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In the
Supreme Court of the United States

JAVAID PERWAIZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX A

**TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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2024 WL 2891327

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United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellee,
v.
Javaid PERWAIZ, Defendant – Appellant.

No. 21-4255

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Submitted: January 5, 2024

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Decided: June 10, 2024

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Amended: June 10, 2024

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk.
[Rebecca Beach Smith](#), Senior District Judge. (2:19-cr-00189-RBS-DEM-1)

Attorneys and Law Firms

ON BRIEF: [Wesley P. Page](#), Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Jessica D. Aber, United States Attorney, Joseph Attias, Assistant United States Attorney, Richmond, Virginia, E. Rebecca Gantt, Assistant United States Attorney, [Elizabeth M. Yusi](#), Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Before [DIAZ](#), Chief Judge, and [NIEMEYER](#) and [RICHARDSON](#), Circuit Judges.

Opinion

Affirmed by unpublished opinion. Chief Judge [Diaz](#) wrote the opinion, in which Judge [Niemeyer](#) and Judge [Richardson](#) joined.

Unpublished opinions are not binding precedent in this circuit.

[DIAZ](#), Chief Judge:

***1** After a nearly five-week trial, a jury convicted Javaid Perwaiz of 52 counts of healthcare fraud and making false statements in relation to healthcare matters. The district court then sentenced him to 708 months' imprisonment.

Perwaiz now asserts two evidentiary challenges from his trial and an ineffective assistance of counsel claim. But because any evidentiary error would be harmless considering the overwhelming evidence of Perwaiz's guilt, we affirm his convictions. And because any ineffective assistance by Perwaiz's counsel doesn't "conclusively appear[] in the trial record," [*United States v. Mandello*, 426 F.2d 1021, 1023 \(4th Cir. 1970\)](#), we affirm his sentence.

I.

A.

Javaid Perwaiz was a Virginia-licensed OB/GYN who regularly treated pregnant patients and performed procedures such as [colposcopies](#),¹ [hysteroscopies](#),² and [hysterectomies](#)³ on other patients. Perwaiz contracted with healthcare benefit companies, including private insurers (like Anthem and Optima) and public insurers (like Medicare and Medicaid), that would pay or reimburse Perwaiz for his services. To be certified as a "participating provider," J.A. 626:6, and to bill for the care he provided, Perwaiz had to enroll (and periodically reenroll) with these insurers.

¹ A [colposcopy](#) is a procedure used to examine a patient's cervix that is generally done after an abnormal [Pap smear](#) or human papillomavirus test. J.A. 549:25–550:17.

² A [hysteroscopy](#) is a procedure used to examine a patient's uterine cavity to detect, among other things, [cancer](#), [fibroids](#), or polyps. J.A. 562:15-24.

³ A [hysterectomy](#) is an irreversible procedure removing a patient's uterus because of a benign condition such as [uterine fibroids](#), or a malignant condition such as [cancer](#). J.A. 572:15–573:2.

During the respective enrollment processes, Perwaiz had to agree to certain terms and conditions—such as a 30-day waiting period between obtaining a Medicaid patient's signature consenting to sterilization and conducting the procedure—and to verify certain information—such as listing any type of adverse employment action that had been taken against him or any felony convictions. And once these insurers approved Perwaiz's enrollment, they would only reimburse him for services or procedures that met the appropriate "medical standard of care," J.A. 523:12-19, and were "medically necessary," J.A. 1155:23–1156:2.

In 2018, the FBI received a tip from one of Perwaiz's former colleagues alleging that he had performed unnecessary surgeries on unsuspecting patients. As the FBI investigated Perwaiz, it found that this wasn't the first instance of his medical misconduct.

In 1983, for example, Maryview Hospital in Portsmouth, Virginia, temporarily terminated Perwaiz's clinical privileges “due to poor clinical judgment, unnecessary surgery, lack of documentation, and discrepancies in recordkeeping.” J.A. 7484. The Hospital recited that Perwaiz performed eleven [hysterectomies](#) on patients, “contrary to sound medical judgment.” J.A. 7484–86. The Virginia Board of Medicine⁴ then “[c]ens[u]red” Perwaiz in a separate proceeding based on these findings, citing a “lack of documentation.” J.A. 7488. The Board didn't recommend any other disciplinary action, but it noted that his censure would “become part of [his] permanent record for future reference.” J.A. 7488.

⁴ At the time, Virginia's medical licensing authority was called the “Department of Health Regulatory Boards.”

*2 Perwaiz resumed practicing medicine when Maryview reinstated his privileges. But about a decade later, he was charged with six counts of federal felony tax evasion. He ultimately pleaded guilty to two of those counts. The district court sentenced Perwaiz to five years’ probation. Because of those convictions, the Virginia Board of Medicine briefly suspended Perwaiz's medical license.

Perwaiz once more resumed practicing medicine, operating a solo OB/GYN practice with access to the operating room at Chesapeake Regional Medical Center. But between 2017 and 2019, he repeatedly failed to report and falsely denied his earlier disciplinary and criminal history when he enrolled to be a provider in public and private healthcare benefit programs.

Perwaiz's fraud didn't end there.

First, Perwaiz falsified his pregnant patients’ estimated due dates so that he could induce labor on a day he had standing operating room time at Chesapeake. Doing so ensured that Perwaiz was the doctor who performed the deliveries and was therefore the doctor who was paid through the patients’ insurance coverage. But doing so also meant that many of these elective inductions occurred before 39 weeks’ gestation—that is, earlier than medically recommended—and without any “medical indication[s].” J.A. 2247:13. This was contrary to the accepted standard of care, yet Perwaiz still billed insurance companies for full-term or medically necessary deliveries.

Second, Perwaiz performed and billed for medically unnecessary surgeries, including [hysterectomies](#), based on fabricated symptoms. He falsely told several patients, for example, that they had [cancer](#) (or would get [cancer](#)) and required surgery. He then documented this nonexistent condition and used it as the basis for performing and billing for the eventual procedure.

Third, Perwaiz billed insurers for in-office diagnostic procedures like [hysteroscopies](#) and [colposcopies](#) that (a) weren't performed, (b) were performed in a non-standard way, or (c) were

performed with broken instruments. He then routinely used the results from these procedures to justify other, more invasive surgeries that he also billed for.

Fourth, Perwaiz falsified his Medicaid patients' sterilization consent forms verifying that he had abided by the required 30-day waiting period. He had these patients sign blank consent forms but not date them. He then backdated the forms so that it appeared the patients signed them prior to 30 days before the surgery. And Perwaiz billed Medicaid for the sterilizations, even when he performed them within the 30-day period.⁵

⁵ Several of these patients hadn't even been under Perwaiz's care for 30 days before he performed the sterilizations.

B.

A superseding indictment charged Perwaiz with committing healthcare fraud and making false statements related to healthcare matters.

During trial, the government introduced two exhibits containing evidence of Perwaiz's suspension from Maryview Hospital and his prior felony tax convictions. Perwaiz had moved in limine to exclude those exhibits under [Federal Rules of Evidence 403](#) and [404](#). Though the court found the evidence was reliable, and intrinsic to two counts addressing Perwaiz's failure to disclose his disciplinary history to a pair of insurance companies (Anthem and Optima), it didn't admit the exhibits in full. The court allowed only the fact of the suspension and convictions, not the underlying details. It redacted, for example, Perwaiz's indictment so that the jury saw only the two charges to which Perwaiz pleaded guilty.


***3** The government introduced over 500 other exhibits and called 55 witnesses at trial. Six witnesses were former patients who were referenced in the indictment's factual allegations but weren't subjects of any count. They testified about Perwaiz's falsifying the sterilization consent forms or falsifying symptoms to bill for unnecessary surgeries. Perwaiz didn't object to their testimonies at trial. He did, however, testify in his own defense and admitted that he had backdated the Medicaid sterilization consent forms.

The jury convicted Perwaiz on 23 counts of healthcare fraud and 29 counts of making false statements in relation to healthcare matters.

C.

Before sentencing Perwaiz, the district court considered Perwaiz's presentence investigation report. The report put Perwaiz's guidelines range at life imprisonment, restricted to the statutory maximum of 5,700 months' imprisonment.

The district court also considered the sentencing memoranda Perwaiz and the government submitted. And it received victim impact statements from over 60 women, many of whom recounted their physical and emotional trauma. So too did the district court hear that Perwaiz's fraudulent scheme caused over \$18 million in losses to insurers.

At sentencing (as in his sentencing memorandum), Perwaiz maintained his innocence, so his counsel objected only generally to the guidelines calculation and associated sentencing enhancements.⁶ And they requested no particular sentence. Rather, at sentencing, Perwaiz's counsel stated that they had “every confidence that the Court will fashion a sentence ... that is sufficient but not greater than necessary” under the  [18 U.S.C. § 3553](#) factors. J.A. 3569:8-10.

⁶ Perwaiz was represented by two lawyers during his trial and sentencing.

Counsel noted, however, that Perwaiz was “71 years old” with “ongoing medical conditions.” J.A. 3569:22. Counsel also explained that Perwaiz had a limited prior criminal history, and that, for his earlier felony convictions, he had completed his probationary sentence, paid back the funds, made no effort to flee, and acknowledged his guilt. Counsel concluded by pointing out that Perwaiz no longer had a medical license and wouldn't return to practicing medicine if he were released from prison. The government, meanwhile, requested a prison sentence of 600 months (or 50 years).

The district court imposed a 708-month (or 59-year) sentence. It explained that the “nature and circumstances of the offense and [Perwaiz's] history and characteristics” were the “most important” factors it considered. J.A. 3571:15-18. The court also described the evidence of Perwaiz's guilt as “overwhelming,” while chiding him for “abu[sing] the trust” that his patients had placed in him and that his profession had placed in [him].” J.A. 3572:2, 11. And it noted that Perwaiz had “expressed no remorse for such a callous disregard for the welfare of [his] patients and the victims.” J.A. 3572:15-17.

This appeal followed.

II.


Perwaiz brings three challenges to his convictions and sentence. He asserts that during trial, the district court erred in (1) admitting into evidence the exhibits concerning his suspension from Maryview Hospital and felony tax convictions, and (2) allowing the testimony of the six patient-



witnesses who weren't named in any count of the indictment. And he claims that during sentencing, his lawyers were so ineffective that they all but abandoned him.

We address each argument in turn.

A.

We begin with Perwaiz's evidentiary challenges. As he did at trial, Perwaiz mainly contends that the evidence of his suspension and prior convictions violated the Federal Rules of Evidence because it was unduly prejudicial and impermissibly went to his character rather than to the conduct at issue.

*4 We will overturn a “district court's decision to admit evidence over a [Rule 403](#) objection” only “under the most extraordinary circumstances, where [the district court's] discretion has been plainly abused.”  [United States v. Williams](#), 445 F.3d 724, 732 (4th Cir. 2006) (cleaned up). But evidentiary challenges have an additional—and here, dispositive—backstop: harmless error review. See [United States v. Walker](#), 32 F.4th 377, 394 (4th Cir. 2022).


“[A]n error is harmless if it's highly probable that it did not affect the judgment.”  [United States v. Caldwell](#), 7 F.4th 191, 204 (4th Cir. 2021) (cleaned up). “The decisive factors to consider are the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error.” *Id.* (cleaned up). There's no dispute then that an error is harmless “where there is a significant amount of evidence which inculcates a defendant independent of the erroneous [evidence].”  [United States v. Johnson](#), 617 F.3d 286, 295 (4th Cir. 2010); see also [United States v. Scheetz](#), 293 F.3d 175, 186 (4th Cir. 2002) (finding an error harmless where, “[m]ost importantly, absent [the error], the government's case against [the defendant] was overwhelming” (cleaned up)).

Even if we assume the district court erred (which seems unlikely),⁷ the evidence against Perwaiz was overwhelming. Scores of witnesses—former patients and employees, including nurses, billers, and ultrasound technicians; Chesapeake personnel; OB/GYN and insurance experts; and insurance company representatives—testified about Perwaiz's fraudulent conduct. And the government introduced documents to support this testimony and each aspect of Perwaiz's fraudulent scheme.

⁷ We're inclined to agree with the government that the challenged exhibits were intrinsic to the two counts charging Perwaiz with lying to insurers about his disciplinary history.

The government, for example, introduced recordings wherein Perwaiz told a patient that he would falsify her records for insurance purposes, and misrepresented to another patient that she was

suffering from tumors when a subsequent ultrasound found no such tumors. Perwaiz also admitted at trial to regularly backdating the Medicaid sterilization consent forms.

This evidence related to Perwaiz's present fraudulent scheme and not to his past disciplinary history. And the district court redacted or otherwise limited the challenged exhibits, mitigating the prejudicial effect the evidence might have on the jury. As Perwaiz concedes, “[e]vidence that is highly probative invariably will be prejudicial to the defense.” Appellant's Br. at 24 (quoting  [United States v. Grimmond](#), 137 F.3d 823, 833 (4th Cir. 1998)). The exhibits’ probative value easily outweighs any potential unfair prejudice.

In short, we have no trouble holding that any evidentiary error by the district court was harmless, considering the extensive evidence of Perwaiz's fraudulent conduct.

B.

Turning to Perwaiz's second evidentiary challenge against the patient-witnesses’ testimony, we could reject it too on harmlessness grounds. In any event, Perwaiz all but concedes in his reply brief that our decision in [United States v. Bajoghli](#), 785 F.3d 957 (4th Cir. 2015), not only controls this issue but also forecloses his argument on appeal. See Reply Br. at 10–12.

***5** In *Bajoghli*, which involved a similar healthcare fraud scheme, we held that “the district court abused its discretion in limiting the government's proof to that which is directly relevant to one or more of the 53 executions charged in the indictment, without taking into account the relevance of *uncharged conduct* to the alleged overarching scheme.” [785 F.3d at 964](#) (emphasis added). We explained that “in a large and complex healthcare-fraud case where the defendant's criminal intent is placed at issue,” uncharged but relevant evidence is “intrinsic to the ‘scheme’ element” and is therefore admissible. *Id.* (cleaned up).

The patient-witnesses’ testimony fits squarely within *Bajoghli*’s holding given that the proof of a scheme to defraud was a required element of the healthcare fraud counts. The testimony in turn spoke directly to the existence of such a scheme and was thus intrinsic and admissible. So we can't find that the district court erred in allowing the testimony.

C.

Finally, we address Perwaiz's argument that his counsel's performance at sentencing was ineffective. An ineffective-assistance claim is permitted on direct appeal (rather than a motion to

vacate under [28 U.S.C. § 2255](#)) only “where it conclusively appears in the trial record itself that the defendant was not provided with effective representation.” [Mandello, 426 F.2d at 1023](#). Perwaiz makes no such showing, nor does he attempt to argue that his counsel's performance prejudiced him.

Relying on [United States v. Cronic, 466 U.S. 648 \(1984\)](#), Perwaiz maintains that his counsel's performance during sentencing was so deficient that we can presume prejudice. Otherwise, Perwaiz would have to adhere to the traditional two-pronged showing of deficient performance and prejudice under [Strickland v. Washington, 466 U.S. 668 \(1984\)](#).

Cronic permits such a shortcut in limited “circumstances that are so likely to [have] prejudice[d] the accused that the cost of litigating their effect in a particular case is unjustified.” [466 U.S. at 658](#). One such circumstance is the “complete denial of counsel,” where “the accused is denied counsel at a critical stage of his trial,” or where “counsel entirely fails to subject the prosecution's case to meaningful adversarial testing.” [Id. at 659](#).

Cronic's exception—which results in a structural error—requires “an extremely high showing,” [United States v. Ragin, 820 F.3d 609, 618 \(4th Cir. 2016\)](#) (cleaned up), and is “exceedingly narrow,” [United States v. Theodore, 468 F.3d 52, 56 \(1st Cir. 2006\)](#). To illustrate, we have held *Cronic* satisfied where defense counsel slept through substantial portions of the trial. [Ragin, 820 F.3d at 620](#). But even there, the defendant raised his ineffective assistance of counsel claim on a [§ 2255](#) motion. [Id. at 613](#).

Here, Perwaiz's lawyers submitted a sentencing memorandum, were present (and awake) during sentencing, and spoke on Perwaiz's behalf regarding the [§ 3553\(a\)](#) factors. Even if (in Perwaiz's eyes) counsel didn't do *enough*, he can't argue that they did *nothing*. At bottom then, any ineffective assistance rendered by Perwaiz's counsel doesn't “conclusively appear[] in the trial record.” [Mandello, 426 F.2d at 1023](#). Postconviction proceedings are therefore a better vehicle for that claim.

* * *

For these reasons, we affirm the district court's judgment. And we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid in the decisional process.

AFFIRMED

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APPENDIX B

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1 If they don't appear, Your Honor, that is all we have for
2 victim statements.

3 THE COURT: A.M.?

4 MS. GANTT: A.M.

5 THE COURT: And J.P.?

6 MS. GANTT: Yes, ma'am.

7 That's all I have, Your Honor.

8 THE COURT: Have we checked? Are either one in the
9 overflow courtroom?

10 COURT SECURITY OFFICER: Yes, ma'am. He just
11 notified me they weren't in the overflow courtroom.

12 THE COURT: A.M. and J.P. are not here. If you see
13 them, please let the Court know. There is a court security
14 officer in the overflow courtroom, and that individual has
15 said neither of the two that you have named are in that
16 courtroom.

17 Other than the victim impact statements, is there
18 anything else for the Court to consider, other than the
19 argument?

20 MS. YUSI: No, Your Honor, just argument.

21 Thank you, Your Honor. As the Court is aware, the
22 government is requesting a sentence of 600 months or 50
23 years for Javaid Perwaiz. We believe such a sentence is
24 appropriate under the factors of 18 U.S.C. 3553, as well as
25 it would be a sufficient but not greater sentence than

1 necessary to achieve the purposes of sentencing.

2 We understand the defendant is approximately 69 or
3 71 years old, depending on the date of birth that is being
4 used, and this is equivalent to a life sentence. However,
5 based on the evidence this Court saw at trial, and the
6 damage the defendant has caused to so many women, and the
7 complete lack of remorse, Your Honor, we believe 50 years is
8 entirely appropriate in this matter.

9 The Court and the jury sat through almost four
10 weeks of testimony for this case, and I understand the
11 Court's very aware of the facts underlying the defendant's
12 convictions, and so we are not going to rehash all of those
13 that the Court already saw and that are contained at least
14 in part in the PSR.

15 But while the government has covered the 3553
16 factors in its position sentencing paper, we wanted to touch
17 on a few of the factors the government avers are
18 particularly compelling. As we discussed in our position,
19 general deterrence is an important factor which this Court
20 needs to consider in fashioning a sentence for the
21 defendant.

22 Typically, just by having the title of doctor, you
23 command respect and trust, and with this trust patients feel
24 safe, and they understand that their best interests are
25 being looked after by the doctors or nurses. Typically,

1 patients follow the advice and directions of their
2 caregivers, knowing it's the right thing for them and their
3 family.

4 This case, Your Honor, has turned that concept of
5 trust on its head. Not only have the women who were
6 defendant's patients all started questioning the care by
7 Dr. Perwaiz, that this case has also been a shock to the
8 community and public at large, and a call to many to start
9 questioning the trust that they have had in their doctors
10 and medical caregivers.

11 Not only do the victims in this case deserve the
12 defendant to receive a lengthy sentence of imprisonment, I
13 believe the community deserves to know that this type of
14 crime, healthcare fraud, that directly affected the health
15 and bodies of these women, just for the defendant's
16 financial gain, will not be tolerated by the Court and the
17 law.

18 The community deserves to know that the medical
19 establishment is not above the law. The government also
20 believes the nature and circumstances of the offense and the
21 history and characteristics of the defendant are extremely
22 vital in its decision-making on the sentence and believe
23 that the nature and circumstances of the offense and the
24 history and characteristics of the defendant go hand in
25 hand.

1 The only way Javaid Perwaiz was able to get away
2 with and perpetrate this fraud and damage over so many years
3 was because of who he is or, rather, who he purported to be.
4 As for who he purported himself to be, as the Court heard
5 from the victims at trial and from the defendant himself,
6 Dr. Perwaiz was extremely confident in his abilities as a
7 doctor and surgeon. He sat up on that witness stand for
8 hours talking about his alleged skills and experience,
9 bragging about his abilities.

10 He stated repeatedly that his vast experience
11 supported all of his medical decisions. He was unequivocal
12 about it. He even became indignant when questioned by the
13 government about his shortcomings, and when questioned by
14 Your Honor about why he didn't bother buying a \$3 bottle of
15 vinegar in order to properly perform a colposcopy, he just
16 stated he didn't need to because he knew better because of
17 his vast experience.

18 As for who Javaid Perwaiz really is, he was a
19 master manipulator. He would lie to these women that they
20 were sick or that they had cancer or that they were going to
21 get cancer or that the baby was ready to be born or that
22 they would be able to have more children if they let him
23 sterilize them.

24 Then what he actually did, he would take these
25 women, perform unnecessary surgeries on them, remove organs,

1 take away their ability to have children, put them at risk
2 for infection and complication, put their babies at risk by
3 forcing them to be born too early. What it caused, Your
4 Honor, the government is going to rely on what these women
5 have told the Court about what happened to them and how they
6 feel, which is far more powerful than anything the
7 government can say today.

8 What the 63 women who wrote impact statements to
9 the Court, and the women who spoke in terms of the damage
10 the defendant has caused to them, is just stunning, Your
11 Honor. This is not clearly a monetary crime. This was a
12 crime that caused physical and emotional damage to countless
13 women, and some women have permanent damages to their
14 bodies. They can't have more children. They can't go to
15 the bathroom ever again without being reminded of what
16 Javaid Perwaiz did to them. Some can't be intimate anymore
17 because of the physical pain due to these unnecessary
18 surgeries and procedures, and emotionally, as the Court has
19 heard, many of the victims are now questioning the entire
20 medical establishment. They're scared to go to doctors.
21 They don't trust what they're being told is true anymore by
22 the doctors.

23 One question that got there is why did the
24 defendant do all of these things? The easy answer is that
25 the defendant wanted to make as much money as possible. He

1 wanted to continue to buy and have luxurious cars, expensive
2 watches, nice clothes, sunglasses, jewelry, to keep his
3 paramours comfortable. He committed these crimes due to all
4 and out greed.

5 But, Your Honor, the government believes the better
6 question to ask is how could he do these things? It's not a
7 crime to be arrogant, it's not a crime to want nice things,
8 but it is a crime to be so callous in greed that you
9 repeatedly lie to women's faces, tell them there is
10 something wrong with them, scare them into agreeing to
11 surgeries and procedures or early birth, lying to insurance
12 companies, all for money or the feeling of power and
13 complete disregard for the fact that these are human beings.

14 From the jail calls that this Court has heard
15 during trial and knows about from our position paper, the
16 defendant appears to have an actual general disgust for
17 these women who were his patients, who he claimed to be
18 helping for decades. I understand that the defendant is
19 maintaining his innocence. However, you can maintain your
20 innocence and still feel empathy or at least a general
21 recognition for these women's lives and feelings, and not
22 the defendant. Not once did the defendant admit that he did
23 something wrong. Not once did he pause to consider that
24 what he revealed as skilled and experience was actually
25 reckless, dangerous, and criminal.

1 Your Honor, if the defendant was allowed to go out
2 that door today, he has shown that he would go right ahead
3 and continue these crimes today. The sentence cannot let
4 that be a possibility. Javaid Perwaiz stood on that stand
5 during trial, and he blamed his former partners from the
6 1980s for his problems then. He blamed jealous doctors
7 throughout his practice for his continued problems. He
8 blamed the hospitals. He blamed the victims. Not once had
9 he turned the mirror on himself, nor does the government
10 ever expect him to do so. It's just unfathomable how anyone
11 can listen to the evidence and hear from these women and not
12 think twice or feel anything.

13 I understand, and the government understands, that
14 a long sentence of imprisonment will not heal these women or
15 solve all of these problems, Your Honor, but perhaps it can
16 at least help with the healing process. Therefore, Your
17 Honor, we believe that a sentence of 600 months is
18 appropriate in this matter.

19 Thank you.

20 THE COURT: When you say 600 months, Ms. Yusi, but
21 a Court just doesn't say 600 months. You've got a number of
22 counts here, and so you set forth just a number, 600 months.
23 There are counts, and they involve different matters. So a
24 Court can't sentence or just say under federal law you get
25 600 months. The statutory maximum is 240 months on counts

1 8, 14 through 16, 18 through 22 and 24, and the maximum is
2 120 months on each of the counts 1 through 7, 9, 10, 17, 23,
3 25 and 26, and there is a five-year maximum on the remaining
4 counts of making the false statement, five years on making a
5 false statement on healthcare.

6 So when a Court sentences, and as far as I'm
7 concerned, every human being that is part of this case,
8 particularly those for which the jury found beyond a
9 reasonable doubt that they were a victim and found that some
10 were a victim that incurred serious bodily injury, so there
11 has to be some distinction made because a Court can't just
12 go in and blanket sentence. You have to separate them. I
13 say this also so that the victims and individuals
14 understand. I know you're asking, when you do all of that
15 together, that the sentence be 50 years.

16 MS. YUSI: Yes, Your Honor. I understand that. I
17 apologize that we did not break it out further, Your Honor.
18 What the government was trying to do was compare some of the
19 white collar cases, which this is technically a white collar
20 case and what the court and courts have provided and what
21 the government had asked for for that compared to drug
22 sentences, compared to child exploitation sentences, and
23 looking at that as a whole as to what we believe would be
24 sufficient, Your Honor, and I apologize for not breaking it
25 down between the different counts.

1 THE COURT: I know that it may be confusing for
2 some, but the guidelines here set forth different amounts of
3 years, as I've indicated, and if you look at the guidelines
4 as calculated, and this would be difficult, I know, for many
5 people to understand, but if you look at the guidelines, and
6 they were calculated without what's called a restricted
7 range, it would be life in prison. However, under the law,
8 I just said what the maximum sentence is, 240 months on
9 certain counts, 120 months on certain counts, five years on
10 certain counts. Given that, I want to make it clear on the
11 record and for those involved in the case, it may sound
12 strange, but a sentence for a term of months or years under
13 the law is considered below a sentence of life.

14 So, consequently, a Court can never sentence an
15 individual for longer than the statutory maximum. So even
16 if you did a full guidelines calculation here, it would come
17 out to life in prison. Each of the counts themselves carry
18 a statutory maximum of years, and even though ultimately it
19 well may work out to a life sentence, you still have to
20 render it in terms of years or months and not life.

21 I just want that to be clear so everyone realizes
22 his offense level is 43 with a criminal history category of
23 one. We start the sentencing, and I just read the statutory
24 maximums for each, which life is not one of them, but you're
25 arguing for, in effect, life.

1 MS. YUSI: That's correct, Your Honor.

2 THE COURT: You compared in your position papers, I
3 think you referred to the *Madoff* case as well as to another
4 physician.

5 MS. YUSI: Dr. Fata.

6 THE COURT: Dr. Fata. I believe in *Fata's* case he
7 was sentenced to 45 years.

8 MS. YUSI: He was, Your Honor, and pled guilty
9 through a plea agreement and did not go to trial.

10 THE COURT: Exactly. You pointed out those
11 differences, that he pled guilty, he did not go to trial.
12 Again, his guideline sentence would have been life but for
13 the statutory maximums in years on each of the counts. He
14 was sentenced to 45 years. You argued that Dr. Perwaiz
15 should receive a higher sentence than that because Dr. Fata
16 pleaded guilty and did express remorse for his crimes.

17 So, consequently, for Dr. Perwaiz, there should be
18 some consideration for the lack of remorse and putting the
19 victims through what they've been through. Consequently,
20 you argue for that higher sentence. Then I believe on the
21 *Madoff* case, and I'm saying a lot of this to help whoever is
22 arguing, Ms. Munn, Mr. Woodward, the argument was that it
23 didn't make sense in the *Madoff* case to sentence somebody
24 beyond their life expectancy.

25 I believe Judge Chin was the judge there who

1 indicated that you had to follow the law and sentence in
2 terms of years, even though you realize it's past the life
3 expectancy, because it also carries a symbolic message of
4 deterrence to anyone else inclined, as well as to vindicate
5 the victims.

6 So I did read the two transcripts, although they're
7 different cases, and they're different sentencing, but you
8 argued them to avoid unwarranted sentencing disparity.
9 You've cited the *Madoff* case and the *Fata* case.

10 MS. YUSI: I did, Your Honor. Thank you.

11 THE COURT: Ms. Munn.

12 MS. MUNN: Thank you, Judge. At the outset I will
13 say that Dr. Perwaiz and Mr. Woodward and myself stand on
14 its position paper. He does, as the government mentioned,
15 and the Court has acknowledged, reserve his right to
16 maintain his innocence, and I will say that his lack of
17 testimony today, and I expect his lack of allocution to the
18 Court, is in no way affront to the Court's authority or
19 disrespect to the Court.

20 To the contrary, he would acknowledge his respect
21 for the system and for the process. He is grateful for the
22 fact that the Court gave him the right to proceed to trial
23 and to assert his innocence, which is his constitutional
24 right.

25 The Court was committed to providing him with a

1 safe trial during a very difficult time in this courthouse
2 and in the United States. The Court provided him with a
3 trial. We brought a jury. He testified. He had the
4 ability and exerted his right to confront his accusers, and
5 he is grateful for that process and for the Court's
6 commitment to that.

7 I would note that while Mr. Woodward and
8 Dr. Perwaiz and I have every confidence that the Court will
9 fashion a sentence, understanding all of that, that is
10 sufficient but not greater than necessary pursuant to 18
11 U.S.C. 3553, I would note that it's impossible for us to
12 compare to other cases, given that all cases that are tried
13 in courts are so fact specific. We don't have the trial
14 transcripts for Dr. Fata or for Mr. Madoff.

15 Both of those cases were high publicity, but
16 Dr. Perwaiz nor Mr. Woodward and I were able to watch those
17 victims testify to understand what evidentiary objections
18 there were pretrial or during the trial. So it's difficult
19 for us to make an argument about where Dr. Perwaiz's
20 sentence should fall among two other unrelated cases with
21 very different facts and very different testimony.

22 What we can note for the Court is that Dr. Perwaiz
23 is 71 years old. He does have ongoing medical conditions.
24 He does have no prior criminal history.

25 THE COURT: He does have the one conviction in this

1 court for tax evasion.

2 MS. MUNN: Yes, ma'am. That's correct. He did
3 complete that probationary period. He did pay back the
4 funds to the United States. He made no effort to flee or to
5 avoid that process. He faced that obligation and satisfied
6 it. He acknowledged his guilt in a case for which he
7 believed he was guilty, and he agreed.

8 I would say that, to respond to Ms. Yusi's argument
9 that if Dr. Perwaiz were allowed to walk out this door there
10 is every indication that he wouldn't stop, I would note for
11 the record today, Your Honor, that Dr. Perwaiz has no
12 license to practice medicine. He has not practiced medicine
13 or attempted to do so since he was taken into custody. He's
14 been in jail since November of 2019.

15 There is no expectation, and I will just say that
16 I'm sure the Court -- this should go without saying, but
17 there is no expectation if Dr. Perwaiz were released from
18 custody at any point that he would resume the practice of
19 medicine. He will have no offices. He has no staff. He
20 has no malpractice insurance. He has no license to
21 practice. There is no reason, based on his history, to
22 believe that he wouldn't follow the terms of probation as he
23 did in the tax case.

24 So, Judge, again, I would just stand on our
25 position paper. I would tell you that Dr. Perwaiz is

1 grateful for the opportunity to proceed to trial. He does
2 preserve all of his objections and his right to appeal to
3 the Fourth Circuit, and does preserve his innocence, as is
4 his right. Thank you.

5 THE COURT: Dr. Perwaiz, is there anything you'd
6 like to say before the Court pronounces sentence?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: In sentencing you, Dr. Perwaiz, as the
9 Court does in every federal sentencing, it has to follow the
10 federal criminal sentencing statute for imposition of
11 sentence, and that is found at 18 United States Code Section
12 3553(a), and the Court has to consider the factors
13 thereunder to determine a sentence that is sufficient but
14 not greater than necessary.

15 The first factor under this statute is the nature
16 and circumstances of the offense and your history and
17 characteristics as a defendant. Obviously, this particular
18 factor is one of the most important for the Court to
19 consider in this case. I'm not going to go back through all
20 of the victims, but I was the trial judge, and so I heard
21 the victims testify upon which the convictions are based.

22 There have been 63 victim impact statements
23 submitted to the Court, and the victims that testified here
24 today, there have been four more that did not submit victim
25 impact statements. There have been e-mails that were

1 attached to the position paper. There were 12 from former
2 patients who believe they are victims. It's overwhelming
3 the number of victims, the procedures that were performed,
4 and the healthcare fraud that was perpetrated not only upon
5 the victims but upon the insurance entities and the public
6 because ultimately when there is this kind of fraud and
7 action, the victims are not only the individuals and the
8 healthcare providers but the public. Because of the
9 position of trust that you were in and you had, I agree with
10 the United States, that it's particularly difficult because
11 you abused the trust that your patients had placed in you,
12 that your profession had placed in you. So, consequently,
13 it is a very serious matter.

14 It's a bit overwhelming to encounter a defendant
15 that has expressed no remorse for such a callous disregard
16 for the welfare of the patients and the victims. Not only
17 no remorse for these patient victims but also the only
18 reason that one can determine from all of this is that it
19 was done for greed and to enhance a very lavish lifestyle.
20 In the Court's mind this conduct is simply unconscionable.

21 I do agree that there is no way for many of these
22 victims to recover their certain losses, but each human
23 being has dignity and worth, and, hopefully, they will be
24 able to go on and recover in the long run their dignity and
25 at least their mental well-being.

1 The nature and circumstances of the offense are
2 overwhelming. Your history and characteristics as a
3 defendant, it's disturbing to the Court that you had this
4 tax conviction in this court, I was not the judge, but that
5 you had this tax conviction that was a fraudulent
6 conviction. So even then, I know that you served your
7 probationary sentence, and you got through that, but the
8 Court still looks at your criminal history. That's part of
9 your history and characteristics as a defendant.

10 Then this case involves falsified hysteroscopies
11 and colposcopies and procedures that weren't necessary and
12 that were physically damaging to individuals. I'm not going
13 to go back through all the trial evidence and the
14 presentence report, which re-captures it, and all of the
15 victims' statements, but you falsified patient symptoms,
16 their diagnosis. You gave people false cancer scares to the
17 point that they were willing to subject themselves to
18 unnecessary surgery that prevents them from ever proceeding
19 naturally and normally with their life in terms of their
20 child-bearing and their other incidents of life.

21 You falsified the sterilization consent forms. You
22 not only did that, but you misrepresented on provider
23 applications. So, consequently, when you look at all of
24 this, it's tremendous. You look at the restitution here,
25 it's over \$18 million that's in restitution, \$18,563,323.18.

1 I'll get to the restitution in a moment, but the
2 overwhelming amount of fraud at every point in the process
3 from representations to victims to falsifying forms to
4 making the statements to providers, all of that goes into
5 this crime. So it wasn't a one-time occurrence. It was
6 repetitive over so many years. That's why there were so
7 many counts involved in this case. When I sentence, I will
8 go through it count by count in terms of the sentencing.

9 It's also sad that you were able to come to this
10 country and then not take advantage of education or the
11 medical profession here to practice your profession with
12 honesty. Yes, you came from a difficult background and
13 difficult circumstances, and you came here, and you achieved
14 at what other people would look at as great levels of
15 success. The sad thing is that this success was hiding a
16 lot of this fraud and the actions that you were taking.

17 So I just can't overlook the length of time, the
18 number of victims, the depth of the fraud, the depth of the
19 misrepresentation not only to the patients but for
20 reimbursement, and then no remorse at all.

21 I think this was something that the United States
22 wrote in the position paper, with which I agree, you acted
23 "without remorse or hesitation" and you "lied to the Court
24 and the jury and blamed everyone but yourself," and you
25 still continue to do that. You blame everybody else but

1 yourself. The only motive, as the United States put forward
2 that anyone can determine, was for financial gain to fund a
3 lavish lifestyle, and there doesn't seem to be any motive
4 for good. Consequently, that is very disturbing to the
5 Court.

6 Moving on to some other factors is the seriousness
7 of the offense. I won't belabor that. I can't imagine
8 anything more serious than performing these procedures that
9 result in bodily harm to an individual, and the jury found
10 that beyond a reasonable doubt on certain counts.

11 You have not shown respect for the law in terms of
12 the false information that you've put on forms, your lack of
13 remorse. You are, obviously, entitled to plead not guilty
14 and to persist in the not guilty plea, but a Court sentences
15 you based upon the trial and the jury's verdict, and that's
16 where we are now.

17 You do have to be justly and properly punished with
18 a sentence that is sufficient but not greater than
19 necessary. The Court has to look at deterrence, and I agree
20 that deterrence here is a very important factor. There has
21 to be deterrence for you, to protect the public from you for
22 further crimes, but also deterrence in terms of the
23 professional obligations that doctors, all professionals
24 have when someone comes to you, and they put their trust in
25 you. You're in the position of trust. Rather than treating

1 them honestly and legitimately, you engage in criminal
2 conduct. That can't be tolerated. It shouldn't be
3 tolerated from anyone, but they're licensed professionals,
4 and they're licensed in states, and they are licensed in
5 their profession.

6 When you go to someone, you should be able to rely
7 on that professionalism and that licensure. So I do have to
8 look at deterrence here. It's a very important factor.
9 Greed can't overcome your professional ethics, your
10 professional creeds, and the law. That's something that is
11 very important.

12 The Court does have to look at any needed
13 rehabilitation or medical care, and certainly I will direct
14 that while he is incarcerated that he undergo a full medical
15 and mental health evaluation and receive any and all
16 appropriate medical care and any and all appropriate mental
17 health counselling.

18 I also have to look at all of the kinds of
19 sentences available, and I'll go through that in a moment.
20 I do have to look at the victims involved, and that is a
21 very important aspect of this case. I do have to be aware
22 of unwarranted sentencing disparity. It's very difficult
23 because, thankfully, there are not that many cases that
24 would be comparable. I agree with what Ms. Munn said, I
25 mean, most comparable in terms of what occurred factually

1 would be Dr. Fata's case, but there were differences there
2 in pleading guilty and showing remorse, not that you have
3 to, but those are factors that both Ms. Munn and
4 Mr. Woodward and any of the lawyers in the courtroom know
5 about is acceptance of responsibility. That is a very
6 important factor in determining a sentence under the
7 guidelines and also for rehabilitation purposes in the long
8 run.

9 So with all that being said, I've indicated the
10 statutory maximums on this, but I would say if all of the
11 sentences were running consecutive, which they could run
12 that way, it would be 5,700 months or 475 years. So I would
13 note that. Now, I know the United States is not asking for
14 that, and I will sentence and explain my sentence as I go
15 along.

16 As I indicated earlier, a life sentence, while that
17 certainly is more than any life sentence, life under the law
18 is considered a different sentence than a sentence in years.
19 I won't go back through that again. But in sentencing you
20 on the various counts, I do have to indicate the amount of
21 years or months.

22 So I will go through my sentences. I'll start with
23 the healthcare fraud sentences, and I will say the counts on
24 the healthcare fraud sentence. The maximum statutory
25 sentence there is 120 months on a count. On the healthcare

1 fraud counts, count 1 is the healthcare fraud relating to
2 patient A.B., I impose the 120 months maximum sentence
3 there.

4 With respect to count 2, healthcare fraud relating
5 to patient C.L., I impose a sentence of 120 months.

6 Count 3, with respect to the healthcare fraud
7 relating to L.R., I impose a sentence of 120 months.

8 Count 4, with respect to count 4, this is the
9 healthcare fraud relating to A.C., again, 120 months or ten
10 years.

11 With respect to count 5, the healthcare fraud
12 relating to H.M., 120 months or ten years.

13 With respect to counts 6, healthcare fraud relating
14 to patient B.P., I impose 120 months or 10 years.

15 With respect to count 7, healthcare fraud relating
16 to A.B., I impose -- that's a different -- I know there are
17 two A.B. initials here, but we made that clear during the
18 trial.

19 MS. GANTT: Your Honor, counts 1 and 7, as Your
20 Honor may recall, is the same individual but she had two
21 deliveries.

22 THE COURT: That's right. Okay.

23 MS. GANTT: There is an A.M.B. later.

24 THE COURT: I know there are two there, but I'm
25 only going to use initials here.

1 Count 7, healthcare fraud relating to A.B., again,
2 120 months or ten years.

3 With respect to count 9, healthcare fraud relating
4 to patient A.N., that would be 120 months or ten years.

5 With respect to count 10, healthcare fraud relating
6 to A.M.B., that would be 120 months or ten years.

7 With respect to count 17, healthcare fraud relating
8 to patient S.N., that would likewise be 120 months or ten
9 years.

10 Count 23, with respect to that count of healthcare
11 fraud as to patient A.F., that would be 120 months or ten
12 years.

13 With respect to count 25, healthcare fraud relating
14 to L.G., that would be 120 months or ten years.

15 With respect to count 26, healthcare fraud relating
16 to L.G., that would be, again, 120 months or ten years.

17 I would run all of those 10 years concurrently. So
18 it will be 120 months or 10 years running concurrently on
19 the counts that I just went through, 1 through 7, 9 through
20 10, 17, 23, and 25 through 26.

21 Now in regard to the counts that were healthcare
22 fraud that the jury found unanimously that the healthcare
23 fraud resulted in serious bodily injury, and the maximum
24 sentence on those counts are 240 months on each count or 20
25 years.

1 On count 8, with respect to the healthcare fraud
2 relating to patient W.B. resulting in serious bodily injury,
3 I impose a sentence of 240 months or 20 years.

4 On count 14, with respect to healthcare fraud
5 relating to patient M.F., which also the jury found
6 unanimously resulted in serious bodily injury, I impose the
7 20 years, 240 months.

8 With respect to count 15, that's the healthcare
9 fraud relating to patient D.P., which also the jury found
10 resulted in serious bodily injury, I impose the 20 years or
11 240 months.

12 Count 16, with respect to healthcare fraud relating
13 to patient D.P., which the jury found resulted in serious
14 bodily injury, I impose a sentence of 240 months or 20
15 years.

16 With respect to count 18, that was the healthcare
17 fraud relating to patient S.N. in which the jury also found
18 it resulted in serious bodily injury, I impose 240 months or
19 20 years.

20 With respect to count 19, that's the healthcare
21 fraud with W.H.W., which the jury unanimously found resulted
22 in serious bodily injury, I impose the maximum of 240 months
23 or 20 years.

24 With respect to count 20, the healthcare fraud
25 relating to patient A.G., which the jury unanimously found

1 resulted in serious bodily injury, I impose 240 months or 20
2 years.

3 With respect to count 21, that's the healthcare
4 fraud relating to patient A.G., which the jury further found
5 resulted in serious bodily injury, I impose the maximum
6 sentence of 20 years or 240 months.

7 With respect to count 22, which is the healthcare
8 fraud relating to patient Y.S., which the jury found
9 resulted in serious bodily injury, I impose a sentence of 20
10 years or 240 months.

11 With respect to count 24, which was the healthcare
12 fraud relating to patient N.B., which the jury also found
13 resulted in serious bodily injury, I again impose the 240
14 months or 20 years.

15 In respect to these counts, which would be counts
16 8, 14 through 16, 18 through 22 and 24, those sentences
17 would run concurrently for the 240 months or 20 years.

18 Now I'm going to sentence on the counts of making a
19 false statement. This would be count 27, which is the false
20 statement relating to healthcare matters to patient D.W.,
21 count 28 with respect to false statements relating to
22 healthcare matters to patient T.T., count 29 with all of
23 these are making false statements, and this would relate to
24 patient A.P.C., count 30 is a false statement relating to
25 healthcare matters for patient T.C., count 31 is a false

1 statement relating to healthcare false statement with
2 patient A.B., count 33 is making false statement related to
3 healthcare matters for patient L.R., count 34 is with
4 respect to a healthcare false statement relating to patient
5 A.C., count 35 is with respect to making the false
6 statements relating to patient H.M., 36 is with respect to
7 making the false statements related to healthcare matters
8 for patient B.P., count 37 is with respect to making a false
9 statement relating to healthcare matters for patient A.B.,
10 Count 38 is with respect to making a false statement related
11 to healthcare matters for patient W.B., is with respect to
12 count 39, that's false statement related to healthcare
13 matters for patient A.N., count 40 is making a false
14 statement related to healthcare matters for patient A.M.B.,
15 Count 44 is with respect to making the false statement
16 related to healthcare matters relating to patient M.F.,
17 Count 45 is with respect to making false statement related
18 to healthcare matters for patient D.P., count 46 is with
19 respect to making a false statement relating to healthcare
20 matters for patient D.P., Count 47 relates to false
21 statement for healthcare matters for patient S.N., count 48
22 is with respect to making a false statement relating to
23 patient S.N., count 49 is with respect to making a false
24 statement for patient W.H.W., count 50 is with respect to
25 making a false statement on the healthcare matters related

1 to patient A.G., count 51 is with respect to making a false
2 statement relating to healthcare matters for patient A.G.,
3 count 52 is with respect to making false statements on
4 healthcare matters with regard to patient Y.S., count 53 is
5 with respect to making a false statement related to
6 healthcare matters for patient A.F., count 54 is with
7 respect to making a false statement on healthcare matters
8 relating to N.B., and count 55 is with respect to making
9 false statements regarding patient L.G., count 56 is in
10 respect to making false statements in regard to patient
11 L.G., count 57 is with respect to making a false statement
12 on healthcare matters relating to patient D.B., count 58 is
13 with respect to making false statements related to
14 healthcare matters to an attestation to Anthem, and count 59
15 is with respect to making false statement related to
16 healthcare matters to attestation to Optima.

17 On those counts, that should be 29 counts, and
18 those are counts 27 through 31, 33 through 40, and 44
19 through 59, I impose a sentence of 12 months or one year for
20 each of the false statements counts, but that is to run
21 consecutively. So that would be a total of 29 years on
22 making the false statements.

23 So in summary, the sentence is one of 708 months,
24 which is 59 years incarceration. It would consist of the
25 240 months on the counts, and I say this repeatedly, I want

1 to be sure that the clerk can get all of this down, but the
2 240 months on all of the counts that were related to the
3 healthcare fraud in regard to the patients that resulted in
4 serious bodily injury, and the 120 months is related to the
5 patients that had the healthcare fraud relating to them are
6 to run consecutively. In other words, so the 120 months are
7 concurrent with each other but consecutive to the other
8 sentences. The 240 months are concurrent with each other
9 but consecutive each other and to the other sentences. The
10 29 years, one year on each of these healthcare frauds,
11 making a false statement, is consecutive to the other
12 sentences. So that is a total sentence of 708 months, which
13 is 59 years when they are served consecutively in the three
14 different groups; concurrent within the first group,
15 concurrent within the second group, consecutive within the
16 third group, but each group is consecutive to the other. So
17 that is the sentence itself, a total of 708 months or 59
18 years.

19 In terms of supervised release, there will be the
20 maximum of three years on each count of conviction, all to
21 be served concurrently. The probation officer has not
22 recommended a fine because of the restitution amount, the
23 special assessment, and the forfeiture, which I will go
24 through.

25 I do waive the cost of the prosecution and the

1 incarceration. To the extent that there is any supervised
2 release in the case, the defendant will have to bear the
3 costs of any programs he's on if he's on supervised release.

4 In terms of the restitution, I will enter that
5 order that has been presented to the Court. This is for
6 restitution in the total amount of \$18,563,323.18. The
7 interest is waived. That is very difficult to calculate
8 under the statute on this amount of money. You haven't
9 asked for it not to be waived; is that correct?

10 MS. YUSI: Correct, Your Honor.

11 THE COURT: I'm going to set the payments. Right
12 now they are set at 1,000 a month. Again, I don't know if
13 this will be able to be paid given the other, but I'm going
14 to set them at a thousand a month or 25 percent of net
15 income, whichever is greater. That would begin 60 days
16 after release from any period of confinement; however,
17 obviously, while you're incarcerated, it's subject to the
18 inmate financial responsibility program. I do order the
19 full amount of the restitution. I believe that it's signed
20 by the defendant and the attorneys. Everyone agrees that
21 the restitution will be paid to Optima and Anthem on a pro
22 rata basis, and TRICARE and Medicare and Medicaid then on a
23 pro rata basis. So that's all set forth in the restitution,
24 for Optima, Anthem, Medicaid, Medicare, and TRICARE are
25 listed as an attachment to the order.

NO. _____

In the
Supreme Court of the United States

JAVOID PERWAIZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX C
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
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Counsel of Record

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Counsel for Petitioner

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:19CR00189-001

JAVAID PERWAIZ,

USM Number: 26867-083

Defendant.

Defendant's Attorney: Lawrence Woodward, Jr.
and Emily Munn

JUDGMENT IN A CRIMINAL CASE

After a plea of not guilty, the defendant was found guilty by a jury on Counts 1s-10s, 14s-31s, 33s-40s, 44s-59s of the Superseding Indictment.


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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Offense Class</u>	<u>Offense Ended</u>	<u>Count</u>
T.18, USC, Sections 1347 and 1349	Health Care Fraud	Felony	October 2, 2019	1s-10s, 14s-26s
T.18, USC, Section 1035(a)(2)	False Statement Related to Health Care Matters	Felony	October 19, 2019	27s-31s, 33s-40s, 44s-59s

As pronounced on May 18, 2021, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Given this 18th day of May, 2021.

/s/ 
Rebecca Beach Smith
Senior United States District Judge

Rebecca Beach Smith
Senior United States District Judge

Case Number: 2:19CR00189-001
Defendant's Name: PERWAIZ, JAVAID

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of SEVEN HUNDRED EIGHT (708) MONTHS (59 years). This term of imprisonment consists of a term of two hundred forty (240) months on each of Counts Eight, Fourteen through Sixteen, Eighteen through Twenty-Two, and Twenty-Four, all to be served concurrently with one another; a term of one hundred twenty (120) months on each of Counts One through Seven, Nine, Ten, Seventeen, Twenty-Three, Twenty-Five, and Twenty-Six, all to be served concurrently with one another and consecutive to the sentences imposed on Counts Eight, Fourteen through Sixteen, Eighteen through Twenty-Two, and Twenty-Four; and a term of twelve (12) months on each of Counts Twenty-Seven through Thirty-One, Thirty-Three through Forty, and Forty-Four through Fifty-Nine, all to be served consecutively with each other and with the sentences imposed on all other counts.

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

- 1) The defendant shall undergo a full medical evaluation and shall receive all appropriate medical care and treatment.
- 2) The defendant shall undergo a full mental health evaluation and shall receive all appropriate mental health care and treatment.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

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

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

Case Number: 2:19CR00189-001
Defendant's Name: PERWAIZ, JAVAID

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS. This term consists of a term of three (3) years on each of Counts 1s through 10s, 14s through 31s, 33s through 40s, and 44s through 59s, all to run concurrently.

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

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

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

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

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

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

STANDARD CONDITIONS OF SUPERVISION

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

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

Case Number: 2:19CR00189-001
Defendant's Name: PERWAIZ, JAVAID

SPECIAL CONDITIONS OF SUPERVISION

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

- 1) The defendant is prohibited from engaging in any aspect of the medical field, or any similar occupation where the defendant would have access to patients.
- 2) The defendant shall apply monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation, or in a lesser amount to be determined by the Court upon the recommendation of the probation officer.
- 3) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
- 4) The defendant shall provide the probation officer access to any requested financial information.
- 5) The defendant shall participate in the Treasury Offset Program (TOP) as directed by the probation officer.
- 6) During the period of supervised release, the defendant shall provide copies of his state and federal income tax returns each year to the probation officer.
- 7) The defendant shall continue to participate in a mental health treatment and counseling program at the direction and discretion of the probation officer. The defendant shall bear the costs of this program.
- 8) The defendant shall continue to participate in any necessary medical treatment at the direction and discretion of the probation officer. The defendant shall bear the costs of this program.
- 9) The defendant shall waive all rights of confidentiality regarding medical/mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.
- 10) The court does not deny federal benefits because the denial is not applicable.

Case Number: 2:19CR00189-001
Defendant's Name: PERWAIZ, JAVAID

CRIMINAL MONETARY PENALTIES

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

	<u>Special Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	\$5,200.00	\$0.00	\$18,563,323.18
TOTALS:	\$5,200.00	\$0.00	\$18,563,323.18

See below for explanation of total Special Assessment and Restitution.

SPECIAL ASSESSMENT

As to Counts 1s through 10s, 14s through 31s, 33s through 40s, 44s through 59s, the defendant shall pay a special assessment in the amount of \$100.00 as to each count. The total special assessment due is \$5,200.00.

FINES

No fines have been imposed in this case.

COSTS

The Court waives the cost of prosecution, incarceration, and supervised release, except to the extent the defendant will have to bear costs as outlined in the Special Conditions of Supervision.

FORFEITURE

The court entered a Consent Order of Forfeiture on May 7, 2021, which is made a part hereof, thereby becoming a money judgment in the amount of \$2,276,089.51, to the extent all applicable notice and legal requirements set forth in the Consent Order of Forfeiture are met.

The court entered a Second Consent Order of Forfeiture on May 18, 2021, which is made a part hereof, to the extent all applicable notice and legal requirements set forth in the Consent Order of Forfeiture are met.

The court entered a Third Consent Order of Forfeiture on May 18, 2021, which is made a part hereof, to the extent all applicable notice and legal requirements set forth in the Consent Order of Forfeiture are met.

RESTITUTION

See attached Restitution Order entered and filed on May 18, 2021.

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

UNITED STATES OF AMERICA

v.

JAVID PERWAIZ,

Defendant.

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)
)
)
)
)

Criminal No. 2:19-cr-189

CONSENT ORDER OF FORFEITURE

BASED UPON the findings of guilt by a jury on Counts 1–10, 14–40, 44–59, the defendant’s consent to the entry of this order, and FINDING that the requisite nexus exists between the property listed below, in which the defendant has an interest, and the offenses to which the defendant has been found guilty, IT IS HEREBY ORDERED pursuant to Federal Rule of Criminal Procedure 32.2 that:

1. The following assets are forfeited to the United States pursuant to 18 U.S.C. § 982(a)(7):
 - a. A sum of money in the amount of \$2,276,089.51¹, which represents the proceeds of the offenses of conviction obtained by the defendant and which sum shall constitute a monetary judgment against the defendant in favor of the United States. This is a sum for which the defendant shall be solely liable and a sum which shall be offset to the extent of the government’s net at final forfeiture for the assets listed below.
 - b. Real property and improvements located at 340 Mill Stone Road, Chesapeake, Virginia;
 - c. Real property and improvements located at 3003 Churchland Boulevard, Chesapeake, Virginia;

¹ The defendant’s agreement to this consent order of forfeiture does not constitute a waiver of any objection he may have to loss or gain amounts set forth in his presentence report for the purposes of calculating the Sentencing Guidelines.

- d. Any and all property, to include medical equipment, located within the premises of 3003 Churchland Boulevard, Chesapeake, Virginia;**
- e. Approximately \$90,954.39 in proceeds from the sale of 109 Wimbledon Square, Suite F, Chesapeake, Virginia which is presently being held by the Marshals Service;**
- f. Two membership units representing a 1.0% interest in Bon Secours Surgery Center at Harbor View, LLC.**

2. The following assets are forfeited to the United States pursuant to 21 U.S.C. § 853(p), as the defendant agrees and the Court FINDS that the prerequisites of 21 U.S.C. § 853(p)(1) have been met:

- a. Towne Bank account # 211179825;**
- b. Towne Bank account # 211052337;**
- c. Towne Bank account # 414006208;**
- d. Chartway Federal Credit Union account # 9100802129481;**
- e. 2001 Bentley Arnage Red Label with VIN SCBLC31E91CX06418;**
- f. All proceeds of consignment sales, to include those completed by Antique Design Center, Exclusive Gem, and Real Real, presently being held by counsel for the defendant, excluding any portion constituting earned legal fees for the trial phase of this case.**

3. The United States shall seize all forfeited property and shall take full and exclusive custody and control of same.

4. The United States shall, to the extent practicable, provide direct written notice to any persons known to have alleged an interest in the seized property, and shall publish notice of this order in accordance with Federal Rule of Criminal Procedure 32.2(b)(6).

5. Any person, other than the defendant, asserting any legal interest in the property may, within thirty days of the publication of notice or the receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of their alleged interest in the property.

6. Following the Court's disposition of all timely petitions filed, a final order of forfeiture shall be entered, whereupon the United States shall have clear title to the property as provided in the final order of forfeiture, and shall dispose of the property in accordance with law.

7. The parties stipulate and agree that the aforementioned asset represents property described in 18 U.S.C. § 982(a)(7) and 21 U.S.C. § 853(p) and, as such, is subject to forfeiture thereunder. The defendant hereby waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment, and consents to the entry of this order.

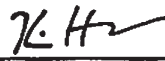
8. Pursuant to Fed. R. Crim. P. 32.2(b)(3), upon entry of this order, the United States is hereby authorized to conduct any appropriate discovery for the purpose of identifying, locating, or disposing of property subject to forfeiture.

Dated this 1st day of May 2021.

/s/ [Signature]
Rebecca Beach Smith
Senior United States District Judge

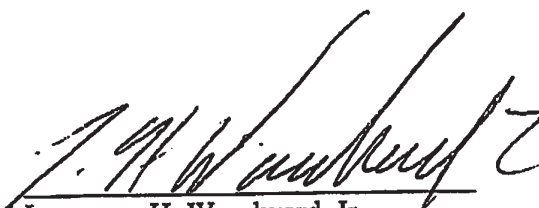
UNITED STATES DISTRICT JUDGE


I ask for this:
Raj Parekh
Acting United States Attorney

By: 
Kevin Hudson
Laura Grimes
Assistant United States Attorneys
Attorneys for the United States
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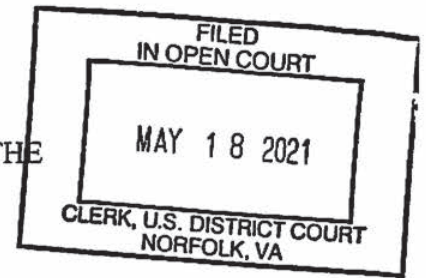
Seen and Agreed
Javaid Perwaiz
Defendant

By: 
Javaid Perwaiz

By: 
Lawrence H. Woodward, Jr.
Counsel for Defendant

By: 
Emily M. Munn
Counsel for Defendant

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



UNITED STATES OF AMERICA

v.

JAVID PERWAIZ,

Defendant.

Criminal No. 2:19-cr-189

SECOND CONSENT ORDER OF FORFEITURE

BASED UPON the findings of guilt by a jury on Counts 1–10, 14–40, 44–59, the defendant’s consent to the entry of this order, and FINDING that the requisite nexus exists between the property listed below, in which the defendant has an interest, and the offenses of which the defendant has been found guilty, IT IS HEREBY ORDERED pursuant to Federal Rule of Criminal Procedure 32.2 that:

1. The following property is forfeited to the United States 21 U.S.C. § 853(p), as the defendant agrees and the Court FINDS that the prerequisites of 21 U.S.C. § 853(p)(1) have been met:

Unearned portion of the appellate retainer held by the defendant’s present counsel.

2. The United States shall seize all forfeited property and shall take full and exclusive custody and control of same.

3. The United States shall, to the extent practicable, provide direct written notice to any persons known to have alleged an interest in the seized property, and shall publish notice of this order in accordance with Federal Rule of Criminal Procedure 32.2(b)(6).

4. Any person, other than the defendant, asserting any legal interest in the property

may, within thirty days of the publication of notice or the receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of their alleged interest in the property.

5. Following the Court's disposition of all timely petitions filed, a final order of forfeiture shall be entered. If no third party files a timely petition, this order shall become the final order of forfeiture, as provided by Federal Rule of Criminal Procedure 32.2(c)(2), and the United States shall have clear title to the property, and shall dispose of the property in accordance with law.

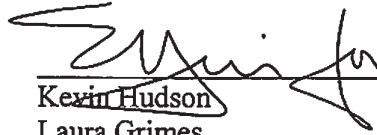
6. The parties stipulate and agree that the aforementioned asset represents property described in 21 U.S.C. § 853(p) and, as such, is subject to forfeiture thereunder. The defendant hereby waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment, and consents to the entry of this order. The defendant agrees not to file or interpose any claim to the property listed herein, in whole or in part, in any proceedings or manner whatsoever.

Dated this 18th day of may 2021.

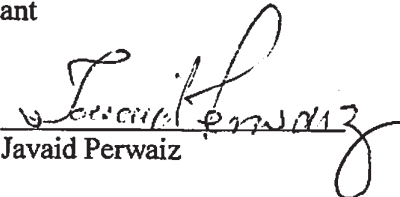
/s/ [Signature]
Rebecca Beach Smith
Senior United States District Judge

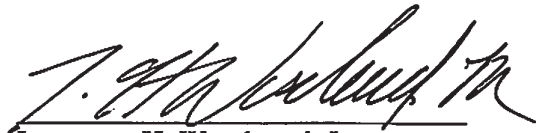
UNITED STATES DISTRICT JUDGE

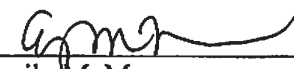
I ask for this:
Raj Parekh
Acting United States Attorney

By: 
Kevin Hudson
Laura Grimes
Assistant United States Attorneys
Attorneys for the United States
101 West Main Street, Suite 8000
Norfolk, VA 23510
Office Number: (757) 441-6331
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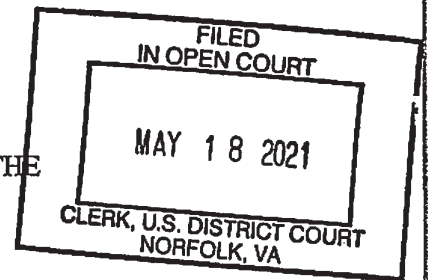
Seen and Agreed
Javaid Perwaiz
Defendant

By: 
Javaid Perwaiz

By: 
Lawrence H. Woodward, Jr.
Counsel for Defendant

By: 
Emily M. Munn
Counsel for Defendant

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



UNITED STATES OF AMERICA

v.

JAVID PERWAIZ,

Defendant.

Criminal No. 2:19-cr-189

THIRD CONSENT ORDER OF FORFEITURE

BASED UPON the findings of guilt by a jury on Counts 1-10, 14-40, 44-59, the defendant's consent to the entry of this order, and FINDING that the requisite nexus exists between the property listed below, in which the defendant has an interest, and the offenses of which the defendant has been found guilty, IT IS HEREBY ORDERED pursuant to Federal Rule of Criminal Procedure 32.2 that:

1. The following property is forfeited to the United States 21 U.S.C. § 853(p), as the defendant agrees and the Court FINDS that the prerequisites of 21 U.S.C. § 853(p)(1) have been met:

All jewelry and other personal property turned over to the Federal Bureau of Investigation at an address on East City Hall Avenue in Norfolk, Virginia on May 17, 2021.¹

2. The United States shall seize all forfeited property and shall take full and exclusive custody and control of same.

3. The United States shall, to the extent practicable, provide direct written notice to

¹ The personal property reviewed by the Federal Bureau of Investigation on May 17, 2021 but which they did not take is considered to be of nominal value and therefore not subject to the restraining order of January 26, 2021.

any persons known to have alleged an interest in the seized property, and shall publish notice of this order in accordance with Federal Rule of Criminal Procedure 32.2(b)(6).

4. Any person, other than the defendant, asserting any legal interest in the property may, within thirty days of the publication of notice or the receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of their alleged interest in the property.

5. Following the Court's disposition of all timely petitions filed, a final order of forfeiture shall be entered. If no third party files a timely petition, this order shall become the final order of forfeiture, as provided by Federal Rule of Criminal Procedure 32.2(c)(2), and the United States shall have clear title to the property, and shall dispose of the property in accordance with law.


6. The parties stipulate and agree that the aforementioned asset represents property described in 21 U.S.C. § 853(p) and, as such, is subject to forfeiture thereunder. The defendant hereby waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment, and consents to the entry of this order. The defendant agrees not to file or interpose any claim to the property listed herein, in whole or in part, in any proceedings or manner whatsoever.

Dated this 18th day of May 2021.


/s/
Rebecca Beach Smith
Senior United States District Judge


UNITED STATES DISTRICT JUDGE

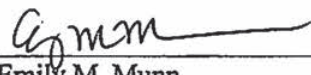
I ask for this:
Raj Parekh
Acting United States Attorney

By: 
Kevin Hudson
Laura Grimes
Assistant United States Attorneys
Attorneys for the United States
101 West Main Street, Suite 8000
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Seen and Agreed
Javaid Perwaiz
Defendant

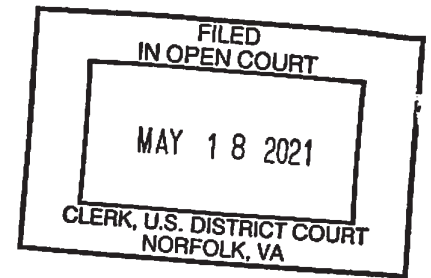
By: 
Javaid Perwaiz

By: 
Lawrence H. Woodward, Jr.
Counsel for Defendant

By: 
Emily M. Munn
Counsel for Defendant

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

Norfolk Division



UNITED STATES OF AMERICA)

v.)

Criminal No. 2:19CR00189

JAVOID PERWAIZ,)

Defendant.)
_____)


RESTITUTION ORDER

1. Pursuant to 18 U.S.C § 3663A(a)(1), the defendant is ordered to pay restitution in the total amount of **\$18,563,323.18**.
2. The amount of restitution paid to any victim, collectively, shall not exceed the victim's total loss from the offenses of conviction.
3. The victims' names, addresses, and the total respective loss amount are listed in Attachment A to this Restitution Order.

4. Interest: ✓ is waived.
 accrues as provided in 18 U.S.C § 3612(f).

5. Notwithstanding any other provision of this Restitution Order, or the sentence imposed, including the directive to make periodic payments, restitution is due in full and payable immediately from assets known and unknown and including assets identified in the Presentence Report. The Government may enforce restitution at any time.
6. If incarcerated, the Court encourages the defendant to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, to comply with the provisions of the financial plan, and to meet the defendant's financial obligation, pursuant to 28 C.F.R. § 545.10-11.
7. If restitution is not paid in full immediately, the defendant shall pay to the Clerk at least \$1,000.00 per month or 25 percent of net income, whichever is greater, beginning 60 days after release from any period of confinement, or 60 days after sentencing if no confinement is imposed.


8. All payments shall be made to the Clerk of Court, United States District Court, 600 Granby Street, Norfolk, VA 23510.
9. Within 30 days of (a) any change of name, residence, or mailing address; and/or (b) any material change in economic circumstances that affects the ability to pay restitution, the defendant shall notify the Clerk of Court and the United States Attorney's Office, Financial Litigation Unit, 8000 World Trade Center, Norfolk, Virginia 23510.
10. No delinquent or default penalties will be imposed except upon Order of the Court.
12. Pursuant to 18 U.S.C. § 3664(i), the priority of payments to victims shall be:
 - a. Optima and Anthem shall be paid in full first on a pro-rata basis.
 - b. Tricare, Medicare, and Medicaid shall be paid last on a pro-rata basis.

_____/s/ 
Rebecca Beach Smith
~~Senior United States District Judge~~
Honorable Rebecca Beach Smith
Senior United States District Judge

ENTERED this 18th day of May, 2021.
at Norfolk, Virginia

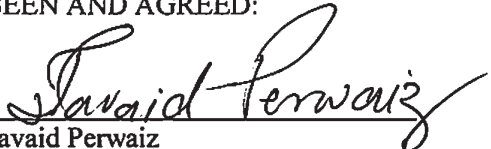
WE ASK FOR THIS:

Raj Parekh
Acting United States Attorney




Elizabeth Yusi
E. Rebecca Gantt
John Butler
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United States Attorney's Office
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SEEN AND AGREED:



Javaid Perwaiz
Defendant



Lawrence Woodward, Jr.
Counsel for Defendant
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(757) 457- 0845
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Emily Meyers Munn
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Norfolk, VA 23510
(757) 619-1060
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ATTACHMENT A TO RESTITUTION ORDER

Victim:	Loss Amount:
Optima	\$2,743,659.17
Anthem	\$6,677,227.34
<i>To be paid only after Optima and Anthem are paid in full first</i>	
Medicaid	\$8,125,166.56
Medicare	\$814,929.89
Tricare	\$202,340.22
Total due from defendant:	\$18,563,323.18

Case Number: 2:19CR00189-001
Defendant's Name: PERWAIZ, JAVAID

SCHEDULE OF PAYMENTS

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

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

The defendant shall pay to the Clerk at least \$1,000.00 per month or 25% of net income, whichever is greater, beginning sixty (60) days from the inception of supervised release toward any restitution remaining unpaid. The court reserves the option to alter this amount, depending upon defendant's financial circumstances at the time of supervised release and depending upon how much restitution has been paid.

Interest on the restitution is waived.

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

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

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

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