



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

CWE/JLB
F. #2020R00955

*271 Cadman Plaza East
Brooklyn, New York 11201*

November 14, 2022

By ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Hashim Campbell
Criminal Docket No. 21- 478 (FB)

Dear Judge Block:

The government respectfully submits this letter in advance of the sentencing of Hashim Campbell (the “defendant”), which is currently scheduled for November 17, 2022. On September 23, 2021, the defendant pled guilty before the Honorable Roanne L. Mann, United States Magistrate Judge, Eastern District of New York, to a single-count Information charging him with participating in a conspiracy to commit bank and wire fraud, in violation of Title 18, United States Code, Section 1349. For the reasons set forth herein, a sentence within the United States Sentencing Guidelines (“Guidelines” or “USSG”) range 33 to 41 months’ imprisonment is appropriate in this case.

I. Background¹

The Paycheck Protection Program

In March 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act into law. It was designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects of the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses through a program referred to as the Paycheck Protection Program (“PPP”).

To obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business, through its authorized representative, to acknowledge the program rules

¹ Unless otherwise noted, the facts in this section come from the Information and the Pre-Sentencing Report (“PSR”) for the defendant.

and to make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business was required to state, among other things, its: (a) average monthly payroll expenses and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses.

The Economic Injury Disaster Loan Program

The Economic Injury Disaster Loan (“EIDL”) program was a Small Business Administration (“SBA”) program that provided low-interest financing to small businesses, renters and homeowners in regions affected by declared disasters. Another source of relief provided by the CARES Act was the authorization for the SBA to provide EIDLs of up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. Under the program, the SBA was authorized to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL Advance. The amount of an EIDL Advance was determined based on the number of employees working for the applicant. The advance did not have to be repaid.

To obtain an EIDL or EIDL Advance, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was the period preceding January 31, 2020. The applicant also was required to certify that all the information in the application was true and correct to the best of the applicant’s knowledge.

EIDL applications were submitted directly to the SBA and processed by the SBA with support from a government contractor. The amount of the loan, if the application was approved, was determined based, in part, on the information provided in the application about number of employees, revenue, and cost of goods, as described above. Any funds issued under an EIDL were issued directly by the SBA. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL funds could not be used for the same purpose as the PPP funds.

The Fraudulent Scheme

The defendant is a 41-year-old man who resided in the Bronx, New York. He was the owner and operator of two New York-based tax businesses. Taking advantage of that position, the defendant engaged in a scheme where he and his co-conspirators fraudulently obtained over approximately \$1 million in PPP loans.

Separately charged defendant Charlene Wint, co-conspirator #1, co-conspirator #2, and co-conspirator #3 (the “Bank Employees”),² were employed at a retail branch of a bank located at 125th Street in New York, New York (“Bank 1”). Bank 1 is a national bank with locations around the country.

Following the enactment of the CARES Act, the defendant and Bank Employees, together with others, effectuated a scheme to submit fraudulent PPP loan applications on behalf of Bank 1 customers who did not legitimately qualify for loans under the PPP program in exchange for “commissions” taken from loan proceeds. The Bank Employees worked with a network of recruiters to identify borrowers who were either existing Bank 1 customers or became Bank 1 customers after they were recruited. In exchange for their assistance, the Bank Employees gave the recruiters “commissions” from the PPP loan proceeds.

After borrowers were recruited to join the scheme, the Bank Employees assisted customers with all aspects of the PPP loan application process and helped borrowers fill out fraudulent PPP loan application documents that contained fraudulent information. As part of the scheme, the Bank Employees enlisted tax preparers, including the defendant, to obtain false tax documents, which were provided as support for the fraudulent PPP applications to maximize the loan amount for each borrower’s business. In addition, the defendant and Bank Employees obtained fraudulent PPP loans for the defendant’s family members and friends.

As part of the scheme, the defendant prepared false tax documents to support PPP loan applications and then sent the documents, often via email, back to the Bank Employees. In some cases, rather than sending the applicants to the defendant, the Bank Employees only sent an applicant’s personal information to the defendant (e.g. name, business name, SSN, etc.) and the defendant used the information to prepare false tax documents, without ever meeting the loan applicant. For applicants with legitimate businesses, the defendant inflated financial figures on tax documents so that the applicants would qualify for larger PPP loans. For applicants with no businesses, the defendant created false tax returns.

Additionally, the defendant assisted several family members and friends in submitting fraudulent applications for PPP loans. Specifically, the defendant created fraudulent income tax returns for his family members and friends, which were submitted with their PPP applications to obtain fraudulent loans. With the defendant’s assistance, his family and friends obtained approximately \$200,000 in fraudulent PPP loans to which the applicants were not entitled.

The defendant demanded 10% of each PPP loan that was processed using the false documents that he prepared and applicants paid the defendant directly. Ultimately, the defendant accepted approximately \$100,000 in commission of PPP loan proceeds to which he was not entitled. The false tax documents that the defendant prepared were used to support approximately \$1,000,000 in fraudulent PPP loans to which the applicants were not entitled.

² These co-conspirators have been charged in other cases pending in this district before Your Honor.

II. Applicable Law

The Supreme Court has explained that the Court “should begin all sentencing proceedings by correctly calculating the applicable [Guidelines] range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted).

Next, a sentencing court should “consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [it] may not presume that the Guidelines range is reasonable. [It] must make an individualized assessment based on the facts presented.” Id. at 50 (citation and footnote omitted). Title 18, United States Code, Section 3553(a) provides, in part, that in imposing sentence, the Court shall consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; [and]

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct; [and]

(C) to protect the public from further crimes of the defendant.

18 U.S.C. § 3553(a).

At sentencing, “the court is virtually unfettered with respect to the information it may consider.” United States v. Alexander, 860 F.2d 508, 513 (2d Cir. 1988). Indeed, “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” 18 U.S.C. § 3661. Thus, the Court should first calculate the applicable Guidelines range, and then apply the Section 3553(a) factors to arrive at an appropriate sentence, considering all relevant facts.

III. Guidelines Calculation

The United States Probation Department’s (“Probation”) calculated the defendant’s offense level in the PSR as follows:

Base Offense Level (§§ 2X1.1(a) and 2B1.1(a)(1))	7
More: Loss Amount Greater than \$550,000 (2B1.1(b)(1)(H))	+14
More: Abuse of Position of Public Trust (§§ 3E1.1(a))	+2
Less: Acceptance (§§ 3E1.1(a))	-2
Less: Early Acceptance (§§ 3E1.1(b))	<u>-1</u>
Adjusted Total:	<u>20</u>

(PSR ¶¶ 23–34). Probation calculated the adjusted total offense level as 20, which, based on a criminal history category of I, carries an advisory Guidelines range of 33 to 41 months’ incarceration. (*Id.* ¶ 72).

The government disagrees with this calculation because Probation did not apply a two-level adjustment for sophisticated means pursuant to USSG § 2B1.1(b)(10)(C). The government believes the enhancement for sophisticated means applies because of the nature of the conduct involved in the conspiracy during which fictitious client names and companies were used to defraud Bank 1 and the SBA into paying out PPP loans. U.S.S.G. § 2B1.1(b)(10) provides: “If . . . the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by 2 levels.” U.S.S.G. § 2B1.1(b)(10)(C). Application Note 9 further explains:

For purposes of subsection (b)(10)(C), “sophisticated means” means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

U.S.S.G. § 2B1.1 cmt. n.9.

The scheme in its totality is sophisticated when all relevant conduct is considered. The scheme involved the defendant and numerous co-conspirators, who created the documents necessary to fraudulently apply for and receive PPP loans for various entities in this case. A certain level of sophistication is required to determine how to apply for such a loan in a manner likely to succeed, especially involving insider bank employees and, in the defendant’s case, being a licensed accountant. During the course of the scheme, the defendant and his co-conspirators also knew how to recruit participants to assist in preparing the fraudulent loans and worked out kickbacks as payment for their roles in securing fraudulent loans. *See United States v. Regensberg*, 381 F. App’x 60, 62 (2d Cir. 2010) (finding that “repetitive conduct ... [that] demonstrates that more than routine planning was involved” constituted sophisticated means); *See United States v. Jackson*, 346 F.3d 22, 25 (2d Cir.2003) (“[E]ven if each step in the scheme was not elaborate, the total scheme was sophisticated in the way all the steps were linked together...”); *United States v. Lewis*, 93 F.3d 1075, 1083 (2d Cir.1996) (holding, in tax case, that the sophisticated means enhancement applied even when “each step in the planned tax evasion was simple, [because] when viewed together, the steps comprised a plan more complex than merely filling out a false tax return.”). Additionally, the documents necessary to support the PPP applications are sophisticated. As part of the conspiracy, fraudulent tax documents were prepared and provided to the loan applicants in the name of their respective corporate entity. Generating false documents sufficient to survive minimal scrutiny reflects a level of sophistication in the execution of the scheme and that the defendant was aware of how his conduct could potentially avoid detection with these tax documents in place.

Evaluating the entire scheme, all of which includes defrauding a complex disaster loan plan by the federal government, the recruitment of employees at a bank and outside accountants, the recruitment of individuals willing and eligible to submit a fraudulent loan application with a legitimate nominee business, and the creation of different supporting documents including IRS forms, all underscores that the defendant's fraudulent scheme involved sophisticated means. Lewis, 93 F.3d at 1083. Further, the defendant does not contest the application of the sophisticated means enhancement and stipulated to it as part of the Guidelines calculations included in the plea agreement.

Taking into account the additional 2 points for sophisticated means, the government respectfully submits that the total offense level is 20, and the applicable Guidelines range is 33 to 41 months' incarceration.

IV. A Sentence of 33 to 41 Months' Imprisonment is Appropriate

The government respectfully submits that a sentence between 33 to 41 months' incarceration, as set forth in the plea agreement, is sufficient, but not greater than necessary, to achieve the goals of sentencing.

First, the defendant's criminal conduct in this matter is serious, as he fraudulently sought to obtain approximately a million dollars in pandemic-related loans offered to address emergency and disaster relief to those businesses affected by the COVID-19 pandemic. His actions warrant commensurately significant consequences, both due to the seriousness of the offense and as a general deterrent to send a message to the broader public that taking advantage of a national emergency to enrich oneself at public expense is not tolerated. The COVID-19 pandemic was among the most serious of public health crises in American history and it had profound economic ramifications. The defendant's exploitation of the crisis not only cost the government and the Bank 1 time and money, but also diverted funds that could have been used the way PPP loans were intended: to assist struggling businesses and to keep people employed. Instead, the defendant took money that was earmarked for small businesses struggling and dissipated it on his own personal enrichment. Moreover, this was not a victimless crime. The PPP and EIDL programs were not a limitless pot of money. By taking money that he was not entitled to, the defendant defrauded taxpayers who helped fund the program and the SBA which guarantees these loans. As such, this selfish and destructive conduct, which through the diversion of relief money caused direct harms to a vulnerable public, demands serious punishment.

Second, a Guidelines sentence as reflected in the plea agreement is necessary to reflect the seriousness of the offense, promote respect for the law and provide general deterrence. Given that criminal conduct like the defendant's is typically difficult to detect and prosecute, there is a greater need for general deterrence. See, e.g., Harmelin v. Michigan, 501 U.S. 957, 988-89 (1991) (noting that "since deterrent effect depends not only upon the amount of the penalty but upon its certainty, crimes that are less grave but significantly more difficult to detect may warrant substantially higher penalties"). Moreover, because economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." See, e.g., United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation marks omitted)); United States v. Heffernan, 43

F.3d 1144, 1149 (7th Cir. 1994) (“Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.”). Here, a Guidelines sentence will help to deter other fraudsters, like the defendant, who believe that they can generate income through fraudulent schemes against government agencies during a time of crisis. Such persons should know that the decision to deceive government agencies into handing over funds allocated to assist the most vulnerable populations will result in stern consequences. This is particularly true for a person who is placed in a position of trust, as was the defendant, who was to assist people in submitting legitimate tax documents necessary to maintain their businesses.

V. Conclusion

The government respectfully requests that the Court impose a sentence between 33 to 41 months’ incarceration, as set forth in the plea agreement.

Respectfully submitted,

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