.3d 131, 144 (3d Cir. 2002).

¹³ See, e.g., *DelRio-Mocci v. Connolly Props., Inc.*, 672 F.3d 241, 248 (3d Cir. 2012) (noting that a conviction under 8 U.S.C. § 1324(a)(1)(A)(iv) requires proving “some

Pennsylvania back to New Jersey—an attempted *interstate*, not international, transfer—could not lead to a conviction under any of these statutes. But this argument rests on the assumption that, at the time of Mary’s visit, P.I. planned to remain in the United States. The evidence, however, does not compel such a finding. Instead, a jury could have inferred that P.I. was contemplating a return to Africa, and that Mary’s solicitation of P.I. was “conduct tending to substantially facilitate [P.I.’s] remaining in the United States illegally.”¹⁴ *United States v. Ozcelik*, 527 F.3d 88, 99 (3d Cir. 2008).

D. Facial Overbreadth

Finally, the Woods argue that one of the charged conspiracy’s object offenses—8 U.S.C. § 1324(a)(1)(A)(iv), which prohibits “encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States”—is facially overbroad in violation of the First Amendment. The Woods did not raise this argument below, so we may reverse only if the statute is “clear[ly] or obvious[ly]” unconstitutional “under current law.” *Gov’t of V.I. v. Vanterpool*, 767 F.3d 157, 162 (3d Cir. 2014). Given the split of authority on this issue,¹⁵ this standard is not satisfied.

affirmative assistance that makes an alien lacking lawful immigration status more likely to . . . remain in the United States than she otherwise might have been.”).

¹⁴ This analysis disposes of the Woods’ argument that there was insufficient evidence showing that the Woods’ intent to commit the charged conspiracy’s object offenses continued into the limitations period, and their argument that the object offenses became legally impossible after P.I.’s move.

¹⁵ Compare *United States v. Sineneng-Smith*, 910 F.3d 461 (9th Cir. 2018) (finding 8 U.S.C. § 1324 (a)(1)(A)(iv) unconstitutionally overbroad in violation of the First Amendment), *cert. granted*, 140 S. Ct. 36 (2019), with *United States v. Tracy*, 456 F. App’x 267, 272 (4th Cir. 2011) (per curiam) (rejecting an overbreadth challenge to § 1324(a)(1)(A)(iv)).

III. CONCLUSION

For these reasons, we will affirm the District Court's judgments of conviction.

UNITED STATES COURT OF APPEALS
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v.

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(Nos. 1-16-cr-00271-001 & 1-16-cr-00271-002)
District Judge: Hon. Robert B. Kugler

Submitted pursuant to Third Circuit L.A.R. 34.1(a)
November 20, 2019

Before: CHAGARES, MATEY, and FUENTES, *Circuit Judges*.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on November 20, 2019.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the judgments of the District Court entered on November 27, 2018, are hereby **AFFIRMED**. Each party to bear its own costs.

All of the above in accordance with the Opinion of the Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: February 6, 2020

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 1:16-CR-00271-RBK-1

MICHAEL WOOD

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MICHAEL WOOD, was represented by ERNESTO CERIMELE, ESQ. and HENRY E. KLINGEMAN, ESQ.

The defendant was found guilty on counts 1 and 2 of the Indictment by a jury verdict on 6/6/2017 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
8 U.S.C. § 1324(a)(1)(A)(v)(I)	Conspiracy to Harbor Aliens for Private Financial Gain	8/2005 - 6/28/2006	1
8 U.S.C. §§ 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), 1324(a)(1)(B)(i) and 1324(a)(1)(B)(ii)	Harboring Aliens		2

As pronounced on November 19, 2018, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553(a).

It is ordered that the defendant must pay to the United States a special assessment of \$200.00 for counts 1 and 2, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

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

Signed this 26th day of November, 2018.



Robert B. Kugler
U.S. District Judge

Defendant: MICHAEL WOOD
Case Number: 1:16-CR-00271-RBK-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 20 months on each of Counts 1 and 2 of the Indictment, such terms to be served concurrently with one another.

The Court makes the following recommendations to the Bureau of Prisons: the Court recommends that the Bureau of Prisons designate defendant to a facility as close as possible to defendant's home address.

The defendant will surrender for service of sentence at the institution designated by the Bureau of Prisons on a date no sooner than January 2, 2019, the specific date and time to be determined by the Bureau of Prisons.

RETURN

I have executed this Judgment as follows:

At _____ Defendant delivered on _____ To _____
_____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MICHAEL WOOD
Case Number: 1:16-CR-00271-RBK-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years on each of Counts 1 and 2 of the Indictment, such terms to be served concurrently with one another.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

Based on information presented, you are excused from the mandatory drug testing provision, however, you may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

FINANCIAL DISCLOSURE

Upon request, you must provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You must cooperate with the U.S. Probation Officer in the investigation of your financial dealings and must provide truthful monthly statements of your income. You must cooperate in the signing of any authorization to release information forms permitting the U.S. Probation Office access to your financial records.

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You must not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

Defendant: MICHAEL WOOD
Case Number: 1:16-CR-00271-RBK-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: MICHAEL WOOD
Case Number: 1:16-CR-00271-RBK-1

Judgment - Page 5 of 6

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

Defendant: MICHAEL WOOD
Case Number: 1:16-CR-00271-RBK-1

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the amount of \$46,320.40. Payments should be made payable to the **U.S. Treasury** and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to

P.I. (see attachment)

The amount ordered represents the total amount due to the victim for this loss. The defendant's restitution obligation shall not be affected by any restitution payments made by other defendants in this case, except that no further payments will be required once payments by one or more defendants fully satisfies the victim's loss. The following defendant in the following case may be subject to restitution orders to the same victims for this same loss:

MARY WOOD

CR. 1:16-00271-002 (RBK)

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$200.00, to commence 30 days after release from confinement.

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 1:16-CR-00271-RBK-2

MARY WOOD

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MARY WOOD, was represented by LISA MATHEWSON, ESQ. and MEREDITH A. LOWRY, ESQ.

By order dated June 11, 2018 after defendant's motion for acquittal or new trial pursuant to F.R.Crim.P. 29, the court has dismissed count 3 of the INDICTMENT. The defendant has been found not guilty at trial on count 4 of the INDICTMENT and is discharged as to such count.

The defendant was found guilty on counts 1 and 2 of the INDICTMENT by a jury verdict on 6/6/2017 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

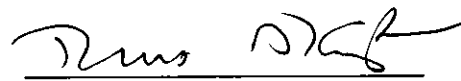
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
8 U.S.C. § 1324(a)(1)(A)(v)(I)	Conspiracy to Harbor Aliens for Private Financial Gain	8/2005 - 6/28/2006	1
8 U.S.C. §§ 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), 1324(a)(1)(B)(i), and 1324(a)(1)(B)(ii)	Harboring Aliens	8/2005 - 6/28/2006	2

As pronounced on November 19, 2018, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553(a).

It is ordered that the defendant must pay to the United States a special assessment of \$200.00 for counts 1 and 2, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

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

Signed this 26th day of November, 2018.


Robert B. Kugler
U.S. District Judge

Defendant: MARY WOOD
Case Number: 1:16-CR-00271-RBK-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 20 months on each of Counts 1 and 2 of the Indictment, such terms to be served concurrently with one another.

The Court makes the following recommendations to the Bureau of Prisons: the Court recommends that the Bureau of Prisons designate defendant to a facility as close as possible to her home address.

The defendant will surrender for service of sentence at the institution designated by the Bureau of Prisons on a date no more than 30 days after the release of co-defendant Michael Wood, CR. 1:16-271-1 (RBK), with the specific date and time to be determined by the Bureau of Prisons.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MARY WOOD
Case Number: 1:16-CR-00271-RBK-2

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years, on each of Counts 1 and 2 of the Indictment, such terms to be served concurrently with one another.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

Based on information presented, you are excused from the mandatory drug testing provision, however, you may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

FINANCIAL DISCLOSURE

Upon request, you must provide the U.S. Probation Office with full disclosure of your financial records, including commingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You must cooperate with the U.S. Probation Officer in the investigation of your financial dealings and must provide truthful monthly statements of your income. You must cooperate in the signing of any authorization to release information forms permitting the U.S. Probation Office access to your financial records.

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You must not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

Defendant: MARY WOOD
Case Number: 1:16-CR-00271-RBK-2

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
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- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization) the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: MARY WOOD
Case Number: 1:16-CR-00271-RBK-2

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

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Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

Defendant: MARY WOOD
Case Number: 1:16-CR-00271-RBK-2

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the amount of \$46,320.40. Payments should be made payable to the **U.S. Treasury** and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to

P.I.

The amount ordered represents the total amount due to the victim for this loss. The defendant's restitution obligation shall not be affected by any restitution payments made by other defendants in this case, except that no further payments will be required once payments by one or more defendants fully satisfies the victim's loss. The following defendant in the following case may be subject to restitution orders to the same victims for this same loss:

MICHAEL WOOD

CR. 1:16-00271-001 (RBK)

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$200.00 to commence 30 days after release from confinement.

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JvTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18-3597

UNITED STATES OF AMERICA

v.

MICHAEL WOOD,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(No. 1:16-cr-00271-001)
District Judge: Hon. Robert B. Kugler

SUR PETITION FOR REHEARING

BEFORE: SMITH, *Chief Judge*, and MCKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER,
MATEY, PHIPPS, and FUENTES,* *Circuit Judges*

The petition for rehearing filed by appellant Michael Wood in the above-captioned matter has been submitted to the judges who participated in the decision of this Court and to all other available circuit judges of the Court in regular active service. No judge who concurred in the decision asked for rehearing, and a majority of the circuit judges of the

* Judge Fuentes's vote is limited to panel rehearing only.

Court in regular active service who are not disqualified did not vote for rehearing by the Court en banc. It is now hereby **ORDERED** that the petition is **DENIED**.

BY THE COURT,

s/ Paul B. Matey

Circuit Judge

Dated: June 1, 2020

Lmr/cc: Mark E. Coyne

Erin H. Flynn

Christopher C. Wang

Henry E. Klingeman

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18-3653

UNITED STATES OF AMERICA

v.

MARY WOOD,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(No. 1:16-cr-00271-002)
District Judge: Hon. Robert B. Kugler

SUR PETITION FOR PANEL REHEARING

BEFORE: CHAGARES, MATEY, and FUENTES, *Circuit Judges*

The petition for rehearing filed by appellant Mary Wood in the above-captioned matter has been submitted to the judges who participated in the decision of this Court. It is now hereby **ORDERED** that the petition is **DENIED**.

BY THE COURT,

s/ Paul B. Matey

Circuit Judge

Dated: June 1, 2020
Lmr/cc: Mark E. Coyne
Erin H. Flynn
Christopher C. Wang
Lisa A. Mathewson

RECEIVED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUN - 9 2016

AT 8:30 _____M
WILLIAM T. WALSH, CLERK

UNITED STATES OF AMERICA : Hon.
 :
 v. : Criminal No. 16 - *27- RBK*
 :
 MICHAEL WOOD, and : 8 U.S.C. §§ 1324(a)(1)(A)(iii)
 MARY WOOD : 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(v)(II),
 : 1324(a)(1)(B)(i), 1324(a)(1)(B)(ii),
 : 18 U.S.C. §§ 1001 and 1425(a)
 :

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting in
Newark, charges:

COUNT ONE
(Conspiracy to Commit Alien Harboring)

The Conspiracy

1. From in or about August 2005 and continuing through on or about
June 28, 2006, in Burlington County and Gloucester County, in the District of
New Jersey, and elsewhere, defendants

MICHAEL WOOD
and
MARY WOOD

did knowingly and intentionally conspire and agree with each other and others
known and unknown to the Grand Jury: (1) to encourage and induce an alien,
namely P.I., to come to, enter, and reside in the United States, knowing and in
reckless disregard of the fact that such coming to, entry, and residence was

and would be in violation of law, for the purpose of private financial gain, in violation of Title 8, United States Code Sections 1324(a)(1)(A)(iv) and 1324(a)(1)(B)(i); (2) knowing and in reckless disregard of the fact that an alien, namely P.I., had come to, entered, and remained in the United States in violation of law, to transport and move P.I. within the United States by means of transportation and otherwise, in furtherance of such violation of law and for the purpose of private financial gain, in violation of Title 8 U.S.C. 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i); and (3) knowing and in reckless disregard of the fact that an alien, namely P.I., had come to, entered, and remained in the United States in violation of law, to conceal, harbor, and shield from detection P.I. in any place, including any building and any means of transportation, for the purpose of private financial gain, in violation of Title 8 U.S.C. 1324(a)(1)(A)(iii) and 1324(a)(1)(B)(i).

All in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

Object of the Conspiracy

2. It was the object of the conspiracy to facilitate the unlawful presence of an undocumented alien in the United States for the purpose of obtaining childcare and domestic work at minimal to no cost.

The Manner and Means

3. It was part of the conspiracy that the defendants and others known and unknown to the Grand Jury, while in Kenya, encouraged P.I. to

travel from Kenya to Ghana to care for the defendants' four minor children and thereafter took P.I.'s Kenyan passport.

4. It was further part of the conspiracy that the defendants and others known and unknown to the Grand Jury provided P.I. with a false British passport in the name of defendant MICHAEL WOOD's adult daughter and thereafter arranged to unlawfully bring P.I. to the United States from Ghana using the false British passport.

5. It was further part of the conspiracy that the defendants and others known and unknown to the Grand Jury, while residing in New Jersey, required P.I. to care for the defendant's four minor children and to perform domestic work, including but not limited to cleaning, cooking, doing the laundry, and shoveling snow.

6. It was further part of the conspiracy that the defendants and others known and unknown to the Grand Jury paid P.I. approximately \$200 a month for such childcare and domestic work and arranged for the money less any expenses to be given to P.I.'s family in Kenya.

7. It was further part of the conspiracy that the defendants and others known and unknown to the Grand Jury isolated P.I. from her family and others, prohibited her from speaking to others or leaving their residence without permission, and controlled her access to food and basic necessities.

8. It was further part of the conspiracy that the defendants and others known and unknown to the Grand Jury engaged in conduct intended to make P.I. believe that she would be arrested and deported if she spoke to

anyone or left their residence without permission, which would result in serious harm, including financial harm, to P.I. and her family in Africa.

COUNT TWO
(Alien Harboring)

9. Paragraphs 1 through 8 of Count One are realleged and incorporated as if set forth full herein.

10. From in or about August 2005 and continuing through on or about June 28, 2006, in Burlington County and Gloucester County, in the District of New Jersey, and elsewhere, defendants

MICHAEL WOOD
and
MARY WOOD

aided and abetted by each other and others known and unknown to the Grand Jury, knowingly and in reckless disregard of the fact that an alien, namely P.I., had come to, entered, and remained in the United States in violation of law, did knowingly conceal, harbor, and shield from detection P.I., and attempt to conceal, harbor, and shield from detection P.I., in any place, including any building and any means of transportation, for the purpose of private financial gain.

All in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), 1324(a)(1)(B)(i) and 1324(a)(1)(B)(ii).

COUNT THREE
(Unlawful Procurement of Naturalization)

11. Paragraphs 1 through 8 of Count One are realleged and incorporated as if set forth full herein.

12. On or about April 13, 2010, in Gloucester County, in the District of New Jersey, and elsewhere, defendant

MARY WOOD

did knowingly procure naturalization for herself, contrary to law, when she falsely answered "No" to the question "Have you ever committed a crime or offense for which you were not arrested?" on her Application for Naturalization, knowing at the time that she had committed crimes as alleged in Counts One and Two of this Indictment.

All in violation of Title 18, United States Code, Sections 1425(a).

COUNT FOUR
(False Statement)

13. Paragraphs 1 through 8 of Count One are realleged and incorporated as if set forth full herein.

14. On or about November 1, 2011, in Gloucester County, in the District of New Jersey, and elsewhere, defendant

MARY WOOD

did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, by denying that P.I. had worked for her and defendant MICHAEL WOOD when questioned by Special Agents with the United States Department of Homeland Security's Homeland Security Investigations. The statements and representations were

false because, as defendant MARY WOOD then knew, P.I. had worked for her and defendant MICHAEL WOOD.

All in violation of Title 18, United States Code, Section 1001(a)(2).

FORFEITURE ALLEGATION

15. As a result of committing one or more of the violations of 8 U.S.C. § 1324 alleged in Count(s) One and Two of this Indictment, defendants MICHAEL WOOD and MARY WOOD shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(6), any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the said offense(s); any property, real or personal, that constitutes or is derived from proceeds obtained directly or indirectly from the commission of the said offense(s); and any property, real or personal, used to facilitate or intended to be used to facilitate the commission of the said offense(s).

Substitute Assets Provision

16. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be

subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. ' 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of said defendant(s) up to the value of the above forfeitable property.

DATED: June 9, 16

A TRUE BILL. 

FOREPERSON 

VANITA GUPTA
Principal Deputy Assistant Attorney General


PAIGE FITZGERALD
Acting Principal Deputy Chief
U.S. Department of Justice, Civil Rights Division, Criminal Section

(Approved as to form: 
Anita Channapati
Trial Attorney

CASE NUMBER: 16-

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

**MICHAEL WOOD
MARY WOOD**

INDICTMENT FOR

**8 U.S.C. § 1324(a)(1)(A)(iii)
8 U.S.C. § 1324(a)(1)(A)(v)(I)
8 U.S.C. § 1324(a)(1)(A)(v)(II)
8 U.S.C. § 1324(a)(1)(B)(i)
8 U.S.C. § 1324(a)(1)(B)(ii)
18 U.S.C. § 1001
18 U.S.C. § 1425(a)**

A. Hyde Bill

Forberson

**VANITA GUPTA
PRINCIPAL DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
WASHINGTON, D.C.**

**ANITA T. CHANNAPATI
TRIAL ATTORNEY
202-353-1219**

**USA-48AD §
Fed. 1/97**