IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 18-3597

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL WOOD,

Defendant-Appellant

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL

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The United States submits this opposition to Michael Wood's motion for bail pending appeal under Federal Rule of Appellate Procedure 9(b) and Local Rule 9.1. The Court should deny the motion because Wood does not raise a substantial question of law or fact that will affect his conviction or sentence under 18 U.S.C. 3143.

BACKGROUND

1. In July 2005, Michael and Mary Wood (defendants), who have four children, were having issues with their nanny. Doc. 125-8, at 49.[1] Defendants therefore recruited a relative from Africa to help with childcare. Doc. 125-8, at 77. Mary's family in Kenya helped the victim, P.I., travel to Ghana for the ostensible purpose of assisting with defendants' childcare during their summer vacation there. Doc. 125-8, at 77-82. Once there, defendants confiscated P.I.'s travel documents and informed her that she would be traveling to the United States with them. Doc. 125-8, at 84-85. Defendants then used a fraudulent British passport to bring P.I. to New Jersey in August 2005. Doc. 125-8, at 85-86.

In the United States, defendants paid P.I. $200 per month but sent 90% of that money directly to P.I.'s family in Africa. Doc. 125-8, at 101-102. From her arrival in August 2005 to June 2006, P.I. provided full-time care for the Woods' four children and handled defendants' household chores. Doc. 125-8, at 96-101. Defendants warned P.I. not to talk to anyone outside their house and otherwise threatened and isolated P.I. Doc. 125-8, at 103-112.

Eventually P.I. surreptitiously called one of Mary's brothers and informed him about her situation. Doc. 125-8, at 115-116. Shortly thereafter, another of

[1] References to "Mot. __" are to page numbers in Wood's appellate bail motion. References to "Doc. __" are to documents on the district court's docket. References to "Ex. __" are to the attached exhibits.

Mary's brothers concocted a plan without P.I.'s knowledge to remove her from defendants' home. In June 2006, the brother picked P.I. up from defendants' residence and dropped her off at the home of Mary's sister Anne Murunga and Anne's then husband, Newton Adoyo. Doc. 125-8, at 116-119.

A few weeks later, Mary came to the Murunga-Adoyo household and had a conversation with P.I. urging her return to defendants' home to provide childcare. Doc. 125-7, at 104-105; Doc. 125-8, at 118. Adoyo testified that he overheard Mary telling P.I. that the kids missed her, and P.I. testified that she rejected Mary's request to return to defendants' household. Doc. 125-7, at 107; Doc. 125-8, at 118. P.I. explained that this upset Mary, and Adoyo testified that he separated the women after they both became upset. Doc. 125-7, at 107-108; Doc. 125-8, at 118. Throughout this time, defendants retained P.I.'s property even though P.I. lived with the Murunga-Adoyos. Doc. 125-8, at 119.

2. On June 9, 2016, a grand jury indicted Michael and Mary Wood. Doc. 1. Count 1 alleged that defendants engaged in a multi-object conspiracy in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I) between approximately August 2005 and June 28, 2006. The three objects of the conspiracy were to (1) encourage or induce P.I. to come to, enter, or reside in the United States knowing that such activity was illegal; (2) transport or move P.I. in furtherance of a legal violation with knowledge or reckless disregard of P.I.'s illegal presence in the United States; and

(3) conceal, harbor, or shield P.I. from detection with knowledge or reckless disregard of P.I.'s illegal presence in the United States. Doc. 1, at 1-4 (citing 8 U.S.C. 1324(a)(1)(A)(ii)-(iv) and (a)(1)(B)(i)). Count 2 alleged that between approximately August 2005 and June 28, 2006, defendants concealed, harbored, or shielded P.I. from detection in violation of Sections 1324(a)(1)(A)(iii) and 1324(a)(1)(B)(i). Doc. 1, at 4.

At trial, both defendants made legal and factual arguments that any criminal conduct did not continue past June 9, 2006, and thus fell outside 18 U.S.C. 3298's ten-year statute of limitations. See Doc. 125-9, at 110-111. The district court rejected defendants' legal arguments but instructed the jury that the government needed to prove beyond a reasonable doubt that the conspiracy and harboring offenses continued past June 9, 2006. Doc. 125-9, at 124; Doc. 125-10, at 61, 79, 84-85. Both defendants' closing arguments emphasized the factual dispute regarding the limitations issue. Doc. 125-10, at 127-128, 137-138. During deliberations, the jury requested transcripts of P.I. and Adoyo's testimony that Wood's counsel highlighted as relevant to Wood's limitations defense. Doc. 125-11, at 11; Doc. 97. The jury convicted defendants of the conspiracy and harboring counts. Doc. 99.

Both defendants filed motions for judgments of acquittal and new trials (Doc. 125, 128), which the district court denied as to the conspiracy and harboring

counts (Ex. 4, at 48). The court sentenced each defendant to 20 months' imprisonment on each count with the sentences to run concurrently. Doc. 161, 163. The court ordered Michael to self-surrender on January 2, 2019, and Mary to surrender within 30 days of his release. Doc. 161, 163. Defendants appealed. Doc. 165, 167. Michael Wood filed a motion in district court for bail pending appeal (Doc. 166), which the court denied (Ex. 2, at 18-19). He then filed this motion.

DISCUSSION

The Bail Reform Act of 1984 creates a presumption that a convicted defendant sentenced to imprisonment "shall * * * be detained" during appeal. 18 U.S.C. 3143(b)(1). A defendant can be released pending appeal only if he shows that (1) he is not a flight risk or a danger to public safety, (2) the appeal is not for purposes of delay, and (3) the appeal "raises a substantial question of law or fact" likely to result in reversal, a new trial, a non-custodial sentence, or a reduced prison sentence less than the appeal's expected duration. 18 U.S.C. 3143(b)(1)(B); see *United States* v. *Miller*, 753 F.2d 19, 24 (3d Cir. 1985) (defendant bears burden).

For purposes of this motion, the government concedes that Wood is not a flight risk or a danger to public safety and the appeal is not for purposes of delay. The sole issue before this Court is whether the appeal raises a "substantial question

of law or fact" likely to result in reversal, a new trial, a non-custodial sentence, or a reduced prison term shorter than the appeal.

A "substantial question" is one "of more substance than would be necessary to a finding that it was not frivolous." *United States* v. *Smith*, 793 F.2d 85, 89 (3d Cir. 1986) (citation omitted). There are no categories of substantial questions, and the determination must be made on a case-by-case basis. *Ibid*. For a question to be substantial, the Court must find that it "is either novel," "has not been decided by controlling precedent," or "is fairly doubtful." *Miller*, 753 F.2d at 23. Substantial questions are those that are fairly debatable among jurists. *Smith*, 793 F.2d at 89-90.

Wood contends that there are two issues that are substantial and merit bail pending appeal. Neither issue satisfies Section 3143(b).

A. Wood's Sufficiency Challenge Is Insubstantial Because Record Evidence Supports The Jury's Rejection Of His Limitations Defense

Wood contends (Mot. 15-17) that his sufficiency-of-the-evidence challenge to his convictions raises a substantial question because the evidence that his criminal activity continued past June 9, 2006, and into the limitations period is insufficient. This argument is not substantial because there was sufficient evidence that defendants' criminal activity continued past June 9, 2006, and a properly instructed jury relied on this evidence to reject Wood's limitations defense.

1. The Applicable Legal Standard And Trial Evidence Render This Issue Insubstantial

a. As a threshold matter, this Court reviews sufficiency challenges with substantial deference to the jury's verdict; Wood thus bears a "heavy burden" on appeal. *United States* v. *Casper*, 956 F.2d 416, 421 (3d Cir. 1992). On sufficiency review, the Court views the evidence in the light most favorable to the government and draws all inferences in favor of the verdict. *United States* v. *Inigo*, 925 F.2d 641, 649 (3d Cir. 1991). The Court cannot "weigh evidence or determine the credibility of witnesses in making this determination." *United States* v. *Beckett*, 208 F.3d 140, 151 (3d Cir. 2000). Given the "highly deferential" standard of review, *United States* v. *Helbling*, 209 F.3d 226, 238 (3d Cir. 2000), Wood cannot show that the sufficiency question is substantial, particularly in light of the evidentiary record and the centrality of the limitations issue at trial.

b. Even if this Court considers the merits of Wood's challenge, sufficient evidence supported the jury's conclusion that Wood's criminal activity continued past June 9, 2006. Specifically, the record shows that the purpose of both offenses was for defendants to get low-cost childcare and household help. Doc. 125-8, at 50, 96-97. P.I. provided these services from approximately August 2005 to sometime in June 2006, when Mary Wood's siblings first heard that defendants were mistreating P.I. Doc. 125-8, at 96. At that point (*i.e.*, sometime in June

2006), Mary's brother picked up P.I. and dropped her off at the Murunga-Adoyo residence. Doc. 125-8, at 115-118.

But P.I.'s presence at the Murunga-Adoyo household did not end the Woods' criminal conduct. Rather, Adoyo testified that Mary Wood came to Adoyo's house "*a few weeks after*" P.I.'s June 2006 arrival and engaged in a heated conversation with P.I. Doc. 125-7, at 104. Adoyo testified that both women were upset, that Mary told P.I. that "the kids miss [her]," and that Mary had raised her voice. Doc. 125-7, at 106-107. P.I. testified that Mary asked her to return to the Wood household but that she told Mary that she "wasn't coming with her," which upset Mary. Doc. 125-8, at 118. And, during this time period, even as P.I. resided at the Murunga-Adoyo household, defendants kept P.I.'s possessions at their home. Doc. 125-8, at 119.

A reasonable jury could infer from this testimony that Mary's attempt to retrieve P.I. extended the Woods' criminal conduct—conspiring to harbor P.I. and harboring P.I. for the purposes of low-cost childcare and domestic help—beyond June 9, 2006. As the district court explained, "the crime continued until, at least until Mary went and tried to get [P.I.] back," which was weeks into June 2006. Ex. 4, at 6.[2] The court thus held that the evidence did not support defendants' post-

[2] Although P.I. and Newton Adoyo's testimony conflicted on how long after P.I.'s departure the conversation between Mary and P.I. took place, the district

(continued...)

trial arguments that the criminal activity ended when P.I. left their house. "This is a scheme that continued up through some point later in June of 2006 of harboring this victim so that she could continue to reside in the United States and continue to provide services to the defendants in the United States." Ex. 4, at 49.

c. The limitations issue was a central focus of trial, and the jury closely considered this evidence. The district court, at Wood's request, instructed the jury regarding its obligation to find beyond a reasonable doubt that the criminal activity continued past June 9, 2006. At the outset, the court instructed the jury that "the Government must prove beyond a reasonable doubt the conspiracy alleged in Count One continued on or after June 9, 2006, and some element of the alien harboring alleged in Count Two took place on or after June 9, 2006." Doc. 125-10, at 61. When instructing on the conspiracy count, the court reiterated that "the Government must prove beyond a reasonable doubt that the conspiracy alleged in Count One continued on or after June 9th, 2006." Doc. 125-10, at 79. And, the court repeated for a third time that "the Government must prove beyond a reasonable doubt that the conspiracy continued on or after June 9th, 2006" and that "the Government must prove beyond a reasonable doubt that some element of alien harboring took place on or after June 9, 2006." Doc. 125-10, at 84-85.

(...continued)
court correctly acknowledged that it was within the jury's province to assess the witnesses' credibility and resolve any conflicting testimony. Ex. 4, at 22-23.

This Court presumes the jury followed these instructions. See *United States* v. *Hodge*, 870 F.3d 184, 205 (3d Cir. 2017). But even apart from that presumption, the trial shows that the jury focused on this critical date. Michael Wood's counsel argued in closing that the jury should "focus [their] deliberations on * * * the statute of limitations." Doc. 125-10, at 127. Counsel reiterated that the jury must find "unanimously" and "beyond a reasonable doubt" that the "Government has proved criminal conduct occurring on or after June 9, 2006." Doc. 125-10, at 128. Turning to the facts, counsel argued that any criminal activity ended when P.I. moved to the Murunga-Adoyo residence and that the government had not established that the move happened after June 9, 2006. Doc. 125-10, at 137-138. During its deliberations, the jury requested transcripts of P.I. and Adoyo's testimony regarding Mary's conversation with P.I. at the Murunga-Adoyo residence. Doc. 125-11, at 11; Doc. 97. Counsel's argument and the jury's request make clear that jurors focused on ensuring that part of the criminal scheme (here, Mary's attempt to return P.I. to her residence to engage in low-cost childcare) continued past June 9, 2006 and that they did so based on evidence in the record.

2. Wood's Arguments Against The Verdict Lack Merit

Wood's arguments against the verdict do not render his sufficiency claim substantial. Wood's assertion (Mot. 16) that he was not involved in criminal

activity after June 9, 2006, is meritless because he is responsible for Mary Wood's conduct, including her attempt to retrieve P.I. for defendants' benefit.

"[A] defendant is liable for his own and his co-conspirators' acts for as long as the conspiracy continues unless he withdraws prior to the conspiracy's termination." *United States* v. *Kushner*, 305 F.3d 194, 198 (3d Cir. 2002). To avoid liability for Mary's conduct, Michael must provide "evidence of complete withdrawal," *i.e.*, "a full confession to the authorities or communication to his co-conspirators that he has abandoned the enterprise and its goals." *United States* v. *Detelich*, 351 F. App'x 616, 620 (3d Cir. 2009) (citation omitted). Because there is no evidence of withdrawal, Michael is responsible for Mary's ongoing harboring activity of trying to get P.I. to provide low-cost childcare and housework to them. As the district court held, "Michael Wood never withdrew from the conspiracy as is required under the law, and, therefore, he is responsible for the substantive acts of Mary Wood." Ex. 4, at 49.

Wood's assertion (Mot. 17) that his conspiracy and harboring offenses ended when P.I. moved to the Murunga-Adoyo household and that the Mary-P.I. conversation was a new offense also lacks merit. This argument relies on one case regarding the federal kidnapping statute, in which the Supreme Court held that a kidnapping offense ends for venue purposes when the victim is freed. See Mot. 17 (citing *United States* v. *Rodriguez-Moreno*, 526 U.S. 275, 281 (1999)). But the

argument that the victim's removal from defendants' home is akin to freedom and thus ends the offense does not apply in the harboring context because, unlike the kidnapping statute (18 U.S.C. 1201), the harboring statute (8 U.S.C. 1324) does not require that the victim be seized or restrained. Rather, the statute here requires only that the defendant, for financial gain, conceal, harbor, or shield an alien from detection with knowledge or reckless disregard of the alien's unlawful presence in the United States. See 8 U.S.C. 1324(a)(1)(A)(iii) and (a)(1)(B)(i).

Finally, to the extent Wood contends that the government's position on the legal significance of P.I.'s move to the Murunga-Adoyo household shifted during trial (see Mot. 15-16), the district court repeatedly and properly rejected this argument. In denying bail pending appeal, the court stated that the government "put the defendant on notice, starting with the indictment, as to what the time frame was going to be here, and they proved the same crime, the same elements, and the same time period as they alleged." Ex. 2, at 18. The court rejected Wood's contention that he was unaware that the government would rely on the Mary-P.I. conversation after P.I. went to the Murunga-Adoyo household, stating that it found "there was no surprise to the defense counsel as to where this was going once the victim moved out." Ex. 2, at 18; Ex. 4, at 3-4 ("I am puzzled somewhat by your claim that you were apparently kind of caught by surprise when

the Government argued and presented evidence that the crime continued after June 10th.").

In sum, sufficiency is not a substantial question because, as the district court concluded, the limitations issue "was a jury fact question as to whether or not the acts that were done to try to get [P.I.] back, which took place, the jury found, weeks after she had left the house, is supported by the evidence, and there is evidence to support that, so I don't think it can be a substantial question." Ex. 2, at 18.

B. Wood's Challenge To His Conspiracy Conviction Would Not Affect The Jury Verdict Or Substantially Reduce His Prison Sentence, And Does Not Raise A Substantial Question

Wood's argument regarding his conspiracy conviction (Mot. 11-15) also does not warrant bail pending appeal. Wood was convicted of a multi-object conspiracy under 8 U.S.C. 1324(a)(1)(A)(v). The three objects were: (1) encouraging or inducing an alien to come to, enter, or reside in the United States knowing that such activity is or will be illegal; (2) transporting, moving, or attempting to transport or move an alien in furtherance of a legal violation where the defendant knows the alien remains in the United States illegally; and (3) harboring or attempting to harbor an alien who the defendant knows is in the United States illegally. Wood argues (Mot. 12) that the first two objects of the conspiracy are legally invalid and thus require reversal of his conspiracy

conviction. Specifically, he argues that defendants induced P.I. to enter the United States and transported her only in 2005, which is outside of the limitations period.

The Court need not consider whether this question is substantial because even if it were, Wood cannot satisfy Section 3143(b)(1)(B). Resolving the question in Wood's favor would not result in reversal of his conspiracy conviction, nor would reversal lead to a reduced prison sentence shorter than the expected duration of the appeal. If the Court nevertheless reaches the issue, Wood does not raise a substantial question because he misreads the statute that creates the objects of the conspiracy and misinterprets *Yates* v. *United States*, 354 U.S. 298 (1957).

1. Even Resolving This Issue In Wood's Favor Would Not Affect The Verdict Or Substantially Reduce His Prison Sentence

The Court need not reach whether Wood's arguments regarding the first two objects of the conspiracy are substantial because even if the Court were to resolve that issue in his favor, that would neither require reversal of the conspiracy conviction nor substantially reduce his prison sentence. That is because the jury convicted Michael Wood of a substantive alien-harboring offense in addition to conspiracy, which is important for two reasons.

a. Even if the Court were to conclude that the first two objects of the conspiracy—the "inducing entry" and "transporting" objects (Mot. 12)—are legally invalid as time-barred (which, as discussed below, they are not), any such error would not affect the conspiracy conviction. Wood concedes (Mot. 13) that

the third object—alien harboring under 8 U.S.C. 1324(a)(1)(A)(iii)—has a ten-year limitations period. Wood's argument hinges on his contention that "the Court cannot tell which theory [the jury] predicated the conspiracy verdict upon": the first two, which he contends are legally invalid, or the third, which is undoubtedly valid. Mot. 13.

But the Court *can* tell that the jury relied on the third, valid theory, *i.e.*, that the object of the conspiracy was to engage in alien harboring that continued into June 2006. That is because the jury convicted defendants of engaging in the underlying substantive alien-harboring offense within the limitations period. The jury's verdict demonstrates that any error regarding the validity of the two objects of the conspiracy that Wood challenges would be harmless. Reversal of the conspiracy conviction would thus be inappropriate because "errors of the *Yates* variety are subject to harmless-error analysis." *Skilling* v. *United States*, 561 U.S. 358, 414 (2010). The district court concluded as much, stating that "defendants were convicted of harboring, [a] substantive count of harboring, beyond a reasonable doubt, so I don't think there is a substantial question" on conspiracy. Ex. 2, at 19.

b. Bail pending appeal is also inappropriate regardless of Wood's conspiracy argument because he would be subject to a significant sentence for his alien-harboring conviction even absent his conspiracy conviction. The sentence

for alien harboring would likely exceed the duration of this appeal, requiring denial of his motion. See 18 U.S.C. 3143(b)(1)(B).

The district court calculated Wood's recommended Guidelines sentence to be 15 to 21 months and imposed a 20-month sentence. Even if the conspiracy conviction (Count 1) were vacated, the Guidelines calculation would not change, and Wood would likely receive a prison sentence on the substantive alien-harboring conviction (Count 2) that exceeds this appeal's expected duration. The base offense level (12) is the same for the conspiracy and alien-harboring convictions. See Sentencing Guideline § 2L1.1(a)(3). The two counts were grouped together under Section 3D1.2(a), and the base offense level for the group as a whole was 12 under Section 3D1.3(a), which applies as the group's offense level the highest offense level for any single count. The court then applied a two-level vulnerable victim enhancement under Section 3A1.1(b)(1). Even if the conspiracy conviction were vacated, the alien-harboring conviction alone, without grouping, would have the same base offense level of 12; the same vulnerable victim enhancement would apply; and the recommended prison sentence would remain at 15 to 21 months. There is no dispute regarding these Guidelines calculations, nor is there reason to believe the court would impose a sentence on

Count 2 shorter than the duration of the appeal, which forecloses granting Wood's motion.[3]

2. Wood's Challenge To His Conspiracy Conviction Does Not Raise A Substantial Question

Regardless, Wood's argument regarding his conspiracy conviction does not raise a substantial question because he misconstrues the statute and *Yates*.

a. Wood Reads The Statute Defining The Conspiracy's Objects Too Narrowly

Wood contends (Mot. 12) that defendants' inducement of P.I.'s entry to the United States and transportation of her occurred outside the limitations period. But the argument that such conduct was completed on August 13, 2005, ignores the breadth of those statutory prohibitions. Properly understood, both objects cover defendants' conduct in June 2006.

As for the first object of the conspiracy—namely, "encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States," 8 U.S.C. 1324(a)(1)(A)(iv)—Wood contends that it "cannot survive the end of the entry or

[3] Anne Murunga's sentence also suggests that Wood's sentence on the alien-harboring conviction would be longer than the duration of this appeal. Murunga pleaded guilty to one count of alien harboring (8 U.S.C. 1324(a)(1)(A)(iii) and (a)(1)(B)(i)), and the district court sentenced her to 18 months' imprisonment. See Judgment, *United States* v. *Murunga*, No. 14-cr-175 (E.D. Pa. Nov. 20, 2018) (Doc. 174). Though there are differences between Murunga and Wood's cases, the duration of her sentence for violating the same statute suggests that Wood would receive a sentence for alien harboring that would be longer than this appeal's duration.

inducement." Mot. 12. But it does. The statute criminalizes not only encouragement or inducement to *enter* the United States but also encouragement or inducement to *reside* in the United States, which Wood ignores. See 8 U.S.C. 1324(a)(1)(A)(iv). Mary's attempt to retrieve P.I. weeks after P.I. moved to the Murunga-Adoyo residence in June 2006 and defendants' withholding of P.I.'s possessions (pp. 8-9, *supra*) violate the statute because Mary's actions encouraged or induced P.I. to *reside* in the United States. Courts have recognized that the statute applies even where "the illegal alien[] in question already resided in the United States at the time * * * the alleged wrongful encouragement or inducement occurred." *United States* v. *Martinez*, 900 F.3d 721, 731 n.8 (5th Cir. 2018) (collecting cases). The district court thus found there was no substantial question, concluding that the statute "is pretty plain about encouraging and inducing an alien to reside in the United States." Ex. 2, at 19.[4]

The same flaw infects Wood's argument on the conspiracy's second object—namely, "transport[ing], or mov[ing] or attempt[ing] to transport or move such alien within the United States by means of transportation or otherwise, in

[4] *United States* v. *Lopez*, 484 F.3d 1186 (9th Cir. 2007), which Wood cites (Mot. 12), is inapposite. That case concerns 8 U.S.C. 1324(a)(2), which criminalizes "bring[ing] or attempt[ing] to bring" an alien into the United States knowing that the alien cannot legally come to, enter, or reside in the United States. Wood ignores the difference between bringing an alien to the United States and encouraging an alien to reside in the United States.

furtherance of [the alien's illegal presence]," 8 U.S.C. 1324(a)(1)(A)(ii). Wood contends that any transportation scheme ended when he brought P.I. to the United States. Mot. 12. But Mary's attempt to retrieve P.I. and withholding of P.I.'s possessions advance this object because Mary was trying to "transport or move" P.I. from the Murunga-Adoyo residence back to defendants' household. See 8 U.S.C. 1324(a)(1)(A)(ii). That transportation would not be merely incidental to P.I.'s legal status or the goals of the conspiracy. Rather, the goal of such transportation was to address the Woods' need for low-cost childcare and household help, *i.e.*, the reason P.I. was in the country illegally. Courts have recognized that an employer's transportation of aliens whom they know are working for them illegally is not "incidental." See *United States* v. *One 1982 Chevrolet Crew-Cab Truck VIN 1GCHK33M9C143129*, 810 F.2d 178, 182 (8th Cir. 1987). Accordingly, the district court correctly concluded that Mary Wood's conduct "would contemplate transporting" P.I. and that there was no substantial question as to this object of the conspiracy's legal validity. Ex. 2, at 19.

Wood's argument that a five-year statute of limitations applies to these two objects (Mot. 13) fails because the conduct extended to late June 2006. Wood's theory is that the shorter limitations period applies because the limitations period was extended from five to ten years in January 2006. But the plain language of the statute and the evidence make clear that defendants advanced these criminal

objectives well into June 2006 through Mary's attempt to return P.I. to their home. That the statute of limitations was not extended until January 2006 is irrelevant.

Because defendants' scheme to encourage P.I. to reside in the United States, transport P.I. within the United States, and harbor P.I. from detection all persisted into late June 2006, there is no substantial question regarding conspiracy.

b. Yates *Does Not Apply Because The Statute Here Does Not Require An Overt Act And Because Wood's Challenge Is To Factual Sufficiency, Not A Legal Defect*

Even if Wood correctly interpreted the statute, his challenge to his conspiracy conviction is still insubstantial because his reliance *Yates* (Mot. 13-14) is misplaced for two reasons.

i. *Yates* does not apply where, as here, the conspiracy statute does not require the jury to find that specific objects of the conspiracy happened during the limitations period. In *Yates*, the Supreme Court vacated a conspiracy conviction where the defendant had been convicted of (1) conspiring to advocate for the overthrow of the government, and (2) organizing the Communist Party. See 354 U.S. at 300-301. The Court found that the second object fell outside the limitations period as a matter of law. See *id.* at 312. The Court rejected the government's argument that it should nevertheless affirm due to harmlessness. See *id.* at 311. Importantly, *Yates* concerned the general federal conspiracy statute, 18 U.S.C. 371, which requires an overt act. The Court vacated the defendant's conviction because

it was not clear whether the jury relied on the overt act for advocacy—which would have been allowed—or the overt act for organization—which was time-barred and legally invalid. See *Yates*, 354 U.S. at 311-312 ("[W]e have no way of knowing whether the overt act found by the jury was one which it believed to be in furtherance of the 'advocacy' rather than the 'organizing' objective of the alleged conspiracy.").

Yates does not require the same result where the conspiracy statute at issue does not require an overt act. Unlike the general conspiracy statute, the plain text of other conspiracy statutes, such as the provision here, Section 1324(a)(1)(A)(v)(I), do not require any overt act. See *United States* v. *Bey*, 736 F.2d 891, 893-894 (3d Cir. 1984). For a statute that does not require an overt act, the crime is the agreement to violate the law, not the underlying object or overt acts. That is, defendants violated Section 1324(a)(1)(A)(v)(I) as soon as they made an agreement to engage in any of the conduct prohibited under Sections 1324(a)(1)(A)(i) to (iv). Wood's liability for that conspiracy continues until the conspiracy ends or he withdraws from it, even if defendants stop engaging in one or more objects of the conspiracy. While the *conspiracy itself* must continue into the limitations period for the jury to convict, no particular *object* of the conspiracy needs to continue into the limitations period. That is precisely what the jury found. The district court instructed the jury that it could convict only if the United States

proved beyond a reasonable doubt that there was an agreement to engage in one or more of the objects of the conspiracy *and* that the conspiracy extended past June 9, 2006. Doc. 125-10, at 61, 79, 84-85. The jury found both.

ii. *Yates* also does not apply when the defendant's challenge is to the evidentiary support for some objects of a multi-object conspiracy. That is, where a defendant is convicted of a multi-object conspiracy, the verdict must be upheld as long as there is sufficient evidence on one object, even if there is insufficient evidence on another. See *Griffin* v. *United States*, 502 U.S. 46, 56 (1991) (distinguishing *Yates*).

Here, to the extent Wood contends that there was a defect in the evidence as it pertains to some of the objects of the charged conspiracy, he is alleging a factual rather than legal flaw. At bottom, Wood's argument is not that there was some legal defect in the conspiracy charge, but rather that the evidence was insufficient that two of the objects of the conspiracy continued into the limitations period. While statute of limitations is frequently a question of law, in this case, the limitations issue was a factual question for the jury. Because the issue here is one of factual sufficiency, rather than legal validity, the Court must affirm if there is sufficient evidence for *any* of the objects of the conspiracy. See *Griffin*, 502 U.S. at 60. Because the jury's guilty verdict on the substantive alien-harboring conviction makes clear that the harboring object of the conspiracy continued into

the limitations period (see pp. 14-15, *supra*), Wood raises no substantial question of law or fact regarding his conspiracy conviction.

CONCLUSION

The Court should deny Wood's motion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL:

(1) complies with the type-volume limitation in Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 5190 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2016, in 14-point Times New Roman font.

s/ Vikram Swaruup
VIKRAM SWARUUP
Attorney

Date: December 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, I electronically filed the foregoing UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system.

I further certify that all parties are CM/ECF registered, and service will be accomplished by the appellate CM/ECF system.

s/ Vikram Swaruup
VIKRAM SWARUUP
Attorney

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	Hon. Robert B. Kugler
Plaintiff(s),	:	Criminal No. 16-271(RBK)
v.	:	
MICHAEL WOOD,	:	
Defendant(s).	:	

O R D E R

THIS MATTER HAVING come before the Court on the application of defendant Michael Wood, by his attorney Krovatin Klingeman LLC, Ernesto Cerimele, Esq., appearing, for bail pending appeal, and the court having heard the argument of counsel in open court on December 10, 2018, and having reviewed the papers submitted, including the opposition of the government, and for the reasons expressed on the record on that date,

IT IS ON THIS 11th day of December, 2018, **ORDERED** that the Motion of defendant Michael Wood for bail pending appeal be and is hereby **DENIED**.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	**CRIMINAL NUMBER:**
v.	**16-cr-271-RBK**
MICHAEL WOOD,	**MOTION FOR BAIL PENDING APPEAL**
Defendant.	

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
December 10, 2018
Commencing at 2:15 p.m.

B E F O R E: **THE HONORABLE ROBERT B. KUGLER, UNITED STATES DISTRICT JUDGE**

A P P E A R A N C E S:

U.S. DEPARTMENT OF JUSTICE
BY: SHAN PATEL, ASSISTANT U.S. ATTORNEY
ANITA CHANNAPATI, ASSISTANT U.S. ATTORNEY
950 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20530
FOR THE PLAINTIFF

KROVATIN KLINGEMAN LLC
BY: ERNESTO CERIMELE, ESQUIRE
60 PARK PLACE, SUITE 1100
NEWARK, NJ 07102
FOR THE DEFENDANT

A L S O P R E S E N T:

Michael Wood, Defendant

Scott Bishop, HSI Special Agent

Certified as true and correct as required by Title 28 U.S.C. Section 753.

/S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI

Carol Farrell, Official Court Reporter
cfarrell.crr@gmail.com
856-318-6100

(In open court on December 10, 2018, at 2:15 p.m.)

THE DEPUTY CLERK: All rise.

THE COURT: Good morning. How is everybody? Or good afternoon. I'm sorry. Have a seat, please.

MR. CERIMELE: Good afternoon.

THE COURT: Let's start with appearance for the government, please.

MR. PATEL: Yes. Shan Patel and Anita Channapati on behalf of the United States. And also seated at the table is Agent Scott Bishop.

THE COURT: Mr. Cerimele?

MR. CERIMELE: Good afternoon, Your Honor. Ernesto Cerimele from Krovatin Klingeman on behalf of the defendant, Michael Wood.

THE COURT: I assume you got the same notice I did about the designation?

MR. CERIMELE: We haven't received it yet, but I had a conversation with pretrial, and I understand that he has been designated to report in January.

THE COURT: Well, I will make you a copy of the letter I just got.

MR. CERIMELE: Thank you.

THE COURT: All right. We're not going to be dealing with risk of flight or danger to the community or the application is not for purposes of delay. But didn't I handle

all these issues before and during and after trial?

MR. CERIMELE: Yes, Judge.

THE COURT: So what has changed, if anything?

MR. CERIMELE: Nothing, Judge.

THE COURT: Okay. So these are the same reasons that we raised before?

MR. CERIMELE: Correct.

THE COURT: All right. So the substantial question that you want to present to the Court of Appeals has to do, again, with the statute of limitations, right?

MR. CERIMELE: That is correct, Judge. There is three separate issues that all deal with the statute-of-limitations question.

Judge, the government made two decisions that had an impact, both before trial and during trial, on the statute of limitations, and it created substantial issues in our opinion.

The first of the decisions, Judge, is not to indict Michael Wood until ten years after the offense conduct had concluded, to the month and to the day, in June 2016. When they made the decision to do so on that date, it is our position, and we believe we do have support for it, that two of the three objects of the conspiracy were time barred, without question -- potentially three.

With respect to the government's second decision, they made the decision at trial, inadvertently, not to present

evidence of the date that Pasi left the Woods household, and at that time they admitted it was inadvertent, and they attempted to reopen their case in chief because it was a mistake.

That decision led to the second issue of whether this post-offense conduct that your Honor has heard and heard and heard about Mary Wood attempting to retrieve Pasi from Ann Murunga's household, constitutes an act in furtherance of the conspiracy.

And so the two points I want to make today, Judge -- and I'll be brief; your Honor has heard it over and over again -- is as follows:

With respect to whether the harboring constitutes -- continued after the date that Pasi was retrieved from the Woods household, we believe that it wasn't, that it didn't constitute a continuing act in furtherance of the conspiracy. But, in any event, that's not the question for the Court to decide today.

Your Honor may very well be correct that this conversation, this undated, vague, relatively innocuous conversation in approximately June 2006, constitutes an act in furtherance of the conspiracy, and the Third Circuit may very well affirm. But that's not the question.

The question is whether that is a substantial issue, and it is. Because this isn't a case, Judge --

THE COURT: Well, why is it a substantial issue? The question was presented to the jury. There was evidence to support it by the testimony that it was a few weeks after she left the house; the testimony the jury could find easily -- clearly was asking her to come back, so that she could continue to reside at the Wood house so that the Wood family could continue to get the financial benefit of that. Right? I mean, the jury heard all that.

MR. CERIMELE: Well, that's not necessarily true, Judge. That is the argument that the government has made. But if you reevaluate the trial transcript, Mary Wood spoke very little during this conversation. The only thing that she purports to have said is that the kids miss you.

Newton Adoyo has testified that Pasi was the one screaming during this conversation. She was the one with her voice elevated. And so, if you actually revisit the transcript, Judge, it's not as incriminating as the Court just suggested.

THE COURT: Well, what I'm suggesting is the jury could conclude that it was incriminating, I mean that, taken with the fact that Mary said that they were going to keep Pasi's belongings until she came back, to sort of further incentivize the victim to come back. I mean, why can't the jury conclude that that's what that meant?

MR. CERIMELE: The jury can conclude that's what that

meant, Judge. But it's our position that that is not an act in furtherance of the conspiracy.

In fact, when you're dealing with the issue of whether this is a substantial question, the question -- the issue for your Honor to decide today is not whether the jury's verdict was correct or whether your Honor's decision to reject our motions for judgment of acquittal were proper or whatnot.

The question is whether the Third Circuit, if they ruled in the defendant's favor, would constitute a reversal, whether it would result in a reversal, and if the Third Circuit agreed that this relatively innocuous conversation that took place, you know, a couple of days or a couple of weeks after P.I., Pasi, was no longer living or being harbored by the Woods, whether that would be reversal. Of course it would, because the statute of limitations would have run at that point in time.

And so the question, again, for your Honor to decide is, you know, whether the -- excuse me -- the language must be read as going to the significance of the substantial issue to the ultimate disposition of the appeal. And if the appeal is decided in Mr. Wood's favor, the result would be a reversal of the conviction. And that's why the substantial --

THE COURT: Well, no, you're right. I mean, but the burden is more difficult, though, if you're dealing with a question of fact than a question of pure law, correct?

MR. CERIMELE: That's correct.

THE COURT: And this is a fact that the jury clearly must have found. And there was -- I mean she, the victim, testified it was a couple days, but Adoyo comes in and says it was a couple weeks. The jury was clearly interested in the time frame, as they must have been, because they charged him specifically on that. So if they weigh the competing testimony and take into account your summations, and they come out and say, well, this is what we found, then you've got a really high hurdle to overcome, right?

MR. CERIMELE: It is a high hurdle, Judge, but, again, the Third Circuit has reversed things like this in the past. You know, the jury has -- excuse me -- the Third Circuit has overturned jury verdicts even when the juries have decided issues of fact.

And a question like this, where the decision, based on fact or what have you, is so substantial, that absolutely would have the effect of reversal of the conviction; that's why it's substantial.

The second issue, Judge, that I want to discuss is a little different because it's more complex and it doesn't deal with a question of fact. It deals specifically with a question of law. And it's the *Yates* issue that we briefed, during the trial and post trial as well, and it deals with these objectives.

The government did not indict Mr. Wood for each of the three objects because they couldn't have. The first two objects of the conspiracy were time barred. The act of transporting Pasi into the country expired when the entry was complete. And the act of transporting Pasi within the country was complete when the transport was completed. Both of those were not only completed before June of 2006, they were completed before January of 2006, and that's important, because in January of 2006, the statute is changed and the entry and the transport goes from a five-year statute of limitations to a ten-year statute of limitations. And so the statute there runs in 2011, not in 2016, which is when Michael Wood was indicted. That's important because if those two objects were time barred, they were legally invalid. Even if one of those objects was time barred, the entry, most specifically, was legally invalid, those objects could not have been presented to the grand jury -- to the jury. It would have been improper for them to be presented to the grand jury, and that's exactly what the Supreme Court's decision in *Yates* has said.

In this case, it would be impossible for us to know which of the objects the jury convicted Mr. Wood because of. I understand what the government's position is, that because he was convicted of the substantive offense of harboring, he must have been convicted for the third object, which was the

harboring. But that inference can't be made, Judge, because those are two separate and distinct crimes, with two separate and distinct elements.

Obviously, for the -- the jury could have convicted Michael Wood for a substantive offense of harboring but also found that he and Mary Wood did not have an agreement to harbor Pasi, and because of that, Judge, it would be an improper inference. It would be an illogical inference. And so, by permitting the jury to hear all three objects, over the defendant's objection, the verdict itself is illegal. That again, Judge, that's not a fact inquiry; that's a -- that would be a legal decision of the Third Circuit to make. And if the Third Circuit rules in the defendant's favor, again, the conviction would be overturned, and that's why that is a substantial issue.

And I'll give you a second hypothetical, Judge. It's possible that the jury convicted Michael Wood of conspiracy with Mary Wood to bring Pasi into this country, the first object, which is legally invalid. Because the government demanded a *Pinkerton* charge over the defendant's objection, that would also permit the jury to find Michael Wood guilty of a substantive offense of alien harboring, notwithstanding his contribution to that offense in any way, shape, or form, if Mary Wood did that on her own. And so the -- if you follow me here, the conspiracy is the -- would be the first object, not

the second or third object, but it would result in the jury being permitted to consider Mary Wood's act of harboring and hold it against Michael Wood and also convict him for the harboring substantive offense. And that's why -- that's the second reason why the government's argument in that regard is flawed.

THE COURT: I'm not sure I'm following you.

I mean, it's black-letter law that the two of them are responsible for each other's acts --

MR. CERIMELE: Correct.

THE COURT: -- as long as they're foreseeable, even if they don't know what each other's acts are.

MR. CERIMELE: Correct.

THE COURT: So I'm not following what you're trying to say here. What's the distinction you're trying to make?

MR. CERIMELE: So the issue that would be presented to the Third Circuit is as follows: Would *Pinkerton* apply when the conspiracy that the defendant is convicted of is legally invalid? Could the government use that legally invalid conspiracy to then convict the defendant of a substantive offense of alien harboring? I'm not sure of the answer. I tried to find the answer, Judge, and I couldn't find it, but it is substantial.

THE COURT: So if the conspiracy count is vacated because it's legally impossible to have conspired, then you're

saying that neither could be convicted of the substantive acts caused by the other?

MR. CERIMELE: That's correct, Judge. That would be the argument to the Third Circuit because the conspiracy is no longer valid, in which case the government wouldn't be permitted to charge the jury on the *Pinkerton* liability. At least, that's what the argument would be.

THE COURT: Okay. Well, I understand the argument now.

What else would you like to say?

MR. CERIMELE: That's it, Judge.

THE COURT: All right. Who is going to argue for the government?

MR. PATEL: I will, your Honor.

THE COURT: Mr. Patel?

MR. PATEL: Your Honor, as a threshold matter, as we all know, the defense has the burden in this motion. It's a high standard post-conviction, post-sentencing, and it's a clear and convincing standard.

And the issue we're talking about today is whether there is a substantial issue -- substantial question of law or fact, and the defense has not met its burden under clear and convincing evidence that one exists.

And I'll state that the true definition for a substantial question is something that is significant in

addition to being novel, not governed by controlling precedent or fairly doubtful. It's not simply looking at whether if the Third Circuit overturned the conviction on appeal, whether that would then be a significant issue, because that's going to be true in every case. I mean, the question of a -- a significant question is how I just defined it.

The first argument made by the defense concerning the statute of limitations, it's not significant because it's a sufficiency issue. And under Third Circuit precedent, sufficiency of evidence claims are not significant questions of fact. And the Court has ruled on this multiple times already, during the trial and after the trial.

And, as we mentioned in our pleadings and in argument, the Court has to give deference to the jury as the factfinder, and it's up to the jury to resolve different issues of credibility. These are not novel issues. There is no significant question of fact with respect to that.

And I didn't hear much argument in terms of the constructive amendment or prejudicial variance, but those aren't substantial questions either.

As we've argued throughout, the government proved at trial what was alleged in the indictment. The grand jury heard evidence of Mary Wood's attempt to bring P.I. back post departure. So there was no constructive amendment.

There was no prejudicial variance. As based on

discovery, grand jury, the pretrial motions, the government's opening argument, the defendant was put on notice that the government was including post-departure conduct involving Mary Wood, where she tried to get P.I. to return, as part of the case in chief. As the Court ruled previously, the defendant can't allege surprise. There is no substantial question with respect to prejudicial variance.

In terms of the objects, there is no substantial question of law, despite the argument just made by defense. A plain reading of the statute shows that none of the objects are legally time barred.

The first object, again and again the government has been reiterating in its pleadings that it encompasses encouraging someone to reside or continue to remain in the United States illegally, and that's exactly what Mary Wood was doing when she went to get P.I., attempted to bring P.I. back to the defendant's house.

And the same thing with the second object. It encompasses conspiring to transport and move somebody in furtherance of their illegal status in the United States. And that's exactly what Mary Wood was doing when she went to Adoyo's house and attempted to bring -- transport and bring P.I. back to the defendant's house. So there is no substantial question in terms of whether those objects are time barred. They're not.

And then, finally, despite defense counsel's argument to the contrary, even if somehow those two objects were time barred, the substantive harboring count, it serves as a quasi special verdict form that shows that the jury needed to -- certainly found beyond a reasonable doubt that the objective of harboring -- that it convicted the defendant of the objective of harboring with respect to the conspiracy because the jury found that. They found the substantive offense beyond a reasonable doubt. So even if there were two objects that were time barred, which they're not, it would be harmless error.

THE COURT: Thank you.

MR. PATEL: Thank you.

THE COURT: Mr. Cerimele, did you want to reply?

MR. CERIMELE: Very briefly, Judge.

I'm pointing to the decision rendered by the Ninth Circuit in *United States of America versus Angelica Lopez,* which is 484 F.3d 1186. I recognize that it's a Ninth Circuit case, but they discuss specifically when the offense of illegal entry terminates. And the Circuit there held: The crux of this case is our determination of when the offense of bringing an alien to the United States terminates. We hold it ends when the person who transports the alien to the country terminates his act of transportation and drops off the aliens in the United States.

It would be -- despite the government's argument, it's not the law that this offense continues, and it's not the law that it would continue to a time not only when the Woods harbored Pasi, but to a time after she left their home. It doesn't make sense, Judge, and it's not supported by the law. That's important because if that object itself is legally invalid, then the verdict rendered on the conspiracy count is reversible, and that's the issue, and it's a substantial one.

THE COURT: What about the statute? It doesn't just say "entry" but it says "reside," to encourage and induce an alien to reside in the United States. Why can't we conclude that that's what Mary was doing when she went and tried to get her back?

MR. CERIMELE: Because that's not a fair reading of the statute, Judge. I understand that the statute says an encouragement or an inducement to reside, but it's not the actual residing.

THE COURT: What do you mean, it's not the actual residing?

MR. CERIMELE: The statute is -- and, again, the Ninth Circuit did a good job of laying out the precise law. It's not the actual act of residing. It's also not the actual act of transporting the defendant -- the victim when the victim's in the country. It is the act of transporting the victim from an extraterritorial land to the United States, and

it terminates when that person enters the United States or shortly thereafter. It doesn't continue --

THE COURT: So the crime can never continue once that person sets foot in United States. Is that what you're saying?

MR. CERIMELE: That's not what I'm saying, Judge. It can continue, but it's not reasonable for it to continue for a year after the entry into the United States, after this victim had been living in the United States for a year, after this victim had planned an escape from their home and had lived in another home for a few days or a few weeks. That's not a logical reading of the statute.

THE COURT: I don't understand why the statute can't reach conduct such as -- let's assume they bring someone in -- someone is brought in here into the United States under false pretenses, and then, as in this case, they take away that person's ability to leave voluntarily -- passport, they strictly regulate that person's contacts with the outside world. And the person then -- the victim then runs away. The defendant chases that victim down, finds them, and brings them back involuntarily to their house. You're telling me that statute won't reach that kind of conduct?

MR. CERIMELE: Judge, it's a case-by-case basis. I'm not sure if it would or wouldn't.

What I'm saying is that is a substantial issue.

Because if the entry terminates upon entry or close to upon entry, shortly after the victim arrives in the country or arrives at her final destination, at that point in time it becomes -- excuse me -- if the Third Circuit interprets our argument as it should -- because there is plenty of support, Judge, and I think that we cited it in our post-trial motions. But if they rule in our favor in that regard, then that's one illegally invalid object and it couldn't be submitted to the jury. That's why it's an issue. I mean, the fact that we are sitting here, Judge, and arguing it should give your Honor cause for concern that this is something that is substantial.

THE COURT: Well, respectfully, the reason we're here arguing it is because you filed a motion and asked me to.

MR. CERIMELE: But it's not --

THE COURT: You shouldn't --

MR. CERIMELE: It's not --

THE COURT: -- into that.

MR. CERIMELE: Judge, it's not a -- it is a close call. Contrary to the government's argument, it is a novel issue. Certainly, during trial, your Honor categorized it as very interesting.

THE COURT: No question it's interesting and novel. The question is whether it's substantial.

MR. CERIMELE: That's correct. And we would argue that it is, Judge.

THE COURT: Thank you.

Well, I'm going to deny the defendant's motion for bail pending appeal because I don't find that there is a substantial question here.

As to the statute of limitations, that was a jury fact question as to whether or not the acts that were done to try to get her back, which took place, the jury found, weeks after she had left the house, is supported by the evidence, and there is evidence to support that, so I don't think it can be a substantial question.

The *Pinkerton* issue, it is a novel issue that the defense raised, but it's pretty much black-letter law that Michael is responsible for the acts of Mary. And I don't think that the statute of limitations applies here.

Anyway, there wasn't any argument on the constructive amendment and variance, and we've dealt with this a few times. I don't change my mind. I don't think there is any substantial question here.

The government put the defendant on notice, starting with the indictment, as to what the time frame was going to be here, and they proved the same crime, the same elements, and the same time period as they alleged. Again, I find there was no surprise to the defense counsel as to where this was going once the victim moved out.

Now, as to the objects of the conspiracy, I don't

think there is a substantial question here. I think -- I just think that the reading of the statute is pretty plain about encouraging and inducing an alien to reside in the United States -- reside in the United States illegally. I think that all continued when Mary went to try to get the victim back. Certainly, that would contemplate transporting her, once they got her back. So I think the second of those objects is not a substantial question.

And the defendants were convicted of harboring, substantive count of harboring, beyond a reasonable doubt, so I don't think there is a substantial question as to the third object of this.

So, for all those reasons, I'm going to deny the motion for bail pending appeal.

Anything else?

MR. PATEL: Not from the government, your Honor.

MR. CERIMELE: Nothing from the defendant, Judge.

THE COURT: Thank you very much.

(The proceedings concluded at 2:40 p.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI
Court Reporter/Transcriber

12/14/2018
Date

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	Hon. Robert B. Kugler
Plaintiff(s),	:	Criminal No. 16-271(RBK)
v.	:	
MICHAEL WOOD,	:	
MARY WOOD,	:	
Defendant(s).	:	

O R D E R

THESE MATTERS HAVING come before the Court upon the Motions of Defendant Michael Wood, pursuant to F.R.Crim.P. 29 and 33, for judgment of acquittal and/or new trial (document 125), and the Motions of defendant Mary Wood, pursuant to F.R.Crim.P. 29 and 33, for judgment of acquittal and/or new trial, (document 128) and the court having reviewed the papers submitted including the opposition of the government and having heard oral argument on June 8, 2018, and for the reasons expressed on that date,

IT IS ON THIS 11th day of June, 2018, **ORDERED**;

1. The Motions of defendant Michael Wood for judgment of acquittal or new trial is **DENIED**;
2. The Motions of defendant Mary Wood for acquittal or new trial is **DENIED** as to Counts 1 and 2;
3. The Motion of defendant Mary Wood for judgment of acquittal on Count 3 is **GRANTED**.
4. Defendants shall be sentenced on **September 6, 2018, at 10:00 A.M.**

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

-vs-

CRIMINAL NUMBER: 16-271

MICHAEL WOOD & MARY WOOD,

Defendants.

MOTIONS FOR ACQUITTAL AND/OR A NEW TRIAL

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
June 8, 2018

B E F O R E: HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

THE HONORABLE JEFF SESSIONS
ATTORNEY GENERAL FOR THE UNITED STATES
BY: ANITA CHANNAPATI
SHAN PATEL
ASSISTANT UNITED STATES ATTORNEYS

KROVATIN KLINGEMAN, LLC
BY: HENRY E. KLINGEMAN, ESQUIRE
ERNESTO CERIMELE, ESQUIRE
ATTORNEYS FOR MICHAEL WOOD

THE LAW OFFICES OF LISA A. MATHEWSON, LLC
BY: LISA A. MATHEWSON, ESQUIRE
MEREDITH A. LOWRY, ESQUIRE
ATTORNEYS FOR MARY WOOD

Certified as true and correct as required by Title 28, U.S.C., Section 753
/S/ Carl J. Nami

(Defendants Michael Wood & Mary Wood present)

(The following took place in open court)

THE COURT: All right, this is the matter of United States versus Michael Wood and Mary Wood, indictment 16-271. We'll start with the appearance of counsel. For the Government, please.

MS. CHANNAPATI: Good afternoon. Anita Channapati for the Government.

MR. PATEL: Good afternoon. Shan Patel for the Government and next to us is Agent Scott Bishop.

THE COURT: All right. Welcome back.

MR. CERIMELE: And, your Honor, Ernesto Cerimele and Henry Klingeman on behalf of the defendant, Michael Wood.

THE COURT: Miss Mathewson.

MS. MATHEWSON: Thank you, your Honor. Lisa Mathewson. I'd like to introduce Mary Lowry who recently joined my firm and together we're representing Mary Wood.

THE COURT: Oh, welcome.

MS. LOWRY: Good afternoon, your Honor.

THE COURT: Have a seat, everybody. These are the defendants' motions. We'll start with defendant Michael Wood's motion for acquittal and/or a new trial and then defendant Mary Wood also moved for acquittal and/or a new trial and is opposed by the government. Reply briefs have been submitted. And there's some other motions that I've

already dealt with.

So, I guess we'll start with Michael Wood was the first defendant to move.

MR. CERIMELE: Your Honor, I think Lisa Mathewson is going to take the lead.

THE COURT: Oh, fine.

MS. MATHEWSON: If that's acceptable to the court.

THE COURT: Sure. Come on up.

MS. MATHEWSON: Thank you, your Honor. As the court knows, there's been quite a lot of ink spilled in this matter already, and I thought I'd start with inquiring if the court had a particular topic of interest that prompted the scheduling of oral argument. If not, I can summarize, but as Mr. Cerimele and I both observed, given the myriad of issues here, we each have outlined, there are about four pages each and so I thought I'd first inquire if the court has a priority that you'd like us to address.

THE COURT: Well, not so much a priority. And I -- there wasn't any -- there was not anything in particular that caused me to schedule for oral argument. I actually have oral argument in all criminal motions anyway.

MS. MATHEWSON: I understand.

THE COURT: But I, I am puzzled somewhat by your claim that you were apparently kind of caught by surprise when the Government argued and presented evidence that the crime

continued after June 10th.

MS. MATHEWSON: Yes, your Honor. And an excellent place to start because I would, perhaps, clarify our position somewhat.

00:02 THE COURT: Okay.

MS. MATHEWSON: The date itself is not the heart of our constructive amendment argument, your Honor. That's why, for example, the cases that the Government cites on what's called a time variance, for example, in this context do not 00:02 apply. Because our position is not simply that there was a variance in the date but rather in the scope of the conspiracy as it was defined.

The Government consistently took the position until literally the middle of oral argument on a Rule 29 motion that 00:03 the conspiracy terminated when Mary Wood left the Woods -- I'm sorry, when P.I. left the Woods' home in Mullica Hill. And --

THE COURT: I don't remember them saying that during the trial. In fact, in their opening statement they talked about the evidence of your client going to try to get her 00:03 back.

MS. MATHEWSON: They did, your Honor. But the framework in which, and your Honor held substantial oral argument on this, the framework in which that evidence was offered was to prove the offense conduct. The conduct during 00:03 the course of the offense. And we've cited to the court in

our papers numerous instances in which the Government said this post-offense conduct is not nonetheless relevant to prove state of mind during the course of the offense. And if your Honor recalls, this first arose in the context of Mr. Wood's
00:03 Motion in Limine to exclude allegations, some inflammatory allegations which the Court ultimately did exclude and the Government's position for including them was that those allegations which explained why P.I. was removed from Woods' home were important because they explained the end of the
00:04 conspiracy. Thereafter, the government alleged there were statements made that shed light on the defendants' state of mind during the preceding conspiracy, and in fact that's exactly how Agent Bishop testified to those facts in the Grand Jury. Now he didn't say anything to the Grand Jury about Mary
00:04 Wood going to the Poconos or Mary Wood attempting to persuade P.I. to return. But what he told the Grand Jury was that P.I. told Mary Wood she wasn't coming back. Mary Wood was upset. Mary Wood said to her sister, don't pay her. I'm the one who brought here. She works for me.

00:04 So that evidence understandably the Government proffered and correctly identified as relevant to identify, to prove the state of mind during the course of the conspiracy. But it was not itself offense conduct, and I'll remind the court, for example --

00:05 THE COURT: Why then does the indictment charge

explicitly the crime continued to June 28th?

MS. MATHEWSON: The indictment does charge that, your Honor, but the heart of the constructive amendment is the difference between what's charged and what's proven at trial. So the crime that was charged was a crime that continued until P.I. left the Woods' home. The government alleged that was June 28th.

THE COURT: No, the crime continued until, at least until Mary went and tried to get her back.

MS. MATHEWSON: Well, that was not the Government's position until the Rule 29 argument, your Honor. The Government's position consistently was that the crime ended when she left the home, and interestingly the June 28th date that the Grand Jury was told was the date that the Woods actually purchased the Mullica Hill home.

So clearly the Grand Jury put the end point of the conspiracy at or near the time that the Woods even moved to Mullica Hill. And as the government had identified it to us, the conspiracy, and they said quite expressly to your Honor repeatedly the conspiracy ends with her departure from their home.

Now when your Honor said to them, well, wait a second, we don't know when in June that happened. Miss Channapati said, well, no, we do know because if we look at Exhibit 14 which was Mary Wood's N-400 Application for naturalization,

Exhibit 14 says that they moved to Mullica Hill in July. Had she been correct about that, that would have been dispositive. But she wasn't. We pulled out Exhibit 14, we looked at it and we saw, in fact, they had moved to Mullica Hill in June. And
00:06 the fact that they moved to Mullica Hill in June then required the government to pivot because they knew your Honor had pointed out to them that there was no evidence in the record as to when in June P.I. left that home, and in the absence of the evidence it would simply be insufficient for the court to
00:07 uphold the conviction on the, given the statute of limitations problem. Then the Government said, well, wait a second, maybe it included the Poconos conduct and your Honor said to them, well wait a second, what are you talking about. We never heard that before. And your Honor was absolutely correct.

00:07 THE COURT: Well, I never heard that before.

MS. MATHEWSON: And neither had we, your Honor.

THE COURT: Well, you heard it before in the sense that Mr. Klingeman had made the motion in limine regarding that evidence and it's in the indictment June 28th.

00:07 MS. MATHEWSON: Your Honor, the June 28th date, I don't recall the June 28th was in the indictment but it certainly was told to the Grand Jury. The evidence that Mr. Klingeman attempted to elicit succeeded in excluding was actually the evidence of events that happened before P.I. left
00:07 the Woods' home. And again our point is not the dates

themselves but the scope of the conspiracy which is what Grunewald and myriad of cases say matter for statute of limitations purposes.

THE COURT: Why isn't it within the scope of the conspiracy that Mary tried to get her to come back and continued to reside illegally in Mullica Hill?

MS. MATHEWSON: Several reasons, your Honor, and I'll try to be systematic about this.

First and most concretely, that's simply not what the Grand Jury was told. The Grand Jury heard literally no evidence about Mary going to the Poconos and attempting to retrieve P.I. And your Honor has in the briefing, in fact, I re-produced it in full on page four of my memorandum of law in support of the motion Agent Bishop's testimony about the post departure interaction to the extent it was interaction between P.I. and Mary Wood. That's what the Grand Jury was told. And the Grand Jury was also told that the conspiracy ended on a date on which the Woods actually purchased the Mullica Hill home which would obviously precede the alleged Poconos conduct.

The second reason, your Honor, is that the way this case was indicted, the purpose of the conspiracy -- well, the purpose of any conspiracy, your Honor, must be criminal and not simply as the Government has stated in its briefing reasons or motive for the conduct. So the Government now

tells your Honor, well, the purpose of this conspiracy was to get low cost child care until the Wood's children went to school. That's not a criminal purpose that's cognizable under Grunewald or any case law regarding the scope of conspiracy for statute of limitations purposes. It's also not a cognizable purpose for Count two, the substantive harboring and other charges. Those are, they're criminal statutes, your Honor. They require a criminal purpose, not simply a motive or a reason for the criminal conduct. Thus, the way that this case was charged, the objective of the conspiracy was to violate the substantive statutes, the harboring, the transport and inducement statute.

THE COURT: To cause her to remain in the United States.

MS. MATHEWSON: Yes.

THE COURT: The motive was for cheap childcare.

MS. MATHEWSON: Motive absolutely was for cheap childcare, but motive doesn't extend the statue of limitations. If it did, the conspiracy could encompass, you know, hiring a neighborhood teen.

THE COURT: I don't think they're arguing that it extended the statute of limitations.

MS. MATHEWSON: They're saying that the scope of the conspiracy is defined by the motive by the need for cheap childcare. But the need for -- you know, obtaining cheap

childcare is not necessarily criminal.

THE COURT: No, it's not.

MS. MATHEWSON: And it's something, therefore, that doesn't qualify as conspiratorial objective. But here's another --

00:10

THE COURT: Causing her to remain in the United States is a crime, is it not?

MS. MATHEWSON: I'm glad your Honor asked about that. It is. But here's the element of that that this conduct does not meet. The case law we cited in, I believe, our reply opening brief, the case law makes clear that in the context of the harboring, the transport and the inducement to remain, the conduct at issue has to substantially facilitate the remaining in the United States. It does not qualify to move somebody from Pennsylvania to New Jersey. Moving her from Pennsylvania to New Jersey is not keeping her in the U. S. That's just changing her place of residence. So, she was going to remain in the U. S, whether she stayed in the Poconos or being moved back to New Jersey.

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00:11

So, your Honor is getting at a crucially important point here which is that that separate conduct perhaps might have been an attempt to begin a new harboring offense, but it was not a continuation of the existing harboring offense.

THE COURT: Why isn't that a continuation? They want her to come back and do exactly what she's been doing.

00:11

MS. MATHEWSON: Because there was a break, your Honor. There was a break in the conduct. There was a interruption in the conduct and two points on this, your Honor. Even if one hypothesizes that the motive continued? First the continuation of the motive when the conspiratorial objective has been achieved is insufficient to --

THE COURT: Why do you say it's been achieved?

MS. MATHEWSON: To use the conspiratorial --

THE COURT: Not from the Woods' point of view it hasn't been achieved because they had expectations obviously she'd come back and continue.

MS. MATHEWSON: Well, I don't know that there was even evidence in the record, your Honor, and that's a subsidiary point that there is really not enough evidence in the record to suggest that Mary was trying to induce her to return.

THE COURT: Why isn't that a permissible inference that she wanted the victim to return?

MS. MATHEWSON: Because, your Honor, the testimony was simply that Mary spoke with her and said she was sad or, you know, P.I. was angry and she was sad.

THE COURT: She was angry.

MS. MATHEWSON: Well, I think the testimony actually was that Mary -- the testimony in the Grand Jury was that Mary was angry but the testimony at trial which is what's crucially

important now under Rule 29 or Rule 33 was that Mary was sad. That's really a subsidiary point, your Honor, we maintain.

THE COURT: What about the part not to pay her? Why would you say that? Why would you say that unless you want to further induce her to come back?

MS. MATHEWSON: Your Honor, that was not in evidence at trial. That was only in evidence at the Grand Jury. There was no testimony at trial that she even told Ann not to take her. Ann didn't testify and none of the witnesses who testified about the interaction said that, you know, to the petit jury. They said it only to -- Agent Bishop said it to the Grand Jury.

But, your Honor, let's even go one step, I guess, of beyond that point. Let's assume for the moment without actually conceding that your Honor is correct, that there would be evidence of an intent to induce her to return. There is two additional points on that. One, there's nothing in the record suggesting that she was acting in a conspiracy with anybody else at that point. But let's say the more important point is even if she is attempting to induce her to return at that time? All she's doing is attempting to initiate a new harboring offense. Because the first harboring offense ended when every element of it had been accomplished.

Now she is not by moving her to New Jersey from Pennsylvania to facilitate her remain in the United States.

The case law is clear about that. Both for purposes of transport for harboring itself and for inducing to remain, it is not enough to move someone from one place to another within the United States. And so that conduct even if perhaps again
00:14 arguendo, it had been an attempt to initiate a new substantive offense was not itself a continuation of the substantive offense which had already been accomplished. And because, and here's really the rub of this, your Honor. This gets into the Yates and Griffin issues that we briefed as well related to
00:15 the general verdict. Take the transport objective. The transport objective, clearly there was no additional transport. There is no proof in the record about a transport. That means the only transport really that was before this jury, the trial jury was the transport from the airport to the
00:15 original house in New Jersey and then incidental transports that don't meet standard of substantially facilitating her to remain in the United States. If any one of those object offenses was time barred, then a new trial is required because we don't know which of the offenses the jury relied upon when
00:15 finding that the conspiracy continued. And although we maintain that judgment of acquittal is required, it is at a minimum in the case that a new trial would be required because of that ambiguity in the record. Now the government says we waive that issue by opposing the special verdict form. The
00:16 Supreme Court disposed of that argument in the Conrad Black

cases and in the Skilling case. And that means that even if your Honor rejects the constructive amendment argument and finds that the scope of the charged conspiracy did encompass the Poconos' conduct and that the proof was sufficient to
00:16 establish that the Poconos' conduct was within the scope of the conspiracy and the charged harboring offense, the ambiguity in the question of which substantive offense was the predicate for the conspiracy conviction is going to require a new trial under Yates because there is a legal issue and our
00:16 colloquy now demonstrates that, your Honor. We're not talking about what witness X said or what date something might have happened. We're talking about the legal interpretation of the substantive offenses. And that means that we're under Yates and not Griffin and because we do not know which of those
00:17 substantive offenses the jury relied on, the court will have to order a new trial at a minimum.

THE COURT: Why wasn't there enough that I told them to find one?

MS. MATHEWSON: Because, your Honor, I guess a few
00:17 different answers to that. First, of course as your Honor knows, we did request, and the court declined, to instruct that they could not rely on the Poconos' conduct and we contend that that was error. Secondly, of course, and, of course, given that instruction then because the jury was
00:17 permitted to use the Poconos' conduct when evaluating the

statute of limitations, they may very well and I have every reason to believe that they did convict on the Poconos' conduct. They found that the Poconos' conduct brought the conspiracy and substantive offenses within the statue of
00:17 limitations. Because of that, your Honor, we concede from the record that their verdict was predicated on the legal error because it was predicated on conduct that was outside the scope of the conspiracy.

The second point, your Honor, is really just inherent
00:18 in the nature of Rule 29 and Rule 33. We always have a verdict. We always have an adverse verdict anytime before the court addresses these motions. The adverse verdict cannot be the end of the story. The court will scrutinize the record and ask is there any evidence to support the jury's finding.
00:18 And while we do contend that judgment of acquittal is required because there's no evidence to support the finding, no matter how the court construes the conspiracy and substantive offenses, we also believe that the ambiguity in the basis for the jury's verdict is going to require a new trial at least.
00:18 And that actually goes quite acutely to Count 2, the substantive count, your Honor, because as the court knows from our papers, we also contend that if the court construes it to include the Poconos' conduct, it's duplicitous which is an additional layer of ambiguity in this question of what the
00:19 jury actually based its finding on.

THE COURT: I'm not sure I followed your duplicity argument.

MS. MATHEWSON: Yes.

THE COURT: I think that assumes that there's two separate conspiracies and two separate crimes here. One ended and the other began.

MS. MATHEWSON: Duplicity goes on to the substantive offenses, your Honor. And, yes, exactly. It's saying her initial harboring offense ended when she was spirited away from the home, and perhaps there was a new harboring offense that began with the attempt to re-harbor. But particularly in the context of a substantive offense, your Honor, it's impossible for the Government to say that the substantive offense continued during that time when Mary Wood was in the Poconos. And they say that both the conspiracy and substantive continued, I think that both, it's incorrect as to both, but really on the substantive count, it's very clear that every element of the offense had been completed and then ended because she was no longer in their custody or control. And, therefore, the harboring offense had to end when she left their home, and that means that Count 2 is duplicitous.

I'll just note one final point, your Honor. The Government did not counter this. If the Poconos' conduct were offense conduct, we would be in front of Judge Sanchez. There would have been venue in the Eastern District of Pennsylvania.

There are very good reasons consonant with the efficient administration of justice put related cases together in the same District when it's possible to do them. We've cited this authority to the court and that's what the statute says. If
00:20 one aspect of a multi-jurisdictional offense takes place -- well, a multi-jurisdictional offense may be charged in any District in which the offense conduct occurred.

THE COURT: Right.

MS. MATHEWSON: We would be in front of Judge Sanchez
00:20 as a related case where the cooperators were because that's how the system is supposed to work. The only reason they brought this case in the District of New Jersey is because the offense conduct was in the District of New Jersey.

THE COURT: All of the offense conduct was in the
00:21 District of New Jersey. What do you mean some of it?

MS. MATHEWSON: That's true, your Honor. But they are supposed to defer to the interest in efficiency. That's why the Related Case Rule has been adopted.

THE COURT: It's not a constitutional imperative or a
00:21 statutory imperative.

MS. MATHEWSON: Absolutely not, your Honor. But I think it's a practical imperative and the government hasn't countered it. I think it's an important question, why were we in New Jersey, and the reality is, that's where the --

00:21 THE COURT: Dismissing an indictment because they

might have brought it in the Eastern District of Pennsylvania instead of the District of New Jersey, when the District of New Jersey clearly had jurisdiction over it.

MS. MATHEWSON: Absolutely, your Honor. If I were
00:21 standing here asking you to dismiss on this basis, I should be embarrassed. But what I'm saying is that is an indication of the scope of the conspiracy. And it absolutely dovetails with every single thing that the Government ever said about the scope of this conspiracy until that moment during the Rule 29
00:22 argument. The conspiracy ended when P.I. left their home and went to the Poconos, and the fact that they charged this case here is simply one more piece of evidence in support of that.

THE COURT: Okay.

MS. MATHEWSON: If I may, your Honor, on the
00:22 naturalization fraud or does your Honor want to hear from Michael Wood and the government on this first.

THE COURT: Keep going.

MS. MATHEWSON: Okay. So your Honor is aware of the Maslenjak case which came down after the trial in this matter
00:22 but even before the decision in that case your Honor was acknowledging that there was serious concerns about the Government's proofs. The Government's only proofs here was that Mrs. Wood would not have been naturalized on the day of her interview. There wouldn't have been additional inquiry.
00:22 And Maslenjak could not be more clear that that is

insufficient to convict her of naturalization fraud. The government cited to the court a Sixth Circuit decision that is actually quite supportive of the defense position here because it was Sixth Circuit case, the Government put on the testimony
00:23 that it didn't put on here. It put on testimony of somebody from CIS who said had we discovered these facts, we ultimately would not have been naturalized and that didn't happen here, your Honor. Which means the government never proved the causal link between the alleged misrepresentation and the
00:23 ultimate naturalization decision. So judgment of acquittal is warranted on that count as well.

THE COURT: All right. Mr. Cerimele, did you want to say anything about this?

MR. CERIMELE: Yes, Judge. I intend to be brief, and
00:23 I'll do my best not to reargue anything that's been argued.

There is no doubt that the Government is entitled to any reasonable inferences based on the trial record and the evidence. They are not entitled to illogical inferences and they are not entitled to extraordinary inferences. At the
00:24 same time it's the Government's burden, not the defendant's burden to prove the statute of limitations. And this court is obligated to strictly construe the statute of limitations. At the same time with respect to a continuing offense, and we'll concede for these present purposes that harboring is a
00:24 continuing offense, that also must be narrowly construed.

Which means that the last criminal act is when the statute of limitations starts to run. The most important question that your Honor has for the court today is when did Pasi leave the Woods' home. Because that's the end of the conspiracy. And
00:24 the answer to that is the conspiracy ended after P.I. reported the assault to others who then removed her from the Woods' home.

THE COURT: And when was that?

MR. CERIMELE: That -- well, excuse me. That is the
00:24 Government making that representation in their motions in limine or their opposition to the defendants' motions in limine.

The court directly asked the government that question. You agree that the conspiracy ended when she was removed to
00:25 the Murunga house. The Government stated: We do. There is no need to complicate this, Judge. The only reasonable conclusion can be that the conspiracy ended, the harboring ended when she was taken from the Woods' home without their knowledge. During oral argument the Government seemed
00:25 confused and surprised as to that argument, but they shouldn't have been because pretrial the defendants moved to dismiss the indictment because it was barred by the statute of limitations and the Government opposed that motion stating that there was a written statement made by Pasi that said she was rescued
00:26 from Michael Wood's abuses and moved to defendant Mary Wood's

sister's house on June 22, 2006. If the government admitted that written statement into evidence, we wouldn't be here today, but they didn't. Similarly the Government on their witness list had Douglas Murunga and Harold Murunga. The
00:26 people who took Pasi from the Woods' home to the Murunga's home. They chose not to call those two witnesses and they made a strategic decision in that regard.

So the trial record as it stands right now is what they are left with. And that's why they need to rely on this, this
00:26 conversation that Mary Wood had with Pasi either days later or weeks later after she left their home.

A couple of things in that regard, Judge. First of all, Michael Wood was long gone by that point.

THE COURT: Well, he wasn't long gone. He's just not
00:27 at home. He was working.

MR. CERIMELE: He was working halfway across the planet, Judge, and Pasi herself testified --

THE COURT: That doesn't mean he's abandoned the conspiracy, does it?

00:27 MR. CERIMELE: Understood, but that's -- it is a pertinent fact in this regard. In the government's opposition to our motion, they concede that there was no direct solicitation by Mary Wood to Pasi when she went to the Murunga's house, and that's important. But we do disagree
00:27 with your Honor's characterization that the purpose of the Ann

Murunga visit was to get Pasi back. Because that's not in the record, Judge. The record as constructed is all of fourteen lines in the transcript. And the government asks the court to make an illogical inference and an unreasonable inference and
00:27 one that the court should not make, because Pasi was asked directly. While you were at Ann's house, did Mary come and see you. And Pasi could have said, yes, Mary came to see me. And she could have said, yes, Mary came to get me to come home. That's not what she said. She said, she came two days
00:28 after to pick up her kids from Ann's house. Newton Adoyo testified about this conversation. He said Mary Wood wasn't even talking. And so this, this inference that this was part of a conspiracy, it's, it's not reasonable, Judge.

Now, I said that the statute of limitations must be
00:28 strictly construed and that's true. And the reason why the statute of limitations needs to be strictly construed, one of the most important reasons is because it protects the defendants, because evidence is lost or destroyed. Witnesses die or cannot be found and memories fade.

00:29 The Government learned about this case, they began their investigation in 2011. They did not indict this case until either shortly before or shortly after the statute of limitations ran in June of 2016. The trial happened in May and June of 2017, eleven years after the conduct took place.
00:29 So without this written statement, without Harold, without

Douglas the Government asked the question, the most important questions to three witnesses, when did Pasi leave the house. And the Government received three different answers back. And now the Government asks the court to disregard the fact that
00:30 it's their fault that this case was tried eleven years later, to disregard the fact that these witnesses fade and they want the court to adopt the most favorable inference that can be made.

THE COURT: Well, didn't the jury adopt the most
00:30 favorable inference that can be made?

MR CERIMELE: That's true, Judge. The jury also didn't have the benefit of all three things. They didn't have the benefit of the law. They did not have the benefit of the background and there's no reason why your Honor armed with
00:30 what we presented to the court can adopt our, our arguments.

THE COURT: Well, why should I disregard what the jury adopted in terms of what the appropriate inference to make from what the facts was.

MR. CERIMELE: Because it's against the weight of the
00:30 evidence, Judge. It's not, it's not more complicated than that.

THE COURT: It's against the weight of the evidence that I should be juror number what, thirteen or what.

MR. CERIMELE: You should be juror number one, Judge.
00:31 What I'm trying, what I'm trying to say, Judge, is it's clear

that if this case was indicted when it should have been, there wouldn't be three conflicting statements about the most important answers and there are.

THE COURT: There's no question that there's, there's no question there were different -- there was just different testimony about the dates involved and the victim that it was two days later that Mary showed up.

MR. CERIMELE: Well, what the Government asks you to do because there's -- first of all, the first person that was asked the question was Laura that day. She doesn't recall when Pasi was moved. Newton Adoyo was asked and he said approximately June 2006. And that this meeting between Mary and Pasi happened a couple of weeks later.

THE COURT: Right.

MR. CERIMELE: Pasi says that she was moved in June 2006 and the meeting happened two days later. And Mary was there to pick up the kids. And so what the Government asks you to you to do is take a portion of Pasi's testimony and a portion of Newton's testimony and that will get them over the hump. That will save the statute. Judge, doing so is unfair and it's unjust just and it is -- the court would not be strictly construing the statute of limitations here.

THE COURT: Why can't the jury do it? What was wrong with the jury deciding, well, I'm going to take June and I'm going to take two weeks?

MR. CERIMELE: Well, Judge, I think that there's a couple of things there. When the government argued in summation to the government, they argued the same things that your Honor said today, that Mary Wood's purpose for going to the Woods' -- for going to Murunga's house was to get Pasi back. That was unsupported by the record. That was, that was improper and frankly, Judge, they if they relied on that argument, then, you know, perhaps it was, it was an incorrect result. But there's no reason why the court today are one with the facts and, two, armed with the law that we've cited can't grant the motions that we ask the court to grant.

THE COURT: Thank you.

MR. CERIMELE: Thank you.

THE COURT: Let me hear from the government. I want to talk first about this, the Count three, naturalization fraud.

Why isn't it -- I mean I had reservations about this, as you know, last year.

Why isn't Miss Mathewson correct that -- and the only testimony presented was she was not going to be naturalized that day if she had correctly disclosed this problem. Because there's no testimony whatsoever that ultimately she wouldn't have been naturalized.

MR. PATEL: Yes, your Honor. Well there was more evidence than just that. There is evidence of -- and first

let me say as threshold matters, the jury was properly instructed that they had to find a fair inference that Mary Wood would be ineligible for naturalization.

Now the evidence of that, there are two witnesses, and
00:34 one in particular USCIS Senior Officer Mary Senft. And so she explained that on part 10 of the naturalization application are questions that USCIS asks to establish someone's good moral character and whether they've done anything that would disqualify them from citizenship. And then she went on and
00:34 explained question 15, the question, question, question: Have you ever committed a crime or offense for which you have not been arrested. Mary Wood said: No. And she signed under a penalty of perjury. Based on that alone just as we cited in the pleadings, the Sixth Circuit Haroon case, just on the
00:34 first test of whether the lie itself would be disqualified. The Government met the burden on that just based on that evidence. Because the jury was -- based on that evidence and knowing that what the underlying crime was, which was the testimony concerning the immigration offenses, that was in
00:35 counts one and two, the jury was entitled to reach a conclusion that the lie demonstrated a lack of good moral character that Mary Wood would have provided truthful information would have raised a fair inference of her ineligibility.

00:35 THE COURT: Well, how do we know that? I mean who

got on the stand and said that she would not have been naturalized but for this?

MR. PATEL: No one got on the stand and said those exact words but --

00:35 THE COURT: Why not?

MR. PATEL: Well, the government didn't need to put on that proof. We didn't need to prove there was actual, you know, ineligibility. We just needed to prove that the jury had to find that there was a fair inference of ineligibility.

00:35 Now maybe in hindsight it would have been better to have somebody put --

THE COURT: Well, how do you get to an inference of ineligibility unless there's evidence from which the jury could find ineligibility? Who said, what evidence did the

00:36 jury have that she otherwise was ineligible for citizenship?

MR. PATEL: So the evidence they had was Mary's sentence is saying, this section, this section that, that is in question, we asked these questions to determine whether this individual has good moral character. And then

00:36 immediately after the sentence said whether they've done anything that would disqualify them from citizenship. The rest of the testimony shows that Mary Wood lied about that question. And so based on that, the jury could make an inference that, that she lied.

00:36 THE COURT: Okay.

MR. PATEL: Yup.

THE COURT: She lied. I'm trying to hone in on what exactly the consequences of that lie were. We know that she couldn't be naturalized that day had she not been true.

00:36 MR. PATEL: Right.

THE COURT: Well --

MR. PATEL: Well, looking at the second -- maybe this is more in line with the second test. If we -- and we don't see this, but let's say that the lie is not in and of itself

00:37 disqualified. So then obviously the first prong I think of most people would agree was clearly met based on the evidence of Fay Hunter that she would have stopped the interview and done a further investigation.

So let's move to the second prong which is in evidence

00:37 that the investigation would, predictably would have disclosed legal disqualification. And so we got to look at all of the evidence as a whole that the jury heard. And so then I'll bring you back to what I just mentioned about Senft, talking about good moral character, what that part of the test is.

00:37 But there's also evidence concerning the lie itself and that's all of the evidence that this jury heard about the immigration offenses that Mary Wood committed.

THE COURT: I mean the form doesn't even say that if you lie on this, you're not going to become a citizen. Right?

00:37 MR. PATEL: That's correct.

THE COURT: It just says you're subject to the crime of perjury.

MR. PATEL: Right. And the government concedes there's certain offenses that wouldn't necessarily disqualify you.

THE COURT: Well, that's the point.

MR. PATEL: Right. But the jury --

THE COURT: How does the jury know what -- that this offense would have disqualified her?

MR. PATEL: Well, the jury can infer that based on, based on the type of lie it was, you know what being --

THE COURT: The jury knows that some -- there's something that will disqualify you from citizenship. They know that. They were told that. Right?

MR. PATEL: Yes.

THE COURT: How do they know this particular thing disqualifies you from citizenship?

MR. PATEL: Well, one of the things they know that would disqualify them from citizenship, they can infer based on Senft's testimony is not of a good moral character. And so then answering that question falsely, they can make inference to show that she didn't have good moral character. Uh --

THE COURT: Did anybody say that?

MR. PATEL: Well, what Senft said was again this is a question we ask to establish someone's good moral character.

Their -- whether they've done anything that would disqualify them for citizenship. That's what she said. And the other testimony from Hunter talks about the further investigation and whatnot. I think we've covered that. But I think the
00:39 court is saying from a legal perspective is and this was mentioned in the Haroon case as well, a fair inference of ineligibility does not require proof of actual ineligibility. The issue here is the jury was properly instructed. So they were able to make that fair inference and they did make that
00:39 fair inference that she was ineligible. And so taking all of the evidence in the light most favorable for the government, the motion on, you know, that this evidence is insufficient and should fail.

THE COURT: All right. You're going to argue the
00:39 other part for this?

MR. PATEL: For?

THE COURT: Or is Miss Channapati going to argue?

MR. PATEL: I was going to do -- respond to Miss Mathewson?

00:39 THE COURT: Yeah.

MR. PATEL: And I'll start with the venue and we didn't respond to that.

THE COURT: Don't worry about the venue.

MR. PATEL: Okay. And I'll try to be brief because I
00:39 do agree with Miss Mathewson that a lot of ink has been

spilled on this, both here and at trial. But it's the government's position there was certainly no constructive amendment, no essential terms of the offense were charged. Here the crime charged, a conspiracy and substantive alien
00:40 harboring from August 2005 through June 28th, 2006. And that's exactly what the evidence was at trial. That's exactly what the defendants were found guilty of.

Similarly there's no variance. The lesser standard where the evidence of trial proves facts materially, I'm
00:40 sorry, different from those alleged in the indictment. That didn't happen either. It's the -- what was alleged in the indictment, the evidence supporting that was the same as what was presented at trial. And then, of course, the foreign part here even if there were a variance, certainly there was no
00:40 prejudice and a variance would only be reversible if there was prejudice, as the court ruled at trial. There's no surprise to the defendants that there was going to be evidence in this case of events that occurred after the victim moved from the Woods' house. So they can't allege surprise. And I'll just
00:41 highlight the different parts in the trial and pretrial that arose. It starts with the discovery. It starts with Grand Jury transcript which, contrary to Miss Mathewson's claim that there was no mention of this conversation to the Grand Jury. There was discussion. The reports of investigation that were
00:41 turned over as parts of discovery which Newton Adoyo discussed

this, the post departure conduct.

In the pretrial motions, the Government explicitly expressed its intent to include the post departure conduct in the case in chief, and the government will note throughout a
00:41 lot of ink that's been spilled and even here today there's been a lot of mischaracterizations both what the government conceded and did not concede in pretrial motions. What's important to note is the, the Government never was even contemplating putting an end date on any of the conspiracy in
00:42 any of those pretrial motions. Instead the pretrial motions, the pretrial motions had to do with making concessions to cut out, you know, the conduct involving the Pennsylvania defendants really had nothing to do with what we're discussing here today. And the court summed it up perfectly saying that
00:42 they're irrelevant given the lack of specificity with respect to the cited evidence and the fact that they're ultimately withdrawn. In those pretrial motions, those points were based on the variances the government, you know, repeatedly cited that they wanted the information in as direct proof of the
00:42 crimes. And then, of course, opening statements the government stated that it would be introducing evidence of this post departure conduct and that was important for Counts one and two. So, again --

THE COURT: Let's talk about that, though. The post
00:42 departure conduct. The whole nub of the defendants' argument

is that the substantive offense ended when she left. She no longer resided in the Wood house.

MR. PATEL: Yes.

THE COURT: How could they be guilty of causing her to reside illegally in the United States when she's left that house?

MR. PATEL: Well, and this kind of goes to the duplicity issue, your Honor. And put simply, alien harboring is continuing effect. It can be looked at as a continuing scheme, a continuing course of conduct, commission of an offense.

THE COURT: That's true. I don't disagree with that. But she wasn't living there anymore.

MR. PATEL: But that's not an element of the offense.

THE COURT: The element of the offense is that she has to reside there.

MR. PATEL: No, she only is not required the use of a physical barrier, artifice or trick. That's in the Ozcelik case. I mean it's not an element that she has to reside in the defendants' house. I mean that's a red herring. The question is whether they're continuing their scheme to conceal, harbor and shield her from detection.

On the duplicity argument the government also will make two other points. One, that the defense waived that argument by not making it pretrial. And, secondly, interestingly this

was in a footnote in one of the pleadings, but even if there were some duplicitous argument, the issue with duplicity is ensuring this unanimous verdict. And certainly the jury in this case was told they had to find evidence of a crime after June 9th, 2006 over and over again. So they would have found unanimously that second part of the crime. But obviously we do not concede or believe in any way this was a duplicitous count as one continuing scheme.

Moving on, your Honor, to the arguments that -- I'm sorry. That count one of the indictment should be vacated due to two objects of the conspiracy being time barred.

I will make a note that after reviewing the defense pleadings on U.S. v. Black, that the government concedes they have not forfeited or waived their objection to the legal validity argument? But that -- we will state -- I'm sorry. On that same argument, the court correctly ruled at trial the two-challenge objects were not timed barred. You know, both of them like the first one which encouraged and induced the victim to continue to reside in the country after knowing that she was here illegally, that certainly continued as a legal matter after she was removed from the house and after she -- the post-departure conversation, that was still an objective for Mary when she went into the house to try to bring her back and have her continue to reside here illegally. But the same thing with the transported move. The goal of Mary Wood was to

transport and to move her back to the defendants' house in order to continue to receive the cheap child care. And that transportation is not incidental. It is fundamentally directly related to the crime the defendants are trying to commit as almost any other transportation because they're trying to bring her, trying to transport her back to continue their scheme. But the government also will note that in the Yates analysis there's another way in preparing for this argument. The government realizes there's another way that this case is distinct from Yates. And that's that, as defense -- we simply had a de facto special verdict form here because the jury found unanimously that the defendants committed this substantive, you know, encouraging offense and defendant Mary Wood conceded that that was the object of the conspiracy was not be time barred. The object of concealing, harboring and shielding from detection. And so we know that the jury found that object beyond a reasonable doubt because they found the substantive offense beyond a reasonable doubt.

00:46 00:46 00:46 00:47 00:47

So the Government would argue that's distinct from Yates under those grounds anyway, even if one of the objects was time barred.

Any further questions of that, your Honor?

THE COURT: No. Thank you.

MR. PATEL: Thank you.

THE COURT: I think Miss Mathewson might have

something to say.

MS. MATHEWSON: Your Honor, you're right.

MR. PATEL: Just --

MS. CHANNAPATI: Did you want Miss Mathewson to respond to what Mr. Patel said or would you like me to respond to what Mr. --

MR. PATEL: Miss Channapati is going to respond to the other argument.

THE COURT: Well, then, let's hear from Miss Channapati first.

MR. PATEL: Sorry about that, your Honor. I'm sorry.

MS. CHANNAPATI: Your Honor, with respect to the statute of limitations and the Rule 29 argument and the Rule 33 argument, I'll be responding to those.

Rule 29 states that this court must uphold the conviction if there is sufficient evidence such that any reasonable jury or rational trier of the fact could find the essential elements of the crime charged beyond a reasonable doubt.

So with respect to this trial, your Honor, the jury was instructed not only to find the elements of a crime but they also had to find a very specific finding that criminal conduct occurred after June 9th, 2006. So, there is sufficient evidence in the record to support that finding. We have Pasi's testimony of what occurred when, when Mary came to

Newton Adoyo's house and we also have Newton Adoyo's testimony what he observed of that conversation. Based on a Rule 29 analysis, that's sufficient evidence, your Honor, of that criminal conduct occurred after June 9th. Pasi indicated what
00:48 the substance of the conversation was, and Newton Adoyo said that it occurred two weeks after Pasi arrived in June 2006. That's sufficient evidence. But we have, the record has more than that. The court gave a very specific instruction three times to the jury indicating they had to make that finding and
00:49 the government is given, the Government is -- the evidence is viewed more favorable to the government in terms of the Rule 29. The presumption for the prosecution is also in favor of that the jury has followed the instructions. Then we have the closing arguments, your Honor, and both defense counsel stated
00:49 their arguments to the jury indicating that the evidence was insufficient. And they went at length parsing how that wasn't sufficient evidence. The jury heard that and we know that the jury heard that because they specifically asked for that testimony to be read back to them based basically taking the
00:50 advice of Mr. Klingeman during his summation at -- who impressed -- who employed them to actually look at that piece of evidence. They did exactly that, your Honor. They looked at -- the only thing that they asked for was the testimony of Pasi and Newton regarding the timing of the conversation. So,
00:50 the record is pretty sufficient that is, is beyond sufficient

that the jury considered the evidence on this point taking to heart the Court's instruction and defense counsels' arguments that they found that the criminal conduct continued after June 9th, 2006.

00:50 THE COURT: Well, clearly the jury had to find that and they did.

MS. CHANNAPATI: Right. But I think -- I mean it's not to be taken lightly. It didn't happen in a vacuum. There was a lot of direct attention placed on that, on that very

00:50 specific issue, at the request of the defense counsel. They asked for this -- they asked for that finding. They asked for that specific finding. So it's not -- I don't -- I understand that that's why we're here. We wouldn't be here if that didn't occur. But I also think that it's not something that

00:51 should be taken lightly because the jury did -- this jury listened to the instructions. They listened to the arguments and they heeded the advice of defense counsel and they still returned a guilty verdict based on the evidence proffered at trial.

00:51 With respect to the Rule 33, your Honor. That had to be, the standard for that is that is that has be against the weight of the evidence and the Third Circuit generally disfavors findings of setting aside verdicts after there has been by jury deliberations and a jury decision. And they

00:51 should be -- the Third Circuit found that they should be, you

know, granted sparingly and only in exceptional cases. Again the standard is it's supposed to be contrary to the weight of the evidence and only in cases where there is a miscarriage of justice.

00:52 The weight of the evidence also supports the finding that there is criminal conduct beyond June 9th, 2006, your Honor.

The testimony of Pasi is a little bit more extensive than my adversary had indicated. She talks about the content 00:52 of the conversation and says that when Mary said she wanted her to come back and she said no, Mary got upset. So the content of the conversation that occurred in Newton Adoyo's house was very much about getting Pasi to return back to the Wood home. And Newton's testimony, given all the words that 00:52 were said in the courtroom, your Honor, Newton's testimony was primarily and only focused on what he observed about that conversation. So, again, it's their perspective, what they were -- what they were -- where they were both coming from. We had Pasi who was talking about, and, you know, a year of 00:52 living with the Woods and how she was mistreated and then at the end, at the, at the moment she was removed from the Wood home, how she was shuffled from place to place and didn't know where she was going and she didn't have her things and, and all of this was going on where you have Newton Adoyo who was 00:53 only asked to talk about how Pasi showed up unannounced and

then two weeks later, a few weeks later Mary showed up announced. So the perspective of both of them, it should come into account in determining the weight of the evidence, your Honor. The jury received -- the jurors received the
00:53 instruction that they are allowed to take -- they can resolve internal consistencies. They are allowed to resolve inconsistencies between different witnesses. It's the same, it's the same deduction that the court can indulge in deciding whether or not the weight, there is sufficient weight of the
00:53 evidence, and the government argues that there is and the Rule 33 motion should be denied as well.

I was going to respond to Michael Wood's argument about being part of the conspiracy even though he was abroad. Is that necessary?

00:54 THE COURT: He never withdrew from the conspiracy.

MS. CHANNAPATI. Okay.

THE COURT: That's clear.

MS. CHANNAPATI: Okay.

THE COURT: You don't need to address that.

00:54 MS. CHANNAPATI: Okay.

THE COURT: Anything else you want to say?

MR. PATEL: Your Honor, there is one part, if I may?

THE COURT: Yeah. Sure.

MR. PATEL: I just wanted to make a record and we
00:54 didn't make in our pleadings and this has to do with the

naturalization count. She also claimed that the evidence was insufficient that Mary Wood knew that her prior conduct constituted a crime, and thus that she did that knowingly lie on her naturalization application.

00:54 I just wanted to make known that the government's position is that the jury had ample evidence to infer that she knew she had committed crimes including the evidence of P.I.'s testimony concerning Mary Wood's isolating P.I. and repeatedly warning P.I. not to talk to anybody outside the house, as well 00:54 as Agent Bishop's testimony concerning Mary Wood admitting that P.I. came to the U.S. on someone else's passport which constitutes passport fraud and that Mary by saying that P.I. did not work for her at the house showing that Mary was conscious of -- consciousness of guilt concerning the crimes 00:55 of count one. Thank you, your Honor.

THE COURT: Thank you. Now I think we're ready for Miss Mathewson.

MS. MATHEWSON: Thank you, your Honor. I really will try to limit this to a true reply and I apologize if I bounce 00:55 around a bit. Let me do the naturalization fraud first because that's where we just -- I'll rest on my papers with respect to the point that Mr. Patel just made. But it's important to note with respect to the Maslenjak case that what the government calls two different tests is really one test 00:55 with two different circumstances. I outlined this in my rely

and your Honor has it. So I won't belabor the point.

Fundamentally the question is would there have been a causal relationship between the underlying conduct and the naturalization decision. It's crucially important to clarify what the good moral character inquiry focuses on. Mr. Patel today referred repeatedly to the lying as a potential disqualifying basis. That is not how the statute works. There's absolutely nothing in the record suggesting that the statute works that way and because it simply doesn't, your Honor. The question is whether the underlying harboring conduct would have disqualified her, not the fact of having lied on the day of her naturalization interview. And that's important as well, your Honor, because as the Supreme Court pointed out, the good moral character inquiry is truly dizzying. The Supreme Court used the term, used the words disquieting impact of the government's position in Maslenjak which is nearly identical to the position the government is taking here. And as an example of the disquieting impact, the Supreme Court cited the very question at issue in this case. Have you ever been -- have you ever engaged in criminal conduct for which you were not arrested. And as the Supreme Court went on to point out, the disqualification decision rests not only on the nature of the underlying conduct but on the reason that the person denied it in the initial interview. So if, for example, somebody says, no, I didn't engage in that

conduct, and they said that because they, because they were embarrassed about the conduct because they were trying to avoid the abuse of a boyfriend, who the heck knows. But for any reason other than to obtain naturalization benefits, it would not actually preclude them from being naturalized. And so that incredible subjectivity that goes in to the final decision on naturalization precludes any jury from making the conclusion that the government is urging here. And certainly this jury which heard literally nothing about how the good moral character inquiry would work after the day of that initial interview had no tools from which to make the judgment that the government is now suggesting that it made.

Let me turn back to a question that the Court asked Mr. Cerimele that I think also was at the heart of Miss Channapati's presentation a moment ago.

The court said why wasn't the jury entitled to pick and choose among the various dates. P.I.'s testimony about her interaction with Mary Wood, Newton Adoyo's testimony that that was two weeks later. The heart of the problem here is not when those interactions happened in the first instance. The heart of the problem in the first instance is that the Poconos' conduct was post-offense conduct. It's doesn't matter when.

THE COURT: I understand your point.

MS. MATHEWSON: Okay.

THE COURT: If you're right, if it's post-offense conduct, it doesn't matter.

MS. MATHEWSON: Yes. And, and on that point, your Honor, I do want to address this point Mr. Patel just made about variance and lack of prejudice. He obscured a crucial distinction about which your honor had a colloquy earlier. We knew that post-offense conduct was going to come in as proof of offense conduct, not as offense conduct itself. And here's why that matters to the defense trial preparation. The distinction between P.I. saying Mary came two days later to get her kids and then I never saw her again and P.I. said it just that clearly. And Newton Adoyo saying: Oh, I think it was a couple weeks later. That distinction didn't matter if it was post-offense conduct. That merely proved the mental state during the course of the conspiracy. Once the Government pivoted it calling it offense conduct, all of a sudden the difference between P.I. saying it was two days and Newton saying it was two weeks became potentially outcome determinative. Had we known prior to trial that that discrepancy would matter because had we known prior to trial that this was offense conduct and not merely evidence of offense conduct, then we would have undertaken that investigation about the timing. We would have looked for records. We would have figured out what was going on with the childcare. There are a million things we could have done that

we didn't do, your Honor, because we had no reason to believe that the timing of that conversation mattered. Now had Mary Wood walked up to Agent Bishop a week before trial and said, Agent Bishop, it was all my idea, I brought P.I. here. She
01:00 was living with me, I needed childcare, I'm confessing, that would have come into evidence. It would be post-offense. Right? A post-offense statement, but it would be offered to prove the offense conduct. So the timing of that evidentiary interaction doesn't matter unless it's actually part of the
01:01 offense, and that's the prejudice from the variance if your Honor said it's not a constructive amendment. We have no reason to investigate the timing of Mary's trip to the Poconos because the timing of it didn't matter any more than if it had been a couple of years later she made that statement that the
01:01 government wanted to --

THE COURT: It may have not have been dispositive. The timing, the discrepancy may not have been dispositive because even by the victim's testimony two days, it still may have brought it within the statute limitations.

01:01 MS. MATHEWSON: It might have but we're all guessing, your Honor. And your Honor made the point during the argument, P.I. said June.

THE COURT: Right.

MS. MATHEWSON: And sometime in June plus two days
01:01 might be before June 9th, might be after June 9th. We're

guessing, and prohibited speculation is not a basis on which to uphold a verdict.

THE COURT: I don't know what we're guessing. June is June.

01:01 MS. MATHEWSON: June is June, your Honor. But unless they prove beyond a reasonable doubt that it was June 9th or later, the conviction must be set aside, and they didn't. Definitely they tried to reopen, your Honor. Remember we had the whole back and forth after these arguments, they came in 01:02 with the last minute motion saying: Yeah, I know you've already instructed the jury but we would have put on more evidence. That's why they tried to reopen because they knew there was a gap. They never asked her when in June she left. And that's why they were trying to point to Exhibit 14 as 01:02 though that were an admission. It was actually July, it wasn't. That's why they tried to reopen in that highly irregular offense later because they never said when in June. And that's the fundamental failure of proof.

Now, I want to address very specifically something that 01:02 Mr. Patel said in the duplicity context. He said, you know, we have a unanimous verdict, and the court did instruct on unanimity. Of course, the problem there is that the court didn't tell the jury that there were two different kinds and it had to be unanimous as to one. But Mr. Patel said 01:03 something very interesting. He said it's obvious that the

jury found the second part. You know, I don't know that that's really a concession that it was two different courses of conduct but it certainly came awfully close to sounding like a concession. It was two different courses of conduct.

01:03 And the last thing I really want to clarify very strenuously is Mr. Patel said we concede that the harboring is not time barred. Your Honor has our papers. We absolutely do not remotely concede that. In fact, we talk about the Ozcelik case that Mr. Patel cited. And we also cite the Silveus case.

01:03 Ozcelik was a case where somebody affirmatively advised an alien how to avoid detection and the Third Circuit said, well that is not concealing, harboring or shielding. Silveus perhaps even more important. The defendant was cohabiting with an alien. Shut the door on Immigration officers as they

01:04 approached looking for him. Lied to the Immigration officers when he asked whether the defendant had fled the residence as the officers approached when, in fact, he had and turns the officers away when they asked to inspect the residence. The Third Circuit reversed on those facts, your Honor. The

01:04 reality is Ozcelik,Silveus and a myriad of other cases stand for the proposition that harboring is helping someone substantially to remain in the United States. And moving somebody from Pennsylvania to New Jersey when she's going to be in the State anyway doesn't qualify.

01:04 So we absolutely do maintain that the harboring

conviction was barred as a substantive conviction and, therefore, is an invalid predicate for the conspiracy.

THE COURT: Thank you.

MS. MATHEWSON: Thank you.

01:04 THE COURT: All right. Well, apparently, I don't think there's disagreement as to the standard that applies to these motions. The government's correct that it would be entitled to all the inferences in the case. And as to Rule 29, the motion for judgment of acquittal, I have to affirm the 01:05 conviction in any rational trier to of fact could have found the essential elements of the crime beyond a reasonable doubt. And the motion for the new trial under Rule 33, again it's a very heavy burden. The Third Circuit has been instructive that these should be rarely granted and only in exceptional 01:05 cases, and I have to exercise great caution in setting aside a verdict, et cetera, et cetera, in the interest of justice.

Turning to Counts 1 and 2, I'm going to deny the defendants' motions. I find there's no constructive amendment whatsoever. The indictment explicitly charges in Counts 1 and 01:05 10 that this -- in paragraphs 1 and 10, I'm sorry, that this crime, these crimes continued up through June 28, 2006 and was the evidence that was presented to the jury in this case.

The arguments as to variance in duplicitous charge really come down to the defendants' argument that the crime 01:06 and thus the conspiracy ended when the victim left the Wood

house. I don't agree with that and I didn't agree at the end of the trial and during the trial with that. This is a scheme that continued up through some point later in June of 2006 of harboring this victim so that she could continue to reside in the United States and continue to provide services to the defendants in the United States. So I reject those arguments also.

Defendant Michael Wood never withdrew from the conspiracy as is required under the law, and, therefore, he is responsible for the substantive acts of Mary Wood. And, frankly, I don't think the jury thought for a minute that he didn't know that Mary Wood was trying to get her back. But be that as it may.

That leads to the more troublesome, I think, and difficult question facing the court which is Count 3, the unlawful procurement of naturalization. I read the case Maslenjak that's spelled M-a-s-l-e-n-j-a-k much like defense counsel does. I think there's a two-step process that's involved in this matter, and I think as the Supreme Court indicated, that the process has to culminate with a finding that the victim would have disclosed some legal disqualification. I had difficulty with this at trial but I let it go, but I don't think that there was sufficient evidence from which the jury could rationally find that the consequences of what this defendant did would have led to the

conclusion that she was not eligible for naturalization. What we had was Miss Hunter testifying that she wouldn't have been naturalized that day. Miss Senft testified as to what the purpose of the questions were and what the government was looking for but never really testified as to what standards would be applied to the application for the Government to conclude that the applicant lacked moral fitness in order to become a citizen. I think the jury was left guessing that perhaps by not truthfully asking these questions, she automatically would not have been permitted to become naturalized as a citizen. I think a failure of that proof is fatal to the government's case on Count 3.

I'm going to grant the Rule 29 motion as to Count 3 and we'll go from there.

Now, we need a sentencing date.

MS. MATHEWSON: After Labor Day would be lovely if the Court's inclined.

THE COURT: That's fine with me. Let's do it after Labor Day. September 6, 2018 at 10:00 a.m. Okay?

MS. MATHEWSON: Okay.

THE COURT: Thank you, everybody.

MR. PATEL: Thank you, your Honor.

MR. KLINGEMAN: Thank you, your Honor.

(The matter was then concluded)

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EXHIBIT 5

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

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

MICHAEL WOOD

Defendant.

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

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

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

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

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

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

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

Signed this 26th day of November, 2018.

Robert B. Kugler
U.S. District Judge

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

IMPRISONMENT

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

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

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

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ To _____

At _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

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

SUPERVISED RELEASE

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

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

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

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

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

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

You must comply with the following special conditions:

FINANCIAL DISCLOSURE

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

NEW DEBT RESTRICTIONS

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

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

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

STANDARD CONDITIONS OF SUPERVISION

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

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4) You must answer truthfully the questions asked by your probation officer.

5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

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

STANDARD CONDITIONS OF SUPERVISION

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

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

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

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

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

(Signed)_____
Defendant Date

_____
U.S. Probation Officer/Designated Witness Date

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

RESTITUTION AND FORFEITURE

RESTITUTION

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

P.I. (see attachment)

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

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

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

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

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