

The Honorable Richard A. Jones

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
BAOKE ZHANG,  
Defendant.

NO. CR 20-169RAJ

**GOVERNMENT’S SENTENCING  
MEMORANDUM**

**I. Introduction**

Baoke Zhang will be sentenced by this Court for his scheme to fraudulently obtain relief funds meant for small businesses and restaurant workers suffering because of the COVID-19 pandemic. Zhang is a software engineer who, at the time of this offense, was earning a base salary of \$19,000 per month. Presentence Report (PSR) at ¶ 58. Even though he was living comfortably, Zhang took advantage of the government and other assistance programs to steal money meant for those who were in distress. Per the Section 3553(a) factors, a sentence of 33 months of imprisonment, three years of supervised release, and a \$100,000 fine, is the appropriate sentence in this case for adequate deterrence and to recognize the seriousness and nature of this offense.

//  
//

1 **II. Factual Background**

2 In early 2020, as the COVID-19 pandemic spread across the country, the  
 3 government and businesses assembled relief programs to help those whose livelihoods  
 4 were jeopardized. However, software engineer Zhang – not eligible for these programs –  
 5 took advantage of them by claiming to own companies with employees and payroll that  
 6 did not exist. He fraudulently applied for funds from multiple COVID-19 relief programs  
 7 in the name of fake businesses, using false tax forms and paystubs, as listed below:

8 <b>COVID-19 Relief Program</b>	<b>Funds Attempted to Obtain or Received</b>
9 U.S. Small Business Administration: Paycheck Protection Program	Attempted to obtain over \$900,000
10 U.S. Small Business Administration: Economic Injury Disaster Loan Program	Received \$10,000
11 Relief Program #1	Attempted to obtain \$2,000
12 Relief Program #2	Received \$5,000
13 Relief Program #3	Received \$1,500

14 **A. CARES Act**

15 The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is a federal  
 16 law enacted in March 2020 and designed to provide emergency financial assistance to the  
 17 millions of Americans who are suffering the economic effects caused by the COVID-19  
 18 pandemic. One source of relief provided by the CARES Act was the authorization of  
 19 forgivable loans to small businesses for job retention and certain other expenses through  
 20 the Paycheck Protection Program (“PPP”). A PPP loan application must be processed by  
 21 a participating financial institution (the lender). If a PPP loan application is approved, the  
 22 participating financial institution funds the PPP loan using its own monies, which are  
 23 100% guaranteed by the Small Business Administration (“SBA”). PPP loans are  
 24 obtained by submitting an application to a financial institution along with supporting  
 25 documentation as to the business’s payroll expenses.  
 26

27 The CARES Act also authorizes the SBA to provide Economic Injury Disaster  
 28 Loans (“EIDL”) of up to \$2 million to eligible small businesses experiencing substantial

1 financial disruption due to the COVID-19 pandemic. In addition, pursuant to the CARES  
 2 Act, the SBA is authorized to issue advances of up to \$10,000 to small businesses within  
 3 three days of applying for an EIDL. The amount of the advance was determined by the  
 4 business's number of employees. The advances did not have to be repaid. Unlike PPP  
 5 loan applications, EIDL applications are submitted directly to the SBA. EIDL funds can  
 6 be used for payroll expenses, sick leave, production costs, and business obligations, such  
 7 as debts, rent, and mortgage payments.

### 8 **B. Zhang tried to obtain multiple PPP Loans**

9 PPP loans were intended for small businesses with employees that were in  
 10 operation as of February 2020. Zhang submitted four PPP applications on behalf of two  
 11 businesses that did not exist – Baoke Zhang dba Baoke Zhang (“Zhang Sole  
 12 Proprietorship”) and Cloud Optimization LLC. Zhang knew that these entities did not  
 13 exist and did not have employees, but still he claimed that these businesses had as many  
 14 as 25 employees and a monthly payroll between \$16,000 and \$240,000. He included  
 15 fake government tax forms with his applications to support these made-up numbers.

16 The four loans are summarized below and are further discussed in the Plea  
 17 Agreement (¶¶ 9-c through 9-q) and the PSR (¶¶ 9-14):

18 Entity Name	Lender	Loan Amount
19 Zhang Sole Proprietorship	Lender 1	\$600,000
20 Zhang Sole Proprietorship	Lender 2/Financial Institution 2	\$600,000
21 Cloud Optimization	Lender 2/Financial Institution 2	\$325,000
Zhang Sole Proprietorship	Lender 3/Financial Institution 3	\$41,580.63

22 Zhang withdrew three of these four applications after a lender noticed that Zhang  
 23 was using a recently obtained Employer Identification Number (EIN). On May 4, 2020,  
 24 Lender 1 sent Zhang an email seeking his signature on loan documents for the Zhang  
 25 Sole Proprietorship. Shortly after sending the email, Lender 1 emailed Zhang because it  
 26 had discovered that, although Zhang had submitted tax forms showing the EIN for the  
 27 sole proprietorship was used in 2019, data from the SBA showed that the EIN was  
 28 obtained in April 2020. Lender 1 asked Zhang to provide documentation of date he

1 obtained the EIN and told Zhang to reply by 5:00 p.m. that day or Lender 1 would  
2 decline the application. In response, Zhang provided a falsified IRS Notice CP 575,  
3 which Zhang had falsified to show that an EIN had been applied for and assigned by the  
4 IRS to the Zhang Sole Proprietorship on April 3, 2017. In fact, Zhang obtained an EIN  
5 for the Zhang Sole Proprietorship on or about April 3, 2020. In his email to Lender 1,  
6 Zhang also claimed that “[t]here are some change in situation with my business in last  
7 few days, and don’t need this loan. I would like to withdraw and cancel my ppp loan  
8 application.” Zhang also falsely claimed that he did not “know why SBA record  
9 incorrectly show the date. My business and EIN date back to 2017.” Lender 1 did not  
10 provide Zhang with the funds for this loan. Plea Agreement at ¶¶ 9-f to 9-g.

11 Zhang then took steps to cancel the other two outstanding PPP loans with Lender  
12 2. The lender did not provide funds for these loans. *See* Plea Agreement ¶¶ 9-k - 9-p.

13 However, after the dust settled on the withdrawn applications, Zhang tried to get  
14 another PPP loan for the Zhang Sole Proprietorship. On or about May 20, 2020 – after he  
15 had been caught by Lender 1 – Zhang signed a promissory note for a \$41,580.63 loan,  
16 falsely certifying that the information and supporting documents he had provided in  
17 support of the application were “true and accurate in all material respects.” *See* Plea  
18 Agreement at ¶ 9-q. On May 22, 2020, Zhang was arrested in this case and did not  
19 receive the funds for this loan.

### 20 **C. Zhang applied for and received an EIDL Loan**

21 The EIDL program was also authorized to loan money to small businesses  
22 experiencing financial distress due to the pandemic. To qualify for an EIDL advance  
23 under the CARES Act, a business had to provide the SBA with information about its  
24 operations, such as the number of employees, gross revenues, and cost of goods sold in  
25 the 12-month period preceding January 31, 2020. On April 5, 2020, Zhang submitted a  
26 fraudulent application to the SBA for an EIDL for the Zhang Sole Proprietorship. Zhang  
27 falsely claimed that the sole proprietorship had 49 employees, \$2,978,000 in gross  
28 revenue in the 12-month period preceding January 31, 2020, and \$2,647,906 in cost of

1 goods sold in the 12-month period before January 31, 2020. In reliance on the false  
2 information provided by Zhang, the SBA transferred an EIDL advance of \$10,000—the  
3 maximum allowed under the CARES Act—on May 1, 2020, to Zhang’s bank account. A  
4 few days later, Zhang transferred the \$10,000 to another financial account.

5 **D. Zhang applied for and received other funds that were intended for**  
6 **restaurant workers and downtown business owners**

7 Zhang also applied to three different COVID-19 relief programs for grants  
8 between \$500 and \$5000. Relief Program 1 provided one-time grants of \$500 to  
9 qualifying restaurant workers who provided proof they had been employed in the  
10 restaurant industry and suffered decreased or lost work. In April 2020, Zhang submitted  
11 four fraudulent applications for Relief Program 1 grants in the names of Zhang, his wife,  
12 and both of Zhang’s parents. Each application contained several materially false  
13 statements, including that Zhang, his wife, and both of Zhang’s parents had been working  
14 in the restaurant industry since before December 10, 2019, and had suffered decreased or  
15 lost work after March 10, 2020. Zhang provided fake paystubs and fake letters he created  
16 purporting to be from restaurant owners stating that Zhang and his wife had been  
17 terminated due to the pandemic. In support of the applications in his parents’ names,  
18 Zhang provided fake paystubs he created purporting to show a drop in income between  
19 2019 and March 2020. Zhang was approved and received four \$500 checks for each  
20 application, but he received the money after he was arrested in this case.

21 The next relief program Zhang defrauded was Relief Program 2, a small business  
22 relief fund for businesses operating in designated Seattle-area neighborhoods. Under the  
23 program, only service and retail establishments open to the general public, with less than  
24 50 employees or less than \$7 million in revenue, and located in either the South Lake  
25 Union or Regrade neighborhoods of Seattle, or in Bellevue, could qualify. In April 2020,  
26 Zhang submitted a fraudulent application to Relief Program 2 where he claimed to own a  
27 business called Wireless Kiosk that operated in the Westlake Center Mall in downtown  
28 Seattle. Wireless Kiosk did not exist. Based on Zhang’s false application, on or about  
May 11, 2020, Zhang received \$5,000 from Relief Program 2.

1 The third and final relief program was a relief program for restaurant workers in  
 2 King County who had suffered financial hardship because of the COVID-19 pandemic.  
 3 In April 2020, Zhang submitted three fraudulent applications for grants from Relief  
 4 Program 3 in his name, his wife's name, and his father's name that contained materially  
 5 false statements about the applicants' eligibility—specifically, that their employment in  
 6 the restaurant industry had been harmed by the COVID-19 pandemic. In turn, Zhang  
 7 received three \$500 deposits from Relief Program 3 into three different bank accounts  
 8 that he controlled.

## 9 **II. Prosecution, Plea Agreement, and Presentence Report**

10 On May 22, 2020, Zhang was arrested pursuant to a complaint for one count of  
 11 Wire Fraud and one count of Bank Fraud. *See* Complaint, Dkt. #1. On October 22,  
 12 2020, Zhang pleaded guilty to a single count of Wire Fraud, in violation of Title 18,  
 13 United States Code, Section 1343, pursuant to a plea agreement. *See* Plea Agreement,  
 14 Dkt. #31. Zhang agreed that he had fraudulently applied for funds from multiple  
 15 COVID-19 relief programs. Plea Agreement at ¶ 9. Zhang agreed that he intended to  
 16 fraudulently obtain over \$550,000 in loans.<sup>1</sup> Plea Agreement at ¶ 9. He also agreed to  
 17 pay \$16,500 in restitution. Plea Agreement at ¶ 12.

18 The plea agreement contains the parties' agreement to the base offense level of 23.  
 19 Plea Agreement at ¶ 10. Based on a criminal-history category of I, and credit for  
 20 acceptance of responsibility, the applicable Sentencing Guidelines' range of  
 21 imprisonment is 33-41 months.

---

23 <sup>1</sup> While the defendant sought over \$1.5 million in loans, the PPP loan program allows for  
 24 individuals and businesses to seek multiple PPP loans from various lenders at the same time.  
 25 Thus, the government takes the position that the guideline loss calculation should count the  
 26 highest PPP loan application amount for each purported business, in addition to any other  
 27 intended loss. Thus, the total intended loss in this case is \$943,500, which includes the first PPP  
 28 loan application to Lender 1 for the Zhang Sole Proprietorship (\$600,000); the PPP loan  
 application to Lender 2 for Cloud Optimization (\$325,000); the EIDL advance (\$10,000); the  
 checks from the Relief Program 1 (\$2,000); the grant from Relief Program 2 (\$5,000); and the  
 grants from Relief Program 3 (\$1,500).

1 A Presentence Report was prepared by the Probation Office and the final report  
2 was distributed on April 22, 2021. The final PSR noted the government’s objections to  
3 including extra language in the PSR’s description of the Offense Conduct about Zhang’s  
4 “remorseful” behavior. Specifically, the defense requested that the PSR include part of  
5 Mr. Zhang’s rescinding email to Lender 1 “So the loan can be available to other small  
6 business who urgently need it.” Defense also requested that the PSR include detail about  
7 Mr. Zhang’s post-arrest actions, specifically that “Mr. Zhang sent an application  
8 cancellation request and return request to SBA on May 28, 2020, to return the \$10,000  
9 advance” and “Mr. Zhang did not deposit the mailed checks [intended for restaurant  
10 workers].” These additions were included in the final PSR (but were not in the Plea  
11 Agreement). The government objected to the inclusion of these extra statements because  
12 their inclusion in the Offense Conduct section risks misleading the PSR reader about the  
13 true conduct; for example, Zhang only tried to return the EIDL advance, and only failed  
14 to deposit the checks, after he was arrested in this case.

15 However, with that explanation, the government accepts the PSR as written and  
16 withdraws any outstanding objections to the PSR.

### 17 **III. Sentencing Recommendation**

18 The § 3553(a) factors warrant a within-Guidelines sentence of 33 months, three  
19 years of supervised release, and a \$100,000 fine. The § 3553(a) factors do not support  
20 the sentence recommended by the Probation Office of no incarceration and no fine. *See*  
21 *Recommendation at 3-4.*

#### 22 **A. Nature and Circumstances of the Offense and the History and** 23 **Characteristics of the Defendant**

24 As the government, nonprofits, and businesses worked to try and help small  
25 businesses suffering from the effects of the unprecedented COVID-19 pandemic, Zhang,  
26 whose livelihood was unaffected, engaged in a cash grab. This offense deserves  
27 punishment because of its extensive nature. While the offense period was short, spanning  
28 two months from April to May 2020, Zhang fraudulently submitted multiple applications  
to multiple COVID-19 relief programs. This was not a one-time error in judgment, but

1 rather a calculated attempt to take advantage of the relief systems set up for those that  
2 were truly in need because of the pandemic. Zhang applied for four PPP loans, one  
3 EIDL, and submitted multiple applications for COVID-19 funds from nonprofits and  
4 private companies. He did this knowing that he was not eligible for any of these  
5 programs. In addition, some of the applications for the private relief funds were not even  
6 in his own name; Zhang used the names of his wife and parents in an attempt to get even  
7 more money from these programs.

8 Zhang does not deserve a lesser sentence because he “only” managed to obtain  
9 \$16,500. Zhang certainly tried to obtain more – but he got caught. Lender 1 noticed his  
10 falsified EIN which prevented him from obtaining the first \$600,000 PPP loan. Only  
11 after being discovered by Lender 1 did Zhang rescind the other loan applications. The  
12 Probation Office recommendation seems to give Zhang credit because he “cancelled most  
13 of the transactions before they were processed.” Recommendation at 3. Most of the  
14 loans were processed. *See, e.g.*, Plea Agreement at ¶ 9-k (describing how Lender 2 tried  
15 to disburse the \$325,000 loan). The evidence shows that Zhang did not cancel the loans  
16 on his own accord; rather, he was caught by Lender 1. The evidence also shows that  
17 Zhang would have continued to seek COVID-19 relief funds without law enforcement  
18 intervention – even after he was caught by Lender 1, he signed documents for **another**  
19 PPP loan in the name of the Zhang Sole Proprietorship. This PPP loan was pending at  
20 the time of Zhang’s arrest.

21 Furthermore, Zhang did not simply exaggerate the state of a real business that he  
22 owned. He used three fake businesses for the purpose of applying for these funds,  
23 including the Zhang Sole Proprietorship, Cloud Optimization, and Wireless Kiosk. He  
24 pretended that he, his wife, and his parents were restaurant workers. Zhang created fake  
25 paperwork, paystubs, and tax forms to create the illusion that these businesses were real  
26 and had been operating prior to April 2020. He submitted outright lies to businesses,  
27 nonprofits, and the government to perpetuate his scheme. This was not an accident;

1 Zhang sought to get money from any source and by any means available, without any  
2 regard for the harm it caused those who actually needed the funds.

3 Zhang has no criminal history. He is a successful software engineer who was  
4 earning \$19,000 a month at the time of the offense. PSR at ¶ 58. He has worked at some  
5 of the top companies in the United States, including Lyft and Amazon. *Id.* Zhang has  
6 assets exceeding \$1.75 million and a net worth of more than \$1.2 million. PSR at ¶ 60.

7 It is all the more aggravating, then, that at a time when millions of Americans and  
8 small business owners were suffering from the effects of the COVID-19 pandemic,  
9 Zhang elected to defraud the very programs set up to help those in need. By applying for  
10 and receiving these funds, Zhang deprived suffering small business owners of the  
11 opportunity to get the funds. His sizable assets and salary at the time make clear that this  
12 was not money that he needed – this offense was motivated purely by greed.

### 13 **B. The Need for Adequate Deterrence**

14 The sentence in this case, the first case involving PPP fraud in the Western District  
15 of Washington to go to sentencing, must send a clear message to the defendant and other  
16 offenders that there are serious consequences for defrauding government and other  
17 pandemic relief programs.

18 Indeed, as the pandemic continues to impact small businesses, restaurant workers,  
19 and downtown Seattle itself, many relief programs are ongoing. The PPP loan program  
20 remains in effect through May 31, 2021, and small businesses can still apply for PPP  
21 loans. Actors like Zhang who seek to defraud these programs make it more difficult for  
22 administrators of government and other relief programs to get aid to individuals that  
23 qualify for and need it. The defendant's sentence should serve as a warning and deterrent  
24 to others inclined to exploit pandemic relief programs.

25 Further, the sentence in this case should also provide specific deterrence to Zhang.  
26 The sentence in this case should reflect that Zhang repeatedly engaged in criminal  
27 conduct. By the government's count he submitted 13 different false applications to five  
28 different programs – he did not simply make one bad decision.

1           **C.     The Sentencing Guidelines and similarly situated defendants**

2           Section 3553(a) requires that the Court consider the need to avoid unwarranted  
3 sentence disparity among similarly situated defendants. Courts have imposed meaningful  
4 jail sentences in similar cases where defendants defrauded the PPP loan program. *See,*  
5 *e.g., United States v. Ganell Tubbs*, 20-CR-193, E.D.AR (imposing 41-month sentence  
6 for defendant who fraudulently applied for two PPP loans with a loss of \$1.9 million);  
7 *United States v. Tarik Jaafar*, 20-CR-185, E.D.V.A., (imposing 12-month sentence for  
8 defendant who fraudulently applied for 18 PPP loans with a loss of \$1.4 million). Based  
9 on these cases, a jail sentence is appropriate here.

10           The Probation Office's Recommendation notes that a noncustodial sentence is  
11 appropriate based on seven cases involving fraudulent claims for Hurricane Katrina  
12 Relief Funds charged in the Western District of Washington. A review of these cases  
13 demonstrates why a jail sentence is appropriate in this case. The six defendants cited that  
14 received a probationary sentence were not similarly situated to Zhang. *See, e.g., United*  
15 *States v. George Cuiellete*, CR07-78JCC, (imposing a two year term of probation on  
16 defendant who pled guilty to a misdemeanor theft of government property in violation of  
17 Title 18, United States Code, Section 641 for misappropriating \$4,500 in Hurricane  
18 Katrina Relief Funds); *United States v. Gregory Wilkes*, CR07-5132FDB (imposing a  
19 five year term of probation on defendant who pled guilty to felony theft of government  
20 property in violation of Title 18, United States Code, Section 641, for fraudulently  
21 obtaining \$8,866 in Hurricane Katrina Relief Funds). Two of these six cases were not  
22 sentenced in this District. Unlike the present case, none of the cases involve wire fraud.  
23 The loss amounts involved in these cases are significantly lower than Zhang's intended  
24 loss of \$943,500. Moreover, many of the defendants in these cases were struggling  
25 financially, and some actually had been affected by Hurricane Katrina. *See, e.g., United*  
26 *States v. Gregory Wilkes*, CR07-5132FDB; *United States v. George Cuiellete*, CR07-  
27 78JCC; *United States v. Joy Promise*, CR07-77JCC (imposing two year term of probation  
28 on an individual who pled guilty to a misdemeanor theft of government property in

1 violation of Title 18, United States Code, Section 641 for misappropriating \$2,000 in  
2 Hurricane Katrina Relief Funds). These examples are a far cry from Zhang, who was  
3 making \$19,000 a month at the time he sought to defraud multiple pandemic relief  
4 programs. Finally, these cases involved applications for funds from one program, while  
5 Zhang attempted to defraud multiple government and private pandemic relief funds.

6 The one case that the Probation Office reviewed that did not involve a  
7 probationary sentence is the one that most closely aligns with Zhang's case. In *United*  
8 *States v. Rosemarie Calvin*, CR07-81JCC, the Court sentenced the defendant to 18  
9 months in prison and three years of supervised release. Calvin fraudulently applied for  
10 and received \$23,000 in FEMA Hurricane Katrina Relief Funds. In addition to  
11 defrauding FEMA, Calvin had also run other schemes to defraud government programs,  
12 including the Social Security Administration and the Washington State Department of  
13 Labor and Industries. Much like Zhang, Calvin defrauded multiple programs. Therefore,  
14 her sentence reflected that her actions were not a one-time error in judgment.

15 Finally, the Sentencing Guidelines support a 33-month sentence. Consistent  
16 application of the Guidelines avoids unwarranted disparities in cases involving similar  
17 conduct. Of course, there are often valid reasons to depart from the applicable  
18 Guidelines, but no such reasons apply in this case.

#### 19 **E. The Types of Sentences Available**

20 The government recommends that the Court impose a \$100,000 fine as a part of  
21 the sentence in this matter. This fine is squarely within the guideline range of \$15,000 to  
22 \$150,000. PSR at ¶ 71. The PSR notes that Zhang appears to be capable of paying a fine  
23 based on his sizable assets, i.e., a net worth of more than \$1.2 million spread across  
24 multiple investment accounts. PSR at ¶¶ 60-61. However, the Probation Office does not  
25 recommend a fine because Zhang is currently unemployed and currently relying on his  
26 savings. The government respectfully disagrees and recommends a fine; here, the  
27 criminal conduct was motivated by financial gain.

1 The government also recommends that the Court impose a three-year term of  
2 supervised release consistent with the statute. While Zhang may be deported as a result  
3 of his crime, the deportation process could take months or years. Zhang should be  
4 supervised during any intervening time frame.

5 Last, the Court should impose restitution in the amount of \$16,500 as agreed by  
6 the Plea Agreement. Plea Agreement at ¶ 12.

7 **V. Conclusion**

8 Based on the foregoing, the United States respectfully requests that this Court  
9 impose a Guidelines' sentence of 33 months of imprisonment, three years of supervised  
10 release, and a \$100,000 fine.

11 Dated this 30th day of April, 2020.

12 Respectfully submitted,  
13 TESSA M. GORMAN  
14 Acting United States Attorney

15 DANIEL S. KAHN  
16 Acting Chief, Fraud Section  
17 U.S. Department of Justice

18 *s/Brian Werner*  
19 \_\_\_\_\_  
20 BRIAN WERNER  
21 Assistant United States Attorney  
22 700 Stewart Street, Suite 5220  
23 Seattle, Washington 98101  
24 Telephone: (206) 553-2389  
25 Fax: (206) 553-2502  
26 E-mail: Brian.Werner@usdoj.gov

27 *s/Laura Connelly*  
28 \_\_\_\_\_  
LAURA CONNELLY  
Trial Attorney  
1400 New York Ave. NW  
Washington, D.C. 20005  
Telephone: (202) 307-1423  
Fax: (202) 514-0152  
E-mail: Laura.Connelly@usdoj.gov