No. 22-179

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

—v.—

HELAMAN HANSEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

HEATHER E. WILLIAMS
FEDERAL DEFENDER FOR
THE EASTERN DISTRICT
OF CALIFORNIA
CAROLYN M. WIGGIN
ASSISTANT FEDERAL DEFENDER
Counsel of Record
801 I Street, 3rd Floor
Sacramento, California 95814
(916) 498-5700
carolyn_wiggin@fd.org

QUESTION PRESENTED

8 U.S.C. § 1324(a)(1)(A)(iv) (the "encouragement provision") prohibits encouraging or inducing a noncitizen's entry to or residence in the United States, knowing, or recklessly disregarding, the fact that the entry or residence is unlawful. The question presented is whether—in a case in which the defendant's sentence is enhanced under a separate provision because the defendant was also found to have acted for private financial gain—the encouragement provision violates the First Amendment on overbreadth grounds.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF THE CASE

This case concerns the constitutionality of 8 U.S.C. § 1324(a)(1)(A)(iv) (the "encouragement provision"), which prohibits "encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." The court of appeals held that this statute criminalizes a substantial amount of speech protected by the First Amendment and is unconstitutionally overbroad.

1. The government initially indicted Respondent Helaman Hansen on 16 counts of mail and wire fraud, and conspiracy to commit mail and wire fraud, under 18 U.S.C. §§ 1341, 1343, 1349 in connection with his operation of Americans Helping America Chamber of Commerce ("AHA"), a community-based organization. The government charged that Mr. Hansen falsely asserted that through participating in AHA's adult adoption program, undocumented United States residents could gain United States citizenship. *See* Pet. App. 2a–3a.

More than a year later, the government filed a superseding indictment adding two counts charging violations of Section 1324(a)(1)(A)(iv), the encouragement provision, with respect to two individuals who were also named as victims of the fraud counts. The superseding indictment also charged Mr. Hansen under a separate sentencing enhancement subsection, 8 U.S.C. § 1324(a)(1)(B)(i), alleging that he violated the encouragement provision for "the purpose of private financial gain." Resp. App. 68a. That sentencing enhancement provision increases the statutory maximum sentence from five years to ten years for

offenses committed for "commercial advantage or private financial gain." 8 U.S.C. § 1324(a)(1)(B)(i)–(ii) .

At trial, the government introduced evidence that specific people were victims of the fraud counts, including Epeli Vosa (Count Two) and Mana Nailati (Count Five). In addition, the government presented evidence that Mr. Hansen "encouraged or induced" Mr. Vosa and Mr. Nailati to reside in the United States. Both Mr. Vosa and Mr. Nailati were foreign nationals who entered the United States on six-month visitor visas. After arriving in the United States, they participated in the AHA program. They testified that Mr. Hansen told them not to worry about leaving the United States when their visas expired because they were participating in the AHA program. Resp. C.A. Br. at 3–5; Pet. at 4–6; Pet. App. 2a–3a, 25a; Resp. App. 33a–34a. In fact, their participation in the AHA program did not permit them to overstay their visas or to remain in the United States.

The defense requested that the jury be instructed that in order to convict a defendant under Counts 17 and 18, the jury must find the government proved the defendant "substantially" encouraged or induced the noncitizen to reside in the United States, and that the defendant "intended" the noncitizen's residence in the United States to be in violation of the law. Resp. App. 47a–48a. The government objected to this proposed instruction, arguing that it added elements not found in the text of the encouragement provision itself. Resp. App. 38a–40a. The district judge agreed with the government, Resp. App. 40a, so the jury was instructed that to find Mr. Hansen guilty of Counts 17 and 18, it need only find that he "encouraged or induced" the two noncitizens to reside in the United States knowing or in reckless disregard of the fact that their residence would

violate the law. Resp. App. 34a. That is, the jury was not instructed that the encouragement provision should be limited in any way, and was therefore left to apply the literal meaning of its terms.

Nor was the jury instructed that in order to convict under the encouragement provision, it would need to find that Mr. Hansen committed the offense for "commercial advantage or private financial gain." Rather, pursuant to its verdict form, the jury first found that Mr. Hansen was guilty of encouragement or inducement under Section 1324(a)(1)(A)(iv), and then independently found that he had committed the offense for private financial gain, triggering the separate penalty enhancement provision in Section 1324(a)(1)(B)(i). Resp. App. 30a–31a; 34a.

At the close of trial but prior to jury deliberations, the government dismissed one of the fraud counts. The jury found Mr. Hansen guilty of the remaining 15 fraud counts, as well as Counts 17 and 18 under the encouragement provision. Resp. App. 24a–31a.

Mr. Hansen then moved to dismiss Counts 17 and 18, arguing that the encouragement provision is facially overbroad in violation of the First Amendment. He also argued the provision is void for vagueness and unconstitutional as applied to him. While the government defended the core encouragement provision, it no longer rested on the literal meaning of "encourage" and "induce." Instead, the government argued for the first time that those terms did not include all encouragement, but were limited to facilitation or solicitation—despite the fact that the jury was not so instructed. Resp. App. 9a–13a. The district court denied Mr. Hansen's motion.

The district court sentenced Mr. Hansen to 240 months on each of the mail and wire fraud counts, and 120 months on each of the encouragement provision counts, all to be served concurrently. Pet. App. 83a.

2. On appeal, the court of appeals did not disturb Mr. Hansen's convictions on the 15 fraud counts, but unanimously vacated the convictions on Counts 17 and 18 on the ground that the encouragement provision is facially overbroad. Pet. App. 13a–14a. The court of appeals reasoned that the plain meaning of the words "encourage" and "induce" encompasses "inspiring, helping, persuading, or influencing" through either "speech or conduct." Pet. App. 9a. It held that even if Section 1324(a)(1)(A)(iv) legitimately prohibits some conduct, "[i]t is clear that subsection (iv) covers a substantial amount of protected speech," including "knowingly telling an undocumented immigrant 'I encourage you to reside in the United States,'" a statement protected by the First Amendment. *See* Pet. App. 11a.

The Ninth Circuit denied the government's petition for rehearing *en banc*. Pet. App. 28a–29a.

REASONS FOR DENYING THE WRIT

The government asks this Court to grant certiorari and hold that the encouragement provision, 8 U.S.C. § 1324(a)(1)(A)(iv), comports with the First Amendment as applied to prosecutions in which the jury finds the defendant acted for private financial gain. For several reasons, this Court should deny the petition.

First, if any question regarding the constitutionality of Section 1324(a)(1)(A)(iv) is worthy of this Court's attention, it is whether the core criminal offense it creates comports with the First Amendment.

Yet the government does not ask this Court to resolve that question. Instead, the government's question presented asks only whether the encouragement provision is constitutional as applied to cases where the government has also sought and obtained a sentencing enhancement under a separate provision for violations engaged in for "commercial advantage or private financial gain." Pet. at I. The government scarcely made that narrower argument in the court of appeals, and the Ninth Circuit did not directly address it. It is no answer to a facial overbreadth challenge that some limited applications of a statute might be constitutional. As a matter of judicial economy and overbreadth doctrine, the pertinent question is whether the encouragement provision itself is overbroad on its face. That is the question the court of appeals actually decided. Yet the government has not asked this Court to address it.

This case is also a poor vehicle to address whether the encouragement provision violates the First Amendment because the government now argues that Section 1324(a)(1)(A)(iv) should be construed narrowly, to prohibit only facilitation or solicitation of unlawful activity, and not all speech that "encourages" or "induces" a noncitizen to enter or remain in the country unlawfully, as the statute provides on its face. But Mr. Hansen's convictions were not secured pursuant to the narrowing construction that the government belatedly urges. The jury was instead instructed to apply the statute's plain terms without any narrowing construction. Accordingly, even if this Court were to agree with the government's new construction of the encouragement provision, it would not alter the result. The jury did not find that Mr. Hansen committed the crime of solicitation or facilitation of an immigration violation, and the government did not request any such

instruction at trial. In fact, the government successfully fought against any limiting instructions. The government cannot defend the conviction on the basis of an interpretation never presented to the jury. *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 92 (1965). The Court should await a case in which the government sought from the beginning of the case to limit the statute in the way it now proposes.

Nor is there any pressing reason to take up the constitutionality of the encouragement provision in this procedurally flawed setting. There is no split among the courts of appeals on the constitutionality of the encouragement provision. The government remains free to press its new narrowing construction of the encouragement provision—and attendant constitutional arguments—in other circuits. And while the Ninth Circuit decision has facially invalidated the encouragement provision, the federal government has other criminal provisions it can use to charge the facilitation and solicitation conduct it contends is covered by the provision.

Finally, the decision of the court below is correct. This Court has long held that encouraging or inducing illegal conduct is protected by the First Amendment except in very narrow circumstances, and the encouragement provision includes none of those limitations.

I. This Case Is a Poor Vehicle To Address the Constitutionality of the Encouragement Provision.

This case is a poor vehicle to address the constitutionality of the encouragement provision because—in two distinct ways—the version of Section

1324(a)(1)(A)(iv) that the government defends as constitutional in its petition for certiorari does not correspond with the more expansive version of the encouragement provision under which the government prosecuted and the jury convicted Mr. Hansen.

A. The question presented is too narrow to resolve the constitutionality of the encouragement provision.

This case is a poor vehicle for the Court to resolve the constitutionality of the encouragement provision because the government has presented a significantly narrower, and more analytically problematic, question. The government's question presented asks not whether the encouragement provision is overbroad on its face, as the court of appeals held, but whether "the federal criminal prohibition against encouraging or inducing unlawful immigration *for commercial advantage or private financial gain*" violates the First Amendment. Pet. at I (emphasis added). And in the body of its brief, the government relies on the "financial-gain element" of a separate penalty enhancement provision to argue that the encouragement provision is not overbroad under the First Amendment. *See* Pet. at 20–21 (arguing that, "[p]roperly construed, Section 1324(a)(1)(A)(iv) does not reach the kinds of innocent expressions of support for noncitizens" that the panel was concerned about, because "the financial-gain element" limits the provision's reach).

But having acted for "commercial advantage or private financial gain" is not an element of the crime defined by Section 1324(a)(1)(A)(iv), the provision the court of appeals held facially overbroad. That provision criminalizes "encouragement" or "inducement," regardless of motivation. Financial gain is not an

element of the offense. Rather, financial gain is relevant only to a *separate provision* providing for penalty enhancement, Section 1324(a)(1)(B)(i). As Judge Gould explained, "acting for commercial advantage or financial gain is not an element of the criminal offense defined in subsection (iv). Any person can be convicted of that offense without seeking financial gain . . . ." Pet. App. 33a (Gould, J., concurring in denial of en banc petition). Accordingly, the jury was not instructed that it would have to find a financial gain motive in order to find Mr. Hansen guilty under the encouragement provision.

In the proceedings below, Mr. Hansen challenged the facial validity of Section 1324(a)(1)(A)(iv), the encouragement provision. He did not challenge the validity of the separate sentencing enhancement provision. *See* Resp. C.A. Br. at 41–47. The government did not explain in the proceedings below—or for that matter, in its petition here—how the facial validity of the encouragement provision can be saved by reference to a distinct provision altogether. *See* Resp. App. 8a–16a. In the court of appeals, the government referenced the sentencing enhancer only a couple of times in passing, and never attempted to explain how a statute's facial overbreadth can be defended by focusing on an independent sentencing enhancement that is not part of the criminal offense the statute defines and that is only applicable in a subset of prosecutions under the statute.

As a logical matter, the enhancement provision cannot save the facial validity of the encouragement provision. The whole point of the overbreadth doctrine is that a statute is facially invalid where it covers an undue amount of protected speech, even if it also covers some unprotected conduct. *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001) (Alito, J.) (school

district's ban on speech was unconstitutionally overbroad under the First Amendment where, in addition to covering speech that can be barred under the First Amendment, it covered a substantial amount of speech protected by the First Amendment). And that is how the Ninth Circuit approached this case. It considered and invalidated Section 1324(a)(1)(A)(iv) itself, without separately addressing the independent sentencing enhancement provision (which Mr. Hansen did not challenge). Pet. App. 1a–14a.

Even if the government's as-applied defense to a finding of facial overbreadth were otherwise appropriate, this Court should decline to address the question the government presents. If the Court were to resolve that question in the government's favor—finding that the First Amendment permits a criminal prohibition on encouraging or inducing unlawful immigration for commercial advantage or private financial gain—that would still not resolve whether Section 1324(a)(1)(A)(iv) itself is unconstitutionally overbroad. Going forward, prosecutors would not be sure whether they can charge a violation of Section 1324(a)(1)(A)(iv) without also alleging a violation of the sentencing enhancement provision in Section 1324(a)(1)(B)(i), and the public would have no clarity on whether Section 1324(a)(1)(A)(iv) prohibits constitutionally protected speech where the speaker is not speaking for commercial advantage or private financial gain. To answer those questions, this Court would need to grant certiorari for a third time—following *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020), and this case.

B. This case is a poor vehicle to resolve the question presented because the government is defending a construction of the statute that was not presented to the jury that convicted Mr. Hansen.

This case is also a poor vehicle for deciding whether Section 1324(a)(1)(A)(iv) is overbroad under the First Amendment because the government employed an entirely different interpretation of the statute at trial from the one it now relies on to defend that statute's constitutionality on appeal. In its petition, the government contends that the encouragement provision is constitutional because the words "encourage" or "induce" do not actually prohibit all encouragement and inducement, but can be narrowly construed as prohibiting only solicitation or facilitation of unlawful immigration, or aiding and abetting such conduct. Pet. at 13–20.[1] But whether or not that is a permissible construction of the statute, *the jury was never so instructed*. Therefore, Mr. Hansen was not convicted under the statutory interpretation the government now advances.

Had the jury been instructed that the statute criminalized aiding and abetting, for example, it would have been told that it had to find that (1) someone else committed a specified crime; (2) Mr. Hansen aided, counseled, commanded, induced or procured that person with respect to at least one element of the crime; (3) Mr. Hansen acted with the intent to facilitate the crime; and (4) Mr. Hansen acted before the crime was complete. Manual of Model Crim. Jury Instructions for the Ninth

[1] The government appears to use the terms solicitation, facilitation, and aiding and abetting liability interchangeably without specifically defining each term. *See* Pet. at 10, 13, 14, 16.

Circuit § 4.1 (2022 ed.). Had the jury been instructed that the statute prohibited solicitation, it would have been told that it had to find both that Mr. Hansen urged Mr. Vosa and Mr. Nailati to commit crimes and intended that they commit the crimes. *Compare United States v. Caira*, 737 F.3d 455, 463 (7th Cir. 2013) (upholding jury instruction for solicitation to commit a violent felony in violation of 18 U.S.C. § 373 where it "informs the jury that it must find the defendant 'intended' that another person engage in conduct constituting a violent felony.").

But the government requested no such limiting instructions below. Instead, the government successfully resisted Mr. Hansen's requests for limiting instructions, leaving the jury to apply the literal terms of the statute–"encourage" or "induce." *See supra* at 2–3; Resp. App. 38a–40a.

In particular, the government did not state at the time of trial—and the jury was accordingly not instructed—that the words "encourage" or "induce" should be understood as legal terms of art prohibiting only solicitation, facilitation, or aiding and abetting. *Compare* Resp. App. 38a–40a (no jury instruction limiting the meaning of "encourage" or "induce"); *with* Pet. at 13–14 (arguing that "encourage" and "induce" should be construed according to their "established criminal-law meanings," which the government variously describes as "accomplice and solicitation liability" or "assisting or procuring unlawful immigration").

In fact, the government argued *against* a different limiting instruction proposed by the defense, which would have required the jury to find "substantial" encouragement or inducement of immigration

violations. *See* Resp. App. 38a–40a. That proposed instruction was based on the Third Circuit's interpretation of the encouragement provision. *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241 (3d Cir.), *cert. denied*, 568 U.S. 821 (2012). In successfully opposing that limitation, the government did not urge that the encouragement provision should be subject to a different limiting construction as a solicitation or facilitation statute. *See* Resp. App. 39a. Rather, it took the position that the jury could apply the plain meaning of "encourage or induce" without any limiting instruction. *See* Resp. App. 40a (government argued that asking the jury "to find substantial encouragement rather than encouragement, which is the language of the statute and the language of the Ninth Circuit model instruction" is "a dramatic reinterpretation of the statute"); *see also* Resp. App. 43a, 47a–48a (Ninth Circuit model jury instruction at the time required the jury to find only that "the defendant encouraged or induced [name of alien] to reside in the United States in violation of law") (alteration in original).

It was only *after* it secured guilty verdicts on Counts 17 and 18 that the government argued that "encouraging or inducing" "resembles the doctrine of aiding and abetting under federal law." Resp. App. 12a. Specifically, the government argued that the encouragement provision is constitutional if understood pursuant to a limiting construction—namely, that it "requires an affirmative act of encouragement that could facilitate or assist an alien" in violating immigration law, and that "[s]tanding alone, moral support, attempts to persuade, or abstract advocacy of illegal immigration do not suffice." Resp. App. 11a–12a. Furthermore, the government argued that the limiting construction it belatedly proposed incorporated the *DelRio-Mocci*

requirement of "substantial" assistance or offers of assistance, *see* Resp. App. 12a, despite successfully opposing a jury instruction based on *DelRio-Mocci* that would have required such a finding, *see* Resp. App. 38a–40a. Now, in its certiorari petition, the government contends that the encouragement provision is limited to solicitation, facilitation, or aiding and abetting. Pet. at 12–17. But that is not the understanding of the statute the jury convicted Mr. Hansen of violating.

This Court should not grant review in a case in which the government did not request jury instructions reflecting the interpretation of the statute it now defends. If this Court is inclined to consider whether the encouragement provision passes muster under the First Amendment's overbreadth doctrine, it should await a case in which the interpretation the government defends was actually applied by the jury to reach a verdict. That is not this case.

Critically, even if the Court were to adopt the government's proposed narrowing construction in order to save the encouragement provision, it would not alter the result in this case. Because Mr. Hansen was convicted under what was effectively a far broader understanding of the statute, his conviction would still need to be vacated. In *Shuttlesworth v. City of Birmingham*, for example, the Court vacated a conviction under an overbroad statute, even though the statute had subsequently been more narrowly construed, because it was not clear that the trier of fact applied the narrowing construction, but may have applied instead "the literal—and unconstitutional—terms of the ordinance." 382 U.S. at 92; *see also McDonnell v. United States*, 579 U.S. 550, 579–80 (2016) (vacating conviction where jury instruction gave an

overly broad definition of term "official act" in criminal statute). Where, as here, the Court's adoption of the petitioner's argument would not alter the result below, there is no basis for certiorari.

Moreover, if the Court were to grant this petition, it would have to grapple with whether the government is judicially estopped from advancing its new argument in Mr. Hansen's case that the encouragement provision is limited to solicitation, facilitation, or aiding and abetting. Judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citations omitted). It is hard to imagine a more stark example of such behavior than here: the government resisted any narrowing construction of "encourage" or "induce" when the jury was instructed, obtained convictions, and only thereafter sought to defend the constitutionality of the encouragement provision on the ground that the words should be narrowly construed as terms of art meaning solicitation, facilitation, or aiding and abetting.

In future cases, the government will presumably only charge individuals under its narrow reading, and will support instructions that make that clear to the jury. As other circuits weigh in on the constitutionality of the encouragement provision, this Court will have the opportunity to review the statute's validity where the government has taken a consistent position with respect to the meaning of the encouragement provision before the jury and on appeal.

II. The Court of Appeals' Decision Does Not Conflict With Any Decision of This Court or Another Court of Appeals.

There is no conflict among the courts of appeals on the constitutionality of the encouragement provision. Both the Ninth Circuit in this case, and the Tenth Circuit in *United States v. Hernandez-Calvillo*, 39 F.4th 1297 (10th Cir. 2022), *reh'g denied*, held that Section 1324(a)((1)(A)(iv) criminalizes a substantial amount of constitutionally protected speech, and is overbroad in violation of the First Amendment. Pet. App. 13a–14a; *Hernandez-Calvillo*, 39 F.4th at 1303–07. Both the *Hansen* and *Hernandez-Calvillo* courts construed the words "encourage" and "induce" according to their plain meanings, and both courts found that the statutory language is not susceptible of the limiting construction the government belatedly advanced. Pet. App. 12a; *Hernandez-Calvillo*, 39 F.4th at 1307–08. No other circuit court has decided whether the encouragement provision violates the First Amendment, let alone disagreed with the Ninth and Tenth Circuits.[2]

Furthermore, no court of appeals has considered the constitutionality of Section 1324(a)(1)(A)(iv) in a case in which the jury was instructed that "encourage" and "induce" should be narrowly construed as legal

[2] The Third Circuit did not consider any constitutional challenge to the encouragement provision when interpreting it to require "substantial" encouragement or inducement, nor did it consider whether such a limiting construction would save the provision from unconstitutionality. *See DelRio-Mocci*, 672 F.3d 241. The Fourth Circuit, in an unpublished decision, held that the encouragement provision is not overbroad because it can be narrowly construed as largely an aiding and abetting provision. *See United States v. Tracy*, 456 F. App'x 267, 272 (4th Cir. 2011) (decided without trial after guilty plea).

terms of art prohibiting only solicitation, facilitation, or aiding and abetting—as the government now asserts. In both *Hansen* and *Hernandez-Calvillo*, the government argued on appeal—but not at trial, and not in connection with jury instructions—that the statute should be limited to solicitation, facilitation, or aiding and abetting. Pet. App. 9a–10a; *Hernandez-Calvillo*, 39 F.4th at 1301. Accordingly, in neither case did the jury consider whether the defendants engaged in solicitation, facilitation, or aiding and abetting of unlawful activity. The government did not request in either case a jury instruction requiring a finding that the conduct constituted solicitation, facilitation or aiding and abetting, and opposed the defendants' requests for limiting constructions on the ground that the plain language of the statute was clear. *See* Resp. App. 9a, 38a–40a (government argued against defense's proposed limitation construction and did not propose its own); *Hernandez-Calvillo*, 39 F.4th at 1301 ("At trial, [defendants] proposed a jury instruction to define what it means to 'encourage' or 'induce' someone to unlawfully reside in the United States. The government opposed the instruction, arguing that the jury could give those terms their ordinary meaning based on its own understanding. The district court agreed, rejecting the instruction.").

Given the lack of circuit split, and the fact that no court of appeals has even squarely considered the constitutionality of the encouragement provision in a case in which a jury convicted under the narrow version of the statute that the government now belatedly advances, this Court should allow lower courts to further consider the issue. There is no need to decide the validity of a conviction on the basis of jury instructions reflecting a statutory construction that the government itself no

longer defends as adequate, even if there were a circuit split. And there is none.

III. The Court of Appeals' Decision Does Not Raise an Issue of Exceptional Importance.

The court of appeals' decision does not raise an issue of exceptional importance necessitating this Court's review. While this Court often grants review where a federal statutory provision has been invalidated, this case is unusual for two reasons: 1) as noted above, the question presented concerns only the validity of the statute as applied to cases involving allegations of commercial advantage or private financial gain, and this case does not provide an opportunity to address the validity of the encouragement provision standing alone; and 2) the decision below and other statutes in the U.S. Code leave the government ample means to prosecute the conduct it now claims to want to use the encouragement provision to punish.

First, for the reasons explained above, this case does not present a question of importance. The question presented does not take on what the court of appeals decided—the facial validity of the encouragement provision—but instead merely seeks to defend the validity of the statute as applied to cases in which, under the separate enhancement provision, an individual acted for commercial advantage or private financial gain. That narrow question is not sufficiently important to warrant this Court's time. And because the government now defends the encouragement provision on a theory that was not presented to the jury, the Court may not even be able to reach the question the government now asks. If the Court thinks the facial validity of the encouragement provision is an important question, that is *not* the question the government asks

in its petition, and the Court should await a case in which the government actually tries the case on the theory it now propounds.

Second, invalidation of the encouragement provision leaves the government with multiple statutory tools for prosecuting solicitation, facilitation, or aiding and abetting of immigration violations—the only conduct it now claims the statute covers. These offenses can be charged under many other federal criminal provisions. It is a crime to create and disseminate fraudulent immigration documents, 18 U.S.C. § 1546; to hire, recruit, and profitably refer unauthorized workers for employment, 8 U.S.C. §§ 1324(a), (c); to aid or assist the entry of certain inadmissible noncitizens, *id*. § 1327; to import or attempt to import noncitizens for immoral purposes, *id*. § 1328; and to bring undocumented noncitizens to the country other than at a designated port of entry, to transport undocumented noncitizens within the country, and to conceal, harbor, or shield them from detection, *id*. § 1324(a)(1)(A)(i)–(iii). In addition, it is a crime to aid and abet the commission of any offense listed in Section 1324(a)(1)(A) or to engage in a conspiracy to commit those offenses. *See id* § 1324(a)(1)(A)(v). Finally, 18 U.S.C. § 2 provides that anyone who "aids, abets, counsels, commands, induces or procures" any federal crime, which would include criminal immigration violations, is punishable as a principal.

In addition to immigration-specific laws, there are other tools at the government's disposal. Mr. Hansen's case demonstrates as much. He was charged with 13 counts of mail fraud and 3 counts of wire fraud, and convicted on 15 of those counts (all but the one the government itself dismissed), for which he was

sentenced to 240 months. Denying review in this case will not disturb those mail and wire fraud convictions.

The importance of the issue is even more limited given the government's argument that the encouragement provision should be interpreted narrowly as prohibiting only solicitation, facilitation, or aiding and abetting. *See* Pet. 13–20. The government has not pointed to a significant category of conduct covered by Section 1324(a)(1)(A)(iv), if it were so construed, that is not also reached through other federal criminal prohibitions. The impact of denying review of the court of appeals' decision is therefore not significant, either in Mr. Hansen's specific case or for the federal government more broadly. *See also* Pet. App. 31a–32a (Gould, J., concurring in denial of en banc petition) (noting that few convictions for deplorable conduct rely only on the encouragement provision).

The mere fact that some state criminal laws prohibit encouraging certain unlawful conduct does not warrant a grant of certiorari. *See* Br. of *Amici Curiae* Arizona, *et. al* at 3–9. The decision below does not implicate any of those statutes, which cover a wide range of contexts and statutory schemes, and each of which would require its own First Amendment analysis. Many of the provisions cited by *amici* prohibit encouraging criminal conduct, including crimes involving violence, whereas the provision at issue here concerns encouragement of civil and nonviolent immigration violations. *See id*. (collecting examples). These differences mean that the First Amendment analysis in these cases will be distinct. *See Hernandez-Calvillo*, 39 F.4th at 1308–09 (discussing Supreme Court jurisprudence on unprotected speech that is integral to criminal conduct).

In addition, each state law is subject to definitive construction by the respective state court of last resort. How those statutes are interpreted is a matter of state law generally not reviewable by this Court, and will affect any First Amendment analysis. Whether these various state laws can be fairly read as facilitation or solicitation prohibitions will vary, and will turn entirely on state law. *See* 2 Wayne R. LaFave, Subst. Crim. L. § 11.1 (3d ed.) (stating that offender must solicit another person "to commit a crime"); *id.* § 13.3(c) (explaining that accomplice liability does not attach "[i]f the acts of the principal . . . are found not to be criminal"). Many of the state statutes included in the *amici's* appendix involve soliciting illegal sex with a minor, which can be proscribed without running afoul of the First Amendment.[3]

In sum, the decision of the court of appeals in this case does not resolve—let alone necessarily affect—the issue of numerous state statutes that use the words "encourage" and "induce" in a variety of very different contexts.

IV. The Decision of the Court of Appeals Is Correct.

The Ninth Circuit correctly read the words "encourage" and "induce" in Section 1324(a)((1)(A)(iv) in light of their plain meaning, and properly held that they criminalize a substantial amount of speech protected by the First Amendment. Acknowledging that invalidating a statute "for overbreadth is strong medicine that is not

[3] *Ashcroft v. Free Speech Coal.,* 535 U.S. 234, 251–52 (2002) ("The Government, of course, may punish adults who provide unsuitable materials to children . . . and it may enforce criminal penalties for unlawful solicitation.").

to be casually employed," the court of appeals correctly held that the encouragement provision is unconstitutionally overbroad. Pet. App. 13a.

A. The Court of Appeals Correctly Construed the Encouragement Provision.

The court of appeals correctly concluded that the statute's broad prohibition on "encouraging" or "inducing" immigration violations proscribes a substantial amount of protected speech, and is therefore unconstitutionally overbroad.

1. The Ninth Circuit properly held that Section 1324(a)(1)(A)(iv)'s blanket prohibition on any "encourag[ing]" or "induc[ing]" of unlawful activity impermissibly covers an extraordinarily broad range of protected speech. The word "encourage" means "to inspire with courage, spirit, or hope . . . to spur on . . . to give help or patronage to." *United States v. Thum*, 749 F.3d 1143, 1147 (9th Cir. 2014) (alterations in original) (citations omitted); *see also United States v. Sineneng-Smith*, 982 F.3d 766, 773 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 117 (2021) (same); *United States v. He*, 245 F.3d 954, 959–60 (7th Cir. 2001) (same). To "induce" is to "move by persuasion or influence." *United States v. Rashkovski*, 301 F.3d 1133, 1136 (9th Cir. 2002) (quoting *Merriam–Webster's Collegiate Dictionary* (2002)).

Merely encouraging someone to engage in illegal activity is protected by the First Amendment. *See United States v. Williams*, 553 U.S. 286, 300 (2008) (the First Amendment protects the statement "I encourage you to obtain child pornography"); *Brandenburg v. Ohio*, 395 U.S. 444, 448–49 (1969) (speech encouraging illegal conduct is protected unless it is intended and likely to

incite imminent illegal conduct). Indeed, a prohibition on mere encouragement and inducement is so plainly unconstitutional that the government does not even defend the statute as the court of appeals construed it. Instead, it counters that "properly construed," the encouragement provision actually *allows* much encouragement and inducement, and prohibits only soliciting or aiding and abetting illegal activity. Pet. at 20. But, for two reasons, the court of appeals properly rejected that view.

First, the government's suggestion that "encourage" means "aid," "abet," or "solicit" is belied by Congress's use of those specific words elsewhere. Indeed, Congress included an actual aiding-and-abetting provision as a separate subsection in the same statute that contains the encouragement provision. *See* 8 U.S.C. § 1324(a)(1)(A)(v)(II). "[W]hen 'Congress includes particular language in one section of a statute but omits it in another'—let alone the very next provision—[the Supreme Court] 'presume[s]' that Congress intended a difference in meaning." *Loughrin v. United States,* 573 U.S. 351, 358 (2014) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Likewise, Congress knows how to use the word "solicit" when it wants to prohibit solicitation, as evidenced by 18 U.S.C. § 373(a), which provides that "[w]hoever . . . solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in" a violent felony is subject to prosecution.

While the government argues that there is no surplusage problem because Section 1324(a)(1)(A)(v)(II) does not extend aiding-and-abetting liability to violations of immigration law writ large, but only to violations of the other provisions in its subsection, *see* Pet. at 18–19, that misses the point. The issue is not

surplusage. Rather, the use of "aid" or "abet" in a closely adjoining provision shows that Congress knew how to use those terms when it meant them. It chose to use that language in subclause (a)(1)(A)(v)(II) but *not* in subclause (a)(1)(A)(iv), the encouragement provision. That choice shows that the encouragement provision is not confined to aiding or abetting. Pet. App. 9a– 10a; *see also Central Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176–77 (1994) ("Congress knew how to impose aiding and abetting liability when it chose to do so. . . . [W]e presume it would have used the words 'aid' and 'abet' in the statutory text.").

Second, the encouragement provision does not include important requirements of aiding-and-abetting and solicitation provisions. Much of the illegal conduct the provision is concerned with, including residing unlawfully in the United States, isn't a crime at all, but merely a civil infraction. As the Ninth Circuit recognized in a separate opinion, one can be convicted under the encouragement provision merely for misinforming an undocumented immigrant and giving her false hope she can legally live in the United States; there is no requirement that the defendant encourage the undocumented person to commit a crime. *Sinenenng-Smith*, 982 F.3d at 777. In this case, the government's theory was that Mr. Hansen encouraged Mr. Vosa and Mr. Nailati to overstay their visas—a civil, not criminal, violation.[4] By contrast, under the "established criminal-law meanings" the government now invokes, "aiding-and-abetting" requires that the defendant help another

[4] *See Arizona v. United States*, 567 U.S. 387, 407 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States.").

person to commit a *crime*,[5] and solicitation requires the defendant to intend that another person commit a *crime*.[6]

The government argues that the court of appeals erred in using dictionary definitions to interpret "encourage" and "induce" rather than "established criminal-law meanings." Pet. at 17–18. But the government points to no case holding that in the context of a criminal statute, "encourage" and "induce," when used in the absence of other verbs that convey facilitation or solicitation, do not reflect their plain meaning, namely, that of "inspiring, helping, persuading, or influencing . . . through speech or conduct." Pet. App. 9a. If the government is claiming that the words were transplanted from a source that would give them meanings contrary to their literal dictionary definitions, it does not identify that source. Moreover, a jury member who is not instructed otherwise will understand statutory terms according to their plain meaning. So, too, will members of the public, who will read the statute as written.

Nor does the canon of constitutional avoidance save the encouragement provision. *Cf.* Pet. at 20–21. That canon applies only "if a reasonable alternative interpretation poses no constitutional question." *Gomez v. United States*, 490 U.S. 858, 864 (1989). "The canon 'has no application' absent 'ambiguity.'" *Nielsen v.*

---

[5] Under 18 U.S.C. § 2, "a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission." *Rosemond v. United States*, 572 U.S. 65, 70 (2014).

[6] 2 LaFave, Subst. Crim. L. § 11.1(a) (describing solicitation as asking that another commit a criminal offense); 18 U.S.C. § 373(a) (requiring that defendant intend that another person commit a specified felony).

Preap, 139 S. Ct. 954, 972 (2019). Here, the statute as written plainly states that it is a crime to encourage an undocumented resident to remain in the United States if done with knowledge or reckless disregard for the fact that the residence violates the law. 8 U.S.C. § 1324(a)(1)(A)(iv). In this case, "there is no reason to deviate from the usual principle that Congress said what it meant and meant what it said." *United States v. Rundo*, 990 F.3d 709, 718 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 865 (2022). And again, the government did not try the case below on the basis of a "constitutional avoidance" construction, but instead successfully urged that the jury be instructed to apply the plain meaning of the statute's terms. *See supra* Part I.

B. The Court of Appeals Correctly Held That The Encouragement Provision is Facially Overbroad.

Having properly construed the statute in light of its plain meaning, the court of appeals then turned to overbreadth analysis, and properly concluded that the encouragement provision is facially overbroad. A statute is overbroad where "a substantial number of [the statute's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472–73 (2010) (cleaned up). In *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2387–88 (2021), this Court recently held that the California Attorney General's requirement that charities disclose their donors was invalid under the overbreadth doctrine, reasoning that disclosure requirements can chill exercise of the First Amendment's freedom of association. The encouragement provision has at least as sweeping a chilling effect.

The Ninth Circuit correctly determined that the encouragement provision's unconstitutional applications exceed its "plainly legitimate sweep." Pet. App. 11a–14a. While the government suggests that the court improperly minimized the legitimate sweep of Section 1324(a)(1)(A)(iv) and dreamed up "fanciful hypotheticals," Pet. at 18, this critique is unfounded. The court of appeals acknowledged that the encouragement provision encompasses some conduct that is not protected by the First Amendment. Pet. App. 10a. But it noted that the circumstances in which encouragement can be criminalized consistent with the First Amendment are narrow, and that the encouragement provision, on its face, covers a substantial amount of protected speech, including encouraging an undocumented immigrant to take shelter during a natural disaster, advising an undocumented immigrant about available social services, telling a tourist that she is unlikely to face serious consequences if she overstays her tourist visa, or providing legal advice to undocumented immigrants about the costs and benefits of remaining in the United States. Pet. App. 11a.

In addition, when this Court noted "the tendency of our overbreadth doctrine to summon forth an endless stream of fanciful hypotheticals," *Williams*, 553 U.S. at 301, it pointed first to a fact pattern that would not violate the statute at issue and second to conduct extremely unlikely to occur in the real world: a mainstream movie intentionally advertising that it contains actual children engaging in actual or simulated sex on camera. *Id.* By contrast, the court of appeals here considered realistic scenarios that violate the statute as written, including giving an undocumented person legal advice to stay in the country unlawfully to improve his

chance of future immigration relief, encouraging an undocumented immigrant to take shelter, or encouraging an undocumented immigrant to take advantage of an available social service. Pet. App. 11a. These are not fanciful hypotheticals but everyday scenarios, and they fully support "a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).

The government claims that the jury's determination that Mr. Hansen acted for private financial gain somehow narrows Section 1324(a)(1)(A)(iv) sufficiently to avoid violating the First Amendment. Pet. at 12–13. That argument fails for two reasons. First, acting for "the purpose of commercial advantage or private financial gain," 8 U.S.C. 1324(a)(1)(B)(i), is not an element of Section 1324(a)(1)(A)(iv), and the jury need make no finding about acting for commercial advantage or private financial gain to find a violation of the encouragement provision. The private financial gain element is a distinct penalty enhancement provision. The encouragement provision stands alone, and the jury found that Mr. Hansen violated the encouragement provision. Resp. App. 30a–31a. The fact that the jury also found he acted for private financial gain under a separate provision does not narrow the encouragement provision. It must stand or fall on its own, because it imposes criminal sanctions on its own. *See supra* Part I.

Second, even if this Court were to consider the constitutionality of the encouragement provision only in cases where individuals acted for commercial advantage or private financial gain, that would not cure the

statute's overbreadth. Constitutionally-protected speech can be, and often is, uttered for financial gain. *See*, *e.g.*, *New York Times v. Sullivan*, 376 U.S. 254 (1964) (speech by a for-profit corporate media entity is protected under the First Amendment). The same is true of the speech at issue here. For example, a lawyer for a noncitizen client has a First Amendment right to advise the client that she should continue to live unlawfully in the United States in order to accrue a long enough period of residence to apply for adjustment of status. The fact that she might charge a fee for her service does not reduce her First Amendment right to do so. Similarly, the First Amendment protects the speech of someone telling their undocumented spouse that the spouse's continued employment in the United States is necessary to financially support their family, even if that encourages the spouse to remain in the country. The private financial gain that would redound to the family does not narrow the spouse's First Amendment right.

The overbreadth doctrine has long played an essential part in making real the First Amendment's prohibition against statutes that, on their face, prohibit substantial amounts of protected speech. *See*, *e.g.*, *Stevens*, 559 U.S. 460 (invalidating statute barring depictions of animal cruelty that could prohibit, for example, depictions of legal hunting); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234 (2002) (invalidating statute prohibiting indecency on the Internet that could prohibit non-obscene sexually explicit depictions of minors that are of serious literary, artistic, political, or scientific value); *City of Houston v. Hill*, 482 U.S. 451 (1987) (invalidating ordinance that could prohibit verbal criticism directed at police officers); *Lewis v. City of New Orleans*, 415 U.S. 130 (1974) (invalidating ordinance prohibiting "opprobrious" language toward or about

police officers because it could chill criticism of police); *Thornhill v. Alabama*, 310 U.S. 88 (1940) (invalidating state statute that could prohibit the dissemination of information about a labor dispute). Like these laws, the encouragement provision sweeps far too broadly. If the government seeks to criminalize only aiding and abetting, it can and should draft a statute that does just that.

The court of appeals correctly concluded that a law criminalizing the mere encouragement or inducement of largely civil infractions violates the First Amendment.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

Heather E. Williams
FEDERAL DEFENDER FOR THE EASTERN DISTRICT OF CALIFORNIA
Carolyn M. Wiggin
Counsel of Record
Assistant Federal Defender
801 I Street, 3rd Floor
Sacramento, CA 95814
(916) 498-5700
carolyn_wiggin@fd.org

Counsel for Respondent

OCTOBER 28, 2022

APPENDIX

APPENDIX A

PHILLIP A. TALBERT
UNITED STATES ATTORNEY
ANDRÉ M. ESPINOSA
KATHERINE T. LYDON
ASSISTANT U. S. ATTORNEYS
501 I STREET, SUITE 10-100
SACRAMENTO, CA 95814

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. 2:16-CR-0024 MCE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HELAMAN HANSEN,

Defendant.

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

Date: December 14, 2017
Time: 10:00 am
Judge: Hon. Morrison C. England, Jr.

After trial, a jury convicted Defendant Helaman Hansen (Defendant) of twelve counts of mail fraud (18 U.S.C. § 1341) (Counts 1-9; 11-13), three counts of wire fraud (18 U.S.C. § 1343) (Counts 14-16), and two counts of encouraging and inducing illegal immigration for private financial gain (8 U.S.C. §§ 1324(a)(1)(A)(iv) and (B)(i)) (Counts 17, 18). More than six months later, and more than nine months after the deadline under Rule 12(b) passed, Defendant moves to dismiss Counts 17 and 18 of the superseding indictment, claiming the underlying criminal statutes are overbroad and void for vagueness under the First Amendment. The Court should deny the untimely and frivolous motion.

First, Defendant's motion is grossly untimely. On that basis alone, the Court should deny it. Moreover, Defendant offers no explanation for why the Court should excuse his neglect. The First Amendment is not a new development in the law and none of the cases on which Defendant relies were decided after the pretrial motion deadline in this case. That this argument only recently occurred to Defendant is not good cause to excuse his untimeliness. Second, even if the Court reaches the merits of Defendant's arguments, and it need not, the statutes at issue, when properly construed, are not plainly overbroad or unconstitutionally vague. Accordingly, and for the following reasons, the Court should deny Defendant's motion.

I. FACTUAL AND PROCEDURAL SUMMARY

Defendant founded and ran Americans Helping America Chamber of Commerce ("AHA"), a purported nonprofit that, along with an affiliated Hansen-controlled organization, Native Hawaiians and Pacific

Islanders ("NHPI"), claimed to provide advice and assistance to adult illegal aliens residing in California and elsewhere in navigating United States immigration laws. AHA's business activities included the marketing, sale, and maintenance of "memberships" to victims of its fraudulent "Migration Program," an elaborate adult-adoption program that was based on the false promise that adult illegal aliens residing in the United States could achieve citizenship after being legally adopted by an American citizen and completing a list of additional tasks. In reality, adult adoptions are not paths to citizenship. To conceal the scheme and avoid detection by victims and others Defendant and his agents were evasive about the technical details and purported legal foundation of AHA's fraudulent Migration Program. In some instances, Defendant told skeptics that AHA's fraudulent Migration Program was authorized under a United Nations law that superseded United States law. Additionally, Defendant encouraged and induced two victims who were lawfully in the United States on visas – and participants in Defendant's fraudulent Migration Program (to whom Defendant has falsely promised citizenship) – to overstay their visas to ensure their participation in the program, from which Defendant financially benefited.

A federal grand jury in the Eastern District of California returned a superseding indictment on March 2, 2016, charging Hansen with thirteen counts of mail fraud (18 U.S.C. § 1341) (Counts 1-13), three counts of wire fraud (18 U.S.C. § 1343) (Counts 14-16), two counts of Encouraging and Inducing Illegal Immigration for Private Financial Gain (8 U.S.C. § 1324(a)(1)(A)(iv) & (B)(i)) (Counts 17, 18), and a criminal forfeiture allegation. CR 62. A jury trial

began on April 17, 2017, and, on May 9, 2017, the jury convicted Defendant on all counts in the superseding indictment, except for Count 10, which the government moved to dismiss following its case-in-chief. CR 107148.

After several continuances, sentencing is scheduled for December 14, 2017. On November 9, 2017, Defendant filed a Motion to Dismiss Counts 17 and 18 of the superseding indictment. CR 165. The motion is scheduled to be heard on December 14, 2017. See CR 165. Defendant's motion asserts a constitutional challenge to 8 U.S.C. § 1324(a)(1)(A)(iv), which was also recently raised by a panel of the United States Court of Appeals for the Ninth Circuit in United States v. Evelyn Sineneng-Smith, No. 15-10614. By stipulation of the parties, the Court ordered the United States to file this opposition to Defendant's motion on or before November 30, 2017. CR 171.

II. ARGUMENT

A. Defendant's Motion is Untimely and the Court Should Deny it Without Reaching the Merits

Defendant's motion is grossly untimely and the Court should deny it without reaching the merits. Rule 12(b)(3) of the Federal Rules of Criminal Procedure sets forth a list of motions that must be brought before trial. That list includes motions concerning "a defect in the indictment," including "failure to state an offense." Fed. R. Crim. P. 12(b)(3)(B)(v). Under Rule 12, a late-filed motion is untimely and may be denied on that basis alone. Fed. R. Crim. P. 12(c)(3). Upon a showing of good cause by the late-moving party, a court may but need not consider the merits of an untimely motion under Rule 12(b)(3). See Fed. R.

Crim. P. 12(c)(3). Failure to bring timely motions under Rule 12(b)(3), or show good cause for relief from the Rule, results in waiver of those claims.[1] United States v. Buffington, 815 F.2d 1292, 1304 (9th Cir. 1987) ("As a general rule, claims of defects in an indictment must be raised prior to trial," or they are waived). See also United States v. Torres, 908 F.2d 1417, 1424 (9th Cir. 1990) (affirming the denial of a motion to suppress as untimely under Rule 12); United States v. Villasenor-Chavez, 560 F. App'x 653, 655 (9th Cir. 2014) (unpublished) (affirming denial of suppression motion as untimely when filed eleven days after the Rule 12(b) motion deadline).

Here, the Court ordered all pretrial motions under Rule 12(b) filed no later than February 2, 2017. CR 44. Defendant filed his pending motion to Dismiss Counts 17 and 18 of the superseding indictment on November 9, 2017, more than nine months late. Defendant makes no effort at all to state good cause to excuse his untimely motion. He mentions only the

---

[1] Before 2014, Rule 12 contained a subsection stating: "[a] party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides." See United States v. Scott, 705 F.3d 410, 415 (9th Cir. 2012). In 2014 subsection (e) was merged into subsection (c). See Advisory Committee Notes to 2014 Amendments to Rule 12. As amended, new paragraph (c)(3) "governs the review of untimely claims, previously addressed in Rule 12(e). Rule 12(e) provided that a party 'waives' a defense not raised within the time set under Rule 12(c). Although the term waiver in the context of a criminal case ordinarily refers to the intentional relinquishment of a known right, Rule 12(e) has never required any determination that a party who failed to make a timely motion intended to relinquish a defense, objection, or request that was not raised in a timely fashion. Accordingly, to avoid possible confusion the Committee decided not to employ the term 'waiver' in new paragraph (c)(3)." Id.

constitutional inquiry into 8 U.S.C. § 1324(a)(1)(A)(iv) recently initiated by the Ninth Circuit panel in United States v. Evelyn Sineneng-Smith, No. 15-10614. Yet, that cannot justify his untimeliness. A constitutional challenge to a criminal statute is perhaps unique among the collection of pretrial motions most typically raised under Rule 12(b). However, the concepts of statutory overbreadth and vagueness are elementary and taught to thousands of first year law students every year across the country. There is nothing so novel or obscure about those concepts as to make thoughtful reliance on them impossible without assistance from judges of the Ninth Circuit—especially here, where Defendant is represented by multiple experienced and able counsel.

The First Amendment is not a new development in the law. Defendant could have, and should have, timely raised his constitutional challenge. None of the cases on which he now relies was decided after the pretrial motion deadline. That Defendant simply did not think of the argument until it recently came to his attention in a case currently before the Ninth Circuit does not constitute good cause to excuse the untimeliness of his motion. Indeed, at least one other defendant in another Circuit managed to assert identical overbreadth and vagueness challenges—and did so more than *six years* ago. See United States v. Tracy, 456 F. App'x 267, 271 (4th Cir. 2011) (denying First Amendment overbreadth and vagueness challenge to 1324(a)(1)(A)(iv), which supported defendant's conspiracy conviction under 1324(a)(1)(A)(v)(I)). Here, Defendant simply failed to file a timely motion.

The mandatory pretrial motion requirement in Rule 12(b)(3) is designed to promote finality of motion

practice by forcing litigants to make timely arguments so that courts may decide any pivotal or dispositive issues before investing judicial resources in trial. See e.g., United States v. Smith, 866 F.2d 1092, 1097 (9th Cir. 1989) (observing that one purpose of Rule 12 is "conservation of judicial resources by facilitating the disposition of cases without trial"); accord Davis v. United States, 411 U.S. 233, 241 (1973).[2] The Court should apply the plain language of Rule 12 in this instance, and enforce its deadlines. Defendant makes no effort to present good cause to excuse his untimely motion, which is more than nine months late. Consequently, the Court should deny the motion without reaching the merits.

B. 8 U.S.C. §§ 1324(a)(1)(A)(iv) and (B)(i) Are Not Overbroad Under the First Amendment

Even if the Court reached the merits of Defendant's argument, and it should not, the motion must fail because the statute at issue is not unconstitutionally overbroad or vague.

---

[2] Davis involved an earlier version of Rule 12. See Advisory Committee Notes to 1974 and 2002 Amendments to Rule 12. In Davis, the Supreme Court warned if defendants were allowed to flout the deadlines to bring mandatory pretrial motions under Rule 12, "there would be little incentive to comply with its terms when a successful attack might simply result in a new indictment prior to trial. Strong tactical considerations would militate in favor of delaying the raising of the claim in hopes of acquittal, with the thought that if those hopes did not materialize, the claim could be used to upset an otherwise valid conviction at a time when reprosecution might well be difficult." 411 U.S. at 241.

1. The Overbreadth Doctrine

Courts may invalidate a law for overbreadth under the First Amendment only if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449 & n.6 (2008) (quotation marks omitted). "[M]anifestly," this doctrine is "strong medicine," and should be applied "sparingly and only as a last resort." Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). To determine whether a statute is overbroad, this Court must (1) construe the challenged statute to determine its reach; and (2) examine whether the statute "criminalizes a 'substantial amount' of expressive activity." Powell's Books, Inc. v. Kroger, 622 F.3d 1202, 1208 (9th Cir. 2010). An overbroad statute may be invalidated only if it is "not readily subject to a narrowing construction." Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975).

2. The Reach of the Relevant Statute

The "statute of conviction" at issue in this case is not 8 U.S.C. § 1324(a)(1)(A)(iv), standing alone. Rather, the superseding indictment charged and the jury found that Defendant acted "for the purpose of commercial advantage or private financial gain" under 8 U.S.C. § 1324(a)(1)(B)(i). Section 1324(a)(1)(B)(i) specifies a higher maximum sentence, and thus establishes a separate aggravated offense. See Apprendi v. New Jersey, 530 U.S. 466, 476, 490 (2000). Accordingly, the statutes of conviction are 8 U.S.C. §§ 1324(a)(1)(A)(iv) and (B)(i).

a. Elements

As set forth in Ninth Circuit Model Criminal Jury Instruction 9.4, Section 1324(a)(1)(A)(iv) contains three elements:

- First, [*name of alien*] was an alien;
- Second, the defendant encouraged or induced [*name of alien*] to [come to] [enter] [reside in] the United States in violation of law; and
- Third, the defendant [knew] [acted in reckless disregard of the fact] that [*name of alien*]'s [coming to] [entry into] [residence in] the United States would be in violation of the law.

Further, as charged in this case, the defendant must have "the purpose of commercial advantage or private financial gain." 8 U.S.C. § 1324(a)(1)(B)(i).

b. Meaning of "Encourage[ ]" and "Induce[ ]"

In support of his overbreadth claim, Defendant argues Section 1324(a)(1)(A)(iv) covers protected speech. CR 165 at 3-5. In fact, the statute does not restrict speech regarding immigration or other protected speech. Instead, it prohibits actions and action-oriented speech that facilitate violations of the immigration laws. That construction comports with a common meaning of "encourage[ ]," is consistent with other provisions of Section 1324, and avoids the constitutional problems that Defendant's interpretation poses.

No reported decision applies Section 1324(a)(1)(A)(iv) to mere efforts to persuade, expressions of moral support, or abstract advocacy

regarding immigration, without more. Instead, in additional to the inevitable use of words, the cases "address[ ] acts of encouragement or inducement closely tied to" violations of immigration law. See, e.g., United States v. Ndiaye, 434 F.3d 1270, 1297-98 (11th Cir. 2006) (supplying a social security number to which an alien is not entitled); United States v. Oloyede, 982 F.2d 133, 135-37 (4th Cir. 1992) (per curiam) (providing false documents for citizen applications); see also United States v. He, 245 F.3d 954, 955-56 (7th Cir. 2001) (escorting alien into the country). The statutory context of Section 1324(a)(1)(A)(iv) illuminates the meaning of "encourage[]." See, e.g., Yates v. United States, 135 S. Ct. 1074, 1081-82 (2015) (interpreting statutory language based on "the specific context in which that language is used, and the broader context of the statute as a whole") (quotation marks and citation omitted). In particular, all other provisions of Section 1324(a)(1)(A) prohibit specific activities that promote illegal immigration, including "bring[ing]," "transport[ing]," "mov[ing]," "conceal[ing], "harbor[ing]," or "shield[ing]" aliens. Under the principle of noscitur a sociis—a word is known by the company it keeps— "encourage[ ]," as used in Section 1324(a)(1)(A)(iv), should likewise be interpreted to require specific action or speech advocating specific actions that facilitate an alien's coming to, entering, or residing in the United States illegally. See generally United States v. Williams, 553 U.S. 285, 294 (2008). So understood, Section 1324(a)(1)(A) serves as a "catch-all" provision that covers only words that elicit actions other than "bring[ing]," "transporting," etc., that might facilitate illegal immigration. Indeed, as the cases applying Section 1324(a)(1)(A)(iv) make clear, Sections 1324(a)(1)(A)(i)-(iii) leave uncovered

other conduct that Section 1324(a)(1)(A)(iv) reaches, including providing aliens with false documents and social security cards, and, as here, fraudulently promising to secure legal immigration status through citizenship.

Interpreting Section 1324(a)(1)(A)(iv) in this manner comports with Altamirano v. Gonzales, 427 F.3d 586 (9th Cir. 2005). Altamirano interpreted 8 U.S.C. § 1182(a)(6)(E)(i), which excludes from the United States any alien who "knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law." After Altamirano attempted to cross the border in a vehicle driven by her husband that concealed an illegal alien, the Board of Immigration Appeals found her inadmissible. The Ninth Court reversed, holding that the "plain meaning" of the statute "requires an affirmative act of help, assistance, or encouragement." Id. at 592 (emphasis added). The Circuit further concluded that because Altamirano did not "affirmatively act to assist" the illegal passenger (who had been concealed by others), "she did not engage in alien smuggling." Id. at 592; see id. at 592-93 (prior cases involving alien smuggling have involved "some form of affirmative assistance to the illegally entering alien") (citing cases). Altamirano also relied on "the well-established meaning of aiding and abetting" in criminal law, noting that "[a] defendant cannot be convicted of aiding and abetting absent an affirmative act of assistance in the commission of the crime." Id. at 594.

Likewise, as used in Section 1324(a)(1)(A)(iv), "encourage[ ]" requires an affirmative act of encouragement that could facilitate or assist an alien in "com[ing] to, enter[ing], or resid[ing]" in the United

States "in violation of law."[3] Standing alone, moral support, attempts to persuade, or abstract advocacy of illegal immigration do not suffice. So understood, Section 1324(a)(1)(A)(iv) resembles the doctrine of aiding and abetting under federal law, which renders "a person … liable … if (and only if) he … takes an affirmative act in furtherance of [the] offense." Rosemond v. United States, 134 S. Ct. 1240, 1245 (2014); accord Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 181 (1994) (18 U.S.C. § 2 applies to "those who provide knowing aid to persons committing federal crimes"); see also United States v. Montoy, 664 F. App'x 632, 634 (9th Cir. 2016) (unpublished) ("We have found sufficient evidence of aiding and abetting where the aider and abettor provided verbal encouragement of a crime and gave advice about how to commit the crime.") (citing United States v. Allen, 341 F.3d 870, 889 (9th Cir. 2003)). Existing cases defining "encourage[ ]" under Section 1324(a)(1)(A)(iv) are largely consistent with this understanding. See, e.g., United States v. Lopez, 590 F.3d 1238, 1249-52 (11th Cir. 2009) (defining "encouraging or inducing" to include the act of "helping" aliens come to, enter, or remain in the United States); DelRio-Mocci v. Connolly Properties Inc., 672 F.3d 241, 248 (3d Cir. 2012) ("encourage" requires "some affirmative assistance that makes an alien lacking lawful immigration status more likely to enter or remain in the United States than she otherwise might have

[3] Acts that *appear* to facilitate such conduct are also covered even if, as in this case, the assistance turns out to be fraudulent. And offers of assistance – like offers to make an illegal alien a citizenship – are acts of encouragement too, even if the defendant never makes good.

been"); United States v. Fujii, 301 F.3d 535, 540 (7th Cir. 2002) ("To prove that Fujii 'encouraged or induced' the aliens, all that the government needed to establish was that Fujii knowingly helped or advised the aliens."); Oloyede, 982 F.2d at 137 ("'encouraging' relates to actions taken to convince the illegal alien to come to this country or to stay in this country"); Ndiaye, 434 F.3d at 1298 (supplying fake social security number to illegal alien is "encouraging" alien to reside here); He, 245 F.3d at 957 ("encourage" defined as "to knowingly instigate, help or advise"); United States v. Delgado-Ovalle, 2013 WL 6858499, at *6 (D. Kan. Dec. 30, 2013) (encouragement includes employment that is coupled with aggravating factors consistent with knowingly assisting an immigrant in maintaining an illegal residence).

But merely providing legal goods to illegal immigrants on the same terms available to others does not encourage their residence. Instead, "encourage[ ]" requires substantial assistance (or offers of assistance) that the defendant expects to make an alien lacking lawful immigration status more likely to enter or remain in the United States than she otherwise would have been. See DelRio-Mocci, 672 F.3d at 248; see also United States v. Khanani, 502 F.3d 1281, 1289 (11th Cir. 2007) (merely employing illegal aliens does not suffice to show knowing encouragement); Zavala v. Wal-Mart Stores, Inc., 393 F. Supp. 2d 295, 308 (D.N.J. 2005) (same); United States v. Henderson, 857 F. Supp. 2d 191, 208 (D. Mass. 2012) (occasional employment coupled with advice about immigration law practices and consequences is "barely" sufficient); cf. United States v. Moreno, 561 F.2d 1321, 1323 (9th Cir. 1977) (foreman who drove illegal aliens from one job site to

another did not transport them "in furtherance of" a violation of law).

Defendant also argues that the "induce[ ]" prong of Section 1324(a)(1)(A)(iv) targets protected speech. CR 165 at 3-5. As with "encourage[ ]," "induce[ ]" in Section 1324(a)(1)(A)(iv) requires more than passive discussion. See United States v. Rashkovski, 301 F.3d 1133, 1136-37 (9th Cir. 2002) (defendant "induced" women to travel to the United States when he offered to make and pay for the necessary travel arrangements). Such inducements may be either real or fraudulent. So understood, induce and encourage are related but not synonymous. Threats of force, for example, can induce an alien to remain in the United States but are not generally considered "encourage[ment]."

c. Mens Rea

The statute explicitly requires the government to prove that the defendant acted "knowing[ly] or reckless[ly]" with regard to the fact that the alien's "coming to, entry, or residence is or will be in violation of law." Additionally, although the statute does not specify that a defendant must "knowingly" encourage or induce an alien, "knowing" action is nonetheless required. One can perhaps encourage another unwittingly. But under Section 1324(a)(1)(A)(iv), a defendant must realize that his actions may "encourage[ ] or induce[ ]" another to "come to, enter, or reside" in the United States; otherwise, she cannot "know[ ]" or "recklessly disregard … the fact" that these potential consequences "[are] or will be in violation of the law[.]" Accordingly, Section 1324(a)(1)(A)(iv) covers only "knowing" encouragement or inducement. See He, 245 F.3d at

959; see also Elonis v. United States, 135 S. Ct. 2001, 2009 (2015) ("[O]ur cases have explained that a defendant generally must 'know the facts that make his conduct fit the definition of the offense[.]'") (quoting Staples v. United States, 511 U.S. 600, 608 & n.3 (1994)).

d. Requirement of "[A]n Alien"

Section 1324(a)(1)(A)(iv) is limited in another respect as well. The statute addresses one who "encourages or induces *an* alien." (emphasis supplied). Use of the term "an alien," rather than "any alien," suggests that a defendant's acts must be directed to a particular alien or aliens. Accordingly, Section 1324(a)(1)(A)(iv) does not prohibit acts of encouragement directed to the general public. Cf. Ninth Circuit Model Criminal Jury Instruction 9.4 ("Second, the defendant encouraged or induced [name of alien] to [come to] [enter] [reside in] the United States in violation of law"); State v. Melchert-Dinkel, 844 N.W.2d 13, 23 (Minn. 2014) (statute that prohibits assisting, advising, or encouraging "another in taking the other's own life" refers to an individual, rather than a larger audience).

e. The Meaning of "In Violation of Law"

Consistent with common usage, the term "in violation of law" refers to violations of both civil and criminal laws, including the civil enforcement provisions of the U.S. immigration laws. See, e.g., Melendres v. Arpaio, 784 F.3d 1254, 1258 (9th Cir. 2015) (referring to "violations of federal civil immigration laws"), cert. denied, 136 S. Ct. 799 (2016); see also United States v. Tracy, 456 F. App'x 267, 271

(4th Cir. 2011) ("When viewed in context, the statute cannot reasonably be read as referring to anything but violations of United States immigration law."). Accordingly, while aliens who lack authorization may not commit a crime by residing in the United States, Arizona v. United States, 567 U.S. 387, 407 (2012), their residence is still "in violation of law." See generally National Council of LaRaza v. Department of Justice, 411 F.3d 350, 353 n.1 (2d Cir. 2005) ("Civil violations of immigration law include those violations – such as overstaying one's visa or entering the United States without proper documentation – that result in administrative proceedings").

f. Purpose of Commercial Advantage or Private Financial Gain

Finally, Defendant's conviction required proof that he acted for "commercial advantage" or "private financial gain." 8 U.S.C. 1324(a)(1)(B)(i). Thus, the statutes of conviction exclude any "encourage[ment]" done "out of any feelings of charity or affection." United States v. Kim, 193 F.3d 567, 577 (2d Cir. 1999).

3. 8 U.S.C. 1324(a)(1)(A)(iv) and (B)(i) Do Not Criminalize Protected Speech and Are Not Overbroad Under the First Amendment

As set forth above, the Supreme Court has "vigorously enforced the requirement that a statute's overbreadth be substantial, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." Williams, 553 U.S. at 292-93. Here, Section 1324(a)(1)(A)(iv) and (B)(i)'s "plainly legitimate sweep" is wide. The statutes target conduct

that encourages illegal immigration for profit or commercial advantage. They likewise cover actions that induce an alien to violate immigration law, including through fraud, that is undertaken for the same motives. Examples of potentially covered activities include (1) selling a border-crossing kit to aliens, including a map of "safe crossing" points and backpacks filled with equipment designed to evade border patrol; (2) duping foreign tourists into purchasing a fake "visa extension;" or (3) providing a "package deal" to foreign pregnant women who wish to give birth in the United States that includes a year of room and board, a six-month tourist visa, and instructions on how to overstay the visa without detection.

As for Defendant's claims of overbreadth, once the encourage prong is interpreted to prohibit action-oriented speech that facilitates coming to, entering, or residing in the United States illegally, his First Amendment claims evaporate. To be sure, some profit-generating activities that "encourage[ ] or induce[ ]" illegal immigration may involve speech. But "[t]he first amendment does not provide a defense to a criminal charge simply because the actor uses words to carry out his illegal purpose." United States v. Barnett, 667 F.2d 835, 842-43 (9th Cir. 1982). The map used in the mail order business described above, for example, constitutes speech but because it aims to facilitate illegal conduct, that speech is not protected.

Cases addressing aiding and abetting liability confirm this point. In United States v. Freeman, 761 F.2d 549, 552 (9th Cir. 1985), for example, the Ninth Circuit held that a tax protestor who assisted in preparing and filing false returns for others could properly be convicted of aiding and abetting tax fraud

even if his convictions "rested on spoken words alone, [because] the false filing was so proximately tied to the speech that no First Amendment defense was established." In so holding, the Circuit observed that "the First Amendment is quite irrelevant if the intent of the actor and the objective meaning of the words used are so close in time and purpose to a substantive evil as to become part of the ultimate crime itself. In those instances, where speech becomes an integral part of the crime, a First Amendment defense is foreclosed even if the prosecution rests on words alone." Id. (citations omitted). Other cases reach the same result.[4]

Section 1342(a)(1)(A)(iv) is not precisely equivalent to an aiding and abetting offense. Yet, any differences do not affect the First Amendment analysis. First, while federal aiding and abetting

---

[4] See Barnett, 667 F.2d at 842-43 (First Amendment did not protect defendant's sale of printed instructions for the manufacture angel dust); United States v. Meredith, 685 F.3d 814, 819-20 (9th Cir. 2012) (defendants who gave explicit instructions to customers on how to file fraudulent tax returns not immune from prosecution under First Amendment); Rice v. Paladin Enterprises, Inc., 128 F.3d 233, 242 (4th Cir. 1997) ("speech…that constitutes criminal aiding and abetting does not enjoy the protection of the First Amendment"); see generally Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949) ("[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."); Williams, 553 U.S. at 298 ("Many long established criminal proscriptions…criminalize speech…that is intended to induce or commence illegal activities.") (citations omitted); United States v. Stevens, 559 U.S. 460, 468 (2010) ("speech integral to criminal conduct" is among the traditional classes of unprotected speech).

requires a completed crime, Barnett, 667 F.2d at 841-42, a Section 1342(a)(1)(A)(iv) offense is complete once the "encourag[ing]" or "induc[ing]" has occurred. Section 1342(a)(1)(A)(iv), therefore, resembles an attempted aiding and abetting offense. See generally Model Penal Code § 2.06(3)(a)(ii) (describing such an offense). That difference is immaterial. The First Amendment does not protect the act of mailing written instructions to a hitman, and those instructions do not become protected speech if they are accidentally delivered to the wrong address. Likewise, Congress can prohibit speech that facilitates or induces an alien's coming to, entering, or residing in the United States illegally, whether or not the alien ultimately violates immigration law.

Second, under 18 U.S.C. § 2, a defendant must aid or abet the commission of a criminal offense, while Section 1342(a)(1)(A)(iv) covers "encourag[ing] and induc[ing]" both civil and criminal "violation[s] of law." But, once again, that distinction is irrelevant. The legislature may decide to regulate misconduct through civil rather than criminal penalties for many reasons, including a concern that the wrongdoers constitute a vulnerable population. Likewise, it may reasonably determine that a person who encourages or induces civil wrongdoing is himself guilty of a criminal offense, especially when he does so for a profit. Some states, for example, make possession of alcohol by minors a civil violation but criminalize "aid[ing] or assist[ing]" in furnishing alcohol to minors. See, e.g., Me. Rev. Stat. tit. 28-a §§ 2051.1(A)(1) and 2081.1(A). That reasonable choice should not dictate whether the adult who earns a profit by aiding and abetting the minor's violation can assert a First Amendment defense. Counseling a

particular minor on how to obtain alcohol is not "protected speech," and that conclusion should not turn on whether the minor himself has violated civil or criminal law. Such speech is "of such slight social value as a step to truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality." Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

a. Section 1342(a)(1)(A)(iv) does not reach "political speech"

Defendant argues Section 1342(a)(1)(A)(iv) "potentially infringes on one's ability to advocate for undocumented people to pursue staying in the United States despite losing legal status." CR 165 at 3. The argument presumes that encourage must be capaciously defined to include any generally directed speech that inspires illegal immigrants with courage, spirit, or hope, or spurs them on. Once that faulty premise is rejected, it becomes clear that Section 1342(a)(1)(A)(iv) does not aim to regulate protected speech at all, and does not facially target particular disfavored viewpoints. Instead, Section 1342(a)(1)(A)(iv) prohibits conduct that facilitates or induces illegal immigration, and any speech that it prohibits is not protected under the First Amendment. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (laws against treason are directed towards conduct even though they may be violated by telling the enemy defense secrets).

Section 1324(a)(1)(A)(iv) is directed at conduct that is almost always accompanied by speech; not speech alone. The statute does not punish any person because he is conveying a particular message. Where a general prohibition "does not target conduct on the

basis of its expressive content, acts are not shielded from regulation merely because they express a [particular] idea or philosophy." Id. at 389-90. Thus, even assuming that actions that violate Section 1324(a)(1)(A)(iv) convey a coherent message, Section 1324(a)(1)(A)(iv) may nonetheless proscribe them because it was not enacted to stifle any particular point of view. See also id. at 390 (regulations that selectively proscribe unprotected speech are valid "so long as the nature of the content discrimination is such that there is no realistic possibility that official suppression of ideas is afoot."). In sum, properly construed, Section 1324(a)(1)(A)(iv) is not substantially overbroad. See, e.g., Milavetz, Gallop & Milavetz, P.A. v. United States, 559 U.S. 229, 248 (2010) (narrow construction that avoids First Amendment issues is "not merely a plausible interpretation but the more natural one"). The Court should deny Defendant's motion to dismiss.

C. Section 1342(a)(1)(A)(iv) Is Not Vague as Applied to Defendant, Nor Can He Argue it is Vague as Applied to Others

The "[v]agueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment. A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." Williams, 553 U.S. at 304. When a law burdens First Amendment rights, "a more stringent vagueness test should apply" "[b]ut perfect clarity and precise guidance have never been required even of regulations that restrict

expressive activity." Id. at 304 (citations and quotations omitted); Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982).

Defendant claims Section 1324(a)(1)(A)(iv) is vague as applied to his conduct. The argument fails because a person who: (i) knowingly charges immigrants money to pursue a non-existent remedy; (ii) pays those immigrants stipends to work for him (essentially discounts from the fraud proceeds) to assure their continued participation in his program and to lull them; (iii) repeatedly urges them not to return home in compliance with their visa conditions; and (iv) does so for private financial gain, can be expected to know he thereby "encourages" or "induces" them to remain in the United States "in violation of law." See, e.g., Tracy, 456 F. App'x at 272 ("a person of ordinary intelligence would understand that assisting [ ] non-citizens indirectly to enter the United States" is proscribed).

Defendant cannot argue that Section 1324(a)(1)(A)(iv) is vague as applied to others. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." Hoffman Estates, 455 U.S. at 495. "That rule makes no exception for conduct in the form of speech. Thus, even to the extent a heightened vagueness standard applies, a plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice. And he certainly cannot do so based on the speech of others." Humanitarian Law Project, 561 U.S. at 20 (citation omitted). Even if Defendant could properly assert a general vagueness argument based on an improperly broad interpretation of the terms

"encourage[ ]" and "induce[ ]", which he cannot, the proper remedy is to narrow the definitions of those terms, not to invalidate the statute. See Skilling v. United States, 561 U.S. 358, 403 (2010) (Supreme Court case law "requires us, if we can, to construe, not condemn, Congress' enactments."); see, e.g., United States v. King, 608 F.3d 1122, 1128 (9th Cir. 2010) (this Court has "cabined the dictionary definition of 'associate' in three ways to avoid its potentially vague outer boundaries"). A judicial decision clarifying the proper meanings of "encourage[ ]" and "induce[ ]" suffices to provide public notice regarding the scope of the statute and thereby obviates any vagueness concerns. See United States v. Lanier, 520 U.S. 259, 266 (1997) ("clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute") (citations omitted). The Court should deny Defendant's motion to dismiss.

III. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Defendant's Motion to Dismiss Counts 17 and 18 of the superseding indictment.

Dated: November 30, 2017

PHILLIP A. TALBERT
United States Attorney

/s/ André M. Espinosa
ANDRÉ M. ESPINOSA
KATHERINE T. LYDON
Assistant U.S. Attorneys

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 2:16-CR-00024-MCE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HELAMAN HANSEN,

Defendant.

VERDICT FORM

We, the jury, unanimously find the Defendant, HELAMAN HANSEN, as follows:

AS TO COUNT 1:

GUILTY	NOT GUILTY	
X		of Count 1, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Vasiti Nailati Morrill mailed on or about July 7, 2014.

AS TO COUNT 2:

GUILTY	NOT GUILTY	
X		of Count 2, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Epeli Q. Vosa mailed on or about July 10, 2014.

AS TO COUNT 3:

GUILTY	NOT GUILTY	
X		of Count 3, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Maraia Endo mailed on or about September 2, 2014.

AS TO COUNT 4:

GUILTY	NOT GUILTY	
X		of Count 4, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the AHA Migration Program Application of Henrietta Ane Matakitoga mailed on or about September 3, 2014.

AS TO COUNT 5:

GUILTY	NOT GUILTY	
X		of Count 5, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Mana E. Nailati mailed on or about December 19, 2014.

AS TO COUNT 6:

GUILTY	NOT GUILTY	
X		of Count 6, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Gabriela Gonzalez mailed on or about April 22, 2015.

AS TO COUNT 7:

GUILTY	NOT GUILTY	
X		of Count 7, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the I-TIN of Amete Bai Eberly mailed on or about May 19, 2015.

AS TO COUNT 8:

GUILTY	NOT GUILTY	
X		of Count 8, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the I-TIN of Vasiti Nailati Morrill mailed on or about June 22, 2015.

AS TO COUNT 9:

GUILTY	NOT GUILTY	
X		of Count 9, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Vikram Coutinho mailed on or about July 7, 2015.

AS TO COUNT 11:

GUILTY	NOT GUILTY	
X		of Count 11, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the I-TIN of Kinsimere Ranadi Morrill mailed on or about July 21, 2015.

AS TO COUNT 12:

GUILTY	NOT GUILTY	
X		of Count 12, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the I-TIN of Emerson Rivas Sevier mailed on or about December 3, 2015.

AS TO COUNT 13:

GUILTY	NOT GUILTY	
X		of Count 13, Mail Fraud, in violation of Title 18, United States Code, Section 1341, regarding the Delayed Registration of Birth of Sam Tukana Dias mailed on or about August 4, 2016.

AS TO COUNT 14:

GUILTY	NOT GUILTY	
		of Count 14, Mail Fraud, in violation of Title 18, United States Code, Section 1343, regarding an electronic transfer, via Fedwire, of approximately $1,100 from a Bank of America account on behalf of Pamela

		Vunlileva, to a Chase Bank account controlled by Americans Helping America, on or about June 3, 2013.
X		

AS TO COUNT 15:

GUILTY	NOT GUILTY	
		of Count 15, Mail Fraud, in violation of Title 18, United States Code, Section 1343, regarding an email from Henriettea Matakitoga Avoi delivering proof of payment for her Migration Program membership, sent from Washington to Native Hawaiians Pacific Islanders, in Sacramento, California, on or about September 3, 2014.
X		

AS TO COUNT 16:

GUILTY	NOT GUILTY	
		of Count 16, Mail Fraud, in violation of Title 18, United States Code, Section 1343, regarding an electronic transfer, via Fedwire,

X		of approximately $3,500 from a Bank of America account on behalf of Sachin Salian, to a Chase Bank account controlled by Americans Helping America, on or about June 4, 2015.

AS TO COUNT 17:

GUILTY	NOT GUILTY	
X		of Count 17, Encouraging and Inducing Illegal Immigration, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv), regarding Epeli Q. Vosa, between on or about January 19, 2014 and July 18, 2014.

YES	NO	
		If you found the defendant guilty of Count 17, do you find beyond a reasonable doubt that the offense was done for the purpose of private

X		financial gain?

AS TO COUNT 18:

GUILTY	NOT GUILTY	
X		of Count 18, Encouraging and Inducing Illegal Immigration, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv), regarding Mana E. Nailati, between on or about August 10, 2014 and February 9, 2015.

YES	NO	
X		If you found the defendant guilty of Count 18, do you find beyond a reasonable doubt that the offense was done for the purpose of private financial gain?

Dated: 5/9/2017

JURY FOREPERSON

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRIC OF
CALIFORNIA

Case No. 2:16-CR-00024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HELAMAN HANSEN,

Defendant.

Sacramento, California
May 9, 2017
9:00 a.m.

JURY TRIAL – DAY 11

Before

The Honorable Morrison C. England, Jr.
United States District Judge

APPEARANCES:

For the Government:

UNITED STATES ATTORNEY
501 I Street, Suite 10-100
Sacramento, California 95814
BY: ANDRE M. ESPINOSA
KATHERINE T. LYDON
Assistant U.S. Attorneys

For the Defendant:

FEDERAL DEFENDER
801 I Street, Third Floor
Sacramento, California 95814
BY: TIMOTHY ZINDEL
SEAN RIORDAN
Assistant Federal Defender

Court Reporter:

DIANE J. SHEPARD, CSR 6331, RPR
Official Court Reporter
501 I Street, Rm 4-200
Sacramento, California 95814
(916) 554-7460

Proceedings reported by mechanical stenography, transcript produced by computer-aided transcription.

* * *

[1919]

THE COURT cont.: It is no defense to fraud that the defendant honestly holds a certain opinion or belief but also intentionally makes false or fraudulent representations or promises to others.

Evidence has been admitted that the defendant may have suffered from diminished capacity at the time the crime charged was committed. You may consider evidence of the defendant's diminished capacity in deciding whether the Government has proved beyond a reasonable doubt that the defendant acted with the intent to commit the charged crimes.

The defendant is charged in Count 17 and 18 of the superseding indictment with encouraging illegal

entry by an alien in violation of Section 1324(a)(1)(A)(iv) of Title 8 of the United States Code.

In order for the defendant to be found guilty of that charge the Government must prove each of the following elements beyond a reasonable doubt.

First, with respect to Counts 17 and 18, respectively, Epeli Q. Vosa and Mana E. Nailati was each an alien.

Second, the defendant encouraged or induced Epeli Q. Vosa and Mana E. Nailati to reside in the United States in violation of law.

Third, that the defendant knew or acted in reckless disregard of the fact that Epeli Q. Vosa and Mana E. Nailati residence of the United States would be in violation of the law.

An alien is a person who is not a natural-born or [1920] naturalized citizen of the United States. An alien enters the United States in violation of law if not duly admitted by an immigration officer.

When you begin your deliberations, elect one member of your jury as your foreperson, who will preside over your deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so.

Your verdict, whether guilty or not guilty, must be unanimous. Each of you must decide the case for yourself but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach unanimous verdict, of course, but only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Because you must base your verdict only on the evidence received in this case and on these instructions, I remind you that you must not be exposed to any other information about the case or the issues it involves.

* * *

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRIC OF
CALIFORNIA

Case No. 2:16-CR-00024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HELAMAN HANSEN,

Defendant.

Sacramento, California
May 8, 2017
9:00 a.m.

JURY TRIAL – DAY 10

Before

The Honorable Morrison C. England, Jr.
United States District Judge

APPEARANCES:

For the Government:

UNITED STATES ATTORNEY
501 I Street, Suite 10-100
Sacramento, California 95814
BY: ANDRE M. ESPINOSA
KATHERINE T. LYDON
Assistant U.S. Attorneys

For the Defendant:

FEDERAL DEFENDER
801 I Street, Third Floor
Sacramento, California 95814
BY: TIMOTHY ZINDEL
SEAN RIORDAN
Assistant Federal Defenders

Court Reporter:

DIANE J. SHEPARD, CSR 6331, RPR
Official Court Reporter
501 I Street, Rm 4-200
Sacramento, California 95814
(916) 554-7460

Proceedings reported by mechanical stenography, transcript produced by computer-aided transcription.

* * *

[1812]

THE COURT: I do not believe that the evidence that's been presented comes even close to this. The jury is going to look at the evidence as presented and make a decision as to whether or not Dr. Hansen did this. There is nothing reckless, indifferent about what he did. He's not going to — he didn't [1813] stick his head in the sand. He was very, very actively participating in it to the extent of making personal appearances, to having videos, having them posted on YouTube. It just doesn't make sense.

MS. LYDON: It's true, Your Honor. We absolute agree that he actively participated. But this goes to the knowledge of the false statements' falsity. And he was recklessly indifferent as to whether or not the

statements he was making were true.

He said he didn't need to talk to immigration lawyers. He doesn't have a law degree, but he doesn't need to. He knows. No one else does.

He was recklessly indifferent as to whether the statements were true. That's what it goes to that. That knowledge.

THE COURT: I understand. But I still stand by my original ruling.

The next is 6.9, diminished capacity. There is no objection to that.

Then the next one is alien, encouraging illegal entry. That's 9.4. And there were two instructions provided. It appears that the Government's proposed instruction is the --well, it is the pattern instruction. It's the law. So I'll let you put on the record as to why you believe there should be a modification to 9.4.

MR. RIORDAN: Yes, Your Honor. The modifications we [1814] are proposing are minor but still significant in terms of the jury's ability to determine properly whether the statute was violated.

The first modification in terms of adding the term "substantially," that's based in out-of-circuit case law. But it's a principle of substantiality that is consistent with the plain import of the statute.

Because it seems implausible that Congress would have criminalized conduct that doesn't substantially encourage or induce somebody as opposed to some de minimis encouragement or inducement of somebody to violate the law.

And the case, primarily, that we're relying on is a Third Circuit case. DelRio-Mocci versus Connolly

Properties, 672 F.3d 241.

The second change is the one that incorporates an intentionality requirement into what the defendant was doing in terms of the non-citizens' residence.

So our proposed language would require that the defendant have intended that the non-citizens' residence in the United States would be in violation of the law.

And that comes out of Yoshida, which found that the Government is required to prove an intent to violate the immigration laws in order to make out a successful prosecution under 1324(a).

And then the "acting for the purposes of his own private [1815] financial gain," which would be -- that's a proposed fourth paragraph, I think that the verdict forms, which break out a separate finding beyond a reasonable doubt for private financial gain, would make that unnecessary.

THE COURT: Did you say, "necessary" or "unnecessary"?

MR. RIORDAN: Sorry. Unnecessary, Your Honor.

Because under the Government's proposed verdict forms, the jury has to make a separate determination as to that sentencing enhancement.

THE COURT: Yes.

MR. ESPINOSA: Your Honor, on the proposed modifications to this Instruction 9.4, the Government opposes strongly the additions and modifications primarily because they modify the elemental language in the standard instructions to require, first, a

heightened evidentiary requirement; that is, in the proposed modification in the second element, the defense would ask the jury to find substantial encouragement rather than encouragement, which is the language of the statute and the language of the Ninth Circuit model instruction.

With respect to the third element and the proposed modification therein, the modification proposes to change completely the mens rea from "knew or acted in reckless disregard" to "intended."

That is a dramatic reinterpretation of the statute that not only changes the terms of the statute but changes the level of [1816] proof necessary. So for those reasons, the Government opposes those modifications.

THE COURT: I agree with the Government's position that adding the word "substantially" and then "intent" is not what the law does require.

And the pattern instruction states what the law is very clearly, and so it's not necessary. So that requested modified instruction of 9.4 is denied.

And then we simply go on to the seven series of 7.1, duty to deliberate; 7.2, consideration of evidence, conduct of the jury; 7.3, the use of notes; 7.4, jury consideration of punishment; and 7.5 is the verdict form information; and 7.6, communication with the court.

All right. We will get these going as soon as we can and get these out to you.

Did you meet with respect to the verdict form, that one issue?

MR. ESPINOSA: We did, Your Honor, and I

think we reached a resolution.

THE COURT: Do you have a modified verdict form?

MR. ESPINOSA: I was going to reproduce a typed version, and I can re-file it tonight as the joint verdict form, or I can re-file it as the third version.

MR. ZINDEL: Maybe if Mr. Espinosa wants to make the changes on the one that he has, email it to me, and I'll ok it, [1817] and he can file it as a joint.

* * *

APPENDIX E

HEATHER E. WILLIAMS, #122664
Federal Defender
TIMOTHY ZINDEL, #158377
SEAN RIORDAN, #255752
Assistant Federal Defenders
801 I Street, 3rd Floor
Sacramento, CA 95814
Telephone: (916) 498-5700

Attorneys for Defendant
HELAMAN HANSEN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. 2:16-CR-0024 MCE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HELAMAN HANSEN,

Defendant.

DEFENDANT'S PROPOSED JURY INSTRUCTIONS

Trial Date: April 17, 2017

Helaman Hansen requests that the Court include in its charge to the jury the instructions referenced or set forth below.

First, Mr. Hansen asks the Court to give the following Ninth Circuit Model Jury Instructions at the start of trial. (The requested instructions do not appear among the standard instructions attached to the Court's Pretrial Order (doc. 64-1).) Copies are attached in pdf and will be sent to the Court in Word along with copies of other jury instructions proposed by the defense.

1. 1.1 Duty of Jury
2. 1.2 Presumption of Innocence
3. 1.3 What is Evidence
4. 1.4 What is Not Evidence
5. 1.5 Direct and Circumstantial Evidence
6. 1.6 Ruling on Objections
7. 1.7 Credibility of Witness
8. 1.8 Conduct of the Jury
9. 1.9 No Transcript Available to Jury
10. 1.10 Taking Notes
11. 1.11 Outline of Trial

Second, Mr. Hansen concurs in the Court's proposed end-of-case instructions (doc. 64-1) but asks that the Court also give Ninth Circuit Model Instruction 3.11 (copy attached).

Third, Mr. Hansen concurs in the Court's other proposed instructions (Ninth Cir. Model Instructions 4.1, 4.6, 4.14, 4.15, 4.16, 5.6, 5.7, 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6).

Fourth, Mr. Hansen asks the Court to instruct the jury on the substantive law as set forth below.

Fifth, Mr. Hansen reserves the right to supplement or modify these instructions depending on evidence and argument presented during the trial, and to request that the jury be instructed in Mr. Hansen's theories of defense at close of trial, as required by law. *See United States v. Perdomo-Espana*, 522 F.3d 983, 986-87 (9th Cir.2008); *United States v. Hutchison*, 22 F. 3d 846, 853 (9th Cir. 1993); *United States v. Lothian*, 976 F.2d 1257, 1267 (9th Cir. 1992); *United States v. Bear*, 439 F.3d 565, 568 (9th Cir. 2006)(when a defendant presents and relies upon a theory of defense at trial, "the judge must instruct the jury on that theory even where such an instruction was not requested").

Proposed Substantive Instructions

1. Elements of Mail Fraud.

The defendant is charged in Counts One through Thirteen of the indictment with mail fraud in violation of Section 1341 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly devised, intended to devise, and participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;

Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and

Fourth, the defendant used, or caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

A mailing is caused when one knows that the mails will be used in the ordinary course of business or when one can reasonably foresee such use. It does not matter whether the material mailed was itself false or deceptive so long as the mail was used as a part of the scheme, nor does it matter whether the scheme or plan was successful or that any money or property was obtained.

Ninth Circuit Model 8.121 Mail Fraud (ver. approved 3/2016)

2. Elements of Wire Fraud.

The defendant is charged in Counts Fourteen through Sixteen of the indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly participated in, devised, and intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of

influencing, a person to part with money or property;

Third, the defendant acted with the intent to defraud, that is, the intent to deceive or cheat; and

Fourth, the defendant used, or caused to be used, a wire communication to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

A wiring is caused when one knows that a wire will be used in the ordinary course of business or when one can reasonably foresee such use.

It need not have been reasonably foreseeable to the defendant that the wire communication would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that some wire communication would occur in furtherance of the scheme, and an interstate wire communication must have actually occurred in furtherance of the scheme.

Ninth Circuit Model 8.124 Mail Fraud (ver. approved 2/2014)

3. Intent to Defraud Defined

An intent to defraud is an intent to deceive or cheat.

If a defendant does not intend to harm the victim then he has not intended to defraud the victim.[1]

You may determine whether the defendant had

[1] *United States v. Takhalov*, 827 F.3d 1307, 1313 (11th Cir. 2016).

an honest, good faith belief in the representations he made in determining whether or not the defendant acted with intent to defraud.[2]

Good faith is a complete defense to a charge that requires intent to defraud. A defendant is not required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt. An honestly held belief or an honestly formed belief cannot be fraudulent intent even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness cannot establish fraudulent intent.[3]

Ninth Circuit Model 3.16 (current ver., modified)

4 Elements of 8 U.S.C. § 1324(a)(1)(A)(iv)

The defendant is charged in Counts Seventeen and Eighteen of the indictment with encouraging illegal entry by an alien in violation of Section 1324(a)(1)(A)(iv) of Title 8 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, [name of alien] was an alien;

Second, the defendant substantially[4] encouraged or induced [name of alien] to reside in the United States in violation of law; and

---

[2] The Commentary to Ninth Cir. Model Instruction 3.16 endorses this formulation – with minor changes – in a case where defendant maintains he acted in good faith.

[3] *United States v. Takhalov*, 827 F.3d 1307, 1317 (11th Cir. 2016).

[4] *See Delrio-Mocci v Connolly Properties, Inc.*, 672 F.3d 241, 248 (3d Cir. 2012).

Third, the defendant intended[5] that [name of alien]'s residence in the United States would be in violation of the law.

Fourth, the defendant acted for the purpose of his own private financial gain.

An alien is a person who is not a natural-born or naturalized citizen of the United States. An alien enters the United States in violation of law if not duly admitted by an Immigration Officer.

Ninth Cir. Model 9.4 (current ver., modified)

Respectfully submitted,

HEATHER E. WILLIAMS
Federal Defender

Dated: April 10, 2017

/s/ S. Riordan & T. Zindel
SEAN RIORDAN &
TIM ZINDEL
Assistant Federal Defenders
Attorneys for HELAMAN HANSEN

[5] *See United States v. Yoshida*, 303 F.3d 1145, 1149 (9th Cir.2002).

APPENDIX F

PHILLIP A. TALBERT
United States Attorney
ANDRÉ M. ESPINOSA
KATHERINE T. LYDON
Assistant United States Attorneys
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HELAMAN HANSEN,

Defendant.

Case No. 2:16-CR-0024-MCE

18 U.S.C. § 1341 – Mail Fraud (13 Counts); 18 U.S.C. § 1343 – Wire Fraud (3 Counts); 8 U.S.C. § 1324(a)(1)(A)(iv) & B(i) – Encouraging and Inducing Illegal Immigration for Private Financial Gain (2 Counts); 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) - Criminal Forfeiture.

SUPERSEDING INDICTMENT

COUNTS ONE THROUGH THIRTEEN: [18 U.S.C. § 1341 – Mail Fraud]

The Grand Jury charges:

HELAMAN HANSEN,

defendant herein, as follows:

I. BACKGROUND

At all times relevant to this Indictment,

1. Americans Helping America Chamber of Commerce ("AHA") was a purported non-profit organization that operated out of offices in Sacramento, in the State and Eastern District of California. Among other things, AHA purported to provide advice and assistance to adult illegal aliens residing in California and elsewhere. AHA's business activities included the marketing, sale, and maintenance of "memberships" to victims of its fraudulent "Migration Program," an elaborate adult-adoption program that was based on the false promise that adult illegal aliens residing in the United States could achieve United States citizenship after being legally adopted by an American citizen and completing a list of additional tasks.

2. Native Hawaiians and Pacific Islanders ("NHPI") was a subsidiary of AHA and a purported nonprofit organization that operated out of offices in Sacramento, in the State and Eastern District of California. NHPI was involved in the marketing, sale, and maintenance of memberships to victims of AHA's fraudulent Migration Program. NHPI primarily targeted the foreign Pacific Islander Immigrant Community.

3. Community Independent Business Owners ("CIBO") was a subsidiary of AHA and purported to be an import/export company focused on trade between the United States and the South Pacific. However, CIBO's former CEO and other of its agents were involved in the marketing, sale, and maintenance of memberships to victims of AHA's fraudulent Migration Program.

4. Fijians Helping Fiji ("FHF") was a subsidiary of AHA. Agents and employees of FHF were involved in the marketing, sale, and maintenance of memberships to victims of AHA's fraudulent Migration Program. FHF purported to maintain its offices in Fiji.

5. Defendant HELAMAN HANSEN was an individual residing in Elk Grove, in Sacramento County, in the State and Eastern District of California. Defendant HELAMAN HANSEN claimed to hold a doctorate degree in Marketing and Business and referred to himself as "Dr. Hansen." Defendant HELAMAN HANSEN was also the founder of AHA and, at various times, held various positions at AHA, including Chief Executive Office ("CEO"), and most recently, Chairman of the Board of Directors of AHA, NHPI, and CIBO.

6. The United States Citizenship and Immigration Services ("USCIS.") was a government agency within the United States Department of Homeland Security that oversees lawful immigration to the United States.

7. An "alien" was any person who was not a citizen or a national of the United States.

8. United States immigration law imposed a numerical quota on the number of immigrant visas

that could be issued and/or the number of aliens who could otherwise be admitted into the United States for permanent residence status. However, aliens who were "immediate relative[s]" of United States citizens were exempt from these numerical limitations and could obtain immigrant visas by petitioning for immediate relative status. "Immediate relatives" included "children." The statutory definition of "child," for purposes of the relevant immigration law, included "a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years."

9. The process of adjusting the immigration status of an adopted child by a family member included the completion and filing with USCIS of a Form I-130, Petition for Alien Relative ("Form I-130"). A Form I-130 established the family relationship between a child and relative. Filing a Form I-130 did not allow an alien relative to work in the United States. While a Form I-130 petition was pending, the alien relative was required to wait outside the United States to immigrate legally. In general, a Form I-130 could only be filed on behalf of an adopted alien child when all of the following conditions were met: (i) the adoption was finalized before the child's sixteenth birthday; (ii) the child had lived with the adoptive parents for at least two years, either before or after adoption; and (iii) the child had been in the adoptive parent's legal custody for at least two years, either before or after adoption. The written instructions on the face of the Form I-130 stated that it was intended to be used only in connection with adoptions of persons under the age of sixteen, and not those who had been adopted as adults.

10. Two additional paths existed under United States law to adjust the immigration status of an adopted alien child by a family member. The first additional path related to the adoption of an orphaned foreign national living overseas, which required the filing with USCIS of a Form I-600 or Form I-600A. Generally, a Form I-600 was required to have been properly filed before the orphan's sixteenth birthday. The adoption could have occurred after the orphan's sixteenth birthday, but only if the Form I-600 was filed before that day. A Form I-600 could also have been filed after the orphan's sixteenth birthday, but before the orphan's eighteenth birthday, but only if the orphan was the birth sibling of another foreign national child who had immigrated or would immigrate based on adoption by the same adoptive parents.

11. The second additional path under United States law to adjust the immigration status of an adopted child by a family member involved an adoption under the Hague Convention, which required the filing with USCIS of a Form I-800 or Form I-800A. If a child was adopted through the Hague Convention adoption program, a Form I-800 was required to have been properly filed before the child's sixteenth birthday. Unlike the orphan program, there was no sibling exception in adoptions under the Hague Convention.

II. SCHEME TO DEFRAUD

12. Beginning in or about October 2012, and continuing through September 2, 2016, in the State and Eastern District of California and elsewhere, defendant HELAMAN HANSEN knowingly devised, intended to devise, and participated in a material

scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses, representations, promises, and the concealment of material facts.

13. The purpose of the scheme and artifice was to obtain payment from the marketing, sale, and maintenance of "memberships" to victims of his fraudulent "Migration Program," an elaborate adult-adoption program that was based on the false promise that adult illegal aliens residing in the United States could achieve United States citizenship after being legally adopted by an American citizen and completing a list of additional tasks.

III. WAYS AND MEANS

In furtherance of the scheme and artifice to defraud, defendant HELAMAN HANSEN employed, among others, the ways and means described below.

14. To obtain money from victims in the form of membership fees and investments, defendant HELAMAN HANSEN and others acting at his direction made false representations to victims and others that AHA's Migration Program could lead to United States citizenship; that adult adoption was a path to United States citizenship; that the Migration Program was lawful; that the Migration Program had the support or authorization of the United States government or various legal experts and authorities; that similar services were offered by licensed attorneys but at greater cost; and that AHA and its affiliates had successfully used the Migration Program to obtain citizenship for other illegal aliens. The defendant and others acting at his direction also offered false justifications and explanations regarding immigration law and AHA's Migration Program to

recruit victims and to keep victims enrolled in the Migration Program.

15. Beginning in or about October 2012, and continuing through September 2, 2016, defendant HELAMAN HANSEN and others acting at his direction marketed, sold, and maintained memberships to victims of AHA's fraudulent Migration Program, an elaborate adult-adoption program that was based on the false promise that adult illegal aliens living in the United States could achieve United States citizenship after being legally adopted by an American citizen and completing a list of additional tasks.

16. Defendant HELAMAN HANSEN and others acting at his direction falsely represented to victims that membership in AHA's fraudulent Migration Program and completion of its various requirements would result in legal United States citizenship for adult illegal aliens living in the United States. Early in the scheme, the defendant and others acting at his direction sold memberships to victims for fees of approximately $150. Over time, as defendant HELAMAN HANSEN and others acting at his direction lured an increasing number of victims to the scheme, that fee grew to $450, then $600, then $5,000, then $7,500, and eventually as high as $10,000.

17. To induce victims to purchase memberships in AHA's fraudulent Migration Program, defendant HELAMAN HANSEN and others acting at his direction falsely promised victims that they would achieve United States citizenship within one year after being legally adopted by an American citizen. As the scheme progressed, the defendant and others acting at his direction revised their false promises to

victims and assured them that they would achieve United States citizenship within two years after being legally adopted by an American citizen.

18. Defendant HELAMAN HANSEN and others acting at his direction marketed AHA's fraudulent Migration Program to victims through AHA and its subsidiaries - NHPI, CIBO, and FHF - all of which were engaged in substantially the same activity. Defendant HELAMAN HANSEN and others acting at his direction operated their scheme from shared office spaces in Sacramento, which housed AHA, NHPI, and CIBO. The defendant and others acting at his direction maintained and controlled bank accounts associated with AHA and its subsidiaries and deposited proceeds of their fraud scheme into those accounts and elsewhere.

19. Defendant HELAMAN HANSEN and others acting at his direction hired recruiting agents to work for AHA and its subsidiaries. The duty of those recruiting agents was to find illegal aliens living in California and elsewhere to solicit to join AHA's fraudulent Migration Program. Those recruiting agents eventually received a commission of approximately $1,500 for each victim they persuaded to purchase a membership in AHA's fraudulent Migration Program. Defendant HELAMAN HANSEN and others acting at his direction also offered those recruiting agents the opportunity to adopt victims of the scheme.

20. Victims of AHA's fraudulent Migration Program paid their membership fees in a variety of ways. Some victims delivered cash or checks to defendant HELAMAN HANSEN or others acting at his direction. Other victims mailed checks to AHA or

caused cash or checks to be deposited into accounts controlled by the defendant or others acting at his direction. Other victims completed wire transfers of funds from their accounts to accounts controlled by the defendant or others acting at his direction.

21. After a victim of AHA's fraudulent Migration Program paid the membership fee, defendant HELAMAN HANSEN and others acting at his direction worked with the victim to complete an AHA membership application. In some instances, victims would mail their completed membership applications to AHA. Once a victim's membership application was processed, the defendant or others acting at his direction worked with the victim to complete an adoption petition seeking a court order resulting in legal adoption of the victim by an American citizen.

22. The defendant and others acting at his direction instructed victims to identify and recruit individuals to adopt the victims. However, if a victim was unable to find an individual willing to legally adopt the victim, the defendant or others acting at his direction would locate an individual willing to adopt the victim. In some instances, the defendant or another acting at his direction adopted the victim.

23. Defendant HELAMAN HANSEN and others acting at his direction would include false information in victim adoption petitions. For example, if a victim of AHA's fraudulent Migration Program was not a resident of California or the country in which an adoption petition was to be filed, the defendant and others acting at his direction would include a false address in that victim's adoption petition so that the petition could be considered by the

court in which it was filed. On at least one occasion, defendant HELAMAN HANSEN fired an AHA employee who refused his instruction to include false information in victim adoption petitions.

24. Defendant HELAMAN HANSEN and others acting at his direction caused AHA-facilitated adoption petitions to be filed in courts in Sacramento County, Alameda County, Marin County, and Los Angeles County, among others. The defendant and others acting at his direction also attended court proceedings for AHA-facilitated adult adoption proceedings and instructed victims how to respond to potential questions from the judge or others about the purpose of the adoption or other matters. After judicial proceedings in an AHA-facilitated adult adoption were completed, the court delivered by mail a copy of a final adoption order to the adoptive parent named in the petition. Thereafter, the adoptive parent usually mailed a copy of the final adoption order to the victim, who provided a copy to AHA as instructed.

25. After a victim successfully completed the adult-adoption stage of AHA's fraudulent Migration Program, defendant HELAMAN HANSEN and others acting at his direction required the victim to complete a list of additional tasks, including obtaining several official and unofficial documents supporting the victim's "new identity profile." Those documents included, among others, an adoption order, a delayed registration of birth certificate, an individual tax identification number ("I-TIN"), a driver's license, a vehicle registration, a library card, a bank account number, proof of health and life insurance, identification cards from employers or educational institutions, and membership cards to civic organizations, big-box retail stores, and other clubs.

26. Among the key documents required to advance through AHA's fraudulent Migration Program were a delayed registration of birth certificate and an I-TIN, which the rules of AHA's fraudulent Migration Program requires victims to request and which were delivered to victims by mail from the California Department of Public Health and the Internal Revenue Service ("IRS"), respectively. In some instances, the IRS rejected a victim's application for an I-TIN and, instead, delivered by mail to that victim a temporary I-TIN.

27. Defendant HELAMAN HANSEN and others acting at his direction relied on the appearance of legitimacy to successfully operate their fraud scheme and lull their victims into suppressing doubts about AHA's fraudulent Migration Program and rejecting advice from skeptical friends or family. Defendant HELAMAN HANSEN and others acting at his direction also relied on the requirements imposed on victims of AHA's fraudulent Migration Program to extend the period of time necessary for victims to complete AHA's fraudulent Migration Program, which resulted in payments of additional membership fees from victims who could not complete the program within one year and assisted AHA in delaying detection of the fraudulent scheme.

28. Defendant HELAMAN HANSEN and others acting at his direction also urged victims of AHA's fraudulent Migration Program to "invest" in AHA, and offered victims the opportunity to purchase up to 10,000 "shares" of AHA "stock" for $1 per share. The defendant and others acting at his direction promised victims of AHA's fraudulent Migration Program, who became adoptees, that AHA would convert a portion of the victims' membership fees into

AHA shares at a price of $.20 per share. The defendant and others acting at his direction promised victims who bought AHA stock that the purported investment would mature and yield dividends after three years of payments.

29. After a victim remitted payments to defendant HELAMAN HANSEN, completed the adult-adoption stage of AHA's fraudulent Migration Program, and obtained at least the key required official and unofficial documents, defendant HELAMAN HANSEN, in a small number of instances, caused to be prepared and submitted to USCIS a Form I-130 Petition for Alien Relative to adjust the victim's immigration status.

30. In or about June 2012, defendant HELAMAN HANSEN caused a Form I-130 petition to be submitted to USCIS for Victim 1. USCIS denied that Form I-130 petition in or about October 2012 for failure to comply with procedural requirements and because the proposed adoptive parent was deceased. In denying the Form I-130 petition filed on behalf of Victim 1, USCIS also attached a document that explained that an adult adoption could not result in citizenship because the Form I-130 Petition for Alien Relative process was limited to alien children adopted before their sixteenth birthdays.

31. Although defendant HELAMAN HANSEN had been informed by USCIS as early as October 2012 that alien children adopted after their sixteenth birthdays could not obtain citizenship through the Form I-130 Petition for Alien Relative process, defendant and others acting at his direction omitted that information from their communications with victims. Instead, they continued to advertise AHA's

fraudulent Migration Program, solicited victims with false promises that the program would result in United States citizenship, and accepted payment from victims who relied on those false promises. Moreover, although defendant HELAMAN HANSEN knew that AHA's fraudulent Migration Program had never resulted in United States citizenship for any victim of his scheme, and could not result in United States citizenship for them, he falsely told victims the opposite to induce them to participate in AHA's fraudulent Migration Program.

32. Defendant HELAMAN HANSEN and others acting at his direction falsely assured victims who were skeptical of the legitimacy of AHA's fraudulent Migration Program that many past members had become United States citizens as a result of participating in the program. However, when skeptical victims or others asked for proof, the defendant and others acting at his direction told those skeptical victims that privacy laws prevented AHA from disclosing the identities of successful participants in the program. In truth and in fact, defendant HELAMAN HANSEN knew that no past member of AHA's fraudulent Migration Program had become a United States citizen through participation in the program.

33. During "training" sessions with recruiting agents hired by AHA and its subsidiaries, defendant HELAMAN HANSEN and others acting at his direction instructed those recruiting agents to tell potential victims that others had become United States citizens by participating in AHA's fraudulent Migration Program, but that privacy laws prevented disclosure of their identities.

34. Defendant HELAMAN HANSEN and others acting at his direction advertised the AHA's fraudulent Migration Program widely. In addition to word-of-mouth and print advertisement, presentations to church congregations, and official websites for AHA, and its subsidiaries, defendant HELAMAN HANSEN also caused to be uploaded to publicly accessible websites on the Internet, including YouTube, the video-upload website, dozens of videos of varying lengths marketing AHA's fraudulent Migration Program to potential victims. The defendant and others acting at his direction also advertised AHA's fraudulent Migration Program through social media websites like Facebook, on pages associated with AHA and the individual identities of the defendant and certain others acting at his direction.

35. Videos uploaded to the several YouTube channels controlled by defendant HELAMAN HANSEN included a series uploaded in or about June 2015 and titled: "US Citizenship Through Adult Adoption [parts 1 through 4]." In those videos, the defendant discussed the AHA's fraudulent Migration Program. In the fourth video in that series, the defendant stated that the "law" permitting AHA's fraudulent Migration Program is not an American law. Rather, the defendant falsely stated that AHA's fraudulent Migration Program is permitted under a United Nations law that provides that a person adopted in a court of a particular country receives the same citizenship rights as if that person was born in that country. The defendant also falsely stated that through AHA's fraudulent Migration Program, AHA customers "inherit the citizenship rights" of the adopting parents. The defendant stated that the

program can take up to two years because of government delay, but that AHA works to accomplish its efforts within twelve months.

36. In addition to serving as advertisement for AHA's fraudulent Migration Program, defendant HELAMAN HANSEN's false statements in videos advertising AHA's fraudulent Migration Program were intended to lull potential victims into suppressing their doubts about the legitimacy of AHA's fraudulent Migration Program and to lull them to reject the advice of skeptical friends or family. Those false statements were also intended to lull existing but skeptical or disappointed AHA customers into refraining from reporting their suspicions about AHA's fraudulent Migration Program to law enforcement authorities.

37. To conceal their scheme and avoid detection by their victims and others, Defendant HELAMAN HANSEN and others acting at his direction were evasive about the technical details and purported legal foundation of AHA's fraudulent Migration Program. Defendant HELAMAN HANSEN often told those skeptical of the legitimacy of AHA's fraudulent Migration Program that he had met with a retired United States Supreme Court Justice who had written a law permitting AHA's fraudulent Migration Program and who taught the defendant how to implement that law. In other instances, the defendant told skeptics that AHA's fraudulent Migration Program was authorized under a United Nations law that superseded United States law.

38. It was further part of the scheme that defendant HELAMAN HANSEN made efforts to discourage victims and witnesses from assisting law

enforcement agents in the investigation of AHA's fraudulent Migration Program.

39. Between in or about October 2012 and September 2016, defendant HELAMAN HANSEN and others acting at his direction induced approximately 500 victims to join AHA's fraudulent Migration Program. As a result, victims of AHA's fraudulent Migration Program paid approximately $1,000,000 to the defendant and others acting at his direction to obtain legal United States citizenship through a process that defendant HELAMAN HANSEN knew could not result in legal United States citizenship.

IV. MAILINGS

40. On or about the dates set forth below, in the Eastern District of California and elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud, and attempting to do so, defendant HELAMAN HANSEN knowingly caused to be delivered by the United States Postal Service and by any private or commercial interstate carrier, according to the direction thereon, the items more specifically set forth below:

Count	Approximate Date	From	To	Mail Item
1	July 7, 2014	CA Department of Public Health	Adoptive Parent of Victim 2	Delayed Registration of Birth Certificate
2	July 10, 2014	CA Department of Public Health	Adoptive Parent of Victim 3	Delayed Registration of Birth Certificate
3	September 2, 2014	CA Department	Adoptive Parent of	Delayed Registration

		of Public Health	Victim 4	of Birth Certificate
4	September 3, 2014	Victim 5	Native Hawaiian Pacific Islanders	Membership Program Membership Application
5	December 19, 2014	CA Department of Public Health	Adoptive Parent of Victim 6	Delayed Registration of Birth Certificate
6	Aril 22, 2015	AHA	Victim 7	Delayed Registration of Birth Certificate
7	May 19, 2015	IRS	Victim 8	I-TIN
8	June 22, 2015	IRS	Victim 2	I-TIN
9	July 7, 2015	CA Department of Public Health	Adoptive Parent of Victim 9	Delayed Registration of Birth Certificate
10	July 10, 2015	IRS	Victim 10	I-TIN
11	July 21, 2015	IRS	Victim 11	I-TIN
12	December 3, 2015	IRS	Victim 12	I-TIN
13	August 4, 2016	CA Department of Public Health	Victim 13	Delayed Registration of Birth Certificate

In violation of Title 18, United States Code, Sections 2 and 1341.

COUNTS FOURTEEN THROUGH SIXTEEN: [18 U.S.C. § 1343 – Wire Fraud]

The Grand Jury charges:

HELAMAN HANSEN,

defendant herein, as follows:

I. THE SCHEME TO DEFRAUD

1. Beginning in or about October 2012, and continuing through September 2, 2016, in the State and Eastern District of California and elsewhere, defendant HELAMAN HANSEN knowingly devised, intended to devise, and participated in a material scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses, representations, promises, and the concealment of material facts.

2. The purpose of the scheme and artifice was to obtain payment from the marketing, sale, and maintenance of "memberships" to victims of his fraudulent "Migration Program," an elaborate adult-adoption program that was based on the false promise that adult illegal aliens residing in the United States could achieve United States citizenship after being legally adopted by an American citizen and completing a list of additional tasks.

II. MANNER AND MEANS

3. The allegations in Paragraphs 1 through 11 and Paragraphs 14 through 39 of Counts One through Thirteen are re-alleged and incorporated herein by reference as if set forth in their entirety.

III. USE OF INTERSTATE WIRES

4. On or about the dates set forth below, in Eastern District of California and elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud, and attempting to do so, defendant HELAMAN HANSEN did knowingly transmit and cause to be transmitted by means of wire

communication in interstate and foreign commerce, certain writings, signs, signals and sounds, specifically:

Count	Date	Description of Wire
14	June 3, 2013	Electronic transfer, via Fedwire, of approximately $1,100 from a Bank of America account, on behalf of Victim 14, to a Chase Bank account controlled by Americans Helping America.
15	September 3, 2014	Email from Victim 5 delivering proof of payment for membership in Migration Program, sent form Bremerton, WA, to Native Hawaiians Pacific Islanders, in Sacramento, CA.
16	June 4, 2015	Electronic transfer, via Fedwire, of approximately $3,500 from a Bank of America account, on behalf of Victim 15, to a Chase Bank account controlled by Americans Helping

		America.

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

COUNT SEVENTEEN: [8 U.S.C. § 1324(a)(1)(A)(iv) & B(i) – Encouraging and Inducing Illegal Immigration for Private Financial Gain]

The Grand Jury charges:

HELAMAN HANSEN,

defendant herein, between on or about January 19, 2014, and July 18, 2014, in the State and Eastern District of California, for the purpose of private financial gain, did encourage and induce an alien, to wit Victim 3, to reside in the United States after that alien's lawful visa expired, knowing and in reckless disregard of the fact that such residence in the United States was and would be a violation of law, in violation of Title 8, United States Code, Sections 2 and 1324(a)(1)(A)(iv) & (B)(i).

COUNT EIGHTEEN: [8 U.S.C. § 1324(a)(1)(A)(iv) & B(i) – Encouraging and Inducing Illegal Immigration for Private Financial Gain]

The Grand Jury charges:

HELAMAN HANSEN,

defendant herein, between on or about August 10, 2014, and February 9, 2015, in the State and Eastern District of California, for the purpose of private financial gain, did encourage and induce an alien, to wit Victim 6, to reside in the United States after that alien's lawful visa expired, knowing and in reckless disregard of the fact that such residence in the United States was and would be in violation of law, in

violation of Title 8, United States Code, Sections 2 and 1324(a)(1)(A)(iv) & (B)(i).

FORFEITURE ALLEGATION: [8 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture]

1. Upon conviction of one or more of the offenses alleged in Counts One through Sixteen of this Superseding Indictment, defendant HELAMAN HANSEN shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, which constitutes or is derived from proceeds traceable to such violations, including but not limited to a sum of money equal to the amount of proceeds traceable to such offenses, for which defendant is convicted.

2. If any property subject to forfeiture, as a result of the offenses alleged in Counts One through Sixteen of this Superseding Indictment, for which defendant is convicted:

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

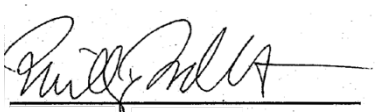
e. has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 28 U.S.C. § 2461(c), incorporating 21 U.S.C.

§ 853(p), to seek forfeiture of any other property of said defendant, up to the value of the property subject to forfeiture.

A TRUE BILL.

_____

FOREPERSON



PHILLIP A. TALBERT
United States Attorney

No. _ _ _ _ _ _

IN THE UNITED STATES DISTRICT COURT

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

HELAMAN HANSEN

S U P E R S E D I N G I N D I C T M E N T

VIOLATION(S): 18 U.S.C. § 1341– Mail Fraud (Thirteen Counts); 18 U.S.C. § 1343 – Wire Fraud (Three Counts); 8 U.S.C. § 1324(a)(l)(A)(iv) & (B)(i) – Encouraging and Inducing Illegal Immigration for Private Financial Gain (Two Counts); 18 U.S.C. § 98l(a)(l)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

A true bill,

/s/ Signature on file w/AUSA

_ _

Foreman.

Filed in open court this 2 day of March, *A.D. 2017*

_ _

Clerk.

Bail, $ _ _ _ _ _ _ _ _ _

NO PROCESS NECESSARY

_ _

GPO 863 525

United States v. HELAMAN HANSEN
Penalties for Superseding Indictment
2:16-CR-00024-MCE

Defendants
HELAMAN HANSEN

COUNTS 1–13:	**ALL DEFENDANTS**
VIOLATION:	18 U.S.C. § 1341 – Mail Fraud
PENALTIES:	Maximum of 20 years in prison; or Fine of up to $250,000; or both fine and imprisonment Supervised release of not more than 3
SPECIAL ASSESSMENT:	$100 (mandatory on each count)

COUNTS 14–16:	**ALL DEFENDANTS**
VIOLATION:	18 U.S.C. § 1343 – Wire Fraud
PENALTIES:	Maximum of 20 years in prison; or Fine of up to $250,000; or both fine and imprisonment Supervised release of not more than 3
SPECIAL ASSESSMENT:	$100 (mandatory on each count)

COUNTS 17–18:	**ALL DEFENDANTS**
VIOLATION:	18 U.S.C. § 1324 (a)(1)(A)(iv) & (B)(i) – Encouraging and Inducing Illegal Immigration for Private Financial Gain
PENALTIES	Maximum of 10 years in prison;

	or Fine of up to $250,000; or both fine and imprisonment Supervised release of not more than 3
SPECIAL ASSESSMENT	$100 (mandatory on each count)

FORFEITURE ALLEGATION:	**ALL DEFENDANTS**
VIOLATION:	981(a)(1)(C) and 28 U.S.C. § 2461 – Criminal Forfeiture
PENALTIES:	As stated in the charging document