



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
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February 19, 2019

BY ECF

The Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Billy Anderson, 18 Cr. 596 (LTS)

Dear Judge Swain:

The defendant in the above-captioned case, Billy Anderson, is scheduled to be sentenced on February 26, 2019 at 11:00 a.m., after pleading guilty to two counts of computer fraud – causing damage to a protected computer, in violation of 18 U.S.C. §§ 1030(a)(5)(A), 1030(c)(4)(A)(i)(I) & (V), 1030(c)(4)(B)(i), and 2. The Government respectfully submits this letter in advance of the sentencing and in response to the defendant's sentencing submission filed on February 10, 2019 (ECF No. 23).

As an initial matter, the Government does not have any objections to the Presentence Investigation Report revised on January 23, 2019 (the "PSR"), which determined that the defendant's applicable United States Sentencing Guidelines (the "Guidelines") sentence is 12 to 18 months' imprisonment. (PSR ¶ 122.) For the reasons set forth below, the Government respectfully submits that the Court sentence the defendant to a term of imprisonment within the Guidelines sentencing range, which would be sufficient but not greater than necessary to serve the purposes of sentencing and would be fair and appropriate in this case.

I. APPLICABLE LAW

As the Court is aware, the Guidelines still provide strong guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005), although they are no longer mandatory. "[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range" – that range "should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). As the Second Circuit has noted, although the Guidelines do not dictate a presumptively reasonable sentence, they are not merely a "body of casual advice." *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (internal quotation marks omitted).

After making the initial Guidelines calculation, a sentencing judge must then consider the seven factors outlined in Title 18, United States Code, Section 3553(a): (1) “the nature and circumstances of the offense and the history and characteristics of the defendant”; (2) the four legitimate purposes of sentencing, as set forth below; (3) “the kinds of sentences available”; (4) the Guidelines range itself; (5) any relevant policy statement by the Sentencing Commission; (6) “the need to avoid unwarranted sentence disparities among defendants”; and (7) “the need to provide restitution to any victims.” 18 U.S.C. § 3553(a)(1)-(7); *see Gall*, 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2). To the extent the Court imposes a sentence outside the range recommended by the Guidelines, the Court must “consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Cavera*, 550 F.3d at 189 (quoting *Gall*, 552 U.S. at 50).

II. DISCUSSION

The Government respectfully submits that the application of the statutory sentencing factors set forth in Title 18, United States Code, Section 3553(a) supports the imposition of a Guidelines sentence of 12 to 18 months’ imprisonment.

A. The Seriousness of the Defendant’s Conduct and the Need for Just Punishment

First, a sentence within the Guidelines range is necessary to reflect the seriousness of the defendant’s conduct and to provide just punishment for the offense. The defendant was a sophisticated hacker who compromised and defaced more than 11,000 military, government, and business websites around the world under his online pseudonym “AlfabetoVirtual” over a period of three years. (PSR ¶ 10.) In particular, the defendant defaced the websites of the New York City Comptroller (the “NYC Comptroller”) and the Combating Terrorism Center at the United States Military Academy in West Point, New York (“West Point”). On July 10, 2015, the defendant altered the NYC Comptroller’s website so that it would display the text “Hacked by AlfabetoVirtual,” “#FREEPALESTINE,” and “#FREEGAZA.” (*Id.* ¶ 11.) He did this by

exploiting security vulnerabilities with the version of a plugin or software component being used on the website. (*Id.*) Then, more than a year later on October 4, 2016, the defendant altered the content of the Combating Terrorism Center website to display the text “Hacked by AlfabetoVirtual.” (*Id.* ¶ 12.) This time the defendant committed the defacement by exploiting a known cross site script vulnerability, enabling him to bypass access controls. (*Id.*) The defendant further admitted during his plea allocution that he ran programs that found vulnerabilities on websites and that the programs he ran for the NYC Comptroller and West Point defacements were targeting different vulnerabilities.

Importantly, this was not a one-time lapse in judgment on the defendant’s part. Rather, over the course of three years, the defendant continued to engage in this criminal activity and even sought to gain notoriety for these defacements under his online pseudonym by posting his more than 11,000 defacements on Zone-H.org (“Zone-H”). (*Id.* ¶¶ 15-17.) The defendant also specifically targeted defacements of important websites such as government websites that would be designated a “special defacement” on Zone-H and receive a gold star, such as his defacement of the website for the Ronald Reagan Presidential Library in January 2016. (*Id.*) Indeed, in August 2015, the defendant sent an email to an administrator of Zone-H in which he talked about hacking groups he was a member of and asked whether a defacement he did “deserve[d] a star or not?” (*Id.* ¶ 32.) In response, the administrator stated that “Only famous companies, top 50 univ or government sites get a star.” (*Id.*)

When the defendant was arrested on May 10, 2018, a search warrant was executed at his residence which revealed evidence of the defendant’s hacking sophistication. Specifically, among the items recovered during the search, law enforcement seized a DVD containing keyloggers, which are programs that surreptitiously record computer keystrokes in order to steal usernames and passwords, as well as a variety of other hacking tools and malicious programs typically used to commit computer intrusions. (*Id.* ¶ 44.) In addition, law enforcement seized a suite of tools used by criminals to test computer vulnerabilities and commit illicit cyber intrusions, as well as a book explaining how to obfuscate one’s online activities from law enforcement. (*Id.* ¶¶ 46-47.)

As set forth above, this crime is very serious not only because of the sheer number of websites defaced by the defendant, but also because of his targeting of important government websites and his level of sophistication in committing these destructive attacks. The harm from the defendant’s criminal conduct also goes far beyond the defacements themselves, the potential loss of the website for a period of time, and the thousands of dollars it cost the victims to remove the defacements. As set forth in the victim impact statement of the NYC Comptroller which is attached hereto as Exhibit A, the defendant’s conduct “serve[d] to undermine confidence in government, raising questions in the public’s mind about the professionalism, security, and integrity of government work in general, and the Comptroller’s Office in particular. . . . This was not a victimless crime, but an attack on municipal government itself.” The same holds true for the defendant’s defacement of the Combating Terrorism Center at West Point, one of the most prestigious military academies in the world. Accordingly, a Guidelines sentence is necessary to reflect the seriousness of the defendant’s conduct and to provide just punishment for the offense.

B. The Need for Adequate Specific Deterrence

Second, a term of imprisonment is necessary for specific deterrence to this defendant and to protect the public from further crimes. Although the defendant in his letter to the Court claims to have a “heavy conscience and much regret,” that same letter tells a story that is inconsistent with statements the defendant previously made to the Government, undermines his acceptance of responsibility, and demonstrates that he does not appear to understand the seriousness of his conduct.

Notably, the defendant states in his letter to the Court that he engaged in the defacements and posted them on Zone-H as a “way of keeping my cover, maintaining the hacking communities’ trust and to inform the sites of their weak security.” The defendant’s altruistic characterization of his conduct does not make sense and is completely inconsistent with his previous statements to the Government and his conduct as described in the PSR. As the defendant had informed the Government, at the time he was defacing websites, the defendant wanted the public to believe he was a hacker and to maintain his online popularity. Moreover, he ran multiple scripts that identified vulnerabilities in websites and defaced the websites by altering the sites to display political messages and his signature “Hacked by AlfabetoVirtual”; there was no notification to the victims of their vulnerabilities. The notion that the defendant joined “hacking groups with intentions to investigate and expose their identities” is also inconsistent with his previous statements to the Government in which he admitted to joining such groups to learn more about hacking and computer intrusion activities. Indeed, as the defendant previously told the Government, it was through such groups that the defendant received training and tools to deface websites and traded scripts and web shells with other hackers around the world that could be used to conduct defacements.

Further, the defendant stated in his letter to the Court that he “never had the intention to penetrate government sites.” Again, this is contrary to the defendant’s previous statements to the Government in which he admitted that he knew the computer scripts he executed were identifying and defacing websites belonging to governments. The defendant also previously admitted to the Government that even after the defendant realized he was defacing government websites, the defendant kept executing scripts that he knew would deface vulnerable government websites and sought out gold-star recognition for his government defacements on Zone-H to bolster his hacker credentials. For example, the defendant acknowledged to the Government that he had sent evidence of the Ronald Reagan Presidential Library website defacement to an administrator of Zone-H in to receive attributed credit. This is corroborated by the email Anderson sent to an administrator at Zone-H seeking to know whether one of his defacements would receive a gold star.

Finally, the defendant’s statement in his letter to the Court that his “identity was never a secret” is a complete falsehood. The defendant’s defacements referred only to his online pseudonym “AlfabetoVirtual” and he also used email addresses containing the same pseudonym. At no time did the defendant reveal his true identity in his defacements. Moreover, in previous statements to the Government, the defendant admitted that he routinely used a virtual private network tool to conduct hacking activity in order to not have such activity traced to an Internet protocol address that would identify his true identity or location.

As summarized above, the defendant through his own statements has tried to explain away his conduct through statements that are inconsistent with admissions he previously made to the Government as well as the evidence described in the PSR. Because the defendant has demonstrated that he does not understand the seriousness of his conduct and has not fully accepted responsibility, the Government submits that a sentence of incarceration is necessary to impress upon him the serious consequences of his criminal conduct.

C. The Need for General Deterrence and to Promote Respect for the Law

Third, a Guidelines sentence is also appropriate to ensure adequate general deterrence and to promote respect for the law. The defendant is requesting to be sentenced to a non-custodial sentence. But such a sentence would not demonstrate that crimes such as the instant offense are taken seriously. As discussed above, the defendant's criminal conduct in compromising the integrity of more than 11,000 military, government, and business websites around the world and specifically the websites of West Point and the NYC Comptroller is very serious and caused real harm to the victims, both in terms of the actual monetary cost of remediation and the undermining of public confidence in those institutions. That is why this case attracted widespread media attention.¹ A prison sentence within the Guidelines range is therefore necessary to send a message to other similarly situated individuals and the public that websites defacements and intrusions will not be treated leniently and will entail a period of incarceration. Such a message is particularly important at a time when hacks of websites, which are often extremely difficult to prosecute, have become commonplace. Accordingly, a sentence within the Guidelines range is both necessary and appropriate to promote general deterrence and respect for the law.

¹ See, e.g., <https://www.nytimes.com/2018/05/10/nyregion/hacker-west-point-nyc-comptroller.html>.

III. CONCLUSION

For the reasons set forth above, Government respectfully submits that a Guidelines sentence of 12 to 18 months' imprisonment is sufficient but not greater than necessary to achieve the purposes of sentencing and would be fair and appropriate in this case.

Respectfully submitted,

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By:



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cc: Stanley Greenberg, Esq. (by email)

EXHIBIT A



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

KATHRYN E. DIAZ
GENERAL COUNSEL

OFFICE OF THE GENERAL COUNSEL

January 18, 2019

The Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Suite 1320
New York, NY 10007

Re: *United States v. Billy Ribeiro Anderson*, 18-Crim-596 (LTS)
Victim Impact Statement for Sentencing Determination on February 13, 2019

Dear Judge Swain:

I am General Counsel of the Office of the New York City Comptroller, Scott M. Stringer. An independently-elected citywide official, Comptroller Stringer serves as the City's chief financial officer with wide-ranging responsibilities for safeguarding the City's fiscal health. The Comptroller's duties are set forth in Chapter 5 of the New York City Charter.

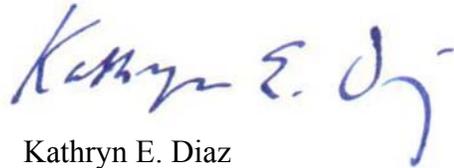
Among other duties, the Comptroller conducts performance and financial audits of all City agencies; serves as investment advisor and custodian of assets to the City's five public pension funds totaling nearly \$180 billion in assets; reviews City contracts for integrity, accountability and fiscal compliance; and has settlement authority over all claims and lawsuits sounding in law on behalf of and against the City. Supporting the Comptroller's important work is a staff of about 750 employees made up of accountants, attorneys, economists, engineers, IT professionals, budget, financial and investment analysts, claim specialists and researchers, and administrative support staff.

On or about July 15, 2015, the Comptroller's official government website was accessed without authorization and defaced, modifying the content to display the text "**hacked by AlfabetoVirtual,**" "**#FREEPALESTINE,**" and "**FREEGAZA.**" The Comptroller's website provides critical information about the Comptroller's work, directives, and services to members of the public, businesses, and City agencies (*see, e.g.*, <https://comptroller.nyc.gov/services/for-the-public/>). The Comptroller's IT department had to deploy significant resources to revert the website to its original state. In addition to Comptroller staff, an employee of the vendor REI Systems, which manages the hosting of the agency's website at Rackspace, worked to remove the defacement. The estimated direct cost associated with these activities is \$5,514.35. Further, for a 39-hour period (July 10, 2015 at 8 a.m. to July 11, 2015 at 11 p.m.), the agency's website content enhancement requests were placed on hold and the IT department was unable to provide this service to the office.

Perhaps more important, acts of vandalism such as the one perpetrated against the Comptroller's website serve to undermine confidence in government, raising questions in the public's mind about the professionalism, security, and integrity of government work in general, and the Comptroller's Office in particular. Among its many audits of City agencies, the Comptroller's Office performs IT audits. Compounding therefore the pernicious nature of Mr. Anderson's crime is that among the Comptroller's Office's website pages he attacked was one that happened to feature a photograph of the Comptroller himself and the Deputy Comptroller for Audit announcing findings. Finally, the Comptroller, with his substantial financial and oversight power and fiduciary obligations, holds a position of significant trust. This was not a victimless crime, but an attack on municipal government itself—and an orderly society at the local level that is its core function.

Accordingly, we believe that justice will be served by imposing a period of prison incarceration for Mr. Anderson. A prison term would constitute reasonable retribution under the circumstances for Mr. Anderson's destructive acts and also deter others from conducting similar intrusions upon government operations.

Respectfully submitted,



Kathryn E. Diaz
General Counsel