UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:19-CR-20693-SEITZ

UNITED STATES OF AMERICA

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.
_____/

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANTS' OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files its Response in opposition to defendants Peter Sotis's and Emilie Voissem's Objections to the Presentence Investigation Report (PSI). *See* ECF No. 132 and 135.

Base Offense Level

As an initial matter, either Section 2M5.1(a)(1) or 2M5.2(a)(1) of the Sentencing Guidelines provides the appropriate base offense level, which in this case is 26. Section 2M5.1(a)(1) pertains, in pertinent part, to cases where "national security controls . . . were evaded." Section 2M5.2 applies, in relevant part, to "[e]xport of . . . military equipment . . . without required valid export license." Both apply in this case. As Commerce expert Michael Tu testified at trial, the rebreathers at issue were restricted items on the Commerce Control List and required a license because of national security concerns. In short, the rebreathers were subject to "national security controls" and the defendants evaded those controls. Michael Tu also testified that the rebreathers were dual use, meaning they had a military as well as commercial application. Shawn Robotka testified that the Revo rebreathers were used by the U.S. military for a training exercise and had

discussed with both defendants that rebreathers have a distinctive military application.

Both 2M5.1 and 2M5.2 explicitly note that one of the statutory provisions they apply to is 50 U.S.C. § 1705 (the International Emergency Economic Powers Act), which both defendants were convicted of here and which also forms the basis of the conspiracy count for which they were convicted. Additionally, 2M5.2 applies to 18 U.S.C. § 554 (smuggling goods from the U.S.), which was another statute that both defendants were convicted of.

Sotis seems to contend that 2M5.1 should not apply because there was no danger to national security from the export of these rebreathers to a Libyan company that purportedly wanted to use the rebreathers for non-military purposes. Such a contention is directly contradicted by the testimony of Michael Tu, who as noted, testified that these rebreathers required a license for export to Libya because of national security controls, regardless of whether they also had a commercial use. Presidential Executive Order 13726 issued in April 2016, just a few months before the defendants' export in this case, explicitly invoked the "unusual and extraordinary threat to the national security and foreign policy of the United States" posed by Libya and highlights the reasons for national security concerns regarding Libya:

> I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13566 of February 25, 2011, finding that the ongoing violence in Libya, including attacks by armed groups against Libyan state facilities, foreign missions in Libya, and critical infrastructure, as well as human rights abuses, violations of the arms embargo imposed by United Nations Security Council Resolution 1970 (2011), and misappropriation of Libya's natural resources threaten the peace, security, stability, sovereignty, democratic transition, and territorial integrity of Libya, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Executive Order 13726 of April 19, 2016.

The First Circuit Court of Appeals addressed similar arguments in *United States v. McKeeve*, 131 F.3d 1 (1st Cir. 1997). In that case, the defendant contended that "USSG §

2M5.1(a)(1) cannot apply in a sale-of-goods case unless the government presents evidence that the particular goods, when or if sold, constitute an actual threat to national security." The First Circuit Court of Appeals disagreed with the defendant's argument, concluding that because "the President determined that Libya posed an 'unusual and extraordinary threat to the national security and foreign policy of the United States' and therefore ordered an embargo covering the exportation of virtually all goods to Libya" that 2M5.1(a)(1) applied, "whether or not the goods shipped actually are intended for some innocent use." *Id*. at 14. The Libyan embargo in place in 1997 was more comprehensive than the one in effect in 2016 (which only covered transactions with individuals involved with attacks in Libya or threats against certain Libyan assets or institutions), but the legal principles articled by the *McKeeve* court are analogous. The Executive Branch had made a determination that the rebreathers in this case were restricted items on the Commerce Control List and the shipment of rebreathers to Libya were controlled for national security reasons, whether or not they were ultimately intended for commercial as opposed to exclusively military use. 2M5.1(a)(1) thus applies. *Id*.

Sotis further asserts that 2M5.2 would not apply because the Revo III rebreathers have "metal components and a solenoid" that make them detectable by sonar and, according to Sotis, therefore not up to military specifications. Such an argument misapprehends the reasons why the military uses rebreathers and the dangers that rebreathers pose if possessed by an adversary. Even if the rebreathers are detectable by sonar, the rebreathers still deprive any observers of visual cues that they are underwater – they produce little to no bubbles and thus have a stealth function. And, as Michael Tu testified, the devices have military functions that go beyond stealth, including range (allowing divers to travel greater distances underwater) and duration (allowing divers to stay underwater for longer), which can assist with repairing ships and other underwater military

equipment and retrieval of underwater military equipment (e.g., mines). Second, any rebreathers exported could be used by foreign militaries for training purposes. Militaries typically do not train divers using fully functional equipment, so even if these rebreathers have some of their stealth function removed, they could still be used by foreign adversaries to train divers on how to use rebreathers generally. Indeed, as Robotka testified, even the U.S. military was using the Revo rebreathers to train.

Sotis argues that even if a BOL of 26 applies under 2M5.1 or 2M5.2, that a downward departure should apply. The Application Note for both sections indicate that "[i]n determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted." Those factors taken as a whole do not weigh in the defendants' favor and, accordingly, do not warrant a downward departure.

First, there was a heightened national security interest with respect to Libya in 2016, where militants were engaging in ongoing attacks and when less than four years before the U.S. Ambassador to Libya had been murdered during a terrorist attack there. Moreover, as the attached Orlando Sentinel article notes, as far back as June 2002, the FBI was particularly concerned with terrorist attacks being committed with rebreathers, given its specialized capabilities, and its stealth function. *See* June 2002 Orlando Sentinel article, attached as Exhibit A.

The case that Sotis cites – *United States v. Sevilla*, 2006 U.S. Dist. LEXIS 87252, 2006 WL 3486872, Case No. 04 CR 0171 (N.D. Ill. Nov. 29, 2006) – is inapposite. In that case, the district court departed downward in part because the universal testing machine exported to Iran

was not designated as a dual-use item and was not on the Commerce Control List, which of course is not the case here.

Moreover, in this case, unlike in *Sevilla*, there was strong evidence that the defendants were aware of the concerns for terrorism that the rebreathers posed. Documents admitted into evidence show that on July 28, 2016, Voissem emailed Sotis that, based on her communication with the freight forwarding company Global Forwarding, she understood that there was a "concern for terrorism" with the shipment, and there were "red flags" and a "potential hold with the Department of Commerce." Gov. Ex. 12N. The next day, On July 29, 2016, Voissem emailed Sotis and Robotka to report that an official with the Commerce Department had informed her "that shipping to Libya was probably not going to happen because of how volatile" the country was and that the situation in Libya at the time was so dire that the Commerce "office physically pulled out of Libya in March because of this." Gov. Ex. 12T. That same day, Shawn Robotka, a U.S. military veteran with multiple combat experiences and expertise in rebreathers, had texted Voissem that rebreathers have "a distinctive military application," and that there were concerns about terrorism in the region with previous bombings of ships. Gov. Ex. 19. Robotka further testified that the other equipment ordered by Codi Group, including the $12,000 Genesis scooters that would allow for transportation of 500 pounds of equipment underwater, caused him grave concern that the items would not be used for recreational purposes. And then on August 4, 2016, Commerce Special Agent Brent Wagner explained in detail to Voissem how rebreathers and underwater scooters could be used in a terrorist attack on a cruise ship by welding a bomb and they therefore could not be shipped to Libya. *See* Wagner Trial Testimony Excerpt, attached as Exhibit B.

The defendants tossed aside all the warnings they received about national security concerns and chose profit over country. Indeed, the undersigned is not aware of any case with so flagrant a

disregard shown by defendants after receiving so many explicit notices that they would be violating the law by attempting such an export. The undersigned is also not aware of any other export violation case that involved so extensive a cover-up after a federal investigation had started and certainly no other export case in which a key federal witness was threatened with his life for cooperating. That alone should militate against a downward departure. The *Sevilla* case also noted that the defendant has no prior criminal history. Here Sotis previously committed a violent crime, a Hobbs Act robbery of a jewelry store at gunpoint for which he was sentenced to nearly three years in federal prison. Although the case occurred 30 years ago, when Sotis was 27 years old, and therefore does not count for criminal history points, it still should be a factor that cuts against a variance or departure for him. And Voissem's prior law enforcement and military experience cuts against a departure for her – she understood more keenly than most the need to protect national security and she actively worked through her deception to the Zaghabs and intentional silence to Special Agent Wagner to enable this illegal export. Indeed, her law enforcement experience was what gave Special Agent Wagner false assurance that Add Helium would follow the law.

To assert that this was a one-off export ignores that, according to trial testimony, this was one of the largest orders ever received by Add Helium – over 100 items, valued at over $100,000, and weighing almost 1,500 pounds (*see* Gov. Ex. 8D and 8E)- and the defendants were continuing to order items for Codi Group, including sophisticated underwater communication devices, after the shipment of rebreathers left the country (and even after Special Agent Wagner had definitively told them on August 17 that the license determination had been made and that the rebreathers would be seized) and that they had an expectation that this would be an ongoing relationship with Codi Group.

Finally, Sotis suggests that because Osama Bensadik and Abdullah Elbanani were not

prosecuted that the government did not have national security concerns with this shipment. This red herring argument is not true. The government did not prosecute Bensadik or Elbanani for the simple reason that there was no evidence of their willful violation of U.S. export laws, unlike the defendants in this case. The government obtained an email search warrant for Bensadik and numerous other email accounts and nowhere did the defendants inform Bensadik what they had learned from Commerce – that the rebreathers were restricted items that needed a license for export to Libya. This speaks to the defendants' duplicity rather than there being no concern with what the shipment would be used for. To the contrary, as Special Agent Wagner testified, the government was deeply concerned with how this shipment could get into the wrong hands in Libya. Codi Group had no presence online, no track record of exports from the U.S., and there was no readily verifiable way to discern that the equipment would be used for non-nefarious purposes, especially given the volume of underwater equipment (over 100 items) that they ordered.

Acceptance of responsibility

Neither Sotis nor Voissem qualify for a reduction for acceptance of responsibility. Both proceeded to trial, contested their factual guilt, and at no point acknowledged responsibility or remorse for their actions. And neither cite to any law or factual basis in their objections to indicate why they are entitled to such a reduction.

A two-level reduction applies if a defendant "clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. § 3E1.1(a). The guidelines commentary provides "[t]his adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse." U.S.S.G. § 3E1.1(a), comment. (n.2). It further states that, if a defendant

proceeds to trial, acceptance-of-responsibility reductions should only occur in "rare situations," such as "where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt." *Id*. The defendant bears the burden of proving he accepted responsibility. *United States v. Moriarty*, 429 F.3d 1012, 1023 (11th Cir. 2005). Here, neither defendant insinuated in any way that they were proceeding to trial merely to preserve issues unrelated to factual guilt.

Sotis further argues, without further explanation, that denying him a reduction for acceptance of responsibility is an "unconstitutional imposition of a penalty against Mr. Sotis for having exercised his right to trial by jury under the Sixth Amendment to the United States Constitution." Sotis Objections to PSI, ¶ 23. The law of our Circuit forecloses such an argument. "[Eleventh Circuit] case law permits a district court to deny a defendant a reduction [for acceptance of responsibility] under [U.S.S.G.] § 3E1.1 based on conduct inconsistent with acceptance of responsibility, even when that conduct includes the assertion of a constitutional right." *United States v. Wright*, 133 F.3d 1412, 1414 (11th Cir. 1998). Acceptance of responsibility points present the "possibility of leniency"; withholding those points is therefore not "impermissible punishment." *United States v. Henry*, 883 F.2d 1010, 1011 (11th Cir. 1989). *United States v. Jones*, 934 F.2d 1199, 1200 (11th Cir.1991) ("The court's consideration, at sentencing, of the defendants' denial of culpability at trial does not impermissibly punish the defendant for exercising his constitutional right to stand trial.").

Role in offense

Sotis' four-level leader/organizer enhancement is appropriate. Under the Guidelines, a district court can impose a four-level enhancement to a defendant's sentence "if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise

extensive." U.S.S.G. § 3B1.1(a). To receive a role increase under § 3B1.1, the defendant must have been the organizer or leader of at least one or more criminally responsible participants. *Id*., cmt. nn.1-2. That criminally responsible participant "need not have been convicted." *Id*., cmt. n.1. Moreover, "in deciding whether individuals were participants in the criminal activity, the court must consider, in addition to the criminal act itself, the individuals' involvement in the events surrounding the criminal act," including "in the course of attempting to avoid detection or responsibility for that offense." *United States v. Holland* , 22 F.3d 1040, 1045-46 (11th Cir. 1994). In determining whether a criminal activity was "otherwise extensive," once a court determines that there was at least one criminally responsible participant, the court may take into account "all persons involved during the course of the entire offense," including outsiders who provided "unknowing services." U.S.S.G. § 3B1.1(a), cmt. n.3.

There were four participants in the offense – Peter Sotis, Emilie Voissem, Deborah Wesler, and Ken Wesler - and several unwitting parties to this large order who provided unknowing services – Mohamad Zaghab, Diana Zaghab, Shawn Robotka, the freight forwarder, Osama Bensadik, and other Add Helium employees. Emilie Voissem, the Add Helium office manager, coordinated the logistics of the illegal shipment and was the primary point of contact with Ramas LLC. Deborah Wesler, as Voissem's assistant, played a role in communicating false information to Mohamad Zaghab. During trial, the defense conceded that Deborah Wesler was an unindicted co-conspirator. And there was testimony that Ken Wesler, an employee at Add Helium, helped Peter Sotis conceal documents to protect Sotis during the criminal investigation. But of these participants, Peter Sotis was indisputably the leader of the conspiracy to illegally export the rebreathers. It was Sotis' decision to cause the illegal shipment after being told of the Commerce restrictions. It was Sotis' decision to lie to the Zaghabs and thereby encourage his employees to

do the same. It was Sotis' decision to threaten Robotka and have his employee Ken Wesler destroy documents and conceal relevant material from federal investigators.

Sotis was the 80% owner of Add Helium, the managing member, and the face of Add Helium. All decisions regarding items leaving the Add Helium warehouse went through him, as trial testimony established. And he made clear that he was to be kept in the loop regarding this shipment given its importance monetarily to him. *See* Gov. Ex. 12D. To complete this illegal shipment, Sotis lied to and concealed critical information from several unwitting parties. He explicitly lied to Mohamad Zaghab and told him that Commerce had said "nothing" regarding the shipment. He misled Robotka into thinking the shipment had not left the warehouse. And under Sotis' direction, Voissem lied to Mohamad and Diana Zaghab about what Commerce had said and about whether the rebreathers were "dual use" or had a military use. Voissem did not do so out of embarrassment. She knew rebreathers had a distinctive military application and was asked multiple times by Diana Zaghab whether any items had a dual or military use and Voissem falsely told her no. Voissem also deceived, at the direction of Sotis, by not revealing anything to the Zaghab's about what Special Agent Wagner had said at his meeting on August 4, 2016, or later on his August 17, 2016 call, or even the August 24 meeting.

Sotis' Obstruction of Justice

Sotis merits an obstruction of justice enhancement for the threats he made to Robotka to discourage him from cooperating with the federal investigation in this case and for Sotis' efforts to conceal or destroy documents relevant to the investigation.

Robotka testified at trial that Sotis threatened him on at least three occasions in November and December 2016 not to cooperate with the federal investigation. *See* Robotka Signed Affidavit

at 4-6, attached as Exhibit C. Each time, Sotis' threats escalated, until culminating in a December 21, 2016, call from Sotis in which he told Robotka "you're a dead man. I'm going to kill you. I told you this would get bloody and I will put you in the ground." That was the last time Robotka and Sotis spoke to each other. Robotka sued Sotis in Broward Circuit Court regarding Sotis' business practices at Add Helium and prevailed. All the threats were documented in contemporaneous calendars that Robotka kept and memorialized in a notarized affidavit from 2017 that is attached to this response. Additionally, Robotka informed law enforcement in writing at the time of the threats, by texting Commerce Special Agent Brent Wagner in December 2016 about the threats he was receiving from Sotis. Robotka's statements thus have the indicia of reliability. The fact that in one recorded meeting with Sotis in December 2016 Sotis did not threaten Robotka, proves little, particularly since the more serious threats that Sotis made came after this recording.

Additionally, on December 14, 2016, Sotis admitted to Robotka that he had his employee Ken Wesler destroy files related to this case:

> Sotis asked me why I was so concerned about Libya. Stating, you don't get it, "our signatures are not on the documents. I ran everything through Emilie [Voissem]. She will take the fall for everything. I had Ken (Ken Wesler) deleted all the files on the server which we will blame on Emilie as a disgruntled employee. Ken deleted all Osama payments there is no link to us ["]. Sotis then stated, "we can always throw them [referring to law enforcement] Ken for destroying documents."

Robotka Signed Affidavit at 5, attached as Exhibit C. Robotka also testified at trial that Sotis discussed how Ken Wesler had destroyed relevant documents. This statement is corroborated in part by testimony from Commerce Special Agents Brent Wagner and Michael Bollinger at trial that in the administrative subpoena returns there were missing communications with Sotis that were only later discovered through e-mail search warrants. Sotis' obstruction by concealing such relevant documents therefore delayed the investigation.

The commentary to the Guidelines describes this kind of conduct as amounting to obstruction: "(a) threatening, intimidating, or otherwise unlawfully influencing a . . . witness, . . . directly or indirectly, or attempting to do so"; and (d) "directing or procuring another person to destroy or conceal evidence that is material to an official investigation." U.S.S.G. § 3C1.1 comment. (n.4(a) and (d)). *United States v. Snipes* , 611 F.3d 855, 871 (11th Cir. 2010)(upholding district court's enhancement for obstruction of justice where defendant instructed a witness not to comply with a subpoena and threatened that "if you do contact them, you will have to pay the consequences").

Voissem's Obstruction of Justice

Voissem's two-level upward adjustment for obstruction of justice under U.S.S.G. §3C1.1 is justified based on her perjury at trial. For purposes of §3C1.1, perjury is defined as "false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States v. Dunnigan*, 507 U.S. 87, 94 (1993).

Four elements are required to support a perjury finding under §3C1.1:

> (1) the testimony must be under oath or affirmation; (2) the testimony must be false; (3) the testimony must be material; and (4) the testimony must be given with the willful intent to provide false testimony and not as a result of a mistake, confusion, or faulty memory.

United States v. Singh, 291 F.3d 756, 763 & n.4 (11th Cir. 2002). Voissem does not appear to contest that her testimony was under oath and was material. She only appears to maintain that her testimony was truthful or, alternatively, was not willfully false.

Case law directs the Court to make an independent factual finding that the defendant gave perjured testimony on a material matter in order to apply the obstruction of justice adjustment. While "[i]t is preferable that the district court make specific findings as to each instance of

obstruction by identifying the materially false statements individually," *id*. (internal citation omitted), it is sufficient "that the district court makes a general finding of obstruction of justice that encompasses all of the factual predicates of perjury," *id*. (internal quotation and citation omitted).

Voissem's most readily provable false statement is her testimony that she did not speak on the phone with Mohammad Zaghab after the August 4, 2016, meeting with Special Agent Wagner. Voissem did not claim she could not remember; instead she adamantly insisted she did not speak to him. Her testimony is directly contradicted both by Mohammad Zaghab's testimony and trial exhibit emails from August 5, 2016, which show that such a call was scheduled for 2 PM that very day. *See* Gov Ex. 12EE. Such a call was material given that Mohammad Zaghab testified that Voissem affirmatively lied to him during the call about what Special Agent Wagner had said.

Voissem also provides false testimony regarding what Special Agent Wagner had told her during the August 4, 2016 meeting. While she the jury was initially deadlocked on this false statement count and ultimately acquitted her, the preponderance of the evidence indicates she perjured herself. At the very least, Voissem was misleading in her testimony regarding her understanding of what Special Agent Wagner had said. Clearly the jury disbelieved her with regards to her understanding of whether the rebreathers could not be shipped to Libya given her conviction of all other counts.

Other Sotis objections

To the extent not addressed by the Response above, the government will respond to Sotis' objections corresponding to the paragraph number in his filing in D.E. 135.

Paragraph 2. The government never contended that the defendants were shipping the rebreathers directly to the Libyan government, as opposed to a private entity in Libya.

Paragraph 3. See above regarding military use of rebreathers.

Paragraph 4. The evidence at trial showed that Sotis was aware from the very beginning that Bensadik would be receiving money from overseas for this shipment and certainly by May 2016 was aware that it was going to Libya.

Paragraph 5. This is precisely what the jury convicted the defendants of.

Paragraph 6. Sotis' contention is false. On July 30, 2016, as shown in Gov. Ex. 12U, Sotis brought up the subject that the Zaghabs' should take over the shipment since he did not want "trouble from the government for making an illegal shipment."

Paragraph 7. Unrebutted testimony at trial established this was the largest order ever received by Add Helium and that Sotis viewed this customer as a "whale" that could bring him significant revenue. It is also undisputed from Sotis' own emails that he reviewed Add Helium to be in dire financial straits at the time of the illegal shipment. While the amount of payment received by Add Helium from Codi Group (through Ramas LLC) was approximately $112,000, the defendant were also in the process of quoting a price for dozens of other diving items worth tens of thousands of dollars. *See* Gov Ex. 12II and 12KK.

Paragraph 8. Robotka testified about his conversations with both defendants about rebreathers having a military application and Gov Ex. 19 explicitly contains Robotka's July 29, 2016, text to Voissem that the U.S. government views rebreathers as having a "distinctive military application."

Paragraph 9. The relevance of the presidential embargo on Libya is that Sotis clearly thought that there was a presidential ban on all shipments to Libya and connived through deception to cause the export of the rebreathers anyway to Libya. It is thus relevant to his willfulness and to the egregiousness of his violation. It is also relevant in showing the Executive Branch's view of

the severity of the national security concerns that Libya posed at the time, even if the Executive Order did not directly apply to the shipment at issue.

Paragraph 10. See response to Paragraph 6 above regarding timing of who suggested that shipment should go through Ramas LLC. As to whether Voissem attempted to mislead the Zaghabs, the testimony of Mohammad and Diana Zaghab clearly refute the defendants' self-serving spin of the evidence.

Paragraph 11. All information contained in paragraph 31 of the PSI comes from trial testimony.

Paragraph l2. No objection to this clarification.

Paragraph 13. The information in paragraph 33 of the PSI comes from the trial testimony of Special Agent Wagner, as corroborated by the trial testimony of Shawn Robotka.

Paragraph 14. This paragraph is relevant in showing that Sotis, even after being confronted with his illegal export, refused to assist in bringing the shipment back and thus shows the need for greater specific deterrence under the 3553 factors.

Paragraph 15. The info in paragraph 36 of the PSI comes from Robotka's trial testimony.

Paragraph 16. Robotka testified consisting with the info in the PSI and jury necessarily found him credible in convicting Sotis.

Paragraph 17. See response to Sotis' Obstruction of Justice enhancement above.

Paragraph 18. Sotis' counsel, in his cross examination of Robotka, was the one who first mentioned there being a civil law suit. Since Sotis is attempting to impugn Robotka's credibility, it is relevant that a state court judgment found Sotis to not be credible and Robotka to be credible regarding testimony related to this case.

Paragraph 19. See Voissem's Obstruction of Justice above. Voissem testified that Sotis

told her to delay the debrief with the government, had a substantive conversation with Voissem within an hour of the government's debrief with Voissem, and then within months provided financial resources to Voissem to have her open up her own diving business with equipment from Add Helium. The reasonable inference from such evidence is that Sotis was attempting to steer Voissem away from cooperating with the government, which echoes his attempt to conceal evidence and keep Robotka from cooperating with the federal investigation.

Paragraph 20. See response to Sotis' enhancement as leader/organizer above.

Paragraph 21. Add Helium documents indicate that the profit from the overall shipment, as opposed to the gross revenue of over $112,000, was approximately $28,000. To that extent, the PSI should be modified to clarify the net profit.

Paragraphs 22 – 27. The objections contained in these paragraphs are all addressed by the government above.

Paragraph 28. The Court can accord the weight it wishes to the statement in that paragraph. It does not seem to be in dispute that the filmmaker died while diving with Sotis in January 2017. Whether Sotis will be held civilly responsible for the death is the subject of ongoing civil litigation.

Other Voissem Objections to PSI

The paragraphs referenced below refer to the paragraphs in Voissem's PSI that are indicated in Voissem's objections.

Paragraph 22. While Voissem may have been following Sotis' orders, she certainly understood that proceeding with the shipment was unlawful and evaded export controls, and therefore the conspiracy served that purpose.

Paragraph 31. Special Agent Wagner's reference to the items being detained was

corroborated by Robotka's testimony as well as by Agent Wagner's contemporaneous email to his supervisor that the items were detained.

Paragraph 32. While it is correct that according to his own testimony Robotka was present for the call with Agent Wagner on August 17, 2016, it is unrefuted that Robotka was not aware at that time that the rebreathers had already been shipped by the defendants. In fact, Voissem admitted at trial that she did not tell Robotka that the items had shipped prior to August 24, 2016.

Paragraph 33. Agent Wagner informed Voissem that the shipment was detained on August 4, 2016. There was no need for him to repeat that it was detained during his August 17, 2016 call. It is telling that even though she admits that Agent Wagner said the items would be seized during the call, she, as a former law enforcement officer, did not inform Agent Wagner that the items were already en route to Libya.

Paragraph 41. See response to Voissem obstruction of justice above.

Paragraph 43. Add Helium documents indicate that the profit from the overall shipment, as opposed to the gross revenue of over $112,000, was approximately $28,000. To that extent, the PSI should be modified to clarify the net profit. As noted above, there were thousands of dollars in additional items that were still being processed or quoted by Add Helium after the initial order had been shipped.

Paragraph 44. Robotka certainly warned Voissem and Sotis in July 2016, as confirmed by government exhibits introduced at trial, that it was illegal to ship items to Libya and that rebreathers in particular were of concern to the government because they had a military application. After the August 4 meeting with Agent Wagner, Robotka explicitly told Sotis that they could not ship without Commerce's authorization.

Paragraph 46-47. See response to Voissem obstruction of justice above.

Paragraph 48. See response to Acceptance of Responsibility above.

Paragraph 54. See response to Voissem obstruction of justice above.

CONCLUSION

For all the reasons states above, the Court should deny Defendants' Objections to the PSI.

Respectfully submitted,

JUAN ANTONIO GONZALEZ
United States Attorney

s/ Michael Thakur__
MICHAEL THAKUR
Assistant United States Attorney
Court Id No. A5501474/FL Bar No. 1011456
99 NE Fourth Street, 8Th Floor
Miami, Florida 33132-2111
Phone: (305) 961-9361
E-mail: michael.thakur@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF on January 9, 2022.

s/ Michael Thakur
MICHAEL THAKUR
ASSISTANT UNITED STATES ATTORNEY