

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

UNITED STATES OF AMERICA,

v.

21-CR-168-WMS

ADAM D. ARENA,

Defendant.

THE UNITED STATES' SENTENCING MEMORANDUM

The government respectfully submits this memorandum ahead of the April 13, 2022, sentencing of the defendant, Adam D. Arena. On November 17, 2021, the defendant pleaded guilty to a two-count criminal Information charging him with violating 18 U.S.C. § 1349 (conspiracy to commit bank fraud) and 18 U.S.C. § 1957 (engaging in monetary transactions with criminally derived proceeds). *See* Docs. 35, 36. The government recommends that the Court sentence the defendant to a period of incarceration of between 63 and 78 months—a sentence that the government submits is sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553. The government also recommends that the Court impose a term of five years of supervised release, with necessary conditions to be determined by the U.S. Probation Office. 18 U.S.C. § 3583(b)(1).

I. Offense Conduct

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, signed into law on March 27, 2020, in response to the COVID-19 pandemic, authorized forgivable loans to small businesses for job retention and certain other expenses through the creation of the Paycheck Protection Program (“PPP”).

Here, the defendant defrauded the PPP by submitting a materially false and fraudulent loan application to Bank-1 for the defendant's Florida-based business, ADA Auto Group LLC. Despite the defendant's representations to the contrary, this business did not have employees or legitimate business operations in 2019 and 2020. Relying on the defendant's application, however, Bank-1 directly provided him with approximately \$954,000 in PPP funds. After receiving this money, the defendant laundered the funds by using some of the money for personal purchases for himself, and also distributing a portion of it to at least one separately charged co-defendant. None of the \$954,000 in PPP loan proceeds were used by the defendant for business-related purposes, nor did the defendant ever intend to use these funds for business-related purposes. *See generally*, Plea Agreement, Doc. 36 at 3-6.

II. Sentencing Recommendation

At a minimum, the government recommends that the Court sentence the defendant to not less than 63 months—the low end of the Plea Agreement's Guidelines range—to reasonably account for the defendant's convictions for both conspiracy to commit bank fraud and substantive money laundering. That said, the government submits that a sentence at or above the high end of the U.S. Probation Office's Guidelines range (*i.e.*, at least 71 months) is appropriate in this case.

First, the nature and circumstances of the defendant's offense weigh in favor of a significant sentence of incarceration. *See* 18 U.S.C. § 3553(a)(1). The defendant initiated this fraudulent scheme at the beginning of the COVID-19 pandemic. While millions of Americans struggled through financial hardship caused by the COVID-19 pandemic, the defendant disregarded his federal release conditions and took advantage of the federal program designed to help legitimate businesses in need.

Second, the defendant's history and characteristics, especially his criminal history and status on pretrial release while committing this latest offense, weigh in favor of a sentence at or above the high end of the U.S. Probation Office's Guidelines calculation. *Id.* The defendant engaged in this conspiracy to commit bank fraud and subsequently laundered the proceeds of his fraud (i) while on federal pretrial release and after pleading guilty to a separate fraud in the District of New Jersey (PSR at ¶ 64), and (ii) while state charges were pending against him in Suffolk County, New York for a separate fraud case (PSR at ¶ 65). The defendant pursued this PPP fraud scheme even as he took an oath and entered a plea of guilty in federal court, expressed remorse to the U.S. Probation Officer in that case, and stated his commitment to follow the law going forward.

The defendant started the instant scheme beginning in May 2020 when he filed and paid for ADA Auto Group LLC to be reinstated in the state of Florida. *See* PSR at ¶ 24. Just weeks later, on July 10, 2020, the defendant entered a plea of guilty in the District of New Jersey to conspiracy to commit bank fraud and a substantive count of bank fraud. *See* PSR at ¶ 64. There, the defendant used the names and personal identifying information of at least 79 inmates in Florida and Mississippi to submit fraudulent credit card applications to a bank. *Id.* The defendant caused approximately \$1.3 million of loss to that bank. *Id.*

Then, on August 30, 2020—only thirty days after his plea in the District of New Jersey—the defendant directed Bank-1, the victim of his PPP loan scheme in this case, to send his fraudulent PPP loan proceeds to a bank account held in his name. *See* PSR at ¶ 31. On August 13, 2020, the defendant electronically signed and submitted the closing loan documents based on false and fraudulent representations about his company, ADA Auto Group LLC. *See* PSR at ¶ 32. After receiving the proceeds, on September 11, 2020, the

defendant mailed a check for \$24,135 to his co-defendant, Amanda J. Gloria, as payment for her role in the fraud. *See* PSR at ¶ 34.

On September 28, 2020, just over two weeks after mailing the check for Gloria, and while hundreds of thousands of dollars of recently obtained PPP fraud proceeds sat in his bank account, the defendant told the U.S. Probation Officer handling the PSR in the District of New Jersey:

I sincerely regret my role in the instant offense, and I take complete responsibility for my actions . . . **Most importantly, everything I do in the future, I will take full responsibility for ensuring that I never find myself in this situation again.**

PSR at ¶ 64 (emphasis added).

Third, the sentence imposed must “afford adequate deterrence” against future crimes committed by the defendant. *See* 18 U.S.C. § 3553(a)(2)(B). As for deterring the defendant, he engaged in this scheme to defraud Bank-1 using a \$954,000 PPP loan while federal and state charges were pending in the District of New Jersey and Suffolk County, New York for other fraudulent schemes. It is clear from his persistent criminal conduct that a significant jail sentence is required to have any hope of a deterrent effect on his pursuit of further schemes in the future.

The Court should also consider the broader, general deterrent value of the defendant’s sentence on other individuals contemplating similar schemes to exploit federal relief programs, such as the PPP. *See* 18 U.S.C. § 3553(a)(2)(B). As of May 2021, the U.S. Small Business Administration (SBA) reported over 11.8 million PPP loan applications total were approved for nearly \$800 billion since the program was implemented in 2020.¹ Nearly 5,500

¹ U.S. Small Business Administration, Paycheck Protection Program (PPP) Report,

financial institutions served as participating lenders for these forgivable business loans. *Id.* As of February 20, 2022, the SBA had granted forgiveness for nearly \$700 billion in PPP loans.² During an extraordinary time in this country’s history, the United States government sought to provide widescale relief to those most in need. Yet during this same time, the defendant chose to defraud his government. This contrast justifies a serious sentence being imposed to send a clear message about the future that others might face who are contemplating defrauding the PPP and other U.S. federal relief programs.

Fourth, the sentence imposed must also “protect the public from further crimes of the defendant.” *See* 18 U.S.C. § 3553(a)(2)(C). The defendant has demonstrated twice that getting caught, facing criminal charges, and appearing in both federal and New York state court has done nothing to protect the public from further crimes of the defendant. On April 7, 2021, the defendant was sentenced to 48 months imprisonment by the Honorable Noel Hillman, United States District Court, District of New Jersey, for his last fraudulent scheme. A consecutive sentence of at least 63 months—and more appropriately, up to 78 months—appropriately accounts for the defendant continuing to engage in fraud by exploiting the PPP while two other criminal cases were pending against him. Any sentence below 63 months will hardly protect the public from the defendant’s future crimes.

Finally, given the defendant’s significant history of criminal misconduct, the government submits that whenever the defendant is released from custody, the defendant be

Approvals through May 31, 2021, *available at* https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf (last visited Feb. 23, 2022).

2 U.S. Small Business Administration, PPP data, *available at* <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-data> (last visited Feb. 23, 2022).

required to serve a term of five years of supervised release. While a custodial sentence may be a sufficient deterrent for some defendants to avoid engaging in future criminal acts, this defendant has shown little impact from the prospect of a prison term. To best ensure the defendant does not commit further crimes, a five-year term of supervised release is appropriate in this case.

Conclusion

For the foregoing reasons, the government respectfully recommends that the Court impose a sentence of incarceration within the Plea Agreement's Guidelines range of between 63 and 78 months imprisonment, along with five years of supervised release.

The government further requests the Court order restitution for \$1,103,701.04 as required pursuant to 18 U.S.C. § 3663A, 18 U.S.C. § 3663(a)(3), and U.S.S.G. § 5E1.1. *See* PSR at ¶ 86.

DATED: Buffalo, New York, March 23, 2022.

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