

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

ALEX VAN DER ZWAAN,

Defendant.

Crim. No. 18-31 (ABJ)

GOVERNMENT’S SENTENCING MEMORANDUM

The government submits this memorandum in connection with the sentencing of Alex van der Zwaan scheduled for April 3, 2018. On February 20, 2018, van der Zwaan pleaded guilty to one count of making false statements in violation of 18 U.S.C. § 1001(a). The government does not take a position with respect to a particular sentence to be imposed. Instead, the government sets forth its view of the nature of the offense and offender. *See* 18 U.S.C. § 3553(a).

In light of the statement of offense, the plea colloquy, the government’s description of the factual basis for the plea during the plea hearing, and the Presentence Report, the Court is already aware of the principal offense conduct. We underscore several points herein. In short, the defendant presents a scarcity of mitigating factors, and several aggravating circumstances.

First, we note that the defendant is a lawyer who was trained at a major international law firm. Indeed, he had worked for almost a decade at his firm at the time of his interview with the Special Counsel’s Office in November 2017 at which he lied repeatedly, and prior to which he destroyed and failed to produce pertinent documents.

Second, as explained in the statement of offense, the defendant appeared at the Special Counsel’s Office for an interview and lied regarding topics at the center of a significant

investigation into the criminal conduct of Paul J. Manafort, Jr., and Richard W. Gates III. Both had been indicted just days earlier. The charges include Manafort and Gates' unregistered work on behalf of Ukraine and specifically referenced their work in commissioning and disseminating a report concerning the trial of the former Prime Minister Yulia Tymoshenko. *See* Indictment as to Paul J. Manafort, Jr., and Richard W. Gates III at ¶¶ 1–3, 9–11, 18–24, 26, *United States v. Manafort et al.*, No. 17 Cr. 201 ABJ (D.D.C. Oct. 30, 2017). The defendant worked on this report. From that work, Manafort profited substantially, laundered those profits, and hid both those profits and the conduct from United States authorities, including the Treasury Department and the Department of Justice. Manafort created a web of entities and corresponding bank accounts in the United States and abroad to hide and facilitate the movement of funds. *Id.* at ¶¶ 12, 14–17, 27–32. As discussed below, among the topics about which the defendant lied were his communications with Gates, his communications with a Ukrainian business associate of Manafort and Gates (Person A), and his failure to produce an email between himself and the Ukrainian business associate—all important matters in the investigation.

Third, at the time of the interview as well as at the time of his destruction of pertinent documents, van der Zwaan was represented by experienced legal counsel. The defendant was expressly warned by the government that it is a crime to lie to the Special Counsel's Office, that lying could constitute a federal crime, and that such conduct would carry with it the possibility of going to jail if he were convicted. van der Zwaan stated that he understood. He thereafter deliberately and repeatedly lied.

Instead of truthfully answering questions about his contacts with Gates and Person A, van der Zwaan lied. He denied having substantive conversations with Gates and Person A in 2016. When confronted with an email dated September 12, 2016, sent by Person A to van der Zwaan,

the defendant again lied. The email was sent to the defendant's email address at his law firm, though the Special Counsel's Office had obtained the email from another source. The email said, in Russian, that Person A "would like to exchange a few words via WhatsApp or Telegram." van der Zwaan lied and said he had no idea why that email had not been produced to the government, and further lied when he stated that he had not communicated with Person A in response to the email.

As the defendant was aware, he had withheld and otherwise destroyed documents requested by the Special Counsel's Office through his counsel relating to his work with Manafort, Gates, and Person A. The email with Person A was one such document that the defendant had not produced to his counsel and that the government had obtained through other means. (His counsel had instructed him to collect all such documents.) Further, van der Zwaan in fact had a series of calls with Gates and Person A—as well as the lead partner on the matter—in September and October 2016. The conversations concerned potential criminal charges in Ukraine about the Tymoshenko report and how the firm was compensated for its work. The calls were memorable: van der Zwaan had taken the precaution of recording the conversations with Gates, Person A, and the senior partner who worked on the report. In van der Zwaan's recorded conversation with Person A, in Russian, Person A suggested that "there were additional payments," that "[t]he official contract was only a part of the iceberg," and that the story may become a blow for "you and me personally."¹

¹ As referenced in the indictment, the law firm had been paid over \$5 million for its work, largely through third-party payments by a Ukrainian oligarch, funneled through a Manafort and Gates Cypriot account. The Ukraine potential criminal matter concerned the allegation that in 2012-13 the then-government of Ukraine had disclosed that the firm was being paid only about \$12,000 (an amount above which Ukraine law would have required a different procurement process).

Fourth, the lies and withholding of documents were material to the Special Counsel's Office's investigation. That Gates and Person A were directly communicating in September and October 2016 was pertinent to the investigation. Federal Bureau of Investigation Special Agents assisting the Special Counsel's Office assess that Person A has ties to a Russian intelligence service and had such ties in 2016. During his first interview with the Special Counsel's Office, van der Zwaan admitted that he knew of that connection, stating that Gates told him Person A was a former Russian Intelligence Officer with the GRU.²

Fifth, the above-described deceptive behavior was consistent with van der Zwaan's conduct working on the Tymoshenko report. The report had been touted to the outside world—as van der Zwaan knew—as an independent evaluation of the trial commissioned by the Government of Ukraine. *See, e.g.,* Statement of the Ministry of Justice of Ukraine, *Leading International Law Firm . . . did not Find Evidence of Political Motivation in Judgement of Tymoshenko*, PR Newswire, Dec. 13, 2012 (“The Ministry of Justice has received the independent report of the law firm. . . . In accordance with the signed agreement, [the law firm] has delivered an independent report”). Further, as van der Zwaan also knew, the law firm had decided not to retain the public relations firm to do the public roll out of the report, precisely because the law firm did not want to be perceived as “whitewashing” or as doing public relations work on behalf of Ukraine.

Yet, although he had been instructed not to share advance copies of the report with the public relations firm retained by the Government of Ukraine, van der Zwaan had, in the words of one witness, “gone native”—that is, he had grown too close to Manafort, Gates, and Person A.

² Person A worked with Manafort and Gates in connection with their Ukraine lobbying work. Person A is a foreign national and was a close business colleague of Manafort and Gates. He worked in Ukraine at Manafort's company Davis Manafort International, LLC (DMI). Up until mid-August 2016, Person A lived in Kiev and Moscow.

For instance, far from maintaining a role of independence, he leaked an advance copy of the report to the public relations firm retained to “spin” the report, despite his knowing that this was against the express wishes of the firm. When it was discovered that the press relations firm had an advance copy, van der Zwaan lied to the senior partner on the matter and said he had no idea how the firm obtained the draft. In addition, far from distancing himself from spinning the report, van der Zwaan orally gave Gates talking points as to how to present the report in an advantageous light to Ukraine.

Sixth, van der Zwaan is a person of ample financial means—both personally and through his father-in-law, a prominent Russian oligarch, who has paid substantial sums to the defendant and his wife. He can pay any fine imposed. *See generally* Complaint, *Mikhail Fridman, Petr Aven & German Khan v. Bean LLC et al.*, No. 1:17-cv-02041 (D.D.C. Oct. 3, 2017). van der Zwaan, in short, is a person to whom every advantage in life has been given, and from whom the government and the professional bar rightly expected candor and uprightness.

To be sure, after van der Zwaan’s lies and withholding of documents were revealed, van der Zwaan produced to his law firm the above-mentioned recordings made on the law firm’s recording equipment. That he did so—and did not further obstruct justice, or further disobey the instructions of his then-employer—is not, however, a mitigating factor. He does not deserve credit for adhering to the law.

Further, although van der Zwaan has now been terminated from his law firm, that termination is not a circumstance that should mitigate his sentence. van der Zwaan can hardly have expected to remain at his law firm in light of his unprofessional conduct during 2012 on the report, his withholding and destroying documents in response to his firm’s requests, and his lying to the Special Counsel’s Office in 2017. And while there might eventually be additional

professional consequences that befall a foreign lawyer who commits a United States felony, those consequences do not themselves obviate the need for his current sentence to reflect the seriousness of his crime, to promote respect for the law, or to provide adequate specific and general deterrence.

To the extent the Court seeks to take into account the circumstances of van der Zwaan's wife's pregnancy, consideration of that circumstance would not preclude a term of incarceration. As the Advisory Sentencing Guidelines make clear, family responsibilities are "not ordinarily relevant in determining whether a departure may be warranted." *See* U.S.S.G. § 5H1.6; see also *United States v. Dyce*, 91 F. 3d 1462, 1466 (D.C. Cir. 1996) (holding that a departure on the basis of family ties or responsibilities is appropriate only if the case "significantly differs" from the norm); see also *id.* (noting that "Congress has directed the Sentencing Commission to 'assure that the guidelines and policy statements . . . reflect the general inappropriateness of considering the . . . family ties and responsibilities . . . of the defendant'" (quoting 28 U.S.C. § 994(e)). In any event, a sentence that ensured van der Zwaan's return to the United Kingdom for the birth of his

child in August 2018 would be within the recommended Guidelines' range.

Respectfully submitted,

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Dated: March 27, 2018

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**SENTENCING MEMORANDUM
ON BEHALF OF ALEX VAN DER ZWAAN**

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INTRODUCTION

Alex van der Zwaan is a loving husband, expectant father, devoted son, and caring friend and godparent. A few months ago, he was a successful attorney with bright career prospects. Now, his world has collapsed as a result of his decision to lie to law enforcement. His career has been destroyed, he has been separated from his friends and family, and he faces the possibility of missing the birth of his first child. Although Alex committed a serious offense, just punishment does not require incarceration. Having been explicitly warned by the prosecutors during the interview that he could be prosecuted in the United States for making false statements, Alex decided to return here less than two weeks after that interview in order to correct the record and answer the government's questions about his false statements and other topics. Further, Alex made a concerted effort to correct the record. Prior to returning to the United States, Alex produced notes and recordings of the conversations about which he had been asked, providing the government with the best proof that his statements were false. Having agreed shortly after his arrival to surrender his passport to the government, Alex has remained in limbo in the United States for more than four months awaiting resolution of this matter. The Sentencing Guidelines range is 0-6 months, so a non-jail sentence is within the applicable range. We urge the Court to sentence Alex van der Zwaan to a non-custodial sentence, and permit him to return to London to be with his wife and family.

PERSONAL BACKGROUND

Alex is 33 years old. He was born in Brussels, Belgium, and is a citizen of the Netherlands. He has lived in Europe his entire life. Alex is an only child, and he has been exceptionally close to his mother since childhood. As Ludmilla Oleolenko van der Zwaan, Alex's mother, writes:

Alex's father and myself were 46 and 33 respectively when we had him. He was the first child for both of us, and in those days, 33 was an old age to have your first. I devoted myself entirely to Alex's upbringing and education. Throughout his childhood, he never spent an hour with a baby sitter or a nanny. . . . Alex and I have always been very close. His father was often away on business trips, so Alex and I spent all our time together.¹

The relationship between Alex and his mother was strengthened through their use of a shared language. As Ms. van der Zwaan explains, she was born and raised in the Soviet Union and emigrated to the West when she was in her mid-twenties. Her ex-husband, Alex's father, is Dutch, and she had few opportunities to speak or hear her native language. She spoke Russian with Alex from birth. She states, "[W]e always spoke Russian between the two of us. In those days, there was no Russian television and nobody beside myself spoke Russian, so it allowed us to create a special bond, a secret language, which only the two of us understood."²

Alex grew up in a middle class home and attended international schools in Brussels. He studied law at King's College in London,³ where he served as President of the King's College Law Students' Society and graduated with distinction.⁴ While he was studying for his law degree, Alex received a job offer from Skadden, Arps, Slate, Meagher & Flom, a major international law firm. He joined Skadden's London office following the completion of his legal studies, and he worked there for the next ten years, until he was fired by the firm in late November 2017.

Alex worked hard during his tenure at Skadden; he was well regarded and advanced steadily at the firm.⁵ His international upbringing and varied language skills (he speaks fluent

¹ Letter of Ludmilla Oleonko van der Zwaan, attached hereto as Exhibit 1.

² *Id.*

³ In the United Kingdom, students study law as part of their university education rather than post-graduate as in the United States.

⁴ Letter of Rolf van der Zwaan (Ex. 2).

⁵ *Id.*; Letter of Mark Crofskey (Ex. 3).

French as well as Russian and English, and he is conversant in Dutch) served him well professionally; he travelled often and worked for a variety of sophisticated, international clients.⁶ Alex's first supervisor at Skadden became a close friend, and chose Alex as the godfather of his eldest son, seeing in him the potential to serve as a role model and a positive influence on his child.⁷

In 2016, Alex met Eva Khan, who quickly became the love of his life. Eva was born in Russia (and is a citizen of that country and Israel). She was studying art in London when the two met. As Eva writes, she and Alex "instantly clicked and fell in love."⁸ About a year later, they married. Despite the fact that Eva comes from a wealthy background, they live in the modest London apartment that Alex purchased with his salary at Skadden and a mortgage, and Alex provided for the two of them. At the time of his offense, approximately five months after their wedding, they were just embarking on building their joint life together. Indeed, even as the events involved in this prosecution were unfolding, Eva and Alex received happy news: Eva will give birth to their first child—a son—in August.

OFFENSE CONDUCT

A. The November 3, 2017 Interview with the Government

This case arises from a matter on which Alex was assigned to work approximately six years ago. In 2012, Skadden was retained to prepare a report for the Ukraine Ministry of Justice concerning the criminal trial of Yulia Tymoshenko, the former Prime Minister of the Ukraine. Alex was a relatively junior associate at the time, and his primary role on the matter was to facilitate communication between the firm and its clients. In that role, he worked closely with

⁶ The firm offered him and he accepted responsibility exceeding his class seniority.

⁷ Letter of Mark Crofskey (Ex. 3).

⁸ Letter of Eva Khan (Ex. 4).

Rick Gates and an individual identified as Person A in the Information and Statement of the Offense. Years later, Skadden's work in connection with the Tymoshenko report and, in particular, its contacts with Paul Manafort and Rick Gates apparently became of interest to the Office of the Special Counsel ("OSC"). On November 3, 2017, pursuant to a request by the OSC communicated through Skadden, Alex voluntarily participated in an interview with OSC prosecutors and Special Agents of the Federal Bureau of Investigation. Alex travelled from London to Washington, D.C. for the interview, which lasted more than eight hours and covered a variety of topics related to his work on the Tymoshenko report. Alex was represented by Skadden lawyers.

Although Alex understood both the importance of being truthful to the OSC and the legal significance of not being truthful, he lied in answering certain questions. As he admitted during his guilty plea, Alex falsely stated that his last communication with Rick Gates was an innocuous text message in mid-August 2016 and that his last communication with Person A occurred in 2014, when he knew he had spoken with (and indeed had recorded) both in September 2016. In addition, when confronted with an email from his Skadden account that alluded to the September 2016 communications, Alex falsely stated that he did not know why Skadden had not produced that email to the OSC; in fact, Alex knew that he had not identified that email to Skadden in response to its request for relevant materials.⁹

⁹ In describing that email, Paragraph 6(b) of the Statement of the Offense states that Person A wrote a Russian email to Alex asking him to communicate on an "encrypted application." Alex typically communicated with Person A, a native Russian speaker, in Russian. They also typically communicated on commonly-used apps such as WhatsApp, Viber, and Telegram, which provide for free calls and messages and happen to be encrypted. The message at issue simply asked Alex to contact Person A on WhatsApp or Telegram. There was nothing unusual about the language or medium used in this communication.

The circumstances under which Alex committed his offense and his subsequent effort to correct the record do not excuse his conduct, but they provide useful context, which we respectfully submit is relevant to sentencing. In September 2016, long after Skadden's work on the Tymoshenko report had been completed, Alex was contacted by Rick Gates, who urged him to contact Person A. Gates also sent Alex a legal document in Ukrainian, a language Alex cannot read. Alex then spoke with Person A, who told Alex that the new Ukrainian regime might file formal criminal charges against various individuals, including Alex and other Skadden personnel, related to Skadden's work on the Tymoshenko report. Alex immediately reported these communications to the Skadden senior partner with whom he had worked on the Tymoshenko report. After speaking with Person A and the Skadden partner, Alex also discussed the Ukrainian investigation with Gates. Following his receipt of the Ukrainian document, and in light of the unusual and unnerving nature of these communications, Alex used a dictaphone to surreptitiously record his calls with Person A and Gates so that he would have a record of the discussions. Further, Alex was concerned that Skadden might not focus on the matter unfolding in the Ukraine, which he considered alarming. So, unbeknownst to the Skadden partner, who assured him during the call that Skadden was aware of and dealing with the matter, Alex turned on the dictaphone in the course of receiving assurance that Skadden was handling the issue.

Prior to his November 3, 2017 meeting with the OSC, Alex had not told anyone about the existence of the recordings or the handwritten notes he had made of the calls. When Alex was asked in the interview by the OSC about his most recent conversations with Gates and Person A, he found himself in a difficult situation. He knew that it was improper to have recorded his conversation with the Skadden senior partner; indeed, he understood that he could be fired for having done so. He also knew that a truthful disclosure about his September 2016 calls with

Gates and Person A would almost inevitably lead to questioning that could quickly get to the existence of the recordings. During the interview, Alex was keenly aware that he was not speaking only to the OSC. Alex was represented by Skadden lawyers, and anything he shared with the OSC would simultaneously be heard by Skadden. In his mind, his boss was listening to every word.

Focused on preserving his career at Skadden, and fearful that truthful answers could lead to discovery of the recordings (and in particular, the discovery that he had recorded a Skadden partner), Alex made a terrible decision: he decided to cut off the inquiry at its inception by lying about the September 2016 conversations with Gates and Person A. He falsely stated that his last communications with those individuals had occurred earlier and had been non-substantive.

When Alex was shown a September 2016 email from his Skadden account in which Person A suggested that Alex contact him, Alex lied again and stated that he did not know why it had not been produced; in fact, Alex was aware that he had not carefully reviewed and flagged for Skadden all of his emails from the period after he ceased working on the Tymoshenko matter.¹⁰

Alex also failed to flag some personal emails from his Skadden account and he deleted some emails from his personal g-mail account after Skadden sought access to that account. Alex was concerned about social communications with various individuals on his Skadden emails. Further, in approximately 2012 and 2013, Alex had explored opportunities to leave Skadden to work directly for Gates and Manafort, and he corresponded with them about that possibility on g-mail. Again, Alex did not want his employer to see these emails. As a result, he did not flag all the responsive emails from his Skadden account, and he deleted some emails about his

¹⁰ Paragraph 7 of the Statement of the Offense also sets forth Alex's statement during the November 3 interview that he "played a passive role" in the rollout of the Tymoshenko report. Alex's plea does not encompass this statement, which he did not consider to be false or misleading when made.

prospective employment with Gates and Manafort from his g-mail account online, before providing access to that account to Skadden.¹¹ Alex's motivation was not to hinder this investigation, but to prevent Skadden from learning about activities he thought could be detrimental to his career.

B. Alex's Efforts to Correct the Record after November 3

Alex had made serious mistakes, and he knew it. Even though he was still represented by Skadden, Alex decided to correct the record. Aware that his false statements could lead to his prosecution in the United States, Alex nonetheless decided to return to this country to meet again with the OSC to correct the record and to answer further questions. Prior to returning to the United States, he disclosed the existence of, and turned over, notes and recordings of the conversations he had in September 2016. By turning over the notes and the recordings, Alex provided the OSC with powerful evidence that irrefutably proved that he had made false statements and which he knew could be used to prosecute him for those statements. It is our understanding that the OSC did not know about the recordings until Alex revealed their existence.

Alex arrived in New York on November 16, 2017, just thirteen days after his initial interview, and began to prepare for a second meeting with the OSC that was then scheduled to occur early the following week. The day after his arrival, the OSC asked Alex to surrender his passport to the FBI. He agreed to do so, retained new counsel after discussing the matter with Skadden, and continued to provide information to the OSC.

¹¹ To our knowledge, the OSC was unaware of Alex's deletion of emails before he disclosed it. Significantly, shortly after deleting emails from his g-mail account, and before the November 3 interview, Alex gave Skadden the personal laptop that he had used at the time those emails were created, because he believed the deleted emails remained on that device.

On December 1, 2017, Alex participated in a second voluntary interview with the OSC. At this interview, which lasted many hours, Alex admitted his false statements and answered questions about them, the recorded conversations, and several other subjects.

In his effort to correct the record, Alex also provided numerous electronic devices to Skadden to be produced to the OSC. These included his work and personal cell phones (including old cell phones that were no longer in use), an iPad, and his laptops. In addition, he tried to facilitate access to those devices, by providing the passwords he remembered (and offering his fingerprint for the devices that used that security method) and, at the OSC's request, giving permission to Apple to attempt to recover information from a damaged iPhone.

The conduct that brings Alex before this Court was inexcusable. And while his actions following his initial meeting with the OSC cannot absolve him from culpability, they are compelling mitigating factors in considering punishment. Further, as discussed below, his decision to turn over the recordings and to return to the United States to admit his false statements has come at great cost. We respectfully submit that his remedial actions are important factors for this Court in fashioning an appropriate sentence.

THE 3553(a) FACTORS FAVOR A NON-JAIL SENTENCE

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

In this case, the nature and circumstances of the offense, the history and characteristics of the defendant, and the applicable Guidelines range all weigh heavily in favor of a non-custodial sentence. *See* 18 U.S.C. § 3553(a)(1), (4). Alex has acknowledged his wrongful conduct and fully accepted responsibility. He has done everything he can do to remedy his false statements, and the false statements have had no lasting effect on the investigation. The Sentencing

Guidelines provide for an extremely low offense level of 4 and a sentencing range of 0-6 months, placing a non-custodial sentence squarely within the applicable range. In light of his post-offense behavior and his unusual personal circumstances, a non-custodial sentence is sufficient to achieve the purposes of sentencing set forth in § 3553(a).

Moreover, the need for just punishment does not warrant incarceration in this case. *See* 18 U.S.C. § 3553(a)(2)(A). Alex has already suffered severe consequences from his offense. He returned to the United States and submitted to the OSC's jurisdiction to correct the record in mid-November 2017, less than two weeks after his initial interview. Shortly after his arrival, at OSC's request, Alex surrendered his passport to the Federal Bureau of Investigation. Subsequently, Alex met again with the OSC, admitted his false statements, answered further questions, and consented to searches of his electronic devices. Ever since returning in mid-November, Alex has been unable to leave the United States.¹²

The impact of being stranded here has been enormous: Alex's entire life is overseas; he has no home, no family, and no way to earn a living in this country. Although he has had occasional visitors and took a car trip with his wife over the Christmas holiday, his existence has been largely solitary. He lives alone in a hotel in a city where he has no close friends. His days are empty and lonely.

Moreover, in December, during Eva's Christmas visit, Alex learned that she was pregnant. [REDACTED]

[REDACTED] Enduring this prolonged separation, particularly during the pregnancy, has been extremely arduous for Eva. She writes:

¹² Although we had ongoing discussions with the OSC regarding terms on which Alex would be permitted to return to London pending this investigation and prosecution, including posting security and committing that he would return to the United States when requested, we were unable to reach agreement.

It sounds silly but the flat in which we lived in is empty, and I often sit in it alone, looking at our photos in frames on the counter with a slight disbelief that only months ago we shared such joy and happiness. I am deprived of his touch and affection, his reassuring voice and strong shoulder to lean on in my times of trouble. Furthermore, with no one to speak to, I have horrible thoughts entering my head, in a time, which has to be happy for every woman.¹³

[REDACTED]¹⁴ [REDACTED]

[REDACTED]¹⁵ [REDACTED]

[REDACTED]¹⁶

To put it bluntly, Eva needs Alex at home, and Alex knows it; every day that Alex spends here alone, he is painfully aware that Eva is suffering without him.

Alex's mother also suffers in his absence. [REDACTED]

[REDACTED] Alex is her only child. She has

been divorced from Alex's father for almost 15 years, and lives alone, [REDACTED]

[REDACTED] Although Alex lives a few hours away by train, he provides much needed

¹³ Letter of Eva Khan (Ex. 4).

¹⁴ *Id.*

¹⁵

¹⁶

physical and financial support. He runs errands, performs household tasks, and most importantly, provides emotional support and companionship for his [REDACTED] mother. For the first time in their lifelong close relationship, she found herself alone this past Christmas, because Alex was unable to be with her.¹⁷ As she describes:

ALEX IS THE ONLY SUPPORT AND JOY OF MY LIFE - a very good son, loving, very kind-hearted and attentive, who is always there when I need him, be it financially or emotionally. . . . [REDACTED], I do not have much of a social life or leave my home often, [REDACTED]. Even though he lives in another city and travels a lot for business, Alex usually visits me at least once every three to four weeks. His visits are of paramount importance to my life and my well-being.¹⁸

[REDACTED] she has not seen him in five months.¹⁹

In addition to the havoc Alex's actions have wreaked on his personal relationships, his professional life has been destroyed. After his return to the United States, Skadden terminated his employment, which is both financially and professionally devastating to Alex. Alex worked at Skadden from the time he finished his education; he was proud of everything he had achieved there, and was hopeful that he would be promoted from associate to counsel in May 2018. Instead, his career at Skadden is over. As Mark Crofskey, a former Skadden colleague and longtime friend, explains:

Alex worked very hard for [Skadden] and built up an excellent reputation and made a substantial contribution. Alex completely understands that through his own actions, the career that he built has turned to dust, he keenly feels the loss of this hard won career, as well as the loss of his many colleagues and clients.²⁰

¹⁷ Letter of Ludmilla Oleoenko van der Zwaan (Ex. 1).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Letter of Mark Crofskey (Ex. 3).

Moreover, Alex's guilty plea almost certainly assures that his legal career is over. Alex is licensed as a solicitor in England and Wales. Under the rules governing solicitors, it is highly likely that his license will be revoked in the wake of this conviction.²¹ The loss of his career is not only a devastating professional blow to Alex; it undermines his ability to provide for his family. Supporting himself and Eva and providing financial support to his mother have been a matter of great pride to Alex. Since November, he has been without any source of income.²² Going forward his ability to get a new job and resume financial self-sufficiency when he returns to London is impaired and uncertain.²³

A sentence of incarceration is not necessary in this case to provide adequate punishment or to reflect the seriousness of the offense. Although he has not been incarcerated, Alex has in many ways been serving a sentence while stuck in limbo since mid-November. He has been alone, separated from his wife; he has lost his job and his career; and he has to live with the knowledge that his suffering and that of his family is due to his own actions. Nor is imprisonment needed to afford adequate deterrence or to protect the public. *See* 18 U.S.C. § 3553(a)(2)(B), (C). Alex has learned his lesson, and there is no risk that he will reoffend. And this widely-publicized prosecution, as well as its collateral consequences, sends a strong message to anyone who considers lying to federal investigators.

²¹ The Solicitors Regulation Authority governs the issuance and maintenance of solicitors' licenses in England and Wales. The offense to which Alex pleaded guilty is a felony and one involving dishonesty. SRA guidelines require that such an offense be reported to the SRA, and that body will determine the appropriate disciplinary action. The conduct underlying this offense violates several of the "SRA Principles," including upholding the rule of law and proper administration of justice, acting with integrity, and behaving in a way that maintains the trust the public places in solicitors.

²² During this period without current income, Alex has incurred living expenses in the United States while continuing to incur many of his regular expenses in London.

²³ Letter of Rolf van der Zwaan (Ex. 2); Letter of Mark Crofskey (Ex. 3).

Moreover, any term of imprisonment would be unduly severe under these circumstances. Alex is desperate to return home to Eva as soon as possible, so that he may be with her and can help her both physically and emotionally for the second half of her pregnancy, as well as be present for the birth of his son in August.²⁴ Even if the Court were to impose a relatively brief term of imprisonment, Alex's immigration status would likely delay his departure from the United States far beyond the duration of any prison sentence. It is the policy of Immigration and Customs Enforcement to place a detainer on incarcerated foreign nationals so that any term of imprisonment imposed on Alex would end with his transfer to an immigration detention facility, where he might languish for weeks or even months until he could leave the country. We urge this Court to avoid embroiling Alex in that process.

A non-custodial sentence combined with an appropriate fine would serve the interests of justice and be consistent with the principles of sentencing.²⁵

CONCLUSION

We respectfully request that the Court impose a sentence of zero months' imprisonment and a fine within the Guidelines range.

²⁴ Eva has a pending application for permanent residency in the United Kingdom based on her status as Alex's spouse. The fact of this prosecution, and particularly Alex's prolonged absence from the United Kingdom, have complicated Eva's application. According to Eva's immigration attorneys, Alex's prompt return to the United Kingdom would greatly increase the probability of success for Eva's application, and reduce the likelihood that she will need to leave the country during her pregnancy.

²⁵ When, as in this case, the Guidelines do not require a term of imprisonment, a fine may be the sole sanction. U.S.S.G. § 5E1.2, n.1.

Respectfully submitted,

COOLEY LLP

By: /s William J. Schwartz
William J. Schwartz (*pro hac vice*)
Laura Grossfield Birger (*pro hac vice*)
Nicholas Flath (*pro hac vice*)

1114 Avenue of the Americas
New York, New York 10036
Phone: (212) 479-6000
Fax: (212) 479-6275

Counsel for Defendant Alex van der Zwaan

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

ALEX VAN DER ZWAAN,

Defendant.

Criminal No.:

Violation: 18 U.S.C. § 1001(a)(2) (False
Statements)

Case: 1:18-cr-00031

Assigned To : Judge Jackson, Amy Berman

Assign. Date : 2/16/2018

Description: INFORMATION (A)

Case Related to: 17-cr-201 (ABJ)

INFORMATION

The Special Counsel informs the Court:

(False Statements)

On November 3, 2017, the defendant, ALEX VAN DER ZWAAN, did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, the defendant falsely stated and represented to the Special Counsel's Office, including Special Agents of the Federal Bureau of Investigation, in Washington, D.C., in the course of answering questions concerning his work as an attorney employed by a law firm engaged in 2012 by the Ukraine Ministry of Justice to prepare a report on the trial of Yulia Tymoshenko:

- (i) his last communication with Richard W. Gates III was in mid-August 2016 (which consisted of an innocuous text message) and his last communication with Person A was in 2014 (when VAN DER ZWAAN and Person A discussed Person A's family); and
- (ii) he did not know why an email between him and Person A in September 2016 was not produced to the Special Counsel's Office,

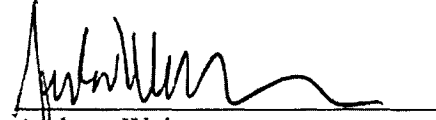
when in fact, as he then and there well knew and believed:

- (i) in or about September 2016, he spoke with both Gates and Person A regarding the Report, and surreptitiously recorded the calls; and
- (ii) he deleted and otherwise did not produce emails sought by the Special Counsel's Office and Law Firm A, including the email between Person A and him in September 2016.

(Title 18, United States Code, Section 1001(a)(2))

ROBERT S. MUELLER, III
Special Counsel

By:

A handwritten signature in black ink, appearing to read 'Andrew Weissmann', is written over a horizontal line.

Andrew Weissmann
Greg D. Andres
Kyle Freeny
Brian M. Richardson
Senior/Assistant Special Counsel

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA

v.

ALEX VAN DER ZWAAN

JUDGMENT IN A CRIMINAL CASE

Case Number: 18-CR-00031-1 (ABJ)

USM Number: 35255-016

William Jay Schwartz

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One (1) of the Information.☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.**FILED**

APR - 5 2018

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18: 1001(a)(2);	False Statements.	11/3/2017	1

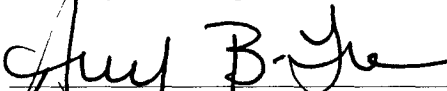
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/3/2018

Date of Imposition of Judgment


 Signature of Judge

Amy Berman Jackson, United States District Judge

Name and Title of Judge

4/5/18

Date

DEFENDANT: ALEX VAN DER ZWAAN
CASE NUMBER: 18-CR-00031-1 (ABJ)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Thirty (30) days on Count One (1) of the Information.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant serve his term of imprisonment at the low security federal facility in Allenwood, PA.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALEX VAN DER ZWAAN
CASE NUMBER: 18-CR-00031-1 (ABJ)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Two (2) months on Count One (1) of the Information.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ALEX VAN DER ZWAAN
CASE NUMBER: 18-CR-00031-1 (ABJ)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ALEX VAN DER ZWAAN
CASE NUMBER: 18-CR-00031-1 (ABJ)

SPECIAL CONDITIONS OF SUPERVISION

DNA Sample Requirement - Pursuant to 42 USC § 14135a, for all felony offenses, the defendant shall submit to the collection and use of DNA identification information while incarcerated in the Bureau of Prisons, or at the direction of the United States Probation Office.

Financial Payment Schedule – It is also a condition of the defendant's supervised release that he pay the \$100.00 special assessment and the \$20,000.00 fine in full, after which, his passport may be returned to him and he may self deport, if that is permitted by the Bureau of Immigration and Customs Enforcement (ICE).

Deportation Compliance - The defendant shall comply with the Bureau of Immigration and Customs Enforcement's immigration process. If the defendant is deported, he shall not reenter the United States without legal authorization during the period of supervised release. If the defendant reenters the United States he must report to the United States Probation Office in the area in which he intends to reside within 72 hours of his return.

DEFENDANT: ALEX VAN DER ZWAAN
CASE NUMBER: 18-CR-00031-1 (ABJ)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 20,100.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- The special assessment and fine are immediately payable to the Clerk of the Court for the U.S. District Court, District of Columbia. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full. Payment may be made before or during the term of imprisonment or during the period of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTa assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

FILED

FEB 20 2018

February 14, 2018

William Schwartz
Laura Grossfield Birger
Cooley LLP
1114 Avenue of the Americas
New York, NY 10036

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Re: United States v. Alex van der Zwaan

Dear Counsel:

18-CR-031 (ABJ)

This letter sets forth the full and complete plea offer to your client Alex van der Zwaan (hereinafter referred to as "your client" or "defendant"), from the Special Counsel's Office (hereinafter also referred to as "the Government" or "this Office"). If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

1. Charges and Statutory Penalties

Your client agrees to waive indictment, plead guilty to a Criminal Information, a copy of which is attached, charging your client with one count of making false statements to the Special Counsel's Office, including Special Agents with the Federal Bureau of Investigation, in violation of 18 U.S.C. § 1001(a)(2).

Your client understands that a violation of 18 U.S.C. § 1001 carries a maximum sentence of 5 years' imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a mandatory special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia before sentencing. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Guidelines, *Guidelines Manual* (2016) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

2. Plea

Your client understands and acknowledges that this Agreement and any plea of guilty which your client may enter pursuant to this Agreement are contingent upon the entry of a guilty plea by the defendant in this case. If your client fails to enter a guilty plea, this Agreement and any proceedings pursuant to this Agreement may be withdrawn or voided in whole or in part at the option of this Office.

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3. Factual Stipulations

Your client agrees that the attached Statement of the Offense fairly and accurately describes your client's actions and involvement in the offense to which your client is pleading guilty. Please have your client sign and return the Statement of the Offense as a written proffer of evidence, along with this Agreement.

4. Additional Charges

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense, for any other false statements made by him to the Office on November 3 and December 1, 2017, any destruction, deletion, and withholding of documents and evidence in connection with requests by this Office or his law firm, and any violations of the Foreign Agent Registration Act or other law arising from the preparation and/or roll out of the Tymoshenko report for the Ukraine Ministry of Justice.

5. Sentencing Guidelines Analysis

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the applicable guidelines and policies set forth in the Sentencing Guidelines. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

A. Estimated Offense Level Under the Guidelines

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. §2B1.1(a)(2)	Base Offense Level:	6
	Total:	6

B. Acceptance of Responsibility

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it

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is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, (b) engaged in additional criminal conduct after signing this Agreement, or (c) taken any other action inconsistent with acceptance of responsibility.

In accordance with the above, the applicable Guidelines Offense Level will be at least 4.

C. Estimated Criminal History Category

Based upon the information now available to this Office, your client has no criminal convictions.

Accordingly, your client is estimated to have zero criminal history points and your client's Criminal History Category is estimated to be I. Your client acknowledges that if additional convictions are discovered during the pre-sentence investigation by the United States Probation Office, your client's criminal history points may increase.

D. Estimated Applicable Guidelines Range

Based upon the agreed total offense level and the estimated criminal history category set forth above, your client's estimated Sentencing Guidelines range is zero months to six months' imprisonment (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 4, the estimated applicable fine range is \$500 to \$9,500. Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, a downward departure from the Estimated Guidelines Range set forth above is not warranted. Accordingly, the defendant will not seek any departure or adjustment to the Estimated Guidelines Range, nor will he suggest that the Court consider such a departure or adjustment, except as provided above. Moreover, your client understands and acknowledges that the Estimated Guidelines Range agreed to by the parties is not binding on the Probation Office or the Court. Should the Court determine that a different guidelines range is applicable, your client will not be permitted to withdraw your client's guilty plea on that basis, and the Government and your client will still be bound by this Agreement.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement. Should your client commit any conduct after the execution of this Agreement that would form the basis for an increase in your client's base offense level or justify an upward departure (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the base offense level based on that post-agreement conduct.

6. Agreement as to Sentencing Allocation

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Based upon the information known to the Government at the time of the signing of this Agreement, the parties further agree that a sentence within the Estimated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below.

7. Reservation of Allocation

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty.

The parties also reserve the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. In the event that the Court considers any Sentencing Guidelines adjustments, departures, or calculations different from any agreements contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court. In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocation in any post-sentence litigation. The parties retain the full right of allocation in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and currently does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

8. Court Not Bound by this Agreement or the Sentencing Guidelines

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing or to grant a downward departure based on your client's substantial assistance to the Government, even if the Government files a motion pursuant to Section 5K1.1 of the Sentencing Guidelines. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offense authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client

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will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.

9. Waivers

A. Venue

Your client waives any challenge to venue in the District of Columbia.

B. Statute of Limitations

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of the Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of the Offense that is not time-barred on the date that this Agreement is signed.

C. Trial Rights

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forego the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of compelled self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against compelled self-incrimination.

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Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily hereby waives the rights that arise under these rules, or from the proffer agreement dated December 1, 2017, to object to the Government's use of all statements by him to the government on and after November 3, 2017, in the event your client breaches this Agreement, withdraws his guilty plea, or seeks to withdraw from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

Your client agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination of information through any means, including but not limited to books, articles, speeches, blogs, podcasts, and interviews, however disseminated, regarding his work for his employer (Law Firm A) as it relates to its work for the Ukraine Ministry of Justice, the events alleged in the Information and Statement of Facts, or the investigation by the Office or prosecution of any criminal or civil cases against him.

D. Appeal Rights

Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or guidelines range determined by the Court or your client claims that your client received ineffective assistance of counsel, in which case your client would have the right to appeal the illegal sentence or above-guidelines sentence or raise on appeal a claim of ineffective assistance of counsel, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

E. Collateral Attack

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective

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assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2), but agrees to waive the right to appeal the denial of such a motion.

F. Privacy Act and FOIA Rights

Your client also agrees to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including and without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, for the duration of the Office's investigation.

10. Restitution

Your client understands that the Court has an obligation to determine whether, and in what amount, mandatory restitution applies in this case under 18 U.S.C. § 3663A. The Government and your client agree that mandatory restitution does not apply in this case.

11. Immigration Consequences

Your client recognizes that because your client is not a citizen of the United States, your client's guilty plea and conviction make it very likely that your client's deportation from the United States is presumptively mandatory and that, at a minimum, your client is at risk of being deported or suffering other adverse immigration consequences. Your client acknowledges discussing the possible immigration consequences (including deportation) of this guilty plea and conviction with you. Your client affirms that your client wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that your client will have no right to withdraw this guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that your client will not challenge your client's conviction or sentence on direct appeal, or through litigation under 28 U.S.C §§ 2255 and/or 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from your client's guilty plea and conviction.

12. Breach of Agreement

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing (even if discovered by the Government after sentencing), your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials

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2/20/2018

provided pursuant to this Agreement or during the course of any proffer sessions conducted before or after entry of this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

13. Complete Agreement

Other than a proffer agreement dated December 1, 2017, no agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and the Office. The proffer agreement is superseded as noted herein if the Agreement is breached.

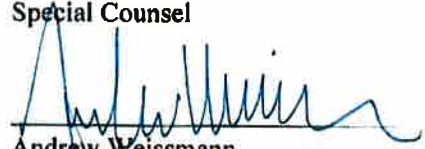
Your client further understands that this Agreement is binding only upon the Office. This Agreement does not bind any United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of the Offense, and returning both to me no later than February 14, 2018.

Sincerely yours,

ROBERT S. MUELLER, III
Special Counsel

By:


Andrew Weissmann
Greg D. Andres

VP2

2/20/2018

Kyle Freeny
Brian M. Richardson
Senior/Assistant Special Counsels
The Special Counsel's Office

VDZ

2/20/2018

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, William Schwartz and Laura Grossfield Birger. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorneys in connection with this Agreement and matters related to it.



Date: 14 February 2018

Alex van der Zwaan
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Alex van der Zwaan, and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: _____

William Schwartz
Attorney for Defendant

Laura Grossfield Birger
Attorney for Defendant

VD2

2/20/2018

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, William Schwartz and Laura Grossfield Birger. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

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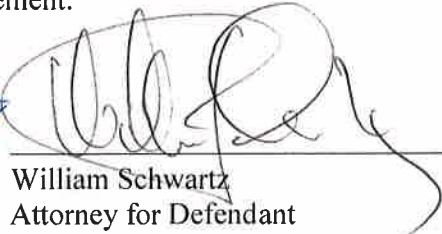
Date: _____

Alex van der Zwaan
Defendant


ATTORNEYS' ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Alex van der Zwaan, and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: February 14, 2018



William Schwartz
Attorney for Defendant



Laura Grossfield Birger
Attorney for Defendant

VD2

2/29/2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ALEX VAN DER ZWAAN,

Defendant.

Criminal No.:

18-cr-031 (ABJ)

Violation: 18 U.S.C. § 1001(a)(2) (False
Statements)

FILED

FEB 20 2018

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

STATEMENT OF THE OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America and the defendant, ALEX VAN DER ZWAAN, stipulate and agree that the following facts are true and accurate. These facts do not constitute all of the facts known to the parties concerning the charged offense; they are being submitted to demonstrate that sufficient facts exist that the defendant committed the offense to which he is pleading guilty.

1. At all relevant times herein, the Special Counsel's Office had an open investigation into Paul J. Manafort, Jr. and Richard W. Gates III in connection with, among other things, their work in the United States on behalf of foreign principals as to which they had not registered under the Foreign Agents Registration Act (FARA). The investigation encompassed United States lobbying and public relations work on behalf of the Ukraine Ministry of Justice in 2012, including the dissemination to the United States media and others of a report written by an international law firm (Law Firm A) concerning the trial of Yulia Tymoshenko (the Report). On October 27, 2017, arising in part from this investigation, a Grand Jury indicted Manafort and Gates, among other things, for acting as unregistered agents of a foreign principal in violation of FARA, 22 U.S.C. §§ 615 and 618(a)(1). The indictment was unsealed on October 30, 2017.

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2. The defendant, ALEX VAN DER ZWAAN, was an English lawyer associated with Law Firm A. He had worked on the Report.

3. On November 3, 2017, in Washington, D.C., VAN DER ZWAAN was interviewed by the Special Counsel's Office, including Department of Justice prosecutors and Special Agents of the Federal Bureau of Investigation. He was represented by counsel. He was warned that intentionally false statements to the Office could subject him to criminal charges. He indicated that he understood.

4. VAN DER ZWAAN thereafter made materially false statements during the interview.

5. During the November 3, 2017, interview, VAN DER ZWAAN knowingly and intentionally falsely stated the following:

- a. his last communication with Gates was in mid-August 2016, which consisted of an innocuous text message;
- b. his last communication with a longtime business associate of Manafort and Gates in Ukraine (Person A) was in 2014, when he talked with Person A about Person A's family; and
- c. he did not know why Law Firm A had not produced to the Special Counsel's Office a September 2016 e-mail between him and Person A.

6. In truth and in fact, VAN DER ZWAAN well knew and believed the following facts, when he made each of the above statements:

- a. In or about September 2016, VAN DER ZWAAN spoke with both Gates and Person A regarding the Report. In early September 2016, Gates called VAN DER ZWAAN and told him to contact Person A. After the

call, Gates sent VAN DER ZWAAN documents including a preliminary criminal complaint in Ukraine via an electronic application called Viber. VAN DER ZWAAN then called Person A and discussed in Russian that formal criminal charges might be brought against a former Ukrainian Minister of Justice, Law Firm A, and Manafort. VAN DER ZWAAN recorded the call. VAN DER ZWAAN then called the senior partner on the Report at Law Firm A and partially recorded that call. Finally, VAN DER ZWAAN called Gates and recorded the call. VAN DER ZWAAN also took notes of the calls.

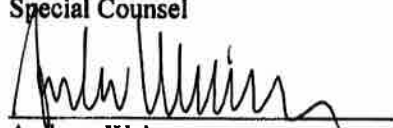
- b. Prior to the November 3, 2017, interview, VAN DER ZWAAN did not produce to Law Firm A and deleted and otherwise did not produce emails he possessed that he understood had been requested by either the Special Counsel's Office or Law Firm A, or both, including an email in Russian dated September 12, 2016 in which Person A asked VAN DER ZWAAN to contact Person A and to use an encrypted application.

7. During the November 3, 2017, interview, VAN DER ZWAAN stated that he played a passive role in the roll out of the Report, limited to defending the Report to ensure Law Firm A's work was properly portrayed. However, in or about late July-early August 2012, VAN DER ZWAAN gave, without authorization, an advance draft of the Report to the public relations firm retained by the Ukraine Ministry of Justice to manage the global press and lobbying strategy for the Report, and in September 2012 provided Gates talking points for use in the public relations campaign as to how to describe the Report in ways favorable to the client. For instance, VAN DER ZWAAN advised that the text of the Report could be used to Ukraine's advantage if

one looked beyond the Report's description of "procedural" infractions in Tymoshenko's trial and focused instead on the fact that her defense was weak.

ROBERT S. MUELLER, III
Special Counsel

By:

A handwritten signature in black ink, appearing to read 'Andrew Weissmann', written over a horizontal line.

Andrew Weissmann
Greg Donald Andres
Kyle Freeny
Brian M. Richardson
Senior/Assistant Special Counsel

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding this offense. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crime charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

I have read every word of this Statement of the Offense, or have had it read to me. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorneys, I agree and stipulate to this Statement of the Offense, and declare under penalty of perjury that it is true and correct. I am fully satisfied with the legal representation I have received in connection with this plea.

Date: 14 February 2018



Alex van der Zwaan
Defendant

ATTORNEYS' ACKNOWLEDGMENT

I have read this Statement of the Offense, and have reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Statement of the Offense as true and accurate.

Date: _____

William Schwartz
Attorney for Defendant

Laura Grossfield Birger
Attorney for Defendant

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding this offense. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crime charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

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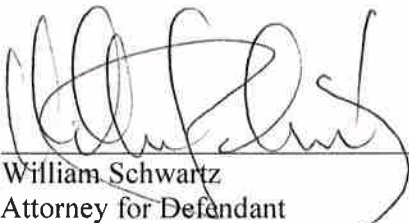
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Alex van der Zwaan
Defendant

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Date: February 14, 2018



William Schwartz
Attorney for Defendant



Laura Grossfield Birger
Attorney for Defendant