No. _____

In The

Supreme Court of the United States

HONGYAN LI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

LANCE CURTRIGHT
Counsel of Record
DE MOTT, MCCHESNEY,
CURTRIGHT, ARMENDARIZ, LLP
800 Dolorosa, Ste. 100
San Antonio, Texas 78207
(210) 354-1844
lance@dmcausa.com

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. 28 U.S.C. § 2462 provides a five-year statute of limitations in which to commence federal civil actions involving penalties or forfeitures. In this case, the Government filed its Complaint over five years after Hongyan Li naturalized. Should the Government's Complaint be dismissed as untimely filed under § 2462?

2. Li and the United States entered into a plea agreement in which Li promised to plead guilty in return for the United States' assurance not to subject her to a "subsequent prosecution." After Li pleaded guilty, the United States commenced proceedings to revoke her citizenship based on the same underlying conduct in the criminal case. Is this denaturalization proceeding a "prosecution" that was barred under the terms of the parties' plea agreement?

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On August 8, 2007, Hongyan Li became a naturalized United States citizen. Over five years later, on January 23, 2013, the United States filed a complaint to revoke her citizenship alleging that it was illegally procured and that Li made material misrepresentations on the naturalization application. Before the district court, both parties moved for summary judgment. Li argued that her citizenship should not be revoked because the government's complaint was untimely filed, the plea agreement she entered into with the United States specifically precluded the civil revocation proceeding, and the government presented insufficient evidence to revoke her citizenship. On September 10, 2014, the district court granted the government's motion for summary judgment, denied Li's motion for summary judgement, and ordered that Li's certificate of naturalization be cancelled. App. 31-32. The United States Court of Appeals for the Fifth Circuit dismissed Li's appeal on July 27, 2015. App. 1-11.

JURISDICTION

On July 27, 2015, the Fifth Circuit filed its opinion denying Li's petition for review. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

– 8 U.S.C. § 1451(a)

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: Provided, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at

the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

– 28 U.S.C. § 2462

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

– 8 U.S.C. § 1101(f)

For the purposes of this chapter –

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

(1) a habitual drunkard;

(2) Repealed. Pub.L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A)

of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section 6 (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or

commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

REGULATORY PROVISION INVOLVED

– 8 C.F.R. § 316.10

(a) Requirement of good moral character during the statutory period.

(1) An applicant for naturalization bears the burden of demonstrating that, during the

statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

(2) In accordance with section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

(b) Finding of a lack of good moral character.

(1) An applicant shall be found to lack good moral character, if the applicant has been:

(i) Convicted of murder at any time; or

(ii) Convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after November 29, 1990.

(2) An applicant shall be found to lack good moral character if during the statutory period the applicant:

(i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in section 212(a)(2)(ii)(II) of the Act;

(ii) Committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was five years or more, provided that, if the offense was committed outside the United States, it was not a purely political offense;

(iii) Violated any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana;

(iv) Admits committing any criminal act covered by paragraphs (b)(2) (i), (ii), or (iii) of this section for which there was never a formal charge, indictment, arrest, or conviction, whether committed in the United States or any other country;

(v) Is or was confined to a penal institution for an aggregate of 180 days pursuant to a conviction or convictions (provided that such confinement was not outside the United States due to a conviction outside the United States for a purely political offense);

(vi) Has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicant sought the benefit;

(vii) Is or was involved in prostitution or commercialized vice as described in section 212(a)(2)(D) of the Act;

(viii) Is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act;

(ix) Has practiced or is practicing polygamy;

(x) Committed two or more gambling offenses for which the applicant was convicted;

(xi) Earns his or her income principally from illegal gambling activities; or

(xii) Is or was a habitual drunkard.

(3) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(i) Willfully failed or refused to support dependents;

(ii) Had an extramarital affair which tended to destroy an existing marriage; or

(iii) Committed unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of § 316.10(b) (1) or (2).

(c) Proof of good moral character in certain cases –

(1) Effect of probation or parole. An applicant who has been on probation, parole, or suspended sentence during all or part of the statutory period is not thereby precluded from establishing good moral character, but such probation, parole, or suspended sentence may be considered by the Service in determining good moral character. An application will not be approved until after the probation, parole, or suspended sentence has been completed.

(2) Full and unconditional executive pardon –

(i) Before the statutory period. An applicant who has received a full and unconditional executive pardon prior to the beginning of the statutory period is not precluded by § 316.10(b)(1) from establishing good moral character provided the applicant demonstrates that reformation and rehabilitation occurred prior to the beginning of the statutory period.

(ii) During the statutory period. An applicant who receives a full and unconditional executive pardon during the statutory period is not precluded by § 316.10(b)(2)(i) and (ii) from establishing good moral character, provided the applicant can demonstrate that extenuating and/or exonerating circumstances exist that would establish his or her good moral character.

(3) Record expungement –

(i) Drug offenses. Where an applicant has had his or her record expunged relating to one of the narcotics offenses under section 212(a)(2)(A)(i)(II) and section 241(a)(2)(B) of the Act, that applicant shall be considered as having been "convicted" within the meaning of § 316.10(b)(2)(ii), or, if confined, as having been confined as a result of "conviction" for purposes of § 316.10(b)(2)(iv).

(ii) Moral turpitude. An applicant who has committed or admits the commission of two or more crimes involving moral turpitude during the statutory period is precluded from establishing good moral character, even though the conviction record of one such offense has been expunged.

STATEMENT OF THE CASE

Issue one: Statute of limitations

This case presents the Court with an important issue of first impression about the Government's conduct in bringing untimely actions to revoke citizenship. Although citizenship is "a most precious right," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963), the Fifth Circuit decided that there is no statute of limitations preventing the Government from bringing a civil action to revoke a naturalized person's citizenship. The scope of this decision is expansive and requires this Court's intervention. According to USCIS, 6.6 million people naturalized in the past decade, including 654,949 in the fiscal year 2014.[1] In the Fifth Circuit's opinion, all of these people, and those who naturalized before them, are subject to having their citizenship revoked at any time, regardless of how long they have maintained U.S. citizenship. By applying the modest five-year statute of limitations as required by 28 U.S.C. § 2462 to denaturalization proceedings under 8 U.S.C. § 1451, millions of naturalized citizens will obtain the certainty that they will not be stripped of citizenship based upon events that occurred in the far past.

Hongyan Li was sworn in as a naturalized United States citizen on August 8, 2007. Subsequent to

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[1] *See* "Naturalization Fact Sheet" available at http://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet (last checked October 13, 2015).

becoming a citizen, she was charged with Enticing Interstate Travel for Purposes of Prostitution in violation of 18 U.S.C. § 2422 and Money Laundering in violation of 18 U.S.C. § 1957. The Information alleges that Li began enticing prostitutes for interstate travel in or around March 1, 2004 and ending around March 6, 2009. It alleged that Li was engaged in money laundering from August 31, 2005 through November 7, 2008. Based on Li's criminal convictions, the United States contends that Li illegally procured her citizenship because she lacked good moral character in the five years prior to applying for naturalization.

On January 23, 2013 – over five years after Li naturalized – the Government filed a civil complaint seeking an order to revoke her citizenship. Li maintains that the Government's complaint should be dismissed as untimely filed under 28 U.S.C. § 2462. The Fifth Circuit, however, decided that there is no statute of limitations governing when the Government can bring an action to denaturalize a citizen under 8 U.S.C. § 1451. The court reasoned that § 2462 does not apply to § 1451 proceedings because a denaturalization proceeding is remedial and not intended to punish. App. 5-8. Li contends that the lower court erred because revoking a person's citizenship is clearly punitive.

Issue two: Li's plea agreement with the United States

In the criminal case, Li entered into a plea agreement with the United States in which she agreed to plead guilty in return for the United States' representation that they would not subject her to "subsequent prosecution." App. 41. Li reasonably believed that the United States' promise not to prosecute her further included this civil prosecution to denaturalize her. In violation of Li's reasonable understanding of the agreement, the United States initiated this action to strip her citizenship.

Before the lower courts, Li argued that the Government violated the plea agreement. She requested the Court to apply the plea agreement according to its terms, which requires dismissal of this case. The Fifth Circuit ruled against Li relying on its own precedent that the word "prosecution" always means criminal prosecutions when used in a plea agreement. *See Bickham Lincoln-Mercury v. United States*, 168 F.3d 790, 792-93 (5th Cir. 1999); App. 3-5. However, *Bickham* is outdated and ignores the reality that "prosecution" covers civil matters, including this denaturalization case. Since many other Defendants are similarly situated to Li, this Court should intervene to determine the scope of "prosecution" as used in plea agreements.

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REASONS FOR GRANTING THE PETITION

The Court should grant this petition for the reasons stated in Supreme Court Rule 10, subsection (c).

I. The statute of limitations found in 28 U.S.C. § 2462 requires a civil revocation of citizenship action to be filed within five years of naturalization.

Statutes of limitations are "vital to the welfare of society." *Gabelli v. S.E.C.*, 133 S.Ct. 1216, 1221 (2013) (*quoting Wood v. Carpenter*, 101 U.S. 135, 139 (1879)). They provide "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella v. Wood*, 528 U.S. 549, 555 (2000). Statutes of limitations are intended to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli*, 133 S.Ct. at 1221 (*citing Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)). It is for these reasons that Congress enacted a statute of limitations in cases involving penalties or forfeitures:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, *penalty*, or *forfeiture*, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender

> or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462 (emphasis added). This statute of limitation applies to actions brought under 8 U.S.C. § 1451 to revoke citizenship because such a revocation is a penalty and a forfeiture. Indeed, this Court long ago recognized that it is a "plain fact that to deprive a person of his American citizenship is an extraordinarily severe penalty." *Klapport v. United States*, 335 U.S. 601, 612 (1949). The Court also expressly referred to denaturalization as a "forfeiture of citizenship." *Id*.

Applying the statute of limitations to Li's case, it is clear that the Government filed its Complaint untimely. Li became a United States citizen on August 8, 2007, which started the clock for the Government to file this revocation of citizenship action under 8 U.S.C. § 1451. Under 28 U.S.C. § 2462, the time to file this action expired on August 8, 2012. The Government's complaint, however, was not filed until January 23, 2013, over five months late. Consequently, the citizenship revocation action brought against Li must be dismissed under § 2462 as untimely filed.

The court of appeals found that § 2462 does not apply to denaturalization proceedings because it determined that revocation of Li's citizenship was not a penalty or a forfeiture. The Fifth Circuit reasoned that the limitations in § 2462 only apply when the Government is seeking a punitive remedy from the

court. According to the Fifth Circuit, revocation of citizenship is not punitive because the Government merely seeks to restore the parties to their relevant positions prior to when Li procured her citizenship. The lower court errs because stripping a person of citizenship is clearly punitive.

In reaching its conclusion, the Fifth Circuit relied on this Court's decision in *Meeker v. Lehigh Valley R.R. Co.*, 236 U.S. 412, 423 (1915). As a threshold matter, *Meeker* is distinguishable because the Government is a party to the instant suit. In *Meeker*, the Court was confronted with private parties and the Plaintiff was seeking relief under a public law. Under those circumstances, the Court stated that "[t]he words 'penalty or forfeiture' in this section refer to something imposed in a punitive way for an infraction of a public law, and do not include a liability imposed solely for the purpose of redressing a *private injury*, even though the wrongful act be a public offense, and punishable as such." *Meeker*, 236 U.S. at 423 (emphasis added). "Thus where a legal action is essentially private in nature, seeking only compensation for the damages suffered, it is not an action for a penalty." *Johnson v. S.E.C.*, 87 F.3d 484, 487 (D.C. Cir. 1996). Unlike *Meeker*, citizenship revocation does not involve a private legal action between private parties. Rather, the Government is a party to the action and it is not seeking redress from a private injury.

This Court explained the importance of the difference in cases when the Government is a party to the suit in *Gabelli*:

> The SEC, for example, is not like an individual victim who relies on apparent injury to learn of a wrong. Rather, a central "mission" of the Commission is to "investigat[e] potential violations of the federal securities laws." SEC, Enforcement Manual 1 (2012). Unlike the private party who has no reason to suspect fraud, the SEC's very purpose is to root it out, and it has many legal tools at hand to aid in that pursuit. It can demand that securities brokers and dealers submit detailed trading information. *Id.*, at 44. It can require investment advisers to turn over their comprehensive books and records at any time. 15 U.S.C. § 80b-4 (2006 ed. and Supp. V). And even without filing suit, it can subpoena any documents and witnesses it deems relevant or material to an investigation. See §§ 77s(c), 78u(b), 80a-41(b), 80b-9(b) (2006 ed.).

133 S.Ct. at 1222. Similar to the SEC's "mission" to find violations of federal securities laws, it is the United States Attorneys' "duty" to investigate naturalized citizens to determine if citizenship should be revoked. 8 U.S.C. § 1451(a). Like the SEC, the United States Attorneys have an abundance of resources to investigate naturalized citizens for potential revocation. Indeed, the Government is in no way similar to the private parties in *Meeker*. Thus, *Meeker* does not support the Fifth Circuit's conclusion that no statute

of limitations apply to an action to revoke citizenship under 8 U.S.C. § 1451.

The Fifth Circuit's reasoning fails because it sets up a false dichotomy where denaturalization can either be punitive or remedial. In fact, it is both. Revoking Li's citizenship may have a remedial element inasmuch as it restores Li to her lawful permanent resident status, but it is also punitive since it goes "beyond compensation, [is] intended to punish, and labels [her as a] wrongdoer." *Gabelli*, 133 S.Ct. at 1223.

To determine whether revocation of citizenship involves a penalty, "the degree and extent of the consequences to the subject of the sanction must be considered as a relevant factor in determining whether the sanction is a penalty." *Johnson*, 87 F.3d at 488. The degree and extent of the consequences of denaturalization are inarguably high: loss of citizenship and, for Li, the inability from ever being able to naturalize in the future. 8 C.F.R. § 316.10(b)(1)(ii). She will be removed from the United States as a person convicted of an aggravated felony, which will result in her separation from her U.S. citizen child. *See* 8 U.S.C. § 1227(a)(2)(A)(iii) and 8 U.S.C. § 1101(a)(43)(D) (relating to money laundering) and (K) (trafficking in prostitution); *see Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (*citing Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893) (This Court has "long recognized that deportation is a particularly severe 'penalty.'"). To denaturalize and deport Li "may result [. . .] in loss of both property and life, or of all that makes life

worth living." *Klapport*, 335 U.S. at 612 (*quoting Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). While Li waits for removal she will be placed in mandatory immigration detention. *See* 8 U.S.C. § 1226(c)(1)(B). Finally, she will be barred from ever returning to the United States. *See* 8 U.S.C. § 1182(a)(2)(a) (relating to inadmissibility for criminal aliens) and (h) (providing that aliens convicted of an aggravated felony are not eligible for a waiver of criminal acts). Even if deportation, mandatory immigration detention, and being forever barred from returning to the United States are considered collateral to the order of denaturalization, they still are relevant to the inquiry of whether denaturalization is punitive for § 2462 purposes. *See, e.g.*, *Johnson*, 87 F.3d at 489 ("These collateral consequences of the censure and suspension, while not the central determinant in whether a sanction reaches penalty status, do suggest its punishment-like qualities.").

Other penalties found by courts to be punitive under § 2462 pale in comparison to what awaits Li. For example, in *Johnson*, the court of appeals for the District of Columbia found that a six month suspension for a broker, forever having to disclose a prior sanction, and having the information put in her *permanent* file was a penalty. *Johnson*, 87 F.3d at 489. If having a sanction placed in one's *permanent* file is a penalty, so is revoking Li's citizenship, especially considering that the citizenship revocation, will result in her removal, mandatory immigration detention, and permanent banishment from the United

States. And, of course, the denaturalization will be noted in Li's permanent immigration file maintained by USCIS.

The Fifth Circuit wrote: "[s]imply put, denaturalization is the withdrawal of something to which the individual was never entitled; denaturalization is a restorative or remedial action, not an action that seeks to punish the commission of a crime." App. 7. Yet, this Court found that the "civil penalties" involved in the Investment Advisors Act of 1940 were subject to § 2462. *Gabelli*, 133 S.Ct. at 1219. How is it that returning citizenship, to which the applicant was not entitled, is not punitive, but paying money, which the person earned through fraud, is punitive? Certainly, the consequences confronting Li (loss of citizenship and removal) are far more serious penalties than the money damages that were barred by § 2462 in *Gabelli*. Indeed, "the consequences of such a deprivation may even rest heavily upon [Li's] children." *Klapport*, 335 U.S. at 612. The Court should reject the Fifth Circuit's simplistic interpretation of what constitutes a penalty.

Finally, by stripping Li of her citizenship she will become stateless. When Li naturalized, the United States required her to renounce her Chinese citizenship. 8 U.S.C. § 1448(a)(2). Article 9 of the Chinese Nationality Law provides that when she received U.S. citizenship, she irretrievably lost her Chinese citizenship. Becoming stateless is certainly far "beyond compensation" for illegally procuring citizenship. *See Gabelli*, 133 S.Ct. at 1223. Further, the prevention of

statelessness is generally considered to be an important governmental interest. *See, e.g.*, *Morales-Santana v. Lynch*, 792 F.3d 256, 267 (2d Cir. 2015) (*citing Kennedy*, 372 U.S. at 160-61 and *Trop v. Dulles*, 518 U.S. 86 (1958) (plurality opinion)). This interest can be achieved in this case by applying the five-year statute of limitation to bringing citizen revocation cases.

Under the lower court's reasoning, there is literally never a time too late for the Government to file a citizenship revocation action. Indeed, the district court cited examples of instances when the Government filed for revocation of citizenship long after the person was naturalized to bolster his decision. *See* App. 24. However, no Supreme Court decision directly addressed the argument about whether § 2462 applies to a citizenship revocation proceeding, and the lower courts did not find otherwise.[2] In light of this Court's decision in *Gabelli* strictly enforcing § 2462 in cases where the Government is a party, it is ripe for the Court to clarify that the statute of limitations do apply to actions brought under § 1451 to revoke citizenship.

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[2] In a 1946 decision, the Second Circuit concluded that the predecessor statute to § 2462 was inapplicable. *See United States v. Hauck*, 155 F.2d 141, 143 (2d Cir. 1946). *Hauck*'s conclusory statement was given with no analysis and its claim that the statute is not relevant is plainly wrong. As Li demonstrated, not only is § 2462 relevant, the statute demands the dismissal of this action.

II. This Court should enforce the parties' plea agreement by its terms, which requires dismissal of the Government's suit to denaturalize Li.

> Plea agreements involve a *quid pro quo* between a criminal defendant and the government. In exchange for some perceived benefit, defendants waive several of their constitutional rights (including the right to a trial) and grant the government numerous "tangible benefits, such as promptly imposed punishment without the expenditure of prosecutorial resources." There can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the immigration consequences of their convictions.

INS v. St. Cyr, 533 U.S. 289, 321-22 (2001) (internal citations omitted). Under this backdrop, Li negotiated her plea agreement and, of course, maintaining citizenship was of the utmost importance. As demonstrated above, failing U.S. citizenship, she confronts mandatory immigration detention, deportation, and is forever barred from returning to the United States. Li only pleaded guilty because she believed the Government's promise in the plea agreement that it would not subject her to a subsequent prosecution included civil proceedings to revoke her citizenship. Since Li's interpretation was not unreasonable, the Court should enforce the plea agreement according to its terms, which requires dismissal of this case. *See,*

e.g., *United States v. Valencia*, 985 F.2d 758, 760 (5th Cir. 1993).

Courts apply general principles of contract law to interpret a plea agreement. *See, e.g.*, *United States v. Cantu*, 185 F.3d 298, 304 (5th Cir. 1999). In determining whether the government breached a plea agreement, a court must determine "whether the government's conduct is consistent with the defendant's reasonable understanding of the agreement." *Id.* A reviewing court should attempt to give effect to the intentions of the contractual parties as expressed in their agreement. *Texas v. American Tobacco Company*, 463 F.3d 399, 407 (5th Cir. 1999). As such, the Court should construe the terms of the plea agreement using "their plain, ordinary, and generally accepted meanings." *Nichols v. Enterasys Networks, Inc.*, 495 F.3d 185, 190 (5th Cir. 2007). If the Court finds an ambiguity in the plain language of the agreement, then it should consider any parol evidence available to ascertain the parties' intent. *American Tobacco Company*, 463 F.3d at 407. In this case, the plea agreement's plain language unequivocally precludes the United States from prosecuting this civil action to revoke Li's citizenship and the available parol evidence supports this interpretation.

The Fifth Circuit's finding that "prosecution" only refers to criminal matters was primarily based upon circuit precedent that is outdated and not binding on this Court. *See Bickham Lincoln-Mercury Inc. v. United States*, 168 F.3d 790, 793-94 (5th Cir. 1999). *Bickham* relied upon a 1990 edition of Black's Law

Dictionary, which no longer fairly defines the term. *Id.* at 793. Indeed, Black's has long since altered their definition to include civil proceedings. The district court even conceded that "prosecution" has a broader meaning than just pertaining to criminal cases. In its decision, the court wrote that "prosecution" "[f]irst, [ ] means '[t]he commencement and carrying out of any action or scheme,' as in 'the prosecution of a long, bloody war.'" App. 20 (*citing* Black's Law Dictionary (9th ed. 2009)). To carry out an action or scheme obviously has a much broader application than just a criminal prosecution. Importantly, and dispositive to this case, this definition is broad enough to include this civil action to revoke Li's citizenship. This revocation proceeding is a "prosecution" because it is "[t]he commencement and carrying out of any action or scheme." *Id.* As such, it is specifically barred by the terms of the plea agreement entered into by the parties. The district court, and the panel of the Fifth Circuit, however, were each bound by the Fifth Circuit's wrong decision in *Bickham*.

This Court's precedent decisions that recognize the merging of immigration and criminal proceedings demonstrate that the Fifth Circuit's rule in *Bickham* is wrong. In *Padilla*, the Court observed that "[o]ur law has enmeshed criminal convictions and the penalty of deportation for nearly a century. . . ." 559 U.S. at 365-66. In *St. Cyr*, the Court recognized, "[t]here can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the immigration

consequences of their convictions." *St. Cyr*, 533 U.S. at 322. This observation certainly applied to Li considering her convictions are aggravated felonies and subject her to removal from the United States. Given the inexorable mixing of criminal and immigration law, Li was reasonable to conclude that the word "prosecution" includes a civil matter to revoke her citizenship.

Li's understanding that "prosecution" includes future civil matters is shared by agencies of the United States as revealed by their official memorandums. Attorneys for the Department of Homeland Security (DHS) exercise "prosecutorial discretion" in civil deportation hearings. *See* Jeh Charles Johnson, Secretary of Homeland Security, *Memorandum re: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014); *see also* John Morton, Director of Immigration and Customs Enforcement, *Memorandum re: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for Apprehension, Detention, and Removal of Aliens* (July 17, 2011). Likewise, DHS uses the term "prosecute" to refer to actions taken on behalf of their staff in immigration proceedings. *See* John Morton, Director of Immigration and Customs Enforcement, *Memorandum re: Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions* (Aug.

20, 2010). Thus, the United States also recognizes that the word "prosecution" is not limited to just criminal prosecutions, but also includes civil actions. In light of this shared understanding, Li's understanding of the plea agreement was certainly reasonable.

In finding for the Government, the Fifth Circuit misconstrued this line in the plea agreement: "It is further understood by the parties that this agreement does not prevent any government agency from pursuing civil and/or administrative actions against the Defendant or any property." App. 65. However, this denaturalization action is not brought by a "government agency," but the United States itself. Actions brought by the United States based on the same criminal conduct addressed in the plea agreement are a "subsequent prosecution" and specifically barred under the agreement's plain terms. App. 41. Since the exception to that provision is not applicable, Li was not unreasonable in believing the government violated the terms of the agreement.

Finally, the available parol evidence supports Li's interpretation of the plea agreement. *See Chase Manhattan Bank v. First Marion Bank*, 437 F.2d 1040, 1048 (5th Cir. 1971) (noting that where "the agreement in question is ambiguous, incomplete, or uncertain in any respect, parol evidence of the intent and purposes of the parties in making the contract becomes admissible for construction."). On June 29, 2009, Assistant U.S. Attorney Christopher L. Peele

wrote the following in a letter to Li about her cooperation with federal agents:

> To assure you that the information provided by you at this proffer session is completely candid, no statements made or other information provided by you at this proffer session will be used by the U.S. Attorney for the Western District of Texas directly against you, except for purposes of cross examination and/or impeachment should you offer in any proceeding statements or information different from statements or information provided by you during the proffer.

Peele assured Li that the "statements" and "information" she provided would *not* be used against her. Li relied on Peele's assurance. She debriefed in full and helped the government procure another person's conviction. *See United States v. North-Keys*, No. 1:09 CR-00414 (W.D. Tex. Nov. 6, 2009). She relied on Peele's assurance and forfeited most of what she owned. Now, in direct violation of this assurance, the United States is prosecuting Li civilly to strip her citizenship away.

The United States drafted this agreement and certainly could have included language about denaturalization proceedings. Its failure to do so should be construed against the government, not Li. *See, e.g.*, *Ford v. NYL Care Health Plan of the Gulf Coast, Inc.*, 141 F.3d 243, 249 (5th Cir. 1999). The consequences of denaturalization are grave. If Li is denaturalized she will be removed from this country and separated from her child. *See* 8 U.S.C. §§ 1227(a)(2)(A)(iii) and

1101(a)(43)(D) and (K). Had Li known that her plea agreement did not preclude denaturalization from the United States, she would not have entered into it.

CONCLUSION

Citizenship is a precious right and it certainly is precious to Li. After more than five years as a citizen, she should be able to achieve the repose and peace that the United States will not attempt to revoke her citizenship based on conduct that occurred in the long past. However, unfortunately for Li, the rule of law in the Fifth Circuit is that it is **never** too late to denaturalize a citizen. This Court should recognize that revoking citizenship is plainly punitive and rule that 28 U.S.C. § 2462 accordingly applies to matters brought under 8 U.S.C. § 1451.

Li also would not have agreed to the terms of her plea agreement had she known that the United States would violate them and attempt to strip her citizenship. This Court should enjoin the government from continuing with this unlawful action and apply the terms of the plea agreement, which requires dismissal.

For these reasons, Li respectfully requests this Court to grant certiorari and enter an order dismissing this civil action to revoke her citizenship.

Respectfully submitted,

LANCE CURTRIGHT
Counsel of Record
DE MOTT, MCCHESNEY,
CURTRIGHT, ARMENDARIZ, LLP
800 Dolorosa, Ste. 100
San Antonio, Texas 78207
(210) 354-1844
lance@dmcausa.com

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14-51091

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HONGYAN LI,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:13-CV-59

(Filed July 27, 2015)

Before JOLLY, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:*

Defendant Hongyan Li, a naturalized United States citizen, pled guilty to acts related to her illegal

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

prostitution business and to laundering the proceeds of that illegal business. Thereafter, the government initiated proceedings to revoke Li's naturalization, alleging that her prostitution operation and money laundering activities – before her naturalization – precluded her possession of the "good moral character" required for one to become a naturalized U.S. citizen. The government and Li cross-moved for summary judgment. The district court granted summary judgment in favor of the government and revoked Li's U.S. citizenship. We affirm.[1]

I.

Li first argues that the government's civil action to revoke her naturalized U.S. citizenship violated the plea agreement underlying her convictions for enticing prostitution and money laundering.[2] To interpret the terms of that plea agreement, we apply general contract law principles, considering "whether the government's conduct is consistent with the

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[1] Because the appeal is from a grant of summary judgment, we review the district court's conclusions de novo and construe all of the facts in the non-movant's favor. *Day v. Wells Fargo Bank Nat'l Ass'n*, 768 F.3d 435, 435 (5th Cir. 2014); *Price v. Fed. Express Corp.*, 283 F.3d 715, 719 (5th Cir. 2002). The district court granted summary judgment in the government's favor; therefore, we construe the facts in Li's favor.

[2] "We review a claim of breach of a plea agreement de novo . . . , accepting the district court's factual findings unless clearly erroneous." *United States v. Davis*, 393 F.3d 540, 546 (5th Cir. 2004).

defendant's reasonable understanding of the agreement." *United States v. Cantu*, 185 F.3d 298, 304 (5th Cir. 1999) (quoting *United States v. Valencia*, 985 F.2d 758, 761 (5th Cir. 1993)).

As is relevant here, the plea agreement provides:

> The United States agrees not to use any truthful statements, testimony, or information provided by [Li] under the terms of this agreement against [Li] at sentencing or as the basis for *any subsequent prosecution*. . . . [Li] fully understands that, by this plea agreement, no promises, representations, or agreements have been made or entered into with any other United States Attorney or with any state prosecutor concerning other possible offenses or charges. It is further understood by the parties that *this agreement does not prevent any government agency from pursuing civil and/or administrative actions against* [*Li*] or any property.

Emphases added. Li contends that this language prevents the government from pursuing its civil denaturalization action because, according to Li, the government's civil action is a "prosecution," which is not permitted under the plea agreement.

Li's position is not supported by the unambiguous language of the plea agreement. First, in the context of the agreement, the term "prosecution" refers to criminal prosecutions, not civil actions. Thus, the term cannot be read reasonably to apply to this *civil* proceeding to revoke Li's citizenship. Although the

term "prosecution" can capture a wide swath of legal proceedings other than criminal prosecutions, this Court has held that, in the context of a plea agreement, the term is read most naturally to refer to criminal prosecutions. *See*, *e.g.*, *Bickham Lincoln-Mercury Inc. v. United States*, 168 F.3d 790, 792-93 (5th Cir. 1999) (reviewing a plea agreement that stated that the defendant "would not be subject to further prosecution" and noting that "[p]rosecution typically involves proceeding against a person criminally"); *id.* at 793 (observing that the term "prosecution" is "part of the terminology of the criminal law, describing the means by which the law is to be enforced, and associated in popular thought with laws for the prevention and punishment of crime" and noting that "the word refers to a criminal action or proceeding, and . . . has been said to be synonymous with 'criminal action' ").

Moreover, to the extent that there may be ambiguity in the plea agreement's use of the term "prosecution," such ambiguity is resolved by the remainder of the agreement, which states explicitly that the government can pursue civil and administrative actions against Li: "[The] agreement does not prevent any government agency from pursuing civil and/or administrative actions against [Li]." The government's civil action in this case falls squarely within the core of this language; and, therefore, the government has not

breached the plea agreement by seeking to revoke Li's naturalization.[3]

II.

Li's second argument is that the government's denaturalization action is time-barred under the general-purpose federal statute of limitations, which provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued. . . .

28 U.S.C. § 2462.[4]

"[T]he United States is not bound by any limitations period unless Congress explicitly directs otherwise." *United States v. City of Palm Beach Gardens*, 635 F.2d 337, 339 (5th Cir. 1981). Where a party seeks to apply a statute of limitations against the government, the statute at issue "must receive a

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[3] Because the contested portions of the plea agreement are unambiguous, we need not reach Li's argument regarding parol evidence.

[4] The district court concluded that the statute of limitations did not apply to this action; this is a legal conclusion that is subject to de novo review. *Tharpe v. Thaler*, 628 F.3d 719, 722 (5th Cir. 2010).

strict construction in favor of the Government." *Badaracco v. C.I.R.*, 464 U.S. 386, 391 (1984) (quotation mark omitted).

Li points to § 2462 as an explicit direction from Congress that restricts the filing of the present action to a five-year period. But, strictly construed in the government's favor, the limitations period in § 2462 does not apply to civil denaturalization actions because such actions cannot be classified as punitive in nature. In fact, the Supreme Court interpreted the predecessor statute to § 2462 and held that "[t]he words 'penalty' or 'forfeiture' in this section refer to something imposed in a *punitive* way for an infraction of a public law." *Meeker v. Lehigh Valley Ry. Co.*, 236 U.S. 412, 423 (1915) (emphasis added). Remedial actions do not count. *Id.*[5] The Supreme Court's

[5] Courts continue to apply the basic holding from *Meeker*, namely that a "penalty or forfeiture" under § 2462 means a *punitive* measure, not a remedial one. *See, e.g.*, *Coughlan v. Nat'l Transp. Safety Bd.*, 470 F.3d 1300, 1305 (11th Cir. 2006); *United States v. Telluride Co.*, 146 F.3d 1241, 1245-46 (10th Cir. 1998) (holding that a sanction is a "penalty" under § 2462 if it "seeks compensation unrelated to, or in excess, of the damages caused by the defendant" and concluding that § 2462 did not apply to the government's claim for injunctive relief in an environmental-restoration suit because "the restorative injunction [sought] is not a penalty because it seeks to restore only the wetlands damaged by [the company's] acts to the status quo . . . and does not seek compensation unrelated to or in excess of the damages caused by [the company's] acts"); *Johnson v. S.E.C.*, 87 F.3d 484, 488 (D.C. Cir. 1996) ("In sum, we conclude that a 'penalty,' as the term is used in § 2462, is a form of punishment imposed by the government for unlawful or proscribed conduct, which goes

(Continued on following page)

conclusion that the language in the predecessor statute to § 2462 refers to punitive and not remedial actions guides our conclusion that § 2462's limitations period does not apply in the denaturalization context.[6]

Notwithstanding that the revocation of Li's naturalized citizenship is certainly severe, it cannot be called punitive. Indeed, if an individual is statutorily ineligible to be naturalized at the time she becomes a citizen, her certificate of naturalization must be cancelled and her citizenship must be revoked and set aside. *See* 8 U.S.C. § 1451(a) (noting that the revocation is effective retroactively and given the original date of the naturalization certificate); *see also Fedorenko v. United States*, 449 U.S. 490, 506 (1981) (describing the illegal procurement of naturalized citizenship). Simply put, denaturalization is the withdrawal of something to which the individual was never entitled; denaturalization is a restorative or remedial action, not an action that seeks to punish the commission of a crime. *Accord Coughlan v. Nat'l Transp. Safety Bd.*, 470 F.3d 1400, 1305-07 (11th Cir.

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beyond remedying the damage caused to the harmed parties by the defendant's action.").

[6] Other courts to consider the issue have also held that § 2462 and its predecessor statute do *not* apply to denaturalization actions. *See, e.g.*, *United States v. Hauck*, 155 F.2d 141, 143 (2d Cir. 1946); *United Slates v. Rebelo*, 394 F. App'x 850, 852-53 (3d Cir. 2010); *see also*, *e.g.*, *Restrepo v. Att'y Gen. of U.S.*, 617 F.3d 787, 802 (3d Cir. 2010) (concluding "that § 2462's five-year statute of limitations does not apply to removal proceedings").

2006) (concluding that the limitations period in § 2462 was inapplicable to the revocation of a piloting certificate because the certificate was not revoked as punishment but was withdrawn because the pilot was unqualified to hold it). Li's sentence punished her for her crimes; denaturalization addresses her qualifications for becoming a naturalized citizen.

Indeed, the government instituted this specific denaturalization action because Li never actually met the requirements for naturalization. It was those acts supporting her criminal convictions that rendered her ineligible for naturalization and citizenship, and the denial of citizenship is an adverse consequence of that conduct. But, the government has not instituted these proceedings to "punish" Li for that conduct; instead, it is attempting to correct the mistake of granting her citizenship. Because the denaturalization action is not punitive, the limitations period in § 2462 is inapplicable to Li's case.

III.

A.

Finally, Li argues that the government has not satisfied its "heavy burden" of showing that she should be denaturalized. *See Fedorenko*, 449 U.S. at 505. An individual seeking naturalized U.S. citizenship must show that she "has been and still is a person of

good moral character." 8 U.S.C. § 1427(a)(3).[7] The government can prevail in its denaturalization action only if "[t]he evidence justifying revocation of citizenship [is] clear, unequivocal, and convincing and [does] not leave the issue in doubt." *Fedorenko*, 449 U.S. at 505. (quotation marks omitted). The government has met its burden.

Li pled guilty to violating 18 U.S.C. §§ 2422 and 1957(a), statutes which prohibit enticing interstate travel for the purposes of prostitution and money laundering, respectively. As a factual basis for her plea, Li admitted that she had multiple residences housing multiple prostitutes over a multi-year period prior to her naturalization. She also admitted that she laundered the money from her illegal prostitution business. These acts made Li automatically ineligible for naturalization because these convictions demonstrated her lack of "good moral character." *See* 8 U.S.C. § 1101(f)(3) ("No person shall be regarded as . . . a person of good moral character" if she if convicted of violating or admits to violating § 1182(a)(2)(D)); *id.* § 1182(a)(2)(D)(ii) (stating that an alien is inadmissible if she "directly or indirectly procures or attempts to procure . . . prostitutes or persons for the

[7] In Li's case, she had to demonstrate good moral character for a period of five years before she filed her naturalization application (in April 2006) until her naturalization ceremony (in August 2007). That is, Li was required to be a person of good moral character from April 17, 2001, through August 8, 2007, the date of her citizenship oath.

purpose of prostitution, or receives . . . in whole or in part, the proceeds of prostitution"); *see also* 8 C.F.R. § 316.10(b)(2)(vii) ("An applicant shall be found to lack good moral character if during the statutory period the applicant . . . is or was involved in prostitution or commercialized vice as described in [8 U.S.C. § 1182(a)(2)(D)]."). It is thus clear that the government satisfied its heavy burden supporting denaturalization.

B.

Li argues that the district court's conclusion is procedurally erroneous because the government's complaint only sought to denaturalize her under 8 C.F.R. § 316.10(b)(iii), rather than C.F.R. § 316.10(b)(2)(vii). Li's focus is too narrow, causing her to overlook that the government cited a relevant statutory provision, 8 U.S.C. § 1101(f), which provides that Li's prostitution-related business precludes a finding that she had good moral character. *See* 8 U.S.C. § 1101(f)(3); *see also id.* § 1101(f)(8) (referencing subsection (a)(43), which states that Li automatically lacked the requisite good moral character because of her convictions under 18 U.S.C. § 1957 and § 2422).

The complaint placed Li's prostitution-related conduct directly at issue, alleging that she illegally procured her citizenship because she "committed unlawful acts, including enticing interstate travel for prostitution and money laundering, that adversely reflected upon her moral character during the period

in which she was required to show good moral character." Li's argument that the complaint was defective is meritless.[8]

IV.

The district court did not err in granting summary judgment for the government. The cancellation of Li's certification of naturalization is, therefore,

AFFIRMED.

[8] Li's argument that the detailed and lengthy factual basis for her prostitution-related convictions is somehow insufficient to show that she "is or was involved in prostitution" is meritless. Furthermore, because the government satisfied its burden to show a clear and unequivocal lack of good moral character, we need not address its alternative bases for revoking Li's citizenship.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs- **Case No. A-13-CA-059-SS**

HONGYAN LI,
Defendant.

ORDER

(Filed Sep. 10, 2014)

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically the United States' Motion for Summary Judgment [#17], and Defendant Hongyan Li's Response [#22]; and Defendant Hongyan Li's Motion for Summary Judgment [#18], the United States' Response [#21], and Defendant Hongyan Li's Reply [#23]. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following opinion and orders GRANTING the United States' motion and DENYING Defendant Li's motion.

Background

This is an action brought by the United States (the Government) under 8 U.S.C. § 1451(a) to revoke and set aside the August 8, 2007 grant of United States citizenship to Defendant Hongyan Li, and to

cancel her Certificate of Naturalization. Li was born in Tianjin, China in 1971, and on November 28, 1996, Li and her then-husband, Wang Naxing, were admitted to the United States. *See* Def's Mot. Summ. J. [#18-2], Ex. B; *id.* [#18-1], Ex. A (Li Aff.), ¶¶ 1, 9. On October 20, 2000, she became a lawful permanent resident of the United States. *See* Pl.'s Mot. Summ. J. [#17-1], Pl.'s Appendix (App., Part I), at 3.

On or around March 28, 2006, Li filed an Application for Naturalization (Form N-400). *Id.* Question 15 asked, "Have you EVER committed a crime or offense for which you were NOT arrested?" *Id.* at 9. The answer provided was "No." *Id.* Question 22(b) asked, "Have you EVER been a prostitute, or procured anyone for prostitution?" *Id.* The answer provided was "No." *Id.* Li signed her Form N-400 under penalties of perjury, certifying the answers provide were true and correct and submitted the application for consideration. *Id.* at 11.

On June 18, 2007, United States Citizenship and Immigration Services (USCIS) officer, Swapna Banerjee, interviewed Li concerning her Form N-400. *Id.* Banerjee reviewed with Li her Form N-400 and the answers provided, although the parties disagree as to what questions Banerjee specifically re-asked Li. Banerjee made a few changes to Li's answers on the Form N-400, but there were no changes made to Questions 15 and 22(b). *Id.* at 4, 9. Li again signed under oath the Form N-400 post-interview, certifying the answers provided were true and correct. *Id.* at 9.

Li's naturalization application was approved on June 18, 2007. *Id.* at 2.

Following the approval of Li's Form N-400, USCIS mailed her a Notice of Naturalization Oath Hearing (Form N-445). *Id.* at 12-13. This form instructed Li to answer specific questions and certify the answers provided were true and correct. *Id.* at 13. Question 3 asked if, after the date she attended the interview in connection with her naturalization application, she had "knowingly committed any crime or offense, for which [she had] not been arrested?" *Id.* The answer provided was "No." *Id.* Question 8 asked if, after the date she attended the interview in connection with her naturalization application, she had "been a prostitute, procured anyone for prostitution or been involved in any other unlawful commercial vice . . . ?" *Id.* The answer provided was "No." *Id.* On August 8, 2007, prior to taking her oath of allegiance, Li submitted her Form N-445 to USCIS with her signature, certifying her answers to the questions were true and correct. *Id.* On the same day, USCIS permitted Li to take the oath of allegiance and admitted her to United States Citizenship. *Id.*

Two years later on September 15, 2009, Li was charged in this Court with Enticing Interstate Travel for Purposes of Prostitution in violation of 18 U.S.C. § 2422 and Money Laundering in violation of 18 U.S.C. § 1957. *Id.* at 16-20. The Information alleged Li, beginning on or about March 1, 2004, and continuing through on or about March 6, 2009, "did knowingly persuade, entice, and coerce any individual to

travel in interstate and foreign commerce to engage in prostitution and any sexual activity for which a person can be charged with a criminal offense." *Id.* at 16. The Information further alleged beginning on or about August 31, 2005, and continuing through on or about November 7, 2008, Li "did knowingly engage and attempt to engage in monetary transactions by, through, or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than $10,000 . . . such property having been derived from a specified unlawful activity. . . . " *Id.* at 16-17. On November 6, 2009, Li pleaded guilty, pursuant to a plea agreement, to running an extensive prostitution ring and deriving substantial income from this illegal activity. *Id.* at 24; Def.'s Mot. Summ. J. [#18-8], Ex. H (Plea Agreement), at 10-21 (detailing the factual basis for the plea). This Court sentenced Li to eighteen months imprisonment on each count to be served concurrently. App., Part I, at 25. In addition, Li forfeited a variety of real and personal property. *Id.* at 28.

On January 23, 2013, the Government filed a complaint in this Court to revoke Li's naturalization pursuant to 8 U.S.C. § 1451(a), and has now filed its motion for summary judgment. The Government contends Li's citizenship should be revoked for three reasons: (1) Li illegally procured her citizenship because she committed unlawful acts, specifically prostitution and money laundering, which precluded her from establishing the good moral character required under statute; (2) Li illegally procured her citizenship

because she provided false testimony during her naturalization application process, which precluded her from establishing the good moral character required under statute; and (3) Li procured her citizenship through willful misrepresentation or concealment of a material fact. Li has filed her own motion for summary judgment, arguing: (1) this revocation proceeding is a violation of her plea agreement; (2) the action is barred by the statute of limitations; and (3) the Government cannot meet its burden on the merits of the revocation.

Analysis

I. Legal Standard – Summary Judgment

Summary judgment shall be rendered when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986); *Washburn v. Harvey*, 504 F.3d 505, 508 (5th Cir. 2007). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all inferences drawn from the factual record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986);

Washburn, 504 F.3d at 508. Further, a court "may not make credibility determinations or weigh the evidence" in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 254-55.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita*, 475 U.S. at 586. Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence. *Id.* The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. Disputed fact issues that are "irrelevant and unnecessary" will not be considered by a court in ruling on

a summary judgment motion. *Id.* If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322-23.

II. Application

The Court first addresses Li's threshold arguments regarding her plea agreement and the statute of limitations before turning to the merits of the revocation.

A. Whether this civil proceeding violates Li's plea agreement

First, Li contends the terms of the plea agreement she signed in her criminal case preclude this revocation action, undisputedly a civil proceeding, if a guilty plea is entered as part of a plea agreement, the government must strictly adhere to the terms and conditions of its promises. *United States v. Valencia*, 985 F.2d 758, 760 (5th Cir. 1993). Courts apply general principles of contract law to interpret a plea agreement. *United States v. Cantu*, 185 F.3d 298, 304 (5th Cir. 1999). In determining whether the government breached a plea agreement, the court must determine "'whether the government's conduct is consistent with the defendant's reasonable understanding of the agreement.'" *Id.* (quoting *Valencia*, 985 F.2d at 761). If the court finds the government is

in violation of the plea agreement, the defendant is entitled to specific performance, which in this case would be dismissal of the revocation action. *See Valencia*, 985 F.2d at 761. The defendant bears the burden of demonstrating the underlying facts establishing the breach by a preponderance of the evidence. *Cantu*, 185 F.3d at 304-05.

Applying principles of contract law, the court should attempt to give effect to the intentions of the parties as expressed in the agreement. *Texas v. Am. Tobacco Co.*, 463 F.3d 399, 407 (5th Cir. 2006). As such, the court should construe the terms of the plea agreement using "their plain, ordinary, and generally accepted meanings." *Nichols v. Enterasys Networks, Inc.*, 495 F.3d 185, 190 (5th Cir. 2007). If the court finds an ambiguity in the plain language of the agreement, then it should consider any parol evidence available to ascertain the parties' intent. *Am. Tobacco Co.*, 463 F.3d at 407.

Li's plea agreement provides the United States Attorney for the Western District of Texas will "not use any truthful statement, testimony, or information provided by [Li] under the terms of this agreement against [Li] at sentencing or as the basis for any subsequent prosecution." Plea Agreement, at 6. The plea agreement also states in its final sentence: "It is further understood by the parties that this agreement does not prevent any government agency from pursuing civil and/or administrative actions against the Defendant or any property." *Id.* at 25.

Li complains this denaturalization proceeding is a "prosecution," and therefore is precluded by the clear terms of the plea agreement. Black's Law Dictionary contains two definitions of "prosecution." First, it means "[t]he commencement and carrying out of any action or scheme," as in "the prosecution of a long, bloody war." BLACK'S LAW DICTIONARY (9th ed. 2009). Second, it means "[a] criminal proceeding in which an accused person is tried." *Id.*[1] In the context of a plea agreement, the second definition is the applicable one, and the Court interprets the unambiguous language of the plea agreement only to prohibit the United States Attorney for the Western District of Texas from using information provided by Li under her plea deal as the basis for a subsequent criminal proceeding against Li.[2]

Furthermore, the relevant case law compels this conclusion. The Fifth Circuit has held a plea agreement in which the government agrees not to further prosecute the defendant for the conduct that is the

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[1] Li focuses on the definition of "prosecute," which Black's first defines as "No commence and carry out a legal action" and second as "[t]o institute and pursue a criminal action," to argue this civil revocation proceeding is prohibited by the plea agreement. *See* Def.'s Mot. Summ. J. [#18], at 10; BLACK'S LAW DICTIONARY (9th ed. 2009). The word that appears in the plea agreement, however, is "prosecution" as a noun, not "prosecute" as a verb. *See* Plea Agreement, at 6.

[2] Because the Court finds the language in the plea agreement to be unambiguous, it need not address Li's arguments concerning parol evidence.

subject of the plea does not bar the government from bringing an action for a civil penalty based on the same conduct. *Bickham Lincoln-Mercury Inc. v. United States,* 168 F.3d 790, 792-94 (5th Cir. 1999). In *Bickham*, the defendant failed to file a form required by the Internal Revenue Code, which gave rise to a criminal information filed by the government. *Id.* at 792. The defendant entered a plea agreement in which the government would "not [] further prosecute" the defendant for failure to file the relevant form. *Id.* Subsequently, the IRS pursued a civil penalty against the defendant for failure to file the same form that was the subject of the criminal action. *Id.* The defendant complained this was a violation of his plea agreement, but the Fifth Circuit affirmed the district court's conclusion to the contrary. *Id.* The Fifth Circuit analyzed the ordinary meaning of "prosecute," concluding it typically refers to criminal proceedings, highlighted the separate statutory provisions within the Internal Revenue code for criminal and civil penalties regarding the defendant's behavior, and noted the fact the plea agreement specifically mentioned prosecution but not "civil liability." *Id.* at 793-94. Faced with a similar scenario as the one facing this Court, a fellow district court, following *Bickham*'s guidance, concluded the United States did not breach a plea agreement whereby it agreed not to further prosecute the defendant when it subsequently sought revocation of the defendant's citizenship under 8 U.S.C. § 1451(a) based on the same conduct at issue in the criminal proceeding. *United States v.*

Mwalumba, 688 F. Supp. 2d 565, 573-74 (N.D. Tex. 2010).

Bickham controls this case. Here, the United States prosecuted Li for enticing prostitution and related money laundering, signed a plea agreement in which it agreed the information Li provided as part of the plea deal would not form the basis of a subsequent prosecution, and now brings a civil action under 8 U.S.C. § 1451(a) based on the same conduct that was the subject of the plea agreement. Just as the IRS was not in breach of its plea agreement in *Bickham* and just as the United States was not in breach of its plea agreement in *Mwalumba*, the United States is not in breach of the plea agreement in this case.[3]

B. Whether this action is time-barred

Li also argues since Congress did not expressly provide a statute of limitations for filing a citizenship revocation action, it is subject to the "catch-all"

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[3] Li attempts to distinguish her case from the facts of *Bickham* because unlike the plea agreement in *Bickham,* Li's plea deal explicitly mentions civil liability, stating no "government agency" is prohibited from pursuing civil actions against Li. According to Li, since "the United States," which is not a government agency, brings this denaturalization proceeding, the action violates the plea agreement. The Court does not agree this sentence, which merely clarifies no government agency is prevented from pursuing a civil or administrative action against Li, prevents the United States from pursuing a civil revocation proceeding under 8 U.S.C. § 1451(a).

statute of limitations provided in 28 U.S.C. § 2462. The statute provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462. Li contends denaturalization is a forfeiture of citizenship and a penalty for wrongful conduct. Since Li naturalized on August 8, 2007, she argues the statute of limitations lapsed on August 8, 2012, but the Government did not initiate the instant action until January 23, 2013, making the claim untimely.

The Court is not moved by this argument largely because Li fails to cite a single case applying § 2462 or its predecessor, 28 U.S.C. § 791, to a revocation action under 8 U.S.C. § 1451(a). In fact, this argument has been made on few occasions, and courts addressing it have quickly rejected it. *See, e.g.*, *United States v. Hauck*, 155 F.2d 141, 143 (2d Cir. 1946) (characterizing the argument § 791 applied to a denaturalization action as "so clearly without merit that [it] may be disposed of summarily," as a "hopeless clutching at straws," and concluding the statute is "completely irrelevant"). More recently, the Third

Circuit reasoned "'[S]tatutes of limitation sought to be applied to bar rights of the Government must receive a strict construction in favor of the Government.'" *United States v. Rebelo*, 394 F. App'x 850, 852-53 (3d Cir. 2010) (unpublished) (quoting *Badaracco v. Comm'r*, 464 U.S. 386, 391 (1984)). The *Rebelo* court recognized the Supreme Court, in interpreting § 791, held "'penalty or forfeiture' means 'something imposed in a *punitive* way for an infraction of public law.'" *Id.* at 853 (quoting *Meeker v. Lehigh Valley R.R. Co.*, 236 U.S. 412, 423 (1915)). Since denaturalization "serves 'as a remedy for citizenship fraudulently obtained,' [it] 'is regarded not as punishment but as a necessary part of regulation naturalization of aliens.'" *Id.* (quoting *E.B. v. Verniero*, 119 F.3d 1077, 1101-02 (3d Cir. 1997)).

Finally, the Court notes the Supreme Court, while it did not specifically address a statute of limitations argument, has addressed the merits of revocation actions brought long after five years from the date of naturalization. *See Kungys v. United States*, 485 U.S. 759, 764 (1988) (revocation action brought twenty-eight years after naturalization); *Costello v. United States*, 365 U.S. 265, 265-68 (1961) (revocation action brought thirty years after naturalization). In light of these opinions, the Court declines to adopt Li's novel argument, which would have the Court bar a revocation action brought less than six years after naturalization.

For these reasons, the Court concludes the "catch-all" statute of limitations of 28 U.S.C. § 2462

does not apply to this revocation action under § 1451(a).

C. Whether the Government has met its burden to denaturalize Li

Because Li's admitted prostitution activities statutorily bar her from establishing the good moral character necessary for naturalization, the Court agrees with the Government that Li illegally procured her citizenship.

The Supreme Court has recognized "the right to acquire American citizenship is a precious one and that once citizenship has been acquired, its loss can have severe and unsettling consequences." *Fedorenko v. United States*, 449 U.S. 490, 505 (1981) (citations omitted). As such, "the Government 'carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship.'" *Id.* (quoting *Costello v. United States*, 365 U.S. 265, 269 (1961)). The evidence justifying revocation of citizenship must be "'clear, unequivocal, and convincing' and not leave 'the issue in doubt.'" *Id.* (quoting *Schneiderman v. United States*, 320 U.S. 118, 120 (1943)). "Any less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding." *Id.* at 505-06. Nevertheless, "there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Id.* at 506. "Failure to comply with any of these conditions renders the certificate of citizenship 'illegally

procured,' and naturalization that is unlawfully procured can be set aside." *Id.* (citations omitted).

Title 8 U.S.C. § 1451(a) provides the order admitting a naturalized citizen to citizenship may be revoked and set aside and the certificate of naturalization may be cancelled if the order and certificate were "illegally procured or were procured by concealment of a material fact or by willful misrepresentation." Here, the Government has advanced two grounds for why Li's citizenship was illegally procured and also contends it was procured by concealment of a material fact or by willful misrepresentation. Because the Court agrees with the Government's first argument concerning illegal procurement, it need not address the other two grounds.

To be statutorily eligible for naturalization, an individual must demonstrate that during the time period prescribed by statute she "has been and still is a person of good moral character." 8 U.S.C. § 1427(a)(3). For Li, this statutory period began five years before the date on which she filed her application for naturalization with the Immigration and Naturalization Services (INS) (approximately late March or early April 2006),[4] and ended on the date she took the oath of allegiance and was naturalized as a

[4] The Court is not entirely clear on when Li filed her Form N-400, but she signed it on March 28, 2006. Whether Li actually filed her application with the INS this same day or shortly thereafter in April 2006 is immaterial to the Court's ultimate conclusion.

United States citizen (August 8, 2007). *See id.* The concept of "good moral character" is defined by the Immigration and Nationality Act (INA) and the regulations promulgated under it. Both the INA and the regulations include lists of specified acts and characteristics that automatically preclude a person from establishing good moral character. *See* 8 U.S.C. § 1101(f)(1)-(9); 8 C.F.R. § 316.10(b)(1)-(3)(ii). Most relevant to this case, § 1101(f)(3) provides no person shall be regarded as having the required good moral character if she is or was "a member of one or more of the classes of person, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title." 8 U.S.C. § 1101(f)(3). Section 1182(a) describes classes of aliens ineligible for visas or admission to the United States, and paragraph (2)(D) is titled "Prostitution and commercialized vice" and describes the following categories of aliens as inadmissible:

> Any alien who –
>
> (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjusted status,
>
> (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application fora visa, admission, or adjustment of status) procured or attempted to procure or to import,

> prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution . . .

8 U.S.C. § 1182(a)(2)(D).

Moreover, the regulations promulgated under the INA state "an applicant [for naturalization] shall be found to lack good moral character if during the statutory period the applicant: . . . (vii) is or was involved in prostitution or commercialized vice as described in section 212(a)(2)(D) of the Act." 8 C.F.R. § 316.10(b)(2)(vii).

The undisputed facts in this case clearly demonstrate Li is and was statutorily barred from establishing good moral character under the statute and its regulations. Li's guilty plea acknowledges that "[b]eginning on or about March 1, 2004, and continuing until on or about March 6, 2009 . . . [Li] did knowingly persuade, induce, entice, and coerce any individual to travel in interstate and foreign commerce to engage in prostitution and any sexual activity for which a person can be charged a criminal offense." *See* Plea Agreement, at 10. The factual basis of Li's plea agreement details the extensive prostitution ring she operated and the substantial income she derived from her illegal activities. *Id.* at 10-21. This admitted behavior could not more obviously fall within 8 U.S.C. § 1182(a)(2)(D)(ii) and 8 C.F.R. § 316.10(b)(2)(vii). Consequently, Li is statutorily barred from establishing she had the required good moral character during

the relevant time period, meaning she was statutorily ineligible for naturalization under 8 U.S.C. § 1427(a)(3). Therefore, Li's citizenship was illegally procured, and it may be revoked under 8 U.S.C. § 1451(a).

The parties waste substantial time in their briefs arguing over whether other provisions of the INA and the related regulations operate to bar Li from establishing the requisite good moral character. Specifically, the parties focus on the "catch-all" provisions in the statutory scheme providing non-enumerated acts or characteristics can demonstrate an applicant lacks good moral character. *See* 8 U.S.C. 1101(f) ("The fact that any person is not within one of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."); 8 C.F.R. § 316.10(b)(3)(iii) (explaining that in the absence of extenuating circumstances an "applicant shall be found to lack good moral character if, during the statutory period, the applicant: . . . (iii) [c]ommitted unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of § 316.10(b)(1) or (2)"). These provisions, however, are inapplicable to this case because Li is "within one of the foregoing classes," and her acts do "fall within the purview of § 316.10(b)(2)." As described above, Li's prostitution-related activities fall squarely within 8 U.S.C. § 1101(f)(3) (via 8 U.S.C. § 1182(a)(2)(D)) and 8 C.F.R. § 316.10(b)(2)(vii). Therefore, the Court finds the parties arguments concerning the "catch-all" provisions

and whether any extenuating circumstances existed, which might excuse Li's prostitution-related activities, irrelevant.[5]

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[5] The parties' focus on the "catch-all" provisions appears to stem from confusion over the pleadings and both parties' apparent misapprehension of the statute. Li argues the Government restricted itself in its complaint to arguing Li's conduct falls within the "catch-all" provision of 8 C.F.R. § 316.10(b)(3)(iii). In other words, Li argues the Government, instead of asserting the substantive provisions regarding prostitution, asserted prostitution (and money laundering) as constituting "unlawful acts" as contemplated by § 316.10(b)(3)(iii). Framed as such, Li spends considerable time arguing Li is entitled to the "extenuating circumstances" exception of § 316.10(b)(3)(iii). *See* Def.'s Mot. Summ. J. [#18], at 15-16. Indeed, this is the only defense mounted by Li to the prostitution-related activity as a bar to a good moral character finding. Furthermore, Li contends the Government cannot now assert the substantive prostitution bars (i.e., 8 U.S.C. § 1182(a)(2)(D) and 8 C.F.R. § 316.10(b)(2)(vii)) because "they failed to allege it as grounds for denaturalization in their Complaint." Def.'s Resp. [#22], at 6. As articulated above, however, § 316.10(b)(3)(iii) does not apply to involvement in prostitution, and the Court rejects Li's attempt to constrain the Government to arguing only this "catch-all" provision. First, while the Government's complaint is no model for pleading, it does capture the basic premise that Li's prostitution activities bar her from showing the requisite good moral character. *See* Complaint [#1], at 4 (describing Li's guilty plea based on her prostitution activity); at 6 (citing the enumerated classes of 8 U.S.C. § 1101(f)(1)-(8)); at 7 (asserting Count I's theory that Li's criminal history shows she lacked good moral character). Moreover, the summary judgment briefing shows the Government seeks to show Li was statutorily barred by her prostitution activities. *See* Pl.'s Mot. Summ. J. [#17], at 10 (arguing "an admitted or convicted prostitute" is statutorily barred from showing good moral character). These contentions put Li on notice of the Government's position, and her attempt to restrict the

(Continued on following page)

Conclusion

The Government initiated this action to revoke the citizenship of Defendant Hongyan Li, and contrary to Li's contentions, this civil proceeding does not violate the terms of her plea agreement nor is it time-barred by any statute of limitations. The undisputed facts establish Li's prostitution-related activities during the relevant time period statutorily barred her from demonstrating the required good moral character to be eligible for naturalization. Consequently, the Government has met its burden and is entitled to judgment.

Accordingly,

IT IS ORDERED that the United States' Motion for Summary Judgment [#17] is GRANTED;

Government to arguing the "catch-all" provision rather than the substantive prostitution provisions evinces her awareness. Li makes this technical pleading argument because she knows she has no defense to the substantive prostitution provisions. Her sole attempted defense is "extenuating circumstances," but this cannot be a defense to involvement in prostitution. *See* § 316.10(b)(2)(vii) (listing involvement in prostitution as a bar to good moral character); § 316.10(b)(3)(iii) (providing extenuating circumstances may excuse the commission of unlawful acts "although the facts do not fall within the purview of § 316.10(b)(1) or (2)"). The bottom line reality, which Li cannot avoid, is the undisputed facts of this case show Li engaged in prostitution activity, which statutorily bars her from demonstrating good moral character. Inartful pleading, which ultimately does not mislead the defendant or materially affect the substance of the complaint, does not change this conclusion.

IT IS FURTHER ORDERED that Defendant Hongyan Li's Motion for Summary Judgment [#18] is DENIED;

IT IS FINALLY ORDERED that Defendant Hongyan Li's Certificate of Naturalization be CANCELLED. Defendant Li must surrender and deliver her certificate and any other indicia of United States citizenship to the Attorney General, or his representatives, including her United States passport.

SIGNED this the 10th day of September 2014.

/s/ Sam Sparks
SAM SPARKS
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	**CRIMINAL NO. 1:09-CR-457 SS**
v.	§	
HONG YAN LI,	§	
Defendant.	§	

PLEA AGREEMENT

In compliance with Rule 11(c) of the Federal Rules of Criminal Procedure, the United States Attorney for the Western District of Texas ("the United States" or "the United States Attorney") and the Defendant, Hong Yan Li, wish to acknowledge the following agreement:

1. Offense and Maximum Penalties

a. The Defendant, having been advised of her right to plead not guilty and be tried by a jury, agrees to enter a plea of guilty to Count 1 an Information charging her with violation of Title 18, United States Code, Section 2422(a) and Count 2 of an information charging her with violation of Title 18, United States Code, Section 1957(a).

b. The maximum possible penalties for this offense are: Count 1 – a maximum term of imprisonment of 20 years; a maximum fine of $250,000.00; a term of supervised release of 3 years following release from imprisonment; and a special assessment of $100; Count 2 – a maximum term of imprisonment of 10 years; a maximum fine of $250,000.00 or twice the amount of the criminally involved property involved in the transaction that is the basis of the violation; a term of supervised release of 3 years following release from imprisonment; and a special assessment of $100.

c. As a condition of this plea agreement, and contingent upon the Court's acceptance of the Defendant's plea of guilty and the Defendant's compliance with this plea agreement, the United States Attorney for the Western District of Texas agrees to not further criminally prosecute the Defendant for the conduct described in the Information or Factual Basis.

d. The Defendant is pleading guilty because the Defendant is in fact guilty of the charged offense. The Defendant admits the facts set forth in the Factual Basis contained in this Plea Agreement and agrees that those facts establish the Defendant's guilt beyond a reasonable doubt.

2. Rights Waived by Pleading Guilty and Assistance of Counsel

The Defendant is satisfied with her attorney's representation and that her attorney has rendered

effective assistance. The Defendant understands and acknowledges that by pleading guilty, the Defendant knowingly, voluntarily, and intelligently waives (gives up) the following rights:

a. The right to plead not guilty and to persist in a plea of not guilty;

b. The right to be presumed not guilty, unless and until the United States has proven the Defendant's guilt beyond a reasonable doubt at trial;

c. The right to trial before a jury, which would have to agree unanimously before it could return a verdict of either guilty or not guilty as to each charge, and the right to be represented by counsel at that trial;

d. The right to confront and cross-examine witnesses against the Defendant;

e. The right to compel and subpoena witnesses to appear on the Defendant's behalf at trial;

f. The right to testify at trial; or, alternatively, the right to remain silent and not testify, and not have such silence be used as evidence against the Defendant;

g. The right to appeal a finding of guilty and/or any pretrial rulings;

h. The right to object to the charge(s) based on the form of the charging instrument or on the statute of limitations.

Moreover, the Defendant knowingly waives any continuing discovery request, including requests for *Giglio* or *Jencks* material; and waives all rights to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including 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).

3. Sentencing

a. The Defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above, but that the Court will determine the Defendant's actual sentence in accordance with 18 U.S.C. § 3553(a), as construed by *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), in which the United States Supreme Court held that the *Federal Sentencing Guidelines and Policy Statements* (the "Sentencing Guidelines" or "Guidelines") are advisory and not binding on the Court, but should be considered in reaching an appropriate sentence. ***Consequently, the Defendant understands that the Court may impose a sentence within, above, or below the advisory sentencing range calculated under the Guidelines.***

b. The Defendant understands that the Court has not yet determined the Defendant's sentence and that any estimate of the probable sentence or the

advisory sentencing range that the Defendant may receive from any source, including the Defendant's counsel, the United States, or the U.S. Probation Office, is simply a prediction, not a promise, and is not binding on the United States, the U.S. Probation Office, or the Court. The Defendant further understands that any term of imprisonment imposed does not provide for parole.

c. The United States and the Defendant each reserve the right to: (1) bring its version of the facts of this case to the attention of the U.S. Probation Office in connection with that office's preparation of a presentence investigation report; (2) dispute facts relevant to sentencing in the presentence investigation report, including any facts or factors relevant to the calculation of the advisory sentencing range under the Sentencing Guidelines; (3) seek resolution of such facts or factors in conference with opposing counsel and the U.S. Probation Office; (4) speak at sentencing under Rule 32(c)(3) of the Federal, Rules of Criminal Procedure; and (5) request the Court to depart from the applicable advisory guideline range in imposing sentence, based upon aggravating or mitigating factors which may warrant a departure.

4. Financial Matters

a. *Restitution.* The Defendant agrees to the entry of a restitution order for the full amount of any loss incurred by a victim of any offense of conviction

or other offense that is not an offense of conviction but nonetheless gave rise to this Plea Agreement.

b. *Monetary Penalties and Assessments*. The Defendant understands and agrees that any monetary penalties, assessments, or restitution will be due and payable immediately and subject to immediate enforcement by the United States.

c. The Defendant agrees to provide truthful, accurate, and complete financial information to the United States, the Probation Office, and the Court.

5. Waiver of Appeal and Waiver of Post-Conviction Remedies

Fully aware of the uncertainty in estimating what sentence will ultimately be assessed and imposed, and in exchange for the concessions made by the United States in this agreement, the Defendant knowingly, voluntarily, and expressly waives the following rights:

a. the right to appeal the conviction and/or sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742; and

b. the right to contest the conviction and/or sentence in any post-conviction proceeding, including a motion pursuant to 28 U.S.C. § 2255.

6. Defendant's Cooperation

The Defendant agrees to cooperate fully and truthfully with the United States and other law enforcement authorities and provide all information known to the Defendant regarding any criminal activity as requested by the government. In that regard:

a. The Defendant agrees to be reasonably available for debriefings and pretrial conferences as the United States may require;

b. The Defendant agrees to provide all information concerning his knowledge of and/or participation in any criminal activity about which Defendant has knowledge;

c. The Defendant agrees to provide all documents, records, writings, materials, objects, or things of any kind in the Defendant's possession or under the Defendant's care, custody, or control relating directly or indirectly to all areas of inquiry, investigation, and cooperation;

d. The Defendant agrees to provide truthful testimony in any state or federal proceedings that may arise in relation to this investigation or prosecution, including, but not limited to, any grand jury proceedings, depositions, trials, and pretrial and post-trial proceedings;

e. The Defendant agrees that Defendant will not falsely implicate any person or entity; and that he

will not protect any person or entity by omission or by providing false information or testimony;

f. The Defendant agrees and understands that, in the course of other investigations or proceedings against persons about whose illegal activities the Defendant has knowledge, the Government or other law enforcement agencies can (and likely will) disclose the Defendant byname as a someone who has debriefed with the government, has indicated Defendant has personal knowledge of the person's illegal activities, and has agreed to testify truthfully as to Defendant's knowledge in open court.

g. The Defendant agrees that Defendant will not violate any federal, state, or local criminal law while providing cooperation;

h. The Defendant understands that, absent any written modifications, this agreement grants no immunity whatsoever for any information provided by the Defendant pertaining to any death, sexual assault, murder or felony crime of violence.

i. The Defendant hereby waives any rights to a prompt sentencing and, if necessary, will request that sentencing be postponed and continued until Defendant's cooperation is completed, to enable the Court to have the benefit of all relevant sentencing information; moreover, the Defendant agrees and understands that this agreement may require Defendant's cooperation to continue even after the time that the Defendant is sentenced and that failure to continue to

cooperate after sentencing may constitute a breach of this agreement; and

j. Nothing in this agreement obligates the United States to seek the Defendant's cooperation or assistance, or, if sought, to further elicit the Defendant's cooperation.

7. Potential Use of Defendant's Information

The United States agrees not to use any truthful statements, testimony, or information, provided by the Defendant under the terms of this agreement against the Defendant at sentencing or as the basis for any subsequent prosecution. The parties agree that U.S.S.G. § 1B1.8 shall apply to any such information.

EXCEPTIONS:

a. Any statements, testimony, or information given by the Defendant in the course of his cooperation under this agreement, or evidence derived therefrom, *may* be used against the Defendant under the following circumstances: (1) in cross examination or rebuttal in any proceeding in which the Defendant makes a statement; (2) in a prosecution against the Defendant for perjury, making false statements, or obstruction of justice; (3) in response to any motion or pleading filed by the Defendant subsequent to Defendant's plea, where such statements may be relevant to the disposition of the motion or pleading (for instance, a motion to grant or reduce bond or a motion

to withdraw guilty plea); or (4) for any purpose, in the event the Defendant breaches any term or condition of this agreement.

b. Such information *may* be revealed to the Court at sentencing, but not for purpose of determining the advisory sentencing range or recommending a sentence within the range. For instance, such information may be presented to describe to the Court the nature and extent of the Defendant's cooperation, or to respond to assertions that may otherwise tend to mislead the Court if such information were not disclosed.

There shall be no restrictions on the use of information previously known to law enforcement agencies or revealed to law enforcement agencies by, or discoverable through, an independent source.

8. Motion for Downward Departure

The United States agrees to make known to the Court, prior to sentencing, the nature and extent of the Defendant's cooperation. If the Defendant provides ***substantial assistance*** to the United States in this and other criminal investigations, the United States may, at its discretion, recommend that the Court impose a reduced sentence calculated in the form of a downward variance from the advisory sentencing guideline range, based on §5K1.1 of the Sentencing Guidelines.

a. In determining whether the Defendant has provided substantial assistance and/or making its recommendation for a reduced sentence, the United States will consider not only the nature, extent, truthfulness, and completeness of the Defendant's assistance, but also other pertinent factors, including, but not limited to: whether the Defendant has fully and in good faith complied with the terms of this Plea Agreement; whether the Defendant has provided truthful and complete information to the Court, U.S. Pretrial Services, and the U.S. Probation Office; whether the Defendant has fully complied with the conditions of his release, if applicable; whether the Defendant has obstructed or attempted to obstruct the administration of justice; whether the Defendant has committed a violation of federal, state, or local law prior to his sentencing; and the factors listed in U.S.S.G. § 5K1.1(a).

b. The Defendant understands that this Plea Agreement and the United States' decision whether to recommend a sentence reduction for substantial assistance are NOT conditioned upon charges being brought against any other individual, or on the outcome of any investigation, Grand Jury proceeding, or pending or future prosecution.

c. The Defendant understands that the Court is not bound by any recommendation for a reduced sentence based on U.S.S.G. § 5K1.1 and that the Court alone will determine the Defendant's ultimate sentence, which may be more or less favorable than any sentencing recommendation that may be made by

the United States and/or may or may not be below any applicable statutory mandatory minimum penalty.

9. Breach of the Plea Agreement and Remedies

This Plea Agreement is effective when signed by the Defendant, the Defendant's attorney, and an attorney for the United States. If the Defendant withdraws from this agreement; commits or attempts to commit any federal, state, or local crime; intentionally gives materially false, misleading, or incomplete information or testimony; or otherwise violates any provision of the Plea Agreement:

a. the United States will be released from its obligations under this agreement;

b. any guilty plea entered by the Defendant will stand and cannot be withdrawn by the Defendant;

c. the Defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury, obstruction of justice, making a false statement, and all offenses arising from this or any other investigation, which may include reinstatement of any charges which may have been dismissed pursuant to this plea agreement;

d. at any proceeding following the Defendant's breach of this agreement, any and all statements, testimony, and information provided by the Defendant, and any evidence derived therefrom, may be used, as evidence against him, notwithstanding

Federal Rule of Evidence 410, Federal Rule of Criminal Procedure 11(f), the Sentencing Guidelines, or any other provision of the Constitution or federal law. Such statements include, but are not limited to, the signed Factual Basis and any statements the Defendant provided to law enforcement officers and made during the course of any cooperation; and

e. the Defendant waives (gives up) the following rights in any prosecution and sentencing subsequent to such breach: (1) the right not to be placed twice in jeopardy for any charges which may have been dismissed pursuant to this agreement; (2) any right to a speedy trial under the United States Constitution and laws of the United States for any charge that is brought as a result of the Defendant's breach of this agreement; and (3) the right to be charged within the applicable limitations period for any charge that is brought following the Defendant's breach of this agreement, if the limitations period for any such charge expired after the Defendant entered into this agreement.

Any alleged breach of this agreement by either party, shall be determined by the Court in an appropriate proceeding at which the Defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the agreement by a preponderance of the evidence.

10. Factual Basis

The Defendant and the U.S. Attorney for the Western District of Texas agree and stipulate that, had this case proceeded to trial, the United States Attorney for the Western District of Texas was prepared to prove and would prove beyond a reasonable doubt the following facts:

Beginning on or about March 1, 2004 and continuing until on or about March 6, 2009, in the Western District of Texas, the defendant,

Hong Yan Li

did knowingly persuade, induce, entice and coerce any individual to travel in interstate and foreign commerce to engage in prostitution and any sexual activity for which a person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2422(a).

Beginning on or about August 31, 2005 and continuing until on or about November 7, 2008, in the Western District of Texas, the defendant,

Hong Yan Li

did knowingly engage and attempt to engage in monetary transactions by through or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than $10,000, that is the deposit, withdrawal, and transfer of U.S. currency, funds, and monetary instruments, such property having been derived from a specified

unlawful activity, that is, violations of title 18, United States Code, Section 2422(a), all in violation of Title 18, United States Codes, Sections 1957 and 2.

Specifically, the United States would prove beyond a reasonable doubt that:

1. From on or about March 1, 2004 until March 6, 2009, Defendant operated a prostitution ring in Austin, Texas. The Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to Austin, Texas, for the purpose of engaging in prostitution. The Defendant would advertise "massage services" on the Internet (on at least two websites: easternsecrets.com and bestasianspa.com) and in a local newspaper (the Austin Chronicle's "Adult Services" section), which services were to be provided at undisclosed locations. Callers would be directed to various properties in Austin, Texas, rented by Defendant or rented on her behalf by others aiding, abetting, and conspiring with her. The women at these locations were prostitutes who engaged in sex acts in exchange for payment. The Defendant would receive a portion of each payment made to the women. The Defendant earned hundreds of thousands of dollars from these prostitution operations between 2004 and 2009.

2. The websites easternsecrets.com and bestasian spa.com both listed two contact telephone numbers. Defendant established service for both numbers On August 23, 2004. These same numbers were listed as contact numbers on advertisements that appeared in the *Austin Chronicle*,

a weekly newspaper, under the "Adult Services" section since at least 2006. Telephone records retrieved from Defendant's trash show that each number received an average of more than 1200 incoming minutes per month.

3. Additionally, the on-line investigation revealed a website that contained postings and reviews of Austin-area escort services, escorts, modeling studios, and "erotic massage services," including dozens of reviews which were posted by customers of both easternsecrets.com and bestasianspa.com. Many of these reviews identified "Tracy" as the manager of both businesses and include detailed descriptions of sexual acts performed by women working for Tracy including specific fees charged. It appears that for approximately $160, a customer could receive oral sex or sexual intercourse. The reviews stated that Tracy seldom had the same prostitutes working for her for more than two weeks at a time. "Tracy" is in fact the Defendant Hong Yan Li.

4. From August 2004 to March 2006, the Defendant operated a location at the Tuscany Apartment Complex at 13355 Highway 183 in Austin, Texas. Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at the Tuscan Apartment complex for the purpose of engaging in prostitution.

5. In 2004, a maintenance employee at Tuscany Apartment Complex entered the apartment operated by the Defendant and witnessed an Asian woman having sex with an older white man. He

also witnessed several different Asian females arriving at or departing the apartment during that time period. Defendant persuaded, induced, enticed, and coerced these Asian women to travel from outside the state of Texas to this location at the Tuscany Apartment Complex for the purpose of engaging in prostitution.

6. From June 2006 until September 2007, Defendant was operating a location at the Marquis at Ladera Vista Apartment Complex located at 11624 Jollyville Road in Austin, Texas. She was advertising the location on the two websites easternsecret.com and bestasianspa.com. Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at the Marquis at Ladera Vista Apartment Complex for the purpose of engaging in prostitution.

7. On June 7, 2007, the Defendant left the Marquis at Ladera Vista and went to a Wells Fargo bank. An Asian woman exited the back seat of Li's the Respondent Lexus and entered the bank. Later, officers stopped the defendant for a traffic violation. At that time, officers found the same Asian female hiding behind the front-seat on the floor of the Defendant's Lexus. The woman identified herself as Kosonsuphakit Chompunut, presented officers a Thai passport, and claimed to be a citizen of Thailand. She claimed to reside in Los Angeles, California. A criminal history search of the woman showed a prior arrest for prostitution in Oklahoma City, Oklahoma. Defendant persuaded, induced, enticed, and coerced Kosonsuphakit Chompunut to travel from outside the state of

Texas to this location at the Marquis at Ladera Vista for the purpose of engaging in prostitution.

8. On July 12, 2007, an undercover officer called the telephone number listed on easternsecrets.com and requested an appointment. The telephone was answered by "Tracy," who told the officer to drive to the intersection of Highway 183 and Duval Road in Austin, Texas, and to call again. The officer placed a second call and was directed to the apartment mentioned above at the Marquis at Ladera Vista. The officer was greeted by an Asian woman. Upon entering the apartment the officer saw no furniture in the apartment living room except mattresses and a television and only a mattress and a nightstand in the bedroom. An open condom wrapper and an unused condom were on the nightstand. After paying the woman $100, the prostitute removed the officer's clothing and began giving him a massage. The woman asked if he "liked her friend," and, "if so, then he would have to pay. The officer paid the prostitute another $60, and a short time later a second Asian woman entered the room dressed in a sheer night gown and asked the officer, "You like to fu--?" The officer said he only wanted a massage and left the room.

9. From November 2006 to May 2007, Defendant was operating another location at the Falcon Ridge Apartment Complex at 500 East Stassney Lane in Austin, Texas. Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at the Falcon Ridge Apartment Complex for the purpose of engaging in prostitution.

10. During the period from November 2006 to May 2007, a maintenance man for the Falcon Ridge apartment complex conducted a routine inspection of the apartment. When he knocked at the door, the Defendant answered the door. Upon entering the apartment for maintenance the man opened a closet door where he found a second Asian woman hiding in the closet. The apartment at Falcon Ridge did not have much furniture. The maintenance man had frequently seen the Defendant at the apartment, and frequently saw her driving a light gold Lexus sedan.

11. From September 25, 2007, to November 14, 2007, the Defendant operated a location at the Barrington at Park Place Complex at 3220 Duval Road in Austin, Texas, Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at the Barrington at Park Place Complex for the purpose of engaging in prostitution.

12. On October 3, 2007, officers followed the Defendant from her residence on Crazy Well Drive to the apartment at the Barrington at Park Place Complex. She then left the apartment with another Asian woman and went to the HEB grocery store. Inside the store, the other Asian woman filled out a Western Union wire transfer request. The woman was later identified as Jittraporn Premlert. She had an identity card from Illinois. A criminal history report indicated that she had been arrested for prostitution in Orlando, Florida, in 2005 and Rockville, Maryland, in 2008. The investigation revealed that Premlert conducted 89 wire transfers from January 1, 2004, to

October 31, 2007, totaling $152,438.00. All of the money went to Thailand and was sent from various states including Illinois, Pennsylvania, Texas, California, Massachusetts, Georgia, Washington, Missouri, and Nevada. Defendant persuaded, induced, enticed, and coerced Jittraporn Premlert to travel from outside the state of Texas to this location at the Barrington at Park Place Complex for the purpose of engaging in prostitution.

13. In March 2008, the Defendant operated a location at the Homestead Studio Suites located at 9100 Waterford Centre Boulevard in Austin, Texas. Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at the Homestead Studio Suites for the purpose of engaging in prostitution.

14. On March 10, 2008, an undercover officer placed a phone call to the number listed on easternsecrets.com. After scheduling an appointment, he arrived at the Homestead Studio Suites located at 9100 Waterford Center Boulevard. An Asian woman met him there, identified herself as "Wendy," and led him into a bedroom. The woman asked the officer if he wanted her to perform oral sex on, him at a cost of $180. He declined and asked for a massage. The woman massaged him for a brief period of time, but said that she did not like giving massages. She told the officer that she lived in New York and would be leaving the following day. Defendant persuaded, induced, enticed, and coerced "Wendy" to travel from outside the state of Texas to this location at the

Homestead Studio Suites for the purpose of engaging in prostitution.

15. In March 2008, the Defendant began renting space in a commercial strip mall at 9025 Research Boulevard, Austin, Texas. Defendant persuaded, induced, enticed, and coerced women to travel from outside the state of Texas to this location at 9025 Research Boulevard, Austin, Texas, for the purpose of engaging in prostitution.

16. On June 24, 2008, officers saw the Defendant and another Asian woman leave the location at 9025 Research Boulevard, Austin, Texas. The woman placed a suitcase into the Defendant's Lexus. The Defendant then drove to Bergstrom International Airport, where the woman left the vehicle, retrieved her suitcase, and entered the terminal. The Asian woman was later identified the woman as Chaiyaraj Suwatana. Suwatana had been arrested for crimes against nature in Orleans Parish Louisiana on January 29, 2008; for performing a massage without a license in Washington, DC on August 17, 2007; and for "keeping a house of ill fame" in San Francisco on July 25, 1997. Defendant persuaded, induced, enticed, and coerced Chaiyaraj Suwatana to travel from outside the state of Texas to this location at 9025 Research Boulevard, Austin, Texas for the purpose of engaging in prostitution.

17. On May 6, 2009, multiple state and federal agencies executed federal search warrants on Defendant's residence at 11117 Crazy Well Drive, and on her business location at 9025 Research Boulevard. Before executing the warrants, two

undercover officers went into the location at 9025 Research Boulevard. One officer was offered sex in exchange for $165 by one of the Defendant's employees, later identified as Su Kun Yue. The Defendant offered the other agent oral sex in exchange for $165, but said that the officer would have to wait for the "other girl" for intercourse, as Defendant was pregnant and said that she did not want to have sex for fear of harming the baby. When the signal for law enforcement to move in an execute the search warrant was made, the Defendant told the undercover officers and Yue to run out the back door. Defendant persuaded, induced, enticed, and coerced Su Kun Yue to travel from outside the state of Texas to this location at 9025 Research Boulevard, Austin, Texas, for the purpose of engaging in prostitution.

Defendant's Use and Laundering of the Proceeds of her Unlawful Activity

18. Defendant made hundreds of thousands of dollars with her prostitution business. Bank records from Bank of America show that from March 2004 through December 2008, the Defendant deposited $408,266.54 into her accounts. Of that amount, $315,157.00 were cash deposits which never exceeded $10,000.00. Bank records from Wachovia Bank from December 2003 through September 2007 show Defendant deposited $143,474.40 into her accounts of which $125,944.00 were cash deposits all under $10,000.00. Bank records from Wells Fargo Bank show that from February 2007 through July 2008, the Defendant deposited $72,589.55 into

her accounts, of which $58,580.00 were cash deposits and again, did not exceed $10,000.00.

19. During their search of Li's residence, officers found $19,787.23, more or less, in United States Currency; a Men's Omega watch; a ladies Rolex watch; a ladies platinum 3.5 carat diamond ring; and a ladies gold and jade ring. In addition to these items, officers found more than one thousand condoms. With regard to the currency, officers found approximately $17,0000 in various locations in the residence, scattered haphazardly around in bundles of a few thousand dollars each. Officers found the remainder of the Respondent $19,787.23, more or less, in United States Currency, in a bank deposit envelope in the Defendant's Lexus. The U.S. Currency and the funds used to purchase the jewelry found during the search were derived from the Defendant's violations of Title 18 U.S.C. Section 2422(a), that is, her persuasion, inducement, enticement, and coercion of various women to travel from outside the state of Texas to various locations in the Austin, Texas, area for the purpose of engaging in prostitution.

20. On June 11, 2009, agents obtained federal seizure warrants for bank accounts owned by the Defendant. The warrants led to the seizure of the following Respondent Properties: $1,027.38 more or less in United States Currency in Wachovia Bank Account #XXXXXXXXX1747; $1,537.51 more or less in United States Currency in Wachovia Bank Account #XXXXXXXXX6412; $2,907.35 more or less in United States Currency in Bank of America Account #XXXXXXXX1888;

$1,900.88 more or less in United States Currency in Bank of America Account #XXXXXXX0279; $4,078.70 more or less in United States Currency in Washington Mutual Account #XXXXXX3585; $909.73 more or less in United States Currency in Wells Fargo Account #XXX-XXX6754; and $1,025.24 more or less in United States Currency in Wells Fargo Account #XXX-XXXX5464. All but the Washington Mutual account are in the name of Hong Yan Li with an address of 11117 Crazy Well Drive, Austin, Texas. The Washington Mutual account is in the name of Hong Yan Li doing business as Sunrise Beauty and Health, at 11117 Crazy Well Drive, Austin, Texas. The funds found in these various accounts were derived from the Defendant's violations of Title 18 U.S.C. Section 2422(a), that is her persuasion, inducement, enticement, and coercion of various women to travel from outside the state of Texas to various locations in the Austin, Texas, area for the purpose of engaging in prostitution.

21. Defendant purchased a property (her residence) at 11117 Crazy Well Drive in Austin, Texas on August 31, 2005. She provided a $27,082 cashier's check from Bank of America and a $30,000 cashier's check from Wachovia Bank, both drawn on her accounts at those banks. Prior to the purchase, between August 1, 2005, and August 30, 2005, Defendant deposited $22,200 in cash into her Bank of America account. Between August 9, 2005, and August 17, 2005, Defendant made four cash deposits totaling $13,800 into her Wachovia account. The funds deposited into the bank accounts and then used for the cashier's checks were derived from the Defendant's violations of

Title 18 U.S.C. Section 2422(a), that is, her persuasion, inducement, enticement, and coercion of various women to travel from outside the state of Texas to various locations in the Austin, Texas, area for the purpose of engaging in prostitution. Defendant was aware of the source of these funds. These funds went directly toward the purchase of 11117 Crazy Well Drive. The remainder of the purchase was financed through Countrywide Mortgage. Defendant paid off the mortgage in November 2007.

22. Defendant purchased a property at 12928 Modena Trail in Austin, Texas on February 21, 2006. She brought a total of $41,218 to the closing, comprised of four $9,800 cashier's checks and $2,018 in money orders. Two of the $9,800 cashier's checks were purchased with cash deposits. The two other cashier's checks were purchased with money from the withdrawal of two certificates of deposits, which had been previously purchased with cash. The cash used to buy two of cashier's checks, as well as the cash used to purchase the certificates of deposit that funded the other two cashier's check, were derived from the Defendant's violations of Title 18 U.S.C. Section 2422(a), that is, her persuasion, inducement, enticement, and coercion of various women to travel from outside the state of Texas to various locations in Austin, Texas, area for the purpose of engaging in prostitution. Defendant was aware of the source of these funds. Defendant financed the remainder of the purchase price with a mortgage from Aegis Mortgage. She paid off the loan in late 2008.

23. The Defendant purchased a property at 15224 Mandarin Crossing in Austin, Texas, on September 19, 2007. She purchased the property outright with a $31,757.69 cashier's check from Bank of America and a $70,000.00 cashier's check from Wachovia Bank, both drawn on her accounts at those bancks. The Bank of America funds included nine $1000 money orders purchased from Bank of America and deposited into Defendant's account on August 29, 2007. It also included a cash deposit of $8000, into her account that was made the day after the deposit of the money orders. The cash used to buy the nine $1000 money orders, the cash used to make the $8,000 deposit, as well as the remaining funds used to purchase the $31,757.69 cashier's check from Bank of America and the $70,000.00 cashier's check from Wachovia Bank, were derived from the Defendant's violations of Title 18 U.S.C. Section 2422(a), that is, her persuasion, inducement, enticement and coercion of various women to travel from outside the state of Texas to various locations in the Austin, Texas, area for the purpose of engaging in prostitution. Defendant was aware of the source of these funds.

24. The Defendant purchased the Respondent 10616 Mellow Meadows Drive in Austin, Texas on November 7, 2008 with two cashier's checks – a $27,752.32 check drawn on her Bank of America account and a $30,000 check drawn on her HSBC account. The Bank of America funds included a $7000 cash deposit made on September 11, 2008; a $7200 cash deposit made on October 15, 2008; and a $2050 cash deposit made on October 17, 2008. The cash used to make the deposits into

> the Bank of American account, as well as the remaining funds used to purchase the $27,752.32 cashier's check from Bank of America and $30,000 cashier's check from HSBC, were derived from the Defendant's violations of Title 18 U.S.C. Section 2422(a), that is, per persuasion, inducement, enticement, and coercion of various women to travel from outside the state of Texas to various locations in the Austin, Texas, area for the purpose of engaging in prostitution. Defendant was aware of the source of these funds.

This, in summary, would be the facts proven by the United States. The Defendant and the U.S. Attorney for the Western District of Texas agree and stipulate that the foregoing facts are a sufficient legal and factual basis for a plea of guilty by the Defendant.

11. Forfeiture

As part of this Plea Agreement, DEFENDANT HONG YAN LI expressly agrees that she will immediately and voluntarily forfeit to the United States of America the following properties, hereinafter referred to as the "subject real property and personal property," which are set forth in the Notice of United States of America's Demand for Forfeiture, as contained within the Information filed against her, namely:

Real Property:

a. ***11117 Crazy Well, Austin, Williamson County, Texas****, with all buildings, appurtenances, and improvements thereon and any and all surface and subsurface rights, title, and interests, if any, and being more particularly described as follows:*

> Avery Ranch Far West Phase 1, Section 4, Block C, Lot 71. RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY FOR ALL OF THE AFOREMENTIONED REAL PROPERTY: Easements, rights-of-way, and prescriptive rights, whether of record or not, all presently recorded instruments, other than liens and conveyances, that affect the property.

b. ***12928 Modena Trail, Austin, Williamson County, Texas****, with all buildings, appurtenances, and improvements thereon and any and all surface and sub-surface rights, title, and interests, if any and being more particularly described as follows:*

> Milwood Section 28, Block L, Lot 15, Williamson County, Texas. RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY FOR ALL OF THE AFOREMENTIONED REAL PROPERTY: Easements, rights-of-way, and prescriptive rights, whether of record or not, all presently recorded instruments, other than liens and conveyances, that affect the property.

c. ***15224 Mandarin Crossing, Pflugerville, Travis County, Texas****, with all buildings, appurtenances, and improvements thereon and any and all surface and sub-surface rights, title, and interests, if any, and being more particularly described as follows:*

> Lot 13, Block M, Gaston Sheldon Subdivision, Section 4, Travis County, Texas. RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY FOR ALL OF THE AFOREMENTIONED REAL PROPERTY: Easements, rights-of-way, and prescriptive rights, whether of record or not, all presently recorded instruments, other than liens and conveyances, that affect the property.

d. ***10616 Mellow Meadow-Dr #10D; Austin, Williamson County Texas****, with all Building, Appurtenances, and Improvements Thereon and any and all surface and sub-surface rights, title, and interests, if any, and being more particularly described as follows:*

> Unit No. 10-D and its appurtenant undivided interest in and to be the general and limited common elements of Park West Condominiums, a condominium regime in Williamson County, Texas, according to the Condominium Declaration, filed December 22, 2005, recorded in/under 2005101448 of the Real Property Records of Williamson County, Texas when take with all Amendments and/or Supplements thereto. RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE

AND WARRANTY FOR ALL OF THE AFOREMENTIONED REAL PROPERTY: Easements, rights-of-way, and prescriptive rights, whether of record or not, all presently recorded instruments, other than liens and conveyances, that affect the property.

Personal Property:

a. $19,787.23 more or less in United States Currency seized on May 6, 2009;

b. $1,027.38 more or less in United States Currency in Wachovia Bank Account #XXXXXXXXX1747;

c. $1,537.51 more or less in United States Currency in Wachovia Bank Account #XXXXXXXXX6412;

d. $2,907.35 more or less in United States Currency in Bank of America Account #XXXXXXXX1888;

e. $1,900.88 more or less in United States Currency in Bank of America Account #XXXXXXX0279;

g. $4,078.70 more or less in United States Currency in Washington Mutual Account #XXXXXX3585;

h. $909.73 more or less in United States Currency in Wells Fargo Account #XXX-XXX6754;

i. $1,025.24 more or less in United States Currency in Wells Fargo Account #XXX-XXXX5464;

j. One Men's Omega Watch seized on May 6, 2009;

k. One Ladies Rolex Watch seized on May 6, 2009;

l. One Ladies Platinum 3.5 Carat Diamond Ring seized on May 6, 2009; and

m. One Ladies Gold and Jade Ring seized on May 6, 2009.

All in violation of 18 U.S.C. § 2422(a) and 18 U.S.C. § 1957(a), and are subject to forfeiture pursuant to 18 U.S.C. § 2428 and 18 U.S.C. § 982(a)(1).

DEFENDANT HONG YAN LI agrees and stipulates that the aforementioned subject real property and personal property are subject to forfeiture to the United States of America, pursuant to the provisions of 18 U.S.C. § 2428 and 18 U.S.C. § 982(a)(1) for violations of 18 U.S.C. § 2422(a) and 18 U.S.C. § 1957(a); that she is the true and actual owner of said subject real property and personal property; and that she has no objection to, and does not contest the criminal, civil, and/or administrative forfeiture of the subject real property and personal property to the United States of America. DEFENDANT HONG YAN LI agrees to waive her right to notice of any forfeiture proceeding involving the subject real property and personal property and agrees not to file a claim or assist others in filing a claim in the criminal, civil, and/or administrative forfeiture of the subject real property and personal property.

DEFENDANT HONG YAN LI farther agrees and stipulates that the facts which are set forth in this Plea Agreement executed by said Defendant are true and correct and establish that the subject real property and personal property are in violation of 18 U.S.C. § 2422(a) and 18 U.S.C. § 1957(a), and are subject to

forfeiture pursuant to 18 U.S.C. § 2428 and 18 U.S.C. § 982(a)(1).

DEFENDANT HONG YAN LI further agrees and stipulates that the aforementioned subject real property and personal property represent properties derived from unlawful proceeds obtained by her as a result of the violations mentioned above, properties used or intended to be used to commit the violations mentioned above, and/or properties involved in financial transactions with unlawful proceeds traceable to the violations mentioned above.

DEFENDANT HONG YAN LI further agrees and stipulates that she will execute and deliver to the United States of America any and all documents deemed necessary by counsel for the United States of America to accomplish the forfeiture of the subject real property and personal property as set forth in this Plea Agreement, including but not limited to any waivers, withdrawals of claim, settlement agreements, execution of a consent decree, surrender of titles, and/or motions to be filed in this instant criminal action.

DEFENDANT HONG YAN LI further agrees and acknowledges that she is aware that the Fifth Amendment to the United States Constitution provides, in part, that no person shall be subject for the same offense to be twice put in jeopardy, and further acknowledges and represents that she is aware that the Eighth Amendment to the United States Constitution provides, in part, that excessive fines shall not

be imposed. In this regard, DEFENDANT HONG YAN LI further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment.

DEFENDANT HONG YAN LI further agrees, stipulates and waives any and all right to a jury trial on forfeiture issues as well as any and all right to appeal the forfeiture of the subject real property and money judgment to the United States of America.

12. Conclusion

This written agreement constitutes the entire plea agreement between the parties and is binding only on the parties to it, namely, the United States Attorney for the Western District of Texas, and the Defendant, Hong Li. This agreement cannot be modified except in writing signed by all parties or done in open court. The Defendant fully understands that by this plea agreement, no promises, representations, or agreements have been made or entered into with any other United States Attorney or with any state prosecutor concerning other possible offenses or charges. It is further understood by the parties that this agreement does not prevent any government agency from pursuing civil and/or administrative actions against the Defendant or any property.

Respectfully submitted,

JOHN E. MURPHY
Acting United States Attorney

By: /s/ Christopher L. Peele
CHRISTOPHER L. PEELE
Assistant United
States Attorney
816 Congress Avenue,
Suite 1000
Austin, Texas 78701
Phone (512) 916-5858
Fax (512) 916-5854
State Bar No. 24013308

Defendant's Signature: I, Hong Yan Li, have carefully read and reviewed the foregoing plea agreement in its entirety. After giving careful and mature consideration to the making of this plea agreement, thoroughly discussing the plea agreement with my attorney, fully understanding my rights with respect to the pending criminal charge(s), and in reliance upon my own judgment and the advice of my attorney, I freely and voluntarily agree to the specific terms and conditions of the plea agreement. Moreover, I am satisfied with the advice my attorney has provided to me in this matter.

/s/ Hong Yan Li — 9-10-09
Hong Yan Li — Date
Defendant

Defense Counsel Signature: I am counsel for the Defendant, Hong Yan Li, in this case. I have fully

explained to the Defendant all of her rights with respect to the pending criminal charge(s). I have carefully reviewed this plea agreement in its entirety with the Defendant and provided her with my best professional advice. In my opinion, the Defendant's decision to enter into this plea agreement is made freely, voluntarily and with full knowledge of its obligations and consequences.

/s/ Robert L. Buford	9.10.09
Robert L. Buford	Date
Attorney for Defendant	