



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

LHE
F. #2020R00617

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 20, 2021

By ECF

The Honorable Diane Gujarati
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Gelpys Joel Peralta-Gutierrez
Criminal Docket No. 21-149 (DG)

Dear Judge Brown:

The government respectfully submits this letter in advance of the sentencing hearing in the above-captioned case, which is scheduled for September 27, 2021. For the reasons set forth in this letter, the government respectfully submits that a custodial sentence is necessary to achieve the goals of 18 U.S.C. § 3553(a).

I. Factual Background

The defendant's conviction arose out of a scheme to fraudulently obtain a Paycheck Protection Program ("PPP") loan by misrepresenting material information regarding his business, J Films HD ("J Films"). Presentence Investigation Report dated August 20, 2021 ("PSR") ¶ 7.

The PPP is a component of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), enacted on March 29, 2020 to provide economic relief to individuals and businesses suffering economic effects of the coronavirus pandemic. PSR ¶ 4. The PPP allowed qualified businesses to receive unsecured loans issued by private lenders but guaranteed by the United States Small Business Administration (the "SBA"). Id. ¶ 5. The loans were required to be spent on specific expenses, such as payroll, interest on mortgages, rent and utilities. Id. PPP loans were forgivable if, inter alia, the proceeds were spent on qualifying expenses, spent within a certain period of time, and a certain proportion were spent on payroll. Id. To apply for a PPP loan, a business was required to provide information regarding its number of employees and average payroll expenses. Id. Business applicants were also required to supply a Form W-3 Transmittal of Wage and Tax Statement. Id.

On June 22, 2020, the defendant submitted an application for a PPP loan on behalf of his company, J Films, seeking a loan in the amount of \$1,747,028. PSR ¶ 7. In the loan application, the defendant represented that: (1) J Films had 62 employees and a total average monthly payroll of \$698,812, and (2) J Films was located at 41-18 Vernon Boulevard, Unit 4B in Long Island City, New York (the “Vernon Boulevard Address”), and operated in New York. Id., see also Complaint, ECF Docket No. 1, ¶ 9. In connection with the online submission of the J Films PPP Application, an undated 2019 IRS Form W-3 Wage & Tax Statement was provided that reported that the total wages, tips and other compensation paid to employees for 2019 was \$8,385,739.12. PSR ¶ 7.

This information was false. The defendant had submitted a different loan application on behalf of his business as part of the Economic Injury Disaster Loan (“EIDL”) program, which is also operated by the SBA, in which he stated that J Films had total revenues of approximately \$50,000 and one employee—the defendant. PSR ¶ 7. The New York State Department of Labor reported no record of payroll or unemployment insurance payments made by J Films. Id. Moreover, the Vernon Boulevard Address where J Films purportedly operated is a public housing apartment. Id.

On June 22, 2020, Kabbage, one of the private lenders that issues PPP loans, issued J Films a PPP loan in the amount of \$1,747,028, and paid the proceeds of the loan into a bank account in the name of J Films. PSR ¶ 8. On July 7, 2020, the defendant opened a cryptocurrency account with Coinbase, and on July 9, 2020, transferred \$25,000 into that account. Id.

In addition to the loan application described above, the defendant also recruited another participant to the scheme, who fraudulently obtained a PPP Loan in the amount of approximately \$1,970,000. PSR ¶ 9.

Following his arrest on February 25, 2021, the defendant acknowledged working with another individual to submit the PPP loan application. PSR ¶ 10. The defendant further acknowledged paying that individual approximately \$180,000 for his assistance with submitting the PPP loan application. Id. That individual has been charged in the Southern District of Florida with participating in another fraudulent PPP loan scheme.

II. The Defendant’s Plea

On June 30, 2021, the defendant pled guilty to the sole count of the indictment, charging him with wire fraud conspiracy. In the plea agreement, the government had estimated the defendant’s offense level under the United States Sentencing Guidelines (the “U.S.S.G.”) to be 25, based upon a base offense level of seven, as provided by U.S.S.G. § 2B1.1(a)(1), plus an 18-level enhancement for the amount of intended loss, as provided by U.S.S.G. § 2B1.1(b)(1)(J). After a three-level reduction for acceptance of responsibility, the government forecast an adjusted offense level of 22. This yielded an estimated Guidelines sentencing range of 41-51 months.

III. The Presentence Report

In the PSR, the United States Department of Probation for the Eastern District of New York (“Probation”) set forth the following Guidelines calculation:

Base Offense Level (§2B1.1)	7
Plus: Loss in Excess of \$3,500,000 (§2B1.1(b)(1)(J))	+18
Plus: Over \$1,000,000 in gross receipts from a financial institution (§2B1.1(b)(17)(A))	+2
Total:	27

Deducting three levels for acceptance of responsibility, the PSR calculates a total adjusted offense level of 24. PSR ¶ 26. Probation further concluded that the defendant was in Criminal History Category I. Based upon that calculation, the PSR provides a Guidelines sentencing range of 51-63 months. Id. ¶ 59.

On September 7, 2021, the government submitted a letter to Probation objecting to the Guidelines calculation to the extent it included the 2-level enhancement for obtaining over \$1,000,000 in gross receipts from a financial institution. Citing United States v. Huggins, 844 F.3d 118, 122 (2d Cir. 2016), the government submitted that the enhancement should not apply because the defendant’s conduct never actually put the lender, Kabbage, at risk of loss, given that the loans were guaranteed by the SBA. Probation disagreed because, in its view, the case was similar to a typical loan fraud case, and on the ground that under the definitions referred to in the Guideline, the SBA is a financial institution. Given that the SBA is considered a “financial institution,” for the purposes of this Guideline, the government concedes that the PSR is technically correct. The government maintains, however, that the inclusion of this enhancement overstates the seriousness of the offense, because the enhancement was designed to penalize conduct that threatens our financial system by fraudulently obtaining money from financial institutions—the defendant’s conduct, which obtained money pursuant to a allocated, guaranteed government loan program, does not seem to fall within that scope.

IV. Sentencing Under 18 U.S.C. § 3553(a)

The government submits that the Court should impose a custodial sentence no longer than the range set forth in the plea agreement, or 41-51 months, because such a sentence is sufficient, but not greater than necessary, to “reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A). A custodial sentence will also further the aims of specific and general deterrence.

The defendant’s offense was serious. He took advantage of a government program designed to help those suffering as a consequence of a national emergency for his own personal gain. Moreover, his application for a PPP Loan did not merely exaggerate the payroll costs of his company, it was a gratuitous lie clearly designed to steal as much money from the government as the defendant thought he could get a way with. The defendant also recruited another participant into the scheme, which reflects that his behavior was intentional and targeted, and not a fluke or

