

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-000175-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. MICHAEL LAIN,

Defendant.

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**GOVERNMENT'S RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION FOR VARIANCE [DOC. #31]**

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The United States of America hereby files the Government's Response in Opposition to Defendant's Motion for Variance [Doc. # 31].

In his motion for a variance, defendant Lain requests a sentence of five years of probation with 24 months of home confinement. [Doc. # 31 at 1]. The government opposes this request and recommends that the Court impose a sentence that includes a 41-month prison term.

**Lain's Outstanding Restitution Obligation and Repayments to Date**

Defendant Lain has a remaining restitution obligation to the SBA of \$622,683.40<sup>1</sup> as a result of the \$336,000 in Emergency Disaster Relief Grants and the remainder of

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<sup>1</sup> The government recognizes that it failed to object to the restitution amount set forth in the Presentence Report. [See Doc. # 23 at ¶¶ 16-17 & 73]. This was largely due to a miscommunication with defense counsel regarding what Lain had repaid directly to the

\$286,683.40 in Paycheck Protection Program loans that he received. **On February 2, 2022, counsel for both the government and defense conferred and agreed that \$622,683.40 was the correct amount the Court should order in restitution.**

Because the grants were not intended to be repaid under the EIDL program, and because Lain successfully applied for \$286,683.40 of the PPP loans to be forgiven, the SBA's internal accounting prevented a direct repayment toward these obligations and a restitution order is needed to facilitate their repayment. Lain's counsel has represented that Lain currently has \$294,966.09 set aside to be paid toward this restitution obligation immediately following his sentencing.

To date, the government understands that defendant Lain has repaid directly to the SBA all of his EIDL loans, which originally had a principal balance of at least \$3,830,400. Defendant Lain also paid the interest that had accrued on these EIDL loans. While Lain was legally obligated to pay this accruing interest by the terms of the loans, it was not factored into the criminal restitution amount that was agreed to by the parties in the plea agreement. The government simply notes this issue regarding Lain's repayments for the Court's awareness.

The government acknowledges that Lain's cooperative repayment of most of his restitution obligation has saved the government a substantial amount of work and

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SBA. The government had incorrectly understood that Lain had repaid the \$336,000 in EID grants that he had received, but that was not the case. Additionally, according to the government's records, only \$8,216.16 of the \$27,462.41 in repayments by Lain referenced in footnote 1 of the PSR was paid against Lain's PPP loans; the rest of that money was paid on EIDL loans. Accordingly, Lain still owes \$286,683.40 in restitution on his PPP loans.

should be commended. Nonetheless, the government opposes Lain's request for a variant sentence.

**Lain's Arguments for a Probationary Sentence Lack Merit**

In support of his request for a probationary sentence, defendant Lain claims he did not act out of greed when he applied for more than 70 EIDL loans that resulted in him receiving \$4,138,937.59 in EIDL loans and grants while he also fraudulently obtained \$294,900 in PPP funds. [Doc. # 31 at 8; Doc. # 17 at 9]. Lain also claims that confusion and poor communication about the EIDL and PPP programs contributed to his decision to engage in his fraud scheme because they allowed him to feel entitled to the government funds. [Doc. #31 at 4-5]. Defendant Lain further claims that he always intended to pay back all of the EIDL and PPP money that he received [*id.* at 5-6], notwithstanding the fact that the \$336,000 in EIDL grants he received did not need to be repaid under the program and that he successfully applied to have the \$294,900 in PPP loans forgiven. Pivoting to his health, defendant Lain argues that the BOP cannot effectively treat his coronary vascular disease, high blood pressure, and high cholesterol, which he points out are also expensive conditions to treat. [*id.* at 11]. Finally, and somewhat ironically, defendant Lain argues that the very pandemic that made his crime possible should prevent his incarceration because it might increase his chances of contracting COVID-19. [*id.* at 12-13]. The Court should find that these arguments are without merit.

The facts of this case belie Lain's argument that he did not act out of greed. From late March through June of 2020, Lain submitted fraudulent EIDL applications on

behalf of more than 70 LLCs seeking loans and grants. [Doc. #17 at 7]. 70 of those EIDL applications were approved and funded by the SBA, and LLCs controlled by Lain received \$3,830,400 in EIDL proceeds and \$336,000 in Economic Injury Disaster Grant proceeds. [Id.]. Lain did not simply apply for one or two loans to help him weather the pandemic. Instead, he aggressively defrauded the EIDL program and received millions at the expense of others who truly needed the federal assistance. His greed cannot credibly be denied.

Nor can Lain's misguided sense of entitlement mitigate his decision to aggressively defraud the government. Lain lied repeatedly—under penalty of perjury—to get what he wanted. [Id.]. Every child knows that is wrong, and no amount of “late night obsessive ‘research’” [doc. #31 at 4] can soften the moral turpitude Lain demonstrated through his crime. Lain did not commit fraud because the EIDL and PPP programs were confusing. If Lain was confused, he would have told the truth, and his loans would have been declined. But Lain wanted the money and had no qualms about lying to get it. In at least 59 of those EIDL applications, Lain lied about the number of employees each LLC had. [Doc. # 17 at 7]. In all of the EIDL applications, Lain lied about the amount of gross revenues and cost of goods sold that each LLC had in the 12 months prior to January 31, 2020. [Id.]. In fact, none of the 70 LLCs was a company with any employees or any gross revenue or cost of goods sold in the 12 months prior to January 31, 2020. [Id.]. Additionally, in connection with each of the 70 loans, Lain signed a Loan Authorization and Agreement in which Lain falsely agreed to use all of the loan proceeds as required under the EIDL program. [Id.]. But Lain had

always intended to use the EIDL proceeds for other purposes, including using the funds toward the purchase of a new home. [*Id.*]. Simply put, Lain lied to get money—a classic fraud. His attempts to mitigate his crime are not persuasive.

With respect to Lain’s coronary vascular disease, high blood pressure, and high cholesterol, the Court is well aware of BOP’s ability to effectively manage a wide array of medical conditions, including those cited by Lain. These fairly common medical conditions do not support a variant sentence in this case.

Finally, as to Lain’s arguments about COVID-19, after nearly two years of the pandemic, the Court has certainly heard innumerable arguments about why COVID-19 should be a get-out-of-jail-free card. It is not. And the fact that effective vaccines are now widely available further undermines this argument.

Instead, the sentencing factors under Section 3553 must drive sentencing decisions. Here, those factors support a sentence that includes 41-months of incarceration. During an unprecedented global pandemic, Lain promptly defrauded emergency government programs to obtain millions for himself at the expense of others who needed the assistance. Lain’s offense is unquestionably very serious. The nature, circumstances and seriousness of the offense, and the need to promote respect for the law, provide just punishment, and promote adequate deterrence requires a significant sentence in this case. Promoting general deterrence is particularly important in fraud cases. “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.” *United States v. Musgrave*, 761

F.3d 602, 609 (6th Cir. 2014) (citing other cases from the 6th Circuit and one from the 11th Circuit); *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (“Defendants in white collar crimes often calculate the financial gain and risk of loss, and white-collar crime can therefore be affected and reduced with serious punishment”). As such, the Court should deny defendant Lain’s motion for a variant sentence.

### CONCLUSION

The government requests that the Court sentence the defendant to 41 months in prison, 3 years of supervised release, order the defendant to pay \$622,683.40 in restitution to the SBA, and impose all of the special conditions of supervised release as proposed by the probation officer.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of February 2022, I electronically filed the foregoing **GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR VARIANCE [DOC. #31]** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in this case.

*s/ Amy McDaniel* \_\_\_\_\_

Amy McDaniel  
Legal Assistant  
U.S. Attorney's Office