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**In The
Supreme Court of the United States**

TOHEEB ODOFFIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**PETITION FOR WRIT OF CERTIORARI
FOR TOHEEB ODOFFIN**

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QUESTIONS PRESENTED

- I. DID THE 4TH CIRCUIT COURT OF APPEALS ERR IN THE POST BOOKER ERA BY NOT FINDING THE DISTRICT COURT PARTICIPATED IN BIAS BY SENTENCING TOHEEB ODOFFIN WITHIN INFLATED GUIDELINES, WHEN A VARIANCE WAS CALLED FOR AS A RESULT OF HIS LIMITED ROLE.
- II. DID THE 4TH CIRCUIT COURT OF APPEALS ERR BY NOT FINDING THAT THE DISTRICT COURT FAILED TO SATISFY THE ENDS OF JUSTICE, IGNORED FACTORS SET FORTH IN 18 U.S.C. §3553, AND UNREASONABLY INCREASED LOSS AMOUNTS ATTRIBUTED TO TOHEEB ODOFFIN, CAUSING AN UNREASONABLE SENTENCE.

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PETITION FOR WRIT OF CERTIORARI

TOHEEB ODOFFIN, (hereinafter “ODOFFIN”) respectfully petitions for a writ of certiorari to review judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The decision of the court of appeals is unreported and is reproduced in the Appendix and was issued on April 6, 2018.

JURISDICTION

This is an appeal from the Fourth Circuit Court of Appeals ruling on the decision of the United States District Court for the Eastern District of Virginia, at Norfolk. Submitted on February 6, 2018 and decided on April 6, 2018 by the Fourth Circuit Court of Appeals. TOHEEB’s appeal was Affirmed in part, Dismissed in part, by unpublished per curiam opinion.

In this case, Petitioner seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit for the matters that were affirmed in part and dismissed in part. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

STATUTES & RULES

18 U.S.C. § 2

18 U.S.C. § 3551

18 U.S.C. § 3553

18 U.S.C. § 3742(e)

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16 U.S.S.G. § 2X1.1(a)

16 U.S.S.G. § 3E1.1(a)

28 U.S.S.G. § 3E1.1(b)

STATEMENT OF THE CASE

Toheeb was arrested in Chicago on October 12, 2016. (JA147). On March 6, 2017, Toheeb pleaded guilty to *Conspiracy to Commit Mail, Bank and Wire Fraud* and *Aggravated Identity Theft*. He was the first of multiple defendants to plead guilty and was the first defendant to be sentenced. (JA146). Toheeb entered a plea on March 6, 2017; on June 19, 2017, he was sentenced to the Bureau of Prisons for a total term of 90 months and judgment was entered on June 20, 2017. (JA 64, 165, 221). The term consists of 66 months on Count 1 and a term of 24 months on Count 36, with 24 months to be served consecutively, plus three years of supervised release. (JA222, 288).

In the Eastern District of Virginia, Toheeb, and seven others were charged in an indictment, covering a period of between 2011 and the fall of 2015, which alleged, *inter alia*, a multi-purpose conspiracy to commit mail, wire and bank fraud and aggravated identity theft, asserting that the coconspirators, both charged and uncharged, perpetrated a fraud totaling some \$3.78 million dollars. Under the terms of their guilty pleas, both Toheeb and Hafeez admitted certain facts as to the crimes set forth in detail below.

Toheeb, along with various other individuals, conspired with each other and others to commit crimes. (JA80). They committed fraud by means of materially fraudulent pretenses using the United States Post Office or commercial interstate carriers, wire communication, fraudulent bank activities and other methods for the purpose of executing their scheme. (JA323). Participants in the scheme, including Toheeb and Hafeez, obtained funds through fraudulent means by recruiting individuals to use their own bank accounts to negotiate counterfeit financial instruments, consisting mainly of counterfeit cashier's checks and counterfeit Postal money orders, and further sending the funds by money transmission service for the conspirators' own use and benefit. (JA126).

The conspirators recruited individuals throughout the United States via email to serve as "Mystery Shoppers," where the individuals would receive financial instruments and then use such instruments to evaluate the services of certain money transmission services, including Western Union and Money Gram. (JA126). The recruited individuals were advised that this practice was a legitimate

employment opportunity. (JA126). The conspirators would obtain legitimate cashier's checks from financial institutions and legitimate Postal money orders and provide them to other conspirators. (JA127).

The conspirators would then use the legitimate financial instruments to make counterfeit versions of the instruments. (JA127). The counterfeiting was largely accomplished in Nigeria, resulting in counterfeit instruments being sent via the mails or electronic means to conspirators in the United States, including Toheeb and Hafeez. (JA127).

Once a recruited individual, or "Mystery Shopper," responded to an email solicitation with interest, the conspirators would obtain personal identification information from the Mystery Shopper, which was then placed on the counterfeit cashier's check or Postal money order. (JA127). The conspirators, including Toheeb and Hafeez, caused mailings to be sent via the United States mails and private interstate commercial carriers to the Mystery Shoppers that contained a counterfeit cashier's check or Postal money order for the Mystery Shopper to negotiate. (JA19).

The conspirators instructed the Mystery Shoppers to negotiate the counterfeit checks or money orders at their own bank, keeping a portion of the represented payment for their services, but withdrawing the majority of the funds represented on the counterfeit check or money order. (JA19). The Mystery Shoppers did present the counterfeit checks and money orders to banks, which were financial institutions as defined by 18 U.S.C. § 20, using the Mystery Shoppers own bank accounts. (JA19).

The Mystery Shoppers, as directed by conspirators, transmitted by Western Union or Money Gram a large portion of the obtained funds to locations throughout the United States using wirings in interstate commerce. (JA20).

The conspirators and/or other recruited individuals (including individuals recruited by Toheeb, retrieved the transmitted funds, which were proceeds of the fraud, and engaged in further distribution of these fraud proceeds. (JA83). In doing so, the conspirators used counterfeit identifications to retrieve the funds. As a result of the scheme, the Mystery Shoppers and various financial institutions suffered losses when the negotiated checks and money orders were determined to be counterfeit. (JA83).

On or about September 30, 2010, Toheeb sent a photograph of a blank money order for \$900 to an unindicted conspirator, stating "ewe moni and account example." (JA83). On October 27, 2010, a parcel of fraudulent monetary instruments was seized that also contained fraudulent passports for Toheeb and another conspirator. (JA83).

In 2012 and 2013, Toheeb engaged in email correspondence with other conspirators concerning names, addresses and labels for individuals (to include individuals that resided in the Eastern District of Virginia) and received and negotiated counterfeit financial instruments in the course of the scheme). (JA83).

A parcel sent from Ghana, West Africa, was seized in October 2010. (JA147). This parcel contained, among other things, a fake Ghanaian country passport for Toheeb and one of his brothers and counterfeit instruments valued at \$924,300.

(JA147). Toheeb appears to have been a low-level mule who was being provided with a fictitious passport to go collect wire transfers. (JA147). This is arguably, the lowest level position in this fraud scheme. (JA 147). Additionally, money service/wire pickups from known mules total approximately \$74,000. (JA147). Lastly, two emails sent to Toheeb from higher ups in the scheme contain counterfeit instruments totaling over \$170,000 made to approximately 109 individuals or potential victims. (JA147). It is unknown whether Toheeb mailed or whether the individuals deposited the checks. (JA147). At least two of the checks were mailed, received and deposited. (JA147).

a. Facts as to Characteristics

Toheeb is a 28-year-old male born in Nigeria and former resident of Chicago and has been continuously incarcerated since his arrest in Chicago on October 12, 2016. (JA143). On the day of his arrest, Toheeb waived his *Miranda* rights and without requesting advice of counsel, made incriminatory statements and admissions to interviewing Federal Bureau of Investigation agents. (JA143).

Prior to these offenses, Toheeb had a minimal criminal record and was continually employed from 2010 until 2014. He was employed as a truck driver and was considered a reliable, responsible and dependable employee. (JA144, 338). Toheeb grew up in Nigeria, Africa, with his devoted, hard-working mother and half-sibling in a small apartment while his mother worked long hours to provide shelter, food and clothes to them. (JA 144, 335-334). His father, who fathered many children, and mother were never married. (JA144). Toheeb's father never much

cared for him. His half-brothers, including his codefendants, were considerably older than him and grew up in a separate household in Nigeria. (JA144, 335-336). Toheeb graduated high school and attended two years of university and lacked a strong male role model in his formative years. (JA144). For a short time, his uncle partially occupied that role. (JA144, 335-336). Toheeb came to America in November 2008, settled in with his father and older siblings in Chicago for a time. (JA144). Nonetheless, Toheeb's relationship with his father and brothers was not a close one. (JA144, 335-336).

He was recruited into this fraudulent scheme by his half-brothers but unlike them, played a small role, in their larger fraudulent machine. (JA145). He maintained, until his arrest, weekly telephone communication with his mother. (JA145). Toheeb was a Lawful Permanent Resident Alien (has a "Green Card"). (JA145, 336). This status is likely to change as Toheeb has now been convicted of 'an aggravated felony' under the Immigration and Nationality Act and will likely be facing certain removal procedures. (JA145). This is another negative and significant consequence of Toheeb's conviction. (JA145).

Toheeb finished the equivalent of high school, took college level classes which he abandoned to immigrate to America. (JA145). Here, he enrolled in some college classes and later left to obtain a Commercial Driver's License. He is currently licensed as a CDL driver. (JA145, 337).

Toheeb lived in Chicago and has maintained relatively stable employment, save for a period of time in 2014. (JA145, 337-338). Toheeb has been described as

reliable and responsible by his last employer, Bestway Transport, Inc. (JA145, 338) He is single, has never been married and has no children. (JA145, 338). Some friends and neighbors describe him as humble, a polite, kind and good-hearted, funny individual who is dependable. (JA145, 338).

b. Facts as to Guidelines

The Presentence Investigation Report (“PSR”) recommended a guideline sentence of between 63 and 78 months’ imprisonment (that is, 5 years and 3 months and 6 years and 6 months) plus a mandatory sentence of 24 months. (JA144, 339).

The PSR calculated the guideline count of conviction at a Total Offense Level of 26 and Criminal History Category (CHC) I. (JA146, 339). This means that the base offense level of 7 was enhanced by 22 additional levels from specific offense characteristics. (JA146). Toheeb’s contends that his guideline range has been improperly calculated due to the inflated loss amount. He does **not** object to the other enhancements. (JA146). The math is as follows:

A. Base Offense Level – 7 levels *U.S.S.G. §2B1.1(a)(1) and §2X1.1(a);*

B. Loss Amount (over \$3.5 million)- 18 levels (maximum) *U.S.S.G. § 2B1.1(b)(1)(J);*

C. 10 or more victims – 2 levels *U.S.S.G. § 2B1.1(b)(1)(A);* and

D. Foreign Scheme - 2 levels *U.S.S.G. § 2B1.1(b)(10)(C).*

E. Adjusted Offense Level – **29 levels**

(JA146, 330-332). The PSR also accounts for a 3-level decrease for Toheeb’s prompt acceptance of responsibility which results is a level 26. (JA147, 331-

332). Accordingly, the PSR recommends a sentence of 63 and 78 months, plus the 24 months statutory mandatory sentence for the Aggravated Identity Theft offense of conviction. (JA147, 339). Toheeb averred at the trial court that his participation in this illegal scheme deserves to be calculated at a loss amount of between \$550,000 and \$1,500,000 dollars and thus enhanced by 14 levels, (JA147.) Therefore, the district court erred in not doing so.

REASON FOR GRANTING THE PETITION

- I. **THE 4TH CIRCUIT COURT OF APPEALS ERRED IN THE POST BOOKER ERA BY NOT FINDING THE DISTRICT COURT PARTICIPATED IN BIAS BY SENTENCING TOHEEB ODOFFIN WITHIN INFLATED GUIDELINES, WHEN A VARIANCE WAS CALLED FOR AS A RESULT OF HIS LIMITED ROLE.**

Summary of Argument

The Fourth Circuit Court of Appeals erred when it did not find that the district court's sentence was unreasonable and the result of judicial bias post *Booker*. Additionally, the Fourth Circuit Court of appeals erred when it did not find the loss calculations were inappropriately applied to Toheeb resulting in an unreasonable sentence and the matter should be reversed and remanded.

ARGUMENT

A sentencing court's discretion at sentencing is not boundless or unfettered. The information that the court relies on to set a sentence is limited by notions of fairness and due process, and that information must have "sufficient indicia of reliability to support its probable accuracy." *United States v. Berry*, 553 F.3d 273, 280 (3rd Cir. 2009) (quoting *United States v. Warren*, 186 F.3d 358, 364-65 (3rd Cir.

1999)). The United States Supreme Court has ruled that evidence of a defendant's history and characteristics "is clearly relevant to the selection of an appropriate sentence." *Pepper v. United States*, 562 U.S. 476, 491 (2011). *Pepper* emphasized that a sentencing court must "consider every convicted person as an individual," 562 U.S. at 487 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)), and must fashion a punishment that "fit[s] the offender and not merely the crime," *id.* (citations omitted).

Under § 3553(a)(6), a court must consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. Here, defense counsel moved for a downward variance of 41 to 51 months plus 24 months and the district court disagreed in an unreasonable fashion.

a. The Federal Sentencing Guidelines' Intent is to Distribute Even Justice Across All Sentencing Courts and to Keep Judicial Bias out of Sentencing.

The Federal Sentencing Guidelines are rules that set out a uniform sentencing policy for individuals and organizations convicted of felonies and serious (Class A) misdemeanors in the United States federal courts system. The Guidelines' primary goal is to alleviate sentencing disparities that research had indicated were prevalent in the existing sentencing system, and the Guidelines reform was specifically intended to provide for determinate sentencing.

"[I]n imposing a sentence after *Booker*, the district court must engage in a multi-step process. First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range." *United States v.*

Moreland, 437 F.3d 424, 432 (4th Cir. 2006). “Next, the court must ‘determine whether a sentence within that range serves the factors set forth in §3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.’” 437 F.3d at 432 (quoting *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006)). Thus,

“a sentencing court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and the need “to reflect the seriousness of the offense,” provide “just punishment,” “afford adequate deterrence,” “protect the public,” and “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

United States v. Hampton, 441 F.3d 284, 287 (4th Cir. 2006) (quoting 18 U.S.C. § 3553(a)); see also *United States v. Roberto Diosdado-Star*, 630 F.3d 359, 363 (4th Cir. 2011) (following *Moreland*).

In 1764, in the first edition of *Dei delitti e delle pene* (An Essay on Crimes and Punishments), Cesare Beccaria noted that a judge's ruling does not always reflect the legal merits of the case. CESARE BECCARIA, AN ESSAY ON CRIMES AND PUNISHMENTS 5 (Branden Press, Inc. trans. 1983) (4th ed. 1775) (Translated and reprinted from *Dei delitti e delle pene* (4th ed. 1775)). He argued that justice often meant judicial favoritism; the courts favored the powerful, while severely sanctioning the powerless. *Id.*

Beccaria felt punishment should prevent people from committing crimes. *Id.* at 2-3. Among his proposed reforms, Beccaria argued for certainty and swiftness of punishment, a legally educated citizenry, revision of the sentencing structure to reflect the severity of each crime, and replacement of judicially determined

punishments with those set by legislators. *Id.* at 4-9, nn.31-32. The judiciary, he believed, with their deeply rooted biases and inconsistent sentences, were incapable of implementing his philosophy of deterrence. *Id.* Beccaria noted that justice suffered when judges set sentences according to whim: “The spirit of the laws will then be the result of the good, or bad logic of the judge; and this will depend on his good or bad digestion; on the violence of his passions; on the rank, and condition of the accused, or on his connections with the judge; and on all those little circumstances, which change the appearance of objects in the fluctuating mind of man.” *Id.* at 4-9 nn. 31-31.

The notion of judicial bias did not end with Beccaria's comments. Throughout American history, judges have been accused of discrimination, primarily for sentencing non-whites more severely than whites. *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896). Judicial bias, which occurred during earlier, more turbulent times, may have been based upon institutionally created differences between whites and their former slaves. *Id.* For example, the United States Supreme Court in *Plessy v. Ferguson* held that one could not expect the courts to guarantee equality to blacks. *Id.* The Court stated: "If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."¹ *Id.*

It can be argued that Toheeb, a Nigerian immigrant, could be and is considered to be inferior to other criminal defendants because of the current charged

¹ This decision was a civil judgment concerning “separate, but equal” policies and did not specifically address sentencing differences. It does, however, illustrate the institutionalized inequity of the time.

political environment. The trial judge's quick dismissal of the defense's arguments and the judge's direct reliance on the perspective of probation and their drafted PSR, shows that Toheeb suffered from judicial bias in receiving an increase sentence based on perceived or inherent prejudice.

The District court began the sentencing with some intimidation towards the defense counsel and requested further evidence from the defendant.

THE COURT: ... before we get started, in the interest of economy, or time, notes that, also the findings of fact, the party objecting to those findings in the PSR has the burden to come forward with an affirmative showing to the contrary. In other words, before the Court just goes through a whole bunch of inquiry here based on this challenge that he wasn't that involved and his actions were compartmentalized. I need to hear from the defendant because the Court's looking at this record and, quite candidly, the Court wants to determine whether, upon further reflection, you wish to go forward with this objection. (JA167).

Trial counsel Green responded about the limited scope of the Toheeb's accountability and that Toheeb was just charged with sending two checks and that to hold him responsible for the entire conspiracy exceeded that considered in the Guidelines.

MR GREEN: The gist of the objection is the Defendant pled guilty and admits responsibility, and the Defendant's position is that he wants to be held accountable for his participation in this rather large, very sophisticated, as the Court well stated, compartmentalized scheme with multiple layers, and that he was just one of the cogs in that layer.

It just happened that his -- one of his stepbrothers was at least the stateside, the North America, so to speak, chief operating officer of this organization,

which also had tentacles to Africa which were where many of the documents were being -- the checks were being generated, were being sent from, the bogus mailing labels were being sent from.

But what the defendant is basically asking the Court to consider is, how much knowledge of the entire operation he had. So that when the Court determines, as it must under the Guidelines, what is the reasonable foreseeability to him and particularly something that is hard to understand for those not versed in law is when they're charged just with two counts of sending checks. So what is the reasonable foreseeability to him if every member of the conspiracy is accountable for the entire amount regardless of what role they played, then there is not much proportionality and accountability. (JA168).

The Court responded that Toheeb would have to prove the PSR was dead wrong if Toheeb did not want the court to follow it. (JA169). This was an impossible and improper burden for a defendant to bear.

THE COURT: Well, the Court understands that but what the Court is simply saying is, looking at the Presentence Report, and they allege the offense conduct in this case and the wide, extensive nature and multiplicity of the roles that the defendants played, foreseeability is hardly a problem with the defendant because he's in it up to his eyeballs, so to speak. And so we can go on and, if you insist and have the Government repeat what's in the Presentence Report here. But usually, unless you have something that suggests that this is dead wrong, the Court can follow it. (JA 169).

There is no responsibility for a defendant to prove the PSR is dead wrong. After hearing Toheeb argue the facts of the case against the Guidelines, the court stated: "But he's making no factual opposition to what is here, it's just how the Court should review the facts in the Presentence Report." (JA171). The court continued by condemning Toheeb for his immigration status and his poor choices:

THE COURT: Now, you are 28 years old, born in Nigeria, came to America and had a chance to do something else but you chose to become a criminal, to make your money off of other people...But somehow you imagined getting all hooked up in this little old crooked scheme here to get money. And not only did you get hooked up in the whole time you were working as a truck driver for various companies, you had found time enough to engage in this scheme. Really makes no sense that you would decide that you would become involved in the criminal enterprise here, almost, given the education and opportunities that you did have. (JA193).

The sentence is in excess of the type of sentences that are given to other defendants in the Eastern District for fraud type charges.

b. Increasing Toheeb's Guidelines is out of Line with Sentencing for Fraud Cases in the Eastern District of Virginia and on Its Face Indicates Bias.

Defendants in the Norfolk Division of the Eastern District of Virginia who engaged in conduct similar to Toheeb's have received sentences of less than 34 months. For example, in *United States v. Jennifer Pleacher*, a judge imposed a 32-month sentence on a defendant who admitted to embezzling over \$500,000. Crim. No. 4:06-50 (E.D. Va. Oct. 10, 2006). In *United States v. Farmer-Forston*, the defendant embezzled over half a million dollars from the law firm at which she was employed. Crim. No. 2:11-111 (E.D. Va. Dec. 6, 2011). This was *actual* loss. Judge Jackson, the judge in this case, sentenced her to 24 months even though her advisory range was 30-37 months.

In Alexandria, a defendant who pleaded guilty to wire fraud and aggravated identity theft with a loss amount over \$1 million received a sentence of 24 months, despite Guidelines of 51-63 months. *United States v. Contreras*, Crim. No. 1:10-296

(E.D. Va. Dec. 17, 2010). Another defendant convicted at trial of conspiracy to commit bank and wire fraud—who was ordered to pay \$4.1 million in restitution—was sentenced to 34 months’ imprisonment, despite Guidelines of 121-151 months and a Government recommendation of 97 months. *United States v. Ferrufino*, Crim. No. 1:09-430-8 (E.D. Va. Oct. 22, 2010).

Finally, a defendant who pled guilty to conspiracy to commit bank fraud through very similar conduct—creating fraudulent tax letters used to support fraudulent mortgage applications—was attributed with \$2.4 million of losses but still received a 24-month sentence, which was less than 50% of what the Guidelines suggested. *United States v. Mercado*, Crim. No. 1:11-482 (E.D. Va. June 8, 2012).

The specific cases discussed above are not aberrational. In the Eastern District of Virginia for fiscal year 2014, the median sentence in a fraud case was 20 months—the mean was 33.² Accordingly, the district court abused its discretion when it imposed a sentence based on an increased loss amount not attributable to Toheeb. The district court created unwarranted sentencing disparities between Toheeb and other similarly situated defendants convicted in Norfolk District of the Eastern District of the same or more egregious conduct. Therefore, Toheeb’s sentence is unreasonable and the result of judicial bias.

² U.S. Sentencing Comm’n., 2014 Datafile, Appx. B – Virginia Eastern, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/stats_VAE.pdf.

CONCLUSION QUESTION I

The district court's sentence was unreasonable and the result of judicial bias post Booker and the 4th Circuit Court of Appeals erred by not finding so. Additionally, loss calculations were inappropriately applied to Toheeb and therefore unreasonable and the matter should be reversed and remanded for sentencing within the Guidelines as requested by the trial counsel.

QUESTION II

II. THE 4TH CIRCUIT COURT OF APPEALS ERRED BY NOT FINDING THAT THE DISTRICT COURT FAILED TO SATISFY THE ENDS OF JUSTICE, IGNORED FACTORS SET FORTH IN 18 U.S.C. §3553, AND UNREASONABLY INCREASED LOSS AMOUNTS ATTRIBUTED TO TOHEEB ODOFFIN, CAUSING AN UNREASONABLE SENTENCE.

Summary of Argument

The 4th Circuit Court of Appeals erred when it did not find the district court sentenced Toheeb unreasonably based on an impermissible expansion of his role in the offense not in line with the §3553 factors due to a lack of meaningful consideration of the facts and for attributing to Toheeb an increased loss amount beyond the scope of his role.

ARGUMENT

The Supreme Court has held that the Sixth Amendment right to a jury trial is violated when a defendant's sentence is increased based on judicial fact-finding under mandatory federal sentencing Guidelines. *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005) at 226-244. As a remedy for that constitutional violation, the Supreme Court severed two provisions of the Sentencing Reform Act of 1984

(herein after “SRA”), 18 U.S.C. § 3551 *et seq.* The first was 18 U.S.C. § 3553(b)(1) (Supp. IV 2004), which had required courts to impose a Guidelines sentence. The second, “so modified, the SRA to makes the Guidelines effectively advisory. It requires a sentencing court to consider Guidelines ranges, but it permits the court to tailor the sentence in light of other statutory concerns as well.” 543 U.S. at 245-46 (citations omitted). The Supreme Court also severed an appellate review provision, 18 U.S.C. § 3742(e) (2000 & Supp. IV 2004) and replaced it with a general standard of review for “unreasonableness,” under which courts of appeal determine “whether the sentence ‘is unreasonable’ with regard to 18 U.S.C. § 3553(a).” 543 U.S. at 261.

The Third Circuit has held, “In addition to ensuring a trial court considered the § 3553(a) factors, we must also ascertain whether those factors were reasonably applied to the circumstances of the case.” *United States v. Cooper*, 437 F.3d 324, 330 (3rd Cir. 2006). The record must demonstrate that the district court gave “meaningful consideration” to the sentencing factors set forth in 18 U.S.C. § 3553(a). 437 F.3d at 329.

a. **In Sentencing Toheeb the 4th Circuit Court of Appeals Erred in not finding the District Court Failed to take into Account that Toheeb’s Participation was Limited.**

Toheeb adopts the *Defendant Toheeb Odoffin’s Objection to Calculation of Loss Amount, Position With Respect to Sentencing Factors and Request for Variance* (JA143) filed in this matter in the district court and restates parts herein as necessary, cited by page in the Joint Appendix.

The district court sentenced Toheeb without regard to the facts surrounding the offense, i.e. Toheeb's more limited role in the offense. The district court improperly imputed to Toheeb knowledge and participation of the entire loss of more than \$4 million dollars. This sentence, based on an inflated loss calculation not in line with the facts, failed to consider that Toheeb's participation was limited, both in time and in scope, and that he was a low-level cog in this extensive and multi-layered conspiracy, removed from any decision-making authority, unaware of all the tentacles and workings of the lead schemers, and did not enjoy large portions of the ill-gotten proceeds. (JA144). In sum, while he is responsible for some loss, the total amount of loss was not clearly foreseeable to him. (JA144).

The PSR calculated the guideline count of conviction at a Total Offense Level of 26 and Criminal History Category (CHC) I. (JA146). This means that the base offense level of 7 was enhanced by 22 additional levels from specific offense characteristics. (JA146). Therefore, the guideline range was improperly calculated due to the inflated loss amount and thus Toheeb's sentence was excessive and not in line with his role in the offense.

The facts set forth in the Statement of Facts do not support that Toheeb knew about all parts of the conspiracy or its scope. Toheeb's role consisted of a parcel that was sent from Ghana, West Africa, and seized in October 2010. (JA 147). This parcel contained a fake Ghanaian country passport for Toheeb and for one of his brothers, along with counterfeit instruments valued at \$924,300. (JA147). This shows that Toheeb was a low-level mule who was being provided with a fictitious

passport to go collect wire transfers -- the lowest level position in this fraud scheme. (JA147). Additionally, money service/wire pickups from known mules total approximately \$74,000. (JA147). Lastly, two emails sent to Toheeb from higher ups in the scheme contain counterfeit instruments totaling over \$170,000 made to approximately 109 individuals or potential victims. (JA147). It is unknown whether Toheeb mailed or whether the individuals deposited the checks. (JA147, 326, PSR ¶ 21). At least two of the checks were mailed, received and deposited. (JA147). This is the sum total of the involvement that Toheeb had in the scheme. There is no question that the entire scheme was extremely large, but there is no information provided or stated, other than argument from the government, that Toheeb's role was any larger.

b. Proper Loss Amount Attributable to Toheeb.

The proper loss to Toheeb should have been between half a million dollars, \$550,000, and a million-and-a-half resulting in a 14-level enhancement instead of 18 level enhancement that the court imposed.

In cases involving property offenses, the applicable specific offense characteristic depends on the amount of "loss" resulting from the defendant's crime. (JA148). The Guidelines define "loss" as the greater of actual loss or intended loss. *U.S.S.G.* §2B1.1. (JA1248). "Actual Loss" is the reasonably foreseeable pecuniary harm that resulted from the offense. (JA148). "Reasonably Foreseeable Pecuniary Harm" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, as a potential result of the offense.

(JA148). “Specific offense characteristics depend not only on the offense of conviction but also on relevant conduct.” *United States v. Salem*, 597 F.3d 877, 884 (7th Cir. 2011). (JA148). In cases involving “jointly undertaken criminal activity” relevant conduct is determined based on “all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity.” (JA148). The court failed to calculate the loss based not on the defendant’s own actions, but on all reasonably foreseeable acts and omissions of others in furtherance of a jointly undertaken criminal activity. *United States v. Adeniji*, 221 F.3d 1020, 1027 (7th Cir. 2000). (JA148). The intended loss figure cannot substantially overstate the seriousness of the offense. Commentary 3(A) (iv) provides:

(iv) Reasonably Foreseeable Pecuniary Harm. —For purposes of this guideline, “reasonably foreseeable pecuniary harm” means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known was a potential result of the offense.

(JA148). The criteria to take into consideration in determining loss under the Guidelines consist of foreseeability plus the calculation of the loss amount. Six factors must be considered. (JA148) These are: 1) Individual’s knowledge about larger scheme;³ 2) Commitment to the conspiracy’s objectives;⁴ 3) Victim

³ *United States v. Moran*, 778 F.3d 942 (11th Cir. 2015). District court may hold participants in conspiracy responsible, for sentencing purposes, for losses resulting from reasonably foreseeable acts of co-conspirators in furtherance of conspiracy. To determine whether defendant is liable for acts of co-conspirators for sentencing purposes, district court must first make individualized findings concerning scope of criminal activity undertaken by defendant. Only if defendant can establish that he played relatively minor role in conduct for which he has already been held accountable, not minor role in any larger criminal conspiracy, should district court grant downward sentencing adjustment for minor role in offense. See also *United*

Expenditure of Time and Money to Regain Funds (even if victims are reimbursed there can be additional pecuniary harm that can constitute actual loss);⁵ 4)

States v. Ortiz, 560 Fed. Appx. 894 (11th Cir. 2014). Found that Defendant recruited people that were involved in the conspiracy – accountable for \$15 million in loss amount. The court that a defendant is accountable for conduct of others occurring after his entry if that conduct was both: (1) In furtherance of the jointly undertaken criminal activity; and (2) Reasonably foreseeable in connection with that criminal activity.

⁴ *United States v. Sykes*, 774 F.3d. 1145 (7th Cir. 2014). Defendant reasonably could foresee the **total intended fraud loss** caused by her codefendants...bank fraud arising out of a check-kiting scheme, in holding her accountable for the **total loss**; defendant admitted she knew what the scheme entailed and that she was participating in a larger scheme, defendant and her fellow recruiters coordinated their efforts with the leader of the scheme and took nearly identical steps to defraud the victims, and defendant's involvement in the scheme was not limited to her relationship with the leader, but she personally knew and worked closely with at least one other recruiter. A defendant need not know of a co-conspirator's actions for those actions reasonably to be foreseeable to defendant for purposes of assessing **loss** amounts that can be attributed to defendant in a case of jointly undertaken criminal activity; rather, sentencing court can determine reasonable **foreseeability** based on whether defendant demonstrated a substantial ~~degree~~ of commitment to the conspiracy's objectives, either through is words or his conduct. Court determined that Ms. Sykes could reasonably have foreseen, and thus was responsible for, the scheme's entire **intended loss** amount of \$653,417. Dispute the PSR's conclusion that she could have reasonably foreseen Hicks's entire scheme. She could not be held responsible for the entire \$658,417 loss caused by the illegal activity. She could only foresee and be accountable for \$196,400 loss that directly resulted from her participation in the scheme. She could reasonably have foreseen the entire loss inflicted by the scheme on the victim **banks**. Ms. Sykes had admitted that she knew what the scheme entailed and knew that she was participating in a "larger scheme" and knew that at least one other person "Terence Sykes" was recruiting nominees for the scheme.

⁵ *United States v. Smith*, 751 F.3d 107 (3rd Cir. 2014). A party that is reimbursed for stolen funds but, as a practical matter suffers additional pecuniary harm, such as expenditure of time and money to regain misappropriated funds and replace compromised bank accounts, may qualify as a victim suffering "actual loss" under sentencing enhancement based on the number of victims.

Loss by Co-conspirators;⁶ 5) Whether the calculated loss overstates the crime;⁷ and 6) Amount of Loss to Each Individual.⁸ (JA148).

Toheeb was a low level, unknowledgeable, mule. (JA151). He was quick to admit his illegal conduct upon his arrest. (JA151). He was a lower level sometime participant in this offense who maintained a job and was a reliable and dependable worker. (JA151). He received some counterfeit checks from the organizers of the conspiracy and cashed some checks. (JA151). He had no decision-making authority, was not a counterfeiter and did not make much money. (JA151). The government obtained and analyzed Toheeb's email account, as well as that from his half-brother Habeeb and only a few emails sent to Toheeb containing counterfeit instruments in

⁶ *United States v. Campbell*, 765 F.3d 1291 (11th Cir. 2014). Here Campbell and co-conspirators created and successfully executed, a scheme to defraud the State of AL of several million dollars. Money received was the loss to the State of Alabama. A sentencing court may include losses caused by co-conspirators in determining actual loss, and it is not limited to harm caused by the conduct charged in the indictment. Where a defendant's conduct was permeated with fraud, a district court does not error by treating the amount that was transferred from the victim to the fraudulent enterprise a starting point for calculating the victim's pecuniary harm at sentencing. When the Court cannot accurately estimate the victim's loss, it can use the defendants gain for purposes of calculating the offense level increase. "There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense...in such cases a downward departure may be warranted. Cases where the crime caused substantial nonmonetary harm or created the risk of much greater financial loss could produce upward or downward departures.

⁷ See also *United States v. Campbell, supra*, 765 F.3d 1291.

⁸ *United States v. Lee*, 427 F.3d 881 (11th Cir. 2005). Victims because individuals suffered "more than a small-out-of-pocket loss and were not immediately reimbursed."

late December 2012 and early 2013. (JA151). Toheeb accepted full responsibility for his actions. (JA151).

The PSR and the district court both attributed to Toheeb foreseeability for the entire amount of the losses caused by the activities of the other codefendants and co-conspirators. (JA150). There was no evidence to suggest that Toheeb had knowledge of the size and depth of this enterprise or of the layers of this Ponzi-like scheme that his brother and others had built to operate as a franchise and swindle substantial gains from individuals. (JA150).

At sentencing, Toheeb argued that Paragraph 19 of the PSR at Page 10, that makes Toheeb responsible for more than \$4 million, was wrong and excessive when he should have been responsible to what is contained Paragraph 20. (JA169). Arguing: "Which would be -- and even if the Court were to add Paragraphs 20 and 21, which are actually searches of his email and interceptions of packages that were sent to him. (JA169). And even if it wasn't to him, that contained documents with false ID in his -- with his face that presumably we're going were going to be used by him." (JA169).

Toheeb's crime contained no aggravating circumstances beyond those contemplated in the law or Guidelines. In fact, the PSR report states that "there are no aggravating or mitigating adjustments for the defendant's role in this offense." (JA330). The PSR also states that there is no information to suggest that Toheeb impeded or obstructed justice, (JA330), nor was there any flight from a law enforcement officer during which he recklessly endangered another person. At the

time he was arrested, he was extensively interviewed by the FBI in Chicago and he made a statement even before he obtained a lawyer. (JA190). He made a statement convicting himself and placing himself in the conspiracy. (JA190). He did accept his responsibility from an early standpoint. (JA190).

The PSR states the Toheeb was interviewed by the probation officer and provided a statement wherein he admitted involvement in the offenses. (JA330). The defendant reported that the *Statement of Facts* is accurate and that he accepts responsibility for his involvement in the instant offenses. (JA330). He also stated that he was sorry for what he did. (JA330). Toheeb clearly accepted responsibility for the offence and the PSR recommended a two-level decrease. USSG §3E1.1(a). (JA331). Toheeb assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the intention to enter a plea of guilty. (JA332). Accordingly, the offense level was decreased by one additional level. USSG §3E1.1(b). (JA332).

Toheeb did not contest the finding of more than ten victims and the two-level enhancement for that. (JA170). Nor did he contest it was either a sophisticated or an international operation, and the two-level enhancement for that. (JA170).

Toheeb contends the district court erred in his sentencing and that it was not clearly foreseeable to him, given the government's evidence, that he should be placed in the same loss category as the other defendants. His participation in and knowledge of the scheme's operation was more limited and compartmentalized. At sentencing, the court ordered restitution in the amount of \$1,294,034.52, which was

within what the trial defense argued was the loss amount that should be used in determining the Guidelines.

ISSUE II CONCLUSION

Toheeb's sentence was unreasonably based on an impermissible expansion of his role in the offense not in line with the §3553 factors due to a lack of meaningful consideration of the facts and due to attributing an increased loss amount beyond the scope of his role. In granting judgment for restitution in the amount of \$1,294,034.52, the district court erred in allowing the enhancement of his Guidelines with a higher loss amount. The matter should be remanded for resentencing with the lower loss amount.

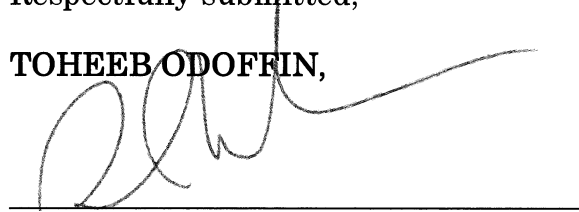
PETITION CONCLUSION

For the reasons stated above, this Petition for Writ of Certiorari should be granted on the issues stated above.

Dated: April 26, 2018

Respectfully submitted,

TOHEEB ODOFFIN,



Rebecca S. Colaw, Esquire
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Suffolk, Virginia 23439
Telephone Number: (757) 539-5020
Facsimile Number: (757) 539-5743
rsc@colawlaw.com

NO. _____

**In The
Supreme Court of the United States**

TOHEEB ODOFFIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI
FOR TOHEEB ODOFFIN**

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*Counsel of Record for
Petitioner Toheeb Odoffin*

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APPENDIX A

United States v. Toheeb Odoffin, No. 17-4568

Unpublished Opinion of the United States Court of Appeals
for the Fourth Circuit

Decided April 6, 2018

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4568

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOHEEB ODOFFIN,

Defendant - Appellant.

No. 17-4581

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HAFEEZ ODOFFIN,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at
Newport News. Raymond A. Jackson, District Judge. (4:16-cr-00049-RAJ-LRL-2; 4:16-
cr-00049-RAJ-LRL-4)

Submitted: March 30, 2018

Decided: April 6, 2018

Before MOTZ, KING, and DIAZ, Circuit Judges.

No. 17-4568, affirmed in part, dismissed in part; No. 17-4581, dismissed by unpublished per curiam opinion.

Rebecca S. Colaw, REBECCA S. COLAW, PC, Suffolk, Virginia; Melissa J. Warner, LAW OFFICE OF MELISSA J. WARNER, Glen Allen, Virginia, for Appellants. Brian James Samuels, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Toheeb Odoffin and Hafeez Odoffin seek to appeal the sentences imposed following their guilty pleas to conspiracy to commit mail, bank, and wire fraud, in violation of 18 U.S.C. § 1349 (2012), and aggravated identity theft, in violation of 18 U.S.C. § 1028A (2012). Both Appellants dispute the amount of loss attributed to them by the district court. In addition, Toheeb Odoffin argues that his sentence is substantively unreasonable because the district court, motivated by anti-immigrant bias, imposed an excessive sentence that failed to account for lesser sentences received by other perpetrators of fraud. Finally, Hafeez Odoffin contends that the court did not adequately consider the 18 U.S.C. § 3553(a) (2012) sentencing factors. The Government has moved to dismiss the appeals as barred by the appeal waivers included in Appellants' plea agreements. For the reasons that follow, we grant the Government's motion to dismiss Hafeez Odoffin's appeal and grant the Government's motion to dismiss Toheeb's appeal in part, deny the motion to dismiss as to his judicial bias claim, and affirm Toheeb's judgment as to that claim.

We review de novo the validity of an appeal waiver. *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012). An appeal waiver "preclude[s] a defendant from appealing a specific issue if . . . the waiver is valid and . . . the issue being appealed is within the scope of the waiver." *Id.* (internal quotation marks omitted). A defendant validly waives his appeal rights if he agreed to the waiver "knowingly and intelligently." *United States v. Manigan*, 592 F.3d 621, 627 (4th Cir. 2010). "To determine whether a waiver is knowing and intelligent, we examine the totality of the circumstances, including

the experience and conduct of the accused, as well as the accused's educational background and familiarity with the terms of the plea agreement.” *Thornsbury*, 670 F.3d at 537 (internal quotation marks omitted).

Upon review of the plea agreements and the Fed. R. Crim. P. 11 hearing transcripts, we conclude that both Appellants knowingly and voluntarily waived the right to appeal. We further find that the issues Hafeez Odoffin seeks to raise fall squarely within his valid appeal waiver.

As to Toheeb Odoffin, his appeal waiver too is valid and enforceable, and only one claim is not foreclosed by his appellate waiver. Specifically, his claim that his sentence was based on a constitutionally impermissible factor is not subject to waiver. *United States v. Marin*, 961 F.2d 493, 496 (4th Cir. 1992); *see United States v. Bakker*, 925 F.2d 728, 740 (4th Cir. 1991) (listing national origin as constitutionally impermissible sentencing factor). However, the record contains no evidence to support his contention that the district court enhanced his sentence because of his national origin.

Accordingly, we grant the Government's motion to dismiss Hafeez Odoffin's appeal. We grant the Government's motion to dismiss Toheeb Odoffin's appeal in part, but we deny the motion as to his judicial bias claim and affirm Toheeb Odoffin's criminal judgment as to that claim. 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 the decisional process.

*No. 17-4568, AFFIRMED IN PART,
DISMISSED IN PART;
No. 17-4581, DISMISSED*

APPENDIX B

United States v. Toheeb Odoffin, No. 17-4568

Judgment of the United States Court of Appeals
for the Fourth Circuit

Filed April 6, 2018

FILED: April 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4568 (L)
(4:16-cr-00049-RAJ-LRL-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TOHEEB ODOFFIN

Defendant - Appellant

No. 17-4581
(4:16-cr-00049-RAJ-LRL-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HAFEEZ ODOFFIN

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, in Case No. 17-4568(L), the judgment of the district court is affirmed in part and the appeal is dismissed in part. In Case No. 17-4581, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

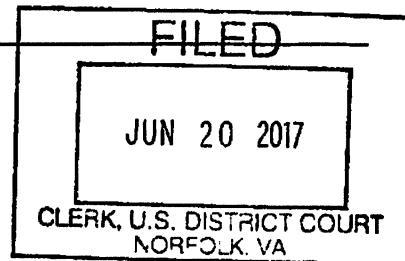
APPENDIX C

United States v. Toheeb Odoffin, No. 4:16-cr-00049-002

Judgment in a Criminal Case from the United States District
Court for the Eastern District of Virginia, Newport News,

Filed June 20, 2017

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Newport News Division



UNITED STATES OF AMERICA

v.

TOHEEB ODOFFIN

Defendant.

Case Number: 4:16cr00049-002

USM Number: 51611-424

Defendant's Attorney: Fernando Groene, Esquire

Government Attorney: Brian Samuels, AUSA
Megan Cowles, AUSA

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts 1 and 36 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 U.S.C. § 1349	Conspiracy to Commit Mail, Bank and Wire Fraud	Felony	Fall 2015	1
T. 18 U.S.C. § 1028A	Aggravated Identity Theft	Felony	January 3, 2013	36

On motion of the United States, the Court dismissed the remaining counts in the superseding indictment as to defendant TOHEEB ODOFFIN.

As pronounced on June 19, 2017, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 20th day of June, 2017.



Raymond A. Jackson
United States District Judge

Case Number: 4:16cr00049-002
Defendant's Name: ODOFFIN, TOHEEB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **NINETY (90) MONTHS**.

This term of imprisonment consists of a term of **SIXTY-SIX (66) MONTHS** on Count 1 and a term of **TWENTY-FOUR (24) MONTHS** on Count 36, **all to be served consecutively**.

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

- 1) The Court recommends that the defendant be enrolled in a drug education program.

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: 4:16cr00049-002
Defendant's Name: ODOFFIN, TOHEEB

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 Count 1 and a term of **ONE (1) YEAR** on Count 36, **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: 4:16cr00049-002
Defendant's Name: ODOFFIN, TOHEEB

SPECIAL CONDITIONS OF SUPERVISION

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

- 1) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as directed by the probation officer.
- 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 is prohibited from engaging in any employment where he has access to identifying information of others.
- 6) If the defendant tests positive for illegal drugs or alcohol, he shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial costs to be paid by the defendant, all as directed by the probation officer.
- 7) The defendant shall waive all rights of confidentiality regarding substance abuse 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.
- 8) As a condition of supervised release, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for deportation in accordance with established procedures provided by the Immigration and Naturalization Act.
- 9) As a further condition of supervised release, if ordered deported, the defendant shall remain outside of the United States.

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 Defendant's Name: ODOFFIN, TOHEEB

CRIMINAL MONETARY PENALTIES

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

	<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	1	\$100.00	\$0.00	\$1,294,034.52
	36	\$100.00	\$0.00	\$0.00
TOTALS:		\$200.00	\$0.00	\$1,294,034.52

FINES

No fines have been imposed in this case.

RESTITUTION

SEE RESTITUTION ORDER FILED ON JUNE 19, 2017.

The defendant is jointly and severally liable for restitution with the following co-defendants: Babajide Fadeyibi, docket no. 4:16cr49-01; Habeeb Odoffin, docket 4:16cr49-03; Christie Easter, docket no. 4:16cr49-07; Hafeez Odoffin, docket no. 4:16cr49-04; Zoelithia Williams, docket no. 4:16cr49-05; Timeiki Hedspeth, docket no. 4:16cr49-06; and Oyeyemi Arogundade, docket no. 4:16cr49-08.

Case Number: 4:16cr00049-002
Defendant's Name: ODOFFIN, TOHEEB

SCHEDULE OF PAYMENTS

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

The restitution is due and payable immediately.

Any balance remaining unpaid on the restitution at the inception of supervision, shall be paid by the defendant in installments of not less than \$150.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

The special assessment is due and payable immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than \$50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

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.