IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	Case No. 1:15-CR-293
v.	)	
	)	Honorable T.S. Ellis, III
WAYNE SHELBY SIMMONS,	)	
	)	Sentencing: July 15, 2016
Defendant.	)	

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States hereby submits its position on the sentencing of the defendant, Wayne Shelby Simmons, in accordance with U.S.S.G. § 6A1.2 and the policy of this Court. As explained in detail below, the defendant is a longtime criminal and con man who apparently stumbled upon his "CIA con" as the perfect means to explain away a lifetime of malfeasance and personal and professional failures. His fraud, however, was serious and had the potential to endanger national security and put American lives at risk. The government therefore believes a substantial sanction is necessary and submits that a sentence of 37 months of imprisonment would be appropriate in this case.

Table of Contents

I. Charges & Guilty Pleas

On October 14, 2015, the grand jury returned an indictment charging the defendant with one count of making false statements, in violation of 18 U.S.C. § 1001 (Count 1), two counts of major fraud against the United States, in violation of 18 U.S.C. § 1031 (Counts 2-3), and four counts of wire fraud, in violation of 18 U.S.C. § 1343 (Count 4-7). The charges related to the defendant's various attempts at obtaining money from the government, government contractors, and a private individual by means of materially false and fraudulent statements and representations — most notably, his claim that he was a supposed former long-time agent of the Central Intelligence Agency (CIA). Specifically, Count 1 charged the defendant with making this false statement on security clearance forms submitted to the government in 2009 in connection with his attempt to obtain employment with government contractor Triple Canopy. Count 2 charged the defendant with defrauding the government with respect to his work for government contractor BAE Systems in 2008-2009 in connection with the U.S. Army's Human Terrain Systems Program. Counts 3-5 charged the defendant with defrauding the government and a government subcontractor with respect to his work as a senior intelligence advisor on the International Security Assistance Force's (ISAF) Counterinsurgency Advisory and Assistance Team (CAAT) in Afghanistan. And Counts 6 and 7 charged the defendant with defrauding an individual victim, E.L., in 2011 in connection with a bogus real estate investment.

On April 29, 2016, the defendant pleaded guilty to Counts 3 (major fraud against the United States) and 6 (wire fraud), and the government agreed to dismiss the remaining counts of the indictment. The defendant also pleaded guilty to a single count criminal information charging him with being a convicted felon unlawfully in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). In his plea agreement, the defendant agreed that:

> [t]he government would prove at trial that the defendant never worked for or on behalf of the CIA or any other governmental agency during the period 1973 through 2000, and that the defendant likewise was not involved in any activities that could have caused him to reasonably believe he was working on behalf of such agencies.

Dkt. No. 104 ¶ 6. In a statement of facts filed with his plea agreement, the defendant admitted to knowingly and intentionally defrauding the U.S. government and making materially false statements regarding his work history, criminal history, financial history, and prior security clearances. *See* Dkt. No. 105 ¶¶ 1, 3-4, 7-8, 10, 12-13. He admitted that there are no records or any other evidence that he was ever employed by or worked with the CIA, had ever trained with the CIA, had ever applied for or been granted a security clearance by the CIA, or had ever been given access to any CIA facilities. *Id.* ¶ 4. He admitted defrauding E.L. into giving him funds for a nonexistent real estate investment, which he simply used on personal expenses. *Id.* ¶¶ 16, 18. And he admitted that that when he was arrested in this case in 2015, he was unlawfully in possession of two firearms, as he had been convicted of a felony offense in Maryland in 1979 and two federal felony firearms offenses in 1984. *Id.* ¶¶ 22-23.

II. Government's Investigation

Throughout his fraud schemes, the defendant has consistently claimed that in 1973, while in Navy boot camp, he was recruited by the CIA, and that from 1973 to 2000, he was employed by that agency as what he calls an "Outside Paramilitary Special Operations Officer." The government has thoroughly investigated the defendant's claims of CIA association, and has determined that they are completely and utterly false. As set forth in detail below, this investigation has included A) a search of CIA records and interviews of former CIA officials; B) an analysis of the "operations" in which the defendant claims he was involved; C) an investigation of the defendant's military, employment, and criminal history; and D) an analysis of the defendant's uses of his "CIA Fraud."

A. CIA Records

1. Agency Records Search

A thorough search was undertaken of the CIA's records to determine whether the defendant was ever employed by or associated with that agency in any capacity. The search was guided by the defendant's claims: association with the agency from 1973 to 2000, work as either a non-official cover officer (NOC) or in some type of paramilitary capacity, and a top secret security clearance.

Witnesses would have testified that if the defendant had served as a NOC or some type of paramilitary officer, that would have been an indication that the defendant served as an employee of the agency. As an employee, there would have been voluminous personnel records regarding the defendant, like application, hiring, performance, and payment records. There would have been voluminous security records, including security clearance applications and periodic renewals, drug testing records, polygraph test results and reports, and nondisclosure agreements for classified programs into which the defendant was read. There would also have been medical evaluation records. If the defendant had been involved in clandestine operations, there also would have been voluminous records within the agency's Directorate of Operations, including cable traffic mentioning the defendant. The defendant has never claimed he used a pseudonym, but even if he had, the searches would have uncovered records related to the defendant because the agency has the means to tie back pseudonym records to true name, and certain records, like security clearance material, would be in true name. Agency employees would have testified at trial that none of these records exists for the defendant, and he therefore was never an employee of the agency, including with non-official cover or in any paramilitary capacity.

Notwithstanding the narrow nature of the defendant's repeated and consistent claims about his role at the agency, the CIA undertook a broader search of its records to ensure the

defendant was never associated with the agency as a contractor, asset, or source. Agency employees would have testified at trial that if the defendant had been a contractor at the agency, there would have been similar records as would have been found if he had been an employee, including voluminous security records. Agency employees would have further testified that if the defendant had been a source or an asset for the agency over a 27-year period, there would have been voluminous records related to the defendant in the Directorate of Operations, including cable traffic. As noted, even if the defendant had used a pseudonym, the agency would be able to tie those records back to the defendant's true name. Again, agency employees would have testified at trial that there are no records at the agency supporting any kind of claim that the defendant served in the capacity of a contractor, asset, or source associated with the CIA.

Agency employees would have further testified at trial that there were some records related to the defendant in agency files — albeit records not corroborating the defendant's claims. In particular, an agency witness would have testified that records related to the defendant were located within the agency's Office of the Inspector General (OIG), the Publications Review Board, and the Threat Management Unit. The OIG records reflect that in 2007, following a meeting between the defendant and a CIA attorney where the defendant claimed he had worked for the agency (discussed in more detail below), OIG conducted a thorough review of agency records related to the defendant. OIG records reflect that searches were done on the defendant's name and personal identifiers, the names of operations he claimed to have been involved in, and the names of individuals the defendant claimed were his case officers or handlers. Based on these searches, OIG determined that the defendant was a fraud and had never been associated with the agency.

Publication Review Board records reflect that in 2013, a former CIA employee sought the agency's permission to publish a story outing the defendant as an imposter and a fraud. Agency records reflect that a search was again performed to determine if the defendant ever had an association with the agency, it was determined that he did not, and the Board approved the former employee's publication of the story. Were the defendant's claims of agency affiliation legitimate, one obviously would not expect to see the Board's approval of a piece calling the defendant out as a fraud. Rather, one would expect to see records of the defendant's own submissions to the Board of requests to appear on-air as a national security commentator, and to publish his novel — of which there is none.

Two records were also located within the CIA's Threat Management Unit, which deals with external security threats to the agency's personnel and facilities. One of those records reflects an unsolicited item sent by the defendant to the agency. The other record relates to an unsolicited email mentioning the defendant that was sent to the agency by a third-party. Neither record supports any inference of association between the defendant and the agency. Indeed, that an item sent by the defendant was routed to the Threat Management Unit is consistent with every other record uncovered regarding the defendant at the agency: he was known by the agency not as a former employee or asset, but as a fraud and an imposter.

2. Interviews of Former Senior Agency Officials

To corroborate the testimony of current agency employees, the government also identified and interviewed several retired officials who served at the agency in senior operational capacities during the timeframe the defendant claims he was associated with the agency. These officials confirm that it would be impossible for there not to be records regarding an individual with service like that claimed by the defendant. Fred T., a former agency official who first joined the agency in 1964 and held various senior positions, explained that it would have been

impossible for the defendant to have been associated with the agency for 27 years without there being voluminous records. Fred T. explained that if the defendant had worked for the agency, including as a NOC or a contractor, there would be, among other things, fingerprint records and multiple years' worth of polygraph records. He stated that while agency records could be tightly compartmented, there was no such thing as someone being "off book," in terms of no records existing regarding them. Fred T. also explained that if the defendant received payments from a case officer, there would have been documentation of such payments. Fred T. Interview 4/5/2016.[1]

David Cohen, a former agency official who served from 1966 to 2000 in various senior roles, including as Deputy Director of Operations (the senior-most official in the clandestine service), echoed Fred T.'s statements. Cohen stated that if an individual had a 27-year association with the agency, there would be a file "five feet high," and even if someone had a short affiliation with the agency, there would be records reflecting it. Cohen explained that even if the defendant had been recruited, for example, as an agency asset, it would have been documented in agency files by the recruiting officer. Cohen also stated that if the defendant had been an agency asset and knew his case officer by a false name, it would be easy to trace that back to a true name in the agency's records, and it was inconceivable that the defendant, as he claims, had the same handler or case officer from the 1970s through the 1990s because such personnel moved around regularly. Finally, on the claim of "rogue" or "off book" operations, Cohen stated that while it was always possible to have a couple individuals do something improper for a short period of time, such activities could always be unraveled on account of the agency's systems and records, and in any event could not persist for 27 years. David Cohen Interview, 4/15/2016.

[1] All of the referenced interview reports were produced to defense counsel in discovery.

B. Analysis of the Defendant's Claimed "Operations"

The government has also thoroughly investigated the supposed "operations" the defendant claims he was involved in, which are set out in the defendant's CIPA § 5 Notice, Dkt. No. 89. That investigation has included interviewing many of the individuals named as having been involved in the operations, and interviewing former senior CIA officials who would have been in a position to have knowledge of the supposed operations. The result of the government's investigation is that not only were the defendant's "operations" not related to any intelligence activities, but they also never even occurred. As set forth below, the defendant has, at times, taken real people he interacted with, or real places he frequented, and concocted fictitious stories around them that support his CIA fraud.

1. "Operation Iranian Trust"

The defendant names his first operation "Operation Iranian Trust," and claims he was involved in "an undercover investigation of a political extortion, cocaine, heroin, and arms trafficking organization" from 1975 to 1984 at the Bastille Supper Club and the Paragon Club in College Park, Maryland, and at the Godfather strip club in Washington, D.C. Dkt. No. 89 at 2. The defendant claims his "handler" was a man named Terrance Holland, and that his targets included Tommy Motlagh and a former CIA officer named Donald Denselya. *Id.* at 3.

There are no records at the CIA regarding this supposed operation or the defendant's supposed case officer, Holland, including in pseudonym. The government's investigation has determined that Motlagh and Denselya, who is in fact a former CIA employee, were part owners of some or all of the three establishments the defendant identified.

The government has interviewed Tommy Motlagh, who has confirmed that both the defendant and the defendant's brother worked for him periodically as doormen at the Bastille Supper Club. Tommy Motlagh Interview, 12/15/2015, at 1. Motlagh also stated that he dated

the defendant's youngest sister during the time period 1978 to 1981. *Id.* Motlagh recalled the defendant as a "bull-sh****" and a "con-artist" who used cocaine. *Id.* Other witnesses, including the defendant's friend W.K., his brother, his sister-in-law, and his friend D.V. corroborate that the defendant merely worked as a doorman for Motlagh at the night clubs, and his sister-in-law corroborated that Motlagh dated the defendant's youngest sister for a period of time. *See* W.K. Interview, 2/4/2015; M.S. Interview, 4/4/2016; J.S. Interview, 4/8/2016; D.V. Interviews, 3/12/2016 & 4/22/2016. D.V. also corroborated the defendant's cocaine use, and related an instance when she witnessed the defendant with a large quantity of cocaine in the defendant's apartment, which the defendant was both using and packaging for distribution. D.V. Interviews, 3/12/2016, at 2, 4/22/2016, at 4.

2. "Operation New England"

The defendant names his second operation "Operation New England" and claims he was involved in "an undercover investigation of arms, cocaine, and marijuana trafficking headquartered in and around Boston, Massachusetts." Dkt. No. 89 at 5. The defendant again claims his "handler" was Terrance Holland, that he was at the time living in a "CIA safehouse leased in [his] name" in Silver Spring, Maryland, and that his targets included Tommy Tindall, Tim Minnig, and Robert Frappier. *Id.* There are no records of any of this at the CIA, and the government has interviewed Tindall, Tindall's law enforcement handlers, and a federal prosecutor who was involved in the Tindall case regarding the defendant's supposed involvement in the investigation.

Tommy Tindall was a marijuana trafficker in the late 1970s, was prosecuted federally in multiple jurisdictions, and ultimately cooperated extensively with the government in the investigation and prosecution of others, including Frappier and Minnig. According to Tindall, he met the defendant in the mid-1970s. Tommy Tindall Interview, 1/20/2015, at 5. He describes

the defendant as "charismatic" and a "bull sh****." *Id.* at 1. He also corroborates that the defendant worked for an Iranian at a night club and that the defendant used cocaine. *Id.* at 6. According to Tindall, on one occasion the defendant accompanied Tindall to Florida and was responsible for driving 200-300 pounds of marijuana up the coast on behalf of the drug trafficking organization. *Id.* at 7. On another occasion, the defendant accompanied Tindall to New York to a meeting with Frappier. *Id.*at 8. According to Tindall, he and Frappier thought the defendant was a "loose cannon" and excluded him from further involvement in the organization. *Id.* Tindall confirmed that again, on the trip to New York, he observed the defendant using cocaine. *Id.* According to Tindall, this was the extent of the defendant's involvement in the drug trafficking.

The government has corroborated Tindall's statements with interviews of Tom Salp, Tindall's FBI handling agent; Peter Vinton, Tindall's DEA handling agent; and Ken Bauman, one of the AUSAs who prosecuted Tindall and was involved in securing Tindall's cooperation. They all confirmed that the CIA had no involvement in the investigation of Tindall, Minnig, or Frappier, and that the defendant was not working undercover on behalf of law enforcement. Tom Salp Interview, 1/29/2015, at 2; Peter Vinton Interview, 1/29/2015; Ken Bauman Interview, 2/19/2016.

3. "Operation Kazakhstan"

In his third supposed operation, what the defendant calls "Operation Kazakhstan," the defendant claims he was involved in "an undercover intelligence operation between 1994-1997 concerning the current political, social, military, and economic status of the Republic of Kazakhstan." Dkt. No. 89, at 6. The defendant identifies his "handlers" as "Terrance Holland" and "Daniel Cohen." Again, the CIA has no records of this supposed operation, nor of the supposed "handlers."

The government has interviewed an individual named Kenneth Carnesi, who was involved with the defendant in attempting to exploit business opportunities in Kazakhstan in the 1990s. According to Carnesi, he had a contact in the Kazakh government and was attempting to introduce U.S. businesses to the Kazakh market. Kenneth Carnesi Interview, 9/22/2015. Carnesi was introduced to the defendant, who was then working as a mortgage broker, and was led to believe by the defendant that the defendant had business contacts that potentially could be of use to his consulting business. *Id.* According to Carnesi, he and the defendant traveled together to Kazakhstan on multiple occasions, but none of the business deals came to fruition. He described that the defendant on the trips would "often get so drunk that it could not have been an act," and that he never permitted the defendant to meet alone with Kazakh officials because he did not believe the defendant "was well-spoken or perhaps intelligent enough to do so." *Id.* at 3. Carnesi also stated that the defendant represented himself as having graduated from the Naval Academy and having been a Navy SEAL — statements that are false. *Id.*at 4. In 1994, in connection with the defendant's bankruptcy, the defendant filed a letter written by Carnesi laying out the business ventures in which they were involved together. *See* Government Exhibit ("GX") 15-2.[2] Carnesi has explained that none of the identified ventures was completed, and that he was surprised to learn the letter had been submitted to a bankruptcy court because the defendant represented himself to Carnesi as having been of significant means. Kenneth Carnesi Interview, 3/16/2016, at 1.

4. Graysonville, Maryland "Safe House"

The fourth supposed operation noted by the defendant involves a house in Graysonville, Maryland the defendant claims was a "safe house . . . used by CIA and other U.S. Intelligence

[2] The cited exhibits have been attached to this filing in numerical order. For multi-page exhibits, only the referenced pages have been included. The exhibits were numbered and marked in preparation for trial and have not been renumbered and remarked for purposes of sentencing.

agencies to run covert operations as well as store and distribute narcotics and arms during the years 1990-1994." Dkt. No. 89, at 7. Again, the CIA has no records of this supposed "safe house," and the government's investigation has revealed that the Graysonville property was simply a vacation home purchased by the defendant. The defendant's sister-in-law reported that the house was old and dilapidated, and that she and other family members contributed furniture to help the defendant and his family furnish the home. J.S. Interview, 4/8/2016, at 2. She also reported being present at the house for family gatherings and parties. *Id.* Friend D.V. also reported attending parties there. D.V. Interview, 4/22/2016, at 5.

The Graysonville home, moreover, was the cause of the defendant's 1991 bankruptcy filing. The defendant's bankruptcy petition notes a $490,000 claim by Citicorp Mortgage on the property, and the property is listed with a value of $1 million owned by the defendant and his wife as tenants by the entireties. GX 15-1. The petition also notes a suit by Colonial Mortgage to set aside the defendant's purchase of the property. *Id.* at 5. In a 1994 Motion to Approve Settlement of Title Litigation and to Approve Abandonment of Property, the defendant, through counsel, explained that "[t]he reason for the filing of this bankruptcy proceeding was the filing of litigation in the Circuit Court for Queen Anne's County, Maryland . . . contesting the Debtors' ownership of certain property known as 504 Pierson Road, Graysonville, Queen Anne's County, Maryland (14.728 acres)." GX 15-6. According to the motion, the defendant agreed to quit claim his interest in the property to the plaintiffs who were claiming title to the property, abandon the property, and pay half of a $75,000 settlement to the plaintiffs. *Id.* at 2.

5. "Operation Alloy"

The fifth and final "operation" identified by the defendant, "Operation Alloy," involved, he claims, "an undercover investigation to locate, identify, and recover a very special alloy or object, most likely a Picosatellite," which he claims he was tasked in 1996 to return to DISA, the

Defense Information Systems Agency. Dkt. No. 89 at 8. In other materials provided to the government, the defendant identified a former DISA official named Bill Lillard as the individual to whom he delivered the supposed alloy. Neither the CIA nor the Department of Defense (of which DISA is a part) have any records to corroborate the defendant's claims. The government has interviewed Captain Lillard, who has no recollection of having any dealings with the defendant in or around 1996 or ever having met with anyone to discuss anything regarding a sensitive alloy. William Lillard Interview, 3/29/2006, at 1.

6. Interviews of Former Senior Agency Officials

In addition to searching agency records and interviewing individuals the defendant claims were involved in these "operations," the government interviewed former senior CIA officials who would have been familiar with these supposed operations, if they existed. Fred T. explained that any matter within the U.S. that involved Iranians would have been within the FBI's jurisdiction. Fred T. Interview 4/5/2016, at 2-3. Former head of the clandestine service David Cohen reviewed the defendant's Section 5 notice and stated that nothing in the defendant's notice described a CIA operation. David Cohen Interview, 4/15/2016, at 2. Cohen stated that the domestic narcotics operations the defendant described, if they existed, would have been DEA operations, not anything related to the CIA. *Id.* Cohen concluded that the defendant's claims and representations were so "farfetched" and "inconceivable," they were nothing more than a "Hollywood script." *Id.* at 3.

C. Investigation of the Defendant's Military, Employment, and Criminal History

As part of the investigation, the government has also conducted interviews and reviewed records in order to determine what the defendant was actually doing during the time period 1973

to 2000, when he claims he was working for the CIA. As set forth below, none of the defendant's activities during that 27-year period remotely relates to the CIA.

1. Military History

The defendant claims he was recruited out of the Navy into the CIA while in training in 1973. The government's investigation has confirmed that the defendant did enlist in the Navy in 1973, but that he was discharged after a couple weeks for medical reasons. The defendant's enlistment contract shows an enlistment date of May 3, 1973. GX 11-2. A sick call treatment record notes that the defendant was treated May 10, 1973 at the Recruit Dispensary, Naval Hospital, Orlando, Florida, for "black outs" and "recurrent headaches" and again on May 23, 1973 for headaches and dizziness, in both instances by a Dr. Sarlin. GX 11-4. A medical board report, dated May 25, 1973, signed by Dr. Sarlin, recommends that the defendant be discharged as "enlisted in error" because of "chronic recurrent headaches, post concussion." GX 11-7. The report itself states that the defendant had been evaluated for "chronic recurrent retro-orbital headaches," the "condition existed prior to enlistment," and that the defendant should be discharged as "enlisted in error." GX 11-9. In a statement of patient, signed on May 25, 1973, the defendant acknowledged the board's report and recommendation. GX 11-8. The materials are consistent with the defendant's pre-enlistment report of medical history, dated April 5, 1973, where he indicated a history of "[d]izziness or fainting spells" and "[p]eriods of unconsciousness." GX 11-1. The defendant's discharge record notes that he was separated from the service on May 30, 1973, honorable discharge, "character and behavior disorders – individual evaluation." GX 11-11. In an administrative remarks form dated May 30, 1973, it is again noted that that the defendant is being discharged "due to erroneous enlistment by reason of physical disability existing prior to entry on active service," and the defendant acknowledged that he is "not recommended for reenlistment." GX 11-12.

In order to corroborate the Navy records of the defendant's enlistment and medical discharge, the government located Dr. Robert Sarlin, who is a medical doctor and retired Navy officer. In 1973, Dr. Sarlin was stationed at the Naval Training Center in Orlando, Florida and was responsible for treating and evaluating Navy recruits. *See* Robert Sarlin Interview, 7/2/2014, at 1. Dr. Sarlin would have testified that he evaluated the defendant and signed the medical report recommending discharge. *Id.* While Dr. Sarlin, unsurprisingly, does not have an independent recollection of treating the defendant in 1973, he would have testified that there is nothing atypical about the defendant's evaluation and discharge forms, that he was never involved in creating any fake medical discharge forms in support of any CIA recruitment, and that all the medical forms he signed in the Navy reflected his honest medical evaluation of his patients. *Id.* at 2.

Interviews of former high-level CIA officials further corroborate the outrageousness of the defendant's claims about Navy boot camp CIA recruitment. According to both Fred T. and David Cohen, who were both with the agency in 1973 and have direct knowledge of the agency's recruitment methods during that time, there is no way the CIA would, or could, have recruited someone out of Navy basic training. Both indicated that the agency did recruit out of the military, but only individuals with combat experience or special operations training. Fred T. Interview 4/5/2016; David Cohen Interview, 4/15/2016. Both also made the point that in the mid-1970s, there was a significant number of individuals with real combat experience from the Vietnam War volunteering to serve at the agency. *Id.* Cohen also explained that the CIA does not have the authority to separate someone from the military. David Cohen Interview, 4/15/2016. An active member of the military could be an agency detailee, which would generate substantial paperwork, but the individual would remain in active military service. *Id.*

2. Employment and Criminal History

Following the defendant's medical discharge from the Navy, the defendant returned to Maryland. According to statements he made to author Mark Graham, he worked first as a painter with a business called East Coast Painting Contractors. He further told Graham that in 1974 he went to Alaska to do construction work on the Alaskan pipeline. This is corroborated by several individuals who knew the defendant at the time. According to friends W.K. and D.V. and the defendant's sister-in-law, the defendant worked in Alaska on the pipeline around 1974, but returned to Maryland after a short time because of a workplace injury. W.K. Interview, 2/4/2015, at 2; D.V. Interview, 3/12/2016, at 1; D.V. Interview, 4/22/2016, at 1-2; J.S. Interview, 4/4/2016, at 1.

The investigation has determined that when the defendant returned to Maryland, he played football, first for the semi-pro Baltimore Eagles football team and then for a short time for the New Orleans Saints NFL team.[3] Records obtained from the New Orleans Saints indicate that the defendant signed with the team on June 4, 1978, at an annual salary of $20,000, and that for a year prior to his signing, he had been playing for the Baltimore Eagles. GX 12-2, 12-3. Records indicate that the Saints made a $500 donation to the Eagles in exchange for releasing the defendant. GX 12-4. The Saints 1978 Rookie Roster identifies the defendant as a defensive back. GX 12-1. The defendant's time with the Saints ended with injury, however, just as did his time in the Navy and in Alaska. A letter from the Saints to the NFL dated August 24, 1978 indicates that the defendant is on reserve/injured status and is being waived upon recovery. GX 12-7. A letter to the defendant dated September 25, 1978 confirms his termination from the Saints. GX 12-9.

[3] Apparently unable to explain how he was working simultaneously as a paramilitary officer for the CIA and playing football in the NFL, the defendant now claims, for the first time, that he took a "leave of absence" from the CIA from 1977 until 1979.

Following his termination from the Saints, the defendant again returned to Maryland, and worked as a doorman at the nightclubs discussed above – the Bastille and the Godfather. In 1979, the defendant was convicted in Maryland of unlawfully carrying a handgun, given probation before judgment, and placed on unsupervised probation for a period of six months. *See* GX 21. In July 1980, the defendant got into an argument with some individuals outside a nightclub in Maryland and shot at them several times with a pistol. *See id.* The defendant was arrested, and he pleaded guilty in Circuit Court for Prince George's County, Maryland, to charges of common law assault and unlawfully carrying a handgun and was sentenced to five years of imprisonment with all but 60 days suspended. *Id.*

In 1984, a search warrant was executed at the defendant's home in Bowie, Maryland. That search led to both Maryland charges for gambling and federal felon-in-possession charges because two firearms were recovered from his home. The defendant pleaded guilty to the state gambling charge, and was convicted by a federal jury on the two firearms charges and sentenced to two years of imprisonment as to each of the two counts, all suspended, and five years of probation. GX 13-3.

A number of documents from the federal court record, including the defendant's sworn pretrial and trial testimony, provide information regarding his work activities in the early/mid-1980s. On May 7, 1984, the defendant submitted a sworn financial affidavit stating he was unemployed/self-employed with no earnings within the prior three months. GX 13-1. On August 27, 1984, through counsel, the defendant filed a request to modify his conditions of pretrial release because the geographic limitations placed on him had hampered his ability to run his limousine business. GX 13-2. In a pre-trial hearing on September 24, 1984, the defendant testified that from November 1983 up until January 1984, when the search warrant was executed

at his home, he had been operating a gambling/bookmaking operation. GX 13-7. In his trial testimony the next day, the defendant testified that in 1977 he played semi-pro football in Baltimore and then professional football for the Saints. GX 13-9. He testified that he had previously worked at a private club called Pisces in Washington, D.C. and then as a district manager for Making Waves Hot Tubs, a rent-by-the-hour hot tub business, and was then employed as the owner of Regal Limousine. GX 13-10. In his trial testimony, he also confirmed that he had received an honorable discharge from the Navy because of football-related concussion issues. GX 13-12.

Following his convictions, on January 29, 1985, the defendant submitted a sworn statement to the court in support of proceeding on appeal *in forma pauperis*. There, the defendant stated he had been the owner/operator of Regal Limousine Service since May 1984 and that his sole monthly income was an expected $1,200 from that business. GX 13-4. In May 1986, the defendant also sent a letter to the district court seeking a modification or reduction in his probation and explaining, at length, his employment with the American Anti-Graffiti Company. According to the defendant, he became involved with that business beginning in the summer of 1985 as vice-president of marketing and sales and was still then-employed with the company. GX 13-5.

Following the American Anti-Graffiti Company, the defendant founded, with a pathologist friend, an AIDs testing business called Blood-Check Inc. The defendant solicited investors for that business in violation of the securities laws, and on October 6, 1988, the SEC issued a litigation release explaining that the defendant had consented to the entry of a permanent injunction against him. GX 14. The release explains that from July 1987 through July 1988, the defendant was the president and a member of the board of directors of Blood-Check and was

responsible for offering to sell up to $500,000 in unregistered securities of its common stock by means of a prospectus that, according to the Commission, contained materially false and misleading statements regarding its history and liabilities. *Id.*

According to loan applications the defendant submitted in connection with the Graysonville, Maryland property (discussed above), and that are included in his bankruptcy court file, the defendant was then employed — in the late 1980s/early 1990s — at a business called Nasa Carpets and involved with a mortgage broker called Phoenix Management. *See* GX 15-4, 15-5. In the 1990s, the defendant was also involved with Ken Carnesi trying to do business deals in Kazakhstan, as discussed above. Individuals who knew the defendant have told the government that the defendant was minimally, if at all, working during this period of time and was largely, if not completely, living off of his wife's federal government salary. Interviews and records obtained by the government confirm that the home the defendant and his family were living in during this time had been purchased for the defendant by the defendant's parents. *See, e.g.*, J.S. Interview, 4/8/2016, at 3.

Former senior agency officials were also interviewed regarding the defendant's criminal and financial history. Fred T. explained that the defendant's being a convicted felon would have been grounds for excluding him from the agency, and a bankruptcy filing also likely would disqualify someone from working for the agency. Fred T. further stated that having multiple DUIs would be a signal to the agency that an employee was out of control and would not have been part of an agency operation. Finally, Fred T. observed that if the defendant had been involved, as he claims, in a CIA-sanctioned shootout outside a Prince George's County, Maryland night club, he would have known about it given his position at the time within the agency. Fred T. Interview 4/5/2016

D. The Defendant's Uses of the "CIA Fraud"

1. Fox News

The government believes the first time the defendant ever represented himself as having worked for an intelligence agency was in or around 2001. Based on interviews, the government believes that the defendant was successful persuading a public relations individual in or around 2002 of his supposed CIA past, and that this individual was instrumental in placing the defendant on Fox News. *See* Michael Collins Interview, 6/3/2014. It appears that as the defendant appeared more frequently, and successfully, on Fox News as a "former-CIA" commentator, he became more aggressive with his fraud.

The defendant's frequent appearances on Fox News enabled him to participate in the Rumsfeld Defense Department's Military Analysts Program, where members of the press were given briefings at the Pentagon and provided the opportunity to tour military facilities, like the detention center at the naval base in Guantanamo Bay, Cuba. The defendant was invited to participate in this program because he was a member of the press, not because the Pentagon ever did any vetting of his supposed CIA credentials. Donald Rumsfeld Interviews, 9/10/2014, at 2, & 1/13/2016; Tara Jones Interview, 2/29/2016, at 1. The majority of the briefings, moreover, were unclassified, and for those members of the press with no security clearance, like the defendant, no background investigation was ever done. Tara Jones Interview, 2/29/2016, at 1-2. Indeed, Allison Barber, who ran the program from approximately 2004 to 2007, recalls the defendant being present on one of the trips to Guantanamo Bay where he was escorted out of a classified briefing because he lacked a security clearance. Allison Barber Interview, 2/26/2016. Likewise, no security clearance was required for the defendant to fly to Guantanamo Bay as part of the program on military aircraft. *Id.*; Tara Jones Interview, 2/29/2016, at 2. The defendant's claim, therefore, that his participation in the Military Analysts Program and his trips to

Guantanamo Bay are somehow proof of the *bona fides* of his CIA past is entirely false. His participation in the program is merely proof of his success as a Fox News commentator.

In the mid/late-2000s, despite the defendant's prominence as an on-air commentator, he was in significant financial distress. While his Fox News appearances had brought him a degree of fame and enabled him to associate with real former military and intelligence officials and to participate in the Pentagon's outreach program, the Fox News position was unpaid. The defendant had a massive federal tax lien due to nonpayment of taxes, and by August 2008, the defendant owed an elderly man named T.M. $525,000 that T.M. had provided the defendant in personal loans. T.M.'s loans were secured by a second mortgage on the defendant's property, but the lien was worthless given the defendant's underwater first mortgage. GX 7-1. By April 2009, the defendant also had stopped paying the mortgage on his multi-million dollar home. GX 7-6 (noting an outstanding mortgage balance of $1.9 million).

2. Tax Lien

Beginning in or around 2007, the defendant conceived of a plan to use his CIA con as a way to deal with his massive federal tax lien. The defendant had a contact in the George W. Bush White House named Brian McCormack, who was a Deputy Assistant to the President in the Office of Public Liaison and had dealt with the defendant as part of an outreach program to on-air military analysts. Brian McCormack Interview, 3/10/2015, at 1-2. McCormack explained that no vetting was done of the military analysts who participated in the program and that he assumed the truth of the defendant's CIA claims. *Id.* at 2-3. McCormack recalled the defendant reaching out to him at one point about some issue involving taxes and needing a contact at the CIA, and McCormack stated he provided the defendant a contact in the CIA's Office of General Counsel. *Id.* at 3. That contact was Matt M., a CIA attorney.

In or around June 2007, pursuant to that outreach by McCormack, Matt M. met with the defendant at CIA headquarters in Langley, Virginia. At that meeting, the defendant made claims that he had been a long-time CIA officer and that certain income reflected on his taxes was actually attributable to clandestine operations. Matthew M. Interview, 10/1/2015, at 2. At that meeting, the defendant also provided Matt M. a folder of materials supposedly supporting his claims of agency affiliation. *Id.* Following the meeting, Matt M. initiated searches of agency records to determine whether the defendant's claims were true. According to Matt M., those search results were negative, and as noted above, evidence of that search and its results were produced during the agency's searches of its records in 2015 for this case. Matt M. also indicated that he received an email from the agency's security office indicating that the defendant was a "known crank." *Id.* According to Matt M., no action was taken with respect to the defendant, aside from referring the matter to the security office, and that he was instructed not to return the defendant's repeated follow-up calls. *Id.* When Matt M. was interviewed as part of this case, he provided the FBI the folder of materials received from the defendant. Those materials have been reviewed and provide no corroboration of the defendant's claims — they are primarily the defendant's notes and various press clippings. *See* Matthew M. Interview, 10/7/2015.

Having been unsuccessful with the CIA, the defendant then turned his attention to the IRS. The defendant met with an IRS employee named Don S. in February 2008 at IRS headquarters in Washington, D.C. In that meeting, the defendant again made claims that he had worked for the CIA and that certain issues he was having with his taxes were actually related to agency-sanctioned clandestine operations. Following that meeting, Don S. attempted to verify the defendant's claims of agency affiliation, but was unsuccessful. Don S. Interview, 1/20/2016,

at 1. Nonetheless, Don S. believed the defendant's story to some degree, and instructed the revenue officer assigned to the defendant's case to help the defendant by reducing his tax penalties and fees. Don S. Interviews, 6/16/2014, at 2 & 8/21/2014. Based on the government's analysis of the defendant's tax transcripts, it appears Don S.'s direction to the defendant's revenue officer resulted in a $1.1 million tax bill being abated by approximately $430,000.

Not only did the defendant's con result in this huge windfall reduction in his taxes, it gained for him individuals at the IRS who had bought into his story. Accordingly, one sees in the defendant's later security clearance forms a direction to confirm his CIA employment through the IRS. For example, in his security clearance application in 2009 for a State Department position, he stated:

> ALL ACTIVITIES related to my CIA Special Operations Group, NAMES, PHYSICAL LOCATIONS, DATES, NUMBERS, ARE CLASSIFIED. Verification of Employment CAN ONLY be made by contacting, the IRS Regional Manager, Steve Doherty. He can be reached at 443-XXX-XXXX. . . . .

GX 1-3. We understand that Doherty, who is now deceased, had been led to believe that the defendant was the real deal, so he became an unwitting tool in the defendant's fraud.

The defendant has also repeatedly lied about his interactions with Matt M. and Don S. on the issue of his taxes. The false narrative he perpetrates is that he went to the CIA without any proof of his claims of CIA affiliation, and that it was for that reason the CIA refused to acknowledge him. He claims that when he then met with Don S., they met in a SCIF, and he provided his supposed "ops" files, which Don S. relied on to believe his claims. When he was interviewed by the FBI, the defendant explained:

> I'm down on the Hill in the Senate Intel Committee saying you guys are screwing me again. Again, because in 2006 and I had to go, and you know the only reason the agency ever admitted to me? Is because President Bush's, Brian McCormick, you hear of Brian? . . .

> Picked up the phone and called general counsel and said you will see this guy, please. And that's what they did, and they still denied me. Until I told them that I had op files. Now can you imagine giving 27 years of your life and the only reason they finally agree to tell the IRS, at their main office, in the SCIF up on the 2nd floor, after I go in with op files and show them, and they finally, and all they would say is, oh yeah we know who he is now. That's how IRS became my verification of employment.

GX 8-5-T (excerpt of FBI Interview, 4/9/2014). Later in the interview, the defendant explained:

> And the IRS, thank god, there was a guy named Steve Doherty that I met, who was a regional director, a strong Christian guy, and also said, "No one could walk into my office with a story like this and it not be true." So he gave me the support and the time that it took for me to continue to pursue. And finally I had to threaten them with my op files. Nobody's supposed to have op files. But if I didn't have those op files, I was going to get hung out to dry.
> . . .
> And when I approached the IRS right here, I said gentlemen, here is the documentation. So, that's what we had to go through. And they wouldn't do it until Brian McCormick asked the general counsel's office to see me. And even after that, the investigator called up and said, Mr. Simmons we can't find you. And that's when I said to the investigator, did they tell you that I have op files, operations files. And there's like this pregnant pause on the phone. And he goes, "I'm sorry sir, what was that." And I said, I have op files. It's against the law to have op files, I'm sorry. But the only guys that you see on television that are surviving like me are the guys that had a case officer that said, keep an op file, because that's exactly what happens. You can read about it all day long on Google.

GX 8-7-T (excerpt of FBI Interview, 4/9/2014). The defendant continued the lies in a follow-up email to the FBI agent:

> Late Summer 2007- A meeting is arranged by President G.W. Bush White House for me to meet with GC Office at CIA Langley to discuss IRS financial issues.
>
> I attend the meeting without any documentation. After the meeting the GC Office still refuses to acknowledge me. A CIA Investigator contacts me privately and I explain to him that I have Operations files. An immediate meeting is arranged for me at IRS HQ, DC. I am told that CIA will also attend.
>
> Feb – March 2008- I attend meeting that is arranged at IRS HQ on Constitution Ave, in a skiff on 2nd floor, in an unmarked room. I present copies of OP files and begin presentation to . . . IRS CI. The meeting lasts less than an hour after agents halt my presentation. They confide that they "have seen all they want or need to see." I provide IRS/CIA with copies of some of my Op files. Shortly after the briefing in the skiff, the CIA finally acknowledges me. The IRS tax bill of $1,139,000 is removed. IRS, Steve Doherty and perhaps others with knowledge, serve as my Verification of past

> Employment with CIA. I am personally disgusted, angry and disillusioned that the CIA has treated me so poorly and created so many issues for me after all the sacrifices Corinne and I made for our country.

GX 9 (email dated 4/13/2014). As an initial matter the defendant does not even appear to understand the difference between a skiff and a SCIF.[4] But more to the point, his claims are completely false. As noted above, the defendant tried to provide "proof" to Matt M., but Matt M. quickly confirmed the defendant was a fraud. According to Don S., they did not meet in a SCIF, and the defendant did not bring any documentation at all with him to the meeting. Don S. Interview, 6/16/2014, at 1. No CIA investigator ever contacted the defendant, the CIA did not "attend" the meeting at IRS, and no one at the CIA ever "acknowledge[d]" him.

3. Human Terrain Systems Program

In 2008, apparently through contacts he made as a commentator on Fox News, the defendant sought and obtained a position with defense contractor BAE Systems and trained at Fort Leavenworth to be deployed to Afghanistan as a Human Terrain Systems team leader. In application paperwork with BAE, and again in his security clearance forms, the defendant made the false claim that he had spent 27 years working for the CIA as an "outside paramilitary special operations officer." *See* GX 2-11. The defendant's clearance forms also contain false statements regarding his criminal history and past security clearances. *See* GX 2-19. According to the defendant, "[a]ll arrests except for DUI of 02/2001, DIRECTLY related to Deep Cover Intel Ops for CIA." *Id.*

When he was interviewed by an OPM investigator in connection with his clearance, he told a series of false and outlandish stories about his criminal convictions. He told the investigator that, as to his DUIs, "he would have given the information and details to his CIA

[4] As the Court is no doubt aware, a "SCIF" is a Sensitive Compartmented Information Facility; a "skiff" is a boat.

case officer immediately after the incident occurred," and that "he was unaware what the CIA case office would have done," but that he "did not have sentencings for the incidents and they were adjudicated." GX 2-21. The defendant could not, however, "discuss any information regarding [his] case officer as it is CIA classified." *Id.* In regard to his 1980 charge of assault with intent to murder, which was pleaded down to a simple assault charge, the defendant explained that, "he was on a CIA classified operation in Hyattsville, Maryland," and that "in the middle of the operation, [he] and four Iranians," regarding whom he "cannot divulge information as CIA classified," "were leaving a nightclub, when three others . . . began shooting." *Id.* The defendant claimed that he could not "divulge [the] reasons for the attack as it is CIA classified," but that he "returned fire," the police arrived, and he was arrested and charged. *Id.* The defendant claimed that "he called his CIA case officer and reported the situation," and later pleaded guilty "per the instructions of his CIA case officer," and "cannot divulge [the] reasons for [those] instructions, and was sentenced to thirty weekends in jail. *Id.*

The defendant ultimately performed poorly in training and was asked to resign from the Human Terrain Systems program. The defendant's seminar leader, Lt. Col. Gordon Obermueller explained that he recommended that the defendant not deploy because his evaluations were so negative. Gordon Obermueller Interview, 8/27/2014, at 3. Col. Steve Rotkoff, deputy director of the HTS program, recalled the defendant as "act[ing] like a fictional CIA character instead of an actual CIA operative," and confirmed that the defendant was asked to resign from the program. Steve Rotkoff Interview, 2/23/2015, at 4.

A Monthly Developmental/Performance Counseling report for the defendant from the HTS program dated March 6, 2009, corroborates Lt. Col. Obermueller and Col. Rotkoff. It states that the defendant's "performance has declined to a substandard level," and that it "became

apparent that [the defendant] lack[s] the prerequisite skill set to be an HTT leader." GX 2-16. The report goes on to state that the defendant has "demonstrated a lack of respect for those on [his] team and for [his] fellow class mates," and that the "lack of respect for [his] classmates and [his] inability to control [his] anger has led to a hostile learning environment and a team revolt." *Id.* The report further states that the defendant "place[d] personal gain ahead of the goals and mission of the organization," his "failure to attend courses on a regular basis has seriously hampered [his] ability to perform as a team leader," and he "lack[ed] the leadership and managerial skills needed in a military environment to successfully lead an HTT team." *Id.* at 2. The report concludes that the defendant "be released from the Program as any form of remedial training would be ineffective." *Id.* at 3.

4. Worldwide Protective Service

After being released from the HTS program, the defendant attempted to obtain work with Triple Canopy on a State Department contract for the Worldwide Protective Service. In his security clearance forms, and interviews with investigators, the defendant repeated many of the same false statements he had previously made regarding his financial, criminal, and work history. In one such interview, the defendant claimed that because "he was assigned as an Outside Paramilitary Special Operations Officer," he "was told that the CIA may disavow (or at least not confirm) his existence as an employee/former employee, who had been involved in extremely sensitive and secretive operations." GX 1-6. He further claimed "that only about five people at the CIA knew of his identity (and the identities of other Outside Paramilitary Officers), and there were no personnel files maintained on them in the Human Resources Office at Langley, VA." *Id.*

After a thorough investigation of the defendant's background, the State Department denied the defendant a security clearance and found him unsuitable for the position, so he never

deployed. GX 1-4, 1-25. An internal State Department memorandum dated November 2, 2009, "strongly recommends against this applicant being considered for any position at any clearance level anywhere. His extensive criminal history, together with his continuing to adhere to his comical fantasy of being an 'outside paramilitary specialist' with the CIA renders him utterly unfit from any security perspective." GX 1-14 (emphasis added).

5. Counterinsurgency Advisory and Assistance Team

Undeterred, the defendant then sought and obtained work with subcontractor Drop Test International (DTI) as a senior intelligence advisor on the International Security Assistance Force's Counterinsurgency Advisory and Assistance Team (CAAT) in Afghanistan. In a resume the defendant provided to DTI, the defendant claimed that from 1973 through 2000, he was a "member of elite CIA Outside Paramilitary Special Operations Group," that he "Spearheaded Deep Cover Intelligence Operations to defeat Drug Cartels and Narco Terrorists from Central and South America, Eastern Europe, and the Middle East," and that he "Executed investigations and special operations against Narcotics and Arms Smugglers, Counterfeiters, Cyberterrorists and Industrial and Economic Espionage." GX 3-4, at 2. Remarkably, the defendant also lied on his resume about what he had done just a year earlier on the HTS program, stating the following:

> • Sociocultural Advisor to U.S. Army Generals and their civilian counterparts along with other government organizations providing socio-cultural information product assisting in decision making processes
> • Obtained designated permanent seat in Joint Operations Cell and Joint Fusion Cell as the socio-cultural advisor
> • Liaison between Afghan persons and U.S. Government operatives serving as mediator, negotiator, and mentor
> • Instructed over 50 indigenous persons to assist Coalition Forces in security operations
> • Manager of all social-cultural information analysis data filing systems

GX 3-4, at 1. Of course, all of these statements were false because the defendant never completed HTS training and was never deployed to Afghanistan. The defendant made various

false statements on his security clearance forms as well, regarding his financial, criminal, and work history and his past security clearances. *See* GX 3-17.

Nonetheless, the defendant received an interim secret clearance and was deployed to Afghanistan, including with Department of Defense authorization to be furnished firearms in-theater. *See* GX 3-8. After a short time, however, his clearance was revoked and he was sent home. DTI records reflect that the defendant was in Afghanistan May 14-24, 2010. Luckily, because of the nature of his interim clearance, he was not allowed to stay on base, or function in his CAAT position, and merely spent the time at a secure housing facility called Green Village in Kabul. Joseph Felter Interview, 1/5/2016, at 1.

According to Col. Felter, the CAAT commander (and a direct report to General Stanley McChrystal), at the time the defendant was deployed, the number of deployed coalition troops was its highest, U.S. forces were suffering their largest casualties, and it was a critical time in counterinsurgency operations. Joseph Felter Interview, 4/20/2016, at 1. Col. Felter further explained that the situation with the defendant "definitely had a negative operational impact" on CAAT's operations because it resulted in a vital position remaining vacant for an extended period of time after the defendant's removal. Joseph Felter Interview, 6/27/2014, at 2. General McChrystal explained that CAAT was responsible for teaching U.S. and Afghan forces how to conduct counterinsurgency operations and to assess whether forward deployed units were implementing those operations correctly, and that its job was "hugely important" to the war effort." Stanley McChrystal Interview, 8/5/2014, at 1.

6. E.L. Investment Fraud

Upon returning to the United States, the defendant was in continuing financial distress. He had no employment, his mortgage bills continued on unpaid, and he continued to solicit more and more loans and "investments" from T.M. (to whom he already owed well over half a million

dollars). In 2011, the defendant found an easy mark in E.L. E.L. and the defendant met in 2008 while the defendant was training at Fort Leavenworth, and they developed a sexual relationship. *See* E.L. Interview, 8/19/2013, at 2. By 2011, it appears E.L. and the defendant's relationship was more of a platonic friendship; however, the text messages between them through 2012 reveal that may not have been the case. In 2011, E.L. had access to $125,000 from a home equity line of credit, and the defendant induced her to wire him the money for what he described as a real estate investment involving retail shopping centers. *Id.* E.L. explained that given her relationship with the defendant and his career accomplishments, including his past as a supposed CIA operative and then-current position on Fox News, she trusted him completely. *Id.* at 3-4. As the defendant has admitted, there was no real estate investment, and he simply spent the money. Dkt. No. 105, ¶ 18. For a time, however, the defendant paid E.L. what she was led to believe was the monthly dividend on her real estate investment, and sent her repeated lies via text messages in an attempt to prolong the fraud. *Id.* ¶ 19.

For example, on June 16, 2012, alluding to the "rollover" option the defendant had told E.L. was part of the real estate deal, the defendant wrote, "[t]he miscommunication was that ou[r] guys thought to reinvest for larger return instead of return to u and now I'm pissed off and my guys r scrambling to recover money loaned out. They r embarrassed and doing everything to get returned. So incredibly sorry for CF! Tryin desperately to unscrew!" Text Message to E.L., 6/16/2012 11:17:48. Of course, there were no "guys" and no "reinvest[ment]"; the defendant had already spent E.L.'s money. On June 25, 2012, the defendant told E.L., "[b]aby…ur on the awesome end of the CF! No matter what u make $$$ and get great return!" Text Message to E.L., 6/25/2012 08:56:39. A few days later, the defendant told E.L., "Ur money is safe and I'm wrking to make arrangement." Text Message to E.L., 6/29/2012 08:50:08. The following

month, the defendant stated, "There r NO secrets E[ ]. It was re invested and I'm getting it back. This not cloak and dagger." Text Message to E.L., 7/6/2012 11:11:43.

After numerous false promises to E.L. that the repayment of her funds was imminent, the defendant offered more false excuses, including that, "I've been in very high level talks on positions for me with Republicans and at very least in hot spots around world. Most meetings not allowed phones. Will see what I can do and advise." Text Message to E.L., 9/5/2012 09:04:57. In 2013, the defendant told E.L., "Im traveling quick trip to see face to face. Ur very rich when finally done!" Text Message to E.L., 4/8/2013 10:25:21. And the next month, apparently frustrated when his lies failed to quell E.L.'s demands for repayment, the defendant lashed out, "Goddamn it E[]! I'm in meeting to resolve. Get a f***in grip! I'm not f***in with u! I'm resolving." Text Message to E.L., 5/16/2013 11:45:21. In a final text later that year, the defendant promised, "E[ ]-after much consternation I was finally able to determine that additional money due you will be paid in full, plus a reasonable amount of interest, on or before May 15, 2014. Text Message to E.L., 12/19/2013 06:24:48. That payment never came, the December 19, 2013 text was just another lie from the defendant meant to perpetuate the fraud.

7. Chase Bank

Around the time the defendant was defrauding E.L., he was also attempting to defraud his mortgage lender Chase Bank, who, due to the defendant's years of nonpayment, was moving toward foreclosure on the defendant's home. In a January 2012 letter to Chase, the defendant attempted to blame Chase for the revocation of his security clearance and his removal from Afghanistan and made repeated false statements about his work there. Among other things, the defendant claimed that while in Afghanistan he "was the Senior Intelligence Advisor to General Stanley McChrystal," that his "job was the most important one in country," and that he "traveled and worked in every combat zone in Afghanistan." GX 7-5, at 1. He claimed that "[a]fter

working in Afghanistan for only a month [he] was denied a TS clearance by DSS because of the Chase mortgage," and that "[e]ven [his] personal relationships with Gen McChrystal and Gen Petraeus could not fix the security clearance issue because Chase had not done what they promised to do and modify [his] mortgage." *Id.* at 2. As noted above, the defendant luckily never got to the point of giving intelligence advice to anyone while he was deployed, never traveled or worked in any combat zone in Afghanistan, and has no personal relationship with General McChrystal or General Petraeus, and nothing Chase did or did not do had anything to do with the revocation of the defendant's security clearance. *See* Interview of Joseph Felter, 4/20/2016, at 1.

8. Arlington National Cemetery

In 2012, the defendant's wife passed away. Following her death, the defendant conceived of a plan to have her remains inurned at Arlington National Cemetery, presumably in an attempt to secure a place there for himself and to ensure his false legacy of government service. In support of this plan, the defendant sent requests to Arlington National Cemetery claiming that when, in 1973, he was supposedly recruited out of the Navy and into the CIA, he received certain assurances from the Navy:

> In 1973 as a young 19 year old, I joined the US Navy . . . . During this time, I was approached by the CIA and recruited by them to work Non-official Cover (NOC), as an Outside Paramilitary Spec Ops officer. An agreement was reached between the Agency and the Navy to allow this move since; after all, it was still in defense of our Nation. All of these events occurred towards the middle of Boot Camp. . . . For 27 years, until 2000, I served this Nation performing operations that virtually no one else could . . . or would.
>
> At the time of the CIA recruitment, 1973, I was adamant and demanded assurance that because I was leaving in the middle of boot camp that if something happened to me that I would be buried at Arlington National Cemetery. . . . Fortunately, I survived all of the high risk missions in which I was involved and did not have to test the promises made by the Navy or the CIA; unfortunately, my wife has recently died of Stage 4 breast cancer and I am now being informed that I am not eligible . . . .

> Obviously, given the nature of the operations in which I was involved and the type of work that I performed for the Agency, I am unable to discuss this further in writing. I would appreciate the opportunity to meet in person to discuss further. I have enclosed a BIO as well as other information. I will also provide current and former CIA and military officers' names to verify my bona fides!

GX 18. In support of the defendant's campaign, retired Major General Gregory Schumacker and former Defense Secretary Donald Rumsfeld, with whom the defendant had come into contact through the Military Analysts Program, sent letters. The defendant's request and his submissions were taken seriously by the cemetery; however, his request was ultimately denied because his government service (assumed as legitimate by the cemetery) was insufficient to qualify him for burial there. *See* Interview of Kathryn Condon, 7/16/2014 (explaining that the Navy has no authority to obligate the U.S. Army, which operates the cemetery).

9. Benghazi Commission

In 2013, the defendant used his supposed CIA past to obtain a position on a commission investigating the attacks in Benghazi, Libya. In a speech at the National Press Club in Washington, D.C., the defendant told the attendees the following:

> [T]he four men that died in Benghazi — the warriors — I am that guy. I've been that guy. I spent twenty-seven years in what is termed "outside paramilitary special ops." I ran deep cover intelligence operations my entire career. Nobody knew who I was. Nobody was allowed to know who I was. So you can imagine that having been that guy who has spent virtually my entire career alone, and in those situations very similar to Benghazi, and absolutely knowing on a handful of those occasions that I was not coming out of this — it didn't knock down my determination to get out, but I knew I was not coming out. And but for the people that I relied on that came through, I would not be here today. So you can only imagine, I would suspect, how I must have been feeling, and guys like me must have been feeling, when we were reliving and continue to relive what we know in our heart of hearts what the final moments were like for these guys to go through.

Citizens' Commission on Benghazi Press Event, National Press Club, 9/16/2013. In fact, the defendant is not "that guy," and bears not a scintilla of resemblance to the men who tragically lost their lives in Libya.

III. Defendant's Obstructive Conduct

The defendant has also engaged in obstructive conduct throughout the course of the government's investigation. Following the defendant's April 9, 2014 voluntary interview with the FBI, he filed, through counsel, a complaint with the DOJ Inspector General (IG) making frivolous claims that the agents had violated his rights. *See* Simmons's Complaint, 6/1/2014. Of course the defendant was unaware at that time that the interview had been recorded, and the complaint was dismissed by the IG.

Also following the interview, the defendant contacted potential victim T.M. and made various statements intended to influence his dealings with the FBI. The defendant told T.M. that T.M. should not be speaking with the FBI because it would negatively impact a business deal T.M. had with the defendant, and the defendant stated that Special Agent McLamb, the case agent, was "just an office girl" and not really who she claimed to be. T.M. Interview, 5/14/2014, at 1. The defendant later told T.M. that he had hired an attorney who was going to "slam" Special Agent McLamb and who would "straighten her a** out." *Id.* at 2. The defendant also later induced T.M. to sign a document indicating he had not been victimized by the defendant. T.M. Interview, 6/23/2014.

The defendant has also repeatedly made the absurd claim to potential witnesses that the investigation and charges against him were somehow politically motivated. He described the government's investigation to T.M. as a "witch hunt." T.M. Interview, 5/14/2014, at 2. The defendant told Kenneth Carnesi:

> My schedule is crazy as the Obama/Holder criminal cabal was coming hard at 2 of us who appear on Fox News and have mocked the "Boy King". The intimidation was relentless as DoJ attempted to use scorched earth policy on us. There are no charges just intimidation. We are represented behind the scenes by firms you would immediately recognize and military and intelligence pros who are disgusted by the FBI and DoJ. DoJ slowly backing off as we kick their a**.

GX 22. The defendant sent a similar text message to Keith Urbahn, a former Rumsfeld aide and potential trial witness:

> I succeeded in becoming the number one enemy of Pres Obama and Hilary Clinton as well as many others like former Attorney General Eric Holder and Speaker of House Nancy Pelosi. The charges are all lies and innuendo. They are doing their best to discredit and destroy me! . . .

GX 23. The defendant also told the *New York Times Magazine*, that "his legal problems were an Obama administration ploy, a craven attempt to punish him for his opinions and to discredit the Citizens' Commission on Benghazi." The Plot to Take Down a Fox News Analyst, *New York Times Magazine*, 3/6/2016.

The defendant's attempted obstruction continued with respect to a potential government witness regarding one of the defendant's supposed CIA "operations." As noted above, the defendant claimed a former DISA official named Bill Lillard was involved in the "operation." The government interviewed Captain Lillard, who confirmed no such operation took place. *See* William Lillard Interview, 3/29/2006, at 1. The defendant, however, also contacted Lillard around this time and attempted to "remind" Lillard of their having met back in 1996. William Lillard Interview, 4/5/2016, at 1.

The defendant also attempted to obstruct justice as to potential firearms charges. As the defendant has admitted, he was convicted in 1979 in the State of Maryland of an offense punishable by imprisonment for a term exceeding one year. Dkt. No. 105, ¶ 22. In 1984, he was convicted in federal district court in Baltimore, following a jury trial, of two counts of being a convicted felon unlawfully in possession of firearms. *Id.* ¶ 23. When he was arrested on October 15, 2015 in this case, two firearms were recovered from his home. *See id.* ¶ 24. One firearm, the Benelli, was recovered in a firearm case on the floor of the defendant's bedroom closet. Report of Investigation of Special Agent Sean Regan, 10/14/2015, at 2. The second

firearm, the Beretta, was "readily accessible behind the closet door, standing upright in the corner." *Id.* On the ATF form the defendant had filled out and signed in order to purchase the Benelli in 1994, the defendant falsely claimed he had never "been convicted in any court of a crime punishable by imprisonment for a term exceeding one year." GX 17. At the time, the defendant was only five years out of probation on his double-conviction for being a felon-in-possession of a firearm. *See* GX 13-3.

Following the defendant's arrest, he was detained for a period of time pending trial, and during his detention, he had multiple telephone conversations with his son (identified in the transcripts as WJS) regarding the firearms. Those conversations were recorded, and the recordings show the defendant's repeated attempts to get his son to lie about the ownership of the firearms in order to try to evade responsibility for, once again, unlawfully possessing firearms.

In the first call, on October 21, 2015, the defendant, cognizant that the call is being recorded, concocts a story "remind[ing]" his son that the son coincidentally left his firearms at the defendant's home when he moved. Apparently unsure how to respond, his son plays along:

> WS: . . . . Now, the one, the only, the last thing I want to remind you of was that, um, um, your uh, how, how odd was it that I would have your, your shotguns, when you moved, and I would have them both while you moved, and then they come and get me and they're both there.
>
> WJS: Yeah, and that's what I said. I was like, you know, that I've, I've had 'em there for, I've had them there since forever and I, I didn't even bring 'em with me obviously, so, uh, yeah.
>
> WS: Yeah, exactly. So, I've got 'em and, yeah, I mean, what, what are those odds? So, both your guns would be at—
>
> WJS: Yeah.
>
> WS: Unbelievable.
>
> WJS: Yeah.

WS: So, anyway—

WJS: How do I, do you even know how I get those back? Am I, can I request those, or, or, or [UI]

WS: Yeah, they'll, yeah, yeah the attorneys, them the attorneys will work on that. The attorneys will get those back.

WJS: Alright.

WS: I mean, they're not mine, so, they're both yours. So, you'll get 'em back.

WJS: (Clears throat) Mmkay. Um—

Recorded Call, 10/21/2015, 20:03:59.

The next day there is another call. To the son's credit, he tells his father he cannot falsely take responsibility for the firearms; however, the defendant responds by pressuring his son to falsely claim the firearms as his own, to go along with the defendant's story, and to "answer the way you're supposed to":

WJS: Um, one of Whitney's investigators called me.

WS: Right.

WJS: They want me to, um, write a statement about what you had here, and I can't, I can't claim, do you know what, do you know what I mean? I can't, I, I, I can't—

WS: You don't mean what you picked up today? You mean, uh, you mean, the uh—

WJS: No.

WS: The, the other things, that were yours?

WJS: Yeah. Yes.

WS: Your other things, yeah. You mean simply that they're yours.

WJS: Which they, which only—

WS: Yeah, but they, but they were. Yeah, they were. (Clears throat). 'Cause the old th, the big, the big one I gave you, and the, the .20 I bought you. (Clears throat).

WJS: Okay. What else is, what else is goin' on?

. . .

WS: Good. Yeah, that, I mean that, that other, that other thing is just, you know, they were, they were, you know, one was a birthday gift, and one was just a gift. You had to do something with 'em while you were movin'. Alright?

WJS: (Sighs) Uh, yeah. I mean, do you, do you—

WS: Well, do what you have to do.

WJS: —I, I mean, I, I just, I ca-, I—

WS: Just answer the way you're supposed to.

Recorded Call, 10/22/2015, 17:45:00.

Two days later there is another call, and the defendant and his son again discuss the firearms. The defendant's son again indicates he will not lie about the ownership of the firearms, and this time the defendant relents:

WJS: So um, I've been thinking a lot about the, uh, the, the stuff at the house, um, so, the two, the two things?

WS: Mhmm

WJS: The one obviously was—

WS: Yeah, yeah, yeah, yeah, yeah. Yeah, yeah.

WJS: Alright. I, I can't. I'm gonna s-, one was mine—

WS: Yeah, that's right.

WJS: And then, I'm just saying the other one was family, 'cause—

WS: Yeah. That's fine. That's fine, son.

WJS: Yeah. Okay, I got no re-, okay.

WS: Yeah, absolutely. Yeah, we're not going there. We don't need to.

WJS: Yeah. No. Alright.

WS: We don't need to. It's a, it's a, it's a family, uh, it's a family, uh-

WJS: Yeah, uh, yeah, that's what-

WS: Blah, blah, blah. It goes back in the family and the other one was your gift.

WJS: Yep. That's how I always knew them as to be. So—

WS: Of course it has to be. Yeah. Perfect. Good. . . .

Recorded Call, 10/24/2015, 13:56:20.

Finally, four days later, on October 28, 2015, the defendant and his son again discuss the firearms, and the son again reasserts that he is not willing to lie about the ownership of the firearms:

> WJS: She can't, she couldn't tell Allison a whole lot because, I guess you, she has to get permission from you. Um, they had gotten the discovery, um, with some witness statements and stuff like that, but she couldn't tell her what it was, or who said anything, um, and then there was a, you know, my statement, um, even though it, it's a true statement, they may not, may not want to use it now, um, since, well, I can't claim that both guns are mine, and that one of the guns, that you weren't supposed to have any in the house, and it sounds like you have two of 'em, for a long time, in the house, um, so, I, I don't, I, I, I honestly I'm surprised, I just thought you had, had talked to, uh, Whitney by now.
>
> WS: No, uh uh.
>
> WJS: (Clears throat)
>
> WS: No.
>
> WJS: So, um, yeah. So—
>
> WS: Hm. Well, I don't, I don't know what I, I—

Recorded Call, 10/28/2015, 19:01:36.

In short, the defendant fully intended to have his son lie about the ownership of the firearms recovered from the defendant's home in a misguided attempt to evade responsibility for, once again, unlawfully possessing firearms. The defendant's obstructive conduct was

unsuccessful not because the defendant had a change of heart, but because his son, despite being told by his father to "[j]ust answer the way you're supposed to," refused to go along with the charade.

IV. Sentencing Argument

Although the Supreme Court rendered the federal Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005), "a sentencing court is still required to 'consult [the] Guidelines and take them into account when sentencing.'" *United States v. Clark*, 434 F.3d 684, 685 (4th Cir. 2006) (quoting *Booker*, 543 U.S. at 264). The Supreme Court has directed district courts to "begin all sentencing proceedings by correctly calculating the applicable Guidelines range." *Gall v. United States*, 552 U.S. 38, 49 (2007). The sentencing court, however, "may not presume that the Guidelines range is reasonable." *Nelson v. United States*, 555 U.S. 350, 352 (2009). The "Guidelines should be the starting point and the initial benchmark," but the sentencing court must also "consider all of the § 3553(a) factors" in determining the appropriate sentence. *Id.; see also Clark*, 434 F.3d at 685. Ultimately, the sentence imposed must meet a standard of reasonableness. *See Booker*, 543 U.S. at 260-61.

A. Guidelines Range

The government agrees with the Guidelines calculations set forth in the Presentence Investigation Report (PSR), with the exception that the government committed in the plea agreement to recommend that a base offense level of 12 applies to the felon-in-possession of a firearm conviction. *See* Dkt. No. 104 ¶ 5. Applying that base offense level, the government calculates a total offense level of 18, resulting in an advisory Guidelines range of 30 to 37 months of imprisonment.

1. Acceptance of Responsibility

The government agrees with the Probation Office's refusal to award credit for acceptance of responsibility under U.S.S.G. § 3E.1.1. On this issue, the plea agreement provides:

> The government would prove at trial that the defendant never worked for or on behalf of the CIA or any other governmental agency during the period 1973 through 2000, and that the defendant likewise was not involved in any activities that could have caused him to reasonably believe he was working on behalf of such agencies. To the extent the defendant argues at sentencing to the contrary, the parties agree that the government will oppose any credit for acceptance of responsibility under U.S.S.G. § 3E1.1.
>
> If the government and the Court agree that the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional one-level decrease in the defendant's offense level.

Dkt. No. 104 ¶ 6. The PSR makes clear that the defendant is refusing to admit the falsity of his claims about CIA affiliation. The PSR reports that the defendant "will not 'disavow' his connection with the CIA," that he "has never acknowledged that the statement he worked for the CIA is false," and that he "advised [the Probation Officer] he has proof of his employment and affiliation with the CIA." PSR ¶ 54. The defendant has failed to "truthfully admit the conduct comprising the offense(s) of conviction," or at the very least is "frivolously contest[ing] relevant conduct." U.S.S.G. § 3E1.1. Applic. Note 1(A). Moreover, the defendant's statement that "he has proof of his employment and affiliation with the CIA," *directly contradicts* his admission in the statement of facts that "[t]here are no records or any other evidence that the defendant had ever been employed by or worked with the CIA." Dkt. No. 105 ¶ 4. Finally, to the extent the Court disagrees with the government and the Probation Office and awards the defendant acceptance credit, the government does not move for the additional one-level decrease under U.S.S.G. § 3E1.1(b). The plea agreement states that the government will move for the third point "[i]f the government and the Court agree that the defendant qualifies for a two-level

decrease in offense level pursuant to U.S.S.G. § 3E1.1(a). Dkt. No. 104 ¶ 6. As noted, the government does not agree that the defendant so qualifies.

2. Obstruction of Justice

The government also agrees with the Probation Office's assessment of an obstruction of justice enhancement as to the gun charge, though the government notes that this enhancement has no effect on the final offense level given the multiple count adjustments.[5] As noted above, the defendant sought to have his son lie to the government and to the Court about the ownership of the firearms in an attempt to falsely mitigate his responsibility for their possession. The facts in this case closely track those of *United States v. Hailey*, 232 F. App'x 300 (4th Cir. 2007), where the Fourth Circuit endorsed an obstruction enhancement. In *Hailey*, firearms had been seized during a search of the defendant's home, and the defendant, just like the defendant in this case, "feared that federal charges would be filed against him because, as a convicted felon, he was prohibited under federal law from possessing firearms." *Id.* at 301. While confined on state drug charges, Hailey "had a conversation with his mother on a recorded telephone line, in which he told her that he needed to have someone retrieve his guns from the Sheriff's Department" and "claim ownership of the guns." *Id.* On appeal, the defendant argued that an obstruction enhancement was improper because the firearm count was ultimately dismissed and "because he did not explicitly ask [his mother] to perjure herself or to find someone who would do so." *Id.* at 302. The Fourth Circuit, however, affirmed the sentence, "find[ing] no error, plain or otherwise" and because "the record disclose[d] that Hailey specifically told his mother that he wanted someone to lie to the authorities about who owned the guns to help him avoid a federal firearms charge." *Id.* The same is true here, and the obstruction enhancement was properly applied.

[5] The plea agreement is silent on the issue of obstruction of justice, and it states that the parties are free to argue at sentencing for the applicability of any "provisions of the Sentencing Guidelines that are not specifically referenced in [the] plea agreement." Dkt. No. 104 ¶ 5.

B. Section 3553(a) Factors

1. Nature and Circumstances of the Offenses

The defendant perpetrated a serious fraud that had the potential to endanger national security and put American lives at risk. He used his lies to obtain security clearances, to train with the U.S. military, and even to get deployed to Afghanistan as a senior intelligence advisor. Had the defendant not been forced out of the Human Terrain Systems program because of his poor performance, he would have deployed to Afghanistan as a team leader. He would have been responsible for a team of civilians working alongside, and providing support to, U.S. military in a war zone. Had the defendant's fraud not come to light while he was still in waiting at Green Village in Kabul working for contractor DTI, he would have begun functioning as a senior intelligence advisor on General McChrystal's Counterinsurgency Advisory and Assistance Team. As Colonel Felter explained, this was a critical time in the U.S. war in Afghanistan. The number of deployed coalition troops was its highest, U.S. forces were suffering their largest casualties, and it was a critical time in counterinsurgency operations. Joseph Felter Interview, 4/20/2016, at 1. As General McChrystal explained, the CAAT was responsible for teaching U.S. and Afghan forces how to conduct counterinsurgency operations and to assess whether forward deployed units were implementing those operations correctly; its job was "hugely important" to the war effort. Stanley McChrystal Interview, 8/5/2014, at 1.

The defendant had no military or intelligence background, or any skills relevant to the positions he attained through his frauds. He was a criminal and a con man, and he was on the verge of being in a position to give critical intelligence advice to real military and intelligence actors in a war zone. It is no exaggeration to say that had the defendant's fraud progressed only a small step farther, his actions or advice might have led to the tragic death of U.S. service members. And even though the defendant's fraud never got that far, and he was sent home after

only a couple weeks on the ground in Afghanistan, he still harmed the war effort. As Colonel Felter explained, the situation with the defendant "definitely had a negative operational impact" on CAAT's operations because it resulted in a vital position remaining vacant for an extended period of time after the defendant's removal. Joseph Felter Interview, 6/27/2014, at 2.[6]

David Cohen, the former CIA deputy director of operations, articulated to the government other harm potentially imposed by the defendant's conduct:

> COHEN expressed concern regarding the potential consequences SIMMONS' representations had upon others. COHEN noted that when someone held themselves out as a former Agency operative, as SIMMONS did, they created the perception they were a staff employee with the Agency. COHEN explained that foreign intelligence services took interest in that kind of information and would seek to identify anybody who ever had contact with the person holding themselves out as former Agency. As such, SIMMONS' claims had the potential to put people and their families at risk of imprisonment or harm. COHEN advised that if SIMMONS was trained by the Agency, he would have known not to publicly disclose the fact that he was an operative and put all of the people with whom he had contact at risk. COHEN characterized people like SIMMONS as dangerous in today's world because they put people in danger who had no reason to think they were in danger. COHEN believed it extraordinarily dangerous that SIMMONS was deployed to Afghanistan as an intelligence advisor after publicly declaring himself to be a former Agency operative. By traveling to a war zone after holding himself out in such a manner, SIMMONS had the potential to put lives at risk.

David Cohen Interview, 4/15/2016, at 3.

Impact of the defendant's other unlawful conduct is similarly serious and troubling. He defrauded victim E.L. out of nearly $100,000, relying in part on the fame he achieved with his CIA con and repeatedly lulling her with more and more lies about the whereabouts of her funds and his supposed efforts to recover them. He defrauded the IRS out of more than $400,000. He tried to defraud Chase Bank and Arlington National Cemetery. Even after going to trial in the 1980s and getting convicted of two counts of unlawfully possessing firearms as a convicted

[6] In light of the actual and potential harm the defendant's crimes imposed on national security, the government is baffled by the uninformed commentary provided by the defendant's prominent supporters. *See, e.g.*, Dkt. No. 117-1 (letter of former Maryland Governor Robert Ehrlich describing the defendant as "patriotic" and noting that "one would be hard pressed to find a person more dedicated to the security of the U.S.A.").

felon, he maintained two firearms in his home — one at the ready behind his bedroom closet door. The defendant's unlawful conduct was repeated and serious, and a substantial sentence of imprisonment is necessary to promote respect for the law and to provide just punishment for his offenses.

2. History and Characteristics of the Defendant

A substantial sentence of imprisonment is also necessary to reflect the defendant's history of unlawfulness, and his ongoing refusal to take responsibility for his conduct. The defendant's personal history includes approximately a dozen alcohol-related arrests, state gambling and firearms convictions, and federal firearms convictions. He appears to have spent most, if not all, of his adult life in financial distress and without steady employment. No conviction or sanction has ever had any deterrent effect on him whatsoever, and there is little reason to believe the instant convictions, absent a substantial sanction, will cause him to temper his conduct. As the defendant's friend of 44 years explained in his letter to the Court, "Simmons exhibits a dramatic flair with a craving for activity, excitement and attention to himself." Dkt. No. 112-1 at 6.

Even at the plea hearing in this case, the defendant made the outrageous claim that he believed, and still believes today, that he possesses a particular skillset that would have made him valuable to U.S. forces in Afghanistan. To what skillset is the defendant referring — his experience as a drug trafficker or bookie? Perhaps the defendant is referring to his work with a failed limousine business, rent-by-hour hot tub business, or AIDS-testing company? This is not a defendant who has seen the error of his ways or has resolved himself to live a life of truth and legality post-conviction. Rather, this is a man who has admitted just enough to plead guilty and avoid the embarrassment of a public trial. Accordingly, a significant sentence is necessary in this case.

3. Need for General Deterrence

Finally, a significant sentence is necessary to deter others engaged in similar conduct. Specifically as to the CIA fraud, general deterrence is critical. Claims of involvement in clandestine operations are all too common in criminal cases, and countering such false claims requires the deployment of significant resources, both at the Department of Justice and in the intelligence community. Proving the falsity of such claims exposes the government to CIPA litigation and potentially requires the government to disclose sensitive, if not classified, information regarding intelligence agency operations and record-keeping practices. Defendants must understand that, given the sensitivities involved in such cases and in dealing with such types of fraud, serious sanctions will be imposed by the Court.

V. Forfeiture and Restitution

The defendant has agreed to the entry of forfeiture and restitution orders in the amount of $175,612, the losses to the government and to victim E.L., as well as to the forfeiture of the firearms seized from his residence, and the government expects to provide agreed orders to this effect to the Court at sentencing.

VI. Conclusion

Based on the foregoing, the government respectfully submits that a sentence of 37 months of imprisonment would be sufficient but not greater than necessary to achieve just punishment in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July, 2016, I electronically filed the foregoing Position of the United States With Respect to Sentencing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

William B. Cummings
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A copy has also been sent via email to:

Karen Moran Riffle
Senior U.S. Probation Officer
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/s/
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