TRACY L. WILKISON
United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
JENNA W. LONG (Cal. Bar No. 332192)
KATHRYNNE N. SEIDEN (Cal. Bar No. 310902)
Assistant United States Attorneys
General Crimes Section
1200 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-8692/0631
Facsimile: (213) 894-0141
Email: jenna.long@usdoj.gov
kathrynne.seiden@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MAHSA PARVIZ, Defendant.	CR No. 21-293-SB GOVERNMENT'S SENTENCING POSITION; DECLARATION OF CHRISTOPHER C. KUZMA; EXHIBITS A-E Sentencing Date: July 12, 2022 Sentencing Time: 8:00 a.m. Location: Courtroom of the Hon. Stanley 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 Jenna W. Long and Kathrynne N. Seiden, hereby files its sentencing position for defendant Mahsa Parviz ("defendant").

//

//

This position is based upon the attached memorandum of points and authorities, the attached declaration of Christopher C. Kuzma, the attached exhibits, the files and records in this case, the testimony and exhibits received during defendant's trial, the Presentence Investigation Report, and any other evidence or argument that the Court may wish to consider at the time of sentencing. The government respectfully requests the opportunity to supplement its position or respond to defendant's position or the Revised Presentence Investigation Report as may become necessary.

Dated: June 28, 2022

Respectfully submitted,

TRACY L. WILKISON
United States Attorney

SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

/s/ *Jenna W. Long*
JENNA W. LONG
KATHRYNNE N. SEIDEN
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

TABLE OF CONTENTS

DESCRIPTION	PAGE
TABLE OF AUTHORITIES	ii
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. DEFENDANT'S CRIME	2
III. DEFENDANT'S CRIMINAL HISTORY	4
IV. PROBATION'S GUIDELINES CALCULATIONS AND RECOMMENDATION	7
V. GOVERNMENT'S MOTION FOR A FOUR-LEVEL UPWARD DEPARTURE OR VARIANCE	8
VI. GOVERNMENT'S RECOMMENDED SENTENCE	11
A. NATURE AND CIRCUMSTANCES OF THE OFFENSES, § 3553(A)(1)	11
B. HISTORY AND CHARACTERISTICS OF DEFENDANT, § 3553(A)(1)	12
1. DEFENDANT'S PSYCHIATRIC EVALUATION	13
C. NEED FOR DETERRENCE AND TO PROMOTE RESPECT FOR THE LAW, § 3553(A)(2)	14
D. NEED FOR THE SENTENCE TO AVOID UNWARRANTED DISPARITIES, § 3553(A)(6)	15
E. IMPOSITION OF SUPERVISED RELEASE	15
F. FINE, FORFEITURE, AND SPECIAL ASSESSMENT	16
VII. CONCLUSION	16

TABLE OF AUTHORITIES

DESCRIPTION PAGE(S)

FEDERAL CASES

Gall v. United States,
552 U.S. 38 (2007) 15

Gawne v. United States,
409 F.2d 1399 (9th Cir. 1969) 10

United States v. Blinkinsop,
606 F.3d 1110 (9th Cir. 2010) 15

United States v. Ceja-Hernandez,
895 F.2d 544 (9th Cir. 1990) 9

United States v. Daughetee,
977 F.2d 592 (9th Cir. 1992) 9

United States v. Ellis,
641 F.3d 411 (9th Cir. 2011) 10

United States v. Gregg-Warren,
2019 WL 3431156 (S.D. Tex, July 30, 2019) 10

United States v. Healy,
376 U.S. 75 (1964) 10

United States v. McQueen,
747 F. App'x 539 (9th Cir. 2018) 10

United States v. Mitchell,
624 F.3d 1023 (9th Cir. 2010) 10

United States v. Treadwell,
593 F.3d 990 (9th Cir. 2010) 15

United States v. Weber,
451 F.3d 552 (9th Cir. 2006) 15

FEDERAL STATUTES

18 U.S.C. § 1028A 1, 11

18 U.S.C. § 1201 ..... 7, 10, 11

18 U.S.C. § 1204 7

18 U.S.C. § 1542 1

18 U.S.C. § 3553 ..... passim

18 U.S.C. § 3583 15

TABLE OF AUTHORITIES (CONTINUED)

DESCRIPTION	PAGE
STATE STATUTES	
Texas Penal Code § 20.03(a)	4
Texas Penal Code § 22.041(c)	4
Texas Penal Code § 37.10(d)	6
Texas Penal Code § 38.04(b)(1)(B)	6
FEDERAL RULES	
U.S.S.G. § 2A4.1	7
U.S.S.G. § 2J1.2	7
U.S.S.G. § 2L2.2	7, 9, 10
U.S.S.G. § 2X1.1	7
U.S.S.G. § 4A1.1	6
U.S.S.G. § 5A	8
U.S.S.G. § 5D1.1	16
U.S.S.G. § 5K2.0	8
U.S.S.G. § 5K2.21	8
U.S.S.G. § 5K2.4	10
U.S.S.G. § 5K2.9	8, 9
OTHER AUTHORITIES	
Cir. Model Crim. Jury Instruct. No. 17.1 (2010 ed., revised March 2022)	10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After losing parental rights to her biological child, C.P., defendant Mahsa Parviz ("defendant") concocted an elaborate lie, using a romantic partner's name and medical license numbers, to obtain a passport for C.P. Defendant then tried to kidnap C.P. and take her overseas to a non-extradition country. In December 2021, a jury found defendant guilty of making a false statement in an application for a United States passport, in violation of 18 U.S.C. § 1542 ("count one"), and aggravated identity theft, in violation of 18 U.S.C. § 1028A ("count two"). (Dkt. 69.) On January 26, 2022, the United States Probation and Pretrial Services Office ("Probation") disclosed its Presentence Investigation Report ("PSR") and sentencing recommendation.[1] (Dkts. 85, 86.) Therein, Probation calculated defendant's advisory Sentencing Guidelines range as 30 to 37 months' imprisonment on count one, with a mandatory consecutive 24-month sentence on count two, for a total Guidelines range of 54 to 61 months' imprisonment. (PSR ¶ 107.) Probation recommended a sentence of 73 months' imprisonment—consisting of 49 months' imprisonment on count one and 24 consecutive months' imprisonment on count two—for an upward departure of 12 months' imprisonment. (Dkt. 85 at 1.) Probation further recommended defendant be sentenced to the maximum term of three years' supervised release. (Id. at 2.)

The government agrees with Probation's calculations but not its recommendation. Instead, the government recommends that the Court grant a four-level upward departure and impose a sentence at the high end of the adjusted Guidelines range, for a total term of 81 months' imprisonment (consisting of 57 months' imprisonment on count one, and 24 months' imprisonment, to run consecutively, on count two), three years' supervised release, and a $200 special assessment.

---

[1] When Probation filed the PSR, Probation had not yet been able to interview defendant due to COVID-19 precautions. Instead, Probation relied on defendant's written questionnaire responses . (PSR ¶ 52.) Since then, Probation has interviewed defendant and indicated that a Revised PSR is forthcoming. It has not yet been filed.

II. DEFENDANT'S CRIME

On June 11, 2019, defendant applied for an emergency passport for C.P. at the United States Passport Agency in Los Angeles. (PSR ¶ 7.) In support of the application, defendant submitted a letter purportedly authored and signed by Bret Barker, a medical provider at a Palo Alto hospital. (Id. ¶ 8.) The letter claimed that C.P. was immunocompromised, in Barker's care, in need of emergency medical treatment in the United Kingdom, and unable to appear for her passport application without posing a serious risk to her health. (Id.; Trial Ex. 46 at 8.[2]) As the evidence at trial showed, defendant knew the letter's contents were false, and, in fact, defendant had forged Barker's signature.[3] Moreover, to justify the request's emergency nature and rush the passport through processing, defendant presented a flight itinerary falsely showing that she and C.P. were scheduled to leave the country in a couple of days. (PSR ¶ 9.) In truth, C.P. was perfectly healthy, was not in Barker's care, had no emergency surgery planned in the United Kingdom, and could not appear at the appointment because she was in the legal and proper custody of her foster parents and Protective Services. Nevertheless, defendant swore to the passport clerk that the information on the application was true and signed the passport application, representing herself to be C.P.'s mother, father, parent, or legal guardian. (Id. ¶ 7.) Defendant did so despite knowing that her parental rights had been terminated and that she had been ordered to stay 500 feet away from and have no contact with C.P. (Id. ¶ 7.) As a result of defendant's lies, the clerk processed the expedited application, and defendant received a passport and passport card for C.P. on June 12, 2019. (Id. ¶ 10.)

Less than two months after defendant fraudulently applied for and illegally

---

[2] The government lodged a CD containing all trial exhibits with its opposition to defendant's Rule 29 and 33 motion. (See Dkt. 83 (notice of manual filing).) If asked, the government can resubmit those exhibits for the Court's review.

[3] The jury saw several examples of Barker's signature on his driver's licenses which differed from the letter's. (Compare Trial Exs. 46 at 8 and 52.) Also in the letter, Barker's middle name was spelled wrong. (Id.) And when defendant was arrested in Texas, she had an unsigned version of the letter in her possession. (Trial Ex. 30.)

obtained C.P.'s passport, she resurfaced in Texas and tried to kidnap C.P. from her foster family. (Id. ¶ 37.) K.M., C.P.'s foster mother in summer 2019, contacted law enforcement after she received suspicious text messages in which defendant posed as a social services provider to set up a meeting alone with C.P. (Id. ¶ 37.) Defendant arrived at the meeting location with her hair dyed and color contact lenses to alter her appearance. (Id.) Law enforcement was waiting for defendant and intervened to arrest her. (Id.) In defendant's car, law enforcement found suitcases packed with women's and children's clothing; international travel documents in defendant's and C.P.'s names; journals detailing defendant's plan to take C.P. to a non-extradition country and assume her sister's identity; and the fraudulently obtained passport for C.P. (Id.) Defendant also had in her possession two of her sister's identifications, as well as a credit card in C.P.'s name. (Declaration of Christopher C. Kuzma ("Kuzma Decl.") ¶¶ 3 (Ex. A), 5.) Defendant had not had parental rights to C.P.—who was then three-and-a-half years old—in over two-and-a-half years. (Id.) At the time of her arrest, defendant also had handwritten notes and papers showing that she had been trying to find the people who had fostered C.P. in 2019. (Id. ¶ 4.)

This criminal scheme was consistent with defendant's other attempts to locate C.P.'s 2019 foster parents, after defendant was released from Texas State custody. Specifically, K.M. received in the mail a response to a request for a domestic violence restraining order from Orange County, California. (Id. ¶ 6.) This form named K.M.'s husband, who had also been C.P.'s foster parent in 2019. (Id.) The form requested address and contact information for the court proceeding in Orange County, California. (Id.) Notably, this form was similar to other domestic violence restraining order application paperwork found in defendant's car during her arrest in July 2021. (Id.)

In fact, as recently as April 2021, in another application for a domestic violence restraining order in California (this one against her former brother-in-law), defendant sought an order removing C.P. from her 2019 foster parents' custody, and claimed C.P. lived with defendant. (Kuzma Decl. ¶ 7 (Ex. B).) In this application, defendant claimed

a 2019 writ—which she had forged—was "in full force and effect." (Ex. B at 7; see infra at 5 (February 2019 forged writ and subsequent tampering with a governmental record conviction).) In the months before defendant's July 2021 arrest, defendant made multiple efforts to gain medical and location information about C.P. and her foster family. (Kuzma Decl. ¶ 8.)

K.M., C.P.'s foster mother in 2019, testified at defendant's trial before this Court. She has elected not to give a victim impact statement after having been subjected to defendant's harassment for years and out of fear of retaliation. (Id. ¶ 9.)

III. DEFENDANT'S CRIMINAL HISTORY

This case marks defendant's sixth and seventh felony convictions and eighth and ninth overall convictions. After defendant's August 2019 arrest, when she returned to Texas with the fraudulently obtained passport for C.P., defendant pled guilty to attempted kidnapping, in violation of Texas Penal Code § 20.03(a), and was sentenced to 500 days in jail. (PSR ¶ 37.) This felony conviction was one in a long string of felony convictions defendant sustained before the instant federal convictions. (See Id. ¶¶ 33-34, 36-37.) Two of defendant's prior five felonies were part of her concerted pattern to take C.P. back illegally, rather than follow the family court's proscribed plan to regain custody. (Id. ¶¶ 36-37.)

Specifically, defendant lost her parental rights after sustaining felony convictions for endangering and attempted kidnapping in 2018. (Id. ¶¶ 34, 59.) In January 2018, defendant instigated a physical altercation with her former brother-in-law while holding her infant child, C.P. (Id. ¶ 34.) During the fight, defendant tried to grab her nephew from her former brother-in-law and falsely claimed to have legal paperwork assigning defendant as her nephew's legal guardian. (Id.) During the altercation, defendant was holding C.P.—who was only two-months-old—in an unsafe manner. (Id.) For these crimes, in October 2018, defendant was convicted of (1) endangering C.P., under Texas Penal Code § 22.041(c), and (2) attempted kidnapping of her nephew, in violation of Texas Penal Code § 20.03(a). (Id.) Defendant was initially given a five-year deferred

adjudication, during which she was ordered to comply with community supervision. (Id.) After several violations, including failing to do community service, failing to appear for drug testing, and traveling out of state, defendant was sentenced to two years' imprisonment. (Id.)

As a result of the January 2018 incident, and an earlier car accident where defendant failed to properly secure a one-month-old C.P. in her car seat and then refused medical care for C.P., the Department of Family and Protective Services petitioned to terminate defendant's parental rights. (Id. ¶¶ 58-59.) Defendant intentionally absented herself from the custody trial. (Kuzma Decl. ¶ 10 (Ex. C).) In December 2018, the Texas family court found that terminating the parent-child relationship between defendant and C.P. was in C.P.'s best interest. (Kuzma Decl. ¶ 11 (Ex. D).) The family court terminated defendant's parental rights for abandonment, endangering C.P.'s physical or emotional well-being, being convicted of child endangering, and failing to comply with court-ordered provisions that would provide the path for returned custody. (Id. at 3-5.) Additionally, by the same order, the court prohibited defendant from being within 500 feet of, or having any contact with C.P. (Id. at 7-8.)

Disgruntled after losing her parental rights to C.P., defendant turned to fraud to take C.P. back unlawfully. In January 2019, defendant filed two false police reports claiming that C.P. had been kidnapped, despite defendant knowing that C.P. was lawfully in the custody of the State of Texas. (PSR ¶¶ 43-44.) During and after the custody proceedings, defendant also repeatedly attempted to use false legal process to obtain physical custody of C.P. (Kuzma Decl. ¶ 12 (Ex. E).) As a result, C.P.'s attorney ad litem initiated a case to contest the validity of legal process that defendant and defendant's mother initiated. (Id.) The Texas court found that defendant and defendant's mother intentionally provided false and misleading information to courts, including the Superior Court of California, County of Los Angeles. (Ex. E at 7-8, 16-17.) Based on this false and misleading information, foreign courts issued judgments that defendant then sought to enforce in Texas. (Id.) In April 2019, the Texas court

dismissed the foreign judgments due to their reliance on false information and lack of jurisdiction. (Ex. E. at 9, 18.)

In February 2019, defendant forged a judge's signature on a writ of attachment purportedly ordering that C.P. be returned to defendant and then presented it to Texas law enforcement officers. (PSR ¶¶ 36, 41.) Defendant was arrested for forgery, and then absconded to California while the Texas charges were pending. (PSR ¶ 41.) Defendant eventually pled guilty to Tampering with a Government Record to Defraud or Harm, in violation of Texas Penal Code § 37.10(d), and was sentenced to 550 days in jail, on January 5, 2021. (PSR ¶ 36.)

Even before commencing her campaign to take C.P. back unlawfully, defendant sustained three convictions before C.P. was born. In 2011, defendant was convicted of driving while intoxicated. (PSR ¶ 32.) She was originally sentenced to 12 months' community supervision, but after violating the terms of her supervision, she was resentenced to 150 days in jail. (Id.) And in 2017, defendant fraudulently shipped approximately 60 packages using the University of Texas's account number without permission. (Id. ¶ 33.) After violating the terms of her bond, defendant fled in her car when officers attempted to arrest her on an arrest warrant. (Id. ¶ 35.) For these crimes, defendant was convicted of (1) felony forgery of financial instrument, in violation of Texas Penal Code § 32.21(d); and (2) misdemeanor evading arrest or detention with a vehicle, in violation of Texas Penal Code § 38.04(b)(1)(B). (Id. ¶¶ 33, 35.) Defendant was given two deferred adjudications, during which she was ordered to comply with community supervision. (Id.) But defendant repeatedly violated the terms of her community supervision, and was re-sentenced to six-months in jail. (Id.)

For these convictions, defendant accumulated 13 criminal history points. (Id. ¶ 38.) Moreover, because defendant committed the instant offense while under community supervision for three prior convictions, she receives two additional criminal history points under U.S.S.G. § 4A1.1(d). (Id. ¶ 39.) A total of 15 criminal history points places defendant well within criminal history category VI—the highest possible

criminal history category.[4] (Id. ¶ 40.)

IV. PROBATION'S GUIDELINES CALCULATIONS AND RECOMMENDATION

Probation correctly determined that defendant's total offense level is 12. (PSR ¶ 27.) Under U.S.S.G. § 2L2.2(a), defendant's base offense level is 8. (Id. ¶ 18.) Under U.S.S.G. § 2L2.2(b)(3)(A), defendant's obtaining and using a United States passport warrants a four-level enhancement, yielding a total offense level of 12. (Id. ¶ 19.)

Probation noted the potential application of U.S.S.G. § 2L2.2(c)(1)(A), which substitutes the offense level of a more serious (non-immigration) felony offense when a defendant uses a passport in the commission or attempted commission of that crime. (Id. ¶ 20.) Ultimately, Probation recommended against application of that higher offense level, even though defendant obtained the passport to further attempted kidnapping, because the evidence did not demonstrate that defendant actually "use[d]" the passport during the attempted kidnapping.[5] (Id.) The government concurs with Probation.

---

[4] Defendant also has an open arrest warrant in Mountainview, California, for grand theft. (Id. ¶ 46.) In the less than two months between her passport fraud and attempted kidnapping of C.P., defendant allegedly stole a victim's jewelry and wallet. (Id.)

[5] In discussing whether to apply U.S.S.G. § 2L2.2(c)(1)(A), Probation contemplated (1) that the applicable felony would be international parental kidnapping, under 18 U.S.C. § 1204; and (2) that the resulting total offense level would be 14 under U.S.S.G. § 2J1.2. PSR ¶ 20. Neither assumption is correct. First, defendant's crime would not be international parental kidnapping, in violation of 18 U.S.C. § 1204, because defendant was not C.P.'s legal parent at the time of the attempted kidnapping. Rather, the federal corollary of the crime defendant attempted to commit would be kidnapping, in violation of 18 U.S.C. § 1201. Section 1201 is inapplicable in the kidnapping of a minor by a parent, but defendant is not C.P.'s parent, and was not at the time of the attempted kidnapping. See 18 U.S.C. § 1201(h) (defining "parent" as excluding "a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order."). Accordingly, defendant's base offense level would be 32 under U.S.S.G. § 2A4.1(a), and because she attempted (and did not complete) the kidnapping, her offense level would be reduced by three points under U.S.S.G. § 2X1.1(b)(1), for a total offense level of 29. Thus, if U.S.S.G. § 2L2.2(c)(1)(A) applied, defendant's Guidelines range would be 151 to 188 months' imprisonment. Second, even if international parental kidnapping were the applicable felony under U.S.S.G. § 2L2.2(c)(1)(A), defendant's offense level would be reduced from a base offense level of 14 to 11 under U.S.S.G. § 2X1.1(b)(1) because she attempted (and never completed) the crime. And because § 2L2.2(c)(1)(A) only substitutes the offense level of the other felony offense if it is greater than the offense level for the passport fraud, no substitution would occur, and defendant's offense level would still be 12.

An offense level of 12, with a criminal history category of VI, results in an advisory Guidelines range of 30 to 37 months' imprisonment on count one, before the addition of the mandatory consecutive 24-month sentence on count two. U.S.S.G. § 5A. Probation recommends the Court impose a sentence of 49 months' imprisonment on count one, which would be 12 months above defendant's Guidelines sentence (Dkt. 85 at 6) and which equates to the mid-range of a three-level upward departure, before the addition of the 24 months on count two, for a total sentence of 73 months' imprisonment. Probation recommended this upward departure based on U.S.S.G. § 5K2.9, because the Guidelines range fails to take into account that defendant obtained the passport to facilitate a more serious offense. (Id.)

V. GOVERNMENT'S MOTION FOR A FOUR-LEVEL UPWARD DEPARTURE OR VARIANCE

The government requests that the Court adopt Probation's factual findings, offense level, criminal history, and Guidelines calculations. However, instead of a three-level upward departure, the government recommends a four-level upward departure, for an adjusted Guidelines range of 46 to 57 months' imprisonment on count one, and a total Guidelines range on both counts of 70 to 81 months' imprisonment.

A four-level upward departure is warranted because the Guidelines contemplate an upward departure where, as here, a case presents aggravating circumstances that are not considered in the offense level calculation. U.S.S.G. § 5K2.0(a)(1)(A) (citing 18 U.S.C. § 3553(b)(1)). Relatedly, U.S.S.G. § 5K2.21 permits an upward departure for uncharged conduct that "did not enter into the determination of the applicable guideline range."

Here, the Guidelines calculations applicable to making false statements in a passport application do not account for the seriousness or scope of defendant's criminal conduct. Defendant's driving purpose for lying on C.P.'s passport application was to kidnap C.P. Even though a Texas court determined that it was in C.P.'s best interest to terminate defendant's parental rights and prohibit her from contacting or coming near C.P., defendant decided she would kidnap C.P. and start a life in a non-extradition

country, where defendant could not be returned for prosecution and C.P. could not be returned to her foster family. (See PSR ¶ 59; Trial Exs. 44, 45.) Defendant's conduct was aggravating, and nothing in the Guidelines accounts for the fact that defendant made false statements not just to obtain a passport for her own travel, but to kidnap and permanently deprive a minor of the stability and life to which she is entitled. Ignoring defendant's escalating efforts to kidnap C.P., and the damage that would have ensued if defendant had not been thwarted by law enforcement, would result in a Guidelines range incommensurate with the sophistication and potential harm of defendant's actions. These aggravating factors warrant a four-level upward departure.

A four-level departure is also warranted under U.S.S.G. § 5K2.9, which contemplates an upward departure "[i]f the defendant committed the offense in order to facilitate or conceal the commission of another offense[.]" In such a case, the court "may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct." U.S.S.G. § 5K2.9; see United States v. Daughetee, 977 F.2d 592, 592 (9th Cir. 1992) (citing United States v. Ceja-Hernandez, 895 F.2d 544, 545 (9th Cir. 1990)). Here, defendant committed the passport fraud to facilitate attempted kidnapping, a felony for which she was convicted in Texas state court.[6] (PSR ¶ 37.) Accordingly, the Court may increase her sentence above the otherwise applicable Guidelines range.

With respect to how much to increase defendant's sentence, a four-level departure is conservative. For example, were the Court to find that defendant "used" the passport in the attempted kidnapping and apply U.S.S.G. § 2L2.2(c)(1)(A), defendant's Guidelines sentence for count one alone would be 151 to 188 months' imprisonment.[7]

---

[6] For her attempted kidnapping conviction, Texas sentenced defendant to 500 days' jail. (PSR ¶ 37.) Defendant was simultaneously sentenced to 550 days' jail—the equivalent of time served—for tampering with a governmental record—the case she had absconded from when she fled to California and committed the instant offenses. (Id. ¶¶ 36-37.)

[7] Notably, the government would not need to prove that defendant would have kidnapped C.P. for reward, ransom, or any other purpose. See Ninth Cir. Model Crim.

(footnote cont'd on next page)

Although the government agrees with Probation that the federal kidnapping offense level should not apply because defendant did not end up having the opportunity to "use" the passport in the commission of the more serious offense, defendant undoubtedly would have done so had law enforcement failed to intervene. Accordingly, the sentencing exposure defendant would be facing—had she been successful in her crimes—provides a useful starting point for the Court's analysis. Section 2L2.2(c)(1)(A) evinces the Guidelines' intent that when a defendant has the criminal purpose to commit a more serious offense, that defendant's Guidelines range should increase accordingly. That is the case here, and the government's proposed four-level upward departure results in an offense level of roughly half what defendant would face if she had been stopped at the airport, rather than earlier. Furthermore, the Guidelines' policy statements recognize the seriousness of abduction cases, similarly permitting an upward departure on that basis. See U.S.S.G. § 5K2.4.

Finally, if the Court declines to grant a four-level upward departure, a four-level upward variance is necessary to achieve a reasonable sentence based on the factors enumerated in § 3553(a), as discussed below. See United States v. Ellis, 641 F.3d 411, 421-23 (9th Cir. 2011) ("[t]he question" is whether the defendant's ultimate sentence "is reasonable under the broad discretion afforded the district court."); see also United States v. Mitchell, 624 F.3d 1023, 1030 (9th Cir. 2010) ("[S]entencing judges can reject any Sentencing Guideline, provided that the sentence imposed is reasonable."); United States v. McQueen, 747 F. App'x 539, 540 (9th Cir. 2018) (finding a sentence substantively reasonable that included an upward variance resulting in a sentence more than double the

---

Jury Instruct. No. 17.1 (2010 ed., revised March 2022) citing United States v. Healy, 376 U.S. 75, 81 (1964) (the 1934 amendment to §1201(a) "was intended to make clear that a nonpecuniary motive did not preclude prosecution under the statute . . . . The wording certainly suggests no distinction based on the ultimate purpose of a kidnapping"); Gawne v. United States, 409 F.2d 1399, 1403 (9th Cir. 1969) ("[I]n light of the language and legislative history of the 1934 amendment a purpose to obtain pecuniary benefit [is] no longer required . . . [and] an illegal purpose need not be shown"). Moreover, a parent whose parental rights have been terminated is not exempt from prosecution under § 1201. See, e.g., United States v. Gregg-Warren, 2019 WL 3431156, at *7 (S.D. Tex, July 30, 2019).

high end of the applicable Guidelines range).

Accordingly, whether framed as an upward departure or an upward variance, defendant's adjusted total offense level should be 16, and her adjusted Guidelines range should be 46 to 57 months' imprisonment on count one, for a total Guidelines range on both counts of 70 to 81 months' imprisonment.

VI. GOVERNMENT'S RECOMMENDED SENTENCE

The government recommends that the Court sentence defendant to a sentence at the high end of that adjusted Guidelines range: 57 months' imprisonment on count one (for 81 months total[8]), three years' supervised release, and a $200 special assessment. This sentence is appropriate, reasonable, and not greater than necessary to account for the factors the Court must consider under 18 U.S.C. § 3553(a).

A. NATURE AND CIRCUMSTANCES OF THE OFFENSES, § 3553(A)(1)

As an initial matter, the government's recommended sentence reflects the seriousness of defendant's crimes. Even without the attempted kidnapping, defendant's decision to make false statements in a passport application, and to use another person's identity and the guise of his medical authority in doing so, was serious. The seriousness of defendant's crimes is significantly exacerbated by the fact that she committed them as a means to a much more sinister end: kidnapping a toddler from her lawful family and taking her overseas to a non-extradition country. See 18 U.S.C. § 1201(g) (punishing an offense involving a child by no less than twenty years' imprisonment). Had C.P.'s foster mother not grown suspicious of defendant's disguised messages and contacted law enforcement, defendant's actions would have been devastating to a young girl's life and that of her foster family. This makes defendant's crimes significantly more serious than an average passport fraud or aggravated identity theft crime.

[8] In determining the term of imprisonment to be imposed on count one, the Court is required to not reduce the term to compensate or take into account the mandatory consecutive 24-month term required by statute on count two. 18 U.S.C. § 1028A(b)(3).

The seriousness of defendant's crime is also exacerbated by her sophisticated premeditation. As defendant's own psychiatric expert concedes, defendant's crimes "indicate a high degree of planning and sophistication." (June 19, 2022 psychiatric evaluation by Manual Saint Martin, M.D., J.D. ("Def. Eval.") at 6.) Specifically, defendant exploited a provision in passport issuance guidelines meant to help children in desperate medical need receive expedited passports. Defendant thoroughly researched what she would need to do to get an expedited passport without the child present. She then played on the natural sympathy of a passport clerk by claiming her child was sick to avoid any precautionary checks the State Department might have done, which could have foiled defendant's kidnapping plan. Defendant's careful planning amplifies the seriousness of the offense. Her conduct was not impulsive, but was rather the last iteration of her persistent efforts to unlawfully take back C.P. (See supra 5-6; PSR ¶¶ 36-37.)

In sum, defendant's crimes were very serious, and the government's recommended sentence of 81 months' imprisonment accounts for that.

B. HISTORY AND CHARACTERISTICS OF DEFENDANT, § 3553(A)(1)

Defendant's history and characteristics also warrant the government's recommended sentence. In aggravation, defendant's criminal history—which falls into the highest possible criminal history category (PSR ¶ 40)—demonstrates that a meaningful sentence is needed to ensure sufficient deterrence to future crimes and further victimization of C.P. and those who care for C.P.

Defendant's numerous convictions evince a clear disrespect for the law. Not only has defendant repeatedly reoffended, even when given a chance with deferred sentences, she has undermined the legitimacy of the law and courts by forging a judge's signature and using fraudulent legal process to try to accomplish criminal ends. (See, e.g. Ex. E.) Defendant repeatedly presented false and misleading information to several courts, right up until her arrest for the instant federal charges. (See, e.g. Ex. B.) Defendant's pattern

of conduct was not even dampened by a previous significant period of incarceration. Defendant spent 550 days in Texas jail (PSR ¶ 36), and yet still, after her release continued to defy court orders by trying to find C.P. and those who cared for C.P. (Kuzma Decl. ¶¶ 4, 6, 8.)

When arrested in this case, defendant also had a credit card in C.P.'s name, despite having no legal right to C.P.'s identity. (Ex. A.) In other words, defendant sought not only to illegally obtain physical custody of C.P. but also to further harm the child's future by using her identity to fund defendant's lifestyle.

1. DEFENDANT'S PSYCHIATRIC EVALUATION

On June 19, 2022, defense counsel provided government counsel with a report concerning a psychiatric evaluation of defendant by Manual Saint Martin, M.D., J.D. ("Def. Eval."). Therein, Dr. Martin diagnosed defendant with borderline personality disorder and bipolar disorder. (Id. at 5.) Dr. Martin concluded that after C.P.'s birth, defendant's "borderline personality traits worsened and her thinking became disorganized and her judgement impaired." (Id.) Specifically, Dr. Martin concluded that defendant developed bipolar disorder as a post-partum mood disorder. (Id.) Dr. Martin attributed defendant's criminal conduct to the intersection of these two disorders, but noted that defendant's personality disorder was not causing criminal conduct before it was exacerbated by her bipolar disorder. (Id. at 6.)

Importantly, Dr. Martin's report and conclusions rely on a single evaluation. Equally tellingly, it is largely based on defendant's self-reported information and does not indicate when or if any information was corroborated or independently obtained. (See, e.g., id. at 2.) Moreover, Dr. Martin conducted a psychological test of defendant to assist in evaluating the validity of her symptoms and personality functioning. (Id. at 4.) But the result indicated defendant's profile was invalid and could not be interpreted. (Id.) As such, Dr. Martin's conclusions are not supported by any testing that would support validity of defendant's self-reported symptoms. Finally, Dr. Martin concluded indicated defendant is receiving treatment for her disorders while in custody but failed to

detail any diagnosis or treatment defendant has received, or to provide any supporting documentation. (Id. at 6.)

In any case, defendant's potential mental illness does not mitigate the severity of her criminal history. While Dr. Martin blames defendant's two disorders (one allegedly developed post-partum) as jointly responsible for her criminal behavior (id.), defendant's criminal history predates her post-partum period. (See PSR ¶¶ 32-33.) In fact, defendant's convictions before and after giving birth demonstrate the same pattern: a willingness to do whatever defendant wants, without concern for victims or the law.

C. NEED FOR DETERRENCE AND TO PROMOTE RESPECT FOR THE LAW, § 3553(A)(2)

Defendant's substantial criminal history warrants a sentence that will promote respect for the law, deter her and others from future crimes, and protect the public. Defendant has shown no remorse or contrition for her crimes. The government and those that care for C.P. are extremely concerned that defendant's attempts to take C.P. back illegally will continue once she is released. A substantial term of imprisonment is necessary to impress upon defendant that she cannot return to the same behavior, and that any attempt to do so will be punished severely. Without adequate deterrence, C.P., and those that care for her, will remain in danger for the rest of C.P.'s life.

Defendant's actions after her release in Texas demonstrate the need for such deterrence. In the months leading up to her federal arrest, defendant filed domestic violence restraining order applications based on false information, in a naked attempt to use fraudulent legal process to take C.P. back. (See Ex. B at 7.) In doing so, defendant referenced the very forged writing she had pled guilty to and been released from jail on just three months prior. (PSR ¶ 36.) In other words, defendant was completely undeterred by her incarceration in Texas from 2019 through January 2021. Defendant's use of sophisticated means only increases her crimes' difficulty to detect, and thus dangerousness. A more substantial term is thus necessary to protect the public and to deter defendant from again returning to the same dangerous criminal behavior. 18

U.S.C. §§ 3553(a)(2)(A)-(C).

Additionally, the government's recommended sentence would promote respect for the laws governing passports and deter defendant and others from fraudulently obtaining passports especially in furtherance of more serious crimes.

D. NEED FOR THE SENTENCE TO AVOID UNWARRANTED DISPARITIES, § 3553(A)(6)

Section 3553(a)(6) requires the Court to minimize sentencing disparities among similarly situated defendants. One way of doing so is to correctly calculate the Guidelines range. See United States v. Treadwell, 593 F.3d 990, 1011 (9th Cir. 2010) ("Because the Guidelines range was correctly calculated, the district court was entitled to rely on the Guidelines range in determining that there was no 'unwarranted disparity' . . . ."); Gall v. United States, 552 U.S. 38, 54 (2007) ("[A]voidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges.").

Here, absent the government's requested upward departure, defendant would face the same general sentence as defendants whose conduct was significantly less serious than defendant's. Defendant's sentence should account for the substantial aggravating factors of her crimes and the fact that the passport she fraudulently obtained and the identity she illegally stole were instrumentalities of a far more serious and potentially devastating offense. The adjusted offense level appropriately increases the penalty defendant faces beyond that of the average passport fraud or identity theft case. In other words, any disparity is completely warranted.

E. IMPOSITION OF SUPERVISED RELEASE

District courts have wide latitude in imposing conditions of supervised release. United States v. Blinkinsop, 606 F.3d 1110, 1118 (9th Cir. 2010); United States v. Weber, 451 F.3d 552, 557 (9th Cir. 2006). A sentencing court even has broad discretion to impose conditions of supervised release not named by statute. 18 U.S.C. § 3583(d) (district court may impose "any condition set forth as a discretionary condition of

probation in section 3563(b) and any other condition it considers to be appropriate"). Here, the imposition of supervised release would provide an "added measure of deterrence and protection" that is warranted under the facts of this case. See U.S.S.G. § 5D1.1, cmt. n.5. In light of defendant's substantial criminal history and repeated violations of probation and court-ordered supervision (PSR ¶¶ 32-37), the imposition of the maximum three-year term of supervised release will be crucial to incentivizing her to refrain from returning to criminal and harassing conduct. Previous supervision's failure to deter defendant's recidivism only amplifies the need that defendant be monitored and penalized for any recidivism, for the longest period of time available.

The Court should also order three years' supervised release because defendant's criminal history shows that she poses a danger to the community. See U.S.S.G. § 5D1.1, cmt. n.3(A), (B) (in determining whether to impose a term of supervised release, "[t]he court should give particular consideration to the defendant's criminal history (which is one aspect of the 'history and characteristics of the defendant'"). In this case, defendant has sustained several felony convictions. (PSR ¶¶ 33-34, 36-37.) She has demonstrated a pattern of resorting to fraud to accomplish her ends, especially when those ends involve C.P. (Id. ¶¶ 36-37; supra 5-6.) When defendant is released, she will likely continue to pose a danger to C.P. and those that care for C.P. This Court's close supervision will be necessary to hold her accountable for her actions and to effectively protect the public—and especially C.P. and C.P.'s caretakers—from defendant's future crimes.

F. FINE, FORFEITURE, AND SPECIAL ASSESSMENT

The government agrees with Probation that defendant is unable to pay a fine, and no fine should be imposed. (Dkt. 85 at 1.) At this time, the government has identified no property subject to the forfeiture allegations. Defendant must pay a mandatory $200 special assessment. (PSR ¶ 119.)

VII. CONCLUSION

For the foregoing reasons, the Court should grant a four-level upward departure

and impose a sentence at the high end of the adjusted Guidelines range: 81 months' total imprisonment (57 months' imprisonment on count one and 24 months' consecutive imprisonment on count two), three years' supervised release, and a $200 special assessment. The government submits that this sentence is "sufficient, but not greater than necessary, to comply with the purposes enumerated in 18 U.S.C. § 3553(a)(2)." 18 U.S.C. § 3553(a).