

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 1:21-CR-165 (GTS)
)
v.)
)
SEAN M. ANDRE,)
)
Defendant.)

United States' Sentencing Memorandum

The United States of America, through the United States Attorney for the Northern District of New York, respectfully requests that the Court sentence the defendant to a term of imprisonment at the low end of the applicable Sentencing Guidelines range, to be followed by a term of supervised release, and to order restitution and forfeiture in accordance with the parties' plea agreement and the Preliminary Order of Forfeiture.

On May 25, 2021, pursuant to a plea agreement, the defendant pled guilty to Counts 1 and 2 of an information charging bank fraud conspiracy in violation of 18 U.S.C. §§ 1344, 1349, and wire fraud conspiracy in violation of 18 U.S.C. §§ 1343, 1349, respectively.

The defendant is scheduled to be sentenced on February 24, 2022. He has been released with conditions since his February 10, 2021 initial appearance on a criminal complaint.

1. Factual Summary

The Government relies on the facts set forth in the Presentence Investigation Report ("PSIR," dkt. no. 49) prepared by the Probation Office. PSIR ¶¶ 5, 10-15. In pleading guilty, the defendant admitted to conspiring with Jean Lavanture to obtain \$4,309,581 in Paycheck Protection Program (PPP) loans between June and August 2020, by submitting fraudulent loan applications in the names of four dormant companies that Lavanture controlled. Each loan application grossly

misrepresented each company's employees and payroll. Each application also included false corporate tax documents that the defendant created as part of the scheme. The defendant received approximately \$157,578 of fraud proceeds from Lavanture as a fee for his role in the scheme. The defendant further admitted that he fraudulently obtained \$1,194,754 in PPP loans for his own companies by making false representations about those entities' employees and payrolls. Finally, the defendant admitted that he fraudulently obtained a \$105,000 Economic Injury Disaster Loan (EIDL) (and a \$10,000 advance) from the U.S. Small Business Administration (SBA) for one of his companies.

2. Statutory Maximum Punishments

Count 1: Bank Fraud Conspiracy

Maximum term of imprisonment: 30 years, pursuant to 18 U.S.C. § 1344.

Maximum fine: \$1 million, pursuant to 18 U.S.C. § 1344.

Count 2: Wire Fraud Conspiracy

Maximum term of imprisonment: 20 years, pursuant to 18 U.S.C. § 1343.

Maximum fine: \$250,000, pursuant to 18 U.S.C. § 3571(b)(3).

Both Counts

Supervised release: the Court may require the defendant to serve a term of supervised release of up to 5 years, to begin after imprisonment. 18 U.S.C. § 3583(b)(1).

3. Guidelines Calculation and Range

3.1 Criminal History Category

The United States adopts the PSIR's conclusion that the defendant's criminal history category is I. PSIR ¶ 43.

3.2 Offense Level

The United States agrees with the Sentencing Guidelines offense level calculation set forth in the PSIR, resulting in a post-acceptance offense level of 24. *See* PSIR ¶¶ 24-34.

4. Sentencing Recommendation

The Government respectfully asks the Court to impose a term of imprisonment at the low end of the Guidelines range, to be followed by a term of supervised release including the special conditions recommended by Probation. Additionally, the Court should order agreed-upon restitution in the amount of \$1,309,754, and order forfeiture in accordance with the Preliminary Order of Forfeiture.

Such a sentence would be sufficient and not greater than necessary to achieve the goals set out in 18 U.S.C. § 3553(a), including the need for the sentence to reflect the nature and circumstances of the offenses, and the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offenses, to promote respect for the law, and to provide just punishment for the offenses; the need to protect the public from further crimes of the defendant; and the need for the sentence to afford adequate deterrence to criminal conduct.

The defendant defrauded lending programs that provided urgent financial lifelines to owners of legitimate businesses, and their employees, amidst a crippling pandemic. Unfortunately, the EIDL program and the PPP proved to be “easy marks” for the defendant and his experienced fraudster partner, Jean Lavanture. The defendant helped Lavanture fraudulently obtain more than \$4 million in a matter of weeks. The defendant also managed to obtain more than \$1 million in loans for his own businesses that had no employees and little to no revenue. Within a few months of obtaining his loans, the defendant transferred fraud proceeds to multiple bank accounts and bought himself a Mercedes. He spent nearly all of the loaned funds he received. The defendant’s

victims included not only the institutions that loaned him the money, but also the legitimate businesses that would have benefitted from these loans had the loans gone to them instead of the defendant. The money available for PPP loans and EIDLs was limited, and by fraudulently obtaining more than \$4 million for Lavanture, as well as more than \$1 million for himself, the defendant prevented legitimate businesses from putting this money to good use.

A term of probation would be insufficient under these circumstances. A term of imprisonment is needed to punish the defendant for taking advantage of a pandemic relief program to commit a large fraud, and for doing so while he was a peace officer employed by the Metropolitan Transportation Association; and also because the defendant improperly spent the loaned funds without any realistic hope of being able to repay the lenders.

The United States reserves the right to respond to defense arguments raised for the first time after the filing of this memorandum. Similarly, if the Court is considering a *sua sponte* departure from the applicable Guidelines range on a ground not previously identified by the parties or in the PSIR, the parties are entitled to notice and an opportunity to respond. *See* Fed R. Crim. P. 32(h), (i)(1)(c). Further, the United States respectfully requests that the Court provide the parties with any *ex parte* communications received by the Court in connection with sentencing, with the exception of the confidential sentencing recommendations submitted by the United States Probation Office.

Dated: February 7, 2022

Respectfully submitted,

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