

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF NEW JERSEY**

3 **UNITED STATES OF AMERICA,**

CRIMINAL NUMBER:

4 **v.**

2:24-cr-00667-ES

2:24-cr-00668-ES

5 **TD BANK, N.A.; TD BANK US**
6 **HOLDING COMPANY,**

SENTENCE

7 **Defendants.**

Pages 1 - 44

8 Martin Luther King Building & U.S. Courthouse
9 50 Walnut Street
10 Newark, New Jersey 07102
11 Thursday, November 7, 2024
12 Commencing at 11:45 a.m.

13 **B E F O R E:**

THE HONORABLE ESTHER SALAS
UNITED STATES DISTRICT JUDGE

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1 (PROCEEDINGS held in open court before The Honorable
2 ESTHER SALAS, United States District Judge, at 11:45 a.m.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Good morning, still, to everyone. Please
5 be seated.

6 We are on the record in the matter of *United States*
7 *of America v. TD Bank, N.A.*, and *United States of America v.*
8 *TD Bank US Holding Company*.

9 So I'd like to start with counsel entering their
10 appearances.

11 Counsel for the Government, please enter your
12 appearance.

13 MS. SINOPOLE: Assistant United States Attorney
14 Angelica Sinopole on behalf of the Government, and I'm here
15 with my colleagues, who will introduce themselves.

16 MR. PESCE: Marko Pesce, Assistant U.S. Attorney,
17 also on behalf of the Government.

18 MS. ROONEY: Chelsea Rooney, trial attorney, on
19 behalf of the Government.

20 MR. ADAMS: Zach Adams on behalf of the United
21 States.

22 THE COURT: Good morning to you.

23 Now on behalf of what I'll refer to as "TD Bank" and
24 "TDBUSH," can I have counsel for the defense.

25 MS. LYNCH: Good morning, Your Honor. Loretta Lynch

1 of the firm of Paul, Weiss, Rifkind, Wharton & Garrison. And
2 I'll let my colleagues introduce themselves.

3 MR. BOURTIN: Good morning, Your Honor. Nick Bourtin
4 with Sullivan & Cromwell.

5 MS. O'SHEA: Aisling O'Shea with Sullivan & Cromwell.
6 Good morning, Your Honor.

7 THE COURT: Good morning to counsel.

8 And good morning to you, Ms. Adams.

9 MS. ADAMS: Good morning, Your Honor.

10 THE COURT: Please be seated.

11 Also present in court, I would like to acknowledge
12 our United States Probation Officer, this Court's liaison,
13 Donald Martenz. We also have the benefit of United States
14 Probation Officer John Almanza.

15 So at this point in time, as I always do, let me
16 outline what I reviewed in anticipation of today's hearing
17 that we're going to try to do simultaneously at some points,
18 as we did at the plea agreement. Whenever possible, we'll
19 combine our arguments.

20 So we have the Government's letters. And the
21 Government's letter for both matters, dated the same,
22 October 24th of this year.

23 Additionally, the Court is mindful of the plea
24 agreement and its Attachment A that the Court has reviewed.

25 The Court is also --

1 And, Elisaveta, of course, I left that pile on my
2 desk, so I'd ask you to go get it.

3 But I did receive, in anticipation of today's
4 sentencing, 25 letters from victims.

5 I've read every single letter. And the letters seem
6 to suggest a Ponzi scheme that is not implicated in the
7 current matter before the Court.

8 But to err on the side of caution, I want to have
9 these letters addressed, in open court, so we can talk about
10 what they signify, if anything, for the Court's consideration,
11 not only in determining whether the Court should accept the
12 11(c)(1)(C) arrangement that's before the Court, but also as
13 to the appropriate sentence that should be imposed.

14 Mr. Pesce, you and I had the benefit of talking in
15 chambers, and I expressed to you my concern, when I read these
16 25 letters -- and I've read every single one of them.

17 Indeed, within them are facts and circumstances that
18 are concerning and alarming from not a judicial point of view
19 but from a human perspective.

20 So I ask you, what's this all about?

21 MR. PESCE: Yes, Your Honor. We appreciate the
22 opportunity to address them.

23 As Your Honor noted, a number of letters have been
24 submitted, both by individual victims of the R. Allen
25 Stanford/Stanford Financial Ponzi scheme, but also from the

1 Official Stanford Investors Committee, and have sent them to
2 the Court, as well as other Government-related entities and
3 individuals. And the Court directed the Government, before
4 the hearing, and now, to address those.

5 As Your Honor may know, Mr. Stanford was prosecuted
6 by the Department of Justice and the Securities and Exchange
7 Commission for running a massive Ponzi scheme, through 2009.

8 The letters essentially argue, and I'm paraphrasing,
9 that because some of Mr. Stanford's funds were transacted
10 through the parent company of the entities in court,
11 represented in court today, a portion of the penalties in this
12 investigation should be provided to the receiver for those
13 victims.

14 I'll make just a few points here, and I won't belabor
15 this, Your Honor.

16 Neither the Investors Committee nor the individual
17 victims of the Stanford Financial Ponzi scheme are victims
18 under the CVRA and, thus, are not permitted to speak or submit
19 things during this sentencing hearing.

20 However, we acknowledge that these letters were
21 submitted, and they obviously pull at the heartstrings, and,
22 certainly, these people face significant hardship from the
23 Stanford Ponzi scheme, so we want to make a few brief points
24 explaining why there is no overlap between the Stanford
25 Financial Ponzi scheme and this case.

1 First, the crimes at issue here are not related, in
2 any way, to the Stanford Ponzi scheme.

3 As laid out in the detailed statements of facts
4 attached to the two plea agreements in this case, here, the
5 department's investigation revealed severe criminal failures
6 in TD Bank's AML program in the United States, which failures
7 started in 2014, lasted nearly 10 years, and enabled three
8 large money laundering schemes, including one aided by five
9 bank employees.

10 This case, the charges in this case we're here today
11 to discuss, were not predicated in any way on the Stanford
12 Financial Ponzi scheme. There is simply no factual overlap
13 between the Stanford scheme and this case.

14 Second, and most importantly, these schemes are
15 separated by time, geography, and corporate entities.

16 Stanford's Ponzi scheme ended in 2009, approximately
17 five years before the scheme alleged in this case started, in
18 2014.

19 Mr. Stanford's Ponzi scheme also involved a
20 correspondent account at the Toronto Dominion Bank in Canada,
21 which, obviously, is in a different country but also involves
22 the parent company of the two U.S.-based defendants in this
23 case and, thus, doesn't even involve the entities that are
24 here today to answer for their criminal activities.

25 Because the Stanford victims were not victims under

1 the CVRA in this case, the Government could not have disclosed
2 a secret grand jury investigation, even if it wanted to, to
3 third parties, including the Investors Committee or individual
4 victims.

5 Finally, the Investors Committee and the individual
6 victims seek something that is not available under the law.

7 Here, the fine of more than \$1.43 billion that will
8 be paid by the two defendants represented today must be
9 deposited, pursuant to statute, in the Crime Victims Fund.

10 The Crime Victims Fund is a key source of federal
11 funding for victim assistance programs across the United
12 States.

13 As for the criminal forfeiture, the smaller portion
14 of the penalty to be paid in this case, that is deposited into
15 the Treasury Forfeiture Fund and can only be used for purposes
16 specified by law.

17 Compensating victims is a key goal of forfeiture, but
18 similar to restitution, only direct victims of the convicted
19 offenses may be compensated with those funds.

20 And because the Stanford Ponzi scheme victims are not
21 victims here, they are not entitled to funding from forfeiture
22 or restitution in this case.

23 In addition, any decisions related to the use of
24 forfeited funds in this case lies with the Department of
25 Justice or the Treasury Department and not with the Court.

1 We're happy to answer any additional questions Your
2 Honor may have but believe that while these letters, you know,
3 are heartbreaking and these people were victims of a
4 significant Ponzi scheme, they really do not relate to this
5 resolution in any material way.

6 Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Pesce.

8 I'm glad that you were able to put that on the
9 record, and the Court, then, will not utilize these letters in
10 assessing the appropriateness of the sentencing, since, as you
11 were telling me, they are not victims under the CVRA, and,
12 therefore, the Court is not bound to consider them in any way.

13 But I do state for the record that I did read them,
14 and, obviously, my heart goes out to each and every victim
15 that was scammed in this Ponzi scheme by Mr. Stanford, and,
16 hopefully, they will find peace with respect to all that has
17 happened.

18 With that being said, now let me move to the matters
19 at hand. The first is, of course, whether to accept this
20 11(c)(1)(C) arrangement.

21 As you-all know, the Court accepted the guilty plea
22 provisionally. And we all were together on October 10th of
23 this year when I took the plea agreement.

24 We did not, based on consent of both sides, move
25 forward with a formal PSR and instead moved forward with an

1 expedited sentencing.

2 So although I do not have the benefit of a PSR, I do
3 have the benefit of a very thorough letter that's been
4 provided by the Government with respect to this investigation,
5 with respect to the plea agreement, with respect to the
6 Schedule A, and the appropriateness of the arrangement that's
7 been reached by mutual consent.

8 I have always viewed 11(c)(1)(C)s -- I've been on the
9 bench since 2011, and I have yet to disturb an 11(c)(1)(C)
10 plea.

11 I have taken a position that the parties are in
12 better -- really, in receipt of all the discovery. They
13 understand the strengths and weaknesses of the case. They
14 understand nuances about the case that the Court is not privy
15 to, and so I have always found that, when faced with the
16 decision as to whether to accept an 11(c)(1)(C), I rely, in
17 large part, in the sound discretion and negotiations that have
18 been reached by excellent attorneys who have represented their
19 clients' interest.

20 So I say that as someone who has a long history of
21 these types of cases that come before the Court -- not often,
22 but they've come, since my appointment in 2011, a number of
23 times.

24 I also do think that I am very mindful of what,
25 indeed, the Government has noted in its letter. Indeed, the

1 Government has noted its strong proofs. It's noted the
2 cooperation by the defendants with the investigation and
3 ongoing commitment, the remediation of its AML program. That,
4 again, is relevant for the Court's later assessment of 3553(a)
5 but, I think, relevant to my decision as to whether to accept
6 an 11(c)(1)(C).

7 Both the defendants in this matter have accepted
8 responsibility, admitted responsibility, have entered into a
9 very, I think, detailed Schedule A -- Attachment A for the
10 Court's consideration.

11 And there will be an independent compliance monitor
12 who will oversee the Government -- who will be overseen by the
13 Government rather, and I understand the significant penalties
14 involved in this particular case, along with the significant
15 oversight.

16 I do believe that the Court is well within its right
17 and discretion to accept the 11(c)(1)(C) agreement, so I will
18 do so.

19 With that being said, I also intend on accepting the
20 plea agreement and the Attachment A as part of the facts and
21 circumstances that the Court will use to consider the sentence
22 and whether it's sufficient but not greater than necessary to
23 penalize the defendants in this particular conduct.

24 So I will rely on the agreement, along with the
25 Schedule A, to support the Court's justification. That's

1 noted for the record.

2 Now, I do want, separately, to go over the first step
3 of the analysis. I'll look for both sides to confirm I'm
4 accurate. And if I'm not, please say so.

5 So let's start with TDBNA -- using the acronym
6 provided by the Government in its submission.

7 I have a total offense level, thanks to Mr. Martenz,
8 of 38. Total culpability score of 10. Probation, one to five
9 years. Fine \$500,000, statutory max. Restitution is not
10 applicable. And a special assessment of \$400.

11 Is that accurate from the Government's perspective?

12 MS. SINOPOLE: Yes, Your Honor.

13 THE COURT: Is that accurate from the defendant's
14 perspective?

15 MS. LYNCH: Yes, Your Honor.

16 THE COURT: Now let's move to step 1 for TDBUSH.

17 Total offense Level 38. Total culpability score 10.
18 We've got probation of one to five years. We have got a fine
19 of \$300 million to \$600 million. Statutory, on Count 2,
20 capped at \$1 million. Restitution not applicable. Assessment
21 of \$400 per count.

22 Is that accurate from the Government?

23 MS. SINOPOLE: Yes, Your Honor.

24 THE COURT: Is that accurate from the defendant?

25 MS. LYNCH: Yes, Your Honor.

1 THE COURT: So that's our first step.

2 Our second step in the analysis, now, of course, is
3 to determine whether there are any departure motions to note
4 of.

5 Any departure motions, from the Government's
6 perspective?

7 MS. SINOPOLE: No, Your Honor, no departures in
8 either case.

9 THE COURT: Any departures motions?

10 MS. LYNCH: No, in either case, Your Honor.

11 THE COURT: All right. Now we move to the third step
12 of the analysis. And, of course, it's the Court's
13 consideration of the factors laid out in 18 United States
14 Code, Section 3553(a).

15 So I understand there are -- there is a variance
16 request for TDBUSH. But what I'd like to do is, let's start
17 with TDBNA, and hear from the Government as to the appropriate
18 sentence to be imposed, facts and circumstances you think the
19 Court should consider with respect to whether to impose what's
20 being requested by the parties, and, overall, your assessment
21 of the factors.

22 Ms. Sinopole.

23 MS. SINOPOLE: Thank you, Your Honor.

24 TD Bank is the largest bank in U.S. history to plead
25 guilty to Bank Secrecy Act program failures, and it is the

1 first U.S. bank in history to plead guilty to conspiracy to
2 commit money laundering.

3 The requested sentence for TDBNA includes the maximum
4 statutory criminal fine of \$500,000 and a forfeiture judgment
5 of more than \$452 million.

6 And Your Honor, of course, has already entered that
7 forfeiture judgment order in connection with the plea on
8 October 10th.

9 This sentence, together with the criminal fine that
10 is being sought against TDBUSH -- TDBNA's parent company --
11 will result in total criminal penalties of approximately
12 \$1.8 billion, which is the largest penalty ever imposed under
13 the Bank Secrecy Act.

14 Now, the resolutions for both TDBNA and TDBUSH are
15 the result of extensive investigation into the conduct that
16 form the basis of the detailed stipulation set forth in
17 Attachment A to the Rule 11(c)(1)(C) plea agreement, with both
18 TDBNA and TDBUSH, and Your Honor has referenced those here
19 today.

20 The parties agree that the proposed criminal
21 sentences for TDBNA and TDBUSH appropriately hold the bank
22 accountable for its criminal misconduct and are sentences that
23 are sufficient, but not greater than necessary, to comply with
24 the purposes of sentencing under Title 18, United States Code,
25 Section 3553(a).

1 There can be, of course, no doubt that the conduct
2 here is very serious.

3 Between January 2014 and October 2023, TDBUSH and its
4 subsidiary TDBNA, categorically failed to maintain an adequate
5 AML compliance program.

6 The BSA requires financial institutions to establish,
7 implement, and maintain a risk-based AML program. And they do
8 that in order to combat money laundering and to prevent
9 terrorism financing.

10 The defendant's willful failure to implement an
11 adequate AML program left the bank, its customers, and the
12 U.S. financial system vulnerable to exploitation by other
13 criminal actors.

14 Now, while the defendants had elements of an AML
15 program that appeared adequate on paper, there were
16 fundamental and widespread flaws in their AML program, and
17 that made the bank an easy target for perpetrators of
18 financial crime. And those perpetrators laundered over
19 \$671 million in illicit proceeds, through the bank, between
20 2019 and 2023.

21 Your Honor is very familiar with our stipulated
22 statement of facts which the parties have agreed. And that
23 statement of fact outlines numerous deficiencies in the bank's
24 AML program, and the Government will just highlight a few of
25 those for Your Honor on the record here today.

1 As part of its AML program, TDBNA used an automated
2 transaction monitoring system designed to detect and generate
3 alerts on suspicious activity.

4 For more than 11 years, however, the senior executive
5 leadership and the boards of directors of the defendants were
6 made aware of concerns with that automated transaction
7 monitoring program, and those concerns had been identified by
8 numerous regulators and the internal audit group at the bank.

9 But despite these concerns, the bank failed to
10 substantively update its transaction monitoring program from
11 2014 through 2022.

12 It failed to enact effective manual transaction
13 monitoring, or any other stopgap measures, to effectively
14 address the risk that they were aware of at that time.

15 The bank also intentionally chose to limit the
16 transaction types that it monitored, resulting in a failure to
17 monitor trillions of dollars in transactions from 2014 to
18 2024.

19 And the lack of governance that surrounded its AML
20 program and that surrounded its transaction monitoring program
21 in particular meant that TD Bank's decision not to monitor
22 those transaction types remained static for more than a
23 decade.

24 Now, TDBNA's AML employees repeatedly proposed
25 various automated transaction monitoring methods to mid-level

1 AML leadership in order to close the gap on the unmonitored
2 transactions, but those were generally ignored or they were
3 rejected by leadership.

4 Instead, the bank prioritized a flat-cost,
5 year-over-year spending paradigm that led to staffing
6 shortages, backlogs of alerts across multiple workstreams, and
7 failure to adequately develop the bank's AML technology.

8 They repeatedly prioritized profits and convenience
9 over compliance with U.S. law.

10 And what happened as a result of the bank's failures?
11 Other criminals were able to exploit the vulnerabilities in TD
12 Bank's system and laundered hundreds of millions of dollars
13 through the bank.

14 Now, one of these money laundering networks was led
15 by an individual known as "David." His network laundered
16 \$470 million, through TDBNA stores, between January 2018 and
17 February of 2021.

18 During many of the large transactions that David's
19 network conducted, he provided gift cards to bank employees.

20 David said it best. He chose to launder most of his
21 funds, most of his illicit funds, through TDBNA precisely
22 because TDBNA had, by far, the most permissive policies and
23 procedures.

24 Now, during that same time, the bank willfully filed
25 564 materially inaccurate currency transaction reports, or

1 CTRs.

2 Those materially inaccurate CTRs failed to identify
3 David as the conductor of the transaction, in part, because
4 the bank's internal systems prepopulated accountholder
5 information on the CTR form, and the employees never included
6 David as the actual conductor of those transactions.

7 These inaccurate CTRs subverted the purpose of the
8 CTR form and prevented law enforcement from being able to
9 identify and track money laundering activities.

10 The defendants' emphasis on customer experience and
11 failure to address insider risk also permitted another money
12 laundering organization to move \$39 million in illicit funds
13 through TDBNA accounts, with the assistance of five TDBNA
14 employees, who we've referred to as "insiders."

15 TDBNA's failure to effectively manage its employee
16 risk contributed to this insider misconduct, and that was a
17 result that was certainly reasonably foreseeable to both
18 global and U.S. AML leadership, in light of TDBNA's pervasive
19 failures.

20 The parties request that the Court sentence both
21 TDBNA and TDBUSH to a five-year term of probation, with the
22 special conditions that are set forth in the parties' plea
23 agreement and that the Government has included in its
24 sentencing memoranda.

25 Those conditions include the obligation to cooperate

1 with the Government's ongoing investigation, and it includes
2 the condition that the defendants retain an independent
3 compliance monitor for three years.

4 As Your Honor has noted, there are substantial
5 oversight obligations that are imposed upon the monitor and
6 upon TD Bank, N.A., and TDBUSH in those plea agreements.

7 Now, in addition, the parties request that the Court
8 impose the statutory maximum criminal fine of \$500,000 on
9 TDBNA and a criminal fine of \$1,434,513,478.40 on TDBUSH.

10 The fine for TDBUSH does exceed the advisory
11 guidelines range, so the parties are asking that Your Honor
12 vary upward, which I will address in a moment.

13 These significant sentences that are being sought
14 here today are warranted based upon the nature and seriousness
15 of the defendants' conduct, as well as the defendants' history
16 and characteristics.

17 The defendants engaged in a willful, pervasive, and
18 long-term criminal scheme to evade U.S. law.

19 The defendants knew the bank's AML program was
20 woefully deficient, and they knew that they were not
21 monitoring trillions in transactions.

22 The defendants had been told, repeatedly, of some of
23 the same deficiencies in their AML program that the Government
24 identified today, and yet they did not take sufficient steps
25 to address the risk or to sufficiently fund their AML program.

1 Their criminal conduct enabled money laundering
2 organizations to move illicit funds through the bank, and it
3 undermined law enforcement's ability to track and identify
4 those money laundering organizations.

5 These sentences that the parties have agreed to here
6 today will hold TDBNA and TDBUSH accountable while providing
7 necessary deterrence.

8 As Your Honor is well aware, the Court must consider
9 both general and specific deterrence in fashioning an
10 appropriate sentence.

11 The agreed-upon sentences include the combined
12 criminal penalty of \$1.8 billion, which is, as I've already
13 said, the largest penalty under the BSA.

14 But, more importantly, the defendants have made
15 ongoing and long-term commitments within the plea agreement
16 and monitorship and compliance commitments that will,
17 hopefully, reduce the risk of reoccurrence of this type of
18 conduct in the future.

19 These commitments warrant the five-year probationary
20 term that the Government is asking that the Court impose upon
21 each defendant.

22 These obligations, including the substantial criminal
23 penalties and the compliance and monitorship commitments that
24 defendants have made in the plea agreements, will promote
25 respect for the BSA and other financial laws and regulations,

1 while also encouraging a culture of compliance within the
2 bank.

3 Now, the Government is asking, and the parties have
4 agreed, that an upward variance in this case is appropriate
5 with respect to the TDBUSH criminal fine.

6 THE COURT: Before you move to the variance, let me
7 focus a little with you on the issue of deterrence. Because
8 as you and I both know, at least specific deterrence I think
9 in one way we have, now, this oversight by the Government that
10 will be ongoing, and it's a requirement of ongoing compliance
11 and remediations.

12 So I'm not so much concerned about specific
13 deterrence as it relates to the defendants. But general
14 deterrence is also a huge consideration for me, Ms. Sinopole.

15 Why do you think that the resolution that is being,
16 at least, requested that the Court impose -- why do you think
17 it serves as general deterrence?

18 MS. SINPOLE: Because, Your Honor, other financial
19 institutions who have not, perhaps, put in the substantial
20 monetary funding of their AML programs, who have not spent
21 sufficient time updating their programs will see these
22 penalties against TD Bank and will think to themselves: We
23 better change our behavior. We better reevaluate our
24 compliance programs. We better take a closer look at how our
25 automated transaction monitoring systems are working, how our

1 employees are being trained, and what, in fact, they are
2 doing.

3 And TD Bank, through its commitment to this
4 monitorship, will, hopefully, come away from this guilty plea
5 and conviction and will have what the Government certainly
6 hopes will be a model AML compliance program that other
7 financial institutions can adopt and know that they are
8 working hard and evaluating on a risk basis, every day, how to
9 change and adapt their AML programs to prevent any future
10 money laundering or terrorism financing.

11 THE COURT: As you started your statement on the
12 record here today, you talked about it being the largest bank
13 in U.S. history to plead to the BSA, as well as money
14 laundering.

15 Isn't that alone, I think, a message? Which is, we
16 know it is the largest. It is the first time. And there is a
17 willingness by the Government to pursue these actions, and
18 will pursue these actions, even if it requires years-long
19 investigation and persistence by the United States of America.

20 That, alone, I think, is a big factor for the Court
21 to consider with respect to general deterrence.

22 Would you agree?

23 MS. SINOPOLE: I would agree, Your Honor.

24 THE COURT: Thank you so much.

25 So now talking about the variance, which is a very

1 significant variance from the advisory guidelines range.

2 Why do you think it's appropriate to impose a
3 variance as to TDBUSH?

4 MS. SINOPOLE: So, Your Honor, TDBUSH was responsible
5 for ensuring TDBNA's compliance with the BSA, and it utterly
6 failed in that responsibility.

7 Now, as Your Honor is aware, the BSA authorizes a
8 fine of up to \$500,000, per day, of a continuing violation.

9 TDBUSH and TDBNA implemented a fundamentally flawed
10 and a wholly ineffective AML program for years.

11 That program allowed for absolutely staggering money
12 laundering and other criminal activity, including criminal
13 activity that involved TD Bank employees and insiders. And it
14 allowed that, kind of, to flourish at the bank.

15 Such staggeringly pervasive conduct, at all levels of
16 the institution, certainly support an upward variance in terms
17 of the fine here today.

18 So while the guidelines range is \$300 million to
19 \$600 million, when Your Honor considers this very specific
20 penalty provided by the BSA that allows for \$500,000 per day,
21 that is where we get to the point of the upward variance.

22 And the Government believes that, given the
23 staggering and pervasive conduct that is involved here -- that
24 it is absolutely appropriate to have assessed that fine, on a
25 per-day basis, for TDBUSH.

1 And I think that the Government cited in our
2 sentencing memoranda that the sentencing guidelines do permit
3 a listing of the maximum guidelines range for cases involving
4 individuals. So, Your Honor, there is some authority for
5 doing that.

6 Where there is a statutory structure, such as is the
7 case here, that provides for a daily fine. And the reason for
8 that daily fine is to prevent the exact type of conduct that
9 happened here, so we believe it is absolutely appropriate to
10 impose that here.

11 THE COURT: So in other words, it was incumbent upon
12 the parent company to make sure that TD Bank, TDBNA, was doing
13 what it needed to do.

14 It had oversight, it had information, and it looked
15 the other way. And that is one of the reasons that you say
16 it's staggering, some of the proofs that you have. It was
17 pervasive; it went all the way up.

18 There seems to be a messaging that needs to go
19 forward, which is an increased amount, and, ultimately, an
20 increased fine does sting. It has teeth to it in the sense
21 that, when we're talking about general deterrence, as well as
22 specific deterrence, a fine like this, as much as it sounds
23 overwhelmingly high from this judicial officer's point of view
24 in the sense that it is probably the highest fine I've imposed
25 to date on any criminal defendant, it is necessary when we

1 think about the factors that the Court must consider in
2 assessing a sufficient, but not greater than necessary,
3 sentence.

4 So it is due and owing based on the investigation
5 facts and circumstances that are clearly outlined in
6 Attachment A, correct?

7 MS. SINOPOLE: Absolutely, Your Honor.

8 As you mentioned, TDBUSH had oversight of TDBNA's
9 compliance with the BSA. They issued the BSA AML policy and
10 standards, and they regularly received briefing on AML
11 matters.

12 So for those reasons, it is very important to send a
13 message and to institute the daily fine here.

14 THE COURT: All right.

15 Anything else you wanted to add?

16 MS. SINOPOLE: No, Your Honor. Thank you very much.

17 THE COURT: All right.

18 Is there anything that the defense would like to
19 place on the record at this point in time?

20 MS. LYNCH: Nothing at this point in time, Your
21 Honor.

22 THE COURT: Ms. Lynch, as you know, I am instructed
23 by the Third Circuit that I must specifically speak to your
24 client and inquire as to whether she wishes to address the
25 Court at this time.

1 Do I have your permission to speak to your client?

2 MS. LYNCH: Of course, Your Honor.

3 THE COURT: Thank you so much.

4 And with that, Ms. Adams, I do ask you to stand.

5 As you know, it is your right, but not an obligation,
6 to say anything on the record here today.

7 Do you wish to say anything on your client's behalf?

8 MS. ADAMS: Not at this time, Your Honor. Thank you.

9 THE COURT: Thank you very much. You may be seated.

10 So let me state for the record that I'm very mindful
11 that pursuant to *United States of America v. Booker*, the
12 Supreme Court has made it very clear that the U.S. Sentencing
13 Guidelines are merely advisory and that this Court is not
14 bound to impose a sentence within the suggested range.
15 Rather, the Court may use its discretion in deciding whether
16 to depart from the range or grant a variance -- as I will be,
17 as it relates to TDBUSH -- weighing the factors provided in 18
18 United States Code, Section 3553(a).

19 Now, the Court must impose a sentence that is
20 sufficient, but not greater than necessary, to reflect the
21 seriousness of the offense, to promote respect for the law,
22 and to provide just punishment for the offense.

23 I think Ms. Sinopole did an excellent job outlining
24 why this case is so serious and why, indeed, it is one that
25 the Court must, when assessing the severity of the offense,

1 consider what went on here.

2 When we think about the laws and when we think about
3 keeping people honest and when we think about law enforcement,
4 all of these responsibilities require not only its citizens
5 but the corporate entities to act in a manner that we expect
6 citizens to act.

7 This is the greatest country in the world. And we do
8 have the ability to profit and we should be able to profit,
9 but not at the expense of the law and not at the expense of
10 the men and women that serve the Government in trying to
11 detect and weed out the criminal components that we face,
12 whether it be on the streets with our drug distributions and
13 our epidemic, whether it be these awful Ponzi schemes and
14 cyber threats that loom everywhere we look these days.

15 But the reality is that in order for the Government
16 to do its job, it's got to be able to detect these crimes.
17 And by not instituting the monitoring programs and not,
18 obviously, taking the precautions and making sure these
19 programs are set up in a way that they can be easily detected,
20 TD Bank -- TDBUSH played a role in the criminality and really
21 allowed and facilitated millions of dollars to be funneled out
22 of this country, based on illegal activity.

23 It's severe. As Ms. Sinopole says, it's the first --
24 and I suspect will not be the last -- of banks to need to
25 really take a hard look at how they're running their

1 operations and the responsibilities they have.

2 I think the Government went ahead and did an
3 excellent job, and I intend on accepting all the statement of
4 facts that are outlined in the Schedule A to support it.

5 For purposes of the record here today, I won't
6 outline all of them, but they are incorporated in the Court's
7 ultimate decision to accept the plea and to, ultimately, hand
8 down a sentence that has been agreed to by the parties.

9 Ms. Sinopole said it. Between January 2014 and
10 October 2023, TDBNA and its direct parent, TDBUSH -- together,
11 the defendants -- willfully failed to implement and maintain
12 an adequate anti-money laundering -- an AML program and
13 knowingly failed to accurately report currency transactions,
14 in violation of the BSA.

15 During the time, it was high-level executives at the
16 bank, including the chief AML officer and the bank's BSA
17 officer, as well as members of the TDBUSH audit committee, who
18 knew -- they knew -- of the long-term pervasive and systematic
19 deficiencies in the defendants' AML policies, procedures, and
20 controls and did nothing -- did nothing -- from 2014 to
21 October 2023.

22 Let's think about the time frame when assessing the
23 appropriateness of the imposition of fines in this case.

24 These failures have been, now, tracked through
25 investigation. And we know now that three money laundering

1 networks were able to launder over \$670 million in criminal
2 proceeds through the bank, and at least one of which operated
3 with the assistance of TDBNA employees. As Ms. Sinopole said,
4 they were calling them the "insiders."

5 Between 2018 and October of 2023, TDBNA failed
6 adequately to thwart the money laundering that went from the
7 United States to Columbia using ATM cash withdrawals.

8 The five "insiders," as we're calling them, actively
9 facilitated this money laundering without adequate
10 identification or intervention by the bank, which allowed more
11 than \$39 million in illicit funds to be laundered to Columbia.

12 Again, I have imposed sentences -- and in some
13 instances life sentences -- against the individuals who do the
14 actions that, perhaps, I suspect we know what these networks
15 were doing. It is -- these are serious offenses.

16 I could go on and really talk about, in detail, how
17 there was a fundamental failure -- and there were fundamental
18 failures that are now outlined very specifically in the
19 Attachment A, but I'm not going to do that.

20 I'm simply going to rely, in large part, on the facts
21 contained in Schedule A to support the Court's findings with
22 respect to the severity of the incident.

23 In terms of promoting respect for the law, which is
24 also something I must do in imposing sentence, I think this
25 does.

1 I think, ultimately, when we begin to see that
2 everyone is subject to punishment, everyone is subject to
3 investigation -- and everyone must adhere to the laws that are
4 set up in this country to ensure compliance, to ensure that we
5 are doing our part as a nation to thwart criminal activity,
6 when possible.

7 And so I think that having reviewed the papers in
8 this matter, having heard the arguments by counsel here today,
9 and really being, overall, privy to all of the many exhibits
10 that were provided to the Court back on October 10th, I do
11 think, undeniably, the sentence I'm about to impose would
12 promote respect for the law and is just under the
13 circumstances.

14 We've talked about deterrence, Ms. Sinopole and I, a
15 few moments ago. I'm not going to go into it.

16 I'm less concerned about TDBUSH; I'm less concerned
17 about TDBNA's actions moving forward.

18 They are going to be having to deal directly with the
19 Government and an independent monitor to make sure that they
20 are doing their part to tighten things up over there.

21 And indeed, I'm sure they may inevitably turn out to
22 have the gold standard of compliance regulations for other
23 banks to, perhaps, learn from, in more ways than one. So I'm
24 not worried about specific deterrence.

25 But general deterrence is always a concern of mine

1 and of all of my colleagues that sit on the bench.

2 We always think about what is the perspective, how
3 are people going to look at these penalties, and are they, in
4 essence, going to be deterred?

5 I think this is one where many, many of our corporate
6 entities, specifically our banks, will begin to think about
7 compliance in a different way; will begin to think about
8 whether they are, indeed, playing dumb or playing fair.

9 I hope many of them will decide that playing fair
10 makes more sense, and they will look to this example to guide
11 them moving forward, I believe.

12 So I do believe general deterrence and the concerns
13 that I have are served by the potential sentence I'm about to
14 lay down.

15 Protecting the public from further crimes.

16 Well, that's why we are imposing these strict
17 penalties. That's why we are imposing these strict
18 regulations. That's why we have a BSA. That's why we are
19 requiring that everyone be very mindful of what their
20 obligations are.

21 I think that by requiring TD Bank to take the steps
22 that they will inevitably have to take during their
23 probationary period, we are, indeed, protecting the public
24 from further harm.

25 The history and characteristics of the defendant.

1 Although I don't generally have a PSR to talk about,
2 I can say that cooperation, in my mind, speaks a lot to the
3 defendant and their willingness to cooperate, their
4 willingness to comply, their willingness to be under the
5 watchful eye of the United States Government and its
6 independent monitoring.

7 Whenever you see a resolution -- and this Court
8 doesn't get involved in resolutions; I leave it to the parties
9 to do.

10 But when you have the Government coming forward and
11 saying that they are cooperative, that they have agreed to
12 pretty strenuous terms, not to mention the amount at issue
13 with respect to the fines and forfeiture, I do believe that
14 that says to me that there is remorse, that there is an
15 acceptance of responsibility that should be credited, and
16 there is, at least, a willingness to do better -- to do
17 better.

18 And I suspect that both TD Bank and TDBUSH will do
19 better. They have to and they will.

20 In terms of other sentences available, the Court is
21 looking at what has been available and the variance in this
22 case, which I am going to impose in a moment. And its
23 justifications for it, in large part, are found in the
24 Schedule A. But I do want to speak to my determination as to
25 the appropriate variance in this case as it relates to TDBUSH.

1 But I do believe that I don't, under the
2 circumstances, have any concerns with respect to the other
3 factors that the Court must consider under 3553(a).

4 Let's talk about the variance.

5 I'd rather put this in a way that probably is easier
6 for some people to understand in the sense of what a parent's
7 responsibilities are.

8 We have a responsibility to make sure that, as
9 parents, we are doing what we need to do to raise good
10 children. That -- we want them to abide by the laws. We want
11 them to not be bullies. We want them to play fair. We want
12 them to prosper, but not at the expense of others.

13 These are all principles that we all live by when we
14 agree to be parents, when we agree to do that tremendous --
15 take that tremendous step to bringing someone into this world.

16 Well, this is the same, in my view, of a parent
17 company.

18 A parent company has obligations. It has an
19 obligation to make sure that its companies are abiding by the
20 rules. It has an obligation to make sure that it is not
21 looking the other way because it's profitable to look the
22 other way.

23 It's not thinking that money is above all else in
24 this world. In the end, it is taking responsibility, when it
25 has to, for the wrongs that it's committed. The parent

1 company must do that.

2 The parent company is doing that in this case. The
3 parent company is stepping up, taking responsibility, and
4 indeed, with that responsibility comes a hefty price. And the
5 hefty price in the form of over \$1 billion -- \$1.4 billion
6 dollars.

7 It's a hefty price. It's a hefty lesson that I hope
8 the parent company learns and that it will, then, certainly
9 take the responsibility that any parent in this country has to
10 take, any parent, I say, in the world agrees to take.

11 So I do believe that the allegations and, as
12 Ms. Sinopole said, the staggering and pervasive behavior by
13 the parent company mandates that fine that has come outside
14 the normal range and that it be indeed assessed in the amount
15 agreed to by the parties.

16 So for all of these reasons, I do find that the Court
17 will impose its sentence. And I intend to do -- unless
18 there's anything else -- intend to read those sentences
19 separately.

20 Is there anything else that the Government believes
21 needs to be addressed by the Court as it relates to TDBNA?

22 MS. SINOPOLE: No, Your Honor.

23 THE COURT: All right.

24 As I always do, I do ask that our representative
25 please stand as I impose sentence on TDBNA.

1 Pursuant to the Sentencing Reform Act of 1984, Rule
2 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and 18
3 United States Code, Section 3553(a), it is the judgment of the
4 Court that, through its representative, TD Bank, N.A., are
5 hereby placed on probation for a term of five years.

6 While on probation, the company must not commit
7 another federal, state, or local crime and must comply with
8 the special conditions that have been imposed by this Court.

9 The Court intends to impose certain special
10 conditions as a condition of supervision.

11 In imposing these conditions, the Court has
12 considered the nature and circumstances of the offense of
13 conviction, the history and characteristics of the defendant,
14 deterrence, protection of the public, providing needed
15 correctional treatment to the defendant, and reflecting the
16 seriousness of the offenses, promoting respect for the law and
17 providing just punishment for the offense.

18 The Court finds that these conditions involve no
19 greater deprivation of liberty or property than is reasonably
20 necessary.

21 So you must comply with the following special
22 conditions -- and I am going to read them -- as agreed in the
23 plea agreement.

24 As special conditions of probation, you must:

25 (1) abide by all sentencing stipulations contained in

1 the plea agreement;

2 (2) appear, through its duly-appointed
3 representatives, as ordered, for all court appearances or obey
4 any other ongoing court order in this matter consistent with
5 all applicable U.S. and foreign laws, procedures, and
6 regulations;

7 (3) commit no further federal, state, or local crime
8 during the term of probation;

9 (4) be truthful, at all times, with the Court;

10 (5) pay the applicable fine and special assessment;

11 (6) consent to and pay the forfeiture amount;

12 (7) cooperate fully with the offices, as described in
13 paragraph 10 of the plea agreement;

14 (8) retain an independent compliance monitor for a
15 period of three years.

16 The parties agree that the retention of a monitor
17 will be a condition of probation, but the oversight of the
18 monitor and the bank's compliance with the monitor's
19 recommendation will not be conditions of probation. The
20 monitor will report to and be overseen by the Government.

21 So we cite to, specifically, the plea agreement,
22 paragraph 7(h), 8(b) through (h), 21(b), 21(c), 21(e), and see
23 also U.S. Sentencing Guidelines, Section 8D1.3.

24 It is further ordered that TD Bank, N.A., must pay to
25 the United States a total fine of \$500,000. The fine is due

1 immediately and must be paid, in full, no later than 10
2 business days after entry of the judgment.

3 You must notify the United States Attorney for the
4 district within 30 days of any change of mailing or residence
5 address -- and this language is consistent with normal
6 sentencing -- but change of mailing address that occurs while
7 any portion of the fine remains unpaid.

8 TD Bank must pay the United States a total special
9 assessment of \$400, which is due immediately.

10 With respect to right to appeal the Court's sentence,
11 I leave it to the parties to discuss what rights remain, but I
12 do say to TD Bank, N.A., that if, indeed, they believe that
13 they wish to appeal the Court, they can request the Clerk of
14 the Court to file a notice of appeal on the corporation's
15 behalf.

16 Anything to be dismissed at this time? And anything
17 that the Government wants to place on the record as it relates
18 to TD Bank, N.A.?

19 MS. SINOPOLE: There are no counts to be dismissed at
20 this time.

21 Your Honor has already entered the preliminary order
22 of forfeiture. Of course, the Government would ask that Your
23 Honor include the forfeiture amount in Your Honor's judgment,
24 but we will assure the Court that it was already paid by the
25 defendant.

1 THE COURT: All right. Would you like to place that
2 amount on the record? We have it in the papers, but --

3 MS. SINOPOLE: It is in the papers.

4 THE COURT: It's fine, Ms. Sinopole.

5 As long as it's in the papers -- we filed it; it's
6 paid. I'm satisfied the record is complete, but if you wanted
7 to put it on there, you go ahead and do so.

8 MS. SINOPOLE: Thank you, Your Honor.

9 The only other questions that we would ask is if
10 Your Honor would order that the special assessment of \$400 be
11 due immediately and paid within 10 days of sentencing. That
12 is how it is framed in the parties' plea agreement.

13 THE COURT: If I didn't say it that way, I apologize.
14 And yes, thank you.

15 It is due immediately and it should be paid within
16 10 days, if it hasn't been done so already.

17 MS. SINOPOLE: Thank you, Your Honor.

18 THE COURT: All right.

19 Next, we're going to move to TD U.S. Holdings, and
20 I'll refer to it as "TDBUSH," as we have done throughout the
21 course of both the plea and the sentencing hearing.

22 Pursuant to the Sentencing Reform Act of 1984, Rule
23 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and 18
24 United States Code, Section 3553(a), it is the judgment of the
25 Court that TD Bank U.S. Holdings Company -- what I'll refer as

1 "TDBUSH" -- are hereby placed on probation for a term of five
2 years. This term consists of terms of five years, on Counts 1
3 and 2. All such terms to run concurrently.

4 While on probation, TDBUSH must not commit another
5 federal, state, or local crime. TDBUSH must comply with the
6 special conditions that have been imposed by this Court.

7 The Court intends to impose certain special
8 conditions as a condition of supervision. In imposing these
9 conditions, the Court has considered the nature and
10 circumstances of the offense of conviction, the history and
11 characteristics of the defendant, deterrence, protection of
12 the public, providing needed correctional treatment to the
13 defendant, and reflecting the seriousness of the offense,
14 promoting respect for the law and providing just punishment
15 for the offense.

16 The Court finds these conditions involve no greater
17 deprivation of liberty or property than is reasonably
18 necessary.

19 TDBUSH must comply with the following special
20 conditions, as agreed to by the parties in the plea agreement.

21 As special conditions of probation, TDBUSH must:

22 (1) abide by all sentencing stipulations contained in
23 the plea agreement;

24 (2) appear, through its duly-appointed
25 representative, as ordered, for all court appearances, if any,

1 and obey any other ongoing court order in this matter
2 consistent with all the applicable U.S. and foreign laws,
3 procedures, and regulations;

4 (3) commit no further federal, state, or local crime
5 during the term of probation;

6 (4) be truthful at all times with the Court and
7 independent monitors;

8 (5) pay the applicable fine and special assessment;

9 (6) consent to and pay the applicable -- there is no
10 forfeiture amount in that case -- no forfeiture amount as to
11 TDBUSH. So that would then become --

12 (6) cooperate fully with the offices as described in
13 paragraph 10 of the plea agreement;

14 (7) retain an independent compliance monitor for a
15 period of three years.

16 The parties agree that the retention of a monitor
17 will be a condition of probation, but the oversight of the
18 monitor and the bank's compliance with the monitor's
19 recommendation will not be conditions of probation. The
20 monitor will report to and be overseen by the Government.

21 Here, I look to -- again, see in the plea agreement,
22 we're looking at paragraph 7(g), 8(b) through (h), 25(b),
23 25(c), 25(e); see also United States Sentencing Guidelines,
24 Section 8D1.3.

25 It is further ordered that TD U.S. Holdings -- which

1 I refer to as "TDBUSH" -- must pay to the United States a
2 total fine of \$1,434,413,478.40, on Count 1.

3 The anticipated fine payment by TD Bank, N.A., in the
4 amount of \$500,000, shall be credited against the criminal
5 fine imposed by the Court against TDBUSH.

6 TDBUSH shall pay the total criminal fines, less
7 TDBNA's credit of \$500,000 and less the potential additional
8 clawback credit of \$5,500,000, to the Court no later than 10
9 business days after the entry of judgment.

10 TDBUSH shall pay to the Court the potential
11 additional clawback credit, less any compensation the
12 defendant successfully claws back or withholds, no later than
13 January 31, 2025.

14 TDBUSH must notify the United States for the district
15 within 30 days of any change of mailing address that occurs
16 while any portion of the fine remains unpaid.

17 TD Bank -- or TDBUSH must pay to the United States a
18 total special assessment of \$800, consisting of \$400 on each
19 of Counts 1 and 2, which is due immediately.

20 As I said earlier, with respect to an appeal, if,
21 indeed, an appeal is sought, TDBUSH can request the Clerk of
22 the Court to file a notice of appeal on its behalf.

23 I ask if there are any clarifications or corrections
24 to note in the sentence just imposed, as to TDBUSH?

25 MS. SINOPOLE: Yes, Your Honor.

1 I believe -- and I may have misheard; I apologize.

2 The total fine amount is \$1,434,513,478.40. I
3 apologize if I misheard. I thought Your Honor might have said
4 413,000, so I just wanted to make sure that that was clear on
5 the record.

6 THE COURT: I'm glad you made it clear. It was a
7 mouthful and -- no, I wrote down \$1,434,513,478.40.

8 MS. SINOPOLE: That's perfect, Your Honor. Thank you
9 so much. We appreciate it. Just making sure.

10 The only other addition that I have is, as with Your
11 Honor's order in TDBNA, we ask that the total special
12 assessment of \$800 be due immediately and paid within 10 days
13 of the sentencing.

14 THE COURT: I will, indeed, place that on the record
15 and clarify for the record that the total special assessment
16 is \$800. It is due immediately and needs to be paid within
17 10 days of the judgment in this case.

18 MS. SINOPOLE: Thank you.

19 THE COURT: Is there anything else that I am missing?
20 Elisaveta is typing, so let me make sure.

21 Elisaveta, is there anything else you need? I see
22 you typing. All right.

23 Nothing further from the Government?

24 MS. SINOPOLE: No, Your Honor. Thank you so much.

25 THE COURT: Don, anything further from you, before I

1 go to the defense?

2 MR. MARTENZ: No, Your Honor.

3 THE COURT: All right.

4 Anything further from the defendants, the defendants
5 and their counsel?

6 MS. LYNCH: No, Your Honor.

7 THE COURT: All right. Well, thank you very much.
8 If there's nothing further, we're in recess. Thank you for
9 your patience.

10 MR. PESCE: Thank you very much, Your Honor.

11 THE COURTROOM DEPUTY: All rise.

12 (Proceedings concluded at 12:46 p.m.)

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16 FEDERAL COURT REPORTER'S CERTIFICATE

17

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20

21 /S/ Mary Jo Monteleone, RMR, CCR, CRCR
22 Official Court Reporter

11/11/2024
Date

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