

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

WRITER'S DIRECT DIAL NO.
(212) 849-7130

WRITER'S EMAIL ADDRESS
marcgreenwald@quinnemanuel.com

October 3, 2022

Via ECF

Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Chris Recamier, 21 Cr. 746 (MKV)

Dear Judge Vyskocil:

We write respectfully on behalf of Mr. Chris Recamier in connection with his sentencing, which is scheduled for October 17, 2022. Mr. Recamier is an older defendant who has suffered a lifelong addiction to heroin and other drugs and will face deportation upon release. For the reasons described below, we respectfully submit that Mr. Recamier should receive a sentence of 60 months' incarceration.

Recognizing the significant mitigating factors present here, the Probation Office recommends a below-Guidelines sentence of 84 months' imprisonment. PSR, ECF No. 71, at 31. Mr. Recamier respectfully requests a sentence below that because such a sentence is sufficient, but not greater than necessary to comport with the factors set forth in 18 U.S.C. § 3553(a) for the following reasons. *First*, Mr. Recamier is a 59-year-old recovering heroin addict, who had a difficult upbringing. *Second*, Mr. Recamier will face deportation upon release. This both serves as an enhanced punishment to Mr. Recamier and lessens the need for specific deterrence. *Third*, Mr. Recamier promptly accepted responsibility for his actions, saving this Court and the Government time and resources in trying his case. *Fourth*, the enhancements in this case drive the Guidelines range higher than necessary. *Fifth*, Mr. Recamier has already suffered significantly for his actions. Mr. Recamier experienced emotional and psychological stress due to the egregious conditions at Metropolitan Detention Center Brooklyn ("MDC") during the Covid-19 pandemic, including frequent lockdowns. For these reasons, a 60-month sentence is sufficient, but not greater than necessary to comport with the factors set forth in 18 U.S.C. § 3553(a).

I. The Plea Agreement

Mr. Recamier entered into a plea agreement with the Government on June 13, 2022. On June 15, 2022, Mr. Recamier entered his guilty plea and this Court accepted his plea. Pursuant to

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the plea agreement, he pled guilty to Count One of the indictment, which charged Mr. Recamier with Major Fraud Against the United States in violation of 18 U.S.C. § 1031.

U.S.S.G. § 2B1.1 is the applicable Guideline. Under the applicable Guideline, Mr. Recamier's base offense level is six because the statutory maximum term of imprisonment for the offense of conviction is less than 20 years. U.S.S.G. § 2B1.1(a)(2). Pursuant to the Plea Agreement, Mr. Recamier agreed to several enhancements including: (1) 20 levels because the offense involved a loss greater than \$9,500,000 but less than \$25,000,000, U.S.S.G. § 2B1.1(b)(1)(K); (2) two levels because the offense involved 10 or more victims, U.S.S.G. § 2B1.1(b)(2)(A)(i); (3) two levels because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, U.S.S.G. § 2B1.1(b)(10)(C); (4) two levels because the offense involved the production of a counterfeit access device or authentication feature and the possession of five or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, U.S.S.G. § 2B1.1(b)(11); and (5) two levels because the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, U.S.S.G. § 2B1.1(b)(17)(A).

Given Mr. Recamier's clear acceptance of responsibility, a two-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(a). Finally, the Government agreed in the plea agreement to move for an additional one-level reduction—pursuant to U.S.S.G. § 3E1.1(b)—“because [Mr. Recamier] gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.” Plea Agreement, at 3. Accordingly, Mr. Recamier and the Government stipulated to a Guideline offense level of 31. *Id.*; *see also* PSR ¶ 75 (same).

Mr. Recamier has never been convicted of any crime. *See* Plea Agreement, at 3; PSR ¶ 79. Therefore, his Criminal History Category is I. U.S.S.G. § 4A1.1.

Based on this sentencing calculation, Mr. Recamier and the Government agreed that the Guideline range would be 108 to 135 months' imprisonment, *see* Plea Agreement, at 3, and a fine range of \$30,000 to \$1,000,000, *see id.* (citing U.S.S.G. § 5E1.2). However, because the statutory maximum sentence for Major Fraud is 10 years' imprisonment, 18 U.S.C. § 1031 (“Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent to defraud the United States . . . [shall be] imprisoned not more than 10 years.”), Mr. Recamier's Guidelines range is 108 to 120 months (the “Stipulated Guidelines Range”).

II. The 18 U.S.C. § 3553(a) Factors Warrant a Sentence Below the Stipulated Guidelines Range

Under 18 U.S.C. § 3553(a), a sentencing court must “impose a sentence sufficient, but not greater than necessary, to comply” with the purposes of sentencing. In determining the sentence, the court must consider the nature of the offense and the history and characteristics of the defendant. Further, the sentence imposed must, among other things, “reflect the seriousness of the offense,” “promote respect for the law,” and “provide just punishment for the offense,” and “afford

adequate deterrence to criminal conduct” and “protect the public from further crimes of the defendant.” § 3553(a)(2); *see also United States v. Stewart*, 590 F.3d 93, 147 (2d Cir. 2009).

We respectfully submit that a sentence of 60 months’ imprisonment is appropriate in Mr. Recamier’s case. A longer sentence is not necessary to impose just punishment or respect for the law.

A. Mr. Recamier’s History and Characteristics Weigh in Favor of a 60-Month Sentence

Mr. Recamier’s difficult upbringing, serious drug addiction, and advanced age are all key aspects in Mr. Recamier’s “history and characteristics,” 18 U.S.C. § 3553(a)(1).

1. Mr. Recamier Grew Up Impoverished, Without the Support of Both of His Parents

Mr. Recamier grew up with a difficult family life. He was the youngest of five children, and his parents separated when he was five years old. PSR ¶ 84. Mr. Recamier did not have regular contact with his father as a child. *Id.* Without any financial support from Mr. Recamier’s father, his mother worked long hours to support her five children, all while raising them on her own. *Id.* ¶ 86. Additionally, Mr. Recamier’s mother suffered from depression, which often left him and his siblings to look after themselves. *Id.*

Mr. Recamier’s struggles extended to school. At a young age, Mr. Recamier was sent to a boarding school that was a ten-hour train ride away. Mr. Recamier was the only one of his five siblings to go to this school. Mr. Recamier describes the school as a violent place. Mr. Recamier eventually went to a different school but was removed due to behavioral issues. *Id.* ¶ 104. Despite this upbringing, Mr. Recamier has consistently sought gainful employment in both the French Air Force and private sector. *Id.* ¶ 106–12. Upon release, Mr. Recamier would like to become a productive member of society again. *Id.* ¶ 113.

The Second Circuit and district courts in this Circuit have recognized that difficult circumstances relating to a defendant’s upbringing may be considered in imposing a sentence. *United States v. Whitten*, 610 F.3d 168, 177 (2d Cir. 2010) (noting that the defendant’s difficult upbringing, including living in poverty and his father’s absence and mother’s drug addiction can be a mitigating factor); *United States v. Thompson*, 2020 WL 6291400, at *3 (S.D.N.Y. Oct. 27, 2020) (noting that the court took into account the “defendant’s difficult upbringing, including his mother’s crack addiction and his father’s absence and troubles with law enforcement” at the time of sentencing). Mr. Recamier’s family circumstances warrant a sentence below the Stipulated Guidelines Range. *See United States v. Johnson*, 964 F.2d 124, 129 (2d Cir. 1992) (finding extraordinary family circumstances can be taken into account during sentencing); *see also United States v. Sharpsteen*, 913 F.2d 59, 63 (2d Cir. 1990) (holding that extraordinary “circumstances related to family ties and relationships” are relevant to sentencing); *United States v. Diawara*, 797 F. App’x 672, 674 (2d Cir. 2020) (noting that the district court took “family circumstances” into account when determining the appropriate sentence); *United States v. Woodson*, 452 F. Supp. 3d

31, 33 n.2 (S.D.N.Y. 2020) (noting that the United States Sentencing Commission Policy Statement allows the court to consider family circumstances when determining the appropriate sentence).

2. Until His Incarceration, Mr. Recamier had a Serious Drug Addiction

Most of Mr. Recamier's life has been plagued by addiction. He initially began experimenting with marijuana and alcohol at the age of 13. PSR ¶ 99. More troubling, Mr. Recamier began to occasionally use heroin around this same age. *Id.* ¶ 101. By the time he was in his twenties, Mr. Recamier would use cocaine with heroin. *Id.* ¶ 100. Mr. Recamier also experimented with methamphetamine.

Mr. Recamier eventually quit using heroin. However, in 1996, Mr. Recamier's longtime girlfriend tragically and suddenly passed away. *Id.* ¶ 101. Mr. Recamier was devastated. He reverted to heroin to cope. *Id.* From there, Mr. Recamier was severely addicted to heroin for over twenty years. He would often use between a half gram and a gram every single day. *Id.* Mr. Recamier has overdosed a total of four times and has been revived with Narcan. *Id.*

On multiple occasions, Mr. Recamier attempted to get clean. *Id.* ¶ 102. Mr. Recamier was only able to beat addiction while incarcerated. However, MDC allowed him to detox without medical supervision. *Id.* ¶ 101. This was an excruciating process that took over a week. Mr. Recamier's lifetime of addiction affects him to this day, particularly impacting his ability to sleep.

This Court can and should consider Mr. Recamier's drug addiction when crafting a sentence. *See, e.g., United States v. Israel*, 2021 WL 5782072, at *2 (2d Cir. Dec. 7, 2021) (holding that the district court could consider drug addiction under § 3553(a)); *United States v. Accime*, 2021 WL 5286303, at *2 (2d Cir. Nov. 15, 2021) (affirming sentence where the district court considered the defendant's addiction). Mr. Recamier's addiction is patently tied to the crimes he has committed. Mr. Recamier does not argue that drugs are by any means an excuse for his actions, but his addiction does color his offenses. Indeed, Mr. Recamier was high on heroin when he was arrested for the instant offense. PSR ¶ 101.

3. Mr. Recamier is Nearly Sixty Years Old

Mr. Recamier is 59 years old.¹ He is not in the best health. Despite exercising regularly, Mr. Recamier is facing a lifetime of heroin addiction that has severely impacted his physical well-being. Additionally, Mr. Recamier has bronchitis and emphysema. PSR ¶ 97. As has been well

¹ While Mr. Recamier is below 65, the combination of his drug abuse history and incarceration means he fits most definitions of "old age." *See, e.g.,* Kimberly A Skarupski, *The Health of America's Aging Prison Population*, 40 *Epidemiol Rev.* 157, 158 (2018), available at <https://academic.oup.com/epirev/article/40/1/157/4951841> ("Although 65 years is the conventional cutoff used to define older age in the general US population, unhealthy lifestyles and inadequate health care often accelerate the onset and progression of many chronic conditions associated with aging; thus, old age in prison typically commences at ages 50 or 55 years.").

documented, older inmates' health wanes in prison. Chronic disease is rampant. *See* Skarupski, 40 Epidemiol Rev., at 159. Moreover, elder inmates "overall health care costs [are] estimated at 3–9 times greater than that of younger inmates." *Id.*, at 162. All of these factors have been further compounded with the onset of the COVID-19 pandemic.

This Court can consider Mr. Recamier's age as part of his history and characteristics under § 3553(a). *See, e.g., United States v. Cifonelli*, 446 F. App'x 363, 367 (2d Cir. 2011) (noting the district court took defendant's age into account); U.S.S.G. § 5H1.1 (Guidelines Policy Statement noting that age can be the basis for a downward departure).² The top-end of the Stipulated Guidelines Range is ten years. Given Mr. Recamier's advanced age, health issue, and the well-documented health issues elderly inmates face, a Guidelines sentence could mean Mr. Recamier spends the remainder of his life in prison.

B. Specific Deterrence is not Required because Mr. Recamier will Face Deportation upon Release

In crafting a sentence, Section 3553(a)(2)(C) instructs courts to consider the need "to protect the public from further crimes of the defendant" when fashioning a sentence. Here, the need for specific deterrence is lessened because Mr. Recamier is in the country illegally and will face deportation upon release. *See* PSR, at 2. After being released, he will be deported to France. While Mr. Recamier has accepted responsibility for his actions and will not commit any further crimes, once deported, he will not be able to commit crimes in the United States.

Furthermore, Mr. Recamier is less likely to recidivate due to his age. As the U.S. Sentencing Commission has found, older offenders are far less likely to recidivate when compared to their younger counterparts. In a study analyzing recidivism rates from inmates released in 2010, the U.S. Sentencing Commission found that only 15.9% of offenders that were 60 or older were rearrested, while that figure is 72.5% for offenders under the age 21, 64.4% for offenders aged 21 to 29, and 30.8% for offenders aged 50 to 59.³ In crafting an appropriate sentence, this Court should consider the low likelihood that Mr. Recamier recidivates.

C. Mr. Recamier has Accepted Responsibility for his Actions

Courts in this Circuit have found acceptance of responsibility to be a mitigating factors. *See, e.g., United States v. Tukes*, 715 F. App'x 37, 40 (2d Cir. 2017) (noting that the district court appropriately took into account "acceptance of responsibility" in its decision to make a three-level reduction to the defendant's offense level); *United States v. Frometa*, 2020 WL 6132296, at *4 (S.D.N.Y. Oct. 19, 2020) (finding a defendant's acceptance of responsibility for his conduct as a

² For the avoidance of doubt, Mr. Recamier does not seek a downward departure or suggest that this Court should impose one. Rather, Mr. Recamier notes that the Guidelines Policy Statement acknowledge that age is an important factor.

³ United States Sentencing Commission, *Recidivism of Federal Violent Offenders Released in 2010* (2022), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220210_Recidivism-Violence.pdf.

mitigating factor); *Melo v. United States*, 2008 WL 5431170, at *2 (S.D.N.Y. Dec. 22, 2008) (acceptance of responsibility warranted a reduction of the Base Offense Level).

As the Government acknowledges, *see* Plea Agreement, at 3, Mr. Recamier has accepted responsibility for his crimes. Mr. Recamier does not cast blames on other people or outside factors for committing his criminal conduct. Indeed, Mr. Recamier quickly accepted the Government's plea offer, signing the agreement less than two weeks after substituting his counsel. Mr. Recamier's timely acceptance of responsibility saved the Government from preparing for his trial. Mr. Recamier also has expressed interest in seeking drug rehabilitation from a substance abuse counselor while incarcerated. PSR, at 31. Moreover, Mr. Recamier took this Court's instruction to fully cooperate and be truthful with the Probation Office seriously. *See* Jun. 15, 2022 Hr. Tr., at 41:25–42:8. Mr. Recamier answered every question the Probation Office had and was candid in his responses, even to sensitive topics such as his upbringing, the loss of his longtime girlfriend, and his addiction.

D. The Enhancements Dramatically Elevate Mr. Recamier's Sentence

As part of the Plea Agreement, Mr. Recamier agreed to a number of enhancements. While Mr. Recamier does not contest the applicability of the enhancements or suggest any departure, it is worth noting that several of the applicable enhancements magnify Mr. Recamier's Stipulated Guidelines Range for his offense.

First, several of the enhancements are effectively required for the commission of the Major Fraud against the United States. The Guidelines add two levels if the offense involved sophisticated means. U.S.S.G. § 2B1.1(b)(10)(C). Among other items, “[c]onduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.” U.S.S.G. § 2B1.1 cmt. 9(B). However, the use of fictitious entities is required to commit a major fraud against the United States. For Mr. Recamier's fraudulent Paycheck Protection Program (“PPP”) loan applications, an individual could not apply. To commit the fraud, one had to set up fictitious entities. This in effect double counts the underlying offense. *Cf. United States v. Tutty*, 612 F.3d 128, 132 (2d Cir. 2010) (noting that a separate enhancement “has the flavor of impermissible ‘double counting’—because it effectively increases a defendant's sentence to reflect the kind of harm that has already been fully accounted for by the base offense level or other enhancements” (cleaned up)).

Second, two of the enhancements are effectively increasing Mr. Recamier's sentence based on substantially the same issue. U.S.S.G. § 2B1.1(b)(1)(K) tracks the greater of the actual or intended loss of the scheme. Here, the intended loss amount is between \$9,500,000 and \$25,000,000, resulting in a twenty-level increase. U.S.S.G. § 2B1.1(b)(17)(A) adds two levels if the gross receipts are greater than \$1,000,000. Both of these enhancements seek to increase the punishment based on the magnitude of the offense, effectively counting this issue twice.

Third, as discussed, U.S.S.G. § 2B1.1(b)(1)(K) adds an enhancement based on the loss as a result of the offense. Importantly, this not the amount the institution actually lost. Rather, it is the greater of the actual loss amount or the intended loss. U.S.S.G. § 2B1.1 cmt. 3(A). Thus,

Mr. Recamier's sentence reflects how much he sought, not how much he received, which is roughly a tenth of that amount. Because the Stipulated Guidelines Range is based on these enhancements, the stipulated range results in a potential sentence that is greater than necessary under § 3553(a).

E. Mr. Recamier has Served Unusually Difficult Time Due to the Pandemic

Mr. Recamier has already suffered specific deterrence due to the egregious conditions he experienced MDC during the COVID-19 pandemic. The poor conditions at MDC have been widely reported during the pandemic, including frequent lockdowns and "electrical blackouts; broken sewage systems; inadequate food supplies; and rates of COVID-19 infection among detainees and staff that far exceed transmission levels outside of the facility." *United States v. Elias*, 2022 WL 125721, at *2 (E.D.N.Y. Jan. 13, 2022) (citing Status Rep. by Fed. Defenders, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons*, No. 19-cv-660, ECF No. 240 (E.D.N.Y. October 13, 2021)).

Additionally, judges in the Southern District have acknowledged the severe impact of the COVID-19 pandemic on inmates. For example, Judge J. Paul Oetken stated at a sentencing, that time in prison during the pandemic is "essentially the equivalent of either time and a half or two times what would ordinarily be served."⁴ Additionally, Judge Jed S. Rakoff noted that the pandemic has made "incarceration harsher and more punitive than would otherwise have been the case. This is because the federal prisons, as 'prime candidates' for the spread of the virus, have had to impose onerous lockdowns and restrictions that have made the incarceration of prisoners far harsher than normal." *United States v. Rodriguez*, 492 F. Supp. 3d 306, 311 (S.D.N.Y. 2020) (citation omitted).

Mr. Recamier has experienced extreme hardship while at MDC. Indeed, on arriving to MDC, Mr. Recamier detoxed without medical supervision. Mr. Recamier has been detained since October 7, 2021. *See* PSR, at 1.

Despite these hardships, Mr. Recamier has remained productive while incarcerated. Mr. Recamier has taken on a job in the kitchens. PSR ¶ 11. He regularly works double shifts. Mr. Recamier regularly exercises. Despite this busy work schedule, Mr. Recamier has taken numerous classes, totally 72 hours of programming on business and health topics. *Id.* Additionally, Mr. Recamier has zero disciplinary sanctions. *Id.*

⁴ Brian Jacobs, *The U.S. Sentencing Commission's Inadequate Response To Covid-19*, FORBES (Sept. 17, 2021), <https://www.forbes.com/sites/insider/2021/09/17/the-us-sentencing-commissions-inadequate-response-to-covid-19/?sh=617fe72a7ee8>.

III. Conclusion

For the foregoing reasons, we respectfully request that the Court grant Mr. Recamier a sentence of 60 months' imprisonment.

Respectfully submitted,

/s/ Marc Greenwald

Marc Greenwald
Michael Linneman

cc: AUSAs Daniel Nessim and Juliana Murray