

No. 3:15-cr-00196

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

v.

BOBBY BOYE,
A/K/A BOBBY AJIBOYE,
A/K/A BOBBY AJI-BOYE,
Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S PETITION UNDER 28 U.S.C. § 2255**

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PROCEDURAL HISTORY¹

In June 2014, defendant was charged in a complaint with one count of wire fraud conspiracy in violation of 18 U.S.C.A. § 1349 and six counts of wire fraud in violation of 18 U.S.C.A. § 1343. (A28). Defendant waived indictment. (A49; 1T9:1-10).

Defendant entered a guilty plea to one count of conspiracy to commit wire fraud in violation of 18 U.S.C.A. § 1349. (A58). The District Court accepted defendant's plea as knowing, voluntary and intelligent on April 28, 2015. (1T35:1-36:25).

The District Court held a sentencing hearing on October 15, 2015 and imposed imprisonment for a term of 72 months, along with fines and restitution. (2T; A1).

Defendant filed a direct appeal to the Court of Appeals, but on January 28, 2016 the Court of Appeals granted the Government's motion to dismiss defendant's appeal on ground of appellate waiver. (A124).

Defendant now brings this petition for relief under 28 U.S.C.A. § 2255.

¹ References to the transcripts are as follows:

1T April 28, 2015 (plea)
2T October 15, 2015 (sentence).

STATEMENT OF FACTS

The Plea Agreement and Plea Colloquy

There was no issue that defendant committed the conspiracy to commit wire fraud crime to which he pleaded guilty. (A58; 1T). Per questioning by the Court, defendant admitted that beginning in or about April 2010, he was “working as an international petroleum tax advisor for” the County of Timor-Leste. (1T26:20-25). In around February 2012, defendant learned that Timor-Leste was soliciting bids for a contract to provide legal and tax accounting advice to Timor-Leste. (1T27:1-25). Defendant created the fictitious company of “Opus & Best for the purpose of bidding for the contract.” He “author[ed] several fraudulent documents submitted by Opus & Best to” Timor-Leste to support Opus & Best’s “bid for the contract.” Defendant “pa[id] a relative to create a website for Opus & Best, which contained numerous misrepresentations, including but not limited to, false claims regarding Opus & Best's credentials and experience...” Defendant did this, he acknowledged, to induce Timor-Leste to award him the contracts. (1T27:10-25).

There was an issue, however, on the amount of the “loss” caused by defendant’s crime. Unlike many wire fraud claims where a defendant induces the victim to pay for goods or services that the defendant never provides, Mr. Boye did the work called for by the contracts to provide legal and tax accounting advice. He

is a highly-educated attorney, admitted to the Bar of the State of New York, who has held several high-profile positions throughout his career. Though he duped Timor Leste into awarding him the contracts, he was fully capable of performing, and did perform, the work under the contracts. All acknowledged during the plea and sentencing process that the work that defendant produced was expertly done – the laws and regulations, and accompanying guidelines and “Transfer Pricing,” provided to Timor-Leste. Indeed, Timor Leste continued paying “Opus & Best” for the work product in installments as the excellent work was produced, in accordance with the benchmarks prescribed by the contracts. The Government’s own proofs showed that defendant retained other professionals to help produce the complex work-products contracted for. These professionals included Peter Chen, a New York and New Jersey licensed attorney, CPA, and former tax partner at Deloitte & Touche LLP (see http://www.zhonglun.com/En/lawyer_298.aspx).

The work that defendant provided to Timor-Leste under the first contract was so outstanding, in fact, that Timor-Leste simply hired “Opus & Best” two more times in second and third “no-bid” contracts. These second and third contracts (“Transfer Pricing Study Report” and “Interpretative Guidelines for TDA & TBUCA”) were awarded to Opus & Best without any bids because of the excellent work that Opus & Best produced per the first contract (“Taxes and Duties

Regulations and Taxation of Bayu-Undan Contractors Act”). And Timor-Leste continued paying defendant for the work as it was produced.

The issue was thus presented: what was the “loss” caused by defendant’s crime under governing sentencing law?

Defendant’s trial counsel did not raise any issue with how to calculate the loss during the plea process. Mr. Thomas counseled his client (see accompanying Certification of Bobby Boye) not only to enter a guilty plea to the conspiracy to commit wire fraud crime charged under count one of the indictment, Mr. Thomas counseled defendant to sign a plea agreement that contained a “Schedule A” providing, “4. Specific Offense Characteristic § 2B1.1(b)(1)(J) applies because the aggregate loss amount is greater than \$2,500,000 but not more than \$7,000,000. This Specific Offense Characteristic results in an increase of 18 levels” (representing 18 of the 24 total sentencing points that District Court assigned to defendant’s crime below). (A58).

The Presentence Report, following the stipulation, thus noted that the loss caused by defendant’s conspiracy crime to be the entire amount of the funds paid by Timor-Leste to defendant. “There is an increase of 18 levels under USSG § 2B1.1(b)(1)(J), as the loss was \$4,369,706.30, which exceeds \$2.5 million but is less than \$7 million.” (PSR 17). The total offense level is calculated as 24, resulting in

a “guideline imprisonment range” of “63 months to 78 months.” (PSR 28).

Because the issue was not raised by defendant’s trial counsel, nothing in the Presentence Report addressed the fact that defendant provided value back to Timor-Leste in exchange for the monies paid to him. Nothing in the Presentence Report addressed the outstanding sum of \$1.4 Million due from Timor-Leste to defendant under the second and third contracts; defendant completed the work called for by these contracts, and Timor-Leste accepted the work and continues to use and benefit from the work.

Only prior to sentencing did defendant’s counsel raise any question about how to calculate the “loss” under the Sentencing Guidelines. Counsel submitted a Sentencing Memoranda to the District Court noting,

The penultimate question Your Honor will resolve on Thursday, October 15, 2015, at 11:00am is *What sentence should Mr. Boye receive when the fraud he committed was in the acquisition of a contract, **but** he delivered the work-product to the victim, the victim has never complained about the work-product and continues to use it, and the victim will be made [whole] by seized property and restitution?*

Regarding the nature and circumstances of this offense, there is no doubt that this crime is serious. As outlined in the PSR, Mr. Boye, through fraudulent pretenses, obtained a lucrative contract from Timor-Leste. He misrepresented himself and failed to disclose an inherent conflicts of interest during the bidding process. As a result, he obtained a multi-million dollar contract to perform work on behalf of Timor-Leste. Unlike most frauds, where the defendant devises a

scheme to defraud the victim and never intended to deliver the product, Mr. Boye produced a work product that is still being utilized by the government of Timor-Leste, who in turn uses it to collect revenue. Though Mr. Boye's conduct was deceptive from the inception, his work product continues to pay dividends for Timor-Leste. [A76]

The Government argued,

Notwithstanding the harm inflicted upon Country A, defendant Boye argues in mitigation that he "delivered the work-product to the victim, the victim has never complained about the work-product and continues to use it, and the victim will be made hold [sic] by seized property and restitution[.]" Def. Sent.Ltr. at 1. The Sentencing Commission has rejected the notion that a defendant should get credit for the value of services rendered where, as here, the "case involv[es] a scheme in which . . . services were fraudulently rendered to the victim by persons falsely posing as licensed professionals[.]" See U.S.S.G. § 2B1.1 app. n. 3(F)(v)(I).

Here, Defendant falsely impersonated or caused the impersonation of numerous licensed attorneys and accountants and therefore should not receive any "credit" for services rendered – whether as a mitigating factor or otherwise – in the determination of his sentence. See United States v. Ary-Berry, 424 F. App'x 347, 352 (5th Cir. 2011) (citing United States v. McLemore, 200 Fed. Appx. 342, 344 (5th Cir. 2006) (*per curiam*) (unpublished) (stating that "[t]here is no setoff for the value of any services actually rendered or products provided" when applying the special rules for certain cases of fraud, and "the determination of the amount of loss for calculations under U.S.S.G. § 2B1.1(b)(1) require the use of the greater of actual loss of [sic] intended loss")); United States v. Hunter, 618 F.3d 1062, 1065 (9th Cir. 2010) (finding that the application rule supported the conclusion that the calculated loss required no deduction for the value of work the defendant performed when she was falsely acting as a nurse). Cf. United States v. Nagle, No. 14–3184, 2015 WL 5712253 (Sept. 30, 2015) (holding that the amount of loss defendants were responsible for was the value of the contracts received, less the value of the

performance of the contracts, but declining to address the application of U.S.S.G. § 2B1.1 app. n. 3(F)(v)) as the Government belatedly raised its application, at oral argument).

In sum, the seriousness of defendant Boye's criminal conduct is unquestionable. His provision of some work product under the Contract, while falsely impersonating licensed attorneys and accountants with decades' long experience in the oil and gas sector, should not be relied upon in mitigation. [A78]

The issue was raised at the Sentencing Hearing before the Court. Defendant's counsel argued,

Mr. Boye admitted that the company he created in order to submit this international tax consultant bid was fraudulent.

But one of the things that strike me as odd from the very beginning, your Honor, is that at its inception Mr. Boye created a fraudulent company in order to get the tax consultant work to try to benefit the country of Timor-Leste.

In the victim's submission that's attached to the government's brief, it's silent, your Honor, with regard to the actual product that Mr. Boye produced. And, in fact, your Honor, what Mr. Boye produced is still being used by the country.

Your Honor, the last time I touched contract law was probably in law school 20 years ago. But I think there is a concept, I'm not sure whether it's still valid or not, but back then 20 years ago there was a concept called unjust enrichment.

THE COURT: It still exists.

MR. THOMAS: What we have here, your Honor, is clearly a fraud from the very beginning. Unlike other fraud cases where you know somebody is going in to commit fraud and they are not going to worry about the end product because they are going in to grab the

money and run, what we have here is Mr. Boye created this fraudulent company from the very onset, all right, but he did the work.

It's no excuse. It is absolutely no excuse for committing the fraud to begin with. You can't, you can't get the benefit of that, and I'm not saying he should. But in fashioning a reasonable sentence, your Honor, one that's sufficient but not greater than necessary we should look at the total picture.

At one point when I first got involved in this case I looked at the country's 2012 annual report and there is nothing in there that talks about the fraudulent nature of what -- the product, the end product, the work product that he did. Nothing in there talks about that. The attorneys don't mention that the country is in irreparable harm because the product he submitted was lousy and insufficient.

They hired a big law firm in California that did at least \$600,000 plus -- close to \$900,000 of investigation and nothing is said about the fact that the work product was faulty. They still use it to generate funds and it's going to be continued to be used to generate funds.

So what we have here is somewhat of an unjust enrichment. And, no, your Honor, I am not saying, I am not saying one bit that his original fraudulent conduct should be excused. Absolutely not. It should not be excused. But when you look at the total picture, your Honor, and you compare this fraud case to others -- I don't know if there is any traditional fraud case. There probably should not be. But just your typical fraud case, your Honor, this case doesn't cry out for a sentence at the high end of the Guideline range. [2T17:1-19:25]

The Government reasserted its position:

Now, Mr. Thomas has argued that, well, in mitigation my client did provide some work product under the consulting contract. Well, Your Honor, the government would submit that was an essential part of the scheme. If he had just blown it off and not provided any work product, he wouldn't have gotten the continuous payments under the

contract. The payments were not paid up front. They were paid in installments based on the delivery of work products and he continued to get paid because he was providing some services under the contract.

Now, in terms of the value of those services, as the government noted in its sentencing memorandum, the Sentencing Commission in its creation of the Commentary to Section 2B1.1 has certainly indicated that where there are false representations as to the licensing of particular professionals who are rendering services in a particular scheme, that there should be no credit for the value of services provided.

Your Honor, that is because, the government would submit, that there is a special kind of abuse of trust and a special kind of manipulation that occurs when an individual is posing as a trusted licensed accredited individual. Here he was posing as various licensed accountants who claimed were CPAs, other attorneys, and he needed to create an aura of expertise in order to get the contract, and then once he had the contract to ensure the continued payments in installments under the terms of the contract. [2T27:1-28:15]

In deciding the appropriate sentence, the Court acknowledged that defendant is a highly educated and experienced lawyer and business advisor who was able to and did in fact “do the work:” “Obviously, though, you have great talents because you were able to do the work.” (2T35:1-36:25).

You got a law degree in your home country of Nigeria. You came to the US. You attended UCLA. You got a LOM. Then got a Masters in Business Tax at USC. First of all, amazing schools, opening up amazing opportunities for you. You are clearly a very intelligent man and able and capable man and had a law degree. I'm not quite sure how New York State admitted you to the bar considering your prior conviction, but that's not for me to determine.

All of those degrees that you had, you earned those degrees, and clearly when you went to Timor-Leste you were capable. You did work as an advisor and you pointed out even the other advice that you gave them was a one-man show without the advantage of a big firm behind you. It was real. It was good work product. [1T41:15-42:5]²

The District Court ruled that the “loss” caused by defendant’s crime, however, was the full amount of the money that Timor-Leste paid under the contracts, with no credit for the work that defendant provided:

We all know that you placed yourself in a tremendous conflict of interest and you understood that which is why you hid it so well. But it wasn't just you presenting that this was an Opus & Best with one man at the top -- not you, whoever you wanted to claim it was going to be -- but you had a host of professionals that you represented to be part of this company with resumes to match that would indicate they were looking at a multi-million dollar contract of work that was going

² The Presentence Report confirmed that defendant was an attorney admitted to practice law in the State of New York. (PSR 7). Defendant completed his secondary education at the Annunciation Grammar School, Ikere, Nigeria, in 1978. He attended the University of Ife-Ife located in Osun State, Nigeria. He earned a Barrister at Law Degree from the Nigerian Law School, Victoria Island, Legos, Nigeria, and was subsequently enrolled as a Barrister and Solicitor of the Nigerian Supreme Court. Once in the United States, defendant attended University of California, Los Angeles (UCLA) Law School between August 1997 and May 1998, and earned a Master of Laws (LLM) degree on May 22, 1998. On May 24, 2000, defendant earned a Master of Business Taxation from University of Southern California (USC). (PSR 22-23). Before being employed with the Government of Timor-Leste as an international petroleum advisor, defendant held numerous positions, including a Senior Business Leader in the Tax Division with Master Card Services, Purchase, New York; global tax director 3-D Systems in Los Angeles; and manager of mergers, acquisitions and tax with KPMG, San Francisco. Defendant worked as a Registered Representative (RR) from 1999-2001 for Morgan Stanley DW Inc. at the Woodland Hills, California branch office. (PSR 22-23).

to go forward to give them advice both from an accounting and legal perspective, which is why when you created this company you didn't just make it a two or three-person company. You presented it as a dozen people, 20 people who could perform all these different services.

Because as we know when you are talking about something of this level nobody goes out and hires the solo practitioner out there with the shingle out, but looks for the big firms that have many individuals that can perform the different kinds of work at any given time. So you very well plotted out what it would be that would be necessary to convince, one, the other two on the committee to make a recommendation and ultimately the country to accept this sham company.

So let's not be fooled today that if you just said, I could do all the work for you, that they would have said, great, come in, do everything, be our advisor, be everything else too, a one-man-show.

[2T35:1-36:25]

The Court said that defendant's preparation and presentation of the work to Timor-Leste did not "mitigate the crime."

And the victim here, the country, the fact that they received services that you described as services that are still being used and good services doesn't mitigate the crime. One, it was of course important that you perform the services because otherwise Opus & Best would have been terminated if they weren't providing services, but moreover it's not novel to me.

I have sat and seen many defendants in fraud cases obtaining contracts from government. Here it's generally here in the US. This happens to be a foreign country. But obtaining contracts that are sent out for bidding and obtaining them through fraud or bribes. And in virtually all of those cases they did the work. Whether it was a demolition contractor, or whoever it might have been, it wasn't a

mitigating factor because they did the work. That was the only way they were going to get paid and they may have been capable of doing the work. But here it's how you went about getting it and the fact that not only did you do it dishonestly, but it prevented honest bidders from getting the work that could have also done the work and been paid the same money. It's a fraud upon the country.

It's more egregious in my mind because it was not just upon a corporation who may have some kind of insurance or whatever that could make them whole, and not just done to our country, but you were really sent out there in some ways as a personal ambassador to this country hand picked by Norway to assist an underdeveloped poor country.

It's almost akin to what we call the vulnerable victim here, but it's not exactly. But I'll point out, this particular country that welcomed you and that you took advantage of, the crime is extremely serious and I won't go through all the aspects of it at this point.

[2T37:1-38:25]

The Court thus concluded, "I have considered all of those 3553(a) factors and in fashioning a sentence that's sufficient but not greater than necessary I, one, disagree with the request by the defendant for a sentence at the bottom of the Guideline range. I think that absolutely does not suffice as a sufficient sentence. A Guideline sentence is appropriate and I am going to impose a sentence of 72 months in this case." (2T42:15-43:10).

ARGUMENT

THE COURT SHOULD GRANT RELIEF TO PETITIONER PER 28 U.S.C.A. § 2255 ON GROUND OF CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

The issue before the Court is whether defendant received ineffective assistance of his trial counsel, warranting a new sentencing hearing, because counsel failed to cite and argue on defendant's behalf the correct federal law governing calculation of the "loss" in a fraud case, counseled defendant to stipulate to a "loss" that contravened the governing law and the facts of this case, and failed to submit to the Sentencing Court the work products that defendant prepared and provided to Timor-Leste in exchange for the monies paid to him. Applying the law set forth below to the facts affirmed in the accompanying Certification of Bobby Boye (incorporated here by reference) shows that this Court should grant defendant relief under 28 U.S.C.A. § 2255, vacate his sentence on the ground that defendant received ineffective assistance of counsel in violation of his rights under the Sixth Amendment to the Constitution, and schedule a new sentencing hearing.

Law Governing a 28 U.S.C.A. § 2255 Claim

A federal prisoner claiming that he was imprisoned in violation of federal law "may move the court which imposed ... sentence [on him] to vacate, set aside or correct the sentence." 28 U.S.C.A. § 2255(a). The statute provides that

“[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” 28 U.S.C.A. § 2255(b). A petition warrants a hearing where it sets forth specific facts supported by competent evidence, raising detailed and controverted issues of fact that, if proved at a hearing, would entitle the petitioner to relief. Machibroda v. United States, 368 U.S. 487, 494, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962). The district court shall grant a hearing to determine the issues and make findings of fact and conclusions of law. 28 U.S.C.A. § 2255(b); United States v. McCoy, 410 F.3d 124, 131–32 (3d Cir. 2005); United States v. Costanzo, 625 F.2d 465, 470 (3d Cir. 1980).

Ineffective Assistance of Trial Counsel

A defendant has a right under the Sixth Amendment to effective assistance from his attorney at all critical stages in the proceeding. Hill v. Lockhart, 474 U.S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). In order to succeed on a claim of ineffective assistance of counsel, a claimant must meet the two-pronged test established by Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) by showing that (1) counsel's performance was deficient and (2)

that the deficient performance prejudiced the defense” such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. To show prejudice under Strickland, Petitioner must demonstrate that there is a “reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.” Gov't of Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989).

A. DEFENDANT’S TRIAL COUNSEL RENDERED DEFICIENT PERFORMANCE.

Counsel was deficient for failing to cite and argue the governing Sentencing Guidelines provision prescribing how to calculate the “loss” for offenses involving fraud and deceit. Guideline § 2B1.1 and the accompanying Notes sets a base offense level of 7 then provides for increases in the level “If the loss exceeded \$6,500...” “If the loss exceeded \$6,500, increase the offense level as follows (J) More than \$3,500,000 ... add 18.” U.S.S.G. 2B1.1. It is the Government’s burden to demonstrate the increase in offense level. And, in determining the “loss,” Section (E) of the Notes provides that the defendant must be given credit for whatever value he provided back to the victim before the offense was detected:

(E) Credits Against Loss. -- Loss shall be reduced by the following:
(i) The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. The time of detection of the offense is the earlier of (I) the

time the offense was discovered by a victim or government agency; or (II) the time the defendant knew or reasonably should have known that the offense was detected or about to be detected by a victim or government agency.

Defendant's counsel was deficient in not arguing for application of this governing law defining "loss," and in failing to cite law and object to the Court's use of Subsection (V) (I) of the Notes, which provides, "In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals..." Defendant's counsel was deficient in not arguing that defendant did not "pose" as a licensed professional. He is a licensed professional, as the Presentence Report and this Court at sentencing confirmed. (1T41:15-42:5). Counsel failed to cite and bring to the Court's attention caselaw showing that this Guideline exception to the otherwise governing rule defining "loss" applies only to persons posing as attorneys, doctors, or other licensed professionals, not to actual licensed professionals like Mr. Boye. See, e.g., United States v. Maurello, 76 F.3d 1304 (3d Cir. 1996) ("The Commission determined that the seriousness of these offenses and the culpability of these offenders is best reflected by a loss determination that does not credit the value of the unlicensed benefits provided"); *U.S. Sentencing Guidelines Manual* app. C, vol. II, amend. 617, at 183-84 (2003). Courts that have applied the Section (V) Note have done so where the defendant has posed as a licensed professional. See,

e.g., United States v. Bennett, 453 F. App'x 395, 397 (4th Cir. 2011) (“Bennett posed as a doctor in purporting to provide the services of an MRO. Therefore, he is not entitled to the reduction applied in *Dawkins*”); United States v. Kieffer, 621 F.3d 825, 834 (8th Cir. 2010) (applying U.S.S.G. 2B1.1 cmt. n. 3(F)(v)(I) to defendant who posed as licensed attorney – “an attorney-impersonator”). The presumptive rule governing calculation of loss, not this narrow exception for imposters, should have and would have applied had defendant’s counsel brought this caselaw to the District Court’s attention before sentencing.

Counsel likewise failed to note for the Court at least five other reasons why Subsection (V) (I) does not apply to defendant’s case:

First, there was no proof before the Court that a specific “licensed professional” was required to perform any of the services required by the Timor-Leste Government under the first contract (the “TDA & TBUCA Regulations”).

Second, there was no proof before the Court that under Timor-Leste law – with Timor-Leste being the place where the contract was being performed – that the drafting of the TDA & TBUCA Regulations was required to be done by licensed professionals.

Third, there was no proof before the Court that the two subsequent, no-bid contracts between Opus & Best and Timor-Leste (the “Transfer Pricing Study

Report" and "Interpretative Guidelines for TDA & TBUCA") required the expertise of certain licensed professionals. Other than a sound understanding of taxation and economics, the preparation of the Transfer Pricing and Study Report and the Interpretative Guidelines did not require possession of any particular professional license.

Fourth, and related to the point argued above, both defendant and Peter Chen, the attorney and CPA who defendant retained to help prepare the work products for Timor-Leste, performed a substantial part of the work under the three contracts and are both licensed attorneys; Mr. Chen is a CPA in New York and New Jersey as well (see http://www.zhonglun.com/En/lawyer_298.aspx).

Fifth, there is nothing in the narration of the Government's case at plea or sentencing nor any other proofs placed before the Court relating to the terms and conditions of any of the three contracts.

As the Court of Appeals has said, in a normal fraud case, "where value passes in both directions [between defrauded and defrauder] ... the victim's loss will normally be the difference between the value he or she gave up and the value he or she received." Nagle, 803 F.3d at 183 (citing United States v. Dickler, 64 F.3d 818, 825 (3d Cir. 1995)). "We have repeatedly emphasized that the amount of loss in a fraud case, unlike that in a theft case, often depends on the actual value

received by the defrauded victim. Thus, when a defendant obtains a secured loan by means of fraudulent representations, the amount of loss is the difference between what the victim paid and the value of the security, because only that amount was actually lost.” (citing United States v. Nathan, 188 F.3d 190, 210 (3d Cir. 1999) (Becker, C.J.). In Nathan, 188 F.3d 190, the Court said that “[i]n a fraudulent procurement case” – much like the defendant’s case here – the court calculates the amount of loss by “offset [ting] the contract price by the actual value of the components provided.” Id. This loss calculation is similar to a classic method of remedying fraud: rescission of any agreements and restitution of the reasonable value of what the parties exchanged. As the Nagle court stated, “Applying this well-established principle here, the defrauded parties—the transportation agencies—gave up the price of the contracts and received the performance on those contracts. Therefore, we conclude that, if the standard definition of ‘loss’ in Note 3(A) applies, the amount of loss Nagle and Fink are responsible for is the value of the contracts Marikina received less the value of performance on the contracts—the fair market value of the raw materials SPI provided and the labor CDS provided to transport and assemble those materials.” Id. at 180-81.

Defendant’s counsel was deficient in failing to cite and argue this governing

law on defendant's behalf and in counseling defendant to stipulate (in the plea agreement) to a "loss" figure that contravenes this governing law. See Nagle, 803 F.3d at 183 ("We conclude that in a DBE fraud case, regardless of which application note is used, the District Court should calculate the amount of loss under U.S.S.G. 2B1.1 by taking the face value of the contracts and subtracting the fair market value of the services rendered under those contracts"). The Court of Appeals has found reversible error on similar ground. United States v. Fumo, 655 F.3d 288, 311-12 (3d Cir. 2011), as amended (Sept. 15, 2011) (noting as reversible error District Court's "failure to resolve the disputed" issue of "loss"; "Accordingly, on remand the District Court should carefully consider the evidence and make a determination as to whether, and to what extent, Rubin's contract resulted in a loss to the Senate"); United States v. Sublett, 124 F.3d 693, 694 (5th Cir. 1997) ("Sublett contends that the district court erred in its application of section 2F1.1(b)(1) by determining the loss to be the total sums paid and to be paid under the two contracts. Sublett maintains that he should be given credit, in the sentencing calculation, for the legitimate counseling services provided under the first contract and for the legitimate and qualified services he intended to provide the IRS under the second contract. We agree").

Defendant's counsel also failed to cite and argue the proper federal law

governing the calculation of restitution. The Mandatory Victims Restitution Act (MVRA) authorizes a court to award restitution only in the amount of the victim's actual loss. United States v. Alphas, 785 F.3d 775 (1st Cir. 2015). Defendant's counsel did not cite and argue this law on defendant's behalf, so the Court did not apply this rule in calculating the restitution order in this case. The calculation of the restitution is separate and distinct from the calculation of the "loss" under the Guidelines in determining the sentence. Thus, even if it was proper to disregard any credit for the products that defendant provided to Timor-Leste, the restitution amount must account for this value provided by the defendant back to the victim. See, e.g., United States v. Allen, 529 F.3d 390 (7th Cir. 2008) (sentencing guidelines application note providing that no credit was given for value of services rendered to victim in calculation of loss amount for sentencing purposes from offense involving fraud perpetrated by person falsely posing as licensed professional did not apply to calculation of loss amount from defendant's mail fraud offense for purposes of restitution order under Mandatory Victim Restitution Act (MVRA), and thus, district court was required to calculate actual loss to victim from scheme in which defendant fraudulently held himself out as mold-testing and remediation expert, secured contract to perform mold testing for victim, and tested victim's buildings for mold, taking into account any pecuniary value victim gained

from defendant's conduct, and order restitution accordingly).

In addition to failing to cite and argue the correct governing law, defendant's counsel failed to submit to the District Court at sentencing the work products that defendant provided to Timor-Leste in exchange for the payments defendant received under the three contracts. Defendant's counsel had copies of the contracts and the work products that defendant provided to Timor-Leste in return for the payments made to defendant. (See accompanying Certification of Bobby Boye). Yet counsel did not present the work products to the sentencing court. These work products were highly relevant to determining the "loss" caused by defendant's crime under the governing federal law cited above:

Contract No. 1. The first contract dealt with the "Taxes and Duties Regulations and Taxation of Bayu-Undan Contractors Act" ("TDA & TBUCA Regulations"). These Regulations govern the collection and Administration of Oil and Gas Taxes imposed by the Timor-Leste Government on all the contractors and subcontractors involved with the Oil and Gas industry in Timor-Leste. Prior to the TDA & TBUCA Regulations, there were no regulations guiding the computation of taxes in the production area known as the Kitan Field (which went into production in May 2012). With regard to the Bayu-Undan Field, the regulations that were in existence before defendant's work was performed did not apply

because the regulations were drafted before production commenced in the Bayu-Undan Field in 2002, and the regulations were grossly inadequate to address the plethora of tax controversies between the tax payers and the Timor-Leste Government. This is what prompted Timor-Leste to solicit the bids for the first contract. As a result of the work products produced by defendant and provided to Timor-Leste, the average tax revenue from the Kitan and Bayu-Undan Fields for the time period 2010-2013 was approximately \$1.5 Billion each year.

Contract No. 2. This involved a "Transfer Pricing Study Report." This was a study commissioned by the Timor-Leste Government to determine the economics of all related party transactions entered into by the Oil and Gas contractors operating in Timor-Leste between 2007 and 2012. The purpose of the study was to determine whether or not the exchange of services and/or goods between the contractors and their related parties were appropriately priced when compared with pricing of similar services or goods with similar unrelated parties. The value of such services and goods between the contractors and related parties in Timor-Leste during the referenced period above was approximately \$12 Billion.

Contract No. 3. This involved "Interpretative Guidelines for TDA & TBUCA." This Guidelines project was commissioned by the Timor-Leste Government to provide guidance to the employees of the Timor-Leste Petroleum

Tax office, Oil and Gas operators in Timor-Leste, and the general public regarding the interpretation of the substantive provisions of the Taxes and Duties Act and the Taxation of the Bayu-Undan Contractors Act. The “Guidelines” is essentially a manual to guide the employees of the Timor-Leste Tax office, Oil and Gas Operators, and the general public as to how the law operates in this area. The Guidelines also contain copies of all of the Tax forms prescribed under the Regulations and the substantive tax laws, as well as instructions on how to complete these forms. The Guidelines also contain various user fees prescribed by certain applications made by taxpayers to the Petroleum Tax Office for one service or the other.

As further shown by the Certification of defendant Boye, trial counsel likewise failed to advise the Court that defendant retained other professionals like Peter Chen, a licensed attorney and CPA, to help prepare the work products for Timor-Leste. http://www.zhonglun.com/En/lawyer_298.aspx (profile page for Peter Guang Chen, Partner in the Hong Kong Office of Zhong Lun Law Firm, and including under “Representative Cases,” “Recently, Mr. Chen has been engaged by the Ministry of Finance of a South Asian nation to draft the country’s tax regulations and to provide consulting on international tax matters.”) Counsel failed to provide the Court with the subcontract agreements, billings, and evidence

of payments by defendant to Mr. Chen and the other professionals hired as part of the team performing the contracts with Timor-Leste. Counsel failed to bring to the Court's attention the fact that the face value of the three contracts was \$4.9 Million, yet only \$3.5 Million was paid to defendant by Timor-Leste – \$1.4 less than the value of the services that defendant and his team provided to Timor-Leste. All of these facts directly impacted the Court's calculation of the "loss" in defendant's case (which in turn impacted the sentence imposed).³

³ The United States Attorney is charged with the duty to see that justice is done, not to "win" the case. Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935) ("[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.") Yet the United States Attorney did not clarify these facts for the Court either. The United States Attorney did not clarify for the Court that there were three separate contracts, that only the first contract was connected with a bid and misrepresentations made to obtain the bid by "Opus & Best," and that the second and third contracts were no-bid contracts awarded by the Timor-Leste Government based on "Opus & Best's" exemplary completion of the work called for by the first contract. Nor did the Government bring to the Court's attention the fact that defendant hired persons like Peter Chen, a licensed attorney and CPA, as part of the team that executed all three contracts. All of this misinformation resulted in a "loss" calculation and consequent punishment that is divorced from the actual facts of this case, we respectfully submit, further supporting granting of 2255 relief here.

B. THERE IS A REASONABLE PROBABILITY THAT, BUT FOR TRIAL COUNSEL'S ERRORS, THE RESULT OF DEFENDANT'S CASE WOULD HAVE BEEN DIFFERENT.

“An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. The defendant “must show that the deficient performance prejudiced the defense.” Id. at 687. The level of prejudice the defendant must show lies between prejudice that “had some conceivable effect” and prejudice that “more likely than not altered the outcome in the case.” Id. at 693. The defendant “must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 694. “Reasonable probability” is one that “undermine[s] confidence in the outcome.” In a guilty plea, “[t]he second, or ‘prejudice,’ requirement [] focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59.

Here, failing to cite and argue the correct federal sentencing law to the Court, and failing to bring the documents and facts discussed above to the Court’s attention at sentencing, was deficient performance of counsel that directly resulted in the 72-month prison sentence imposed on defendant – because the sentence was based primarily on the “loss” that the District Court found.

The Supreme Court has held that a criminal defendant suffers ineffective assistance of counsel when his attorney improperly fails to object to an error of law in the court's application of the Sentencing Guidelines. Glover v. United States, 531 U.S. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001). Thus, in United States v. Otero, 502 F.3d 331 (3d Cir. 2007), the Court of Appeals held that a petitioner received ineffective assistance of counsel when his attorney did not object to the court's misapplication of the Sentencing Guidelines. The petitioner in Otero had pleaded guilty to illegal reentry into the United States after deportation. Otero, 502 F.3d at 333. At sentencing, the court applied a sixteen-level enhancement because it found that the petitioner's prior conviction for simple assault was a “crime of violence” under § 2L1.2(b)(1)(A). In so doing, the court misapplied the law because, for the purpose of sentencing, a simple assault lacked the requisite intent to be considered a crime of violence. See Id. at 335 (citing Popal v. Gonzales, 416 F.3d 249, 254 (3d Cir. 2005)). The Court of Appeals held that counsel was ineffective in failing to object to the erroneous application of the Sentencing Guidelines. Id. Similar analysis applies to this case, we submit, and warrants 2255 relief for defendant by grant of a new sentencing hearing. See also Rompilla v. Beard, 545 U.S. 374, 390, 125 S. Ct. 2456, 162 L. Ed. 2d 360 (2005) (counsel failed to pursue records outlining defendant's upbringing in a slum

environment, evidence pointing to schizophrenia and other disorders, and test scores showing a third grade level of cognition despite nine years of schooling, constituting deficient performance); Williams v. Taylor, 529 U.S. 362, 395, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (counsel deficient where “failed to conduct an investigation that would have uncovered extensive records graphically describing Williams' nightmarish childhood” as mitigating evidence at sentencing).

CONCLUSION

For these reasons and those expressed in the accompanying Petition and Certification of Bobby Boye, we respectfully request that the Court grant defendant relief under 28 U.S.C.A. § 2255, vacate his sentence on the ground that defendant received ineffective assistance of counsel in violation of his rights under the Sixth Amendment to the Constitution, and schedule a new sentencing hearing.

Respectfully submitted,

HEGGE & CONFUSIONE, LLC
P.O. Box 366
Mullica Hill, New Jersey 08062-0366
(800) 790-1550; (888) 963-8864 (fax)
mc@heggelaw.com

Michael Confusione

By: Michael Confusione (MC-6855)
Counsel for Defendant, Bobby Boye

Dated: September 30, 2016

CERTIFICATE OF SERVICE

I certify that service of defendant's Petition with accompanying Certification of Defendant Bobby Boye and Memorandum of Law was served via CM/ECF filing system upon counsel for United States of America, Shirley Uchenna Emehelu, Office of the U.S. Attorney, District of New Jersey, 970 Broad Street, Suite 700, Newark, NJ 07102.

Michael Confusione
Michael Confusione

Dated: September 30, 2016

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

Case Number 3:15-CR-196-01(FLW)

BOBBY BOYE
a/k/a "Bobby Ajiboye"
a/k/a "Bobby Aji-Boye"

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, BOBBY BOYE, was represented by K. Anthony Thomas, AFPD.

The defendant pled guilty to count One of the INFORMATION on 4/28/2015. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:1349	Attempt and Conspiracy to Commit Wire Fraud	3/2012 - 5/2013	One

As pronounced on October 15, 2015, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count(s) One, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 15th day of October, 2015.


FRED A. L. WOLFSON
United States District Judge

RECEIVED

OCT 15 2015

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

07430

A001

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 72 Months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in the FCI Fort Dix, New Jersey facility.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons on November 30, 2015. If designation has not yet been made, the defendant shall surrender to the U.S. Marshal Office in Newark, New Jersey on November 30, 2015.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

Based on information presented, the defendant is excused from the mandatory drug testing provision, however, may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You shall cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you shall provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- (19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- (20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the amount of \$3,510,000.00. The Court will waive the interest requirement in this case. Payments should be made payable to the **U.S. Treasury** and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to:

Ambassador Pierre-Richard Prosper
Arent Fox LLP
555 West Fifth Street, 48th Floor
Los Angeles, California 90013.

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$500, to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: BOBBY BOYE
Case Number: 3:15-CR-196-01

RESTITUTION AND FORFEITURE

FORFEITURE

The defendant is ordered to forfeit the following property to the United States:

The Court orders forfeiture as set forth in the Court's Consent Judgment of Forfeiture and Preliminary Order of Forfeiture dated 7/16/2015 and the Corrected Consent Judgment of Forfeiture and Preliminary Order of Forfeiture dated 10/15/2015.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 15-196-(FLW)-1

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UNITED STATES OF AMERICA : TRANSCRIPT OF
 : SENTENCE
 v. :
 : OCTOBER 15, 2015
 BOBBY BOYE, :
 a/k/a, BOBBY AJIBOYE :
 a/k/a, BOBBY AJI-BOYE :
 Defendant :
 ----- :

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A L. WOLFSON, USDJ

A P P E A R A N C E S:

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: SHIRLEY UCHENNA EMEHELU, AUSA
On behalf of the Government

K. ANTHONY THOMAS, ESQUIRE
On behalf the Defendant Bobby Boye

A L S O P R E S E N T:

DON MARTENZ, US PROBATION OFFICER

* * * * *

VINCENT RUSSONIELLO, CCR, CRR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

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THE COURT: Thank you, Ms. Emehelu.

I'll make my comments now with regard to the
3553(a) factors. Starting with the nature and

1 circumstances of the offense and the seriousness of
2 the offense.

3 I think that the government has just spent
4 substantial time going through, in fact, what the
5 offense was which on its face demonstrates the
6 seriousness of it. So I will make only a few comments
7 which should not in any way be interpreted as because
8 they may not be as lengthy as the government's that it
9 minimizes in any manner the seriousness of this
10 offense.

11 It is correct that the victim in this case was
12 a very young and poor nation that relied principally
13 upon this asset that it had, its natural resource of
14 petroleum, and that it was using and relying on
15 advisors to assist them with it, and also Norway that
16 was involved in this endeavor and locates the
17 defendant.

18 The fraud here was really of such a major
19 level that I can't say enough about it in that Mr.
20 Boye was given a wonderful opportunity. There was
21 employment, yes, and he was going to be paid well for
22 that employment. But it was more than just the salary
23 he was going to get. He accepted a position that was
24 really of a new kind that was going to assist this
25 country.

1 He was going to be on the ground floor of
2 assisting them in moving forward in an economic way.
3 That opportunity to not only perform professional
4 services that appears from his educational background
5 that he had the ability to do and advise upon, but to
6 also do what I would call "do good" to assist this
7 country in moving forward in a very important way, and
8 a country that had been ravaged by civil war and was
9 looking to get itself on its feet and move forward
10 based upon this very important and valuable natural
11 resource. So the opportunities for Mr. Boye were
12 tremendous to accomplish some very, very good things.

13 And you had a country who based upon its in
14 many ways naivete about this industry upon which it
15 was embarking and how to go about it clearly needed
16 the advisors to assist it, was taking the assistance
17 from Norway in selecting such individuals, or
18 suggesting to them the individuals, and obviously
19 having made the selection put great trust and faith in
20 Mr. Boye in performing the services and having a
21 loyalty and fidelity to them that they expected to
22 have.

23 And even today Mr. Boye says how fond he was
24 of the country and how well he was treated by the
25 government. Obviously, particularly because of the

1 kind of small country it was and where they were going
2 and the number of limited people involved in assisting
3 them, this position of trust was obviously fostered
4 and created at an early stage. This country welcomed
5 him and made him one of their own which makes even
6 more egregious the fraud that was then committed upon
7 them. It wasn't simply some stranger committing the
8 fraud that we sometimes get in bid-rigging or things
9 of this nature, but this was one of their own at this
10 point who decided to abuse that trust.

11 In that connection I need to comment obviously
12 upon the manner in which it was carried out and the
13 comments that were made that Mr. Boye seems to think
14 because he was held in such good light by this country
15 that if he had simply disclosed that he could do this
16 work he would have been picked. Don't pull the wool
17 over my eyes.

18 We all know that you placed yourself in a
19 tremendous conflict of interest and you understood
20 that which is why you hid it so well. But it wasn't
21 just you presenting that this was an Opus & Best with
22 one man at the top -- not you, whoever you wanted to
23 claim it was going to be -- but you had a host of
24 professionals that you represented to be part of this
25 company with resumes to match that would indicate they

1 were looking at a multi-million dollar contract of
2 work that was going to go forward to give them advice
3 both from an accounting and legal perspective, which
4 is why when you created this company you didn't just
5 make it a two or three-person company. You presented
6 it as a dozen people, 20 people who could perform all
7 these different services.

8 Because as we know when you are talking about
9 something of this level nobody goes out and hires the
10 solo practitioner out there with the shingle out, but
11 looks for the big firms that have many individuals
12 that can perform the different kinds of work at any
13 given time. So you very well plotted out what it would
14 be that would be necessary to convince, one, the other
15 two on the committee to make a recommendation and
16 ultimately the country to accept this sham company.

17 So let's not be fooled today that if you just
18 said, I could do all the work for you, that they would
19 have said, great, come in, do everything, be our
20 advisor, be everything else too, a one-man-show.
21 Obviously, though, you have great talents because you
22 were able to do the work.

23 I must say when I read through all of what you
24 did and the way you described these individuals, some
25 fake -- I don't know if you found real names out there

1 somewhere and put some resumes on -- but whatever it
2 was it was quite sophisticated and involved to come up
3 with this. And all to get, not to help the country,
4 because there were others out there that could have
5 done a good job too that could have helped the
6 country, but to line your pockets. And what did you
7 do with the money? Expensive cars, jewelry,
8 properties. Partly the reason why there is an ability
9 to get this forfeiture and hopefully compensate to
10 more or less say because you spent your money on
11 things.

12 And the victim here, the country, the fact
13 that they received services that you described as
14 services that are still being used and good services
15 doesn't mitigate the crime. One, it was of course
16 important that you perform the services because
17 otherwise Opus & Best would have been terminated if
18 they weren't providing services, but moreover it's not
19 novel to me.

20 I have sat and seen many defendants in fraud
21 cases obtaining contracts from government. Here it's
22 generally here in the US. This happens to be a
23 foreign country. But obtaining contracts that are
24 sent out for bidding and obtaining them through fraud
25 or bribes. And in virtually all of those cases they

1 did the work. Whether it was a demolition contractor,
2 or whoever it might have been, it wasn't a mitigating
3 factor because they did the work. That was the only
4 way they were going to get paid and they may have been
5 capable of doing the work. But here it's how you went
6 about getting it and the fact that not only did you do
7 it dishonestly, but it prevented honest bidders from
8 getting the work that could have also done the work
9 and been paid the same money. It's a fraud upon the
10 country.

11 It's more egregious in my mind because it was
12 not just upon a corporation who may have some kind of
13 insurance or whatever that could make them whole, and
14 not just done to our country, but you were really sent
15 out there in some ways as a personal ambassador to
16 this country hand picked by Norway to assist an
17 underdeveloped poor country.

18 It's almost akin to what we call the
19 vulnerable victim here, but it's not exactly. But
20 I'll point out, this particular country that welcomed
21 you and that you took advantage of, the crime is
22 extremely serious and I won't go through all the
23 aspects of it at this point.

24 Now, looking at deterrence both from a
25 specific and general deterrence perspective. As to

1 specific deterrence, it is absolutely an important
2 consideration here. This is not the first time that
3 you committed a criminal act, defrauded. What is
4 incredible to me is given how obviously intelligent
5 and educated and able that you were to do good work,
6 that you were employed by very high ranking companies,
7 Morgan Stanley, Mastercard, and this company out in
8 California that I'm not familiar with, that you
9 embezzled from the company and you received a sentence
10 and apparently the sentence allowed you to serve it in
11 a halfway house for white collar criminals.

12 We don't do that here in federal court for
13 some important reasons, but that did not act as a
14 deterrence to you because you would have thought that
15 someone of your intellect that would have been a
16 wake-up call. I escaped prison. I did something
17 really wrong. I could never do anything like that
18 again to an employer or anyone else, and lo and behold
19 here you were a few years later doing the same.

20 And even with your employer there of course
21 preceding that was the employment with Morgan Stanley
22 and your actions there that ultimately result in you
23 being banned by the New York Stock Exchange. Frankly,
24 it boggles my mind that one of the things apparently
25 when you went to California was telling Morgan Stanley

1 that you were on a medical leave with some illness,
2 and it turns out you took another job in California
3 and then they terminated you upon discovering that and
4 all the investigation occurs and that's where it comes
5 out. And here too at some point this investigation
6 begins when you told Timor-Leste that you had a life
7 threatening illness and they started looking into
8 that.

9 There is a pattern here and it's a pattern
10 that unfortunately goes back to your days working with
11 Morgan Stanley, your other employer, that's more than
12 a decade old and you have not learned the lesson. So
13 specific deterrence is a very important consideration
14 for this Court and you clearly have never served real
15 prison time.

16 As to a general or public deterrence, it is an
17 important consideration for this Court because also
18 different than how you were treated in California by,
19 quote, this halfway house for white collar criminals,
20 we take seriously fraud, white collar crimes, and
21 there has to be a recognition of that by the public
22 that no matter how educated you are, how good you are
23 at what you do, you commit a serious crime, you have
24 to do serious time.

25 There is also of course the concern of the

1 Court for disparity of sentencing for similar crimes
2 and I must consider that as well.

3 Looking at your personal history and
4 characteristics. Some of the things that I've
5 mentioned about, the prior activity in your employment
6 both with Morgan Stanley, the criminal history that
7 you had already speak to that somewhat, but let me
8 point out that what I've got here is, it was
9 indicated, I do understand that there is some
10 difficulty in early childhood, your father, but you
11 went about succeeding.

12 You got a law degree in your home country of
13 Nigeria. You came to the US. You attended UCLA. You
14 got a LOM. Then got a Masters in Business Tax at USC.
15 First of all, amazing schools, opening up amazing
16 opportunities for you. You are clearly a very
17 intelligent man and able and capable man and had a law
18 degree. I'm not quite sure how New York State
19 admitted you to the bar considering your prior
20 conviction, but that's not for me to determine.

21 All of those degrees that you had, you earned
22 those degrees, and clearly when you went to
23 Timor-Leste you were capable. You did work as an
24 advisor and you pointed out even the other advice that
25 you gave them was a one-man show without the advantage

1 of a big firm behind you. It was real. It was good
2 work product.

3 As I said, I am stymied by what greed must
4 have motivated you to do this because you could have
5 achieved and accomplished so many things just because
6 of the qualities and education that you had, and
7 instead you used that to take advantage.

8 I know that you currently have two small
9 children. I know it also appears from the PSR that
10 you are in the midst of divorce. Clearly, your
11 relationship has broken down. On a personal level,
12 you have a lot of things to make up for, mending to do
13 at some point if you want relationships with your
14 children.

15 Now, what you are going to do when you are
16 released from prison is going to be up to you.
17 Presumably, with this felony conviction, you are going
18 to be disbarred. There are certain limitations you
19 are going to have on what you are able to do. But
20 certainly given your natural innate abilities, you
21 should be able to do and accomplish a number of
22 things, but you are going to need a major change.

23 I have considered all of those 3553(a) factors
24 and in fashioning a sentence that's sufficient but not
25 greater than necessary I, one, disagree with the

1 request by the defendant for a sentence at the bottom
2 of the Guideline range. I think that absolutely does
3 not suffice as a sufficient sentence.

4 A Guideline sentence is appropriate and I am
5 going to impose a sentence of 72 months in this case.

6 I am also going to impose a 3-year period of
7 supervised release in this matter.

8 I would also agree that given the large
9 restitution and forfeiture order in this case that he
10 would not have the ability to satisfy a fine. My
11 interest is in making sure that restitution is paid.
12 So I will waive the fine.

13 Sentence is as follows:

14 It is the judgment of the Court that the
15 defendant, Bobby Boye, is hereby committed to the
16 custody of the Bureau of Prisons to be imprisoned for
17 a term of 72 months.

18 Upon release from imprisonment, the defendant
19 shall be placed on supervised release for a term of
20 3 years.

21 Within 72 hours of release from the custody of
22 the Bureau of Prisons, the defendant shall report in
23 person to the Probation Office in the district to
24 which he is released.

25 While on supervised release, the defendant

1 shall not commit another federal, state, or local
2 crime, shall be prohibited from possessing a firearm
3 or other dangerous device, shall not possess an
4 illegal controlled substance, and shall comply with
5 the other standard conditions that have been adopted
6 by this Court.

7 Based on information presented, the defendant
8 is excused from the mandatory drug testing provision.
9 However, he may be requested to submit to drug testing
10 during the period of supervision if Probation
11 determines a risk of substance abuse.

12 The following special conditions shall apply:

13 There will be had a new debt restriction that
14 will be in place until the restitution is satisfied.
15 There will also be a self-employment or business
16 disclosure condition as well. Those are the only
17 conditions being imposed.

18 It is further ordered that the defendant shall
19 make restitution in the amount of \$3,510,000. I will
20 waive the interest requirements in the case. Payments
21 shall be made payable to the U.S. Treasury and
22 forwarded to the Clerk of the Court in Trenton, for
23 distribution to Ambassador Pierre-Richard Prosper, and
24 there is an address for that.

25 The restitution is due immediately. It is

1 recommended that the defendant participate in the
2 Bureau of Prisons Inmate Financial Responsibility
3 Program. If he participants, the restitution shall be
4 paid from those funds at a rate equivalent to \$25
5 every 3 months.

6 In the event the entire restitution is not
7 paid prior to the commencement of supervision, the
8 defendant shall satisfy the amount due in monthly
9 installments of no less than \$500 to commence 30 days
10 after release from confinement.

11 Defendant shall notify the United States
12 Attorney for this district within 30 days of any
13 change of mailing or residence address that occurs
14 while any portion of the restitution remains unpaid.

15 As I've indicated, I find the defendant does
16 not have the ability to pay a fine. I will waive the
17 fine in this case.

18 Finally, it is further ordered the defendant
19 shall pay to the United States a total special
20 assessment of \$100 for the single count of conviction,
21 which is due immediately.

22 I advise the parties of their right to appeal
23 this sentence.

24 I will also be entering a forfeiture order
25 that is going to be submitted to me upon consent. Is

1 that correct?

2 MS. EMEHELU: Yes, your Honor.

3 A preliminary forfeiture order has already
4 been entered and filed in this matter. The United
5 States will be submitting a corrected consent judgment
6 of forfeiture that simply corrects the description of
7 the Elizabeth properties that has the correct street
8 number. That's the only correction.

9 THE COURT: Thank you.

10 The last thing, there has been a request for
11 voluntary surrender. Is there any objection by the
12 government?

13 MS. EMEHELU: No objection, your Honor.

14 THE COURT: I think you were requesting a
15 November 30th date.

16 MR. THOMAS: That's correct, your Honor.

17 THE COURT: If he has not yet been designated
18 at that point -- where is he currently living?

19 THE DEFENDANT: Mahwah, New Jersey.

20 THE COURT: If you have not gotten a
21 designation, you are to report to the Marshal's Office
22 in Newark on November 30th. It's a Monday. Just so
23 he doesn't have to come down to Trenton, we'll have
24 him report to Newark.

25 I know you asked that I recommend Fort Dix.

1 I'll recommend it. You know that it's totally up to
2 the BOP, however.

3 MR. THOMAS: Your Honor, one last issue with
4 regards to the \$500 per month while on supervised
5 release.

6 Would your Honor be inclined to put a range
7 and leave it up to the discretion of Probation and not
8 more than \$500?

9 THE COURT: We don't know what his employment
10 will be. I put that out there at this point because I
11 think he is capable of getting employment. It can be
12 adjusted. I usually say adjust it based upon what his
13 employment is at the time, but I can't leave it
14 totally at the discretion of Probation.

15 Mr. Martenz, is that correct?

16 THE PROBATION OFFICER: Set an amount now and
17 it could be adjusted. An amount has to be set.

18 THE COURT: Right. It has to be set. And it
19 can't be like saying a range or up to. We have to set
20 it.

21 MR. THOMAS: Can we put at least 500?

22 THE COURT: No. Or I wouldn't even say at
23 most because if he got a job that was very high paying
24 it could be more than 500. We don't know. I'm
25 putting out a number there that's based upon what his

1 education is and a possibility of getting employment.

2 Absolutely, one, if he doesn't obtain
3 employment immediately, he can't make that; and, two,
4 when he does get employment Probation may adjust that.
5 Absolutely.

6 MR. THOMAS: My concern is, your Honor, it's
7 setting him up for failure for a potential violation.
8 That's all.

9 THE COURT: Well, it wouldn't be a violation
10 anyway because they wouldn't violate if he doesn't
11 have employment that would allow him to pay that.

12 THE PROBATION OFFICER: Correct. It has to be
13 willful.

14 THE COURT: Right.

15 And I must tell you, I haven't seen a
16 violation on a failure to pay restitution unless there
17 are a lot of other things going on at the same time.

18 It will be adjusted. I have it on the record
19 that I've indicated that is to be adjusted based upon
20 whatever his employment situation is at the time.

21 MR. THOMAS: Thank you, your Honor.

22 THE COURT: Thank you.

23 MS. EMEHELU: Thank you, your Honor.

24 THE CLERK: All rise.

25 (Proceedings concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR, CRR
Certificate No. 675

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Cathy L. Waldor
:
v. : Mag. No. 14-7086 (CLW)
:
BOBBY BOYE, :
a/k/a "Bobby Ajiboye," : **CRIMINAL COMPLAINT**
a/k/a "Bobby Aji-Boye" :
: **Filed Under Seal**

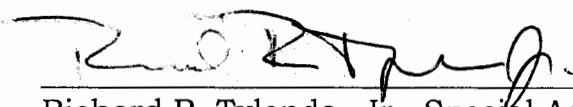
I, Richard R. Tylenda, Jr., being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.


Richard R. Tylenda, Jr., Special Agent
Federal Bureau of Investigation

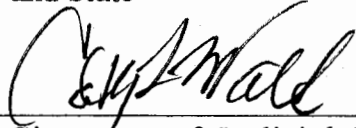
Sworn to before me and subscribed in my presence,

June 18, 2014
Date

at

Newark, New Jersey
City and State

Honorable Cathy L. Waldor
United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

ATTACHMENT A

Count One
(Wire Fraud Conspiracy)

From in or about March 2012 through in or about May 2013, in the District of New Jersey and elsewhere, defendant

BOBBY BOYE,
a/k/a "Bobby Ajiboye,"
a/k/a "Bobby Aji-Boye,"

did knowingly and intentionally conspire and agree with others, known and unknown, to devise a scheme and artifice to defraud Country A, and to obtain money and property from Country A by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, contrary to Title 18, United States Code, Section 1343.

In violation of Title 18, United States Code, Section 1349.

Counts Two through Seven
(Wire Fraud)

On or about the dates set forth below, in the District of New Jersey and elsewhere, defendant

BOBBY BOYE,
a/k/a "Bobby Ajiboye,"
a/k/a "Bobby Aji-Boye,"

did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud, and to obtain money and property from Country A by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, the following writings, signs, signals, pictures, and sounds, each constituting a separate count of this Complaint:

Count	Approximate Date	Description
2	March 17, 2012	Email transmission of the fraudulent Opus & Best bid documentation from an email server located in California to an email server located in Country A.
3	June 15, 2012	Country A's wire transfer of approximately \$1,080,000 from a Country A account at the Federal Reserve Bank of New York (the "Country A Account") to Opus & Best's business checking account ending in -0399 (the "Opus & Best -0399 Account"), which wire payment was processed in East Rutherford, New Jersey, and credited to the Opus & Best Account in New York, New York.
4	July 20, 2012	Country A's wire transfer of approximately \$432,000 from the Country A Account to the Opus & Best -0399 Account, which wire payment was processed in East Rutherford, New Jersey, and credited to the Opus & Best Account in New York, New York.
5	August 3, 2012	Country A's wire transfer of approximately \$720,000 from the Country A Account to the Opus & Best -0399 Account, which wire payment was processed in East Rutherford, New Jersey, and credited to the Opus & Best Account in New York, New York.
6	December 12, 2012	Country A's payment of approximately \$648,000 from the Country A Account to the Opus & Best -0399 Account, which wire payment was processed in East Rutherford, New Jersey, and credited to the Opus & Best Account in New York, New York.
7	December 17, 2012	Country A's payment of approximately \$630,000 from the Country A Account to the Opus & Best -0399 Account, which wire payment was processed in East Rutherford, New Jersey, and credited to the Opus & Best Account in New York, New York.

In violation of Title 18, United States Code, Section 1343 and Section 2.

FORFEITURE ALLEGATIONS

1. The allegations contained in this Complaint are incorporated by reference as though set forth in full herein for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461.

2. The United States hereby gives notice to the defendant that, upon conviction of any of the offenses charged in this Complaint, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Section 1343, or a conspiracy to commit such an offense, as alleged in this Complaint, including but not limited to the real property described as:

- a. 25 Crescent Hollow Court, Ramsey, New Jersey;
- b. 36 Rosewood Court, North Haledon, New Jersey;
- c. 9 Cobblestone Court, Oakland, New Jersey; and
- d. 140 Grove Street, Elizabeth, New Jersey.

3. If by any act or omission of the defendant, any of the property subject to forfeiture described herein:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party,
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty,

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

ATTACHMENT B

I, Richard R. Tylenda, Jr., a Special Agent with the Federal Bureau of Investigation ("FBI"), having conducted an investigation and discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts which I believe are necessary to establish probable cause. Unless specifically indicated, all conversations and statements described in this affidavit are related in substance and in part. In addition, the events described in this affidavit occurred on or about the dates provided herein.

Background

1. At all times relevant to this Complaint, unless otherwise indicated:
 - a. Defendant BOBBY BOYE, a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye," ("BOYE") was a resident of Franklin Lakes, New Jersey, and was admitted to practice law in the State of New York. Starting in or about July 2010, defendant BOYE worked as an international petroleum legal advisor for the Ministry of Finance of Country A. As a legal advisor, defendant BOYE was responsible for, among other things, securing contracts with outside vendors for Country A's benefit.
 - b. Country A was a foreign sovereign nation. In or about February 2012, Country A marketed and solicited bids for a multi-million dollar contract to provide legal and tax accounting advice to Country A (the "Contract"). As part of his role as an international petroleum legal advisor to Country A, defendant BOYE served on an approximately three-member committee responsible for reviewing and evaluating the submitted bids for the Contract (the "Bid Review Committee").
 - c. Founded in or about late March 2012, Opus & Best Services LLC ("Opus & Best") purportedly was a law and accounting firm incorporated in the State of New York as a limited liability company. Defendant BOYE was the sole member of Opus & Best and the registered address for Opus & Best was a Jackson Heights, New York residence associated with defendant BOYE.
 - d. On or about March 17, 2012 defendant BOYE caused Opus & Best to submit, via email transmission, a bid for the Country A Contract. Defendant BOYE did not disclose to Country A that he was the sole member of Opus & Best. Largely based upon the recommendation of defendant BOYE, Country A awarded the lucrative Contract to Opus & Best in or about June 2012.

e. In or about April 2012, defendant BOYE opened a J.P. Morgan Chase Bank business checking account ending in -0399 for Opus & Best in New York, New York (the "Opus & Best -0399 Account"). Defendant BOYE was the sole signatory on the Opus & Best -0399 Account.

f. The Federal Reserve Bank of New York (the "Federal Reserve") operated an Automated Clearing House ("ACH") payments system that allowed customers, including Country A and others, to make payments electronically. The Federal Reserve's ACH processing site was located in East Rutherford, New Jersey.

g. Per the wiring instructions of "Opus & Best," Country A wired a total of approximately \$3,510,000 in Contract payments from a Country A account at the Federal Reserve (the "Country A Account") to the Opus & Best Account secretly controlled by defendant BOYE, which electronic payments were processed in East Rutherford, New Jersey and deposited into the Opus & Best Account in New York, New York.

Overview of the Scheme to Defraud

2. In or about early 2012, defendant BOYE, in his trusted capacity as a legal advisor to Country A, helped oversee the procurement process for professional firms bidding for the approximately \$3.5 million Contract to provide legal and tax accounting advice to Country A. Defendant BOYE caused Opus & Best – a company owned and controlled by defendant BOYE himself – to bid for, and obtain, the lucrative Contract by making materially false representations and omissions, including but not limited to: falsely claiming that Opus & Best was a legitimate law and accounting firm; and fraudulently failing to disclose his affiliation with Opus & Best, in contravention of the no-conflict of interest bidding requirements.

3. Between in or about June 2012, when Opus & Best was awarded the Contract, and in or about December 2012, Country A wired a total of approximately \$3,510,000 in Contract payments to the Opus & Best -0399 Account, which funds defendant BOYE diverted to his own personal use to purchase numerous assets, including but not limited to:

a. Four properties located in Ramsey, New Jersey, North Haledon, New Jersey, Oakland, New Jersey, and Elizabeth, New Jersey, respectively, for a total of more than approximately \$1.5 million in cash;

b. Three luxury vehicles, namely a 2012 silver Bentley Continental for approximately \$172,000, a 2012 black Range Rover for approximately \$100,983, and a 2011 gray Rolls Royce Ghost for approximately \$215,000; and

c. Two designer watches for, in total, almost \$20,000.

The Scheme to Defraud

4. On or about March 17, 2012, defendant BOYE caused the fraudulent Opus & Best bid to be emailed from an email server located in California to an email server located in Country A.

5. The metadata¹ associated with the bid documents submitted by Opus & Best to Country A indicated that defendant BOYE and a coconspirator not charged herein ("CC-1") authored the bid documents (the "Bid Documents").

6. The Bid Documents secretly submitted by defendant BOYE contained several false statements and material misrepresentations. For example, the Bid Documents claimed, in substance and in part, that:

Opus & Best [wa]s a multi-disciplinary corporation, proving [sic] legal, accounting and economics services principally to the oil and gas sector. It is organized under the New York State laws as a limited liability corporation. **Opus & Best was founded in 1985** and it is also registered as a legal and accounting services provider in Europe, Middle East and Africa. (emphasis added)

7. Opus & Best's Articles of Organization, however, were not filed with the State of New York, Department of State, until on or about March 30, 2012, contradicting the bid's claim that Opus & Best was founded in 1985.

8. The Opus & Best Bid Documents authored by defendant BOYE and CC-1 further claimed, in substance and in part, that: "Opus & []Best [wa]s endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector[.]" and listed the purported Opus & Best attorneys and accountants who would work on the Country A matter (hereinafter, collectively, the "Opus & Best Employees").

¹ "Metadata" is data that provides information about other data. See Merriam Webster online dictionary, "Metadata," available at <http://www.merriam-webster.com/dictionary/metadata>. More specifically, metadata constitutes "[s]tructured information about an electronic file that is embedded in the file, but not normally visible when viewing a printed or on screen rendition of the document, that describes the characteristics, origins, usage and validity of other electronic files. . . . Metadata can be characterized as application metadata or system metadata. Application metadata is information not visible on the printed page, but embedded in the document file, remaining with the file if it is copied. . . . Important types of metadata that may be embedded in . . . files includes: title, subject, author, comments, revision number, last print date, creation date, last save time, total editing time. Some documents may also include prior revisions and comments embedded in the metadata. System metadata is not embedded in the file, and instead is stored externally on the computer file system. System metadata does not remain with a file when it is copied. System metadata may include a file name, size, location, path, creation date and modification date. While application metadata can be modified, it is very difficult to modify system metadata. . . ." See Lexbe, "e-Discovery & Metadata Definitions," available at <http://www.lexbe.com/hp/define-e-discovery-metadata.htm>.

9. With the exception of a “staff attorney” listed by defendant BOYE and CC-1 among the purported Opus & Best Employees, there was no record of individuals of those same names being admitted to practice law in New York or New Jersey. With respect to the listed “staff attorney,” there was an attorney with the same name who was admitted to practice in the State of New York, but this attorney worked in the Tokyo, Japan office of a U.S.-based law firm, not as an attorney for Opus & Best in New York.

10. Nor was there any record, in the New York State’s Office of Professions’ official online database, that the accountants listed by defendant BOYE and CC-1 among the Opus & Best Employees held certified public accountancy licenses.

11. Although, in reality, defendant BOYE was the sole member of Opus & Best, defendant BOYE did not disclose his affiliation with Opus & Best to Country A in the Bid Documents that he and CC-1 secretly authored. Indeed, in the Bid Documents’ “Statement of any Potential Conflicts of Interest,” defendant BOYE and CC-1 falsely “confirm[ed] that [Opus & Best] ha[d] no conflicts of interest in undertaking th[e] assignment[.]”

12. Defendant BOYE and CC-1 also caused the Bid Documents to list as “Relevant Consulting Experience in the last Five (5) Years/References,” Opus & Best’s purported “[p]rovision of consulting services” to another foreign sovereign nation (“Country B”). According to Country B, however, Opus & Best had never been awarded any type of consulting services contract by Country B.

13. In Appendix C, under the heading “Terms and Conditions,” defendant BOYE and CC-1 caused the Opus & Best Bid Documents to falsely state, in substance and in part, that: “there [we]re no third party beneficiaries to th[e] [proposed] Agreement” between Opus & Best and Country A. This representation was materially false given that defendant BOYE himself was an undisclosed third-party beneficiary of the Contract, in that he intended to misappropriate the multi-million dollar contract for his own personal benefit.

14. As a member of the Bid Review Committee responsible for reviewing and scoring the bids submitted for the Contract, defendant BOYE was able to steer the Country A Contract to Opus & Best, particularly by exploiting the deference that Country A personnel paid to defendant BOYE as an international petroleum tax advisor to Country A.

15. After the Contract was awarded to Opus & Best, through the manipulation by defendant BOYE of the bid process, Country A entered into a “Contract for Consulting Services” with Opus & Best on or about June 3, 2012 (the “Consulting Contract”). In the Consulting Contract, defendant BOYE was listed as one of the two project coordinators acting on behalf of Country A, and as a project coordinator, defendant BOYE was, in substance and in part,

“responsible for the coordination of activities under th[e] [Consulting] Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for the payment.”

16. Pursuant to the terms of the Consulting Contract, Country A caused wire transfers totaling more than \$3.5 million to be made from the Country A Account to the Opus & Best -0399 Account, between in or about June 2012 through in or about December 2012. These wire transfers included the following Contract payments and, in each case, defendant BOYE, exerting his undisclosed control of the Opus & Best -0399 Account, diverted the Contract payments to his own personal use:

- a. a wire transfer of approximately \$1,080,000 on or about June 15, 2012;
- b. a wire transfer of approximately \$432,000 on or about July 20, 2012;
- c. a wire transfer of approximately \$720,000 on or about August 3, 2012;
- d. a wire transfer of approximately \$648,000 on or about December 12, 2012; and
- e. a wire transfer of approximately \$630,000 on or about December 17, 2012.

17. As recently as in or about May 2013, defendant BOYE impersonated, or caused the impersonation of, a purported employee of Opus & Best, in an attempt to fraudulently collect an additional Contract payment from Country A. For example, on or about May 26, 2013, purported Opus & Best Employee, “D.L.,” attached to an email to certain Country A representatives, an invoice for a “final payment” of approximately \$630,000 purportedly owed to “Opus & Best” under the Consulting Contract. The wiring instructions at the bottom of the invoice provided that the approximately \$630,000 payment should be made, as before, to the Opus & Best -0399 Account – an account controlled by defendant BOYE.

18. Even as late as this email communication in or about May 2013, there was no disclosure by defendant BOYE to Country A that just a few months prior, in or about March 2013, defendant BOYE and others caused Opus & Best to be incorporated in the State of New Jersey with defendant BOYE’s Franklin Lakes, New Jersey residence as the listed corporate address – further evidence of defendant BOYE’s control of Opus & Best.

19. Rather than disclosing his affiliation with Opus & Best to Country A, defendant BOYE and his co-conspirators sought new opportunities to

fraudulently obtain moneys from Country A. For example, after registering an Opus & Best entity as a Hong Kong company, in or about December 2012 (“Opus & Best-Hong Kong”), defendant BOYE caused Opus & Best-Hong Kong, in partnership with a local Hong Kong law firm, to attempt to enter into a contract for “Tax Consulting and Advisory Services” with Country A in or about April 2013. In seeking this engagement, Opus & Best-Hong Kong – whose sole director was defendant BOYE – and its local law firm partner sought an advanced payment of approximately \$250,000 from Country A. Country A did not accept the proposal, and defendant BOYE left Country A shortly thereafter.

SUE/USAO2013R01059

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	Hon. Freda L. Wolfson
v.	:	
	:	Crim. No. 15-196-01 (FLW)
BOBBY BOYE,	:	
a/k/a "Bobby Ajiboye,"	:	18 U.S.C. § 1349
a/k/a "Bobby Aji-Boye"	:	

INFORMATION

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

Background

1. At all times relevant to this Information, unless otherwise indicated:
 - a. Defendant BOBBY BOYE, a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye," ("BOYE") was a resident of Franklin Lakes, New Jersey, and was admitted to practice law in the State of New York. Starting in or about July 2010, defendant BOYE worked as an international petroleum legal advisor for the National Directorate of Petroleum Revenue within the Ministry of Finance of "Country A." As a legal advisor, defendant BOYE was responsible for, among other things, securing contracts with outside vendors for Country A's benefit.
 - b. Country A was a foreign sovereign nation. In or about February 2012, Country A marketed and solicited bids for a multimillion-dollar contract to provide legal and tax accounting advice to Country A (the "Contract").

As part of his role as an international petroleum legal advisor to Country A, defendant BOYE served on an approximately three-member committee responsible for reviewing and evaluating the submitted bids for the Contract (the “Bid Review Committee”).

c. Founded in or about late March 2012 by defendant BOYE, Opus & Best Law Services LLC (“Opus & Best”) purported to be an established, multinational law and accounting firm that employed a number of professionals and was experienced in the mining, oil, and gas industries. In reality, defendant BOYE created Opus & Best to facilitate the fraudulent scheme described herein and was its sole member. Indeed, the registered address for Opus & Best was a Jackson Heights, New York residence associated with defendant BOYE.

d. In or about April 2012, defendant BOYE opened a J.P. Morgan Chase Bank business checking account ending in 0399 for Opus & Best in New York, New York (the “Opus & Best 0399 Account”). Defendant BOYE was the sole signatory on the Opus & Best 0399 Account.

e. The Federal Reserve Bank of New York (the “Federal Reserve”) operated an Automated Clearing House (“ACH”) payments system that allowed customers, including Country A and others, to make payments electronically. The Federal Reserve’s ACH processing site was located in East Rutherford, New Jersey.

f. Per the wiring instructions of Opus & Best, Country A wired a total of approximately \$3,510,000 in Contract payments from a Country A account at the Federal Reserve (the “Country A Account”) to the Opus & Best

0399 Account secretly controlled by defendant BOYE, which electronic payments were processed in East Rutherford, New Jersey and deposited into the Opus & Best Account in New York, New York.

The Conspiracy

2. From in or about March 2012 through in or about May 2013, in the District of New Jersey and elsewhere, defendant

BOBBY BOYE,
a/k/a "Bobby Ajiboye,"
a/k/a "Bobby Aji-Boye,"

did knowingly and intentionally conspire and agree with others, known and unknown, to devise a scheme and artifice to defraud Country A, and to obtain money and property from Country A by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, contrary to Title 18, United States Code, Section 1343.

Object of the Conspiracy

3. The object of the conspiracy was for defendant BOYE and others to enrich themselves by fraudulently obtaining lucrative consulting contracts from Country A for defendant BOYE's entity, Opus & Best.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that in or about March 2012, defendant BOYE and a family member (the “Relative”) authored fraudulent documents submitted by Opus & Best to Country A, in connection with Opus & Best’s bid for the multimillion-dollar Contract (collectively, the “Bid Documents”).

5. It was further part of the conspiracy that defendant BOYE caused his Relative to create Opus & Best email accounts, including an email account for a purported partner at Opus & Best with the initials “D.L.” (the “D.L. Email Account”).

6. It was further part of the conspiracy that on or about March 17, 2012, defendant BOYE caused an email containing the Bid Documents to be sent from the D.L. Email Account to representatives of Country A, in order to “register [Opus & Best’s] expression of interest and present a formal bid[.]”

7. It was further part of the conspiracy that the Bid Documents that defendant BOYE caused to be submitted contained a number of false statements and material misrepresentations that were intended to give Country A the misimpression that Opus & Best was a legitimate, established firm, including that:

a. “Opus & Best [wa]s a multi-disciplinary corporation, proving [sic] legal, accounting and economics services principally to the oil and gas sector. It is organized under the New York State laws as a limited liability corporation. Opus & Best was founded in 1985 and it is also registered as a legal and accounting services provider in Europe, Middle East and Africa”;

b. “Opus & Best [wa]s endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector” (collectively, the “Opus & Best Employees”); and

c. Opus & Best’s “Relevant Consulting Experience in the last Five (5) Years/References” purportedly included the “[p]rovision of consulting services” to another foreign sovereign nation (“Country B”).

8. In reality, defendant BOYE created Opus & Best for the purpose of submitting the fraudulent Bid Documents. Moreover, Opus & Best employed no one other than defendant BOYE, let alone the professionals identified in the Bid Documents, and had never provided consulting services to Country B.

9. It was further part of the conspiracy that defendant BOYE failed to disclose, and caused others to fail to disclose, that his affiliation with Opus & Best created a conflict of interest and rendered him a third-party beneficiary of the proposed Contract. Indeed, in the Bid Documents’ “Statement of any Potential Conflicts of Interest,” defendant BOYE falsely “confirm[ed] that [Opus & Best] ha[d] no conflicts of interest in undertaking th[e] assignment[.]” Additionally, the Bid Documents falsely claimed that “there [we]re no third party beneficiaries to th[e] [proposed] Agreement” between Opus & Best and Country A.

10. It was further part of the conspiracy that in or about March 2012, defendant BOYE paid his Relative to create a website for Opus & Best, which contained numerous misrepresentations, including but not limited to, the following false claims regarding Opus & Best’s credentials:

Our professional tax advisors are simply the best in the business. We have over 40 top tax professionals, each with decades of high-level oil and gas tax/accounting experience spread across the Americas, Middle East, Europe, Africa and South East Asia. . . .

Our experienced tax professionals, accountants and economists jointly bring an unparalleled breadth of industry experience to every engagement. We work with organizations to proactively and efficiently address tax matters connected with the business decisions in relation to the oil and gas industry. We provide tax advisory services on all aspects of oil and gas taxation and tax department operations to corporations. We also assist sovereign government revenue agencies to write tax laws, regulations, tax manuals and rulings.

11. It was further part of the conspiracy that defendant BOYE, as a trusted legal advisor to Country A, exploited his membership on the Bid Review Committee responsible for reviewing and scoring the bids submitted for the Contract, in order to steer the Country A Contract to Opus & Best. Largely based upon the misrepresentations discussed above and the recommendation of defendant BOYE, Country A awarded the lucrative Contract to Opus & Best in or about June 2012.

12. It was further part of the conspiracy that, on or about June 3, 2012, defendant BOYE and others caused Country A to enter into a "Contract for Consulting Services" with Opus & Best (the "Consulting Contract"), which Consulting Contract listed defendant BOYE as one of the two project coordinators acting on behalf of Country A. Unaware of defendant BOYE's undisclosed ties with Opus & Best, Country A relied upon defendant BOYE to, in substance and in part, faithfully "coordinat[e] [Opus & Best's] activities under th[e] [Consulting] Contract, . . . accept[] and approv[e] . . . [its] reports and . . . other deliverables . . . and . . . receiv[e] and approv[e] invoices for . . . payment."

13. It was further part of the conspiracy that defendant BOYE caused Country A to wire a total of approximately \$3,510,000 to the Opus & Best 0399 Account, which wires were processed via transmissions from New Jersey to New York, as follows:

Approximate Date	Description of Wire Transmission
June 15, 2012	Country A wired approximately \$1,080,000 from the Country A Account to the Opus & Best 0399 Account.
July 20, 2012	Country A wired approximately \$432,000 from the Country A Account to the Opus & Best 0399 Account.
August 3, 2012	Country A wired approximately \$720,000 from the Country A Account to the Opus & Best 0399 Account.
December 12, 2012	Country A wired approximately \$648,000 from the Country A Account to the Opus & Best 0399 Account.
December 17, 2012	Country A wired approximately \$630,000 from the Country A Account to the Opus & Best 0399 Account.

14. It was further part of the conspiracy that defendant BOYE and others attempted to fraudulently obtain additional payments from Country A in or about 2013. For example, on or about May 26, 2013, defendant BOYE and others caused an email to be sent from the D.L. Email Account to certain Country A representatives, attaching an invoice for a "final payment" of approximately \$630,000, which "D.L." claimed was purportedly owed to Opus & Best under the Consulting Contract.

15. It was further part of the conspiracy that rather than disclosing his affiliation with Opus & Best to Country A, defendant BOYE and his coconspirators sought new opportunities to fraudulently obtain moneys from Country A. After registering an Opus & Best entity as a Hong Kong company in

or about December 2012 (“Opus & Best-Hong Kong”), defendant BOYE and others caused Opus & Best-Hong Kong, in partnership with a local Hong Kong law firm, to attempt to enter into a contract for “Tax Consulting and Advisory Services” with Country A in or about April 2013. In seeking this engagement, defendant BOYE failed to disclose, among other things, his involvement in Opus & Best-Hong Kong, and sought an advanced payment of approximately \$250,000 from Country A. Country A did not accept the proposal, and defendant BOYE left Country A shortly thereafter.

The Proceeds of the Fraud

16. It was further part of the conspiracy that defendant BOYE diverted the more than approximately \$3.5 million wired by Country A to Opus & Best for purported consulting services for his own personal use. For example, defendant BOYE used more than \$2 million of the total proceeds of the fraud to purchase the following assets:

- a. Four properties located in Ramsey, New Jersey, North Haledon, New Jersey, Oakland, New Jersey, and Elizabeth, New Jersey, respectively, for a total of more than approximately \$1.5 million in cash;
- b. Three luxury vehicles, namely a 2012 silver Bentley Continental for approximately \$172,000, a 2012 black Range Rover for approximately \$100,983, and a 2011 gray Rolls Royce Ghost for approximately \$215,000; and
- c. Two designer watches for, in total, almost \$20,000.

In violation of Title 18, United States Code, Section 1349.

FORFEITURE ALLEGATION

1. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offense in violation of Title 18, United States Code, Section 1349 set forth in this Information, the defendant, BOBBY BOYE, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all right, title, and interest in any property, real or personal, that constitutes or is derived from proceeds traceable to the offense charged in Count One of this Information. The property to be forfeited includes, but is not limited to, the following:

- a. A sum of money equal to \$4,233,015.42, representing the amount of proceeds obtained as a result of the offense of conviction; and
- b. All of the defendant's right, title and interest in the following specific property, which was seized or restrained on or about June 19, 2014:
 - i. The contents of J.P. Morgan Chase Bank Account number [REDACTED] 0399, held in the name of Opus and Best, LLC (approximately \$103.84);
 - ii. Approximately \$8,408 in U.S. currency seized from the defendant; and
 - iii. All right, title, and interest, including all appurtenances and improvements thereon, in the following real properties:
 - (a) 25 Crescent Hollow Court, Ramsey, New Jersey;
 - (b) 36 Rosewood Court, North Haledon, New Jersey; and
 - (c) 140 Grove Street, Elizabeth, New Jersey.

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

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant, BOBBY BOYE, up to the value of the above-described forfeitable property.


PAUL J. FISHMAN
United States Attorney

CASE NUMBER: 15-_____

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

**BOBBY BOYE,
a/k/a "Bobby Ajiboye,"
a/k/a "Bobby Aji-Boye"**

INFORMATION FOR

18 U.S.C. § 1349

PAUL J. FISHMAN
UNITED STATES ATTORNEY, NEWARK, NEW JERSEY

SHIRLEY U. EMEHELU
ASSISTANT U.S. ATTORNEY
NEWARK, NEW JERSEY
973-353-6024

UNITED STATES DISTRICT COURT
For the District of New Jersey

UNITED STATES OF AMERICA :

v. : **WAIVER OF INDICTMENT**

BOBBY BOYE, : Criminal Number: 15-196-01 (FLW)
a/k/a "Bobby Ajiboye," :
a/k/a "Bobby Aji-Boye" :

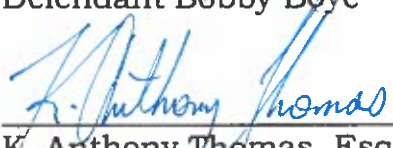
I, Bobby Boye, a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye," the
above-named defendant, who is charged with:

From in or about March 2012 through in or about May 2013, in the District of New Jersey and elsewhere, knowingly and intentionally conspiring and agreeing with others, known and unknown, to devise a scheme and artifice to defraud Country A, and to obtain money and property from Country A by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, transmitting and causing to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, contrary to Title 18, United States Code, Section 1343, in violation of Title 18, United States Code, Section 1349,

being advised of the nature of the charge, the proposed Information, and my
rights, hereby waive in open court on April 28, 2015 prosecution by
Date

indictment and consent that the proceeding may be by information rather than
by indictment.


Defendant Bobby Boye


K. Anthony Thomas, Esq.
Counsel for Defendant

Before:


HON. FREDA L. WOLFSON
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Crim. No. 15- 196 (FLW)

v.

APPLICATION FOR
PERMISSION
TO ENTER PLEA OF GUILTY
(Defendant with Counsel)

BOBBY BOYE hereby certifies as follows:
(Defendant's Name)

1. My full name is **BOBBY BOYE** and I request that all proceedings against me be held in that name.
2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.
3. I have a lawyer who is representing me in this proceeding. My lawyer's name is **K. ANTHONY THOMAS**. I am satisfied that I have had enough time to discuss this matter with my lawyer.
4. English **IS** my native language. After **LAW SCHOOL**, I have two (2) postgraduate Master Degrees in Law and Tax Accounting. I am presently **UNEMPLOYED**.
5. I have taken **THE FOLLOWING** drugs or medication within the past seventy-two hours: **NONE**
6. I **HAVE NEVER** been a patient in a mental hospital or institution. I **DO NOT** believe that at the present time I am mentally ill or mentally incompetent in any respect.
7. I received a copy of the **INFORMATION** before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that : **CONSPIRACY TO COMMIT WIRE FRAUD AND CAUSING MONEY TO BE WIRED FOLLOWING A SCHEME TO OBTAIN CONTRACTS.**

WAIVER OF INDICTMENT (IF APPLICABLE)

8. My lawyer has explained to me that I have a constitutional right to be charged by an indictment of a grand jury but that I can waive that right and consent to being charged through a criminal Information filed by the United States Attorney.
9. I understand that unless I waive indictment I may not be charged with a felony unless a grand jury finds by return of an indictment that there is probable cause to believe that a crime has been committed and that I committed it.
10. I also understand that if I do not waive indictment, the government may present the case to the grand jury and request the grand jury to indict me.
11. I understand that a grand jury is composed of at least 16 and not more than 23 persons, that at least 12 grand jurors must find that there is probable cause to believe that I committed the crime. I also understand that the grand jury may or may not indict me.
12. I further understand that by waiving indictment by the grand jury, the case will proceed against me on the United States Attorney's Information as though I had been indicted.
13. My attorney has discussed the nature of the charges(s) against me and waiving my right to indictment thereon by grand jury, I fully understand those rights, and I wish to waive indictment by grand jury.
14. My decision to waive indictment by grand jury is made knowingly and voluntarily, and no threats or promises have been made to induce me to waive indictment.

THE GUILTY PLEA

15. I have told my lawyer all the facts and circumstances known to me about the charge(s) set forth in the **INFORMATION**.
16. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counseled and advised me on the nature of each charge and on all possible defenses that I might have in this case.
17. In addition, my lawyer has explained to me, and I understand, that if I entered a plea of NOT GUILTY (or persisted in my plea of NOT GUILTY), under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charge(s) contained in this **INFORMATION**.

18. My lawyer has explained to me, and I understand, that at such a trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be required to prove me guilty of the charge(s) against me beyond a reasonable

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doubt. I understand that I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.

19. My lawyer has explained to me, and I understand, that if I went to trial on these charge(s), the Government would have to produce in open court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.
20. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charge(s), and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.
21. My lawyer has explained to me, and I understand, that if I plead GUILTY to any charge(s) in this **INFORMATION** and the judge accepts my plea, I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 17, 18, 19 and 20 ABOVE. I am aware and understand that if my GUILTY plea is accepted, there will be no trial and a judgment of GUILTY will be entered after which, the judge, upon consideration of my presentence report, will impose punishment upon me. I understand that if I plead GUILTY, the judge may impose the same punishment as if I had pleaded "not guilty", went to trial and was convicted by a jury.
22. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE MY RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.

SENTENCING ISSUES

23. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charged in this **INFORMATION** is:

A MAXIMUM OF **20** years imprisonment and a fine of **\$250,000.00** for the offense(s) charged in Count(s) **ONE**. My lawyer has further explained, and I understand, that there is **NO** mandatory minimum punishment of _____ years imprisonment and **NO** mandatory minimum fine of \$_____ for the offense(s) charged in Count(s) _____.

I understand that if I plead **GUILTY** to Count(s) **ONE** of the **INFORMATION** I face a maximum sentence on those Count(s) of **20** years imprisonment, plus an aggregate fine of **\$250,000**. My lawyer has additionally explained, and I understand, that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make a restitution in services instead of money or to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution and the amount of restitution the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$100 for each felony upon which I am sentenced and \$25 for each misdemeanor, if any.

24. I hereby declare that no officer or agent of any branch of government, (Federal, State or local), nor my lawyer, nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead **GUILTY**. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth.
25. I understand that the sentence to be imposed upon me is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act of 1984.
26. I understand that in deciding what sentence to impose upon me, the sentencing judge is required to consider the maximum and minimum prison terms, fines and terms of supervised release recommended under the Sentencing Guidelines. I understand that the Sentencing Guidelines may authorize departures from the maximum and minimum Guidelines recommendations under certain circumstances.

27. I understand that the Sentencing Guidelines are advisory, and that the sentencing judge must also consider the other statutory factors identified in 18 U.S.C. § 3553(a) in deciding what sentence to impose. I understand that the judge has the authority to impose a sentence more severe (up to the statutory maximum) or less severe than the sentencing range recommended by the Guidelines.
28. I have discussed with my attorney how the Sentencing Guidelines might apply to my case.
29. I understand that the Court will not be able to determine the sentence for my case until after the Presentence Report has been completed and both I and the Government have had an opportunity to read the report and challenge any facts reported by the probation officer.
30. I understand that the Court may be bound to impose a fine in accordance with statutory requirements.
31. I understand that parole has been abolished and that if I am sentenced to prison I will not be released on parole.
32. I further understand that the Court **SHALL** impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment. I understand that I am subject to a term of supervised release of up to **THREE** years, the statutory maximum period of supervised release for the crime(s) to which I am pleading guilty.

I further understand that the provisions of 21 U.S.C. § _____, which provide for a mandatory minimum term of supervised release of _____ years, [DO] [DO NOT] apply to my case.
33. I understand that I will have no right to withdraw my plea on the grounds that anyone's prediction as to the Guidelines range or expectation of sentence proves inaccurate.
34. My lawyer has explained to me, and I understand, that if I am not a citizen of the United States, my plea of GUILTY to the charged offense(s) **WILL LIKELY** result in my being subject to separate immigration law proceedings to have me removed from the United States by making me deportable, excludable, or inadmissible, or ending my naturalization.
35. My lawyer has explained to me, and I understand, that if the charged offense(s) is a sex offense under 42 U.S.C. § 16911(5), my plea of GUILTY **WILL LIKELY** result in a requirement that I register as a sex offender under Federal and State law, and I will be subject to the registration law's requirements and penalties.

PLEA AGREEMENT

36. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead GUILTY to these charge(s). Nor have I been told that if I refuse to plead GUILTY, other persons will be prosecuted.

37. There **HAS** been a plea agreement entered into between me and the United States Attorney, by Assistant United States Attorney **SHIRLEY U. EMEHELU**.

☐ The plea agreement DOES NOT exist in written form.

☒ The plea agreement DOES exist in written form. I have read it or have had it read to me in **ENGLISH** (LANGUAGE). My lawyer has explained it to me and I understand it.

38. The substance of the plea agreement is: **I CONSPIRED TO DEFRAUD BY CAUSING MONEY TO BE WIRED IN ORDER TO EXECUTE THE SCHEME**

39. The plea agreement **DOES** contain any stipulations by the parties.

IF APPLICABLE, CHOOSE ONE OF THE FOLLOWING:

☒ I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and that the government has waived the right to argue for a sentence above the range that results from this offense level.

☐ I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that with the exception of arguments regarding a departure as set forth in Paragraph ____ of Schedule A to the plea agreement, I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and the government has waived the right to argue for a sentence above the range that results from this offense level.

☐ The plea agreement contains stipulations regarding certain facts. I understand that if the sentencing court accepts a factual stipulation set forth in the plea agreement, both I and the government have waived the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

40. I understand that my plea agreement **DOES PROVIDE** that under certain circumstances I have waived my right to appeal or collaterally attack the sentence imposed in this case.

41. My lawyer has explained to me, and I understand, that if the judge accepts my GUILTY plea under the plea agreement, including the government's proposal to dismiss charges or to not bring other charges, the judge is not bound to follow the other terms in the plea agreement, including the stipulations recommending that a particular sentence or sentencing range is appropriate or that a particular provision of the Guidelines does or does not apply. I understand that if the judge does not follow one or all of the other terms of the plea agreement, including the stipulations, I will have no right to withdraw my GUILTY plea, even if the disposition of my case may be less favorable than that proposed in the plea agreement.
42. I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.
43. I know the judge will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind and because I am GUILTY, I respectfully request that the Court accept my plea of GUILTY and to have the Clerk enter my plea of GUILTY as follows: To Count(s) **ONE** of this **INFORMATION**.
44. I offer my plea of GUILTY freely and voluntarily and of my own accord with full understanding of all matters set forth in the **INFORMATION** in this application, and in the certification of my lawyer which is attached to this application.
45. I further declare that I wish to waive the reading of the **INFORMATION** in open court, and I request the Court to enter my plea of GUILTY as set forth in Paragraph 43, above.
46. The following person(s), if any, assisted me in completing this application: **K. ANTHONY THOMAS**.

I hereby certify that the foregoing information and statements herein are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed by me in open court in the presence of my lawyer this

28th day of APRIL, 2015.



Defendant

CERTIFICATION OF COUNSEL

K. ANTHONY THOMAS hereby certifies that:

1. I am an attorney at law of the State of **NEW JERSEY** and have been **ASSIGNED TO REPRESENT** the defendant **BOBBY BOYE**, in CRIMINAL No. **15** (FLW).
2. I have read and fully explained to the defendant the allegations contained in the **INFORMATION**.
3. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing Application are in all respects accurate and true.
4. (IF APPLICABLE) In my opinion the defendant's waiver of indictment by grand jury is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
5. In my opinion the defendant's waiver of reading the **INFORMATION** in open court as provided in Rule 11 is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
6. I have explained the maximum and any mandatory minimum penalty for each count to the defendant. I have explained to him that he may be ordered to make restitution under the Victim and Witness Protection Act.
7. I have explained to the defendant that in imposing sentence, the sentencing judge is required to consider the Sentencing Guidelines, and I have further explained how the Guidelines might apply to this offense and to the defendant. I have further explained to the defendant that the Guidelines are advisory, not mandatory, and that the sentencing judge may impose a sentence higher or lower than that recommended by the Guidelines.
8. The plea of **GUILTY** offered by the defendant in Paragraph 41 accords with my understanding of the facts related to me and is consistent with my advice to the defendant.
9. In my opinion the plea of **GUILTY** as offered by the defendant in Paragraph 41 of this Application is voluntarily made with understanding of the consequences of the plea. I recommend that the Court accept the plea of **GUILTY**.

Signed by me in open court in the presence of the defendant above named, and after full disclosure of the contents of this Certification to the defendant, this 28 day of April, 2015.


Attorney for the Defendant



U.S. Department of Justice

*United States Attorney
District of New Jersey*

970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

SUE/PL AGR
2013R01059

March 12, 2015

K. Anthony Thomas, Esq.
Office of the Federal Public Defender
1002 Broad Street
Newark, NJ 07102

Re: Plea Agreement with BOBBY BOYE 15-196-01 (FLW)
(a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye")

Dear Mr. Thomas:

This letter sets forth the plea agreement between your client, BOBBY BOYE, a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye," and the United States Attorney for the District of New Jersey ("this Office"). This offer will remain open until March 20, 2015, and if this plea agreement is not executed and returned to this Office on or before that date, this offer will expire.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from BOBBY BOYE to a one-count Information that charges that BOBBY BOYE conspired to commit wire fraud, contrary to Title 18, United States Code, Section 1343 and in violation of Title 18, United States Code, Section 1349. If BOBBY BOYE enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against BOBBY BOYE for, between in or about March 2012 through in or about May 2013, conspiring with others to commit wire fraud by engaging in a scheme to defraud Country A whereby BOBBY BOYE caused Country A to award a multi-million dollar consulting

contract to his firm, Opus & Best Law Services LLC ("Opus & Best"), without disclosing his affiliation with Opus & Best to Country A, and then diverted to his own personal use the more than \$3.5 million that Country A paid to Opus & Best under the contract. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by BOBBY BOYE may be commenced against him, notwithstanding the expiration of the limitations period after BOBBY BOYE signs the agreement.

Sentencing

Pursuant to 18 U.S.C. § 1343, the violation of 18 U.S.C. § 1349 to which BOBBY BOYE agrees to plead guilty carries a statutory maximum prison sentence of 20 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon BOBBY BOYE is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence BOBBY BOYE ultimately will receive.

Further, in addition to imposing any other penalty on BOBBY BOYE, the sentencing judge: (1) will order BOBBY BOYE to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order BOBBY BOYE to pay restitution pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order BOBBY BOYE, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583, may require BOBBY BOYE to serve a term of supervised release of not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should BOBBY BOYE be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, BOBBY BOYE may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed,

regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, BOBBY BOYE agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying the offense, to Country A in the amount of \$3,510,000.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on BOBBY BOYE by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of BOBBY BOYE's activities and relevant conduct with respect to this case.

Stipulations

This Office and BOBBY BOYE agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or BOBBY BOYE from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and BOBBY BOYE waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

BOBBY BOYE agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, he will consent to the entry of a forfeiture money judgment in the amount of \$4,233,015.42 (the "Forfeiture Money Judgment"). Defendant acknowledges that the Forfeiture Money Judgment is subject to forfeiture as property, real or personal, that constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1349, which constitutes a specified unlawful activity within the meaning of 18 U.S.C. § 981(a)(1)(C), or a conspiracy to commit such offense and/or substitute assets for property subject to forfeiture, as described in 21 U.S.C. § 853(p).

Payment of the Forfeiture Money Judgment shall be made by certified or bank check payable to the United States Marshals Service. On or before the date he enters his plea of guilty pursuant to this agreement, BOBBY BOYE shall cause said check to be hand delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date BOBBY BOYE enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if BOBBY BOYE fails to pay any portion of the Forfeiture Money Judgment on or before the date of his guilty plea, he consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Further, as part of his acceptance of responsibility, and pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, BOBBY BOYE agrees to forfeit to the United States any right, title, or interest in the property seized or retrained on or about June 19, 2014 (the "Specific Assets"), in partial satisfaction of the Forfeiture Money Judgment as follows:

(a) any and all funds contained in the below described bank accounts held at J.P. Morgan Chase bank:

- i. Account Number [REDACTED] 0399 held in the name of Opus and Best, LLC.
- ii. Account Number [REDACTED] 6170 held in the name of Bobby Boye and/or E [REDACTED] K [REDACTED].
- iii. Account number [REDACTED] 5820 held in the name of Bobby Boye.
- iv. Account number [REDACTED] 7116 held in the name of Bobby Boye and/or E [REDACTED] K [REDACTED].
- v. Account number [REDACTED] 2735 held in the name of Bobby Boye and/or E [REDACTED] K [REDACTED].

(b) the below vehicles:

- i. 2012 Silver Bentley Continental
VIN: [REDACTED] 73091
New Jersey License #: BB73GE
Registered Owner: Bobby W. Boye
- ii. 2012 Black Range Rover
VIN: [REDACTED] 87702
New Jersey License #: A11CHT
Registered Owner: Bobby W. Boye
- iii. 2011 Rolls Royce
VIN: [REDACTED] 49882
New Jersey License #: BB81GE
Registered Owner: Bobby W. Boye

(c) the below watches:

- i. IWC "DaVinci" Perpetual
Calender/Moonphase/Chronograph Kurt Klaus Limited
Edition watch, IW3762-04, Serial #3437866, with black
alligator strap.
- ii. Franck Muller "Conquistador Grand Prix" watch, model
8900 SC GP, Serial #53, with black alligator strap.

(d) the below real property or any proceeds traceable to such real

property:

- i. 25 Crescent Hollow Court, Ramsey, New Jersey.
- ii. 36 Rosewood Court, North Haledon, New Jersey.
- iii. 9 Cobblestone Court, Oakland, New Jersey.
- iv. 140 Grove Street, Elizabeth, New Jersey.

BOBBY BOYE acknowledges that the Specific Assets are subject to forfeiture as property, real or personal, which constitutes or is derived from proceeds traceable to his violation of 18 U.S.C. § 1349 and/or represents substitute assets as described in 21 U.S.C. § 853(p). All right, title, and interest in the Specific Assets, and all proceeds traceable thereto, shall be transferred or delivered to the United States on or before the date the Defendant enters his guilty plea pursuant to this agreement.

BOBBY BOYE represents that he has disclosed all of his assets to the United States on the attached Financial Disclosure Statement. BOBBY BOYE agrees that if the government determines that he has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, BOBBY BOYE consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that the defendant owns or in which the defendant has an interest be discovered, BOBBY BOYE knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. BOBBY BOYE further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

BOBBY BOYE further agrees to waive all interest in the Specific Assets and any other property forfeited in partial or full satisfaction of the Forfeiture Money Judgment in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for the Specific Assets and any other property forfeited in partial or full satisfaction of the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

BOBBY BOYE hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) may result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against BOBBY BOYE. This agreement does not prohibit the United States, any agency thereof (including Immigration and Customs Enforcement), or any third party from initiating or prosecuting any civil or administrative proceeding against BOBBY BOYE.

No provision of this agreement shall preclude BOBBY BOYE from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that BOBBY BOYE received constitutionally ineffective assistance of counsel.

No Other Promises

This agreement constitutes the plea agreement between BOBBY BOYE and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.


Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: SHIRLEY U. EMEHELU
Assistant U.S. Attorney

APPROVED:



GURBIR S. GREWAL
Chief, Economic Crimes Unit

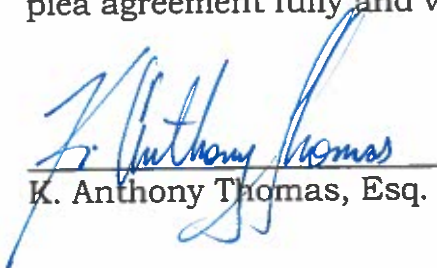
I have received this letter from my attorney, K. Anthony Thomas, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


BOBBY BOYE

Date: 3/19/15

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


K. Anthony Thomas, Esq.

Date: 3/19/2015

Plea Agreement with BOBBY BOYE

Schedule A

1. This Office and BOBBY BOYE recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and BOBBY BOYE nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence BOBBY BOYE within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and BOBBY BOYE further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2014 applies in this case. The applicable guideline is U.S.S.G. § 2B1.1. Because the substantive offense of wire fraud has a statutory maximum term of imprisonment of 20 years or more, the Base Offense Level is 7 pursuant to U.S.S.G. § 2B1.1(a)(1).

3. The parties agree that under U.S.S.G. § 2X1.1(b)(2), BOBBY BOYE and his co-conspirators completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense of wire fraud.

4. Specific Offense Characteristic § 2B1.1(b)(1)(J) applies because the aggregate loss amount is greater than \$2,500,000 but not more than \$7,000,000. This Specific Offense Characteristic results in an increase of 18 levels.

5. BOBBY BOYE abused a position of private trust in a manner that significantly facilitated the commission or concealment of the relevant criminal activity, pursuant to U.S.S.G. § 3B1.3. This results in an increase of 2 levels.

6. The total Guideline offense level applicable to BOBBY BOYE is therefore 27. See U.S.S.G. § 3D1.3(b) & app. n. 3.

7. As of the date of this letter, BOBBY BOYE has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if BOBBY BOYE's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

8. As of the date of this letter, BOBBY BOYE has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting this Office to avoid preparing for trial and permitting this Office and the court to allocate their resources efficiently. At sentencing, this Office will move for a further 1-point reduction in BOBBY BOYE's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) BOBBY BOYE enters a plea pursuant to this agreement, (b) this Office in its discretion determines that BOBBY BOYE's acceptance of responsibility has continued through the date of sentencing and BOBBY BOYE therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) BOBBY BOYE's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

9. In accordance with the above, the parties agree that the total Guidelines offense level applicable to BOBBY BOYE is 24 (the "agreed total Guidelines offense level").

10. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level of 24 is reasonable.

11. BOBBY BOYE knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 24. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 24. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

12. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

From: "Emehelu, Shirley (USANJ)" <Shirley.Emehelu@usdoj.gov>
To: "Renee_Caggia@njp.uscourts.gov" <Renee_Caggia@njp.uscourts.gov>
Date: 09/29/2015 09:24 AM
Subject: RE: US v. Bobby Boye - Govt's Objections to Draft PSR

You're welcome, Renee. I understood the Macau account compromise to qualify as relevant conduct, but upon further review and additional research, I found that it did not qualify for restitution. I apologize for the cause of confusion. I will contact victim's counsel to clarify the issue related to the investigative costs. Have a great day.

From: Renee_Caggia@njp.uscourts.gov [mailto:Renee_Caggia@njp.uscourts.gov]
Sent: Tuesday, September 29, 2015 6:39 AM
To: Emehelu, Shirley (USANJ)
Subject: Re: US v. Bobby Boye - Govt's Objections to Draft PSR

Thank you, Shirley.

My understanding of the restitution from our discussions was that it was all compensable. but your response now seems to contradict what we discussed previously. Regardless, under 18:3664(d)(1), the Government is the attorney for the victim and its duty is to provide our office with the amounts subject to restitution. Since your letter seems to indicate that restitution is limited only to the \$3,510,000 that Boye agreed to pay, that is the figure we will use. Please advise if you will be making further inquiries to ascertain additional restitution to the victim for investigative costs and such.

Thank you,

Renée Caggia, Sr. U.S. Probation Officer
50 Walnut Street, Room 1005
Newark, NJ 07102
Direct: (973) 645-2990
Fax: (973) 645-3173
Mobile/Text: (973) 445-8126
Visit our Website at www.njp.uscourts.gov

From: "Emehelu, Shirley (USANJ)" <Shirley.Emehelu@usdoj.gov>
To: "Renee_Caggia@njp.uscourts.gov" <Renee_Caggia@njp.uscourts.gov>
Cc: Anthony Thomas <Anthony_Thomas@fd.org>
Date: 09/28/2015 05:13 PM
Subject: US v. Bobby Boye - Govt's Objections to Draft PSR

Hello Renee,

Attached are the Government's objections to the draft PSR, which relate to the restitution calculation. The only other more general comment pertains to the "Additional Investigative Findings" referenced starting on p. 13 of the draft PSR: it should be clarified, perhaps in an introductory paragraph for that section, that these are the findings of investigators/counsel retained by the victim, Timor-Leste.

The Government has no Guidelines-based objections.

If you have any questions or concerns related to the Government's submission, please let me know. Thank you.

**Best,
Shirley**

**Shirley U. Emehelu
Assistant U.S. Attorney
Special Prosecutions Division
U.S. Attorney's Office
District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 07102
Tel.: (973) 353-6024
Fax: (973) 297-2006
Cell: (862) 754-3852
Email: Shirley.Emehelu@usdoj.gov**

[attachment "Boye - Govt Objections to Draft PSRdocx.pdf" deleted by Renee Caggia/NJP/03/USCOURTS]



U.S. Department of Justice

*United States Attorney
District of New Jersey*

*Shirley U. Emehele
Assistant U.S. Attorney*

*970 Broad Street, Suite 700
Newark, NJ 07102*

*Tel: (973) 353-6024
Fax: (973) 297-2006*

September 28, 2015

By Electronic Mail

Ms. Renée Caggia
Sr. U.S. Probation Officer
50 Walnut Street, Room 1005
Newark, NJ 07102

Re: United States v. Bobby Boye
(a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye")

Dear Officer Caggia:

The Government writes in response to the draft Presentence Report ("PSR") issued in the matter of United States v. Bobby Boye, Crim. No. 15-196, on September 15, 2015. The Government has no Guidelines-based objections to the PSR. Rather, the Government writes to clarify its position on the amount of restitution owed by defendant Boye to the victim in this matter, i.e., the sovereign nation of Timor-Leste.

Calculation of Restitution in the Draft PSR

Paragraph 59 of the draft PSR states:

According to the Government, restitution in the total amount of \$5,478,875.30 is due, consisting of the following:

\$3,510,000.00	Funds diverted under the Contract;
\$859,706.30	Additional funds diverted by Boye;

\$130,000.00	Salary paid by the Government of Timor-Leste to Boye
\$379,169.00	Investigative and auditing services;
\$600,000.00	Investigative and legal services.

PSR ¶ 59.

The Government, however, does not agree that restitution in the total amount of \$5,478,875.30 is due. Rather, the parties have stipulated in the plea agreement that the defendant is liable for only \$3,510,000 in restitution, representing “all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying the offense” (see Plea Agmt. at 3). The Court is not bound by the parties’ plea agreement stipulations but, as set forth below, district courts may only calculate restitution based upon losses resulting from the offense of conviction.

The Mandatory Victims Restitution Act of 1996

The Mandatory Victims Restitution Act of 1996 (MVRA) defines the term “victim” as follows, in relevant part:

[T]he term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663A(a)(2). As such, reimbursable losses are those incurred as a direct result of defendant’s criminal conduct during the course of, as applicable here, the conspiracy.

In Hughey v. United States, 495 U.S. 411, 422 (1990) (Hughey I), the U.S. Supreme Court held that the plain language of the Victim and Witness Protection Act of 1982 (VWPA), the predecessor statute to the MVRA, which authorized federal courts to order “a defendant convicted of an offense” to

“make restitution to any victim of such offense,” limited restitution to losses resulting from the offense of conviction. The Third Circuit, interpreting Section 3663A and relying on Hughey I and the Fifth Circuit’s ruling in a subsequent separate prosecution of Hughey, in United States v. Hughey, 147 F.3d 423 (5th Cir.1998) (Hughey II), held that, “[i]n the absence of a specific agreement to the contrary, an order of restitution in a criminal case may not include losses caused by conduct that falls outside the temporal limits established by a guilty plea.” United States v. Akande, 200 F.3d 136, 137 (3d Cir. 1999) (remanding to the district court for a reduction of the restitution amount assessed). “The victim’s harm must be closely connected to the conspiracy or scheme rather than merely tangentially.” Id. at 139 (citing United States v. Kones, 77 F.3d 66, 70 (3d Cir. 1996)).

\$3,510,000 in Contract Payments

Here, defendant Boye pled to an Information charging him with, from in or about March 2012 through in or about May 2013, participating in a wire fraud conspiracy the object of which was for defendant Boye and others to enrich themselves by fraudulently obtaining lucrative consulting contracts from Timor-Leste for defendant’s entity, Opus & Best (the “Contract scheme”) (see Information at 3). Victim Timor-Leste’s direct losses resulting from the charged Contract scheme include the \$3,510,000 in total contract payments that Timor-Leste wired to “Opus & Best” between March 2012 and May 2013. Accordingly, the restitution calculation set forth in the draft PSR appropriately includes the \$3,510,000 in payments fraudulently obtained by defendant through his “Opus & Best” entity during the course of the Contract scheme.

\$859,706.30 in Additional Diverted Funds

Other losses sustained by Timor-Leste which do not flow from the “offense of conviction,” i.e., the Contract scheme, should be excluded from the restitution calculation. For example, as described in the draft PSR, defendant Boye and others diverted \$859,706.30 in additional funds belonging to Timor-Leste in December 2011 (the “Macau scheme”), prior to the time period of the charged conspiracy. Because these funds were misappropriated prior to the commencement of the charged conspiracy, their theft cannot form the basis for increasing the amount of restitution owed by defendant Boye, and they should be excluded from the restitution calculation in the final PSR. See Akande, 200 F.3d at 138 (holding two instances of fraud occurring in November 1997, just one month prior to the commencement of the charged scheme, as outside the

temporal scope of the offense of conviction and therefore ineligible for restitution).

\$130,000 in Salary Payments

The draft PSR also includes in its restitution calculation \$130,000 in salary payments made to defendant Boye. It is unclear whether these salary payments were made by Timor-Leste solely during the temporal period of the charged conspiracy, i.e., between March 2012 and May 2013. If the payments were made during the scope of the conspiracy, there would still be the challenge of determining whether those salary payments should be offset by the value of any legitimate services provided by defendant Boye in his capacity as a legal advisor to Timor-Leste. Rather than taking on this daunting task and potentially delaying sentencing in this matter, the Government submits that salary paid to defendant Boye by the victim should be excluded from the restitution calculation on the grounds that doing so would involve “determining complex issues of fact related to the cause or amount of the victim’s losses,” as it would involve offsetting salary payments by any eligible credits for legitimate services rendered by defendant Boye, which “would complicate or prolong the sentencing process to a degree that” would result in “the need to provide restitution to [the] victim [being] outweighed by the burden on the sentencing process.” See 18 U.S.C. § 3663A(c)(3)(B).

Investigative Costs and Attorneys’ Fees

Finally, investigative costs and attorneys’ fees may qualify as “other expenses incurred during participation in the investigation or prosecution of the offense,” which may be reimbursed to victims under the MVRA. See 18 U.S.C. § 3663A(b)(4); United States v. Hayward, 359 F.3d 631, 642 (3d Cir.2004) (holding that the district court correctly concluded that parents were entitled to restitution under the MVRA for “reasonable costs in obtaining the return of their victimized children from London and in making their children available to participate in the investigation and trial”); United States v. Amato, 540 F.3d 153, 159-60 (2d Cir. 2008) (holding that “other expenses” incurred during the victim’s participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense may include attorney fees and accounting costs); United States v. Gordon, 393 F.3d 1044, 1057 (9th Cir. 2004) (affirming award of restitution for victim’s investigation costs, including attorneys’ fees); United States v. Phillips, 477 F.3d 215, 224-25 (5th Cir. 2007) (allowing restitution of costs incurred by victim university in

conducting computer damage and systems evaluation and contacting individuals whose information had been stolen as a result of defendant's computer hacking).

Here, Timor-Leste should be able to pursue reimbursement for its investigative costs, including attorneys' fees, related to the offense of conviction – namely, the scheme by defendant Boye and others to fraudulently obtain Timor-Leste contracts for defendant's company, "Opus & Best." The investigative, auditing and legal costs identified in the draft PSR refer to claims for \$379,169 and \$600,000, respectively, by Timor-Leste (PSR ¶ 59); but the draft PSR does not identify whether these expenses resulted from the victim's investigation of the offense of conviction or some other uncharged scheme, such as the Macau scheme. The Government asks that the final PSR clarify whether such expenses relate to the investigation of the charged conspiracy, or some other uncharged conduct. As set forth above, only investigative expenses related to the charged offense are reimbursable.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ Shirley U. Emehelu

By: SHIRLEY U. EMEHELU
Assistant U.S. Attorney

cc: K. Anthony Thomas, Esq. (by e-mail)

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October 13, 2015

Honorable Freda L. Wolfson, U.S.D.J.
United States District Court, District of New Jersey
Clarkson S. Fisher Fed. Bldg. & U.S. Courthouse
402 East State Street, Room 5050
Trenton, New Jersey 08608

**RE: United States v. Bobby Boye
Criminal No. 15:196**

Dear Judge Wolfson:

The penultimate question Your Honor will resolve on Thursday, October 15, 2015, at 11:00am is *What sentence should Mr. Boye receive when the fraud he committed was in the acquisition of a contract, **but** he delivered the work-product to the victim, the victim has never complained about the work-product and continues to use it, and the victim will be made hold by seized property and restitution?*

The answer to that question is 63 months. The United States Probation Office has calculated an advisory guidelines range of 63 to 78 months, corresponding to an offense level of 24 and a criminal history category of III. PSR at ¶ 123. Mr. Boye does not object to the calculation of this advisory range.

Because Mr. Boye is **not** contesting the advisory guideline range or requesting a downward departure or variance under 18 U.S.C. § 3553(a), as he agreed in his plea agreement, see PSR at ¶ 5(10), Mr. Boye will not focus on the first or second steps of the formal sentencing process outlined by the Third Circuit in *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006).

Application of 18 U.S.C. § 3553(a) factors to the circumstances of this case warrants a sentence of 63 months.

Regarding the nature and circumstances of this offense, there is no doubt that this crime is serious. As outlined in the PSR, Mr. Boye, through fraudulent pretenses, obtained a lucrative contract from Timor-Leste. He misrepresented himself and failed to disclose an inherent conflicts of interest during the bidding process. As a result, he obtained a multi-million dollar contract to perform work on behalf of Timor-Leste. Unlike most frauds, where the defendant devises a scheme to defraud the victim and never intended to deliver the product, Mr. Boye

Honorable Freda L. Wolfson
United States District Court Judge
October 13, 2015
Page 2 of 2

produced a work product that is still being utilized by the government of Timor-Leste, who in turn uses it to collect revenue. Though Mr. Boye's conduct was deceptive from the inception, his work product continues to pay dividends for Timor-Leste.

There is no doubt that Mr. Boye must be punished for his conduct. The question to be addressed is what sentence will provide just punishment for Mr. Boye, bearing in mind the other, equally important sentencing objectives.

Mr. Boye has fully accepted responsibility for his actions and is deeply remorseful. He took a hard look at where he was and the poor judgment that had gotten him there. Mr. Boye has learned a painful lesson from this experience, one he will not soon forget. It has impacted him deeply, and it will have everlasting consequences. He realizes that he will have to work diligently every day, and he welcomes the opportunity. Mr. Boye, therefore, asks this Court to impose a 63 month sentence that reflects the recognition of the substantial assistance that he rendered to the government, and the 3553(a) factors.

Thank you for your consideration of this matter.

Respectfully submitted,



K. Anthony Thomas
Assistant Federal Public Defender

cc: Shirley U. Emehelu, Assistant U.S. Attorney



U.S. Department of Justice

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October 13, 2015

By Electronic and Courthouse Mail

The Honorable Freda L. Wolfson
United States District Judge
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, NJ 08608

Re: United States v. Bobby Boye
(a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye")
Crim. No. 15-196 (FLW)

Dear Judge Wolfson:

The United States submits this letter brief to set forth its position as to the appropriate sentence to be imposed on defendant Bobby Boye, a/k/a "Bobby Ajiboye," a/k/a "Bobby Aji-Boye" ("Defendant" or "defendant Boye") in this case. On April 28, 2015, defendant Boye pled guilty to an Information charging him with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349, arising from his participation in a conspiracy to personally enrich himself and others by fraudulently obtaining lucrative consulting contracts from Country A for Defendant's entity, Opus & Best Law Services LLC. Sentencing in this matter is scheduled before Your Honor for Thursday, October 15, 2015 at 11:00 a.m.

For the reasons set forth herein, the United States respectfully requests that the Court sentence Defendant to a term of imprisonment within the advisory Guideline range of **63 to 78 months**.

After United States v. Booker, 543 U.S. 220 (2005), this sentencing involves a three-step process: (1) "Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker"; (2) courts "must formally rule on the [departure] motions of both parties and state on the record whether they are granting a departure and

how that departure affects the Guidelines calculation”; and (3) courts “are required to exercise their discretion by considering the relevant [18 U.S.C.] § 3553(a) factors in setting the sentence they impose.” United States v. Goff, 501 F.3d 250, 254 (3d Cir. 2007).

Step I. The Advisory Guideline Range is 63 to 78 Months

The parties have stipulated in their plea agreement that defendant Boye is responsible for losses totaling more than \$2,500,000 but less than \$7,000,000, which results in an 18-level increase to the applicable base offense level of 7. See U.S.S.G. §§ 2B1.1(a)(1) & 2B1.1(b)(1)(J). (PSR ¶¶ 5(2), 5(4)). The parties also have agreed that the Defendant abused a position of private trust in a manner that significantly facilitated the commission or concealment of the relevant criminal activity, resulting in a two-level increase to Defendant’s offense level pursuant to U.S.S.G. § 3B1.3. (PSR ¶ 5(5)).

The parties have further stipulated that Defendant has accepted full responsibility for his criminal conduct and allowed the Government to conserve resources by avoiding trial. As such, Defendant is entitled to a three-level reduction for acceptance of responsibility pursuant to U.S.S.G. §§ 3E1.1(a) and 3E1.1(b). (PSR ¶¶ 5(7), 5(8)).

The Probation Office’s Guidelines calculations are consistent with the parties’ plea agreement stipulations. (PSR ¶ 124). With a **Criminal History Category III** (4 points) and a **total offense level of 24**, Defendant’s advisory Guidelines range is **63 to 78 months**. (PSR ¶¶ 74, 79, 123).

Step II. No Guidelines Departure Is Warranted

The PSR does not identify any mitigating or aggravating circumstances concerning the offense or defendant Boye that would warrant a departure from the Guidelines range. (PSR ¶ 141). Neither the Government nor the Defendant moves for a downward departure. See Defendant’s Sentencing Letter dated October 13, 2015 (“Def. Sent. Ltr.”), at 1.

Step III. No Variance Is Warranted In This Case

In determining Defendant’s sentence, this Court should give “rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)” and make an “individualized assessment based on the facts presented.” United States v. Tomko, 562 F.3d 558, 567 (3d Cir. 2009) (en banc). In so doing, this Court should “acknowledge and respond to any properly presented argument which has colorable legal merit and a factual basis” in order to set forth enough to satisfy the appellate court. United States v. Ausburn, 502 F.3d 313, 329, & n.33 (3d Cir. 2007); see also United States v. Lessner, 498 F.3d 185, 203 (3d Cir.

2007). Here, the § 3553(a) factors support sentencing Defendant to a term of imprisonment within the advisory Guideline range of **63 to 78 months**.

A. Seriousness of the Offense

The Guidelines calculation here reflects “the seriousness of the offense” and will “promote respect for the law[.]” 18 U.S.C. § 3553(a)(2)(A). Defendant engaged in an elaborate, ongoing scheme that violated Country A’s trust in him as an international petroleum legal advisor to the small nation, which is “among the youngest and poorest nations in the world, as determined by the World Bank.” (PSR ¶ 12).

Defendant Exploited His Position as Trusted Legal Advisor to Country A by Steering a Multimillion Dollar Contract to his “Opus & Best” Entity

In or about September 2007, defendant Boye was released from a California State facility after serving a three-year sentence for embezzling money from his former employer, 3-D Systems, Inc. (PSR ¶ 76). Defendant relocated to the East Coast, ultimately settling in Franklin Lakes, New Jersey (PSR ¶ 13), and was admitted to practice law in the State of New York in or about 2010. See Attorney Directory, New York State Unified Court System, available at <http://iapps.courts.state.ny.us/attorney/AttorneySearch>. That same year, in or about July 2010, Defendant was hired to serve as an international petroleum legal advisor for the Ministry of Finance of Country A through an international development program sponsored by the Kingdom of Norway. As a legal advisor, Defendant’s responsibilities included securing contracts with outside vendors for Country A’s benefit. (PSR ¶ 13).

In or around February 2012, Country A marketed and solicited bids for an approximately \$4.9 million contract to provide legal and tax accounting advice to Country A (the “Contract”). As a member of an approximately three-member committee responsible for reviewing and scoring the submitted bids for the Contract (the “Bid Review Committee”), and due to the deference that other members of the Bid Review Committee paid to him, defendant Boye held tremendous sway in determining which company would be awarded the Contract. Defendant exploited his position as a trusted legal advisor to Country A and as a member of the Bid Review Committee by steering the Contract to Opus & Best Law Services LLC (“Opus & Best”), a company that, unbeknownst to Country A, Defendant controlled and had only recently incorporated. (PSR ¶¶ 14-18, 25).

Defendant’s False Representations Regarding Opus & Best’s Credentials

Country A awarded the lucrative Contract to Opus & Best based largely upon the recommendation of defendant Boye (PSR ¶ 17) and the false

representations contained in Opus & Best's bid documents, rejecting bids from well-renowned accounting and consulting firms.

In Opus & Best's bid documents (the "Bid Documents"), which defendant Boye and a relative authored and emailed to Country A on or about March 17, 2012 using an email account for a purported partner at Opus & Best with the initials "D.L.," there were numerous false statements and material misrepresentations concerning Opus & Best's qualifications that were intended to give Country A the misimpression that Opus & Best was a legitimate, established firm. (PSR ¶¶ 18, 26, 27, 28). For example, the Bid Documents claimed, in pertinent part, that:

- "Opus & Best [wa]s a multi-disciplinary corporation, proving [sic] legal, accounting and economics services principally to the oil and gas sector. It is organized under the New York State laws as a limited liability corporation. Opus & Best was founded in 1985 and it is also registered as a legal and accounting services provider in Europe, Middle East and Africa." (PSR ¶ 28).
 - In truth, Opus & Best's Articles of Incorporation were not filed with the State of New York, Department of State, until March 30, 2012 – after the Bid Documents were submitted to Country A. (PSR ¶ 29). Thus, Opus & Best had not been in operation for almost thirty years, as falsely indicated in the Bid Documents.
- "Opus & []Best [wa]s endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector" (collectively, the "Opus & Best Employees"). (PSR ¶ 30).
 - In truth, other than a "staff attorney" listed by defendant Boye as one of the purported Opus & Best Employees, there was no record of individuals of those same names being admitted to practice law in New York or New Jersey. As for the listed "staff attorney," there was an attorney of the same name admitted to practice in New York, but this attorney worked in the Tokyo, Japan office of a U.S.-based law firm, not as an attorney for Opus & Best in New York. (PSR ¶ 31).
 - Additionally, there was no record, in the New York State's Office of Professions' official online database, indicating that the accountants listed by defendant Boye among the Opus & Best Employees held certified public accountancy licenses. (PSR ¶ 32).

- Simply put, Opus & Best employed no one other than defendant Boye, let alone the licensed professionals identified in the Bid Documents as supposedly employed by Opus & Best.
- Opus & Best's "Relevant Consulting Experience in the last Five (5) Years/References" purportedly included the "[p]rovision of consulting services" to other foreign sovereign nations. (PSR ¶ 34).
 - These other countries had never awarded any contracts to defendant Boye/Opus & Best or otherwise had any business dealings with Defendant and his entity. (PSR ¶ 34).
- Defendant Boye failed to disclose, and caused others to fail to disclose, that his affiliation with Opus & Best created a conflict of interest and rendered him a third-party beneficiary of the proposed Contract. Indeed, in the Bid Documents' "Statement of any Potential Conflicts of Interest," defendant Boye falsely "confirm[ed] that [Opus & Best] ha[d] no conflicts of interest in undertaking th[e] assignment[.]" Additionally, the Bid Documents falsely claimed that "there [we]re no third party beneficiaries to th[e] [proposed] Agreement" between Opus & Best and Country A. (PSR ¶ 33).
 - In truth, defendant Boye was the sole member of Opus & Best, created Opus & Best for the sole purpose of misappropriating the multimillion dollar Contract for his own personal benefit, and deliberately masked his affiliation with Opus & Best so that he could deceive Country A into believing that Opus & Best was a legitimate, independent firm, free of conflicts of interest and undisclosed third-party beneficiaries. (PSR ¶¶ 33, 35).

Defendant Boye's material misrepresentations were not limited to the Opus & Best Bid Documents. As charged in the Information, the Defendant also caused a website to be generated for Opus & Best, in or about March 2012, which contained many false claims regarding Opus & Best's credentials, including the following:

- "Our professional tax advisors are simply the best in the business. We have over 40 top tax professionals, each with decades of high-level oil and gas tax/accounting experience spread across the Americas, Middle East, Europe, Africa and South East Asia."
- "Our experienced tax professionals, accountants and economists jointly bring an unparalleled breadth of industry experience to every

engagement. We work with organizations to proactively and efficiently address tax matters connected with the business decisions in relation to the oil and gas industry. We provide tax advisory services on all aspects of oil and gas taxation and tax department operations to corporations. We also assist sovereign government revenue agencies to write tax laws, regulations, tax manuals and rulings.”

After Fraudulently Steering the Lucrative Contract to Opus & Best, Defendant Diverted the Contract Proceeds to His Own Personal Use

After steering the \$4.9 million Contract to Opus & Best through fraud and deceit, defendant Boye swiftly diverted the Contract payments to his own personal use. Defendant opened a J.P. Morgan Chase Bank business account ending in -0399 for Opus & Best in New York (the “Opus & Best -0399 Account”) in or about April 2012. Defendant was the sole signatory on this bank account. (PSR ¶ 37). Starting in or about June 2012 and continuing through in or about December 2012, pursuant to the terms of Country A’s “Contract for Consulting Services” with Opus & Best, Country A caused wire transfers totaling more than \$3.5 million to be made from Country A’s account at the Federal Reserve Bank of New York to the Opus & Best -0399 Account. These transfers were made via the Automated Clearing House (“ACH”) payments system and processed at the Federal Reserve’s ACH facility located in East Rutherford, New Jersey, thereby involving interstate wire transfers between New York and New Jersey. (PSR ¶¶ 38, 40).

Defendant then diverted the Contract payments to his own personal use to purchase numerous assets, including, but not limited to:

- Four properties located in Ramsey, New Jersey, North Haledon, New Jersey, Oakland, New Jersey, and Elizabeth, New Jersey, respectively, for a total of more than approximately \$1.5 million in cash;
- Three luxury vehicles, namely a 2012 silver Bentley Continental for approximately \$172,000, a 2012 black Range Rover for approximately \$100,983, and a 2011 gray Rolls Royce Ghost for approximately \$215,000; and
- Two designer watches for, in total, almost \$20,000.

(PSR ¶ 41).

Defendant’s fraudulent scheme came to an end, not by his own choice or triggered by any sense of remorse on his part, but rather because Country A became suspicious of his background, particularly after his claim in early 2013

that he was suffering from a life-threatening illness – a claim that turned out to be a sham. Through its own private investigation of defendant Boye, Country A learned of defendant Boye’s criminal record. In or around April 2013, by which time Defendant and his coconspirators had defrauded Country A of more than \$3.5 million through the fraudulent scheme, Defendant left his legal advisor position and departed from Country A. (PSR ¶ 42).

Defendant’s Attempts to Fraudulently Collect Additional Payments from Country A

Even after he abandoned his employment as a legal advisor to Country A, defendant Boye continued trying to milk Contract payments from Country A by impersonating or causing the impersonation of a purported employee of Opus & Best. For example, on or about May 26, 2013, purported Opus & Best Employee, “D.L.,” attached to an email to certain Country A representatives, an invoice for a “final payment” of approximately \$630,000 purportedly owed to Opus & Best under the Consulting Contract. The wiring instructions at the bottom of the invoice provided that the approximately \$630,000 payment should be made to the Opus & Best -0399 Account secretly controlled by defendant Boye. (PSR ¶ 43).

Defendant Boye’s fraud did not end there. He sought other opportunities to fraudulently obtain moneys from Country A. For example, after registering an Opus & Best entity as a Hong Kong company in or about December 2012 (“Opus & Best-Hong Kong”), Defendant tried to enter into a contract for “Tax Consulting and Advisory Services” with Country A in or about April 2013. In seeking this engagement, Opus & Best-Hong Kong sought an advanced payment of approximately \$250,000 from Country A. Country A rejected this proposal. (PSR ¶ 44).

Evidence of Other Fraud Detected by Country A

Country A’s private investigation of defendant Boye not only revealed defendant Boye’s execution of the fraudulent scheme described above and charged in the Information, but also a separate scheme by Defendant to misappropriate funds from Country A. Specifically, Country A’s investigation found that Defendant had also diverted approximately \$850,000 in tax proceeds from the nation’s petroleum fund to a company called Olive Consultancy that Defendant registered in the name of his former neighbor in Country A, but which, unbeknownst to Country A, was secretly controlled by defendant Boye. Defendant Boye used the diverted moneys in connection with the purchase of his \$1.9 million Franklin Lakes residence. (See generally PSR ¶¶ 45-51).

B. Impact on the Victim

Based on the foregoing, the seriousness of defendant Boye's fraudulent conduct is undisputable. Moreover, Defendant's criminal activity has had an appreciable impact on Country A. In awarding the Consulting Contract to Opus & Best, Country A was under the misimpression that the Opus & Best engagement would be staffed by highly reputable, licensed attorneys and accountants at the top of their field. This impression was generated by defendant Boye's own false representations in the Bid Documents. Indeed, the purported key members of the Opus & Best project team were described with particularity in the Bid Documents, in substance and in part as follows:

- "D.L.," an "Attorney & CPA," was identified as "the leader of the [Country A] Project[,] . . . a graduate of University of Southern California and Yale, [and] . . . the head of the oil and gas tax practice of Opus & Best." He supposedly "ha[d] practiced tax and accounting for over 20 years," purportedly was "previously employed by the IRS' oil and gas section" and was a partner in the oil and gas practice of a private law firm.
- "R.S.W.," an "Attorney & CPA" was described as "a graduate of Aberdeen University [with] a post graduate degree in business (MBA) from Wharton University, [and] . . . over 18 years of mining tax and accounting experience working variously with an oil an [sic] company . . . as a corporate tax attorney, . . . and . . . [a] law firm . . . [that] was acquired by and merged with Opus & Best in 2008¹."
- "E.A.," an "Attorney," was described as "a graduate of Duke University and UCLA Law School [who,] [p]rior to joining Opus & Best in 2005, . . . headed the Oil & Gas Practice [at a firm,] [and] . . . ha[d] 25 years of oil and gas practice."
- "M.H.," a "CPA & Economist," was described as "an economist and a certified accountant with 15 years of experience in the oil and gas industry[,] . . . a graduate of Pepperdine University and USC, where she obtained a Master's degree in Finance (MBA)[, and] h[eld] a doctorate degree in economics (PhD) from the City University of New York."
- "P.D.," a "Staff Attorney," purportedly "joined Opus & Best in 2006, fresh from law school[,] [h]e ha[d] been involved with several oil and gas projects undertaken by Opus & Best since October, 2006 [and] .

¹As noted above, Opus & Best was not founded by Defendant until 2012, and therefore could not have acquired a law firm in 2008. Additionally, given that Opus & Best did not come into existence until 2012, claims in the bid documents that "key members" of the project team joined Opus & Best well before 2012 are also false.

. . [wa]s a graduate of NYU Law School and also [had] an LLM post graduate degree from University of London.”

- “R.S.,” a “Staff Tax Accountant,” purportedly “joined Opus & Best in 2007 as a staff accountant[,] . . . [wa]s a tax accounting specialist[,] . . . certified accountant and a graduate of Brown University [who] was previously engaged by [a major accounting and consulting firm] . . . before her current employment.”

See Letter from “D.L., Partner, Opus & Best Law Services LLC” to National Director of the Ministry of Finance of Country A dated March 15, 2012, attached hereto as Ex. A.

These purportedly licensed professionals with extensive relevant experience are the individuals that Country A understood would be staffing the project, not a previously convicted fraudster, i.e., defendant Boye. The work product that was to be performed under the consulting contracts was extremely important to Country A’s revenue generation, as the contracts were for the “development of regulations and oversight of [Country A’s] oil and gas industry, which accounts for approximately 90% of government revenue.” See Victim Impact Statement Letter dated October 8, 2015 (the “Victim Impact Statement”) at 5, attached hereto as Ex. B. The revelation that petroleum tax regulations and levies were developed and executed by defendant Boye, a convicted felon, and his sham entity, Opus & Best, has caused “immeasurable harm to [Country A’s] relationships with its long-term partners, which include large, international oil companies” as well as to the country’s cultivation of new business partnerships. Id. Additionally, defendant Boye’s fraudulent scheme has impacted Country A’s diplomatic relations, including its relations with other international advisors currently working with Country A. Id. at 5-6.

Notwithstanding the harm inflicted upon Country A, defendant Boye argues in mitigation that he “delivered the work-product to the victim, the victim has never complained about the work-product and continues to use it, and the victim will be made hold [sic] by seized property and restitution[.]” Def. Sent. Ltr. at 1. The Sentencing Commission has rejected the notion that a defendant should get credit for the value of services rendered where, as here, the “case involv[es] a scheme in which . . . services were fraudulently rendered to the victim by persons falsely posing as licensed professionals[.]” See U.S.S.G. § 2B1.1 app. n. 3(F)(v)(I).

Here, Defendant falsely impersonated or caused the impersonation of numerous licensed attorneys and accountants and therefore should not receive any “credit” for services rendered – whether as a mitigating factor or otherwise – in the determination of his sentence. See United States v. Ary-Berry, 424 F. App’x 347, 352 (5th Cir. 2011) (citing United States v. McLemore, 200 Fed.Appx. 342, 344 (5th Cir. 2006) (per curiam) (unpublished) (stating that “[t]here is no

setoff for the value of any services actually rendered or products provided” when applying the special rules for certain cases of fraud, and “the determination of the amount of loss for calculations under U.S.S.G. § 2B1.1(b)(1) require the use of the greater of actual loss of [sic] intended loss”)); United States v. Hunter, 618 F.3d 1062, 1065 (9th Cir.2010) (finding that the application rule supported the conclusion that the calculated loss required no deduction for the value of work the defendant performed when she was falsely acting as a nurse). Cf. United States v. Nagle, No. 14–3184, 2015 WL 5712253 (Sept. 30, 2015) (holding that the amount of loss defendants were responsible for was the value of the contracts received, less the value of the performance of the contracts, but declining to address the application of U.S.S.G. § 2B1.1 app. n. 3(F)(v)) as the Government belatedly raised its application, at oral argument).

In sum, the seriousness of defendant Boye’s criminal conduct is unquestionable. His provision of some work product under the Contract, while falsely impersonating licensed attorneys and accountants with decades’ long experience in the oil and gas sector, should not be relied upon in mitigation.

C. Need for Deterrence

A Guideline range sentence also is appropriate to “afford adequate deterrence to criminal conduct,” 18 U.S.C. § 3553(a)(2)(B). Both specific and general deterrence are necessary in this case.

Specific Deterrence is Required

Specific deterrence is unquestionably important in this matter given that not long after his 2007 release from California State custody for embezzling funds from a prior employer (after having the good fortune of being able to serve that sentence in a halfway house for white collar defendants), defendant Boye was planning and executing the instant fraudulent scheme. Indeed, Country A’s investigative findings indicate that defendant Boye was scamming Country A as early as 2011, with respect to Defendant’s alleged diversion of approximately \$850,000 in petroleum tax revenues. Defendant’s use of aliases indicates that he masked his criminal past by essentially taking on a new identity when he moved to the East Coast and secured employment as an international tax advisor to Country A.

Defendant Boye’s checkered past is not limited to the conduct described above. He also was censured by the New York Stock Exchange and the U.S. Securities and Exchange Commission in 2004 for engaging in trading improprieties in client accounts, while he was employed by Morgan Stanley DW Inc. in New York City. (PSR ¶¶ 106-114).

Thus, based on his long history of engaging in fraudulent conduct, Defendant needs to be specifically deterred from carrying out further criminal

activity.

General Deterrence is Required

Not only is specific deterrence necessary in this case, but also general deterrence. Financial crime cases, such as this one, are “prime candidates for general deterrence,” because these “crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity[.]” United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation marks and alteration omitted).

Defendant’s execution of the criminal conspiracy was unabashedly “rational, cool, and calculated,” and a within Guideline sentence will send a strong deterrent message to others who might consider engaging in similarly calculated criminal behavior.

D. History and Characteristics of the Defendant

A Guideline sentence is also supported by “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). Starting with his trading improprieties in 2000 while employed at Morgan Stanley DW and continuing into 2013 as a legal advisor to Country A and Bid Review Committee member, defendant Boye has engaged in a lengthy pattern of deceptive behavior in which he serially abused the various positions of trust that he held with respect to his employers and/or clients. Although he has expressed remorse for the instant offense, he has done so only after being caught and while facing the prospect of spending a considerable amount of time in prison.

Moreover, Defendant’s personal history reveals a man of tremendous intellect, training, and experience, who squandered those abilities and opportunities by exploiting the trust of his employers and clients in order to satisfy his own personal greed. Accordingly, a Guidelines range sentence is imperative.

E. Restitution

Country A seeks restitution in the amount of “at least \$5,478,875.30.” See Declaration of Victim Losses, attached hereto as Ex. C. The parties, however, have stipulated that the Defendant owes restitution in the amount of \$3,510,000. As set forth below, the Defendant is liable for victim losses directly resulting from the charged criminal conspiracy, but not for any losses related to uncharged conduct. He also may be held liable for expenses related to the Victim’s investigative and auditing fees associated with assisting the prosecution of this matter.

The Mandatory Victims Restitution Act of 1996

The Mandatory Victims Restitution Act of 1996 (MVRA) defines the term “victim” as follows, in relevant part:

[T]he term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663A(a)(2). As such, reimbursable losses are those incurred as a direct result of defendant’s criminal conduct during the course of, as applicable here, the conspiracy.

In Hughey v. United States, 495 U.S. 411, 422 (1990) (Hughey I), the U.S. Supreme Court held that the plain language of the Victim and Witness Protection Act of 1982 (VWPA), the predecessor statute to the MVRA, which authorized federal courts to order “a defendant convicted of an offense” to “make restitution to any victim of such offense,” limited restitution to losses resulting from the offense of conviction. The Third Circuit, interpreting Section 3663A and relying on Hughey I and the Fifth Circuit’s ruling in a subsequent separate prosecution of Hughey, in United States v. Hughey, 147 F.3d 423 (5th Cir.1998) (Hughey II), held that, “[i]n the absence of a specific agreement to the contrary, an order of restitution in a criminal case may not include losses caused by conduct that falls outside the temporal limits established by a guilty plea.” United States v. Akande, 200 F.3d 136, 137 (3d Cir. 1999) (remanding to the district court for a reduction of the restitution amount assessed). “The victim’s harm must be closely connected to the conspiracy or scheme rather than merely tangentially.” Id. at 139 (citing United States v. Kones, 77 F.3d 66, 70 (3d Cir. 1996)).

\$3,510,000 in Contract Payments

Here, defendant Boye pled to an Information charging him with, from in or about March 2012 through in or about May 2013, participating in a wire fraud conspiracy the object of which was for defendant Boye and others to enrich themselves by fraudulently obtaining lucrative consulting contracts from Country A for Defendant’s entity, Opus & Best (the “Contract scheme”) (see Information at 3). The victim country’s direct losses resulting from the charged Contract scheme include the \$3,510,000 in total contract payments that Country A wired to “Opus & Best” between March 2012 and May 2013. Accordingly, the parties have stipulated that Defendant is liable, for restitution purposes, for the \$3,510,000 in payments that he fraudulently obtained through his “Opus & Best” entity during the course of the Contract scheme.

\$859,706.30 in Additional Diverted Funds

Other losses sustained by Country A which do not flow from the “offense of conviction,” i.e., the Contract scheme, should be excluded from the restitution calculation. For example, the \$859,706.30 in tax revenue proceeds that defendant Boye and others stole from Country A in December 2011 (the “Macau scheme”), prior to the time period of the charged conspiracy, should be excluded from the restitution award. Because these funds were misappropriated prior to the commencement of the charged conspiracy, their theft cannot form the basis for increasing the amount of restitution owed by defendant Boye. See Akande, 200 F.3d at 138 (holding two instances of fraud occurring in November 1997, just one month prior to the commencement of the charged scheme, as outside the temporal scope of the offense of conviction and therefore ineligible for restitution).

\$130,000 in Salary Payments

Country A also seeks to claw back \$130,000 in salary payments that it made to defendant Boye. It is unclear whether these salary payments were made by Country A solely during the temporal period of the charged conspiracy, i.e., between March 2012 and May 2013. If the payments were made during the scope of the conspiracy, there would still be the challenge of determining whether those salary payments should be offset by the value of any legitimate services provided by defendant Boye in his capacity as a legal advisor to Country A. Rather than taking on this daunting task and potentially delaying sentencing in this matter, the Government submits that salary paid to defendant Boye by the victim should be excluded from the restitution calculation on the grounds that doing so would involve “determining complex issues of fact related to the cause or amount of the victim’s losses,” as it would involve offsetting salary payments by any eligible credits for legitimate services rendered by defendant Boye, which “would complicate or prolong the sentencing process to a degree that” would result in “the need to provide restitution to [the] victim [being] outweighed by the burden on the sentencing process.” See 18 U.S.C. § 3663A(c)(3)(B).

Investigative Costs and Attorneys’ Fees

Finally, investigative costs and attorneys’ fees may qualify as “other expenses incurred during participation in the investigation or prosecution of the offense,” which may be reimbursed to victims under the MVRA. See 18 U.S.C. § 3663A(b)(4); United States v. Hayward, 359 F.3d 631, 642 (3d Cir. 2004) (holding that the district court correctly concluded that parents were entitled to restitution under the MVRA for “reasonable costs in obtaining the return of their victimized children from London and in making their children available to participate in the investigation and trial”); United States v. Amato, 540 F.3d 153, 159-60 (2d Cir. 2008) (holding that “other expenses” incurred during the victim’s

participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense may include attorney fees and accounting costs); United States v. Gordon, 393 F.3d 1044, 1057 (9th Cir. 2004) (affirming award of restitution for victim's investigation costs, including attorneys' fees); United States v. Phillips, 477 F.3d 215, 224-25 (5th Cir. 2007) (allowing restitution of costs incurred by victim university in conducting computer damage and systems evaluation and contacting individuals whose information had been stolen as a result of defendant's computer hacking).

Country A's restitution claim includes investigative and auditing costs of \$379,169 and legal expenses totaling "at least approximately \$600,000." See Declaration of Victim Losses, Ex. C at 2.

* * *

In determining the appropriate sentence in this case, the Court also should consider: the "kinds of sentences available," 18 U.S.C. § 3553(a)(3); the Guidelines and Guideline range, 18 U.S.C. § 3553(a)(4); and the Guidelines' policy statements, 18 U.S.C. § 3553(a)(5). The "kind of sentences available" include imprisonment.

In light of the seriousness of defendant Boye's offense conduct; the need for deterrence and to promote respect for the law; and the history and characteristics of the Defendant, the § 3553(a) factors plainly call for a sentence within the advisory Guideline range of **63 to 78 months**.

Conclusion

Based on the foregoing, the Government respectfully submits that the Court should sentence defendant Boye to a term of imprisonment within the advisory Guideline range of **63 to 78 months**, followed by three years of supervised release. The Court should also order defendant Boye to pay at least \$3,510,000 in restitution to Country A. If the Court finds that Country A is entitled to be reimbursed by the Defendant for its \$979,169 in investigative/auditing expenses and attorneys' fees, Defendant would owe restitution totaling \$4,489,169. Finally, the Government asks the Court to incorporate in its judgment the parties' agreed-upon forfeiture money judgment of **\$4,233,015.42**.

Thank you for your consideration.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ Shirley U. Emehelu

By: SHIRLEY U. EMEHELU
Assistant U.S. Attorney

cc: K. Anthony Thomas, Esq. (by electronic mail)
Renée Caggia, Senior U.S.P.O. (by electronic mail)

EXHIBIT A



Ms. Monica Rangel Da Cruz
National Director
National Directorate of Petroleum Revenue
Ministry of Finance
Dili
Timor-Leste

March 15, 2012

Dear Ms. Rangel Da Cruz,

RE: Solicitation for services in respect of Regulations under Chapter IX of the Taxes and Duties Act, 2008 and the Taxation of Bayu-Undan Contractors, Act, 2005.

We refer to the publication in The Economist dated February 25, 2012 inviting interested parties to tender for the provision of services described above. We wish to formally indicate our Expression of Interest in the bid and we hereby submit our bid accordingly.

Opus & Best Legal Services, LLC (Opus & Best)

Opus & Best's Profile

Opus & Best is a multi-disciplinary corporation, providing legal, accounting and economics services principally to the oil and gas sector. It is organized under the New York State laws as a limited liability corporation. Opus & Best was founded in 1985 and it is also registered as a legal and accounting services provider in Europe, Middle East and Africa. In countries where we are not registered, we do

business in a collaborative manner with top flight law and accounting firms registered within such jurisdictions.

Opus & Best is endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector. The services include tax planning, tax advisory services, transfer pricing documentation, assisting governments with writing oil and gas regulations and legislation, audit defense, mergers and acquisitions.

We also represent Governments/ oil and gas companies to prepare documentations for licensing bids and negotiate licensing agreements, including Production Sharing Contracts (PSCs).

Opus & Best's oil and gas practice combines our many years of oil and gas legal experience with our commensurate real-life experience in the business. With more than 100 clients with diversified investments in the energy business, you will have the assurance that comes from professional advisors who are well knowledgeable about the industry. Opus & Best works with Governments, exploration and production, midstream and downstream companies. We represent the full range of oil and gas clients from royalty owners to small independents to multinational oil companies. Our clients participate in all phases of upstream oil and gas exploration and production, both onshore and offshore.

Our oil and gas practice is global, covering clients based in the Americas, Europe, Africa, the Middle East and South East Asia. Our Corporate office is located in New York City, USA.

. Practice Areas:

❖ Oil & Gas Taxation Practice

Giving the fundamental implication to the revenue of the industry players (corporations, landowners and governments), the taxation laws governing the oil and gas industry is one of the most singularly important areas of tax laws. Oil and gas laws are spiritedly debated globally. Oil and gas taxation is extremely complex and volatile. The private sector of the industry is constantly faced with aggressive interpretation and enforcement by the revenue agencies in different jurisdictions. The mineral rights owners are also aggressively challenged by the private sector.

That is the reason why you need Opus & Best at your side, whether you are the mineral right owner or the private/corporate entrepreneur. Our professional tax

advisors are simply the best in the business. We have over 40 top tax professionals, each with decades of high level oil and gas tax/accounting experience spread across the Americas, Middle East, Europe, Africa and South East Asia.

We have enormous resources at our disposal. It is critical for your organization to be in possession of the latest tax developments and solutions. With a right and timely tax information and or solution, you can minimize tax risk and capitalize on opportunities, and therefore increase working capital. Opus & Best provides the right assembly of professional and industry recognized experts to help your organization manage oil and gas-related tax issues.

Our experienced tax professionals, accountants and economists jointly bring an unparalleled breadth of industry experience to every engagement. We work with organizations to proactively and efficiently address tax matters connected with the business decisions in relation to the oil and gas industry. We provide tax advisory services on all aspects of oil and gas taxation and tax department operations to corporations. We also assist sovereign government revenue agencies to write tax laws, regulations, tax manuals and rulings.

- **Number of staff in this area:**
Ten (10) attorneys and six (6) accountants, supported by four (4) administrative support staff.

❖ Licensing Practice

Licensing is the first step in securing access to mineral right. It is important to do it right. We assist mineral right owners (individuals, corporate and governments) to prepare all the necessary documentation for bidding rounds.

We have professionals with enormous experience in negotiating the core provisions of licensing arrangements be it a PSC, Joint Ventures, Service Agreements, Concessions etc. We have represented both the mineral right owners as well as the private entrepreneurs in negotiating several licensing agreements.

- **Number of staff in this area:**

Three (3) attorneys, Six (6) Economist and two (2) accountants, supported by three (2) administrative staff.

❖ Oil & Gas Regulatory Matters Practice

Oil and gas companies have dozens of regulations that they must comply with in order to do business. Failure to comply with any one of these regulatory matters could result in serious consequences.

We offer our representation on behalf of clients on matters relating to licensing disputes between the parties before the regulatory authorities and or in arbitration. Opus & Best's Energy Regulatory Practice extends to all aspects of regulation affecting producers, shippers, midstream operators and transporters in virtually all its forms, as well as developers of infrastructure projects, investors in and lenders to the energy sector.

- **Number of staff in this area:**

Five (5) attorneys, three (3) petroleum engineers and one (1) Economist, supported by one (1) administrative staff.

❖ Audit Defense, Accounting & Litigation Support Practice

Irrespective of the side we are on, our tax audit experts, shooting from all cylinders, will vigorously defend the clients' tax positions before the court or any adjudicative body.

Major tax investigation by the revenue agencies – be it civil or criminal allegations of tax fraud or an avoidance arrangement will carry serious adverse consequences for any business. The revenue agencies in most countries are becoming more aggressive in asserting their positions against taxpayers, especially in the oil and gas sector in matters relating to compliance. Tax investigators in most jurisdictions possess wide statutory power in gaining access to business records and making unscheduled visits to business premises.

At Opus & Best, we offer highly experienced support in quickly concluding investigations and minimizing any potential tax liability. Our number one goal

in audit representation is total minimization of the tax at risk and keep penalties and interest (if any) to the minimum.

However, the role is reversed when we represent the revenue agency of a state in defending tax assessments. The goal is the protection of government revenue and sustaining any disputed tax assessment, inclusive of the penalty and interest.

Our professional fees for services performed in this specific area are largely contingent. You win, Opus & Best wins! It is "win-win" strategy for you and for us.

- **Number of staff in this area:**
Twelve (12) attorneys and Eight (3) accountants and four (4) economists supported by five (5) administrative staff.

❖ **Legislation, Policy & Governmental Relations Practice**

The aggregate experience and knowledge of our government relations experts have proven invaluable in addressing the complex legal and public policy issues faced by our clients. This experience and knowledge shape policy development and decision-making and guide the effective communication of our clients' interests to the public. The specific areas covered under this practice are:

- Developing and coordinating advocacy strategies
- Direct advocacy engagement with decision makers
- Draft and analyze tax legislation and proposed rules/regulations
- Developing tax policies
- Counsel clients regarding compliance with laws and regulations

- **Number of staff in this area:**
Six (6) attorneys, supported by two (2) administrative staff.

❖ Mergers and Acquisitions Practice

Opus & Best is proud to be involved in many large and most complicated M&A transactions in the oil and gas industry. From due diligence to the consummation of the execution of the planned transaction, we have the experience and knowledge to guide the transaction to completion while protecting the client's interests.

Companies who choose Opus & Best as part of their advisory team in Mergers and Acquisitions Practice recognize and appreciate our competent and well thought out strategic guidance predicated on practical business realities of the transaction as well as the industry knowledge of our team.

Our corporate experts are experienced in local and cross border M&A transactions, particularly in the oil and gas industry. Due to our established position as principal legal advisor and accountants to many companies in the energy sector, we have played a major role in the restructuring of various parts of the mining, oil and gas industry in different countries.

Opus & Best have advised clients in Farm-in and Farm-Out transactions ranging in size from small transactions to those valued at over \$2 billion. We also advise companies on matters relating to recapitalizations; leveraged or management buyouts; joint ventures and strategic alliances; tender and exchange offers; and spin-off, split-off, auction and "going private" transactions.

Since almost all proposed M&A transactions or restructurings invariably involve substantial tax issues, our tax lawyers and tax accountants work to structure the transaction in a tax efficient manner and thereby lowering transaction cost. Often dealing with novel issues that require creative tax solutions, our M & A experts develop tax strategies for a wide variety of situations, including tax strategies aimed at preserving the deferred tax asset, acceleration of the use of net operating losses etc.

- **Number of staff in this area:**
Ten (10) attorneys and six (6) accountants, supported by four (4) administrative support staff.

Capacity to Perform

Why Opus & Best? – Our Credentials

Opus & Best has been a major professional services (Legal, Accounting and Economics) provider for sovereign governments and corporations in the mining, oil and gas industry for several years. We have been involved with projects from Americas to Africa, South East Asia, Europe and Middle East with a combined value of over US\$500 Billion in the past twenty (20) years.

Opus & Best is strategically positioned to advise the National Directorate of Petroleum Services of Timor-Leste (NDPR) because we have a demonstrable track record of writing oil and gas agreements, tax laws and regulations and developing tax policies touching and concerning the mining, oil and gas industry on behalf of governments all over the world. As detailed in below, several members of Opus & Best's proposed team have decades of high level experience of advising clients on tax policies, tax laws and regulations, and more specifically in the mining, oil and gas industry.

We have previously assisted (1999-2005) the previous United Nations interim administrator of Timor-Leste (UNTAET) on several income tax law issues, and more specifically on certain virtually all of the Directives relating to tax and the 2000/18 Regulations.

We have also assisted other countries in Asia and we are currently assisting both Myanmar Cambodia on matters relating to oil and gas tax policies, laws and regulations. The Cambodian fiscal regime is based essentially on Timor-Leste's fiscal model, including PSC, corporate income tax laws (Additional Petroleum Tax and Supplementary Petroleum Tax) and the 2000 regulations.

We successfully completed a similar exercise for Montenegro as recently as July 2011. The entire fiscal regime, including licensing models, tax and export laws governing the extraction of Copper in the Democratic Republic of Congo was written by Opus & Best in 2003.

Opus and Best has also collaborated with major stakeholders in the oil and gas industry to monitor and provide comments in respect of proposed laws and regulations impacting the oil and gas industry by the US Internal Revenue Service (IRS). Such stakeholders include the American Petroleum Institute (www.api.org), American Association of Petroleum Landman (www.landman.org/news.html), Petroleum Marketers Association of America (www.pman.org), the Tax

Executives Institute (www.tei.org) and the American Gas Association (www.aga.com).

In working with the clients named-above (**the stakeholders are not our clients** but organizations with which Opus and Best share some common interests), Opus and Best has performed tasks and developed substantial expertise in legislative writings in the area of oil and gas, and similar with the advisory services sought by NDPR for regulations under Chapter IX of the Taxes and Duties Act (TDA) as well as the regulations interpreting the substantive provisions of the Taxation of the Bayu-Undan Contractors Act (TBUCA).

We have worked with various governments and tax agencies over long periods, providing ongoing professional advice on tax policies, writing tax manuals, regulations, private and public rulings, developing strategies for revenue maximization, audit defense and prepared detailed ministerial briefings on fiscal matters.

Please see Appendix A for related activities performed by Opus & Best in the last five (5) years and the contact persons for reference.

Aside from the detailed and deep knowledge base of our Oil & Gas Taxation Practice, Opus & Best's project team will also draw upon our extensive global industry network of top flight practitioners and resources.

Representative Key members of the Timor-Leste Project Team

Dominic Lucas :Attorney & CPA

Dominic Lucas (Dominic) will be the leader of the Timor-Leste Project and he is based in New York City. Dominic is an attorney and a Certified Professional Accountant. He is a graduate of University of Southern California and Yale. He is the head of the oil and gas tax practice of Opus & Best.

Dominic has practiced tax and accounting for over 20 years and he is an oil and specialist with a diverse background in government and the private sector. He was

previously employed by the IRS' oil and gas section and he was a partner in the law firm of Brobek, Phleger & Harrison, LLP's oil and gas practice.

Raymond S. Weils: Attorney & CPA

Raymond Weils (Raymond) is an attorney and certified accountant and he shares him time between New York and Trinidad. He is a graduate of Aberdeen University, UK and holds a post graduate degree in business (MBA) from Wharton University, Pennsylvania.

Raymond has over 18 years of mining tax and accounting experience working variously with an oil an company in San Ramon as a corporate tax attorney, Michigan Oil & Gas Association and the law firm of Samuels & Weis, Dallas-Texas (Samuels & Weis) was acquired by and merged with Opus & Best in 2008.

Elizabeth Ackerman: Attorney

Elizabeth Ackerman (Beth) is an attorney and she is based in New York City. She is a graduate of Duke University and UCLA Law School. Prior to joining Opus & Best in 2005, she was variously engaged with Arthur Anderson, LLP as a Senior Manager in Los Angeles and New Energy Ventures, LLC; where she headed the Oil & Gas Practice. She was previously engaged as a staff of the of the US Congressional Committee (Ways & Means) She has 25 years of oil and gas practice.

Michelle Harrison: CPA & Economist

Michelle Harrison (Michelle) is an economist and a certified accountant with 15 years of experience in the oil and gas industry. She is a graduate of Pepperdine University and USC, where she obtained a Masters' degree in Finance (MBA). She holds a doctorate degree in economics (PhD) from the City University of New York.

She is a specialist in related party transactions (transfer pricing) and complicated LNG pricing models.

Paul Davis, Staff Attorney

Paul Davis (Paul) joined Opus & Best in 2006, fresh from law school. He has been involved with several oil and gas projects undertaken by Opus & Best since October, 2006. Paul is a graduate of NYU Law School and also an LLM post graduate degree from University of London.

Rebecca Samuelson: Staff Tax Accountant

Rebecca Samuelson (Becky) joined Opus & Best in 2007 as a staff accountant. She is a tax accounting specialist and she is heavily involved in projects relating to oil and gas taxation/IFRS/US GAAP.

Becky is certified accountant and a graduate of Brown University, Providence, Rhode Island.. She was previously engaged by Ernst & Young (oil & gas practice in Houston Texas before her current employment.

Both Dominic and Raymond will act as joint director for this engagement. Raymond will act as the Project Manager and Dominic will be responsible for the day to day activities associated with the engagement, including communication with NDPR and the stakeholders. He will also be in charge of the deliverables. Michelle and Becky will supply the expertise on transfer pricing and tax accounting part of the project.

To be successful, the project will have to be a joint cooperative effort between Opus & Best and NDPR. Opus & Best will work with NDPR to develop a clear channel of communication to ensure that we are working together to achieve a common goal i.e. writing regulations that reflect the objective of the assignment.

Proposed Methodology

1. Step A: Review of the legislative history, Timor-Leste tax policy in relation to Oil & Gas

The starting point for this project is a comprehensive and detailed review of the legislative history of all relevant Timor-Leste tax laws (including UNTAET Directives, Timor Sea Treaty and its predecessor –Timor Gap Treaty, the inherited Indonesian tax laws, Regulations), the mining laws applicable in Timor-Leste and

the model PSC. The review exercise will also involve the determination of the objective and tax policy of the Timor-Leste government as embodied in such tax laws. We will also review any available commentaries on the fiscal policy of Timor-Leste from international organizations like the IMF and the World Bank. Opus and Best will devote a considerable effort to the TDA and TBUCA, for the fact that those two (2) enabling laws are the cornerstone of the project.

The purpose of the review is two fold. Opus & Best will gain an understanding of the tax policies of Timor-Leste as the resource owner in the Joint Production Development Area (JPDA) as well as the Timor-Leste Exclusive Area (TLEA). Secondly, the understanding gained from comprehensive review will provide a platform for Opus & Best to write regulations that are consistent with the Timor-Leste's tax policies and reflective of the understanding of the parties to the PSC as document in relevant PSCs.

2. Step B: Conference Call/ Meeting with relevant Officials of NDPR

After the completion of the initial review, Opus & Best will enter into dialogue with the relevant officials of NDPR to a symmetry of interest. The exercise will involve discussions on the fiscal and tax regime of Timor-Leste, and more particularly the TDA, TBUCA and the model PSCs. There are several benefits of such interaction. It will provide an opportunity to develop a working relationship, understand the desire of NDPR and the expectations from both parties. It will also enhance the efficiency of our time and ensure that we align our thinking with that of NDPR on several key interpretative and accounting issues that are implicated in writing tax regulations of this magnitude and importance. Key transfer pricing principles (UN and OECD models), deductibility of both Operating expenses (OPEX) and capital expenditures (CAPEX) under the TDA and the TBUCA, models of similar tax regulation in other jurisdictions and adaptability to Timor-Leste peculiar underlying laws will be discussed simultaneously with expectations of the parties to the PSCs during the dialogue phase.

3. Step C: Conference Call/ Meeting with the two (2) operators in the JPDA

Experience has shown over the years that it is best to work with the industry when you write new laws or regulations with direct impact on that particular industry.

First of all, it useful to have the insight and opinion of the industry so that we can find the path of least resistance and understanding. Such an approach may also serve to align the interest of the resource owners with that of the Contractors. Furthermore, if the tax office and the industry is in common understanding about the purport and the ambit of a particular law and or regulation, it will substantially reduce any potential conflict between the views of the tax office and that of the industry. Both parties can therefore expect some level of certainty and efficiency.

It is also important the regulations should also reflect the intent of the parties as reflected in the PSC, whether or not there is any symmetry between the tax and the PSC regimes. The planned conference call and meetings with the two (2) Operators of Bayu-Undan and Kitan will afford an opportunity to achieve the benefits enumerated above.

4. Step D: Conference Call/ Meeting with relevant Officials of NDPR

Opus & Best will discuss the views/opinions of the industry with the relevant officials of NDPR, narrow down areas of mutual assent and resolve any area of potential conflict with a view of minimizing any potential disagreement between the two parties

5. Step E: Review of sample Income tax and APT returns

As part of our understanding of how specific items are treated for tax purposes by the Contractors and Subcontractors in the JPDA, Opus & Best will perform a diagnostic review of some of the income tax and APT returns filed to date by the taxpayers. The purpose of the exercise is for us to make a determination of whether the taxpayers have correctly applied relevant provisions of the TDA and TBUCA to each item in the returns and to reflect areas where there is a common agreement between the taxpayers and NDPR in the new regulations.

The exercise will also provide an opportunity to develop new regulations in important areas such as related party transactions, capital gains, treatment of Geophysical and Geological costs etc. There are currently no specific Timor-Leste regulations covering those important areas.

6. Step F: Review of sample Income tax and APT returns with NDPR

Again, for the sake of efficiency and having a meeting of minds with NDPR, Opus & Best's strategy for this project will be largely collaborative. Step E above is completed, we will review our findings and comments with representatives of NDPR with a view of developing a common understanding. We will also make recommendations in respect of the substance of the regulations under the TDA and TBUCA to reflect the legislative intent of both laws and the desire of the parties to the relevant PSCs.

7. Step G: Drafting of the new Regulations under the TDA & TBUCA

Having completed Step 1-6 above and armed with the knowledge, understanding and facts gathered in the process, NDPR will commence work on the draft Regulations under the TDA and TBUCA.

During this stage, Opus & Best will be coordinating the exercise with the relevant person at NDPR and also provide a briefing & developments twice (2) a week. We will also seek inputs from NDPR.

8. Step H: Submission of draft TDA and TBUCA Regulations

Opus & Best will provide NDPR and the two (2) Operators in the JPDA with electronic copies of the draft Regulations for review and comments. The comment period will be a two-week window. Both NDPR and the two (2) Operators will be invited to provide and discuss any comments with Opus & Best.

9. Step I: Submission of the final TDA and TBUCA Regulations

Based on the comments and suggestions from both the NDPR and the Operators, the final deliverables (Regulations) under the TDA and the TBUCA reflecting the comments and suggestions (if any) from NDPR and the Operators will be submitted.

Opus & Best will provide NDPR with twenty (20) bound copies of each set of Regulations under the TDA and the TBUCA

10. Step J: Capacity Building & Technical Assistance to NDPR's Officials

Opus & Best anticipates a 2-3 day series of workshops in Dili or New York to the officials of NDPR responsible for the administration of the tax laws and

regulations. The workshop will provide and in-depth review and explanation of the new Regulations.

Power point presentations will be made to cover critical areas like transfer pricing, depreciation and amortization, tax accounting, international petroleum accounting and the computation of income tax under the new TDA Regulations.. It will also cover the computation of APT under the new TBUCA Regulations..

Furthermore, Opus & Best will provide guidance on general issues relating to tax administration, reference library, websites and certain industry standards for the administration of tax.

Finally, Opus & Best will assist NDPR free of any charge on any matter relating to the correct interpretation of any parts of the Regulations for six (6) months after the submission of the deliverables (Regulations).

Work Program & Timeline

Please see Appendix B

Statement of any Potential Conflicts of Interest

Opus & Best hereby confirms that we have no conflicts of interest in undertaking this assignment.

However, we note that for the record that a current advisor at NDPR is affiliated with a New York law firm that has provided us with professional services in the past and we continue to do work on ad-hoc basis with the said law firm. At this point, we have no plan of collaborating with any outside law firm on this engagement.

Firm & Detailed Quotation

This engagement will be conducted in a manner consistent with our standard terms of engagement, a copy of which is included as Appendix C.

Opus & Best proposes to deliver the scope of work outlined above in this proposal, including a 2-3 day workshop in New York or Dili (Singapore is also an option) for a fixed fee of US\$2, 5500,000 plus related T & E for Opus & Best's representatives attending the proposed workshop\training, if the training is held outside of New York City. Such T & E will be capped at US\$20,000.

TERMS:

1. 65% of the total fee (US\$1,657,000) is payable upon the signing of the Engagement letter;
2. 25% (US\$637,500) payable upon the submission of the draft TDA and TBUCA Regulations.; and
3. 5% (US\$127,500) payable upon the submission of the final TDA and TBUCA Regulations.

We hope this letter and the exhibited Appendixes meet your expectation and requirements. If you accept our proposal as described in this document, you should please initial a copy of the attached Engagement Confirmation and return a copy by email to: dominic.lucas@opusbest.com

Should you have any questions on any part of our proposal, please do not hesitate to contact Dominic Lucas or Raymond Weils (Raymond.weils@opusbest.com)

Kind regards,

Dominic Lucas

Partner
Opus & Best Law Services, LLC

EXHIBIT B



**EMBAIXADA DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
NOS ESTADOS UNIDOS DA AMÉRICA**

October 8, 2015

Shirley U. Emehelu
Assistant United States Attorney
U.S. Attorney's Office, District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 07102

Re: *U.S.A. v. Boye*, U.S. District Court, District of New Jersey Case No. 15-cr-00196-FLW

Dear Ms. Emehelu:

On behalf of the Government of República Democrática de Timor-Leste, I want to thank you for your work in prosecuting Bobby Boye. I also want to provide you with additional information and background about Timor-Leste to provide context for Mr. Boye's criminal conduct and its impact on Timor-Leste. I ask that you share this letter with The Honorable Freda L. Wolfson before Mr. Boye's sentencing hearing.

I. TIMOR-LESTE

To appreciate the full impact of Mr. Boye's criminal conduct, it is important to know Timor-Leste's history, which continues to influence the people of Timor-Leste as we work to improve ourselves and develop our country.

A. GEOGRAPHY AND BASIC DEMOGRAPHICS

Timor-Leste is located on the eastern half of an island that lies between Indonesia and Australia, and currently has a population of approximately 1.2 million people. Timor-Leste became independent and sovereign for the first time in modern history on May 20, 2002. Because of centuries of Portuguese colonialism and nearly 25 years of a repressive Indonesian occupation, only 1,233 Timorese of the total population had been trained or granted a

diploma—a Masters, a BA, or a high school diploma.¹ Timor-Leste also had extremely poor infrastructure and limited economic opportunities.

B. PORTUGUESE COLONIALISM

Current-day Timor-Leste was colonized by Portugal in the sixteenth century and was known as Portuguese Timor. On April 25, 1974, a peaceful revolution ended 50 years of dictatorship in Portugal, and the new Portuguese government embarked on a policy of rapid de-colonialization. On November 28, 1975, the Timorese political party FRETILIN declared Portuguese Timor's independence as East Timor.

C. INDONESIAN OCCUPATION

On December, 7 1975, Indonesia mounted a full-scale attack on Dili—the capital of East Timor. Indonesia's attack was a major military offensive, and Indonesian troops committed atrocities against civilians.² Houses along the Dili waterfront became execution sites and torture centers.

The United Nations and the international community denounced Indonesia's occupation of East Timor as illegal. On April 22, 1976, the UN Security Council called on "all States to respect the territorial integrity of East Timor, as well as the inalienable right of its people to self-determination," and the Security Council called on "the Government of Indonesia to withdraw without further delay all of its forces from the Territory."³

On July 17, 1976, the military leader and President of Indonesia signed a law integrating East Timor into Indonesia.⁴ On December 1, 1976, the UN General Assembly rejected Indonesia's "claim that East Timor ha[d] been integrated" and called "upon the Government of Indonesia to withdraw all its forces from the Territory."⁵

Indonesia did not withdraw its forces. For nearly 25 years, it occupied East Timor. Widespread atrocities against civilians also continued and "set the tone for the absolute impunity for violence against civilians that was the hallmark of the conflict for years to come."⁶

D. THE UN-SPONSORED VOTE FOR INDEPENDENCE

By the 1990s, international pressure mounted on Indonesia to end its occupation of East Timor. In 1996, Timorese resistance leaders José Ramos-Horta and Bishop Ximenes Belo received the Nobel Peace Prize in "hopes that this award [would] spur efforts to find a diplomatic solution to the conflict in East Timor based on the people's right to self-determination."⁷ In 1997, UN Secretary-General Kofi Annan appointed a Personal Representative on East Timor to support discussions on the future of the territory.

In response to this international pressure, on January 27, 1999, Indonesia announced that it would allow the people of East Timor to vote on a special autonomy package. "If the East Timorese people rejected the autonomy package,

¹ UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 35.

² Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste, *Part 3: The History of the Conflict*, in CHEGA! 62-64 (2005) (*hereinafter* "CAVR Report, Part 3").

³ UN Security Council Resolution 389 (1976).

⁴ CAVR Report, Part 3 at p. 72-73.

⁵ UN General Assembly Resolution 31/53 (1976).

⁶ CAVR Report, Part 3, at p. 65.

⁷ Press Release, Norwegian Nobel Committee, The Nobel Peace Prize 1996 (Oct. 11, 1996).

Indonesia would revoke its June 1976 law incorporating the territory into the Republic of Indonesia.”⁸ Rejection of the package would thus lead to independence.

Leading up to the ballot, militia associated with the Indonesian military continued to engage in violence and intimidation. The militia displaced many East Timorese and denied them basic security, with the clear intention of influencing the vote.⁹

On August 30, 1999, “[d]espite months of intimidation and violence, people across the country came out in droves to cast their ballot.”¹⁰ The results of the ballot were announced on September 4, 1999: 21.5% for the special autonomy package, and 78.5% against it. The independent Electoral Commission’s final determination was unequivocal: “There can be no doubt that the overwhelming majority of the people of this troubled land wish to separate from the Republic of Indonesia.”¹¹

E. INDONESIAN MILITARY AND MILITIA KILLED, BURNED, PILLAGED, AND RAZED EAST TIMOR

Immediately after the ballot, violence began late on August 30, 1999, and it intensified after the results were announced on September 4, 1999. In reaction to losing the referendum, and as they withdrew back to Indonesia and ended their occupation, the Indonesian military and militia systematically killed, burned, raped, pillaged, and decimated East Timor.

“Torture, sexual violence and forcible transfer of the population occurred across the territory. Over half the population, 550,000 people, fled their homes, including 250,000 who were transferred to West Timor by force or under intimidation Militia killed people seeking refuge in churches, and clergy and nuns were among those targeted.”¹²

“Militia burnt Timor-Leste with petrol supplied by the military”¹³ “The majority of the private residences, public buildings and essential utilities in East Timor were destroyed”¹⁴

The Indonesian military and militia “also removed or burned essential government archives.... [S]ome 8,000 civil servants fled to Indonesia—including most of the key people. As a result, East Timor was left with virtually no senior managers, or people capable of operating basic facilities”¹⁵ “Government structures and systems stopped functioning. Tax and customs administrations were dismantled. Collection of revenue from all sources came to a halt”¹⁶

On September 15, 1999, the UN Security Council condemned “all acts of violence in East Timor,” and called “for their immediate end.”¹⁷ The Security Council authorized “the establishment of a multinational force ... to restore

⁸ CAVR Report, Part 3, at p. 130.

⁹ CAVR Report, Part 3, at p. 139.

¹⁰ CAVR Report, Part 3, at p. 143.

¹¹ CAVR Report, Part 3, at p. 144.

¹² CAVR Report, Part 3, at p. 145.

¹³ CAVR Report, Part 3, at p. 147.

¹⁴ U.N. Secretary-General, *Transitional Administration in East Timor: Rep. of the Secretary-General*, ¶ 29, U.N. Doc. S/2000/53 (Jan. 26, 2000).

¹⁵ UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 33.

¹⁶ LUIS M. VALDIVIESO ET AL., INTERNATIONAL MONETARY FUND, EAST TIMOR: ESTABLISHING THE FOUNDATIONS OF SOUND MACROECONOMIC MANAGEMENT 10 (2000).

¹⁷ UN Security Council Resolution 1264 (Sept. 15, 1999).

peace and security in East Timor¹⁸ On September 20, 1999, troops from the International Force for East Timor arrived in Dili, and the last of the Indonesian military withdrew from East Timor on October 30, 1999.

F. THE UN TRANSITIONAL ADMINISTRATION

On October 25, 1999, the UN Security Council concluded that the “destruction ..., the assault on life, the climate of fear, the massive displacement of the population, the total collapse of the public administration and the economy, the destruction or removal of ... institutional memory, the near total dearth of human resources ... need[ed] to be dealt with.”¹⁹ The Security Council thus voted to establish the United Nations Transitional Administration in East Timor (“UNTAET”).²⁰

At the time, “UNTAET was the most comprehensive transition administration ever set up by the United Nations, with very expansive powers vested in the Transitional Administrator.”²¹ UNTAET was “empowered to exercise all legislative and executive authority, including the administration of justice.”²² It “was to be one of the United Nations’ most ambitious operations—a mix of peacekeeping, national rehabilitation and nation-building.”²³ “UNTAET filled almost all the positions in public administration with UN international staff.”²⁴

G. TIMOR-LESTE’S INDEPENDENCE

On May 20, 2002, Timor-Leste became the first new sovereign state of the twenty-first century. Timor-Leste was free and sovereign for the first time in over 400 years.

Timor-Leste was later formally admitted into UN membership.²⁵ Timor-Leste’s independence and admission to the UN as a new state generated “great goodwill and pride.”²⁶

H. TIMOR-LESTE’S CAPACITY AND CONTINUED RELIANCE ON THE INTERNATIONAL COMMUNITY

Independence did not transform Timor-Leste into a mature, fully-functioning State. Upon independence, the people of Timor-Leste did not have the capacity to administer government operations.²⁷ Shortly before Timor-Leste’s independence, the October 18, 2001, and the April 17, 2002, Reports of the Secretary-General on UNTAET reiterated that the Timorese did not have capacity in critical areas. The October, 18 2001, Report stated: “[T]he United Nations has identified approximately 100 core functions for which local expertise does not exist Nearly half of those positions would be in the financial sector The East Timorese capacity in the finance sector is

¹⁸ UN Security Council Resolution 1264 (Sept. 15, 1999).

¹⁹ Sergio Vieira de Mello, *Introductory Remarks and Keynote Addresses, in THE UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR (UNTAET): DEBRIEFING AND LESSONS* 15, 16 (Nassrine Azimi & Chang Li Lin eds., 2003).

²⁰ UN Security Council Resolution 1272 (Oct. 25, 1999).

²¹ *Executive Summary, in THE UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR (UNTAET): DEBRIEFING AND LESSONS* xxv, xxv (Nassrine Azimi & Chang Li Lin eds., 2003).

²² UN Security Council Resolution 1272 (Oct. 25, 1999).

²³ UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 33.

²⁴ UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 33.

²⁵ General Assembly Resolution 57/3 (Oct. 2, 2002).

²⁶ Hilary Charlesworth, *The Constitution of East Timor, May 20, 2002*, 1 INT’L J. CONST. L. 325, 334 (2003).

²⁷ “Capacity is ‘the ability to perform functions, solve problems and set and achieve objectives.’” UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 11.

rudimentary”²⁸ The April 17, 2002, Report stated: “The development of a professional and effective public administration will remain a major challenge in the coming years.”²⁹

Adding to the major challenge, “East Timor’s standards of education [were] among the lowest in the world. The literacy rate [was] only 43%.”³⁰ The Timorese also did not have basic experience and training in government administration. The UN Development Programme noted that the main priority was “to find and nurture Timorese talent,” but Timor-Leste required “international support in critical areas where there [were] insufficient qualified East Timorese.”³¹ The lack of capacity was particularly acute in tax administration.

In August 2007, a new Minister of Finance was sworn in with a new, democratically-elected Government, she and her team soon learned that Timor-Leste still faced many challenges, including a severe lack of capacity in the finance sector. Even today, Timor-Leste continues to work to overcome its challenges and improve its capacity.

II. BOBBY BOYE’S ARRIVAL IN TIMOR-LESTE

Timor-Leste’s challenges and struggles are, and were, publicly known, and the goal is to find and nurture Timorese talent, which takes time. In the meantime, Timor-Leste has relied on, and continues to rely on, the goodwill of the international community, which has provided assistance and international advisers.

In 2010, the Norwegian Ministry of Finance, as part of its foreign aid and development program to Timor-Leste, recruited, interviewed, hired and placed Mr. Boye in Timor-Leste as an international petroleum legal adviser as part of Norway’s Oil for Development Program. Timor-Leste was not a participant in this process. Mr. Boye thus arrived in Timor-Leste with the imprimatur of the Kingdom of Norway.

Timor-Leste has had to place great trust in international advisers like Mr. Boye who arrived as part of internationally sponsored and sanctioned programs. Timor-Leste trusted that such international advisers would act honestly and fulfill their mandates from the international community to train and help the people of Timor-Leste. Unfortunately, Mr. Boye breached the trust of the international community, of Timor-Leste, and of the Timorese people. As we now know, Mr. Boye actively defrauded and embezzled from the Government of Timor-Leste.

III. BOBBY BOYE’S FRAUD AND ITS EFFECTS

Timor-Leste’s monetary losses, costs, and expenses that are directly traceable to Mr. Boye’s fraudulent conduct are detailed in the Declaration of Victim Losses dated June 16, 2015, and signed by Her Excellency, Minister of Finance Santana Jose Rodrigues Fereira Viegas Cardoso, which is enclosed herewith for your convenience. Along with such direct losses, costs, and expenses, Timor-Leste has suffered indirect monetary and non-monetary losses.

As you know, Mr. Boye’s criminal, fraudulent conduct was related to the award of consulting contracts in connection with the development of regulations and oversight of Timor-Leste’s oil and gas industry, which accounts for approximately 90% of government revenue. As you can imagine, Mr. Boye’s conduct has thus caused immeasurable harm to Timor-Leste’s relationships with its long-term partners, which include large, international oil companies. Mr. Boye’s conduct has also impacted Timor-Leste’s relationships with its potential business partners and caused harm to Timor-Leste.

Further, Mr. Boye’s fraudulent and illegal conduct has impacted Timor-Leste’s diplomatic relationships. For example, it required diplomatic exchanges between the Government of Timor-Leste and the Kingdom of Norway to

²⁸ U.N. Secretary-General, *Transitional Administration in East Timor: Rep. of the Secretary-General*, ¶¶ 75-77, U.N. Doc. S/2001/983 (Oct. 18, 2001).

²⁹ U.N. Secretary-General, *Transitional Administration in East Timor: Rep. of the Secretary-General*, ¶¶ 12-14, U.N. Doc. S/2002/432 (Apr. 17, 2002).

³⁰ UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 47.

³¹ UNDP, EAST TIMOR HUMAN DEVELOPMENT REPORT 2002, at p. 37.

address Mr. Boye's criminal conduct in Timor-Leste. Additionally, Mr. Boye's conduct has impacted Timor-Leste's relationships with its other international advisers and the international community as a whole. The damage that Mr. Boye caused to Timor-Leste's business, diplomatic, and other relationships is still being addressed on an ongoing basis, and the full impact of the damage is still being assessed.

IV. CONCLUSION

On behalf of the Government of Timor-Leste, I ask that all of the foregoing be addressed and considered when Mr. Boye is sentenced and ordered to pay restitution to Timor-Leste. Because of your hard work in prosecuting Mr. Boye, a clear and unequivocal message can be sent to criminals like him: The United States and the international community will prosecute and punish those like Mr. Boye who prey on and take advantage of developing, fragile, and conflict-affected states like Timor-Leste.

Once again, thank you for your hard work. I plan to attend the upcoming sentencing hearing, and I look forward to seeing you again.

Kindest regards,


H.E. Domingos Sarmiento Alves, DC



Enclosure

cc: Renée Caggia
Senior U.S. Probation Officer
50 Walnut Street, Room 1005
Newark, NJ 07102

EXHIBIT C



República Democrática de Timor-Leste
Ministério das Finanças



Gabinete Ministerial

"Seja um bom cidadão, seja um novo herói para a nossa Nação"

No: 260 / VI/GM / 2015-06

Dili, 16 June 2015

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

United States

v.

Bobby Boye

Case No. 15-00196-001

DECLARATION OF VICTIM LOSSES

I, MINISTER OF FINANCE SANTINA JOSE RODRIGUES FERREIRA VIEGAS

CARDOSO, represent the victim Government of Timor-Leste located at Building #5, Palacio do Governo, Dili, Timor-Leste, and I believe that the victim Government of Timor-Leste is entitled to restitution in the total amount of at least \$5,478,875.30. Defendant Bobby Boye was an international adviser to the Timor-Leste Ministry of Finance. The specific losses as a result of Defendant's fraudulent conduct, abuse of a position of trust, and offense are summarized as follows:

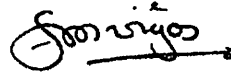
- \$3,510,000.00 fraudulently obtained by and paid to Defendant's sham company Opus & Best LLC;
- \$130,000.00 fraudulently obtained by and paid to Defendant as salary under a consulting contract dated 1 January 2012;
- \$859,706.30 fraudulently obtained by Defendant through his abuse of a position of trust;

Edifício 5, 1.º Andar,
Palácio do Governo,
Dili, Timor-Leste
Phone - +670 3339510
Fax - +670 3331204
Website - www.maf.gov.tl

SMC

- \$379,169.00 paid to Deloitte Unipessoal Lda for investigative and auditing services in connection with Defendant's fraudulent conduct; and
- At least approximately \$600,000.00 paid to Arent Fox LLP for legal and investigative services in connection with Defendant's fraudulent conduct.

I declare under penalty of perjury that the foregoing is true and correct, and this declaration was executed on this 17 day of June 2015 at Dili, Timor-Leste.



**H.E. SANTINA JOSE RODRIGUES
FEREIRRA VIEGAS CARDOSO**

**FEDERAL PUBLIC DEFENDER
DISTRICT OF NEW JERSEY**

RICHARD COUGHLIN
FEDERAL PUBLIC DEFENDER

1002 Broad Street
Newark, New Jersey 07102

CHESTER M. KELLER
FIRST ASSISTANT

(973) 645-6347 Telephone
(973) 645-3101 Facsimile

September 30, 2015

Via Electronic Mail Only

Renee Caggia, USPO
U.S. Probation Office
50 Walnut Street, Room 1005
Newark, New Jersey 07102

**RE: United States v. Bobby Boye
Criminal No. 15-196 (FLW)**

Dear Ms. Caggia:

I have received a copy of the draft presentence report (PSR) in this matter. I have reviewed it with my client, and we take this opportunity to submit our general comments, changes, and/or objections.

Mr. Boye respectfully requests that when appropriate either (1) add a footnote of his explanation for a contemporaneous reading instead of including his comments in the addendum section; or (2) amend the specific paragraph to reflect his comments, changes, and or objections

(1) Page 1 - Defense Counsel:

Our address is 1002 Broad Street. Kindly note the address on this letterhead. We moved from 972 Broad Street six years ago.

(2) Page 2 - Date of Birth:

Mr. Boye indicated that he has never used a date of birth ***other than*** July 30, 1963. Mr. Boye also indicated that he never owned, possessed, or used an American Express Credit Card.

(3) Page 2 - Social Security Number:

Per Mr. Boye, the social security number ending in 9604 was cancelled by the Social Security Administration in February 2007.

Renee Caggia
U.S. Probation Officer
September 30, 2015
Page 4

(4) Page 2 - Alias(es):

Mr. Boye indicated that his “full and given names at birth [was] **Bobby Abiola Olawale Ajiboye.**” According to Mr. Boye, “[w]hen [he] became a US citizen and [he] was offered to change [his] name like other new US citizens.” He elected to “shorten[] [it] to **Bobby Wale Boye.**” He indicated that he has “continuously **and consistently** use the name **Bobby Wale Boye** in all of [his] documentations since [he] became a US citizen on September 23, 2005.”

(5) PSR ¶¶ 12-51 - General Objections/Comments:

Mr. Boye does not object to Timor-Leste, as a victim, having input in the crime he committed. It appears, however, that information from Timor-Leste has been incorporated into the offense conduct, although this country was not part of the investigative agency. Because this country was not an investigation arm in this federal prosecution, please remove this information. At a minimum, it should be separated from the offense conduct and its sources should be noted.

In addition there are commentaries that appears to have been taken from secondary sources. Mr. Boye also requests that these non-investigative commentaries be removed. Again, at a minimum, these commentaries should be properly attributed to its sources.

(6) PSR ¶¶ 22, 23, 45-51:

A substantial part, if not all, of the information in these paragraphs were taken from Timor-Leste’s attorney’s investigation without the appropriate quotations and attributions. Mr. Boye respectfully requests that the appropriate attribution be included in a footnote for contemporaneous reading instead of including it in the addendum section.

In addition, the section entitled “Additional Investigative Findings” should be clarified to avoid implying that the United States government or United States Probation Office conducted additional investigation. Except for a few alterations, the entirety of Paragraphs 45-51 was taken, without attribution, from the victim country’s attorney’s investigation report. Kindly make the appropriate notations so that the Final PSR differentiates between what federal investigator, Probation, and Timor-Leste’s attorney discovered.

Moreover, within those paragraphs (45-51), individuals are identified as co-conspirators and/or criminals. In an abundance of caution, these individuals’ identity should not be disclosed. It has been Probation’s practice to utilize individuals’ initials in order to protect the identity of innocent or uninvolved parties. There is no need to abandon this historical practice in this case. It should also be noted that in the Dolitte Touche, *Privileged & Confidential* letter dated December 7, 2014, it specifically stated that it “does

Renee Caggia
U.S. Probation Officer
September 30, 2015
Page 4

not assume responsibility for the accuracy of the information contained [in its letter],” and that the “report should not be relied upon as legal advice.”

(7) PSR ¶¶ 59 & 139:

Mr. Boye objects to the restitution amount of \$5,478,875.30. First, that amount was not agreed to by Mr. Boye. Second, the amounts beyond \$3,510,000 is not relevance to his offense conduct. Third, by statutory definition, Deloitte Touche and Arent Fox, “investigative and auditing services”, and “investigative and legal services,” respectively, are not victims of Mr. Boye’s offense.

(8) PSR ¶ 83:

Mr. Boye is a naturalized United States citizen. Unless Probation has contrary evidence to contradict Mr. Boye being a citizen of this country, kindly delete the word “reported.”

(9) PSR ¶ 115:

Mr. Boye denies owning 407 Pennington Street, Elizabeth. According to Mr. Boye, “407 Pennington Street is a church and titled in the name of Trinity Christian Center.” Likewise, he denies ownership in “140 Grove Street, Elizabeth.” Mr. Boye explained that this property was previously forfeited.

(10) PSR ¶ 116:

Mr. Boye indicated that the amounts listed are in Hong Kong dollars. Therefore, the amounts should be as follows: \$1,147.26 is \$148.03; \$973.27 is \$125.58; and \$21,370 is \$2,757.33. See <https://www.google.com/#q=hong+kong+conversion+rate> [last visited September 30, 2015, at 6:03pm]

As states above, Mr. Boye indicated that he never owned “407 Pennington Street. As for 36 Rosewood Court, North Haledon, that property is under a forfeiture order.

According to Mr. Boye, he disclosed the source of “Rental Income,” which is 36 Rosewood Court.

Mr. Boye indicated that the “Internal Revenue Service” back tax should be \$578,133 not \$81,164.05. See PSR ¶ 117.

(11) PSR ¶ 117:

Mr. Boye indicated that the \$578,133 has not been paid to the Internal Revenue Service. He added that the “Trustee appointed by the divorce Court in Hackensack is

Renee Caggia
U.S. Probation Officer
September 30, 2015
Page 4

holding on to the balance of the purchase price until the final determination of the divorce case.”

(12) PSR ¶ 118:

Mr. Boye denies ever owning an American Express Credit Card. In addition, Mr. Boye indicated that his utilities bills are in the name of “Bobby Boye.”

(13) PSR ¶ 119:

Mr. Boye indicated that he filed one bankruptcy petition under the name “Bobby Olawale Ajiboye,” not “Bobby Onawane Ajiboye”

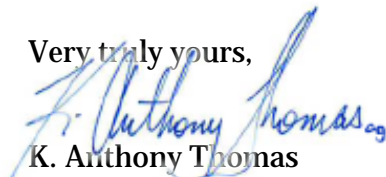
(14) PSR ¶ 121:

Mr. Boye objects to the characterization that his “financial condition is difficult to ascertain” because of two social security numbers, aliases, different company names, and the “demonstrated ability to commit fraud.” First, it demonstrates Probation’s subjective belief, incendiary conclusionary comments, xenophobia, and stereotype of Nigerians. The first sentence in the paragraph has no place in anyone’s PSR because it adds nothing. Therefore, Mr. Boye requests that it be deleted.

Beyond added little value to Mr. Boye’s PSR, he explained that the social security number ending in 9604 was cancelled by the Social Security Administration in February 2007. As for the supposed multiple aliases, it appears that two of the names are variation of each other, i.e., “Bobby Ajiboye” and “Bobby Aji-Boye.” One of the names “Bobby W. Boye” is Mr. Boye’s name and his middle initial. Mr. Boye is unaware of the origin of the other four names attributed to him, nor was any supplied in the draft PSR. Finally, there are no allegations that Mr. Boye has been anything less than forthright in the preparation of his PSR. Probation had complete and unhindered access to Mr. Boye. Mr. Boye was available either by phone or internet to clarify any subjective perceived uncertainties.

If you require additional information, please do not hesitate to call.

Very truly yours,


K. Anthony Thomas
Assistant Federal Public Defender

cc: Shirley U. Emehelu, Assistant U.S. Attorney (**Via Electronic Mail Only**)
Bobby Boye

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

January 26, 2016
CCO-042

No. 15-3779

UNITED STATES OF AMERICA

v.

BOBBY BOYLE

a/k/a Bobby Ajiboye

a/k/a Bobby Aji-Boye

Bobby Boye,
Appellant

(D.N.J. No. 3-15-cr-00196-001)

Present: FISHER, JORDAN and VANASKIE, Circuit Judges

1. Motion by Appellee to Enforce Appellate Waiver and for Summary Affirmance;
2. Response by Appellant in Opposition to Motion to Enforce Appellate Waiver and for Summary Affirmance;
3. Reply by Appellee in Support of Motion to Enforce Appellate Waiver and for Summary Affirmance;
4. Sur-Reply by Appellant in Further Opposition to Motion to Enforce Appellate Waiver and for Summary Affirmance.

Respectfully,
Clerk/tmm

ORDER

The foregoing motion to enforce appellate waiver and for summary affirmance is granted.

By the Court,

s/ Thomas I. Vanaskie
Circuit Judge

Dated: January 28, 2016
tmm/cc: Michael J. Confusione, Esq.
Mark E. Coyne, Esq.
Glenn J. Moramarco, Esq.