

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	CRIMINAL NO. 1:20-cr-185
)	
v.)	Sentencing Date: November 13, 2020
)	
TARIK JAAFAR,)	Hon. Claude M. Hilton
)	
Defendant)	

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States of America, through its attorneys, G. Zachary Terwilliger, United States Attorney; Kimberly Shartar and William Fitzpatrick, Assistant United States Attorneys, in accordance with 18 U.S.C. § 3553(a) and the United States Sentencing Commission, Guidelines Manual (“Guidelines” or “U.S.S.G.”), files this Position of the United States with Respect to Sentencing of Defendant Tarik Jaafar (hereinafter “the defendant” or “Jaafar”).

The United States submits that the Probation Officer correctly calculated the Sentencing Guidelines level to be 17, which results in a 24 to 30 months advisory Guidelines range. Based on the factors set forth in 18 U.S.C. § 3553(a), the United States requests that this Court impose a sentence of 24 months, three years of supervised release, order restitution in the amount of \$220,573, and order forfeiture of certain bank accounts and a portion of the cash seized at the defendant’s arrest as detailed in the agreed upon forfeiture order.

I. BACKGROUND¹

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses through a program referred to as the Paycheck Protection Program (“PPP”). A PPP loan application must be processed by a participating financial institution (the lender). If a PPP loan application is approved, the participating financial institution funds the PPP loan using its own monies, which are 100% guaranteed by the Small Business Administration (“SBA”). PPP loans are obtained by submitting an application to a financial institution along with supporting documentation as to the business’s payroll expenses. PPP loan proceeds must be used by the business for certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time. The CARES Act also authorizes the SBA to provide Economic Injury Disaster Loans (“EIDL”) to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. Pursuant to the CARES Act, the SBA is authorized to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL. Unlike PPP loan applications, EIDL applications are submitted directly to the SBA. EIDL funds can be used for payroll expenses,

¹The PSR and the Statement of Facts (“SoF”) signed by the defendant, Dkt. 36, adequately set forth the offense conduct in this case.

sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments.

Between April 13, 2020, and May 6, 2020, the defendant, Tarik Jaafar, and his wife and co-conspirator, Monika Magdalena Jaworska (“Jaworska”), submitted eighteen PPP loan applications for four businesses, which were merely shell companies, to twelve financial institutions. Of the approximately \$6.6 million sought, the financial institutions disbursed approximately \$1.4 million. Additionally, between April 7, 2020, and April 15, 2020, the defendant and Jaworska submitted two EIDL loan applications for two of the shell entities to the SBA. As a result, one \$10,000 EIDL advance was obtained from the SBA.²

On May 19, 2020, law enforcement visited the home addresses of record, located in northern Virginia, for the defendant and Jaworska. At one of the addresses, the law enforcement officer could tell people were present, however no one answered the door when he knocked. Nonetheless, he left his card at the location. As a result of this visit, the United States made contact with Jaafar’s first defense attorney. Counsel for the United States informed the defendant’s counsel that the defendant was a target of the investigation. Counsel for the United States had several follow-up conversations with defense counsel in which counsel was informed that Jaworska was also a target of the investigation. Despite being told by counsel for the United States on June 9, 2020, during a planned in-person reverse proffer, that he was a target of the investigation and despite making plans for yet another in-person reverse proffer for the beginning of the week of June 22, 2020, on Wednesday June 17, 2020, the defendant purchased one-way

² However, as set forth below, the defendant and his wife were only able to withdraw approximately \$30,000 of the amounts disbursed.

tickets for himself, Jaworska, and their two children, to fly from New York to Poland on Saturday, June 20, 2020.

The defendant was arrested on or about Saturday, June 20, 2020, on a criminal complaint charging him with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. Specifically, the defendant and Jaworska were arrested in the parking garage across from Terminal 7 of John F. Kennedy International (“JFK”) airport, where Polish Airlines is located, with 18 bags. The defendant had both his United States and Moroccan passports on his person. Ms. Jaworska had her United States and Polish passports on her person. In the various bags, law enforcement found \$49,875.65 in cash, approximately 14 cell phones, and multiple laptops. On August 25, 2020, the defendant pleaded guilty to one count of conspiracy to defraud the United States and to defraud various financial institutions in violation of 18 U.S.C. § 371. He has been in custody since his arrest in New York.

II. THE APPROPRIATE GUIDELINE RANGE

As this Court is aware, following the Supreme Court’s decision in *United States v. Booker*, the Sentencing Guidelines are now advisory. 543 U.S. 220, 264 (2005). “In the wake of *Booker* . . . the discretion of sentencing court is no longer bound by the range prescribed by the guidelines. Nevertheless, a sentencing court is still required to ‘consult [the] Guidelines and take them into account when sentencing.’” *United States v. Hughes*, 401 F.3d 540, 546 (4th Cir. 2005) (quoting *Booker*, 543 U.S. at 264). In fact, the Fourth Circuit has noted that “a district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines.” *United States v. Hughes*, 401 F.3d 540, 546 (4th Cir. 2005). Thus, “sentencing

courts are not left with unguided and unbounded sentencing discretion.” *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006).

Here, the United States agrees that the appropriate Guidelines range with respect to incarceration is 24 to 30 months. The total offense level of 17 results from a base offense level of 6, increased by 14 levels for the corresponding to loss of over \$550,000 but less than \$1,500,000,³ and a 3 level reduction for the defendant’s acceptance of responsibility and timely notification to the United States of his intention to plead guilty.⁴ The United States asks this Court to adopt the PSR’s findings and advisory Guidelines range.

III. THE FACTORS SET FORTH IN SECTION 3553(A) AND RECOMMENDED SENTENCE

After calculating the appropriate guidelines range, “the court must ‘determine whether a sentence within that range . . . serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.” *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006) (quoting *Green*, 436 F.3d at 455). Those factors include the nature of the offenses, the characteristics of the defendant, and the need for the sentence to reflect the seriousness of the offense, afford deterrence, protect the public, and provide the defendant with

³ While the defendant sought approximately \$6.4 million in loans, the PPP loan program allows for individuals and businesses to seek multiple PPP loans from various lenders at the same time. However, once a loan is funded, the other applications must be withdrawn. The investigating agents found that the defendant did not seek additional PPP loans for an entity once the entity had already received a PPP loan. As such, the government agreed to limit the loss to the \$1.4 disbursed by the lenders.

⁴ As noted here, the PSR includes a three-level decrease for acceptance of responsibility. In this respect, the United States agrees that the defendant qualifies, pursuant to U.S.S.G. § 3E1.1(a), for a two-level reduction. In addition, the defendant timely notified the United States of his intention to plead guilty, thus permitting the United States to avoid preparing for trial and to allocate its resources more efficiently. Accordingly, the United States hereby moves, pursuant to § 3E1.1(b), to decrease the defendant’s offense level by one additional level.

needed educational or other training. 18 U.S.C. § 3553(a). The Court need not weigh the factors equally, but must consider each of them. *United States v. Fowler*, 948 F.3d 663, 674 (4th Cir. 2020).

The defendant is a smart and business savvy individual. He earned a PhD in Economic in France from the University of Strasbourg. Dkt. 58 at ¶83. He is fluent in five languages. *Id.* at ¶85. From 2001 until June of 2018, he was employed in banking by some of the most well-known banks in the country including: Citibank, Sun Trust, and Lehman Brothers. *Id.* at ¶86-91. He made a significant salary, over \$200,000, when last employed. *Id.* Yet, instead of earning income through gainful employment he chose to use his banking knowledge to commit the instant crime of defrauding multiple financial institutions and the United States through submitting false loan applications.

The defendant and his wife took advantage of two special programs meant for American businesses struggling amidst unprecedented economic disruption due to the COVID-19 pandemic. Despite not having operating businesses, they applied for PPP and EIDL funds. These were not one off mistakes, instead the defendant, along with his wife, applied for eighteen PPP loans from twelve financial institutions and filed two EIDL applications with the SBA. The PPP loan applications included fake employment tax returns and payroll documents which claimed the business had a number of employees. The defendant and his wife sent numerous emails to the lenders and participated in phone calls with lenders so as to follow up on the applications and to plead for the funds all under the guise of their supposed businesses' needs. These acts exploited the fact that the PPP program was designed to release funds as quickly as possible in order to provide a life-line to businesses across the country.

Because of early detection of their crimes by law enforcement, the defendant and his wife did not enjoy the use of the fraudulently obtained funds. Within a mere four to five weeks of obtaining the funds, law enforcement knocked on their door. The banks later froze the fraudulently obtained funds. The defendant was only able to withdraw approximately \$30,000 in cash from the fraud proceeds and some of the funds went to various banking fees. Notwithstanding law enforcements quick actions, the funds likely would have disappeared. And if not for law enforcement learning of their potential flight, the defendant and his wife would be oversees never likely to face the consequences of their crime. While the Guidelines do not account for the flight, because there were no protective barriers in place limiting the defendant's travel, the defendant's flight is an important fact that should be taken into account under the 3553(a) factors when determining his sentence.

The sentence in this case is also likely to have some deterrent effect on other prospective white-collar criminals. The COVID-19 pandemic is not over. The PPP loan program is coming up on important next step — loan forgiveness. In order for the loans to be forgiven, businesses will certify that they used the funds for their intended purpose — for payroll, rent, and utilities. News of PPP loan fraud will likely reach others who may apply for these loans in the future or may have to certify their own PPP loan for forgiveness. As such, the sentence that the defendant receives may serve as a warning to others to not commit a similar crime.

Despite the above, at the end of the day the defendant only withdrew approximately \$30,000, which was later recovered from the defendants' bags at their arrest. While still not justified, it appears that he did not intend to the use the funds for lavish spending, but instead to support his family. Because the funds have been recovered, along with the fact that the defendant

took responsibility for his actions by pleading guilty early, the government suggests a sentence at the low end of the Guidelines — a term of 24 months.⁵

IV. FORFEITURE AND RESTITUTION

While some of the funds were returned by the banks, which were holding fraud proceeds, to the lenders, the lenders have not been made whole. As result there are fraud proceeds in bank accounts controlled by the defendant and his wife that must be forfeited and there is also outstanding restitution.

Pursuant to the plea agreement, Dkt. 35 at ¶10, the defendant and the government have agreed to the attached consent forfeiture order which includes forfeiture totaling \$220,573. Ex. 1. Further, pursuant to the plea agreement, Defendant has agreed to pay mandatory restitution pursuant to 18 U.S.C. §3663A(c)(1)-(c)(2). Dkt. 35 at ¶7 and 9. Attached is the government's proposed restitution order for restitution totaling \$220,573. Ex. 2. The United States understands that while the defendant agrees to the amount of restitution, he disagrees with some of the terms in the restitution order.

CONCLUSION

For the reasons stated, the United States respectfully requests this court to sentence Tarik Jaafar to a period of incarceration of 24 months and 3 years of supervised release. Such a sentence is reasonable and accounts for each of the factors set forth in 18 U.S.C. § 3553(a).

⁵ The United States will be asking the court to allow Ms. Jaworska to start her sentence after Mr. Jaafar serves his term so that their children are not placed in foster care during the pandemic.

Finally, the government requests that the court enter the agreed upon consent forfeiture order and the Government's proposed order restitution.

G. Zachary Terwilliger
United States Attorney

/s/

Kimberly Shartar
William Fitzpatrick
Assistant United States Attorneys
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(703) 299-3700

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UNITED STATES OF AMERICA)	
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TARIK JAAFAR,)	
)	
Defendant.)	

CONSENT ORDER OF FORFEITURE

WHEREAS, on August 25, 2020, the defendant, Tarik Jaafar, waived indictment and pleaded guilty to a single-count Criminal Information charging the defendant with conspiracy to defraud various financial institutions and conspiracy to defraud the United States in violation of Title 18, United States Code, Section 371, and agreed to the forfeiture of assets that are the subject of this order;

AND WHEREAS, the defendant agrees to waive the provisions of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2(a), 32.2(b)(4) and 43(a) with respect to notice in the Criminal Information that the government will seek forfeiture as part of any sentence in this case, and that entry of this order shall be made a part of the sentence, in or out of the presence of the defendant, and included in the Judgment in this case without further order of the Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:

1. Pursuant to 18 U.S.C. § 982(a)(2)(A), the following property is forfeited to the United States of America as proceeds traceable to the conspiracy to defraud various financial institutions and the United States, in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 371:

- a. Approximately \$182,136 in funds held in Visla Capital, LLC account no. 84746075 at United Bank;
- b. Approximately \$8,000 in funds held in Global Capital Financing, LLC account no. 9864353777 at M&T Bank; and
- c. Approximately \$30,437 in U.S. currency found by the FBI on June 29, 2020, in the bags of the defendant and co-defendant, Monica Magdalena Jaworska,¹ during the execution of a search and seizure warrant.² The bags had been seized at John F. Kennedy Airport in New York on June 20, 2020, incident to the arrest of the defendant and his co-defendant.

2. Pursuant to Fed. R. Crim. P. 32.2(b)(3), upon entry of this order, the United States is authorized to conduct any appropriate discovery including depositions, interrogatories, requests for production of documents and for admissions, and pursuant to Fed. R. Civil P. 45, the issuance of subpoenas.

3. The Attorney General, Secretary of Homeland Security, Secretary of the Treasury, or a designee, is hereby authorized to seize, inventory, and otherwise maintain custody and control of the property, whether held by the defendant or by a third party, and to conduct any discovery proper in identifying, locating or disposing of the property subject to forfeiture pursuant to Fed. R. Crim. P. 32.2 (b)(3) and 21 U.S.C. § 853(g).

4. The United States shall publish notice of this order and of its intent to dispose of the property in such manner as the Attorney General may direct, including publication on the Government's Internet site, www.forfeiture.gov, for 30 consecutive days, and to the extent practicable, provide direct written notice to any persons known to have alleged an interest in the property pursuant to Fed. R. Crim. P. 32.2(b)(6) and 21 U.S.C. § 853(n)(1) & (2).

¹ United States v. Monica Magdalena Jaworska, 1:20cr180 (E.D.Va.)

² The remaining funds seized, totaling \$19,438.65, will be returned.

5. This Order of Forfeiture is final as to the defendant, and shall be made part of the defendant's sentence and included in the Judgment in this case pursuant to Fed. R. Crim. P. 32.2(b)(4).

6. Any person, other than the defendant, asserting any legal interest in the property may, within thirty (30) days of the final publication of notice or his receipt of notice, whichever is earlier, petition the court for a hearing to adjudicate the validity of the alleged interest in the property pursuant to Fed. R. Crim. P. 32.2(c)(1) and 21 U.S.C. § 853(n)(2).

7. If no third party files a timely petition, this Order shall become the Final Order of Forfeiture, and the United States shall have clear title to the property and may warrant good title to any subsequent purchaser or transferee pursuant to Fed. R. Crim. P. 32.2(c)(2) and 21 U.S.C. § 853(n)(7).

8. If this Court grants any third party rights, a Final Order of Forfeiture that amends this Order as necessary to account for said third party rights, shall be entered pursuant to Fed. R. Crim. P. 32.2(c)(2) and 21 U.S.C. § 853(n)(6).

October ____, 2020

Date: _____
Alexandria, Virginia

United States District Judge Claude M. Hilton

WE ASK FOR THIS:

G. Zachary Terwilliger
United States Attorney
Eastern District of Virginia

By: _____
Kimberly Shartar
Assistant United States Attorney
William Fitzpatrick
Assistant United States Attorney

Tarik Jaafar
Defendant

Jeffrey Zimmerman, Esq.
Counsel for the Defendant

IN THE UNITED STATES DISTRICT COURT
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)	
TARIK JAAFAR,)	
)	
<i>Defendant.</i>)	
_____)	

RESTITUTION ORDER

1. Pursuant to 18 U.S.C § 3663A(a)(1), the defendant is ordered to pay restitution in the amount of **\$220,573** jointly and severally with co-defendant Monika Magdalena Jaworska (1:20CR00180) and any other defendants to the extent that they are ordered to pay restitution for the losses.
2. The amount of restitution paid to any victim, collectively, shall not exceed the victim’s total loss from the offenses of conviction.
3. The victims’ names, addresses, and respective total loss amounts are listed in Attachment A to this Restitution Order.
4. Interest: _____ is waived.
_____ accrues as provided in 18 U.S.C § 3612(f).
5. Notwithstanding any other provision of this Restitution Order or the sentence imposed, including the directive to make periodic payments, restitution is due in full and payable immediately from assets known and unknown and including assets identified in the Presentence Report. The Government may enforce restitution at any time.
6. If incarcerated, the Court encourages the defendant to participate in the Bureau of Prisons’ Inmate Financial Responsibility Program, to comply with the provisions of the financial plan, and to meet the defendant’s financial obligation, pursuant to 28 C.F.R. § 545.10-11.
7. If restitution is not paid in full immediately, the defendant shall pay to the Clerk at least \$_____ per month or 25 percent of net income, whichever is greater, beginning 60 days after release from any period of confinement, or 60 days after sentencing if no confinement is imposed.

8. All payments shall be made to the Clerk of Court, United States District Court, 401 Courthouse Square, Alexandria, Virginia 22314.
9. Within 30 days of (a) any change of name, residence, or mailing address; and/or (b) any material change in economic circumstances that affects the ability to pay restitution, the defendant shall notify the Clerk of Court and the United States Attorney's Office, Financial Litigation Unit, 8000 World Trade Center, Norfolk, Virginia 23510.
10. No delinquent or default penalties will be imposed except upon Order of the Court.
11. Pursuant to 18 U.S.C. § 3664(i), the priority of payments to victims shall be:
 - a. Sonabank, IncredibleBank, and Harvest Small Business Finance shall be paid in full first on a pro rata basis.
 - b. The U.S. Small Business Administration shall be paid last.

Honorable Claude M. Hilton
Senior United States District Judge

ENTERED this _____ day of _____, 2020.

at Alexandria, Virginia

WE ASK FOR THIS:

G. Zachary Terwilliger
United States Attorney

Kimberly Shartar, Esquire
William E. Fitzpatrick, Esquire
Assistant United States Attorneys
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ATTACHMENT A TO RESTITUTION ORDER

Victim:	Loss Amount:
Sonabank ATTN: Michelle R. Douglas, SVP 11A Main Street Warrenton, VA 20186	\$8,000.00
IncredibleBank ATTN: Connie Nowak P.O. Box 777 Wausau, WI 54402	\$123,824.00
Harvest Small Business Finance 24422 Avenida de La Carlota Suite 232 Laguna Hills, CA 92653	\$78,749.00
<i>To be paid only after Sonabank, Incrediblebank, and Harvest Small Business Finance are paid in full first.</i>	
U.S. Small Business Administration Denver Finance Center ATTN: Paul Keenan 721 19th Street Denver, CO 80202	\$10,000.00
Total due from defendant:	\$220,573.00