

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3554

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANNE MURUNGA,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES' MOTION FOR SUMMARY ACTION
AND DISMISSAL OF APPELLANT'S APPEAL

Defendant-Appellant Anne Murunga has appealed the district court's order denying her motion to withdraw her guilty plea to harboring an alien for financial gain and the court's final judgment sentencing her to 18 months' imprisonment. Murunga's appeal presents no substantial question, because she knowingly and voluntarily waived her right to appeal her conviction and sentence in her plea agreement and failed to offer any evidence that she was coerced into pleading guilty. Accordingly, pursuant to this Court's Local Appellate Rule 27.4, the

United States respectfully requests that this Court summarily affirm the district court's order and final judgment and dismiss Murunga's appeal.

BACKGROUND

In April 2014, a federal grand jury indicted Murunga in the United States District Court for the Eastern District of Pennsylvania. Doc. 1.¹ The indictment charged that Murunga harbored an alien, P.I., for financial gain in violation of 8 U.S.C. 1324(a)(1)(A)(iii) and (B)(i) (Count 1), and conspired with several co-defendants to harbor P.I. in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I) (Count 2). Doc. 1.

On the eve of trial, in August 2014, Murunga pleaded guilty to alien harboring for financial gain (Count 1). Ex. 1. Murunga's plea agreement contained a broad appellate waiver in which she "voluntarily and expressly waive[d] all rights to appeal or collaterally attack [her] conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law." Ex. 1, at 7. The district court held an extensive plea colloquy, in which it confirmed that Murunga understood the terms of the plea agreement and was pleading voluntarily and knowingly. Ex. 2. The court also

¹ References to "Doc. ___" are to documents on the district court's docket. References to "Ex. ___" are to the attached exhibits.

explained the appellate waiver to Murunga and confirmed that she was agreeing to relinquish her appellate rights, including the right to challenge any denial of a later motion to withdraw her guilty plea. Ex. 2, at 36-41.

Murunga's acknowledgements notwithstanding, she moved to withdraw her guilty plea *over three years later*, contending that she was factually innocent of the charges but that her former counsel and a government attorney had pressured her into pleading guilty against her wishes. Doc. 150, 155.² The court held an evidentiary hearing on the motion, at which Murunga presented no evidence other than her bare assertion that these individuals told her she would go to jail and lose her son, house, and job if she did not agree to everything in the plea agreement. Ex. 3, at 16-26, 34, 40-41. Murunga deliberately chose not to call her former counsel at the evidentiary hearing because his testimony would have contradicted her claim of coercion. Ex. 3, at 53-54. The court denied the motion to withdraw in a written order, concluding that Murunga had not satisfied this Court's legal standard for withdrawal. Ex. 4.

² After Murunga pleaded guilty in 2014, her sentencing hearing was repeatedly continued at the government's request because two other defendants involved in the harboring scheme had not yet been tried. See, *e.g.*, Doc. 109. A jury convicted those two defendants on June 6, 2017. See Verdict Form, *United States v. Wood*, No. 16-cr-271 (D.N.J.) (Doc. 99), appeals pending, Nos. 18-3597, 18-3653 (3d Cir.). It was only after these convictions, when Murunga's sentencing became more imminent and she faced likely incarceration because of her failure to cooperate in those prosecutions, that Murunga filed her motion to withdraw her guilty plea.

The case proceeded to sentencing. At the sentencing hearing, Murunga again admitted to engaging in the offense conduct and clarified that she was not being forced or threatened by her attorney or anybody else to admit guilt. Ex. 5, at 30-31. Over the government's objection, the district court granted her a two-point reduction for acceptance of responsibility, yielding a total offense level of 16 and a recommended custodial sentence of 21-27 months. Ex. 5, at 7-12, 28-29, 34-35. The court granted a downward variance, imposed an 18-month sentence, and entered final judgment. Ex. 5, at 39-40; Ex. 6. The government then moved to dismiss Count 2 of the indictment (the conspiracy charge), which the court granted. Ex. 5, at 46. Murunga timely appealed both the court's order denying her motion to withdraw her guilty plea and its final judgment. Doc. 172.

Murunga subsequently filed a motion for bail pending appeal in district court, listing the relevant factors for relief—including whether her appeal raised a substantial question of law or fact—with little elaboration as to how she satisfied them. Doc. 179. The court denied bail pending appeal, reasoning in relevant part that Murunga's motion “offer[ed] no explanation as to why her appeal raises a substantial issue of law or fact” and essentially “renew[ed] her motion to withdraw her guilty plea.” Doc. 183, at 2. The court further observed that its denial of Murunga's motion to withdraw did not raise a “substantial issue” because the court “relied on well-established Third Circuit precedent in finding that Murunga had

failed to meet her substantial burden to establish a fair and just reason to withdraw her guilty plea.” Doc. 183, at 2.

Murunga surrendered to the Bureau of Prisons on January 14, 2019, and is currently incarcerated.

DISCUSSION

This Court’s Local Appellate Rule 27.4(a) provides that “[a] party may move for summary action affirming * * * a judgment, decree or order, alleging that no substantial question is presented.” 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) (interpreting “substantial question” in Bail Reform Act) (citation omitted), cert. denied, 479 U.S. 1031 (1987). 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 a controlling precedent,” or “is fairly doubtful.” *United States v. Miller*, 753 F.2d 19, 23 (3d Cir. 1986). In other words, substantial questions are those that are fairly debatable among jurists. *Smith*, 793 F.2d at 89-90.

Because Murunga’s appeal presents no substantial question, this Court should summarily affirm the district court’s order denying Murunga’s motion to withdraw her guilty plea and the final judgment sentencing her to 18 months’

imprisonment. As a threshold matter, Murunga is barred from bringing this appeal. In her plea agreement, Murunga knowingly and voluntarily waived the vast majority of her appellate rights, including her right to appeal the district court's denial of any motion to withdraw her guilty plea. Enforcement of the appellate waiver provision would not result in a miscarriage of justice. Moreover, on the merits, Murunga's motion to withdraw relied on her mere assertion, without evidence, that she was coerced into pleading guilty, which is insufficient to support withdrawal of the plea under this Court's precedent.

A. *Murunga Has Waived Her Right To Appeal Her Conviction, Including Her Right To Appeal The District Court's Denial Of Her Motion To Withdraw The Guilty Plea*

As a threshold matter, Murunga has waived her right to appeal the district court's denial of her motion to withdraw her guilty plea via an appellate waiver provision in her plea agreement. Because no basis exists for Murunga to challenge the waiver as unenforceable or inapplicable, this Court should dismiss her appeal.

“Waivers of appeals, if entered into knowingly and voluntarily, are valid unless they work a miscarriage of justice.” *United States v. Khattak*, 273 F.3d 557, 563 (3d Cir. 2001). Here, Murunga's plea agreement contained a broad appellate waiver. Under the agreement, Murunga “voluntarily and expressly waive[d] all rights to appeal or collaterally attack [her] conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack

arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.” Ex. 1, at 7. Murunga only retained the right to challenge her conviction or sentence in three limited circumstances, none of which applies here: (1) cross appealing her sentence if the United States appealed her sentence; (2) appealing a sentence that exceeded the statutory maximum; and (3) filing a Section 2255 petition alleging ineffective assistance of counsel. Ex. 1, at 7-8.

The district court’s plea colloquy with Murunga confirmed that she knowingly and voluntarily agreed to the appeal waiver despite her claim otherwise in her motion to withdraw. At the beginning of the colloquy, Murunga acknowledged that she had ample time to discuss the government’s case with her attorney and that the decision to plead guilty was hers. Ex. 2, at 9-10. The court asked Murunga whether anyone had threatened her, promised her anything, or done anything to get her to plead guilty. Ex. 2, at 11. Murunga answered in the negative and reiterated that the decision to plead guilty was hers because she was guilty. Ex. 2, at 11. The court then asked Murunga if she had reviewed the plea agreement “[p]age by page,” “[l]ine by line” and “cover to cover.” Ex. 2, at 16. Murunga responded that she had and that she had no questions or reservations about the agreement. Ex. 2, at 16-17. The district court also confirmed that Murunga discussed the plea agreement with her attorney and signed it. Ex. 2, at 33.

The court then at several points made clear to Murunga that the agreement limited her appellate rights. Murunga asked for clarification but ultimately acknowledged that she understood that her appellate rights were significantly limited:

The Court: In addition to your trial rights, you are also limiting in a very significant way, your appellate rights, is that clear?

The [Defendant]: What rights, again?

The Court: Appellate rights, you give up your right to --

The Defendant: What does that mean?

The Court: -- to go to a higher court and appeal.

The Defendant: Yes, your Honor.

Ex. 2, at 36.

The court subsequently went into even more detail, reading the appeal waiver provision of the agreement and asking Murunga if she understood it. Again, Murunga answered affirmatively when the court asked Murunga whether “you understand that you are giving up, your right to appeal, your conviction, you[r] sentence or any matter relating to the prosecution of this case, whether such right to appeal or to attack arises under these provisions of law.” Ex. 2, at 37. The court then explained each of the exceptions to the appeal waiver, and Murunga and the court engaged in the following colloquy:

The Court: Outside of those things, your appellate rights are very limited, is that clear?

The Defendant: Yes, your Honor.

The Court: So, it's going to be very difficult for you to come back and challenge, your conviction or your sentence or asking -- or ask me -- to withdraw your guilty plea, is that clear?

The Defendant: Yes, your Honor.

The Court: Do you have any questions or reservations about giving up your trial rights and limiting your appellate rights in the way, we've just talked about on the record?

The Defendant: No, your Honor.

Ex. 2, at 40-41. It is clear from the plea colloquy that Murunga knowingly and voluntarily waived her appellate rights. See *United States v. Gwinnett*, 483 F.3d 200, 203-205 (3d Cir. 2007) (holding that an appeal waiver is knowing and voluntary where the agreement is clear and the district court ensured that the defendant was fully competent and understood the agreement before signing it); see also *United States v. Caste*, 317 F. App'x 162, 165 (3d Cir. 2008) (finding an appeal waiver valid where the district court "confirmed that Caste signed the plea agreement and * * * reviewed it with his attorney" and "specifically verified that Caste understood that he 'entered into a plea agreement under which [he has] waived some or all of [his] appeal rights, including the right to file a motion to vacate sentence or any other collateral proceeding attacking [his] conviction or sentence'" (brackets in original)).

Moreover, enforcing the appeal waiver in this case would not work a miscarriage of justice. This Court has repeatedly held that a defendant can, through a plea agreement, waive the right to appeal the denial of a later motion to withdraw the guilty plea. As the Court has explained, “[a]n appeal of a denial of a motion to withdraw a guilty plea constitutes a challenge to a defendant’s conviction that falls within the plain language of an appellate waiver provision.” *United States v. Solomon*, 330 F. App’x 337, 338 (3d Cir. 2009); see also *United States v. Alcala*, 678 F.3d 574, 578 (7th Cir. 2012) (collecting cases for the proposition that “the Second, Third, Fourth, Eighth, Ninth, and Tenth Circuits have each held that when a defendant waives his right to appeal in a plea, he also waives his right to appeal a denial of his motion to withdraw that plea”). Indeed, this Court enforced an appeal waiver in a case where the defendant made similarly unsupported allegations that his guilty plea was the result of pressure by his former counsel. See *United States v. Ray*, 358 F. App’x 329, 331-333 & n.3 (3d Cir. 2009); see also *United States v. Toth*, 668 F.3d 374, 377-379 (6th Cir. 2012) (refusing to consider the merits of a defendant’s argument that his counsel had coerced him into pleading guilty).³

³ The *Ray* Court denied the government’s motion for summary affirmance on the basis of the defendant’s appellate waiver. See 358 F. App’x at 331 n.1. In that case, the district court’s failure to confirm that the defendant understood that he was relinquishing the bulk of his appellate rights was plain error under this

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Accordingly, this Court should enforce the appellate waiver provision, summarily affirm the district court's order denying Murunga's motion to withdraw and its final judgment, and dismiss Murunga's appeal.

B. Murunga's Mere Assertion, Without Any Evidence, That She Was Factually Innocent And Coerced Into Pleading Guilty Is Insufficient For Withdrawal Of Her Guilty Plea

Even if this Court reaches the district court's decision to deny Murunga's motion to withdraw her guilty plea, it should summarily affirm Murunga's conviction and sentence. Murunga argued below that she should be allowed to withdraw her guilty plea because she was factually innocent of the charges and her former counsel and a government attorney had coerced her into pleading guilty against her wishes. Doc. 150, 155. Even assuming that this Court can review the merits of this argument,⁴ Murunga's failure to present *any* supporting evidence renders her challenge to the district court's order insubstantial.

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Court's precedents, requiring the Court to determine whether such error affected the defendant's substantial rights. As discussed above, this case presents no similar complications that render the enforceability of Murunga's appeal waiver a fairly debatable issue among jurists.

⁴ This Court has previously addressed the merits of a district court's denial of a motion to withdraw a guilty plea where the defendant asserted that enforcing an appellate waiver provision in his plea agreement would work a miscarriage of justice because his plea was coerced. See *United States v. Wilson*, 429 F.3d 455, 458-461 (3d Cir. 2005). Notably, in seeking bail pending appeal in the district

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In denying Murunga's motion to withdraw her guilty plea, the district court applied a well-established legal standard after holding an evidentiary hearing, and this Court reviews the denial of such a motion only for an abuse of discretion. *United States v. King*, 604 F.3d 125, 139 (3d Cir. 2010), cert. denied, 562 U.S. 1223 (2011). "Once a court accepts a defendant's guilty plea, the defendant is not entitled to withdraw that plea simply at h[er] whim." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003). Instead, the defendant has the "substantial" burden of "demonstrating a fair and just reason" for the withdrawal of her plea. *Ibid.* (internal quotation marks and citation omitted). A court deciding such a motion must consider three factors: "(1) whether the defendant asserts [her] innocence; (2) the strength of the defendant's reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal." *Ibid.*

The district court expressly cited and applied the above standard and correctly concluded that Murunga had not met her heavy burden. Ex. 4, at 1-2. As to the first factor, this Court has held that "[b]ald assertions of innocence are insufficient to permit a defendant to withdraw h[er] guilty plea." *Jones*, 336 F.3d at 252. Rather, "[a]ssertions of innocence must be buttressed by facts in the record that support a claimed defense." *United States v. Brown*, 250 F.3d 811, 818 (3d

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court, Murunga did not argue that the appellate waiver provision was unenforceable.

Cir. 2001) (citation omitted). Murunga fell well short of this standard, as she “made blanket assertions of her innocence, but failed to offer facts or submit evidence to support her claim.” Ex. 4, at 2. Her claim that her former counsel and a government attorney coerced her into pleading guilty, without more, does not constitute supporting evidence under this Court’s precedent. See *Jones*, 336 F.3d at 253 (defendant’s “mere[] allegat[ion] that his prior counsel had told him to agree to the facts” at the plea hearing failed to demonstrate the first factor).

Regarding the second factor, this Court has held that a defendant who has pleaded guilty and seeks to withdraw that plea must “give sufficient reasons to explain why contradictory positions were taken before the district court and why permission should be given to withdraw the guilty plea and reclaim the right to trial.” *Jones*, 336 F.3d at 253 (citation omitted). In finding Murunga’s explanation incredible, the court observed that she “gave clear answers throughout the Court’s inquiry” at the plea colloquy and even paused the proceedings to correct the record concerning the factual basis of her guilty plea, thus undercutting her claim that “she felt pressure to agree to everything that was presented to her by the Court and the Government.” Ex. 4, at 2. This credibility determination warrants deference from this Court. See *United States v. Trott*, 779 F.2d 912, 915 (3d Cir. 1985) (district court’s finding that defendant was “calm and mentally alert,” contradicting his claim that “he was under emotional duress when he entered his plea,” was “an

evaluation * * * primarily within the province of the district court” that did not warrant reversal).

Further undermining Murunga’s argument was her failure to offer “evidence demonstrating that her prior counsel or the Government coerced or forced her to accept the facts and terms of the plea agreement.” Ex. 4, at 2. Indeed, the court expressly found that Murunga “declined to call her former counsel to testify because his anticipated testimony was not favorable to her,” and that the government’s witness rebutted any claims that a prosecutor had coerced her to accept the plea deal. Ex. 4, at 2. Contradicting Murunga’s wholly unsupported assertions of coercion, moreover, are her earlier statements during the plea colloquy acknowledging that the decision to plead guilty was hers and disavowing any threats or promises by others to achieve that result. Ex. 2, at 9-11. Because Murunga uttered these earlier statements “under oath in open court,” they “carry a strong presumption of verity,” *Ray*, 358 F. App’x at 332 n.3 (citation omitted), and further support the district court’s conclusion that she failed to give sufficient reasons for withdrawing her guilty plea.⁵

⁵ Because Murunga failed to show sufficient grounds to withdraw her guilty plea, the government was not required to show prejudice. See *Jones*, 336 F.3d at 255. In any event, the district court addressed this third factor and found that the government would be prejudiced if Murunga were permitted to withdraw her guilty plea. Ex. 4, at 2.

Finally, in her bail motion before the district court, Murunga did not even attempt to challenge the district court's reasoning or conclusions for holding her to her guilty plea. To the contrary, she simply listed the factors for relief, including whether her appeal raised a substantial question of law or fact, with little elaboration as to how she satisfied them. Doc. 179. That unsupported assertion is insufficient to raise a substantial question as to whether the district court abused its discretion in denying her motion to withdraw her guilty plea. Accordingly, if this Court reaches the merits of Murunga's appeal, it should summarily affirm both the district court's order denying her motion to withdraw her guilty plea and its final judgment.

CONCLUSION

The Court should grant the United States' motion and summarily affirm both the district court's order denying Murunga's motion to withdraw her guilty plea and its final judgment sentencing her to 18 months' imprisonment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached UNITED STATES' MOTION FOR SUMMARY ACTION AND DISMISSAL OF APPELLANT'S APPEAL:

(1) complies with the type-volume limitation in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3462 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/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Date: April 30, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019, I electronically filed the foregoing UNITED STATES' MOTION FOR SUMMARY ACTION AND DISMISSAL OF APPELLANT'S 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/ Christopher C. Wang _____
CHRISTOPHER C. WANG
Attorney

EXHIBIT 1

P.I.'s employment, compensation, treatment, and housing, whether in her household or other households.

c. The defendant further understands and agrees that all information and cooperation provided after signing this agreement may be used for any purpose, including sentencing.

d. The defendant agrees and understands that in providing all information concerning her knowledge of and participation surrounding any crimes committed involving P.I.'s recruitment, entrance into the United States, employment, or housing and nothing she says at a future interviews or proceedings will subject her to criminal liability as long as she is truthful.

e. The defendant agrees that she will not falsely implicate any person or entity and she will not protect any person or entity through false information or omission. The defendant also agrees that if she possesses any exculpatory information regarding any person or entity she will immediately bring that to the attention of the government.

f. The defendant agrees to testify truthfully as a witness before any grand jury, hearing, or trial, in any district, when called upon to do so by the government.

g. The defendant agrees to hold herself reasonably available for any interviews as the government may require.

h. The defendant agrees to provide all documents or other items under her control or which may come under her control, which may pertain to any crime.

i. The defendant understands that her cooperation shall be provided to any federal or other law enforcement agency as requested by the government.

j. To enable the Court to have the benefit of all relevant sentencing information, the defendant waives any rights to a prompt sentencing, and will join any request by the government to postpone sentencing until after her cooperation is complete.

k. The defendant agrees and understands that this agreement requires that her cooperation regarding any matter about which the defendant has knowledge as of the date of sentencing shall continue, upon the government's request, even after the time that the defendant is sentenced.

l. The defendant agrees and understands that should the defendant fail or refuse as to any part of this agreement or commit any other crimes, the representations by the government in paragraphs 3 are rescinded. The defendant further agrees that if the government determines that the defendant has failed to so cooperate following sentencing in this matter, the government may initiate a new prosecution of the defendant for any charges that were dismissed under this agreement, and may use in that prosecution any information provided by the defendant during the course of cooperation. Further, the defendant agrees that in the event of such a later prosecution, she waives any right to object to prosecution for an offense of which a charge to which the defendant is presently pleading guilty is a lesser included offense, and also waives any defense based on the statute of limitations or the Double Jeopardy Clause.

m. The defendant agrees and understands that if the defendant fails to fulfill her obligations under this Plea Agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that the Defendant's statements pursuant to this Plea Agreement or any leads derived therefrom, should be suppressed or are

inadmissible. The defendant understands that it is a condition and obligation of this cooperation agreement that the defendant not commit any additional crimes after the date of this agreement.

n. The defendant agrees that if the government determines that the defendant has not provided full and truthful cooperation, or has not provided full and truthful information about the defendant's assets, income, and financial status, or has committed any federal, state, or local crime between the date of this agreement and her sentencing, or has otherwise violated any other provision of this agreement, then the government may at its option: (a) prosecute the defendant for any federal crime including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation, based on and using any information provided by the defendant during the course of cooperation; (b) upon government motion, reinstate and try the defendant on any counts which were to be, or which had been, dismissed, based on and using any information provided by the defendant during the course of cooperation; (c) decline to file any motion under USSG § 5K1.1 and/or 18 U.S.C. § 3553(e); (d) withdraw any previously filed motion under USSG § 5K1.1 and/or 18 U.S.C. § 3553(e); (e) be relieved of any obligations under this agreement regarding recommendations as to sentence; and (f) be relieved of any stipulations under the Sentencing Guidelines. Moreover, the defendant's previously entered guilty pleas will stand and cannot be withdrawn by her.

o. The decision both as to whether the defendant has violated the terms of this agreement and the election of a remedy or remedies will be in the sole discretion of the government. The defendant understands and agrees that the fact that the government has not asserted a breach of this agreement or enforced a remedy under this agreement will not bar the government from raising that breach or enforcing a remedy at a later time.

3. If the government in its sole discretion determines that the defendant has fulfilled all of her obligations of cooperation as set forth above, at the time of sentencing, the government will:

a. Move to dismiss Count Two of the Indictment as to this defendant. The defendant waives the statute of limitations as to all counts to be dismissed under this agreement and agrees that if the defendant withdraws from, or successfully challenges, the guilty plea entered under this agreement, or if these counts are otherwise reinstated under the terms of this agreement, neither the statute of limitations nor the Double Jeopardy Clause will bar prosecution on any of these dismissed counts.

b. Make the nature and extent of the defendant's cooperation known to the Court.

c. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.

d. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

e. The defendant's rights under this agreement shall in no way be dependent upon or affected by the outcome of any case in which she may testify.

4. The defendant understands, agrees, and has had explained to her by counsel that the Court may impose the following statutory maximum sentence: a 10 years imprisonment and \$250,000 fine and a \$100 special assessment.

5. The defendant agrees to pay restitution in this matter pursuant to 18 U.S.C. § 1593 of the Trafficking Victims Protection Act, in an amount to be determined by the Court at sentencing. The Defendant has reviewed the U.S. Department of Labor calculations of P.I.'s unpaid wages from June 2006 to March 2011 that total \$243,922.66 and reserves the right to argue adjustments to that amount during sentencing. The defendant understands that the Court may order the defendant or her co-defendants to pay different portions of the unpaid wages and may order an amount of restitution that is more than or less than the U.S. Department of Labor's calculation. The defendant agrees that any amount of restitution the Court orders cannot be discharged in any future bankruptcy proceeding.

6. The defendant waives her right to appeal the amount of restitution ordered or the formula and calculation used by the Court – as long as the amount of restitution ordered does not exceed the total U.S. Department of Labor's estimate of unpaid wages.

7. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees fully to disclose all assets in which she has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. Accordingly:

a. The defendant will promptly submit a completed financial statement to the U.S. Attorney's Office of the Eastern District of Pennsylvania, in a form it provides and as it directs. The defendant promises that her financial statement and disclosures will be complete, accurate, and truthful.

b. The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on her in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

8. The defendant agrees to pay the special victims/witness assessment in the amount of \$100.00 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.

9. The defendant may not withdraw her plea because the Court declines to follow any recommendation, motion, or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

10. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying the government of her intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.

11. In exchange for the promises made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.

a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of her sentence.

b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only a

claim that the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in paragraph 4 above;

If the defendant does appeal pursuant to this subparagraph, no issue may be presented by the defendant on direct appeal other than those described in this subparagraph.

c. Notwithstanding the waiver provision set forth in this paragraph, the defendant may file a petition for collateral relief under 28 U.S.C. § 2255, but may only raise a claim that the attorney who represented the defendant at the time of the execution of this agreement and the entry of the defendant's guilty plea provided constitutionally ineffective assistance during any part of the representation.

12. The defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

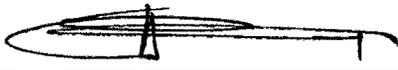
13. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

14. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that she is guilty.

15. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements, or understandings other than those set forth in this written guilty plea

agreement, and that no additional promises, agreements, or understandings will be entered into unless in writing and signed by all parties.

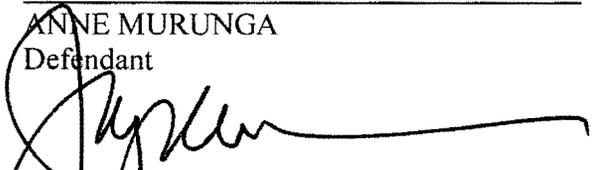
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United States Department of Justice
Civil Rights Division



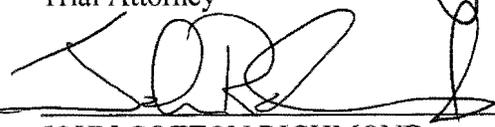
ANNE MURUNGA
Defendant



ANITA CHANNAPATI
Trial Attorney



JOSEPH CAPONE
Counsel for Defendant



JOHN COTTON RICHMOND
Special Litigation Counsel

Date: 8/25/14

Attachment

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. : **CRIMINAL NO. 2:14-cr-00175-JS**

ANNE MURUNGA

ACKNOWLEDGMENT OF RIGHTS

I hereby acknowledge that I have certain rights that I will be giving up by pleading guilty.

1. I understand that I do not have to plead guilty.
2. I may plead not guilty and insist upon a trial.
3. At that trial, I understand
 - a. that I would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with my attorney, I would have the right to participate in the selection of that jury;
 - b. that the jury could only convict me if all 12 jurors agreed that they were convinced of my guilt beyond a reasonable doubt;
 - c. that the government would have the burden of proving my guilt beyond a reasonable doubt and that I would not have to prove anything;
 - d. that I would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that I was guilty;
 - e. that I would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if I could not afford to hire a lawyer, the court would appoint one for me free of charge;
 - f. that through my lawyer I would have the right to confront and cross-examine the witnesses against me;

g. that I could testify in my own defense if I wanted to and I could subpoena witnesses to testify in my defense if I wanted to; and

h. that I would not have to testify or otherwise present any defense if I did not want to and that if I did not present any evidence, the jury could not hold that against me.

4. I understand that if I plead guilty, there will be no trial and I would be giving up all of the rights listed above.

5. I understand that if I decide to enter a plea of guilty, the judge will ask me questions under oath and that if I lie in answering those questions, I could be prosecuted for the crime of perjury, that is, for lying under oath.

6. I understand that if I plead guilty, I have given up my right to appeal, except as set forth in the appellate waiver provisions of my plea agreement.

7. Understanding that I have all these rights and that by pleading guilty I am giving them up, I still wish to plead guilty.

8. I acknowledge that no one has promised me what sentence the Court will impose. I am aware and have discussed with my attorney that, at sentencing, the Court will calculate the Sentencing Guidelines range (including whether any departures apply), and then, in determining my sentence, will consider the Guideline range and all relevant policy statements in the Sentencing Guidelines, along with other sentencing factors set forth in 18 U.S.C. § 3553(a), including

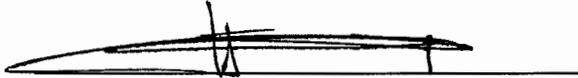
(1) the nature and circumstances of the offense and my personal history and characteristics;

(2) the need for the sentence imposed-- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

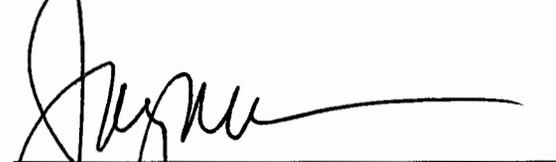
(3) the kinds of sentences available;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(5) the need to provide restitution to any victims of the offense.



Anne Murunga
Defendant



Joseph Capone
Counsel for the Defendant

Dated: 8/25/14

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

UNITED STATES OF AMERICA : CRIMINAL ACTION
: 14-CR-453-1
Plaintiff :
vs. : Philadelphia, Pennsylvania
: August 25, 2014
ANNE MURUNGA :
:
Defendant : CHANGE OF PLEA HEARING
- - - - -

- - -

BEFORE THE HONORABLE JUAN R. SANCHEZ
UNITED STATES DISTRICT JUDGE

- - -

APPEARANCES:

For the Government: ANITA CHANNAPATI, ESQUIRE
JOHN C. RICHMOND, ESQUIRE
UNITED STATES DEPT. OF JUSTICE
Civil Rights
601 "D" Street, N.W., Room 5200
Washington, D.C. 20004

For the Defendant: JOSEPH P. CAPONE, ESQUIRE
1617 John F. Kennedy Boulevard
Suite 355
Philadelphia, Pennsylvania 19103
- - -

Also Present: Scott Bishop, Case Agent

Deputy Clerk: Nancy Delisle

ESR Operator: Katie Furphy

- - -

TRANSCRIBED BY: Drummond Transcription Service
Haddon Heights, New Jersey 08035

Proceedings recorded by electronic sound recording,
transcript produced by computer-aided transcription
service.

1 (At 4:30 p.m. in Courtroom 11A.)

2 THE COURT: Ready?

3 MS. CHANNAPATI: Your Honor, we didn't sign the
4 agreement, but other -- other than that it's --

5 THE COURT: Oh, do you have the agreement here?

6 I -- yes, these are copies. Do I -- if you gave me
7 copies, I'll work off the copies, I want her to have the
8 originals, 'cause as you well know, I review the originals with
9 her or with -- with the defendant. So, here are these copies,
10 are these the originals or --

11 (Discussion held off the record.)

12 THE COURT: Okay. Just give me the copies, if you
13 don't mind. Yeah, those -- those are not signed?

14 MS. CHANNAPATI: Right.

15 MR. RICHMOND: They're not signed.

16 (Discussion held off the record at 4:30 p.m.)

17 MR. CAPONE: Judge, ours has a little clip on the top.

18 THE COURT: I took the clip off. Yeah, those are the
19 ones, I take the clips off, right. So, I took the clips off.
20 Do you want the clips back?

21 MS. CHANNAPATI: No, your Honor, we don't need them.

22 THE COURT: I don't think I took them, did I, unless I
23 put it in the other file, do you have the other file?

24 Could you ask Nancy to bring that file down. Could
25 you tell her to bring that file back, yeah, maybe -- maybe, I

1 put it there.

2 (Discussion held off the record continues at 4:31
3 p.m.)

4 THE COURT: Did you have the original?

5 MS. CHANNAPATI: We're going to -- we're creating --

6 MR. CAPONE: We may have to make new originals, your
7 Honor, we -- we don't know what happened to our originals,
8 plus --

9 THE COURT: Well, whatever, give it to me, let me see,
10 whether I have it.

11 MR. CAPONE: Did counsel pick up that?

12 THE COURT: If it's there -- it's not there, right?
13 Yeah, I un-clipped the ones you gave me and I gave them back to
14 you.

15 (Discussion held off the record continues at 4:32
16 p.m.)

17 THE COURT: You have what you gave me, I gave it back
18 to you, I just un-clipped it.

19 MS. CHANNAPATI: Okay. Thank you.

20 THE COURT: You're welcome, did you find it?

21 MS. CHANNAPATI: Yes.

22 MR. CAPONE: Or maybe, Counsel, who was here
23 previously, picked them up here.

24 (Discussion held off the record.)

25 THE COURT: All right. Could you track them down and

1 see if --

2 MR. CAPONE: No, it's -- it's no problem.

3 THE COURT: All right.

4 I want a copy, I don't -- I work off a copy.

5 MS. CHANNAPATI: Yes.

6 And that's what I'm bringing up to you.

7 (Pause and whispering continues off the record.)

8 THE COURT: I was hoping you'd have my -- my procedure

9 nailed by now, since I took a few pleas this week.

10 Have we straightened out the paperwork on the other

11 cases?

12 MS. CHANNAPATI: Yes, we did, your Honor.

13 THE COURT: Okay.

14 (Pause and whispering continues at 4:33 p.m.)

15 THE COURT: Are we ready to begin the colloquy?

16 MR. CAPONE: We're ready, your Honor.

17 THE COURT: Very well. Is the Government ready?

18 MS. CHANNAPATI: Yes, your Honor.

19 THE COURT: Let me administer an oath to Ms. Murunga.

20 ESR OPERATOR: Would you please raise your right hand?

21 ANNE MURUNGA, DEFENDANT, SWORN.

22 THE DEFENDANT: Yes, I do.

23 ESR OPERATOR: Could you please state your full name

24 and spell your last name?

25 THE DEFENDANT: Anne Murunga, M-u-r-u-n-g-a.

1 ESR OPERATOR: Thank you.

2 THE COURT: Ms. Murunga, you may take a seat, it's
3 going to be a little while before we conclude the proceedings.

4 And I have the matter of the United States versus Anne
5 Murunga, Criminal No. 14-175.

6 My understanding is that Ms. Murunga intends to plead
7 guilty to one of the two counts on the indictment, that was
8 bought back on April 8th of 2014, charging her with alien
9 harboring in violation of Title 8, Section 1324 from June 26th
10 to March 11th, am I correct?

11 THE DEFENDANT: Yes.

12 THE COURT: That is the count that she's pleading
13 guilty to?

14 MR. CAPONE: Yes, your Honor.

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And the Court recognizes the Assistant
17 United States Attorney, Anita Channapati and Attorney John
18 Richmond.

19 The Court also recognizes the case agent, Agent
20 Bishop, did I get it right this time?

21 AGENT BISHOP: Yes, your Honor.

22 THE COURT: It took me a little while, I finally got
23 it.

24 And I think that the -- you just swore to tell me the
25 truth and answer my questions truthfully and completely, you

1 understand your obligation to do that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And you understand that, if at any point
4 in time, you lie to me, those lies can be the basis for a
5 prosecution for perjury or false statements, you understand
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: It's really important that we understand
9 each other and have a conversation that is clear on the record
10 and we understand each other.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If at any point in time, you do not
13 understand my questions, just let me know and I will try to
14 rephrase them.

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: If at any point in time, you need to talk
17 to your lawyer, before you answer my questions, just let me know
18 and I will give that opportunity, is that understood?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Before I take your guilty plea to the one
21 count of the indictment, I want to ask you some information
22 regarding your background.

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And then, we will get into the three
25 documents that you and the Government have given me for my

1 review and approval, fair?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So, your full legal name is Anne Murunga?

4 THE DEFENDANT: Correct.

5 THE COURT: Any other names that you use?

6 THE DEFENDANT: I have a middle name.

7 THE COURT: What is your middle name?

8 THE DEFENDANT: N-y-a-k-o-a-h.

9 THE COURT: Okay.

10 But you have not used -- other than your name -- your
11 full legal name -- you have not used any aliases to the legal
12 authorities?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: How old are you today?

15 THE DEFENDANT: Thirty-nine.

16 THE COURT: Okay.

17 And could you give me a little bit of a sense of how
18 far did you go in school?

19 THE DEFENDANT: I have a Master's degree in Chemistry.

20 THE COURT: And -- and when did you get your Master's
21 degree in Chemistry and from where?

22 THE DEFENDANT: In May of 2014 from the Illinois
23 Institute of Technology.

24 THE COURT: All right.

25 And what type of work are you doing now?

1 THE DEFENDANT: Right now, I'm unemployed.

2 THE COURT: Okay.

3 And how -- how -- before you got arrested in this case
4 what type of work were you doing, give me a --

5 THE DEFENDANT: I was a chemist at Merck & Company in
6 West Point, Pennsylvania and I got laid off due to a major
7 company reorganization in March of 2014.

8 THE COURT: All right.

9 So, it had nothing to do with this case, the layoff
10 was something outside of the case?

11 THE DEFENDANT: It was outside the case.

12 THE COURT: And how long had you been working with the
13 company before you got laid off?

14 THE DEFENDANT: Eleven years.

15 THE COURT: Eleven years.

16 And I gather you read, write and understand the
17 English language, having obtained a Master's degree in Chemistry
18 in -- in the United States?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And -- and with regards to your
21 background, any problems or issues with drug or alcohol?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Okay.

24 Never been treated for any drug or alcohol problems in
25 your -- in your background?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: You're not taking any medication --
3 prescription -- medication right now?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Any mental-health issues in your
6 background?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: You've never been treated or seen a
9 psychologist or psychiatrist for any mental illness?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Any physical problems that impact your
12 ability to understand me?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: You understand me okay?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And physically, you're feeling okay?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You have had enough time -- I -- I gather,
19 you've never been in trouble with the law?

20 THE DEFENDANT: Never, your Honor.

21 THE COURT: I -- I gather, you have had a lot of time,
22 knowing that this case was going to go to trial and we've had
23 the panel waiting today, that you've had a lot of time to talk
24 to your attorney -- Attorney Capone -- about this case, the
25 facts, the charges, the Government's investigation against you,

1 the testimonial and documentary evidence that would be
2 introduced at trial, I gather you have had ample time to talk to
3 him about this, right?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Including talking to him about any
6 potential defenses or defenses to the charges against you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And from your discussion with Counsel, I
9 -- I understand you have a pretty good sense of how strong or
10 how weak the Government's case against you is?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And nevertheless, you do understand --
13 well, the decision to plead guilty, whose decision is it?

14 THE DEFENDANT: It's my decision, your Honor.

15 THE COURT: All right.

16 And you understand that you don't have to plead
17 guilty, however?

18 THE DEFENDANT: I do.

19 THE COURT: And you --

20 THE DEFENDANT: I do understand that I don't have
21 to --

22 THE COURT: Okay.

23 THE DEFENDANT: -- plead guilty, your Honor.

24 THE COURT: You understand, you have a right to a
25 trial?

1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: And by pleading guilty, you give up that
3 right?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Has anyone threatened you in any shape or
6 form to get you to plead guilty?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Promised you anything?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Done anything to force you to plead
11 guilty?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: And, again, the idea to plead guilty is
14 yours?

15 THE DEFENDANT: Can you repeat that, please?

16 THE COURT: Whose idea is it to plead guilty?

17 THE DEFENDANT: It's my idea, your Honor.

18 THE COURT: And why are you pleading guilty?

19 THE DEFENDANT: Because I'm guilty, your Honor.

20 THE COURT: All right.

21 You do understand that the Government, independent of
22 your -- your statements, the Government -- if you were to
23 exercise your right to a trial and demand a trial -- the
24 Government would have the obligation at trial to prove these
25 charges beyond a reasonable doubt, you do understand that?

1 THE DEFENDANT: I do understand, your Honor.

2 THE COURT: And did you have an opportunity to review
3 the documents that you and the Government have presented me and
4 there are three that I want to talk to you about, the
5 Government's change of plea memorandum, the guilty plea
6 agreement and the document called, acknowledgment of rights, did
7 you have an opportunity to read those three documents?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And I want you to turn to the Government's
10 change of plea memorandum, I think you have it in front of you,
11 do you see that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On Page 3, the Government breaks out the
14 charge that you're pleading guilty to, which is charging you
15 with alien harboring in violation of Title 18 -- Title 8, I'm
16 sorry -- Section 1324 from June of 2006 to March of 2011.

17 And that charge, the Government sort of spells out the
18 elements that must be proven at trial to prove you guilty of
19 that one count, do you -- do you see that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: It says, elements of the offense, one,
22 they have to prove that this person, who you were harboring, PI,
23 was an alien, in other words, she was not a citizen of the
24 United States, she was an alien.

25 That PI -- number two -- entered and remained in the

1 United States unlawfully.

2 Number three, that you knew or recklessly disregarded
3 the fact that PI was not a lawful or was not lawfully in the
4 United States.

5 Number four, that you concealed PI or shielded her
6 from detection or you harbored her or him, PI, the alien.

7 And that, Number five, you intended to conceal, to
8 shield from detection or harboring to facilitate PI's continued
9 illegal presence.

10 And the Government would also seek to prove that, you
11 acted for a commercial advantage or private gain in -- in this
12 case.

13 Those are the elements that the Government's evidence
14 has to prove beyond a reasonable doubt before I could sentence
15 you of this charge, do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If the Government's case against you fails
18 to prove any one of these elements, for that reason alone, you
19 could ask me to dismiss the charges, because the evidence is
20 insufficient or for that evidence alone if they fail in their
21 proof, the jury could find your guilt is not proven beyond a
22 reasonable doubt, do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You -- when you plead guilty, you admit
25 that the Government has enough evidence to prove each and --

1 each and every one of those elements beyond a reasonable doubt,
2 do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Now, one of the consequences of a
5 conviction or one of the consequences of your guilty plea, is
6 that you -- for that one count -- are facing a ten-year period
7 of incarceration and a fine of not more than \$250,000.00 or
8 both.

9 So, the consequences to you is a felony, are pretty
10 serious, do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions or reservations
13 about pleading guilty to a felony count, that carries the
14 maximum ten-year prison sentence and a fine of \$250,000.00 or
15 both?

16 THE DEFENDANT: The --

17 THE COURT: Prison and a fine or both?

18 MR. CAPONE: Excuse me for one minute, your Honor.

19 THE COURT: Sure.

20 (Discussion held off the record continues at 4:44
21 p.m.)

22 MR. CAPONE: My client was confused about the
23 maximums, your Honor.

24 THE COURT: Right.

25 The -- so, let -- let me repeat that again.

1 The charge, harboring an alien is a felony, punishable
2 up to ten years in jail and a fine of \$250,000.00 or both, jail
3 and a fine up to \$250,000.00, do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: That's the maximum penalty that you could
6 face --

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: -- is that clear?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, you do understand that I will not be
11 sentencing you here today, I will be doing that later on and in
12 your case -- in your case -- I've got to find out when my Deputy
13 is going to schedule it.

14 But I think it will be done some time in December,
15 your sentencing, assuming your -- your -- assuming your
16 cooperating is done, sentencing will be scheduled December 4th
17 at 10:00 a.m., is what I was planning.

18 So -- so, this is what is important, I will not be
19 sentencing you today, I'll do that much later on, is that clear?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And because I will not be imposing
22 sentence today, I want you to understand later on, if you don't
23 like the sentence I give you, it's going to be a little
24 difficult for you to withdraw your guilty plea and asking me --
25 and ask me that you want to go to trial, is that clear?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And this document that you gave me and I'm
3 going to ask you a whole bunch of questions about this document,
4 but this document that you gave me, it's approximately, nine
5 pages, did you read these nine pages -- do you have it in front
6 of you?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Take a look at it.

9 Did you read these nine pages cover to cover?

10 MR. CAPONE: The guilty plea agreement, your Honor?

11 THE COURT: The guilty plea agreement, I am turning
12 now to the guilty plea agreement --

13 MR. CAPONE: This one.

14 THE COURT: -- do you have it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Nine pages, you've read them cover to
17 cover?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Line by line?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Page by page, right?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: As you sit here before me, do you have any
24 questions about the meaning of this document or -- or what the
25 agreement requires you to do?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Do you have any reservations of -- or any
3 reservations about pleading guilty to this one count?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: With regards to this document, you
6 understand that as part of any sentence I give you, I could also
7 give you what we call, supervised release. And if you later on
8 violate the conditions of your supervised release, I could
9 revoke your supervised release and send you back to jail for a
10 considerable longer period of time, that your original sentence,
11 is that clear?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And you understand that this is an
14 agreement, sort of a contract between you and the Government and
15 it's a simple contract, because in this case there is only two
16 parts that have to perform, you and the Government, do you
17 understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And the -- the document that you gave me,
20 requires -- beginning on Paragraph 2, do you see Paragraph 2?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: It spells out in great detail over the
23 next few pages up to Page 5, it spells out in great detail, what
24 is expected of you in terms of the conditions of this agreement,
25 is that clear?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So, you understand that you have agreed to
3 cooperate with the Government fully and truthfully, you
4 understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You have to -- sort of -- come clean with
7 everything you know about your participation in this crime or
8 anything else, that you -- you know and provide truthful,
9 complete and accurate information and testimony, do you
10 understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: What this means is, that you cannot lie to
13 protect yourself. In other words, to get a benefit lying,
14 implicating somebody else in order to help yourself, do you
15 understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Or lie to protect someone, do you
18 understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: You have to pretty much come clean and
21 tell the truth, no matter what the personal consequences to you
22 or anyone else are, do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And you have to, at least, come clean with
25 regards to your knowledge and participation on how this Kenyan

1 domestic servant, PI came to the United States, was employed in
2 the United States, was -- in the United States was treated in
3 the United States, was housed in the United States, whether in
4 your household or other households, do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And your -- your cooperation before during
7 and after this agreement could be used by the Government for any
8 purpose, do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And you pretty much have to spell out to
11 the Government, all of the information that you have regarding
12 your knowledge and participation in any surrounding crimes
13 committed, that involved PI's recruitment, entrance into the
14 United States, how she was employed, how she was housed.

15 And -- and the incentive to come clean is, that
16 nothing that you used in future interviews would be used to
17 impose criminal liability, if you are truthful, do you
18 understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: So, if you're truthful, you're okay, but
21 if you lie in any material way, you could be in trouble, do you
22 understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Not only do you lose the benefit of the
25 bargain, but in addition to that, you're looking at consequences

1 of potential charges of perjury and false statements, is that
2 clear?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You agree to be a witness before any
5 grand jury or at trial, in any proceedings that may involve the
6 prosecution of others, in exchange for your cooperation, is that
7 clear?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you have any questions or reservations
10 about doing that?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: And you agree to hold yourself available
13 to provide information to law enforcement whenever they want --
14 however they want, do you understand?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And because you are cooperating and -- and
17 you want me to consider your cooperation and the Government
18 wants me to consider your cooperation, you give up your right to
19 be sentenced promptly, so if on December 4th of 2014, the
20 Government is not ready to proceed to sentencing, they could
21 continue the case until they're ready -- assuming I'd let them
22 -- but they could continue the sentencing until they'd tell me,
23 you've completed your cooperation, now you're ready to be
24 sentenced, do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Any questions about that?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: And your cooperation is -- it goes beyond
4 today, do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you cannot commit another crime, do
7 you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Because that would be a breach of this
10 agreement. And if you do, then, they're going to -- you're
11 going to breach the agreement.

12 (Pause at 4:51 p.m.)

13 THE COURT: And do you understand that if you fail to
14 fulfill the terms and conditions of this agreement and the
15 Government decides to rescind the agreement, then do you
16 understand that, you cannot assert any claim under the United
17 States Constitution or rule of evidence or rule of procedure or
18 any other rule, that the statements you gave under the plea
19 agreement or any leads that you gave, should be suppressed or
20 are inadmissible, you cannot argue that, because they would be
21 admissible later on, do you -- do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And you understand that the determination
24 of whether the -- that you've complied with the terms and
25 conditions of the agreement, whether you've fulfilled your

1 conditions, it's up to the Government and that I cannot review
2 that decision, do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And on Paragraph 4, Subparagraph N, it
5 spells out what options the Government has, if they determine
6 that you have not fulfilled the conditions of your agreement, do
7 you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: For example, they may prosecute you for
10 any federal crimes, including but not limited to perjury,
11 obstruction of justice, the substantive offenses arising out of
12 the investigation based on using information provided by you
13 during the course of the cooperation, that's one option.

14 Another is that upon a motion, they can reinstate any
15 count that were or which have been dismissed, so Count 2 is
16 going to be dismissed, if you fail after this agreement that
17 could be charged and you could be re-prosecuted.

18 Or, third, they can decline to file motions on your
19 behalf asking me to not apply the mandatory minimums or any
20 mandatory minimums that are applicable or file a motion asking
21 me to depart from the guidelines, do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: So, the options would be the Government's
24 options, do -- is that clear?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: So, whether you've violated the agreement
2 and what remedies to pursue is solely -- is solely up to the
3 discretion of the Government and I cannot tell -- force them to
4 do otherwise, is that clear?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And like I said, do you understand that in
7 pronouncing sentence, I will not be doing that today, I will be
8 doing that later on.

9 And of the things I have to do is, number one,
10 accurately calculate the guidelines that apply to you, deal with
11 any adjustments that, either, the Government or you are asking
12 me to apply.

13 And then, looking at the nature of the offense, your
14 history, the need for the punishment to fit the crime, the need
15 to deter other people and you from committing further crimes,
16 and then, a whole bunch of other factors, decide what to do with
17 you, what would be an appropriate sentence, that's what I have
18 to do, do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, I think -- and the Government will
21 correct me right -- the base offense level here, do you know
22 what the base offense level is for this offense is?

23 MS. CHANNAPATI: Twelve, your Honor.

24 THE COURT: It's a twelve and that's what I figured.

25 And so, she has no prior criminal history, so the

1 starting point you're looking at, anywhere between ten months to
2 sixteen months in jail, do you understand that?

3 THE DEFENDANT: I now do, your Honor.

4 THE COURT: Huh?

5 THE DEFENDANT: I now do, I didn't know that.

6 THE COURT: Okay.

7 But that's, basically, what I have to consider,
8 consider the guidelines as the starting point of any sentence.

9 Of course, because you're cooperating and if you
10 fulfill the terms and conditions of your cooperation and the
11 Government will let me know and then, the Government will file
12 motions, asking me not to impose the guideline recommended range
13 and taking a look at just your cooperation, to give you
14 something else, do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you have any questions or reservations
17 about pleading guilty, understanding that, potentially --
18 potentially, here you're looking at -- at jail time?

19 MR. CAPONE: Do you have any reservations,
20 potentially, you're looking at jail time, but you're not -- do
21 you understand?

22 THE DEFENDANT: I don't have any reservations.

23 THE COURT: Okay.

24 And of course, the document, basically, tells me that,
25 if you comply with the -- your end of the bargain -- if you keep

1 your end of the bargain, then the Government has agreed to do
2 the following and it's spelled out in this document:

3 One, dismiss Count 2.

4 And of course, you'd waive the statute of limitations,
5 should the Government decide that you have not complied.

6 The Government would bring the extent of your
7 cooperation in terms of this case and any other case that you
8 cooperate with.

9 And -- the Government agrees that your cooperation
10 does not depend on whether anybody -- the outcome of the case,
11 the outcome of any other case that may be prosecuted by the
12 Government.

13 But what I want you to understand is, that these
14 stipulations that you and the Government have agreed to in this
15 document and these conditions, are not binding upon me or the
16 Probation office, is that clear?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You do understand -- there's a couple of
19 little factors here that apply -- because of the nature of this
20 case and I wanted to review them with you.

21 Take a look at Paragraph 5, Page 6. It tells me, that
22 you are agreeing to pay restitution in this matter under the
23 provisions of law at Title 18, Section 1593, which involved the
24 Trafficking Victims Protection Act and that that amount would be
25 determined by me at sentencing, is that clear?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So, I don't know what that amount is going
3 to be, but you have agreed that you have reviewed the U.S.
4 Department of Labor calculations for PI's unpaid wages from June
5 of 2006 to March of 2011 and that the amount claimed by the U.S.
6 Department's calculation is \$243,922.60 and that is the amount
7 that the Department of Labor claims PI's unpaid wages amount to
8 and I could impose that amount as the basis of the restitution,
9 do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Now, you have reserved the right to argue,
12 that the amount should be something else, so probably, something
13 less at sentencing. But at least, you are representing to me
14 that you are aware that that is the amount that the Department
15 of Labor's calculations come out to, do you agree?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You've reviewed that information?

18 MR. CAPONE: Your Honor, may --

19 THE COURT: Yes.

20 MR. CAPONE: -- may I interject just a moment --

21 THE COURT: Yes.

22 MR. CAPONE: -- so, we're clear. May -- may I stay
23 seated or should I rise?

24 THE COURT: You may. I haven't finished this --

25 MR. CAPONE: Okay.

1 THE COURT: -- there are other questions in this
2 thing --

3 MR. CAPONE: No problem, your Honor.

4 THE COURT: -- but --

5 MR. CAPONE: I'll -- I'll wait then, your Honor.

6 THE COURT: -- I wanted to walk through, if I --

7 MR. CAPONE: Yes.

8 THE COURT: -- I'm stating it correctly, hopefully and
9 you could correct me.

10 But this document tells me, that you understand that I
11 may order you or your co-defendants to pay different portions of
12 the unpaid wages and I may order an amount of restitution that
13 is more than or less than the U.S. Department of Labor's
14 calculations, do you understand that?

15 (Discussion held off the record at 4:59 p.m.)

16 THE DEFENDANT: Okay. Yes, your Honor.

17 THE COURT: Okay.

18 And then, the last sentence is, that that amount
19 cannot be discharged in bankruptcy, so you cannot get -- try to
20 reduce it -- by declaring bankruptcy or discharge it by
21 declaring bankruptcy, you have to deal with that at some point
22 in time, do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And that it would be my call to decide
25 what is the amount based on arguments that you may present to me

1 and the Government may present an argument that I accept as
2 credible, do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay.

5 Anything else with regards to that point, Attorney
6 Capone?

7 MR. CAPONE: Thank you, your Honor.

8 Your Honor, it's just that the counsel and I have gone
9 through this point and it's -- it's sort of an open-ended issue
10 in the sense that, if we need experts, we're not precluded --
11 you know -- a full-scale attack, so to speak on the restitution,
12 you know, whatever is entailed that we'll do and I think that's
13 fair to all parties --

14 THE COURT: Right.

15 MR. CAPONE: -- since -- my client is certainly not
16 agreeing to that amount, but it will be the Court's
17 determination.

18 THE COURT: Right.

19 You -- I think the Government -- the document is
20 telling me and I just want to make sure, she understands this,
21 she has a right to argue that she should pay something less and
22 convince me, otherwise, that the amount -- the amount of the
23 restitution would be decided by me at some future time. I don't
24 know and I haven't prejudged the situation and I don't know what
25 evidence -- in addition to the calculations that the Department

1 has reached -- I don't know what other evidence, they're going
2 to present.

3 But you certainly are free to present any other
4 evidence, including expert testimony, if you wish, that's clear
5 from this document. I don't -- I don't -- but you've discussed
6 this wording and the meaning of these words with your lawyer?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Any questions about it?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: All right.

11 The big point is, I'm going to determine the amount at
12 some future date. You've reviewed the calculations that they
13 claim were unpaid wages for PI, right?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And they cannot be discharged in
16 bankruptcy, so you're going to have to deal with it one way or
17 the other at sentencing, clear?

18 THE DEFENDANT: Clear.

19 THE COURT: Now, whatever order I enter in terms of
20 the restitution, the next paragraph tells me, that you agree
21 that you will give up your right to appeal the amount that I
22 order as restitution or the formula or the calculation I use, so
23 long as the amount of the restitution order does not exceed the
24 amount that you are aware of, the \$243,000.00 -- two hundred and
25 twenty -- nine hundred and twenty-two and sixty cents.

1 So long as it's not greater than that, that you agree
2 not to raise an appeal based on that restitution order or the
3 formula that I -- I will decide at some future date, is that
4 clear?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you understand that whatever sentence
7 I impose, the Government may require full documents and have
8 full disclosure of your financial condition, so that they could
9 be able to monitor whether you've complied with the conditions
10 of your restitution obligation -- financial obligations to the
11 Court and to the victims in this case, do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And that is spelled out in Paragraph 7,
14 promptly submit complete financial statements to the U.S. in the
15 forms that they provide you. And that you cannot lie on those
16 forms, you've got to be accurate, you understand?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And they will secure information and you
19 agree that you authorize them to secure your credit report, so
20 that they could monitor you and they could check the information
21 out, do you understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Because you're pleading to one felony
24 count, you will be assessed a \$100.00 special assessment, that's
25 mandatory, I have no discretion, do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you agree to pay that \$100.00 before I
3 pronounce sentence and you have to supply it with a receipt to
4 the Clerk before I pronounce sentence as proof of the payment,
5 is that clear?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that if I decline to
8 follow any of the recommendations or stipulations between and
9 the Government, that you cannot withdraw your guilty plea?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Has anyone made you any promises,
12 whatsoever, as to what I am going to do with you in terms of the
13 sentence?

14 THE DEFENDANT: Can you please repeat that?

15 THE COURT: Do you understand that, the call as to
16 what would be your sentence is totally my call and nobody
17 else's?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Has anybody made any promise to you as to
20 what a potential -- a potential sentence may be?

21 THE DEFENDANT: (No verbal response.)

22 THE COURT: In other words, any promise -- anyone
23 promise you that I will give you X sentence?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: All right. It's totally my call, you

1 understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: In exchange for cooperation, the
4 Government is going to agree, that you have cooperated and
5 you're entitled to a two-level adjustment for your cooperation
6 for your misconduct.

7 And does she get three levels or one, are we talking
8 three or -- two -- just two?

9 MS. CHANNAPATI: Two.

10 THE COURT: Two levels, okay.

11 And a couple of other things that I need to talk to
12 you about before we conclude and we're about to conclude, we're
13 a little bit past the hour.

14 (Discussion held off the record 5:05 p.m.)

15 THE COURT: But you cannot file a lawsuit under the
16 Freedom of Information Act, asking the Government to turn over
17 the investigative file against you, do you understand that?

18 THE DEFENDANT: Can you please repeat the question?

19 THE COURT: You cannot file a lawsuit -- a civil
20 lawsuit -- under the Freedom of Information Act, asking the
21 Government to produce the entire investigative file in your case
22 to you at their cost, do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And you cannot request attorney fees, you
25 waive that right down the line in a separate proceeding, do you

1 understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And you understand that you are telling me
4 by signing this agreement, that this -- this guilty plea
5 contains no additional promises, agreements or understandings
6 and that -- that I -- that you have discussed -- is that right,
7 this contains everything?

8 THE DEFENDANT: (No verbal response.)

9 THE COURT: This contains no additional promises,
10 agreements or understandings, other than what is written in this
11 document?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And also, you're telling me, that you have
14 discussed this with your lawyer and that you are pleading
15 guilty, because in fact you're guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Is that right?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And a couple of more things, before we
20 conclude and I hear from the Government.

21 One is that you've read this document and you signed
22 above the name -- did I already ask you above the name, Anna
23 Murunga, is that your signature?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay.

1 And then, we have another document called,
2 acknowledgment of rights, three pages.

3 Again, did you sign above the name, Anne Murunga?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You've read these documents, the three
6 documents, cover to cover, right?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So, you understand that there is no --
9 because you're pleading guilty, there will be no trial?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And you understand that you have a right
12 to a trial, however, right?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And you are -- I'm pretty sure, you were
15 ready, because we had a panel today for you, that you understand
16 in conversations with your lawyer, how we go about selecting a
17 jury in a criminal case in this courthouse, you understand that,
18 right?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And ultimately, twelve citizen will
21 ultimately have to decide whether the Government's evidence is
22 sufficient to prove these charges beyond a reasonable doubt, do
23 you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: By pleading guilty, you give up the right

1 to the presumption of innocence and to have the Government prove
2 the charges beyond a reasonable doubt, you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You give up the right to challenge the
5 Government's witnesses and the Government's evidence through
6 cross-examination, is that clear?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: You give up the right to testify, which is
9 absolute, nobody could force you to give up that right, do you
10 understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You decide whether to testify, you decide
13 whether or not to testify, that's your call, you give that
14 right, is that clear?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Of course, you have a right to
17 representation during the trial, during your guilty plea and in
18 post -- post-sentence.

19 But, essentially, you also give up the right to compel
20 others, who have favorable information that helps you to -- to
21 come in and testify in court as well, the compulsory process, do
22 you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you want to give up all of these trial
25 rights?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Okay.

3 In addition to your trial rights, you are also
4 limiting in a very significant way, your appellate rights, is
5 that clear?

6 THE COURT: What rights, again?

7 THE COURT: Appellate rights, you give up your right
8 to --

9 THE DEFENDANT: What does that mean?

10 THE COURT: -- to go to a higher court and appeal.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Remember, you just -- I just talked to one
13 provision here that you said, that you agreed that, unless I --
14 I think -- unless I sentence you to a restitution order that's
15 greater than the amount that the Department has calculated, that
16 you give up your right to appeal the restitution order, do you
17 understand that?

18 THE DEFENDANT: (No verbal response.)

19 THE COURT: You already said that here, right?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Well, I want you to turn to Paragraph --
22 it's Paragraph 11 of your guilty plea, do you see that?

23 This is pretty technical language, have you got it?

24 THE DEFENDANT: Not yet.

25 THE COURT: Okay, Page -- of the guilty plea

1 agreement, Page 7.

2 THE DEFENDANT: I'm there.

3 THE COURT: All right.

4 This is very -- very technical language and I think
5 you could appreciate it, since -- since you have a science
6 background.

7 Technical language in the sense that it talks about
8 two things, the right to a direct appeal, your direct-appeal
9 rights.

10 But also down the line to challenge how the case was
11 handled and to raise other issues that are collateral to your
12 direct-appeal rights, do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Because in the Third Circuit, you have to
15 exhaust your direct-appeal rights before you could attack how
16 the case was handled or any other collateral issue, is that
17 clear?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So, this document talks about both things
20 and what it tells me -- and what you are telling me and -- is
21 that you understand that you are giving up, your right to
22 appeal, your conviction, your sentence or any matter relating to
23 the prosecution of this case, whether such right to appeal or to
24 attack arises under these provisions of law.

25 So, the right to appeal and you are also limiting your

1 collateral appeal rights as well, is that clear?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So, you could only appeal or seek
4 collateral review of your conviction or sentence, if the
5 agreement allows it, expressly, allows an appeal or -- or a
6 collateral challenge, do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And this appeal limits what you could do,
9 because you could only file a direct appeal, if the Government
10 doesn't like the sentence I give you and they file an appeal, in
11 that case, you could file an appeal, that's one circumstance, is
12 that clear?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: But if the Government is satisfied with
15 the sentence, then you are allowed to appeal, but it's very
16 limited to three circumstances, that are spelled out in this
17 agreement.

18 One is, that the sentence I give you is greater than
19 what the law permits me to give you, do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you remember what the maximum penalty
22 is?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Right.

25 So, it has to be greater than the maximum penalty

1 allowed under the law, not greater than ten years (sic) and a
2 \$250,000.00 or both, right?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Or if -- remember that I said, the base
5 offense level it twelve, the guidelines call for -- I think, I
6 said, ten to sixteen, right, that's the starting point of the
7 sentence, arguably, a criminal history category of zero -- a I
8 -- because you don't have criminal history points. A base
9 offense level of twelve, it gives me ten to sixteen, so that's
10 the starting point of your sentence -- of your guidelines.

11 So, if I depart upward, if I say, ten -- sixteen
12 months -- it not enough, I'm going to give her an upward
13 departure under the guidelines for whatever reason under the
14 guidelines and I bumped it up, let's say, I bumped it up to
15 fourteen and I give you twenty-one months, in that instance, you
16 could file an appeal.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Right, that's the best example I could
19 give you.

20 Or I don't give you an upward departure under the
21 guidelines, right, I don't treat it as that but I give you an
22 upward variance under the other factors that we've talked about
23 earlier and I give you the same sentence, I've bumped it up
24 upward as a variance and I give you twenty-one months. That
25 sentence, you may have a right to challenge or you'd have a

1 right to challenge your -- your sentence, do you understand
2 that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: But unless you come within those limited
5 -- very limited -- circumstances, you pretty much give up --
6 give up your right to appeal or to attack your conviction, do
7 you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: The only other collateral attack or the
10 right to attack your conviction is that, at the time that you
11 signed the agreement -- and today here, when I take your guilty
12 plea -- that your lawyer's advice and representation fell below
13 what is constitutionally required of him, that's the only other
14 collateral challenge, that you could lodge to this case, do you
15 understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Outside of those things, your appellate
18 rights are very limited, is that clear?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: So, it's going to be very difficult for
21 you to come back and challenge, your conviction or your sentence
22 or asking -- or ask me -- to withdraw your guilty plea, is that
23 clear?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you have any questions or reservations

1 about giving up your trial rights and limiting your appellate
2 rights in the way, we've just talked about on the record?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: All right.

5 Before I heard from the Government, is there anything
6 else, I need to discuss with her, other than some of the
7 collateral consequences, which I will do after you -- and her
8 trial -- and appellate rights -- that I will do after you
9 summarize the facts?

10 MS. CHANNAPATI: No, your Honor.

11 THE COURT: Attorney Capone?

12 MR. CAPONE: No, your Honor.

13 THE COURT: Okay. Thank you.

14 MS. CHANNAPATI: Your Honor, if the -- if the case had
15 gone to trial, the Government would have pre -- presented
16 evidence of the following -- excuse me.

17 From August of 2005 to June of 2006, PI a Kenyan
18 national was employed as a domestic servant in the home of
19 Michael and Mary Wood in New Jersey.

20 Anne Murunga knew that the Woods had recruited PI in
21 Kenya to work for them in New Jersey with promises of employment
22 and educational opportunities.

23 Anne Murunga visited the Woods' home while PI worked
24 and lived there and Anne Murunga observed PI providing childcare
25 and housekeeping labor.

1 In conversations with Michael and Mary Wood, Anne
2 Murunga learned that the Woods had brought PI into the United
3 States, illegally, using someone else's passport and that they
4 have done this before with a prior domestic servant from Ghana.

5 At this time, Anne Murunga learned that PI was not
6 lawfully present in the United States. Mary Wood told Anne
7 Murunga that PI was paid \$200.00 per month for her services.
8 Anne Murunga understood that PI never worked outside of the
9 Woods' home during this time period and PI was never allowed to
10 attend school or participate in educational opportunities.

11 Anne Murunga learned from her older brother, Douglas
12 Murunga, that PI had complained that Michael Wood had sexually
13 assaulted her in the Woods' home. Anne Murunga and her
14 brothers, Douglas and Harold Murunga planned to remove PI from
15 the Woods' employment and home. Anne Murunga agreed that Harold
16 Murunga would remove PI from the Woods' home without giving
17 notice to the Woods or to PI.

18 After her removal PI lived in Anne Murunga's home in
19 Pennsylvania. When PI arrived at Anne Murunga's home, she did
20 not have her passport, birth certificate or other identity
21 documents. Anne Murunga requested these items from Michael
22 Wood, but he did not return them. Michael Wood told Anne
23 Murunga, that PI's passport was in Ghana.

24 Anne Murunga, Harold Murunga and Newton Adoyo
25 discussed hiring an immigration attorney to assist PI, but

1 decided not to, because it might cause problems for the Murunga
2 family.

3 From June of 2006 until March of 2011, Anne Murunga
4 employed PI as a domestic servant under the same payment
5 conditions imposed on the Woods. Anne Murunga paid PI \$200.00
6 per month for her labor.

7 During PI's years working for Anne Murunga, PI never
8 attended school, except some online courses. PI was not
9 employed outside of Anne Murunga's home.

10 THE COURT: Very well.

11 Ms. Murunga, you understood the Assistant United
12 States Attorney's statement -- Anita Channapati -- what she told
13 me?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is that accurate?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: (No verbal response.)

18 (Pause and discussion held off the record at 5:17
19 p.m.)

20 MR. CAPONE: May I have a moment, your Honor?

21 THE COURT: Sure.

22 (Pause and discussion held off the record continues at
23 5:18 p.m.)

24 THE COURT: Okay.

25 MS. CHANNAPATI: Your Honor, with respect to the --

1 THE COURT: Okay, what --

2 MS. CHANNAPATI: -- the fact that PI never attended
3 school, except for some online courses, the Government's meaning
4 of never attending school means that she never attended actual,
5 physical school. She never actually attended a bricks and
6 mortar school.

7 THE COURT: Okay.

8 MR. CAPONE: Never went to a school, right.

9 THE COURT: So, it doesn't apply to online education
10 or anything like that?

11 MS. CHANNAPATI: Right.

12 THE COURT: All right.

13 Aside of that, now that you know what the Government
14 meant by never attended school, a physical brick and mortar type
15 of school, did you understand what she told me about what
16 happened here, the evidence, the highlights of what they would
17 prove at trial --

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: -- if this matter would go to trial?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is what she told me accurate?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you do this, did you commit this
24 crime?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Are you guilty of this?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And your participation and your knowledge
4 of this crime?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You -- this -- she's a citizen, right?

7 MR. CAPONE: Yes, your Honor.

8 THE COURT: So, that's -- one of the consequences of
9 your decision to plead guilty to a felony is that, you may lose
10 your right to vote, do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And you cannot legally possess any
13 weapons, because you're considered to be a felon and that could
14 be serious crime, if you are a felon in possession of a weapon,
15 you -- do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I could order restitution in a civil case
18 to collect taxes against you, as a potential consequence -- I'm
19 not saying that is going to happen -- but that's a consequence
20 of your guilty plea, do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And also, restitution in this case which
23 you understand that I could give you restitution and you
24 understand the parameters of the -- the limitation on that,
25 right?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Understanding all of the consequences of
3 your decision to plead guilty, do you want to plead guilty to
4 this one count of the indictment?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Is there any reason, Attorney Capone, why
7 I should not accept her guilty plea?

8 MR. CAPONE: No, your Honor.

9 THE COURT: Is there anything else, the Government
10 wants me to discuss with her on the record, before I take her
11 guilty plea?

12 MS. CHANNAPATI: No, your Honor.

13 THE COURT: Very well.

14 Ms. Murunga, I -- I'm going to ask that you'd please
15 stand, so that I could take your guilty plea to Count 1 and
16 Count 1 only, because Count 2 will be dismissed at sentencing,
17 am I correct?

18 MS. CHANNAPATI: Yes, your Honor.

19 THE COURT: So, as to Count 1, concealing, harboring
20 and shielding from detecting an alien for the purpose of private
21 financial gain in violation of Title 8, Section 1324(a)(1)(A),
22 Roman Numeral (iii) -- small Roman Numeral (iii) -- how do you
23 plead guilty or not guilty?

24 THE DEFENDANT: Guilty, your Honor.

25 THE COURT: Excuse me?

1 THE DEFENDANT: Guilty.

2 THE COURT: All right, very well, thank you.

3 I will adjudicate you guilty of this felony, Ms.
4 Murunga.

5 I am going to direct the Probation Department to
6 conduct what we call a presentence investigation report and that
7 report here is important -- you're not asking me to waive that
8 here, right?

9 MS. CHANNAPATI: No, we're not, your Honor.

10 THE COURT: Yes.

11 So, I -- in this case, because it's a felony -- I am
12 going to order one and it's a very comprehensive investigation
13 that the Probation Department conducts. They will contact you
14 to talk to you. And you should make yourself available for an
15 interview. You would have a right to have your lawyer present
16 during that interview.

17 Following their investigation, they will prepare a
18 draft report and they will send it to both you and the
19 Government, so the Government and you will have it. And it's
20 critical and important, that you sit down with your lawyer face
21 to face, look at the document line by line, page by page and if
22 there are any problems with the contents of the information that
23 is in the document, that you'd let them know. You could file
24 what we call, corrections, modifications or objections.
25 Particularly, if there is disagreement on the guidelines.

1 We've talked a little bit about what we think you are
2 looking at, but of course, I don't know the entire picture, I
3 don't know whether there are other things that apply, like,
4 enhancements that apply.

5 But if you have an objection, you've got to put it in
6 writing, give it to them, they will take a look at it. They
7 will bring their expertise to bear, they will tell me whether
8 they agree with you or not. If they agree with you, they will
9 incorporate it in their draft report and then, the Government
10 has to file objections and I'd have to address them. If they
11 disagree with you, they will tell me why they disagree with you.
12 And you could always bring that to my attention, is that clear?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Right.

15 And as you well know, I have scheduled sentencing for
16 December 4th, 2014 at 10:00 a.m., assuming that the case could
17 proceed, unless the Government asks me for a continuance.

18 I expect the Government and the defense to have their
19 sentencing memorandums due on the same date, November 25th,
20 2014, is that clear?

21 MR. CAPONE: Yes, your Honor.

22 THE COURT: Okay.

23 Now, you know, I don't know what happened, I don't
24 know why you committed this crime. You will have an opportunity
25 to speak to me, but this is a pretty serious crime, you do

1 understand that, right?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Okay. All right. Anything else?

4 MS. CHANNAPATI: No, your Honor.

5 THE COURT: Okay. Thank you very much.

6 MR. CAPONE: Well, may I, your Honor?

7 THE COURT: Have a good day.

8 MR. CAPONE: Excuse me, your Honor -- your Honor?

9 THE COURT: Yes.

10 MR. CAPONE: I'm sorry.

11 It's just that in terms of conditions of release and I
12 know, bail will continue on --

13 THE COURT: Well --

14 MR. CAPONE: -- on it's own the way it is.

15 The only thing is, my client -- and I don't think the
16 Government has any problem -- she's been reporting, sort of,
17 once every two weeks and -- how far do you go?

18 (Discussion held off the record 5:24 p.m.)

19 MR. CAPONE: It's about a half an hour drive, your
20 Honor. She's had absolutely no problem, the -- the Pretrial
21 Services officer said, he was going to send something to the
22 Court.

23 The Government doesn't mind, if she phones in on a --
24 on a regular basis, if that would be acceptable to the Court.

25 THE COURT: All right.

1 I have a report from the -- did you get a copy of the
2 report from the Pretrial Services?

3 MS. CHANNAPATI: No, your Honor.

4 THE COURT: All right, let me give you a copy, but I
5 have -- I think, I have the same report, the 25th report. It's
6 a good report in terms of the conditions of release and I, of
7 course, will reimpose the same conditions, that were imposed by
8 Judge Rice in this case.

9 So, understand that you have pretrial supervision, you
10 have to randomly submit drug tests and seek treatment, if
11 necessary, if you're told to do so. Surrender your passport,
12 you have travel restriction to the Eastern District of PA. and
13 New Jersey, unless you are given approval to travel elsewhere by
14 the Pretrial Services office or you have to seek their approval
15 all the time. You cannot have firearms and you have to maintain
16 a residence.

17 I don't have anything that they are asking me here, I
18 don't have any recommendations from them as to whether they want
19 to change your reporting date or have you report -- if they do
20 -- does the Government have an objection?

21 MS. CHANNAPATI: No, your Honor.

22 THE COURT: Okay.

23 But I want to hear it from them, so you make sure that
24 they contact me and if they do, submit an order and you submit
25 an order and I will sign that order, modifying her report -- how

1 she reports --

2 (Discussion held off the record at 5:26 p.m.)

3 THE COURT: -- is that what you want?

4 MR. CAPONE: Yes, yes, your Honor.

5 Essentially, maybe -- maybe if it could be every other
6 month or something -- in person. The only thing, that was the
7 only intrusion for -- it's about forty minutes away or so --

8 THE COURT: That's not bad --

9 MR. CAPONE: -- because of where she lives.

10 THE COURT: -- I come every day, an hour away and
11 that's an hour away from West Chester --

12 MR. CAPONE: I --

13 THE COURT: -- and an hour away back, that's not such
14 an inconvenience.

15 MR. CAPONE: -- I understand, your Honor.

16 THE COURT: But as long as the Government doesn't
17 object --

18 MR. CAPONE: Okay.

19 THE COURT: -- tell the Pretrial Services to contact
20 me and -- and --

21 MR. CAPONE: I will, your Honor.

22 THE COURT: -- if they don't have a problem --

23 MR. CAPONE: All right.

24 THE COURT: -- you present me with an order.

25 But just remember --

1 MR. CAPONE: I'll talk --

2 THE COURT: -- I drive every day, an hour to get here
3 and I've been doing it for ten years.

4 MR. CAPONE: I understand. I have the original, your
5 Honor.

6 THE COURT: All right.

7 And I have -- you only have to -- I want to kick
8 myself in the head -- because I only lived three minutes away
9 from where I used to be a judge.

10 All right. Anything else?

11 MS. CHANNAPATI: Nothing, your Honor.

12 THE COURT: Okay.

13 (Pause and discussion held off the record at 5:27
14 p.m.)

15 THE COURT: Attorney Capone, I need to talk to the --
16 the Government but just on the paperwork, because I want to make
17 sure, I talk to them about the paperwork. All right.

18 MR. CAPONE: It's okay, your Honor.

19 THE COURT: Yes, here.

20 Anything, I should -- anything I need from you or did
21 you need to give me something for -- for the paperwork, do you
22 have it?

23 MS. CHANNAPATI: Your Honor, the -- the people intend
24 to file a motion for a continuance, if that's what you're
25 referring to?

1 THE COURT: Right. We -- this is the prob -- this is
2 unusual, a little unusual, it happened to me one time --

3 MS. CHANNAPATI: Okay.

4 THE COURT: -- and -- before -- and the way it was
5 done, which I -- I think since you've been all around the United
6 States, you probably have experiences that every district does
7 it a little different.

8 It happened to me only once and the indictment
9 remained, a new information was given, the indictment was
10 continued until the person was sentenced and then, the
11 indictment was dismissed and the person was sentenced. So,
12 every -- every district is a little bit different.

13 I just wanted to make sure that we comply with what
14 they want downstairs, because they are used to doing something
15 one way and -- and also, I want to make sure that the other
16 pleas that we took are consistent with that and, you know, what
17 number are you giving them?

18 MS. CHANNAPATI: Right, your Honor.

19 So, I have drafted a motion for a continuance. And I
20 intend to file it. But before I do, I will go downstairs and
21 speak to the Clerk's office and make sure everything comports
22 with what they want, rather than just file and then, have to
23 make corrections --

24 THE COURT: Beginning --

25 MS. CHANNAPATI: -- is -- is that sufficient?

1 THE COURT: Yes, that's fine, make sure that Mr.
2 Delisle -- you talk to Ms. Delisle, they're not going to be
3 there now.

4 MS. CHANNAPATI: Okay.

5 Well, then I'll talk to them tomorrow.

6 THE COURT: Yes, but talk to Ms. Delisle, because if
7 she's been getting a wrap from them --

8 MS. CHANNAPATI: Okay.

9 THE COURT: -- on a daily basis and we don't want to
10 do that.

11 MS. CHANNAPATI: Okay.

12 THE COURT: All right.

13 MS. CHANNAPATI: Thank you, your Honor.

14 THE COURT: Thank you very much. Are you putting in
15 for extra time today?

16 MR. RICHMOND: No, we --

17 THE COURT: Good, thank you very much.

18 (Adjourned in this matter at 5:29 p.m.)

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C E R T I F I C A T E

_____ I do hereby certify that the foregoing is a correct transcript of the electronic-sound recording of the proceeding in the above-entitled matter.

Date: August 9, 2016

Gail Drummond
28 8th Avenue
Haddon Heights, New Jersey 08035
(856) 546-6270

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA. Case No. 2:14-cr-00175-JS
Plaintiff, .
v. . U.S. Courthouse
ANNE MURUNGA, . 601 Market Street
Defendant. . Philadelphia, PA 19106
. February 2, 2018
. 03:00 p.m.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE JUAN R. SANCHEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ANITA CHANNAPATI, ESQ.
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Audio Operator: PATRICK KELLY

TRANSCRIBED BY: NEAL R. GROSS

Proceedings recorded by electronic sound
recording, transcript produced by transcription service.

I N D E X

PAGE

WITNESS FOR THE DEFENDANT

ANNE MURUNGA

Direct Examination by Mr. Brennan 7

Cross-examination by Ms. Channapati 26

WITNESS FOR THE PLAINTIFF

AGENT SCOTT BISHOP

Direct Examination by Ms. Channapati 42

Cross-examination by Mr. Brennan 47

CLOSING ARGUMENTS

EXHIBITS

ID.

EVD.

1 THE COURT: Good afternoon, everyone. You may be
2 seated.

3 MR. BRENNAN: Thank you, sir.

4 THE COURT: This is the matter of, I think I have the
5 wrong file, sorry about that, Anne Murunga, represented by Mr.
6 William Brennan, and the Government, represented by Anita
7 Channapati and Shan Patel?

8 MR. PATEL: Yes, that's correct, Your Honor.

9 THE COURT: Good afternoon, everyone.

10 MR. BRENNAN: Good afternoon, Your Honor.

11 MS. CHANNAPATI: Good afternoon.

12 THE COURT: And this is a motion to withdraw a guilty
13 plea?

14 MR. BRENNAN: Yes, sir.

15 THE COURT: So is the Government and the Defendant
16 ready to proceed?

17 MR. BRENNAN: Yes, sir.

18 MS. CHANNAPATI: Yes, Your Honor.

19 THE COURT: Very well. So I guess I need to hear
20 testimony, right?

21 MR. BRENNAN: Yes, sir.

22 THE COURT: All right. Is the Defense Counsel, then
23 -- whose burden is it?

24 MR. BRENNAN: I believe it's on me.

25 THE COURT: All right.

1 MR. BRENNAN: Judge, before we proceed, I have
2 disclosed to the Government and to my client, I believe even to
3 the Court, but I want to place on the record, so in the future,
4 if it would ever come up, there is no ambiguity, that Ms.
5 Murunga's former counsel, Joseph P. Capone, Esquire, is a
6 longstanding friend of mine for almost 40 years; 35 years, I
7 would say.

8 We met in law school, we formed a study group, he was
9 an usher in my wedding, I see him regularly, and I organize,
10 every four or five years, a reunion of our little study group
11 from the 1980s, of which there were four of us, and in fact,
12 most recently, it was this year he attended, so I don't want
13 there to be any issues.

14 Certainly, the Government understands and I met with
15 Mr. Patel in D.C. over the summer months to discuss this case,
16 and I know I told him then, and I believe I told my client the
17 very, very first day we spoke about this. Is that correct, Ms.
18 Murunga?

19 THE DEFENDANT: Yes, it is.

20 MR. BRENNAN: And does that give you any pause or
21 hesitation, the fact that I am friendly with your former lawyer
22 that you made certain comments about, does that give you any
23 pause or hesitation about my ability to represent you to your
24 satisfaction?

25 THE DEFENDANT: No, it doesn't.

1 MR. BRENNAN: Thank you. Your Honor, is that okay?

2 THE COURT: Very well. Is the Government satisfied?

3 MS. CHANNAPATI: No, Your Honor, we can move on.

4 THE COURT: Right. I think I -- I know that she's
5 highly educated, right? Could you tell me a little bit about
6 her background?

7 MR. BRENNAN: Yes, Judge.

8 THE COURT: If I remember correctly, she's --

9 MR. BRENNAN: Worked at a pharmaceutical company.

10 THE COURT: And refresh my recollection.

11 MR. BRENNAN: -- has an advanced degree. Extremely
12 bright individual. I mean, for the purposes of what I think
13 you're trying to accomplish, reads, writes, and understands the
14 English language. I've met with her numerous times. I'm
15 perfectly convinced she understands the issues in the case and
16 she's competent to proceed.

17 THE COURT: Right. And she's competent to waive any
18 potential conflict that may exist between the fact that you are
19 friendly with her former counsel and that she understands that
20 she can never raise that as an issue in the foreseeable future
21 --

22 MR. BRENNAN: Do you understand that?

23 THE COURT: -- in terms of, number one, whether I
24 deny the motion, or number two, down the line whether you
25 should be involved in the case or not.

1 MR. BRENNAN: Right. I mean, I explained to Ms.
2 Murunga, and I think the Court could even take judicial notice,
3 that the bar in the Eastern District of regularly practicing
4 criminal defense lawyers is fairly small, so we pretty much
5 know everybody, but I felt the need to take this extra step
6 because of the longstanding friendship with Capone, and the man
7 was an usher in my wedding.

8 THE COURT: All right.

9 MR. BRENNAN: And we stayed friendly. She
10 understands that, I believe, correct?

11 THE DEFENDANT: Yes, I do.

12 MR. BRENNAN: All right. Can we proceed?

13 THE DEFENDANT: Yes, we can.

14 THE COURT: All right. So --

15 MR. BRENNAN: Judge, the Court has received, I'm
16 sure, and if not, I have plenty of extra copies, my motion and
17 my memorandum or brief and support.

18 THE COURT: Okay.

19 MR. BRENNAN: I'd be happy to hand it up again in
20 case -- I know the Court's very busy in another matter, in case
21 it didn't --

22 THE COURT: No, I have the memo.

23 MR. BRENNAN: Okay.

24 THE COURT: All right. Put on your evidence.

25 DEFENDANT'S EVIDENCE

1 MR. BRENNAN: All right. Thank you. The Defense
2 calls Ms. Anne Murunga. Would you take the stand, please?

3 THE DEFENDANT: Sure.

4 MR. BRENNAN: You walk around this table and you go
5 to --

6 THE COURT: Right over there.

7 MR. BRENNAN: -- where that microphone is over there.

8 ANNA MURUNGA, DEFENDANT, SWORN

9 COURT REPORTER: Please state your full name and
10 spell your last name for the record.

11 THE WITNESS: Anna Murunga, M, as in Mary, U, as in
12 umbrella, R, as in Rosy, U, as in umbrella, N, as in Nancy, G,
13 as in go, A, as in apple.

14 COURT REPORTER: Thank you.

15 THE COURT: And you may be seated.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MR. BRENNAN:

20 Q Good morning, Ms. -- good afternoon, Ms. Murunga.

21 A Good afternoon, Mr. Brennan.

22 Q How are you feeling today?

23 A I am blessed and favored by God. Thank you for asking.

24 Q Wonderful. Now, let me ask you just a few questions that
25 may sound unusual, but we have to establish this for the

1 record, physically, do you have any illness, or ailment, or
2 sickness that would prevent you from testifying today or
3 understanding what we're doing here?

4 A No, I do not.

5 Q Do you have any mental infirmity, or illness, or ailment
6 that would render you incapable to realize what we're doing
7 here today?

8 A No.

9 Q In the last 72 hours, have you had any alcoholic beverage,
10 or narcotic, or drug of prescription or otherwise that would
11 render you incapable to realize what we're doing today?

12 A No, sir.

13 Q All right. Ms. Murunga, why are we here today?

14 A We are here because I would like -- I'm requesting that
15 Judge -- Honorable Judge Juan Sanchez allows the plea deal, the
16 motion to the plea deal, to be withdrawn.

17 Q All right. So you appeared before Judge Sanchez before,
18 did you not?

19 A Yes, I did.

20 Q You, in fact, appeared before the Judge on August 28, 2014
21 and you entered a plea of guilty, correct?

22 A Yes, I did.

23 Q And you had a lawyer at that time, did you not?

24 A Yes, I did, sir.

25 Q And Judge Sanchez conducted a fairly extensive colloquy,

1 and that's just kind of lawyer talk for a series of questions
2 and answers, the Court being the inquisitor and the Defendant
3 being the responder, Judge and you, to ask you how you were
4 feeling, like I did, right?

5 A Yes, he did.

6 Q And if anybody forced or threatened you to make your
7 guilty plea, correct?

8 A Correct.

9 Q And if you were pleading guilty because you were in fact
10 guilty, right?

11 A Correct.

12 Q And there was a factual basis set forth by the Government
13 and the Defense accepted that, so the Judge knew that, you
14 know, you weren't pleading guilty to, say, the Kennedy
15 assassination, you were pleading guilty to the charges in this
16 case, correct?

17 A Correct.

18 Q And at that time, and at the conclusion of that
19 proceeding, Judge Sanchez, the Court, the Eastern District of
20 Pennsylvania here, federal court, district court, accepted your
21 plea, correct?

22 A He did, yes.

23 Q And pursuant to that event, a probation officer was
24 assigned, Mr. Brett White, and a probation pre-sentence report
25 was prepared, correct?

- 1 A Correct.
- 2 Q And you participated in that particular activity, correct?
- 3 A Yes, I did.
- 4 Q And a sentencing date was set, right?
- 5 A Yes.
- 6 Q And at some point, after the plea was accepted and after
7 the pre-sentence report was prepared, both of which,
8 proceedings and compilation of the document, you participated
9 in, you requested new counsel, correct?
- 10 A Yes, I did.
- 11 Q And the opportunity to come before the Court and ask Judge
12 Sanchez if you could withdraw your plea, correct?
- 13 A Correct.
- 14 Q All right. And then, pursuant to that, I agreed to accept
15 the appointment under the CGA panel as your new attorney, and
16 we met numerous times in my office, correct?
- 17 A Yes, we did.
- 18 Q In fact, most recently, I was unavailable and you met with
19 a lawyer with whom I am associated, who is familiar with your
20 matter, Mr. Richard Fuschino, correct?
- 21 A Correct.
- 22 Q And he answered your questions to the best of his ability
23 and to your satisfaction, correct?
- 24 A Yes.
- 25 Q And whenever we met, or spoke by telephone, did I answer

1 your questions to your satisfaction?

2 A Yes, you did.

3 Q And did we go over all the elements and relevant factors
4 that you thought you had questions about?

5 A Yes, we did.

6 Q And did I spend time explaining to you what I believed to
7 be the legal standard that the Court must apply when a
8 Defendant has been before the Court and the Defendant's plea
9 has been accepted, and prior to sentencing, the Defendant
10 decides that he or she wishes to attempt to withdraw their
11 plea, have we gone through all that?

12 A Yes, we did.

13 Q All right. And I prepared, on your behalf, a written
14 motion and a memorandum or brief in support of our request of
15 the Court, and we talked about that, and you've seen that,
16 correct?

17 A Correct.

18 Q Okay. All right. So that brings us to -- that, I
19 believe, sets forth a fairly exhaustive and accurate -- oh, and
20 you're aware that I've been in discussions with the Government.
21 I've actually met with Assistant Prosecutor Shan Patel in D.C.
22 to discuss the case and the various aspects you raised for me
23 to raise on your behalf, correct?

24 A Correct.

25 Q All right. And without telling the Court what my advice

1 was with regard to this proceeding, I independently gave you my
2 thoughts and my advice on not only this particular outstanding
3 motion, but the possible effects of Judge Sanchez' decision,
4 correct?

5 I don't want you to tell him what I told you, but I
6 gave you a whole series of alternatives that you would face,
7 depending which way Judge Sanchez goes, correct?

8 A Yes, you did.

9 Q If he denies your motion, I told you what would likely
10 happen in the process to sentencing, right, or the road to the
11 sentencing, correct?

12 A Yes, you did.

13 Q And if Judge Sanchez, on the alternative, grants your
14 motion, I told you different scenarios that -- or different
15 roads you may take in that event, correct?

16 A Correct.

17 Q And without getting into specifics, this is a case that
18 involved -- this is a case that had related criminal matters,
19 correct?

20 A Correct.

21 Q Some here in the Eastern District and some in the District
22 of New Jersey, correct?

23 A Correct.

24 Q And some of the individuals involved as participants
25 and/or defendants in the related matters, both here and in the

1 District of New Jersey, have gone to trial, correct?

2 A Correct.

3 Q And without getting into the results of those trials,
4 you're aware of the verdicts in those cases, correct?

5 A Yes, I am.

6 Q And in spite of the verdicts of those cases, you still
7 wish to proceed with this motion, correct?

8 A Correct.

9 Q And you understand that it is my belief that if Judge
10 Sanchez grants your motion, and if you elect to go down the
11 road to trial, and if you the case goes to trial, some of those
12 individuals, and others, may testify against you, correct?

13 A Correct.

14 Q And some of those individuals are or were related to you
15 by blood and/or marriage, correct?

16 A Correct.

17 Q And some of those individuals may be cooperating with the
18 Government in the hope that their cooperation and testimony in
19 support of their cooperation may enhance or make better their
20 situation, correct?

21 A Correct.

22 Q And we've spoken about the myriad possibilities that may
23 come from those individuals cooperating or even not
24 cooperating, but just testifying against you, correct?

25 A Correct.

1 Q All right. Now, independent of all that, I gave you an
2 assessment of the statutes in this case, of the law in the
3 case, of what I thought of the Government's case, and then I
4 gave you my thoughts of -- well, I advised you on how I thought
5 you should proceed, correct?

6 A Correct.

7 Q And notwithstanding all of that, in spite of all that, it
8 is still your desire to proceed with this motion, correct?

9 A Yes, it is.

10 Q And nobody's promised you anything. In fact, I've had
11 many, many, many cases with Judge Sanchez and I have immense
12 respect for him, and I am friendly with him if I see him on the
13 street, we stop and say hello. In spite of the fact that I've
14 had so many cases with the Judge, and I have so much respect
15 for him, and I like him so much, I have never predicted what he
16 might do, did I?

17 A No.

18 Q All right. I said, we have no clue. I have no clue,
19 right?

20 A Right.

21 Q All right. So it's not like you're here thinking, you
22 know, that there's a result coming your way, a result you may
23 want, and, you know, that this is just some formality. We
24 don't know what the Court's going to do, correct?

25 A Correct.

1 Q And in addition to the lack of any promises or guarantees
2 of what the Court would do, no one's forced you or threatened
3 you to persist with or to cease persisting with this motion,
4 correct?

5 A Correct.

6 Q So I'm asking all of these questions, which may seem
7 somewhat exhaustive and redundant, because I think they're
8 necessary and I don't want to be, frankly, in the position that
9 Mr. Capone is in. I don't want you, later on, to say, well, on
10 February 2, 2018, when Brennan represented me in front of the
11 Court, you know, I didn't know what I was doing, or I felt
12 forced or threatened, or side deals were made, or he said he
13 thinks he knows what the Judge is going to do, or he met with
14 the Government in D.C. and they had some side deal, none of
15 that's occurred, correct?

16 A Correct.

17 Q We are here as a litigant, a litigant's attorney, facing
18 the Government in front of a federal district judge, with the
19 burden, frankly, being weighted on our side, asking to simply
20 have the opportunity to allow you to withdraw your plea,
21 correct?

22 A Correct.

23 Q All right. So I'm done with that line of questioning.
24 Thank God. Now, in support of your request, why don't you
25 briefly tell Judge Sanchez why you feel that you -- well, we

1 know you want to withdraw your plea, correct?

2 A Correct.

3 Q And I told you, somewhat exhaustively, what the legal
4 standards are to get there before sentencing, right?

5 A Correct.

6 Q I told you there's a different standard before sentencing
7 as opposed to after sentencing, right?

8 A Yes.

9 Q And knowing all that, why don't you briefly tell Judge
10 Sanchez, in the context of what the legal standards are, why
11 you think Judge Sanchez should allow you to withdraw your plea.

12 A Thank you. I feel Honorable Judge Juan Sanchez should
13 withdraw my plea deal because I was -- I felt pressured by the
14 Government and my former attorney to plead guilty.

15 Q All right. And with regard to the feeling of pressure,
16 you have provided to me, various pieces of correspondence,
17 including emails and the like, correct?

18 A Correct.

19 Q And I've reviewed them with you, right?

20 A Right.

21 Q And I've given you my opinion on some of the interchanges
22 between you and your former lawyer, for example, there is a
23 particular email, and I do not choose, at this point, and I may
24 not choose at all in this hearing, to mark or move any specific
25 attorney/client document into evidence, but there is, in fact,

1 for example, an email where your former lawyer says, you must
2 provide objections to the pre-sentence report by such and such
3 date, correct?

4 A Correct.

5 Q And I believe the word, must, is in all capital letters,
6 correct?

7 A Correct.

8 Q And in the new world in which we live, that my children
9 teach me about, in the world of electronic communication,
10 apparently making a word all capital letters has some new
11 imperative meaning, but you took that M-U-S-T in capital
12 letters as almost a, if I was speaking, it would be like a loud
13 shout, like a written shout, correct?

14 A Correct.

15 Q but I explained to you that in any case, and I've been
16 practicing for over 30 years, and I've been practicing in this
17 Eastern District since Ronald Reagan was president, on a fairly
18 active basis, that we are under orders from the Court, when a
19 plea is entered, to comply with a deadline for a pre-sentence
20 report objection or the Court can't proceed.

21 It impedes and stops and slows the business of the
22 Court. We could be in trouble with the Court, we could be held
23 in contempt, that that is simply a common thing that happens.
24 We've discussed that, right?

25 A Yes, we have.

1 Q So when you talk about the pressure, an example like that,
2 and we're not going to go through all the other examples like
3 that, but an example like that, I believe I was able, to your
4 satisfaction, to show you that that was just, we feel pressure
5 from the Court because the Court has to comply with deadlines
6 too, and we operate at the pleasure of the Court, and you have
7 to participate in the process, that, really, they weren't
8 picking -- on that one, nobody was picking on you, we're good
9 on that, right?

10 A Right.

11 Q But there were other correspondence and other emails where
12 you felt that it was more personally directed towards you and
13 you felt that it led you to make a decision that wasn't fully
14 voluntary, and knowing, and intelligent, correct?

15 A Correct.

16 Q All right. And you had, in preparation for resolving your
17 case you had meetings with the Government and your lawyer,
18 correct?

19 A Correct.

20 Q And they're referred to, the term of art is, a proffer
21 meeting. You know what that means, right?

22 A Right.

23 Q You had proffer meetings, and the Government was there,
24 right?

25 A Right.

1 Q And you met with -- your lawyer was always there, right?

2 A Yes.

3 Q And at times, Ms. Channapati would be there, right?

4 A Yes.

5 Q And was Mr. Patel there?

6 A I don't remember seeing him.

7 Q All right. But you also testified that in addition to
8 feeling pressure from your prior lawyer, you felt pressure from
9 the Government, correct?

10 A Correct.

11 Q And I explained to you, as Mr. Capone did, I believe you
12 say, that there are sentencing guidelines in every single
13 criminal case in the United States, right?

14 A Right.

15 Q The Court is no longer bound by, but they're strongly
16 advisory, right? We talked about those.

17 A Yes.

18 Q And that when a Defendant participates in proffer
19 meetings, it's usually in the hopes that he or she will get a
20 motion for downward departure from those guidelines, and
21 there's a motion that you're familiar with, called a 5K1.1
22 motion, right?

23 A Right.

24 Q And you know only the Government can file that motion,
25 right?

1 A Right.

2 Q I couldn't file it for you, Capone couldn't file it for
3 you, right?

4 A Right.

5 Q And during these proffer meetings, I don't want to speak
6 for the Government, the Government will certainly jump and down
7 if I speak wrongly, but I would presume, or assume, that it was
8 the Government's intention to have the case resolve non-trial
9 and have your cooperation maybe be used in other related
10 matters. Government, fair enough statement?

11 MS. CHANNAPATI: I'm not testifying. Please carry
12 on.

13 MR. BRENNAN: All right. Well, nobody's objecting,
14 Judge, just for the record.

15 BY MR. BRENNAN:

16 Q And your intention, was it not, Ms. Murunga, was to
17 possibly have a reduced sentence if that 5K1.1 motion was
18 filed, correct?

19 A Correct.

20 Q All right. But in spite of all that, you then stood in
21 front of this Court and this Judge and entered a plea of
22 guilty, correct?

23 A Correct.

24 Q All right. Now I need you to tell Judge Sanchez two
25 things -- well, I have three other questions I have to ask you

1 first. In preparation for either your meetings with the
2 Government and/or your guilty plea, Mr. Capone went through the
3 evidence with you, correct?

4 A Correct.

5 Q He, to your satisfaction, told you what the legal
6 standards the Government would be held to, to prove your guilt
7 unanimously to 12 fellow citizens, correct? In other words,
8 what the Government had to prove to have a jury find you
9 guilty. That you weren't charged with terrorism, you weren't
10 charged with Hobbs Act robbery, you were charged with crimes
11 that Capone explained to you what they were and what the
12 Government would have to prove to have you convicted. We've
13 talked about this.

14 A At the proffer meeting, I remember --

15 Q Not just -- bad question. Not just at the proffer, when
16 Capone was representing you, all right? You knew what you were
17 charged with, correct?

18 A Yes.

19 Q And in spite of all that, you pled guilty, correct?

20 A Correct.

21 Q All right. And it is your assertion, is it not, Ms.
22 Murunga, that you are, in fact, factually innocent of the
23 charges; you are -- you did not commit the crimes to which you
24 previously are -- actually, presently, have entered a plea of
25 guilty to, correct?

1 A Correct.

2 Q And the reason that you entered a guilty plea after a
3 fairly extensive colloquy from the Court, is that you felt
4 pressured by the Government and your lawyer, correct?

5 A Correct.

6 Q All right. And we've made some attempt to put on the
7 record a dissemination, or a distinction, between emails or
8 conversations that appear to be pressuring, or pressure-like,
9 and those where you actually felt pressure to the degree that
10 you entered a plea to crimes you claim you are not guilty of,
11 do you understand that question?

12 A Yes, I do.

13 Q Now I need you to tell, on the record, Judge Sanchez, what
14 specific acts, or conversations, or emails, or information came
15 your way, either from the Government or from Mr. Capone, that
16 pressured you to a degree to plead guilty to crimes you did not
17 commit.

18 A Yes. Thank you very much. What pressured me to plead
19 guilty to the degree that I did was that, during our meetings
20 with the Government, John Richmond told me that if I do not
21 agree to everything that was in that document as the Judge asks
22 me those questions, that I have to agree to it word-for-word,
23 if I object to anything, the Judge will throw away the whole
24 deal and I will be thrown in jail, I will lose my son, I will
25 lose my house, and I will lose my degree that I've worked so

1 hard for.

2 And then he proceeded to tell me that the bar is so
3 low. The Government does not have to prove anything, but just
4 to prove that I lived with my cousin, and that is -- I'm guilty
5 of that and so I'm going to jail. And I insisted that I was
6 going to go forward to trial and then Mr. Capone, my former
7 attorney, called me on the side in the conference room, next
8 door to where we were meeting, and he proceeded to pressure me
9 to take the plea deal.

10 He said that he has represented murderers and I am
11 going to jail, I'm going to lose my son, and I'm going to lose
12 my house, and I'm going to lose my job, I'm going to lose my
13 education.

14 And John Richmond proceeded to coach me on exactly
15 what to respond to when Judge Juan Sanchez asks me those
16 questions. And when I was signing the document, reading
17 through the document before I met with Judge Juan Sanchez, I
18 had noticed a lot of things that were inaccurate in the
19 document and I proceeded to ask my attorney, why am I signing
20 this? This is not accurate?

21 And he said, quote, it's the U.S. government. They
22 don't change anything. Just sign it. And so I felt pressured
23 from both the U.S. government and my attorney to proceed and
24 sign, and just agree to everything that they say that I -- was
25 in that document, because they say if I do not agree to it, I

1 was going to go to jail.

2 Q Okay. And again, you and I discussed, as we did with the
3 deadlines issue, we discussed that in almost every criminal
4 case in the federal system, that these guidelines are strongly
5 advisory under Section 3553, often recommend jail time,
6 correct?

7 A Correct.

8 Q And there became an issue that arose between you and Mr.
9 Capone regarding objections to the pre-sentence report prepared
10 by U.S. Probation Officer Brett A. White, correct?

11 A Correct.

12 Q And there's a series of conversations that you told me
13 about and emails related to and/or in support of those
14 conversations between you and Mr. Capone regarding those
15 objections, correct?

16 A Correct.

17 Q And you, in fact, sent objections on your own to Mr.
18 White, correct?

19 A Correct.

20 Q And as a result of that, Mr. Capone sent you a letter on
21 February 20, 2015, correct? Do you recall that?

22 A Correct. Yes.

23 Q And in that letter, Mr. Capone advises that you're in
24 jeopardy of losing that 5K1.1 downward departure motion we
25 already talked about some time ago this afternoon, correct?

1 A Correct.

2 Q And that if in fact you lost that motion, and when I say
3 lost that motion, I don't mean before the Court, I mean, stated
4 more clearly, if the Government elected not to file such a
5 motion, that you would be subjected to physical incarceration
6 as a result of your plea, are the exact words he wrote, right?

7 A Right.

8 Q And again, I'm not trying to be an apologist for Mr.
9 Capone because he's a friend of mine, but I have the letter and
10 we discussed it, he didn't say you would go to jail, which
11 would be touching the border of predicting what Judge Sanchez
12 would do, he said you can be subjected to it, in other words,
13 the Judge could put in jail, correct?

14 You knew that you faced jail as a possibility,
15 correct?

16 A Right. In a previous email, he also told me that Judge
17 Juan Sanchez had no power to undo what the Government had done,
18 and I have an email in respect to that.

19 Q Right. And well, you actually answered my next question
20 before I asked it, but the combination of factors of the
21 conversations you had with Mr. Capone, your emails back and
22 forth, and your understanding, from whatever source, including
23 your lawyer's advice, of what you were facing, in your opinion,
24 pressured you to enter a plea to charges you did not commit.

25 In other words, you plead guilty to the things you

1 were innocent to -- you were innocent of committing, correct?

2 A Correct.

3 MR. BRENNAN: I think that's all I have, Judge.

4 THE COURT: Do you have any questions?

5 MS. CHANNAPATI: Yes, Your Honor. If I may?

6 THE COURT: You may.

7 CROSS EXAMINATION

8 BY MS. CHANNAPATI:

9 Q Good afternoon.

10 A Good afternoon.

11 Q Ms. Murunga, you were born and raised in Kenya, correct?

12 A Correct.

13 Q And you pretty much completed your primary and secondary
14 education there, correct?

15 A Yes.

16 Q And you were fluent, not just in English, but in other
17 languages, right?

18 A Right.

19 Q But you -- the classes you took in your secondary
20 education were primarily in English, correct?

21 A Correct.

22 Q So you're comfortable in English, you understand
23 everything that's been said in this courtroom today and
24 previously, correct?

25 A Yes.

1 Q You have no trouble understanding me, I might speak a
2 little quickly, but other than that, do you have any problems
3 understanding anything I'm saying now?

4 A No.

5 Q Now, in addition to the education, the primary and
6 secondary education you received in Kenya, you also came to the
7 United States and studied here as well.

8 A Yes.

9 Q Okay. And you received an education -- you took some
10 college classes here in the United States?

11 A Yes.

12 Q Where was that?

13 A Middlesex County College, Keane University, Illinois
14 Institute of Technology.

15 Q So the Middlesex Community College, is that what you said?

16 A Yes, Middlesex Community College.

17 Q So you took some classes there first.

18 A Yes.

19 Q And then you ultimately went back to the Kenya and
20 received a degree, correct?

21 A No.

22 Q Oh, you received your degree here.

23 A Yes.

24 Q At Keane University, is that correct?

25 A Yes.

- 1 Q K-E-A-N-E.
- 2 A Correct.
- 3 Q What degree did you receive?
- 4 A A Bachelor's Degree in Chemistry.
- 5 Q In chemistry.
- 6 A Yes.
- 7 Q And all those classes were in English.
- 8 A Correct.
- 9 Q And then after that, you pursued a higher education.
- 10 A Yes.
- 11 Q And you received a Master's in Chemistry as well, correct?
- 12 A Yes.
- 13 Q And because of that, you were able to secure gainful
14 employment because you had these degrees in chemistry, is that
15 correct?
- 16 A Correct.
- 17 Q You worked at Merck Pharmaceutical.
- 18 A Yes.
- 19 Q And how long did you work there?
- 20 A Twelve years.
- 21 Q Twelve years? And again, everything that you -- all the
22 business that you conducted at Merck Pharmaceuticals was in
23 English, correct?
- 24 A Yes.
- 25 Q When you communicated with your colleagues, it was all in

1 English, is that right?

2 A Yes.

3 Q So I'm going to jump ahead to the first time you
4 encountered Scott Bishop, do you recall when that was?

5 A Yes.

6 Q Okay. When was that?

7 A I cannot tell you the date, but I know he came to work.

8 Q Okay. And was that roughly 2011?

9 A I cannot recall the date.

10 Q Okay. But it was at Merck Pharmaceuticals.

11 A Yes.

12 Q So you don't recall the date, but do you recall what
13 happened?

14 A I recall it was at Merck.

15 Q It was at Merck.

16 A Yes.

17 Q Isn't it true that Agent Bishop asked you about if you
18 knew the whereabouts of a person that we're going to refer to
19 as P.I. or Posse?

20 MS. CHANNAPATI: Oh, Your Honor, sorry, I'm going to
21 withdraw the question. At this time, and I meant to make this
22 motion at the beginning, can I make a motion to seal the
23 record?

24 MR. BRENNAN: I have no objection.

25 THE COURT: You may. Okay.

1 MS. CHANNAPATI: Thank you. Okay.

2 BY MS. CHANNPATI:

3 Q When Agent Bishop approached you that first time at work
4 while you were at Merck Pharmaceuticals, he asked you if you
5 knew the whereabouts of Posse, is that correct?

6 A I don't remember if he asked me if I knew the whereabouts,
7 because at that time, I didn't know where she was.

8 THE COURT: Well, what does that have to do with the
9 decision here to plead guilty or not plead guilty and whether
10 the guilty plea was knowingly, intelligently, and voluntary,
11 and whether she was coerced in any way, shape, or form to plead
12 guilty?

13 MS. CHANNAPATI: Your Honor, I understand it seems
14 like it's off the beaten path, but there's an evolution here of
15 Ms. Murunga's claims that has changed over the course of the
16 duration of this case, that brings us to this point, and so, I
17 mean, I'm happy to skip through it and get -- to skip through
18 it, but I do think that her -- through every encounter that she
19 had with the Government, her position, in terms of, like, what
20 she recalled, what she didn't recall, whether she was going to
21 cooperate, all of that changed over the course of the
22 arrangements that we had with her, and to the point that now
23 she's arguing this.

24 So I think it's relevant, but if the Court wants me
25 to move on, I'm happy to do so.

1 THE COURT: It may go to credibility, but I'm
2 interested in finding out, because I think counsel is correct,
3 there is a burden, it's a little bit more liberal before she's
4 sentenced, but I think she's claiming that you coerced her and
5 that her lawyer coerced her, and I'm interested in finding out
6 whether that is, in fact, true or not, because there's nothing
7 in this guilty plea agreement that's suggesting in any way,
8 shape, or form that she was coerced. In fact, she answered
9 under oath that she wasn't.

10 MS. CHANNAPATI: I agree with that, Your Honor, yes.

11 THE COURT: Go ahead.

12 MS. CHANNAPATI: Can I just have a minute?

13 THE COURT: Sure.

14 BY MS. CHANNAPATI:

15 Q All right, jumping ahead. Ms. Murunga, you recall being
16 in court on August 25, 2014, correct? That's the day that you
17 pled guilty, is that correct?

18 A Okay.

19 Q Do you not -- do you recall being in court pleading guilty
20 in 2014, is that correct?

21 A Correct.

22 Q Okay. You don't remember the exact date.

23 A No, I do not.

24 MR. BRENNAN: For the record, we'll stipulate to the
25 date.

1 THE COURT: Show her the transcript. There's a
2 transcript here. You didn't read this transcript? You didn't
3 read this transcript?

4 THE WITNESS: I did.

5 THE COURT: You did.

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 MS. CHANNAPATI:

9 Q Okay. Ms. Murunga, the Court asked you a series of
10 questions, is that correct?

11 A Correct.

12 Q And before he asked you the series of questions, you
13 actually took an oath, is that right?

14 A Right.

15 Q And that oath was to tell the truth, is that right?

16 A Right.

17 Q And you understood that oath. You understood what it
18 meant, is that correct?

19 A Correct.

20 Q And you understood what it meant to tell the truth and
21 nothing but the truth, is that correct?

22 A Correct.

23 Q It's the same oath that you took today?

24 A Right.

25 Q So the Judge asked you a series of questions and he asked

1 you specifically if you were -- if anyone had pressured you or
2 coerced you to take the plea to guilty -- the guilty plea, in
3 front of -- that was offered to you by the Government, is that
4 correct?

5 A Correct.

6 Q And you answered, no, no one pressured you, is that
7 correct?

8 A That's what I was told to answer, yes.

9 Q That's what you were told to answer.

10 A I was told to answer that. Yes.

11 Q Okay.

12 THE COURT: Are you seriously suggesting that someone
13 in the Government's prosecution team is subordinating perjury
14 by telling you to lie to me?

15 THE WITNESS: Yes, Your Honor. John Richmond --

16 THE COURT: Is that what you're saying, really?

17 THE WITNESS: John Richmond told me that the Judge --

18 THE COURT: Who's John Richmond?

19 THE WITNESS: -- will ask you these questions and
20 this is what you will answer, yes, Your Honor.

21 MS. CHANNAPATI: Your Honor, John Richmond was the
22 previous co-counsel. He's no longer with the Department of
23 Justice, but he was previous co-counsel.

24 THE COURT: Okay.

25 BY MS. CHANNAPATI:

1 Q And so your testimony with -- when your attorney just now
2 was asking you questions, was that you felt pressured to answer
3 yes -- or you felt pressured to agree with everything that was
4 presented in front of you, is that correct?

5 A Correct.

6 Q And that you had no power or ability to make any
7 corrections, is that correct?

8 A Correct.

9 Q You had to agree with everything that the Government said,
10 is that correct?

11 A Yes, that's what I was told.

12 Q Okay.

13 A If I said anything other than what I was told and what was
14 in that document, the Judge was going to throw me in jail.

15 MS. CHANNAPATI: Okay. So I'm going to -- Your
16 Honor, if you have the transcript in front of you.

17 THE COURT: Page. Go ahead.

18 MS. CHANNAPATI: I'm looking at Page 43. So during
19 the colloquy, during -- when the Judge was asking you questions
20 about the facts that you were pleading guilty to, he -- there
21 was a moment where I recited two paragraphs of facts, and the
22 Judge asked whether or not you agreed with those, is that
23 correct?

24 THE WITNESS: Correct.

25 BY MS. CHANNAPATI:

1 Q And you said that you did, is that right?

2 A Right.

3 Q Okay. And one of the things that was read -- one of the
4 facts that was read into the record was, we start at Page 43,
5 starting Line 7, during P.I.'s years working for Anne Murunga,
6 P.I. never attended school except online courses. P.I. was not
7 employed outside the home. Is that correct?

8 A Correct.

9 Q Do you recall that being read into the record?

10 A Right.

11 Q And that actually -- at that moment, when that was read
12 into the record, you actually stopped the proceedings, is that
13 correct?

14 A I do not recall that part. I'm sorry.

15 Q Okay. Isn't it true that you took issue with that fact
16 about -- that P.I. wasn't able to attend school, and you
17 stopped the proceedings. You actually asked Mr. Capone to stop
18 the proceedings so you could make a correction as to that fact,
19 isn't that true?

20 A I do not recall. I'm sorry.

21 THE COURT: You could use the transcript.

22 MS. CHANNAPATI: I'm sorry?

23 THE COURT: You could use the transcript.

24 MS. CHANNAPATI: Okay.

25 THE COURT: Either impeach her or refresh her

1 recollection.

2 MS. CHANNAPATI: Okay. I'm going to read the
3 correction, and let me know if you recall this, okay?

4 THE WITNESS: All right.

5 BY MS. CHANNAPATI:

6 Q Mr. Capone says, may I have a moment, Your Honor? The
7 Court says, sure. There's a brief pause for discussion held
8 off the record, and then we continue a minute later. The Court
9 says, okay. Ms. Channapati says, Your Honor, with respect to
10 the fact that P.I. never attended school, except for some
11 online courses, the Government's meaning of never attending
12 school means that she never attended actual, physical school.
13 She never actually attended a brick-and-mortar school. The
14 Court says, okay. Mr. Capone says, never went to a school.
15 Right.

16 And the Court then says, so it doesn't apply to
17 online education or anything like that. Ms. Channapati says,
18 right. The Court says, all right. Aside of that, now that you
19 know what the Government meant by never attended school, a
20 physical brick-and-mortar-type school, did you understand what
21 she told me about what happened here, the evidence, the
22 highlights of what they would prove at trial?, and then you
23 answered, yes, Your Honor.

24 Do you recall being asked -- do you recall that
25 occurring during your plea colloquy?

1 A Yes.

2 Q You do.

3 A Yes.

4 Q Okay. So in fact, you did take a moment and correct the
5 record, isn't that true?

6 A True.

7 Q Okay. So in fact, at that moment, you didn't agree with
8 what was being presented in front of you, is that correct?

9 A Correct.

10 Q And so you actually had an opportunity to correct the
11 record, is that right?

12 A Right.

13 Q Ms. Murunga, when your attorney was asking you some
14 questions, he asked you if you were asserting your innocence,
15 is that correct?

16 A Correct.

17 Q And you are asserting your innocence, is that your
18 statement today?

19 A Correct.

20 Q Okay. Isn't it true that Posse lived in your home for
21 almost six years?

22 A She lived in my home. I do not count how long, but she
23 lived in my home.

24 Q So did she live in your house for more than one year?

25 A Yes.

1 Q Did she live in your house for more than two years?

2 A Yes.

3 Q Did she live in your house for more than three years?

4 A I have to look back and see when she left. I'm not sure
5 when she left. I forgot.

6 Q Okay. So what you're saying is that for at least three
7 years, you're admitting that P.I. lived in your home, is that
8 correct?

9 A Correct.

10 MR. BRENNAN: I object. The purpose of this hearing
11 is not to try this case. The purpose of this hearing --

12 THE COURT: I agree, but look, Ms. Murunga, I asked
13 you a whole bunch of questions after Ms. Channapati gave me a
14 long summary of what happened, and you had an opportunity to
15 make a correction, that was of your own, according to the
16 record, you consulted with a lawyer, then you made the
17 correction, I asked you a whole bunch of questions on the
18 record, and I asked, is that what she -- is what she told me
19 accurate? And your answer was, yes, Your Honor.

20 Then I asked you, did you do this? Did you commit
21 this crime? And your answer, under oath, was, yes, Your Honor.

22 I asked you again, are you guilty of this? Yes, Your Honor --
23 under oath -- and your participation and your knowledge of this
24 crime? Yes, Your Honor. You remember that, right?

25 THE WITNESS: Yes, Your Honor, I remember that, and I

1 remember exactly Mr. Trosky (ph.), John Richmond told me that -
2 -

3 THE COURT: Hold on a minute. So under oath, you
4 lied to me, right?

5 THE WITNESS: Yes, Your Honor, and I'm --

6 THE COURT: You lied under oath, because you are
7 telling me that you're innocent today and you were forced to,
8 basically, lie to me.

9 MR. BRENNAN: Judge, may I just jump in here? We may
10 be opening up a can of worms here. It would be my position
11 that it is not accurate --

12 THE COURT: It's quite conveniently, Attorney
13 Brennan, that she's claiming that someone, by coaching her to
14 lie to me, could get through a colloquy with me, and that
15 person is not available to testify.

16 MR. BRENNAN: I just don't --

17 (Simultaneous speaking.)

18 THE COURT: I think the record --

19 MR. BRENNAN: I don't believe it's axiomatic that if
20 she answered in a -- in the fashion she did that it would be a
21 lie under oath, which would be perjury. I think the assertion
22 of pressure would come into play there.

23 THE COURT: Very well. What was the pressure that
24 you felt? What was the pressure that you -- by the way, when
25 was the conversation with the lawyer who coached you? When did

1 you have that conversation?

2 THE WITNESS: It was right before we came to court.
3 That same day.

4 THE COURT: Before, the same day, the day before --

5 THE WITNESS: Same day.

6 THE COURT: -- the month before?

7 THE WITNESS: Same day.

8 THE COURT: And where was that conversation?

9 THE WITNESS: It was at the Customs house.

10 THE COURT: Who else was present in that
11 conversation?

12 THE WITNESS: Anita Channapati, Scott Bishop, and
13 John Richmond.

14 THE COURT: Are you going to offer testimony in this
15 case?

16 MS. CHANNAPATI: Yes.

17 THE COURT: Okay.

18 MS. CHANNAPATI: Yes.

19 THE COURT: And tell me exactly how, how, what was
20 the pressure that the Government placed on you?

21 THE WITNESS: The Government told me that if I --
22 that they were giving me a deal to avoid jail time, and if I
23 answered anything contrary to what was in that document, that
24 the Judge would throw me in jail.

25 THE COURT: That I will throw you in jail?

1 THE WITNESS: Yes.

2 THE COURT: You pled to a felony. You know that,
3 right?

4 THE WITNESS: Yes, Your Honor, and I have an email
5 that I wrote Mr. Capone telling him that there was -- I'm not
6 going to take that deal, and when I met with the Government,
7 and they pressured me, I felt pressured by the Government and
8 my attorney, to take the deal telling me that the Government's
9 bar was so low that they had all my family testifying against
10 me, so they say, the bar is so low, you are going to jail.
11 You're going to lose your son. You're going to lose your job.
12 You're going to lose your house. You're going to lose
13 everything. You're going to jail. You just have to take our
14 deal.

15 And I felt pressured and I said, this document has
16 stuff that is not right. They say, it's a one -- I have to
17 accept all or not, or else I'm going to jail, so I felt
18 pressured by both the Government and my attorney to agree --
19 everything was in that document, because otherwise, I felt that
20 I was going to go to jail, because that's what I was meant to
21 understand, Your Honor.

22 THE COURT: Very well. Any other questions you have?

23 MS. CHANNAPATI: No, Your Honor.

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THE COURT: Okay. I want to get your evidence. You may step down.

MR. BRENNAN: Ms. Murunga --

THE COURT: Do you have anything else? Do you have any other questions?

MR. BRENNAN: I have nothing.

THE COURT: Do you have any questions?

MS. CHANNAPATI: No, Your Honor.

THE COURT: All right. Fine. Call your witness.

(Witness excused.)

PLAINTIFF'S EVIDENCE

MS. CHANNAPATI: Your Honor, at this time, the Government calls Agent Scott Bishop.

THE COURT: Okay.

AGENT SCOTT BISHOP, WITNESS, SWORN

COURT REPORTER: Please state your full name and spell your last name for the record, please.

THE WITNESS: Scott Bishop, B-I-S-H-O-P.

COURT REPORTER: Thank you.

DIRECT EXAMINATION

BY MS. CHANNAPATI:

Q Very briefly, your background, Agent Bishop. By whom are you currently employed?

A Department of Homeland Security, Homeland Security

1 Investigations.

2 Q And were you so employed in 2011?

3 A I was.

4 Q Did there come a point when you became involved in an
5 investigation that dealt with the victim that we're referring
6 to as Posse or P.I.?

7 A Yes.

8 Q During the course of that investigation, did you have
9 conversations with the target at the time, Anne Murunga?

10 A Yes, she was one of the targets.

11 Q Okay. Now, I'm going to direct you to post-indictment.
12 After Ms. Murunga was indicted, did you participate in any
13 proffer sessions or interview sessions with Ms. Murunga?

14 A Yes, I did.

15 Q Okay. And when was the first one that you participated
16 after indictment?

17 A That would have been August, I believe, 21, 2014.

18 Q And who was present during that?

19 A Myself, the Defendant, the Defendant's counsel, John
20 Richmond, and Anita Channapati.

21 Q And what was the purpose of that meeting?

22 A It was a proffer session. We were going to hear from the
23 Defendant. She wanted to provide information, I believe, in
24 hopes of getting a 5K departure.

25 Q And who was asking her questions?

1 A John Richmond.

2 Q And during the course of that meeting on August 21st, did
3 you hear, at any point, John Richmond make any threats to Anne
4 Murunga?

5 A No.

6 Q Did you hear John Richmond say that if she didn't plead
7 guilty, that she was going to lose her house, lose her child,
8 lose her job?

9 A No.

10 Q Did you hear John Richmond say anything about if she
11 didn't take the deal, that she was going to go to jail?

12 A No.

13 Q What did you hear John Richmond say to Anne Murunga
14 regarding the information she was providing?

15 A In the opening, John Richmond always did his proffers,
16 pretty much, the same way, saying that, we want the truth and
17 it has to be the whole truth. You have to come forward with
18 everything that you know.

19 Q Now, did you have a second meeting with Ms. Murunga before
20 she pled guilty?

21 A We did, on the day of the -- I'm sorry, the day of the
22 guilty plea, August 25th, a few days later.

23 Q Okay. And who was present for that meeting?

24 A The same group of people; the Defendant, her counsel,
25 myself, Anita Channapati, and John Richmond.

1 Q And where did that take place?

2 A At the U.S. Customs house.

3 Q And did the previous meeting take place at the Customs
4 house as well?

5 A Yes, same location.

6 Q Okay. And at that meeting, did you hear John -- who led
7 the questioning during that meeting?

8 A John Richmond.

9 Q Okay. And did you hear John Richmond make any threats to
10 Ms. Murunga at that point?

11 A No.

12 Q Did you hear her say that if she -- did you hear him say
13 if she didn't take the plea deal, she was going to go to jail?

14 A No.

15 Q Did hear him tell her that she was going to lose her car,
16 her job, her degrees, everything?

17 A No.

18 Q What did you hear John Richmond say to Ms. Murunga during
19 that proffer session with respect to information that she was
20 going to provide?

21 A The same thing he always does, that she has to be
22 forthcoming, she has to tell the truth, that's what we're
23 looking for, but she has to be open.

24 Q At any point during those two meetings, did John Richmond
25 tell Ms. Murunga that if she said anything contrary to the plea

1 agreement, to the plea document that was going to be submitted
2 to the Court, that she was going to go to jail?

3 A No, not that she was going to jail. He did discuss each
4 statement of facts, and if she disagreed with that, he did
5 explain to her that it's either you plead guilty to all of
6 these things, if you disagree, then that won't be the guilty
7 plea that's going to be entered into the Court. The Court will
8 not accept if she starts striking things out of the -- the plea
9 itself would have to be redone.

10 MS. CHANNAPATI: Nothing further, Your Honor.

11 THE COURT: So you basically explained that there had
12 to be a basis for the Judge to accept the guilty plea and
13 admission of the facts as summarized by the Government.

14 THE WITNESS: Yes. Mr. Richmond explained the whole
15 procedure to her, how you would ask her if it was true, and so
16 forth. It was just an explanation of how the procedure goes.

17 THE COURT: Right. He didn't tell her in any way,
18 shape, or form that she had to lie to the Court in order for me
19 to accept the guilty plea.

20 THE WITNESS: No, no, of course not.

21 THE COURT: Okay.

22 MR. BRENNAN: May I?

23 THE COURT: Yes.

24 MR. BRENNAN: Hello, Agent Bishop.

25 THE WITNESS: Hello.

1 CROSS-EXAMINATION

2 BY MR. BRENNAN:

3 Q Agent, you attended two proffers, one on August 21, 2014
4 and one on August 25, 2014, correct?

5 A Right, and two others after that.

6 Q No, I mean, the two that --

7 A In August.

8 Q -- Ms. Channapati asked you about, right?

9 A Yes.

10 Q And during those two proffers, Assistant U.S. Attorney
11 Richmond and yourself represented the Government, correct?

12 A And Anita Channapati.

13 Q Okay. But Mr. Richmond -- I mean, who conducted the
14 proffer, so to speak?

15 A Mr. Richmond gave most -- asked most of the questions.

16 Q Okay. And were you there for the entire proffer?

17 A Yes.

18 Q Did you leave at any time?

19 A No.

20 Q Were you, at all times, able to hear what Mr. Richmond
21 said to Ms. Murunga or anybody else?

22 A Yes.

23 Q Okay. And at some point, especially on the 25th, the 25th
24 was right before the plea, right?

25 A Mm-hm. It was the morning --

1 THE COURT: That was yes?

2 THE WITNESS: Yes. It was during the morning of the
3 same day.

4 BY MR. BRENNAN:

5 Q I mean, at some point, the Government went over the
6 charges and the possible penalties, correct?

7 A Yes, I'm sure.

8 Q Well, you say -- when Ms. Channapati asked you questions,
9 you didn't say, I'm sure, you just said, yes. And I'm not
10 trying to be a wise guy.

11 A No, I understand.

12 Q But that came across as equivocating, yes, you remember or
13 yes, I'm sure he must have, because he did it all the time?

14 A I don't remember him going through these, like, sentencing
15 guidelines at that time, no.

16 Q I didn't ask you that, though. I asked you, the
17 penalties, and again, I'm not trying to be parsing words, but
18 the penalties are understood, at least the way I'm asking you
19 is, the maximum penalties can include jail time, right?

20 A Well, listen, we discussed that, yes, jail time's a
21 possibility. I don't remember at all Mr. Richmond or anyone
22 else discussing the maximum jail times.

23 Q Okay. If you have -- and again, it's the same way that
24 Ms. Murunga is trying to recall things from years ago, and I
25 understand it's tough --

1 A Yes.

2 Q -- it's tough for me to recall even five years ago, four
3 years ago, but do you have an independent recollection of what
4 was discussed at these proffers?

5 A Yes, I do, plus I reviewed my notes this morning as well.

6 Q Prior to reviewing your notes, would it be fair to say --
7 well, let me rephrase that. A better way to ask that would be,
8 is it a fair statement to say that after reviewing your notes,
9 your recollection was refreshed?

10 A Sure. Yes.

11 Q And do your notes take note of a discussion of the
12 possible penalties that she was facing?

13 A I'd have to see the report again. I don't recall the
14 report mentioning penalties.

15 Q You say report, is that what you mean by your notes?

16 A Yes, the report. The report of investigation.

17 Q Like, the 302?

18 A Well, we don't call it a 302, we call it an ROI, and
19 that's what I reviewed.

20 Q Yes, the report of interview. And do you have that with
21 you?

22 A I do not. I didn't bring it with me to court.

23 MR. BRENNAN: Judge, just in the event that this
24 would go on, I'd ask that the Agent be directed to -- or the
25 Government be directed to preserve, but notwithstanding the

1 specifics of what might be in the ROI, it is fair to say that
2 your recollection improved after you reviewed it, correct?

3 THE WITNESS: Yes.

4 BY MR. BRENNAN:

5 Q And without splitting hairs on the maximums, or the
6 guidelines, the discussion did take place that jail was a
7 possibility, correct?

8 A Yes.

9 MR. BRENNAN: Okay. That's all I have, Judge.

10 THE COURT: Now, did she, at any point in time, hesitate, say,
11 or indicate that she didn't want to plead guilty, that she
12 didn't admit any of the facts, did she lie to you initially
13 during any of those proffers, was she confronted with the lies
14 during those proffers?

15 MR. BRENNAN: Judge, again, I'm sorry to object to
16 the Court's own question again, but he can't tell you if she
17 lied. He can tell you what she said.

18 THE COURT: I agree. I agree.

19 THE WITNESS: Statements in the first proffer
20 differed a bit from the statements in the second proffer.

21 THE COURT: And she was confronted --

22 THE WITNESS: She was more forthcoming, I believe,
23 more forthcoming, more details were given during the second
24 proffer on the 25th than were given on the 21st.

25 THE COURT: All right, very well. Did she show any

1 reluctance to accepting responsibility and pleading guilty
2 during those proffers; the second proffer?

3 THE WITNESS: No.

4 THE COURT: Did she take any issue with any of the
5 facts that you summarized or the facts that the Government was
6 going to present to the -- were those facts reviewed with her
7 at the time?

8 THE WITNESS: Yes.

9 THE COURT: Did she take any issue with them?

10 THE WITNESS: No, not that I recall.

11 THE COURT: Were you present during the guilty plea
12 colloquy?

13 THE WITNESS: Yes.

14 THE COURT: She didn't take issue with some of the
15 facts as she did during the guilty plea colloquy that she took
16 issue with the fact that she had attended school?

17 THE WITNESS: No, not at that time.

18 THE COURT: Right.

19 THE WITNESS: Because, I mean, in the colloquy it
20 says, you attended school as -- online.

21 THE COURT: Right.

22 THE WITNESS: I mean the Agent said it, she just --
23 (Simultaneous speaking.)

24 THE COURT: But during that second meeting with her,
25 did she take any issues with any of the facts that the

1 Government was going to present to the Court?

2 THE WITNESS: No.

3 THE COURT: How long was that session?

4 THE WITNESS: That morning, maybe two hours.

5 THE COURT: And --

6 THE WITNESS: She provided a lot of information about
7 other defendants, and the proffer really wasn't -- she wasn't
8 really focused.

9 THE COURT: It wasn't about the guilty plea, it was
10 about information.

11 THE WITNESS: It was about information she could
12 provide to the Government in future prosecutions.

13 THE COURT: And her attorney was present during the
14 entire time.

15 THE WITNESS: Yes.

16 THE COURT: Okay. All right. I don't have any other
17 questions. Do you?

1 MS. CHANNAPATI: No, Your Honor.

2 THE COURT: Do you, Attorney Brennan?

3 MR. BRENNAN: No, sir.

4 THE COURT: Okay. Thank you.

5 (Witness excused.)

6 THE COURT: Do you have any other evidence?

7 MS. CHANNAPATI: Your Honor, I just -- the Government
8 didn't receive the memorandum in support of the motion until a
9 couple of days ago, so we have not been able to make
10 arrangements to have Mr. Capone available should the Court want
11 to inquire.

12 I do want to point out, however, that during the
13 withdrawal, when he filed his motion to withdraw, he did
14 indicate that one of the reasons was that, if Ms. Murunga later
15 on stated that she was coerced, that he would have to testify,
16 and the quote is, I would have testify in contravention to
17 that.

18 THE COURT: Very well. Once she makes the allegation
19 that she was coerced, he cannot stay in the case.

20 MS. CHANNAPATI: Right. No, I just wanted to bring
21 that to the Court's attention.

22 THE COURT: Right. Very well. Anything else,
23 Attorney Brennan?

24 MR. BRENNAN: Nothing, Your Honor.

25 THE COURT: Okay. So you don't intend to call him or

1 you want to call him?

2 It's his burden, but he's representing to the Court
3 that if he was to be called, he would testify inconsistent with
4 her claim that she was coerced.

5 MR. BRENNAN: The Government, who earlier said they
6 wouldn't be testifying today, read to you a statement that he
7 said if I had to testify, it would be in contravention of --
8 I've spoken to Mr. Capone and I don't intend to call him.

9 THE COURT: Okay.

10 MS. CHANNAPATI: Are you disputing what the --

11 THE COURT: He doesn't intend to call him.

12 MS. CHANNAPATI: Okay. All right.

13 THE COURT: And so he's not disputing what the
14 representation was.

15 MS. CHANNAPATI: All right, Your Honor, then we don't
16 intend to call him.

17 THE COURT: Okay. Argument? How did you meet your
18 burden? Change of mind, fear of punishment? Those are not
19 adequate reasons to put the Government through the expense of a
20 trial.

21 MR. BRENNAN: Judge, I --

22 THE COURT: And she testified under oath that she's
23 guilty, that, you know, nobody coerced her, nobody forced her
24 to plead guilty, under oath to a federal judge.

25 MR. BRENNAN: I would incorporate the arguments made

1 in the memorandum or brief in support and I would point out to
2 the Court that the burden is to be liberally construed if it's
3 made before sentencing, that the Defendant got up on that
4 witness stand and asserted her factual innocence. She also
5 asserted the fact that she felt pressured. It's a subjective
6 standard, whether she feels pressured or not.

7 THE COURT: It's not every time -- it doesn't mean
8 every time you feel pressured --

9 MR. BRENNAN: Doesn't mean you have to accept it.

10 THE COURT: -- there's got to be an objective basis
11 for the pressure. I don't see anything regarding those
12 colloquies that constitutes pressure.

13 MR. BRENNAN: Well, that's why I objected to the
14 Court's question initially when the Court said, did you, on the
15 date that you entered your plea, lie under oath to the Court?
16 And I took issue with that simply because --

17 THE COURT: But if she's asserting innocence and
18 she's accepting responsibility in the guilty plea under oath,
19 aren't those two things inconsistent with each other?

20 MR. BRENNAN: They are in black and white, but that's
21 why we have case law, that's why we have argument, that's why
22 we have live testimony. Her explanation for the apparent
23 mutually exclusive scenario she finds herself in, that being, I
24 am innocent, but I pled guilty, is that she felt pressured. It
25 is a subjective test.

1 Judge, five of us may get on an airplane to fly to
2 the Super Bowl tomorrow, four of us may drink vodka, and tell
3 jokes, and one may be biting their nails, and clinging on to
4 the tray ahead of them. It's how each person feels
5 subjectively. She testified under oath that the reason she
6 pled guilty is she felt pressured by the Government, by her
7 former lawyer, and that she's factually innocent.

8 That's what the case law holds me to submit and I
9 point again that, the motion being filed before sentencing is
10 to be liberally construed in favor of the accused.

11 THE COURT: Very well. Ms. Channapati, you want to
12 make your argument?

13 MS. CHANNAPATI: Yes, Your Honor. Thank you.

14 THE COURT: So the assertion of innocence, in and of
15 itself, is that sufficient?

16 MS. CHANNAPATI: No, Your Honor.

17 THE COURT: I have to look at three factors.

18 MS. CHANNAPATI: Under Jones, yes Your Honor. It's
19 whether the Defendant asserts her innocence, the strength of
20 her reasons to withdraw the plea, and then whether or not the
21 Government's prejudiced. So under those Jones factors, the
22 Government maintains that the Defendant hasn't met her burden.

23 The assertion of innocence was just a bald assertion
24 and that has been found to be insufficient under Third Circuit
25 law. I'm citing cases because I didn't have an opportunity to

1 respond to counsel's memorandum of law, but under Government of
2 the Virgin Islands v. Berry, which is 631 F.2d 214 from 1980, a
3 mere assertion of legal innocence is an insufficient condition
4 of a withdrawal. It has to be buttressed by facts that are in
5 the record that support that claim.

6 And, Your Honor, that goes to the second point, which
7 is that the strength of her reasons to withdraw the plea are
8 simply not there. The transcript of the colloquy is before the
9 Court, the Court laid out each element, and, you know, the
10 terms of the agreement, and for now, for the Defendant to claim
11 that she felt pressured at that exact moment when she took the
12 plea is disingenuous at best.

13 She's a highly-educated woman, she has her Master's.
14 She worked at a pharmaceutical company. She has no problem
15 understanding English. And during the colloquy, if she
16 actually was so pressured, she still had the presence of mind
17 to stop the proceedings and make a correction, Your Honor.

18 It's in the transcript, she was able to make a
19 correction in the factual basis. So the colloquy itself that
20 the Court went through was thorough, complete, and extensive,
21 it established the voluntariness of the Defendant's plea, the
22 Court reviewed the Defendant's understanding of the charges,
23 she answered every question and stated that she understood, and
24 you also explained, Your Honor, also explained to the Defendant
25 that the agreement depended on her truthful cooperation.

1 She knew that in order for her to get the benefit of
2 a 5K, she had to continue cooperating with the Government. The
3 Defendant had every opportunity to change her mind or correct
4 the record, again, which she did, and again, Your Honor, the
5 colloquy took almost an hour, and the transcript is 54 pages
6 long. It's incredibly thorough and very extensive.

7 And the lengthy discussion left no confusion for
8 anyone who was in the courtroom about the seriousness and the
9 nature of her decision to plead guilty. Everybody in that
10 courtroom knew that she voluntarily chose to plead guilty.

11 And the standard under Jones is that strong reasons
12 have to be supported by credible facts, and, Your Honor, the
13 facts in support of her claiming that she was under pressure
14 are not strong and not credible.

15 Should the Court find that the Defendant did meet
16 their burden with Factors 1 and 2, the final factor is whether
17 the Government would be prejudiced by a plea withdrawal, and we
18 maintain that we would be severely prejudiced.

19 THE COURT: How?

20 MS. CHANNAPATI: The considerations for weighing in
21 favor of showing prejudice for the Government was that that
22 day, there was a jury empaneled, Your Honor, and she chose to
23 plead guilty. We had our witnesses lined up. They were flying
24 in from out of state. The mere timing of her motion, which was
25 almost, you know, like, three years after she took her plea,

1 for the Government to go forward now with this trial would be
2 difficult for us to find our witnesses. They've all moved.

3 Some of them have moved out from -- moved away from
4 where they were previously living. The cooperators in this
5 case have all pled guilty, Your Honor, so there's no guarantee
6 that they would testify if we would go forward with trial
7 against her, and memories may have faded from the witnesses
8 that we call.

9 So the Government would be extremely prejudiced if
10 Your Honor granted the Defendant's motion for a plea
11 withdrawal. Ultimately, there's no fair or just reason for her
12 to be allowed to withdraw her plea.

13 THE COURT: Not only that, Mr. Brennan --

14 MR. BRENNAN: May I respond to that first?

15 THE COURT: Yes, you may, but I have a question,
16 wouldn't she be limited, even if I was to grant her the
17 opportunity to withdraw her guilty plea, she's boxed into what
18 she said to the Court. This could be used against her and
19 impeach her credibility, couldn't it?

20 MR. BRENNAN: I don't think so, Judge.

21 THE COURT: Why not?

22 MR. BRENNAN: Because once she withdraws the plea,
23 Judge, she goes to trial -- I can tell you what she'll be boxed
24 in by though, and that'll be her proffer statements. So I
25 mean, I think your -- and I may be wrong on my answer to your

1 question, I don't think I am, she's boxed by the proffers.
2 That's what kills this -- well, I mean, I -- but let me respond
3 to that wide-ranging list of prejudice that the Government set
4 forth.

5 That the jury was in the box, Judge, they come every
6 Monday. They line up. They're on the second floor. They fill
7 these chairs. They've been doing it since -- this room doesn't
8 have the people with the white wigs, but they've been doing it
9 since --

10 THE COURT: Mr. Brennan, I asked --

11 MR. BRENNAN: -- they built the place across the
12 street. Judge --

13 THE COURT: Yes, but we don't have jurors here
14 waiting. We demand jurors.

15 MR. BRENNAN: Right.

16 THE COURT: We summon jurors based on the number of
17 cases we have, and in this case --

18 MR. BRENNAN: It's French fries at McDonald's, Judge,
19 it's not prejudice.

20 THE COURT: -- it was going to be 40 people that I
21 have downstairs waiting.

22 MR. BRENNAN: The fact -- the length and breadth of
23 this transcript, and the hour and 15 minutes it took, as some
24 type of indication that you should deny -- Judge, Kevin Costner
25 made a movie called Waterworld, it was 2 hours and 30 minutes

1 and it cost about \$50 million to produce, you can't sit through
2 it. It's a bad movie. The length of the transcript and how
3 long it took doesn't matter.

4 And the other thing is, although Ms. Channapati said
5 the Government wouldn't be testifying, I didn't object because
6 I've just been doing this so long, I don't like to make
7 nitpicky objections, but she never approached, she never marked
8 this, she never approached in the fashion that I would expect
9 to be done, showed it to the witness to try to refresh her
10 recollection, she testified to you three times that Anne
11 Murunga stopped the proceedings. That's not what this is.

12 43, Line 20, Mr. Capone: may I have a moment, Your
13 Honor? Her lawyer stopped the proceedings. The Government is,
14 and I'm sure it's unintentional, but the Government is
15 misstating who stopped the proceedings and then trying to hinge
16 on this misstatement, some type of argument that if she was
17 slick enough to stop the proceedings, she knew what was
18 happening.

19 She didn't stop anything. Her lawyer asked for a
20 moment to confer with his client. With regard to the
21 Government's inability to get witnesses --

22 THE COURT: That's because the client wanted to speak
23 to him.

24 MR. BRENNAN: -- they just were successful across the
25 river in two of the related cases, they just put a trial on

1 within the last 12 months and they did pretty good over there,
2 so my thoughts of whether or not she should go to trial will
3 remain my thoughts.

4 I'm here to advocate the motion. It's like being a
5 waiter in a restaurant, Judge. If I think the salmon's great
6 and the tilapia is horrible, if my client orders tilapia, I got
7 to serve it. I'm here to advocate three issues, that she
8 asserted her factual innocence, that she felt pressured, and
9 that courts have said, in Young, 424 F.2d at 1280, the liberal
10 rule for withdrawal of a guilty plea before sentence is
11 consistent with the efficient administration of criminal
12 justice. It reduces the number of appeals contesting the
13 knowing and voluntary voluntariness of a guilty plea, and
14 avoids the difficulties of disentangling such claims.

15 It also ensures that a Defendant is not denied a
16 right to trial by jury unless he, that's what that says, I
17 would say, the Defendant, clearly waives itself. She asserted
18 her factual innocence, she told you she felt pressured, and
19 it's in your hands.

20 THE COURT: Well, I have an officer here who
21 contradicts that. If I credit his testimony, it belies her
22 allegations of pressure.

23 MR. BRENNAN: I would respectfully say, and no
24 disrespect to this officer, you take the law -- just like any
25 juror, a standard juror questionnaire, would you tend to take

1 the testimony of a law enforcement officer over the testimony
2 of a citizen? And those who say yes, they're the ones that we
3 strike.

4 You had the Defendant testify and you had the officer
5 testify. You're to weigh those equally. You may go her way,
6 you may go his way, but just because he says it doesn't make it
7 true. It's his recollection versus her -- it's his
8 recollection versus her perception of what she was being told
9 at the time. Again, it's a subjective standard.

10 THE COURT: Then everybody could get out of a guilty
11 plea by just saying, wow, I'm innocent, I perceived that I was
12 coerced by the conversation because they mentioned jail,
13 because there's a risk of jail when I plead guilty to a felony
14 and I'm facing the possibility of jail, and fines, and all
15 that, which, naturally, is part of the conversation.

16 MR. BRENNAN: Yet, she comes here today asking for
17 that opportunity knowing that if she's given the opportunity to
18 go to trial and she goes to trial and loses, as the related
19 Defendants all did, that she is likely to go to jail. I don't
20 make predictions, because I don't want to be in Capone's
21 position, not that he made a prediction, it's just, I am very
22 careful not to predict anything.

23 THE COURT: You know what, I think that it's best, so
24 that we can have a record, I'm going to continue this matter.
25 Call Capone and I'll deal with the issue of whether she was

1 coerced or not. I have the testimony of the police officer,
2 I'll have the testimony of Mr. Capone, who was representing her
3 on --

4 MR. BRENNAN: I can tell the Court, as an officer of
5 the Court, that in my due diligence in preparing for this day,
6 I've spoken to Mr. Capone, and I have no reason to call him.

7 THE COURT: All right. Okay. Thank you very much.

8 MR. BRENNAN: Thank you, Your Honor.

9 THE COURT: I will take it under advisement. I don't
10 think it's necessary to call him, based on counsel's
11 representation, and based on the pleadings that he filed, so
12 okay. Thank you very much.

13 MR. BRENNAN: Thank you, Your Honor.

14 MS. CHANNAPATI: Thank you, Your Honor.

15 MR. BRENNAN: May we be excused?

16 THE COURT: Yes.

17 THE BAILIFF: All rise.

18 THE COURT: Thank you for accepting the
19 representation, Mr. Brennan.

20 MR. BRENNAN: Any time, Judge.

21 (Whereupon, the above-entitled matter went off the
22 record.)

23

24

25

C E R T I F I C A T E

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Neal R Gross

December 7, 2018

Neal R. Gross

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EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	No. 14-175-1
	:	
ANNE MURUNGA	:	

ORDER

AND NOW, this 13th day of April, 2018, upon consideration of Defendant Anne Murunga’s Motion to Withdraw Plea of Guilty, the Government’s opposition thereto, and a February 2, 2018, oral argument on the Motion, it is ORDERED the Motion (Document 150) is DENIED.¹

¹ On August 25, 2014, Murunga pleaded guilty to one count of concealing, harboring, and shielding from detecting an alien, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), arising out of a scheme to smuggle a Kenyan woman into the United States to exploit and harbor her for domestic labor. More than three years after pleading guilty, Murunga filed the instant motion to withdraw her guilty plea.

Murunga asserts her factual innocence, and claims her plea of guilty was the result of duress and confusion. She maintains that she was pressured by both her counsel at the time and the Government to plead guilty, and that “th[e] Court’s extensive Rule 11 colloquy – is the precise time when she [was] feeling that pressure.” Murunga Br. 3. During the evidentiary hearing on her motion, she testified that her counsel at the time and the Government told her she needed to plead guilty, and if she did not, she would go to jail. She also testified that the answers she gave the Court at her change of plea hearing during its Rule 11 colloquy were coached, including her response that she had not been pressured or coerced to plead guilty that day.

Federal Rule of Criminal Procedure 11(d) provides, “A defendant may withdraw a plea of guilty . . . after the court accepts the plea, but before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). A guilty plea is a “grave and solemn act,” *Brady v. United States*, 397 U.S. 742, 748 (1970), and “[o]nce a court accepts a defendant’s guilty plea, the defendant is not entitled to withdraw that plea simply at [the defendant’s] whim,” *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003). The defendant bears the “substantial” burden of demonstrating a “fair and just” reason to withdraw her plea. *Id.* (internal quotation marks and citations omitted).

When evaluating a motion to withdraw a guilty plea, a district court must consider three factors: “(1) whether the defendant asserts [her] innocence; (2) the strength of the defendant’s reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal.” *Id.* If the defendant fails to establish sufficient grounds for withdrawing the plea, the Government need not show prejudice. *See United States v. Cox*, 553 F. App’x 123, 126 (3d

Cir. 2014). As to the first factor, an assertion of innocence weighs heavily in favor of granting a plea withdrawal motion, but only if the assertion is credible. *See Govt of V.I. v. Berry*, 631 F.2d 214, 220 (3d Cir. 1980) (affirming district court’s finding that defendant’s bare assertion of innocence lacked credibility and noting defendant failed to offer any specific defense). With regard to the second factor, the defendant must provide sufficient reasons for withdrawing a plea, and has the burden of overcoming her own repeated sworn admissions of guilt at her plea colloquy. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.” (citations omitted)). A shift in defense tactics, a change of mind, and the fear of punishment are not “adequate reasons to impose on the government the expense, difficulty, and risk of trying a defendant who has already acknowledged [her] guilt by pleading guilty.” *United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001) (citations omitted).

Murunga does not meaningfully assert her innocence. At the hearing on her motion to withdraw her plea, she made blanket assertions of her innocence, but failed to offer facts or submit evidence to support her claim. *Id.* at 818 (“Assertions of innocence must be buttressed by facts in the record that support a claimed defense.” (internal quotation marks and citation omitted)). Her bald claim of innocence fails to meet this factor.

In addition, Murunga provides no credible reason for withdrawing her plea. The Court’s colloquy at Murunga’s change of plea hearing was extensive and thorough. During the hearing, the Court reviewed the plea agreement with Murunga and closely questioned her about her decision to plead guilty. Murunga gave clear answers throughout the Court’s inquiry. Her contention that she felt pressure to agree to everything that was presented to her by the Court and the Government during this proceeding is undercut by the fact that she—through counsel—paused the proceeding to make a correction to the record concerning the factual basis of her guilty plea. Murunga ultimately acknowledged that the corrected factual basis was accurate, and she was guilty of the crime charged. In addition, while the Court was reviewing the maximum penalties Murunga would face after pleading guilty, Murunga’s counsel paused the proceeding, indicating that Murunga was confused about the maximum sentence—which the Court then clarified for her. For her to now claim that she was afraid to speak up or ask questions during the hearing, when she had paused the proceeding twice to do so, is disingenuous.

Aside from Murunga’s testimony, which the Court does not find credible, Murunga offered no evidence demonstrating that her prior counsel or the Government coerced or forced her to accept the facts and terms of the plea agreement. She declined to call her former counsel to testify because his anticipated testimony was not favorable to her, and failed to make any record regarding any ineffective assistance of counsel claims. In contrast, the Government’s witness, Special Agent Scott Bishop, testified and rebutted Murunga’s claims that the Government threatened her to take a plea deal. Murunga’s reasons for withdrawing her guilty plea are therefore neither credible nor supported by the record.

Because Murunga has not demonstrated sufficient grounds for withdrawing her plea, the Court is not required to consider prejudice to the Government. Nevertheless, the Government has shown that it would be prejudiced if Murunga were able to withdraw her plea. At the time of Murunga’s change of plea hearing, jurors were empaneled and court personnel had been assembled in preparation for trial. *See United States v. Crowley*, 529 F.2d 1066, 1072 (3d Cir. 1976) (finding prejudice to the Government “when jurors, witnesses, and court personnel had

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

been assembled for the trial”). The Government would also have to again bear the expense of making travel arrangements for witnesses who lived out of state. *See United States v. Vallejo*, 476 F.2d 667, 669 (3d Cir. 1973) (finding the assembly of out-of-state witnesses to be a contributing factor to prejudice to the Government). Because the instant motion was filed three years after Murunga pleaded guilty, witnesses may be difficult to locate, and if located, their memories may have potentially faded. In addition, Murunga’s co-defendants, who all pleaded guilty prior to Murunga’s plea and agreed to cooperate against her, have since fulfilled the terms of their cooperation agreements and have been sentenced. Thus, they may no longer be willing to testify against Murunga. These combined circumstances would result in substantial prejudice to the Government if Murunga’s motion were to be granted. Accordingly, Murunga’s motion is denied.

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, . Case No. 2:14-cr-00175-JS
Plaintiff, .
v. . U.S. Courthouse
ANNE MURUNGA, . 601 Market Street
Defendant. . Philadelphia, PA 19106
. November 9, 2018
. 01:30 p.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE HONORABLE JUAN R. SANCHEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ANITA CHANNAPATI, ESQ.
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For the Defendant: WILLIAM BRENNAN, ESQ.
LAW OFFICES OF WILLIAM J. BRENNAN
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Audio Operator: PATRICK KELLY

TRANSCRIBED BY: NEAL R. GROSS

Proceedings recorded by electronic sound
recording, transcript produced by transcription service.

I N D E X

EXHIBITS

ID. EVD.

D-1 Pre-sentence Investigation Report

31

1 THE COURT: This is the matter of United States of
2 America v. Anne Murunga. Criminal Number 14-175. The Court
3 recognizes the Assistant United States Attorney Anita
4 Channapati.

5 MS. CHANNAPATI: Good afternoon, Your Honor.

6 THE COURT: Good afternoon. I believe we also have
7 the Assistant United States Attorney Shan P. Patel.

8 MR. PATEL: Yes, good afternoon.

9 THE COURT: And good afternoon. And we have the case
10 agent in this case, I didn't get your name. I apologize.

11 MR. BISHOP: Scott Bishop.

12 THE COURT: Scott -- Agent Bishop. Court recognizes
13 also, William Brennan.

14 MR. BRENNAN: Good afternoon, Your Honor.

15 THE COURT: And I think I have a substitute for Mr.
16 White. Your name?

17 MS. DONSON: Sara Donson.

18 THE COURT: Donson or Johnson?

19 MS. DONSON: Donson, with a D.

20 THE COURT: Donson. Welcome. Back on August 25,
21 2014, she pleaded guilty to one count of concealing, harboring,
22 and shielding from detecting an alien for the purpose of
23 private financial gain in violation of Title 8 Section
24 1324.A.1.A.2.

25 Subsequently, I had hearing on a motion to withdraw

1 that guilty plea, which I denied, and the case is now back in
2 front of me for sentencing. In my review of the pre-sentence
3 investigation report, I noted that this report was prepared a
4 little bit -- well, a while ago, and I think it was revised on
5 November 7th of 2018, but it had initially been prepared a
6 little while ago in aide of sentencing.

7 I noted that there were no objections by the
8 Defendant and I think there was an objection subsequently filed
9 by the Government in regard of the acceptance of
10 responsibility?

11 MS. CHANNAPATI: Yes, Your Honor. We filed a
12 sentencing memo a year ago and in it we raised our objection
13 and then we subsequently filed a letter early this week
14 reiterating that objection.

15 THE COURT: Right. So that's the only objection that
16 remains for me to address, right?

17 MS. CHANNAPATI: Yes, Your Honor. That is correct.

18 THE COURT: Attorney Brennan, you didn't file any
19 objections and there are no objections to the pre-sentence
20 investigation report as revised.

21 MR. BRENNAN: Correct, Judge.

22 THE COURT: All right. So let me then tell you how
23 I'm going to proceed. Is there any evidence that I need to
24 listen to or hear, or that you intend to present before we
25 pronounce sentence on any subject matter?

1 MS. CHANNAPATI: Your Honor, we just ask that the
2 entirety of the record regarding the plea withdrawal be
3 considered as part of the sentencing. And we have a witness
4 today, but we've discussed with Mr. Brennan that he's going to
5 stipulate to the calculation of the restitution, so no, other
6 than that, there is no other evidence for the Government.

7 THE COURT: Attorney Brennan, do you have any
8 evidence to present to the Government, other than your client,
9 who is going to speak to the Court?

10 MR. BRENNAN: Argument, Judge.

11 THE COURT: Okay. So what is the stipulation
12 regarding the restitution amount?

13 MS. CHANNAPATI: So attached to the sentencing memo
14 that the Government filed, there is a back wages computation in
15 which the --

16 THE COURT: Is this the last -- which --

17 MS. CHANNAPATI: The one that was filed in 2017, Your
18 Honor.

19 THE COURT: All right. I got that.

20 MS. CHANNAPATI: One of the exhibits is the back
21 wages computation regarding the restitution.

22 THE COURT: Can you point me to that?

23 MS. CHANNAPATI: I have a copy for the Court.

24 THE COURT: All right. Why don't you give me that.
25 This is what was filed in 2017?

1 MS. CHANNAPATI: Yes, Your Honor.

2 THE COURT: I have a lot of documents here.

3 MS. CHANNAPATI: If I may approach?

4 THE COURT: Go ahead. All right. I think I got it.

5 MS. CHANNAPATI: You got it?

6 THE COURT: Well, I think I got it, but let me see
7 what you have. Is that the FLSA narrative report?

8 MS. CHANNAPATI: And then this attached chart, Your
9 Honor.

10 THE COURT: Oh, I don't have the chart. I don't have
11 the chart. Let me see it. Oh, I do. I'm sorry.

12 MS. CHANNAPATI: You do have it? Okay.

13 THE COURT: I have it.

14 MS. CHANNAPATI: May I have my copy back?

15 THE COURT: Do you have your copy?

16 MS. CHANNAPATI: Thank you.

17 THE COURT: So the total is \$280,950? That's the
18 restitution amount?

19 MS. CHANNAPATI: So the total is minus the amount
20 that the victim was paid by the Defendant --

21 THE COURT: Which is?

22 MS. CHANNAPATI: Which is \$11,000, which is basically
23 \$200 a month for the time that she worked for the Defendant, so
24 minus that amount, the total balance owed is \$232,000 -- excuse
25 me, \$232,922.66. It's the middle chart, Your Honor, on the

1 back wages computation.

2 THE COURT: Oh, I got it.

3 MS. CHANNAPATI: Yes.

4 THE COURT: I got it. All right. Do you agree,
5 Attorney Brennan, that that is the total amount of restitution
6 that I have to order in this case?

7 MR. BRENNAN: No, I agree that the calculations that
8 the individual, is he an Agent, what is his proper title?

9 MS. CHANNAPATI: He's the director.

10 MR. BRENNAN: That the director used are not going to
11 be argued against, but I think -- I didn't negotiate the plea,
12 Judge, but I think at the time of the plea, and I think the
13 Government agrees, that I'm able to make argument, not as to
14 the amount, or the manner in which it was calculated, I'm not
15 going to challenge that, but for my client's ability to pay
16 that amount.

17 THE COURT: All right.

18 MR. BRENNAN: Is that right, Government?

19 THE COURT: But really, that just goes to whether I -
20 - how I order payment.

21 MR. BRENNAN: Exactly.

22 THE COURT: Okay. All right. Very well. With that,
23 let me hear, then, argument. Well, let me hear argument on the
24 acceptance of responsibility, because I think that will impact
25 the guideline calculation and with a guideline calculation of

1 18, and a criminal category of 1, it gives me a different
2 guideline, 27 to 33 months, I think.

3 MS. CHANNAPATI: Yes, Your Honor.

4 THE COURT: So let me hear guideline, because -- hear
5 that, because I think that is significant.

6 MS. CHANNAPATI: Yes, Your Honor. So with respect to
7 the acceptance of responsibility, Your Honor is aware that this
8 entire -- we're here today because, initially, the Defendant
9 was interested in pleading guilty, and as part of that pleading
10 guilty, she had to accept responsibility and she did so, you
11 know, basically, on the eve of trial, which, she's entitled to,
12 she would have been entitled to the acceptance of
13 responsibility deductions had she maintained her acceptance of
14 responsibility.

15 In the time that she plead guilty and up until the
16 time that Your Honor heard her motion to withdraw her plea, the
17 Defendant did not accept any responsibility for what had
18 occurred. She had denied over and over again, the factual
19 basis that she had plead guilty to, she picked apart the pre-
20 sentencing report, and she ultimately tried to withdraw her
21 plea, which is the strongest evidence there could be of not an
22 acceptance of responsibility, Your Honor.

23 With that, she also -- and we are not asking for an
24 obstruction enhancement, but she had -- part of her agreement
25 with the Government is that she was supposed to provide

1 information as part of its investigation and she actually
2 almost went out of her way to undermine the Government's
3 efforts to find out more information about this case and the
4 related matter across the river in New Jersey, Your Honor.

5 So on that basis, there's no real evidence that she -
6 - that the acceptance of responsibility that she took the day
7 of the plea should be honored, considering all the efforts that
8 she made to undermine the plea and the factual basis that she
9 stood and swore to before the Court.

10 THE COURT: So, Attorney Brennan, could you address
11 that, because as you well know, I had a full-blown hearing.

12 MR. BRENNAN: That was here.

13 THE COURT: And in that full-blown hearing under
14 oath, she testified contrary to what she had told me at the
15 guilty plea, pretty much, under oath.

16 MR. BRENNAN: Here's where it's unfair, Judge.

17 THE COURT: Hold on a minute. Hold on. Let me put
18 the question to you.

19 MR. BRENNAN: All right.

20 THE COURT: Right now, I don't know even know that
21 she's accepting responsibility or whether or not she's still
22 claiming that she's totally innocent, as she claimed, and that
23 she was coerced into pleading guilty. So don't I need to hear
24 from her and she needs to convince me that, in fact, she is
25 accepting responsibility for this?

1 MR. BRENNAN: I mean, you're the Judge.

2 THE COURT: The last thing I have is denial, denial,
3 denial, on the guilty plea. And on the basis of that, I think
4 the Government has a compelling argument that she should not be
5 given the three points for accepting responsibility because --

6 MR. BRENNAN: Two.

7 THE COURT: The two points, you're right, the two
8 points, because, Attorney Brennan, the only reason she's here
9 before me for sentencing is because I denied the request for
10 her to withdraw the guilty plea. So --

11 MR. BRENNAN: Here's the problem I have with it,
12 Judge. And, you know, when you came out and you referenced two
13 or three other cases I had in this very courthouse scheduled
14 this week, I am down here all the time, here's what's
15 fundamentally unfair, in my opinion, they're never satisfied,
16 Judge. She pleads, she has a problem with her lawyer, she
17 files a motion to withdraw, you appoint me, we litigate the
18 motion for withdraw, unsuccessfully, and she's here contrite to
19 be --

20 THE COURT: Well, I haven't heard yet, but hopefully
21 she is.

22 MR. BRENNAN: Then here's what to do. And then take
23 the two points back and give her -- change her ruling. Let her
24 go to trial. But you can't have it both ways. She pleads, but
25 she couldn't get it accepted. Let's go to trial. I mean,

1 frankly, Judge, I came into this thing around the seventh
2 inning stretch, I would have tried this case. I would have
3 tried this case.

4 THE COURT: I'm sure you would have.

5 MR. BRENNAN: I would have tried this case, but we
6 got a fair hearing from a good judge, it didn't go our way, and
7 it is our position, as the Government pointed out, there were,
8 before I got involved, pages of objections, we're not pursuing
9 them, we're not going to put the director through a half hour's
10 boring, wasteful, ineffective cross-examination by me about how
11 he came up with the 240 grand.

12 We're here because we have a brief window with the
13 Chief Judge to beg for mercy as a result of our guilty plea
14 that stands. I mean, it's unfair for them to get it both ways.

15 You want the two points? Take them. Let's pick a jury. I'm
16 available. My case plan. I could try this case Monday
17 morning. I'll try it. I'll try it in a heartbeat.

18 But it's just not right to punish her more. I mean,
19 she plead guilty, there was a problem, she misunderstood
20 something, who knows, the Court heard her, but she's here
21 contrite and hat in hand saying, please, Judge Sanchez, please
22 show me mercy. I'm here as a result of my guilty plea. They
23 can't get everything, Judge.

24 Obstruction, and don't give her acceptance, good,
25 let's try the case. I will try the case Monday morning.

1 THE COURT: All right. Could you do me a favor?
2 Could you move that podium? I can't see her.

3 MR. BRENNAN: I got it, Judge.

4 THE COURT: The other podium. It's the other one.

5 MR. BRENNAN: Oh, this one?

6 THE COURT: Yes.

7 MR. BRENNAN: Sure.

8 THE COURT: It's blocking me. Just put it the other
9 way. See, that's why you should not touch equipment.

10 MR. BRENNAN: I'm bad with physical labor.

11 THE COURT: All right. So okay. I'll reserve ruling
12 on the argument for the acceptance of responsibility until I
13 hear argument on the merits of 3553A factor and I hear from Ms.
14 Murunga.

15 MR. BRENNAN: I'm up again?

16 THE COURT: Yes. You're up again.

17 MR. BRENNAN: Judge, we're asking, as a result of the
18 guilty plea, for the Court to impose a sentence and we're
19 asking for a significant variance from the guidelines because
20 of several factors. Judge, this case, as all federal criminal
21 cases are, is a very serious matter, we don't take any of this
22 lightly, but I really believe, as I've gotten to know this
23 case, that Ms. Murunga, for various factors, some of which may
24 have been cultural, may not have realized, in real time, in
25 real time, that the arrangement that was in place amongst

1 members of her family and others, and the victim, was wrong and
2 illegal.

3 I think she realizes that now, Judge. That's why
4 she's here to be sentenced. And I don't want to get mired down
5 in re-litigating the motion to withdraw. We've done all that.

6 That's in the past. I believe that there's so many factors
7 that 3553 requires the Court to look at that weigh in her
8 favor, that a sentence of non-incarceration could be imposed
9 and hit all those factors.

10 The nature and serious -- the facts and serious
11 nature of the offense speak for themselves. The need to
12 promote respect for the law, deterrence, the need for
13 unwarranted disparity, all of those factors, I think, weigh in
14 Ms. Murunga's favor when you look at who she is, as well
15 documented by Officer White in the pre-sentence report, and is
16 supplemented by the numerous testimonials from friends and
17 family in the Defense submission.

18 Judge, she's a hard-working individual, she's never
19 been in trouble a day in her life, she's a single mother,
20 that's the reason I included that stipulation, and while it
21 gives the biological father opportunity to meet and spend time
22 with his son, he doesn't. I mean, she's single-handed here.

23 And there is no doubt in my mind that she accepts
24 responsibility. I think she, maybe, just didn't quite realize
25 what that arrangement -- the ripple effects of that arrangement

1 and the criminality of it.

2 And I think from meeting with her and discussing this
3 with her all these many months, that part of it was cultural,
4 Judge. I just don't know. It's not the kind of case I deal
5 with every day and, you know, this is kind of the home base for
6 me.

7 I know, Judge, when my ancestors came here, they were
8 almost, to a person, servants. My great-great grandmother, who
9 I actually knew, met, Katie McFull (ph.), was a servant up in
10 Chestnut Hill, and the fact pattern, as recited in the pre-
11 sentence report, as to the victim's circumstances, didn't sound
12 a whole lot different from the family stories I heard growing
13 up about when my ancestors came from Ireland.

14 But things have changed and I think that because of
15 this cultural component, and the fact that, I think it's
16 undisputed, that the victim, while certainly a victim, and we
17 make no bones about that, you know, she did have a certain
18 degree of freedom, was taking a college course, was going to
19 church, was out and about, it just, you know, it's not a case -
20 - Judge, I mean, I just finished the case with Judge Roof,
21 United States of America v. Nicholas Woodard, which was the
22 Linda Weston case, where, in three parts of this country, Ms.
23 Weston's gang took people with special needs, chained them to
24 radiators and pipes in basements, beat them, had dogs bite
25 them, sexually abused them, tortured them, electrocuted them,

1 so she could get their Social Security checks.

2 Now, of course, they were facing the death penalty,
3 and life, and horrible sentences, but there's no doubt in my
4 mind those people were captives, they were tortured, it was
5 horrific, it was dungeon of horrors, I think the press called
6 it, you know, there's not a lot to talk about with that one.

7 With this one, while there's criminality here, we
8 accept full responsibility, and come here as a result of a
9 guilty plea, it's a little more of a kaleidoscope to figure out
10 what was really going on there.

11 But when you finally peel the onion layers away,
12 there was criminality and I believe that Ms. Murunga is
13 contrite. I think, Judge, part of the factors, and again, it's
14 before my entry into the case, but part of the -- or several of
15 the factors that led to, maybe, the motion to withdraw was, I
16 think there was some attempts at cooperation, that, for
17 whatever reason, I wasn't there, they just didn't work out.

18 And then there was some, I think, buyer's remorse,
19 and some second thoughts, but Ms. Murunga is here now, today,
20 not nitpicking the pre-sentence report, not challenging the
21 manner of calculation for the monetary restitution, not kicking
22 and screaming, but humble, contrite, accepting of her
23 criminality, and frankly, Judge, just begging for mercy.

24 She wants to continue to work. If she continues to
25 work, she can continue to pay, and she wants to take care of

1 her son, Byron, who I met numerous times, and he's -- I mean,
2 eh could be one of my own, Judge. He reminds me of my 15-year-
3 old twin boys, just a lovely, wonderful young man that relies
4 100 percent on his single mother for support, physically,
5 financially, emotionally, and every other way.

6 So I can't say any more than that, Judge, other than
7 to say that she's contrite, she's accepting, and she's here to
8 beg for mercy.

9 THE COURT: So, Mr. Brennan, I want you to look at
10 Paragraph 29, the victim impact.

11 MR. BRENNAN: Yes, Your Honor.

12 THE COURT: The victim tells me, and you haven't
13 challenged this in the pre-sentence investigation report, P.I.
14 was brought to the United States under the false pretenses of
15 good work opportunity and educational services. And she was
16 brought here from Ghana by Michael and Mary Wood, and the
17 allegations in the pre-sentence investigation report is that
18 your client knew that that was the arrangement.

19 She said that, instead, the victim was forced to work
20 as a domestic servant with little, and sometimes, no pay. She
21 was not given a living wage, basically. Her food was limited,
22 and essentials, and no educational services. She was confined
23 to the homes of the Defendants by locked doors, secured alarms,
24 and fear of negative consequences.

25 Her passport was taken from her and without fair pay,

1 was unable to return to her country. She was also moved from
2 one family member's home to another after the allegation
3 surfaced involving sexual assault against P.I., perpetrated by
4 Wood, and when she started making friends, she was shipped to
5 another family member's home.

6 And she was only allowed to call home once a month
7 and this call was closely monitored so that P.I. wouldn't tell
8 her family about the poor conditions and so wages, she was paid
9 \$11,000, pale in comparison to the \$232,922.60 that she should
10 have been paid and earning a living wage. That's outrageous,
11 isn't it?

12 MR. BRENNAN: If you take all that as factual, and we
13 decided not to challenge that because --

14 THE COURT: Well, that's what the victim tells me and
15 --

16 MR. BRENNAN: Well --

17 THE COURT: -- that's what the pre-sentence
18 investigation bears it out, and, basically, this woman was
19 being held captive to be a slave.

20 MR. BRENNAN: And I believe Michael Wood, a relative
21 over in, I think, Burlington, New Jersey, and there's an
22 allegation, I think, of sexual assault there, I think he, I
23 believe, has a matter pending in front of Judge Kugler, Michael
24 Wood would have to answer to those questions, Judge.

25 The reason I thought the case should be tried, but I

1 wasn't around when those decisions were made, were the
2 photographs that I reviewed, and I really didn't want to get
3 into re-litigating the motion to withdraw or trying to try the
4 case at a sentencing, but the photographs I saw were of a well-
5 developed, well-nourished, healthy, happy-looking, smiling
6 individual, who my client paid for a course at the community
7 college that she wanted to take, who was free to come and go,
8 had a key to the house, went to church services.

9 I mean, you know, I think that -- and frankly, Judge,
10 that, you know, she was certainly taken advantage of, and under
11 the criminal statutes, we're in 2018, we're not in 1898, when
12 my ancestors came here, I get that, but, you know, this wasn't
13 Linda Weston either, Judge.

14 I mean, I really believe that I would have had a
15 shot, at least grabbing 1 of those 12, and handing this thing,
16 or maybe having it acquitted, because there's a whole other
17 side to this when it comes to my client. What Michael Wood
18 did, my client didn't sexually assault anybody, and his wife
19 did over in Burlington County, New Jersey, that's on them.

20 My client paid for a college education course, paid
21 some, although, not much, but paid some wage, providing
22 sustenance, food, clothing, and the victim was free to come and
23 go, so I don't see my client in the same sector as Michael
24 Wood.

25 THE COURT: But acceptance from your client for what

1 she did, not anybody else.

2 THE COURT: I know, but you asked me about Michael
3 Wood.

4 THE COURT: I pointed to Paragraph 29 because all
5 these people engaged in outrageous activity with this
6 individual. Slavery. She was deprived of -- or brought here
7 by false opportunity and deprived of a living wage, and held,
8 pretty much, captive. Very well. That's all you have?

9 MR. BRENNAN: Yes.

10 THE COURT: All right. Let me hear from the
11 Government.

12 MS. CHANNAPATI: Your Honor, I'm going to go through
13 the 3553A factors. The first one being the nature and
14 circumstances of the offense, and Your Honor correctly pointed
15 out the victim impact statement. And I want to point out, I'm
16 familiar with the Weston case, and I just want to, as a
17 preface, say that, as horrible as the facts are in the Weston
18 case, that does not mean that anyone who has suffered less than
19 that isn't entitled to justice as well, Your Honor.

20 Just because someone is punched versus someone is
21 murdered, the person who is -- the victim of a punch is
22 entitled to just as much justice from the courts as well, so
23 that being said, the nature and the circumstances of the
24 offense in this case, the one before this court, the Defendant
25 held the victim in her home for almost five years, Your Honor.

1 Five years during which she was -- the victim was
2 paid \$200 a month. Now, she wasn't chained, she wasn't locked
3 away in a room where she wasn't allowed to see the sun, those
4 aren't the allegations, but nonetheless, she wasn't able to
5 freely move about this country and engage, and make friendship,
6 because of the way she was treated within the Murunga home.

7 The course that everyone keeps talking about, the
8 college course, was an online course, Your Honor. The victim
9 wasn't allowed to actually leave the home and attend school at
10 a community college. She remained in the home and took the
11 course there.

12 The church services that she was allowed to attend,
13 when the victim became friendly with other church members at
14 the church, attendance at the church services ceased, because
15 they did not want the victim to be interacting with anyone that
16 they did not have control over.

17 So there's other sides to the -- this notion that she
18 had all this freedom, when, in fact, she lived in a very much
19 controlled environment, controlled by this Defendant, Your
20 Honor.

21 I want to talk a little bit about the history and the
22 characteristics of the Defendant. The Defendant sits here
23 contrite today, Your Honor, because you denied her motion. She
24 made every effort to undermine the plea that she took before
25 the Court and she only sits here today contrite because of --

1 because Your Honor ruled against her.

2 This notion that there's some kind of cultural
3 difference that caused the Defendant to misunderstand her
4 obligations to the victim is kind of -- there's no basis for
5 it, Your Honor, because the Defendant, as it's outlined in the
6 pre-sentence report, is a highly-educated woman. She has
7 multiple degrees in chemistry, she has a Master's in chemistry,
8 she has lived and worked in the United States, Your Honor, she
9 knows what it means to abide by the law, to earn a wage, to get
10 paid a wage, to pay your taxes.

11 She was a full-fledged member of society and
12 understood how we function as a society, and yet, made a
13 decision to deny those same rights and enjoyment to the victim,
14 P.I.

15 The second factor is the need for the sentence
16 imposed to reflect the seriousness of the offense. Domestic
17 servants who are held in homes, Your Honor, rarely come to
18 light because of the nature of the crime. It's all done in
19 secret. And so it rarely comes to light, and this is one of
20 the cases where we actually -- where the Government was able to
21 meet the victim and hear her story, and actually prosecute the
22 people that brought her over here and held her in their house
23 for five years.

24 So it's important that the seriousness of the
25 offense, although mild compared to the Linda Weston case, is

1 still taken into account because this is a woman who's been
2 denied -- the victim who was denied the opportunity to enjoy
3 her existence here in the United States after being falsely
4 promised that she would be able to get an education here.

5 The next factor is the need to afford adequate
6 deterrence to criminal conduct and to protect the public from
7 further crimes of the Defendant. Your Honor, again, this is
8 something that happens in secret and rarely comes to light.
9 And in fact, a serious punishment for this Defendant would be a
10 major deterrent for anyone else who's considering to underpay,
11 and to house, and to secret their nanny or housekeeper, which
12 is more often than we realize.

13 I'm going to move to the need to avoid unwarranted
14 disparity among Defendants with similar records who have been
15 found guilty of similar conduct. Your Honor, this is an alien
16 harboring charge. The guidelines are the guidelines because
17 that is what's been determined to be an adequate sentence, so
18 it only makes sense for the Defendant to be sentenced to the
19 exact same amount.

20 And her punishment should be commensurate with the
21 amount of time that she held the victim in her home. And
22 finally, the need to provide restitution to any victims for the
23 offense. I mean, this is work that the victim had put into
24 raising the Defendant's child, into keeping her house clean --

25 THE COURT: So a lot of the other people did not get

1 jail time.

2 MS. CHANNAPATI: Right, Your Honor.

3 THE COURT: So how is she similarly situated to the
4 other people or --

5 MS. CHANNAPATI: How is she different.

6 THE COURT: -- similarly situated to other people who
7 have similar charges.

8 MS. CHANNAPATI: Right. So, Your Honor, first and
9 foremost is that the victim was kept in her home for the bulk
10 of the time, and that the victim was also working in her
11 household. I mean, the sole purpose is when she was brought to
12 the Defendant's home is the victim was to help care for the
13 Defendant's child.

14 So the prime mover in that whole scheme of the alien
15 harboring conspiracy is the Defendant. And you'll find that
16 she was actually charged with the substantive count, where
17 everybody else was charged with the conspiracy count. They all
18 plead to misdemeanors for failure to pay the minimum wage
19 because they all -- they either benefitted from some of the
20 labor or they inhabited the home with the Defendant for a small
21 amount of time, and Nedorio (ph.) was her husband at one point,
22 and he paid -- he agreed to pay restitution for the amount of
23 time that he was -- for the short time that he was living in
24 the household.

25 John Nema (ph.) was then her second husband and he

1 actually ended up paying upwards of \$12,000 for the time that
2 he lived in the home while the victim worked there. So, Your
3 Honor, she's differently situated because the victim provided
4 her with childcare and took care of her child, and she kept her
5 in her home for almost six years.

6 So the Defendant is, in terms of her conduct, vastly
7 different than the other Defendants that were charged.

8 THE COURT: I think I understand.

9 MS. CHANNAPATI: Okay. Thank you, Your Honor.

10 THE COURT: Thank you. Attorney Brennan, does your
11 client wishes to speak to the Court?

12 MR. BRENNAN: Judge, can I just say one last thing?
13 And I thank God, thank God, I took a minute and double-checked
14 the name, because I would have really put my foot in my mouth,
15 I forget the name of the person, I had a wrong name associated
16 with, but as I'm listening to the Government's argument, I'm
17 thinking of a person whose name I can't recall, but she was the
18 Clinton -- William Jefferson Clinton nominee for Attorney
19 General of the United States before Janet Reno and she couldn't
20 make confirmation because she was paying her nanny under the
21 table.

22 I'm sure it was some type of monetary savings, but
23 when you point to that Paragraph 29, Judge, I elected, and I
24 told the Government this in advance, and I told Officer White
25 this in several conversations this week, I go back with you

1 since the day you took this bench, I don't want to waste time
2 nitpicking this pre-sentence report, I want to get your
3 attention on what I'm asking for, which is mercy.

4 THE COURT: Your client did a good job nitpicking the
5 report.

6 MR. BRENNAN: Well, I know she did, and that's why we
7 threw this in the trashcan. That's why we're here to beg and
8 plead, because that's the move here. But, you know, 29 says
9 she got no educational services. It was an online course.
10 It's at a college, a community college, it's educational
11 services. She got paid. Maybe it was commensurate with the
12 nominee for Attorney General of the United States in 1993, I
13 don't know, but she did get paid.

14 She lived behind a locked door. Judge, I lock my
15 doors. I don't have a security system, but many people do.
16 She was coming and going to church. Judge, I'm not saying it's
17 not criminal. That's why she's here, but there's no report
18 here that when she went to the authorities that she was
19 malnourished, that she had some type of disease or infection
20 from lack of sustenance, indeed, Judge, in the photographs I
21 looked at, and I'm not a medical professional, but I saw a
22 smiling, apparently well-nourished, happy, by virtue of the
23 smile, individual at a computer working on her college course.

24 That's what we're dealing with here, Judge. Why
25 should Murunga have to go to jail with her young son in the

1 courtroom, who she takes care of, she pays her taxes, she has a
2 job, and the ones who cooperated get misdemeanors? It's not
3 fair.

4 MS. CHANNAPATI: Your Honor, if I may, very briefly.

5 THE COURT: I'm not going to go back and forth. I
6 think I understand the arguments. Does your client wish to
7 speak to the Court?

8 MR. BRENNAN: Yes, Your Honor.

9 THE DEFENDANT: Thank you, Your Honor. I am sorry
10 for everything I did.

11 THE COURT: Can she come closer?

12 MR. BRENNAN: You want her to go to the podium?

13 THE COURT: Could you fix the podium now, put it in
14 the middle?

15 MR. BRENNAN: Sure. Put it back where it was.

16 THE DEFENDANT: Sorry, Your Honor. Thank you for
17 this privilege. I am sorry for everything I did and I
18 apologize to the Government, and I'm here, Honorable Judge Juan
19 Sanchez, to beg for leniency and mercy. I have raised Byron
20 since he was one year old, single-handedly as a single mother,
21 and he just turned 13.

22 I want to continue raising him through his teenage
23 years and beyond. Thank you.

24 THE COURT: Attorney Brennan, your client has -- the
25 father of the kid is involved, right, because I think -- who's

1 the father, Mr. Nedorio?

2 MR. BRENNAN: No, the stipulation that I put in the
3 report shows that he has the opportunity to be involved by
4 court order, but he's flouted that. Am I making a correct
5 statement to this federal judge. He does not -- The biological
6 father does not have involvement with Byron.

7 THE DEFENDANT: Your Honor, Byron's father -- I have
8 the custody order here. He declined anything to do with him
9 when he was one year old, so he does not -- I have full custody
10 of Byron. His father declined Byron when he was one.

11 THE COURT: I'm not asking about custody, I'm asking
12 if she's go to jail --

13 MR. BRENNAN: Real world.

14 THE COURT: -- he could take care of him.

15 THE DEFENDANT: He's not able to take care of Byron
16 because he does not have a place of his own. He lives with
17 friends and he does not have any time with Byron. He only
18 takes him when Byron calls him when he wants to see him for a
19 few hours and he comes back home.

20 MR. BRENNAN: Judge, it's really just been the two of
21 them, kind of, all these many years, which, unfortunately, was
22 probably the impetus for bringing P.I. over here at least for
23 some portion of the time. It's a catch-22. It's very
24 unfortunate.

25 THE COURT: Very well.

1 MS. CHANNAPATI: Your Honor, I just want to make it
2 very clear that the Defendant has multiple siblings that live
3 in the United States, Your Honor --

4 THE COURT: I understand.

5 MS. CHANNAPATI: -- and who have families of their
6 own. So I just want to bring that to the Court's attention.

7 THE COURT: I understand. I'm going to take a few
8 minutes break and I'll get back to my decisions.

9 THE DEPUTY: All rise.

10 (Whereupon, the above-entitled matter went off the
11 record at 2:16 p.m. and resumed at 2:45 p.m.)

12 THE COURT: Is the Government and the Defense ready
13 for the Court to pronounce sentence?

14 MS. CHANNAPATI: Yes, Your Honor.

15 THE COURT: Mr. Brennan?

16 MR. BRENNAN: Yes, Judge.

17 THE COURT: Very well. I think that before I
18 pronounce sentence, I'm going to tell you how I'm going to
19 treat the Government's objection to the acceptance of
20 responsibility, although I'm troubled, I will not enhance the
21 sentence by denying the acceptance of responsibility based on
22 her statements here before the Court.

23 And that will be, I think, a two-level adjustment
24 downwards from the guidelines, so that will mean that the
25 guidelines will be 16 points and that gives me a guideline

1 range -- I thought I had it with me. That's an adjusted
2 guideline of -- where did I put? Where did I put it? Do you
3 have the guidelines of 16 based off Criminal 3, Category 01,
4 that will give me --

5 MS. CHANNAPATI: 21 to 27.

6 THE COURT: 21 to what?

7 MS. CHANNAPATI: 27.

8 THE COURT: 21 to 27 adjusted guideline range. She's
9 not entitled to the additional point because that will be upon
10 the Government's motion and the Government, if I understand it
11 correctly, does not intend to move to give her an additional
12 point for time for pleading guilty in this case --

13 MS. CHANNAPATI: Yes, Your Honor. That's correct.

14 THE COURT: -- given the delay, so with that ruling,
15 Attorney Brennan, of course, you reviewed the pre-sentence
16 investigation with her, that was prepared on October 23, 2014
17 and revised November 6th of 2018. Do I understand that
18 correctly?

19 MR. BRENNAN: You know, Judge? That raises a good
20 point. We kind of hit the ground running on this sentencing.

21 THE COURT: Right.

22 MR. BRENNAN: I think I should create a little record
23 on that, don't you?

24 THE COURT: Yes, I agree with you. That's why I'm
25 asking.

1 MR. BRENNAN: May I ask my client a few questions?

2 THE COURT: Sure.

3 MR. BRENNAN: And standup, would you please, Ms.
4 Murunga. Ms. Murunga, we got into this sentencing, kind of, in
5 the middle of the third round, if you know what I mean, we come
6 out swinging, so a couple of things that maybe I should have
7 done, I didn't, I want to do now, okay?

8 THE DEFENDANT: Okay.

9 MR. BRENNAN: How are you feeling today?

10 THE DEFENDANT: I'm blessed and favored by God.

11 MR. BRENNAN: All right. Are you under the effects
12 of any medication or substance, legal, non-legal, anything at
13 all that would affect your ability to understand what we're
14 doing here?

15 THE DEFENDANT: No.

16 MR. BRENNAN: You have any physical or mental, or any
17 type of ailment that would affect your ability to understand
18 what we're doing here?

19 THE DEFENDANT: No.

20 MR. BRENNAN: Did you understand the last hour or so,
21 or longer, that we've been here for the sentencing in front of
22 Chief Judge Sanchez?

23 THE DEFENDANT: Yes.

24 MR. BRENNAN: All right. And this case has traveled,
25 kind of, a circuitous route, but you realize that although you

1 attempted to withdraw your guilty plea, that was denied, and
2 we're here for sentencing, and you gave allocution admitting to
3 and asking -- admitting the offenses and asking for mercy,
4 correct?

5 THE DEFENDANT: Correct.

6 MR. BRENNAN: And nobody forced you or threatened you
7 to do that, right?

8 THE DEFENDANT: No.

9 MR. BRENNAN: Now, I have advised you on certain
10 things, but I didn't say you must do this or you must do that,
11 right?

12 THE DEFENDANT: Right.

13 MR. BRENNAN: These decisions are yours and yours
14 alone?

15 THE DEFENDANT: Yes.

16 MR. BRENNAN: Now, with respect to the pre-sentence
17 investigation report, I'll just, Judge, for purposes of the
18 record, mark it for identification purposes as D-1, but just so
19 I can have something to refer to, you and I have seen this
20 document before, right?

21 (Whereupon, the above-referred to document was marked
22 as Defense Exhibit D-1 marked for identification.)

23 THE DEFENDANT: Yes.

24 MR. BRENNAN: And we've gone over it, right?

25 THE DEFENDANT: Yes.

1 MR. BRENNAN: Word-for-word, line-for-line, and
2 paragraph-by-paragraph, right, page-by-page?

3 THE DEFENDANT: Yes.

4 MR. BRENNAN: Most recently, in my office in
5 Philadelphia, Pennsylvania, I don't know, week or so ago?

6 THE DEFENDANT: Yes.

7 MR. BRENNAN: And you had with you, an advisor, your
8 pastor, right, your spiritual counselor?

9 THE DEFENDANT: Yes.

10 MR. BRENNAN: And I spent, I don't know, better part
11 of, I guess it was between an hour and two going over the
12 report and going over the file in general, and talking to you,
13 and talking to the pastor, and you had a lot of questions, and
14 the pastor had a lot of questions, right?

15 THE DEFENDANT: Yes.

16 MR. BRENNAN: Did I, at that time, right up and
17 through today, to your satisfaction, answer all of your
18 questions about the pre-sentence report?

19 THE DEFENDANT: Yes.

20 MR. BRENNAN: Okay. Is there anything at all since
21 the Court asked me to undertake representation of you in this
22 matter, that you asked me to do that I didn't do?

23 THE DEFENDANT: No.

24 MR. BRENNAN: Are you satisfied with my
25 representation?

1 THE DEFENDANT: Yes.

2 MR. BRENNAN: All right. That's all. Judge, is that
3 good enough?

4 THE COURT: I think that's good enough. So does the
5 Government have any suggestions that I should discuss with her
6 before I pronounce sentence?

7 MS. CHANNAPATI: No, Your Honor.

8 THE COURT: All right.

9 MR. BRENNAN: I have. Can the Defense be asked that
10 question? I do. Could I ask --

11 THE COURT: Anything else?

12 MR. BRENNAN: I very, very seldom do this with this
13 particular Court, in fact, I can't remember doing it with you,
14 Your Honor, with this Court, but I have reason to believe that,
15 you know, based on the guideline recommendation, that there is
16 a likelihood of a period of incarceration, I may be wrong, I
17 may be right, but I would ask the Court to vary from the net
18 guidelines range and I'm going to ask for a specific sentence.

19 I mean no disrespect, I don't usually do it with you
20 -- I, frankly, don't usually have to with you, I'm going to ask
21 for a sentence, if there is incarceration in the Court's
22 fashioning of a sentence, of one year and one day. I believe
23 that more than adequately addresses the 3553E factors that talk
24 about punishment and deterrence.

25 It also allows my client to return to her life and

1 her child, which she has been, by all accounts, an excellent --
2 and is an excellent mother, within a period of about ten
3 months, Judge, and that's what I'm asking for.

4 THE COURT: I appreciate that. This is your third
5 argument, Mr. Brennan --

6 MR. BRENNAN: I know.

7 THE COURT: -- I know you and sentencing, but I
8 appreciate it. So with that, with regards to my ruling,
9 because I am not going to take away the two points for
10 acceptance of responsibility, I think guidelines will be
11 adjusted to 16, base adjust level of 16, and a criminal
12 category of 1, giving me a guideline of 21 to 27.

13 With that, I will fully adopt and credit the pre-
14 sentence investigation report, the factual findings and
15 guidelines applications, and calculations, as modified, per my
16 ruling, and per the fact that the Government has not moved to
17 award her a one-point departure based on her actions following
18 the guilty plea, and the lack of cooperation, because as you
19 well know, if she cooperated, the guidelines would have been
20 significantly different.

21 But having said that, I will not take away the two
22 points acceptance of responsibility and I will then proceed to
23 consider and recognize that having adopted the statutory
24 maximum in this case, Count 1, which is a pretty serious count,
25 concealing, harboring, and shielding from detecting an alien

1 for the purpose of private financial gain, in violation of
2 Title 8 Section 1324, as you well know, the maximum term of
3 imprisonment is ten years, this is a pretty serious offense,
4 the maximum fine is \$250,000, and the maximum term of
5 supervised release is three years.

6 As I said in this particular case, the guideline for
7 a violation of Title 8 Section 1324A1.A.3 is found in the
8 guideline Section 2L1.1 of the guideline, which provides that
9 an offense involving harboring an alien has an offense level of
10 12.

11 A two-level increase was added because the alien was
12 involuntarily detained through coercion or threat. The
13 resulting two-level increased offense level is 14, which is
14 less than 18. The offense level is thus increased to 18,
15 pursuant to the sentencing guideline 2L1.1.B.8.A, with a two-
16 level subtracted for acceptance of responsibility because she
17 at least plead guilty, even though she attempted to withdraw
18 the guilty plea. I denied that.

19 And she, today, I accept her acceptance of
20 responsibility for her action. She is not entitled to another
21 level because the Government did not move and she did not
22 timely, a plea of in this particular case, given the delay. So
23 the result is a base offense level of 16. She has a criminal
24 history category of 0, and this results in a guideline
25 recommended sentence of 21 months to -- 21 to 27, so the

1 guidelines will be adjusted accordingly.

2 I have to, then, consider and balance the factors in
3 Title 18 Section 3553 so as to yield a sentence that, in my
4 view, is sufficient and not greater than necessary to reflect
5 the seriousness of the offense, deter her from committing
6 further crimes in the future, deter others as well from
7 committing further crimes in the future, and protect the
8 public, as well as provide her an opportunity for
9 rehabilitation.

10 And I have consider, first and foremost, the nature
11 and circumstances of the offense, and in this particular case,
12 this Defendant participated in harboring an illegal alien in
13 her home for a period of five years, paying her merely \$200 per
14 month, and forcing her to perform housekeeping chores for
15 limited pay; \$200 per month.

16 At times, the victim was locked in her home by a
17 security system, at times, she was prohibited from going
18 outside and having contact, and was only allowed limited
19 contact with her family back in Kenya.

20 These conversations were closely monitored to ensure
21 the victim did not tell her family about any crimes. And in
22 terms of the seriousness of the offense, this victim was unable
23 to move freely about, like a free person, that she should have
24 been treated like a free person who had the freedom to move
25 about as she pleased.

1 And turning to the second element, Defendant's
2 history and characteristic, I know that the Defendant is
3 described as a good person, had a good childhood, she obtained
4 a visa and earned an undergraduate and graduate degrees, so
5 she's highly-educated. I also know that she has steady
6 employment history in the United States and I also know that
7 she's been described by family members as a hard worker and a
8 very loving single mother, which is commendable.

9 And I see that her son is here present in the
10 courtroom. And his father was also a Defendant in this case.
11 I reviewed the pre-sentence investigation carefully. She has
12 no history of mental illness or substance abuse. She has
13 earned advanced degrees and has a steady employment history.
14 She does not appear to have any educational or vocational
15 training or correctional treatment of any kind that is
16 necessary in this particular case. She is a highly-educated
17 individual.

18 I think that there is a need not only to punish her
19 for her actions in this case, which, in my view, are pretty
20 outrageous, but also, to deter other people from engaging in
21 this type of crime.

22 I think that the argument that this is cultural, I
23 think, to me, is not credible or warrants anything else. She's
24 been here a significant period of time and I think that she
25 knew that this person was brought here illegally, and while

1 brought her illegally, was exploited by other human beings.

2 And exploited in her custody and control for a
3 significant period of time. So I think there is a need to send
4 a strong message to the community out there that this type of
5 conduct cannot be tolerated and I think that people need --
6 people in the circumstances of P.I. need to be protected from
7 this type of crimes, which are generally crimes committed in
8 secret.

9 And I have considered also, the need to avoid
10 unwarranted sentence disparities. I think she's not similar to
11 her other co-defendants in this case. And while Mr. Brennan
12 makes a great argument that she did not physically abuse or put
13 her in shackles to prevent her from engaging in terms of her
14 detention and preventing her from having contact with the
15 community, this type of crime is serious, nevertheless, and in
16 my view, egregious.

17 So I have considered those sentencing factors, I have
18 considered her brief statement to the Court, I have considered
19 the guidelines of 21 months to 27 months, and I have considered
20 Mr. Brennan's request for a modest -- request for a variance of
21 one year and one month in this particular case.

22 MR. BRENNAN: One day, Your Honor. One year and one
23 day.

24 THE COURT: One year and one day in this particular
25 date, Mr. Brennan. I misspoke. That will allow her to earn

1 good time and reduce the sentence.

2 So I have considered that. I'm willing to give her a
3 modest variance in view of the fact that she's never been in
4 trouble with the law before. She has a young son that she has
5 brought up and by all accounts, is a wonderful son and she's
6 been a wonderful mother. And I don't want to extend her
7 separation from that son longer than I have to, but I think
8 that a sentence in the range of 18 months, followed by 3 years
9 of supervised release, followed by a fine, followed by the
10 special assessment, is an appropriate deterrent and an
11 appropriate deterrent punishment for, and deterrent for others.

12 Mindful of the fact that in this particular case,
13 there are some circumstances, understandable, where she filed
14 motions asking me to set aside the guilty plea, argue against
15 that, and there are some circumstances, as the Government
16 points out, where, potentially, she obstructed justice.

17 So notwithstanding that, for the considerations of
18 her son, I'm giving a modest variance, and I intend to impose
19 an 18-month sentence, followed by a 3-year supervised release,
20 followed by a restitution order, which is significant in this
21 case, and I will put in place a monthly amount, significant,
22 following her release from custody, but subject to re-
23 evaluation upon her release so that we can monitor and we can
24 determine whether she will be able to make those payments at
25 that time.

1 So Mr. Brennan, Attorney Channapati, and Attorney
2 Patel, that is the intent of the Court to impose that sentence.
3 Any comments?

4 MS. CHANNAPATI: With respect to the sentence, no,
5 Your Honor, but the Government does have one motion.

6 THE COURT: All right. But, Mr. Brennan?

7 MR. BRENNAN: No, Your Honor.

8 THE COURT: Very well. Any procedural irregularities
9 that I could cleanup before I impose the sentence?

10 MS. CHANNAPATI: No, Your Honor.

11 MR. BRENNAN: No, Your Honor.

12 THE COURT: Has the elements of the 3553A factors and
13 the Defendant's request for a variance been adequately
14 addressed?

15 MS. CHANNAPATI: Yes, Your Honor.

16 MR. BRENNAN: Yes, sir.

17 THE COURT: All right. With that, Ms. Murunga, would
18 you please stand? It is the judgment of this Court that the
19 Defendant, Anne Murunga, is hereby committed to the custody of
20 the Bureau of Prisons to be imprisoned for a term of 18 months,
21 upon release from imprisonment, you shall be placed on
22 supervised release for a term of three years, within 72 hours
23 of release from the custody of Bureau of Prisons, you shall
24 report in person to the Probation Office in the district to
25 which you are released.

1 While on supervised release, you shall not commit
2 another federal, state, or local crime, and you will be
3 prohibited from possessing a firearm or other dangerous device,
4 and you shall not possess an illegal controlled substance, and
5 you shall comply with the other standard conditions that have
6 been adopted by this Court.

7 You shall submit to one drug test within 15 days of
8 commencement of supervised release and at least two tests
9 thereafter as determined by the U.S. Probation Office. You
10 shall submit to collection of DNA sample at the direction of
11 the U.S. Probation Office, pursuant to law.

12 In addition, you shall comply with the following
13 additional conditions. You shall provide the U.S. Probation
14 Office with full disclosure of your financial records, to
15 include yearly income tax returns, upon request of the U.S.
16 Probation Office. You shall cooperate with the Probation
17 Officer in the investigation of your financial dealings, such
18 as, you shall provide monthly statements of your income.

19 You are prohibited from incurring any credit card
20 charges or opening additional lines of credit without the
21 approval of the Probation Officer unless you are in compliance
22 with the payment schedule for any fine obligation. You shall
23 not incumber or liquidate any interest in any assets unless it
24 is in direct service of a fine obligation, or otherwise has the
25 expressed approval of this Court.

1 I'm going to order restitution in the amount of
2 \$232,922.66. I think that's the correct amount, right?

3 MS. CHANNAPATI: Yes, Your Honor.

4 THE COURT: I will waive any interest requirement in
5 this case. Payment should be made to the Clerk, United States
6 District Court, for proportion of distribution to the victim in
7 this matter. The Government will supply the address. Do we
8 have that address?

9 MS. CHANNAPATI: We have the address, Your Honor. Do
10 you need it at this --

11 THE COURT: You could give it immediately after the
12 sentence --

13 MS. CHANNAPATI: Yes.

14 THE COURT: -- to my Deputy. You don't have a
15 problem with that, right?

16 MR. BRENNAN: Not at all.

17 THE COURT: I'm not going to put it on the record,
18 but you will do that immediately after I impose sentence. The
19 order represents the total amount due to the victim for these
20 losses. The restitution obligations shall not be affected by
21 any restitution payments by other Defendants in this case,
22 except that no further payments shall be required after the
23 sums of the amounts actually paid by all Defendants has fully
24 satisfied the losses.

25 The restitution is due immediately. The Defendant

1 shall satisfy the amount due in monthly installments of not
2 less than \$1000 to commence 30 days after release from
3 confinement, however, I'm going to direct the Probation Office,
4 immediately upon her release, to reevaluate her financial
5 conditions and come up with a reasonable adjustment, if an
6 adjustment is warranted, for the payment of monthly payments
7 towards the restitution.

8 She shall notify the United States Attorney for the
9 District within 30 days of any change of mailing address or
10 residence that occurs while any portion of the restitution
11 remains unpaid.

12 I find that she does not have the ability to pay a
13 fine, so I will not impose a fine. Our interest is for her to
14 pay restitution. I will order that she pay total special
15 assessment of \$100, which will be due immediately. Ms.
16 Murunga, do you understand the sentence that I just imposed?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Very well. Is there anything else that I
19 need to discuss before I read her her appellate rights?

20 MR. BRENNAN: I have a couple of requests, Your
21 Honor.

22 THE COURT: Yes. Let me read her her rights and if
23 you have a request --

24 MR. BRENNAN: Sure. Sure.

25 THE COURT: So, Ms. Murunga, you have 14 days from

1 the day in which I sign the judgment on commitment order
2 imposing the sentence. If you cannot afford a lawyer, you can
3 ask me to appoint a lawyer free of charge. Mr. Brennan will
4 continue to represent you. If you cannot afford the cost of
5 filing such an appeal, you could ask me to waive the costs of
6 filing such an appeal. Do you understand your appellate
7 rights?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, with regard to commencement of
10 sentence, or any other matter that you need to bring to my
11 attention, Mr. Brennan?

12 MR. BRENNAN: I do, Judge. I have a request that the
13 sentence be stayed and be allowed to commence after the
14 holidays. I would suggest, may I look at my calendar, Judge,
15 to find a weekday?

16 THE COURT: You may.

17 MR. BRENNAN: I would suggest January -- one moment,
18 Your Honor. How about January 14th?

19 THE COURT: So that will be -- today is November 9th,
20 right?

21 MR. BRENNAN: Yes, sir.

22 THE COURT: That's over 60 days, Mr. Brennan.

23 MR. BRENNAN: It's the holidays. Seriously, we've
24 got to make arrangements for Byron for this period of time. I
25 mean, there's a lot to do here.

1 THE COURT: All right. Ms. Channapati, do you have
2 any objection?

3 MS. CHANNAPATI: No, Your Honor.

4 MR. BRENNAN: Judge, my second request will be --

5 THE COURT: So I will grant your request.

6 MR. BRENNAN: Thank you.

7 THE COURT: Her reporting date is after the -- I
8 think she will be processed and we will know where she will be
9 designated. She could go directly to the institution and
10 report.

11 MR. BRENNAN: Wonderful.

12 THE COURT: Or report to the U.S. Probation Office --
13 U.S. Marshals Office here no later than noon on January 14,
14 2019.

15 MR. BRENNAN: To the degree it's practical, I'd ask
16 the Court to recommend to the BOP that Ms. Murunga be housed as
17 closely to, and I want to just make sure I have -- as close to
18 Centerville, Lehigh County, Pennsylvania as possible, as, you
19 know, we've made very clear she has a relationship where her
20 son depends on her.

21 THE COURT: So do we know what federal institution --
22 I could only recommend and I'll be happy to recommend, is there
23 an institution close by that Centerville, Lehigh County, do we
24 know?

25 MS. CHANNAPATI: I don't, Your Honor.

1 MR. BRENNAN: Judge, I think, well, the P.O. will
2 know, but I think Minersville, or Allen, what's up there?

3 MS. BRONSON: So, yes, Allenwood, would probably be
4 the closest.

5 THE COURT: All right. So, Attorney Brennan, the
6 Government, you don't have an objection that I recommend that
7 she be housed as closely as possible to her family,
8 particularly, her child.

9 MS. CHANNAPATI: No, Your Honor.

10 THE COURT: She understands it's only a
11 recommendation.

12 MR. BRENNAN: Sure.

13 THE COURT: It's not binding upon the Bureau of
14 Prisons.

15 MR. BRENNAN: Sure.

16 THE COURT: But I'll be happy to designate that she
17 be housed as closely as possible to her Centerville, Lehigh
18 Valley as possible. So I will make that part of the judgment
19 and commitment order. Anything else?

20 MR. BRENNAN: Not from me, Your Honor.

21 THE COURT: The Government?

22 MS. CHANNAPATI: Your Honor, at this time, thought
23 Government moves to dismiss Count 2 of the indictment.

24 THE COURT: Very well. Your motion to dismiss Count
25 2 of the indictment is granted. Anything else?

1 MR. BRENNAN: No, sir.

2 THE COURT: All right. Good luck.

3 MR. BRENNAN: Thank you, Your Honor. That concludes
4 my business. May I be excused?

5 THE COURT: You may. Do you need to see her?

6 MS. DONSON: No.

7 THE COURT: All right. Thank you very much.

8 (Whereupon, the above-entitled matter went off the
9 record.)

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C E R T I F I C A T E

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Neal R Gross

December 7, 2018

Neal R. Gross

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

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EXHIBIT 6

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

ANNE MURUNGA

FILED

NOV 20 2018

W. Brennan, Clerk
Dep. Clerk

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAAE2:14CR000175-1

USM Number: 71340-066

William Brennan, Esquire

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8:1324(a)(1)(A)(iii) and 1324(a)(1)(B)(i)	Bringing in and harboring aliens	3/31/2011	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

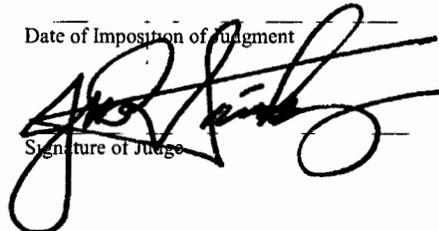
The defendant has been found not guilty on count(s)

Count(s) 2 is are dismissed on the motion of the United States.

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

Date of Imposition of Judgment

Signature of Judge



Juan R. Sánchez, US District Judge

Name and Title of Judge

11/20/18

Date

KB

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

IMPRISONMENT

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

18 months on Count 1.

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

Defendant is to be housed as close to Center Valley, PA in the Lehigh Valley as possible.

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

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

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

as notified by the United States Marshal.

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

before 12 p.m. on 1/14/2019

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Three years on Count 1.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U S C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time 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.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the U.S. Probation Office with full disclosure of her financial records to include yearly income tax returns upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of her financial dealings and shall provide truthful monthly statements of her income.

The defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine obligation or otherwise has the express approval of the Court.

It is further ordered that the defendant shall make restitution, in the amount of \$232,922.66. The Court will waive the interest requirement in this case. Payments should be made payable to the Clerk, U.S. District Court for the Eastern District of Pennsylvania for proportionate distribution to the victim in this matter. The victim information is filed under seal.

The amount ordered represents the total amount due to the victim for these losses. The defendant's restitution obligations shall not be affected by any restitution payments made by other defendants in this case, except that no further payments shall be required after the sums of the amounts actually paid by all defendants has fully satisfied these losses.

The restitution is due immediately. The defendant shall satisfy the amount due in monthly installments of not less than \$1,000 to commence 30 days after release from confinement. However the probation officer is to reevaluate her financial conditions immediately upon release to determine if an adjustment is warranted.

The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing address or residence that occurs while any portion of the restitution remains unpaid.

The Court finds that the defendant does not have the ability to pay a fine. The Court will waive the fine in this case.

It is further ordered that the defendant shall pay to the United States a total special assessment of \$100, which shall be paid immediately.

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$ 232,922.66

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

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

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Filed Under Seal	\$232,922.66	\$232,922.66	100%

TOTALS	\$	232,922.66	\$	232,922.66
---------------	-----------	-------------------	-----------	-------------------

Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
 ** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ANNE MURUNGA
CASE NUMBER: DPAE2:14CR000175-1

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or
- D Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

The restitution is due immediately. The defendant shall satisfy the amount due in monthly installments of not less than \$1,000 to commence 30 days after release from confinement. However the probation officer is to reevaluate her financial conditions immediately upon release to determine if an adjustment is warranted.

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

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

Joint and Several

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

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

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