IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 24-cr-10007-2-MJJ
	)	
ADIANA PIERRE ,	)	
	)	
Defendant	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States respectfully submits this memorandum regarding the sentencing of the defendant, Adiana Pierre, which is scheduled for June 7, 2024.[1]

The defendant pleaded guilty to conspiring to submit fraudulent Paycheck Protection Program ("PPP") applications on behalf of numerous borrowers 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 30 months of incarceration and 36 months of supervised release, and to order the defendant to pay restitution of $5,479,708.

OFFENSE CONDUCT

At the beginning of the COVID-19 pandemic in 2020, the defendant partnered with a friend, co-defendant Wallace Ford, to take advantage of emergency measures that the federal government had implemented to keep businesses running and paying employees.

[1] Pursuant to the Court's Procedural Order Re: Sentencing (Dkt 56), the government respectfully reports (1) that the government is not moving for a departure from the applicable guideline range, but does recommend 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.

Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act in March 2020. The CARES Act established the PPP. Under the PPP, small businesses could apply for loans that were processed and funded by participating lenders. To qualify for a PPP loan, a business was required to submit an application and supporting documentation that established, among other things, the number of persons employed by the business and the amount of the business's payroll expenses.

The defendant lived in Palm Beach County, Florida. She sold life insurance and held herself out as a self-employed consultant. When PPP funds first became available, the defendant unsuccessfully applied for a loan as a sole proprietor. After this, the defendant received help from Ford, who had obtained approximately $170,000 in PPP funds for his own purported businesses through several false loan applications. Ford prepared an application for the defendant. For supporting documentation, he created a tax return that falsely reported that she made gross income of $100,000—the wage cap for determining the PPP amount a borrower was eligible to receive. Based on this application, the defendant received a PPP loan of $20,833 (2.5 times her purported average monthly income).

After this, the defendant and Ford agreed to work together to make money by securing PPP loans for other individuals and businesses. The defendant 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. One of the borrowers the defendant recruited, co-defendant Gardy Alexandre, also recruited other borrowers to submit applications. Alexandre forwarded these referrals to the defendant, who passed them along to Ford.

Most of the applications that Ford prepared for the defendant's and Alexandre's recruits vastly overstated the number of employees and monthly payroll costs of the borrowers. Alexandre, who worked alone and had no employees, received a loan of $300,000 for his purported business entity as a result of an application that falsely stated that he had dozens of employees and attendant payroll expenses. Two borrowers in Massachusetts, recruited by Alexandre and passed along by the defendant, similarly received six-figure loans through false representations about their businesses. 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. 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.

For securing loans through false applications, the defendant charged borrowers a commission, typically of around 10 to 20 percent, which she variously shared with Ford and/or Alexandre.

The defendant directly recruited at least 12 borrowers and indirectly recruited at least five more, through Alexandre. Together, these borrowers received approximately $7.1 million in PPP loans through false applications. The defendant personally received over $400,000 from borrowers for helping secure PPP funds.

SENTENCING GUIDELINES

The government respectfully submits that the defendant's total offense level under § 2S1.1 is 21, 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 $3,500,000 but less than $9,500,000, § 2B1.1(b)(1)(J)	**25** • 7 • +18
The defendant is convicted under 18 U.S.C. § 1957, § 2S1.1(b)(2)(A)	**+1**
Acceptance of responsibility, § 3E1.1	**-3**
Zero-point offender adjustment, § 4C1.1	**-2**
Total Offense Level	**21**

At Criminal History Category I, this offense level results in an advisory Guidelines range of 37-46 months of imprisonment.

At the sentencing of co-defendant Alexandre on May 28, 2024, the Court adopted the Probation Office's calculation of the total offense level under § 2S1.1, starting from a base offense level under § 2B1.1(a) of six rather than seven. While the government objects to calculating the base offense level under § 2B1.1(a) based on money laundering rather than the underlying wire fraud offense, the government acknowledges that a consistent calculation results in a total offense level for this defendant of 20, with a corresponding advisory range of 33-41 months of imprisonment.

SECTION 3553(a) FACTORS

The sentencing factors set forth in 18 U.S.C. § 3553(a) support the government's recommendation of a 30-month prison sentence. This below-guidelines sentence accounts for the defendant's pre-indictment acceptance of responsibility, her background, and the amount by which she profited in relation to the larger amount of loss for which she is responsible.

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 determined that the relief program offered a business opportunity. It was widely understood that PPP loans were forgivable and that this financing amounted to grants from the government. The defendant pitched the program to other people she knew. After she received her own modest, albeit inflated loan, she repeatedly collected amounts in excess of that loan from the borrowers she recruited.

By design, the PPP relied on borrowers' representations about their businesses on a short form application to allocate funds from a limited pool of money. The defendant and Ford blew past program rules by helping borrowers make representations that bore no resemblance to their actual businesses, employees, and payrolls. After disregarding the accuracy of the information on applications, they then flouted restrictions on the uses of the PPP loans by taking kickbacks from the amounts intended to be used on the borrowers' businesses.

The defendant and Ford operated a multi-million-dollar theft from a limited pool of government money. Their conduct harmed the government, which ultimately guaranteed the PPP loans, and small businesses that qualified for loans, needed money to pay their actual employees, and missed out when funds ultimately were exhausted. The defendant should receive a prison term that reflects the opportunism of taking kickbacks from fraudulently obtained disaster loans.

History and Characteristics of the Defendant

The defendant has no criminal history. The PSR and the defendant's memorandum indicate that she is committed to her children and other family members, her educational and professional development, and her church. The defendant's memorandum describes financial and relationship pressures that the defendant submits contributed to her decision to commit fraud. It also describes household challenges that post-date her offense.

The defendant generally has held steady employment and has demonstrated an entrepreneurial bent and an ability to provide for her family. She made the regrettable choice of seeing business opportunity in an emergency relief program. She amassed several years' salary in just two months by recruiting numerous others into a fraud scheme and collaborating with a co-defendant who handled the documentation. The defendant's offense reveals industriousness and people skills that could have been channeled to lawful activities.

Need to Avoid Unwanted Sentencing Disparities

The defendant is the second defendant in this case to be sentenced. With respect to the first, Alexandre, the government recommended a sentence of 27 months, and the Court sentenced Alexandre to a prison term of 15 months. The government's 30-month recommendation for this defendant reflects her more central role to the fraud scheme. While she did not prepare the applications or falsify tax documents, she brought Ford the borrowers that enabled them together to collect tens and hundreds of thousands of dollars at a time in kickbacks. She is more culpable than Alexandre, who recruited fewer borrowers and whose only coordination with Ford was through the defendant. She is responsible for significant losses beyond those Alexandre caused. Unlike Alexandre, the defendant has no criminal history; her guidelines calculation accounts for this twice, through her criminal history category and the zero-point offender reduction. The defendant's role relative to Alexandre's calls for a comparable or higher prison term.

The government's recommendation is consistent with the sentences that other defendants have received for COVID-related offenses in this district. *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).

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, and they erode public trust and support for such programs. A 30-month sentence would serve as a warning and deterrent to others inclined to exploit similar relief programs in the future. It would 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 30 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: *<u>/s/ David M. Holcomb</u>*
DAVID M. HOLCOMB
ASSISTANT U.S. ATTORNEY

Date: May 31, 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 31, 2024 */s/ David M. Holcomb*