UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANTZ GUILLAUME, Jr.,

Defendant.
_____/

Case No. 21-CR—60126 [03]

Hon. Rodolfo A. Ruiz II
United States District Judge

DEFENDANT FRANTZ GUILLAUME Jr.'s
***OBJECTIONS* TO PRESENTENCE INVESTIGATION REPORT**

Frantz Guillaume, through his attorney, respectfully files this his objections to the Pre-Sentence Investigation Report.

In explanation, counsel states:

I. Course of the Case / Nature of the Case

1. As summarized in the Factual Proffer [DE 99] and the PSR [**Offense Conduct,** pages 6 – 12, para. 15 – 38] **Frantz Guillaume,** his two (2) codefendants *and others*, participated in two (2) frauds [involving wire fraud & money laundering] which are together the subject of this prosecution. The first was a so-called -- 1) **Businesss Email Compromise** (BEC) scheme; and, the second was a -- 2) **Paycheck Protection Program/Economic Injury Disaster Loan** (PPP/EIDL) loan fraud scheme. The government agrees the fraud loss amount for which each defendant is responsible is approximately 1.8 million dollars. (PSR **Summary,** page 12, para. 34 [**One – $**

DEFENDANT FRANTZ GUILLAUME, Jr.'s
***OBJECTIONS* TO PRESENTENCE INVESTIGATION REPORT**

1,821.041.09], 35 [**Guillaume -- $ 1,800,698]** & 36 [**Lemy -- $ 1,823.267**].)

2. Significantly, the government also agrees there is

> " . . . not sufficient evidence to link Guillaume and [co-defendant] Lemy to the total loss . . ."

suffered by the university located in the Western District of Texas in the fraud involving that university; notwithstanding the PSR's express statement that they are. [PSR **Victim Impact,** page 13, para. 42]. In that regard, however, it must be noted the Probation Office & the PSR for 'Guidelines Calculations' purposes accepts and applies the fraud loss amount as 1.8 million dollars as agreed to by ***the parties*** as being that which is applicable here.

3. We should mention also, here in the Southern District of Florida the government has –after consultation with their counterparts in Texas– agreed **Lemy** and **Guillaume** have not & ***will not*** be separately prosecuted in Texas for the loss suffered by the university in Texas.

4. Also, the Court should be aware **Guillaume --** 1) early on agreed to resolve the case, 2) accepted responsibility, 3) agreed to assist the government in any potential investigation/prosecution of others, 4) has been debriefed & interviewed by the government, and 5) is genuinely remorseful and regrets getting involved in activity he

knew to be wrong.

5. Importantly, it must be repeated, the government agrees the "evidence supports neither a mitigating nor aggravating role adjustment for these defendants." [PSR, **Role Assessment,** page 13, para. 39].

II. Defendant's Objections

6. Notwithstanding our objection to the PSR's statement/suggestion noted above [PSR **Victim Impact,** page 13, para. 42] that **Guillaume** is responsible for the loss amount involving the university located in Texas (an amount greater than agreed to by the government), the PSR ***does accept*** for Guidelines' calculations purposes the 'loss amount' [1.8 million] agreed to ***by the parties.*** [See PSR **Offense Level Computation**, page 14 – 15, para. 51]. [For easy reference, PSR page 15, para 51, among other things, states: " . . . Since the loss was more than $ 1,500,000 but was $ 3,500,000 or less, increase by 16-levels, §2B1.1(b)1(I). . . . "]

7. On the other hand, however, the PSR adds **two (2) levels** for use of false identification, notwithstanding the express discussions and agreement of the parties such an increase would not be applied. The PSR page 15, para. 52, states [among other things] --

DEFENDANT FRANTZ GUILLAUME, Jr.'s
***OBJECTIONS* TO PRESENTENCE INVESTIGATION REPORT**

> ". . . Since the defendant used any means of identification unlawfully to produce or obtain any other means of identification, *increase by two-levels,* [**emphasis supplied**] 2B1.1(b)(11)(C). Therefore, the total base offense level is Level 24."

8. We disagree. In our conversations and discussions with the government, it was specifically discussed and agreed this increase should not and would not apply and that the Base Offense Level [before increases for 'Sophisticated Means – 2 levels and conviction under §1956 – 2 levels] would be Level 22 [calculated – using Guideline §2B1.1, i.e. base offense level of 6, plus a loss amount under 2 million dollars adds 16 levels.] That is then, again, a starting total Base Offense Level of 22, not 24. [See DE 98, **Plea Agreement,** page 5, para. 10.]

9. While the agreement of the parties is not binding upon the court to be sure, the ***parties agreement***(s) and inducements among themselves to resolve the case by plea without litigation should, we submit, be given deference and weight. Perhaps not rising to the level of asking the court to 'give the defendant the benefit of his bargain' in the constitutional sense of enforcing a plea bargain ***against the prosecution***, e.g. *Santobello v. New York,* 404 U.S. 257 (1971), 95 S.Ct. 495, 30 L.Ed.2d 427, by parity of reasoning –we submit– the court should defer to the parties and not apply this two (2) level increase as now suggested here by the Probation Office. Moreover, we submit, it is

in the nature of a [wire] fraud offense that false representations are made and false identities are used. Using the name and/or social security of another during this type of offense is part of the *manner and means* by which the offense is committed. To add two (2) additional levels here for 'false personation' in opening a bank account, we believe, amounts to a kind of double counting or double punishment. Indeed, the government is **not** seeking this increase. As we will explain in the next paragraph, it was discussed and negotiated as being inapplicable here during the parties good faith efforts to fairly and responsibly resolve the case quickly and expeditiously, with a view toward conserving valuable resources of both the court and the government.

10. Though not binding upon the court, and, generally of no moment what the parties discussed during their plea discussions, we would be remiss if we did not explain why we genuinely feel to add two (2) levels for use of false identification in this case really amounts to a kind of 'double counting.' The parties discussed resolving the case through a single 'wire fraud' count. However, the government –for its own reasons– required instead a plea to a 'money laundering' count; which includes its own additional increase of two (2) levels for convictions under 18 U.S.C. §1956. [USSG § 2B1.1(b)(11)(C).] [See PSR, page 15, para. 51]. Therefore, it is easy to understand why we in good faith view this additional increase, on top of the Two (2) level increase for

'money laundering' as being 'double counting' or double punishment. The prosecution, we submit, felt the same and did not seek in our Plea Agreement the two (2) level increase for the use of false identification. We ask the Court to honor that agreement and **not** apply this further two (2) level increase as suggested by the PSR.

III. Defendant's Criminal History

11. The PSR [PSR, **Part B. Defendant's Criminal History,** page 15 – 18, see para. 63] assesses three (3) Criminal History Points for a December 1999 Massachusetts State case for assault & battery; and places **Guillaume** in Criminal History **Category II,** which increases the applicable recommended Guidelines range. USSG §4A1.1(a). We submit, that the former Massachusetts case should be treated as 'remote' and should not be counted. [The remainder of **Guillaume's** reported criminal history does not result in additional criminal history points.]

12. Note that the offense conduct in the case here before this court is alleged to have commenced in or about June 2017 [see DE 99, Factual Proffer, page 3]; and, that **Guillaume** is not alleged to have received any money in the offense charged here until July 26, 2017; that is, seventeen (17) years after the conviction in the former Massachusetts case in April 2000. Moreover, **Guillaume** was paroled in the

DEFENDANT FRANTZ GUILLAUME, Jr.'s
***OBJECTIONS* TO PRESENTENCE INVESTIGATION REPORT**

Massachusetts case on November 27, 2002; approximately five (5) months shy of fifteen (15) years from the offense conduct now before this court. The A*pplication Notes* to USSG § 4A1.1(a) provides –

> * * *
> Certain prior sentences are not counted or are counted only under certain conditions:
>
> * * *
> A sentence imposed more than fifteen years prior to the defendant's commencement of the instant offense is not counted unless the defendant's incarceration extended into this fifteen year period. See § 4A1.2(e).

13. In particular, the PSR [page 16, para. 63] reports that on 4/18/2000 (seventeen (17) years before the case here) **Guillaume** was found guilty on both counts in the former Massachusetts case and was sentenced to 2.5 years (suspended) with three (3) years of probation, on both counts (to run concurrent). However, **Guillaume** was apparently violated on 8/29/2001 (sixteen (16) years ago and the original 2.5 years on each count was imposed to run concurrently.) He was paroled on 11/27/2002; months shy of fifteen (15) years from the alleged commencement of the offense charged here.

14. We ask the Court to take into account the Sentencing Guidelines scheme we employ generally treats old cases beyond fifteen (15) years as 'remote;' and, does not count them in assessing criminal history points. Although paroled

approximately five (5) months short of fifteen (15) years, the court should –we suggest– consider the passage of time and this old case as a 'remote' conviction in exercising its discretion. The court may 'depart' or consider a 'variance' in not counting the former Massachusetts case because of the passage of time, and, the defendant's personal individual characteristics, education, health, family situation, efforts at making an honest living and potential to be a law abiding productive hard working member of society; the so-called 18 U.S.C. §3553 (sentencing factors).

IV. Conclusion

15. We talk in terms of an abstract concept, i.e. 'levels' in our discussions of 'Guidelines Calculations.' However, what we are really talking about is actual time –that is, months and years– of significant additional time spent incarcerated in a penal/jail type setting. That is real time separated from family, jobs, community, society. Time that could be better spent productively contributing to the community, society and a defendant's children and family.

16. The addition of even just two (2) levels to a sentence in real terms is significant, very significant. The net effect of adding even just two (2) levels to the average sentence [especially as we go higher on the Sentencing Table] increases a

sentence by roughly 20 to 25 %.

17. For instance, here, for comparison purposes **Level 23 v. Level 25** though '*only* just two (2) levels,' increases a defendant's sentence as follows:

CRIMINAL HISTORY CATEGORY

	I	**II**
Level 23	46 - 57	51 - 63
[Difference in Months]	***13 - 14***	***12 - 15***
Level 25	57 - 71	63 - 78

18. In Criminal History Category II, two (2) levels works out to 12 months --at the low end; and, 15 months --at the high end. That is, a little less than 25% in each instance. So, this is a real factor –to take into account– in exercising discretion when determining the applicable guidelines/sentence calculation. Therefore, we respectfully request the court – 1) **not** apply the two (2) level increase as calculated/recommended by the Probation Office in the PSR; and, 2) consider **Guillaume's** criminal history to be in Category I, or, alternatively, depart and recognize **Guillaume's** prior Massachusetts conviction was sufficiently long ago that it should not

work as a negative and substantially impact any final sentence imposed.

19. Counsel will have further and additional remarks at the time of sentencing.

WHEREFORE, in light of the foregoing, counsel submits the Objections to the Pre-Sentence Report mentioned here are well taken and after further argument at the time of sentence should be granted.

Dated: November 8, 2021
Miami, Florida

Respectfully submitted,

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/ s / **Leonard A. Sands**, Esquire

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LEONARD A. SANDS, Esquire

DEFENDANT FRANTZ GUILLAUME, Jr.'s
***OBJECTIONS* TO PRESENTENCE INVESTIGATION REPORT**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically via the Court's **CM/ECF** system on November 8, 2021, and thereby upon all parties and attorneys of record.

/ s / **Leonard A. Sands**, Esquire

LEONARD A. SANDS, Esquire

POSITION OF PARTIES WITH RESPECT TO SENTENCING FACTORS

RE: Guillaume, Frantz

SD/FL PACTS NUMBER: 7058441

DOCKET NO: 113C 0:21CR60126-003

OBJECTIONS DUE BY: 11/08/2021

DATE AVAILABLE FOR DISCLOSURE: 10/25/2021

I have read the presentence investigation completed by the United States Probation Office.

There are Disputed facts

There are no disputed facts.

There are unresolved factual disputed which are attached.

Any objections counsel may have must be submitted to the U. S. Probation Office **within fourteen (14) days of the receipt of the presentence report**, at which time the U.S. Probation Office will prepare for the Court an addendum indicating any unresolved factual disputes or objections by counsel. **Unless otherwise ordered by the Court, objections will be filed in CM/ECF or provided directly to Chambers by the probation office under confidentiality protections**.

Leonard Alan Sands/for Frantz Guillaume	11/08/2021 (Date)	Pembroke Pines, Florida
Leonard Alan Sands/for Leonard Sands	11/08/2021 (Date)	Miami
 Brooke Watson	 (Date)	Miami

Return To: Jessica Manzanares
Sentencing Guideline Specialist
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