TPW/NAM/ELDC/TDRK: USAO 2015R00190

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	**CRIMINAL NO.**
	*	
NGHIA HOANG PHO,	*	**(Willful Retention of National Defense**
	*	**Information, 18 U.S.C. § 793(e);**
Defendant	*	**Forfeiture 18 U.S.C. § 981(a)(1)(C),**
	*	**21 U.S.C. § 853, 28 U.S.C. § 2461(c))**
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INFORMATION

COUNT ONE
(Willful Retention of National Defense Information)

The Acting United States Attorney for the District of Maryland charges that:

At all times material to this Information:

General Allegations

The Defendant

1. Defendant **NGHIA HOANG PHO ("PHO")** was a resident of Ellicott City, Maryland.

2. Beginning in or about April 2006, and continuing through in or about 2016, **PHO** was employed as a Tailored Access Operations ("TAO")[1] developer for the National Security Agency ("NSA") in Maryland. In connection with his employment, **PHO** held various security clearances and had access to national defense and classified information.

[1] At some point during PHO's employment, portions of TAO's responsibilities were reorganized into Computer Network Operations ("CNO").

Classified Information

3. Pursuant to Executive Order 12958 signed on April 17, 1995, as amended by Executive Order 13292 on March 25, 2003, and Executive Order 13526 on December 29, 2009, national security information was classified as "TOP SECRET," "SECRET," or "CONFIDENTIAL." National security information was information owned by, produced by, produced for, and under the control of the United States government that was classified as follows:

a. Information was classified as TOP SECRET if the unauthorized disclosure of that information reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority was able to identify and describe.

b. Information was classified as SECRET if the unauthorized disclosure of that information reasonably could be expected to cause serious damage to the national security that the original classification authority was able to identify and describe.

c. Information was classified as CONFIDENTIAL if the unauthorized disclosure of that information reasonably could be expected to cause damage to the national security that the original classification authority is able to identify and describe.

4. Access to national security information classified at any level could be further restricted through compartmentation in Sensitive Compartmented Information ("SCI") categories. Only individuals with the appropriate security clearance and additional SCI access(es) could have access to such classified national security information.

5. Classified information, including SCI, was marked according to its classification and applicable SCI compartments, following standard formats for different types of media, including headers and footers stating the highest classification level and SCI compartments of information a document contained and individual classifications markings for each paragraph.

6. Information classified at any level could only be accessed by persons determined by an appropriate United States government official to be eligible for access to classified

information, who had signed an approved non-disclosure agreement, who received a security clearance, and who had a need to know the classified information. Classified information could only be stored in an approved facility and container.

National Security Agency

7. The NSA was a U.S. government intelligence agency with various offices and facilities, and was a component of the United States Intelligence Community and the United States Department of Defense ("DoD"). The NSA's primary facility and headquarters were at Fort Meade in the District of Maryland. The NSA was responsible for, among other things, collecting, processing, and disseminating intelligence derived from intercepted foreign communications to U.S. policy-makers and military forces, and protecting secure government systems that handle classified information and were otherwise critical to military and intelligence agencies. The NSA's TAO involved operations and intelligence collection to gather data from target or foreign automated information systems or networks and also involved actions taken to prevent, detect, and respond to unauthorized activity within DoD information systems and computer networks, for the United States and its allies.

PHO's Training Regarding, and Access to, Classified Information

8. **PHO** was required to receive and maintain a security clearance to be employed at the NSA. **PHO** held security clearances up to TOP SECRET/SCI.

9. Over his many years holding a security clearance, **PHO** received training regarding classified information, including the definitions of classified information, the levels of classification, and SCI, as well as the proper handling, marking, transportation, and storage of classified materials. **PHO** received training on his duty to protect classified materials from unauthorized disclosure, which included complying with handling, transportation, and storage requirements. **PHO** was told that unauthorized removal of classified materials and

transportation and storage of those materials in unauthorized locations risked disclosure and transmission of those materials, and therefore could endanger the national security of the United States and the safety of its citizens. In particular, **PHO** had been advised that unauthorized disclosure of TOP SECRET information reasonably could be expected to cause exceptionally grave damage to the national security of the United States, and that violation of rules governing the handling of classified information could result in criminal prosecution.

10. **PHO** worked on highly classified, specialized projects and had access to government computer systems, programs, and information, including classified information.

PHO's Theft of National Defense and Classified Information

11. Because **PHO** held a security clearance and was an NSA employee, the United States Government entrusted **PHO** with access to sensitive government materials, including information relating to the national defense that was closely held by the government ("National Defense Information") and classified documents, writings, and materials.

12. Beginning in or about 2010 and continuing through in or about March 2015, **PHO** removed and retained U.S. government property, including documents and writings.

13. Many of the documents and writings **PHO** removed and retained bore standard markings indicating that they contained highly classified information of the United States, including TOP SECRET and SCI information. The information in the classified documents and writings included National Defense Information.

14. **PHO** retained documents and writings, in hard copy and digital form, containing National Defense Information and classified information in a number of locations within his residence in the District of Maryland.

15. **PHO** knew that the documents and writings contained classified information that related to the national defense.

16. **PHO** was never authorized to retain these documents and writings at his residence.

17. **PHO** knew that he was not authorized to remove National Defense Information and classified documents and writings from secure locations and was not authorized to retain them at his residence.

18. **PHO** willfully and unlawfully retained documents and writings that contained National Defense Information, including classified documents and writings, which were classified as TOP SECRET and SCI.

The Charge

19. On or about March 9, 2015, in the District of Maryland and elsewhere, the defendant,

NGHIA HOANG PHO,

having unauthorized possession of, access to, and control over documents and writings relating to the national defense, willfully retained the documents and writings and failed to deliver them to the officer or employee of the United States entitled to receive them.

18 U.S.C. § 793(e)

FORFEITURE

The Acting United States Attorney for the District of Maryland further finds that:

1. Upon conviction of the offense in violation of Title 18, United States Code, Section 793(e) set forth in Count One of this Information, the defendant,

NGHIA HOANG PHO,

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense. The property to be forfeited includes, but is not limited to, the property of the United States seized from the Defendant's residence in or about March 2015, and all digital media and devices used to store such information.

2. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

18 U.S.C. § 981(a)(1)(C)
21 U.S.C. § 853
28 U.S.C. § 2461(c)

Stephen M. Schenning /TW
Stephen M. Schenning
Acting United States Attorney

Date: November 29, 2017