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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 247 (PAE)

5 AMOS MUNDENDI,

6 Sentence

7 Defendant.

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8 New York, N.Y.
9 February 14, 2023
10 9:30 a.m.

11 Before:

12 HON. PAUL A. ENGELMAYER,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 DINA McLEOD

Assistant United States Attorney

18 DAVID E. PATTON

19 Federal Defenders of New York, Inc.
Attorney for the Defendant

20 TAMARA LILA GIWA

21 Also Present: Sofia Rao, Paralegal, Federal Defenders

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(Case called)

THE DEPUTY CLERK: Counsel at the front table, please state your appearance for the record.

MS. MCLEOD: Dina McLeod for the government.

THE COURT: Good morning, Ms. McLeod.

MS. GIWA: Federal Defenders of New York by Tamara Giwa for Mr. Mundendi. Also at counsel table is Sofia Rao, a paralegal in my office, and next to me is Mr. Mundendi. Good morning, your Honor.

THE COURT: Good morning, Ms. Giwa. Good morning, Ms. Rao. And good morning to you, Mr. Mundendi.

THE DEFENDANT: Good morning, Judge.

THE COURT: We're here today to impose sentence in the case of United States v. Amos Mundendi. On April 4th, 2022, Mr. Mundendi pled guilty to one count of conspiracy to commit wire fraud.

In preparation for today's proceeding, I have reviewed the plea agreement and the transcript of the plea proceedings. I have also reviewed the presentence report dated last June 28th, including its recommendation and addendum. I have also received and reviewed the following additional submissions: The defendant's sentencing submission, with various attachments, dated February 2nd; the government's sentencing submission, dated February 7th; and most recently, a draft restitution order.

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1 Have the parties received each of these submissions
2 and has anything else been submitted in connection with
3 sentencing?

4 MS. MCLEOD: Yes, your Honor. And no, I don't believe
5 so, your Honor.

6 THE COURT: Was there a forfeiture order, can you
7 refresh my memory?

8 MS. MCLEOD: There was, but I believe it was signed at
9 the plea.

10 THE COURT: So the application as to that would then
11 be simply to convert it from a preliminary to a permanent?

12 MS. MCLEOD: Correct.

13 THE COURT: Same answer?

14 MS. GIWA: Yes, your Honor.

15 THE COURT: Ms. Giwa, have you read the presentence
16 report?

17 MS. GIWA: Your Honor, I have read it. I have also
18 sent a copy to Mr. Mundendi. The two of us discussed it, we
19 reviewed it, and we don't have any objections at this point.

20 THE COURT: I'll get to the objections, but thank you.
21 Good to know. You got ahead of me there, and that's just fine.

22 Mr. Mundendi, have you read the presentence report?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Have you discussed it with Ms. Giwa?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Have you had an opportunity to go over
2 with her any errors in the report or anything else that should
3 be taken up with the Court?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: How about you, Ms. McLeod, have you
6 reviewed the presentence report?

7 MS. MCLEOD: I have, your Honor.

8 THE COURT: Putting aside the calculation of the
9 sentencing guidelines and focusing just on factual accuracy,
10 does anyone have any objections to the report regarding its
11 factual accuracy?

12 MS. MCLEOD: No, your Honor.

13 MS. GIWA: No, your Honor.

14 THE COURT: Then hearing no objections, I will adopt
15 the factual recitations set forth in the presentence report.
16 The report will be made a part of the record in this matter.
17 It will be placed under seal. In the event an appeal is taken,
18 counsel on appeal may have access to the sealed report without
19 further application to the Court.

20 Counsel, I believe you both publicly filed, subject to
21 redactions, your sentencing submissions.

22 MS. MCLEOD: Yes, your Honor.

23 MS. GIWA: That's correct, your Honor.

24 THE COURT: Turning to the guidelines, the Court is no
25 longer, of course, to follow the sentencing guidelines, but I

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1 am required to consider the applicable guidelines in imposing
2 sentence. To do so, it's necessary that the Court accurately
3 calculate the guidelines sentencing range. Now, in this case,
4 there was a plea agreement in which the parties stipulated to a
5 particular calculation of the guidelines. The parties
6 calculated an offense level of 24 and a criminal history
7 category of II, which would yield an advisory guideline range
8 of between 57 and 71 months' imprisonment. The probation has
9 calculated the same offense level of 24, but a criminal history
10 category of III, yielding an advisory guideline range of
11 between 63 and 78 months' imprisonment.

12 From reviewing the parties' sentencing submissions --
13 although it's not completely clear -- it doesn't appear that
14 either party takes issue with the probation department's
15 calculation of the criminal history category.

16 Beginning with the government, is that correct?

17 MS. MCLEOD: That's correct, your Honor.

18 MS. GIWA: That's correct, your Honor.

19 THE COURT: Then based on the parties' present
20 agreement and the absence of objection and my independent
21 evaluation of how the guidelines apply here, I accept the
22 guideline calculation in the presentence report. I find that
23 the offense level is 24, the criminal history category is III
24 and the guideline range is between 63 and 78 months'
25 imprisonment.

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1 The next subject I need to briefly cover is
2 departures, which is to say, within the narrow framework of the
3 guidelines, in the plea agreement, both parties have agreed
4 that neither an upward nor a downward departure -- again,
5 within the guidelines framework -- was merited. Having
6 reviewed the presentence report and the parties' submissions, I
7 share that conclusion. I find that no departure is available
8 as a matter of law. That, of course, does not preclude any
9 party from seeking a variance, as the defense is here.

10 So with that, does the government wish to be heard
11 with respect to sentencing?

12 MS. MCLEOD: Yes, your Honor, briefly.

13 So I'll start first with the nature of the offense and
14 the severity here. Your Honor, at this point, is very familiar
15 with the facts of the case and with PPP fraud and the fact that
16 it's been an extensive problem nationwide. The defendant was
17 not sort of the ringleader of the fraud, but he played a role
18 in it. He helped to facilitate and reached out to the owner of
19 a company in an attempt to file fraudulent submissions.
20 Ultimately, an application was filed for about \$2 million.
21 That loan never funded. So the crimes here, I think, are very
22 serious.

23 In addition, the government was able to obtain a
24 number of Signal communications between the defendant and
25 Mackenzy Toussaint where they discussed other companies for

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1 which loans were ultimately also sought and obtained.

2 THE COURT: Let me pause you, because I was having a
3 little bit of difficulty just understanding the different
4 categories, if you will, into which the fraud fell. And the
5 overall loss amount that the defendant is treated as
6 accountable for is the amount in the guidelines that is
7 bracketed by 9 and a half million to 25 and a half million. On
8 the other hand, it looked as if the defendant was involved
9 functionally in a much smaller subset. Can you just walk me
10 through the different categories and what his connection was to
11 each.

12 MS. MCLEOD: Yes.

13 So the overall scheme involved upwards of \$30 million
14 in attempted losses. In terms of the plea agreement the
15 defendant was held responsible for losses that we felt were
16 reasonably foreseeable to him. And so those would include the
17 \$4 million -- the two \$2 million loans for company one and
18 company two, initially. Plus a number of other companies that
19 were discussed over Signal. And so he ultimately ended up
20 being held responsible for those, although he did not receive
21 proceeds.

22 THE COURT: The fraud from which he received \$78,000
23 in proceeds, which one was that?

24 MS. MCLEOD: That was the initial round of fraudulent
25 loan applications related to company one and company two; the

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SDNY companies.

THE COURT: So functionally, in terms of the fraud that he actually contributes by his actions to, that's the first pair involving the two \$2 million loan applications for company one and two, which together reap a little over \$3.9 million?

MS. MCLEOD: Yes.

He received proceeds from that first round involving company one and company two. And then the next year, when the CARES Act was sort of re-upped and you could apply again, he was involved in facilitating another fraudulent loan application for a company -- I forget whether it was company one or company two -- but sort of a second fraudulent loan application for the same company, and that was never funded.

THE COURT: So I had understood, essentially, that in 2020, he participates with companies one and two; that results in about \$3.9 million or so being obtained of which he gets about 78,000. I understood as well that, in June of 2020, independent of the PPP program, he had some participation in an attempted fraud directed at EIDL program funds, but I understood at least from the best I could tell, that that also didn't result in any payout.

MS. MCLEOD: Correct.

And there were no --

THE COURT: Is that correct?

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1 MS. MCLEOD: There are no allegations that there was
2 fraud as to those EIDL applications. The reason why that was
3 put in there, that factual point, is to show his connection to
4 the modem that was used.

5 THE COURT: I see.

6 MS. MCLEOD: As you know, Toussaint was connected to
7 that modem.

8 THE COURT: But in other words, you are not alleging
9 that there was anything improper about the application for the
10 EIDL loans?

11 MS. MCLEOD: Correct.

12 THE COURT: So it's really two schemes; the first one
13 bears a little under \$4 million in fruit, the second one is
14 unsuccessful?

15 MS. MCLEOD: Yes.

16 THE COURT: But to the extent that he's being held
17 accountable for a much larger sum, that's based essentially on
18 awareness of the size of the fraud, as reflected in the
19 communications, not in the functional activity by him?

20 MS. MCLEOD: Correct.

21 THE COURT: Okay.

22 MS. MCLEOD: And just to clarify one point. I believe
23 we're saying he received about \$78,000 of that first round; it
24 was actually his parents who received it. But he is held
25 responsible for it in the forfeiture order.

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1 THE COURT: So come back to that, that was received.
2 I recognize that the allocation of fraudulent proceeds doesn't
3 always say a lot, but it was striking to me that he receives
4 maybe 2 percent of the proceeds of the first fraud and seems to
5 be the smallest recipient among any.

6 Is there any evidence that he received any other
7 proceeds of any of the frauds here?

8 MS. MCLEOD: No. I don't think that we have evidence
9 that he received proceeds of the other fraud. Although he may
10 have -- given his more substantial involvement in the second
11 round, it's possible that he could have got a chunk.

12 THE COURT: Any explanation as to why his share of the
13 proceeds is what it is as to the \$3.9 million.

14 MS. MCLEOD: I don't know why that is. I think
15 everyone was taking their cut, and he ended up having a much
16 smaller cut. I don't know the exact reasons why he --

17 THE COURT: His cut almost to the penny turns out to
18 be about 2 percent. I think everyone who I have sentenced so
19 far has -- well, I don't know that you have an insider witness
20 on all this -- but I was struck by the number, \$78,000 is twice
21 \$39,000; \$39,000 would be 1 percent. It looks like at least
22 he's got a 2 percent cut here. Do you have any idea how that
23 came about?

24 MS. MCLEOD: I don't know how they came up with the
25 split.

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1 THE COURT: There have been a number of defendants
2 sentenced and some of them who participated had a lesser
3 awareness of the scope of the fraud, but I think everybody I
4 have sentenced received a greater share of the fruits of the
5 fraud. All factors considered, what's your assessment of
6 comparators?

7 MS. MCLEOD: There's not sort of one that's really
8 exactly on all fours. In the second round, he was
9 facilitating, sort of acting as the go-between, which is what
10 Bella did in the first round. Bella also collected information
11 from the owner of the company to pass along to the
12 coconspirator. So in that sense, the conduct is similar to
13 what Bella did.

14 THE COURT: Isn't that what Mr. Mundendi did in the
15 first round, that he was reaching out to the owner?

16 MS. MCLEOD: Sorry, that was the second round.

17 THE COURT: In the first round, what did he
18 functionally do?

19 MS. MCLEOD: He received money in the first round.

20 THE COURT: That's like Bella, in that respect; right.

21 MS. MCLEOD: Right.

22 In essence, they're almost reversed. Bella, in the
23 first round, is doing the brokering and then receives a huge
24 chunk of money in the first round. But then Bella drops out
25 from the second round. He doesn't participate.

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1 THE COURT: And Bella is unusual in that Bella does
2 not demonstrably know of the fraud until it's essentially
3 complete, and therefore, his offense is receiving the fruits of
4 the fraud; it's a laundering offense.

5 MS. MCLEOD: That's right.

6 THE COURT: Whereas Mr. Mundendi can't say that. He's
7 involved both in receiving the fruits and in attempting to make
8 a fraud, specifically the second one.

9 MS. MCLEOD: Yes.

10 THE COURT: But he also receives somewhat less money
11 than Mr. Bella?

12 MS. MCLEOD: He receives significantly less money than
13 Bella. And Bella -- it sort of depends on how you weigh
14 committing the fraud versus laundering the proceeds. The
15 guidelines for money laundering is usually a little bit higher,
16 so Bella actually did have slightly higher guidelines, if you
17 were comparing apples to apples. Bella received much more
18 money, I think almost three-quarters of a million dollars. So
19 I think, in that sense, right, that weighs more in
20 Mr. Mundendi's favor.

21 I think the big thing weighing against Mr. Mundendi is
22 that he has the most significant criminal history of any --

23 THE COURT: Of any of the defendants.

24 MS. MCLEOD: Mr. Bella and Mr. Maxwell -- I think
25 maybe Mr. Jackson also -- did not have any convictions. I

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1 think maybe Toussaint was the only one who had prior --

2 THE COURT: Right. Toussaint is an order of magnitude
3 above everybody else.

4 MS. MCLEOD: So again, my point here is not to
5 overstate the role here. His role was what it was. It was a
6 significant part. He received money -- a small amount of money
7 compared to the others -- however, he has by far the worst
8 track record in terms of criminal history.

9 So I think, just to turn briefly -- and I'm not going
10 to belabor the point, because I think your Honor is very attune
11 to this issue -- but specific deterrence is obviously a major
12 concern here.

13 THE COURT: Right.

14 MS. MCLEOD: We have already had a bail hearing for
15 the defendant where we went over in detail the issues he was
16 having complying with both the law and with pretrial release.
17 Prior to being arrested on those 2022 offenses, he had already
18 had a fairly lengthy arrest and conviction history. And his
19 employment history, I think, is also a little bit spotty.
20 Right, actually, this reminds me.

21 The fact that he seemed to have sort of gotten it
22 together a little bit and was working for UPS while on pretrial
23 release was a very positive sign for him. But the fact that he
24 then was fired for stealing from UPS, I mean it's almost the
25 worst possible thing that he could have done. It's like a 180,

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1 right; working, legitimate employment for UPS and then fired
2 for stealing from UPS.

3 THE COURT: But that has not been established; right?
4 In other words, the fact that he was fired, yes. The fact that
5 he committed that crime is not actually something I think I can
6 consider.

7 MS. MCLEOD: Correct.

8 He has not been convicted for it, I think the arrest
9 report -- yes, this is all based on what was in the incident
10 report. But the incident report stated that at least one of
11 the thefts was on video.

12 THE COURT: I appreciate that.

13 MS. MCLEOD: But yes.

14 THE COURT: For the purposes of sentencing, while the
15 brushes with the criminal law are germane from the specific
16 deterrence perspective, I don't think the record permits me to
17 find that he in fact committed those offenses.

18 MS. MCLEOD: And I don't think that your Honor needs
19 to. I mean, the main upshot, I think, is that he was fired
20 from his job, which I don't think is in dispute.

21 THE COURT: Right.

22 MS. MCLEOD: And so the trajectory has not been
23 positive.

24 I know that Ms. Giwa put in a very thoughtful
25 submission. But there has just been an extremely long history

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1 of the defendant really not being able to go very long without
2 some sort of arrest or conviction.

3 THE COURT: Thank you, Ms. McLeod, as always.

4 Ms. Giwa, the floor is yours.

5 MS. GIWA: Thank you, your Honor.

6 Your Honor, as you are aware, we're asking for a
7 sentence here of five years probation and a year of home
8 confinement. And so I want to just sort of address the fact
9 that I realize this is -- but for the home confinement -- a
10 nonincarceratory sentence. And I'm familiar with the sentences
11 of the co-defendants, I've read all of those transcripts in an
12 attempt to understand the Court's view of the case. And I
13 think that this ask, the request for a nonincarceratory
14 sentence, really can be supported. And I'm hopeful that our
15 sentencing submission really sort of laid the foundation for
16 why we think the 3553(a) factors demonstrate the
17 nonincarceratory sentence is appropriate here.

18 The sentence, of course, would guarantee some sort of
19 confinement; confinement in Mr. Mundendi's family's, his
20 parents' home for a year. That is on top of the seven, almost
21 eight months of incarceration that he has already been
22 subjected to. But I think that the reason -- and I spent some
23 time really thinking about the appropriate sentence here -- I
24 think one guarantee of this sentence is that it allows the
25 Court to impose any number of conditions, while hanging over

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1 Mr. Mundendi's head the fact that if he violates those, he
2 faces the possibility of really a substantial period of
3 incarceration. And I think this sentence allows for the
4 supervision that Mr. Mundendi really needs, as demonstrated by
5 the report that our expert spent a lot of time on. So I want
6 to get into it, but I do want to acknowledge that I am asking
7 for a sentence that varies quite significantly from the
8 guidelines and from the sentences that the other defendants
9 received.

10 THE COURT: I think that's a significant -- look, I
11 appreciated the power of the defense submission, but it is a
12 hard ask because the nature of the crime, PPP fraud, is
13 particularly serious, particularly offensive for reasons stated
14 in the other sentencings. And although Mr. Mundendi can
15 distinguish his facts from other defendants -- and I think
16 Ms. McLeod was very neutral and clear in explaining the ways in
17 which he is alike and not alike others -- at the end of the
18 day, the scatter pattern of people who have similarities to him
19 would situate the sentence considerably higher. And although
20 he can make arguments in mitigation, predominantly the lesser
21 fruit, offsetting that is the higher criminal record. So in
22 candor, I'm happy to hear the application, but it does look to
23 me that he belongs, broadly speaking, within the purview of the
24 non-Toussaint defendants here.

25 MS. GIWA: I understand that, your Honor. And I heard

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1 Ms. McLeod in her explanation of the offense conduct here.

2 But I think that Mr. Mundendi also stands out, if the
3 Court considers the nature and circumstances of him and his
4 personal history. And so I want to discuss that a little bit.
5 I won't repeat everything in our submission, but maybe just
6 some of the highlights.

7 THE COURT: Go ahead.

8 MS. GIWA: Mr. Mundendi, as I think he'll explain to
9 you himself, he was born in the Democratic Republic of the
10 Congo, which under its current conception was a fairly young
11 country. It's a country that's been plagued by civil war. And
12 that really was the backdrop of Mr. Mundendi's childhood.

13 He had a rather unremarkable childhood for the first
14 five years, and then his father lost his job and the family
15 lost all of their financial security. And they suddenly had no
16 stable housing, no stable income, no stable food.

17 Mr. Mundendi's mother went to a new church to, I
18 guess, find answers. And instead, she found somebody that told
19 her that her sons were sorcerers and that they were engaging in
20 witchcraft, and the witchcraft was the reason that the family
21 found themselves in the circumstance. And the advice that was
22 given to Ms. Mundendi's mother was to expel Mr. Mundendi from
23 the home, deny him food and water, force him to live outside,
24 to take all of his clothes. So at five years old, when he
25 should have been in school learning to read and write, he was

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1 living outside. He told me and told probation also that he
2 would climb the neighbor's mango trees at night to get mangos
3 to feed himself. On top of that, he was verbally ridiculed and
4 berated by his family, but also subjected repeatedly to
5 beatings both by his parents and by his siblings who were
6 encouraged also to get the sorcerer out of him. And as a
7 result, Mr. Mundendi stopped speaking. He was withdrawn, his
8 parents took him out of school, and he just stopped speaking
9 because he was told to confess, but he was not going to confess
10 to being a sorcerer. And essentially, he was robbed of his
11 childhood within the family structure that was meant to support
12 and stabilize him.

13 And then the backdrop of civil war that I mentioned
14 started intensifying. And Mr. Mundendi's parents left the
15 country, they came to the US as political asylees. And they
16 left Mr. Mundendi and his siblings in the care of their older
17 sister, who I think was 20 or maybe 21 at the time.

18 THE COURT: How old is Mr. Mundendi at this point?

19 MS. GIWA: 10 or 11, your Honor.

20 Eventually, Mr. Mundendi and his siblings, they made
21 their way to Cameroon, a neighboring country, and they found a
22 UN refugee camp and they lived there for some time, also under
23 difficult circumstances. And eventually were able to join
24 their parents in Texas as asylees also.

25 In some ways coming to the United States brought some

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1 stability. There certainly was not civil war happening. But
2 Mr. Mundendi had been subjected to a significant amount of
3 trauma. And when he got to the United States, he didn't speak
4 English. And so he was in school, really unable to function
5 because he didn't know what was happening around him. And his
6 family situation, while not as severe -- he was allowed to live
7 in the home -- was still pretty bad. And so his adjustment to
8 the United States was difficult until he found basketball. And
9 he has expressed that finding basketball really changed
10 something for him.

11 He had a coach who became a mentor, who he says was
12 the first person ever in his life to express interest in him
13 and to guide him. And that sort of mentor figure was
14 significant and is something that our expert,
15 Dr. Akinsulure-Smith also referred to in thinking about the
16 future for Mr. Mundendi, this idea of mentorship and guidance.
17 I think we can tie that back to this first basketball coach
18 that he met.

19 Your Honor, as you know, we retained an expert here.
20 After we met with Mr. Mundendi and heard about his childhood, I
21 felt that I didn't really have the capacity to fully make sense
22 of that. And so our expert, she specializes in West African
23 refugees, in torture and in trauma, so she seemed like the
24 perfect person to work with Mr. Mundendi. And in fact she did.
25 She met with him, I think, nine times. She spoke with his

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1 family, she spoke with his former fiance. She reviewed a
2 number of records. And I think the report she produced was
3 really quite comprehensive. And I hope it is helpful to the
4 Court --

5 THE COURT: It was.

6 MS. GIWA: -- in understanding Mr. Mundendi and his
7 past.

8 One of the things that Dr. Akinsulure-Smith did was to
9 administer a number of psychological. And some of those tests
10 were about childhood adversity. And they confirm what
11 Mr. Mundendi reports; that he was subjected to very severe
12 trauma. She was able to diagnostically confirm that.

13 Dr. Akinsulure-Smith also diagnosed Mr. Mundendi with
14 a number of serious conditions, including depression, complex
15 PTSD and bipolar disorder. And she was able, I think, to
16 relate quite effectively those diagnoses to Mr. Mundendi's
17 childhood trauma. And she described the social isolation and
18 his instability and feelings of stress and powerlessness as
19 sort of leading us to the place in which we are now. And I
20 think another helpful aspect of her report that also helps to
21 explain the offense conduct here is that she said that, as a
22 result of Mr. Mundendi's childhood, he became somebody who was
23 very eager to please, who developed poor decision-making skills
24 and really acted in a way to prioritize attempts to make social
25 connections with others because he as a child never had these

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1 connections. So I think this gets us now to the offense
2 conduct and contextualizes Mr. Mundendi's conduct.

3 It's certainly undisputed -- Ms. McLeod just said --
4 that Mr. Mundendi was not the ringleader here; it's clear
5 Mr. Toussaint was. Ms. McLeod said Mr. Mundendi played a role,
6 and I think that's what we see here.

7 What Mr. Mundendi has expressed to me and to
8 Dr. Akinsulure-Smith is that had had found somebody who could
9 be a friend to him, and he was eager to have this friend, he
10 was eager to make that social connection. And in doing so, he
11 really exercised poor decision-making. On top of that, he was
12 facing some financial pressure. And so those are the
13 circumstances that lead us to him engaging in this offense
14 conduct.

15 And I certainly don't want to minimize the conduct
16 here. It was very, very serious, and Mr. Mundendi knows as
17 much. But I think that there is a context to understand his
18 behavior here. And I think that this question of the amount of
19 money that he received is a significant issue. He received a
20 very small sum, as we've already been over. That money went to
21 his parents. And then about a third of that went to Mr. Martin
22 to pay legal fees for Mr. Mundendi's cases in Texas. Putting
23 aside whether that was an inappropriate sum, really that money
24 was sent to pay a lawyer.

25 I think that the amount of money also reflects

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1 Mr. Mundendi's role in this offense. And the government didn't
2 quite use the word broker -- or maybe they did use the word
3 broker -- they said Mr. Mundendi was a facilitator. And I
4 think one way of thinking about this was as a broker's fee. In
5 Mr. Mundendi's plea allocution, he said that he did not
6 initially understand what was happening, but that he did at
7 some point realize there was fraud happening here. And even
8 the communications that the government submitted with their
9 submission are really just communications and emails between
10 parties. And so, again, not to minimize the conduct here, but
11 Mr. Mundendi, I think, in some ways can be seen as a middleman,
12 a broker between the two parties.

13 Your Honor, I understand that Mr. Mundendi's criminal
14 history is of serious concern to the Court and I understand
15 that he has a more serious criminal history than most of the
16 defendants here. And again, I think that is the result of
17 years of trauma that he endured and really an inability to
18 exercise proper decision-making, to really make the right
19 decisions about his life.

20 And it was certainly upsetting and troubling when
21 Mr. Mundendi came back to the Court after a significant period
22 of time of almost perfect compliance under pretrial
23 supervision. I was in regular contact with his pretrial
24 officer, and she had nothing but good things to report for a
25 long time. And so it was troubling when Mr. Mundendi came back

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1 in October and was detained by the Court. But as his former
2 fiancée explained in her letter of support and
3 Dr. Akinsulure-Smith explained, the pressure and the tense and
4 stress of the impending sentencing led to a breakdown, led to a
5 cognitive mental health breakdown.

6 And one thing that has changed is that, as a result of
7 this case -- not that I in any way favor contact with the
8 criminal legal system -- but as a result of this case,
9 Mr. Mundendi has had to talk about things that he had never
10 before spoken about. And in fact, even though we have a close
11 relationship, it did take some time for him to even open up to
12 me. And then after telling me about his life, he spoke to our
13 expert, he spoke to probation and he also engaged in some
14 limited therapy. And this mental health intervention, I think,
15 is the reason that Mr. Mundendi is going to do well in the
16 future. He has had -- and I know that defendants say this
17 every day to you -- I think it was a wake-up call, things have
18 changed. There really has been a significant shift caused by
19 Mr. Mundendi's ability now to have insight into himself in a
20 way that he never had before.

21 Your Honor, very briefly I just want to talk about the
22 fraud guidelines. I am not going to get into it -- I know your
23 Honor has a lot of opinions about the fraud guidelines and is
24 aware of all of the criticism around them -- the only thing I
25 would note here is that, in redoing the guidelines calculation

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1 under the 2000 guidelines, turns out Mr. Mundendi's guideline
2 range would be about half of what it is now. And for me, that
3 fact was just so compelling, and I think it really demonstrates
4 why the Court maybe should not give as much deference to these
5 particular guidelines. I think that's all I'll say about that.

6 THE COURT: Look, the other point in that vein is
7 that, although he acknowledges understanding the broader scope
8 of the scheme, his participation is, although in two phases,
9 limited to a much smaller dollar amount.

10 MS. GIWA: That's right, your Honor. That's right.

11 Your Honor, I do want to spend some time talking about
12 a topic that I know everybody is tired of hearing about, which
13 is the conditions in the jails. And I think it's at this point
14 that often everybody stops listening because we've been talking
15 about these conditions now for years.

16 THE COURT: Also, you know that I'm sensitive to that.
17 If you have read prior transcripts, you know that my practice
18 is to give defendants credit for more than a day for each day
19 in conditions. Look, he's been there well after vaccinations,
20 he got there well after the worst of it, but he is still in the
21 MDC during a bad phase. I have every expectation of treating
22 him the way I have others. So you are at liberty to speak
23 about it, but on the one hand, you're kicking an open door; on
24 the other hand, unless there's something unique about him, I
25 don't know that we need to elaborate greatly.

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1 MS. GIWA: I understand, your Honor. I have cited
2 your prior decisions. I understand the Court's view of that.

3 I think that the one point I just want to make is that
4 a lot of the conversation about the conditions in the jails has
5 been about COVID restrictions. And the thing that's changed
6 now but that actually has left things much the same is there is
7 a major shortage of staffing at the jails. And as a result of
8 that understaffing, which I have seen. I go to the jail on a
9 regular basis; there are not enough guards there. The guards
10 tell me they're understaffed. There's a big sign as you are
11 driving down Third Avenue saying, we're looking for guards.
12 It's undisputed. But the result is that, because there are not
13 enough guards, they just lock people into their cells, because
14 they don't have personnel to deal with them.

15 And so what Mr. Mundendi reports is that every Friday,
16 from Friday through the weekend until Tuesday, he is locked
17 into the cell. And on some of the units, guards from other
18 units will come and help out. But Mr. Mundendi is in unit 51,
19 which is controlled entirely by a very specific gang. And
20 violence in that unit is rampant. And the guards are afraid of
21 intervening there, because they too -- in fact, I met with
22 Mr. Mundendi last week and he told me about an assault that had
23 happened on a guard in his unit.

24 Mr. Mundendi has also told me that every time he goes
25 to get commissary, he is robbed by one of the gang members;

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1 they take all of his food. And isolated in that unit, not a
2 member of that gang, he has nothing. He cannot fight back in
3 any way.

4 And so in addition to the COVID issues, which in many
5 ways have passed, there really are continuing issues that mean
6 that people at MDC are facing really inhumane conditions. Your
7 Honor, one last thing on that point, Mr. Mundendi told me that
8 a guard said to him, when your lawyer goes to court for your
9 sentencing, tell her to tell the judge about the conditions
10 here. And I thought that was really telling that even the
11 guards are telling inmates to report about the conditions.

12 I'm going to wrap up, your Honor. I just want to talk
13 very briefly about what the future would look like for
14 Mr. Mundendi.

15 He certainly needs a lot of supervision and which is
16 why I think a sentence of probation really ensures the type of
17 supervision that he needs. The reentry plan that we proposed
18 covers mental health treatment, and our expert went into some
19 detail about the therapy and the medication and the mentorship
20 that Mr. Mundendi needs. Mr. Mundendi also wants to complete
21 his education. Although he came to the US and didn't speak
22 English, he was able to graduate high school at 20, he did
23 attend some college, and he wants to complete that and get a
24 degree in business administration; he's pretty committed to
25 that. He knows on the way there, he's also going to have to

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1 maintain employment. So that's something he intends to do
2 while living with his parents. And also spending time with his
3 son J., who I haven't mentioned today, but we include photos of
4 him in our submission. J. has been diagnosed with autism, and
5 Mr. Mundendi and he have a close relationship and so he intends
6 to spend meaningful time with his son.

7 Your Honor, I don't really have much more to say. I
8 hope I have demonstrated that Mr. Mundendi really stands apart
9 from the other defendants here, in part because of his conduct
10 and in part because of the trauma that he suffered as a child
11 that really has been a through line. I think the Court should
12 consider what happened in his childhood as contextualizing the
13 conduct here, contextualizing Mr. Mundendi's criminal history,
14 and also offering, I think, potential for an outcome here that
15 relies heavily on his rehabilitation.

16 And unless the Court has questions, I have nothing
17 further.

18 THE COURT: So on the assumption that there,
19 nevertheless, is likely to be a prison component to the
20 sentence, are there recommendations you would like me to make
21 to the Bureau of Prisons, along the lines of what you have been
22 speaking of most recently?

23 MS. GIWA: Certainly, your Honor, Mr. Mundendi would
24 like really access to all of the services he could have, but
25 specifically mental health treatment and counseling. I will

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1 say that I made a number of requests already to the legal
2 department at MDC for those things. He has met with a
3 therapist at the jail twice already. He found that beneficial.
4 And so any sort of mental health counseling or mental health
5 treatment would be a request.

6 THE COURT: What about vocational training or
7 educational opportunities; same?

8 MS. GIWA: Yes, your Honor, the same.

9 THE COURT: You mentioned the name of Mr. Mundendi's
10 son. I take it you would like the court reporter to just
11 delete the use of that name?

12 MS. GIWA: Yes. Thank you, your Honor.

13 THE COURT: So I will ask the court reporter in
14 returning to the transcript just use the first initial J., but
15 not the name, please.

16 MS. GIWA: Thank you.

17 THE COURT: Mr. Mundendi, do you wish to make a
18 statement?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Just kindly speak slowly and distinctly
21 and into the microphone.

22 THE DEFENDANT: Thank you, your Honor.

23 Your Honor, I would like to first start off by asking
24 the Court to forgive me for making bad choices and bad
25 decisions that have led me here. I was in a dark place with no

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1 guidance.

2 THE COURT: A little louder, kindly, Mr. Mundendi.

3 THE DEFENDANT: I was in a dark place with no
4 guidance. And I am deeply sorry for my actions.

5 I spent the first 15 years of my life enduring
6 emotional, physical and verbal abuse. The impact of the
7 extensive abuse left me damaged. And the sounds of guns and
8 bombs going off every day and night made my life feel hopeless.

9 It's during the evaluation with Dr. Akinsulure that I
10 have learned that the maladaptive coping skill which I have
11 developed in my childhood led me to interactions with the legal
12 system. That's why seeking counseling is very important for me
13 right now, because I need to work on the exact nature of what's
14 making me do some of the things I do.

15 Your Honor, this case has truly been an experience of
16 a lifetime for me, where I once found myself struggling to
17 smile, breathe or go through many sleepless night from fearing
18 of the unknown. It feels like the world was closing in on me,
19 just like back in my childhood days for being isolated in my
20 cell for two weeks or more without showering or properly fed.
21 I end developing separation anxiety from not speaking to my
22 family, especially during the weekend when everybody is home,
23 because of low staff in jail. And every day I made commissary,
24 the gang will run down on me and take everything from me and
25 threaten my life with knives, bullying me and calling me all

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1 different type of names.

2 Your Honor, these months that I spent in the jails has
3 really opened my eyes. I can never get the time back that I
4 have lost out of my son's life. Thinking about it, your Honor,
5 it hurt me so bad because I always say to myself that I really
6 wanted to give my son the best life that I -- better than what
7 I had. That's why we have a special bond between the two of
8 us.

9 But I can guarantee that my future with my family will
10 be bright because the lesson I have learned is that I never --
11 I need to be very, very careful with who I associate myself
12 with and also there is no shortcuts in life. So I will work my
13 hardest to become the father my son needs and leading by
14 example, by me going back to school and graduate, finding a
15 full-time job and also avoid people and places that would put
16 me in position to have contact with the law enforcement.

17 Society now is only what you make it, and I'm going to
18 be a positive, productive member. All I'm asking for, your
19 Honor, is the opportunity to show the Court that I'm capable of
20 being the better version of myself. And I will not fail you,
21 your Honor.

22 Thank you for your time.

23 THE COURT: Thank you, Mr. Mundendi.

24 I'm going to take about ten minutes. I'll stay here
25 and just reflect on my remarks. If anyone needs to take a

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1 comfort break, you're free to do so. But I expect I'll impose
2 sentence in about ten minutes.

3 (Pause)

4 THE COURT: Is there any reason why sentence should
5 not now be imposed?

6 MS. MCLEOD: No, your Honor.

7 MS. GIWA: No, your Honor.

8 THE COURT: As I have stated and as counsel have
9 agreed, the guideline range that applies in this case is
10 between 63 and 78 months' imprisonment. Under the supreme
11 court's decision in *Booker* and the cases that have followed it,
12 the guideline range is only one factor that a court must
13 consider in deciding the appropriate sentence. The Court is
14 also required to consider the other factors set forth in the
15 sentencing statute, Title 18 United States Code
16 Section 3553(a). These factors include: The nature and
17 circumstance of the offense and the history and characteristics
18 of the defendant; the need for the sentence imposed to reflect
19 the seriousness of the offense; to promote respect for the law
20 and to provide just punishment for the offense; the need for
21 the sentence imposed to afford adequate deterrence to criminal
22 conduct; the need for the sentence imposed to protect the
23 public from further crimes of the defendant; and the need for
24 the sentence imposed to provide the defendant with needed
25 educational or vocational training, medical care or other

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1 correctional treatment in the most effective manner. The Court
2 must also avoid unwarranted sentence disparities among
3 defendants with similar records who have been found guilty of
4 similar conduct. In a case like this, involving numerous
5 defendants, it's important that the sentences imposed by the
6 Court, all factors considered, bear a rational relationship to
7 one another. The Court is also required to impose a sentence
8 sufficient, but no greater than is necessary, to comply with
9 the purposes I just summarized. And here, I find the sentence
10 I am about to pronounce is sufficient, but not greater than
11 necessary to satisfy all in the purposes of sentencing that I
12 have just reviewed.

13 Mr. Mundendi, I have given a lot of thought and
14 attention to the appropriate sentence in your case, in light of
15 those Section 3553(a) factors, and really the purposes for
16 which sentences are imposed. This is my assessment: Under
17 Section 3553(a), among other factors, I am required to consider
18 the seriousness of your offense, the need for the sentence that
19 I impose to reflect just punishment, and the need for the
20 sentence to promote respect for the law. In other words, the
21 sentence has to fit the crime. This set of factors is the one
22 that most powerfully supports a substantial sentence here.

23 During a once-in-a-century national pandemic, while
24 the country was reeling and millions of people were suffering,
25 either medically or financially or both, you banded together

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1 with Mackenzy Toussaint and others to defraud the US government
2 of funds intended as relief payments. You participate really
3 in two successive fraudulent schemes. First, in 2020, the
4 group led by Mr. Toussaint sought to fraudulently obtain money
5 under the Paycheck Protection Program. The program was
6 intended to provide relief for businesses and employees where
7 the businesses were closed or hurting on account of the
8 pandemic. The amount of funding available was keyed to the
9 number of eligible employees. And the scheme here sought to
10 obtain really a mammoth amount of funds via fraud. And in the
11 end, as relevant to you, the scheme obtains more than three and
12 a half million dollars, I think more than \$3.69 million.

13 The loan applications that the group, that
14 Mr. Toussaint submitted were bogus on a grand scale. For
15 example, the group claimed that one company had a monthly
16 payroll of about \$790,000, attributable to more than 121
17 employees. In fact, it had only four employees.

18 The nearly \$4 million in proceeds were distributed
19 among the coconspirators. You received the lowest of anybody;
20 you received about \$78,000 or approximately 2 percent of the
21 proceeds of that offense. That said, this was part of a bigger
22 scheme led by Mr. Toussaint, which resulted in or sought to
23 result in fraudulent disbursements in excess of \$15 million and
24 it is undisputed that that amount was foreseeable to you, and
25 that's the basis for the higher guideline range, although I

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1 fully appreciate that your involvement was limited to a subset
2 of the fraud.

3 The second scheme occurred in the following year, in
4 2021. You played a role, essentially, in the second round of
5 seeking bogus PPP loans, seeking another about \$2 million based
6 on false representations about the number of the company's
7 employees. Paragraph 33 of the presentence report sets out
8 various steps that you took to get to that loan. And this
9 time, you played a more active role in the fraud process.

10 In 2020, your role had largely consisted of receiving
11 the \$78,000 in fraudulent proceeds. In 2021, you were more
12 generative; you participated in the fraud itself.

13 The bogus loan applications were submitted, but
14 happily for the public, ultimately, they were never funded.
15 That said, had Mr. Toussaint and you and the others had their
16 way, the 2021 loan would have been funded as well.

17 To say the least, this conduct is morally
18 unacceptable. You and the other coconspirators either diverted
19 or tried to divert money, millions of dollars from the federal
20 government which was intended to help real people, real
21 companies who were hurting during an extraordinary national
22 crisis. I appreciate that the scheme and your participation in
23 it need to be kept in context. The scheme, I appreciate, was
24 white collar only; there was no violence, there was no
25 bloodshed, there were no guns. I appreciate as well that you

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1 did not and the coconspirators didn't directly loot needy
2 people. They sought money from what must have seemed like a
3 faceless government agency. I appreciate as well that your
4 role was far more limited than that of Mr. Toussaint.

5 The guideline range here treats you as culpable for
6 nearly the full monetary value of the frauds that he attempted,
7 but your active involvement was limited to a much smaller
8 subset of the scheme. Mr. Toussaint, not you, was the
9 ringleader here. And the scope of your involvement and also
10 the scope of the fruits that you received was correspondingly
11 lower. According to the presentence report, you received by
12 far the smallest amount of any conspirator of the \$3.9 million
13 or so that was received in the first round of the scheme. The
14 \$78,000 that you received was less than the \$730,000 received
15 by Bella. It was less than the \$138,000 received in that part
16 of the scheme by Mr. Toussaint, although I have little doubt
17 that Mr. Toussaint benefited financially in other ways. And by
18 the way, when I say you, I'm mindful that the \$78,000 was
19 received by ultimately people affiliated with you; your
20 parents, to some degree your lawyer, but it was ultimately to
21 advance your interests.

22 You also did not demonstrably receive any of the
23 fruits of any of the other parts of Toussaint's fraudulent
24 activity. All of this -- including, critically, that
25 Mr. Toussaint and not you was the instigator -- is important

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1 context in determining the length of the just sentence for you.
2 That said, you knew perfectly well and you admitted knowing
3 that bogus applications for PPP loans were being submitted, you
4 knowingly participated in the scheme, you took a not small
5 amount of money from it for your personal use. That conduct
6 was exploitive, it was unpatriotic. At a time when others were
7 stepping up to pitch in in a crisis, you and your co-defendants
8 sought to line your own pockets.

9 The fraud scheme in which you participated stood to
10 hurt innocent people at a time of great need. To be sure, in
11 the record before me, there is no evidence, zero evidence that
12 in fact any deserving company or person who applied for such
13 loans, such funds was denied on account of this scheme. The
14 PPP program may well have been able to fund every application
15 that it found to be worthy, and I'm assuming for the purposes
16 of today that it was able to do so. But that's ultimately no
17 thanks to you. Your conduct had the potential to deprive real
18 people of money, had the government run out of funds for the
19 PPP program. And the reason for your engaging in this, your
20 motive, like that of the other defendants, was monetary greed.

21 When Congress passed, expanded and funded the various
22 COVID relief programs, it was not to enable you and
23 Mr. Toussaint to live beyond your means. It was to protect
24 small businesses, real people and real paychecks. Instead, you
25 and the other conspirators treated the program as something of

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1 a personal piggy bank. As a matter of just punishment, as a
2 matter of promoting respect for these important laws, a
3 substantial sentence is needed here, in my judgment, to take
4 account of the abusiveness of this crime.

5 Now, under Section 3553(a), I also have to consider
6 the interest in what's called general deterrence. It refers to
7 the need for the sentence I impose to send a message to other
8 people that is sufficient to deter them from engaging similar
9 crimes. That interest is present here. Your crime is not the
10 only one, your case is not the only one in which bad actors
11 have attempted to defraud the PPP or other Coronavirus relief
12 programs. When public money is available by means of
13 application, there's always going to be a temptation for
14 unscrupulous people to get at it by fraudulent means. It's
15 important that the sentence is imposed in cases where such
16 frauds are detected and proven that these sentences be
17 sufficient, taken as a whole, to send a message that people who
18 fraudulently prey on government relief programs and get caught
19 will go to prison for a substantial period.

20 Under Section 3553(a), I also have to consider the
21 interest in what's called specific deterrence. That refers to
22 the need for the sentence I impose to send a message to the
23 specific defendant before me -- meaning you, Mr. Mundendi --
24 that's sufficient to deter him from committing future crimes.
25 And for several reasons, that interest is very much present in

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1 your particular case.

2 First, this was not your first brush with the criminal
3 law. In 2012, you pled guilty to assault causing bodily
4 injury. You were sentenced to 30 days in prison.

5 In 2014, you pled guilty to theft of property. You
6 were sentenced to probation.

7 In 2019 and 2020, respectively, you were sentenced for
8 public intoxication and DWI. For those crimes, you
9 respectively received a time served sentence and a fine.

10 And the presentence report also reflects four arrests
11 that did not lead to convictions. This is not a small number
12 of brushes with the criminal law. These should have been
13 enough, more than enough to deter you from committing future
14 crimes. They should have served as wake-up calls to you. They
15 did not. That underscores a sentence here to get your
16 attention in a way that gets you to stop flying close to the
17 flame, to get you to stop committing crimes.

18 The other reason that I perceive the need for specific
19 deterrence here is that the scheme played out over several
20 different calendar years and the frauds came in a couple of
21 different rounds. After that first round, after you got the
22 \$78,000 in ill gotten gains, you could have easily paused and
23 reflected and stopped. You had the time to do that, you had
24 the opportunity to do it. This was not an impulse crime that
25 unspooled all of a sudden. Instead, you moved forward and

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1 indeed escalated your role by getting actively involved in the
2 second fraud. That reinforces the need for a sentence
3 substantial enough to stick a message with you that sticks,
4 which is to say one that causes you next time to hesitate,
5 reflect and not commit the crime.

6 Under Section 3553(a), I also have to consider the
7 interest in public protection or incapacitation. That refers
8 to the benefit that the free public gets from you being in
9 federal prison, where, by definition, you can't commit crimes
10 that endanger. For the same reasons that I just covered in
11 connection with specific deterrence, that interest is also
12 present here. Given your track record, there's a real
13 possibility that, if you were released from prison, you would
14 commit another crime. I hope that's not so, but actions speak
15 louder than words. And indeed, you were arrested for assault
16 in between the plea and sentencing in this case, which, as you
17 know, required me ultimately to remand you. Those were based
18 on violent incidents last year, when you were alleged to have
19 punched a bouncer of a club in the face with a closed fist and
20 later doing the same to a restaurant patron. I hope, I really
21 hope that you are in the process of pulling it together, as you
22 have told me you are, as Ms. Giwa has passionately told me you
23 are. And there are, perhaps, signs of that, but I cannot be
24 sure of it. It follows that, to the extent that you are in
25 prison, there's less of a risk that you can hurt anybody,

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1 whether by participating in a fraud, driving while intoxicated,
2 punching someone in the face or taking some other harmful
3 illegal action.

4 So far, I have considered four sets of factors really
5 that, by their nature, all tend to favor a meaningful sentence
6 in this case, and to varying degrees, they all do. But there
7 are other factors that favor you and point in the other
8 direction in the sentencing equation, and I want to review
9 those with you now.

10 First off, you accepted responsibility. You did so by
11 pleading guilty, and you did so by admitting your crime. That
12 makes a difference to me, as it does under the sentencing
13 guidelines. Were it not for your guilty plea, please know that
14 the sentence that I would be imposing today would have been
15 materially higher.

16 I also appreciated the very thoughtful letter that you
17 wrote me. It gave me a better sense of your journey. At the
18 end, you tell me that you have received a wake-up call. This
19 case, you write, has been "both a curse and a blessing at the
20 same time," and you tell me that you are committed to being
21 more careful about who you associate with and that you
22 appreciate the need for counseling and professional help.
23 Essentially, those remarks track what you said to me a few
24 minutes ago. You also write that you appreciate that you let
25 your family down, including your son, who is an innocent here.

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1 You wrote all the right things, Mr. Mundendi, and I was glad to
2 see that. I hope those sentiments guide your conduct going
3 forward.

4 Second, under Section 3553(a), I am to consider a
5 defendant's history and characteristics. And at this point,
6 I'm referring to your history other than your criminal history,
7 which I covered. From Ms. Giwa's very powerful sentencing
8 submission, from the attachments to it, I came to appreciate
9 the torment and challenges that you faced in your life,
10 including in your early years in Kinshasa. You suffered
11 graphic and highly unusual family trauma, set out in the
12 defense expert report and by Ms. Giwa. You were exposed to war
13 atrocities. After your family reached the United States, you
14 had a hard transition with verbal and emotional abuse, both at
15 home and with peers. Nonetheless, you made your way to
16 college. And although you did not graduate, you were able to
17 obtain gainful employment. Dr. Akinsulure-Smith has diagnosed
18 you, drawing upon your journey, with multiple conditions,
19 including a depressive disorder and posttraumatic stress
20 syndrome. I found her report detailed and convincing. I also
21 note you are dedicated to your son who has special needs.

22 To state the obvious -- and you know this -- your
23 background, as hard as it was, is not a justification for
24 crime, let alone participating in a sustained fraud directed at
25 getting COVID relief funds. It just isn't. And you had had

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1 the demonstrated capacity to earn a lawful living. You didn't
2 need to turn to crime to support yourself or your son. That
3 said, I appreciate that, given what you endured, the temptation
4 to take a shortcut may have been more acute for you than for
5 other people. I treat your background as mitigating.

6 I also read with interest the letter from Charisma
7 Iwu, who describes how you are in the process together of
8 healing and her view that you are back to normal after a mental
9 breakdown last fall and her perception that you appreciate the
10 need to get professional help and not to make bad choices
11 again.

12 I also read a letter with interest from your father,
13 Elie Nsangala Mundendi. He wrote about your early years. He
14 wrote about how you today appreciate that it's important not to
15 take shortcuts and to, quote, "earn things through hard work."
16 He tells me you have promised to do that in the future. I was
17 glad to read that.

18 I also recognize that although you haven't been
19 incarcerated since your arrest, but only since last fall,
20 conditions of pretrial custody in the MDC have been unusually
21 hard. And counsel and you both were very graphic about present
22 day conditions today. As in other cases, I will treat the
23 conditions of the presentencing custody as mitigating and as
24 warranting, in effect, credit as I tabulate the just and
25 reasonable sentence.

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1 In the end, the Court is the required to impose the
2 lowest sentence that reasonably takes into account the 3553(a)
3 factors considered as a whole. Judging as a whole, a
4 substantial sentence is needed here. A sentence somewhat below
5 the guideline range, including the range to which the parties
6 stipulated, is reasonable. And that's on account of the
7 various factors I have just covered. It's also, given the
8 fact, that the guideline range here is really heavily driven by
9 the amount of the loss. But the loss here, as used by the
10 guidelines, is more than a hundred times your gain. It also
11 very significantly overstates your role in the offense, which
12 again was that of a participant and a follower, but not an
13 instigator or a leader. And you didn't participate in every
14 dimension of the fraud, but only certain parts. A below
15 guidelines sentence is warranted here because the mode of
16 analysis used by the guidelines simply overstates your
17 participation in the fraud.

18 In reflecting on the sentence, I have considered the
19 sentences imposed on co-defendants. My judgment is that none
20 of their situation is really closely akin to yours, but there
21 are various people who have various similarities. Perhaps the
22 closest to you all in is Mr. Bella. His conduct was, in one
23 sense, much more serious than yours, in that he received ten
24 times more of the fruits of that 2020 fraud than you did. On
25 the other hand, he received the fruits, he did not know at the

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1 time of the fraud that there was a fraud. His crime involved
2 receiving ill gotten gains afterwards and appreciating at the
3 time that they were the fruit of a fraud. He also participated
4 in one round, not two. You came back for more and actively
5 participated in the fraud in 2021. There are a few other
6 factors that compare and contrast. He was not in the MDC; you
7 have been there for the better part of a half of a year, and
8 that matters too. He does not get credit for that because he
9 was at liberty at the time of sentencing. On the other hand,
10 you have a significant criminal record that makes the fact of
11 specific deterrence one that matters here; that was not the
12 case for Mr. Bella. Putting all those factors together, my
13 judgment is that your sentence needs to be above his, but not
14 by much.

15 The sentence I will impose is one that fairly situates
16 you relative to all your co-defendants. It is also the lowest
17 sentence that I believe I can impose consistent with all of the
18 3553(a) factors considered together.

19 I'm now going to formally state the sentence I intend
20 to impose. The attorneys will have a final opportunity to make
21 legal objections before the sentence is finally imposed.

22 Mr. Mundendi, would you please rise.

23 After assessing the particular facts of this case and
24 the factors under 3553(a), including the sentencing guidelines,
25 it's the judgment of the Court that you are to serve a sentence

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1 of 42 months' imprisonment in the custody of the Bureau of
2 Prisons, to be followed by a period of three years supervised
3 release. I will recommend to the Bureau of Prisons that they
4 make available to you, to the maximum extent that you qualify,
5 mental health treatment, vocational training and any and all
6 educational programs in which you are interested.

7 As to supervised release, the standard conditions of
8 supervised release shall apply. In addition, you shall be
9 subject to the following mandatory conditions: You shall not
10 commit another federal, state, or local crime; you shall not
11 illegally possess a controlled substance; you shall not possess
12 a firearm or destructive device; you must cooperate in the
13 collection of DNA as directed by the probation officer.

14 Ms. Giwa, am I correct that you and your client have
15 reviewed the entirety of the mandatory, standard and special
16 conditions recommended by the probation department and that
17 it's unnecessary for me to read each of those aloud?

18 MS. GIWA: Yes, your Honor.

19 THE COURT: You waive my doing so?

20 MS. GIWA: So waived.

21 THE COURT: Look, as to the special conditions, I want
22 to zero in on those. I do intend to reproduce all of the
23 mandatory, standard and special conditions verbatim, but they
24 require a few things. You are required to obey the immigration
25 laws and comply with the directives of immigration authorities.

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1 You are required to provide the probation department with
2 access to any requested financial information. You must not
3 incur new credit charges or open additional lines of credit
4 without the approval of the probation officer, unless you are
5 in compliance with the installment payment schedule, which is
6 with respect to restitution. You are required to participate
7 in an outpatient mental health treatment program, as indeed the
8 defense has recommended. And you are to submit your person,
9 residence, property, car, phone, et cetera to a search by the
10 probation department on the premise that or at any time that
11 they have reasonable suspicion either that you are violating a
12 condition of release or committing a crime. That's for a
13 couple of reasons. One is that you have a criminal record and
14 you committed this crime in the face of that. The other is,
15 even while on release here between plea and sentencing, you
16 violated the conditions of release. All of that says to me,
17 Mr. Mundendi, as much as I hope you have turned over a new
18 leaf, it is possible that you will be tempted when you are on
19 supervised release to cut a corner again or commit a crime or
20 violate a condition of supervised release that would have
21 terrible consequences for you, as well as for the public,
22 depending on what it is you have in mind. I want you to know
23 that the probation department has maximum eyes on you. And
24 therefore, if that stays your hand, if that leads you not to
25 commit another crime, that will be all to the good for you as

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1 well as for the public. And you are to be supervised in the
2 district of your residence.

3 I'm not going to impose a fine. I'm persuaded you
4 don't have the ability to pay one on top of restitution here.

5 I'm going to convert the existing forfeiture order
6 into a permanent such order.

7 And counsel have handed up an order of restitution. I
8 take it, Ms. Giwa, you have no objection to my signing it as
9 proposed?

10 MS. GIWA: That's correct, your Honor.

11 THE COURT: I'm going to sign, then, the restitution
12 order.

13 And your client has read it; correct?

14 MS. GIWA: Yes, your Honor.

15 THE COURT: That will be docketed.

16 I am required to and do impose a mandatory special
17 assessment of \$100, which shall be due immediately.

18 As to forfeiture, as I said, the defendant, per the
19 original preliminary order of forfeiture, is to forfeit to the
20 United States all property involved in the offense or obtained
21 directly or indirectly as a result of the offense.

22 Does either counsel know of any legal reason why the
23 sentence shall not be imposed as stated?

24 MS. MCLEOD: No, your Honor.

25 MS. GIWA: No, your Honor.

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1 THE COURT: The sentence as stated is imposed.

2 Ms. McLeod, are there any open counts?

3 MS. MCLEOD: Yes, your Honor. And the government
4 moves to dismiss them.

5 THE COURT: Granted.

6 Mr. Mundendi, I am obliged to you advise you of your
7 appeal rights. To the extent you haven't given up your right
8 to appeal your conviction and your sentence through your plea
9 of guilty and the plea agreement you entered into with the
10 government in connection with that plea, you have the right to
11 appeal those things; your conviction and your sentence. If you
12 are unable to pay for the cost of an appeal, you may apply for
13 leave to appeal *in forma pauperis*. The notice of appeal must
14 be filed within 14 days of the judgment of conviction.

15 Ms. Giwa, I have asked you already for recommendations
16 as to programs in prison. Is there a recommendation you would
17 like me to make with respect to the location of the prison?

18 MS. GIWA: Yes, please, your Honor.

19 I would ask you for a recommendation that Mr. Mundendi
20 be placed as close to Dallas, Texas as possible to facilitate
21 family visits.

22 THE COURT: Including with his son?

23 MS. GIWA: Yes, your Honor.

24 THE COURT: Would you like me to recommend as well,
25 just given the terrible conditions in the MDC, that he be moved

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1 to a permanent facility as soon as possible?

2 MS. GIWA: Yes, please.

3 THE COURT: I'll be happy to make that recommendation.

4 MS. GIWA: Thank you.

5 THE COURT: Is there anything further from the
6 government?

7 MS. MCLEOD: No, your Honor.

8 THE COURT: Anything further from the defense?

9 MS. GIWA: Nothing further, your Honor.

10 THE COURT: Mr. Mundendi, I just want to wish you
11 well. The report that I read about you from
12 Dr. Akinsulure-Smith was very moving, and I admire your
13 fortitude in surviving all that and pushing forward and
14 especially getting an education and getting gainful employment
15 in a new country after everything you went through. That tells
16 me you have some real grit and some real stuff there. And if
17 you carry through on your promise to turn over a new leaf, you
18 clearly have the wherewithal to build a law abiding, productive
19 life for your benefit and that of your family. I wish you the
20 very best.

21 Thank you. We stand adjourned.

22 (Adjourned)