

an additional \$310 billion for PPP funding. These funds were designed to address the unprecedented crisis facing Americans -- especially business owners whose livelihoods were threatened by the public health emergency. PPP funds were designed as a lifeline.

Because the program was designed to provide funds quickly and easily to qualifying individuals, PPP loans were not dispensed through any government bureaucracy. Instead, funds were distributed by banks who often had existing relationships with many of the people in need. To apply, individuals submitted an application to a participating financial institution along with supporting documentation as to the business's payroll expenses. The supporting documentation requirement was minimal and could be satisfied with one year's worth of the company's tax records. If a PPP loan application was approved, the participating financial institution funded the PPP loan using its own monies, which were 100% guaranteed by the Small Business Administration ("SBA").

B. Overview of The Defendant's Conduct

The Defendant submitted two PPP loan applications to Bank 1, an approved SBA lender of PPP loans, using false information, including fake revenues, employment data, and fabricated documentation. As a result of the fraudulent applications, Kamgaing obtained more than \$1.5 million in PPP funds. After receiving the funds, Kamgaing started a business, including purchasing an \$850,000 office building, and transferred substantial sums of the PPP proceeds to a brokerage account for his personal benefit.

Kamgaing had two business entities – AKC Solutions, LLC and Apiagne, Inc. AKC Solutions was administratively dissolved on October 11, 2019 and reinstated on May 15, 2020, after the PPP application was submitted. Apiagne was incorporated on January 16, 2019. Prior to the false loan applications neither company had revenues or employees. Kamgaing applied

for a PPP loan in the name of each company. The two PPP loan applications contained numerous falsities, including false monthly payroll, number of employees, and that the businesses were in operation in February 2020. Kamgaing also submitted false Internal Revenue Service (“IRS”) employment tax returns, Forms 940 and 941, as part of the loan applications. These tax returns contained completely fabricated information and were never filed with the IRS. In fact, neither AKC Solutions and Apiagne filed any corporate tax returns prior to receipt of the PPP loans.

Bank 1 funded both loans, disbursing \$856,463 for the Apiagne loan and \$650,00 for the AKC loan. Upon receipt of the PPP loan proceeds, Kamgaing used the funds for start-up costs for the businesses, including the purchase of an \$850,000 office building. He also transferred hundreds of thousands of dollars from the Apiagne and AKC business accounts to his personal account as well as two brokerage accounts where he invested the funds in the stock market for his personal benefit.

III. ADVISORY GUIDELINES

In determining the appropriate sentence, “a district court must begin by correctly calculating the applicable Guidelines range.” *United States v. Evans*, 526 F.3d 155, 160 (4th Cir. 2008). The advisory Guidelines are “the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines “seek to embody the § 3553(a) considerations, both in principle and in practice. . . . [I]t is fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.” *Rita v. United States*, 551 U.S. 338, 350 (2007). “[A] Guidelines sentence will usually be reasonable, because it reflects both the Commission’s and the sentencing court’s judgment as to what is an appropriate sentence for a given offender.” *Id.* at 351.

The PSR calculated a total offense level of 20 and a criminal history I, corresponding to an advisory guideline range of 33 to 41 months. Doc. 23 at ¶¶ 53, 63, and 88.

IV. 18 USC § 3553(a) SENTENCING FACTORS

The appropriate sentence is for the District Court to determine based on the factors enumerated in 18 U.S.C. § 3553(a), and “any sentence, within or outside of the Guidelines range, as a result of a departure or of a variance, must be reviewed by appellate courts for reasonableness pursuant to an abuse of discretion standard.” *United States v. Diosdado-Star*, 630 F.3d 359, 365 (4th Cir. 2011). The 18 U.S.C. § 3553(a) factors dictate a sentence within the advisory guideline range. While the post-*Booker* sentencing regime affords the sentencing court discretion in selecting the appropriate sentence, “[a]s a matter of administration and to secure nationwide consistency, the advisory Guidelines should be the starting point and the initial benchmark” in determining the appropriate sentence. *Gall*, 522 U.S. at 49. The Fourth Circuit has stated it even more strongly, describing the Guideline offense level as “the *crucial* ‘starting point,’ as well as the ‘initial benchmark’” in the sentencing process. *United States v. Lewis*, 606 F.3d 193, 199 (4th Cir. 2010) (quoting *Gall*, 522 U.S. at 49) (emphasis added).

The nature and circumstances of the offense and the need to afford adequate deterrence, as detailed above and in the Factual Basis and Relevant Conduct Statement, warrants a guidelines sentence. The Defendant carried out a scheme to fraudulently obtain more than \$1.5 million in loans. The Defendant submits that he had good intentions and that his motivation was to “jump-start [his] IT business” and “play an active role in the economy recovery or prevent it from collapse.” See Doc. 23 at ¶ 35. However noble the Defendant’s intentions, he understood the purpose of the PPP was to help existing businesses, not provide an interest-free forgivable loan to create and start a business or an opportunity to invest the funds in the stock market for his personal

benefit. Moreover, in filling out the applications, the Defendant had to answer and certify that his business was “in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes...” and that the “loan proceeds [would] be used for business-related purposes.” He affirmatively knew this was not the case because he created fictitious documents, including bank statements from the very bank that was funding the loan and multiple tax returns that were presented as having been filed with the IRS and which included wildly false statements about the number of employees and their payroll. The Defendant then used the funds to enrich himself by transferring large sums to his personal brokerage accounts and by purchasing, mortgage free, an office building to house his new venture. Further, as noted by the Defendant, when he applied for loan forgiveness, he continued the fraud by again providing Bank 1 fabricated records. None of these acts evidences good intentions. Because of the Defendant’s fraudulent applications and receipt of funds he deprived legitimate applicants from receiving funding because PPP funds were limited and eventually ran out.

A lengthy period of incarceration also serves to deter not just the Defendant but other would-be fraudsters. Regarding specific deterrence and the need to protect the public, according to a recent report issued by the U.S. Sentencing Commission, longer sentences deter recidivism. *Length of Incarceration and Recidivism*, Ryan Cotter, PH.D., April 2020, at 30 (“The Commission found a statistically significant deterrent effect for offenders incarcerated for more than 60 months when compared to similar offenders incarcerated for shorter periods of time.”).¹

As to general deterrence, as the Eleventh Circuit has noted, “[b]ecause economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Martin*, 455 F.3d 1227,

¹ Available at: https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200429_Recidivism-SentLength.pdf.

1240 (11th Cir. 2006) (internal quotation omitted). “Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.” *Id.* at 1227. Put differently, as the Seventh Circuit has explained, “[t]he system of penalties under the Guidelines is constructed on the belief that . . . longer sentences of imprisonment, are more effective deterrents. A large body of evidence supports this intuition.” *United States v. Turner*, 998 F.2d 534, 536 (7th Cir. 1993).

As explained above, this case was motivated by self-interest and greed at a time when millions of Americans were suffering from the economic impact of a global pandemic. As the pandemic spread, so too did fraud related to the PPP program and other programs designed to provide critical economic assistance. The United States’ recommended sentence of imprisonment in this case is thus appropriate to provide both specific and general deterrence. Such a sentence will send a clear message to the Defendant and other offenders that there are serious consequences for defrauding government pandemic relief programs. Indeed, as the pandemic continues to impact small businesses, the PPP loan program remains ongoing. Actors like the Defendant who seek to defraud these programs not only drain the program of limited funding, they also make it more difficult for administrators of government and other relief programs to get aid to individuals that qualify for and need it. The Defendant’s sentence will serve as a warning and deterrent to others inclined to exploit pandemic relief programs. *See United States v. Morgan*, 635 F.3d. Appx. 423, 450 (10th Cir. 2015) (“Deterrence is a crucial factor in sentencing decisions for economic and public corruption crimes...”); *United States v. Hayes*, 762 F.3d 1300, 1308 (11th Cir. 2014) (“In a number of opinions . . . we have explained that general deterrence is an important factor in white-collar cases, where the motivation is greed.”). The Fourth Circuit has explicitly recognized the

importance of incarceration for defendants convicted of white collar crimes such as tax evasion, theft, fraud and embezzlement. *See United States v. Engle*, 592 F3.d 495, 501 (4th Cir. 2010).

Although a relatively small number of PPP loan defendants have been sentenced in cases nationwide, judges in other districts have not hesitated to sentence such defendants to substantial terms of imprisonment that are consistent with the guideline range in those cases. *See, e.g., United States v. David Hines*, No. 21-CR-20011 (S.D. Fla. May 12, 2021) (78 months of incarceration for defendant responsible for a loss of \$3.9 million resulting from multiple fraudulent PPP loans; guideline range of 63-78 months); *United States v. Ganell Tubbs*, No. 20-CR-193 (E.D. Ark. March 15, 2021) (imposing 41-month term of imprisonment for defendant responsible for loss of \$1.9 million resulting from two fraudulent PPP loans; guideline range of 41-51 months); *United States v. Benjamin Rafael*, No. 21-CR-20161 (S.D. Fla. July 14, 2021) (18 months of incarceration for defendant responsible for a loss of at least \$95,000 resulting from multiple fraudulent PPP loans. There was a companion Ponzi-scheme case; guideline range for just the PPP fraud was 12-18 months); *United States v. Ioannis Kralievits*, Case No. 21-CR-20157 (S.D. Fla. June 30, 2021) (sentencing cooperating defendant to 19-month term of imprisonment (following reduction pursuant to 5K1.1) in connection with two fraudulent PPP loans totaling approximately \$824,750). Therefore, a sentence within the advisory guideline range of 33 to 41 months is in line with other similarly situated defendants.

V. CONCLUSION

For the foregoing reasons, the United States recommends a sentence of 33 months, the low-end of the advisory guidelines range, as well as a term of supervised release, and restitution of \$628,374.39 to Bank 1 and \$856,463 to the SBA. The United States has requested the Defendant's signature on a consent order and will be requesting forfeiture of a property and other assets at

sentencing. A sentence of 33 months, the low-end of the advisory guideline range, reflects the seriousness of the offense and deters both the Defendant and others from defrauding government pandemic relief programs.

RESPECTFULLY SUBMITTED, this the 29th day of December, 2021.

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