

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 21-CR—60126 [03]

v.

Hon. Rodolfo A. Ruiz II

FRANTZ GUILLAUME, Jr.,

United States District Judge

Defendant.

_____ /

DEFENDANT FRANTZ GUILLAUME Jr.'s
SENTENCING MEMORANDUM
and
REQUEST FOR VARIANCE and/or DOWNWARD DEPARTURE

Frantz Guillaume, through his attorney, respectfully files this *Sentencing Memorandum*, in addition to the Objections to the PSR previously filed [DE 114]. Sentencing is now rescheduled for Tuesday, November 30, 2021, at 2:00 pm, in Fort Lauderdale [DE 125].

In explanation, counsel states:

I. Introduction

1. Counsel previously filed on **Frantz Guillaume, Jr.'s** behalf objections to the Draft Presentence Report [DE 114]; which objections we reiterate and reincorporate herein.

2. In that regard, the Probation Office has itself just filed a Revised

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Presentence Report [DE 122] and their Response to our objections. [See **Addendum to the Presentence Report** - DE 122]. At this time the issues raised remain unresolved.

They are --

a) adding an additional 2 levels for use of false identification (though considered & rejected by the parties in their resolution of the case); and,

b) adding three (3) criminal history points for a conviction that, we submit, borders on being 'remote,' and, which we ask not be counted.

c) additionally, the issue concerning the total loss amount in the Texas University matter has been clarified. It is agreed **Guillaume** is only responsible for the funds that went into & out of an account he controlled.

3. Because of the nature of the case, the nature of the defendant, and, the PSRs suggested scoring is greater than the parties themselves thought to be correct [see *Plea Agreement* DE 98], we suggest a variance or downward departure is appropriate and in order.

II. Nature of the Case

4. Not to be redundant, the gist of the case is that **Frantz Guillaume**, his two (2) codefendants *and others*, participated in two (2) frauds [involving wire fraud & money laundering]. They involved a so-called -- 1) **Businesss Email Compromise** (BEC) scheme; and, a -- 2) **Paycheck Protection Program/Economic Injury Disaster**

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Loan (PPP/EIDL) loan fraud scheme. The government and Probation office agree the fraud loss amount for which each defendant is responsible is approximately 1.8 million dollars. (PSR **Summary**, page 12, para. 34 [**One – \$ 1,821.041.09**], 35 [**Guillaume -- \$ 1,800,698**] & 36 [**Lemy -- \$ 1,823.267**].) Again, the total includes that portion of the Texas fraud for which **Guillaume** is responsible. Consistent therewith, the Court has recently entered a Preliminary Order of Forfeiture [DE 122] granting the Government's Unopposed Motion for Forfeiture of Property as to Frantz Guillaume [DE 116].

III. Nature of the Defendant

5. Not as an excuse, and not minimize the seriousness of these offenses, it is –we believe– conceded **Guillaume** was not an organizer, or, leader here and did not personally keep the majority of the funds attributed to him as represented by the loss amount for which he is held responsible. He did not conceive these offenses and was recruited to participate in this matter by others.

6. The government agrees the “evidence supports neither a mitigating nor aggravating role adjustment for these defendants.” [PSR, **Role Assessment**, page 13, para. 39].

7. Moreover, as we said previously, **Guillaume** -- 1) early on agreed to

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resolve the case, 2) accepted responsibility, 3) agreed to assist the government in any potential investigation/prosecution of others, 4) has been debriefed & interviewed by the government, and 5) is genuinely remorseful and regrets getting involved in activity he knew to be wrong.

8. While counsel cannot vouch for anyone but himself, we have found **Frantz Guillaume** to be a soft spoken, humble man who has genuine remorse for having allowed himself to have been recruited and involved in matters he knew to be wrong. We take it as a sign of his maturity that while he may not have understood the full scope of what he was getting involved in, **Guillaume** accepts responsibility for what happened and his role in it.

9. **Guillaume** is loved by his large family who are supportive of him and he is supportive of them as well. **Frantz Guillaume** is a hardworking man who has studied and worked to become a productive member of the community. **Frantz** has studied and been trained, and, certified essentially as an insurance adjuster. He works as ‘*a vehicle damage appraiser.*’ He is well liked and enjoys a good reputation in his chosen profession. [E.g. see PSR page 21, para. 88].

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**IV. Sentence & Requests for Court Recommendations to
Bureau of Prisons - RDAP, Self-Surrender & Local Institution**

10. It is accepted that a period of incarceration is appropriate here. However, it should not be longer than necessary considering all of the 18 U.S.C. 3553 factors. Long sentences are, we submit, counter-productive in many instances, and, in most instances –in our view– unnecessary. In a non-violent case involving a mature defendant, with family responsibilities, young children, an education and occupation that suggest he can and will be a productive, law-abiding member of the community upon release all argue --in our view-- for a below guidelines sentence.

11. We are submitting letters in support of **Frantz Guillaume** from people who know him. We think such letters humanize a defendant and remind us he is not just another name on a file folder. Such letters often tell us more about the ‘person’ than either the PSR or court file alone. [Therefore, attached as Exhibits hereto are twelve (12) Character Letters & Six (6) family photos.]

12. Also, we note the defendant has a history of substance abuse. [See PSR page 20, para. 82 – 83.] While on pre-trial release **Guillaume** was evaluated & diagnosed by our own Pre-Trial Services Office’s outside contract vendor **Compass Health Systems** as suffering from ‘*cannabis abuse disorder*.’ We submit, **Guillaume**

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would benefit from the Bureau of Prisons *Residential Drug Abuse and Alcohol Program* [RDAP] offered at several institutions within the BOP. We respectfully suggest any sentence recommend **Guillaume** be assigned/designated to an institution that offers this program. Also, we ask, consistent with the prior request the Court recommend designation to an institution ‘close to South Florida;’ to facilitate family visitation during the term of incarceration

13. Lastly, we strongly request **Frantz Guillaume** be allowed to *voluntarily surrender* at the institution or place ultimately designated by the Bureau of Prisons where **Guillaume** is to serve his sentence. For a long-time it was common-place to allow self-surrender where a defendant was on pretrial release, was compliant with the terms of his pretrial release, had an uneventful history of reporting as required, and, was not deemed a flight risk or danger to the community. For several reasons, however, it has become more common for several of our judges to remand at the time of sentencing. We ask that not be the case here. Among them, self-surrender saves limited government resources involving the housing, transportation, and, now with Covid 19 potential infection in an institution with a high infection rate. Moreover, and most importantly, the Bureau of Prisons favorably credits self-surrender when calculating/determining a defendant’s ‘security classification’ and institutional designation. See **Bureau of Prisons**,

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Program Statement, Number P5100.08, eff. 9/12/2006, entitled *Inmate Security Designation and Custody Classification*, Chap. 4, p. 5 - 6. We submit, remand upon sentence is not warranted nor necessary here; and will negatively impact the BOP's classification/designation process increasing **Guillaume's** security classification and potentially limiting program(s) eligibility within the Bureau of Prisons.

V. Conclusion

14. Counsel will have further and additional remarks at the time of sentencing.

Dated: November 25, 2021
Miami, Florida

Respectfully submitted,

LEONARD A. SANDS, Esquire
(Fla. No. 0257583)
leonardsands@att.net
SANDS & MOSKOWITZ, P.A.
Law Offices at Brickell Bay
2333 Brickell Avenue, Suite A-1
Miami, Florida 33129-2497
Telephone: (305) 285-1500
Facsimile: (305) 285-0699
Cell: (786) 202-1500
Counsel for **Frantz Guillaume, Jr.**

/ s / **Leonard A. Sands**, Esquire

LEONARD A. SANDS, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically via the Court's **CM/ECF** system on November 27, 2021, and thereby upon all parties and attorneys of record.

/ s / Leonard A. Sands, Esquire

LEONARD A. SANDS, Esquire