U.S. Department of Justice

United States Attorney
Eastern District of New York

JPL/TJT:AB
F. #2020R01145

271 Cadman Plaza East
Brooklyn, New York 11201

March 26, 2024

By ECF

The Honorable Ann M. Donnelly
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Arkadiy Khaimov,
Criminal Docket No. 20-580 (AMD)

Dear Judge Donnelly:

The government respectfully submits this letter in anticipation of sentencing in the above-captioned case, which is scheduled for Wednesday, April 3, 2024, at 10:00 a.m. On November 16, 2022, the defendant pleaded guilty to Count 2 of the Superseding Indictment, which charged him with money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). That money laundering conspiracy enabled the defendant and his brother to steal almost 19 million dollars from Medicare, as they exploited the relaxation of antifraud safeguards during the COVID-19 pandemic for their own personal benefit.

In light of the seriousness of the offense and the harm caused to a vital healthcare benefit program, the government respectfully submits that a sentence within the applicable United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") range of 97 to 121 months' imprisonment is sufficient, but not greater than necessary, to achieve the goals of sentencing. See 18 U.S.C. § 3553(a). The government also respectfully submits that the Court should order the defendant to pay restitution in the amount of $18,921,139.21 to Medicare, and a forfeiture money judgment in the amount of $9,647,506.08, as set forth in the Court's March 21, 2023 preliminary order of forfeiture (ECF No. 83).

I. Background

A. The Fraudulent Scheme

From 2018 through 2020, Arkadiy Khaimov and his brother Peter Khaim engaged in a fraudulent scheme involving no less than 16 pharmacies across New York City (the "Scheme Pharmacies"). (October 16, 2023 Presentence Investigation Report ("PSR") ¶¶ 24, 26).

While Khaim and Khaimov opened and controlled the Scheme Pharmacies, they concealed their involvement by paying nominee owners to open bank accounts for the pharmacies and falsely represent their ownership. (PSR ¶ 26). The defendants also recruited and paid others to pretend that they were supervising pharmacists of the Scheme Pharmacies. (PSR ¶ 26). Many of the Scheme Pharmacies were simply false fronts themselves, without regular pharmacy business. (PSR ¶ 26). To further enable their scheme, the defendants caused the submission of fraudulent documents that falsely represented the owners and supervising pharmacists to the New York State Board of Pharmacy Licensing (the "Pharmacy Board"), pharmacy benefit managers, and insurance plans. (PSR ¶¶ 26). The defendants likewise caused the submission of fraudulent New York Pharmacy Applications with the same misrepresentations. (PSR ¶ 27).

The defendants, together with other members of the conspiracy, then used the Scheme Pharmacies to submit claims for prescription drugs that were not actually (a) purchased or stocked by the Scheme Pharmacies; (b) dispensed to beneficiaries; (c) prescribed by the medical professionals who purportedly gave their authorization; and (d) medically necessary and reasonable. (PSR ¶ 28). Khaim and Khaimov caused these submissions even when the Scheme Pharmacies were not supervised, licensed, or even operational. (PSR ¶ 28).

The predicate healthcare fraud conspiracy included the submission of claims for Targretin Gel 1% ("Targretin") and Panretin Gel 0.1% ("Panretin"), two expensive drugs used to treat skin problems arising from Cutaneious T-Cell Lymphoma and Kaposi Sarcoma respectively. (PSR ¶¶ 17-18, 20, 28). To prevent fraudulent billing for these lucrative and specialized cancer medications, prescription drug plans required pharmacies to seek their prior authorization and furthermore prohibited pharmacies from billing for multiple refills to a single beneficiary within a 30-day period (the "Refill-Too-Soon Edits"). (PSR ¶¶ 20, 23). However, federal regulations provided for the relaxation of these general restrictions during public health emergencies, to ensure that the medications remained available to beneficiaries in need. (PSR ¶¶ 21-23).

Khaim and Khaimov exploited the COVID-19 health emergency to cause the submission of fraudulent claims for the two gels, which were neither legitimate treatments for COVID-19 nor actually dispensed by the Scheme Pharmacies. (PSR ¶¶ 19, 30). Khaim, Khaimov, and others caused an exponential increase in claims for these expensive drugs just as New York became the epicenter of the pandemic. (PSR ¶ 30). For example, at just one of the Scheme Pharmacies, payments for Targretin increased from an average of less than $12,000 per month prior to COVID-19 to nearly $2 million per month from approximately March 2020 to May 2020. (PSR ¶ 30). Between December 2018 and July 2020, Khaim and Khaimov used the Scheme Pharmacies to submit over $45 million in claims for Targretin and Panretin to Medicare Part D plans. (PSR ¶ 31).

B. The Money Laundering Conspiracy

Khaim, Khaimov, and their coconspirators concealed the scheme and fraudulently obtained proceeds by using at least 14 entities with names that closely resembled those of legitimate pharmaceutical wholesale companies (the "Pass-Through Entities"). (PSR ¶¶ 25, 29). The defendants and their coconspirators would write checks from the Scheme Pharmacies' accounts to the Pass-Through Entities, including references to purported invoices for goods or services that were not actually provided. (PSR ¶ 29). These checks would typically also feature the stamped signatures of the nominee owners, including one nominee owner who had died before purportedly signing the check. (PSR ¶ 29).

Initially, the defendants and coconspirators laundered the fraudulent proceeds by causing the Pass-Through Entities to wire funds to companies in China, which would then pass the funds to individuals in Uzbekistan who were associated with an unlicensed money services business in Queens. (PSR ¶ 32). Khaim and Khaimov then received a corresponding amount of cash from a coconspirator ("Money Launderer 1") minus a commission. (PSR ¶ 32). Eventually, as the fraudulently obtained reimbursements exceeded the amount of cash available through the unlicensed money services business, the defendants and coconspirators laundered the proceeds by causing the Pass-Through Entities' nominee owners to (a) withdraw cash and have it delivered, sometimes in the night, to Khaimov and his relatives, and (b) purchase millions of dollars in certified checks and write personal checks to Khaimov, Khaim, and others including their relatives. (PSR ¶ 33).

The defendants, together with others, laundered $18.9 million from the Scheme Pharmacies' bank accounts to the accounts of the Pass-Through Entities, as well as accounts controlled by Khaim and Khaimov personally. (PSR ¶ 34). Khaim and Khaimov further dissipated the proceeds through transfers to family members, real estate investments in the United States and abroad, purchases of jewelry and other luxury items, and payments for personal expenses such as tennis clubs and architects. (PSR ¶ 34).

C. Khaimov's Role

Khaimov was responsible for coordinating the money laundering operations of the Scheme Pharmacies with Money Launderer 1. (PSR ¶ 40). Khaimov regularly provided Money Launderer 1 with checks from the Scheme Pharmacies, which typically referred to fictitious invoices and bore the stamped signatures of the nominal account holders. (PSR ¶ 40). Money Launderer 1 then delivered cash or checks to Khaimov while keeping a fee of approximately 5% of the check amount. (PSR ¶ 40). Khaimov and Money Launderer 1 frequently communicated by WhatsApp messaging regarding the exchange of the checks from the pharmacies to the Pass-Through Entities. (PSR ¶ 40). To better conceal the money laundering and fraud at the Scheme Pharmacies, Khaimov also told Money Launderer 1 to create or use entities with names that resembled real wholesalers or included words like "wholesale." (PSR ¶ 41).

Although Khaimov primarily focused on the money laundering side of the broader scheme, he was also involved with the Scheme Pharmacies' underlying operations. (PSR ¶ 43). Among other things, Khaimov recruited an individual to act as the nominee owner of a pharmacy, agreeing to pay the nominee owner $3,000 per month to act as an owner without assuming any of the corresponding obligations. (PSR ¶ 43). Khaimov also visited the Scheme Pharmacies and met with the purported owners, further underscoring his awareness of and involvement in the broader scheme. (PSR ¶ 43). In total, Khaimov was personally involved in receiving and laundering at least $9,647,506.08 from the scheme. (PSR ¶ 42).

D. Guilty Plea

On November 16, 2022, Khaimov pleaded guilty to Count 2 of the Superseding Indictment. During his allocution, Khaim acknowledged that between September 2019 and December 2020, he "agreed with others to launder funds that were the proceeds of illegal activities that various pharmacies were engaged in including wire fraud," that he "would receive checks from pharmacies and provide these checks" to a coconspirator who "deposited the pharmacy checks in various accounts and returned cash," and that Khaimov "would then give the cash back to the pharmacies. These transactions were designed to conceal the nature of unlawful activity that the pharmacies had engaged in." (Nov. 16, 2022 Tr. 17).

II. The Defendant's Guidelines Range

A. The PSR and Government's Calculations

The PSR calculated a total offense level of 32 for the defendant. (PSR ¶¶ 50–60; January 23, 2024 Addendum to the PSR (the "Addendum") (striking the enhancement listed at PSR ¶ 55). The PSR's offense level is based on the following calculations:

Base Offense Level: 6 (§2S1.1(a)(1))	6
Plus: Intended Loss above $25,000,000 (§§2S1.1(a)(1), 2B1.1(b)(1)(L))	+22
Plus: Conviction under 18 U.S.C. § 1956 (§2S1.1(b)(2)(B))	+2
Plus: Sophisticated laundering (§2S1.1(b)(3))	+2
Plus: Manager or supervisor (§3B1.1(b))	+3
Subtotal:	35
Minus: Acceptance of responsibility (§3E1.1)	-3
Total:	32

The PSR estimated that the defendant falls into criminal history category ("CHC") II, resulting in an advisory sentencing range of 135 to 168 months' imprisonment. (PSR ¶¶ 62-65, Addendum).

While the government agrees with the substantial majority of the PSR's findings, it adheres to the terms of its plea agreement, which did not include the three-level aggravating role enhancement under U.S.S.G. § 3B1.1(b) in its estimate. For clarity, the government's estimated offense level is as follows:

Base Offense Level: 8 (§2S1.1(a)(2))	8
Plus: Laundered funds above $9,500,000 (§§2S1.1(a)(2), 2B1.1(b)(1)(K))	+20
Plus: Conviction under 18 U.S.C. § 1956 (§2S1.1(b)(2)(B))	+2
Plus: Sophisticated laundering (§2S1.1(b)(3))	+2
Subtotal:	32
Minus: Acceptance of responsibility (§3E1.1)	-3
Total:	29

The government agrees with the finding that the defendant falls into CHC II, and therefore calculates the Guidelines range as 97 to 121 months' imprisonment.

B. The Defendant's Objections

In his sentencing submission, Khaimov disputes (1) the calculation of his offense level; and (2) the assessment that he falls into CHC II. The government addresses each below.

1. The Defendant's Offense Level

First, Khaimov challenges Probation's decision to calculate his base offense level by reference to Guidelines Section 2S1.1(a)(1), rather than 2S1.1(a)(2). See Defense Submission at 3–4. According to Khaimov, this is incorrect because he did not participate in the health care fraud conspiracy at all. See id. Khaimov adds that Probation therefore calculated his offense level by reference to an "inflated loss amount." Id. at 4.

The government adheres to the terms of its plea agreement, which calculated Khaimov's base offense level by reference to Guidelines Section 2S1.1(a)(2) rather than 2S1.1(a)(1). However, the government notes that under either calculation, the base offense level and loss enhancement still amount to 28. See supra Section II.A. (noting Probation's calculation of a base offense level of six plus a 22-point increase for intended loss under Section 2S1.1(a)(1), and the parties' calculation of a base offense level of 8 and a 20-point increase for funds laundered under Section 2S1.1(a)(2)). Even if the Court focuses solely on the value of the funds laundered, rather than the $45 million billed to Medicare, that would not impact Khaimov's offense level. Khaimov's argument that the intended loss figure overstates his culpability is a red herring, and it does not warrant a downward variance.

More importantly, the government does not agree that Khaimov had no involvement in the underlying scheme to defraud. As noted above, he met with the nominee owners of the Scheme Pharmacies, and he recruited at least one of them to deceive the Pharmacy Board and thus enable his co-conspirators' fraudulent billing. Moreover, the money laundering and healthcare fraud conspiracies did not take place in siloed vacuums. They were two halves of one whole, and Khaimov knew his money laundering activities furthered the healthcare fraud. He encouraged Money Launderer 1 to create Pass-Through Entities with names resembling those of real pharmaceutical wholesalers, and included references to fictitious invoices on checks from the Scheme Pharmacies to the Pass-Through Entities, to create the appearance that the Scheme Pharmacies were engaged in legitimate business rather than fraud. Even if Khaimov was not the leader of the healthcare fraud conspiracy, he played his part in ensuring its success.[1]

[1] The defendant also frequently references the government's initial position that he faced an enhancement under Guidelines Section 3C1.3, which may apply where a defendant committed an offense while on pretrial release. As the defendant notes, the government is not seeking that enhancement now. But for clarity of the record, the government does not "concede[] Mr. Khaimov did not engage in criminal conduct after his arrest on the Azrack Indictment." Defense Submission at 5. To the contrary, in connection with his guilty plea, the defendant allocuted to committing the offense of conviction through December 2020, that is, at least in part after being arrested and released on bond in the summer of 2020 in connection with United States v.

2. The Defendant's Criminal History Category

Khaimov argues that Probation's CHC calculation overstates his culpability and thus deprives him of a two-point reduction to his offense level under Guidelines Section 4C1.1. That argument is baseless. CHC II appropriately reflects the gravity of Khaimov's multiple offenses, and he is not a zero-point offender.

Khaimov claims that the conduct alleged in the Superseding Indictment is substantially the same conduct to which he pleaded guilty in United States v. Khaimov, 20-CR-267 (E.D.N.Y.) (JMA).[2] According to Khaimov, the offenses are effectively one and the same because "they occurred in the same district, during the same time period, and involved essentially the same scheme." Defense Submission at 5.

Khaimov's claim is patently false, on several levels. The Superseding Indictment and "Azrack Indictment" differ in at least five significant ways: (1) time period, (2) counts charged, (3) victims, (4) drugs, and (5) means of committing the fraud. The Azrack Indictment charged Khaimov with conspiracy to commit mail and wire fraud between February 2017 and July 2018. See 20-CR-267, ECF No. 7, at ¶¶ 13–14. In that case, Khaimov and his co-conspirators victimized the pharmaceutical manufacturer of a drug that is neither Targretin nor Panretin by abusing the manufacturer's privately-offered co-pay program. See generally id. In contrast, the Superseding Indictment charged Khaimov with (1) a conspiracy to commit healthcare fraud and wire fraud between October 2018 and December 2020; (2) conspiracy to commit money laundering between September 2019 and December 2020; and (3) two substantive counts of money laundering in 2020. See ECF No. 32. In this case, Khaimov and his co-conspirators victimized Medicare through fraudulent claims for Targretin and Panretin, and they accomplished this through the abuse of emergency override codes and federal regulations meant to ensure access to medications during public health emergencies.

In short, there is no basis to treat the offenses as the same. On the contrary, as Probation recognized, "that the defendant engaged in the instant offense soon after his involvement in another serious fraud scheme is notable and speak[s] to the need for specific deterrence, which is appropriately represented by the criminal history category as calculated." Addendum. The only real commonality between Khaimov's prior offense and the instant one is his willingness to profit from the fraudulent abuse of pharmacies, no matter how that undermines public and private efforts to ensure greater access to healthcare.

Khaimov, 20-CR-267 (E.D.N.Y.) (JMA). Notwithstanding, the government does not seek a Fatico hearing on this issue.

[2] Khaimov was sentenced to 51 months' imprisonment in that case; his surrender date has been adjourned pending sentencing in this case. (PSR ¶ 63). The Government agrees with Probation that the sentence imposed here should run consecutively to the sentence already imposed there.

III. A Significant Sentence of Incarceration Is Appropriate

A. Legal Standard

While the Guidelines are advisory rather than mandatory, district courts are still "require[d] . . . to consider Guidelines ranges" in determining sentences. United States v. Booker, 543 U.S. 220, 245 (2005); see 18 U.S.C. § 3553(a). The Supreme Court has elucidated the proper procedure for sentencing courts to follow in light of Booker: "[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted). Next, a sentencing court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [the Court] may not presume that the Guidelines range is reasonable. [The Court] must make an individualized assessment based on the facts presented." Id. at 50 (citation and footnote omitted).

The Section 3553(a) factors that the Court must consider in sentencing the defendant include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to (a) reflect the seriousness of the offense, to promote respect for the law and to provide just punishment, (b) afford adequate deterrence to criminal conduct, (c) protect the public from further crimes of the defendant, and (d) provide the defendant with appropriate education or vocational training; (3) the kinds of sentences available; (4) the Guidelines range; (5) pertinent policy statements of the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution.

B. Application of Law

The government respectfully requests that the Court impose a term of imprisonment within the adjusted Guidelines range of 97 to 121 months. A sentence within that range is sufficient but not greater than necessary to achieve the goals of sentencing, and it would appropriately reflect important factors including the nature and circumstances of the offense, the need to promote respect for the law, and the need for specific and general deterrence. See 18 U.S.C. § 3553(a).

1. The Seriousness of the Offense, and Promoting Respect for the Law

The defendant's participation in this scheme shows a general lack of respect for the law. A Guidelines sentence is the just punishment for his efforts to profit from the exploitation of federal healthcare programs.

Money laundering is a serious offense that plays a critical role in the promotion and concealment of a range of lucrative crimes. As detailed in the Superseding Indictment, the defendant's money laundering conspiracy aimed to siphon millions of dollars obtained through wire and healthcare fraud. Fraud against Medicare and Medicaid is itself a serious offense that targets national programs relied on by millions of Americans. Congress aptly summarized the effects of healthcare fraud over forty-five years ago:

> In whatever form it is found, . . . fraud in these health care financing programs adversely affects all Americans. It cheats taxpayers who must ultimately bear the financial burden of misuse of funds in any government-sponsored program. It diverts from those most in need, the nation's elderly and poor, scarce program dollars that were intended to provide vitally needed quality health services.

H.R. 95-393, pt. II, at 44 (1977); see also H.R. Rep. 104-747 (1996) ("Everyone pays the price for health care fraud: beneficiaries of Government health care insurance such as Medicare and Medicaid pay more for medical services and equipment; consumers of private health insurance pay higher premiums; and taxpayers pay more to cover health care expenditures."). These concerns are just as pressing today, which is why Congress has enacted increasingly severe penalties for health care fraud, most recently directing the Sentencing Commission to add enhancements for defendants who commit the most financially serious health care frauds. See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §10606(a)(2)(C), 124 Stat. 119, 1007 (2010) (directing Sentencing Commission to amend guidelines in order to punish health care fraud more severely).

The conspiracies charged in the Superseding Indictment implicate all the foregoing concerns. Khaimov and his co-conspirators' efforts resulted in the submission of over $45 million worth of claims to Medicare for two drugs alone, and their extensive money laundering network enabled them to collectively steal almost $20 million from Medicare as a result. Khaimov's gain is a loss for the programs designed to serve those most in need of quality healthcare. A sentence within the Guidelines range would properly punish Khaimov's disregard for the law.

2. The Nature and Circumstances of the Offense

Money laundering and healthcare fraud are always serious, but the offense conduct here is surpassingly so. From its inception, the scale and complexity of the overall scheme here went well beyond most others. The members of the conspiracy coordinated and paid recruiters, nominal owners, and licensed pharmacists to collectively deceive the Pharmacy Board, pharmacy benefit managers, and insurance plans into believing that at least sixteen of their pharmacies were legitimate businesses. Peter Khaim was undoubtedly the leader of this activity, but Khaimov also met with the nominal owners of the Scheme Pharmacies and recruited at least one of them himself. He played his part to help set up the scheme.

The fraudulent activity at the Scheme Pharmacies that he enabled focused on specialized medication for serious ailments. Targretin and Panretin target the side effects of specific and/or rare forms of cancer, and Targretin is to be used only where other therapies have failed or are contra-indicated. (PSR ¶ 16). These drugs are predictably expensive as a result, with one tube of Targretin costing approximately $34,000 on average wholesale. (PSR ¶ 19). Needlessly billing Medicare millions for these rare treatments depletes the funds available to beneficiaries who actually need the medications, and it raises the costs for the broader public to fund similar expenses in the future. Submitting false and fraudulent claims for dispensing prescription drugs to vulnerable beneficiaries also creates a record that could complicate their treatment in the future.

Worse still, the defendant and his coconspirators capitalized on the COVID-19 pandemic to siphon exponentially more money from the public. As noted above, payments for Targretin at one of the Scheme Pharmacies increased from an average of less than $12,000 per month to nearly $2 million per month at the start of the public health emergency. This was possible only because the defendant and his coconspirators took advantage of the relaxation of Refill-Too-Soon Edits and prior authorization requirements, which federal regulations allowed solely to ensure that those in need could still receive their medications amid the disruptions of a global pandemic. Khaimov personally profited from the exploitation of this well-intentioned measure.

To conceal and perpetuate this scheme, Khaimov and his coconspirators used no less than fourteen Pass-Through Entities that were named to resemble legitimate medical wholesalers. Khaimov personally suggested the use of these misleading names, and he encouraged Money Launderer 1 to continue creating Pass-Through Entities to facilitate the money laundering. Khaimov also took the lead on the checks-for-cash arrangement with Money Launderer 1. The checks that Khaimov and his coconspirators wrote made misleading references to nonexistent invoices and used stamped signatures from nominal owners who may not even have been alive anymore. The money that the defendants obtained from Medicare often then went to China and Uzbekistan. If not, Khaimov would have the nominee owners deliver the money directly to him at his home, often in the middle of the night.

A Guidelines sentence is the just punishment for the defendant's offense, and it would not be greater than necessary under the circumstances.

3. Affording General and Specific Deterrence

The Court's sentence should also further the aims of general and specific deterrence. 18 U.S.C. § 3553(a)(2)(B), (C).

Generally speaking, a Guidelines sentence is necessary to deter similarly-situated individuals from engaging in this behavior. Money laundering schemes like the ones charged in this case threaten the integrity of federal healthcare programs like Medicare and Medicaid. Because the profits of these schemes are often enormous — the only limiting variables are the criminals' ability to manufacture Medicare and Medicaid claims and their likelihood of getting caught — it is critical to address the problem through systematic deterrence.

Moreover, because "economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." See, e.g., United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation marks and citation omitted). As Judge Garaufis has recognized, "[t]he need for general deterrence is particularly acute in the context of white-collar crime." United States v. Johnson, No. 16-CR-457-1 (NGG), 2018 WL 1997975, at *5 (E.D.N.Y. Apr. 27, 2018); see also; United States v. Mueffelman, 470 F.3d 33, 40 (1st Cir. 2006) (deterrence of white-collar crime is "of central concern to Congress"). This is true, in part, because "[p]ersons who commit white-collar crimes like defendant's are capable of calculating the costs and benefits of their illegal activities relative to the severity of the punishments that may be imposed." See Johnson, 2018

WL 1997975 at *5 (internal quotation marks omitted); see also Harmelin v. Michigan, 501 U.S. 957, 988 (1991) ("[S]ince deterrent effect depends not only upon the amount of the penalty but upon its certainty, crimes that are less grave but significantly more difficult to detect may warrant substantially higher penalties"). This is especially true when the potential rewards for would-be criminals who are not caught can be substantial.

A Guidelines sentence is also needed to specifically deter Khaimov, who has already been sentenced for a criminal fraud scheme related to pharmaceuticals in this very district. As Probation noted, Khaimov's participation in multiple fraudulent schemes involving pharmacies punctuates the importance of specific deterrence. See Addendum. The government likewise joins in Probation's recommendation that the sentence imposed here run consecutively to the Guidelines sentence imposed by Judge Azrack. As already detailed above, the schemes took place at different times and differed in practically all of their particulars. Consecutive Guidelines sentences would appropriately reflect the seriousness of each offense committed by Khaimov and adequately deter him from committing future ones.[3]

IV. Restitution and Forfeiture

Under 18 U.S.C. § 3663A, the Court shall impose restitution. In United States v. Zangari, 677 F.3d 86, 93 (2d Cir. 2012), the Second Circuit held that restitution must be measured according to the victim's actual loss, not the defendant's gain. Moreover, in calculating restitution, "these losses need not be mathematically precise," and "[a] reasonable approximation will suffice, especially in cases in which an exact dollar amount is inherently incalculable." United States v. Rivernider, 828 F.3d 91, 115 (2d Cir. 2016) (internal quotation marks omitted). The government respectfully submits that the Court should order the defendant to pay restitution in the amount of $18,921,139.21 to Medicare, as set forth in the plea agreement.

In addition, the defendant acknowledged in the plea agreement that he obtained and acquired property that is subject to forfeiture, and he consented to the entry of a forfeiture money judgment in the amount of $9,647,506.08. (PSR ¶ 119). Accordingly, the government

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[3] Khaimov devotes 12 pages of his submission to arguing that conditions at the Metropolitan Detention Center ("MDC") warrant a significant downward variance. See Defense Submission at 14–26. While the government disputes Khaimov's sweeping generalizations, courts often impose Guidelines sentences even while crediting arguments about the MDC, in light of countervailing factors under Section 3553(a). See, e.g., United States v. Hilliard, 2024 WL 1193606, at *2 (S.D.N.Y. Mar. 20, 2024); United States v. Stewart, 2023 WL 2599668, at *7 (E.D.N.Y. Mar. 22, 2023). The same should hold true here — on balance, Khaimov's time at the MDC does not weigh heavily enough against the nature of his offense and the need for deterrence to warrant a sentence below the Guidelines range.

respectfully requests that the Court incorporate its forfeiture order (ECF No. 83) into the judgment of conviction.

V. Conclusion

For the foregoing reasons, the government respectfully requests that the Court impose a sentence of imprisonment within the adjusted advisory Guidelines range of 97 to 121 months, as well as order the defendant to pay restitution in the amount of $18,921,139.21 to Medicare and a forfeiture money judgment in the amount of $9,647,506.08.

Respectfully submitted,

BREON PEACE
United States Attorney
Eastern District of New York

GLENN LEON
Chief
Criminal Division, Fraud Section
U.S. Department of Justice

By: /s/
Arun Bodapati
Trial Attorney
Criminal Division, Fraud Section
U.S. Department of Justice

cc: Counsel of Record (via ECF)
Probation Officer Jennifer Baumann