

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA) NO. 4:15-CR-591-2
)
)
VS.) Houston, Texas
) 10:48 a.m.
)
MARIE NEBA) August 11, 2017

SENTENCING
BEFORE THE HONORABLE MELINDA HARMON
UNITED STATES DISTRICT JUDGE
VOLUME 1 OF 1

APPEARANCES:

FOR THE GOVERNMENT:

Mr. William S.W. Chang
Mr. Jon Baum
United States Department of Justice
Criminal Division, Fraud Section
1000 Louisiana St
Suite 2300
Houston, TX 77002
Tel: 202-320-0048

FOR THE DEFENDANT:

Mr. Michael Khouri
KHOURI LAW FIRM
24012 Calle De La Plata, Suite 210
Laguna Hills, CA 92653
Tel: 949-336-2433

1 COURT REPORTER:

2 Ms. Kathleen K. Miller, CSR, RMR, CRR
3 515 Rusk, Room 8004
4 Houston, Texas 77002
5 Tel: 713-250-5087

6 Proceedings recorded by mechanical stenography.
7 Transcript produced by computer-assisted transcription.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 (Defendant present.)

3 THE COURT: Next case. United States versus
4 Marie Neba, Criminal Number H-15-591, Defendant Number 2.

10:48:25 5 MR. CHANG: Good morning, Your Honor, William
6 Chang and John Baum for the United States.

7 MR. BAUM: Good morning.

8 THE COURT: Good morning.

9 MR. KHOURI: Good morning, Your Honor, Mike
10 Khouri for Marie Neba and she is present in custody. Good
11 morning.

12 THE COURT: Good morning.

13 MR. KHOURI: Good to meet you, Your Honor.

14 THE COURT: Good to meet you, too.

10:48:43 15 MR. KHOURI: Do you want her back here at
16 counsel table?

17 THE COURT: No, this is fine.

18 You are Marie Neba?

19 THE DEFENDANT: Yes, Your Honor.

10:48:59 20 THE COURT: In a previous proceeding, you were
21 found guilty of Count 1, conspiracy to commit healthcare
22 fraud, in violation of 18 United States Code, Section 1349;
23 and Count 2, 3, and 4, healthcare fraud, aiding and
24 abetting, in violation of 18 United States Code, Sections
10:49:21 25 1347 and 2; Count 5, making false statements relating to

1 healthcare matters in violation of 18 United States Code,
2 Sections 1035 and 2; Count 6, conspiracy to pay and receive
3 healthcare kickbacks in violation of 18 United States Code,
4 Section 371; Count 8, payment and receipt of healthcare
10:49:43 5 kickbacks in violation of 42 U.S. Code, Section
6 1320a-7b(b) (1) and (b) (2), and 18 United States Code,
7 Section 2; and Count 11, conspiracy to commit laundry of
8 monetary instruments in violation of 18 United States,
9 Section 1956(h).

10:50:08 10 Ms. Neba, have you had a chance to read
11 over the presentence report that was prepared in your case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And have you discussed it with your
14 attorney, Mr. Khouri?

10:50:22 15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you feel you understand what is
17 contained in the presentence report?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you have any questions you would
10:50:30 20 like to ask about it at this time?

21 THE DEFENDANT: No.

22 THE COURT: I believe there were a number of
23 objections filed to the presentence report by your attorney
24 and also, I believe, I think one by the Government. But I
10:50:45 25 want to find out if you, yourself, have any objections to

1 the report that you would like to make that your attorney
2 did not make on your behalf?

3 THE DEFENDANT: No.

4 THE COURT: All right. Then, let's start with
10:50:58 5 your objections, Mr. Khouri.

6 MR. KHOURI: Thank you, Your Honor. We did
7 file a motion to continue the sentencing.

8 THE COURT: Oh, that is right, you did. But I
9 am -- I have considered that, and I don't believe that you
10:51:10 10 made a case for that, so I am not -- I am going to go ahead
11 and we are going to have the sentencing today.

12 MR. KHOURI: All right, Your Honor. Thank you.

13 I know Your Honor has read the briefs, and
14 we tried to do our best in the briefs to explain to the
10:51:21 15 Court why we object to the guideline calculation --

16 THE COURT: Yes.

17 MR. KHOURI: -- in the presentence report. So
18 I'll try to be brief. Although, this is the first time I
19 have been before a microphone since I spoke at my
10:51:33 20 daughter's wedding last weekend, so if you need to shut me
21 off, just go right ahead.

22 The way we get to the 26, Your Honor, is
23 six as a base offense level, 16 as a loss amount, and 2 for
24 a greater loss, and that's how we get to a 26.

10:51:52 25 The primary objection to the PSR comes

1 from paragraphs 84, 87, 88, 89, where we ask the Court to
2 apply the United States Sentencing Guideline 2S1.1(a)(1),
3 Application Note C. In the Seventh Circuit case of the
4 *United States vs. Rushton*, which is cited in the brief, it
10:52:18 5 appears that if the money laundering count is utilized as
6 the grouping count to calculate the guidelines, that the
7 enhancement should only arise out of the money laundering
8 count instead of the other counts. That, we believe, would
9 cut out the points for organizing leader, abuse of trust,
10:52:41 10 sophisticated means, and obstruction of justice because the
11 money laundering is certainly distinct from the healthcare
12 fraud.

13 Your Honor, I read the transcript of the
14 trial, or a summary of the transcript, and I know the
10:52:58 15 history of this case. But the fact of the matter is, that
16 on the money laundering count, the money laundering count
17 just consists of deposits of checks that were easily
18 discoverable by the agents in this case, and I do not
19 believe comes anywhere near the enhancements that are
10:53:16 20 included in the presentence report.

21 When it comes to loss amount, healthcare
22 fraud is difficult --

23 THE COURT: Let me let counsel for the
24 Government make a response, if he wishes.

10:53:30 25 MR. KHOURI: All right. Thank you, Your Honor.

1 MR. CHANG: Your Honor, this has been briefed
2 by the United States, and probation has adopted the United
3 States's arguments in response. We stand on that, but I
4 just want to point out two things, I think, that is the
10:53:42 5 basis of this incorrect position: One, Defendant fails to
6 recognize that this particular money laundering charge
7 conspiracy is using the proceeds of healthcare fraud to
8 promote the carrying on of healthcare fraud. That is the
9 money laundering conspiracy at issue here. So all of those
10:54:03 10 Section 3 enhancements are properly applied.

11 Second issue: As a sophisticated
12 launderer, which the United States has also argued for in
13 the PSR and in addendum agreed, the laundering, the
14 promoting of healthcare fraud was sophisticated here
10:54:18 15 because they layered their laundering operations to conceal
16 the operations. Defendant Tilong, Defendant Neba, wrote a
17 check to some of the office workers, who are minimum wage
18 workers; asked them to cash those checks so it looks like
19 those workers cashed it; bring the cash back to them, and
10:54:35 20 then they would send other folks, or directly pay the
21 recruiter some of this cash with instructions to pay a
22 portion of this cash to the beneficiaries. That is
23 layering of two -- that is two or more layering of
24 transactions to conceal the transaction.

10:54:52 25 THE COURT: I agree. I am going to overrule

1 your objection to those, paragraphs 87 and 88 and 89.

2 MR. KHOURI: Thank you, Your Honor. The next
3 large chunk of guideline points comes from the loss amount,
4 and, of course, in a healthcare fraud case, there is always
5 the tension between the amount billed and/or collected, on
6 the one hand, and the amount proven at trial, on the other.

10:55:10

7 Here, as I understand what happened at the
8 trial, and, again, I wasn't there, the loss amount that was
9 proven at trial arose out of the billings and collections

10:55:31

10 that were the results of patients recruited by the
11 marketers that had received alleged, according to the jury,
12 kickbacks, and had paid patients kickbacks. If we look at
13 that amount, loss amount, I think we're only talking about
14 a loss amount of about \$700,000, and that brings the
15 guidelines way down.

10:55:50

16 So, I am asking the Court to apply the
17 loss amount that is limited to what was proven at trial,
18 rather than the total amount that was billed and collected
19 by the business during the time of the conspiracy because I
20 do not believe that there is any evidence that showed that
21 those billings and collections were the result of
22 healthcare fraud.

10:56:05

23 That would bring the guideline level down
24 to 26. With criminal history level of zero, she would be
25 at 63 to 78 months, and I'll submit on that, Your Honor.

10:56:20

1 THE COURT: Thank you.

2 MR. CHANG: Your Honor, the United States
3 proved the \$13 million loss amount by more than a
4 preponderance of evidence. Those arguments have already
10:56:31 5 been set forth in a motion for money judgment, which this
6 Court ruled upon.

7 It wasn't just testimony. It was also
8 data analytics analyzing Fiango's billing data that was
9 used to maximize the amount of money that could be taken
10:56:48 10 and stolen from Medicare according to the changes in
11 Medicare rules.

12 We also looked at the bank records. We
13 laid out the extrapolation of the bank records, married it
14 with the testimony of how much kickbacks were paid per
10:56:58 15 60-day sur period and were extrapolated loss amounts which
16 again corroborated the loss amounts. And what Mr. -- what
17 counsel for Ms. Neba still does not address is Ms. Tilong's
18 plea agreement. There, and I'll read it, he says this and
19 he said this under oath to Your Honor: "Defendant Neba and
10:57:18 20 her co-conspirators also paid illegal kickback payments to
21 patient recruiters and physicians to refer or certify or
22 recertify Fiango's Medicare patients with medically
23 unnecessary physical therapy and other home healthcare
24 services."

10:57:33 25 This scheme resulted in Defendant Neba

1 submitting approximately \$10 million in false and
2 fraudulent -- false physical therapy and home healthcare
3 services claims to Medicare and receiving over 13 million
4 in ill-gotten Medicare payments on those claims.

10:57:53

5 I submit the evidence more than exceeds
6 the burden.

7 THE COURT: I agree. I am going to overrule
8 your objections to the loss amount.

9 Any others objections?

10:58:05

10 MR. KHOURI: No, Your Honor.

11 THE COURT: All right. Mr. Chang, the --

12 MR. CHANG: We have two.

13 THE COURT: You have two?

14 MR. CHANG: Yes.

10:58:19

15 THE COURT: Tell me about yours.

16 MR. CHANG: Well, I think the first has already
17 been accepted by probation. This is sophisticated
18 laundering which we have already explained to this Court.
19 We believe the Court agrees on that point.

10:58:26

20 THE COURT: Okay.

21 MR. CHANG: In addition to the sophisticated
22 means for the underlying base level offenses, to be clear,
23 if the pub records -- sophisticated means is based on the
24 repeated falsification of medical records using medical

10:58:39

25 professionals and her medical training to falsify medical

1 records to perpetrate the fraud and then to cover it up,
2 including when Medicare-trained auditors were in the
3 office, they falsified medical records to deceive them as
4 well. Such a sophisticated means and the sophisticated
5 laundering is based on the multilayered transactions that
6 we just discussed.

10:58:54

7 The second, this is a mass marketing
8 enhancement. And we argued for purposes of the appellate
9 record that it would apply an alternative to the multiple
10 victims enhancement. The Fifth Circuit on no less than
11 four occasions, in *United States versus Mauskar*, 557 F.3d
12 219; *United States versus Jackson*, 250 F.app'x 317; *United*
13 *States versus Magnuson*, 307 F.3d 33D; and *United States*
14 *versus Isiwale*, I-S-I-W-E-L-E, 635 F.3d 196, have upheld
15 the mass marketing enhancement in situations that are
16 indistinguishable from these. And I'll just read one line
17 from them.

10:59:10

10:59:54

18 "As we have recognized, face-to-face
19 marketing intended to reach a large number of persons for
20 the purpose of facilitating healthcare fraud can constitute
21 mass marketing." That's *U.S. vs. Mauskar* citing *United*
22 *States vs. Jackson*, with a district court noted, in
23 applying the enhancement, that face-to-face recruiting of
24 patients merits the application of the mass marketing
25 enhancement.

11:00:10

11:00:30

1 Your Honor, the evidence here shows mass
2 marketing. I refer you to United States Exhibits 120 and
3 124. During the conspiracy, the Defendants paid over 1.4
4 million in kickback fees. Purpose of it was clear. It is
11:00:52 5 to rip off Medicare as much as possible, and that means the
6 intent was to reach as many Medicare beneficiaries as
7 possible. So that was the intent and that was the effect.
8 Over 1,175 Medicare beneficiaries. So the mass marketing
9 enhancement applies alternatively to the multiple victims
11:01:11 10 enhancement.

11 THE COURT: Response.

12 MR. KHOURI: Yes. Thank you, Your Honor. In a
13 Medicare fraud case, it's our position that there is only
14 one victim, and that's the United States Government. The
11:01:26 15 payment of the kickback in and of itself, which is what I
16 understand to have been proven at the trial, our position
17 does not constitute any type of fraud unless the services
18 that were rendered at the time were also medically
19 unnecessary.

11:01:47 20 That's an issue that I believe the Court
21 should -- should think about and take under -- into
22 consideration. If the services would have been rendered
23 anyway, then the kickback is not material and cannot be
24 considered a part of the healthcare fraud scheme. This is
11:02:12 25 something that is yet to be decided by the appellate

1 courts.

2 I looked at the jury instructions that
3 were given at the trial regarding the kickback count. Of
4 course, this case involves much more than that, but with
11:02:29 5 respect to the kickback counts, and I believe the mental
6 state that was required for a guilty conviction of the
7 kickback counts dealt with simply knowing that you were
8 giving money to get a referral.

9 That, according to our side of the table,
11:02:44 10 does not constitute fraud. It might be a regulatory
11 violation. It might be some other type of violation, but
12 it isn't a crime. And I don't believe the concept of
13 materiality was explained to the jury either.

14 So, on that I'll submit.

11:02:58 15 MR. CHANG: On the jury instructions this Court
16 instructed on willfulness and knowingly as applied to the
17 371 instruction. We followed the pattern Fifth Circuit
18 instruction so -- and the evidence supported the willful
19 intent at issue here, including evidence of her tampering
11:03:17 20 with a witness and trying to suborn perjury in this very
21 courthouse on that very issue.

22 I think Ms. Neba's counsel was arguing
23 also about the multiple victims enhancement which wasn't
24 what I was talking about. But that issue has been decided
11:03:30 25 by the Fifth Circuit, in this Court. This Court applied

1 that enhancement -- this is the multiple victims
2 enhancement -- the ten or more victims, in *Barson*, in a
3 Medicare case with illegal kickbacks paid to the
4 beneficiaries. The Fifth Circuit affirmed.

11:03:44

5 The Fifth Circuit also affirmed in *United*
6 *States vs. Vasquez*, 672 F.app'x 401. The Fifth Circuit
7 affirmed on the same issue in *United States vs. Noland*,
8 640 F.app'x 337. These are all 2016 cases. And this is
9 also consistent with the approach of the Eleventh Circuit

11:04:04

10 in *Smith* which we cited, where the Eleventh Circuit noted
11 that a victim can even be a victim even if the victim
12 participated and received money.

13 THE COURT: All right. I'll sustain your
14 objections.

11:04:21

15 MR. CHANG: Thank you.

16 THE COURT: And I will adopt the presentence
17 report as my own, with findings of fact in the application
18 of the guidelines to the facts, find a total offense level
19 of 45, criminal history category of 1, which gives a
20 guideline range of life, but the -- the -- under the U.S.
21 Sentencing Guidelines, Section 5G1.1(c) (1) applies, which
22 gives a range of 708 months.

11:04:38

23 PROBATION OFFICER: Yes, Your Honor.

24 THE COURT: Is that correct?

11:05:01

25 PROBATION OFFICER: And total offense level

1 will become 43.

2 THE COURT: 43?

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: All right. I'm sorry, you're

11:05:10 5 right.

6 Okay. Anything else you would like to say
7 before I pronounce sentence?

8 MR. KHOURI: Your Honor, I would like to say a
9 few things if I could, please.

11:05:17 10 THE COURT: Sure.

11 MR. KHOURI: I know the Court is aware of Marie
12 Neba's health condition. She is very seriously ill. I
13 have talked to her about talking in public about her
14 condition, and she's given me her consent.

11:05:42 15 She has -- and, again, I am no doctor, and
16 I haven't spoken with her oncologist, but as I understand
17 it, she has -- we have been trying to get in touch with
18 him, Your Honor, and we haven't received any phone calls
19 back. But as I understand it, she has fourth stage breast
11:06:03 20 cancer that has spread to her bones and her lungs.

21 She's currently under the care of an
22 oncologist at the Harris County Medical Center, and she's
23 receiving weekly chemotherapy. And in about a week, her --
24 her scheduled chemotherapy is going to be extended,

11:06:32 25 depending upon some of the results of that examination on

1 the 18th, in exactly a week.

2 Hopefully she won't be transferred by the
3 Bureau of Prisons to some other facility and get stuck in
4 the bureaucratic maze that we were in the last couple
11:06:51 5 months when the United States Marshal's Office and my
6 office were attempting to find a hospital to begin
7 treatment for her.

8 She has two -- she has twin boys that, I
9 believe, are seven years old. There's going to probably be
11:07:11 10 nobody else to take care of them once the Court imposes
11 sentence on her husband, because the only relatives she has
12 are out of the -- out of the country.

13 She's 53 years old. Sometimes I wish I
14 was still 53 years old. But at that age, the data shows
11:07:34 15 that the probability that criminal conduct will recur is
16 very, very low, not to mention the fact that her nursing
17 license has been revoked, and her Medicare provider number,
18 I am sure, will follow. And it's sort of like taking guns
19 away from someone who has committed a gun offense. It is
11:08:00 20 not likely that criminal conduct will recur.

21 She has a history of being abused as a
22 child and also abused during her marriage. I -- again, I
23 want to emphasize to the Court, and the Government, that I
24 get the history of this case. I understand the facts of
11:08:26 25 this case. I know the Government's motivated. And the

1 conduct that the jury found to be true is conduct that I
2 can understand the Court wants to treat very seriously.

3 I just have one thing to say: That under
4 3553, the Court can impose any sentence the Court believes
11:08:49 5 is appropriate. And one thing that I think has been lost,
6 certainly not on the Court, but in this whole process, is
7 Marie Neba is a mother, a wife, and a human being, who is
8 dying. If there is any Defendant that stands before the
9 Court that deserves a below-guideline sentence, in
11:09:20 10 consideration of what she has gone through, sitting there
11 at the detention center for a couple of months while her
12 lawyers and the United States Marshal's office are trying
13 to find a hospital that will take her, having her
14 chemotherapy while she's shackled, it's this -- well, it's
11:09:48 15 this woman that stands before you.

16 The Court has great power, and I believe
17 that the Court should exercise that power in this
18 sentence -- in this instance, sparingly, given the special
19 circumstances that are before the Court.

11:10:06 20 And I thank you very much, Your Honor, for
21 listening to me. I don't believe she has anything to say.
22 Do you, Marie?

23 THE DEFENDANT: No.

24 MR. KHOURI: She said no.

11:10:19 25 THE COURT: I want to be sure you don't want to

1 say something, Ms. Neba.

2 THE DEFENDANT: Excuse me?

3 THE COURT: Would you like to say something?

4 THE DEFENDANT: Not at this time.

11:10:36 5 PROBATION OFFICER: May I please approach?

6 THE COURT: Yes. Yes, you may.

7 (Probation confers with the Court.)

8 THE COURT: All right. I misspoke. I am
9 corrected. I said that the -- that the sentence was 708 --
11:11:40 10 the guideline sentence was 708 months, but it's 900 months.
11 So -- all right. Anything you want to say, Mr. Chang?

12 MR. CHANG: Yes, three things, Your Honor. As
13 to her family it is not lost on the United States, the
14 impact on her family. I want to say a couple things about
11:12:03 15 that. She put her family in this position by carrying out
16 this conspiracy. She didn't have to. She was making
17 money, even outside of Fiango, over \$6,000 a month. She
18 had nursing licenses from the best schools in Texas. She
19 had other options.

11:12:20 20 During the conspiracy, this is what they
21 were spending that money on. For example, a 2008 Mercedes
22 Benz G550 off-road military style luxury SUV. Not
23 particularly useful in Houston. 2011 Lexus 570, another
24 luxury, large SUV. And we went through this in the trial,
11:12:46 25 all the lavish spending.

1 And then when this issue came out, when
2 the medical director was first arrested in June 2015, when
3 she was first interviewed by agents, and opportunities
4 after opportunities after that, she could have chosen to do
11:13:01 5 the right thing, and not put her kids in this position.
6 She chose to put herself first.

7 Also noted, they do have family in another
8 state that the kids ended up -- the sentencing memorandum
9 noted that the children could potentially be placed with
11:13:17 10 that family member and that the eldest child is almost of
11 adult age. That's the first thing as to the family.

12 Second, the Defendant persists in trying
13 to use her childhood experiences and her marital abuse to
14 justify or somehow excuse or somehow to obtain leniency
11:13:38 15 from this Court, but it just doesn't fly on its face. You
16 can't on the one hand persist in denying that she had any
17 knowledge, not just participation, she denied any knowledge
18 of the criminal activity, with the other hand asks this
19 Court to excuse her criminal conduct because of her past
11:13:55 20 experience. You can have it one way or the other but not
21 both. This is another example of her wanting to do
22 anything to get out of trouble.

23 As to her medical condition, the United
24 States is very sensitive to that. We have repeatedly
11:14:09 25 asked, is she receiving adequate care from BOP? All

1 indications is she is. She is receiving medical care from
2 the Harris County Hospital System, from a doctor who is a
3 fellow at M.D. Anderson. And we have also asked counsel to
4 raise any issues if they have any -- if they have talked to
5 BOP, to let us know if they reached an impasse with BOP
6 about adequate care, and we have gotten nothing. So at
7 this point there is just no evidence that she will not be
8 able to receive adequate care inside BOP in case the
9 evidence is that she is and will be able to receive
10 adequate care.

11 (Defendant confers with defense counsel.)

12 MR. KHOURI: I'm sorry, is counsel done, Your
13 Honor?

14 THE COURT: Yes, I think so.

15 MR. KHOURI: May I, please?

16 THE COURT: You may.

17 MR. KHOURI: First of all, Marie Neba is not in
18 the custody of the Bureau of Prisons. Marie Neba is in
19 custody of the United States Marshal's Office. If it
20 hadn't been for the cooperation between my office and the
21 United States Marshal's Office here in Houston -- and I'd
22 like to publicly thank them for the cooperation that they
23 have given. There was a particular deputy, his name is
24 Julio Villegas, in order to get Marie Neba care -- she
25 would not have received any care. The fact of the matter

1 is, that even if the Court ordered her transferred to a
2 United States medical facility, the Bureau of Prisons would
3 not have complied because the Bureau of Prisons believes
4 that it operates independently, and will have nothing to do
5 with Marie Neba until after she's sentenced.

6 We -- we -- we had her all ready to go at
7 M.D. Anderson months ago, but the hospital required a
8 financial responsibility form, and someone in Washington,
9 D.C. decided that that form was not going to be signed
10 because it obligated the United States to pay for her care;
11 and because the United States was obligated to pay for her
12 care anyway, no form would be signed.

13 And we had to start all over again, and it
14 was up to the United States Marshal's Office, and my
15 office, to find her current caregiver at Harris County
16 Medical Center. And counsel's correct, the oncologist she
17 has is a fellow at M.D. Anderson. I am not from here. But
18 I understand, you can't get any better than M.D. Anderson
19 anywhere in the world.

20 To suggest that the United States was
21 concerned about my client's health condition is a
22 suggestion that I think the Court should be underwhelmed
23 with. It is not true. The only people that cared about my
24 client's health condition was my office and the United
25 States Marshal's Office. And that's why I am so concerned

1 that once she's sentenced, she will go from top-notch care
2 to being sort of a football in the bureaucratic maze.
3 Eventually the BOP will get her to a hospital. That may be
4 too late if it takes a matter of months. And that's why I
5 would encourage the United States Marshal's Office to
6 remain involved. And I respect the Court's decision not to
7 continue the sentencing. I get it. Don't get the wrong
8 message, Your Honor. But I encourage the United States
9 Marshal's Office to get involved and keep her here so that
10 her care isn't interrupted.

11 Everything counsel says about what the
12 jury found to be true is appropriate. But the fact of the
13 matter is, that under 3553, the Court can find things more
14 important than what counsel suggests are aggravating
15 factors, to use an old man's language. And the fact of the
16 matter is, is that she's a human being, dying, and she
17 needs your help, Your Honor. And I am asking the Court to
18 exercise its great power to make sure that she gets that
19 help, and that her sentence is as lenient as possible.
20 Because any sentence that involves a number of years, she
21 will probably die in prison. And the effect of that,
22 having raised children myself, on those twin boys is awful.
23 Thank you, Your Honor.

24 THE COURT: Anything else?

25 MR. KHOURI: No, Your Honor.

1 THE COURT: Ms. Neba, did you want to say
2 something?

3 THE DEFENDANT: I wanted to make a comment
4 regarding the health situation that I have, based on what
11:19:28 5 Mr. Chang just said. I have gone through a lot regarding
6 my health at Joe Corley Detention Center. And in addition
7 to what Mr. Khouri say, I have been communicating with
8 Mr. Khouri about my health situation from November 10th,
9 the day that I went to custody. When I went to custody, I
11:19:50 10 did not have all my medicines, so I -- because I wasn't
11 expecting -- I wasn't expecting -- it was -- everything
12 happened by surprise.

13 So when I went, I have chronic conditions
14 before ever going to Joe Corley Detention, so it took me
11:20:07 15 awhile to get my medicines. From then I started becoming
16 sick, so at that time I had retained Mr. Khouri, to
17 convince him that I am not feeling well. So that's when he
18 filed the motions for me to go out and follow up all my
19 medical conditions, which was denied.

11:20:23 20 But I still get -- I was getting sicker
21 and sicker. So I kept communicating with him, and the
22 facility there, the problems there with the medical, their
23 medical unit there, the problem is that I have been writing
24 reports, complaints about my health, to the doctor there
11:20:41 25 and it was consistently being ignored. To the point that

1 my breast pain -- I had to go to the warden. I had to go
2 to the warden. And with the chaplain -- there was a
3 chaplain came there and saw me and see I have pain. And
4 she took me to the warden and to find out why they are not
5 paying attention to my complaints.

11:21:01

6 It's been months, since December, Your
7 Honor, December, January, February, March. My breast was
8 excruciating. I couldn't sleep at night. It was that bad.
9 I had to like put wash cloth on my breasts. One day the
10 doctor kept giving me ibuprofen. He never examined my
11 breasts, several different times, until I reported it to
12 the supervisor, and she went -- they went to the warden.
13 They went to the clinic to find out why they were not
14 examining my breasts.

11:21:16

15 The time that they decided to examine the
16 breasts, the mammogram was already scheduled. They found
17 out that I had breast cancer. They all panicked because
18 they didn't know how -- when did this happen? And they
19 were -- the supervisor was not pleased that the doctor
20 never examined my breasts. If the doctor had examined my
21 breasts, I would not have been in this stage of the cancer.

11:21:47

22 So, it was diagnosed May -- May 15. Your
23 Honor, it's like two, three, four months, that it took,
24 again, for me to even start treatments because they have to
25 wait for marshals. They were telling me that we have to

11:22:08

1 wait for the marshals to approve to do biopsy. We have to
2 wait for the marshals to do this. And the doctor at the
3 facility himself was worried that the longer you stay to
4 have treatment, the worse off your situation. And he told
11:22:25 5 me that you cannot wait until August, or anytime, to start
6 treatment. You have to start treatment right away because
7 it is going to your bones, which surprised him, and me, and
8 everybody, that how can they diagnose me with cancer that
9 has gone to my bones and my lungs?

11:22:40 10 And at that facility, what happened? Why
11 didn't somebody find out or catch it? So, on that note,
12 the doctor -- the doctor at the facility is Dr. Nguyen.
13 Dr. Nguyen, now, he himself, was shocked. He was like when
14 did this happen? Why -- I didn't know that you had cancer.
11:22:58 15 Then I told him if you had checked it, you could have
16 caught it ahead of time.

17 So, Dr. Nguyen now told me, and everybody,
18 the administration, you will need to hurry up so that this
19 woman gets treatment. If you don't hurry up, it is going
11:23:13 20 to get worse. Your Honor, we are going back and forth,
21 back and forth, with Mr. Khouri involved, the marshal
22 office involved, making all efforts to make sure that I get
23 the treatment that I am supposed to get.

24 So finally, at one point, Your Honor, I
11:23:30 25 was really kind of like literally pushed out of Joe Corley

1 to go to emergency room, to see if they can find an
2 oncologist there who can treat me. I went to the emergency
3 room. The oncologist says he doesn't want to treat me
4 inpatient, only provide chemo outpatient. Everywhere they
5 want to provide chemo outpatient, not inpatient.

11:23:47

6 So that's what -- it was one of the
7 biggest issue. We were making effort, as opposed to what
8 Mr. Chang is saying. There was a lot of effort at the
9 facility to try to get me treatment, but they couldn't
10 because I was inpatient. They don't accept me. That was

11:24:01

11 the problem consistently until Harris County finally called
12 me, and I went there. And the first thing the doctor did,
13 who is treating me now, told me was that because this is
14 how it went. And she says, is that how you going to come

11:24:17

15 and have chemo? I didn't know what to tell her. I just
16 told her, that do the consultation, when you are done, I
17 will take it back to the lawyer, and they are going to tell
18 it to the Court. Because the warden told me to tell him,
19 to tell the marshal to come to court so that I can go out

11:24:36

20 and get chemo, the warden at Joe Corley, because he,
21 himself, was worried about my condition.

22 So when I spoke to the doctor, that all
23 they need is the -- the plan of treatment, so that we can
24 bring it to court to see what they can do about me getting
25 treatment.

11:24:51

1 So, the -- the doctor, Dr. Tanusra
2 (phonetic), she wrote it, the plan of treatment. I brought
3 it -- I send it to him. And then she got all -- everything
4 scheduled, and then she had to start right away because I
11:25:05 5 had to repeat certain test to make confirm whether the --
6 the spot they saw on my bones and my lungs were -- what it
7 was. And when they did it, it was what it was.

8 So, the doctor said she had to start right
9 away. And I -- and in agreement with Dr. Nguyen at Joe
11:25:23 10 Corley facility. So I have received two cycles. This week
11 is going to be the third cycle, and I'm telling you I am
12 not feeling well, even though I am in court. I made an
13 effort to come here, not to miss court, because I am in
14 pain on my bones, my breast. I have a big, gaping wound on
11:25:40 15 my breast that needs attention, too. So it is not --
16 really, really bad. I just went in Joe Corely facility
17 because when I went there, I didn't have -- I was fine. I
18 didn't have breast cancer. I went there, everything went
19 downhill. If you look on my breast, it is a mess.

11:25:54 20 So I am just trying to put myself to -- a
21 position that I could even come here, even be sentenced.
22 If the -- the doctor did not provide me two cycles of
23 chemo, I wouldn't be standing here because I couldn't even
24 walk. My bones, everything hurt so bad. So those two
11:26:13 25 treatments, it helped me to come here and stand here today.

1 So, Your Honor, I have been through a lot.
2 And like he said, I have been really through a lot for the
3 past nine months in Joe Corley. If you are talking about
4 punishment, I think I have really, really -- and I have
5 done some severe punishment under Joe Corley.

11:26:28

6 The diet is certainly a mess. The doctor
7 say I have to eat right for chemo to work. It's holistic.
8 I have to eat the right things, so that it works with the
9 chemotherapy. You cannot just get infusion. You don't eat

11:26:43

10 right. Then there are the side effects I have to go
11 through, that's why they say you can't have all those in
12 detention. You have the side effects of those medicines,
13 you have to go through, and I am going through it, too. I
14 am going through it all -- I have not had breakfast. I
15 have not had lunch, which is not even conducive with
16 chemotherapy, and I am standing here in front of the Court.

11:26:57

17 THE COURT: Well --

18 MR. CHANG: Your Honor --

19 THE COURT: Yes.

11:27:17

20 MR. CHANG: -- briefly, the United States has
21 consistently asked -- in response to these concerns, the
22 United States has repeatedly asked the same questions and
23 asked when they filed their first motion for treatment at
24 Joe Corley. What has BOP said? And have you guys reached
25 a situation where you can't find a resolution? Nothing.

11:27:33

1 They haven't tried to resolve these issues with BOP.

2 And second, it appears that she is at this
3 point receiving adequate care, and that's the standard.

4 And if there are issues, that she will not be able to

11:27:51

5 receive adequate care, then we could receive it when those
6 issues come up. But until those issues come up, the United
7 States can't stand here and say BOP just can't handle it.

8 We have no basis for saying that. Just like I have no
9 basis. I wasn't there. I don't know what her doctor saw.

11:28:04

10 We have no basis for commenting on the treatment she did
11 receive either. We just asked them, what have you found
12 out?

13 And, finally, on the sentencing, I think
14 it's important to just note a few benchmarks in response to
15 counsel's argument that any sentence of a few years or more
16 would be unacceptable. In their sentencing memo, they
17 asked for seven to eight years.

11:28:17

18 We also note that had she pleaded guilty
19 at the very beginning without obstruction of justice and
20 received the highest 5K that is normally authorized, that
21 sentence would be 14 and a half years.

11:28:34

22 Had the same thing happened and she
23 received no 5K whatsoever, it would be 21.8 years. If she
24 had gone to trial and been convicted, but no obstruction of
25 justice, the sentence would have been 30 years on the

11:28:50

1 calculation of the guidelines. So, we want the Court to
2 understand the United States's principal position for what
3 it seeks.

4 THE COURT: I am not a heartless person. I
11:29:13 5 think I am not. I hope I am not. And I -- it must be a
6 terrible experience that you are going through, Ms. Neba,
7 and I don't want you to think that by sentencing you to
8 what I am going to sentence you to that I'm trying to heap
9 more difficulties on you because I am not. I just -- it's
11:29:38 10 just the way the system works, the way the law works, you
11 have been found guilty of a number of counts by a jury, and
12 this is -- this is what -- this is what happens.

13 Ms. Neba, you're before the Court for
14 sentencing after being found guilty by a jury on one count
11:30:04 15 of conspiracy to commit healthcare fraud, three counts of
16 healthcare fraud, aiding and abetting, one count of false
17 statements relating to healthcare matters, one count of
18 conspiracy to pay and receive healthcare kickbacks, one
19 count of payment and receipt of healthcare kickbacks, and
11:30:21 20 one count of conspiracy to commit laundering of monetary
21 instruments.

22 Ms. Neba is held accountable for being
23 convicted of a federal healthcare offense involving a
24 Government healthcare program, and the loss to that program
11:30:37 25 was more than \$7 million, as envisioned under United States

1 Code Sentencing Guidelines, Section 2B1.1(b) (7) (a) and
2 (b) (1) (ii) .

3 Regarding the money laundering activities,
4 Ms. Neba engaged in monetary transactions improperly
5 derived from the specified unlawful activity, that is
6 healthcare fraud, in the total amount of \$10,382,002.25.

7 Ms. Neba and co-Defendant, Ebong Tilong went through great
8 lengths to conceal their fraud, often involving several of
9 their employees, who admitted to both agents and the jury
10 that they engaged in fraud at the direction of Ms. Neba and
11 Mr. Tilong.

12 Ms. Neba and Mr. Tilong falsified,
13 instructed Fiango's employees to falsify and paid others to
14 falsify medical records to make patients appear sicker on
15 paper than the patients really were, in order to obtain
16 greater payments from Medicare for home health services
17 plans.

18 Ms. Neba and Mr. Tilong also falsified
19 medical records, sometimes while Medicare auditors were in
20 their offices. In addition, Ms. Neba and Mr. Tilong
21 attempted to hide kickback payments by using intermediaries
22 for the payments. Instead of paying patient recruiters and
23 patients directly, Ms. Neba and Mr. Tilong frequently wrote
24 checks to their office employees, instructed them to cash
25 the checks, and bring the cash back, so that Ms. Neba and

1 Mr. Tilong could provide the kickback cash to the patient
2 recruiter, who in turn would also pay illegal kickbacks to
3 patients. Thus the offense involved both sophisticated
4 means and sophisticated laundering as contemplated by the
5 United States Sentencing Guidelines, Section
6 2B1.1(b) (10) (c) and United States Sentencing Guidelines,
7 Section 2S1.1(b) respectfully.

11:32:28

8 Additionally, Ms. Neba intentionally
9 engaged in or caused the conduct -- or caused the conduct
10 that constitutes sophisticated means. Ms. Neba is an
11 organizer, leader of a criminal activity which involved
12 five or more participants, including Mr. Ebong Tilong,
13 Daisy Carter, and Connie Ray Island as well as in a related
14 case, Nirmal Mazumdar and unindicted co-conspirators.

11:32:45

15 She is considered to have abused a
16 position of trust as a Medicare provider who submitted
17 Medicare applications of Fiango, which noted she would
18 follow the rules and regulations of Medicare as envisioned
19 under the United States Sentencing Guidelines 3B1.3.

11:33:07

20 Additionally, Ms. Neba obstructed justice
21 as contemplated by the United States Sentencing Guideline,
22 Section 3C1.1 by attempting to tamper with a witness,
23 co-Defendant Daisy Carter, and suborn perjury. Prior to
24 arraignment, Ms. Neba and Mr. Tilong approached Ms. Carter,
25 sat down next to her and told -- and Ms. Neba told Carter

11:33:24

11:33:41

1 to keep to her story. She was doing good.

2 The story, which Ms. Neba was referring
3 to, not that was -- she was referring to not to tell
4 anybody that she, Ms. Carter, was paying the patients.

11:34:05

5 The Defendant is 53 years old. She is
6 married, has three minor children. Her husband, Mr. Ebong
7 Tilong, is currently on bond, and she is in custody. She
8 has been recently diagnosed with breast cancer while she
9 was in custody, and is receiving chemotherapy treatments.

11:34:28

10 Based upon all of the factors that are
11 associated with this case; that is, Ms. Neba's role in the
12 offense, the amount of loss attributable to the Defendant
13 compared to others, obstruction of justice, aggravating
14 role enhancement, and most importantly the guideline range
15 of life, I believe that she should be sentenced to the
16 statutory maximum on each of the counts of conviction to
17 run consecutively to each other for a total of 900 months
18 imprisonment. A three-year term of supervised release will
19 also be imposed.

11:35:09

20 Pursuant to the Sentencing Reform Act of
21 1984, it is the judgment of the Court that the Defendant
22 Marie Neba is hereby committed to the custody of the Bureau
23 of Prisons to be imprisoned for a term of 120 months as to
24 each of counts 1, 2, 3, and 4; 60 months as to each of
25 Counts 5, 6, and 8; and 240 months as to Count 11; all such

11:35:31

1 counts to run consecutively for a total of 900 months.

2 Upon release from imprisonment, the
3 Defendant shall be placed on supervised release for a term
4 of three years as to each of Counts 1, 2, 3, and 4, 5, 6,
11:35:55 5 8, and 11, all such terms to run concurrently. Within 72
6 hours of release from the custody of the Bureau of Prisons,
7 the Defendant shall report in person to the probation
8 office in the district to which the Defendant is released.

9 While on supervised release, the Defendant
11:36:12 10 shall not commit another federal, state, or local crime,
11 shall comply with the standard conditions that have been
12 adopted by this Court under General Order Number 2017-01,
13 abide by any mandatory conditions required by law, and
14 shall comply with the following additional conditions:

11:36:30 15 Ms. Neba, you are not to incur any new
16 credit charges or open additional lines of credit without
17 the approval of the probation officer. You must provide
18 the probation officer with access to any requested
19 financial information and authorize the release of any
11:36:43 20 financial information. The probation office may share
21 financial information with the United States Attorney's
22 Office.

23 You must participate in an inpatient or
24 outpatient alcohol abuse treatment program and follow the
11:36:54 25 rules and regulations of that program. The probation

1 officer will supervise your probation in the program -- I'm
2 sorry, your participation in the program, including the
3 provider, locality, modality, duration, and intensity. You
4 must pay the cost of the program if you are financially
5 able.

11:37:11

6 You may not use or possess alcohol. You
7 must submit to substance abuse testing to determine if you
8 have used a prohibited substance and you must pay the cost
9 of testing if financially able. You may not attempt to
10 obstruct or tamper with the testing methods.

11:37:25

11 Ms. Neba, you are accountable for
12 restitution to Medicare in the total sum of \$13,203,676.37,
13 jointly and severally under Docket Number 4:15-CR-591, with
14 Ebong Tilong up to the amount of \$13,203,676.37; Daisy
15 Cooper up to the amount of \$508,892; and Connie Ray Island
16 up to the amount of one million two hundred nineteen
17 dollars -- I'm sorry -- \$1,219,697.19. This restitution
18 amount is also to be applied to any other defendants named
19 in this docket number or to any related cases.

11:37:57

20 It is further ordered that the Defendant
21 shall pay to the United States a special assessment of
22 \$800. The Court finds the Defendant does not have the
23 ability to pay a fine and will waive the fine in this case.

11:38:19

24 Having assessed the Defendant's ability to
25 pay, payment of the total criminal monetary penalties shall

11:38:34

1 be as follows: The Defendant shall make a lump sum payment
2 of \$800 due immediately, balance due in 50 percent of any
3 wages earned while in prison in accordance with the Bureau
4 of Prisons Inmate Financial Responsibility Program.

11:38:49

5 Any balance remaining after release from
6 imprisonment shall be due in monthly installments of \$400
7 to commence 60 days after release from imprisonment to a
8 term of supervision. Payment is to be made to the United
9 States District Clerk, Southern District of Texas. And if

11:39:06

10 there is any forfeiture, it should be included in the
11 judgment.

12 Mr. Chang, do you have any forfeiture
13 issues?

11:39:18

14 MR. CHANG: We believe we filed it already in
15 the money judgment order.

16 THE COURT: All right.

17 MR. CHANG: And we will file additional filings
18 if required.

11:39:27

19 THE COURT: Okay. Ms. Neba, you have the right
20 to appeal your conviction and your sentence. If you do not
21 have the funds to pay for an attorney, one will be provided
22 for you at Government's expense along with any transcripts
23 or other documents necessary for such an appeal.

11:39:41

24 And I will recommend to the Bureau of
25 Prisons that Ms. Neba not be transferred from the Joe

1 Corley institution until she has completed her chemotherapy
2 at the doctor's -- on doctor's orders. In other words, the
3 doctor has to say that this therapy is finished, and then
4 she may be transferred to the Bureau of Prisons. I don't
5 think they have -- they can -- I don't think they have to
6 follow my recommendation, but I am sure that they will
7 follow my recommendation in this matter.

11:40:07

8 Anything else?

9 MR. KHOURI: No, Your Honor. Thank you very
10 much.

11:40:22

11 MR. CHANG: No, Your Honor.

12 THE COURT: All right. Thank you all very
13 much.

14 THE DEFENDANT: Thank you.

11:40:25

15 THE COURT: You may be excused.

16 (Concluded at 11:40 a.m.)

17

18 COURT REPORTER'S CERTIFICATE

19

20 I, Kathleen K. Miller, certify that the foregoing is a
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23

24 DATE: Sept. 11, 2017 /s/
25 Kathleen K. Miller, RPR, RMR, CRR