UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

AMOS MUNDENDI,

Defendant.

21 Cr. 247 (PAE)

GOVERNMENT'S SENTENCING MEMORANDUM

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In 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act to provide over $300 billion in emergency relief loans to struggling small businesses that were shuttered as a result of the COVID-19 pandemic and desperately needed money to pay their employees. Amos Mundendi, the defendant, took advantage of the pandemic and participated in a scheme to submit fraudulent applications for millions of dollars in pandemic relief loans through the Paycheck Protection Program ("PPP").

In order to commit the crime, the defendant and his co-conspirators took numerous calculated steps intended to carry out a massive fraud on American taxpayers during a vulnerable time. Those steps included recruiting straw borrowers, setting up email addresses specifically for use in the fraud, and centrally managing the fraudulent loan applications.

To reflect the seriousness of the defendant's conduct, to promote just punishment and respect for the law, and to deter this defendant and others like him, the Government respectfully requests that the Court impose a sentence no less than 57 months' imprisonment.[1]

I. OFFENSE CONDUCT

A. The 2020 PPP Loan Fraud Scheme

At the height of the COVID-19 pandemic in 2020, Toussaint sought to fraudulently obtain millions of dollars in Government-guaranteed loans intended to help businesses and employees struggling during the pandemic.

The CARES Act provided emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The CARES Act authorized hundreds of billions of dollars in forgivable loans to small businesses to pay for payroll,

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[1] The parties stipulated to a Guidelines range of 57 to 71 months in the plea agreement (the "Stipulated Guidelines Range"). As noted below, the Probation Department calculated a higher Guidelines range of 63 to 78 months' imprisonment based on its determination that the defendant has four criminal history points, rather than three. (PSR ¶ 106).

mortgage interest, rent, and/or utilities through the Paycheck Protection Program ("PPP"). The amount of PPP funds a business was eligible to receive was determined by the number of employees employed by the business and their average payroll costs.

Starting in the spring of 2020, Mundendi and his co-conspirators, Mackenzy Toussaint, Apocalypse Bella, Alvin Maxwell, and others were involved in an extensive scheme to prepare and submit fraudulent applications to the SBA and companies which process PPP loan applications, to obtain at least approximately $30 million in government-guaranteed loans for various companies through the SBA's PPP Program. This scheme resulted in the approval of fraudulently procured loans for two companies ("Company 1" and "Company-2"), both located in the Southern District of New York, totaling approximately $3.969 million, and the distribution of the fraud proceeds to a series of bank accounts located in the United States and elsewhere, including bank accounts controlled by Toussaint and Bella.

The defendant executed the scheme by conspiring with various individuals, including the owner of PPP Loan Companies-1 and 2 ("Owner-1") and Alvin Maxwell, who were affiliated with companies (collectively, the "Straw Companies") that were eligible for PPP relief, such as Company-1 and Company-2 (collectively, the "Straw Company Agents"). These Straw Company Agents were used as applicants in the fraudulent scheme, whom Bella, Toussaint, Mundendi, and others recruited to apply to the PPP program in the names of the Straw Companies.

The fraudulent loan applications contained fabricated payroll information and false numbers of employees. For example, the loan applications for Company-1 claimed that Company-1 had an average monthly payroll of approximately $790,000 and 121 employees. An earlier EIDL application had represented that Company-1 had only 4 employees. The PPP loan applications for Companies-1 and -2 sought $1,976,341.00 and $1,992,673.00 in loan funds respectively. At the time those loan applications were submitted, the loan processor would fund only up to a maximum amount of $2 million.

In early July 2020, the loan processor disbursed almost $4 million into the bank accounts for Companies-1 and -2. Those funds were consolidated into one bank account. In the next two months, Owner-1 transferred millions of dollars out of that bank account. Over $1.6 million was transferred overseas via wire transfer. A significant portion of the fraud proceeds was transferred domestically and ended up in the hands of the defendants. Of the fraud proceeds from Companies-1 and -2, Toussaint received approximately $138,000, Bella received approximately $730,000, and Mundendi's parents received approximately $78,000.

To execute the fraud, the co-conspirators used a series of email accounts that were created specifically for use in the fraud. The email provider used for these accounts allows users to create "alias" email addresses—i.e., different email addresses all for the same email account. The applications for Companies-1 and -2 listed two particular email addresses as the points of contact. Those two email addresses are two of twelve "alias" email addresses that all share the same email account ("Fraudulent Email Account-1"). Nine of the other alias email addresses for Fraudulent Email Account-1 were also used in PPP applications. A review of Fraudulent Email Account-1 pursuant to a search warrant indicated that the account contained emails related only to PPP loan applications. Two emails relating to the PPP loan applications for Companies-1 and -2 were forwarded from Fraudulent Email Account-1 to an email account used by Bella. Emails from Fraudulent Email Account-1 were also sent to an email account belonging to Toussaint. For example, on or about July 3, 2020, the user of Fraudulent Email Account-1 sent an email from one of its alias email addresses to one of Toussaint's email accounts, with the subject line "it." The email message contained no text, but its attachment was a copy of one of the Straw Companies' PPP loan applications.

Toussaint also used a modem registered to his fiancée (the "Modem") as part of the fraud. A comparison of IP addresses[2] used to access Toussaint's personal accounts and IP addresses used to access the fraudulent loan accounts indicated that Toussaint used IP addresses assigned to the Modem to access fraudulent loan applications. For example, between May 2020 to October 2020, Toussaint logged into one of his personal email accounts using IP addresses assigned to the Modem almost every day. In an overlapping time period, between June 2020 to September 2020, IP addresses assigned to the Modem were used to access approximately 23 different PPP loan applications, including those for Companies-1 and -2. The use of the same IP address is a strong indicator that the same person who accessed the personal email account also accessed the PPP loan applications. Those 23 different PPP loan applications resulted in requests totaling approximately $31,078,471 in PPP loans, of which approximately $15,448,830 was approved and disbursed.

On or about June 18, 2020, two of the IP addresses assigned to the Modem were used to file EIDL applications in Mundendi's name. Those two EIDL applications accurately listed Mundendi's personal information (including his date of birth and social security number), and listed a particular email address (the "Mos30 Email Address") as the primary email address. The Mos30 Email address is an alias email address associated with the BigShot Email Address (the email address to which Owner-1 was originally instructed to send his business information).

[2] An Internet Protocol ("IP") address is a numerical label assigned to each device participating in a computer network that uses the Internet Protocol for communication. IP addresses serve to identify particular devices on a network and to allow information to be routed to and from those devices.

B. The 2021 PPP Loan Fraud Scheme

Starting in or about February 2021, Mundendi began facilitating the process of fraudulently applying for a second round of PPP loans, including for Company-1 and Company-2, by reaching out to Owner-1. This resulted in a second fraudulent PPP Loan Application being prepared and submitted in the name of Company-2 ("Second Company-2 PPP Loan Application"), requesting $2 million in additional PPP loans.

WhatsApp messages between Owner-1 and Mundendi include the following:

- On or about February 26, 2021, Owner-1 told Mundendi that Company-1 had 5 employees in the United States, and over 100 overseas, and that Company-2 had 2 employees in the US. Mundendi responded, "Ok let me tell him."

- On or about March 2, 2021, Owner-1 gave Mundendi the online log-in information for Company-1 and Company-2 on Lender-1's website.

- On or about March 5, 2021, Mundendi asked if Owner-1 was able to do a "questionnaire" because "they trying to get you funded by next week."

- On or about March 8, 2021, Owner-1 sent Mundendi a completed form for Company-2's PPP loan application. Mos responded, "Great . . . I'll forward it to [them]."

- On or about March 14, 2021, Owner-1 told Mundendi, "Hello as a heads up let me know which financial institution your team would be utilizing in case I get any calls or something." Mundendi responded, "Ok but I'll keep you posted."

- On or about March 22, 2021, Mundendi asked Owner-1, "Can you please send me a copy of your void check?" Owner-1 sent Mundendi a copy of a Company-1 and Company-2 voided check images. Mundendi responded, "I got them two and sent them over." The next day, Mundendi asked Owner-1 asked him to send him the code (i.e., the code for dual factor authentication for the Lender-1 account).

- On or about March 27, 2021, Mundendi forwarded Owner-1 a message reading, "Your client needs to go to their email. Click the link. Create a password. Text you the new password. Link their bank account on the system. Tell me when their [sic] done. Asap." Owner-1 responded that "I will do this in the morning." Owner-1 received an email on or about March 28, 2021 with instructions from a different lender ("Lender-2") to link his bank account. Later, Owner-1 sent Mundendi the log-in information for a Lender-2 account.

- On or about March 27, 2021, an application for Company-1 was submitted to Lender-2. That application represented that Company-1 had 121 employees and an average monthly payroll of $799,990. That loan was never funded.

II. DISCUSSION

A. Applicable Law and Guidelines Range

The United States Sentencing Guidelines continue to provide strong guidance to the Court following *United States* v. *Booker*, 543 U.S. 220 (2005), and *United States* v. *Crosby*, 397 F.3d 103 (2d Cir. 2005). Although *Booker* held that the Guidelines are no longer mandatory, it also held that the Guidelines remain in place and that district courts must "consult" the Guidelines and "take them into account" when sentencing. *Booker*, 543 U.S. at 264. As the Supreme Court stated, "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range" — that "should be the starting point and the initial benchmark." *Gall* v. *United States*, 128 S. Ct. 586, 596 (2007).

After that calculation, however, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1); the four legitimate purposes of sentencing, *see id.* § 3553(a)(2); "the kinds of sentences available," *id.* § 3553(a)(3); the Guidelines range itself, *see id.* § 3553(a)(4); any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," *id.* § 3553(a)(6); and "the need to provide restitution to any victims," *id.* § 3553(a)(7). *See Gall*, 128 S. Ct. at 596 & 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; and

(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).

The parties agreed, in the plea agreement, that a Guidelines range of 57 to 71 months' imprisonment (the "Stipulated Guidelines Range") was appropriate. (PSR ¶ 12).

In the Presentence Investigation Report, the United States Probation Office calculated an applicable Guidelines range of 63 to 78 months' imprisonment, because Probation has determined that two 2022 convictions—one for driving while intoxicated (PSR ¶ 61) and one for assault causing bodily injury (PSR ¶ 62)—each result in one point. The Probation Department further determined that the defendant's 2012 arrest in Addison, Texas for failing to identify himself had ultimately resulted in a dismissal and thus no criminal history points were warranted. (PSR ¶ 67) These determinations increases the criminal history score by one point (from three points to four points). Probation therefore places the defendant in Criminal History Category III, as opposed to Criminal History Category II.

B. The Nature and Circumstances of the Offenses and the Need for Punishment Weigh In Favor of a Significant Sentence

The defendant's crimes were extremely serious. The defendant saw the CARES Act as an opportunity to enrich himself. 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's actions were calculated, sophisticated, and involved a nationwide network of co-conspirators. The defendant and his co-conspirators used specially-created email accounts to centrally manage the fraudulent loan applications and recruited others to participate in the scheme. The fraudulent loan applications were carefully designed to maximize the fraud proceeds (for example, applying for a loan in the amount of $1.976 million when the loan processor's maximum loan amount was $2 million).

The scale of the fraud is staggering. The defendant was held responsible for fraudulent loan applications which sought over $11 million in pandemic relief funds—all of which were actually funded. The defendant therefore caused millions of dollars in losses to the American taxpayers. The defendant did not profit as substantially as other co-defendants in the fraud (his parents received about $78,000 in fraud proceeds). However, unlike some of the other co-defendants in this case, the defendant participated in two "rounds" of filing fraudulent PPP applications—attempting to file fraudulent PPP applications for the same company in 2020 and 2021.

The defendant took advantage of a national emergency to steal millions of dollars from the American people. This constitutes extraordinarily serious conduct that warrants significant punishment. For these reasons, the nature and circumstances of the defendant's conduct and the need for just punishment warrant a sentence no less than 57 months' imprisonment.

C. A Sentence Within the Stipulated Guidelines Range Is Necessary to Promote Respect for the Law and Afford Adequate Deterrence to Criminal Conduct

The need to afford adequate deterrence to both the defendant and the public generally also weighs strongly in favor of a significant term of imprisonment. The defendant has a long record of arrests and convictions—for both violent and fraud/theft offenses. He has 2012 and 2020 convictions for assault. (PSR ¶¶ 58, 62). In addition, in 2011, he was arrested for assault. The disturbing police reports for that assault indicate the defendant assaulted his then-girlfriend with closed fists—resulting in her hospitalization. (PSR ¶ 67). In addition to *that*, the defendant was remanded by this Court in October 2022 because he had been twice arrested for assault in September 2022. Once, on September 22, 2022, when the defendant, intoxicated, punched the bouncer of a club on the side of his face with a closed first. And on September 29, 2022, the defendant was arrested for assaulting a restaurant patron with a closed fist.[3]

The defendant also has convictions and arrests for theft. He was convicted in 2014 of theft of property. (PSR ¶ 59). The report for that incident indicates that the defendant conspired with others to steal six vehicles from a car rental company, with a total value over $100,000. (*Id.*) That report also quotes a witness who stated that Mundendi had instructed him not to cooperate with the police. (*Id.*) In addition, as was discussed at the defendant's bail hearing in October 2022, the defendant was also arrested in June 2022 for stealing multiple iPhones from his employer, UPS. At least one of those thefts were captured on CCTV footage.

In addition, the defendant has a string of arrests in which he either gave false information to law enforcement or was found in possession of identification documents belonging to others. In April 2012, the defendant was stopped by law enforcement for a traffic violation. (PSR ¶ 67). He told law enforcement that his name was "Israel Mundendi" and gave them an incorrect date of birth. (*Id.*). In July 2020, the defendant was arrested for driving while intoxicated. He was also found "in possession of eight credit cards in [an]other individual's name and a passport, Mastercard, and social security card for Richard Smith." (PSR ¶ 61). Then, in December 2020, the defendant was stopped again for a traffic violation. He told the police officer that he did not have to follow the speed limit because the government "cannot tell people what to do." (PSR ¶

[3] The Presentence Report, which is dated June 28, 2022, was filed prior to the July and September arrests which triggered the bail hearing in October 2022.

69). He then gave the officer three different identification documents, some of which were in the name "El Ashile Mundi." (*Id.*).

The defendant's many prior arrests and convictions have failed to deter him from criminal conduct. His behavior—which runs the gamut from assault to driving while intoxicated to theft, and now fraud—demonstrates a disrespect for the law and poses a significant danger to the public.

The defendant also has a spotty history of employment. There is no employment identified from 2017 to 2022. (PSR ¶¶ 94-98). And while the defendant was able to secure employment while on pretrial release, he was then fired from that job for stealing packages from his employer.

Accordingly, a significant sentence is necessary to discourage the defendant from committing further crimes and to impress upon him the serious consequences of his criminal conduct.

Importantly, a strong message is also needed to deter others from lying to fraudulently secure scare government funds during a national emergency. Such a message is particularly important at a time when such crimes involving pandemic relief, which are often difficult to detect and prosecute, have become rampant. Indeed, Congress's Select Subcommittee on the Coronavirus Crisis identified up to approximately $84 billion in potentially fraudulent loans in the PPP and EIDL Programs.[4] Accordingly, the sentence imposed must demonstrate that the consequences of committing these types of fraud are severe.

[4] *See* https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-03-25%20Staff%20Memo%20-%20Small%20Business%20Fraud.pdf.

III. Conclusion

For all the reasons set forth above, the Government respectfully submits that a sentence no less than 57 months' imprisonment, is sufficient, but not greater than necessary, to achieve the legitimate goals of sentencing.

Respectfully submitted,

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