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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

21 Cr. 746 (MKV)

ADEDAYO ILORI,

Defendant.

New York, N.Y.
October 23, 2023
11:00 a.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge

APPEARANCES

DAMIAN WILLIAMS,

United States Attorney for the
Southern District of New York

BY: JULIANA N. MURRAY

DANIEL G. NESSIM

Assistant United States Attorneys

SANFORD N. TALKIN

Attorney for Defendant

ALSO PRESENT:

ISABEL LOFTUS, AUSA Paralegal

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(Case called)

MS. MURRAY: Good morning, your Honor. Juliana Murray and Daniel Nessim on behalf of the United States. We're joined by paralegal specialist, Isabel Loftus.

THE COURT: Good morning, Ms. Murray, Mr. Nessim, and Ms. Loftus.

MR. TALKIN: Good morning, your Honor. San Talkin for Mr. Ilori, who is seated to my left.

THE COURT: Good morning, Mr. Talkin. And good morning to you, Mr. Ilori.

THE DEFENDANT: Good morning.

THE COURT: So we are here once again for the sentencing of Mr. Ilori. As you know, I am Judge Vyskocil.

Just for the sake of the record, Mr. Ilori, you do speak and understand English clearly; correct?

THE DEFENDANT: Yes.

THE COURT: You do not need the services of an interpreter?

THE DEFENDANT: No, I don't.

THE COURT: Sorry?

THE DEFENDANT: I don't need an interpreter.

THE COURT: Thank you.

And Ms. Murray, are there victims entitled to notice and has notice been provided?

MS. MURRAY: Yes, your Honor, there are victims and

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1 notice has been provided.

2 THE COURT: Thank you.

3 By way of background in June of last year, 2022, a
4 grand jury returned a superseding indictment charging Mr. Ilori
5 with six counts.

6 Count One charged him with major fraud against the
7 United States, in violation of Title 18, United States Code,
8 Section 1031, 2, and 3147.

9 Count Two charged Mr. Ilori with conspiracy to commit
10 wire and bank fraud, in violation of Title 18, United States
11 Code, Section 1349 and 3147.

12 Count Three charged Mr. Ilori with wire fraud, in
13 violation of Title 18, United States Code, Section 1343, 2, and
14 3147.

15 Count Four charged Mr. Ilori with bank fraud, in
16 violation of Title 18, United States Code, Section 1344, 2, and
17 3147.

18 Count Five charged Mr. Ilori with aggravated identity
19 theft, in violation of Title 18, United States Code,
20 Section 1028A, 2, and 3147.

21 Finally, Count Six charged Mr. Ilori with conspiracy
22 to commit money laundering, in violation of Title 18, United
23 States Code, Section 1956(h), and 3147.

24 On November 1st of last year, 2022, after a six-day
25 jury trial, the jury found Mr. Ilori guilty of all six counts

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1 charged in that superseding indictment. The probation office
2 has completed its investigation and the parties have filed
3 their sentencing submissions and numerous supplemental
4 submissions.

5 I note, too, that the sentencing of Mr. Ilori has
6 repeatedly been adjourned or delayed. Sentencing was
7 originally scheduled for January of 2023, but was adjourned
8 because Mr. Ilori fired his trial lawyer, Mr. Peter Brill, and
9 requested new counsel. I then appointed Avraham Moskowitz, who
10 requested additional time to prepare for sentencing. That's at
11 ECF 108 and 122. Sentencing was scheduled for May 25, 2023.

12 Despite many months of delay, Mr. Moskowitz informed
13 the Court at the May 25 sentencing hearing that Mr. Ilori was
14 not prepared to proceed. Specifically, Mr. Moskowitz explained
15 that Mr. Ilori wanted new counsel again, and that, against the
16 advice of counsel, Mr. Ilori sought a *Fatico* evidentiary
17 hearing with respect to the loss amount and the number of
18 access devices used in his fraud scheme. The transcript of
19 that May 25th hearing is at ECF No. 127.

20 Given the obvious conflict between Mr. Moskowitz and
21 Mr. Ilori, I appointed Mr. Talkin to replace Mr. Ilori, and I
22 warned Mr. Ilori at that time that new counsel would not be
23 appointed again. That happened on May 30th of 2023. The
24 transcript is at ECF No. 131.

25 Now, since Mr. Talkin was appointed as counsel, both

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1 parties have submitted additional sentencing materials, made
2 some new objections, requested revisions to the PSR.

3 I will turn now to laying out all of the materials I
4 have received that are part of the record, and I'll deal then
5 with the various objections, requests, et cetera.

6 So, the following is what is before the Court in
7 connection with today's sentencing. So I'd ask you please
8 listen very carefully because, as I say, there were many
9 submissions that were made after the initial ones and I want to
10 be sure we have everything noted on the record.

11 So, I have the final presentence report prepared by
12 probation, that was filed on February 14th of 2023. That's at
13 ECF No. 113. The probation office made revisions to update
14 Mr. Ilori's sentencing date, although it was not revised again
15 to reflect today's date, to correct typographical errors and to
16 reflect that a telephone interview was conducted with
17 Mr. Ilori's wife. The PSR is at docket entry 113.

18 Now, in terms of objections, just noting them right
19 now, then I'll turn back and we'll deal with them. The
20 government originally did not file any objections. That's
21 noted on page 31 of the PSR, but in a supplemental submission
22 filed on June 28th of 2023 – that's ECF No. 130 – the
23 government requested a number of corrections. Specifically, on
24 page 2, the statutory citation for Count Four was revised to
25 read 18 U.S.C. Sections 1344, 2, and 3147, the latter 3147

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1 being what was corrected.

2 Next, the itemized offense level calculation should
3 include a paragraph for a two-level enhancement pursuant to the
4 sentencing guidelines Section 2S1.1(b)(2)(B) because the
5 defendant was convicted under 18 U.S.C. Section 1956.

6 Next, in paragraphs 21, 56, 57, and 59, the amount of
7 the approved fraudulent loans should read \$1,024,625.

8 Next, in paragraph 139, and on pages 34, 36, and 39,
9 the amount of restitution owed should read \$1,120,462.47, of
10 which \$1,072,062.47 is owed to the Small Business
11 Administration with the remaining individual restitution of
12 \$48,400 owed to the other victim identified in the schedule of
13 victims.

14 Finally, in that June 28th letter, the government
15 states that paragraph 40 should read: "Restitution in the
16 amount of \$1,072,067.47 is joint and several with his
17 codefendant in this case..."

18 In another supplemental submission, dated October 13th
19 of 2023 – that's at ECF 144 – the government identified an
20 error in its and the probation office's guidelines calculation.
21 The government requested that the Court delete paragraph 70 of
22 the PSR and revise Mr. Ilori's adjusted offense level downward
23 from 40 to 38.

24 While represented by Mr. Moskowitz, Mr. Ilori objected
25 to three paragraphs of the PSR.

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1 First, he objected to paragraph 67, arguing the actual
2 loss rather than intended loss should be used to calculate the
3 enhancement pursuant to guideline 2B1.1(b)(1)(K).

4 Next, he objected to paragraph 69, arguing that the
5 sophisticated means enhancement, pursuant to Section
6 2B1.1(b)(10)(C) should not apply because the crimes of which he
7 was convicted couldn't have been committed without
8 sophisticated means.

9 Next, he objected, through Mr. Moskowitz, to paragraph
10 71, arguing that the two-level enhancement for receiving more
11 than \$1 million in gross receipts, pursuant to Section
12 2B1.1(b)(17)(A) cannot apply because there is no basis to
13 conclude that Mr. Ilori individually derived more than
14 \$1 million in gross receipts.

15 Thereafter, Mr. Talkin lodged on Mr. Ilori's behalf
16 three substantive objections.

17 Paragraph 67, making a different argument with respect
18 to paragraph 67, arguing that two fraudulent loans shouldn't be
19 included in the loss calculation, pursuant to Section
20 2B1.1(b)(1)(K).

21 Next, he objected to paragraph 68, arguing that the
22 ten-or-more-victims enhancement, pursuant to
23 Section 2B2.1(b)(1)(A)(i) should not apply because the SBA, the
24 Small Business Administration, was his only victim.

25 Next, he objected to paragraph 70, arguing that the

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1 enhancement, pursuant to Section 2B1.1(b)(11) should not apply
2 to the extent that it is applied regarding authentication
3 features.

4 Then, in a supplemental submission, filed on October
5 10th of 2023 – that's at ECF 142 – Mr. Talkin requested a
6 correction to page 39 of the PSR. Specifically, that page
7 includes a sentence beginning: "As stipulated in the
8 defendant's plea agreement..." That's on page 39 of the PSR.
9 Mr. Talkin points out correctly that Mr. Ilori did not enter
10 into a plea agreement, he did not plea. He requests that the
11 sentence be stricken from the PSR.

12 So, those are the objections I have. As I say, I'll
13 turn to them in a moment. With regard to the rest of the
14 submissions, I then have the defendant's sentencing submission,
15 the original submission, filed on April 24th, 2023. That's at
16 ECF 118. There is a supplemental submission filed on June 9th,
17 2023 at ECF 129 that attached two letters of support, one for
18 Mr. Ilori's mother, another from his wife. Both letters
19 contain redactions.

20 I have then the government's sentencing submission,
21 filed on May 1, 2023 – that's at ECF No. 130 – together with a
22 supplemental submission, filed on June 28th, 2023. I have a
23 victim impact statement, which has been filed under seal, and a
24 sentencing transcript from Judge Liman, and proposed orders of
25 forfeiture and restitution. With its June 28th supplemental

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1 submission, the government provided revised proposed orders of
2 forfeiture and restitution.

3 I then have the defendant's original sentencing
4 submission and the two letters of support -- I'm sorry. The
5 defendant's original sentencing submission and the two letters
6 of support contain redactions, and the government's original
7 submission has no redactions, but the victim impact statement
8 was filed under seal. The Court will maintain all of those
9 unredacted documents under seal.

10 Now, in terms of the supplemental submissions. I have
11 a letter, dated July 13th, 2023, filed by Mr. Talkin -- at ECF
12 136 -- in which he requests a *Fatico* hearing with respect to two
13 sentencing enhancements: The gross receipt enhancement and the
14 ten or more victims enhancement. The government opposed that
15 request by letter, dated July 14th, 2023. That's at ECF 138.

16 On August 8th of this year, 2023, I entered an order --
17 that's filed at ECF No. 140 -- denying the request for a *Fatico*
18 hearing, explaining that Mr. Ilori would be given ample
19 opportunity to address these two items at sentencing.

20 I then entered an order on October 4th, 2023,
21 requesting copies of several of the government's trial
22 exhibits, which both sides address or allude to in their
23 various filings, and I did receive copies of those exhibits
24 from the government on October 5, 2023.

25 Just for the record, I assume, Ms. Murray, that you

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1 provided copies to Mr. Talkin?

2 MS. MURRAY: Yes, your Honor.

3 THE COURT: Thank you.

4 Finally, I received a letter, dated October 10, 2023,
5 filed by Mr. Talkin – that's at ECF No. 142 – which belatedly
6 raises an issue with respect to forfeiture. The government
7 filed an opposition to that letter on October 13th of this
8 year – that is at ECF No. 144.

9 That is the entirety of what I have by way of the
10 record. Let me just confirm with each side that I'm not
11 missing anything.

12 Ms. Murray.

13 MS. MURRAY: That's correct, your Honor, you're not
14 missing anything.

15 THE COURT: Mr. Talkin.

16 MR. TALKIN: Your Honor, I believe you refer to my
17 June 9th letter and the substance of the objections, I just
18 don't know that you called it out by date for the record. I
19 may have missed that, but I did -- there was also a June 9th
20 letter with some objections. And you did refer about those
21 specific objections, but I don't know that you actually said
22 the June 9th letter. So I want to make sure that's part of the
23 record, as well.

24 THE COURT: Yes, I do have it. Do you have the --

25 MS. MURRAY: It's docket No. 129.

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1 THE COURT: Thank you.

2 Yes, 129, June 9th, 2023 letter. That's the letter in
3 which Mr. Talkin requested the *Fatico* hearing with respect to
4 the two issues that I mentioned, yes. That is, of course, part
5 of the record.

6 Anything else?

7 MR. TALKIN: That's it. Thank you.

8 THE COURT: Before I turn to my questions, let me just
9 confirm for the record, Mr. Ilori, did you have a chance to
10 review the PSR to note any comments or objections and to
11 discuss them with your various lawyers?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Mr. Talkin, have you had an opportunity to
14 review the PSR, all of the supplemental filings, to discuss
15 them with Mr. Ilori, and to file any objections that you wish
16 to make?

17 MR. TALKIN: Yes, your Honor.

18 THE COURT: Ms. Murray, has the government had an
19 opportunity to read and tender any objections to the PSR?

20 MS. MURRAY: Yes, your Honor.

21 THE COURT: Thank you.

22 So I have a few questions that I want to talk about
23 with everyone before we get to my ruling on all of the
24 outstanding issues.

25 First, Mr. Talkin, can you please confirm for me that

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1 you've reviewed specifically the mandatory, standard, and
2 special conditions that have been proposed by probation if I
3 were to impose supervised release, and that you do not object
4 to my referring to them collectively without reading them into
5 the record verbatim?

6 MR. TALKIN: Your Honor, I don't have an objection to
7 you referring to them collectively. I know that we went over
8 these conditions, but I can't say, as I stand here, that -- I
9 know that I've gone through every one with my client. We went
10 through all of the submissions and we talked about objections,
11 but --

12 THE COURT: We're going to take a recess and I'd like
13 you to review them with Mr. Ilori so that any issues can be
14 noted on the record.

15 My question is: Can I refer generically to the
16 standard and mandatory conditions by calling them "standard"
17 and "mandatory" and not putting them verbatim on the record?
18 Then I'll give you my next question so you can do it all at the
19 same time.

20 MR. TALKIN: Yes, your Honor.

21 THE COURT: Are there any objections to the two
22 proposed special conditions of supervised release?

23 Those I will put on the record now. They are as
24 follows:

25 The first is a search condition. Mr. Ilori, that

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1 condition, during any term of supervised release, would require
2 that you submit your person, any property, residence, vehicles,
3 papers, computers, or other electronic communication, data
4 storage devices, cloud storage or media and effects to a search
5 by any United States probation officer who, if needed, could
6 enlist the assistance of law enforcement. The search would be
7 conducted if there were a reasonable suspicion concerning a
8 violation of a condition of supervision or of any unlawful
9 conduct by the person being supervised – that, of course, is
10 you. Failure to submit to a search may be grounds for
11 revocation of release and you would be ordered to warn any
12 other occupant that the premises may be subject to search
13 pursuant to this condition. I would order that any search be
14 conducted at a reasonable time and in a reasonable manner.

15 Probation also recommends that I impose a special
16 condition with respect to financial issues. Specifically, you
17 must not incur new credit card charges or open any additional
18 lines of credit without the approval of the probation officer
19 unless you are in compliance with the installment payment
20 schedule that would be included in any judgment, and you must
21 provide the probation officer with access to any requested
22 financial information.

23 So those would be the two special conditions. Then,
24 in addition, there are the mandatory and standard conditions of
25 supervised release that are on pages 37 through 39 of the PSR.

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1 So I'm going to adjourn briefly and ask that you
2 review them with Mr. Ilori and confirm to me that you've done
3 so.

4 MR. TALKIN: Your Honor, we've discussed these when we
5 went over the PSR originally, we did discuss both of these. We
6 do not have any objection. I just confirmed that with my
7 client that we had discussed in the past. And we also don't
8 object to the collective reference by the Court through the
9 sentence.

10 THE COURT: To the what?

11 MR. TALKIN: To how you refer to them as special
12 conditions.

13 THE COURT: There are either two, if you group the
14 financials together, or three proposed special conditions. Are
15 there any objections to those?

16 MR. TALKIN: No, your Honor.

17 THE COURT: Thank you.

18 Next question: According to the government, the PSR
19 neglected to include a two-point enhancement under sentencing
20 guidelines Section 2S1.1(b)(2)(B) stemming from Mr. Ilori's
21 conviction of a violation of 18, United States Code,
22 Section 1956. That's in the government's memorandum at 8.

23 Does Mr. Ilori object to the application of that
24 enhancement?

25 MR. TALKIN: No, your Honor. We went through that. I

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1 followed up, I did the research, and we agree that a fair
2 application of the guidelines requires that.

3 THE COURT: Thank you.

4 Next, the statutory maximum fine for Counts One, Two,
5 and Four is \$1 million per count, \$250,000 for Counts Three and
6 Five, and \$500,000 for Count Six.

7 Does the government take any position with respect to
8 the appropriate fine?

9 MS. MURRAY: No, your Honor. We defer to the Court.

10 THE COURT: Now, I have a question regarding
11 restitution. Ms. Murray, this is really for you. I have a
12 copy of your revised proposed order of restitution.

13 Let me just ask you first, I want to confirm, you
14 provided both of those to Mr. Talkin; right?

15 MR. TALKIN: Yes, your Honor.

16 THE COURT: Mr. Talkin, do you consent to either?

17 MR. TALKIN: Yes, your Honor, I've discussed those. I
18 think the issue was that there was interest added to the first
19 number.

20 THE COURT: Are we talking restitution now?

21 MR. TALKIN: Yes, restitution. I'm sorry. And we
22 went through that and we do consent to that.

23 As far as the forfeiture --

24 THE COURT: Let's hold off on that. That's my fault.
25 I did lump them together.

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1 So the restitution order is on consent, but the
2 question I have for you, Ms. Murray, I have, as I started to
3 say, what you attached to your June 28th letter. You separate
4 out a \$48,400 payment for which Mr. Ilori is individually
5 liable, but the proposed order still appears to include a
6 different amount to be paid than that, which was included in
7 consent order of restitution that I entered with respect to
8 Mr. Recamier. That order stated that Mr. Recamier is joint and
9 severally liable for \$1,072,062.47 and your proposed order says
10 that Mr. Ilori is jointly and severally liable – that would be
11 with Mr. Recamier – for \$1,072,067.47. Is that five-dollar
12 difference this interest issue that you were alluding to?

13 MS. MURRAY: No, your Honor. And apologies, that is a
14 typographical error on the government's part.

15 THE COURT: In the order?

16 MS. MURRAY: In the order. It should be as it was in
17 Mr. Recamier's order, \$1,072,062.47.

18 THE COURT: So the "62" is the correct number?

19 MS. MURRAY: Correct.

20 THE COURT: Did you submit this in Word format?

21 MS. MURRAY: No, we submitted it on the docket in PDF.

22 THE COURT: So revise it, please, and get it to us so
23 that we can get it entered along with the judgment, assuming
24 that that's where we land. Okay?

25 MS. MURRAY: Yes. Will do.

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1 THE COURT: Thank you.

2 Now, Mr. Talkin, your issue with respect to
3 forfeiture, despite numerous adjournments of sentencing, the
4 defense had never raised any issues with respect to the
5 monetary penalties. I reminded you on October 4th, nearly one
6 year after the original sentencing date and over four months
7 after you were appointed, I commented that no issues had been
8 raised in advance of sentencing as I require in my individual
9 rules and as I try to caution people at the time sentencing is
10 set. Two weeks after I entered that order, you filed a letter
11 raising for the first time one financial issue with respect to
12 forfeiture. So I'd like to understand why was this issue not
13 raised earlier and why isn't it untimely?

14 MR. TALKIN: Your Honor, obviously I came into this
15 case after many lawyers, there was a lot of work to be done,
16 getting reading done, getting through a whole record, trying to
17 figure out what's going on here, but obviously the financial
18 aspect of it, because we're talking about so many years here
19 and the guidelines wasn't at the forefront of my mind. Then,
20 when I read that order, it caused me to go re-read the
21 financial aspects. And as you can tell from my letter, it's an
22 objection of more of a preservation of a right, because I
23 understand, in other words, the application was and we'll get
24 into that *Honeycutt* applies to money laundering cases. As I
25 noted in my letter, I've made that order before, not in this

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1 district, but in the Eastern District, and it was denied, and
2 it's an open issue.

3 THE COURT: When you say it's a right, what do you
4 mean by that? You're trying to preserve it for appeal, is that
5 what you mean?

6 MR. TALKIN: In other words, I want to make sure my
7 client's -- all of his arguments are, on appeal, to the best of
8 my ability, preserved. I still make that argument to your
9 Honor and I think -- I'm sure you understand the basis of the
10 argument, but I also understand the other side. But I think
11 since it's an open area of the law, that certainly the courts
12 have been -- they moved it from just the drug statute to
13 include fraud statutes, and there is a possibility it could
14 make it to the money laundering statute. So I wanted to make
15 sure it was preserved for my client.

16 THE COURT: So your objection is preserved for the
17 record and we'll talk about the merits of it in a moment.

18 I'm going to turn now to the various issues, including
19 the objections that had been raised by various sides. So let
20 me start with what I hope are the easy things. There were a
21 number of typographical, I'm going to call them errors that had
22 been raised. So let me ask first, does the government object
23 to the typo -- I'm sorry. Let me start again.

24 Does Mr. Ilori object to the correction proposed by
25 the government in its June 28th, 2023 letter, specifically on

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1 page 2 of the PSR?

2 Do you have the PSR?

3 MR. TALKIN: I do.

4 THE COURT: Do you disagree or do you agree that the
5 statutory citations to 18 U.S.C., the last provision should be
6 3147?

7 MR. TALKIN: Yes, your Honor.

8 THE COURT: You agree?

9 MR. TALKIN: Yes.

10 THE COURT: Next, as noted in the government's
11 sentencing submission, the PSR reflects what the government
12 considers to be a correct total offense level of 40. The
13 itemized offense level calculation is missing a paragraph. The
14 math in the PSR just doesn't add up, and yet, there's a
15 paragraph that seems to have been dropped or it's missing about
16 the two-level enhancement pursuant to Section 2S1.1(b)(2)(B)
17 because the defendant was convicted under 18, United States
18 Code, Section 1956.

19 I think you told me earlier, Mr. Talkin, you agree
20 that that should be included in the PSR?

21 MR. TALKIN: Correct, your Honor.

22 THE COURT: Or in the guidelines calculation?

23 MR. TALKIN: Yes, and that explains one of my
24 objections to the math from one of the other lawyers.

25 THE COURT: In the following paragraphs, 21, 56, 57,

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1 and 59, the amount of the approved fraudulent loans should read
2 \$1,024,625.

3 Does the defense object?

4 MR. TALKIN: No, your Honor.

5 But I just do want to make one record, because I
6 didn't -- as far as -- I'm not objecting to that being what the
7 PSR is saying, but just as an overall objection, since this is
8 not a plea bargain, it's a case after trial, I should put on
9 the record that I'm making these in a sentencing discussion
10 after trial, but we still object to the facts as a whole
11 because he has maintained his innocence and pled not guilty.

12 With that understood --

13 THE COURT: And the jury rejected it.

14 MR. TALKIN: Correct. I think that for a Court of
15 Appeals, I just want to make sure that they understand that he
16 maintains his position.

17 THE COURT: I think they'll get it.

18 In paragraph 139 on pages 34, 36, and 39, the amount
19 of restitution should read, and this is the issue we just
20 talked about, \$1,120,462.47, of which \$1,072,062.47 is owed to
21 the Small Business Administration with the remaining individual
22 restitution of \$48,400 owed to the other victim identified in
23 the schedule of victims.

24 Any objection, Mr. Talkin?

25 MR. TALKIN: No, your Honor.

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1 THE COURT: Now, your last correction, Ms. Murray, on
2 page 40, is the one we just talked about. So you're
3 withdrawing that; right?

4 MS. MURRAY: Yes, your Honor. We would ask that your
5 Honor just update the number to be correct. So page 40 then
6 should read: "Restitution in the amount of \$1,072,062.47."

7 THE COURT: Yes.

8 Correct, Mr. Talkin?

9 MR. TALKIN: Yes, your Honor.

10 THE COURT: Now, Mr. Talkin has pointed out that on
11 page 39 of the PSR, there is a sentence which begins: "As
12 stipulated in defendant's plea agreement..." and then it goes
13 on to talk about restitution.

14 Does the government agree that the "As stipulated in
15 defendant's plea agreement" should be stricken?

16 MS. MURRAY: Yes, your Honor.

17 THE COURT: Now, Mr. Talkin, that's all you said about
18 that, but I had a further correction to that. Let me just pull
19 out the PSR. Page 39, so it's a little bit awkward, the way
20 it's going to read now because it's just going to begin with a
21 dollar amount. This is under the restitution section, page 39
22 under the heading "Restitution."

23 So we're striking in the second sentence: "As
24 stipulated in the defendant's plea agreement." Correct?

25 MS. MURRAY: Yes, your Honor.

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1 MR. TALKIN: Yes, your Honor.

2 THE COURT: It goes on to read, so now it's going to
3 begin: "\$1,072,062.47 is owed to the Small Business
4 Administration..." but that section from probation is missing,
5 the additional language that "\$48,400 is owed individually to
6 the victim" on the schedule attached to the proposed order of
7 restitution; correct?

8 MS. MURRAY: Yes, that's correct, your Honor.

9 THE COURT: Mr. Talkin.

10 MR. TALKIN: That is correct.

11 THE COURT: So we will make that notation on the
12 judgment that finally gets entered.

13 And the final, what I'm calling a typographical error,
14 the government -- this is not really a typographical error item
15 I don't think, but in any event, let's just deal with it now.
16 In your October 13th, 2023 supplemental submission, the
17 government identifies an error in its own and in the probation
18 department's guidelines calculation, and the government now
19 acknowledges that the two-level enhancement under
20 2B1.1(b)(11)(A)(i) and 2, and (b)(11)(C)(ii) does not apply to
21 the combined offense level calculation because Mr. Ilori was
22 also convicted of aggravated identity theft, in violation of
23 Title 18, United States Code, Section 1028; correct?

24 MS. MURRAY: That's correct, your Honor.

25 THE COURT: Mr. Talkin, I assume no objection?

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1 MR. TALKIN: That's correct.

2 THE COURT: I just need one moment.

3 (Pause)

4 So that is all of what I think are, what I'm calling
5 typographical objections.

6 A couple of other preliminaries before we get to
7 Mr. Ilori's objections.

8 Does Mr. Ilori object to the government's request in
9 the October 13th letter that paragraph 70 be deleted and
10 Mr. Ilori's adjusted offense level be reduced from 40 to 38?

11 MR. TALKIN: No, your Honor.

12 THE COURT: Next, does the government object to
13 defendant's request – we already talked about this – that the
14 language about the plea be stricken and that we're fixing the
15 remainder?

16 MS. MURRAY: Correct.

17 THE COURT: Mr. Talkin.

18 MR. TALKIN: Yes.

19 THE COURT: I'm sorry, I know this is tedious, but
20 there's a lot of materials flying back and forth.

21 Let's turn to Mr. Ilori's objections now.

22 So first, Mr. Ilori raised two objections with respect
23 to paragraph 67, and I have said this is the loss amount,
24 intended loss amount. As I had said, I do not require a *Fatico*
25 hearing on all of this. I sat through the trial, I heard all

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1 of the evidence. There were two issues, Mr. Talkin, on which
2 you said you wanted a *Fatico* hearing, I think this was one of
3 them; correct?

4 MR. TALKIN: Yes, your Honor.

5 THE COURT: On this, and I believe the second was the
6 number of victims; is that right?

7 MR. TALKIN: Actually, one second, your Honor. Well,
8 it was really -- it's more than ten victims in the access
9 device authentication feature, which is now moot anyway.

10 THE COURT: So there's really only one issue on which
11 you're requesting a *Fatico* hearing?

12 MR. TALKIN: It was the ten or more victims. I'm
13 sorry. Also, the prior attorney had objected to the
14 \$1 million -- the injury to a bank for \$1 million received by
15 Mr. Ilori.

16 THE COURT: Received individually?

17 MR. TALKIN: Correct.

18 THE COURT: But he didn't request a *Fatico* hearing on
19 that, he just objected. I have your six objections and I'm
20 going to go through them. All I'm trying to do is figure out
21 on which of these objections were you asking for a *Fatico*
22 hearing, and it's only the ten or more victims; right?

23 MR. TALKIN: At this point, that's correct.

24 THE COURT: Let's talk about the actual loss amount.

25 So, Mr. Ilori raised two objections with respect to

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1 paragraph 67. Paragraph 67 is, I'm quoting, "Specific offense
2 characteristics: Because the intended loss was more than
3 \$9.5 million, but less than \$25 million, a 20-level enhancement
4 is warranted pursuant to United States Sentencing Guideline
5 Section 2B1.1(b)(1)(K)." And it does note in footnote 3 the
6 defense position.

7 So, as I understand it, Mr. Ilori is contending that
8 actual loss rather than intended loss should be used for
9 purposes of this enhancement; correct?

10 MR. TALKIN: That's correct, your Honor.

11 THE COURT: So any points to authority from the Third
12 Circuit in a case called *United States v. Banks*, 55 F.4th 246
13 (3d Cir. 2022). Mr. Ilori contends I should consider actual
14 loss only for the purpose of this enhancement. Absent from the
15 defense submission is any mention of what the Second Circuit
16 says on this issue, that is the circuit which is binding on me
17 for purposes of analysis. So no discussion in the defense
18 submission on what the Second Circuit instructs. Perhaps that
19 is because the Second Circuit has been eminently clear that
20 "for purposes of calculating the guidelines range, loss is
21 defined as "the greater of actual loss or intended loss".
22 *United States v. Powell*, 831 F. App'x 24, 25 (2d Cir. 2020),
23 citing a number of other cases.

24 So, based on that Second Circuit binding authority,
25 Mr. Ilori's first objection to paragraph 67 is overruled.

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1 Consistent with Section 2B1.1, comment No. 3A, and Second
2 Circuit precedent, I intend to sentence Mr. Ilori to the
3 greater of actual loss or intended loss.

4 Now, Mr. Ilori raises a second objection, as I
5 understand it, with respect to paragraph 67, objecting to the
6 inclusion of the loss amount associated with two of the
7 fraudulent loan applications listed in Government Exhibit 750.
8 He originally stated that inclusion of these items in loss
9 calculation has not been sufficiently addressed so as to
10 preclude a *Fatico* hearing, but he did not request a *Fatico*
11 hearing, and I don't understand you to be requesting a *Fatico*
12 hearing now; correct?

13 MR. TALKIN: That's correct. Our position is that the
14 record, as it stands, it has not been proved by a preponderance
15 of the evidence.

16 THE COURT: Mr. Ilori simply asserts that the
17 inclusion of these two loans in the loss calculation has not
18 been sufficiently addressed.

19 So I'll just note, as an initial matter, it's not even
20 clear to me what two loan applications Mr. Ilori is objecting
21 to. He first objects to the inclusion of a loan application
22 filed by Source Four Jet Corporation under the name of William
23 Jameson, but no such loan application is reflected on
24 Government Exhibit 750; there is a loan application filed on
25 behalf of Source Four Jet Inc. filed under the name of Thomas

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1 Allen; and then there is a different loan application filed on
2 behalf of an entity called Jet Away Jets Corporation submitted
3 under the name of William Jameson.

4 So, do you wish to be heard?

5 MR. TALKIN: I can correct that, your Honor. It is
6 the loan identified by company name, Source Four Jets
7 Incorporated.

8 THE COURT: Source Four Jets Incorporated?

9 MR. TALKIN: Correct, which would be the one --
10 looking at Government Exhibit 750, that would be the one, two,
11 three, fourth, fifth from the top.

12 THE COURT: Filed under the name Thomas Allen?

13 MR. TALKIN: That's correct, your Honor.

14 THE COURT: So my clerk is handing me a copy of
15 Government Exhibit 750.

16 Ms. Murray, do you wish to be heard?

17 MS. MURRAY: Your Honor, we noted in our submission,
18 dated June 28th, 2023 -- that's at docket 130 -- the specific
19 evidence the government presented at trial to justify the
20 inclusion of these two particular loans in the summary of the
21 loans the defendant was involved with fraudulently submitting.

22 Happy to answer any additional questions if the Court
23 has any.

24 THE COURT: No, I just want the record to reflect
25 where someone should look.

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1 And then I note, too, the second loan application to
2 which Mr. Ilori objects, a filing by Creative Media Software
3 Solutions under the name of Thomas Huckleberry on May 25, 2021
4 is accurately reflected on that trial exhibit.

5 Do you want to be heard with respect to that,
6 Mr. Talkin?

7 MR. TALKIN: Yes, your Honor. My client informs me
8 that it should be the last Thomas Huckleberry Farms product,
9 which would be the last one in the exhibit.

10 THE COURT: Look, the time for objections, folks, has
11 long since passed here.

12 Does the government wish to be heard?

13 MS. MURRAY: Your Honor, I would just note that,
14 again, the evidence presented at trial justified the inclusion
15 of the loans reflected here.

16 I would also note that Government Exhibit 750 has a
17 cross-reference to Government Exhibit 167 with respect to the
18 Thomas Huckleberry Farm products loan the defendant just
19 mentioned. So I would just include those in the record
20 regarding this objection.

21 THE COURT: Thank you.

22 I do recall from presiding over this trial that the
23 government produced extensive evidence with respect to each of
24 the loan applications included on Government Exhibit 750 during
25 the course of the trial, and that evidence included loan

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1 applications, documents recovered from Mr. Ilori's computer,
2 physical evidence recovered from the apartment that Mr. Ilori
3 shared with his codefendant, Mr. Recamier, and counterfeit
4 sources of identification. And I would refer, among other
5 pieces of evidence, to Government Exhibits 162, 163, 166, 167,
6 590, and 610. This is not an exhaustive list, but having
7 presided over the trial, I am quite confident that each of
8 these loan applications are amply supported in the record and
9 were sufficiently addressed at trial. So that objection to
10 paragraph 67 is overruled.

11 Now we turn to the objection to paragraph 68 in which
12 Mr. Ilori asserts, really with no support, that the
13 ten-or-more-victims enhancement does not apply because his
14 crime had only one victim, the Small Business Administration.

15 Now, do you want to be heard? This is the item on
16 which you requested a *Fatico* hearing.

17 MR. TALKIN: Yes, your Honor.

18 As I stated in my submission, I also am aware of the
19 law that exists as far as when there's an identity theft issue,
20 that victims of identity theft are also victims; however, we
21 did want to assert that objection, but I did point you to that
22 law.

23 THE COURT: Yes, you did.

24 Is there anything by way of a *Fatico* hearing that you
25 want to present? A *Fatico* hearing says you want to present

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1 evidence; right?

2 MR. TALKIN: I think the *Fatico* hearing more is that
3 the government hasn't presented evidence beyond -- excuse me.

4 THE COURT: By a preponderance of the evidence.

5 MR. TALKIN: By a preponderance of the evidence in
6 order to make out the ten victims. That's our position.

7 THE COURT: The objection is overruled. It is simply
8 not true that there is only one victim of Mr. Ilori's numerous
9 violations of the law. The objection, in fact, is indicative
10 of a piece with Mr. Ilori's continued failure to accept
11 responsibility for the extensive damage that his actions have
12 caused to numerous, unsuspecting victims of his identity theft.

13 In addition to the Small Business Administration, the
14 government introduced evidence at trial indicating that
15 Mr. Ilori and Mr. Recamier used the names of nine identity
16 theft victims in connection with their fraudulent loan
17 applications. And you can, again, look at Government
18 Exhibit 750.

19 The records at trial also demonstrate that Mr. Ilori
20 registered email accounts in the names of 18 identity theft
21 victims, and I refer specifically to Government Exhibit 730.
22 This evidence is sufficient under application note 4E to
23 Section 2B1.1 of the sentencing guidelines, which, as
24 Mr. Talkin has acknowledged, clearly states -- and this is for
25 you, Mr. Ilori -- that "a victim" may be "any individual whose

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1 means of identification was used unlawfully or without
2 authority."

3 Based on the evidence that I saw and heard at the
4 trial of this case, I am more than satisfied, certainly by a
5 preponderance of the evidence, that the crimes committed by
6 Mr. Ilori had ten or more victims. So the objection to
7 paragraph 68 is overruled and I do intend to apply this
8 enhancement.

9 Next, defendant objects to paragraph 69, arguing that
10 Section 2B1.1(b)(10)(C), the so-called sophisticated means
11 enhancement, should not apply because sophisticated means are
12 inherent in the crimes of which Mr. Ilori was convicted.

13 Do you wish to be heard? I have both sides'
14 submissions on this, but if you wish to be heard, I'm happy to
15 hear you.

16 MR. TALKIN: Your Honor, just very briefly. In other
17 words, I think what the prior counsel was saying in that point
18 is basically that these means to commit this crime, by saying
19 that they're inherent in committing the crime, that they are
20 not in fact sophisticated means. It's the minimum required to
21 commit the offense of conviction or the offenses of conviction,
22 and because of that, they lack the sophistication that warrants
23 upward enhancement.

24 THE COURT: I do not agree. The record at trial
25 showed that Mr. Ilori participated in a particularly

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1 sophisticated conspiracy involving dozens of falsified bank and
2 other records, fraudulent identification cards, the creation of
3 numerous fictitious business entities. These tactics were
4 intended to and in some cases actually did trick established
5 financial institutions into awarding Mr. Ilori and his
6 codefendant tens of thousands or even millions of dollars in
7 loans, all under the mistaken belief that they were running
8 legitimate businesses and employing hundreds of employees as
9 required to qualify them.

10 I would note, too, that comment 9B to Section 2B1.1
11 notes that "sophisticated means" may include "conduct such as
12 hiding assets or transactions, or both, through the use of
13 fictitious entities, corporate shells, or other offshore
14 financial accounts."

15 The Second Circuit has recognized that "the creation
16 and use of documents and other tactics to conceal offense
17 conduct are indicia of sophistication of an offense." That's
18 from *United States v. Fofanah*, 765 F.3d 141, 146 (2d Cir.
19 2014). That is exactly what happened here.

20 Moreover, the Second Circuit has found that simply
21 "moving money between several bank accounts" and using
22 "businesses as "fronts" to hide his activity" can warrant an
23 application of this enhancement. That's *United States v.*
24 *Bailey*, 820 F. App'x 57, 62 (2d Cir. 2020).

25 Mr. Ilori did not only use businesses as fronts, he

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1 and his coconspirator entirely created fictitious businesses to
2 facilitate their fraud, and the record at trial shows the funds
3 they acquired were subsequently disbursed to purchase
4 cryptocurrency and stock among other things.

5 In an effort to avoid this binding Second Circuit
6 authority, Mr. Ilori again points to out-of-circuit precedent,
7 this time looking to authority from the Fourth Circuit, for the
8 unremarkable proposition that "sophistication requires more
9 than the concealment or complexities inherent in fraud." He
10 was quoting from *United States v. Adepoju*, 756 F.3d 250 (4th
11 Cir. 2014). That out-of-circuit case provides little help to
12 Mr. Ilori because in that case, the Fourth Circuit remanded the
13 sentence only after determining that the district court had
14 failed to detail factual findings to support imposition of the
15 sentence, and that's at pages 258 and 259.

16 Based on the record from the trial in this case, I
17 have no hesitation in applying the sophisticated means
18 enhancement here. I think the preponderance of the evidence
19 clearly supports that and the objection to paragraph 69 is
20 therefore overruled.

21 I want to discuss just one more objection and then I'm
22 going to take a short break.

23 Defendant next objects to paragraph 70, arguing that
24 Section 2B1.1 -- this is the one that has been deleted, right,
25 so this is mooted; correct, Mr. Talkin?

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MR. TALKIN: That's correct.

THE COURT: So I don't need to address this.

MR. TALKIN: Correct. 71 is the last objection.

That's the bank, \$1 million of individual proceeds from a bank.

THE COURT: Yes, that's the one I said I want to take up after the break. So why don't we take a short break now and then we'll come back.

So for the record, the objection to paragraph 70 has been mooted because the parties have both agreed that paragraph 70 should be deleted. That enhancement does not apply; correct, Ms. Murray?

MS. MURRAY: That's correct, your Honor.

THE COURT: All right. So we'll stand in recess for a few moments and we'll come back and talk about paragraph 71 and then we have to talk about the forfeiture issue.

(Recess)

So the final argument that was raised by Mr. Ilori with respect to the PSR is with respect to paragraph 71, and he argues that the two-level enhancement under Section 2B1.1(b)(17)(A) should not apply because there is no basis to conclude that Mr. Ilori individually derived more than \$1 million in gross receipts.

Now, before I hear from Mr. Talkin, I just want to note for the record that, at least as described by probation, it does appear that, initially, Mr. Ilori was making a slightly

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1 different argument, and again, that's part of a pattern here of
2 ever-shifting, evolving, and emerging arguments.

3 I note that page 31 to 32, the PSR seems to understand
4 Mr. Ilori's argument to be a contention that the application of
5 this enhancement would involve double counting, in effect, with
6 the loss amount, which was already counted for with respect to
7 the 2B1.1(b)(1)(K) enhancement. He briefly included this in
8 his original sentencing submission with no authority for that
9 argument, but now he seems to have shifted his argument to
10 focus more broadly on the individual receipt issue.

11 So, Mr. Talkin, I'll hear from you, and I'd appreciate
12 if you can clarify that I'm correct in understanding that now
13 what you're saying is that Mr. Ilori did not individually
14 receive more than \$1 million.

15 MR. TALKIN: That's correct, your Honor. The total
16 amount is only \$24,000 over the \$1 million threshold, and there
17 is clearly his codefendant Recamier clearly got proceeds during
18 his plea agreement. He said he received proceeds. The
19 government has made allegations that it was spent on items of
20 his own throughout much of the litigation, and because of that,
21 really only needing to move \$24,000, I believe the government
22 has failed by a preponderance of the evidence to establish that
23 my client received over \$1 million to make this apply.

24 THE COURT: Ms. Murray, do you wish to be heard?

25 MS. MURRAY: Your Honor, we've included information

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1 about this in our submissions, but I'm happy to answer any
2 questions that the Court has.

3 THE COURT: Do you want to refer to a specific
4 submission for the record?

5 MS. MURRAY: Yes. So July 14th, 2023 -- that's at
6 docket entry 138 -- we addressed the objection to the gross
7 receipts enhancement.

8 And I would note also, in connection with that
9 submission, we indicated that, through trial evidence,
10 Mr. Ilori himself was linked to more than \$1 million in gross
11 receipts through his control of his 0642 phone, and that is the
12 phone he was arrested with. Evidence at trial included
13 evidence that that phone number was connected to Chase,
14 Capital One, and HSBC accounts that, together, received more
15 than \$1 million in bank funds.

16 THE COURT: Thank you.

17 MR. TALKIN: Your Honor, if I can be heard with just a
18 couple more sentences on that.

19 THE COURT: Sure.

20 MR. TALKIN: The fact that he had access to the bank
21 accounts does not mean he had control over all the dollars in
22 those bank accounts and certainly doesn't -- I have not seen
23 evidence that establishes that by any standard.

24 THE COURT: Are you finished?

25 MR. TALKIN: Yes. Thank you.

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1 THE COURT: Look, I will say I do find this one a much
2 closer call than any of the other objections that Mr. Ilori has
3 made.

4 Comment 13A to Section 2B1.1 clarifies that in order
5 for subsection (b)(17)(A) to apply, I need to determine that
6 the gross receipts to Mr. Ilori individually, rather than to
7 all participants, exceeded \$1 million. As Mr. Talkin has just
8 laid out, the contention is that the evidence at trial shows
9 that the gross receipts were received by both Mr. Ilori and his
10 codefendant, Mr. Recamier, and that there is no evidence
11 indicating what gross receipts were received personally by
12 Mr. Ilori. As Ms. Murray has just stated, the government's
13 response is that Mr. Ilori had access to and control over
14 several fraudulent bank accounts that received the fraud
15 proceeds.

16 The evidence at trial indicated that both Mr. Ilori
17 and Mr. Recamier jointly possessed the proceeds from their
18 offenses. For example, the Mercedes that we had a lot of
19 evidence about at trial was leased by Mr. Recamier. I note,
20 too, that the proceeds from the offenses involved, as
21 Mr. Talkin has pointed out, just over \$1 million in
22 fraudulently received funds. I have no reason to believe that
23 Mr. Ilori individually received almost every single dollar
24 acquired by both parties' fraud.

25 So, on the record before me, I cannot conclude that

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1 the over \$1 million in gross receipts were received by
2 Mr. Ilori individually.

3 I cite to *United States v. Millar*, 79 F.3d 338, 346
4 (2d Cir. 1996), remanding the case where the district court did
5 not find that the defendant individually derived more than
6 \$1 million in proceeds. So I do sustain this objection. And
7 in my own independent guidelines calculation, which I'll lay
8 out on the record later, I have not applied this enhancement.

9 Now, as I understand it, the final issue we need to
10 talk about is the objection, as I've noted, raised belatedly
11 with respect to forfeiture. As I understand it, Mr. Talkin,
12 you're contending that *Honeycutt v. United States*, which is
13 reported at 581 U.S. 443 (2017), supports an argument that
14 Mr. Ilori should be required to forfeit only the property he
15 actually acquired, in other words the funds he personally
16 obtained. He argues that because Mr. Recamier acquired a
17 portion of the proceeds, the government cannot establish that
18 Mr. Ilori actually acquired the entire forfeitable amount.

19 You have acknowledged that there is no binding
20 authority saying in the first place that the *Honeycutt* case
21 applies in the money laundering context; correct?

22 MR. TALKIN: That's correct, your Honor. There's not
23 one that says it does, there's not one that says it does not.

24 THE COURT: In *Honeycutt*, the Supreme Court addressed
25 joint and several liability in the context of forfeiture awards

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1 issued under Title 21, United States Code, Section 853.
2 Specifically, the Supreme Court held that forfeiture was
3 limited to property "obtained" by a criminal defendant. That's
4 at 581 U.S. 454.

5 Relevant here, the court went on to explain that a
6 defendant who has "come into possession of" funds may be said
7 to have "obtained" them for purposes of forfeiture liability.
8 That's at pages 449 through 450 of the *Honeycutt* opinion.

9 So, against that backdrop, I'm going to note as an
10 initial matter, I don't even see that *Honeycutt* is relevant to
11 this case because the proposed order of forfeiture, under the
12 proposed restitution order, as I understand it, does not seek
13 to hold Mr. Ilori jointly and severally liable with
14 Mr. Recamier; is that correct, Ms. Murray?

15 MS. MURRAY: That is correct, your Honor.

16 MR. TALKIN: Your Honor, can I say one thing on that.
17 I noticed what you noticed, but I think there's a reason for
18 that. It's not a factual reason, and I know it was a while
19 ago --

20 THE COURT: Let me look back at it.

21 MR. TALKIN: Sure. When Mr. Recamier took his plea,
22 he pled guilty under a statute that did not have a
23 forfeiture --

24 THE COURT: Right.

25 MR. TALKIN: But that didn't mean factually. In other

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1 words, that doesn't stand for the proposition that he wouldn't
2 be responsible if he was charged under that statute.

3 THE COURT: But he wasn't.

4 MR. TALKIN: I understand. He was offered a plea to a
5 lesser count and it didn't -- that count did not carry the
6 possibility for forfeiture. It's not that they didn't --
7 government said he shouldn't have forfeited. If he pled guilty
8 to a count that had a forfeiture, and I think they even said
9 this during the sentencing, if he had pled guilty to a count
10 that did have a forfeiture statute that applied to it, that
11 they would have asked for forfeiture, but because -- and I
12 remember your Honor actually brought this up with the court
13 when they came out. I think it was at the sentencing of this,
14 of codefendant. And the reason wasn't that there was a factual
15 issue that he would be responsible for forfeiture, but it's
16 only -- and the reason it's not joint and several is because
17 not on a factual basis, but on a practical basis of how the
18 case was charged and ultimately pled out.

19 THE COURT: In any event, I don't that helps you. The
20 government is not seeking to impose joint and several liability
21 for forfeiture. But, in any event, as you've already
22 acknowledged, *Honeycutt* interpreted a different forfeiture
23 statute than the one at issue in this case. And in any event,
24 the evidence at the trial over which I presided clearly showed
25 that Mr. Ilori possessed and controlled the funds derived from

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1 this fraud at various points in time, even if he didn't
2 permanently retain all of the funds.

3 And I would refer you to the following cases: *United*
4 *States v. Tanner*, 942 F.3d 60, 68 (2d Cir. 2019). In
5 particular, the court there said: "When each coconspirator
6 required the full proceeds as a result of the crime, each can
7 still be held liable to forfeit the value of those tainted
8 proceeds, even if the proceeds are no longer in his
9 possession." Similarly, *United States v. Bergstein*, 788
10 F App'x 742, 748 (2d Cir. 2019) said: "Bergstein effectively
11 controlled the proceeds of the P2 and TT funds as he was able
12 to transfer the funds to shell companies and use the funds for
13 personal expenses." Similarly, in *Rajaratnam v. United States*,
14 736 F. App'x 279, 283, 84 (2d Cir. 2018), the Court found the
15 defendant "exercised "control" over both that firm and the
16 proceeds it acquired, including the proceeds acquired as a
17 result of his insider trading. Even if those proceeds
18 subsequently were distributed to investors with him personally
19 retaining only a percentage as management fees, he nonetheless
20 had authority over disbursements, and thus exercised control
21 over the proceeds at some point."

22 So, based on the evidence that I saw and heard at the
23 trial, I do find by a preponderance of the evidence there is a
24 sufficient record that Mr. Ilori obtained the funds if
25 *Honeycutt* in fact is applicable here.

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1 So, the relevant statute does entitle the government
2 to a forfeiture award. That statute is 18, United States Code,
3 Section 982(a)(1), (a)(2)(A), and I do intend to impose the
4 full amount of forfeiture requested here.

5 Are there any objections that have not been addressed?
6 Ms. Murray.

7 MS. MURRAY: No, your Honor.

8 THE COURT: Mr. Talkin.

9 MR. TALKIN: No, your Honor.

10 THE COURT: So I do adopt the PSR with all of the
11 modifications and subject to my rulings on the various
12 corrections, comments, objections, including the factual
13 findings therein.

14 I will note that my guidelines calculation is not
15 consistent with what's in the PSR. I will lay out my
16 guidelines calculation in a few moments. So that will be I
17 suppose attached to the PSR and to the judgment or reflected in
18 the judgment and the PSR as modified with my rulings, and all
19 of the modifications and corrections we've talked about will be
20 made part of the record in this matter. It will be filed under
21 seal. If an appeal is taken, counsel on any appeal may have
22 access to the modified PSR and all of the attachments to it
23 without any need for further application to the Court.

24 So we can turn at this point to my hearing from the
25 parties, unless there's anything further that we need to

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1 discuss.

2 I'm just pausing to give counsel an opportunity to
3 talk to Mr. Ilori.

4 MR. TALKIN: Thank you. We're ready, your Honor.

5 THE COURT: You're ready?

6 MR. TALKIN: Yes.

7 THE COURT: Ms. Murray, would you like to be heard?

8 MS. MURRAY: Yes, your Honor. We've made arguments in
9 our written sentencing submissions, but I wanted to highlight
10 some of the major considerations that we think are relevant for
11 the Court's sentencing determination.

12 We believe that a significant consecutive sentence,
13 consecutive to the defendant's sentence in Judge Liman's case,
14 of at least 25 years' imprisonment is warranted here, and
15 that's to account for the nature and seriousness of the offense
16 as well as deterrence and, in particular here, individual
17 deterrence.

18 First, the nature and seriousness of the offense.

19 Mr. Ilori is a uniquely dangerous white collar
20 defendant. He is, simply put, a menace to society. He
21 orchestrated this broad fraud scheme for more than a year, and
22 in the course of the scheme, he took advantage of the COVID-19
23 pandemic relief programs that were set up to assist small
24 businesses in coping with an unprecedented economic crisis.

25 He also committed these crimes after he had been

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1 charged with similarly serious fraud by our office and after he
2 had pled guilty and supposedly accepted responsibility for
3 those other fraud crimes.

4 The identity theft that Mr. Ilori and his codefendant
5 committed was deliberate and it was layered. They opened
6 cellphone accounts in victims' names, then they registered
7 email accounts in the victims' names using the cellphone
8 numbers. Then they opened bank accounts and they established
9 supposed businesses in the names of those victims. They
10 created false IDs with individuals' names and identifiers, but
11 Mr. Recamier and, in one case, Mr. Ilori's photo. And
12 Mr. Ilori himself posed as one of the identity theft victims,
13 renting an apartment and presenting himself to the leasing
14 agent as one of the identity theft victims.

15 The individual identity theft is equally, if not more
16 serious than the COVID-19 relief fraud conduct. As your Honor
17 heard during trial, the defendant stole the identities of more
18 than a dozen individuals to set up the various accounts and to
19 steal government funds.

20 And identity theft imposes lasting and significant
21 effects on victims. Several of the defendant's victims
22 testified at trial about the consequences of having their
23 identity stolen, which included both the practical effects such
24 as credit problems and damage resulting to their own credit,
25 and debt collectors seeking money that they didn't owe.

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1 But even aside from the financial impact on these
2 identity theft victims, there is the serious emotional damage
3 that results from the theft of their identities, and that
4 includes a feeling of helplessness. The effects of identity
5 theft are lasting and they shatter the victims for years.

6 Here, too, with respect to deterrence, the defendant
7 has displayed a consistent and utter disregard for his victims
8 and for the law. As your Honor noted earlier in today's
9 proceeding, he continues to accept no responsibility whatsoever
10 for his conduct. He stole identities not just to defraud the
11 government and steal aid, but he did it for his own selfish
12 purposes. He drove a Mercedes that was leased in the name of
13 his identity theft victims, he rented an apartment in the name
14 of an identity theft victim. This defendant is effectively
15 undeterrable, your Honor.

16 His substantive history of fraud makes it clear that
17 he does not take responsibility for his actions or the
18 consequences of his crime.

19 It's for these reasons, your Honor, that the
20 government respectfully submits that a substantial term of
21 imprisonment of at least 25 years is necessary here, both to
22 account for the seriousness of the conduct, to account for the
23 impact that the conduct has had on individual identity theft
24 victims, and also to ensure that Mr. Ilori is not able to
25 continue to commit crimes.

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1 And with respect to a technical issue on sentencing,
2 your Honor, we would note that Title 18, United States Code,
3 Section 3147 permits for an additional consecutive sentence of
4 up to 10 years' imprisonment on each count. To the extent that
5 the Court includes a component of 3147 in its sentence, we
6 would ask the Court apportion that sentencing enhancement under
7 the various counts.

8 THE COURT: All right. I actually had a question
9 about this, and I'd like to hear it, I'm sorry to do it at this
10 point, I should have done it earlier, but I'd like to hear from
11 both of you about this. It was my understanding that, having
12 been convicted under 3147, there was the potential for 10 years
13 in addition to, but is that in addition to a guidelines
14 sentence or don't the guidelines, by saying I believe it's a
15 three-level enhancement, doesn't that negate the 3147 or how do
16 the two work together?

17 MS. MURRAY: Can I just have a moment, your Honor?

18 THE COURT: Sure.

19 And Mr. Talkin, I'm going to want to hear from you on
20 that point, too.

21 MS. MURRAY: Your Honor, with respect to the
22 guidelines calculation, it's the government's understanding
23 that, as you said, the three points does account for 3147
24 regarding the calculation of the applicable guidelines range.
25 That said, the impact of 3147 is to increase the statutory

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1 maximum for each of the counts of conviction. So here, because
2 Mr. Ilori was convicted of 3147 on each of the six counts, the
3 impact would be to increase the statutory maximum for each of
4 those counts by 10 years. To the extent any of the sentence is
5 as a result of 3147 conviction for that count, it would be
6 imposed consecutive.

7 THE COURT: The statute does say it has to be
8 consecutive; right?

9 MS. MURRAY: Yes, that is correct.

10 THE COURT: Mr. Talkin.

11 MR. TALKIN: Yes, your Honor. I believe that that
12 paragraph, 74 and 3C --

13 THE COURT: Are you going back to the PSR now?

14 MR. TALKIN: I'm reading it to get the statutes. The
15 enhancement in paragraph 74 of the PSR, I think it's akin to
16 when the thinking behind when you're convicted of multiple
17 counts and you get -- there's the grouping analysis, and then
18 each group gets one point and it increases it in an incremental
19 level, taking into account for criminal behavior, the
20 commission deems is more serious than just the single count. I
21 think it's a similar analysis here where they've come up with a
22 way for the courts to consider as a three-point enhancement,
23 which is a significant enhancement.

24 THE COURT: Yes.

25 MR. TALKIN: So I do think it is covered, so to speak.

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1 But the government is right, as everyone knows, there was
2 guidelines and they're statutory, and those are two different
3 things. As far as contemplating a sentence, I believe that
4 contemplation is satisfied by the enhancement.

5 THE COURT: Now you're arguing, though, by saying you
6 believe it's satisfied by the enhancement, you're arguing on
7 behalf of Mr. Ilori, but you're not disputing what Ms. Murray
8 says, that there could be up to a 10-year additional term per
9 count.

10 MR. TALKIN: Correct, that's what the law says.

11 THE COURT: And they're supposed to run consecutively
12 to any other sentence.

13 MR. TALKIN: Correct, yes.

14 THE COURT: I appreciate your candor. And I should
15 have raised that with you all earlier.

16 Mr. Talkin, would you like to address the Court?

17 MR. TALKIN: Briefly, your Honor. I have advised my
18 client, because he has a -- he's going to file an appeal and --

19 THE COURT: I'm sorry. I'm not hearing you. He's
20 going --

21 MR. TALKIN: Because he's going to file appeal, I've
22 advised my client not to address the Court. So I am going to
23 address the Court because, after a trial, I do not want him to
24 make any statements that could be used against him at a later
25 time.

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1 THE COURT: Okay.

2 MR. TALKIN: Your Honor, in essence, the sentence that
3 the government is asking for is a 30-year sentence, 30-years
4 plus, it's 25 and consecutive 63 months. So you're talking
5 about a 30-year sentence on a fraud case.

6 THE COURT: I'm sorry. Say that again.

7 MR. TALKIN: Sure. They've asked for 25 years
8 consecutive to the sentence in front of Judge Liman.

9 THE COURT: That's not in front of me, though, the
10 Judge Liman.

11 MR. TALKIN: No, but they've asked for consecutive to
12 that.

13 THE COURT: Yes.

14 MR. TALKIN: And that is an issue because, in essence,
15 you have the opportunity to run it concurrent, partially
16 concurrent, or consecutive, and that's a decision this Court
17 has to make in figuring out what is a reasonable sentence, that
18 is a consideration by this court. I'm just informing your
19 Honor that the ultimate ask by the government as far as
20 sentencing here, because it could be concurrent, but by asking
21 for it to be consecutive is a 30-year total sentence for both
22 cases.

23 I have reviewed the transcript, I've read a lot of the
24 paperwork, and I understand the seriousness of the allegations
25 here. I have seen my client's criminal record, I understand

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1 that. But what I'm asking your Honor to consider in setting a
2 sentence here that is sufficient but not more than necessary to
3 satisfy the goals of both 3553(a) and justice. We're talking
4 about someone who's 46 years old now. The equivalent of a
5 30-year sentence will probably get him out in his lower 70s by
6 the time he's out on a fraud case that did not involve an
7 overwhelmingly large amount of money as many other fraud cases
8 with sentences that aren't even as large as that have. I
9 understand the government's point about the harm that's done by
10 these particular frauds, but a lot of those other frauds also
11 have that ancillary harm that is a result of the defendant's
12 conduct.

13 But I think one thing that gets lost when we start
14 getting up in all these years is what the years really mean. I
15 mean, 30 years for someone who is 46 years old is an incredible
16 amount of time. And when the government's asking for a
17 sentence that's severe and sufficient, a sentence less than
18 25 years can serve those same goals. A sentence of 15 years,
19 which is 66 percent longer than the codefendant received in
20 this case, is a reasonable sentence because for 15 years, he's
21 not going to have his freedom, for 15 years, Mr. Ilori is going
22 to sit in jail and think about the crimes he's committed here
23 and in the past, and for 15 years, he's going to be separated
24 from society.

25 And one of the things that I've fallen victim to

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1 sometimes in doing this for so many years is losing sense of
2 what that really means and how punitive years in jail really
3 are. And when we think about how punitive it is and the
4 feeling of being totally separated from society for a period of
5 time as long as 15 years, that is a significant sentence and a
6 significant punishment.

7 It also serves all the goals of 3553(a). The
8 individual deterrence that the government spoke of is served
9 for a long period of time as is the general deterrence showing
10 society what's going to happen if you commit a crime of this
11 sort, going to jail for 15 years.

12 What it also does is it shows some compassion, some
13 understanding of what goes through a defendant's mind in his
14 life or her life when they spend time in jail, particularly
15 when they spend, as he did, the first two years in a place such
16 as MDC, which is the most difficult, and I know your Honor has
17 read and dealt with and seen the conditions of MDC.

18 THE COURT: Yes, I've been there.

19 MR. TALKIN: And you know very well that that is an
20 accurate statement. I can tell you anecdotally from the jails
21 I've been around this country, it's one of the worst and
22 toughest. Part of it is because it's a pretrial detention,
23 basically a maximum security where everyone is in there
24 together in the caldron of pretrial detention, which is clearly
25 a much more intense experience than post-conviction detention.

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1 But all of those things I'm asking you to consider,
2 and I understand the Court's position has been clear and the
3 government's position has been clear, he has not accepted
4 responsibility for his conduct. But even taking that into
5 account, your Honor, even deciding to punish that -- reasonably
6 punish that factor about Mr. Ilori, a sentence of 15 years more
7 than satisfies that. It's hard to quantify how, after the 16th
8 year, the 17th year, the 18th year, the 20th year, even the
9 25th year, after 15 years, that message, that necessity is
10 going to be any more clear than after year 15.

11 And because of that, your Honor, I'm asking you to
12 show mercy on my client, and when I ask for mercy, I'm not
13 saying by any stretch of the imagination that he should get
14 excessive leniency. The sentence I've suggested is very high.

15 And as far as the concurrent versus consecutive, your
16 Honor, as you know, he's been in for two years on this case, of
17 which he will not get any credit because under the BOP
18 guidelines, if the pretrial detention goes toward any other
19 sentence, which it does to Judge Liman's, so even if you wanted
20 to run this concurrent, it still would be partially consecutive
21 because those two years would count not towards this case.

22 In short, the sentence you pronounce today starts
23 today, whether it's concurrent or consecutive, and the fact
24 that there's two years that are consecutive, I'm asking your
25 Honor to run this sentence concurrent starting today. That

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1 way, in essence, I'm asking for not just 15 years, but a
2 17-year sentence, and a 17-year sentence that obviously has all
3 the factors I just spoke about it because, even a concurrent
4 sentence, he will have two years of individual punishment going
5 on Judge Liman's case.

6 I know it's always a difficult thing for courts to
7 figure out what the right sentence is, especially when you sat
8 through a trial, but I'm asking your Honor just to think from
9 the point of view of somebody sitting in jail which every year
10 means, and as those years pile up year, after year, after year
11 for 17 years, if that is a sufficient punishment for the crimes
12 that occurred here.

13 THE COURT: Thank you.

14 Mr. Ilori, I heard what your lawyer said, but I do
15 want to have on the record that you do have an opportunity to
16 speak to me if you wish to do so. Your lawyer has advised you
17 not to and obviously you're not obligated to speak to me, but I
18 just want to confirm, do you wish to be heard before I impose
19 sentence?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Thank you.

22 I'd like to take just a very brief recess and then I
23 will be back and impose sentence.

24 (Recess)

25 THE COURT: I am going to now describe the sentence

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1 that I am intending to impose and I will give you my statement
2 of reason for that sentence. The attorneys will have a final
3 opportunity, obviously, to make any objections before sentence
4 is finally imposed.

5 So, I begin, as I'm obligated to do, with and I did do
6 my own independent calculation under the sentencing guidelines,
7 and as I said at the outset, my calculation differs from what
8 was in the PSR. So I'm going to go through this in some detail
9 clearly for the record because this will become part of the
10 judgment and the PSR going forward. So I'm explaining how I
11 calculated that guidelines range.

12 To begin, I use the November 1st, 2021 guidelines
13 manual. Because there are multiple counts of conviction, I
14 performed a grouping analysis under Section 3D1.1(a). I first
15 began by grouping "distinct groups of closely related counts"
16 pursuant to Section 3D1.1(a)(1).

17 Count Five, though, the aggravated identity theft
18 count, is excluded from my grouping analysis because Mr. Ilori
19 was convicted under 18, United States Code, Section 1028A, and
20 I am instructed therefore to exclude that from the grouping
21 under guidelines Section 3D1.1(b)(2).

22 For the remaining counts, Counts One, Two, Three,
23 Four, and Six, Section 3D1.2 provides that "all counts
24 involving substantially the same harm shall be grouped together
25 into a single group." Counts involve "substantially the same

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1 harm" whereas here, "the offense level is determined largely on
2 the basis of the total amount of harm or loss." And I'm
3 quoting from Section 3D1.2(d).

4 I therefore grouped these other five counts of
5 conviction in my analysis. Pursuant to Section 3D1.3(b),
6 because "the counts involve offenses of the same general type
7 to which different guidelines apply," I used the offense
8 guideline that produces the highest offense level. I therefore
9 looked to sentencing guideline Section 2S1.1(a)(1).

10 The base level offense for Counts One, Two, Three,
11 Four, and Six is therefore 7. Because the intended loss was
12 more than \$9.5 million but less than \$25 million, I added 20
13 points pursuant to Section 2B1.1(b)(1)(K). Because the offense
14 involved ten or more victims, I added two levels pursuant to
15 Section 2B1.1(b)(2)(A)(i). Because the offense involves
16 sophisticated means, I added two levels pursuant to Section
17 2B1.1(b)(10)(C). Because Mr. Ilori was convicted under 18,
18 United States Code, Section 1956, which involves laundering of
19 monetary instruments, I added two points pursuant to
20 Section 2S1.1(b)(2)(B). Because Mr. Ilori was on pretrial
21 release during his commission of the offenses on which he was
22 convicted, I have added three points pursuant to Section 3C1.3
23 of the sentencing guidelines. That results in an adjusted
24 offense level of 36.

25 With respect to criminal history category, Mr. Ilori's

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1 June 2006, April 2007, and April 2021 convictions result in
2 criminal history score of IX.

3 I would note that criminal convictions from February
4 of 1998, May of 2000, January of 2000, and September of 2004
5 were not counted for purposes of his criminal history score
6 because the sentences on these charges were not imposed within
7 15 years of the commencement of the instant offense.

8 Now, I'm also going to just note because, as I say,
9 the calculations set forth in the PSR is basically going to
10 become irrelevant. I'm going to just note for the record,
11 since we talked so much about an appeal, I want the record to
12 be crystal clear, although Mr. Ilori was on pretrial release
13 when he committed the offenses for which he was convicted in
14 this case, Section 4A1.1(d) of the sentencing guidelines does
15 not apply here because Mr. Ilori was not yet serving a
16 "criminal history sentence."

17 A criminal history score of IX places Mr. Ilori in
18 criminal history category IV. The guidelines range with an
19 offense level of 36 and a criminal history category of IV is
20 262 months to 327 months. Separately, there is a mandatory
21 term of 24 months of imprisonment on Count Five that must run
22 consecutive to any other term of imprisonment. And I refer to
23 18, United States Code, Section 1028A, (a)(1), and
24 Section 5G1.2(a) of the sentencing guidelines.

25 None of this that I've laid out accounts for the

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1 potential additional 10 years under the statutory sentences
2 pursuant to Section 3147.

3 Now, I note for the record that these guidelines are
4 obviously not binding on me. I have carefully calculated them,
5 we have talked a lot about what provisions apply and what
6 provisions don't apply. I have taken them into account, but I
7 have also carefully considered all of the sentencing factors
8 set forth in Section 3553(a) of Title 18 of the United States
9 Code. Those factors include the nature and circumstances of
10 the offense, and the history and characteristics of Mr. Ilori,
11 the need for the sentence imposed to reflect the seriousness of
12 the offense, to promote respect for the law, and to provide
13 just punishment for the offense, to afford adequate deterrence
14 to criminal conduct, to protect the public from further crimes
15 of Mr. Ilori, and to provide the defendant with needed
16 educational and vocational training, medical care, or other
17 correctional treatment. As I say, I have considered the
18 sentencing guidelines as well as the applicable policy
19 statements issued by the sentencing commission. I'm mindful of
20 the need to avoid unwarranted sentencing disparities among
21 similarly situated defendants and the need to provide
22 restitution to the victims.

23 Now, I will say at the outset that while I don't have
24 to impose a sentence within the guidelines range, I do intend
25 to impose a guidelines range sentence.

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1 I'm going to begin by explaining my reasons for the
2 sentence I intend to impose, and I begin with the nature and
3 circumstances of the offense.

4 The conduct in this case was extremely serious, it was
5 calculating, it was brazen, and it warrants just punishment.
6 Over the course of more than a year in this case, you took
7 advantage of a national emergency to enrich yourself during a
8 time when many Americans were grieving the loss of their loved
9 ones or navigating serious illness, you saw and you seized upon
10 an illegal opportunity to get ahead personally. Your conduct
11 was selfish, it was reprehensible, and it caused a sizeable
12 loss.

13 And very troubling to the Court is that to this very
14 day, you have accepted no responsibility for your crimes. You
15 argue in your sentencing submission that your crimes were
16 nonviolent, your crimes were far from victimless, and you seem
17 to ignore or to in fact argue contrary to that. You do not
18 recognize that you stole the identities of real people.

19 I listened during the course of the trial to three of
20 those victims who testified at the trial, and I read one victim
21 impact statement submitted in connection with this sentencing.
22 Your criminal activity will have significant and lasting
23 consequences for those individuals, not only financially, but,
24 more importantly, perhaps in terms of their sense of security
25 and safety. All of that counsels in favor of a serious

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1 sentence as just punishment for your offense.

2 I am not persuaded by your efforts to justify your
3 egregious conduct. You say in your sentencing submission that
4 COVID-19, the pandemic turned your life upside down. That was
5 true of everyone living in this country and frankly everyone
6 around the world, and you, by your conduct, further turned the
7 lives of innocent people upside down. You took advantage of a
8 program put in place by our government to deal with a national
9 emergency. Most of the people who were dealing with the upside
10 down of their lives as a result of the COVID-19 pandemic didn't
11 turn to fraud or to theft to cope with the difficulties of the
12 pandemic. The funds that you stole were, as I say, made
13 available by the federal government precisely because so many
14 individuals and businesses were struggling and needed aid, but
15 you chose to steal those funds for your own benefit and make
16 them unavailable to those who actually and legitimately needed
17 them.

18 I find in this case that there is a very serious need
19 for specific deterrence. You have demonstrated no respect for
20 the law and your sentence needs to promote respect for the law.
21 This is your eighth conviction as an adult, your third in
22 federal court. Virtually all of your crimes stemming back, way
23 before COVID turned your life upside down, have involved some
24 type of financial fraud. Indeed, you committed the crimes on
25 which you were convicted in this case while you were on

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1 pretrial release for a similar crime in another case. Your
2 sentencing submission suggests that short sentences can have a
3 strong deterrent effect. Even if that were true generally, it
4 is certainly not true of you. You have repeatedly, not once,
5 not twice, but eight times shown disrespect and disregard for
6 the laws of our country.

7 I need, by the sentence I impose, to ensure you are
8 deterred from future crimes, from similar conduct, and I need
9 for the sentence to ensure that the public is protected from
10 any of your further crimes.

11 There is also a need for general deterrence here. I
12 do have an obligation to send a message that the United States
13 will not tolerate this kind of fraud and abusive behavior.
14 This is particularly so where in this case, crimes that you
15 committed were difficult to detect until the fraud gets to a
16 substantial scale. I need to send a message that if you
17 fraudulently utilize the identities of others and you steal
18 from the government and, by extension, from your fellow
19 citizens, you will face significant punishment. By imposing a
20 significant sentence, I am intending to promote respect for the
21 rule of law in this country.

22 Now, you and your lawyer have argued that you were
23 already punished for this crime in the case before Judge Liman.
24 That really is not true. In fact, Judge Liman made it
25 eminently clear when he sentenced you in his case that he was

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1 not considering your involvement in this case and that these
2 charges that were tried before me had no impact on the sentence
3 that he imposed. That's at page 26, lines 1 through 5 of the
4 transcript of your sentencing by Judge Liman.

5 You also argue that you should receive a sentence
6 commensurate with your codefendant, Mr. Recamier. I am mindful
7 of the need to avoid unwarranted sentencing disparities, but
8 that is of similarly situated defendants. You simply are not
9 similarly situated to Mr. Recamier.

10 First, he accepted responsibility for his crimes and
11 he pled guilty to a single count of conviction. Moreover, he
12 had no criminal history points at sentencing, and he was
13 therefore in criminal history category I. You, quite unlike
14 Mr. Recamier, still have not accepted responsibility for your
15 crimes, and at trial, you were convicted of six separate
16 felonies.

17 You argue that the trial and evidence showed that
18 Mr. Recamier was more culpable than you. I sat through that
19 trial and the evidence showed no such thing. Instead, the jury
20 found, after listening to all of the evidence and to your
21 arguments in summation, that you – and not Mr. Recamier and not
22 anyone else – were guilty of the six felonies of which you were
23 convicted. Any sentence imposed here is not either motivated
24 by race, as you seem to suggest, but by the six serious crimes
25 of which you have been found guilty.

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1 Now, I have also carefully looked at your history and
2 your personal characteristics as I am instructed to do when
3 considering all of the 3553(a) factors. You point out that you
4 haven't had an easy life. You were born in the United States,
5 but you moved to Nigeria at age 1. You spent your childhood
6 there. And you suggest that you had a poverty-stricken
7 upbringing and you lived in an unstable and abusive home. You
8 say you suffer from untreated complex PTSD. I credit those
9 contentions and I am sorry for them, but most individuals who
10 have a difficult childhood and various traumas do not attempt
11 to defraud the federal government and their fellow citizens in
12 times of crisis. I cannot find that this history mitigates the
13 weight of all of the other 3553(a) factors, including your
14 extensive criminal history.

15 As I mentioned earlier, you have demonstrated a
16 long-running pattern of committing fraud crimes similar to the
17 scheme at issue in this case. I do note your lack of criminal
18 conviction between 2010 and 2019. I truly hope you were living
19 a law abiding life during that time. It does appear that you
20 even built up a successful, lawful personal-training business
21 to support yourself and your family. That was commendable, but
22 it is regrettable that you again turned to crime with the onset
23 of the pandemic. But, as I have already mentioned, many
24 businesses and individuals struggled during the pandemic. That
25 cannot be an excuse for fraud, and particularly not the

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1 extensive, sophisticated and, as counsel has described it,
2 layered fraud that you engaged in here.

3 Now, I appreciate that you care deeply about your
4 family, including your children, and that your family cares
5 deeply about you. I did read the two letters of support. I
6 hope that your family continues to support you now more than
7 ever.

8 For all of these reasons, it is the intent of the
9 Court to sentence you to a term of imprisonment of 300 months.
10 That is broken down as follows: 32 months on Count One, 85
11 months on Count Two, 37 months on Count Three, 85 months on
12 Count Four, the 24-month mandatory sentence on Count Five, and
13 37 months on Count Six, each to run consecutively, and that is
14 to run consecutively to the sentence imposed by Judge Liman for
15 separate crimes that were at issue in his case. I find that
16 that is sufficient but not greater than necessary to serve the
17 goals of sentencing as set forth in Section 3553(a)(2).

18 That term of incarceration should be followed by five
19 years of supervised release – three years on Count One, five
20 years on Count Two, three years on Count Three, five years on
21 Count Four, one year on Count Five, three years on Count Six,
22 but those will run concurrently.

23 During that term of supervised release, it is my
24 intent that the mandatory standard and special conditions,
25 including the search condition and the financial conditions

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1 that we discussed earlier, would be imposed.

2 There is a \$100 per-count-of-conviction special
3 assessment that's mandatory per count and payable immediately.
4 Since there are six counts of conviction, I would intend to
5 impose a \$600 special assessment payable, as I say,
6 immediately.

7 Now, with respect to a fine, the guidelines say the
8 court shall impose a fine in all cases except where the
9 defendant establishes he is unable to pay and is not likely to
10 become able to pay. I do find on the record before me that you
11 don't have the ability to pay. And so, I am not intending to
12 impose a fine. I'm therefore not going to lay out on the
13 record what the statutory fines are.

14 The guidelines range, for the record, is \$40,000 to
15 \$3.4 million in fines, but I do find, after looking over your
16 finances, including the fact that there are 10 outstanding
17 liens and judgments, that you don't have the ability to pay a
18 fine. So I don't intend to impose a fine.

19 Now, restitution, I do intend to enter the consent
20 order of restitution in the amount of \$1,120,462.47,
21 \$1,072,067.47 of which is a joint and several liability with
22 Mr. Recamier, your codefendant, and you individually are liable
23 for the remaining \$48,400 in restitution.

24 The superseding indictment also contains forfeiture
25 allegations -- by the way, that victim, with regard to the

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1 restitution, is identified on the exhibit to the proposed order
2 of restitution submitted by the government and made available
3 to defense counsel ahead of time.

4 The superseding indictment also contains forfeiture
5 allegations with respect to Counts Two, Three, and Four, and
6 with respect to Count Six, forfeiture on each of those counts
7 is permissible with respect to the first group, Two, Three, and
8 Four. That's under 18, United States Code,
9 Section 982(a)(2)(A), and with respect to Count Six, that's
10 under 18, United States Code, Section 982(a)(1).

11 So I do intend to impose the full amount of forfeiture
12 requested here, \$1,024,625 -- I'm sorry. \$1,120,462.47 in
13 addition to the right, title, and interest in the specific
14 property Coinbase account, Robinhood, and Charles Schwab
15 accounts.

16 At this time, I'm going to pause. Do you need a
17 moment?

18 MS. MURRAY: If we could just have one moment, please,
19 your Honor.

20 THE COURT: Sure.

21 (Pause)

22 MS. MURRAY: Your Honor, with respect to the sentence
23 that the Court indicated it intends to impose, we would just
24 ask if the Court could indicate with respect to Counts One,
25 Two, Three, Four, and Six what portion, if any, of the stated

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1 sentence is attributable to 3147.

2 THE COURT: I'm not adding any time for 3147.

3 MS. MURRAY: Okay. Thank you, your Honor. So nothing
4 else from the government.

5 THE COURT: Yes. I should have made that clear.
6 Thank you.

7 I'm going to ask you both in a minute, but Mr. Talkin,
8 did you need time to talk to Mr. Ilori?

9 MR. TALKIN: No. Thank you, your Honor.

10 THE COURT: So let me then ask each of you, does the
11 government know of any legal reason that sentence cannot be
12 imposed as I have outlined?

13 MS. MURRAY: No, your Honor.

14 THE COURT: Mr. Talkin, do you know of any legal
15 reason that sentence cannot be imposed as I have outlined?

16 MR. TALKIN: No, your Honor.

17 THE COURT: Mr. Ilori, would you please stand.

18 It is the judgment of the Court that you be remanded
19 to the custody of the Bureau of Prisons to serve a term of
20 incarceration of 300 months, broken down by count as I have
21 already stated on the record, and that 300 months will run
22 consecutively to the sentence that you are now serving in the
23 case before Judge Liman.

24 Your term of incarceration will be followed by a
25 five-year term of supervised release, again, broken down count

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1 by count as I previously laid out on the record with those
2 terms of supervised release to run concurrently to one another.

3 You also must pay a \$100-per-count special assessment
4 for a total of \$600, given that there are six counts. That is
5 payable immediately and it is mandatory.

6 I am not imposing a fine.

7 I am imposing restitution and forfeiture in the
8 amounts requested in the proposed orders. Specifically, I'm
9 ordering restitution in the amount of \$1,120,462.47 with
10 1,072,067.47 owed jointly and severally with Mr. Recamier and
11 the remaining \$48,400 owed by you individually. The forfeiture
12 amount as laid out in the proposed order of forfeiture is also
13 imposed.

14 You may be seated, sir.

15 Are there requests from you, sir, with regard to the
16 facility or do you request that Mr. Ilori remain in the same
17 facility where he is serving the sentence in the Judge Liman
18 case?

19 MR. TALKIN: Your Honor, just to be clear, I believe
20 he was designated to Devons. We'll ask that you suggest the
21 same designation, FCI Devons.

22 THE COURT: The request to Judge Liman was that he be
23 housed near where his family is located?

24 MR. TALKIN: Correct.

25 THE COURT: Does Devons address that?

NANCilos

1 MR. TALKIN: It's as close as they were willing to
2 deal with in Massachusetts.

3 THE COURT: Are there any other requests from you,
4 Mr. Talkin, with respect to facility or programs or otherwise?

5 MR. TALKIN: No, your Honor.

6 THE COURT: And there is no motion by the government
7 with respect to any counts?

8 MS. MURRAY: Yes, we would move to dismiss any open
9 counts.

10 THE COURT: Are there any?

11 MS. MURRAY: On the underlying indictment, yes, your
12 Honor.

13 THE COURT: Okay.

14 Mr. Ilori, I just need to advise you before we
15 adjourn.

16 You don't find something funny, do you, sir?

17 MR. TALKIN: He wasn't --

18 THE COURT: He seemed to be smiling.

19 MR. TALKIN: No, I don't believe so, your Honor.

20 THE COURT: Mr. Ilori, I advise you that you have the
21 right to appeal from your conviction and from your sentence.
22 If you're unable to pay the costs of an appeal, you may apply
23 for leave to appeal *in forma pauperis*. We will do our best to
24 get judgment entered as promptly as possible. Any notice of
25 appeal must be filed within 14 days of the judgment of

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conviction.

Do you understand, sir?

THE DEFENDANT: Yes, I do.

THE COURT: Is there anything else for the record?

MS. MURRAY: Nothing from the government. Thank you.

THE COURT: Mr. Talkin.

MR. TALKIN: No, your Honor.

THE COURT: All right. All that I have to say,
Mr. Ilori, I wish you well. I hope you will take this time to
really think seriously about reforming your life going forward
when you are released from prison.

I need to thank especially our court reporter for your
patience. I'm sorry for how protracted and tedious today's
hearing was, but I thank you, and I thank the marshals, as
well.

We stand adjourned.

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