IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**Case No. 1:23-cr-00015-JL-TSM**
	)	
HEATH GAUTHIER	)	
	)	

GOVERNMENT'S SENTENCING MEMORANDUM AND
OBJECTION TO DEFENDANT'S SENTENCING MEMORANDUM

The defendant stands convicted fraud and possession of child pornography. During the height of the COVID-19 pandemic, Heath Gauthier stole the identities of more than ten dead people and created fake companies to submit numerous applications through the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program to steal funds Congress secured to help Americans struggling during the worst health crisis in a century. The defendant attempted to steal more than $1.3 million of these pandemic relief funds and successfully obtained nearly $200,000. The investigation also revealed that the defendant, a convicted sex offender, maintained a collection of more than 1,500 images of child sexual abuse material (CSAM) on his computer.

The party's binding plea agreement contemplates a sentence of just over 12 years, or 145 months' imprisonment as well as full restitution for the defendant's fraud and to the identified victims of his sex offense. The United States urges the Court to accept the parties' plea agreement and impose a sentence of 145 months' imprisonment and restitution of *at least* $202,507. Such a sentence is sufficient but not greater than necessary to achieve the purposes of sentencing and is appropriate in this case.

I. Factual Background

A. Pandemic Relief Programs

On March 13, 2020, the President declared a nationwide disaster in response to the ongoing COVID pandemic and resulting economic crisis. PSR ¶ 11. Shortly thereafter, Congress passed the CARES Act, which among other things created the PPP. Under the PPP, small businesses could apply for loans from lenders at 1% interest. If the borrower spent the bulk of the loan proceeds on payroll, the loans would be forgiven. *Id.* The CARES Act also expanded the Small Business Administration's (SBA) EIDL program. Like PPP loans, EIDLs were low-interest loans which were supposed to be used to help businesses pay their operating expenses. *Id.* Because PPP loans were federally guaranteed and EIDL monies were directly lent by the SBA, American taxpayers served as the backstop for both types of loans.

B. The Defendant's Fraud

During the height of the COVID-19 pandemic in 2020 and 2021, the defendant applied for sixteen PPP and EIDL grants/loans using fake business names and the stolen identities of more than ten deceased individuals. PSR ⁋ 12-14, 17. The object of the defendant's fraud was simple: to obtain pandemic release funds for his own personal use. For example, the defendant used some of the stolen pandemic relief funds to send Venmo payments for "pics" and "meet up" to an individual he met on Grindr. *Id.* ⁋ 47.

To obtain a PPP loan, the applicant was required to state the business's average monthly payroll expenses and number of employees. These figures were then used to calculate the amount of money the small business was eligible to receive under the PPP. Similarly, to obtain an EIDL, the applicant was required to provide information about its operations, such as the number of employees, the entity's gross business revenues, and cost of goods sold. To perpetrate this fraud, the defendant applied for loans using fake business that he created: Sellingham Farms, Lilac City Home Car, and New England Power and Light. To fool his lenders and the SBA, the defendant created fake federal tax records and fake municipal and business records so that these would appear to be legitimate businesses in need of pandemic relief. *Id.* ¶¶ 15-16, 20-33, 35-39. The defendant often listed himself as the owner of these fake companies but also applied for some loans using the stolen identities of two deceased individuals, going so far as to create counterfeit driver's licenses using their personal identification information. *Id.* ¶¶ 17-19. The defendant also stole and used the identities of nine other dead individuals to commit this fraud, claiming in several of the applications and in fake tax and payroll records that they were employees of his fake companies. *Id.* ¶¶ 17-40.

While several lenders identified the false applications and denied them, others, relying on his lies, wired the defendant approximately $186,007 in PPP funds and the SBA wired the defendant approximately $10,500 in EIDL funds. *Id.* ¶¶ 20-40. The defendant also requested to have his PPP loans forgiven by the SBA, repeating the lies he used to obtain the loans. Relying on these falsehoods, the SBA forgave the loans. *Id.* ¶¶ 12, 20, 25.

As charted below, the defendant successfully stole $196,507 in pandemic relief funds and attempted to steal an additional $1,309,607. *Id.* ¶¶ 34, 40.

PPP Loans:

Company	**Date of Application**	**Lender**	**Amount**	**Awarded**
Heath R. Gauthier	05/19/2020	Itria Ventures, LLC	**$70,000**	Yes
Sellingham Farms	08/04/2020	Itria Ventures, LLC	**$99,000**	No
Sellingham Farm	02/09/2021	Harvest Small Business Finance, LLC	**$116,007**	Yes
Lilac City Home Care	04/28/2020	WebBank	**$34,000**	No
New England Power and Light	05/04/2020	Cross River Bank	**$11,250**	No

Heath Gauthier	07/04/2020	Fountainhead SBF, LLC	**$70,000**	No
Sellingham Farm	08/11/2020	Fountainhead SBF, LLC	**$99,000**	No
Sellingham Farm	01/20/2021	Northeast Bank	**$90,090**	No
Sellingham Farm	02/12/2021	Customers Bank	**$99,090**	No
Sellingham Farm	02/12/2021	ReadyCap Lending, LLC	**$99,000**	No
Sellingham Farm	02/12/2021	ReadyCap Lending, LLC	**$99,090**	No
Sellingham Farm	03/26/2021	ReadyCap Lending, LLC	**$99,090**	No
Total Attempted			**$787,527**	

EIDL Loans/Grants:

Company	**Date of Application**	**Lender**	**Amount**	**Awarded**
New England Power and Light	04/15/2020	SBA	$10,500	Yes
Heath Gauthier	06/18/2020	SBA	$174,000	No
Sellingham Farm	06/29/2020	SBA	$165,180	No
Sellingham Farm	01/06/2021	SBA	$172,400	No
Total Attempted			**$522,080**	

C. The Defendant's Collection of Child Sexual Exploitation Videos and Images

While searching the defendant's electronic devices for evidence of his fraud, investigators found images of child sexual abuse material (CSAM), commonly known as child pornography. PSR ⁋⁋ 41- 42. After obtaining a second warrant to search for and seize such material, found approximately 1,536 files that contained CSAM on the defendant's Toshiba Laptop and backed up on a Western Digital Hard Drive. *Id.* ⁋⁋ 42-45. Of these files, twelve were videos and ten were sadomasochistic in nature. *Id.* ⁋ 45. In addition to these images, investigators found Skype chats between the defendant and others from 2014 in which the individuals requested images of child pornography and the defendant sent files with names consistent with those requests. *Id.* ⁋ 46.[1]

[1] Investigators were not able to recover the actual files that the defendant sent through the Skype chats.

II. Guidelines Calculation and the PSR

The Government agrees with the Probation Office's calculated Guidelines range of 97-121 months' imprisonment based off a total offense level of 29 and Criminal History Category of II. PSR ¶ 57-87, 110. The Government further agrees with the Probation Office's conclusion that defendant faces two mandatory minimum sentences: 120 months for his possession of child pornography and a consecutive 24-month sentence for aggravated identity theft. *Id.* ⁋ 108-110. The defendant therefore faces an effective guideline range of 144 to 145 months' imprisonment. *Id.* ⁋ 110.

The defendant objects to the PSR and moves to strike to paragraphs 47 and 48 of the PSR. The Court should deny the defendant's motion.

Both paragraphs 47 and 48 of the PSR are directly relevant to the Court's consideration of the statutory sentencing factors and are properly included. As Congress has made clear, "*[n]o limitation* shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661 (emphasis added). As the Sentencing Commission explained, "[a] court is not precluded from considering information that the guidelines do not take into account in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines." USSG § 1B1.4 commentary; *see also id.* ("In determining the sentence to impose . . . the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law.").

Paragraph 47 describes how, instead of spending pandemic relief funds on payroll and other business expenses as he represented in his loan applications, the defendant wired some of his fraudulently obtained funds to a person he met on Grindr, earmarked for "pics" and "meet up." The defendant asserts that because he did not *know* the person he paid was minor, that the Court should not consider this conduct. ECF No. 42 at 3. But, regardless of whether the defendant knew he was paying a minor or thought he was paying an adult, he knew he was paying him with stolen COVID-19 relief funds. This wasn't payroll. Put simply, spending CARES Act Loan funds to a stranger online for "pics" and "meet up" rather than for designated business expenses is an "act[] . . . committed . . . by the defendant . . . that occurred during the commission of the offense of conviction." USSG §1B1.3. It is direct evidence of the defendant's fraud and is properly included in the PSR. Regardless, the defendant's use of Grindr and Venmo to solicit of pornography and likely a sexual encounter is relevant in the Court's evaluation of the 3553 factors, particularly in light of his prior online sex offense and possession of CSAM.

The defendant also asserts that the Court should not consider the facts in paragraph 48 of the PSR because, when interviewed, the defendant's minor family member "provided no evidence that any sexual assaults occurred" and "failed to establish a base level of probable cause to issue a warrant or charges." ECF No. 42 at 4. But, as laid out in the PSR, the facts in paragraph 48 are not based solely on his minor family member's interview. In December 2021, a police department in Maine conducted an investigation after the defendant's then 9-year-old family member made explicit sexual statements and several of the minor relative's classmates reported that the defendant engaged in sexually charged chats while playing online video games with them and the defendant's minor family member. PSR ⁋ 48. When interviewed by law enforcement, several of these minor classmates stated that while playing Fortnite with the defendant, he made inappropriate sexual comments and gave them online gifts. *Id.* Finally, while the defendant correctly states that his minor relative did not disclose that the defendant sexually assaulted him, during his interviews with interviewers at the Child Advocacy Center, he did say he spent time alone with the defendant and that what they did together is "hard to explain." He further stated that he was told the defendant "would go to jail and would be taken away" if he said anything. *Id.*

Though not relevant conduct under section 1B1.3, the facts in paragraph 58 are directly relevant to the Court's evaluation of the 3553 factors, particularly the defendant's history and characteristics, the need to protect the public from the defendant, and to provide adequate deterrence.

The Court should reject the defendant's request to strike these paragraphs from the PSR.

III. Argument

A. A 145-Month Sentence is Appropriate.

During the height of the COVID-19 pandemic, the defendant stole the identities of more than ten dead people and created fake companies to steal or attempt to steal nearly $1.5 million in COVID-19 pandemic relief funds. The defendant, who was previously convicted of felonious sexual assault, also maintained an extensive collection of CSAM. A substantial prison sentence is necessary to account for "the nature and circumstances of the offense," "the history and characteristics of the defendant," and the "need for the sentence imposed to reflect the seriousness of the offense, to "promote respect for the law," to "afford adequate deterrence to criminal conduct," and to "protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(1), (2).

The defendant's actions here are outrageous. Hiding behind a computer, he exploited the worst public health crisis in a century for his own enrichment and preyed on the most vulnerable in our society. Unlike many who appear before this Court, the defendant's personal circumstances are not mitigating. In 2005, the defendant was sentenced for felonious sexual assault and prohibited use of computer services. *See* PSR ⁋ 85. Then, the defendant used a computer to exchange messages with an undercover police officer that he believed to be a 14-year-old child, where he arraigned to travel to engage in sexual acts. *Id.* In 2021, he was the subject of an investigation involving multiple allegations that he engaged in sexually explicit conversations with minors, including a 9-year-old relative, while playing online video games. *Id.* ⁋ 48. Undeterred, the defendant amassed a collection of more than 1,500 images and videos of child exploitation material and shared such material with others over the internet.

The government is not asking the Court to punish the defendant for his prior crimes and other conduct. But in considering the appropriate sentence for the instant offense, the defendant's prior conviction, his solicitation of pornography and a sexual encounter over the internet with CARES Act funds, and evidence of his behavior with other minors are aspects of his history and characteristics that strongly supports the joint recommendation for a sentence of 145 months. The defendant is a recidivist sex offender and a fraudster. He committed the instant offenses in the same way that he targeted is prior victims and other minors: behind the cloak of a computer. The fact that the defendant was required to register as a sex offender did not dissuade him from continuing to amass and distribute child pornography. Nor did his prior sex offense conviction deter him from concocting and executing a massive fraud scheme.

A 145-month sentence is necessary to account of the seriousness of these offenses and the defendant's troubling history and characteristics, to deter the defendant, and, importantly, to protect the public. The Court should accept the parties' agreed-upon sentence.

A. The Court should order restitution of *at least* $202,507.

The provisions of the Mandatory Victim Restitution Act apply to the defendant's crimes, so restitution is mandatory in this case. The defendant successfully obtained $196,507 in CARES Act loan funds from lenders and the SBA. Because the SBA forgave the PPP loans, the Court should order $196,507 in restitution be paid to the SBA. PSR ⁋ 49, 122.

The defendant agrees that his child pornography victims are entitled to restitution. PSR ⁋ 8. As laid out in the PSR, law enforcement has identified two victims in the defendant's CSAM images. Under 18 U.S.C. § 2259(b)(2)(B), each victim is entitled to restitution of *at least* $3,000. These victims have provided impact statements for the Court to consider, and each requested $5,000 in restitution. PSR ⁋⁋ 50-51, 122. The government therefore requests that the Court order restitution of $206,507 and no less than $202,507.

IV. Conclusion

For these reasons, the Government respectfully requests the Court impose a sentence of 145 months' imprisonment.

Dated: June 24, 2024

Respectfully submitted,
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