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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

CASE NO.: 2:21-CR00081-VAP

Plaintiff

SENTENCING MEMORANDUM

vs.

**HONORABLE, VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE**

**SENTENCING DATE: NOVEMBER 15,
2021**

HASSAN SHABAN KANYIKE

Defendant.

SENTENCING MEMORANDUM

INTRODUCTION

How is it possible to bring order and understanding to the life of an individual that has plead guilty of committing fraud against the very country that gave him a home? Where can a story begin that will create order and understanding of how a gentle and honorable man could make such a shameful and irresponsible mistake?

1 Perhaps it begins on the streets of Aids ravaged Kampala Uganda where a
2 young boy desperately sought attention from a polygamist father who give scant
3 notice to a lonely boy, just one of his many children. Maybe it begins in a Sunni
4 Muslim Mosque where an unconsummated marriage, born out of desperation,
5 takes place to protect a young gay man who is facing the harsh and violent rath of
6 community where homosexuality is punishable by brutal violence. Perhaps it
7 begins here in America where asylum was granted to a fleeing immigrant who
8 dreamt of a better life but was still attached to obligations of family who truly
9 needed the financial help only he could give them. Possibly it begins when his
10 successful auto sales business was hit hard by the economic ravages of Covid and
11 left him in financial despair. Or maybe it begins in the office of a Psychologist
12 who, for the first time, exposes to this man the mental deficiencies and challenges
13 that hinder self-awareness of himself. Where to begin to bring order and
14 understanding?

15 And who shall tell his story? Perhaps the attorney who has found in this man
16 a certain nobility and inexperience that challenge description and leaves him
17 struggling for words. Maybe from Rabbi Yoel Doron and Rabbi Yossi Bryski of
18 The Aleph Institution, who saw cause to step in and help a Muslim brother by
19 creating a meticulous and sincere report. Possibly clarity would come from friends
20 and people who have been helped and served by this man. Or maybe truth would
21 come from that man's own life shared from people, in diverse ways, who know
22 him best. Indeed, it will need to come from each of those sources because when
23 the time came to find people willing to tell the story of Hassan Kanyike the
24 challenge was not how much to tell, it was how to limit the countless people
25 willing to come forth upon his behalf.

1 **AN UNCONVENTIONAL SUBMISSION**

2
3 While this brief may appear unconventional, it is an honest attempt to
4 convey the character and soul of Hassan Kanyike to this Court. To write that all
5 too standard brief would have been done in contempt of the fair representation of
6 Hassan. Counsel hopes that it will be received with the integrity with which it is
7 offered.

8 **TO AVOID BOILERPLATE**

9
10 Counsel for Mr. Kanyike is well aware of the long-standing history of this
11 Court. To fill pages with wasted boilerplate about the rules of Federal Sentencing
12 feels either lazy or designed to burden this Court with words that have been copied
13 and pasted all too many times. It seems excessive to burden Your Honor with
14 redundant recitations of law and code which are well known by this Court.
15 Instead, we simply acknowledge the standards of Booker, the Federal Guidelines
16 and the United States Code and seek the Courts wisdom as she applies the law, the
17 facts, and the life story of Mr. Kanyike when determining the appropriate sentence.

18 Counsel will also seek to avoid duplication by allowing the extensive and
19 well researched report prepared by The Aleph Institution, who voluntarily
20 submitted a full account on the life and circumstances of Mr. Kanyike, to speak for
21 itself. Their detailed history and analysis deserve a place alone and to repeat their
22 words would be superfluous. We ask that the Court review their report and
23 incorporate it into this Sentencing Memorandum (Exhibit 1).¹

24 We ask the Court to also consider the attached Psychological Report which
25 was completed by K. Drorit Gaines, Ph.D. a fully licensed Psychologist and
Neuropsychologist. Dr. Gaines presents detailed information showing Mr.

¹ Counsel for Mr. Kanyike wishes to thank and acknowledge the extensive work performed by Rabbi Yoel Doron and Rabbi Yossi Bryski who spent countless pro bono hours to prepare this report for the Court.

1 Kanyike’s limited intelligence (an FSIQ of 83), neuropsychological brain deficits
2 brought on by head trauma from beatings, and trauma-related symptoms brought
3 on as a result of physical and emotional abuse as a cultural and sexual orientation
4 minority from his days in Uganda (Exhibit 2).

5 Also submitted are letters of reference from family, friends, associates and
6 community organizations as well as a discussion on the location of the stolen PPP
7 funds.

8 **USE OF STOLEN FUNDS**

9 At the outset Mr. Kanike asks the Court to understand there is no desire to
10 make excuse for his criminal behavior. Mr. Kanyike has plead guilty and accepts
11 full responsibility for all of his actions. While he has struggled to see the logic of
12 being punished for “intended loss”² he has no question about his failure of integrity
13 in taking money from the Government during its generous PPP program. Mr.
14 Kanyike, in a moment of a panic due to Covid induced desperation³, accepts full
15 responsibility for false applications seeking \$1,775,675.00 and actually receiving
16 \$1,302,255.00. The question is what happened to that money?

17 Let us begin by noting what did not happen. Mr. Kanyike did not go out and
18 buy expensive and fancy cars, boats, or luxury items for himself. He did not take
19 posh trips or celebrate at high end hotels and bars. Mr. Kanyike did not spend the
20 money on personal luxuries or frivolous behavior. What he did was both
21 unfortunate and indicative of who he is. In an effort to impress his father he sent
22 approximately \$762,000.00 to his father in Uganda for a proposed investment in a

23 ² Many attorney’s and litigants struggle with the increase in punishment for “intended loss” especially
24 when there is actual loss, but we do not seek to challenge that here.

25 ³ Mr. Kanyike did not have the Covid illness – we refer to the overwhelming fear and disorientation that
was brought on by the massive uncertainty created in the early days of the pandemic. For most small
businesses owners these were days of confusion, fear, and trepidation. It is a time like no other and
without compare. Most handled it with correctness, a few took advantage, and a few others were lost in
the unknown and made poor choices that in the clarity of the months that followed became obvious in the
mirror of hindsight.

1 warehouse and the remaining money was used to pay employees, expenses, fees,
2 and debts for his business, Falcon Motors.

3 Since his arrival in the United States, with only a few dollars in his pocket,
4 Mr. Kanyike has built a small going concern as an auto dealer to the Ugandan
5 community. Falcon Motors purchased cars at the auction and then sold them to
6 people usually within that community. He used contract brokers and others to sell
7 and service these vehicles. When the Covid Pandemic left him financial marred,
8 due to a massive drop in sales and mounting debt service, Mr. Kanyike wrongfully
9 took advantage of the PPP program to obtain money to pay ongoing costs.⁴ While
10 this is no excuse for bad behavior, Mr. Kanyike did use a good portion of this
11 money to pay legitimate costs and expenses.

12 The money sent to Uganda, however, has its own journey based in tragic and
13 problematic circumstances. Mr. Kanyike's father had proposed that his son's
14 success in America could be added to in Uganda when it was learned this money
15 might be available. What was wanted by his father was a warehouse whereby
16 autos could be shipped to and stored for resale in Uganda. Believing in his father
17 business acumen and seeking acceptance, Mr. Kanyike sent about \$762,000.00 of
18 his own money to his father in hopes of building up a business overseas for his
19 family. Unfortunately, that money was used to buy a property that was never
20 turned over to his father and has since become the subject of Ugandan law and
21 litigation. In other words, it is unlikely to ever find its way back to Mr. Kanyike.

22 Counsel for Mr. Kanyike has engaged in attempts to validate this event.
23 This was obviously not done to show any types of innocence, but rather to answer
24 the import question of what happened to this money. Attached are documents
25 from Ugandan lawyers that outline the litigation. We understand the dubious

⁴ These expense and income were properly reported in his tax returns which have been filed with the IRS and Franchise Tax Board. It would also be fair to say that Mr. Kanyike did comingle his business and personal finances to a degree and personal life expenses came from the same pot of money as both the PPP and business income. However, these expenses were the same as they always had been and were modest and continue to be even to this date.

1 nature of such documents and how easily they could be unfairly created, but they
2 are what was provided by those lawyers and it is all we can offer. They tell a story
3 of the Asian Property Custodian Board who sold the property to Mr. Kanyike's
4 father, Asuman Nkambwe. However, unbeknownst to Mr. Nkambwe they did not
5 actually own the property due to a third-party claim and pending litigation (Exhibit
6 3).

7 The family, due to their own ignorance, fell victims to a scam. These
8 documents also discuss others who had similar problems and the litigation attempts
9 to obtain either the property or the money but to no avail. The money is gone, and
10 the property is not in the possession of his father. That is the long and short of the
11 story.

12 With limited ways to prove this to this Court, Counsel does note that Mr.
13 Kanike has no motive to hide money for personal use in Uganda. He has been
14 successful in his auto business. His income of just a few years would match this
15 money. He owns an ordinary home here in California and has been granted
16 asylum. He has continually supported family members in Uganda with his income
17 so that they might attend school and obtain basic needs. In other words, he would
18 make more money working as an auto dealer in the United States than by making a
19 singular theft and then disappearing to Uganda where he is both unwelcome and at
20 risk of violent reprisals for his sexual orientation and history as a Gay Rights
21 Advocate. His actions in sending money to his father are consistent with his desire
22 to support his family abroad and to find favor with a neglective father. While it is
23 still theft, it offers our explanation as to why he cannot retrieve and return this
24 money.

25 **HOW TO RECONCILE BAD CONDUCT WITH THE MAN**

It feels like a weak argument to claim one is good when they have done bad.
But such is the nature of what sometimes happens in the field of Criminal Law and

1 with Mr. Kanyike it is an honest question and statement – for all signs indicate he
2 is a good man that has done a wrongful act. The question when determining Mr.
3 Kanyike’s sentence is what is appropriate for this man, in this situation?

4 To balance the factors set forth in U.S.C. 3553 the Court certainly can look
5 to his mental history and personal story from Uganda to now. The Court might
6 also include his criminal history and his ongoing work ethic whereby he built a
7 productive and full tax paying business from literally nothing. The Court could dd
8 in his personal challenges growing up as an abused individual due to his sexually
9 orientation and his personal commitment to religious principles such as total
10 abstinence from alcohol or drugs. The Court might could incorporate his ongoing
11 commitment to funding young members of family in Uganda so that they may
12 attend school. And the Court could embrace the fact that all indications support
13 compliance with the rules of the Court and Probation in considering the correct
14 sentence. For in all these things Mr. Kanyike warrants merciful consideration.

15 Counsel concedes that there is a broad range in which this Court could
16 exercise its discretion under U.S.C. 3553. Indeed, a sentence ranging from Home
17 Confinement to the agreed upon, in the Plea Agreement, low end guidelines would
18 not feel unreasonable upon its face. But here lies the true challenge of Mr.
19 Kanyike, for as mentioned in the beginning, Mr. Kanyike presents differently than
20 that of the standard range and Counsel submits, he should be sentenced
21 accordingly.

22 Mr. Kanyike’s humility and kindness to so many people demonstrate
23 the heart of a good man who has made a mistake. His service to others, concerns
24 for his family, unpretentious lifestyle and general demeanor suggest this case
25 warrants extended mercy rather than enhanced punitive justice. This Court will
never have the opportunity to sit in silent contemplation with Mr. Kanyike, but his
Counsel has, and can represent he is a uniquely soft soul with a deeply loving heart
and a firm religious commitment that defies an explanation why in desperation he

1 selected a course adverse to his character. He is not a fraudster but a man that
2 committed this fraud and there is a big difference.

3
4 **AN UNSUAL GAP WITHIN THE LAW**
5 **THE COURT MAY CONSIDER**

6 As the Court makes its decisions for a just punishment, it may be helpful to
7 know that the U.S. Sentencing Commission has conducted a multi-year study of
8 guideline section 2B1.1 and whether the loss table is in fact an appropriate measure
9 of the seriousness of the offense.

10 When the Commission adopted the original guidelines in 1987, it “decided
11 to abandon the touchstone of prior past practice” with respect to white-collar
12 offenses.⁵ The Commission required some form of confinement for all but the
13 least serious cases, and adopted a fraud guideline requiring no less than 0-6 months
14 and no more than 30-37 months for defendants in Criminal History Category I.
See USSG § 2F1.1 (1987).

15 The Commission explained “the definite prospect of prison, though the term
16 is short, will act as a significant deterrent to many of these crimes, particularly
17 when compared with the status quo where probation, not prison, is the norm.”⁶
18 The Commission’s deterrence rationale was not based on empirical evidence. The
19 empirical research regarding white-collar offenders, in fact, shows no difference
20 between the deterrent effect of probation and that of imprisonment.⁷

21
22 ⁵ Breyer, 17 Hofstra L. Rev. at 22-23.

23 ⁶ USSG, ch. 1, intro., pt. 4(d) (1987); see also U.S. Sent’g Comm’n, Fifteen Years of Guidelines
24 Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of
Sentencing Reform (2004) [hereinafter Fifteen Year Report].

25 ⁷ See David Weisburd et al., Specific Deterrence in a Sample of Offenders Convicted of White Collar
Crimes, *Criminology* 587 (1995).

1 Moreover, the Commission quickly abandoned its original goal of ensuring
2 “short but definite” sentences. Beginning just two years after the Guidelines went
3 into effect, prison sentences for fraud offenders were steadily increased. The effect
4 of those increases on this case was to add four levels for loss in 1989, to add five
5 more levels for loss in 2001, and to increase the base offense level by one level in
6 2003. As a result, Mr. Kanyike’s advisory guideline range today, is over four
7 times the range under the original 1987 guideline.⁸

8 The 1989 and 2001 increases in the fraud guideline led to the incongruous
9 result that first-time, nonviolent fraud offenders, like Mr. Kanyike, were subject to
10 guideline ranges as high as those imposed on armed drug traffickers and even
11 higher than those applicable to the most violent offenders.⁹

12 So why then was a guideline range of 10-16 months a reasonable sentence in
13 1987, but in 2016 a sentence of 51 to 63 months is a reasonable sentence for the
14 same conduct?

15 In an opinion by the Supreme Court on June 10, 2013 in *Peugh v. United*
16 *States*, Justice Thomas provides the following thought:

17 “[T]he Guidelines do not constrain the discretion of district courts and, thus,
18 have no legal effect on a defendant’s sentence. Second, to the extent that the
19 amended Guidelines create a risk that a defendant might receive a harsher
20 punishment, that risk results from the Guidelines’ persuasive force, not any
21 legal effect . . . Petitioner next argues that the Guidelines limit district court
22 discretion because sentences falling outside the Guidelines are more likely
23 to be reversed for substantive unreasonableness. I doubt, however, that
24 reversal is a likely outcome when a district judge can justify his sentence
25 based on agreement with either of two Guidelines — the old or the new. If a
district court calculated the sentencing range under the new Guidelines but

26 ⁸For example: A 1987 conviction for 2B5.3(a) and a 2F1.1(b)(1)(I) would have yielded a +16 total verses
27 the +24 today.

28 ⁹ Compare USSG § 2B1.1 (2001) (offense level 30 for loss over \$7 million, sophisticated means, abuse of
29 position of trust) with USSG § 2D1.1 (2001) (offense level 30 for trafficking in 3 kilograms of cocaine
30 while possessing a firearm); USSG § 2A2.1 (2001) (offense level 28 for assault with intent to commit first
31 degree murder); § 2A4.1 (2001) (offense level 24 for kidnapping), USSG § 2K1.4 (2001) (offense level 24
32 for arson creating substantial risk of death or serious bodily injury), USSG § 2A1.3 (2001) (offense level
33 25 for voluntary manslaughter).

1 sentenced the defendant to a below-Guidelines sentence that fell within the
2 range provided by the old Guidelines, it would be difficult to label such a
3 sentence “substantively unreasonable.” To do so would cast doubt on every
within-Guidelines sentence issued under the old Guidelines.”

4 The above-quoted passages from Justice Thomas now would enable
5 sentencing courts to feel confident that a sentence within the range suggested by
6 the 1987 guidelines should nearly always be deemed reasonable.

7 Judges are imposing sentences below the guideline range in fraud cases all
8 over the country. The courts are looking for options. To highlight these changes,
9 the U.S. Sentencing Commission released a statement on December 2, 2016,
10 suggesting new rules and guidelines. The proposed amendment suggests the
11 Courts consider greater use of alternatives to incarceration for first-time offenders.
12 This proposal is based on the continued overcrowding of prisons and more
13 importantly the much lower rate of recidivism from first time offenders.¹⁰ Mr.
14 Kanyike is exactly the type of person who is unlikely to reoffend and could be
considered for alternative sentencing.

15 EXHIBIT SUMMARY

17 President John F. Kennedy once said “As we express our gratitude, we must
18 never forget that the highest appreciation is not to utter words, but to live by
19 them.” All too often defense attorney’s utter words in a weak plea for
20 understanding and perhaps sympathy. The words that stumble across the pages of
21 countless sentencing memorandums search for excuse and feigned pity. But when
22 the life well lived makes a mistake what is presented, in the search to balance the

23 ¹⁰ This is the web location of the U.S.S.G proposed changes December 9, 2016.
24 [http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-
amendments/20161209_prelim-rf-proposed.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20161209_prelim-rf-proposed.pdf)

1 needs of mercy and justice, seem to present themselves with grace and simplicity.
2 Such is the case of Mr. Kanyike as penned not by his counsel but by those that
3 know him best. For the Courts consideration we present the following:

4
5 **Exhibit 1: The Aleph Institution.**

6 From the Rabbis and support staff of The Aleph Institution we learn of
7 Hassan's past and the terrible difficulties he overcame in the streets of Kampla to
8 his search for asylum in America. We learn of Hassan's spiritual journey, his
9 honest remorse, and his ongoing willingness to make amends.

10 We also learn of Hassan's personal actions of repentance and how for years
11 he has performed hundreds of hours of community service to small business
12 owners. We learn that The Aleph Institute had to limit their presentation because
13 of the overwhelming number of people who had benefited from Hassan's ongoing
14 community services, choosing to highlight but a few of the countless people who
15 have benefited from Hassan's service.

16 **Exhibit 2: K. Drorit Gaines, Ph.D.**

17
18 From Dr. Gaines we discovery how head trauma and a life in an oppressive
19 environment have both hindered and hampered Hassan. Here we find mental
20 anguish, a damaged brain due to trauma, and a willingness by Hassan to bypass
21 excuses to find success through hard work and diligence.

22 **Exhibit 3: The Uganda Fraud and Litigation.**

23
24 From lawyers in Uganda and their Court documents we learn how a son,
25 trying to please his father, was fooled into to passing over the money taken by his
own fraudulent behavior to Ugandan swindlers and lost.

1 **Exhibit 4: Personal Letters of Support**

2
3 From his close friends and the people Hassan has worked with, we learn of
4 his compassion, humility, willingness to work hard and the trust he has earned
5 from his community. From Mansoor Kiyingi we learn of Hassan’s selflessness
6 when he financially supported a friend with Leukemia. From Mr. Byaruhanga we
7 learn of Hassan’s dedication to a community in need of cars and support. From a
8 fellow Ugandan, Wasswa Umar, we discover that Hassan is a cheerful man willing
9 to share his single room, giving a friend a place to sleep. From Khalid Islam, the
10 man who gave Hassan his first real opportunity in America, we learn of his
11 devotion to God, his superlative work ethic and how deeply he truly is loved by so
12 many. From Eric Thomas, a vet suffering from PTSD, we learn how the
13 compassion of Hassan gave him housing, clothing, and above all, hope to live.
14 Each letter exposes us to a deeper understanding of a simple theme – Hassan is
15 well loved because he loves and cares for others.

16 **Exhibit 5: Sheikh Abu Bakar**

17 From Sheikh Abu Bakar we learn of Hassan’s fear of failure, deep anxiety to
18 protect his family in Uganda and Hassan’s honest remorse and path towards
19 repentance.

20 **Exhibit 6: His Current Job**

21
22 From Location Group Motors we learn that Hassan, who once generated
23 over \$2 million dollars in annual sales in his own business, now works as an
24 Inventory Manager for \$18.00 an hour.
25

1 **Exhibit 7: Spectrum Uganda LGBT Advocates**

2
3 From Moses Mulindwa, Deputy Executive Director of Spectrum Uganda we
4 discover that Hassan stood boldly against those who would suppress other due to
5 sexual orientation in a country where Police and the Community humiliate and
6 physically abuse with impunity.

7 **Exhibit 8: Letters from Community Organizations**

8
9 From local and distant community organizations we learn that Hassan is a
10 trusted pillar of the Muslim, LGBT, and both the Ugandan and local Business
11 Communities.

12 **OUR REQUEST**

13
14 When asking for the appropriate sentence one risks credibility if they ask for
15 too much. In this case what is too much? Shall justice and the need for
16 punishment be limited because Hassan Kanyike is a good man who transgressed
17 the law? Shall mercy fall onto the fertile and deserved ground of this man's life
18 and grant him a type of reprieve? To do either would not be unfair nor
19 unexpected.

20 But this Court is now charged with the task of weighing out the factors of
21 Hassan's life well lived against the failure he committed during the days of the
22 Covid Pandemic which induced high anxiety and fear. Would a sentence of
23 substantial home confinement and community service, as have been recommended
24 by The Aleph Institution, be unreasonable? Perhaps a sentence of a year and a
25 day? Even the Government's request of 33 months does not fall beyond the
understanding of the outside observer.

1 But here the Court is urged by Counsel for Mr. Kanyike to exercise a
2 wisdom that sees beyond the basic sentences to find what is correct. Perhaps, here
3 is that singular case that calls for something distinctive and unique and brings both
4 the inside of a prison cell alongside of alternative sentencing. Could not 6 months
5 in custody followed by home confinement and community service satisfy both
6 justice and mercy? Would one more day beyond those 180 teach or punish or
7 deter Mr. Kanyike? Could not justice find it place on the 181st day the same as the
8 366th or the 990th day? What do those extra day really serve in the case of
9 Hassan Kanyike? We submit they serve nothing but the removal of this man from
10 society for those days and to limit his potential to begin to payback what was lost.
11 And of course, a loss to those whom he continues to help and love every single
12 day.

13 Indeed, Hassan's life well lived deserves understanding in his moment of
14 failure. It is nearly impossible to imagine that this man, Hassan Kanyike, would
15 have ever committed a crime but for the oddities of the Coivd Pandemic. But he
16 did. He failed that test and for that punishment shall occur. We ask only that such
17 punishment matches both that life and that singular mistake.

18 Whatever the sentence, Mr. Kanyike is prepared to accept this Court's
19 decision with humility and an apologetic heart.

20 Dated: 10/23/2021

21 Respectfully submitted,

22 

23
24
25

DYKE E. HUISH
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