No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ABDISALAN ABDULAHAB HUSSEIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX

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United States Court of Appeals

For the Eighth Circuit

No. 18-1814

United States of America

Plaintiff - Appellee

v.

Carlos Patricio Luna

Defendant - Appellant

No. 18-3302

United States of America

Plaintiff - Appellee

v.

Preston Ellard Forthun

Defendant - Appellant

No. 18-3304

United States of America

Plaintiff - Appellee

v.

Abdisalan Abdulahab Hussein

Defendant - Appellant

Appeals from United States District Court
for the District of Minnesota

Submitted: October 17, 2019
Filed: August 10, 2020

Before LOKEN, SHEPHERD, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

This case is about a recruitment-and-kickback scheme involving car-accident victims, a chiropractic clinic, and automobile insurers. Three members of the scheme were convicted of mail and wire fraud. In these consolidated appeals, the defendants' convictions stand, but we send several sentencing issues back for another look.

I.

Before delving into the issues on appeal, we begin with a description of the fraud itself and the legal backdrop against which it operated.

A.

Minnesota has a unique no-fault automobile-insurance system. Among other things, the No-Fault Act requires every insurer to provide a minimum of $20,000 per

person to cover "reasonable" and "necessary" medical expenses, regardless of who is at fault for an automobile accident. Minn. Stat. § 65B.44, subd. 1(a), 1(a)(1), 2(a). What this means is that insurers pay the medical expenses of their *own* policyholder. Minn. Stat. § 65B.42(1).

From the perspective of health-care providers, there is much to like. Reimbursements often exceed those from other sources, and there is no limit on the number of times a policyholder can seek treatment for an injury. It is true that insurers have ways of uncovering whether medical treatment is unreasonable or medically unnecessary, such as by requiring a policyholder to provide further information under oath or undergo an independent medical examination. Minn. Stat. § 65B.56, subd. 1. But absent a red flag suggesting possible fraud, insurance companies typically pay their bills because they assume that they can trust what providers send them.

There are other safeguards in the statutory scheme, too. For example, one provision bans certain "[u]nethical practices," including, with limited exceptions, "initiat[ing] direct contact" with accident victims in order to "influenc[e them] to receive treatment." Minn. Stat. § 65B.54, subd. 6(a). The prohibition also extends to having others—known in the industry as runners—recruit on a health-care provider's behalf. A "runner" is someone who is offered compensation for "directly . . . solicit[ing] prospective patients . . . at the direction of, or in cooperation with, a health care provider when [they] know[] or ha[ve] reason to know" that the purpose is to seek reimbursement under an automobile-insurance policy. Minn. Stat. § 609.612, subd. 1(c), (2); *see* Minn. Stat. § 65B.54, subd. 6(a)–(c) (providing exceptions). Once a runner recruits someone, all subsequent health-care services are "noncompensable and unenforceable as a matter of law." Minn. Stat. § 609.612, subd. 2.

B.

The specific cases before us revolve around one clinic in particular: the Comprehensive Rehab Centers of Minnesota, which was co-owned by two chiropractors, Dr. Preston Forthun and Dr. Darryl Humenny. From at least 2010 onward, Carlos Luna, Abdisalan Hussein, and others recruited accident victims to the clinic's two Minneapolis locations. Recruiters often identified prospects through accident reports purchased by the clinic and facilitated attendance by providing other services, such as transportation to and from appointments. The clinic paid them for their efforts.

Patients were also paid after they attended a certain number of sessions. The doctors would pay recruiters (typically in cash), who would then pay kickbacks to patients. Less frequently, accident victims approached the doctors directly and were brought into the cash-for-treatment scheme without the involvement of recruiters. In both cases, the hope was that a patient would eventually attend 30 to 40 sessions and exhaust the entire $20,000 guaranteed by the No-Fault Act.

The treatment for most patients was the same, regardless of their specific type of injury. Typically, it would involve an x-ray at the first exam, a treatment plan of three sessions weekly for four weeks, and then a second exam. Repeat, re-exam, repeat was the practice—until the doctors treated the patient "as many times as possible."

C.

Eventually, law enforcement caught on. Operation Backcracker, as it came to be known, targeted multiple health-care providers across the Twin Cities and led to a number of indictments. *See, e.g.*, *United States v. Kidd*, 963 F.3d 742 (8th Cir. 2020). Among those indicted were Forthun, Luna, and Hussein, who were charged with mail and wire fraud; conspiracy to commit both crimes; and aiding and abetting the conspiracy. 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1349

(conspiracy), 2 (aiding and abetting). Dr. Humenny served as a key government witness at the defendants' joint trial.

The jury found the defendants guilty on all counts. Forthun received five years in prison. Guilty as co-conspirators and accomplices to mail and wire fraud, Hussein and Luna received 15-month and time-served sentences, respectively. All three appeal their convictions, and Forthun and Hussein challenge their sentences.

II.

The first issue is the sufficiency of the evidence. The analysis begins with the mail- and wire-fraud statutes, which as relevant here, require an individual to have "devised or intend[ed] to devise any scheme or artifice to defraud" using mail or wire communication "for the purpose of executing" the scheme. 18 U.S.C. §§ 1341, 1343. The defendants start with the argument that the government never proved that there was a "scheme to defraud." And even if there were one, Luna and Hussein claim that they did not play a role in it. We review the sufficiency of the evidence de novo, "viewing [the] evidence in the light most favorable to the government, resolving conflicts in the government's favor, and accepting all reasonable inferences that support the verdict." *United States v. Washington*, 318 F.3d 845, 852 (8th Cir. 2003).

A.

We begin with the scheme-to-defraud requirement. A scheme is a "deliberate plan of action" or "course of conduct." *United States v. Whitehead*, 176 F.3d 1030, 1037–38 (8th Cir. 1999) (approving this definition in a jury instruction); *United States v. Clapp*, 46 F.3d 795, 803 (8th Cir. 1995) (same). "To defraud" someone requires material, affirmative misrepresentations or active concealment of material information for the purpose of inducing action. *United States v. Steffen*, 687 F.3d 1104, 1111, 1115 (8th Cir. 2012); *see Neder v. United States*, 527 U.S. 1, 22–23 (1999) (explaining that the fraud statutes incorporate the materiality element of

common-law fraud); Restatement (Second) of Torts §§ 525, 550 (Am. Law Inst. 1977). Taken together, the government had to prove that: (1) there was a "deliberate plan of action" or "course of conduct" to hide or misrepresent information; (2) the hidden or misrepresented information was material; and (3) the purpose was to get someone else to act on it. It proved all three here.

First, there was plenty of evidence "of planning" by those involved. *United States v. Goodman*, 984 F.2d 235, 237 (8th Cir. 1993) (citation omitted). Forthun and Humenny created an elaborate web of lies to keep insurance companies in the dark about their use of recruiters and kickbacks. One example from trial is particularly illustrative. During a routine inspection, an insurance company representative asked whether the clinic used runners to attract business. Rather than answering honestly, Forthun replied that they did not "approach him." The jury could have concluded that this misrepresentation, like many others, was part of a larger "plan" or "course of conduct" aimed at misleading insurers.

Active concealment also played a significant role. Recruiters were paid in cash to avoid a "paper trail." If insurance companies questioned patients, recruiters coached them on what to say, including how to respond to requests for information under oath or attendance at independent medical examinations. From all appearances, the operation was a well-oiled machine.

Second, the information withheld had "a natural tendency to influence, or [was] capable of influencing" an insurer's decision to pay. *Neder*, 527 U.S. at 16 (citation omitted). Multiple insurance representatives testified at trial. The consistent theme was that the use of recruiters and kickbacks creates multiple concerns for insurers. One is that accident victims might seek treatment, not because they actually need it, but based on pressure from recruiters or a desire to put money in their own pockets. Another is that health-care providers may inflate their fees to cover the extra expenses from compensating recruiters and paying kickbacks to patients. It creates a vicious cycle: it costs money to get patients in the door, even more to keep them there, and insurers are left footing the bill.

All of this information had a bearing on whether insurers had to pay. If recruiters like Luna and Hussein qualified as "runners," then insurers had no obligation to reimburse the clinic for *any* services provided. Minn. Stat. § 609.612, subd. 2; *Kidd*, 963 F.3d at 745–48. It goes without saying that information completely relieving them of the obligation to pay was material.

Insurers also have no obligation to pay for medical services that are unreasonable, medically unnecessary, or never provided. *See* Minn. Stat. § 65B.44, subd. 1(b), 2(a); *see also Kidd*, 963 F.3d at 747. Even if recruiters like Luna and Hussein were not technically "runners" under Minnesota's restrictive definition, employing recruiters, setting minimum attendance requirements, and paying kickbacks made it more likely that the chiropractic services were noncompensable for one of these reasons. Insurance representatives testified, in fact, that the use of recruiters and kickbacks is "suspicious" activity, regardless of whether it violates state law, and often leads to further investigation, sometimes by special units. Even this underlying information, in other words, was material.[1] *See Neder*, 527 U.S. at 16; *Kidd*, 963 F.3d at 747.

It makes no difference, at least in evaluating the sufficiency of the evidence, that insurance representatives admitted that some claims may still have been compensable. After all, the same group of insurance representatives testified that, with a fuller picture of the clinic's practices, insurers would have investigated. This fact alone shows that the information withheld had a "tendency to influence" their

[1]The government's evidence supported a single cohesive theory of materiality, so there was no risk that jurors convicted the defendants based on inconsistent rationales. *United States v. Lasley*, 917 F.3d 661, 664–65 (8th Cir. 2019) (per curiam) (reversing when there was a "genuine risk" that the jury did not agree on a single set of facts supporting liability (citation omitted)); *see also United States v. Davis*, 154 F.3d 772, 783 (8th Cir. 1998) ("[A] general unanimity instruction is usually sufficient to protect a defendant's [S]ixth [A]mendment right to a unanimous verdict.").

actions, even when it had no effect on whether they ultimately paid. *Neder*, 527 U.S. at 16 (citation omitted).

Third, these actions were done "for the purpose of" defrauding insurance companies. 18 U.S.C. §§ 1341, 1343. Humenny instructed patients to tell insurers that "a former patient" referred them, because "it was one way [to] deceive" them into "pay[ing] the bills." When asked why they screened out accident victims who had "wait[ed] too much time" to seek treatment, Humenny responded that "it kind of lends to the fact that you may not have been injured," which is "a red flag" for insurance companies. The upshot is that the lies were aimed at keeping the money flowing.

B.

Even if a scheme to defraud existed, the government still had to establish that Hussein and Luna played a role in it. Based on the jury verdict, it meant proving that they were accomplices and co-conspirators in the fraud.

There was plenty of evidence that both men participated in the scheme. They played an active role in recruiting accident victims, paying kickbacks, and coaching patients to deceive insurance companies, all in an effort to line their own pockets. These facts allowed the jury to infer that Luna and Hussein had knowledge of the illegal scheme and knowingly participated in it. *See United States v. Hamilton*, 929 F.3d 943, 946 (8th Cir. 2019) (requiring a conspirator to know of the illegal agreement and knowingly participate); *United States v. Hively*, 437 F.3d 752, 764 (8th Cir. 2006) (explaining that "knowing[] participat[ion]" is necessary for accomplice liability).

Moreover, there was evidence separately implicating each man. One former patient testified that Luna instructed her not to tell anyone that he had initially approached her about visiting the clinic. *See Kidd*, 963 F.3d at 750 (noting that some "irregular behavior" can "support an inference that [the defendant] knew of the illicit

activity and acted with intent to defraud"). Hussein participated in a similar arrangement with another clinic, which was properly admitted for the limited purpose of showing that he understood how these types of schemes work. *See* Fed. R. Evid. 404(b)(2).

* * *

Based on the evidence, a jury could conclude beyond a reasonable doubt that Forthun committed mail and wire fraud, that both Luna and Hussein were his accomplices, and that all three entered into a conspiracy to defraud insurers. *See Washington*, 318 F.3d at 852.

III.

The sentencing issues come next. Forthun challenges all three parts of his sentence: a 60-month prison term that he is currently serving, $1,553,500 in restitution, and an order to forfeit $1,180,666. Hussein, for his part, asks us to reverse the district court's determination that he owes $187,277 in restitution.[2]

A.

For both defendants, their primary complaint is the district court's loss calculations. They argue that the failure to include an offset for services that were medically necessary and reasonable led the district court to overestimate the amount of actual and intended losses from the fraud. In addressing this argument, we review the court's legal conclusions de novo and its factual findings for clear error. *United States v. Gammell*, 932 F.3d 1175, 1180 (8th Cir. 2019); *United States v. Bistrup*, 449 F.3d 873, 882 (8th Cir. 2006).

[2]Hussein's challenge to his 15-month prison term became moot once he was released from prison. *See United States v. Hill*, 889 F.3d 953, 954 (8th Cir. 2018).

1.

The district court used "intended loss[es]" to calculate the length of Forthun's sentence. U.S.S.G. § 2B1.1, cmt. n.3(A) (explaining that the offense level for fraud depends in part on "actual loss or intended loss," whichever is "greater"). These losses were all about his intent: what the fraud was *designed* to cause the insurance companies to lose. *United States v. Wells*, 127 F.3d 739, 746 (8th Cir. 1997) (explaining that "intended loss[es]" are those that "the defendant intended to cause to the victim[s]" of the fraud); *accord United States v. Manatau*, 647 F.3d 1048, 1050 (10th Cir. 2011) (Gorsuch, J.).

Actual losses came into play when the district court ordered both defendants to pay restitution. *See* 18 U.S.C. §§ 3663A(a)(1), (c)(1)(A)(ii) (requiring restitution for property-offense victims), 3664(f)(1)(A) (specifying that restitution is "the full amount of each victim's losses"). Here, the focus was on what actually happened: how much the insurance companies *in fact* lost due to each defendant's fraudulent actions. *Gammell*, 932 F.3d at 1180 (describing "actual loss[es]" as "the amount of loss *actually* caused by the defendant's offense" (citation omitted)).

Following these definitions, the district court used the same basic formula for both. One variable remained constant: the estimated number of patients each man was responsible for bringing into the clinic through "kickbacks or referrals." As the mastermind, Forthun was responsible for all 500 patients offered cash for treatment. For Hussein it was just 65, the total number of accident victims he directly recruited.[3]

[3]Of the 65 patients, 30 came from his work with another clinic. After the government agreed to dismiss some charges against him, he agreed that these patients could be added to his total. The district court did not clearly err in using a patient ledger from the other clinic and "investigative interviews" to arrive at the 65-patient total. 18 U.S.C. § 3661 (placing no limits on relevant evidence at sentencing).

The second variable changed depending on the type of loss involved. For intended losses, the court used the average amount billed per patient. *See* U.S.S.G. § 2B1.1, cmt. n.3(C) ("The court need only make a reasonable estimate of the loss."); *United States v. Lamoreaux*, 422 F.3d 750, 756 (8th Cir. 2005) (approving the district court's finding that "loss could be estimated" through "basic economics" under the Guidelines). For actual losses, the choice was average reimbursement rates. *See United States v. Carpenter*, 841 F.3d 1057, 1060–61 (8th Cir. 2016) (describing the "wide discretion" courts have to calculate restitution (citation omitted)).

Simple multiplication yielded the final figures. The district court estimated Forthun's intended losses at $2,726,500 based on 500 patients and an average billing rate of $5,453. The actual losses were lower, $1,553,500, using an average reimbursement rate of $3,107. Finally, the district court held Hussein accountable for 35 patients at an average reimbursement rate of $3,107, and 30 patients at his prior clinic, with an average reimbursement rate of $2,617. The total came to $187,277.

2.

These calculations were a reasonable starting point, but as the defendants explain, the district court did not complete its analysis. It did not make an allowance for the legitimate, compensable services provided by the clinic. The Sentencing Guidelines, for example, provide an offset for the "fair market value of . . . the services rendered . . . to the victim."[4] U.S.S.G. § 2B1.1, cmt. n.3(E)(i) (providing

[4]The victims of the fraud are the insurance companies, not those who underwent treatment for their injuries. The phrase "fair market value of the services rendered" is an awkward fit with a third-party payor. After all, when third-party payors are the victims, as in this case, they do not directly receive the services, so there is arguably no "fair market value" to them. But this line of argument ignores an insurer's statutory duty to pay for reasonable and medically necessary treatments. Minn. Stat. § 65B.44, subd. 2(a). Treatments arising out of a statutory obligation to

for "[c]redits" in all loss calculations under the Sentencing Guidelines); *United States v. Liveoak*, 377 F.3d 859, 867 (8th Cir. 2004). Similarly, with restitution, anything the insurance companies would have had to pay, regardless of the defendants' actions, cannot be a loss caused by the fraud. *See United States v. Frazier*, 651 F.3d 899, 904 (8th Cir. 2011) (emphasizing that restitution is "compensatory" and courts "cannot award the victim a windfall" (internal quotation marks and citations omitted)). We need not decide whether these two offsets are the same, only that they both may be available here.

None of the district court's findings rule out this possibility. Far from determining that the services lacked fair market value (intended losses) or that insurers had no obligation to pay (actual losses), the district court did not even sort out what percentage of the services were noncompensable—as medically unnecessary; unreasonable; never provided; or for some other reason, like use of a runner. *See* Minn. Stat. §§ 65B.44, subd. 2(a), 609.612, subd. 2; *see also Kidd*, 963 F.3d at 753 (using "the number of patients who were recruited by [the defendant's] runners").

The danger is overinclusiveness. The district court found that the clinic attracted 500 patients "through kickbacks or referrals." But some of those patients approached the clinic on their own and asked for a kickback—a practice that is not directly prohibited by the No-Fault Act. To the extent that the chiropractic services provided to them were reasonable and medically necessary, they would have been compensable.

The same is true even when patients were recruited to the clinic by someone else. To be sure, once "runner[s]" are involved, it taints the relationship and automatically relieves insurers of their statutory duty to pay. Minn. Stat. § 609.612, subd. 2; *Kidd*, 963 F.3d at 746. But not all recruiters are runners under Minnesota's

pay arguably have value to insurers. The extent to which they do is an issue for the district court to consider on remand.

restrictive statutory definition. *See* Minn. Stat. §§ 65B.54, subd. 6, 609.612, subd. 1(c). Without any findings distinguishing between the two, we cannot be sure that the loss calculations are accurate.

The fact that the runner statute changed midway through the scheme only adds to the difficulty. Toward the end, services were noncompensable once a third party "directly procure[d] or solicit[ed] prospective patients" for "pecuniary gain" and "kn[e]w[] or ha[d] reason to know that" the purpose was to "obtain . . . benefits under or relating to" an automobile-insurance contract. Minn. Stat. § 609.612, subd. 1(c). Before then, the definition was even more restrictive: the third party also had to know that the health-care provider's purpose was to "fraudulently" obtain benefits. Minn. Stat. § 609.612, subd. 1(c) (2004); *see* 2012 Minn. Laws 1005–06 (striking the term "fraudulently" and setting January 1, 2013 as the amendment's effective date). This distinction never factored into the district court's analysis.

In sum, offsets could have made a difference, both to the length of Forthun's sentence and to the size of the restitution awards. When the district court failed to consider the possibility, it created the risk that each may be too high. For this reason, we vacate and remand for resentencing.

B.

Forfeiture is a different story. The district court ordered Forthun to forfeit $1,180,666 in proceeds from the fraud. The first two challenges to the order are procedural: the government waived the opportunity to seek forfeiture and, in any event, filed its motion too late. First, the government did not waive its right to seek forfeiture because it provided notice in the indictment. Fed. R. Crim. P. 32.2(a). Second, forfeiture is mandatory for "[f]ederal health care offense[s]," so the government was not required to file a motion. *See* 18 U.S.C. §§ 24(a)(2)–(b), 982(a)(7).

The third challenge is to the amount, and specifically, whether it was excessive. The argument is a familiar one: some of the chiropractic services were compensable, so Forthun should have received some sort of offset. Successful elsewhere, it fails here, primarily because of the difference between restitution and forfeiture. *See United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344–45 (11th Cir. 2009). The focus shifts from the "victim's losses," 18 U.S.C. § 3664(f)(1)(A), to the "*gross* proceeds traceable to the commission of the offense," *id.* § 982(a)(7) (emphasis added). The reimbursements for all 500 patients were "gross proceeds" of the fraud itself, so the forfeiture order stands.

IV.

We affirm the judgment of the district court in Luna's case. In the other two, we affirm the convictions and the forfeiture order, vacate the restitution orders, vacate Forthun's sentence, and remand for resentencing consistent with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-3304

United States of America

Appellee

v.

Abdisalan Abdulahab Hussein

Appellant

Appeal from U.S. District Court for the District of Minnesota
(0:16-cr-00339-MJD-5)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 01, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT

District of Minnesota

UNITED STATES OF AMERICA

v.

ABDISALAN ABDULAHAB HUSSEIN

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: **16-CR-339-MJD/BRT (5)**
USM Number: **20973-041**
R J Zayed, Jr.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count 1 of the Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court

☒ was found guilty on count(s) 1rss, 5rss-6rss, 12rss-13rss after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:1349 CONSPIRACY TO COMMIT MAIL FRAUD AND WIRE FRAUD	12/2015	1rss
18:1341 and 2 AIDING AND ABETTING MAIL FRAUD	6/18/2013 and 6/27/18	5rss-6rss
18:1343 and 2 AIDING AND ABETTING WIRE FRAUD	5/13/2013 and 5/22/2013	12rss-13rss

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

☒ $500.00 Special Assessment is due and payable immediately.

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

October 17, 2018
Date of Imposition of Judgment

s/Michael J. Davis
Signature of Judge

MICHAEL J. DAVIS
SENIOR JUDGE UNITED STATES DISTRICT COURT
Name and Title of Judge

October 22, 2018
Date

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

15 months on each of counts 1rss, 5rss, 6rss, 12rss, and 13rss to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons: **FPC-Duluth**

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at on

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 12:00 PM on December 28, 2018.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **two (2) years on each count, to be served concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____ Date _____

Probation Officer's Signature _____ Date _____

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation officer access to any requested financial information, including credit reports, credit card bills, bank statements, and telephone bills.

2. The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.

3. The defendant shall do 100 hours of community service, specifically dealing with the organization that he has already worked, and with any other community organization that deals with youth.

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$500.00		$.00	$187,277.16

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

See attached pages

Name and Address of Payee	**Total Loss	Restitution Ordered	Priority or Percentage
The specific victim information and joint and several details have been entered into RestAssured prior to sentencing.		$187,277.16	
TOTALS:	$0.00	$187,277.16	0.00%
Payments are to be made to the Clerk, U.S. District Court, for disbursement to the victim.			

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ABDISALAN ABDULAHAB HUSSEIN
CASE NUMBER: 16-CR-339-MJD/BRT (5)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of $187,277.16 due immediately, balance due

☐ not later than , or

☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal 20 *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Mandatory Restitution in the amount of $187,277.16 is due, joint and several with his codefendants. The specific victim information and joint and several details have been entered into RestAssured. Payments of not less than $50 per month are to be made over a period of 2 years commencing 30 days after the date of this judgment. Payments are to be made payable to the Clerk, U.S. District Court, for disbursement to the victims. The interest requirement is waived in accordance with 18 U.S.C. § 3612(f)(3).
Over the period of incarceration, the defendant shall make payments of either quarterly installments of a minimum of $25 if working non-UNICOR or a minimum of 50 percent of monthly earnings if working UNICOR. It is recommended the defendant participate in the Inmate Financial Responsibility Program while incarcerated. The defendant's obligation to pay the full amount of restitution continues even after the term of supervised release has ended, pursuant to federal law. See 18 U.S.C. § 3613. If the defendant is unable to pay the full amount of restitution at the time supervised release ends, the defendant may work with the U.S. Attorney's Office Financial Litigation Unit to arrange a restitution payment plan.

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

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate: $187,277.16 is due jointly and severally with the codefendants in this case.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

18 United States Code Section 1341 - Mail Fraud

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 United States Code Section 1343 - Wire Fraud

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution,

such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Minnesota Statutes § 609.612 - **EMPLOYMENT OF RUNNERS**.

§Subdivision 1.Definitions. (a) As used in this section, the following terms have the meanings given.

(b) "Public media" means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards, and mailed or electronically transmitted written communications that do not involve in-person contact with a specific prospective patient or client.

(c) "Runner," "capper," or "steerer" means a person who for a pecuniary gain directly procures or solicits prospective patients through telephonic, electronic, or written communication, or in-person contact, at the direction of, or in cooperation with, a health care provider when the person knows or has reason to know that the provider's purpose is to perform or obtain services or benefits under or relating to a contract of motor vehicle insurance. The term runner, capper, or steerer does not include a person who solicits or procures clients either through public media, or consistent with the requirements of section 65B.54, subdivision 6.

Subd. 2.Act constituting. Whoever employs, uses, or acts as a runner, capper, or steerer is guilty of a felony and may be sentenced to imprisonment for not more than three years or to a payment of a fine of not more than $6,000, or both. Charges for any services rendered by a health care provider, who violated this section in regard to the person for whom such services were rendered, are noncompensable and unenforceable as a matter of law.

Minnesota Statutes § 65B.54 – Claim Practices

Subdivision. 6. **Unethical practices**. (a) A licensed health care provider shall not initiate direct contact, in person, over the telephone, or by other electronic means, with any person who has suffered an injury arising out of the maintenance or use of an automobile, for the purpose of influencing that person to receive treatment or to purchase any good or item from the licensee or anyone associated with the licensee. This subdivision prohibits such direct contact whether initiated by the licensee individually or on behalf of the licensee by any employee, independent contractor, agent, or third party, including a capper, runner, or steerer, as defined in section 609.612, subdivision 1, paragraph (c). This subdivision does not apply when an injured person voluntarily initiates contact with a licensee.

(b) This subdivision does not prohibit licensees, or persons acting on their behalf, from mailing advertising literature directly to such persons, so long as:

(1) the word "ADVERTISEMENT" appears clearly and conspicuously at the beginning of the written materials;

(2) the name of the individual licensee appears clearly and conspicuously within the written materials;

(3) the licensee is clearly identified as a licensed health care provider within the written materials; and

(4) the licensee does not initiate, individually or through any employee, independent contractor, agent, or third party, direct contact with the person after the written materials are sent.

(c) This subdivision does not apply to:

(1) advertising that does not involve direct contact with specific prospective patients, in public media such as telephone directories, professional directories, ads in newspapers and other periodicals, radio or television ads, websites, billboards, mailed or electronically transmitted communication, or similar media if such advertisements comply with paragraph (d);

(2) general marketing practices, other than those described in clause (1), such as giving lectures; participating in special events, trade shows, or meetings of organizations; or making presentations relative to the benefits of a specific medical treatment;

(3) contact with friends or relatives, or statements made in a social setting;

(4) direct contact initiated by an ambulance service licensed under chapter 144E, a medical response unit registered under section 144E.275, or by the emergency department of a hospital licensed under chapter 144, for the purpose of rendering emergency care; or

(5) a situation in which the injured person:

(i) had a prior professional relationship with the licensee;

(ii) has selected that licensee as the licensee from whom the injured person receives health care; or

(iii) has received treatment related to the accident from the licensee.

(d) For purposes of this paragraph, "legal name," for an individual means the name under which an individual is licensed or registered as a health care professional in Minnesota or an adjacent state, and for a business entity, a name under which the entity is registered with the secretary of state in Minnesota or an adjacent state, so long as the name does not include any misleading description of the nature of its health care practice; and "health care provider" means an individual or business entity that provides medical treatment of an injury eligible as a medical expense claim under this chapter. In addition to any laws governing, or rules adopted by, a health care provider licensing board, any solicitation or advertisement for medical treatment, or for referral for medical treatment, of an injury eligible for treatment under this chapter must: (1) be undertaken only by or at the direction of a health care provider; (2) prominently display or reference the legal name of the health care provider; (3) display or reference the license type of the health care provider, or in the case of a health care provider that is a business entity, the license type of all of the owners of the health care provider but need not include the names of the owners; (4) not contain any false, deceptive, or misleading information, or misrepresent the services to be provided; (5) not include any reference to the dollar amounts of the potential benefits under this chapter; and (6) not imply endorsement by any law enforcement personnel or agency.

(e) A violation of this subdivision is grounds for the licensing authority to take disciplinary action against the licensee, including revocation in appropriate cases.