

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUSTIN HSU,

Defendant.

No. CR20-0191JLR

GOVERNMENT’S SENTENCING
MEMORANDUM

Comes now the United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, Steven T. Masada, Assistant United States Attorney for said District, Joseph Beemsterboer, Acting Chief, Fraud Section, Criminal Division, United States Department of Justice, and Christopher Fenton, Trial Attorney for said Section, and files this Government’s Sentencing Memorandum.

I. INTRODUCTION

Defendant, Austin Hsu, is before the Court for sentencing following his guilty plea to one count of wire fraud, in violation of 18 U.S.C. § 1343. Hsu is scheduled to be sentenced at 10:00 a.m. on August 10, 2021.

II. BACKGROUND

A. The COVID-19 Pandemic and Disaster Relief Loan Programs

In early 2020, the COVID-19 pandemic spread rapidly across our country. What started as a public-health crisis rapidly also became an economic crisis. Large parts of the economy were shut down, businesses shuttered, and workers lost their jobs. By April 2020, the unemployment rate in the United States had reached 14.8%, *see* Congressional Research Service, Unemployment Rates During the COVID-19 Pandemic, fas.org/sgp/crs/misc/R46554.pdf, and millions of businesses faced the risk of failing.

To respond to the economic fallout, and prevent even worse disaster, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). Pub. L. No. 116-136, 134 Stat. 281 (2020). One of the goals of the CARES Act was to help businesses make payroll and pay operating expenses (and thereby avoid failure). To that end, the CARES Act created a new government program, the Paycheck Protection Program (the PPP), to enable the issuance of loans, that ultimately could be forgivable, to small businesses in operation as of February 2020. *See* Presentence Report ¶ 8 [hereinafter, PSR].

Under the PPP, loans were processed and funded by participating lenders. *See id.* The loans were guaranteed by the Small Business Administration (the SBA), and ultimately would be forgiven if borrowers spent the loan proceeds on permissible expenses, including spending a substantial percentage on payroll. *See id.* To qualify for a PPP loan, a business was required to submit an application, and supporting documentation, that established, among other things, the number of persons employed by the business, and the amount of the business' payroll expenses. *See id.* ¶ 9.

The CARES Act originally appropriated \$349 billion for the PPP. *See id.*; <https://www.americanactionforum.org/research/tracker-paycheck-protection-program-loans/>. This money was exhausted by April 16, 2020, causing the program to shut down for a time. *Id.* Congress appropriated another \$320 billion to fund additional loans

1 (sometimes referred to as “round two”) through August 8, 2020. *Id.* (A third round of
2 funding followed in 2021.)

3 The Economic Injury Disaster Loan (EIDL) program is an SBA program that
4 provides low-interest financing to small businesses, renters, and homeowners in regions
5 affected by declared disasters. PSR ¶ 10. In addition to the PPP, the CARES Act also
6 authorized the SBA to provide EIDLs to eligible small businesses experiencing
7 substantial financial disruption due to the COVID-19 pandemic. *Id.*

8 EIDL applications are submitted directly to the SBA. The amount of the loan, if
9 the application is approved, is determined based, in part, on the information provided by
10 the applicant about employment, revenue, and cost of goods. *Id.* ¶ 11. If the applicant
11 also obtains a loan under the PPP, the EIDL funds cannot be used for the same purposes
12 as the PPP funds. *Id.*

13 **B. Austin Hsu’s Fraudulent Scheme**

14 Hsu’s monthly income is over \$54,000. He drives a Porsche. And a Range Rover.
15 PSR ¶ 62. Despite his wealth and privilege, amidst a national catastrophe, Hsu
16 orchestrated a months-long scheme to steal COVID-19 disaster relief loan funds that the
17 federal government designated for small businesses who needed the money to survive.
18 Seeing opportunity in crisis, Hsu attempted to defraud the SBA and lenders of nearly \$1.2
19 million before that money reached the small businesses who were actually suffering from
20 the disaster. *Id.* ¶ 17. Hsu was successful in stealing \$709,104.97 in money that would
21 have otherwise been the lifeline for others in need. *Id.*

22 And he used a portion of that money to give himself and his girlfriend a massive
23 pay raise. A comparison of his business’s monthly payroll for the six months preceding
24 the pandemic as compared to the first four months of the pandemic shows that Hsu gave
25 himself a pay raise of nearly 1000% percent and his girlfriend a pay raise of around
26 450%:
27
28

Month	Total Payroll for Hsu	Total Payroll for Girlfriend
Sep-19	\$4,635	\$4,635.00
Oct-19	\$4,635	\$4,635.00
Nov-19	\$0	\$4,635.00
Dec-19	\$0	\$4,635.00
Jan-20	\$2,320.50	\$4,641.00
Feb-20	\$0	\$4,641.00
Mar-20	\$0	\$4,641.00
Apr-20	\$20,523	\$4,641.00
May-20	\$10,049.50	\$9,913.60
Jun-20	\$25,141.65	\$25,657.84
Jul-20	\$15,913.50	\$15,913.50

(See Exhibit A (excerpts from Intuit payroll records filtered to show payroll payments made to Hsu and his girlfriend¹) (payroll payments made during pandemic highlighted in yellow).)²

Hsu's fraudulent scheme took place over the course of three months and required significant time and attention to perpetrate. From April 2020 through July 2020, Hsu prepared and submitted a total of eight COVID-19 disaster relief loan applications using the names of four companies he had previously formed. PSR ¶ 12; ECF 34 at 6. Hsu's loan applications contained numerous lies, and were accompanied by several different types of federal tax forms he had forged. For example:

- Hsu represented that each of the four companies for which he sought a PPP loan had employees to whom it paid salaries and payroll taxes. This was false. None of the four companies had any employees to whom it paid salaries or payroll taxes. See PSR ¶ 13.

¹ In Exhibit A, the name of Hsu's girlfriend has been redacted.

² In the Presentence Report, Probation Officer Neumeister stated that it appears Hsu did not provide a complete picture of his finances because, among other things, he did not provide information relating to his businesses, which provide a source of income for Hsu and his live-in girlfriend. PSR ¶ 62.

- 1
- 2 ■ For two of the four companies, Hsu created IRS Forms
- 3 940 and 941 that purported to show that these companies
- 4 had paid hundreds of thousands of dollars in salary to
- 5 employees in 2019. This too was false. The companies
- 6 had not paid the salaries shown, or the withholding to the
- 7 IRS shown. Rather, Hsu had forged these documents for
- 8 the purpose of supporting his fraudulent PPP applications.
- 9 *See id.* ¶ 14; ECF 34 at 7.
- 10 ■ Hsu also created fake Forms W-2 and W-3 for three of the
- 11 four companies. These forms listed over twenty
- 12 employees who purportedly worked for these businesses.
- 13 These forms were also fraudulent. None had actually been
- 14 filed with the Social Security Administration and none of
- 15 the listed employees actually worked at these companies.
- 16 Rather, Hsu created the Forms W-2 and W-3 for the
- 17 purpose of supporting the fraudulent PPP applications. *See*
- 18 PSR ¶ 14; ECF 34 at 7.

19 Two months into the scheme, after he had used the companies he had previously

20 incorporated to apply for fraudulent PPP and EIDL loans, he invented new ways to

21 continue the fraud. On June 26, 2020, Hsu incorporated a new company, Blueline

22 Capital LLC (“Blueline”), for the purpose of applying for additional COVID-19 disaster

23 relief loans. PSR ¶ 15. On June 29, 2020, he applied for an Employer Identification

24 Number on behalf of Blueline. *Id.* And on July 12, 2020, Hsu applied for an EIDL loan

25 for Blueline in the amount of \$150,000. *Id.* ¶ 16. Hsu represented that Blueline had been

26 in business since 2017, and as of January 31, 2020, had nine employees and gross

27 receipts of over \$1.5 million. *Id.* Blueline had in fact only been incorporated days prior,

28 in late June 2020, and had no business or operations. *Id.*

29 In furtherance of his scheme, Hsu used, without authorization, the names of

30 dozens of individuals whom he personally knew. Hsu used his mother’s name to obtain

31 an Employer Identification Number from the Internal Revenue Service for his sham

32 company Blueline. *Id.* ¶15. Hsu also used the name and personal identifiers belonging to

1 his girlfriend, with whom he had lived for ten years, to apply for one of the PPP loans.
2 Sentencing Recommendation at 3. As a consequence of Hsu's unauthorized use of their
3 names, Hsu's mother and girlfriend became subjects of a federal criminal investigation
4 and were interviewed by federal agents, and his girlfriend's entire home was searched.³

5 Hsu also used the names of over twenty current and former employees of one of
6 his legitimate businesses on the fake Forms W-2 and W-3 he forged as part of his fraud.
7 PSR ¶ 14. As a consequence of Hsu's unauthorized use of his former employees'
8 names, Hsu potentially jeopardized any unemployment benefits to which these former
9 employees may have been entitled.

10 Six of the nine COVID-19 disaster relief loan applications that Hsu submitted were
11 approved and, as a result, Hsu received a total of \$709,104.97 in fraudulent loan proceeds.
12 *See id.* ¶ 17. As described above, Hsu used a large amount of the fraudulently obtained
13 disaster loan proceeds to give himself and his girlfriend a significant pay raise. Beginning
14 in or around July 2020, five employees who previously received payroll payments from
15 Hsu's legitimate business began to receive periodic direct deposits for payroll from a
16 different company belonging to Hsu. The balance of the fraudulently obtained PPP and
17 EIDL proceeds remained in bank accounts owned and controlled by Hsu. Hsu did not
18 actually spend the money, presumably, because (i) he did not have an immediate need for
19 the money, and (ii) he planned later to submit fraudulent paperwork claiming the money
20 had been spent on legitimate business expenses and did not want actually to spend the
21 money until that paperwork was approved, the loans were forgiven, and the fraud scheme
22 was effectively completed (since it would be risky to spend the money when he still might
23 have to pay it back).

24 In October 2020, the United States obtained seizure warrants and seized a total of
25 \$517,677.18 from various bank accounts owned and controlled by Hsu. PSR ¶ 18. Hsu
26

27
28 ³ Evidence of the fraud scheme, belonging to Hsu, was located by authorities within his
girlfriend's residence.

1 subsequently paid \$191,427.79 to the Clerk of the Court, which represented the balance
2 of the funds that he fraudulently obtained and that had not been seized. *Id.*

3 III. PRESENTENCE REPORT

4 The Government has no objection to the facts or to the Sentencing Guidelines
5 calculation contained in the Presentence Report. The Presentence Report adopts the same
6 calculation of Hsu's offense level that both parties agreed to recommend in the Plea
7 Agreement. *See* Plea Agreement ¶ 9. Specifically, it recommends that the Court find that
8 the following Sentencing Guidelines apply:

9	Base offense level (§ 2B1.1(a)(1))	7
10	Loss > \$550,000 (§ 2B1.1(b)(1)(I))	+14
11	Use of sophisticated means (§ 2B1.1(b)(10))	+2
12	Acceptance of responsibility (§ 3E1.1(a) & (b))	<u>-3</u>
13	Total Offense Level	20

14 Based upon a Total Offense Level of 20 and a Criminal History Category of I, Hsu has an
15 advisory sentencing range of 33 to 41 months.

16 IV. SENTENCING RECOMMENDATION

17 The Government recommends that the Court sentence Hsu to 33 months'
18 imprisonment, to be followed by a three-year term of supervised release. The
19 Government believes that this sentence appropriately balances the factors set forth in 18
20 U.S.C. §3553(a).

21 **1. "The nature and circumstances of the offense."** Hsu has
22 committed an extremely serious offense. During a national catastrophe when the federal
23 government and lenders were racing to get disaster relief loans out to small businesses
24 and in turn wages to employees, who needed the money to survive, Hsu defrauded the
25 government of more than \$700,000 (and he sought to defraud the government of as much
26 as around \$1.2 million). Hsu's offense is aggravated by multiple factors:

- 27 ■ First, Hsu was not threatened by the economic melt-down
28 caused by COVID-19. While others lost their jobs, savings,

1 and businesses, Hsu's monthly income was over \$54,000 and
2 his live-in girlfriend's monthly income was over \$4,000.

- 3 ■ Second, Hsu did not merely steal from the government.
4 Rather, Hsu stole from a program designed to try to provide a
5 lifeline to small businesses and their employees. This was a
6 limited pool of money, which ultimately was exhausted.
7 Hsu's crime deprived people who actually and urgently
8 needed PPP loans of the ability to get them.
- 9 ■ Third, Hsu's crime was not a momentary lapse, but a
10 determined ongoing effort. Hsu filed *nine* separate fraudulent
11 loan applications over a three-month time period from April
12 2020 through July 2020. Each application required
13 substantial work, including completing the actual loan
14 application and, in many cases, creating fraudulent tax forms
15 to support the fraud. For the last application, Hsu create an
16 entirely new company in order to continue the fraud. The
17 evolution in his *modus operandi* further demonstrates the
18 time and effort be put into committing the fraud.
- 19 ■ Fourth, Hsu used the names of dozens of real people who he
20 knew and that use had potentially serious consequences for
21 their lives.

22 The impact of Hsu's crimes on the lives of others was substantial and should be reflected
23 in the sentence imposed.

24 **2. "The history and characteristics of the defendant."**

25 Although Hsu has been productively employed throughout his adult life, does pro
26 bono work, and has no prior criminal history, Hsu's statements about this offense are
27 cause for concern. He does not appear to provide a coherent explanation to the Probation
28 Officer of the motivation for his crime. For example, he claims he took a lot on trying to
juggle three businesses and he applied for multiple loans. PSR ¶ 21. However, the
businesses he used to apply for the loans did not actually have employees. He also
claims that he panicked about the lack of PPP funds when his initial PPP application was
denied. *Id.* However, this explanation makes no sense in light of the fact that he had no

1 | urgent need for the PPP money and, when he received it, he used a large amount of it to
2 | give himself and his girlfriend a massive pay raise.

3 | Perhaps more importantly, the letters of support submitted on Hsu's behalf show
4 | that he appears to have made a series of false and misleading statements to his friends and
5 | family about his crime. For example, Hsu's uncle recounts how Hsu told him that Hsu
6 | "submitted multiple applications hoping that one of them will be successful" and that Hsu
7 | "never expected that all applications would be approved and funded into his bank
8 | accounts". Letter from Michael Hsu dated July 19, 2021 at 2. Hsu's uncle further
9 | explains that Hsu sought the PPP money to cover "current urgent financial needs". *Id.*
10 | None of this true. Hsu filed the applications over the course of three months, not all at
11 | once. Moreover, after initial loan applications were approved, Hsu never made an effort
12 | to withdraw pending applications, but rather filed additional claims, including through
13 | the creation of a fictitious corporate entity. Nor did Hsu attempt to return duplicative
14 | loan funds before becoming alerted to the criminal investigation. Rather, Hsu used a
15 | large part of the money to give himself a massive pay raise, not to cover what he told his
16 | uncle were his business's "current urgent financial needs."

17 | Similarly, Hsu apparently told Edward K. Le and Henry Kan that the purpose of
18 | the money was to fund his ongoing chiropractic business and help defray the costs of
19 | relocating an MRI machine. Letter from Edward K. Le dated July 21, 2021 and Letter
20 | from Henry Kan. These statements are also false. Hsu did not actually use the money for
21 | these purposes.

22 | Hsu's friend Hung Le wrote that, because he was concerned his chiropractic
23 | business might go under, Hsu "lamented how his father was looking down on him now
24 | and how he failed his mother, who toiled all her life to pay for his education to get him to
25 | where he was." Letter from Hung Le at 1. If these were indeed Hsu's concerns, then he
26 | presumably would not have used his mother's name to fraudulently obtain a \$150,000
27 | EIDL loan he did not need and make her the subject of a federal criminal investigation as
28 | a result. Simply put, Hsu was an opportunist motivated by greed who, in disregard to the

1 real and considerable plight of others, sought to personally profit from an available
2 emergency government program.

3 **3. The need for the sentence to “reflect the seriousness of the offense,” “to**
4 **provide just punishment,” “to afford adequate deterrence,” and “to**
5 **protect the public.”**

6 A significant prison sentence is required to reflect the seriousness of Hsu’s crime,
7 and to provide just punishment. As previously noted, despite his personal wealth and
8 privilege, Hsu fraudulently applied for nearly \$1.2 million dollars intended to provide a
9 lifeline to small business and employees who were suffering as a result of the pandemic.
10 Such conduct merits a significant sentence.

11 Hsu’s case is one where a significant sentence also is needed to provide adequate
12 deterrence, and to protect the public. We still are emerging from the COVID-19
13 pandemic. Massive amounts of money have yet to be funneled to their ultimate
14 recipients. As that process continues, it is important that people understand that there are
15 serious consequences for those committing fraud to steal money that should go to others.
16 If a wealthy and privileged chiropractor can defraud a relief program of more than
17 \$700,000 without facing serious consequence, that message of deterrence will be
18 undermined.

19 **4. The kinds of sentences available.** For the reasons already discussed, the
20 Government believes that a sentence of imprisonment is needed in this case.

21 **5. The sentencing range.** The 33-month sentence that the Government is
22 recommending is at the low-end of the parties’ agreed sentencing range and the
23 Government submits that this case falls within the heartland of cases contemplated by the
24 Sentencing Commission, particularly in light of the nature of the loss and level of
25 sophistication necessary to commit the crime.

26 **6. The need to avoid unwarranted sentence disparities among defendants.**

27 The 33-month sentence that the Government is proposing is consistent with
28 sentences in other PPP cases. Although there have been a relatively limited number of

1 PPP and EIDL loan fraud cases sentenced so far, the Probation Office has collected a
2 number of those cases in its Sentencing Recommendation. The Government also
3 provided the Probation Office with two additional cases that were not covered in the
4 Probation Office's Sentencing Recommendation. A review of PPP cases suggests that
5 defendants who have committed substantial PPP frauds (that is, those measured in the
6 hundreds of thousands to millions of dollars), generally have received sentences that are
7 measured in years, and often have received sentences that approach or fall within the
8 applicable sentencing Guidelines.

9 For example, in *United State v. Philus, et al.*, Case No. 1:21CR20067 (S.D. Fla.),
10 the defendant, who was a small business owner whose business was suffering, conspired
11 with his girlfriend to submit two fraudulent loan applications seeking a total of
12 \$688,325. Nearly all of the money was apparently returned and the defendant only
13 received around \$2,000 in personal benefit. He pled guilty to one count of conspiracy
14 (18 U.S.C. § 371) and he was sentenced to 30 months' imprisonment.

15 In *United States v. Smith, et al.*, Case No. 20-CR-196 (E.D. Wis.), the defendant,
16 who was a special education teacher with no prior criminal history, conspired with his
17 brother Thomas to submit five fraudulent loan applications seeking \$960,000. He pled
18 guilty to one count of bank fraud and was sentenced to 36 months' imprisonment.

19 In *United States v. Tubbs*, No. 4:20-cr-00193-BSM (E.D. Ark.), the defendant
20 obtained two PPP loans totaling \$1,933,262, but only spent \$14,000. She was sentenced
21 to 41 months' imprisonment.

22 Here, Hsu submitted substantially more fraudulent loan applications than the
23 defendants in *Philus*, *Smith*, or *Tubbs*, and sought an amount that was materially greater
24 than in *Philus* and *Smith* and less than but comparable to *Tubbs*. Moreover, Hsu spent far
25 more than the defendants in *Philus* and *Tubbs*, when he paid himself and his girlfriend a
26 massive pandemic pay raise of around \$90,000. The 33-month sentence that the
27 Government is proposing is therefore consistent with sentences in other PPP and EIDL
28 loan fraud cases with similar facts. Indeed, it is on the lower of the range in that the

1 sentence the Government recommends here is only three months greater than *Philus* and
2 is three months and eight months lower than in *Smith* and *Tubbs*, respectively.

3 The Government agrees with the Probation Office that this case is dissimilar from
4 *United States v. Boake Zhang*, No. 2:20-cr-00169-RAJ (W.D. Wash.), where defendant
5 was sentenced to just 60 days' imprisonment and should not be used as a comparable
6 here for all of the reasons the Probation Office sets forth in its recommendation.
7 Moreover, a sentence based on Zhang's case would create the very disparity that the
8 Court should seek to avoid and would create a situation where the defendants convicted
9 of PPP and EIDL fraud in this District receive sentences that are materially lower than
10 defendants convicted of the same or similar crimes in other districts. By contrast, the 33-
11 month sentence the Government is recommending will avoid or minimize disparities with
12 other cases.⁴

13 **7. The need to provide restitution to victims.** As discussed in Part IV
14 below, the Government anticipates that the victim banks in this case will be paid
15 restitution by the restoration of the money seized by the Government. As a result, the 33-
16 month sentence that the Government is recommending also will ensure that restitution is
17 paid to victims.

18 . . .

19 In sum, a 33-month sentence balances the considerations set forth in 18 U.S.C.
20 § 3553. It will appropriately punish Hsu for stealing massive amounts of money from
21 programs designed to save others from disaster. It will deter others from similarly
22 defrauding programs that continue to provide a necessary lifeline to struggling
23 Americans. And it will treat Hsu fairly relative to the main run of defendants convicted
24 of COVID-19 disaster relief loan fraud in districts around the country.

27 ⁴ The Government agrees with the Probation Officer that a \$25,000 fine is appropriate in this
28 case, so long as that fine is not in lieu of a sentence of imprisonment, which is important to
detering individuals, who like Hsu, have substantial wealth and privilege.

1 **IV. RESTITUTION AND FORFEITURE**

2 As set forth in the PSR, Hsu agrees that he will pay full restitution to the PPP
3 lenders he defrauded (Square Inc. in the amount of \$54,627.97 and Kabbage, Inc. in the
4 amount of \$354,477), and to the SBA in the amount of \$300,000, for a total restitution
5 obligation of \$709,104.97. He will receive credit for any amounts already paid by him.
6 The parties agree that, after judgment, they will seek to apply amounts already paid to the
7 Clerk of the Court by Hsu to restitution, and further request to apply seized funds to
8 restitution through restoration.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Court should sentence Hsu to 33 months'
11 imprisonment, to be followed by a three-year term of supervised release. The Court also
12 should order Hsu, to pay a \$25,0000 fine, \$709,104.97 in restitution, and a \$100.00
13 penalty assessment. Further, as set forth in its motion (ECF 41), the United States further
14 requests that the Court enter the proposed preliminary order of forfeiture.

15
16 DATED: this 2nd day of August, 2021.

17
18 Respectfully submitted,

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