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SENTENCING MEMORANDUM

BY ECF

September 29, 2021

Re: *United States v. Ilori*, No. 20-cr-378 (S.D.N.Y.)

Hon. Lewis J. Liman
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Liman:

We respectfully submit this sentencing memorandum on behalf of our client, Adedayo Ilori, the defendant in the above-referenced matter (“Mr. Ilori” or “Adedayo”).

On April 8, 2021, Mr. Ilori pled guilty to Count 1 of the Indictment, which charges him with conspiracy to commit wire fraud and mail fraud in violation of 18 U.S.C. 1343 and 18 U.S.C. 1341 relating to a scheme in which the conspirators submitted fraudulent business loan applications across interstate lines with the intent not to repay the loans. Mr. Ilori also admitted to the conduct charged in Count 5 of the Indictment, which charges him with agreeing with his co-defendants and others to launder the proceeds obtained from the fraudulent business loan applications through a bank account opened using a stolen identity in violation of 18 U.S.C. 1343 and 1341. Mr. Ilori pled guilty pursuant to a plea agreement in which the parties stipulated to a United States Sentencing Guidelines (the “Guidelines”) range of 51 to 63 months (the “Guidelines Range”), which is based on a total adjusted offense level of 22 and a Criminal History Category of III.

After the Supreme Court’s decision in *Booker*, the Guidelines are but one of several factors that the Court must consider in determining a defendant’s sentence. *See United States v. Booker*, 543 U.S. 220 (2005). Indeed, a district court “may not presume that a Guidelines sentence is reasonable; it must instead conduct its own independent review of the sentencing factors, aided by the arguments of the prosecution

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and defense.” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008). The Second Circuit has recognized that in the post-*Booker* regime, a sentencing judge “has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime” and is “generally free to impose sentences outside the recommended range.” *Id.* at 188–89.

For the reasons set forth in this memorandum and the letters submitted by Mr. Ilori, his family, and his friends, as well as the other exhibits submitted herewith, we respectfully request that the Court impose a sentence of home confinement, below the as-stipulated Guidelines Range. A sentence of home confinement is fair, just, and reasonable given Mr. Ilori’s good record during his period of home confinement, Mr. Ilori’s role in the offense conduct, and in light of the evidence of his character and history, including: (i) his perseverance in the face of a challenging upbringing; (ii) his recent efforts to devote himself to his family, and the positive contributions he has since made to his family, friends, and community; and (iii) the difficult circumstances that led to his involvement in the offense conduct.

Mr. Ilori realizes that he made a mistake participating in the conspiracy and that he must take responsibility for his bad decision. However, compared to his co-defendants, Mr. Ilori’s role in the conspiracy was minimal, and he was drawn into the sting operation due to financial hardship and desperation. We submit that the circumstances of his offense, taken together with the factors described above, demonstrate a lack of potential recidivism or risk to his community, and the proposed sentence of home confinement is sufficient, but not greater than necessary, to effectuate the purposes of the criminal law. *See* 18 U.S.C. § 3553(a).

I. Mr. Ilori’s History and Characteristics Warrant Leniency

A. Mr. Ilori Suffered Abuse Throughout his Childhood and Overcame Difficult Circumstances

Adedayo was born in 1978 in Redwood City, California. PSR ¶ 76.¹ Although he was born in the United States, Adedayo spent most of his childhood in Nigeria. *Id.* ¶ 78. Adedayo’s childhood was rough – he was not close with his biological father, who had a life apart from Adedayo and his family. *Id.* ¶ 79. Adedayo’s biological father was not financially or emotionally supportive of Adedayo or his family. *Id.* Although Adedayo and his father have recently reconciled after his father suffered from a stroke, Adedayo was heavily impacted by his father’s absence throughout his childhood. *Id.*

¹ Citations to “PSR” refer to the Presentence Report dated July 8, 2021.

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When Adedayo was approximately three years old, his mother married Adedayo's stepfather, who abused Adedayo and his mother, both verbally and physically. *Id.* ¶ 80. Additionally, his stepfather was largely absent from the family, and was often away from home and did not provide much support for the family. *Id.* Partially due to the absence of both his biological father and stepfather, Adedayo was raised in a low income environment, which was exacerbated by a struggling national economy at the time. *Id.* ¶ 82. As his uncle writes, Adedayo would go about "begging for food" as a hungry child, but still remained "humble and quiet" and "very respectful." *See Ex. 3, Letter from Benjamin Ejelonu.*

Despite these challenging circumstances, Adedayo did what he could to help his family. He would perform chores around the home and helped prepare the daily meals for the family while his mother was working. PSR ¶ 82. Adedayo enjoyed a close relationship with his mother, which he maintains to this day. *Id.*

When Adedayo was 12 years old, however, his mother left Nigeria to pursue an employment opportunity in Saudi Arabia. *Id.* ¶ 83. At this point, Adedayo lived with his step-grandmother, who—like Adedayo's stepfather—verbally abused Adedayo. *Id.* Adedayo's mother confirms that his step-grandmother treated Adedayo difficultly and with "wickedness." *See Ex. 2, Letter from Aminat Bakare.* In order to escape this abusive environment, Adedayo emigrated to the United States with the help of his friends, eventually securing employment at a fast food restaurant and saving enough money to move into his own apartment. PSR ¶ 84.

Despite a childhood plagued by abuse and without the support of a stable family or father figure, Adedayo was able to start a career as a personal fitness trainer, and was even eventually able to start his own personal fitness company. *Id.* ¶¶ 97, 98. While financial difficulties with his company ultimately led to his participation in the instant offense, Adedayo is committed to returning to his business and doing everything he can to see it succeed.

B. Mr. Ilori is Devoted to His Family, Friends, and Community

Adedayo is devoted to his family, who love and care for him deeply. Family has long been the most important thing to Adedayo, as he grew up in trying conditions that forced him to grow closer to those who truly cared for him. As his step-father writes, Adedayo was there for him and his family, and helped provide and take care of the kids. *See Ex. 4, Letter from Muslim Adesoye Bakare.* His family has also suffered from recent tragedy, as both his aunt and uncle died, leaving Adedayo with two nephews, a niece, an elderly mother, and his 86-year-old grandmother, all who "depend on [Adedayo's] support." *Id.*

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His uncle also confirms that he is a “good boy, a good man, a good son, a good brother, and a good husband and father again.” *See* Ex. 3, *Letter from Benjamin Ejelonu*. His uncle also forcefully believes that he “would bounce back to a good life, becoming a good and dependable citizen” and notes that he “has been of immense assistance” to his uncle throughout his life. *Id.*

Adedayo’s mother writes that Adedayo has finally “realized his misdeeds and the need to get focused and discipline[d] to embrace” his future. *See* Ex. 2, *Letter from Aminat Bakare*. She longs to be with him again as she gets older and suffers from various medical issues that she needs his support to overcome. *Id.*

Finally, Adedayo’s wife writes that he is a “great” and “amazing” father, who has an incredible relationship with his children, who he helps with their homework, bonds with through physical activity, and picks up every day from school. *See* Ex. 5, *Letter from Wunmi Fadipe-Ilori*. For Adedayo, his children are his priority. *Id.* Adedayo is also a supportive husband, as he has encouraged his wife to obtain her Bachelor’s degree and to pursue investment licenses so that she can become a financial advisor. *Id.* Adedayo is “beyond committed as a father and husband” and is an essential part of his family. *Id.* Adedayo’s daughter, T.I., writes that Adedayo “has been nothing but a good father to me and my brother” and that, despite being busy with his career, is “still able to nurture and love everyone.” *See* Ex. 6, *Letter from T.I.* Adedayo’s family is deeply supportive of him and looks forward to their futures together with him.

Given Adedayo’s close ties to his family, and the fact that he has successfully been on home confinement since he was arrested, a sentence of home confinement is appropriate here, as it will allow Adedayo to continue to pursue his business and support his loving family, who depend on him. Home confinement also makes sense here, given the ongoing concerns regarding COVID-19, especially in light of the Delta variant surge.

II. The Proposed Sentence Is Fair In Light of the Nature and Circumstances of the Offense and Sufficiently Addresses the Needs for Deterrence and Punishment

Pursuant to U.S.C § 3553(a)(1), this Court must consider the nature and circumstances of the offense in determining an appropriate sentence. While Adedayo understands that the Government would have attempted to prove the offense conduct as described in the “Offense Conduct” section of the Presentence Report if he had gone to trial, Adedayo disputes much of the Government’s portrayal of the facts as described therein.

To be sure—Adedayo does not deny that he engaged with Mr. Chancy and an undercover agent (the “UC”) posing as a corrupt underwriter to submit fraudulent

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business loans. Adedayo disputes, however, the extent of the involvement attributed to him, and certain acts that are baselessly attributed to him, as opposed to Mr. Chancy, Mr. Albarella, the UC, or the confidential source (the “CS”).

First, Adedayo disputes being directly involved in “eight fraudulent business loan applications.” PSR ¶ 18. While Adedayo was involved in preparing certain loan applications submitted in January 2020, he was not directly involved in the loan applications submitted in February 2020, except as a member of the broader conspiracy started with the submission of January 2020 loan applications. While certain documents Adedayo may have prepared in the past were used by Mr. Chancy in connection with the February 2020 loan applications, *see id.* ¶ 37, Adedayo disputes being actively involved with those applications when they were submitted in February 2020. And while Mr. Chancy may have called Adedayo when he was at the HSBC bank branch to open a bank account, Adedayo disputes actually providing Mr. Chancy with the Missouri identification card that Mr. Chancy had on his personal cellphone. *Id.* ¶ 39.

Second, much of the Government’s allegations are based on Mr. Chancy’s unreliable account as to what Adedayo supposedly did in furtherance of the conspiracy. *See, e.g., id.* ¶ 23 (“CHANCY reported that ILORI had opened business bank accounts at three different banks, using the identities of other people. According to CHANCY, ILORI used driver’s licenses with real identifying information that had been altered with different photographs.”). To the extent these allegations are unverified by supporting evidence, they should be discounted as unreliable.

Third, Adedayo disputes that his June 28, 2019 arrest by the NYPD was in connection with the current offense conduct. *See id.* ¶ 27. Adedayo is still fighting those charges, and believes he will be found innocent.

Fourth, while Adedayo takes full responsibility for his participation in the conspiracy, he was brought into the conspiracy by Mr. Chancy. Following a *Fatico* hearing on July 29, 2021, the Court held that it cannot be determined that it was Mr. Chancy who initiated the fraudulent loan scheme and further credited the defense theory that it was in fact the Government’s CS who “initiated the scheme and first mentioned to Chancy that he could use his position as a bank manager to commit fraud.” *See* Dkt. No. 87. After the CS initiated the scheme with Mr. Chancy, Mr. Chancy then drew Adedayo into the scheme. To the extent this was taken into account for Mr. Chancy’s sentencing, it should also be taken into account for Adedayo’s sentencing.

Fifth, the Court should consider that the CS—who was working with the Government for his own benefit—influenced Adedayo and Mr. Chancy to use real identifications belonging to actual victims, with the likely goal of increasing the criminal exposure Adedayo and Mr. Chancy would face. The CS—likely with the same goal—also

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influenced Adedayo and Mr. Chancy to increase the amount sought in the loan applications. While the value of using loss amount as a proxy for culpability and thus jail time is debatable in any context, it is especially questionable here, where the loss amount was influenced by the CS and where there was no risk of actual loss given the Government's involvement from the onset. *See, e.g., United States v. Corsey*, 723 F.3d 366, 377 (2d Cir. 2013) (Underhill, J., concurring) (arguing that the loss guideline is "fundamentally flawed," especially where the entire loss amount "consists of intended loss" and where the underlying conduct is not dangerous). We ask that the Court consider this in determining Adedayo's sentence.

Finally, Adedayo played a significantly less central role in the scheme than Mr. Chancy, who was responsible for bringing Adedayo into the scheme and who was involved in all of the loan packages at issue. Accordingly, Mr. Ilori's sentence should be lesser than Mr. Chancy's, who received a sentence of 30 months. *See* Dkt. No. 92; *United States v. Frias*, 521 F.3d 229, 236 n.8 (2d Cir. 2008) (district court may consider similarities and differences among co-defendants when imposing a sentence).

III. Conclusion

For all the foregoing reasons, we respectfully ask that the Court impose a sentence of home confinement.

Respectfully submitted,

/s/ Brooke E. Cucinella
Brooke E. Cucinella

Enclosure

cc: Cecilia Vogel, Esq.