IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 24-cr-10007-3-MJJ
	)	
GARDY ALEXANDRE,	)	
	)	
Defendant	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States respectfully submits this memorandum regarding the sentencing of the defendant, Gardy Alexandre, which is scheduled for May 28, 2024.[1]

The defendant pleaded guilty to conspiring to submit fraudulent Paycheck Protection Program ("PPP") applications and engaging in unlawful monetary transactions with proceeds of those applications. For the reasons stated below, the government asks the Court to sentence the defendant to 27 months of incarceration and 36 months of supervised release, and to order the defendant to pay restitution of $1,455,652 as agreed to in the parties' Plea Agreement (Dkt. 39).

OFFENSE CONDUCT

At the beginning of the COVID-19 pandemic in 2020, the defendant worked with others to exploit emergency measures that the federal government implemented to keep real businesses running and paying real employees.

[1] Pursuant to the Court's Procedural Order Re: Sentencing (Dkt. 57), the government respectfully reports (1) that the government is not moving for a departure from the applicable guideline range or for a non guideline sentence; (2) that there are no legal questions that have not been adequately addressed in the presentence report ("PSR"), in the parties' objections to the PSR, or in the parties' sentencing memoranda; and (3) that there are no factual issues which the government contends would require an evidentiary hearing.

The defendant worked alone and had no employees. However, when PPP funds became available in April and May 2020, the defendant applied for a PPP loan for Palm Beach Community House ("PBCH"), a non-profit that he registered over a decade prior and that had no activity or employees by 2020.

After his first attempt at obtaining a PPP loan for PBCH failed, the defendant accepted assistance from a woman that he met through his work as a tax return preparer, co-defendant Adiana Pierre. Pierre and her friend from church, co-defendant Wallace Ford, agreed to work together to make money by securing PPP loans for individuals and businesses. Pierre recruited the borrowers, and Ford electronically prepared the applications. Rather than soliciting and reporting accurate information about potential borrowers' employees and payroll costs, they fabricated the numbers on the applications that Ford prepared. Ford also prepared fake tax forms for borrowers to match the payroll costs he stated on applications. For securing loans through false applications, Ford and Pierre charged borrowers a commission, typically of around 10 percent.

In early June, Ford prepared two PPP applications for PBCH, which falsely claimed employees and payroll expenses in 2019 that PBCH never actually had or paid. Ford prepared a fake 2019 Form W-3 for PBCH to match the pretend payroll expenses. As a result of one of these applications, the defendant received a PPP loan of $300,000 for PBCH. In return, he paid Ford a $30,000 kickback (10 percent of his loan proceeds).

Thereafter, the defendant agreed to recruit additional borrowers to submit applications through Pierre and Ford. He shared in the kickbacks for securing loans for these borrowers. Several of the borrowers that the defendant referred to Pierre and Ford for loans were Massachusetts residents connected to the defendant's cousin. One—Bill Dessaps—operated a used car dealership that employed only a few people but received $836,800 from an application that falsely claimed that the dealership had 40 employees and average monthly payroll expenses of $334,720. Dessaps paid $28,000 to the defendant, who passed $21,000 of that money along to Ford. Another—Wens Mathurin—received $313,852 for a business that did not yet exist, as a result of an application that falsely claimed 25 employees and average monthly payroll expenses of $125,541. Mathurin paid $62,760 to the defendant, who sent $30,000 of that amount to Ford.

The defendant recruited at least five borrowers in 2020, who together received approximately $1.5 million in PPP loans through false applications. The defendant personally received $143,760 from these borrowers for helping secure these funds and passed along additional amounts from these borrowers to Pierre and Ford.

SENTENCING GUIDELINES

The government respectfully submits that the defendant's total offense level under § 2S1.1 is 19, calculated as follows:

Offense level for the underlying offense (wire fraud), § 2S1.1(a)(1) • Base offense level for underlying offense (wire fraud), § 2B1.1(a)(1) • Loss greater than $550,000 but less than $1,500,000, § 2B1.1(b)(1)(I)	**21** • 7 • +14
The defendant is convicted under 18 U.S.C. § 1957, § 2S1.1(b)(2)(A)	**+1**
Acceptance of responsibility, § 3E1.1	**-3**
Total Offense Level	**19**

At Criminal History Category II, this offense level results in an advisory Guidelines range of 33-41 months of imprisonment.

The government has outlined its position on the proper base offense level under § 2S1.1 in its objection to the PSR. The government's position adheres to the text of that guideline, which takes as its base offense level "the offense level for the underlying offense from which the laundered funds were derived." Wire fraud is the underlying offense; the offense level for wire fraud is calculated under § 2B1.1; and, for purposes of determining the base offense level of wire fraud under § 2B1.1, wire fraud is referenced to that guideline. The "offense level for the underlying [wire fraud]" therefore starts with a base level of 7, not 6. This position is consistent with the Sentencing Commission's guidance, the stated goal of the money laundering guideline, and appellate authority, including *United States v. Cruzado-Laureano*, 440 F.3d 344, 48 (1st Cir. 2006) (looking to the offense level of the underlying extortion offense "standing alone" as the starting place for its analysis under § 2S1.1). Where plain text, purpose, and precedent align on this position, the rule of lenity has no application.

SECTION 3553(a) FACTORS

The sentencing factors set forth in 18 U.S.C. § 3553(a) support the 27-month incarcerative sentence the government is requesting. This below-guidelines sentence accounts for the defendant's pre-indictment acceptance of responsibility, his background, and his relative role in the scheme and the resulting losses.

Nature and Circumstances of the Offense

During a nationwide rush to disburse PPP funds to small businesses and employees who needed the money, the defendant and his co-conspirators profited from the program by stealing for themselves and for others.

By design, the program relied on borrowers' representations about their businesses on a short form application. Calculating the loan amount was straightforward; borrowers generally qualified to receive a loan of 2.5 times their average monthly payroll expenses. The process was quick and simple by design and relied on borrowers' certifications to having provided truthful and accurate information about their businesses.

The defendant took advantage of the national emergency and lied to get $300,000 for a non-existent business. It matters little that the defendant relied on someone else to prepare the application and to falsify supporting documents. He ultimately signed the application and accepted the windfall. By stealing from a limited pool of money, which ultimately was exhausted, he harmed not only the government, but also from real small businesses that truly needed those loans and from those businesses' employees.

Had the defendant's conduct stopped there, his case might be within the heartland of PPP fraud committed during this period. But the defendant took additional amounts from the program by bringing other borrowers into the scheme and then taking a cut of their PPP funds. This kind of disaster profiteering is reprehensible and merits a sentence that recognizes its harm to the public.

History and Characteristics of the Defendant

The PSR and the defendant's memorandum describe numerous challenges that the defendant faced in childhood and into adulthood, including displacement, abuse, relationship instability, behavioral health issues, and encounters with the criminal justice system, several of which resulted from substance use. He has several children and is active in their lives to varying degrees. As a non-citizen, the defendant likely is subject to removal as a result of this case.[2]

These hardships should be weighed alongside the defendant's occupation and its implications for the offense he committed. Professionally, the defendant reported to the Probation Office that he worked over the last decade as a self-employed tax return preparer and consultant and that he made a comfortable salary from this work. The defendant must have understood how amounts reported on forms result in real world consequences, just as he must have appreciated the

[2] The government is not aware of any reason that the defendant could not have obtained citizenship during his lengthy residence in the United States, and the PSR suggests that he began an application in the 1990s but abandoned it.

significance of lying on financial documents. The defendant did not exploit the PPP out of hardship, impulse, or confusion.

Need to Avoid Unwanted Sentencing Disparities

The Defendant's requested sentence of 12 months and a day is insufficient under §3553(a), especially compared to defendants in similar cases. While the defendant must be assessed independently, as a general matter, defendants who have committed COVID-related fraud in this district have received meaningful custodial sentences greater than the one the defendant is requesting. *See, e.g., United States v. Loc Vo*, 22-cr-10286-WGY (24-month sentence for defendant who received over $1.5 million based on multiple fraudulent applications), *United States v. Adley Bernadin*, 22-CR-10110-IT (15-month sentence for defendant who obtained over $400,000 in one fraudulent PPP loan and tried to obtain additional loans); *United States v. Ronald Buie*, 22-cr-10042-DPW (18-month sentence for defendant who obtained SBA loans and PUA payments exceeding $300,000 using stolen and fabricated identities); *United States v. Elijah Buoi*, 20-cr-10130-FDS (39-month post-trial sentence for defendant that submitted fraudulent applications for millions in SBA loans but accessed and spent less than $30,000 in proceeds; defendant had exceptionally difficult childhood and served as a child soldier in Sudan); *United States v. William Cordor*, 21-cr-40016-TSH (33-month sentence for defendant that received $8,000 in EIDL disbursement and who also sought PUA benefits and committed aggravated identity theft); *United States v. Roosevelt Fernandez*, 21-cr10046-RGS (60-month sentence for recidivist defendant who fraudulently obtained $350,000 through EIDL fraud and tax offenses); *United States v. John Casey*, 20-cr-10202-ADB (48-month sentence for defendant who fraudulently obtained over $675,000 in EIDL and PPP funds, and who also committed two unrelated fraud schemes); *United States v. Dana McIntyre*, 21-cr-10162 (24-month sentence for defendant who fraudulently obtained $679,156 in PPP and EIDL funds by inflating employees and monthly payroll expenses).

The defendant will be the first of the co-conspirators in this case to be sentenced. Pursuant to its plea agreement with co-defendant Adiana Pierre (Dkt. 42), the government intends to recommend a sentence of 30 months incarceration for Pierre. Whereas Pierre recruited more borrowers (at least 12, including the defendant), caused a greater amount of losses (approximately $7.1 million), and profited more from the scheme (approximately $400,000), she is more culpable than the defendant. She also has no criminal history and will receive the benefit of the zero-point offender reduction. The government's recommendations for the defendant and Pierre appropriately account for their relative culpability within the framework of the guidelines.

Need for the Sentence to Afford Adequate Deterrence to Criminal Conduct and Protect the Public from Further Crimes of the Defendant

As the pandemic spread, so too did fraud related to the CARES Act programs and other programs designed to provide critical economic assistance. The government's recommended sentence is appropriate to provide both general and specific deterrence. Actors like the defendant who defraud one or more emergency programs not only drain those programs of limited funding; they also make it more difficult for administrators of government relief programs to get aid to individuals that qualify for and need it. A 27-month sentence will serve as a warning and deterrent to others inclined to exploit similar relief programs in the future. It will illustrate that relief programs are not designed to be cash grabs and that the receipt of relief funds is not a right, but rather a privilege afforded to those who qualify based on true and accurate information.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court impose the government's requested sentence of 27 months imprisonment and three years of supervised release, along a special assessment of $100 and the restitution and forfeiture set forth in the plea agreement. This sentence is sufficient, but not greater than necessary, to reflect the seriousness of the offense and the history and characteristics of the defendant, promote respect for the law, provide just punishment, and afford adequate deterrence.

Respectfully submitted,

JOSHUA S. LEVY
ACTING UNITED STATES ATTORNEY

By: */s/ David M. Holcomb*
DAVID M. HOLCOMB
ASSISTANT U.S. ATTORNEY

Date: May 21, 2024

Certificate of Service

I, David M. Holcomb, hereby certify that this document was this day filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF").

Date: May 21, 2024 */s/ David M. Holcomb*