



Within two years of coming to the United States from Taiwan on a student visa to receive a college education, the defendant Sheng-Wen Cheng dropped out of school and committed a series of sophisticated fraud schemes against more than 45 victims and the Government over three years from 2017 to 2020. These schemes varied in the victims that Cheng targeted and the types of misrepresentations that he made, but they demonstrated, time and time again, Cheng's callous disregard for the financial and emotional harm he caused to victims and the consequences of his criminal conduct. Cheng's crime spree culminated in his most successful and audacious scheme in stealing millions of dollars in COVID-19 pandemic relief from the Government. Using multiple identities and sham companies, Cheng submitted fraudulent loan applications that falsely represented that he needed millions of dollars to make payroll payments to hundreds of employees, when in fact those employees never existed and Cheng used the relief funds to enrich himself and live a lavish lifestyle while others suffered from the devastating effects of the pandemic. Then, even after he was arrested, the defendant sought to proffer with the Government and lied about his own criminal conduct and also lied to the Probation Department about his family circumstances.

To reflect the seriousness of the defendant's conduct, to promote just punishment and respect for the law, and to deter this defendant and others like him, the Government respectfully requests that the Court follow the recommendation of the Probation Department and impose a sentence within the applicable U.S. Sentencing Guidelines ("Guidelines") range of 78 to 97 months' imprisonment, which would be sufficient but not greater than necessary to serve the legitimate purposes of sentencing. (Presentence Investigation Report revised July 12, 2021 ("PSR") at 39.)

## **I. OFFENSE CONDUCT**

Beginning in or about 2017, the defendant committed multiple frauds that can generally be grouped into three schemes: first, a securities fraud scheme; second, an advance fee scheme; and finally, the Payment Protection Program (“PPP”) loan scheme during the COVID-19 pandemic. Each of these schemes will be discussed in turn.

### **A. The Securities Fraud Scheme**

Beginning in or about 2017 through 2019, Cheng perpetrated a securities fraud scheme in which he lied to at least six prospective investors in order to fraudulently obtain a total of approximately \$400,000 in investments in his company Alchemy Coin Technology Limited and related companies (“Alchemy Coin”). In a company white paper, Cheng represented that Alchemy Coin was developing an online blockchain-based peer-to-peer lending marketplace that would (i) allow borrowers to request a loan and for lenders on the system to directly fund it from pooled investment accounts; and (ii) bundle borrowers’ debts into debt pools that would be assembled in tranches that could be purchased by investors using Alchemy tokens. Cheng sought investments in Alchemy Coin, first by executing share purchase agreements with investors and then through a “token purchase agreement” whereby investors were promised a token to reflect their investment in the company. Importantly, in written representations to investors, Cheng explicitly stated that “Alchemy is classifying our token sale as a security,” that it was offering a “fully registered security token,” and he even sought to distinguish his investment opportunity from other initial coin offerings (“ICOs”) by claiming that “Alchemy is seeking to be a leader in operating compliantly and inline with SEC and securities regulation.”

In seeking these investments, Cheng made brazen misrepresentations about Alchemy Coin’s access to capital, use of investor proceeds, the product readiness of its purported lending

platform, and the registration of its tokens as part of an initial coin offering. For example, Cheng falsely told at least two prospective investors who ultimately invested a total of \$275,000 that Alchemy Coin had already raised \$40 million in funding, and even provided these investors with doctored bank documents supporting that misstatement. In addition, Cheng falsely represented to at least one investor that Alchemy Coin's lending platform was already functioning and ready to deploy, when in fact the lending platform was never actually fully developed. Cheng also never registered Alchemy Coin's tokens as he had previously represented. Finally, Cheng convinced one investor to invest more funds into Alchemy Coin by engaging the victim-investor to provide marketing services to Alchemy Coin, but then Cheng did not even pay the invoices for the marketing work. These investors relied on these material misstatements made by Cheng and never received any of their money back despite repeated requests, as Cheng had spent the money largely on personal expenses. (PSR ¶ 80.)

**B. The Advance Fee Scheme**

While the securities fraud scheme was in progress, Cheng perpetrated another scheme in which he convinced approximately 40 start-up companies to provide so-called advance "due diligence fees" of up to \$25,000 to another company owned and controlled by Cheng, Alchemyze Capital LLC ("Alchemyze"). In essence, Cheng falsely told these companies that were looking for investors that, in exchange for a due diligence fee that was fully refundable, Alchemyze would perform due diligence on the companies and assess them for investments by Alchemyze or otherwise assist them in securing funding. For example, Cheng falsely told one victim that he could invest one to five million dollars in the victim's company, but that the company had to pay a \$25,000 refundable fee for the due diligence process, which never happened. In another example, Cheng falsely told a second victim that he could invest ten to

twenty-five million dollars in the victim's company in return for a \$25,000 refundable due diligence fee that would allow Alchemyze to ensure that the company was a viable business. Cheng engaged in this same pattern of fraud again and again (*see* PSR ¶¶ 82-85), resulting in a total of approximately 40 victims who lost a total of approximately \$380,000.

Similarly to the securities fraud scheme, Cheng had no interest in or financial ability to invest in any of the victim companies, did not return the purportedly refundable fees despite repeated requests from victims, and used the fees for personal expenses as opposed to performing any due diligence. (PSR ¶ 82.) When Cheng was confronted by victims to return the fees after they realized that no investments were forthcoming, Cheng falsely told the victims that he did not have the fees and a third-party due diligence company he had employed had stolen the fees and was being investigated for fraud. (*Id.* ¶ 86.) In a particularly bold lie, Cheng told these victims that he was “going to do everything in my power to refund you back your money as much as I can.” (*Id.*) This could not have been farther from the truth. Instead of returning the fees he stole from these victims, Cheng used the funds to enrich himself, including to pay for a \$13,000 per month apartment in Manhattan. (PSR ¶ 160.)

### **C. The PPP Loan Fraud Scheme**

At the height of the COVID-19 pandemic in 2020, and while Cheng was overstaying in the United States on his expired student visa (PSR ¶ 17), Cheng committed his most successful and egregious scheme and fraudulently obtained millions of dollars in Government-guaranteed loans intended to help businesses and employees struggling during the pandemic.

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which was enacted on March 29, 2020, provided emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One

source of relief provided by the CARES Act was the authorization of hundreds of billions of dollars in forgivable loans to small businesses to pay for payroll, mortgage interest, rent, and/or utilities. Pursuant to the CARES Act, the amount of PPP funds a business was eligible to receive was determined by the number of employees employed by the business and their average payroll costs. Businesses applying for a PPP loan must provide documentation to confirm that they have in the past paid employees the compensation represented in the loan application. The CARES Act also expanded the separate Economic Injury Disaster Loan (“EIDL”) Program, which provided small businesses with low-interest loans of up to \$150,000 to help overcome the temporary loss of revenue they were experiencing due to COVID-19. To qualify for an EIDL under the CARES Act, the applicant must have suffered “substantial economic injury” from COVID-19, based on a company’s actual economic injury determined by the SBA.

From in or about May 2020 through in or about August 2020, a period of just six months, Cheng used the identity of six other individuals to submit fraudulent online applications to the U.S. Small Business Administration (“SBA”) and at least five financial institutions for a total of over \$7 million in loans for six different companies controlled by Cheng (the “Cheng Companies”) through the SBA’s PPP and EIDL Program. In connection with these fraudulent loan applications, Cheng falsely represented, among other things, that other individuals were the sole owners of the Cheng Companies and that the Cheng Companies together had over 200 employees and paid a total of over \$1.5 million in wages to those employees on a monthly basis. In fact, however, the Cheng Companies actually had a total of no more than 14 employees. Cheng supported the false statements in the loan applications by submitting doctored tax records that were never actually filed with the IRS, which contained the forged electronic signature of a

payroll company employee, as well as fraudulent payroll records. Below is a brief description of the six fraudulent loan applications submitted by Cheng.

First, on or about May 5, 2020, Cheng used the identity of another individual (“Individual-1”) to submit a PPP loan application in the amount of \$439,474.56 for Celeri Network, Inc. (“Celeri Network”). That application falsely represented that Celeri Network had 43 employees and an average monthly payroll of approximately \$175,790, when in fact Celeri Network had no more than 11 employees and paid wages of approximately \$39,000 in the first quarter of 2020. Cheng provided fabricated IRS Forms 940 and 941 purportedly signed by a payroll company employee to corroborate the false statements in the loan application. The loan was approved and disbursed to a bank account controlled by Cheng. Notably, after this loan was funded, in an interview posted on Celeri Network’s website on June 1, 2020, Cheng claimed that he and his company were helping struggling businesses during the pandemic: “During COVID-19, we have helped fund millions of dollars of Paycheck Protection Program (PPP) loans for a wide variety of businesses. . . . While we have helped our clients with millions of dollars of PPP funding, there are still many more people to be helped during and after this crisis.” Of course, Cheng was doing just the opposite, stealing pandemic relief funds to help himself.

Second, on or about May 21, 2020, approximately two weeks after the Celeri Network application, Cheng used the identity of a second individual (“Individual-2”) to submit a PPP loan application in the amount of \$243,258 for Wynston York LLC (“Wynston”). That application falsely represented that Wynston had 17 employees and an average monthly payroll of approximately \$97,303, when in fact Wynston did not have any employees or pay any wages. Cheng provided a fabricated IRS Form 941 purportedly signed by a payroll company employee

to corroborate the false statements in the loan application. The loan was approved and disbursed to a bank account controlled by Cheng.

Third, on or about June 10, 2020, approximately three weeks after the Wystem application, Cheng used the identity of a third individual (“Individual-3”) to submit a PPP loan application in the amount of \$1,540,800 for Alchemy Finance, Inc. (“Alchemy Finance”). That application falsely represented that Alchemy Finance had 87 employees and an average monthly payroll of approximately \$616,348, when in fact Alchemy Finance did not have any employees or pay any wages. When the bank asked for a payroll summary, Cheng withdrew the loan application. Then, two weeks later on June 24, 2020, Cheng submitted a PPP loan application for the same amount and containing the same misrepresentations to two other banks, one of which was later withdrawn. For the second application that was not withdrawn, Cheng provided fabricated IRS Forms 940 and 941 purportedly signed by a payroll company employee to corroborate the false statements in the loan application. The loan was ultimately approved and disbursed to a bank account controlled by Cheng.

Fourth, on or about July 14, 2020, approximately one month after the initial Alchemy Finance application, Cheng used the identity of a fourth individual (“Individual-4”) to submit a PPP loan application in the amount of \$621,000 for Celeri Treasury LLC (“Celeri Treasury”). That application falsely represented that Celeri Treasury had 28 employees and an average monthly payroll of approximately \$248,400, when in fact Celeri Treasury did not have any employees or pay any wages. Cheng provided a fabricated IRS Form 940 purportedly signed by a payroll company employee to corroborate the false statements in the loan application, as well as a payroll summary listing the names of more than 30 purported employees. The loan was approved and disbursed to a bank account controlled by Cheng.

Fifth, on or about July 25, 2020, approximately ten days after the Celeri Treasury application, Cheng used the identity of a fifth individual (“Individual-5”) to submit a PPP loan application in the amount of \$622,700 for Neo Bellum Industries Inc. (“Neo Bellum”). That application falsely represented that Neo Bellum had 41 employees and an average monthly payroll of approximately \$249,047, when in fact Neo Bellum did not have any employees or pay any wages. Cheng provided a fabricated IRS Form 941 purportedly signed by a payroll company employee to corroborate the false statements in the loan application, as well as a payroll summary listing the names of purported employees. The loan was approved but the funds were not disbursed prior to Cheng’s arrest on August 18, 2020.

Sixth, on or about August 4, 2020, approximately 10 days after the Neo Bellum application, Cheng used the identity of a sixth individual (“Individual-6”) to submit a PPP loan application in the amount of \$916,345 for Alchemy Guarantor LLC d/b/a “Celer Offer” (“Alchemy Guarantor”). That application falsely represented that Alchemy Guarantor had 54 employees and an average monthly payroll of approximately \$366,538, when in fact Alchemy Guarantor did not have any employees or pay any wages. Cheng provided a fabricated IRS Form 941 purportedly signed by a payroll company employee to corroborate the false statements in the loan application, as well as a payroll summary listing the names of more than 50 purported employees. The loan was approved and was to be disbursed to a bank account controlled by Cheng, but the funds were frozen as a result of this investigation.

Finally, Cheng also submitted fraudulent EIDL Program applications for several of the Cheng Companies containing similar misrepresentations about the number of employees at each company, which resulted in a loan advance of \$10,000 to Celeri Network, a loan advance of

\$4,000 to Wynston, and a \$150,000 EIDL to Alchemy Guarantor that was funded on August 7, 2020.

In total, Cheng succeeded at receiving approximately \$2.8 million in PPP loan proceeds that were deposited into bank accounts solely controlled by Cheng. Instead of using the PPP loan proceeds for payroll costs, mortgage interest, rent, and/or utilities for the purported Cheng Companies as he was required and agreed to do, Cheng used a portion of the \$2.8 million in loan proceeds as follows: (i) a total of at least approximately \$881,000 was transferred abroad; (ii) a total of at least approximately \$360,000 was withdrawn in cash and/or cashier's checks; and (iii) a total of at least approximately \$279,000 was spent on personal expenses, including \$40,000 for the purchase of an 18-carat gold Rolex watch, rent and move-in fees for a \$17,000 per month luxury condo and approximately \$50,000 of furnishings, at least approximately \$80,000 toward the purchase of a 2020 S560X4 Mercedes, and purchases totaling approximately \$37,000 at Louis Vuitton, Chanel, Burberry, Gucci, Christian Louboutin, and Yves Saint Laurent. While many of the items Cheng purchased with fraud proceeds were seized from his luxury condo and have been forfeited, a majority of the fraud proceeds have not been located by the Government, in large part because they were transferred abroad or withdrawn in cash.<sup>1</sup> It is thus a real possibility that Cheng may in fact still have access to those funds abroad when he is released from prison and deported.

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<sup>1</sup> For example, the Government was able to trace approximately \$160,000 of the PPP loan proceeds that were transferred to a bank account in Taiwan in the name of Alchemy Marketplace Inc., another company controlled by Cheng. (PSR ¶¶ 20(d), 148-49.) However, by the time the Government was able to get records relating to this account, the funds had been transferred elsewhere and the account was empty.

**D. Other Lies and Misconduct by Cheng**

As noted in the PSR, outside of the schemes described above, Cheng has also lied to Government officials on multiple times. First, on May 22, 2019, when the advance fee scheme was ongoing, Cheng voluntarily met with FBI agents to report potential criminal activity involving another individual. During this interview, he repeated the lies he made to victims that Alchemy Coin had raised approximately \$25 million from investors in Dubai and another \$20 million in investments from other sources, and that Alchemyze Capital had raised \$50 million in capital from investors in Europe and Asia. (PSR ¶¶ 92-93.) Cheng also falsely stated that he did not keep any of the due diligence fees paid by victim-companies. (*Id.*)

Second, as Cheng himself acknowledges, during a proffer with the Government in connection with this case, and after he was informed that he could be prosecuted for any false statements, Cheng falsely denied committing some of the criminal conduct he now admits. (*See* ECF No. 25 (“Def. Mem.”) at 5.) In any event, putting aside whether the information provided by Cheng to the Government was credible given his false statements, the limited information he did provide to the Government did not lead to the initiation of any investigations.

Third, as the Probation Department notes, Cheng lied about having an 18-month-old son who died from COVID-19-related complications while he was in prison. (PSR ¶¶ 125-26.) The purported mother of the son has denied that she ever had any children with the defendant, and the Government has not been able to find any records related to the existence of the son, from the alleged birth to the alleged death. There was also no evidence of the presence of a child in Cheng’s residence or in the phone seized from him at the time of his arrest.

Finally, Cheng also used the identity of another individual to apply for credit cards in that individual’s name. (PSR ¶ 117.) During the execution of a search warrant at Cheng’s residence,

law enforcement found bank correspondence addressed to that individual, but which listed Cheng's mailing address.

## **II. DISCUSSION**

### **A. Applicable Law and Guidelines Range**

The United States Sentencing Guidelines continue to provide strong guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). Although *Booker* held that the Guidelines are no longer mandatory, it also held that the Guidelines remain in place and that district courts must “consult” the Guidelines and “take them into account” when sentencing. *Booker*, 543 U.S. at 264. As the Supreme Court stated, “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range” — that “should be the starting point and the initial benchmark.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007).

After that calculation, however, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the four legitimate purposes of sentencing, *see id.* § 3553(a)(2); “the kinds of sentences available,” *id.* § 3553(a)(3); the Guidelines range itself, *see id.* § 3553(a)(4); any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); “the need to avoid unwarranted sentence disparities among defendants,” *id.* § 3553(a)(6); and “the need to provide restitution to any victims,” *id.* § 3553(a)(7). *See Gall*, 128 S. Ct. at 596 & n.6.

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (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.

18 U.S.C. § 3553(a)(2).

In the Presentence Investigation Report, the United States Probation Office calculates an applicable Guidelines range of 78 to 97 months, which is also in accordance with the parties' plea agreement, and recommends a sentence within the Guidelines range of 84 months on each count to run concurrently.

**B. The Nature and Circumstances of the Offenses and the Need for Punishment Weigh In Favor of a Guidelines Sentence**

The defendant's crimes were serious in several ways. First and foremost was the harm he caused more than 45 individual victims, many of whom were not wealthy and were seeking funding for their own start-up companies. Cheng callously and repeatedly lied to one victim after another who were looking to him for start-up capital or for an exciting investment opportunity, and he took advantage of those needs in order to defraud the victims for as much money as he could. Cheng also did not hesitate to use doctored bank statements to trick his victims into believing that he had tens of millions in cash, thereby causing the victims to trust that his company was successful, that he could help them get investments, and/or that he could actually return the fees that he promised were refundable. The words of the victims speak volumes of the harm that Cheng caused them:

- "The funds that were provided to Alchemy Finance /Justin were personal funds of mine lent to our company. Despite repeated emails to Justin that these were personal funds, he failed to grasp the implications of this and chose to ignore my emails. As a result of the money we didn't receive back from Alchemy Finance/Justin, I lost the chance to purchase our family home which has therefore placed great strain on my marriage and the relationships with the

rest of my family. The impact of this has been both mentally and physically draining and it has taken its toll on my health and well-being.” (July 29, 2021 Victim Impact Submission, Statement #1.)

- “In 2018, Cheng orchestrated a complex scheme to defraud me and [my company] of substantial funds and services. . . . The financial cost that Cheng’s fraud has imposed on me, [my company], and [my] employees has been disastrous. . . . [My company] was forced to lay off no fewer than four employees . . . in mid-2018. Due to the huge loss of funds and substantial time spent by my employees without payment, I was not able to meet the salary requirements of these employees. It was a heart wrenching experience having to let go of people who had been with me for more than five years, most of whom were the sole breadwinners in their families.” (July 29, 2021 Victim Impact Submission, Statement #2.)
- “I felt many different emotions but mostly I felt hopeless. My hard-earned savings were gone, my entire lifework and my reputation were [t]ainted; the embarrassment and shame outgrew me. . . . After almost a year of feeling lost, embarrassed, ashamed, anxious, and depressed, I must move forward carrying on this horrible experience with Justin.” (July 29, 2021 Victim Impact Submission, Statement #3.)
- “My business and I have been dealing with both the financial and emotional effects of [the defendant’s] actions on a daily basis. Justin took advantage of my start-up at a critical time when I was desperately trying to raise funding to expand my company. Justin’s false legal contracts and promises haunt my team and me every time we approach a contract, to the point where no amount of due diligence is sufficient, and I can’t sleep most nights worrying something similar might happen again. Because of the stress and strain Justin caused by forsaking our legitimate approach in favor of his bogus approach, all of our current investor and adviser connections have been ruined. . . . Financially, my company has suffered to the point where it is practically unrecoverable due to capital expenditures on Justin’s false contracts.” (July 29, 2021 Victim Impact Submission, Statement #4.)

But Cheng’s crimes through the advance fee and securities schemes were not the end of his criminal conduct. He further had the audacity to lie to the SBA and multiple banks in six different loan applications in order to get millions of dollars in pandemic relief under the guise of using those funds to pay wages to hundreds of needy employees, when in fact all he did was

enrich himself. And these were not simple lies. Cheng used multiple real identities to submit the loan applications to avoid scrutiny and to ensure that the applications could not be easily tied back to him. He further submitted numerous fraudulent and doctored tax records and payroll summaries, even forging the identity of an actual payroll company employee multiple times. The defendant's schemes to steal millions of dollars was thus multi-faceted, took planning, and as the victim impact statements make clear, also took a level of skill to credibly lie to the faces of multiple victims that only a savvy fraudster could pull off. (*See, e.g.*, Aug. 5, 2021 Victim Impact Submission (“I wonder how I was able to be deceived by someone so seemingly sincere and friendly, who was able to callously lie and steal money that meant a life in France with me and my partner at the time”); July 29, 2021 Victim Impact Submission, Statement #3 (“Justin [was] a man I once called friend, a man I once introduced to my significant someone, and a man I trusted so much that I gave my life-fortun[e] to.”).)

The defendant's crimes were made all the more serious by the duration and scope of the offenses. Cheng engaged in multiple fraud schemes over at least three years, and those fraud schemes targeted dozens of victims and a Government pandemic relief program. The defendant was also extremely successful in his efforts to commit fraud, gaining at least approximately \$400,000 from the securities fraud, \$380,000 from the advance fee scheme, and \$2.8 million from the PPP loan fraud scheme. With these ill-gotten gains, Cheng lived a lavish lifestyle, moving into a luxury Manhattan condo along the High Line with a private pool, buying a \$40,000 Rolex and tens of thousands of dollars of luxury goods, and purchasing a new Mercedes for \$185,000, among other things. All of this while the victims of his fraud were trying to cope with their losses and struggling businesses all over America were fighting to get much-needed pandemic relief.

Cheng's years of repeated lies to dozens of victims and the Government constitutes extraordinarily serious conduct that warrants significant punishment. For these reasons, the nature and circumstances of the defendant's conduct and the need for just punishment warrant a sentence within the Guidelines range.

**C. A Guidelines Sentence Is Necessary to Promote Respect for the Law and Afford Adequate Deterrence to Criminal Conduct**

The need to afford adequate deterrence to both the defendant and the public generally also weighs strongly in favor of a significant term of imprisonment. Notably, the defendant continued to commit criminal activity despite being sued civilly for fraud in this District. In April 2019, Cheng was sued in this District for, among other things, fraud in connection with misrepresentations regarding the amount of funds raised for Alchemy Coin. *See Polites v. Alchemy Finance, Inc. et al.*, 19 Civ. 3862 (GHW) (S.D.N.Y. Complaint filed Apr. 30, 2019). Then, in June 2020, Cheng was sued for fraud in this District before Your Honor by a victim of the securities fraud scheme discussed above. *See Digilytic International FZE et al v. Alchemy Finance, Inc. et al.*, 20 Civ. 4650 (AJN) (S.D.N.Y. Complaint filed June 17, 2020). Cheng appeared in both actions through counsel. Nevertheless, despite being sued for fraud – twice – in federal court, the defendant persisted in committing fraud. Indeed, *after* the second lawsuit was filed, Cheng filed three more fraudulent PPP loan applications (the applications for Celeri Treasury, Neo Bellum, and Alchemy Guarantor) and proceeded to use those proceeds to upgrade his lifestyle, rather than making amends to past victims (which would have still been illegal). Cheng's sustained fraudulent conduct despite having a pending lawsuit for fraud is strongly indicative of the need for deterrence for this defendant and to protect the public from further crimes of the defendant, even if he will be deported.

A prison sentence within the Guidelines range is also necessary to send a message to other similarly situated individuals and the public that defrauding dozens of victims as Cheng did over the course of three years will not be treated leniently and will entail a significant period of incarceration. Moreover, a strong message is also needed to deter others from lying to fraudulently secure scare pandemic funding. Such a message is particularly important at a time when such crimes involving pandemic relief, which are often difficult to detect and prosecute (and the funds are even harder to recover), have become rampant. Indeed, Congress's Select Subcommittee on the Coronavirus Crisis identified up to approximately \$84 billion in potentially fraudulent loans in the PPP and EIDL Programs.<sup>2</sup> Accordingly, the sentence imposed must demonstrate that the consequences of committing these types of fraud, particularly with the duration and scope of the frauds committed by Cheng, are severe.

**D. The History and Characteristics of the Defendant**

For the reasons set forth above, the sentence of two years' imprisonment requested by the defendant is wholly unreasonable and the reasons proffered by the defendant for such a sentence are unpersuasive.

First, the defendant's history and characteristics do not warrant a variance from the Guidelines. The defendant makes much of the fact he was "barely more than a child when this conduct began" and that he was "only 18 at the inception of his conduct." (Def. Mem. at 2). In fact, however, the defendant (who was born in 1996) began committing the securities fraud in 2017 when he was 21 and continued to commit the PPP loan fraud through 2020 when he was 24 years old. The defendant's commission of these crimes well into his adulthood do not warrant

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<sup>2</sup> See <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-03-25%20Staff%20Memo%20-%20Small%20Business%20Fraud.pdf>.

any leniency, particularly when the defendant was even on notice through civil lawsuits that others were aware of his fraudulent conduct and yet he chose to continue committing crimes.

Second, while the Government is sympathetic to the circumstances of the defendant's childhood and the abuse he claims he suffered from his father (*see* Def Mem. at 2-4), those circumstances do not explain the choices he made, day after day, to commit fraud, nor do they mitigate, to any extent, the severe harm that he caused through his multiple crimes. At bottom, Cheng committed his crimes for one reason: greed. As he admits in his letter to the Court, Cheng began engaging in criminal conduct not because he was suffering financially, but because he "desperately started craving for more success and recognition." (Def. Ltr. at 6.) He further admitted to "spend[ing] money on expenses that would make me and my company look 'successful' in public," in order to "justify the false images that I portrayed for myself and the company." (*Id.* at 7.) As the losses from this spending piled up, Cheng "stopped trying and decided to pocket money for myself first than running the company." (*Id.*) The defendant's greed is evident from his use of a majority of the fraud proceeds for lavish personal expenses, rather than to support his family or actual employees at his companies.

Third, the defendant also suggests that his sentence should be more lenient because of the harsh conditions of confinement due to the global pandemic. (Def. Mem. at 6). While conditions of imprisonment during the pandemic were undeniably difficult, given the steep learning curve the entire world faced in figuring out how to respond to the threat of COVID-19, and the need for physical distancing in order to control the spread of the virus, those conditions do not negate the need for a very significant sentence here. This is particularly true where, as here, the defendant chose to commit fraud over and over again during the pandemic, by

exploiting a pandemic relief program, thereby assuming the clear risk of ending up in jail during the pandemic.

Finally, the cases outside of this District cited by the defendant in support of a two-year sentence are inapposite and do not involve similarly situated defendants. (*See* Def. Mem. at 9.) As an initial matter, several of the cases involving a 24-month sentence, which the defendant is seeking, involve defendants who submitted fraudulent loan applications but did not actually receive any money. *See U.S. v. Rai*, 21 Cr. 9 (E.D. Tex.); *U.S. v. Hayford*, 20 Cr. 88 (N.D. Okla.); *U.S. v. Jackson*, 20 Cr. 112 (S.D. Ohio). In the cases cited by the defendant where fraud proceeds were actually received, all of them involved significantly lower loss amounts and lower Guidelines ranges. *See U.S. v. Jaafar*, 20 Cr. 185 (E.D. Va.) (12-month sentence for defendant who submitted 18 PPP loan applications and received \$1.4 million, where Guidelines range was 24 to 30 months); *U.S. v. Tezna*, 21 Cr. 77 (E.D. Va.) (18-month sentence for defendant who submitted three PPP loans and received approximately \$275,000, where Guidelines range was 21 to 27 months); *U.S. v. Suber*, 20 Cr. 110 (E.D. Va.) (24-month sentence for defendant who submitted one PPP loan application and received approximately \$350,000, where Guidelines range was 33 to 41 months); *U.S. v. Baker*, 20 Cr. 20355 (E.D. Mich.) (24-month sentence for defendant who submitted one PPP loan application and received approximately \$590,000, where Guidelines range was 30 to 37 months); *U.S. v. Crowther*, 20 Cr. 114 (M.D. Fl.) (37-month sentence for defendant father of three young children who submitted one PPP loan application and received approximately \$2.1 million); *U.S. v. Clawson*, 21 Cr. 39 (D. Or.) (24-month joint sentencing recommendation for defendant who innocently received \$145,000 in PPP loan proceeds and then converted them for personal use). Importantly, none of the PPP cases cited by the defendant involve defendants who received more money than Cheng or who perpetrated as

many different fraud schemes as Cheng.<sup>3</sup> These cases therefore support a sentence well above the two-year sentence requested by Cheng.

### III. Conclusion

For these reasons, and all the reasons set forth above, the Government respectfully submits that a substantial term of imprisonment within the Guidelines range is sufficient, but not greater than necessary, to achieve the legitimate goals of sentencing.

Respectfully submitted,

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<sup>3</sup> In *U.S. v. Rafael*, 19 Cr. 20477 and 21 Cr. 20161 (S.D. Fl.), which is cited by Cheng, the defendant sentenced to 42 months' imprisonment received a three-level minor role adjustment and was characterized by the Government as the least culpable defendant in a movie financing fraud scheme. Further, that defendant's crime with respect to PPP loan fraud was concealing his criminal history on loan applications, which is quite distinct from Cheng's conduct in submitting multiple fraudulent loan applications using multiple identities.