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July 13, 2023

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

VIA ECF

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

Dear Judge Vyskocil:

Defendant Adedayo Ilori (“Ilori”) respectfully submits this letter in response to the Court’s Order dated June 30, 2023, requiring defendant to state “whether he is requesting a *Fatico* hearing and, if so, explaining the issues he seeks to address and providing legal authority.”¹ Dkt. 133. As stated in his prior submission, Ilori is aware that as to factual issues that were fully litigated during the trial of the instant case, he is not entitled to a *Fatico* hearing. *United States v. Guang*, 110 F.3d 110, 122 (2d Cir. 2007). Additionally, he acknowledges that a district court is not required to resolve contested sentencing issues through an evidentiary hearing and need only “provide the defendant some opportunity to rebut the government’s allegations.” *United States v. Sabhnani*, 599 F.3d 215, 258 (2d Cir. 2005). The manner in which sentencing disputes are resolved is “ordinarily left to the discretion of the sentencing Court.” *United States v. Prescott*, 920 F.2d 139, 144 (2d Cir. 1990).

The government bears the burden of proving a sentencing enhancement by a preponderance of the evidence. *See United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992); *United States v. Guerra*, 888 F.2d 1017, 247, 251 (2d Cir. 1989). Ilori respectfully requests that the Court require the government to meet its burden of proof and conduct a *Fatico* regarding the following sentencing enhancements:

¹ Ilori maintains all of his prior objections the Presentence Report (“PSR”).

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Defendant Derived More than \$1,000,000 in Gross Receipts from One or More Financial Institution, U.S.S.G § 2B1.1(b)(17)(A)

Ilori respectfully submits that he did not personally receive greater than \$1,000,000 from one or more financial institutions. Application Note 13(A) states, “For the purposes of subsection (b)(17)(A), the defendant shall be considered to have derived more than \$1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded \$1,000,000.” In their letter dated June 28, 2023, the government asserts that this enhancement applies here because Ilori had “access and control” over fraudulent bank accounts that held \$1,024,625 in fraud proceeds so he “therefore individually received more than \$1 million from banks.” Dkt. 130, Gov. 6/28/23 Let., p. 7. However, the government cites no proof, other than a reference to a disjointed self-serving statement made by co-defendant Chris Recamier, establishing that Ilori had sole control over the deposited proceeds. As a result, Ilori respectfully requests that the Court conduct a hearing to determine whether he individually derived over \$1,000,000 in gross receipts.

10 or More than Victims Enhancement, U.S.S.G § 2B1.1(b)(2)(A)(i)²

The Application Note 1 for U.S.S.G § 2B1.1(b)(2)(A)(i) defines a “Victim” in relevant part as “any person who sustained any part of the actual loss determined under (b)(1). Victims “within the meaning subsection (b)(2) are only those persons or entities who “sustained actual loss determined by the court under subsection (b) (1).” *United States v. Skys*, 637 F.3d 146, 153 (2d Cir. 2011) (citation omitted). The record of the trial is devoid of any evidence that any person (or entity) beyond the Small Business Administration suffered actual loss.

Ilori acknowledges that Application Note 4(E) to § 2B1.1 states that in cases involving means of identification, the definition of “victims” for § 2B1.1(b)(2)(A)(i) purposes, also includes “any individual whose means of identification was used unlawfully or without authority.” Should the government seek to rely on this provision, Ilori respectfully requests that the Court conduct a *Fatico* hearing and require the government to prove by a preponderance of the evidence that the use of unlawful or unauthorized means of identification for 10 or more individuals was part of the offenses of conviction.

Very truly yours,
Sanford Talkin
Sanford Talkin

cc: AUSA David Felton (by ECF)
AUSA Juliana Murray (by ECF)

² Paragraph 68 of the PSR has a typographical error and applies the ten or more victims enhancement pursuant to 2B2.1(b)(2)(A)(i) instead of 2B1.1(b)(2)(A)(i).