UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	No. 3:09 Cr. 260 (JCH)
v.	:	
	:	
OKPAKO MIKE DIAMREYAN,	:	
	:	April 30, 2010
Defendant.	:	

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

For defendant Okpako Mike Diamreyan, America is a land of opportunity -- opportunity to commit fraud. We are sheep, waiting to be shorn; we are "mugu."*

The defendant began committing advance-fee fraud in Nigeria and Ghana no later than 2004. In 2008, he came to the United States, where he married a young woman who supported him by working two jobs and going to school at night. Instead of taking advantage of this opportunity to start a new life, the defendant continued participating in the fraud scheme and, in fact, used his presence in the United States to further the fraud.

The defendant made no effort to become a productive member of society; instead, he hoped to reap a fortune in crime. As the defendant told an accomplice: "i want to forget america and come back home . . . once i take like 1m or half m i don

* The term "mugu" is used throughout the defendant's email messages and Internet chats to refer to victims. In Nigerian pidgin, it means "fool." See http://en. wikipedia.org/wiki/Mugu (last visited April 28, 2010).

forget this place." See Declaration of Christopher Mehring, dated Apr. 30, 2010 ("Mehring Decl."), at B-13; see also id. at B-16 ("i want take 1 m or half m . . . 1m dollar").

The defendant's crimes demand a substantial punishment, one that fully reflects the suffering caused by the defendant to his many victims.

Background

The defendant is a Nigerian citizen who immigrated to the United States on May 30, 2008. See Pre-sentence Report, dated Apr. 21, 2010 ("PSR") ¶¶ 42 & 65. He was arrested on August 27, 2009 and convicted by a jury of three counts of wire fraud on February 16, 2010.

A. The Offense Conduct

1. The Advance-Fee Fraud Scheme

Starting no later than August 2004, and continuing until his arrest in August 2009, the defendant participated in an advance-fee fraud scheme. The scheme involved: (a) sending email messages to potential victims about large sums of money or other assets; (b) making false and fraudulent representations about advance fees that the victims had to pay to obtain the money or assets; (c) posing as government or bank officials to persuade the victims to pay the advance fees; (d) providing false and fraudulent documents to the victims; and (e) causing the

victims to transfer money to pay the advance fees, usually by Western Union or MoneyGram.

The defendant was involved in all aspects of the scheme. His email account, "milkymyx@yahoo.com," contains numerous solicitation emails, sent to induce potential victims to respond. See, e.g., Mehring Decl. at A-1 & A-4. In one such email, the defendant claimed to be in a refugee camp in Ghana, trying to move a consignment worth $23.4 million out of the country. See id. at A-4. The defendant offered 20% of the money in return. See id.

While most people receiving such a solicitation would not respond, the scheme worked by sending the message to large numbers of potential victims via the Internet, in order to find the few who were sufficiently gullible, sufficiently desperate, or even just sufficiently curious to respond. Again, this was seen in the defendant's email account, where nearly identical solicitation emails were sent to many people; it was also captured in an Internet chat between the defendant and an accomplice, in which the defendant instructed his accomplice to send an email message to multiple recipients using "bcc" (blind carbon copy). See id. at B-3 ("you fit send 10 10 with bcc").

The scheme also worked by repeatedly fleecing victims who were known to be susceptible to such solicitations. The defendant and his accomplices were constantly exchanging

information about old victims (whom they referred to as "old work"). See, e.g., id. at A-17 (email message from defendant to accomplice with subject line "Old work" that contains information about Pandelos, Bender, Victim Nos. 42 and 55, and many others); see also id. at A-6 to A-7 (trading information about "magas"); id. at A-9 to A-10 (forwarding victim information from one accomplice to another with instruction to "try this ones first").

Once a potential victim responded to the scam solicitation, the defendant and his accomplices used phony documents and false identities to persuade the victim that the promised rewards really existed. They also exerted considerable pressure on the potential victim, both by email and on the telephone. For example, telephone records show that the defendant called Mitchell Bender nearly 1,200 times during a two year period. See id. ¶ 23. To avoid the defendant and his accomplices, victims have had to disconnect their phone lines and Internet service. See, e.g., Trial Transcript, dated Feb. 11, 2010 ("Tr."), at 131.

In 2008, the defendant came to the United States. Not only did the defendant continue to participate in the fraud scheme, he actually used his presence in the United States to perpetuate the scheme. For example, the defendant offered to pick up money anywhere in the United States on behalf of an accomplice:

> [accomplice]: so if any mugu send money go anywhere for states u fit pick am eh
>
> milkymyx: like i have explain to u before
> milkymyx: yes
> milkymyx: and it has to be in money gram
> milkymyx: and the amount have to be very high
> milkymyx: from 1600 upward

Id. at B-7. Allowing accomplices to direct victim money within the United States served two purposes: first, it allowed the scheme to be more realistic, so that the victim could be led to believe that a purported consignment had actually reached the United States (where it would undoubtedly then be stuck until a fee was paid to somebody in the United States); second, it allowed the defendant and his accomplices to defraud individuals who were less wary of sending money domestically than overseas.

The defendant also supplied communication equipment and services to his accomplices that were evidently not available to them overseas. For example, the defendant provided one accomplice with a MagicJack, i.e., a device for making telephone calls over the Internet, "so that you . . . call america any how as u likke for free." Id. at B-24. The defendant provided another accomplice with the ability to make it appear to the victim on a telephone call that the accomplice was in the United States: "when mugu call u e go be like say you dey america." Id. at B-34. Indeed, the defendant offered to make it appear as if the accomplice was "any where [in] the world," an obviously valuable capability given the nature of the scheme. See id. at

B-21 (stating to accomplice that he will call victim's cell phone to show victim he is in United States).

2. The Jointly Undertaken Criminal Activity

As already indicated, the defendant had many accomplices in executing the scheme to defraud. For the scheme to be successful, victims had to be given a realistic impression that there were people around the world who were trying to move a consignment or reward from one place to another. Therefore, the defendant relied on accomplices throughout his involvement in the scheme. See, e.g., id. at A-2 (email dated Aug. 11, 20004 in which defendant exhorts accomplice to "work with this [victim] . . . to believe what even i tell him he should follow it accordily"); see also id. at A-5 ("i want you . . . to work the same on the woman she is stuborn is time for her to pay me money but she is hesitating please i want you to also work hard on her").

The defendant and his accomplices constantly shared information about the victims of the scheme, in order to present a consistent story in their dealings with each victim. This can be seen in the defendant's emails, see, e.g., id. at A-12 (email from defendant to accomplice with subject line "details of the Mugu"), A-14, A-26, A-27, & A-39; as well as his Internet chats, see, e.g., id. at B-21 (getting details from accomplice about what to tell victim) & B-39 (instructing accomplice on what to

tell victim). The defendant and his accomplices also discussed amounts that victims had previously paid. See, e.g., id. at B-18 (discussing "mugu" who previously sent more that $75,000 to London).

Beyond just sharing information, the defendant and his accomplices shared their victims. For example, in one Internet chat, the defendant explicitly gave "fresh work" to an accomplice: "take this fresh work e go pay you." Id. at B-28. The defendant then provided the name and email address of a second victim, saying "fresh work . . . she pay us last year." Id. With respect to a third victim, the defendant wrote: "that guy now work . . . the guy can dey give u 7, 8, 10, 12, k upward . . . big mugu with money." Id. Finally, the defendant asked for victim information in return: "u tell me say u get some for email when u go give me"? Id. The accomplice obliged a short while later, providing the names and telephone numbers of five other victims in the United States. See id.

Although there does not appear to be a strict hierarchy, nor any single leader, among the defendant and his accomplices, the defendant clearly enjoyed a position of responsibility and authority. Two different accomplices referred to him as "chairman." See id. at B-41 ("you be my chairman") & A-39 (referring to defendant as "chairman" in email from accomplice asking defendant to call Victim No. 53). More

concretely, there were instances where the defendant gave specific instructions to an accomplice on what to do. See, e.g., id. at B-3 (instructing accomplice on sending emails); id. at B-30 (instructing accomplice to create fraudulent document); id. at B-32 (instructing accomplice to call victim). There was even an occasion when the defendant, immediately before his return visit to Ghana, instructed an accomplice to clean his room, wash the windows and sheets, and clean the refrigerator. See id. at B-26.

B. Impact of the Offense on Victims

For the purpose of computing a Guidelines offense level, sixty-seven victims have been identified from the United States and around the world. See Mehring Decl. ¶¶ 15-170. Many of the victims have suffered losses measured in the hundreds of thousands of dollars.

The victims have suffered more than pecuniary loss; they have suffered injury to their health, see id. at C-1; emotional well-being, see id. at C-5 & C-6; and financial security, see id. at C-1 & C-5. Victims have also reported devastating damage to their personal relationships: "After some 63 years of marriage [my wife] is ready to leave me and has even threatened suicide." Id. at C-13.

C. Background of the Defendant

The defendant has reported a difficult childhood in Nigeria. See PSR ¶¶ 34-35 (describing conflicts with half-

siblings). From the age of 12, the defendant lived with an uncle. See PSR ¶ 36. In addition to going to school, where he played soccer and sang in the choir, the defendant helped with the farming. See PSR ¶ 37.

At the age of 20, the defendant began attending a nearby university. See PSR ¶ 38. He was homeless for a period, with no financial resources. See id. He left the university in 2004. See PSR ¶ 50. He immigrated to the United States on May 30, 2008, and he married Martine Janvier on June 19, 2008. See PSR ¶ 42.

The defendant reported the following employment in Nigeria: agricultural work, bricklaying, selling clothes and household items, cleaning, and begging on the streets. See PSR ¶¶ 39 & 41. The defendant reported the following employment in the United States: working at a library and shoveling snow. See PSR ¶ 51.

There is nothing in the defendant's background to explain why people from the United States and around the world were sending him money -- except for fraud.

ARGUMENT

I. The Guidelines Recommend a Term of 151 to 188 Months' Imprisonment

The Government respectfully submits that the following Guidelines computation applies in this case:

Base offense level, § 2B1.1(a)(1)	7
Loss amount, § 2B1.1(b)(1)(I)	+16
Number of victims, § 2B1.1(b)(2)(B)	+ 4
Substantial part of scheme committed overseas, § 2B1.1(b)(9)(B)	+ 2
Vulnerable victims, § 3A1.1(b)(1)	+ 2
Leadership role, § 3B1.1(b)	+ 3
TOTAL:	34

The above computation is identical to the Guidelines calculation in the Pre-sentence Report, except for the inclusion of an upward adjustment for vulnerable victims. See PSR ¶¶ 19-29. Based on a criminal history category of I, the Sentencing Guidelines recommend a term of imprisonment of 151 to 188 months.

A. The Loss from the Offense Exceeded $1,000,000

1. Applicable Law

Under the Sentencing Guidelines, the defendant is responsible for the "actual loss" resulting from his offense, i.e., for "reasonably foreseeable pecuniary harm." U.S.S.G. § 2B1.1 n.3(A) (2009).

In determining the actual loss, the relevant conduct includes, in this case: (a) all acts and omissions committed, aided, or abetted by the defendant; and (b) all reasonably foreseeable acts and omissions of others in furtherance of the scheme to defraud. See U.S.S.G. § 1B1.3(a)(1) (2009). Because the offense is "of a character . . . which . . . would require grouping," the relevant conduct also includes all such acts and omissions "that were part of the same course of conduct or common scheme or plan" as the charged conduct. See id. § 1B1.3(a)(2).

In particular, the defendant is responsible for the reasonably foreseeable acts and omissions of his accomplices, even though he was neither charged nor convicted of conspiracy. See id. § 1B1.3(a)(1)(B) (imposing liability for jointly undertaken criminal activity "whether or not charged as a conspiracy"). In this regard, the Court must first determine the scope of the criminal activity the defendant agreed to undertake jointly, i.e., the scope of the conduct and the objectives. See id. § 1B1.3 n.2. In doing so, the Court may consider "any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others." See id.

The requirement of reasonable foreseeability applies only to the acts and omissions of the defendant's accomplices; it does not apply to conduct in which the defendant was personally involved. See U.S.S.G. § 1B1.3(a)(1) & n.2 (2009); United States v. Maaraki, 328 F.3d 73, 75-76 (2d Cir. 2003) (defendant who sold stolen calling card numbers was liable for calls made by purchasers without regard to reasonable foreseeability); see also United States v. Paulino, 873 F.2d 23 (2d Cir. 1989) (defendant who acted as lookout with minimal knowledge of transaction and minimal control over its execution was responsible as aider and abetter for entire quantity of drugs sold).

Once the Government establishes, by a preponderance of the evidence, the existence of jointly undertaken criminal activity, the burden rests on the defendant to prove that the acts or omissions of his accomplices was not reasonably foreseeable to him. See United States v. Martinez-Rios, 143 F.3d 662, 677 (2d Cir. 1998) (citing cases); see also United States v. Firment, 296 F.3d 118, 122 (2d Cir. 2002).

Finally, "[t]he court need only make a reasonable estimate of the loss." U.S.S.G. § 2B1.1 n.3(C) (2009); see United States v. Uddin, 551 F.3d 176, 180 (2d Cir. 2009) ("[T]he court need not establish the loss with precision but rather need only make a reasonable estimate of the loss, given the available information." (internal quotation marks omitted)).

In particular, determining loss is not a merely arithmetical task of adding together the loss from individual transactions; the Court can and should look to the overall pattern of criminal conduct established by the evidence. See United States v. Wilson, 11 F.3d 346, 356 (2d Cir. 1993) ("Even if the specific transactions identified in the record do not total five kilograms, they are merely examples of a course of conduct that continued unabated for an entire year . . . ."); see also U.S.S.G. § 2B1.1 n.3(C)(vi) (2009) (including "scope and duration of offense" as factor that may be considered in determining loss).

Although determining loss may be "no easy task, some estimate must be made for Guidelines' calculation purposes, or perpetrators of fraud would get a windfall." United States v. Rigas, 583 F.3d 108, 120 (2d Cir. 2009) (internal quotation marks omitted).

2. The Loss Exceeded $1,000,000

Starting in August 2004, the defendant indisputably engaged in jointly undertaken criminal activity. As to the scope and objectives of that joint undertaking, the evidence shows that the defendant and his accomplices were using fraudulent email messages, documents, and telephone calls to extract as much money as possible from their victims -- put more bluntly, to take the victims for all they were worth.

Accordingly, the defendant should be held responsible for all losses suffered by all victims of his accomplices, from August 2004 through August 2009, excluding only those losses that the defendant can prove were not reasonably foreseeable to him.

As a practical matter, however, the Government has not identified all of the defendant's accomplices, nor has it identified all of their victims. Instead, the Government offers a more conservative measure of loss in this case: (1) the loss suffered by victims who are known either to have sent money to the defendant or to have some connection to the defendant, where (2) the loss has been documented by third-party records and is

not based solely on the victims' own estimates. Using this more conservative yardstick, the loss in this case is still greater than $1 million. See Mehring Decl. ¶ 8.*

The defendant places mistaken reliance on two cases that deal with securities fraud, United States v. Rutkoske, 506 F.3d 170 (2d Cir. 2007), and United States v. Olis, 429 F.3d 540 (5th Cir. 2005), to argue that there is no evidence that the defendant caused the losses claimed by the Government. The defendant's argument is mistaken, as a matter of fact and as a matter of law.

First, as a factual matter, the victims identified by the Government reported that they were victims of an advance-fee fraud scheme and that they lost money as a result of the scheme. Also, each victim either sent money to the defendant or was connected in some other way to the defendant, who was engaged in advance-fee fraud. Finally, in the context of advance-fee fraud (unlike securities fraud), there is no "innocent" cause for a loss that must be excluded from the loss calculation. Therefore, there is a sufficient basis for the Court to conclude that the

* The defendant complained, by letter dated March 24, 2010, that the Government's loss calculation "far exceeds" any amount contained in the discovery materials or made known at trial. In fact, the Government twice advised the defendant, by email messages dated October 2, 2009 and October 7, 2009, that it expected to claim a loss amount over $1 million.

losses identified by the Government were in fact caused by an advance-fee fraud scheme.

Second, the legal question is not whether the defendant himself caused the loss suffered by each victim, but whether the defendant is responsible for losses caused by his accomplices in the course of jointly undertaken criminal activity. As to that, the defendant should be held responsible under both prongs of U.S.S.G. § 1B1.3(a)(1).

Under § 1B1.3(a)(1)(A) -- concerning acts and omissions committed, aided, or abetted by the defendant -- the defendant should be held responsible because the victims identified by the Government were limited to those victims who sent money to the defendant or were otherwise connected to the defendant. Because of the defendant's direct participation in defrauding those victims, he should be held responsible for the full fraud loss of each victim, regardless of reasonable foreseeability. See, e.g., United States v. Boothe, 994 F.2d 63, 71 (2d Cir. 1993).

Under § 1B1.3(a)(1)(B) -- concerning acts and omissions of accomplices -- the defendant should be held responsible because he cannot carry his burden of disproving reasonable foreseeability. The evidence conclusively demonstrates that the defendant and his accomplices were continually exchanging information about their victims, in order to continue existing scams and to perpetrate new ones. Therefore, it would be

reasonably foreseeable to the defendant that victims would have suffered losses caused by his accomplices, both before the defendant's involvement and after.

Indeed, the defendant expressly intended to clear half a million to a million dollars from participating in the fraud scheme. See Mehring Decl. at B-13 ("once i take like 1m or half m") & B-16 ("i want take 1 m or half m"). The defendant's expressly stated intent not only demonstrates reasonable foreseeability, but actual knowledge by the defendant as to the scope of the criminal enterprise. The defendant intended to clear that amount personally, in a scheme where he knew that many others would be involved and would be entitled to a share of the money. Thus, the defendant plainly understood that he was involved in a scheme where the victims were losing millions of dollars. See also Mehring Decl. ¶ 11 (describing defendant's statement to informant that he and his accomplices made approximately $5 million a year for Nigerian "syndicate").

Finally, as argued previously, the loss claimed by the Government in this case is conservative, because it does not include victims of known accomplices if the victims had no direct contact with the defendant. Accordingly, there is a sufficient evidentiary basis for the Court to find, as a reasonable estimate and by a preponderance of the evidence, that the actual loss was greater than $1 million.

B. There Were At Least 50 Victims in This Case

1. Applicable Law

Under the Sentencing Guidelines, "victim" is defined to mean any person, company, or other entity that "sustained any part of the actual loss," as determined in calculating loss under the Guidelines. U.S.S.G. § 2B1.1 n.1 (2008). To constitute a "victim," an individual's loss must be included in the loss calculation. See United States v. Abiodun, 536 F.3d 162, 169 (2d Cir. 2008).

2. The Court Should Find that the Offense Involved At Least 50 Victims

Each of the victims identified by the Government suffered a loss cognizable under the Guidelines. The Court should reject the defendant's argument that the Government has failed to prove causation, see point I.A.2., supra, and the Court should accordingly find that there were more than fifty victims.

C. The Victims of the Offense Were Vulnerable Victims

1. Applicable Law

Under the Sentencing Guidelines, a two-level increase in the defendant's offense level is warranted if the defendant "knew or should have known that a victim of the offense was a vulnerable victim." U.S.S.G. § 3A1.1(b)(1) (2009). A "vulnerable victim" is a victim who is "unusually vulnerable due to age, physical or mental condition, or who is otherwise

particularly susceptible to the criminal conduct." Id. § 3A1.1 n.2.

In 2000, the guideline was amended to provide for an additional two-level increase if the offense involved "a large number of vulnerable victims." Id. § 3A1.1(b)(2). The amendment was made in conformance with the Telemarketing Fraud Prevention Act of 1998, Pub. L. No. 105-184, § 6(c)(3), 112 Stat. 520, 521, which mandated "an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to victims described in section 2326(2) of title 18, United States Code, are affected by a fraudulent scheme or schemes." Section 2326(2) pertains to offenses that "(A) victimized ten or more persons over the age of 55; or (B) targeted persons over the age of 55 . . . ." 18 U.S.C. § 2326(2) (2006). Accordingly, ten or more vulnerable victims constitutes a "large number" for the purposes of this guideline. See United States v. Kaufman, 546 F.3d 1242, 1268-69 (10th Cir. 2008) (interpreting "large number" to mean ten or more victims as a matter of law); see also 18 U.S.C. § 2326(2) (2006) (referring to "ten or more" victims).

2. The Defendant Targeted a Large Number of Elderly Victims Particularly Susceptible to Fraud

The vulnerable-victim adjustment applies in this case, because the defendant and his accomplices deliberately targeted individuals who were known to have responded to earlier fraud

solicitations. Moreover, of the 34 victims in this case whose age is known, 41 are over the age of 55.

This case is strikingly similar to United States v. O'Neil, 118 F.3d 65 (2d Cir. 1997), in which the defendants were engaged in telemarketing fraud. Specifically, the defendants called people in the United States and Canada to tell them that they had won an automobile or large-screen television. See id. at 68-69. In order to receive the prize, the victims were told that they had to pay a fee, to cover taxes, duties, or other expenses. See id. at 70. Once a victim actually paid money, he or she was contacted by a more experienced telemarketer, who attempted to obtain more money by telling the victim that he or she had won more valuable prizes and that more fees had to be paid. See id. at 69.

The court in O'Neil held that the vulnerable-victim adjustment applied, based on the age of the victims and the targeting of individuals who were susceptible to fraud:

> [T]he victims of this scheme primarily were individuals in their sixties, seventies and eighties. Although being elderly is alone insufficient to render an individual "unusually vulnerable" . . . , courts frequently have found elderly individuals to be unusually vulnerable to telemarketing fraud schemes very similar to the one involved here. Moreover, . . . many of the leads given to the sales staff were the names and phone numbers of individuals who previously had done business with a telemarketing company, indicating their susceptibility to criminal conduct that utilizes telemarketing methods.

Id. at 75 (citations omitted).

This case is indistinguishable from O'Neil. In particular, there are numerous instances where the defendant and his accomplices shared information about individuals who had victimized previously. Therefore, the vulnerable-victim adjustment should be applied.

II. The Court Should Impose a Guidelines Sentence

A. Applicable Law

As the Court knows, the Sentencing Guidelines are advisory. Gall v. United States, 128 S. Ct. 586, 594 (2007). Nevertheless, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Id. at 596.

"[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the [Court] should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party." Id. In doing so, the Court should "not presume that the Guidelines range is reasonable," but should instead "make an individualized assessment based on the facts presented." Id. at 596-97

If the Court concludes that a non-Guidelines sentence is appropriate, the Court must then "consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." Id. at 597. "We find it uncontroversial that a major departure should be

supported by a more significant justification than a minor one." Id. "For even though the Guidelines are advisory rather than mandatory, they are . . . the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions." Id. at 594.

B. A Guidelines Sentence Is Appropriate Under § 3553

The Government respectfully submits that the Court should impose a Guidelines sentence, to include a term of 151 to 188 months' imprisonment. Such a term would be well-deserved in this case.

1. The Nature and Circumstances of the Offense

The advance-fee fraud scheme perpetrated by the defendant and his accomplices has been extensive, injuring and deceiving victims around the world. The defendant participated in the scheme for at least five years. The scope and duration of the defendant's criminal conduct plainly warrants a substantial sentence.

Moreover, the scheme has a greatly disproportionate impact on the elderly, who are more vulnerable to the lies and more victimized by the losses. Michael Pandelos is a case in point: Pandelos is a 78 year-old man who was gainfully self-employed his entire life. In retirement, he lives with his wife in a modest home on a fixed income; he cannot afford to lose the nearly $73,000 that he has, in fact, lost.

Pandelos is one of many elderly victims with similarly sad stories. The sentence imposed on the defendant should reflect the suffering caused by the offense to this vulnerable segment of society.

2. The Need to Provide Just Punishment

The sentence imposed must also reflect the need to provide just punishment, where the offense caused both financial losses to the victims as well as other important, but less tangible, injuries.

On the issue of financial loss, it is tragic that some victims were so thoroughly deceived that they took out loans to pay the advance fees -- a fact that was known to the defendant. See Mehring Decl. at B-17 (Internet chat in which defendant tells accomplice that victim was applying for bank loan); see also Tr. at 131 (testimony of Antje Pandelos that they had taken a home equity loan).

The Court should also take into account the fact that the defendant is unlikely ever to pay much in restitution. Accordingly, the victims can never be made whole, except for seeing justice served through a sentence that imposes a significant term of incarceration.

The sentence imposed should also reflect the non-compensable injuries to the victims, such as emotional distress, depression, health problems, loss of financial security, and

damage to interpersonal relationships. Each of the victims is left to deal with the fact that he or she has been thoroughly deceived and tricked out of a large (and sometimes enormous) amount of money, with absolutely no recourse.

Moreover, it is a tragedy that some victims have even become too afraid to use the Internet. In the case of Michael Pandelos, who is home-bound after suffering two strokes, he and his wife have disconnected their Internet service, see Tr. at 131, leaving him with little to do but watch television. The defendant and his accomplices have thus perverted a technology of immeasurable social utility, one that should have been available to people such as Michael Pandelos for communication, education, and entertainment.

It is easy to imagine the anger, the frustration, and the despair that the victims in this case feel; a just punishment is one that will help mitigate, to whatever extent possible, such non-compensable injuries.

3. History and Characteristics of the Defendant

The defendant is an ambitious, enterprising individual who escaped from an "abusive and traumatic life in Nigeria," PSR ¶ 66, and was recognized by his accomplices as a leader, see Mehring Decl. at B-41 ("you be my chairman") & A-39.

The defendant's ambitions, however, are directed towards crime. Upon coming to the United States, and with the

support of a new wife, the defendant ignored the opportunity to start a new life. Instead, he used his presence in the United States to facilitate his crime, and he provided equipment and telecommunications services to his accomplices that was otherwise unavailable.

In short, the defendant sadly abused an opportunity sought by millions -- the opportunity to become a legal, productive member of our society. The defendant hoped to become rich through fraud; what he deserves, instead, is a lengthy term of incarceration.

4. The Need to Protect the Public

The defendant's background strongly suggests that, once he serves his sentence and is returned to Nigeria, he will return to fraud. Before the defendant became involved in fraud, he could only find menial employment, and he could barely support himself. See PSR ¶ 38.

Although the defendant claims that he was still poor from 2006 through 2008, see PSR ¶ 41 (describing period when he was sleeping on the floor and begging on the streets), i.e., a period when he was involved in the fraud, the defendant's claim of poverty is not credible. The defendant entertained his future wife for a week in January 2007 and for two weeks in June 2007. See Tr. at 172-73. According to her, the defendant lived in

reasonable comfort, and he even purchased her an engagement ring. See Mehring Decl. ¶ 10.

Moreover, in the defendant's last recorded chat conversation before returning to visit Ghana in 2009, he gave the following instructions to an accomplice: "make u guys clean my room very well from tomorrow . . . all the widows and wash the cottons . . . and also clean the fridge." See Mehring Decl. at B-26. Whatever the defendant may claim about his financial circumstances in Ghana, it is clear that, as a result of his participation in the fraud scheme, he is sufficiently successful now that he directs others to perform menial tasks for him.

There can be little doubt that, once returned to Nigeria, the defendant will eschew the menial employment available to him and will again commit advance-fee fraud. There is nothing else that he knows how to do, and he will be surrounded by associates and accomplices who do nothing else. Furthermore, once he is in Nigeria, he will effectively be beyond the ready reach of U.S. law enforcement. Therefore, the only way to protect the public from further crimes by the defendant is to incarcerate him, for a lengthy period of time.

5. The Need to Afford Adequate Deterrence

Finally, the need to provide adequate general deterrence is the most compelling reason why the Court should impose a lengthy sentence. Advance-fee schemes, executed from

abroad, are extremely difficult to investigate and prosecute. Indeed, there have been few such prosecutions.

In light of the difficulty of prosecuting advance-fee fraudsters, and the enormous losses associated with such fraud, the need to provide general deterrence should be given the greatest weight. To be clear, the Government is not asking the Court to "make an example" of the defendant. Instead, where the Sentencing Guidelines recommend a term of 151 to 188 months' imprisonment, fairly calculated based on the extent of the criminal conduct in this case, the Government respectfully submits that the Court should impose that sentence.

III. Restitution

A. Applicable Law

By statute, the defendant is required to pay restitution. See 18 U.S.C. § 3663A (2006).

> [T]he purpose of restitution is essentially compensatory: to restore a victim, to the extent money can do so, to the position he occupied before sustaining injury. Because the MVRA mandates that restitution be ordered to crime victims for the "full amount" of losses caused by a defendant's criminal conduct, it can fairly be said that the "primary and overarching" purpose of the MVRA "is to make victims of crime whole, to fully compensate these victims for their losses and to restore these victims to their original state of well-being."

United States v. Boccagna, 450 F.3d 107, 115 (2d Cir. 2006) (citations omitted). Accordingly, the Court must order restitution "in the full amount of each victim's losses as

determined by the court and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A) (2006).

After the amount of restitution is determined, the Court must set a schedule for restitution payments, taking into consideration "(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant; including obligations to dependents." Id. § 3664(f)(2).

The restitution order may require the defendant to make "a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments." Id. § 3664(f)(3)(A). The Court may make each defendant jointly and severally liable for payment of the full amount of restitution, or may "apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant." Id. § 3664(h).

B. The Court Should Order Restitution

Each of the victims identified by the Government suffered a loss for which restitution should be ordered. The Court should reject the defendant's argument that the Government has failed to establish the defendant's responsibility for the

loss, see point I.A.2., supra, and the Court should accordingly order restitution for each of the victims.

Conclusion

Based on the foregoing, the Government respectfully requests that the Court impose a Guidelines sentence of 151 to 188 months' imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Title 28, United States Code, Section 1746, and Rule 5(b) of the Local Civil Rules of the United States District Court for the District of Connecticut, I hereby certify that a copy of the document(s) listed below:

Government's Memorandum in Aid of Sentencing

was filed electronically and was served by electronic mail on the following parties:

Jonathan J. Einhorn, Esq.
412 Orange St.
New Haven, CT 06511

Notice of this filing will be sent by email to anyone unable to electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 30, 2010

/s/ Edward Chang
EDWARD CHANG