No. 17A-

IN THE

Supreme Court of the United States

MOHSIN RAZA, ET AL.

Petitioners,

V.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION TO STAY OR RECALL THE MANDATE, OR IN THE ALTERNATIVE FOR RELEASE ON BAIL, PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

Directed to the Honorable John G. Roberts, Jr.,
Chief Justice of the United States
and Circuit Justice for the Fourth Circuit

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Defendants-Applicants Mohsin Raza, Humaira Iqbal, Farukh Iqbal, and Mohammad Ali Haider respectfully move for a stay of the Fourth Circuit's mandate, or in the alternative for release on bail, pending the filing and disposition of a timely petition for a writ of certiorari. If the mandate issues while this application is pending, Applicants also move for an order recalling the mandate.

Applicants have been released on bond for over two and a half years, first during trial and then during appeal. They pose no risk of flight or threat to the community of any kind. And because the government brought the charges in this case nearly a decade after the underlying conduct, there is no conceivable rush for Applicants to serve their sentences. But absent relief, most or all of the Applicants would likely serve their full sentences before this Court could resolve this case.

The Fourth Circuit has denied Applicants' request to stay the mandate. This Court should intervene to stay or recall the mandate, or grant release on bail.

INTRODUCTION

This case presents an ideal opportunity for this Court to resolve a circuit conflict over the materiality element of the federal mail, wire, and bank fraud statutes—laws that underlie thousands of federal prosecutions each year. For decades, this Court has held that a misrepresentation is material if it has "a natural tendency to influence, or [is] capable of influencing, the decision of *the decisionmaking body to which it was addressed.*" *Neder v. United States*, 517 U.S. 1, 16 (1999) (emphasis added) (internal quotation marks omitted). Most recently,

the Court stressed that, "[u]nder any understanding of the concept, materiality looks to the effect on the likely or actual behavior of *the recipient of the alleged misrepresentation*." *Universal Health Servs. v. Escobar*, 136 S. Ct. 1989, 2002 (2016) (emphasis added) (internal quotation marks omitted).

But in this case, the Fourth Circuit held that *Neder* and *Escobar*'s "decisionmaker" standard applies only when the fraud victim is a government entity or official, and that a different, "reasonable person" standard applies when the victim is a private party. According to the Fourth Circuit, "the test for materiality in a fraud scheme targeting the government verges toward the subjective," but "[a] fraud scheme targeting a private lender, on the other hand, is measured by an objective standard." App. A at 24. Thus, "when the victim is the government, the prosecution must prove materiality by reference to the particular government agency or public officials that were targeted," but, in the Fourth Circuit's view, this *Neder/Escobar* test "does not apply to a fraud scheme that targets a private lender." *Id.* at 26-27. Strange as it sounds, the Fourth Circuit expressly held that there are "different standards of materiality for those two categories of fraud." *Id.* at 24.

Based on this bizarre interpretation of the federal criminal fraud statutes, the Fourth Circuit upheld jury instructions in this case stating that a misrepresentation is material if it was capable of influencing an abstract "reasonable person," regardless of whether the misrepresentation was capable of influencing its recipient, *i.e.*, the decisionmaking body to which it was addressed—here, a private lending institution that employed Applicants.

This erroneous instruction made all the difference. Applicants, former employees of a SunTrust Mortgage branch in 2006-07 at the height of the mortgage-lending frenzy, were convicted of falsifying borrowers' income and assets in mortgage loan applications submitted to SunTrust. The evidence at trial showed that SunTrust, at that time, did not care one whit about borrowers' assets or income; instead, SunTrust had jettisoned traditional underwriting criteria and was approving over 99% of applications based solely on alternative criteria necessary to sell the loans to Wall Street. Thus, a borrower's income and assets were manifestly immaterial to SunTrust during the relevant time period, even if such information may have been material to some unidentified "reasonable lender." This was Applicants' principal defense at trial, and the erroneous jury instruction gutted it.

This Court is likely to grant certiorari. The Fourth Circuit's "reasonable person" materiality holding and similar holdings of the Seventh and Ninth Circuits squarely conflict with decisions of the First, Second, Fifth, Sixth, Eighth, and Eleventh Circuits. In case after case, the latter six circuits have applied *Neder* and *Escobar*'s "decisionmaker" standard in fraud prosecutions involving public and private victims alike, including private lenders just like SunTrust. This conflict has arisen repeatedly and will continue to recur, and it is untenable for the essential elements of such oft-charged offenses to vary depending on the geographic region in which a defendant faces trial.

There is also a fair prospect that this Court will reverse the decision below and reject the Fourth Circuit's dual materiality standards. The decision cannot be

reconciled with this Court's materiality jurisprudence, which makes clear that the same "decisionmaker" standard from *Neder* and *Escobar* applies regardless of the victim's identity. This Court has applied that standard in fraud cases involving public and private victims alike. And the Court has never suggested, much less held, that there are two different tests for cases involving different types of victims.

Absent relief, Applicants will suffer grave, irreparable harm. Upon issuance of the mandate, they would soon begin serving their prison sentences, which range from 12 months and one day to 24 months. Three of the four Applicants (and possibly all four) would serve their full sentences before this Court had an opportunity to rule on the merits, if review were granted. Serving prison time based on invalid convictions unquestionably constitutes irreparable harm.

And there is no need for it here. The district court and the Fourth Circuit previously concluded that Applicants pose neither a flight risk nor any danger to the community, first in granting Applicants release on bond during the trial and then release pending appeal. The charges in this case, moreover, involve conduct more than a decade old. None of the Applicants remains involved in the mortgage lending industry. Quite the contrary, Applicant Humaira Iqbal left the workforce altogether years ago and stays home to care for her young children and elderly parents. The other Applicants now have other occupations that offer no opportunity to engage in the conduct at issue here. In these circumstances, this Court should stay or recall the Fourth Circuit's mandate, or grant release on bail, pending the filing and disposition of Applicants' petition for certiorari.

OPINIONS BELOW

The Fourth Circuit's opinion (Appendix A) is reported at 876 F.3d 604. The Fourth Circuit's order denying Applicants' motion to stay the mandate is reproduced in Appendix B. The district court's judgments and relevant jury instructions are unreported, and are reproduced in Appendices E and F.

JURISDICTION

The Fourth Circuit issued its opinion on November 20, 2017 (App. A), and denied rehearing on December 18, 2017 (App. C). Applicants' petition for certiorari is due March 19, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

BACKGROUND

Applicants were employees of a SunTrust Mortgage branch in 2006-07, the height of the bubble in the mortgage-lending industry. Nearly a decade later, federal prosecutors charged Applicants with wire fraud and conspiracy in connection with mortgage loans obtained from SunTrust through misrepresentations to SunTrust concerning borrowers' income and assets. On May 22, 2015, the district court granted Applicants release on bond. App. G.

At trial, Applicants' central defense was that the alleged misrepresentations to SunTrust were not "material," because they were not capable of influencing SunTrust's decision to approve the loans. The evidence showed that, to originate more mortgages, SunTrust made a strategic business decision to ignore traditional indicia of loan quality like borrowers' income and assets, and instead to focus its decisions on only the criteria necessary to sell the loans to Wall Street—namely

borrowers' credit scores and loan-to-value ratio. SunTrust then sold these loans into the secondary market, eliminating its credit-risk exposure and generating substantial profit. Because SunTrust's lending model eschewed loan quality, and focused only on reselling mortgages, SunTrust would have approved the loans even if it knew of the alleged misrepresentations, rendering them immaterial.

Relying on the leading treatise's model wire fraud materiality instruction and this Court's precedent in *Neder v. United States*, 517 U.S. 1 (1999), Applicants requested a jury instruction that a representation is "material" if it has "a natural tendency to influence" or is "capable of influencing a decision of the particular decisionmaker to whom it is addressed—here, the decision of SunTrust to approve and fund mortgages." App. F; *see* 1A Kevin F. O'Malley, et al., *Federal Jury Practice & Instructions Criminal* § 16.11 (6th ed. 2017). The court rejected that proposal and instead instructed the jury to determine materiality from the perspective of an abstract "reasonable person." App. C at JA-1315. So instructed, the jury convicted Applicants of wire fraud and conspiracy.

On appeal, Applicants argued that materiality must be judged from the perspective of the actual "decisionmaker" and not an abstract "reasonable person," as required by *Neder*. The Fourth Circuit granted Applicants' motion for release pending appeal. App. D; *see United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (release pending appeal requires an appellant to "raise[ ] a substantial question of law or fact likely to result in" a reversal or new trial).

On November 20, 2017, a different Fourth Circuit panel affirmed Applicants' convictions. App. A. While acknowledging that this Court's precedents like *Neder* and *Escobar* employ a materiality standard centered on the actual "decisionmaker," the Fourth Circuit held that that standard applies only when a fraud targets *the government*. *Id.* at 24-27. Where, as here, the alleged fraud targets a *private* victim, the panel held that *Neder* and *Escobar*'s standard "does not apply" and materiality instead turns on whether a misrepresentation could influence a "reasonable lender in SunTrust's position—not necessarily SunTrust itself." *Id.* at 27, 33.

On December 18, 2017, the Fourth Circuit denied Applicants' petition for rehearing or rehearing en banc. App. C.

On January 5, 2018, the Fourth Circuit denied Applicants' motion to stay the mandate pending resolution of a petition for a writ of certiorari. App. B.

REASONS TO GRANT THE STAY

An individual Justice may issue a stay "for a reasonable time to enable the party aggrieved to obtain a writ of certiorari." 28 U.S.C. § 2101(f). Such a stay is warranted if there is "(1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable harm will result from the denial of a stay." *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers) (internal quotation marks and alterations omitted). The balance of the equities may also be considered. *See Philip Morris USA Inc. v. Scott*, 131 S. Ct. 1, 4-5 (2010) (Scalia, J.,

in chambers). The same standard applies to applications to stay and recall the mandate. *See, e.g.*, *Wise v. Lipscomb*, 434 U.S. 1329, 1333-34 (1977) (Powell, J., in chambers). This Court recently granted similar relief in analogous circumstances. *See McDonnell v. United States*, 136 S. Ct. 23 (Mem) (2015).

Similarly, any judicial officer—including a Circuit Justice—"shall order" release on bail pending disposition of a petition for certiorari, so long as (1) the applicant is not likely to flee or pose any danger, and (2) the applicant's appeal presents a "substantial question of law" that, if decided in his or her favor, is "likely to result in . . . reversal" or "a new trial." 18 U.S.C. § 3143(b). Explicating that standard, Justices have looked to whether there exists "a reasonable probability that four Justices are likely to vote to grant certiorari." *Julian v. United States*, 463 U.S. 1308, 1309 (1983) (Rehnquist, C.J., in chambers).

Thus, whether framed as a stay under 28 U.S.C. § 2101(f) or release on bail under 18 U.S.C. § 3143(b), the legal standard is materially the same: Is there a reasonable probability of certiorari, and do the equities favor maintenance of the status quo until this Court has an opportunity to consider the petition?

Here, the answer to both questions is yes. Applicants' petition will raise an important and recurring question of federal criminal law that has divided the courts of appeals, and it is reasonably probable the Court will grant certiorari and reverse. The district court and the Fourth Circuit, moreover, previously determined that Applicants pose no flight risk or danger, and nothing has changed. Nor is there doubt that irreparable harm would otherwise result: Absent a stay or release,

Applicants would likely complete their full prison sentences before this Court has an opportunity to rule on whether their convictions are tainted by invalid jury instructions on materiality. On the other hand, if this Court grants relief and then denies review, Applicants will still serve the entirety of their sentences, and the government will have suffered no harm from the temporary postponement.

I. The Court Is Likely to Grant Certiorari and Reverse the Decision Below

Applicants' petition for certiorari will present the following question: Whether, in a federal fraud prosecution involving a private victim, a misrepresentation's materiality turns on whether the misrepresentation could influence the actual decisionmaking body to which it was addressed, as this Court held in *Neder* and *Escobar*, or instead an abstract, unidentified "reasonable person." There is a reasonable probability that the Court will grant certiorari to decide this important and recurring question of federal criminal law—on which the circuits are divided—and at least a fair prospect that the Court will reverse the Fourth Circuit's judgment.

1. Certiorari is appropriate when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals." Sup. Ct. R. 10(a). The Fourth Circuit's ruling in this case deepens a conflict among the circuits on a recurring issue of exceptional importance—namely, the uniform standard for proving the essential element of materiality under the federal mail, wire, and bank fraud statutes. This entrenched split shows no signs of

abating, and only this Court can bring about national uniformity in the essential elements of these ubiquitous federal criminal statutes.

For decades, this Court has held that, under the criminal fraud statutes, a misrepresentation is material if it has "a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed." *Neder v. United States*, 527 U.S. 1, 16 (1999) (alteration in original) (quoting *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988))). In this case, the Fourth Circuit held that *Neder*'s "arguably subjective" materiality standard applies *only* "when the victim is the government" and "*does not apply* to a fraud scheme that targets a private lender such as SunTrust." App. A at 26-27 (emphasis added).

In conflict with the Fourth Circuit's decision, six circuits have unambiguously applied *Neder*'s "decisionmaker" standard in mail, wire, and bank fraud prosecutions involving *private* victims, including, as here, private lenders:

- First Circuit: In a wire fraud prosecution alleging "mortgage fraud," the court held that "[a] material statement 'has a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed,'" and that the government had "adduced . . . evidence regarding the types of information material to Long Beach [Mortgage]'s decisionmaking process." *United States v. Appolon*, 715 F.3d 362, 368 (1st Cir. 2013) (quoting *Neder*, 527 U.S. at 16).

- Second Circuit: In a bank fraud prosecution, the court quoted *Neder*'s "decisionmaker" standard and specified that, for the defendant's alleged "misstatements to be material . . . they had to be capable of influencing a decision that the bank was able to make." *United States v. Rigas*, 490 F.3d 208, 231, 235 (2d Cir. 2007) (quoting *Neder*, 527 U.S. at 16).

- Fifth Circuit: "A statement is material if it 'has a natural tendency to influence, or was capable of influencing the decision of' the lending

institution." *United States v. Heath*, 970 F.2d 1397, 1403 (5th Cir. 1992) (quoting *Kungys*, 485 U.S. at 770).

- Sixth Circuit: The court held that misstatements were material if they "had a 'tendency' to influence Grange [Insurance Company]'s decision to settle his claim." *United States v. McAuliffe*, 490 F.3d 526, 532 (6th Cir. 2007) (quoting *Neder*, 527 U.S. at 16).

- Eighth Circuit: In a mail fraud prosecution, the court quoted *Neder*'s "decisionmaker" standard—"[a] misrepresentation is material if it is capable of influencing the intended victim" —and held that certain statements were material because they had "influenc[ed] the intended victim," John Hancock Insurance Company. *United States v. Bryant*, 606 F.3d 912, 917-18 (8th Cir. 2010) (citing *Neder*, 527 U.S. at 24).

- Eleventh Circuit: Citing *Neder*'s "decisionmaker" standard, the court held that "for the jury to determine whether Gray's representations had a natural tendency to influence [private victim] Patti's decisionmaking, it was necessary for them to consider the circumstances the addressee found himself in." *United States v. Gray*, 367 F.3d 1263, 1272 n.19 (11th Cir. 2004).

Many other decisions from these circuits likewise apply *Neder*'s "decisionmaker" standard in private-victim fraud prosecutions.[1]

By contrast, the Fourth Circuit held that *Neder*'s "decisionmaker" standard "does not apply to a fraud scheme that targets a private lender such as SunTrust," and that materiality in such cases is instead judged from the perspective of a "reasonable lender in SunTrust's position—not necessarily SunTrust itself." App. A

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[1] *E.g.*, *United States v. Forehand*, 577 F. App'x 942, 945 (11th Cir. 2014); *United States v. DiRosa*, 761 F.3d 144, 151 (1st Cir. 2014); *United States v. Anderson*, 558 F. App'x 454, 459 (5th Cir. 2014); *United States v. Hames*, 185 F. App'x 318, 325 (5th Cir. 2006); *United States v. Echols*, 77 F. App'x 233, 234 (5th Cir. 2003); *see also* 1A Kevin F. O'Malley, et al., *Federal Jury Practice & Instructions Criminal* § 16.11 (6th ed. 2017) (defining materiality, without any distinction between public versus private victims, as "[a] statement or representation is 'material' if it has a natural tendency to influence *or* is capable of influencing a decision or action of _____").

at 33. Likewise, in a case with strikingly similar facts to those here, the Seventh Circuit recently held that "whether a statement is material depends on its effect on 'a reasonable person'—or, in this case, a reasonable lender." *United States v. Betts-Gaston*, 860 F.3d 525, 532 (7th Cir. 2017). Adding to the confusion, the Ninth Circuit recently held that because "materiality is an objective element and an absence of reliance does not affect its presence . . . . a victim's intentional disregard of relevant information is not a defense to wire fraud and thus evidence of such disregard is not admissible as a defense to mortgage fraud." *United States v. Lindsey*, 850 F.3d 1009, 1015-16 (9th Cir. 2017). Nonetheless, the Ninth Circuit allows defendants to "attack materiality through industry practice," but without "evidence of the behavior of individual lenders." *Id.* at 1016.

Multiple commentators have noted that, since *Neder*, "circuit courts are split with regard to the precise standard to use when determining if a statement was a material misrepresentation." Skye Lynn Perryman, *Mail and Wire Fraud*, 43 Am. Crim. L. Rev. 715, 720 (2006). "[S]ome circuits *may* endorse the 'reasonable person' or 'person of ordinary prudence' definition," while "[o]ther circuits have abandoned the 'reasonable person' standard of materiality in favor of the broader formulation: capable of influencing the intended victim." William K.S. Wang, *Application of the Federal Mail and Wire Fraud Statutes to Criminal Liability for Stock Market Insider Trading and Tipping*, 70 U. Miami L. Rev. 220, 277-78 (2015); *accord* Lauren D. Lunsford, Note, *Fraud, Fools, and Phishing: Mail Fraud and the Person of Ordinary Prudence in the Internet Age*, 99 Ky. L.J. 379, 380-81 (2010-11)

("[C]ourts of appeals . . . have interpreted the materiality requirement differently, creating a split in the circuits as to what prosecutors have to prove," resulting in "two interpretations of materiality . . . nicknamed the objective and subjective approaches.").

Beyond deepening this conflict, the Fourth Circuit's decision also runs headlong into the government's own advocacy in other cases, including before this Court. Since *Neder*, the government has repeatedly sought application of its "decisionmaker" standard in fraud prosecutions involving private victims, even though, under the decision below, that standard "does not apply." App. A at 27. Last year, in a bank fraud prosecution, the government approved as "correct[]" an instruction defining a material misrepresentation as one that has "a natural tendency to influence or is capable of influencing the financial institution." Br. for United States, *Shaw v. United States*, 2016 WL 4375377, at *45 (U.S. 2016) (bracketing omitted). Likewise, in a mail fraud prosecution, the government approved as "correct" an instruction defining materiality as "capable of influencing Hollinger," the private-company victim. Br. for United States, *Black v. United States*, 2009 WL 3155001, at *17-18 (U.S. 2009). We could go on. *E.g.*, Br. for Appellee United States, *United States v. Viloski*, 2013 WL 3366723, at *48-49 (2d Cir. 2013) (citing *Neder* "decisionmaker" standard for mail fraud charges involving private victims).

This issue plainly warrants this Court's review given the vast number of federal fraud prosecutions. In 2016 alone, there were over 6,500 federal fraud

prosecutions, accounting for nearly 10 percent of the federal caseload. U.S. Sentencing Comm'n, *Overview of Federal Criminal Cases – Fiscal Year 2016*, at 2, http://goo.gl/BHGB7C. The average loss in a fraud case was over $2.3 million, and the largest, a staggering $800 million. *Id.* at 9. The number of fraud cases has remained relatively constant over the past few years, down slightly from over 7,400 fraud cases in 2015 and 7,600 fraud cases in 2014. U.S. Sentencing Comm'n, *Overview of Federal Criminal Cases – Fiscal Year 2015*, at 3, http://goo.gl/GTnGbP; U.S. Sentencing Comm'n, *Overview of Federal Criminal Cases – Fiscal Year 2014*, at 2, http://goo.gl/CFYiyC. Violations of the federal mail, wire, and bank fraud statutes have long served as the backbone for such criminal prosecutions. And recent cases like this one, *Betts-Gaston*, and *Lindsey* illustrate the frequency with which the question presented in this case arises. Because the Fourth Circuit's decision below has thrown into disarray the jurisprudence on a recurring legal question in an area of great importance, there is at least a reasonable prospect that this Court will grant certiorari.

2. The Fourth Circuit's holding that *Neder*'s "decisionmaker" standard does not apply to private-victim fraud is also inconsistent with this Court's precedent, making reversal the likely outcome if certiorari is granted. This Court's precedents have held that the same "decisionmaker" materiality standard applies in fraud prosecutions involving public and private victims alike. There is only one standard.

Two years before *Neder*, this Court unequivocally applied the "decisionmaker" standard initially adopted in *Kungys* in a fraud prosecution

involving a *private* victim. In *United States v. Wells*, 519 U.S. 482, 484-85 (1997), the defendants were charged pursuant to 18 U.S.C. § 1014 with making false statements to private banks—the same type of victim as in this case. This Court "consider[ed] whether materiality of falsehood is an element under § 1014, understanding the term in question to mean 'having a natural tendency to influence, or being capable of influencing, the decision of the decisionmaking body to which it was addressed.'" *Wells*, 519 U.S. at 489-90 (alterations omitted) (quoting *Kungys*, 485 U.S. at 770; also citing *Gaudin*, 515 U.S. at 509).

Neder itself confirms the point. There, the defendant was charged with both tax fraud (involving a government victim) and mail, wire, and bank fraud (involving private bank victims). In its discussion of the tax fraud charges, this Court held that materiality turns on a misrepresentation's "natural tendency to influence, or [] capab[ility] of influencing, the decision of the decisionmaking body to which it was addressed." *Neder*, 527 U.S. at 16. Likewise, in its discussion of mail, wire, and bank fraud, the Court stated that the term "immaterial" means "incapable of influencing *the intended victim*"—mirroring the materiality standard the Court applied in the tax-fraud context. *Id.* at 24 (emphasis added). Thus, while *Neder* separately analyzed tax fraud and mail, wire, and bank fraud, the Fourth Circuit seriously erred in asserting that *Neder* "identified different standards of materiality for those two categories of fraud." App. A at 24. *Neder* cannot plausibly be read to create such a distinction. Having just applied the "decisionmaker" standard in *Wells*, the Court did not change the standard in *Neder* without saying so.

Escobar reconfirms our point. There, relying on the same common-law antecedents addressed in *Neder*, this Court unequivocally stated that "[*under*] *any understanding of the concept*, materiality 'looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation." *Universal Health Servs. v. Escobar*, 136 S. Ct. 1989, 2002 (2016) (emphasis added). Applying this standard, *Escobar* stressed that the context and practices of the actual decisionmaker are highly relevant to judging materiality: "if the Government regularly pays a particular type of claim in full despite actual knowledge that certain [regulatory] requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material." *Id.* at 2003-04.

In other words, the rule adopted by a minority of circuits requires one to believe that *Neder* considered the common-law antecedents of fraud and adopted an abstract, reasonable-person approach to determining materiality, while *Escobar* considered the same common-law antecedents and adopted a completely different approach. There is no basis for such a conclusion.

The common law, which has formed the basis for all this Court's jurisprudence on materiality, draws no distinction between fraud targeting public versus private victims. Nor does the common law require courts to choose among different materiality standards based on the identity of the fraud victim. This Court's jurisprudence, rather, points to a single materiality standard—the one from *Kungys*, *Gaudin*, *Wells*, *Neder*, and *Escobar*. Because the holdings of the Fourth,

Seventh, and Ninth Circuits cannot be reconciled with this Court's precedents, there is at least a fair prospect that this Court will reverse.

3. This case is an excellent vehicle to resolve the circuit conflict. There is no dispute that Applicants fully preserved the issue at trial. And the Fourth Circuit squarely decided the issue in a published opinion after full briefing and oral argument. The panel's conclusory footnote asserting that any instructional error "would be entirely harmless" is no obstacle to this Court's review. App. A at 35 n.9. This Court has not hesitated to grant certiorari in similar circumstances. *See, e.g.*, *Zedner v. United States*, 547 U.S. 489 (2006); *cf. Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 246 & n.12 (1981). The government itself has urged this Court to ignore "harmless-error . . . dictum" in which a court of appeals "state[s] only that 'any' error would have been harmless." Br. for United States in Opp'n, *Zedner v. United States*, 2005 WL 3968649, at *14-15 (U.S. 2005).

Here, moreover, the panel's footnote could not have been an alternative holding because it does not even attempt to apply the harmlessness standard. Because the district court's instructions misstated an element of the offense, reversal is required unless "it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Neder*, 527 U.S. at 15 (internal quotation marks omitted). Rather than address that question, the panel's footnote just points to some evidence of Applicants' wrongful intent. App. A at 35 n.9 (stressing that "defendants went to great lengths" to misrepresent information and would not have done so unless it was material). But intent and materiality are

distinct elements of wire fraud; the government must prove both. And *Neder* rejected the government's contention that fraud liability "would exist so long as the defendant *intended* to deceive the victim, even if the particular means chosen turn out to be immaterial." 517 U.S. at 24. Even if some evidence might suggest that "SunTrust would not have funded the loans had the defendants painted an accurate picture of the applicants' qualifications," App. A at 35 n.9, such evidence does not render the instructional error harmless unless there is no viable contrary evidence.

Here, there was overwhelming evidence from which the jury could have found the alleged misrepresentations immaterial, including a SunTrust underwriter's testimony that it was "common knowledge" at SunTrust that loan files contained misrepresentations, JA1117, 1130; that SunTrust had a "don't ask/don't tell policy" toward borrower representations in loan applications, JA1124; and that underwriters' concerns about loan quality did not "ma[ke] a difference" to SunTrust's lending decisions. JA1130; *see* Br. of Appellants, *United States v. Raza*, 2016 WL 3541650, at *31-43 (4th Cir. 2017). The panel's footnote dictum simply did not address whether this and other evidence was "sufficient to support a contrary finding" by the jury. *Neder*, 527 U.S. at 19.

Accordingly, there is both a reasonable probability that the Court will grant certiorari and at least a fair prospect that the Court will reverse.

II. Applicants Pose No Flight Risk or Threat of Any Kind, and, Absent Relief, They Would Likely Complete Their Sentences Before this Court Can Rule on the Merits of the Convictions

In granting Applicants release on bond during both trial and appeal, the district court and Fourth Circuit previously concluded that Applicants pose no flight risk or danger to the community. App. D, G. That remains equally true today. Thus, the threshold requirements for release under § 3143(b) are plainly satisfied.

Moreover, the irreparable harm from denying relief would be stark and inequitable. Irreparable harm occurs when denying a stay would likely result in a movant serving his or her entire prison term before completion of the normal course of appellate review. *See In re Bart*, 82 S. Ct. 675, 675-76 (1962) (Warren, C.J., in chambers); *see also Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers) (citing *In re Bart*, 82 S. Ct. at 676). Applicants face precisely such harm here. Their sentences, ranging from 12 months and one day to 24 months, would likely be fully or substantially completed before this Court has the opportunity to resolve the merits of their case. It would be unfair to condemn Applicants to prison only later to hold that their convictions were legally flawed based on erroneous jury instructions as to an essential element of the offenses. The irreparable-harm factor thus decisively supports preserving the status quo.

III. The Balance of Equities Favors Applicants

A Justice considering whether to stay the mandate pending disposition of a petition for certiorari may consider the balance of the equities. *See Philip Morris USA Inc. v. Scott*, 131 S. Ct. 1, 4-5 (Scalia, J., in chambers). On balance, the

equities here overwhelmingly favor a stay. Applicants' liberty is at stake, as they will be required, absent relief, to report soon to begin serving their prison sentences. And, as explained above, there is a substantial risk that Applicants will have served their full sentences by the time appellate review is complete.

On the other hand, the government faces no prejudice or risk from a stay of the mandate or release on bail. The government waited nearly a decade to charge Applicants. And based on prior orders of the district court and Fourth Circuit, Applicants have been released on bond for the past two and half years. All have surrendered their passports. All have left the retail banking industry. Ms. Iqbal is a stay-at-home mother residing in Northern Virginia. Since leaving retail banking in 2010, she has spent her days caring for her young children—a six-year-old daughter and a five-year-old son—and attending to her elderly parents. She also suffers from epilepsy and is under an intensive course of treatment prescribed by a Falls Church-based neurologist. The other Applicants likewise no longer work in retail banking and have taken up other occupations.

Finally, if this Court grants a stay and then denies certiorari, there is no harm done. Applicants' sentences will remain the same length of time, whether Applicants begin serving those sentences in the spring or summer 2018. The equities thus plainly favor a stay of the mandate or release on bail.

CONCLUSION

Applicants respectfully request a stay or if necessary a recall of the mandate, or alternatively release on bail, pending the filing and disposition of a timely petition for a writ of certiorari.

Dated: January 9, 2018

Respectfully submitted,

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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4247

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MOHSIN RAZA,

Defendant – Appellant.

No. 16-4259

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

FARUKH IQBAL,

Defendant – Appellant.

No. 16-4261

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MOHAMMAD ALI HAIDER,

Defendant – Appellant.

No. 16-4262

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

HUMAIRA IQBAL,

Defendant – Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:15-cr-00118-CMH-1, 1:15-cr-00118-CMH-3, 1:15-cr-00118-CMH-4, 1:15-cr-00118-CMH-2)

Argued: September 15, 2017 Decided: November 20, 2017

Before NIEMEYER, KING, and HARRIS, Circuit Judges.

Affirmed by published opinion. Judge King wrote the opinion, in which Judge Niemeyer and Judge Harris joined.

ARGUED: Geoffrey Paul Eaton, WINSTON & STRAWN LLP, Washington, D.C., for Appellants. Jack Hanly, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF**: G. Derek Andreson, Thomas M. Buchanan, Ilan Wurman, WINSTON & STRAWN LLP, Washington, D.C., for Appellant Mohsin Raza. John N. Nassikas III, R. Stanton Jones, Dirk C. Phillips, Robert A. DeRise, ARNOLD & PORTER LLP, Washington, D.C., for Appellant Humaira Iqbal. Peter H. White, Gary Stein, Jeffrey F. Robertson, Brittany L. Lane, SCHULTE ROTH & ZABEL LLP, Washington, D.C., for Appellant Farukh Iqbal. Thomas G. Connolly, Patrick O'Donnell,

Stephen W. Miller, Lauren E. Snyder, HARRIS, WILTSHIRE & GRANNIS LLP, Washington, D.C., for Appellant Mohammad Ali Haider. Dana J. Boente, United States Attorney, Joseph A. Capone, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

KING, Circuit Judge:

In February 2016, the defendants in these proceedings — Mohsin Raza, Humaira Iqbal, Farukh Iqbal, and Mohammad Ali Haider — were convicted by a jury in the Eastern District of Virginia of the offenses of wire fraud and conspiracy to commit wire fraud. Those crimes were predicated on a fraudulent mortgage lending scheme centered at the Annandale branch of SunTrust Mortgage in Fairfax County, Virginia.[1] The defendants have appealed, maintaining that the trial court fatally undermined their convictions by giving erroneous instructions to the jury. As explained below, we reject the contentions of error and affirm.

I.

A.

On April 23, 2015, a federal grand jury in Alexandria, Virginia, returned a seven-count indictment against the defendants — who were former employees of SunTrust's Annandale branch.[2] The indictment's first count charged them with conspiracy to

[1] The fraudulent mortgage lending scheme underlying this prosecution touched not only SunTrust Mortgage (the subsidiary entity), but also SunTrust Bank (the parent entity) as the fraud scheme's primary victim. Because the distinctions between those banking entities are immaterial in these appeals, we refer to them jointly as "SunTrust."

[2] The indictment against the defendants is found at J.A. 27-40. (Citations herein to "J.A. __" refer to the contents of the Joint Appendix filed by the parties in these appeals.)

commit wire fraud affecting a financial institution, in contravention of 18 U.S.C. § 1349.[3] Counts 2 through 7 made substantive allegations of wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1343.[4] The substantive offenses were interposed against defendants Raza and Farukh Iqbal (Count 2); Raza and Humaira Iqbal (Counts 3 and 5); Raza alone (Counts 4 and 6); and Raza and Haider (Count 7).

The fraud scheme underlying the indictment involved a total of twenty-five mortgage loans made by SunTrust from May 2006 through February 2007.[5] Pursuant thereto, the defendants prepared fraudulent mortgage loan applications for prospective

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[3] The wire fraud conspiracy offense in Count 1 of the indictment was alleged as a violation of section 1349 of Title 18 of the United States Code, which provides, in pertinent part:

> Any person who conspires to commit [an] offense under this chapter [including 18 U.S.C. § 1343] shall be subject to the same penalties as those prescribed for the offense [that is, § 1343], which was the object of the . . . conspiracy.

[4] The substantive wire fraud offenses in Counts 2 through 7 of the indictment were alleged as violations of section 1343 of Title 18 of the United States Code, which provides, in pertinent part:

> Whoever, having devised . . . [a] scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire . . . communication in interstate . . . commerce, any writings . . . for the purpose of executing such scheme or artifice, shall be [punished as provided by law]. If the violation . . . affects a financial institution [the permissible penalties are enhanced].

[5] The general statute of limitations for federal criminal offenses is five years. *See* 18 U.S.C. § 3282(a). No such defense was interposed in this prosecution, in that none was available. *See id.* § 3293(2) (establishing ten-year limitations period for offense of wire fraud affecting a financial institution).

SunTrust borrowers. The false information contained in the loan applications underlying the indictment included, inter alia, false employment claims, inflated incomes, and overstated assets. As a result, SunTrust made twenty-five mortgage loans on thirteen properties located in various cities and counties in eastern Virginia.[6]

B.

The trial of the defendants was conducted in Alexandria in late January and early February of 2016. To understand those proceedings, a brief explanation of the

[6] The "manner and means of the conspiracy" were described in paragraphs 11-15 of Count 1 of the indictment as follows:

- The defendants prepared false mortgage loan applications for prospective borrowers at SunTrust. They well knew that the loan applications contained false material information, such as inflated incomes, inflated assets, reduced liabilities, and statements indicating that prospective borrowers intended to use the subject properties as their primary residences.

- To support false information contained in the loan applications, the defendants obtained and prepared multiple false documents, such as counterfeit earning statements for prospective borrowers and sham letters from accountants.

- Raza, as a loan officer at SunTrust, submitted false loan applications prepared by him and Humaira Iqbal to SunTrust underwriters. Farukh Iqbal and Haider, as loan officers at SunTrust, submitted additional false loan applications to those underwriters.

- By submitting false loan applications and false documents to SunTrust, the defendants caused SunTrust to make mortgage loans to the borrowers. The defendants thereby caused SunTrust to fund fraudulent mortgage loans on at least thirteen properties in eastern Virginia.

The substantive wire fraud offenses in Counts 2 through 7 realleged and incorporated the foregoing as the "scheme to defraud" underlying those six charges.

relationships between the defendants and their responsibilities at SunTrust is appropriate. During the relevant time frame, defendant Raza managed SunTrust's Annandale office. Raza's wife, defendant Humaira Iqbal, worked as Raza's personal assistant. Humaira's brothers, defendants Farukh Iqbal and Haider, worked for Raza as loan officers. Each of the defendants performed loan officer duties during the fraud scheme.

The SunTrust loan officers assisted prospective borrowers in obtaining residential mortgages and refinancing existing mortgages. During a consultation with such a loan officer, a prospective borrower would provide information relating to, inter alia, the borrower's income, employment, and assets. The loan officer utilized that information to prepare the prospective borrower's mortgage loan application. In preparing an application, the loan officer would select the type of loan that SunTrust should consider for approval. The different types of SunTrust loans had distinct interest rates and separate requirements with respect to supporting evidence. For example, pursuant to SunTrust guidelines, a "full document" loan required supporting documents corroborating the loan applicant's income, employment, and assets. On the other hand, a "stated income, stated asset" loan required only those documents necessary to verify the applicant's employment for the prior two years.

After completing a loan application, the loan officer forwarded it to a SunTrust underwriter in Richmond for review and possible approval. The underwriter would sometimes conditionally approve a loan application, subject to the bank's receipt of additional supporting documents. If the loan officer and the applicant thereafter fulfilled the specified conditions — for example, by providing the underwriter with the applicant's

pay stubs or bank statements — the loan application would be approved for closing. SunTrust would then fund the loan by wiring money from Georgia to a bank account in Virginia. Following the loan closing, SunTrust paid a commission to the loan officer.

1.

The prosecution's case-in-chief, which encompassed five trial days, consisted of four categories of evidence. First, the prosecutors called two coconspirators who explained the wire fraud conspiracy and the fraud scheme. Next, the prosecution presented testimony from the SunTrust borrowers involved in the mortgage loans underlying the wire fraud offenses. Third, other SunTrust borrowers were called to buttress the conspiracy evidence and to provide evidentiary support for the fraudulent practices underlying the wire fraud scheme. Finally, a SunTrust official explained the significance to SunTrust of the misrepresentations on the pertinent loan applications and the risks those misrepresentations posed to the bank.

a.

Rina Delgado worked as a loan officer at SunTrust's Annandale branch during Raza's tenure as the branch manager. She described a fraud scheme that was largely overseen by Raza and his wife Humaira Iqbal. As explained by Delgado, either Raza or Humaira reviewed each loan application originated at Annandale before it was submitted to the SunTrust underwriters. Raza and Humaira would check the prospective borrower's income, assets, and liabilities, seeking to ascertain whether the applicant was qualified for SunTrust mortgage loans. If an applicant's income was insufficient, Raza and Humaira would sometimes have Delgado inflate the applicant's income on the loan application.

Delgado described in detail how the defendants used a series of false representations and fraudulent documents to circumvent SunTrust's loan requirements. She identified an incident when Humaira Iqbal needed a landlord to verify that a loan applicant was paying rent. Humaira had Delgado impersonate the applicant's landlord over the phone and falsely confirm to a SunTrust underwriter that the applicant was current on his rental payments. In a similar vein, Farukh Iqbal and Haider asked Delgado to secure fraudulent accounting records to verify the assets shown on pending loan applications. Delgado responded by providing Farukh with false bank statements that were used to further the scheme. Delgado pleaded guilty in federal court in 2013 to an information that charged a wire fraud conspiracy offense. Pursuant to her plea agreement with the United States Attorney, she cooperated with the prosecutors. Delgado was sentenced to prison for her involvement in the fraud conspiracy.

Another key prosecution witness concerning the conspiracy offense was Ranjit Singh — a tax preparer in northern Virginia. In 2015, Singh confessed to the FBI that he had manufactured and delivered false tax and payroll documents to the defendants. Singh cooperated with the FBI and the prosecutors and was given immunity. In 2006 and 2007, Singh sold false pay stubs and false W-2 forms to Farukh Iqbal and Haider. Singh knew that those defendants were SunTrust loan officers and that the false documents would be used to help loan applicants qualify for SunTrust mortgage loans. In carrying out the fraud scheme, Farukh and Haider provided Singh with the identities of loan applicants, the names of purported employers, employment dates, and salaries. Singh used that information in his tax and payroll programs to generate false documents that he provided

to loan officers. Singh produced a spreadsheet at trial — introduced as Government's Exhibit 50B — that identified the false documents he had prepared in connection with the fraud scheme. *See* J.A. 2153-61. Several spreadsheet entries corresponded with false documents that supported phony loan applications prepared by the defendants and used in furtherance of the fraud scheme.

b.

In May 2006, Silvana Rosero obtained $437,000 in mortgage loans from SunTrust to purchase residential real estate in Occoquan, Virginia. A wire transfer of those loan proceeds from a SunTrust account in Atlanta to a BB&T account in Richmond formed the basis for the wire fraud charge in Count 2 against Raza and Farukh Iqbal. Rosero's loan application — prepared by Farukh — reflected that Rosero earned $14,000 per month as an operations manager at Horizon Mortgage. Her SunTrust loan file contained a W-2 form showing that Rosero had made $155,000 the previous year, and the file contained salary payment statements supporting those earnings. Those false documents bore the name of Ranjit Singh, who confirmed that the phony documents had been prepared by him. Rosero testified that her SunTrust loan application — and its supporting documents — misrepresented her employment and vastly overstated her income. Rosero also confirmed that she had not provided Farukh with the false information and fraudulent documents and had never met Singh.

In June 2006, a borrower named Leslie Lamas obtained $365,000 in mortgage loans from SunTrust to purchase a residential property in Annandale. A wire transfer of those loan proceeds from a SunTrust account in Atlanta to a bank in Fairfax, Virginia,

formed the basis for the wire fraud charge in Count 3 against Raza and Humaira Iqbal. Lamas obtained her loans from SunTrust with the assistance of Humaira, although Raza was the SunTrust loan officer identified on the Lamas loan application. The application reflected that Lamas earned $9,540 per month, and her SunTrust loan file contained a false earnings statement — prepared by Ranjit Singh — that corroborated her income. Lamas testified, however, that her income was not nearly that high when she obtained her SunTrust loans. Furthermore, she had not provided Humaira with any supporting documents to that effect.

In June 2006, Reynaldo Valdez obtained $414,000 in SunTrust mortgage loans to purchase a home in Fairfax. A wire transfer of those loan proceeds from a SunTrust account in Atlanta to a bank in Fairfax formed the basis of the wire fraud charge in Count 4 against Raza. Valdez's loan application at SunTrust — prepared and submitted with Raza's assistance — reflected that Valdez was a practicing dentist, that he earned $11,580 per month, and that he had $68,000 in the bank. His SunTrust loan file contained a bank statement and an earnings statement supporting those false assertions. Valdez confirmed at trial that he was not a dentist. He actually worked in his sister's medical office doing clerical and maintenance work. Valdez admitted that his SunTrust loan application vastly overstated his income and assets, and that he had not provided the false documents found in his SunTrust loan file. Those documents — a false earnings statement and a false W-2 form — had been prepared by Ranjit Singh.

In July 2006, a borrower named Harwinder Singh obtained $470,000 in SunTrust mortgage loans — in his wife's name — to purchase a residence in Ashburn, Virginia. A

wire transfer of those loan proceeds from a SunTrust account in Atlanta to a bank in Fairfax formed the basis for the wire fraud charge in Count 5 against Raza and Humaira Iqbal. Humaira — working with Raza — had assisted Harwinder Singh in completing the SunTrust loan application. Harwinder overstated his wife's income at the urging of Humaira and his realtor. The loan application reflected that Mrs. Singh worked as a systems engineer at Orberthur Systems, earned $14,825 per month, and had $45,000 in a Wachovia Bank. Her loan file contained earnings and bank statements corroborating those false numbers. Mrs. Singh was actually a quality technician at Orberthur Systems and earned only $25,000 per year. Harwinder Singh and his spouse had never banked with Wachovia, and neither of them gave Humaira any false documents.

In July 2006, Santos Valdez-Mejia obtained $405,000 in SunTrust mortgage loans on a residential property in Alexandria. A wire transfer of those loan proceeds from SunTrust in Atlanta to a bank in Fairfax formed the basis for the wire fraud charge in Count 6 against Raza. The Valdez-Mejia loan application, prepared for him by Raza, reflected that Valdez-Mejia earned $9,875 per month and that he worked as an area manager for a restaurant chain. His SunTrust loan file contained false earnings statements prepared by Ranjit Singh. When Valdez-Mejia applied for his SunTrust mortgage loans, he was actually working hourly wage jobs — as a cook and as a manual laborer. Valdez-Mejia confirmed at trial that his income was substantially less than $9,875 per month. He had never advised Raza that he worked as an area manager for a restaurant or that he earned such a monthly income.

In February 2007, Zahoor Hashmi obtained $387,000 in SunTrust loans to refinance a mortgage on an Alexandria residential property. A wire transfer of those loan proceeds from a SunTrust account in Atlanta to a bank in Fairfax formed the basis for the wire fraud charge in Count 7 against Raza and Haider. Hashmi had secured his initial mortgage loan in 2005 from another lender. He thereafter sought to refinance with SunTrust because he was behind on his bills. Hashmi's refinancing application — prepared by Haider — falsely indicated that Hashmi was vice-president of a business called AA Motors. Hashmi had never worked at AA Motors, and he had not told Haider otherwise. His SunTrust loan file contained a false pay stub prepared by Ranjit Singh.

c.

The prosecution presented additional conspiracy and fraud scheme evidence by calling several other former SunTrust borrowers. Francy Castillo had obtained mortgage loans from SunTrust in 2006. Her loan application — prepared by Raza — falsely reflected that Castillo was president of a company called NGDC, earned a monthly salary of $17,000, and had $100,000 in a Wachovia bank. Castillo confirmed at trial that, when she obtained her SunTrust loans, she was actually working two hourly jobs — as a waitress and as a caretaker. Castillo had never worked for NGDC, she earned substantially less than $17,000 per month, and she never had $100,000 in any bank.

Khalid Yousaf obtained a mortgage loan from SunTrust in 2005 and refinanced just a year later. Raza handled both of Yousaf's SunTrust loans. When he refinanced, Yousaf was working two jobs — driving a cab and operating a Dollar Store — and made about $3,000 per month. His refinancing application with SunTrust, however, reflected

that he was vice-president of a business called DPP Services and earned $13,000 per month. Yousaf had never heard of DPP Services, had never earned $13,000 per month, and had not told Raza otherwise.

Oscar Carrion testified that his wife made approximately $15,000 per year in 2006. Her SunTrust loan application — prepared by Raza — reflected that she earned nearly that much monthly. The loan application of Juan Pablo Yanez — prepared by Humaira — reflected that he was president of a construction company and earned more than $11,000 per month. Yanez was actually a laborer earning hourly wages. Jagtar Dhanoa's SunTrust loan application — prepared by Humaira — falsely indicated he was a senior analyst at Ikon Solutions. He was actually working as a Pizza Hut cook and as a cab driver.

d.

Barbara Daloia, a vice-president of SunTrust's national underwriting team in North Carolina, explained the potential consequences to SunTrust of loan applicants failing to submit accurate information on mortgage loan applications. As Daloia explained, SunTrust sometimes contracted with investment banks to sell its originated mortgage loans by way of secondary sales agreements. Pursuant thereto, SunTrust agreed to repurchase any such loans that failed to comply with its underwriting guidelines. Thus, if such a secondary market purchaser discovered that a SunTrust loan it had purchased had been procured by fraud, SunTrust was obliged to repurchase the fraudulent loan.

Furthermore, according to Daloia, if SunTrust sold a fraudulently procured loan and was not compelled to repurchase it, SunTrust was nevertheless exposed to the risk of default. Daloia had reviewed all the loan files used by the prosecution at trial. She explained that, on twelve of the properties, SunTrust had made two loans simultaneously — one for eighty percent of the property's value and the other for the remaining twenty percent. SunTrust would thus retain two separate liens on each of those properties, with a first lien being retained on the larger eighty percent loan. The second lien would be retained on the smaller loan. Daloia explained that SunTrust would sell only the larger loan — with the first lien — and would always hold for itself the smaller loan and the second lien. Thus, in the event of a sale, SunTrust would nevertheless be exposed to the risk of the smaller loan's default.

In sum, Daloia emphasized the significance to SunTrust of the information required on its loan applications. As she related to the jury,

> anything on the loan application is of importance, the loan amount, the borrower's name, their current address, the property type, whether it was a purchase or a refinance, if they owned any other properties. All of that is important on the application.

See J.A. 657. Daloia stressed that supporting documents were similarly important to SunTrust's loan process — such as those required for full document loans and stated income, stated asset loans — because those documents authenticate the information on the loan application.

2.

After the prosecution rested, the defense called three witnesses, seeking to show that the misrepresentations made on the SunTrust mortgage loan applications were not important to the bank's loan process. The defendants also sought to prove that the fraud scheme did not present any substantial risk of injury to SunTrust. None of the defendants testified.

Terri Dougherty, a former SunTrust underwriter, described what the defense called SunTrust's "originate-to-sell" mortgage business. Such a business model focused on new mortgage loans and deemphasized the collection of interest. According to Dougherty, SunTrust aggressively sought to originate mortgage loans in order to sell them on the secondary mortgage market. SunTrust attempted to sell loans immediately after origination, before the SunTrust borrowers could default and undermine the loans' marketability. Dougherty believed this business model encouraged SunTrust employees to prioritize economic metrics that attracted secondary loan purchasers — such as good credit scores of borrowers — and to disregard other information on the SunTrust loan applications. For example, Dougherty asserted that SunTrust discouraged its mortgage loan underwriters from raising red flags when loan applications contained questionable information concerning income, employment, and assets, so long as the borrowers' credit scores were adequate. Dougherty also maintained that SunTrust supervisors would sometimes override her decisions to defer action on loan applications and to request additional supporting documents.

The defense relied on an expert witness concerning the secondary mortgage market in an effort to bolster Dougherty's testimony. Robert MacLaverty opined that SunTrust's mid-Atlantic region had engaged in reckless lending practices and approved more than ninety-eight percent of its residential mortgage loan applications during the period of the fraud scheme. In contrast, SunTrust's competitors approved about eighty percent of similar loan applications during that period. MacLaverty believed that secondary market purchasers deemed credit scores of borrowers to be one of the most important economic metrics in their evaluations of loan acquisitions. MacLaverty further opined that SunTrust's pattern of expeditiously selling originated loans to secondary market purchasers minimized SunTrust's exposure to the risk of borrowers defaulting on SunTrust loans.

3.

After the parties rested and made their closing arguments, the district court instructed the jury. Several of the instructions were contested. The jury was required to find that — as part of the scheme to defraud — the defendants had made and caused to be made materially false statements and representations to SunTrust. The defendants sought to have the court define material false statements in a subjective manner. They argued unsuccessfully for an instruction that a materially false statement was one that "would have a natural tendency to influence or be capable of influencing a decision of the particular decisionmaker to whom it is addressed — here, the decision of SunTrust to approve and fund mortgages for the properties named in the indictment." *See* J.A. 191. The prosecution's proposed materiality instruction, on the other hand, was drawn in an

objective context, explaining that a "statement or representation is 'material' if it has a natural tendency to influence or is capable of influencing a decision or action." *See id.* at 153. The court rejected the defendants' materiality instruction and defined materiality in a manner similar to that proposed by the prosecution.

C.

On February 3, 2016 — after three days of deliberations — the jury returned its verdict. The jury convicted each of the defendants on Count 1, which charged conspiracy to commit wire fraud. As for the wire fraud offenses, the jury convicted Raza on three of six charges. That is, Raza was convicted on Counts 3, 4, and 6. Humaira was convicted on Count 3. Both Farukh and Haider were convicted of a single wire fraud offense — Farukh on Count 2 and Haider on Count 7. The court sentenced Raza to twenty-four months in prison, Humaira Iqbal to fifteen months, and both Farukh Iqbal and Haider to a year and a day. The defendants thereafter noted these appeals. We possess jurisdiction pursuant to 28 U.S.C. § 1291. The defendants have been granted bond pending appeal.

In their appeals, the defendants jointly present three issues concerning the jury instructions. They first maintain that the court committed reversible error on two aspects of the wire fraud offense, that is, materiality and intent to defraud. The defendants also contend that the court abused its discretion by failing to instruct the jury prior to deliberations that it had to individually assess the guilt of each defendant as to each count. No other issues concerning the conduct of the trial or the propriety of the sentences are presented.

II.

We review de novo an appellate contention "that a jury instruction failed to correctly state the applicable law." *See United States v. Jefferson*, 674 F.3d 332, 351 (4th Cir. 2012). In assessing the propriety of instructions, however, "we do not view a single instruction in isolation." *See United States v. Rahman*, 83 F.3d 89, 92 (4th Cir. 1996). We are obligated to "consider whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law." *Id.* If an instruction on an offense element is improper, and if an objection was preserved, we review for harmless error. *See Neder v. United States*, 527 U.S. 1, 9 (1999).

A trial court's decision not to give a proposed instruction is reviewed for abuse of discretion and is reversible error only if it "(1) was correct, (2) was not substantially covered by the charge that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense." *See United States v. Bartko*, 728 F.3d 327, 343 (4th Cir. 2013). We have emphasized that a party challenging "instructions faces a heavy burden, for we accord the district court much discretion to fashion the charge." *See Noel v. Artson*, 641 F.3d 580, 586 (4th Cir. 2011).

III.

Prior to its deliberations in this trial, the district court instructed the jury that, in order to convict a defendant on a wire fraud offense, it was obliged to find five elements beyond a reasonable doubt. That is, the prosecution had to establish the following: (1)

the scheme to defraud; (2) the use of a wire communication in furtherance of the scheme; (3) a material statement or omission in furtherance of the scheme; (4) an intent to defraud; and (5) that the fraud scheme affected a financial institution.

By way of background, the federal courts have historically identified two statutory elements of a wire fraud offense. That is, such an offense can be proved if a defendant (1) devised or intended to devise a scheme to defraud, and (2) used a wire communication in furtherance of the scheme. *See* 18 U.S.C. § 1343. In 1999, the Supreme Court identified a common law element of materiality as applicable to mail, wire, and bank fraud offenses. *See Neder v. United States*, 527 U.S. 1, 25 (1999). Additionally, an intent to defraud has consistently been treated as an element of such fraud offenses. *See United States v. Wynn*, 684 F.3d 473, 478 (4th Cir. 2012) (explaining that scheme to defraud necessarily requires proof of intent to defraud). Finally, a fifth element of the substantive wire fraud offenses in this case — that the fraud scheme affected a financial institution — is required under § 1343 of Title 18 and must be proved if a financial institution is the alleged victim. Pursuant to § 1343, proof that the wire fraud scheme affected a financial institution justifies enhanced punishments for the person convicted. Notably, the defendants proposed an instruction that the wire fraud offenses required proof of the five elements specified above, and the court tracked that instruction in its jury charge.

A.

1.

We review de novo the defendants' first contention of error, which is that the instructions failed to properly advise the jury that it had to find — on the third element of the wire fraud offense — that the defendants' misrepresentations and false statements were subjectively material to the fraud's victim, i.e., SunTrust. The defendants thus maintain that the court erroneously gave the jury an objective — or "reasonable lender" — standard of materiality. The court instructed the jury on the materiality element in the following terms:

- The government was obliged to prove that "the scheme or artifice to defraud, or the pretenses, representations, or promises, were material; that is, they would reasonably influence a person to part with money or property." *See* J.A. 1313.

- A particular fact is material if it "may be of importance to a reasonable person in making a decision about a particular matter or transaction." *Id.* at 1315.

- "A statement or representation is material if it has a natural tendency to influence or is capable of influencing a decision or action." *Id.* at 1318.

Based on those instructions, the defendants argue that the jury could have convicted them on the basis of false statements that an objective, reasonable lender might have considered material, but that SunTrust itself did not deem to be material in the circumstances.

The defendants support their contention of error with several court decisions that assess materiality in the fraud context. For example, in *Neder*, the Supreme Court

concluded — in the context of a tax fraud prosecution — that to be material a false statement must be "capable of influencing[] the decision of the decisionmaking body to which it is addressed." *See* 527 U.S. at 16. In a similar vein, we have determined, in the context of fraud against a county government, that "[t]he test for materiality of a false statement is whether the statement has a natural tendency to influence, or is capable of influencing its target." *See Wynn*, 684 F.3d at 479. The defendants contend on appeal — and argued at trial — that those decisions required that the jury be instructed on a subjective standard of materiality.

Although the federal courts have generally applied an objective test to the materiality element in fraud schemes targeting private lenders, the defendants argue that a recent Supreme Court decision — post-dating this trial — clarified the applicable standard in their favor. More specifically, they contend that the Court, in *Universal Health Services v. United States ex rel. Escobar*, confirmed that the applicable test is subjective for materiality in a fraud prosecution such as theirs. *See* 136 S. Ct. 1989 (2016). As the Court stated therein, "[u]nder any understanding of the concept, materiality looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation." *See id.* at 2002 (quoting 26 Richard A. Lord, *Williston on Contracts* § 69:12, at 549 (4th ed. 2003)).

Finally, the defendants contend that the trial court's instructional error on the materiality element was prejudicial and that they were thereby denied a fair trial. They argue that materiality was the "core issue at trial," and that the prosecution failed to prove that the misrepresentations made in the SunTrust loan applications had actually

influenced SunTrust. They point in particular to the evidence of witnesses Dougherty and MacLaverty, who opined that SunTrust had engaged in reckless lending practices and disregarded false information in loan applications. As a consequence, according to the defendants, they would not have been convicted of wire fraud if the jury had been properly instructed on the materiality element.

2.

The government counters that the trial court did not err in its materiality instructions and that the jury was advised of the applicable legal principles. The prosecutors contend that the Supreme Court and the courts of appeals — consistent with the instructions here — have endorsed an objective test of materiality for lender fraud such as that underlying this prosecution. In *Neder*, for example, the Supreme Court endorsed an objective, reasonable person standard for materiality in the context of wire fraud against private lending institutions. *See* 527 U.S. at 22 n.5. Furthermore, we recently decided, in *United States v. Wolf*, that an objective test for materiality applies in the context of a bank fraud prosecution. *See* 860 F.3d 175, 193 (4th Cir. 2017). The government contends that we are bound by *Wolf*, which constitutes circuit precedent and which was was decided well after the *Universal Health* decision. The prosecutors therefore see *Wolf* as binding on the materiality issue.

The government also argues that *Universal Health* did not establish a subjective test for the materiality element in a wire fraud prosecution where a private lender is the victim. Although the government depends primarily on *Wolf*, it also relies on *Neder* and a recent Ninth Circuit decision that is consistent with *Wolf*. *See United States v. Lindsey*,

850 F.3d 1009 (9th Cir. 2017). The *Lindsey* decision — which also post-dates *Universal Health* — ruled that an objective test for materiality applies to a wire fraud scheme targeting a private lender. *Id.* at 1014-17. Finally, the government contends that, if the district court somehow erred on the materiality element, the error was harmless.

3.

a.

We begin our discussion of the materiality element with the Supreme Court's 1999 decision in *Neder*. There, the defendant had been convicted of offenses that included tax, mail, wire, and bank fraud. *See Neder*, 527 U.S. at 1. The Court therefore had to address materiality-related questions concerning several types of fraud, but separated its analysis into two primary parts. *Id.* at 7-26. First, it discussed the tax fraud scheme in that prosecution, which had targeted the federal government. *Id.* at 7-20. Second, the Court addressed the mail, wire, and bank fraud schemes, which had victimized private lenders. *Id*. at 20-26. The Court then identified different standards of materiality for those two categories of fraud. *Id.* at 16, 22 n.5. Pursuant to *Neder*, the test for materiality in a fraud scheme targeting the federal government verges toward the subjective. *Id.* at 16. A fraud scheme targeting a private lender, on the other hand, is measured by an objective standard. *Id.* at 22 n.5.

The *Neder* Court first assessed whether it could sustain the tax fraud convictions where the prosecution had proven that the defendant falsely stated his income on his federal returns. *See* 527 U.S. at 7-20. That aspect of the case concerned, inter alia, whether the trial court's error in failing to submit the materiality issue to the jury was

harmless. *Id.* at 15-20. In conducting that analysis, the Court made its formulation of materiality when the federal government is a target, explaining that "a false statement is material if it has a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it is addressed." *Id.* at 16 (internal quotation marks omitted).

The *Neder* materiality standard — emphasizing that the false statement must be capable of influencing the decisionmaking body to which it is addressed — is derived from earlier decisions assessing materiality issues in fraud schemes that targeted the federal government. The most notable was *Kungys v. United States*, where the Court addressed a materiality element in a denaturalization proceeding. *See* 485 U.S. 759, 769-70 (1988). The applicable statute provided that the citizenship of a naturalized citizen could be revoked if naturalization had been procured by, inter alia, the "concealment of a material fact." *See* 8 U.S.C. § 1451(a). The *Kungys* Court recognized that the federal courts had reached a "uniform understanding of the 'materiality' concept" in the context of "federal statutes criminalizing false statements to *public officials*." *See* 485 U.S. at 770 (emphasis added). The uniform understanding was that "a concealment or misrepresentation is material if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Id.* *Kungys* ruled that "the test of whether [the defendant's] concealments or misrepresentations were material is whether they had a natural tendency to influence the decisions of the *Immigration and Naturalization Service*." *Id.* at 772 (emphasis added).

The applications of *Kungys* in subsequent decisions plainly show that a more focused materiality test applies to fraud schemes that target the federal government and public officials. *Cf. Shaw v. United States*, 137 S. Ct. 462, 468 (2016) (emphasizing that "crimes of fraud targeting the Government" constitute "an area of the law with its own special rules and protections"). More precisely, when the victim is the government, the prosecution must prove materiality by reference to the particular government agency or public officials that were targeted. *See, e.g.*, *United States v. Camick*, 796 F.3d 1206, 1217-19 (10th Cir. 2015) (reversing fraud convictions because false statements were immaterial to public decisionmaking bodies); *United States v. Litvak*, 808 F.3d 160, 174 (2d Cir. 2015) (vacating false statement conviction because prosecution failed to prove that misstatement was capable of influencing Treasury decision). Thus, even if the false representation might influence a reasonable person, a fraud conviction was not warranted unless the governmental decisionmaking body considered the false representation to be material. *See United States v. Ismail*, 97 F.3d 50 (4th Cir. 1996).

In our *Ismail* decision, for example, we were called upon to assess the validity of a conviction under 18 U.S.C. § 1001, involving false statements made to the FDIC as part of a scheme to defraud the government. *See* 97 F.3d at 52-55. The defendant argued that his statements — use of a false name and a fictitious social security number — were immaterial to the FDIC. *Id.* at 60-61. In vacating his conviction, we acknowledged that "[p]roviding a false name or social security number certainly could, in a given situation, be material." *Id.* at 60. We explained, however, that the prosecution had failed to present

any evidence bearing on the materiality of the false statements made to the FDIC. *Id.* As a result, Ismail was entitled to a judgment of acquittal. *Id.* at 62.

b.

Although the materiality test identified by the Supreme Court in *Kungys* is arguably subjective, it does not apply to a fraud scheme that targets a private lender such as SunTrust. In assessing the second type of fraud discussed in *Neder* — fraud schemes that target private banks and lenders — the crucial issue was whether the prosecution must prove materiality as an element of the offenses of mail, wire, or bank fraud. *See* 527 U.S. at 20. In determining that Congress intended to incorporate common law materiality principles into those offenses, the *Neder* Court relied on the objective materiality test spelled out in the Second Restatement of Torts. *Id.* at 22 n.5. As explained therein, a fact is material if a "reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." *Id.* (quoting Restatement (Second) of Torts § 538 (1977)).[7]

Consistent with *Neder*, our *Wolf* decision adhered to an objective standard of materiality for a criminal fraud offense that targeted a private lender. *See Wolf*, 860 F.3d at 193-96. Wolf was convicted, inter alia, of bank fraud in violation of 18 U.S.C. § 1344. *Id.* at 179. He challenged evidence sufficiency, arguing that the prosecution had failed to

[7] Notably, the *Neder* Court declined to incorporate the common law elements of reliance and damages into the mail, wire, and bank fraud offenses. *See* 527 U.S. at 24-25. Requiring proof of those elements would have required proof of more than objective materiality, that is, proof that the misrepresentations actually influenced and harmed the target.

prove that his false statements and representations were material to the lenders. *Id.* at 194. Judge Traxler's carefully crafted opinion rejected that proposition, explaining that the applicable "test for whether a false statement to a bank is material is an objective one; it does not change from bank to bank." *Id.* at 193. For that formulation, *Wolf* relied on a Tenth Circuit case, where the court had explained that "materiality in the bank fraud context [is] an *objective* quality, unconcerned with the subjective effect that a defendant's representations actually had upon the bank's decision." *See United States v. Irvin*, 682 F.3d 1254, 1267 (10th Cir. 2012). The *Wolf* decision thus applied an objective test to the materiality element, asking whether "Wolf's statements or representations would have been important to a reasonable lender." *See* 860 F.3d at 195. In ruling that the prosecution had presented sufficient evidence to prove materiality, *Wolf* explained that "the kinds of misrepresentations [the defendant] made during all of these transactions would have mattered greatly to any mortgage lender." *Id.* at 196.

More than fifteen years prior to *Wolf* — and post-*Neder* — our Court explained that frauds perpetrated on private lending institutions are judged according to an objective, "reasonable financial institution" standard. *See United States v. Colton*, 231 F.3d 890, 903 n.5 (4th Cir. 2000). In *Colton*, a jury had convicted the defendant on several counts of bank fraud after finding that he fraudulently obtained loans used to finance commercial real estate projects. *Id.* at 894. The prosecution presented evidence that Colton failed to disclose material information to the victimized financial institutions prior to the fraudulent transactions. *Id.* Colton challenged the prosecution's theory, maintaining, inter alia, that he had no independent duty to disclose the material

information to the victimized lenders. *Id.* He also asserted that one of the lenders failed to perform an adequate due diligence investigation prior to entering into a financing agreement. *Id.* at 903.

We rejected Colton's argument and affirmed his convictions, explaining that "the susceptibility of the victim of the fraud, in this case a financial institution, is irrelevant to the analysis." *See Colton*, 231 F.3d at 903; *see also United States v. Brien*, 617 F.2d 299, 311 (1st Cir. 1980) ("If a scheme to defraud has been or is intended to be devised, it makes no difference whether the persons the schemers intended to defraud are gullible or skeptical, dull or bright. These are criminal statutes, not tort concepts."). As our *Colton* decision explained, *Neder* had declined to incorporate common law elements of fraud that would require proof of the impact of a fraud scheme on its intended victims, namely "reliance" and "damages." *See Colton*, 231 F.3d at 903 (citing *Neder*, 527 U.S. at 24-25). Instead, the relevant elements of wire fraud are an intent to defraud and materiality, which *Colton* defined as "what a *reasonable financial institution* would want to know in negotiating a particular transaction." *Id.* at 903 n.5 (emphasis added).

Finally, in the *Lindsey* prosecution that was strikingly similar to this one, the Ninth Circuit reached the same conclusion we reached in *Wolf* and *Colton*. In *Lindsey*, the court of appeals assessed whether to affirm a bank loan officer's convictions of wire fraud after the jury found that the officer had fraudulently procured loans from private lenders. *See* 850 F.3d at 1012-19. The *Lindsey* prosecutors proved — as here — that the defendant used false income figures on mortgage loan applications. *Id.* at 1010. Lindsey argued that those false numbers were immaterial to the victim lenders, because those

lenders were routinely engaged in negligent lending practices and regularly disregarded materially false information on loan applications. *Id.* at 1012-14.

The Ninth Circuit rejected Lindsey's assertion that the behavior of the victimized lenders could be a defense for the defendants. *See Lindsey*, 850 F.3d at 1015. As the court explained, "[a] false statement is material if it *objectively* had a tendency to influence, or was capable of influencing, a lender to approve a loan." *Id.* (emphasis in original). This result was necessary because the materiality standard "is not concerned with a statement's subjective effect on the victim, but only the intrinsic capabilities of the false statement itself." *Id.* (internal quotation marks omitted).

The *Lindsey* court also acknowledged the broader context of lender misconduct in which that prosecution had occurred, and the court understood "the desire to see lenders shoulder responsibility for their role in the mortgage crisis of the last decade." *See* 850 F.3d at 1014. The opinion recognized, however, that adopting a subjective test of materiality would essentially grant blanket absolution to low-level fraudsters because of the widespread sins of the mortgage industry. *Id.* The court of appeals rejected that outcome, emphasizing that "[t]wo wrongs do not make a right, and lenders' negligence, or even intentional disregard, cannot excuse another's criminal fraud." *Id.*

c.

(i)

Notwithstanding the controlling import of our *Wolf* decision — and asking us to discount *Lindsey* — the defendants argue that *Wolf* was erroneously decided because it

conflicts with *Universal Health*.[8] There, the Supreme Court was tasked with assessing materiality in the context of a qui tam proceeding against a healthcare facility. *See Universal Health*, 136 S. Ct. at 2001-03. The plaintiffs argued that, under the False Claims Act (the "FCA"), the healthcare facility had defrauded the government by falsely claiming that it was in compliance with state licensing requirements when it billed Medicaid. *Id.* at 1993. The FCA penalizes anyone who "knowingly presents . . . a false or fraudulent claim for payment or approval" to the federal government. *See* 31 U.S.C. § 3729(a)(1)(A). Furthermore, a qui tam plaintiff may state an actionable FCA claim if she alleges that "a misrepresentation about compliance with a statutory, regulatory, or contractual requirement" is "material to the Government's payment decision." *See Universal Health*, 136 S. Ct. at 2002.

In evaluating materiality in the FCA context, *Universal Health* explained that the federal statute itself defines materiality as having "a natural tendency to influence, or be[ing] capable of influencing, the payment or receipt of money or property." *See* 31 U.S.C. § 3729(b)(4). *Universal Health* acknowledged some similarities between the FCA's statutory definition of materiality and the definitions adopted by the Court in *Neder* and *Kungys*. *See Universal Health*, 136 S. Ct. at 2002. Explaining that the materiality requirement in *Kungys* "descends from common-law antecedents," the Court

[8] It bears noting that *Wolf* was decided by our Court a full year after the *Universal Health* decision was handed down by the Supreme Court. For whatever reason, the defendants' contention in these appeals — that *Universal Health* altered our materiality analysis in the context of fraud schemes targeting lenders — was not presented in the *Wolf* appeal.

resolved that it "need not decide whether [the FCA's] materiality requirement is governed by [statute] or derived directly from the common law." *Id.* Instead, the Court explained, "Under any understanding of the concept, materiality 'looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation.'" *Id.* (internal quotation marks omitted).

The defendants' contention of error on the materiality element apparently comes to this: They want us to utilize *Universal Health* to rule that the Supreme Court has clarified its earlier cases to say that materiality — in any criminal fraud context — requires proof that the false statements and misrepresentations were subjectively material. For multiple reasons, we reject that invitation.

(ii)

First, to the extent *Universal Health* altered the concept of materiality in fraud proceedings, it is not likely that its impact extends beyond the context of qui tam actions. And a qui tam action is a civil proceeding that protects the federal government. The Court implicitly acknowledged that proposition in *Universal Health*, explaining that "[t]he [FCA's] materiality standard is demanding. The [FCA] is not an all-purpose antifraud statute." *See* 136 S. Ct. at 2003 (internal quotation marks omitted). We reached a similar conclusion recently in *United States v. Palin*. In the *Palin* fraud prosecution, several defendants had been convicted of health care fraud and conspiracy to commit health care fraud, in violation of 18 U.S.C. §§ 1347 and 1349. *See* No. 16-4522, slip op. at 1 (4th Cir. Oct. 30, 2017). They appealed, arguing that "*Universal Health* established a new materiality standard that applies to all criminal fraud statutes, including

§ 1347." *Id.* at 7. Judge Motz's opinion expressed skepticism with that assertion, recognizing that the defendants sought to "stretch *Universal Health* too far." *Id.* at 8. Although *Palin* only had to decide whether *Universal Health* impacted the materiality element in the context of health care fraud, it specified that "[w]e do not believe the Supreme Court intended to broadly 'overrule' materiality standards that had previously applied in the context of criminal fraud." *Id.* We readily agree.

Second, if *Universal Health* controlled our decision on materiality in these appeals, it is unclear what the impact might be. After explaining for the unanimous Court in *Universal Health* that "[u]nder any understanding of the concept, materiality looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation," Justice Thomas emphasized that "[i]n tort law, for instance, a matter is material . . . if a reasonable man would attach importance to [it] in determining his choice of action in the transaction in question." *See* 136 S. Ct. at 2002-03 (internal quotation marks omitted). The Court's juxtaposition of those two standards suggests that they are not in tension. Put another way, an objective test of materiality does in fact "look to the effect on the likely or actual behavior of the recipient." *See id.* at 2002. In those circumstances, however, the recipient is a "reasonable man . . . determining his choice of action in the transaction in question." *Id.* at 2002-03. Thus, in this prosecution, the recipient whose behavior the jury should assess in its materiality inquiry is a reasonable lender in SunTrust's position — not necessarily SunTrust itself.

Third, and perhaps most important, *Universal Health* involved a civil fraud scheme that had targeted the federal government. In such a circumstance, the applicable

materiality test verges toward a subjective standard. In *Universal Health*, for example, the Court suggested that evidence of a government entity's past disregard of particular types of false statements might undermine the materiality element. *See* 136 S. Ct. at 2003 ("[I]f the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated, that is very strong evidence that those requirements are not material."). The *Lindsey* court recently explained why that principle does not apply when the fraud victim is a private lender:

> A single lender represents only some small part of the market for issuing mortgages. The Federal Government, by contrast, represents the entire market for issuing federal government contracts. The weight the Government gives to a particular statutory, regulatory, or contractual requirement is analogous not to the weight an individual lender gives to a statement on its loan application, but rather the weight the entire mortgage industry gives to that type of statement.

See 850 F.3d at 1017. The Ninth Circuit appears to have barred the evidentiary use of a lender's past lending practices on the materiality issue. In explaining that step, it related that "lending standards applied by an individual lender are poor evidence of a false statement's intrinsic ability to affect decision making." *Id.* at 1018. Although we need not go so far, we understand the rationale for the *Lindsey* court's wholesale rejection of such evidence.

d.

In view of the foregoing, the district court did not err in failing to require the misrepresentations in the SunTrust loan applications to be material to SunTrust as the fraud victim. In fact, the correct test for materiality — as the district court recognized — is an objective one, which measures a misrepresentation's capacity to influence an

objective "reasonable lender," not a renegade lender with a demonstrated habit of disregarding materially false information. In light thereof, the challenged instructions on the materiality element were not erroneous.[9]

B.

1.

By way of their second contention of error, the defendants maintain that they are entitled to appellate relief because the district court erroneously instructed the jury on the element of intent to defraud. The court told the jury, inter alia, that it had to find that the defendants acted "knowingly and with the intention . . . to deceive or to cheat." *See* J.A. 1317. The defendants contend that the court's use of the disjunctive "or" in that instruction "erroneously allowed conviction for wire fraud based just on intent to deceive

[9] If the trial court somehow misstated the applicable principles concerning materiality, that error would be entirely harmless. The evidence established that certain types of loans required supporting documents verifying the various loan applicants' income, employment, and assets. The defendants went to great lengths to obtain those documents, seeking out and purchasing fraudulent W-2s and pay stubs from a reprobate tax preparer. The defendants then repeatedly mischaracterized the loan applicants' qualifications.

By way of example, Reynaldo Valdez walked into SunTrust's Annandale branch a custodian in a medical office, but left as a licensed medical professional. Jagtar Dhanoa understood that he cooked pizzas for Pizza Hut. He was identified on SunTrust loan documents as a "senior analyst" at Ikon Solutions. The defendants ask us to believe that those ludicrous misrepresentations are meaningless, i.e., that SunTrust would have funded Valdez's and Dhanoa's loans in any event. If that were the case, why make such misrepresentations? Why surreptitiously purchase and submit fraudulent documents? Barbara Daloia, who stressed the importance of accurate information being reflected on all loan applications, confirmed the obvious. SunTrust would not have funded the loans had the defendants painted an accurate picture of the applicants' qualifications.

without an intent to deprive SunTrust of anything of value." *See* Br. of Appellants 19. The defendants argue that this error was also prejudicial, in that a properly instructed jury would have found them not guilty, because there was little or no risk to SunTrust if the loans went into default.

2.

The government counters that the intent to defraud instructions — viewed in context — adequately advised the jury that it had to find that the defendants intended to deprive SunTrust of something of value. They point to aspects of the court's charge that indicated the scheme had to entail losses to SunTrust. For example, the jury was advised that it had to find that the defendants' false statements "would reasonably influence a person to part with money or property." *See* J.A. 1313. The prosecution was required to prove that the fraud scheme was a "deliberate plan of action or course of conduct by which someone intends to deceive or to cheat another or by which someone intends to deprive another of something of value." *Id.* at 1314. And the jury had to find that the defendants acted with the "specific intent" to defraud, i.e., "with the bad purpose either to disobey or disregard the law." *Id.* at 1318.

If the trial court somehow erred in its intent instructions, however, the government again asserts that the error was harmless. As the prosecution emphasizes, the "entire case was about the defendants submitting false loan applications and supporting documents on behalf of clients to obtain mortgage loans. There was no evidence of an intent to deceive [SunTrust] for any other purpose." *See* Br. of Appellee 45-46.

3.

Because the defendants maintain that the applicable law was erroneously set forth in the intent instructions, our review is de novo. We addressed a similar contention in *Wynn*, the case on which the defendants primarily rely. The trial court in *Wynn* had instructed that the intent element required a "specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone." *See* 684 F.3d at 477. The defendant took umbrage on appeal with the word "usually," arguing that its use allowed the jury to convict based solely on an intent to deceive the victim. *Id.* He maintained that the intent instruction was fatally erroneous because the prosecutors had to show more than "mere deception." *Id.* The government had to prove, Wynn argued on appeal, both intent to deceive and intent to harm. *Id.*

We agreed that the government had to prove more than mere deception. As Judge Niemeyer's opinion explained, "[t]o be convicted of . . . wire fraud, a defendant must specifically intend to lie or cheat or misrepresent with the design of depriving the victim of something of value." *See Wynn*, 684 F.3d at 478. The *Wynn* decision carefully evaluated the pertinent instructions, which had explicitly advised that the jury had to find the defendant "acted with the intent to defraud." *Id.* The trial court had also instructed that a "scheme to defraud includes any plans or course of action intended to deceive or cheat someone out of money or property," and that intent to defraud means "the specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else." *Id.*

On those instructions, viewed in the proper light, our *Wynn* decision explained that the court's charge was correct, i.e., it did not permit the jury to find intent proved solely by an intent to deceive. *See* 684 F.3d at 478-79. The term "usually" explained motivation. *Id.* at 478. It "did not withdraw the instruction to the jury that the scheme to defraud *must* 'include a plan or course of action intended to deceive or cheat someone out of money or property.'" *Id.* That instruction, we explained, obviously conveyed "an intent to harm in some sense." *Id.*

As in *Wynn*, the intent instructions used by the trial court — viewed as a whole and in context — plainly conveyed to the jury that it had to find more than a mere intent to deceive SunTrust. *See United States v. Rahman*, 83 F.3d 89, 92 (4th Cir. 1996) (explaining that specific instructions should not be viewed in isolation). To commit wire fraud, the defendants had to engage in a scheme to defraud, which is "a deliberate plan . . . by which someone intends to deceive or to cheat another or by which someone intends to deprive another of something of value." *See* J.A. 1314. Notably, the instructions on intent to defraud substantially tracked those that we had approved four years earlier in *Wynn*. *See* 684 F.3d at 478. And, in any event, "a trial court has considerable discretion in choosing the specific wording of its instructions." *See United States v. Hager*, 721 F.3d 167, 185 (4th Cir. 2013). In these circumstances, we are

content to reject the contention that the court erred with respect to the intent to defraud instructions.[10]

C.

1.

Finally, the defendants contend that the trial court abused its discretion by failing to instruct the jury prior to the deliberations that it was obliged to "give separate and individual consideration to each charge against each defendant." *See* J.A. 210. As proposed by the defendants, that instruction would have explained that "[t]he fact that you find one defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against that defendant or against any other defendant." *Id.* The defendants argue that, in failing to so instruct, the court permitted the jury to find guilt by association.

2.

In response, the government does not say that the proposed instruction was erroneous. It maintains that the substance of the proposal was covered by the trial court's

[10] We also agree with the prosecution that, if the trial court's intent instructions could somehow be deemed erroneous, the error was harmless. On this evidence, the defendants had repeatedly engaged in underhanded tactics to hoodwink SunTrust underwriters into approving falsified loan applications. The defendants were thereafter rewarded for their deception by the commissions that SunTrust paid. The defendants ask us to ignore their efforts to deceive SunTrust and to instead focus on SunTrust's business model. If we were inclined to indulge the defendants' misdirection — and we are not — the witness Daloia refuted the allegation that SunTrust was insulated from harm if the fraudulent loans went into default. Because of the guilty verdicts, that explanation was necessarily accepted by the jury.

charge, both prior to and during the deliberations. Notably, the court instructed the jury in the charge — in words that refute the defendants' contention of error — that the "verdict must be unanimous on each count as to each defendant." *See* J.A. 1330. The court further explained that the jury would receive "a verdict form for each defendant," and pursuant thereto had to reach and return a "not guilty or guilty" verdict on each charge as to each defendant. *Id.*

During the deliberations, the jury sent the court a note that said: "According to the judge's instructions, if we find the Defendants guilty of [conspiracy to commit wire fraud], is guilt assumed for all other counts?" *See* J.A. 1364. The court responded — with the prior approval of the lawyers — as follows:

> As to your question, the answer is no. That if you find the Defendants guilty [of conspiracy to commit wire fraud], guilt is not assumed for all counts. You have to look at each and every count for each and every defendant in accordance with the instructions that I gave you and reach an individual verdict on each and every one of the counts.

Id. at 1351. The defendants argue that the supplemental instruction was not sufficient because it was given after the deliberations had begun and the jury had already agreed on its verdicts. The government rejects that assertion, emphasizing that the jury had certainly not agreed on verdicts when the note was sent — as evidenced by the fact that the jury had thereafter sought even more guidance from the court. *See id.* at 1365.

3.

We agree with the government that the instructions adequately covered the defendants' proposed instruction concerning the jury's duty to give individual consideration to each offense alleged. *See United States v. Bartko*, 728 F.3d 327, 343

(4th Cir. 2013) (explaining there is no abuse of discretion where jury charge "substantially covered" rejected instruction). More specifically, the jury was told that the verdict had to be "unanimous on each count as to each defendant." *See* J.A. 1330. That directive was supported by the verdict forms themselves, along with the supplemental instruction given during the deliberations. Notably, a separate verdict form was provided to the jury for each defendant, with the separate counts against each defendant listed thereon, thus requiring a separate verdict on each count. And as the completed verdict forms clearly demonstrate, the jurors acted precisely as the trial court directed. *Id.* at 1366-69. For example, Raza was acquitted on three of the seven counts reflected on his verdict form, and his wife Humaira Iqbal was acquitted on one of the three charges lodged against her. The jurors were unquestionably careful and conscientious in the performance of their exceedingly important duties. Finally, the jurors confirmed the accuracy of each of the verdicts — unanimously — in open court. *Id.* at 1358. In these circumstances, we are satisfied that the trial court did not err in failing to give the defendants' proposed instruction.

IV.

Pursuant to the foregoing, we are obliged to sustain the convictions of each defendant and affirm the judgments of the district court.

AFFIRMED

APPENDIX B

FILED: January 5, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4247 (L)
(1:15-cr-00118-CMH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHSIN RAZA

Defendant - Appellant

O R D E R

Upon consideration of submissions relative to the motion to stay mandate, the court denies the motion.

Entered at the direction of the panel: Judge Niemeyer, Judge King and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C

FILED: December 18, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4247 (L)
(1:15-cr-00118-CMH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHSIN RAZA

Defendant - Appellant

No. 16-4259
(1:15-cr-00118-CMH-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FARUKH IQBAL

Defendant - Appellant

No. 16-4261

(1:15-cr-00118-CMH-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHAMMAD ALI HAIDER

Defendant - Appellant

No. 16-4262
(1:15-cr-00118-CMH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HUMAIRA IQBAL

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge King, and Judge

Harris.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

FILED: June 1, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4247 (L)
(1:15-cr-00118-CMH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHSIN RAZA

Defendant - Appellant

No. 16-4259
(1:15-cr-00118-CMH-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FARUKH IQBAL

Defendant - Appellant

No. 16-4261
(1:15-cr-00118-CMH-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHAMMAD ALI HAIDER

Defendant - Appellant

No. 16-4262
(1:15-cr-00118-CMH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HUMAIRA IQBAL

Defendant - Appellant

O R D E R

Upon consideration of submissions relative to the motions for release

pending appeal filed by Appellants Mohsin Raza, Farukh Iqbal, Mohammad Haider, and Humaira Iqbal, the court grants the motions and releases Appellants on bond pending appeal under the conditions of release previously imposed by the district court.

The Clerk is directed to transmit a copy of this order to the United States Marshal for the Eastern District of Virginia.

Entered at the direction of Judge Wynn with the concurrence of Judge Duncan and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX E

FILED
MAY - 3 2016
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA
v.

Case Number: 1:15CR00118-001

MOHSIN RAZA

USM Number: 85675-083
Defendant's Attorney: Thomas M. Buchanan, Esquire

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1, 3, 4, and 6 of the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	1
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	3
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	4
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	6

The defendant was found not guilty on Counts 2, 5, and 7 of the Indictment.

As pronounced on April 29, 2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 3rd day of May, 2016.

/s/
Claude M. Hilton
United States District Judge

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWENTY-FOUR (24) MONTHS.

This term of imprisonment consists of terms of TWENTY-FOUR (24) MONTHS on each of Counts 1, 3, 4, and 6, to run concurrently with each other.

The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to the facility in Montgomery, Alabama.

The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons, as notified by the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

This term consists of terms of TWO (2) YEARS on each of Counts 1, 3, 4, and 6, to run concurrently with each other.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall cooperate with any orders or directives of the Bureau of Immigration and Customs Enforcement.

2) The defendant shall provide the probation officer access to any requested financial information.

3) The defendant shall undergo any mental health treatment or monitoring as directed by the probation officer.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$1,923,324.58
	3	$100.00	$0.00	$0.00
	4	$100.00	$0.00	$0.00
	6	$100.00	$0.00	$0.00
TOTALS:		**$400.00**	**$0.00**	**$1,923,324.58**

FINES

No fines have been imposed in this case.

RESTITUTION

The defendant shall pay restitution in the amount of $1,923,324.58, pursuant to the Restitution Order entered by the Court on April 29, 2016.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment and restitution shall be due in full immediately.

Interest on the restitution is waived. On any unpaid balance, the defendant shall pay to the Clerk at least $100.00 per month to commence within 60 days after release from confinement.

The defendant shall forfeit the defendant's interest in the following property to the United States:

SEE Consent Order of Forfeiture entered by the Court on April 29, 2016.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

FILED
MAY - 3 2016
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA
v.

Case Number: 1:15CR00118-002

HUMAIRA IQBAL

USM Number: 85674-083
Defendant's Attorney: John Nassikas III, Esquire

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1 and 3 of the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	1
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	3

The defendant was found not guilty on Count 5 of the Indictment.

As pronounced on April 29, 2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 3rd day of May, 2016.

/s/
Claude M. Hilton
United States District Judge

Defendant's Name: **IQBAL, HUMAIRA**
Case Number: **1:15CR00118-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FIFTEEN (15) MONTHS.

This term of imprisonment consists of terms of FIFTEEN (15) MONTHS on each of Counts 1 and 3, to run concurrently with each other.

The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to the facility in Alderson, West Virginia.

The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons, as notified by the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: IQBAL, HUMAIRA
Case Number: 1:15CR00118-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

This term consists of terms of TWO (2) YEARS on each of Counts 1 and 3, to run concurrently with each other.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: IQBAL, HUMAIRA
Case Number: 1:15CR00118-002

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall provide the probation officer access to any requested financial information.

Defendant's Name: IQBAL, HUMAIRA
Case Number: 1:15CR00118-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$1,923,324.58
	3	$100.00	$0.00	$0.00
TOTALS:		**$200.00**	**$0.00**	**$1,923,324.58**

FINES

No fines have been imposed in this case.

RESTITUTION

The defendant shall pay restitution in the amount of $1,923,324.58, pursuant to the Restitution Order entered by the Court on April 29, 2016.

Defendant's Name: **IQBAL, HUMAIRA**
Case Number: **1:15CR00118-002**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment and restitution shall be due in full immediately.

Interest on the restitution is waived. On any unpaid balance, the defendant shall pay to the Clerk at least $100.00 per month to commence within 60 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

FILED
MAY - 3 2016
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA
v.

Case Number: 1:15CR00118-003

FARUKH IQBAL

USM Number: 85676-083
Defendant's Attorney: Peter White, Esquire

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1 and 2 of the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	1
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	2

As pronounced on April 29, 2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 3rd day of May, 2016.

/s/
Claude M. Hilton
United States District Judge

Defendant's Name: IQBAL, FARUKH
Case Number: 1:15CR00118-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWELVE (12) MONTHS and ONE (1) DAY.

This term of imprisonment consists of terms of TWELVE (12) MONTHS and ONE (1) DAY on each of Counts 1 and 2, to run concurrently with each other.

The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to the facility in Cumberland, Maryland.

The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons, as notified by the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: IQBAL, FARUKH
Case Number: 1:15CR00118-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

This term consists of terms of TWO (2) YEARS on each of Counts 1 and 2, to run concurrently with each other.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: IQBAL, FARUKH
Case Number: 1:15CR00118-003

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall provide the probation officer access to any requested financial information.

Defendant's Name: IQBAL, FARUKH
Case Number: 1:15CR00118-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$1,923,324.58
	2	$100.00	$0.00	$0.00
TOTALS:		**$200.00**	**$0.00**	**1,923,324.58**

FINES

No fines have been imposed in this case.

RESTITUTION

The defendant shall pay restitution in the amount of $1,923,324.58, pursuant to the Restitution Order entered by the Court on April 29, 2016.

Defendant's Name: IQBAL, FARUKH
Case Number: 1:15CR00118-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment and restitution shall be due in full immediately.

Interest on the restitution is waived. On any unpaid balance, the defendant shall pay to the Clerk at least $100.00 per month to commence within 60 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

MAY - 3 2016
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA
v.

Case Number: 1:15CR00118-004

MOHAMMAD ALI HAIDER

USM Number: 85677-083
Defendant's Attorney: Thomas Connolly, Esquire

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1 and 7 of the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	1
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	7

As pronounced on April 29, 2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 3rd day of May, 2016.

/s/
Claude M. Hilton
United States District Judge

Defendant's Name: HAIDER, MOHAMMAD ALI
Case Number: 1:15CR00118-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWELVE (12) MONTHS and ONE (1) DAY.

This term of imprisonment consists of terms of TWELVE (12) MONTHS and ONE (1) DAY on each of Counts 1 and 7, to run concurrently with each other.

The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to the facility in Butner, North Carolina.

The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons, as notified by the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: HAIDER, MOHAMMAD ALI
Case Number: 1:15CR00118-004

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

This term consists of terms of TWO (2) YEARS on each of Counts 1 and 7, to run concurrently with each other.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: HAIDER, MOHAMMAD ALI
Case Number: 1:15CR00118-004

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall provide the probation officer access to any requested financial information.

2) The defendant shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial costs to be paid by the defendant, all as directed by the probation officer.

3) The defendant shall undergo any mental health treatment or monitoring as directed by the probation officer.

Defendant's Name: HAIDER, MOHAMMAD ALI
Case Number: 1:15CR00118-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$1,923,324.58
	7	$100.00	$0.00	$0.00
TOTALS:		**$200.00**	**$0.00**	**1,923,324.58**

FINES

No fines have been imposed in this case.

RESTITUTION

The defendant shall pay restitution in the amount of $1,923,324.58, pursuant to the Restitution Order entered by the Court on April 29, 2016.

Defendant's Name: HAIDER, MOHAMMAD ALI
Case Number: 1:15CR00118-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment and restitution shall be due in full immediately.

Interest on the restitution is waived. On any unpaid balance, the defendant shall pay to the Clerk at least $100.00 per month to commence within 60 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

FILED
MAY 20 2016
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA
v.

Case Number: 1:15CR00118-001

MOHSIN RAZA

USM Number: 85675-083
Defendant's Attorney: Thomas M. Buchanan, Esquire

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1, 3, 4, and 6 of the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	1
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	3
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	4
18 U.S.C. §§ 1343 and 2	Wire Fraud Affecting a Financial Institution	Felony	02/05/2007	6

The defendant was found not guilty on Counts 2, 5, and 7 of the Indictment.

As pronounced on April 29, 2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 20th day of May, 2016.

Claude M. Hilton
United States District Judge

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWENTY-FOUR (24) MONTHS.

This term of imprisonment consists of terms of TWENTY-FOUR (24) MONTHS on each of Counts 1, 3, 4, and 6, to run concurrently with each other.

The Court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be designated to the facility in Cumberland, Maryland; or in the alternative if there is no space at that facility, to the facility in Morgantown, West Virginia.

The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons, as notified by the United States Marshal, after co-defendant Humaira Iqbal (1:15cr00118-002) has been released.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

This term consists of terms of TWO (2) YEARS on each of Counts 1, 3, 4, and 6, to run concurrently with each other.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall cooperate with any orders or directives of the Bureau of Immigration and Customs Enforcement.

2) The defendant shall provide the probation officer access to any requested financial information.

3) The defendant shall undergo any mental health treatment or monitoring as directed by the probation officer.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$1,923,324.58
	3	$100.00	$0.00	$0.00
	4	$100.00	$0.00	$0.00
	6	$100.00	$0.00	$0.00
TOTALS:		**$400.00**	**$0.00**	**$1,923,324.58**

FINES

No fines have been imposed in this case.

RESTITUTION

The defendant shall pay restitution in the amount of $1,923,324.58, pursuant to the Restitution Order entered by the Court on April 29, 2016.

Defendant's Name: RAZA, MOHSIN
Case Number: 1:15CR00118-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment and restitution shall be due in full immediately.

Interest on the restitution is waived. On any unpaid balance, the defendant shall pay to the Clerk at least $100.00 per month to commence within 60 days after release from confinement.

The defendant shall forfeit the defendant's interest in the following property to the United States:

SEE Consent Order of Forfeiture entered by the Court on April 29, 2016.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	:	
-vs-	:	Case No. 1:15-CR-118
MOHSIN RAZA and HUMAIRA IQBAL and FARUKH IQBAL and MOHAMMAD ALI HAIDER, Defendants.	:	

V O L U M E 6

TRIAL PROCEEDINGS

February 1, 2016

Before: Claude M. Hilton, Judge

And a Jury

APPEARANCES:

Jack Hanly and Joseph A. Capone,
Counsel for the United States

G. Derek Andreson, Thomas M. Buchanan, Matthew M. Saxton, and
Peter G. Osyf, Counsel for Defendant Raza

John N. Nassikas, Amy Jeffress, and Alex Berrang,
Counsel for Defendant H. Iqbal

Peter H. White and Jeffrey F. Robertson,
Counsel for Defendant F. Iqbal

Thomas G. Connolly, Patrick P. O'Donnell, and
Stephen W. Miller, Counsel for Defendant Haider

The Defendants, M. Raza, H. Iqbal, F. Iqbal, and M.A. Haider,
in person

INDEX

CLOSING ARGUMENTS BY:

COURT'S JURY INSTRUCTIONS

Now, Counts 2 through 7 charge the defendants with transmitting wire communications in interstate commerce.

Now, Section 1343 of Title 18, United States Code, provides that whoever, having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, and transmits or causes to be transmitted by means of a wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be guilty of an offense the United States.

Now, there are five essential elements to this offense that the Government must prove. First, the defendant knowingly devised or knowingly participated in a scheme or artifice to defraud, or knowingly devised or knowingly participated in a scheme or artifice to obtain money or property by means of false or fraudulent pretenses or promises.

Two, the scheme or artifice to defraud, or the pretenses, representations, or promises, were material; that is, they would reasonably influence a person to part with money or property.

Three, that the defendant did so with the intent to defraud.

And four, in advancing, or furthering, or carrying

A material fact is a fact which may be of importance to a reasonable person in making a decision about a particular matter or transaction.

Now, the term "false or fraudulent pretenses, representations, or promises" includes actual, direct false statements, as well as half-truths, and includes the knowing concealment of facts that are material or important to the matter in question that were made or used with the intent to defraud.

It is not necessary for the Government to prove that a defendant was actually successful in defrauding anyone or in obtaining money or property by means of false or fraudulent pretenses, representations, or promises.

It is not necessary for the Government to prove that anyone lost any money or property as a result of the scheme or plan to defraud and to obtain money or property by means of false or fraudulent pretenses, representations, or promises.

An unsuccessful scheme or plan to defraud or to obtain money by means of false or fraudulent pretenses, representations, or promises is as illegal as a scheme or plan that is ultimately successful.

Now, the phrase "transmission by means of wire, radio, or television communication in interstate commerce" means to send from one state to another by means of telephone or telegraph lines or by means of radio or television.

The term "knowingly" as used in these instructions to describe the alleged state of mind of the defendant means that the defendant was conscious and aware of the defendant's act or omission, realized what the defendant was doing or what was happening around him or her, and did not act because of ignorance, mistake, or accident.

An act is done willfully if done voluntarily and intentionally and with the specific intent to do something the law prevents; that is to say, with the bad purpose either to disobey or to disregard the law.

A statement or representation is material if it has a natural tendency to influence or is capable of influencing a decision or action.

"Interstate commerce" means commerce, trade, or travel between one state, territory, possession, or the District of Columbia and another state, territory, or possession.

For the purpose of the Government's wire fraud charges, a financial institution is defined by federal statute and does cover the SunTrust Bank. It does not, however, cover SunTrust Mortgage.

Now, a member of a conspiracy who commits another crime during the existence or the life of a conspiracy, and commits this other crime in order to further or somehow advance the goals or objectives of the conspiracy, may be found by you

APPENDIX G

FILED

UNITED STATES DISTRICT COURT

2015 MAY 22 A 11:45

Eastern District of Virginia

United States of America

V.

MOHSIN RAZA

Defendant

ORDER SETTING CONDITIONS OF RELEASE

Case Number: 1:15CR118-001

IT IS ORDERED that the release of the defendant is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. Attorney in writing before any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) United States District Court

401 Courthouse Sq., Alexandria, VA on 9/25/15 @ 9:00 for Motions (Place; Date and Time)

10/27/15 @ 10:00 for Trial

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

(✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of FIFTY THOUSAND $ 00/100 dollars ($ 50,000.00) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) __________
(Address) __________
(City and State) __________ (Tel.No.) __________

who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: __________
Custodian of Proxy

(X)(7) The defendant shall:

( ) (a) maintain or actively seek employment.

( ) (b) maintain or commence an educational program. & THE DISTRICT OF MARYLAND

(X) (c) abide by the following restriction on his personal associations, place of abode, or travel:
Do not depart the Washington D.C. metropolitan area without prior approval of Pretrial Services or the Court, with the exception that he be permitted to travel to Texas

( ) (d) ~~avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:~~ [illegible]

(X) (e) report on a regular basis to the following agency: **Pretrial Services.**

( ) (f) comply with the following curfew: __________

( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapons.

( ) (h) refrain from excessive use of alcohol, and any use or unlawful possession of a narcotic drug or controlled substance defined in 21 U.S.C. 802 unless prescribed by a licensed medical person.

( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: __________

( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: __________

( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: __________

( ) (l) execute a bail bond with the solvent sureties in the amount of $__________

( ) (m) return to custody each (week) day as of ______ o'clock after being released each (week) day as of ______ o'clock for employment, schooling, or the following limited purpose(s): __________

(X) (n) surrender any passport or other travel documents to: Pretrial Services

(X) (o) obtain no passport or travel documents.

( ) (p) undergo substance abuse testing and/or treatment as directed at the direction of Pretrial Services.

( ) (q) the defendant shall not operate a motor vehicle without a valid license.

( ) (r) the defendant is placed on home detention with electronic monitoring as directed.

(X) (s) Notify any current or future employer of charged offense if deemed necessary by PTS

X (t) Do not open any lines of credit w/out approval of PTS or the Court & Allow access to all financial records as directed by PTS.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a $250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a $250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than $250,000 or imprisoned for not more than 10 years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, you shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, you shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Signature of Defendant

Address

CHANTILLY VA. 281-726-4836

City and State Telephone

Directions to United States Marshal

( ) The defendant is ORDERED released after processing.
( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 22, 2015

Claude M. Hilton
Signature of Judicial Officer

CLAUDE M. HILTON
U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

UNITED STATES DISTRICT COURT

2015 MAY 22 A

Eastern District of Virginia

United States of America

V.

HUMAIRA IQBAL

Defendant

ORDER SETTING CONDITIONS OF RELEASE

Case Number: 1:15CR118-002

IT IS ORDERED that the release of the defendant is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. Attorney in writing before any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) United States District Court

401 Courthouse Sq., Alexandria, VA on 9/25/15 @ 9:00 for Motions
Place
Date and Time
10/27/15 @ 10:00 for Trial

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

(✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of FIFTY-THOUSAND & 00/100 dollars ($ 50,000.00) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) _____
(Address) _____
(City and State) _____ (Tel.No.) _____
who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian of Proxy

(X) (7) The defendant shall:
( ) (a) maintain or actively seek employment.
( ) (b) maintain or commence an educational program.
(X) (c) abide by the following restriction on his personal associations, place of abode, or travel:
Do not depart the Washington D.C. metropolitan area without prior approval of Pretrial Services or the Court. With the exception that she be permitted to travel to Texas

( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses: _____

(X) (e) report on a regular basis to the following agency: **Pretrial Services.**
( ) (f) comply with the following curfew: _____

( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapons.
( ) (h) refrain from excessive use of alcohol, and any use or unlawful possession of a narcotic drug or controlled substance defined in 21 U.S.C. 802 unless prescribed by a licensed medical person.
( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: _____

( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: _____

( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: _____

( ) (l) execute a bail bond with the solvent sureties in the amount of $_____
( ) (m) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____
(X) (n) surrender any passport or other travel documents to: _____
(X) (o) obtain no passport or travel documents.
( ) (p) undergo substance abuse testing and/or treatment as directed at the direction of Pretrial Services.
( ) (q) the defendant shall not operate a motor vehicle without a valid license.
( ) (r) the defendant is placed on home detention with electronic monitoring as directed.
(X) (s) Do not open any lines of credit & shall provide PTS access to financial/self-employment records as directed.
X (+) Notify any future employer of the instant offenses if deemed necessary by PTS.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a $250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a $250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than $250,000 or imprisoned for not more than 10 years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, you shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, you shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Signature of Defendant

Address

Chantilly VA 20151

City and State Telephone

Directions to United States Marshal

( ) The defendant is ORDERED released after processing.

( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 22, 2015

Claude M. Hilton
Signature of Judicial Officer

CLAUDE M. HILTON
U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

FILED

UNITED STATES DISTRICT COURT

2015 MAY 22 A 11: 18

Eastern District of Virginia

United States of America

V.

FARUKH IQBAL

Defendant

ORDER SETTING CONDITIONS OF RELEASE

Case Number: 1:15cr118-003

IT IS ORDERED that the release of the defendant is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. Attorney in writing before any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) United States District Court

401 Courthouse Sq., Alexandria, VA on 9/25/15 @ 9:00 for Motions, (Place)

10/27/15 @ 10:00 for Trial. (Date and Time)

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

(✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of FIFTY THOUSAND & 00/100 dollars ($ 50,000.00) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) _____
(Address) _____
(City and State) _____ (Tel.No.) _____
who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian of Proxy

(X) (7) The defendant shall:
( ) (a) maintain or actively seek employment.
( ) (b) maintain or commence an educational program.
(X) (c) abide by the following restriction on his personal associations, place of abode, or travel:
Do not depart the Washington D.C. metropolitan area without prior approval of Pretrial Services or the Court.

( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses: _____

(X) (e) report on a regular basis to the following agency: **Pretrial Services.**
( ) (f) comply with the following curfew: _____

( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapons.
( ) (h) refrain from excessive use of alcohol, and any use or unlawful possession of a narcotic drug or controlled substance defined in 21 U.S.C. 802 unless prescribed by a licensed medical person.
( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: _____

( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: _____

( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: _____

( ) (l) execute a bail bond with the solvent sureties in the amount of $_____
( ) (m) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____
(X) (n) surrender any passport or other travel documents to: Pretrial Services
(X) (o) obtain no passport or travel documents.
( ) (p) undergo substance abuse testing and/or treatment as directed at the direction of Pretrial Services.
( ) (q) the defendant shall not operate a motor vehicle without a valid license.
( ) (r) the defendant is placed on home detention with electronic monitoring as directed.
(X) (s) Notify any future employer of instant offense if deemed necessary by PTS.
X (t) Do not open any new lines of credit & provide PTS access to financial/self-employment records as directed.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a $250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a $250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than $250,000 or imprisoned for not more than 10 years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, you shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, you shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Signature of Defendant

Address

Chantilly VA 703-629-3270
City and State Telephone

Directions to United States Marshal

( ) The defendant is ORDERED released after processing.
( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 22, 2015

Signature of Judicial Officer

CLAUDE M HILTON
U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

FILED

UNITED STATES DISTRICT COURT

2015 MAY 22 A 11: 17

Eastern District of Virginia

United States of America

V.

ORDER SETTING CONDITIONS OF RELEASE

MOHAMMAD ALI HAIDER Case Number: 1:15CR118-004

Defendant

IT IS ORDERED that the release of the defendant is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. Attorney in writing before any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) United States District Court

401 Courthouse Sq., Alexandria, VA on 9/25/15 @ 9:00 for motions, (Place; Date and Time)

10/27/15 @ 10:00 for Trial.

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

(✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of FIFTY THOUSAND & 00/100 dollars ($ 50,000.00) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) _____
(Address) _____
(City and State) _____ (Tel.No.)_____
who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian of Proxy

(X) (7) The defendant shall:
( ) (a) maintain or actively seek employment.
( ) (b) maintain or commence an educational program.
(X) (c) abide by the following restriction on his personal associations, place of abode, or travel:
Do not depart the Washington D.C. metropolitan area without prior approval of Pretrial Services or the Court.

( ) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses: _____

(X) (e) report on a regular basis to the following agency: **Pretrial Services.**
( ) (f) comply with the following curfew: _____

( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapons.
( ) (h) refrain from excessive use of alcohol, and any use or unlawful possession of a narcotic drug or controlled substance defined in 21 U.S.C. 802 unless prescribed by a licensed medical person.
( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: _____

( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: _____

( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: _____

( ) (l) execute a bail bond with the solvent sureties in the amount of $_____
( ) (m) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____
(X) (n) surrender any passport or other travel documents to: Pretrial Services
(X) (o) obtain no passport or travel documents.
( ) (p) undergo substance abuse testing and/or treatment as directed at the direction of Pretrial Services.
( ) (q) the defendant shall not operate a motor vehicle without a valid license.
( ) (r) the defendant is placed on home detention with electronic monitoring as directed.
(X) (s) Notify any future employer of the instant offenses if deemed necessary by PTS.
X (t) Do not open any new lines of credit & provide PTS access to financial/self employment records as directed.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a $250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a $250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than $250,000 or imprisoned for not more than 10 years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, you shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, you shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Signature of Defendant

Address

Chantilly VA 703-998-8980

City and State Telephone

Directions to United States Marshal

( ) The defendant is ORDERED released after processing.

( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 22, 2015

Claude M. Hilton
Signature of Judicial Officer

CLAUDE M. HILTON
U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Criminal No. 1:15-CR-118**
	)	
MOHSIN RAZA, HUMAIRA IQBAL,	)	**The Honorable Claude M. Hilton**
MOHAMMAD ALI HAIDER, and	)	
FARUKH IQBAL,	)	**Trial: January 19, 2016**
	)	
Defendants.	)	
	)	

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

Counsel for Defendants Mohsin Raza, Humaira Iqbal, Farukh Iqbal, and Mohammad Ali Haider respectfully request the Court to include in its charge to the Jury the following instructions for the trial set for January 19, 2016.

Dated: January 11, 2016

Respectfully submitted,

/s/ Thomas M. Buchanan
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WINSTON & STRAWN LLP
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Washington, DC 20006
Tel: (202) 282-5000
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Counsel for Mohsin Raza

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Washington, DC 20036
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Fax: (202) 730-1301
tconnolly@hwglaw.com
Counsel for Mohammed Ali Haider

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of January 2016, I caused a true and correct copy of the foregoing Motion and proposed Order to be filed and served electronically using the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

/s/ John N. Nassikas III

John N. Nassikas III, Esq. (VSB #24077)
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John.Nassikas@aporter.com

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INSTRUCTION NO. 17

The Essential Elements of the Offense Charged

In order to sustain its burden of proof for the crime of using a wire communication in interstate commerce to further a scheme or plan to defraud and to obtain money or property by means of false or fraudulent pretenses, representations, or promises as charged in Counts 2 through 7 of the indictment, the government must prove the following five (5) essential elements beyond a reasonable doubt:

One: The defendants knowingly devised or knowingly participated in a scheme or artifice to defraud and to obtain money or property by means of material false or fraudulent pretenses, representations, or promises as detailed in Counts 2 through 7 of the indictment and as summarized in these instructions;

Two: The false or fraudulent pretenses, representation, or promises were material, that is, they were capable of influencing the decisionmaker to which they were directed to part with money or property;

Three: The defendants did so with the intent to defraud;

Four: In advancing, or furthering, or carrying out this scheme to defraud and obtain money or property by means of false or fraudulent pretenses, representations, or promises, the defendants transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

***Five*:** The scheme or artifice to defraud and obtain money or property by means of material false or fraudulent pretenses, representations, or promises affected a financial institution.

(Adapted from 1A O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 47.06 (6th ed. updated through 2015), and from *Neder v. United States*, 527 U.S. 1, 24 (1999), *United States v. Wynn*, 684 F.3d 473, 479 (4th Cir. 2012), *United States v. Mauney*, 129 F. App'x 770, 774 (4th Cir. 2005), and *United States v. Pasquantino*, 336 F.3d 321, 333 (4th Cir. 2003).)

INSTRUCTION NO. 20

"Materiality"—Defined

A statement is "material" if it would have a natural tendency to influence or be capable of influencing a decision of the particular decisionmaker to whom it is addressed—here, the decision of SunTrust to approve and fund mortgages for the properties named in the indictment. Whether the same statement could have mattered to another decisionmaker—a different bank, for example—is not relevant.

Context makes a difference when determining whether a statement is "material." You should consider the circumstances surrounding the decision at issue and the nature of the decision in determining whether any statement was material to that decision.

(Adapted from *Neder v. United States*, 527 U.S. 1, 24 (1999), *United States v. Litvak*, 808 F.3d 160, 172-75, 181-83 (2d Cir. 2015); *Flannery v. SEC*, Nos. 15-1080 & 15-1117, 2015 WL 8121647, at *8 (1st Cir. Dec. 8, 2015); *United States v. Wynn*, 684 F.3d 473, 479 (4th Cir. 2012), *United States v. Mauney*, 129 F. App'x 770, 774 (4th Cir. 2005), and *United States v. Pasquantino*, 336 F.3d 321, 333 (4th Cir. 2003).)