

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:23-cr-10158-DJC
)	
KEMAL MRNDZIC)	
a/k/a "KEMO")	

GOVERNMENT’S SENTENCING MEMORANDUM

I feel consequences every day, its woven deep in my soul . . . Kemal Mrndzic and other criminals who lived their lives normally after all crimes they have done gave us feeling of weakness and infirmity, that we are worthless, that our voice cannot be heard. We lived with perception that someone has right to do everything and someone else can only live with mouth shut. It hurts a lot when you know someone flipped the truth and enjoys life . . .

Survivor GG Impact Statement

It has been 32 years since I was in Celebici, enduring all the torture, which is certainly by far the worst thing that can happen to a human being. When there is no justice, you feel alone. The weight becomes even heavier psychologically and physically. With justice, there would be a sense of closure. It will never be forgotten, but if justice is served, then a piece of you can feel like someone cares . . .

Survivor FF Impact Statement

The United States, through undersigned counsel, respectfully submits this sentencing memorandum. Separately, the government has also filed a motion for upward departure and variance. As outlined below, the government recommends a sentence of 108 months’ incarceration to be followed by 36 months of supervised release. Whether imposed as a guideline sentence, as argued herein, or the product of an upward departure or variance, such a sentence reflects the gravity of the defendant’s crimes and the need to effectively deter human rights violators and war criminals from seeking safe haven in the United States. It also provides

justice to the survivors who continue to suffer the effects of the defendant's persecution and concealment.

The detainees at the Celebici prison camp lost nearly everything to the defendant and his fellow guards. They lost their health, their sense of security, their peace of mind, their dignity, and, for a time, all hope. While many survivors subsequently cobbled together lives as refugees, they have continued to suffer – physically, mentally, and economically – in part because they have been denied justice for decades. Survivors continue to experience worthlessness, weakness, loneliness, depression, and oppressiveness. In their impact statements, survivors have recounted their use of alcohol and sedatives to cope.

During the same period, Kemal Mrndzic has enjoyed everything America has to offer: a rewarding job; sufficient income; a comfortable home; a safe community; an American passport with the ability to visit his family in Konjic at any time; and, most importantly, the privilege of raising and educating a daughter who is now a U.S. citizen by birth. Any sentence imposed in this case must account for the profound disparity in the life the defendant has lived through his criminal conduct and the lives lived by the survivors who were persecuted and then denied justice because of Mrndzic's concealment.

The government is not requesting that the Court sentence Mrndzic for the crimes he committed at Celebici in 1992. If it were making such a request, the government would recommend a sentence in excess of 20 years' incarceration, consistent with the sentencing guidelines applicable to aiding and abetting murder and torture. *See, e.g.*, USSG §§2A1.5(c)(1) and 2X2.1 (guideline range of life). Tragically, the crimes Mrndzic committed and assisted at Celebici are likely to go unpunished forever. That is so because the defendant successfully committed the crimes for which he now faces sentencing. His fraudulent departure from Bosnia

and Herzegovina (“BiH”) in 1999 and his decades-long criminal concealment of his conduct in this country will likely allow him to escape any effective prosecution for the crimes he committed at Celebici. The witnesses to his crimes in Celebici have sought refuge in countries all over the world, suffer from mental and physical ailments and premature old age, and have little trust in a judicial system of the country from which they fled.

Nonetheless, Mrndzic’s sentence in this case must reflect the gravity of the offenses he committed and assisted in Celebici in 1992. Twenty-one former detainees have described Mrndzic as one of the most notable guards at the camp, who was widely known for his vicious treatment of prisoners and his close association with the camp deputy commander, Hazim Delic. PSR ¶¶ 52-81. All of them describe Mrndzic’s involvement with other guards in collective beatings at the camp. In addition, Spasoje Milijevic said that Mrndzic was one of the worst guards in the camp and broke his ribs with his gun. PSR ¶61. Slobodan Mrkajic said that Mrndzic savagely beat both him and his brother when they arrived at the camp and that Mrndzic’s blows left a one-inch scar on his upper lip and broken teeth. PSR ¶59. Rajko Dordic described Mrndzic as particularly vicious and said Mrndzic would call him out of Tunnel 9 at night on his own initiative to practice karate strikes on him. PSR ¶63. Novica Dordic recounted that Mrndzic’s kicks were particularly hard because he was young and strong. PSR ¶¶66-68. ICTY Witness 003 853 60 recounted how Mrndzic forced him to stand against the wall and then struck him with his rifle butt. PSR ¶80. Notably, all of this evidence is in addition to the trial testimony during which all five survivor witnesses testified about Mrndzic’s notable abuse of prisoners at Celebici. PSR ¶52-57.

The applicable guidelines and prior cases make clear that sentences for immigration offenses committed for the purpose of concealing torture and other serious human rights offenses

should be based, in large part, on the nature and extent of those uncharged crimes. *See, e.g.*, USSG § 2L2.2(b)(4)(B); *United States v. Munyenyezi*, 781 F.3d 532, 542 (1st Cir. 2015) (imposing a 10-year sentence because of the seriousness of the defendant's conduct in Rwanda). As outlined below, many courts have imposed statutory maximum penalties for immigration crimes in such cases, concluding that Congress could not have envisioned defendants more deserving of a maximum penalty than a war criminal who seeks safe haven in this country through lying on immigration forms. *Id.*; *United States v. Jabateh*, 974 F.3d 281, 304 (3d Cir. 2020); *United States v. Worku*, 800 F.3d 1195, 1208 (10th Cir. 2015). In this case, the longest statutory maximum for any one count is 120 months. Collectively, the defendant faces a statutory maximum sentence of 35 years. A sentence below but near the statutory maximum for the most serious count, whether calculated as a guideline sentence or the product of an upward departure/variance, is necessary to provide effective deterrence for persons like Mrndzic who could have faced decades in prison if timely located and prosecuted in their home countries. The government respectfully submits that the 108-month sentence recommended is the lower boundary of a just sentence, and is not greater than necessary to achieve the fundamental purposes of sentencing as articulated in 18 U.S.C. § 3553(a).

1. The guideline calculation should include a two-level organizer enhancement pursuant to USSG §3B1.1(c).

The government objects to the PSR's failure to include a two-level enhancement pursuant to USSG §3B1.1(c) as an organizer or leader of a criminal endeavor involving more than one but fewer than five participants.¹ In this case, there is ample evidence that the defendant directed his

¹ The government notes that it received the final PSR at 4:30 pm on January 15, 2025, the same day that this memorandum is due. As a result the government has yet to carefully assess the final PSR. To the extent that a careful review of the final PSR reveals additional issues to be

girlfriend (and later wife), in their jointly undertaken criminal scheme. With regard to the application of USSG §3B1.1(c), the First Circuit has recently held, “[o]ur precedent provides that even a single instance of directing another person to perform a task for the criminal enterprise may be enough to support the imposition of the managerial or supervisory enhancement.”

United States v. Goncalves, 123 F.4th 580, 588 (1st Cir. 2024). The Court also noted:

The enhancement has two elements: the sentencing court must supportably find that (i) the criminal activity involved at least two, but fewer than five, complicit individuals (the defendant included); and (ii) in committing the offense, the defendant exercised control over, managed, organized, or superintended the activities of at least one other participant. . . We have previously considered proof of both orders given and obeyed when determining whether the enhancement applies.

Id. at 586 (internal quotation and citation omitted); *see also United States v. Grullon*, 996 F.3d 21, 34–35 (1st Cir. 2021) (“To earn the enhancement, the government must show by a preponderance of the evidence that the defendant did more than participate in shared criminal activity; he must have led or facilitated that criminal activity. . . [I]t is not particularly difficult for the government to meet its burden. The evidence of the defendant's role in the conspiracy may be wholly circumstantial, and need only show that he exercised authority or control over one other participant on one occasion.”) (internal citations and quotations omitted).

Here, the evidence at trial amply demonstrated that there were at least three individuals involved in Mrndzic’s scheme to conceal and his possession of fraudulently obtained documents: Mrndzic, Mrndzic’s girlfriend/wife (Sejla), and Azem Zebic. Thus, the first element of the test is met. With regard to the second element, the facts at trial, including the testimony of Zebic, Brabazon, Golub, and Lobato, and related exhibits, demonstrated that Mrndzic was plainly the

addressed for sentencing, the government respectfully requests leave to file a supplement to this sentencing memorandum and related motion for upward departure/variance.

organizer and leader with regard to Sejla's involvement in the criminal activity. For instance, Zebic testified that it was Mrndzic alone who met with him in Konjic as they formulated a scheme to leave the country as refugees; it was Mrndzic alone who asked him to pose as his fake half-brother once Zebic got to the United States; and it was Mrndzic who copied Zebic's false story of being targeted by Serbs in Nevesinje and then escaping to an island in Croatia. From Zebic's testimony alone, it was plain that Mrndzic organized and directed Sejla's participation from the outset. *See United States v. Picanso*, 333 F.3d 21, 24 (1st Cir. 2003) ("There is no mathematical formula for drawing the line on one side of which one can be called an organizer. Although there must be a core of facts to support the label and not pure intuition, the issue also turns in some measure on an overall assessment of the defendant's role based on an assemblage of detail.")

Golub and Brabazon testified that it was Mrndzic who was the primary applicant as a refugee and Sejla was a derivative refugee. The structure and substance of their applications was as leader and follower. It can be readily inferred from Sejla's I-590 application (Exhibits 79 and 79A) that Mrndzic told her what to write so that their applications matched and so she would qualify as a derivative refugee. She did not make up an independent story of persecution, nor make up different dates regarding where she lived in Croatia, nor a different story of their meeting and marriage. Instead, Sejla carefully repeated Mrndzic's fabricated story and precisely copied the false addresses in BiH and Croatia which Mrndzic obtained from Zebic. *Id.* In addition, Brabazon testified that he interviewed Mrndzic and Sejla together, but that it was Mrndzic answering all the questions because he was the primary applicant. Mrndzic was plainly the leader directing Sejla's derivative application.

Once in the United States, Sejla's application for naturalization (Form I-400) provides even clearer evidence that Mrndzic was directing her participation and assistance in their concealment (Exhibit 82). Mrndzic signed her form as "preparer." She signed the form as the applicant. If Sejla were acting independently, there would have been no need for him to sign it at all. It can be plainly inferred from this exhibit that he completed the form and directed her to sign it once completed.

While the PSR rejected the application of this guideline to this case, it did so on its assessment of the facts in this case, concluding "there does not appear to be any evidence that the defendant directed the actions of either Zebic or his wife." PSR at pp. 47. Respectfully, the probation office did not have the benefit of hearing all of the trial evidence. *Compare* PSR at pp.44 ("Since this case went to trial, the Probation Office defers to the Court to resolve any evidentiary or factual disputes that may be relevant for sentencing purposes."). While the government must demonstrate that the defendant directed another person, it does not need to demonstrate that the other person was **compelled** to "obey orders" which they otherwise would have resisted as suggested by the PSR. *See* PSR at pp. 47-48; *compare* *Grullon*, 996 F.3d 21, 34-35. Sejla may have been a willing participant in Mrndzic's scheme, as suggested by the PSR. But just because she was a willing participant does not mean that Mrndzic did not direct her activity. Rather, both are true: she shared the criminal objective but was given directions by her husband who hatched, organized, and directed the scheme.

2. The guideline calculation should include a four-level vulnerable victim enhancement pursuant to USSG §§3A1.1(b)(1) & (2).

The defendant qualifies for a four-level enhancement pursuant to USSG §§3A1.1(b)(1) &

(2)² for his conduct as a supervisor of guards at Celebici and for his concealment of his crime for more than 20 years after his crimes at that camp. The application note for USSG §3A1.1 reads in pertinent part:

For purposes of subsection (b), "vulnerable victim" means a person (A) who is a victim of the offense of conviction **and any conduct for which the defendant is accountable under §1B1.3** (Relevant Conduct); and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.

Subsection (b) applies to offenses involving an unusually vulnerable victim in which the defendant knows or should have known of the victim's unusual vulnerability.

(emphasis added). In the instant case, Mrndzic's participation in "serious human rights offenses" at Celebici is relevant conduct for purposes of applying USSG §2L2.2(b)(4)(B).³ As a result, the Court must treat the victims of those "serious human rights offenses" as victims for purposes of applying USSG §3A1.1.⁴ The PSR incorrectly suggests that the definition of "victim" in the

² The provision reads in pertinent part:

(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.

³ As noted in the PSR, the application of USSG § 2L2.2(b)(4)(B)(ii) is appropriate in this case because the defendant concealed his involvement in a "serious human rights offense." "Serious human rights offenses" include violations of 18 U.S.C. § 2340A, the commission of torture, aiding or abetting of torture, or conspiracy to torture. Torture is defined as "an act committed by a person, acting under the color of law, specifically intended to inflict severe physical pain or suffering (other than pain or suffering incidental to lawful sanctions) upon a person within his custody or physical control." 18 U.S.C. § 2340(1). The trial evidence and convictions overwhelmingly established that torture was routinely committed by guards at Celebici and, at a minimum, Mrndzic aided and abetted it.

⁴ The Sentencing guidelines do not define the term "victim." See, e.g., *United States v. Terry*, 142 F.3d 702, 710 (4th Cir. 1998) (noting the lack of definition). However, the Crime Victims' Rights Act, Victims' Rights and Restitution Act, and related statutes generally define

application notes for USSG §2B1.1 applies to guidelines generally, and specifically to the application of USSG §3A1.1. *See* PSR at pp.44. Courts have routinely concluded that there is no general definition of “victim” for purposes of the guidelines. *See, e.g., Terry*, 142 F.3d at 710. Moreover, as noted above, USSG §3A1.1 has its own application note on who qualifies as a victim.

As the five survivor witnesses testified at trial, and as an additional 16 survivors recounted for other tribunals and in recent interviews, Mrndzic participated in the systematic beating, threats, psychological persecution, and deprivation of basic human needs of hundreds of men at Celebici. These men were rounded up in a manner remarkably similar to that used to capture and detain European Jews during WWII, immediately subjected to threats and physical abuse, and upon arrival at the camp had automatic rounds of ammunition fired over their heads from behind to frighten them into submission. They were forced down lightless, airless manholes as an additional form of torture and intimidation, and then held for months on starvation rations in conditions which violated the most basic requirements of the Geneva Conventions. Some of the victims were elderly men – such as Scepko Gotovac who was killed by

victims as persons directly and proximately harmed by the defendant’s criminal conduct. *See e.g.* 18 U.S.C. § 3663A(a)(2) (2000) (defining “victim” as “a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered”); 18 U.S.C. § 3771(e) (Supp. 2007) (“[T]he term ‘crime victim’ means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.”); 34 U.S.C § 20141(e)(2) (“the term ‘victim’ means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime”). International law describes victims similarly: “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. *See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Adopted by General Assembly resolution 40/34 of 29 November 1985.

beating and had a badge pinned to his forehead – and some were teenagers – such as the two boys who were forced to perform fellatio on each other in front of the other prisoners – making them vulnerable victims by virtue of their age from the outset. *See United States v. Donnelly*, 370 F.3d 87, 92 (1st Cir. 2004). But the conduct of the guards and the conditions of the camp rendered all of the detainees vulnerable after a few weeks. Among other things, former detainees recounted their inability to withstand the guard’s beating because they had lost so much weight from lack of food. Others, like Velimir Kuljanin, asked the guards to kill them instead of continuing their beating because they were so hopeless and weak.

Plainly, early in their detention, these victims were rendered “substantially less able than the average citizen to protect themselves” and thus qualify as “vulnerable victims” under USSG §3A1.1(b). *See United States v. Gill*, 99 F.3d 484, 486 (1st Cir. 1996); *United States v. Donnelly*, 370 F.3d at 92 (finding victims vulnerable when they had an “impaired capacity . . . to detect or prevent the crime) (emphasis added) (internal citations omitted). Thus, the harms inflicted by Mrndzic and other guards at Celebici give rise to a four-level enhancement pursuant to USSG §§3A1.1(b)(1) & (2). *Id.*

In addition, there is a second and independent basis for concluding that USSG §§3A1.1(b)(1) & (2) applies to this case. Many detainees who survived torture and other abuses at Celebici have articulated additional emotional and psychological harms arising from Mrndzic’s concealment of his crimes as charged in Count VII. As noted above and in the victim impact statements, the concealment of his participation in persecution at Celebici caused survivors to experience worthlessness, weakness, loneliness, depression, and oppressiveness. Years of that mental oppression led some survivors to abuse alcohol and sedatives, among other things. Emotional suffering caused by a defendant’s criminal acts are universally recognized as

a basis for concluding an individual is a victim of a crime. *See Sounds of Silence: A Thematic Analysis of Victim Impact Statements*, 27 Lewis & Clark L. Rev. 147, 170 (2023) (categorizing emotional and psychological harms as “first order harms” and noting the prevalence of depression, deep suffering, suicidal thoughts, fears, and anxieties in victim impact statements). Moreover, it is widely recognized that requiring a victim to recount a crime many years after its occurrence, requires the victim to relive the crime and re-traumatizes the victim. *Id.* at 180-181. Similarly, it is commonly accepted that substantial delays in justice can cause significant emotional harm to surviving victims. *See, e.g.,* Kayla Lasswell Otano, *Victimizing the Victim Again: Weaponizing Continuances in Criminal Cases*, 18 Ave Maria L. Rev. 110, 112 (2020) (“victims often suffer significantly from delays in the criminal justice system”) (quotation and citation omitted); *Calderon v. Thompson*, 523 U.S. 538, 556, (1998) (“Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out.”). Congress recognized this when it included as one of the fundamental victim rights under the CVRA “[t]he right to proceedings free from delay.” 18 U.S.C. §3771(a)(7); Charles Doyle, *Cong. Research Serv., Crime Victims’ Rights Act: A Summary and Legal Analysis of 18 U.S.C. §3771*, at 36-39 (2015).

Moreover, it can readily be inferred that the defendant knew or should have known that vulnerable victims were affected by his concealment of his crimes. Not only had dozens of survivors publicly testified at the ICTY about the trauma associated with their captivity and torture, but Celebici victims have subsequently been the subject of widely available documentaries and numerous publications. *See, e.g., The Unforgiven* (2017 documentary about former prison guard Esad Landzo’s quest for forgiveness from former Celebici detainees) <https://www.youtube.com/watch?v=xSc3JbC7B88>; *Celebici '92, Beyond Reasonable Doubt*

(2007 documentary of Celebici victims' stories and discussion of ICTY prosecution)

<https://www.youtube.com/watch?v=Xuu2mgVbbs0>. In these documentaries, survivors discuss the anger and re-traumatization from what they viewed as unjustly short sentences imposed by the ICTY for crimes committed at Celebici, as well as their frustration with how few guards were prosecuted. Mrndzic's concealment of his crimes, therefore, caused additional harm to numerous vulnerable victims and USSG §§3A1.1(b)(1) & (2) should apply.

3. The defendant should not be the beneficiary of a Zero-Point Offender Reduction.

The government objects to the PSR's inclusion of a two-level Zero-Point Offender reduction under USSG §4C1.1. That provision does not apply because the defendant fails to meet the criteria at USSG §§4C1.1(a)(9) (no vulnerable victims) and (a)(10) (no adjustment for role in the offense). *See supra*. In addition, USSG §4C1.1 read as a whole, as well as the related application notes, reflect that a defendant who has concealed criminal conduct for decades should not also receive the windfall of a reduction designed to benefit non-violent criminals who have little or no involvement with the criminal justice system. The evidence demonstrated that the defendant engaged in serious violent criminal conduct, escaped criminal prosecution in his home country, and through concealment has been able to fabricate a criminal history score of zero. Applying a reduction here runs counter to both the terms and the purpose of this guideline and underlying statute.

4. The defendant's total offense level should be 31, with a resulting guideline sentencing range of 108-135.

Applying the offense characteristics set forth above and removing the Zero-Point Offender credit results in the addition of four-levels for a victim-related adjustment (PSR ¶91), a two-level increase for role in offense (PSR ¶92), and the elimination of a two-level reduction

under Chapter Four (PSR ¶95). The resulting total offense level is 31, with a guideline sentencing range of 108-135. This range of sentences, from 9 years to just over 11 years is consistent with the range of sentences imposed in similar serious human rights offenses, as outlined below. A sentence of 108 months is within that range and is the lower boundary of a just sentence. It is also not greater than necessary to achieve the purposes of sentencing as articulated in 18 U.S.C. § 3553(a).

5. Whether imposed as a guideline sentence or the product of an upward departure or variance, a sentence of 108 months is necessary to deter other human rights violators and is consistent with sentences imposed in similar cases.

A sentence of 108 months incarceration – less than half of the time that the defendant concealed his criminal conduct, denied the victims justice, and enjoyed the fruits of his freedom in the United States – is reasonable, and is consistent with sentences imposed in similar cases. Courts in this and other districts have regularly imposed either statutory maximum sentences or similarly long sentences on defendants who fraudulently entered this country by concealing their involvement in persecution or other serious human rights offenses. For instance, in *United States v. Beatrice Munyenyezi*, a case prosecuted in the District of New Hampshire by Assistant U.S. Attorneys from this district, the Court imposed a sentence of 120 months incarceration on two counts of 18 U.S.C. §1425 (fraudulent acquisition of naturalization). Munyenyezi was a Hutu member of the ruling MRND at the time of the Rwandan genocide, the wife of a notorious Interahamwe genocidaire, and was herself involved in selecting Tutsis for rape and/or murder at a roadblock in Butare. *United States v. Munyenyezi*, 781 F.3d at 542. In upholding the ten-year sentence – which was the statutory maximum for a violation of Section 1425 – the First Circuit acknowledged that the defendant was not sentenced for her involvement in the Rwandan genocide but for the gravity of her lies on immigration forms:

Despite what [the defendant] thinks, the judge kept his word, explicitly hitting her with the statutory maximum not as “punishment for genocidal conduct” but because her lies were the “most serious” infractions “of section 1425 that one can describe.” She “is not accountable in this court” for her genocidal acts, the judge stressed. But “she is accountable for lying to obtain refuge and citizenship for which she was not qualified.” And “lying about participation in genocide when specifically asked,” the judge explained, knowing full well “that such conduct is automatically disqualifying with respect to immigration and citizenship seriously undermines the integrity of this country's immigration standards in the most offensive way” imaginable. . . . “We cannot abide this country being a haven for génocidaires,” the judge emphasized. Citizenship applicants must know, he added, that if they “lie” about taking part in genocide, “the punishment for that fraud will not be lenient.” By our lights, the judge's analysis is plausible and defensible.

Id. at 544-545.

The *Munyenzezi* sentence provides a critical guidepost for sentencing the defendant in this matter. While Mrndzic did not participate in a large-scale genocide, his conviction on Count VII reflects, at a minimum, that he aided and abetted, and conspired with other guards in the brutal torture of hundreds of captive Serbs because of ethnic hatred. The harms inflicted on the captives were systemic, pervasive, and committed over a period of many months. Moreover, the trial testimony amply demonstrated that the torture in which Mrndzic participated was designed to instill terror in the victims. That the survivors still suffer the psychological effects of this torture more than 30 years later is testament to the destructive effect of the reign of terror in which Mrndzic participated. While there are differences between Mrndzic’s conduct at Celebici and Munyenzezi’s conduct at the roadblock in Butare, if it were possible to prosecute either of them in this country for their conduct overseas, they would both receive either a life sentence or

decades of incarceration. *Id.* (noting Munyenyezi would receive a life sentence if prosecuted for those crimes in the U.S.).⁵

Moreover, the *Munyenyenzi* decision is just one of several in which courts have concluded that the statutory maximum, rather than the sentencing guidelines, is the appropriate benchmark for immigration fraud which concealed past persecution, war crimes, or genocide. The Third Circuit in *United States v. Jabateh*, 974 F.3d 281, 304 (3d Cir. 2020), affirmed a 360-month sentence comprised of four maximum sentences to be run consecutively. The defendant was convicted for lying about his involvement in human rights abuses, including murder, rape, and torture during his service as commander in Liberia’s civil war. *Id.* While Jabateh’s convictions were for perjury and naturalization fraud, the Third Circuit upheld the district court’s conclusion that the defendant’s “‘criminal acts f[e]ll well outside the heartland of Guideline provisions related to immigration fraud and perjury’ . . . that ‘in lying to INS about his crimes and seeking sanctuary as a persecuted refugee, [Jabateh] stood the persecutor bar, and indeed, the asylum system itself, on its head’ and ‘perjury . . . undermines the foundations of our immigration and asylum system.’” *Id.* (quoting district court decision). It found the district’s court decision to impose the statutory maximum “neither irrational nor novel.” *Id.* Like Jabateh, Mrndzic stood

⁵ Under the Sentencing Guidelines, conspiracy to commit murder or aiding and abetting murder calls for a base offense level of 43 with a resulting guideline range of life in prison. *See* USSG §2A1.5(c)(1) (conspiracy); USSG § 2X2.1 (aiding and abetting). Similarly, unlawful restraint combined with applicable specific offense characteristics results in an offense level of 40, and a guideline range of 292-365 months (24 – 30 years). *See* USSG §§2A4.1(a), (b)(2), (b)(3), and (b)(4)(a). Torture with death resulting has a base offense level of 37 with a guideline range of 210-262 months (17.5 – 21.8 years). *See* USSG §3A1.5(b). Accessory after the fact to murder results in a base offense level of 30 and a guideline range of 97-121 months. *See* USSG §§2X3.1(a)(1) and (a)(3)(A).

the refugee system “on its head” by posing as victim of persecution when he was in fact a perpetrator of persecution.

Similarly, in *United States v. Worku*, 800 F.3d 1195, 1208 (10th Cir. 2015), the Tenth Circuit upheld a 22-year sentence – the product of stacking three maximum penalties (two for naturalization fraud and one for aggravated identity theft) – in a case factually similar to this one. Worku had been a higher-level cadre member at a notorious prison in Ethiopia in the 1970s who participated in the torture of prisoners at that prison because they were of a different ethnicity. *United States v. Worku*, No. 12-CR-346-JLK, 2014 WL 2197537, at *5 (D. Colo. May 27, 2014). Witnesses testified at sentencing that Worku had been involved in beatings and torture of prisoners, and one witness testified she saw him kill three prisoners. *Id.* Worku, like Mrndzic, lied his way into the United States after he persecuted prisoners in a distant country, effectively circumventing any justice in his home country for years. In imposing three consecutive maximum penalties, the district court observed,

The statutes enacted by Congress provide maximum penalties of ten years imprisonment for two counts and a mandatory consecutive two year sentence for the third. If not this case, what is the maximum sentence for? The interests of the United States in keeping its immigration processes free of corruption must be measured in terms of the degree of that corruption. Such, I think, is Congress's intent. . . . The Congress has provided maximum sentences for the most egregious violations of these statutes. If this case is not egregious, I cannot imagine what case would be.

Id. at *9.

Both the Ninth Circuit and the Eleventh Circuit have similarly upheld statutory maximum sentences in immigration fraud matters involving the concealment of war crimes. *See United States v. Sosa*, 608 F. App'x 464, 468 (9th Cir. 2015); *United States v. Jordan*, 432 F. App'x 950, 952 (11th Cir. 2011). In *Sosa*, the Court upheld the imposition of a 120-month sentence for a violation of §1425. *Sosa*, 608 F. App'x at 468. The defendant had been a member of a

Guatemalan military unit which was involved in the killing of civilians in what later became known as the “Dos Erres massacre.” *Id.* The Court upheld the conclusion that the crimes Sosa concealed “were exceptionally heinous,” and unlike the kind of information typically concealed in naturalization fraud cases. *Id.* Similarly in *Jordan*, the Eleventh Circuit upheld a 120-month sentence for a violation of §1425, when the defendant concealed his involvement in a Guatemalan military group involved in the killing of dozens of civilians during the civil war. *Jordan*, 432 F. App’x at 952; *see also* Government’s Brief in *Jordan* at 2011 WL 858544 *3-10.

While not all courts have imposed the statutory maximum sentences in cases in which persecution, torture, or war crimes have been concealed, many courts have imposed sentences at the high end of the guideline range or above the guideline range. *See, e.g., United States v. Teganya*, 1:17-cr-10292-FDS (D. Mass. July 1, 2019), *aff’d* 997 F.3d 424 (1st Cir. 2021) (imposing high-end 97 month sentence on a defendant who concealed his involvement in the Rwandan genocide); *United States v. Boskic*, No. 1:04-cr-10298 (D. Mass. Nov. 20, 2006), *aff’d* 545 F.3d 69 (1st Cir. 2008) (granting an upward departure from range of 0-6 months and sentencing defendant to 63 months on visa fraud charge where he made false statements on his refugee application that concealed his military service in Bosnia); *United States v. Mitrovic*, No. 1:12-cr-00311 (N.D. Ga. Nov. 7, 2016), *aff’d* 890 F.3d 1217 (11th Cir. 2018) (upwardly departing from a guideline range of 0-6 months to 57 months for lying during naturalization process to conceal his service during the Bosnian War).

In the most recent sentencing in this district for immigration fraud related to a war crimes or genocide was the high-end 97-month sentence imposed by Chief Judge Saylor in *United States v. Teganya*. Teganya was a Rwandan medical student at the university in Butare when the genocide broke out in 1994. *Teganya*, 1:17-cr-10292-FDS (D. Mass. July 1, 2019), *aff’d* 997

F.3d 424 (1st Cir. 2021). Trial testimony indicated that he was a member of the MRND party and the Interahamwe youth wing of the MRND, and that he was involved in the rape and killing of several Tutsis during the genocide. He was convicted on two counts of immigration fraud (18 U.S.C. § 1546(a)) and three counts of perjury (18 U.S.C. § 1621(2)) for lying about his membership in the MRND and Interahamwe and his participation in persecuting Tutsis during the genocide. The Court found that Teganya's applicable guideline range was 78-97 months, and sentenced him to the high end of that range. *Teganya*, 1:17-cr-10292-FDS at D.165.⁶

Similarly in *United States v. Boskic*, an earlier Bosnian war crimes case, Judge Woodlock upwardly departed from a guideline range of 8-14 months to sentence the defendant to 63 months incarceration. *United States v. Boskic*, 1:04-cr-10298-DPW at D.165 pg. 9 *aff'd* *United States v. Boskic*, 545 F.3d 69 (1st Cir. 2008). Notably, the jury acquitted Boskic on the two most serious counts which charged him with lying about his involvement in persecution including the massacre of Muslims at Srebrenica. *Boskic*, 1:04-cr-10298-DPW at D.148.⁷ Instead, the jury convicted him for lying about serving in the army of Republika Srpska during the Bosnian war. Nonetheless, Judge Woodlock factored into Boskic's sentence his service in a

⁶ It is notable that the Court in *Teganya* was reluctant to impose a sentence above the sentencing guideline range because, “[v]irtually every atrocity that was described by witnesses in this trial was supported by the testimony of a single witness without much corroboration, and at least some of the witnesses had some credibility issues . . . my confidence level is not as high as it might be in . . . a murder trial in a modern American Court.” Sentencing Transcript at 27. By contrast, in this case five witnesses testified consistently about the guards' conduct at Celebici and Mrndzic's role as a leader; that testimony was supported by contemporaneous military records, the ICTY judgment, and the witness statements of another 16 witnesses.

⁷ The PSR suggests that the defendant in *Boskic* admitted direct participation in a mass killing of unarmed prisoners. See PSR at pp. 51. However, Boskic was acquitted of lying about his involvement in persecution, the most serious counts in that case. *Boskic* at D.165. The government is uncertain of the basis for the PSR's conclusion.

military unit which committed a “genocidal massacre,” by increasing Boskic’s criminal history category from II to VI, and relying on the guideline for travel in foreign commerce to avoid prosecution. *Id.* at D.165 at pg. 9.

Conclusion

For the reasons set forth above, the government requests that the Court accept in part and reject in part the conclusions of the PSR, find that the total offense level in this case is 31, and impose a sentence of 108 months followed by a period of 36 months supervised release and a fine within the guideline range. In the event that the Court accepts all of the factual and legal conclusions of the PSR, the government is filing a motion for upward departure and upward variance so that the sentence in this case adequately reflects the seriousness of the offenses, the need to establish an effective deterrent, and the need to vindicate the victims of Mrndzic’s crimes

Respectfully submitted,

JOSHUA S. LEVY
UNITED STATES ATTORNEY
District of Massachusetts

By: s/ John T. McNeil
John T. McNeil
Jason A. Casey
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that these documents are being filed through the ECF system and therefore will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

s/ John T. McNeil
John T. McNeil
Assistant U.S. Attorney

Date: January 15, 2025