

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-60126-CR-RUIZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

**JIMPCY ONE, GOUSMAN LEMY, and
FRATNZ GUILLAUME, Jr.**

Defendants.

_____ /

**GOVERNMENT’S OMNIBUS SENTENCING MEMORADUM AND
OBJECTION TO A VARIANCE**

The United States, by and through undersigned counsel, hereby files this Omnibus Sentencing Memorandum and Objection to a Variance to address matters raised in the defendants’ Objections to Presentence Investigation Report ((DE: 114 (Guillaume); DE:115 (Lemy); and DE:120 (One)) as well as the defendants’ Sentencing Memoranda ((DE: 121 (One); DE:126 (Guillaume); and DE:127 (Lemy)).

The United States respectfully submits that the defendants be sentenced within the applicable advisory guidelines. As described in greater detail below, the defendants were involved in a complex money laundering conspiracy that involved two separate, but intertwined fraud schemes, resulting in a total intended loss of approximately 2 million for each defendant.

Memo Structure

Part I: General Facts and Brief Case History

Part II: Government's Response to the Defendants' Objections to the Presentence

Investigation Report

Part III: Government's Proposed Guidelines Range

Part IV: Application of § 3553 Factors

Part V: Government's Objection to any Variance

Part I: General Facts and Case History

A. General Facts

In this case, the defendants conspired to launder funds criminally derived from a business email compromise ("BEC") scheme and a PPP/EIDL loan fraud scheme. The defendants funneled the money obtained from these schemes through business bank accounts registered to companies and shell companies controlled by the defendants in order to conceal and disguise the nature, location, source, ownership, and the control of the proceeds.

The facts are outlined extensively in the defendants factual proffers: Lemy (DE:97), One (DE:95), and Guillaume (DE:99), and further outlined and analyzed in each of the defendants' Presentence Investigation Reports: Lemy (DE:124 *revised*); One (DE: 123 *revised*); and Guillaume (DE: 122 *revised*).

B. Case History

In August of 2020, the defendants were arrested on a criminal complaint charging them with conspiracy to commit money laundering, money laundering, bank fraud, and false statements to a financial institution. One and Guillaume were also charged with aggravated

identity theft (DE:1). In May of 2021, each defendant waived indictment and was arraigned on an information charging them with conspiracy to commit money laundering. On September 1, 2021, the defendants pled guilty to the one-count Information.

Part II: Defendant’s Objections to the Presentence Investigation Report

In a broad sense, the parties agree that the United States Probation Department’s (“Probation”) factual findings in its Presentence Investigation Report (“PSIR”) are generally correct. Nevertheless, the defendants each raised factual and legal objections which will be addressed in turn.

A. Factual Objections that Do not Affect the Advisory Guidelines Range

The following factual objections do not affect the USSG guideline calculations:¹

Defendant	Docket Location	Objection	Government Position
Lemy	DE:115, 6	Characterization of relationship with Ms. McGhee	Addressed in addendum
Lemy	DE:115, 7	Protection orders were temporary	Addressed in addendum
Lemy	DE:115, 8	Tax returns should suffice as proof of employment	PPP Loan fraud often involves the submission of false and fraudulent tax documents in order to trick banks into funding bogus PPP loans. Thus, tax returns, especially in cases like this, are not sufficient to prove proof of employment.
One	DE:120, 1	Spelling of Adriana	No objection
One	DE:120, 2	Knowledge of underlying crime	The United States believes it would prove that One was aware of the underlying fraud scheme based on items seized from his house, however, this does not impact his USSG range

¹ The citations refer to the Docket Entry DE, and the paragraph number containing the objection.

Defendant	Docket Location	Objection	Government Position
One	DE:120,3	One did not retain funds	Whether or not One retained the funds is irrelevant as it relates to the conduct.
One	DE:120, 7	One's DOB, etc.	No objection
One	DE:120, 8	Family background info	No objection
One	DE:120, 9-10	Company profits and car model	No objection

B. Substantive Objections

i. Two-Point Enhancement for Use of Identification: One and Guillaume

Lemy and One each object to the two-level increase for use of any means of identification unlawfully to produce or obtain any other means of identification pursuant to USSG § 2B1.1(b)(11)(C). (*See* DE:114, 7 (Guillaume); DE:120, 4 (One)). The United States submits that this enhancement was correctly applied by the United States Probation Department (“Probation”).² However, after lengthy plea negotiations, this enhancement was not included in the plea agreement for Lemy or One. As such, the United States respectfully requests that the Court accept the parties’ plea agreement which does not include this enhancement.

² Pursuant to USSG § 2B1.1(b)(11)(C), if the offense involved the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification increase by 2 levels. USSG § 2B1.1, cmt., application n. 1 adopts the definition of means of identification as it appears in 18 U.S.C.S. § 1028(d)(7), which, in turn, defines means of identification as including any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any name or date of birth. However, § 2B1.1 clarifies that such means of identification shall be of an actual, i.e., not fictitious, individual, other than the defendant. U.S. Sentencing Guidelines Manual § 2B1.1, cmt., application n. 1. *United States v. Rosso*, 492 F. App'x 28, 30 (11th Cir. 2012).

In this case, One used the personal identification information (name, date of birth and social security number) of deported aliens to open bank accounts which facilitated this scheme. Guillaume used the fake identity comprised of the name Sandro Saintfloeur with a stolen social security number to open a bank account to facilitate this fraud scheme. In this case, it follows that the subsequently “produced” other means of identification are the bank accounts registered to false social security numbers. Probation is correct that an account number in this context constitutes of identification that [was] obtained unlawfully.” *United States v. Ubieta*, 630 F. App'x 964, 984 (11th Cir. 2015).

ii. Criminal History Category: Guillaume

Guillaume received criminal history points for his 1999 arrest and 2001 sentence of incarceration for intimidation and assault and battery with a deadly weapon. (DE:108, 63). He argues that the points should not be assessed (DE: 114, 13).

A sentence imposed more than fifteen years prior to the defendant's commencement of the instant offense is not counted unless the defendant's incarceration extended into this fifteen-year period. *See* §§4A1.2(e). For this offense, Guillaume was sentenced to 2.5 years in the House of Corrections on August 29, 2001, and released from incarceration in November of 2002, making November of 2021 the cutoff date for the application of these criminal history points. The conduct here began in or around June 2017 which is within the fifteen-year period. The criminal history points were correctly applied.

iii. Criminal History Lemy

Lemy received one criminal history point for his 2018 Continuance Without a Finding ("CWOFF") for breaking and entering and assault and battery. He argues that the point should not be assessed (DE:115, 2).

Probation's thoughtful analysis on the impact of a CWOFF demonstrates that this criminal history point was correctly applied (*See* DE: 124-1, page 2 of 6). In essence, pursuant to §4A1.1(c), one point is added for each prior sentence not counted under §4A1.1(a) or (b). A diversionary disposition is counted only where there is a finding or admission of guilt in a judicial proceeding. *See* §4A1.2(f). In *United States v. Morillo*, 178 F. 3d 19 (1st Cir. 1999) and *United States v. Reyes*, 386 F. 3d 332 (1st Cir. 2004), the First Circuit held that CWOFF dispositions are to be included in criminal history calculations under the U.S. Sentencing Guidelines Manual. Furthermore, the eventual dismissal of the charge underlying the CWOFF

does not result in an expungement that would preclude the disposition from being counted. an eventual dismissal is a normal outcome in a CWOFF case and in no way results in an expungement which would preclude the disposition from being counted. *Reyes*, 386 F.3d 332, 335 fn.2 (1st Cir. 2004). The criminal history point was correctly applied.

Part III: Government's Proposed Guidelines Range

One has a criminal history category of I, and an agreed upon adjusted offense level of 26 (DE:94 at 5 of 10). The United States suggests that with a three-point reduction for acceptance, One's guidelines range per the plea agreement is 46-57 months.

Lemy has a criminal history category of II, and an agreed upon adjusted offense level of 26 (DE:96 at 5 of 10). The United States suggests that with a three-point reduction for acceptance, Lemy's guidelines range per the plea agreement is 51-63 months.

Guillaume has a criminal history category of II, and an agreed upon adjusted offense level of 26 (DE:98 at 5 of 10). The United States suggests that with a three-point reduction for acceptance, Guillaume's guidelines range per the plea agreement is 51-63 months.

Part IV: Application of 18 U.S.C. § 3553(a) to the Defendants

Pursuant to 18 U.S.C. § 3553(a), the court, in determining a particular sentence to be imposed, shall consider (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. These factors are discussed below.

A. The nature and circumstances of the offense

The defendants in this case laundered money for BEC schemes and then used their preexisting shell companies to launder fraudulently obtained PPP and EIDL proceeds. The fraud was deliberate, sophisticated, and thoughtfully executed, warranting a sentence within the advisory guidelines.

The BEC

As outlined in the Information (DE:66) and factual proffers: Lemy (DE:97); One (DE:95); and Guillaume (DE:99) the defendants each participated in a scheme to launder funds for BEC schemes.

First, in or around June 2017, Lemy and Guillaume laundered over \$300,000 that was stolen in a \$3.4 million BEC of a University located in the Western District of Texas.

Then, in or around February of 2019, Lemy and Guillaume joined forces with One to launder an additional \$912,941 that was stolen in a BEC of a New York based company. Lemy, One, and Guillaume wired the money amongst numerous shell companies that they controlled in order to conceal the true nature of the funds. To that end, the shell companies used legitimate sounding names: SE Construction, Columbia Construction, and Auto Sales of Florida, among others, to make it appear as if the defendants were conducting legitimate transactions with each other. In reality, they were moving stolen money to conceal their theft.

PPP and EIDL Fraud

As outlined in the Information and the defendants' factual proffers the defendants used their preexisting shell companies funded by fraud to apply for government backed PPP Loans and EIDL relief.

Varying down from the advisory guidelines range does not adequately address the nature and circumstances of this case, nor does it account for the seriousness of this offense. Finally, it does not promote respect for the law. A just punishment for this conduct, is a sentence within the advisory guidelines.

B. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

BEC schemes routinely use money launderers to move stolen victim money through shell companies located in the United States and elsewhere. The money is transferred rapidly throughout several launderers in order to evade law enforcement. The network of money launderers is vital to the success of a BEC scheme. Those who participate in this conduct often claim they are unaware of the source of the funds they are moving in order to achieve lighter sentences or avoid prosecution altogether. Without adequate sentences, there is very little to deter those who participate in laundering BEC proceeds.

PPP Loans are Small Business Association loans meant to help businesses keep their workforce employed during the COVID-19 crisis. In the months since the CARES Act passed, more than 100 defendants in more than 70 criminal cases have been charged with fraud related to these programs.³ Law enforcement has seized more than \$60 million in cash proceeds derived from fraudulently obtained PPP loans, as well as numerous real estate properties and luxury items purchased with such proceeds. In this case alone, law enforcement has seized over \$1.4 million dollars.

³ <https://www.justice.gov/opa/pr/man-purchased-lamborghini-after-receiving-39-million-ppp-loans>

Laundering for BEC schemes and laundering for PPP loan fraud schemes are serious and persistent crimes here in the Southern District of Florida. A sentence within the advisory guidelines range will reflect the serious nature of this offense, provide just punishment, and deter others from laundering illicit proceeds.

C. The need to protect the public from further crimes of the defendants/ the history and characteristics of the defendants

Lemy has numerous arrests. Guillaume was recently arrested. One committed the PPP fraud scheme *after* federal agents executed a search warrant at his residence related to the BEC fraud scheme. Each of these defendants has demonstrated their continued willingness to commit crime and defraud members of the community.

As noted above, in this case alone, the defendants laundered BEC money and then used the infrastructure of shell companies they created to launder BEC money to launder fraudulently obtained COVID relief money meant for struggling businesses. The conduct here warrants a guidelines sentence.

D. Community Deterrent

Lastly, the United States would ask this Court to consider the importance of sentencing fraudsters and money launderers to meaningful sentences. The community must understand the seriousness of BEC schemes. In this case, two innocent actors – a University and a Company – were tricked into wiring money to fraudsters instead of trusted entities. Those two innocent actors suffered real losses. Furthermore, and ironically, both innocent actors were no doubt impacted by the COVID-19 pandemic.

These defendants, however, saw the COVID-19 pandemic as yet another way to trick, defraud, and launder money to which they were not entitled. The community in South

Florida needs to understand that blatant, thoughtless theft and those who help perpetuate it, will not be tolerated.

Part V. Variance Motions

The United States suggests that for the reasons noted above, a variance is not warranted in this case. The United States acknowledges that each defendant waived indictment, agreed to cooperate, and in fact tried to cooperate. However, much of that benefit is reflected in the charging decision. One and Guillaume were each charged by complaint with aggravated identity theft. A charge which carries a two-year mandatory sentence consecutive to any other sentence. Those charges were excluded in the filed information, resulting in a substantial benefit to each. Similarly, Lemy has pled to a single count in this case, when he was facing several other charges contemplated in the criminal complaint.

The proposed guidelines range is fair and the United States submits any further deviation is unwarranted.

Conclusion

The United States respectfully submits that the defendants should be sentenced within the advisory guidelines range and their requests for a downward variance should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 29, 2021, I electronically filed and served the foregoing document with the Clerk of Court using CM/ECF.

Assistant United States Attorney
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