

## **APPENDIX - A**

**Order of the United States Court of Appeals for the Ninth  
Circuit, Dated 11/05/2019, Affirming District Court Order**

**FILED****NOT FOR PUBLICATION**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOV 5 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LAHKWINDER SINGH,

Defendant-Appellant.

No. 18-50332

D.C. No.  
3:16-cr-00729-BAS-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Cynthia A. Bashant, District Judge, PresidingArgued and Submitted October 15, 2019\*  
Pasadena, California

Before: NGUYEN and MILLER, Circuit Judges, and VITALIANO, \*\* District Judge.

Appellant Lahkwinder Singh appeals from an order of forfeiture in the amount of \$1,955,521 imposed on him by the district court as part of his sentence following conviction upon his plea of guilty to one count of structuring currency

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Eric N. Vitaliano, United States District Judge for the Eastern District of New York, sitting by designation.

transactions to evade reporting requirements, in violation of 31 U.S.C. §§ 5324 (a)(3) and (d)(2). The sole question presented on appeal is whether the forfeiture amount was so grossly disproportional to his offense that it contravenes the Eighth Amendment. Exercising jurisdiction under 28 U.S.C. §§ 1291 and 1294, we affirm.

Although courts are not bound by “any rigid set of factors” in determining the propriety of a challenge to an order of criminal forfeiture imposed at sentence, we look for guidance to those applied in *United States v. Bajakajian*, 524 U.S. 321 (1998): “(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused.” *United States v. \$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1121–22 (9th Cir. 2004) (citing *Bajakajian*, 524 U.S. at 337–40). In making this determination, we review a district court’s interpretation of federal criminal forfeiture law *de novo* and its findings of fact for clear error. *Bajakajian*, 524 U.S. at 337 n.10.

In assessing whether an order of forfeiture is grossly disproportional, we consider, in part, the nature of the crime, wary of *Bajakajian*’s admonition that isolated reporting offenses do not often constitute serious crimes. *See, e.g., United States v. \$132,245.00 in U.S. Currency*, 764 F.3d 1055, 1058 (9th Cir. 2014); *\$100,348.00 in U.S. Currency*, 354 F.3d at 1122. Significantly, although he did

not plead guilty to drug trafficking, Singh does not dispute that his structuring activity was related to illicit drug proceeds. His offense of structuring was, thus, a far cry from a single failure to report cash; the totality of his related conduct evidences serious criminality.

Determination of the severity of an offender's criminal culpability for forfeiture purposes requires consideration of other authorized penalties for the crime of conviction, as reflected in the applicable maximum guidelines penalties, because those guidelines reflect legislative judgment as to the appropriateness of punishment and because they "take into account the specific culpability of the offender." *\$100,348.00 in U.S. Currency*, 354 F.3d at 1122. Singh's crime carried maximum guidelines punishments of 71 months of imprisonment and a \$100,000 fine. Although the forfeiture exceeded the maximum guidelines fine by a factor of almost 20, our consideration cannot be so limited. *See United States v. Mackby*, 339 F.3d 1013, 1018 (9th Cir. 2003) (upholding a civil forfeiture amount approximately ten times greater than the maximum guideline financial penalty). A 71-month maximum term of imprisonment is strong evidence of the severity of Singh's culpability. *See id.* (urging consideration of "the full criminal penalty").

Furthermore, in determining the appropriateness of forfeiture, it will not go unnoticed that a reporting violation causes significant harm when the currency that would have otherwise gone undetected was, more likely than not, connected to

drug trafficking. *\$132,245.00 in U.S. Currency*, 764 F.3d at 1061; *see also United States v. Chaplin's, Inc.*, 646 F.3d 846, 853 (11th Cir. 2011) (“Attempting to hide drug money is harmful in and of itself.”). That every structured dollar, or even a majority of the structured funds, was not directly traceable to Singh’s drug shipments is of little consequence, for the scheme as a whole perpetuated drug-trafficking.

As a final matter, Singh asks us to consider financial hardship in our analysis. We have not squarely addressed whether such consideration is required or even proper where a forfeiture order is challenged as excessive, and we decline to do so here. Because the four *Bajakajian* factors weigh so heavily in favor of the forfeiture amount, any finding that Singh may suffer some financial hardship, which is a reality in almost every case, would not tip the scales in his favor.

**AFFIRMED.**

## **A P P E N D I X - B**

**Order of the United States Court of Appeals for the Ninth  
Circuit, Dated 1/15/2020, Denying Rehearing Request**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LAHKWINDER SINGH,

Defendant-Appellant.

No. 18-50332

D.C. No.

3:16-cr-00729-BAS-1

Southern District of California,  
San Diego

ORDER

Before: NGUYEN and MILLER, Circuit Judges, and VITALIANO,\* District Judge.

The panel voted to deny Appellant's petition for panel rehearing.

Appellant's petition for panel rehearing is denied.

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\* The Honorable Eric N. Vitaliano, United States District Judge for the Eastern District of New York, sitting by designation.

**A P P E N D I X - C**

**Plea Agreement, Lahkwinder Singh, Pages 1 through 15**

1 ALANA W. ROBINSON  
2 Acting United States Attorney  
3 Orlando B. Gutierrez  
4 Daniel C. Silva  
5 Assistant United States Attorneys  
6 California Bar Nos. 183745/264632  
7 Federal Office Building  
8 880 Front Street, Room 6293  
9 San Diego, California 92101-8893  
10 Telephone: (619) 546-6958  
11 Email: Orlando.Gutierrez@usdoj.gov

12 Attorneys for United States of America

13  
14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,

17 Case No. 16-cr-0729-BAS

18 Plaintiff,

19 v.

20 PLEA AGREEMENT

21 LAHKWINDER SINGH (1),  
22 aka "Victor",

23 Defendant.

24 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,  
25 through its counsel, Alana W. Robinson, Acting United States Attorney, and Orlando B.  
26 Gutierrez and Daniel C. Silva, Assistant United States Attorneys, and Defendant  
LAHKWINDER SINGH, aka "Victor", with the advice and consent of Robert E. Boyce,  
counsel for Defendant, as follows:

27 I

28 **THE PLEA**

29 A. **THE CHARGE**

30 Defendant agrees to plead guilty to Count 6 of the Second Superseding Indictment  
31 charging Defendant with:

32 Beginning no later than December 27, 2011, and continuing up to and  
33 including January 29, 2014, within the Southern District of California,  
34 defendants LAHKWINDER SINGH, aka Victor, and LOVELY SINGH,

1 INC., for the purpose of evading the reporting requirements of Title 31, United  
2 States Code, Section 5313, and the regulations prescribed under such section,  
3 did structure and attempt to structure approximately \$2,955,521 in currency  
4 transactions with Bank of America, N.A., Wells Fargo Bank, N.A., JP Morgan  
5 Chase, N.A., and Union Bank, N.A., all domestic financial institutions, on or  
6 about the dates, approximately for the amounts, in the manner, and at the  
7 domestic financial institutions listed in Schedule A [of the Second  
8 Superseding Indictment], for the purpose of causing said domestic financial  
9 institutions to fail to file a report required under Title 31, United States Code,  
10 Section 5313(a), and the regulations promulgated thereunder, and did so as  
11 part of a pattern of illegal activity involving more than \$100,000 in a 12-month  
12 period; all in violation of Title 31, United States Code, Section 5324(a)(3) and  
13 (d)(2). *5313 (a)* *5324 (a)(3)*  
14

1 The United States agrees to (1) move to dismiss the remaining charges without  
2 prejudice when Defendant is sentenced, and (2) not prosecute Defendant thereafter on such  
3 dismissed charges unless Defendant breaches the plea agreement or the guilty plea entered  
4 pursuant to this plea agreement is set aside for any reason. If Defendant breaches this  
5 agreement or the guilty plea is set aside, section XII below shall apply.

6 This plea agreement is part of a "package" disposition as set forth in Section VI.E  
7 below. In addition, the attached Forfeiture Addendum shall govern forfeiture in this case.

8 **B. TIMELINESS / OFFER REVOCATION**

9 The disposition contemplated by this agreement is conditioned on the following: (i)  
10 the United States' receipt of a singed Plea Agreement and Forfeiture Addendum for  
11 Defendant and co-defendant LOVELY SINGH, INC., by no later than 5:00 pm on  
12 October 20, 2017; and (ii) Defendant entering a guilty plea in this case before a Magistrate  
13 Judge on or before November 3, 2017.

14 **II**

15 **NATURE OF THE OFFENSE**

16 **A. ELEMENTS EXPLAINED**

17 Defendant understands that the offense to which Defendant is pleading guilty in  
18 Count 6 of the Second Superseding Indictment has the following elements:

19 1. Beginning no later than December 27, 2011, and continuing up to and

1 including January 29, 2014 for the purpose of evading the reporting requirements of  
2 Title 31, United States Code, Section 5313, and the regulations prescribed under  
3 such section;

4 2. Defendant did structure and attempt to structure \$2,955,521 in currency  
5 transactions with domestic financial institutions; and

6 3. Did so as part of a pattern of illegal activity involving more than \$100,000 in  
7 a 12-month period.

8 B. ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS

9 Defendant has fully discussed the facts of this case with defense counsel. Defendant  
10 has committed each element of the crime and admits that there is a factual basis for this  
11 guilty plea. The following facts are true and undisputed:

12 1. Beginning no later than 2010 and continuing up to and including September  
13 2016, Defendant Lahkwinder Singh, aka “Victor”, managed and operated multiple  
14 Postal Annex stores, a commercial shipping service provider (the “Postal Annexes”),  
15 each located within the Southern District of California.

16 2. Beginning no later than 2004 and continuing up to and including September  
17 2016, Singh was a shareholder in Lovely Singh, Inc., and its Chief Financial Officer  
18 and Secretary.

19 3. Co-defendant Lovely Singh, Inc. was a party to a franchise agreement that  
20 authorized it to operate the Postal Annexes.

21 4. Co-defendant Alejandro Nava was Singh’s employee at the Postal Annexes.  
22 For a fee, the Postal Annexes would package and ship items via various commercial  
23 carriers, including but not limited to Federal Express, United Parcel Service, and the  
24 U.S. Postal Service.

25 5. Beginning on an unknown date and continuing up to and including March 10,  
26 2016, within the Southern District of California, and elsewhere, Singh and Nava  
27 distributed Schedule II controlled substances from the Postal Annexes to persons  
28 located throughout the United States (the “Purchasers”); in that, prior to the shipment

1 of controlled substances, Singh and Nava would receive client shipping lists from  
2 individuals operating from within Mexico. Both Singh and Nava would then use  
3 these client shipping lists to pre-print and prepare commercial shipping labels for  
4 packages that would be used to fulfill orders placed by the Purchasers.

5 6. Couriers imported pre-packaged quantities of controlled substances into the  
6 United States from Mexico, and delivered them to the Postal Annexes. Using pre-  
7 printed shipping labels, co-defendants Singh and Nava would <sup>add labels</sup> prepare packages for  
8 shipment to the Purchasers from the Postal Annexes, which were shipped via various  
9 commercial shipping services in an attempt to avoid drawing attention to the  
10 packages.

11 7. Over the course of 2011 through 2016 Singh was aware of a high probability  
12 that the hundreds of packages sent from the Postal Annexes contained a prohibited  
13 controlled substance, and he deliberately avoided learning the truth of their contents.

14 8. In addition to receiving cash for the shipment of the controlled substances  
15 packages to the Purchasers, the Postal Annexes also conducted large cash  
16 transactions generated from its operations as a money services business, as  
17 supervised, managed, and coordinated by Singh. These cash proceeds were regularly  
18 deposited by Singh into bank accounts located throughout the Southern District of  
19 California, in the name of Singh and co-defendant Lovely Singh, Inc.

20 9. By no later than October 7, 2006, Singh had registered co-defendant Lovely  
21 Singh, Inc. with the Financial Crimes Enforcement Network (“FinCEN”) as a  
22 Money Services Business; thereby obtaining a license known as an “RMSB”, with  
23 the following stated money services business activities: money transmitter; redeemer  
24 of money orders; issuer of money orders; and seller of money orders. Singh was  
25 listed as the “Owner or Controlling Person” on the RMSB.

26 10. Singh registered himself with FinCEN on the RMSB as co-defendant Lovely  
27 Singh, Inc.’s Anti-Money Laundering and Bank Secrecy Act (“AML/BSA”) Officer,  
28 which required him to ensure that the Postal Annexes maintained an adequate

1 AML/BSA program.

2 11. Singh received regular training on AML/BSA issues from an international  
3 financial services and money transmitting corporation, for which co-defendant  
4 Lovely Singh, Inc. was an agent. The training Singh received included the  
5 obligations imposed on domestic financial institutions to report certain cash  
6 transactions to the Department of Treasury, including under Title 31, United States  
7 Code, Section 5313, and the regulations prescribed under such section.

8 12. One of Singh's duties as the RMSB AML/BSA Officer for co-defendant  
9 Lovely Singh, Inc. was to provide AML/BSA training to all new employees at the  
10 Postal Annexes.

11 13. Beginning no later than December 27, 2011, and continuing up to and  
12 including January 29, 2014, within the Southern District of California, Singh knew  
13 about the reporting requirements of Title 31, United States Code, Section 5313, and  
14 the regulations prescribed under such section, which generally required a domestic  
15 financial institution to file a report with the Department of Treasury for cash  
16 transactions of \$10,000 or more in any given banking day.

17 14. With the knowledge of the reporting requirements of Title 31, United States  
18 Code, Section 5313, and the regulations prescribed under such section, Singh did  
19 structure and attempt to structure up to \$2,955,521 in currency transactions with  
20 several domestic financial institutions, including Bank of America, N.A., Wells  
21 Fargo Bank, N.A., JP Morgan Chase, N.A., and Union Bank, N.A. (the "Financial  
22 Institutions"), into accounts controlled by Singh and co-defendant Lovely Singh,  
23 Inc.

24 15. Singh structured cash deposits at the Financial Institutions – that is, he  
25 conducted multiple deposits of less than \$10,000 in cash on the same day, and over  
26 the course of several business days into accounts controlled by Singh and co-  
27 defendant Lovely Singh, Inc. – for the purpose of causing the Financial Institutions  
28 to fail to file a report required under Title 31, United States Code, Section 5313(a),

1 and the regulations promulgated thereunder. The structured deposits were part of a  
2 ~~5324 (1)(2) → ENHANCEMENT~~  
3 pattern of illegal activity involving more than \$100,000 in a 12-month period.

4 16. In light of Singh's role as the ~~packager~~ and shipper of hundreds of packages  
5 to the Purchasers, the RMSB AML/BSA Officer for co-defendant Lovely Singh,  
6 Inc., and the person who conducted all of the structured cash deposits at the Financial  
7 Institutions, Singh knew or believed that the funds were proceeds of unlawful  
8 activity, or were intended to promote unlawful activity.

9 17. As the RMSB AML/BSA Officer for co-defendant Lovely Singh, Inc., and as  
10 the owner and controlling person on the RMSB, Singh abused a position of public  
11 trust, and used a special skill, in a manner that significantly facilitated the  
12 commission or concealment of the structuring alleged in Count 6 of the Second  
Superseding Indictment.

### 13 III

#### 14 PENALTIES

15 The crime to which Defendant is pleading guilty carries the following penalties:

16 A. a maximum 10 years in prison;  
17 B. a maximum \$500,000 fine;  
18 C. a mandatory special assessment of \$100 per count;  
19 D. forfeiture of all property, real or personal, involved in the offense and any  
20 property traceable thereto; and  
21 E. a term of supervised release of up to 3 years. Failure to comply with any  
22 condition of supervised release may result in revocation of supervised release,  
23 requiring Defendant to serve in prison, upon revocation, all or part of the  
24 statutory maximum term of supervised release.

### 25 IV

#### 26 DEFENDANT'S WAIVER OF TRIAL RIGHTS AND UNDERSTANDING OF CONSEQUENCES

27 This guilty plea waives Defendant's right at trial to:

28 A. Continue to plead not guilty and require the United States to prove the

- elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages;
- D. Confront and cross-examine adverse witnesses;
- E. Testify and present evidence and to have witnesses testify on behalf of Defendant; and
- F. Not testify or have any adverse inferences drawn from the failure to testify.

**DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE  
INFORMATION**

Any information establishing the factual innocence of Defendant known to the undersigned prosecutor in this case has been turned over to Defendant. The United States will continue to provide such information establishing the factual innocence of Defendant.

If this case proceeded to trial, the United States would be required to provide impeachment information for its witnesses. In addition, if Defendant raised an affirmative defense, the United States would be required to provide information in its possession that supports such a defense. By pleading guilty Defendant will not be provided this information, if any, and Defendant waives any right to this information. Defendant will not attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

**DEFENDANT'S REPRESENTATION THAT GUILTY  
PLEA IS KNOWING AND VOLUNTARY**

Defendant represents that:

A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel and has a clear understanding of the charges and the consequences of this plea. By pleading guilty, Defendant may be giving up, and rendered ineligible to receive, valuable government benefits and civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. The conviction in this case may subject Defendant to various collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case; debarment from government contracting; and suspension or revocation

1 of a professional license, none of which can serve as grounds to withdraw  
2 Defendant's guilty plea.

3

4 B. No one has made any promises or offered any rewards in return for this guilty  
5 plea, other than those contained in this agreement or otherwise disclosed to  
6 the Court.

7 C. No one has threatened Defendant or Defendant's family to induce this guilty  
8 plea.

9 D. Defendant is pleading guilty because Defendant is guilty and for no other  
10 reason.

11 E. The disposition contemplated by this agreement is part of a "package"  
12 disposition with co-defendant LOVELY SINGH, INC. If any defendant in the  
13 package fails to perform or breaches any part of their agreement, no defendant  
14 can withdraw their guilty plea, but the United States is relieved from and not  
15 bound by any terms in any agreements in the package.

16 **VII**

17 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 This plea agreement is limited to the United States Attorney's Office for the  
20 Southern District of California, and cannot bind any other authorities in any type of matter,  
21 although the United States will bring this plea agreement to the attention of other  
22 authorities if requested by Defendant.

23 **VIII**

24 **APPLICABILITY OF SENTENCING GUIDELINES**

25 The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a).  
26 In imposing the sentence, the sentencing judge must consult the United States Sentencing  
27 Guidelines (Guidelines) and take them into account. Defendant has discussed the  
28 Guidelines with defense counsel and understands that the Guidelines are only advisory, not  
mandatory. The Court may impose a sentence more severe or less severe than otherwise  
applicable under the Guidelines, up to the maximum in the statute of conviction. The  
sentence cannot be determined until a presentence report is prepared by the U.S. Probation  
Office and defense counsel and the United States have an opportunity to review and  
challenge the presentence report. Nothing in this plea agreement limits the United States'  
duty to provide complete and accurate facts to the district court and the U.S. Probation

1 Office.

2 **IX**

3 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

4 This plea agreement is made pursuant to Federal Rule of Criminal Procedure  
5 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge who may  
6 impose the maximum sentence provided by statute. It is uncertain at this time what  
7 Defendant's sentence will be. The United States has not made and will not make any  
8 representation about what sentence Defendant will receive. Any estimate of the probable  
9 sentence by defense counsel is not a promise and is not binding on the Court. Any  
10 recommendation by the United States at sentencing also is not binding on the Court. If the  
11 sentencing judge does not follow any of the parties' sentencing recommendations,  
12 Defendant will not withdraw the plea.

13 **X**

14 **PARTIES' SENTENCING RECOMMENDATIONS**

15 **A. SENTENCING GUIDELINE CALCULATIONS**

16 Although the Guidelines are only advisory and just one factor the Court will consider  
17 under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the  
18 following Base Offense Level, Specific Offense Characteristics, Adjustments, and  
19 Departures:

20 1. Base Offense Level [§ 2S1.3(a)(2)]	6	5/6
21 2. Increase [§2S1.3(a)(2)/§2B1.1(J)]	+18*	16
22 3. Proceeds of Unlawful Activity [§ 2S1.3(b)(1)(A)]	+ 2	
23 4. Pattern of Unlawful Activity > \$100,000 [§ 2S1.3(b)(2)]	+ 2	
24 5. Abuse of Position of Trust [§ 3B1.3]	+ 2	
25 6. Acceptance of Responsibility [§ 3E1.1]	- 3	

6 5/6  
+18\* 16

+ 2

+ 2

+ 2

- 3

26 \*Defendant may argue that the increase to the Base Offense Level under USSG

27 §2S1.3(a)(2)/§2B1.1 should be for 16 levels, which the United States may oppose.

28 ///

1                   B. ACCEPTANCE OF RESPONSIBILITY

2                   Despite paragraph A above, the United States need not recommend an adjustment  
3 for Acceptance of Responsibility if Defendant engages in conduct inconsistent with  
4 acceptance of responsibility including, but not limited to, the following:

- 5                   1. Fails to truthfully admit a complete factual basis as stated in the plea at  
6 the time the plea is entered, or falsely denies, or makes a statement  
7 inconsistent with, the factual basis set forth in this agreement;
- 8                   2. Falsely denies prior criminal conduct or convictions;
- 9                   3. Is untruthful with the United States, the Court, or probation officer;
- 10                  4. Breaches this plea agreement in any way; or
- 11                  5. Contests or assists any third party in contesting the forfeiture of  
12 property(ies) to which Defendant or any co-defendant has agreed to  
13 forfeit.

14                  C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS  
15                  INCLUDING THOSE UNDER 18 U.S.C. § 3553

16                  Defendant may request or recommend additional downward adjustments,  
17 departures, or variances from the Sentencing Guidelines under 18 U.S.C. § 3553. The  
18 United States will oppose any downward adjustments, departures, or variances not set forth  
in Section X, paragraph A above.

19                  D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

20                  The parties have **no** agreement as to Defendant's Criminal History Category.

21                  E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

22                  The facts in the "factual basis" paragraph of this agreement are true and may be  
23 considered as "relevant conduct" under USSG § 1B1.3 and as to the nature and  
24 circumstances of the offense under 18 U.S.C. § 3553(a)(1). The parties further agree that  
25 each may offer additional evidence at the sentencing hearing regarding the total amount of  
26 currency structured in violation of Title 31, United States Code, Section 5324, and  
27 Defendant's role therein, as "relevant conduct" under USSG § 1B1.3 and as to the nature  
28 and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

1                   F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

2                   The United States will recommend that Defendant be sentenced to the low end of  
3 the advisory guideline range recommended by the United States at sentencing.

4                   G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

5                   1. Special Assessment

6                   The parties will jointly recommend that Defendant pay a special assessment in the  
7 amount of \$100 per felony count of conviction to be paid forthwith at time of sentencing.  
8 Special assessments shall be paid through the office of the Clerk of the District Court by  
9 bank or cashier's check or money order made payable to the "Clerk, United States District  
10 Court."

11                  2. Fine

12                  The parties will jointly recommend that Defendant pay no fine in light of the  
13 forfeiture to be paid by Defendant and co-defendant Lovely Singh, Inc., as detailed in the  
14 attached Forfeiture Addendum.

15                  3. Forfeiture

16                  Defendant consents to the forfeiture allegations of the Second Superseding  
17 Indictment and consents to the forfeiture of up to \$2,955,521 pursuant to Title 31, United  
18 States Code, Section 5317(c)(1). Defendant agrees that the provisions of the attached  
5317(c)(1) Forfeiture Addendum shall govern forfeiture in this case. Defendant further agrees not to  
20 contest or assist anyone in contesting the forfeiture of any properties seized or forfeited in  
21 connection with this case, except that Defendant reserves the right to challenge any  
22 forfeiture in this case pursuant to the excessive fines clause of the Eighth Amendment of  
23 the United States Constitution at the sentencing hearing. The United States may oppose  
24 Defendant's lone available challenge to the forfeiture.

25                  H. SUPERVISED RELEASE

26                  If the Court imposes a term of supervised release, Defendant will not seek to reduce  
27 or terminate early the term of supervised release until Defendant has served at least 2/3 of  
28 the term of supervised release and has fully paid and satisfied any special assessments, fine,

criminal forfeiture judgment, and restitution judgment.

XI

## **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

4 Defendant waives (gives up) all rights to appeal and to collaterally attack every  
5 aspect of the conviction and sentence, including any forfeiture order. The only exceptions  
6 are: (i) Defendant may appeal on the sole ground that the final order of forfeiture violates  
7 the excessive fines clause of the Eighth Amendment of the Constitution; and (ii) Defendant  
8 may collaterally attack the conviction or sentence on the basis that Defendant received  
9 ineffective assistance of counsel. If Defendant appeals, the United States may support on  
10 appeal the sentence or forfeiture order actually imposed.

XII

## **BREACH OF THE PLEA AGREEMENT**

Defendant and Defendant's attorney know the terms of this agreement and shall raise, before the sentencing hearing is complete, any claim that the United States has not complied with this agreement. Otherwise, such claims shall be deemed waived (that is, deliberately not raised despite awareness that the claim could be raised), cannot later be made to any court, and if later made to a court, shall constitute a breach of this agreement.

Defendant breaches this agreement if Defendant violates or fails to perform any obligation under this agreement. The following are non-exhaustive examples of acts constituting a breach:

1. Failing to plead guilty pursuant to this agreement;
2. Failing to fully accept responsibility as established in Section X, paragraph B, above;
3. Failing to appear in court;
4. Attempting to withdraw the plea;
5. Failing to abide by any court order related to this case;
6. Appealing (which occurs if a notice of appeal is filed) or collaterally attacking the conviction or sentence in violation of Section XI of this

plea agreement;

7. Failing to comply with the terms of the attached Forfeiture Addendum, or contesting or assisting anyone in contesting the forfeiture in breach of the provisions of this agreement or the attached Forfeiture Addendum; or
8. Engaging in additional criminal conduct from the time of arrest until the time of sentencing.

If Defendant breaches this plea agreement, Defendant will not be able to enforce any provisions, and the United States will be relieved of all its obligations under this plea agreement. For example, the United States may proceed to sentencing but recommend a different sentence than what it agreed to recommend above. Or the United States may pursue any charges including those that were dismissed, promised to be dismissed, or not filed as a result of this agreement (Defendant agrees that any statute of limitations relating to such charges is tolled indefinitely as of the date all parties have signed this agreement; Defendant also waives any double jeopardy defense to such charges). In addition, the United States may move to set aside Defendant's guilty plea. Defendant may not withdraw the guilty plea based on the United States' pursuit of remedies for Defendant's breach.

18        Additionally, if Defendant breaches this plea agreement: (i) any statements made by  
19      Defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a  
20      District Judge) and the sentencing hearing; (ii) the factual basis statement in Section II.B  
21      in this agreement; and (iii) any evidence derived from such statements, are admissible  
22      against Defendant in any prosecution of, or any action against, Defendant. This includes  
23      the prosecution of the charge(s) that is the subject of this plea agreement or any charge(s)  
24      that the prosecution agreed to dismiss or not file as part of this agreement, but later pursues  
25      because of a breach by the Defendant. Additionally, Defendant knowingly, voluntarily, and  
26      intelligently waives any argument that the statements and any evidence derived from the  
27      statements should be suppressed, cannot be used by the United States, or are inadmissible  
28      under the United States Constitution, any statute, Rule 410 of the Federal Rules of

1 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, and any other federal  
2 rule.

3 **XIII**

4 **CONTENTS AND MODIFICATION OF AGREEMENT**

5 This plea agreement embodies the entire agreement between the parties and  
6 supersedes any other agreement, written or oral. No modification of this plea agreement  
7 shall be effective unless in writing signed by all parties.

8 **XIV**

9 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

10 By signing this agreement, Defendant certifies that Defendant has read it (or that it  
11 has been read to Defendant in Defendant's native language). Defendant has discussed the  
12 terms of this agreement with defense counsel and fully understands its meaning and effect.

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DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and Defendant's counsel did not advise Defendant about what to say in this regard.

ALANA W. ROBINSON  
Acting United States Attorney

DATED

Orlando B. Gutierrez  
Daniel C. Silva  
Assistant U.S. Attorneys

10/18/17

Robert E. Boyce  
Robert E. Boyce  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR  
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"  
SECTION ABOVE ARE TRUE.

DATED

10/18/2017  
Lahkwinder Singh, aka "Victor"  
Defendant

Approved By:

BLAIR C. PEREZ  
Assistant U.S. Attorney

**A P P E N D I X - D**

**Forfeiture Addendum, Lakhwinder Singh, Pages 1 through 4**

OCT 31 2017

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *RMB*

## FORFEITURE ADDENDUM

Defendant's conviction will include forfeiture. This forfeiture addendum is incorporated into and part of Defendant's plea agreement, and the additional terms and warnings below apply.

A. Penalty. In addition to the penalties in the plea agreement, federal law states that a guilty plea as to Count 6 of the Second Superseding Indictment mandates that Defendant must forfeit all property, real or personal, involved in the offense and any property traceable thereto.

B. Property Subject to Forfeiture. As part of Defendant's guilty plea to Count 6 of the Second Superseding Indictment, as set forth in section I of the plea agreement, Defendant, and all shareholders of Defendant, agree to forfeit \$2,955,521, via entry of a money judgment against Defendant in a preliminary order of forfeiture. Defendant, however, reserves the right to contest the total amount of the money judgement, before entry of a final order of forfeiture, solely upon the ground that the forfeiture of \$2,955,521 constitutes an excessive fine under the Eighth Amendment of the United States Constitution at the sentencing hearing. Defendant, and all shareholders of Defendant, understand the United States may seek forfeiture in the entire amount and will oppose Defendant's position. Notwithstanding the Court's imposition of a forfeiture judgment in any amount, Defendant, and all shareholders of Defendant, understand it will not be able to withdraw its guilty plea.

C. Basis of Forfeiture. The money judgment against Defendant represents monies subject to forfeiture to the United States as property involved in the illegal conduct in violation of Title 31, United States Code, Section 5324(a)(3) and is subject to forfeiture to the United States pursuant to Title 31, United States Code, Section 5317(c)(1).

D. Immediate Entry of an Order of Forfeiture. Defendant, and all shareholders of Defendant, consent and agree to the immediate entry of an order of forfeiture upon entry of the guilty plea. Defendant, and all shareholders of Defendant, agree that upon entry of the order of forfeiture, such order shall be final as to Defendant, except as to Defendant's

1 right to challenge the forfeiture on Eighth Amendment grounds at the sentencing hearing as  
2 described above. Defendant agrees to immediately withdraw any claims in pending admin-  
3 istrative or civil forfeiture proceedings to properties seized in connection with this case that  
4 are directly or indirectly related to the criminal conduct. Defendant agrees to execute all  
5 documents requested by the United States to facilitate or complete the forfeiture process  
6 upon entry of a final order of forfeiture. Defendant, its shareholders, officers, employees,  
7 and agents further agree not to contest the forfeiture of property subject to forfeiture in this  
8 case. Contesting the forfeiture shall constitute a material breach of the plea agreement,  
9 relieving the United States of all its obligations under the agreement including but not lim-  
10 ited to its agreement to recommend an adjustment for Acceptance of Responsibility. De-  
11 fendant, and all shareholders of Defendant, agree that the criminal forfeiture money judg-  
12 ment imposed by the Court will be (i) subject to immediate enforcement, and (ii) submitted  
13 to the Treasury Offset Program so that any federal payment or transfer of returned property  
14 the Defendant receives may be offset and applied to the outstanding balance on the forfei-  
15 ture judgment.

16 E. Entry of Orders of Forfeiture and Waiver of Notice. Defendant, and all share-  
17 holders of Defendant, consent and agree to the entry of orders of forfeiture for such prop-  
18 erty and each waive the requirements of Federal Rules of Criminal Procedure 32.2 and  
19 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the  
20 forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant un-  
21 derstands that the forfeiture of assets is part of the sentence that may be imposed in this  
22 case and waives any failure by the Court to advise Defendant of this, pursuant to Rule  
23 11(b)(1)(J), at the time the Court accepts the guilty plea(s).

24 F. Waiver of Constitutional and Statutory Challenges. Defendant, and all of its  
25 shareholders, further agree to waive all constitutional and statutory challenges (including  
26 direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance  
27 with this agreement, except that Defendant may challenge the forfeiture at the sentencing  
28 hearing pursuant to the Eighth Amendment of the United States Constitution. Defendant,  
LSJ,69  
Def. Initials RMB  
16CR0729-BAS

1 its shareholders, officers, employees, and agents agree to take all steps as requested by the  
2 United States to pass clear title to forfeitable assets to the United States and to testify truth-  
3 fully in any judicial forfeiture proceeding.

4       G. Agreement Survives Defendant; No Forfeiture Abatement. Defendant, and all  
5 shareholders of Defendant, agree that the forfeiture provisions of this plea agreement and  
6 forfeiture addendum are intended to, and will, survive Defendant, notwithstanding the  
7 abatement of any underlying criminal conviction after the execution of this agreement. The  
8 forfeitability of any particular property pursuant to this agreement shall be determined as  
9 if Defendant had survived, and that determination shall be binding upon Defendant's heirs,  
10 successors, and assigns until the agreed forfeiture, including any agreed money judgment  
11 amount, is collected in full.

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1        H. Substitute Assets/Collection of Judgment. Defendant, and all shareholders of  
2 Defendant, acknowledge and agree that the forfeiture in this case includes entry of a money  
3 judgment against Defendant. Interest shall accrue on the judgment from the date of entry  
4 of the Order of Forfeiture and shall accrue thereon in accordance with 18 U.S.C. § 3612(f)  
5 and 28 U.S.C. § 1961. Defendant, and all shareholders of Defendant, agree that the United  
6 States may take all actions available to it to collect the full amount of the judgment, includ-  
7 ing enforcement of the judgment against substitute assets as provided in 21 U.S.C. § 853(p)  
8 and actions available under the Federal Debt Collections Procedure Act.

ALANA W. ROBINSON  
Acting United States Attorney

Orlando B. Gutierrez  
Daniel C. Silva  
Assistant U.S. Attorneys

11 DATED 10-30-19

Richard M. Barnett  
Defense Counsel

14 10-18-17  
DATED

Himanshu Singh  
Himanshu Singh, as  
President, Chief Executive Officer,  
and Shareholder of  
Defendant Lovely Singh, Inc.

16 | 10-18-17  
17 | DATED

Lahkwinder Singh, aka "Victor", as  
Secretary, Chief Financial Officer,  
and Shareholder of  
Defendant Lovely Singh, Inc.

20 10/18/2017  
DATED

23

**A P P E N D I X - E**

**Sentencing Hearing Transcript, Lakhwinder Singh, Selected Pages**

## 12 || APPEARANCES:

13 For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
14 ORLANDO GUTIERREZ  
15 DANIEL SILVA  
16 Assistant United States Attorneys  
17  
18 For Defendant Singh: BOYCE & SCHAEFER  
19 ROBERT EVANS BOYCE  
20 Attorney at Law  
21  
22 RICHARD MARK BARNETT  
23 Attorney at Law  
24  
25 For Defendant  
26 Lovely Singh, Inc.: FRANK THOMAS VECCHIONE  
27 Attorney at Law  
28  
29  
30 Court Reporter: Dana Peabody, RDR, CRC  
31 District Court Clerk's Office  
32 333 West Broadway, Suite 420  
33 San Diego, California, 92101  
34 DanaPeabodyCSR@gmail.com

1 wife have put into raising their family.

2 when he was working at UCSD and Kaiser, he bought them a  
3 Postal Annex in Lemon Grove in 2000, and he bought a second one  
4 in 2007, which required him to run the Postal Annexes  
09:05 5 full-time, and then his wife would work in the evenings too.

6 In 2009 the lease on the Encinitas Postal Annex was not  
7 renewed, and he moved it to College Grove. That's where he met  
8 Mr. Nava, and Mr. Nava was a carpenter I think at the -- in  
9 rebuilding the -- or preparing the College Grove Postal Annex  
09:06 10 for them to move into. And Mr. Nava primarily ran the College  
11 Grove Postal Annex, and in 2014 that College Grove Postal Annex  
12 was closed.

13 I think one of the questions in this case is whether the  
14 bank structuring had anything to do with the passing of pills  
09:06 15 through the Postal Annex. And I think if you look at this  
16 closely, I don't think that the bank structuring, the money  
17 going through the bank, had anything to do with the pills that  
18 were going through the Postal Annex. The bank structuring  
19 would have occurred regardless if any of those pills had ever  
20 gone through a Postal Annex, and but for Mr. Nava, there would  
21 have been no pills that ever went through the Postal Annex.  
22 All the connections to the pills were directly related to  
23 Mr. Nava's connection to Mexico.

24 Now, obviously Mr. Singh did turn a blind eye to what was  
09:07 25 happening at the Postal Annex after he received information

1 that is the only thing that makes any sense as to why he was  
2 structuring was just to avoid contact with the government.

3       But I also think that if you -- I thought something  
4 significant was noted in Mr. Gutierrez's sentencing memorandum  
09:09 5 which highlights the fact that the structuring did not have  
6 anything to do with the pills going through the Postal Annex,  
7 and that is that on page 4 of the sentencing memorandum,  
8 Mr. Gutierrez notes that -- he says, "Mr. Singh embarked on a  
9 scheme in and avoiding detection of law enforcement in the  
09:09 10 institutions at which he banked. Defendant Singh began  
11 operating the Postal Annexes as licensed money transmitting  
12 businesses in 2006 as an agent of Western Union." And that's  
13 how he became educated on the fact that you had these reporting  
14 requirements for amounts over \$10,000.

09:10 15       Now, the Western Union business resulted in people bringing  
16 in large amounts of cash to the Postal Annexes because they  
17 would buy money orders to pay their rent and pay other  
18 utilities. This amounted to thousands of dollars from these  
19 people that Mr. Singh had to put into the bank, and that was  
09:10 20 what resulted in the structuring.

21       He made probably 1 percent on those transactions. If he  
22 wanted to avoid attention from the government on the pills  
23 going through the business, the last thing he's going to do is  
24 sign up with Western Union and say okay, I'm going to get all  
09:10 25 this business from Western Union which is going to result in

1                   MR. VECCHIONE: Not only for the corporation, which is  
2 really the only issue, but also for Mr. Singh, and they overlap  
3 tremendously because all the conduct was that of Mr. Singh.

4                   I share in all of the comments made by Mr. Boyce. This  
5 case -- and this is going to apply also to the forfeiture  
6 analysis because I know Your Honor can't ignore the elephant in  
7 the room, which is the shipment of the pills, but this is a  
8 structuring case. He pled guilty to structuring. He did not  
9 plead guilty to a drug count. And when you look at structuring  
09:14 10 from a forfeiture standpoint, i.e., is the forfeiture grossly  
11 disproportional to the conduct of the defendant in that  
12 particular case, we have to look at Mr. Singh's conduct.

13                   And I'm going to address that in a minute, but --

14                   THE COURT: Before you do, I mean, on the one hand  
09:14 15 there's an agreement that it was more than 1.5 million that was  
16 structured, and this was proceeds from unlawful activity.

17                   MR. VECCHIONE: My understanding that the unlawful  
18 activity is the structuring. Some of it is proceeds from the  
19 shipment of the pills, but in talking with co-counsel -- I  
09:15 20 joined the party a little late -- they indicated to me don't  
21 let that language confuse you. We were talking about the  
22 actual structuring. If you look at the -- I think it's our  
23 Exhibit -- well, it's the chart in our opposition. I think  
24 it's on page 7 where we've analyzed all of the deposits that  
09:15 25 were made into the corporate account. And over the course of

1 the two years that we're talking about, there was approximately  
2 \$4 million roughly that went into the two accounts, most of  
3 which was money transmissions or money orders. It was money  
4 that fleetingly passed through the account literally in less  
09:15 5 than 24 hours.

6 And I'm somewhat taken aback by the fact that this money  
7 that never belonged to Mr. Singh, never garnered him a profit  
8 other than maybe 1 percent, is going to result in him getting  
9 hit with a \$2.9 million forfeiture order when in fact if you go  
09:16 10 back to 2012 and 2013, in 2012 the corporation had a profit of  
11 \$23,000, and in 2013 it was about \$50,000. So we're talking  
12 about \$75,000 profit over the two years walking him into a  
13 \$2.9 million forfeiture. That is grossly disproportional, and  
14 I thought we at least would be there and then talking about how  
09:16 15 much would be reasonable, so I'm a little taken aback because  
16 not only is the 2.9 million grossly disproportional to any  
17 profit that Mr. Singh or the corporation made, but when you  
18 look at the offense, and this is one of the main factors  
19 utilized by the Ninth Circuit in *United States versus \$100,348*,  
09:17 20 they look at the four *Bajakajian* factors, and I won't go into  
21 the history of *Bajakajian*. I'm sure Your Honor is familiar. I  
22 believe this case tracks *Bajakajian*. It has similarities, and  
23 it also tracks the \$100,348. They were both cases where  
24 individuals were stopped at airports, asked if they had any  
09:17 25 money to declare, one case 5,000, one case 7,000.

1 is if people were walking in and instead of shipping pills, and  
2 we don't know -- we know for a fact that Mr. Singh didn't know  
3 exactly what was in these packages, and most of them were sent  
4 from the San Diego Postal Annex while he was working in Lemon  
09:19 5 Grove. He picked up the money and deposited it, but he didn't  
6 understand what was in the packages, how often they were being  
7 shipped, but he was aware a high probability of pills, and I  
8 think he came to learn that over time and knew more about it  
9 later on. Early on it might have been less obvious, and I  
09:19 10 think it actually was being hidden from him, but he's pled  
11 guilty, and there are the pills shipments that we have to  
12 address. If people were coming in with vitamin C pills,  
13 aspirin, stuffed Teddy bears, Mr. Singh would have still been  
14 structuring that money. The reason it's not related to the  
09:20 15 pill shipments is because it's not related to the structuring.  
16 His business was related to pill shipments, but the structuring  
17 was not. There never was one pill shipment payment that there  
18 is any evidence caused a structured deposit. We know that they  
19 were at most 2,000 to \$2500 in one day. We see 179  
09:20 20 transactions that were taken out of the first superseding  
21 indictment that the government concedes are not structuring.  
22 There's deposits of 4,000, 5,000, \$3500, all single  
23 transactions well under 10,000.  
24 Now, obviously we don't know how many of the pill shipment  
09:20 25 deposits went into those nonstructured transactions. Obviously

1 some went into the structure. But it was happenstance. He's  
2 being treated as an individual who is running this business in  
3 order to ship pills and therefore was structuring in order to  
4 hide the fact that he's shipping pills. If we count every  
09:21 5 single shipment from the San Diego office as a pill shipment,  
6 that's 9 percent of all of the deposits over those two years.  
7 And I submit there were packages that didn't contain pills.  
8 We're probably talking 5 to 7 percent of all of the deposits  
9 pertained to pill shipments. That wouldn't be the motivation  
09:21 10 for structuring. The structuring exists before the pills  
11 arrived.

12 So I can't emphasize strongly enough, Your Honor, that this  
13 is a structuring case, not a drug distribution case and that  
14 the pill shipments were not the reason for or the motivation  
09:21 15 behind the structuring. Why is that important? Because if  
16 Your Honor looks at this as solely a structuring case, we start  
17 out with a maximum statutory fine of 250,000. And Your Honor  
18 says but there were many transactions, so we have to look at  
19 this differently.

09:22 20 Well, Congress enacted a statute that if this is a pattern  
21 of conduct over a year, over \$100,000, you double the maximum  
22 fine. So the Ninth Circuit says look at the Sentencing  
23 Guidelines. Number one, Congress has written a statutory  
24 penalty for pattern of conduct similar to Mr. Singh. It's a  
09:22 25 \$500,000 maximum statutory. The Ninth Circuit looks at the

1 maximum Sentencing Guideline fine. It doesn't look at the  
2 maximum statutory. And in §100,348 it reversed a seizure of  
3 \$100,000 because it was three times more than the maximum  
4 Sentencing Guideline fine. It was a \$250,000 maximum statutory  
09:22 5 fine. The Sentencing Guideline fine had a maximum of 30,000,  
6 and the Ninth Circuit found a \$100,000 forfeiture to be grossly  
7 disproportional when you have a maximum Sentencing Guideline  
8 fine of 30,000.

9 In this case depending on whether we use the 2014 guideline  
09:23 10 or the 2016 for the fine, and I think the guidelines make it  
11 clear that you use the 2014 if the offense ended before  
12 November of 2014, which this count did, but either way the  
13 government might differ with that.

14 The 2014 guidelines at the time this offense occurred,  
09:23 15 structuring with this guideline level of 25 resulted in a  
16 maximum guideline fine of \$100,000. If we use the 2016  
17 guideline range, it's a maximum of \$200,000.

18 So Congress considered pattern of conduct as did the  
19 Sentencing Commission because you get to this guideline range  
09:24 20 by adding on two levels for the pattern of conduct. He gets  
21 hit with it twice, the maximum statutory fine and the maximum  
22 Sentencing Guideline fine.

23 So it is all taken into consideration, and looking at it in  
24 light most favorable to the government, we have a maximum  
09:24 25 Sentencing Guideline fine of 200,000. We have a maximum

1 statutory fine of 500,000. They're asking for \$3 million.  
2 That's 15 times the maximum Sentencing Guideline fine. The  
3 Ninth Circuit reversed a forfeiture that was three times more  
4 than the maximum Sentencing Guideline fine.

09:24 5 So, Your Honor, I think it's important that we look at this  
6 as a structuring case. we look at the maximum Sentencing  
7 Guideline fine. we look at the maximum statutory fine. we had  
8 recommended a forfeiture of 200,000 for Mr. Singh. I would say  
9 any forfeiture between 200 and 500,000 would be reasonable and  
09:25 10 would pass muster with the Ninth Circuit. If Your Honor gets  
11 into the government's \$3 million range, it is at such a  
12 multiple of the Sentencing Guideline fine maximum that it  
13 clearly would be grossly disproportionate to the conduct of  
14 Mr. Singh.

09:25 15 with regard to the corporation, the corporation essentially  
16 owned the two Postal Annexes, Lemon Grove and San Diego.  
17 San Diego was sold in 2014. Lemon Grove was sold in 2017.  
18 Presently the corporation is operating no business. It is a  
19 closely held corporation owned by Mr. Singh and his wife. It's  
09:25 20 not a Fortune 500 company, and it is only active today in order  
21 to defend this litigation. In fact, California law requires it  
22 to stay active to defend against litigation. So just so the  
23 Court is aware in fashioning any order or modification of  
24 forfeiture, the corporation has no assets. All of the conduct  
09:26 25 of the corporation was the conduct of Mr. Singh. If you look

1 2.9 was involved in structuring or was structured. We would be  
2 put to our paces to argue that beyond a reasonable doubt. But  
3 in terms of the gravity of the offense, over this, I don't  
4 know, I think it was 25, 26-month period, nearly \$5 million in  
09:45 5 cash went into these accounts. And I think it's worth noting,  
6 Your Honor, that maybe three -- maybe four were over \$10,000 in  
7 cash deposits.

8 On the flip side, as Special Agent Gogley detailed  
9 throughout the expert report, there were repeated aggravating  
09:45 10 factors in this case, and I've touched on them, but I want to  
11 make sure I end with this.

12 THE COURT: Before you end with that, so you talk  
13 about the 4 to \$5 million, and then you go down -- I guess I'm  
14 not completely clear how you come up. I do understand that  
09:46 15 there was an agreement as part of the plea agreement that the  
16 2.9 million was the amount involved in the structuring. I'm  
17 not clear where that comes from. Just an agreement for the  
18 plea agreement?

19 MR. SILVA: No, that was alleged in the indictment.  
09:46 20 THE COURT: But how did you get down to that from the  
21 4 to 5 million?

22 MR. SILVA: Well, you get down to it because you look  
23 at it, and the challenge, Your Honor, in these cases and why  
24 maybe the Court and the U.S. Attorney's office may not bring  
09:46 25 these often is you have 12 strangers trying to figure out this

1 MR. SILVA: The last thing I'll say on the forfeiture,  
2 just to be clear, the statutory maximum fine for Mr. Singh is  
3 \$500,000 in this case. The statutory maximum fine for the  
4 corporation, for Lovely Singh, Inc., is \$1 million, so that's  
09:48 5 \$1.5 million. The government is effectively asking for a  
6 forfeiture of double that. Does that make sense? The  
7 Sentencing Guidelines, however, are different. The Sentencing  
8 Guidelines, I had it under a 27 the fine range for Lovely  
9 Singh, Inc. is between 5.1 and \$10.2 million under the  
09:48 10 guidelines.

11 THE COURT: How did you get that? Is that based  
12 on -- because there's a provision that says twice the gross  
13 gain, and part of the problem I have is I'm not sure it's clear  
14 from the record that this was a gain to Mr. Singh.

09:48 15 MR. SILVA: That's a good clarification, Your Honor.

16 So just to be clear, probation recommended that the fine should

17 be, I believe, \$5.8 million. The government is not requesting

18 that. I think the government would agree with the Court that

19 we're not saying this is a gross gain. The analysis that the

09:49 20 United States did in its sentencing memo for the corporation at

21 least was based on chapter 8 of the Sentencing Guidelines. And

22 that's where you come up with the culpability score on the

23 underlying crime, and then there's a multiplier, and so based

24 on that, the government got to 5.1 to \$10.2 million. Now, the

09:49 25 corporation didn't -- I'm not positive, so excuse me. I don't

1 think they filed any sort of analysis of how they reached a  
2 fine. I think as Mr. Vecchione made clear, look, there's no  
3 assets of the corporation, so the Court's forfeiture would be  
4 sort of moot, but the government, even if it reduced its  
09:49 5 culpability score, if it reduced the guideline range, that  
6 would still be well above the \$2.9 million forfeiture against  
7 the corporation that the government is requesting.

8 THE COURT: I'm not sure there's a direct correlation  
9 between the fine and the forfeiture.

09:50 10 MR. SILVA: That's a good point.

11 THE COURT: I understand that's the defense's argument  
12 that shows that it's grossly disproportionate. I'm not sure  
13 it's limited by the sentencing guideline range.

14 MR. SILVA: It's a factor for the Court to consider.

09:50 15 THE COURT: It's a factor.

16 MR. SILVA: One other thing, and we started off our  
17 analysis of one of these -- one of the papers that were put in  
18 front of the Court, one of the courts said look, how do you  
19 determine the gravity of the offense? How do you determine the  
09:50 20 gross proportionality? And what there was was there was an  
21 initial understanding by many of these courts as they did this  
22 analysis throughout all the authority that this is a difficult  
23 analysis, and Congress has decided that there is at least three  
24 types of sentencing issues that the Court can hand down. Jail.  
09:50 25 A fine. And forfeiture. Right. So all three of those, none

1 of them are mutually exclusive. Just because the Court  
2 attaches a fine does not limit the amount of forfeiture that  
3 the Court can hand down. Just because the Court has a large  
4 forfeiture doesn't mean it then reduces that incarceration.

09:51 5 And so I would only say that that the \$2.9 million here is  
6 exactly what Congress expected to happen; namely, someone  
7 structures with the corporation. They are subject to a very  
8 large fine, and they also are subject to a very large  
9 forfeiture of all property involved in the offense of  
09:51 10 conviction. And so I think Congress would envision exactly the  
11 type of sentence that the United States is requesting today in  
12 that the corporation and the individual, these two working in  
13 tandem, that one was a corporation and the other was a person,  
14 that there's a total \$2.9 million forfeiture. So that's to be  
09:51 15 clear, Your Honor, is we're not asking for two forfeiture  
16 orders, each in the amount of \$2.9 million. You know, we want  
17 it to add up to that.

18 Secondly, that the individual responsible for this conduct  
19 would be risking jail time as a felony. Now, the government  
09:52 20 has not requested a fine. Right. we have totally dispensed  
21 with that because what we said was both the defendant  
22 individually and the defendant in a corporate manner understand  
23 that there is a forfeiture and that it will be large. And  
24 because of that, the government doesn't see any need to ask for  
09:52 25 a fine on top of that.

1 THE COURT: I have one other question. So if you're  
2 requesting that it add up to 2.9 million, can I order a  
3 \$2.9 million or whatever forfeiture I decide and make it  
4 jointly and severally liable or do I have to impose a  
5 forfeiture on the corporation and then a separate forfeiture on  
6 Mr. Singh and make them add up to 2.9 or whatever my total  
7 amount is?

8 MR. SILVA: That's somewhat of an academic question at  
9 this point because there's a lot of flux in the law right now.  
09:52 10 There are recent Supreme Court cases that have kind of thrown  
11 it up in the air. There's also new circuit law, so I'm not  
12 totally positive where it stands in the Ninth Circuit.

13 THE COURT: what are you requesting today?  
14 MR. SILVA: what we're requesting is that the Court  
09:53 15 add them up.

16 THE COURT: \$1 million fine to the corporation and 1.9  
17 to Mr. Singh?

18 MR. SILVA: Yes, that exact request would be exactly  
19 what we would look for. Exactly. There's a little bit more  
09:53 20 that we would like to discuss, but I think we've taken much of  
21 the Court's time.

22 I just want to again offer that there are witnesses here  
23 prepared to testify if the Court needs any clarification or if  
24 it wants the United States to come up with any more -- I think  
09:53 25 we're prepared to do it today. That's why we requested this

1 significantly, a year or two for a couple million is generally  
2 what ends up happening, even after the cooperation. There was  
3 a recent case out of the Central District of California  
4 similarly where there was a doctor misprescribing opioids. And  
10:00 5 he was getting paid for it. And he was structuring at his  
6 bank, and I believe that was 500 to 600,000, and I think he got  
7 somewhere between 30 and 40 months, right, so you now have  
8 multiples of that and about the same recommendation. And so  
9 the United States basically thought look, 40 months is an  
10:00 10 adequate deterrent both specifically to Mr. Singh but also to  
11 the public at large because I do think there is a  
12 misperception, Your Honor, that structuring is not bad. You  
13 know, it's not money laundering. It's not tax evasion. But  
14 this is just as insidious as any of those crimes as Congress  
10:00 15 has laid out with the high sentencing factors as borne out as  
16 shown to the Court that Mr. Nava is actually facing a little  
17 bit less than Mr. Singh is for different crimes that they pled  
18 to.

19 THE COURT: Okay. Thank you.

10:01 20 MR. GUTIERREZ: Do you mind, Your Honor?

21 THE COURT: Mr. Guiterrez, go ahead.

22 MR. GUTIERREZ: If I could just put in perspective,  
23 you asked Mr. Nava's sentencing exposure. It is based on 325  
24 converted kilograms of marijuana, and I want to be careful and  
10:01 25 explain to the Court why it is the guidelines are as they are

1 as they were charged against Mr. Singh and Mr. Nava pled to.  
2 This business for a period of many years, for 20 to 50  
3 packages a day, were sending opioids across the country. And  
4 they were getting money from that. But the important thing is  
10:01 5 that when we made the charging decision to charge the drug  
6 offenses against both defendants, it was based only on what we  
7 were able to seize. On one point in time one courier was  
8 coming across, and she was caught, and she told them I'm going  
9 to this Postal Annex, so that's where we got the guidelines for  
10:02 10 Mr. Nava for Mr. Singh. And it's a little bit misleading  
11 because you might think well, only 40 months, that must not  
12 have been a lot of drugs. That was just one courier on one  
13 day, and that's what the guidelines come to because 2D1.1  
14 requires us to correlate drugs to time. And those were the  
10:02 15 only drugs that we actually seized. But when we investigated  
16 more and we talked to Nava and we saw Mr. Singh's conduct, we  
17 knew that there was an operation. The organization would send  
18 a list because there were so many, 20 to 50 overnight packages  
19 that they wanted them beforehand, and on the day Mr. Singh was  
10:02 20 arrested, Nava was detained at the port, and he was already  
21 processing the order by the time the authorities came. There  
22 were times when he would do it by himself. There were times  
23 when Mr. Nava would do it himself.

24 THE COURT: You say "he." You mean Mr. Singh?  
10:02 25 MR. GUTIERREZ: Mr. Singh would get the email, would

1 package the drugs, and ship them out, and he would sometimes --  
2 and we even followed him -- would go to different shipping  
3 places. A post office at a shopping mall that he owns was also  
4 used. So I don't want the Court to think that this is only a  
10:03 5 40-month drug case because if we were to tabulate 30 to 50  
6 packages a day over a period of conservatively of 26 months,  
7 the guidelines would be much more severe, and it goes to show  
8 that his motive to hide what he was doing was more commensurate  
9 with what we weren't able to charge and determine, so I just  
10:03 10 want to put in perspective what it was he was actually doing  
11 with regard to the drugs.

12 THE COURT: Anything from probation?

13 PROBATION: Your Honor, Carlos De La Toba on behalf of  
14 U.S. Probation. No information.

10:03 15 THE COURT: Okay. Anything further?

16 MR. BOYCE: Yes, I'd like to respond.

17 THE COURT: Sure.

18 MR. BOYCE: Just to circle back to what they've  
19 brought up regarding the drug case in this case, and I think  
10:03 20 that this began in 2008 when Mr. Nava was hired by Mr. Singh,  
21 and what Mr. Nava would say and what he told the agents was  
22 that shortly after he was hired, he was approached by these two  
23 individuals, Garcia and Dicianno, and these people were  
24 connected to people that Mr. Nava knew in Mexico, and also  
10:04 25 other people were arrested that Mr. Nava had known, and what

1 and the government did nothing either. They were aware of it  
2 back in 2013 and 2014. And these shipments continue to go  
3 through. Mr. Singh, maybe like the government -- maybe like  
4 UPS should have done something back then to stop the shipments,  
10:06 5 but that didn't happen. 98 percent of these packages went  
6 through UPS. Only a small percentage went through FedEx or  
7 through the postal service. }  
8  
9

10 And this interview that Mr. Silva was talking about where  
11 there was a -- they sent an informant in, and the  
12 informant -- there was supposed to be a transcript, wear a  
13 transcript, but the recording apparently malfunctioned, but the  
14 informant came in asking for Mr. Nava. Mr. Nava wasn't there,  
15 so the informant talked to Mr. Singh about wanting to ship  
16 packages through UPS, and Mr. Singh gave him a list of prices  
17 about how much the packages would cost, the normal shipping  
18 costs of packages using UPS through the Postal Annex. During  
19 this conversation Mr. Nava came into the store, and at that  
20 point the confidential informant and Mr. Nava had a  
21 conversation in which apparently they were whispering and  
22 Mr. Nava was talking to the informant about coming back into  
23 the business of shipping these apparently pills through  
24 the -- if this informant was going to continue shipping pills  
25 through the postal service. But that was a little background  
as to how the pill business was working, and it certainly was  
10:07 Mr. Singh who turned a blind eye to this, and probably

1 shouldn't have, but Mr. Singh did not need to use the  
2 structuring to conceal the pills shipped through the Postal  
3 Annex.

4 And the irony is that by bringing in this Western Union  
10:08 5 business, it only drew attention to Mr. Singh and the  
6 structuring, only concealed the legitimate money that was  
7 coming through the Postal Annex because there was no day in  
8 which the amount of these packages that were shipped through  
9 the Postal Annex would ever have exceeded at most \$2500. It  
10:08 10 never got up to \$10,000. So the only thing by bringing this  
11 Western Union business through the Postal Annex was it was  
12 drawing attention to Mr. Singh's business.

13 And I comment about the disparity of the sentence, and  
14 that's why they're requesting a 40-month sentence which they  
10:08 15 say is one of the higher amounts -- the higher sentences that's  
16 imposed on somebody that has been convicted or pled guilty to  
17 structuring. And that is including drug organizations where  
18 you've got actual money laundering going on. There was no  
19 money laundering here because there was no necessity to -- only  
10:09 20 1 to 10 percent of the money that was going through the banks  
21 was due to these pill shipments, to the UPS costs of shipping  
22 these pills. 90 percent of that money that was being  
23 structured was legitimate money that did not even -- most of it  
24 did not even belong to Mr. Singh, but rather went to pay rent  
10:09 25 and utility bills. So the disparity is really that Mr. Singh

1 packages sent from the Postal Annexes contained a prohibited  
2 controlled substance, and he deliberately avoided learning the  
3 truth of their contents, closed quote.

4 And Paragraph 16, "He was a packager and shipper of  
10:11 5 hundreds of packages, both defendants were. Mr. Singh knew or  
6 believed the funds were proceeds of unlawful activity and  
7 intended to promote unlawful activity."

8 So I'm relying quite a bit on the factual basis in ruling  
9 on my objections. LINE 4 = WRONG - NOT PACKAGER  
10:12 10 Objection number 2 to page 5, paragraph 4, 14, Mr. Singh  
11 denies shipping packages to various commercial shipping  
12 services to avoid detection. I will overrule that objection.

13 Objection number 3, page 5, paragraph 15, he was aware of a  
14 high probability that hundreds of packages from his Postal  
10:12 15 Annexes had illegal substances and deliberately avoided  
16 learning the truth. I think that directly is belied by the  
17 factual basis, so I will overrule that objection.

18 Objection number 4 to page 6, paragraph 22, he knew or  
19 believed that these were the proceeds of unlawful activity.  
20 Again, I will overrule that objection.

21 Number 5, page 13, paragraph 80 and also page 15, paragraph  
22 94, that he agreed to the 2.9 forfeiture. I'll sustain that  
23 objection. I will note that he didn't agree to the 2.9  
24 forfeiture. He just agreed that that was the amount of money  
10:13 25 that was involved and that there should be a preliminary

1 forfeiture, but reserved the right to contest it on Eighth  
2 Amendment grounds. So I'll sustain that objection.

3 Objection number 6 to page 14, Paragraph 88 and page 17,  
4 paragraph 115, that the fine range is not 20,000 to \$500,000.

10:13 5 I think the probation officer agreed that should be sustained,  
6 and it's actually 20,000 to \$200,000. So I'll sustain in part  
7 and overrule in part. I think Mr. Singh argued that it should  
8 be 10,000 to 100,000. I find it should be 20,000 to 200,000.

9 Number 7, page 15, paragraph 97, a large portion of the  
10 money structured was from illegal activity. I'll sustain that  
11 objection. At this point I don't know that it's absolutely  
12 clear how much of the money structured was from illegal  
13 activity and how much was not, so I think saying it was a large  
14 portion is perhaps overstating the situation.

10:14 15 The eighth objection, page 16, paragraph 101, two Postal  
16 Annexes were not involved in a multi-year scheme to mail  
17 controlled substances throughout the U.S. and did not structure  
18 the 3 million in bank proceeds believing they were funds from  
19 drug trafficking. I will overrule that objection as well.

20 With respect to the objections of Lovely Singh, several of  
21 them are repetitive.

22 I think page 9, paragraph 45 with respect to the minus  
23 three for acceptance of responsibility, I don't think that's  
24 really applicable to a corporation. I will overrule for the  
10:15 25 reasons stated in the probation officer's addendum.

1       Page 10, paragraph 40 where it talks about the fine, and I  
2 think ultimately that's going to be moot because I'm not going  
3 to impose a fine in this case.

4       Page 10, paragraph 64, agree to forfeit 3.9 million or  
10:15 5 agree to forfeit up to 2.9 million, for the same reasons I  
6 sustained the objection with respect to Mr. Singh I will  
7 sustain that objection.

8       Page 12, paragraph 77, the instant offense involves a  
9 scheme to mail packages containing controlled substance. I  
10 will sustain. I agree that the instant offense involves  
11 structuring, not a scheme to mail packages containing  
12 controlled substances, so I'll sustain that objection.

13       Page 12, paragraph 79 again has to do with agreeing to  
14 forfeit the 2.9 million, and I'll sustain that objection.

10:16 15       I think that covers all the objections.

16       Mr. Boyce, would you agree?

17       MR. BOYCE: Yes, Your Honor.

18       THE COURT: Okay. Would you agree, Mr. Vecchione?

19       MR. VECCHIONE: Yes, Your Honor.

10:16 20       THE COURT: Okay. Now, let's talk about the  
21 underlying case, and I think it's important also I make two  
22 factual findings that I think also implicate the decisions that  
23 I make with respect to sentencing.

24       First of all, I find that the reason for the structuring  
10:16 25 was to avoid the attention of the government. And I find that

1 the reason Mr. Singh wanted to avoid the attention of the  
2 government was to avoid detection that he was shipping illegal  
3 drugs, maybe initially shipping jewelry illegally and then  
4 eventually shipping illegal drugs. So to the extent Mr. Singh  
10:16 5 argued that the reason for the structuring was because he  
6 didn't like the government or for some other reason, I don't  
7 find that to be the case. And I think it's particularly  
8 significant that he had training as a Western Union agent. I  
9 think that belies the argument that he's just an ignorant  
10 immigrant who was just sort of avoiding the government because  
11 they made him nervous, and I think it's a much more intentional  
12 act than that. He is a bright man who knew exactly what he was  
13 doing. So I think that all affects where I come down on the  
14 sentencing.

10:17 15 First of all, with respect to the guideline calculations, I  
16 don't think there's a great disagreement. I find the base  
17 offense level is a six. I will add 18 points because there was  
18 more than 1.5 million and less than 3.5 million structured.  
19 I'll add two points under 2S1.3(b)(2) because there was a  
10:17 20 pattern of unlawful activity involving more than 100,000 in a  
21 12-month period. I will add two points under 2S1.3(b)(1)(A)  
22 because it was the proceeds from unlawful activity. And I will  
23 add two points because there was abuse of a position of trust.  
24 I find Mr. Singh has accepted responsibility for what he did,  
10:18 25 so I will deduct three points. I find he has no criminal

1 record, so his guideline range is 57 to 71 months.

2 with respect to the underlying sentence, I have considered,  
3 first of all, the nature and circumstances of the offense, and  
4 I do agree with the government that this is a serious

10:18 5 structuring case. This is not someone caught at the border  
6 with their life savings in their fanny pack that they didn't  
7 declare at the border. This was over a long period of time.  
8 And this was a sophisticated structuring. And so I am taking  
9 that into consideration, and, as I said before, I do find that  
10:18 10 the reason for that structuring was to avoid the attention of  
11 the government because there were illegal things going on at  
12 the Postal Annex.

13 I have also taken into consideration Mr. Singh's history  
14 and characteristics, the fact that he has no criminal record,  
10:19 15 the fact that he has done a wonderful job in raising his  
16 children, that he has always been gainfully employed, that he  
17 has been a productive member of the community. So I've taken  
18 that into consideration as well.

19 I think I've already discussed the seriousness of the  
10:19 20 offense, but I do think it's very important, the deterrence,  
21 not just for Mr. Singh, because I believe at this point  
22 Mr. Singh, especially having this case drag on for so long, may  
23 very much regret what he did and would not repeat that, but I  
24 think, as the government points out, it is very important.

10:19 25 Drug traffickers cannot complete what they do without the

1 support of the money people, and Mr. Singh was one of those  
2 money people. And I think it's very important also, just the  
3 structuring in general to avoid the detention of the  
4 government. Structuring is an important part of the financial  
10:20 5 system, and Mr. Singh knew exactly what he was doing; and so I  
6 do take into consideration the need to deter other people from  
7 doing similar offenses.

8 And then I have taken into consideration the fact that  
9 there may be disparity not only of sentences with Mr. Nava, who  
10:20 10 was basically a co-defendant, but also other structuring cases  
11 across the country, as the government points out, so I've taken  
12 into consideration all of those factors.

13 And I do find that a three-year sentence or 36 months in  
14 custody is sufficient but not greater than necessary to satisfy  
10:20 15 the policies of 3553(a). I also find that that should be  
16 followed by three years of supervised release. During that  
17 three years you are not to engage in any employment or  
18 profession involving fiduciary responsibilities. You're to  
19 report any vehicles you own or operate. The probation office  
10:20 20 can search you or your property to see if you're having illegal  
21 things on you, any money on you. You're to completely disclose  
22 all personal and business financial records. You're not to  
23 open any new checking accounts or credit charges or lines of  
24 credit without the permission of the probation department.

10:21 25 I will not impose a fine. I find Mr. Singh does not have

1 the ability to pay a fine, particularly in light of the  
2 forfeiture that I am going to impose, and I will impose a \$100  
3 special assessment.

4 With respect to the forfeiture.

10:21 5 MR. BOYCE: Sorry to interrupt.

6 THE COURT: No, that's okay.

7 MR. BOYCE: I did note that when you were going  
8 through the guidelines, you said I believe he started at base  
9 offense level six and added 18. I think you meant 16.

10:21 10 THE COURT: I think it's 22 overall -- oh, 16, yes,  
11 you're right, I'm sorry. I wrote the wrong number down. 16.  
12 Correct. I think I ended up at the right place.

13 MR. BOYCE: You did.

14 THE COURT: I just said the wrong number. Okay. Yes,  
10:22 15 six plus 16, plus two, plus two, plus two for a 28 minus three  
16 for a 25.

17 MR. SILVA: That's right, Your Honor.

18 THE COURT: 57 to 71 months.

19 Let's talk about the forfeiture. I understand there's an  
10:22 20 argument that this is grossly disproportionate to the gravity  
21 of Mr. Singh's offense, and I have considered, first of all,  
22 the nature and extent of the crime. I think I've pretty much  
23 outlined how serious I think this crime is. I think I've  
24 considered whether this violation is related to other illegal  
10:22 25 activities. It is. And I have considered other penalties that

1 can be imposed and the extent of harm caused. I think  
2 ultimately I am concerned that Mr. Singh hid by playing this  
3 shell game of moving the money around. It makes it  
4 particularly hard to find out how much he made, how much was  
10:23 5 laundered, and it was a very serious offense. It occurred over  
6 three years. It involved at least 450 transactions. There  
7 were a number of bank accounts and financial institutions  
8 involved. - He played a very important role in the financial  
9 system because he was qualified as a Western Union agent. And  
10 also was a compliance officer, BSA/AML compliance officer. He  
11 wasn't some, as I mentioned before, poor, suspecting immigrant  
12 who didn't understand the importance of not structuring and  
13 filing these forms. And at least some of the money being  
14 structured was the proceeds of drug trafficking.

10:23 15 So I do find that the recommended forfeiture by the  
16 government is appropriate in this case. I find that it has a  
17 relationship to the gravity of the offense, and at this point I  
18 will order forfeiture in the amount of \$1,955,521 for  
19 Mr. Singh.

10:24 20 With respect to Lovely Singh, Inc., I find that the base  
21 offense level is six plus 16 plus two because the proceeds were  
22 the proceeds of unlawful activity, plus two because it involved  
23 over 100,000 in a 12-month period for a total of 26. The  
24 pecuniary gain is 2.9 million. The base fine is 6.5 million,  
10:24 25 but that's limited by the \$1 million maximum. The culpability

## **A P P E N D I X - F**

**Appellant's Opening Brief in the United States Court of Appeals  
for the Ninth Circuit, Selected pages**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LAHKWINDER SINGH,

Defendant-Appellant.

U.S.C.A. Case 18-50332  
U.S.D.C. Case 16cr729-BAS

**COPY**

Appeal from the United States District Court  
for the Southern District of California  
Honorable Cynthia Bashant, Judge Presiding

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**APPELLANT'S OPENING BRIEF**

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LAURA SCHAEFER  
California State Bar No. 138801  
934 23rd Street  
San Diego, CA 92102  
(619)232-3320  
ls@boyce-schaefer.com

Attorney for Defendant-Appellant  
LAHKWINDER SINGH

“this information has some value to the government because it may facilitate investigation of other crimes, the harm is ‘minimal.’” *Id.* at 1123.

Here, Singh deposited cash in amounts less than \$10,000 preventing the transactions from being reported to the government, and depriving the government of information. Although as a BSA Officer Singh knew the structuring was illegal, his officer status did not cause additional harm. Thus, the harm flowing from Singh’s structuring cannot support the amount of the forfeiture imposed in this case.

##### **5. Other relevant factors.**

Other factors may be relevant to determine the harshness of a fine, including the financial hardship caused by the forfeiture. This Court has suggested that it will consider “deprivation of livelihood” in the proportionality analysis. *United States v. Hantzis*, 403 F. App’x 170, 172 (9th Cir. 2010); *United States v. Real Prop. Located in El Dorado City*, 59 F.3d 974, 985-86 (9th Cir. 1995), abrogated in part on other grounds by *Bajakajian*, 524 U.S. 321; *United States v. Levesque*, 546 F.3d 78, 83 (1st Cir. 2008) (Excessive Fines Clause analysis should “consider whether forfeiture would deprive the defendant of his or her livelihood.”)

Singh’s net worth at the time of sentencing was approximately \$1.5 million, consisting mainly of his family home and a commercial property, both burdened

with fairly high mortgages, and two family cars. CR 130, PSR pp. 12–13. Even if he sold these assets, he would still be half a million dollars in debt. Singh was sentenced to three years in prison which has, and will continue to have, a significant negative impact on his finances. Singh will be 62 when he is released from custody; he suffers from several health conditions, including diabetes. CR 130, PSR, p. 11. Although Singh's average annual income in the three years preceding his arrest was just under \$200,000, he cannot return to his former occupation and is forbidden from any employment that requires fiduciary responsibilities. CR 165, p. 4, ER 62. He will be unable to sustain an income anywhere near amounts he formerly earned upon his release. CR 130, PSR, p. 13. It is doubtful that Singh, at this point in his life, will ever be able to satisfy this debt to the government; this sanction amounts to a financial tsunami for Singh and his family. This factor, as well, justifies reduction of the forfeiture imposed in this case.

## **CONCLUSION**

The forfeiture order of \$1,955,521 is nearly twenty times the high-end fine recommended by the Guidelines. The connection of the structuring to the drug shipment activity, if any, is nominal; the bulk of funds structured came from the legitimate money services and shipping business, lessening the severity of the