U.S. Department of Justice

United States Attorney
Eastern District of New York

TJT/JPL:AB
F. #2020R01145

271 Cadman Plaza East
Brooklyn, New York 11201

June 20, 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. Peter Khaim,
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 Monday, June 24, 2024, at 10:30 a.m. On November 3, 2022, the defendant Peter Khaim pleaded guilty to Count Two of the Superseding Indictment, which charged him with money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). That conspiracy enabled the defendant to steal almost $19 million from Medicare, as he exploited the relaxation of antifraud safeguards during the COVID-19 pandemic for his personal benefit.

Given the circumstances of the defendant's offense and his disrespect for the law, 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 $2,753,129, as set forth in the Court's March 15, 2023 preliminary order of forfeiture (ECF No. 80).

I. Background

A. The Fraudulent Scheme

From 2018 through 2020, the defendant and his brother and co-defendant Arkadiy Khaimov engaged in a fraudulent scheme involving no less than 16 pharmacies across New York

City (the "Scheme Pharmacies"). (July 25, 2023 Presentence Investigation Report ("PSR") ¶¶ 23, 25). While the two defendants 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. (Id. ¶ 25). The defendants also recruited and paid others to pretend that they were supervising pharmacists of the Scheme Pharmacies, even though those individuals never actually performed such duties at the Scheme Pharmacies. (Id. ¶ 25). Many of the Scheme Pharmacies were simply false fronts themselves, without any regular pharmacy business. (Id.). 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. (Id.). The defendants likewise caused the submission of fraudulent New York Pharmacy Applications with the same misrepresentations. (Id. ¶ 26).

The defendants 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/or (d) medically necessary and reasonable. (Id. ¶ 27). Khaim and Khaimov caused these submissions even when the Scheme Pharmacies were not supervised, licensed, or even operational. (Id.).

The predicate healthcare fraud conspiracy involved 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. (Id. ¶¶ 16-17, 19, 27). To prevent fraudulent billing for these lucrative and specialized cancer medications, prescription drug plans required pharmacies to seek their prior authorization and prohibited pharmacies from billing for multiple refills to a single beneficiary within a 30-day period (the "Refill-Too-Soon Edits"). (Id. ¶¶ 19, 22). 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. (Id. ¶¶ 20-22). Pharmacies could thus use an Emergency Override Code to bill for those medications and receive reimbursement without observing the foregoing restrictions. (PSR ¶ 21).

Khaim exploited these Emergency Override Codes during 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. (Id. ¶¶ 18, 29). Khaim and Khaimov caused an exponential increase in claims for these drugs just as New York became the epicenter of the pandemic. (Id. ¶ 29). 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. (Id.). 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. (Id. ¶ 30).

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"). (Id. ¶¶ 24, 28). 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. (Id. ¶ 28). 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. (Id.).

Initially, the defendants 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. (Id. ¶ 31). Khaim and Khaimov then received a corresponding amount of cash from a coconspirator, minus a commission. (Id.). Eventually, as the fraudulently obtained reimbursements exceeded the amount of cash available through the unlicensed money services business, the defendants 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. (Id. ¶ 32).

The defendants 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. (Id. ¶ 33). 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. (Id.).

C. Khaim's Role

Khaim was deeply involved in the multifaceted scheme, overseeing most of the activity needed to ensure its continuing success. He was responsible for the submission of fraudulent licensing applications to the Pharmacy Board. (Id. ¶¶ 34, 35). Khaim also paid a co-conspirator to obtain licensed pharmacists who would claim to be supervising pharmacists for at least five of the sixteen Scheme Pharmacies, which allowed the pharmacies to be licensed. (Id.). Khaim sometimes made these payments from the Scheme Pharmacies' bank accounts, using checks stamped with the signatures of the nominee owners (including the deceased owner referenced above). (Id.).

Khaim then served as the primary point of contact for these pharmacists, to ensure that the Scheme Pharmacies passed inspections and obtained the registrations and credentials needed to successfully operate. (Id. ¶ 35). Among other things, Khaim directed these pharmacists about what to tell state inspectors, such as falsely stating that the purported supervising pharmacist would be present for 40 hours per week. (Id.). Khaim even directly responded to a state inspector for one pharmacy, though that pharmacy ultimately failed its inspection and was not licensed. (Id.).

Khaim generally oversaw and directed the operations of the Scheme Pharmacies as well. (Id. ¶ 36). He gave directions to employees including supervising pharmacists and technicians, and he directed the IT work. (Id.). Khaim had both remote and in-person access to the computer systems and billing software that the Scheme Pharmacies used to submit claims. (Id.). When one of the Scheme Pharmacies was audited, he instructed pharmacy employees to tell the auditors that their computers had been hacked. (Id.). He also directed the installation of video cameras so that he could monitor the pharmacies remotely. (Id.).

Khaim further assisted in the money laundering conspiracy. On at least one occasion, when a bank placed a hold on a transaction, Khaim brought the nominal account holder to the bank to resolve the issue. (Id. ¶ 37). At other times, funds were laundered through the Pass-Through Entities to a cashier's check made payable to Khaim personally. (Id.). Additionally, Khaim used the Scheme Pharmacies to pay for his own expenses. For example, he paid $20,000 from one of the pharmacies to architects for an unrelated office building project. (Id. ¶ 38). He subsequently asked the architects to replace the $20,000 pharmacy check with a check from another company of his, A&P Holding Group Corp., and asked the architecture firm to provide a backdated refund check in return. (Id.). In total, Khaim was personally involved in receiving and laundering at least $2,753,129 of funds from the scheme. (Id. ¶ 37).

D. Guilty Plea

On November 3, 2022, Khaim pleaded guilty, pursuant to a plea agreement, to Count Two of the Superseding Indictment. During his allocution, Khaim admitted that between approximately September 2019 and December 2020, he conspired with others to conduct financial transactions involving fraudulently obtained proceeds, knowing both that the proceeds derived from unlawful activity and that the transactions were designed to conceal the ownership and control of those proceeds. (Nov. 3, 2022 Tr. 15:15-24).

II. The Defendant's Guidelines Range

The PSR calculated a total offense level of 33 for the defendant, based substantially upon the following estimates made in the parties' plea agreement (PSR ¶¶ 48–59):

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
Plus: Leader or organizer (§ 3B1.1(a))	+4
Subtotal:	36
Minus: Acceptance of responsibility (§ 3E1.1)	-3
Total:	33

The PSR estimated that the defendant falls into Criminal History Category I, resulting in an advisory sentencing range of 135 to 168 months' imprisonment. (PSR ¶¶ 63, 90).

The government's calculations differ from Probation's in two respects. First, the government is no longer seeking the 4-point leadership enhancement under Section 3B1.1(a), as the Guidelines instruct that "application of any Chapter Three adjustment [for a defendant convicted of money laundering offenses] shall be determined based on . . . the laundering of criminally derived funds[,] and not on the underlying offense from which the laundered funds were derived." U.S.S.G. § 2S1.1, Application Note 2(c).[1] Second, the defendant now belongs in Criminal History Category II as a result of his conviction and sentence for another healthcare fraud and money laundering scheme in the Southern District of New York. See United States v. Gulkarov et al., 22-CR-20, at ECF No. 501 (S.D.N.Y. June 11, 2024) (imposing a Guidelines sentence of 180 months' imprisonment).

The government therefore calculates the defendant's Guidelines range as 97 to 121 months, based on an offense level of 29 and Criminal History Category II.

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 Guidelines range of 97 to 121 months. A Guidelines sentence is sufficient but not greater than necessary to achieve the goals of sentencing, and it would appropriately reflect important factors including the need to promote respect for the law, the

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[1] The government nonetheless maintains that Khaim *was* the leader of the broader healthcare and wire fraud conspiracy that his money laundering activities enabled. As detailed below, the defendant's in-depth oversight of the broader scheme can and should be considered when assessing his culpability under the Section 3553(a) factors.

nature and circumstances of the offense, 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 successful 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 siphoned 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 health care 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 of the foregoing concerns. The defendant's efforts resulted in the submission of over $45 million worth of claims to Medicare for two rarely-used drugs, and his international money laundering network enabled his coconspirators and him to collectively gain almost $20 million from that fraud. The defendant'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 reflect the seriousness of the defendant's offense and his attendant disregard for the law.

2. The Nature and Circumstances of the Offense

The defendant's activities do not just demonstrate a general lack of respect for the law. They reveal a specific disregard for the government's willingness to relax its usual safeguards and trust healthcare providers to act appropriately when billing Medicare during a public health crisis. Money laundering and healthcare fraud are always serious, but the defendant's offense conduct is particularly so for at least three reasons.

First, the scale and complexity of the conspiracy were immense. Khaim led the overall scheme, paying recruiters, nominee owners, and licensed pharmacists to collectively deceive the Pharmacy Board, pharmacy benefit managers, and insurance plans into believing that at least sixteen of his pharmacies were legitimate businesses. By and large, they were simply fronts for criminal activity. He then oversaw the Scheme Pharmacies' operations, even installing surveillance cameras in the pharmacies to monitor them from afar. He had access to the billing software used to submit fraudulent claims, and he specifically instructed employees to lie to auditors to prevent the scheme from being discovered. This was not a routine scheme, and the defendant was not a minor participant.

Second, the defendant's scheme focused on specialized medication for serious ailments. Targretin and Panretin target the side effects of specific, 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. (Id. ¶ 19). Needlessly billing Medicare millions for these 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. Moreover, submitting fraudulent claims for dispensing prescription drugs to vulnerable beneficiaries creates a record that could complicate their treatment in the future.

Third, the defendant and his coconspirators exploited the COVID-19 pandemic to siphon exponentially more money from Medicare. As noted above, payments for Targretin at just 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 pandemic. 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 and uncertainty of a global crisis. This was not accidental; circumventing these safeguards required the deliberate use of Emergency Override Codes. The defendant's cynical exploitation of this well-intentioned measure is hard to fathom.

The nature and circumstances of the money laundering are no less troubling. To conceal and perpetuate the scheme, the defendant and his coconspirators used no less than fourteen Pass-Through Entities that were named to resemble legitimate medical wholesalers. The checks that they wrote made misleading references to nonexistent invoices and used stamped signatures from nominal owners who may not even have been alive. The money that the defendants obtained from Medicare then went either to China and Uzbekistan, or the accounts of the defendant and his family. The defendant personally received over $2 million of these funds, which he then used for his own personal expenses. He was not simply a passive beneficiary of the money laundering activity, either. He would personally go to a bank himself to dispel any concerns that it had about the Pass-Through Entities' financial transactions, all so that he could preserve the conspiracy and his ill-gotten gains.

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 others from engaging in similar behavior. Money laundering schemes like the one 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 Khaim, who has repeatedly engaged in deceptive acts that harm the public.[2] As referenced above, Khaim was convicted of separate money laundering and healthcare fraud conspiracies in the Southern District of New York. See United States v. Gulkarov et al., 22-CR-20, at ECF No. 364 (Superseding Information) & November 15, 2023 Minute Entry (S.D.N.Y.). In that case, Khaim and his coconspirators recruited numerous medical professionals to open clinics and fraudulently bill for unnecessary prescription drugs, durable medical equipment, and services for individuals who had purportedly been in motor vehicle accidents between 2014 and 2021. The defendant made healthcare fraud his livelihood, and the District Court for the Southern District of New York properly imposed a Guidelines sentence to address the conduct before it.

While Khaim argues for a fully concurrent 87-month sentence in this case, the government respectfully submits that the Court should impose a sentence that runs consecutively for at least 24 months. See U.S.S.G. § 5G1.3(d) (noting that sentences may run consecutively or partially concurrently); see also, e.g., United States v. Shams, 17-CR-588, at ECF No. 59

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[2] This is not even the only case involving Khaim before this Court, as one pharmaceutical company has alleged in a civil case that Khaim participated in the trafficking of counterfeit HIV medications. See Gilead Sciences Inc. v. Safe Chain Solutions LLC et al., 21-CV-4106 (AMD).

(E.D.N.Y. May 29, 2024) (MKB) (imposing 60-month sentence for defendant convicted of money laundering conspiracy, with 36 months to run consecutively to 120-month sentence previously imposed for separate healthcare fraud scheme). Additional time is needed to adequately account for the defendant's conduct in this specific case, which features aggravating factors absent from the motor vehicle insurance case. Critically, that scheme did not involve billing for rare cancer treatments, and it largely pre-dated the pandemic. A wholly concurrent sentence would also effectively fail to punish the defendant for his callous use of Emergency Override Codes to profit from the pandemic. Finally, a partially consecutive sentence would appropriately reflect that the defendant was the most culpable participant in the overall scheme, as his codefendant Arkadiy Khaimov faces imprisonment for 21 months more than he received for another criminal fraud scheme that he joined. See ECF No. 120 (Sentencing Khaimov to 72 months' imprisonment, to run concurrently with a previously-imposed 51 month sentence).

4. The Section 3553(a) Factors Do Not Warrant a Downward Variance

In arguing for an 87-month sentence, the defendant highlights two main considerations: (1) Probation's recommendation of a below-Guidelines sentence; and (2) the potential impact of his absence on his four children. See Defense Submission, ECF No. 130, at 3–6. Neither factor warrants a below-Guidelines sentence in this case, though.

The government respectfully disagrees with Probation's reasoning for an 84-month sentence—a sentence that is even lower than the one the defendant himself requests. In its recommendation, Probation cited three factors supporting the downward variance: (1) that the advisory Guidelines range may be overstated because it is driven by an intended loss amount of $45 million rather than the actual loss amount of roughly $19 million; (2) that the instant offense is non-violent in nature; and (3) that the defendant has no criminal history. The Guidelines range is not driven by the intended loss amount alone, though. While Probation calculated the defendant's offense level with reference to the intended loss amount under Guidelines Section 2S1.1(a)(1), the parties' plea agreement calculated the defendant's base offense level with reference to the value of the laundered funds pursuant to Guidelines Section 2S1.1(a)(2). The defendant's base offense level is 28 under either rubric, and the Guidelines range is not overstated as a result. Moreover, the defendant has a criminal history; he pleaded guilty to a similar scheme that began well before the instant offense, undercutting any implication that the defendant deserves a break as a first-time offender. The nonviolent nature of the defendant's fraud does not warrant a variance, either. The Guidelines for economic crimes like those applicable here already inherently take into account their nonviolent nature. And, as noted above, general deterrence is a priority for offenders who commit economic crimes like this one precisely because they can account for the punishments they may face if caught. If they can expect a downward variance simply because they committed a white-collar crime, they will be incentivized to do so.

And while the defendant's absence would subject his children to difficulty, other people in his life can step into the caregiving roles he plays. See United States v. Selioutsky, 409 F.3d 114, 119 (2d Cir. 2005) (rejecting a family circumstances-based departure because, in part, "other relatives could meet the family's needs"). The letters from the defendant's wife, parents, and siblings amply support that fact. Khaim's family situation is neither unique nor dire, and it does not justify a non-Guidelines sentence. It is often an unfortunate consequence that one person's criminal conduct takes its toll on wholly innocent individuals.[3] The defendant made a conscious decision to profit from criminal offenses, and his choice warrants a Guidelines sentence.

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 $2,753,129. (PSR ¶ 101). Accordingly, the government respectfully requests that the Court incorporate its forfeiture order (ECF No. 80) 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 Guidelines range of 97 to 121 months, as well as

[3] Indeed, almost all defendants who come before the Court have family members who will be negatively affected by the imposition of a sentence of incarceration. As the Second Circuit has repeatedly emphasized, the Guidelines recognize that "disruption of [a] defendant's life, and the concomitant difficulties for those who depend on the defendant, are inherent in the punishment of incarceration." United States v. Johnson, 964 F.2d 124, 128 (2d Cir. 1992); United States v. Sprei, 145 F.3d 528, 534 (2d Cir. 1998) ("Family ties and responsibilities are a discouraged basis for departure"); United States v. Smith, 331 F.3d 292, 294 (2d Cir. 2003) ("Because the Guidelines disfavor departure based on family responsibilities such a departure is not permitted except in extraordinary circumstances.").

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 $2,753,129.

Respectfully submitted,

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GLENN LEON
Chief
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By: /s/
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cc: Counsel of Record (via ECF)
Probation Officer Jennifer Baumann