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March 29, 2021

VIA ECF

The Honorable Jesse M. Furman
United States District Court Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: *United States v. Ifeanyi Eke*
19-cr-00318 (JMF)**

Dear Judge Furman:

Please recall that I represent Mr. Ifeanyi Eke in his defense of the above-referenced matter. Mr. Eke is scheduled to both enter an anticipated guilty plea and be sentenced by Your Honor on April 13, 2021, at 11:00 a.m. For the reasons set forth herein, Mr. Eke will respectfully request that Your Honor impose a term of incarceration of 30 months and a period of supervised release of three years. Mr. Eke will also request that Your Honor refrain from imposing a fine.

I. PROCEDURAL HISTORY

Based upon a pending arrest warrant in the case at bar in the Southern District of New York (“S.D.N.Y.”), Mr. Eke was arrested for the underlying conduct on May 8, 2019 in the Northern District of Georgia, where he resided at the time. He was ordered to be transferred, on consent, to the S.D.N.Y. when he appeared in the Northern District of Georgia for a Federal Rules of Criminal Procedure Rule 5(c)(3) hearing on May 16, 2019.

On May 30, 2019, Mr. Eke made his initial appearance in the S.D.N.Y., with court-appointed counsel, before the Honorable James L. Cott, and he consented to detention without prejudice. Mr. Eke has been incarcerated since that time and has sustained no disciplinary infractions. As Your Honor is aware, as difficult as it has been for any detainee to serve their time in the Metropolitan Detention Center (“MDC”) during the pandemic, [REDACTED]

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On June 4, 2019, Mr. Eke appeared before Your Honor to enter a not guilty plea to the indictment at bar that charges him with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, and fraud by wire, radio, or television, in violation of 18 U.S.C. § 1343.

On August 12, 2020, Mr. Eke's co-defendant, Joshua Ikejimba, appeared before Your Honor and pled guilty to one count of conspiracy to commit wire fraud. That same day, Your Honor sentenced Ikejimba to 24 months' imprisonment, three years of supervised release, and restitution in the amount of \$1,238,748.93. Upon information and belief, co-conspirator Cyril Ashu has been charged in the S.D.N.Y., and co-conspirator Chinedu Ironuah remains a charged fugitive.

II. CONDUCT AT BAR

Mr. Eke immigrated legally from Nigeria and entered the United States on a temporary work visa in October 2016. Upon arriving, Mr. Eke lived in a hotel for approximately one month when he met Ashu, who was also an immigrant who had previously arrived in the United States. Within a short time, Ashu offered and Mr. Eke accepted a chance to live in Ashu's basement, as Mr. Eke was looking for permanent housing. Mr. Eke lived in the basement for a few months. Over that time, Mr. Eke directly witnessed Ashu, who he learned owned two entertainment clubs and a luxury Italian sports car, living the "American Dream." Mr. Eke wanted the same level of material success that he perceived Ashu to have attained. Ashu also introduced Mr. Eke to Chinedu Ironuah, who owned and operated a used car business in the Houston, Texas area.

As Mr. Eke became better acquainted with Ashu and Ironuah, he learned that the two were involved in a money-making scheme and was presented with an opportunity to join. Mr. Eke, who had come to the United States with little, was still living in Ashu's basement and decided to join the conspiracy at bar. Mr. Eke, who proved himself to be a particularly unsophisticated participant, provided his own bank account information to Ashu and used bank accounts *in his own name* to receive transfers of fraud proceeds from at least three victims in amounts ranging from approximately \$41,500 to approximately \$189,000 (Presentence Report ("P.S.R.") ¶ 16). After the transfer, it is alleged that Mr. Eke sent the money out of his accounts via cashier's checks on instructions, Mr. Eke has informed, that he received from Ironuah.

Though Mr. Eke is prepared to accept responsibility for his participation in the fraud scheme, he did not participate without experiencing internal conflict. After Mr. Eke, who was raised in a devout Christian home, learned that one of the victims of the fraud scheme was the United Nations, he explained to us that he became very upset and refused to move any of that particular money for approximately three days. However, Ironuah reassured Mr. Eke, and as a result, Mr. Eke's ethical concern was assuaged and overcome by his desire for material success.

As Mr. Eke's involvement in the fraud scheme allegedly continued, he, while remaining under the supervision of Ironuah, began to supervise a number of co-conspirators, including Ashu, who also were working to transfer victim funds. Further, there is evidence that Mr. Eke received some of the "spoofed" emails, which he then used to acquire victims' login credentials. As a point of clarification to the P.S.R., Mr. Eke is also accused of using a false identity during

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the course of the case at bar (P.S.R. ¶ 15). The discovery provided by the Government contains evidence that Ironuah requested a false passport using Mr. Eke's picture and a false name, Luther Mulbah Doley; however, Mr. Eke maintains that he never used or even possessed this false identity to open any bank accounts, shell companies, or deposit cashier's checks. By way of his anticipated guilty plea in this matter, Mr. Eke is prepared to accept responsibility for a loss amount of \$2,791,797.80.

III. UNITED STATES SENTENCING GUIDELINES CALCULATION

The Parties and the United States Probation Department ("Probation") are in accord with our respective calculations of the applicable United States Sentencing Guidelines ("Guidelines/U.S.S.G.") in this case, and the defense requests that Your Honor adopt the same calculation. This Guidelines calculation results in a total offense level of 26, a recommended range of 63 to 78 months of imprisonment and 1 to 3 years of supervised release, with an applicable fine range of \$25,000 to \$5,583,595.60.

IV. REQUEST FOR A NON-GUIDELINES SENTENCE

As Your Honor is aware, a sentencing court is required to consider the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, provide the defendant with needed training or treatment; the kinds of sentences available; the kind of sentence and the sentencing ranges established by the U.S.S.G. for the crime(s) of conviction; pertinent policy statements of the U.S.S.G. Commission; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to victims. 18 U.S.C. § 3553 (a)-(b). It is respectfully submitted that the proposed sentence achieves the applicable, aforementioned sentencing goals.

Mr. Ifeanyi Eke was born in April 1987 in Nigeria to the marital union of Mr. Bennett Eke and Mrs. Justina Eke, who co-owned a small water distribution company there (P.S.R. ¶ 53). He was raised along with his three siblings in a middle class, religiously observant household (Id.). Mr. Eke explained to Probation that there was violence in the neighborhood where he grew up, but his parents sent him and his siblings to schools out of their area in an effort to protect them from being exposed to the neighborhood danger (Id.). In late 2016, Mr. Eke left Nigeria and his family behind and arrived in the United States on a temporary work visa¹ (Id. ¶ 52). In our discussions with Mr. Eke, he indicated that despite his ability to live a decent life in Nigeria, he desired a chance to live in the United States where he believed he had more opportunity for growth both economically, for him and his children, and individually, in general.

¹ As noted in the P.S.R., Mr. Eke's visa expired and he is no longer legally residing in the United States. ICE confirmed that Mr. Eke has a pending application for citizenship due to his marriage to Ms. Quanisha Nelson, a United States citizen, and that Mr. Eke is subject to removal proceedings.

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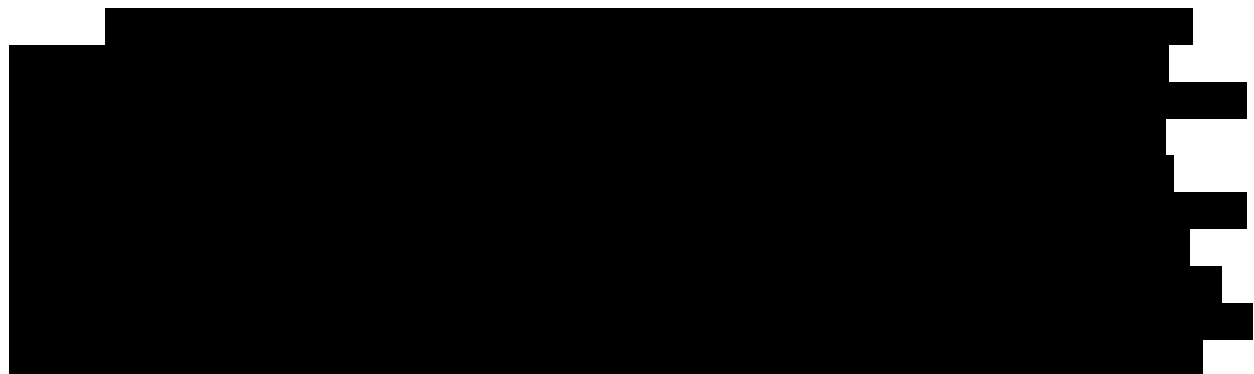
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Mr. Eke is educated and has demonstrated himself to be a capable individual. He earned his high school diploma from Living World Academy in 2003 and his Bachelor's degree in English from Imo State University in 2013, both of which are located in Nigeria (Id. ¶ 65). While living in Nigeria, Mr. Eke was employed by his family's water business. In 2017, shortly after immigrating to the United States, Mr. Eke started and operated his own used car business in Mableton, Georgia. Mr. Eke purchased used vehicles, typically through insurance company "repo" and recovery auctions. After he purchased vehicles, he repaired and resold them for a very small profit. Mr. Eke continued to "make a go" of this business until his arrest in the instant matter.

Despite the physical distance between him and much of his family, Mr. Eke is a devoted husband and father to his wife and children. He married Ms. Quanisha Nelson in 2017, and prior to his arrest and incarceration, the couple lived together in Georgia (Id. ¶ 55). Mr. Eke is also the proud father of two children from a past relationship² with Ms. Ifeoma Unobuagha, which ended shortly after he arrived in the United States (Id. ¶ 54). Ms. Unobuagha presently resides in the United Kingdom with Mr. Eke's two children (Id.). Prior to his arrest, Mr. Eke had frequent telephone contact with his children and voluntarily provided for them financially (Id.). Mr. Eke explained to Probation that his incarceration has caused financial difficulties for Ms. Unobuagha and his children (Id.). In her letter to Your Honor, Ms. Unobuagha described Mr. Eke as a "caring father" who, prior to his incarceration, "shoulder[ed] the responsibility of the upkeep of his children" and noted that Mr. Eke's children "miss their father dearly."

Mr. Eke has lamented to us that his father fell seriously with cancer while Mr. Eke was living in the United States in 2018. He was greatly impacted by his father's illness and devastated when his father ultimately passed away in 2018. Mr. Eke explained to Probation that his father's death was very difficult for him to deal with, and it has frequently dominated his thoughts while isolated within the MDC (P.S.R. ¶ 53). Due to the distance and financial circumstances, Mr. Eke was unable to return to Nigeria for his father's burial, but according to his brother, Mr. Kingsley Eke, Mr. Eke made sure "all that was needed for the burial was provided."



² Paragraph 54 of the P.S.R. incorrectly states that Mr. Eke was married to Ms. Ifeoma Unobuagha from 2015 until 2016. Mr. Eke and Ms. Unobuagha were in a consensual relationship during that time, but they never married.

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[REDACTED]

Approximately one month after Mr. Eke returned to custody in the MDC, the COVID-19 pandemic broke out in the United States. As Your Honor is aware, during the pandemic, all inmates' movement in the jail has been severely restricted while Mr. Eke has been confined in a tiny cell under lockdown. He is receiving even more limited phone and email communication time than under normal conditions.

[REDACTED] Prior to the pandemic [REDACTED] Mr. Eke continued to learn and expand his skill set [REDACTED], as he participated in finance, job skills, employment, and resume classes (P.S.R. ¶ 67). Unfortunately, Mr. Eke has endured the injustice of losing the ability to participate in additional worthy programs such as these over the last year due to the COVID-19 pandemic.⁴ [REDACTED]

[REDACTED] Obviously, the mass quarantine measures, the rumors and confirmation of inmate deaths in the MDC, has made this period of confinement that much more challenging, if not bordering on downright cruel.

It is respectfully submitted that the proposed punishment is appropriate considering the nature and circumstances of the offense and the personal history and characteristics of Mr. Eke and would provide just punishment and general and specific deterrence. Notably, Probation has already recommended a significant variance of 48 months' imprisonment. However, the defense submits that an even greater variance is warranted because Mr. Eke would be a first-time, non-violent offender who will be sentenced under Guidelines that are justifiably criticized as a poor measure of just punishment. As Your Honor is aware, in April 2013, the Criminal Justice Section of the American Bar Association formed a task force (hereinafter "Task Force") of legal scholars to evaluate potential reforms to the fraud guidelines. This Task Force was comprised of law

³ [REDACTED]

⁴ Despite the programming limitations, Mr. Eke has taken the initiative to enroll in self-study courses while in the MDC, completing courses in finance and parenting. The certificates of completion are attached for Your Honor's review.

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professors and judges, including Judge Gerard Lynch of the U.S. Court of Appeals for the Second Circuit, Judge Jed S. Rakoff of the Southern District of New York, and now retired Judge John Gleeson, then sitting in the Eastern District of New York. In November 2014, the Task Force published the results of their work and proposed changes to the Fraud Guidelines (hereinafter “Shadow Guidelines”) that would decrease the focus on loss amount and increase the importance of a defendant’s culpability.⁵ As Judge Eric N. Vitaliano explained in United States v. Faibish,⁶ “The loss table is but one example of the seemingly mindless acceleration of penalties for economic crimes incorporated in the current Sentencing Guidelines regime.” Significantly, the Task Force posited an offense level cap of 10 for defendants who have zero criminal history points and committed a not “otherwise serious” offense under 28 U.S.C. § 994(j) and noted that “a sentence other than imprisonment is generally appropriate.”⁷

While Mr. Eke recognizes and is prepared to accept responsibility for the serious larcenous conduct he engaged in by helping to move funds obtained by fraud through bank accounts he controlled via instructions he received and supervising the movement of money by other members of the conspiracy by passing on instructions, he does not have a prior record and did not commit an “other serious” offense within the meaning of 28 U.S.C. § 994(j). In addition, it is important to note that money is the driving factor of Mr. Eke’s total offense level, with 16 of the 26 points coming solely from the loss amount in the instant matter. Accounting for the fact that money is the driving factor in Mr. Eke’s Guidelines calculation and using the Shadow Guidelines, Mr. Eke would be facing a 6 to 12 month sentence of imprisonment. Mr. Eke will have been incarcerated for approximately 24 months at the time of his anticipated sentencing. It is respectfully submitted that under the existing, bloated Guidelines, a sentence of 30 months of imprisonment followed by 3 years of supervised release would accomplish the goals delineated in 18 U.S.C. § 3553(a) and would reinforce for Mr. Eke, and others, that there are serious consequences for his actions that helped to cause large monetary losses to victims. In addition to the proposed sentence, Mr. Eke also faces significant punishment through the financial penalties in this case, owing approximately \$2.8 million in restitution. Generally, the proposed sentence would send a clear message of deterrence to similarly-situated individuals that participating in a fraud scheme will result in serious punishment, even for a first-time, non-violent offender. Finally, it is respectfully submitted that the proposed sentence would be proportionate to that of Mr. Eke’s co-conspirators, considering that Ikejimba, who was less involved in the fraud scheme, received a sentence of 24 months’ imprisonment.

It is respectfully submitted that Mr. Eke poses a low risk of recidivism as a first-time offender who will most likely be removed from and barred from reentry into the United States. Regardless, it may be fair to say that reversion to criminal activity is not a realistic concern for

⁵ American Bar Association Criminal Justice Section, A Report on Behalf of The American Bar Association Criminal Justice Task Force on the Reform of Federal Sentencing for Economic Crimes (Nov. 10, 2014), *available at* https://www.americanbar.org/content/dam/aba/publications/criminaljustice/economic_crimes.pdf.

⁶ No. 12-cr-265 (July 16, 2015), 2015 U.S. Dist. LEXIS 101200, at *2.

⁷ Id.

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Mr. Eke, who, [REDACTED] is unlikely to ever again put himself in a position where he may be returned to custody (P.S.R. ¶ 10). In addition, Mr. Eke maintains the support of his family, who can help him to resist any reversion to criminal activity. Finally, it is respectfully submitted that even before entering an anticipated guilty plea, Mr. Eke has demonstrated an admirable level of acceptance of responsibility for his actions. In his interview with Probation, Mr. Eke made a rare statement of acceptance in which he expressed regret for his actions, wishing he could “turn back the hands of time” to “refrain from such actions,” and prayed that the victims would find a way to forgive him for his actions (Id. ¶ 31).

Finally, Mr. Eke wishes for Your Honor to consider the conditions of incarceration he has endured in the MDC without seeking an adjustment of his bail status. It has been, from all accounts, much more difficult than normal to spend one’s time in the confines of the infamous MDC during the pandemic than before.

V. CONCLUSION

In light of the above, it is respectfully submitted that the goals of 18 U.S.C. § 3553(a) would be met by sentencing Mr. Eke to a period of incarceration of 30 months and a 3-year period of supervised release. Finally, due to his present financial situation, the defense respectfully requests that Your Honor not impose a fine on Mr. Eke. Pursuant to the plea agreement, Mr. Eke agrees to make restitution in the amount of \$2,791,797.80. Mr. Eke has no assets and his Equifax credit report revealed \$14,214 in debt (P.S.R. ¶ 69-70). As such, Probation concluded that Mr. Eke does not have the ability to pay a fine (Id. ¶ 72).

Respectfully submitted,



Mark I. Cohen, Esq.

MIC/gmf

Cc: A.U.S.A. Olga Zverovich (via ECF)
A.U.S.A. Jarrod Schaeffer (via ECF)
Mr. Ifeanyi Eke (via mail)