IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

UNITED STATES OF AMERICA :

v. : No. 1:22-cr-232-JKB

ALEXANDER BARABASH, :

Defendant. :

DEFENDANT'S RESPONSE TO THE
GOVERNMENT'S SENTENCING MEMORANDUM

Since the inception of this case, Mr. Barabash has accepted complete responsibility for his actions and acknowledged that his company iDesignBuild was ineligible for PPP funds as it did not have W-2 employees, but rather employed independent contractors. For some unknown reason, whether it be a more catchier press release, or to bring more attention to the national task force created by the Department of Justice to prosecute these cases over more traditional federal crimes, such as, Hobbs Act robberies, drug trafficking, and unlawful firearm possession, the Government goes to great lengths to give the impression that Mr. Barabash engaged in some widespread, intricate, and systematic fraud and used the proceeds of his fraud to live "lavishly."[1] That is not this case. While it may be the vast majority of cases that the Government usually prosecutes, and what it may have even believed was this case when it initially opened an investigation, the facts

[1] As foreshadowed in Mr. Barabash's sentencing memorandum (D.E. 23 at 11), the Government makes this characterization solely from Mr. Barabash's purchase of a vehicle from an account that already contained $350,000 prior to the introduction of PPP funds, where the vehicle was ultimately refinanced above purchase price and the proceeds transferred back into the account that contained the PPP funds. While the Government would like to give the impression — like the many cases cited nationwide — where the PPP funds were used exclusively for lavish personal purposes and not for business purposes, that is not this case.

do not bear out those beliefs.

The Government's sentencing memorandum also completely disregards M&T Bank's Vice President for Business Banking Peyton Morin (https://www.linkedin.com/in/peytonmorin, last visited June 19, 2023) encouraging Mr. Barabash to apply for a larger loan and that the tax documents were prepared and signed by Mr. Barabash's accountant and his accountant participated in a phone conference with bank personnel when issues were raised regarding the documentation in support of the loans. Whether or not those facts are inconvenient for the Government's narrative, they nonetheless put into appropriate context Mr. Barabash's conduct in this case.

Absent knowingly submitting inaccurate loan applications (and supporting documents) during a global pandemic to save his company from economic ruin, there is absolutely no history of Mr. Barabash engaging in any widespread business fraud or self-dealing for his own financial benefit. Mr. Barabash's company did excellent work and employed numerous individuals, contractors, and suppliers in the process. The Government, nonetheless, uses Mr. Barabash's impeccable business record and positive life history to somehow justify why this Court should sentence him harsher than others. *See* Gov't Mem. at 7 ("He reports no history of mental or psychiatric illness and no history of mental, emotional, physical, sexual or other abuse . . . These characteristics may, on one level, show that [the] Defendant has a clear path toward rehabilitation. But, on the other hand, the same characteristics show that [the] Defendant's criminal conduct did not arise from necessity or extreme hardship"). Brushing aside that the pandemic had the effect of destroying Mr. Barabash's business, as well as, all those who worked for him and whose livelihood depended upon his business' viability; the fact that Mr. Barabash did not have a significant criminal record or history of drug use or gambling cannot be an aggravating factor. If he had all of them, the Government would be arguing that Mr. Barabash deserves a lengthy sentence to punish his life-long criminal conduct and would link his fraud to his personal shortcomings, and not more appropriately, as in this case, to a once in a hundred years global pandemic. Again, while not an excuse or legal defense, Mr. Barabash's personal life puts into appropriate context his conduct in this case.

Also, momentarily brushing aside the Government's disclosure of its communication with Mr. Barabash's subcontractor, Mr. McGuire for the first time *in its sentencing memorandum* and not earlier; the fact that Mr. Barabash was using PPP funds to pay workers and contractors, whether W-2 employees or not, reinforces that the PPP funds in this case were used to save and grow Mr. Barabash's business and not to pay his personal expenditures as is so frequently seen in cases that the Government usually focuses its prosecutorial resources on.

Finally, at the plea hearing, this Court spoke at length about its concerns regarding the Government's position on seeking both restitution and forfeiture orders. Besides now claiming that M&T Bank is the victim and not the Government, contrary to its response to this Court's pointed inquiry at the plea hearing, the Government wants to obtain a windfall in this case, a million dollar restitution order and a million dollar forfeiture order, while also claiming (at 9) that "[a]lthough the Government seized a portion of the fraud proceeds before Defendant could use the funds, that seizure does not offset Defendant's restitution obligation." The Government's position, contrary to the Court's admonitions at the plea hearing, now makes clear why Mr. Barabash is receiving treasury notices that he immediately owes the Government $1.6 million dollars. *See* Treasury Notice, D.E. 23-4.

Here, the Government wants to incarcerate Mr. Barabash for over three years and then require him to pay over two million dollars after he is removed from society, out of the relevant commercial industry for years, and a convicted felon. If the Government was truly focused on and committed to the 3553 statutory factors, it would allow Mr. Barabash to remain in the community in order to meet his financial obligations under strict conditions of probation to see if Mr. Barabash's conduct in this case (completely inconsistent with his life), was a once off event and the result of a global pandemic and financial meltdown, or as the Government would have this Court belief, part of a pattern of improper conduct.

While the Government is required to ask for a Guidelines compliant sentence as a matter of policy, notwithstanding that the Guidelines range in this case is completely overstated by the loss amount and that a financial institution was involved, even if just a pass through entity; this Court's obligation is to 18 U.S.C § 3553, which provides no limit on what this Court may consider in fashioning an appropriate sentence that is "sufficient, but not greater than necessary" to comply with the statutory factors of sentencing as mandated by Congress.

Consistent with comparator sentences issued in this jurisdiction and others (*see* D.E. 23 at 20-29), Mr. Barabash's actions in this case do not require any period of incarceration, let alone the lengthy period the Government requests solely as a matter of deterrence, where Mr. Barabash's felony conviction will be a life-long reminder of his conduct and his lengthy period of supervision will ensure that such conduct never happens again while he works to pay back his debts and continues to help those, especially his family, who rely significantly on his support in this challenging time in their lives.[2]

[2] As a supplement to his sentencing memorandum, Mr. Barabash can report that his fiancée Mariia Doroshenko's parents have left Ukraine, are in Poland, and should arrive in the United States by the end of the month.

Dated: June 19, 2023

Respectfully submitted,

/s/

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