

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VIVIAN YUSUF §
v. § CIVIL ACTION NO. 6:15cv562
UNITED STATES OF AMERICA § Crim. No. 6:11cr28(1)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

Movant Vivian Yusuf filed this motion to vacate or correct her sentence under 28 U.S.C. §2255, complaining of the validity of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Yusuf pleaded guilty to health care fraud and conspiracy to commit health care fraud, receiving a sentence of 87 months in prison, three years of supervised release, a \$100 special assessment, and restitution in the amount of \$1,629,368.00. She filed a motion to vacate or correct sentence arguing that she received ineffective assistance of counsel in that her attorney did not object to a sentencing enhancement of 250 or more victims. This enhancement raised her sentencing range from 46 to 57 months to a range of 87 to 108 months.

In response, the Government filed a motion for re-sentencing, acknowledging that the relevant amendment to the U.S. Sentencing Guidelines was improperly applied to Yusuf. The Government asks that she be re-sentenced without application of the enhancement.

The magistrate judge issued a report recommending that Yusuf's motion to vacate or correct sentence be granted and that she be re-sentenced without application of the amendment to the


Sentencing Guidelines. No objections have been filed to the report; the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has examined the pleadings in this cause and the report of the magistrate judge and has concluded that this report is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the report of the magistrate judge (docket no. 8) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Movant's motion to vacate or correct sentence, and the Government's motion for re-sentencing, are **GRANTED**. The Court shall re-sentence Yusuf under the proper guidelines at the earliest available opportunity. A sentencing hearing will be set by separate order. The granting of the Movant's motion to vacate sentence is based upon the finding that she was improperly sentenced under an amendment which did not apply to her; the Court does not find that counsel rendered ineffective assistance.

SIGNED this 4th day of February, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE