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VIA ECF and Email

Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Amos Mundendi
21 Cr. 247 (PAE)

Dear Judge Engelmayer,

Amos Mundendi was five years old the first time his parents forced him to sleep outside with no food and water for a week. Labeled as a sorcerer responsible for his family's misfortune, young Amos was berated and beaten. And as his personal trauma intensified, the country around him – the Democratic Republic of Congo – descended into civil war. Mr. Mundendi and his family found their way to the United States as political asylees, but the violence he had witnessed and the trauma he endured shaped his outlook on life. Unable to fully process his experiences, Mr. Mundendi did not graduate college and could not find fulfilling employment. He faced tremendous financial pressure and a growing sense of failure. The offense conduct here was born of that untreated trauma.

Mr. Mundendi has now confronted his decisions and has accepted responsibility for the harm that he caused. He is looking to the future, focused on the considerable rehabilitation that lies ahead.

Given all of the factors to be considered in determining a just sentence, I ask the Court to sentence Mr. Mundendi to a term of **five years' probation with one**

year of home detention. This sentence acknowledges the seriousness of the offense, reflects the unique circumstances of Mr. Mundendi's life, and sufficiently punishes. A sentence of probation and home detention is wholly sufficient to achieve the statutory goals of sentencing.

Procedural History

On April 4, 2022, Mr. Mundendi entered a guilty plea to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. In a plea agreement, the government and Mr. Mundendi calculated a Sentencing Guidelines range of 57 – 71 months' imprisonment. The Probation Office, based upon new information regarding Mr. Mundendi's criminal history, calculated a Guidelines range of 63 – 78 months' imprisonment.

Mr. Mundendi was arrested on April 21, 2021 and detained until July 28, 2021. Mr. Mundendi's bond was revoked and he was remanded on October 14, 2022. He has been in custody at the Metropolitan Detention Center ("MDC") since that date. By the date of his sentencing, Mr. Mundendi will have served approximately seven months in custody.

A Sentence of Probation and Home Confinement is Warranted¹

A. Amos Mundendi's Tragic Childhood²

Amos Mundendi was born in Kinshasa, the Democratic Republic of Congo

¹ A letter from Mr. Mundendi is attached to this submission as Exhibit B. Letters of support from Mr. Mundendi's family are attached as Exhibits C and D. Supplemental information in this submission is drawn from the Pre-Sentence Report ("PSR") and conversations with Mr. Mundendi and his family.

² To assist with Mr. Mundendi's sentencing, our office retained Dr. Adeyinka Akinsulure-Smith, Ph.D., a clinical psychologist, senior staff psychologist at the Bellevue Program for Survivors of Torture, and professor at New York University's School of Medicine as well as the City College of the City University of New York. Dr. Akinsulure-Smith's teaching and research focuses on severe psychopathology, trauma, and refugee/immigrant mental health. Dr. Akinsulure-Smith met with Mr. Mundendi nine times, reviewed records, and spoke with Mr. Mundendi's fiancée, Charisma Iwu. Dr. Akinsulure-Smith conducted a psychological evaluation of Mr. Mundendi, which included obtaining significant background information and administering a series of psychological tests. Dr. Akinsulure-Smith's report is attached to this submission as Exhibit A.

(“DRC”) in 1989 to a close-knit household. Mr. Mundendi’s first few years were unremarkable; his father worked as a teacher while his mother raised the six children. This stability ended abruptly when Mr. Mundendi’s father lost his job and the family found themselves living in poverty. Almost overnight the family had no home and not enough food.

In search of solace, Mr. Mundendi’s mother joined a new church. There she met a woman who explained that the family’s struggles were the result of young Amos and his brothers engaging in witchcraft. The children would require a spiritual cleansing as the only way to rescue the family from their plight. At five years old, Amos Mundendi was expelled from his home. He was forced to sleep outside and denied food and water. His clothes were taken from him and he was made to wear his mother’s old clothes. His parents and siblings tormented him with ridicule and beatings. When Amos refused to confess to his sorcery, his parents withdrew him from elementary school.

This abuse persisted for six years. Instead of learning to read and playing with friends, Amos spent his days looking for food and becoming increasingly withdrawn. As Mr. Mundendi explained to Dr. Akinsulure-Smith, he spent six years crying and would close his eyes and try to think of something beautiful. Ex. A at 5. This practice of disengaging from the world around him is one that Mr. Mundendi still engages in to this day.

As young Amos was experiencing the trauma inflicted on him by his family, the country around him was descending into war.³ Years of genocide, internal displacement, and dictatorship culminated in a civil war that ultimately caused over six million deaths.⁴ Mr. Mundendi quickly became accustomed to witnessing the atrocities of war.

In 1999, Mr. Mundendi’s parents, outspoken critics of the dictatorship, were forced to flee the country. As Elie Mundendi, Amos’ father, explains, “...the political police came after me. They started searching for me...I escaped the country.”

³ Human Rights Watch Report, *DR Congo: Chronology* (August 21, 2009) at https://www.hrw.org/news/2009/08/21/dr-congo-chronology#_War.

⁴ See Caritas Report, *Six Million Dead in Congo’s War* (February 24, 2010), at <https://www.caritas.org/2010/02/six-million-dead-in-congos-war/>.

Exhibit D. Amos and his siblings were left behind in Kinshasa under the care of their oldest sister Lydie. The physical abuse and denial of food continued. Outside the home, the conditions of the war worsened. The children decided to leave their home and traveled alone until they reached a refugee camp in neighboring Cameroon. After several months in the camp the children were able to join their parents in Texas. On May 18, 2005, Amos Mundendi entered the United States as a political asylee.

In evaluating Mr. Mundendi, Dr. Akinsulure-Smith administered a series of psychological tests focused on adverse childhood experiences and adversities. Ex. A at 11. The results were consistent with Mr. Mundendi's reported experiences: he scored highly on tests indicating (1) childhood exposure to emotional, physical, and sexual abuse, (2) exposure to violence, and (3) persistent trauma during his developmental years. *Id* at 12.

B. Amos Mundendi's Adjustment to Life in the United States

"When I came to the United States, I couldn't speak a word of English. Throughout most of my childhood, I didn't talk because I was so scared of being thrown out of the house. I was pretty much silent. But at least I understood the language. When I came to Texas I couldn't even understand what people were saying. Learning English was probably the hardest thing I have ever had to do."

Letter from Mr. Mundendi, attached as Exhibit B.

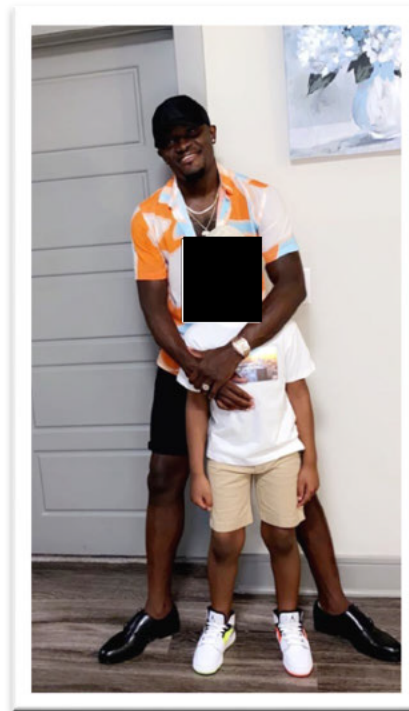
Life in Texas brought its own set of challenges. Initially, Mr. Mundendi's parents were steadfast in their belief that Amos was a sorcerer. Though he was allowed to sleep in the home, the emotional and verbal abuse continued. Amos was enrolled in school but could not speak any English. He was viciously teased by his classmates and c make friends. Unable to acclimate, he stopped speaking entirely.

Mr. Mundendi credits basketball with enabling him to endure: "Early on, I was introduced to the game of basketball. Basketball, in many ways, changed my life. It gave me a reason to live and exist in a world where I had so often been told that I was different and unworthy. It took a lot of mental and physical focus, but I was good at it." Exhibit B. Basketball provided Mr. Mundendi with a sense of self-

worth. He formed a close relationship with his coach, describing him as “the first person I trusted....the first person ever to give me compliments and praise.” *Id.*

After many attempts, Mr. Mundendi was finally able to graduate from high school at the age of 20. He was admitted to college on a basketball scholarship, but financial pressure from his family ultimately lead him to drop out. He found work at a bank, refurbishing phones, and as a pharmaceutical rep.

When Mr. Mundendi was 21 years old his son J [REDACTED] was born. This experience changed his life. Though J [REDACTED] mother and Mr. Mundendi are no longer in a relationship, they co-parent effectively. J [REDACTED] has an autism diagnosis and requires significant supportive services. Mr. Mundendi, committed to providing J [REDACTED] with a childhood different from his own, is a present and involved father. Father and son enjoy playing basketball and spending time together.



Amos and J [REDACTED]

C. Amos Mundendi's Mental Health Obstacles

"I never really healed from the scars of that trauma. My childhood was robbed from me by my parents and their religious beliefs. To this day, I wake up in the middle of the night sweating as a result of nightmares related to my past."

Letter from Mr. Mundendi, attached as Exhibit B.

Mr. Mundendi's clinical sessions with Dr. Akinsulure-Smith identified "a history of psychological injuries that have created a sense of heightened vulnerability." Ex. A at 15. Dr. Akinsulure-Smith determined that Mr. Mundendi exhibits the following diagnoses:

[REDACTED]

Id. at 18. These diagnoses are consistent with the chronic childhood adversity that Mr. Mundendi faced. As Dr. Akinsulure-Smith explains:

Throughout his formative years, Mr. Mundendi's experiences and background contributed to undermining his sense of safety and stability. As a child who grew up in constant survival mode in a home where the loved ones who were supposed to protect were the ones who harmed him; Mr. Mundendi struggled to survive...without any protective factors to mitigate the extensive toxic stress that he encountered on a daily basis...Mr. Mundendi faced severe, frequent, sustained physical, psychological, and verbal abuse. For this individual, all of these factors left him with chronic instability, social isolation, stress and an overwhelming sense of powerlessness in his life.

Id. at 16.

This arrest has compelled Mr. Mundendi to discuss the trauma of his childhood with my office, the Probation Office, Dr. Akinsulure-Smith, and his family. These conversations have led to significant insight into his functioning and decision-making. Mr. Mundendi had, for the most part, managed to cope despite his challenges. For the majority of his time under the supervision of Pretrial Services

Mr. Mundendi was in full compliance. PSR ¶ 17. The stressors of this case, in the absence of appropriate supportive services, led to a rapid deterioration of his behavioral functioning. As Ms. Iwu explains in her letter to the Court:

[Last fall] Amos experienced a sort of mental breakdown. His sentencing was initially set for September 9th, and as this day approached, he became more and more in denial. He started acting differently. It was then that I really began to understand the extent of his mental illness. I always knew he struggled with a lot, but it was kind of easy to ignore when he was doing well. I think the sentencing triggered some sort of mental break for him. The upcoming sentencing led him to a very manic, volatile state... I've known Amos for three years, but the last six months showed me a side of Amos I had never seen before.

Ex. C.

D. Untreated Trauma and the Offense Conduct

Raised in poverty, Amos Mundendi has always felt the pressures of economic insecurity. After dropping out of college to support his family, Mr. Mundendi maintained some form of employment. But lacking a college degree, Mr. Mundendi found himself unable to secure long-term stability. After his dreams of playing basketball failed, he started to flounder. He could not free himself of the trauma of his childhood, but was not equipped to address it. He slowly accumulated a number of contacts with the criminal legal system.

When the pandemic struck, financial pressure mounted for Mr. Mundendi. As businesses across the state closed he suddenly found himself without work. He worried about how he would continue to support his parents and young son. Against this backdrop of financial insecurity his friend Mackenzy Toussaint asked him if he wanted to help him with a new loan application business. As Mr. Mundendi explains, “[h]e told me that it was completely alright, and I foolishly believed him.”

Ex. B. Mr. Mundendi was told to act as a broker – connecting individuals and businesses with Mr. Toussaint in order to submit Paycheck Protection Program (“PPP”) loan applications. As Mr. Mundendi candidly stated to the Court during his plea allocution, he was not aware of all of the details of the scheme, but understood that false information was being submitted as part of the applications. PSR ¶ 45.

Mr. Mundendi is deeply remorseful for his actions. In trying to make sense of his conduct, he states that:

For me, it really comes down to the fact that ever since I was a young child I have wanted to fit in. I was wronged so many times by my family that I always just wanted friends. As an adult, I still try very hard to fit in. I want people to like me and so I don't question at all when they tell me something. When [Mr. Toussaint] told me about the loan application, and said that everyone was doing it, I immediately agreed.

Ex. B. Mr. Mundendi was so eager to be a part of a community that he ignored his better judgment. Dr. Akinsulure-Smith determined that Mr. Mundendi's poor decision-making skills were in part due to a desperate effort to develop social connections with others. Ex. A at 17.

Mr. Mundendi's conduct was serious, but it is uncontested that he was not the originator or ringleader of this scheme. He did not understand the breadth of its reach or the details of its illegality. Mr. Mundendi received approximately \$78,000 as proceeds of the fraud. *United States v. Apocalypse Bella*, 21 Cr. 247, ECF # 182 at 4 (S.D.N.Y. October 22, 2022). This is a fraction of the actual loss amount and a sum consistent with a broker's fee. Mr. Mundendi initially gave this money to his parents and then used approximately \$25,000 to pay legal fees to Bret Martin (Mr. Toussaint's attorney in this matter) for representation on pending state matters.

In determining a sufficient sentence, the Court should consider the specific circumstances of Mr. Mundendi's conduct – shaped by a history of trauma and rejection – as well as his lesser role in this scheme.

E. Amos Mundendi's Suffering in Jail

Mr. Mundendi has endured two separate and brutal periods of confinement in federal custody. On April 4, 2021, Mr. Mundendi was detained in the Northern District of Texas (Dallas) following his arrest on this matter. He was then transported across the country over a period of several months until he arrived, and was released, in our district. The Marshals' process for transferring prisoners across

the country, always arduous, was exacerbated by the pandemic. Mr. Mundendi traveled through several different states, spent time in both local and federal facilities, and was typically isolated from others due to lock-down conditions. He arrived in New York bewildered by that experience.

Mr. Mundendi was then detained last October after his bond was revoked by this Court. Mr. Mundendi has been housed at the MDC, where conditions remain as grim as they were during the height of the pandemic. Mr. Mundendi is in Unit 51, a pod in the jail that is openly controlled by gang members. Violence is pervasive and inmates are reluctant to report anything for fear of retribution by other inmates or placement in the SHU by the guards. Prison staff, already operating at low numbers, often refuse to work in Unit 51 due to the heightened violence and lack of order. This is particularly true on the weekends. Mr. Mundendi reports that the unit is typically unstaffed from Friday night through Tuesday morning. When guards fail to report for work, the unit is placed on lock-down. During almost every one of my visits and phone calls to Mr. Mundendi he has reported that his unit has been on lock-down. This means that Mr. Mundendi (and the other men in his unit) remain confined to a single cell without access to showers, telephones, legal documents, or any form of rehabilitation. Although the new warden at the MDC has announced that lock-downs are a thing of the past, this is simply not true.

This period of incarceration has been traumatic for Mr. Mundendi. Unaffiliated with a gang, he has been threatened, physically assaulted, and repeatedly robbed of his few belongings. He also lacks any opportunity to engage in productive activities: Mr. Mundendi has not had access to any educational, vocational, or therapeutic services. It is clear that the Bureau of Prisons is unable to provide Mr. Mundendi with the psychological and rehabilitative services that Dr. Akinsulure-Smith has determined he needs.

Mr. Mundendi's time in prison has served as both a sufficient punishment and an effective deterrent. Accordingly, I ask the Court to take these conditions into account when determining a just sentence.

F. The Fraud Guideline Places Undue Weight on the Loss Amount

To a substantial extent, the fraud Guideline range in this case is driven by the loss amount – both intended and actual. The Guideline’s emphasis on loss has been criticized for lacking empirical or historical basis concerning deterrent efficacy or any other variable relevant to the purposes of sentencing. *See United States v. Corsey*, 723 F.3d 366, 379 (2d. Cir. 2013) (Underhill, J., concurring) (“The loss guideline...was not developed by the Sentencing Commission using an empirical approach based on data about past sentencing practices. As such, district judges can and should exercise their discretion when deciding whether or not to follow the sentencing advice that guideline provides.”).

In imposing a below-guidelines sentence, Judge Rakoff noted in *United States v. Adelson*, 441 F.Supp.2d 506, 509 (S.D.N.Y. 2006), *aff’d*, 301 Fed. Appx. 93 (2d Cir. 2008), that the loss Guideline in fraud cases (as well as the drug Guideline), in an effort to appear “objective,” places great weight on putatively measurable quantities without explaining why it is appropriate to accord such weight to such factors. As further noted in *United States v. Gupta*, 904 F. Supp. 2d 349, 361 (S.D.N.Y. 2012), *aff’d* 747 F.3d 111 (2d Cir. 2014), the Guideline’s focus on the amount of monetary loss effectively ignores the many other factors contained in § 3553(a), resulting in Guidelines-recommended sentences that are “irrational on their face.”

The fraud Guideline has also shifted significantly from historical sentencing practices and the stated original intent of the Commission. Since 1987, the Guidelines have strayed far from the initial goal of short but definite prison terms for white collar defendants: recommended sentences have been steadily increased, often with little justification. Looking at this case alone, if Mr. Mundendi had been convicted of this same offense in 2000, the Guideline⁵ range would have been *almost half* of the range in the current Guidelines. (Guidelines for a loss of more than \$10,000,000 earned a base-offense level of 6, plus a 15-level loss-amount enhancement, yielding a Guideline Range of 33 to 41 months, whereas calculations under the current Guidelines call for a base

⁵ Available at: ussc.gov/guidelines/archive/2000-federal-sentencing-guidelines-manual.

offense level of 7 with a 20-level loss-amount enhancement.) That the same crime can supposedly warrant such different penalties over time undercuts any claim that the Guidelines yield rational sentencing recommendations.

The harsh sentence recommended here under § 2B1.1, based primarily on an overemphasis on loss amount, is not historically or empirically based, will yield a sentence that is greater than necessary, and will impose significant costs on Mr. Mundendi and the community. The Court should recognize this Guideline as fundamentally flawed.

Looking Ahead: The Path Forward

“Growing up, I was thought to be a witch, and made to live in a crawl space. Physically, but also emotionally, I didn’t see a way out. But now I do. I see a way that I can take this terrible mistake and recover from it in a productive way.”

Letter from Mr. Mundendi, attached as Exhibit B.

Amos Mundendi is not the same man he was almost two years ago when he was arrested on this matter. He has made many mistakes in those two years, but he has also gained tremendous insight into the decisions that led him to this point. This most recent period of incarceration has challenged Mr. Mundendi’s sense of self, and has forced him to focus on the necessary rehabilitation that lies ahead.

Mr. Mundendi’s reentry plan has been developed after meeting with Dr. Akinsulure-Smith and social work staff at the Federal Defender’s office. I urge the Court to consider imposing the services in this reentry plan as mandatory conditions of a five-year term of probation.

Mental health treatment: In her report to the Court, Dr. Akinsulure-Smith recommends the following for Mr. Mundendi:

1. Cognitive Behavioral Therapy (“CBT”);
2. Medication management;
3. Psychological therapeutic support; and
4. Community mentorship.

See Ex. A at 19.

Education: Mr. Mundendi's educational trajectory was cut short by the pressure to contribute financially to his family. Mr. Mundendi regrets his decision to leave school and is eager to graduate from college with a degree in business administration. Mr. Mundendi hopes to attend Tarrant County College in Fort Worth, Texas.

Employment: Mr. Mundendi will obtain and maintain regular employment. He has already spoken with a social worker at the Federal Defender's office about reentry programs that provide vocational training programs that offer certifications in technical skills.

Upon his release Mr. Mundendi will live with his parents in the suburbs of Dallas, Texas. Mr. Mundendi will comply with the conditions of his supervision. He will also spend time with his young son and work to repair his relationships with his family. As Dr. Akinsulure-Smith notes, "...Mr. Mundendi would be most amenable to treatment in the community rather than a correctional facility. Mr. Mundendi is generally a prosocial individual and his psycho social functioning would improve significantly" with access to appropriate services. Ex. A at 20.

Conclusion

Amos Mundendi committed a serious crime and he knows that a serious punishment is warranted. A sentence of five years' probation with one year of home detention is such punishment and is sufficient to serve the purposes of sentencing. This sentence punishes Mr. Mundendi for his role in this crime and serves as a powerful deterrent. It also recognizes that, with the imposition of necessary psychological services and continued supervision, Mr. Mundendi can overcome the tragedy of his childhood. As his father states: "Amos wants to stand for the good in life. He has promised me this, and I know I can count on him to follow through." Ex. D. Amos Mundendi has the potential for full rehabilitation and a successful reentry into our community. The Court should afford him that opportunity.

Respectfully submitted,



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cc: AUSA Dina McLeod (via ECF)