U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
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New York, New York 10007

October 10, 2022

BY ECF

The Honorable Mary Kay Vyskocil
United States District Court 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:

The defendant in this case, Chris Recamier ("Recamier" or "the defendant"), is scheduled to be sentenced on October 17, 2022 at 11:00 a.m., having pleaded guilty to Major Fraud against the United States, in violation of Title 18, United States Code, Section 1031. The Government respectfully submits this letter in advance of sentencing. For the reasons explained below, the Government believes that a sentence within the Guidelines range stipulated by the parties of 108 to 120 months' imprisonment (the "Stipulated Guidelines Range") is warranted in this case.

I. Background

A. Offense Conduct

The defendant took part in broad criminal activity, utilizing the stolen identities of dozens of victims and taking advantage of programs intended to assist the country in responding to the COVID-19 pandemic, with co-defendant Adedayo Ilori.

On January 16, 2019, the defendant was arrested on New York State drug distribution charges. (Presentence Investigation Report revised September 9, 2022 ("PSR") ¶ 81.) From the time of his arrest through October 2019, the defendant was incarcerated at Rikers Island. (PSR ¶ 92.) While incarcerated at Rikers Island, the defendant met Ilori, who was also incarcerated for pending fraud and identity theft charges. Both Recamier and Ilori were released from prison in or about fall 2019, as a result of the implementation of New York State's bail reform law.

Ilori recruited Recamier to take part in Ilori's ongoing bank fraud scheme, in which Ilori conspired with Herode Chancy and Michael Albarella. (PSR ¶ 57.) In this scheme, Ilori and his co-conspirators submitted fraudulent applications for more than $1 million in business loans, using stolen identities and fabricated bank statements and tax documents. Recamier's role in this scheme included, among other things, impersonating an identity theft victim. In or about March 2020, Ilori, Chancy, and Albarella were arrested and charged in *United States v. Chancy*, 20 Cr. 378 (LJL); however, law enforcement had not identified Recamier during the earlier investigation, and he therefore was not arrested at that time.

Despite Ilori's 2020 arrest and Ilori's release pursuant to federal bail conditions, beginning in or about August 2020, Ilori and Recamier worked together to commit yet more crimes—engaging in the instant fraud, identity theft, and money laundering scheme. Ilori and Recamier chose to defraud the federal government and two emergency programs intended to assist the nation in weathering the COVID-19 pandemic. In the process, Ilori and Recamier fraudulently used the stolen identities of dozens of victims.

The Small Business Administration ("SBA") is responsible for the federal relief programs in question. (PSR ¶ 18.) The CARES Act provided emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of hundreds of billions of dollars in forgivable loans to small businesses to pay for payroll, mortgage interest, rent, and/or utilities through the Paycheck Protection Program ("PPP"). Pursuant to the CARES Act, the amount of PPP funds a business was eligible to receive was determined by the number of employees employed by the business and the business's average payroll costs. A business applying for a PPP loan was required to provide documentation to confirm that it had, in the past, paid employees the amount of compensation represented in the business's loan application. The CARES Act also expanded the separate Economic Injury Disaster Loan ("EIDL") Program, which provides small businesses with low-interest loans of up to $150,000 to help overcome the temporary loss of revenue that they were experiencing due to COVID-19. To qualify for an EIDL under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19, based on the applicant's actual economic injury, as determined by the SBA.

Together, Recamier and Ilori applied for at least 14 different COVID-relief loans, under both the EIDL program and PPP. They applied for these loans under the stolen names of various business entities and using the stolen identities of at least nine different individuals. In total, Ilori and Recamier applied for at least $10 million in fraudulent loans, and they successfully obtained more than $1 million in federal relief loans.

Recamier and Ilori generally followed the same approach with each fraudulent loan application they filed. They used the stolen identities of real people and businesses. They submitted falsified tax documents and bank records, claiming that the applications had been completed by business entities that, in some cases, purportedly employed dozens of people and had substantial monthly payroll. All said, the defendants represented that they ran companies employing more than 300 employees and paying more than $3 million in monthly wages. (PSR ¶ 22.) Many of the accounts and applications involved the use of fake IDs, many bearing Recamier's photograph but the names and identifying information of identity theft victims.

For example, one loan application claimed the name of Appserd Incorporated ("Appserd"), which was purportedly run by an identity theft victim frequently used by the defendants ("ID Theft Victim-1"). (PSR ¶¶ 24-28.) Ilori and Recamier claimed that Appserd employed 79 employees with an average monthly payroll of more than $1.7 million. The defendants cast ID Theft Victim-1 as the owner and victim of the company, and they represented that the more than $4.4 million loan they were seeking would be used only for authorized business expenses. In support of the application, the defendants submitted multiple fraudulent tax documents to back up their fraudulent representations. Recamier personally impersonated ID Theft Victim-1, interacting with bank employees as ID Theft Victim-1 to attempt to get the loan approved. Ultimately, the bank denied the loan.

Of the more than $1 million in relief funds successfully obtained, Ilori and Recamier transferred the money to accounts they controlled, in the names of identity theft victims. (PSR ¶ 23.) These funds were used to purchase more than $400,000 in cryptocurrency; at least approximately $50,000 in stocks; and at least approximately $60,000 in cash.

Law enforcement identified particular investment accounts utilized by Ilori and Recamier to invest fraudulently obtained funds. Between at least in or about May 2021 and in or about July 2021, a particular IP address was used to access at least one of these investment accounts on multiple occasions. Subscriber records reflect that IP Address-1 was assigned to a particular apartment in Long Island City (the "LIC Apartment"). The LIC Apartment had been rented by Ilori and Recamier, in or about March 2021, under name of an identity theft victim ("ID Theft Victim-2"). (PSR ¶ 50.) During the investigation, law enforcement conducted surveillance of the LIC Apartment and observed both Ilori and Recamier present in the vicinity of the LIC Apartment.

Ilori and Recamier provided numerous banks with the same phone number as a particular contact phone number on their loan applications and/or fraudulent bank accounts ("Phone-1"). (PSR ¶ 48.) Law enforcement obtained a GPS tracking warrant for Phone-1. In conducting surveillance concerning the location of Phone-1, law enforcement observed Ilori in the vicinity of Phone-1. In addition, law enforcement determined that Phone-1 was often located in the vicinity of Ilori's home address during the night.

On October 7, 2021, the Honorable Peggy Kuo, U.S. Magistrate Judge for the Eastern District of New York, signed a search warrant, authorizing law enforcement to search: (a) the LIC Apartment, and (b) Ilori's person and the area in his immediate control. On October 7, 2021, at approximately 9:45 p.m., law enforcement officers executed the search at the LIC Apartment. Recamier was present at the LIC Apartment when the search warrant was executed, and law enforcement officers placed him under arrest. Following his arrest, Recamier was provided with his *Miranda* rights, waived those rights, and engaged in an audio-recorded interview with law enforcement. During this interview, Recamier inculpated both himself and Ilori in the charged crimes. Recamier stated, in substance and in part, that he had used fake IDs in other people's names; he and Ilori had been working to submit fraudulent applications for COVID-19 relief loans; and that Ilori and Recamier had used 15 to 20 fake ID Cards, which were maintained by Ilori, over the course of the scheme.

The day after Recamier's arrest, on October 8, 2021, at approximately 10:15 a.m., Ilori left his Queens home and entered a vehicle (the "Mercedes"), which was parked outside and had been fraudulently leased by Recamier and Ilori just a few weeks earlier. Law enforcement officers approached and executed the search warrant, as it pertained to Ilori's person and the area within his immediate control. From Ilori's person, law enforcement recovered, among other things, a key to the LIC Apartment, bank cards in the name of ID Theft Victim-1, and three cellular phones. From the Mercedes's passenger compartment, law enforcement recovered, among other things, an additional cellular phone. Law enforcement also searched the Mercedes's trunk, and recovered, among other things, an additional cellular phone; ID cards in the name of identity theft victims and bearing Recamier's photograph; and bank cards in the name of identity theft victims. Many of the electronic devices recovered during the arrests of Ilori and Recamier provided additional evidence of the defendants' involvement in the charged offenses.

B. Procedural History

On October 8, 2021, Recamier was charged in a criminal complaint, presented in this District, and detained on consent. On December 9, 2021, a grand jury returned indictment 21 Cr. 746 (MKV), charging Ilori and Recamier with Major Fraud Against the United States, in violation of 18 U.S.C. § 1031; conspiracy to commit wire and bank fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; aggravated identity theft, in violation of 18 U.S.C. § 1028A; and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956. On June 15, 2022—approximately one month before trial was scheduled to begin—Recamier pleaded guilty to Count One of the Indictment, Major Fraud Against the United States. Pursuant to a plea agreement between the parties, the defendant agreed to the Stipulated Guidelines Range of 108 to 120 months' imprisonment. But for the ten-year statutory maximum sentence, the applicable Guidelines Range would be 108 to 135 months' imprisonment.

II. Discussion

1. Applicable Law

Following *United States v. Booker,* 543 U.S. 220 (2005) and *United States v. Crosby,* 397 F.3d 103 (2d Cir. 2005), the Guidelines continue to provide a critical touchstone. Indeed, while the Guidelines are no longer mandatory, they remain in place, and district courts must "consult" them and "take them into account" when sentencing. *Booker,* 543 U.S. at 264. As the Supreme Court has stated, "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," which "should be the starting point and the initial benchmark." *Gall v. United States,* 552 U.S. 38, 49 (2007).

After calculating the Guidelines range, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): (1) "the nature and circumstances of the offense and the history and characteristics of the defendant"; (2) the four legitimate purposes of sentencing, as set forth below; (3) "the kinds of sentences available"; (4) the Guidelines range itself; (5) any relevant policy statement by the Sentencing Commission; (6) "the need to avoid unwarranted sentence disparities among defendants"; and (7) "the need to provide restitution to any victims," 18 U.S.C. § 3553(a)(l)-(7). *See Gall,* 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, which are:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant;
>
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

2. A Sentence Within the Stipulated Guidelines Range Is Sufficient, but Not Greater Than Necessary

A sentence within the Stipulated Guidelines Range of 108 to 120 months' imprisonment is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, such a sentence is appropriate to reflect the nature and seriousness of Recamier's offense, to provide just punishment for the offense and promote respect for the law, to afford adequate deterrence to criminal conduct, and to avoid unwarranted sentencing disparities. *See* 18 U.S.C. §§ 3553(a)(1), (2)(A)-(B).

<u>Seriousness of the Offense, Providing Just Punishment, and Promoting Respect for the Law</u>

The conduct at issue is extremely serious. The defendant took part in more than a year of criminal activity, trading in the stolen identities of many identity theft victims and defrauding the SBA and banks into issuing loans on the basis of fraudulent applications.

The defendant knowingly took part in these crimes, in which he attempted to fraudulently obtain more than $10 million, of which he and Ilori successfully received more than $1 million. These funds were intended to assist in the pandemic emergency, to allow for people to keep their jobs and for businesses to keep operating. The defendant stole, and attempted to steal, from the public, taxpayers, and the people and entities these funds were intended to support.

But he did not just rob the Government and deceive banks, he also utilized dozens of stolen identities in the course of his fraudulent loan applications and to maintain accounts and obtain property, such as the LIC Apartment and the Mercedes. His conduct harmed the victims whose identities were stolen and misused. As one victim writes to the Court in a victim-impact statement, since the defendant's crimes, "I have been constantly afraid my credit rating would be impacted. I no longer trust using any form of payment, except cash, will be secure." (Ex. A.) These consequences, and others, are shared by other victims of the defendant's crimes.

The defendant also engaged in this conduct while on state bail and after he was released from Rikers Island, compounding the seriousness of his conduct.

In his sentencing submission, the defendant argues that certain Guidelines sentencing enhancements unjustifiably "magnify" the applicable sentencing range. The defendant does not dispute the applicability of the enhancements. However, the enhancements in question are both applicable and warranted.

First, the defendant asserts that the sophisticated means enhancement involves some form of double-counting, pointing to commentary stating that the use of fictitious entities constitutes sophisticated means and arguing that one cannot commit COVID-19 relief fraud without utilizing fictitious entities, because individuals are not eligible for the business relief. (Dkt. No. 76, at 6.) He is wrong for several reasons. First, there are multiple bases in this case—beyond the use of fictitious entities—supporting the application of the sophisticated means enhancement, including the web of stolen identities and financial accounts that were used to advance the scheme. In addition, there is no "double-counting" as no other applicable Guideline provision considers the use of fictitious entities, which is purportedly inherent to the variety of fraud committed. It is also false that fictious entities are a required condition of COVID-19 relief fraud and/or Major Fraud Against the United States. For example, there have been numerous successful prosecutions of individuals who have submitted fraudulent PPP or EIDL applications in the names of businesses that they, in fact, operated. *See e.g.*, *United States v. Cheng*, 21 Cr. 261 (AJN) (S.D.N.Y.).

Second, the defendant argues that the application of both the loss-table enhancement and the enhancement for the receipt of more than $1 million from a financial institution also constitutes double counting. Again, he is wrong. These enhancements address different concerns: the loss table enhancement is oriented toward intended loss and considers the scope of the fraudulent scheme, while the gross receipts enhancement is oriented toward identifying fraud schemes that successfully obtain substantial funds from financial institutions, undermining the security of financial institutions that are integral to our economy and communal wellbeing.

Finally, the defendant argues that the loss-table enhancement exaggerates the harm of his conduct, because it focuses on intended (and not actual) loss. This enhancement was designed by the Sentencing Commission to contemplate intended loss; accordingly, the enhancement is appropriate here, particularly in light of the actual harm and attempted harm caused by the defendant's conduct.

<u>Deterrence</u>

A sentence within the Stipulated Guidelines Range is necessary to deter future criminal conduct of both the defendant and other similarly situated individuals.

Specific deterrence is highly relevant to the defendant. The defendant took part in his serious and sophisticated fraud, identity theft, and money laundering crimes while he was on pretrial release and shortly after he was bailed from pretrial incarceration at Rikers Island. He also engaged in this conduct with Ilori, who was facing federal charges for similar crimes, and for conduct in which Recamier had also engaged. He thought nothing of stealing from funds designed to help law-abiding companies and Americans who had just lost their jobs in the early days of a devastating global pandemic. He illegally profited from a national emergency. This record suggests the defendant has limited ability to resist the temptation to engage in criminal activity when it suits him.

Furthermore, the Court should reject the defendant's argument that specific deterrence should not be considered because Recamier is likely to be deported. (Dkt. No. 76, at 5.) Although the defendant has been living in the United States illegally since in or about the 1990s, there is no assurance that he will in fact be deported. For example, as the Probation Office notes, Immigration and Customs Enforcement has not yet lodged an immigration detainer. (PSR, at 30.) The Court cannot be confident that the defendant will in fact be deported (and on what timeline). In addition, the defendant's logic would result in the Court treating a citizen who commits the same crime more harshly than the defendant, which both would be unfair and also would run counter to the sentencing command to treat similarly situated defendants similarly.

General deterrence is also a very important consideration in the defendant's case. The defendant took part in these serious fraud and identity theft crimes. These crimes hurt real victims. The defendant's conduct lasted over the course of a year. And Recamier's and Ilori's crimes show how easy it is for others to commit similar COVID-19 relief fraud and identity theft crimes. The defendant apparently believed that the institutions and individuals he was defrauding—whether identity theft victims, banks, or the EIDL program and PPP—were asleep at the switch and would not detect his premeditated and major fraud. The Court's sentencing determination should send a strong message to others about the serious consequences of engaging in such flagrant criminal conduct.

Unwarranted Sentencing Disparities

The Court should also reject the defendant's request for a 60-month sentence, as such a sentence would constitute an unwarranted disparity between similarly situated defendants. Based on data collected by the United States Sentencing Commission, defendants sentenced between 2017 and 2021, subject to U.S.S.G. § 2B1.1 with an offense level of 31 and a Criminal History Category of I received an average sentence of 83 months' incarceration and a median sentence of 86 months' incarceration. *See Judiciary Sentencing Information (JSIN)*, U.S. Sentencing Commission, https://jsin.ussc.gov/analytics/saw.dll?Dashboard. When defendants receiving Section 5K1.1 motions are excluded from the data, approximately one-third of the defendants in this category received a Guidelines sentence. As this data shows, the sentence advocated by the defendant would be inappropriately lenient in light of the sentences imposed on defendants subject to the same Guideline, offense level, and criminal history. And, as described above, the seriousness of the defendant's conduct warrants his inclusion in the class of approximately 32% of such defendants receiving a Guidelines sentence.

III. Conclusion

For the reasons set forth above, the Government respectfully requests that the Court impose a period of imprisonment within the Stipulated Guidelines Range of 108 to 120 months' imprisonment, as such a sentence would be sufficient, but not greater than necessary, to serve the legitimate purposes of sentencing.

Respectfully submitted,

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