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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAYORALTY CHRIS HAYES,

Defendants.

) Case No. 4:07-cr-00005-01-JWS
)
) **GOVERNMENT’S SENTENCING**
) **MEMORANDUM AS TO**
) **DEFENDANT MAYORALTY**
) **CHRIS HAYES**
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COMES NOW the United States of America, by and through counsel, and submits its sentencing memorandum as to defendant MAYORALTY C. Hayes in the above captioned case as follows:

I. INTRODUCTION

MAYORALTY C. Hayes (Chris Hayes) pled guilty to Counts 4 and 24 of the Second Superseding Indictment charging her with Misapplication for Organization Receiving Federal Funds and Money Laundering. The two counts involved the funds misapplied from Love Social Services Center (LSSC) in calendar year 2003 and one money laundering count involving Chris Hayes purchase of a check to cash that was used to buy a cashier's check to Chandler Plumbing that James Hayes later hand delivered to pay for overdue construction bills on the Lily of the Valley Church of God in Christ (LOVCOGIC) construction project. In her plea agreement Chris Hayes admitted the applicable relevant conduct – the misapplications involving funds diverted from 2001 through 2005 and the money laundering counts involving her actions in writing approximately \$164,000 in checks to cash and two \$40,000 checks she wrote to LOVCOGIC that were used by Jim Hayes to pay church construction bills.

The Presentence Report (PSR) calculates an offense level of 25 derived as follows:

Misapplication

Base Offense Level	6
Loss Amount (Over \$400,000).....	14
Misrepresentation Concerning Charitable and Educational Institution.....	2
Abuse of a Position of Trust.....	2

Total for Misapplication Offenses 24

Money Laundering

Base Offense Level.....	22
Adjustment for Money Laundering....(agreed).....	2
Adjustment for Sophisticated Laundering....(disputed).....	2
Abuse of a Position of Trust....(disputed).....	2

Total for Money Laundering Offenses 28

Acceptance of Responsibility.....-3

Total Offense Level 25 (Sentencing Range 57-71 months)

In the plea agreement, the parties noted their agreement to two of the applicable calculations under the United States Sentencing Guidelines; 1) the loss

amount as more than \$400,000 and 2) the adjustment for misrepresentation concerning a charitable and educational organization. Based on the objections to the draft PSR the government anticipates that Ms. Hayes will dispute the guideline adjustments found in the PSR concerning abuse of a position of trust and sophisticated laundering as they apply to the money laundering calculation. There does not appear to be any dispute concerning the calculation for the underlying misapplication counts. The government supports the calculations contained in the PSR and will request a sentence within the applicable guideline range.

II. SUMMARY OF PERTINENT FACTS

The court heard the evidence adduced at James Hayes trial and thus is well apprised of Ms. Hayes role in the offenses charged in the Second Superseding Indictment. Suffice it to say that Chris Hayes abused her authority as the executive director of LSSC for a period of at least four years, from 2001 through 2005, to illegally divert funds granted to that organization for the benefit of herself, her family and the church construction project run by her co-defendant Jim Hayes.

The evidence at trial, as detailed in the charts introduced, show that the scheme became apparent early on when Chris and Jim Hayes conspired to have

LSSC pay above market price for the purchase of the LOVCOGIC building. From there, Chris Hayes wrote numerous checks to cash that she converted to cashier's checks and money orders in order to conceal her illegal diversions of funds to pay for personal and church items. Chris Hayes, according to all of the church witnesses who testified at trial, had no knowledge of or involvement in the church finances. The amount of the checks and the payee's of the cashier's checks written from the diverted funds, therefore, came from Jim Hayes. As detailed below, Chris Hayes was enabled to commit her crimes because of her position in LSSC and the trust put in her by the other officers and members of the board of that organization. She had complete control over the organization's checkbook, in part because of her position and in part because she took specific steps to hide the fact of one of the checkbooks, the one on the HUD grant account, from the CPA who thought that his firm was doing the bookkeeping for the organization but was only aware of the DOJ grant. Through her joint actions with her husband, Chris and Jim Hayes illegally misapplied over \$400,000 of LSSC funds earmarked for the benefit of underprivileged children and used them to purchase personal items and pay personal bills and pay for construction overruns and furnishing of LOVCOGIC.

III. ANTICIPATED LEGAL DISPUTES

A. Sophisticated Laundering – U.S.S.G. § 2S1.1(b)(3)

The government anticipates that both Jim and Chris Hayes will object to the enhancement for sophisticated laundering at ¶¶ 98–99 of the PSR. Chris Hayes objects on the grounds that her money laundering transactions were not particularly complex or intricate. The Hayes’ transactions did involve, however, multiple layers attempting to obscure the source and destination of the misapplied funds. As part of that scheme, the Hayes worked together to layer transactions to hide the source of the funds. As the case law makes clear, the question for each is the same. If the laundering activities include sophisticated laundering the enhancement applies to both defendants. The adjustment turns on the crime not the individual defendant’s role in the crime.

Laundering is sophisticated if there is a layering of two or more transactions to disguise the source of the funds. U.S.S.G. § 2S1.1(b)(3); United States v. Miles, 360 F.3d 472, 482 (5th Cir. 2004); United States v. Charon, 442 F.3d 881, 891 (5th Cir. 2006). This includes transactions that are not very successful at obscuring the source or the destination of the money but are nonetheless an attempt to hide the flow of money. Miles, 360 F.3d 482. Specifically, it has been

held that asking a third-party to purchase a cashier's check and then purchasing property with the cashier's check to disguise the criminal proceeds from a drug transaction constitutes layering for the enhancement. Charon, 442 F.3d 891.

Likewise, a check derived from illegal funds used to buy three cashier's checks and some cash—one of which was deposited into a bank account and taken out the next day, one of which was used to buy a new ford-mustang convertible, and one of which was cashed at a casino—was held to constitute layering for purposes of the sophisticated laundering enhancement. Miles, 360 F.3d 482. Further, where a defendant is found guilty of conspiracy to defraud the government and aiding and abetting and one aspect of the scheme is to hide the source of the illegally derived funds, the sophisticated laundering enhancement applies even if the defendant's particular transaction "constituted merely one incident in the jointly undertaken activity" as long as it was reasonably foreseeable to the defendant. Id.

The conspiracy that both Hayes' were convicted of was a joint plan and scheme to misapply government funds and hide the source of those funds by layering transactions through writing checks to cash and then buying several cashier's checks or money orders and delivering those cashier's checks and money

orders to pay for personal items as well as for overdue bills on the Hayes' church. The scheme is set out in detail in ¶99 of the PSR. Jim Hayes' role in the offense as the head of the financing for church construction—and the primary person vendors complained to about overdue bills—was to communicate the name of the vendor and the amount of money needed to pay overdue church bills as well as personal bills, like Allstate car insurance, to Chris Hayes.

Chris Hayes would then write a check to cash on the LSSC account and get a second signer, either LaNenene Scott or Sharon Miller, to co-sign the check based on a falsely stated purpose. Alternatively, Chris Hayes would forge the signature of the co-signor. In many instances Chris Hayes falsified the memo sections on the checks to cash to hide the true reason for the check. Chris Hayes would then cash the LSSC check at the bank and purchase several cashier's checks or money orders in the amounts and to the payees that Jim Hayes had to have indicated. Jim Hayes, in some instances, would then deliver these cashier's checks or money orders to pay personal and church-related bills. The remitters were sometimes falsified to further disguise that LSSC was the source of the funds. The carbons of the checks to GCI, ACS and Holm Town nursery were altered to hide from the vendor that the purchasing remitter was LSSC. These

altered carbons with false remitters were found in Jim Hayes top, center desk drawer. Jim Hayes further wrote personal notes on a number of invoices that he submitted to the church for their records falsely stating that he was the source of funds to payments that came from LSSC. In one instance he took one of the money orders purchased by Chris with the now common check to cash scheme and filled it in to cash for the amount of \$1,000.

Chris Hayes took further action to hide her activities by lying to the CPA handling the books for LSSC in order to hide the fact of the HUD funds. As David Stephenson testified at trial, he thought he was handling all of the finances for LSSC. Indeed, he believed that he wrote the first check for the organization. When he saw what he thought was the first credit card statement, he asked Chris Hayes about a \$4,300 payment that had already been made on behalf of LSSC. He wanted to know where the money came from so that he could code the general ledger. Chris Hayes lied to the CPA and told him it was a donation from the church when it was actually a payment out of the HUD account that was deliberately concealed from Stephenson.

Chris Hayes wrote the two \$40,000 checks to LOVCOGIC referred to above. Jim Hayes hand walked the checks to Edward Jones and deposited them

into the church's account. Jim Hayes then told the church finance officers what checks to write and for how much knowing that those checks to vendors came from LSSC funds and that these transactions concealed the source of the funds.

From these facts established at trial, it was reasonably foreseeable to Jim Hayes that Chris Hayes was writing checks to cash and purchasing cashier's checks and taking other actions to conceal the laundering. For example, Chris Hayes would pay for personal items on the Department of Justice American Express (Amex) card. Chris identified some of the more obvious items as personal and the CPA, David Stephenson, then ran a schedule of amounts for which she needed to reimburse the account. To repay the personal debt that she did identify to Stephenson, Chris Hayes wrote a check to cash from the LSSC HUD account and then, using the same scheme, purchased two money orders to pay off the listed debt to the DOJ account. Trial Ex. 100, transaction 9/15/03.

In other instances, Chris Hayes hid her personal purchases on the DOJ American Express and made false statements to the CPA to hide the personal nature of the items. Examples of this include the \$3,000 plasma tv she purchased for the Hayes' home on the DOJ Amex but told the CPA that it was "electronic equipment" for LSSC and the \$2,000 ornamental lighthouse for the Hayes'

backyard on the DOJ Amex that she told the CPA was “playground equipment” for LSSC.

For all these reasons, this case meets the criteria for sophisticated money laundering set forth in U.S.S.G. § 2S1.1(b)(3) as discussed in the cases set forth above.

B. Abuse of a Position of Trust

Chris Hayes objects to the application of the enhancement for U.S.S.G. § 3B1.3 that mandates a two-level increase in a defendant's offense level “[i]f the defendant abused a position of public or private trust ... in a manner that significantly facilitated the commission or concealment of the offense.” The objection does not state on what grounds this application should not apply to the laundering offenses.

For the abuse of trust enhancement to apply, “the position of public or private trust must have contributed in some significant way to facilitating the commission or concealment of the offense,” for example, by making the detection of the offense or the defendant's responsibility for the offense more difficult. U.S.S.G. § 3B1.3, cmt. n. 1. Public or private trust refers to “a position of public or private trust characterized by professional or managerial discretion substantial

discretionary judgment that is ordinarily given considerable deference.” Id. The critical inquiry with regard to the application of the abuse of trust enhancement is “the extent to which the position provides the freedom to commit a difficult-to-detect wrong.” United States v. Hill, 915 F.2d 502, 506 (1990).

Here, Chris Hayes was the executive director of LSSC. As such, no one questioned her use of LSSC resources. She had the LSSC checkbooks and directed the writing of checks and what the money was used for. The co-signors on the LSSC account, LaNene Scott and Sharon Miller, trusted Chris Hayes completely when she gave them false explanations for the checks to cash that she had them co-sign. According to Don Thomas and Joe Thomas, Chris Hayes managed the budget and applied for the grants and dealt with the CPA, David Stephenson. Joe Thomas quit his association with LSSC because he was not provided any financial statements by Chris Hayes when he asked and because she would not answer any questions regarding the handling of LSSC’s money.

In her role as executive director, Chris Hayes was able to obtain checks to cash that she converted through multiple transactions to payments for personal and church-related bills. Because she maintained control over the finances and had managerial discretion, she was able to prevent the other LSSC board members

from detecting the money laundering that she undertook. Her ability to write checks for any purpose, to hide the HUD grant account from the CPA, and hide her checks to cash scheme and control the reporting to the board derived from her position as executive director of LSSC provided Chris Hayes with the freedom to commit a difficult to detect crime. Chris Hayes could not have carried out or concealed the money laundering she did without that position of trust. She clearly abused that position to commit her crimes.

IV. FACTORS UNDER 18 U.S.C. § 3553(a)

A review of the factors under 18 U.S.C. § 3553(a) supports a conclusion that a guideline sentence is called for in this case. The nature and circumstances of this offense were that it was a complex multi-year scheme to steal money. The grant moneys were solicited at a time when the LOVCOGIC construction project was already over budget. Jim and Chris Hayes began stealing money and breaching their obligations to LSSC very quickly after they obtained access to the government funds. They continued their actions knowing that there was no oversight of what they were doing and others relied on their honesty and would have no knowledge of their criminal conduct. As the court could see from the numbers of investigators who testified at trial and the need to trace funds through

the bank records to dozens of vendors this was a scheme that was very difficult to detect and prove. Chris Hayes actions in paying past credit card debt, buying family items, paying family bills and using the LSSC funds earmarked for that organization to cover the church cost overruns and continue to purchase high end furnishings for the church for the benefit of Jim Hayes showed a complete disregard for her fiduciary obligations to the organization that she undertook to represent as executive director. While Chris Hayes has no criminal record and has a long record of achievement, her actions in this case involve a multi-year scheme of continuous theft—and one that began almost from the onset of receiving government funds.

A significant sentence within the guideline range is necessary to reflect the seriousness of the offense and the difficulty in uncovering such offenses when the various government grant programs must, by necessity and resources, rely on the honesty of those who undertake to administer and expend grant funds. Deterrence is also of major concern as it is easy to take the funds and extremely difficult to bring those who do to justice. This case took a team of four special agents and three auditors two years to put together. Chris Hayes' deliberate actions to hide her crimes, lying to the CPA hired to do LSSC's bookkeeping, altering documents

so that she could submit items for reimbursement where they had already been paid for by the organization, using multi-layered financial transactions to hide her efforts, and other actions, show a real need to make sure that she is never again in a position to handle money belonging to an organization or others.

Chris Hayes' personal circumstances appear to show possible depression apparently beginning in November 2006, at the time that the government first informed the Hayes that an indictment was imminent. Her medical issues appear to be ones that would be easily addressed in prison. Indeed, the stresses that lead to the depression may be alleviated by a prison term.

Based on her long term actions and many, many deliberate steps to keep stealing and concealing her actions from all except her co-defendant, Jim Hayes, a lengthy prison term reflected by the bottom of the applicable guideline range set out in the PSR is necessary to address her actions, the complexity of her crimes, deterrence and society norms.

IV. CONCLUSION

Jim and Chris Hayes were engaged in a multi-year scheme to divert program funds for their own benefit and the benefit of a large church project grew to be over-budget, over-furnished and emblazoned with items identifying the church

with Jim Hayes' image and name. Both acted with a complete disregard for their fiduciary obligation to the non-profit whose interest they were bound to serve. The grant of government funds for community benefit, like many government programs relies on the honesty of the persons charged with oversight of those funds. The scheme and widespread fraud engaged in by both of the Hayes was complex, difficult to uncover, and causes untold damage to the community. The program they obtained the money to run is shut down. The church itself is suffering financial ruin and the congregation is apparently suffering from the dishonesty of one they looked to for moral leadership. The guideline recommended sentence of 57- 71 months appropriately addresses the need to

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address the serious nature of this massive violation of private trust and deter similar conduct while addressing Ms. Hayes acceptance of her responsibility.

RESPECTFULLY SUBMITTED this 28th day of April, 2008, in
Anchorage, Alaska.

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2008
a copy of the foregoing **GOVERNMENT'S
SENTENCING MEMORANDUM AS TO
DEFENDANT MAYORALTY CHRIS HAYES**
was served electronically on:

MJ Haden

s/Karen L. Loeffler