

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	No. 1:20-CR-277
	:	No. 1:21-CR-169
v.	:	
	:	(JUDGE WILSON)
SCOTT LEVY,	:	
Defendant	:	Electronically Filed

UNITED STATES' SENTENCING MEMORANDUM

In advance of the sentencing of the defendant, Scott Levy, and for the reasons explained in this memorandum, the United States recommends that the Court:

- overrule Levy's objections to the pre-sentence report;
- find that a downward variance is unwarranted;
- sentence Levy to 50 months' imprisonment; and
- permit Levy to surrender voluntarily to the Bureau of Prisons.

I. BACKGROUND

The background to Levy's tax, fraud, and money laundering offenses has been thoroughly summarized in the presentence report. PSR ¶¶ 3-27. As described in that summary, Levy has pleaded guilty to five separate offenses: (1) tax fraud, in violation of 26 U.S.C. § 7201; (2) failure to pay taxes, in violation of 26 U.S.C. § 7202; (3) wire fraud, in

violation of 18 U.S.C. § 1343; (4) bank fraud, in violation of 18 U.S.C. § 1344; and (5) money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i). Levy committed the wire/bank fraud and money laundering offenses charged in case number 21-CR-169 after he had signed a plea agreement admitting to the tax violations charged in case number 20-CR-277. As part of a plea agreement, the parties agreed to recommend that the Court consolidate Levy's two cases for sentencing. The Court agreed with that request. Levy is scheduled to be sentenced on February 18, 2022.

II. ARGUMENT

A. Levy's Objections to the PSR

1. Levy's Objection to the PSR's Guideline Calculation Should Be Overruled.

Levy objects to the calculation of an advisory guideline range of 46-57 months' imprisonment, arguing that the probation officer misapplied the grouping rules set forth in USSG §§ 3D1.1 and 3D1.2. According to Levy, the tax offenses from case number 20-CR-277 should be grouped together and the fraud and money laundering offenses from case number 21-CR-169 should be grouped separately. Based on Levy's calculation, grouping the offenses in this way would result in a total

combined offense level of 22, and result in an advisory guideline range of 41-51 months.

The government agrees with the probation officer's application of the grouping rules and concurs in her calculation of Levy's advisory guideline range.

Levy's wire fraud, bank fraud, and tax offenses are properly grouped together because the offense level applicable to each of those offenses "is determined largely on the basis of the total amount of harm or loss." USSG § 3D1.2(d). The money laundering offense is likewise properly grouped with these offenses because "one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts." USSG § 3D1.2(c).

Pursuant to USSG § 3D1.3(a), the offense level applicable to this group is the offense level for the most serious of the counts comprising the group. As the PSR makes clear, the money laundering offense results in the highest guideline level.

The guideline provision applicable to money laundering is set forth in USSG § 2S1.1, which prescribes that the base offense level is

“[t]he offense level for the underlying offense from which the laundered funds were derived, if . . . the offense level for that offense can be determined.” USSG § 2S1.1(a)(1). In this case, “the underlying offense from which the laundered funds were derived” is wire and bank fraud, and the offense level for those offenses can be determined.

The guideline provision applicable to bank and wire fraud is USSG § 2B1.1. The base offense level for those offenses is seven. USSG § 2B1.1(a)(1). The aggregate loss from Levy’s fraud offenses – which are properly grouped with the tax offenses – is \$457,846.44. PSR ¶ 37. Because that loss amount is more than \$250,000, but not more than \$550,000, a 12-level increase is applied. USSG § 2B1.1(b)(1)(G). This results in an adjusted offense level of 19. Pursuant to USSG § 2B1.1(b)(12), a two-level increase applies because Levy’s fraud involved conduct described in 18 U.S.C. § 1040 (fraud in connection with major disaster or emergency benefits). Finally, pursuant to USSG § 2S1.1(b)(2)(B), a two-level increase applies because Levy was convicted under 18 U.S.C. § 1956, which yields an adjusted offense level of 23, and an advisory guideline range of 46-57 months.

The probation officer accurately applied the grouping rules prescribed by USSG § 3D1.2, and accurately calculated the adjusted offense level through application of USSG §§ 2S1.1 and 2B1.1. Levy's objection to the calculation of his adjusted offense level should be overruled.

2. Levy Should Not be Awarded Credit for Acceptance of Responsibility.

In the PSR, the probation officer has recommended that Levy receive no credit for acceptance of responsibility under USSG § 3E1.1 because Levy committed fraud and money laundering offenses *after* he was aware that he was being investigated for tax offenses, and in fact after he had signed a plea agreement with respect to those tax offenses. PSR ¶ 44. Levy has objected to this recommendation, arguing that under the plea agreement he is permitted to request a one-level reduction for acceptance of responsibility, and noting the steps he has taken to demonstrate acceptance since he pled guilty in case number 21-CR-169, including by paying \$125,000 in partial restitution.

The government agrees that Levy should not receive credit for acceptance of responsibility. The guidelines provide that a defendant who "clearly demonstrates acceptance of responsibility for his offense"

may be entitled to a reduction in his offense level. USSG § 3E1.1(a).

Levy has not clearly demonstrated acceptance of responsibility in this case.

Levy's commission of new offenses after he had signed a plea agreement with respect to his tax crimes should weigh heavily against his eligibility to receive credit for acceptance. In part for that reason, and because Levy would benefit by having his sentencing proceedings consolidated, the parties agreed that Levy would not be entitled to any more than a one-level reduction in his offense level to the offenses charged in case number 21-CR-169.¹ Doc. 7, Plea Agreement, ¶ 12.

If there was doubt before, Levy's post-plea conduct has made it even less clear that he has accepted responsibility for his crimes: despite twice pleading guilty to committing serious felony offenses, on October 8, 2021, Levy wrote an email to the probation officer in which he appeared walk back his sworn admission of guilt, writing that he

¹ By having his cases consolidated for sentencing, Levy will come before the Court with no prior criminal history – a substantial benefit to him. Had Levy been sentenced in case number 20-CR-277 before being sentenced in case number 21-CR-169, he almost certainly would have had three criminal history points when he was sentenced on his second case, resulting in a criminal history category II and a corresponding increase in his guideline range.

“never intended to defraud the Government by taking out any [SBA] loans.” Doc. 16, at 7. Even Levy’s counsel has acknowledged that this assertion was “gratuitous, uncounseled, and rather bizarre.” *Id.* While Levy wrote a subsequent letter to acknowledge that “what [he] did was wrong . . .” his varying efforts to explain his misconduct should give the Court pause in determining whether he has “clearly” demonstrated acceptance of responsibility for his offenses.

Following careful consideration, the government recommends that the Court decline to award Levy credit for acceptance of responsibility. By committing fraud and money laundering offenses after he had already signed a plea agreement to tax charges, Levy demonstrated a lack of personal responsibility for his crimes. Levy compounded that lack of acceptance through his post-plea email to the probation officer, making claims that flew in the face of his sworn admissions to the Court. The guidelines provide that a defendant may be entitled to a reduction in his offense level if he “clearly demonstrates acceptance of

responsibility[.]” Levy has not done so here.²

B. A Guideline Sentence is Appropriate

Levy argues that the Court should vary below the advisory guideline range in this case and impose a sentence of between 27 and 33 months. In support of this argument, Levy highlights his efforts to manage his restaurant business despite being saddled with substantial debt; his longstanding commitment to local charities; his post-offense work history; his efforts to care for his wife’s chronic medical ailments; and what he characterizes as a failure of the Sentencing Commission to conform the guidelines for white-collar offenses to congressional directives. Although the government agrees that the Court may properly consider these factors in determining an appropriate sentence under 18 U.S.C. § 3553(a), there are multiple compelling reasons that counsel against a variance in this case.

² If the Court finds that Levy has “clearly” demonstrated acceptance of responsibility, the government recommends that the Court award him no more than a one-level reduction, consistent with the parties’ agreement. Plea Agreement, ¶ 12. If the Court finds that a reduction of only one level is not available under USSG § 3E1.1, the government suggests that such a reduction could be achieved through a variance.

While Levy's offense conduct was committed over a long period of time, and involved different violations of federal law, it was driven by a consistent and singular goal: the enrichment of Scott Levy at the expense of others. And Levy pursued this objective through a variety of deceptive means: underreporting his business income; failing to pay taxes on his restaurant's payroll; obtaining emergency loans through false pretenses during a national crisis; spending those proceeds for his own personal benefit; and using his mother to conceal \$125,000 that was intended to be used to help his business survive the pandemic.

Levy committed violations of the nation's tax laws for almost the entire time he owned The Hershey Road Family Restaurant (HRFR), which he purchased in 2012. He underreported the business's income by more than \$1 million from 2012 through at least 2017, and he underreported the business's payroll (including payments made to Levy and his wife) between 2014 and 2018.

When that longstanding scheme was revealed, Levy was confronted by federal agents and eventually admitted to the fraud. He signed a plea agreement in January 2020. Before he was formally charged, Levy continued to operate his restaurant and quickly

discovered a new opportunity to obtain money under fraudulent pretenses: government-backed loans made available to support businesses struggling during the COVID-19 pandemic. These loans included the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL).

While the investigation into his tax fraud was playing out, Levy began applying for PPP and EIDL loans and grants that were intended to help small businesses weather the economic storm that emerged in the spring of 2020. When he applied for these emergency loans, Levy acknowledged to government authorities that he understood that the funds were to be used exclusively for approved business expenses, and he further acknowledged that “if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.”

By June 12, 2020 – less than six months after he signed the plea agreement in the tax matter – Levy had received \$237,500 in PPP and EIDL loans. As he has admitted, Levy converted nearly \$40,000 of the emergency loan proceeds for his own personal use, and spent thousands more on unauthorized expenditures, including to make purchases from

home improvement stores, dine out, pay veterinary bills, rent a vacation home and – ironically – to make tax payments. While he was spending these loan proceeds for his personal benefit, HRFR was failing.

On July 30, 2020, Levy announced publicly that HRFR would close its doors on July 31, 2020. In an interview explaining the decision, Levy was quoted in a local newspaper as saying, “I have to stop the bleeding, because now all I’m doing is digging into my personal [finances] and nobody is going to refund that.” In reality, those “personal finances” were the federal loans he obtained fraudulently.

Thus, on July 15, 2020, two weeks before announcing the restaurant’s closure, Levy wrote a check drawn on HRFR’s bank account for \$125,000 made payable to his mother, Roberta Cohen Levy, and mailed it to her home address in Coconut Creek, Florida. This \$125,000 came from the PPP and EIDL loans to HRFR. On the memo line of the check to his mother, Levy wrote “Investments.” At Levy’s direction, his mother withdrew the cash and had it placed into separate safe deposit boxes with Wells Fargo and Citibank, where it remained until Levy’s scheme came to light toward the end of 2020. Levy

concealed the whereabouts of this money so that it would be available to him after he had served his anticipated sentence in the tax case.

Levy's longstanding pattern of fraud and deception constitute serious violations of federal law. His tax offenses are, on their own, deserving of a serious sanction. A guideline sentence is even more appropriate given Levy's commission of new fraud offenses involving the misuse of emergency federal loans during a nationwide economic crisis. And Levy's use of his own mother to help conceal and perpetuate his fraud is particularly contemptible, and counsels in favor a substantial penalty.

Upon consideration of the nature and circumstances of Levy's multiple offenses, the government submits that a sentence of 50 months is appropriate to reflect the seriousness of the offense conduct, and to promote respect for the law, provide for just punishment, deter further criminal conduct.

C. The Government Does Not Oppose Levy's Request to Surrender Voluntarily.

Levy has requested that he be allowed to surrender voluntarily to the Bureau of Prisons to begin serving his sentence. The government does not oppose that request.

Levy has complied with the conditions of pre-trial release that the Court imposed during the pendency of these cases. Provided Levy remains subject to post-sentence supervision, the government does not believe that Levy poses a danger to the safety of any person or the community. Levy's ties to the community, his ongoing care of his wife, and his gainful employment make him unlikely to flee. Accordingly, the government does not oppose Levy's request to surrender to the Bureau of Prisons to begin serving his sentence at a time and location as directed by the Court.

Respectfully submitted,

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Dated: February 8, 2022

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CERTIFICATE OF SERVICE

I certify that on February 8, 2022, I served a copy of the foregoing motion on the defendant's counsel, Joshua D. Lock, Esq., by email and through electronic filing.

/s/ Christian T. Haugsby
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