U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 1, 2023

BY ECF

The Honorable Mary Kay Vyskocil
United States District Court Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Adedayo Ilori*, S1 21 Cr. 746 (MKV)

Dear Judge Vyskocil:

The defendant in this case, Adedayo Ilori ("Ilori" or "the defendant"), is scheduled to be sentenced on May 8, 2023 at 10:00 a.m., having been convicted at trial of major fraud against the United States, in violation of Title 18, United States Code, Sections 1031, 2, and 3147; conspiracy to commit wire and bank fraud, in violation of Title 18, United State Code, Sections 1349 and 3147; wire fraud, in violation of Title 18, United States Code, Sections 1343, 2, and 3147; bank fraud, in violation of Title 18, United States Code, Sections 1344, 2, and 3147; aggravated identity theft, in violation of Title 18, United States Code, Sections 1028A, 2, and 3147; and conspiracy to commit money laundering, in violation of Title 18, United States Code, Sections 1956(h) and 3147. The Government respectfully submits this letter in advance of sentencing. For the reasons explained below, the Government believes that a serious sentence of at least 25 years' imprisonment (to run consecutive to the defendant's pending sentence) is warranted in this case.

I. Background

A. The Defendant's Criminal History

For more than two decades, the defendant has engaged in fraud and identity theft crimes. In 1997, at the age of 18, the defendant was arrested twice in short succession for state fraud offenses, involving stolen identities, stolen credit card information, and fraudulent checks. (*See* Presentence Investigation Report revised February 14, 2023 ("PSR") ¶¶ 92, 93.) These arrests were shortly followed by his November 1997 federal arrest, in this District. Giving rise to this prosecution, for several months, the defendant had opened bank accounts using stolen and fraudulent identifying information, into which he deposited counterfeit checks. (*See* PSR ¶ 81.) Ilori was convicted of bank fraud for this conduct, and the Honorable Deborah A. Batts, United

States District Judge for the Southern District of New York, sentenced Ilori to 15 months' incarceration.

Ilori soon violated his supervised release. In July 1999, at the age of 20, Ilori was arrested for using a fraudulent credit card to purchase a retail item. (PSR ¶¶ 81, 82.) The defendant's federal supervised release was revoked, and he received a twenty-four-month sentence for the violation. He was also convicted of the crime in state court.

In September 1999, after the defendant's July 1999 arrest but before his supervised release was revoked, he was again arrested for similar fraud conduct. He was arrested attempting to steal a computer through the use of a stolen identity and fraudulent ID and bank cards. (PSR ¶ 83.)

In May 2004, the defendant was arrested while using a stolen credit card to purchase merchandise. He was found in possession of a forged ID when he was arrested during his attempted flight from apprehension. (PSR ¶ 84.) He was sentenced to a term of probation for this offense.

In January 2006, while he was still under probation for his 2004 conviction, the defendant was again arrested using a fraudulent credit card and utilizing a stolen identity. (PSR ¶ 85.) For this offense, his fifth conviction, the defendant was sentenced to between 42 months' and 7 years' incarceration.

On June 8, 2006, less than one week after he entered a guilty plea in the case described in the preceding paragraph, the defendant was again arrested while attempting to use stolen identities to open bank accounts. (PSR ¶ 86.) The defendant was convicted following a jury trial for this offense and received a sentence of 30 months' to 5 years' incarceration. During the period of his incarceration, he was cited for numerous disciplinary infractions. He was released from prison in 2010.

Beginning in approximately March 2019, the defendant took part in a scheme to submit fraudulent loan applications. The defendant partnered with a crooked bank manager, Herode Chancy. The plan involved creating falsified bank statements and business documents to convince the bank to extend what bank employees believed would be legitimate loan funds, but that the defendant never had any intention of repaying. The defendant's role in the scheme involved creating the fake documents and obtaining the stolen identity information required to execute the scheme.

While this bank fraud and identity scheme was in progress, the defendant was engaged in additional fraud and identity theft crimes. In June 2019, the defendant was arrested while attempting to open bank accounts under stolen identities. During his arrest, law enforcement recovered numerous ID cards and bank cards in the names of identity theft victims. Some of the

ID cards used the information of these identity theft victims, but displayed Ilori's photograph. Ilori was charged for this conduct in state court, although the case was later dismissed.

As a result of this June 2019 arrest, Ilori was incarcerated at Rikers Island. While on Rikers, Ilori met co-defendant Chris Recmier ("Recamier"), who was himself incarcerated as a result of drug charges. In or about fall 2019, Ilori and Recamier were both released from prison, following the implementation of New York State's bail reform law.

With the defendant out of prison, he returned to the bank fraud conspiracy that had been initiated in spring 2019 with Chancy. Ilori recruited Recamier to take part in this scheme, and Recamier used stolen identities and forged bank cards to advance the scheme. Ilori and his co-conspirators ultimately submitted fraudulent applications for more than $1 million in business loans. In or about March 2020, Ilori, Chancy, and Michael Albarella were arrested and charged in *United States v. Chancy*, 20 Cr. 378 (LJL); however, law enforcement had not identified Recamier during the earlier investigation, and he therefore was not charged in that case. (PSR ¶ 58.) Ilori was released on bail conditions between his arrest on or about March 4, 2020 and his arrest rising out of the instant case on or about October 8, 2021. (PSR ¶ 87.)

B. Offense Conduct

Despite Ilori's 2020 arrest and Ilori's release pursuant to federal bail conditions, the defendant took part in broad criminal activity, utilizing the stolen identities of dozens of victims and taking advantage of programs intended to assist the country in responding to the COVID-19 pandemic, with co-defendant Recamier.

Beginning in or about August 2020, Ilori and Recamier worked together to commit yet more crimes—engaging in the instant fraud, identity theft, and money laundering scheme. Ilori and Recamier chose to defraud the federal government and two emergency programs intended to assist the nation in weathering the COVID-19 pandemic. In the process, Ilori and Recamier fraudulently used the stolen identities of dozens of victims.

The Small Business Administration ("SBA") is responsible for the federal relief programs in question. (PSR ¶ 16.) The Coronavirus Air, Relief, and Economic Security (CARES) Act provided emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. (PSR ¶ 17.) One source of relief provided by the CARES Act was the authorization of hundreds of billions of dollars in forgivable loans to small businesses to pay for payroll, mortgage interest, rent, and/or utilities through the Paycheck Protection Program ("PPP"). Pursuant to the CARES Act, the amount of PPP funds a business was eligible to receive was determined by the number of employees employed by the business and the business's average payroll costs. (PSR ¶ 18.) A business applying for a PPP loan was required to provide documentation to confirm that it had, in the past, paid employees the amount of compensation represented in the business's loan application. The CARES Act also expanded the separate Economic Injury Disaster Loan ("EIDL") Program, which provided small businesses with low-interest loans of up to $150,000 to help overcome the temporary loss of revenue that they were experiencing due to COVID-19. To qualify for an EIDL loan under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19, based on the applicant's actual economic injury, as determined by the SBA.

Together, Ilori and Recamier applied for at least 14 different COVID-relief loans, under both the EIDL program and PPP. They applied for these loans under the stolen names of various business entities and using the stolen identities of at least nine different individuals. In total, Ilori and Recamier applied for at least $10 million in fraudulent loans, and they successfully obtained more than $1 million in federal relief loans. (PSR ¶ 56.)

Ilori and Recamier generally followed the same approach with each fraudulent loan application they filed. They used the stolen identities of real people and businesses. They submitted falsified tax documents and bank records, claiming that the applications had been completed by business entities that, in some cases, purportedly employed dozens of people and had substantial monthly payroll. All said, the defendants represented that they ran companies employing more than 300 employees and paying more than $3 million in monthly wages. (PSR ¶ 22.) Many of the accounts and applications involved the use of fake IDs, many bearing Recamier's photograph but with the names and identifying information of identity theft victims.

Of the more than $1 million in relief funds successfully obtained, Ilori and Recamier transferred the money to accounts they controlled, in the names of identity theft victims. These funds were used to purchase more than $400,000 in cryptocurrency; at least approximately $50,000 in stocks; and at least approximately $60,000 in cash. (PSR ¶ 21.)

Law enforcement identified particular investment accounts utilized by Ilori and Recamier to invest fraudulently obtained funds. Between at least in or about May 2021 and in or about July 2021, a particular IP address was used to access at least one of these investment accounts on multiple occasions. Subscriber records reflect that IP Address-1 was assigned to a particular apartment in Long Island City (the "LIC Apartment"). The LIC Apartment had been rented by Ilori and Recamier, in or about March 2021, under name of an identity theft victim named Mark Heffron. (PSR ¶ 48.) During the investigation, law enforcement conducted surveillance of the LIC Apartment and observed both Ilori and Recamier present in the vicinity of the LIC Apartment.

Ilori and Recamier also used a particular phone number as the primary contact phone number on their loan applications and/or fraudulent bank accounts (the "0642 Number"). (PSR ¶ 37.) During the investigation, law enforcement obtained a GPS tracking warrant for the 0642 Number. In conducting surveillance concerning the location of the 0642 Number, law enforcement observed Ilori (alone) at a particular coffee shop located in Manhattan. During the approximate time that Ilori was in that coffee shop, the credit card in the name of identity theft victim Jonathan Herttua was used to purchase coffee. Based in large part on the results of this physical and electronic surveillance, law enforcement identified Ilori as a subject of their investigation. In addition, law enforcement determined that the 0642 Number was located in the vicinity of Ilori's home address every night between approximately midnight and 5 a.m. (Trial Transcript ("Trial Tr.") at 239-40.)

C. The Searches and Arrests

On October 7, 2021, the Honorable Peggy Kuo, U.S. Magistrate Judge for the Eastern District of New York, signed a search warrant, authorizing law enforcement to search: (a) the LIC Apartment, and (b) Ilori's person and the area in his immediate control. On October 7, 2021, at approximately 9:45 p.m., law enforcement officers executed the search at the LIC Apartment. Recamier was present at the LIC Apartment when the search warrant was executed, and law enforcement officers placed him under arrest. (PSR ¶ 51.) During the search of the LIC Apartment, law enforcement recovered evidence of Ilori's and Recamier's fraud, including notebooks meticulously documenting the names and personally identifiable information of specific victims and the names of companies in whose name Ilori and Recamier had submitted fraudulent SBA loan applications.

Following his arrest, Recamier was advised of his *Miranda* rights, waived those rights, and engaged in an audio-recorded interview with law enforcement. During that interview, Recamier inculpated both himself and Ilori in the charged crimes. Recamier stated, in substance and in part, that he had used fake IDs in other people's names; that he and Ilori had been working to submit fraudulent applications for COVID-19 relief loans; and that he and Ilori had used 15 to 20 fake ID cards and fraudulent credit cards in the names of those individuals. Ilori maintained the fake ID cards and fraudulent credit cards that were used over the course of the scheme and would give Recamier particular cards to use as needed. For example, in September 2021, Ilori gave Recamier a fake ID and fraudulent credit card in the name of victim Thomas Hockenberry and directed Recamier to lease a Mercedes (the "Mercedes") in Hockenberry's name (for Ilori's use), which Recamier did. Recamier also generally described his and Ilori's respective roles in the scheme as follows, in sum and substance: Recamier was responsible for creating false tax documents and physically going into banks to open accounts using fake IDs with his photograph, and Ilori purchased the fake ID cards and victims' personal information from the dark web; found the company names and EINs under which Ilori and Recamier submitted the fraudulent loan applications; falsified bank statements and the other supporting documents; and controlled all the stolen money.

The day after Recamier's arrest, on October 8, 2021, at approximately 10:15 a.m., Ilori left his Queens home and entered the Mercedes, which was parked outside. Law enforcement officers approached and executed the search warrant, as it pertained to Ilori's person and the area within his immediate control. From Ilori's person, law enforcement recovered, among other things, a key to the LIC Apartment, bank cards in the name of ID theft victim Jonathan Herttua, and three cellular phones. From the Mercedes's passenger compartment, law enforcement recovered, among other things, an additional cellular phone. Law enforcement also searched the Mercedes's trunk, and recovered, among other things, an additional cellular phone; ID cards in the name of identity theft victims and bearing Recamier's photograph; and bank cards in the name of identity theft victims. Many of the electronic devices recovered during the arrests of Ilori and Recamier provided additional evidence of the defendants' involvement in the charged offenses. For example, a cellphone recovered from Ilori's person at the time of his arrest was the cellphone that law enforcement had first identified as associated with the fraud scheme, and the location of which law enforcement had been tracking in its efforts to identify the perpetrators of the fraud.

D. The Trial

On October 25, 2022, trial began against Ilori. The evidence presented at trial illustrated the sophistication of Ilori's and Recamier's fraud scheme. Ilori and Recamier were deliberate in how they used their victims' identities for purposes of submitting the fraudulent SBA loan applications and stealing government funds. They engaged in successively escalating identity theft—for example, they first registered the 0642 cellphone number in Herttua's name; then they set up an email account linked to Herttua's name *and* the 0642 Number; then they falsified corporate and other documents for companies they had fraudulently associated with Herttua (including Appserd Inc. and BRS Consulting Corp.) to reflect Herttua's name, the 0642 Number, and the email account; then they opened bank accounts using Herttua's name, the 0642 Number, the email account, and the respective company. It was later—after all those layers of identity theft and fraudulent supporting documentation was in place—that they submitted the fraudulent loan applications.

Ilori and Recamier also carefully documented their fraud. Notebooks recovered from the LIC Apartment contained lists of the various identity theft victims, with annotations and notes of what appeared to be information about the victims' credit and where they may have held bank accounts already in their true names. (*See, e.g.*, Trial Tr. at 323.) A desktop computer that was recovered from the LIC Apartment, which reflected login information to various of Ilori's personal electronic accounts, also contained electronic versions of falsified documents, including documents in the names of specific identity theft victims and/or the business entities in whose name Ilori and Recamier submitted the fraudulent SBA loan applications. (*See* Trial Tr. at 612-46.)

One loan application claimed the name of Appserd Incorporated ("Appserd"), which was purportedly run by Jonathan Herttua. (PSR ¶¶ 20-26, 32, 35.) Ilori and Recamier claimed that Appserd employed 79 employees with an average monthly payroll of more than $1.7 million. The defendants cast Mr. Herttua as the owner and victim of the company, and they represented that the more than $4.4 million loan they were seeking would be used only for authorized business expenses. In support of the application, the defendants submitted multiple fraudulent tax documents to back up their fraudulent representations. Recamier personally impersonated Mr. Herttua, interacting with bank employees as Mr. Herttua (including one bank employee who testified at trial and positively identified Recamier as the person she knew as "Jonathan Herttua") to attempt to get the loan approved. (Trial Tr. at 423-29.) Ultimately, the bank denied the loan.

Three of Ilori's and Recamier's victims testified at trial. All of the victims confirmed that they had not applied for SBA loans and that their personal information was used without their authorization to, among other things, register email addresses, open bank accounts, rent cars or apartments, and apply for (and, in some cases, received funded) SBA loans.

The true Jonathan Herttua testified about the following, among other things: (i) he learned in October 2021 that he had been the victim of identity theft; (ii) the various documents Ilori and Recamier created and/or used in Mr. Herttua's name in connection with their fraud—including a fake ID, registered email and cellphone accounts, bank account applications, rental car agreements, and SBA loan applications—leveraged Mr. Herttua's true name, date of birth, and social security number but falsified other details, including Mr. Herttua's address, photograph, and business (*see* Trial Tr. at 62-80); (iii) Mr. Herttua's purported signature on various of those documents, including a rental car agreement in his name, was not in fact his signature (*id.* at 80); (iv) Mr. Herttua never authorized anyone to use his personal information, including for any transactions or to rent any cars (*id.* at 88); (v) Ilori's and Recamier's theft of Mr. Herttua's identity damaged his credit score and required him to change all his credit cards, bank accounts, and passwords, and to undertake efforts to prove to various companies that he was, in fact, the true Jonathan Herttua (*id.* at 88-89); and (vi) the theft of his identity was personally stressful and left him with "that feeling of helplessness and did I do something wrong to bring this on." (*Id.* at 89.)

The true Gerald Hanson testified that the consequences stemming from Ilori's and Recamier's theft of his identity—including the damage to his credit history and banking relationships—required him to delay, by a full year, his retirement and his associated move to be near his son and grandchildren. (Trial Tr. at 49-50.)

The true William Jamieson testified that his true name (sometimes misspelled), date of birth, and social security number were used to rent an apartment in Brooklyn, to open a bank account, and to apply for an SBA loan in the name of a company that Mr. Jamieson had never heard of. (Trial Tr. at 443-51.) Mr. Jamieson never authorized anyone to use his personal information in any of those manners. Ilori held himself out as William Jamieson; Ilori's photograph was on the fake William Jamieson ID, and it was Ilori who met with a leasing agent and rented a Bushwick, Brooklyn apartment in Jamieson's name. (Trial Tr. at 559-60.)

E. Procedural History

On October 8, 2021, Ilori was arrested on the basis of his violation of pretrial release and appeared before the Honorable Lewis J. Liman, who ordered his bail revoked. Recamier was presented on the same day on the basis of a criminal complaint.

On December 9, 2021, a grand jury returned indictment 21 Cr. 746 (MKV), charging Ilori and Recamier with Major Fraud Against the United States, in violation of 18 U.S.C. § 1031; conspiracy to commit wire and bank fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; aggravated identity theft, in violation of 18 U.S.C. § 1028A; and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956. On June 22, 2022, a grand jury returned a superseding Indictment adding a statutory enhancement to each of the six Counts, pursuant to 18 U.S.C. § 3147, due to Ilori's having committed the charged offenses while he was released under conditions of bail imposed in the case before Judge Liman. On October 25, 2022, the defendant proceeded to a jury trial on the charges contained in the Superseding Indictment. (PSR ¶ 10.) On November 1, 2022, the jury returned a guilty verdict on all six counts in the Superseding Indictment. (*Id.*)

II. The Application of the Guidelines

The Government largely concurs with the Probation Department in its calculation of the Guidelines to the defendant's case. (*See* PSR ¶¶ 66-77.) However, although the PSR appears to reach the proper total offense level of 40, the PSR misses one component of the Guidelines calculation. Because the defendant was convicted of 18 U.S.C. § 1956, pursuant to U.S.S.G. § 2S1.1(b)(2)(B), the offense level should be increased by two levels. With this correction, the PSR is correct that the total offense level is 40, the defendant is in Criminal History Category IV, and he is subject to a Guidelines Range of 360 months' to life imprisonment, with a mandatory consecutive term of two years' imprisonment for his conviction of aggravated identity theft.

The defendant objects to numerous Guidelines enhancements. The Court should reject these arguments.

First, utilizing the out of Circuit case of *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022), the defendant argues that only actual loss should be considered under U.S.S.G. § 2B1.1(b)(1). In *Banks*, the Third Circuit cited the Supreme Court's decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), to find that "loss" in U.S.S.G. § 2B1.1 is unambiguously limited to actual loss and there is thus no reason to consult the commentary to the provision, which defines loss as both actual and intended loss. *Banks*, 55 F.4th at 255-57.

The *Banks* argument can be easily dismissed. *Banks* is inconsistent with Second Circuit precedent, under which the law is clear that, "[f]or the purposes of calculating the Guidelines range, loss is defined as 'the greater of actual loss or intended loss.'" *United States v. Powell*, 831 F. App'x 24, 25 (2d Cir. 2020) (quoting *United States v. Certified Envtl. Servs., Inc.*, 753 F.3d 72, 103 (2d Cir. 2014)). This makes sense because "the larger intended amount is a better measure for the defendant's culpability." *United States v. Lacey*, 699 F.3d 710, 720 (2d Cir. 2012). Indeed, in three post-*Kisor* cases, the Second Circuit has reaffirmed its deference to the Sentencing Guidelines commentary in its decisions that have held that the commentary to a different Guideline, U.S.SG. § 4B1.2, remains valid. *See United States v. Wynn*, 845 F. App'x 63, 65 (2d Cir. 2021) (distinguishing *Kisor* and applying the Sentencing Guidelines commentary's statement that "controlled substance offenses" includes inchoate offenses), *as amended* (Apr. 1, 2021), *cert. denied*, 211 L. Ed. 2d 570, 142 S. Ct. 865 (2022); *United States v. Richardson*, 958 F.3d 151, 154-55 (2d Cir. 2020); *United States v. Tabb*, 949 F.3d 81, 87 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 2793 (2021). It is thus unsurprising that the Honorable Edgardo Ramos, United States District Judge, Southern District of New York, was unimpressed with a similar *Banks* argument at a recent sentencing. *See United States v. Almaleh,* 17 Cr. 25 (ER) (S.D.N.Y. Jan. 20, 2023), Tr. at 10-11 ("To state the obvious, we're not in the Third Circuit, we're in the Second Circuit. And my understanding is that in this circuit, loss under the guidelines does include intended loss. That has been the case from forever.").

In addition to its conflict with Second Circuit law, *Banks* also rests on flawed analysis and is wrongly decided. In interpreting "loss," the Third Circuit overlooked at least two Guidelines provisions that shed light on how to interpret the word: (1) the relevant-conduct Guideline, which states that specific offense characteristics like those in U.S.S.G. § 2B1.1 "shall be determined on the basis of . . . all harm that was the object of such acts and omissions," U.S.S.G. § 1B1.3(a)(3); and (2) the attempt and conspiracy Guideline, which says that the base offense level is calculated using the base offense level from the Guideline for the substantive offense "plus any adjustments from such guideline for any *intended* offense conduct that can be established with reasonable certainty," *id.* § 2X1.1(a) (emphasis added). Those provisions show that the word "loss" in § 2B1.1 encompasses intended loss—or, at a minimum, that the term is "genuinely ambiguous" under *Kisor*.

The Court should apply the 20-level enhancement under U.S.S.G. §2B1.1(b)(1)(K) because the intended loss amount was more than $9.5 million and less than $25 million.

Second, the defendant objects to the application of U.S.S.G. § 2B1.1(b)(10)(C)'s sophisticated means enhancement. In this case, the defendant utilized dozens of stolen identities, fraudulent ID and bank cards, falsified bank records, numerous corporations, and multiple electronic devices and accounts in order to advance the fraud scheme, in a broad conspiracy involving multiple participants. The Second Circuit has routinely held that repeated and coordinated criminal conduct and "the creation and use of false documents, and other tactics to conceal offense conduct, are indicia of the sophistication of an offense." *United States v. Fofaneh*, 765 F.3d 141, 146-47 (2d Cir. 2014) (affirming imposition of sophisticated means enhancement); *see also, e.g.*, *United States v. Bailey*, 820 F. App'x 57, 62 (2d Cir. 2020) (transferring money between multiple bank accounts and use of corporations as "fronts for criminal activity"); *United States v. Fiumano*, 721 F. App'x 45, 48 (2d Cir. 2018) (using tactics to evade victims and law enforcement). The defendant again points to an out-of-Circuit case for support. But that case, *United States v. Adepoju*, 756 F.3d 250 (4th Cir. 2014), provides him no aid. Beyond lacking application within the Second Circuit, which has routinely upheld the enhancement's application in similar cases, *Adepoju* involved the Fourth Circuit vacating and remanding sentence because the district court failed to explain the bases for the enhancement's application. 756 F.3d at 257-59. The case has no bearing here, where there are ample bases to support the application of the sophisticated means enhancement.

Finally, the defendant objects to the application of the enhancement for receiving $1,000,000 or more in gross receipts from financial institutions under U.S.S.G. § 2B1.1(b)(17)(A). (Def. Sent Sub. at 2-3.) The defendant argues that the defendant did not individually receive the more than $1 million fraud proceeds obtained from banks in this case. But, as described in greater detail above and as proven at trial, the defendant had access to and control over the fraudulent bank accounts, in the names of identity theft victims, that received the fraud proceeds. And as Recamier stated during his post-arrest interview, it was *Ilori* who controlled the bank accounts and the fraud proceeds. Ilori therefore individually received more than $1 million from banks.

Accordingly, the Court should reject the defendant's Guidelines arguments and adopt the PSR's calculation with the correction outlined above.

III. Discussion

1. Applicable Law

Following *United States v. Booker,* 543 U.S. 220 (2005) and *United States v. Crosby,* 397 F.3d 103 (2d Cir. 2005), the Guidelines continue to provide a critical touchstone. Indeed, while the Guidelines are no longer mandatory, they remain in place, and district courts must "consult" them and "take them into account" when sentencing. *Booker,* 543 U.S. at 264. As the Supreme Court has stated, "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," which "should be the starting point and the initial benchmark." *Gall v. United States,* 552 U.S. 38, 49 (2007).

After calculating the Guidelines range, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): (1) "the nature and circumstances of the offense and the history and characteristics of the defendant"; (2) the four legitimate purposes of sentencing, as set forth below; (3) "the kinds of sentences available"; (4) the Guidelines range itself; (5) any relevant policy statement by the Sentencing Commission; (6) "the need to avoid unwarranted sentence disparities among defendants"; and (7) "the need to provide restitution to any victims," 18 U.S.C. § 3553(a)(l)-(7). *See Gall,* 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, which are:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant;
>
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

2. A Significant, Consecutive Sentence of at Least Twenty-Five Years Is Sufficient, but Not Greater Than Necessary

A significant sentence of at least twenty-five years' imprisonment, to be served consecutive to the sentence imposed by Judge Liman , is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, such a sentence is appropriate to reflect the nature and seriousness of Ilori's offense, to provide just punishment for the offense and promote respect for the law, to afford adequate deterrence to criminal conduct (including, in particular, *individual* deterrence), to avoid unwarranted sentencing disparities, and to protect the public from the defendant's further crimes. *See* 18 U.S.C. §§ 3553(a)(1), (2)(A)-(B).

Seriousness of the Offense, Providing Just Punishment, Promoting Respect for the Law

The conduct at issue is extremely serious. The defendant took part in more than a year of criminal activity, trading in the stolen identities of many identity theft victims and defrauding the SBA and banks into issuing loans on the basis of fraudulent applications. While small businesses across the United States were struggling to make ends meet, the defendant had the audacity to lie to loan processors and to the federal government in order to obtain millions of dollars in pandemic relief—purportedly for hundreds of struggling employees.

The defendant knowingly took part in these crimes, in which he attempted to fraudulently obtain more than $10 million, of which he and Recamier successfully received more than $1 million. These funds were intended to assist in the pandemic emergency, to allow for people to keep their jobs and for businesses to keep operating. The defendant stole, and attempted to steal, from the public, taxpayers, and the people and entities these funds were intended to support. This scheme was sophisticated, involving a web of financial accounts, electronic accounts, and numerous corporations.

Alongside the defendant's fraud related to the COVID-19 relief loans, he also engaged in numerous additional fraud and identity theft schemes to benefit himself, including the fraudulent leasing of the LIC Apartment, the Mercedes, and an apartment in Bushwick, Brooklyn.

But he did not just rob the Government and deceive banks, he also utilized dozens of stolen identities in the course of his fraudulent loan applications and to maintain accounts and obtain property, such as the LIC Apartment and the Mercedes. His conduct harmed the victims whose identities were stolen and misused. As one victim writes to the Court in a victim-impact statement, "The stress of being put in this position was untenable. I have been constantly afraid my credit rating would be impacted. I no longer trust using any form of payment, except cash, will be secure." (Ex. A.) Identity theft victim Jonathan Herttua testified that the theft of his identity was akin to being burglarized and left him with a "feeling of helplessness." (Trial Tr. 89.) These consequences, and others, are shared by other victims of the defendant's crimes.

The seriousness of the defendant's conduct is exponentially multiplied when considered against both his criminal history and his separate federal fraud and identity theft prosecution, to which he was subject to pretrial release while he committed these separate crimes. The defendant had even pleaded guilty, purporting to accept responsibility for criminal conduct, when he committed these fraud and identity theft offenses. He exhibited absolute disdain for the law.

The defendant's arguments for leniency do not hold water. He blames his recent slew of criminal conduct on the COVID-19 pandemic and traumatic triggers from his childhood. (Def. Sent. Sub at 5.) But this is false. The defendant's recent criminal activity predates the pandemic. Indeed, in March 2019, approximately a year before the imposition of first pandemic lockdowns in the United States, the defendant began plotting to commit bank fraud and identity theft with Chancy. It was also in 2019 that the defendant was arrested committing additional fraud and identity theft and incarcerated at Rikers Island, where he met and recruited Recamier to take part in fraud schemes. The pandemic and Ilori's purportedly traumatic childhood, offer no explanation for the defendant's crimes.[1]

Ilori also argues that he "was already punished for the crime in the case before Judge Liman." (Def. Sent. Sub. at 8.) But that is false. In sentencing Ilori, Judge Liman stated, "I specifically am not considering your involvement in the paycheck protection program fraud scheme that is the subject of the case before Judge Vyskocil. That charge and the facts underlying it have no impact on the sentence I am going to impose." March 3, 2022 Sent. Tr., at 26, *United States v. Ilori*, 20 Cr. 378 (LJL) (S.D.N.Y.), attached hereto as Exhibit B.

<u>Deterrence</u>

A substantial sentence is necessary to deter future criminal conduct of both the defendant and other similarly situated individuals.

Specific deterrence is extremely relevant to the defendant. The defendant took part in this serious and sophisticated fraud, identity theft, and money laundering crimes after he had been convicted and served jail sentences for numerous similar offenses. He engaged in these crimes after his prior Southern District of New York arrest and while he was subject to pretrial release. This case represents the defendant's third conviction in this District alone. None of the defendant's prior contacts with the criminal justice system nor his prior sentences appear to have deterred him in any way. A weighty sentence is required to work to accomplish the ends of specific deterrence, if it is even possible to deter Ilori from criminal conduct.

General deterrence is also a very important consideration in the defendant's case. The defendant took part in these serious fraud and identity theft crimes. These crimes hurt real victims. The defendant's conduct lasted over the course of a year. And Recamier's and Ilori's crimes show how easy it is for others to commit similar COVID-19 relief fraud and identity theft crimes. The defendant apparently believed that the institutions and individuals he was defrauding—whether identity theft victims, banks, or the EIDL program and PPP—were asleep at the switch and would not detect his premeditated and major fraud.

Identity theft itself is rampant. The Federal Trade Commission received more than 1 million complaints of identity theft each year from 2020 through 2022. *See* https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf, at 10. Each case of identity theft causes extensive harms to its victims, who face the possibility of financial injury, damaged credit scores, and feelings of emotional insecurity. Identity theft takes place at such a high volume, and the dollar amount in loss associated with identity theft cases can be insignificant

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[1] The Government is highly skeptical that the defendant's lack of arrests between 2010 and 2019 reflects a lack of criminal conduct. The defendant has repeatedly engaged in flagrant fraud and identity theft crimes. And when the defendant began conspiring with Chancy in 2019, the defendant was, from the outset, prepared to obtain the fraudulent identities and forged documents necessary to complete the crime. If the defendant were truly engaged in only legitimate activity, it is unlikely that he would have been able to obtain and provide these fraudulent materials.

compared to the other costs of identity theft crimes, such as the reputational and emotional harms that can haunt identity theft victims for years. It would be impossible for law enforcement to identity, investigate, and prosecute every instance of identity theft, but, in a case like the present one, the Court should send a clear message of general deterrence. Identity theft is a terrible crime that should be met with real consequences.

As is clear from this case, it is all too easy to do what the defendant did, all too attractive, and all too difficult to detect until the fraud has reached a substantial scale. This means that a meaningful sentence is warranted. *See, e.g.*, *United States* v. *Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) ("Because economic and fraud-based crimes are 'more rational, cool, and calculated than sudden crimes of passion or opportunity,' these crimes are 'prime candidate[s] for general deterrence.' (quoting Stephanos Bibas, *White-Collar Plea Bargaining and Sentencing After Booker*, 47 Wm. & Mary L. Rev. 721, 724 (2005)) (alteration in original)); *United States* v. *Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it."); Francesco, Galbiati & Vertova, *The Deterrent Effects of Prison: Evidence From a Natural Experiment*, 117 J. of Political Econ. 257, 278 (2009) ("Our findings provide credible evidence that a one-month increase in expected punishment lowers the probability of committing a crime. This corroborates the theory of general deterrence."). The Court's sentencing determination should send a strong message to others about the serious consequences of engaging in such flagrant criminal conduct.

<u>Sentencing Disparities</u>

The defendant argues that a sentence of the sort recommended by the Probation Department or the Guidelines, would result in unwarranted sentencing disparities. Not so. The defendant stands nearly alone given the severity of his criminal background and criminal conduct.

First, the defendant argues that a lengthy sentence would be disparate from Recamier, who the Court sentenced to 9-years' incarceration, even invoking racism as a possible reason for any potential divergence. (Def. Sent. Sub. at 7.) The defendant refers to Recamier as the "primary offender," but that is wrong. Recamier was the face of the criminal operation, but the defendant was the actor in control. Ilori is the one who recruited Recamier to take part in fraud, and Ilori is the one who possessed the primary tools of the fraud schemes—fake IDs, bank cards, and the cellular phones used to advance the fraud scheme. In addition, unlike Ilori, Recamier had no criminal history at sentencing. By contrast, Ilori is subject to Criminal History Category IV and also has numerous prior convictions and arrests that are not factored into the Guidelines's Criminal History computation.

Second, the defendant points to other purportedly similar defendants who received lesser sentences. (Def. Sent. Sub. at 7.) But Ilori's aggravating factors are relatively unique. He cannot simply be compared to other fraud defendants. His criminal history, his pretrial release status during the commission of these offenses, and his total lack of acceptance of responsibility sets him apart.

Protecting the Public

This is the relatively rare case where the Court must consider the importance of incapacitating the defendant to protect the public from his further crimes, *see* 18 U.S.C. § 3553(a)(2)(C). Given the defendant's track record, there is no reason to conclude the defendant will ever stop committing fraud and identity theft crimes. He appears to have been engaged in such activity for at least approximately twenty-five years, and his entire adult life. Even as he has aged and had children, his devotion to crime has apparently not wavered. Each crime the defendant commits harms additional innocent victims of identity theft, as well as those who might lose valuable funds and goods as a result of the defendant's crimes. A substantial sentence is necessary to protect the public from the defendant, who is an unrepentant, inveterate fraudster and identity thief.

IV. Forfeiture and Restitution

In addition to a substantial sentence, the Government seeks the imposition of financial penalties. Based on conversations with defense counsel, the Government understands that the defendant may contest the applicability of these financial penalties.

As to forfeiture, the Government seeks the entry of a proposed forfeiture order, attached as Exhibit C, forfeiting the Coinbase Account, Robinhood Account, and Schwab Account, enumerated in the Superseding Indictment, as well as a money judgment in the amount of $1,039,424. The listed enumerated accounts received deposits of fraud proceeds and were used to launder the criminal proceeds. They are thus forfeitable as the proceeds of fraud, pursuant to 18 U.S.C. § 982(a)(2)(A), and as property involved in money laundering, pursuant to 18 U.S.C. § 982(a)(1). The money judgment reflects the actual proceeds the defendant obtained through his fraudulent loan applications, and is forfeitable as the proceeds of fraud, pursuant to 18 U.S.C. § 982(a)(2)(A).

As to restitution, the Government seeks the entry of a proposed restitution order, attached as Exhibit D, with a Schedule of Victims submitted to the Court under seal. The restitution order seeks restitution in the amount of $1,120,462.47. This restitution figure reflects the loss to victims as a result of the defendant's crimes and includes: (1) the money paid out as a result of the defendant's fraudulent loan applications; (2) interest due on those loans; and (3) the amount of rent owed to a New York City landlord as a result of the fraudulent leasing by the defendant of an apartment in Bushwick, New York, under the name William Jamieson.

V. Conclusion

For the reasons set forth above, the Government respectfully requests that the Court impose a period of imprisonment of at least 25 years, to be served consecutive to the sentence imposed by Judge Liman, as such a sentence would be sufficient, but not greater than necessary, to serve the legitimate purposes of sentencing.

Respectfully submitted,

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by: */s/*

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