IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA	)
	)
v.	)
	) Criminal No. 2:20-cr-114-FTM-66MRM
	)
CASEY DAVID CROWTHER	)
	)
Defendant.	

CASEY CROWTHER'S MEMORANDUM IN AID OF SENTENCING AND MOTION FOR VARIANCE

Casey David Crowther respectfully, through his counsel, submits this memorandum in order to provide information to assist the Court with fashioning a sentence that is "sufficient but not greater than necessary" to achieve the statutory purposes of punishment and a just sentence. Mr. Crowther also respectfully requests the Court to consider the multiple factors pursuant to 18 USC §3553(a)(1)-(7) that would warrant a variance and a sentence significantly below the guidelines range.

I. INTRODUCTION

Casey Crowther is a 35-year-old devoted father of 3, loving husband, local business owner, and valued member of the Fort Myers community. His family has lived in southwest Florida for generations and is well-known throughout the community, but Casey's story is not that of the privileged family which has been portrayed. Casey's mom struggled with addiction and his father worked extremely long hours to provide for Casey and his younger sister. Casey essentially raised himself and started roofing when he was just 15 years old to assist with supporting the family. He worked long hours as an apprentice roofer in the sweltering Florida sun to learn and master the family trade. By all accounts, Casey is an extremely hard worker and took great pride in putting in an honest day's work for an honest day's pay. He has put his heart, soul and all of his resources into building a successful roofing company that, at one point in time, employed over 200 employees.

Although negative media coverage has painted Casey as the poster boy of Paycheck Protection Program ("PPP") fraud, the reality of his charges is much different. Target Roofing is a legitimate roofing business which qualified for and received one PPP loan. Unlike many other companies throughout the United States, Target Roofing was considered an essential business and remained open during the pandemic to continue to service its customers and maintain its employees. Target Roofing implemented additional safeguards to protect workers and, under Casey's supervision, the Company not only continued to accept roofing projects at a reduced price but continued to give back to the community, organizing and providing pallets of food to local food pantries during the global pandemic. *See* ***Attachment A.***

Unlike the majority of PPP cases nationwide, Casey paid his employees and spent the sum of the loan amount on allowable expenses during the Covered Period pursuant to forgiveness requirements as described within the CARES Act. *Exs. A4, A5*; *Portinari Tr. at pp. 46:22-25, 47: 1-10*; *Knott Tr. at pp.12:8-25, 13:1-25, and 14:1-12*. The loan was a performing loan at the time of his arrest and remains a performing loan on the books and records of Sanibel Captiva Community Bank. Target Roofing has not submitted a forgiveness application so there are no government funds involved. This is not your typical federal fraud case. The Government inserted itself into a performing loan – there are no loss amounts and there is no evidence that Casey ever intended to default on his loans with either the mortgage lender or the bank pursuant to the loan terms at the time of the application or thereafter. The guidelines range calculated within the PSR does not come close to accurately portraying the offenses.

As stated in his letter to the Court, Mr. Crowther takes full responsibility for the mortgage fraud and deeply regrets his actions. He respects the verdict of the jury in the PPP fraud case. He deeply regrets buying the boat and is extremely remorseful for the devastating consequences his actions had on his family and his business. He stands before the Court as a first-time offender with sincere remorse, embarrassment, and regret for making poor decisions that now overshadow decades of diligence and hard work, including years of building both a family and a successful local business that was fortunate enough to grow and employ so many within the community. Through this submission, Casey would like to provide the Court with additional information to consider in formulating a just sentence.

II. ANALYSIS OF STATUTORY FACTORS AS APPLIED TO THIS CASE

A. Nature and Circumstances of the Offense, 18 U.S.C. §3553(a)(1)

Mr. Crowther was arrested on September 2, 2020, for bank fraud in relation to his application pursuant to the PPP. He never disputed the facts within the original indictment or the following superseding indictments surrounding the application for the bank funds or the purchase of the boat. Since the inception of this case, he has argued that this was a legal matter regarding statutory construction and the Small Business Administration ("SBA") and Government's misinterpretation of the CARES Act. Because of the mass confusion regarding the CARES Act, this was not a frivolous endeavor. Congress passed this legislation at an alarming rate with little to no guidance or parameters in place for lenders or borrowers. The SBA, the regulating government agency for this legislation, admitted to misinterpreting the CARES Act, resulting in a number of misleading Interim Final Rules and inaccurate guidance. The guidance continues to be unclear. *See* ***Attachment B.*** Unfortunately, there is no avenue in criminal proceedings to address these legal arguments prior to a trial. As seen in other recent Eleventh Circuit cases, sometimes the prosecution's interpretation of a statute is excessively broad and needs to be checked via the judicial branch. *See*, *e.g.*, *Van Buren v. United States*, No. 19-783, 2021 WL 2229206 at *1 (U.S. 2021); *Yates v. United States,* 574 U.S. 528 (2015). We would ask that Mr. Crowther's constitutional right to go to trial not be held against him at sentencing.

Mr. Crowther deeply regrets his decision to buy a boat during this timeframe and is remorseful about his poor accounting decisions. Because of his history of buying and selling boats, Mr. Crowther did not stop to think about the repercussions his actions would have on his family and employees and he deeply regrets what he has put them through. However, we have yet to find a case sentenced, or even charged, that is remotely similar to Mr. Crowther's case. Mr. Crowther's case appears to be the <u>only</u> legitimate company prosecuted by the federal government who paid its employees in full during the covered period pursuant to the forgiveness requirements of the CARES Act. The hundreds of criminal cases charged nationwide over the past year include overtly fraudulent statements on multiple PPP and/or Economic Injury Disaster Loan ("EIDL") applications including fraudulent shell companies, false employee and payroll numbers, fake tax forms, and various other false statements. In stark contrast, Mr. Crowther's company Target Roofing is a legitimate company that utilized the actual number of employees, recorded the actual payroll numbers, and provided the actual documentation to support eligibility for the loan application. Not only was Target Roofing eligible for the loan, the Company paid the total sum of the loan proceeds on payroll and other allowable expenses pursuant to the forgiveness requirements of the CARES Act. Target Roofing has not applied for forgiveness. Non-disputed trial testimony proved that the loan remains a performing loan on the books and records of Sanibel Captiva Community Bank. As such, there are no loss amounts associated with the loan, no demand has been made for payment, and no default provision has been exercised.

Mr. Crowther took full responsibility for his actions regarding the purchase of the St. James City residence and pled straight up to the mortgage fraud charges prior to trial and without the benefit of a plea agreement. He was charged with mortgage fraud in a superseding indictment after refusing to plead guilty to the PPP fraud for the reasons stated above. But for the PPP fraud charges, it is highly unlikely that a loan application for a home where the loan was in good standing, the loan payments were being timely made, and there were no loss amounts would be prosecuted as a federal crime. Mr. Crowther discussed the purchase of the Saint James City property with his mortgage broker prior to entering into a contract. During those discussions, Mr. Crowther informed the mortgage broker of his credit score and the intended down payment of 50%. At this time the mortgage broker informed Mr. Crowther that he would have no problem originating a loan. It was not until Mr. Crowther was already under contract and his due diligence period had expired that he was notified that the down payment had to be funded out of one account. Mr. Crowther then made an extremely poor decision to alter the bank records. Mr. Crowther had the funds in multiple bank accounts, including proceeds from the Jade property that he had just sold, accounts receivable, his corporate account and others but he changed the bank documents to reflect that the down payment came from a single account. It should be noted that all the monies were funded by Mr. Crowther on the date of closing.

Even in light of this poor decision, it is clear that Mr. Crowther never intended to defraud the lender. He put a 50% down payment on the home ($686,732.56); someone having the intent to walk away from a mortgage would never provide that much money as a down payment. Mr. Crowther paid his mortgage payments on time and he would have continued to pay the mortgage payments for the lifetime of the loan so that he could live in his dream home and raise his kids near the water. Even following the indictment, Angel Oak Mortgage company did not default the loan and it remained in good standing until the property was sold. After his arrest, the 3653 San Carlos Drive residence was sold for approximately $1,300,000 on November 22, 2020. The mortgage lender, Angel Oak, received full repayment of the loan amount ($640,381.21). Unlike most federal fraud cases, the loss amount for the mortgage fraud is $0.

The nature and circumstances of both instant offenses are unique in that the victims suffered no loss and that Mr. Crowther never intended to harm the victims or create a loss. He made poor decisions and has paid for those poor decisions but the typical intent to defraud and injure characteristic of most federal fraud cases is lacking here.

B. Characteristics of the Defendant, 18 U.S.C. §3553(a)(1)

Mr. Crowther has no significant prior criminal history and, with the exception of these offenses, has led an exemplary life.[1] He grew up in the Fort Myers area and currently resides here with his wife and three young children. He is a football and baseball coach, a local businessman, and has served on the boards of local charities. Mr. Crowther is dedicated to his wife and children. He adores his children and spends a quality amount of time with them -- coaching sports, attending dance recitals, and spending the weekends fishing and hunting. Mr. Crowther is also very passionate about giving back to his community. He's been a football coach for the last 6 years and a baseball coach for the last seven 7 years. When the North Fort Myers Knights needed a coach this past year, Mr. Crowther volunteered even though his son played for a different team. Steven Brown, the Vice President and Director of Athletics for the North Fort Myers Junior Football

[1] Mr. Crowther's previous interactions with law enforcement appear to be induced by alcohol which he acknowledges is an issue that has been a growing problem for many years and one that he is currently addressing via alcohol counseling.

Association, affiliated with Pop Warner Youth Football, praises Mr. Crowther's coaching talent and integrity:

> I met Casey Crowther in the summer of 2017 and have since often interacted with him in his roles as a coach, parent, volunteer, and sponsor. Casey has done an extraordinary amount of service for the players and families in our organization. At the end of each season, we send a survey to the parents of each team to ask for feedback on our coaches. This happened after Casey's case became very public. Even knowing what they knew, all twenty-eight parents gave Casey the highest possible scores and asked that he be retained as head coach for next year.

When Mr. Crowther is not coaching or spending time with his family, he is at work. He has been working in the roofing business since he was a kid where he learned the trade from his dad. By all accounts, Mr. Crowther is an extremely talented roofer who works incredibly hard and is passionate about his trade. Over the past 5 years, he has dedicated a massive amount of time, energy, and resources into growing Target Roofing into a successful community business. Target Roofing is more than just a job, it is Mr. Crowther's passion. He started this project in a garage near downtown Fort Myers with 2 employees and grew it over the next 5 years to be a business with over 200 employees. At the inception of the company, he refused distributions in order to pay his business partner back first and when financial times got hard, he sold his home and other investments to ensure that the business survived. Mr. Crowther considers the Target Roofing staff his family and deeply regrets the fatal consequences these charges have had upon his business and his reputation. The multiple letters from the Target Roofing staff tell a story of a kind and compassionate man who cares greatly for his employees. The letters from vendors and customers show that Mr. Crowther has an exceptional reputation in the construction community for his hard work, integrity and technical skills. The Project Manager for Lee County School District Construction Services Department, Stephen Hanna, was highly impressed with Mr. Crowther's roofing work at North Fort Myers High School and Cypress Lake High School. He writes:

> At the end of every project, I fill out an assessment of the contractor. I gave Casey top scores in every category. He is trustworthy, honest, and a pleasure to deal with. If it were up to me, I would certain[ly] hire Target Roofing again. I remain grateful for Casey's personal contributions from Day One. With seventeen years of experience, I state with confidence that Casey is a talented roofer and exemplary human being all around.

In addition to his work, Mr. Crowther is also passionate about giving back to the community and helping others. He integrates volunteer work into both his personal and work life. Dan Beiter, the President of Builders Care, the charitable arm of the Building Industry Association writes:

> Casey provided free services to multiple elderly and struggling individuals. For one resident with multiple sclerosis, Casey's team built an accessibility ramp. He sent a truck to pick up a donated refrigerator. Without fail, Casey was responsive and eager to be of service. Casey so impressed our organization that we offered him a seat on our Board of Directors. He said yes and proceeded to render outstanding service. He actively participated in discussions, offering whatever help or creative solutions he could.

Whether Mr. Crowther is volunteering his time to coach kids, building roofs after the devastation of a hurricane, providing roofing to veterans, offering his home to a woman after her house was destroyed by a hurricane, providing pallets of food to the community during a global pandemic, loaning money to an employee so he can buy an engagement ring, giving a friend a job, or providing special training to an employee, the one theme that runs through the letters of support provided to the Court is Mr. Crowther's generosity, kindness, and service to his community. He is a man who has made mistakes but by all accounts, he is a good person who contributes greatly to his community, his company, and his family.

Mr. Crowther's desire to give back did not start at the inception of this case and it will not end after his sentencing. Mr. Crowther has been working closely with Prison Professors Charitable Corporation, a charitable organization dedicated to critical prison reform that creates programs to teach and inspire people in prison and at-risk youth valuable life skills. Mr. Crowther created a course for prisoners to obtain critical trade skills in preparation for their return to society. The online version of his class, "How People in Prison can Prepare for Roofing Careers: From an Expert Job Creator" can be viewed by more than 100,000 people in jails and prison. *See **Attachment C.***

C. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A).

Mr. Crowther understands the seriousness of his offenses, but in assessing a "just" punishment, we ask the Court to consider that these were non-violent offenses committed by a man with no significant prior criminal history that netted zero loss to the victims. He has been working diligently to pay off his debts and make his victims whole, recently selling the newly constructed Target Roofing building so that he could pay off the existing mortgage and the entire line of credit that he had with Sanibel Captiva Community Bank to minimize any financial risk to the bank. He has also been working diligently to keep his business afloat and his staff employed. Target Roofing was once a highly successful business, but it is currently struggling to remain viable. There are many factors involved in the decline including the damage to the company's reputation from the criminal case, the targeted attacks by competitors, and the significant supply shortage created by the pandemic. Mr. Crowther moved the company to a barn on his personal property and is working fifteen hours a day to ensure that his employees have a job and a paycheck. *See **Attachment D.*** The possible loss of his business that he spent the last 5 years of his life building, the inevitable loss of his contractor's license which is the only career he has ever known, the significant amount of money still owed on the loan, the loss of his home, and the substantial harm to his reputation are all significant punishments.

D. To afford adequate deterrence to criminal conduct. 18 U.S.C. §3553(a)(2)(B).

The prosecutions brought against Mr. Crowther have devastated him personally, professionally, and financially. The charges and intense negative media coverage surrounding the case have had a severe detriment on the business. Target Roofing lost 80% of its revenue since the inception of this case. Mr. Crowther paid his employees pursuant to the forgiveness requirements of the CARES Act yet he remains personally liable for the outstanding $2 million loan. Target Roofing was unable to apply for additional money via government programs which could have substantially assisted his business in the aftermath of the pandemic, where it is almost impossible to obtain roofing materials in order to complete projects. Mr. Crowther, who was always proud of his ability to provide financial support to his immediate and extended family, is now in the process of losing the vast majority of his assets in order to make amends. A lengthy jail sentence is not called for in this case and would not further the statutory goals of sentencing. As a result of this widely-reported case, the public now understands what can happen when the full prosecutorial force of the United States government is brought down upon an individual, and would-be violators have been generally deterred from engaging in similar conduct.

E. Protecting the public from further crimes. 18 U.S.C. § 3553(a)(2)(C)

Mr. Crowther does not present a risk of recidivism. His age, lack of record, supportive family, and employment history show there is an extremely low risk that he will recidivate. Mr. Crowther took responsibility for the fake documents submitted to the mortgage lender, but importantly he also paid the mortgage payments on time for the life of the loan. If he had not sold the home after his arrest, he would still be paying the mortgage payments. Mr. Crowther made a poor decision purchasing the boat but the fact that he paid his employees during the covered period is significant. Unlike the majority of PPP prosecutions nationwide, the company qualified for the loan and the employees were paid.

Since his arrest, Mr. Crowther has been working diligently with the bank to minimize the bank's risk. He sold the new building to pay off the line of credit and is working to make loan payments. The mortgage loan has been paid in full. These actions demonstrate that he is unlikely to commit any further illegal acts. The Court can consider the low risk of recidivism when fashioning its sentence.

F. Kinds of Sentences Available, 18 U.S.C. §3553(a)(4)

The guideline imprisonment range calculated in the PSR is not commensurate to the crimes. Since the offense is a Class B felony, Mr. Crowther is ineligible for probation, however there are a number of sentences that the Court could impose to allow Mr. Crowther to continue to operate his business, which is the only way that he will be able to pay the loan back to the bank, keep Target Roofing viable, pay vendors, and keep his staff employed. The Court could impose a sentence of time served with home detention with work restrictions or other conditions set by the Court to reach a just sentence. This suggestion is not one to nullify Mr. Crowther's conduct, but to ensure that the loan is paid back to the bank and that Target Roofing's staff remains employed. A period of significant incarceration would not benefit anyone in this case because it would result in Mr. Crowther closing Target Roofing, resulting in the loss of jobs and income for Target employees and the inability to pay back over 30 southwest Florida vendors. It would also destroy the only source of income and ability to pay the loan back to Sanibel Captiva Community Bank. This sentence would allow Mr. Crowther to pay restitution and continue to be a contributing member of society without being a financial burden to an already overly crowded prison system still suffering from the ramifications of COVID-19.

This type of sentence is not uncommon. On July 7, 2017, Judge Corrigan gave a sentence of time served with 5 years of supervised release to Rashaad Simar Jones, a co-defendant in a drug conspiracy case that involved the trafficking of multiple kilograms of cocaine, who faced an applicable guideline range of 70 to 87 months. *See* *United States v.*

Jones, et al, 3:16-cr-00104. Judge Corrigan also required Mr. Jones to participate in a 365 day home detention program. This sentence was given absent a 5K motion for downward departure. This variance was granted based upon Mr. Jones' good character and the Court found that this sentence that was sufficient but not greater than necessary to achieve the statutory purposes of punishment and a just sentence.

G. Need to Avoid Unwarranted Sentencing Disparities

We would ask the Court to take into consideration not only the sentences that have been given in the few PPP cases that have been prosecuted but also the Government's disparate charging decisions. We have researched PPP cases and sentences across the nation. We have yet to find a case sentenced, or even charged, that is remotely similar to Mr. Crowther's case. The criminal cases charged nationwide include overtly fraudulent statements on multiple PPP loan and EIDL applications including fraudulent shell companies, false employee and payroll numbers, fake tax forms, and various other false statements. In stark contrast, Mr. Crowther's company Target Roofing is a legitimate company that utilized the appropriate number of employees, recorded the appropriate payroll numbers, and possessed the appropriate documentation to support eligibility for application of the loan. Target Roofing also paid its employees and spent well over the sum of the loan amount on allowable expenses during the Covered Period. Yet, Mr. Crowther's sentencing guidelines are starkly disparate from the PPP cases recently sentenced:

United States v. Tarik Jaffaar, No. 1:20-cr-185-CMH, Eastern District of Virginia

- Defendant received twelve (12) months imprisonment.
- Mr. Jaffaar submitted eighteen (18) PPP loan applications for four businesses, which were merely shell companies, to twelve financial institutions.
- The PPP loan applications included fake employment tax returns and payroll documents which claimed the business had a number of employees.
- Of the approximately $6.6 million sought, the financial institutions disbursed approximately $1.4 million.
- Additionally, between April 7, 2020, and April 15, 2020, the defendant and his wife submitted two EIDL loan applications for two of the shell entities to the SBA. As a result, one $10,000 EIDL advance was obtained from the SBA.
  The defendant and his wife were arrested in the parking garage across from Terminal 7 of John F. Kennedy International ("JFK") airport with 18 bags. The defendant had both his United States and Moroccan passports on his person. Ms. Jaworska had her United States and Polish passports on her person. In the various bags, law enforcement found $49,875.65 in cash, approximately 14 cell phones, and multiple laptops.
- The defendant did not pay any payroll with funds received.

United States v. Shahank Rai, No. 1:21:cr-00009, Eastern District of Texas

- Defendant received twenty-four (24) months imprisonment.
- The defendant filed 2 PPP loan applications seeking $10 million and $3 million respectively.
- The defendant claimed to have 250 employees earning wages in each application when, in fact, no employees worked for his purported business.
- The defendant did not pay any payroll with funds received.

United States v. Latoya Stanley and Johnny Philus, No. 1:21-cr-20067, Southern District of Florida.

- Defendants were sentenced to eighteen (18) and thirty (30) months respectively.
- The defendants filed four (4) PPP and EIDL loan applications claiming nonexistent employees and payroll and received $1.1 million.
- The defendants resurrected defunct corporations to file applications and used fraudulent bank statements in support of the application.
- The defendants also filed EIDL loans claiming non-existent farming land.
- Investigators found notebooks full of personal identification information and over 70 credit cards in the names of third parties.

- The defendant did not pay any payroll with funds received.

United States v. Julio Lugo and Rosenide Venant, No. 8:21-mj-01295, Middle District of Florida (Tampa)

- Julio Lugo received 42 months imprisonment.
- He submitted at least seventy (70) false and fraudulent loan applications seeking PPP and EIDL funds.
- The fraudulent loan applications requested more than $5.8 million, including for shell companies established by Lugo, Venant, and their relatives.
- The conspirators also secured coronavirus relief funds for a defunct tax-preparation company that Lugo had previously used to perpetrate a tax fraud in or around 2015.
- The defendant paid off a luxury vehicle, spent more than $62,000 at casinos, and for other personal purposes. Additionally, the conspirators withdrew at least $320,000 in cash. Lugo publicized the misuse of the SBA funds in a Facebook video featuring a hotel room littered with $100 bills and at least $5,000 in merchandise from Louis Vuitton.
- The defendant did not pay any payroll with funds received.

United States v. Nadine Consuelo Jackson, No. 3:20-cr-00112-MJN, Southern District of Ohio

- Defendant received twenty-four (24) months imprisonment.
- Ms. Jackson applied to First Home Bank for a PPP loan of $1,315,491.12 (received $1,021,300) and also applied for an EIDL loan.
- Submitted false Wage and Tax Reports and false personal tax returns.
- Submitted a second PPP loan application for $1,236,817.
- The defendant did not pay any payroll with funds received.

The Justice Department has also used prosecutorial discretion when prosecuting legitimate companies. On January 12, 2021, the District of California entered into a civil settlement with SlideBelts, Inc., an internet retail company who lied about bankruptcy on its PPP application. *https://www.justice.gov/usao-edca/pr/eastern-district-california-obtains-nation-s-first-civil-settlement-fraud-cares-act.* The company and Brigham Taylor, the company's president and CEO, have agreed to pay the United States a combined

$100,000 in damages and penalties to resolve allegations that they committed fraud. Similar to Mr. Crowther's case, there was no loss.

Mortgage Fraud Convictions

In 2010, the middle of the mortgage crisis, the government prosecuted a mortgage fraud conspiracy case in the Fort Myers Division involving six defendants, eight properties, multiple straw buyers, numerous sham companies, and over $4.2 million in loss to financial institutions. *United States vs. Troy Bossert, et al.*, No. 2:10-cr-00031. The conspirators sought properties that were for sale by owner and then negotiated a purchase price on behalf of third-party buyers. The conspirators, on behalf of the third party buyers, would provide false information to the lenders including fake cashier's checks, falsified bank statements, and doctored W-2 forms. The defendants created sham companies to receive the closing funds for the properties and the funds were then distributed to the individual defendants. The conspirators would then direct the straw buyers to make three mortgage payments prior to defaulting on the loans.

For their roles in the conspiracy, Steven Petrovich, a Cape Coral Police Officer, received 24 months imprisonment; Steven Reese received 18 months imprisonment; Ryan O'Brien received 15 months imprisonment; Troy Bossert received 18 months imprisonment; and, Tyler Forrey received 18 months imprisonment. By contrast, Mr. Crowther is significantly less culpable than the defendants in the *Bossert* case. Mr. Crowther's crime centered upon one transaction involving his own home, not eight (8) properties. Mr. Crowther paid his mortgage payments on time and there were no loss amounts involved.

In _United States v. Thomas Fendick_, No. 2:17-cr-00051-SPC, the defendant used a straw buyer to orchestrate the short sale of his personal residence causing an actual loss of approximately $445,959.18 to the lender. Mr. Fendick was sentenced to time served (one day) and house arrest with the ability to attend work. Mr. Fendick was a small business owner and the Court's sentence allowed him to save his business and make restitution payments to the victim. Although there is currently no loss to the bank, Mr. Crowther would like the opportunity to pay back the loan with Sanibel Captiva Community Bank.

H. Restitution

Mr. Crowther is going to have to pay the loan to Sanibel Captiva Community Bank. He requests time served and a period of supervised release with conditions so that he can continue to work and pay off his debts. Mr. Crowther is the sole owner of Target Roofing and the company will most likely not survive in his absence, creating a loss of over 40-50 community jobs. A term of imprisonment would hinder, if not destroy, any opportunity Mr. Crowther has to make the loan payments. He is asking the Court to allow him to keep the business that he has built so he can pay the loan and maintain some semblance of a life post-conviction.

V. ADVISORY GUIDELINES CALCULATIONS

As the Court is aware, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the guidelines are solely advisory in nature. *See*, *e.g.*, *Moore v. United States*, 871 F. 3d 72, 74 (1st Cir. 2017) (noting that *Booker* made the guidelines advisory). The Pre-Sentencing Investigation Report (the "PSR") calculates the offense level to be a total offense level of 34 and a criminal history category of I with the guideline imprisonment range from 151 to 188 months. As explained below, the total offense level calculated in the PSR is incorrect; the correct offense level calculation results in a total offense level of eight with a guideline range of 0 – 6 months.

First, Mr. Crowther's financial status continues to change because of supply chain interruptions and material shortages in the construction industry. This is a direct result of the pandemic that has had (and is continuing to have) a devastating financial impact on Mr. Crowther's business and his ability to finish roofing projects and collect accounts receivable. *See* ***Attachment E.***

Second, the loss amounts should be calculated at zero. Intended loss is defined as "pecuniary harm that the defendant purposely sought to inflict." Following the 2015 amendment, that specifically includes a ***subjective element***. USSG App. C, amend. 792 (effective Aug. 1, 2015). In this context, "[o]btaining a loan fraudulently is different from stealing property outright, because defendants who fraudulently obtain loans often intend to repay them in full." *United States v. Harris*, 597 F.3d 242, 254 (5th Cir. 2010) (citing *United States v. Henderson*, 19 F.3d 917, 928 (5th Cir. 1994)). Thus, "where the defendant intends to repay the loan or replace the property, the intended loss is zero." *Id.*; *United States v. Kraus*, 656 Fed. Appx. 736, 739 (6th Cir. 2016) ("[i]n the context of loan-related fraud, 'intended loss is the amount the defendant subjectively intended not to pay.'")

(citations omitted); *United States v. Haddock*, 12 F.3d 950, 963 (10th Cir. 1993) (government failed to prove intended loss where evidence suggested the defendant intended to repay loans); *United States v. Monk*, No. 2:20-CR-22-WKW, 2020 U.S. Dist. LEXIS 121489 *22 (M.D. Ala. July 10, 2020) (no intended loss where government presented no evidence of intended loss and, moreover, the evidence established that the defendant intended to benefit the victim by using loan proceeds to delay reporting of separate loan losses, in the hopes that the delay would buy the victim time to increase its assets to cover is losses); *United States v. Hughes*, 775 F. Supp. 348, 351-52 (E.D. Cal. 1991) (refusing sentencing enhancement where falsified loan applications resulted in no loss, because "'[g]ross receipts are not the same thing as 'loss.'").

All evidence shows that Mr. Crowther always intended to repay the PPP loan to Sanibel Captiva if the loan was not forgiven: 1) the loan remains a performing loan on the books and records of Sanibel Captiva Community Bank; 2) Target Roofing paid its employees the sum of the loan amount on payroll expenses during the Covered Period as required by the CARES Act; 3) the loan was sufficiently collateralized to create little to no risk to the bank; and 4) Mr. Crowther remains responsible for the loan amount. There is no evidence, much less a preponderance of the evidence, to suggest otherwise. As a result, there is no intended loss. Similarly, there is no evidence of any actual loss, which means "the reasonably foreseeable pecuniary harm that resulted from the offense." *See* U.S.S.G. § 2B1.1 n.3(A)(i). The loan remains a performing loan on the books and records of Sanibel Captiva Community Bank.

Although there are currently no SBA funds involved (Target Roofing never applied for forgiveness and the loan remains a performing loan with the lender), to the extent that the Court applies the government benefits rule, then the amount of any loss should, consistent with that rule, exclude all amounts that Target Roofing spent on the intended uses of the loan (including payroll, mortgage interest payments and other allowable expenses proven at trial through bank records) and include only the monies "diverted to unintended uses." *See* U.S.S.G. § 2B1.1 n.3(F)(ii). Any such loss should be further reduced by the value of Mr. Crowther's loan payments. *See United States v. Near*, 708 Fed. Appx. 590, 603-604 (11th Cir. 2017); (affirming finding of no loss, despite misuse of federal grant money, where value of defendant's services exceeded the amount of any loss suffered by the government); *see also* U.S.S.G. § 2B1.1 n.3(E)(i) ("Loss shall be reduced by the following: The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected"). The evidence at trial showed that Mr. Crowther paid well over the sum of the loan in allowable expenses during the Covered Period.

Third, the PSR incorrectly applies a 2-level sentencing increase for abuse of trust. The case law is clear - the victim is the bank, not Target Roofing's management team and employees. *United States v. Garrison*, 133 F.3d 831 (11th Cir. 1998) contains an extended discussion of what qualifies as a position of trust. Among other things, the court held that "'the abuse of trust enhancement applies only where the *defendant has abused* *discretionary authority entrusted to the defendant by the victim*'; arm's length business relationships are not available for the application of this enhancement." *Id.* at 839 (citations omitted). As a result, it appears that Probation relies upon a faulty premise to apply this increase in this case, because the bank (not Target Roofing's management team and employees) is the victim. *See also* *United States v. Broderson*, 67 F.3d 452 (2d Cir. 1995); *United States v. Porcelli*, 440 Fed. Appx. 870, 876-77 (11th Cir. 2011)(citing *Garrison* as good law for the requirement to view abuse of trust from the perspective of the victim of the crime); *United States v. Evans*, 370 Fed. Appx. 829, 832 (9th Cir. 2010) (sentence enhancement for abuse of trust was reversible plain error, despite defendant's failure to raise the argument below, because the district court did not apply the enhancement from the government's perspective, where the government was the victim, and defendant was not in a position of trust from the perspective of the government). It is also important to note that the trial testimony and exhibits confirmed that the employees were paid during the Covered Period.

The multiple letters submitted to the Court from current and former Target Roofing employees also contradict this increase, including the excerpt from Evelyn Portinari:

> Your Honor, I can report that Casey's employees love him and followed the trial closely. We all know that Casey is a kind-hearted selfless person who cares deeply about the people around him. I will continue to work for Casey with great pride. I hope this Court will consider Casey's record of service to others and hand down a lenient sentence.

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Moreover, the PSR does not identify the Target Roofing employees as victims. Nor were any of the Target employees notified of their rights as victims pursuant to the Crime Victim's Rights Act as required by law.

Fourth, the PSR incorrectly applies a 2-level increase for sophisticated means. For purposes of subsection (b)(10)(C), "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. The offense that the defendant was charged with in the Second Superseding Indictment is making a false statement on a loan application and utilizing the loan proceeds to purchase a boat and make a promissory note payment. The conduct discussed in the PSR as sophisticated, the 39 employees, was not charged as part of the conduct of the scheme to defraud, occurred months after the execution of the offense, and had absolutely no bearing on the execution or the concealment of the offense charged. In fact, because Target Roofing never applied for forgiveness of the loan, the conduct is completely irrelevant. The PSR attempts to hold Mr. Crowther accountable for a crime that was never charged or even committed.

Fifth, the PSR incorrectly applies a 2-level increase for five means of identification. Crowther objects to this enhancement because the identification documents do not meet the definition of "means of identification" as defined by the guidelines. Effective November 1, 2009, the Sentencing Commission amended the commentary to §2B1.1(b)(2) to expand the definition of victim in cases involving a means of identification. The guidelines incorporate the statutory definition of "means of identification" from 18 U.S.C.

§ 1028(d)(7) but require that "such means of identification ***shall be of an actual (i.e., not fictitious) individual***, other than the defendant or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct)." The government's entire theory at trial was that the social security numbers were fake and the individuals were not actual individuals. As such, this increase does not apply.

Sixth, the PSR incorrectly applies a 2-level increase for obstruction of justice. It is unclear how statements made by defense counsel in defense of her client during Rule 408 settlement negotiations can be imputed on the defendant as an obstruction of justice. This adjustment would effectively stop defense counsel from ever trying to settle a case pre-indictment or otherwise. Furthermore, confusion regarding the opening of the account containing the loan funds remains on the trial record. According to Government Exhibit #100, Sanibel Captiva Community Bank employee Diane Jefferson opened an account on behalf of Target Roofing with account number 290863331 on March 23, 2020, a few weeks prior to the submission of the loan application on April 13, 2020. According to Government Exhibit #104, bank employee Kristin DiIorio opened a third account for the company with account number 29086781 on April 10, 2020, just a few weeks after a second account was opened.

The PSR's statement that Mr. Crowther made a misrepresentation to the bank is inaccurate. Mr. Crowther provided letters of good standing from the bank and vendors to customers after charges were brought. *See* ***Attachment F.*** Probation's inference that Mr. Crowther made a misrepresentation to the bank is incorrect. Second, the letter is 100%

accurate. Mr. Crowther and Target Roofing's bank accounts remain in good standing to this day; the bank's representative testified to this effect at trial.

Seventh, Mr. Crowther deserves acceptance of responsibility for his mortgage fraud plea. He should not be punished for exercising his constitutional right to a jury trial regarding the interpretation and conflicting guidance surrounding the implementation of the CARES Act, a legal issue that the government itself found confusing.

Based on the foregoing, it is clear that the correct offense level calculation results in a total offense level of eight with a guideline range of 0 – 6 months.

VI. CONCLUSION

We respectfully request that this Court sentence Mr. Crowther to a period of time served with supervised release and restrictions such as home confinement and work release.

Respectfully Submitted,

/s/ Nicole Hughes Waid

Nicole Hughes Waid
FISHERBROYLES LLP
Florida Bar #0121720
625 Tamiami Trail North, Suite 203
Naples, FL 34103
P: (202) 906-9572
E: Nicole.waid@fisherboyles.com

CERTIFICATE OF SERVICE

I, Nicole H. Waid, attorney for Casey David Crowther, do hereby certify that I have, this day, filed the foregoing with the Clerk of Court via the CM/ECF system, which has caused a true and correct copy to be served on all counsel of record.

/s/ Nicole H. Waid
Nicole H. Waid, Esq.