

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No.: 2:22-cr-39-SPC-NPM
)
DANIEL JOSEPH TISONE,)
)
Defendant.)

**SENTENCING HEARING PROCEEDINGS
BEFORE THE HONORABLE SHERI POLSTER CHAPPELL**

**February 21, 2023
10:25 a.m.**

APPEARANCES:

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ALSO PRESENT: DANIEL JOSEPH TISONE, DEFENDANT

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P R O C E E D I N G S

(Court called to order.)

THE DEPUTY CLERK: Calling case 2:22-cr-39-SPC-NPM:
The United States of America versus Daniel Joseph Tisone.

MR. REICHLING: Good morning, Your Honor. Trent Reichling on behalf of the United States. With me at counsel's table is AUSA Suzanne Nebesky with our forfeiture division, as well as Agent Grace Bruno with the FBI and Agent Roger De Sedas with SIGPR. Good morning.

THE COURT: Good morning.

MR. EIGLARSH: Good morning, Your Honor. Mike Eiglarsh on behalf of Mr. Tisone, who's standing to my right.

THE COURT: Good morning.

THE DEFENDANT: Good morning.

MR. EIGLARSH: Good morning.

THE COURT: Mr. Tisone, on August 26th of last year, you entered a plea of guilty to Counts 2, 8, 14, and 18 of the indictment charging you in Count 2 with wire fraud, in violation of Title 18 United States Code Section 1343 and 2, in Count 8 with bank fraud, in violation of Title 18 United States Code Section 1344 and 2, in Count 14 with illegal monetary transaction, in violation of Title 18 United States Code Sections 1957 and 2, and in Count 18 with possession of ammunition by a convicted felon, in violation of Title 18 United States Code Sections 922(g)(1) and 924(a)(2). We've now

1 reached the stage of the provision where it is my duty to
2 address several questions to you, your attorney, and the
3 attorney for the government.

4 Before we get too much into that, Counsel, I noticed
5 you filed last night after 7 o'clock over 200 pages of
6 additional information that you wanted the Court to consider
7 for purposes of sentencing.

8 I would just ask if the government has had an
9 opportunity to review all of that information?

10 MR. REICHLING: Judge, I've read through it. I can't
11 say -- I can't say I went line-by-line through every 244 pages,
12 but I did read through it as quick as possible and I have a
13 general understanding of what's in there, Judge.

14 I'm fine with proceeding forward. If counsel wants
15 to make arguments referring to some of the documents in that,
16 the government would have no issue with it. Obviously, it is a
17 late filing and it was last night, but the government knows the
18 case well enough and knows sort of what counsel's getting at in
19 those attachments.

20 THE COURT: All right, thank you.

21 MR. EIGLARSH: I wanted to apologize to the Court.
22 What I wanted to do is avoid any kind of, like, factual battle
23 in court and just focus on our motions. So what I did, instead
24 of filing the final version, I did the best that I could with
25 my zealous yet very reasonable advocate to try to make sure

1 that the facts, as we knew them, were consistent with the
2 government and the last-minute filing reflected what we thought
3 was the best version of that and I apologize.

4 As I'm filing it, my legal assistant was away from
5 her kids at the office trying to get all those pages and it
6 wasn't even working so it was even delayed and I felt bad
7 because I kept picturing you getting this at the eleventh hour
8 and I sincerely apologize. Not my plan. Never done it before.
9 I apologize.

10 THE COURT: I can tell you that I've had an
11 opportunity to read over the documents, but I was up very late
12 having to do that because of all the letters and all the
13 documentation that was provided.

14 MR. EIGLARSH: Thank you.

15 THE COURT: And I want to make sure that I come to
16 sentencing as prepared as I need to be to give the defendant
17 and the government a fair assessment of the facts and
18 circumstances, but when the Court gets that type of filing -- I
19 mean, sometimes there's five letters, but this was, I think, 24
20 attachments to a sentencing memorandum that was single-spaced
21 and there was just a lot of information. So I want to make
22 sure --

23 MR. EIGLARSH: It won't happen again. Thank you,
24 Judge. I appreciate it.

25 THE COURT: I want to make sure that everyone's

1 prepared to go forward.

2 All right. Let's talk about the presentence report.
3 We've reached the stage of the proceedings where it is time for
4 sentencing. And, as I said, I'll ask you some questions, your
5 attorney some questions, the attorney for the government some
6 questions as well. But, first, I need to talk to you about the
7 presentence report.

8 Did you have an opportunity to carefully read over
9 the presentence report in your case?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And did you discuss that with your
12 attorney?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Was he able to answer any questions you
15 might have had?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you pay close attention to the
18 factual accuracy of the report?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you discussed that with him as well?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Counsel, after speaking with your client,
23 did you have any objections as to the factual accuracy of the
24 report?

25 MR. EIGLARSH: No, Your Honor.

1 THE COURT: Any objection to the probation officer's
2 application of the guidelines?

3 MR. EIGLARSH: No, but for the motions that we filed.

4 THE COURT: All right. My understanding is that you
5 have an objection pursuant to *Dupree*; correct? The *Dupree*
6 case?

7 MR. EIGLARSH: Yes, Your Honor.

8 THE COURT: Okay. And that would affect the specific
9 offense characteristic of intended loss; correct?

10 MR. EIGLARSH: Correct. And then there was a
11 separate motion that I hope the Court saw regarding his
12 criminal history category.

13 THE COURT: Okay. Let's review all the motions to
14 make sure that we're on the same page. I know you were asking
15 for what you characterized as a downward departure as well.

16 MR. EIGLARSH: That's correct.

17 THE COURT: Okay. Is that the motion that you're
18 referring to or are you referring to something else?

19 MR. EIGLARSH: Something else.

20 THE COURT: Okay.

21 MR. EIGLARSH: On January 9th, so way in advance of
22 your last night's reading, we filed a motion for downward
23 departure from criminal history category III. And I think that
24 there's tremendous merit to this motion. It's very short,
25 page-and-a-half, and I can summarize it.

1 THE DEPUTY CLERK: Your Honor, it was -- it looks
2 like it was filed as an objection at 71.

3 THE COURT: Okay. It still deals with the intended
4 loss versus the actual loss.

5 MR. EIGLARSH: No, there's a separate motion --

6 THE COURT: Okay.

7 MR. EIGLARSH: -- that deals specifically with his
8 criminal history category filed, again, on -- at least I signed
9 it on the 9th of January. That was filed the same day as the
10 intended versus actual loss motion.

11 THE COURT: Document 70 was a motion for downward
12 departure from criminal history category III.

13 MR. EIGLARSH: That's it.

14 THE COURT: But that was --

15 THE DEPUTY CLERK: As per 72, Your Honor.

16 THE COURT: Okay. The Court struck that based upon
17 the fact that any objections that were raised as to the
18 preliminary presentence report go directly to probation for
19 their handling of it and then they may change the presentence
20 report based upon those arguments. So the Court struck that
21 particular document because it was in regard to the preliminary
22 presentence report, not the final presentence report, and that
23 was at document -- the objection you raised was document 71 and
24 you were objecting to document 56, which is the -- that's not
25 right either. It's actually to the initial presentence

1 investigation report.

2 In any event, let's hear whatever objections that you
3 have to the final presentence report, and if there's something
4 that the government has questions on, we'll certainly deal with
5 that. But I want to make sure that we handle all the
6 objections as to Mr. Tisone's final presentence report, one
7 objection being as to the *Dupree* case that just came out less
8 than a month ago as to that particular guideline range or the
9 intended loss amount. And then tell me what you want to raise
10 as far as that prior objection.

11 Is it still valid, I guess, because it was to the
12 initial presentence report, is it still valid as the final
13 presentence report?

14 MR. EIGLARSH: I didn't receive any response. It's
15 not to say they didn't send anything, but I don't know what
16 probation's position is as it relates to those two separate
17 motions, one the *Dupree* we'll call it and the other one
18 regarding criminal history category, so I don't know if I was
19 supposed to get some kind of response from probation.

20 THE COURT: Did you send it to probation?

21 MR. EIGLARSH: Always, yes.

22 THE COURT: Okay.

23 MR. EIGLARSH: Uh-huh.

24 THE COURT: All right.

25 Mr. Stevens, do you have any response to that from

1 probation?

2 PROBATION OFFICER: Your Honor, an addendum was filed
3 with the Court -- the final PSR was filed with the Court on
4 looks like February 14th, Your Honor.

5 THE COURT: Yes, docket 84.

6 PROBATION OFFICER: That was addressing the *Dupree*
7 issue.

8 The downward departure issue, that's a separate
9 issue, that was addressed in part E of the presentence report
10 as a possible downward departure under 4A1.3.

11 THE COURT: All right, okay. So let's handle
12 those -- so it appears that probation did review your
13 objections as to that. And it is in the presentence report
14 page 41; correct?

15 PROBATION OFFICER: For the downward departure
16 objection, yes, Your Honor.

17 THE COURT: Yeah.

18 PROBATION OFFICER: The *Dupree* issue --

19 THE COURT: The *Dupree* issue was separate.

20 PROBATION OFFICER: Separate addendum, yes, Your
21 Honor.

22 THE COURT: Okay.

23 All right, so let's handle those objections then in
24 turn. The first issue -- let's handle *Dupree* first, I guess,
25 and then we can go from there.

1 MR. EIGLARSH: May I make argument seated; is that
2 okay?

3 THE COURT: You have your paperwork in front of you.
4 I'll allow that. Go ahead.

5 MR. EIGLARSH: Okay.

6 So we laid it out in the motion, Judge. I don't
7 usually like to, you know, read from my motion. We cited the
8 case law. We believe it's in the Court's discretion and
9 consistent with fundamental fairness to merely hold the
10 defendant responsible for what was an actual loss as opposed to
11 intended and we'd like you to do that in this particular case.

12 THE COURT: What do you calculate as the actual loss?
13 I know, at one point, in one of your other pleadings that you
14 filed, you basically said there was, you know, there was no
15 intent to have any loss, that he was going to pay everything
16 back, so the actual loss --

17 MR. EIGLARSH: Right, 2.6 is what I'm being told,
18 2.6 million.

19 THE COURT: As to the actual loss --

20 MR. EIGLARSH: Correct.

21 THE COURT: Or the intended loss?

22 MR. EIGLARSH: No, the actual loss. Intended was a
23 lot higher. I think somewhere like 8 or 9, something like
24 that.

25 THE COURT: All right, so that's what you're asking

1 the Court to attribute the actual loss to be 2.6?

2 MR. EIGLARSH: Yes, Your Honor.

3 THE COURT: Okay. I just want to make sure that
4 we're on the same page.

5 All right then, Mr. Reichling?

6 MR. REICHLING: Yeah, thank you, Your Honor.

7 Judge, the government stands with probation's
8 calculation and use of intended loss in this case. Certainly,
9 the government understands defense's argument with the use of
10 the new *Dupree* case. I will note to the Court that there has
11 been a unpublished Eleventh Circuit case that was -- and I
12 will -- I can approach Your Honor's bench and bring Your Honor
13 the case here in a second. There's a case that was recently
14 issued on February 6th in the Eleventh Circuit called the
15 *United States v. Corker*. If I may approach --

16 THE COURT: Yes, thank you.

17 MR. REICHLING: -- I can bring Your Honor a copy.
18 And I can give defense a copy. I emailed him a copy last
19 night.

20 THE DEPUTY CLERK: Thank you.

21 THE COURT: Seems like everyone was very busy last
22 night.

23 MR. REICHLING: Exactly. I thought I'd be out
24 celebrating the presidents, Judge, but I was preparing for
25 this.

1 So, Judge, in *Corker*, the Court, under a plain error
2 standard, at least dealt with the use of intended loss or the
3 use of the application note, specifically 3(a), which is
4 probably the crux of the defendant's argument here is that the
5 government -- in using -- in citing *Dupree*, I would imagine the
6 defendant's argument is that the Court can't go beyond what's
7 contained in the sentencing guidelines. Meaning the Court
8 cannot go to the application notes, commentary as to
9 determining loss amount.

10 *Corker*, Judge, reviewing a District Court's use of
11 intended loss and mentioning *Dupree*, just simply found that the
12 Court did not err in using intended loss and found that the use
13 of intended loss did not contradict the plain meaning of the
14 guidelines text and cited another case, which is a published
15 Eleventh Circuit case, and that's *United States v. Moss*. And I
16 have a copy of that for Your Honor as well and I'll come up
17 and -- I'll come bring you a copy, if you don't mind.

18 THE COURT: Yes, thank you.

19 MR. REICHLING: Now, *Moss* was published and issued
20 before *Dupree*, but the general gist of both *Corker* and *Moss* are
21 that using intended loss in calculating loss amount for
22 purposes of a guideline determination does not contradict the
23 plain meaning of the guidelines text.

24 So it's also the government's position that, in
25 2B1.1, when there is the mention of loss, which it states if

1 the loss exceeds \$6,500, increase the offense level as follows,
2 it's the government's belief that the word loss does not have
3 one plain meaning, that the word loss has more than one
4 meaning. It could be actual loss and intended loss and it's
5 not certainly clear by the language of the guidelines which
6 would, therefore, allow the Court, under *Dupree*, even if the
7 Court were to find *Dupree* applies here, would allow the Court
8 to go to the commentary and application notes in determining
9 loss amount.

10 There is no binding precedent in this circuit as of
11 now, Judge, dealing with *Dupree* and its application to 2B1.1,
12 in all fairness. The government has gone out and just found
13 its most recent case, at least at the Eleventh, talks about
14 *Dupree*, but it doesn't analyze *Kaiser* specifically, which is
15 dealt with in *Dupree*, which deals with sort of the rule that
16 the Court cannot -- when interpreting an administrative rule,
17 cannot go beyond the text of that rule, but *Corker* does at
18 least address whether the use of intended loss contradicts the
19 plain meaning of the guidelines.

20 And so it's the government's position that, one,
21 using intended loss would not contradict the plain meaning of
22 2B1.1, and also, that the word loss, even if the Court were to
23 think that *Dupree* were to apply here and *Kaiser* were to apply,
24 in determining what the word loss means, it is the government's
25 belief that the word loss carries with it just more than a

1 standard meaning of actual loss.

2 So those are the government's arguments. And the
3 government does believe that the Court should consider the
4 intended loss here in determining the loss calculation. That,
5 of course, will drive the defendant's guidelines up about four
6 levels. The defendant in this case, Judge factually applied
7 for -- one of the driving loans in this case which drives up
8 the guidelines -- the loss amount, excuse me -- is the
9 application -- is the Main Street Lending Program loan that he
10 applied for.

11 So, initially, he was seeking a \$9 million dollar
12 loan and it's the government's belief the evidence shows, I
13 don't believe it's disputed by defense, that the application
14 and the documents submitted to get that loan were fraudulent.
15 So, initially, the defendant was seeking a \$9 million dollar
16 loan. That \$9 million was not approved by the lender in this
17 case, but he did get a \$1.5 million loan from that same lender.
18 So that's what's driving up the intended loss numbers in this
19 case, which would take it from adding 16, Judge, to adding 20
20 because it would be over that \$9.5 million dollar number.

21 THE COURT: All right, thank you.

22 Any further argument, Counsel, on the *Dupree* case?

23 MR. EIGLARSH: Just very briefly.

24 We're hearing from the prosecution that the Court's
25 hands are not tied in having to interpret the loss as intended.

1 It is in the Court's discretion to do so. There's no binding
2 case law that forces the Court to interpret this as intended
3 loss, and I'd ask in this case that the Court uses the Court's
4 discretion and hold him responsible for the 2.6, the actual
5 loss.

6 THE COURT: All right, thank you.

7 Probation currently has the calculations based on
8 intended loss. I believe that was paragraph 80. Defense is
9 objecting to that 20 level -- the level 20 based upon that
10 intended loss.

11 The enhancement of Section 2B1.1B deals with loss and
12 the Court has to determine if I am applying *Dupree* -- first of
13 all, *Dupree*, as I said, was decided less than a month ago and
14 *Dupree* was a specific case under the Eleventh Circuit where
15 they addressed a situation where the defendant -- whether or
16 not the defendant could be given a career offender status based
17 upon the commentary that said inchoate drug offenses should be
18 included in the definition of controlled substance offense,
19 yet, the actual sentencing guideline that was used was very
20 specific as to the offenses that should be considered.

21 So, clearly, our situation here is very different,
22 but if the Court were to apply *Dupree* in this instance and look
23 at the term loss, to me, the term loss is ambiguous. It could
24 be actual loss, it could be intended loss. I don't know if
25 there is any other kind of loss, but it is ambiguous. And when

1 it's ambiguous, *Dupree* talks about the Court then being allowed
2 to look at the commentary to the specific note, the specific
3 guideline offense to look at the commentary.

4 If the Court does that and the Court does turn to the
5 commentary for guidance, then the Court should look to intended
6 loss and, therefore, agrees with probation, overrules the
7 defendant's objection, and the guideline -- particular addition
8 to the guideline would be that 20-level enhancement for the
9 specific offense characteristic.

10 All right. That being the case, Counsel, you had
11 another objection. As I said, I want to make sure that that
12 was handled either within the final presentence report or here
13 with the Court. So go ahead and make that argument then.

14 MR. EIGLARSH: This is the defendant's motion for
15 downward departure from criminal history category III. We
16 don't dispute that, if all of the offenses are calculated, then
17 that's where he belongs. The question is whether it overstates
18 his criminal history, and we strongly believe that it does. He
19 committed his offenses at the age of 18 years of age. He's
20 currently 36. He pled guilty in 2006, but he wasn't
21 adjudicated guilty of one offense, a controlled substance
22 possession, until 2012 and it's still a mystery why. Part of
23 it was probably because he was incarcerated, but had he simply
24 been adjudicated before he went in and they resolved that
25 case -- he pled guilty, but they just didn't adjudicate him

1 until, for some reason, he got out. Had they done that, we
2 would be in category I. You wouldn't be able to score the
3 offense that occurred back in 2005 when he was merely 18. He
4 served time in prison, and because the offense was adjudicated
5 2012, that made it scoreable and it completely then overstates
6 his criminal history. He didn't have any new criminal offenses
7 committed after he was released from prison after he pled in
8 2006 for that offense.

9 So I believe that the Court should grant this motion
10 for downward departure to category I. Alternatively, category
11 II. Thanks.

12 THE COURT: Was there a violation of probation? Is
13 that why he was adjudicated?

14 (Pause.)

15 MR. EIGLARSH: So my understanding was he was on
16 probation in 2005. And then, because he pled in 2006, he was
17 adjudicated of the 2005 offense because his incarceration, his
18 conviction that led to his prison term, violated his 2005
19 probation. He didn't commit any new offenses after the 2006.

20 MR. REICHLING: And, Your Honor, if I may just
21 briefly jump in here. I believe it's paragraphs 105 and 106.

22 THE COURT: That's what I'm looking at, yeah.

23 MR. REICHLING: Yes, they lay out the procedural
24 history as to each case. Specifically, the earlier in time
25 case, which was the possession of schedule II controlled

1 substance, it appears like he had violated probation, was
2 adjudicated. This was in 2006. That was deferred and, in the
3 meantime, he violated, again, by picking up the armed -- the
4 attempted robbery offense that he was -- or he was found guilty
5 of at trial in 2007. And then was later sentenced on that
6 violation in December -- excuse me, in -- well, in September
7 and December of 2012. He was adjudicated guilty in September
8 of 2012 and then sentenced as to that violation on December 7,
9 2012.

10 (Pause.)

11 THE COURT: So, procedurally, you're not arguing that
12 it's not correct that that is counted. You're just making an
13 argument that the Court should consider that and perhaps
14 sentence him to a lesser sentence similar to what he would
15 receive if he was a criminal history category I?

16 MR. EIGLARSH: That's correct. Alternatively, II,
17 yeah.

18 THE COURT: Okay.

19 MR. EIGLARSH: It's as if he had picked up new
20 offenses, but he didn't. He was just delayed in being
21 adjudicated in the 2012 entry, which relates back to a crime
22 that he committed when he was, you know, 18 and it happened
23 seven years earlier, caused the adjudication on his record,
24 which then made those offenses scoreable. Had they done it
25 like most state courts around here and they adjudicated him

1 initially and then there was no additional adjudication entered
2 seven years later, then both these offenses would be outside
3 the time period of those that can be scored. Plus, it would
4 clearly overstate his criminal activity because he was done
5 committing crimes in 2006 when he went away.

6 THE COURT: Well, weren't they doing it to help him
7 by deferring?

8 MR. EIGLARSH: I don't practice in that area, I'm not
9 sure how that was handled, so maybe that was the benefit. But,
10 ultimately, again, he's being treated as if he then went out,
11 again, in 2012 and committed a new offense and/or committed
12 additional offenses that then would be scoreable. It just
13 seems, you know, to be unfair to put him into category III. He
14 could do -- people in category III do a lot worse and have
15 multiple convictions, typically. This was restricted to when
16 he was a teenager, because he was, he was 18 when he committed
17 these offenses, and, but for the second case, he wouldn't have
18 then been adjudicated in 2012.

19 THE COURT: Anything that you wanted to add?

20 MR. REICHLING: No, Judge. I think Your Honor got it
21 correct in that it's not an objection -- and I believe defense
22 agrees -- it's not an objection to the fact that he's a
23 criminal history category III. This is more of an argument,
24 perhaps, for departure or variance in finding him at a lower
25 criminal history level.

1 Obviously, the significance of this conviction,
2 specifically, the attempted robbery conviction and the facts
3 surrounding that conviction, are something, of course, that the
4 government is going to argue when it gets to the 3553 factors
5 in fashioning a sentence, but I do believe he is a category
6 III. I think that's -- the calculation as to that is correct
7 based on this latter conviction in 2012, Judge, for the
8 probation violation.

9 THE COURT: All right. So, as to that particular
10 objection, I'm overruling counsel's objection as to the
11 applicable guideline range. The Court does believe that it is
12 scored correctly, but I will take your argument and apply that
13 later once we've determined the advisory guideline range to
14 either a variance or a departure argument.

15 So you're not losing that particular argument, but I
16 want to make sure that we have the guideline range calculated
17 correctly. And I believe probation has calculated the
18 guideline range correctly, that it is a level III based upon
19 what happened with his violations and when he was violated,
20 when he was adjudicated. It is correctly scored, but I will
21 take that into consideration as to what's appropriate for a
22 variance or a departure, if that's the case.

23 You had no other objections to any factual accuracy
24 of the report or to the probation officer's application of the
25 guideline then; correct?

1 MR. EIGLARSH: Correct, Your Honor.

2 THE COURT: Mr. Reichling, any objection to the
3 probation officer's application of the guidelines or to the
4 factual accuracy of the report?

5 MR. REICHLING: No, Your Honor.

6 THE COURT: All right, then the Court is going to
7 adopt the undisputed factual statements and guideline
8 calculations contained in the presentence report. As to any
9 controverted guideline applications, the Court does adopt the
10 position of the probation officer, as stated in the addendum
11 and as stated by the Court in its ruling.

12 The first thing that I have to do, Mr. Tisone, is
13 determine the advisory guideline range. That gives the Court
14 an idea of where you should be sentenced in your case. Then,
15 obviously, your attorney has the opportunity to argue for a
16 lesser sentence based on a variance or a departure.

17 In your case, your total offense level is a 29. Your
18 criminal history category is III. That would be anywhere
19 between 108 months and 135 months of incarceration. That would
20 be followed by two to five years of supervised release on
21 Counts 2 and 8 and one to three years of supervised release on
22 Counts 14 and 18. Restitution is \$2,617,447.17. There could
23 be a fine of anywhere between \$30,000 and \$5,284.308. There is
24 a \$400 special assessment that's mandatory because you pled to
25 the four counts. So that's the advisory guideline range.

1 Then Mr. Reichling?

2 MR. REICHLING: Yes.

3 THE COURT: Any victims present in the courtroom or
4 any victim statements that you wish for the Court to consider?

5 MR. REICHLING: No, Judge. I don't believe any
6 victims are in the courtroom. They have been notified of
7 today's proceedings and have advised as to how they would like
8 the government to proceed, but there are no victim impact
9 statements that I will read.

10 In all candor to the Court, I have not filed a 5K
11 motion before this Court in the past so I don't know if Your
12 Honor gets to that at the end or now, but I just wanted to
13 alert the Court that I did file a motion under docket entry
14 number 86.

15 THE COURT: You did.

16 MR. REICHLING: Okay.

17 THE COURT: And I usually do that before the advisory
18 guideline range.

19 MR. REICHLING: Okay.

20 THE COURT: And thank you for reminding me.

21 MR. REICHLING: I'm sorry, Judge.

22 THE COURT: There have been a lot of moving parts
23 here today.

24 MR. REICHLING: Yes, Your Honor.

25 THE COURT: I did read that at document 86. So let's

1 address that, okay.

2 Is there any objection or any argument that either
3 party wants to make as to the Court accepting the government's
4 5K1.1 motion for a reduction?

5 MR. REICHLING: Judge, I'll just briefly state the
6 government is moving for two levels. Its reason for doing so
7 is that Mr. Tisone met with an FBI -- the FBI agent in this
8 case on two occasions and provided her with information that
9 the government does consider to be helpful, although, it did
10 pertain to a lot of things that the government already knew at
11 the time. But based on that corroborating information, it led
12 to the prosecution of another individual who was recently --
13 who recently waived indictment and pleaded to an information.
14 Last name is Laroche. I do not have the case number to provide
15 Your Honor, it was very recent, but it's the government's
16 belief that that corroboration did assist the government in
17 achieving a resolution very quickly in the case and that
18 individual did not fight the case or take it to trial or even
19 engage in the discovery process.

20 THE COURT: All right. And the two-level reduction
21 is consistent, from what I can tell, with how the U.S.
22 Attorney's Office generally recommends. If there is statements
23 that assist, it's usually the two levels and can go up from
24 there if the defendant has to testify at a trial or other
25 proceedings.

1 MR. REICHLING: That's correct.

2 THE COURT: Any objection or any argument on the
3 request for two levels?

4 MR. EIGLARSH: Yes, Judge. I believe it's a good
5 start. I don't think that that's adequate to represent what my
6 client did, and I wanted to be heard on that, if I could.

7 THE COURT: Go ahead.

8 MR. EIGLARSH: You know, I always joke with my kids
9 like, you know, that score on your SAT is what they give you
10 when you put your name on the application, you know, and I
11 think that two levels, to me, is the least that somebody should
12 ever be given just for entering into the room and giving
13 helpful information. I think that my client deserves greater
14 credit for what he's done. His initial proffer to the
15 government was 78 pages long. He had two separate meetings
16 with FBI agent Grace Bruno, both lasting for hours. He
17 answered every single one of her questions. He didn't hold
18 back. He took my advice to just dive in and be on Team USA and
19 make them your friend. And he did that.

20 Afterwards, he provided her with a multitude of
21 emails, text messages, documents, surveillance footage, gave
22 her the usernames and passwords to all of his accounts where
23 she can find other corroborating evidence. He further created
24 a software diagram offering to build out a software to quickly
25 an lies any and all loans for fraud using his experience in the

1 computer coding arena. He created a graphical chart with
2 summaries of individuals and their roles. He created
3 individual bios, summaries of every individual. And, while one
4 arrest was made, I believe that there was -- there could be
5 more to come, especially with regard to the individuals who did
6 Mr. Tisone's loans. He estimates -- and, again, it's not
7 scientific, but I said give me an idea of how many hours you
8 think you spent. He said maybe 40 to 60 hours.

9 But the biggest thing that we don't talk about enough
10 when somebody says, okay, I'm going to be on Team USA instead
11 of just taking it, you know, all right, two levels. You know,
12 all right, I'll just do two levels more time. When you jump on
13 Team USA, Judge, you are, essentially, announcing to the world
14 that you're a snitch. It risks my client's life. It risks the
15 life of his family, his one-year old child. It risks the life
16 of his fiancée, and when he goes into prison, which I suspect
17 the Court may impose a prison sentence, you are either a snitch
18 or you're not and your life as a snitch becomes completely
19 different than had you not joined Team USA.

20 I think, based upon all of what he did and how he
21 assisted the government and the manner in which he did things,
22 I think that two levels is insufficient and I think the Court
23 can use the Court's discretion to provide him with some greater
24 time off than merely two levels.

25 THE COURT: Mr. Reichling, anything further on that

1 issue?

2 MR. REICHLING: Judge, as Your Honor stated, this
3 two-level motion is consistent with my office's policy, and I'd
4 like to just at least respond to a few things.

5 This case, Your Honor, involved a lot of
6 investigation. There were many search warrants that were
7 executed in this case as to Mr. Tisone's home and all of his
8 electronic devices and a lot of things that he had stored
9 electronically. The government was aware of a lot of the
10 evidence already that Mr. Tisone later provided the government
11 in these two proffer sessions with the agent in this case. The
12 individual who the government later charged and arrested, whose
13 name is Al Laroche, was someone that the government was very
14 much aware of before they even indicted Mr. Tisone or charged
15 him with any offenses in this case. The government is being --
16 it's my opinion, at least, that we are being very lenient in
17 providing Mr. Tisone two levels for just meeting with agents on
18 two occasions and providing them with corroborating evidence as
19 it applied to that individual.

20 The other facts that counsel talks about is, you
21 know, the potential that the government can make more cases
22 based on Mr. Tisone's testimony. Well, it's difficult to do so
23 when you've just got the word of one individual providing you
24 that information and the government has not found corroborating
25 evidence thus far that backs up much of what Mr. Tisone has

1 provided in his proffer sessions. He has not testified in any
2 trial or any proceeding which has led to the charging of any
3 other individuals in this case or any other convictions in this
4 case. So it's the government's opinion that two levels here is
5 appropriate in light of Mr. Tisone's cooperation thus far.

6 THE COURT: All right. As to the government's
7 motion, 5K1.1 motion, the Court grants the motion, would allow
8 for an additional two levels. That is consistent with how the
9 Court generally views the type and amount of cooperation. That
10 would be then an offense level of 27 with a criminal history
11 category of III, which would be anywhere between 87 and 108
12 months of incarceration as opposed to what the Court previously
13 noted, the 108 to 135.

14 The supervised release terms would remain the same;
15 is that correct, Mr. Stevens?

16 PROBATION OFFICER: Yes, Your Honor.

17 THE COURT: The restitution amount would remain the
18 same. Is there any difference in the fine amount?

19 PROBATION OFFICER: Your Honor, the fine would remain
20 the same; however, there's a different -- I have a different
21 number for the top fine.

22 THE COURT: Okay, go ahead.

23 PROBATION OFFICER: It's twice the gross gain. It's
24 \$5,234,894.34.

25 THE COURT: All right. That would be the top amount

1 of the fine with the lower amount being \$30,000 and a \$400
2 special assessment because of the plea to the four counts.

3 All right. That is the advisory guideline range.

4 Counsel, as I noted, I have read your motions for
5 downward departure; I've read your sentencing memoranda; I've
6 read all of the letters and documentation that was attached to
7 your motions; so I would entertain argument at this time from
8 you as to what you believe the appropriate sentence should be.
9 Obviously, you outlined that in your memorandum, but I would
10 like to hear from you, your argument as to the sentence in this
11 case.

12 MR. EIGLARSH: We took a lot of time to put forth a
13 lot of material so I'm not going to reiterate all of them. I'm
14 just going to hit some of the high points, Judge --

15 THE COURT: Please.

16 MR. EIGLARSH: -- as I think about this case.

17 And just so we're crystal clear, none of this is
18 meant to negate his guilt whatsoever. I still have my former
19 prosecutor hat on that says yeah, but. This is solely to
20 mitigate, not to negate what he did. My client accepted full
21 responsibility. He committed fraud. He committed the crimes
22 that he pled to. What I'm about to say is solely for
23 mitigation.

24 So, as the memo highlights, my client overcame a
25 significant traumatic childhood of a father who left him when

1 he was merely 11 months old leaving my client's mother, Doreen,
2 who's sitting behind me, to care for my client on her own. And
3 when his father, my client's father, did come back into the
4 scene occasionally, it was nothing, I heard, but abusive, both
5 physically and emotionally.

6 In spite of that -- not in spite of that just yet.

7 Because of that, he had a troubled childhood and that
8 led to what he did in 2005 and 2006. It led to behavior that
9 fell way short of what he expects from himself today. This
10 offense that he committed would not have happened but for a
11 global unforeseen pandemic. In other words, there was zero
12 crimes committed but for when he was a teenager at 18 years of
13 age and then he's in his 30s and he's got a business going and
14 there was a pandemic that caused people to stay home, which
15 took a mobile car wash business and decimated it, and he was
16 desperate. And, again, I say all this to mitigate.

17 People without a prior criminal history like my
18 client had would have a lot more options available to him than
19 what was presented and he chose the wrong path. He chose a
20 path that is now going to subject him to the loss of his
21 liberty. But he did those things solely because the
22 circumstances occurred. Again, not to negate the guilt, but it
23 does mitigate. In other words, he didn't say things are great,
24 I'm just going to go out and commit these crimes. It was done
25 out of desperation.

1 In his mind, unlike a lot of fraudsters, he intended
2 to pay back the loans. You know, I think that that's a
3 mitigating factor. It was never his intent to simply deprive
4 the government of this money. And, fortunately, a bulk of
5 money was invested in a way that yielded a return towards
6 restitution. So with a contract that we currently have, or
7 they have, his home should -- he's hoping to yield about
8 \$1.7 million of the 2.6 loss in this case. He was hoping to
9 get far more, but, once again, this unforeseen circumstance
10 occurred. The hurricane decimated both his office property and
11 his home drastically reducing the value of both properties, but
12 from day one, we both were talking about how well, goodness,
13 we're going to be standing in front of the judge and what would
14 help would be the restitution number would be zero because, if
15 we do everything we can to assist the government and get this
16 sold, then the number would be zero. We fell short of that by
17 about what looks like 8, \$900,000, but he did all he could to
18 get that to market and sold.

19 While my client did accept responsibility, I would
20 argue it's super acceptance of responsibility in that we filed
21 no motions in this case. I never indicated to the prosecutor
22 that we had any intent on actually going to trial. This was
23 one where limited prosecutorial resources had to be put forth
24 to defend this case because we never indicated that we were
25 going to go to trial. In fact, I had told him that, even

1 before I think I got all the evidence, that my client was on
2 board and anything that we can do to accept responsibility
3 sooner than later would be our route.

4 As you've learned from the letters that we submitted,
5 and I can attest, also, personally, when a father has a son for
6 the first time, it changes you significantly. And almost
7 everyone talks about how my client's son, who just turned one
8 on February 12th, has significantly changed his life. The
9 question becomes how long -- and, again, he should have thought
10 about this -- this is my prosecutorial thinking -- should have
11 thought about all this and you shouldn't have done all this,
12 but where we are right now the reality is how long will that
13 child, who he loves and adores, not have him around? That's
14 really the question. He wants to get back into his life as
15 soon as possible. So that would be something that I'd offer to
16 you in terms of mitigation.

17 I'd ask that you consider the things that were said
18 about him in these letters, that he's extremely kind, how he's
19 generous, how he treats people with love and respect. There's
20 a lot in these letters that I found to be very eyeopening and
21 enlightening that I didn't know about my client.

22 I would also ask you to consider the extensive
23 volunteer work that he's done. He didn't do those things
24 because one day he needed to get out of jail free or a
25 reduction of his sentence. He did those things because that's

1 who he is. And people indicate that in the letters and the
2 people that I've spoken to talk about how he genuinely wants to
3 make a difference.

4 We didn't put our suggestion in there lightly. I
5 believe that a punishment of house arrest with extensive
6 community service does address the severity of what he's done
7 and I'd ask that the Court consider that.

8 THE COURT: Mr. Tisone, did you wish to make a
9 statement to me at this time?

10 THE DEFENDANT: Yes, Your Honor.

11 You know, the statistics of growing up without a
12 father are very clear. I think everybody knows that. It's not
13 an excuse for how I behaved during my teenage years and I made
14 a lot of mistakes and put my mom through tremendous pain. And
15 she's here, again, today being put through pain. And I got out
16 of prison after five long years and what I saw inside there you
17 can't even fathom. And I turned my life around, went to
18 community college, got a 4.0 GPA, transferred to Catholic
19 University, did a double major in an honors program, and I
20 started feeling good about myself.

21 I had extreme PTSD. I saw a counselor and it made me
22 feel good to volunteer with other troubled youth to tell them
23 look, it's been years, I've gone to college, and doors are
24 still slammed in my face every day. I can't get an internship
25 to graduate; I can't find gainful employment; and it's my own

1 fault. So I tell those kids to think about that and look at me
2 as a sterling example.

3 I did so well for so many years, and whether
4 there's -- my business was successful, it wasn't successful, I
5 don't want to debate that, but I was trying to build something
6 that, in my mind, was successful and my only hope of gainful
7 employment. And when COVID came, it was like, if you remember
8 the day, you thought it was a zombie apocalypse. The roads
9 were empty. You were told to shelter-in-place. I was wiping
10 my groceries down with Clorox and gloves. It was scary. And,
11 frankly, I was scared for my future being a convicted felon and
12 it brought me back to all the rejections that I faced and had
13 in knowing that I can't get gainful employment so I resorted to
14 crime.

15 I'm guilty of these charges against me. I'm wrong
16 for doing them. I've pled guilty. I've tried to work with
17 Grace Bruno and Trent giving them as much information as I
18 possibly can to redeem myself. And I stand before you
19 merciful, embarrassed greatly. The Google articles, there's
20 like 200 on me now that I'll have to face for the rest of my
21 life, which is a significant punishment. And I greatly
22 apologize to this Court, Trent, Grace, and everyone that I've
23 affected by my crimes. Truly, I am very sorry.

24 That's all I have to say.

25 THE COURT: Thank you.

1 Mr. Reichling?

2 MR. REICHLING: Thank you, Your Honor.

3 As Your Honor is aware in our plea agreement, the
4 government certainly doesn't object to a recommendation or a
5 request by defense for a low end in this case, which would put
6 the defendant at that 87-month range, I believe. Obviously,
7 the government has a huge issue with a request that would not
8 include some significant incarceration in this case and I'd
9 like to at least touch upon a few reasons as to why, especially
10 in light of the 3553 factors and Your Honor's considerations of
11 those in fashioning a sentence that's reasonable in light of
12 crimes here.

13 First, Your Honor, Mr. Tisone's father, who was a
14 victim in this case, he's not here. And, quite frankly, he was
15 provided -- he has a lawyer who was involved in the case
16 because the government compelled him to come and speak before a
17 Grand Jury. So in communicating with his lawyer, he was
18 provided with a copy of the sentencing memorandum in this case,
19 which included allegations of abuse and other improprieties by
20 his father.

21 Quite frankly, Your Honor, I can at least relay to
22 the Court that his father was in shock. And I say that, Your
23 Honor, because in the government's investigation of the
24 defendant, they don't see a defendant who was abandoned by his
25 father. They see someone who moved to Naples in 2018 and was

1 allowed to live in his father's condominium in Naples and was
2 financially supported by his father for a period of time
3 leading up to the coronavirus pandemic. That's what the
4 evidence showed in this case. It didn't show someone who had a
5 successful business that, up until the pandemic hit, was at a
6 loss of being able to keep people employed because many of the
7 individuals, or all of the individuals, that were submitted in
8 payroll documents that were fraudulently created never worked
9 for any of the defendant's companies or at least worked for
10 those companies doing what the defendant purported they did.

11 I find it further difficult to believe that the
12 defendant had such a harsh childhood or had such a bad
13 relationship with his father because he boasted about his
14 father's background on a website he created to purport that his
15 business was real and legitimate. He had a profile created for
16 his father with his father's photograph as the vice president
17 of his company, TEC Ventures, which was not true. He also used
18 his father's Social Security number and falsified his signature
19 to qualify for an EIDL loan in this case of over \$100,000,
20 Judge. He also forged his father's signature in loan paperwork
21 for a \$1.5 million MSLP loan that he also fraudulently
22 obtained. He filed false tax documents indicating that his
23 father was paid \$40,000 in 2021 and his father has to endure
24 IRS audits now because he never worked and made \$41,000 working
25 for the defendant so he has income on his tax records, which

1 are false.

2 So, obviously, I didn't grow up in the defendant's
3 home. I wasn't there when he was a child. But I could tell
4 you that, at least from what I've noted in my investigation and
5 what I've seen thus far, I don't believe that he's got a father
6 who was absent from his life. Just judging from much of what
7 the government uncovered in their investigation and some of the
8 things that came up in finding out whether some of those loans
9 were real or not, I find it hard to believe that Mr. Tisone had
10 such a -- was dealing with or had this disconnect with his
11 father and had no relationship with his father.

12 Your Honor, this is a case that involves quite a bit
13 of fraudulent loans in this case, and one argument that defense
14 has made is that Mr. Tisone did not intend to deprive the
15 government of this money, that he intended on paying it back,
16 but I would submit to the Court that five -- the five PPP loans
17 that he received in this case, all of which were gotten
18 fraudulently, over \$500,000 in PPP loans, the defendant
19 fraudulently applied for forgiveness for those loans. He
20 didn't seek to pay those loans back. He actually filed
21 paperwork with the lender on those loans asking for forgiveness
22 of that money. So if he wasn't intending to take that money
23 from the government or take it at all or to pay it back, why
24 was he seeking forgiveness? Why was he making false
25 representations in forgiveness applications noting that he had

1 actually used the money lawfully, which he did not. He did not
2 use any of the money on payroll, for the most part.

3 Now, I will give the defendant some benefit. He did
4 employ his fiancée and his mother to work for the company, and
5 I would use air quotes, and I'm going to now, of course, noting
6 it for the record, but I find it hard to believe that his
7 mother and other -- these -- and his fiancée, I don't know what
8 they were doing for the company, Judge, but it was certainly --
9 casts some doubt as to whether they were actually working for
10 the company because they were making close to the equivalent of
11 \$100,000 a year. So I'm not sure what they were doing.

12 But, generally, Your Honor, this is someone who time
13 and again throughout this application process for these loans
14 made many, many false representations. He created documents.
15 You know, hired -- actually submitted fake financial documents
16 to accountants to create documents to make it appear as if
17 these companies were real. And he was able to dupe and con a
18 bank, Bank of Clark County, into giving him \$1.5 million based
19 solely on lies.

20 And so, you know, that's the conduct, I think, that
21 the Court should take into account. This wasn't one loan.
22 This was five PPP loans, this was four EIDL loans, and this was
23 one Main Street Lending Program loan. And so I think those
24 factors, or at least the details as to each one of those loans,
25 should show a pattern of someone who has no regard for the law

1 and is doing this over and over again not because, Judge, he's
2 trying to keep people employed, not because his business is
3 suffering because of the pandemic, because it's the belief from
4 the government's side of things, Judge, is that these
5 businesses weren't really successful, at least up until, you
6 know, mid 2019, maybe even 2018. We found no records really
7 dating back to 2019 or 2018 that showed significant payroll
8 being paid or that Mr. Tisone was generating the type of money
9 that he represented in these applications off of these
10 businesses. In fact, before the loans were applied for, these
11 businesses went inactive. They were no longer registered as
12 active corporations or companies in the State of Virginia for
13 some time. And then, once the PPP program came out, Mr. Tisone
14 activated these different companies in Virginia and then
15 applied for the loans. So the businesses that he had weren't
16 at least active on paper in the State of Virginia leading up to
17 the loans, Your Honor.

18 So it's the government's position, Judge, that, in
19 light of this constant fraud by Mr. Tisone, a bottom of the
20 guideline sentence would be warranted as to 87 months, but to
21 go below that, Judge, in light of this fraud would, I think,
22 be, you know, would not -- may or may not take into account the
23 level of fraud committed in this case.

24 I'd also like to note, Judge, that there's also a
25 count related to possession of ammunition as a convicted felon.

1 Mr. Tisone had hundreds and hundreds of rounds of ammunition in
2 his home. There were also other firearms in the home that had
3 parts that were considered ghost gun parts in which the
4 government couldn't establish an interstate nexus as to those
5 firearms, which is why they were not charged in this case, but
6 that was -- those sorts of, you know, ammunition, potential
7 firearms were contained within the defendant's home. He's a
8 convicted felon. He knows he can't possess those items or
9 possess those things, Judge.

10 And then we often hear this argument of not wanting
11 to go back to prison. And, you know, when Mr. Tisone -- and I
12 make this argument -- when Mr. Tisone is sitting at his
13 computer making fake documents to perpetrate a fraud, those are
14 things, you know, you should think about, not going back to
15 prison, you know, when you're doing those things. So I'd at
16 least ask that Your Honor consider that in rendering your
17 sentence in this case.

18 There is, of course, quite a bit of forfeiture here,
19 Judge. We'd ask that the Court incorporate its preliminary
20 order of forfeiture into the judgment in this case.

21 There is restitution, Judge. I don't believe there
22 is any disagreement as to the amount in this case. I don't
23 have the actual amounts divided out, but I can -- if the Court
24 would indulge the government, we would be able to provide those
25 breakouts to the Court as far as what goes to what loans, but

1 the two victims that are entitled to restitution in this case
2 are going to be the SBA and the Bank of Clark County.

3 And, Judge, we would also ask for, of course, a term
4 of supervised release, and we would leave it up to Your Honor
5 in fashioning the appropriate period of supervised release.

6 THE COURT: The defendant indicated that much of the
7 monies that he received in the PPP loans were for payroll and
8 that type of thing to keep employees working. Were you able to
9 find monies that were used by the defendant for his own
10 personal use?

11 MR. REICHLING: Yes, Judge. I would say that the
12 bulk of the monies were used for his own personal use. The
13 only payroll that was actually disbursed in this case was
14 disbursed to the defendant, his mother, and his fiancée. Money
15 that actually went out only went to those three individuals,
16 and I believe the total amount was \$80,000, if memory serves me
17 correct, out of 2. -- you know, obviously, the PPP loans,
18 you're supposed to use those funds for payroll. The PPP loans
19 were total under \$600,000. Of course, you had the other loans,
20 which could be -- there's a little bit more discretion in their
21 use, but as far as money used towards the payroll, at least
22 what we could see on paper through a payroll company that he
23 was using, the only payroll was going out to himself, his
24 mother, and his fiancée, and that was totaled to be about
25 \$80,000, Judge.

1 THE COURT: And from the presentence report, it
2 appears that monies were used to purchase a home, an expensive
3 vehicle --

4 MR. REICHLING: That's correct, Judge.

5 THE COURT: -- jewelry.

6 MR. REICHLING: Right. So I will give it to the
7 defendant. He used the money in a very sophisticated way. So
8 the money would come in, and then what the defendant would do
9 is he would purchase various stocks, securities, investments
10 with Morgan Stanley, I believe. And what he would then do is
11 by buying and owning all of these securities and stocks, he was
12 able to then apply for lines of credit against those stocks.
13 So he would put the money in there, and it's the government
14 belief so as to almost make it more legitimate looking, and
15 then he would borrow against that money. And, once he borrowed
16 against that money, that money that he borrowed was then used
17 to purchase a number of properties.

18 He bought two properties in Naples that I know he in
19 his -- and I know in the sentencing memo, he sort of -- I don't
20 want to say boasts, but talks about what great business
21 decisions those were because he returned money on buying those
22 homes. But he bought two homes and then he, I guess, flipped
23 those homes and made some money off of that. He bought the
24 house he currently has been residing in, which was purchased
25 for around \$3 million in Naples, and vehicles, Your Honor. A

1 Mercedes Benz G Wagon, an engagement ring for his fiancée, and
2 some other items. Of course, I can't -- I don't have the list
3 of everything in front of me, Judge, but yes, it was mostly for
4 his own financial benefit.

5 THE COURT: Counsel, did you wish to respond to
6 anything that the government has argued?

7 MR. EIGLARSH: Just a few points, if I could, Judge.

8 THE COURT: Sure.

9 MR. EIGLARSH: Very briefly, and I'm going to pick my
10 battles. There's a lot of things that we will disagree with
11 factually, but in the interest of time and, really, we want the
12 focus to be on some of the variance requests that we've made.

13 I'm not going to dispute what the government claims
14 my client did in terms of the fraud. He's pled guilty to that
15 and I think that the government did a fine job explaining what
16 my client did.

17 We did submit a couple documents which corroborate my
18 client paying cash to a number of his employees, just to refute
19 that point, but, again, I don't want to go down a rabbit hole
20 about that. But he did use more of the money to pay for
21 employees than I think what the government is representing.

22 THE COURT: But isn't paying cash to employees also
23 getting around other laws that he should have been paying
24 payroll, paying the IRS what he needed to pay, all of those
25 things? Isn't allowing cash payments to go to individuals

1 skirting other laws?

2 MR. EIGLARSH: I don't disagree with you. You can
3 add that to the list of things that I consider to be
4 problematic with his behavior. And I think that he -- I don't
5 think that was his intent, but maybe it was and so we wouldn't
6 negate that.

7 I did want to tell the Court that everything that I
8 represented about his relationship with his father was
9 accurate. And, if necessary, we didn't plan on it, but his
10 mother is here and she could corroborate that his childhood was
11 abysmal in terms of his relationship with his father.

12 What the prosecutor, I think, is telling you is
13 accurate and that is that, after my client what released from
14 prison, he attempted to reconcile with his father and then
15 there were contacts with him later in life, but what I brought
16 up was -- had to do with his upbringing.

17 And, finally, regarding restitution, I know that I,
18 working with my client, did everything we could to assist the
19 government in the attempt to sell off the pieces of property
20 that needed to be put towards restitution. My client and his
21 fiancée, who's present, spent countless hours marketing the
22 properties, doing everything that they could to get maximum
23 value, even resisting reducing the price at times because he
24 believed that the value of the properties were higher than what
25 a lower price would yield. So his intent was pure to sell

1 these properties so that he could pay back the government at
2 the maximum level that he could.

3 MS. NEBESKY: Your Honor?

4 THE COURT: Yes.

5 MS. NEBESKY: Suzanne Nebesky for the United States.
6 I handled the forfeiture in the case. One point of
7 clarification.

8 We would like the forfeiture order incorporated into
9 the judgment as-is, as we standardly do. We have had some very
10 last minute, but, you know, to the extent how much effort's
11 been put in all along in the last nine months. I know Your
12 Honor is aware we've been working with the defendant to try to
13 get restitution paid. Not as much got sold as we hoped, but he
14 did obtain two weeks ago what has appeared to be a decent offer
15 on the Starboard property, which is the residence they've been
16 living in. The marshals have vetted it. It appears to be a
17 third-party, independent buyer and something that, with Your
18 Honor's permission, we'd like to try to facilitate moving
19 forward.

20 It's not ready to close right now. Obviously, it's
21 going to -- things could fall through, which is why I'd like
22 the forfeiture incorporated as-is so we preserve our interest.
23 But the title company -- it's the marshal's title company is
24 working with them. If the sale does go through, we would move
25 to -- file an unopposed motion to vacate the preliminary order

1 of forfeiture, which would allow them to convey clear title,
2 and the marshals can have the funds sent to the Clerk of Court
3 for restitution to that property.

4 It's not quite as much as he's indicating we're going
5 to get from it because there haven't been payments made on the
6 mortgage for all this time so there's quite a bit of interest
7 that's accrued on that mortgage, but with Your Honor's
8 permission, we would like to give it the next couple weeks to
9 see if it's going to work out and then move to vacate the
10 preliminary order just for that property so that they can
11 convey clear title.

12 It's unorthodox and it's not how we typically like to
13 do things because, you know, the forfeiture order gives us some
14 abilities to preserve the property, step in and do what we can
15 to maintain it. So we would ask -- this comes with some risk
16 for us. He's agreed that he's going to continue cooperating
17 for the next two weeks while we try to work this out, which is
18 going to include, obviously, providing access to the property
19 for the marshals and the buyers. He's going to -- he said he's
20 going to sign any closing statements we're giving to him. He's
21 aware that there's going to be some cost for the marshals
22 because they have incurred costs because they've come in to try
23 to take over the property so those are going to be on the
24 closing statement.

25 And I think a big one that I want to make sure the

1 Court is aware is he's agreed he is going to vacate the
2 property to allow this closing to go forward. These buyers --
3 again, it appears to be a decent offer. If they close, it's a
4 cash offer. They could close in the next -- sometime in the
5 next two to three weeks, and I have been promised that is not
6 going to be an issue, that he will be ready to vacate to allow
7 that sale to go through.

8 In the event it does not, we were going to move
9 forward with forfeiture, which is why we want to keep the order
10 in place at this point.

11 THE COURT: All right.

12 Any response to that so that we're clear for the
13 record?

14 MR. EIGLARSH: My client has maintained he will
15 continue to cooperate and do everything possible, but I wanted
16 to take 15 seconds to thank that particular prosecutor who has
17 been unbelievably professional, compassionate, patient. I know
18 that -- I don't know her history and how she typically does
19 things. I accept as fact that she was doing things in this
20 case that she doesn't normally do, taking certain liberties and
21 risks, and I just want to say how grateful I am. And I know my
22 client feels the same way so I just want to express that.

23 THE COURT: I'm sure that's appreciated. Thank you.

24 And you have no objection, he's willing to continue
25 to cooperate in vacating the premises and doing everything he

1 needs to do to, hopefully, facilitate the sale going through?

2 MR. EIGLARSH: Absolutely, Your Honor.

3 (Pause.)

4 THE COURT: All right. Then, Mr. Tisone, is there
5 any reason the Court should not now impose the sentence?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: If you would stand with your counsel
8 then?

9 The Court has asked the defendant why judgment should
10 not now be pronounced and, after hearing his response, I don't
11 find any cause to the contrary. I have listened to your
12 statement. I've listened to the arguments of your counsel.
13 I've reviewed the presentence report and the advisory guideline
14 range. I've also reviewed the over 244 pages of exhibits,
15 attachments, memoranda that were filed in this case, the motion
16 for downward departure, which I consider as a variance argument
17 in this case, and all the surrounding facts and circumstances
18 that have been argued here today.

19 In reviewing your actions, Mr. Tisone, and the case
20 itself and looking at what the appropriate sentence should be,
21 I need to look at the Section 3553(a) factors, and I'm sure
22 your counsel has explained to you those are such things as the
23 nature and circumstances of the offense, your history and
24 characteristics, the need for the sentence imposed to reflect
25 the seriousness of the offense, to promote respect for the

1 laws, provide just punishment, afford adequate deterrence, and
2 any number of other factors that go into this. Specifically,
3 your counsel has requested that the Court vary from the
4 sentencing guidelines, and the government, on the other hand,
5 is asking for a guideline sentence.

6 I have taken into consideration things that you have
7 argued and your counsel has argued in regard to your nature --
8 or your history and characteristics, the good works that you
9 have done, the fact that you have shown remorse, the fact that
10 you have worked with youth as a counselor, the fact that you
11 came out of prison and were actually able to complete a
12 community college degree, complete a university degree, and
13 start your own business. All of those things are very
14 commendable because it is difficult, I'm sure, for an
15 individual who's been a convicted felon to find employment, but
16 it is also not impossible for that to happen. I know that
17 doors did close for you along the way, certainly, but you did
18 what you could to create your own business. So the Court has
19 looked at all of those things.

20 Weighing that, the Court also then, as I said, needs
21 to look at the seriousness of this offense and the sentence
22 needs to also promote respect for the laws and provide just
23 punishment. There were, in this case, five PPP loans, four
24 EIDL loans, and one Main Street Lending loan that you applied
25 for. You did apply for these loans under businesses that had

1 previously been kind of dormant and reevaluated those and you
2 indicated in much of your paperwork that you were paying
3 individuals under the table.

4 The government -- or at least in cash.

5 The government has provided information to the Court
6 that, in fact, you were paying your mother and your fiancée as
7 part of the business using these monies. You also bought
8 homes, vehicles. You bought your fiancée an expensive
9 engagement ring and used much of the money for your own
10 personal gain and that's where this offense becomes offensive,
11 the fact that you applied for these loans and did that. Your
12 mortgage alone is over \$8,000 on a home in Naples. You didn't
13 seek to live within your means. You didn't seek to do what you
14 could to get other employment. You sought the easy way out.

15 You're clearly an intelligent individual, you make
16 compelling arguments, and had you applied those traits to
17 something legal, we wouldn't be sitting here today. Compounded
18 everything that you did by receiving these monies. And it's
19 interesting. And, certainly, you received these monies and
20 then you made money off the fraudulent money that you had
21 received from these loans. Clearly, an entrepreneur, if you
22 will.

23 After looking at all of the evidence in this case,
24 I'm also considering that you did accept responsibility quickly
25 in this case. You've helped the prosecution in proffering to

1 them in giving them information that helped in the prosecution
2 of another individual, and certainly that has been accounted
3 for in the two-level reduction in the guidelines.

4 All said and done, the Court, pursuant to Title 18
5 United States Code Section 3551 and 3553, it would be the
6 judgment of the Court that you be committed to the custody of
7 the Bureau of Prisons to be imprisoned for a term of 87 months.
8 That term of 87 months will run concurrent in Counts 2, 8, 14,
9 and 18.

10 Upon release from custody, you will serve a
11 three-year term of supervised release. That term will consist
12 of three years as to Counts 2, 8, 14, and 18, all to run
13 concurrently.

14 While on supervised release, you'll need to comply
15 with the mandatory and standard conditions adopted by the Court
16 in the Middle District. In addition, there's a number of
17 special conditions:

18 You'll need to participate in a substance abuse
19 program, outpatient and/or inpatient, and follow the probation
20 officer's instructions regarding the implementation of the
21 Court's directive. Further, you're going to need to contribute
22 to the costs of those services not to exceed an amount
23 determined reasonable by the probation officer's sliding scale
24 for substance abuse treatment services. During and upon the
25 completion of the program, you're directed to submit to random

1 drug testing.

2 You'll need to submit to a search of your person,
3 your residence, your place of business, any storage units under
4 your control, or your vehicle, all conducted by the United
5 States Probation Officer at a reasonable time and in a
6 reasonable manner based upon reasonable suspicion of contraband
7 or evidence of a violation of condition of release. You'll
8 need to inform any other residents that the premises may be
9 subject to search pursuant to this condition. If you fail to
10 submit to a search, it could be grounds for revocation.

11 You'll be prohibited from incurring any new credit
12 charges, opening any additional lines of credit, or obligating
13 yourself for any major purchases without approval of the
14 probation officer. You'll need to provide the probation
15 officer access to any requested financial information.

16 Having been convicted of a qualifying felony, you'll
17 need to cooperate in the collection of DNA as directed by the
18 probation officer.

19 You must refrain from any unlawful use of a
20 controlled substance, and you need to submit to one drug test
21 within 15 days of your placement on supervision and at least
22 two periodic drug tests thereafter as directed by the probation
23 officer. You will need to submit to random drug testing not to
24 exceed 104 tests per year.

25 You will pay restitution in the amount of \$1,476,093

1 to Bank of Clark County, \$573,554.17 to Blue Ridge Bank, and
2 \$567,800 to Small Business Administration.

3 Is that correct?

4 MR. REICHLING: Judge, all of the money that you
5 mentioned that was going to go to Blue Ridge Bank is going to
6 actually go to the SBA as well. Since the loans were forgiven
7 and the SBA paid Blue Ridge for those loans, then all the
8 money -- all the non-MSLP money, all the non-Bank of Clark
9 County money is going to go to the SBA.

10 THE COURT: All right. So you will give the amounts
11 to the --

12 MR. REICHLING: That's correct. I'll provide
13 Ms. Holland with the loan numbers associated with each one of
14 those PPP and EIDL loans, which the SBA has asked for when
15 restitution is ordered.

16 THE COURT: All right.

17 And, in any event, the restitution obligation will be
18 made payable to the Clerk of the United States District Court
19 for distribution to the victims. You'll need to pay the
20 monthly -- balance in monthly payments of 10 percent of your
21 monthly income. While in the Bureau of Prisons, you will
22 either pay at least \$25 quarterly if you have a non-UNICOR job
23 or pay at least 50 percent of your monthly earnings if you have
24 a UNICOR job.

25 Upon release from custody, your financial

1 circumstances will be evaluated and the Court may establish a
2 new payment schedule accordingly. At any time during the
3 course of your post-release supervision, if you or the
4 government notifies the Court of any material change in your
5 ability to pay, then the Court can adjust that payment schedule
6 accordingly.

7 I do find that you do not, at this time, have the
8 ability to pay interest, and the Court waives the interest
9 requirement for the restitution.

10 Based upon your financial status, I am not going to
11 impose any additional fine.

12 As to the forfeiture, the Court would make the
13 preliminary order of forfeiture final and part of the judgment.

14 It is further ordered that you pay the United States
15 a special assessment totaling \$400, which is due immediately.
16 That's because you pled to the four counts.

17 After considering the advisory sentencing guidelines
18 and all of the factors identified in Title 18 United States
19 Code Section 3553(a)(1) through (7), I do find that the
20 sentence imposed is sufficient but not greater than necessary
21 to comply with the statutory purposes of sentencing. I'm
22 accepting the plea agreement because I'm satisfied that the
23 agreement adequately reflects the seriousness of the actual
24 offense behavior and that accepting the plea agreement will not
25 undermine the statutory purposes of sentencing.

1 Under the plea agreement, you entered pleas to Counts
2 2, 8, 14, and 18. And is the government still intending then
3 to request the Court dismiss Counts 1, 3 through 7, 9 through
4 13, and 15 through 17?

5 MR. REICHLING: That is correct, yes, Judge.

6 THE COURT: In accordance with the plea agreement and
7 the request of the government, it is ordered that Count 1, 3,
8 4, 5, 6, 7, 9, 10, 11, 12, 13, and 15, 16, and 17 of the
9 indictment be dismissed.

10 The Court having pronounced sentence, does counsel
11 for the defendant or the government have an objection to the
12 sentence or the manner in which the Court has pronounced it?

13 MR. REICHLING: No objection from the government,
14 Judge.

15 MR. EIGLARSH: No objection. I did have a couple of
16 points I wanted to --

17 THE COURT: Go ahead.

18 MR. EIGLARSH: -- address with the Court.

19 So I'm assuming it's inferred based upon the Court's
20 ruling that our motion to depart downward because of his
21 criminal history, the Court rejected that argument?

22 THE COURT: Correct, yes, that's denied.

23 MR. EIGLARSH: Okay. I would ask that the Court
24 recommend -- and then I know it's not binding on the Bureau of
25 Prisons but recommend the following:

1 The RDAP program. And a facility close to this area
2 so that his fiancée and son could visit him. And we'd request
3 a self-surrender to the designated facility. Alternatively, 90
4 days before he has to surrender.

5 THE COURT: From the government?

6 MR. REICHLING: Judge, I don't have an issue with the
7 self-surrender, but 90 days, I think, is a little too lenient
8 as to that self-surrender date. So the government would be
9 willing to go up to 30 days, but 90 is just a bit too long.

10 MR. EIGLARSH: Sounds like 60 is in the middle, if
11 the Court's not willing to do 90.

12 THE COURT: All right. As far as the RDAP program,
13 the Court does not have any objection to the defendant being
14 placed in the RDAP program if he does qualify for that program.

15 Also, the Court would recommend that the defendant be
16 placed in a facility as close to the Fort Myers area as
17 possible. Generally, Coleman is recommended. Is that
18 something you'd like for the Court to recommend specifically or
19 just say as close to Fort Myers as possible?

20 (Pause.)

21 MR. EIGLARSH: As close to here as possible.

22 THE COURT: All right. So the Court will just order
23 then that he be placed in a facility as close to Fort Myers as
24 possible.

25 (Pause.)

1 THE COURT: All right. The Court will grant the
2 defendant's motion to self-surrender and allow for him to
3 surrender by April 19th. If you're trying to figure it out,
4 that's 57 days. You need to either surrender to the facility
5 where you are designated. If they designate you sooner, you
6 have to surrender sooner. If not, then you will surrender to
7 the United States Marshals here before 2:00 p.m. on the 19th.

8 Hopefully, in that amount of time, that will assist
9 the forfeiture proceedings. If, in fact, the defendant is not
10 cooperative in the forfeiture proceedings, meaning does not
11 vacate the residence, does not sign the documents that he's
12 supposed to sign, the Court will certainly reassess a
13 self-surrender. So, hopefully, that will facilitate everything
14 going through. If it does not for some reason, then the Court
15 will entertain any motions filed by the parties as to
16 revisiting the self-surrender.

17 Anything further at this time?

18 MR. REICHLING: No, Your Honor. Thank you.

19 THE COURT: Anything from the defense?

20 MR. EIGLARSH: No, Your Honor. Thanks.

21 THE COURT: All right then, we'll be in recess on the
22 proceedings. The defendant will need to check in with his
23 Pretrial Services officer before he leaves the courthouse.
24 Make sure that he remains on the same terms and conditions as
25 he was previously been on. He may also want to check with

1 probation just to make sure that there is nothing else that is
2 needed.

3 All right, we'll be in recess. Thank you.

4 (Luncheon recess taken at 11:54 a.m.)

5 AFTERNOON SESSION

6 (Time noted: 1:17 p.m.)

7 THE COURT: All right, let the record reflect
8 defendant is present in court with counsel. We are back on the
9 record in Mr. Tisone's case.

10 Mr. Tisone, we started talking about the forfeiture
11 issues and everything else and I did not advise you of your
12 right to appeal. So I want to make sure that you understand
13 your right to appeal.

14 You do have the right to appeal from the judgment and
15 sentence of this Court within 14 days from the date of the
16 entry of the judgment. If you fail to appeal within that
17 14-day period of time, it would be a waiver of your right to
18 appeal. The government also has a right to appeal the
19 sentence.

20 If you choose to appeal and you cannot afford
21 counsel, I'll appoint counsel to represent you. If you cannot
22 afford the filing fee, then the Clerk of Court will be directed
23 to accept the notice of appeal without the filing fee.

24 That's really all I needed to tell you in that regard
25 so I appreciate the fact that everybody came back together for

1 that, but I want to make sure that you understand the rights
2 that you have in that regard.

3 THE DEFENDANT: I understand.

4 THE COURT: Just one other question to the
5 government:

6 There were a number of forfeiture motions that were
7 filed --

8 MR. REICHLING: That's correct.

9 THE COURT: -- by different entities. How is the
10 Court to handle those? I mean, what's the situation? Do we
11 need to wait until everything --

12 MR. REICHLING: I would wait until this sale of the
13 home, hopefully. I know that the forfeiture AUSA, Suzanne
14 Nebesky, has been in touch with those various entities.
15 Specifically, I think it's the mortgage company and with Bank
16 of Clark County, which wanted rights to monies that were taken
17 in a forfeiture of Mr. Tisone -- one of Mr. Tisone's accounts.
18 I believe she's been having communications with the lawyers
19 representing those parties and I believe we're going to have an
20 agreement that will -- I think they're going to file something
21 that indicates that they're withdrawing their motion or
22 something like that. I believe that's going to be the case.

23 If anything changes on that front, Judge, I'll have
24 Suzanne or my -- or Ms. Nebesky or myself reach out and speak
25 with Mr. Eiglarsh and file whatever we need to with the Court.

1 THE COURT: Okay, that's fine. I just wanted to make
2 sure because I know they were pending and I didn't know exactly
3 how that all worked --

4 MR. REICHLING: Right.

5 THE COURT: -- with --

6 THE DEPUTY CLERK: So leave them all pending?

7 THE COURT: We'll leave them pending except for the
8 government's.

9 MR. REICHLING: That's correct, yeah.

10 THE COURT: What we ordered.

11 MR. REICHLING: Exactly.

12 THE DEPUTY CLERK: Yes, Your Honor.

13 THE COURT: All right, okay. Then we'll be in recess
14 on the proceedings. Thank you.

15 MR. EIGLARSH: Thank you, Judge.

16 (Proceedings were concluded at 1:19 p.m.)

17 * * * * *

1 CERTIFICATE OF REPORTER

2
3 UNITED STATES DISTRICT COURT)
4 MIDDLE DISTRICT OF FLORIDA)
5

6 I, Stacey E. Raikes, RMR, CRR, Official Court
7 Reporter for the United States District Court, Middle District
8 of Florida, do hereby certify, pursuant to Section 753, Title
9 28, United States Code, that I was authorized to and did
10 stenographically report the foregoing proceedings; and that the
11 foregoing pages constitute a true and complete computer-aided
12 transcription of my original stenographic notes taken by the
13 undersigned in the above-entitled matter to the best of my
14 knowledge, skill, and ability.

15 I further certify that I am not a relative, employee,
16 attorney, or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorneys or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand at Fort
21 Myers, Lee County, Florida, this 23rd day of February 2023.
22

23 
24

25 STACEY E. RAIKES, RMR, CRR
Official Court Reporter