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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MAHSA PARVIZ, Defendant.	No. CR 21-293-SB GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR NEW TRIAL; TRIAL EXHIBITS Hearing Date: February 1, 2022 Hearing Time: 8:00 a.m. Location: Courtroom of the Hon. Stanlev Blumenfeld Jr.

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorneys Kathrynne N. Seiden and Jenna W. Long, hereby files its Opposition to Defendant's Motion for Judgment of Acquittal and Motion for New Trial.

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This Opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: January 10, 2022

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In June 2019, defendant applied for an expedited passport for C.P., her biological daughter to whom she had lost her legal parental rights. In so doing, defendant submitted a letter purporting to be from a medical provider. The letter contained numerous statements about C.P.'s health which defendant knew to be false, but which justified C.P.'s absence from the passport-application appointment and the expedited nature of defendant's passport request. Nonetheless, defendant signed the passport application under penalty of perjury that she had not made any misrepresentations—or submitted any false documentation—in support of the application. Two months later, defendant appeared in Texas and attempted to kidnap C.P. from her foster family and take her overseas using the passport.

Defendant was subsequently indicted for making false statements in an application for a United States passport, in violation of 18 U.S.C. § 1542, and aggravated identity theft, in violation of 18 U.S.C. § 1028A. Over a three-day trial in December 2021, a jury heard testimony and saw evidence about defendant's legal relationship to C.P., prior efforts to get C.P. back, application for C.P.'s passport, and subsequent attempt to kidnap C.P. from her foster family. At the close of the government's case, defendant moved for a judgment of acquittal on both counts under Federal Rule of Criminal Procedure 29, which this Court denied. Within hours, the jury returned a verdict of guilty on both counts. (Dkt. 77.)

Defendant now renews her motion for a judgment of acquittal under Rule 29 or, in the alternative, moves for a new trial pursuant to Rule 33. (Dkt. 79 ("Mot.").) In doing so, defendant turns the Rule 29 standard on its head by examining the evidence in the light most favorable to her, rather than in the light most favorable to the government and the jury's verdict, as the law requires. Applying the correct standard, a rational trier of fact could have found—and in fact, did find—that the essential elements of both crimes were met beyond a reasonable doubt. Likewise, defendant cannot show that "a serious

miscarriage of justice may have occurred," as would justify a new trial under Rule 33. See United States v. Kellington, 217 F.3d 1084, 1097 (9th Cir. 2000) (quoting United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir. 1980)). Accordingly, the jury's guilty verdict on both counts should stand.

II. STATEMENT OF FACTS

On December 14, 2021, defendant went to trial on a two-count indictment charging her with: (1) making a false statement in an application for a United States passport, in violation of 18 U.S.C. § 1542 ("count one"); and (2) aggravated identity theft, in violation of 18 U.S.C. § 1028A ("count two"). The government called seven witnesses and introduced 62 exhibits into evidence. (Dkts. 74 (Trial Exhibit List) & 75 (Trial Witness List).) That evidence proved beyond a reasonable doubt that defendant knowingly made a false statement in an application for a United States passport and used another person's name and medical provider numbers in doing so. Accordingly, the jury returned a verdict of guilty on both counts. (Dkt. 69.)

A. Defendant Knew Her Parental Rights Were Terminated in December 2018 and that C.P. Was in Foster Care in Texas

The government introduced various certified court records—heavily redacted pursuant to the parties' agreement—reflecting that defendant knew she no longer had legal parental rights to C.P. when she applied for a passport for C.P. in June 2019. Those records included: a December 2018 order terminating the parent-child relationship between defendant and C.P. and prohibiting defendant from coming within 500 feet of C.P. or having any contact with her; defendant's January 2019 motion for new trial, in which defendant attested to the fact that her parental rights had been terminated; defendant's January 2019 appeal of the parental termination order; and the appellate court's July 2019 order affirming the termination of defendant's parental rights. (Tr. Exs. 8–11.)

Additionally, Collin County Supervision Officer Michelle Stewart testified about having met with defendant in person in late 2018 and into 2019. Stewart testified that

she had provided defendant with a copy of the termination order on the day it was issued and confirmed with defendant that defendant understood what the order meant. Stewart told the jury that defendant seemed unfazed by the order and gave Stewart the impression that she would deal with it in her own way. Stewart also testified that in January 2019, defendant confirmed to Stewart that she was continuing to comply with the order by not having any contact with C.P. Significantly, these meetings took place months before defendant submitted false documents at the United States passport office in order to obtain a passport for C.P.

The government also introduced certified records showing that defendant was convicted for tampering with a governmental record with the intent to defraud or harm. (Tr. Ex. 12.) Specifically, defendant pled guilty to an indictment which charged that in February 2019—that is, four months before she applied for C.P.'s passport—defendant intentionally and knowingly presented for enforcement a judicial order for a writ of attachment which she knew to be false. (Id.) That false order—admitted into evidence by the parties' stipulation—incorrectly stated that defendant was entitled to full physical and legal custody of C.P. and purported to order a writ of attachment commanding any law enforcement officer within the state of Texas to take C.P. and deliver her into defendant's possession. (Id.)

B. Defendant Applied for a Passport for C.P. in Los Angeles and Submitted a False Letter Containing a Third Party's Identifying Information in Support of the Application

The evidence at trial further showed that, having failed in her prior illegal attempt to regain physical custody of C.P., defendant then submitted a passport application for C.P. at the Los Angeles Passport Agency on June 11, 2019. (Tr. Ex. 46.) In doing so, defendant signed on a line representing herself as C.P.'s mother, father, parent, or legal guardian, even though she knew that her parental rights to C.P. had been legally terminated six months earlier. (Id.) Defendant listed C.P.'s mailing address as a hotel in Santa Clara, California, even though C.P. was then living with her foster family in Texas. (Id.)

The government also presented evidence of the passport application instructions in place (and publicly available online) in June 2019, which noted that both parents must be present to apply for a minor's passport, absent certain exceptions (such as where an applicant produces a court order or other evidence of sole legal authority to apply on behalf of the minor). (Tr. Ex. 49.) Passport adjudication manager Jason Roach testified that defendant circumvented this requirement by presenting a copy of C.P.'s birth certificate, which listed defendant as C.P.'s sole legal parent (but which, as defendant knew, was not an accurate reflection of her legal authority to act on C.P.'s behalf). The jury also saw the certified copy of the complete passport application, which included C.P.'s birth certificate, defendant's driver's license, and other documents defendant used to apply for C.P.'s passport. (Tr. Ex. 46.)

The application instructions and Roach's testimony also made clear that, with limited exceptions, anyone applying for a passport—including a minor—is required to appear in person for his or her application. (See Tr. Ex. 49.) Defendant could not bring C.P. to apply for a passport because, as defendant knew, C.P. was living with a foster family in Texas and defendant had no legal right to come within 500 feet of C.P. However, as Roach testified, the Foreign Affairs Manual, which dictates State Department procedures for accepting a passport application, provides an exception where an applicant is seriously ill.

Thus, to circumvent the requirement that C.P. appear for her own passport application, defendant presented a letter in support of the application from Brett Barker, a medical provider in northern California whom defendant had been dating. The letter claimed that C.P. was immunocompromised, in Barker's care at Lucile Packard Children's Hospital in Palo Alto, and unable to leave the facility without posing an insurmountable risk to her health. (Tr. Ex. 46.) In order to justify defendant's request for an expedited passport, the letter further stated that C.P. was scheduled to have a

medically necessary emergency operation in the United Kingdom.[1] (Id.) In truth, and as testified to by C.P.'s then-foster mother, K.M., C.P. was healthy, had no planned operations in the U.K. or elsewhere, and was in the care of her foster family in Texas.

The letter defendant submitted with C.P.'s passport application contained Barker's name, National Provider Index ("NPI") number, registered nursing number, and purported signature. (Tr. Ex. 46.) Although Barker's trial testimony established that he likely knew defendant was headed to the passport agency on June 11, 2019, he denied writing or signing the letter. The jury was able to compare the letter against Bret Barker's last five DMV image records, which all contained a markedly different signature than that on the letter and which showed that Barker's middle name was misspelled on the letter. (See Tr. Ex. 52.) The jury also saw evidence that on June 11, 2019—the same day defendant applied for C.P.'s passport—someone purchased a flight in defendant's name. (Tr. Ex. 62.) That flight was scheduled to depart the next day—not for northern California, where the letter said C.P. was hospitalized, but for Maui. (Id.) And the jury heard and saw evidence that when defendant later appeared in Texas and attempted to kidnap C.P., law enforcement found an unsigned copy of the letter in her car. (See Tr. Ex. 30.)

Defendant signed the passport application under penalty of perjury, attesting that she had not knowingly made any misrepresentation or submitted any false documentation in support of the application. (See Tr. Ex. 46.) The passport was issued and picked up at will call the next day, several hours before defendant's scheduled flight to Hawaii. (See Tr. Ex. 62.)

[1] Roach testified that although the State Department would ideally send someone to verify whether a person was actually hospitalized, there was insufficient time to do so in this case because of the exigency surrounding C.P.'s purported operation.

C. Defendant Returned to Texas and Attempted to Kidnap C.P. and Take Her Overseas Using the Passport

Finally, the jury heard and saw evidence that less than two months after defendant applied for and illegally obtained C.P.'s passport, she resurfaced in Texas and attempted to kidnap C.P. from her foster family. K.M., C.P.'s foster mother during the summer of 2019, testified about text messages she received in early August of that year, which were also introduced into evidence. (See Tr. Exs. 56–60.) The messages purported to be from Lifepath Services, an Early Childhood Intervention ("ECI") program, scheduling a social services check-in appointment with C.P. and offering to transport C.P. to the appointment. (See id.) K.M. explained that she was suspicious of the messages because C.P. had already completed the ECI program, ECI had never offered transportation before, and because the messages contained C.P.'s Medicaid number, which ECI would not ordinarily include in a text message. Concerned that the messages were actually from defendant, K.M. contacted law enforcement, who instructed her to confirm the purported ECI appointment for August 9, 2019.

Collin County Constable Sergeant Christopher Lindley testified that on August 9, 2019, he and Lieutenant Michael Slaughter drove to the "Kid's Play Co.," a location in Richardson, Texas, where the purported ECI appointment was scheduled to take place around noon. (See Tr. Ex. 15.) Around that time, Lindley and Slaughter saw defendant arrive in a rental car and hurriedly enter the business. Lindley testified that he waited in the back of the business while Slaughter entered the front, planning to pose as C.P.'s foster father checking in for the appointment. After a few minutes, Slaughter texted Lindley to come in the business through the front.

Lindley testified that upon entering the business, he saw defendant talking to Slaughter. Defendant had disguised her appearance by dyeing her hair orange and wearing colored contact lenses. (See Tr. Ex. 16.) Lindley testified that defendant acted confused and repeatedly denied being Mahsa Parviz, even when Lindley showed her a photograph of herself, and even though Lindley and Slaughter then recovered a

university identification defendant was carrying that identified her by name and photo. (Tr. Exs. 14, 17.)

Finally, Collin County Corporal Arthur Jumper testified about the items recovered from defendant's car during a subsequent search, photographs of which were also admitted into evidence. (Tr. Exs. 24–45.) Those items included: C.P.'s passport; copies of the materials defendant used to apply for C.P.'s passport, including an unsigned copy of the letter purportedly from Bret Barker; the will call envelope from the Passport Agency, dated June 12, 2019; defendant's United States passport and other travel documents (including an expired Iranian passport); suitcases full of women's and children's clothing; a car seat; and a notebook. (Id.) The jury saw photographs of several pages of the notebook, including one in which defendant had written out the text messages that she eventually sent to K.M., pretending to be Lifepath Services scheduling the ECI appointment. (Tr. Ex. 45.) On the opposite page, defendant wrote "PLAN: send a 'reminder' to drop [C.P.] off at a private daycare for an ECI visit. Just pick her up instead." (Id.) The journal also contained a page on which defendant wrote: "On Friday @ 12:00 p.m. 8/9/19, you will leave with your daughter/Find Caribbean/S. American No extradition countries[.]" (Tr. Ex. 44.) On the opposite page, defendant wrote "DON'T FEAR LIVING WITH SHAME. Be someone else & go to the UAE where you are safe. You have nothing to lose." (Id.)

III. LEGAL STANDARDS

Under Rule 29, a court must "review the evidence presented against defendant in the light most favorable to the government to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Lombera-Valdovinos, 429 F.3d 927, 928 (9th Cir. 2005); United States v. Hinton, 222 F.3d 664, 669 (9th Cir. 2000). "The hurdle to overturn a jury's conviction based on a sufficiency of the evidence challenge is high." United States v. Rocha, 598 F.3d 1144, 1153 (9th Cir. 2010) (explaining that the test to be applied for a Rule 29 motion is the same as for a sufficiency challenge). "The test is whether the

evidence and all reasonable inferences which may be drawn from it, when viewed in the light most favorable to the government, sustain the verdict." United States v. Terry, 911 F.2d 272, 278 (9th Cir. 1990). Any "[c]onflicting evidence is to be resolved in favor of the jury verdict." See United States v. Corona-Verbera, 509 F.3d 1105, 1117 (9th Cir. 2007) (cleaned up).

In ruling on a Rule 29 motion, the Court "must bear in mind that it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts." United States v. Rojas, 554 F.2d 938, 943 (9th Cir. 1977) (internal quotation marks omitted) (quoting United States v. Nelson, 419 F.2d 1237, 1241 (9th Cir. 1969)). In other words, "it is not the district court's function to determine witness credibility when ruling on a Rule 29 motion." United States v. Alarcon-Simi, 300 F.3d 1172, 1176 (9th Cir. 2002). Nor may the Court "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." United States v. Nevils, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (quoting Jackson v. Virginia, 443 U.S. 307, 318-19 (1979) (emphasis in original)). Rather, the question is only whether "all rational fact finders" would have voted to acquit. Id. at 1165. A jury's determination should be upset only on those "rare occasions in which . . . it can be said that no rational trier of fact could find guilt beyond a reasonable doubt." Id. at 1164 (cleaned up).

The standard for granting a Rule 33 motion is similarly stringent. A new trial under Rule 33 should only be granted where the "evidence preponderates sufficiently heavily against the verdict" such that "a serious miscarriage of justice may have occurred." Kellington, 217 F.3d at 1097. Courts should grant Rule 33 motions only "in exceptional circumstances in which the evidence weighs heavily against the verdict." United States v. Del Toro-Barboza, 673 F.3d 1136, 1153 (9th Cir. 2012); accord United States v. Rush, 749 F.2d 1369, 1371 (9th Cir. 1984); United States v. Camacho, 555 F.3d 695, 705 (8th Cir. 2009) ("New trial motions based on the weight of the evidence are generally disfavored[.]").

IV. ARGUMENT

A. A Reasonable Jury Could, and Did, Find that Defendant Made a False Statement in an Application for a United States Passport

As the Court properly instructed the jury, in order to convict defendant of making a false statement in an application for a United States passport, the jury needed to find that the government proved the following beyond a reasonable doubt: (1) defendant made a false statement in an application for a United States passport, with all jurors agreeing as to which statement was false; (2) defendant did so with the intent to induce and/or secure the issuance of a passport for the use of another; and (3) defendant acted knowingly and willfully. (Dkt. 81 at 2–3, 7.) As the jury was also correctly instructed, the government was not required to prove that defendant knew her action was unlawful. (Id. at 7); accord United States v. Aifang Ye, 808 F.3d 395, 399 (9th Cir. 2015). The jury found defendant guilty of that charge. (Dkt. 77.)

Defendant argues cursorily that she is entitled to a judgment of acquittal on count one because the evidence at trial "g[ave] rise to serious questions as to [her] knowledge and understanding of the termination of her parental rights, and therefore whether she knowingly and willfully provided false information on the application." (Mot. at 9.) But the law requires the Court to construe the evidence in the light most favorable to the government, not defendant. See Terry, 911 F.2d at 278.

Viewed through the correct lens, the testimony and evidence presented at trial demonstrated that defendant knowingly and willfully made a false statement when she applied for C.P.'s passport as C.P.'s mother or legal guardian, and that she did so in order to secure issuance of the passport. As Michelle Stewart testified, defendant knew her parental rights were terminated in December 2018 because she was provided the termination order that same day. (See Tr. Ex. 8.) Defendant still knew her parental rights were terminated in January 2019, when she filed a motion for a new trial attesting to the fact that her rights had been terminated. (See Tr. Ex. 9.) Defendant was not dispelled of that knowledge simply because she later appealed that termination and her

appeal was not yet resolved when she applied for C.P.'s passport, as defendant suggests. (See Mot. at 8–9.) Rather, as the jury learned at trial, defendant confirmed to Michelle Stewart in February 2019—after she filed the appeal and before it was resolved—that she was continuing to comply with the termination order by not having contact with C.P. That same month, defendant also tried to regain physical custody of C.P. by presenting a false judicial order compelling law enforcement to return C.P. to defendant's custody. (See Tr. Exs. 12–13.) Defendant's resort to illegal conduct to regain custody of C.P. provided the jury with strong evidence that, even after she filed her appeal and before it resolved, defendant knew she did not have legal parental rights to C.P.

Even if a rational trier of fact could have found that defendant misunderstood the status of her parental rights to C.P. in June 2019, (which she did not), the standard is not whether a rational trier of fact could have found in defendant's favor, but whether any rational trier of fact could have found in the government's. See Lombera-Valdovinos, 429 F.3d at 928. If so, the verdict must stand. Viewed in the light most favorable to the government, a rational factfinder easily could have concluded that defendant knew she did not have the legal right to sign the passport application as C.P.'s mother or legal guardian.

Furthermore, defendant's representation that she was C.P.'s mother or legal guardian was not the only false statement the government alleged defendant made when she applied for C.P.'s passport, and the jury only needed to find that defendant made one. (Dkt. 81 at 7.) The government provided significant testimony and evidence that the letter defendant submitted in support of the application was also false, as was defendant's representation on the application that she had not knowingly submitted any false documentation in applying for the passport. (See Tr. Ex. 46.) That testimony and evidence showed that defendant submitted the false medical letter as part of her scheme to kidnap C.P. from her foster family and take her to a "no extradition" country, as defendant herself wrote in the notebook recovered from her rental vehicle after the attempted kidnapping. (See Tr. Ex. 44.) In order to complete her plan, defendant

needed a passport for C.P. But because defendant did not have physical custody of C.P., she could not bring C.P. to the passport application appointment, as would ordinarily be required. (See Tr. Ex. 49.) Accordingly, defendant concocted a story about C.P. being severely ill and unable to appear, using a false letter from a medical provider to support that narrative. (See Tr. Ex. 46.) Defendant then signed under penalty of perjury that she had neither made any misrepresentations, nor presented any false documents, in support of the application. (Id.) Then, rather than book a flight back to her purportedly sick child in northern California, who supposedly needed an emergency operation in the United Kingdom, defendant instead booked a flight to Maui departing the day after she applied for the passport. (See Tr. Ex. 62.) Defendant then appeared in Texas two months later and tried to kidnap C.P. An unsigned copy of the false medical letter, along with C.P.'s passport and the notebook detailing defendant's plans to take C.P. overseas, were found in defendant's rental car. (See Tr. Exs. 30, 38, 43–45.)

Construing this evidence in the light most favorable to the government, a reasonable jury could have concluded that defendant knew the letter she presented—and therefore the statements she made regarding the letter's veracity—were false, and that she made those false statements so that she could get a passport for (and later kidnap) C.P. Defendant cannot plausibly argue that, viewing that evidence in the light most favorable to the government, most, let alone "all rational fact finders" would have voted to acquit. See Nevils, 598 F.3d at 1165. Because this is not one of the "rare occasions in which . . . it can be said that no rational trier of fact could find guilt beyond a reasonable doubt," see id. at 1164, the Court should deny defendant's motion as to count one.

B. A Reasonable Jury Could, and Did, Find that Defendant Committed Aggravated Identity Theft

The Court should similarly deny defendant's motion as to count two because a rational trier of fact could (and did) find that defendant used Bret Barker's means of identification during and in relation to making a false statement in C.P.'s passport application.

At trial, the Court properly instructed the jury that in order to convict defendant on count two, the jury needed to find that the government had proved beyond a reasonable doubt that: (1) defendant knowingly used, without legal authority, a means of identification of another person; (2) defendant knew the means of identification belonged to a real person; and (3) defendant did so during and in relation to the offense of making a false statement in an application for a United States passport. (Dkt. 81. at 2–3, 7–8.) The jury was further instructed that the government "need not establish that the means of identification of another person was used without that person's consent." (Id. at 8); accord United States v. Osuna-Alvarez, 788 F.3d 1183, 1185–86 (9th Cir. 2015). The jury found defendant guilty of that charge. (Dkt. 77.)

Defendant asserts that she should be acquitted on count two, despite the jury's conviction, because she did not "use" Barker's identity within the meaning of the aggravated identity theft statute. (Mot. at 5–6.) In so arguing, defendant misconstrues the Ninth Circuit's holding in United States v. Hong, 938 F. 3d 1040 (9th Cir. 2019) to mean that to prove that defendant "used" Barker's identity, the government must prove that defendant tried to pass herself off as Barker. (Mot. at 5–6.) Not so. Post-Hong, the Ninth Circuit has expressly rejected the notion "that 'use' 'refers only to assuming an identity or passing oneself off as a particular person.'" United States v. Harris, 983 F.3d 1125, 1128 (9th Cir. 2020) (quoting with approval United States v. Michael, 882 F.3d 624, 627 (6th Cir. 2018)). Rather, the relevant inquiry is whether the means of identification is "central to" or "further[s] or facilitate[s]" the fraudulent conduct. See id. at 1127-28; see also United States v. Gagarin, 950 F.3d 596, 604 (9th Cir. 2020).

In Harris, the defendant owner of a speech therapy business fraudulently billed a government healthcare program for services that were never rendered. Harris, 938 F.3d at 1126. Those services were purportedly provided by a speech pathologist who was on maternity leave on the dates listed on the bills. Id. Defendant used the speech pathologist's name and NPI number on the fraudulent forms. Id. In analyzing whether defendant had "used" the pathologist's identification within the meaning of 18 U.S.C.

§ 1028A, the Ninth Circuit examined the Sixth Circuit's holding in Michael. Id. at 1127-28. There, a defendant pharmacist used a doctor's name and NPI number to submit an insurance claim that showed the doctor as having prescribed a drug to a patient. Id. In truth, the doctor was not the patient's doctor and had not prescribed the drug. Id. The Sixth Circuit rejected the district court's holding that § 1028A covered "only impersonation," noting: "the statutory text does not suggest that 'use' 'refers only to assuming an identity or passing oneself off as a particular person.'" Id. Rather, "the salient point is whether the defendant used the means of identification to further or facilitate the [] fraud." Id. In Michael, because the doctor's means of identification was "integral" to the predicate fraud, defendant had "used" it within the meaning of the statute. Id.

The Harris court contrasted Michael with the Ninth Circuit's prior holding in Hong, on which defendant now relies. Id. at 1127. The court explained that in Hong, the defendant had "provided massage services to patients to treat their pain, and then participated in a scheme where that treatment was misrepresented as Medicare-eligible physical therapy service." Id. (quoting Hong, 938 F.3d at 1050–51). The Ninth Circuit explained that, unlike in Michael, in Hong, the "patients' identities had little to do with furthering or facilitating Hong's fraudulent scheme"; rather, Hong merely "misrepresent[ed] the nature of treatment that actual patients of his received." Id. (cleaned up). By contrast, the Ninth Circuit determined that the defendant in Harris was more akin to that in Michael than in Hong because the Harris defendant "did not merely inflate the scope of services rendered during an otherwise legitimate appointment," but rather "manufactured entire appointments that never occurred," thereby using the "identifying information to fashion a fraudulent submission out of whole cloth." Id. at 1128. Thus, "[u]nlike the defendant in Hong, [defendant's] use of [the pathologist's] identification was central to the wire fraud." Id. at 1127.

Here, as in Harris and Michael, defendant used a third party's identifying information in a wholly fraudulent submission to facilitate her fraudulent conduct.

Specifically, defendant used Barker's name and NPI number in a letter claiming that Barker had rendered and was rendering medical services to C.P. when, in fact, C.P. was not Barker's patient and Barker had never rendered any such services to C.P. Barker's identity as a medical provider provided not only a substantive explanation for why C.P. could not appear at the passport office—i.e., because she was in Barker's care at a hospital in northern California—but also lent necessary credibility to defendant's story, without which she would not have been able to obtain a passport for C.P. In fact, as Jason Roach testified, he relied on his partial verification of Barker's identity to justify approving defendant's application, despite C.P.'s absence. Thus, like in Harris and Michael, Barker's identity was central and indispensable to the predicate crime. Defendant did not merely "misrepresent[] the nature of treatment" that Barker provided, as in Hong, but rather used Barker's identifying information to "fashion a fraudulent submission out of whole cloth" regarding medical treatment that never occurred, in order to facilitate defendant's commission of passport fraud. Id. at 1128.

Furthermore, even if defendant's overly narrow construction of aggravated identity theft were correct, which it is not, defendant concedes that someone "uses" a third person's identity within the meaning of § 1028A by taking action on that third person's behalf, such as by forging his or her signature. (Mot. at 7); accord Harris, 983 F.3d at 1127; Hong, 938 F.3d at 1051 & n. 8. Here, the evidence gave the jury a sufficient basis to conclude that defendant took action on Barker's behalf by drafting a false letter in his name, using his NPI number, and forging his signature. Significantly, the signature on the letter did not match Barker's. (Compare Tr. Ex. 46 with Tr. Ex. 52.) Defendant misspelled Bret Barker's middle name on the letter. (See id.) And defendant was found with an unsigned copy of the letter in her car two months after Barker supposedly authored and signed the letter, suggesting that it was defendant—not Barker—who wrote, printed, and eventually signed the letter. (See Tr. Ex. 30.) Viewing this evidence in the light most favorable to the government, as the law requires, a rational trier of fact could have concluded that defendant authored and/or signed a letter

purporting to be from Barker, and therefore took action on his behalf. That is all the law requires. Gagarin, 950 F.3d at 603 (affirming denial of Rule 29 motion where defendant and her cousin had discussed that defendant would find her cousin life insurance because, viewed in the light most favorable to the prosecution, the evidence showed that defendant had forged her cousin's signature on a life insurance application, "and in doing so used [her cousin's] identity to further the fraudulent insurance application.").

C. The Interests of Justice Do Not Demand a New Trial

Finally, defendant asks the Court to order a new trial on the basis that she was "substantially prejudiced" by three of the Court's evidentiary rulings. (Mot. at 9.) But defendant's disagreement with the trial court's evidentiary rulings does not entitle her to a new trial.

First, while the government used defendant's prior tampering conviction to argue that her knowledge of her parental status predated the passport application, the Court admitted that evidence only after defendant first opened the door by putting her knowledge on that exact point at issue. Moreover, defendant is wrong that the tampering conviction is not "sufficiently similar to the charged offenses to justify admission under Federal Rule of Evidence 404(b)." (Mot. at 10.) Defendant falsified a document and manipulated a government entity to try to regain physical custody of C.P.—exactly like she did at the passport office, four months later. (See Tr. Exs. 12–13, 46.) Further, the Court reviewed extensive briefing and gave considerable thought to its ruling concerning the admissibility of defendant's multiple prior convictions, and struck an appropriate balance by precluding admission of defendant's other prior convictions. (See Dkt. 38, 45, 65.)

Second, the Court did not err in admitting defendant's expired Iranian passport, especially in light of defendant's written intention to take C.P. out of the country and demonstrated history of using even legitimate documents (like C.P.'s birth certificate) to illegitimately obtain travel documents. (Mot. at 10–11; see Tr. Exs. 46.) The Court was not required to "to scrub the trial clean of all evidence that may have an emotional

impact." United States v. Ganoe, 538 F.3d 1117, 1124 (9th Cir. 2008) (cleaned up). Further, defendant's speculation that some jurors may have harbored anti-Muslim prejudices so strong as to be inflamed by the mere image of Islamic writing or clothing is unsupported by the record and contrary to the selected jurors' voir dire responses, sworn oaths, and instructions. (See Dkt. 81 at 2 (instructing the jury that it "must decide the case solely on the evidence and the law" and must "not allow [themselves] to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases," nor "any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances"); see also Richardson v. Marsh, 481 U.S. 200, 211 (1987) (jury is presumed to follow instructions); United States v. Padilla, 639 F.3d 892, 897 (9th Cir. 2011) (same). There is simply no evidence that the jury's verdict was based on anything other than the government's substantial evidence of defendant's guilt.

Third, the Court did not err by imposing minor limitations on defendant's already extensive cross-examination of Barker to exclude highly inflammatory and irrelevant facts about allegations unrelated to either defendant or her case. (Mot. at 11–14 (describing the allegations as "moral deprivation"); see generally Dkt. 65 (government's motion to exclude this line of questioning).) Again, the Court's ruling to limit this line of cross-examination was made after a considered review of the parties' extensive briefing. (Dkt. 65–66, 82.) Moreover, contrary to defendant's assertion, the government's case at trial did not hinge on Barker's credibility—something defendant still had the opportunity to attack at great length. Indeed, Bret Barker's direct examination was cabined to roughly ten questions, primarily concerning the fact that he did not treat C.P. or write the letter in question. The government corroborated both points. First, C.P.'s foster mother testified that C.P. was not ill, was never treated by Barker, and never left Texas in summer 2019. Second, the signature on the letter, Barker's misspelled middle name, and the unsigned copy of the letter in defendant's car two months later all showed that Barker did not write or sign the letter, regardless of

whether he was aware of defendant's scheme. (See, e.g., Tr. Ex. 30, 46, 52.) Notably, even if Barker had written or signed the letter (he did not), the evidence showed that defendant knew that the letter she submitted in support of C.P.'s passport application, and the statements she made in support thereof, were false, and that she used Barker's information to further her fraud. Thus, the evidence showed that defendant was guilty, irrespective of Barker's role in the scheme. See Osuna-Alvarez, 788 F.3d at 1185–86 (noting that "regardless of whether the means of identification was stolen or obtained with the knowledge and consent of its owner, the illegal use of the means of identification alone violates § 1028A").

Even if any of the Court's evidentiary rulings was incorrect (they were not), none of the Court's alleged errors, either individually or collectively, would render defendant's trial the "exceptional case[]" where the "evidence preponderates sufficiently heavily against the verdict" such that "a serious miscarriage of justice may have occurred." Del Toro-Barboza, 673 F.3d at 1153; Kellington, 217 F.3d at 1097. Defendant had the right to one, fair trial, which she received. Her dissatisfaction with the outcome does not entitle her to another one.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court deny defendant's motion for a judgment of acquittal or for a new trial.