

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA )  
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 )  
 v. )  
 )  
 )  
 **KEON TAYLOR** )  
 \_\_\_\_\_ )

DOCKET NO. 3:21-cr-00132  
**GOVERNMENT’S SENTENCING  
MEMORANDUM**

COMES NOW the United States of America, by and through Dena J. King, United States Attorney for the Western District of North Carolina, and respectfully submits this Sentencing Memorandum.

**I. Introduction**

Defendant KEON TAYLOR took advantage of the COVID-19 pandemic and obtained fraudulent unemployment benefits totaling more than \$219,000 from numerous states using the stolen identities of at least 35 victims. TAYLOR further attempted to steal funds meant to help businesses that suffered because of the pandemic by filing three applications for Economic Injury Disaster Loans from the Small Business Association (SBA) using false information.

TAYLOR’s offenses were not limited to COVID-19 fraud. TAYLOR also made fake IDs that were subsequently used in other fraud schemes; he was charged with possession of device-making equipment and agreed to a sentencing enhancement for this conduct. Additionally, TAYLOR continued his fraudulent ID-making *after* his guilty plea in this case, and his bond was revoked based on his continued conduct.

**II. Sentencing Guidelines**

A. Advisory Guidelines Calculation

As calculated in the PSR, TAYLOR faces an offense level calculation as follows:

Base Offense Level [U.S.S.G. § 2B1.1(a)(1)]:	7
Loss between \$250,000 and \$550,000 [U.S.S.G. §2B1.1(b)(1)(H)]	+12
More than Ten victims [U.S.S.G. §2B1.1(b)(2)(A)(i)]:	+2

Offense involved the possession or use of device-making equipment or authentication feature: [U.S.S.G §2B1.1(b)(11)]	+2
TOTAL	23
Less 3 levels for timely acceptance of responsibility	-3
OFFENSE LEVEL	20

Based on an offense level 20/I, the advisory sentencing guidelines range called for by the PSR, absent any variances or departures, is 33 to 41 months. Additionally, TAYLOR faces a 24-month consecutive sentence for his conviction of 18 U.S.C. § 1028A.

Generally, the calculation is straight-forward and without objection. However, there is one agreed upon enhancement that warrants additional discussion.

B. Enhancement for Possession or Use of Device Making Equipment and Authentication Features, U.S.S.G. § 2B1.1(b)(11)(A)

Defendant faces a two-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(11)(A). Defendant agreed to this enhancement in the plea agreement and does not object to the enhancement in the PSR. However, because enhancements under U.S.S.G. § 2B1.1(b)(11) do not always apply when a defendant also pleads guilty to aggravated identity theft, in violation of 18 U.S.C. § 1028A, additional discussion is warranted.

In some instances, the two-level enhancement for U.S.S.G. § 2B1.1(b)(11) becomes inapplicable when a defendant pleads guilty to aggravated identity theft as set out in U.S.S.G. Application Note 2 of § 2B1.6. However, Application Note 2, applies, in this context, only to enhancements under § 2B1.1(b)(11)(C), pertaining to the unauthorized transfer or use of any means of identification. It does not apply to enhancements under § 2B1.1(b)(11)(A), pertaining to “the possession or use of any (i) device-making equipment, or (ii) authentication feature . . . .”

TAYLOR used device making equipment to create fictitious driver’s licenses, with holograms, to be used by himself. He likewise sold such fake driver’s licenses to other individuals, for example as charged in *United States v. Terrell Freeman et al.* (3:21cr240, Doc. 10, ¶¶ 26, 34, 42, 49, and 52).

This Court has previously upheld the use of the § 2B1.1(b)(11)(A) enhancement even when the defendant had pled guilty to aggravated identity theft when the defendant’s conduct fell under § 2B1.1(b)(11)(A) rather than under § 2B1.1(b)(11)(C). For example, in *United States v.*

*Medley*, 3:18cr379-MOC, and *United States v. Jihoon Sun*, 3:18cr361-MOC, this Court upheld the enhancement in similar circumstances.

Likewise, other judges in the Western District of North Carolina have also imposed the enhancement in similar circumstances. See *United States v. James Murray Willingham, Jr.*, et al., 3:17cr276-RJC, and *United States v. Malcolm Bynum*, 3:20cr202-01-RJC. Other circuits have also upheld the use of the enhancement in conjunction with the two-year aggravated identity theft sentence. See *United States v. Cruz*, 713 F.3d 600, 605-07 (11th Cir. 2013); *United States v. Jenkins-Watts*, 574 F.3d 950, 961-62 (8th Cir. 2009); (*United States v. James*, 744 F. App'x 664, 666 (11th Cir. 2018) (citing *United States v. Taylor*, 818 F.3d 671, 675 (11th Cir. 2016)).

Application of the enhancement for use of authentication features therefore is separate from TAYLOR's conduct punished by 18 U.S.C. § 1028A and is warranted. Therefore, the Court should impose the two-level enhancement to TAYLOR as agreed to by the parties.

### C. Two-Level Upward Variance

The Government respectfully moves for a two-level upward variance from a guidelines range 20/I (33-41 months) to guidelines range 22/I (41-51 months).

This request for a variance is contemplated in the plea agreement. The plea agreement states, "The United States may seek, and the defendant may oppose, a two-level variance because the offense involves fraud in connection with major disaster or emergency benefits, similar to the enhancement applicable under U.S.S.G §2B1.1(b)(12)." (Doc. 13, ¶7(f)).

Initially, USPO included a two-level enhancement pursuant to U.S.S.G §2B1.1(b)(12) in the draft PSR. The United States filed an objection when this enhancement was included in the draft PSR. (Doc. 22).

Generally, the two-level enhancement is applicable when "the offense involved conduct described in 18 U.S.C. § 1040." U.S.S.G. §2B1.1(b)(12). Section 1040 involves fraud in connection with a major disaster or emergency benefits. On its face, this enhancement appears applicable to fraud related to COVID-19 funds, like those involved in the conduct in this case.

However, a more in depth review of this statute and the enhancement shows that the fraud must be in a matter paid in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5191).

On March 13, 2020, then President Trump declared the existence of a national emergency pursuant to § 501(b) (42 U.S.C. § 5191(b)) of the Stafford Act in response to the COVID-19 pandemic. However, the expanded unemployment benefits payments – such as those involved in this case – were authorized under the CARES Act, Pub. L. No., 116-136, not under the Stafford Act. The COVID-19 fraud benefits obtained by the defendant in this case were not issued under

the Stafford Act.

In April 2021, the Department of Justice issued guidance to AUSAs prosecuting COVID-19 fraud cases directing that AUSAs should “use restraint” in seeking this two-level sentencing enhancement because the conduct does not involve funds obtained under the Stafford Act.

While there may not be clarity on whether the enhancement pursuant to U.S.S.G. §2B1.1(b)(12) would be applicable to funds obtained under the CARES Act, there is clarity that: (1) COVID-19 had not been contemplated at the time of the drafting of the Sentencing Guidelines and (2) COVID-19 payments were paid in connection with a major disaster and national emergency.

The same reasoning that made a two-level sentencing enhancement appropriate to funds sought by those defrauding relief funds for victims of Hurricane Katrina and Hurricane Rita, as contemplated by U.S.S.G. §2B1.1(b)(12), makes an enhanced punishment appropriate in this case.

Even if the enhancement in the guidelines does not specifically apply to conduct under the CARES Act, the reasoning behind such an enhancement – to punish defendants who seek to profit from national disasters and who take advantage of the government’s desire to get money quickly into the hands of those hurt by the disasters – still applies.

The Government respectfully moves for a two-level variance. TAYLOR’s conduct involved applying for unemployment benefits that had been increased due to the COVID-19 pandemic as part of the emergency response of the United States. His conduct also involves applying for fraudulent EIDL loans. A two-level variance will result in an adjusted offense level of 22/I with an advisory guidelines range of 41 to 51 months in prison. TAYLOR faces an additional 24-month sentence for his conviction of 18 U.S.C. § 1028A.

### **III. U.S.S.G. 3553(a) Factors**

#### **A. Nature and Circumstances of Offense**

In May 2021, a federal Grand Jury indicted TAYLOR on charges of wire fraud, false statements to the SBA, aggravated identity theft, and possession of document making equipment. Generally, TAYLOR engaged in a scheme to defraud the United States Department of Labor, the North Carolina Division of Employment Security, and the States of Tennessee, Texas, Ohio, Massachusetts, Nevada, and Arizona by filing fraudulent claims for COVID-19-related unemployment insurance (UI) benefits in the names of identity theft victims. During the scheme, TAYLOR fraudulently obtained more than \$219,000 in fraudulent unemployment benefits by filing fraudulent claims in the names of more than 35 victims and submitted numerous additional applications seeking fraudulent UI benefits. Additionally, TAYLOR fraudulently applied for three Economic Injury Disaster Loans from the SBA using false information.

Federal agents executed a search warrant on TAYLOR's apartment in February 2021. In his apartment, TAYLOR had equipment that he used to manufacture fake IDs, including a computer; holographic ink cartridges; holographic stickers; plastic identification card blanks; and identification card template computer software. He also possessed photographs and fake IDs with different photographs, including the photographs of individuals who have been prosecuted in this district for identity theft offenses.

TAYLOR had his initial appearance on May 25, 2021; he was released on a \$25,000 unsecured bond on May 28, 2021 with conditions of release, including that he must not violate any federal, state or local law and that he not possess the personal identifying information of any person except for himself and his minor children. (Doc. 9).

On July 27, 2021, TAYLOR pleaded guilty to one count of wire fraud and one count of aggravated identity theft pursuant to a plea agreement. Following TAYLOR's guilty plea, he remained on release with the same conditions pending his sentencing hearing. The final PSR was filed on September 28, 2021.

In a separate case, defendant Terrell Freeman and others were indicted in September 2021 for a different identity theft and fraud scheme. TAYLOR provided some the fake IDs to Freeman that were used in this fraud scheme. Indeed, TAYLOR is referenced in the Freeman, et al. indictment as K.T. (3:21cr240, Doc. 10, ¶¶ 26, 34, 42, 49, and 52). TAYLOR's conduct alleged in the Freeman indictment occurred between November 2020 and December 2020.

Following Freeman's arrest on October 4, 2021, federal agents obtained a search warrant for Freeman's cellular devices. The search of those devices revealed text messages and messages on the Telegram messaging application between Freeman and TAYLOR during September 2021. In those messages, Freeman provided TAYLOR with the name, date of birth, and address for identity theft victim E.S. TAYLOR then agrees to make a fake ID for TAYLOR using that information.

On October 22, 2021, U.S. Probation filed a sealed bond violation report against TAYLOR alleging two violations of his release conditions based on the information obtained from the search of Freeman's devices. Magistrate Judge David Keesler held a bond revocation hearing on November 10, 2021. Defendant admitted the violations, and Judge Keesler ordered TAYLOR detained.<sup>1</sup>

## B. Defendant's History and Characteristics

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<sup>1</sup>TAYLOR technically breached the plea agreement. Specifically, TAYLOR breached paragraph 3 of the agreement stating that, defendant breaches the plea agreement by "the defendant's violation of any federal, state or local law or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release." However, the United States intends to proceed at sentencing under the terms of the plea agreement.

As reflected in the PSR, TAYLOR is a Criminal History Category I. He receives no enhancements to his sentencing range as a result of prior criminal conduct.

However, TAYLOR does not have a pristine criminal record. He was convicted of obtaining property under false pretense in 2015 and had a probation violation for that offense. He received one criminal history point for this conviction.

TAYLOR also has pending charges in Mecklenburg County including possession of a stolen firearm and possession of financial transaction card from 2017. He has a dismissed charge for possession of counterfeit instruments in 2014, and he also has a dismissed felon in possession of a firearm charge from 2021 that was related to a federal search warrant executed at his residence for this case.

Additionally, TAYLOR does not have substantial work history. Per the PSR, he was unemployed for several years. (Doc. 24, ¶ 88). Even while TAYLOR was on pre-trial release, his Pre-Trial Services officer was unable to confirm that he actually worked as he purported.

#### C. Additional 3555(a) Factors

TAYLOR's crimes were serious. He stole taxpayer dollars from the federal government as well as from numerous state unemployment programs. He also victimized individuals whose identities were used to effectuate the scheme.

The sentence in this case should deter others who may be tempted by easy money of fraud and should also specifically deter TAYLOR who continued to commit crimes even after pleading guilty in this case.

### **IV. Conclusion**

TAYLOR used stolen identities to steal unemployment benefits that were meant to help those suffering due to the COVID-19 pandemic. TAYLOR took advantage of benefits that the Government was trying to distribute quickly due to a national emergency. He also tried to obtain fraudulent loans for businesses meant to aid those harmed by the pandemic. Additionally, TAYLOR made fake IDs that were used in fraudulent schemes, and he continued his fraudulent conduct after his guilty plea.

The Government respectfully request that the Court sentence TAYLOR to a term consistent with the range in the Sentencing Guidelines for 22/I – a range that includes an upward variance of two-levels because of his disaster benefits fraud. TAYLOR also faces a consecutive sentence of 24 months based on his conviction of aggravated identity theft in Count Eleven. The Government will make its specific sentencing recommendation at the time of sentencing.

Respectfully submitted this the 1st day of March, 2022 by:

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