No. 21-____

IN THE

Supreme Court of the United States

RICHA NARANG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a district court has jurisdiction to try a defendant upon a finally dismissed indictment that the government has never sought to reinstate, in contravention of the sole statute allowing reinstatement of an indictment, the precedent of this Court and of two circuits, and of the Grand Jury's exclusive role under the Fifth Amendment?

2. Whether a district court can convict a defendant for conduct not proscribed at the time of its commission by unambiguous statute or by unambiguous regulation formulated pursuant to rulemaking authority and process – when the conduct in question comes to be proscribed by regulation only after the fact and such proscription is subsequently invalidated by order of a sister district court and abandoned by the government?

3. Whether a district court can transpose the burden of proving *mens rea* in a conspiracy from the government to a defendant by characterizing the defense of advice of counsel as an affirmative defense rather than an impediment to *mens rea* – while relieving the government of its burden to prove same by employing judicial notice to find *mens rea,* the signal issue under contention in the trial?

PARTIES TO THE PROCEEDINGS

All parties to these proceedings are noted in the caption of the case. None is a corporation.

RELATED PROCEEDINGS

United States v. Richa Narang, Case No. 1:16cr43 before the United States District Court for the Eastern District of Virginia, Alexandria Division. Memorandum Opinion denying Narang's Motion to Dismiss Pursuant to Fed. R. Crim. P. 29 was issued on August 21, 2019. Judgment of Conviction was rendered on November 1, 2019.

United States v. Richa Narang, Case No. 19-4850 before the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit issued an unpublished *per curiam* opinion denying the appeal on August 9, 2021 and dismissed the appeal and denied a Certificate of Appealability on the same day, August 9, 2021.

The Fourth Circuit denied the Petition for Rehearing and Rehearing En Banc on September 7, 2021.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

Rules and Regulations

Other Authorities

PETITION FOR WRIT OF *CERTIORARI*

Petitioner asks this Court to resolve the Questions Presented in her favor, and contrary to the the unpublished *per curiam* opinion of the United States Court of Appeals for the Fourth Circuit, and thence to reverse the decision of that court and to dismiss her conviction founded upon a dismissed indictment.

OPINIONS BELOW

The United States District Court for the Eastern District of Virginia, Alexandria Division, granted the government's August 18, 2016 Motion for Dismissal of Petitioner's indictment (at Appendix ("A") 84) with its Order of Dismissal the same day (at A85). The district court denied Petitioner's Motion to Dismiss pursuant to Fed. R. Crim. P. 29 with its Memorandum Opinion of August 21, 2019 (at A25) and entered its Judgment of Conviction on November 1, 2019 (at A76). The United States Court of Appeals for the Fourth Circuit affirmed the conviction with its unpublished *per curiam* opinion of August 9, 2021 ("Opinion" at A1), issued its Final Judgment dismissing Petitioner's appeal and denying a Certificate of Appealability on August 9, 2021 (at A24), and denied Petitioner's Petition for Rehearing and Rehearing *En Banc* with its Order of September 7, 2021 (at A83).

JURISDICTION

Petitioner files this Petition within 90 days of the Fourth Circuit's September 7, 2021 denial of her Petition for Rehearing and Rehearing *En Banc*. This Court has jurisdiction to hear this Petition pursuant to 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment requires that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." The Fifth Amendment further requires that no one shall "be deprived of life, liberty, or property, without due process of law… "

18 U.S.C. §3731 establishes the requisites for an appeal by the government of a district court order dismissing an indictment. 18 U.S.C. §3296 prescribes the sole statutory means of reinstating a dismissed indictment.

Fed. R. Evid. 201 establishes the requisites for judicial notice by a district court of an adjudicative fact.

INTRODUCTION

The Fourth Circuit's decision conflicts with decisions of this Court and of circuit courts, and involves issues of exceptional importance to the administration of justice by: (i) authorizing jurisdiction to adjudicate criminal charges based solely upon an indictment dismissed in a final, unappealed district court judgment; (ii) permitting the *ex post facto* prosecution of regulatory offenses; and (iii) relieving the government of its burden of proving *mens rea* for a specific intent offense.

The Fourth Circuit's jurisdictional holding authorizes prosecution upon a dismissed indictment without compliance with the exclusive, narrow statutory criteria under which Congress authorized reinstatement of a dismissed indictment, 18 U.S.C.

§3296. By ruling that the statutorily-prescribed means to reinstate a dismissed indictment is merely "ministerial," such that an indictment survives a final judgment of dismissal, even without reinstatement, the Fourth Circuit placed itself in conflict with the law of the Seventh and Ninth Circuits, *United States v. Foumai*, 910 F.2d 617, 620 (9th Cir. 1990); *United States v. McCarthy*, 445 F.2d 587, 592 (7th Cir. 1981) (then-Judge Stevens). In addition, permitting a criminal prosecution without an existing indictment violates the Fifth Amendment and the longstanding precedent of this Court, which was neither expressly nor implicitly overruled in *United States v. Cotton*, 535 U.S. 635 (2002).

Second, permitting a criminal prosecution based upon unclear or nonexistent regulations not having the force of law under valid administrative requirements[1], as occurred here, conflicts with the law of the Eleventh Circuit in *United States v. Izurrieta*, 710 F.3d 1176, 1182 (11th Cir. 2013), and that which can be inferred from the District of Columbia Circuit's acceptance of a government settlement rescinding the very regulatory requirements at issue in this case based upon a district court judgment that the purported immigration regulations are invalid. *ITServe Alliance v. Cissna,* 443 F. Supp.3d 14, 42 (D.D.C. 2020), *appeal withdrawn by government agreement with judgment*, 2020 WL 3406588 (D.C. Cir. June 15, 2020).

Finally, the Fourth Circuit's endorsement of the district court's improper allocation to a defendant of

[1] Petitioner's dismissed indictment included not a single specific reference to a regulation which she was supposed to have violated.

the burden of disproving *mens rea,* violates the precedent of this Court in *Patterson v. New York*, 432 U.S. 197, 204 (1977); and *Mullaney v. Wilbur*, 421 U.S. 684, 699-02 (1975) (citing *In re Winship*, 397 U.S. 358, 699 (1975)), and the precedent of the Second and Third Circuits, *United States v. Greenspan*, 923 F.3d 138, 147 (3rd Cir. 2019) (citing *United States v. Scully*, 877 F.3d 464, 476 (2d Cir. 2017)), as well that of the Fourth Circuit itself in *United States v. Miller*, 658 F.2d 235, 237 (4th Cir. 1981)

STATEMENT OF THE CASE

Petitioner was an employee in a technology staffing company, EcomNets, who was tried in a one-day bench trial in December 2017 on an indictment charging Conspiracy to Commit Visa Fraud and two counts of Visa Fraud in violation of 18 U.S.C. §1546(a). The April 26, 2016 indictment under which she was tried, however, had already been dismissed on August 18, 2016 in a final, unappealed judgment (A85), on government motion (A84), and no longer existed at the time of her trial.

The sole indictment against Petitioner (Joint Appendix before the Fourth Circuit ("JA") 50), charged her, along with her boss and several co-workers, with submitting false sworn material statements "prescribed by statute and regulation" in connection with her employer's H-1B visa petitions, Counts 2-9¶2, quoting §1546, JA 61. Several months after securing the indictment, the government sought and obtained a judicial order dated August 18, 2016 dismissing the indictment as to Petitioner pursuant to a plea agreement to a different offense by information. A84. The government thereafter

secured a superseding indictment against the remaining co-defendants, but not against Petitioner.

The superseding case faltered in trial, however, because of discovery violations. Petitioner was then allowed to withdraw her plea to the information, which she did. The prosecution failed thereafter to secure another indictment of Petitioner or to move to reinstate the original indictment under the limited statutory authority for doing so under 18 U.S.C §3296, which requires both a timely government motion and a court order to reinstate an indictment.

Four months before her December 2017 trial, Petitioner had stated clearly her position to the district court that she could no longer be tried on the charges in the dismissed indictment unless the government returned to a Grand Jury to secure a new indictment comprising those charges. JA 169. The district court expressed disagreement, JA 169, but failed to undertake any action to reinstate the indictment it had finally dismissed the year before.

The Court then proceeded to try Petitioner under the original, dismissed, indictment – notwithstanding the government had never moved its reinstatement, and without any court order of reinstatement. Twenty-one months after the trial, the district court convicted, claiming – without reference to any order written or oral - that it had reinstated the indictment at some unspecified time prior to the trial.

SUMMARY OF ARGUMENT

Petitioner contends that the final, unappealed judgment dismissing the original indictment, absent any subsequent re-indictment by a Grand Jury or

government motion and court order to reinstate the original indictment in compliance with 18 U.S.C. § 3296, deprived the district court of jurisdiction to try Petitioner upon the charges in the dismissed indictment.

Holding a defendant for trial without indictment or presentment to a grand jury, "exceed[s a court's] jurisdiction." *Ex Parte Wilson*, 114 U.S. 417, 419 (1885); *United States v. Hill*, 26 F. Cas. 315, 317 (Marshall, Circuit Judge, C.C.D. Va. 1809) (federal court jurisdiction "can only be exercised through the instrumentality of grand juries.")

By statute, the government had a limited, 30 day period in which to appeal the August 2016 dismissal of the indictment. 18 U.S.C. §3731. This statutory period is jurisdictional. *United States v. Kalb*, 891 F.3d 455, 462 (3d Cir. 2018) (quoting *United States v. Hark*, 320 U.S. 531, 533 (1944)); *In re Grand Jury Proceedings*, 616 F.3d 1186, 1195 (10th Cir. 2010) (citing *United States v. Martinez*, 681 F.2d 1248, 1254 (10th Cir. 1982); *United States v. Cos*, 498 F.3d 1115, 1135 (10th Cir. 2007) (Gorsuch, J., dissenting, citing *Bowles v. Russell*, 551 U.S. 205 (2007)).

Two circuit courts have specifically held that a court cannot retry a defendant on a dismissed indictment absent its timely reinstatement. *United States v. Foumai*, 910 F.2d 617, 620 (9th Cir. 1990); and *United States v. McCarthy*, 445 F.2d 587, 592 (7th Cir. 1981) (then-Judge Stevens) (upon unequivocal dismissal, "the right to prosecute will be lost unless the record is protected by filing a timely motion to reinstate the dismissed counts.") (followed in *United States v. Destefano*, 347 F. Supp. 442, 445 (S.D.N.Y. 1972) (rejecting government claim of inherent court

authority to overrule prior indictment dismissal, noting the "chaos that would result from the application of such a rule is clearly apparent").

Nonetheless, the Panel characterizes this exclusive statutory mechanism for reinstating dismissed indictments as merely "ministerial," Opinion at A13, thereby affording the district court jurisdiction to adjudicate a dismissed indictment – rendering compliance with the statutory reinstatement requirements optional for the prosecution and the court. Under this rubric, once a defendant is indicted, those public charges are permanent, surviving even their record dismissal secured by government motion and court order, giving the government or the court a permanent license to pursue the charges for all time.

The Panel concludes that the "modern" judicial view deprives Grand Jury indictments of jurisdictional significance. Opinion at A12. This it does by misconstruing this Court's opinion in *United States v. Cotton*, 535 U.S. 635, (2002). *Cotton* does not hold, as the Panel concluded, that "judicial power to hear criminal prosecutions stems [exclusively] from Sec. 3231, which confers subject matter jurisdiction over all crimes against the United States." Opinion at A12. *Cotton* addressed a defective indictment and simply held that such a circumstance did not deprive a court of jurisdiction. *Cotton* said nothing whatsoever about the absolute lack of an indictment. Nor did *Cotton* hold that indictments survive their own final dismissals.

By eliminating finality for indictment dismissals, the Fourth Circuit's opinion not only compromises the role of the Grand Jury as an

independent check on both the Executive and Judicial Branches (see *United States v. Williams*, 504 U.S. 36, 47 (2003)), it renders illusory plea bargains to dismiss indictments. In the Fourth Circuit, indictments are no longer terminated upon dismissal.

Diamonds are forever. Now indictments are too.

Petitioner separately challenges jurisdiction based upon the face of the indictment because: (i) it purported to criminalize H-1B visa conduct that was not prohibited under any existing regulation having the force of law (Count 1, ¶16), JA 55; and (ii) the lack of a valid regulatory origin for any supposed regulatory regimen applied against Petitioner, rendered it impermissibly vague. *United States v. Mitchell*, 39 F.3d 465, 470 (4th Cir. 2004) (only unambiguous regulations with force of law can be subject of criminal prosecution). "Before courts may send people to prison, we owe them an independent determination that the law actually forbids their conduct." *Guedes v. ATF*, 140 S. Ct. 789 (2020) (Gorsuch, J., statement on denial of certiorari).

The alleged prohibition of the challenged immigration conduct - subcontracting H-1B visa workers for work at third-party worksites - did not even exist until the issuance of regulatory guidance post-trial in 2018 (the "CIS Policy Memo") which purported to interpret restrictively the existing immigration law governing this industry. A copy of

the CIS Policy Memo was included in the Opening Brief to the Fourth Circuit as an Addendum.[2]

The offense for which Petitioner was tried, 18 U.S.C. §1546, proscribes false statements under oath in connection with a "document required by the immigration laws or regulations prescribed thereunder." Petitioner contended that the alleged offense - her employer's processing of H-1B visa applications for "specialty occupation" employees who would later be subcontracted to third parties - was not prohibited by regulation, was done industry-wide, and was completely implemented by the firm's immigration lawyers who submitted the relevant filings. In fact, the government was unable to proffer at trial a single regulation forbidding this immigation practice.

Post-trial, the Department of Homeland Security issued the CIS Policy Memo purporting to restrict the H-1B industry, thereby retroactively forbidding the practices of Petitioner's firm. During the pendency of Petitioner's appeal, however, the CIS Policy Memo was challenged in the United States District Court for the District of the District of Columbia. That Court invalidated the CIS Policy Memo as unauthorized by existing statute or regulation, and lacking the necessary notice and rulemaking to change the immigration law. *ITServe Alliance v. Cissna,* 443 F. Supp.3d 14, 42 (D.D.C.

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[2] USCIS, (PM-602-1057), "*Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites*" (2/22/18).

2020), *appeal withdrawn by government agreement with judgment*, 2020 WL 3406588 (D.C. Cir. June 15, 2020).

ITServe confirms that this *post-hoc* CIS Policy Memo—the *ex post facto* basis of Petitioner's regulatory offense--is itself unenforceable precisely because it is inconsistent with existing regulations and statutes, is arbitrary and capricious, and lacks the rulemaking required of a change in the law. *ITServe,* 443 F. Supp.3d at 37 (policy definition of "employee-employee" relationship to exclude contractors contrary to regulation and not promulgated under the APA), 40 (policy requiring filing proof of "non-speculative work assignments" for visa duration "plainly erroneous" and contrary to pre-existing "specialty occupation" regulation, adding new requirements "that are inconsistent with a professional 'specialty occupation' as previously enforced for decades and inconsistent with the regulation"), and 41 (policy arbitrary and capricious, and "would effectively destroy a long-standing business resource without congressional action").

Finally, Petitioner challenges the district court's shifting the burden of proof from government to defendant by recasting the abundant evidence of the advice of immigration counsel received by Petitioner as an affirmative defense for which she bore the burden of proof. The unrebutted evidence established that Petitioner received the advice of her company's immigration counsel who entered their appearances (Form G-28) for each petition, filed all visa petition papers, made all responses to government petition inquiries, and blessed all the practices in question, This evidence was a fatal

impediment to the proof of *mens rea* required for conviction. Further, in impermissibly shifting the burden of proof to Petitioner on the issue of intent, the district court violated the Rules of Evidence by taking judicial notice of a fact - the use of anglicized versions of the name of EcomNets' Human Resources Manager - as conclusive evidence of the fraudulent intent of Petitioner's colleagues. This notwithstanding their conduct conformed to the advice of company counsel who themselves used the same practice (as authorized under 8 C.F.R. §103.2(a)(5)). JA 259, 279-80.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision fundamentally misapprehends these three errors, each of which is fatal to Petitioner's conviction:

1. The trial of Petitioner on charges no longer in existence;
2. For conduct not clearly proscribed until after the conduct at issue, and even then invalidated by court order and government stipulation; and
3. Through a misapplication to her of the government's burden of proof as to *mens rea.*

ARGUMENT

1. Finally Dismissed Indictments Cannot Provide Jurisdiction for Criminal Prosecutions

The requirement of an indictment for a district court's trial of a felony case has been with us since (and, actually, before) the founding of our Republic.

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.

Fifth Amendment to the Constitution of the United States.

From the outset, this Court's decisions have uniformly held that a felony trial without an indictment "exceed[s a court's] jurisdiction." *Ex Parte Wison*, 114 U.S. 417, 419 (1885). This requirement flows from the Grand Jury's unique constitutional charter to protect the accused.

> "In fact, the whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people.

United States v. Williams, 504 U.S. 36, 47 (2003).

By characterizing a grand jury indictment as merely a "ministerial" step in a criminal prosecution, the Fourth Circuit strays from this birthright, holding that federal courts have jurisdiction to preside over a criminal prosecution upon a dismissed indictment never reinstated by the district court. Opinion, at A11 ("assuming the indictment was not properly reinstated pursuant to that statute"). This marks a fundamental departure from the unique constitutional role of the Grand Jury that is not, as the Fourth Circuit believed, justified by the "modern" view of a grand jury's mere ministerial role.

Even the Panel acknowledged the novelty of its conclusion:

> "We admit that the seeming lack of a valid charging document bears indicia of a jurisdictional defect…

Opinion at A11.

The Grand Jury's independence is a bulwark against all branches of the Government, including the Judiciary – and even against other grand juries. In denying district court jurisdiction to enforce a subpoena from a discharged grand jury, the Second Circuit explained: "[E]ach grand jury is a separate entity conducting its own investigation… to hold otherwise would reduce the grand jury to a quaint fiction." *In re: Grand Jury Proceeding Oberlander*, 971 F. 3d 40, 52 (2d Cir. 2020). *See also*, *In re: Grand Jury Proceedings*, 744 F. 3d 211, 214-15 (1st Cir. 2014)).

Here, a Grand Jury did issue a second indictment on the subject events, but it returned no charges against Petitioner. Following its dismissal, the original indictment no longer served as an existing charge against anyone. The grand jury's "constitutional[ly] guarantee[d]" independence, *United States v. Dionisio*, 410 U.S. 1, 16 (1973), precludes unilateral reinstatement of a dismissed indictment by the Executive Branch or by the Judiciary and, requires a strict reading of the sole statutory means for reinstating such an indictment - 18 U.S.C. §3296.

The district court's dismissal, pursuant to government motion, of the only indictment against Petitioner on August 8, 2016, left the government with 30 days under 18 U.S.C. §3731 to appeal or otherwise challenge the dismissal before it became

final. *Foumai*, 910 F.2d at 620 ("Moreover, we treat the expiration of time for the government to appeal under 18 U.S.C. § 3731 as a jurisdictional limitation on the trial court, after which a judgment cannot be reconsidered"). The government never appealed or otherwise challenged the dismissal it obtained.

The Third, Sixth and 10th Circuits have all agreed with the Ninth Circuit that Section 3731's 30 day deadline is jurisdictional. *United States v. Kalb*, 891 F.3d 455, 462 (3d Cir. 2018) (quoting *United States v. Hark*, 320 U.S. 531, 533 (1944) ("Neither the District Court nor this court has power to extend the period."); *In re Grand Jury Proceedings*, 616 F.3d 1186, 1195 (10th Cir. 2010) (citing *United States v. Martinez*, 681 F.2d 1248, 1254 (10th Cir. 1982); *United States v. Cos*, 498 F.3d 1115, 1135 (10th Cir. 2007) (Gorsuch, J., dissenting, citing *Bowles v. Russell*, 551 U.S. 205 (2007)).

Petitioner's withdrawal of her plea to the intervening information 13 months later, left the government with the only Congressionally authorized exception to the otherwise preclusive bar of §3731 to proceeding under the dismissed indictment. That exception requires the occurrence of two events - neither of which occurred here:

1. a motion to reinstate by the government made within 60 days of the withdrawal of the subject plea, and.

2. a court order of reinstatement.

18 U.S.C. § 3296(a)(4).

The government never moved the reinstatement of the dismissed indictment - within

the 60 days allotted by the statute or at any other time - and no court order was entered reinstating the dismissed indictment. What Congress has made explicit, this Court has described as the "party presentation principle," whereby a party must comply with its obligation to identify and present an issue which it seeks to propound - here the filing a government motion for reinstatement under § 3296. *United States v. Singeng-Smith*, 140 S. Ct. 1575, 1579 (2020); *Greenlaw v. United States*, 554 U.S. 237, 244 (2008).

The Fourth Circuit Panel "assum[es] the indictment was not properly reinstated pursuant to that statute." Opinion at A11, meaning that neither necessary participant (the prosecution or the court) complied with the express statutory burden for reinstatement under Section 3296. This assumption is driven by the record showing no such reinstatement motion was filed or order issued – orally or in writing. The government's residual claim of diligence rests upon a single sentence in its brief (JA 37) opposing a motion by Petitioner (JA 37) to dismiss the information, not the indictment.[3]

Further, the Government waived any right to prosecute Petitioner under indictment by securing its dismissal, subject only to the statutory reinstatement remedy which it then forfeited by failing to pursue it. *United States v. Olano*, 507 U.S. 725 (1993) (distinguishing between waiver and forfeiture).

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[3] The government's stated wish to see the dismissed indictment reinstated came while the subsequent information was still in effect and before Petitioner withdrew her plea of guilt to same. Consequently, the government's statement was without effect under Sec. 3296.

The Panel admits that defense counsel objected to proceeding without an indictment (JA 169), but claims that Petitioner could have objected on § 3296 grounds, whereupon the district court could have "remedied the error." Opinion at A13. With § 3296, however, Congress vested the government with the exclusive authority to seek the reinstatement of an indictment. Therefore, only the government can fail to do so. Its failure is its own, for which Petitioner bears no responsibility.

The Panel's suggestion not only visits Petitioner with the burden of propelling her own prosecution, but ignores that "[n]o party need assert [a jurisdictional] defect. No party can waive the defense or consent to jurisdiction. No court can ignore the defect; rather a court, noticing the defect, must raise the matter on its own." *Wisconsin Dep't of Corr. v. Schact*, 524 U.S. 381, 389 (1998). The Panel's reference to "plain error" Opinion at A14, is entirely misdirected, as a defendant has no obligation, or even statutory authority, to bring charges against herself, or to seek their reinstatement.

Finally, the Panel discounts compliance with §3296 as "merely a claims processing rule," Opinion at A14, compliance with which is not essential to district court jurisdiction. Sec. 3731, however, is not an appellate claim processing rule at all, it is jurisdictional. *United States v. Kalb*, 891 F.3d 455, 462 (3d Cir. 2018) (quoting *United States v. Hark*, 320 U.S. 531, 533 (1944)*).* By the time Petitioner's withdrawal of her plea to the subsequent information enabled reinstatement of the indictment under Sec. 3296, the indictment had been finally dismissed. The

government failed thereafter to comply with §3296, as the Panel accepts.

The Panel supports its untenable conclusion with the questionable premise that the only jurisdictional statute at play is 18 U.S.C. Sec. 3231 which vests federal courts with subject matter jurisdiction over prosecution of federal crimes. As per the Opinion, the government allegations of U.S. Code offenses against Petitioner "compel the conclusion that the court retained subject matter jurisdiction." Opinion at A14. But the fact that the U.S. Code is teeming with offenses does not afford federal courts the power to disregard the Grand Jury guarantee of the Fifth Amendment.

The Panel notes further that, since the grand jury right is waivable, it "does not involve subject matter jurisdiction." Opinion at A11-12, quoting, *United States v. Hartwell*, 448 F.3d 707, 717 (4th Cir. 2006). The Panel concludes, therefore, that "the combined effect of the two statutes [Secs. 3731 and 3296] lacks jurisdictional import." Opinion, n. 2 at A13. In this case, there is no Rule 7 waiver of proceeding on the original indictment – rather, it was dismissed by the Government. That a defendant can waive his Fifth Amendment rights does not mean that the government can do so for him.

The Panel's logic flies in the face of the earlier cited uniformly consistent decisions that Sec. 3731 is jurisdictional. Statutory deadlines for appeals are jurisdictional, not claims processing rules. *Hamer v. Neighborhood Housing Services*, 138 S. Ct. 13, 17 (2017); *United States v. Kalb*, 891 F.3d 455, 462 (3d Cir. 2018) (quoting *United States v. Hark*, 320 U.S. 531, 533 (1944)*); United States v. Cos*, 498 F.3d 1115,

1135 (10th Cir. 2007) (Gorsuch, J., dissenting, citing *Bowles v. Russell*, 551 U.S. 205 (2007)). Section 3731 cannot be made any less jurisdictional by the Government's subsequent failure to comply with the indictment reinstatement requirements of §3296.

Indeed, the Opinion renders § 3296 utterly superfluous—even without invoking it, as indictments can now reinstated indefinitely. Statutory deadlines and proscriptions have no purpose if the parties proscribed can ignore them with impunity. Such a reading of §3296 violates the canon that statutes are construed to have meaning. *NAM v. Dept. of Defense*, 138 S. Ct. 617, 632 (2018) (rejecting interpretation rendering statutory language meaningless) (citing *Reiter v. Sonotone*, 442 U.S. 330, 339 (1979)).

The Panel disregards the jurisdictional consequences of a final, unappealed, judgment by claiming that federal courts have jurisdiction over finally dismissed indictment because of their general criminal jurisdiction under 18 U.S.C. §3231. No express authority is contained in §3231 to adjudicate finally dismissed indictments, and Congress presumably expects the exercise of general federal criminal jurisdiction under §3231 to comply with its specific indictment reinstatement requirements set forth in §3296.

Indeed, the fact the Congress conferred jurisdiction upon federal courts to adjudicate federal charges does not mean it thereby repealed all other limitations on criminal prosecutions, permitting the eternal prosecution of all indictments, and eliminating any finality from our justice system.

The requirement of a prosecution for a federal crime does nothing to diminish the requirement of "an indictment or a presentment to a Grand Jury." *Ex Parte Wilson*, 114 U.S. at 419. Chief Justice Marshall had it correct in 1809—a grand jury indictment is a prerequisite to the exercise of federal court criminal jurisdiction over felonies subject to the Fifth Amendment. *United States v. Hill*, 26 F. Cas. 315, 317 (Marshall, Circuit Judge, C.C.D. Va. 1809). The Grand Jury guarantee traces back to the Magna Carta at Runnymede. Under the banner of "modernity," it should not be stripped of jurisdictional significance today. Holland, *Magna Carta and the Right to Trial by Jury*, 155 (2014).

The party asserting jurisdiction bears the burden of establishing it. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021). The record contains no motion for, or order of, reinstatement of the indictment under §3296 of the indictment, the component that has been indispensable to a felony trial since the barons stared down King John. In section 3296, Congress gave authority exclusively to the Executive Branch to seek reindictment, but only on a timely basis. Therefore, only it can do so. Its failure is its own, as to which the defendant has no statutory authority or responsibility

Nonetheless, the Panel mistakenly claims that "the judicial power to hear criminal prosecutions stems [exclusively] from Sec. 3231, which confers subject matter jurisdiction over all crimes against the United States." Opinion at A12. For support, the Panel cites this Court's decision in *Cotton* to propound this radical departure from history in deference to what it describes as the view of "modern courts" that

decline "to read jurisdictional import into indictment defects… " Opinion at A12.

The Panel's application of its "modern" view of grand juries, however, is misguided. "[T]he Constitution's guarantees cannot mean less today than they did the day they were adopted." *United States v. Haymond*, 139 S. Ct. 2369, 2369 (2019). This Court's review is justified to clarify that *Cotton* did not render grand jury indictments devoid of jurisdictional significance and entirely meaningless.

Cotton addressed a post-*Apprendi* sentencing dispute concerning an indictment that failed to specify a drug quantity that was nonetheless supported by the trial evidence. *Cotton* did not involve a nonexistent indictment, or a trial on one. *Cotton* stands solely for the principle that "defects in an indictment do not deprive a court of its power to adjudicate a case." *Cotton*, 535 U.S. at 630. That is, an indictment error going to an aspect of sentencing did not prevent the Court from imposing sentence.

Insofar as its holding goes, *Cotton* is unremarkable. While the decision does overrule in part this Court's much earlier decision in *Ex Parte Bain,* 121 U.S. 1 (1887), it does so sparingly.

> "Insofar as it held that a defective indictment deprives a court of jurisdiction, *Bain* is overruled.

Cotton, 535 U.S. at 631.

Cotton did not hold that indictment omitted in its entirety provides a court with jurisdiction to try a defendant on its charges, which is precisely what the Panel has held.

This limited language is consistent with decisions to have come before.[4] The Panel's leap, however, is not. The explanation for the Panel's unwarranted extinguishment of the Grand Jury's exclusive role in protecting defendants from all branches of the state may lie in *Cotton's* expansive dictum confronting the historic limitations on Supreme Court habeas corpus review from "an era in which this Court's authority to review criminal convictions was greatly circumscribed." *Cotton,* 535 U.S. at 629-30. But nothing in *Cotton* or in the earlier decisions it cites, supports the unprecedented notion of dispensing entirely with the Grand Jury's exclusive role in conferring jurisdiction to adjudicate felonies.

As strange as an indictment-less trial would be to the Founders, it is especially so today when dismissal of indictments is such a necessary staple of the plea bargaining process.

The systemic reliance upon the finite life of indictments is also embodied in the right to a Speedy Trial.

> "[A] court should not weigh that time [between dismissal and reinstatement of an indictment] towards a claim under the Speedy Trial Clause"

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[4] Neither case cited in *Cotton* disturbs the threshold principle that an indictment is required for jurisdiction to adjudicate a felony. Both *Lamar v. United States*, 240 U.S. 60 (1916), and *United States v. Williams*, 341 U.S. 58 (1951), cited at *Cotton*, 535 U.S. at 630-31, parsed the merits-based impediment created by a defective indictment. Neither decision entailed a circumstance wherein no indictment existed at all, nor does either suggest guidance in the event of such.

> because: " [a]s we stated in *MacDonald:* 'with no charges outstanding, personal liberty is certainly not impaired to the same degree as it is after arrest while charges are pending. After the charges against him have been dismissed, 'a citizen suffers no restraints on his liberty and is [no longer] the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer.'"

United States v. Loud Hawk, 474 U.S. 302, 311 (1986) (quoting *United States v. McDonald*, 456 U.S. 1, (1982)).

The prospect of unilateral government authority to resurrect a dismissed indictment would operate to toll the Speedy Trial clock indefinitely.

Indeed, given the prevalence of criminal forfeiture claims in indictments, (Fed. R. Crim. P. 7), immortal indictments would cast a lingering public shadow over a dismissed defendant's property as well as his liberty.

2. Prosecution for Violation of Unissued or Unlawful Regulations Violates the *Ex Post Facto* Clause

The dismissed indictment referenced not a single regulation Petitioner was alleged to have violated. At trial, and during the appeal, Petitioner contended that there was no "regulation" prohibiting third party contracting of H-1B visas. Given the petition and subsequent annual lottery process for

issuing visas, and the prohibition on filing H-1B petitions less than six months before an actual need for a beneficiary job exists, 8 C.F.R. § 214.2I(h)(1)(ii)(9)(i)(B), subcontracting is common for specialty occupation workers.

Overlooking the repeated inability of the government to adduce at trial specific statutes or regulations forbidding the conduct with which Petitioner was charged, the Panel simply repeats the district court's finding as to the materiality of the misstatements alleged, without identifying a proscribing regulation. Opinion at A17-18.

The Panel parses specific conduct of EcomNets for which Petitioner was convicted:

- Seeking visas for speculative positions in the future, Opinion at A3-4.
- Seeking visas for workers to be employed by third party end users, Opinion at A4;
- Using wholly controlled "shell companies" in the visa application process and in correspondence with visa beneficiaries; Opinion at A4.
- Placing visa recipients only after visa issuance and failing to pay them in the interim, i.e., "benching," Opinion at A4-5.

The Panel overlooks, however, that each of these practices was not proscribed until the CIS Policy Memo issued in 2018, years after the conduct in question. More importantly, the Panel fails even to acknowledge that the CIS Policy Memo was specifically invalidated as "unlawful and unenforceable" by the United States District Court for the District of Columbia in the *ITServ* decision issued

during the pendency of Petitioner's appeal before the Fourth Circuit. *ITServ*, 443 F. Supp. 3d. at 35-43.

Specifically, *ITServ* held that the CIS Policy Memo was inconsistent with applicable immigration statutes and regulations, more onerous than longstanding regulations, lacked proper rulemaking procedures, and was arbitrary and capricious. *ITServ*, 443 F. Supp. 3d 14, 37, 40, 42, 43 (D.D.C. 2020).

The CIS Policy Memo comprised specific prohibitions, pursuant to which Petitioner was prosecuted, to include:

a. the requirement of a "non speculative" job vacancy, *Id.* at 40 (hence the government's claim that Petitioner helped to secure visas for non existent jobs);
b. the prohibition of contractor intermediaries in the placement of visa beneficiaries, *Id.* at 37 (hence the government's claim of fraud in the placement with third parties and the use of "shell companies" by Petitioner's employer); and
c. the prohibition of "benching" *ITServ*, 443 F. Supp. 3d at 41 n.15 (failing to pay visa beneficiaries not yet placed with end users), albeit the government never connected this practice to a discrete misstatement).[5]

[5] In any event, Michael Violett had testified at trial as the government's only expert and acknowledged that there was no prohibition against petitioning for jobs not yet available, JA 132, or against using controlled "shell companies" (i.e., contractor intermediaries) as petitioners and participants in the petition process, and that, in fact, there was "a profusion of mid level vendors involved in the petition process." JA 241. In its March

On May 20, 2020, the government withdrew its appeal to the United States Court of Appeals for the District of Columbia Circuit of the *ITServ* decision (withdrawal cited in Petitioner's Fed. R. App. P. 28(j) submission of May 22, 2020) and rescinded the CIS Policy Memo in its entirety.

More pointedly, the government on *December* 7, 2020 (three years to the day after Petitioner's trial), published "Strengthening the H-1B Nonimmigrant Visa Classification Program," 85 Fed. Reg. 63918, an Interim Final Rule ("IFR") in which the government acknowledged the lack of "specific, clear, and relevant statutory and regulatory definitions" pertaining to the very issues undergirding Petitioner's prosecution – prominent among them, the parameters of an "employer-employee relationship."

The government's belated acknowledgement to the D.C. Circuit of the unenforceability of the regulatory requirements levelled against Petitioner vividly and undeniably conflicts with the government's effort to prosecute her before the district court here for conduct not illegal at the time of commission.[6]

21, 2021 submission to the Fourth Circuit pursuant to Fed. R. App. P. 28(j), the government itself abandoned its claim that "benching" and "third party contracting" (i.e., the submission of petitions for visas to be held by workers at third party end users) were proscribed, noting that they "were immaterial to the district court's finding of guilt."

[6] Perhaps most disturbing is the government's acknowledgement in the IFR that it recognized the infirmity of its regulatory regimen and began a "comprehensive review" eight months before Petitioner's trial. The government never revealed this exculpatory information to Petitioner, the district court, or the Fourth Circuit.

3. The Government Bears the Burden of Proof on *Mens Rea*

Virtually all of the immigration filings were signed and filed by the attorneys of Petitioner's corporate employer, based upon their formal appearances before the DHS as the filing corporate counsel. Petitioner's boss testified that company counsel knew about each of the disputed practices, advised that they were acceptable, and engaged in these disputed practices themselves (i.e., signing for the Human Resources manager using an anglicized version of her name). Further, their legal advice was shared with the employees, including Petitioner. JA 259, JA 279-80. JA 317, JA 332-33.

Instead of addressing this systemic evidence of corporate reliance upon counsel, the trial court, and the Panel, chose to reject it based upon the mistaken legal conclusion that advice of counsel in a conspiracy case is an affirmative defense as to which a defendant bears the burden of proof.

Mens rea to commit an offense connotes a burden of proof belonging solely to the prosecution. *See*, *e.g., Patterson v. New York*, 432 U.S. 197, 204 (1977); *Mullaney v. Wilbur*, 421 U.S. 684, 699-02 (1975) (citing *In re Winship*, 397 U.S. 358, 699 (1975)). Because defendants have no burden of proof as to *mens rea*, it is error to impose that burden upon them, including when there is evidence of advice of counsel. *See. e.g.*, *United States v. Greenspan*, 923 F.3d 138, 147 (3d Cir. 2019) (citing *United States v. Scully*, 877 F.3d 464, 476 (2d Cir. 2017)); *United States v. Miller*, 658 F.2d 235, 237 (4th Cir. 1981)

Refusing to acknowledge that advice of counsel is an impediment to *mens rea* rather than an affirmative defense, *United States v. Stevens*, 771 F. Supp. 2d 556, 566 (D. Md. 2011), the Panel simply concludes without elaboration that the evidence was "entirely inconsistent with good faith reliance on any advice [of counsel] received." Opinion at A20. The only evidence on the matter, however, was the uncontroverted testimony of the government's star witness tendered without objection, that company immigration counsel blessed, and often signed themselves, every one of the allegedly "fraudulent" submissions made by the company.[7]

Turning the burden of proof on its head, the Panel ignores that the district court rejected this unrebutted evidence eviscerating the case for *mens*

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[7] Raj Kosuri, owner of Petitioner's employer, EcomNets, testified without controversion for the government that his company lawyers blessed all of the practices for which Petitioner was convicted. Specifically, he stated that he had been advised by three separate immigration lawyers, JA 332, and that:

a. Those lawyers approved the practice of "benching" (i.e., failing to pay visa recipients during the interim between visa issuance and placement with the third party end user), JA 332;
b. Those lawyers, knowing there were no jobs in the location reflected in the visa applications, approved listing same as the job locus on petitions, JA 317;
c. Those lawyers approved the use of related companies controlled by him as signatories and participants in the application process, JA 341;
d. The lawyers approved of the use of a pseudonym to sign petitions and used it to append the signatures themselves, JA 259, 279-80;
e. He shared the lawyers' advice with his work force, to include Petitioner, JA 333.

rea, by erroneously ruling that Petitioner "has not satisfied that affirmative burden here" by failing to call as witnesses the company lawyers who filed the subject immigration applications. Opinion at A57.

Worse, in concluding the evidence was inconsistent with good faith reliance on counsel, the district court misapplied a rule of evidence (Fed R. Evid. 201) by taking judicial notice of a fact clearly reasonably subject to dispute – in fact, the element at the heart of the Government's case, *mens rea*.

> "Mr. Kiyonaga, this argument doesn't work well with the Court. I'll take judicial notice that if a document is signed in the name of a fictitious person, it's fraudulent. Let's move on.

JA 237.

The misuse of judicial notice contravened the Fourth Circuit's precedent in *United States v. Ismail*, 97 F. 3d 50, 61 (4th Cir. 1996), that the use of a fictitious name is not *per se* fraudulent. Further, the context in which the pseudonyms were used shows that their use was manifestly not fraudulent. Regulations specifically allow for a visa petitioner's Human Resource Manager to sign a visa petition and, further, expressly allow the use of an Anglicized version of the HR Manager's name for the signature. PM-602-0134(B)(2)(5)(8), and 8 C.F.R. 102.2(a)(5), respectively.

The uncontroverted evidence showed that:

- There was no prohibition on a fictitious signature as long as it

bound the subject company, JA 235-36, 523;

- The fictitious names in question (Sam Bose and Sonia Basu) were but Anglicized versions of Sanchita Bhattacharya, HR Manager for Petitioner's employer, EcomNets, JA 259; and
- The company lawyers blessed the practice to the workforce and often applied the pseudonymous signatures themselves, JA 259, 279-80.

Employees in a regulated industry are entitled to rely in good faith on the advice of lawyers provided by their employers. *United States v. Crosby*, 294 F.2d 928, 942 (2d Cir. 1961). Query how clear and unambiguous could have been the regulations levied against Petitioner if the government could not specify one in the dismissed indictment of her?

At a stroke, the district court relieved the government of its signal burden in the trial, proving Petitioner's *mens rea*, by subverting a rule of evidence to reach a finding not only susceptible to reasonable challenge, but uniformly contradicted by the only evidence on the issue.

CONCLUSION

This should be the first and last indictment-less case, but it may just be the first of many. The district court should never have convicted her. The Fourth Circuit should never have ratified an exercise in government overreach:

- trying an unindicted felony defendant;
- for conduct not then or even now illegal;
- convicting through a disregard of the Government's burden of establishing *mens rea*.

The unpublished *per curiam* opinion extrapolates an unwarranted inference from this Court's decision in *Cotton* that Grand Juries are only ministerial in the modern world. The panel thereby invites the government and every court to ignore the Fifth Amendment's dedication of an exclusive role to the Grand Jury to protect defendants from all branches of the federal government – and invites havoc by throwing into doubt every federal indictment dismissal, and every plea agreement contingent on one.

The Constitution and the orderly administration of justice impel a grant of this petition so to cabin the precedential import of *Cotton* and preclude the harm to the Grand Jury right, and the orderly administration of criminal justice presaged by the Fourth Circuit's characterization of indictments as merely "ministerial."

This petition should be granted.

Respectfully submitted,

RICHA NARANG

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TABLE OF CONTENTS

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4850

UNITED STATES OF AMERICA,
Plaintiff - Appellee,
v.

RICHA NARANG,
Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cr-00043-LMB-5)

Argued: May 7, 2021 Decided: August 9, 2021

Before FLOYD, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: John Cady Kiyonaga, LAW OFFICE OF JOHN C. KIYONAGA, Alexandria, Virginia, for Appellant. Jack Hanly, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF:** Terrance G. Reed, LANKFORD & REED, PLLC, Alexandria, Virginia, for Appellant. G. Zachary Terwilliger, United States Attorney, Alexandria, Virginia, Richard D. Cooke, Assistant United States Attorney, OFFICE OF THE

UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richa Narang appeals her conviction of conspiracy to commit visa fraud and two counts of visa fraud. Following a strange procedural history, Narang and the government tried these counts in a one-day bench trial. Narang now appeals, arguing both that the court lacked jurisdiction over the trial and that she was convicted based on insufficient evidence. We reject both of Narang's arguments and affirm the judgment of the district court.

I.

The government's prosecution centered on Narang's role as a high-level employee of EcomNets—a Virginia corporation purportedly providing technology services while running a sophisticated visa fraud scheme. EcomNets's business model involved sponsoring H-1B visa beneficiaries and then placing them with third-party vendors for a fee. The government alleged at trial that EcomNets's business model depended on the submission of fraudulent applications for H-1B worker visas.

The H-1B visa program is a temporary-worker program, which admits roughly 65,000 applicants annually to work in specialty occupations requiring a bachelor's degree or its equivalent. 8 U.S.C. §

1184(g)(1)(A)(vii); 8 C.F.R. § 214.2(h)(4)(iii)(A). United States-based employers (the "petitioners") file petitions on behalf of non-citizen workers (the "beneficiaries") seeking U.S. Citizenship and Immigration Services (USCIS) approval for a beneficiary to work for a petitioner in the United States.

Before petitioners can file an H-1B petition with USCIS, they must first file a labor condition application (LCA) with the U.S. Department of Labor (DOL) promising to pay the beneficiary the prevailing wage for their occupational classification. *See* 8 U.S.C. § 1182(n)(1)(A)(i), (D). Once approved, the petitioner files a form I-129 with USCIS for adjudication, appending supporting documentation. USCIS adjudicators seek to determine whether there is a genuine employer-employee relationship between the petitioner and the beneficiary. Because the H-1B visa is employment-based, adjudicators also look for evidence that the beneficiary's employment will begin "at the time indicated on the [I-]129 petition." J.A. 222–23. And adjudicators look for whether that employment will conform to the wage and location specifications in the LCA.

USCIS scrutiny is even greater for staffing companies like EcomNets. J.A. 223 (USCIS adjudicator testimony noting that the agency "heavily examine[s] the employer-employee relationship" for staffing companies). There is no per se prohibition against the use of shell companies or third-party staffing models by petitioners. If USCIS discovers, however, that documents were signed using fake names, that a staffing company would not begin seeking a placement until after a visa was granted, or that the listed job did not and would not

exist at the time the visa was approved, USCIS would deny the petition.

EcomNets founder Raj Kosuri employed a small number of individuals at EcomNets's headquarters who assisted EcomNets's outside counsel in preparing LCAs and I-129 petitions for beneficiaries. These petitions listed EcomNets as the ultimate work location for beneficiaries, but EcomNets did not intend for the beneficiaries to work for EcomNets. Nor did EcomNets begin looking for third-party placement until after the H- 1B visa was approved.

EcomNets took a number of steps to conceal its business model from USCIS adjudicators. First, Kosuri incorporated a series of shell companies—Unified Systems, United Tech, United Software Solutions, and Data Systems. These shell companies served as the petitioners on EcomNets's H-1B petitions but were not meaningfully independent from EcomNets. To create the appearance of independence, EcomNets falsified information about these companies in its visa petitions. EcomNets employee Sanchita Bhattacharya signed documents on behalf of United Tech as "Sonia Basu" and on behalf of United Software Solutions as "Sam Bose." Additionally, EcomNets included falsified leases for its shell companies in visa petitions.

The petitions usually falsely represented that these shell companies had contracted to place H-1B beneficiaries at a "Green Technology Center" owned by EcomNets in Danville, Virginia. J.A. 959–64. The petitions included contracts and purchase orders between the shells and EcomNets to support that assertion. In reality, there were no jobs available at what was an essentially empty warehouse and there was no plan for any H-1B beneficiary to work

directly for EcomNets. EcomNets also falsified the signatures of beneficiaries on documents submitted to USCIS. EcomNets employees prepared offer letters to beneficiaries under the name of the shell companies reflecting this non-existent work. But once H-1B petitions were approved, EcomNets required beneficiaries to sign voluntary leave letters to avoid the company's obligation to pay beneficiaries. The company then began to look for third-party placements for its "benched" beneficiaries.

Narang played a central role in this scheme. EcomNets hired her in 2013 as its Senior Business Development Manager for IT services. One of her primary responsibilities was to find job placements for EcomNets's approved visa beneficiaries. She also played a key role in preparing documents in support of the overall scheme. For instance, at trial the government presented emails from Narang requesting that other employees use pseudonyms to sign and prepare documents—purportedly on behalf of EcomNets's shell companies. Narang also signed contractor agreements and purchase orders in which EcomNets agreed to host a shell company's H-1B beneficiary at its non-existent Green Technology Center. These agreements were then included in the shell company's H-1B petition to USCIS. In total, Narang signed 178 documents—be they contractor agreements, purchase orders, or verification letters—that were submitted in H-1B petitions to USCIS.

The government also adduced evidence suggesting that Narang knew the fraudulent nature of EcomNets's business model. Witnesses testified that it was common knowledge that EcomNets never

intended to place any beneficiary in its Danville, Virginia warehouse. One employee also testified that Narang simply smiled when told that Bhattacharya should not be signing documents under the false name "Sam Bose." That same employee witnessed Narang participate in forging beneficiary signatures on offer letters to be submitted with H-1B petitions. Narang also maintained a list of companies involved in the scheme, which names should be used to sign on behalf of each, and other pertinent information for each company. Narang stressed to co-workers the importance of not interchanging this information on applications.

II.

On April 26, 2016, a grand jury returned an indictment against six employees of EcomNets and its shell companies. Narang was charged with conspiracy to commit visa fraud in violation of 18 U.S.C. § 371 and two counts of visa fraud in violation of 18 U.S.C. § 1546(a). On August 18, 2016, Narang pleaded guilty to one substituted count of wire fraud charged in a criminal information. As part of her plea agreement, Narang promised to cooperate by testifying against co-conspirators. The court subsequently dismissed all original indictment counts against Narang.

Two of Narang's co-defendants—Vikrant Jharia and Bhattacharya—went to trial. During trial, the two raised *Brady* and *Giglio* violations. Based on the government's discovery errors, the district court dismissed the indictment against them. Narang and her remaining co-defendants—Kosuri, Smriti Jharia, and Raimondo Piluso, who also pleaded guilty—

subsequently moved to dismiss their charges in light of the government's misconduct. The court declined to dismiss the remaining charges but gave each defendant the option to withdraw their guilty pleas or renegotiate new plea deals with the government.

Jharia and Kosuri decided to simply renegotiate, rather than withdraw, their guilty pleas. At a status conference, Narang's counsel sought clarification on whether Narang's dismissed indictment counts needed to be presented a second time to the grand jury. J.A. 169 ("[T]he government has also taken the position that—you may recollect Ms. Narang pled to an information. The underlying indictment was dismissed, and the government's position is that the Court unilaterally can restore the indictment. My position is that they need to go back to the grand jury . . . ."). The court informed counsel that he could "brief [the issue] for me if you want to, but my . . . gut instinct is there's no reason why the Court cannot reinstate the grand jury indictment." *Id.* The court then stated that Narang needed to decide if she was formally withdrawing her plea. If so, the court stated it would "vacate the plea colloquy and the findings connected with the plea, [and] reinstate the indictment against Ms. Narang," which would provide "the legal structure of the case." J.A. 171.

Narang filed a second motion to dismiss the information but did not challenge the government's or district court's ability to reinstate the earlier indictment. In its response, the government asked the district court to both deny Narang's motion to dismiss and reinstate the charges in the original indictment. At a hearing, the court denied Narang's original and second motions to dismiss and stated: "[T]he government . . . wanted the Court to vacate

your client's guilty plea, reinstate the indictment, and set the case for trial. I'm not prepared to do that yet. I think—unless you're certain as to how your client wants to proceed at this time . . . ." J.A. 180. Narang's counsel immediately indicated that Narang was withdrawing her guilty plea and would like to proceed to trial. The parties and court then discussed potential trial dates with no further discussion of the indictment.

The court never entered a formal order reinstating the indictment, and the issue was never raised again by either party. Instead, Narang, the government, and the court all appear to have proceeded on the clear understanding that the indictment had been reinstated. The morning of trial, Narang moved "to exclude evidence of acts that are not *within the indictment*." J.A. 206 (emphasis added). After the court denied that motion, the parties conducted a one-day bench trial on the counts of conspiracy to commit visa fraud and visa fraud with which Narang was originally charged. The parties made specific references to the indictment counts during closing arguments. *See, e.g.*, J.A. 500 (Narang's counsel noting that "Ms. Narang is charged in Count 1 with conspiracy, [and] Counts 6 and 7 with specific misstatements"). And at the conclusion of the trial, Narang filed a motion to dismiss the indictment without discussing any error in its reinstatement.

In a written order filed after trial concluded, the court noted that it had "reinstated the original indictment that had charged Narang with one count of conspiracy to commit visa fraud and two counts of visa fraud." J.A. 545. The court then denied Narang's motion to dismiss the indictment and found Narang

guilty beyond a reasonable doubt on each count. The court ultimately sentenced Narang to six months of incarceration and two years of supervised release. Narang timely appealed the court's judgment.

III.

On appeal, Narang contends that the district court lacked jurisdiction over her indictment counts because the district court dismissed but never validly reinstated those charges. Second, Narang argues that the court lacked jurisdiction both because the immigration laws did not prohibit EcomNets's third-party staffing model and because those same laws were too uncertain to make her conduct a crime against the United States. Third, Narang challenges the sufficiency of the evidence used to convict her.

We review de novo whether the district court had jurisdiction over Narang's prosecution. *United States v. Barton*, 26 F.3d 490, 491 (4th Cir. 1994). Non-jurisdictional errors that were forfeited below are reviewed for plain error. *United States v. Olano*, 507 U.S. 725, 732 (1993).

We review the sufficiency of the evidence following a bench trial under a deferential standard. We ask whether the court clearly erred in its factual findings and whether the district court's "ultimate" finding of guilt is supported by substantial evidence. *United States v. Lockhart*, 382 F.3d 447, 451 (4th Cir. 2004). Substantial evidence is that which, "viewed in the light most favorable to the Government," would permit any reasonable factfinder to find the elements established beyond a reasonable doubt. *United States v. Burgos*, 94 F.3d

849, 863 (4th Cir. 1996) (en banc) (quoting *Burks v. United States*, 437 U.S. 1, 17 (1978)).

IV.

A.

Narang first argues that the district court's dismissal of and failure to reinstate her indictment deprived the district court of jurisdiction over her criminal trial. Three statutes guide our resolution of this issue. First, 18 U.S.C. § 3231 gives district courts "original jurisdiction . . . of all offenses against the laws of the United States." 18 U.S.C. § 3231. A second statute, 18 U.S.C. § 3731, governs appellate jurisdiction over government appeals in criminal cases. That provision states that "an appeal by the United States shall lie to a court of appeals from . . . [an] order of a district court dismissing an indictment . . . within thirty days after the . . . order has been rendered." *Id.* § 3731. Third, 18 U.S.C. § 3296 permits district courts to revive previously dismissed indictments under specific conditions—namely, when (1) the original indictment counts were filed within the statute of limitations, (2) the indictment was dismissed pursuant to an agreement to plead to substituted charges, (3) the defendant later successfully moved to vacate that guilty plea, and (4) the government moves for reinstatement within sixty days of the plea's vacatur. *Id.* § 3296(a)(1)–(4).

Narang argues that the interplay of § 3731 and § 3296 deprived the district court of jurisdiction over the indictment counts. According to Narang, § 3731 is a jurisdictional bar on the district court's ability to

reconsider its prior dismissal of an indictment after thirty days. And because § 3731 is jurisdictional, § 3296 must also be jurisdictional because it operates as a limited exception to reopen the court's otherwise final order. But Narang believes the government did not properly move for—and the district court did not properly order—reinstatement of the indictment under § 3296, so the court did not have jurisdiction over her charges. The government contests Narang's argument that it and the district court did not comply with the requirements of § 3296. But we need not decide that question: Even assuming the indictment was not properly reinstated pursuant to that statute, Narang cannot demonstrate that the error was jurisdictional or that the error satisfies plain error review.[1]

We admit that the seeming lack of a valid charging document bears indicia of a jurisdictional defect—indeed, one may wonder what supports the court's jurisdiction in the absence of such a document. However, the Supreme Court held in *United States v. Cotton* that a federal court's jurisdiction over criminal cases turns entirely on the "statutory or constitutional *power* to adjudicate the case." 535 U.S. 625, 630 (2002) (cleaned up). Following *Cotton*, we have explained "that the

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[1] The government argues that Narang raised and then abandoned this argument and asks us to find the argument waived. The government overplays its hand. Narang questioned whether the court could unilaterally restore her indictment and never pressed the issue when invited to do so by the court. But Narang's mere failure to press the claim is not the sort of intentional, explicit withdrawal of an identified issue required for waiver. *See United States v. Robinson*, 744 F.3d 293, 298 (4th Cir. 2014) (citing *United States v. Rodriguez*, 311 F.3d 435, 437 (1st Cir. 2002)).

[constitutional] grand jury right, because waivable, does not involve subject-matter jurisdiction." *United States v. Hartwell*, 448 F.3d 707, 717 (4th Cir. 2006).

Modern courts have declined to read jurisdictional import into indictment defects because the judicial power to hear criminal prosecutions stems from § 3231, which confers subject-matter jurisdiction over all crimes against the United States. *See, e.g.*, *id.* at 716 ("Subject-matter jurisdiction (in the sense of judicial power) over federal criminal prosecutions is conferred on district courts by 18 U.S.C. § 3231."). Accordingly, we ask whether something in this case established the court's subject-matter jurisdiction by making clear the government was prosecuting federal offenses. *See United States v. Titterington*, 374 F.3d 453, 459 (6th Cir. 2004) (noting that if the government prosecuted state crimes, this would be "[a] true jurisdictional problem"); *United States v. McIntosh*, 704 F.3d 894, 902–03 (11th Cir. 2013) (noting that a conviction secured prior to the indictment's dismissal sufficed to "establish[] an offense against the United States").

Several unique facts compel the conclusion that the court retained subject-matter jurisdiction because Narang was being tried for crimes against the United States. First, no one disputes that Narang was originally charged pursuant to a valid indictment alleging conspiracy and two substantive counts of visa fraud—all federal offenses. Those charges were dismissed, but Narang's underlying criminal case continued pursuant to a substituted charge of mail fraud—itself a federal offense. Thus, at all times, Narang was before the court to answer for a crime against the United States. Second, § 3296

permitted reinstatement of those dismissed charges as part of an ongoing criminal case without new presentment to a grand jury. 18 U.S.C. § 3296. Indeed, the language appears to make that reinstatement *mandatory* when timely requested by a prosecutor. *See id.* (noting the charges "*shall* be reinstated" (emphasis added)). Thus, reinstatement was clearly a ministerial step. Third, the government and the court clearly attempted to and believed they had reinstated the charges. Fourth, the case was retried by all parties on the basis of the original charges. On these facts, any technical failure to comply with § 3296 does not call into question the subject-matter jurisdiction of the court to try the three specific federal charges alleged in the original indictment.[2]

If Narang had objected on § 3296 grounds, the government or court could have easily remedied the error—especially because reinstatement is ministerial, not discretionary. If the court had identified the error, it too could have easily requested the government move to reinstate the indictment and then enter a pro forma order. Any technical issues with the reinstatement of Narang's

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[2] Narang argues that the broad grant of jurisdiction pursuant to § 3231 must yield to the specific limitations on that jurisdiction imposed by § 3731 and § 3296. But she fails to persuade us that the combined effect of the two statutes has jurisdictional import. Even if § 3731 imposes a jurisdictional limit on a district court's authority to reconsider the merits of an indictment dismissal, § 3296 does not permit *reconsideration* of that previous order as erroneously granted. The statute serves an entirely different function than § 3731— namely, it mandates the reinstatement of previously dismissed charges as part of an ongoing case following a defendant's withdrawal of a guilty plea to substituted charges.

indictment are less significant than other procedural errors courts have declined to treat as jurisdictional. *See Cotton*, 535 U.S. at 631–62 (missing indictment element); *Hartwell*, 448 F.3d at 714–17 (improperly proceeding by information for capital offense).

Finally, the structure of § 3296 suggests the sixty-day deadline to move for reinstatement of an indictment is not jurisdictional. In relevant part, the statute requires "the United States [to] move[] to reinstate the dismissed counts within 60 days of the date on which the order vacating the plea becomes final." 18 U.S.C. § 3296(a)(4). The Supreme Court has held that Congress's decision to place a filing deadline in a separate part of a statutory scheme from its jurisdictional grant suggests the deadline is merely a claimsprocessing rule. *See United States v. Kwai Fun Wong*, 575 U.S. 402, 411–12 (2015). Here, the court's subject-matter jurisdiction is granted by § 3231, which does not condition the court's jurisdiction on compliance with the reinstatement provision.

Of course, the fact that an error is not jurisdictional does not mean it is not reversible. But Narang spends little time discussing how this Court should address the district court's errors if they are not jurisdictional. Because Narang did not press this argument to the district court, we are constrained to review for plain error. *Olano*, 507 U.S. at 731–32. Even assuming the district court plainly erred in a manner that violated Narang's substantial rights, we would not exercise our discretion to correct the error because it did not seriously affect the fairness, integrity, or public reputation of Narang's trial. *See United States v. Cedelle*, 89 F.3d 181, 186 (4th Cir. 1996) (asking whether "the proceedings resulted in a

fair and reliable determination of . . . guilt"); *United States v. Collins*, 982 F.3d 236, 242 (4th Cir. 2020) (finding fairness was not affected where defendant had the opportunity to "fully litigate" charges notwithstanding the error). We decline to overturn the otherwise fair and reliable results of Narang's trial on that basis.

B.

Narang next argues her conviction must be overturned because the government's fraud theory was a thinly veiled attack against third-party staffing, which she contends was not clearly prohibited until after trial. Narang frames the issue as a jurisdictional one, seemingly arguing her conduct did not involve a crime against the United States. In advancing her theory, Narang argues that the immigration regulatory scheme for H-1B visas either did not, or at least did not clearly, prohibit the third-party staffing model used by EcomNets. Narang contends that the government is therefore prosecuting Narang for her participation in a staffing model that was not clearly criminalized, given the complexity and ambiguity of the relevant regulations. We need not delve deeply into these arguments, but Narang attempts to isolate specific portions of EcomNets's fraudulent scheme—for instance, failing to secure non-speculative work placements or benching beneficiaries—and argue they were either permitted or not within the purview of USCIS.

These contentions attempt to complicate a quite simple criminal rule: applicants may not make materially false statements in immigration

applications. Regardless of whether EcomNets's underlying business model would violate immigration laws and regulations surrounding H-1B visas, Narang's charges relate to *fraud* in the visa application process. And the indictment charged both substantive violations of and conspiracy to violate 18 U.S.C. § 1546(a), which does not criminalize a staffing model, but making materially *false statements* in an immigration application. Narang's argument does not implicate the district court's power to hear this case. *See Cotton*, 535 U.S. at 630–31 (reaffirming that district courts have jurisdiction over all crimes against the United States, and any objection that the indictment fails to allege a crime is a merits argument); *Lamar v. United States*, 240 U.S. 60, 64 (1916) ("Jurisdiction is a matter of power and covers wrong as well as right decisions.").

V.

Having disposed of Narang's jurisdictional arguments, we turn to the sufficiency of the evidence at trial. We conclude Narang's arguments are without merit, given the impressive volume of testimonial and documentary evidence the government presented at trial and the court's thorough evaluation of the evidence. We begin by examining Narang's conspiracy count before turning to her two substantive counts of immigration fraud.

A.

Conspiracy to commit immigration fraud is governed by 18 U.S.C. § 371, which criminalizes "two

or more persons conspir[ing] . . . to defraud the United States . . . [when] one or more of such persons do any act to effect the object of the conspiracy." 18 U.S.C. § 371. Here, the government accused Narang of conspiring to commit visa fraud pursuant to 18 U.S.C. § 1546(a), and therefore must establish (1) an agreement between coconspirators to commit visa fraud; (2) Narang's willing participation in that conspiracy; and (3) an overt act by a co-conspirator to further the conspiracy. *United States v. Camara*, 908 F.3d 41, 46 (4th Cir. 2018). Narang must have also participated in the conspiracy with at least the same mens rea required for the substantive act of visa fraud—namely, knowledge. *See Ingram v. United States*, 360 U.S. 672, 678 (1959); *see also* 18 U.S.C. § 1546(a). Both Narang's knowledge of and participation in the conspiracy can be established through circumstantial evidence. *United States v. Tucker*, 376 F.3d 236, 238 (4th Cir. 2004).

We have no difficulty sustaining the court's order on this count, which was based on substantial evidence. The court correctly concluded that the "sustained efforts" of EcomNets employees "to prepare false LCAs and I-129 petitions," as well as the "coordinated and collaborative manner" in which those petitions were prepared, revealed the existence of a conspiracy, especially given consistent testimony that employees knew they were submitting false information. J.A. 558. The evidence at trial revealed Narang was intimately involved in the scheme. And Narang's responsibilities for placing beneficiaries with outside employers, her communications with other co-conspirators, and her signatures on false documents submitted to USCIS are all "fundamentally inconsistent" with a lack of

knowledge about the conspiracy. J.A. 571. Furthermore, witnesses testified it was common knowledge that H-1B beneficiaries would not work at the Danville warehouse. Evidence also established Narang's knowledge that Bhattacharya signed documents under false names. This overwhelming evidence of a collaborative effort to falsify I-129 petitions also easily establishes the proof of an overt act. Accordingly, there was more than substantial evidence to support the court's finding of guilt on this count.

On appeal, Narang does not directly challenge this evidence nor meaningfully distinguish between her conspiracy and visa fraud counts. Instead, Narang makes a series of arguments about the elements of visa fraud, without specifying whether they are intended to defeat the existence of a criminal conspiracy or instead her underlying fraud counts. Regardless, each argument can be easily dispensed with.

First, Narang contends the government did not prove the materiality of statements made to USCIS adjudicators. A statement made to public officials is material when "it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988) (cleaned up). Narang contends the government has not proven the existence of a material statement because the representations to USCIS related to beneficiaries' work location and wages, which she argues are material to DOL's consideration of an LCA and whether it was complied with. But Narang argues that such statements are immaterial to USCIS's focus on a

bona fide employment relationship and qualifying position. This argument ignores USCIS adjudicator testimony that these statements would be considered material when considering whether to accept an H-1B petition, particularly for staffing companies, which the agency more carefully scrutinizes. The court did not err in finding that the false representations made to USCIS were material.

Second, Narang asserts the court erred in finding that Narang and her co-conspirators had the required mens rea to commit visa fraud because the court improperly rejected her advice-of-counsel defense. Specifically, Narang contends the court erred by treating it as an affirmative defense, requiring her to show both full disclosure to EcomNets's outside counsel and good faith reliance on counsel's advice. For support, Narang cites a district court opinion stating that "good faith reliance on the advice of an expert negates a defendant's *mens rea*, and therefore is not an affirmative defense." *United States v. Stevens*, 771 F. Supp. 2d 556, 566 (D. Md. 2011) (citing *United States v. Miller*, 658 F.2d 235, 237 (4th Cir. 1981)). Regardless of whether the defense is technically an affirmative one, we have held advice of counsel rebuts mens rea only when (1) a defendant fully discloses pertinent facts to an attorney; and (2) relies in good faith on that advice. *See Miller*, 658 F.2d at 237; *United States v. Westbrooks*, 780 F.3d 593, 596 (4th Cir. 2015).[3] Narang failed to either call

[3] Narang argues the court also erred in relying on *United States v. Bostian*, 59 F.3d 474, 480 (4th Cir. 1995), to hold that she could not rely on legal advice passed through Kosuri as an intermediary. We need not decide whether *Bostian* applies here because sufficient evidence supports the court's conclusion

attorneys or present other evidence revealing the full extent of the company's disclosure to outside counsel. The evidence at trial is entirely inconsistent with a good-faith reliance on any advice received. And given the court's thorough analysis of Narang's intent to make and knowledge of false information provided to USCIS, it did not impermissibly shift the burden of proof to the defense. *See Westbrooks*, 780 F.3d at 596.

Third, Narang argues the government did not prove that any false, material statement was made in an immigration document required by law because it failed to allege a violation of the regulations in effect when the statements were made. *See Caring Hearts Pers. Home Servs. v. Burwell*, 824 F.3d 968, 970 (10th Cir. 2016) (noting prosecution in Medicare fraud case relied on "more onerous" version of regulations than those in place at the time of the fraud). At the outset, § 1546(a) requires that the statement be made "in any application, affidavit, or other document required by the immigration laws." 18 U.S.C. § 1546(a). There is no dispute that I-129 petitions were required for beneficiaries to receive an H-1B petition. *Cf. United States v. Jimenez*, 972 F.3d 1183, 1192 (11th Cir. 2020) (concluding that I-140 forms are documents required by immigration laws and thus satisfy this element). And the district court questioned the USCIS adjudicator at trial to confirm that the I-129 instructions presented by the government were similar in substance to those in effect at the time of the conspiracy. Accordingly, there was substantial evidence that the statements were made in an

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that—notwithstanding that case—the facts are inconsistent with good-faith reliance on counsel's advice by Narang.

application required by immigration laws and regulations.

B.

Finally, we contend with Narang's two substantive convictions for visa fraud pursuant to 18 U.S.C. § 1546(a). In particular, the government charged Narang with immigration fraud related to EcomNets's H-1B applications for "Chandra B." and "Gautami S." J.A. 61. One way of proving visa fraud is to show a defendant (1) knowingly (2) made a false statement (3) under oath (4) that was material to the immigration decision and (5) that the false statement was made in a document required by United States immigration laws or regulations. 18 U.S.C. § 1546(a); *United States v. Jabateh*, 974 F.3d 281, 302–03 (3d Cir. 2020). Importantly, Narang did not personally sign any of the visa petitions under penalty of perjury. Instead, she merely signed documents containing falsehoods that were included as part of the overall I-129s certified by other co-conspirators. The court did not resolve whether § 1546(a)'s oath element is satisfied by a false statement not made under penalty of perjury but contained in an application that is itself submitted under penalty of perjury. Instead, the court relied on co-conspirator liability pursuant to *Pinkerton v. United States*, 328 U.S. 640 (1946), to convict Narang for her co-conspirator's substantive visa fraud violations.[4] *Pinkerton* liability permits a

[4] The district court also analyzed whether Narang could be held liable under a theory of aiding and abetting pursuant to 18 U.S.C. § 2. We do not discuss this alternate holding, given the sufficiency of the evidence to support *Pinkerton* liability.

coconspirator to be convicted as a principal for crimes committed by a co-conspirator when "reasonably foreseeable and in furtherance of the conspiracy." *United States v. Ashley*, 606 F.3d 135, 143 (4th Cir. 2010). We take each count in turn.

One visa-fraud count involved an I-129 submitted by "Data Systems" on behalf of beneficiary Chandra B. Unindicted co-conspirator Ravi Kaur signed multiple certifications under penalty of perjury that gave the false impression Chandra B. would be subcontracted to work at EcomNets's Green Technology Center. Kaur testified that she knew her representations were false. And the court did not clearly err in finding these representations material in light of the adjudicator's trial testimony that false representations as to location or the employer-employee relationship could result in the denial of a petition. Nor did the court err in concluding that this instance of visa fraud was both in furtherance of EcomNets's overall conspiracy and foreseeable to Narang. Indeed, the submission of this I-129 was part of the company's overall scheme to fraudulently procure H-1B visas. Furthermore, Narang signed false documents submitted with the petition representing a non-existent contractor relationship between Data Systems and EcomNets. Accordingly, there was substantial evidence to support Narang's conviction under a *Pinkerton* theory.

The other visa-fraud count involved a similar I-129, this time submitted by United Tech on behalf of Gautami S. and again including false documents signed by Narang. As the court correctly found, the I-129 itself was signed under oath by "Sonia Basu" and contained falsehoods as to Gautami S.'s future

role as a Green Technology Center contractor. The trial did not establish who signed the document. But the court did not clearly err in concluding that it was one of Narang's co-conspirators in light of trial testimony that this false name was used to sign documents on behalf of United Tech, and that the name was used falsely in Gautami S.'s petition. *See* J.A. 373 (testimony of Kaur agreeing that "a fake person was certifying as to the truthfulness of these documents"). For the same reasons as the other petition, the court did not err in concluding these statements were false, material, made knowingly in furtherance of the overall conspiracy, and foreseeable to Narang. Substantial evidence supports Narang's conviction on this count.

VI.

For the foregoing reasons, the district court's judgment is

AFFIRMED

FILED: August 9, 2021

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-4850
(1:16-cr-00043-LMB-5)

UNITED STATES OF AMERICA
Plaintiff – Appellee

v.

RICHA NARANG
Defendant – Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: August 9, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

1:16-cr-43 (LMB)

UNITED STATES OF AMERICA

V.

RICHA NARANG,
Defendant.

MEMORANDUM OPINION

After a bench trial of Richa Narang ("Narang" or "defendant") on one count of conspiracy to commit visa fraud and two counts of visa fraud, the Court took the case, as well as defendant's motion to dismiss the indictment for insufficient evidence, under advisement. This Memorandum Opinion constitutes the Court's findings of fact and conclusions of law. For the reasons stated below, defendant's motion to dismiss will be denied, and she will be found guilty of all three charges.

I. BACKGROUND

This case had a difficult procedural history, which resulted in a significant delay in its resolution.

A. Original Indictment and Proceedings

On April 26, 2016, a federal grand jury in the Eastern District of Virginia returned a 21-count indictment charging Narang and five codefendants-Raju Kosuri ("Kosuri"), Smriti Jharia ("S. Jharia"), Vikrant Jharia ("V. Jharia"), Sanchita Bhattacharya ("Bhattacharya"), and Raimondo Piluso ("Piluso")-with various offenses related to an alleged H-1B visa fraud scheme. Specifically, Narang was charged with one count of conspiracy to commit visa fraud in violation of 18 U .S.C. § 371 (Count I)[1] and two counts of visa fraud in violation of 18 U.S.C. § 1546(a) (Counts 6 and 7).[2] At the arraignment,

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[1] Section 371 makes it a crime for "two or more persons [to] conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof[,] in any manner or for any purpose," so long as any of the conspirators "do[es] any act to effect the object of the conspiracy." 18 U.S.C. § 371. If the object of the conspiracy is a felony offense, § 371 exposes a defendant to up to five years' imprisonment. See id.

[2] Section 1546 prohibits various forms of fraud in the visa context. For example, § l 546(a) applies to any individual (i) who "knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized *stay or* employment in the United States"; (ii) who, "when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States[,] personates another . .. or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity"; or (iii) who "knowingly makes under oath, or as permitted under penalty of perjury ... knowingly subscribes as true, any false statement with respect

Narang and her codefendants entered not guilty pleas to all charges and requested trial by jury.

Narang subsequently reached a plea agreement under which she agreed to plead guilty to a one-count criminal information charging her with wire fraud[3] and to cooperate fully with the prosecution. ln exchange, the government agreed to move to dismiss Counts 1, 6, and 7 of the indictment pending against Narang and agreed not to prosecute her further for any offenses related to the alleged visa fraud scheme. On August 18, 2016, after conducting a plea colloquy under Rule 11 of the Federal Rules of Criminal Procedure, the Court accepted Narang's guilty plea, found her guilty of wire fraud, and dismissed the indictment against her. Narang's

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to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact." 18 U.S.C. § 1546(a). A first-time conviction under § 1546(a), at least where the fraud was not intended to facilitate international terrorism or drug trafficking, exposes a defendant to a maximum of 10 years' imprisonment. See id.

[3] See 18 U.S.C. § 1343 ("Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or prope1ty by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.").

codefendants Kosuri, S. Jharia, and Piluso also reached plea agreements with the government.[4]

On September 22, 2016, a federal grand jury returned a superseding nine-count indictment charging the remaining defendants, Bhattacharya and V. Jharia, with various offenses related to the alleged H-1B fraud scheme, and the original indictment was dismissed. Bhattacharya and V. Jharia went to trial later that year. On the third day of trial-after Narang had been called as a government witness the previous day-counsel for Bhattacharya and V. Jharia advised the Court of potential violations of the government's obligations under Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and the Jencks Act, Pub. L. No. 85-269, 71 Stat. 595 (1957) (codified as amended at 18 U.S.C. § 3500). For example, the defendants identified undisclosed prosecutorial notes from interviews conducted with government witnesses, including Narang, that they claimed contained material impeachment evidence. See, e.g., Jury Trial Tr. [Dkt. No. 160] 504-06. The defendants also complained that the prosecution had turned over hundreds of pages of investigative reports at midnight before the third day of trial. See id. at 512-13. In addition, the defendants raised concerns about whether the government had timely disclosed an offer of immunity to a witness and

[4] Kosuri pleaded guilty to conspiracy to commit visa fraud (Count 1 of the indictment), visa fraud (Count 2), and making a false statement to the Small Business Administration (Count 17); S. Jharia pleaded guilty to unlawful procurement of citizenship or naturalization (Count 20); and Piluso pleaded guilty to making a false statement to the Small Business Administration (Count 19). All other charges pending against those defendants were dismissed.

whether the government had produced all witness statements pursuant to the Jencks Act. See, e.g., id. at 504-05, 516, 522.

Based on these alleged discovery abuses, Bhattacharya and V. Jharia jointly moved to dismiss the superseding indictment with prejudice. Jury Trial Tr. [Dkt. No. 160] 511. In response, the chief of the criminal division of the U.S. Attorney's Office for the Eastern District of Virginia, speaking on behalf of the government, acknowledged that he "c[ould] not say ... with any confidence that [the government had] met [its] discovery obligations" but urged the court to declare a mistrial so that the defendants could be retried. Id. at 542. The Court concluded that the government had violated its discovery obligations and dismissed the superseding indictment against Bhattacharya and V. Jharia with prejudice. The government did not appeal that order of dismissal.

B. Withdrawal of the Previous Guilty Pleas

One week after dismissing the superseding indictment, the Court granted the four remaining codefendants' motions to continue their sentencing hearings to enable them to engage in additional discovery with the government and "evaluate the impact, if any, of the problems ... which led to the dismissal of the charges against" Bhattacharya and V. Jharia. Order [Dkt. No. 166] 1. The Court advised each remaining defendant to consider whether to proceed to sentencing or move to withdraw his or her guilty plea. Status Conf. Tr. [Dkt. No. 291] 16. The Court further advised the defendants that if they elected to withdraw their guilty pleas, any future

proceedings could be "randomly reassigned to a different judge for trial" if they wished. See id. at 16-17.

Piluso was the first to move to withdraw his guilty plea. The government not only consented to the withdrawal of the plea but also, after having reviewed the evidence concerning Piluso's role in the alleged fraud scheme, moved to dismiss the indictment against him. The Court granted Piluso's motion to withdraw his guilty plea and the government's motion to dismiss the indictment.

Narang, Kosuri, and S. Jharia also moved to withdraw their guilty pleas and to dismiss their respective charging documents, motions which the government opposed. The Court concluded that despite the heavy presumption of veracity afforded to statements made during plea colloquies, the fairest procedure in light of what had happened was to permit the defendants to withdraw their guilty pleas, at which point each could proceed to trial or negotiate a new plea agreement with the government. See Mots. Hr'g Tr. [Dkt. No. 251] 11-12. The Court also reiterated that each defendant could elect to have future proceedings reassigned to a different district judge. Id. at 12-13.

S. Jharia and Kosuri elected to negotiate new plea agreements with the government. See Status Conf. Tr. [Dkt. No. 266] 3. Both declined to have their cases reassigned to a new judge, and the Court accepted both defendants' new guilty pleas.[5] On

[5] Both defendants ultimately pleaded guilty to the same offenses for which they had previously admitted guilt: S. Jharia to unlawful procurement of citizenship or naturalization (Count 20 of the original indictment) and Kosuri to conspiracy to commit visa fraud (Count 1), visa fraud (Count 2), and making

December 22, 201 7, Kosuri was sentenced to 28 months' imprisonment to be followed by three years' supervised release, and S. Jharia was sentenced to one year of supervised probation.

C. Narang's Not Guilty Plea and Bench Trial

Unlike S. Jharia and Kosuri, Narang elected to enter a plea of not guilty and proceed to trial. When asked whether "th[e] case need[ed] to be reassigned to another judge," counsel for Narang responded that she "would prefer that [the same judge] keep the case." Status Conf. Tr. [Dkt. No. 266] 11-12. Rather than requiring the government to secure a new grand jury indictment, the Court reinstated the original indictment that had charged Narang with one count of conspiracy to commit visa fraud and two counts of visa fraud. Narang also elected to waive her right to trial by jury and requested a bench trial, and both parties submitted proposed findings of fact and conclusions of law for the Court's consideration.[6]

The Court conducted a one-day bench trial during which the government called six witnesses: Kosuri, Narang's codefendant; Ravinder Kaur ("Kaur"), an unindicted coconspirator who testified under an immunity agreement; Divya Chopra ("Chopra"), on whose behalf Narang and her

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a false statement to the Small Business Administration (Count 17).

[6] Although Narang's proposed findings and conclusions were simply pro forma statements that the government "has failed to meet its burden of proving every element of the crime charged beyond a reasonable doubt," see Proposed Findings of Fact & Conclusions of Law [Dkt. No. 309], the government's proposed findings and conclusions were more detailed.

coconspirators attempted to obtain an H-1B visa; Ramesh Venkata ("Venkata"), whose wife was another H-1B visa beneficiary working with Narang and her coconspirators; and Michael Violett ("Violett") and Laura Hutson ("Hutson"), two U.S. Citizenship and Immigration Services ("USCIS") officers.[7] Narang called only one witness: Rajiv S. Khanna ("Khanna"), who had previously been qualified as an expert on employment immigration law.

After the conclusion of the evidence and closing arguments, Narang moved to dismiss the indictment for insufficient evidence[8] and has twice supplemented that motion.[9]

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[7] The government offered Violett, a longtime USCIS officer with substantial experience, as an expert on the H-1B visa program. Defendant did not object, and the Court found him qualified to offer expert testimony. Hutson, also a longtime USCIS officer, did not testify as an expert witness, but rather as the USCIS officer who carried out the investigation of the visa fraud conspiracy at issue here.

[8] Defendant's motion for dismissal of the indictment was brought under Rule 29 of the Federal Rules of Criminal Procedure, which establishes the applicable procedures for a motion for judgment of acquittal both before and after a case is submitted to a jury. As several courts of appeals have observed, "a plea of not guilty in a trial to the bench is the functional equivalent of a motion for acquittal in a jury trial" because the judge in a bench trial "implicitly rules on the sufficiency of the evidence by rendering a verdict of guilty." See, e.g., United States v. Atkinson, 990 F.2d 501, 503 (9th Cir. 1993). Accordingly, Narang's "motion to acquit is superfluous," id., and is necessarily denied in light of the Court's finding that she is guilty on all three charges.

[9] The first of Narang's supplemental filings, a two-page document styled as an "Addendum" to her motion to dismiss

II. FACTUAL FINDINGS[10]

The evidence at trial revealed that Kosuri created and operated a wide-reaching and complex

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the indictment, points to Sessions v. Dimaya, 138 S. Ct. 1204 (2018), in which the Supreme Court held that the residual clause definition of "crime of violence" in 18 U.S.C. § 16(b) is unconstitutionally vague. The Addendum's argument amounts to just one line: "No less unenforceable for vagueness are the statutory and regulatory 'requirements' of the Hl-B visa process as touted by the Government in its pursuit of [Narang]." Addendum to Mot. to Dismiss Indictment [Dkt. No. 351 J 2. This assertion amounts to a reiteration of Narang's arguments that the immigration laws and regulations are simply too complex or unclear to support a finding of visa fraud in this case. As elaborated below, those arguments are meritless.

Narang's "Second Addendum" argues that the delay between the date of the bench trial and the issuance of a decision violates her Sixth Amendment right to a spee dy trial. Second Addendum to Mot. to Dismiss Indictment [Dkt. No. 355] 1, 3. The speedy trial right chiefly exists "to assure that cases are brought to trial" in a timely fashion. Barker v. Wingo, 407 U.S. 514, 529 (1982); see also Smith v. Hooey, 393 U.S. 374, 377-78 (1969) (observing that the speedy right serves to "prevent undue and oppressive incarceration prior to trial" and to "limit the possibilities that long delay will impair the ability of an accused to defend himself'). There is no dispute that Narang's bench trial was conducted in a timely fashion. Although a delay between a bench trial and the resulting judgment implicates a defendant's speedy trial right, the Court does not find that the delay in Narang's case was so extensive or unjustified as to merit dismissal of the indictment. Moreover, Narang has been on bond throughout these proceedings and therefore has not been subjected to any "oppressive incarceration" either before or after trial.

[10] References in the form "GEX __ " are to the government's exhibits and "DEX_" to defendant's exhibits. Unless otherwise stated, all pincite references to the government's exhibits are to the Bates numbering.

visa fraud scheme. The evidence further revealed that Narang willingly joined and played a major role in that scheme, including through her knowing and intentional production of fraudulent documents that would be submitted to the USCIS and that would be material to that agency's evaluation of the H-1B visa applications.

A. The H-1B Visa Program

The H-1B visa program allows U.S. businesses to employ foreign skilled workers on a temporary basis to fill specified needs. An H-1B visa is typically valid for only six years, and upon its expiration the visa recipient (known in immigration-law parlance as the "beneficiary") must pursue lawful immigration status through other avenues or return to his or her country of origin. To be eligible for an H-1B visa, the beneficiary must have at least a bachelor's degree (or the equivalent) or "[h]ave education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation." See 8 C.F.R. § 214.2(h)(4)(iii)(C) (2015) (listing beneficiary qualifications).[11] Because the number of H-1B visas available each year is limited and usually exceeded by the number of H-1B petitions filed, the government uses a lottery system to decide which petitions it will adjudicate. H-1B petitions not selected in the lottery are automatically rejected.

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[11] All references to the Code of Federal Regulations (C.F.R.) or the United States Code (U.S.C.) in this subsection are to the 2015 versions.

A U.S. employer seeking to take advantage of the H-1B program must first file a labor condition application ("LCA") with the U.S. Department of Labor (the "DOL"). See generally GEX 3 (graphical overview of the H-1B visa application process). Each LCA must include, among other things, "'a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed." 8 U.S.C. § l 182(n)(l)(D); see also GEX 1 (outlining the requirements for completing an LCA, including identification of the geographical area of employment and prevailing wage information). An employer may file one LCA seeking DOL approval for multiple positions. An employer submitting an LCA is required to be truthful, and any willful misrepresentation of material fact exposes the employer to administrative remedies, civil fines, and other penalties. See, e.g., id. § 1182(n)(2)(C).

Once the DOL has approved an LCA, the employer must file a Form I-129 petition with the U.S. Department of Homeland Security ("DHS") for each foreign skilled worker it seeks to hire for a position identified in the LCA. See generally GEX 2 (providing instructions for completing I-129 petitions).[12] Although a company may file a I-129 petition on its own behalf, a third-party staffing company also may act as an intermediary between the underlying "client site"-that is, the employer for

[12] Although defendant objected that this version of the instructions expired in October 2013, the Court overruled that objection after Violett explained that no substantive changes had occurred between the older and newer versions. See Bench Trial Tr. [Dkt. No. 358] 26-27.

whom the beneficiary will work-and the government. The I-129 petitioner must demonstrate to the government that the position to be filled by the designated foreign worker is a "specialty occupation position," which is defined as one for which a bachelor's degree or its equivalent is normally required or for which "[t]he nature of the specific duties are so specialized and complex that [the] knowledge required to perform the duties is usually associated with the attainment" of such a degree. See 8 C.F.R. § 214.2(h)(4)(iii)(A).[13] The petition must also specify many details about the position to be filled, including the job duties, expected hours, and length of employment. As with all submissions seeking immigration-related benefits, the petitioner "must sign ... [the] request" and "certif[y] under penalty of perjury that the ... request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct." Id. § 103.2(a)(2) (included as GEX 90A).

Each I-129 petition is assigned to a USCIS adjudications officer. If the petition is deficient or unclear, the officer can seek additional information from the petitioner through a request for evidence ("RFE"). RFEs may cover information about anything from the specific job duties or industry to

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[13] See also 8 C.F.R. § 214.2(h)(4)(ii) ("Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.").

the exact relationship between a staffing company and the underlying employer. See Bench Trial Tr. [Dkt. No. 358] ("Bench Trial Tr.") 25. If after further review a petition is found to be incurably deficient or fraudulent, the USCIS will deny the petition. See id. at 32-33.

If the OHS approves an I-129 petition and authorizes the issuance of an H-1B visa to the foreign worker,[14] the petitioner must inform the worker and begin paying the worker's salary promptly. See 20 C.F.R. § 655.73l(c)(6) (included as GEX 90). Normally, an H-1B beneficiary "shall receive the required pay beginning on the date when [he] 'enters into employment,'" meaning the day when he "first makes [him]self available for work or otherwise comes under the control of the employer." Id. If a beneficiary has not made himself available for work, payment must begin 30 days after the date he is first admitted into the United States or, if already present in the country, within 60 days of becoming eligible to work. Id. If the beneficiary is available for employment and in the United States but the position is not immediately available, the employer has an obligation to pay the beneficiary for nonproductive time. Finally, if during the course of a beneficiary's visa term the underlying conditions of employment change-for example, if the employer no longer needs the foreign skilled worker's services-the employer must notify the USCIS, and the beneficiary's H-1B status will be terminated.

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[14] Although the USC IS must approve the issuance of an H-1B visa, it is the U.S. Department of State, and not the DHS, that ultimately issues nonimmigrant visas.

8. EcomNets and the Fraud Scheme

Kosuri incorporated EcomNets Inc. ("EcomNets") in 2000. GEX 4. Initially, the company was focused on software development; however, around 2011, its focus shifted to obtaining work visas for IT professionals. Most of the individuals for whom Kosuri attempted to procure visas were Indian nationals, many of whom were already living in the United States under dependent visas but were not permitted to work. EcomNets's main offices, at which no more than 10 employees worked, were located in Loudoun County, Virginia. Some time in 2010 or 2011, Kosuri opened an additional facility in Danville, Virginia, which came to be known as the "Green Technology Center." The Danville facility was essentially a warehouse, containing a few computers used for customer data storage. There were never more than three employees working in that facility: two office managers and one technician.

To prevent USCIS from becoming suspicious about his scheme, Kosuri created a number of other companies to be used as the petitioners on H-1B visa applications. These companies were Unified Systems USA Incorporated ("Unified Systems"), see GEX 5; United Tech Inc. ("United Tech"), see GEX 6; United Software Solutions Incorporation ("United Software"), see GEX 7; and Data Systems Inc. ("Data Systems"), see GEX 8. As part of his scheme, Kosuri called these corporate entities "staffing companies" and listed them as such on multiple H-1B applications. The staffing companies' I-129 petitions would claim to be seeking to fill open positions with EcomNets at its Danville facility.

In fact, none of the four "staffing" companies "operated independently" of EcomNets, nor did any have a separate "physical location, staff, [or] business plan." See Bench Trial Tr. 57; id. at 58 (Kosuri acknowledging that the other companies were "all part of EcomNets"). The evidence also clearly established that the Danville facility had no open positions, no need for additional workers, and no work in software development or any other specialized field. See Bench Trial Tr. 58 (Kosuri direct examination: "Q. Were there, in fact, at any time jobs planned for these people at the Danville facility? A. No, there were no jobs there."). Instead, once one of Kosuri's "staffing" companies had secured an H-1B visa, Kosuri and his coconspirators worked to find a job for that beneficiary with third-party companies, many of which were located outside Virginia. Those third-party companies paid EcomNets for the services provided by the visa beneficiaries. In tum, EcomNets retained a portion of that payment and funneled the remainder to the beneficiaries. In essence, Kosuri's scheme was to use the ruse of employment opportunities at the Danville facility to obtain H-1B visas and, once the visas were obtained, to place the visa beneficiaries in undisclosed jobs with unrelated third-party employers, keeping a portion of their salaries for EcomNets's expenses and profit.

Kosuri and his coconspirators went to great lengths to shield their actions from governmental scrutiny, including by using fake names and fraudulent documents. For example, I-129 petitions and other documents submitted by United Software were signed by a "Sam Bose," allegedly United Software's HR Manager. Kosuri testified that no

such person existed and that the name had been made up by Bhattacharya, who would affix a "Sam Bose" signature to United Software documents when prompted by one of her coconspirators. Bench Trial Tr. 60-61. Petitions and other documents submitted by United Tech were signed by a "Sonia Basu," described as United Tech's HR Manager. This was another fictional name Bhattacharya and other coconspirators used to sign documents submitted to the USCIS. On occasion, even visa beneficiary signatures were forged on documents submitted to the government. See id. at 204 (discussing GEX 75, at 22656, which contains a forged signature for beneficiary Chopra). Compare, e.g., GEX 110, at 2019 (showing a signature for Guatami Sundaram ("Sundaram"), one of the visa beneficiaries working with EcomNets), and Bench Trial Tr. 222 (Venkata, Sundaram's husband, affirming that the signature was hers), with, e.g., GEX 110, at 2036 (showing a markedly different signature), and Bench Trial Tr. 223 (Venkata testifying that the signature was not Sundaram's). Once an H-1B visa had been obtained, Kaur, an unindicted coconspirator who worked for Kosuri as an HR employee, would cover the fraud by generating "offer letters" detailing the beneficiary's employer, location, job title, and salary-even when no genuine job had been located. The beneficiary would be required to sign the offer letter regardless of its inaccurate contents. See Bench Trial Tr. 70 (Kosuri direct examination: "Q. Why did you want them to sign offer letters when they got their visas approved? A. Because we need to ... complete the paperwork to keep them employed. You know, they need to have some kind of a job. Q. This is before they even have a job sometimes, right? A. Yes."). To

avoid the obligation of paying its visa beneficiaries in a timely fashion, EcomNets instructed the beneficiaries to file false requests for voluntary leave. Id. at 76-77 (Kosuri: "[O]ur intention is not to ... pay them from the Day One. After they get the project, we want to pay them ... from their salary from that point onwards."); see id. at 78 (Kosuri recognizing that EcomNets's voluntary leave letter policy was inconsistent with the applicable regulations); see also, e.g., GEX 14A (four-month voluntary leave request signed by Deepika Jaiswal). Kosuri and his coconspirators also forged documents that could be used to mislead government adjudicators in response to RFEs. These included false leases, contract documents, and purchase orders designed to convince USCIS officials that there was a bona fide business relationship between the "shell" company that had acted as the I-129 petitioner and EcomNets. See, e.g., id. at 116-18 (discussing GEX 130, a falsified document indicating that United Software had leased office premises in Sterling, Virginia); GEX 110, at 2082 (containing a false purchase order signed by representatives of EcomNets and United Tech).

C. Narang's Role

Kosuri hired Narang as EcomNets's Senior Business Development Manager (at times just called the IT Director) in mid- to late 2013. See GEX 11. Her job was to place "bench" beneficiaries-a term used to describe foreign workers who had been issued H-1B visas but who had yet to begin work-with other companies. See GEX 12, at 228135 (Kosuri stating in an August 2013 email that

Narang would be "[r]esponsible for closing all our bench in [the] next 6 months"). Narang was an attractive candidate in part because she represented on her resume that she had experience with the H-1B visa process. See GEX 9, at 938709. Although Narang had worked as a senior paralegal and case manager for Khanna's immigration firm since 1999, her resume misrepresented both her experience with H-1B visa applications and her role as a supervisor.[15] Once Narang accepted the position, she became the point person for many beneficiaries' questions about the H-1B visa process. See Bench Trial Tr. 156.

The testimony of witnesses and the documentary evidence established beyond a reasonable doubt that Narang was intimately involved in all aspects of the H-1B scheme. Cf. GEX 17 (email from Narang to Kosuri with an attachment outlining the entire recruitment life cycle). She helped to maintain the "bench" list of all H-1B beneficiaries still looking for jobs. She worked alongside EcomNets HR staff in preparing the documentation necessary for LCAs, I-129 petitions, and responses to RFEs. And she was ultimately responsible for obtaining jobs for approved H-1B beneficiaries looking for work in locations other than the Danville, Virginia facility, including as far as California. See, e.g., GEX 23 (referring to a beneficiary whose "relocation preference" was Burbank, California (capitalization altered)); see also GEX 25A (containing a list of "bench" beneficiaries awaiting a job and listing their locations, including Arizona, Connecticut, Illinois,

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[15] See Bench Trial Tr. 280-82 (Khanna explaining that Narang was not involved with H-1B visa applications and did not have a supervisory role in his law firm).

Iowa, New Jersey, New York, North Carolina, and Texas).[16] If beneficiaries were having trouble finding jobs, Narang would prompt them to lie to make themselves more attractive, as for example when she sent a beneficiary sample resumes and instructed the beneficiary to "'fill in" a gap in work experience. See Bench Trial Tr. 195.

Narang also played a major role in preparing key documents needed to carry out Kosuri's scheme. For example, she directed the process by which beneficiaries who had not yet received jobs filed requests for voluntary leave so that EcomNets could avoid paying them while job searches were underway. See, e.g., GEX 14 (email from Narang to two EcomNets human resources employees related to the voluntary leave letters); see also GEX 31 (showing 13 beneficiaries whose petitions were filed by United Software who were on voluntary leave as of May 1, 2014). Compare, e.g., GEX 27 (requesting offer letters for four consultants to be employed by United Software), with, e.g., GEX 28 (requesting voluntary leave letters for the same four consultants). On at least one occasion, Narang went to great lengths to pressure a beneficiary into

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[16] Narang's efforts were not always successful. See, e.g., Bench Trial Tr. 194 (Chopra describing how after her H-1B visa was issued, Narang had difficulty locating a position for her and even instructed her to "look for a project [her]self"); see also id. at 220 (Venkata stating that after Guatami Sundaram's H-1B visa was approved it was difficult to contact Narang and that she did not promptly find Sundaram a job). To make matters more difficult, Narang would reject possible positions if "the rates [were] not matching"-that is, if the prospective position's salary was too low, at least relative to the expected wages stated in the visa application materials, for EcomNets to recover its expenses and earn a profit. Id. at 194-95.

signing a voluntary leave letter, demanding that the beneficiary travel over 10 hours to Virginia for a next-day meeting after she refused to sign. See Bench Trial Tr. 197-99. Narang also ordered other staff to prepare "'offer letters" for beneficiaries that she understood would be signed on behalf of United Software by "'Sam Bose," which was commonly known to be a fake name among EcomNets employees. See id. at 80-81. Indeed, Narang herself confirmed the common awareness that "Sam Bose" was a fictional identity when she sent Kosuri an email attaching documents with blank signatures for Sam Bose as HR Manager for United Software and told Kosuri that they needed to "get the last page ... signed from [Bhattacharya]." GEX 18, at 949354, 949361; see also GEX 51 & 51A (Narang's email instructing Bhattacharya to "[p]lease do the needful" with respect to a document that had to be signed by Sam Bose). Narang directed Bhattacharya to prepare "offer letters" for beneficiaries and specified the exact salary that should be included in each letter, even if no actual employment had yet been obtained for those beneficiaries, and Bhattacharya responded with letters on United Software letterhead signed by "Sam Bose." See, e.g., GEX 15; GEX 26. Narang also instructed her staff about specific legally relevant language to include in the documents they were preparing for use in H-1B visa applications, as for instance when she told Bhattacharya to include "right to control language" in offer letters for four visa recipients. See, e.g., GEX 34. Further, Narang made sure all relevant EcomNets employees were keeping careful track of the information used for each of Kosuri's distinct corporate entities, warning the employees not to

"interchange any information [,e]specially the names of the signing authorities, addresses and [federal employer identification numbers]." GEX 21, at 232449. Finally, Narang helped to prepare key documents used to persuade government officials to authorize the H-1B visa applications, including letters falsely claiming that EcomNets was operating a large-scale data and cloud computing center in the Danville, Virginia warehouse. See, e.g., GEX 48; see also GEX 50; GEX 101, at 230, 262-63 (showing Narang's signatures on immigration forms submitted in response to RFEs containing false information, including a falsified lease and a nonexistent "Enterprise Cloud Implementation" project); GEX 75, at 22683-84 (showing Narang's signature on an EcomNets letter describing an alleged contract for "Enterprise Cloud Implementation" at the Danville site).

Narang was not only intimately involved with every aspect of Kosuri's H-1B scheme; she also received a substantial financial benefit from that involvement. In addition to her $70,000 base salary, see GEX 11, at 1609, she received commissions based on the total number of hours worked by the visa beneficiaries whom she helped to find jobs, Bench Trial Tr. 110. See, e.g., GEX 40 (email from Narang reporting over 5000 hours for which she was entitled to a commission over a four-month period); GEX 41 (email from Narang reporting over 9000 hours for which she was entitled to a commission over a three-month period).

During Narang's tenure with EcomNets, Kosuri's scheme produced a substantial number of H-1B visa applications. In fiscal years 2014 and 2015, 121 petitions submitted by Kosuri's four "staffing"

companies were selected for adjudication in the H-1B lottery, see GEX 91A-a total which does not include the petitions submitted but not selected in the lottery or any amendments to existing petitions, see Bench Trial Tr. 226-27. Narang's signature appears on over 170 documents associated with these H-1B petitions filed with USCIS over that period. See GEX 92; see also GEX 93A-93C (providing additional details about those petitions).

III. ANALYSIS

The original indictment in this case, which was reinstated before Narang's bench trial, charged her with one count of conspiracy to commit visa fraud and two counts of visa fraud.

A. Conspiracy to Commit Visa Fraud

Count 1 of the indictment alleges that Narang conspired, along with Kosuri, S. Jharia, V. Jharia, and Bhattacharya, to use fraudulent representations to obtain H-1B visas for their beneficiary clients. "To prove a conspiracy under 18 U.S.C. § 371, the government must establish an agreement to commit an offense, willing participation by the defendant, and an overt act in furtherance of the conspiracy." United States v. Tucker, 376 F.3d 236, 238 (4th Cir. 2004).

1. Agreement to Commit an Offense

"[T]he fundamental characteristic of a conspiracy is a joint commitment to an 'endeavor which, if completed, would satisfy all of the elements of [the

underlying substantive] criminal offense.'" Ocasio v. United States, 136 S. Ct. 1423, 1429 (2016) (alteration in original) (quoting Salinas v. United States, 522 U.S. 52, 65 (1997)). "The existence of a 'tacit or mutual understanding' between conspirators is sufficient evidence of a conspiratorial agreement," United States v. Ellis, 121 F.3d 908, 922 (4th Cir. 1997) (quoting United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc)), and "[k]nowledge and participation in the conspiracy may be proven by circumstantial evidence," Tucker, 376 F.3d at 238.

The government proved the existence of a conspiracy among Kosuri and his associates, including Narang, beyond a reasonable doubt. Unequivocal evidence at trial showed that EcomNets's employees engaged in sustained efforts to prepare false LCAs and I-129 petitions stating that the beneficiaries would work for nonexistent projects at the Danville location, to obscure the true nature of their scheme from government adjudicators, to falsify documents to be included in H-1B applications or in responses to RFEs, and to pressure the beneficiaries to sign fraudulent offer letters and take "voluntary" leave before starting work. The evidence at trial also showed that the EcomNets employees, including Narang, performed this work in a coordinated and collaborative manner, often with many employees in the same room at the same time. And they did so despite the common knowledge that the documents they were submitting to the government contained significant misrepresentations, including about the nature of EcomNets and the other corporate entities under Kosuri's control, the individuals purporting to act on behalf of those entities, and the nature and location

of the work the visa beneficiaries would be performing. The well-coordinated nature of EcomNets's H-1B visa scheme, the multiple conversations among EcomNets employees indicating awareness of the illegality or impropriety of their activities, and the clear evidence demonstrating that the various types of fraud were matters of common knowledge within the enterprise place the existence of a conspiracy beyond question.

Defendant does not squarely dispute that Kosuri and his associates were engaged in a complex H-1B visa scheme involving fake names, shell corporations, and misrepresentations about work opportunities at the Danville site. Indeed, defendant effectively concedes that many of the documents submitted to the government as part of the scheme were "not accurate." Bench Trial Tr. 306. Nor does defendant claim she did not play a role in that scheme. Instead, she argues that although the misrepresentations were "distasteful," they did not amount to criminal or otherwise unlawful activity in light of the complex nature of immigration law. See id. at 306-07. As detailed below, defendant's arguments are unsuccessful.

> As relevant here, § 1546(a) applies to anyone who knowingly makes under oath, or as permitted under penalty of perjury ... knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application,

> affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact.

18 U.S.C. § l 546(a). As summarized by another judge of this district, to satisfy § 1546(a), the government must prove beyond a reasonable doubt

> (1) that defendants made a false statement in an immigration document, (2) that the false statement was made knowingly, (3) that the false statement was material to [immigration authorities'] activities or decisions, (4) that the false statement was made under oath, and (5) that the false statement was made in an application required by the immigration laws or regulations of the United States.

United States v. O'Connor, 158 F. Supp. 2d 697, 720 (E.D. Va. 2001).

Narang first takes issue with the government's argument that the EcomNets submissions were false because they misrepresented the present availability of positions to be filled by foreign skilled workers. Defendant recognizes that "[t]he H-1B program was not intended to provide an avenue for nonimmigrants to enter the U.S. and await work at the employer's choice qualified workers for whom employment opportunities currently exist." Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models, 59 Fed. Reg. 65,646, 65,656 (Dec. 20, 1994) (included as

DEX 1) (emphasis added). Nonetheless, Narang argues that the H-1B application process requires nothing more than that "a vacancy [be] reasonably likely in the future." Mot. to Dismiss Indictment [Dkt. No. 317] ("Mot. to Dismiss") 4; see also Bench Trial Tr. 252 (Khanna opining that the applicable regulations "seem[] to say" that an H-1B petitioner need only state "a reasonable good faith likelihood of employment in at least six months' time"). This argument fails for two reasons. First, even if nothing in the statutes or regulations governing the LCA and H-1B petition processes expressly precludes an application based on a reasonably anticipated rather than a current job opening,[17] a petitioner seeking an H-1B visa from the government must tell the truth, which means it must disclose to the government that the petition is based on an anticipatory rather than a current need. Such a disclosure in this case, of course, would likely have triggered increased scrutiny on behalf of the government adjudicators-scrutiny which Kosuri and his coconspirators were desperate to avoid. So it is unsurprising that the H-1B applications prepared as part of Kosuri's scheme do not contain any accurate description of the "prospective" nature of the beneficiaries' employment. Second, the notion that anyone at EcomNets had a "reasonable good faith" basis to believe that each H-1B beneficiary would have a job by the time his or her application was approved is wholly inconsistent with the evidence. Narang and

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[17] In this respect, it is worth observing that Khanna's own article from 2009 states that USCIS's purpose in administering the H-1B program is ensuring that every beneficiary "is or will be working in a position whose existence is beyond doubt." See Bench Trial Tr. 276.

her associates did not even start looking to place H-1B beneficiaries with other companies until their visa applications were approved. Often, it would take weeks or even months to find a position for a beneficiary, which is why EcomNets routinely asked its beneficiaries to sign voluntary leave requests to avoid having to pay them until a position had been found. The EcomNets conspirators had every reason to know that most, if not all, of their visa beneficiaries would not step into an available position once their petitions were approved, a fact which defeats defendant's argument about a good-faith-basis exception.

Narang also argues that there was nothing illegal or fraudulent about listing the visa beneficiaries' work location as Danville, Virginia. Narang does not squarely dispute Kosuri's and Kaur's testimony that it was common knowledge that there were no open jobs or projects at the Danville facility; instead, she argues "that geographic specificity as to a prospective job is aspirational as opposed to binding." Mot. to Dismiss 5; see also Bench Trial Tr. 253-56 (attempting to develop this argument during the direct examination of attorney Khanna). Again, Narang's argument is meritless. The form every prospective employer must complete for purposes of submitting an LCA makes clear that "[i]t is important for the employer to define the place of intended employment with as much geographic specificity as possible." DEX 3, at 3. The form goes further in its efforts to demand geographic precision, requiring that the addresses provided be physical locations rather than P.O. boxes. See id. To the extent Narang's view is that this address requirement does not require absolute

certainty, she is in some sense correct. The exact work site may change between the time an employer files an LCA and the date the H-1B visa is approved. In that case, the petitioner may inform the government of the change without submitting a new LCA so long as the new site is within the same geographical region as that identified in the original LCA. (If the new work site is outside that geographical region - as was often the case for EcomNets's beneficiaries, who were seeking work across the country - a new LCA must be prepared.) But whatever the merits of that argument, it falls apart when assessed against the actual facts of this case. Because there never were available jobs or projects at the Danville facility, and because there was no possibility that any jobs or projects would come available in the interim between application and approval, it simply cannot be said that anyone at EcomNets was making a "best good faith guess" in stating that the beneficiaries would work in Danville, see Bench Trial Tr. 253 (Khanna). To the contrary, Kosuri and his coconspirators were affirmatively misleading the government with full knowledge that the beneficiaries would, once placed, be spread throughout the country. When pressed during cross-examination, even defendant's expert Khanna admitted that such a scheme was inconsistent with the applicable rules and regulations:

> Q. In your opinion as an expert immigration lawyer, you think it's okay to tell USCIS that a prospective H-1B beneficiary would be doing a particular job for a company in a particular location when you know that there

> is no intention of placing the beneficiary in that job in that location?
>
> A. It is not okay, no, sir.

Bench Trial Tr. 285.[18] This is exactly the type of misrepresentation which the visa fraud statute is intended to capture.

The same is true for defendant's quibbling with the government's argument that EcomNets improperly forced its visa beneficiaries to sign voluntary leave requests to avoid having to pay for nonproductive time. See, e.g., Bench Trial Tr. 196-97 (Chopra describing how she was asked to take three months' "voluntary" leave even though she was ready to begin work). The "voluntary" leave requests formed an important part of the EcomNets scheme; otherwise, the company would have had to pay the visa beneficiaries while their job search was ongoing and while no money was coming into EcomNets from the third-party companies. See 20 C.F.R. § 655.731(c)(6) (providing that an H-1B visa beneficiary should be paid "beginning on the date when [she] -enters into employment' with the employer," meaning when she first makes herself" available for work or otherwise comes under the control of the employer"). Narang attempts to avoid this clear regulatory requirement, arguing that H-1B employers "are perfectly free to strike a bargain" in which the visa beneficiary agrees to request

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[18] Khanna also admitted that "it would be wrong to submit false contractor agreement documents" or "false purchase orders to USCIS in support of visa applications." Bench Trial Tr. 283-84. The evidence shows that the EcomNets conspirators did both. See, e.g., GEX 101, at 22261-65.

voluntary leave rather than being terminated without cause. Mot. to Dismiss 6. This bizarre argument misses the point altogether. Even assuming a genuine employer who otherwise would have to terminate an H-1B beneficiary could make such an offer, cf. id. at 6-7 (positing that an employer might be faced with such a circumstance "where a beneficiary's American colleagues were not being paid for nonproductive time"), that does not mean a company with no genuine positions to offer can mislead the government, secure an H-1B visa, and then hold the beneficiary hostage while attempting to find her work. Narang's tortured construction of the regulations is contrary to their text and spirit and does not negate the finding of a conspiracy to commit visa fraud.

Next, defendant submits that none of the foregoing misrepresentations could have been material as required by § 1546(a). Specifically, she argues that the immigration adjudicators assessing H-1B applications care only about an employer's right to control the potential visa beneficiary and that none of the misrepresentations speak to that right to control. Defendant is wrong on both counts. Although a valid employer-employee relationship, which under federal common-law principles depends on several factors including "the right to control the manner and means by which" the employee's work is performed, see DEX 9, at 3 (quoting Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323 (1992)), is certainly relevant to USCIS adjudicators, it is not the only relevant consideration. As both Violett and Khanna explained at trial, adjudicators care not only about the existence of a valid employment relationship but also about the specific

characteristics of that relationship, including what types of work the visa beneficiary will perform, for whom, and in what location. Moreover, even if a valid employment relationship were the only concern of USC IS adjudicators, the conspirators' fraudulent statements would remain material. Khanna, Narang's only witness, recognized that the "location of the work" is a relevant factor to be considered in deciding whether an employer has a right to control the visa beneficiary. See Bench Trial Tr. 262 (Khanna direct examination: "Q. Does the employer-employee relationship tum on the location of the beneficiary relative to the petitioner? A. Directly, no, but if somebody is working off premises, then USCIS may look at the relationship more carefully or more minutely."); see also id. at 275 (pointing to GEX 110, at 2042, which contains a nonexhaustive list of fifteen factors to be considered in assessing the right to control, one of which is the "location of the work"). Likewise, Narang cannot credibly argue that a USCIS adjudicator with all relevant facts could not have concluded that EcomNets lacked a sufficient right to control the beneficiaries for which it secured H-1B visas. As Narang herself recognizes, "the right to control ... is subject to interpretation," Mot. to Dismiss 3, and it is at least doubtful whether the EcomNets personnel were "responsible for" the visa beneficiaries in any meaningful sense, see Bench Trial Tr. 246.

For similar reasons, defendant is incorrect in arguing that there is nothing material about the conspirators' use of shell corporations or their placement of fake names and false signatures on documents submitted to the USCIS. In one sense, this conclusion is a matter of common sense: As the

Court put it during a midtrial ruling, "if the document is signed with the name of a fake person, it's fraudulent." Bench Trial Tr. 39. Yet it also flows from evidence at trial concerning what types of evidence would have been most concerning to H-1B visa adjudicators. As Violett credibly explained during his testimony, adjudicators look for any indications of fraud or material omissions; for evidence confirming a bona fide employment opportunity in a specialty occupation; and for affirmation that the employer identified in the H-1B visa petition will exercise an appropriate level of control over the work of the visa beneficiary. Had USCIS known about Kosuri's creation of four shell corporations that were in fact "all part of EcomNets," Bench Trial Tr. 58, the conspirators' use of the fake names Sam Bose and Sonia Basu, or their creation of false leases and other documents, all of which was designed to hide the fact that EcomNets had no jobs for any of the potential H-1B visa beneficiaries, USCIS would have conducted additional investigations and ultimately would have denied the H-1B applications. These representations and documents were, therefore, unquestionably material and thus fall within the scope of § 1546(a).[19]

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[19] Khanna recognized, albeit reluctantly, the problematic nature of using fake names on H-1B visa applications and associated documents. When asked whether it was appropriate to sign with a fake name on a document to be submitted on behalf of a petitioning corporation, Khanna responded that he "wouldn't do it." Bench Trial Tr. 270; accord id. at 276. Later, when asked whether he had taught Narang during her tenure with his immigration firm to submit documents containing false names, Khanna relied, "No, sir, I hope not." Id. at 283. He made a similar statement with respect to the conspirators'strategic use of fake lease agreements with several

Finally, defendant argues that EcomNets' collaboration with immigration attorneys negates any agreement to commit a criminal offense, reasoning that Kosuri and his associates could not have reached such an agreement if they believed, based on the advice of counsel, that what they were doing was lawful. "The general rule is that advice of counsel is no excuse for violation of law." Miller v. United States, 277 F. 721, 726 (4th Cir. 1921). "But where the question ... is one of intent, the advice and the good faith of the defendant is a defense." Id. To negate the requisite showing of mens rea and thereby avoid criminal liability, a defendant invoking the advice-of-counsel defense must demonstrate "(a) a full disclosure of all pertinent facts to an expert ... and (b) good faith reliance on the expert's advice." United States v. Butler, 211 F.3d 826, 833 (4th Cir. 2000) (quoting United States v. Miller, 658 F.2d 235, 237 (4th Cir. 1981)).

Defendant has not satisfied that affirmative burden here. No attorney testified to leading Kosuri and the coconspirators into this scheme with bad legal advice. Although defendant elicited testimony that EcomNets hired several lawyers to assist in preparing and submitting documents related to H-1B visa applications, there was absolutely no testimony with respect to what, if any, facts about the scheme were communicated to counsel. See, e.g., Bench Trial Tr. 236 ("THE COURT: ... [W]e do not have the attorneys here to say what information they were told which led them to give the answers

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of Kosuri's "shell" companies, stating that there was something "not right" about their conduct and that "as an immigration lawyer, [he] would probably decline to represent th[ose] companies." Id. at 288-89.

that they did. I don't know any attorney who would be comfortable sending a document through if [he] knew that the signature on the document were false. So the fact that the lawyer might have said, well, it's all right to indicate that employment is going to be in Danville doesn't mean a thing if we don't know what the lawyer was told."). Although the Court pointed out that deficiency before defendant's case in chief, defendant did not seek to call any of the attorneys who she claimed had provided legal advice to Kosuri or other members of the conspiracy. Further, the evidence at trial established that the key EcomNets employees, including Kosuri and Narang, knew they were violating the rules and regulations related to obtaining H-1B visas, which undercuts any argument of good-faith reliance on the advice of counsel and defeats Narang's advice-of-counsel defense.

In sum, defendants' many efforts to show that there was nothing illegal or fraudulent about the EcomNets scheme are unavailing,[20] and the government has proved the existence of a conspiracy to commit visa fraud beyond a reasonable doubt.

2. Narang's Willing Participation

To prove that Narang violated § 371, the government must also show her knowing and willing

[20] Similarly unconvincing is defendant's last-ditch argument that "the beneficiaries aren't complaining." See Bench Trial Tr. 306. For one thing, there is no "no harm, no foul" exception to visa fraud liability. For another, that many of the beneficiaries had to wait months before being paid and were pressured into various forms of fraud by Kosuri and his associates severely undercuts any notion that the EcomNets scheme was harmless.

participation in the conspiracy. Tucker, 376 F.3d at 238. A defendant "need not know every member of a conspiracy or act at every stage in order to be liable for the conspiracy as whole." United States v. McCoy, 895 F.3d 358,364 (4th Cir. 2018); see also United States v. Banks, 10 F.3d 1044, 1054 (4th Cir. 1993) ("[O]ne may be a member of a conspiracy without knowing its full scope, or all its members, and without taking part in the full range of its activities or over the whole period of its existence."). Even if defendant "played only a minor part," she may be convicted so long as she "join[ed] the conspiracy with an understanding of [its] unlawful nature and willfully join[ed] in the plan on one occasion." United States v. Roberts, 881 F .2d 95, 101 (4th Cir. 1989).

The government proved beyond a reasonable doubt that Narang willingly participated in the EcomNets conspiracy with full knowledge of its unlawful nature. In fact, Narang played a critical role in that conspiracy. Without her involvement, all of EcomNets's H-1B visa beneficiaries would have had to be paid as soon as they were "available" to work, 20 C.F.R. § 655.73 l(c)(6), which would have either destroyed the company's profit model (if it had paid) or rendered it vulnerable to beneficiary complaints and government investigations (if it had not). By acting as the agent primarily responsible for placing many of the "bench" beneficiaries with other companies, Narang was fully aware of the fake Danville positions and the need to find bona fide jobs elsewhere. The evidence established that she had regular interactions with beneficiaries all around the country, many if not most of whom had no intentions of working anywhere in Virginia, let alone at a

nonexistent project at the Danville site. Narang was a key member of the conspiracy, a fact reflected in the number of emails on which she was copied and documents in the record that she signed. Although Kosuri's businesses had obtained a "few" H-1B visas before Narang was hired, see Bench Trial Tr. 68, Narang's participation allowed the scheme to flourish. In 2014 and 2015, after Narang started working for Kosuri, his "staffing" companies succeeded in having 121 of their I-129 petitions selected for adjudication in the H-1B visa lottery, a figure which does not include the petitions they filed that were not selected in the first place. In sum, the high degree of Narang's involvement with the EcomNets scheme renders implausible any claim that she did not know what Kosuri's companies were doing.

Extensive witness testimony and documentary evidence confirm that Narang was well aware of the unlawful nature of the scheme. For example, Kaur, who worked in a lower-level HR capacity in the office directly next to Narang's, provided valuable insight into how the visa fraud taking place within Kosuri's enterprise was an open secret. Kaur testified that there were no jobs available for H-1B visa beneficiaries with EcomNets when their visas were approved and that finding those beneficiaries work and convincing them to request "voluntary" leave in the meantime constituted the bulk of Narang'sjob. See Bench Trial Tr. 157-58. Kaur also explained that the H-1B petitions with which she and Narang were assisting, first on behalf of EcomNets and subsequently on behalf of Data Systems, falsely listed each beneficiary's worksite as Danville, Virginia, even though none of the beneficiaries

would ever go to work there. See id. at 160-62 (Kaur direct examination: "Q. Was it known throughout the office that no workers were working in Danville, Virginia? A. Yes. Q. Would you describe that? A. I mean, everyone knew that no one is working in Danville because the employees[-]when they call, they' re not calling from Danville. They're calling [from] all over the United States."). Kaur testified that she even announced to several EcomNets employees, including Narang, that although the H-1B petitions listed the work site as Danville, no beneficiaries would actually be working there, explaining that Narang heard the statement but did not respond. Bench Trial Tr. 161-62. Another way in which the H-1B petitions were fraudulent was the use of fake names Sam Bose and Sonia Basu to deflect unwanted attention from USCIS investigators. Kaur not only knew that Bhattacharya was signing key documents as "Sam Bose"; Kaur actually alerted Narang to the use of fake names, stressing the obvious point that documents submitted to immigration authorities "shouldn't" be falsified. See id. at 163-64. Kaur testified that Narang's only response was to smile knowingly. See id. at 164. Although Kaur testified pursuant to an immunity agreement, the Court finds that her testimony was forthright and credible and supports the finding that Narang was fully aware of the unlawful nature of EcomNets's scheme.

Kaur's testimony was corroborated not only by Kosuri's testimony describing Narang's participation in the scheme and the "common knowledge" among the coconspirators that Bhattacharya was using fake names on documents submitted during the H-1B

visa application process, see Bench Trial Tr. 81,[21] but also by numerous documents in the record. For example, in an email to a potential H-1B visa beneficiary, Narang readily responded to most of the beneficiary's questions but declined to answer in writing when asked what would happen if the beneficiary was "on bench for a duration," insisting that the beneficiary call her to discuss that issue. GEX 35, at 942515; cf. Bench Trial Tr. 105 (Kosuri reasoning that Narang asked the beneficiary to call because she did not want to state in an email that EcomNets "do[es not] pay people on bench"). In response to an RFE, Narang helped to prepare false lease documents designed to give government adjudicators the impression that EcomNets and Kosuri's "staffing" companies were genuine independent businesses. On one occasion, Narang sent one of EcomNets's attorneys a lease document with inconsistencies as to the relevant corporate entity, GEX 130, at 22340 (containing an office lease listing United Software as the lessee but listing EcomNets on the bottom of each page), and in response the attorney pointed out Narang's mistake and warned her to "be careful," GEX 50, at 86840, clearly indicating that there would be consequences if the government discovered the nature of the fraud. Narang took that advice to heart, warning employees working under her not to "interchange

[21] Defendant highlighted two possible reasons to discount Kosuri's testimony: that the government had agreed not to seek jail time for Kosuri's wife, who was also charged in the conspiracy, and that Kosuri had lied during his initial encounter with government investigators. See Bench Trial Tr. 134-42. Neither factor undercuts the Court's finding that Kosuri was credible. His testimony was well corroborated by other witnesses and the documentary evidence.

any information[, e]specially the names of the signing authorities, addresses and [federal employer identification numbers]." GEX 21, at 232449. With respect to the conspirators' use of false names, Narang on several occasions sent Bhattacharya documents with blank signature lines to be signed by "Sam Bose" and instructed Bhattacharya to "do the needful," which Kaur explained meant that Bhattacharya would apply the signature of this fake person. See, e.g., GEX 51 (Narang forwarding Bhattacharya a letter to be signed by Sam Bose); GEX 51A (the letter Bhattacharya attached in response, which contains the "Sam Bose" signature); see also Bench Trial Tr. 181 (Kaur referring to an email she sent to Bhattacharya, see GEX 69, in which Kaur asked Bhattacharya to "do the needful" with respect to signing another document with the "Sam Bose" signature). Narang made clear that she knew Bhattacharya was forging signatures by sending Kosuri an email attaching documents with blank signatures for Sam Bose and informing Kosuri that they needed to "get the last page ... signed from [Bhattacharya]." GEX 18, at 949354, 949361. In one instance, Narang forwarded Kosuri an email she was "planning to send" after a discussion with one of EcomNets's attorneys; the message to be sent was on behalf of United Software and was to be signed by Sam Bose. See GEX 52.[22] Taken together, the

[22] Defendant points out that this email "had nothing to do with the government" but rather involved a dispute between Kosuri's enterprise and New England IT Associates ("NEIT"), one of the third-party companies with whom an H-1B visa beneficiary had been placed. See Bench Trial Tr. 139. Defendant's argument mischaracterizes the import of this evidence, which goes to Narang's awareness that Sam Bose was a fictious person, that United Software was a shell corporation

documentary evidence indicating Narang's awareness that EcomNets personnel were placing fictional names on documents submitted to the USCIS, falsifying other documents, and using shell corporations to create the appearance of bona fide employment opportunities at the Danville site corroborates Kosuri's and Kaur's accounts that many components of the visa fraud scheme were common knowledge within EcomNets and certainly would have been well known to Narang.

Furthermore, Narang's position and duties within the EcomNets scheme were themselves fundamentally inconsistent with any argument that she did not knowingly and willingly participate in the conspiracy. Narang spent most of her time trying put H-1B visa beneficiaries to work anywhere but at the Danville facility. As even Khanna recognized, it is not appropriate "to tell USCIS that a prospective H-1B beneficiary would be doing a particular job for a company in a particular location when [it is] know[n] that there is no intention of placing the beneficiary in that job in that location." Bench Trial Tr. 285.

Narang's final argument once again invokes the advice-of-counsel defense, this time arguing that even assuming the existence of a conspiracy to commit visa fraud, she did not knowingly and voluntarily take part in that conspiracy because she was acting on the advice of counsel. This argument

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with no true business of its own, and that both were frequently used in the course of the EcomNets enterprise. Likewise, that Narang ultimately sent NEIT the email under her own name rather than Bose's, see id. at 140-41, is irrelevant to the question whether Narang willingly and knowingly participated in the visa fraud conspiracy.

is meritless.[23] To be sure, several attorneys had been hired by EcomNets and were involved in submitting many of the documents to the DOL and the USCIS. For example, Kosuri explained that attorneys prepared the I-129 petitions based on documents obtained from EcomNets's human resources department; compiled and submitted responses to RFEs, again based on information and documents received from EcomNets staff; and even occasionally forged signatures on documents. See, e.g., Bench Trial Tr. 54-55, 61. Defendant also elicited testimony from Kosuri indicating that those attorneys had blessed some of the aspects of the H-1B visa scheme. See, e.g., *id.* at 134 (Kosuri admitting that his attorneys "advised [him] that it was okay to require beneficiaries to sign voluntary leave statements" and "to list Danville as the place of employment").[24] Yet that alleged advice did not cover all aspects of the scheme, including the use of fake names to deflect unwanted attention from government investigators. Further, there was no evidence indicating what

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[23] Although the burden of proving Narang's willing participation in the conspiracy remains on the prosecution, "[i]t is constitutionally permissible to place on ... defendant the burden of producing some evidence to establish an affirmative defense." O'Connor, 158 F. Supp. 2d at 728 n.55. The Court finds that defendant has not pointed to sufficient evidence to establish a prima facie advice-of-counsel defense so as to shift the burden back to the government to prove "that the affirmative defense has not been established," id.

[24] The latter admission is of questionable value, as Kosuri attempted to provide a clarification but was cut off by defendant's counsel. See Bench Trial Tr. 134 ("Q. And [your attorneys] told you that it was okay to list Danville as the place of employment? A. Yes, but they have advised - Q. Yes is all we need.").

exactly Kosuri, Narang, or anyone else at EcomNets may have told those attorneys about the underlying scheme. Without those key facts, defendant cannot establish the "full disclosure of all pertinent facts" required to invoke the advice-of-counsel defense. Cf. id. at 264 (The Court: "[T]he attorney['s] representations are only as good as the information given to him."). Nor did defendant present any evidence indicating what, if anything, the attorneys told Narang about her actions within the scheme. The best defendant can do is to point to Kosuri's testimony that he had "passed th[e attorneys'] advice on to [his] employees," including Narang. See id. at 135. That vague statement does not provide any of the specific facts needed to make out the affirmative defense, see, e.g., O'Connor, 158 F. Supp. 2d at 728 (requiring, among other things, that the defendant produce evidence that he made a "full and accurate report ... to the professional of all material facts" and "acted strictly in accordance with th[at] advice")-and does nothing to show that any reliance on Kosuri's statements by Narang would have been in good faith. What is more, defendant's argument is foreclosed by Fourth Circuit precedent holding that an intermediary's alleged "convey[ance]" of an attorney's advice to a criminal defendant "'does not satisfy the elements of a reliance defense." See United States v. Bostian, 59 F.3d 474, 480 (4th Cir. 1995). At bottom, the evidence suggests only that the attorneys working for EcomNets were either unaware of the true nature of the fraudulent scheme or else actively participated in that scheme alongside the other conspirators and as such does not preclude a finding that Narang knowingly and willfully participated in the conspiracy. Accordingly, the

government has satisfied its burden of proof with respect to this second element.

3. Overt Acts[25]

Finally, the government must prove that at least one of the conspirators committed at least one of the overt acts charged in the indictment. An overt act is "some type of outward that an "Enterprise Cloud Implementation" project was underway at the Danville facility; and that Bhan would be employed as a computer systems analyst for that project). In addition, overt act (r) alleged that Narang signed a consultant verification letter, again in response to an

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[25] On the first day of trial, Narang moved to exclude any evidence of overt acts not explicitly mentioned in the indictment, arguing that allowing the government to introduce evidence of other acts "would result in an impermissible constructive amendment" of the indictment. Mot. to Exclude Evidence [Dkt. No. 314] 1. As the government pointed out, "[i]t is well established that when seeking to prove a conspiracy, the government is permitted to present evidence of acts committed in furtherance of the conspiracy even though they are not all specifically described in the indictment." Bench Trial Tr. 10 (quoting United States v. Bajoghli, 785 F.3d 957, 963 (4th Cir. 2015)). The case law Narang cited in response is not to the contrary. Although an indictment that specifically identifies the manner in which a substantive offense was committed cannot be constructively amended so as to "broaden[] the possible bases for conviction from that which appeared in the indictment," United States v. Milstein, 401 F.3d 53, 65 (2d Cir. 2005) (alteration in original) (citation omitted), "[t]here is no constructive amendment 'where a generally framed indictment encompasses the specific legal theory or evidence used at trial," id. (citation omitted). In light of the clear line of precedent allowing the presentation of evidence related to overt acts not specifically mentioned in the indictment, the Court denied Narang's motion to exclude. See Bench Trial Tr. 10.

RFE, this time certifying that Sundaram, another EcomNets beneficiary, would be working as a computer systems analyst at Danville under a contract between United Tech and EcomNets for the provision of technical services for the "Federal Cloud Solutions" project. Indictment [Dkt. No. 1] ¶ 21 (r), at 11. Here, too, the government proved the commission of this overt act beyond a reasonable doubt; that letter was signed by Narang and submitted as part of the H-1B application process on Sundaram's behalf. See GEX 110, at 2077-78.

Accordingly, the government has carried its burden with respect to the last of the necessary elements for a § 371 offense, and for all the reasons discussed above the Court will find defendant guilty of conspiracy to commit visa fraud.

B. Visa Fraud

Counts 6 and 7 charge Narang with substantive visa fraud in violation of 18 U.S.C. § 1546(a). Specifically, Count 6 is based on an H-1B visa obtained for Bhan, and Count 7 is based on an H-1B visa obtained for Sundaram.

In urging acquittal on both substantive counts, Narang focuses only on the "specific instances of communicating with the Government attributed to [her]" in the indictment. See, e.g., Mot.to Dismiss 7. She argues that she cannot be subject to liability under § 1546(a) because the false contract documents and consultant verification letters bearing her signature that were submitted as part of the H-1B applications did not themselves contain any statement that they had been signed under penalty of perjury. Whether an individual who

makes a false statement on a document without express penalty-of-perjury language can be held directly liable for visa fraud if the document is submitted in support of an I-129 petition that does contain such language is an open question in this circuit and has divided other courts of appeals. Compare United States v. Khalje, 658 F.2d 90, 91-92 (2d Cir.1981) (interpreting § 1546(a) to criminalize not only swearing to a material false statement in the visa application itself but also "present[ing] materially false statements in such applications, whether or not" under penalty of perjury), with United States v. Ashurov, 726 F.3d 395, 397-402 (2d Cir. 2013) (holding that § 1546(a)'s criminalization of the "knowing[]" presentment of "any such false statement" applies only to statements made under oath or penalty of perjury). Yet as the government correctly points out, it is not necessary for the Court to resolve that conflict in this case.

To be sure, one way for the government to prove visa fraud is by proving beyond a reasonable doubt that Narang herself made fraudulent representations under penalty of perjury in violation of § 1546(a). But that is not the only basis upon which criminal liability may be established. Under the Pinkerton doctrine, "a defendant is 'liable for substantive offenses committed by a co-conspirator when their commission is reasonably foreseeable and in furtherance of the conspiracy.'"see United States v. Blackman, 746 F.3d 137, 141 (4th Cir. 2014) (quoting United States v. Dinkins, 691 F.3d 358, 384 (4th Cir. 2012)). Further, anyone who "aids, abets, counsels, commands, induces," "procures," or "willfully causes" another to commit a crime "is punishable as a principal." 18 U .S.C. § 2. These

theories of liability are implicit in every substantive offense and need not be separately alleged in the indictment. See United States v. Ashley, 606 F.3d 135, 142-43 (4th Cir. 2010) ("[A]n indictment need not set forth vicarious coconspirator liability ...."); United States v. Rashwan, 328 F.3d 160, 165 (4th Cir. 2003) ("[C]onviction on an aiding and abetting theory is proper, even if the government did not specifically charge [the defendant] under 18 U.S.C. § 2."). Accordingly, in deciding whether Narang is guilty of the charges in Counts 6 and 7, the Court has considered not only the evidence of her direct acts, but also those acts of her coconspirators reasonably attributable to her under Pinkerton or § 2.

1. Petition on Behalf of Chandra Bhan (Count 6)

One of Kosuri's shell "staffing" corporations, Data Systems, filed an I-129 petition on Bhan's behalf in March 2014. Kaur prepared the petition with the assistance of attorney Mathew Chacko. The I-129 petition falsely averred that Bhan would be employed as a computer systems analyst at the "Green Technology Center" in Danville, Virginia. GEX 101, at 22176. Kaur, who worked closely with Narang, signed the I-129 petition containing this false statement under penalty of perjury. See id. at 22178. Similarly false was the LCA underlying the I-129 petition, which stated that Data Systems had a temporary need for a computer systems analyst who would be employed in Danville. See id. at 22185-87. Kaur made a similar certification under penalty of perjury with respect to the I-129 supplement attaching a "Support Letter" designed to establish

that the Green Technology Center position qualified as a specialty occupation, see id. at 22179-80, despite her knowledge that there was no such center in Danville. For the reasons outlined above, those statements were not only false but also material to USCIS's adjudication of the visa applications: Without a qualifying position available at the time (or, arguendo, reasonably likely to be available by the time the application was fully processed), no visa would have been approved.

The Court has already found that Kaur and Narang were members of the same conspiracy. Accordingly, under Pinkerton, any substantive offense committed by Kaur is attributable to Narang so long as it was reasonably foreseeable to Narang and in furtherance of that conspiracy. Those conditions obtain here. Kaur's submission of the fraudulent I-129 petition on Bhan's behalf was designed to further the EcomNets scheme by securing another H-1B visa beneficiary from whom the company could earn a profit. Moreover, the petition was certainly reasonably foreseeable to Narang; indeed, such H-1B visa applications were the entire thrust of the conspiracy. Accordingly, under Pinkerton, Narang is liable for Kaur's fraudulent and material submission of the H-1B visa application on behalf of Bhan.

The government also proved that Narang took deliberate, knowing action designed to aid and abet Kaur's submission of the materially fraudulent H-1B visa application. One of the documents submitted along with that application is a "contractor agreement" between EcomNets and Data Systems, under which Data Systems agreed "to provide technical or other specialized services as an

independent contractor to" EcomNets for the Green Technology Center in Danville, Virginia. GEX 110, at 22260. Kaur signed on behalf of Data Systems, and Narang signed on behalf of EcomNets. Id. at 22262. Exhibit A to that agreement was a purchase order in which Data Systems purported to "agree[] to provide the services of Chandra Bhan to EcomNets" for the "Enterprise Cloud Implementation" project. Id. at 22263. Again, that agreement was signed by Narang along with Kaur. Finally, Narang prepared and signed a consultant verification letter in which she described, in detail, the work Bhan would be performing as a computer systems analyst for the project at Danville. Id. at 22264-65. As the evidence at trial established beyond a reasonable doubt, all of those representations were false: There was no Enterprise Cloud Implementation project at Danville, no open position with EcomNets that Bhan could fill, and no legitimate contract between Data Systems and EcomNets. The evidence also established, again beyond a reasonable doubt, that Narang knew that those statements were false but signed off on them to assist with her coconspirators' efforts to obtain Bhan's H-1B visa. Without those documents, the USCIS adjudicators would not have been confident that there was a genuine temporary specialized position to be filled, an H-1B visa would not have been approved, and Narang would have had one fewer beneficiary on whose behalf she could look for work and recover a commission. Indeed, without Narang's assistance, the misrepresentations Kaur made under penalty of perjury, especially that there was an open position at the Danville site, would have been laid bare by the government's request for additional information. In sum, Narang's

willful and knowing assistance with her coconspirator's submission, which was made under penalty of perjury, of a materially false application for an H-1B visa renders her substantively liable for visa fraud under the aiding-and-abetting principles codified in § 2(a), and consequently she will be found guilty of visa fraud as charged in Count 6.

2. Petition on Behalf of Guatami Sundaram (Count 7)

The same analysis applies to the H-1B application submitted on Sundaram's behalf, which was filed by United Tech, another of Kosuri's shell "staffing" companies, and signed by the nonexistent "Sonia Basu." See GEX 110, at 1987-88. That application stated, equally falsely, that Sundaram would be working as a computer systems analysist for the Green Technology Center in Danville. Id. at 1992. Bhattacharya or another of the EcomNets coconspirators signed the I-129 petition under penalty of perjury as "Sonia Basu," falsely certifying that the evidence contained in the petition was true and correct. See id. at 1994; see also Bench Trial Tr. 175 (Kaur direct examination: "Q. Is it fair to say a fake person was certifying as to the truthfulness of these documents? A. Yes."). "Sonia Basu" also certified the correctness and truthfulness of an I-129 supplement designed to establish that the nonexistent position in Danville qualified as a specialty occupation. GEX 110, at 1996-97. Narang and Bhattacharya, along with others working in concert with Kosuri, were members of the same conspiracy, and as a result Narang is substantively liable under Pinkerton for those material

representations because they were reasonably foreseeable to her and made in furtherance of the visa fraud conspiracy.

Similarly, Narang directly contributed to her coconspirators' unlawful efforts to obtain an unwarranted H-1B visa on Sundaram's behalf. Narang prepared and signed a consultant verification letter from EcomNets purporting to verify that Sundaram would "provide technical services for [EcomNets's] on-going project Federal Cloud Solutions" in Danville as a computer systems analyst. See GEX 110, at 2077-78. She also signed a false contractor agreement and purchase order that described a "Federal Cloud Solutions" project taking place at Danville for which United Tech would provide skilled workers. See id. at 2079-82. Narang's signatures on behalf of EcomNets on both documents appear next to signatures for the nonexistent "Sonia Basu." Id. at 2081-82. Without these documents, there would have been no evidence of a genuine employment opportunity upon which the H-1B visa application could be based, and the application would not have been approved. Accordingly, Narang knowingly and willingly aided and abetted her coconspirators'submission, under penalty of perjury, of a materially false application for an H-1B visa, which under § 2(a) renders her equally guilty of the visa fraud charged in Count 7.

IV. CONCLUSION

For the reasons stated above, defendant's motion to dismiss the indictment for insufficient evidence will be denied, and defendant will be found guilty on

all three counts by an appropriate Order to be issued with this Memorandum Opinion.

Entered this 21st day of August, 2019.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

FILED Nov. 1, 2019

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

Case Number 1:16cr00043-005

UNITED STATES OF AMERICA

V.

RICHA NARANG,
Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant, RICHA NARANG, was represented by John C. Kiyonaga, Esquire.

The defendant was found guilty as to Count (s) 1, 6, and 7 of the Indictment. Accordingly, the defendant is adjudged guilty of the following count(s), involving the indicated offense(s):

Title & Section; Nature of Offense; Date Offense Concluded; Count Number(s)

18 U.S.C. § 371; Conspiracy to Commit Visa Fraud (Felony); 01/2016; 1

18 U.S.C. § 1546(a); Visa Fraud(Felony); 08/28/2014; 6

18 U.S.C. § 1546(a); Visa Fraud(Felony); 09/05/2014; 7

As pronounced on November 1, 2019, the defendant is sentenced as provided in pages 2 through 7** of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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.

Signed this 1st day of November, 2019.

/s/ Leonie M. Brinkema
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SIX (6) MONTHS; as to each of Counts 1, 6, and 7; to run concurrently, with credit for time served.

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

The defendant to be designated to F.C.I. Alderson, West Virginia.

The defendant shall surrender for service of sentence not sooner than January 1, 2020 at the institution designated by the Bureau of Prisons as notified by the United States Marshal. Until she self-surrenders, the defendant shall remain under the Order Setting Conditions of Release entered on April 27, 2016, with the added condition that when notified

as to where to report, the defendant self-surrender to the facility as directed.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS as to each of Counts 1, 6, and 7. Each count to run concurrent with one another.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

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

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below):

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

1. The defendant shall provide the probation officer access to any requested financial information.
2. Although mandatory drug testing is waived pursuant to 18 U.S.C § 3564 (a)(4), the defendant must remain drug free and her probation officer may require random drug testing at any time. Should a test indicate drug use, then the defendant must satisfactorily participate In, and complete, any inpatient or outpatient drug treatment to which defendant is directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

Count	Special Assessment	Fine
1	$100.00	$0.00
6	$100.00	$0.00
7	$100.00	$0.00
Total	$300.00	$0.00

FINE

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

FORFEITURE

Forfeiture is directed in accordance with the Final Order of Forfeiture entered on March 12, 2018 as amended by the Amended Final Order of Forfeiture of Real Property entered by this Court on May 21, 2019.

FILED: September 7, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4850
(1:16-cr-00043-LMB-5)

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

RICHA NARANG
Defendant - Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Floyd, Judge Richardson, and Judge Quattlebaum.

For the Court
/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Case No. 1:16-CR-0043-LMB

UNITED STATES OF AMERICA

V.

RICHA NARANG,
Defendant.

MOTION FOR DISMISSAL

The United States of America, by and through its attorneys, Dana J. Boente, United States Attorney for the Eastern District of Virginia, Paul K. Nitze, and Angela Fiorentino-Rios, Special Assistant United States Attorneys, hereby moves this Honorable Court pursuant to Fed. R. Crim. p. 48(a) to dismiss all counts of the Indictment in the above-captioned case as to defendant RICHA NARANG, pursuant to the Plea Agreement entered into between the United States and defendant RICHA NARANG and her counsel.

Respectfully submitted,
Dana J. Boente
United States Attorney

By: /s/
Paul K. Nitze
Angela Fiorentino-Rios
Counsel for the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Case No. 1:16-CR-0043-LMB

UNITED STATES OF AMERICA

V.

RICHA NARANG,
Defendant.

ORDER

Upon Motion of the United States to dismiss all counts of the Indictment in the above captioned case as to defendant RICHA NARANG, it is hereby

ORDERED, that all counts of the Indictment in the above-captioned case are dismissed as to defendant RICHA NARANG.

Alexandria, Virginia
Date: August 18, 2016

/s/ Leonie M. Brinkema
United States District Judge