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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ARTUR AYVAZYAN, Defendant.	No. CR 20-00579-SVW-3 GOVERNMENT'S RE-SENTENCING POSITION FOR DEFENDANT ARTUR AYVAZYAN Sentencing: April 15, 2024 Time: 11:00 a.m. Location: Courtroom of the Hon. Stephen V. Wilson

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California, Assistant United States Attorneys Scott Paetty and Brian Faerstein, and Department of Justice Trial Attorney Christopher

Fenton, hereby files its re-sentencing position regarding defendant Artur Ayvazyan.

The government's re-sentencing position is based upon the attached memorandum of points and authorities, the government's original sentencing memorandum (ECF 1133), the presentence investigation report, the files and records in this case, and any other evidence or argument that the Court may wish to consider at the time of re-sentencing. The government reserves the right to file any supplemental sentencing positions that may be necessary.

Dated: April 8, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following a jury trial, defendant Artur Ayvazyan was convicted of numerous offenses in connection with his role in a sweeping conspiracy to fraudulently obtain and launder millions of dollars in federal Covid-relief funds that were intended to assist businesses impacted by the pandemic. The Court found "there was overwhelming evidence of Defendant's guilt." (ECF 875 at 11.) At sentencing, the Court decried the fraud in this case as "horrific and calculated and calloused" because, among other things, it "resulted in losses to a very vulnerable program imposed at a critical time in the country's history." (ECF 1188; 11/15/21 Tr. 25:7-10.) As for defendant, who sought to shift blame to his wife and codefendant, Tamara Dadyan, while testifying in his own defense at trial, this Court found that defendant "perjured himself" while peddling "patently incredible" and "totally implausible" testimony at trial. (11/15/21 Tr. 13:5-14:7.)

Although not the architect of the fraud, defendant played an important role helping his wife and his brother, Richard Ayvazyan, who were the ringleaders. Accordingly, he received a sentence of 60 months' imprisonment, while his wife and brother respectively received sentences of 130 months and 17 years. When sentencing defendant, the Court explained that it applied "the most charitable analysis [of the loss attributable to the conspiracy that] the defense can get" (Id.; 11/15/21 Tr. 4:9–12), and "impose[d] the most lenient sentence necessary" (Id.; 11/15/21 Tr. 25:23–25). Indeed, defendant's 36-month sentence (not including the additional mandatory 24-month consecutive sentence he received for aggravated identity theft) was significantly below the advisory Guidelines range of 70 to

87 months for his bank/wire fraud conspiracy, bank/wire fraud, and money laundering conspiracy offenses.

On appeal, the Ninth Circuit rejected virtually all of defendant's challenges to his conviction and sentence, including challenges to the sufficiency of the evidence and this Court's application of the Guidelines. The Ninth Circuit, however, remanded the case for a de novo resentencing solely because of one procedural (not substantive) issue, namely, that the Court did not invite the allocution of defendant at the sentencing hearing. The government recommends that at re-sentencing, the Court impose the same sentence as before: 60-months' imprisonment, five-years supervised release, a special assessment of $2,200, and restitution in the amount of $17,723,141.26. Not only does the factual record remain the same, but the Ninth Circuit affirmed the Court's view of the evidence as well as its correct application of the advisory Guidelines.[1]

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY[2]

A. Defendant's Charges, Testimony and Conviction at Trial, and Post-Trial Motions

On March 9, 2021, a grand jury returned a first superseding indictment against defendant and seven codefendants, charging conspiracy to commit bank fraud and wire fraud, substantive wire fraud and bank fraud counts, aggravated identity theft, and conspiracy to commit money laundering. (ECF 154.) On June 15, 2021,

[1] Rather than repeat all of the arguments that the government originally made in connection with defendant's sentencing, the government incorporates by reference the government sentencing memorandum (ECF 1133).

[2] The government provided an extensive summary of the facts presented at trial related to defendant Artur Ayvazyan in its opposition to defendant's Rule 29 and 33 motion (ECF 793), and incorporates by reference the factual background contained therein.

defendant and three of his co-conspirators — brother Richard Ayvazyan, sister-in-law Marietta Terabelian, and cousin-in-law Vahe Dadyan — went to trial and defendant was convicted of all counts charged against him. (ECF 644, Redacted Verdict Form.) Defendant's wife, Tamara Dadyan, pleaded guilty to counts 1, 24, and 26 prior to trial, and - following defendant's convictions - filed a motion to withdraw her guilty plea (and later fled the country after that motion was denied by this Court). (ECF 525, 541, 998, 1193, and 1271.)

At trial, defendant testified and, under oath, attempted to convince the jury and this Court that his wife, co-defendant Tamara Dadyan (not present at trial on account of her plea), was solely responsible for the volumes of incriminating documentary evidence found in his possession at his home. Defendant claimed, incredibly, that he permitted her to submit COVID-19 disaster relief loan applications for his business without even knowing the amount of those loans. (ECF 676; 6/23/21 A.M. Tr. 101:24-103:19 and 108:3-110:12.)

Defendant also tried to obfuscate the overwhelming proof of his direct participation in the charged conspiracy found on his phone. This evidence included personal identifying information for individuals and businesses used in fraudulent PPP and EIDL applications (see Government Trial Exhibit ("GEX") 24b), handwritten instructions to make changes to identification cards ("IDs") followed by images of false and fraudulent IDs matching those instructions (see GEX 24a at 16-19), and numerous images of checks and debit/credit cards in names of individuals and businesses used in the charged conspiracy (see GEX 24c). The evidence also included copies of confirmations of the very same Small Business Administration loan applications whose amounts he allegedly did not see (see GEX 24d). Defendant's explanation as to why the voluminous evidence of fraud found on his phone was the same as that found at his home was that the incriminating evidence was "likely" put there by his wife, Tamara Dadyan. (ECF 676; 6/23/21 A.M. Tr. 102:14-103:7 and 104:22-105:21.)

In contrast, defendant testified that his brother, Richard Ayvazyan, who had not pleaded guilty and was contesting the charges at trial with defendant, was a "great guy" to whom he had transferred fraudulent loan proceeds (albeit only after first laundering it through two other bank accounts) simply to repay a supposed business loan from many years earlier. (Id. at 89:5-18 and 111:18-113:4; see also GEX 115 at 7.)

The jury rejected defendant's inconsistent testimony and attempt to shift all blame to his wife (co-defendant Tamara Dadyan), and convicted defendant on all counts for which he was charged. Following defendant's convictions, defendant moved for a judgment of acquittal and a new trial pursuant to Fed. R. Crim. P. 29 and 33. (ECF 686, 687.) The government opposed, and the Court denied defendants motions, finding that "there was overwhelming evidence of Defendant's guilt." (ECF 875 at 11.) The Court went on to find that, "[t]he evidence in this case does not preponderate heavily against the verdict. Instead, it preponderates heavily in favor of the verdict against Defendant." (Id. at 12.)

B. The Presentence Investigation Report and the Parties' Respective Sentencing Recommendations

The USPO filed its PSR and recommendation letter for defendant on September 23, 2021, in which it calculated a criminal history category of I and total offense level of 35, yielding an advisory guidelines range of 168 to 210 months' imprisonment for counts 1-20 and 26, plus a mandatory consecutive term of 24 months' imprisonment for his aggravated identity theft conviction in count 24. (PSR ¶¶ 2, 6, 81-113, 115-125, and 176-178.) The USPO's offense level calculation of 35 was based on the following:

- a base offense level of 7 (see U.S.S.G. § 2B1.1(a)(1));
- +20 for a loss between $9.5 million and $25 million (see U.S.S.G. § 2B1.1(b)(1)(K));
- +2 for ten or more victims (see U.S.S.G. § 2B1.1(b)(2)(A)(i));
- +2 for sophisticated means (see U.S.S.G. § 2B1.1(b)(1));
- +2 for the use of identifications (see U.S.S.G. § 2B1.1(b)(11)); and
- +2 for defendant's conviction for violating 18 U.S.C. § 1956 (see U.S.S.G. § 2S1.1(b)(2)(B)).

(PSR ¶¶ 81-112.) The USPO further recommended that this Court impose a total sentence of 192 months' imprisonment at the low-end of the effective advisory guidelines range (which included the mandatory consecutive 24-month sentence for count 24), plus five years of supervised release. (USPO Rec. Letter at 3-7.)

The government agreed with the PSR's calculation except that it argued for an additional two-level vulnerable victim enhancement pursuant to U.S.S.G. § 3A1.1(b)(1) for a total offense level of 37 and an advisory Guidelines range of 210 to 262 months (exclusive of the 24 months' mandatory minimum for the Section 1028A conviction). (See CR 1041 ("Govt. PSR Obj.") at 2-4; CR 1133 at 17-21.) The government argued for a 260-month sentence (236 months for the underlying offenses plus 24 months for the Section 1028A conviction).

Defendant objected to all of the PSR's findings with respect to the sentencing enhancements and adjustments and instead argued for a total offense level of 16 and an advisory Guidelines range of 21 to 27 months (exclusive of the 24-month mandatory minimum for the Section 1028A conviction). (See ECF 1038 ("Def. PSR Obj.") at 12.) Specifically, defendant argued that the loss was less than $250,000 and that he qualified as a minor participant in the scheme for purposes of USSG § 3B1.2. The defendant argued for a 36-month sentence (12 months for the convictions on the underlying offenses plus 24 months for the Section 1028A conviction).

C. The Sentencing Hearing

At the sentencing hearing, the Court determined the offense level was 27 based on the following calculation:

- a base offense level of 7 (see U.S.S.G. § 2B1.1(a)(1));
- +16 for a loss between $1.5 million and $3 million (see U.S.S.G. § 2B1.1(b)(1)(I))[3];
- +2 for sophisticated means (see U.S.S.G. § 2B1.1(b)(1));
- +2 for defendant's conviction for violating 18 U.S.C. § 1956 (see U.S.S.G. § 2S1.1(b)(2)(B)). (ECF 1188; 11/15/21 Tr. at 4:9-19.)

The Court rejected defendant's argument that he qualified as a minor participant in the scheme for purposes of USSG § 3B1.2.

When sentencing defendant, the Court examined the Section

[3] The Court applied what it considered to be the "the most charitable analysis [of the loss attributable to the conspiracy that] the defense can get". (ECF 1188; 11/15/21 Tr. 4:9 – 4:12.)

3553(a) factors, and found that "the fraud here was horrific and calculated and calloused and resulted in losses to a very vulnerable program imposed at a critical time in the country's history." (ECF 1188; 11/15/21 Tr. 25:7-10.) During the sentencing hearing, the Court also explained that it believed that defendant "lied when he testified" at trial. (Id. at 13:5-14:7.) The Court found defendant's testimony to be "patently incredible" and "totally implausible." (Id.) This led the Court to find that defendant had "perjured himself." (Id.)

Based on the Court's consideration of the advisory Guidelines and the Section 3553(a) factors, the Court imposed a sentence of 60 months' imprisonment, which included 36 months for the underlying offenses (namely, conspiracy to commit bank fraud and wire fraud (count 1), numerous substantive counts of wire fraud and bank fraud (counts 2-20), and conspiracy to commit money laundering (count 26)), and 24 months for aggravated identity theft (count 24). At the sentencing hearing, the Court explained that "judges have discretion to impose the most lenient sentence necessary in their discretion, and that is what I think I am doing." (ECF 1188; 11/15/21 Tr. 25:23-25.) The Court also ordered supervised release for five years, a special assessment of $2,200, and restitution in the amount of 17,723,141.26. (ECF 1265.)

Defendant's wife, Tamara Dadyan, was sentenced to 130-months' imprisonment. Defendant's brother, Richard Ayvazyan, was sentenced to 17 years' imprisonment.

D. Defendant's Appeal

On appeal, defendant argued that his convictions were not supported by sufficient evidence and that the Court erred in its application of the Guidelines and by failing to invite his allocution. The Ninth Circuit rejected virtually all of defendant's challenges, affirming as to defendant's jury convictions and the Court's application of the Guidelines. Memorandum, United States v. Artur Ayvazyan, No. 21-50302 (9th Cir.) (Aug. 7, 2023) (ECF 104-1.) Specifically, the Ninth Circuit found there was sufficient evidence to support all of defendant's convictions and affirmed this Court's application of the 16-level loss enhancement and 2-level sophisticated means enhancement, as well as the Court's rejection of the minor role adjustment. (Id.) The Ninth Circuit, however, vacated in part because the Court did not invite allocution and remanded the case back to the Court for defendant's de novo resentencing. (Id.)[4]

III. THE COURT SHOULD IMPOSE THE SAME SENTENCE AS BEFORE

The Court correctly calculated defendant's sentencing range at 70 to 87 months, reflecting an offense level of 27 based on the rulings that were subsequently affirmed by the Ninth Circuit. The Court's below-Guidelines sentence of 36 months' imprisonment (not including the 24-month mandatory consecutive sentence for aggravated identity theft) was within the Court's discretion and reflected the extremely serious nature of defendant's crimes, his role in the offenses relative to his co-conspirators, the fact that he perjured himself at trial, and numerous other factors that compelled a substantial custodial sentence.

[4] In a separately filed opinion, the Ninth Circuit affirmed the Court's judgment as to defendant's restitution obligation. Memorandum, United States v. Artur Ayvazyan, No. 21-50302 (9th Cir.) (Aug. 7, 2023) (ECF 99-1.)

The factual record with respect to this case remains the same -- and if anything, the record with respect to defendant is worse at this stage of the proceedings. Specifically, after he was sentenced in this case, defendant sustained two separate significant state court convictions, both in the Superior Court of California, County of Los Angeles. First, on June 13, 2023, defendant was sentenced to seven years in state prison (to be served <u>concurrently to his federal sentence in this case</u>) as a result of his pleading guilty to multiple felonies (including conspiracy to commit grand theft, money laundering, mortgage fraud, identity theft, and counterfeiting) arising out of a sprawling mortgage-fraud-related conspiracy in which he was charged with numerous co-conspirators, wholly separate from the conduct for which he was convicted here. <u>See</u> California Superior Court Case No. BA484293 (Cal. Sup. Ct. June 13, 2023). Second, on November 21, 2023, defendant separately was sentenced to three years in state prison for rape. <u>See</u> California Superior Court Case No. XNWLA096433-01 (Cal. Sup. Ct. Nov. 21, 2023). Defendant's record of other transgressions thus has only become more clear since his prior sentencing hearing, as he proceeds to resentencing solely because of one procedural error during the initial sentencing hearing.

In sum, the Court's findings with respect to the sufficiency of the evidence and applicability of the advisory Guidelines has been affirmed on appeal, and the factual record in the instant case remains the same. Whatever potential mitigating circumstances defendant seeks to muster at this stage of the proceedings should be considered within the total scope of his personal history and characteristics under Section 3553(a), including his most recent convictions in California state court. Taken as a whole, the Court should impose at re-sentencing the same sentence as it previously imposed.

IV. CONCLUSION

For the aforementioned reasons, the government respectfully requests that the Court sentence defendant to 60 months total imprisonment (comprised of 36 months to be concurrently served on counts 1-20 and 26, and the mandatory consecutive term of 24 months on count 24), five years of supervised release, order defendant to pay $17,723,141.26 in restitution, and order $2,200 in special assessments.