

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Case No. 1:20-CR-260
	)	
v.	)	Judge Rossie D. Alston, Jr.
	)	
DIDIER K. KINDAMBU,	)	Sentencing: October 21, 2021
	)	
Defendant.	)	

**POSITION OF THE UNITED STATES**  
**WITH RESPECT TO SENTENCING**

The United States, by and through undersigned counsel, hereby respectfully submits this position paper with respect to the sentencing of defendant Didier Kindambu. As explained in more detail below, in the agreed statement of facts, and in the Presentence Investigation Report, defendant Kindambu has committed a deplorable crime by seeking to exploit a global health crisis to satisfy his personal greed. The sentence in this case should reflect that ugly reality.

Nevertheless, there are mitigating factors discussed in more detail in the government's sealed filing being submitted to the Court today. As set forth in that sealed filing, Kindambu has taken some actions to begin to undo the harm that he caused. The government therefore respectfully requests that this Court consider the totality of the circumstances—the wanton, selfish nature of the crime, the harm that it caused, as well as the facts in mitigation—in fashioning the sentence in this case. As explained in more detail in the government's sealed filing, the government respectfully recommends that the Court impose a sentence of imprisonment that is significant, but that is nonetheless somewhat below the advisory guideline range.

**I. Kindambu Exploited An Unprecedented Crisis to Satisfy His Own Greed.**

In the final days of 2019, scientists learned that a previously unknown respiratory coronavirus had emerged, likely first infecting a human host sometime near the end of that year. For a short time thereafter, reasonable minds disagreed about the nature and severity of the threat and what, if anything, should be done to counter it. But within months, it became plain for all to see that the virus now known as SARS-CoV-2 would pose the greatest threat to public health that the world had seen since the 1918 Flu Pandemic, if not before.

Since the first confirmed case of Coronavirus Disease 2019 (“COVID-19”) was identified in the United States, the COVID-19 pandemic has remade society in ways thought unimaginable just a few years ago. Out of self-preservation, citizens from all walks of life immediately stopped going to work; children were suddenly pulled out of schools; treasured national pastimes like the annual NCAA basketball tournament were canceled on almost no notice, while the 2020 Summer Olympic Games were postponed by a full year. Churches and other places of worship emptied of their congregants. This Court and thousands of others across the country temporarily were shuttered. Now nearing the end of its second year, the COVID-19 pandemic has claimed the lives of more than 700,000 Americans, a figure greater than all of the American combat deaths during World War I, World War II, the Korean War, and the Vietnam War combined.

The best among us rose to meet the crisis. On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, more commonly known as the “CARES Act.” Pub. L. No. 116-136, 134 Stat. 281 (2020). The law sought to alleviate the massive suffering caused by the pandemic and the damage to the economy caused by resulting sudden, widespread lockdowns. The terms of the Act were generous by design: it made billions of government-guaranteed loans available to qualified small businesses through the Paycheck Protection Program (“PPP”). The loans would carry the exceptionally low interest rate of 1% if

they came due at all. And the loans would be forgiven entirely so long as the proceeds were used on a narrow list of expenses designed to help struggling businesses survive: payroll, utilities, rent, premiums to keep health care benefits in force, and just enough to pay the interest (but not the principal) on a company's pre-existing mortgage or other business loan.

To qualify for a PPP loan, an applicant had to meet certain criteria that were designed to ensure that the program's assets would be used to forestall widespread layoffs and economic collapse. A business applying for a PPP loan was required to certify, among other things, that it was "in operation on February 15, 2020 and either had employees for whom [it] paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC." The amount of the loan that could be approved under the program was a function of the applicant's historical payroll costs, subject to certain exclusions. Again, the intent of the Act and its implementing regulations were to alleviate widespread economic suffering caused by the pandemic, by giving companies enough money to pay the absolute essentials.

While millions of Americans struggled for their lives and livelihood, Kindambu moved rapidly to exploit the crisis. Starting no later than April of 2020, Kindambu, with the help of his now-estranged wife Rose-Marie Nsahlai, *see United States v. Rose-Marie Nsahlai*, 1:21-mj-318 (E.D. Va.), engaged in a scheme to fraudulently obtain PPP loan proceeds, and then to spend those funds on luxury items having nothing to do with legitimate payroll expenses.

**A. Kindambu and Nsahlai Submit Fraudulent Applications to BOA on Behalf of Shell Entities Papillon Holdings, Incorporated and Papillon Air, Inc.**

The scheme centered upon two shell entities owned by Kindambu named Papillon Holdings, Incorporated and Papillon Air, Inc. These companies held themselves out as operating some form of business in the aviation industry. But in reality, as of early 2020, neither entity had any meaningful business operations or employees, aside from perhaps Kindambu and Nsahlai

themselves.

In April of 2020, Kindambu and Nsahlai acted in concert to submit fraudulent applications for PPP loans to Bank of America (“BOA”) on behalf of both shell entities. In the application submitted on behalf of Papillon Holdings, Incorporated, Kindambu certified that in 2019, that entity had “Payroll Costs” consisting of “[s]alaries, wages, commissions, vacation and sick pay (as reported on IRS form 940)” in the amount of \$7,181,552.” In truth, Papillon Holdings, Incorporated had no employees and essentially no operations that year. Kindambu further certified in the application that “[a]ll SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.” And more particularly, he falsely represented that the “the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; as specified under the Paycheck Protection Program Rule.” Kindambu knew that all of this was false, and that he intended to use the overwhelming bulk of the PPP loan proceeds to buy luxury items and fund his lavish lifestyle.

Kindambu, again working with Nsahlai, submitted an equally fraudulent application on behalf of Papillon Air, Inc. Kindambu falsely certified that Papillon Air, Inc. had average monthly payroll expenses of at least \$850,701.25, when he knew that it had no employees and therefore no payroll expenses. More particularly, the defendant falsely certified that in 2019, Papillon Air, Inc. had “Payroll Costs” consisting of “[s]alaries, wages, commissions, vacation and sick pay (as reported on IRS form 940)” in the amount of \$10,208,415. This figure was entirely fabricated, as Kindambu knew. And once again, the defendant certified that “[a]ll SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule,” and that the “the funds will be used

to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; as specified under the Paycheck Protection Program Rule.” Kindambu knew that he would spend the bulk of the proceeds on whatever he wanted.

**B. Kindambu and Nsahlai Submit Fabricated Payroll Documentation To BOA.**

After Kindambu and Nsahlai submitted the first round of paperwork to BOA, the Bank sought additional documentation supporting the claimed payroll expenses. In response, the co-conspirators prepared Excel spreadsheets for each entity that purported to contain payroll records for the respective entity. The information contained in these files was entirely fictitious. As to Papillon Holdings, Incorporated, the bogus spreadsheet claimed millions of dollars in payroll expenses that the entity supposedly had incurred during 2019 and the first few months of 2020, listed the names of the eighteen employees supposedly paid by the company, and further purported to itemize the salaries paid to, and the various categories of taxes withheld on behalf of, these alleged employees. Kindambu knew that this spreadsheet was a fabrication, that the names had been made up, and that the company had not incurred the payroll expenses or withheld the taxes listed in the spreadsheet.

The spreadsheet created on behalf of Papillon Air, Inc. was equally fraudulent. That file claimed millions of dollars in payroll expenses paid and taxes withheld by Papillon Air, Inc. on behalf of twelve supposed employees who allegedly worked for that entity during 2019 and early 2020. Again, the names, payroll information, and tax information all had be made up.

**C. Kindambu Signs False Promissory Notes Doubling-Down on the Fraud.**

In May 2020, Kindambu completed and signed promissory notes on behalf of both shell entities wherein he repeated or elaborated upon many of the falsehoods described above. For example, he claimed falsely in the promissory notes that: (1) “[a]ll proceeds of the Loan will be

used only for business-related purposes as specified in the Application and consistent with the Paycheck Protection Program Rule”; (2) “[t]he current economic uncertainty makes the request for the Loan necessary to support the ongoing operations of Borrower”; (3) “[a]ll proceeds of the Loan will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule”; and (4) that “[b]orrower has provided Bank true, correct and complete information demonstrating that Borrower had employees for whom Borrower paid salaries and payroll taxes on or around February 15, 2020.”

**D. Kindambu Lauanders and Then Willfully Misuses the Proceeds to Fund His Lavish Lifestyle.**

In the first half of May 2020, BOA approved PPP loans both to Papillon Holdings, Incorporated and to Papillon Air, Inc. The Bank then disbursed a total of approximately \$2.5 million in PPP loan proceeds into accounts controlled by Kindambu. The defendant immediately shuffled this money back, forth, and through various accounts that he controlled, before spending it on numerous items that had nothing to do with protecting anyone’s paycheck or with helping a struggling business stay alive. For example, Kindambu used the money to buy himself a brand-new Lexus and a brand-new Cessna aircraft, to pay for part of a 6-bedroom, 7,000 square-foot home priced at over \$1.1 million, *see* Ex. 1 (exterior photo of residence),<sup>1</sup> to pay his personal tax bill, and to purchase luxury items for himself from Gucci, Nordstrom, Hugo Boss, Winn Bros, and Lenkersdorfer Fine Jewelry.

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<sup>1</sup> A profile of this extraordinary residence is available at [https://www.zillow.com/homes/43464-Calphams-Mill-Court,-Leesburg,-VA-20176\\_rb/72490977\\_zpid/?mmlb=g](https://www.zillow.com/homes/43464-Calphams-Mill-Court,-Leesburg,-VA-20176_rb/72490977_zpid/?mmlb=g), 1. Because this home was listed in the Indictment and is subject to forfeiture as proceeds of the offense, the full address may be published without redaction pursuant to Fed. R. Crim. P. 49.1(b)(1).

## **II. Sentencing Argument**

Although the Supreme Court rendered the federal Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005), “a sentencing court is still required to ‘consult [the] Guidelines and take them into account when sentencing.’” *United States v. Clark*, 434 F.3d 684, 685 (4th Cir. 2006) (quoting *Booker*, 543 U.S. at 264). The Supreme Court has directed district courts to “begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 552 U.S. 38, 49 (2007). In *Gall*, the Supreme Court instructed that the sentencing court should calculate the sentencing guideline range, permit the government and the defendant “an opportunity to argue for whatever sentence they deem appropriate,” consider all of the § 3553(a) factors, and finally pronounce a sentence taking into account all of the relevant factors. *Id.* at 596-97. The *Gall* Court further instructed that, in the event that the sentencing court decides to impose a variance sentence, the court “must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Id.* (noting that a “major departure should be supported by a more significant justification than a minor one.”). Ultimately, the sentence imposed must meet a standard of reasonableness. *See Booker*, 543 U.S. at 260-61.

### **A. Guidelines Range**

The United States joins in the Sentencing Guidelines calculations set forth in the final Pre-Sentence Report as to defendant Kindambu. Dkt. No. 53. The PSR correctly calculates the total offense level of 22, and a criminal history category of I, resulting in an advisory guideline range of 41 to 51 months of imprisonment. Dkt. No. 53 at 16-17, 25. Because the guideline

calculations do not appear to be in dispute, the government will focus in this memorandum on the § 3553 factors.

**B. Section 3553(a) Factors**

Pursuant to the factors set forth in 18 U.S.C. § 3553(a), the government recommends that this Court impose a substantial sentence of imprisonment that is nonetheless somewhat below the advisory guideline range.

*1. The Sentence Should Reflect the Nature and Circumstances of the Offense.*

The nature and circumstances of Kindambu's scheme call for a substantial term of imprisonment. As set forth above, Kindambu set out to exploit a national crisis to satisfy his own greed. There is no evidence that he was struggling financially, was desperate for money, or acted out of fear or under duress. Rather, this was purely a crime of choice, and one that succeeded in obtaining over \$2.5 million in proceeds for Kindambu merely because he was willing to lie repeatedly and brazenly. The crime thus calls for a meaningful period of imprisonment.

*2. The Sentence Must Promote General Deterrence.*

A significant sentence is also called for in this case to promote general deterrence. First, the Payroll Protection Program, and other governmental loan and loan-guarantee programs, are a commonly used tool in our economy. Because these programs are widespread and are used by many applicants, there are millions of opportunities to exploit such programs. The sentence in this case should account for the need to deter a large set of potential fraudsters. Absent a meaningful term of imprisonment, general deterrence —“the effort to discourage similar wrongdoing by others through a reminder that the law's warnings are real and that the grim

consequence of imprisonment is likely to follow”—will not be achieved. *United States v. Bergman*, 416 F. Supp. 496, 499 (S.D.N.Y. 1976).

Second, PPP loan frauds in general, and this crime in particular, are deliberate and calculated crimes of choice. They are therefore more susceptible to general deterrence and more in need of a significant sentence to achieve that deterrence. *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (finding that crimes that are “rational, cool, and calculated” rather than “crimes of passion or opportunity” are “prime candidates for general deterrence”) (citation omitted).

Third, this crime, like many PPP loan fraud scams, are both difficult to detect and highly lucrative. As shown here, Kindambu obtained over \$2.5 million in fraud proceeds through his scheme, making this crime a very attractive option for would-be fraudsters, unless there is a meaningful threat of a lengthy term of incarceration. *See, e.g., United States v. Hefferman*, 43 F.3d 1144, 1149 (7th Cir. 1994) (“Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.”); *see also United States v. Morgan*, 635 F. App’x 423, 450 (10th Cir. 2015) (“General deterrence comes from a probability of conviction and significant consequences. If either is eliminated or minimized, the deterrent effect is proportionately minimized.”).

3. *The Sentence Should Account for the Need to Incapacitate Defendant Kindambu.*

The facts of this case also show that Kindambu is very much in need of incapacitation. As noted above and as reflected in the PSR, Kindambu does not appear to have been facing any significant crisis or other desperate circumstances that might explain (though never excuse) this crime. He appears to have had ample resources and business prospects, and simply chose to

commit this crime because he believed he could get away with it, and because he wanted to live a life of considerable luxury.

Contrary to the defense's suggestions, moreover, Kindambu will remain a threat to commit this type of crime even if he is deported from the United States. Virtually none of this fraud required Kindambu to physically enter a local bank branch. Rather, the fraudulent statements and documents were submitted electronically via the *world wide* web, and the proceeds were then wire-transferred into a bank account identified electronically by Kindambu. Kindambu will be able to commit crimes like this from anywhere other than prison, and will be likely to do so if not sufficiently punished in this case.

4. *The Sentence Should Promote Respect for the Rule of Law.*

The COVID-19 pandemic has been an extraordinary challenge to the nation and to the world. When Congress enacted the CARES Act and established the Payroll Protection Program, it sought to act in solidarity with those across America who were suffering, and to prevent an even greater economic calamity. Kindambu exploited this crisis and stole millions of dollars intended for the most desperate among us. His actions strike directly at the rule of law. The sentence in this case should honor the suffering that so many have endured during this crisis, and should reflect the fact that Kindambu's crimes were an affront to the rule of law, as well as our collective humanity.

5. *The Court Should Also Consider the Mitigating Factors Set Forth In More Detail in the Government's Sealed Filing.*

Notwithstanding the above, there are significant mitigating factors in this case that the Court should also consider in fashioning the ultimate sentence in this case. Those factors are discussed in more detail in the sealed filing being submitted to the Court today.





# EXHIBIT 1

