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 17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 ARTUR AYVAZIAN,

24 Defendant.

No. CR 20-00579-SVW-3

GOVERNMENT'S SENTENCING POSITION FOR  
DEFENDANT ARTUR AYVAZIAN;  
DECLARATION OF CATHERINE AHN WITH  
ATTACHED EXHIBIT 1 (FILED UNDER  
SEAL) AND EXHIBIT 2

Sentencing: November 15, 2021  
 Time: 11:00 a.m.  
 Location: Courtroom of the  
 Hon. Stephen V. Wilson

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1 Plaintiff United States of America, by and through its counsel  
2 of record, the Acting United States Attorney for the Central District  
3 of California, Assistant United States Attorneys Catherine Ahn, Scott  
4 Paetty, and Brian Faerstein, and Department of Justice Trial Attorney  
5 Christopher Fenton, hereby files its sentencing position regarding  
6 defendant Artur Ayvazyan.

7 The government's sentencing position is based upon the attached  
8 memorandum of points and authorities, the declaration of Catherine  
9 Ahn and accompanying exhibits, the presentence investigation report,  
10 the files and records in this case, and any other evidence or  
11 argument that the Court may wish to consider at the time of  
12 sentencing. The government reserves the right to file any  
13 supplemental sentencing positions that may be necessary.

14 Dated: November 8, 2021

Respectfully submitted,

15 TRACY L. WILKISON  
Acting United States Attorney

16 SCOTT M. GARRINGER  
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17 Chief, Criminal Division

18 /s/

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 25, 2021, a jury convicted defendant Artur Ayvazyan of  
4 conspiracy to commit bank fraud and wire fraud (count 1), eleven  
5 counts of wire fraud (counts 2 through 12), eight counts of bank  
6 fraud (counts 13 through 20), aggravated identity theft (count 24),  
7 and conspiracy to commit money laundering (count 26). (ECF 1128,  
8 Revised Presentence Investigation Report ("PSR"), ¶¶ 1-7; see also  
9 ECF 154, Superseding Indictment ("FSI").) Specifically, beginning in  
10 March 2020 through at least August 2020, defendant conspired with his  
11 wife, his brother, his sister-in-law, his cousin-in-law, and others  
12 to use real and false personal identifiers to create false and  
13 synthetic identities and businesses, submit fraudulent Paycheck  
14 Protection Program ("PPP") and Economic Injury Disaster Loan ("EIDL")  
15 applications on behalf of those fictitious entities as well as  
16 businesses they controlled, obtain and spend the fraudulent loan  
17 proceeds, and launder those proceeds through bank accounts. (PSR  
18 ¶¶ 19-75.) These accounts were in the names of defendant and his  
19 coconspirators, as well as the false and synthetic business and  
20 individual identities created and used by them. (Id.) In total,  
21 defendant and his co-conspirators sought \$21,768,962.26 in fraudulent  
22 loan proceeds and obtained \$17,723,141.26. (See Exhibit 1 attached  
23 to Decl. of Catherine Ahn ("Ahn Decl.") (filed under seal).)

24 For this conduct, the government recommends that this Court find  
25 a total offense level of 37, which - when combined with defendant's  
26 criminal history category of I - yields an advisory guidelines range  
27 of 210 to 262 months' imprisonment. The government respectfully  
28 recommends that the Court impose a sentence of 236 months, at the

1 mid-point of the guidelines range, plus the mandatory consecutive  
2 sentence of 24 months' imprisonment for count 24, for a total of 260  
3 months' imprisonment. The government further recommends that the  
4 Court impose a concurrent period of supervised release of five years  
5 on counts 1-20, three years on count 26, and one year on count 24,  
6 with the conditions recommended by the U.S. Probation Office  
7 ("USPO"), order defendant to pay \$17,723,141.26 in restitution, the  
8 \$2,200 special assessment, and order the forfeiture of the property  
9 identified in the jury's special verdict from as to defendant (ECF  
10 646). (See ECF 1127 (USPO Revised Recommendation Letter) at 1-4.)

## 11 **II. RELEVANT FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>**

### 12 **A. Defendant's Charges, Testimony and Convictions, and Motions**

13 On March 9, 2021, a grand jury returned a first superseding  
14 indictment against defendant and seven codefendants, charging  
15 conspiracy to commit bank fraud and wire fraud, substantive wire  
16 fraud and bank fraud counts, aggravated identity theft, and  
17 conspiracy to commit money laundering. (ECF 154.) On June 15, 2021,  
18 defendant and three of his co-conspirators - brother Richard  
19 Ayvazyan, sister-in-law Marietta Terabelian, and cousin-in-law Vahe  
20 Dadyan - went to trial. Defendant was convicted of all counts  
21 charged against him. (ECF 644, Redacted Verdict Form.) Defendant's  
22 wife, Tamara Dadyan, pleaded guilty to counts 1, 24, and 26 prior to  
23 trial, and - following defendant's convictions - filed a motion to  
24 withdraw her guilty plea. (ECF 525, 541, and 998.)

25 At trial, defendant took the stand and, under oath, attempted to  
26

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27 <sup>1</sup> The government provided an extensive summary of the facts  
28 presented at trial related to defendant Artur Ayvazyan in its  
opposition to defendant's Rule 29 and 33 motion (ECF 793), and  
incorporates by reference the factual background contained therein.

1 convince the jury and this Court that his wife, co-defendant Tamara  
2 Dadyan (who did not appear before the jury at trial), was solely  
3 responsible for the voluminous amount of incriminating evidence found  
4 in his possession. Despite testifying that he lacked so much trust  
5 in his wife that he refused to file taxes with her and kept her  
6 separated from the finances for his business, Allstate Towing and  
7 Transport, defendant claimed that he handed her the tax forms for  
8 that very same business and permitted her to submit PPP and EIDL loan  
9 applications without even knowing their amounts. (6/23/21 A.M. Tr.  
10 101:24-103:19 and 108:3-110:12.)

11 Defendant also tried to explain away the overwhelming proof of  
12 his direct participation in the charged conspiracy found on his  
13 phone. This evidence included personal identifying information for  
14 individuals and businesses used in fraudulent PPP and EIDL  
15 applications (see Government Trial Exhibit ("GEX") 24b), handwritten  
16 instructions to make changes to identification cards ("IDs") followed  
17 by images of false and fraudulent IDs matching those instructions  
18 (see GEX 24a at 16-19), and numerous images of checks and  
19 debit/credit cards in names of individuals and businesses used in the  
20 fraud and money laundering conspiracies (see GEX 24c). Defendant  
21 also possessed copies of confirmations of the very same loan  
22 applications whose amounts he allegedly did not see (see GEX 24d).

23 Defendant's explanation as to the voluminous evidence of fraud  
24 found on his phone was the same as for the assembly line of  
25 fraudulent documents found at his home - that the false IDs and  
26 incriminating evidence was "likely" put there by his wife, Tamara  
27 Dadyan. (6/23/21 A.M. Tr. 102:14-103:7 and 104:22-105:21.)  
28 According to defendant's own testimony, defendant routinely handed



1 Tamara Dadyan his phone, despite allegedly previously finding other  
2 persons' IDs on his phone, confronting her about them, and then  
3 supposedly erasing them. (Id. at 88:25-89:4.) Defendant also  
4 testified that - despite mistrusting her to the point of refusing to  
5 file their taxes together - he was nonetheless willing to make  
6 deposits for her and transport escrow documents on her behalf. (Id.  
7 at 88:25-89:4 and 101:24-103:19; see also Exhibit 2 (attached to Ahn  
8 Decl.) (showing selected text messages and attachments from GEX 10  
9 describing "Art's" participation in recruiting other individuals to  
10 submit PPP and EIDL applications, his knowledge and use of accounts  
11 into which fraudulent loan proceeds were to be transferred,  
12 references to deposits he would make, and participation in the  
13 creation of checks.)

14 In contrast, defendant testified that his brother, Richard  
15 Ayvazyan, who had not pleaded guilty and was contesting the charges  
16 at trial with defendant, was a "great guy" to whom he had transferred  
17 fraudulent loan proceeds (albeit only after first transferring it  
18 through two other bank accounts) simply to repay a supposed business  
19 loan from many years earlier. (Id. at 89:5-18 and 111:18-113:4; see  
20 also GEX 115 at 7.)

21 The jury rejected defendant's inconsistent testimony and attempt  
22 to shift all blame to his wife, Tamara Dadyan, and convicted  
23 defendant of all counts for which he was charged.

24 Following defendant's convictions, defendant moved for a  
25 judgment of acquittal and a new trial pursuant to Federal Rules of  
26 Criminal Procedure 29 and 33. (ECF 686, 687.) The government  
27 opposed, and on August 20, 2021, the Court denied defendant's  
28 motions, finding them "largely conclusory" and that "there was

1 overwhelming evidence of Defendant's guilt." (ECF 875 at 11.) The  
2 Court further concluded that "[t]he evidence in this case does not  
3 preponderate heavily against the verdict. Instead, it preponderates  
4 heavily in favor of the verdict against Defendant." (Id. at 12.)

5 **B. The Presentence Investigation Report and Objections**

6 The USPO filed its revised PSR, its addendum in response to the  
7 parties' objections, and revised recommendation letter on November 8,  
8 2021, in which it calculated a criminal history category of I and  
9 total offense level of 35, yielding an advisory guidelines range of  
10 168 to 210 months' imprisonment for counts 1-20 and 26, plus a  
11 mandatory consecutive term of 24 months' imprisonment for his  
12 aggravated identity theft conviction in count 24. (See PSR ¶¶ 81-  
13 113, 115-125, and 176-178 and ECF 1129 ("Addendum").) The USPO's  
14 offense level calculation of 35 was based on the following: a base  
15 offense level of 7 (see U.S.S.G. § 2B1.1(a)(1)); +20 for a loss  
16 between \$9.5 million and \$25 million (see U.S.S.G. § 2B1.1(b)(1)(K));  
17 +2 for ten or more victims (see U.S.S.G. § 2B1.1(b)(2)(A)(i)); +2 for  
18 sophisticated means (see U.S.S.G. § 2B1.1(b)(10)); +2 for the use of  
19 identifications<sup>2</sup> (see U.S.S.G. § 2B1.1(b)(11)); and +2 for  
20 defendant's conviction for violating 18 U.S.C. § 1956 (see U.S.S.G.  
21 § 2S1.1(b)(2)(B)). (PSR ¶¶ 81-112.)

22 The USPO recommended that this Court impose a total sentence of  
23 192 months' imprisonment (comprised of 168 months' imprisonment at  
24 the low-end of the advisory guidelines range, plus the mandatory  
25 consecutive 24 months for count 24), to be followed by five years of  
26

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27 <sup>2</sup> Although the PSR and addendum referred to identifications  
28 found in defendant's possession (PSR ¶¶ 98-99 and Addendum at 4), the  
government respectfully recommends the Court apply it for possession  
and use of authentication features, as further discussed, below.

1 supervised release, and order restitution of \$17,723,141.26. (ECF  
2 1127 at 1-7.)

3 Both parties timely filed objections to USPO's initial  
4 calculation of defendant's offense level, with the government  
5 recommending an additional two-level vulnerable victims enhancement  
6 pursuant to U.S.S.G. § 3A1.1(b)(1) for a total offense level of 37,  
7 and defense recommending a total offense level of 16. (See ECF 1038  
8 ("Def. PSR Obj.") at 12; CR 1041 ("Govt. PSR Obj.") at 2-4; and Table  
9 1, infra at 7.) The government also provided to defendant and to the  
10 USPO updated loan and loss charts showing an intended loss of  
11 \$21,768,962.26, and an actual loss of \$17,723,141.26. (See Ahn Decl.  
12 Exhibit 1.)

13 Neither party objected to the USPO's calculation of defendant's  
14 criminal history category as I, which was based on one criminal  
15 history point derived from defendant's disorderly conduct conviction  
16 in 2015. (PSR ¶¶ 122, 124-125.) Defendant currently faces a pending  
17 133-count felony indictment in the Los Angeles County Superior Court  
18 for numerous mortgage fraud, theft, money laundering, forgery, and  
19 conspiracy counts, among others, for which his wife Tamara Dadyan and  
20 brother Richard Ayvazyan are also charged. (PSR ¶ 127.) On November  
21 4, 2021, defendant was arrested by the Los Angeles Police Department  
22 for violating California Penal Code 261(a)(2): Rape: Force/Fear/Etc.<sup>3</sup>  
23 (ECF 1113 at 2-3.)

24 A table showing the parties' offense level calculations based on  
25 the recommended criminal history category of I is included, below:

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27 <sup>3</sup> According to California Penal Code 261(a), the statute outlaws  
28 "an act of sexual intercourse accomplished with a person not the  
spouse of the perpetrator" (emphasis added). As such, the victim of  
the alleged rape does not appear to be co-defendant Tamara Dadyan.

**Table 1. An Overview of the Recommended Offense Level Calculations**

<b>Offense Level Calculation (PSR with +2 Recommended by Govt.)</b>		<b>USSC Provision</b>
Base Offense Level	7	2B1.1(a)(1)
Loss > \$9.5 million < \$25 million	+20	2B1.1(b)(1)
Ten or More Victims	+2	2B1.1(b)(2)(A)(i)
Sophisticated Means	+2	2B1.1(b)(10)
Possession/use of Authentication Features	+2	2B1.1(b)(11)
Conviction for 18 USC 1956	+2	2S1.1(a)(1)
<i>Govt. Recommended: Vulnerable Victims</i>	+2	3A1.1(b)(1)
<b>PSR Total Offense Level:</b>	<b>35</b>	
<b>With Govt. +2 Recommendation:</b>	<b>37</b>	

	<i>Low</i>	<i>Mid</i>	<i>High</i>
Guidelines Range (based on OL 37)	210	236	262
Plus 24 Months (1028A/count 24)	234	260	286
<i>Govt. Proposed Recommendation: 260 months' imprisonment</i>			

<b>Defense Offense Level Calculation</b>		<b>USSC Provision</b>
Base Offense Level	7	2B1.1(a)(1)
Loss of > \$250,000 < \$550,000	+12	2B1.1(b)(1)
Mitigating Role Reduction	-3	3B1.2
<b>Def. Recommended Total Offense Level</b>	<b>16</b>	

	<i>Low</i>	<i>Mid</i>	<i>High</i>
Guidelines Range (based on OL 16)	21	24	27
Plus 24 Months (1028A/count 24)	45	48	51

**III. THE COURT SHOULD ADOPT THE PSR'S CALCULATION OF DEFENDANT'S CRIMINAL HISTORY CATEGORY AND THE GOVERNMENT'S RECOMMENDED OFFENSE LEVEL OF 37**

**A. Defendant's Recommended Offense Level Calculation Ignores the Overwhelming Evidence at Trial and Conflicts with Jury's Verdicts**

The government concurs with the PSR's offense level calculation (but see footnote 2, *supra*) but further recommends a +2 vulnerable victims enhancement, as discussed below, for an overall offense level of 37. (Govt. PSR Obj. at 2-4.)

Defendant, by contrast, argues for an overall offense level of 16, less than half that calculated by the PSR and the government, by

1 excluding from the scope of defendant's relevant conduct all loans  
2 other than the two he received in the name of his business, Allstate  
3 Towing and Transport. (Def. PSR Obj. at 8.) Defendant's  
4 recommendation should be rejected. The scope of relevant conduct  
5 asserted by defendant directly conflicts with the principles of the  
6 U.S.S.G. and Ninth Circuit caselaw and ignores the evidence  
7 supporting the jury's verdict for counts for which he was convicted.  
8 In short, defendant relies on a counterfactual reality wholly at odds  
9 with the overwhelming weight of evidence against him and the import  
10 of the jury's verdict in seeking to reject all enhancements and argue  
11 for a -3 mitigating role reduction. (Def. PSR Obj. at 2-3, 6-12.)  
12 Defendant's recommended offense level also blatantly conflicts with  
13 the straightforward application of the guidelines as to substantive  
14 counts of conviction, including the inclusion of loans associated  
15 with Anna Dzukaeva - the identity that was the basis for defendant's  
16 18 U.S.C. § 1028A conviction (count 24) - and the +2 enhancement  
17 required for a conviction under 18 U.S.C. § 1956 (count 26).

18 1. The Conspirators' Attempts to Obtain Approximately  
19 \$21.7 Million in Fraudulent Loans and Launder the  
Received Funds was Reasonably Foreseeable to Defendant

20 At sentencing, a defendant is responsible for "all reasonably  
21 foreseeable acts and omissions of others in furtherance of the  
22 jointly undertaken criminal activity, that occurred during the  
23 commission of the offense of conviction, in preparation for that  
24 offense, or in the course of attempting to avoid detection or  
25 responsibility for that offense." United States v. Lloyd, 807 F.3d  
26 1128, 1142-45 (9th Cir. 2015) (citing U.S.S.G. § 1B1.3(a)(1)(B)). As  
27 such defendant is accountable for the conduct of his conspirators  
28 that are: "(i) in furtherance of the jointly undertaken criminal

1 activity; and (ii) reasonably foreseeable in connection with that  
2 criminal activity.” Id. (citing United States v. Treadwell, 593 F.3d  
3 990, 1002 (9th Cir. 2010) (overruled on other grounds in United  
4 States v. Miller, 953 F.3d 1095 (9th Cir. 2020) and United States v.  
5 Blitz, 151 F.3d 1002, 1012 (9th Cir. 1998)). While the district  
6 court need not “proceed item-by-item through a complete list of all  
7 losses attributed to a criminal conspiracy,” it must make  
8 particularized findings about “‘the scope of the criminal activity  
9 the particular defendant agreed to jointly undertake.’” Blitz, 151  
10 F.3d at 1012-13 (quoting U.S.S.G. § 1B1.3, cmt. n. 2).

11 Defendant’s entire position on the scope of relevant conduct  
12 depends on the mistaken argument that he should only be held  
13 accountable for loans he directly submitted. The Court already  
14 rejected a similar argument when sentencing defendant’s co-defendant,  
15 Vahe Dadyan. And for good reason. Defendant’s argument is  
16 inconsistent with how relevant conduct is analyzed in the scope of  
17 jointly undertaken criminal activities, like the conspiracies for  
18 which defendant was convicted (counts 1 and 24). For example, in  
19 Lloyd, the Ninth Circuit explained how this analysis works in an  
20 analogous context:

21 [T]he scope of a joint undertaking for sentencing purposes  
22 depend[s] on whether the telemarketers worked together, relied  
23 on one another to make a sale, attended the same sales meetings,  
24 and depended on the success of ... the operation as a whole for  
25 their financial compensation. If two defendants, working  
26 together, design and execute a scheme to sell fraudulent stocks  
27 in a telephone boiler-room operation, each is accountable for  
28 all the fraud losses that result. The conduct of each is in  
furtherance of their jointly undertaken criminal activity and is  
reasonably foreseeable in connection with that criminal  
activity. To determine a defendant’s fraud-loss amount and  
resulting offense level, a district court must consider that  
defendant’s role in the overall scheme.

1 Lloyd, 807 F.3d at 1142-1143 (citing Treadwell, 593 F.3d at 1005  
2 (quoting Blitz, 151 F.3d at 1013), among others) (internal quotations  
omitted).

3 The evidence in this case demonstrates that defendant - like his  
4 wife, Tamara Dadyan, and other coconspirators with whom he directly  
5 conspired - should be held accountable for the full scope of the  
6 conspiracy. Defendant was not merely involved in the submission of  
7 loan applications related to his own business. As extensively  
8 discussed in the Government's Opposition to Defendant's Rule 29 and  
9 33 motions, the text messages exchanged between his wife (Tamara  
10 Dadyan) and his brother (Richard Ayvazyan), the evidence discovered  
11 on defendant's own phone, the evidence found in his home, and even  
12 his own testimony at trial show that defendant was intimately aware  
13 of the manner and scale of the conspiracy and should be held  
14 accountable for the full scope of its associated losses. (ECF 793  
15 ("Govt. Opp. to Rule 29 and 33 Motions") at 2-13; see also Ahn Decl.  
16 Exhibit 2.) For example, as reflected in one of his wife's texts to  
17 his brother, stating that "Tom coming over now I told art to show him  
18 the decline letter from the eidl and its simple its 35 percent for  
19 ppp," defendant was aware of the submission of other PPP and EIDL  
20 loan applications and actively recruited other individuals to help  
21 submit them. (GEX 10 at 18; see also Ahn Decl. Exhibit 2 and  
22 Testimony of Special Agent Massino (6/21/21 P.M. Tr. 71:4-75:2).)

23 Defendant also participated in and benefited from the use of  
24 accounts belonging to other individuals or entities to receive,  
25 transfer, and spend the resulting fraudulent loan proceeds. (See Ahn  
26 Decl. Exhibit 2.) This stands in stark contrast to defendant's  
27 assertion in his objections to the PSR that his knowledge and  
28 involvement extended only to the loans he obtained for his own

1 business - an assertion rejected by the jury's verdict holding him  
2 guilty of substantive counts of bank fraud, wire fraud, and  
3 aggravated identity theft. For instance, defendant received a "wire  
4 for Art for \$73,500" (as described in his wife's and brother's text  
5 messages) that was transferred through his "best friend" Thanh P.  
6 Tran's New Acre Farm account and the Runyan Tax Service account and  
7 roughly constituted 35% of a loan earlier obtained as part of the  
8 conspiracy. (6/21/21 P.M. Tr. 71:4-75:2 and GEX 10-24.) A copy of  
9 the front and back of Thanh Tran's driver's license, and a  
10 confirmation for the PPP application for New Acre Farm Produce were  
11 further found in defendant's own phone. (See GEX 24b at 20, 27-28,  
12 and GEX 24d at 12.)

13 Defendant's awareness of the overall scheme is further  
14 demonstrated by his possession of numerous check images, debit/credit  
15 cards, and actual screenshots of PPP and EIDL application  
16 confirmations beyond the two loans he received for his direct  
17 business, Allstate Towing. (See GEX 24b, 24c, and 24d.) The names  
18 of individuals and businesses found on his phone reflect those used  
19 in the PPP and EIDL fraud, along with the accounts used to receive  
20 and launder the resulting proceeds, showing his actual knowledge of  
21 and participation in the full scope of the fraud and money laundering  
22 conspiracies. This evidence further includes fraudulent California  
23 IDs, as well as copies of handwritten notes describing what to put on  
24 these fraudulent IDs, including two versions of a California Driver's  
25 License bearing different photographs for Anna Dzukaeva (see GEX 24b  
26 at 1-4), Osbaldo Velasquez (see GEX 24b at 8-9), and Miykhailo  
27 Diuzehnko (see GEX 24b at 11-14). Defendant's phone also contained  
28 screenshots of confirmations of loans in amounts that differed from



1 the loans obtained for his business, Allstate Towing, and included  
2 confirmations for fictitious businesses used in the conspiracy to  
3 receive loans, such as "Green Label nutrienrs" (see GEX 24d at 5), LK  
4 Designs (see GEX 24d at 10), and individuals other than himself, such  
5 as Alak Mikhaelian (GEX 24d at 7) and Mikhael Diuzehenko (see GEX 24d  
6 at 7 and 11).

7 As such, defendant's argument that the scope of his relevant  
8 conduct should be limited to the two loans applied for in the name of  
9 his business, totaling \$274,000, is simply not credible. (Def. PSR  
10 Obj. at 8.) Most tellingly, defendant does not even include as  
11 relevant conduct the loan applications associated with Anna Dzukaeva,  
12 the identity theft victim whose name and date of birth defendant and  
13 co-defendant Tamara Dadyan used without lawful authority as the jury  
14 found in convicting defendant of count 24. But just as implausibly,  
15 defendant's argument wholly ignores the evidence and statements of  
16 coconspirators directly linking defendant to affirmative acts in  
17 furtherance of the fraud and money laundering conspiracies. (See Ahn  
18 Decl. Exhibit 2.)

19 The PSR rightly focused on the scope of the jointly undertaken  
20 criminal conduct in analyzing defendant's relevant conduct.  
21 (Addendum at 2-3.) Based on the overwhelming evidence of defendant's  
22 knowledge and participation in the fraud and money laundering  
23 conspiracies, the principles set forth in the U.S.S.G., and  
24 corresponding Ninth Circuit authority, the full scope of those  
25 conspiracies was foreseeable to defendant and he should be held  
26 accountable for all of the loans sought, and actually received, as a  
27 result. The Court should therefore adopt the intended loss of  
28 \$21,768,962.26 and actual loss of \$17,723,141.26 incurred against the

1 more than ten victims of defendant's criminal conduct. (See Ahn  
2 Decl. Exhibit 1.)

3 2. The Court Should Adopt the Enhancements for Ten or  
4 More Victims, Sophisticated Means, Possession and Use  
5 of Identification, and Reject Defendant's Attempt to  
6 Apply a Mitigating Role Reduction

7 a. *The Court Should Adopt the PSR's Recommendation*  
8 *that the Ten or More Victims Enhancement Applies*  
9 *Pursuant to U.S.S.G. § 2B1.1(b) (2) (A) (i)*

10 Given the basis of defendant's objection to the PSR's  
11 application of the +2 enhancement for ten or more victims was its  
12 improperly narrow definition of relevant conduct, the Court should  
13 adopt the PSR's application of the +2 enhancement for ten or more  
14 victims pursuant to U.S.S.G. § 2B1.1(b) (2) (A) (i). (Def. PSR Obj. at  
15 8-9 and PSR ¶ 95.) As indicated in the attached loans and loss  
16 chart, there were more than ten victims as a result of defendant's  
17 conduct. (See Ahn Decl. Exhibit 1; see also Addendum at 3.)

18 b. *The Court Should Adopt a +2 Enhancement for*  
19 *Possession or Use of an Authentication Feature*  
20 *Pursuant to U.S.S.G. § 2B1.1(b) (11) (A) (ii)*

21 The intricacy of the fraud and money laundering conspiracies'  
22 use and transfer of numerous identities, real and fake businesses,  
23 and financial accounts is exemplified by the evidence found on  
24 defendant's own phone. This evidence and the immigration documents  
25 and records found at his residence in the names of his foreign  
26 exchange student and visitor victims further show defendant's  
27 knowledge of and involvement in conduct that falls squarely within  
28 the +2 enhancement described in U.S.S.G. § 2B1.1(b) (11).

If the offense involved

(A) the possession or use of any . . . (ii) authentication  
feature; (B) the production or trafficking of any  
(i) unauthorized access device or counterfeit access

1 device, or (ii) authentication feature; or (C) (i) the  
2 unauthorized transfer or use of any means of identification  
3 unlawfully to produce or obtain any other means of  
4 identification, or (ii) the possession of 5 or more means  
of identification that unlawfully were produced from, or  
obtained by the use of, another means of identification

5 increase by 2 levels.

6 U.S.S.G. 2B1.1(b) (11) (emphasis added).

7 While defendant is eligible to receive the +2 enhancement under  
8 either U.S.S.G. § 2B1.1(b) (11) (A) (ii), (B) (i), (B) (ii), (C) (i),  
9 and/or (C) (ii), the government respectfully recommends this Court  
10 apply the enhancement based on U.S.S.G. § 2B1.1(b) (11) (A) (ii), as  
11 affirmed in United States v. Ovsepien, 739 Fed. Appx. 448 (9th Cir.  
12 October 5, 2018). In that case, the panel rejected the defendant's  
13 argument that applying the +2 enhancement under U.S.S.G.  
14 § 2B1.1(b) (11) was impermissible "double-counting" prohibited by  
15 U.S.S.G. § 2B1.6 cmt. App. Note 2. 739 Fed. Appx. at 448. The note  
16 states that where a sentence for aggravated identity theft is imposed  
17 with one "for an underlying offense, do not apply any specific  
18 offense characteristic for the transfer, possession, or use of a  
19 means of identification when determining the sentence for the  
20 underlying offense. A sentence under this guideline accounts for  
21 this factor for the underlying offense of conviction, including any  
22 such enhancement that would apply based on conduct for which the  
23 defendant is accountable under §1B1.3 (Relevant Conduct)." Id.  
24 (emphasis added).

25 In Ovsepien, the district court applied the enhancement not for  
26 means of identification, but for the authentication features found on  
27 the copies of driver's licenses maintained by defendants in fake  
28 patient files. (ECF 23, Government Answering Brief, United States v.

1 Ovsepien, Case No. 18-50026, at 26.) An authentication feature is  
2 defined by statute and in the guidelines as a “hologram, watermark,  
3 certification, symbol, code, image” or other feature used on an  
4 identification document or means of identification to determine its  
5 authenticity. 18 U.S.C. § 1028(d)(1) and U.S.S.G. § 2B1.1, cmt. App.  
6 Note 1, 10(A). The features highlighted in these California Driver’s  
7 Licenses included the images – a photograph – of their bearers, a  
8 hologram, and other markings the verify authenticity. The Ninth  
9 Circuit affirmed the district court’s application of the enhancement,  
10 holding that “Despite Appellants’ argument to the contrary, under the  
11 facts in this case, Application Note 2 to section 2B1.6 did not bar  
12 the two-level authentication-feature enhancement under U.S.S.G. §  
13 2B1.1(b)(11)(A)(ii). Accordingly, the district court did not err in  
14 applying the two-level enhancement under U.S.S.G. §  
15 2B1.1(b)(11)(A)(ii).” Ovsepien, 739 Fed. Appx. at 448.

16 Similarly, the Court in this case should hold defendant  
17 accountable for the multiplicity of authentication features found in  
18 his possession. This includes copies of California Drivers Licenses  
19 in names that were not his own clearly showing watermarks, seals,  
20 raised lettering, and signatures of the identified cardholder,  
21 including for Roza Avakian, Thanh Tran, Anastasia Rysik, Egia  
22 Kapemyan, Tony Gleb, Viktoria Babetska, and Leoncio Galver, more.  
23 (See GEX 24b.) The possession of these California Driver’s Licenses,  
24 along with copies bearing different photographs but the same  
25 signature image, additional watermarks and other indicia of  
26 authenticity, also renders defendant eligible for the enhancement  
27 pursuant to U.S.S.G. § 2B1.1(b)(11)(b)(ii) (production of any  
28 authentication feature). (Id.; see also GEX 24a at 16-19 (showing

1 handwritten notes directing the information to be included in an  
2 identification document and the fraudulent California Driver's  
3 License bearing the instructed information along with a photograph,  
4 the image of a signature, watermarks/background images, and other  
5 authentication features).

6 *c. The Court Should Adopt the PSR's Recommendation*  
7 *that the Sophisticated Means Enhancement Should*  
8 *Apply Pursuant to U.S.S.G. § 2B1.1(b)(10)(A)(i)*

9 A +2 sophisticated means enhancement is applicable where "he  
10 offense otherwise involved sophisticated means and the defendant  
11 intentionally engaged in or caused the conduct constituting  
12 sophisticated means," defined as "especially complex or especially  
13 intricate offense conduct pertaining to the execution or concealment  
14 of an offense." U.S.S.G. § 2B1.1(b)(10) and App. Note 9(B). The  
15 voluminous number of fake IDs, the careful reproduction of the  
16 signatures, watermarks, and other forms of authentication on those  
17 fake IDs found in defendant's possession (see GEX 24a and 24b), the  
18 use of victims' PII to open numerous financial accounts in their  
19 names and the fake businesses used to submit PPP and EIDL  
20 applications, and then launder the resulting proceeds through  
21 multiple accounts (see GEX 24c, GEX 24d, and Exhibit 2 at 1-2  
22 (selected excerpts from GEX 10)), all provide ample basis for the  
23 sophisticated means enhancement. Therefore, this Court should adopt  
24 the PSR's recommendation to apply this enhancement to defendant's  
25 offense level. (PSR ¶ 96; see also Addendum at 3.)

26 *d. A Mitigating Role Reduction Should Not Apply*

27 Furthermore, given defendant's active participation in the  
28 conspiracies for which he was convicted, including assisting in  
recruiting individuals into the conspiracy and making the financial

1 transactions that enabled the parties to obtain, launder, and spend  
2 the fraudulent proceeds, defendant does not qualify for a mitigating  
3 role reduction. (See PSR ¶¶ 105-106 and Def. PSR Obj. at 10-12.)  
4 Such reductions apply to "a defendant who plays a part in committing  
5 the offense that makes him substantially less culpable than the  
6 average participant in the criminal activity." U.S.S.G. § 3B1.2 App.  
7 Note cmt. 3(A). Defendant could hardly be considered substantially  
8 less culpable than an average participant in this conspiracy.  
9 Indeed, the voluminous amount of incriminating evidence found in his  
10 home and on his phone demonstrates just the opposite. Such evidence  
11 includes, among other things, the personal identification documents,  
12 images of checks and debit/credit cards in the names of individuals  
13 used in the PPP/EIDL fraud and money laundering conspiracies, and  
14 confirmations of PPP/EIDL loans submitted as part of the scheme. The  
15 evidence also reflects defendant's knowing and active use of the  
16 information of foreign exchange students and visitors (as evidenced  
17 by his conviction for count 24) to perpetrate those crimes.

18 Defendant's argument for a mitigating role is, as with his other  
19 arguments, based on his attempts to ignore the overwhelming evidence  
20 supporting, and fact of, his convictions and should be rejected by  
21 the Court.

22 **B. Defendant's Offense Level Should be Increased by Two Levels**  
23 **Based on the Vulnerable Victims Enhancement Pursuant to**  
24 **U.S.S.G. § 3A1.1(b) (1)**

25 The government respectfully recommends that this Court adopt the  
26 offense level calculated by the USPO (offense level 35) but further  
27 apply a two-level increase because defendant "knew or should have  
28 known that a victim of the offense was a vulnerable victim."  
U.S.S.G. § 3A1.1(b) (1). Defendant not only targeted individuals that

1 qualify as vulnerable victims - either through the deceased status of  
2 the individuals used to submit the fraudulent applications and  
3 launder the resulting proceeds, or their foreign immigrant status,  
4 which rendered them uniquely unable to respond to the fraudulent use  
5 of their names and information.<sup>4</sup> As described at trial, one of the  
6 deceased individuals used by the coconspirators to submit fraudulent  
7 loan applications was Alak Mikaelian. (GEX 10 at 9.) When Richard  
8 Ayvazyan praised his credit score, he noted "You can do 2 on this  
9 guy," to which Tamara Dadyan replied, "Let's go the fool is dead on  
10 armo land." (Id.) When Richard inquired about personal accounts,  
11 Tamara Dadyan responded "Yes wells" and forwarded information  
12 regarding a PPP applications. (Id.) A copy of a Wells Fargo check  
13 for an account in the name of Alak Mikaelian and the front and back  
14 of a Wells Fargo Visa Platinum Debit Card, also in the name of Alak  
15 Mikaelian, was found on defendant's phone. (GEX 24c at 6-8.)

16 As detailed above and in previous filings, defendant knew of the  
17 foreign immigrant status of many of the individuals used by him and  
18 his coconspirators to submit fraudulent PPP and EIDL filings and  
19 laundering the resulting proceeds, including the victim of count 24,  
20 Anna Dzukaeva, and others, such as Liudmyla Kopytova. (Govt. Opp. to  
21

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22 <sup>4</sup> This is the same reasoning used to apply the vulnerable  
23 victims enhancement to co-defendant Richard Ayvazyan. The USPO  
24 applied the enhancement based on his targeted use of deceased father-  
25 in-law Nazar Terabelyan's name and information and that of Iulia  
26 Zhadko, a real Ukrainian exchange visitor, to apply for and then  
27 transfer the fraudulent loan proceeds. (See ECF 1121 (Revised PSR  
28 for Richard Ayvazyan) at ¶¶ 62-64 and ECF 1122 (Second Addendum to  
the PSR for Richard Ayvazyan) at 2.) The government is seeking a  
similar enhancement for Tamara Dadyan; the USPO in that PSR declined  
to apply the enhancement because the government had not directly  
shown the connection to the money laundering conspiracy, which the  
government will address in its sentencing memorandum for Tamara  
Dadyan. (See ECF 1001 (Govt. Response to Tamara Dadyan PSR) and ECF  
1119 (Addendum to the PSR for Tamara Dadyan) at 2.)

1 Rule 29 and 33 motions at 4-8.) The evidence found on defendant and  
2 Tamara Dadyan's phone shows that he not only assisted in the use and  
3 transfer of fraudulent California Driver's Licenses bearing  
4 authentication features (as detailed above) for these victim  
5 immigrants, he knew of and assisted in the laundering of the  
6 resulting proceeds. (See Exhibit 2 (excerpts of GEX 10) and GEX 24c  
7 and 24d.) Images for a check in the name of Anna Dzukaeva and the  
8 front and back of a debit card bearing the name of Liudmyla Kopytova  
9 were further found on his phone. (GEX 24c at 5, 9-10).

10 The application of the vulnerable victims enhancement is  
11 supported by the plain language of the guidelines and Ninth Circuit  
12 opinions. According to the U.S.S.G., the vulnerable victims  
13 enhancement applies to an individual that is "unusually vulnerable  
14 due to age, physical or mental condition, or who is otherwise  
15 particularly susceptible to the criminal conduct." U.S.S.G.  
16 § 3A1.1(b) (1) App. Note 2. The purpose of the adjustment is to  
17 punish and deter criminals like defendant from victimizing those who  
18 cannot protect themselves:

19 The "vulnerable victim" sentencing enhancement is intended  
20 to reflect the fact that some potential crime victims have  
21 a lower than average ability to protect themselves from the  
22 criminal. Because criminals incur reduced risks and costs  
23 in victimizing such people, a higher than average  
24 punishment is necessary to deter the crimes against them. .  
25 . . Defrauders who direct their activities not against  
26 banks, insurance companies, or large investors, but instead  
27 against people [with] . . . mental or educational  
28 deficiencies, . . . do not need to take as many precautions  
against the discovery of their scheme by the intended  
victims and in any event are less likely to be prosecuted,  
because the victims are less likely to know that they have  
been defrauded or if they know to have the know-how and  
initiative required to press a criminal complaint or bring  
a civil suit.



1 United States v. Etoty, 679 F.3d 292, 296 (2012) (quoting United  
2 States v. Grimes, 173 F.3d 634, 637 (7th Cir.1999)).

3 The use of the "dead on armo land" Alak Mikaelian's name and  
4 information, and the presence of his Wells Fargo account information  
5 on defendant's phone, show that defendant knew of and attempted to  
6 use this individual's information in support of the fraud and money  
7 laundering conspiracies. In United States v. Cuellar, 165 F.3d 918  
8 (9th Cir. 1998) (unpublished), the Court affirmed the district  
9 court's application of a two-level "vulnerable victim" enhancement  
10 where defendant used the identity of a deceased individual to  
11 fraudulently obtain a credit card in the deceased's name. Of note,  
12 the district court had found that the families of the deceased were  
13 the vulnerable victims, who were particularly susceptible to  
14 defendant's conduct at a difficult time. (Id. (further noting that  
15 "[a] vulnerable victim under section 3A1.1 need not be the victim of  
16 the offense of conviction").) "In determining whether a victim is  
17 'particularly susceptible' within the meaning of section 3A1.1(b), a  
18 sentencing court must consider the characteristics of the defendant's  
19 chosen victim, the victim's reaction to the criminal conduct, the  
20 circumstances surrounding the criminal act, and whether the defendant  
21 could reasonably have anticipated the victim's reaction." Cuellar,  
22 165 F.3d at 918 (citing United States v. Peters, 962 F.2d 1410, 1417  
23 (9th Cir. 1992)).

24 Using the same analysis, the family of Alak Mikaelian and the  
25 foreign exchange students targeted by defendant and his  
26 coconspirators should also qualify as vulnerable victims. Alak  
27 Mikaelian appears to have died overseas; similarly, the foreign  
28 exchange students and visitors had left the United States years prior

1 to the onset of COVID-19 and were no longer present in the United  
2 States to monitor or even respond to the fraudulent use of their  
3 information. That time and distance makes it particularly difficult  
4 to detect and address the theft and fraudulent use of their names in  
5 a crisis-induced federal loan program. Like the families of the  
6 deceased, these victims' characteristics, their reaction (or lack of  
7 ability to react) to the criminal conduct, the circumstances  
8 surrounding the criminal act, and whether the defendant could  
9 reasonably have anticipated the victim's reaction (or lack of  
10 reaction), are all dispositive. These victims were chosen by  
11 defendant and his coconspirators because - given the length of time  
12 since the victims had departed the U.S. and their immigrant status -  
13 their circumstances made it difficult for them to respond to the  
14 fraudulent use of their identities. As such, the government  
15 respectfully recommends that the two-level enhancement be applied to  
16 defendant for a total offense level of 37.

#### 17 **IV. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

##### 18 **A. A Custodial Sentence of 260 Months Is Sufficient But Not** 19 **Greater than Necessary to Meet the Goals of 18 U.S.C.** **§ 3553(a)**

20 The Court should impose a sentence sufficient, but not greater  
21 than necessary, to reflect the purposes of sentencing identified in  
22 18 U.S.C. § 3553(a). United States v. Carty, 520 F.3d 984, 991 (9th  
23 Cir. 2008). The advisory guidelines range provides the "starting  
24 point and . . . initial benchmark" for sentencing. Molina-Martinez  
25 v. United States, 136 S.Ct. 1338, 1345 (2016) (quoting Gall v. United  
26 States, 552 U.S. 38, 49 (2007)).

27 Under 18 U.S.C. § 3553(a), in arriving at the appropriate  
28 sentence, the Court should consider, among other factors, the nature

1 and circumstances of the offense and defendant's history and  
2 characteristics, § 3553(a)(1); the need for the sentence to reflect  
3 the seriousness of the offense, promote respect for the law, and  
4 provide just punishment for the offense, § 3553(a)(2)(A); the need  
5 for the sentence imposed to afford adequate deterrence to criminal  
6 conduct, § 3553(a)(2)(B); the need for the sentence imposed to  
7 protect the public from further crimes of defendant, § 3553(a)(2)(C);  
8 and the need to avoid unwarranted sentence disparities, § 3553(a)(6).

9 Defendant was a knowing and active participant in a massive PPP  
10 and EIDL fraud and money laundering scheme that took nearly \$20  
11 million in much-needed assistance away from small businesses and  
12 their employees. Despite claiming, on the witness stand, that he  
13 suffered from a loss in business due to COVID-19 (6/23/21 A.M. Tr.  
14 86:13-23), he readily admitted that he used the loan proceeds to  
15 transfer money to his brother, Richard Ayvazyan (id. at 111:12-15),  
16 and one of his first recorded expenses after receiving government  
17 funds was for a Harley Davidson motorcycle, using an approximately  
18 \$24,067.15 cashier's check (id. at 122:3-123:1).

19 Furthermore, despite his attempts to escape the reality of his  
20 own conduct, the overwhelming evidence found at his home and on his  
21 own phone shows that he played a critical role in producing the  
22 actual fraudulent IDs used to submit the fraudulent PPP and EIDL  
23 applications. The plethora of fraudulent IDs, ID-making implements,  
24 checks, and debit/credit cards found in his phone and his residence  
25 shows that he not only knew about the fraud, he actively assisted in  
26 one of its most critical aspects - the generation of IDs needed to  
27 submit the fraudulent applications and facilitate access to the  
28 financial accounts needed to launder the proceeds.

1           When confronted with the voluminous evidence of his crimes,  
2 defendant took the stand and - under oath - spun a fantastical and  
3 inherently contradictory tale of how it was all his wife's fault, who  
4 was conveniently not present at trial to contest his protestations of  
5 innocence at her expense. Defendant pointed the finger at his wife  
6 but not his present-at-trial co-defendant brother, despite sitting  
7 through lengthy testimony highlighting the sometimes gleeful text  
8 messages between his brother and his wife detailing their, and  
9 defendant's own, extensive role in the fraud and money laundering  
10 conspiracies. (See GEX 10 and attachments.) Defendant's self-  
11 serving and false statements were rightly rejected by the jury when  
12 they convicted him of all counts charged against him.

13           Furthermore, defendant continues to try to minimize his conduct,  
14 in spite of the jury's clear rejection of his testimony, as evidenced  
15 by his attempts to take responsibility for only the loans submitted  
16 specifically in his or his business' name. (Def. PSR Obj. at 6.)  
17 This shows that defendant has not understood or accepted, in any  
18 meaningful way, the seriousness of the crimes for which he was  
19 convicted, or his role in perpetrating those crimes well beyond the  
20 mere \$274,000 obtained in the name of his business. A significant  
21 term of imprisonment is therefore necessary to protect the public  
22 from further crimes of defendant and afford adequate deterrence to  
23 criminal conduct as to defendant specifically when he is released  
24 from custody. Given the backdrop of the national catastrophe that  
25 defendant exploited in engaging in the callous and brazen fraud and  
26 money laundering conspiracies, a significant custodial sentence is  
27 also necessary to reflect the seriousness of the offense, promote  
28 respect for the law, and provide just punishment.

1           Based on a criminal history category of I and offense level of  
2 37, defendant's guidelines range is 210 to 262 months' imprisonment,  
3 plus a mandatory consecutive 24 months for aggravated identity theft  
4 (count 24), yielding a total effective range of 234 to 286 months'  
5 imprisonment. Given the aggravating factors described above,  
6 including the nature and content of defendant's testimony at trial, a  
7 low-end sentence would be insufficient to meet the goals of 18 U.S.C.  
8 § 3553(a). The government therefore recommends the Court impose a  
9 sentence of 260 months' total imprisonment, based on 236 months at  
10 the mid-point of the guidelines range, plus the mandatory consecutive  
11 24 months for count 24, to be followed by five years of supervised  
12 release. The government recommends that the Court impose a  
13 concurrent sentence of 236 months on counts 1-20 and 26, followed by  
14 count 24's mandatory consecutive term of 24 months, and a concurrent  
15 period of five years of supervised release on counts 1-20, one year  
16 of supervision on count 24, and 3 years of supervision on count 26.<sup>5</sup>  
17 Such a sentence would be sufficient, but no more than necessary, to  
18 meet the goals of 18 U.S.C. § 3553(a).

19           **B. The Court Should Order Restitution and Forfeiture**

20           Defendant attempts to evade responsibility for his conduct by  
21 arguing that he should only be responsible for \$260,000 in loans  
22 submitted directly in his or his business' name. As discussed in  
23 detail above, this contradicts the guidelines, Ninth Circuit  
24 precedent, and the jury's verdicts. Based on information obtained  
25 from the U.S. Small Business Administration and provided to  
26

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27           <sup>5</sup> The maximum term of imprisonment for counts 1-20 is 30 years,  
28 two years for count 24, and 20 years for count 26. The statutory  
maximum term of supervision for counts 1-20 is five years, one year  
for count 24, and 3 years for count 26. (PSR ¶¶ 176-177, 180-187.)

1 defendant, defendant's conduct - including acts that were foreseeable  
2 to him as part of the conspiracy - resulted in an actual loss of  
3 \$17,723,141.26, based on an intended loss of \$21,768,962.26. (Ahn  
4 Decl. Exhibit 1.) As such, this Court should hold defendant  
5 accountable for his conduct and order restitution for \$17,723,141.26  
6 and further order payment of the \$2,200 special assessment.

7 Furthermore, at the conclusion of trial, the jury made a series  
8 of findings as to defendant's forfeiture of property involved in  
9 defendant's offenses of conviction. Consistent with those findings,  
10 the government respectfully requests that the Court include in its  
11 judgment and commitment order an order forfeiting the property  
12 identified in the jury's special verdict form as to defendant (ECF  
13 646).

14 **V. CONCLUSION**

15 For the aforementioned reasons, the government respectfully  
16 requests that the Court sentence defendant to 260 months' total  
17 imprisonment (comprised of a concurrently served 236 months on counts  
18 1-20 and 26 and the mandatory consecutive term of 24 months on count  
19 24), five years of supervised release (comprised of a concurrently  
20 served five years on counts 1-20, 1 year of supervision on count 24,  
21 and 3 years of supervision on count 26), order defendant to pay  
22 \$17,723,141.26 in restitution, order forfeiture consistent with the  
23 jury's forfeiture findings, and order \$2,200 in special assessments.