

No. 14-10499

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

SUSAN XIAO-PING SU,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

(D.C. No. CR 11-0288-JST)

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APPELLANT'S EXCERPTS OF RECORD

VOLUME I

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SUSAN XIAO-PING SU

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
SUSAN SU,  
Defendant.

Case No: CR 11-00288 SBA

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS**

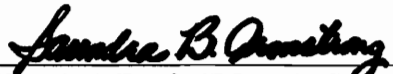
Dkt. 18

Defendant has filed a motion to dismiss Counts 1 through 12 of the Indictment. Dkt. 18. However, Defendant's motion is now moot in light of the Superseding Indictment filed by the Government on November 10, 2011. Dkt. 21. Accordingly,

IT IS HEREBY ORDERED THAT Defendant's motion to dismiss is DENIED AS MOOT.

IT IS SO ORDERED.

Dated: December 8, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE JON S. TIGAR

UNITED STATES OF AMERICA, )  
 ) Volume 13  
Plaintiff, ) Pages 1916 - 1938  
 )  
VS. ) NO. 11-00288 JST  
 )  
SUSAN XIAO-PING SU, )  
 ) San Francisco, California  
Defendant. ) Monday, March 24, 2014  
 ) 11:40 a.m.

**TRANSCRIPT OF COURT PROCEEDINGS**

**APPEARANCES:**

**For Plaintiff:** MELINDA HAAG  
UNITED STATES ATTORNEY  
1301 Clay Street, Suite 340S  
Oakland, California 94612  
**BY: HARTLEY M.K. WEST, ESQ.**  
**WADE M. RHYNE, ESQ.**  
**ASSISTANT UNITED STATES ATTORNEYS**

**For Defendant:** Law Offices of Erik G. Babcock  
717 Washington Street, Second Floor  
Oakland, California 94607  
**BY: ERIK G. BABCOCK, ESQ.**  
**ATTORNEY AT LAW**

Reported By: James C. Pence, RMR, CRR, CSR No. 13059  
Official Court Reporter - U.S. District Court  
Computerized Transcription By Case CATalyst

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I N D E X

Monday, March 24, 2014 - Volume 13

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Verdict	1918	13

## VERDICT

1 Monday, March 24, 2014

11:40 a.m.

2 ----000----

3 (Proceedings heard in the presence of the jury:)

4 THE COURT: Good morning. It's still morning barely.  
5 All the jurors are in their newly assigned seats because our  
6 alternates have been excused. So we shuffled people around a  
7 little bit. The lawyers and the defendant are at counsel  
8 table.

9 Would the foreperson of this jury please identify himself.

10 Good morning, Mr. Sockolov. I have received a note from  
11 the jury that the jury has reached a unanimous verdict; is that  
12 true?

13 JUROR NO. 5: Yes. Yes, your Honor.

14 THE COURT: Would you please hand the verdict form to  
15 my courtroom deputy, please.

16 Mr. Noble, will you now read the verdict in open court?

17 THE CLERK: Yes, your Honor.

18 Ladies and gentlemen of the jury, listen to your verdict as  
19 it will stand recorded.

20 United States District Court, Northern District of  
21 California, United States of America, Plaintiff, versus Susan  
22 Xiao-Ping Su, Defendant, Case No. CR 11-00288 JST. Verdict  
23 Form.

24 Count 1. We, the jury, find defendant Susan Xiao-Ping Su  
25 in the above-entitled case guilty of wire fraud as charged in

1 Count 1 relating to an electronic submission of a Form I-17 on  
2 or about September 15th, 2008.

3 Count 2. We, the jury, find defendant Susan Xiao-Ping Su  
4 in the above-entitled case guilty of wire fraud as charged in  
5 Count 2 relating to an e-mail from defendant regarding  
6 recruiting Indian students on or about February 21st, 2009.

7 Count 3. We, the jury, find defendant Susan Xiao-Ping Su  
8 in the above-entitled case guilty of wire fraud as charged in  
9 Count 3 relating to a Student and Exchange Visitor Information  
10 System, SEVIS, entry for B.C. on or about January 10th, 2010.

11 Count 4. We, the jury, find defendant Susan Xiao-Ping Su  
12 in the above-entitled case guilty of wire fraud as charged in  
13 Count 4 relating to a SEVIS entry for K.C. on or about  
14 January 27th, 2010.

15 Count 5. We, the jury, find defendant Susan Xiao-Ping Su  
16 in the above-entitled case guilty of wire fraud as charged in  
17 Count 5 relating to a SEVIS entry for S.A. on or about  
18 July 27th, 2010.

19 Count 6. We, the jury, find defendant Susan Xiao-Ping Su  
20 in the above-entitled case guilty of wire fraud as charged in  
21 Count 6 relating to a SEVIS entry for K.D. on or about  
22 July 27th, 2010.

23 Count 7. We, the jury, find defendant Susan Xiao-Ping Su  
24 in the above-entitled case guilty of wire fraud as charged in  
25 Count 7 relating to a SEVIS entry for M.R. on or about

## VERDICT

1 August 31st, 2010.

2 Count 8. We, the jury, find defendant Susan Xiao-Ping Su  
3 in the above-entitled case guilty of wire fraud as charged in  
4 Count 8 relating to a SEVIS entry for R.B. on or about  
5 September 7th, 2010.

6 Count 9. We, the jury, find defendant Susan Xiao-Ping Su  
7 in the above-entitled case guilty of wire fraud as charged in  
8 Count 9 relating to an e-mail from defendant containing a Form  
9 I-20, transcript, and a letter of good standing for S.A. on or  
10 about September 20th, 2010.

11 Count 10. We, the jury, find defendant Susan Xiao-Ping Su  
12 in the above-entitled case guilty of wire fraud as charged in  
13 Count 10 relating to an e-mail from defendant containing a Form  
14 I-20, transcript, and a letter of good standing for K.D. on or  
15 about September 24th, 2010.

16 Count 11. We, the jury, find defendant Susan Xiao-Ping Su  
17 in the above-entitled case guilty of wire fraud as charged in  
18 Count 11 relating to an e-mail from defendant containing a Form  
19 I-20, transcript, and letter of good standing for M.R. on or  
20 about January 7th, 2011.

21 Count 12. We, the jury, find defendant Susan Xiao-Ping Su  
22 in the above-entitled case guilty of wire fraud as charged in  
23 Count 12 relating to an e-mail from defendant containing a Form  
24 I-20, transcript, and letter of good standing for R.B. on or  
25 about January 7th, 2011.



1           Count 13. We, the jury, find defendant Susan Xiao-Ping Su  
2           in the above-entitled case guilty of mail fraud as charged in  
3           Count 13 relating to a Form I-17 and accompanying documents,  
4           including a DSO verification letter from defendant to the  
5           Student and Exchange Visitor Program, SEVP, on or about  
6           December 23rd, 2008.

7           Count 14. We, the jury, find defendant Susan Xiao-Ping Su  
8           in the above-entitled case guilty of mail fraud as charged in  
9           Count 14 relating to three articulation agreements sent from  
10          defendant to SEVP on or about February 10th, 2009.

11          Count 15. We, the jury, find defendant Susan Xiao-Ping Su  
12          in the above-entitled case guilty of conspiracy to commit visa  
13          fraud as charged in Count 15.

14          Count 16. We, the jury, find defendant Susan Xiao-Ping Su  
15          in the above-entitled case guilty of visa fraud as charged in  
16          Count 16 relating to S.A. on or about July 27th, 2010.

17          16a. We, the jury, unanimously find that defendant Susan  
18          Xiao-Ping Su forged or falsely made the Form I-20; knowingly  
19          used, attempted to use, possessed, obtained, or received the  
20          Form I-20.

21          Count 17. We, the jury, find defendant Susan Xiao-Ping Su  
22          in the above-entitled case guilty of visa fraud as charged in  
23          Count 17 relating to K.D. on or about July 27th, 2010.

24          17a. We, the jury, unanimously find that defendant Susan  
25          Xiao-Ping Su forged or falsely made the Form I-20; knowingly

1 used, attempted to use, possessed, obtained, or received the  
2 Form I-20.

3 Count 18. We, the jury, find defendant Susan Xiao-Ping Su  
4 in the above-entitled case guilty of visa fraud as charged in  
5 Count 18 relating to M.R. on or about August 31st, 2010.

6 18a. We, the jury, unanimously find that defendant Susan  
7 Xiao-Ping Su forged or falsely made the Form I-20; knowingly  
8 used, attempted to use, possessed, obtained, or received the  
9 Form I-20.

10 Count 19. We, the jury, find defendant Susan Xiao-Ping Su  
11 in the above-entitled case guilty of visa fraud as charged in  
12 Count 19 relating to R.B. on or about September 7th, 2010.

13 19a. We, the jury, unanimously find that defendant Susan  
14 Xiao-Ping Su forged or falsely made the Form I-20; knowingly  
15 used, attempted to use, possessed, obtained, or received the  
16 Form I-20.

17 Count 20. We, the jury, find defendant Susan Xiao-Ping Su  
18 in the above-entitled case guilty of use of a false document as  
19 charged in Count 20 on or about September 24th, 2010.

20 Count 21. We, the jury, find defendant Susan Xiao-Ping Su  
21 in the above-entitled case guilty of false statement to a  
22 government agency as charged in Count 21 on or about  
23 January 7th, 2011.

24 Count 22. We, the jury, find defendant Susan Xiao-Ping Su  
25 in the above-entitled case guilty of alien-harboring as charged

1 in Count 22 relating to V.D.

2 22a. We, the jury, unanimously find that defendant Susan  
3 Xiao-Ping Su acted for the purpose of commercial advantage or  
4 private financial gain. Yes.

5 Count 24. We, the jury, find defendant Susan Xiao-Ping Su  
6 in the above-entitled case guilty of alien-harboring as charged  
7 in Count 24 relating to A.D.

8 24a. We, the jury, unanimously find that defendant Susan  
9 Xiao-Ping Su acted for the purpose of commercial advantage or  
10 private financial gain. Yes.

11 Count 25. We, the jury, find defendant -- defendant Susan  
12 Xiao-Ping Su in the above-entitled case guilty of unauthorized  
13 access of a government computer as charged in Count 25.

14 Count 26. We, the jury, find defendant Susan Xiao-Ping Su  
15 in the above-entitled case guilty of money-laundering as  
16 charged in Count 26 relating to a \$36,783.61 check used to  
17 purchase a 2009 Mercedes Benz on or about November 28th, 2009.

18 Count 27. We, the jury, find defendant Susan Xiao-Ping Su  
19 in the above-entitled case guilty of money-laundering as  
20 charged in Count 27 relating to a \$78,700 wire transfer to  
21 purchase 1087 Murrieta Boulevard, Number 133, in Livermore,  
22 California, on or about February 25th, 2010.

23 Count 29. We, the jury, find defendant Susan Xiao-Ping Su,  
24 in the above-entitled case guilty of money-laundering as  
25 charged in Count 29 relating to a \$160,986.87 cashier's check

1 used to purchase 405 Boulder Court, Suite 800, in Pleasanton,  
2 California, on or about April 9th, 2010.

3 Count 31. We, the jury, find defendant Susan Xiao-Ping Su  
4 in the above-entitled case guilty of money-laundering as  
5 charged in Count 31 relating a -- to a \$261,307.49 cashier's  
6 check used to purchase 405 Boulder Court, Suite 700, in  
7 Pleasanton, California, on or about July 8th, 2010.

8 Count 32. We, the jury, find defendant Susan Xiao-Ping Su  
9 in the above-entitled case guilty of money-laundering as  
10 charged in Count 32 relating to a \$700,000 cashier's check used  
11 to purchase 2890 Victoria Ridge Court in Pleasanton,  
12 California, on or about July 20th, 2010.

13 Count 34. We, the jury, find defendant Susan Xiao-Ping Su  
14 in the above-entitled case guilty of money-laundering as  
15 charged in Count 34 relating to a \$600,000 wire transfer to  
16 purchase 1371 Germano Way in Pleasanton, California, on or  
17 about December 15th, 2010.

18 Count 35. We, the jury, find defendant Susan Xiao-Ping Su  
19 in the above-entitled case guilty of money-laundering as  
20 charged in Count 35 relating to a \$1,200,000 wire transfer to  
21 purchase 1371 Germano Way in Pleasanton, California, on or  
22 about December 15th, 2010.

23 Dated March 24th, 2014. Signed, Steven Sockolov,  
24 Foreperson.

25 THE COURT: Thank you, Mr. Noble.

1 Does any party wish to have the jury polled?

2 MR. BABCOCK: Yes, please, your Honor.

3 THE COURT: Members of the jury, as I previously  
4 instructed you, either side can request that the jury in any  
5 jury case, civil or criminal, be polled, and the purpose for  
6 that is just to make sure that the verdict as read in open  
7 court is actually the jury's verdict.

8 We won't go through each of the counts as you just heard  
9 read in open court one by one, but we will ask each of you just  
10 to say whether or not the verdict that you just heard read in  
11 open court represents your personal verdict.

12 Mr. Noble?

13 THE CLERK: Yes, sir.

14 Juror No. 1, is this your true and correct verdict?

15 JUROR NO. 1: Yes.

16 THE CLERK: Juror No. 2, is this your true and  
17 correct verdict?

18 JUROR NO. 2: Yes.

19 THE CLERK: Juror No. 3, is this your true and  
20 correct verdict?

21 JUROR NO. 3: Yes.

22 THE CLERK: Juror No. 4, is this your true and  
23 correct verdict?

24 JUROR NO. 4: Yes.

25 THE CLERK: Juror No. 5, is this your true and

1 correct verdict?

2 JUROR NO. 5: Yes.

3 THE CLERK: Juror No. 6, is this your true and  
4 correct verdict?

5 JUROR NO. 6: Yes.

6 THE CLERK: Juror No. 7, is this your true and  
7 correct verdict?

8 JUROR NO. 7: Yes.

9 THE CLERK: Juror No. 8, is this your true and  
10 correct verdict?

11 JUROR NO. 8: Yes.

12 THE CLERK: Juror No. 9, is this your true and  
13 correct verdict?

14 JUROR NO. 9: Yes.

15 THE CLERK: Juror No. 10, is this your true and  
16 correct verdict?

17 JUROR NO. 10: Yes.

18 THE CLERK: Juror No. 11, is this your true and  
19 correct verdict?

20 JUROR NO. 11: Yes, it is.

21 THE CLERK: Juror No. 12, is this your true and  
22 correct verdict?

23 JUROR NO. 12: Yes.

24 THE CLERK: Your Honor, the verdict is unanimous.

25 THE COURT: Mr. Noble, I'll direct you to file and

1 record the verdict because the polling does verify the  
2 unanimity of the jury's verdict.

3 Well, this is the last time I get to talk to you. What you  
4 just did is an extraordinary thing, but it happens every day in  
5 the United States. Both of those things are true, and that is  
6 it can be commonplace in this incredible justice system that we  
7 have, and nonetheless every individual incident of it, I think,  
8 is tremendous.

9 You've just completed your jury service in this case  
10 effective with the polling that Mr. Noble just did, and I want  
11 to thank you again not only on my behalf but on behalf of all  
12 the judges of this court and on behalf of all the people of the  
13 United States, particularly the people in the Northern District  
14 of California.

15 I told you this once before, but I think it bears  
16 repeating. Generally, we hire people to make decisions that  
17 are important in the community. We hire Congressmen,  
18 Congresswomen, and we hire mayors and people on the zoning  
19 board and the President and federal judges and other people,  
20 and they make important decisions in our community, but the  
21 Founding Fathers reserved one category of decisions to be made  
22 directly by people in the community.

23 We don't hire somebody. We go in the community and we get  
24 you, and I think that the -- the results speak for themselves  
25 that juries in the United States have an unparalleled

1 reputation for fairness and conscientiousness and diligence,  
2 and so I really want to thank you because that's what you  
3 brought to this system, and this was not an easy case.

4 The trial was a little bit long, and I know that jury room  
5 right behind me is not very comfortable, and many of you came  
6 from very far away, and I'm sure that you made sacrifices to do  
7 this trial that I'll never know about because you didn't tell  
8 me what they were, but I know there were some, and so I thank  
9 you for that also.

10 Some of you may have questions about the confidentiality of  
11 these proceedings. Sometimes jurors ask, "Now can I talk about  
12 it?" And now that the case is over, I'm releasing you from my  
13 prior admonition. You can talk about this case with anybody  
14 that you'd like, but it has to be with anybody that you choose  
15 because you are under no obligation whatsoever to discuss this  
16 case with any person.

17 There was a very light amount of media attention to the  
18 case. We have a very robust press in this country, and the  
19 First Amendment is very important, and so it's possible -- I  
20 don't know how likely. It is possible members of the press may  
21 choose to try to contact you, but they're in the same shoes as  
22 anybody else, meaning that the decision whether to talk about  
23 the case with somebody is your decision, regardless of whether  
24 you're initiating the conversation or someone is initiating it  
25 with you.



1           If someone wants to discuss it with you -- and I don't know  
2 whether that will happen. If you want to, you can, but you can  
3 also just say, "No. Thank you" and end the conversation.

4 That's up to you.

5           If you do decide to discuss the case with anyone, I would  
6 suggest that you treat it with the degree of solemnity and that  
7 whatever you do decide to say, you should act as though you  
8 would be willing to say it in the presence of other jurors or  
9 under oath here in open court in the presence of all the  
10 parties.

11           We all need a certain measure of -- of lightness and humor  
12 to get through our day, but it will always be true that -- that  
13 the service that you just performed, that the task that you  
14 just did is a serious one, and you should -- you should treat  
15 it that way.

16           Also, please bear in mind if you do decide to discuss this  
17 case that when you were deliberating, you and the other jurors  
18 fully and freely stated your opinions with the understanding  
19 that they were being expressed in confidence. Confidence of  
20 the deliberation process is very important to our system. So  
21 please respect the privacy of the views of other jurors.

22           I thank you so much for your service. You've been a great  
23 group of jurors, and you're now excused.

24           THE CLERK: All rise.

25           ///

1 (Proceedings were heard outside the presence of the jury:)

2 THE COURT: Everyone can retake their seats.

3 I do want to pause the proceedings and just allow Mr. Noble  
4 to come into the courtroom so that he can make accurate notes  
5 of whatever further proceedings transpired, but we'll just wait  
6 a minute for that to happen.

7 All right. Mr. Noble has now reentered the courtroom. I  
8 would like to set a sentencing date in this case, and if it's  
9 available -- if it's available on counsel's calendar, perhaps  
10 in San Francisco on June the 27th in the afternoon, which is a  
11 Friday afternoon.

12 MR. RHYNE: That's fine with the Government, your  
13 Honor.

14 MR. BABCOCK: I'm sorry, your Honor. I'm going to be  
15 out of the country that whole week.

16 THE COURT: Okay.

17 MR. BABCOCK: I'm returning on Monday the week after  
18 that, I believe. I actually have a flight then, but I  
19 appreciate it's Monday.

20 THE COURT: Could counsel appear the prior week on  
21 the 20th in the afternoon in Oakland?

22 MR. RHYNE: That's fine with the Government, your  
23 Honor.

24 MR. BABCOCK: That should -- that should be fine,  
25 your Honor. I just hesitate because I don't see my flight

1 actually information in the calendar, but I'm virtually  
2 positive it's not until the weekend after that Friday. So the  
3 20th should be fine.

4 THE COURT: All right. Well, if it turns out there's  
5 a conflict, you can talk to the Government and request a  
6 continuance.

7 MR. BABCOCK: Sorry. What time -- what time?

8 THE COURT: For now, I'll set the sentencing on June  
9 the 20th, 2014, at 2:00 p.m. in the Oakland court. It's  
10 difficult for me to be more specific about the courtroom  
11 because they move me around over there. I don't have a  
12 permanent courtroom.

13 Ms. Su, I'm ordering you to be in the Oakland courthouse at  
14 2:00 p.m. on June 20th, 2014, for sentencing.

15 I'm going to refer this matter to the probation department  
16 for a written presentence report. Ms. Su, you can have your  
17 lawyer there if you'd like. They will interview you to obtain  
18 information for the presentence report, and it should be --  
19 well, I'll let your lawyer give you advice about how to respond  
20 to their questions.

21 MR. BABCOCK: I'll take care of that after I get the  
22 process started.

23 THE COURT: Now, I need to address the defendant's  
24 presentencing release status.

25 Mr. Babcock?

1           MR. BABCOCK: I'd ask the Court to let her stay out.  
2           You know, I didn't actually -- she originally had retained  
3           counsel. So I didn't do the original bail hearing, but -- the  
4           Government can correct me if I'm wrong, but she is a U.S.  
5           citizen, has been for more than 20 years, and I believe the  
6           clerk or pretrial or someone has her passport.

7           MR. RHYNE: I think that's right.

8           MR. BABCOCK: She was -- the specific conditions that  
9           she was required -- the main one that she had to do for a while  
10          was to see a therapist, which she did for the first year or  
11          longer after her original conditions were set, until the  
12          therapist eventually said that things seemed to be going okay,  
13          and the magistrate -- I believe you allowed her to stop going  
14          to court-ordered therapy.

15          Not unmindful of the fact that she's had what I would call  
16          some tardiness at trial but never a failure to appear -- as the  
17          Court notes, she's been here every day mostly on time but not  
18          always. So I really don't think she's going anywhere.

19          Her whole family is here, her mom, her sister, her  
20          children, her two daughters; that is, her whole life is in the  
21          Bay Area. And she's really actually without any financial  
22          resources any longer. The Government has seized every account  
23          that was associated with her, and -- which is why she needed  
24          court-appointed counsel.

25          I don't see her as a flight risk at this point.

1 MR. RHYNE: Your Honor, we are moving for remand  
2 pursuant to 3143(a), which states that the Court shall order  
3 the defendant detained unless there's a finding by clear and  
4 convincing evidence that the defendant is not a flight risk or  
5 a danger. We think that the procedural posture of the case has  
6 obviously changed a lot since Ms. Su -- or since Dr. Su was out  
7 on pretrial release.

8 As defense counsel noted, she had trouble throughout trial  
9 showing up on time and comporting herself with the expectations  
10 of the Court, but most importantly, the fact that she was  
11 reaching out and interfering with witnesses during the trial  
12 after being repeatedly warned by the Court not to do so raises  
13 serious concerns with the Government.

14 That's also coupled with Judge Ryu's initial concerns about  
15 Ms. -- about Dr. Su possibly harming herself at the beginning  
16 of this case. We think that --

17 THE COURT: Wasn't there evidence in this trial that  
18 she was committed at least once pursuant to California Welfare  
19 and Institutions Code Section 5150?

20 MR. RHYNE: There was one reference to that --

21 MR. BABCOCK: Yes.

22 MR. RHYNE: -- in Exhibit 850, and that was the claim  
23 that she filed against the Department of Homeland Security. I  
24 think that might be what the Court is referring to.

25 THE COURT: And that was during the investigatory --

1 that was in the phase following her arrest?

2 MR. BABCOCK: You know, actually, your Honor, if I  
3 might, she was 5150 once. To my knowledge, it was before --  
4 before Tri-Valley University was even started. I want to say  
5 in 2007. It was only for 48 hours. She basically had a  
6 nervous breakdown at the time, and I'm not aware of any  
7 subsequent commitments.

8 MR. RHYNE: I don't know for certain, your Honor.  
9 All I know is what was in Exhibit 850. So we would have to  
10 check on that in order to get an accurate answer for the Court.  
11 We know that Judge Ryu's concerns at the time were probably  
12 more present now given the procedural posture of the case.

13 And on that, we'd submit.

14 THE COURT: Mr. Babcock?

15 MR. BABCOCK: I don't think she's -- I -- I'm always  
16 a little leery speaking -- predicting psychiatric issues. I'm  
17 not a particular expert, but she's -- the Court can consider, I  
18 suppose -- and I wasn't there for the original hearing. So I  
19 don't know exactly what raised Judge Ryu's concerns, but I do  
20 know there were concerns, and she did order therapy, which  
21 Ms. -- Dr. Su went to for over a year.

22 So -- but I really don't think she's a flight risk. I --  
23 based on my personal interactions and observations, I have not  
24 seen any evidence that she's a danger to herself, but I'm not  
25 opposed to sending her to therapy just to alleviate any concern

1 in that regard.

2 MR. RHYNE: Your Honor, we renew our motion. We do  
3 believe she should be remanded.

4 THE COURT: I find the defendant has failed to meet  
5 her burden by clear and convincing evidence that she's not  
6 likely to flee or pose a danger to the safety of any other  
7 person or the community, and I will remand her into the custody  
8 of the United States Marshal pending sentencing.

9 Nobody would remand someone just for being tardy a couple  
10 of times, but I think that -- and that's not what's occurring  
11 here. Dr. Su has a demonstrated incapacity to comply with the  
12 Court's reasonable orders, and it is true that she was either  
13 unwilling or unable, and I think it might have been not able.  
14 She just couldn't stop herself from contacting other persons in  
15 the case.

16 She does have a history of mental health issues that give  
17 me actually at least as much concern about her safety as  
18 anybody else's, but now that she stands convicted of these many  
19 counts and is suddenly facing for the first time the  
20 possibility of the consequences of those convictions, I -- in  
21 light of her prior failures to comply with the Court's orders  
22 and her prior history of mental health issues, I don't think  
23 she can meet the clear and convincing burden that she has, and  
24 so I'll order her remanded.

25 Is there anything further that we need to discuss at this

1 point?

2 MR. BABCOCK: There are two things, I think, one  
3 having to do with our -- my Rule 29 motion and I guess the  
4 other having to do with the forfeiture end of the case. Both  
5 are just more, I think, scheduling and briefing matters.

6 MS. WEST: As to the forfeiture, the Government  
7 intends to file a preliminary order of forfeiture in the near  
8 future, and then if there are issues that are contested, then  
9 we can figure out if there needs to be a hearing.

10 THE COURT: All right. Does the defendant wish to  
11 brief her Rule 29 motion?

12 MR. BABCOCK: You know, I'd like to think about it  
13 and be given an opportunity if I might.

14 THE COURT: I can set this for status in a week. The  
15 Government will probably have a time frame for its forfeiture.  
16 You all can talk about that, and you can decide whether or not  
17 you want to file a brief.

18 MR. BABCOCK: What day are we talking about?

19 THE COURT: Either this Friday or the following one  
20 in the morning, both in San Francisco.

21 MR. BABCOCK: I'm sorry, your Honor. Those are both  
22 particularly complicated days for me.

23 THE COURT: What if we did --

24 MR. BABCOCK: When is the Court's San Francisco  
25 calendar?



1 THE COURT: The two days I just gave you.

2 MR. BABCOCK: Oh. It's Fridays.

3 THE COURT: We can specially set this thing. Just  
4 give me a minute.

5 MR. BABCOCK: Sorry. I had planned on originally  
6 estimating this trial going to April. So all my other things  
7 have been --

8 THE COURT: Yes.

9 MR. BABCOCK: -- stepped up on Fridays.

10 THE COURT: Well, we can do this a week from today in  
11 the afternoon. That would be the 31st.

12 MR. BABCOCK: Actually, I'm going to be out of the  
13 immediate Bay Area. I can do -- I don't mean to -- mean to be  
14 difficult, your Honor. I can make virtually any other --

15 THE COURT: Tuesday morning, April 1st?

16 MR. BABCOCK: Perfect.

17 THE COURT: Done.

18 The Court will set this matter for a status conference at  
19 9:30 a.m. on April 1st, 2014, in Courtroom 9.

20 MR. BABCOCK: Thank you.

21 THE COURT: Other matters?

22 MS. WEST: I don't believe so.

23 MR. RHYNE: No, your Honor.

24 MR. BABCOCK: I think that wraps it up.

25 THE COURT: Thank you.

1 Court's in recess.

2 MS. WEST: Oh. Your Honor --

3 THE COURT: Yes.

4 MS. WEST: -- I think we need something from the  
5 Marshal's Office to receive Dr. Su.

6 MR. BABCOCK: I can take her upstairs to the  
7 marshals.

8 THE COURT: They're -- we anticipated this  
9 eventuality. Marshal staff is in the room. If -- it may save  
10 the marshal staff -- is it possible for -- if Mr. Babcock wants  
11 to convey Ms. Su up through the front door, that you can  
12 accompany in that way?

13 All right. Thank you.

14 MR. RHYNE: Thank you, your Honor.

15 MS. WEST: Thank you.

16 THE CLERK: All rise.

17 Court is in recess.

18 (Proceedings adjourned at 12:17 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, James C. Pence, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 30th day of June, 2014.



JAMES C. PENCE, RMR, CRR, CSR NO. 13059  
FEDERAL OFFICIAL COURT REPORTER

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Pages 1 - 14

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 VS. ) NO. CR 11-00288 JST  
 )  
 SUSAN XIAO-PING SU, also known )  
 as Susan Su, )  
 )  
 Defendant. )  
 )

San Francisco, California  
Tuesday, April 1, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

MELINDA HAAG  
United States Attorney  
450 Golden Gate Avenue  
San Francisco, California 94102  
BY: HARTLEY M. K. WEST  
WADE M. RHYNE  
DAVID COUNTRYMAN  
ASSISTANT UNITED STATES ATTORNEYS

For Defendant:

LAW OFFICE OF ERIK G. BABCOCK  
717 Washington Street - 2nd Floor  
Oakland, California 94607  
BY: ERIK G. BABCOCK  
ATTORNEY AT LAW

Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
Official Reporter

1 Tuesday - April 1, 2014

9:35 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Calling Criminal Case 11-288,  
5 United States of America versus Sue Xiao-Ping Su.

6 Counsel, will you please make your appearances.

7 **MS. WEST:** Good morning, Your Honor. Hartley West and  
8 Wade Rhyne for the United States.

9 **THE COURT:** Good morning.

10 **MR. RHYNE:** Good morning, Your Honor.

11 **MR. BABCOCK:** Good morning, Your Honor. Erik Babcock  
12 for Ms. Su.

13 **THE COURT:** Good morning.

14 **MR. BABCOCK:** Dr. Su.

15 **THE COURT:** I have on my list to find out what the  
16 schedule of the forfeiture proceedings is. We had left it as  
17 an open question last time, whether the defendant wanted to  
18 brief her Rule 29 motion.

19 I'm going to ask the Government to pick up their exhibits  
20 and retain them so that the court is not put to the expense of  
21 shipping them to Oakland, which is the other alternative.

22 Then I want to find out what is on all of your lists.  
23 Let's start with the Government.

24 **MR. BABCOCK:** Actually, I'll actually probably hop in,  
25 Your Honor, because I think the Government's aware about it,

1 but there's an issue.

2 I received a voice mail last night, or yesterday  
3 afternoon, from Michael Cardoza, who's an attorney in the  
4 Walnut Creek area, saying that he'd been retained by Ms. Su's  
5 family to represent her.

6 **THE COURT:** Cardoza with an A?

7 **MR. BABCOCK:** Yes, I believe so.

8 **THE COURT:** All right.

9 **MR. BABCOCK:** I spoke with him briefly this morning on  
10 my way to court. He did say that he's been retained. I  
11 understand from my client that she's not met with him yet.

12 My suggestion would be -- I mean, certainly I think if she  
13 wants to seek new counsel, that's her right, and I don't want  
14 to stand in the way of that.

15 Mr. Cardoza was on his way to Hayward to start a  
16 time-not-waived jury trial in aggravated mayhem this morning,  
17 so he's pretty much out-of-pocket, it sounds like, for about  
18 the next two weeks.

19 His request to me to convey to the Court was to see if  
20 there's a way we could put this over to later in April to allow  
21 him to finish his trial and make arrangements to appear here.  
22 That's sort of the long and short of it.

23 **MS. WEST:** And I spoke with Mr. Cardoza yesterday, he  
24 gave me a call as well, conveyed the same information to me,  
25 asked that we set it out for at least two weeks as he expects

1 his trial will be approximately two weeks.

2 Mr. Rhyne and I are both unavailable the week of the 14th.  
3 So if the Court would be available the following week, it  
4 sounds like that would work for all parties; but we, I think,  
5 can still address some of the issues in terms of forfeiture for  
6 the Court today.

7 **THE COURT:** Okay. Well, let's take this very  
8 important issue of counsel first.

9 I am available the week of the 21st, and my preference  
10 would be to set the matter on Friday the 25th with my regular  
11 criminal calendar. I believe that will be here in  
12 San Francisco.

13 Mr. Noble; is that right?

14 **THE CLERK:** Yes, Your Honor.

15 **THE COURT:** To set the matter for hearing in  
16 San Francisco here at 9:30 in the morning.

17 Of course, Ms. Su has the right to counsel of her choice.  
18 If her family has retained new counsel, I'll preserve for the  
19 record. I thought Mr. Babcock did a marvelous job in this  
20 case. That's just one man's opinion.

21 **MR. BABCOCK:** I don't take these things personally one  
22 way or the other, Your Honor. It comes with the territory.

23 **THE COURT:** Understood.

24 **MR. BABCOCK:** I am not available the 25th. As long  
25 as -- Mr. Cardoza said either if the -- I told him that you

1 were on Fridays, and that might be your preference. He said  
2 any of the later Fridays in April would work.

3 **THE COURT:** My question for the parties would be is:  
4 If he's beginning the trial in Hayward today, two weeks from  
5 this Friday would have him in trial almost three weeks. So if  
6 the parties were available on Friday the 18th in Oakland, we  
7 could do that also.

8 **MR. BABCOCK:** I'm not available that week, but --

9 **THE COURT:** You're not available that week?

10 **MR. BABCOCK:** Right.

11 **THE COURT:** I see.

12 **MR. BABCOCK:** I think all of us --

13 **MS. WEST:** Neither are Mr. Rhyne --

14 **THE COURT:** Okay. I'm not paying attention to the  
15 information you already gave me.

16 **MR. BABCOCK:** That's okay.

17 I think the 25th is --

18 **THE COURT:** Oh, you were about to say? I'm sorry?

19 **MR. BABCOCK:** What I started to say is I'm sure the  
20 25th works for Mr. Cardoza. It doesn't work for me, I don't  
21 think. I have a misdemeanor trial.

22 **THE COURT:** I'm not going to have a situation -- I  
23 think it's best for the Court to avoid a situation in which I  
24 release lawyer one but I haven't seen lawyer two. So my  
25 suggestion would be that we specially set this on Monday,



1 April 21st, if that is available for the parties, here in  
2 San Francisco just as we've specially set this morning's  
3 proceeding.

4 (Pause in proceedings.)

5 MR. BABCOCK: That's a complicated day, Your Honor. I  
6 have a trial set in --

7 THE COURT: Is April the 22nd simpler?

8 MR. BABCOCK: Much better. Thank you.

9 THE COURT: How about the morning of April 22nd at  
10 9:30?

11 MR. RHYNE: That will be fine.

12 THE COURT: Mr. Noble, are there other conflicts on  
13 that day that I'm not seeing?

14 (Court and clerk conferring.)

15 THE COURT: The Court will set this matter for hearing  
16 on April 22nd, 2014, in the San Francisco courthouse at  
17 9:30 a.m.

18 Ms. Su, you're ordered to be personally present on that  
19 date and at that time in this location.

20 Forfeiture.

21 MS. WEST: We invite David Countryman to present his  
22 expertise to the Court.

23 MR. COUNTRYMAN: Good morning, Your Honor.

24 THE COURT: Good morning, Mr. Countryman.

25 MR. COUNTRYMAN: The Government is going through the

1 assets that are to be seized and calculated for the money  
2 judgment it seeks to ask for. If the Court -- if it's amenable  
3 to the Court, we could have that ready in 30 days.

4 **THE COURT:** I don't have any idea what the customary  
5 schedule for these things is. It's my first time at this  
6 particular rodeo.

7 I never know whether it's a good idea for a brand new  
8 federal judge to admit the things he doesn't know, but I do it  
9 all the time.

10 If 30 days is how you like to do it, and if no one says  
11 there's any objection, that's fine with the Court.

12 Is there any objection?

13 **MR. BABCOCK:** No objection.

14 **THE COURT:** All right.

15 **THE DEFENDANT:** I ask for a jury trial on forfeiture.

16 **THE COURT:** I can hear from the defendant's table that  
17 Dr. Su is asking for a jury trial on the question of  
18 forfeiture.

19 **THE DEFENDANT:** Yes, I did, Your Honor.

20 **MR. COUNTRYMAN:** Your Honor, if I may respond to that.  
21 The defendant has the right to a jury trial, but that right  
22 must be exercised before the jury is impaneled because you have  
23 the right --

24 **THE COURT:** Yes. I believe the question of forfeiture  
25 was waived on the record with Dr. Su's consent.

1           **THE DEFENDANT:** I did not --

2           **THE COURT:** In this court, Dr. Su, you will not talk  
3 while I'm talking. Let me be very plain with you, very plain.

4           **THE DEFENDANT:** Yes, Your Honor.

5           **THE COURT:** I have done everything I can in this trial  
6 to accommodate the fact that trial must be very stressful for  
7 you. I know this morning's proceedings are very stressful for  
8 you, but I also need to enforce the rules of the courtroom.

9           One rule is that only one person can talk. When I'm  
10 talking, I'm that person. That's not just a rule of decorum;  
11 it's a rule of courtroom administration. It is impossible for  
12 the court reporter to take down more than one person at a time,  
13 and it's very important to have a clear record.

14           Also, as you and I have previously discussed, right now  
15 you're represented by counsel. If, in fact, Mr. Babcock is  
16 relieved as your attorney in this case because Mr. Cardoza  
17 comes in, you'll still be represented by counsel. Because  
18 you're represented by counsel, you speak to the Court through  
19 counsel.

20           I made a note on the record, in other words, I said on the  
21 record just a moment ago that you were asserting your right to  
22 a jury trial because, although I remember that you had waived  
23 your right already, I simply wanted to have a complete record.  
24 But that doesn't take away from two things that I just said:  
25 First, you need to address the Court through counsel; and,

1 secondly, only one person at a time can talk.

2 Do we need to set a hearing on the question of forfeiture?

3 When you say 30 days, what does that mean?

4 **MR. COUNTRYMAN:** Your Honor, the statute says that we  
5 should do it sufficiently in advance of sentencing to allow the  
6 parties to modify the order or correct errors if necessary.

7 **THE COURT:** Yes. And sentencing is set for June?

8 **MR. BABCOCK:** 20th.

9 **THE COURT:** June 20th. Thank you.

10 **MR. COUNTRYMAN:** So it's up to the Court how  
11 sufficiently in advance of sentencing it would like to have a  
12 preliminary order of forfeiture presented to it.

13 **THE COURT:** Well, when you say 30 days, that's the  
14 Government will file a brief of some kind?

15 **MR. COUNTRYMAN:** The Government will file an  
16 application for a preliminary order of forfeiture.

17 **THE COURT:** 30 days from today is May 1st, 2014.  
18 We're going to have new counsel come into the case just about  
19 nine days before that, I believe, or eight.

20 Well, what I'll do is set a tentative schedule now; and  
21 then if new Defense counsel does come in and they feel the  
22 schedule is unreasonable, they can move the Court for a  
23 continuance after discussing the matter with the  
24 U.S. Attorney's Office.

25 So anticipating that you will file something on the 1st,

1 Mr. Babcock, if you were still in the case at that time, what  
2 would you think is a reasonable amount of time to respond to  
3 that?

4 MR. BABCOCK: 30 days, Your Honor. I think primarily  
5 I would expect -- yeah, by the end of May would be plenty of  
6 time.

7 THE COURT: So if we have the Government's  
8 presentation on May 1st and the defendant has until May  
9 the 30th to respond, does the Government typically file a reply  
10 brief in these things?

11 MR. COUNTRYMAN: They don't happen often. The  
12 Government has in the past. In this case, the Government  
13 intends to rely a lot on --

14 THE COURT: I'm not looking for one.

15 MR. COUNTRYMAN: Only if novel issues are raised,  
16 Your Honor. We believe that the record deals with this issue  
17 adequately.

18 THE COURT: All right. Well, I'll set a hearing in  
19 the spirit of optimism that there won't be any novel issues.  
20 So why don't we put the matter on for a hearing on....

21 (Pause in proceedings.)

22 MR. COUNTRYMAN: If you'd like me to walk you through  
23 the procedure, I can, so you can figure out what time is  
24 necessary.

25 THE COURT: Sure. That will be helpful.

1           **MR. COUNTRYMAN:** The Government is supposed to enter  
2 a -- submit an application for preliminary order of forfeiture,  
3 which the Court then should rule on sufficiently in advance of  
4 sentencing to work out any of the kinks.

5           Defendant has the right to a hearing to submit additional  
6 evidence, but the Court can rely on evidence already in the  
7 record. It can rely on hearsay. It can -- you know, this is a  
8 part of sentencing so the rules of sentencing apply.

9           At that point, at sentencing the order becomes final as to  
10 the defendant; and then the Government will provide notice to  
11 the rest of the world through Internet publication and the  
12 mailing of notice to, let's say, mortgage holders on real  
13 property, that they can say that they have an interest in the  
14 property the Government is seeking to forfeit.

15           **THE COURT:** Yes.

16           **MR. COUNTRYMAN:** In this situation the Government is  
17 going to be seeking a money judgment for which no ancillary  
18 proceeding is necessary, because it's an *in personam* money  
19 judgment against the defendant, for approximately \$5.6 million.

20           It will also be seeking actual direct forfeiture of all of  
21 the property listed in the Indictment and the Bill of  
22 Particulars, and there may be third-party interests in that  
23 property.

24           So as to the money judgment, the Government feels that,  
25 you know, in large part, the testimony of Special Agent Mackey

1 dealt with that at length.

2 Also, as for money judgment -- or, I should say, as to  
3 money laundering counts, the Government is entitled to any  
4 property involved in the money laundering transaction, which  
5 would include the entirety of the real property.

6 So after the final order of forfeiture becomes final at  
7 sentencing, the Government will publish. If it is unable to  
8 work out the third-party interests, there can be an ancillary  
9 hearing. The Government doesn't anticipate that.

10 So once the third-party interests are resolved, the  
11 Government will issue an application for final order of  
12 forfeiture, which the Court can sign.

13 After the preliminary order of forfeiture, the defendant  
14 has no right to challenge that ancillary process because his  
15 rights are determined finally at the preliminary-order-of-  
16 forfeiture stage.

17 **THE COURT:** Is June 6th available on the parties'  
18 calendars? That would be in Oakland at 9:30.

19 **MR. COUNTRYMAN:** Yes, Your Honor.

20 **MR. BABCOCK:** That's fine.

21 **THE COURT:** Okay. So we'll set a hearing on the  
22 preliminary application -- application for preliminary order of  
23 forfeiture on June 6, 2014, at 9:30 a.m. in the Oakland  
24 courthouse.

25 **MR. BABCOCK:** Sorry. The clerk said the 22nd is here;

1 right?

2           **THE COURT:** Yes, that's true. Frankly, I'd rather set  
3 that hearing on the 13th, but I want to make sure I've left  
4 enough time before the sentencing. So that's what I have to  
5 say.

6   (Pause in proceedings.)

7           **THE COURT:** Thank you, Mr. Countryman.

8           **MR. COUNTRYMAN:** Thank you, Your Honor.

9           **THE COURT:** Mr. Babcock, Rule 29 motion. I understand  
10 that there's some issues maybe with your --

11           **MR. BABCOCK:** Well, my suggestion would be this: I  
12 was thinking about that. I would like to brief some of the  
13 issues; but rather than file it, I will either give it to  
14 Mr. Cardoza when he's available or bring it on the 22nd; and if  
15 he comes in, he can decide what to do with it, or I can argue  
16 it then if he prefers. He obviously wasn't here during trial  
17 and is at a disadvantage to argue a sufficiency claim, which is  
18 what this is.

19           **THE COURT:** Yes.

20           **MR. BABCOCK:** So I think he might want my view on the  
21 sufficiency arguments, and he can look at the briefing and  
22 decide. He's obviously not going to be -- the other way to do  
23 it, I suppose, was if he ordered a transcript and did it from  
24 the paper record. I don't know if he's planning to do that. I  
25 didn't have that conversation with him.



1           **THE COURT:** Let me set a backstop. If this issue has  
2 not been resolved, obviously, before sentencing, I'll just rule  
3 on the motion before I sentence the defendant --

4           **MR. BABCOCK:** Fair enough.

5           **THE COURT:** -- whether or not briefing has been filed,  
6 the motion. I stated on the record the motion is pending, so  
7 I'll issue a ruling on it based on my own recollection of the  
8 evidence if nothing further has happened before I sentence  
9 Dr. Su.

10           **MR. BABCOCK:** If he doesn't pursue it, I do intend to  
11 follow it through.

12           **THE COURT:** All right.

13           **MR. BABCOCK:** So one way or another.

14           **THE COURT:** Very good.

15           We will address -- the minutes should reflect we will  
16 address that issue again when we convene on April 22nd.

17           Anything further on the parties' to-do lists?

18           **MR. BABCOCK:** I don't think so.

19           **MS. WEST:** Not for the Government.

20           **THE COURT:** All right. Thank you.

21           (Proceedings adjourned at 9:52 a.m.)

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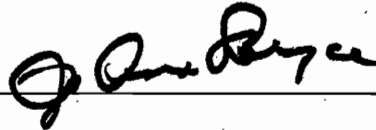
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Monday, August 11, 2014



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Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
U.S. Court Reporter



1 TUESDAY, APRIL 22, 2014

9:42 A.M.

2 P R O C E E D I N G S

3 THE CLERK: Calling Criminal Case 11-288, United  
4 States of America versus Susan Su.

5 Counsel, will you please make your appearances.

6 MR. RHYNE: Good morning, Your Honor. Wade Rhyne for  
7 the United States.

8 THE COURT: Good morning, Mr. Rhyne.

9 MR. MORRIS: Good morning, Your Honor. Barry Morris  
10 appearing for Michael Cardoza, who makes a general appearance  
11 at this time.

12 THE COURT: Good morning, Mr. Morris.

13 MR. MORLEY: Good morning, Your Honor. Kevin Morley  
14 appearing on behalf of Erik Babcock.

15 THE COURT: Good morning, Mr. Morley.

16 MR. MORRIS: Mr. Cardoza is presently in trial in  
17 front of Judge Jacobson in Alameda County. They have dark days  
18 on Fridays. So, I understand that a date has to be set for a  
19 Rule 29 motion.

20 Mr. Cardoza indicated he's available on the 9th, to be  
21 here personally. Not to hear the Rule 29 motion on the 9th --  
22 obviously it hasn't been filed yet -- but to set a date for a  
23 hearing.

24 THE COURT: Mr. Morris, have you had a chance to talk  
25 to my clerk about our calendar here?

1           **MR. MORRIS:** Yes, I did. I was told the 9th was a  
2 possibility.

3           **THE COURT:** I'm in Oakland that morning.

4           **MR. MORRIS:** Oh, that's even better.

5           **THE COURT:** So -- so what do you contemplate will  
6 happen on May 9th?

7           **MR. MORRIS:** Mr. Cardoza will appear and a date will  
8 be set to hear a Rule 29 motion.

9           **THE COURT:** All right. We have a sentencing set in  
10 this case on June 20th.

11          **MR. MORRIS:** I'm aware of that.

12          **THE COURT:** Is Mr. Cardoza able to indicate to the  
13 Court now when he thinks a Rule 29 -- let me just say a few  
14 things.

15          **MR. MORRIS:** Okay, sure.

16          **THE COURT:** First, if Mr. Cardoza knows he's in  
17 trial, it's a good idea for him to make a motion to continue a  
18 hearing if he needs that.

19            Although, it sounds to me like maybe we'll get some things  
20 done today.

21          **MR. MORRIS:** Okay.

22          **THE COURT:** I would be curious to know if Mr. Cardoza  
23 has given any thought to the relationship between the Rule 29  
24 motion and the sentencing.

25            I don't know whether Mr. Cardoza has talked to Mr. Babcock

1 about who will have summoned for briefing that motion. I would  
2 be curious to know that.

3 Obviously, it's important to the Court to honor Ms. Su's  
4 right to counsel of her choice. But I also have to manage the  
5 deadlines in the case. And it also needs to be clear to the  
6 Court who's responsible for what.

7 And, I also think that Mr. Babcock is -- has been  
8 representing Ms. Su as a member of our CJA panel. So, I would  
9 like to get a handle on all of those housekeeping issues. It  
10 may be that I may need to hear from Mr. Babcock, too.

11 Do you think -- oh, and let me also say: I've had to  
12 think about the -- I had to think about the Rule 29 motion,  
13 when it was made. I don't have a tentative ruling about a  
14 motion that hasn't been filed yet.

15 I would say, as I sit here, probably the one area where I  
16 could use a little help in terms of briefing is the  
17 alien-harboring conviction.

18 Obviously, I'll read the motion closely. And, it may be  
19 that something will be called to my attention that I missed  
20 during the trial.

21 With regard to the other counts, my recollection of the  
22 evidence is it would be difficult for the Court to conclude  
23 that no reasonable juror could find that the counts had been  
24 proven beyond a reasonable doubt.

25 But as to that, as to those alien-harboring counts, I

1 actually would look forward to getting some briefing.

2           **MR. MORRIS:** I will convey that to Mr. Cardoza.

3           **THE COURT:** Mr. Rhyne, is the government available on  
4 May 9th in Oakland?

5           **MR. RHYNE:** We are, Your Honor.

6           **THE COURT:** Mr. Morley, do you know if Mr. Babcock  
7 and Mr. Cardoza have spoken about the transition between  
8 counsel --

9           **MR. MORRIS:** You know, Judge, I was told that Mike  
10 was still in trial, and I should come here today. And I  
11 was told --

12           **THE COURT:** I directed my question to Mr. Morley.

13           **MR. MORRIS:** Oh, I'm sorry.

14           **MR. MORLEY:** My understanding is that they only had  
15 brief conversations about it. And I think they were planning  
16 to talk more today.

17           Obviously, it's not happening.

18           **THE COURT:** Okay. May 9th at 9:30 a.m.

19           **MR. MORRIS:** Your Honor?

20           **THE COURT:** Yes.

21           **MR. MORRIS:** One additional matter. My client has  
22 requested that I ask you if she could be released pending  
23 sentencing.

24           **THE COURT:** That request is denied.

25           **MR. MORRIS:** Okay. Would the Court be willing to

1 refer the matter for Pretrial Services for that purpose? To  
2 make -- to renew the request?

3           **THE COURT:** On an oral motion this morning? No.  
4 Court is in recess.

5           **THE CLERK:** All rise.

6 (Conclusion of Proceedings)  
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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes of Official Court Reporter DEBRA PAS, CSR, CRR, RMR, provided to me by the U.S. District Court for the Northern District of California, of the proceedings taken on the date and time previously stated in the above matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of this action.

/s/ Belle Ball 

Wednesday , September 17, 2014

Belle Ball, CSR 8785, CRR, RDR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CERTIFIED COPY**

BEFORE THE HONORABLE JON S. TIGAR, JUDGE

UNITED STATES OF AMERICA,	)	HEARING RE:
	)	APPOINTMENT OF ATTORNEY
PLAINTIFF,	)	
	)	
VS.	)	NO. CR 11-00288JST
	)	
SUSAN XIAO-PING SU,	)	PAGES 1 - 7
	)	
DEFENDANT.	)	OAKLAND, CALIFORNIA
_____	)	FRIDAY, MAY 9, 2014

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

FOR PLAINTIFF:                   MELINDA L. HAAG, ESQ.  
   UNITED STATES ATTORNEY  
   1301 CLAY STREET, SUITE 340S  
   OAKLAND, CALIFORNIA 94612

                                  BY: WADE M. RHYNE,  
   ASSISTANT UNITED STATES ATTORNEY

FOR DEFENDANT:                   LAW OFFICE OF JOHN J. JORDAN  
   400 MONTGOMERY STREET, SUITE 200  
   SAN FRANCISCO, CALIFORNIA 94104

                                  BY: JOHN J. JORDAN, ATTORNEY AT LAW

  LAW OFFICE OF ERIK G. BABCOCK  
   717 WASHINGTON STREET, SECOND FLOOR  
   OAKLAND, CALIFORNIA 94607

                                  BY: KEVIN MORLEY, ATTORNEY AT LAW

  THE CARDOZA LAW OFFICES  
   1220 OAKLAND BOULEVARD, SUITE 200  
   WALNUT CREEK, CALIFORNIA 94596

                                  BY: MICHAEL CARDOZA, ATTORNEY AT LAW

REPORTED BY:                   RAYNEE H. MERCADO  
   CSR. NO. 8258

PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY;  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530**

1 FRIDAY, MAY 9, 2014

10:26 A.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CRIMINAL CASE 11-288, UNITED  
4 STATES OF AMERICA VERSUS SUSAN XIAO-PING SU.

5 COUNSEL, ONCE THE DEFENDANT IS PRESENT, WILL YOU PLEASE  
6 MAKE YOUR APPEARANCES.

7 (PAUSE IN THE PROCEEDINGS.)

8 **MR. RHYNE:** GOOD MORNING, YOUR HONOR. WADE RHYNE FOR  
9 THE UNITED STATES.

10 **MR. CARDOZA:** AND GOOD MORNING, YOUR HONOR. MICHAEL  
11 CARDOZA.

12 **MR. JORDAN:** GOOD MORNING, YOUR HONOR. JOHN JORDAN.

13 **THE CLERK:** AND WE HAVE...?

14 **MR. MORLEY:** GOOD MORNING. KEVIN MORLEY APPEARING  
15 FOR ERIK BABCOCK.

16 **MR. JORDAN:** YOUR HONOR, I BELIEVE WE HAVE A  
17 RESOLUTION OF THE REPRESENTATION ISSUE. I DID MEET WITH  
18 MS. SU FOR THE FIRST TIME THIS WEDNESDAY AT HER FACILITY AT  
19 SANTA RITA, SPOKE WITH HER. SHE INDICATED SHE WISHED TO GO  
20 FORWARD WITH ME.

21 I'VE MET WITH THE FAMILY AND FINALIZED THOSE ARRANGEMENTS.  
22 I BELIEVE SHE'S INFORMED MR. CARDOZA THAT SHE PREFERS TO GO  
23 WITH ME WITH THANKS TO HIM FOR THE WORK HE'S DONE SO FAR.

24 I SPOKE TO MR. BABCOCK YESTERDAY BY TELEPHONE, WHO SAID HE  
25 WAS HAPPY TO GET ME THE FILE NEXT WEEK, AND AGREED TO THE

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1       SUBSTITUTION, SO I THINK WITH ALL THAT SAID, I'M PREPARED TO  
2       ENTER A GENERAL APPEARANCE TODAY TO TAKE OVER THE CASE.

3               **THE COURT:** DOES ANYONE ON THE DEFENSE SIDE OF THE  
4       COURTROOM WISH TO BE HEARD TO SUPPLEMENT OR AMEND ANYTHING  
5       THAT MR. JORDAN HAS SAID?

6               **MR. CARDOZA:** I DO NOT. THAT IS ACCURATE, WHAT HE  
7       SAID.

8               **THE COURT:** MR. MORLEY, IS THAT ALSO ACCURATE FROM  
9       YOUR AND MR. BABCOCK'S PERSPECTIVE?

10              **MR. MORLEY:** YES, YOUR HONOR.

11              **THE COURT:** VERY GOOD. MR. JORDAN, YOUR GENERAL  
12       APPEARANCE ON BEHALF OF MS. SU IS NOTED FOR THE RECORD.

13              GOOD MORNING AGAIN, MS. SU.

14              **MR. CARDOZA:** MAY WE BE EXCUSED?

15              **THE COURT:** YOU ARE EXCUSED. THANK YOU, MR. CARDOZA.

16              **MR. CARDOZA:** I APPRECIATE IT.

17              **THE COURT:** YOU FINISHED -- YOU JUST A TRIAL IN MY  
18       OLD STOMPING GROUNDS IN FRONT OF JUDGE JACOBSEN; IS THAT TRUE?

19              **MR. CARDOZA:** I DID, A MONTH AND A HALF. AND  
20       ACTUALLY IT WAS ENJOYABLE TO A CERTAIN LEVEL.

21              **THE COURT:** YEAH. WELL, HE'S A GOOD TRIAL JUDGE.  
22       ANYWAY, THANK YOU.

23              **MR. CARDOZA:** I KNOW. THANK YOU. GOOD TO SEE YOU.

24              **THE COURT:** SO WE'VE GOT SOME SCHEDULING ISSUES IN  
25       THE CASE.

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1 IS THE PROBATION DEPARTMENT HERE THIS MORNING?

2 **MR. RHYNE:** YES, THEY ARE, YOUR HONOR.

3 **THE COURT:** GOOD MORNING.

4 **THE PROBATION OFFICER:** GOOD MORNING. JESSICA  
5 GOLDSBERRY FOR THE PROBATION OFFICE.

6 **THE COURT:** IS IT GOLDSBERRY WITH AN "S"?

7 **THE PROBATION OFFICER:** YES.

8 **THE COURT:** MS. GOLDSBERRY, GOOD MORNING TO YOU.

9 **THE PROBATION OFFICER:** GOOD MORNING.

10 **THE COURT:** SO HERE ARE ALL THE THINGS I WANT TO  
11 FIGURE OUT. WE HAVE A SENTENCING DATE. THERE WAS AN ORAL  
12 RULE 29 MOTION MADE DURING THE TRIAL. I DEFERRED RULING ON  
13 THAT UNTIL AFTER THE VERDICT. THE VERDICT CAME IN, AS WE  
14 KNOW. MR. BABCOCK HAD RESERVED THE RIGHT TO HIMSELF TO BRIEF  
15 THAT MOTION. WE ACTUALLY HAVE A HEARING DATE FOR THAT MOTION.  
16 WE HAVE A SENTENCING DATE. AND PERHAPS THE PARTIES HAVE  
17 TALKED AMONGST THEMSELVES TO HARMONIZE THE FIRMAMENT OF ALL  
18 THESE DATES AND THEIR RESPECTIVE SCHEDULES.

19 WHO WANTS TO ADDRESS SCHEDULING?

20 **MR. JORDAN:** YOUR HONOR, IF I MIGHT, WE HAD SOME TIME  
21 THIS MORNING, AND ALSO I TALKED TO MS. HARTLEY WEST YESTERDAY  
22 AND MS. GOLDSBERRY AT LENGTH, AND THEN THIS MORNING WITH  
23 MR. RHYNE, SO WE HAVE SOME PROPOSALS FOR YOU WHICH SEEM TO  
24 HARMONIZE EVERYTHING.

25 WE WOULD ASK THAT YOU VACATE, I GUESS, ALL THE DATES AND

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1 SET THIS DOWN ON SEPTEMBER 12TH, WHICH WE'VE TALKED TO YOUR  
2 LAW CLERK, IS AN AVAILABLE TIME TO BE SPECIALLY SET IN THE  
3 AFTERNOON. I WILL ORDER THE TRANSCRIPTS IF THEY HAVEN'T BEEN  
4 ORDERED ALREADY. I'LL NEED TO REVIEW THOSE, AND THAT SHOULD  
5 TAKE ABOUT A MONTH FOR THEM TO BE PREPARED.

6 I WOULD THEN NEED AN APPROXIMATE MONTH TO PREPARE THE  
7 VARIOUS RULE 29/RULE 33 MOTIONS, AND I WOULD PROPOSE TO FILE  
8 THOSE ON JULY 18TH. GIVE THE GOVERNMENT A MONTH TO RESPOND,  
9 WHICH WOULD BE AUGUST 15TH. I WOULD HAVE TWO DAYS TO FILE A  
10 REPLY, WHICH WOULD BE AUGUST 29TH.

11 AND THEN WE'VE GIVEN YOUR HONOR APPROXIMATELY TWO WEEKS TO  
12 REVIEW IT, COMING BACK HERE ON THE 12TH. THAT'S A LITTLE  
13 LONGER, BUT WE NEED TO GET THE TRANSCRIPTS READY.

14 MS. GOLDSBERRY AND OTHER PEOPLE HAVE VACATIONS IN AUGUST.  
15 AUGUST IS USUALLY A SLOW MONTH. AND IN MY MIND, THIS IS LIKE  
16 THE VERDICT DATE TODAY. I'M JUST COMING IN. SO WE WOULD  
17 NORMALLY SET THE CASE OUT --

18 **THE COURT:** I DON'T -- JUST SO THAT YOU KNOW, ABSENT  
19 ANY SHOWING OF PREJUDICE THAT THE GOVERNMENT MIGHT MAKE, WHICH  
20 I WOULD BE SURPRISED IF THEY COULD, BECAUSE MS. SU IS NOW IN  
21 CUSTODY -- SHE'S EFFECTIVELY SERVING HER SENTENCE RIGHT NOW, I  
22 DON'T HAVE ANY OBJECTION TO GIVING YOU, MR. JORDAN, THE TIME  
23 THAT YOU NEED, AND I RECOGNIZE THAT YOU'RE NEW AND I WANT YOU  
24 TO BE ABLE TO DO A GOOD JOB. SO YOU DON'T NEED TO CONVINC ME  
25 ON THE LENGTH OF TIME. THAT'S FINE.

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1           **MR. JORDAN:** THANK YOU, YOUR HONOR. I VERY MUCH  
2 APPRECIATE THAT. SO THAT'S OUR PROPOSAL.

3           THERE WAS ALSO FORFEITURE FILED. I'VE TALKED TO  
4 MR. RHYNE. WE'VE AGREED TO SUBSTITUTE THESE DAYS FOR THAT AND  
5 HAVE EVERYTHING HEARD ON THE 12TH IN ONE OMNIBUS PROCEEDING.

6           **THE COURT:** THAT SOUNDS FINE. SO YOU'RE  
7 CONTEMPLATING -- WHAT DATE OF THE WEEK, PLEASE, IS SEPTEMBER  
8 THE 12TH?

9           **MR. JORDAN:** A FRIDAY.

10          **THE COURT:** FRIDAY. I SEE. SO --

11          **MR. JORDAN:** THAT WAS SUGGESTED ABOUT YOUR COURTROOM  
12 DEPUTY.

13                               (PAUSE IN THE PROCEEDINGS.)

14          **THE COURT:** OKAY. SO I'M GOING TO SET THIS ON  
15 SEPTEMBER THE 12TH, 2014, AT 1:30 P.M.

16          MS. SU, YOU'RE ORDERED TO BE PERSONALLY PRESENT AT THAT  
17 TIME.

18          ON THAT DATE, WE WILL HEAR THE DEFENDANT'S RULE 29 MOTION,  
19 WE'LL ALSO HEAR ANY FORFEITURE REQUESTS THAT HAVE BEEN MADE  
20 AND MS. GOLDSBERRY OR SOMEBODY TELL ME ABOUT WHAT'S HAPPENING  
21 WITH SENTENCING.

22          **MR. JORDAN:** THAT WOULD BE ON THE DIFFERENT TRACK,  
23 BUT WE TALKED ABOUT THAT. I DO PLAN TO HAVE A DOCTOR LOOK AT  
24 MS. SU. I WOULD LIKE TO GET THAT TO MS. GOLDSBERRY BEFORE SHE  
25 INTERVIEWS THE DEFENDANT, SO WE WORKED OUT THIS SCHEDULE SO

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1 THAT I WOULD GET MS. GOLDSBERRY THAT REPORT TOWARDS THE END OF  
2 JUNE. AND THEN SHE COULD INTERVIEW THE DEFENDANT FIRST WEEK  
3 OF JULY, END OF JUNE, AND STILL HAVE TIME TO GET THE 35-DAY  
4 REPORT IN FOR THE SEPTEMBER 12TH DATE. THAT'S ACTUALLY WHY  
5 WE --

6 **THE COURT:** SO THAT ALSO WOULD BE A SENTENCING  
7 DATE --

8 **THE PROBATION OFFICER:** YES.

9 **THE COURT:** -- ASSUMING THAT RULE 29 MOTION WERE  
10 (SIC) NOT GRANTED.

11 **THE PROBATION OFFICER:** (NODS HEAD.)

12 **THE COURT:** ALL RIGHT. IT WILL BE A BUSY AFTERNOON.

13 MR. RHYNE, DOES THIS SCHEDULE ALSO -- IS THIS SCHEDULE  
14 ALSO AGREEABLE TO THE GOVERNMENT?

15 **MR. RHYNE:** THAT WILL BE FINE, YOUR HONOR.

16 **THE COURT:** AND, MS. GOLDSBERRY, THIS WORKS FOR YOU,  
17 TOO?

18 **THE PROBATION OFFICER:** IT DOES, YOUR HONOR. THANK  
19 YOU.

20 **THE COURT:** THE COURT WILL ALSO SET THE MATTER FOR  
21 SENTENCING ON SEPTEMBER 12TH, 2014, AT 1:30 P.M.

22 **MR. JORDAN:** JUST ONE FINAL CLARIFICATION, YOUR  
23 HONOR.

24 I MAY ALSO, ALTHOUGH I'M NOT -- FILE RULE 33 MOTION WITH  
25 THE RULE 29 BUT ON THE SAME BRIEFING SCHEDULE.

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530**



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**THE COURT:** THAT'S UNDERSTOOD.

**MR. JORDAN:** OKAY.

**THE COURT:** ANYTHING ELSE?

**MR. JORDAN:** NO, YOUR HONOR.

**MR. RHYNE:** NO, YOUR HONOR.

**THE COURT:** ALL RIGHT. THANK YOU ALL.

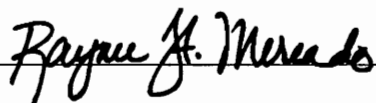
**MR. RHYNE:** THANK YOU.

(PROCEEDINGS WERE CONCLUDED AT 10:33 A.M.)

--000--

**CERTIFICATE OF REPORTER**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

FRIDAY, OCTOBER 10, 2014

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530**

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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

USA,  
  
Plaintiff,  
  
v.  
  
SUSAN XIAO-PING SU,  
  
Defendant.

Case No. 11-cr-00288-JST-1

**PRELIMINARY ORDER OF  
FORFEITURE**

Re: ECF No. 129

In this application of the United States for a Preliminary Order of Forfeiture, the United States moves for criminal forfeiture of the following types of property: (1) proceeds from Defendant Susan Su’s fraudulent scheme; (2) property involved in her money laundering; and (3) property that facilitated her harboring of aliens. ECF No. 129 at 3. The Court will GRANT the application.

**I. BACKGROUND**

From September 2008 to January 2011, Su created and ran Tri-Valley University, a school in Pleasanton, California that collected tuition and other fees from non-immigrant aliens in return for maintaining their student visa status. ECF No. 129 at 1-2. Su defrauded its students and the federal government, collecting at least \$5.6 million in “tuition fees,” and using those funds to purchase a number of properties. *Id.* at 5-8. On March 24, 2014, Su was found guilty on all thirty-five counts of criminal charges related to this fraudulent scheme. *Id.* at 1-2. The charges included wire fraud (18 U.S.C. § 1343), mail fraud (18 U.S.C. § 1341), conspiracy to commit visa fraud (18 U.S.C. § 371), visa fraud (18 U.S.C. § 1546(a)), use of a false document and false statements (18 U.S.C. § 1001(a)(3)), alien harboring (18 U.S.C. §§ 1324(a)(1)(A)(iii), (a)(1)(A)(v)(II), (a)(1)(B)(i)), unauthorized use of a government computer (18 U.S.C. § 1030(a)(3)), and money laundering (18 U.S.C. § 1957(a)). *Id.* at 2.

1 In its application, the United States asserts it is entitled to the criminal forfeiture of all  
2 proceeds traceable to the offenses she committed. Id. at 3-4. The United States claims all funds  
3 and real property that were related to the fraudulent scheme, and properties “involved in” the  
4 money laundering are subject to forfeiture. Id. The United States has shown through the existing  
5 record and testimony from a special agent that, as derivatives of the \$5,601,844.72 in total tuition  
6 fees Su collected, a 2009 Mercedes Benz and five other real estate properties are subject to  
7 forfeiture. Id. at 6-7. Defendant has not offered any defense or opposition to the Government’s  
8 application, except to ask that the decision on forfeiture be delayed until the Court rules on  
9 Defendant’s motions under Federal Rules of Criminal Procedure 29 and 33. ECF No. 168.

## 10 II. LEGAL STANDARD

11 The general forfeiture statute, 18 U.S.C. § 982, was enacted to separate criminal  
12 defendants from their “ill-gotten gains.” United States v. Newman, 659 F.3d 1235, 1243 (9th Cir.  
13 2011). Forfeiture is a portion of the sentence imposed upon a person found guilty of certain  
14 crimes, and the propriety of forfeiture must be proven by a preponderance of the evidence.  
15 Libretti v. United States, 516 U.S. 29, 49 (1995). To establish criminal forfeiture, the government  
16 must prove “the requisite nexus between the property and the offense,” the “nexus” being supplied  
17 by the forfeiture provision applicable to the crime. Fed. R. Crim. Pro. 32.2(b)(1)(A). The court  
18 can make its determination regarding forfeiture “on evidence already in the record . . . and on any  
19 additional evidence or information submitted by the parties and accepted by the court as relevant  
20 and reliable.” Id., subsection (B). Once the government meets its burden of establishing that  
21 forfeiture is proper, forfeiture is mandatory – a court has no discretion, unlike other aspects of  
22 sentencing, to decide whether or in what amount to impose forfeiture. Newman, 659 F.3d at  
23 1239-40.

24 A court imposes criminal forfeiture on a defendant after the government has provided  
25 notice, either through the indictment or through other means, that the government is seeking  
26 “forfeiture of property as part of any sentence in accordance with the applicable statute.” Fed. R.  
27 Crim. Pro. 32.2(a). The indictment does not need to “identify the property . . . or specify the  
28 amount of any forfeiture money judgment” the government is seeking. Id.

1           “The court, in imposing sentence on a person convicted of an offense in violation of  
2 section 1957 [money laundering] . . . , shall order that the person forfeit to the United States any  
3 property, real or personal, involved in such offense, or any property traceable to such property.”  
4 18 U.S.C. § 982(a)(1); see also Newman, 659 F.3d at 1243. Additionally, the court must order  
5 forfeiture of any “property constituting, or derived from, proceeds the person obtained directly or  
6 indirectly, as the result of” their fraud or false statements. 18 U.S.C. §§ 982(a)(2)(A),  
7 982(a)(3)(B), (E), (F). Where the defendant is convicted of alien harboring under 8 U.S.C.  
8 §1324(a)(1)(A), the court must also, in imposing sentence, order forfeiture of any real or personal  
9 property “used to facilitate, or intended to be used to facilitate, the commission of the offense.” 18  
10 U.S.C. § 982(a)(6)(A)(ii)(II), (B).

### 11           **III. DISCUSSION**

12           The United States has met its burden to show that the properties it seeks to forfeit were  
13 obtained from the commission of various offenses for which Su was convicted. The government  
14 has also provided Su with proper notice in the indictment that it would be seeking forfeiture. ECF  
15 No. 1.

16           Under 18 U.S.C. § 982(a)(3)(B), all proceeds gained from Su’s fraudulent scheme are  
17 subject to criminal forfeiture. The United States examined bank records, invoices, and receipts for  
18 payments made to Tri-Valley University, and traced movement of tuition payments between Su’s  
19 bank accounts to determine the total amount of fraud proceeds in her possession. ECF No. 129 at  
20 5; ECF No. 125 at 7-18. Adding up all the funds seized from several of Defendant’s accounts, the  
21 government has shown from documents in the record that the total of the fraud proceeds is  
22 approximately \$5,601,844.72. ECF No. 129 at 5-6. Those proceeds are subject to forfeiture. 18  
23 U.S.C. § 982(a)(3)(B).

24           Under 18 U.S.C. Sections 982(a)(1)-(3), the government is also entitled to the criminal  
25 forfeiture of properties Su obtained through money laundering and wire fraud. The government  
26 has demonstrated, using evidence already in the record, that Su committed money laundering by  
27 using those proceeds to purchase real property. Id. at 7-8; ECF No. 125 at 32-37, 39-55. The  
28 properties involved in Defendant’s money laundering and wire fraud are: (1) a 2009 Mercedes

1 Benz; (2) 1087 Murrieta Blvd., #113, Livermore, CA; (3) 405 Boulder Court, Suite 700,  
2 Pleasanton, CA; (4) 405 Boulder Court, Suite 800, Pleasanton, CA; (5) 2890 Victoria Ridge Court,  
3 Pleasanton, CA; and (6) 1371 Germano Way, Pleasanton, CA. ECF No. 129 at 7-8.

4 The government asserts that Su used two of the subject properties, suites 700 and 800 at  
5 405 Boulder Court, Pleasanton, CA, to facilitate her commission of alien harboring under 8 U.S.  
6 C. § 1324(a)(1)(A), and that the properties are subject to forfeiture on that additional basis. At  
7 trial, the government provided evidence that Su employed several of the aliens she harbored, and  
8 those aliens worked at 405 Boulder Court, in suites 700 and 800. Accordingly, the Court finds  
9 that Defendant used the properties at 405 Boulder Court to facilitate her crime. United States v.  
10 Sabhnani, 599 F.3d 215, 261-62 (2d Cir. 2010) (holding that where harbored aliens were  
11 employed within the office of a home, the entire home was subject to forfeiture, as it was used to  
12 facilitate the commission of the alien-harboring offense by concealing the aliens within, although  
13 the aliens did not live at the home). Accordingly, the Court finds that, pursuant to 18 U.S.C. §  
14 982(a)(6)(A)(ii)(II), suites 700 and 800 at 405 Boulder Creek are subject to forfeiture.

#### 15 IV. CONCLUSION

16 Having considered the application for a preliminary order of forfeiture filed by the United  
17 States and the guilty verdict pursuant to trial on March 24, 2014, and good cause appearing,

18 IT IS HEREBY ORDERED the following property is forfeited to the United States:

19 1. Approximately \$5,601,844.72 in property derived from total tuition proceeds  
20 traceable to Defendant's crimes, including:

- 21 a. a 2009 Mercedes Benz, VIN XXXXXXXX;
- 22 b. 1087 Murrieta Blvd., #113, Livermore, CA;
- 23 c. 405 Boulder Court, Suites 700 and 800, Pleasanton, CA;
- 24 d. 2890 Victoria Ridge Court, Pleasanton CA;
- 25 e. 1371 Germano Way, Pleasanton, CA; and
- 26 f. any remaining funds in bank accounts identified in the government's  
27 application for forfeiture, ECF No. 129 at 6-7, which the government calls "Bank  
28 Proceeds,"

United States District Court  
Northern District of California

- 1 g. any interest or appreciation accrued on the aforementioned property, and
- 2 h. a monetary judgment in the amount of the difference between
- 3 \$5,601,844.72 and the total value of the aforementioned property subject to
- 4 forfeiture, if the total value of the aforementioned property is less than
- 5 \$5,601,844.72,

6 pursuant to Title 18, United States Code, Sections 982(a)(1) - (3).

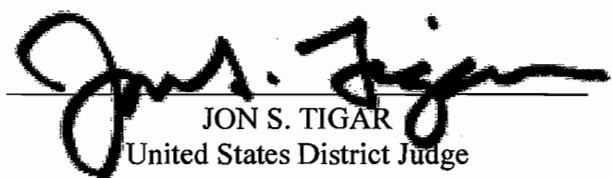
7 IT IS FURTHER ORDERED that the United States, through its appropriate agency, shall  
8 seize the forfeited property forthwith and publish on [www.forfeiture.gov](http://www.forfeiture.gov), a government website  
9 for at least thirty days, notice of this Order, notice of the government's intent to dispose of the  
10 property in such manner as the Attorney General may direct and provide notice that any person,  
11 other than the defendant, having or claiming a legal interest in the property, must file a petition  
12 with the Court and serve a copy on government counsel within thirty days of the final publication  
13 of notice or of actual receipt of notice, whichever is earlier.

14 IT IS FURTHER ORDERED that the government may conduct discovery to identify,  
15 locate, or dispose of property subject to forfeiture in accordance with Rule 32.2(b) of the Federal  
16 Rules of Criminal Procedure; and

17 IT IS FURTHER ORDERED that the Court retain jurisdiction to enforce the Preliminary  
18 Order of Forfeiture, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure  
19 32.2(e).

20 IT IS SO ORDERED this 24th day of October, 2014.

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JON S. TIGAR  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JON S. TIGAR, JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CR 11-288 JST
	)	
SUSAN XIAO-PING SU,	)	
	)	San Francisco, California
Defendant.	)	Friday
	)	October 31, 2014
	)	9:47 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:                   MELINDA L. HAAG  
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                                  Suite 340S  
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BY: WADE RHYNE  
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Assistant United States Attorneys

For Defendant:                 LAW OFFICE OF JOHN J. JORDAN  
                                  400 Montgomery Street  
                                  Suite 200  
                                  San Francisco, California 94104

BY: JOHN JORDAN, ESQ.

Also Present:                   JESSICA GOLDSBERRY, U.S. Probation

Reported by BELLE BALL, CSR 8785, CRR, RDR  
                                  Official Reporter, U.S. District Court

1 **FRIDAY, OCTOBER 31, 2014**

**9:47 A.M.**

2 **P R O C E E D I N G S**

3 **THE CLERK:** Calling Criminal Case 11-288, United  
4 States of America versus Susan Xiao-Ping Su. Counsel, will  
5 you please make your appearances for the Record.

6 **MR. RHYNE:** Good morning, Your Honor. Wade Rhyne,  
7 Hartley West and David Countryman for the United States.

8 **MS. WEST:** Good morning.

9 **THE COURT:** Good morning.

10 **MR. JORDAN:** Good morning, Your Honor. John Jordan  
11 on behalf of my client, Dr. Susan Su.

12 Your Honor, with your permission, may she sit at the  
13 counsel table during the arguments?

14 **THE COURT:** Yes.

15 **MR. JORDAN:** Thank you.

16 **PROBATION OFFICER GOLDSBERRY:** Good morning, Your  
17 Honor. Jessica Goldsberry for the Probation Office.

18 **THE COURT:** Good morning.

19 This morning we have several matters on calendar. The  
20 Defendant has filed a Rule 29 motion and a Rule 33 motion.  
21 Those need to be heard. If those motions are denied, then  
22 this morning also is set for Dr. Su's sentencing.

23 And so I'll talk for -- in just a moment about time  
24 management to make sure we are able to give all these very  
25 important matters the time that they deserve and require.



1           But before I did that, I just wanted to say that I'm sure  
2           that there are people here in the audience who are family  
3           members of Dr. Su and supporters of Dr. Su, and perhaps you  
4           will take the opportunity to come to the microphone and  
5           address the Court. And if you do that, I'll hear from you  
6           then. Perhaps there are victims of the offense here, too. I  
7           don't know.

8           Perhaps you will take that opportunity. But if you don't,  
9           I just want you to know that I appreciate you coming here.  
10          Even when I don't hear from the victims of an offense directly  
11          or I don't hear from family members or supporters directly, I  
12          welcome your attendance here. And I know that the government  
13          and the Defendant also are glad that you're here. And so, I  
14          wanted to just welcome you this morning.

15          My suggestion, unless Counsel have a different one, is  
16          that we set aside a certain amount of time for argument on  
17          these motions at the beginning, and then proceed to  
18          sentencing. And that we do it that way to make sure that if  
19          there's to be a sentencing in this case, that adequate time is  
20          allocated to it. I think that is likely to be the most of  
21          complicated part of the proceedings this morning.

22          And my suggestion would be that we allow a maximum of an  
23          hour for argument on these motions with 15 minutes for each  
24          side of both of the two motions. You don't have to use all  
25          your time. If you don't, the other side won't use it. That

1 will just be more time that we have for our sentencing.

2 How does that sound?

3 **MR. RHYNE:** Very good, Your Honor.

4 **MR. JORDAN:** Sounds very reasonable, Your Honor.

5 **THE COURT:** All right, then let's proceed on that  
6 basis.

7 What I would like to do is to first address the Rule 29  
8 motion and then the Rule 33 motion.

9 And the Rule 29 motion -- and I should tell the parties  
10 that I have read everything that both sides have filed in  
11 connection with all three of these matters very carefully and  
12 to those of you in the audience who submitted letters on  
13 behalf of Dr. Su, I read those also.

14 But I don't think that we have enough time to go through  
15 each and every item in the Rule 29 motion. You should address  
16 the parts that you think are most important to you. I.

17 Will tell you that from the Court's perspective the  
18 knottiest parts of the motion were the factual-impossibility  
19 portion, with regard to Counts 5 through 12 and 16 through 19.  
20 Although, I'll tell you I see 5 through 12 and 16 through 19  
21 in very different lights.

22 But, anyway. That issue, and then the concealment --  
23 Concealing, Harboring or Shielding from Detection count --  
24 counts for violations of 18 United States Code Section 1324.  
25 As to those matters, I think that as to Counts 5 through 12 --

1 the Defendant actually has a pretty good factual-impossibility  
2 argument. Factual impossibility is not a defense to inchoate  
3 crimes like conspiracy or attempt. And had the crimes been  
4 charged that way, factual impossibility would not be  
5 available.

6 But and I think it is -- I can fairly say that I read  
7 every Ninth Circuit case in which the phrase "factual  
8 impossibility" -- every criminal case in which "factual  
9 impossibility," that phrase, appears. At least for the  
10 purposes of determining -- at least enough of it that it would  
11 help me decide the issue this morning.

12 I did read the government's -- the one case the government  
13 cites, *United States versus Lane*. And I recognize that these  
14 remarks -- that I'm going on at some length, but because I  
15 thought that these issues were the hardest, I thought it would  
16 be helpful to provide the parties with the equivalent of a  
17 tentative ruling.

18 The government cites *Lane* for the proposition that each of  
19 the wires charged in these counts was part of the execution of  
20 the scheme, and that the wire itself does not need to have  
21 deprived anyone of money or property, citing *United States  
22 versus Lane*, 474 U.S. 438, at 453.

23 It's true, *Lane* holds that. But, *Lane* is not a  
24 factual-impossibility case. In *Lane*, the Defendant committed  
25 mail fraud in connection with his arson of one of his own

1 buildings and his subsequent claim to his insurance company.

2 Secondly, in *Lane*, there was a victim. It was Lane's  
3 insurance company. And the issue in that case was whether the  
4 letters that Lane sent to the insurance company after they had  
5 already paid him could be counted against him for mail fraud  
6 purposes. And the Court held that they could because the  
7 letters had a lulling effect on the insurance company that  
8 made it more likely that Lane could keep the proceeds that he  
9 had already received.

10 So, I wish there were more case-law guidance on factual  
11 impossibility. Frankly, there isn't a lot. But I do think  
12 that the Defendant has shown that, unknown to her, the  
13 consummation of the intended criminal act is physically  
14 impossible.

15 I'm taking that definition from *United States versus*  
16 *McCormick*. 72 F.3d, 1404 at 1408.

17 But I think that analysis only applies to Counts 5 through  
18 12. Counts 16 through 19, as to which the Defendant also  
19 asserts this defense, charge visa fraud. In visa fraud, the  
20 victims of that crime are not the non-existent fake students,  
21 but the United States. And the fact that Dr. Su used fake  
22 names in her visa application doesn't prevent the claim from  
23 being committed; it just makes the applications more  
24 fraudulent.

25 So, that is how the Court at the moment is likely to rule

1 with regard to that issue.

2 With regard to harboring an alien, for reasons I could go  
3 into in more detail, I don't think that the government has  
4 shown concealing and harboring. But I do think they have  
5 shown shielding from detection.

6 And, I thought the government did a very good job in its  
7 brief of reciting all of the many things that Dr. Su did:  
8 Enrolling these fake students in classes that didn't exist,  
9 showing bogus grades in transcripts and on and on and on. And  
10 certainly, viewing that evidence favorably to the government,  
11 I think the evidence was more than sufficient to show that  
12 Dr. Su engaged in conduct tending to: directly or  
13 substantially facilitate an alien's remaining in the United  
14 States unlawfully with the intent to prevent detection from  
15 the immigration authorities." Which was the definition in  
16 *United States versus Aguilar*, 883 F.2d, 662.

17 The other basis for the Defendant's motion with regard to  
18 those counts is that Messrs. DASA, D-A-S-A, and DIRISANALA,  
19 D-I-R-I-S-A-N-A-L-A, were not illegal aliens for the purposes  
20 of this statute. I've not been able to find a case that  
21 addresses that issue in the context of a harboring allegation,  
22 but I think the government's citation to the Tenth Circuit  
23 case *United States versus Atandi*, A-T-A-N-D-I, is persuasive  
24 on this point.

25 And, I think that these non-immigrant F1 student aliens

1 were failing to comply with immigration regulations; they were  
2 out of status; they were unlawfully in the United States. So,  
3 I think the government has satisfied that element.

4 So, I would deny the Rule 29 as to the remainder of the  
5 counts in the case. I would grant it tentatively as to Counts  
6 5 through 12. That would be the Court's tentative ruling.

7 Mr. Jordan.

8 **MR. JORDAN:** Yes, Your Honor. Of course, I  
9 appreciate all Your Honor's comments, and just briefly, in one  
10 or two sentences, would submit to the Court that we do ask  
11 that you grant them as to all counts that Dr. Su believes the  
12 evidence is insufficient of those. And we would object to any  
13 rulings contrary to that.

14 Getting to Your Honor's comments, I appreciate the  
15 guidance for Counts 5 through 12. Of course I'm in agreement  
16 with the Court. Those are legitimate law-enforcement  
17 techniques to gather evidence. But the way they're charged,  
18 they simply don't fit that statute.

19 Like Your Honor, I'm sure -- I searched through Lexis for  
20 every factual-impossibility case in Ninth Circuit and others,  
21 and there were few, but this does seem to fit squarely within  
22 those few cases.

23 It's simply not part of the scheme to defraud. It can't  
24 be a lulling technique or something to keep the government  
25 from finding out about the scheme to defraud, because the

1 government is actually using this as an investigative  
2 technique to build a case.

3 The evidence is relevant to the scheme to defraud in the  
4 other counts. But it doesn't make out these counts. There's  
5 no victim; it was factually impossible for her to commit wire  
6 fraud for these victims. It's never going to get -- any  
7 furtherance of her scheme with these four.

8 I'll switch to the counts for the visa fraud, 16 through  
9 19, which I see, of course, are different. The U.S. is a  
10 victim. My point on that was: Although there were  
11 immigration forms -- if you want to call them that --  
12 generated, the government knew these forms were invalid from  
13 the get-go, because they're generated for aliens that don't  
14 exist.

15 So the documents, themselves, although they might say  
16 "I-17" on top of them, or they might be generated by Dr. Su at  
17 the school, they're not legitimate, not real immigration  
18 documents, because persons they are being given to, the United  
19 States government, knows before receiving them that they are  
20 invalid. That they are for fictitious people.

21 So, that's my point on the other four counts.

22 **THE COURT:** Well, that just makes it unlikely.  
23 Factual impossibility is a very high bar. This is a Rule 29  
24 motion. The Court has to view the evidence in the light most  
25 favorable to the government.

1           And, I hear what you're saying about the visa fraud  
2 counts, and I considered that point. And I continue to  
3 consider it. But, it depends on the absolute inevitability of  
4 certain things taking place after the -- after the forms are  
5 submitted.

6           And obviously, we would expect Agent Mackey to pick up the  
7 phone and say, "Hey, by the way, you probably don't want to  
8 issue those visas." But it's not factually impossible.

9           That's the defense, right?

10           **MR. JORDAN:** It is, Your Honor. And it is  
11 interesting, it goes really back to my first year of law  
12 school with a professor there talking about if you're playing  
13 chess, it's fine. If two people change the rules and are  
14 cheating, and they agree to play, are they still playing  
15 chess? Or have they invented a new game?

16           And that is what I think happened here. My simple point  
17 in one sentence is: It's impossible for the government to  
18 prove that Dr. Su committed visa fraud for these four counts  
19 because the government can't be defrauded. They know these  
20 four people are not immigrants. So it's going to be  
21 impossible for them to be defrauded. That's my point.

22           **THE COURT:** The point is well argued.

23           **MR. JORDAN:** Thank you, Your Honor.

24           Switching to the harboring.

25           **THE COURT:** Yes.



1           **MR. JORDAN:** Well, I disagree. I think the defense  
2 has proven under the case law that the two named victims are  
3 simply not here illegally under the statute.

4           They might be potentially out of status, but at the time  
5 charged in the indictment, I look at it this way: If they  
6 were pulled over by an immigration officer, and he said, "What  
7 is your status here" and they told him they were at the school  
8 and they showed him their paperwork, that would be valid in  
9 the system. They're just --

10           **THE COURT:** Here is the difficulty I have with that  
11 argument. And again, I thought the point was exceedingly well  
12 made in the papers, and very well argued by you. And that is  
13 why it's one of the items that I wanted to address at our  
14 hearing this morning.

15           But the only thing in the Court's mind that gives these  
16 two individuals the superficial patina of lawful status is  
17 that Dr. Su was given the power by the United States  
18 government to get access to the SEVIS system, and so, let's  
19 use as an example the family in *Dann*, I think the case is  
20 *Dann*, D-A-N-N, where you have an illegal nanny working in a  
21 house.

22           What if the husband and wife in that house had the power  
23 to somehow use their computers to submit forms to the  
24 government that would all of a sudden make their housekeeper  
25 lawful?

1           The only thing that gave these two individuals this  
2 superficial gloss of lawful status was Dr. Su's underlying  
3 illegal conduct.

4           Now, is there another case in which that's not the way  
5 someone got their lawful status in which this *Atandi* analysis  
6 might not apply? Perhaps. The Court's analysis is limited to  
7 the facts here. But that's what gave me the most difficulty  
8 in going your way.

9           **MR. JORDAN:** Your Honor, if I might address a couple  
10 of points. One, in the situation hypothetically you just came  
11 up with, that seems wrong what they did, and it is wrong. But  
12 it is visa fraud. That is the crime that you would be  
13 committing. There were other facts in that case which you  
14 argue are not present here that also show harboring.

15           My second rebuttal would be: If you imagine these two  
16 named victims in the two counts, if one of them was arrested  
17 for having a gun then, he would have a defense under the cases  
18 I cited -- *Salman*, *Hernandez* and *Brissett* -- to being an  
19 illegal alien with a gun. He would say "No, I'm not out of  
20 status."

21           "Well, but the school's a fraud and we're going to prove  
22 that."

23           "Yes, but right, now I'm not out of status. You can't  
24 prove this charge against me."

25           I think under those cases, he would prevail. And again,

1 as I said in the brief, we have *Arizona versus United States*  
2 where the Supreme Court has said it's generally not a crime  
3 for -- for a removable alien to remain in the United States.

4 I saw the cases cited by the government, and I (Inaudible)  
5 in my reply brief.

6 In all those cases, there had already been steps taken by  
7 the U.S. government to place those individuals out of status.  
8 Removal proceedings were started; orders to show cause were  
9 issued. Here, there's nothing against these two individuals  
10 to in any way show that they are illegal aliens.

11 Finally, one brief point which occurred to me last night:  
12 On the harboring count, we can't forget that Dr. Su did notify  
13 the government through SEVIS where these people were, that  
14 they're students at the school, which cuts against harboring  
15 them or secreting them.

16 I also think the government has to prove that she was  
17 doing that to hide them from an imminent ICE raid, you know,  
18 enforcement action by the Homeland Security. And here there's  
19 just no showing on that.

20 I would submit my points on those grounds.

21 **THE COURT:** Thank you.

22 Mr. Rhyne?

23 **MR. RHYNE:** Yes, Your Honor. I'll obviously start by  
24 addressing Counts 5 through 12. And I think the best place to  
25 start is really the only place I can start, is looking at the

1 elements of the offense that we have to prove in the case.

2 And, as we stated in our brief, there's no requirement for  
3 wire fraud, mail fraud, or visa fraud, for that matter, that  
4 there be an actual victim harmed as a result of the wire, the  
5 underlying wire for each count.

6 **THE COURT:** Well, there doesn't have to be harm. But  
7 your summary of the elements of the Court's jury instruction  
8 elide over the phrase "a person." I went back and checked the  
9 jury instruction that I gave. And that phrase appears in the  
10 instruction, but not in your brief. And what about that?

11 **MR. RHYNE:** Well, I think the focus of the Court's  
12 inquiry needs to be: Is there a scheme to defraud? From  
13 there: Is this wire sent in furtherance of that scheme to  
14 defraud?

15 And I think the only way to answer that question on this  
16 record is: Yes. It was a scheme conceived by her at the time  
17 she sent these wires. Even though these were not real  
18 students, the scheme, as conceived by her, she sent these  
19 wires in furtherance of that scheme. And I think it's  
20 important to start from that -- that first opening element.

21 **THE COURT:** Isn't the scheme described in the  
22 indictment as a scheme to defraud students out of their money?

23 **MR. RHYNE:** (Nods head)

24 **THE COURT:** I mean --

25 **MR. RHYNE:** Yes.

1           **THE COURT:** -- I'm using too few words. But that's  
2 the essence of it.

3           **MR. RHYNE:** Yes.

4           **THE COURT:** So, the scheme is described in the  
5 indictment as a scheme to defraud students out of their money.  
6 And then this -- so, so it's -- the focus in the government's  
7 indictment is on the student in question. And there may be  
8 others. Certainly, there were. Thousands --

9           **MR. RHYNE:** Very good.

10          **THE COURT:** -- of other incidents of wire or mail  
11 fraud that defrauded real people.

12          **MR. RHYNE:** Here is the problem with that analysis:  
13 That analysis would require for every wire that Dr. Su sends  
14 to have some degree of success. She has to strike gold with  
15 every wire that she sends. Somebody has to be harmed.

16          That's not the elements of the offense. The offense is  
17 that she has to send a wire in furtherance of a larger scheme.  
18 The fact that we create an opportunity for her to send wires  
19 in furtherance of her pre-existing scheme, we shouldn't be  
20 penalized by saying, "Hey, those wires she sent didn't  
21 actually harm anybody because we knew the score at the time  
22 she sent them."

23          That would require basically every wire-fraud or  
24 mail-fraud count that the government charges to be based on a  
25 wire or a mailing that actually, for lack of a better term,

1 strikes gold (indicating quotation marks). That's successful,  
2 that causes harm to a real person. And that's not the  
3 elements of the offense. It's just not.

4 **THE COURT:** So, I have tried as hard as I could to  
5 survey the law on this point. And go beyond the authorities  
6 that were cited by the parties in their briefs.

7 There are -- the cases are legion that make the point that  
8 in essence you don't reward the pick-pocket by dismissing  
9 the indictment just because the pocket he tried to pick was  
10 empty.

11 So, there are cases in which the government will create a  
12 fake victim for purposes of internet sex solicitation, or give  
13 somebody drugs to sell that aren't really drugs. That kind of  
14 thing. Those cases are generally charged as conspiracy or  
15 attempt.

16 And if this had been charged that way, we wouldn't really  
17 be having this discussion. I mean, perhaps the Defendant  
18 would assert that defense, but it wouldn't go anywhere.

19 And of course, with regard to the thousands of other --  
20 it's not that she -- the Court is saying -- is not she has to  
21 strike gold in the sense of there being harm in connection  
22 with every wire. She could send a wire or make a phone call  
23 with regard to a real person, and not have it harm anybody.  
24 The law is good for you on that point.

25 It's the not-a-real-person part, that's where I'm stuck.

1           **MR. RHYNE:** And I understand the Court's analysis.  
2 Again, I have to keep running back to the elements of the  
3 offense. And I feel like that analysis almost adds an element  
4 that we need to prove in a wire fraud or a mail fraud type of  
5 setting.

6           And I think if you look at it from a common-sense  
7 standpoint of undercover operations or ruse operations, it's  
8 going to be very difficult if the Court is going to impose  
9 essentially a sixth or seventh element for mail or wire fraud.

10           Because again, she sent these wires in furtherance of a  
11 preexisting scheme that she had created that was then ongoing.  
12 And I just don't see how another element can be added to the  
13 offense.

14           **THE COURT:** This isn't the first undercover operation  
15 that the United States has engaged in?

16           **MR. RHYNE:** It is not.

17           **THE COURT:** There are thousands of such operations in  
18 the reported cases, right?

19           **MR. RHYNE:** Yes.

20           **THE COURT:** You and I can both feel confident that  
21 there are several ongoing elsewhere in the United States, even  
22 as we are conducting this hearing.

23           **MR. RHYNE:** Certain of it.

24           **THE COURT:** And yet, there is not a single reported  
25 case in your favor. Why is that?

1           **MR. RHYNE:** Well, I think it's -- I don't know if  
2 this has been raised. I don't know if -- I don't think that  
3 this argument has been successful before in this context.

4           **THE COURT:** There isn't one in Mr. Jordan's favor  
5 either, just so we don't -- I'm setting the table in a fair  
6 way.

7           **MR. RHYNE:** I think it's because the courts focus on  
8 the elements of the offense. And I don't think that that  
9 element is there that requires us to use a real person.

10           With respect to attempt, I agree, she would be guilty of  
11 attempt. But just because she's guilty of attempt doesn't  
12 mean she's not guilty of wire fraud.

13           **THE COURT:** All right.

14           **MR. RHYNE:** And then, I'll move to the alien  
15 harboring. Obviously, we agree with the Court's analysis on  
16 the unlawful component of that offense. She's hiding these  
17 people in plain sight.

18           And the reason she's able to do it, as the Court noted, is  
19 because she's making the entries in SEVIS, she's cutting these  
20 false transcripts, she's creating the facade and the  
21 perception that there is nothing to worry about, that these  
22 people are complying with their immigration status.

23           I think that there is a big difference between, as what  
24 the defense noted, that it's not in and of itself illegal to  
25 be in the United States in an unlawful status. I think that;



1 the case law says that. But there's a difference between  
2 being that person and shielding or hiding that person from  
3 detection from the United States.

4 I also think there is a distinction that is made in the  
5 case law between that person who may not be unlawfully in the  
6 United States for purposes of 922 or 1324 like we have in the  
7 case law, and in this case, and somebody that's actually going  
8 through immigration proceedings.

9 We're not required to have the aliens that underlie our  
10 counts here to actually have gone through some due process and  
11 have a finding by an immigration judge that they are  
12 unlawfully in the United States. That would be -- that would  
13 make it almost impossible to charge these crimes.

14 From a harboring standpoint or shielding standpoint, as we  
15 noted, SEVIS transcripts, school record, repeated assurances  
16 to multiple students that their immigration status was secure,  
17 she's signing I-20s. There was testimony in the record at  
18 trial that she locked some of them in at one point. She had  
19 them paint houses, or at least had Anji Dirisinala paint her  
20 house, and also move furniture. So, I think there is ample  
21 evidence in the record to support the 1324 counts.

22 And I believe I covered Your Honor's issues at that point,  
23 unless you have more questions.

24 **THE COURT:** I don't. I think what I would like to do  
25 is take argument with regard to the Rule 33 motion, and take a

1 short break. There's something I want to look at back in  
2 chambers. And then I can come out and rule on those motions.

3 So let's turn to the -- first of all, is the Rule 29  
4 motion submitted?

5 **MR. JORDAN:** It is, Your Honor.

6 **MR. RHYNE:** Yes, Your Honor.

7 **THE COURT:** Let's turn to the Rule 33 motion.

8 Mr. Jordan.

9 **MR. JORDAN:** Well, Your Honor, I was hoping you would  
10 give us some guidance if you had any concerns.

11 Do you have any questions specifically I could focus in  
12 on, given the low -- certainly have sufficient time to argue  
13 the motion; I know you'll give me all the time I need.

14 But, was there a concern you had a point to address?

15 **THE COURT:** The Court doesn't intend to provide a  
16 tentative with regard to this motion.

17 **MR. JORDAN:** Your Honor, I would argue -- I don't  
18 want to repeat what's in my brief -- that you were at the  
19 trial. You saw the behavior of Dr. Su.

20 And, from my reading of the cold transcript, I was struck  
21 at one point when I realized I was making notes of, you know,  
22 incidents by Dr. Su. And then I looked at the dates and it  
23 occurred to me that it looked like it was every single day,  
24 and they were getting increasingly severe toward the end date.  
25 I wasn't here, so I'm reading from a cold transcript, but that

1 was my view of the matter.

2 Having gotten the case, at that point I would say Dr. Su  
3 was, if I could use a layman's term, frantic. And at times,  
4 saying things that seem to indicate some delusional thinking.

5 Now, at all times, it seems to be a big concern of the  
6 government if I'm making an incompetency motion. I am not.  
7 My view today was that Dr. Su was competent during the trial  
8 and is competent today. However, that is not the issue we're  
9 raising.

10 The issue is whether in the interest of justice, under the  
11 first prong of the motion, the jury didn't hear evidence that  
12 they should have as to her mental state. My opening brief  
13 lays out that I believe *mens rea*, intentional conduct, is an  
14 element for all the crimes charged, if not all the significant  
15 ones.

16 Dr. Amanda Gregory -- who, by the way, Your Honor is  
17 present in court if you have any questions for her -- did  
18 evaluate the Defendant. I've submitted now two reports. The  
19 initial report, and then the last updated report, which I  
20 think are material both to this motion and sentencing.

21 But if I was focusing on this motion, I would rely heavily  
22 on the case out of Puerto Rico in the District Court case, I  
23 believe it's *Gutierrez*.

24 **THE COURT:** Yes.

25 **MR. JORDAN:** Where the Judge faced almost the exact

1 same situation. A jury decided guilt without hearing critical  
2 evidence on *mens rea*. Here, I think we have a couple of added  
3 factors.

4 The added point I was making was that the jury saw Dr. Su,  
5 and her behavior, which was unexplained to them. And that  
6 could have prejudiced her separately, even apart from the jury  
7 not hearing evidence of guilt or innocence on the intent part.

8 That is the summary of the Defendant's motion. There was  
9 an objection by the government that it's untimely. As I read  
10 the statute, there are two grounds: Interest of justice,  
11 newly-discovered evidence. Interest of justice has to be made  
12 within a certain time period. However, Your Honor did reserve  
13 a right to set a motions schedule at a later date.

14 I think the fair inference from that is that you intended  
15 that to include both Rule 29 and potential Rule 33 motions, so  
16 that this motion would be timely under the first prong.

17 And if one were to even to take a strict view of what  
18 Your Honor said as to what motions were reserved, I believe  
19 the statute still provides you may find just cause for  
20 allowing it to be filed at a later date.

21 The second prong, newly-discovered evidence, as I recall,  
22 allows the motion to be filed within, I believe, two years. A  
23 certain period of time longer than the initial setting. And I  
24 think here, there is a good argument that this is newly  
25 discovered.

1           Although the Defendant's behavior was at some point  
2           apparent to Defense Counsel, it seems from the record that it  
3           got much worse as it went along, to the point it became  
4           obvious. And at that point, we did have Dr. Su evaluated by  
5           Dr. Gregory.

6           I'll submit on it that, unless Your Honor has questions.

7           **THE COURT:** I don't. Thank you, Mr. Jordan.

8           Ms. West?

9           **MS. WEST:** Yes, thank you.

10           Beginning with the untimeliness, I'm not quite sure what  
11           Your Honor intended, but what was actually articulated on the  
12           Record was that the Court would set the date for filing the  
13           Rule 29 motion when counsel was ready to set that date. There  
14           was no discussion of a Rule 33. It was only with regard to  
15           Rule 29.

16           Moving on to the more substantive matters, what I hear  
17           from defense counsel now is actually slightly different than  
18           what was articulated in the brief. And that is that the only  
19           argument they are now raising is that expert testimony was  
20           required to provide evidence as to the Defendant's mental  
21           state. So, that's what I'm hearing now.

22           That argument is basically an  
23           ineffective-assistance-of-counsel argument. They are saying  
24           that prior counsel was ineffective in not retaining an expert  
25           to opine as to her mental state, to form the *mens rea* for the

1 offenses, or -- or -- and to explain what they describe as,  
2 you know, erratic or inappropriate behavior during trial.

3 Both of those arguments at core come down to an argument  
4 of ineffective assistance of counsel, which is not properly  
5 before this Court now. The cases are clear that that needs to  
6 be raised post-sentencing, in the habeas context.

7 So, I think really the only other thing for the Court to  
8 consider is: Is there some other interest of justice. And I  
9 would submit that that's premature; it is not properly before  
10 the Court.

11 But even if the Court were to consider that on the merits,  
12 there isn't. This Court was here. This Court isn't going  
13 from a cold record. This Court was able to see the  
14 Defendant's behavior during the trial, and the Court also has  
15 the benefit of knowing -- partly from the cold record, but  
16 partly from the Court's own experience during the trial and  
17 with prior counsel -- no prior counsel thought that this was  
18 appropriate for the Defendant to raise some sort of  
19 mental-health defense or to challenge her competency. It was  
20 something that they had certainly considered, and we made sure  
21 that that was articulated to this Court on the Record when  
22 Your Honor took over this case, as well.

23 So, unless the Court has any questions, this seems like an  
24 easy one.

25 **THE COURT:** Mr. Jordan, reply argument?

1           **MR. JORDAN:** Yes, Your Honor.

2           I think my argument has been consistent throughout. Under  
3 *Gutierrez*, the District Court there said: No, this could be  
4 made now. We don't have to wait for a 2255. It fits under  
5 the statute for either newly-discovered evidence or evidence  
6 in the interest of justice that the jury should have heard.

7           So, I'll submit it on that.

8           **MS. WEST:** I think the only newly-discovered evidence  
9 is that the Defendant was malingering and doing some research  
10 and faking some symptoms, Your Honor. Everything else was  
11 historical.

12           **THE COURT:** Is the motion submitted?

13           **MR. JORDAN:** It is, Your Honor.

14           **MS. WEST:** It is.

15           **THE COURT:** Thank you. Both of these motions have  
16 now been submitted.

17           As I said a moment ago, I would like to take a brief  
18 break. There's something I would like to look up before I  
19 provide a ruling on both these motions. And so, the Court  
20 will now take a brief recess.

21           **THE CLERK:** All rise.

22           (Recess taken from 10:21 to 10:32 a.m.)

23           **THE COURT:** The Court will now provide its ruling  
24 regarding the Defendant's Rule 29 motion and Rule 33 motion.

25           I think I will remember to say this at the end, but in

1 case I don't, these transcripts -- excuse me -- the transcript  
2 of this hearing will serve as the Court's order with regard to  
3 both of these motions. And that has been my -- I've attempted  
4 this morning to place sufficient reasons on the Record that it  
5 will be clear to any reviewing court why the Court rules the  
6 way that it does.

7 With regard to the Rule 29 motion, and Counts 5  
8 through 12, I conclude that my prior tentative ruling with  
9 regard to those counts was in error. And that I would be  
10 making new law if I were to acquit the Defendant of those  
11 counts. Perhaps a reviewing court will feel differently. As  
12 I've said earlier, there isn't a great deal of law that  
13 supports either side of this issue.

14 Also, I think it bears mention that this particular ruling  
15 doesn't have any effect on the sentence that will be imposed  
16 later this morning because of the way these offenses are  
17 grouped. Nonetheless, I took the motion seriously, and it  
18 gave me serious pause. But ultimately I conclude that as to  
19 those counts, the motion has to be denied.

20 I think it bears mention that the defense asserted here  
21 was not raised at trial. I think it bears mention here that  
22 the Court can find no case reported or otherwise that would  
23 support the granting of the motion.

24 I have rereviewed the wire fraud and mail fraud jury  
25 instructions, and I find that the evidence that was adduced at



1 trial was more than sufficient for the jury to find that the  
2 government had proven each element.

3 And so, for those reasons, the Court will reverse its  
4 tentative ruling and deny the motion as to those counts.

5 With regard to alien harboring I'll adopt my tentative  
6 ruling, but I would like to place some further analysis on the  
7 Record for the benefit of any reviewing court and for the  
8 benefit of the parties.

9 This portion of the motion relates to Dr. Su's conviction  
10 for harboring an alien pursuant to 18 United States Code  
11 Section 1324, which criminalizes the conduct of any person  
12 who, quote, "willfully or knowingly conceals, harbors or  
13 shields from detection, an unlawful alien."

14 And as we discussed earlier this morning, there really are  
15 two issues at play in the motion. The first is whether the  
16 Defendant did anything that would constitute concealing,  
17 harboring and shielding.

18 I don't think -- well, let me start by saying, just a few  
19 days ago the Seventh Circuit decide a case called *The United*  
20 *States versus Campbell* which appears at 2014 Westlaw 533,  
21 4645. And the only reason I mention that is they note that  
22 the terms "conceal," "harbor" and "shield from detection" are  
23 not defined in the statute, and the courts have devoted a lot  
24 of effort to pinning down their precise meaning in the context  
25 of the statute.

1           So it just bears mention that it is not plain from the  
2 face of the statute, itself, what kind of conduct necessarily  
3 would constitute a violation.

4           So let's talk first about harboring and concealing, which  
5 I don't think the Defendant did, and next about shielding  
6 which I think the Defendant did do.

7           I think the terms "harboring and concealing" denote  
8 putting the alien in a physical space such as a home in which  
9 they are unlikely to be detected.

10           The plain meaning of "harbor" means to give shelter or  
11 refuge to. That is the way the phrase is used in *United*  
12 *States versus Dann*, 652 F.3d, 1160, the case cited by the  
13 government. That court used the phrase "provided the alien  
14 with shelter."

15           And in the *Campbell* case the Seventh Circuit case I  
16 mentioned a moment ago, the Court defined harboring as, quote,  
17 "providing or offering a known illegal alien a secure haven, a  
18 refuge, a place to stay, in which the authorities are unlikely  
19 to be seeking him." Close quote.

20           That's not what happened here. The fake students -- which  
21 is what I'll call them -- were free to come and go. They  
22 didn't live at TVU; they didn't live with Dr. Su. There was a  
23 lunch hour, it's true, in which Dr. Su locked the door. But  
24 that was aberrational. And, it wasn't -- this wasn't like the  
25 *Dann* case in which somebody was locked in a house and not free

1 to go all the time.

2 So I don't think the conduct qualifies as harboring or  
3 concealing. But that still leaves shielding from detection.  
4 And the Ninth Circuit has defined that term as, quote,  
5 "Conduct tending to directly or substantially facilitate an  
6 alien's remaining in the United States unlawfully with the  
7 intent to prevent detection by the Immigration and  
8 Naturalization Service." And that is the *United States versus*  
9 *Aguilar*, 883 F.2d, 662, at Pages 689 to-90. That is a 1989  
10 case.

11 I think that definition is met here. Dr. Su fraudulently  
12 created and maintained Dasa and Dirisinala's F1 immigration  
13 status in order to employ them at TVU. She enrolled them in  
14 classes that did not exist; she issued them bogus grades and  
15 transcripts; she assured them that their immigration status  
16 was secure. She transmitted fraudulent SEVIS -- S-E-V-I-S --  
17 entries to the government. She printed fraudulent I-20 forms.

18 Viewing this evidence favorably to the government, there  
19 was more than enough evidence here to qualify as shielding  
20 from detection.

21 I won't say anything further about the question of whether  
22 Dasa and Dirisinala were unlawful aliens within the meaning of  
23 the statute. As I said earlier, I think that the analysis in  
24 the *Atandi* case -- A-T-A-N-D-I -- applies here, as the  
25 government urges in its brief. And so, the Court will deny

1 the Rule 29 motion in all respects.

2 With regard to those counts we haven't discussed, I'll say  
3 only that the evidence was more than sufficient to meet the  
4 government's burden of permitting the jury to find against the  
5 Defendant with regard to each of the elements contained --  
6 each of the elements supporting a conviction for each of the  
7 counts for which the Defendant was convicted, and the  
8 transcript of this hearing shall serve as the Court's order.

9 With regard to the Rule 33 motion, the Defendant asserts  
10 two grounds: That new evidence has been discovered, and that  
11 the interests of justice require a new trial.

12 In order to obtain a new trial based on newly-discovered  
13 evidence, Dr. Su must establish five things:

14 First, that the evidence is newly discovered. Secondly,  
15 that her failure to discover the evidence sooner was not the  
16 result of a lack of diligence. Thirdly, that the evidence is  
17 material. Fourth, that the evidence is neither cumulative nor  
18 merely impeaching. And fifth, that the evidence indicates a  
19 new trial would probably result in acquittal.

20 That comes from a very recent case, *United States versus*  
21 *Wilkes*, 744 F.3d, 1101 and 1110. It's a 2014 case.

22 Here, I find the evidence is not newly discovered in the  
23 exercise of diligence. Had Dr. Su wanted to present  
24 information regarding her mental health at trial, she could  
25 have done that.

1           While there is some discussion of Dr. Su's behavior during  
2 the trial, which parenthetically I think is consistent with  
3 someone who is experiencing the stress of a multi-week  
4 wire-fraud case in which she has to sit and listen to a lot of  
5 very unfavorable evidence, putting that to one side, almost  
6 all the evidence referenced in Dr. Gregory's report occurred  
7 before trial. And even before Dr. Su's arrest. So, had  
8 Dr. Su wanted to present this evidence, she could have.  
9 There's nothing that would have prevented that.

10           Also, with regard to the last element under the *Wilkes*  
11 test, I cannot find, do not find that this evidence indicates  
12 that a new trial would probably result in an acquittal. And  
13 it fails that element also.

14           Dr. Gregory concludes in her report -- and I read both  
15 reports closely -- that Dr. Su suffers from schizo-affective  
16 disorder, bipolar type. And I accept that tentative diagnosis  
17 for purposes of this hearing. It's not that I don't think  
18 that Dr. Gregory's diagnosis is correct, or that I in any way  
19 doubt her qualifications or the thoroughness of her testing.

20           There also is no doubt that Dr. Su was hospitalized in  
21 2005 for an acute psychotic episode. And it does appear to  
22 the Court that she could benefit from mental-health treatment.  
23 But I don't accept Dr. Gregory's conclusions about the effect  
24 of Dr. Su's mental health or her ability to make the decisions  
25 that led to her conviction in this case.

1 Dr. Gregory also noted Dr. Su's exaggeration of her  
2 symptoms. And that also informed the Court's analysis of her  
3 report.

4 I think Dr. Su's conduct during her interview with  
5 Dr. Gregory and the information she provided during that  
6 interview do support Dr. Gregory's diagnosis. But, they also  
7 appear at the same time to be motivated by the desire to  
8 obtain a report that would result in a positive outcome in  
9 Dr. Su's criminal case, rather than simply to provide  
10 Dr. Gregory with the objective information she needed to make  
11 a good diagnosis.

12 Finally, Dr. Gregory's report does -- I don't think would  
13 permit a reasonable jury to conclude that Dr. Su was not  
14 responsible for her criminal conduct, or her forming the  
15 specific intent to defraud someone. I don't read the report  
16 as doing that.

17 *Gutierrez* is cited by the Defendant. I think to support  
18 both the new-evidence and the interest-of-justice aspects of  
19 the motion, so I'll discuss it now, that's a very interesting  
20 case. And I think that the District Court judge in that case  
21 is to be commended for -- for taking the bull by the horns,  
22 frankly, and making sure that the Defendant in that case got a  
23 fair trial.

24 But that's a very different case from this case. In  
25 *Gutierrez*, the court and counsel discovered after the jury

1 verdict and before sentencing that the defendant suffered  
2 severe cognitive impairment, and the defendant is described as  
3 being someone with subnormal intellectual functioning.

4 Quoting from the *Gutierrez* case now, the Court said, I quote  
5 (As read):

6 "The test results revealed that Defendant was  
7 functioning at slightly above the moderate mental  
8 retardation range of intelligence with an IQ of 57.  
9 According to the profile of a person within this  
10 range, Defendant is a person who is trainable, can  
11 talk, and take care of himself with some supervision.  
12 Would probably be unable to pass the second grade in  
13 academic subjects."

14 That's not Dr. Su. And, were we in a situation like the  
15 one faced by the court in the *Gutierrez* case, I hope that I  
16 would acquit myself as well as the District Court judge did in  
17 that case. But, I don't think this is that case.

18 With regard to the portion of the motion grounded on the  
19 interest of justice, the District Court should grant a Rule 33  
20 motion on that basis only in extraordinary circumstances. The  
21 Second Circuit has gone so far as to indicate that such a  
22 motion should be granted only if there exists a real concern  
23 that an innocent person may have been convicted.

24 This isn't the standard here, this isn't the Second  
25 Circuit, but I say that only to make it plain that the federal

1 courts agree that the bar on a Rule 33 motion on the grounds  
2 of the interests of justice is a very high bar.

3 It's true that a District Court's power to grant a motion  
4 for a new trial is much broader than its power to grant a  
5 motion for judgment of acquittal. I don't have to view the  
6 evidence in the light most favorable to the government as I do  
7 on a Rule 29 motion. I'm free to weigh the evidence and  
8 evaluate for myself the credibility of the witnesses. But, my  
9 focus has to be whether letting a guilty verdict stand would  
10 be a manifest injustice.

11 Let me just say first, I find that the motion is not  
12 timely. But, I want to go ahead and address the motion on the  
13 merits anyway because secondly, I do not conclude that  
14 allowing the verdict to stand would work a manifest injustice.

15 Dr. Gregory's report does not succeed in raising a doubt  
16 in my mind that Dr. Su knew what she was doing. She was  
17 taking advantage of her position of authority to make a lot of  
18 money. And she was using that money to support an extravagant  
19 lifestyle. So, Defendant's Rule 33 motion will be denied.

20 And, the transcript of this hearing shall serve as the  
21 Court's order with regard to that motion.

22 The Court is now prepared to proceed to sentencing, if the  
23 parties also are ready.

24 **MR. RHYNE:** We are, Your Honor.

25 **MR. JORDAN:** Yes, Your Honor.



1           **THE COURT:** Very good. So, let me start in the  
2 interest of making sure that everyone is appropriately heard  
3 this morning, and the Court has the ability to consider all  
4 the information the parties want to give the Court.

5           Let me start by finding out whether there is anyone here  
6 besides Dr. Su and her lawyer who wish to speak on the  
7 Defendant's behalf.

8           **MR. JORDAN:** Your Honor, her family is here. I  
9 submitted letters to you from everyone who's here, I believe.  
10 And I've asked them if they wanted to speak to you, and I  
11 think they did tell me they would rely on the letters.

12           **THE COURT:** All right.

13           **MR. JORDAN:** They are fairly comprehensive.

14           **THE COURT:** So I'll tell those of you who are here, I  
15 thank you very much for your letters. The letters are a very  
16 important part of what I read in getting ready for any  
17 sentencing. And I've read your letter closely. But if you  
18 came to court and you wanted to address the Court, you have  
19 that right.

20           And, and so I just want to ask, is there anyone here who  
21 came this morning in order to speak to the Court about Dr. Su  
22 this morning? At the microphone?

23           (No response)

24           **THE COURT:** Okay, I'm not seeing any hands.

25           And I hope I'm not trespassing on your role as counsel

1 there. I just wanted to make sure I was doing everything I  
2 could.

3 **MR. JORDAN:** Not at all, Your Honor.

4 **THE COURT:** Is there anyone in court here who was a  
5 victim of these crimes, who wishes to address the Court?

6 (No response)

7 **THE COURT:** Mr. Rhyne, are you aware of anybody who  
8 wishes to address the Court in that capacity?

9 **MR. RHYNE:** I am not, Your Honor.

10 **THE COURT:** All right.

11 Ms. Goldsberry, good morning.

12 **PROBATION OFFICER GOLDSBERRY:** Good morning.

13 **THE COURT:** Is there anything further that Probation  
14 wants to say this morning in regard to the substance of the  
15 presentence report or any of the objections? All of which I  
16 know you address in the report, itself, but is there anything  
17 further you would like to say this morning?

18 **PROBATION OFFICER GOLDSBERRY:** There's nothing  
19 further, Your Honor.

20 **THE COURT:** All right. Before we begin, I need to  
21 just say for the Record what it is specifically that I have  
22 read in preparing for this morning's hearing. I did read the  
23 presentence report; I read the sentencing memoranda submitted  
24 by both parties. I read the letters attached to Mr. Jordan's  
25 sentencing memorandum.

1 I read Dr. Gregory's report. I read it in connection with  
2 the Rule 33 motion, but I have taken it into account in regard  
3 to the sentencing of Dr. Su.

4 And I have also read Dr. Gregory's supplemental report,  
5 which she prepared after interviewing Dr. Su's ex-husband and  
6 other of her family members.

7 So, that's what I've read so far.

8 I think the order that I would suggest, subject to hearing  
9 from counsel, is that I determine whether Dr. Su wants to  
10 address the Court, and I hear from her; that we then resolve  
11 any objections to the presentence report.

12 And there are some weighty issues there involving grouping  
13 and many, many issues related to various enhancements. And,  
14 that the Court then finally impose sentence.

15 **MR. RHYNE:** Your Honor, one issue I wanted to put on  
16 the Record. There was also a declaration that I submitted  
17 with a binder of attachments that I wanted to make sure you  
18 referenced.

19 **THE COURT:** Thank you. I did, I did read that  
20 declaration. And I did read a sufficient amount of the  
21 attachments to satisfy myself that the materials there were as  
22 they were described by the government.

23 And just so that the transcript is clear, I think it's  
24 important for me to be candid with the Record about there's  
25 these hundreds and hundreds and hundreds of pages of

1 attachments to a large -- handful, but nonetheless, a handful  
2 of emails Dr. Su sent to government witnesses, for the most  
3 part. And, either immediately prior to or during the trial of  
4 this case. And it is to those materials that Mr. Rhine is  
5 referring.

6 And, as I say, I've read a lot of them, and I've read  
7 enough to satisfy myself that they say what the government  
8 says they say. So, I have read that.

9 Going back to the order of proceedings, does anyone want  
10 to suggest an alternative order of proceedings, or add  
11 something that the Court may have left out?

12 **MR. JORDAN:** No, Your Honor.

13 **MR. RHYNE:** No, Your Honor.

14 **THE COURT:** All right. Mr. Jordan, does Dr. Su wish  
15 to address the Court this morning?

16 **MR. JORDAN:** Your Honor, when I spoke to her on  
17 Monday when I met with her and then -- on Tuesday when I met  
18 with her and on Thursday by phone, she indicated she did not  
19 want to speak. And I think she is visually affirming that  
20 decision.

21 **THE COURT:** Yes. And the Record will reflect that  
22 Mr. Jordan looked at Dr. Su as he made his remarks, and Dr. Su  
23 shook her head from side to side to indicate she did not wish  
24 to address the Court this morning.

25 And so, we can move on to the next item, which is to

1 resolve any objections to the presentence report. I think the  
2 most sensible thing is to go through the objections one at a  
3 time to allow each side to address the Court, and then for the  
4 Court to make a final ruling.

5 The Probation Office obviously very carefully considered  
6 the parties' objections, and even went back to the Sentencing  
7 Commission at one point to -- Ms. Goldsberry, to satisfy  
8 herself that her grouping was correct. And, I appreciate the  
9 work that the Probation Department did in putting together  
10 this report.

11 I think what I will do is let me just tell you what my  
12 tentative rulings are regarding these various objections, and  
13 then you can address those -- Counsel can address those they  
14 want to address further.

15 I think the United States' grouping methodology is  
16 correct, actually. I don't think it has a sentencing effect.  
17 But, in any event, I do think that the crimes in what the  
18 United States describes as Group 1, which is essentially  
19 everything except misuse of a government computer, those are  
20 all crimes in which the guideline sentence is based on loss,  
21 harm or quantity, or otherwise contemplate continuing  
22 behavior. That language comes from a comment to Section  
23 3D1.2D of the sentencing guidelines. And, I recognize that  
24 the Probation Department heard directly from the Sentencing  
25 Commission, so perhaps someone will have a different view down

1 the line, but I thought the United States' analysis on that  
2 point was correct.

3 I would overrule the Defendant's objections for reasons I  
4 can put on the Record later, with one exception. And that is  
5 the misrepresentation the Defendant was acting on behalf of an  
6 educational organization I do not think is an appropriate  
7 enhancement here, because the comments to the sentencing  
8 guidelines make clear that the purpose of that enhancement is  
9 to reach conduct where the Defendant represents that the money  
10 is going to be to an educational, religious or charitable  
11 organization, but the money is really going to her. And here,  
12 the money actually was going to TVU.

13 Now, of course, TVU is a sham, but that fact is already  
14 accounted for in other portions of the sentencing  
15 calculations. So I think that the group offense level for  
16 Counts 20 and 21 is 34, not 36. And that the Defendant's  
17 objection on that point is well-taken.

18 I apologize to the parties and the Defendant. I know  
19 you're not supposed to eat in court but I'm doing too much  
20 talking, and I'm starting to get a sore throat, so I'm going  
21 to put a lozenge in my mouth.

22 So anyway, that would be the Court's tentative ruling with  
23 regard to the objections.

24 Mr. Jordan, let me hear first from you. Let's talk about  
25 grouping first.

1           **MR. JORDAN:** Your Honor, before we get to that,  
2 there's just one little minor point. I very much appreciate  
3 the work done by the probation officer in this case. But in  
4 the second reading --

5           **THE COURT:** Oh --

6           **MR. JORDAN:** We did come up with a few little  
7 corrections.

8           **THE COURT:** You did. And thank you for reminding me.  
9 I made a note of those, and I meant to put those in my outline  
10 for this morning's proceedings. And if you will give me just  
11 a second, I'll make a good record of this.

12           In addition to objections to various enhancements and so  
13 forth, the Defendant also interposed more minor objections, as  
14 set forth on the bottom of Page 4 of the Defendant's  
15 sentencing memorandum. These are described by the Defendant  
16 as "minor corrections."

17           The first is that in Paragraph 85, the name of David Kerns  
18 needs to be spelled differently. In Paragraph 26, the salary  
19 should read "\$1,000 per month" instead of what it actually  
20 says. And that in Paragraphs 22 and 35, the lowest grade  
21 should read "B-."

22           Does anyone object to the Court sustaining these  
23 objections and ordering that these corrections be made?

24           **MR. RHYNE:** Your Honor, the only comment that I would  
25 want in the Record is that there were -- I believe there were

1 times in trial where people testified that the lowest grade  
2 should be a B+. I know Mr. Jordan has cited a reference here  
3 to B-, but I believe that there was some differing testimony  
4 on that.

5 So, I have no objection to B- being in there as long as  
6 there is reference to the fact other students -- employees  
7 said the instruction was B+.

8 **THE COURT:** The transcript of this hearing now does  
9 contain such a reference.

10 **MR. RHYNE:** (Nods head)

11 **THE COURT:** And so, the Court will order the  
12 Probation Department to make each of the corrections that are  
13 contained on Page 4 of the Defendant's sentencing memorandum  
14 at Lines 21 through 25.

15 Mr. Jordan, grouping.

16 **MR. JORDAN:** Thank Your Honor. Well, Your Honor, the  
17 -- the papers filed by both parties, I think, really briefed  
18 well, if I may say that.

19 The technical issue is, so I won't repeat too much, it's  
20 the Defendant's view that all the counts should be grouped  
21 because under 3D1.2B, they're all part of a common scheme or  
22 plan. So I think that covers all of the counts here.

23 To a lesser extent, they could be grouped under 3D1.2C  
24 because it's the same conduct. I know even under the  
25 government's calculations, there are additions to those



1 guideline scores based on visa fraud, which is already being  
2 counted in Group 1.

3 So I think that's where the Defendant is prejudiced here,  
4 where an additional count which comprises the same common  
5 scheme and which relies on conduct charged in Group 1 is being  
6 used to increase her potential sentence. I think the whole  
7 rationale between -- behind the grouping scheme, as pointed  
8 out in 3D1.2 is that if it's substantially the same harm,  
9 there should be no further increase.

10 I will also add that although my arguments were as to the  
11 scheme heard by the Probation Officer, the double-counting  
12 scheme under *US v. Smith* cited in my brief, I think, also  
13 applies to the government scheme. If you're going to increase  
14 the score because of the visa fraud, which is already in  
15 Group 1, that's double-counting.

16 I will submit it on that.

17 **THE COURT:** Mr. Rhyne, further comment?

18 **MR. RHYNE:** Your Honor, I'll be very brief.

19 The only response I have with respect to 3D1.2B is: I  
20 believe it's problematic because that subsection is premised  
21 on the same victim. And I think that there are different  
22 victims based on the counts in this case, which I think is why  
23 it makes more sense, as the Court noted, to go to 3D1.2. And  
24 for the reasons we stated in our sentencing memo, we believe  
25 that that's correct.

1 As far as double counting goes, I don't there's any issue  
2 with respect to double counting. I think that each individual  
3 offense level is computed correctly, and they are adequately  
4 accounted for in the end when the units are assigned to the  
5 different groups in this case. So, I don't think there is any  
6 issue there. So, I would submit on grouping.

7 **THE COURT:** The Court will adopt the United States'  
8 grouping methodology, and place all of the counts in Group 1,  
9 save and except the misuse of a government computer count.

10 Next, the Defendant objects to the calculation of actual  
11 loss. I have to say, also -- this is really probably a side  
12 note -- the government cites Section 2B1.1, Comment N of the  
13 sentencing guidelines, 2002 edition, for the proposition that  
14 the Court can rely on the Defendant's personal gain as an  
15 alternate measure of the loss when it is unable to determine  
16 actual or intended loss with sufficient certainty.

17 **MR. RHYNE:** May I have a moment, Your Honor?

18 **THE COURT:** Yes.

19 And what I will say is I didn't find that comment. To  
20 prepare for the hearing, I actually used both the 2010 and  
21 2013 versions of the sentencing manual because the conduct in  
22 the case occurred predominately in 2010, seemed like the right  
23 thing to do. And in neither of those manuals did I find that  
24 comment.

25 I don't doubt that it appeared in 2002. I didn't look.

1 But perhaps you could help me.

2 **MR. RHYNE:** Your Honor, that might be an erroneous  
3 cite. I believe the -- as I'm quickly looking here, the gain  
4 is noted in Allocation Note 3 and 4 (As read):

5 "...shall use the gain that resulted from the offense  
6 as an alternative measure of loss only if there is a  
7 loss but it reasonably cannot be determined."

8 **THE COURT:** This is at comment 3 -- 2B1.1?

9 **MR. RHYNE:** Yes, Your Honor. And I don't -- I think  
10 gain and loss are computed exactly the same in this case. It  
11 will be on Page 87 of the November 1st, 2013, guideline.

12 **THE COURT:** I have it now. Thank you. It's comment  
13 3, large B.

14 Okay, Mr. Jordan.

15 **MR. JORDAN:** Your Honor, again, I'll emphasize what I  
16 wrote in my papers: The defense believes that the loss here  
17 is exaggerated based on the government's proof.

18 And we are pointing to the trial testimony of Parth Patel  
19 who testified at trial, frankly, that in his view, there were  
20 two types of students here. On the one hand those who were  
21 unhappy and defrauded, and a second group which he estimated  
22 as 65 to 70 percent of the students as those, in his words,  
23 "just interested in maintaining their immigration status."

24 The counts here for loss don't view -- don't list the  
25 United States as a victim. They list a scheme to defraud

1 students. My point is if -- there is not sufficient evidence  
2 by the government -- and it's their burden -- to show that all  
3 the students were defrauded here. If students, as Mr. Patel  
4 testified, were willing participants, they are not victims.  
5 And the money they paid shouldn't be included in the loss  
6 figure. I can't say it any simpler than that.

7 **MR. RHYNE:** Your Honor, I think there is a difference  
8 in the victims in this case. I think that there are certainly  
9 victims that were bona-fide victims from start to finish. And  
10 I think the government has to reasonably concede that there  
11 were people that came here as victims, and then realized: Hey,  
12 I can -- I can stay in the country, I don't have to go to  
13 class, and I can go work in Silicon Valley and make an income  
14 that I can't make in India, and this works out great for me.

15 That doesn't mean that they weren't defrauded at the  
16 beginning of this scheme, though.

17 It doesn't mean that Susan Su gets to escape the loss that  
18 she caused those people when they initially came into the  
19 country just because it turned out that they, for lack of a  
20 better term, liked being a victim in this scheme.

21 I think that the evidence in this case is overwhelming  
22 that the school was not what it purported to be. Its  
23 projection publicly was that it was a real school, on its  
24 website and all its course material. And as soon as it got  
25 SEVIS approval, the money started rolling in.

1           And I think there is adequate evidence in the record for  
2 the Court to find by a preponderance of the evidence, and for  
3 that matter, by clear and convincing evidence, that the loss  
4 amount in this case is at least \$5.6 million.

5           I note also that that's a conservative number. As Jason  
6 Mackey testified at trial, it's actually probably more like  
7 5.9 million. And that discrepancy was a result of the trial  
8 subpoenas and grand jury subpoenas that went out in this case  
9 that limited the returns to certain dollar amounts. So he  
10 wasn't able to capture some of the smaller charges.

11           Add to that we haven't spoken about intended loss here.  
12 The government could be asking for a lot more than it actually  
13 is. Based on the exponential growth that TVU was experiencing  
14 just in the snapshot of the of time that we have, I think that  
15 Susan Su's claim that she made to ASI and DHS is compelling.  
16 I don't think she was going to make \$20 million the next year  
17 but I think she was going to make a lot more than she made the  
18 year before. And she certainly intended to do that and she  
19 certainly was on a vector to do that.

20           So for the government to stand here before the Court and  
21 say "We know \$5.6 million is a safe number, and we should go  
22 with that," I think we are taking a very reasonable approach.  
23 I think we could be asking for a lot more.

24           And on that, I would submit.

25           **MR. JORDAN:** Just briefly in reply, Your Honor,

1 again, it's the government's burden to prove that all of these  
2 people at the beginning were defrauded; that they didn't know  
3 at the beginning what TVU was.

4 Secondly, briefly, even under the government's view if  
5 somebody comes here at first and is defrauded, but then sees:  
6 Oh, this is good, I can work in Silicon Valley, his or her  
7 subsequent payments should be deducted from that loss figure.

8 **THE COURT:** The Court will overrule the objection and  
9 adopt the \$5.6 million figure. For several reasons.

10 First, I think that the government makes a good point  
11 about intended loss. It would be easy for the government to  
12 put too much weight on the \$20 million figure that Dr. Su  
13 included in her tort claim. But I don't think they do that.  
14 I think what the government simply says is all we need to show  
15 is that the intended loss was at least this much.

16 And since Dr. Su asked for a lot more from the government,  
17 in her tort claim, based on her reasonable expectations about  
18 the growth of TVU, 5.6 is reasonable. And I think on an  
19 intended-loss basis, that argument is reasonable.

20 Secondly, I think that there -- this income came from a  
21 scheme that included an element of -- of visa fraud that has  
22 as its victim, the United States government. And, it's not  
23 just that these individual students were defrauded, although  
24 most of them probably were. There are separate and  
25 independent -- these are all separate and independent bases

1 for the court to feel comfortable with this loss figure.

2 I take it as a given that many of the students who paid  
3 TVU tuition only wanted visas, and never actually expected to  
4 go to class. How many were there? I don't know. Was there  
5 at least one? Is it reasonable to think that there was at  
6 least one who was in on it from the beginning? We don't -- I  
7 can't say for certain. That person didn't testify. But, the  
8 argument that there were such people is not frivolous. Those  
9 people are just co-conspirators in Dr. Su's visa fraud.

10 And even accepting that argument, there's no way to  
11 quantify the number of students who were intent on visa fraud  
12 versus the number who thought they were getting actual  
13 classes, because the only evidence on that point is the  
14 estimate of a TVU student who didn't have good information,  
15 and I find that estimate to be unreliable.

16 And then lastly, to the point that it's hard to know how  
17 many of the students were actually defrauded and how many were  
18 in on it, to the extent that that's even relevant, and I'm not  
19 sure that it is, then we get back to this comment that  
20 Mr. Rhine had to straighten out a few minutes ago. And that  
21 is that the actual loss is hard to determine.

22 And, and we know what Dr. Su's gain from this conduct was:  
23 It was at least \$5.6 million. Because her only source of  
24 income during this time was TVU, and TVU was a sham. And, and  
25 that money has been adequately traced.

1           So the Court will overrule that objection, and adopt an  
2 actual loss of \$5.6 million for sentencing purposes.

3           Next, we come to sophisticated means and organizer leader.  
4 And I would like to discuss those two enhancements together,  
5 if we might.

6           **MR. JORDAN:** I think that is a good idea, Your Honor.

7           And first, with the sophisticated means, we did raise an  
8 objection to that. But frankly, it's there also to -- of  
9 course it's relevant to the 3553 arguments later, which is  
10 perhaps technically, this is a sophisticated scheme.

11           But, how many schemes involving this amount of money  
12 wouldn't also qualify for that? Of course, that is not  
13 properly in this section (Indicating). It's an argument we  
14 make later. But, that's one reason we raise it now, to relate  
15 it back to that point.

16           Focusing more perhaps on the role. Just looking at 3B1.1,  
17 Application Note 1 says a participant is a person who is  
18 criminally responsible for the commission of this offense.  
19 When I read the transcript under the government's theory of  
20 the case, it seemed very much a one-person scheme. No one  
21 else apparently profited directly. I didn't see any evidence  
22 in the trial that anyone else knew about these articulation  
23 agreements. There might have been people working at TVU, of  
24 course there were; might have been other people there.

25           But, are they participants under 3B1.1? That I think is



1 the only question. Are they part of a criminal conspiracy  
2 that Dr. Su is properly being penalized for being the  
3 organizer or the leader of criminal activity that involved  
4 other participants?

5 That's, I think, a technical argument. But here, I think  
6 the other people fall below the definition of "participant"  
7 under 3B1.1.

8 **THE COURT:** Mr. Rhyne?

9 **MR. RHYNE:** Yes, Your Honor.

10 With respect to sophisticated means, I think it's briefed  
11 in our sentencing memo. There's obviously many cases on the  
12 subject. I don't think there's any case that I was able to  
13 find that included the degree of sophistication and layers of  
14 lies that we saw in this case that didn't qualify for  
15 sophisticated means.

16 I spelled out in a list why the government believed that  
17 this qualified on Page 13 of the sentencing memo. And it  
18 includes the first lies that she tells to DHS in order to  
19 obtain the SEVIS approval in the I-17. The forgery of the two  
20 articulation agreements using the photo shop type program.  
21 The aid of her family members to forge I-17 documents as DSOs.

22 And although they didn't testify, Jason Mackey testified  
23 that Susan Su told him that they had no intention to be DSOs.  
24 She knew it; they knew it.

25 The assistance of her sister Sophie, to pose as a DSO

1 during SEVIS site visit. There was an actual skit that was  
2 run for the site inspector that was there. Sophie sat at a --  
3 roughly a card table just to be a prop, so that they could  
4 pull the ruse over on the actual physical site inspector,  
5 which was roughly a government contractor who was there to  
6 just kind of take a look around.

7 You've got the creation of -- preservation of the facade  
8 of the university, including the website, the course catalog,  
9 the bogus instructors that she listed. She also -- I don't  
10 think there's any evidence to dispute the fact that Dr. Su had  
11 specialized knowledge. Not only in her field of expertise,  
12 but she was trying very hard to navigate the specialized  
13 knowledge that she learned in the visa fraud regulations.

14 She knew where she needed to improve the school's  
15 appearance and where she needed to skirt around certain issues  
16 to avoid detection. I think that the daily entry of false  
17 information into SEVIS also contributes to the sophistication  
18 of this scheme per her orchestration --

19 (Document handed up to the Court)

20 (Reporter interruption)

21 **MR. RHYNE:** Her orchestration of multiple DSOs to  
22 carry this out. And I use "DSOs" in quotes because they  
23 obviously were not DSOs; they were people whom she controlled  
24 with laptops that she distributed to them that were  
25 pre-admitted or pre-logged on into SEVIS.

1           You've got those daily entries in turn are creating the  
2 appearance to the government that TVU students are complying  
3 with their visa regulations.

4           There's, although closely related, the creation and  
5 issuance of bogus school schedules and transcripts. Again, a  
6 completely kind of new dimension of the facade that she's  
7 creating here.

8           You have the marketing of her own academic credentials as  
9 president of the school, and her academic credentials as a  
10 Ph.D. from Cal. You've got the use of multiple bank accounts  
11 at the back end of the scheme that she used to collect the  
12 money, and later spend the money after the scheme was done.

13           So, we just think that her orchestration of these multiple  
14 facets of this crime go well beyond what the case law shows  
15 would be required for sophisticated means.

16           And on that, we would submit.

17           **THE COURT:** Submitted?

18           **MR. JORDAN:** Yes, Your Honor.

19           **THE COURT:** The Court will overrule the Defendant's  
20 objection, and adopt both of these enhancements. I'll say --  
21 first let me make a couple of comments.

22           First, I take the Defendant's point that at least with  
23 regard to sophisticated means, and I think frankly also with  
24 regard to organizer/leader, that these arguments have at least  
25 as much force in the context of 3553(a) as they do to the

1 technical application of the sentencing guidelines.

2 I think sophisticated means is an easy call on this case.  
3 You look at the amount of computer work, forms, the number of  
4 people who had to be in on it at least to some extent. And,  
5 this seems to me like a textbook sophisticated-means case.

6 With regard to organizer/leader, I think the Defendant  
7 made a very good argument, but there's a comment in the  
8 guidelines that says:

9 "In assessing whether an organization is otherwise  
10 extensive, all persons involved during the course of  
11 the entire offense are to be considered. Thus a  
12 fraud that involved only three participants but used  
13 the unknowing services of many outsiders could be  
14 considered extensive."

15 And I think that's what happened here. I think there were  
16 a few people who knew everything. Then there was a layer of  
17 people who knew not everything, but they knew enough to serve  
18 Dr. Su's purposes.

19 And then there was a third layer of people who really  
20 didn't know in any respect that this university was one big  
21 scam. But they were nonetheless providing their services in  
22 some form to Dr. Su, unknowingly. And so within the meaning  
23 of that comment, they helped make the organization extensive.  
24 So, I think that those enhancements are both appropriate.

25 Let's turn to obstruction of justice. Mr. Jordan?

1           **MR. JORDAN:** Your Honor, I think at this point  
2 Dr. Gregory's report would be relevant also. Obstruction of  
3 justice does have, as I briefed, a *mens rea*, an element of  
4 willfulness. I've looked at, of course, the emails sent by  
5 Dr. Su and reviewed the transcript for her, you know, comments  
6 or actions during the trial. And I think there is a strong  
7 argument to be made here that of course, the emails were sent.  
8 And of course, she did what she did at trial.

9           But, was it willful? Was she really trying to obstruct  
10 justice? She had her own view, I believe, of what the truth  
11 was here. And she was urging the witnesses to testify in  
12 accordance with that. In her mind, I don't think she was  
13 trying to get them to perjure themselves. Or urge them to do  
14 that. She was urging them to testify consistent with her  
15 beliefs, with her belief system that she was operating under.

16           So, the question just resolves down to: Did she really  
17 have the intent to willfully obstruct justice? And I think  
18 that's not proven here.

19           **THE COURT:** Mr. Rhyne?

20           **MR. RHYNE:** Then, why use an alias? If what she's  
21 doing is okay, why can't she just be herself? The reason is  
22 because she doesn't want people to know that it's her. She's  
23 trying to influence the testimony of multiple people that were  
24 on the government's witness list.

25           I think the opening email is probably one of the most

1 compelling ones where she talks about, with Vishal Dasa, "Look  
2 what they did to Anji Reddy" R-E-D-D-Y, "they used him as a  
3 decoy and right after they arrest him." That follows through  
4 the rest of her emails that she is sending. It's clear she  
5 has a theory that she thinks is going to be successful on  
6 different components of this trial. And she's trying to get  
7 witnesses to get on board with it.

8 And she's using an alias because she knows that she  
9 shouldn't be doing it, which underscores the fact that it is  
10 willful.

11 And on that, we would submit.

12 **THE COURT:** Reply?

13 **MR. JORDAN:** Your Honor, again I think she explained  
14 there that the use of the alias was because she was suspicious  
15 of the government interfering with her attempts -- again I  
16 think under this belief system she had a -- to get the  
17 witnesses to tell the truth as she saw it.

18 I'll submit it with that.

19 **THE COURT:** Submitted?

20 **MR. RHYNE:** Submitted.

21 **THE COURT:** The Court will overrule the objection,  
22 and adopt the obstruction-of-justice enhancement.

23 This is a case in which Dr. Su contacted witnesses before  
24 and during the trial, and urged them to give false testimony.  
25 The Defendant in connection with a separate motion has already

1 made it plain that she is not making a competency argument;  
2 she's not arguing legally that she was unable to distinguish  
3 between right and wrong.

4 And I don't think that she didn't know that what she did  
5 was a criminal offense. I don't think that she didn't know  
6 that what she was doing -- and I mean, doing in the underlying  
7 conduct involving TVU -- was wrong.

8 And, and perhaps I'll say a little bit more about that  
9 later in the hearing. But, for those reasons I don't -- I am  
10 unable to conclude that she sent these emails for the purpose  
11 of encouraging witnesses to give what she honestly believed to  
12 be truthful testimony. And so I think the  
13 obstruction-of-justice enhancement is appropriate.

14 I think that leaves only, other than the -- than the  
15 imposition of sentence itself, the defendant's objection that  
16 the enhancement for her having acted on behalf of -- falsely  
17 on behalf of an educational organization is inappropriate.

18 And Mr. Rhyne, let me start with you.

19 **MR. RHYNE:** Your Honor, we actually talked about this  
20 this morning, and it is the government's position that we  
21 actually agree with Mr. Jordan that this probably is not an  
22 offense characteristic that should be included. So, those two  
23 levels should come off.

24 I note that the application notes for that have some  
25 examples, and they are not the fact pattern we see in this

1 case. It's more like you noted: Fundraising and seeking  
2 donations. And I don't think that that's what she's doing in  
3 this case.

4 **THE COURT:** Those -- I read those examples, myself,  
5 last night, and they were informative of the Court's  
6 tentative.

7 **MR. RHYNE:** I don't think it changes the final  
8 calculation of the guidelines. It knocks that -- for Count 20  
9 to 21, it knocks it down to 34. Which is a subset of Group 1  
10 that does not affect the ultimate unit grouping. So --

11 **THE COURT:** The Court will sustain the objection  
12 without opposition, and rule that the enhancement for -- I  
13 wish I had put the report in front of me, I could cite the  
14 right provision of the sentencing guidelines.

15 But, the enhancement for falsely acting on behalf of an  
16 educational organization is not appropriate, and that the  
17 group offense level for Counts 20 and 21 be reduced from 36 to  
18 34.

19 So, that will be the Court's order.

20 **MR. RHYNE:** (Nods head)

21 **THE COURT:** Is there any matter raised by either side  
22 in connection with this sentencing this morning, other than  
23 the length of sentence, that we have not yet addressed?

24 **MR. JORDAN:** I don't believe so, Your Honor.

25 **MR. RHYNE:** No, Your Honor. We don't believe so.



1           **THE COURT:** All right. Then what we will do this  
2 morning is I'll allow Mr. Jordan to make an argument on behalf  
3 of the Defendant. I will allow Mr. Rhyne to make an argument  
4 on behalf of the government. I will allow Mr. Jordan to very  
5 briefly make a reply argument if he wants.

6           And then the Court probably will take a brief recess and  
7 then I'll come out, and I'll impose sentence.

8           Mr. Jordan?

9           **MR. JORDAN:** Thank you, Your Honor.

10          Your Honor, I appreciate the work done by the probation  
11 officer and the recommendation by her for a variance down to  
12 168 months. But, I think even that sentence is too high for  
13 this offense.

14          Of course, at this point you've denied the Rule 29 and the  
15 Rule 33 motions. We take objection to that. But, we are now  
16 faced with you finding that the Defendant is guilty and is  
17 going forward to sentencing.

18          So, assuming those facts, putting us in that context, I  
19 will go back to a statement you said earlier about how in this  
20 case, there are two groups of victims. I think we all agree  
21 to that. Some were defrauded, under Your Honor's findings.  
22 But others were not. And guidelines here are being driven by  
23 that high loss figure.

24          That loss figure and the other factors result in a  
25 guideline offense level of 40 which was -- I believe the

1 highest the guidelines go to are Level 43? Which is the  
2 equivalent for major, major crimes. Not to say that this  
3 isn't a major crime, but murders, treason, and the like.

4 **THE COURT:** Yes. 43 is the highest offense level.

5 **MR. JORDAN:** In talking with the Probation Officer  
6 informally before this, I believe I said to her "This  
7 situation here -- we have almost a perfect storm where various  
8 factors are in here that keep increasing her score."

9 Some of which we take exception to Your Honor's rulings,  
10 but those are the rulings, and those are the guideline  
11 provisions. But some of which, although not legally  
12 double-counting, have the same effect.

13 My strong opinion that a fraud that Your Honor finds is  
14 5.6, \$5.8 million is going to have sophisticated means. It's  
15 going to have more than one person. It's going to have many  
16 of these other factors in there.

17 So, again, is it legally double-counting? Not under  
18 Your Honor's rulings. But does it have the effect of  
19 exponentially increasing the punishment here? And I think it  
20 does.

21 So I believe the guidelines, themselves, as ruled on by  
22 Your Honor, overstate the severity of the crime. That's my  
23 first point.

24 The second point under 3553 is there are other factors  
25 here. Now, taking note of the government's comments today,

1 and its comments in the sentencing memorandum, I know they  
2 think Dr. Su is malingering, that she is exaggerating her  
3 mental condition. And that, I guess, it should not be taken  
4 into account here today.

5 I strongly disagree with that. We have Dr. Gregory here  
6 if you want to ask any questions. We submitted the report. I  
7 was well aware of Dr. Gregory's statements about Dr. Su  
8 perhaps trying to exaggerate her symptoms. That wasn't in any  
9 way to try to hide that from the Court or submit a report that  
10 didn't have all of the information in it. That's all true.

11 It doesn't take away from the fact that Dr. Su has been  
12 suffering, I believe, from a mental disease for some time.  
13 The earlier incidents were well before any criminal  
14 proceedings started. So there can't be any argument that she  
15 was malingering then to try to avoid guilt now.

16 Reading Dr. Gregory's report, this isn't a situation where  
17 Dr. Su got treatment, was cured -- if you want to use that  
18 phrase -- for a mental condition, and is now reinventing it.

19 I think instead, and I believe the Probation Officer  
20 recognizes this, that Dr. Su is suffering from an untreated  
21 mental condition. And that you may take that into account at  
22 sentencing as a mitigating factor.

23 Although she isn't present here today, because she goes to  
24 Duke University, I really think Dr. Su's youngest daughter  
25 really just hit the nail on the head when she stated that

1 Dr. Su in her mind probably believed what she was doing was  
2 good. She had this delusional belief that she was running a  
3 school that was going to rival Harvard or Stanford, and that  
4 she was going to be a world-famous educator, and people would  
5 respect her, her family would respect her, and she would  
6 accomplish this on her own.

7 We are not saying she's innocent. We're not saying she's  
8 not guilty by reason of insanity. We're not saying that she  
9 should not be punished, after Your Honor has now ruled in  
10 denying the Rule 29 and Rule 33 motions. There were victims  
11 under Your Honor's rulings. The sentence should be imposed.  
12 But the sentence recommended by the Probation Officer, which I  
13 appreciate, I believe is still too high.

14 Finally, we have, as Your Honor realizes, the family in  
15 court. We have a lot of the good factors we often look at  
16 when we are structuring the sentence. Lack of a prior record.  
17 Good family support. I think an argument that this is  
18 aberrant behavior, which we used to argue a lot back when the  
19 guidelines were mandatory, just a situation where I believe  
20 Your Honor can look at this, and say, "This is a situation  
21 where the guidelines over-calculate some of the factors here  
22 and that the reasonable sentence should be lower."

23 I've explained in my sentencing memorandum the rationale  
24 how I came up with my recommendation for the 70 months. I  
25 think that's a fair sentence, a reasonable sentence. It

1 doesn't punish her for going to trial. And I would urge  
2 Your Honor consider adopting that sentence.

3 **THE COURT:** Thank you, Mr. Jordan.

4 **MR. JORDAN:** (Nods head)

5 **THE COURT:** Mr. Rhyne?

6 **MR. RHYNE:** Yes, Your Honor. I'll start with the  
7 request that we are making at 292 months. Obviously it is the  
8 low end of the guideline. And, we don't want the Court to  
9 think that just because it's the low end of the guideline we  
10 think that's what the Court should impose. There's some  
11 rationale as far as the amount of time or opportunity costs  
12 that Dr. Su caused other people to lose.

13 And just doing some rough calculations I would just like  
14 to, if you start with the \$5.6 million that she made, and you  
15 figure as the evidence at trial was that it cost \$2,800 per  
16 student per semester at the school, that means that she took  
17 about 2,000 semesters from those students if you multiply a  
18 semester by three months, roughly the length of a semester,  
19 probably that is conservative, that is 6,000 months that she  
20 cost other people in opportunity cost to go somewhere else.  
21 That is not taking into account the additional loss that they  
22 suffered of their out-of-pocket money that went into her  
23 pocket.

24 Now, again, we're reasonable with respect to probably not  
25 every dollar of that \$5.6 million came from somebody who was

1 completely defrauded from beginning to end, so take half of  
2 that. If you have take half of that, 2.8 million, divided by  
3 2,800, follow it through, obviously it's half. It's 3,000  
4 months lost, of lost student time.

5 And if you compare those 3,000 months of lost time that  
6 she caused other people against the backdrop of the 292 months  
7 we are asking for, it is one tenth of the time that she took  
8 from other people. So that, that is at least a starting point  
9 or at least a rationale as to how we think that 292 is -- is  
10 reasonable and appropriate on this record.

11 The next thing I would like to address is Mr. Jordan  
12 mentioned a preliminary plea offer that was based --

13 **THE COURT:** I don't wish there to be any discussion  
14 of that topic at this hearing.

15 **MR. RHYNE:** Very good, Your Honor.

16 **THE COURT:** I don't -- and I'll be clear about why I  
17 say that. I don't think that it's helpful to the Court -- I'm  
18 not saying it is inappropriate. I don't know that there is  
19 any rule against it. But I don't think it is helpful to the  
20 Court for the Court to consider the parties' various pretrial  
21 plea negotiations positions in determining what a fair  
22 sentence is.

23 And I would feel that way regardless of whether the  
24 position in question were the one advanced by the government  
25 or the Defendant. Certainly, if the shoe were -- in this

1 case, the Defendant has said that the government made a  
2 certain offer to resolve the case. Certainly if the shoe were  
3 on the other foot, and the Defendant had in negotiations  
4 offered to accept a higher sentence than the one that the  
5 Court -- that the Defendant was urging the Court to impose at  
6 sentencing, the Court would feel justifiably uncomfortable in  
7 using that offer as a floor that the Defendant was allowed to  
8 argue. And I -- I think the same reasoning applies the other  
9 way. So, you don't need to talk about that.

10 **MR. RHYNE:** Okay, Your Honor.

11 So I think the next question becomes: What, if any, facts  
12 are in this record to justify a well-founded variance below  
13 the low end of the guidelines?

14 And I think that Mr. Jordan makes fair points. I think  
15 that the strongest point that they have is -- is her mental  
16 health condition. But, I keep coming back to the undisputed  
17 facts in this case, and that is that that condition did not  
18 cause her to commit these offenses, and it certainly didn't  
19 slow her down from committing the offenses.

20 When she was confronted by law enforcement about her  
21 conduct, it didn't stop her from lying to Jason Mackey when he  
22 was interviewing her at her kitchen table when she's still  
23 trying to conceal things that she knew she was doing that were  
24 wrong. So, I don't think it's compelling at all for Dr. Su to  
25 argue that, you know, this is somehow a mistake.

1           And I noted in our sentencing memo, her statement in the  
2           PSR. It sounds of negligence. Still, today, she doesn't  
3           believe that what she did was wrong. And she committed so  
4           many acts that are so clearly wrong. She lied from start to  
5           finish in this case. And for her to stand here before the  
6           Court and not make any -- not express any remorse or any  
7           recognition that what she did was wrong I think is compelling.

8           And it's compelling against the backdrop of the fact that  
9           even before this trial started, while she was aware she was  
10          under indictment, she tried to start a new school. And before  
11          that, she was soliciting donations to save Tri-Valley  
12          University.

13          I think it proves that she is relentless. I think it  
14          raises serious concerns that if she were released today, she  
15          would be right back at this, a little bit -- well a lot  
16          smarter. But, still under the belief that what she did was  
17          not wrong.

18          And I think from a 3553(a) factor, the Court can consider  
19          that with respect to the characteristics of the offense,  
20          deterrence, risk to the community, I think it -- it transcends  
21          many of the relevant factors that the Court should be  
22          considering.

23          And I also think that undercuts Mr. Jordan's argument that  
24          it was aberrant behavior. I think it was up until this point,  
25          but I think the record since then shows that it's what she



1 wants to do. So, I think that should be a concern.

2 With respect to the guideline calculation overstating the  
3 harm, there -- there aren't any close calls in this  
4 calculation. Every base offense level, offense characteristic  
5 and adjustment that is applied in this case is well-founded on  
6 multiple pieces of evidence that came not from a plea --  
7 guilty plea record, but from trial.

8 So for those reasons, we think that the recommendation of  
9 292 months is appropriate.

10 I should note that I should have responded to Your Honor's  
11 question before about whether there were any other issues that  
12 we should raise. And obviously, restitution and forfeiture  
13 are something that, at least with respect to forfeiture,  
14 Mr. Countryman is here to address, if there's any issues on  
15 that.

16 But, on that basis, we would submit.

17 **THE COURT:** Mr. Jordan, reply argument with regard to  
18 the length of sentence?

19 And also, the Court did enter a preliminary order of  
20 forfeiture, and I'm prepared at the conclusion of the  
21 proceedings this morning to make that order final. So if you  
22 wish to be heard on that issue, you should say so.

23 **MR. JORDAN:** I do, Your Honor. That would go to our  
24 earlier points made under the argument about loss. Again we  
25 object to that forfeiture amount, because it's -- it's the

1 defense position the government hasn't proved that amount of  
2 loss.

3 And Dr. Su would request a continuation of the stay  
4 through the appeal until that issue is resolved. She's said  
5 that to me several times, and I did promise I would mention  
6 that to the Court as her position.

7 I understand Your Honor's rationale in the forfeiture  
8 order. But again, the defense believes that the loss is  
9 overstated, that the government hasn't met its proof, and that  
10 the forfeiture amount should be limited to the restitution  
11 amount as proposed by Ms. Goldsberry of the Probation Office.

12 And then briefly, in reply, hearing what Mr. Rhyne said at  
13 the very end, we just disagree on whether there is any  
14 reasonable view that Dr. Su will get right back at it. When I  
15 see the facts in this case, the testimony, and I read it and  
16 then I talk to Dr. Su and she tells me again and again and  
17 again that she didn't intend to defraud, that the government  
18 doesn't understand, I think that goes more to her mental  
19 illness than it does to any evilness on her or some kind of  
20 belief that she's going to now become a career criminal or  
21 habitual criminal.

22 Obviously, Your Honor is going to impose a custodial  
23 sentence. I will be asking Your Honor to attach Dr. Gregory's  
24 reports to the PSR. What she needs, even if Your Honor is  
25 going to impose a custodial sentence, which you will, is

1 mental-health treatment, which she has never gotten.

2 And I'll submit it on that, Your Honor.

3 **THE COURT:** Mr. Rhyne, is the matter submitted?

4 **MR. RHYNE:** It is, Your Honor.

5 **THE COURT:** The Court will now take a brief recess.

6 **THE CLERK:** All rise.

7 (Recess taken from 11:40 to 11:48 a.m.)

8 **THE CLERK:** Remain seated and come to order. The  
9 Court is now in session.

10 **THE COURT:** The Defendant and the counsel will please  
11 rise.

12 Dr. Su, you are ordered to stand up.

13 (Request complied with by the Defendant)

14 **THE COURT:** This is the time for the Court to impose  
15 sentence. And before I impose sentence, it is my obligation  
16 to explain why I'm doing what I'm doing.

17 The Court is required always, in every criminal case, in  
18 the Federal Court, to start by consulting the guidelines  
19 manual promulgated by the United States Sentencing Commission.  
20 And to perform a calculation under those guidelines. We've  
21 done that, and spent a substantial amount of time.

22 And I appreciate the work of the Probation Department in  
23 putting together its presentence report, and the work of  
24 counsel in arriving at the sentencing recommendation -- excuse  
25 me -- in arriving at the sentencing calculation that results

1 in a total offense level of 40.

2 But, the guidelines are not mandatory. They are a  
3 necessary starting point for the Court in making its  
4 calculations, and they are to be given serious weight. The  
5 Court also has to consider the factors set out in 18 United  
6 States Code Section 3553(a).

7 Although there are many considerations set out there, the  
8 predominant ones in most sentencing hearings are the ones set  
9 forth in subpart (a)(1) and subpart (a)(2) which, itself, has  
10 several subparts. We'll talk about those a little more in a  
11 second.

12 The Defendant has asked that the Court impose a sentence  
13 of 70 months. I will not be adopting that sentence, for  
14 reasons that I'll state in a moment. The government has  
15 requested that the Court impose a sentence of 292 months,  
16 which is the bottom of the sentencing range at Defendant's  
17 total offense level. And for reasons that I'll explain in a  
18 moment, I will not be imposing that sentence, either.

19 Sentencing is, I think, the most important and the hardest  
20 thing that federal judges do. And, if this were just a case  
21 of baseball arbitration then I would have to choose one  
22 party's proposal or the other. But it isn't. I have the  
23 obligation to consider each case on its facts, and fashion a  
24 sentence that is sufficient, but not greater than necessary to  
25 comply with the purposes of the federal law and the sentencing

1 guidelines.

2 Let me talk first about why I will not adopt the  
3 Defendant's proposed sentence of 70 months. I do not think a  
4 sentence of 70 months begins to come close to capturing the  
5 magnitude of the Defendant's crime. This was a massive,  
6 lucrative fraud scheme that generated at least a thousand  
7 false visas. TVU in its totality was a sham. The scope of  
8 the fraud was enormous.

9 In May, 2009, TVU had 11 "students." And I put "students"  
10 in quotation marks because the school did not offer any  
11 classes or have real instructors. By September, 2009 it had  
12 75 students. By January of 2010 it had 447. By May, 2010, it  
13 had 939. Those numbers were taken from the documents that  
14 were submitted to me before the hearing.

15 My recollection of the testimony at trial -- I'm just  
16 operating from recollection -- is that by the time of her  
17 arrest, Dr. Su had more than a thousand students.

18 More than half of the students, these fake students, were  
19 registered as living at the same address in Sunnyvale. They  
20 were registered by her as living at the same address in  
21 Sunnyvale.

22 Although the defense at trial was that this university was  
23 a legitimate enterprise, the evidence was overwhelmingly to  
24 the contrary. There were no classes beyond the playing of a  
25 few online videos. And even in those, there were no

1 examinations, or grades, or instructors.

2 Dr. Su lied to the federal government about who her  
3 instructors would be. She made up classes that didn't exist.  
4 She issued transcripts for classes that had never occurred.  
5 For many of the courses listed in the university's catalog,  
6 there were no classes whatsoever.

7 There was no relationship between the grades on students'  
8 transcripts and their performance in these largely-nonexistent  
9 classes, because Dr. Su or her subordinates issued transcripts  
10 from their central office, assigning grades largely at random,  
11 except that Dr. Su required that no one be given less than a B  
12 or a B- or a B+.

13 TVU was nothing more than a mill for the issuance of F1  
14 visas, for the sole purpose and effect of massively enriching  
15 Dr. Susan Su.

16 The fraud started from the beginning. The SEVIS petition  
17 was false. This is not a situation where it started as a  
18 legitimate enterprise and slowly crept over to the realm of  
19 illegality. Dr. Su knew that the DSOs listed on her SEVIS  
20 petition were never going to be involved in the administration  
21 of TVU. She listed professors she hadn't hired or even talked  
22 to. She listed three universities as willing to accept  
23 credits from TVU, when that assertion was knowingly false as  
24 to two of them. She submitted forged paperwork to the federal  
25 government.

1           There weren't instructors. There weren't classrooms;  
2 there weren't real classes. It wasn't a case of Dr. Su giving  
3 people less than they bargained for in their education. It  
4 was a case of TVU giving people nothing at all. It was a  
5 fraudulent visa mill. It was a fraud on TVU students, and a  
6 fraud on the people of the United States.

7           When immigration authorities confer the right to supply  
8 visa information to the SEVIS system, to someone, they create  
9 a bond of trust. A person with SEVIS authority holds the keys  
10 to the right to remain lawfully in the United States. Dr. Su  
11 violated that trust, for her own personal financial gain. And  
12 she made approximately \$6 million doing it.

13           A sentence of 70 months does not capture that conduct.

14           There has there has been some talk about Dr. Su's good  
15 motives. About how she wanted to introduce new educational  
16 methods. About how she wanted to instill good values in her  
17 students. About how her school rested on Christian  
18 principles. I find that none of that has any basis in fact.

19           The Defendant's lack of remorse in this case is striking.  
20 I'm attempted to say "stunning," but that might be a little  
21 overly dramatic.

22           Shortly after her arrest in this case, she attempted  
23 almost immediately to establish another fake university called  
24 "Global University," which fortunately never got off the  
25 ground.

1 She continues to this day to maintain to her family  
2 members and acquaintance that's she was trying to do the right  
3 thing, and that this was awful some kind misunderstanding.  
4 Selling completed visa paperwork for \$2,000 is not doing the  
5 right thing. Providing transcripts for classes that never  
6 took place is not doing the right thing, or trying to. Having  
7 a policy of awarding no grade lower than a B is not doing the  
8 right thing. Issuing forms for students who don't actually  
9 exist is not doing the right thing.

10 It's always difficult to predict recidivism. It's  
11 something that federal judges are asked to do all the time.  
12 And usually there is no information from which the judge can  
13 make as good a decision as he or she would like.

14 There isn't great information here. I won't pretend to  
15 predict the future. But, I would say uniquely in my  
16 experience, at least to this date, it seems that the Defendant  
17 simply hasn't learned any significant lesson from her arrest  
18 or prosecution in this case. And that concerns me.

19 Dr. Su is someone who could easily have made better  
20 choices. She's an intelligent, well-educated woman with a  
21 sophisticated background who has held a variety of  
22 interesting, well-paid jobs. She is a loving mother. She had  
23 many advantages in life that others don't enjoy.

24 And, I will say that I feel sorry for her family. It is  
25 probably -- it is one of the most heartbreaking parts of being



1 a judge that when you impose a sentence, it has a consequence  
2 on loving, close family members like Dr. Su's daughters. And  
3 it may be that one of you is here. And if you are, I'm sorry  
4 you have to see this.

5 Dr. Su urges the Court to place the responsibility for her  
6 crimes on her mental illness. She does appear to have some  
7 mental-health issues. I said earlier I accept Dr. Gregory's  
8 diagnosis.

9 I think she is entitled to some consideration for her  
10 mental illness which in part will lead the Court to vary  
11 somewhat from the sentencing guidelines. And, I do think she  
12 needs treatment. But I don't think that her mental illness is  
13 an explanation or excuse for her crimes. At the end, I think  
14 this was a massive fraud that was done for greed, for which  
15 Dr. Su still refuses to take responsibility.

16 Having said all that, I think a guideline sentence is  
17 necessary -- I think a guideline sentence of 292 months is  
18 greater than necessary to accomplish the goals of the  
19 sentencing guidelines.

20 Let me start by saying for those of you who haven't done  
21 the math, that 292 months is 24 and 1/3 years. It's difficult  
22 even to hear that without recognizing its enormity. And I  
23 think there are crimes that deserve that sentence, and there  
24 are cases in which I imposed sentences longer than that.

25 And I think clearly, a substantial sentence in this case

1 is appropriate. But for a few reasons, I think that some  
2 reduction from that lower boundary is appropriate in this  
3 case.

4 First of all, I do think that Dr. Su's mental condition is  
5 entitled to some consideration. I think she knew what she was  
6 doing was wrong, but I think that she also operated under  
7 delusions of grandeur or other beliefs that mitigate her  
8 criminal conduct.

9 I think it is significant that this is Dr. Su's first  
10 offense. And obviously, the guidelines take account of that  
11 in some respects by providing for the addition of a criminal  
12 history calculation.

13 But, when you are at the place that we are in the  
14 sentencing guidelines, and all the proposed sentences are so  
15 severe, I don't think that the sentencing guidelines  
16 adequately take that into account.

17 And lastly, I think to a small extent, Mr. Jordan is  
18 right, that the guidelines overstate the severity of this  
19 crime.

20 Mr. Rhyne is a very good lawyer. I hadn't thought of the  
21 metric of the various months and so forth of lost opportunity.  
22 And Mr. Rhyne knows, I think from prior experience, that I  
23 think like an economist, and it was a very good argument.

24 And there is no doubt that this crime was severe. But  
25 just for example, even if you were to reduce the guidelines

1 total offense level by four points, Dr. Su would be in the  
2 range of 188 to 235 months. And, and I'm not saying that that  
3 is precisely the amount of overstatement, because that is not  
4 the only ground on which I would base a variance in this case.  
5 But, I do think that there has been some overstatement.

6 And I conclude that an appropriate sentence in this case  
7 is 198 months, which is 16 and 1/2 years. And, that is the  
8 sentence that the Court will impose.

9 Having placed on the Record the Court's -- well, let me  
10 say a few more things before I actually impose sentence.

11 I hope that Dr. Su does receive mental-health treatment  
12 while she is in custody. And I will order that it be  
13 provided.

14 I don't have any doubt that 198 months is an adequate  
15 sentence to provide the general-deterrence effect that I am  
16 required to attempt to achieve. I think anybody looking at  
17 this conduct -- and I know it's been reported in the press --  
18 will conclude that this sentence very much made this crime not  
19 worth it. And that's what deterrence is.

20 Secondly, I think any reasonable viewer would conclude  
21 that a sentence of that length reflects the seriousness of  
22 this offense and promotes respect for the law.

23 And, lastly, the offense is of -- excuse me -- that  
24 sentence is of a sufficient length that while I have the  
25 concerns about recidivism and specific deterrence that I

1 articulated earlier, it's my hope that after a sentence of  
2 that length, Dr. Su will have learned her lesson, and we don't  
3 have to worry any further about Dr. Su believing that she can  
4 commit crimes like this and get away with them.

5 So, I've considered all of the factors under United States  
6 Code 3553(a) in addition to the sentencing guidelines.

7 Turning now to the imposition of sentence itself, Dr. Su,  
8 pursuant to the Sentencing Reform Act of 1984, it is my  
9 judgment that you are hereby committed to the custody of the  
10 Bureau of Prisons, to be imprisoned for a term of 198 months.  
11 This term consists of 198 months on Counts 1 through 14, 60  
12 months on Counts 15 through 19, 188 -- excuse me.

13 188 months on Counts 20 through 21, 26, 27, 29, 31, 32,  
14 34, and 35. And 12 months on Count 25. All counts to be  
15 served concurrently.

16 Upon release from imprisonment, you shall be placed on  
17 supervised release for a term of three years. This term  
18 consists of three years on each of Counts 1 through 22, 24,  
19 26, 27, 29, 31, 32, 34, 35; and one year on Count 25, all such  
20 terms to run concurrently.

21 Within 72 hours of release from the custody of the Bureau  
22 of Prisons, the Defendant shall report -- excuse me you shall  
23 report in person to the Probation Office in the district to  
24 which you are released. Unless you are deported.

25 A copy of Dr. Gregory's report shall be attached to this

1 transcript when the record is transmitted to the Bureau of  
2 Prisons. It is recommended by the Court that the Bureau of  
3 Prisons place Dr. Su in a facility where she can receive  
4 mental-health treatment.

5 While on supervised release, Dr. Su, you shall not commit  
6 another federal, state or local crime; you shall comply with  
7 the standard conditions that have been adopted by this Court,  
8 except that the mandatory drug-testing provision is suspended;  
9 and you shall comply with the following additional conditions.

10 First, you shall participate in a mental-health program --  
11 a mental-health treatment program, as directed by your  
12 Probation Officer. You shall pay part or all of the costs of  
13 that treatment, at an amount not to exceed the cost of  
14 treatment, as deemed appropriate by your Probation Officer.  
15 The payments shall never exceed the total cost of  
16 mental-health counseling, and the actual co-payment schedule  
17 shall be determined by the Probation Officer.

18 You shall abstain from the use of all alcoholic beverages.  
19 You shall not maintain a position of fiduciary capacity  
20 without the prior permission of your Probation Officer. You  
21 shall pay any restitution and special assessment that is  
22 imposed by this judgment, and that remains unpaid at the  
23 commencement of the term of supervised release. You shall not  
24 open any new lines of credit, or incur new debt without the  
25 prior permission of the Probation Officer.

1           You shall provide your Probation Officer with access to  
2 any financial information, including tax returns, and you  
3 shall authorize the Probation Officer to conduct credit checks  
4 and obtain copies of income tax returns. You will be subject  
5 to a search clause, pursuant to which you shall submit your  
6 person, residence, office, vehicle, or any property under your  
7 control to a search.

8           For sake of clarity, "residence" means anywhere you are  
9 living, and "office" means anywhere you are working.

10           Such a search shall be conducted by a United States  
11 Probation Officer at a reasonable time and in a reasonable  
12 manner, based upon reasonable suspicion of contraband or  
13 evidence of a violations of a condition of release. Failure  
14 to submit to such a search may be grounds for revocation. And  
15 you need to warn any residents where you're staying that those  
16 premises are subject to search.

17           You shall not possess any false identification. And you  
18 shall provide your true identity at all times. You shall  
19 cooperate in the collection of DNA as directed by your  
20 Probation Officer.

21           You shall not own or possess any firearms, ammunition,  
22 destructive devices, or other dangerous weapons. And I will  
23 advise you that that is not only a condition of your  
24 supervised release, but that you have now been convicted of a  
25 felony, and that the possession of a firearm, destructive

1 devices or ammunition is a crime in every jurisdiction in the  
2 United States, for which you could be separately punished.

3 I further order that you shall pay to the United States a  
4 special assessment of \$3,025, which shall be due immediately.

5 While you are incarcerated, the payment of criminal  
6 monetary penalty is due during imprisonment at the rate of not  
7 less than \$25 per quarter. And payment shall be through the  
8 Bureau of Prisons Inmate Financial Responsibility Program.  
9 The address for those payments will be contained in your  
10 paperwork.

11 I find that you don't have the ability to pay a fine, and  
12 I order the fine waived.

13 I further order that you pay restitution totaling  
14 \$904,198.84. That restitution is owing to the student  
15 charge-backs that are described in the presentence report.  
16 And those amounts have not been contested.

17 That amount shall be due immediately to the following  
18 victims in the following amounts: To the victim PayPal, Inc.,  
19 Attention Michael Rou, Global Regulatory Policy, 2211 North  
20 First Street, San Jose California, 950131, restitution in the  
21 amount of \$595,111.

22 To the victim Total Merchant Services Inc., Attention  
23 Director of Operations, 255 Gold River Road, Third Floor,  
24 Basalt, Colorado, 81621, the amount of \$309,087.84.

25 For a total restitution order of \$904,198.84.

1           While you are incarcerated, payment of restitution is due  
2 during imprisonment at the rate of not less than \$25 per  
3 quarter. And payment shall be through the Bureau of Prisons  
4 Inmate Financial Responsibility Program at an address that  
5 will be contained in your paperwork.

6           With regard to the issue of forfeiture, the Court orders  
7 that its preliminary order of forfeiture now be made final.  
8 The Defendant's request for a stay of that order is denied.

9           Are there further matters the Court needs to take up?

10           **MR. RHYNE:** Your Honor, there is one matter. Excuse  
11 me. About a week ago, we got a revised restitution total from  
12 Total Merchant Services. I forwarded it to Probation. And I  
13 failed to raise it in this proceeding.

14           We did include the number in our sentencing memo. It is  
15 actually \$420,684.64. And, the evidence that we sent to  
16 Probation is a detailed spreadsheet of that calculation of  
17 loss.

18           And, that was my fault. I apologize for not raising that  
19 earlier, or noticing that it was in the original PSR.

20           **THE COURT:** I think the Defendant is entitled to  
21 consider that question on something other than a pop-quiz  
22 basis.

23           **MR. RHYNE:** (Nods head)

24           **THE COURT:** So perhaps that matter, alone, need to be  
25 set for separate hearing.



1 Mr. Jordan, would you like to respond?

2 **MR. JORDAN:** Yes, Your Honor, this is -- you know,  
3 getting -- at this point it's a little late. So --

4 **THE COURT:** What is the Court to do, Mr. Rhyne, this  
5 morning, that doesn't include ordering that amount of  
6 restitution from the bench?

7 **MR. RHYNE:** I think that you can order the 309,000 at  
8 this point, subject to us coming back after we are able to  
9 review this. And I should say I forwarded this as soon as we  
10 got it. I apologize for the late notice.

11 **THE COURT:** That's all right. I don't have any  
12 problem implementing that request, and that is that the  
13 Court's order of a moment ago will stand, and if the  
14 government want to seek further relief it obviously has the  
15 right to do that.

16 Further matters to be taken up this morning?

17 **MR. JORDAN:** Yes, Your Honor. Just briefly, we would  
18 note our objection to your forfeiture order.

19 **THE COURT:** Oh. Actually, you reminded me of  
20 something. And I'm going to want to hear from the government  
21 about this.

22 Oh, I had a copy of my preliminary order in my hand, but I  
23 must have left it in chambers.

24 The issue is this: The forfeiture order rests on  
25 alternate grounds. As to the first ground, there is no issue.

1           The second ground is: The use of the properties for the  
2 -- oh, never mind. Well, let me say -- and I'll invite both  
3 Counsel to comment on this -- and Mr. Jordan, I see you have a  
4 copy of the order there.

5           **MR. JORDAN:** Yes.

6           **THE COURT:** That would be a courtesy to the Court if  
7 I could just borrow it. Thank you.

8           (Document handed up to the Court)

9           **THE COURT:** This paragraph -- and I'm addressing  
10 myself to Page 4 at Lines 4 through 14. I think the Defendant  
11 did use the properties at 405 Boulder Court to facilitate her  
12 crime. But, I think not exactly in the way that perhaps this  
13 paragraph describes.

14           As I said earlier, the basis of my belief that the  
15 evidence with regard to these counts was adequate really isn't  
16 so much simply the provision of employment. It was all the  
17 other things that Dr. Su did. Now, she used Suite 700 and 800  
18 to do all those things.

19           So, I think that those properties were used to facilitate  
20 her crimes of alien harboring. It's from these properties,  
21 for example, that she generated all of this fraudulent  
22 paperwork, and that sort of thing. So the adjustment is a  
23 minor one.

24           But, I want to ask Counsel if, based on that statement on  
25 the Record, the Court believed -- that either counsel thinks

1 the Court needs to do anything further before reducing this to  
2 a final order of forfeiture, understanding that the Defendant  
3 objects to the reduction to a final order at all.

4 Mr. Countryman?

5 **MR. COUNTRYMAN:** No, Your Honor, that comports with  
6 the government's understanding.

7 Just one sort of language question, to have a final order  
8 of forfeiture, the government still needs to publish to allow  
9 third parties to claim. So it becomes final as to Defendant  
10 Su, but it's not a final order of forfeiture per se.

11 **THE COURT:** Yes. I saw that in the statute earlier  
12 this morning. Does that require that we set a further date  
13 here? Or is this Court simply --

14 **MR. COUNTRYMAN:** (Shakes head)

15 **THE COURT:** Okay.

16 **MR. COUNTRYMAN:** Third-party claimants could file  
17 petitions. I think there could be an ancillary proceeding  
18 where those third-party petitions are resolved. But -- and  
19 unless and until that happens, there is no further date that  
20 needs to be set, Your Honor.

21 **THE COURT:** I see. All right.

22 Mr. Jordan, any further comment on that point?

23 **MR. JORDAN:** No, Your Honor. Just that we have our  
24 objection on the Record.

25 **THE COURT:** Very good. Dr. Su, you are remanded into

1 the custody --

2 **MR. JORDAN:** Your Honor I'm sorry. Sorry, I had two  
3 or three other ancillary requests.

4 **THE COURT:** Yes.

5 **MR. JORDAN:** Of course --

6 (Reporter interruption)

7 **MR. JORDAN:** Of course, mental-health treatment is  
8 the biggest priority. But if that could be ordered to a  
9 facility closest to her family so they could visit her, if  
10 Dublin is appropriate, we would make that recommendation.

11 **THE COURT:** The Court recommends to the Bureau of  
12 Prisons that the Defendant, Dr. Su, be designated to the  
13 closest facility to the Bay area consistent with her  
14 classification, to facilitate visitation with her family  
15 members, including her two daughters.

16 **MR. JORDAN:** And then finally, my last request is  
17 that Your Honor consider recommending her placement in RDAP.  
18 She does have an alcohol issue. Your Honor just ordered her  
19 not to use alcohol at all during her supervised release. And  
20 I think the program would help her now, and help her comply  
21 with that requirement when she's released.

22 **THE COURT:** The Court will recommend to the Bureau of  
23 Prisons that Dr. Su participate in the RDAP program, and that  
24 she be designated to a facility that offers that program.

25 **MR. JORDAN:** Thank you, Your Honor.

1           **PROBATION OFFICER GOLDSBERRY:** Your Honor, out of an  
2 abundance of caution, I wonder if we could go through the  
3 custody sentence one more time a little slower, to ensure we  
4 don't hit any of the stat maxes on any of the counts.

5           **THE COURT:** Okay. This is not a statement of the  
6 imposition of sentence. This is the Court's recollection of  
7 what it said earlier.

8           My recollection of what I said earlier is that I imposed a  
9 sentence of 198 months on Counts 1 through 14. Sixty months  
10 on Counts 15 through 19, which is different from the counts  
11 that you listed in your probation report.

12           **PROBATION OFFICER GOLDSBERRY:** Exactly. That is what  
13 threw me off.

14           **THE COURT:** And I think I did that after checking the  
15 indictment.

16           **PROBATION OFFICER GOLDSBERRY:** Okay.

17           **THE COURT:** But if you think I made an error, this is  
18 a great time to tell me.

19           **PROBATION OFFICER GOLDSBERRY:** I think you're okay.

20           **THE COURT:** It's different on purpose. 188 months on  
21 Counts 20 through 21, 22 --

22           **PROBATION OFFICER GOLDSBERRY:** Your Honor, I have 20  
23 and --

24           **MR. JORDAN:** 21 has a five-year max.

25           **PROBATION OFFICER GOLDSBERRY:** Both 20 and 21 are

1 five-year statutory maxes.

2 **THE COURT:** Oh, I see what I did. Yes, no, I made a  
3 mistake in this transposition. So I need to correct my  
4 earlier statement.

5 Sixty months applies to Counts -- 60 months applies to  
6 Counts -- it does apply -- 60 months applies to Counts 15  
7 through 19, 20 and 21. I see the error that I made.

8 **MR. JORDAN:** So Your Honor, 15 through 21, 60 months.

9 **PROBATION OFFICER GOLDSBERRY:** No, 15 through 19 --

10 **THE COURT:** 15 through 19.

11 **PROBATION OFFICER GOLDSBERRY:** Yes, 20 and 21.

12 **THE COURT:** And 20 and 21. That's right. And then,  
13 188 months on Counts 22, 24, 26, 27, 29, 31, 32, 34, 35.

14 **MR. JORDAN:** But Your Honor, I think 20 and 24 are  
15 ten-year maximums.

16 **PROBATION OFFICER GOLDSBERRY:** That's correct. 20  
17 and 24 are ten years. 20 -- 27, 29, 31, 32, 34, 35 are 120.

18 **THE COURT:** I think the safest thing to do is simply  
19 with regard to the counts other than 1 through 14, simply to  
20 adopt the Probation Department's recommendation. And that's  
21 what the Court will do. And therefore, I will now restate the  
22 sentence, for the sake of clarity.

23 Dr. Su is committed to the custody of the Bureau of  
24 Prisons to be imprisoned for a term of 198 months. This term  
25 consists of 198 months on Counts 1 through 14; 60 months on

1 Counts 15 through -- excuse me, 15, 20, and 21; 120 months on  
2 Counts 16 through 19, 22, 24, 26, 27, 29, 31, 32, 34 and 35;  
3 and 12 months on Count 25, all counts to be served  
4 concurrently.

5 **PROBATION OFFICER GOLDSBERRY:** Thank you.

6 **THE COURT:** I appreciate very much the correction.  
7 Anything else?

8 **MR. JORDAN:** No, Your Honor.

9 **MR. RHYNE:** Submitted, Your Honor.

10 **THE COURT:** Thank you.

11 **THE CLERK:** All rise.

12 Court is now in recess.

13 (Conclusion of Proceedings)

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**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball 

Monday, December 15, 2014

Belle Ball, CSR 8785, CRR, RDR