20-3520(L)

20-3789(CON)

To Be Argued By:
TANYA HAJJAR

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

—against—

ALLISON MACK, KATHY RUSSELL, LAUREN SALZMAN, NANCY SALZMAN, also known as PERFECT,

Defendants,

KEITH RANIERE, also known as VANGUARD, CLARE BRONFMAN,

Defendants-Appellants.

On Appeal From The United States District Court
For The Eastern District of New York

BRIEF FOR THE UNITED STATES

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UNITED STATES COURT OF APPEALS

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Docket No. 20-3520(L), 20-3789(CON)

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PRELIMINARY STATEMENT

Defendants-appellants Keith Raniere and Clare Bronfman appeal from judgments entered on October 30, 2020, and October 7, 2020, respectively, in the United States District Court for the Eastern District of New York (Garaufis, J.). After a six-week jury trial, Raniere was

convicted of racketeering, racketeering conspiracy, forced labor conspiracy, wire fraud conspiracy, sex trafficking conspiracy, sex trafficking, and attempted sex trafficking. The court sentenced Raniere principally to 120 years' imprisonment and a $250,000 fine.

Bronfman pleaded guilty, pursuant to a plea agreement with the government, to both counts of a two-count superseding information charging her with conspiring to conceal, harbor and shield from detection one or more aliens for financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I), 1324(a)(1)(B)(i), and the unlawful transfer and use of a means of identification of another person with the intent to commit and in connection with attempted tax evasion, in violation of 18 U.S.C. §§ 1028(a)(7). The district court sentenced Bronfman principally to 81 months' imprisonment, a $500,000 fine, and, as set forth in the plea agreement, over $6 million in forfeiture and restitution.

On appeal, Raniere asserts that (1) the jury instructions for the sex trafficking offenses and related racketeering acts were erroneous and the government failed to adduce sufficient evidence to sustain the jury's verdict as to those counts; (2) the government adduced insufficient evidence to sustain the jury's verdict on the forced labor, child

exploitation, obstruction of justice, identity theft and racketeering offenses; and (3) the district court denied Raniere a fair trial by admitting certain evidence related to his sexual abuse of a minor victim; limiting defense counsel's cross-examination of cooperating witness Lauren Salzman; and requiring the parties to refer to victim-witnesses by their first name only. Bronfman asserts that the court committed procedural error in sentencing her to an above-Guidelines sentence of 81 months' imprisonment.

These arguments are without merit and the judgments should be affirmed.

STATEMENT OF FACTS[1]

I. The Superseding Indictment and Trial Conviction of Raniere

On March 13, 2019, a grand jury in the Eastern District of New York returned a second superseding indictment against defendants Keith Raniere, Clare Bronfman, Allison Mack, Kathy Russell and Lauren Salzman.[2] ("Second Superseding Indictment" or "S-2")).[3] After a six-week trial in May and June of 2019, Keith Raniere was convicted of all seven counts and 11 racketeering acts submitted to the jury. (GA1166).

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[1] The facts herein are drawn principally from Raniere's PSR and the trial record. Bronfman's sentencing proceeding and related procedural history are discussed in POINT FOUR.

[2] The caption on the Second Circuit docket erroneously lists Nancy Salzman's alias as "PERFECT." In fact, as noted on the first superseding indictment (DE50), her alias is "PREFECT." The government respectfully requests that this Court's docket be amended to correct this error.

[3] References to "A," "SPA," "GA" and "SGA" are to Raniere's appendix, his special appendix, the government's appendix and its sealed appendix, respectively. References to "DE" are to entries on the district court's docket (No. 18-CR-204 (NGG) (E.D.N.Y.)). "T" refers to the trial transcript. "GX" refers to government trial exhibits. "RBr" and "SRBr" refer to Raniere's principal and supplemental appellate briefs, respectively. "BBr" and "SBBr" refer to Bronfman's principal and supplemental appellate briefs, respectively. References to "RPSR" and "BPSR" are to the Presentence Investigation Reports for Raniere and Bronfman, respectively.

Bronfman and Raniere's other four codefendants all pleaded guilty pursuant to agreements with the government.

II. The Government's Evidence at Trial

A. The Racketeering Enterprise and Overview (Counts 1, 2[4])

For over a decade, Raniere led a criminal enterprise ("the Enterprise") that was comprised of and relied on an "inner circle" of adherents that included, at various times, defendants Clare Bronfman, Nancy Salzman, Lauren Salzman, Allison Mack and Kathy Russell, among others. (RPSR¶¶36–41; GA982–1129 (summations)). Members of Raniere's "inner circle" were accorded "special positions of trust and privilege" with respect to Raniere and held high-ranking positions in one or more Raniere-founded organizations, including Nxivm and a "secret society" called "Dominus Obsequious Sororium" or "DOS." (Id.). The primary purpose of the Enterprise was to promote Raniere and to recruit individuals into various purported self-help organizations that Raniere

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[4] Counts Three, Four, and Five of S-2 were dismissed prior to trial for lack of venue. The district court renumbered the charges on the verdict sheet to avoid juror confusion, so that Counts Six Through Eleven were presented to the jury as Counts Three through Eight. To avoid further confusion, the government refers to the counts as they appear on the verdict sheet, as Raniere did in his appellate brief.

founded, including Nxivm and affiliated programs, and DOS. (Id.; GA235:T1619–20; T619–24,).

During the relevant period, Raniere and his co-conspirators committed a wide range of criminal activity, including sex trafficking, forced labor, alien smuggling, wire fraud and obstruction of justice in connection with the Enterprise. In the early 2000s, for example, Raniere and his co-conspirators trafficked a Nxivm adherent, "Daniela," for labor and services and confined her to a room for nearly two years. (RPSR¶¶65–69). Raniere also sexually exploited Daniela's sister, "Camila," who was then a 15-year-old child, and took photographs of his abuse constituting child pornography. (RPSR¶¶60–64).

In 2015, Raniere created and led DOS, a secret organization in which women — referred to as "slaves" — were recruited to take "vows of obedience" to higher-ranking women, including members of Raniere's inner circle, who were themselves "slaves" to Raniere. (RPSR¶¶84–96). DOS "slaves" were required to take nude photographs, perform labor, and in some cases, engage in sex acts with Raniere. (Id.).

Raniere demanded absolute commitment from those he recruited and those within his inner circle, including as to his teachings

and ideology. (RPSR ¶ 38; GA126:T308, 300:T1875; T502). Raniere and his co-conspirators maintained control over the Enterprise by, among other means, obtaining sensitive information about members and associates of the Enterprise; recruiting and grooming sexual partners for Raniere and obtaining nude photographs of women for Raniere; inducing shame and guilt in order to influence and control members and associates of the Enterprise; isolating associates and others from friends and family and making them dependent on the Enterprise for their financial well-being and legal status within the United States; and encouraging associates and others to take expensive Nxivm courses, and to incur debt to do so. (RPSR¶38). Members of the Enterprise recruited and groomed sexual partners for Raniere, both within and outside of DOS, and many were themselves in sexual relationships with Raniere that involved pledges of loyalty, penances for "ethical breaches," and the provision of collateral. (RPSR¶39).

During Raniere's six-week trial, the government called over 15 witnesses. Among those witnesses were cooperating witness Lauren Salzman (GA207–396), Daniela (GA400–699), and DOS victims Sylvie (GA71–161), Nicole (GA725–848) and Jay (GA850–923). The government

also called an expert in clinical and forensic psychology who specialized in interpersonal violence and trauma, several custodian witnesses, and four law enforcement witnesses.

B. The Sexual Exploitation of Camila (RA2, RA3, RA4)

In September 2005, Raniere began a sexual relationship with Camila, then a fifteen-year-old child. (RPSR¶¶60–64; T3457–65, 3524; GX301-R). Camila and her family had arrived in Clifton Park, New York at Raniere's invitation, and he arranged for Camila to work as a maid in Nancy Salzman's house, which was a distance away from her siblings. (GA413–17). Camila lived in a house with other members of the Nxivm community, including Monica Duran, a woman who — like Camila — would later become a first-line "master" in DOS, as described further below. (Id.).

On November 2, 2005 and again on November 24, 2005, the defendant took photographs of Camila constituting child pornography. Several of the photographs depict Camila lying on a bed fully nude. At least five photographs depict close-ups of Camila's genitals. (RPSR¶¶60–64).

On March 27, 2018, law enforcement agents conducted a judicially authorized search of 8 Hale Drive, a residence in Halfmoon, New York, that was primarily used by Raniere. (Id.) During the course of the search, agents recovered, among other things, a Western Digital hard drive and a Canon EOS 20D camera. (Id.; GA848:T4290, 849–50; GX503 (hard drive), 520 (camera)). The Western Digital hard drive contained a folder titled "BACKUPS," within which was a folder titled "Studies." (RPSR ¶ 62). Within the "Studies" folder were twelve subfolders containing nude photographs of twelve women with whom Raniere had a sexual relationship. (Id.). Each subfolder was titled with the initials of the woman (or her nickname) and a date corresponding to the metadata of the image files contained within it, all of which were taken with the Canon EOS 20D camera between October and November 2005. (Id.; GA1184).

The images in the collection were similar in content. (RPSR¶62). Each folder contained images of a nude woman on a bed and close-up photographs of the woman's public hair and vaginal area — images which the evidence at trial demonstrated were consistent with Raniere's sexual preferences. (Id.). Among the women depicted in the

"Studies" folder were Lauren Salzman and Daniela, both of whom testified as government witnesses at trial.

One of the folders on the Western Digital hard drive was titled "V." (RPSR¶63). It contained thirteen photographs of Camila taken on November 2, 2005, at least nine of which were child pornography.[5] (Id.). Several of the photographs depict Camila lying on a bed fully nude and at least five photographs depict close-ups of Camila's genitals. (Id.).

Electronic communications between Raniere and Camila admitted in evidence at trial confirm that their sexual relationship began with Camila was fifteen years old. (RPSR¶64). In certain communications, Camila refers to her and Raniere's "anniversary" — the first date they had sex — as September 18, 2005. (Id.). In 2009, Raniere and Camila exchanged numerous sexually explicit emails discussing the beginning of their sexual relationship as September 2005. (Id.; GX1400–65).

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[5] Raniere's nickname for Camila was "V" or "Virgin Camila." (GA414:T2468).

C. Trafficking of Daniela For Labor and Services (RA8)

Between March 2010 and April 2012, Raniere, Lauren Salzman, and others trafficked Daniela for labor and services by confining her to a room for nearly two years on the threat of being sent to Mexico and withholding her birth certificate. (RPSR¶¶65–69).

Raniere initiated a sexual relationship with Daniela, Camila's sister, in 2003, when Daniela was eighteen. (RPSR¶66). After Daniela re-entered the United States in 2004, she began to work for Raniere, including by cleaning, organizing his books, digitizing his music collection, and compiling reports summarizing lengthy textbooks on various topics. (Id.; GA508:T2511). As Raniere did in his relationships with other women, Raniere controlled Daniela's diet and weight and insisted that Daniela keep the relationship secret. (RPSR¶66).

When Daniela was 20, Daniela became pregnant by Raniere. (Id.). Raniere's longtime romantic partner and a member of the Enterprise, Pamela Cafritz, paid for Daniela's abortion and instructed Daniela to lie about the identity of her partner to medical staff. (Id.).

After Daniela developed romantic feelings for another man, Raniere told Daniela's parents that Daniela had committed an "ethical

breach." (RPSR¶67). Raniere thereafter ordered that Daniela be confined to a room in her parents' home without human contact until she had "healed" her purported "ethical breach." (Id.). At Raniere's instruction, Lauren Salzman threatened Daniela that if she left the room, she would be sent to Mexico without any identification documents, which Raniere had in his possession. (Id.; GX1578, 1535, 1534, 1563, 1603, 1934).

Daniela was confined to the room for nearly two years, during which she went months without human contact. (RPSR¶68; GA313:T1927). Family members left meals for Daniela outside her door. Daniela was denied prompt medical care and slept on a foam pad on the floor. During this time, Daniela wrote hundreds of letters to Raniere with various proposals in an effort to persuade him to allow her to leave the room. Daniela believed that if she stopped writing to Raniere, she would be sent to Mexico without money or her identification documents. (Id.).

Lauren Salzman reported to Raniere regarding Daniela's "progress," but Raniere frequently told Salzman that Daniela was "game-playing" and manipulating Salzman and needed to stay in the room longer. (GA313–14). Raniere forbade Salzman from giving Daniela any

information "about what was going on, on the outside with anybody." (GA315:T1936–37). At one point, when Daniela cut off her hair, Raniere instructed Lauren Salzman to tell Daniela that Daniela would have to stay in the room until her hair grew back. (Id.; GA605:T2899). Over time, Daniela's psychological health deteriorated:

> [S]ometimes I would beg: Please let me know. I don't know why, just — just let me out. Nobody cared. My family didn't. Nobody cared. So, it was also — it was also knowing that nobody wanted me. I'm in a world where nobody cares that I'm losing my life. . . it was clearly never gonna end.

(GA607:T2905).

In approximately February 2012, after considering suicide, Daniela left the room. (RPSR¶69). As punishment, Daniela was driven to Mexico at Raniere's direction and was told that unless she completed book reports for Raniere, she would not receive her birth certificate. (Id.). Daniela ultimately obtained a copy of her birth certificate with the assistance of an attorney working for a human rights commission. (Id.).

D. Alien Smuggling (RA1)

Raniere and his co-conspirators participated in efforts to recruit and secure immigration status for non-citizens so that they could work in one or more Nxivm-affiliated organizations or as his sexual

partners. (RPSR¶42). Among the individuals that Raniere and his co-conspirators assisted in entering or remaining in the United States unlawfully were siblings Marianna, Daniela, Adrian and Camila. (Id.). By 2008, all four siblings no longer had lawful immigration status in the United States. (GA503–07; GX1554).

In 2004, Raniere arranged for Daniela to enter the United States unlawfully using a false identification document with the last name and date of birth of Ashana Chenoa, a deceased woman. (RPSR¶44). Daniela's parents had paid for her to take a Nxivm course in Monterrey, Mexico, and encouraged Daniela to join the Nxivm community in Albany, New York. (Id.; GA456:T2301).

On October 26, 2004, Daniela was denied entry into the United States and she returned to her hometown in Mexico. (RPSR¶44; GA483:T2408). Raniere instructed Daniela to fly to Toronto, Canada and enter the United States with a false sheriff's ID card containing the name and date of birth of Chenoa who, according to Raniere, bore a resemblance to Daniela. (RPSR¶44; GA483:T2410). On December 24, 2004, Daniela met Kathy Russell at the border. (Id.). Russell handed Daniela a false sheriff's ID bearing the name "Lisa Chenoa," and drove

Daniela across the border into the United States and back to where Raniere and other Nxivm members were living in Clifton Park, New York. (GA483–84).

E. Identity Theft and Unlawful Surveillance (RA5, 7)

Raniere and his co-conspirators engaged in unlawful surveillance and investigation of his and Nxivm's perceived enemies. (RPSR¶¶70–75). The targets of these efforts included federal judges overseeing litigation in which Nxivm was a party, high-ranking politicians, reporters who had published articles critical of Raniere or Nxivm, Nxivm's own lawyers, legal adversaries and their families, an accountant (government witness James Loperfido) who worked for an attorney who had previously done work for Nxivm, and Edgar Bronfman Sr., the father of defendant Clare Bronfman. (Id.; T3357). On multiple occasions, Bronfman approached Stephen Herbits, a colleague of her father who testified at trial for the government, whom she believed to have political influence, in an attempt to persuade him to use his influence to help her intimidate individuals perceived to be hostile to Nxivm or Raniere. (RPSR¶¶70–75; T1322–24, 1330–33.)

After the publication of an October 2003 Forbes article in which Edgar Bronfman was quoted calling Nxivm a "cult," Raniere considered Edgar Bronfman an enemy of his and of Nxivm. (GX1456). As a result, Raniere tasked Daniela with creating keylogging software in order to access and monitor Edgar Bronfman's email account. (GA518–19). Bronfman installed the keylogging software on her father's computer, and Daniela was thereafter able to access and monitor Edgar Bronfman's email account. (GA519:T2554–55). For years, Daniela reported the results to Raniere. (RPSR¶72; GA519:T2556–520:T2557).

At Raniere's direction, Daniela also created and installed keylogging software on the computer of Loperfido (GA519:T2553; T3370), and Daniela's sister Marianna (RPSR¶74; GA536:T2621–22). Raniere directed Daniela to install key logging software on her sister's computer after Raniere suspected Marianna of rekindling a relationship with an ex-boyfriend. Daniela provided Raniere with information about Loperfido and Marianna obtained using the keylogging software. (RPSR¶73, 74; GA422:T2560, 536:T2621–22).

On behalf of Nxivm, Bronfman hired several private firms, including Canaprobe and Interfor, to investigate perceived enemies of

Nxivm and Raniere. (RPSR¶75; T5010). Between approximately 2007 and 2009, Canaprobe sent Bronfman the results of purported "bank sweeps" for bank account and balance information belonging to Nxivm's adversaries. (Id.). On March 27, 2018, a search warrant was executed on the residence of Nancy Salzman, where law enforcement agents recovered, among other things, a large box containing what appeared to be private banking information of many individuals perceived to be Nxivm enemies, including Edgar Bronfman, Joseph O'Hara, Rick Ross, and others. (Id.; T4997–99 (testimony describing purported banking information for, among other individuals, the author of the October 2003 Forbes article and prominent New York politicians and lobbyists)).

F. Obstruction of Justice (RA6)

Raniere obstructed justice by altering videotapes that were to be produced in discovery in a federal lawsuit involving Nxivm in New Jersey. (RPSR¶¶80–83). In 2003, Nxivm and affiliated entities filed suit against Stephanie Franco, a former Nxivm student, and Rick Ross, a cult "deprogrammer" who testified for the government at Raniere's trial. (T4683–84). The lawsuit alleged copyright infringement and centered on a claim that Franco had violated a non-disclosure agreement by providing

Nxivm course materials to Ross, who published the course materials on his website. (GA328:T1988–89; T910, 1299, 4700–03). In around 2008, Franco's attorneys requested the production of certain videotapes in support of their claim that the Nxivm curriculum contained false statements and violated certain state consumer protection laws. (Id.).

In June 2008, Raniere tasked Mark Vicente (who testified for the government at trial), among others, to alter videotapes and to remove certain segments from them without having the videotapes appear altered. (GA178–82). Vicente was provided with videotapes from which he was instructed to remove content, including segments in which Nancy Salzman made unsubstantiated health claims about Nxivm's curriculum. (GA179; T1256). These altered videotapes were then produced in discovery by Nxivm's attorneys with the false claim that they were provided in "unedited fashion." (RPSR¶82).

G. Sex Trafficking, Forced Labor, Wire Fraud and Extortion Related to DOS (Counts 3, 4, 5, 6, 7 and RA9, 10)

1. Overview of DOS

In late 2015, Raniere created DOS, a secret organization led by Raniere. (RPSR¶¶84–96; GA207:T1506). Aside from Raniere, who

gave himself the title "Grandmaster," all members of DOS were female, and were referred to as "slaves." (Id.). Raniere's direct slaves (the "First Line") were Camila, Daniella Padilla, Nicki Clyne, Loreta Garza, Rosa Laura Junco, Monica Duran, Allison Mack, and Lauren Salzman. (GA207:T1509). Each of these "first-line slaves" recruited their own "slaves" by approaching other women and, at Raniere's instruction, falsely describing DOS as a secret women's empowerment group or sorority. (RPSR¶85). Raniere instructed the First Line never to disclose his participation in and leadership of DOS. (Id.). Prospective "slaves" were required to provide "collateral" — including damaging confessions about themselves and loved ones (truthful or not), rights to financial assets, and sexually explicit photographs and videos — which were intended to prevent them from leaving the group or disclosing its existence to others. (GA208:T1508–09, 231–32).

Through DOS, Raniere used the First Line to recruit other women to make a "collateralized vow of obedience" to their masters and, by extension, to Raniere, and then required these "slaves" to perform labor, take nude photographs, and, in some cases, to engage in sex acts with Raniere. (GA257:T1707, 268:T1750, 375:T2183). For example,

Raniere told First Line "slave" Camila that it would be "good" for her to "own a fuck toy slave" for him that she could "groom and use as a tool to pleasure" him. (GX1779-285; T3569). Raniere also instructed Daniella Padilla, Loreta Garza, Rosa Laura Junco and Camila to find a young virgin "successor" for Raniere. (T3590, 3597).

The First Line of DOS met three times a week for about ten hours a week. (RPSR¶¶84–96; G208:T1510–11). At the start of each meeting, the First Line took a fully nude photograph of themselves and sent it to Raniere. In the meetings that Raniere attended, Raniere sat on a chair, dressed, while the First Line sat naked on the floor beneath him. (Id.). Raniere engaged in sexual relationships with women on the First Line, occasionally at the same time, and directed them to purchase a "sorority house" which would contain BDSM equipment, including sex toys and a human-sized cage. (GA208:T1510, 215:T1538). These sexualized components of DOS, along with Raniere's leadership of DOS, were deliberately concealed from recruits. (RPSR¶¶84–96; GA208:T1509). In April 2017, the First Line of DOS purchased a "sorority house" in Waterford, New York. (RPSR¶¶84–96; GA236:T1623).

Raniere and other DOS "masters" recruited women as "slaves" into DOS by deliberately concealing Raniere's role in DOS. (RPSR¶¶84–96; GA208:T1509). Women were recruited into DOS from California, Mexico, Canada and elsewhere, and DOS "masters" used encrypted messaging applications located overseas, including Telegram and Signal, to communicate with their "slaves" and to collect collateral. (GA231:T1604–232:T1605). After women were recruited into DOS and their collateral was collected, the DOS "slaves" were told for the first time that they needed to provide additional collateral each month. (RPSR¶89). DOS "slaves," including Sylvie, Nicole, and Jay, among others, believed that if they did not obey their "masters," their collateral would be released. (RPSR¶¶84–96; GA103:T213–14).

Raniere and the DOS "masters" used a variety of means to coerce their "slaves" into submission. Raniere and DOS "masters" sought to control their "slaves" using physical isolation (by being required to stay in Clifton Park); forced participation in "readiness" drills; requirements to seek permission from Raniere or their "master" for various activities; sleep-deprivation and extremely restrictive diets. (RPSR¶¶84–96). In accordance with Raniere's instructions, DOS "slaves" were also required

to be branded with a symbol that, unbeknownst to the "slaves," represented Raniere's own initials. (GA236:T1621).

DOS members were required to participate in a "branding ceremony," during which the DOS victim being branded was held down by other DOS "slaves" and was required to state, among other things, "Master, please brand me, it would be an honor." (RPSR¶¶84–96).[6] Raniere added that DOS "slaves" should "probably say that before they're held down, so it doesn't seem like they are being coerced." (Id.). The branding itself was performed without anesthesia, using a cauterizing pen, which burned the skin and left a permanent mark. (RPSR¶¶84–96). Most of the brandings were performed by Danielle Padilla, a DOS "slave" who was also a licensed medical professional. (RPSR¶¶84–96).

DOS "masters" also benefitted financially from recruiting and maintaining DOS "slaves." DOS "slaves" were coerced into providing labor and services for their "masters" under the threat of the release of their collateral, including editing and transcription work, taking naked

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[6] Raniere directed Allison Mack to implement these aspects of the branding ceremony. (GA1178).

photographs, and other tasks. DOS "masters" were expected to receive approximately 40 hours of labor each week from their "slaves." (RPSR¶¶84–96; GA235:T1618–19).

Some First Line DOS "masters," including Allison Mack and Nicole Clyne, assigned their DOS "slaves" to have sex with Raniere. (T1794-95.) As a First Line master, Mack expected to, and did, receive financial opportunities and privileges as a result of her slaves' compliance with her orders, including her orders to engage in sex acts with Raniere. (RPSR¶109).

2. Nicole

Nicole, an actress in her early 30s, began taking Nxivm classes in 2015, including acting classes with Allison Mack. In February 2016, Mack invited Nicole to join a "women's mentorship group," but asked that Nicole first provide collateral. (RPSR¶¶103–112; GA738:T3845–739:T3847). At the time, Nicole was living in Brooklyn, New York. Nicole was told, and believed, that the organization was women-only and had no connection to Nxivm. (RPSR¶103). After Mack told Nicole what would constitute sufficient collateral, Nicole wrote a series of letters falsely alleging sexual abuse by a family member and

other damaging allegations. (GA740:T3850). After Mack assured Nicole that the letters would be "locked in a box" where nobody could see them, Nicole provided the letters and a sexually explicit video of herself to Mack. (GA740:T3853).

Once Nicole had provided this collateral, Mack told Nicole about DOS, referring to it as "the Vow." (GA741:T3854–55). Nicole agreed to become Mack's DOS "slave." (GA743:T3863–64). When Nicole agreed to join DOS, she was not aware and was not told that she would later be required to provide additional collateral. (GA781:T4017). Nicole was later required to provide, and did provide, additional collateral on a monthly basis, including credit card authorizations and the right to her grandmother's wedding ring. (GA782:T4021–22).

Mack directed Nicole to be celibate for six months and subsequently assigned Nicole to contact Raniere. (GA744:T3868). Mack "assigned" Nicole to tell Raniere that she would do "whatever" he wanted her to do. (GA756:T3917). One night when Nicole was staying with Mack in Clifton Park, New York, Raniere called Mack. (GA757:T3921–22). Mack told Nicole to go outside and meet Raniere, which Nicole did. (Id.). Raniere blindfolded Nicole, led her into a car and drove her to a house.

(GA758:T3925). Raniere then led Nicole, still blindfolded, through some trees and inside a building, where he ordered her to undress and tied her to a table. (GA758:T3926–759:T3929). Another person in the room, whose identity was not known to Nicole, began performing oral sex on her.[7] Raniere asked if Nicole was ok, told her that she was "very brave" and directed her not to tell anyone what had happened. (GA759:T3931).

Nicole testified that she believed that if she left DOS or broke her commitment, her collateral would be released. (GA746:T3876–77, 764–65). Nicole and Raniere eventually had additional sexual encounters. (GA766:T3956). At one point, after Nicole told Raniere that she was having significant financial difficulties as a result of being a DOS "slave," Raniere, exasperated, pulled out a "plastic bag with $10,000 in it" and gave it to Nicole. (GA771:T3976–77). Nicole used some of the money for various expenses related to Nxivm and DOS. (GA772:T3981).

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[7] The individual who performed oral sex on Nicole was Camila, one of Raniere's First Line "slaves," and the sexual abuse took place at 120 Victory Way. (GA298:T1870). A photograph recovered from Camila's email account shows the table onto which Nicole was tied, and a video camera that was pointed in the direction of the table. (GA1201; T3657).

Throughout Nicole's time in DOS, Mack regularly required her "slaves" to pose for nude photographs, including close-up photographs of their vaginas, either as assignments or as collateral. (GA781:T4016, 783:T4024). Mack sent the photographs to Raniere. (RPSR¶109). As a DOS "slave," Nicole also performed uncompensated labor, including, among other things, hours of editing work. (GA784–87).

3. Jay

Jay is an actress and model who began taking Nxivm classes in or about 2016, during which time she became friendly with India, one of Mack's DOS "slaves." (RPSR¶¶113–17; GA851:T4318). In approximately November 2016, India recruited Jay into DOS. (GA8523:T4324). Jay was told that DOS was a women's-only organization. (Id.). Jay performed uncompensated labor as part of her membership in DOS, including transcribing interviews involving Pamela Cafritz, who had passed away. (GA885:T4411).

After several months, Mack and India gave Jay a "special assignment" to "seduce" Raniere and have Raniere take a photograph of Jay to prove that she had done it. (GA887:T4416–888:T4417). Mack told Jay, "I give you permission to enjoy it," and Jay understood the

assignment as a direction to have sex with Raniere. (GA888–89). Jay asked Mack directly if Raniere was part of DOS, which Mack denied. (Id.). Jay refused to engage in a sex act with Raniere and decided to leave DOS. (GA889:T4419). Before leaving DOS in approximately May 2017, Jay captured images of collateral belonging to other DOS "slaves," believing that she could protect the release of her own collateral by having other DOS members' collateral as leverage. (GA891–92).

4. Sylvie

Sylvie had worked for Clare Bronfman for nearly ten years when Monica Duran, a First Line master in DOS, approached Sylvie about joining DOS. (RPSR¶¶99–102; GA71:T85). At that time, Sylvie had recently been married to another member of the Nxivm community. (RPSR¶99; GA115:T261). Both Raniere and Bronfman, at various points, instructed Sylvie not to have sex with her husband for the first two years of their marriage. (RPSR¶99; GA161:T447).

Duran approached Sylvie and invited Sylvie to a secret project that Duran said had nothing to do with Nxivm. (RPSR¶100; GA102:T207). Sylvie was told that, in order to learn more, she had to provide "collateral," which was something capable of destroying her

relationships with her family. (GA103:T211, 115:T264). Sylvie provided a stamped letter addressed to her parents falsely confessing to being a prostitute and a naked photograph of herself. (GA119:T277).

Soon thereafter, Duran gave Sylvie an assignment to "seduce" Raniere and send him naked photographs every day. (RPSR¶101; GA105:T219). Sylvie was not attracted to Raniere and found him "creepy." (GA79:T118). Duran later arranged for Sylvie to meet Raniere at a house, where Raniere took Sylvie upstairs, instructed her to undress and lie down on the bed. (GA112–13). Raniere then performed unwanted oral sex on Sylvie and took close-up photographs of Sylvie's genitals with Sylvie's phone. (GA114). Sylvie felt disgusted by this encounter and acquiesced to it only because she believed her collateral would be released if she did not obey Raniere. (GA105:T220). The photographs were then sent to Duran using Telegram, an encrypted messaging service. (GA114:T257–58).

After Sylvie completed the assignment she had been given, Sylvie deleted the photograph in disgust and shame. (Id.). The next day, Duran called Sylvie, panicked, because the photographs had been deleted from Duran's phone. (Id.). Duran told Sylvie that she would have to go

back to Raniere and have him take new photographs, which Sylvie did. (Id.).

5. Actions After DOS Was Disclosed

The existence of DOS became known within the Nxivm community in early June 2017, when the husband of Sarah Edmondson, a DOS "slave," publicly confronted Nxivm members about DOS. (GA279:T1796). Immediately after the existence of DOS was publicly disclosed, Raniere directed the First Line of DOS to lie about his involvement in DOS, as well as to compile materials related to DOS and secure them. (RPSR¶¶123–31; GA280). Raniere also instructed the First Line to collect "positive" testimonials about DOS and to create a DOS website. (GA284:T1815).

In July and September 2017, Raniere and Bronfman received letters from separate DOS victims describing their collateral and requesting its return. (RPSR¶124; GA282–84). Bronfman hired private investigators and public relations firms to rehabilitate DOS's public image and to distance it from Nxivm. (RPSR¶125).

In September 2017, Raniere and Bronfman were alerted to the fact that The New York Times would shortly be publishing an article

about DOS. Bronfman and Raniere drafted intimidating cease-and-desist letters to DOS victims who Bronfman and Raniere feared would publicly disclose the existence of DOS. These letters were later sent to several DOS victims by attorneys in Mexico. (RPSR¶126).

Months later, in December 2017, Bronfman released a public statement characterizing DOS as a "sorority," stating that it had

> truly benefited the lives of its members, and does so freely. I find no fault in a group of women (or men for that matter) freely taking a vow of loyalty and friendship with one another to feel safe while pushing back against the fears that have stifled their personal and professional growth.

(GX1393R). Raniere also issued a public statement denying his association with DOS and claiming that "experts" had concluded that "members of the sorority ... haven't been coerced." (GX1009).

After multiple DOS victims spoke publicly about their experiences, Raniere and Nicki Clyne, a member of the First Line, considered releasing an edited video of Sarah's branding ceremony. (GA290:T1836). The branding video depicted Sarah naked and being branded and stating, as she had been instructed, "Master, please brand me, it would be an honor." (GA290:T1836-37). In May 2019, during the

trial against Raniere, the video of Sarah's branding video was publicly disseminated and broadcast in Mexican media. (T5149).

Shortly after the media reports were published regarding DOS, Raniere and Bronfman traveled to Mexico. (RPSR¶29). As media outlets began reporting that the United States Attorney's Office had launched a criminal investigation, Raniere stopped using the phone number he had previously used for over fifteen years and he and Bronfman began using encrypted email accounts. (GA295:T1855–56).

H. Identity Theft Related to Tax Evasion (RA11)

Between approximately November 2016 and March 2018, Raniere and Bronfman conspired to commit identity theft in connection with Raniere's continued use of a credit card account number and bank account number belonging to Pamela Cafritz, knowing Cafritz was deceased. (RPSR¶78). This scheme was part of a long-standing practice of deliberately keeping money and assets out of Raniere's name. (Id.; T607–08 (explaining that Raniere expressed desire to be "bankruptcy remote")).

Bronfman facilitated the scheme by arranging for regular payment of Cafritz's credit card bills after she died on November 7, 2016.

(Id.; T4540). Among the charges on Cafritz's credit card were charges to Amazon Marketplace, Restoration Hardware, a sock store in Brooklyn, Neiman Marcus, Bergdorf Goodman and Saks Direct. (T4556–629). In total, approximately $135,000 was charged to Cafritz's credit card from November 7, 2016, the date of her death, to February 8, 2018. (GA935). In addition, disbursements were made from Cafritz's Key Bank account after she died. (GA928–32). Approximately $320,305 in checks and $736,856 total disbursements were drawn from Cafritz's account, which included payments to Kathy Russell. (T4582).

III. The Rule 29 Motion, Verdict and Raniere's Sentencing

Following the close of the government's case, counsel for Raniere made an oral Rule 29 motion attacking the sufficiency of the evidence as to the sex trafficking and racketeering counts. (T5234–36). The district court denied the motion. (Id.). On June 19, 2019, the jury convicted Raniere of all seven counts submitted to the jury and found that the government had proven all 11 racketeering acts identified in the indictment. (GA1166). On October 27, 2020, the court sentenced Raniere to a term of 120 years' imprisonment and a $250,000 fine.

SUMMARY OF ARGUMENT

The defendants raise dozens of arguments and sub-arguments over more than 37,000 words of briefing. None have merit and the Court should affirm the judgments for the following reasons:

- Raniere did not preserve his challenge to the district court's sex trafficking instruction regarding the phrase "anything of value," and there is no merit to his claim that the court erred by using "because of" rather than "on account of" or by adding a sentence not found in the "Sand instructions" that counsel agreed was a correct statement of the law;

- The government adduced sufficient evidence to support Raniere's convictions of sex trafficking, child exploitation, obstruction of justice, identity theft and racketeering offenses;

- The district court did not err under Rules 401 and 403 in admitting certain communications between Raniere and Camila, evidence of Camila's abortions and photographs of Raniere's other sexual partners.

- The district court did not abuse its discretion in ending the cross-examination of Lauren Salzman, in light of counsel's repetitive and irrelevant questioning and, in any event, any error was harmless given Raniere's failure to call Salzman as a witness himself when given the option and his failure on appeal to identify any line of questioning he would have pursued.

- The district court did not err in permitting victim-witnesses to testify using only their first name or a pseudonym to protect their privacy, where the defendant had access to their identifying information and could fully investigate prior to their testimony.

- The district court did not apply the legal concept of willful blindness to find that Bronfman "bore culpability" for DOS and the court's substantial upward variance is supported by the § 3553(a) factors.

ARGUMENT

POINT ONE

THERE IS NO BASIS TO VACATE RANIERE'S SEX TRAFFICKING CONVICTIONS

The Court should reject Raniere's challenges to his convictions on Counts Five, Six and Seven, charging him with sex trafficking conspiracy, sex trafficking as to Nicole, and attempted sex trafficking as to Jay. First, contrary to the claims set forth in Raniere's supplemental brief (SRBr6, 9), Raniere did not preserve the challenges to the definition of a commercial sex act that he raises on appeal and his arguments are, in any event, frivolous. Second, the government adduced more than sufficient evidence to support Raniere's convictions (RBr20), including proof of commercial sex and of force, fraud and coercion.

I. Applicable Law

A. Challenges to Jury Instructions

Federal Rule of Criminal Procedure 30(d) provides that "[a] party who objects to any portion of the [jury] instructions ... must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate." Under Rule 30(d), to preserve an objection, the defendant "must direct the trial court's attention to the contention

that is to be raised on appeal." United States v. Masotto, 73 F.3d 1233, 1237 (2d Cir. 1996). An objection is not properly preserved "if the grounds stated at trial are different from those raised on appeal." United States v. Goldreich, 712 F. App'x 102, 104 n.1 (2d Cir. 2018) (citing United States v. James, 998 F.2d 74, 78 (2d Cir. 1993)).

This Court "review[s] de novo a properly preserved challenge to a jury instruction," and it will reverse only "where the charge, viewed as a whole, either failed to inform the jury adequately of the law or misled the jury about the correct legal rule." United States v. Capers, -- F.4th ---, 2021 WL 5894685, at *5 (2d Cir. Dec. 14, 2021). In reviewing jury instructions, this Court does not look only to the particular words or phrases questioned by the defendant, but reviews "the instructions as a whole to see if the entire charge delivered a correct interpretation of the law." United States v. Al Kassar, 660 F.3d 108, 127 (2d Cir. 2011) (internal quotation marks omitted).

Where a defendant fails to raise a specific objection to a jury instruction before the district court, this Court reviews the instruction for plain error. See Capers, 2021 WL 5894685, at *5. "Under plain error review, [this Court] considers whether (1) there is an error; (2) the error

is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant's substantial rights; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings." Id. (internal quotation marks omitted).

B. Sufficiency of the Evidence

This Court "review[s] preserved claims of insufficiency of the evidence de novo." Capers, 2021 WL 5894685, at *3 (internal quotation marks omitted). But "a defendant challenging the sufficiency of the evidence ... at trial bears a heavy burden, as the standard of review is exceedingly deferential." United States v. Coplan, 703 F.3d 46, 62 (2d Cir. 2012) (internal quotation marks and citations omitted).

This Court will "sustain the jury's verdict if, crediting every inference that could have been drawn in the government's favor and viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Capers, 2021 WL 5894685, at *3. This Court analyzes the evidence adduced at trial "in conjunction, not in isolation," United States v. Persico, 645 F.3d 85, 104 (2d Cir. 2011), and must apply the sufficiency test "to the totality of the government's case and not to

each element, as each fact may gain color from others," United States v. Guadagna, 183 F.3d 122, 130 (2d Cir. 1999). Moreover, "[t]he task of choosing among competing, permissible inferences is for the [jury], not for the reviewing court," United States v. McDermott, 245 F.3d 133, 137 (2d Cir. 2001), and "it is well-settled" that this Court will "defer to the jury's assessment of witness credibility," even when those witnesses have "testified pursuant to cooperation agreements with the Government," United States v. Glenn, 312 F.3d 58, 64 (2d Cir. 2002) (internal quotation marks omitted). "A court may enter a judgment of acquittal only if the evidence that the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt." United States v. Atilla, 966 F.3d 118, 128 (2d Cir. 2020) (internal quotation marks omitted).

II. Discussion

The Court should reject Raniere's argument, set forth in his supplemental brief, that the district court gave an erroneous and misleading instruction as to the definition of a "commercial sex act" by (1) using "because of" instead of "on account of" in the following sentence: "A commercial sex act is any sex act of which anything of value is given

to or received by any person because of such sex act" (T5685–86 (jury instructions) (emphasis added); SRBr 9) and (2) explaining that "[a] thing of value need not involve a monetary exchange and need not have any financial component" (T5686; SRBr 12).

A. Raniere Did Not Preserve His Challenges

As an initial matter, Raniere failed to preserve the challenges he raises to the "commercial sex act" instruction on appeal, and this Court therefore reviews them only for plain error. In suggesting otherwise, Raniere directs this Court to pages 5271 and 5273 of the transcript (GA978–81). (RSBr6). But there, counsel acknowledged that he had no "quarrel with the legal propriety of the language," he simply asserted that the district court should use "the Sand jury instruction" because it "is a little more time tested." (GA979).[8] Counsel did not assert that it was error for the court use the phrase "because of," rather than "on account of," or to instruct the jury on the legally correct definition of

[8] "The Sand instruction," which Raniere adopted in his proposed jury instructions (DE692-1 at 86), defines a "commercial sex act" as "any sex act on account of which anything of value is given to or received by any person." Modern Federal Jury Instructions-Criminal, Instr. 47A.03.

"thing of value." This Court should therefore review Raniere's challenges for plain error.

B. The Challenged Instruction Is Not Erroneous

Under any standard of review, the district court's "commercial sex act" charge was not error. First, the court did not err by "replacing the language of 'on account of' with 'because of' without further explanation." (SRBr11). Indeed, as the Supreme Court has explained, the two phrases mean the same thing: "The words 'because of' mean 'by reason of: on account of.'" Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 176 (2009) (emphasis added) (quoting 1 Webster's Third New International Dictionary 194 (1966) and citing other dictionaries).

Raniere's assertion that the phrase "because of" fails to capture the "legal standard of a causal relationship" is frivolous. (SRBr18). See, e.g., Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 350 (2013) (quoting Safeco Ins. Co. of America v. Burr, 551 U.S. 47, 63–64 & n.14 (2007), for the proposition that "'because of' ... indicates a but-for causal relationship"). The phrases are synonymous and other district courts in this Circuit have provided an identical definition of "commercial sex act" in their jury charges. See, e.g., United States v. Rivera, et al, No.

13-CR-149 (KAM) (E.D.N.Y. June 15, 2015) (DE453) (defining "commercial sex act" as "any sex act of which anything of value is given to or received by any person because of such act" (emphasis added)).

Raniere's challenge to the instruction that a "thing of value" need not "involve a monetary exchange" is equally meritless. (SRBr12). Raniere faults the instruction for being "repetitive" or "duplicative," (SRBr12, 16), but he does not assert, and he cites no authority to suggest, that the jury instruction articulated an incorrect legal standard. Nor could he, given the settled proposition that "things of value" are not limited to cash or cash equivalents. See United States v. Girard, 601 F.2d 69, 71 (2d Cir. 1979) ("These words ['thing of value'] are found in so many criminal statutes throughout the United States that they have in a sense become words of art ... generally construed to cover intangibles as well as tangibles."); see also, e.g., United States v. Schwartz, 785 F.2d 673, 680 (9th Cir. 1986) (collecting cases and explaining that "some of the intangibles which have been held to be things of value, including amusement, sexual intercourse or the promise of sexual intercourse, the promise to reinstate an employee, and an agreement not to run in a primary election"); Eckhart v. Fox News Network, LLC, No. 20-CV-5593

(RA), 2021 WL 4124616, at *9 (S.D.N.Y. Sept. 9, 2021) (collecting cases holding that "pledges of career support" qualify as "things of value" under § 1591). District courts in this Circuit have given similar jury instructions in recent sex trafficking trials. See United States v. Maxwell, No. 20-CR-339 (AJN) (S.D.N.Y. Dec. 19, 2021) (DE453); United States v. Melendez-Rojas, No. 17-CR-434 (ARR) (E.D.N.Y. March 13, 2020) (DE218 at 40); United States v. Marcus, No. 05-CR-457 (ARR) (E.D.N.Y. Feb. 21, 2007) (DE202 at 17).

The district court did not commit error, much less plain error, in instructing the jury on the meaning of "commercial sex act," and the Court should reject Raniere's argument to the contrary.

C. The Evidence as to Commercial Sex Was Sufficient

The Court should also reject Raniere's argument that the evidence adduced at trial was insufficient to prove that "commercial sex act was intended, initiated, or completed" as to any DOS victim. (RBr20). The evidence offered at trial overwhelmingly demonstrated that Raniere created DOS as a way of obtaining sex and labor from lower-ranking DOS "slaves" and that the First Line of DOS, including Allison Mack, obtained

financial benefits and opportunities as a direct result of assigning their DOS "slaves" to have sex with Raniere.

The evidence at trial established that by 2016, Allison Mack recruited Nicole, India, Michelle and Danielle to serve as her "slaves" in DOS. (GA778:T4007, 780:T4012, 782:T4023). Lauren Salzman testified that Allison Mack had tasked her DOS "slaves" with "the assignment," which Mack at first described as an assignment to "seduce" Raniere. (GA278–79). When Lauren Salzman pointedly asked Mack whether "the assignment" involved sex, Mack acknowledged that it did:

> Q: And what did you say [to Mack]?
>
> SALZMAN: Is he fucking your slaves, is what I said.
>
> Q: What did she say?
>
> SALZMAN: She said: Just Nicole…. But we're going to start working with India and Jay. And I said to her: When you say working, do you mean fucking? And she said: Yes.

(GA279:T1794).

Raniere is wrong that the benefits or expected benefits that accrued to Mack as a result of these sex acts do not "qualify as a 'thing of

value' in the context of commercial sex services" under 18 U.S.C. § 1591 because the statute was designed only to "punish sexual exploitation for economic profit" (RBr23). To the contrary, in Girard, this Court explained that "things of value" can include tangible and intangible benefits, 601 F.2d at 71, and courts have consistently held that "anything of value" within the meaning of 18 U.S.C. § 1591 is not limited to financial transactions, see, e.g., United States v. Cook, 782 F.3d 983, 988–89 (8th Cir. 2015) (holding that "[t]he phrase 'anything of value' is extremely broad" and encompasses "sexual acts, photographs, and videos"); David v. Weinstein Co. LLC, 431 F. Supp. 3d 290, 304 (S.D.N.Y. 2019) (rejecting assertion that a "commercial sex act" must be "economic in nature"); Noble v. Weinstein, 335 F. Supp. 3d 504, 521 (S.D.N.Y. 2018) ("Congress's use of expansive language in defining commercial sex act — using such terms as 'any sex act,' 'anything of value,' 'given to or received by any person' —requires a liberal reading."); see also United States v. Rivera, No. 12-CR-121 (ORL), 2012 WL 6589526, at *5 (M.D. Fla. Dec. 18, 2012) (holding that the term "anything of value" "encompasses more than just monetary gain," including "ordination as a prophet"). Nor does 18 U.S.C. § 1591 contain a requirement of an "explicit quid pro quo in order to

establish that a sex act was 'commercial'." Eckhart, 2021 WL 4124616, at *9.

The legislative history of the Trafficking Victims Protection Act of 2000 ("TVPA") does not support Raniere's claim that Section 1591 is aimed only at "sexual exploitation for profit." (RBr21 (emphasis in original)). In enacting the TVPA, Congress found that trafficking in persons is a "contemporary manifestation of slavery" which "is not limited to the sex industry" and that the "growing transnational crime" includes sex acts and labor procured by force. Pub. L. No. 106–386, 114 Stat. 1466 (2000). Congress further noted that "force" can include "threats, psychological abuse, and coercion." Id.

The government adduced substantial evidence that DOS "masters" expected to receive and did receive benefits, including financial opportunities and income, from assigning DOS "slaves" to have sex with Raniere. Lauren Salzman testified that Raniere set an expectation in DOS that each DOS "master" would receive "40 hours of work" from their "slaves," and those women who had more than six "slaves" would "receive special privileges" from Raniere. (GA235:T1618–19). Nicole testified that she understood that her performance in DOS was "important" to

Mack because it "reflected on" Mack, i.e., provided the intangible benefit of increased stature in Raniere's eyes. (GA764:T3951–765:T3952). Jay testified that Raniere had "built businesses" with Nxivm members and that if Raniere considered a person "special," he would start a business with that person. (GA881:T4404).

And contrary to Raniere's claims (RBr24), the government also presented ample evidence that Allison Mack's ability to earn income from Nxivm was tied to the performance of her DOS "slaves" in performing "the assignment." As one example, on March 3, 2016, Raniere sent Mack an email stating, "Does India know to complete her [assignment] she needs to take all of her clothes off, while I am clothed, post in the most revealing way, and have me take a picture of her, with her phone, to be immediately sent to you as a proof?" (GA1271). The next day, on March 4, 2016, Mack sent Raniere an email explaining that Mack "had not been paid as a head trainer" since the prior year and that Mack was "struggling a little with income." (GA1269). The email also noted that Clare Bronfman had told Mack that she could not "approve the payments" until Raniere reviewed them. (Id.). Raniere responded shortly thereafter with an email stating "Yes. Any news on India?" (Id.).

Mack then sent Raniere two emails assuring Raniere that India had changed her flight and that India would be "reach[ing] out" to Raniere regarding "meeting again to complete the assignment." (Id.).

Weeks later, in late March, Mack gave Nicole the assignment to "reach out to Keith Raniere" and, eventually, to meet with him, resulting in an encounter in which Raniere watched while a woman performed oral sex on Nicole, who was blindfolded and tied to a table. (GA474–57). Nicole and Raniere subsequently had additional sexual encounters, and Nicole testified that it was "obvious" to her that Mack was aware that she and Raniere were having sex, as Mack at one point told her, "Isn't it so cool that Keith [Raniere] is working on my sexuality through you?" (GA764:T3950).

There was therefore substantial evidence to support the inference that Mack expected to receive and did receive benefits, including financial benefits, from assigning her DOS "slaves," including Nicole and Jay, to have sex with Raniere.[9] Communications between

[9] The jury also heard evidence that in the course of Raniere's sexual relationship with Nicole, he gave her $10,000 because she was not

Mack and Raniere reflected that Mack, who was "struggling" with her "income," understood that it was Raniere who had to authorize her payments before they could be paid to her. A rational jury could therefore have concluded that Mack expected to receive a financial benefit from assigning her "slaves" to have sex with Raniere.[10] Indeed, Lauren Salzman testified that, as a First Line master in DOS, she believed that if she left "this vow," she risked losing her "role, [her] positions, [and her] career in NXIVM as it existed." (GA299:T1874–300:T1875).

The cases relied upon by the defendant are consistent with the government's position. In United States v. Estrada-Tepal (RBr23), the district court rejected an overbreadth challenge to § 1591 and

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able to pay for basic expenses related to her membership in Nxivm and DOS. (GA771:T3976–77, 1126:T5570).

[10] Raniere's principal brief omits mention of the email exchange between Raniere and Mack. Raniere's supplemental brief makes the unsupported claim, without citation to the record, that "sex acts were ... not necessary for the career advancement or status of Allison [Mack]." (SRBr14–15). But the government was not required to prove that any sex acts with Raniere were "necessary" for the jury to have found the commercial sex element to have been satisfied. As set forth above, there was ample basis for the jury to conclude that Mack received or expected to receive a thing "of value" from assigning her "slaves" to have sex with Raniere.

explained that the statute "criminalizes a broad spectrum of conduct" and that "expansiveness was a legislative goal in enacting the statute." 57 F. Supp. 3d 164, 169 (E.D.N.Y. 2014). And in United States v. Marcus (RBr24), the district court concluded that a "narrow construction" of the TVPA was "unwarranted" and that the statutory language provided "no basis for limiting the sex acts at issue to those in which payment was made for the acts themselves…." 487 F. Supp. 2d 289, 306–7 (E.D.N.Y. 2007), vacated in part on other grounds, 538 F.3d 97 (2d Cir. 2008).

Finally, in Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc., an out-of-Circuit district court case that Raniere describes as "instructive" (RBr25; SRBr12), the district court determined that there was an insufficient causal connection between the "thing of value" (in that case, the payment of living expenses) and the sex act. No. 10-CV-4124, 2013 WL 6816174, at *1 (W.D. Ark. Dec. 24, 2013). Here, however, the jury was provided with ample evidence, described above, demonstrating a causal connection between the forced sex acts of DOS "slaves" and the receipt of financial and intangible benefits by DOS masters.

D. The Evidence as To Force, Fraud and Coercion Was Sufficient

Raniere's claim that the government "failed to put forth adequate evidence" that Nicole engaged in sex acts with Raniere "as a result of coercion or force" is equally meritless. (RBr27). As recounted above, Mack recruited Nicole by falsely describing DOS as a women-only group. (GA733:T3824–25). Nicole also testified that the day before she was sexually abused by Raniere, Mack gave Nicole an "assignment" to tell Raniere that Nicole would do "anything he want[ed]" her to do. (GA756:T3917). Nicole testified as follows:

> Q: At that point, what choice did you feel you had in completing that assignment?
>
> Nicole: No choice. It was an assignment.
>
> Q: Did Allison [Mack] say anything else to you before you started the walk [with Raniere]?
>
> Nicole: She said, Now go be a good slave.

(Id.; GA756–59). Nicole further explained that she believed that if she ever "broke [her] commitment" or left DOS, her collateral "would be released" (GA746:T3876–77), and that she would "never" have had sex

with Raniere if he had not been her "Grand Master" in DOS (GA847:T4284).

It defies common sense to claim that no rational jury could conclude that these facts establish that force, fraud or coercion was used in sex trafficking Nicole. Raniere's argument that it is "unfathomable" that Nicole would have "remained silent" and not "complained" about the abuse to Allison Mack — her DOS "master" — is specious and belied by Nicole's testimony, which the jury plainly credited. (RBr28; GA758–61). Raniere presented similar arguments in summation and the jury rejected them. (GA1080). There is no basis to disturb its findings.

POINT TWO

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JURY'S VERDICT AS TO THE REMAINING COUNTS

The Court should reject Raniere's assertion that no rational jury could have convicted him of forced labor and forced labor conspiracy, sexual exploitation of a child, conspiracy to alter records and conspiracy to commit identity theft. (RBr18). Across Raniere's scattershot challenges to some ten counts and racketeering acts, he fails to acknowledge the overwhelming evidence adduced as to each count, and binding and persuasive caselaw that is fatal to his legal arguments.

I. Applicable Law

See POINT ONE, Part I.B, supra.

II. Discussion

A. Count 3 and Racketeering Act 10B — Forced Labor in Violation of 18 U.S.C. § 1589

The government adduced substantial evidence to support Raniere's conviction of forced labor conspiracy and the forced labor of Nicole, and his conclusory assertions unsupported by the record or relevant case law provide no basis to disturb the verdict. As recounted above, the evidence at trial demonstrated that DOS "masters," and by

extension, Raniere, were expected to receive approximately 40 hours of labor each week from their "slaves." (GA235:T1618–19). The DOS Book, which Salzman testified was created by Raniere to describe the "philosophy" behind DOS, set forth, among other things, that a DOS "slave" is to "surrender [her] life, mind, body and possessions for unconditional use." (GA1208, 235:T1617). Further, as reflected in a text message sent by Salzman to one of her DOS "slaves," the labor performed by the DOS "slave" was expected to be commensurate with her abilities. (GA1177). Salzman told her "slave" that "[w]hat generally helps me most is you considering where you can bring the most and highest level skills you have to my life and objectives at the highest standard possible. I have an assistant and a cleaning lady so that doesn't really help me that much...." (Id.). The testimony of Nicole, Sylvie, and Jay also established that DOS "slaves" were coerced into providing uncompensated work by the threat of the release of their collateral, including, among other things, hours of uncompensated editing and transcription (GA396:T267, 785–87; GA1189, 1202–03), and the provision of sexually explicit photographs to, and sex acts with, Raniere. (GA113–14, 278:T1790, 780–81, 892:T4425).

There is no legal support for Raniere's assertion that the "labor and services" rendered by DOS "slaves" is not the type of labor contemplated by the forced labor statute.[11] (RBr30–34). In United States v. Marcus, this Court affirmed a forced labor conviction where evidence was presented to the jury that the defendant had forced a woman to maintain "a commercial BDSM website" by, among other things, updating photographs and diary entries, which the Court held constituted "labor or services" within the meaning of 18 U.S.C. § 1589. 628 F.3d 36, 39, 45 & n.10 (2d Cir. 2010) (defining "labor" as the "expenditure of physical or mental effort especially when fatiguing, difficult, or compulsory."). In Marcus, the Court rejected an argument, similar to Raniere's, that the victim's work on the website was similar to "unpaid domestic chores," and that 18 U.S.C. § 1589 was "intended to proscribe international trafficking in slave labor and prostitution" and was therefore inapplicable to his conduct. Id. This Court explained that

[11] The forced labor statute, in relevant part, provides punishment for anyone who "knowingly provides or obtains the labor or services of a person ... by threats of serious harm to, or physical restraint against, that person or another person." 18 U.S.C. § 1589.

the evidence adduced at trial supported the government's theory that the victim would not have performed services for the defendant's website had she not feared the consequences of noncompliance, and that the statute therefore unambiguously applied to his conduct. Id.

Here, the evidence at trial demonstrated that Nicole, Jay, Sylvie and other DOS "slaves" performed uncompensated work, provided nude photographs, and were directed to engage in sex acts with Raniere. The evidence is more than sufficient to support the jury's verdict as to Count Three and Racketeering Act 10B.

B. Racketeering Acts 2, 3 and 4 — Child Exploitation in Violation of 18 U.S.C. § 2251

It is frivolous to assert, as Raniere does, that the government failed to prove child exploitation as alleged in Racketeering Acts 2, 3 and 4 because Camila, the child victim of those counts, did not testify. (RBr35). The government adduced overwhelming evidence that Raniere's sexual relationship with Camila began when she was fifteen

years old, and that Raniere took and maintained the child pornography photographs of Camila introduced at trial.[12]

Raniere concedes that the child pornography photographs taken in 2005 were of Camila, but he argues that "[w]ithout Camila's testimony, the origins of [Raniere] and Camila's relationship is simply unknown." (RBr36–37). But there was no dispute that Camila's birthday

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[12] Although Camila did not testify at trial, she appeared at the defendant's sentencing and provided a four-page victim impact statement, in which she stated that, in September 2005, "when [she] was still fifteen, [Raniere] took naked pictures of [her.]" (DE965-1). She added:

> He first had sex with me on September 18, 2005.... During these secret meetings, when I was still fifteen, he took naked pictures of me.
>
> The experience of being photographed is seared into my memory. As a fifteen year old, this is not something you easily forget. We had sexual contact during every meeting we ever had; when he took the photos was no exception.

(Id.). Camila also stated that during Raniere's trial, she was advised "not to speak with the government and to stay invisible[.]" (Id.).

At Raniere's sentencing hearing, the district court acknowledged Camila's victim impact statement, observing that "had she testified, it would have taken the jury ten minutes to convict [Raniere], because ... she was groomed from age 13 to age 15, and then she was seduced by Mr. Raniere and kept in an apartment and used for his sexual pleasure." (DE1002 (10/27/20 Sent'g Transcript) at 110).

was March 1, 1990, and evidence admitted at trial demonstrated that the defendant began sexually abusing Camila in September 2005, two months before he took child pornography photographs of her. (GA1175 (electronic message to Raniere in which Camila referred to herself as an "inexperienced 15 year old"), 710-1–10-4). Further, Raniere and Camila exchanged numerous messages referencing the beginning of their sexual relationship as September 2005. (GA710-1–10-4, 1171, 1268). Some of these communications refer to Raniere's creation and possession of the November 2005 photographs. (GA1173).[13] Camila's sister, Daniela, testified that she had a conversation with Raniere about his sexual relationship with Camila, and that the conversation took place at some point prior to the Fall of 2006. (GA416–17 ("I asked him if he was having sex with my sister [Camila]. He asked me if I minded.")). The government also introduced Camila's gynecological records, which reflected that in 2011, Camila reported to medical professionals that she

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[13] For example, in one series of messages, Raniere said to Camila, "You know I guard the other pictures right? You know I have the others yes?," to which Camila asked "From way back when..?," and Raniere said "I wanted the original forever. I thought it was truly mine. Yes, from way back…"). (GA1173).

had been with the same sexual partner for "five years." (GA715:T3312–13; GX539-18).

The child pornography photographs that Raniere took of Camila in November 2005 themselves indicate a contemporaneous sexual relationship between Raniere and Camila. (GX503 (hard drive), 504 (report for GX503), 528–534 (images)).[14] The photographs, which were on a hard drive recovered by law enforcement agents from 8 Hale Drive (GA848:T4290, 849–50), depict Camila lying naked on a bed, and several photographs depict close-ups of Camila's genitals. Not only do the content of photographs themselves suggest that Camila was engaging in sexual activity with the taker of the photographs — Raniere — but the photographs were located in a folder containing nude photographs of eleven other women with whom Raniere had a sexual relationship at that time. (GA1024–26, 1184).

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[14] The child pornography photographs of Camila were introduced at trial, but they were shown only to the district court, the jury and parties, and were not made public. At the Court's request, the government will provide them in a sealed supplemental appendix.

Raniere's claim that "no evidence was presented at trial regarding the circumstances of how the photos came to be in existence or maintained on the hard drive" is contradicted by the record. (RBr35–36). Lauren Salzman testified that in around 2005, Raniere took what she described as "up-close crotch shot" photographs of her at 8 Hale Drive. (GA214–15). Daniela also testified that in 2005, Raniere approached her with a Canon camera and insisted on taking a naked photograph of her. (GA404–05). Raniere told Daniela to spread her legs and gave Daniela specific instructions as to how to position herself. (Id.). Daniela also testified that at one point, she discovered other photographs of naked women on Raniere's computer. (GA428). There can be no serious dispute that the jury was entitled to conclude that Raniere took the child pornography photographs of Camila and that, at and around the same time, he was sexually abusing her to find Racketeering Acts 2, 3 and 4 proven.

C. Racketeering Act 6 — Conspiracy to Alter Records for Use in an Official Proceeding

Raniere's assertion that the government failed to prove that he conspired to alter records for use in an official proceeding, as alleged

in Racketeering Act 6, is also meritless. As Raniere concedes, he directed Mark Vicente to alter video tapes that were to be produced in discovery in civil litigation in the District of New Jersey. (RBr40). Raniere also concedes that Vicente knew the content of the tapes would have been damaging to Nxivm in an ongoing "case." (RBr40). It is therefore frivolous to assert, as Raniere does, that the government failed to adduce sufficient evidence to prove the mental state required to support the jury's finding at to Racketeering Act 6.

As relevant here, Section 1512(c) criminalizes "corruptly ... alter[ing], destroy[ing], mutilat[ing], or conceal[ing] a record, document, or other object ... with the intent to impair the object's integrity or availability for use in an official proceeding…." 18 U.S.C. § 1512(c)(1). To "satisfy the element of intent, the government must show a nexus between the defendant's act and the judicial proceedings; that is, there must be a relationship in time, causation, or logic such that the act has the natural and probable effect of interfering with the due administration of justice." United States v. Desposito, 704 F.3d 221, 230 (2d Cir. 2013) (internal quotation marks omitted).

At trial, the government presented evidence that in the course of a lengthy civil litigation, attorneys for Stephanie Franco required the production of certain videotapes from Nxivm. (GA924:T4500). Anthony Valenziano, Franco's attorney, testified that Nxivm produced 35 videotapes on July 1, 2008, and sent an accompanying letter indicating that the videotapes were being produced in "unedited fashion as requested." (GA1013, 1185, 925-1–26). Valenziano testified that upon review of the videotapes, there were "tapes that appeared to have jump cuts in them that would seem to be skipping around." (GA926:T4527).

Mark Vicente testified that, at Raniere's direction, he and other individuals altered videotapes to remove segments from them that depicted Nancy Salzman making unsubstantiated health claims, including that Nxivm could cause physiological changes in the body. (GA175–81). "[Raniere] asked [Vicente], Is there a way to remove stuff from a videotape in such a way that it doesn't look like it's removed? ... The legal department has some things that need to be removed from some tapes and it has to do with a case where our methodology is being evaluated and our patent is being looked at." (GA175). Vicente testified that he and others received a "list of what needed to be removed with

specific time codes" and they then altered the videotapes in such a way to make it appear as though the removed portions were attributable to "glitches." (GA184–85). Vicente further testified that other individuals, including Nancy Salzman, were aware that the videotapes were being altered. (GA181).[15]

This evidence was more than sufficient to prove that Raniere and his co-conspirators had the intent to obstruct the civil proceeding by altering the videotapes before producing them in discovery, and to support the jury's finding as to Racketeering Act 6.

D. Racketeering Act 11 — Identity Theft Conspiracy

Raniere misunderstands the law in asserting that the government failed to adduce sufficient evidence to support the jury's finding as to Racketeering Act 11, which charged Raniere with conspiring to commit identity theft in connection with tax evasion. (RBr42–44). Related to this allegation, the government established at trial that, after the death of Raniere's longtime partner, Pam Cafritz, Raniere, Bronfman

[15] As part of her guilty plea, Nancy Salzman admitted her participation in this conspiracy to obstruct justice by altering videotapes to be produced in civil discovery. (DE474, 466 (transcript)).

and others charged more than $135,000 on Cafritz's credit card and withdrew more than $736,000 from her bank account.[16] (GA935, 928–32).

The government's theory for Racketeering Act 11 was that Raniere in fact earned substantial taxable income through his participation in the Enterprise, but that he evaded his tax obligations by keeping assets over which he exercised control in others' names. For example, the government established that Raniere purported not to have income even though he earned "10 percent of net" as to companies he controlled (GA164–69, 1204); that Nxivm members transported cash from Mexico to Albany to pay for Nxivm programs (GA201); that over $500,000 in cash was recovered from Nancy Salzman's residence (GA206:T1457); and that Raniere received tens of millions of dollars from Bronfman (GA707:T3359). Lauren Salzman testified, for example, that a Nxivm member had "saved all the money" owed to Raniere "over many

[16] Bronfman pleaded guilty to this offense pursuant to a plea agreement with the government, and allocuted under oath that the purpose of the identity theft was to assist Raniere in avoiding taxes. (GA64).

years" and had saved it in a Ziploc bag and kept it for him. (GA295:T1857–58). Nevertheless, in December 2016, Raniere filed an affidavit under oath in federal court asserting that he did not have access to $400,000 to pay a court judgment. (GA1198).[17]

From this evidence, the jury was entitled to conclude that Raniere's knowing and intentional use of Cafritz's credit card after her death was part of this scheme, and there is therefore no basis to disturb the jury's finding as to this racketeering act.

E. The Government Proved the Existence of the Charged Enterprise and a Pattern of Racketeering Activity

The government adduced overwhelming evidence to support the jury's findings regarding the existence of the Enterprise. Raniere and his coconspirators agreed that the Enterprise would exist and that it

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[17] On December 13, 2016, the United States District Court for the Northern District of Texas ordered Raniere to pay defendants' attorneys' fees and costs in an amount over $400,000. Raniere v. Microsoft et al., 15-CV-0540(M) (N.D.T.X. 2016) (DE181). One week later, Raniere signed and filed a declaration under penalty of perjury in the Northern District of Texas district court that he did "not have access to monies of over $400,000" and was therefore "unable to comply with the Court's order." (GA1198). At the same time that Raniere filed this declaration, however, Raniere was charging thousands of dollars to Cafritz's credit card with Bronfman's assistance. (GX727).

would conduct its affairs through a pattern of racketeering activity (Count 1), and the enterprise in fact existed and conducted its affairs through the pattern of racketeering acts alleged in the indictment (Count 2). Here again, Raniere misunderstands the relevant law and fails to acknowledge the facts actually adduced at trial. (RBr44-45). Further, his argument concerns only substantive racketeering; he fails to address his conviction for racketeering conspiracy in Count 1, and any such challenge is therefore waived.

1. Applicable Law

To sustain a substantive racketeering conviction, the government must prove that a defendant participated in the affairs of the charged enterprise through a pattern of racketeering activity. 18 U.S.C. § 1962(c); United States v. Zemlyansky, 908 F.3d 1, 11 (2d Cir. 2018); United States v. Burden, 600 F.3d 204, 216 (2d Cir. 2010). A racketeering "enterprise" is defined by statute as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). The Supreme Court has explained that this element does not require proof of a formal organization because "an association-in-fact

enterprise is simply a continuing unit that functions with a common purpose." Boyle v. United States, 556 U.S. 938, 948 (2009).

This Court and its sister circuits have repeatedly held that "[a]n 'individuals associated in fact' enterprise, 18 U.S.C. § 1961(4), may continue to exist even though it undergoes changes in membership." United States v. Eppolito, 543 F.3d 25, 49 (2d Cir. 2008). Further, "[a] period of quiescence in an enterprise's course of conduct does not exempt the enterprise from RICO" prosecution. Burden, 600 F.3d at 216; see also Boyle, 556 U.S. at 948. Finally, "the government need not prove that a conspirator-defendant agreed with every other conspirator, or knew all the other conspirators, or had full knowledge of all the details of the conspiracy.... [I]t is sufficient that the defendant know the general nature of the enterprise and know that the enterprise extends beyond his individual role." United States v. Rastelli, 870 F.2d 822, 828 (2d Cir. 1989).

As the Supreme Court explained in Boyle, "[m]embers of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary

procedures, or induction or initiation ceremonies." 556 U.S. at 948. In sum, an association-in-fact enterprise is "oftentimes more readily proven by what it does, rather than by abstract analysis of its structure." United States v. Applins, 637 F.3d 59, 73 (2d Cir. 2011) (internal quotation marks omitted); see also Burden, 600 F.3d at 215 ("An established hierarchy is not essential to the existence of an enterprise.").

2. Discussion

Raniere's assertion that the government "proved only that [he], himself, was the enterprise" is without merit. (RBr47 (emphasis in original)). Indeed, in making this argument, Raniere acknowledges there was a "group," of which he was a "member" and leader, to whom others made a "commitment" and had a "shared loyalty." (RBr47–48). These factual concessions are at odds with his argument and entirely consistent with the jury's finding of a racketeering enterprise. Cf., e.g., Boyle, 556 U.S. at 948 (noting the "breadth of the 'enterprise' concept in RICO").

Further, Raniere's argument on appeal is untethered to the indictment, the evidence adduced at trial or the jury instructions. It is a non-sequitur to assert, as Raniere does, that "[a] shared loyalty to the Defendant simply does not quality as a common purpose to engage in a

course of conduct" (RBr48 (emphasis in original)) because the government never relied on that theory. The indictment identified the Enterprise as "RANIERE and his inner circle," and it alleged that the "principal purpose of the Enterprise was to promote the defendant KEITH RANIERE ... and to recruit new members into the Pyramid Organizations. By [doing so], the members the Enterprise expected to receive financial opportunities and personal benefits, including increased power and status within the Enterprise." (GA2–3). At trial, the government adduced testimony from Enterprise members Mark Vicente (GA173, 203), Lauren Salzman (GA222:T1564, 223:T1570, 225, 256:T1703, 329:T1992, 330:T1998), and Daniela (GA401:T2400, 407–08, 410:T2455, 411:T2461, 419:2505–06, 443:T2706, 446–47) about the membership of Raniere's inner circle and the members' dedication to the purpose alleged in the indictment, including testimony from Sylvie that Raniere himself used the term "inner circle" to refer to his closest associates (GA222:T1564). And Raniere does not dispute that the district court properly instructed the jury on the enterprise element. The government did not assert at trial that a "shared loyalty" to Raniere was the purpose of the enterprise, the court's jury instructions did not invite

the jury to convict him on that basis, and the Court should therefore reject Raniere's assertion to the contrary.

It is true that the government adduced overwhelming evidence at trial that members of the Enterprise had a "shared loyalty" or "shared devotion" to Raniere. (GA223:T1571). And it is equally true that the members' "shared devotion" was highly probative evidence of the existence of the Enterprise. But the government's theory — and what made the Enterprise criminal — is that the members of the enterprise acted on their "shared devotion" to achieve the purpose of the Enterprise through a course of conduct, including the pattern of racketeering activity charged in the indictment and proved at trial.

It is specious to assert that the government failed to adduce evidence that the members of the Enterprise engaged in a course of conduct to achieve the purpose of the enterprise. (RBr48). From the first day of trial until the last, witnesses testified about the Enterprise's purpose of promoting Raniere and recruiting new members, for the benefit of Raniere and existing enterprise members. For example, contrary to Raniere's assertion (RBr48), cooperating witness Lauren Salzman explained that the purpose shared by members of the inner

circle was to promote Raniere and his objectives at any cost. (GA223). Government witness Mark Vicente testified that Enterprise members occupied "special positions of trust and privilege" with Raniere and were able to secure promotions within Nxivm as a result. (GA189–94). Vicente further testified that he was able to "earn" Raniere's approval by participating in the scheme to alter videotapes as Raniere directed, and by publicly defending him. (GA192). Vicente also offered detailed testimony about the Enterprise's purpose of promoting Raniere and recruiting new members, which in turn conferred benefits on enterprise members. (GA198).

Raniere conflates the existence of the Enterprise with its pattern of racketeering activity when he asserts that Vicente was not aware of all of the alleged racketeering acts. (RBr48). See POINT TWO, Part II(F) (discussing "pattern" element). In any event, even if true, that fact does nothing to undermine the jury's finding regarding the charged Enterprise (or the pattern element), because neither substantive racketeering nor racketeering conspiracy charges require the government to prove that every member or associate was aware of every other member or associate and every act committed in furtherance of the

enterprise. See, e.g., Rastelli, 870 F.2d at 828 ("[T]he government need not prove that a conspirator-defendant agreed with every other conspirator, or knew all the other conspirators, or had full knowledge of all the details of the conspiracy,"). And finally, again contrary to Raniere's assertion, Daniela's testimony fully supports the jury's finding concerning the enterprise — Raniere's concession that Daniela was ostracized from the Enterprise is of course highly probative evidence that the Enterprise existed. (RBr48).

United Sates v. Bledsoe — a 40-year-old out-of-Circuit case that this Court has rejected — does not compel a different conclusion. (RBr50 (citing 674 F.2d 647 (8th Cir. 1982)). See United States v. Mazzei, 700 F.2d 85, 89–90 (2d Cir. 1983) (noting that this Court has rejected the Bledsoe's approach to the "enterprise" element). Raniere is unable to draw a coherent parallel to the facts of Bledsoe and his attempt to disparage the proved Enterprise as a "large assortment of individuals" distinct from NXIVM and DOS merely echoes the statutory definition of an "association in fact." See 18 U.S.C. § 1961(4); see also Boyle, 556 U.S. 938 at 944 ("The term 'any' ensures that the definition has a wide reach, ... and the very concept of an association in fact is expansive."). Finally,

in asserting that the proved racketeering acts were "disconnected" (RBr51), Raniere again conflates the Enterprise element with the pattern element and he fails to acknowledge the overwhelming testimony establishing that the racketeering acts were connected by their obvious relationship to the enterprise's purpose — including to "promote" Raniere and "recruit" new members, for which Enterprise members "receive[d]" benefits. The government adduced overwhelming proof that the Enterprise existed and this Court should reject Raniere's assertion to the contrary.

F. The Government Proved that the Enterprise Engaged in a Pattern of Racketeering Activity

Finally, the Court should reject Raniere's assertion that the government adduced insufficient proof of the "pattern" element of the substantive racketeering offense, and instead proved only "a medley of sporadic offenses with no connection to the alleged enterprise or to each other." (RBr55). Raniere asserts that the charged racketeering acts fall into three "distinct categories," and that the three groups of acts are not related to each other (horizontal relatedness) or to the enterprise (vertical relatedness). But here, again, Raniere's argument is based on a

fundamental misunderstanding of the charges in the indictment, the evidence adduced at trial and the jury instructions. Raniere does not dispute that the district court properly instructed the jury on the pattern element, and his unsupported and conclusory assertions provide no basis to disturb the jury's verdict.

1. Applicable Law

"[C]riminal conduct forms a pattern of racketeering activity under RICO when it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." United States v. Daidone, 471 F.3d 371, 375 (2d Cir. 2006) (per curiam) (internal quotation marks omitted)). This Court has explained that "the overall pattern requirement, of which relatedness is one component, is a bulwark against 'the application of RICO to the perpetrators of isolated or sporadic criminal acts.'" Id. (quoting United States v. Minicone, 960 F.2d 1099, 1106 (2d Cir. 1992) (internal quotation marks omitted)). "To form a pattern of racketeering activity, predicate acts must be related to each

other and to the enterprise." Id. (citing United States v. Polanco, 145 F.3d 536, 541 (2d Cir. 1998); Minicone, 960 F.2d at 1106).

This Court has described the relationship of predicate acts to each other as "horizontal" relatedness, and their relationship to the enterprise as "vertical" relatedness. See, e.g., Daidone, 471 F.3d at 375; Minicone, 960 F.2d at 1106. To show vertical relatedness, that is, the relationship of the acts to the enterprise, "the government must establish (1) that the defendant was enabled to commit the predicate offenses solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise, or (2) that the predicate offenses are related to the activities of that enterprise." Daidone, 471 F.3d at 375 (internal quotation marks omitted; emphasis added)). With respect to horizontal relatedness, "[a] predicate act is related to a different predicate act if each predicate act is related to the enterprise." Polanco, 145 F.3d at 541.

The Court has explained that, "[a]lthough the government must provide sufficient evidence of each kind of relatedness, both the vertical and horizontal relationships are generally satisfied by linking each predicate act to the enterprise." Burden, 600 F.3d at 216 (internal

quotation marks and alterations omitted); Daidone, 471 F.3d at 375. "This is because predicate crimes will share common goals and common victims and will draw their participants from the same pool of associates (those who are members and associates of the enterprise)." Id.

2. Discussion

Raniere again misunderstands the relevant law in asserting that the government failed to prove that the predicate acts proved at trial formed a pattern of racketeering activity. See, e.g., Minicone, 960 F.2d at 1108 ("The question of whether [criminal] acts form a pattern rarely is a problem with a criminal enterprise." (internal quotation marks omitted)). Across more than 10 pages of argument without a single citation to the trial record (RBr52–63), Raniere asserts that the predicate crimes found by the jury do not form a pattern because the three "distinct categories" of predicate acts he identifies serve different purposes, involve different kinds of crimes and have different victims. He is wrong as a matter of law and of fact, and the Court should reject his argument.

First, in assessing "horizontal" relatedness, this Court has repeatedly rejected Raniere's myopic focus on the specific provisions of law violated in each predicate act and the specific victims of each of those

acts. See, e.g., United States v. Basciano, 599 F.3d 184, 202 (2d Cir. 2010) (explaining that "the pattern element of racketeering is a fairly flexible concept" (internal quotation marks omitted)). As this Court has explained, the "interrelationship between acts, suggesting the existence of a pattern, may be established in a number of ways[,] ... includ[ing by] proof of their temporal proximity, or common goals, or similarity of methods, or repetitions." United States v. Indelicato, 865 F.2d 1370, 1382 (2d Cir. 1989). That stands to reason because, contrary to Raniere's assertion, an enterprise whose members pursue the enterprise's goals through diverse criminal activity is at least as dangerous as an enterprise that specializes in a particular kind of crime. Cf., e.g., Basciano, 599 F.3d at 200 (explaining "that the diverse predicate acts listed in each indictment … manifest the relatedness and continuity required of a 'pattern' ... simply by virtue of their connection to an enterprise whose business is racketeering"); Mazzei, 700 F.2d at 89 (rejecting assertion that defendant's "actions are beyond the purview of RICO because he engaged only in point shaving and did not commit criminal acts other than those specifically contemplated in the conspiracy").

Similarly, it is frivolous to assert, as Raniere does, that the government failed to prove relatedness because the enterprise had so many different victims. (RBr56). The government is unaware of any legal authority to support Raniere's assertion that the various predicate acts are insufficiently related to the other acts because members of the enterprise used many criminal schemes to pursue the enterprise's goals, and in so doing victimized many different people.

Here, "[a]t the highest level of generality, relatedness and continuity [are] established" because the enterprise's "diverse predicate acts" are connected to the enterprise. Basciano, 599 F.3d at 202 (citing Indelicato, 865 F.2d at 1383). The district court instructed the jury to this effect (GA1137:T5631), and Raniere did not object to that instruction. Indeed, on appeal, Raniere simply ignores the trial record and asks this Court to vacate the verdict of a properly instructed jury based only on his unsupported assertion that the acts "do not share the same or similar purpose[s]." (RBr55).

At trial, the government adduced overwhelming evidence to the contrary and the jury was entitled to find that the defendant undertook each of the predicate acts in furtherance of the enterprise's

"common goals," "solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise," or both, and each act was therefore vertically and horizontally related to the Enterprise. See Burden, 600 F.3d at 216. As described above, DOS, and therefore Racketeering Acts 9 and 10, which arose from DOS, plainly served the Enterprise's goal of promoting Raniere, recruiting new members and thereby benefitting enterprise members, including Raniere himself. The testimony at trial established that DOS was formed at Raniere's direction and for his benefit, his participation was intentionally hidden from lower-ranking DOS members, he was the "Master" or "Grandmaster" to each of the "slaves" in the group, members were branded with a symbol that included his initials and DOS and members were required to submit damaging "collateral," including naked photographs, that were provided to Raniere. (GA208:T1508–09, 231–32, 236). Raniere and the First Line "slaves," including Allison Mack, benefitted from free labor provided by lower-level "slaves" and, as Raniere concedes, "slaves" were tasked with "sexually gratify[ing]" the defendant as part of their participation in the group. (GA235:T1618–19; RBr56).

What Raniere refers to as the "Non-DOS" and "child exploitation" predicates served the purposes of the Enterprise just as surely as the "DOS-Acts," and they are therefore similarly related to the enterprise. First, the government adduced overwhelming evidence — including from Daniela — to support the jury's finding that Racketeering Acts 1 and 8 were related to the purpose of the Enterprise. Raniere and others recruited Daniela — the subject of these predicate acts — into Nxivm organizations and, eventually, into the Enterprise. (T2280–3280; RPSR¶¶65–69). As described in Racketeering Act 1, at Raniere's direction, other members of the Enterprise, including Pam Cafritz and Kathy Russell, successfully brought Daniela into the United States illegally, and then to Raniere in Clifton Park, New York. Thereafter, she became a member of the Enterprise and a sexual partner of Raniere's. At Raniere's direction, she helped to recruit others, including her minor sister Camila, to join the Nxivm community. (GA413–15). Later, as described in Racketeering Act 8, Raniere, Lauren Salzman, and other members of the Enterprise punished Daniela at Raniere's direction for her perceived disloyalty to Raniere and the Enterprise. (GA311–12). Raniere's conclusory assertion that these acts "cannot be linked" to the

Enterprise and its purpose is without merit and the Court should reject it.

What Raniere calls the "child exploitation offenses" — Racketeering Acts 2, 3 and 4 — are related to the Enterprise in much the same way as Racketeering Acts 1 and 8 and, moreover, Raniere was able to commit Racketeering Acts 2, 3 and 4 "solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise." See Burden, 600 F.3d at 216. As proved at trial, after Camila and her family arrived in Clifton Park, Raniere arranged for her to work as a maid in Nancy Salzman's house, which was a distance away from her siblings. (GA413–17). As Daniela testified, Camila was "isolated for [Raniere's] easy access." (GA499:T2472–73). Raniere had a sexual relationship with Camila beginning when she was 15 and, as described in Racketeering Acts 2, 3 and 4, Raniere took and kept sexually explicit photographs of her from that age, which he stored with hundreds of other similarly posed naked photographs of female enterprise members and associates. (GA1024–26). In addition, other members of the Enterprise facilitated Raniere's access to Camila. For example, Cafritz

instructed Camila to lie to medical staff about the identity of her partner in an effort to shield Raniere from scrutiny. (GA441).

The jury was entitled to find that Racketeering Acts 2, 3 and 4 were related to the enterprise's purpose of promoting Raniere and recruiting new members into his organizations, and also that Raniere was able to commit these crimes, and to count on other Enterprise members to facilitate them, solely because of his position as the leader of the Enterprise. Raniere's conclusory assertions to the contrary provide no basis to disturb the jury's finding.

Racketeering Acts 5 and 6 describe efforts by Raniere and other Enterprise members to silence perceived enemies of the Enterprise and they, too, are plainly related to the Enterprise's purpose. The existence of real or perceived enemies is highly probative of the existence of an Enterprise, cf. United States v. Orena, 32 F.3d 704, 710 (2d Cir. 1994) ("An internal dispute among members of a conspiracy can itself be compelling evidence that the conspiracy is ongoing and that the rivals are members of it." (internal quotation marks omitted)), and efforts to intimidate or eliminate an enterprise's rivals or enemies unquestionably further an enterprise's purpose, cf. United States v. Carlisle, 287 F. App'x

516, 519 (6th Cir. 2008) (explaining that enterprise's "effort[s] to intimidate rivals" were "for the purpose of furthering its unlawful activities"); United States v. Delgado, 401 F.3d 290, 298 (5th Cir. 2005) (holding that predicate acts were related to enterprise where, inter alia, they "served to intimidate members of rival gangs [and] intimidate individuals who posed problems for [enterprise] members"). Raniere makes no effort to explain why his and his coconspirators' efforts to track, intimate and silence perceived enemies is any less obviously related to the purposes of the Enterprise (RBr61), and there is no basis to disturb the jury's findings as to these acts.

Finally, Racketeering Act 7 concerns efforts of Enterprise members, including Raniere, Daniela and Cafritz, to unlawfully access an electronic account belonging to Enterprise member Mariana in order to monitor her communications and control her. (GA520–21). Raniere asserts that the act "has no distinguishing characteristics with any other racketeering activity nor is it related to any enterprise," but his conclusory assertion is inconsistent with settled law. Raniere called on other members of the Enterprise, including the victim's own sister, to commit the crime described in Racketeering Act 7, and the jury was

entitled to find that he was able to do so "solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise." Burden, 600 F.3d at 216. As with each of the other racketeering acts proved at trial, Racketeering Act 7 is related to the affairs of the enterprise and there is therefore no basis to disturb the jury's finding of relatedness.

POINT THREE

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CONNECTION WITH THE CHALLENGED TRIAL RULINGS

I. The District Court Properly Admitted Certain Evidence Related to Raniere's Sexual Abuse of Camila

The Court should reject Raniere's argument that the district court abused its discretion in admitting (1) communications between Raniere and Camila when Camila was in her mid-20s; (2) evidence of Camila's abortions, including medical records; (3) photographs of Raniere's other sexual partners. (RBr63). The court properly admitted the evidence because it was direct evidence of the child exploitation charges as to Camila — the same charges as to which he challenges the sufficiency of the evidence. See POINT TWO, Part II(B), supra. Moreover, any error was harmless because of the overwhelming evidence supporting the jury's verdict against Raniere.

A. Relevant Facts

1. Camila Communications

At trial, the government offered into evidence (1) certain emails recovered from camilascastle@yahoo.com, an email address used by Camila, which were sent in approximately 2009, when Camila was

approximately nineteen years old (the "Camilascastle Emails"); (2) electronic communications between Raniere and Camila that were exchanged via the instant messaging application WhatsApp between approximately 2014 and 2016 and subsequently recovered from email accounts belonging to Camila and Raniere (the "WhatsApp Messages"). On June 5, 2019, in a sealed letter, counsel for Raniere objected to the admission of the Camilascastle Emails due to lack of foundation and to the admission of certain images that were recovered from another email account used by Camila, including images of a self-inflicted wound (GX1113–23), a pregnancy test (GX1162), and an ultrasound (GX1165). (SGA1). Raniere did not object to the admission of the WhatsApp Messages.

The district court heard oral argument on the issue on June 5, 2019, prior to the witness's testimony during which the government intended to offer this evidence, and ultimately admitted selected portions of the Camilacastle Emails at trial. From the Camilacastle Emails, the court admitted Government Exhibits 1400-4, -6, -23, -25, -30, -45, -65, -99, -134, -151, -197 and -198 without objection (GA712–13) and Government Exhibits 1400-62, -198 and -202 over Raniere's objection

(GA717–21). The court admitted the WhatsApp Messages without objection. (GA709–10). The government did not offer the images of the self-inflicted wound (GX113–23) into evidence (GA710) and, although the images of the pregnancy (GX1162) test and ultrasound (GX1165) were admitted (GA710), they were never published to the jury or otherwise discussed by any witness or by either party during summations.

2. Abortion Evidence

Prior to trial, the parties litigated the admissibility of certain evidence related to abortions, including Daniela's testimony that both she and Camila had aborted pregnancies, and medical records reflecting that Camila had an abortion when she was eighteen years old. (DE559, 561). In a written opinion issued on May 3, 2019, the district vourt held that "evidence of abortions" met "the threshold for relevance" and was not "needlessly cumulative," though it permitted Raniere to raise the issue again at trial. (DE617). The district court also acknowledged "the sensitivity of the subject of abortions" and directed that the government be "careful to present any such evidence in a circumscribed and thoughtful manner to avoid any unfair prejudice to Raniere." (Id.). At trial, the court again found that the abortion evidence was admissible,

insofar as it was relevant to both "the timing" of Raniere's sexual relationship with Daniela and Camila, as well as the lengths to which Pamela Cafritz — Raniere's longtime partner — went "to groom [Raniere's] sexual partners, which is one of the alleged means and methods of the charged enterprise." (T2278 (sealed sidebar)).

Daniela testified at trial that she underwent an abortion after getting pregnant by Raniere at the age of 20. (GA537–38). Daniela explained that Cafritz brought Daniela to a clinic and told her to lie about her immigration status and to lie about the identity of the father of the child. (GA538:T2632–39:T2633). Daniela further testified that after her sister, Camila, became pregnant, Daniela accompanied Cafritz and Camila to the same clinic so that Camila could get an abortion. (T2639–43). Daniela testified that because Camila was "very young," there was an effort to craft a "cover story" to the clinic staff. (GA540:T2639–41:T2641). Daniela testified that Cafritz was a "handler" whose role was to "shield" Raniere from any questions that were raised by clinic medical staff. (GA542:T2647–48). Cafritz told Daniela and Camila "what to say" and "what to do" at the clinic, and "ma[de] sure that everything went according to plan." (GA542:T2648).

The government also called Elizabeth Butler, a nurse practitioner who worked at McGinnis Women's Health clinic, who authenticated records of Camila's treatment at the clinic. (GA669–704; GX539). The medical records reflected that in response to routine questions, Camila told clinic staff that she had been with her partner for "five years." (GA705:T3312; GX539). Ms. Butler also testified that Cafritz called the clinic "very upset" because one of the nurse practitioners had questioned Camila or Daniela about nonconsensual sex and abuse. (GA706:T3319–20).

3. Photographs on Western Digital Hard Drive

The district court admitted into evidence the Western Digital hard drive recovered from 8 Hale Drive that contained child pornography photographs of Camila. (GA938; GX503). The government also admitted an exhibit depicting a directory of the contents of the hard drive, as well as a report of the contents of the "Studies" folder, i.e., the folder on the hard drive which contained the child pornography. (GA939–48; GX505, 505A). The report reflected that the "Studies" folder contained nude photographs of twelve women with whom Raniere had a sexual relationship. (GA1024–26).

The defense objected to the admission of the report on the grounds that it contained sexually explicit photographs of adult women, which went "more to sexual lifestyle of the accused rather than any count of the indictment," that the images were "excessive" and that they did not contain child pornography and they were therefore "not necessary to put in." (GA949). At side bar, the government explained that the report of the "Studies" folder contained metadata which tended to confirm that the photographs — including the child pornography photographs of Camila — had been taken with the Canon camera between October and November 2005. (GA950–52). The government explained that Salzman and Daniela had testified that Raniere had taken photographs of them in 2005, and that the images on the hard drive, as well as the associated metadata, corroborated their testimony. (Id.). Lastly, the government noted that the photographs were very similar to those Raniere later obtained from "slaves" in DOS, and they were therefore relevant to the means and methods of the Enterprise as alleged in the indictment. (GA952).

The district court overruled Raniere's objection but noted that it would instruct the jurors "only to turn" to the specific pages of the

report that were being discussed during testimony. (GA959). The government published only eleven sexually explicit photographs to the jury, and elicited testimony that the metadata associated with the image reflected that the photographs were taken in 2005 and were taken with the Canon camera. (GA958–59, 960–71).

B. Applicable Law

Under Rule 401, evidence is relevant if: (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. Fed. R. Evid. 401. Evidence that is relevant under Rule 401 may nevertheless be excluded under Rule 403 "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

This Court has acknowledged the district court's "superior position to assess relevancy and to weigh the probative value of evidence against its potential for unfair prejudice," United States v. Abu–Jihaad, 630 F.3d 102, 131 (2d Cir. 2010), and in reviewing the court's assessment it will "generally maximize[s] the [challenged] evidence's probative value

and minimize its prejudicial value," United States v. Monsalvatge, 850 F.3d 483, 494 (2d Cir. 2017) (internal quotation marks omitted). Under Rule 403, evidence is unfairly prejudicial only when "it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence." United States v. Massino, 546 F.3d 123, 132 (2d Cir. 2008) (internal quotation marks omitted).

Where an evidentiary challenge is properly preserved, this Court reviews it "under a deferential abuse of discretion standard, and [it] will disturb an evidentiary ruling only where the decision to admit or exclude evidence was 'manifestly erroneous.'" United States v. Litvak, 889 F.3d 56, 67 (2d Cir. 2018) (quoting United States v. McGinn, 787 F.3d 116, 127 (2d Cir. 2015)). "The decision to admit or exclude evidence will not be overturned unless we conclude that the court acted arbitrarily or irrationally." United States v. Polouizzi, 564 F.3d 142, 152 (2d Cir. 2009). Furthermore, "[e]ven if a decision was 'manifestly erroneous,' we will affirm if 'the error was harmless.'" Litvak, 889 F.3d at 127 (quoting McGinn, 787 F.3d at 127). "[An] error [is] harmless if it is not likely that it contributed to the verdict." McGinn, 787 F.3d at 127.

Where a defendant fails to object to the admission of evidence, this Court reviews his claim on appeal for plain error. See United States v. Felder, 993 F.3d 57, 77 (2d Cir. 2021).

C. Discussion

1. The District Court Did Not Err

The Court should reject Raniere's assertion that the district court abused its discretion under Rules 401 and 403 in admitting electronic communications between Raniere and Camila, evidence relating to abortions, and images recovered from the Western Digital hard drive. (RBr63). As a preliminary matter, Raniere misrepresents the record when he asserts that he objected to the WhatsApp Messages cited on pages 67 to 72 of his brief — he did not. (RBr67 (citing T3426–39 (GA708-1–08-10)); GA710 (admitting WhatsApp messages without objection); SGA1 (letter moving to preclude emails but not WhatsApp messages)). Accordingly, this Court reviews that aspect of his evidentiary challenge for plain error.

In any event, all three categories of evidence are highly probative of the child exploitation and other charges against Raniere and the district court did not err, much less plainly err, in admitting any of

them. Raniere largely concedes the issue on appeal, acknowledging that (1) the WhatsApp Messages were "arguably relevant to support the government's claim that Defendant began a sexual relationship with Camila when she was 15 years old and that Defendant was the architect of DOS" (RBr71 (internal citations omitted)); the abortion records may have been "relevant to support the government's theory that Defendant initiated a sexual relationship with Camila when she was 15 years old" (RBr74); and the "timeframe in which the vulva photos [found on the hard drive were] taken sheds some light on the question of whether Defendant was responsible for taking the Camila photos" (RBr77). In view of the full record, there is no credible argument that the admission of this highly probative evidence was an abuse of the court's considerable discretion.

With respect to Raniere's unpreserved challenge to the WhatsApp messages, his assertion that the government unfairly "cherry-picked" messages that "painted a disturbing picture" of Raniere and Camila's relationship is meritless. (RBr67). The communications were highly probative insofar as they reflect that Raniere first began having sex with Camila when she was 15 years old and refer to the child

pornography photographs he took of her. (GA1173, 1171). The nature and scope of Raniere's relationship with Camila, who was both a child exploitation victim and a "slave" in DOS, was highly probative of the charged crimes, and Camila's communications with Raniere were, in turn, highly probative evidence of that relationship. The district court did not plainly err in admitting these messages, which were highly probative direct proof of the charged child exploitation offenses.

As to the abortion evidence, the district court correctly found that the evidence was relevant both to establish that Raniere and Camila began a sexual relationship before Camila was 18 and to show that Cafritz, a deceased member of the charged enterprise, facilitated Raniere's abuse. (See POINT THREE, Part I(B)(2), supra). Raniere's assertion that the court erred in admitting this evidence because Daniela "could not imagine having a baby" and therefore "didn't push back" on Raniere's instruction to have an abortion makes little sense. (RBr74; GA479:T2393–94, 538). Daniela described how Cafritz accompanied her to the clinic and paid for the abortion. (GA433:T2631). Cafritz instructed Daniela, and later Camila, to lie to medical staff about their immigration status and about Raniere in order to "shield" Raniere. (GA443–41).

Camila's and Marianna's similar experiences, as described by Daniela, are also highly probative of the Enterprise's purpose and its means and methods precisely because their experiences were similar.

Raniere's assertion that the evidence was inadmissible because there was no evidence that Raniere or Cafritz "pressured" Camila or Marianna to have abortions is a non-sequitur and does nothing to undermine the district court's analysis. (RBr74). Camila's medical records, which corroborated Daniela's testimony, were admitted because they reflected that at 18 years old, she told staff that she had been "five years with partner," and other evidence admitted at trial demonstrated that Camila had first met Raniere when she was 13 years old. (GX539; GA497–98).

The photographs on the Western Digital Hard Drive to which Raniere objected were admitted as direct evidence of the child exploitation charges. (GA938; GX503). The fact that child pornography photographs of Camila were saved in a folder of other images taken at the same time and with the same camera as sexually explicit images of other women with whom Raniere had a contemporaneous sexual relationship was highly probative of Raniere's commission of the charged

crimes. The evidence was also relevant to the offenses involving DOS, because these sexually explicit photographs of Raniere's sexual partners were of the same type that Raniere required of nearly every woman recruited into DOS ten years later. (GA215:T1537, 237:T1626, 475:T2378). The government took care to minimize any potential unfair prejudice as to the challenged evidence, and the jurors were asked only to view only 11 illustrative images. Raniere's claim that the government admitted this evidence "solely to breed contempt and disgust for the Defendant" is baseless. (RBr64).

The district court did not abuse its discretion in admitting the contested evidence. See Polouizzi, 564 F.3d at 152–53 (upholding admission of child pornography, where images were relevant to charged crimes); see also United States v. Hester, 674 F. App'x 31, 33 (2d Cir. 2016). The record reflects that the court admitted the challenged evidence only after "conscientiously balanc[ing]" the probative value of the evidence with its potential for prejudice and it did not act "arbitrar[ily] or irrational[ly]" in admitting the evidence. Massino, 546 F.3d at 133.

2. Any Error Was Harmless

Finally, any error in admission of the challenged evidence was harmless, in light of the overwhelming evidence supporting Raniere's convictions. As described in more detail above, the evidence of Raniere's guilt was overwhelming, particularly with respect to the numerous charges and racketeering acts supported by Daniela's testimony and the child exploitation and child pornography charges related to Camila. Daniela's highly credible testimony and the overwhelming objective evidence of the crimes against Camila make clear that any error with respect to the evidence challenged on appeal by Raniere did not "contribute[] to the verdict." McGinn, 787 F.3d at 127.

II. The District Court Did Not Abuse Its Discretion in Ending the Cross-Examination of Lauren Salzman

The district court did not commit reversible error in limiting Raniere's cross-examination of Lauren Salzman, a cooperating witness for the government. (RBr78). Raniere claims that the termination of Salzman's cross-examination infringed on his constitutional rights, but the record refutes this claim. Prior to the court's instruction to counsel to conclude his cross-examination, counsel conducted a vigorous and thorough cross-examination, and succeeded in eliciting testimony

favorable to his client, on which counsel relied in summation. Further, at the close of the government's case, the government made Salzman available as a witness in the defendant's case, but Raniere declined to call her. Accordingly, the court did not abuse its discretion in limiting defense counsel's cross-examination and, in any event, Raniere was not deprived of a fair trial when the court did so.

A. Relevant Facts

Lauren Salzman testified on May 17, 20, 21 and 22, 2019. (GA207–396). During the government's direct examination, the jury was informed that Salzman had pleaded guilty to racketeering conspiracy and racketeering, with predicate acts of labor trafficking, extortion, forced labor and wire fraud. (GA209). Salzman testified that she pleaded guilty pursuant to a cooperation agreement, which was offered into evidence without objection. (GA332–33). Salzman further testified that she faced up to twenty years' imprisonment on each count to which she had pleaded guilty. (Id.).

During Raniere's cross-examination of Salzman, Raniere's counsel asked open-ended questions to elicit testimony favorable to his client, which often resulted in the witness giving long, detailed answers.

(GA348:T2074 ("Q: Just tell us a little bit about that."), 2079 ("Q: Can I ask you why did you chose to pursue this relationship with Keith [Raniere] given what you knew about him and what his conditions were?"), 350:T2080 ("Q: And what were those principles that you were admiring [in Raniere]?"), 352:T2088 ("Q: "Just describe that for the jury [regarding Raniere's fear of having women leave him]."), 371:T2166 ("Q: How does collateral build one's conscience?"); 382:T2211 ("Q: Is it the same concept as what we were just discussing? ... Go ahead, tell me the way you see it."). Using this approach, which resembled a direct examination, Raniere's counsel established a number of helpful facts, including that Salzman loved Raniere and had wanted to have children with him (GA346–47); she believed Raniere to be a "humanitarian" and an ethical person (GA350:T2080); Raniere had "good-natured" nicknames for members of the Nxivm community (GA368–70); Raniere had not had sex with any of the DOS "slaves" Salzman had recruited (GA373:T2172); DOS was a "demanding program" that was "meant to make people stronger" (GA374:T2178); Salzman had recruited women she "loved" in DOS (GA377:T2191); to Salzman's knowledge, no DOS collateral had been released (GA379:T2196); a woman Salzman had recruited into DOS

had told her that she loved her (GA388:T2232); and Salzman had meant it when she told Nxivm members that she "never felt more connected to people than overcoming pain for a principle" (GA390:T2243). Counsel also admitted, through Salzman, a series of photographs of Nxivm members. (GA368–70).

During Raniere's cross-examination of Salzman, counsel also focused on the fact that Salzman had experienced a significant "change in perspective" regarding Nxivm, DOS, and Raniere from her involvement in DOS to her decision to cooperate:

> Q: In fairness, you had a major change in perspective between the time [you were] involved in DOS and as you're sitting here today.
>
> SALZMAN: Yes.
>
> Q: Major.
>
> SALZMAN: Major.
>
> Q: 180 degrees.
>
> SALZMAN: It's true.

(GA373:T2174). Raniere's counsel later established that Salzman's review of discovery provided in the criminal case contributed to her change in perspective. (GA384:T2216). Shortly thereafter, Raniere's

counsel indicated to the court that he had "another 15 minutes" of cross-examination, but that he intended to conclude cross-examination by the end of the day. (GA384:T2216–17).

Raniere's counsel resumed cross-examination after the afternoon break. At that point, Salzman acknowledged that she had reviewed discovery and had read about what counsel characterized as Raniere's "special relationship" with Camila. (GA392). Raniere's counsel also cross-examined Salzman on the fact that Salzman had reviewed audio recordings of meetings between Raniere and other women at which Salzman was not present. (GA394–95). Counsel then returned to his original line of questioning, asking the witness again whether she "loved" Raniere and if it was "hard" for her to "hear his voice" with other women in the recordings that were disclosed to her. (GA395).

Counsel continued questioning Salzman by suggesting she had pleaded guilty to crimes as to which she was not in fact guilty, a line of questioning which elicited several sustained objections. (GA395–96). Counsel asked repeatedly whether Salzman "intended" to commit the crimes to which she had pleaded guilty, for example by asking, "Did you intend to commit a racketeering violation at the time that you did it?"

(GA395:T2263), "Did you think it was extortion when you took the stuff [i.e., the collateral]?" (GA396:T2264), and "were you doing things intentionally to break the law?" (GA396:T2265). Counsel also began a line of questioning intended to suggest that Salzman's guilty plea was coerced by the government:

Q:	You said on direct examination that you committed extortion; right?
SALZMAN:	Yes.
Q:	Did they tell you to say that?
SALZMAN:	No.
Q:	Do you think you committed extortion?
SALZMAN:	Yes.
Q:	You do?
SALZMAN:	Yes.
Q:	What did you do?
SALZMAN:	I took collateral from people who were afraid to not give it to me....

(GA395:T2263–96:T2364).

After further inquiry along these lines, the district court interrupted and ended counsel's cross-examination:

THE COURT:	Okay, that's it. We are done.
MR. AGNIFILO:	Okay, Judge. Thank you.
THE COURT:	You are done.
MR. AGNIFILO:	I know. I am done.
THE COURT:	No, I said you are done.
MR. AGNIFILO:	I know. I am.

(GA396:T2265). After the witness and the jurors were excused, defense counsel asked the court why his cross-examination was ended, and the court responded that counsel "went way over the line" by continuing to ask the same questions over and over and by "ask[ing Salzman] to make legal judgments about whether what she did in pleading guilty was farcical...." (GA397:T2269). The court added that it was not going to allow the witness to "have a nervous breakdown on the witness stand."[18] (GA397:T2268). The following day, the court administered a warning to Raniere's counsel regarding his questioning the witness "about the validity of a plea proceeding before" the court and "whether the witness

[18] The trial transcript fails to capture that the witness was sobbing uncontrollably throughout this portion of the cross-examination.

had been disingenuous or lying to the Court during the proceeding" without a proper offer of proof. (GA399).

On May 23, 2019, the defendant filed a motion for a mistrial based on the district court's decision to end his cross-examination of Lauren Salzman. (DE668). The court denied the motion. (GA399:T2274).

At the close of the government's case, counsel for the government noted on the record that it had "offered to the defense to make any of its witnesses available to them ... including [the government['s] two cooperating witnesses, including Lauren Salzman." (GA975–76). The government represented, and defense counsel confirmed, that Raniere did not wish to call Salzman or any of the government's other witnesses and did not intend to put on a case. (GA976).

In summation, defense counsel did not seek to discredit Salzman's testimony. Instead, he credited her testimony before the jury and attempted to use it to demonstrate, among other things, that the participants in Nxivm and DOS believed they were doing good:

> [I]n my opinion, I think Lauren [Salzman] came here and told you exactly how she feels. I think she told you the absolute truth about her feelings and I think her feelings are that she's hurt, I think she's heartbroken and I think you can see that.... I thought that was incredibly powerful testimony, incredibly powerful, from the heart, unvarnished, from a very deep place in her soul....
>
> Every witness who got up here said amazingly positive things about what they thought NXIVM was doing and Lauren is certainly no exception.

(GA1074–76).

B. Applicable Law

This Court "has repeatedly emphasized" that trial judges "'retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on … cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." United States v. Crowley, 318 F.3d 401, 417 (2d Cir. 2003) (internal quotation marks omitted); see also Fed. R. Evid. 611(a) (instructing that the Court "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to [inter alia] ... protect witnesses from harassment or undue embarrassment"). Although the Confrontation Clause guarantees "an

opportunity for effective cross-examination," it does not guarantee "cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Delaware v. Fensterer, 474 U.S. 15, 20, (1985) (emphasis omitted). "Cross-examination is not improperly curtailed if the jury is in possession of facts sufficient to make a discriminating appraisal of the particular witness's credibility." United States v. Laljie, 184 F.3d 180, 192 (2d Cir. 1999) (internal quotation marks omitted); accord Howard v. Walker, 406 F.3d 114, 129 (2d Cir. 2005).

Even a finding that the trial judge abused his broad discretion in curtailing cross-examination does not require reversal. Any such error is subject to harmless error analysis. United States v. Rosa, 11 F.3d 315, 336 (2d Cir. 1993). In this context, "[t]he correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless." Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986). Relevant factors include "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise

permitted, and ... the overall strength of the prosecution's case." Id.; see also Cotto v. Herbert, 331 F.3d 217, 254 (2d Cir. 2003).

C. Discussion

1. The District Court Did Not Err

Raniere was permitted a full opportunity to cross-examine Salzman and the district court did not err when it ended the cross-examination. Counsel engaged in a lengthy cross-examination of Salzman, which culminated in Raniere's counsel revisiting lines of inquiry he had previously covered and asking a series of inappropriate questions about Salzman's plea without a good faith basis. The court's limit on cross-examination fell well within the wide latitude afforded by the Confrontation Clause to limit questioning by defense counsel.

Raniere's claim that he had insufficient opportunity to "test the veracity of Salzman's testimony, including through bias and motive," is belied by the record. (RBr84). Salzman was cross-examined on a wide range of topics, including her relationship with Raniere and her jealousy of other women (GA351:T2085) and her "change in perspective" caused by her review of discovery provided by the government (GA373:T2174, 384:T2216–17). Counsel also elicited that Salzman had "been through a

lot" for Raniere and did not want to "go through this criminal trial with him." (GA395:T2262–63). As a result, when the district court ended the examination, "the jury was already in possession of sufficient information to make a discriminating appraisal of [Salzman's] possible motives for testifying falsely in favor of the government." United States v. Stewart, 433 F.3d 273, 313 (2d Cir. 2006) (internal quotation marks omitted).

Ultimately, however, given the helpful information Raniere's counsel elicited, Raniere's counsel made the strategic decision not to attack Salzman's credibility and he opted instead to credit her testimony and elicit testimony favorable to his client. Raniere's counsel used Salzman's testimony to bolster his principal defense that DOS was "created with the best of intentions" (GA1093:T5504, 1076:T5471 ("[S]he literally thinks sincerely in her heart and soul, I am doing something to help humanity…")). At no time during Raniere's summation did he suggest to the jury that Salzman was lying during her testimony. (GA1074–76 (suggesting during summation that Salzman was telling the "absolute truth about her feelings")).

Further, the district court ended defense counsel's cross-examination only after the court sustained several objections to a line of

cross-examination that defense counsel had already explored. The court ended the examination only after counsel attempted to elicit that Salzman had pleaded guilty to crimes as to which she was not guilty, which Salzman denied. Raniere's counsel then suggested, without any good faith basis to do so, that the government "told" the witness to "say" that she committed extortion in the course of a guilty plea accepted by the court. (GA395:T2263). Cf., e.g., United States v. Figueroa, 548 F.3d 222, 227 (2d Cir. 2008) (noting that counsel must have "some good faith basis for questioning that alleges adverse facts" (internal quotation marks omitted)). Only after Raniere's counsel challenged Salzman on this topic several times without success did the court indicate that Raniere's counsel was "done." At that time, Raniere's counsel agreed that cross-examination had concluded, and counsel responded, "Okay, Judge. Thank you," and then reiterated, "I know. I am done." (GA396:T2265).

The district court's limitations on the cross-examination of Salzman were reasonable and appropriate, and well within its broad discretion. Raniere was not deprived of a "meaningful opportunity to test the truth of [Salzman's] direct testimony," Bagby v. Kuhlman, 932 F.2d

131, 135 (2d Cir. 1991), and the court did not err in ending the cross-examination.

2. Any Error Was Harmless

Even if the district court erred, any error was harmless. Raniere's counsel did not ask the court to re-open cross-examination, and he declined the government's offer to re-call Salzman as a witness during the defense case. (GA976). The latter decision, in particular, is fatal to Raniere's argument on appeal. See, e.g., United States v. Barbarino, 612 F. App'x 624, 627 (2d Cir. 2015) (holding that any error in limiting cross-examination was harmless given that "[t]he Government offered to make [the witness] available for further cross-examination by telephone, and [defense counsel] has not offered any reason why this compromise would not have been adequate"). The jury would not have thought it unusual, and Raniere would not have been at a disadvantage if he had called Salzman himself, given that his cross-examination of Salzman was, for long stretches, indistinguishable from a direct examination.

Moreover, as noted above, Raniere had indicated to the court that he was nearing the end of his cross-examination (GA384:T2216–17), and on appeal he fails to identify any question or line of inquiry that he

would have pursued but for the court's decision to stop the examination. See, e.g., id. at 627 (holding that any error in limiting cross-examination was harmless where, inter alia, the defendant "has not identified other questions he was prevented from asking on cross-examination"); see also United States v. Casamento, 887 F.2d 1141, 1173 (2d Cir. 1989) (finding no error where "defense counsel made no proffer to indicate what areas of inquiry they would pursue if they had had more time"); cf., e.g., United States v. Nunez, No. 07-1218-CR, 2008 WL 4810090, at *3 (2d Cir. Nov. 3, 2008) (finding no error where, inter alia, "the defendants have not identified any unexplored lines of questioning"). His failure to identify any relevant line of questioning is also fatal to his argument on appeal.

Finally, any error is harmless when all of the factors discussed above — Raniere's already-extensive cross-examination of Salzman, his suggestion to the court that he was nearing the end of his cross-examination, his decision not to call Salzman himself, and his failure to identify any line of questioning he was unable to pursue — is considered against the overwhelming evidence against Raniere adduced at trial.

III. The District Court Did Not Abuse Its Discretion in Permitting Non-Disclosure of Witness Last Names

It is meritless to assert, as Raniere does in an argument that spans just two pages, that his Fifth and Sixth Amendment rights were violated by the district court's decision to permit victim-witnesses to testify under a nickname, first name or pseudonym only, and not to disclose any uniquely identifying information. (RBr85). In doing so, the court thoughtfully balanced the relevant interests and properly instructed the jury on the presumption of innocence. The Court should reject Raniere's argument to the contrary.

A. Relevant Facts

Prior to trial, the government moved in limine to permit testifying victims to testify under a nickname, first name or pseudonym, and for a ruling prohibiting disclosure of uniquely identifying information, such as victims' addresses, names of family members, exact place of education or employment. (DE567). The government also moved to require the parties to refer to non-testifying DOS members by first name or nickname, and to preclude disclosure of uniquely identifying information. (Id.). The government argued that these measures were necessary to protect these testifying and non-testifying witnesses from

harassment from the media and others, undue embarrassment and other adverse consequences, such as loss of employment, that could result from their testimony regarding their membership in DOS. Raniere opposed the motion. (DE595). On May 6, 2019, the district court granted the government's motion in a memorandum opinion. (DE622 at 29–35).

On May 8, 2019, after a break in the testimony of the government's first witness, Sylvie, the district court instructed the jury as follows:

> Members of the jury, you may have noticed during yesterday's testimony that the witness only used the first names of certain individuals. That is because the names of certain alleged victims are being withheld from the public and the press to protect the privacy of those individuals. I have, therefore, instructed the parties to refer to those individuals by their first names only; however, their full names and identities are known to the Government, to the defense, and to the Court.
>
> I remind you that the defendant has pleaded not guilty to all the charges and is presumed innocent throughout the trial. You shall not make any inferences as to the defendant's guilt or non-guilt from the fact that certain last names are being withheld from you and the public.

(GA112:T249).

B. Applicable Law

The Confrontation Clause guarantees defendants the right to cross-examine witnesses who testify against them. U.S. Const. amend VI. That right, however, is not absolute, and a defendant's rights under the Confrontation Clause must yield to accommodate other legitimate interests in the criminal trial process. Figueroa, 548 F.3d at 227. As discussed above, for example, trial courts have "wide latitude ... to impose reasonable limits on ... cross-examination." Van Arsdall, 475 U.S. at 679 (1986); see also POINT TWO, Part II(B), supra.

"[T]here is no absolute right of an accused to have a jury hear a witness's true name and address." Clark v. Ricketts, 958 F.2d 851, 855 (9th Cir. 1991). "[O]nly where the lack of a witness's name and address denies a defendant an opportunity to effectively cross-examine a witness ... is [a defendant] denied his Sixth Amendment right to confrontation." United States v. Mohamed, 727 F.3d 832, 838 (8th Cir. 2013). Where a defendant is aware of a witness's true name — but where that information is not disclosed to the jury or the public — he will be "able effectively to investigate and impeach the declarant" on cross-examination. See Siegfriedt v. Fair, 982 F.2d 14, 18 (1st Cir. 1992); see

also Marcus, 628 F.3d at 45 n.12 (rejecting in a footnote defendant's challenge to district court's order permitting two witnesses to testify using only their first names); United States v. Celis, 608 F.3d 818, 833 (D.C. Cir. 2010) (holding that defendant's Fifth and Sixth Amendment rights were not violated by court order permitting certain witnesses to testify under pseudonyms where their true identity was revealed to defense counsel prior to the witness's testimony); United States v. Maso, No. 07-10858, 2007 WL 3121986, at *4 (11th Cir. Oct. 26, 2007) (same and collecting cases).

This Court has identified "two central interests" defendants have in disclosure of witnesses' identifying information. First, the defendant may require such information "so that the defense can obtain this information which may be helpful in investigating the witness out of court or in further cross-examination." United States v. Marti, 421 F.2d 1263, 1266 (2d Cir. 1970). "Second, the defense may need the witness to reveal his address in court because knowledge of the address by the jury might be important to its deliberations as to the witness' credibility or his knowledgeability." Id. If the government provides a reason to "limit disclosure of identifying information in open court," the defendant must

"demonstrate a 'particularized need' for disclosure ... which the court weighs against the risks to the witness." Marcus, 2007 WL 330388, at *1, aff'd, 628 F.3d 36 (2d Cir. 2010).

A district court's evidentiary rulings are reviewed under a deferential abuse of discretion standard. United States v. Litvak, 808 F.3d 160, 179 (2d Cir. 2015).

C. Discussion

The district court properly exercised its discretion in permitting victim-witnesses to testify and be referred to by first name or pseudonym only, and in requiring that non-testifying victims similarly be referred to by first name or pseudonym only. As set forth in the court's memorandum opinion, requiring victim-witnesses to provide their names in public could "chill their willingness to testify, for fear of having their personal histories publicized." (DE622 at 32). The court also found that Raniere "knew who the victims" were and was therefore "fully able to investigate their testimony outside of court." (Id. at 33). The court found that Raniere had failed to identify any "particularized need for the disclosure" of witnesses' or non-testifying victims' identities or specific places of employment or education. (Id.). In response to Raniere's

argument that non-disclosure of witness information would give the jury the impression that the defendant was "dangerous," the court explained that any prejudice would be cured with a jury instruction "explaining that the reason for the anonymity is regard for the witnesses' and non-witness victims' privacy." (Id. at 33–34). "Given the potentially embarrassing nature of the allegations, and the media attention thus far," the court observed, "such an explanation will certainly seem plausible to the jury." (Id.). The court in fact gave this instruction shortly after the government's first witness began her testimony. (GA112).

In Marcus, this Court summarily rejected a challenge to a similar procedure in a forced labor case. 628 F.3d at 45 n.12. And district courts in this Circuit have permitted similar relief when presented with circumstances that warrant it. See, e.g., United States v. Maxwell, No. 20-CR-330 (AJN) (S.D.N.Y. Nov. 1 2021) (limiting disclosure of witnesses' and alleged victims' identities and dismissing defense's concern that jury instruction afforded "Court-sanctioned sympathy and credibility"); United States v. Kelly, No. 19-CR-286 (AMD) (E.D.N.Y. Oct. 17, 2019); United States v. Zhong, No. 16-CR-614 (DLI), 2018 WL 6173430, at *2 (E.D.N.Y. Nov. 26, 2018); United States v. Alimehmeti, 284 F. Supp. 3d

477, 490–91 (S.D.N.Y. 2018); United States v. Urena, 8 F. Supp. 3d 568, 573 (S.D.N.Y. 2014); United States v. Rivera, No. 09-CR-619 (SJF) (E.D.N.Y. Apr. 26, 2011); Marcus, 2007 WL 330388, at *1.

Raniere's claim, on appeal, that the district court's ruling "ran afoul of the presumption of innocence" by "for[cing]" him to "essentially concede the government's theory of the case" is meritless. (RBr86–87). The court carefully instructed the jury that the names of these "alleged victims" were being "withheld from the public and the press" solely to protect their privacy and reminded the jury about the defendant's presumption of innocence. (GA112). The court also separately instructed the jury about the presumption of innocence during its preliminary instructions. (GA70:T31, 39). In granting the government's motion in limine, the court carefully and thoughtfully balanced the relevant concerns and Raniere does not assert, much less demonstrate, that the court's instructions were ineffective. See United States v. Reichberg, 5 F.4th 233, 244 (2d Cir. 2021) (noting that "[w]e presume that juries follow limiting instructions" and finding no evidence to undermine that presumption).

POINT FOUR

BRONFMAN'S SENTENCE IS PROCEDURALLY REASONABLE

The Court should reject Clare Bronfman's assertion that her sentence is procedurally unreasonable. Contrary to Bronfman's repeated and unsupported assertions, in imposing sentence, the district court acknowledged that Bronfman was not a member of DOS and was not aware of it prior to June 2017.[19] The court did not vary upwardly from the applicable Guidelines range because it found that Bronfman "bore culpability" in any legal sense for DOS (BBr2), but rather because, as a matter of her "history and characteristics," she repeatedly turned a blind eye to the "uglier aspects" of "Raniere's world" (SPA125) — a proposition for which there is overwhelming record support. The court provided ample support for its decision to reject Bronfman's counter-factual assertion that she meant well, and that her crimes were not particularly serious, and there is no support in law or fact for Bronfman's request that

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[19] (See SPA103 (noting that the PSR "does not state that Bronfman was aware of or involved with DOS or that she directly funded it"), 104 ("I agree with Ms. Bronfman that the available evidence does not establish that she was aware of DOS prior to June 2017 or that she directly or knowingly funded DOS or other sex trafficking activities."), 109 (same), 118 (same), 120 (same), 124 (same)).

this Court rebalance the factors considered by the court to reach a different conclusion on appeal. See United States v. Perez-Frias, 636 F.3d 39, 42 (2d Cir. 2011) (explaining that this Court "will not second guess the weight (or lack thereof) that the judge accorded to a given factor or to a specific argument made pursuant to that factor").

I. Relevant Facts

A. Bronfman's Guilty Plea

On April 19, 2019, Bronfman pleaded guilty, pursuant to a plea agreement with the government, to both counts of a two-count Superseding Information. (BPSR¶1). Count One charged that between October 2015 and January 2018, Bronfman, together with others, conspired to conceal, harbor and shield from detection one or more aliens for financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I) and 1324(a)(1)(B)(i). (BPSR¶¶1–2). Count Two charged that between November 2016 and March 2018, Bronfman, together with others, unlawfully transferred and used a means of identification of another person with the intent to commit and in connection with attempted tax evasion, in violation of 18 U.S.C. §§ 1028(a)(7), 1028(b)(1)(D), and 1028(c)(3)(A). (Id.; see also GA31).

B. The Parties' Sentencing Submissions

Prior to sentencing, both parties submitted lengthy sentencing memoranda in which the primary dispute concerned the significance of Bronfman's crimes of conviction and other relevant conduct with respect to lead defendant Raniere. (A131, 225 (excerpt), 229; DE915, 922, 927). Bronfman, in her 80-page opening submission, asserted that she pleaded guilty to crimes outside the "core" offenses that made up the "Nxivm case," that her "motivation" for participating in Nxivm was a mitigating factor that the district court should consider, and that her participation in Nxivm had "nothing to do with DOS, a secret society that [she] neither participated in nor knew anything about." (A146). Bronfman requested that the court impose a below-Guidelines sentence of probation. (A145).

The government's 71-page submission cited to the trial record and additional documentary support to urge the district court to consider Bronfman's crimes of convictions in their full context. (DE922). As the government explained, Bronfman "used her extraordinary wealth and social status to fund and promote a criminal enterprise led by" Raniere. (Id. at 1). She "recruited individuals into Nxivm-affiliated organizations

and brought them within Raniere's orbit" and then "pursued Raniere's accusers and critics by dispatching powerful teams of lawyers, private investigators and public relations firms to attempt to discredit them and dredge up information that could be used to undermine their claims." (Id.). And, even after trial, and after Raniere had been "convict[ed of] sex trafficking, forced labor, alien smuggling and child exploitation," Bronfman continued to support him. (Id.). The government requested an above-Guidelines sentence of 60 months' imprisonment. (Id.).

C. The Sentencing Hearing

The district court sentenced Bronfman on September 30, 2020. (SPA6).

1. Guidelines Calculation

At the hearing, without objection from either party, the district court calculated Bronfman's adjusted Guidelines level as 16 and her Criminal History Category as I. (SPA10–15). The court determined that Bronfman's applicable Guidelines range was 21–27 months' imprisonment. Bronfman stipulated to a calculation with the same adjusted offense level and Guidelines range in her plea agreement.

2. Victim Impact Statements

The district court then heard from nine victims of Bronfman's offenses and related conduct. (SPA16–71).[20] The victims described Bronfman's close relationship with Nxivm's leader, Raniere, her powerful role in Nxivm, her participation in the abusive and exploitative treatment of Nxivm's adherents and her efforts to silence Nxivm's critics — including her own father — through criminal means. Sarah Edmondson, for example, described how, after she publicly described the abuse she suffered as a member of DOS, Bronfman went to extraordinary lengths to silence her, including by urging law enforcement in Vancouver to press charges against her. (SPA17; DE922 at 22–27). Ivy Nevares explained that Bronfman "exploit[ed her] through indentured servitude" and "forced labor" (SPA19), that she was among Raniere's "chief enabler[s]" (SPA22), and that her vast wealth served as "the propellant to [Raniere's] unyielding fire" (id.).

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[20] Prior to the hearing, and notwithstanding U.S.S.G. § 1B1.3 and 18 U.S.C. § 3661, Bronfman urged the district court not to hear from "additional Jane and John Does who were impacted by [her] criminal conduct." (A206–07 (citing BPSR¶116)). She does not renew this objection on appeal.

Jane Doe 12, the victim of Count One, explained that Bronfman hired her to work as a management consultant for a Nxivm-affiliated company at a salary of $3,600 per month and arranged for a work visa, but she thereafter "never received [her] salary because [her] visa was seen as a privilege, and [she] needed to earn that privilege by some unknown internal metric that was not stated in [the] work agreement." (SPA27). Jane Doe 12 criticized Bronfman's description of DOS as a "sorority" based on "loyalty and friendship" and she — unlike Bronfman — recognized and regretted that she did not "see[] the red flags sooner." (SPA29).

3. The Parties' Arguments

Counsel made lengthy arguments to the district court. Bronfman's counsel apologized to Jane Doe 12, the victim of Count One, on Bronfman's behalf and asserted that Bronfman's "mission" had been "to help people." (SPA71–72). Bronfman's counsel then focused, as he does on appeal, on Bronfman's lack of knowledge of DOS prior to public revelations about the organization in 2017 (SPA74), and her purported lack of knowledge of the "full scope" of DOS's criminal activities until Raniere's federal trial and conviction (SPA76, 84–85). Counsel also

discussed and attempted to explain the vast sum of money that Bronfman spent in connection with Nxivm and her relationship with Raniere, including (1) $67 million in "calls on commodity trades" made by Raniere and others;[21] (2) $30 million to the Nxivm-affiliated Ethical Science Foundation; and (3) funds expended in connection with Nxivm-related litigation. (SPA76–79).

Counsel addressed Bronfman's crimes of convictions briefly and referred to the "context" for those crimes discussed in her memorandum. (SPA85–87). Counsel disputed that Bronfman's conviction of identity theft (Count Two) was part of an effort to shield Raniere's assets and thereby avoid taxes (SPA 86–87), notwithstanding Bronfman's allocution, under oath, to precisely that (GA64; SPA92–93). Counsel concluded with a request for a sentence of probation. (SPA88).

The government requested a sentence of 60 months' imprisonment. (SPA90). The government asserted that "this is no

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[21] At the sentencing hearing, counsel disputed the purpose of the $67 million, asserting that it was not solely for Raniere's use in the commodities market. As the government noted, however, that assertion was contradicted by prior counsel's concession to the contrary. (SPA97).

ordinary alien smuggling case" (id.), and that "the [G]uidelines don't begin to take into account the gravity of the defendant's conduct" (SPA92). The defendant "recruited individuals into Nxivm and promised to pay them a professional salary as required by immigration law," but then "exploited [the] victims for free labor by dangling that salary in front them without [paying] them." (Id.). For example, Bronfman paid Jane Doe 12 just $4,000 for a year of work, rejecting her "desperate financial situation" and her pleas for just $200 to see a doctor. (SPA91, 92 (describing another victim who was coerced to do "menial and unpaid work")). The government noted that the exhibits attached to its sentencing memorandum as Exhibit A made clear that Bronfman's immigration fraud was a "sophisticated operation," involving lawyers and falsified letters of employment, in which the defendant "secure[d] visas for people who genuinely wanted to work in the United States," who Bronfman "exploited ... by making them pay back the cost of the visa through uncompensated work for her and for NXIVM." (SPA92). Jane Doe 12 was not the only victim of Bronfman's scheme. (DE922 at 2–14).

The government addressed at length Bronfman's argument about her lack of knowledge of DOS and reiterated that the government's

argument related to her behavior after she learned of DOS in 2017. The government explained that its position was "based on the evidence, the emails that the defendant does not dispute that she received, and she does not dispute that she wrote." (SPA93). The government explained that, after "the existence of DOS became known to members of the Nxivm community," Bronfman received letters from DOS victims requesting the return of their collateral, among other things. (Id.). Those letters "were not ambiguous" — they "identified the collateral" as "naked photographs, videos of branding, videos of paddling, and confessions of devastating secrets" — and they made clear that the DOS victims provided collateral in reliance on lies. (Id.). Bronfman's response to these letters was not to investigate, or respond to the victims' pleas for help, but rather to engage in efforts, together with Raniere, to silence the victims, including by "draft[ing] threatening letters to DOS victims that were sent by attorneys in Mexico." (SPA93–94). The government directed the district court to exhibits B and C to its sentencing memorandum, which contained examples of Bronfman's communications regarding these issues. (SPA95).

Finally, the government requested that the district court impose a sentence that would promote respect for the law. (SPA96). The government noted in this regard that:

> even now Bronfman continues to unequivocally support Raniere. The defense suggests that the defendant didn't know the details about DOS or every detail about all of Raniere's crimes, but she knows now. And even though Raniere has been convicted by a jury of sex trafficking, forced labor and exploitation of a child, [Bronfman] still does not acknowledge that his conduct was unlawful or wrong.

(Id.). The government noted that this, in turn, "suggest[ed Bronfman], who has supported Raniere without question or limitation for decades, will continue to do so." (SPA96). The government noted that, although Bronfman did not write a check to DOS, "she supported Raniere in full without limitation or restriction, and that is what the government respectfully asks the Court to consider in terms of deterrence." (SPA97–98).

4. The Defendant's Statement

Bronfman briefly addressed the district court. She began by noting that "all over the world ... people are praying for me because they know my goodness." (SPA99). She acknowledged making "mistakes and

wrongful choices" and apologized for them. (Id.). Finally, she apologized to the court "for the time and the resources that [she took] from th[e] court" and the district judge. (Id.).

5. The District Court's Statement of Reasons

The district court explained its sentence over nearly 31 pages of transcript and, subsequently, in a detailed 27-page sentencing memorandum. (SPA100–31; GA1139). The court explained at the outset that, in its view, a sentence within the applicable Guidelines range would not be reasonable given that "the crimes of conviction standing alone do not fully encompass the larger pattern and misdeeds perpetrated by Ms. Bronfman."[22] (SPA100–01). The court explained that, in its view, "[t]his case is not about an isolated incident of credit card fraud or the run-of-the-mill case of harboring of illegal aliens for financial gain. To the contrary, the crimes to which Ms. Bronfman has pleaded guilty exist in the larger context of the crimes committed by her codefendants, including Keith Raniere." (SPA101).

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[22] On December 17, 2019, the district court advised the parties that it was considering an above-Guidelines sentence. (DE 12/17/2019).

Based on testimony adduced during Raniere's trial, over which the district court presided, the court explained the context in which Bronfman committed her crimes — the nature of Nxivm and DOS, Raniere's role in founding both, and Bronfman's relationship with Raniere and her service as a high-ranking Nxivm executive. (SPA101–03). The court was "crystal clear" about the acts for which Bronfman was to be sentenced, acknowledging that she was not convicted of racketeering or any of the other crimes of which Raniere was convicted. (SPA104). The court agreed that "there were many aspects of Mr. Raniere's crimes in which Ms. Bronfman very well may have not been familiar" and "that the available evidence does not establish that she was aware of DOS prior to June 2017 or that she directly or knowingly funded DOS or other sex trafficking activities." (Id.). Nevertheless, the court explained that her crimes "were not committed in a vacuum, they were committed in connection with a role in NXIVM and a close relationship with Raniere," and the court believed it would be "inappropriate for [the court] to consider them divorced from that context." (Id.).

The district court then turned to the "nature and circumstances of [Bronfman's] offense[s]," see 18 U.S.C. § 3553(a)(1), and

rejected Bronfman's efforts to minimize her crimes of conviction. The court described Bronfman's visa fraud with respect to Jane Doe 12 (Count One) as "particularly egregious." (SPA106). The court explained that Bronfman was aware that her actions left Jane Doe 12 in "dire financial straits," and she nevertheless "used Jane Doe[12's] immigration status as a means of pressuring her to continue working without compensation" despite having income of $26 to $30 million per year during the relevant period. (SPA107–08). The court again noted that there was no evidence that Bronfman knew of DOS at this point in time, but it found that Bronfman's abuse of Jane Doe 12 left her in a "very vulnerable state," which made her "more susceptible to be recruited into an organization like DOS." (SPA109).

The district court found that Bronfman's conduct with respect to Jane Doe 12 was "part of a pattern" that involved other victims. (SPA109–11). Bronfman "made promises to immigrants that she did not keep [and] exacted labor that she did not pay for...." (SPA111). She "took advantage of these individuals' financial straits and immigration status in a manner that exacerbated both their financial and emotional

vulnerability and made them more reliant on her and the NXIVM community, sometimes with very harmful consequences." (Id.).

With respect to Count Two, the district court again placed Bronfman's crime of unlawful use and transfer of Jane Doe 7's identification documents into context. The court noted that Bronfman's payment of $135,000 in bills charged to the deceased woman's credit card, and the $736,856 in disbursements taken from her account were "consistent with a pattern of facts suggesting that Raniere attempted to minimize money that was in his name." (SPA112). The court acknowledged that the available evidence did not make clear Bronfman's intent in committing the crime, but also that the "offense helped to facilitate" Raniere's efforts to keep assets out of his name, regardless of whether or not that is what Ms. Bronfman understood herself to be doing." (SPA112). The crime, too, "was committed within a larger context of more serious crimes and alarming behavior ... and was consistent with the hallmarks and aims of that behavior." (Id.). Although Bronfman may not have "shared in those aims," the court found that they were "relevant context" that the court was entitled to consider. (Id.).

The district court then considered Bronfman's "history and characteristics." See 18 U.S.C. § 3553(a)(1). The court found that Bronfman "repeatedly and consistently leveraged her wealth and social status as a means of intimidating, controlling and punishing individuals whom Raniere perceived as his adversaries, particularly NXIVM's detractors and critics." (SPA113). The court explained that, "even if Ms. Bronfman did not knowingly facilitate Raniere's worst crimes, as a general matter she was his accomplice in the effort to intimidate and silence detractors, using her wealth and privilege as a sword on Raniere's and NXIVM's behalf." (SPA115). The court referred in this regard to Bronfman's attempt to use her political connections to have NXIVM critic Rick Ross indicted (SPA113), to silence several of Raniere's former partners who had turned into critics (SPA114), to hack her father's computer following his criticism of Nxivm (SPA116), and her contribution of some $400,000 to a company to spy on Nxivm critics in Canada (SPA117).

The district court found that "the most troubling" aspect of Bronfman's unyielding support for Raniere occurred when Bronfman was "confronted with ... information about DOS" in 2017. (SPA118). The

court reiterated its finding that Bronfman did not "fund[] specific DOS activities," did not "kn[o]w about specific DOS rituals in real time" and did not "knowingly fund a sex cult" (id.), and it explained that it "did not base Ms. Bronfman's sentence on the assumption that she knew about DOS prior to ... June 2017" (SPA119).

Rather, the district court found that when Bronfman was "confronted with information about DOS [in 2017] ... she doubled down on her support of Raniere and pursued her now familiar practice of attacking his critics." (SPA119). Instead of "distanc[ing] herself from Raniere" or "help[ing] those clearly in need," she "even help[ed] to facilitate further intimidation of DOS victims." (SPA120–21). The court found that Bronfman worked "hand-in-hand with Raniere to intimate and silence victims of Raniere's ... brutal campaign of sexual abuse and exploitation," and it rejected her purported "explanation" of her behavior as "deeply disingenuous." (SPA121–22). The court noted that Bronfman lived with Raniere and the First Line DOS Members in Mexico shortly before their arrest and paid nearly $14 million to cover Raniere's and others' legal fees in connection with the federal investigation and trial. (SPA124). The court noted that when Bronfman was faced with the

choice of Raniere or his victims, "she chose Raniere unequivocally, and to this day she has not clearly apologized for that choice, admitted her actions were harmful, or conceded that her loyalty was misplaced." (Id.).

Near the end of the district court's statement of reasons, in the context of its discussion of Bronfman's "history and characteristics" and after again explaining that it was not finding that Bronfman knew or funded DOS (SPA124), the court explained that its sentence was based in part on Bronfman's "pattern of willful blindness" towards the "uglier aspects" of "Raniere's world" (SPA125). The court explained that, in considering Bronfman's history and characteristics, it found it relevant that during Bronfman's involvement in Nxivm, she was concerned "first and foremost with protecting Raniere and attacking his enemies" (SPA126), and she chose to "avert [her] gaze" from the harm brought by [her] actions and the actions of those to whom [she was] close." (SPA127–28).

The district court concluded that a "substantial upward variance [was] appropriate" in this case. (SPA130). The court summarized its lengthy statement of reasons as follows:

> I find that the nature and circumstances of Ms. Bronfman's offense exacted a harm not reflected in the Guidelines and placed her conduct outside the ordinary realm of those offenses. I also find that a fair appreciation of her history and characteristics, including her repeated attempts to leverage her wealth and status as a sword against Raniere's enemies, and her decision as she became aware of DOS to remain steadfast in her support of Raniere, lead[s] to the conclusion [that a sentence] greater than the upper limits of [the] Guidelines [range] is warranted.

(SPA130–31). The court imposed a sentence of 81 months' imprisonment, a fine of $500,000, restitution of $96,605.25 as to Jane Doe 12, agreed-upon forfeiture of $6 million, a special assessment of $200 and three years of supervised release on each count, to run concurrently. (SPA131).

II. Applicable Law

This Court's review for procedural error "focus[es] primarily on the sentencing court's compliance with its statutory obligation to consider the factors detailed in 18 U.S.C. § 3553(a)." United States v. Canova, 412 F.3d 331, 350 (2d Cir. 2005). A sentence is procedurally unreasonable if the district court "fail[s] to calculate (or improperly calculate[es]) the Guidelines range, treat[s] the Guidelines as mandatory, fail[s] to consider the [18 U.S.C.] § 3553(a) factors, select[s] a sentence based on clearly erroneous facts, or fail[s] to adequately explain the

chosen sentence." Gall v. United States, 552 U.S. 38, 51 (2007). "To reject a finding of fact as clearly erroneous, [the Court] must, upon review of the entire record, be left with the definite and firm conviction that a mistake has been committed'" United States v. Kourani, 6 F.4th 345, 358 n.49 (2d Cir. 2021) (internal quotation marks omitted)).

III. Discussion

A. The District Court's Upward Variance Does Not Trigger "Heightened" Appellate Review

As an initial matter, Bronfman ignores settled law in this Circuit in urging the Court to subject her sentence to a heightened standard of review. (BBr21 (asserting that Bronfman's sentence "requires this Court to apply a heightened standard of scrutiny"), 26–29). As the Supreme Court and this Court have repeatedly held, upward variances no matter the size are reviewed for reasonableness, like any other sentence. See Gall, 552 U.S. at 46. Further, a district court must support every sentence imposed "with sufficient justifications," regardless of the sentence's relationship to the advisory Guidelines range. Id.

In Gall, the Supreme Court expressly rejected the assertion, urged by Bronfman, that appellate courts must apply a "heightened

standard of review to sentences outside Guidelines range." Id. The Court explained that the position urged by Bronfman "is inconsistent with the rule that the abuse-of-discretion standard of review applies to appellate review of all sentencing decisions — whether inside or outside the Guidelines range." Id. In United States v. Jones, this Court likewise rejected the assertion that it should view "non-Guidelines sentences with inherent suspicion or to establish a higher standard of review than abuse of discretion for" such sentences. 531 F.3d 163, 173 (2d Cir. 2008).

In any event, this aspect of Bronfman's argument is premised on sentencing data that does nothing to undermine the district court's sentence. (BBr26–27).[23] In the court's lengthy statement of reasons, it

[23] In consultation with data analysts at Main Justice in Washington, D.C. (who were in contact with the U.S. Sentencing Commission), we have been unable to verify the data analysis Bronfman purports to have done in this part of her brief. We have been advised that using the data that the Commission makes public, it may not be possible to conduct the analysis Bronfman claims to have done because of idiosyncrasies with the relevant statutes. We are further aware that the Sentencing Commission will analyze sentencing data at the request of the Court — but not at the request of the parties — and the government therefore respectfully submits that, in considering Bronfman's claims, the Court request that the Sentencing Commission assess Bronfman's data analysis on the Court's behalf.

acknowledged that it was imposing a sentence well-above the applicable Guidelines range and it provided detailed support for its decision. The court also considered the sentence it imposed with reference to other defendants convicted of similar crimes, see 18 U.S.C. § 3553(a)(6), but it concluded that "the context of Ms. Bronfman's criminal conduct places her in an[] altogether different category from other defendants convicted of the same offenses," and "therefore, her circumstances defy easy comparison." (SPA129). Accordingly, this Court's review of Bronfman's sentence has little to do with whether, in the abstract, other defendants were sentenced to terms of imprisonment that differ from the sentence imposed on Bronfman, based on facts that Bronfman does not cite and that, in any event, necessarily differ materially from her own given the extraordinary and unique facts underlying and surrounding her offenses. See, e.g., Jones, 531 F.3d at 174 ("[A] a reviewing court will set aside only those outlier sentences that reflect actual abuse of a district court's considerable sentencing discretion.").[24]

[24] See also, e.g., United States v. Hawes, 309 F. App'x 726, 735 (4th Cir. 2009) (explaining that sentencing "data does not provide the information necessary to determine whether the defendants who received

B. The District Court Did Not Commit Legal Error or Clear Factual Error in Referring to Bronfman's "Willful Blindness"

Bronfman mischaracterizes the district court's statement of reasons in asserting that the court's "core finding" was that she was "willfully blind" to DOS and therefore "bore culpability" for it. (BBr2). To the contrary, at sentencing the court repeatedly made clear that it was not holding Bronfman responsible for DOS. (SPA103, 104, 109, 118, 120, 124). In the court's statement of reasons, it referred to Bronfman's "willful blindness" just twice in more than 30 pages of transcript and it did so in connection with the court's consideration of her "history and characteristics" — not the "nature and circumstances of [her] crime[s]" — to describe her willingness to turn a blind eye to the "uglier aspects" of "Raniere's world." (SPA125, 127; GA1160). The court's description of Bronfman's behavior finds ample support in the record and it provides no basis to vacate her sentence.

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such sentences are truly comparable to the defendant at hand"); United States v. Willingham, 497 F.3d 541, 545 (5th Cir. 2007) (same).

1. The District Court's "Core Finding" Was Not that Bronfman Was "Willfully Blind"

First, it is incorrect to assert, as Bronfman does, that Bronfman's willful blindness was the district court's "core finding." (BBr29, 50 (describing "willful blindness" as the court's "primary justification")). The court used the phrase for the first time on the 25th page of its oral statement and the 22nd page of its written statement, only after its detailed consideration of the "nature and circumstances" of Bronfman's offenses (SPA125; GA1160), and only once more thereafter (SPA127; GA1162). To be certain, the court used the phrase "willful blindness" to describe Bronfman's behavior — not her legal culpability — but the concept played a limited role in the court's analysis that bears little relation to Bronfman's description of it on appeal.

2. The District Court Did Not Rely on the Legal Concept of "Willful Blindness"

Bronfman's argument relies on the demonstrably false premise that the district court employed the legal concept of "willful blindness" to find that she was "willfully blind to DOS all along" and therefore "bore culpability for the harms" caused by DOS. (BBr2, 16–17, 54 (asserting that the court was "desperat[e]" to hold Bronfman

accountable for DOS)). Bronfman's assertions in this regard are not accompanied by any citation to the record because the court made no such finding. Indeed, on six occasions, the court expressly found that Bronfman did not know about DOS prior to her actual knowledge of it in June 2017 and it was "crystal clear" that it was not holding her responsible for that aspect of Raniere's crimes. (See SPA103–04, 109, 118, 120, 124). Although the court repeatedly made this clear in both its oral and written statements, Bronfman makes only passing reference to this aspect of the court's opinion. (BBr16–17).

That the district court did not find that Bronfman "bore culpability" for DOS is apparent from its consideration of the § 3553(a) factors. The court began its consideration of the § 3553(a) factors with a discussion of the "nature and circumstances of [Bronfman's] offense[s]," including relevant conduct, during which it did not once mention the concept of willful blindness or suggest that Bronfman "bore culpability" for DOS. (SPA105–12; GA1146–50[25]). The court's first mention of

[25] The district court's two references to Bronfman's "willful blindness" fall under the heading "History and Characteristics" in the court's written opinion. (GA1151–61).

"willful blindness" appears some 25 transcript pages into its oral statement and 13 pages into its written statement in connection with the court's consideration of Bronfman's "history and characteristics." (SPA112–13; GA13). In that section of the court's analysis, it was focused on Bronfman's role as a well-heeled and politically connected enforcer for Raniere until her arrest with Raniere in Mexico in 2018, notwithstanding the many red flags that should have led her to understand that Raniere was not the beneficent force she purportedly believed him to be. (E.g., SPA118–19). It is apparent, in other words, that the court used the phrase "willful blindness" not to hold Bronfman legally "culpable" for Raniere's criminal acts, but rather to describe her characteristic willingness to support Raniere at any cost, to any victim, and in spite of the mounting evidence of his and her codefendants' alarming behavior.[26]

It is true that the district court discussed Bronfman's willful blindness in the context of DOS, but only because Bronfman's behavior

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[26] Because the district court employed the phrase "willful blindness" to describe Bronfman's behavior, not her legally culpability, Bronfman's discussion of the legal concept of "willful blindness" is irrelevant to the court's statement of reasons and to this Court's review on appeal. (BBr31–32).

after she had actual knowledge of DOS was "the most troubling [example] of this theme." (SPA118; GA1154). The court's first mention of willful blindness (SPA125) followed the court's lengthy discussion of Bronfman's response to learning of DOS in 2017 (SPA119–24). In the course of that discussion, the court noted that, once Bronfman learned of DOS, "Bronfman could have begun to distance herself in an attempt to help those who were clearly in need. Instead, she chose to double down on her support for Raniere, even helping to facilitate further intimidation of DOS victims." (SPA120). In this context, there is overwhelming evidence to support the court's finding that, after June 2017, Bronfman turned a blind eye to the horrors of DOS and its victims, and instead "chose Raniere unequivocally." (SPA124). The court noted that Bronfman's blindness to Raniere's appalling behavior continued until her sentencing, as she continued to pay his legal fees and assert that he "greatly changed her life for the better." (SPA125). Viewed in context, there is no support for Bronfman's assertion that the court held her legally culpable for DOS, and the Court should reject her argument to the contrary.[27]

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[27] The district court did not find that Bronfman was aware of DOS prior to June 2017, and Bronfman's collection of record citations to

C. The District Court Did Not Err in Denying Bronfman's Request for a *Fatico* Hearing

Bronfman's assertion that the district court erred in denying her request for a Fatico hearing is based on the same misunderstanding as her principal argument, and this Court should reject it. (BBr40–45). As set forth above, the court did not make a legal finding that Bronfman "bore culpability" for DOS, and therefore it did not err in denying her request for a Fatico hearing on that issue. (BBr40). Her mental state was not the "key issue" at sentencing (id.); it was a non-issue, as the court relied on undisputed facts about Bronfman's behavior, not her intent, in imposing an above-Guidelines sentence.

The district court's statement of reasons makes clear that it correctly denied Bronfman's request for a Fatico hearing to "show[] that she had no inkling whatsoever about DOS until the rest of the world

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support that undisputed fact therefore does nothing to support her argument on appeal. (BBr32–37). Moreover, as described above, the district court held Bronfman responsible for her pattern of choosing to support Raniere at all costs, and in spite of evidence of the harm he was causing. Accordingly, contrary to Bronfman's assertion (BBr37–38), how Bronfman responded after DOS was revealed to her, and her similar reactions in the past, were highly relevant to the court's analysis of the § 3553(a) factors. (SPA118–28).

began to learn about it." (BBr11, 44). The court, after all, made precisely that uncontested finding at Bronfman's sentencing and repeated it six times in the course of explaining its sentence. (SPA103, 104, 109, 118, 120, 124). Accordingly, even putting aside this Court's repeated admonition that "[n]either the Due Process Clause [n]or the federal Sentencing Guidelines" require a court "to hold a full-blown evidentiary hearing in resolving sentencing disputes," there was no reason for the court to hold such a hearing in this case. United States v. Sabhnani, 599 F.3d 215, 258 (2d Cir. 2010).

D. The District Court's Statement of Reasons Is Consistent with its Guidelines Calculation

Bronfman's assertion that the district court's statement of reasons was inconsistent with its Guidelines calculation is meritless. First, Bronfman stipulated to the same Guidelines range found by the court in her plea agreement, and she did not object to the court's sentencing calculation. (SPA15). To the extent Bronfman is asserting, incongruously and for the first time on appeal, that the court erred by

failing to apply certain Guidelines enhancements, this Court should review those arguments at most for plain error and reject them.[28]

First, as set forth above, the district court did not find that Bronfman was responsible for "the conduct related to DOS." (BBr46; SPA103, 104, 109, 118, 120, 124). Accordingly, the court did not err in failing to impose the "death or bodily injury" enhancement in § 2L1.7(b)(6) and (b)(7) based on harms suffered by DOS victims.[29]

Second, the district court did not err by declining to apply the enhancement found in § 2L1.1(b)(2)(A) for concealing and harboring six or more aliens. (BBr47–48). The court correctly found that Bronfman's conduct was part of a "pattern," but one that involved a total of five immigrants, including Jane Doe 12. (SPA109–11 (discussing Jane Doe

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[28] See POINT ONE, Part I(A) (discussing plain error review).

[29] Contrary to Bronfman's unsupported assertion, the district court did not "assert[] that a sentence three times the Guidelines range was necessary because it found that Ms. Bronfman was willfully blind to the harm suffered by" Jane Doe 12 when Doe subsequently joined DOS. (BBr47 (emphasis added)). The court held Bronfman responsible for the emotional and financial harm she caused to Jane Doe 12, not for harms Jane Doe 12 suffered after she joined DOS. Moreover, the above-Guidelines sentence the court imposed was based on the totality of the circumstances and its individualized assessment of the § 3553(a) factors, not "because" of this or any other single factor.

12, the woman hired to be a "management consultant at Exo/Eso," a "woman from India," "Adrian" and "at least one other woman")). Because the court did not find facts sufficient to support application of the enhancement in § 2L1.1(b)(2)(A) for six or more immigrants, it did not err in declining to impose it.

Finally, the district court did not err in granting Bronfman a three-level reduction for acceptance of responsibility under § 3E1.1. (BBr48). Bronfman took responsibility for her crimes of conviction through her plea allocution (GA31), her counsel's statements at sentencing (SPA71–72, 86–87) and her own statements at sentencing (SPA99). As discussed at length above, the court did not find that Bronfman "bore culpability" for DOS as "relevant conduct" under § 1B1.3, and as this Court explained in United States v. Singh — upon which Bronfman principally relies — "[a] defendant is not required ... to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction to qualify for the reduction" under § 3E1.1. 877 F.3d 107, 120 (2d Cir. 2017) (internal quotation marks omitted); see also U.S.S.G. § 3E1.1 app. note 1(A). Accordingly, Bronfman's plea and sentencing

position were sufficient to support the court's decision to apply a three-level reduction under § 3E1.1.

E. None of Bronfman's Remaining Challenges to the District Court's Statement of Reasons Have Merit

As set forth above, Bronfman is wrong that the district court found that she "bore culpability" for DOS, and the government therefore respectfully submits that the Court should reject her argument and affirm her sentence. She does not assert that her remaining claims of error independently warrant vacatur and they are, in any event, meritless. (BBr50–58).

First, the district court did not find that Jane Doe 12's recruitment into DOS was "foreseeable," or hold Bronfman responsible for that recruitment. (BBr53).[30] Bronfman does not dispute that it was entirely foreseeable to her that her mistreatment of Jane Doe 12 would leave Jane Doe 12 in a "vulnerable state," and the court properly considered that aspect of Bronfman's crime under § 3553(a). See, e.g.,

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[30] Bronfman is incorrect that the district court only referred to Jane Doe 12 — the victim of Count One — in "passing." (Br50). The district court discussed Jane Doe 12 at length, covering more than three pages of transcript at the sentencing hearing. (SPA106–09).

United States v. Dean, 792 F. App'x 842, 845 (2d Cir. 2019) (affirming upward variance in wire fraud case in light of, inter alia, and the "inexcusable harm caused to the victims"); United States v. Brass, 527 F. App'x 70, 72 (2d Cir. 2013) (explaining that "while the Guidelines may adequately consider the kind of harm suffered," "they do not necessarily adequately consider the degree of harm" to a victim, and affirming upward variance (internal quotation marks and alterations omitted; emphasis in original)). The court correctly noted that Jane Doe 12 was subsequently recruited into DOS, but it is clear from the excerpt that Bronfman cites in her brief that the court did not find that she "bore culpability" for what subsequently happened to Jane Doe 12. (BBr53 (citing SPA 109 ("I am not suggesting that Ms. Bronfman had a direct role in Jane Doe 12's recruitment into DOS or [that] she was aware of it. The evidence before me does not support such a proposition.")).

The cases upon which Bronfman relies do not support her argument. In United States v. Robinson, the Court found procedural error where, "before imposing sentence[,] the district court engaged in several wide-ranging soliloquies on urban decay, the changing nature of [the defendant]'s neighborhood, the 'pathology' of certain neighborhoods,

and the connection between Milwaukee's 1967 riots and recent protests in Baltimore, Maryland," none of which are among the "criteria authorized by Congress." 829 F.3d 878, 880 (7th Cir. 2016). In United States v. Golding, this Court was "troubled" by the district court's suggestion that a bank's failure to detect the defendant's embezzlement should be considered a mitigating factor with respect to the defendant's "volitional" criminal act. 405 F.3d 125, 126–27 (2d Cir. 2005). Neither of these cases bear any resemblance to Bronfman's, and neither undermines the court's analysis.

Second, Bronfman mischaracterizes the district court's analysis in asserting that it found that "Bronfman had enabled ... Raniere to create DOS." (BBr54). As is again clear from the except in Bronfman's brief, the court found no such thing. (BBr55 (quoting SPA 115 (noting that Bronfman "did not knowingly facilitate Raniere's worst crimes")). Rather, the court found that Bronfman "participated in and perpetuated" a "culture of stifling and threatening dissenters," "using her wealth and privilege as a sword on Raniere's and NXIVM's behalf." (Id.). Contrary to Bronfman's unsupported assertion, this discussion was not a "non-sequitur" (BBr55) — the court properly considered this aspect of

Bronfman's "history and characteristics" under § 3553(a), and it would have been error for the court to have done otherwise. See United States v. Crosby, 397 F.3d 103, 113 (2d Cir. 2005) ("the sentencing judge must consider the Guidelines and all of the other factors listed in section 3553(a)"); 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.").[31]

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[31] In this section of Bronfman's brief, she cites several cases that are plainly inapposite. (BBr55). The district court was authorized by § 3661 and required by § 3553(a)(1) to consider Bronfman's "background, character, and conduct," including her efforts to intimidate and silence victims of Raniere's crimes, and therefore cases that concern courts' consideration of factors beyond those listed in § 3553(a) are irrelevant. See, e.g., United States v. Burgos, 276 F.3d 1284, 1290 (11th Cir. 2001) ("Penalizing Burgos for refusing to cooperate in the case against her husband … exceeds the district court's sentencing discretion."); United States v. Figueroa, 622 F.3d 739, 743 (7th Cir. 2010) (finding error where district court improperly commented on issues beyond the scope of § 3553(a); United States v. Velasquez Velasquez, 524 F.3d 1248, 1252 (11th Cir. 2008) (explaining that the district court "lack[ed] the authority" to "impose[] Velasquez's sentence as if it were reviewing (and overturning) the IJ's decision…."); United States v. Pugh, 945 F.3d 9, 27 (2d Cir. 2019) ("The vast majority of the court's comments on the record relate to Pugh's guilt rather than to an appropriate sentence. Those

Finally, the district court did not err in carefully assessing Bronfman's culpability with respect to Count Two. (BBr57). The court explained that Bronfman's participation in the fraud to which she pleaded guilty in Count Two helped to facilitate Raniere's efforts to "minimize money that was in [Raniere's] name," "whether or not that is what Ms. Bronfman understood herself to be doing." (BBr57). The court's hesitation about Bronfman's mental state was unwarranted, because during Bronfman's plea allocution she acknowledged under oath that "the person using the credit card [i.e., Raniere] did not intend to pay taxes on the income received in the form of payment for goods purchased on the credit card." (GA64).

In any event, Bronfman is wrong about the weight the district court assigned to the "nature and circumstances" of Count Two. (BBr57). It is plainly untrue that the court sentenced her to 81 months' imprisonment "because" her commission of Count Two assisted Raniere in avoiding taxes. (Id.). The court sentenced her to 81 months'

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comments do not provide a basis for understanding why the particular sentence was imposed….").

imprisonment "because" of all of the factors set forth in the court's lengthy and detailed statement of reasons, including but not limited to the circumstances surrounding Bronfman's commission of Count Two.

* * *

None of Bronfman's arguments in this section of her brief, alone or together, warrant vacatur of her sentence, and the Court should reject them.

F. Bronfman's Sentence Is Not Unwarrantedly Disparate with Respect to the Sentences Imposed on Her Codefendants

The Court should reject Bronfman's supplemental argument that her sentence is unwarrantedly disparate with the sentences imposed on her codefendants Lauren Salzman, Allison Mack and Kathy Russell. (SBBr). As an initial matter, this Court has repeatedly explained that § 3553(a)(6) "requires a district court to consider nationwide sentence disparities, but does not require a district court to consider disparities between co-defendants."[32] United States v. Frias, 521 F.3d 229, 236 (2d

[32] This Court has explained that "the mandate to take into account nationwide disparities under § 3553(a)(6), as distinct from the need to give due weight to the Guidelines under § 3553(a)(4), is modest." United States v. Wills, 476 F.3d 103, 110 (2d Cir. 2007), abrogated on other grounds by Kimbrough v. United States, 552 U.S. 85 (2007).

Cir. 2008); see also United States v. McFadden, 838 F. App'x 632, 634 (2d Cir. 2021). As this Court explained in United States v. Baires, "there is no legal requirement that a court consider, let alone explain, sentencing disparities among codefendants." 789 F. App'x 245, 247 (2d Cir. 2019). This settled understanding of § 3553(a)(6) is fatal to Bronfman's argument.[33]

In any event, the disparities between Bronfman's sentence and those of her codefendants are warranted. Mack and Salzman both cooperated with the government, and the government made § 5K1.1 motions on behalf of both at sentencing. (DE1045, 1068). Mack provided

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[33] The cases cited by Bronfman are not to the contrary. (SBBr7). In United States v. Esso, this Court found error where, unlike here, the district court "explicitly compared [two defendants] and the other participants in the scheme," and imposed a higher sentence on the defendant it found to be the "least culpable" without explanation. 486 F. App'x 200, 202 (2d Cir. 2012). United States v. Mumuni is contrary to Bronfman's argument, insofar as this Court explained that it was error in that case for the district court to treat two defendants "as if they had engaged in comparable conduct," which was "simply not true" in Mumuni and is "simply not true" with respect to Bronfman and Russell. 946 F.3d 97, 111 (2d Cir. 2019). And, here, unlike in United States v. Nunez-Gonzalez, certain arguably more culpable defendants received lower sentences based on their provision of substantial assistance to the government. Cf. 295 F. App'x 473, 474 (2d Cir. 2008).

valuable information about Raniere and Bronfman and a recording of Raniere related to the DOS branding ceremony that the government introduced at trial. (DE1045). Salzman also provided the government with detailed information about crimes committed by Raniere, Bronfman and others, "including significant information regarding DOS, the secret organization led by Raniere," and she testified during Raniere's trial. (DE1068). The government described Salzman's cooperation as "extraordinary." (Id.). Bronfman's argument with respect to Mack and Salzman amounts to a challenge to the extent of the district court's departures for each under § 5K1.1, but those decisions are no more amenable to challenge by Bronfman under § 3553(a)(6) than they would have been by Mack or Salzman on direct appeal. See, e.g., United States v. Reyes, 308 F. App'x 517, 518 (2d Cir. 2009) ("This is nothing more than a challenge to the extent of the district court's downward departure under § 5K1.1, which we lack jurisdiction to review." (internal quotation marks omitted)).

The government did not file a § 5K1.1 motion on Kathy Russell's behalf, but Russell pleaded guilty to a single count of visa fraud, in violation of 18 U.S.C. § 1546(a), and the district court calculated an

offense level of 10 and an advisory Guidelines range of 6 to 12 months' imprisonment. (DE1131). From this starting point — already well below Bronfman's applicable Guidelines range — Russell had mitigating factors that Bronfman did not, few of Bronfman's aggravating factors, and she had cut ties with Raniere and renounced her participation in Nxivm by the time of her sentencing. (Id.).

Contrary to Bronfman's assertion, "a reasonable explanation of the different sentences here is readily apparent, namely, the varying degrees of culpability and cooperation between the various defendants." United States v. Ebbers, 458 F.3d 110, 129 (2d Cir. 2006); see also United States v. Fiumano, 721 F. App'x 45, 51 (2d Cir. 2018). Because "disparity between non-similarly situated co-defendants is not a valid basis for a claim of error under 18 U.S.C. § 3553(a)(6)," the sentences imposed on Salzman, Mack and Russell provide no basis to disturb the sentence imposed on Bronfman. United States v. Fernandez, 443 F.3d 19, 28 (2d Cir. 2006), abrogated on other grounds by Rita v. United States, 551 U.S. 338 (2007).

CONCLUSION

For the reasons stated above, the judgments as to Raniere and Bronfman should be affirmed in all respects.

Dated: Brooklyn, New York
January 5, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief does not comply with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Second Circuit Rule 32.1(a)(4) because the brief contains 29,932 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). However, this Court has previously granted the government's motion to file an oversize brief of not more than 30,000 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: Brooklyn, New York
January 5, 2022

/s/ KEVIN TROWEL
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