

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA, CASE NO.: 21-20156-CR-KING/BECERRA

Plaintiff,

v.

JUSTIN ETWARU,

Defendant(s).

DEFENSE SENTENCING MEMORANDUM

Before the court is Justin Etwaru, a twenty-six-year-old young man who has no prior criminal record. He graduated college in in 2020. He resided with his parents and sister until recently and now lives on his own. He attended college in 2016 but interrupted his education to move to New York in 2016. He returned to Florida in 2018 and enrolled in college again. He recently graduated college in 2020 with a degree in hospitality management.

Mr. Etwaru worked at his uncle's restaurant in New York from 2016 to 2018 and enjoyed learning all aspects of that business. That was the impetus for his return to Florida to complete his college education in hospitality management. While still in college he met Mr. Kralievits. Mr. Kralievits offered to allow Mr. Etwaru to buy a 20% interest in Nostimo Restaurant in 2019, the business referred to as Business "A" in the presentence report. In 2019 Nostimo was still undergoing construction for opening. It opened in December of 2019. Mr. Etwaru borrowed the \$80,000.00 for that purchase from his parents with the understanding he would be working at the business in whatever capacity necessary to finish the construction and continue operating the restaurant once opened for business.

Because he was only a 20% owner, Mr. Kravielits was the managing partner for all business decisions. Mr. Kravielits owned another restaurant and food business prior to opening Nostimo. Mr. Kravielits controlled all the financial and management operations for the business. Due to Mr. Etwaru's education and computer knowledge, he designated Mr. Etwaru to handle the daily inventory control and online payroll and purchasing responsibilities. In addition, Mr. Etwaru worked inside the restaurant in any capacity needed.

The business was operating for less than 3 months when the covid pandemic shuttered all restaurants in 2020. The restaurant was unable to survive due to the immediate loss of almost all business. They had to let go most of their employees and tried to survive on the limited take-out business like most restaurants.

It was during that time Mr. Kravielits instructed Mr. Etwaru to apply for a PPP loan. Mr. Etwaru attempted to complete the application numerous times with no success. Mr. Kravielits had a previous friendship with co-conspirator David Hines. Mr. Hines had participated in obtaining numerous fraudulent PPP loans and personally enriched himself making extravagant purchases of expensive automobiles and other personal property. Mr. Hines had previously obtained a large fraudulent PPP loan for Mr. Kravielits's other restaurant. Mr. Kravielits used some of the proceeds from that loan for his personal gain.

Mr. Kravielits introduced Mr. Hines to Mr. Etwaru to assist him in the loan application for Nostimo. Mr. Etwaru was aware it contained false information about their business history. The amount of \$57,000.00 was the amount Nostimo needed to remain in business. There were no excess funds requested as in all Mr. Hines's other ventures. Mr. Etwaru intended on repaying the loan once the business became operational again. Unlike his co-conspirators, Mr. Etwaru never personally gained from the PPP loan funds for Nostimo.

Because Mr. Etwaru only had a 20% interest in the company Mr. Kravielits controlled the operations of the business after obtaining the loan. Mr. Kravielits maintained complete control of the banking for the company. After the agents contacted Mr. Etwaru regarding the investigation of the loan, Mr. Kravielits did not allow Mr. Etwaru to access the business bank account. Mr. Etwaru believed the funds from the loan had only been used to pay salary and food costs for the business. He understood there was still a majority of the loan funds remaining in the bank account and believed they would be returned to the Government as restitution. During the discovery process it was revealed Mr. Kravielits withdrew all funds from the account and deposited them into his other business account. That included the remaining funds from the loan.

Mr. Etwaru's guideline score places him at the offense level 12 with zero criminal history points. That places him at the bottom of Zone C. If he were granted a departure downward, he would be in Zone B and could be sentenced to supervision without any incarceration. Mr. Etwaru cooperated with the Government immediately upon being contacted by the agents. He did not wait for an arrest or indictment. There is a provision in the plea agreement the Government may file a 5K1.1 request for a sentence reduction. It is expected that will occur which will permit the Court to depart downward and sentence him to a period of supervision in lieu of a sentence of imprisonment.

The sentencing factors enumerated in 18 U.S.C. 3553 can be satisfied by this Court placing the Defendant on house arrest or probation. That sentence would certainly serve to punish Mr. Etwaru as well as promoting respect for the law. Mr. Etwaru understands the severity of this offense and has shown respect for the law by immediately cooperating with the Government after contact by the agents. He abided by all pretrial conditions and has shown true remorse for his

conduct. Mr. Etwaru requests this Court grant the request for a downward departure pursuant to 5K1.1 and sentence him to a term of supervision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing will be provided to all counsel of record via the Court's CM/ECF system on this 17th day of August 2021.

/s/ Hilliard E. Moldof
Hilliard E. Moldof, Esquire
Hilliard E. Moldof, P.A.
1311 SE 2nd Avenue
Ft. Lauderdale, Florida 33316
Phone: (954) 462-1005
Fax: (954)463-9869
hilliard@moldoflaw.com
Florida Bar No.: 215678