

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 14-cr-50**
 :
 JUCONTEE THOMAS WOEWIYU :

**GOVERNMENT’S SENTENCING MEMORANDUM AND
MOTION FOR UPWARD DEPARTURE AND/OR VARIANCE**

The United States of America, by its attorneys, William M. McSwain, United States Attorney for the Eastern District of Pennsylvania, and Linwood C. Wright, Jr. and Nelson S.T. Thayer, Jr., Assistant United States Attorneys for the District, respectfully submits the following sentencing memorandum and motion for upward sentencing departure and/or variance.

I. INTRODUCTION

When defendant Jucontee Thomas Woewiyu, a native and citizen of Liberia, sought to become a naturalized United States citizen, he filled out an Immigration and Naturalization Service Form N-400, Application for Naturalization, and entered an “X” in the box marked “No” to the following questions:

1. “Have you **EVER** been a member of or associated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place?” (Question 8a);
2. “Have you **EVER** advocated (either directly or indirectly) the overthrow of any government by force or violence?” (Question 10); and
3. “Have you **EVER** persecuted (either directly or indirectly) any person because of race, religion, national origin, membership in a particular social group, or political opinion?” (Question 11).

When Woewiyu signed his completed Form N-400 on January 23, 2006, he thereby certified under penalty of perjury that his answers were true and correct. On January 30, 2009, when

Woewiyu was interviewed in person by a United States Citizenship and Immigration Services naturalization officer, he orally reaffirmed under oath that the answer to each of these questions was “No,” but then changed his answer to Question 8a to “Yes,” naming only one organization, the “United Liberian Association in the United States.” At the conclusion of the interview, Woewiyu signed a second certification on the Form N-400 in which he again swore and certified under penalty of perjury that the contents of his naturalization application were true and correct.

The evidence at trial established that Woewiyu intentionally lied when he answered “No” to these questions, and that he knowingly concealed significant, material disqualifying facts, which truthful answers to those questions would have required him to reveal. Specifically, Woewiyu concealed that during Liberia’s first civil war, he served as the Minister of Defense and Chief Spokesperson of the National Patriotic Front of Liberia (“NPFL”), a rebel group dedicated to the armed overthrow of Liberia’s then-sitting government and its elected leader, President Samuel K. Doe, and that, from his paramount position of authority, he promoted and pursued the most abhorrent of NPFL policies: the kidnapping, forcible recruitment and exploitation of child soldiers as front-line fighters and as his own personal bodyguards, and the open and notorious deployment of those children across Liberia to commit persecutory separations and killings based on ethnicity and political opinion at the ubiquitous NPFL checkpoints which became hallmarks of the horror that was the first Liberian civil war. Those persecutory killings targeted members of the Krahn and Mandingo tribes, Armed Forces of Liberia soldiers, other rebel groups and even West African ECOMOG peacekeepers. Also marked for death pursuant to NPFL policy was anyone perceived to be collaborating with these targeted groups, and among those countless NPFL victims were five American nuns who, during a military assault code-named Operation Octopus, were shot to death by NPFL fighters on the

orders of a commander known as Mosquito, whom Woewiyu by his own account had trained and whom Woewiyu supplied with machine gun and rocket propelled grenade ammunition during the assault. The nuns were targeted for execution by the NPFL because they were suspected of collaborating with ECOMOG, which Woewiyu relentlessly identified as a mortal enemy supported by the United States. As such accused “connivers,” the nuns were executed pursuant to NPFL policy.

In deliberately providing deceitful answers to U.S. immigration authorities to hide his abhorrent wartime conduct, which he well knew would disqualify him from citizenship, Woewiyu perverted the integrity of this nation’s crucial gatekeeping process, manipulating that process in the hope that he -- a persecutor, a human rights abuser, a war criminal -- could enjoy the rights and protections afforded by perhaps the world’s most precious of privileges: United States citizenship.

Even among human rights violators who have been prosecuted in U.S. courts for immigration fraud -- to say nothing of the garden variety immigration fraud offenders -- Woewiyu is an extraordinary outlier in the breadth and scope of his personal responsibility for appalling acts he committed during Liberia’s first civil war, and the concomitant corruption of the very system that was designed to prevent the likes of Woewiyu from setting foot on our shores, much less being granted citizenship. This case therefore falls far outside the heartland of typical immigration fraud cases contemplated by the U.S. Sentencing Guidelines. Accordingly, because Woewiyu’s lies about his human rights abuses constitute an aggravating circumstance of a kind and to a degree not adequately taken into consideration by the Guidelines, and because his criminal history category substantially underrepresents the seriousness of his criminal history, the government moves for an upward departure pursuant to United States Sentencing Guidelines

Sections 5K2.0 and 4A1.3(a)(1), respectively. In addition, the government moves for an upward variance based upon the sentencing factors in 18 U.S.C. § 3553(a). Given that Woewiyu's egregious war crimes formed the basis and motive for his false statements and perjury, and that there can be no more egregious an assault on our nation's immigration scheme than the prospect of granting U.S. citizenship to such a high-level war criminal, his case is extraordinary and warrants sentencing him to thirty years' imprisonment.

II. PROCEDURAL BACKGROUND

On January 30, 2014, a federal grand jury sitting in the Eastern District of Pennsylvania returned a sixteen-count indictment charging Woewiyu with one count of attempting to obtain citizenship by providing false and fraudulent information and omitting material facts, in violation of 18 U.S.C. § 1425(a) (Count 1); one count of attempting to obtain citizenship to which he was not entitled owing to lacking "good moral character," in violation of 18 U.S.C. § 1425(b) (Count 2); four counts of fraud in immigration documents, in violation of 18 U.S.C. § 1546(a) (Counts 3, 4, 5 and 6); three counts of false statements in relation to naturalization, in violation of 18 U.S.C. § 1015(a) (Counts 7, 8 and 9); three counts of oral perjury, in violation of 18 U.S.C. § 1621(1) (Counts 10, 12 and 14); and four counts of certification perjury, in violation of 18 U.S.C. § 1621(2) (Counts 11, 13, 15 and 16). On July 3, 2018, after a three-week trial, Woewiyu was found guilty of 11 of 16 counts; specifically, Counts 1, 2, 4, 5, 8, 9, 10, 12, 13, 14 and 15. He was acquitted of Counts 3, 6, 7, 11 and 16.

III. THE OFFENSE CONDUCT

The evidence at trial established that Woewiyu was a founder and leader of the National Patriotic Front of Liberia, the rebel group that on Christmas Eve of 1989, fired the first shots in Liberia's brutal civil war, and that continued to wage its bloody uprising until its leader, Charles

Taylor, was elected Liberia's president in 1997. As the NPFL's Minister of Defense and Chief Spokesperson, and close friend and ally of Taylor, Woewiyu's role throughout the conflict was central and singularly influential, commensurate with the highest-level political and military positions he held. Indeed, Woewiyu was responsible, second only to Taylor, for implementing the NPFL's political and military objectives.

Woewiyu was a U.S. green card holder since 1972, and he abused that status and immigration benefit to facilitate his mission as an NPFL leader, from giving him access to American diplomats in the United States whom he sought to influence on behalf of the NPFL; to serving as the "acceptable face" and voice of the NPFL to the international community, spinning and deflecting accusations of human rights abuses; to leading the way when the NPFL walked away from the peace table to continue fighting; to flying back and forth from Liberia to meet up and down the East Coast with arms brokers to negotiate the sale of heavy machine guns, grenade launchers and even surface-to-air missiles to shoot down ECOMOG peacekeepers' jets.

Traveling easily between the U.S. and Africa, Europe and Liberia for these purposes, the evidence at trial further established that when on the ground in his home country, Woewiyu exercised the duties and responsibilities expected of a Defense Minister, and that he received the commensurate degree of respect and obedience. Woewiyu acquired arms and ammunition for his fighters; delivered those lethal supplies to his fighters on the front lines; recruited fighters; addressed fighters at their training bases before military operations; issued orders to commanders and fighters; brought those fighters to the battlefield; and was briefed by his commanders at the front. Significantly, at every one of these stages, Woewiyu's fighters included child soldiers. Indeed, the defendant was a leading proponent of the NPFL's foul practice of capturing and training little boys and girls to serve as child soldiers on the front lines, as his personal

bodyguards and as the tip of the spear of terror at the NPFL's blood-soaked checkpoints.

Woewiyu's endorsement, promotion and personification of these persecutory policies and human rights abuses wreaked catastrophic consequences for Liberia, whose citizens fortunate enough to survive the conflagration, still suffer for them to this day.

Summarized below by general category is a non-exhaustive accounting of some of the evidence of Woewiyu's atrocities adduced at trial. Woewiyu concealed these facts, now proved, and in doing so, sought to impede U.S. immigration officials from discharging their vital gatekeeping duties as contemplated by our immigration system.

A. Woewiyu's Leading Role And Authority In The NPFL, And Commitment To The Armed Overthrow Of The Doe And Successor Governments

The evidence at trial established that Woewiyu was a founder and leader of the NPFL, and that he relentlessly pursued the violent overthrow of the Doe and successor governments. For example, approximately three or four weeks after the NPFL invaded Nimba County on December 24, 1989, Woewiyu called former U.S. Assistant Secretary of State for African Affairs **Herman Cohen** and identified himself as the NPFL and Taylor's official spokesperson. Cohen considered Woewiyu a close confidante of Taylor and a reliable intermediary. Cohen discussed a January 2, 1990 memorandum from Woewiyu to the U.S. State Department in which Woewiyu described the objective of the NPFL's "military campaign" as "the overthrow of the Doe dictatorship and its replacement, in a two-phase process, by a democratically elected government." Cohen had contact with only two NPFL representatives, Taylor and Woewiyu, and when the U.S. government sought to repatriate the remains of the five American nuns murdered by the NPFL from NPFL territory, the American Ambassador at the time wanted the message to go to Taylor or Minister of Defense Woewiyu. PSR ¶¶ 47-48; Gov. Exh. F-1.

In the spring of 1990, former U.S. Ambassador **James Bishop** met with Woewiyu twice

in Washington, D.C. Bishop understood that Woewiyu represented the NPFL as its Minister of Defense, that he was in charge of the military and that the objective of the NPFL was to remove the Doe regime. PSR ¶ 45.

Approximately one month prior to departing for Liberia in August of 1991, former U.S. Deputy Chief of Mission **Gerald Rose** met for lunch in the U.S. with Woewiyu, who he understood was the NPFL's Minister of Defense and spokesperson. Woewiyu told Rose about the NPFL's goals and impressed him by being very educated and well-spoken, though he reminded Rose of a used car salesman. Woewiyu was selling the mission of the NPFL, which was to assume power over the government, remove Doe and establish a new government. When Rose arrived in Liberia in August of 1991, the NPFL controlled the entire country save for Monrovia, which had been guarded by a defensive perimeter of ECOMOG peacekeepers for almost two years. PSR ¶¶ 70-71.

When British journalist **Mark Huband** was ushered into Taylor's secluded jungle headquarters after a prominent NPFL military commander had been killed in May or early June of 1990, he saw Woewiyu seated at Taylor's right hand, dressed in military fatigues and cap, with an AK-47 between his legs. PSR ¶ 69.

BBC West Africa Correspondent **Elizabeth Blunt** conducted interviews between June and October 1990 with Woewiyu, who as the NPFL spokesperson and Minister of Defense, served as the NPFL's "acceptable face." During the interviews, Woewiyu was not interested in coming to an agreement with the Doe government, but instead wanted to fight until Doe was out of Monrovia. After Doe was removed, the NPFL continued to fight ECOMOG. PSR ¶ 49.

Liberian journalist **Witness A** and other journalists were invited from Monrovia to the Executive Mansion for what turned out to be a celebration of Taylor's birthday. Once inside a

large room in the Executive Mansion, Witness A saw NPFL Chief of Staff General Isaac Musa, other NPFL commanders and Woewiyu, who was seated on Taylor's right-hand side. Taylor stood up and told a story in which Woewiyu was a central figure. PSR ¶ 85.

Witness A recalled another occasion when Woewiyu came to Monrovia for a "confidence-building" event, and a member of Woewiyu's entourage pointed out Witness A and said, "Chief, this is the BBC guy." Woewiyu thanked Witness A and said that his stories' detailed locations pinpointed the positions of their enemies, which at that time were the Liberia's national army, the Armed Forces of Liberia ("AFL"), and ECOMOG. PSR ¶ 86.

Liberian photojournalist **James Fasuekoi** testified that even with interim government in place, the NPFL continued to fight the AFL and ECOMOG. PSR ¶ 43.

United States Customs Service Special Agents **Gary Lang, Peter Ostrovsky** and **William Parks** all testified about a long-term undercover investigation in which they posed as Miami-based illegal arms brokers and were introduced to Woewiyu through a third party who had been under investigation. Over a series of audio and video-recorded meetings between early 1992 and the end of 1993, Woewiyu and the U.S. undercover agents agreed that he would purchase for a price of approximately two million dollars: six Stinger missile launchers, plus 18 Stinger missiles; ten Redeye disposable missiles; 1,100 M-16 assault rifles, plus approximately one million rounds of ammunition; 24 M-60 heavy machine guns; and 15 M-79 grenade launchers. PSR ¶¶ 98-107.

The evidence further established that Woewiyu eagerly sought the Stinger and Redeye surface-to-air missiles so that his NPFL fighters would have the capability to shoot down ECOMOG jets, which were bombing NPFL positions. The plan Woewiyu entered into with the undercover agents was that the arms would be secreted with medical supplies and shipped via

Sierra Leone to evade United States export control laws prohibiting the sale of items such as surface-to-air missiles, and to circumvent an embargo imposed on Liberia at the time. In order to conceal the illicit nature of the cargo and to provide a mechanism by which the NPFL government, the National Reconstruction Assembly Government (“NPRAG”), could pay the undercover business for the arms, the defendant provided a “Promissory Note,” signed by Charles Taylor, in the amount of \$2,350,000 on behalf of the NPRAG to the undercover company for the “medical supplies,” as well as an eight-page inventory of the fictitious medical supplies. Video and audio-recordings captured Woewiyu laughing and joking about the fact that the weaponry would be concealed in and referred to as “medical supplies,” as well as him inspecting an M-16 machine gun at the undercover warehouse. PSR ¶¶ 100-105.

Herman Cohen testified that after Doe was removed from power, the NPFL fought ECOMOG, and then ULIMO. Throughout the many peace conferences, the NPFL kept fighting. PSR ¶ 48.

Gregory Stemn also took numerous photographs of Woewiyu meeting with various interim government officials and attending numerous peace conferences, where Woewiyu represented the NPFL. The fighting did not stop, however, and the NPFL fought AFL soldiers, INPFL rebels, ECOMOG peacekeepers and ULIMO rebels. PSR ¶ 76. Stemn and **James Fasuekoi** both identified Woewiyu in separate photographs they took at a 1994 gathering of leaders of a coalition of warring factions which called itself the Central Revolutionary Committee or CRC, which was itself a warring faction that broke away from Taylor and fought against Taylor and the NPFL. PSR ¶¶ 44, 76.

The evidence further established that these witnesses saw Woewiyu as he described himself, in his own words, throughout and following the war. For example, numerous witnesses

explained how they obtained their news from the radio and recalled hearing Woewiyu interviewed by the BBC, and the jury heard many of those recordings, in which Woewiyu, sometimes on the line from locations in Liberia such as Gbarnga:

- confirmed that the NPFL controlled 90% of the land and 99% of the people;
- described the military objectives and progress of the NPFL forces and the creation of the NPRAG, which had been running the country and of which he was a member;
- insisted that Charles Taylor lead the interim government;
- voiced the NPFL's hostility to ECOMOG, its suspicion of the Mandingo presence among its Guinean peacekeepers and the NPFL's determination to continuing fighting against ECOMOG, which he believed was supported by the U.S.;
- acknowledged the existence of the NPFL's Small Boys Unit and endorsed the NPFL's use of armed child soldiers;
- responded to allegations of NPFL atrocities against civilians and the disappearance of Senegalese ECOMOG peacekeepers; and
- declared being of being "one mind" with Charles Taylor as his Defense Minister.

PSR ¶¶ 127.

During a 1994 press conference announcing his split with Taylor and the formation of the CRC, Woewiyu asserted that he was a founding member of the NPFL and that even if he wanted to, he could not get out of the NPFL. In the same press conference, he accused NPFL General CooCoo Dennis of cutting peoples' ears off (an atrocity which the jury learned that Woewiyu personally authorized by his presence as the most superior NPFL leader during the interrogation by Dennis of beaten and bound prisoners, *see* Part III.E.3.a., *infra*) and, accused Taylor of using eight year-old child soldiers who dragged their AK-47s behind them, a particularly shameful accusation, given Woewiyu's own exploitation of child soldiers, described, *infra*, in Parts III.B through III.D. PSR ¶ 128.

In a 1996 affidavit in connection with insurance litigation involving the Firestone Corporation, which for decades before the war had maintained extensive rubber plantations in Liberia, Woewiyu described his role as a founder of the NPFL. PSR ¶ 128.

Dutch National Police Investigator Danny Tinga and interpreter/translator Arien

Zuijdwijk testified that after the war, in a 2004 statement to them in connection with a Dutch war crimes investigation of Dutch national Gus Kouwenhoven, Woewiyu stated that:

- “I am the co-founder of the NPFL. Together with Charles Taylor, I founded the NPFL;”
- Gus Kouwenhoven had given the NPFL \$150,000, part of which was used to buy arms;
- “I was the main negotiator as well as spokesman for the NPFL” and the Minister of Defense;
- he split with Taylor in 1994, and as a member of the CRC, he fought Taylor, but later reconciled with him and served as his Minister of Labor; and
- even in 1999, years after the first civil war was over, “I also still had a fair amount of influence in military affairs.”

PSR ¶ 41; Gov. Exh. D-1.

In his 2006 statement to the Dutch, Woewiyu stated:

- that “[i]n December 1989, we had started the war,” and “[w]e needed money for arms;”
- that half of Kouwenhoven’s \$150,000 had been used to buy arms;
- that “I know everything” about weaponry because “I am the former Minister of Defense” and an “expert” in military matters;
- that “I never physically engaged in fighting. As the Minister of Defense of the NPFL, I did issue order to fighters;” and
- that as Defense Minister he trained commanders who gave orders during the war, including “James Vamo, whose nickname was ‘Mosquito.’”

PSR ¶ 41; Gov. Exh. D-3.

After the war, Woewiyu continued to avow his formative role in the NPFL. In a 2005 “Open Letter to President Ellen Johnson Sirleaf,” Woewiyu described his role in forming, training and arming the NPFL. PSR ¶ 128.

B. Woewiyu’s Forcible Recruitment Of Child Soldiers

Few NPFL practices were more odious or multi-generationally catastrophic than its use of child soldiers, of which Woewiyu was a proud proponent. In fact, he described and endorsed the NPFL’s use of child soldiers to the BBC as a sort of mobile orphanage:

It's a very small group. We put them all together to make sure they don't do anything that we don't want them to do and uh, to keep them disciplined. But the Small Boys Unit contains maybe from thirteen to fourteen on. They not, they not babies, they not ten years old. When we got here, uh by the time we reached places from Nimba to Bassa, we saw a young kids. The former military regime had killed their parent right in front of them and they placed themselves, they had no other place to go, to fight, to do whatever they had to do to defend themselves. The AK-47 weighs, you know, maybe ten, fifteen pounds, and if this young fellow feels like, if he doesn't fight, he will be dead anyway, Uh, he comes forward to do what he has to do.

PSR ¶ 127, Gov. Exh. I-27.

The reality, as all of Liberia knows and as the jury learned, was tragically and brutally different. **Witness GG** grew up in Gbarnga and fled to Kakata with her brother, Witness FF, during the war. In Kakata, which at the time was controlled by the NPFL, she and Witness FF sold goods in the market and came to recognize NPFL commanders such as Martina Johnson and Woewiyu, who passed through Kakata. During Operation Octopus, she and Witness FF, who was then twelve years old, fled from Kakata to the bush near the village of Konola, where they continued to sell goods to survive. One day they were sitting at the Konola market selling goods when she saw a group of people running and boys being chased by soldiers, including armed child soldiers. She called to Witness FF and had her arms around him, but NPFL child soldiers pulled Witness FF from her and put him and other boys and men on a truck and took them away to the Konola NPFL base, as Witness GG and the other childrens' relatives ran behind the truck, crying. After Witness FF was taken away, Witness GG and relatives of the other boys walked to the Konola base to appeal to the Defense Minister, "Tom Woewiyu," whom they heard was in town that day. Woewiyu was the NPFL spokesperson and Minister of Defense, and she had listened to him previously on the BBC radio. The Konola base was located in a Seventh Day Adventist mission school. When Witness GG and the others arrived and explained to Woewiyu's bodyguards why they were there, the bodyguards, who included child soldiers,

pushed them away. Woewiyu was twenty feet away from Witness GG, speaking on a radio with his back to Witness GG's group, and when the group called out to him by name, he turned around and saw them. Woewiyu was wearing a white shirt, camouflage pants, and a military belt with a pistol on it. Woewiyu ignored their pleas, so they left. Witness GG decided to stay in Konola with a woman who cooked for the base, hoping that she would receive some news about Witness FF. For several days, every time she heard a vehicle arrive, she rushed to the base in case her brother was in it. One day she heard that the group of boys recently taken away from the Konola market had been ambushed, and that some had been killed and others had been injured and taken to the Phebe Hospital near Gbarnga. Witness GG went to the hospital and walked from room to room calling Witness FF's name until she found him. His hand had been injured and his face was bandaged, and she stayed with him in the hospital for two to three weeks while he recovered from his fingers being amputated. Witness GG stated that Witness FF cannot see because of the wounds to his eyes, and that even now, his eyes water constantly and cause him pain. PSR ¶¶ 50-51.

Witness FF was twelve years old and selling goods with his sister, Witness GG, in the Konola market when he was seized by child soldiers and taken by truck to the Konola base. He and the other boys were crying. They were placed in the Small Boys Unit under Commander Zobon [Johnson, commander of the Small Boys Unit] and trained for four days with other child soldiers and adults in how to fire and field strip an AK-47 and to kill. On the fourth day, they were told that the Minister of Defense was coming. When he arrived, he was addressed as "Chief Tom Woewiyu" and from a platform told the gathered fighters that they were going to liberate Liberia from ECOMOG. When Witness FF learned that he was going to the battlefield, he and the other child soldiers cried, but were admonished by a commander who was on the

platform with Woewiyu, who was wearing a white shirt, camouflage pants, a pistol on his side and a radio. That night Witness FF was taken in a truck toward the battlefield, but a rocket struck the truck on the way. He awoke in the hospital with his head and hand bandaged. Witness GG found him in the hospital after calling his name. He lost all of the fingers on his right hand as a result of the explosion, which also left him with constant pain in his eyes and impaired vision. PSR ¶¶ 52.

Witness X was fourteen years old in 1990 and was selling bread with his cousin Obie when the NPFL rebels attacked and entered Kakata. The NPFL drove the AFL out of Kakata between 1990 and 1991 and the local villagers coexisted with them. One day in 1992, when he was sixteen years old, Witness X and Obie were at Coles Farm to gather palm nuts to make oil, when the some NPFL soldiers led by a fighter named Alphonso appeared and ordered him to come down from the palm tree he was in. Witness X and Obie were taken by the NPFL fighters to Bong Mines, along with about ten other boys, and there joined other captured men and other boys -- some younger than he -- already being held in Bong Mines. In Bong Mines, the boys were told that they would be killed if they tried to escape. After a few days, they were told to come outside and get into formation. Three adult commanders then arrived in cars and brought weapons and food. Everyone gathered in formation in the middle of town and the three commanders spoke. General Zah was the first and told them that they would be going to the frontlines and would be trained first. Woewiyu addressed them last, and identified himself by his name and position, Defense Minister. When Woewiyu first arrived, he was honored by the soldiers, who stood at attention, saluted him and addressed him as "sir." Woewiyu wore khaki pants, a white shirt, and had a pistol and a grenade. Woewiyu told them that they should get prepared, and that they had two weeks to train before going to the front to fight. Woewiyu left

arms and ammunition on the ground with which they were to be trained. Before he left, Woewiyu gave the order that anyone who tried to escape would be executed. Witness X and the others, including boys as young as twelve years old, then received two weeks of training in how to load, fire and field strip guns, and taking cover. After the training, Woewiyu returned in a convoy with General Zah, and ordered AK-47s and ammunition to be distributed to the trainees. Woewiyu told the trainees that they were going to Duala to attack ECOMOG and fight ECOMOG soldiers and that it would not be easy. Woewiyu further told them that they would be divided into two groups, so the trainees were split in half, each taking a different route to Monrovia. Both groups had child soldiers. Their attack on ECOMOG involved heavy fighting, and they eventually retreated. One of Witness X's friend was killed, and he and Obie escaped to the bush. PSR ¶¶ 53-54.

Witness Y testified that on two occasions, when he was around nine years old, Zobon Johnson, the commander of the NPFL's Small Boys Unit, came to Zualay with other fighters and forced him and other boys to carry loads, such as ammunition magazines, to nearby villages. Johnson told the boys that Johnson's "boss" would compensate them when he arrived. On the third occasion, when Witness Y was between ten and eleven years old, he hid under a bed inside his home when the NPFL fighters came into town. NPFL fighters forcibly pulled Witness Y out from under the bed and took him from his foster sister, who was crying and begging them not to take him away. Witness Y was captured with about a dozen other boys, and he was the oldest. They were taken to a training camp which appeared to be a school in Gbarnga and taught to use guns. He was a frightened boy being held against his will, and recalled one seven or eight year-old girl in his group of captives who had spent most of her time crying and was taken away after disobeying an order, never to be seen again. Eventually, Johnson told the boys that the "boss" to

whom he had referred previously would arrive that day and speak to them. When the “boss” arrived, he identified himself as Tom Woewiyu, and was wearing camouflage pants, a white shirt and jacket, and a pistol on his belt. Woewiyu told the boys that the boys were at the camp for a purpose, which was to fight Doe’s soldiers. Woewiyu said that he would return. When Woewiyu returned, he distributed arms to some of the boys and divided them into two groups, one led by Woewiyu and the other by Johnson. Witness Y was assigned to Johnson’s group, and was unarmed; his role was to carry ammunition magazines to supply to the armed child soldiers who marched in front of and behind him. His group was headed to Monrovia, and *en route* they were attacked by small arms and rockets, so he and Obie ran into the bush and fled all the way to Guinea. PSR ¶¶ 55-56.

Witness CC was fifteen years old when the NPFL attacked the area of the Firestone plantation where he lived with his parents. After about a month living with an uncle, Witness CC was forcibly recruited by the NPFL, put on a truck and taken to the fairgrounds in Buchanan, where he and many other men and boys, some younger than he was, joined a large group already there. After enduring “Zero Week” of punishing training, during which two recruits died, Witness CC and the others received weapons and guerilla tactics training for two weeks. They were told that the AFL was the enemy. Witness CC became a member of the Small Boys Unit and was sent into the battle for Camp Schieffelin. After that battle, Witness CC was assigned to the Small Boys Unit in Gbarnga, under the command of Zobon Johnson. Witness CC manned one of a series of checkpoints leading to the Executive Mansion, where Charles Taylor lived. Witness CC recalled that many NPLF commanders passed through his checkpoint, including Chief of Staff Isaac Musa, Christopher “Mosquito” Vambo and Defense Minister Woewiyu. Witness CC recalled two or three occasions when Woewiyu arrived at his checkpoint, and each

time Witness CC followed the same procedure: he would salute Woewiyu, and then Woewiyu's Jeep and truck full of bodyguards were searched, and any weapons were held at the checkpoint while Woewiyu proceeded to the Executive Mansion to meet with Taylor. Witness CC specifically recalled Woewiyu handing over his .45 pistol to one of his bodyguards to hold at the checkpoint. PSR ¶ 57.

Witness BB was living in Todee, Montserrado County, where her mother sold food and drinks. One morning she saw soldiers were running around the village catching boys; soldiers came to the kitchen where her mother was cooking and asked where her two brothers were. The soldiers found her brothers and tied them up. When her parents cried and begged the soldiers for their boys, the soldiers told them to go beg to their boss, who was Woewiyu. Witness BB and her parents went to see Woewiyu at the barracks in the next town to beg for the boys' release. When they arrived at Woewiyu's building, his soldiers standing outside went inside and told him that Witness BB's parents were there. Woewiyu came outside, where her parents begged him for their sons. Woewiyu said nothing and went back inside. He came back out after changing clothes, and ordered his fighters to "take care of" her brothers, whom she never saw again. PSR ¶ 93.

C. The NPFL's Ubiquitous Use Of Child Soldiers

The evidence at trial established that the NPFL controlled over 90% of Liberia and, by Woewiyu's own account, the NPFL controlled 99% of Liberia's people. In fleeing their homes as the war raged, witness after witness described the hellscape that greeted them at checkpoint after checkpoint, from every corner of the country, which -- save for the capital Monrovia -- lay under NPFL control. It was at these checkpoints that the NPFL implemented its policy of ethnic, tribal and political war. The checkpoints were designed to instill terror, bearing body parts and

the stench of death, with armed children, under the direction of their NPFL commanders, perverting the natural order by determining which adults lived and died.

Dr. Elizabeth Kaiser, an expert in the characteristics of child soldiers, testified that the two major features which make child soldiers attractive to rebel groups are that they are fearless and that they are fearful. Because children's brains are not fully developed, they make good soldiers because they view soldiering as a game with fast rewards and do not assess the long-term consequences of their actions and do not have the required judgment. Child soldiers also trust and obey their adult mentors and mimic them, but could never voluntarily join a fighting force because they cannot assess harm. PSR ¶ 59.

British journalist **Mark Huband** was captured by the NFPL after his train was attacked by NPFL fighters, including child soldiers. During his travel in Liberia during the war, Huband was taken through countless NPFL checkpoints manned by armed child soldiers. PSR ¶ 66.

Even high-level American officials were not immune from this terrifying experience. *En route* to Taylor's headquarters in Gbarnga, **Gerald Rose** had to pass first through ECOMOG checkpoints, then through NPFL checkpoints. The NPFL checkpoints were manned by the SBU, or Small Boys Unit, fighters ranging in age from eight to fourteen. The boys were often drugged. At one NPFL checkpoint, a ten- or eleven-year-old child soldier with an AK-47 forced Rose out of his car and shoved the gun against Rose's body. Rose convinced the child soldier to let him pass after he told the boy that he would be in trouble if he did not let Rose make his appointment with the boy's "big boss," Taylor. Taylor's Gbarnga headquarters had multiple perimeters guarded by SBU fighters. There was effective command and control within the NPFL fighting forces, with radio communications across units, and overall NPFL aims and goals being set by Taylor and implemented through the NPFL's ministries. PSR ¶ 71.

As **Witness B**, a Krahn, fled with a friend to Sierra Leone, they reached an NPFL checkpoint at Klay manned by eleven- to fourteen-year-old boys with AK-47s. This checkpoint had a piece of rope across the road and a fresh human head with blood draining from it on a stake in the middle of the road. The process at this checkpoint involved a child soldier shouting at the people to stop at about 1,000 feet from the checkpoint, and then ordering each person one at a time to advance another 500 feet, at which time the person would be questioned about tribal and any government affiliation. If a person were identified as Krahn or Mandingo, they were ordered out of the line. Witness B and his friend then reached another checkpoint in Guthrie, where they stayed the night. The next morning, Witness B heard a woman crying that the NPFL had taken her husband. Witness B then saw an NPFL fighter tell a man to step aside, and next saw a child soldier shoot the man in front of his wife and children. The NPFL fighter said the family was Mandingo. Later that morning, the NPFL took another man to the Guthrie football field, ordered the whole group to gather around and shot the man as a warning to anyone trying to protect Krahns or Mandingos. Witness B and his friend continued walking, passing through more checkpoints that became more and more dangerous. People waiting in line were identified for separation, taken away and gunshots would follow, their bodies not buried, but placed in the middle of the town for display. PSR ¶¶ 77-80.

James Fasuekoi testified that he observed armed child soldiers controlling NPFL checkpoints, where they interrogated fleeing civilians about their tribal affiliations and dialects, and evidence of service in the AFL. People accused of being Krahn and Mandingo were taken away. At a “confidence-building” event in 1991 where Woewiyu led the NFPL delegation and was photographed by Fasuekoi, Fasuekoi also photographed an NPFL child soldier armed with an automatic rifle. PSR ¶¶ 42-43. During Operation Octopus in October of 1992, Fasuekoi

photographed NPFL child soldiers who had been captured in battle by ECOMOG peacekeepers and disarmed. PSR ¶ 43.

Herman Cohen testified that when he met Taylor at his jungle headquarters compound, Cohen saw child soldiers, some as young as 12 or 13, armed with large automatic weapons and who appeared to be on drugs, serving as bodyguards for Taylor. PSR ¶ 48.

During a short-lived “confidence-building” period when journalists were permitted to travel to Gbarnga to meet Taylor, Liberian journalist **Witness A** recalled having to pass through a checkpoint manned by child soldiers before proceeding to the Executive Mansion; on a later visit to the Executive Mansion, he observed the NPFL Chief of Staff, Isaac Musa, being disarmed by a child soldier bodyguard of Taylor before he could enter. PSR ¶¶ 84-85. As described by former child soldier, **Witness CC**, *supra*, these checkpoints and disarming protocols were strictly followed by the child soldiers operating the Executive Mansion checkpoints.

On July 9, 1990, **Witness HH**’s eleventh birthday, the NPFL attacked the AFL and captured the Red Light neighborhood of Monrovia, and he became separated from his family. Witness HH was fleeing alone toward the Fendell campus when he reached a checkpoint at the Coca-Cola factory, where he saw dead bodies everywhere and in the road, and NPFL fighters, including armed child soldiers as young as he was, were ordering people into a single line and questioning them about their tribal affiliation and whether they were in the AFL. People were taken out of the line for further interrogation. PSR ¶ 94.

Witness DD and his family fled in 1990 to nearby Harbel, where they passed through an NPFL checkpoint at which they were stopped and interrogated about their tribal affiliation, and if someone was identified as a Krahn or Mandingo, they were taken out of the line by armed child

soldiers and then killed. Some of the child soldiers were as young as twelve years old and their guns dragged on the ground; the Harbel checkpoint they guarded was decorated with a human skull. There was another checkpoint at Harbel Hills, where intestines from more than one person were tied together. Child soldiers also manned this checkpoint. One day, Woewiyu came to the house where Witness DD was living with Woewiyu's girlfriend and warned them that an attack was coming, so after Woewiyu left, they moved from Harbel Hills with some NPFL soldiers, traveling under the protection of the Defense Minister. They were headed to Buchanan, and stopped at an NPFL checkpoint at Cotton Tree, where NPFL soldiers questioned people in a long line about their tribal affiliation. There were many bodies in a nearby swamp, and Krahn and Mandingos were targeted for execution carried out by child soldiers at adults' direction. They passed through another checkpoint guarded by child soldiers and decorated with a human skull and intestines at Owen's Grove, then reached Buchanan. At Buchanan, they were met by CooCoo Dennis, an NPFL general under Woewiyu, who walked with a limp (**Gregory Stemn**, the Liberian journalist, identified a photograph he took of General Dennis, and recalled that he walked with a limp). PSR ¶¶ 60-62.

Liberian journalist **Gregory Stemn** traveled twice to NPFL territory, passing through terrifying checkpoints where he saw human skulls and intestines in a basket. These checkpoints were guarded by well-armed child soldiers, aged nine through fifteen. The child soldiers appeared to be on drugs and interrogated travelers who were lined up at the checkpoints. Stemn saw one man taken from the line because he was Krahn and heard gunshots. Stemn photographed NPFL child soldiers on at least three occasions: at a Harbel checkpoint in 1990; during a "confidence-building" event at the buffer zone at the Mount Barclay checkpoint in 1991, where he also photographed Defense Minister Woewiyu, who addressed the event; and in

1992. PSR ¶¶ 75-76.

Witness AA is a Muslim of mixed Mandingo and Kpelle tribal background. Before the war, he left his home in Gbarnga and brought his mother and family to Monrovia. Towards the end of 1991, his mother asked him to take her back to the family farm in Belefanai, near Gbarnga, so they drove from Monrovia to Gbarnga, passing through 25 to 30 NPFL checkpoints on the way. There were human skulls and intestines tied together and strung across the checkpoints, and even a human head attached to the license plate of a car. At the checkpoints, the fighters told the people to form a single file, where the NPFL was looking for Mandingos, Krahns and AFL soldiers, whom they tried to identify by checking a person's legs for boot marks. SBU child soldiers between ten and fifteen manned the checkpoints, armed with guns dragging behind them. Witness AA identified himself as Kpelle at the checkpoints, because if he had identified himself as Mandingo, he would have been killed. People were crying and begging, but it did not matter. He saw people being killed and their intestines removed. Others received the "VIP treatment," in which heavy objects were placed on their chests until they died. Around September of 1992, Witness AA's mother began to miss her grandchildren, so he returned to Monrovia to fetch them. He searched for his children when he reached Monrovia, but could not find them, and then Operation Octopus began. People were fleeing in every direction, and he reached the Dry Rice Market area, where the NPFL had a checkpoint. People were told to stand in line and the same questions were asked as at the others, looking for Mandingos, Krahns and AFL soldiers. NPFL commander Martina Johnson appeared, ordered the line straightened and fired her pistol, grazing Witness AA's head and causing him to fall. A child soldier stabbed Witness AA in the back with a bayonet at the end of his rifle, and after he managed to stand up, he was forced to move dead bodies for two or three days. PSR ¶¶ 87-89.

Mark Stucke, a British journalist and videographer, was granted an interview with Taylor in October of 1992 at his jungle headquarters deep in the bush. *En route* to Taylor's headquarters, Stucke passed through twenty frightening NPFL checkpoints decorated with skulls and manned primarily by child soldiers, some as young as eight years old. The child soldiers, who included girls, appeared malnourished and excitable and were armed with machetes, knives, sticks and guns. When they reached the NPFL compound, he was immediately confronted by soldiers with guns, and then taken to meet Taylor, who was surrounded by well-armed child soldiers. These child soldiers belonged to the Small Boys Unit, which had their own vehicles painted with the unit's name or just "SBU." The SBU soldiers carried authority and were feared by the other soldiers. Stucke asked to see the front lines during this ongoing NPFL military action, called "Octopus," so he was taken to the Gardnersville area, where he was handed over to a group of NPFL fighters for the day. Stucke filmed this group of fighters, which included child soldiers as young as nine or ten, who were commanded by an adult, who described the command structure through which he reported. During Operation Octopus, Stucke observed child soldiers engaging in active combat, including one whom he filmed firing an AK-47, indelible footage which was played for the jury. PSR ¶¶ 64-65.

The striking uniformity of the checkpoints' depravity was no coincidence; rather, as discussed in Part III.E, *infra*, it was the natural and foreseeable consequence of NPFL persecutory policies pushed like a pernicious drug by Woewiyu on children who, he well knew, knew no better than to follow the orders and examples set by the adults in power like him.

D. Woewiyu's Personal Use Of Child Soldiers

Woewiyu not only endorsed, but openly and notoriously personified the abominable NPFL practice of exploiting children as bodyguards from its highest echelons: its Minister of

Defense and chief international spokesperson.¹ Witnesses at trial confirmed this.

For example, sometime in 1991, after Liberian journalist **Witness A** had started working for the BBC and AP, the NPFL invited Monrovia journalists to visit their headquarters in Gbarnga. This invitation was in conjunction with “confidence-building” measures designed to bridge Monrovia and the rest of the interior of the country, which was then controlled by the NPFL and referred to as “Taylorland.” The NPFL’s press liaison picked up Witness A and some other journalists in Monrovia and headed to Gbarnga. On the way, the press liaison had his driver turn off at CARI, the Central Agricultural Research Institute, a research institute Witness A had visited before. As they turned off of the main highway to a road leading to a house, the liaison announced that they would make a short stop and parked very close to the house’s porch. When lights came on at the house, Witness A for the first time saw child soldiers, the youngest ten years old, who were all over the yard. The child soldiers looked and acted drugged, and some carried guns that were bigger than they were. Woewiyu emerged from the house and spoke to the liaison briefly. PSR ¶ 84.

When **Witness AA** and his mother reached Gbarnga after fleeing Monrovia towards the end of 1991, he met a friend, who said his uncle was NPFL official Sam Dokie, who could assist Witness AA in his journey to the farm, which was still 25 miles away. Witness AA told his

¹ This abhorrent privilege was not reserved to Woewiyu alone as Defense Minister; rather, other top-level NPFL leaders also used child soldiers as bodyguards. See **Herman Cohen** and **Mark Stucke**’s description of Taylor’s use of child bodyguards *supra*. When **Mark Huband** met with Taylor in his jungle headquarters in April of 1990, he was guarded by armed child soldiers. PSR ¶ 66. When **Witness HH** was living in Buchanan towards the end of 1990, he saw NPFL Chief of Staff Isaac Musa and Woewiyu traveling in convoys and guarded by a mix of adult and child soldiers. He saw child soldiers who had been captured and taken away to be trained. PSR ¶ 94.

friend that he needed rice, so his friend took him to Defense Minister Woewiyu's house, where they had been told they could find Dokie. They traveled to Woewiyu's house, which was near Taylor's mansion, but neither man was there, so they waited until they arrived. When Woewiyu and Dokie arrived, the soldiers all stood at attention and saluted, from the checkpoint to the house, and there were a lot of SBU boys there. PSR ¶ 88.

Witness L worked for the Salvation Army rehabilitating child soldiers during the war, and saw Woewiyu being guarded by child soldiers on three occasions. Witness L saw Woewiyu in March 1994 at the Mount Barclay checkpoint guarded by about fifteen fully-armed bodyguards, most of whom were between eight and thirteen, who had jumped down from the truck and taken up positions. In June of that year, Witness L saw Woewiyu again at the police station in Kakata, fueling his vehicle. Woewiyu was guarded by the same SBU bodyguards. Witness L saw Woewiyu again in May 1995 at the Cotton Tree checkpoint near Harbel, guarded by child soldiers who appeared to be drugged. These child bodyguards pointed their guns at Witness L and told him not to get too close to Woewiyu. PSR ¶¶ 73-74.

E. Woewiyu's Responsibility For Persecutions

The NPFL's widespread use of child soldiers to carry out persecutions at NPFL checkpoints, as discussed, *supra*, did not occur spontaneously or in a vacuum. Woewiyu was directly and indirectly responsible for promulgating the NPFL's dehumanization of its adversaries; that is, suspected members of the Krahn and Mandingo tribes; AFL members; opposing rebel group members; ECOMOG; and anyone perceived to be collaborating with any of those groups.

1. Persecution of Krahns

Witness L listened to the BBC’s “Focus on Africa” radio program daily, and was familiar with the voices of Charles Taylor, the leader of the revolution, and Tom Woewiyu, the NPFL’s spokesperson and number two man in the NPFL. He specifically recalls Woewiyu saying on the radio, “The good Krahn man is a dead Krahn man.” PSR ¶ 73.

Witness B learned about the situation in Monrovia from listening to the BBC. He first heard about Woewiyu when he was interviewed by BBC reporters Robin White and Elizabeth Blunt. During one of those interviews, he remembered Woewiyu saying, “[t]he good Krahn man is the dead one.” PSR ¶ 78.

Witness C listened to the BBC for news, and after the war started, she heard NPFL representatives speaking on the radio. She specifically recalled at one point hearing Woewiyu say, “[t]he good Krahn man is the dead one.” Her first contact with the NPFL was when an NPFL commander arrived at the farm in a pickup truck with some armed fighters, accused their friend of harboring Krahns and ordered the Krahns out so that they could be killed. A local marketing official was already tied up in the back of the truck, and the commander said that Witness C would be tied up like her and taken to be killed because they were Krahns. Witness C, one of her sisters and the family friend, who had been an official in the Doe government, were tied up in the “duckfa tabay” method and taken to the pickup truck and placed in the back.² At one point, a fighter placed an RPG launcher at the back of her neck. She told the NPFL fighters that she was Grebo, not Krahn, and spoke in the Grebo dialect to a Grebo-speaking fighter and convinced him. After looting the farm, the fighters tried to start the truck, but failed three times,

² Numerous witnesses at trial testified about this method of binding, which involved tying the prisoner’s arms behind the back at the biceps so tightly that the elbows touched, forcing the prisoner’s chest outwards like a duck, causing great pain and making it very difficult to breathe.

so the commander freed them and told them that they would return, and if anyone was not there when they did, they would kill everyone they found. About two weeks later, the commander returned and abused them, still looking for Krahns and looting the farm. The wife of the family friend again denied harboring Krahns, and the fighters left with their loot. PSR ¶¶ 81-82.

After the war, in a piece he authored titled “The Woewiyu Testimony To The Liberian TRC [Truth and Reconciliation Commission] That Was Never Given,” published in *African Panorama* magazine, Woewiyu tried to explain away his widely-broadcast persecutory statement that “the only good Krahn is a dead Krahn” by making the convoluted and nonsensical claim that, while he did say those words, he had simply been quoting Taylor. The absurdity of Woewiyu’s claim merely underscores the fact that he recognized that he could not dispute having actually made this incendiary persecutory statement which so many Liberians heard with their own ears, but felt the need to somehow distance himself from it after the war. PSR ¶ 128; Gov. Exh. I-34.

2. Persecution of Mandingos

Mandingos, according to Woewiyu, were the “most despised ethnic group by other tribes in the country for their Islamic and clannish behavior” who could not be trusted even as peacekeepers because of their presumed loyalty to their religion.³

Witness V is a Mandingo and Muslim born in the predominantly Mandingo village of Bakiedou. His older brother was the town chief. On a Tuesday in July of 1990, his brother received a warning that NPFL rebels had attacked a nearby town and were looking for Mandingos. By this time, Mandingos from Bakiedou and other counties had returned to

³ Email dated August 23, 2012, from Woewiyu to FBI Special Agent Tylor J. Hanna, proposed defense stipulated document number 7, from defense “Stipulated Document List,” withdrawn by defense June 28, 2018.

Bakiedou after the war started. His brother convened a town meeting the next day and they decided not to leave when the rebels came and to tell the rebels that they were not involved in politics. The rebels arrived the morning after that, a Thursday, though he does not recall the date. The rebels included child soldiers and fired their guns, and rounded up people and took them to the town hall. His brother gave the rebels a cow and some money. The rebels ordered the women to leave the town hall, but his mother, who was blind, stayed inside. The commander of the rebels said he was Quiwonkpa's brother. The rebels then opened fire on the unarmed men inside the town hall, killing 137 people inside, including Witness V's mother, father and brother, the town chief. Witness V was shot in the hand and leg and a bullet grazed the top of his head, and when he left the town hall, he saw dead bodies outside the town hall and around the village. PSR ¶¶ 90-91.

Witness W is a Mandingo and Muslim born and raised in Bakiedou. NPFL fighters entered Bakiedou in the morning on July 12, 1990, a Thursday. The armed fighters were male and female, adults and children. They were shooting and killed some villagers, and Witness W was grabbed when he tried to flee. He was taken to the town hall, where others were also taken. The rebels told the town crier to call people to the town hall, so more people came. The rebels surrounded the town hall, and the town chief was brought there and welcomed the rebels with a cow and money. The rebels ordered the women out of the town hall, except for one old blind woman. The rebel commander, who said he was a relative of Quiwonkpa, was not satisfied and said they would kill everyone. The rebels started shooting everyone inside the town hall, and Witness W was shot and fell among the others who were falling. His brother was among the 137 killed inside the town hall. There were wounded among the dead inside the town hall, wounded and dead outside the town hall and dead bodies in the village. He saw a man with his intestines

hanging out asking for water and children were crying for their mothers. He and all the other Mandingos of Bakiedou fled the village. He only returned in 1997 when the election was held. PSR ¶ 92.

The mass execution of members of the Mandingo tribe at Bakiedou was carried out pursuant to NPFL policy, just as the systematic and targeted killings of suspected members of the Krahn tribe and Doe government supporters was NPFL policy. As a founding member, chief spokesperson and Minister of Defense for the NPFL, Woewiyu was directly and indirectly responsible for these policies and their consequences. Woewiyu cannot deny, distance himself from or claim ignorance about what was the open and notorious conduct of the NPFL fighters from the earliest days of the conflict, though in his role as NPFL chief spokesperson and Minister of Defense he certainly tried to. For example, in a BBC interview on July 3, 1990, Woewiyu denied that the NPFL was out for revenge as it was poised to enter Monrovia. Then, on August 13, 1990 – merely a month after the Bakiedou massacre -- a BBC correspondent asked Woewiyu, “[i]s it not true that the Mandingos have been killed? Is it not true that the Krahn have been killed? Is it not true that Gios and the Manos have been suffering reprisals? Can you seriously think of these tribes living in Liberia if this crisis goes on longer than this?” In response, Woewiyu merely demurred dismissively, “Oh, if all of them have been affected, and they are all Liberian tribes, then we will have to find a Liberian solution.” Gov. Exh. I-12; PSR ¶ 127.

Ten days later, Woewiyu was asked by a BBC correspondent during an interview on August 23, 1990, “Now, at the press conference, you said that you had certain suspicions about the Guinean forces [forming part of the ECOMOG peacekeeping contingent that the NPFL opposed and a nation with a significant Mandingo population]. Is this correct?” Woewiyu

replied, “Oh, yes, it is. It is correct that even if we didn’t have suspicion, if we didn’t know that they are, indeed, involved, they have been sending troops and forces to support and to bolster the Doe army, if that was not the only problem, the other problem is that the same tribes in Guinea [Mandingos] are the same tribes in Liberia. So that when you have a problem between the Mandingos and the Manos and the Gios, and the Mandingos are in Guinea and they are in Liberia, then that particular country cannot serve as a referee.” Gov. Exh. I-14; PSR ¶ 127.

Tellingly, in his statement, “The Woewiyu Testimony To The Liberian TRC [Truth and Reconciliation Commission] That Was Never Given” published in *African Panorama*, *supra*, Woewiyu conceded -- barely -- that war crimes were indeed committed during the conflict. However, he attributed those atrocities to only one party: the rebel group that “had natural ethnic affinities” with Guinea; *i.e.*, the Muslim Mandingo ULIMO rebel group, thus revealing his continued anti-Mandingo animus even after the war. PSR ¶ 128; Gov. Exh. I-34.

3. Persecution of Enemies and their Suspected Sympathizers: AFL, ULIMO, ECOMOG

a. *Persecution of Suspected AFL Sympathizers*

In addition to suspected AFL members, NPFL checkpoints described *supra*, also targeted suspected sympathizers and collaborators, referred to as “reconnaissance” and “connivers.”

Witness DD was twelve years old in 1990 when the armed NPFL rebels entered their town on the Firestone plantation. The rebels seized and tied up a well-known rubber tapper in the “duckfa tabay” method and then shot him dead in the middle of town after accusing him of hiding enemy soldiers. Witness DD’s older brother was captured by the NPFL in 1990 and never seen again. NPFL fighters also captured young girls and women at gunpoint and did what they wanted with them. One day while Witness DD was living at the Liberian Agricultural Company (“LAC”) with Woewiyu’s girlfriend, Woewiyu came to the LAC compound, where

soldiers from various towns had been assembled. Woewiyu told the gathering to be vigilant because there may be an attack. A couple of days later, Coocoo Dennis returned with two men tied up in the duckfa tabay method and accused them of being spies on reconnaissance. Woewiyu was standing next to Dennis, and when the prisoners refused to talk, Dennis demanded, referring to Woewiyu, “Your Chief is here and asking, and you don’t respond?” When the prisoners continued not to answer, Dennis ordered their ears cut off. The men pleaded and cried, insisting that they were not soldiers, and after an ear was cut off of each prisoner, Dennis ordered the prisoners taken away. Woewiyu was in charge during this incident. PSR ¶¶ 60, 63.

b. Persecution of Suspected ULIMO Collaborators

Witness Z was living in Monrovia with an older sister when the war started, but when the war intensified, she joined her father in Gbarnga. She and her younger brother Paul then left Gbarnga to be with her mother in Kelepei, Bong County, which was under NPFL control. Paul was a very quiet boy because of a stutter who fished and sold his catch at the market. One Saturday market day during Operation Octopus, Witness Z was told that Paul had been arrested by the NPFL as ULIMO “reconnaissance.” Witness Z went to the market, saw the fish that had been taken from Paul and asked the NPFL fighters where he was, but they denied knowing who he was. Witness Z learned that the prisoners were being held in a storage kitchen attic, and when she asked the NPFL fighters if she could see if Paul was there, the soldiers said no, because they had to wait for orders from the Defense Minister, so she and the mothers of the two other boys who had been captured with Paul waited for him. When the Defense Minister arrived, the NPFL fighters addressed him by title, said his name, Tom Woewiyu, and referred to him as the “big man.” Woewiyu sat at a table in a kitchen adjacent to the one in which Paul was being held, his

bodyguards standing between him and the three women. Witness Z and the mothers begged Woewiyu to release the boys, telling him that they were townspeople and not reconnaissance. The local NPFL commander said that “the boss” wanted to see the prisoners, so Paul and the two other boys were brought down from the attic and taken before Woewiyu. The women continued to beg Woewiyu and cry, but Woewiyu reiterated that the boys were accused reconnaissance and ordered them taken away, saying that he did not want to see them again, which Witness Z understood meant that they would be killed. NPFL fighters then took Paul and the other two boys away, and while the women continued to beg and cry, Woewiyu had no reaction. The prisoners were taken on the road in the direction of Mononkpanga, and Witness Z never saw Paul again. PSR ¶¶ 96-97.

c. Persecution of ECOMOG

As NPFL Minister of Defense and chief spokesperson, Woewiyu consistently and publically articulated the NPFL policy to treat ECOMOG as an opposing warring party to be fought as such with lethal fire, and to view ECOMOG as being a surrogate of the United States. As the NPFL’s attacks on ECOMOG intensified, both ECOMOG peacekeepers and suspected collaborators were targeted by the NPFL. As demonstrated below, this policy was communicated down the chain of command from Taylor to Woewiyu to front-line fighters.

Based on his conversations with Taylor, **Gerald Rose** saw that the NPFL viewed ECOMOG as its mortal enemy. Rose was present in Monrovia when Operation Octopus began on October 15, 1992 with heavy artillery shelling on the capital by the NPFL. After an intensive beginning to the offense, ECOMOG eventually pushed the NPFL back over a period of weeks past its original positions. PSR ¶ 72.

In a meeting with Taylor, Taylor expressed to **Herman Cohen** his mistrust of and

hostility towards ECOMOG, but indicated that troops from Senegal would be acceptable.

However, despite Taylor's assurances that the Senegalese troops would be treated as neutral, NPFL fighters deliberately killed some of the Senegalese peacekeepers. PSR ¶ 48. **Gregory Stemn** also recalled that six Senegalese ECOMOG peacekeepers were killed by the NPFL and buried in Lofa County. PSR ¶ 76.

d. Persecution of Suspected ECOMOG Collaborators: the Murder of Five American Nuns During Operation Octopus

At trial the parties entered into the following stipulation:

Before and during Liberia's first civil war, five white, female American humanitarian aid workers lived in a house on a compound in the Gardnersville neighborhood of Monrovia. During Operation Octopus in October of 1992, two of the workers were killed while driving in a car with two ECOMOG soldiers. Approximately two days later, NPFL fighters entered the workers' compound and ordered the occupants out of the house. One of the workers was shot and wounded almost immediately after she exited the house. The other two workers then exited the house. The NPFL commander on the scene was named Mosquito and ordered the white women separated from the others, so the other two workers were taken a short distance within the compound near a wall. Mosquito accused the workers of being American and collaborating with ECOMOG. After demanding the workers' money and car keys, Mosquito then ordered another NPFL fighter to kill all three of the workers, who were then shot dead with an automatic rifle.

PSR ¶ 129.

The five American citizens murdered that day were Catholic nuns of the missionary order the Adorers of the Blood of Christ who had been serving the local Liberian population for many years from their convent in the Gardnersville neighborhood of Monrovia. Their names were Sisters Kathleen McGuire, Agnes Mueller, Shirley Kolmer, Barbara Ann Muttra and Mary Joel Kolmer.

The murder of the nuns, like the persecutions of Krahn, Mandingo and AFL and ULIMO members, did not happen spontaneously or as a random act of war. Rather, the murders were the

culmination and tragic confluence of two NPFL policies: implacable hostility to ECOMOG and no quarter for suspected collaborators with enemy forces. The evidence at trial established that Woewiyu was active in the planning and execution of Operation Octopus, forcibly recruiting child soldiers he led to the battle; delivering ammunition to the frontline fighters and their commander, Mosquito (whom Woewiyu told Dutch investigators he trained, *see supra*), and getting personally briefed by and encouraging Mosquito at the battle front. In his role as Defense Minister and chief spokesperson, Woewiyu promulgated these lethal NPFL policies from his position at the very top of the chain of command down to the frontline fighters who shot their way into the nuns' convent compound. Moreover, Woewiyu, owing to his position and conduct as Defense Minister, not only directly persecuted the nuns because of their race, national origin and perceived political beliefs, but that he also did so indirectly, in that their deaths were the natural and foreseeable consequence of his support, promotion and implementation of these NPFL policies, as the trial testimony of Witness CC and Witness HH confirmed and corroborated.

Witness CC testified that prior to Operation Octopus in mid-October 1992, Taylor issued an order through the Defense Ministry, of which Woewiyu was the head, to disarm ECOMOG throughout the different counties. Witness CC received his order to fight in Operation Octopus from his commander, Zobon Johnson, and was transported by truck to the Fendell campus of the University of Liberia, where his unit joined with others gathered into one task force for the operation. The fighters were told that ECOMOG, the AFL and ULIMO were the enemy, and supporters of those groups were considered "connivers" and thus subject to execution. Woewiyu addressed the gathered fighters before they attacked ECOMOG's position at Mount Barclay, telling them to capture Monrovia and that ECOMOG was the enemy. When the assault began on

October 15, 1992, Witness CC was placed under the command of Christopher “Mosquito” Vambo. Witness CC moved towards Barnersville and engaged in a battle with ECOMOG, which deployed jets against them. Witness CC personally received orders from Mosquito every day during Operation Octopus, and at one point, he and Mosquito picked up ammunition from Woewiyu near the Fendell campus. Mosquito saluted Woewiyu before speaking with him, after which Witness CC heard Woewiyu order that fifteen boxes of AK-47 and RPG ammunition be given to Mosquito. Witness CC also heard Woewiyu tell Mosquito to “take care of the front line,” and to “take care of the boys.” PSR ¶ 58.

Witness HH testified that when Operation Octopus started on October 15, 1992, there was heavy gunfire everywhere as the NPFL rebels attacked ECOMOG and entered Gardnersville. NPFL fighters were killing and raping, and Witness HH personally saw people shot 20-25 times. The NPFL fighters operating the checkpoints were looking for Krahns as well as men from ECOMOG troop-contributing nations like Guinea and Nigeria, and were trying to detect all of those dialects. Persons suspected of being “reconnaissance” or “connivers” were summarily shot. During Operation Octopus, Witness HH saw NPFL commanders Martina Johnson and Christopher “Mosquito” Vambo, whom the NPFL fighters saluted. PSR ¶ 95.

F. Woewiyu’s Immigration Fraud And Perjury

Marsha Eikerenkoetter was a USCIS Immigration Services Officer in Philadelphia who became familiar with Woewiyu because she interviewed him for naturalization. A December 3, 2008 email from her supervisor instructed clerical staff to schedule a naturalization interview for her to conduct with Woewiyu at 10 a.m. on January 30, 2009. Woewiyu was the only case she had scheduled that day. PSR ¶ 113.

Prior to the interview, she reviewed Woewiyu's A-File, which included a Form I-20A, which is completed by a person coming to the U.S. as a student on an F-1 visa. F-1 visas are meant for students, and Woewiyu's I-20 indicated that he was supposed to attend Burnside Aviation School in Opa Locka, Florida. Subsequent forms indicated that Woewiyu had not registered for class at Burnside Aviation in 1969 as required, and that he instead registered for a computer programming school. PSR ¶ 114.

At the interview, the first thing she did was to place Woewiyu under oath, and she expected him to tell the truth. She then went through the N-400 citizenship application question by question. She placed red check marks beside the questions she asked and went over with Woewiyu. On the N-400, Woewiyu had certified that his answers were true under penalty of perjury, and that they were prepared with the help of an attorney. The application was certified on January 23, 2006. PSR ¶ 115.

She read Question 8a. about his membership in organizations. Woewiyu had answered that he was not a member of a group. After she repeated the question a couple of times to make sure he understood the question, Woewiyu changed his answer to yes, as indicated by her writing in red ink, "Union of Liberian Associations in the United States." She then asked what type of organization it was, he replied that it was a U.S.-based organization that helped Liberians. When she then asked him again for the third time about any organizations he was a member of, Woewiyu told her he had not belonged to any other groups. There was no need to ask about any others, because she assumed he was telling the truth. When she asked verbatim the question about whether Woewiyu had ever sought the overthrow of a government by force or violence, he chuckled and answered no. PSR ¶¶ 116, 117, 121.

When Eikerenkoetter asked Woewiyu the N-400's Question 11 verbatim: "Have you ever persecuted (either directly or indirectly) any person because of race, religion, national origin, membership in a particular social group, or political opinion?," she checked the question off in red pen, indicating that Woewiyu verbally answered no. Woewiyu signed and swore to the N-400's certification before Eikerenkoetter at the interview. Woewiyu's signature on the N-400 denoted that he attested under penalty of perjury that everything in the application was true and correct, including the answers and changes he gave orally. PSR ¶¶ 118, 119.

Following the interview, she asked Woewiyu for additional evidence via a request for evidence, or N-14. However, her request for additional information did not change the requirement of the oath Woewiyu took at the interview that he must tell the truth during the interview, as an applicant does not know going into the interview if the officer would even ask for additional information. In this case, she requested that Woewiyu provide his IRS transcripts from 2002-2007, as well as documentation to prove that Woewiyu's first marriage had been legally terminated via a divorce decree. PSR ¶ 120.

She did not ask for evidence about his organizations or associations, because Woewiyu had indicated that there was only one. There was no need to ask about any others, because she assumed he was telling the truth. Nor did she ask him for additional evidence about overthrowing a government, because he had told her under oath that he had not. Nor did she submit a request for evidence about any persecution Woewiyu may have committed, because he had told her under oath that he had not. In her view, Woewiyu was testifying when he answered her questions during his interview, because he was under oath. PSR ¶ 121.

Peggy Lin was assigned the Woewiyu case in July 2009, through the USCIS fraud unit. The case was designated as a CARP, a process by which special cases went through a more

careful review process. She explained that the general criteria for a CARP case was a national security issue, including terrorist cases or egregious public safety concerns, of which war crimes would be an example. The eligibility assessment is the first step in such a case. An eligibility assessment is performed in every citizenship application, and questions include good moral character, physical presence, and a continuous residence. To make her assessment, Lin reviewed Woewiyu's A-File and conducted her own research. When conducting her database and open source research, she saw abundant information about Woewiyu's involvement with the NPFL and various groups. She said this was not on his Form N-400, although his positions within the Liberian government, and his travel dates, were a big part of his application. These open source resources gave her concerns about Woewiyu's eligibility, because they indicated to her that Woewiyu was very high up in the NPFL as its Defense Minister and spokesperson. She seemed to remember that he was number two in the hierarchy. While she could have denied Woewiyu's application on the spot, she issued a second request for evidence, dated July 15, 2009. Among other things, Lin's N-14 referred to Woewiyu's "Open Letter to Madame Ellen Johnson Sirleaf," which she either found online, or was already in the file, and which she found significant because it came from Woewiyu himself, and was therefore more credible. Woewiyu's letter to Sirleaf indicated that he was part of the NPFL and other organizations that were not disclosed on his Form N-400, and that it seemed to her that he had had a very significant role. Other Internet searches also revealed Woewiyu's links to the NPFL. Despite his evident involvement in these groups, the only association Woewiyu identified on his N-400 was the Union of Liberian Associations in the United States, so Lin's request for evidence asked him to explain the discrepancy. This discrepancy was significant to her because it appeared that Woewiyu did not disclose the truth during his naturalization interview, which went

to false testimony and good moral character grounds. When she issued Woewiyu the N-14 request for evidence, it did not in any way negate his obligation to tell the truth during his January 30, 2009 interview. Applicants have to tell the truth at the interview because that is the integrity of the process, and Woewiyu's subsequent written statements in his response to her N-14 did not relieve him of his obligation to tell the truth during his citizenship interview. PSR ¶¶ 123-125.

Lin issued her decision denying Woewiyu's application on August 12, 2010 on the grounds that he had failed to demonstrate good moral character. Relying on the TRC report, Lin found that Woewiyu was implicated in gross human rights violations both individually and by virtue of the critical command role he played. Lin also found that Woewiyu provided false testimony during the naturalization interview, including about advocating the overthrow of government, and persecution. Lin further testified that the forced recruitment of child soldiers by the NPFL, or the knowledge of Woewiyu's personal use of them, would be important for determining Woewiyu's eligibility. Separating people on the basis of their tribe or ethnicity would also preclude a finding of good moral character. PSR ¶ 126.

IV. SENTENCING CALCULATION

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in *United States v. Booker*, 543 U.S. 220 (2005):

- (1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before *Booker*.
- (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-*Booker* case law, which continues to have advisory force.

(3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing *United States v. King*, 454 F.3d 187, 194, 196 (3d Cir. 2006)).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. “The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises ‘a ground of recognized legal merit (provided it has a factual basis)’ and the court fails to address it.” *United States v. Cooper*, 437 F.3d 324, 329-30 (3d Cir. 2006) (citations omitted).

A. Statutory Maximum Sentence

The maximum sentences of imprisonment upon conviction that may be imposed per count on the defendant are as follows:

- ten years on Counts 1 and 2 (18 U.S.C. §§ 1425(a) and (b), attempting to obtain citizenship by fraud and to which he was not entitled as not a person of good moral character, respectively);
- ten years on Counts 4 and 5 (18 U.S.C. § 1546(a), fraud in immigration documents);
- five years on Counts 8 and 9 (18 U.S.C. § 1015(a), false statements in relation to naturalization);
- five years on Counts 10, 12 and 14 (18 U.S.C. § 1621(1), oral perjury); and
- five years on Counts 13 and 15 (18 U.S.C. § 1621(2), certification perjury).

PSR ¶ 188.

B. Sentencing Guidelines Calculation

The Probation Office used the 2008 Guidelines Manual and correctly calculated Woewiyu’s advisory guideline range as follows: the Base Offense Level is 14, using the perjury guideline at

U.S.S.G. § 2J1.3(a); with no other adjustments, the defendant's Total Offense Level remains at 14.⁴ PSR ¶¶ 5, 136, 139-147. With a criminal history score of zero, Woewiyu's criminal history category is I. PSR ¶ 153. Thus, based upon a Total Offense Level of 14 and a criminal history category of I, the resulting advisory guideline range is 15 to 21 months. PSR ¶ 189.

C. The Role of the Defendant's Wartime Conduct in the Court's Sentencing Determination

In considering Woewiyu's wartime conduct in determining whether to impose an upward departure pursuant to §§ 5K2.0 and 4A1.3 or an upward variance, the Court may consider that conduct both independently of his convictions for immigration fraud and perjury, as well as insofar as they increase the culpability of his immigration fraud and lies. The Court may find the facts of these war crimes for sentencing purposes by a preponderance of the evidence, so long as they do not affect either the statutory minimum or maximum. *Alleyne v. United States*,

⁴ The perjury guidelines provide an Accessory After the Fact cross reference if the offense involved perjury "in respect to a criminal offense." Cases interpreting the "in respect to a criminal offense" language typically have arisen in the context of a grand jury investigation or other criminal proceeding involving a criminal offense, where the defendant knew or had reason to know that his testimony concerned such a criminal offense. *United States v. Knight*, 700 F.3d 59, 64-65 (3d Cir. 2012) (perjury during suppression hearing concerned a murder); *United States v. Leifson*, 568 F.3d 1215, 1220-23 (10th Cir. 2009) (perjury before grand jury was in respect to a murder); *United States v. Flemmi*, 402 F.3d 79, 95-97 (1st Cir. 2005) (perjury before grand jury was in respect to murder); *United States v. Suleiman*, 208 F.3d 32, 39 (2d Cir. 2000) (perjury before grand jury was in respect to 1993 World Trade Center bombing); *United States v. Leon-Reyes*, 177 F.3d 816, 823-24 (9th Cir. 1999) (perjury during trial related to money laundering charges, but not drug trafficking charges); see also *United States v. Blanton*, 281 F.3d 771, 775-76 (8th Cir. 2002) (following *Leon-Reyes* and *Suleiman*, *supra*, and remanding for application of § 2J1.3(c) cross reference). Thus, these cases all involved proceedings in connection with the investigation or prosecution of a criminal offense, and in which the defendant was placed on notice about said criminal offense and then lied about said criminal offense. The facts of the instant case -- where the defendant perjured himself not during a criminal proceeding but during a naturalization interview -- could arguably be viewed as distinguishable from these cases, although the "in respect to a criminal offense" language could also be read broadly to encompass the defendant's perjury during his citizenship interview to conceal his Liberian crimes. In any event, there is no reason to reach that issue here.

133 S.Ct. 2151 (2013); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *United States v. Grier*, 475 F.3d 556, 567-78 (3d Cir. 2007). It is a well-settled and “longstanding principle that sentencing courts have discretion to consider various kinds of information,” *United States v. Watts*, 519 U.S. 148, 151 (1997), and a federal sentencing judge “has almost unlimited discretion in determining the appropriate sentence in a criminal case.” *United States v. Simmonds*, 235 F.3d 826, 837-38 (3d Cir. 2000) (scope of what a court may consider in fashioning a sentence is “breathtakingly broad”). Indeed, “[n]o limitation shall be placed on the information concerning the background, character, and conduct of the person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” 18 U.S.C. § 3661. The Sentencing Guidelines have adopted this principle as well, stating that “[i]n determining the sentence to impose within the guideline range, or whether a departure from the Guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law.” U.S.S.G. § 1B1.4 (citing 18 U.S.C. § 3661). Section 6A1.3 of the Guidelines instructs, with regard to the admissibility standard at a sentencing hearing, that “the parties shall be given an adequate opportunity to present information to the court regarding [any disputed] factor.” U.S.S.G. § 6A1.3(a). “[T]he court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support the probable accuracy.” *Id.*⁵ Given that “[a]ny

⁵ In the commentary to Section 6A1.3, the Sentencing Commission notes several kinds of information that are admissible at a sentencing hearing, including acquitted conduct (citing *Watts*, 519 U.S. at 154); conduct that may be subject to subsequent prosecution (citing *Witte v. United States*, 511 U.S. 738 (1995)); and reliable hearsay (citing *United States v. Petty*, 982 F.2d 1365 (9th Cir. 1993) and *United States v. Sciarrino*, 884 F.2d 95 (3d Cir. 1989)); U.S.S.G. § 6A1.3 Commentary.

information may be considered, so long as it has sufficient indicia of reliability to support its probable accuracy,” § 6A1.3(a), Commentary (emphasis added), and given that the Third Circuit has consistently upheld a sentencing court’s reliance on testimony from another trial, the Court may certainly rely on the trial testimony of the instant case over which it presided in finding facts by a preponderance of the evidence at sentencing that were not explicitly or even necessarily found by the jury, so long as the parties are afforded fair notice and sufficient opportunity to review and respond to the specific evidence upon which the Court intends to rely and the purposes for which it intends to consider it. *See United States v. Curran*, F. App’x 198, 201-02 (3d Cir. 2013); *United States v. Dair*, 174 F. App’x 68, 70 (3d Cir. 2006); *United States v. Reynoso*, 254 F.3d 467, 474 (3d Cir. 2001); *United States v. Nappi*, 243 F.3d 758, 763 (3d Cir. 2001). *See also United States v. Knobloch*, 131 F.3d 366, 370 (3d Cir. 1997) (holding that “[n]o rule of law prohibits the court from making its factual conclusions at sentencing based on testimony from a separate proceeding” (citing *United States v. Reyes*, 930 F.2d 310, 316 (3d Cir. 1991)); *Simmonds*, 235 F.3d at 837-38 (sentencing court permitted to rely on codefendants’ PSR information).

Thus, in order to obtain “the fullest information possible concerning the defendant’s life and characteristics,” the Court may consider evidence of Woewiyu’s wartime conduct both independently of his immigration fraud and perjury convictions, *and* insofar as that evidence increases the culpability of his fraud and perjury, as such evidence is precisely the type of “highly relevant – if not essential” information concerning Woewiyu’s background, character and conduct upon which sentencing courts have historically been entitled to rely in their nearly unfettered discretion in fashioning a sentencing within the statutory maximum sentence, and to which courts traditionally have had almost unlimited access. *Watts*, 519 U.S. at 151-52 (citing

Williams v. New York, 337 U.S. 241, 247 (1949)).

D. An Upward Departure Is Warranted In This Extraordinary Case

The government seeks an upward departure to the statutory maximum on Counts 2, 3, 13 and 14, to run consecutively, with the remaining counts of conviction to run concurrently. The specific offense characteristics contemplated by the Guidelines for the offenses of conviction do not capture the real offense conduct: Woewiyu's deliberate deceit to U.S. immigration authorities, from 2006 through 2009, designed to hide his wartime crimes. The horrific nature of the human rights offenses that Woewiyu concealed in order to obtain citizenship and subvert the immigration laws and process of the United States constitute grounds for an upward departure. The persecutory facts of his wartime leadership were precisely those which Woewiyu hid from the USCIS gatekeepers and lied about when he applied for citizenship. His wartime conduct in Liberia is therefore the motive for and the necessary predicate to why and how he committed the offenses of conviction, and the two cannot be separated. It is precisely his prominent role and human rights abuses -- such as the use of child soldiers -- throughout Liberia's notoriously brutal civil war that Woewiyu sought to conceal from the United States authorities when he lied, *inter alia*, on his sworn Form N-400 and under oath to Immigration Services Officer Eikerenkoetter.

By providing a ten-year statutory maximum for a violation of 18 U.S.C. §§ 1425 and 1546, Congress anticipated that there would be violations of those laws so egregious that a sentence of a decade in prison would be appropriate. In the case of 18 U.S.C. § 1621, Congress likewise anticipated that there would be violations of law so egregious that a sentence of one-half decade in prison would be appropriate. There can be no more serious basis for immigration fraud than such a high-level perpetrator's concealment of and lying about his prior participation in, *inter alia*, the forcible kidnapping and use of child soldiers on the front lines and persecutory,

deadly checkpoints of the NPFL's horrific war.

Other courts sentencing offenders who participated in human rights violations in their home country and lied about that conduct during the immigration process have departed upwards to the statutory maximum. *See United States v. Munyenyezi*, 781 F.3d 532 (1st Cir. 2015) (affirming ten-year statutory maximum sentence where the defendant's Guidelines range was zero to six months); *United States v. Jorge Sosa*, 608 F. App'x 464 (11th Cir. 2015) (affirming ten-year statutory maximum sentence for naturalization fraud conviction for defendant who participated in a single mass atrocity in Guatemala, where the defendant's Guidelines range was six to twelve months); *United States v. Gilberto Jordan*, 432 F. App'x 950 (11th Cir. 2011) (affirming ten-year statutory maximum sentence for naturalization fraud conviction for defendant who participated in a single mass atrocity in Guatemala, where defendant's Guidelines range was zero to six months' imprisonment and court granted an upward 5K2.0 departure); *cf.*, *United States v. Horton*, 497 F. App'x 302 (4th Cir. 2012) (affirming ten-year statutory maximum sentence for passport fraud conviction where defendant kidnapped his daughter, whom he sexually abused after taking her overseas; defendant's Guidelines range was 24 to 36 months' imprisonment). *See also*, Memorandum, dated May 21, 2018 and Judgement, dated May 23, 2018, *United States v. Mohammed Jabbateh*, 16-re-88 (PD), Eastern District of Pennsylvania, ECF Doc. Nos. 141 and 143, respectively (departing and varying upwards to sentence a battalion commander of rebel group during Liberian civil war to the consecutive statutory maximum per all four counts of conviction for a total of 30 years' imprisonment).

1. Section 5K2.0(A) Departure

The human rights violations in which Woewiyu participated and which he concealed in order to obtain citizenship constitutes grounds for an upward departure under the Guidelines, as

it is “an aggravating or mitigating circumstance . . . of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that, in order to advance the objectives set forth in 18 U.S.C. § 3553(a)(2), should result in a sentence different from that described.” 18 U.S.C. § 3553(b)(1); U.S.S.G. § 5K2.0(a)(1)(A).

An upward departure is warranted in this case because it is well outside the heartland of the applicable guidelines. U.S.S.G. Ch. 1, Part A, cmt. 4(b); *Koon v. United States*, 518 U.S. 81, 98 (1996). Following the Third Circuit’s three-part process, the factor that takes the case outside the Guidelines’ heartland and makes it unusual is the egregious nature of Woewiyu’s war crimes, which were the *sine qua non* of his subsequent fraudulent and perjurious statements to U.S. immigration authorities. *United States v. King*, 604 F.3 125, 142 (3d Cir. 2010). The 2008 Guidelines do not prohibit, encourage or discourage departures based on the seriousness of Woewiyu’s lies, and as of 2012, mention that factor only in connection with U.S.S.G. § 2L2.2. As noted *infra* in footnote 5, this factor is sufficient to take Woewiyu’s case outside the heartland under both the 2008 and post-2012 Guidelines, though departures based on this “unmentioned factor” must be “highly infrequent.”⁶ *Koon*, 518 U.S. at 95. Thus, “the structure and theory of

⁶ The fact that the 2012 amendments to U.S.S.G. § 2L2.2 add a specific offense characteristic where a defendant committed an immigration fraud offense to conceal his participation in a serious human rights offense, does not establish that the Guidelines adequately take into account the defendant’s conduct. If applied in the instant case, the 2012 amendment to § 2L2.2 would increase the advisory guideline range to 57 to 71 months’ imprisonment, PSR ¶ 204; however, Woewiyu’s crimes are so serious that they fall well outside the heartland of the 2012 amendments as well. A “serious human rights offense” is defined under the 2012 amendment as “(A) violations of federal criminal laws relating to genocide, torture, war crimes and the use or recruitment of child soldiers . . . and (B) conduct that would have been a violation of any such law if the offense had occurred within the jurisdiction of the United States or if the defendant or the victim had been a national of the United States.” U.S.S.G. § 2L2.2 Application Note 4. Serious human rights offenses can be committed in a variety of ways, including assault, kidnapping and murder. U.S.S.G. Supplement to Appendix C, p.14. Even in light of these revisions, the offenses the defendant concealed and about which he lied are of a kind and to a degree not contemplated by the Sentencing Commission in the 2012 amendments, which apply

both relevant individual guidelines and the Guidelines taken as a whole” permit consideration of the seriousness of Woewiyu’s lies. *United States v. Iannone*, 184 F.3d 214, 226 (3d Cir. 1999). The difference cannot be overstated between, for example, the garden-variety conduct of an offender who lies about overstaying a visa or his marital status in attempting to obtain U.S. citizenship or remain in this country to escape poverty, and the instant case, where Woewiyu concealed and lied about an extensive history of human rights abuses. Until the recent prosecution of Mohammed Jabbateh in this District, *supra*, a case involving a perpetrator of such high level with anything remotely resembling these particular facts is virtually unprecedented.

2. Departure Under Section 5K2.1 through Section 5K2.9

Section 5K2.0 by itself supports the requested departure, which is also justified by numerous particular guidelines in Chapter 5K2. Among the examples listed in the Guidelines for departing upward are Death (§ 5K2.1), Physical Injury (§ 5K2.2), Extreme Psychological Injury (§ 5K2.3), Abduction or Unlawful Restraint (§ 5K2.4), Property Damage or Loss (§ 5K2.5), Use

where a defendant participated in even a single serious human rights offense or concealed his mere membership in a military organization that was involved in such an offense. § 2L2.2(b)(4)(B); *cf. Munyenyezi*, 781 F.3d at 543-44 (where sentencing court considered the revisions to § 2L2.2, but concluded that “the ‘facts’ that made her immigration/naturalization ‘statements lies’ – *i.e.*, the facts that showed her to be a génocidaire – are so ‘disturbing’ that she deserved the maximum sentence permitted by statute”). Moreover, the degree of authority that Woewiyu exercised over the NPFL, which controlled well over 90 per cent of Liberia’s landmass and population during virtually the entire war, far exceeds that contemplated by the 2012 enhancements. Nevertheless, following the rule of lenity and *Peugh v. United States*, 133 S.Ct. 2072 (2013), the government agrees with the Probation Office’s use of the 2008 Guidelines, and the government’s position remains that the 2008 Guidelines should apply. PSR ¶¶ 5, 136 and 204; U.S.S.G. § 1B1.11(b)(1). There is no *ex post facto* issue in this case because the 2008 guideline should apply, and the government is not seeking application of the enhancement provided in the 2012 amendment. *United States v. Larkin*, 629 F.3d 177, 194 (3d Cir. 2010). Rather, the government is seeking a departure from the 2008 Guideline range, and in that regard, the adoption of the 2012 amendment simply underscores how Woewiyu’s conduct was not fully addressed by, and fell far outside the heartland of, the 2008 range.

of Weapons and Dangerous Instrumentalities (§ 5K2.6), Disruption of Governmental Function (§ 5K2.7), Extreme Conduct (§ 5K2.8) and Criminal Purpose (§ 5K2.9).⁷ All of these are arguably applicable in this case, though the government recognizes that they would typically apply to victims of the offenses of conviction or to the intrinsic conduct of the offenses of conviction.

a. Sections 5K2.1, 5K2.2, 5K2.4, 5K2.5 and 5K2.6

As summarized *supra*, Woewiyu participated in or oversaw the forcible kidnapping of child soldiers, who were then deployed to the front lines, served as bodyguards for him and Taylor, or manned the horrific checkpoints where they were installed to implement the NPFL policy of persecutions based on membership in a social group, nationality and political opinion. Woewiyu and fighters acting pursuant to the policies he promoted and personified committed many of these crimes in an extraordinarily cruel, heinous and degrading manner. Thus, §§ 5K2.1 (Death), 5K2.2 (Physical Injury), 5K2.4 (Abduction or Unlawful Restraint) and 5K2.6 (Weapons and Dangerous Instrumentalities) are all applicable to Woewiyu's wartime conduct, during which he personally ordered or was the highest-ranking official permitting the abuse and execution of prisoners, caused severe and sometimes permanent physical injuries (*e.g.*, from mutilations), and the capture, kidnapping, forced recruitment and deployment of child soldiers.

b. Sections 5K2.3 and 5K2.8

Some of Woewiyu's crimes were extreme both in their psychological injury and in their conduct, and therefore warrant upward departures under §§ 5K2.3 (Extreme Psychological

⁷ The related provision of U.S.S.G. § 5K2.21 also could be applied to depart upward, but may be cumulative of 5K2.0 in this case. That section provides that a court may depart upward to "reflect the actual seriousness of the offense based on conduct (1) . . . underlying a potential charge not pursued in the case . . . for any other reason; and (2) that did not enter into the determination of the applicable guideline range. The commission of the war crimes set forth above constitutes uncharged conduct that did not enter into the determination of the applicable Guidelines range, but should be considered to reflect the seriousness of the offense.

Injury) and §§ 5K2.8 (Extreme Conduct). For example, the limits of psychological endurance were doubtlessly reached by witnesses who watched or survived the indelible brutality of the NPFL separations and checkpoints or the ethnic-based massacre of Mandingos at Bakiedou; watched as the nuns were separated and executed; or watched as their children were taken away, and begged Woewiyu for their freedom, to no avail, many never seeing them alive again. The United States Probation Office rightly observed that “as recounted by the trial witnesses, the war crimes committed by the defendant in Liberia, which he lied about when he committed the instant offense, cause extensive physical and psychological harm to numerous noncombatant civilians. Some of the victims who survived and testified at trial have been dealing with their horrific experiences for years, and they had to relive the tragic events when they testified. Many will undoubtedly suffer from the trauma for the remainder of their lives.” PSR ¶ 131. In addition to the witnesses’ psychological trauma, the jury heard and observed evidence of their physical scars and maiming, caused by bullet, bayonet, ligature and rocket. *See, e.g., Witness FF, Witness AA, Witness C, Witness V and Witness W, supra.*

c. Section 5K2.7

As the government argues more fully below, Woewiyu’s false statements and perjury also significantly disrupted a governmental function, thus warranting an upward departure under U.S.S.G. § 5K2.7. Indeed, the U.S. laws and immigration scheme under which Woewiyu fraudulently and deceitfully sought citizenship were the very laws designed to keep a human rights abuser such as he from obtaining citizenship in this country. The severity of Woewiyu’s wartime conduct in Liberia -- which he deliberately and repeatedly concealed in order fraudulently to obtain citizenship -- only intensifies the degree to which he perverted our immigration laws.

Since the end of the war, Woewiyu continued to enjoy all of the freedoms and comfort granted by our nation as a legal permanent resident; yet, not satisfied with those benefits, he sought the validation of United States citizenship. In the eyes of Woewiyu's neighbors and members of his diaspora community in the Eastern District of Pennsylvania, some of whom are no doubt members of the ethnic groups he victimized, the integrity and efficacy of our system of immigration laws risked being severely vitiated by his two decades of living here with impunity. No less in the eyes of the world, the place of the United States as a beacon to the world's persecuted risked being dimmed when our laws were so flagrantly derided by Woewiyu.

d. Section 5K2.9

In addition, U.S.S.G. § 5K2.9 is applicable to Woewiyu's conduct, as he swore to and submitted false immigration documents and then perjured himself in connection with them in order to conceal his involvement in another offense; here, gross human rights abuses.

3. Section 4A1.3 Departure

The government also seeks an upward departure pursuant to Guidelines Section 4A1.3 because Woewiyu's conduct during the first Liberian civil war constituted criminal activity, the seriousness of which is wholly unrepresented by his criminal history. U.S.S.G. § 4A1.3(a)(1). Section 4A1.3 provides that "[i]f reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted." *Id.* Here, the PSR calculated a criminal history score of zero and a corresponding criminal history category of I, despite having committed numerous heinous war crimes. PSR ¶¶ 152-53.

In imposing an upward departure under Section 4A1.3, on the grounds that the

defendant's criminal history category significantly underrepresented his actual history, it is required that the district court "ratchet" and consider each higher criminal history category sequentially, determining why each is inadequate before proceeding to the next. *United States v. Freeman*, 316 F.3d 386, 391 (3d Cir. 2003).⁸ However, the Court need not follow a "ritualistic exercise in which it mechanically discusses each criminal history category it rejects en route to the category it selects," but will comply with the ratcheting procedure if its "reasons for rejecting each lesser category [are] clear from the record as a whole." *United States v. Harris*, 44 F.3d 1206, 1212 (3d Cir. 1995) (citation and quotations omitted).

Section 4A1.3 allows courts to impose upward departures if "reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes." U.S.S.G. § 4A1.3(a)(1). Courts have permitted upward departures to account for criminal conduct for which the defendant has never been arrested. *See United States v. Green*, 516 F. App'x 113, 133-34 (3d Cir. 2013) (sentencing court's upward departure properly based on reliable evidence that defendant "had engaged in numerous episodes of uncharged" crimes). A sentencing court may also consider as relevant conduct, crimes which could not be independently prosecuted because of the passage of time or that are beyond the jurisdiction of the court. *See United States v. Amirault*, 224 F.3d 9, 15 (1st Cir. 2000) (citations omitted); and *United States v. Pollard*, 986 F.2d 44, 47 (3d Cir. 1993). While, moreover, a § 4A1.3(a)(1) departure can be based upon dissimilar conduct that was neither charged nor the subject of a conviction, in this case, the un-represented criminal conduct was the very information that Woewiyu ineligible for

⁸ The court need not follow this procedure when imposing a variance. *United States v. Colon*, 474 F.3d 95, 99-100 (3d Cir. 2007).

citizenship and about which he lied and committed perjury during the naturalization process.

In this case, Woewiyu's true criminality should be reflected in a commensurate Guidelines criminal history category and offense level. Section 4A1.3(a)(1) of the Guidelines affords this Court the discretion to do just that by departing both horizontally across the sentencing table by increasing his criminal history, and vertically, by increasing the offense level. In light of Woewiyu's egregious proven uncharged criminal conduct, it is difficult to envision a circumstance under which a defendant's criminal history category more substantially and grotesquely underrepresents the seriousness of his criminal history than in this case. The numerous crimes for which Woewiyu is responsible -- for example, his use of child soldiers and promotion of persecution based on membership in a social group or political opinion -- strongly militate in favor of him falling within criminal history category VI. Additionally, his conduct, including ordering prisoners to be killed and kidnapping children to use as child soldiers, strongly favor an upward departure from criminal history category VI to an appropriate offense level of 43, using the First Degree Murder Guideline, *see* U.S.S.G. § 4A1.3(a)(4), § 2A1.1 (Base Offense Level of 43), and the Kidnapping Guideline, *see* U.S.S.G. § 2A4.1 (Base Offense Level of 32, plus four-level enhancement if the victim -- *i.e.*, **Witness FF** -- sustained permanent or life-threatening bodily injury, plus two-level enhancement because a dangerous weapon was used, plus one-level enhancement because victim was not released before seven days had elapsed, for a Total Offense Level of 39) (U.S.S.G. § 2A4.1(b)(2)(A), (b)(3) and (b)(4)(B), respectively). The government respectfully urges this Court to exercise its discretion by granting the government's motion for an upward departure, raising Woewiyu's criminal history category and offense level commensurate with his vast destructive criminal conduct.

V. SECTION 3553(a) ANALYSIS

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) establishes that the most appropriate sentence is one far above the advisory Guideline range of fifteen to twenty-one months. However, a sentence within the advisory Guideline range would be grotesquely inadequate in this case when considered in light of the 3553(a) factors. First, the highest sentence available is necessary here to reflect the seriousness of Woewiyu's crimes, to promote respect for the law, and to afford an adequate deterrent to similar criminal conduct. Those involved in egregious human rights violations on distant shores must be meaningfully deterred in their attempts to obtain U.S. immigration benefits by fraud and deceit. A sentence within the Guidelines range would be wholly inadequate to provide such deterrence.

The government therefore seeks an upward variance to four consecutive statutory maximum sentences of imprisonment per count of conviction on Counts 2, 3, 13 and 14, for a total of thirty years, based upon the sentencing factors set forth in 18 U.S.C. § 3553(a).

The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). "These requirements mean that '[i]n the usual sentencing, . . . the judge will use the Guidelines range as the starting point in the analysis and impose a sentence within the range.'" *Peugh v. United States*, 133 S. Ct. 2072, 2083 (2013) (quoting *Freeman v. United States*, 131 S. Ct. 2685, 2692 (2011) (plurality opinion); ellipsis in original). "Common sense indicates that in general, this system will steer district courts to more within-Guidelines sentences." *Peugh*, 133 S. Ct. at 2084. "The federal system adopts procedural measures intended to make the Guidelines the lodestone of sentencing." *Id.*

In addition, this Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

A. Consideration of the 3553(a) Factors.

1. The Nature, Circumstances and Seriousness of the Offense.

Immigration fraud and perjury can be committed by many means and in many ways; however, the severity of Woewiyu's lies directly relates to the nature and circumstances of his criminal acts. Unlike many defendants who lie in order to travel to or remain in the United States to, for example, escape persecution or poverty, Woewiyu's lies in this case were carefully calculated to deceive the U.S. immigration authorities by misdirecting them from and concealing his egregious wartime conduct. Here, Woewiyu engaged in a serious offense by repeatedly lying and then perjuring himself throughout the immigration process falsely to portray himself simply as a family man, business owner and civic leader.

The United States grants citizenship to many people, but there is a limit to the number of applicants the immigration system can handle at a given time. Woewiyu's fraud and deceit to

obtain citizenship impaired the integrity of the critical process the United States government has in place to determine who really deserves citizenship in this country, and who does not. By absorbing resources that could have been used to hear and decide other cases, Woewiyu's offense conduct made it more difficult for people with legitimate qualifications to obtain citizenship. That a persecutor like Woewiyu could not only walk freely among his expatriate countrymen, some no doubt belonging to the very groups he persecuted, but could have a citizenship application under consideration in the pipeline, made a grotesque mockery of our system of laws and risked breeding cynicism about its efficacy.

2. The History and Characteristics of the Defendant.

Woewiyu's history and characteristics support the need for significant incarceration. He tirelessly served at the highest level of the NPFL and even after the war remained defiantly unrepentant about his cause and the way he fought for it. That for a certain short time he was estranged from Taylor, yet reconciled and indeed, only speaks further to their deep, trusting and lasting relationship.

Woewiyu's lies throughout his naturalization proceedings sought to obstruct them and thwart the process to determine whether he should be granted the benefit for which he applied. Moreover, Woewiyu aggravated that crime by lying under oath to Officer Eikerenkoetter and committing perjury. Over the course of these proceedings, Woewiyu's fraud and deceit persisted, and remained deliberate.

While the government expects the defense to attempt to deflect attention at sentencing from his past criminal acts and to portray him as a pious family man and selfless civic leader, there is of course infinitely more to Woewiyu's history and characteristics than the accolades to be expected from family members, clergy and community figures who the government will

expect to vouch for Woewiyu's putative good character and works.

The fact is that Woewiyu lied from practically the moment he landed on our shores. The jury heard the defendant himself recorded asking Special Agent William Parks, "Did I ever tell you the story with the Immigration?" When Parks said "No," Woewiyu told him that in 1969, he was supposed to come to the U.S. to attend Burnside Aviation school in Miami to study commercial flying. Woewiyu said that when he arrived in New York, where all his friends were, he decided that he wanted to switch to another field of study, computer engineering. When the U.S. Immigration interviewer expressed skepticism about Woewiyu's decision, Woewiyu simply lied to the Immigration officer, making up a story that he suffered from "altitudinal complex" after he arrived. Woewiyu explained to Parks that he had a friend from the police academy who would not fly because he was afraid of heights and suffered from "altitudinal complex." Woewiyu told Parks that when the Immigration official asked Woewiyu what "altitudinal complex" was and asked him, "didn't you know that before you left home," Woewiyu replied that "I never tell this guy" about this friend from the police academy, but instead told the Immigration interviewer that the tallest building in Liberia is three stories high and that when he saw the Empire State building and other tall buildings, he said that he could not fly that high. Woewiyu then told Parks, "I wasn't suffering from no altitudinal complex, I just didn't want to go to Florida," and that he simply "changed my mind" about becoming a pilot. Thus, Woewiyu thought nothing of lying to U.S. immigration authorities when it suited him, and still chuckled about it over two decades later. Moreover, it must not be overlooked that Woewiyu confided this account to the undercover agent while seeking to evade United States arms export control laws and an international embargo.

Once in this country, Woewiyu did not lead an unblemished life prior to the Liberian civil war. In fact, after being admitted to this country in February of 1969 on a student visa, supposedly to learn how to be a pilot in Florida, he was arrested in June of 1970 and convicted that September of falsifying business records. PSR ¶ 150. Not deterred by that criminal conviction and again taking advantage of the generosity of the legal permanent resident status he enjoyed since 1972, Woewiyu continued to be involved in criminal activity and was again arrested in New York and convicted of receiving stolen property in 1982. PSR ¶ 151.

More importantly, however, just as witnesses testified that Woewiyu remained unmoved by their pleas -- literally turning his back on them as they begged him to release their doomed children -- and personal appeals to his authority as Minister of Defense, Woewiyu has shown not one shred of remorse during the entirety of these proceedings. There has been no acceptance of responsibility, contrition or flicker of empathy, even in the face of the victim witnesses' gut-wrenching testimony and the jury's verdict. Any such expressions at this late date should be accorded the *de minimus* value such hollow words would represent. This shocking lack of remorse and indifference to our nation's laws throughout the immigration process and these proceedings befits mirrors the contemptible arrogance of power Woewiyu exhibited throughout the Liberian civil war.

3. The Need to Promote Respect for the Law.

The U.S. Supreme Court has emphasized the importance of this nation's immigration regime. *See, e.g., Arizona v. United States*, 567 U.S. 387, 395 (2012) ("Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws."). The essential mission of our U.S. immigration officers is to ensure that people who do not belong

in the country are prevented from entering it and that immigration benefits such as citizenship are not bestowed upon those who are undeserving of or disqualified from receiving them. That was the core function Woewiyu corrupted. Woewiyu was not a migrant or refugee who arrived on our shores fleeing the persecution or the horror of war or the desperation of extreme privation. Even the most recently arrived come here knowing that our country is one that is governed by laws, and they must see that those laws work and that human rights violators will not find safe haven here. Moreover, they must expect that serious consequences will flow should they enter or seek to remain through fraud and deceit, and that those consequences will be particularly severe if they seek to conceal their participation in human rights abuses. In Woewiyu's case, he had been in this country since 1969. A substantial prison sentence is necessary to promote respect for our country's immigration laws, which Woewiyu violated in such an outrageous and arrogant fashion.

4. The Need to Provide Just Punishment for the Offense.

Anything less than the requested thirty-year term of imprisonment would be grotesquely inadequate as just punishment for Woewiyu's crimes and his underlying wartime conduct.

5. The Need to Deter Others from Committing Similar Criminal Conduct.

The United States has a vital public interest in deterring human rights violators from seeking to gain entry, refuge and safe haven in this country. Deterrence requires that the sentence send a signal to others similarly situated in order to create a disincentive to manipulate the U.S. immigration system. As efforts increase around the globe to end the culture of impunity and to investigate, prosecute and hold accountable human rights abusers, there will necessarily be an increased temptation on the part of those abusers to seek safe haven in the United States. Our immigration system provides an abuser who seeks to gain an immigration benefit a simple

choice: tell the truth and risk denial, or lie and risk prosecution. Woewiyu's sentence must offer a third and equally simple alternative as a powerful disincentive to human rights abusers tempted to try their hand at manipulating the generosity inherent in our system of immigration laws: do not even try it, because if you do, you do so at the grave risk of losing your liberty for a significant period of time. The need for deterrence is particularly great where the defendant is such a high-level war criminal as Woewiyu, and sentencing him within the advisory guideline range of fifteen to twenty-one months would, rather than deter other war criminals from lying to U.S. immigration officials, have the opposite effect of emboldening them to deceitfully seek U.S. immigration benefits and subvert our immigration laws and processes.

6. The Need to Protect the Public from the Defendant and Deter Him from Committing Similar Criminal Conduct.

A sentence above the advisory guidelines range is necessary to protect the public from Woewiyu and deter him from committing similar crimes in the future. The jury found and the Court may similarly find by a preponderance of the evidence that Woewiyu committed numerous human rights abuses. Woewiyu's past conduct demonstrates the brutality and deception of which he is capable, and which he has successfully concealed since remaining in this country following the end of the war. The mere fact that the defendant has lived quietly among the citizens of the Eastern District of Pennsylvania ought not to be rewarded, nor presumed to be evidence that the passage of time alone has rendered him law-abiding.

7. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct.

As noted above, the evidentiary foundation for Woewiyu's crimes is largely unprecedented. *See United States v. Worku*, 800 F.3d 1195, 1207-08 (10th Cir. 2015) (prison official sentenced to consecutive statutory maximum on all counts of conviction for a total of 22

years' imprisonment), *Jabbateh* (battalion commander sentenced to consecutive statutory maximum per all four counts of conviction for a total of 30 years' imprisonment). Although the defendant in *Worku* personally committed acts of violence, and Jabbateh personally committed and ordered innumerable acts of brutality, they were far lower-level figures than Woewiyu. Worku was a prison official and Jabbateh was a battalion commander in the ULIMO rebel group, whereas Woewiyu wielded his authority and influence over a rebel group that controlled over 90 per cent of Liberia throughout virtually the entire war. Consequently, he occupied an echelon and exerted a scope of power far exceeding that of any figure from the Liberian civil war ever prosecuted in a U.S. courtroom to date. Thus it is difficult to compare Woewiyu's conduct with others because there is a dearth of defendants who are truly similarly situated. Nevertheless, in that there are human rights violators who have been sentenced for making misrepresentations in the U.S. immigration process they, as noted above, many were sentenced to terms of imprisonment far in excess of the terms provided by applicable sentencing guideline ranges. Thus, in this case the sought variance would not cause an unwarranted sentencing disparity.

8. The Need to Provide the Defendant with Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner; and Restitution.

There is no need in this case to adjust the sentence in order "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" § 3553(a)(2)(D). Also, restitution is not an issue in this case. § 3553(a)(7).

B. An Upward Variance Is Warranted In This Extraordinary Case.

The government seeks an upward variance to the statutory maximum penalties, per count, on Counts 2, 3, 13 and 14, to run consecutively, for a total of thirty years' imprisonment. As

noted above, courts are required to “impose a sentence sufficient, but not greater than necessary” to accomplish the purposes of sentencing as articulated in 18 U.S.C. § 3553(a). A sufficient sentence must “reflect the seriousness of the offense,” “promote respect for the law,” “afford adequate deterrence to criminal conduct,” and “protect the public from further crimes of the defendant.” § 3553(a)(2). Courts are to consider these factors based “on the specific circumstances of the case and the defendant.” *United States v. Melvin*, 2009 WL 3128358, at *6 (D.N.J. Sept. 25, 2009). Under circumstances in which the applicable Sentencing Guidelines range is “inadequate to impose a sentence that is ‘sufficient, but not greater than necessary’ to accomplish the goals of sentencing,” courts have gone “outside the guideline range...to justly meet the criteria of § 3553(a).” *Id.*, quoting § 3553(a). In determining whether an upward variance is appropriate courts can properly consider a combination of factors. *See United States v. Varsanyi*, 392 F. App’x 15, 17 (3d Cir. 2010). These factors include, but are not limited to, whether the defendant has a criminal history category that understates his past. *See United States v. Passalacqua*, 508 F. App’x 141, 143 (3d Cir. 2013).

The above review of relevant 18 U.S.C. §3553(a) factors within the context of the Woewiyu’s conduct, either singularly or collectively, militate in favor of an upward variance. As noted above, the offenses of conviction are extremely serious, as they involve Woewiyu’s concealment of years of human rights abuses and the singularly severe subversion of the United States’ immigration system by concealing those abuses. *See United States v. Jorge Sosa*, 608 F. App’x 464, 468 (9th Cir. 2015) (upholding sentence of 120 months’ imprisonment where the guidelines sentence was six to twelve months, and where the crimes the defendant “lied about on his naturalization application were exceptionally heinous, making the circumstances of his offense distinct from most [naturalization fraud] prosecutions.”); *Worku*, 800 F.3d at 1207-08

(upholding 22-year sentence where court varied upwards to statutory maximum on each count, to run consecutively in immigration fraud and identity theft case where evidence concealed his torture and murder of prisoners in Ethiopia).

A thirty-year sentence is required to achieve just punishment and to deter other persecutors from finding sanctuary in the United States, much less the privilege of U.S. citizenship, which among other things, is granted only to persons of “good moral character.” Here, unlike some other human rights violators who were lower-level figures when they participated in single mass atrocities, Woewiyu was the Minister of Defense of the rebel group that effectively controlled Liberia’s territory, natural resources and its population. *See, e.g., United States v. Ngombwa*, No. 14-123, 2017 WL 508208, at *8 (N.D. Iowa Feb. 7, 2017) (defendant local chapter leader of large political party); *Sosa*, 608 F. App’x at 468 (defendant a member of Guatemalan Army); *Worku* (defendant controlled one of numerous prisons overseen by 120-officer military committee); *United States v. Boskic*, 545 F.3d 69 (1st Cir. 2008) (lower-level shooter who participated in part of a larger massacre) and *Jordan, supra* (same). Woewiyu is precisely the type of person that the U.S. immigration system is designed to keep out.

United States citizenship is a privilege reserved for those who deserve it. Woewiyu thought he could game our immigration system by concealing a past that would have disqualified him from citizenship as a persecutor and human rights abuser. A less severe sentence would send the opposite message about the gravity of his type of crimes, as well as about the gravity of committing perjury and false documents when applying for citizenship. While the core of the harm here is the fraud upon the United States’ immigration process, what Woewiyu lied about is an aggravating factor which cannot be ignored.

By concealing the true nature of his wartime conduct, each day of the over twenty years

Woewiyu spent after the war, living among the law-abiding in this country as a legal permanent resident was an ongoing and undeserved illicit benefit he continued to receive by fraud and deceit.

To be clear, the government is not asking the Court to sentence Woewiyu to thirty years' imprisonment for being a war criminal (though the evidence at trial in fact firmly established that he is one), but because his lies were the most egregious violations of the offenses of conviction conceivable. Woewiyu lied on his application for naturalization, for which he well knew was not qualified, and continued to lie throughout the subsequent immigration process when interviewed in person by a naturalization officer about organizations to which he belonged, whether he ever sought the overthrow of a government by force or violence, or whether he ever persecuted anyone, knowing full well that an honest answer to any of those questions would have doomed his application. Woewiyu is a war criminal who profoundly befouled his country and sought to ratify with the imprimatur of U.S. citizenship the impunity he for too long enjoyed; by employing fraud and deceit to do so, he severely undermined the integrity of the United States' immigration regime in the most insidious way.

WHEREFORE, the government respectfully requests that its motion for an upward departure be granted, and that in order to effectuate the goals of sentencing as articulated in 18 U.S.C. § 3553(a), the Court vary upwards from the otherwise applicable Sentencing Guidelines range and sentence Woewiyu to thirty years' imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum In Support Of Government's Motion For Upward Departure and/or Variance and Sentencing Memorandum was filed electronically on the Electronic Case Filing system, is available for viewing and downloading from the ECF system, and/or was served on defense counsel as follows:

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