

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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**JOSE SALVADOR LANTIGUA,**  
*Petitioner,*

v.

**UNITED STATES OF AMERICA,**  
*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether, consistent with due process and 28 U.S.C. § 455(a), a sentencing judge should recuse himself when he expressly views his own court as a “victim” of the offense in deciding to sentence a defendant to more than double the recommended sentencing guidelines range?

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Jose Salvador Lantigua respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### **OPINION AND ORDERS BELOW**

The opinion of the Eleventh Circuit, *United States v. Lantigua*, 749 F. App'x 875 (11th Cir. 2018), is provided in the petition appendix at 1a-5a (“Pet. App.”). The Eleventh Circuit’s denial of rehearing and rehearing en banc is provided at Pet. App. 8a. The district court’s sentencing decision is provided at Pet. App. 9a-37a.

### **JURISDICTION**

The Eleventh Circuit issued its decision on September 20, 2018. Pet. App. 1a. Mr. Lantigua timely filed a petition for rehearing and rehearing en banc on October 11, 2018, which the Eleventh Circuit denied on December 7, 2018. Pet. App. 8a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the U.S. Constitution provides, in relevant part:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

Section 455(a) of Title 18, U.S. Code, provides:

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

### **STATEMENT OF THE CASE**

The sentencing judge expressly viewed its own court as a “victim” of Petitioner Lantigua’s offense and relied upon that view in imposing a sentence of 144 months – more than double the recommended sentencing guidelines range of 51 to 63 months. Pet. App. 14a, 17a-18a, 21a-22a.

None of the counts against Mr. Lantigua – conspiracy to commit mail and wire fraud, bank fraud, passport fraud, and aggravated identify theft – charged an offense where the court was a “victim.” *See Doc. 1; CR-141 Doc. 1 (attachment number 3).*<sup>1</sup> The factual basis for Mr. Lantigua’s guilty pleas, entered before a magistrate judge of the same court, did not include any statement that the district court was itself a victim. *See Doc. 12 at 21-26; Doc. 50 at 28-35; CR-141 Doc. 37 at 21-24.* And, nowhere in the presentence report (PSR) prepared for the sentencing had there been any notice that the sentencing court viewed itself as a victim of Mr. Lantigua’s offense. *See Doc. 26 (PSR) at ¶¶ 1-35.* The sentencing judge nonetheless relied upon its view that its own court had been a victim of the offense to increase Mr. Lantigua’s sentence. The important question presented is whether due process and 28 U.S.C. § 455(a) demand that a sentencing court, in such a circumstance, recuse itself.

1. The instant case has resulted in Mr. Lantigua’s only criminal convictions. At the time of sentencing, Mr. Lantigua was 63 years old and had no prior convictions or arrests. Doc. 26 (PSR) at page 3 and ¶¶ 65-70.

The offenses began in 2012, when Mr. Lantigua obtained two loans, in the amount of \$1 million each, from American Enterprise Bank in Jacksonville, Florida. Mr. Lantigua submitted false and fraudulent documents in applying for the loans, including representing that he had a life insurance policy from Hartford Universal Life with a cash value of over \$2 million. Doc. 12 at 26; Doc. 50 at 34-35.

With his family business failing and having borrowed based upon fraudulent documents, Mr. Lantigua decided to fake his own death and allow his family to inherit his property and life

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<sup>1</sup> “Doc.” refers to docket entries in Case No. 3:16-CR-125-J-32PDB (M.D. Fla.), and “CR-141 Doc.” refers to docket entries in Case No. 3:16-CR-141-J-32PDB (M.D. Fla.).

insurance payments to pay off outstanding debts. Doc. 25 at 12-13. While he faked his death, Mr. Lantigua's wife, Daphne Simpson, used an attorney to submit claims for life insurance benefits to several life insurance companies. Doc. 12 at 23-24; Doc. 50 at 31. The use of the mail and interstate phone calls formed the basis for the mail and wire fraud conspiracy count. Doc. 12 at 24; Doc. 50 at 31-32. The life insurance claims led to federal lawsuits in the Jacksonville Division of the U.S. District Court for the Middle District of Florida involving disputes over the life insurance benefits. *See* Pet. App. 17a-18a. These federal lawsuits were heard by the same district judge who sentenced Mr. Lantigua after he was ultimately found to be alive. *See id.*<sup>2</sup>

Mr. Lantigua was found to be alive in the Western District of North Carolina. In November 2014, he had applied for a passport in another individual's name. That application led to an investigation and Mr. Lantigua's arrest. Doc. 12 at 24-26; Doc. 50 at 32-24.

2. In the U.S. District Court for the Western District of North Carolina, Mr. Lantigua was charged by indictment with passport fraud, 18 U.S.C. § 1542, and aggravated identity theft, 18 U.S.C. § 1028A. Mr. Lantigua entered guilty pleas before that court. *See* CR-141 Doc. 1.

Mr. Lantigua was also charged with bank fraud, 18 U.S.C. § 1344, and conspiracy to commit mail and wire fraud, 18 U.S.C. § 1349, in the Jacksonville Division of the U.S. District Court for the Middle District of Florida. Mr. Lantigua entered guilty pleas to these offenses pursuant to a plea agreement. Docs. 1, 12, 50.

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<sup>2</sup> *See also United States v. Daphne Simpson*, Case No. 3:16-CR-99-J-32MCR, Doc. 30 at 4 (M.D. Fla.) ("And the other thing that's true about this case is that I actually handled the civil cases, the insurance coverage cases, that were present in the court back in 2015. And so I have a fairly good familiarity with what was happening during that time period. And so I'd just point that out, that I do have some background in this case even before I got involved in the criminal side of it. Of course, those cases largely went away once it was determined that Mr. Lantigua is -- was alive, but -- but, still, I did have hearings in those cases and I had involvement in the cases. I wrote a couple of orders. The magistrate judge wrote a report and recommendation. And so I do have that background, as well, as we -- as we begin today.").

The parties thereafter attempted to transfer the North Carolina counts to the Jacksonville Division for sentencing, pursuant to Federal Rule of Criminal Procedure 20. *See* CR-141 Doc. 1. When the Jacksonville district judge raised with the parties that Rule 20 provided a different procedure, Mr. Lantigua's guilty pleas in North Carolina were vacated and re-entered in Jacksonville. Doc. 51 at 3-4; CR-141 Docs. 5, 37.

As a result, the Jacksonville district judge sentenced Mr. Lantigua on all four counts – conspiracy to commit mail and wire fraud; bank fraud; passport fraud; and aggravated identity theft. *See* Doc. 37. The recommended guidelines range for the three fraud offenses was 51 to 63 months in prison. Doc. 26 (PSR) at ¶ 103. With a two-year consecutive term required for aggravated identity theft, the guidelines range for all of Mr. Lantigua's offenses was 75 to 87 months in prison. *See id.* at ¶ 104.

Although neither Mr. Lantigua's guilty plea nor the PSR included the sentencing court as a "victim," the judge expressed at least three times that its court was a victim of the offense. First, the judge counted its court among the victims, stating:

Mr. Lantigua -- a man who served with distinction in the military and then became a respected and valued member of his community, he stands convicted of committing a particularly pernicious fraud which counts as its victims banks, insurance companies, governmental agencies, his friends, his family, and even this very court.

Pet. App. 14a (emphases added). Second, the judge described the offense by including the civil lawsuits that had been before him, stating:

Ms. Simpson then duped a respected Jacksonville law firm which advocated in both state court and this court for payment on these policies, spinning an incredible tale of CIA and cartel involvement.

These lawsuits and the events surrounding them caused the insurance companies and creditors, including the bank, and also Mr. Wienckowski, to embark on a massive and expensive investigation.

This went on for two years. It involved having people in Venezuela, involved court hearings. It involves all kinds of time, expense, and effort.

Pet. App. 17a-18a (emphasis added).

Finally, and significantly, the judge expressly relied upon its view that his court had been used during the offense in deciding to sentence Mr. Lantigua to more than double the recommended guidelines range:

[T]he high end of the guideline counts for the bank fraud, the insurance fraud, and the passport fraud are 63 months, which is a little over five years, and then I add the 24 months, but the five years is what I'm focused on, five years, three months.

I find this sufficiently insufficient to account for the gravity of the offense, the -- all the -- to take into account all the persons who suffered, to take into account the use of the court's system to try to achieve fraudulent ends, and all of the attributes of the fraud that I talked about at the beginning of my discussions.

I -- I just do not find the 63-month number, which is the high end of the guidelines, to be the appropriate sentence in this case and that an upward variance is required.

Pet. App. 21a-22a (emphasis added). The court then imposed a sentence of 144 months on the fraud counts, to be followed by a 2-year prison term for the aggravated identity theft. Pet. App. 23a-24a.<sup>3</sup>

The guidelines range for Mr. Lantigua's fraud offenses was calculated based upon an intended loss of over \$8 million. Doc. 26 (PSR) at ¶ 45. The guidelines recommend a sentence of 144 months, the sentence imposed in this case, for a fraud offense involving a loss of at least \$150 million.<sup>4</sup> The 144-month sentence imposed also exceeded the guidelines range that would

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<sup>3</sup> Because the passport fraud count had a 10-year maximum, the district court imposed 120 months on that count. *See* 18 U.S.C. § 1542; Doc. 37 at 2.

<sup>4</sup> To arrive at a recommended guidelines range of at least 144 months, the court would have had to increase the guidelines range by 8 additional levels (Total Offense Level 32, CHC I), which equates to a loss between \$150 million and \$250 million. *See* U.S.S.G. § 2B1.1(b)(1)(N).

have applied had Mr. Lantigua not accepted responsibility and proceeded to trial – by almost 5 years.<sup>5</sup>

3. On appeal, Mr. Lantigua challenged the procedural and substantive reasonableness of his sentence. Among other arguments, Mr. Lantigua contended that the court had relied upon an impermissible factor – i.e., that the court was itself a victim of the offense – to impose the sentence. Mr. Lantigua alternatively argued that the court should have recused itself because it viewed itself as a victim of the offense. *See* Corrected Initial Br. at 24-26 (11th Cir. Nov. 30, 2017); Reply Br. at 5-8 (11th Cir. Feb. 9, 2018).

The Eleventh Circuit affirmed. Pet. App. 5a-6a. The court of appeals concluded that the district court had not relied upon an impermissible factor. The Eleventh Circuit read the district court’s sentencing explanation to be “clear that it did not consider itself a victim of Lantigua’s fraud in the traditional sense; instead, it was accounting for Lantigua’s abuse of the judicial system generally as a means to facilitate his fraud.” Pet. App. 6a. Based upon this reasoning, and its conclusion that the district court’s statements did not “evidence partiality,” the Eleventh Circuit determined that the district court had not erred, plainly or otherwise, by not recusing itself. Pet. App. 6a n.3.

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<sup>5</sup> Without the three-level adjustment for acceptance of responsibility, the guidelines range would have been 70 to 87 months (Total Offense Level 27, CHC I). Doc. 26 (PSR) at ¶¶ 60, 67. The 144-month sentence exceeds the high end of this guidelines range by 57 months.

## REASONS FOR GRANTING THE WRIT

### **This Court’s Review is Needed to Address Whether Recusal is Required When a Court Expressly Views Itself as a Victim of the Offense in Deciding to Increase a Defendant’s Sentence**

The decision below leaves in a place a federal sentence imposed by a court that expressly viewed itself as a victim of the offense in sentencing the defendant to more than double the recommended sentencing guidelines range. In holding that recusal was not required, the Eleventh Circuit did not take the sentencing court at his word – that it viewed itself as a victim – and did not apply the correct legal standard. This Court’s precedent and the governing statute require the avoidance of “even the appearance of impropriety whenever possible.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988); 28 U.S.C. § 455(a) (providing that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned”). The Eleventh Circuit’s decision below conflicts with precedent of this Court and other circuits and runs afoul of the maxim that “no man can be a judge in his own case.” *In re Murchison*, 349 U.S. 133, 136 (1955). Petitioner Lantigua therefore respectfully requests that this Court exercise its supervisory powers to review his case. Supreme Court Rule 10(a); *see, e.g., Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (reviewing state supreme court decision applying the wrong legal standard in rejecting recusal argument).

1. The Due Process Clause “guarantees ‘an absence of actual bias’ on the part of a judge.” *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (quoting *Murchison*, 349 U.S. at 136). Actual bias, however, is not required for recusal. As this Court has explained, “our system of law has always endeavored to prevent even the probability of unfairness.” *Murchison*, 349 U.S. at 136. Although a judge may not have actual bias, this Court has maintained that “to

perform its high function in the best way ‘justice must satisfy the appearance of justice.’” *Id.* (citation omitted).

To evaluate whether recusal is required, under the Due Process Clause and 28 U.S.C. § 455(a), this Court applies an objective standard. *See Williams*, 136 S. Ct. at 1905; *Liljeberg*, 486 U.S. at 858 n.7. As a matter of due process, this Court examines whether “the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” *Williams*, 136 S. Ct. at 1905. And in 28 U.S.C. § 455(a), Congress provided an objective standard, requiring recusal when the judge’s “impartiality might reasonably be questioned.” *Liljeberg*, 486 U.S. at 858 n.7 (quoting 28 U.S.C. § 455(a)) (internal quotation marks omitted). Significantly, Congress adopted the objective standard “to promote public confidence in the integrity of the judicial process.” *Id.* As this Court has stressed, “The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible.” *Id.* at 865.

Applying an objective standard, this Court has held that a prosecutor or an accuser cannot later serve as a judge in the same case. *See Williams*, 136 S. Ct. at 1905-10 (finding due process violation where judge on appellate court had earlier served as the district attorney who authorized the death penalty in the same case); *Murchison*, 349 U.S. at 136-37 (finding due process violation where same judge sat as both grand jury accuser and then trial judge). The Court has thus described, as a “due process maxim,” that “no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.” *Williams*, 136 S. Ct. at 1905-06 (quoting *Murchison*, 349 U.S. at 136) (internal quotation marks omitted).

The Eleventh Circuit’s decision below runs afoul of this maxim. Just as a prosecutor cannot later serve as a judge in the same case, a victim – who is no less interested than the prosecutor – cannot serve as the sentencing judge in its own case. Indeed, permitting a court to more than double a defendant’s sentence based upon its view that it was a victim of the offense serves neither justice nor the appearance of justice.

The Eleventh Circuit reached the contrary conclusion because it did not apply the correct legal standard – i.e., whether, viewed objectively, the appearance of partiality required recusal. Viewed objectively, a reasonable person might question the impartiality of a court when it views itself as a victim of the offense, and might therefore reasonably question whether the court would seek vindication in the sentence being imposed. A reasonable person would also question that impartiality when the court expressly relies upon the view that it was a victim in imposing a sentence more than double the guidelines range. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009) (“The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. . . . The judge’s own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief.”); *Liteky v. United States*, 510 U.S. 540, 555 (1994) (providing for recusal when opinions formed by the judge based upon current or prior proceedings “display a deep-seated favoritism or antagonism that would make fair judgment impossible”).<sup>6</sup> Here, the sentencing court’s own words establish that it viewed itself as a victim

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<sup>6</sup> The Eleventh Circuit discounted the sentencing court’s words by reasoning that the court had not viewed itself as a victim in the “traditional” sense. Pet. App. 6a & n.3. A court, however, need not view itself as a victim in the “traditional” sense to require recusal. For example, this Court has required recusal in criminal contempt proceedings, as a matter of due process, to provide a defendant a trial “before a judge other than the one reviled by the contemnor.” *Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971); *see also* Fed. R. Crim. P. 42(a)(3) (“If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from

and that it relied upon this view to increase Mr. Lantigua’s sentence. Pet. App. 14a, 17a-18a, 21a-22a. Recusal was required.

2. The Eleventh Circuit’s decision also conflicts with decisions of the Third and Fifth Circuit that have applied the appearance-of-partiality standard and concluded that recusal was required in comparable circumstances. In *United States v. Antar*, 53 F.3d 568, 573-74, 576-79 (3d Cir. 1995), the Third Circuit held that the district judge plainly erred by not recusing himself, based on a statement of the judge at sentencing. That statement, the Third Circuit determined, could lead a reasonable person to question whether the judge’s goal in the criminal case had been to enforce orders he had entered in a related civil case. *Id.* at 579. In reaching this conclusion, the Third Circuit accepted the judge’s own words:

[W]e must be careful not to rewrite what the judge said and render unreasonable the clearest and most obvious reading of the language. After all, we are reviewing a record, and when all is said and done, the transcript of the proceeding speaks for itself. If a reasonable observer is entitled to take the judge at his word—and certainly he or she is so entitled—we think that after reading the judge’s remarks at sentencing, that reasonable observer would think that the judge, as he indicated, had the goal in the trial of recovering substantial funds from the appellants, a goal which their convictions would help him reach.

*Id.* at 576-77.

Unlike the Third Circuit, the Eleventh Circuit did not take the district judge at its word when he stated that he viewed his own court as a victim of the offense based on the related civil cases. Pet. App. 6a. & n.3. The standard, though, is the appearance of partiality. *Antar*, 53 F.3d

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presiding at the contempt trial or hearing unless the defendant consents.”). A judge that has been subject to an individual’s repeated insults, *see id.* at 465-66, is not a “traditional” victim. Recusal was nonetheless required in *Mayberry* because, in light of the individual’s conduct, it was unlikely that any judge in that position could “maintain that calm detachment necessary for fair adjudication.” *Id.* at 465.

at 576-77. The Eleventh Circuit’s decision, which discounts the sentencing judge’s own words, cannot be squared with the appearance-of-partiality standard applied by the Third Circuit.

Nor can the Eleventh Circuit’s decision be squared with the appearance-of-partiality standard applied by the Fifth Circuit in *United States v. Jordan*, 49 F.3d 152 (5th Cir. 1995). In that case, the Fifth Circuit determined that recusal was required where the sentencing judge had a “long, close and multi-faceted friendship” with an individual who had had “an extremely hostile relationship” with the defendant. *Id.* at 157-58. A reasonable person, the Fifth Circuit found, would question the judge’s impartiality in sentencing that defendant in light of the hostile relationship with her friend. *Id.* at 158. The judge sentenced the defendant, a first time offender, to 300 months in prison, a sentence the Fifth Circuit stated seemed “excessively harsh.” *Id.* at 159.

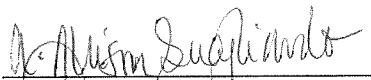
The appearance of partiality at issue in *Jordan* was the risk that the court, in imposing sentence, was vindicating a friend in punishing the defendant. Here, the appearance of partiality is as strong, or even stronger – the court expressly relied on its view that it had been a victim of the offense to sentence Mr. Lantigua, who had no prior convictions, to more than double the high end of the guidelines range. Mr. Lantigua therefore respectfully seeks this Court’s review.

## CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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## **Decision Below**

749 Fed.Appx. 875

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit. UNITED STATES of America, Plaintiff-Appellee, v. Jose Salvador LANTIGUA, Defendant-Appellant.

No. 17-12684

|  
Non-Argument Calendar  
|  
(September 20, 2018)

**Synopsis**

**Background:** Defendant pled guilty to conspiracy to commit mail fraud and wire fraud, bank fraud, passport fraud, and aggravated identity theft. The United States District Court for the Middle District of Florida, Nos. 3:16-cr-00125-TJC-PDB-1 and 3:16-cr-00141-TJC-PDB-1, Timothy J. Corrigan, J., sentenced defendant to 168 months' imprisonment. Defendant appealed.

**Holdings:** The Court of Appeals held that:

[1] District Court's oral pronouncement and statement of reasons for sentencing defendant to 168 months' imprisonment were not in conflict, and thus did not require resentencing;

[2] District Court did not rely on information from civil cases, arising out of attempts to obtain payouts under defendant's life insurance policies, that was not incorporated into record in defendant's criminal case when sentencing defendant; and

[3] District Court did not unreasonably balance statutory sentencing factors when sentencing defendant, and thus, defendant's sentence was not substantively unreasonable.

Affirmed.

West Headnotes (3)

[1] **Sentencing and Punishment**

🔑 Oral and written pronouncements

District Court's oral pronouncement and statement of reasons for sentencing defendant to 168 months' imprisonment for conspiracy to commit mail and wire fraud, bank fraud, and passport fraud, representing upward variance from top of sentencing guidelines range, were not in conflict, and thus did not require resentencing; even though District Court minimized role of specific deterrence as justification for varying upward during sentencing hearing, it did not entirely disregard that factor, and District Court's statement that it was unlikely that defendant would reoffend was not inconsistent with its notation in statement of reasons that it varied upward to protect the public from further crimes. 18 U.S.C.A. §§ 1344, 1349, 1542, 3553(a)(2)(C).

Cases that cite this headnote

[2] **Sentencing and Punishment**

🔑 Use and effect of report

**Sentencing and Punishment**

🔑 Evidence from prior proceedings

District Court did not rely on information from civil cases, arising out of attempts to obtain payouts under defendant's life insurance policies, that was not incorporated into record in defendant's criminal case when sentencing defendant for conspiracy to commit mail fraud and wire fraud, bank fraud, passport fraud, and aggravated identity theft; although District Court was familiar with defendant's conduct based on its handling of civil cases, record in criminal case included letters from bank and insurance representatives discussing impact of defendant's fraud and their attempts to recover money through civil proceedings, and District Court relied on presentence

investigation report (PSI). 18 U.S.C.A. §§ 1028A, 1344, 1349, 1542, 3553(a).

Cases that cite this headnote

[3] **Sentencing and Punishment**

↳ Nature, degree or seriousness of offense

**Sentencing and Punishment**

↳ Factors Related to Offender

**Sentencing and Punishment**

↳ Total sentence deemed not excessive

District Court did not unreasonably balance statutory sentencing factors when sentencing defendant to 168 months' imprisonment for conspiracy to commit mail and wire fraud, bank fraud, and passport fraud, representing upward variance from top of sentencing guidelines range, and thus, defendant's sentence was not substantively unreasonable; by imposing variance, District Court intended to account for nature and circumstances of the offense and defendant's history and characteristics, and District Court thoroughly analyzed the factors as applied to the case. 18 U.S.C.A. §§ 1344, 1349, 1542, 3553(a).

Cases that cite this headnote

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Appeal from the United States District Court for the Middle District of Florida, D.C. Docket Nos. 3:16-cr-00125-TJC-PDB-1, 3:16-cr-00141-TJC-PDB-1

Before TJOFLAT, JILL PRYOR and NEWSOM, Circuit Judges.

**Opinion**

**PER CURIAM:**

Jose Salvador Lantigua was sentenced to 168 months' imprisonment, a significant upward variance from his applicable Sentencing Guidelines range, after he pled guilty to conspiracy to commit mail fraud **\*877** and wire fraud, in violation of 18 U.S.C. § 1349; bank fraud, in violation of 18 U.S.C. § 1344; passport fraud, in violation of 18 U.S.C. § 1542; and aggravated identity theft, in violation of 18 U.S.C. § 1028A. On appeal, Lantigua argues that the district court erred by imposing a procedurally and substantively unreasonable sentence. After careful review, we affirm.

**I. BACKGROUND**

**A. The Fraudulent Scheme**

In April and August 2012, Lantigua applied to borrow \$2 million in loans from Fidelity Bank (formerly known as American Enterprise Bank), a federally insured financial institution in Jacksonville, Florida. During the application process, Lantigua submitted a false and fraudulent statement of a life insurance policy from Hartford Universal Life, reflecting a cash value of more than \$2.4 million, and a false and fraudulent statement of his personal assets and liabilities. Under the loan agreements, Lantigua assigned life insurance benefits as collateral. Based upon the false information provided to the bank, the loans were approved and funded.

In early 2013, with his business financially suffering and having borrowed \$2 million based on fraudulent documents, Lantigua decided to fake his own death and allow his family to collect his life insurance benefits to pay off his outstanding debt. He told his wife, Daphne Simpson, that he suffered from a fatal brain disease and had one year or less to live. He said that he could travel to South America to undergo a potentially life-saving treatment.

Shortly before his trip, Lantigua revealed to Simpson that he had no brain disease, but he continued to lie to her. He told her that his military past was catching up with him. He explained that he had led an Army special operations team, his team had taken out a drug cartel leader, and he was being blackmailed by a rogue CIA agent. Lantigua

told Simpson he had been blackmailed into paying money to avoid exposure to the alleged cartel leader's son. He also said that members of his former team had already been killed and warned Simpson that both of their families were in danger. Simpson believed the fabricated military story and agreed to help him out of fear for their families by applying for Lantigua's life insurance benefits after he secured a sham death certificate.

Lantigua flew to Venezuela, where he obtained the fraudulent death certificate and a fraudulent certificate of cremation. Simpson met Lantigua in Venezuela and used the fraudulent death certificate and certificate of cremation to obtain a certificate of death abroad from the U.S. Embassy. She then returned to the United States with the fake certificates.

Simpson submitted false claims to seven life insurance companies, representing that Lantigua had died in Venezuela. She directed Lantigua's attorney, who was unaware of the scheme, to prepare the documents necessary to seek death benefits from the life insurance companies. The cumulative value of these policies exceeded \$6.6 million, but only three of the companies paid death benefits, so Simpson only received \$871,067.11. Simpson and Lantigua's unwitting attorney went to federal court in an attempt to obtain payment on at least some of the policies.

Meanwhile, Lantigua illegally returned to the United States by paying an individual \$5,000 to take him from the Bahamas to Florida on a fishing boat. Lantigua and Simpson then traveled to their second home in North Carolina, where Lantigua used a New York driver's license and birth certificate in the name of "Ernest Allen Wills" to obtain a North Carolina driver's \*878 license in that name. He used his fraudulent driver's license to apply for a passport in Wills's name. Officials with the U.S. Department of State caught on to Lantigua's fraudulent passport application, and law enforcement arrested him in North Carolina. Lantigua pled guilty to one count each of conspiracy to commit mail and wire fraud, bank fraud, passport fraud, and aggravated identity theft.

## B. The Sentencing Hearing

In preparing the Presentence Investigation Report ("PSI"), a probation officer calculated a total offense level of 24 for Lantigua's convictions for conspiracy to commit mail and wire fraud, bank fraud, and passport fraud. This

calculation included 18 levels based on an intended loss amount of over \$8 million, as well as a three level reduction for Lantigua's acceptance of responsibility. With a total offense level of 24 and a criminal history category of I, the calculated guidelines range for Lantigua's conspiracy, bank fraud, and passport fraud convictions was 51 to 63 months' imprisonment. The guidelines sentence for Lantigua's aggravated identity theft conviction was 24 months consecutive to all other counts, making the total guidelines range 75-87 months. *See U.S.S.G. § 2B1.6.*

The district judge who sentenced Lantigua was the same judge who had presided over the civil cases through which Simpson fraudulently had attempted to recover benefits under Lantigua's life insurance policies. At the sentencing hearing, the district court noted its familiarity with Lantigua's case based on the previous civil cases. The court adopted the guidelines calculation in the PSI without objection from either party. The court entertained extensive argument from the government and defense counsel and reviewed statements from victims of Lantigua's fraud, including Fidelity Bank, Five Star Insurance, and Michael Wienckowski, a former friend who had loaned over \$1.7 million to Lantigua. Even though Wienckowski was not a victim of the counts of conviction, he and his wife spoke at the sentencing hearing about the money they lost as a result of Lantigua's fraud and through litigating against Lantigua and Simpson to recover against them for the fraud.

The district court at length considered the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a).<sup>1</sup> The district court explained that the intended loss amount under the Sentencing Guidelines was a large sum of money, approximately \$8.6 million, and the actual loss was over \$2.8 million. It was this loss amount, the court explained, that drove Lantigua's guidelines range. As to § 3553, the court specifically addressed *each* factor in § 3553(a), describing in detail the nature and circumstances of Lantigua's offenses and his history and characteristics. The court explained that Lantigua had "served with distinction in the military and then became a respected and valued member of his community" but then was "convicted of committing a particularly pernicious fraud which counts as its victims banks, insurance companies, governmental agencies, his friends, his family, and even this very court." Doc. 52 at 88.<sup>2</sup> The district court \*879 commented that Simpson, at Lantigua's urging, had "duped" a law firm into advocating "in both

state court and this court” for payment on the insurance policies. *Id.* at 91. Relatedly, the court stated that “[t]hese lawsuits and the events surrounding them caused the insurance companies and creditors, including the bank, and also Mr. Wienckowski, to embark on a massive and expensive investigation.” *Id.* at 92. The court noted that Lantigua had cooperated with the government and was remorseful. Nonetheless, it explained the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and serve as a deterrent. The court, noting that Lantigua was “unlikely, given these circumstances, [to] commit another fraud,” stated that specific deterrence was “not a big issue.” *Id.* at 95.

1 The factors delineated in 18 U.S.C. § 3553(a) include the nature and circumstances of the offense and history and characteristics of the defendant; the need for the sentence imposed to afford adequate deterrence to criminal conduct, to protect the public from further crimes by the defendant, and to provide the defendant with needed educational or vocational training; and the kinds of sentences available and established sentencing ranges. *See* 18 U.S.C. § 3553(a) (1)-(5).

2 “Doc. #” refers to numbered entries on the district court’s docket.

After considering these facts and the remaining § 3553(a) factors, the court determined that a within-guidelines sentence was “insufficient to account for the gravity of the offense, ... all the persons who suffered, ... the use of the court’s system to try to achieve fraudulent ends, and all of the attributes of the fraud.” *Id.* at 96. Thus, even “tak[ing] into account [...] Lantigua’s cooperation and his apparent remorse” and that he “did live a crime-free life ... really, an upright life, as far as we know ... until he started down this road,” the district court determined that a total sentence of 168 months’ imprisonment, consisting of 144 months for the fraud offenses and 24 consecutive months for the aggravated identity theft, was appropriate. *Id.* at 97. The sentence the court imposed represented an 81-month upward variance from the top of Lantigua’s guidelines range. Lantigua objected to the upward variance, arguing that it “produce[d] a sentence that is unreasonably excessive.” *Id.* at 110.

In its Statement of Reasons, filed after sentencing, the district court noted the following § 3553(a) factors and other reasons for a variance: the nature and

circumstances of the offense, specifically, Lantigua’s “[e]xtreme [c]onduct”; the need to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; the need to afford adequate deterrence to criminal conduct; and the need to protect the public from further crimes of the defendant. Doc. 83 at 3.

This is Lantigua’s appeal of his sentence.

## II. STANDARDS OF REVIEW

We generally review the reasonableness of a sentence for an abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). First, we must “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence....” *Id.*

As relevant to this appeal, we review *de novo* one aspect of procedural reasonableness: whether the district court complied with 18 U.S.C. § 3553(c)(2), which requires it to adequately explain the chosen sentence. 18 U.S.C. § 3553(c)(2); *see United States v. Bonilla*, 463 F.3d 1176, 1181 (11th Cir. 2006) (reviewing *de novo* a district court’s compliance with § 3553(c)(1), which applies to within-Guidelines sentences rather than variances, regardless of whether the defendant objected in the district court). Specifically, § 3553(c)(2), which applies when the district court imposes an upward variance, requires the district court to “state in open court the reasons for its imposition of the particular sentence” \*880 and “the specific reason for the imposition of a sentence different from that described” in the Guidelines. 18 U.S.C. § 3553(c)(2). The specific reason for the variance also must be “stated with specificity in a statement of reasons.” *Id.*

Second, we must determine whether the district court imposed a substantively reasonable sentence. A district court’s sentence is substantively unreasonable when it (1) “fails to afford consideration to relevant factors that were due significant weight,” (2) “gives significant weight to an improper or irrelevant factor,” or (3) “commits a clear error of judgment in considering the proper factors” by considering proper factors but balancing them

unreasonably. *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc).

### III. DISCUSSION

On appeal, Lantigua argues that his sentence is both procedurally and substantively unreasonable. As to procedural reasonableness, Lantigua contends that the district court failed to comply with § 3553(c)(2) by inadequately explaining the sentence imposed. As to substantive reasonableness, Lantigua argues that the district court weighed improper factors and balanced proper factors unreasonably. We address his arguments in turn.

#### A. Procedural Reasonableness

[1] Lantigua argues that the district court erred because it failed to explain adequately the upward variance. Specifically, he argues that an inconsistency between the district court's oral pronouncement at sentencing and its written Statement of Reasons created an ambiguity in the record that prevents meaningful appellate review and requires resentencing. During the sentencing hearing, the district court stated that the need to deter Lantigua from committing additional crimes, a sentencing factor listed in § 3553(a)(2)(C), was "not a big issue" because it was unlikely that he would commit fraud in the future. Doc. 52 at 94-95. But in the Statement of Reasons completed after sentencing, the district court checked the box indicating that the need for the sentence to "protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))" was among the factors justifying the upward variance. Lantigua argues that this inconsistency requires resentencing. We are unpersuaded.

If a district court determines that a sentence outside the guidelines range is warranted, it "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Gall*, 552 U.S. at 50, 128 S.Ct. 586. "After settling on the appropriate sentence, [the district court] must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *Id.*; *see* 18 U.S.C. § 3553(c)(2). And the district court must provide written explanations in a Statement of Reasons. 18 U.S.C. § 3553(c)(2). If an orally pronounced sentence conflicts

unambiguously with the Statement of Reasons, the oral pronouncement will govern. *United States v. Bonilla*, 579 F.3d 1233, 1245 (11th Cir. 2009).

Lantigua argues that the oral pronouncement and the Statement of Reasons take conflicting positions on the role of deterrence in his sentence, making our review of the reasonableness of his sentence impossible. But the two are not unambiguously in conflict. Even though the district court minimized the role of specific deterrence as a justification for varying upward during the sentencing hearing, it did not entirely disregard that factor. The district court's statement that it was "unlikely" \*881 that Lantigua might reoffend was not inconsistent with its notation in the Statement of Reasons that it varied upward "[t]o protect the public from further crimes of the defendant." Doc. 52 at 95; Doc. 38 at 3.

To the extent an orally pronounced sentence is ambiguous, "it is proper to look to the written judgment to ascertain the court's intentions." *Bonilla*, 579 F.3d at 1245 (internal quotation marks omitted). Here, because there was no direct conflict, to the extent the district court's oral pronouncement was ambiguous with reference to specific deterrence, the Statement of Reasons clarified the district court's intent to rely, at least in part, on specific deterrence in varying upward from Lantigua's guidelines range. Lantigua has not, therefore, demonstrated that the district court created such an ambiguity in the record as to warrant resentencing.

#### B. Substantive Reasonableness

Lantigua also challenges the substantive reasonableness of his sentence, which represented a significant upward variance from the top of the applicable guidelines range. He argues that the district court relied on an improper factor—harm to the court—in determining an appropriate sentence. And, he argues, the district court erred in weighing the § 3553(a) factors, placing too little weight on his acceptance of responsibility, length of pretrial detention, and the need for restitution. We address these arguments in turn.

##### 1. Reliance on an Improper Factor

[2] At sentencing, the district court referenced its involvement in the civil cases arising out of Simpson's attempts to obtain payouts under Lantigua's life insurance policies. Lantigua argues that the district court's

statements evidence its reliance on a factor—harm to the court—that is outside the scope of § 3553(a) and that reflected the court’s bias against him. Relatedly, he argues that the district court relied on facts from the civil cases that were not incorporated into the record in his criminal case in determining that the court was a victim.

When we place the district court’s statements in context, however, we cannot agree that they were improper. The court thoroughly explained that Lantigua had improperly used the judicial system by manipulating lawyers into taking untrue positions and then requiring Lantigua’s victims to litigate against Simpson to show she was not entitled to life insurance proceeds. It was only in crafting this explanation that the court mentioned that Lantigua’s fraud had touched “this very court.” Doc. 52 at 88. The court’s fulsome explanation makes clear that it did not consider itself a victim of Lantigua’s fraud in the traditional sense; instead, it was accounting for Lantigua’s abuse of the judicial system generally as a means to facilitate his fraud.<sup>3</sup>

<sup>3</sup> Also based on these comments about the court as a victim, Lantigua argues for the first time on appeal that the district judge was biased and should have recused himself. Because Lantigua failed to seek recusal in the district court, we review only for plain error. *United States v. Berger*, 375 F.3d 1223, 1227 (11th Cir. 2004) (explaining that an unobjected-to error can be grounds for reversal only if the error is plain, affected the defendant’s substantial rights, and seriously affected the fairness, integrity, or public reputation of judicial proceedings). A district judge should disqualify himself if his “impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). For the same reasons we described above, the district court’s comments were not improper, nor did they evidence partiality. Lantigua therefore cannot show error, plain or otherwise, in the district judge’s failure to recuse himself.

The district court also noted its familiarity with Lantigua’s conduct based on its \*882 handling of the civil cases. But Lantigua offers no evidence that the district court actually *relied* on facts or other information from those cases that was not in the record in his criminal case. The record in Lantigua’s criminal case supported the district court’s determination that Lantigua had abused the judicial system. During the sentencing hearing, and through letters to the district court that were included in the record, Wienckowski, representatives from Fidelity

Bank, and representatives from Five Star Insurance discussed the impact of Lantigua’s fraud on their lives and businesses and their attempts to recover money through civil proceedings against Simpson. And the district court relied on the PSI, which recounted that Lantigua had enlisted an attorney to help him prepare documents to submit to the life insurance companies to seek death benefits. Thus, we can discern no error.

## 2. Unreasonable Balancing of Factors

[3] Lantigua next argues that his sentence is substantively unreasonable because the district court’s balancing of the § 3553(a) factors reflected a clear error of judgment. *See Irey*, 612 F.3d at 1189. Although we acknowledge that the district court’s sentence varied significantly from the applicable guidelines range, based on its careful and thorough consideration of the § 3553(a) factors, we cannot say the district court’s balancing warrants reversal.

First, Lantigua argues that the district court gave inadequate weight to the driver of his applicable guidelines range, the loss amount of his offenses. According to Lantigua, by varying upward as much as it did, the district court imposed a sentence corresponding to a loss amount of \$150 million, an amount far higher than the loss amount in his case. We disagree. The district court’s upward variance expressly was *not* tied to the guidelines, but rather to the § 3553(a) factors. In imposing the variance, the district court by its own statements intended to account for the nature and circumstances of the offense and Lantigua’s history and characteristics, among other § 3553(a) factors, not to account for a greater loss amount.

Second, Lantigua argues that the district court gave too little weight to the fact that he pled guilty and accepted responsibility. And, he argues, the district court provided too little explanation for, and gave too little weight to, the length of his pretrial detention (nearly two years) and the need to provide restitution (which, Lantigua says, could counsel in favor of a shorter term of incarceration to provide for income earning). We reject his arguments. The district court must explain the sentence that it imposes, but that explanation need not be extensive. *See United States v. Dorman*, 488 F.3d 936, 938 (11th Cir. 2007). So we are unconvinced that the district court erred in providing too little explanation for the length of detention and the need to provide restitution.<sup>4</sup>

4 We also note that the district court discussed with defense counsel Lantigua’s ability to pay restitution before delineating and applying the § 3553(a) factors.

Moreover, although the district court must consider all of the applicable § 3553(a) factors, *United States v. Shaw*, 560 F.3d 1230, 1237 (11th Cir. 2009), it need not give all of the factors equal weight. Instead, the sentencing court “is permitted to attach ‘great weight’ to one factor over others.” *Id.* (internal quotation marks omitted). The decision about how much weight to assign a particular sentencing factor is “committed to the sound discretion of the district court.” *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008) (internal quotation marks omitted). Considering the thoroughness and care with which the district court analyzed the § 3553(a) factors as applied to \*883 this case, the court made no clear error of judgment by assigning less weight to Lantigua’s acceptance of responsibility and pretrial detention,<sup>5</sup> as well as to the need to provide restitution, and more weight to the other § 3553(a) factors.

5 The length of pretrial detention and acceptance of responsibility are not expressly delineated in § 3553(a)

but arguably are part of the nature and circumstances of the offense, or the history and characteristics of the defendant, § 3553(a)(1).

Regardless of whether we would have imposed a similar sentence had we been in the district court’s position, the sentence the court imposed was within the bounds of its substantial sentencing discretion, or “in the ballpark of permissible outcomes.” *Ledford v. Peeples*, 605 F.3d 871, 922 (11th Cir. 2010). The sentence was not substantively unreasonable.

#### IV. CONCLUSION

Lantigua has failed to demonstrate that his sentence is procedurally or substantively unreasonable. We therefore affirm the sentence the district court imposed.

#### AFFIRMED.

#### All Citations

749 Fed.Appx. 875

## **Denial of Rehearing and Rehearing En Banc**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-12684-HH

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSE SALVADOR LANTIGUA,

Defendant - Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, JILL PRYOR and NEWSOM, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

  
UNITED STATES CIRCUIT JUDGE

ORD-42

## **District Court's Sentencing Decision**

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA, Jacksonville, Florida  
Plaintiff, Case Nos. 3:16-cr-125-J-32PDB  
vs. 3:16-cr-141-J-32PDB  
JOSE SALVADOR LANTIGUA, February 1, 2017  
Defendant. 9:30 a.m.  
Courtroom No. 10D

SENTENCING HEARING  
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN  
UNITED STATES DISTRICT JUDGE

## GOVERNMENT COUNSEL:

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(Proceedings recorded by mechanical stenography;  
transcript produced by computer.)

1 MS. HALVORSEN: Yes, sir.

2 THE COURT: Yes. And I heard from you in December.

3 MS. HALVORSEN: Yes.

4 THE COURT: All right. Yes, ma'am.

5 MS. HALVORSEN: Just one thing in addition, please.

6 In terms of what Daphne Simpson has already given in  
7 restitution, something has been omitted all along, and that is  
8 the amount that -- all the amounts that were garnished from  
9 every account, whether it was a bank statement or -- I mean, a  
10 bank account or a -- an investment account.

11 Everything she had was garnished by Mr. Wienckowski.  
12 So he did have additional funds from her. She doesn't have  
13 anything left. But that has always been left out. It may not  
14 be substantial, but she -- everything she has, she has given in  
15 restitution.

16 THE COURT: Thank you, ma'am.

17 MS. HALVORSEN: You're welcome.

18 THE COURT: Seeing no other persons who wish to  
19 speak, and having now heard from everybody in both cases,  
20 Mr. Devereaux, I'll ask you: Is there any legal bar to the  
21 imposition of sentence in either Mr. Lantigua's or  
22 Ms. Simpson's case?

23 MR. DEVEREAUX: No, Your Honor.

24 THE COURT: Ms. Call, is there any legal bar to  
25 sentence in Mr. Lantigua's case?

1 MS. CALL: No, Your Honor.

2 THE COURT: Mr. Willis, is there any legal bar to the  
3 imposition of sentence in Ms. Simpson's case?

4 MR. WILLIS: No, sir.

5 THE COURT: All right. I'm going to take a brief  
6 recess and gather my thoughts and try to come out and pronounce  
7 sentence in both cases.

8 And I can't exactly tell you how long I'll be out,  
9 but I'll be out as long as I'm out. I don't think it will be a  
10 long period of time. I've obviously given this matter a great  
11 deal of thought, done a great deal of preparation, and now had  
12 the benefit of two several-hour hearings.

13 And so I -- I have all the information that I'm going  
14 to have, but I do want to -- it's, obviously, an important  
15 matter. And I want to make sure that I'm in the right place  
16 before I pronounce sentence. So I'll be in recess until  
17 further call of the court.

18 I would guess we'd be talking somewhere 15 to 20  
19 minutes, something like that. So if you could make sure you're  
20 in the vicinity, but I will -- I'll be back as soon as I can.

21 COURT SECURITY OFFICER: All rise.

22 (Recess, 11:55 a.m. to 12:29 p.m.)

23 COURT SECURITY OFFICER: All rise. This Honorable  
24 Court is now in session. Please be seated.

25 THE COURT: Mr. Devereaux, in his remarks, referenced

1 an article I wrote recently about sentencing, the title of  
2 which is *Who Appointed Me God?* And, of course, the answer is  
3 nobody. I'm not God. I don't have any great wisdom about any  
4 of this.

5 I'm just a judge who is doing the best he can to  
6 uphold the law and to apply it as best I can with -- with  
7 imperfect knowledge.

8 I can only go on what I'm told and what I discern and  
9 use my common sense and intuition and the experience of having  
10 sentenced criminal defendants, likely 2500 of them, over the  
11 last 14 years.

12 And one thing I have learned is that you can't make  
13 everybody happy and sometimes you make nobody happy, but that  
14 doesn't determine what I do.

15 What determines what I do is apply the sentencing  
16 factors, which I'm going to discuss in a moment, to the facts  
17 as I understand them, and use the law in terms of guidelines  
18 and maximums and minimum mandatories, and try to come up with a  
19 sentence that is just and that is sufficient but not greater  
20 than necessary, which is what the statute tells me to do.

21 And so I'm going to make a -- some statements and  
22 then I'm going to impose those sentences. And I do so humbly  
23 and with full knowledge that I'm just a vessel that's trying to  
24 effectuate my duty.

25 And they -- as we address this case, I -- I start out

1 with the old bromide that truth is stranger than fiction. And  
2 this case is certainly an example of that.

3 Mr. Lantigua -- and, by the way, this sentencing  
4 statement applies to both Mr. Lantigua and Ms. Simpson. At the  
5 end of it I will formally pronounce sentence as to Mr. Lantigua  
6 and then separately as to Ms. Simpson.

7 By the way, before I do start -- and I apologize. We  
8 have located the letter from Five Star. It was received in our  
9 clerk's office yesterday afternoon, but hadn't made it through  
10 the processes to get it into the file. So I have read the  
11 letter and considered it.

12 Essentially it seeks the \$500,000 in restitution that  
13 already is included in -- in the restitution amounts, and gives  
14 Five Star's version of events.

15 It is critical of Ms. Simpson. Matter of fact, it's  
16 mostly addressed towards Ms. Simpson. It's not really  
17 addressed, quite at all, to Mr. Lantigua very much.

18 So that's -- that's a sum and substance of it. I  
19 accept it as a victim's statement. I don't know why it -- they  
20 didn't send it earlier, but it -- I just put it into the mix  
21 with all the other statements I heard.

22 And to Mr. Willis' point, I don't feel the need to  
23 continue the matter, as respect to Ms. Simpson. I feel like  
24 I've got appropriate information. I feel like my sentence --  
25 hopefully will be appropriate. And I think it -- I think we're

1 at a point where it's time to resolve these matters.

2 So as I said, truth is stranger than fiction. And  
3 Mr. Lantigua -- a man who served with distinction in the  
4 military and then became a respected and valued member of his  
5 community, he stands convicted of committing a particularly  
6 pernicious fraud which counts as its victims banks, insurance  
7 companies, governmental agencies, his friends, his family, and  
8 even this very court.

9 If all the insurance companies had paid on their  
10 policies after Mr. Lantigua feigned his death, as he intended,  
11 the loss would have totaled over \$6,600,000. Add to that to  
12 the -- add to that the loss to American Enterprise Bank of \$2  
13 million, the other losses we've heard about today from  
14 Mr. Wienckowski, and I know there were other institutions --  
15 but those are the -- I'm focused primarily on the loss amounts  
16 for the counts of conviction.

17 For guidelines purposes, the intended loss, that is  
18 the amount that Mr. Lantigua intended to defraud, is  
19 approximately \$8.6 million.

20 And, again, that's just focused on the counts of  
21 conviction. I understand there's others who are aggrieved as  
22 well, but I -- I need to focus on -- on the counts of  
23 conviction.

24 Because some of the insurance companies did not pay,  
25 the total actual loss is \$2,871,067.11. Of course, that

1 doesn't take into account the substantial sums the insurance  
2 companies and the bank spent on investigation and lawsuits  
3 arising from Mr. Lantigua's fraud.

4                   And, indeed, as Mr. Brown and his lawyers talked to  
5 Ms. Glober about what the amount of restitution should be, it  
6 may well be appropriate for investigation and other costs to be  
7 included in -- in the restitution. I'll leave that to them.  
8 And a number will be brought to me and I'll make a decision.

9                   I note that none of the -- the insurance companies --  
10 and maybe because of reinsurance -- I don't really know exactly  
11 why -- nobody has actually made a claim for investigative or  
12 other costs, which could potentially have been part of a  
13 restitution amount.

14                   Of course, we all know that the likelihood of  
15 restitution in any significant amount other than assets already  
16 being addressed is probably relatively unlikely. And maybe  
17 that's part of the calculus.

18                   The sentencing guidelines, largely driven by the  
19 amount of the loss and the fact that Mr. Lantigua had no prior  
20 criminal history, and grouping together the insurance and the  
21 bank fraud with the passport fraud -- they recommend a sentence  
22 of 51 to 63 months, plus 24 months consecutive for the  
23 aggravated identity theft, for a sentence at the high end of  
24 the guidelines of seven years and three months. So that's what  
25 the sentencing guidelines recommend.

1           While the sentencing guidelines are always  
2 influential in arriving at a sentence, they are but one factor  
3 that the court under 18, U.S.C., Section 3553(a) must consider.

4           The court must also consider the nature and  
5 circumstance of the charged offense. And it is here that  
6 Mr. Lantigua's fraudulent conduct distinguishes itself in both  
7 its scope and its brazenness.

8           First, Mr. Lantigua, utilizing his share of Christian  
9 faith and good reputation in the business community, defrauded  
10 American Enterprise Bank of \$2 million by creating bogus  
11 documents designed to assure the bank that its loan was secure.

12           We've heard from Mr. Wienckowski that similar things  
13 happened to him. And then in early 2013, Mr. Lantigua  
14 escalated his fraud by seeking to fake his own death.

15           He first cruelly told his wife that he had a fatal  
16 disease and only had a short time to live, and even involved  
17 her in potential treatment decisions for his alleged fatal  
18 illness.

19           He then said that treatment in South America was his  
20 only hope. But after having given that elaborate lie and put  
21 people through all that, he then told her, in fact, he didn't  
22 have a fatal illness.

23           And that was probably only because his medical  
24 accomplice got cold feet. And so he needed to go to a  
25 different deception. And that deception was even -- an even

1 bigger lie. He was not fatally ill after all, but was in  
2 danger from a drug cartel, and the CIA was also somehow  
3 involved.

4 Not only that, but the whole family was in danger, he  
5 said. Thus, Mr. Lantigua said he needed Ms. Simpson's support  
6 to fake his own death.

7 Mr. Lantigua traveled to Venezuela to purchase fake  
8 documents, which he then used to convince the U.S. Embassy in  
9 Venezuela to issue a certificate of death. Ms. Simpson  
10 traveled to Venezuela with cash and assisted Mr. Lantigua in  
11 his fraudulent efforts.

12 When Ms. Simpson returned to the United States, there  
13 was a funeral at which family and friends attended, mourning a  
14 man who was still very much alive. Think about that. Think  
15 about that. Brazenness does not even begin to describe it.

16 Then at Mr. Lantigua's direction and urging,  
17 Ms. Simpson began seeking payment on life insurance policies  
18 based on Mr. Lantigua's purported death. Some insurance  
19 companies paid. Others did not.

20 Ms. Simpson then duped a respected Jacksonville law  
21 firm which advocated in both state court and this court for  
22 payment on these policies, spinning an incredible tale of CIA  
23 and cartel involvement.

24 These lawsuits and the events surrounding them caused  
25 the insurance companies and creditors, including the bank, and

1 also Mr. Wienckowski, to embark on a massive and expensive  
2 investigation.

3 This went on for two years. It involved having  
4 people in Venezuela, involved court hearings. It involves all  
5 kinds of time, expense, and effort.

6 It went on for nearly two years until Mr. Lantigua  
7 and Ms. Simpson were caught in North Carolina living under  
8 assumed names but trying to obtain fake passports, after  
9 Mr. Lantigua had already obtained a fake North Carolina  
10 driver's license, presumably to be able to leave the United  
11 States for safer havens if necessary.

12 In the wake of this fraudulent scheme, the bank and  
13 other creditors like MRWINK2 and the insurance companies have  
14 sustained losses totaling millions of dollars.

15 But equally germane is that Mr. Lantigua was so  
16 willing to play upon the trust and affections of his wife, his  
17 family, his friends, his faith community, and business  
18 associates to achieve his fraudulent end.

19 It's against this backdrop that I analyze in  
20 Mr. Lantigua's case the sentencing factors that I'm required to  
21 utilize to arrive at an appropriate sentence.

22 The first is the nature and circumstance of the  
23 charged offense. And I think I've just, through my recitation,  
24 established that this was a serious, sustained, and harmful  
25 fraud that affected banks, insurance companies, family,

1 friends, and others.

2                   Although the court has dealt with fraud cases  
3 involving more money and more victims, the perniciousness and  
4 callousness of Mr. Lantigua's actions do set this case apart.  
5 And the profligate spending of the ill-gotten gains also is a  
6 factor to consider.

7                   I tend to believe that there are not substantial  
8 assets remaining that are hidden or secreted, as the creditors  
9 might be tempted to think. But if that's true, it's only  
10 because so much of the money was spent, and, obviously, some of  
11 it is being able to be recovered, but only after time and  
12 expense, and resistance early on.

13                  So this was a -- this is a serious fraud that -- it's  
14 hard to really -- I think Mr. Devereaux captured this. It's  
15 really hard to put this into a category of fraud.

16                  You know, I've had *Ponzi* schemes where hundreds of  
17 people were victims. I've had other similar-type frauds that  
18 affect people -- more people and affect -- and are worth more  
19 money, or there was more loss.

20                  But in terms of pure evil or the willingness to  
21 involve and dupe not only your wife, but others close to you,  
22 and then others who had befriended you, it's -- it really  
23 ranks -- in the -- in the spectrum of frauds, it really ranks  
24 as among the more serious fraud cases I've seen.

25                  The history and characteristics of Mr. Lantigua

1 are -- are a second factor to consider. He was -- he did have  
2 a distinguished military career. He was a businessman, good  
3 friend and family member and community member for many years.  
4 But then he surrendered all that when he engaged in this fraud.

5 I will note that he did cooperate and now does appear  
6 to be remorseful. And I certainly hope that his faith can  
7 sustain him as he serves this sentence. But I have to hold him  
8 to account to the law.

9 The other factors I have to consider I can more  
10 briefly state. This is an important one. I need to reflect  
11 the seriousness of the offense, promote respect for law, and  
12 provide just punishment.

13 For even those in the eyes of the law who are  
14 remorseful, even those in the eyes of the law who may be  
15 unlikely to commit new crimes, there still is an aspect of  
16 punishment in our criminal justice system accountability that  
17 has to be effectuated.

18 I need to avoid adequate -- afford adequate  
19 deterrence to criminal conduct. I do tend to agree with  
20 Mr. Devereaux, and I tend to agree with Ms. Call, that  
21 Mr. Lantigua, given his age, given the sentence he's going to  
22 receive, and given what has happened to him -- I think he's  
23 unlikely to be somebody who's going to commit additional fraud  
24 in the future.

25 But I do think that general deterrence is an issue;

1 that is, that -- that the case stands -- should stand for the  
2 idea that if you commit this type of activity there has to be  
3 consequences. And there will be.

4 I tend to think protecting the public from further  
5 crimes of Mr. Lantigua is not -- not a big issue, because I  
6 just think it's unlikely, given these circumstances, he would  
7 commit another fraud. Not impossible, but unlikely.

8 I need to provide him with whatever vocational,  
9 medical, and other treatment he requires. I need to look at  
10 the kinds of sentences available. And this gets me back to the  
11 guidelines. I've already told you what the guidelines are in  
12 this case. I do have to consider them. And they are  
13 influential in the -- in the sentencing scheme.

14 I need to avoid unwarranted sentencing disparity  
15 among defendants with similar records who have been found  
16 guilty of similar conduct.

17 And I have looked and recalled various fraud  
18 sentences I've given over the years and tried to, to the best I  
19 can, pigeonhole Mr. Lantigua's case, and at least have some  
20 consistency in the sentences that we've imposed over the years.

21 And I need to provide restitution, which, of course,  
22 I will do. So those are the sentencing factors. And as I  
23 mentioned earlier, the high end of the guideline counts for the  
24 bank fraud, the insurance fraud, and the passport fraud are 63  
25 months, which is a little over five years, and then I add the

1 24 months, but the five years is what I'm focused on, five  
2 years, three months.

3 I find this sufficiently insufficient to account for  
4 the gravity of the offense, the -- all the -- to take into  
5 account all the persons who suffered, to take into account the  
6 use of the court's system to try to achieve fraudulent ends,  
7 and all of the attributes of the fraud that I talked about at  
8 the beginning of my discussions.

9 I -- I just do not find the 63-month number, which is  
10 the high end of the guidelines, to be the appropriate sentence  
11 in this case and that an upward variance is required.

12 Whenever a court varies upwards, there have to be  
13 good reasons to do so. And I hope that I've articulated on  
14 this record how this fraud -- how there are matters and  
15 circumstances in this fraud that simply are not captured by  
16 just a statement of how much money was lost and that  
17 Mr. Lantigua used sophisticated means. I just don't think that  
18 captures enough of this -- of the totality of this conduct.

19 How much to vary is always a difficult decision for a  
20 court and what justification you can reach for it. But I have  
21 looked hard at this, thought about it. I've been working on  
22 this now for several days, and tried to -- and then I wanted to  
23 hear what I was going to hear today.

24 And I do feel that a substantial upward variance is  
25 appropriate. I just feel that for all the reasons that I tried

1 to articulate earlier, this was just a particularly pernicious  
2 fraud and has had a great effect on many people, and probably  
3 will going forward.

4                   And I have taken into account Mr. Lantigua's  
5 cooperation and his apparent remorse. And so I do -- I do  
6 factor those in as well, and the fact that he did live a  
7 crime-free life before he -- and, really, an upright life, as  
8 far as we know, until -- until he started down this road.

9                   And I also have taken into account how sustained this  
10 was over a period of time and how it continued to escalate, and  
11 how he had to manipulate others, including his wife, to be  
12 making claims and writing demand letters and having his  
13 lawyers -- having lawyers take positions that were completely  
14 untrue, and then requiring people to try to pursue assets and  
15 to prove that he was still alive.

16                  It just really is a -- and he always -- he always had  
17 the ability to stop it whenever -- whenever he wanted to. I  
18 mean, he just didn't.

19                  So I've looked at this and really tried to think  
20 about what an appropriate sentence would be. I've looked at  
21 the statutory maximums. I've looked at the guidelines.

22                  And I am going to vary upward from 63 months to 144  
23 months, or 12 years. And then I will add the required 24-month  
24 consecutive sentence under Count Two in 3:16-cr-141 -- that's  
25 on the aggravated identity theft -- for a total sentence of 168

1 months, or 14 years, with five years of supervised release.

2 I considered even going higher than that. But as I  
3 indicated, there were some positive factors in terms of  
4 Mr. Lantigua's cooperation, in terms of his apparent remorse,  
5 in terms of his submitting to depositions. And I do have to be  
6 mindful, the guidelines are much lower. They're 63 months.

7 And a court -- even though a court is free to vary,  
8 I -- I think it -- I think it appropriate to stop here where  
9 I've stopped. I did consider going higher, but I think it's  
10 appropriate for me to stop here. And there will be five years  
11 of supervised release.

12 I've also, frankly, taken into account Mr. Lantigua's  
13 relatively older age and how old he'll be when the sentence is  
14 completed.

15 While the court recognizes that this is a substantial  
16 upward variance from the advisory guidelines, the court  
17 believes the sentence to be consistent with the requirements of  
18 18, U.S.C., Section 3553(a), and notes it is still well below  
19 the statutory maximums of 20 and 30 years, which could be  
20 imposed under some of the counts of conviction.

21 And so one of the things we look at in terms of  
22 variances is -- is whether the variance -- how close the  
23 variance gets to the statutory maximums. And in this case  
24 there's still plenty of daylight between the court -- the  
25 sentence the court is imposing and the statutory maximums.

1                   So that's the sentence I intend to impose on  
2 Mr. Lantigua. And I will do so formally momentarily.

3                   I now address Ms. Simpson. And all of my comments  
4 about how the fraud played out that I made earlier, you know,  
5 apply to Ms. Simpson.

6                   And there's no doubt that she was heavily involved in  
7 the fraudulent scheme. She traveled to Venezuela and the  
8 Caribbean to help implement it. She participated in her  
9 husband's funeral. She lied to friends and family.

10                  She also participated in defrauding the insurance  
11 companies, her own lawyer, and committed fraud upon this court  
12 and the state court.

13                  She was, in effect, the face of the fraud to many of  
14 these insurance companies, who hold her responsible, and to  
15 others. You've heard from Mr. Brown -- or I got his letter,  
16 and also Mr. Wienckowski. They hold her accountable and don't  
17 believe that she was duped.

18                  And that's because she was the face of this to them,  
19 and in large measure after -- especially after Mr. Lantigua was  
20 supposedly dead, she was the face of the fraud.

21                  And I understand that. And I -- I agree that she has  
22 to face consequences and accountability. However -- and this  
23 is the toughest decision I had to make in this case, I think --  
24 it is also true that Ms. Simpson's case -- unlike  
25 Mr. Lantigua's, there is substantial mitigation.

1           I do believe, as the government does, and as the  
2 probation officer does, and written in the reports, that  
3 Ms. Simpson, in addition to being a participant in the fraud,  
4 was also a victim of it.

5           I believe she was a victim of Mr. Lantigua's lies. I  
6 believe that she first truly believed he was dying and had to  
7 face that consequence, and then he led her to believe that his  
8 life, as well as hers and her family's, was in danger, and that  
9 this could justify whatever actions needed to be taken.

10          While I understand the victims are skeptical of  
11 this -- Ms. Simpson's story, and I understand why -- I also do  
12 credit the government, which has extensively investigated this  
13 matter, and which, in my experience, is not one -- neither  
14 Mr. Devereaux nor the U.S. Attorney's Office generally is one  
15 to accept a story.

16          They are naturally skeptical, naturally questioning.  
17 They tend to believe that people are probably lying to them  
18 until it's proven that they're telling the truth.

19          And so it does influence me that the government,  
20 which has extensively investigated this matter, believes that  
21 Ms. Simpson was largely duped and deceived by her husband even  
22 up until the end.

23          Mr. Lantigua has confirmed that in a long letter to  
24 me and completely accepts responsibility for his actions and  
25 completely tries to exonerate his wife.

1               Now, you may say that's just -- you know, that's good  
2 for him to do and that he figures, Well, as long as I'm going  
3 to prison, there's no point in involving my wife further.

4               But he has told me that -- in a letter, that -- that  
5 he considers her a victim of his own -- of his lies as well.  
6 And her own lawyer, Mr. Hutton, told me that he could not even  
7 get Ms. Simpson to deal with this case for a long time because  
8 she believed that her husband and the government were going to  
9 rescue her and put things right.

10               Now, I understand that Ms. Simpson spent a lot of the  
11 money. I understand why the victims would feel badly toward  
12 her. I do, however, believe that much of her actions were  
13 orchestrated by Mr. Lantigua behind the scenes even after he  
14 had faked his own death.

15               I don't think of her as a person who has the  
16 wherewithal to think of all this and do all this herself. So I  
17 do think there is mitigation here. I do think that in many  
18 senses she was a victim as well as a participant. And I  
19 understand that reasonable people could disagree about that.  
20 But that's my judgment.

21               However, even if I accept Ms. Simpson's version of  
22 events, she still must be held accountable for her actions.  
23 Her sentencing guidelines are 46 to 57 months. Unlike  
24 Mr. Lantigua's guidelines, which I think under-represent his  
25 conduct, I think -- given the substantial mitigation that I'm

1 finding in this case, I think Ms. Simpson's guidelines actually  
2 overrepresent her actions.

3 I note, too, that -- and this is a factor that we  
4 need to keep in mind. Ms. Simpson has already served 16 months  
5 of very difficult detention in the Duval County Pretrial  
6 Detention Facility, which -- in which she suffered both  
7 physically and mentally. And I don't think there's any doubt  
8 about it.

9 And some of the conditions of confinement fell  
10 below -- if it's all to be believed -- and I think they were  
11 having trouble at the time. I hope it's been resolved. Some  
12 of the conditions of confinement fell below the standards that  
13 we should have. And so 16 months in this incarceration is  
14 punishment. And it is serious punishment.

15 We oftentimes -- and when we're thinking about  
16 punishment and incarceration, we oftentimes -- even apart from  
17 this particularly difficult detention that Ms. Simpson went  
18 through, any pretrial detention is more difficult than  
19 post-sentencing detention in the federal system.

20 Because in the federal system, once you're sentenced,  
21 you're sent to a federal prison that has better facilities and  
22 more programs and better conditions than the conditions that  
23 you're in.

24 And so a person who spends an extended period of time  
25 in pretrial detention, as Ms. Simpson did, has served a measure

1 of punishment that is demonstrable.

2                   And the question is what additional punishment is  
3 required to be sufficient, but not greater than necessary. I  
4 conclude that given these unique circumstances further  
5 incarceration of Ms. Simpson is not required.

6                   However, to further sanction her and to keep her  
7 under the watchful eye of U.S. Probation, which can continue to  
8 fully investigate her assets and financial situation, in the  
9 unlikely event that she really is secreting assets or that  
10 she's planning some elaborate lifestyle after she's free of  
11 these charges -- I intend to place her on probation for a term  
12 of five years, which is the maximum provided by law, and to  
13 require U.S. Probation to aggressively monitor her financial  
14 and other situation, and to require her to continue to  
15 cooperate with those who are seeking to marshal assets.

16                  I will also take under advisement any request to move  
17 to California until I'm satisfied that she's done everything  
18 here she can to assist those who are trying to marshal assets.

19                  I'm not ruling it out, but I'm not -- I'm taking it  
20 under advisement. It would require my -- it would first  
21 require agreement by California. It would require agreement by  
22 our probation office. And then it would require my approval.

23                  And I'm going to monitor that situation and make sure  
24 that everything that needs to be done has been done before I  
25 would entertain that idea. So she'll be under probation for

1 five years.

2                   And the first six months of that will be a home  
3 detention requirement that requires her, under most  
4 circumstances, to remain in the home.

5                   There are exceptions to it, but -- her work and other  
6 things. But it's a -- it's a part of a sentence that we give  
7 when further incarceration is not indicated.

8                   And so in deciding this, I've looked at all the  
9 3553(a) factors, and particularly to see if there's unwarranted  
10 sentencing disparity between the sentence I've given to  
11 Mr. Lantigua and that I've given to Ms. Simpson. I conclude  
12 that the disparity, which is obvious, is warranted.

13                   Ms. Simpson would never have been involved in this  
14 scheme but for being overborne and deceived by Mr. Lantigua.  
15 Mr. Lantigua also convinced her that his life, as well as hers  
16 and her family, were in danger, and, therefore, this helped her  
17 justify actions which she knew were wrong.

18                   So Ms. Simpson deserves to be punished. She's  
19 already served the 16 months, and will be held accountable to  
20 the court for five more years. She'll have to pay restitution,  
21 and will be marked as a felon for the rest of her life.

22                   In these unique and unusual circumstances, I find  
23 this to be a sufficient but not greater than necessary  
24 sentence.

25                   Mr. Lantigua and Ms. Call, if you'll come forward for

1 formal pronouncement, please.

2                   Mr. Jose Salvador Lantigua, on September 6th, 2016,  
3 you entered a plea of guilty to Counts One and Two of the  
4 indictment, in Docket No. 3:16-cr-125.

5                   Count One charges you with conspiracy to commit mail  
6 and wire fraud, in violation of 18, U.S.C., Section 1349, and  
7 Count Two charges you with bank fraud, in violation of  
8 18, U.S.C., Section 1344.

9                   Further, on November 17th, 2016, you pled guilty to  
10 Counts One and Two of the indictment, in Docket  
11 No. 3:16-cr-141. Count One charges you with passport fraud, in  
12 violation of 18, U.S.C., Section 1842. Count Two charges you  
13 with aggregated identity theft, in violation of  
14 18, U.S.C., Section 1028(a).

15                   The court now having heard from all affected parties,  
16 having heard from victims, having heard from persons in  
17 support, having considered all legal matters, including the  
18 sentencing guidelines, and recognizing that the court is  
19 imposing a substantial upward variance from the guidelines, but  
20 feeling justified in doing so for the reasons stated, it is the  
21 judgment of this court that you be sentenced to the custody of  
22 the Bureau of Prisons for a total term of 168 months, which is  
23 14 years.

24                   This term consists of 144 months as to Counts One and  
25 Two, in Docket 3:16-cr-125, and Count One in Docket

1 3:16-cr-141. All those terms to run concurrently.

2                   And then the required term of 24 months as to Count  
3 Two in Docket 3:16-cr-141, which shall run consecutively to all  
4 other counts, for a total term of 168 months.

5                   Upon release from imprisonment, you'll serve a  
6 five-year term of supervised release. That's a three-year term  
7 in 3:16-125 as to Count One, a five-year term as to Count Two  
8 in that case, and a one-year term as to Count Two in  
9 3:16-cr-141. All that is concurrent, for a total term of five  
10 years.

11                  During that term of supervision, you'll be prohibited  
12 from incurring new credit, opening additional lines of credit,  
13 or obligating yourself to any major purchases without approval  
14 of probation. You'll provide probation access to any requested  
15 financial information. And probation will aggressively monitor  
16 your finances.

17                  I also am putting in a provision that any money which  
18 might be derived from the sale of rights to your story, or any  
19 profits that might come in any related way -- because I  
20 understand there were contacts about that, that that money  
21 would be reported directly to probation and would be applied  
22 directly to your restitution, the intent being that you not  
23 profit or get any funds from the sale of your story. And I'll  
24 probably have different language in the actual judgment to try  
25 to -- to be clear about that.

1                   DNA collection is required. Mandatory drug testing  
2 will be waived. There's no evidence of drug abuse.

3                   Restitution totals the amount of \$2,871,067.11 to the  
4 following victims, Fidelity Bank, in the amount of -- right  
5 now -- I guess we're holding -- we're going to hold this open,  
6 but that -- I will be ordering restitution to Fidelity Bank,  
7 Prudential, to Prudential again, and to Five Star.

8                   But I'm going to hold -- at the request of the  
9 parties, I'm going to hold restitution open for up to 90 days  
10 in order to be able to determine the total amount of the  
11 restitution.

12                  And then I'll include in that judgment what -- what  
13 payments I would expect from Mr. Lantigua toward that  
14 restitution.

15                  Obviously you'll be in custody and -- doesn't really  
16 have the ability to make any restitution payments during that  
17 time, unless he gets some jail income. And I'll make an amount  
18 that is payable on a monthly basis after he's released.

19                  Based on -- on the fact that I'm expecting  
20 restitution and forfeiture judgments to be entered in  
21 substantial amounts, I'm not going to impose any further fines.

22                  And I understand there was a -- an agreed-upon  
23 forfeiture money judgment. But Ms. Call has asked me to hold  
24 that open until we determine appropriate amount of forfeiture  
25 and restitution, which we will do post sentencing.

1                   There is a \$400 special assessment which is required  
2 by law.

3                   Anything else?

4                   Emily, anything else?

5                   (Judge confers with courtroom deputy.)

6                   THE COURT: The probation officer -- and, by the way,  
7 I did intend -- I did intend, Ms. Call, to recommend FCI Miami  
8 as the location. And I will do that to the Bureau of Prisons.

9                   The probation officer has a provision in here about  
10 mental health treatment. I wasn't sure where that was coming  
11 from.

12                  Is that -- Ms. Call, is that something that y'all are  
13 advocating for, or not?

14                  MS. CALL: Not particularly, Your Honor.

15                  THE COURT: I didn't think so. I think it might be  
16 more applicable to Ms. Simpson's case. Okay.

17                  Anything else?

18                  COURTROOM DEPUTY: I think that's it.

19                  THE COURT: Okay. Sir, you have the right to appeal  
20 from the judgment and sentence I've just given you within 14  
21 days from this date. Failure to appeal within that 14-day --  
22 it may not be from this date. It will be from the date of the  
23 entry of judgment. And that may get delayed. But it will be  
24 from the date of judgment. Failure to appeal within the time  
25 period -- and Ms. Call will be well aware of what it is --

1 would give up your right to appeal.

2 It's 14 days from the date the judgment was entered.

3 You're also advised that you're entitled to the  
4 assistance of counsel in taking an appeal. And as I have found  
5 you unable to afford a lawyer, Ms. Call or her colleagues would  
6 continue to represent you at no cost or charge to you.

7 The court has now pronounced sentence. I'll  
8 entertain objections to the court's sentence or the manner in  
9 which the court has pronounced sentence at this time.

10 MS. CALL: Your Honor, it may be premature, but I  
11 would ask the court to also consider waiving interest on the  
12 restitution judgment.

13 THE COURT: I will do that.

14 MS. CALL: Second, Your Honor, I do object to the  
15 upward variance and the extent of the upward variance. And as  
16 to Count One of Docket 141, this is an illegal sentence. The  
17 maximum is ten years, the count relating to the passport fraud.

18 THE COURT: You are correct.

19 All right. Then I -- let me correct that sentence,  
20 then. It will not change my ultimate sentence, but I, of  
21 course, don't want to impose more than the statutory maximum on  
22 any count.

23 So I will correct the sentence -- so the term of  
24 imprisonment will be 168 months. That term consists of 144  
25 months as to Counts One and Two in Docket 3:16-cr-125 and ten

1 years as to Count One in Docket 3:16-cr-141. All those terms  
2 will run concurrently for a total of 144 months, and a term of  
3 24 months as to Count Two in 3:16-cr-141, which shall run  
4 consecutively to all other counts, for a total term of 168  
5 months.

6 Now, Ms. Call, you, of course -- and it's not  
7 surprising to me you're objecting to the -- to the upward  
8 variance.

9 But have I cured the illegality of the Count One  
10 sentence that you referred to?

11 MS. CALL: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. CALL: So, Your Honor, if I may just -- to  
14 maintain the record, I would object to the upward variance, the  
15 extent of the variance, and that it produces a sentence that is  
16 unreasonably excessive.

17 In light of Mr. Lantigua's age and his time in  
18 pretrial detention, he has almost two full years, versus the  
19 court's announced intention to sentence Ms. Simpson to 16  
20 months of pretrial detention custody. And I think the total  
21 overall analysis of the factors result in a sentence that is  
22 greater than necessary.

23 THE COURT: Yes, ma'am. The objection is noted.

24 Mr. Devereaux, does the government have any objection  
25 to the court's sentence or the manner in which the court has

1 pronounced the sentence?

2 MR. DEVEREAUX: No objections, Your Honor.

3 THE COURT: Mr. Lantigua, I really don't have any  
4 words for you. I've obviously done the best I can to evaluate  
5 the case and impose the sentence I thought was appropriate.

6 Your lawyer has objected to it. And you may well  
7 have an appeal that will be taken. And that's perfectly within  
8 your rights.

9 I will say this to you, though. I did appreciate  
10 some of the statements in your letter. And you -- even in  
11 the -- even in the situation you're in, you have an opportunity  
12 to continue to try to better yourself and to find the -- the  
13 best in yourself you can find.

14 And if your faith is a big part of that, then that's  
15 certainly to be encouraged. And notwithstanding the sentence  
16 I've given you, I certainly do wish you well and I do wish your  
17 family well.

18 DEFENDANT LANTIGUA: Thank you, sir.

19 THE COURT: You may have a seat.

20 I'm going to let the marshals remain just briefly  
21 until I finish pronouncing.

22 Mr. Willis, would you please come up with  
23 Ms. Simpson.

24 MR. WILLIS: Yes, sir.

25 THE COURT: Ms. Simpson, on August 3rd of 2016 --