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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 746 (MKV)

5 CHRIS RECAMIER,

6 Defendant.

Sentence

7
8 New York, N.Y.
9 October 17, 2022
11:00 a.m.

10 Before:

11 HON. MARY KAY VYSKOCIL,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: DANIEL GEORGE NESSIM, ESQ.
17 DAVID RUSSELL FELTON, ESQ.
JULIANA NEWCOMB MURRAY, ESQ.
Assistant United States Attorneys

18 QUINN EMANUEL URQUHART & SULLIVAN
19 Attorneys for Defendant

20 BY: MICHAEL LINNEMAN, ESQ.
21 MARC LAURENCE GREENWALD, ESQ.

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1 (Case called; appearances noted)

2 THE COURT: Alright. We're here today for the
3 sentencing of Mr. Recamier. Let me just confirm for the
4 record, sir, you do speak and understand English clearly?

5 THE DEFENDANT: Yes, ma'am.

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

8 THE DEFENDANT: I don't.

9 THE COURT: You don't?

10 THE DEFENDANT: I don't.

11 THE COURT: Okay. When Mr. Recamier addresses the
12 Court, please put the microphone over in front of -- well,
13 counsel, you should keep one. Thank you.

14 Alright. Let me ask the government, at the outset
15 when we were here for the plea, I asked you if you had given
16 notice to victims and you told me I think you were in the
17 process. Have you taken care of that responsibility?

18 MR. NESSIM: Yes, your Honor.

19 THE COURT: All right. All victims entitled to notice
20 have received it?

21 MR. NESSIM: Yes.

22 THE COURT: Alright. Are there any victims who wish
23 to be heard today?

24 MR. NESSIM: There were two victim impact statements
25 that were submitted.

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1 THE COURT: Yes, one this morning roughly a half hour
2 ago --

3 MR. NESSIM: That's when we received it, your Honor.
4 We just received it.

5 THE COURT: It's your job to be in touch with these
6 people.

7 MR. NESSIM: They were notified weeks ago.

8 THE COURT: Alright.

9 MR. NESSIM: But we wanted to make sure the Court had
10 it for sentencing.

11 THE COURT: That's my point. A half hour before
12 doesn't make sure I get things in time for sentencing.

13 Does anyone wish to be heard?

14 MR. NESSIM: Besides those two submissions, no.

15 THE COURT: Is anyone going to address the Court?

16 MR. NESSIM: Besides those victims, no.

17 THE COURT: Mr. Recamier plead guilty on June 15,
18 2022, pursuant to an agreement with the government to one count
19 of major fraud against the United States, in violation of Title
20 18, United States Code section 1031. Since that date, the
21 Probation Office has completed its investigation and the
22 parties -- and the Probation Office have each filed -- the
23 Probation Office, the presentence report, and the parties,
24 their sentencing submissions.

25 So let me just reflect what it is that I have received

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1 and considered in connection with today's sentencing. I have
2 the final presentence report, which was filed on September 9th,
3 2022. That's filed at ECF No. 71.

4 I'll just note that apparently after probation
5 tendered the initial presentence report, there were some
6 objections filed by the defense. They were really more in the
7 nature of requests for clarification. They largely related to
8 a case against Mr. Recamier in which he's not charged -- I'm
9 sorry, a related case in which Mr. Recamier is not charged, and
10 probation's discussion of the defendant's personal history. A
11 number of revisions were made by the probation office.

12 There are no objections that I'm aware of by the
13 government, and the government consented to the revisions made
14 by probation in response to the defendant's submissions, which
15 I'll talk to you about individually in a moment to make sure
16 they have all been addressed and resolved.

17 I also have the defendant's sentencing submission,
18 which was filed on October 3rd, 2022. That's at ECF No. 76.

19 I just wish to confirm, counsel, that your letter
20 dated October 3rd, on the letterhead of Quinn Emmanuel, it's an
21 eight-page document, is the entirety of your sentencing
22 submission.

23 MR. LINNEMAN: That is correct, your Honor.

24 THE COURT: There are no letters or any attachments,
25 correct?

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1 MR. LINNEMAN: That is correct, your Honor.

2 THE COURT: I have the government's sentencing
3 submission filed at October 10, 2022. That's at ECF No. 78.
4 That submission attached one letter, a handwritten victim
5 impact statement from a Mark Heffron, and then I received, as I
6 just said a few moment ago, roughly 10:25 this morning a
7 further typewritten victim impact statement.

8 Has that been provided to the defense?

9 MR. NESSIM: Yes, your Honor.

10 THE COURT: Alright. Is there anything else that's
11 before me in connection with sentencing?

12 MR. NESSIM: The parties have also submitted a
13 proposed consent order of restitution.

14 THE COURT: Okay. I have that proposed order. Is it
15 different from what was submitted by your office, Mr. Nessim?

16 MR. NESSIM: No, besides it's now been executed by
17 defense counsel and defendant.

18 THE COURT: Alright. I'll talk to you about that in a
19 moment when we get to the substance of what we're here for
20 today.

21 So I also wanted to put on the record that I received
22 a request from the government that I adjourn today's sentencing
23 until after the trial of Mr. Recamier's codefendant, Mr. Ilori,
24 and I guess that's based on the government's speculation that
25 Mr. Recamier may be called to testify at Mr. Ilori's trial and

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1 that testimony might impact my sentencing of Mr. Recamier.
2 That was opposed by the defendant, and I denied that request.
3 So that's really just for the record. So that we are
4 proceeding today, unless there's anything further from either
5 side.

6 MR. NESSIM: Not from the government.

7 MR. LINNEMAN: Not from the defense.

8 THE COURT: Alright. Thank you.

9 So that is the entirety of what's before the Court,
10 correct?

11 MR. NESSIM: Yes, your Honor.

12 MR. LINNEMAN: Yes, your Honor.

13 THE COURT: Alright. Thank you.

14 So let me ask then to you, Mr. Linneman, have you had
15 the opportunity to read the presentence report and to lodge any
16 objections or comment?

17 MR. LINNEMAN: I have, Your Honor.

18 THE COURT: Alright. Mr. Recamier, have you reviewed
19 the presentence report; have you discussed it with your lawyer;
20 have you called to his attention any corrections or objections?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Alright. Thank you.

23 Has the government had the opportunity to read and
24 review the presentence report and to tender any objections?

25 MR. NESSIM: Yes, your Honor.

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1 THE COURT: Alright. A few things I want to discuss
2 with the parties before we get into the substance of things.
3 First, the parties stipulated in the plea agreement to
4 forfeiture of specific property, as well as restitution in the
5 amount of \$1,114,464. At the change of plea hearing, I asked
6 for a preliminary order of forfeiture, and the government told
7 me you were not assessing forfeiture.

8 As I read some of the statutes, forfeiture and
9 restitution may well be mandatory. I received, in response to
10 an inquiry, an email from the government telling me that you
11 were not seeking forfeiture now, even though Mr. Recamier has
12 consented to forfeiture of specific bank accounts, as I
13 understand what you're telling me. Are you saying because
14 you're going to pursue that, if at all, in a separate civil
15 proceeding?

16 MR. NESSIM: No, your Honor. Major fraud against the
17 United States, the statute the defendant plead guilty to, does
18 not have a forfeiture provision, so there's no statutory
19 provision to impose forfeiture on that statute.

20 What Mr. Recamier did in his plea agreement is in
21 event his codefendant, Mr. Ilori, is convicted at trial -- he
22 is being charged with many offenses.

23 THE COURT: He being whom?

24 MR. NESSIM: Mr. Ilori. Many offenses allowing
25 criminal forfeiture. So we would seek forfeiture of those

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1 accounts.

2 THE COURT: Only if Mr. Ilori is convicted?

3 MR. NESSIM: Well, we will regardless, but the
4 statutory scheme, as our office understands it, does not allow
5 forfeiture on the count of conviction for Mr. Recamier. So in
6 the plea agreement he is acknowledging the money in those --
7 specific property in those accounts are subject to forfeiture
8 and violation of bank fraud, for example, which was cited in
9 the plea agreement, which he was not convicted of. He plead
10 guilty to Count 1, so he is acknowledging that it is properly
11 subject to forfeiture and he's making clear that to the extent
12 he could otherwise file a claim --

13 THE COURT: How is it properly subject to forfeiture
14 if you're just telling me he hasn't been convicted of a crime
15 that permits forfeiture?

16 MR. NESSIM: What that agreement does is it stops
17 Mr. Recamier --

18 THE COURT: From objecting. I get that part.

19 MR. NESSIM: So that's why we included that language.
20 We believed the plea to Count 1 was an appropriate plea to
21 extend, notwithstanding there's not a forfeiture component of
22 that statute. We are seeking restitution obviously in the
23 restitution order.

24 THE COURT: Yes. We'll get to that in one moment.

25 MR. NESSIM: So we can't seek forfeiture.

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1 THE COURT: Can't? Are you saying cannot?

2 MR. NESSIM: In Mr. Recamier's case, that is correct,
3 at least in the criminal forfeiture context.

4 THE COURT: As I read the statutes, if he can be
5 subject to civil forfeiture, then it can be imposed in a
6 criminal proceeding as well.

7 MR. NESSIM: Your Honor, I don't have the case law in
8 front of me or statutes at hand. I do know that the Department
9 of Justice's position is that the major fraud against the
10 United States does not support a forfeiture judgment in the
11 criminal case.

12 I'm happy to look into it.

13 THE COURT: Is it your view that he's not subject to
14 civil forfeiture either unless and until Mr. Ilori is
15 convicted?

16 MR. NESSIM: I don't believe that is the case. I
17 think a civil forfeiture action could be supported as a
18 separate collateral proceeding.

19 THE COURT: Right. Look. I'm just going to say this
20 on the record. The government needs to get its act together on
21 these issues. I don't know how many cases I've had where you
22 come in and -- why do you put in a plea agreement he's agreeing
23 to forfeiture and then you stand up to me and say, we don't
24 have a right to forfeiture? Don't put it in a plea agreement
25 if he's not subject to it. Just put that he won't object.

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1 MR. NESSIM: Your Honor, the plea agreement does not
2 say he's subject to forfeiture. It says he agrees the property
3 is forfeitable and that he won't object.

4 THE COURT: Alright. Next issue.

5 Is this amusing?

6 MR. NESSIM: No. No. I apologize, your Honor.

7 THE COURT: It's the government's decision what kind
8 of penalties to seek, so we'll leave it at that.

9 With respect to restitution -- and I'm telling you
10 right now, if you ever appear before me again and display that
11 kind of disrespectful behavior, there will be consequences.

12 MR. NESSIM: I apologize, your Honor. I intended no
13 disrespect.

14 THE COURT: With respect to restitution, why does the
15 dollar amount differ from what's in the plea agreement, dollar
16 amount in the proposed order that you gave me?

17 MR. NESSIM: The plea agreement had a rough
18 calculation of what we believed restitution to be at the time.
19 Since then, we've collected formal statements from the Small
20 Business Administration that includes a calculation of fees and
21 interest.

22 THE COURT: The number went down.

23 MR. NESSIM: The number did -- it did end up going
24 down.

25 THE COURT: Where is the schedule of victims that I

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1 need to attach to a judgment in the case? Is that attached to
2 the order you handed up?

3 MR. NESSIM: No, your Honor. Because there's only one
4 victim, the information on payment is included in section one
5 of the order.

6 THE COURT: It says a victim. Alright. I would like
7 the name of the victim as a Schedule A to this order, which I'm
8 going to attach and file under seal.

9 MR. NESSIM: Understood.

10 THE COURT: Once I receive it, I will sign the order
11 of restitution.

12 MR. NESSIM: Understood.

13 THE COURT: I'm not signing it until I have the name
14 of the victim.

15 MR. NESSIM: Understood.

16 THE COURT: Okay. Ms. Dempsey, here you go. Thank
17 you.

18 That order, in terms of the substance of it, Counsel,
19 for the defense is on consent?

20 MR. LINNEMAN: Yes, it is, Your Honor.

21 THE COURT: All right. Mr.Linneman, let me just
22 confirm with you. Have you reviewed with the defendant the
23 mandatory standard and special conditions of supervised release
24 that are contained in the PSR?

25 MR. LINNEMAN: I have, your Honor.

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1 THE COURT: And you are comfortable with my referring
2 to them generically as standard, special, and mandatory
3 conditions of release and not putting them on the record
4 verbatim?

5 MR. LINNEMAN: I am, Your Honor.

6 THE COURT: Alright. Specifically, the personal
7 conditions, are there any objections by the defendant to the
8 special conditions that were proposed by probation and that are
9 contained in the PSR at page 33?

10 MR. LINNEMAN: No, your Honor.

11 THE COURT: Alright. And, specifically, the probation
12 office is recommending a search condition pursuant to which
13 Mr. Recamier would subject his person and any property,
14 residence, vehicle, papers, computer or other electronic
15 communications, data storage devices, cloud storage, or media
16 and effects to a search by any United States probation officer
17 and, if needed, that the assistance of law enforcement can be
18 requested. That search would be conducted when there's a
19 reasonable suspicion concerning a violation of the condition of
20 supervision or any lawful conduct by the defendant.

21 Failure to submit to a search may be grounds for
22 revocation of release. And Mr. Recamier would be obligated to
23 warn any other occupants of his premises that the premises is
24 subject to search pursuant to this condition. Any search would
25 need to be conducted at a reasonable time and in a reasonable

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1 manner.

2 Understood?

3 MR. LINNEMAN: Understood and agreed to.

4 THE COURT: You've discussed it with Mr. Recamier?

5 MR. LINNEMAN: Yes, your Honor. We've gone over the
6 entire PSR with Mr. Recamier.

7 THE COURT: Alright. Thank you very much.

8 The other special conditions include an outpatient
9 treatment program, certain financial conditions, that the
10 defendant not incur new credit card charges or open new lines
11 of credit, that financial information be provided to the
12 probation officer, and that the defendant obey immigration laws
13 and comply with any directive of immigration authorities. In
14 addition, that he would be supervised by his district of
15 residence.

16 MR. LINNEMAN: Those are understood and agreed to.

17 THE COURT: Thank you.

18 Alright. So defense counsel, in its submission to me,
19 argues that several of the enhancements in the calculation of
20 the sentencing guidelines range, which I'll note the PSR, the
21 plea agreement, and my calculation of the sentencing guidelines
22 range are all in agreement, but, nonetheless, the defense
23 counsel argues that several of the enhancements overstate or
24 double count the offense conduct. I'll address those arguments
25 in a few minutes, but what I want to just clarify right now, is

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1 the defendant objecting to any particular enhancement or other
2 aspect of the guidelines calculation even though he stipulated
3 to that calculation in the plea agreement?

4 MR. LINNEMAN: No, your Honor. We are not objecting
5 to any of the guidelines calculation or seeking a variance or
6 departure.

7 THE COURT: You are seeking a variance?

8 MR. LINNEMAN: We're just asking for you to craft a
9 sentence within the 3553(a) factors below the stipulated
10 guideline range.

11 THE COURT: That's a variance, isn't it?

12 MR. LINNEMAN: I don't believe that's formally a
13 variance, but I might be mistaken.

14 THE COURT: Okay. Alright. Does the government still
15 agree that Mr. Recamier is entitled to a 2-level reduction in
16 the guidelines calculation by reason of acceptance of
17 responsibility?

18 MR. NESSIM: Yes, your Honor.

19 THE COURT: Alright. And does the government intend
20 to move for a further 1-level reduction pursuant to 3E1.1(b) by
21 reason of the defendant's timely notice of his intent to plead?

22 MR. NESSIM: Yes, your Honor.

23 THE COURT: Alright. That motion is granted, and I
24 have used the 3-level reduction in the -- my own guidelines
25 calculation, as I'll put on the record in a moment.

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1 So let me just turn to -- I don't know, frankly,
2 whether these are objections or just comments, so let me just
3 go through them with the defense to make sure there's nothing
4 that I need to rule on. As I mentioned earlier, the government
5 tendered no objections, correct, Mr. Nessim?

6 MR. NESSIM: Yes, your Honor.

7 THE COURT: Alright. The defense objected first to
8 paragraph 13, which I understand was changed to clarify -- let
9 me just pull it out. Changed to clarify that that paragraph is
10 not about Mr. Recamier; it is about Mr. Chancy, who's a
11 defendant in the related case involving Mr. Recamier's
12 codefendant, Mr. Ilori, in which Mr. Recamier is not charged.

13 Is that comment or objection resolved, counsel?

14 MR. LINNEMAN: It is, Your Honor.

15 THE COURT: All right. Paragraph 16 was added to
16 specify that Mr. Recamier is not charged in that related case,
17 and paragraph 48 was revised to correct typos and to mention
18 Mr. Ilori by name instead of generically calling him a
19 co-conspirator.

20 Are those paragraphs -- any comments or objections
21 resolved?

22 MR. LINNEMAN: They are, your Honor.

23 THE COURT: Alright. Are there any outstanding
24 objections concerning the discussion of the other case in this
25 district in which Mr. Ilori but not Mr. Recamier is charged?

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1 MR. LINNEMAN: We do not have any, your Honor.

2 THE COURT: Alright. Now, there are several
3 paragraphs that deal with Mr. Recamier's personal history, and
4 I'll call out the paragraph numbers. And I want you to tell me
5 on the record whether there are any outstanding issues,
6 alright? So if you need me to stop at any one, just tell me.

7 Alright. So it's paragraph 89.

8 MR. LINNEMAN: No objections, your Honor.

9 THE COURT: Ninety-four.

10 MR. LINNEMAN: No objections, your Honor.

11 THE COURT: You can stay seated. Ninety-six.

12 MR. LINNEMAN: No objections, your Honor.

13 THE COURT: Ninety-nine.

14 MR. LINNEMAN: No objections.

15 THE COURT: 101.

16 MR. LINNEMAN: No objections.

17 THE COURT: 107.

18 MR. LINNEMAN: No objections.

19 THE COURT: 109.

20 MR. LINNEMAN: No objections.

21 THE COURT: And 111.

22 MR. LINNEMAN: No objections.

23 THE COURT: Alright. No outstanding issues on those
24 paragraphs.

25 Then next, paragraph 116, which is mistakenly referred

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1 to as paragraph 115 in the section on objections, mentions an
2 Accurent report that lists six liens and judgments against
3 Christopher Recamier, or with different spellings, Christopher
4 Recamier, including two for which the creditor is Empire
5 Portfolios, LLC. And the defense objected that the defendant
6 is not familiar with something called Empire Portfolios, LLC,
7 and is unaware of any liens.

8 Probation has added a footnote reflecting the
9 defendant's position. Does that address the concern?

10 MR. LINNEMAN: Yes, your Honor.

11 Just to clarify, we don't have any basis to believe
12 that these are not true. We just could not verify the veracity
13 of any of these statements.

14 THE COURT: Alright. So is there an objection then to
15 that paragraph?

16 MR. LINNEMAN: There is not.

17 THE COURT: Okay. So it is my understanding that
18 there are no objections then to the PSR; is that correct,
19 Counsel?

20 MR. LINNEMAN: That is correct.

21 THE COURT: Alright. Mr. Nessim?

22 MR. NESSIM: Yes, your Honor.

23 THE COURT: Alright. So with that, the Court will
24 adopt the PSR and the factual findings and the guidelines
25 calculations contained therein. In a moment, I will put on the

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1 record my own guidelines calculation, but, as I said, it is in
2 accord with what's in the PSR and, frankly, was in accord with
3 the parties' plea agreement.

4 So I adopt the PSR in full, including the factual
5 guidelines and the guidelines calculations contained therein.
6 That PSR will be made part of the record in this matter. It
7 will be filed under seal. It will be made available to any
8 counsel on appeal. They may have access to that PSR without
9 any need for a further application to the Court.

10 So, at this time, does the government wish to be heard
11 further?

12 MR. NESSIM: Yes, your Honor.

13 The government believes that a guideline sentence is
14 appropriate here. And, as calculated as we understand by the
15 Court, that would be within 108 to 120 months' imprisonment.
16 We make some of these arguments in our sentencing submission,
17 and I will highlight some of the major considerations we think
18 should drive some of the Court's sentencing determination.

19 First is the seriousness of the defendant's conduct.
20 He took part in this broad fraud scheme for more than a year
21 with his codefendant Adedayo Ilori and, in the course of that
22 scheme, took advantage of the COVID pandemic and relief
23 programs set up to assist small businesses in coping with that
24 disruption, and in the case of the Paycheck Protection Program,
25 loans specifically to ensure that people were able to keep

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1 their jobs in that time of intense need.

2 He did that fraud conduct while he was facing charges,
3 state drug charges. He had been incarcerated in Rikers Island
4 where he actually met his codefendant, Mr. Ilori, and also took
5 part in this criminal conduct even as Mr. Ilori was arrested in
6 an earlier fraud scheme that Mr. Recamier also took part in.

7 So notwithstanding, you know, seeing in front of him
8 the very real risks of his criminal conduct, he agreed to
9 commit the serious fraud crime. He and Ilori successfully
10 obtained more than a million dollars in COVID-19 relief loans,
11 and they applied for an additional more than nine million
12 dollars, all under the names of -- assumed names of companies,
13 stolen identities of individuals.

14 And the individual identity theft is equally if not
15 more serious to the actual fraud conduct that the defendant
16 took part in. He used the names of more than a dozen
17 individuals to set up accounts to apply for these loans and to
18 obtain things by fraud. Some of these victims, you know, who
19 we expect will testify at trial next week, and some of whom
20 have submitted letters to the Court --

21 THE COURT: Two.

22 MR. NESSIM: Two have submitted letters to the Court,
23 have dealt with real consequences of the theft of their
24 identities. They've dealt with concerns of credit reporting,
25 an inability to get funding for certain things, and the general

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1 sense of panic and fear that someone, a stranger has access to
2 your personal information and can use it however they wish in
3 any connection to crime, as the case here.

4 And the seriousness of the conduct is only added to by
5 the other frauds that Mr. Recamier took part in with Mr. Ilori
6 as part of the same offense, just showing his total disregard
7 for these victims and the law. So some clear examples of that
8 are the leasing of the apartment in Long Island City under the
9 name of an identity theft victim.

10 That apartment, which was a subject of a search where
11 Mr. Recamier was arrested was basically an office for Ilori and
12 Recamier to commit this PPP and COVID-19 relief fraud on a
13 massive scale. There are scanners there, there's identity
14 documents, loan documents. It's as if almost every day, and
15 his post-arrest statement corroborates this, they were there to
16 apply for more fraudulent loans, obtain more fraudulent funds.

17 He also used the stolen identity of an identity theft
18 victim to lease a very valuable car that was used by Mr. Ilori
19 and Mr. Recamier over the course of their involvement in this
20 scheme, and that's an identity also used to apply for
21 fraudulent COVID-19 loans.

22 So his conduct over the year shows both in the fraud
23 conduct, the major fraud against the United States, but also
24 these other major identity theft and fraud schemes that
25 Mr. Recamier had no regard for the law, for the government, for

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1 the community grappling with the severe pandemic, and for the
2 identity theft victims whose identities he used however he
3 wanted.

4 So an incredibly serious offense worthy of a very
5 serious penalty. In addition, deterrence is very important
6 here. I highlighted, I mentioned some of the factors in
7 Mr. Recamier's case that show he is not able to modify his
8 conduct in light of societal strictures: The fact he was on
9 bail; the fact that he's seen his codefendant being arrested
10 and prosecuted federally for similar fraud and bank fraud
11 conduct, identity theft conduct; the fact that he is already an
12 old man who, as far as statistics, should age out of this kind
13 of criminal conduct. Nevertheless, he took part in this
14 repeatedly.

15 So specific deterrence is a very important concern
16 here, as is general deterrence. There are many news articles
17 of fraud in the COVID-19 relief loan space. Obviously, too
18 many people took advantage of an opportunity to make some extra
19 money on the backs of the government and the employees and
20 employers who are struggling to make ends meet.

21 I think one thing that actually separates this fraud,
22 COVID-19 relief fraud scheme apart from some others here is it
23 just was so rampant and so blatant and repeated. They applied
24 for these loans under all these stolen assumed identities,
25 making up information about how many people they employed and

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1 where they operated and what they did and what their bank
2 accounts looked like and what their tax returns looked like out
3 of full cloth.

4 In many of these cases, COVID-19 relief cases that
5 we've seen someone will misrepresent information about an
6 existing business, but the ramifications of their fraud are
7 somewhat limited because it's limited to a business that
8 they're at least ostensibly tied do. They're not going out and
9 creating and stealing identities of all these fraudulent
10 businesses like a domino scheme, just one after the next
11 falling, just trying to get any money you can from the
12 government.

13 So this is a case that's particularly serious and
14 particularly worthy of deterrence. And of course the
15 seriousness factors here also speak to the need to promote
16 respect for the law and provide just punishment for the
17 defendant's offense.

18 Unless the Court has any additional questions, I'll
19 rest on our papers, but the government does believe a guideline
20 sentence is appropriate here.

21 THE COURT: Thank you.

22 Alright. Counsel, would you wish to be heard?

23 MR. LINNEMAN: Yes, your Honor.

24 THE COURT: Alright. You can either remain seated or
25 speak from there or speak from the lectern, whatever you're

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1 more comfortable with.

2 MR. LINNEMAN: Maybe I'll move over here. Thank you,
3 your Honor.

4 THE COURT: Yes.

5 MR. LINNEMAN: Your Honor, we respectfully request
6 that you sentence Mr. Recamier to --

7 THE COURT: Keep your voice up.

8 MR. LINNEMAN: We respectfully request that you
9 sentence Mr. Recamier below the stipulated guidelines range to
10 60 months in prison. All of our reasons are set forth in our
11 sentencing memorandum, but much like the government, there's a
12 couple that I would like to highlight here.

13 The probation office itself recognizes that a
14 guideline sentence is not warranted here, and I believe there
15 are five additional reasons that I'd like to go over. The
16 first is Mr. Recamier's history and characteristics weigh in
17 favor of a 60-month sentence.

18 THE COURT: Meaning his personal history?

19 MR. LINNEMAN: Correct.

20 THE COURT: Okay.

21 MR. LINNEMAN: Those can be considered by your Honor
22 under section 3553(a)(1).

23 Second, the sentence is sufficient to achieve both
24 general and specific deterrence.

25 Third, Mr. Recamier has accepted responsibility for

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1 his actions.

2 Fourth, a 60-month sentence would be just punishment
3 for the crime.

4 And, fifth, a 60-month sentence will avoid unwarranted
5 sentencing disparities.

6 Beginning with Mr. Recamier's history and
7 characteristics, Mr. Recamier did not enjoy a privileged
8 upbringing. He grew up without the support of his father, and
9 his mother suffered from depressive episodes. Mr. Recamier
10 struggled in school and was kicked out several times, but
11 Mr. Recamier still tried to make the most of it.

12 For much of his adult life he was gainfully employed,
13 including in the French Air Force and in the private sector.
14 However, Mr. Recamier's drug abuse took its toll. Mr. Recamier
15 first began using drugs at the age of 13, and that included the
16 use of heroin. He eventually quit and was clean for decades.
17 He consistently held down a job, and in the 1990s, he was in a
18 stable relationship with a woman he loved. However, in 1996,
19 Mr. Recamier was away on a business trip. During this, his
20 girlfriend suddenly and tragically passed away. Mr. Recamier
21 turned to heroin in order to cope.

22 From then and until his arrest, Mr. Recamier used
23 heroin nearly every single day. Heroin has destroyed
24 Mr. Recamier's life and it has destroyed his health. He has
25 overdosed multiple times and even had to be revived.

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1 Mr. Recamier has also tried to quit using heroin. He
2 was only able to quit after he detoxed in MDC without medical
3 supervision. Mr. Recamier is also 59 years old. He has abused
4 heroin for decades, and that has had severe impacts on his
5 health.

6 He also suffers from bronchitis and emphysema. As
7 studies have shown older defendants do not fare well in prison
8 with respect to their health, a 60-month sentence for
9 Mr. Recamier is substantial given both his age and health.

10 Turning to deterrence, a 60-month sentence is adequate
11 to address both general and specific deterrence. With respect
12 to general deterrence, a 60-month sentence is a substantial
13 amount of time to spend in federal custody. That is five
14 years. This sends a message to anyone who wants to commit
15 major fraud against the United States, the consequences that
16 they will face.

17 With respect to specific deterrence, Mr. Recamier has
18 accepted responsibility for his actions and will not commit any
19 further crimes. Sixty months in prison will only further
20 cement this for Mr. Recamier. Additionally, defendants of
21 Mr. Recamier's age rarely recidivate. Moreover, Mr. Recamier
22 has accepted responsibility for his actions. He promptly plead
23 guilty after substituting his counsel, I believe two weeks
24 after that hearing. Mr. Recamier has also cooperated with the
25 probation office as your Honor directed him to do so.

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1 Furthermore, a 60-month sentence is just punishment.
2 Mr. Recamier does not dispute that this is a serious crime. He
3 does not dispute that this has affected the United States
4 Government during a pandemic condition, nor that this has
5 affected real people, the identity theft victims; but 60 months
6 is a serious sentence, and such a sentence is sufficient to
7 reflect the seriousness of the offense, promote respect for the
8 law, and provide just punishment.

9 And, finally, 60 months will avoid unwarranted
10 sentencing disparities. In the government's submission, it
11 argues that Mr. Recamier's -- for Mr. Recamier's range, the
12 average sentence is 83 months of incarceration and the median
13 sentence is 86 months of incarceration. Importantly, the
14 government's own argument shows that the sentence it seeks
15 within the stipulated guideline range is materially higher than
16 what other defendants would receive with the same guidelines
17 range.

18 Additionally, the data on which the government relies
19 does not account for important factors under 3553(a), such as
20 the defendant's history and characteristics. Given
21 Mr. Recamier's age, health, history of drug use, he is not like
22 the average offender.

23 And, finally --

24 THE COURT: Counsel, what is the average age of
25 defendants convicted of this offense?

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1 MR. LINNEMAN: I don't have that data, your Honor.

2 THE COURT: I just have to tell you, I don't find 59
3 all that old.

4 MR. LINNEMAN: And I'm not arguing necessarily that it
5 is.

6 THE COURT: You don't need to respond really.

7 MR. LINNEMAN: Thank you, your Honor.

8 And just one final point on the sentencing differences
9 is that 86 is a -- 86 months is actually a median, and that
10 means that half of defendants actually receive below 86 months.
11 And given Mr. Recamier's history and characteristics, he likely
12 has more in common with those receiving below than above.

13 And just one final point that I'd like to make is we
14 respectfully request that your Honor designation Mr. Recamier
15 for treatment in a drug treatment facility.

16 THE COURT: Yes. Let's talk about that after I impose
17 sentence. Okay.

18 MR. LINNEMAN: Of course.

19 THE COURT: I didn't mean to cut you off otherwise.
20 Are you otherwise concluding?

21 MR. LINNEMAN: Unless your Honor has any further
22 questions, we're happy to rest on our briefs.

23 THE COURT: No, I don't. We'll talk about designation
24 in a few minutes. Okay?

25 MR. LINNEMAN: Of course. Thank you, your Honor.

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1 THE COURT: Alright. Thank you.

2 Mr. Recamier, now is the opportunity, if you would
3 like to address the Court, you may. You're certainly not
4 obligated to do so, but if you wish to address the Court, I'm
5 happy to hear from you.

6 MR. LINNEMAN: Mr. Recamier would prefer to speak
7 through his counsel.

8 THE COURT: Alright. And as I say, Mr. Recamier, that
9 is your right and it in no way impacts the sentence that I
10 intend to impose. Your counsel has done a fine job speaking on
11 your behalf, so that's perfectly fine.

12 Alright. At this stage, I want to describe the
13 sentence that I intend to impose. The attorneys will have a
14 final opportunity to make any legal objections before sentence
15 is actually imposed.

16 So I have started, as I'm obligated to do, with my own
17 independent guidelines range calculation. As I said before, my
18 calculations match the calculation in the PSR, which also
19 matches what the parties stipulated to in the plea agreement,
20 and both sides, in fact, reflect that in the sentencing
21 memorandum that they submitted to me.

22 So, quickly, I used the 2021 guidelines manual. The
23 guideline applicable to the offense to which Mr. Recamier plead
24 guilty is section 2B1.1, and the base offense level is 6.

25 I added 20 levels, because the parties have agreed

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1 that the loss was more than 9.5 million but less than
2 25 million.

3 I then added two additional levels, because the
4 parties again agree that there were 10 or more victims. That's
5 pursuant to section 2B1.1(b)(2)(A)(I).

6 I added two levels because Mr. Recamier used
7 sophisticated means. That's 2B1.1(b)(10)(C).

8 I added an additional two levels because the offense
9 involved a production of a counterfeit access device or
10 authentication feature and the possession of five or more means
11 of identification that unlawfully were produced from or
12 obtained by the use of another means of identification. And
13 that's 2B1.1(b)(11).

14 There is an additional 2-level enhancement because
15 Mr. Recamier derived more than a million dollars in gross
16 receipts from one or more financial institutions as a result of
17 the offense. That's 2B1.1(b)(17)(A).

18 I then subtracted two levels based on the defendant's
19 clear acceptance of responsibility, section 3E1.1(a). And
20 pursuant to the motion which I granted earlier during today's
21 proceeding, I did include a further one level reduction based
22 on Mr. Recamier's early notice or timely unless of his intent
23 to plea, and that's section 3E1.1(b). And that produces an
24 offense level of 31.

25 According to the PSR, Mr. Recamier has zero criminal

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1 history points, although I do note he was charged in a drug
2 case in New York and he was out on bail when he participated in
3 the offense conduct giving rise to this case.

4 He is, according to the PSR, in Criminal History
5 Category 1. That offense level of 31 with a Criminal History
6 Category of 1 produces a range of 108 to 135 months. There is,
7 however, a statutory maximum of 10 years, and, therefore, the
8 guidelines range is 108 to 120 months.

9 I have also considered each of the 3553(a) factors,
10 and the need for any sentence that I impose to be sufficient
11 but not greater than necessary to serve the goals of sentencing
12 as set forth in 3552(a)(2).

13 So let me begin by just stating on the record that I
14 do intend to impose a guidelines range sentence, although the
15 lower end of the guidelines range.

16 This is my reasoning for the record. The conduct in
17 this case is incredibly serious. It is corrupt and it is,
18 frankly, cynical. Taking advantage of a national emergency to
19 enrich one's self by attempting to steal tens of millions of
20 dollars from the public coffers while Americans were dying en
21 mass is despicable behavior in the extreme.

22 Mr. Recamier is in this country illegally. You have
23 no right to be here by your own admission, and yet you decided
24 to help yourself to millions of dollars of American taxpayer
25 money that was intended to respond to one of the worst public

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1 health crises this country and, in fact, the world has ever
2 faced.

3 This is, moreover, not a case just about stealing
4 money from the American Government. You stole the identities
5 of individual people. You brazenly impersonated at least one
6 of your victims while you interacted with bank employees. You
7 jeopardized some of the very businesses this money was supposed
8 to help save. Your theft of people's identities had serious
9 and significant and lasting consequences for your victims. You
10 destroyed people's confidence and the good working order of our
11 system of law and order.

12 Now, I do appreciate that you had a somewhat difficult
13 life. Growing up without a father is undoubtedly difficult,
14 and I understand that your mother struggled with depression.
15 In addition, you have struggled with drug addiction from a
16 young age. You did manage apparently to get yourself clean.
17 You worked. You had a decent employment history. But then you
18 relapsed when a long-time girlfriend died tragically, and that
19 resulted in your relapsing and apparently multiple drug
20 overdoses.

21 So I understand that you have suffered some real
22 hardships, and I do take that personal history into account.
23 I'm also aware of your acceptance of responsibility for which
24 you were given credit in the guidelines calculation. I do also
25 take into account your adjustment to your presentencing

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1 detention in this case. I commend you for your efforts to
2 avail yourself of educational programs that were available at
3 the facility and for the job responsibilities that you have
4 undertaken. But the other 3553(a) factors, including the need
5 for a just punishment, the need to promote respect for the law,
6 the need for deterrence, and the need to reflect the
7 seriousness of the offense clearly outweigh any mitigation as a
8 result of your personal circumstances. So I cannot find that a
9 sentence below the guidelines range, whether you call it a
10 variance or something else, is warranted.

11 Now, your attorney argues there's no need for specific
12 deterrence in this case because you're old and you have some
13 health issues and you are subject to deportation. I don't find
14 any of those arguments compelling.

15 With respect to your age, I'll just say, first, I
16 don't find 59 particularly old. In any event, there are
17 certainly men who commit crimes when they're younger who seem
18 to age out of that conduct, but you are now 59 years old and
19 you recently engaged in very serious criminal conduct. There's
20 no basis for me to conclude, as your attorney suggested, that
21 you'll be any less inclined to commit fraud when you are 64
22 years old, which is what you would be at the age if I were to
23 impose the sentence your counsel is requesting.

24 Next, I do not know whether or if you will be
25 deported. I note that when the PSR was written, Immigration

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1 and Customs Enforcement had not lodged an immigration detainer.
2 That's reflected at page 30 of the PSR. I'm not sure, in any
3 event, that you even need to be physically present in the
4 United States for much of the type of conduct that's at issue
5 in this case. And, in any event, I cannot justify treating
6 someone who's here in the United States illegally less harshly
7 than a United States citizen. That would fly in the face of
8 the mandate to avoid unwarranted sentencing disparities.

9 There is clearly a need in this case for specific
10 deterrence, because you were out on pretrial release in a state
11 drug case when you took part in this crime. And your
12 co-conspirator was facing charges in a related case, and that
13 did not deter you either. The fact that you engaged in a
14 serious federal fraud while on pretrial release in a state case
15 and while your co-conspirator was facing charges in a related
16 case weighs in favor of a longer sentence to promote respect
17 for the rule of law.

18 I also find there is a need, strong need for general
19 deterrence. I have an obligation to send a message that the
20 United States will not tolerate this kind of fraud and abuse.
21 If you steal people's identities and you steal from the
22 government and its programs, you will face significant
23 punishment.

24 Finally, I just want to address defense counsel's
25 arguments that certain enhancements to which you stipulated

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1 unfairly magnify or double count your conduct. These arguments
2 as well are not persuasive to the Court. First, the government
3 permitted you to plead to one count out of six counts, and yet
4 you clearly have admitted facts underlying several of the other
5 charges. And, as I say, you agreed to these enhancements in
6 the plea agreement. Those enhancements and your stipulation to
7 them are part of the bargain you struck with the government
8 when it allowed you to plead to only one count instead of
9 facing a trial on all of the counts or some subset of those
10 counts. But let me talk specifically about some of those
11 enhancements.

12 With respect to the sophisticated means enhancement,
13 defense counsel argues in effect that you had to do things like
14 create shell companies to commit this type of fraud. This is
15 just baffling to me. Not every bank fraud involves
16 sophisticated means. This one clearly did. The application of
17 the sophisticated means enhancement is completely appropriate
18 and supported by the facts in the PSR, to which there is no
19 objection.

20 Next, there's nothing objectionable about the amount
21 of the loss calculation under the loss table pursuant to the
22 guidelines, section 2B1.1(b)(1)(K), or the application of the
23 enhancement under section 2B1.1(b)(17)(A), because you did
24 derive more than a million dollars in gross receipts from one
25 or more financial institutions as a result of the offense as

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1 you have stipulated.

2 Finally, you stipulated that the intended loss amount
3 was more than 9.5 million, and, as I say, you stipulated that
4 you received more than 1 million dollars from banks. It is
5 well established that the intended loss is an appropriate
6 measure of culpability, and the loss table and enhancement in
7 issue account for different aspects of your offense conduct.
8 You not only intended to steal 10 million dollars from the
9 government, you also successfully defrauded financial
10 institutions, banks, on a significant scale, and thereby
11 undermined the good working order of our financial system.

12 So, with all of that in mind, it is my intent to
13 sentence you, as I say, within the guidelines range, but at the
14 lowest end of that range, to 108 months of incarceration. I
15 find that such a sentence is sufficient but not greater than
16 necessary to serve the goals of sentencing set forth in section
17 3553(a)(2).

18 It's my intent to sentence you thereafter to three
19 years of supervised release on the standard mandatory and
20 special conditions of release, including the special conditions
21 that I previously reviewed with your counsel and with you on
22 the record and to which your counsel tells me you have no
23 objection. And, as I say, those conditions are set forth in
24 the PSR, pages 31 through 33.

25 There is a \$100 mandatory special assessment per count

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1 that will be payable immediately. It is the Court's intent not
2 to impose a fine, because I do find, based on the PSR, that you
3 do not have an ability to pay a fine.

4 Restitution must be made in the amount set forth in
5 the consent order of restitution, which you signed earlier this
6 morning, so you will be obligated to pay restitution in the
7 total amount of \$1,072,062.47 to the victim, which the
8 government is going to identify to me later on today.

9 MR. NESSIM: Yes, your Honor.

10 THE COURT: I will then sign that order of
11 restitution.

12 The government has advised that it is not seeking
13 forfeiture, so I will not be ordering any forfeiture as part of
14 the sentence in this case.

15 So that is my intent with respect to sentencing. Let
16 me ask each side, does the government know of any legal reason
17 that this sentence may not be imposed?

18 MR. NESSIM: No, your Honor.

19 THE COURT: Does the defense know of any legal reason
20 why the sentence may not be imposed as I've outlined?

21 MR. LINNEMAN: No, your Honor.

22 THE COURT: Alright. Thank you.

23 Mr. Recamier, would you please stand?

24 It is the judgment of the Court that you be remanded
25 to the custody of the Bureau of Prisons to serve a sentence, a

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1 term of incarceration of 108 months, and to be followed by a
2 three-year term of supervised release on the standard mandatory
3 and special conditions set forth in the PSR and the special
4 conditions that I specifically outlined earlier on the record.

5 You are obligated to pay a \$100 mandatory special
6 assessment that is payable immediately. In addition, the
7 consent order of restitution that you signed earlier today will
8 be entered on the docket and included as part of judgment. And
9 I will not be ordering any fine or any forfeiture.

10 It is the Court's view that -- I'm sorry. You may be
11 seated, sir.

12 Alright. So, counsel, you earlier began to address
13 with me a request for a recommendation with regard to a
14 facility. I just want to say on the record that we have been
15 advised by the Bureau of Prisons not -- they won't entertain
16 from me a request for a specific facility, but they will
17 entertain requests with regard to location or services
18 available at particular facilities. And it's their job then --

19 You need to understand, Mr. Recamier, I do not
20 designate the facility where you will be incarcerated. That's
21 the Bureau of Prison's prerogative. But I will listen to
22 requests for any recommendations and include that in the
23 judgment.

24 Counsel, do you wish to be heard now?

25 MR. LINNEMAN: Yes, your Honor. Thank you.

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1 We just ask that you recommend the Bureau of Prisons
2 designate him to a facility with a drug treatment program. As
3 I said before, Mr. Recamier is serious about quitting his
4 addiction and recognizes that he cannot do this on his own.

5 THE COURT: Okay. I will certainly include that in
6 the request for recommendations.

7 Is there any request with regard to location?

8 MR. LINNEMAN: There is not, your Honor.

9 THE COURT: Okay. Alright. Is there a motion by the
10 government with respect to open counts?

11 MR. LINNEMAN: Yes, your Honor. The government moves
12 to dismiss the open counts against the defendant.

13 THE COURT: Alright. That motion will be granted.

14 Mr. Recamier, let me advise you before we adjourn for
15 the day that to the extent you haven't waived it in connection
16 with your plea agreement, you do have the right to appeal from
17 your conviction and from the sentence that I have just imposed.
18 If you're unable to pay the costs of any appeal, you may apply
19 for leave to appeal in forma pauperis.

20 Any notice of appeal must be filed within 14 days of
21 the judgment, which -- judgment of conviction, which will
22 include your sentence. I will file that as soon as we are able
23 to finalize it. It may be by the end of the day today, but
24 certainly in the next day or two at the very latest, so you
25 need to pay attention to when that gets filed. And as I say,

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1 any appeal must be filed within 14 days of entry of that
2 judgment.

3 So before we depart, Mr. Recamier, let me just say, as
4 I said before, I do commend you for your interest in
5 participating in educational programs that are available. I
6 also understand the difficulty of beating your drug habit, and
7 I wish you all the best in continuing on the path to better
8 health in beating that habit. Hopefully the prison where you
9 will be designated will have a program that will be beneficial
10 to you.

11 And it's my sincere hope that when you finish serving
12 your sentence, you will live a law-abiding life and not again
13 find yourself involved with our criminal justice system. So I
14 wish you well, sir.

15 I thank our court reporter for being with us today,
16 and we stand adjourned. Thank you.

17 (Adjourned)
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