UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No.: 1:18-cr-218 (TSC)
	)	
MARIIA BUTINA, a/k/a MARIA BUTINA,	)	
	)	
Defendant.	)	
	)	

SENTENCING MEMORANDUM
ON BEHALF OF MARIA BUTINA

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Dated: April 19, 2019

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Certificates

Defendant Maria Butina will appear before this court for sentencing on April 26, 2019, after having plead guilty to one count of conspiracy to act as an agent of a foreign official, in violation of 18 U.S.C. §§ 371, 951. She submits this memorandum to assist the court in fashioning the appropriate sentence, respectfully requesting that it impose a sentence of time served in this case for the following reasons.

I. INTRODUCTION

Maria Butina is a devoted daughter, genuine idealist, and compassionate civil activist. Nearly a year ago, she graduated with a master's degree from American University with straight A's and bright career prospects. Now, her world has collapsed because of a decision to help and discuss her amateur diplomacy efforts with a Russian official.

Maria spent a night in the Central Cell Block in Washington, DC, weeks of incarceration in the DC Correctional Treatment Facility, and months at the Alexandria detention center. Her reputation has suffered. Her integrity has been questioned. She has been separated from her family, in a foreign country, for over nine months. She has languished for three of those months in administrative segregation—solitary confinement by another name—where she was enclosed in a small cell for 22 hours a day. Maria has tremendous debts with no assets. Her ability to get a job going forward is uncertain. She faces expulsion from this country and now must reconcile with her new future.

Although Maria has committed a serious offense, just punishment does not require additional incarceration. After all, if Maria had never been detained, it's possible a sentence without incarceration could have been handed down given the deportation consequences of her felony plea, her substantial assistance the government will acknowledge in its USSG § 5K1.1 submission, and analogous guideline range of 0-6 months we canvass in this memorandum.

Moreover, had Maria notified the Attorney General of her foreign agent status in advance of her activities, she would have committed no crime.

However, Maria acknowledges her failure to notify the Attorney General and thus serious offense. She further appreciates her violation is more than a mere process crime—it is a violation of an important law through which the United States identifies those who act on behalf of foreign governments or officials. She admits that, by agreeing to work with another at the direction of a foreign official without notice, she deprived the United States government of important information through required disclosures and committed a felony: conspiracy to violate 18 U.S.C. § 951, in violation of 18 U.S.C. § 371. She regrets this act more than anything and her contrition—reflected in her cooperation and substantial assistance—is honest and sincere.

As the court knows, no sentencing guideline expressly applies in this case. We ask the court to find that USSG § 2B1.1 of the Sentencing Guidelines is most analogous and applicable. The advisory guideline range for § 2B1.1 is 0-6 months imprisonment. Having now spent over nine months in detention, with earnest cooperation occurring before and after her arrest and guilty plea, we urge the court to sentence Maria Butina to time served, enter the proposed order directing a prompt removal (*see* Doc. 92-5), and send her home to her family.

II. PERSONAL BACKGROUND

Maria is 30 years old, born in the former Soviet Union one year before the fall of the Berlin Wall. She grew up on the edge of a boreal forest in Siberia, 2200 miles and four time zones away from Moscow. Her hometown of Barnaul is not a seat of wealth or privilege. It is an industrial city of roughly 600,000 residents and a place where five months of the year are below freezing and average temperatures never reach 70 degrees. Raised by loving parents, her father is a retired furniture maker and her mother is an electrical engineer. Maria has a younger sister who works in advertising and sells e-cigarettes at the airport, and in addition to her nuclear family, Maria has

been exceptionally close to her maternal grandmother, a retired teacher who used to work in a Russian orphanage.

Maria grew up middle class in Russia and attended local public schools. When she was 10, her school couldn't afford to purchase computers. Her first computer classes were taught using a hand-drawn keyboard on a piece of paper from the teacher. Despite her parents "limited income," they did their best to "provide Maria a good education" and other opportunities "in hopes of her securing a good job and a successful career." (Ltr. from Valeri Butin, Attach. at 7.) They enrolled Maria in a neighborhood secondary school that taught English as part of the curriculum. Maria was a successful and intellectually curious student. "Virtually all the subjects came easy to her." (*Id.*) And she went on to study political science and education at Altai State University, where she eventually graduated with honors and a joint bachelor's/master's degree in 2009 and 2010, respectively.

In university, Maria thrived. A member of the first post-Communism generation, politics and international relations became her passion. She volunteered as a political journalist in the local press. At 19, she became the youngest person ever elected to the Altai State Social Chamber, an advisory council. For a little spending cash, she had a part-time community service job at the Barnaul Rotary Club.

There were few opportunities for Maria after graduation and after her failed attempt at local office. But as a hardworking entrepreneur like her father, she decided to follow his lead into the furniture business by taking out a loan to start a small retail store of her own. Her store expanded to other locations, growth that was fueled by the introduction of consumer credit in Russia. By the age of 22, Maria soon decided to move to the big city as many young people do. And also like many young people, she did so without a clear plan to get by. She considered expanding her

furniture business to Moscow, but quickly realized that running a small chain of stores in Siberia was not adequate preparation to compete with stores like IKEA. Spurred by business realities and a failing economy, she ultimately sold her furniture business with her dad's help and decided to put her political science degree and public relations experience back to work.

She returned to the issue of gun rights. Her father had taught her how to use a hunting rifle as a child, a hobby they both shared. Her gun rights advocacy had also been one of the most popular issues in her campaign for local office right after graduating, and she already started a small gun rights group in Barnaul. Using social networking websites, Maria was able to form a formidable group in Moscow, organizing demonstrations and protests, particularly on the issue of personal safety. Based on her admiration of western democratic freedoms, a group name was chosen: the Right to Bear Arms.

Notably, gun advocacy in Russia has little to do with gun advocacy in the United States. A hundred years ago, during the Russian Civil War, guns were confiscated by the precursor of the Soviet Union. With few exceptions, Russians today cannot carry or own most firearms. Yet, the issue of gun rights was important to Maria as a matter of self-defense, when for every five people murdered in the United States, there were fifteen murdered in Russia.[1] For Maria, gun rights—however unpopular—was a means for personal safety, and Maria sought support for her advocacy from across the political spectrum. It didn't matter to her whether the person was liberal, conservative, in government, or oppositional, and she had a slogan written on her office door that read "anyone who supports gun rights may come in, but you leave your flag behind."

[1] *See* Nation Master, Crime Stats: compare key data on Russia & United States, available at: https://www.nationmaster.com/country-info/compare/Russia/United-States/Crime (last visited Apr. 19, 2019)

Maria marshaled her civil society group to an "all-Russia" sized entity—that is, one having a large enough membership across all the Russian regions. Soon after, avocation and vocation merged when her group attracted funding from a wealthy private businessman, someone who had a logical fiscal interest in Maria's gun-rights advocacy in Russia because his wife owned a domestic gun company.

Over the next two years, Maria became the face of the gun-rights movement in Russia, appearing frequently on television, in newspapers and magazines, and leading rallies around the country. She traveled to other international cities to give talks at civil functions and compare notes on gun laws. She advocated for those wrongly convicted of crimes, and she was a champion for self-defense survivors who were abandoned by an unforgiving local criminal justice system.[2]

In the process, she met Aleksandr Torshin, the first deputy chairman of the Federation Council (the upper chamber of Russian parliament), who would later become the deputy governor of the Central Bank of Russia in July 2018. Torshin had been a gun rights advocate in the State Duma (the lower house of Russian parliament) and had previously been to National Rifle Association (NRA) conventions in the United States where he met other NRA members and officials. Like Maria, Torshin hailed from another remote region of the country. Maria did occasional unpaid volunteer work for his office, and Torshin lent his name and prestige to her gun-rights group, eventually submitting a report to the Duma, recommending that the parliament adopt a version of the "Castle Doctrine." President Putin never signed or adopted the recommendations.

As Maria's group membership multiplied, she planned an annual convention for fall 2013, with similar gun-rights organizations from around the world invited to Moscow for the meeting.

[2] (*See, e.g.*, Attachs. 30, 34, and 37) (character letters from assault victims who were wrongly accused of crimes and exonerated with Maria's support)).

Torshin gave Maria the contact information for David Keene (a former NRA President), who Torshin met on a prior trip to the United States. Because Torshin did not speak or write English, Maria reached out to Keene to invite him and any other NRA members for her group's annual meeting. Keene accepted the invitation and asked Paul Erickson to accompany him. Maria was elated.

Through Maria's advocacy in Russia, she became familiar with the NRA during this 2013 visit. She did not infiltrate the NRA. She joined it, as millions have, by filling out an online form and paying a fee. She did not seduce the figures within it or funnel Russian money to it. Nor did anyone else instruct her to do so. Simply put, as the founder of a fledgling gun rights group, in a country without much in the way of gun rights, the NRA was a good connection to have.

On a personal level, Erickson and Maria kept in touch after the 2013 meeting and she began a romantic relationship with him in the following year. Her new connection to the NRA, reached through a graciously accepted cold-call invitation to Keene and Erickson, gained her a reciprocal invitation to a 2014 NRA convention in Indianapolis. Maria used the occasion to see Erickson, attend the convention, and travel. Amazed by what she saw, she seized all opportunities to travel to the US, either on her own or with Torshin, to go to other NRA events, give talks about Russian gun rights, network, and see Erickson, who eventually flew to Siberia to meet her family in return.

In 2015, she invited a larger group of NRA members and others to Moscow, through Keene, for her group's 2015 annual meeting, and she attempted to match the hospitality of the NRA conventions. For example in 2015, Torshin and Maria flew to Nashville for an NRA annual meeting attended by many US dignitaries, and Torshin was entertained by Southern culture, its cowboy hats, dinners and a trip to an Allan Jackson concert. To return the favor, Maria arranged a trip to the Bolshoi Ballet, gun ranges, and fine dining, thereby blowing the small budget she had

for her American guests. She also asked Torshin—not the other way around—to set up meetings with Russian politicians to given an appearance of greater legitimacy for her group.

Maria's world was expanding. As the young woman who had never been on a plane a few years earlier, she traveled internationally for her gun rights group and met with people she thought influential. She wished to pursue graduate education as the important people around her had degrees from institutions more prestigious than Altai State. She also wished to be in the same hemisphere as her romantic interest. So Maria and Erickson explored both educational and business opportunities for her. This is the genesis of the *Description of the Diplomacy Project* proposal referenced in the Statement of Offense. (Doc. 66.)

III. OFFENSE CONDUCT

In March 2015, Maria drafted the *Description of the Diplomacy Project* with Erickson's help. In it, she laid out the benefits of having nongovernmental contacts between Russia and the US based on shared interests (like gun rights) to help make the case for an international policy/consulting position for her. Erickson assisted by giving her a forecast on politics and the upcoming 2016 US presidential election. Erickson also inspired Maria with information about the citizen diplomat Vladimir Pozner, a Russian-American journalist (best known for explaining the views of the Soviet Union during the Cold War) and spokesman for the Soviets, who Maria believed, as described in her proposal, was an "unofficial transmitter" of the policies of Gorbachev and Yeltsin in the United States.

Ambitious and suggestible, Maria cleverly listed all of her American involvements in the proposal to market and inflate her experience, and then she cast herself as the next Pozner offering to meet with people from the Russian foreign ministry or private Russian businessmen to determine where interests lay. In other words, the "project" was a request to fund Maria's travels

to the US for an idealized job that entailed getting to see Erickson while attending various conservative conferences and meetings in the US on the basis that these types of Americans might be receptive to improved relations between the countries.

Maria took her proposal to the only wealthy person she knew in Russia—the funder of the Right to Bear Arms—and one politically connected person she knew—Torshin. It would come as no surprise to a skilled issue advocate reading the project description that after vague commitments of partial support from Torshin, and no commitments from the wealthy businessman, not a dime of support for this project was provided by any Russian entity—private, government, or otherwise. Thus, the project was essentially an invitation to fund Maria's time and travels in the US in exchange for ephemeral hopes of better relations without any specific policy or other objective.

In hindsight, Maria admits her proposal was foolish and potentially harmful. If given a chance, she would have done things differently. Yet, she never received funding. So without any, she industriously rebranded and attempted to launch an international career by forming a single-member limited liability company called "Bridges, LLC"—aptly named based on her wish to be a bridge between Russia and America. Under Bridges, Maria scored a consulting contract with the Outdoor Channel to develop a television show in Russia featuring President Putin and his love of the outdoors. Her contract and business were unsurprisingly short-lived, however, because she couldn't produce the president. After all, she had no personal or direct ties to him and Torshin—not without trying—didn't either.

With no commercial prospects left, Maria resolved to focus on graduate school. When she considered where to pursue a degree, there was really only one choice: the United States. No Russian told Maria to apply to American University. She was not infiltrating the American education system. She was not using her schooling as a cover. She was simply pursuing a degree

in international relations. And according to Twitter messages, Torshin even forgot at one point that Maria was bound for Washington, DC to attend American University.

However, even without financial support or direction from the Russian government, Maria admittedly still took some of the actions described in her *Description of the Diplomacy Project* on behalf of Torshin. For instance, she went to various events with Erickson and others while in the US. She did additional things for Torshin while a student. She regularly spoke to him, who by this point had become a friend, using unsecure Twitter direct messages. Their messages show a friendly personal relationship, as opposed to something more operational. Maria every so often helped Torshin with mundane tasks like buying clothes for his grandchildren, purchasing American toothpaste and medication, providing translations, and making travel arrangements for trips to the US. But as admitted in her Statement of Offense, Maria also attended a presidential campaign announcement—albeit not under any order or mission—and described it for Torshin, who requested to know more about the exciting event and candidate. Maria complied by translating a Wikipedia page, she copy-pasted into a Twitter direct message. With an eye on future job possibilities, Maria further sent other notes to Torshin regarding the political landscape in the US on her own. She also helped him secure time off from work for a trip to the US by writing a note that highlighted the chance to meet political candidates as justification, which Maria knew in this instance he would share with his superiors at the Russian Central Bank or foreign ministry.

All told, her motivations weren't nefarious. Maria was genuinely interested in improving relations between the two countries, and she had no ill intent. Additionally, if Torshin happened to share any of her unsolicited notes or political thoughts up the chain, she didn't know, although she would welcome any recognition all the same. She was driven to find a career. Graduation was

inevitable, and her ambition clouded her good judgment. So she carelessly continued to help Torshin while in the US, albeit not under orders or for money.

Ironically, the financial support Maria received for her friendship citizen diplomacy activities only came from Americans, not Russians. For example, a wealthy philanthropist she met had a shared appreciation for restoring US-Russia relations. This American helped Maria with some of her educational expenses, and Maria felt indebted to him. So based on shared interests she helped him plan a series of friendship dinners between Russians and Americans.

Despite Maria's well-meant intentions, she has confessed to her crime. She recognizes that her good ends were sought using unlawful means. Her activities with Torshin triggered a duty to notify the Attorney General. This law exists for a reason: so the Unites States government knows the identities of those who are acting on behalf of foreign governments or officials, whether the actions are legal or not, and Maria failed to provide the requisite notice. For this, she is remorseful.

IV. THE GUIDELINES AND § 3553 FACTORS FAVOR A TIME-SERVED SENTENCE

Title 18, United States Code, § 3553(a) requires the court to impose a sentence "sufficient, but not greater than necessary, to comply" with the sentencing purposes in the statute.

In this case, the nature and circumstances of the offense, history and characteristics of the defendant, as well as sentencing ranges for the most analogous and meaningfully applicable guideline all weigh heavily in favor of a time-served sentence. *See* 18 U.S.C. § 3553(a)(1) and (a)(4). Maria has acknowledged her wrongdoing and has fully accepted responsibility. Even prior to her arrest and guilty plea, she did everything she could to remedy her misconduct. Although no sentencing guideline expressly applies to the substantive offense in this case, "the most analogous offense guideline" or guideline "that can be applied meaningfully," USSG 2X5.1, provides for a base offense level of 6 and sentencing range of 0-6 months imprisonment. Together with her

earnest cooperation and substantial assistance, a time-served sentence is sufficient to achieve the purposes of sentencing set forth in § 3553(a).

A. The Plea Agreement

Maria pleaded guilty on December 13, 2018 to Count 1 of the indictment, charging her with conspiracy to violate 18 U.S.C. § 951, in violation of 18 U.S.C. § 371. Per the terms of her Rule 11(c)(1)(B) plea agreement (Doc. 67), Maria agreed that the guidelines range for a violation of section 371 follows the underlying substantive offense, which in this case is section 951. Maria also agreed that the Sentencing Guidelines did not expressly specify an applicable guideline for the substantive offense. Where the Guidelines do not expressly specify an applicable guideline, the court should

> apply the most analogous guideline. If there is not a sufficient analogous guideline, the provisions of 18 U.S.C. §3553 shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable.

USSG § 2X5.1.

The government's position in the plea agreement is that there is no sufficiently analogous guideline for the underlying substantive offense, that the provisions of 18 U.S.C. §3553 should control sentencing, and they cite *United States v. Alvarez*, 506 F.Supp. 2d 1285 (S.D. Fla. 2007) for support. Maria submits that the guideline that best captures her offense behavior and guideline that is most analogous for sentencing purposes here is USSG § 2B1.1, and she cites *United States v. Dumeisi*, No. 06C4165, 2006 WL 2990436, at *8 (N.D. Ill. Oct. 17, 2006) for support. If accepted by the court, the parties agreed that the base offense level for USSG § 2B1.1 is 6; that Maria would be entitled to a two-level adjustment for acceptance of responsibility under USSG § 3E1.1 for a total offense level of at least 4; that Maria does not have any criminal convictions,

rendering her criminal history category I; thus, the resulting advisory guideline range is 0-6 months imprisonment. (Doc. 67 at ¶ 4.)

Both parties agreed for allocution purposes that if a guidelines range applies, a sentence within this estimated guidelines range of 0-6 months "would constitute a reasonable sentence in light of all the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review" (Doc. 67 at ¶ 5). The court is free to make the final decision regarding sentencing. Yet, per the promises in the plea agreement, the government implicitly agreed that a 0-6 month sentence would be "sufficient, but not greater than necessary, to comply" with the purposes of the statute. Maria has now served over nine months of incarceration. Accordingly, we respectfully request the court impose a sentence of time-served.

B. <u>The Presentence Investigation Report and Guidelines Range</u>

To be sure, when sentencing a defendant, the court must consider the Sentencing Guidelines and kinds of advisory sentencing ranges available. *See* 18 U.S.C. § 3553(a)(4). In this respect, Maria disagrees with the government and presentence investigation report's (PSR) conclusion that "there is no analogous guideline" and thus no advisory sentencing range to consider. (Doc. 95 at ¶ 71.) Admittedly, there is no express guideline range for the substantive offense of section 951. However, the district court must "apply the most analogous offense guideline" if one, or "any guideline[] and policy statement[]" if it "can be applied meaningfully[.]" USSG § 2X5.1. We submit that § 2B1.1 of the Guidelines is most analogous and can be applied meaningfully for sentencing in this matter.

In determining whether there is an analogous guideline, case law counsels courts to first "determine whether *any* guideline, and there can be more than one, is sufficiently analogous to the defendant's crime of conviction." *United States v. Nichols*, 169 F.3d 1255, 1270 (10th Cir. 1999)

(emphasis in original), *cert denied*, 528 U.S. 934 (1999). Whether a guideline is sufficiently analogous "most generally will involve comparing the elements of the federal offenses to the elements of the crime of conviction." *United States v. Osborne*, 164 F.3d 434, 437 (8th Cir. 1999).

Upon examination of the elements for the substantive offense here, we see that section 951 makes acting as a foreign agent in the United States illegal if without prior notice to the Attorney General.[3] With the exception of diplomatic officials and the like, section 951 covers all agents of foreign governments, not just hostile or covert ones. Section 951 also covers all acts taken in the United States by such agents, not just espionage-related or subversive acts. The statute contains no statutorily prescribed form. Even a letter to the Attorney General would suffice. The statute also contains no regulation on the proscribed actions of a foreign agent. Even "legal conduct on behalf of a foreign government" may result in a conviction the agent "fails to notify the Attorney General of such conduct" in advance. *United States v. Duran*, 596 F.3d 1283, 1295 (9th Cir. 2010); *see also United States v. Latchin*, 554 F.3d 709, 715 (7th Cir. 2009) (requiring only "*some kind*" of act by a foreign agent without prior registration to establish guilt under the statute (emphasis in original)). Section 951 gives the government no authority to withhold permission to act as a foreign agent, and once the agent has notified the Attorney General, he or she is in no way regulated by the statute. The principal requirement is notification. Correspondingly, the essence of the substantive offense is failing to notify the Attorney General.

In this light, with failing to notify being the core element of the offense, there are some readily-available analogous offenses and other guidelines that can be meaningfully applied. For

[3] Specifically, section 951 states, in pertinent part that: "Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General . . . shall be fined under this title or imprisoned[.]" 18 USC § 951(a).

instance, USSG § 2B1.1 covers false statements to the government under 18 U.S.C. § 1001. Undeniably, making a false statement is not the same as failing to notify a foreign agent's status. After all, a false statement can be considered more egregious. However, making a false statement deprives the government of information in much the same way as failing to notify the Attorney General deprives the government of information—that is, "the identity of those acting on behalf of a foreign government within the United States, whether the action is legal or not." *Duran*, 596 F.3d at 1295.

The base offense level for USSG § 2B1.1 is 6. Other guidelines concerning depriving the government of information also have base offense levels at or near 6. For example, USSG § 2C1.8 (for 2 USC § 437 et seq.) has a base offense level of 8 for failing to report campaign contributions. USSG § 2E5.3 (for 18 USC § 1027 or 29 USC § 439 et seq.) has a base offense level of 6 for various federal crimes concerning failures to maintain the required records for pension plans. USSG § 2M4.1 (for 50 USC § 462) sets a base offense level of 6 for failing to register for military service. And USSG § 2T1.1 (for 26 USC §§ 7201 and 7203) likewise sets a base offense level of 6 for failing to file a tax return.

These guidelines reveal a pattern on how the Sentencing Commission treats failures to make required disclosures to the government. Although each covers a unique crime distinct from section 951, all cover the Commission's treatment of those who deprive the government of information. In this respect, they lend support for the premise that USSG § 2B1.1 (which concerns false statements to government agents of all varieties, thereby depriving them of information) is sufficiently analogous to section 951. And this premise is bolstered by the fact that the legality of the predicate act for a conviction of section 951, at least according to two circuits, is seemingly irrelevant. *See Duran*, 596 F.3d at 1295 (even "legal conduct" taken by a foreign agent without

prior notification can result in a conviction); *see also Latchin*, 544 F.3d at 715 (uncertain acts of "*some kind*" taken by an undisclosed foreign agent is sufficient to sustain a conviction (emphasis in original)). The critical requirement is that the agent notify the Attorney General in advance, even if in a mere e-mail message. This makes notification and disclosure to the Attorney General before acting as a foreign agent the flashpoint of the crime.

Yet, if the court wished to look beyond the element of 'non-disclosure or notification' and instead focus on 'acting as an agent of a foreign government,' there is another analogous offense and guideline: USSG § 2J1.4 (for the crime of impersonation under 18 USC §§ 912 and 913). In this context, section 951 only applies to foreign agents who don't have prior sponsorship, public acknowledgment, or official recognition as a representative of a foreign government. Thus a diplomat, for instance, would not have to register, while an amateur diplomat would. The difference between them is that the diplomat has official status. The amateur diplomat does not, although is pretending to have similar authority. By analogy, section 951 regulates foreign agents who are acting as or impersonating a duly-accredited agent of a foreign government, in much the same way as sections 912 and 913 regulate unlicensed federal agents who are acting as or impersonating a federal officer, agent, or employee. The guideline for impersonation is USSG § 2J1.4, and the Sentencing Commission likewise calculates a base offense level of 6 for this crime.

There is nevertheless precedent for applying USSG § 2B1.1 as the most analogous and meaningfully applicable guideline. The leading case for this proposition is *United States v. Dumeisi*, No. 06C4165, 2006 WL 2990436, *8 (N.D. Ill. Oct. 17, 2006) (Conlon, J.). *Dumeisi* involved a matter with more sinister behavior, no cooperation or acceptance of responsibility by the defendant, and yet the court still found the fraud/false statement guideline of USSG § 2B1.1 to be most analogous and applicable. *Id.*

In *Dumeisi*, the defendant was charged with acting as a secret foreign agent of the Iraqi government, conspiracy, and perjury for lying to an immigration officer about his ties to Iraq, and lying to a grand jury. *Id.* at *1. Dumeisi was accused of spying on critics of the Baghdad regime living in the United States and passing the information along to the Iraqi intelligence service. The trial evidence showed he had coded messages, traded secret phone calls, and worked with Iraqi intelligence officers. It also showed he published a repugnant local Arabic community newspaper, in which he expressed hatred for Israel and admiration for the Iraqi dictator Saddam Hussein, as directed by the Iraqi Mission to the United Nations. He pleaded not guilty, but a jury found him guilty on all counts. *Id.* at *2.

As here, the government contended there's no sufficiently analogous guideline to section 951. Probation differed, offering USSG § 2M5.3—which covers crimes for supporting terrorist organizations (in violation of 18 USC §§ 2283, 2284, 2339B, 2339C(a)(1)(B))—as the appropriate guideline. But the *Dumeisi* court rejected both of these views and invited the parties to identify other analogous guidelines that better capture the offense behavior. After additional briefing, the judge dismissed the government's proposed alternatives under the espionage and IEEPA-linked guidelines of USSG §§ 2M3 and 2M5,[4] and instead agreed with the defense, adopting § 2B1.1 as the most analogous guideline to be applied in the case.

The same should happen here, as further corroborated by Application Note (I) of USSG § 1B1.1 and USSG § 1B1.3(a), which call for the application of chapter two offense guidelines on the basis of the relevant conduct. The relevant conduct here is that Maria Butina pleaded guilty to a single charge of conspiring to act as an agent of a Russian official.

[4] (*See* Govt's Mem. Concerning Sentencing Issues [ECF 123], filed Mar. 31, 2004 in *United States v. Dumeisi*, No. 1:03-cr-00664 (N.D. Ill.)).

"Agent of a Russian official." We appreciate how this phrase is perceived in light of the strained relations and controversy surrounding the relationship between the United States and Russia, as well as other, unrelated cases brought by the Special Counsel's Office to address Russian election interference. But there are many agents of foreign governments or officials from other nations acting lawfully in the United States. The difference between those agents and Maria is that they registered with the government when Maria did not.

Additionally, when the government charges Maria with conspiring to act as a foreign agent, they are not saying she conspired to act as a "secret agent." Rather she's better viewed as the 'agent' in a principal-agent relationship under Agency Law as opposed to something more nefarious or clandestine. Indeed, for all of the media coverage of Hollywood style, spy-novel allegations, in reality, this case is bereft of any tradecraft or covert activity whatsoever. There are no dead drops, brush passes, secret communication devices, hidden transmitters, bags of cash or payoffs, counterfeit passports, plane tickets back to Moscow, or espionage-related activity at all.

This is in sharp contrast with the clear espionage-type conduct of the accused in the matter *United States v. Alvarez*, 506 F.Supp. 2d 1285 (S.D. Fla. 2007), which the government relies on for its position here. (Doc. 67 at 3.) *Alvarez*, 506 F.Supp. 2d at 1288 (proposing there's no sufficiently analogous guideline for section 951). In *Alvarez*, the husband-wife pair were genuine covert Cuban intelligence agents, who spied on the Cuban-exile community in South Florida for 30 years. They used sophisticated communications equipment from the Cuban intelligence service to keep their activities secret, and they regularly gathered and transmitted information to their Cuban intelligence handlers for decades. The court sentenced the codefendants according to § 3553 in the absence of an advisory guideline because the judge found "that neither 2M3.3 nor any other guideline provision was sufficiently analogous to be applied in this case." *Alvarez*, 508 F.Supp. 2d

at 1291 (Moore, J.). Although importantly, the *Alvarez* court only considered whether USSG § 2M3.3 (dealing with espionage and the transmittal of national defense or classified information) was sufficiently analogous to the relevant conduct in that case. In fact, there's no indication or record evidence that the government, defense, or probation department ever briefed the court on USSG § 2B1.1 (among the others referenced above) as an alternative analogous or meaningfully applicable guideline.

We informed the probation department of our position and objections (Doc. 95 at 21-25), simultaneously sharing a copy of the same with the government. To date, the government has offered no alternative or rebuttal guidelines analysis. The probation department has nonetheless left the PSR unchanged because Maria's "offense conduct" included some unknown, unspecified "overt acts that are not adequately taken into account by USSG § 2B1.1." (Doc. 95 at 24-25.)

The probation department is mistaken. The test under USSG § 2X5.1 doesn't focus on the underlying conduct, but rather raises a legal question that generally involves examining and comparing the elements of the federal offenses with the relevant crime of conviction. *See Osborne*, 164 F.3d at 437. But even if the court were to look at the underlying facts in selecting the most analogous offense, as the Second Circuit seems to permit, *see, e.g.*, *United States v. Cefalu*, 85 F.3d 964, 968 n.6 (2d Cir. 1996), what are these "overt acts" that concern the probation department to counsel against USSG § 2B1.1? There are no transmissions of national defense information. There are no national secrets or unlawful disclosures of covert agent information being revealed—which, by the way, rules out the espionage or IEEPA related guidelines of the Guidelines Manual. There is no lying, stealing, or spying. Maria never communicated sensitive information. In fact, all of the evidence in this case contains no classified information at all. Thus, Maria took no independently criminal overt act and the probation department cites none. (Doc. 95 at 24.)

In her Statement of Offense (Doc. 66), Maria admitted to coauthoring *Description of the Diplomacy Project*, a proposal that was partially backed (in concept only and without any financial support) by a single Russian official to better Russian-American relations. The description of her offense doesn't mention any link to Russian intelligence services. Rather Maria is accused of unofficial diplomacy and lobbying at conferences, dinners, and other events without any clandestine or nefarious ends. She admitted to wanting to open a dialogue with influential Americans to win them over to the idea of Russia as a friend, not a foe. And she admitted to taking advice and doing tasks for a Russian official, who recently resigned as deputy governor of the Russian central bank, and that she knew this banker had at times coordinated with the Russian foreign ministry.

There is no claim in the Statement of Offense that she was a Russian intelligence operative. There is no assertion that she stole confidential information, bribed an official, funneled money to the NRA, ran a Russian troll farm on social media, made illegal campaign contributions, lied to investigators, acted covertly, engaged in subversive activities, had ill will, or undertook any independently criminal act in the United States for some spy-game or Cold War related goal. There is no admission that she received money from the Russian government for her actions in the United States. Nor is there a claim that she harmed an American or was sent here on a mission to lie in wait until Russian intelligence officers decided how to use her. The government withdrew its initial accusation that Maria communicated with Russian intelligence agents about her diplomacy activities while in the United States. The government corrected its inaccurate assertion that Maria had applied for a B1/B2 visa (rather she applied for OPT and work authorization) as part of a plan to bolt back to Russia. And the government withdrew its mistaken claim that Maria used sex as spycraft.

In truth, Maria entered the United States because of a sincere desire to pursue a western education (as acknowledged in a footnote in the Statement of Offense), but as a lover of both this country and her own, she hoped for a better relationship between the two countries and took steps to pursue that aim. She discussed her amateur diplomacy efforts with a member of Russian government. Had Maria disclosed her resulting foreign-agent status in advance, she would have committed no crime. But she didn't disclose it. For that, she committed a felony: conspiracy to violate section 951. And she deprived the United States government of information through required disclosures, a serious crime that Maria deeply regrets.

For all of these reasons, we submit that USSG § 2B1.1 is "the most analogous offense guideline" or guideline "that can be meaningfully applied" here, and should be used by the court at sentencing.

C. <u>The Sentencing Factors</u>

With or without applicable advisory guideline ranges, case law still requires the court to "make an individualized assessment," tailoring an individualized sentence that actually achieves the sentencing purposes of § 3553(a). *Gall v. United States*, 552 U.S. 38, 50 (2007). Given Maria's personal history, characteristics, and the stated objectives of sentencing, a sentence of time-served is "sufficient but not greater than necessary" to serve the purposes of sentencing in this matter.

The nature and circumstances of Maria's offense are recounted in the personal background and offense conduct sections above, as well as in the PSR. While the facts constituting Maria's offense for which she is ashamed need no repeating, Maria has otherwise lived a law-abiding life. Her character was never called into question and her civic mindedness was always on display. As the testimonials from her family, friends, professors, supporters, priests, and others make plain, Maria is a good person. Some of her supporters include former strangers, who she helped escape

wrongful convictions, and their insights on Maria describe a person who is capable of making a positive difference and lasting impact on many lives and families. Maria is kind and generous. She is honest, thoughtful, and hardworking. These qualities should not be overshadowed by her aberrant felonious act.

Maria has also acknowledged her wrongdoing, fully accepting responsibility, and she's been trying to cure her misconduct through complete and extensive cooperation, some of which predates her arrest. Indeed, Maria has *always* been willing to cooperate with the government. Her willingness to cooperate is demonstrated by her decision to appear voluntarily before the United States Senate Select Committee on Intelligence. Although not under any subpoena, she supplied thousands of pages of documents to the committee, which significantly included all of her Twitter direct messages with Torshin. She answered all of the committee's question's for eight hours, providing satisfactory testimony that didn't trigger a Senate referral to the FBI and, in broad strokes, mirrored what she has told the government and federal investigators in more detail during the witness interviews before and after her guilty plea.

Maria did not flee the United States after her apartment was searched in April 2018. She did not return home after graduating from American University. She did not refuse to provide her electronic device passwords to the FBI when requested during the April 2018 search. In fact, when the FBI seized her electronics again with her arrest months later, she said she never changed her passwords when requested to provide them again. Since arrest, her cooperation has continued, even prior to the start of any plea negotiations. She answered all questions, never lied to an investigator, and never refused a requested interview.

Maria's cooperation has been full, transparent, and complete. Yet, what makes her case especially noteworthy is that, as a young Russian national who has accepted that deportation will

be part of the resolution of her case, Maria has willingly cooperated with the United States despite the geopolitical tension between the two countries. Even though Maria was not charged with espionage or for being an agent of Russian intelligence—and accordingly doesn't fear being accused of divulging Russian secrets upon her return, as she has none to divulge—the high-profile nature of her case and frequent use of the terms "spy" or "secret agent" by many in the international news community will undoubtedly lead to speculation by some as to what kind of information she has provided or whether she has been loyal to her homeland. Maria has taken on that burden as part of her penance.

The need for just punishment does not warrant more incarceration in this case. *See* 18 U.S.C. § 3553(a)(2)(A). Maria has already suffered severe consequences from her offense. The impact of her arrest and incarceration over the past nine months have been sobering. This widely-publicized prosecution and its collateral consequences similarly send a strong message to anyone who considers conspiring to act as a foreign agent without prior notification.

On a very real level, Maria spent a harrowing night in the Central Cell Block in Washington, DC on the day of her arrest, followed by weeks in a DC jail, and months in the Alexandria detention center. During her detention, Maria spent three months in administrative segregation, confined in a cell the size of a parking space, behind a steal door, in a foreign country, for 22 hours a day. She was relieved from her cell for two hours total to shower and call her parents, once at 1:00am and again at 11:00am. The hardship of such confinement alone is adequate punishment and of great deterrent value.

On a more lasting and internal level, however, Maria also has had a great deal of time to reflect on the choices she made to bring her to this point, and she has had to confront the personal shame, embarrassment, and public opprobrium that now attend her crime as a foreign agent and

convicted felon. This is to say nothing of the global media coverage on this case that has falsely portrayed Maria as a "Kremlin spy" who "traded sex for access" in a manner akin to the Red Sparrow fictional character from the movie and book trilogy.[5] Maria has felt the weight of these consequences and brands has looked ahead to the limitations they will have for her the rest of her life.

This case and her guilty plea almost assures that her future career prospects are bleak. No one would wish to follow this fate, especially someone who acted out of good motivations toward good peaceful ends, albeit using unlawful means. And there is no reason to conclude that more punishment is needed in this case to deter others or to exact retribution on Maria. Her very public and humiliating fate has chastised all who deal with the regulations Maria has transgressed.

Maria has paid a great price for her unlawful conduct, making any additional term of imprisonment unduly severe under the circumstances. She is desperate to return home to her family as soon as possible, so that she can start her life anew. And even if the court were inclined to add additional prison time, Maria's immigration status may already result in an indeterminate period of detention before her final removal. It is the policy of Immigration and Customs Enforcement (ICE) to detain incarcerated foreign nationals waiting removal in immigration detention facilities. ICE issued a detainer in this case and upon entering the proposed judicial order of removal, ICE will take custody of Maria and transfer her to an immigration facility, where she might spend days,

[5] As the court is aware, subsequently withdrawn allegations made by the government in pleadings and open court fueled this negative coverage. And notwithstanding the government's later acknowledgment of its errors and abandonment of certain assertions, that bell cannot be unrung. In the age of the internet, these allegations, which resulted from this prosecution, will follow her wherever she goes. This makes it appropriate for the court to consider the negative effects the media coverage has had and will have on Maria, despite their proven falsity, the government's admitted mistake and withdrawal.

weeks, or even months before leaving the country. We urge the court not to impose a greater sentence.

Finally, Maria has learned her lesson, and her remorse is genuine and deep. The combination of her good character and evident proclivity to be a lawful and productive member of society will ensure that she never reoffends again.

V. CONCLUSION

Maria Butina has been justly punished. She now has a felony conviction for her crime, and she has been held in three different detention facilities for over nine months, with another facility to follow pending her ultimate removal. Maria has felt the depths of shame, humiliation, and remorse for her actions. She has done everything she could to atone for her mistakes through cooperation and substantial assistance, which the government acknowledges in its USSG § 5K1.1 submission. She is ready to return to her family and get her life back on track. For all of these reasons, and such others that may be presented at the sentencing hearing on this matter, a sentence of time-served is sufficient but not greater than necessary to meet the purposes of sentencing, and Maria Butina respectfully requests that the court impose the same.

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Respectfully submitted,

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