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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ROBERT BENLEVI,

16 Defendant.  
17  
18

No. 2:21-CR-00246-PA

GOVERNMENT'S SENTENCING MEMORANDUM  
REGARDING DEFENDANT ROBERT BENLEVI

Date: June 27, 2022  
Time: 8:30 A.m.

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20 Plaintiff United States of America, by and through its counsel  
21 of record, the Fraud Section of the Criminal Division of the U.S.  
22 Department of Justice, hereby files its Sentencing Memorandum with  
23 respect to Defendant Robert Benlevi.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 28, 2022, a jury found defendant Robert Benlevi  
4 ("defendant") guilty of six counts of bank fraud, in violation of  
5 Title 18, United States Code, Section 1344, six counts of false  
6 statements to a financial institution, in violation of Title 18,  
7 United States Code, Section 1014, and four counts of conducting  
8 monetary transactions in criminally derived property over \$10,000, in  
9 violation of Title 18, United States Code, Section 1957, as charged  
10 in a May 18, 2021 indictment. (Dkt. 1, 95.) The United States  
11 Probation Office ("USPO") issued its Presentence Investigation Report  
12 ("PSR") on June 13, 2022. (Dkt. 98.) Defendant's sentencing is  
13 scheduled for June 27, 2022, at 8:30 a.m.

14 For the reasons set forth below, the government respectfully  
15 submits that the Court should find that the total offense level for  
16 defendant is 30. Based on the finding in the PSR that defendant is  
17 in Criminal History Category IV, the resulting advisory guidelines  
18 range is 135-168 months. The government submits that a sentence of  
19 135 months, a five-year period of supervised release, and a mandatory  
20 special assessment of \$1,600, along with a restitution order of  
21 \$3,000,000 is sufficient, but not greater than necessary, to provide  
22 just punishment in this case, promote respect for the law, and deter  
23 defendant and others from committing similar crimes in the future.

24 **II. OFFENSE CONDUCT**

25 The Court is no doubt familiar with the facts of this case,  
26 having presided over the trial of defendant in March 2022.

27 According to the evidence, defendant owned and controlled  
28 multiple corporate entities registered in California, including the

1 following: Ultra+ Health, LLC; 4HEALTH WONDERS, LLC; JOYOUS-HEALTH4U,  
2 LLC; 1STELLAR HEALTH, LLC; BESTWAYS2 HEALTH, LLC; 4STARS COLLECTION,  
3 LLC; 2GR8 HEALTH, LLC; and TOPSTARS HEALTH, LLC (collectively, the  
4 "Benlevi-controlled entities"). California Secretary of State  
5 records identify defendant as the organizer for each of the Benlevi-  
6 controlled entities. (Gov. Exs. 101-108<sup>1</sup>.) Between April 28, 2020,  
7 and May 20, 2020, defendant submitted 27 applications for loans from  
8 the Small Business Administration's ("SBA") Paycheck Protection  
9 Program ("PPP") on behalf of various Benlevi-controlled entities to  
10 Wells Fargo, U.S. Bank, WebBank (via PayPal), and Bank of America  
11 (identified in the indictment as Banks A, B, C, and D, respectively).  
12 (Gov. Exs. 201-228.)

13 Each of the 27 applications submitted by defendant sought  
14 \$1 million in PPP loans. (Ex. A [Gov. Ex. 601].) Further, each of  
15 the 27 applications stated the submitting company had 100 employees  
16 and average monthly payroll of \$400,000. (Ex. B [Gov. Exs. 602-  
17 605].) Many of the applications also included 2019 IRS Form 940s  
18 stating that each company had \$4.8 million in payments to employees  
19 in 2019 and IRS Form 941s listing 2020 quarterly employee wages of  
20 \$1.2 million. (Id.) On each of the 27 applications, defendant  
21 certified multiple times that the loan funds would be used to retain  
22 workers and maintain payroll, that the applicant company was in  
23 operation with employees on February 15, 2020, and that all  
24 information and supporting documents in the applications were true  
25 and accurate in all material respects. (Gov. Exs. 201-228.)  
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<sup>1</sup> "Gov. Ex." Refers to the government trial exhibit number.

1 As demonstrated by the evidence introduced at trial, the  
2 information that defendant submitted in the 27 loan applications was  
3 false and fraudulent and the IRS documentation that the defendant  
4 included was completely fabricated. California Employment  
5 Development Department ("EDD") witness Sonny Pilanthnakorn testified  
6 at trial that none of the Benlevi-controlled entities paid any  
7 payroll taxes or payroll expenses between the years 2012 through  
8 2021. (Ex. C [3.25.2022 A.M. Trial Tr.] at 126-127.<sup>2</sup>) IRS witness  
9 Renee McClain testified at trial that none of the Benlevi-controlled  
10 entities filed any IRS Form 940s or Form 941s and that the IRS tax  
11 forms the companies did file—the IRS Form 1120S—reflected the  
12 companies paid no salary or wages in 2019. (Ex. C at 88-90.)  
13 Federal Deposit Insurance Corporation ("FDIC") witness Erin Bourassa  
14 testified at trial that, after analyzing over 5,000 pages of banking  
15 documentation for accounts controlled by the defendant both in his  
16 name and the names of the Benlevi-controlled entities, there was no  
17 history of any payroll or payments to employees from any of any of  
18 the 45 bank accounts analyzed. (Ex. C at 60-69.)

19 Further evidence presented at trial, including testimony by Bank  
20 of America Witness Christopher Yuasa and SBA witness Gil Hopenstand,  
21 proved that the defendant's false statements were material to the  
22 lenders and, had Bank of America and SBA known that defendant's  
23 companies had no payroll and no employees, the companies would not  
24 have been eligible for the \$3 million in PPP funds that defendant  
25 ultimately received. (Ex. C at 29-35, 96-107.)  
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28 <sup>2</sup> The final trial transcripts are not yet available, so the  
government references the "rough" transcript from the March 23, 2022  
a.m. session which is attached here as Exhibit C.

**A. Presentence Investigation Report**

In the PSR, the USPO calculated defendant's total offense level as 34, with a Criminal History Category IV, as follows:

Base Offense Level:	7	U.S.S.G. § 2B1.1(a) (1)
Intended Loss (More than \$25 million but less than \$65 million):	22	U.S.S.G. § 2B1.1(b) (1) (L)
Obtained >\$1m from Bank	2	U.S.S.G. § 2B1.1(b) (17) (A)
Sophisticated Means	2	U.S.S.G. § 2B1.1(b) (10)
Money Laundering	1	U.S.S.G. § 2S1.1(b) (2) (A)

Accordingly, the USPO's calculation of a total offense level of 34 results in a Guidelines range of 210 to 262 months.

**B. Government's Calculation**

The United States submits that the Guidelines factors listed below apply to the defendant:

Base Offense Level:	7	U.S.S.G. § 2B1.1(a) (1)
Intended Loss (More than \$9.5 million but less than \$25 million):	20	U.S.S.G. § 2B1.1(b) (1) (K)
Obtained >\$1m from Bank	2	U.S.S.G. § 2B1.1(b) (17) (A)
Money Laundering	1	U.S.S.G. § 2S1.1(b) (2) (A)

Accordingly, the United States calculates the defendant's offense level to be 30, which, with a Criminal History Category IV, results in a Guidelines range of 135 to 168 months.

**C. Applicable Guidelines Provisions**

**1. Intended Loss**

The government respectfully disagrees with the PSR and submits that the intended loss in this case is approximately \$21 million. The Guidelines provide that loss is the greater of actual loss or intended loss. U.S.S.G. § 2B1.1(b) (1) (L) Application Note 3. As

shown in the table below, defendant submitted PPP loan applications to Bank of America, Wells Fargo, and U.S. Bank on either April 28 or April 29, 2020. In or around May 1, 2020, U.S. Bank notified defendant that he was ineligible for the seven PPP loans he applied for through seven of the Benlevi-controlled companies. Then on May 20, 2020, after defendant was already aware that the loan applications for the seven U.S. Bank PPP loans had been denied, defendant applied for the remaining six loans through PayPal/WebBank.

Therefore, at the time defendant applied for the first 21 loans on April 28 and April 29, 2020, the intended loss was \$21 million. After seven of those loans were denied on May 1, 2020, defendant thereafter applied to PayPal/WebBank for six additional loans on May 20, 2020, resulting in an intended loss of \$20 million since defendant was aware at that time his seven previous loan applications to U.S. Bank were already denied. Given the timing of those applications, the government conservatively calculates the intended loss to be \$21 million, resulting in a 20-level enhancement for intended loss more than \$9.5 million but less than \$25 million, pursuant to U.S.S.G. § 2B1.1(b)(1)(K).<sup>3</sup>

Bank (# of applications)	Application Date
Bank of America (6)	4/28/2020
Wells Fargo (8)	4/28/2020
U.S. Bank (7)	4/29/2020 <b>(denied 5/1/2020)</b>
PayPal/WebBank (6)	5/20/2020

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<sup>3</sup> Of note, whether the Court concludes the intended loss under this methodology is \$20 million or \$21 million, the loss enhancement would not be affected.

1                   2.    Gross Receipts Enhancement

2           The government agrees with the USPO's determination in the PSR  
3 that a 2-level enhancement applies for deriving more than \$1 million  
4 in gross receipts from a financial institution as a result of the  
5 offense, pursuant to U.S.S.G. § 2B1.1(b)(17)(A). (PSR ¶¶ 32-34.)  
6 Here, defendant fraudulently obtained \$3 million from Bank of  
7 America, a financial institution, through his applications for the  
8 Benlevi-controlled entities, and thus the 2-level enhancement should  
9 be applied.

10                   3.    Sophisticated Means

11           While the government understands the reasoning of the USPO and  
12 initially recommended to the USPO that the sophisticated means  
13 enhancement be applied, upon further reflection, as well as review of  
14 applicable caselaw and the commentary to the United States Sentencing  
15 Guidelines, the government respectfully declines to seek this  
16 enhancement given the facts of this case.

17                   4.    Money Laundering Enhancement

18           The government agrees with the USPO's determination in the PSR  
19 that a 1-level enhancement applies, pursuant to U.S.S.G.  
20 § 2S1.1(b)(2)(A), for a conviction under Title 18, United States  
21 Code, Section 1957. Here, defendant was convicted of four counts  
22 (Counts 13-16) of conducting monetary transactions in criminally  
23 derived property over \$10,000, in violation of Title 18, United  
24 States Code, Section 1957 and thus the 1-level enhancement should be  
25 applied.

26 **III. RESTITUTION**

27           The government respectfully requests that the Court order  
28 defendant to pay restitution to Bank of America in the amount of



1 \$3,000,000,<sup>4</sup> which was the amount that Bank of America paid the  
2 Benlevi-controlled entities based on the defendant's fraudulent PPP  
3 loan applications. This is the amount recommended by the USPO in the  
4 PSR, pursuant to Title 18, United States Code, Section 3663A. (PSR  
5 ¶¶ 97-99.)

#### 6 **IV. ANALYSIS OF THE SECTION 3553(a) FACTORS**

7 The federal statute governing sentencing requires district  
8 courts to take the applicable Guidelines range into consideration  
9 when sentencing, along with other sentencing factors enumerated by  
10 Congress. See 18 U.S.C. § 3553; United States v. Booker, 543 U.S.  
11 220, 264 (2005) ("The district courts, while not bound to apply the  
12 Guidelines, must consult those Guidelines and take them into account  
13 when sentencing."). When the Court determines a sentence, "the  
14 Guidelines are the starting point and the initial benchmark." United  
15 States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008) (en banc)  
16 (quotations omitted). Once the Court calculates defendant's  
17 Guidelines range, it must then consider the factors set forth in 18  
18 U.S.C. § 3553(a) to decide if they support the sentence recommended  
19 by Probation and the parties. Id. These factors include, among  
20 others, (a) the nature and circumstances of defendant's offense and  
21 his history and characteristics; (b) the need for the sentence  
22 contemplated to, among other things, (i) reflect the seriousness of  
23 the offense, (ii) promote respect for the law and provide just  
24 punishment for the offense, (iii) afford adequate deterrence to

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27 <sup>4</sup> The total amount provided to defendant by Bank of America based on  
28 his fraudulent PPP loan applications was \$3,000,000. The FBI seized  
\$2,876,666.37 from bank accounts controlled by defendant. These  
funds are in the process of being returned to Bank of America,  
resulting in a loss of \$123,333, but have not yet been returned.

1 criminal conduct, and (iv) protect the public from further crimes of  
2 defendant; and (c) the need to provide restitution to the victim of  
3 defendant's offenses.

4 The government submits that the Section 3553(a) factors support  
5 a sentence of 135 months in custody for defendant. Such a sentence  
6 would be "sufficient, but not greater than necessary" to comply with  
7 the purposes enumerated in 18 U.S.C. § 3553(a)(2), discussed further  
8 below.

9 **A. Nature and Circumstances of the Offense**

10 To try to alleviate the significant impact of the COVID-19  
11 pandemic on businesses, the federal government created the PPP to  
12 help small businesses financially survive the pandemic. The funds  
13 were intended to keep business owners and their employees above water  
14 during a time of severe economic disruption. Due to the nature of  
15 the program and the immediacy of the financial danger resulting from  
16 the pandemic, the PPP loans did not require the same vetting and due  
17 diligence as a typical business loan—a feature that was necessary to  
18 quickly get the funds to the small businesses and employees that  
19 needed them most. Instead, the program depended on the honesty of  
20 the applicants. Defendant turned that feature to his advantage and  
21 lied, multiple times, in 27 fraudulent PPP applications for  
22 \$1 million each. Because banks were relying on applicants to tell  
23 the truth in order to get the PPP relief money out to those who  
24 needed it as quickly as possible, the defendant's obtained \$3  
25 million dollars based on his lies.

26 **B. History and Characteristics of the Defendant**

27 Defendant is 53 years old, and lives with and is the sole  
28 caregiver for his mother. (PSR ¶ 61.) Defendant was born in Tehran,

1 Iran, and reportedly came to the United States as a refugee with his  
2 mother and sister in 1985. (Id. ¶ 63.) Defendant reportedly has a  
3 Bachelor of Science in Pharmacy and is a trained pharmacist. (Id.  
4 ¶¶ 74-75.)

5 Defendant has a substantial criminal history that results in a  
6 Criminal History Category IV, including convictions for theft,  
7 forgery, entering a noncommercial dwelling, as well as multiple  
8 probation violations. (Id. ¶¶ 45-54.)

9 **C. Deterrence, Promoting Respect for the Law, and Punishing**  
10 **Defendant for Her Crime**

11 The government believes a serious sentence in this case is  
12 necessary for both specific and general deterrence. The defendant's  
13 criminal record indicates that he has been willing to break the law  
14 routinely, even if for matters less severe than the instant offenses.  
15 That attitude about the law appears to have carried over to these  
16 offenses, where he was willing to take advantage of vulnerabilities  
17 in the PPP loan program.

18 The sentence in this case should send a clear message to the  
19 defendant and other offenders that there are serious consequences for  
20 defrauding government emergency relief programs. As stated by the  
21 drafters of 18 U.S.C. § 3553(a), general deterrence is particularly  
22 important for white collar criminals in order to dissuade actors that  
23 small fines or low sentences can be dismissed as simply a "cost of  
24 doing business." S. Rep. No. 98-225, at 76 (1983), as reprinted in  
25 1984 U.S.C.C.A.N. 3182, 3259. A significant sentence of  
26 incarceration is necessary to affect that calculus so that others  
27 realize that the "risk" is too high—that they will pay a significant  
28 cost if they are caught. Actors like the defendant who seek to

1 defraud these programs make it more difficult for administrators of  
2 government and other relief programs to get aid to individuals who  
3 qualify for and need it. The defendant's sentence should serve as a  
4 warning and deterrent to others inclined to exploit similar relief  
5 programs.

6 **V. CONCLUSION**

7 For the foregoing reasons, the government respectfully requests  
8 that the Court: (1) find defendant's total offense level is 30;  
9 (2) applying a Criminal History Category IV, sentence defendant at  
10 the low end of the advisory Guidelines range for a sentence of 135  
11 months in custody, along with a five-year period of supervised  
12 release, and a mandatory special assessment of \$1,600; and (3) order  
13 defendant to pay restitution to Bank of America in the amount of  
14 \$3,000,000.