

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20159

In the Matter of

PARFAIT MUTIMURA,

Respondent.

DECLARATION OF
RICHARD G. PRIMOFF

I, Richard G. Primoff pursuant to 28 U.S.C. §1746, declare as follows under penalty of perjury:

1. I am employed as Senior Trial Counsel by Plaintiff Securities and Exchange Commission (the “Commission”) in the Commission’s New York Regional Office of the Division of Enforcement (the “Division”). I submit this declaration in support of the Division’s motion for an order of default and imposition of remedial sanctions against Respondent Parfait Mutimura (“Mutimura”). As of the filing of this declaration, the Division has not received any response to the April 16, 2021 Order of the Commission, nor does the docket of this proceeding reflect any filing by Mutimura in response to it.

2. Attached hereto as Exhibit A is a true and correct copy of the February 7, 2020 Superseding Information in *United States v. Parfait Mutimura*, 19 CR 592 (LGS) (the “Criminal Action”), which the Division obtained from the public docket maintained for the United States District Court for the Southern District of New York.

3. Attached hereto as Exhibit B is a true and correct copy of the August 25, 2020 Judgment entered against Mutimura in the Criminal Action, which the Division obtained from the public docket maintained for the United States District Court for the Southern District of New York.

4. Attached hereto as Exhibit C is a true and correct copy of the August 26, 2020 Consent Order of Restitution entered against Mutimura in the Criminal Action, which the Division obtained from the public docket maintained for the United States District Court for the Southern District of New York.

5. Attached hereto as Exhibit D is a true and correct copy of my letter dated December 10, 2021 sent to Mutimura, enclosing copies of the Division's investigative file pursuant to Commission Rule of Practice 230.

6. Attached hereto as Exhibits E and F are letters dated December 17, 2020 and January 1, 2021 sent from Mutimura to the Division by U.S. mail to the New York Regional Office, and which the undersigned inadvertently overlooked until June 7, 2021, as a result of the current remote working environment.

7. Attached hereto as Exhibits G and H are my letter dated June 8, 2021 to Mutimura, responding to his correspondence, and my letter dated June 9, 2021, attaching a copy of the sentencing transcript in the Criminal Proceeding that Mutimura had requested.

Dated: New York, New York
June 24, 2021

/s/ Richard G. Primoff
Richard G. Primoff

PRIMOFF DECLARATION EXH. A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
UNITED STATES OF AMERICA	:	<u>SUPERSEDING INFORMATION</u>
	:	
- v. -	:	S1 19 Cr. 592 (LGS)
	:	
PARFAIT MUTIMURA,	:	
a/k/a "Parfait Niyomugabo,"	:	
	:	
Defendant.	:	
	:	
-----	X	

COUNT ONE

(Wire Fraud)

The United States Attorney charges:

1. From at least in or about April 2016 up to and including at least in or about March 2019, in the Southern District of New York and elsewhere, PARFAIT MUTIMURA, a/k/a "Parfait Niyomugabo," the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, MUTIMURA engaged in a scheme to obtain the money of his clients through material misrepresentations and omissions and then misappropriated those

client funds, including through unauthorized withdrawals and adviser fees, for his own purposes and, in furtherance of such scheme, caused an interstate wire to be sent from New York to Pennsylvania.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT TWO

(Investment Adviser Fraud)

The United States Attorney further charges:

2. From at least in or about April 2016 up to and including at least in or about March 2019, in the Southern District of New York and elsewhere, PARFAIT MUTIMURA, a/k/a "Parfait Niyomugabo," the defendant, acting as an investment adviser with respect to his clients, willfully and knowingly did use the mails and other means and instrumentalities of interstate commerce, directly and indirectly, (a) to employ a device, scheme, and artifice to defraud clients and prospective clients; (b) to engage in a transaction, practice, and course of business which operated as a fraud and deceit upon clients and prospective clients; and (c) to engage in an act, practice, and course of business which was fraudulent, deceptive, and manipulative, to wit, MUTIMURA engaged in a scheme to obtain the moneys of his investment advisory clients through material misrepresentations and omissions and then misappropriated those

client funds, including through unauthorized withdrawals and adviser fees, for his own purposes.

(Title 15, United States Code, Sections 80b-6 and 80b-17; and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATIONS

3. As a result of committing one or more of the offenses alleged in Counts One and Two of this Information, PARFAIT MUTIMURA, a/k/a "Parfait Niyomugabo," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28 United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Asset Provision

4. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)


GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

PARFAIT MUTIMURA,
a/k/a "Parfait Niyomugabo,"

Defendant.

SUPERSEDING INFORMATION

S1 19 Cr. 592 (LGS)

(18 U.S.C. §§ 1343 and 2; 15 U.S.C.
§§ 80b-6, 80b-17.)

GEOFFREY S. BERMAN
United States Attorney

PRIMOFF DECLARATION EXH. B

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

PARFAIT MUTIMURA

JUDGMENT IN A CRIMINAL CASE

Case Number: 19 Cr. 592 (LGS)

USM Number: 76329-054

Jennifer E. Willis

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1s and 2s

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1343	Wire Fraud	3/31/2019	1s
15 U.S.C. §§80b-6 and 80b-17	Investment Advisor Fraud	3/31/2020	2s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) 1, 2, 3, and 4 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/25/2020

Date of Imposition of Judgment

Signature of Judge

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/25/2020

Hon. Lorna G. Schofield, United States District Judge

Name and Title of Judge

8/25/2020

Date

DEFENDANT: PARFAIT MUTIMURA
CASE NUMBER: 19 Cr. 592 (LGS)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

63 Months on Count 1s and 60 months on Count 2s to run concurrently.

- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant is housed at a facility as close as possible to the New York Metropolitan area.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at 12:00 a.m. p.m. on 8/27/2020
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PARFAIT MUTIMURA
CASE NUMBER: 19 Cr. 592 (LGS)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years to run concurrently on both counts.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: PARFAIT MUTIMURA
CASE NUMBER: 19 Cr. 592 (LGS)**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: PARFAIT MUTIMURA
CASE NUMBER: 19 Cr. 592 (LGS)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in an outpatient mental health treatment program approved by the United States Probation Office. The defendant shall continue to take any prescribed medications unless otherwise instructed by the health care provider. The defendant shall contribute to the cost of services rendered based on his ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the health care provider.
2. The defendant shall provide the probation officer with access to any requested financial information.
3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless in compliance with the installment payment schedule.
4. The defendant shall submit his person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.
5. The defendant shall be supervised by the district of residence.

DEFENDANT: PARFAIT MUTIMURA
 CASE NUMBER: 19 Cr. 592 (LGS)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u> \$ 200.00	<u>Restitution</u> \$ See separate	<u>Fine</u> \$	<u>AVAA Assessment*</u> \$	<u>JVTA Assessment**</u> \$
---------------	--------------------------------	---------------------------------------	-------------------	-------------------------------	--------------------------------

Orders of Restitution and
 Forfeiture.

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
 ** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
 *** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PARFAIT MUTIMURA
CASE NUMBER: 19 Cr. 592 (LGS)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 200.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
See separate Orders of Restitution and Forfeiture.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

PRIMOFF DECLARATION EXH. C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Consent Order of Restitution

v.

PARFAIT MUTIMURA

19 Cr. 592 (LGS)

Upon the application of the United States of America, by its attorney, Audrey Strauss, Acting United States Attorney for the Southern District of New York, Jun Xiang, Assistant United States Attorney, of counsel; the presentence report; the Defendant's conviction on Counts One and Two of the above Information; and all other proceedings in this case, it is hereby ORDERED that:

1. Amount of Restitution

PARFAIT MUTIMURA, the Defendant, shall pay restitution in the total amount of \$578,389.85, pursuant to 18 U.S.C. §§ 3663A, 3663A(a)(3), to the victims of the offenses charged in Counts One and Two. The names, addresses, and specific amounts owed to each victim are set forth in the Schedule of Victims, attached hereto as Schedule A. Upon advice by the United States Attorney's Office of a change of address of a victim, the Clerk of the Court is authorized to send payments to the new address without further order of this Court.

A. Joint and Several Liability

Restitution is not joint and several with other defendants or with others not named herein.

B. Apportionment Among Victims

Pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid. Restitution shall be paid to the victims identified in the Schedule of Victims, attached hereto as Schedule A, on a pro rata basis, whereby each payment shall be distributed

2020.01.09

proportionally to each victim based upon the amount of loss for each victim, as set forth more fully in Schedule A.

2. Schedule of Payments

Pursuant to 18 U.S.C. § 3664(f)(2), in consideration of the financial resources and other assets of the Defendant, including whether any of these assets are jointly controlled; projected earnings and other income of the Defendant; and any financial obligations of the Defendant; including obligations to dependents, the Defendant shall pay restitution in the manner and according to the schedule that follows:

In the interest of justice, restitution shall be payable in installments pursuant to 18 U.S.C. § 3572(d)(1) and (2). The Defendant shall commence monthly installment payments in an amount equal to 15 percent of the Defendant's gross income, payable on the first of each month, immediately upon entry of this judgment.

While serving the term of imprisonment, the Defendant shall make installment payments toward his restitution obligation, and may do so through the Bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating the Defendant's six-month deposit history and subtracting an amount determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help the Defendant develop a financial plan and shall monitor the inmate's progress in meeting his restitution obligation. Any unpaid amount remaining upon release from prison will be paid in installments in an amount equal to 15 percent of the Defendant's gross income on the first of each month.

If the Defendant defaults on the payment schedule set forth above, the Government may pursue other remedies to enforce the judgment.

3. Payment Instructions

The Defendant shall make restitution payments by certified check, bank check, money order, wire transfer, credit card or cash. Checks and money orders shall be made payable to the "SDNY Clerk of the Court" and mailed or hand-delivered to: United States Courthouse, 500 Pearl Street, New York, New York 10007 - Attention: Cashier, as required by 18 U.S.C. § 3611. The Defendant shall write his/her name and the docket number of this case on each check or money order. Credit card payments must be made in person at the Clerk's Office. Any cash payments shall be hand delivered to the Clerk's Office using exact change, and shall not be mailed. For payments by wire, the Defendant shall contact the Clerk's Office for wiring instructions.

4. Additional Provisions

The Defendant shall notify, within 30 days, the Clerk of Court, the United States Probation Office (during any period of probation or supervised release), and the United States Attorney's Office, 86 Chambers Street, 3rd Floor, New York, New York 10007 (Attn: Financial Litigation Unit) of (1) any change of the Defendant's name, residence, or mailing address or (2) any material change in the Defendant's financial resources that affects the Defendant's ability to pay restitution in accordance with 18 U.S.C. § 3664(k). If the Defendant discloses, or the Government otherwise learns of, additional assets not known to the Government at the time of the execution of this order, the Government may seek a Court order modifying the payment schedule consistent with the discovery of new or additional assets.

5. Restitution Liability

The Defendant's liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the Defendant's release from imprisonment, as provided in 18 U.S.C. § 3613(b). Subject to the time limitations in the preceding sentence, in the event of the death of the Defendant, the Defendant's estate will be held responsible for any unpaid

balance of the restitution amount, and any lien filed pursuant to 18 U.S.C. § 3613(c) shall continue until the estate receives a written release of that liability.

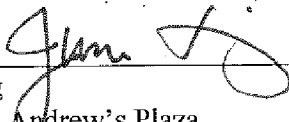
6. Sealing

Consistent with 18 U.S.C. §§ 3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims, the Schedule of Victims, attached hereto as Schedule A, shall be filed under seal, except that copies may be retained and used or disclosed

by the Government, the Clerk's Office, and the Probation Department, as need be to effect and enforce this Order, without further order of this Court.


AGREED AND CONSENTED TO:

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York


By: 
Jun Xiang
One Saint Andrew's Plaza
New York, NY 10007
Tel.: (212) 637 - 2289

8/25/20
DATE

PARFAIT MUTIMURA

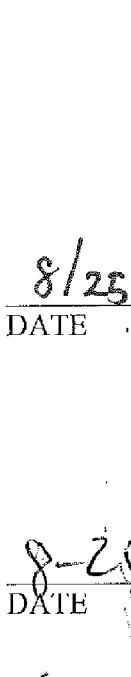
By: 
Parfait Mutimura

8-25-20
DATE

By: 
Jennifer Willis, Esq.
52 Duane Street, 10th Floor
New York, NY 10007

8-25-20
DATE

SO ORDERED:


HONORABLE LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

8/25/20
DATE

PRIMOFF DECLARATION EXH. D



NEW YORK
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

December 10, 2020

FIRST CLASS U.S. MAIL

Mr. Parfait Mutimura
Register Number 76329-054
MDC Brooklyn
Metropolitan Detention Center
PO Box 329002
Brooklyn, NY 11232

Re: Matter of Parfait Mutimura (3-20159)

Dear Mr. Mutimura:

Pursuant SEC Rule of Practice 230, I enclose a set of the Division of Enforcement's investigative file in the referenced matter, consisting of documents bearing bates-numbers 0001-0185. Please let me know if you have any questions.

Very truly yours,

/s/Richard G. Primoff
Richard G. Primoff
Senior Trial Counsel
(212) 336-0148
primoffr@sec.gov

PRIMOFF DECLARATION EXH. E

Pargait Mutimura
Res. No: 76329-054
Metropolitan Detention Center
P.O. Box 329 002
Brooklyn, NY 11232

December 17, 2020

Re: Matter of Pargait Mutimura (3-20159)

Dear Mr. Primoff,

This is to confirm that I have received a set of the Division of Enforcement's investigative file in the referenced matter, pursuant to SEC Rule of Practice 230. I will go over the documents and reach out if I have any questions.

However, a quick skim-through shows that you did not enclose a copy of Sentencing Hearing minutes held on August 25, 2020. It is equally, if not more, important piece of the file than the Plea Hearing minutes that you have enclosed; for it shows some of the elements we addressed at the hearing. Will you please also send this missing document? The Sentencing Minutes?

Thank you.

Sincerely, Pargait Mutimura
ID# 76329-054

Yusuf Muthumura

Reg No 76329-054

MetroPolitan Detention Center
MDC- Brooklyn

P O Box 329002

Brooklyn, NY 11232



OS Received 06/24/2021

To: Mr. Richard G. Primoff
Senior Trial Counsel
Securities and Exchange Commission
Brookfield Place
200 Jersey St. Suite 400
New York, NY 10281

10281\$1025 0038



" Legal Mail "

OS Received 06/24/2021

PRIMOFF DECLARATION EXH. F

Parfait Mutimura
Reg. No. 76329054
MDC Brooklyn
P.O. Box 329002
Brooklyn, NY, 11232

January 1, 2021

RE: Matter of Parfait Mutimura (3-20159)

Dear Mr. Primoff,

This is a second follow up letter to you. In the first letter mailed to you a few weeks ago, I have acknowledged receipt of discovery files and documents regarding the matter referenced above in the subject.

Unfortunately, I expressed that there was an important piece of discoveries / investigative elements that was Not included in the files you sent. That is "my sentencing transcripts / Minutes". Please send it over to help me prepare my response. If you have sent it already, please disregard this letter.

Thank you.

Sincerely
Parfait Mutimura
Reg. No. 76329-054

Parfait Mutinura

Res. No. 76329-054

MDC Brooklyn

Metropolitan Detention Center

P.O. box 329002

Brooklyn, NY 11232

NEW YORK NY 100

4 JAN 2021 PM 7 L



To: Mr. Richard E. Primoff
Senior Trial Counsel
Securities ^{and} Exchange Commission
200 Vesey street
suite 400
New York, NY 10281

OS Received 06/24/2021

10281-102525



METROPOLITAN DETENTION CENTER
80 29TH ST, BROOKLYN, NY 11232

The enclosed letter was processed through
mail procedures for forwarding to you.

The letter has neither been opened nor inspected.
If the writer raises a question or a problem over
which this facility has jurisdiction, you may wish
to return the material for further information
or clarification. If the writer encloses correspondence
for forwarding to another addressee, please
return the enclosure to the above address.

Legal Mail

OS Received 06/24/2021

PRIMOFF DECLARATION EXH. G



NEW YORK
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

June 8, 2021

FIRST CLASS U.S. MAIL AND UPS OVERNIGHT DELIVERY

Mr. Parfait Mutimura
Register Number 76329-054
MDC Brooklyn
Metropolitan Detention Center
PO Box 329002
Brooklyn, NY 11232

Re: **Matter of Parfait Mutimura (3-20159)**

Dear Mr. Mutimura:

I write in response to your correspondence of this past December 17, 2020 and of January 1, 2021, which, by reason of our remote working environment, we had inadvertently overlooked. With respect to your request for the sentencing minutes, this is to advise you that the Division of Enforcement (the "Division") is not in possession of that document, and it is not (and was not) part of the Division's investigative file required to be produced to you pursuant to SEC Rule of Practice 230.

I note in addition that the Division never received from you an Answer to the Order Instituting Proceedings ("OIP"), nor does it appear you have filed an Answer with the Commission. I also note that the Division received no response from you to the Division's motion for default dated March 3, 2021, or to the Commission's April 16, 2021 Order – nor does it appear that you have filed any responses thereto with the Commission. Please let me know if I am in error with respect to the foregoing.

Very truly yours,

/s/Richard G. Primoff
Richard G. Primoff
Senior Trial Counsel
(212) 336-0148
primoffr@sec.gov

OS Received 06/24/2021

PRIMOFF DECLARATION EXH. H



NEW YORK
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

June 9, 2021

FIRST CLASS U.S. MAIL AND UPS OVERNIGHT DELIVERY

Mr. Parfait Mutimura
Register Number 76329-054
MDC Brooklyn
Metropolitan Detention Center
PO Box 329002
Brooklyn, NY 11232

Re: Matter of Parfait Mutimura (3-20159)

Dear Mr. Mutimura:

I write to follow up on my letter to you dated June 8. After I reviewed your correspondence and request, the Division of Enforcement voluntarily undertook to obtain a copy of the sentencing transcript you requested, which was not previously in its possession. A copy of that document is enclosed herewith.

Very truly yours,

/s/Richard G. Primoff
Richard G. Primoff
Senior Trial Counsel
(212) 336-0148
primoffr@sec.gov

OS Received 06/24/2021

K8p1muts

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 592 (LGS)

5 PARFAIT MUTIMURA,

6 Defendant.

Sentencing

7 -----x

New York, N.Y.
August 25, 2020
5:11 p.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the
16 Southern District of New York

17 BY: JUN XIANG

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

19 BY: JENNIFER E. WILLIS, ESQ.

20 ALSO PRESENT: KRISTIN ALLAIN, Special Agent, FBI

K8p1muts

1 (Case called)

2 THE DEPUTY CLERK: Before we begin, as we have parties
3 listening remotely, I'm just going to remind the listening
4 public that recording or rebroadcasting of this proceeding is
5 prohibited. Violation of this prohibition may result in
6 sanctions.

7 We're here before the Honorable Lorna G. Schofield.

8 THE COURT: Okay. Good afternoon.

9 MR. XIANG: Good afternoon, your Honor. Jun Xiang for
10 the government. With me at counsel table is Special Agent
11 Kristin Allain of the FBI.

12 THE COURT: Okay. Thank you.

13 MS. WILLIS: Good afternoon, your Honor. Jennifer
14 Willis, Federal Defenders of New York, on behalf of
15 Mr. Mutimura.

16 THE COURT: Good afternoon.

17 Good afternoon, Mr. Mutimura.

18 We're here today to impose sentence in the case of
19 United States v. Parfait Mutimura.

20 Mr. Mutimura pleaded guilty to two counts. Count One
21 is a wire fraud, and Count Two is investment adviser fraud.
22 His plea was pursuant to a plea agreement dated January 27,
23 2020.

24 To prepare for the proceeding today, I've reviewed the
25 presentence report, which was last revised April 29, 2020.

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 I've also received and reviewed the defendant's unredacted
2 submissions dated August 3rd and 21st, 2020, and letters from a
3 number of people. Let me just recount who they are:

4 First from Mr. Mutimura himself. Thank you for that.
5 It's always important for me to hear from the defendant.

6 Also -- I'm afraid I'm going to butcher these names,
7 my apologies -- Innocent Nsengiyaremye -- and somebody will
8 spell these for the court reporter afterwards; Gilbert
9 Rwabigwi; Serge Rugamba, who is president of Light My Candle, a
10 nonprofit institution based in Rwanda; Sebastian Rukarisha, who
11 is a friend and former college classmate of Mr. Mutimura's;
12 Reverend Bizimana, who is a friend and pastor of the Emmaus
13 United Methodist Church in Albany; Francine Uwamahoro, who is a
14 childhood friend; Andro Samuel, who is the CEO of Sphynx
15 Capital and defendant's employer from February 2020, and I just
16 note that this was a letter that related to a request regarding
17 a bail condition, it wasn't expressly in support for
18 sentencing.

19 I also have received and reviewed an affidavit of
20 monetary damages owed to victim Immaculée Ilibagiza dated
21 March 13, 2019; a copy of a cashier's check in the amount of
22 \$1,420 dated January 27, 2020, and addressed to victim Eunice
23 Nganga; and a copy of a \$1,000 cashier's check dated
24 January 24, 2020, and addressed to victim Ronald L. Thorington.

25 I also have the government's unredacted submissions

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 dated August 11th and 21st, 2020.

2 And I have also received a consent order of forfeiture
3 in the amount of \$578,389.85; and a restitution order, I
4 believe in the same amount. Is that right?

5 MR. XIANG: That's correct, your Honor.

6 THE COURT: Just so I get it right this time, it's
7 \$578,389.85.

8 Is there anything I'm missing?

9 MR. XIANG: Your Honor, I apologize if I missed this.
10 I believe attached to the government's August 11, 2020
11 submission was a letter from one of the victims, Ron
12 Thorington.

13 THE COURT: Okay. I thought I had mentioned that, but
14 if I didn't, my apologies for the oversight in mentioning it.

15 Okay. Ms. Willis, have you read the presentence
16 report and discussed it with your client?

17 MS. WILLIS: I have, your Honor.

18 THE COURT: And Mr. Mutimura, have you read the
19 presentence report and discussed it with your lawyer?

20 THE DEFENDANT: Yes.

21 THE COURT: And have you had the opportunity to go
22 over with her any errors in the report or anything else?

23 We have two mics so you should each just take one.

24 MS. WILLIS: When we were testing the sound system,
25 your Honor, there were some difficulties hearing me on this

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 microphone, so I took his, so --

2 THE COURT: Okay. All right. So my question to
3 Mr. Mutimura, is: Have you had the opportunity to discuss the
4 presentence report with your lawyer and bring up anything else
5 that you think should be taken up with the Court?

6 THE DEFENDANT: I have.

7 THE COURT: Okay. And let me ask Mr. Xiang, have you
8 read the presentence report?

9 MR. XIANG: Yes, your Honor.

10 THE COURT: Okay. So my question to counsel is:
11 Putting aside the calculation of the sentencing guidelines, are
12 there any objections to the report regarding its factual
13 accuracy?

14 MR. XIANG: Not from the government, your Honor.
15 Thank you.

16 MS. WILLIS: No, your Honor.

17 THE COURT: So hearing no objections, I adopt the
18 factual recitations in the presentence report. I direct that a
19 complete copy of the report be prepared for the Bureau of
20 Prisons and the Sentencing Commission. The report will be made
21 a part of the record in this matter and placed under seal. If
22 an appeal is taken, counsel on appeal may have access to the
23 sealed report without further application.

24 So before I go any further, I wanted to find out -- I
25 know that we have the opportunity for people to participate on

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 the phone, and I wanted to find out if Mr. Mutimura has any
2 friends or family on the phone.

3 No. Okay. Thank you.

4 So I'd like to turn now to discussion of the
5 sentencing guidelines. Although the Court is no longer
6 required to follow the sentencing guidelines, we're still
7 required to consider them in determining what an appropriate
8 sentence is, and to that end, I have to calculate what the
9 guidelines recommend as far as a sentence.

10 In this case, as you know, Mr. Mutimura, there was a
11 plea agreement in which you and the government agreed to a
12 calculation of the sentencing guidelines, and in reviewing the
13 presentence report, it seemed to me that the calculation of the
14 guidelines was the same. I would just note that I saw from the
15 submissions and the most recent exchange that the government
16 was considering disputing a reduction in the offense level
17 based on the defendant's acceptance of responsibility, so I
18 asked for the defendant to respond and also for the government
19 to state its position, having read that response. I take it
20 from that that the government will not argue for any reduction
21 for acceptance of responsibility under Section 3E1.1 of the
22 guidelines. So can you confirm that.

23 MR. XIANG: I can, your Honor. That is, of course,
24 subject to any statements that Mr. Mutimura might make in
25 sentence today.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 THE COURT: Okay. Thank you.

2 So based on the parties' agreement, the absence of
3 objection, and my independent evaluation of the sentencing
4 guidelines, I accept the calculation in the presentence report.
5 I find the offense level is 26 and the criminal history
6 category is I.

7 Mr. Mutimura, you probably know that those are the two
8 variables that are used in the sentencing guidelines to
9 calculate what the recommended sentence is. Based on those
10 variables, the sentence that's recommended is 63 to 78 months'
11 imprisonment; a fine of \$25,000 to \$1,156,779.70, which is
12 twice the loss amount; also, supervised release on each of the
13 counts of one to three years; and probation is not a
14 possibility.

15 You should understand, however -- I think you do --
16 that the maximum sentence is actually much greater than what
17 the guidelines propose. I can impose a maximum term of
18 imprisonment of 20 years on Count One, five years on Count Two,
19 for a total of 25 years; the maximum fine is the same number
20 that I previously said; supervised release under the statute is
21 a maximum of three years on each count; and the statute would
22 permit for probation of one to five years.

23 There's also a mandatory special assessment of \$200,
24 which means that it's an amount I have to impose.

25 And pursuant to the plea agreement and also to the

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 agreements that I've received from the government, there is a
2 forfeiture of \$578,389.85, plus a restitution agreement in the
3 same amount, both pursuant to the plea agreement.

4 Are there any objections to the sentencing options
5 I've outlined?

6 MR. XIANG: No, your Honor.

7 MS. WILLIS: No, your Honor.

8 THE COURT: So I see from the plea agreement that
9 neither party believes that an upward or downward departure
10 from the guidelines is appropriate. Departure is a term of
11 art. While I have authority to depart, I decline to do so.
12 That, of course, is different from what we call a variance, and
13 both parties have agreed that a variance could be sought.

14 So would the government like to be heard?

15 MR. XIANG: Yes, your Honor. And I would note for the
16 Court that I believe Victim 1, Immaculée Ilibagiza is on the
17 line and that she would like to speak at some point during this
18 proceeding.

19 THE COURT: Certainly.

20 MR. XIANG: Great.

21 As the Court is aware, your Honor, the government is
22 seeking a top-of-the-guidelines sentence in this case. And as
23 your Honor is aware, that's somewhat unusual, and I think it's
24 important to explain why the government believes that's
25 appropriate here.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 This is a case about theft and about financial loss,
2 so it is a case about an extraordinary breach of trust and an
3 extraordinary and, I would submit, cruel and heartless
4 withholding of information and deliberate misleading of the
5 victims, including Victim 1, Immaculée Ilibagiza, in such a way
6 that prevented them from recouping the losses, from salvaging
7 what they could of what defendant stole.

8 I want to start by noting an unusual fact in this
9 case, which is that the primary -- the victim who suffered the
10 most in terms of financial loss, Ms. Ilibagiza, is a survivor
11 of the Rwandan genocide, as your Honor has read in the
12 submissions. Her family was killed. And her life has been
13 devoted to both learning about that experience -- and she'll
14 speak to this to the Court -- and trying her best to reach a
15 message of forgiveness and of understanding and of moving on.
16 And the defendant knew this because the defendant shared that
17 background. The defendant is also a survivor of that tragedy.
18 And that, of course, is incredibly tragic, but what it means,
19 your Honor, is that this defendant leveraged that connection,
20 that shared background, to earn Ms. Ilibagiza's trust and,
21 having done so, when she entrusted him with several hundred
22 thousand dollars of her life's savings, her retirement, her
23 savings, what she earned through her books and her speaking,
24 what he did was, he stole it. He lost some of it, to be sure,
25 but he stole most of it. He stole it by opening bank accounts

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 in her name, using information and identification that she had
2 entrusted to him, opened bank accounts in her name to siphon
3 the money away in the form of withdrawals, in the form of
4 excessive adviser's fees.

5 And how did he spend that money? We don't know the
6 full picture, your Honor, because he took out a lot of it in
7 cash, in thousand-dollar increments on over 40 occasions, but
8 what we do see is that he would spend directly from that
9 account, that account in Ms. Ilibagiza's name, to pay for his
10 rent, to pay for his wedding, to pay for other luxury goods, to
11 pay for \$5,000 of purchases at the Apple store. That is what
12 he did with someone's life savings who entrusted that money to
13 him.

14 And what did he tell her? She was trusting. For a
15 long time she didn't question. She didn't understand fully
16 what was going on. She didn't keep close tabs on what was
17 happening with the money. When questions arose, when she
18 became suspicious, what did he do? Well, first, he forged
19 years' worth of account statements, straight up, you know,
20 created them and Photoshopped and sent them to her to give her
21 a false sense of security. As the Court will recall from
22 reviewing some of the text message communications that the
23 government submitted as part of its sentencing submission, he
24 told her, oh, it's in this other investment, don't worry,
25 you've actually earned money during your time with me, when in

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 fact that was all false. And that was when the victim
2 confronted the defendant.

3 So this is not a case, your Honor, where it was a
4 one-time mistake, a two-time mistake, someone got behind,
5 someone made mistakes, there was an error of judgment, and as
6 soon as the day of reckoning came, it was a confession, an
7 admission, an attempt to do right. What happened, as your
8 Honor sees from the submission, is that he attempts to lie to
9 her further about, oh, it's somewhere else, I would never do
10 this to you; and then when she really confronts him, he comes
11 back, he puts the piece of paper in front of her that I think
12 is titled the Affidavit of Damages, something to that effect,
13 in which he says, you know what, I'll pay you back, here are
14 these various terms, please don't involve the legal system.
15 She does not sign that.

16 He returns to Africa and was there predominantly for
17 the many months prior to his arrest, with a few days-long trips
18 to the United States.

19 Immaculée has not received a cent of restitution or
20 payment from the defendant -- the defendant, who was arrested
21 with, you know, brand new Apple devices at the airport. I
22 think that shows extraordinary callousness and cruelty that
23 goes beyond the heartland of even financial fraud cases like
24 this.

25 I want to speak as to Victim 2, Reverend Thorington,

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 as well. Reverend Thorington submitted a letter to the Court.
2 And there too, I would submit to the Court that the defendant's
3 conduct betrayed an incredible trust. Reverend Thorington was
4 someone in his 60s. I believe now he's maybe in his 70s, your
5 Honor. So he was approaching the defendant in the twilight of
6 his life, having met through I believe the church community,
7 although I'm not positive of that, your Honor. That was the
8 relationship. He gave his time and savings to this defendant,
9 but he stole it. He stole it and he lost it. And again, when
10 Reverend Thorington, and when the remaining victims -- who I
11 don't want to kind of minimize in any way -- when each of them
12 kind of confronted Mr. Mutimura, the response was always to
13 deflect, to delay, to buy more time. That is this defendant,
14 and that is why the government believes that certainly to
15 promote respect for the law, for specific deterrence, and for
16 general deterrence, a top-of-the-guidelines sentence is
17 appropriate.

18 I want to speak briefly, your Honor, to the issue of
19 incapacitation and specifically specific deterrence, which the
20 government believes are important sentencing factors here.
21 They're important sentencing factors in every case, but based
22 on the government's involvement in this case, there is specific
23 reason to be concerned that this defendant is tempted, will be
24 tempted to reoffend in the future. He is someone who,
25 according to his own sentencing submission, is working in some

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 capacity at some Wall Street firm, even though the bail
2 conditions in this case told him to stay far away from
3 financial information and personal identifying information of
4 other individuals. He is someone whose website is still up.
5 He is someone whose LinkedIn page for his firm includes fake
6 profiles that were created of employees who never worked there.
7 He is someone who, when Ms. Ilibagiza asked him, hey, why
8 didn't you pay me back, his response was, in sum and substance,
9 oh, I would have sold my firm for multiple millions of dollars,
10 but you told the authorities and as a result, my firm was
11 worthless, the implication being, if only you stayed quiet and
12 I was able to offload this firm, which was built on this
13 defendant's fraud, I would be able to pay you back. I think
14 all of that shows certainly -- although not going to the issue
15 of acceptance, which, as the government stated before, based on
16 his guilty plea and his postarrest confession, the government
17 is not disputing here, it does go to the issue of specific
18 deterrence and is this defendant likely to reoffend.

19 And so with that, your Honor, the government would
20 submit it does not make recommendations at the
21 top-of-the-guidelines range lightly, and those are the reasons
22 why a sentence in such a range would be appropriate here.

23 I'm happy to answer any questions the Court has.

24 THE COURT: Okay. Thank you.

25 Ms. Willis, would you like to be heard?

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 MS. WILLIS: Your Honor, the history provided in the
2 submissions regarding Mr. Mutimura was provided not just so
3 that the Court could learn more about him, as, of course, the
4 Court is mandated to do before sentencing, but because I think
5 that it helps explain what happened in this case. Mr. Mutimura
6 truly was someone who wanted to have a business that would
7 serve his clients, truly, and I don't dispute, obviously, what
8 the government is saying about some of the foundations and some
9 of the things that happened with the business. But there is a
10 difference between someone who sets up a complete sham, with
11 the intention of getting as much money as they can, not
12 investing that money, but getting that money and running with
13 it, and someone who wants to have a business. And I think that
14 his sort of greatest failing is that he -- as we talked about
15 in the submission, his life course, the things that he suffered
16 after the genocide and the way in which he emerged from that by
17 focusing on his education, by focusing on his success, and when
18 that success spilled over into the business world after he
19 finished college, after he was able to be employed, he wanted
20 to rush the next step. Starting a business obviously takes
21 time. It always has the risk of failure, as well as the risk
22 of success. And Mr. Mutimura was someone who believed that he
23 could be a success in a legitimate business. And instead of
24 starting small, instead of making modest investments, as
25 clients had authorized him to do, he wanted to do aggressive

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 investments, investments that had the potential of large gain.
2 He was not authorized to do that. That's not what those
3 clients wanted him to do. And when that money was lost, as a
4 startup business owner, the business was not profitable enough
5 to be paying him money to pay his rent, to pay, you know, his
6 general expenses, and so he took money from his clients. He
7 lied to cover those losses.

8 Unquestionably, it's just bad conduct. Nothing that I
9 put in the submission, nothing that Mr. Mutimura has said in
10 his letter or to me is meant in any way to minimize that. But
11 I do think, when the government talks about callousness, when
12 they talk about cruel and heartlessness, when they talk about
13 leveraging the relationship with Victim 1, as if Mr. Mutimura
14 was targeting her to defraud and specifically using their
15 shared pain and their shared history as survivors of a horrible
16 genocide to then take advantage of her, that's not what we have
17 here. He met her through the course of his life. They no
18 doubt were brought together and felt a connection because of
19 that shared history. That is why he wanted her as a client and
20 I'm sure part of the reason why she trusted him. But he did
21 not target her in some way, which seemed to be the government's
22 implication, and again, his intention was to be able to provide
23 a legitimate service. When that started to go south,
24 Mr. Mutimura believed that while markets go down, they also go
25 up, that he would eventually be able to recoup the money, that

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmutS

1 he would be able to pay his clients back. And of course what
2 he should have done, of course, is to immediately come clean
3 and say, look, you know, we took more losses than we expected,
4 laid out a prospective for the clients, saying, either you can
5 continue to choose to trust me and see if the money is able to
6 be recouped or you can take what's left and run. Of course
7 that's what he should have done. He did not. But his
8 intention -- again, it does matter -- was that he, through both
9 his individual consulting and also through market investments,
10 would be able to get back the money that was lost, would be
11 able to pay the victims back. That has always been his
12 intention.

13 In the additional letter that I had written to the
14 Court after the main submission, the government talks about
15 Mr. Mutimura leaving after being confronted by Victim 1 and
16 going to Africa. He went there for business, because if he's
17 not able to work, he can't possibly make any kind of
18 significant reparations to these victims. This is not a
19 situation where a hundred dollars is lost and he can get a job
20 at McDonald's and he can pay that back in a few days or few
21 weeks or few months. This is significant money, obviously --
22 and clearly, as we've heard in the letter from Mr. Thorington
23 and I expect when Victim 1 speaks today, money that is
24 impactful to these people, impactful to their lives. These are
25 not victims who are investing with kind of play money. This is

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 money that people relied on and expected to have. For him to
2 be able to repay \$500,000 of losses, he needed to work.

3 So when he traveled to Africa in 2019, it was for the
4 purpose of work, and I included some of the additional letters
5 about a contract he had that started in 2018 and would have
6 continued on to 2021, 2022, to show that he did have a
7 legitimate belief, a real expectation, that he would be able to
8 be compensated for his work in a way that would have allowed
9 significant payments to the victims, and when he set up the
10 payment plans or the letters or the contracts, however we want
11 to term them, at the time he did not have money. This is not
12 as if he stole this money and bought a yacht somewhere that he
13 could then sell to pay the money back. The money that was
14 taken was used to keep himself and the business afloat. He
15 does not have any assets. As I talked about in the submission,
16 and as the government talked about in their submission, he
17 doesn't have any assets. He doesn't have a bank account with
18 hundreds of thousands of dollars that can just be disgorged to
19 pay these people back. So he was not able to start with
20 significant repayments. He set up what he thought was a
21 reasonable payment plan that he could make at that time, with
22 the expectation that the business ventures he was already
23 engaged in would then lead to payments that would have been for
24 him personally that he then could use to repay the victims.
25 That obviously did not happen. But there was not -- and we

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 know that that was true because if his idea was, I've done all
2 the damage I can here, I'm just going to run away and never
3 come to terms with these people, why would he have come back?
4 Once he was in Africa, starting a business there and working as
5 a consultant there, he returned at least twice to the United
6 States, and the purpose of his return was to continue to speak
7 to and to try to come to terms with Victim No. 1. So -- and
8 when he was arrested in this case, it was when he had just
9 flown back to the country again. So this is not someone who
10 stole money, fled to some tax haven somewhere or a place that
11 has no extradition treaty and never returned to America. He
12 came back, because he wanted to be able to continue to come to
13 terms with the victims.

14 And I want to address something the government talked
15 about in terms of specific deterrence. They talked about the
16 idea that Mr. Mutimura has to be given this extremely harsh
17 sentence for what is his first crime, his first arrest of any
18 kind, because he has continued to work in the financial field.
19 Specifically what he is not allowed to do is have the personal
20 identifying information of others or access to their financial,
21 you know, financial fingerprints. When he started on
22 supervision, one of the first jobs that he had -- and he'll
23 correct me if I'm wrong -- was one that he explained to them
24 what he could do and what he couldn't do. He accepted the job.
25 And once he was on the job for several days or weeks, it became

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 clear -- and it was going to be sort of in a more advisory
2 capacity, where he was merely explaining markets and things
3 like that to people, not dealing with individual clients'
4 financial information. When he learned that they actually
5 wanted him to have access in a way that he thought would
6 violate his pretrial terms, he quit that job, and informed me,
7 he informed the pretrial officer, because he was trying to
8 scrupulously make sure that he was in compliance.

9 So as someone who is trained and has worked in the
10 finance industry, that's the skill that he has. There are ways
11 that he can continue to work in that industry while still not
12 directly having someone's Social Security number or someone's
13 birthdate or bank account numbers, the type of things that the
14 government sounds like it's concerned about. So he has not
15 violated the terms of his supervision. In fact, he took pains,
16 gave up a job that was, you know, paying more than the job he
17 took afterwards, because he wanted to make sure that he
18 complied with what he was obligated to do for pretrial. So
19 this argument that somehow using the skills he has, using the
20 education that he has for work, that that somehow means he's
21 going to reoffend I think is misplaced.

22 And your Honor, a key piece of I think my argument on
23 behalf of Mr. Mutimura is also one about restitution, and about
24 the ability to make reparations. Mr. Mutimura has erred
25 severely, and that error, those crimes, have hurt real people.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 This is not, you know, he embezzled from Target and the bottom
2 line of some business is affected. It's real people. Sending
3 Mr. Mutimura to prison will not deter him any more than the
4 felony, than the months on home detention, than the pressure
5 and the burden and the fear that he has lived with over the
6 course of this year, but it will also not make the victims
7 whole. Sending him to prison does impact his ability to start
8 paying them back now and, quite frankly, impacts his ability to
9 pay them back in a significant way in the future. If he is
10 able to find work, and if -- he has tried, and obviously with
11 limited success, but if he is able to find work, certainly a
12 condition of any term of supervision, now or in the future,
13 will be that he has to pay on a certain payment scale, and that
14 gets monitored by supervision and the supervision officer, and
15 they're able to make sure that he is in fact paying, that he is
16 sending what he's supposed to. If he is sent to prison, it
17 certainly devastates the rest of his life. He is a young man,
18 just 30 years old, who does have promise. He has shown that.

19 The letters of support I think show your Honor a
20 different side of Mr. Mutimura. It shows you someone who
21 believes also in forgiveness, it shows you someone who believes
22 in community service, in giving back, who has tried to do
23 right, and that is obviously a different side of him than what
24 the government's case shows. But what it tells you is that he
25 is not heartless, he is not callous. He is someone who made a

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 horrible error in judgment, and once he had dug himself that
2 hole, unfortunately he kept digging.

3 If he is given an opportunity for supervision, with
4 whatever kind of conditions, that will also enable him to start
5 to try to make right what he has done wrong. That is his
6 fondest wish. He, as much as anyone, understands the
7 importance of healing, of trying to right the wrongs that you
8 have done. He talked about that in his letter, that he cannot
9 go back and undo these horrible choices, all he can do is move
10 forward, and he wants to move forward in a way -- obviously, he
11 is obviously thinking about himself as well, but he's thinking
12 about moving forward in a way that somehow, some way, is able
13 to begin the process of repaying and healing the harm done to
14 the victims. And a sentence in the guideline range, let alone
15 the top of the guideline range that the government asked for,
16 eliminates that possibility. His rehabilitation is best served
17 by -- I am asking for a sentence of time served, your Honor.
18 But the needs I think of the victims are best served in that
19 way as well, as long as there is a plan put in place that he is
20 forced to adhere to, that forces him to start the process of
21 repaying them, and obviously that is something that your Honor
22 could craft in terms of conditions.

23 So I am asking you to consider of course the harm he
24 has caused, but also consider who he is, the fullness of his
25 life, the things that brought him to this path, and in doing

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 so, your Honor, I ask you to give him a sentence of time
2 served.

3 THE COURT: Okay. Thank you.

4 So I understand that the woman we've referred to as
5 Victim 1 is on the phone.

6 MR. XIANG: Yes, your Honor.

7 Could the government, either before or after Victim 1,
8 Ms. Ilibagiza, speaks, respond to a few of those points, your
9 Honor?

10 THE COURT: Yes.

11 MR. XIANG: So first of all, I want to address this
12 argument that, well, the loss amounts are so large and this is
13 someone who is still in the financial sector and so therefore,
14 in order to enable restitution, leave him out, your Honor.
15 There's obviously some appeal to that, some logical appeal to
16 that, but there's also a serious irony there, your Honor, which
17 is that the more someone stole, the more losses, the more harm
18 they caused the victims to suffer, and the more privileged they
19 themselves were in terms of their earning potential now or
20 going forward, ironically, the more compelling that argument
21 becomes. Someone who's in finance and who loses over half a
22 million dollars, as this defendant did, stole and lost over a
23 half a million dollars, as this defendant did, is more able to
24 make that argument than someone who is less privileged and who
25 caused less harm. And I do think that that is a perverse

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 incentive, your Honor.

2 I also think that, ironically, that this theme that,
3 well, keep him out in order to let him pay back the victims,
4 sounds eerily like what he texted to Ms. Ilibagiza when she
5 confronted him. He wrote -- and this is in the government's
6 submission -- "A lawsuit ends the company and ends my life.
7 Not sure it would help you cover your losses. All I'm hoping
8 to happen is to reach the amicable settlement, then within a
9 year or so, I sell my company to another bank for a million to
10 2 million, then pay you all your dues to you. That's the only
11 okay outcome. You know that I'll not run away from you. I,
12 out of all people, understand that." And then there's a bit of
13 foreign language here, your Honor. I'll skip over that. "I'll
14 have to keep what I owe you my top priority. A lawsuit would
15 put everything we are talking about in a court order, but
16 there's no way a judge would let me walk free without a minimal
17 jail time in this case."

18 And so the argument he's making today, your Honor, is
19 the pitch he made to Victim 1 to prevent her from going to law
20 enforcement in the first place: If you expose me, if I get in
21 trouble, if I go to jail, then you'll never get your money
22 back. The only way for you to get your money back is for you
23 to trust me, for you to believe me. When I represent to you
24 that I have future streams of income, I have this business, I
25 have this going on in Africa, that's the only way that you'll

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 get your money back.

2 What were the defendant's actions when he was
3 purportedly struggling so hard to find something to pay back
4 the victims? Well, on July 2019, four months after this
5 exchange, when the defendant was purportedly making restitution
6 and repayment the top priority, he spent more money at the
7 Apple store. He spent, you know, thousands of dollars over a
8 number of trips over this period in which, apparently, you
9 know, by the defendant's words, his top priority was to pay
10 victims back.

11 Victim 1 will speak in a moment, your Honor, and
12 obviously her memory and recitation of what the interaction
13 between her and the defendant was like post the confrontation
14 will shed a lot of light on this issue, but it is not the case
15 that the defendant was abroad at every opportunity, letting her
16 know, here's what I'm doing, I'm paying you back, here's an
17 update, I'll be in the country, don't worry. No. There was
18 this exchange, there was that affidavit, and then he went to
19 Africa, where he primarily stayed except for certain trips when
20 he came back.

21 For all of those reasons, your Honor, the government
22 again respectfully submits that a top-of-the-guidelines
23 sentence is appropriate.

24 THE COURT: Okay. Thank you.

25 So we have Ms. Ilibagiza on the telephone. And she,

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 as a victim in this case, has a right to speak, so I would
2 recognize her now.

3 MS. ILIBAGIZA: Thank you so much. This is Immaculée
4 Ilibagiza.

5 Your Honor, and everyone there, and Parfait Mutimura,
6 I'm really happy that it's come to this, that I'm given a
7 chance -- especially your Honor, to give me a chance to share
8 my -- the side of my story.

9 As I say, my name is Immaculée Ilibagiza. I come from
10 Rwanda, and I lived through the genocide where I lost my
11 family. My mom, my dad were killed, and my two brothers. I
12 survived by hiding in a bathroom of 3 x 4 feet, with other
13 seven women, my neighbors, where my parents sent me before it
14 all went bad. So three months later, I found out the family
15 had been killed, but by the grace of god, I made it through.

16 I found somebody who gave me a home, and I started to
17 look for a job. I found a job with United Nations in end of
18 1994; and in 1998, I moved to United States working with United
19 Nations again, until 2006, when I wrote my first book. People
20 who heard my story would tell me, why don't you write a book,
21 you know, how can you be yourself after what you went through.
22 Please write a book, and just to share how -- the process of
23 your thoughts, how can you still want people to be okay, how
24 are you not angry.

25 So anyway, I wrote my first book, *Live To Tell*, which

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 was -- became a best seller, and I resigned my job at the
2 United Nations in 2006. That was six years after I was working
3 with United Nations. I had saved some money in United Nations,
4 my pension, but when I saw the sales of my book, I now started
5 completely to do that alone. I realized I loved writing books.
6 I -- people started to invite me to speak, which I also
7 realized that I loved. And one of the things really I may
8 mention, I will share, I shared, is just how to find peace, to
9 have hope, and to keep going no matter what happens to you in
10 your life as what have happened to me, when most of my family
11 was killed.

12 So I moved some money I have saved in my savings in
13 the United Nations for six years, and now I put together with
14 some money I was saving from my book and my public speaking. I
15 realized that I have to depend on myself now, that I don't have
16 an organization, having to save money for my pension.

17 For three years after I have started working -- and by
18 the way, I am a single mom. I have two children. And I went
19 through divorce during about -- in 2007, separation, and the
20 divorce came through a few years later. But knowing that I was
21 alone, I have two children, I started to save money. I never
22 wanted to invest, where, you know, so that my money becomes
23 more than just really -- you're just working, save all you
24 have.

25 And so when I met Mutimura, I think it was two years

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 after I have started being a public speaker and speaking about
2 my experience, encouraging people just to have hope. He was
3 introduced to me by a cousin, whose name is Habugima Ndani
4 (ph), and he introduced him to me, and he said he was the
5 person who work in investments, and he asked me if I can do
6 investment with him, he's a good guy. I'm like, look -- Ndani
7 was a cousin, but somebody I didn't trust that much. But when
8 Mutimura Parfait came to see me, he was very put together, very
9 calculated in his work. It really counted. And he explained
10 to me also that he was a Tutsi, he knew my book, he knew my
11 background. He told me that he survived the genocide, and he
12 said they had killed his family but he survived with one
13 sister, who was his twin, and his twin -- he said during the
14 genocide, he was visiting a family in another province, he and
15 his sister, who are twins, and that's how they made it, because
16 his family was all killed. So when he and his two sisters --
17 his sister -- his sister was adopted by a Canadian family who
18 took her to Canada, but didn't take him. He was adopted by
19 another family.

20 So fast forward. When he came to the US, all he
21 wanted to do was to go to look for his sister who have survived
22 the genocide. When he came here, before he went to visit her,
23 he found out his sister have just died. And for me, it was
24 like the worst thing can happen to anybody. I survived with
25 one brother, who was outside of the family. I couldn't believe

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 that this man have lived through this terrible thing, as we
2 lived through, now to survive with one person, and who he never
3 saw since they were 4 years old, because she was adopted, and
4 now she died too, before he can ever go to see her.

5 So he told me how disciplined he is; he told me how he
6 wakes up very early, he sleeps very early, he works well, he
7 doesn't drink, he doesn't take drugs, he's a very disciplined
8 man; he would assure me to just, you know, take care of my
9 money and helping him as another Rwandan, another person who
10 have lived through this and who have just lost his sister. I
11 trusted him, especially with what he gave me. I have not met
12 anyone whom I could speak about it with, who went through the
13 same thing that I'd been through, and really who is so well
14 behaved that -- with what he was saying. I moved the money.

15 But there's something I remember that scared me. And
16 this way he can hear, he can remember that. After I signed the
17 papers to transfer the money I had to the account, the thought
18 of me was, well, even if he takes the money, it doesn't mean
19 that it's with his account. It would be in the account of the
20 companies. So I just wanted to trust him to be the one who was
21 the adviser. I never thought he would ever have taken the
22 money. Maybe I would not have done it, you know, to put in his
23 hand. But I remember after I signed the papers, he look at me
24 and he said, Oh, my god, you trust me. And my heart jumped.
25 After all you're telling me for a week how trustworthy you are,

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 now you tell me I shouldn't trust you? And that really scared
2 me. But then I start to calm myself. Well, maybe -- he told
3 me he has a hundred million he's invested, like he's managing.
4 Who am I to say my 500,000 is something compared to a hundred
5 million? And then he told me all the schools he went to; he
6 had this diploma, he have this license. And a part of me also
7 was thinking, there is no way he will mess this up. We've come
8 too far. We come from Africa, in a tiny country in Africa,
9 Rwanda, to come to the US, go to school, how hard this is, and
10 to ever take a chance to go against the law? I'm sure he will
11 not do this.

12 So all of these thoughts were in my mind, but still, a
13 part of me was, oh, think of how orphaned he is, thinking of
14 how he lost his sister. I gave him the money. And I was
15 traveling a lot, and I have an accountant whom I really trust,
16 his name is Theo (ph), lived with me, and I told him, look,
17 will you just keep following up with him. And that's him who
18 was following up. So after a time I remember I said, you know,
19 let's see if we can just follow and see where the money is,
20 just to check things. Somehow that doesn't -- my mind was
21 like, what if -- what if it's a lie? What if this money is
22 nonexistent? That was always something that was in my mind.

23 When I told him to ask him to give him the password so
24 that we can check the money, Mr. Mutimura said he was traveling
25 to Europe. I ask him again; he said, well, I need to be there

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 to be able to give you the password. And I said, why don't you
2 just give it to me? Now I really started to get scared. Why
3 is he not giving us the password? And then he told us, Look,
4 look at the statement. And I look at the statement, I'm like,
5 oh, things are good, everything is good. But then again, we
6 asked him, you know, can I just check? All my friends, they're
7 always on the computer checking their investments. Why can't I
8 check? And again, we asked him. He's like, Okay, I will tell
9 you, they blocked something. I will come. But he wouldn't
10 give it to us.

11 So at a certain time I remember there was phone --
12 banks calling me, telling me that someone is trying to ask for
13 a credit card in my name. But they didn't tell me who that
14 person was. And I thought -- I told a friend, and this friend
15 told me, oh, maybe it's the work of hackers who are lying to
16 you. I'm like, I know. Who knows who is the right person?
17 That was a lie. To find later it was account -- person have
18 opened an account in my name, that was actually asking -- they
19 took the credit card, because they were calling me.

20 So how I came to find out, all this was just a little
21 bit scary, but still I didn't have a sign or something to
22 convince me that things were wrong. What I realized also was
23 that after the way he was with the password, he was avoiding
24 me. Before he was very much coming home and miss me, miss you,
25 this, and he was kind of avoiding me. I couldn't understand

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 either what was going on.

2 So I remember, before everything came through, Parfait
3 asked me, right after his wedding, to lend him \$9,000, and, oh,
4 quickly. Again, I did not find anything bad, so I send him --
5 I wrote him a check of 9,000, and he said, I will give it to
6 you in three weeks. Which was another red flag. I'm like,
7 Three weeks? Why would you not have 9,000 and you would have
8 it in three weeks? Not even three, four months later or -- why
9 do you need that money quickly? And beside, I never thought
10 that he was a person who was not managing money or maybe
11 wanting -- there was no reason why he wanted money, because he
12 had convinced me what a good money manager he is. I gave him
13 the 9,000. Three weeks later, I remember, to when I gave it to
14 him, he did not want to meet me. He said he's in a hurry, but
15 leave it somewhere. So I gave him the check.

16 And then three weeks later he told me, Oh, I'm going
17 to wire money to your account, the 9,000. I said okay. And
18 then instead of sending 9,000, he send 30,000. Which was
19 another -- you send me 30,000 and you told me you didn't have
20 9,000? So -- and then after he send 30,000, ten minutes later
21 he called me, he said, Oh, I made a mistake. I send you more
22 money than what you gave me. I would like now to get a check
23 of 20 something thousand. Actually, it was 33, maybe. I don't
24 remember exact amount. So he told me I have to give him back
25 the check. To find out later, the money he transferred to my

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 account to reimburse the check was coming from my own account,
2 to my account. So on top of 9,000, I gave him another \$25,000,
3 because he made a mistake, he says, by transferring it to me.
4 To go over that again, I still don't understand how this makes
5 sense, because when he kept 5,000, 30,000, he didn't have it
6 three weeks ago, but now he have this much money? But again, I
7 never had anything to really suspect him much.

8 So few months later, my cousin who lives with me -- I
9 came from work. I was -- I came from traveling. I was
10 working, through airports, night. I was really tired -- I will
11 never forget that -- that evening. I came home, and he found
12 me at the door. He said, I have to tell you something. You
13 need to sit down. I'm like, What? What happened? I almost
14 passed out. I thought something happened to my kids. And he
15 told me, It's Parfait. I'm like, What do you mean Parfait? He
16 said, Parfait have been the one that have been taking your
17 money. What money? He doesn't have access to anything. He's
18 the one, he said. He's the one who have been calling people,
19 opening credit cards in your name. I'm like, No, it's not
20 possible. It was hackers. He said, You need to sit and I need
21 to tell you. He stole all your money. How can he? How? How
22 much? All your money. Your accounts are empty. I'm like,
23 What? Now my head is reeling. I could have died. He told me
24 he went to his house. This is what happened. Again, I truly
25 believed it was the grace of god, because I could have been

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 giving Parfait all the money I made for the next 10 years, and
2 I would have gone through, you know, to pension, retire, but I
3 could have gone to retire and I would not have had any money.

4 So what happened was, my cousin told me, Parfait
5 called him to go to his house when he was in Rwanda, and
6 somehow -- maybe he wasn't paying his apartment and his wife
7 have left, and he wanted my cousin to go help him move stuff
8 from his apartment. So when he went to his apartment, he find
9 letters in my name, and the letter he wrote to the bank in my
10 name, changing my address to Parfait's address. Now all my
11 statements were going to Parfait's address. And my cousin find
12 a credit card, debit card. Because he's my assistant, he
13 assist me, so he opened all my envelopes. I give him the
14 rights. And he open it. He's like, why Immaculée's mailings
15 here? And he finding a debit card in my name. When he came
16 back, he was shaking. He showed me the debit card. And he
17 said his brother or somebody who worked with Parfait, two men
18 who were his best friends here and worked with him from Kenya,
19 told him that, yes, everything is wrong, they have changed all
20 the statements, and that he believes that every money I had
21 with Parfait have gone.

22 I was -- I called Parfait. Parfait, please tell me
23 where I can find the password. Oh, wait until I come.
24 Parfait, will you please, this is the savings for my children.
25 I have no company that have any money. I don't have any other

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 income. This is the life of my children. You cannot do this.
2 He said, No, wait.

3 THE COURT: I'm sorry. I'm going to have to interrupt
4 you. It's getting to be late in the day and I have a lot of
5 people here. I think I've heard the worst of what you
6 suffered, so if you'd like to wrap it up in the next couple of
7 minutes, I'd appreciate it.

8 MS. ILIBAGIZA: Sure, yes. So anyway, I just really
9 want to thank you.

10 And what happened later was, I confronted Parfait and
11 I told him when he came, and I told him, I know about the debit
12 card. And I remember he's like, Oh, let me hang up, I will
13 call you back. No, Parfait, please tell me the truth. Tell me
14 the truth. And he was -- couldn't breathe. He's like, Okay,
15 fine. Let me tell you, but if I tell you the truth, promise me
16 you will not go to court. I'm like, Parfait, I just need to
17 hear the truth first.

18 And truly, I don't wish any ill on Parfait. However,
19 I don't understand him. He ruined my savings for my kids. I
20 don't even know what I wish for him. All I wish for him is a
21 change of heart. How can that happen, only god knows. I pray
22 for you, if you hear me. I just hope -- one of your friends
23 tell me actually you are not even a Tutsi, that you didn't go
24 through the genocide. I don't know if this is the truth or
25 not. But all I know, I pray for you for this change.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 And your Honor, I just want to say, sometimes I have
2 feared for my life. I have feared for my life. With finally
3 having these papers. And his friends, not knowing who is close
4 to him and how my life really is, why I am testifying what
5 happened to me, because everything he have told me was a lie,
6 and I don't understand. And for the first time, I fear truly.

7 Thank you so much.

8 THE COURT: Okay. Thank you for being here and
9 speaking and sharing your experience. It's very important I
10 think for the Court, but also for victims and for the public to
11 understand that this is an open process and that you have a
12 right to be heard. So thank you.

13 MS. ILIBAGIZA: Thank you.

14 THE COURT: Now the last person we'll hear from is
15 Mr. Mutimura. You don't have to say anything if you don't
16 want, but if you would like to speak, now is your chance.

17 THE DEFENDANT: Your Honor, thank you for giving me
18 this opportunity once again.

19 I want to apologize to everyone, all the victims and
20 the families who have been hurt by my actions. You know, I
21 wish I can go back and undo what I have done, of course. I
22 hope they can forgive me. I hope I get a chance to get things
23 right. And that I pray I will be able to do that over time.
24 So thank you for giving me the chance. I pray for forgiveness.
25 Thank you.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 THE COURT: Okay. Thank you. Is.

2 there any reason why sentence should not be imposed?

3 MS. WILLIS: No, your Honor.

4 THE COURT: So as I've stated, the recommended
5 guidelines sentence applicable in this case is 63 to 78 months'
6 imprisonment. Under the Supreme Court's decision in *United*
7 *States v. Booker* and cases that have followed it, that is just
8 one factor in the Court's consideration of what the appropriate
9 sentence is. I'm required to consider other factors that are
10 listed in a statute called 18 U.S.C. 3553(a). They include,
11 first and foremost, the nature and circumstances of the
12 offense; also your own history and personal characteristics;
13 the need for the sentence to reflect the seriousness of the
14 offense, promote respect for the law, and provide just
15 punishment for the offense; also something that has already
16 been mentioned, to afford adequate deterrence to criminal
17 conduct, and that means deterring you specifically but it also
18 means deterring other people who might see what happens to
19 someone who commits crimes like these; also to protect the
20 public from further crimes the defendant might commit. I'm
21 also required to impose a sentence that is sufficient but no
22 greater than necessary to achieve these purposes, and I find
23 the sentence I'm about to impose does that.

24 So I thought carefully and read all of the materials,
25 and like all sentences, this is a very difficult decision. On

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 the one hand, it's a very serious offense. You got people to
2 trust you and trust you with their savings, and you breached
3 that trust. You betrayed that trust. And as your own lawyer
4 put it, this is not some anonymous corporate victim somewhere,
5 these are real people, and we've just heard at length from one
6 of those people. And during the period of about three years,
7 from the spring of 2016 to 2019, you defrauded five victims of
8 a total of \$578,389.85.

9 I know you were arrested in August of 2019 and
10 released on bail in September, so you spent about 36 days in
11 jail.

12 I know you are a young man. You're 30 years old.
13 This is your first conviction. You are a naturalized US
14 citizen.

15 I know you've come from horrific circumstances. You
16 were an orphan of the Rwandan genocide. You suffered a
17 terrible loss of your family when you were 4 years old. I know
18 you lived with many families who took you in despite their own
19 impoverished circumstances. And you were lucky and you were
20 smart. Good people took you in. You got a good education.
21 You attended a private boarding school. A wealthy family
22 provided for you so that you could live a normal life. And
23 that paved the way, and you yourself, through your hard work,
24 paved the way for you to come to the United States and attend
25 college. And you became a citizen in 2011.

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 I know that you got a bachelor's degree in actuarial
2 science from SUNY Albany. I know you're attending Fordham Law
3 School now, hoping to get a master of studies in law and
4 corporate compliance. Even though you wouldn't be able to be
5 licensed as a lawyer, you hope to work in the legal field.

6 I know you're married but separated from your wife.
7 You don't have any children.

8 You appear to be in good physical health; no history
9 of drug or alcohol abuse. I know you've seen a therapist
10 sometimes regularly, sometimes not as regularly, to deal with
11 the issues in your past.

12 This paints for me a complicated picture, because you
13 are someone who is obviously talented and smart and has a lot
14 of charisma, and that's how you were able to be successful in
15 your crimes, but it seems as though there's some kind of
16 reality check that is missing and that led you to breach the
17 trust of these people and that leads you even now to have what
18 seems like somewhat grandiose plans about what will happen in
19 the future.

20 So under these circumstances, I believe it's important
21 to impose a substantial sentence of incarceration to promote
22 respect for the law, but also, as the government points out, to
23 ensure specific deterrence -- that is, to deter you from
24 committing crimes in the future.

25 I also think it's important to impose a term of

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 supervised release, which is a period after imprisonment, where
2 you'll be supervised, and I hope you'll take the opportunity of
3 the conditions that are imposed to try to put together a
4 different kind of life.

5 The government recommends a sentence at the top of the
6 range in the plea agreement, which is 78 months, the top of the
7 guidelines range. The probation department recommends the low
8 end of the guidelines range of 63 months. Your lawyer asks for
9 a sentence of time served.

10 I will now state the sentence I intend to impose, but
11 the attorneys will have a final opportunity to make legal
12 objections before it's final.

13 Mr. Mutimura, would you please stand.

14 After assessing the particular facts of this case, the
15 factors under 3553(a), including the sentencing guidelines, I
16 conclude that a sentence within the guidelines is justified as
17 follows:

18 It is the judgment of the Court that you are remanded
19 to the custody of the Bureau of Prisons for a period of 63
20 months -- 63 months on Count One, 60 months on Count Two, to be
21 served concurrently -- followed by three years of supervised
22 release.

23 In imposing a term of supervised release, I'm
24 considering the 3553(a)(1) factors, which really go to
25 rehabilitation.

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 And I just want to say, I know you're a young man, you
2 have a lot of talents and a lot of promise, and I hope you will
3 take the time to think about how you can live a different kind
4 of life, where you're not drawn into these kinds of situations.

5 So I'm imposing the standard conditions of supervised
6 release.

7 You must also follow special conditions, which are
8 explained in detail in the presentence report and that I'm just
9 summarizing now:

10 You must not commit another offense under any law --
11 federal, state, or local;

12 You must not illegally possess a controlled substance;

13 You must not possess a firearm or destructive device;

14 Mandatory drug testing will happen from time to time;

15 and

16 You will cooperate in the collection of your DNA.

17 I am imposing special conditions, and the first one is
18 outpatient mental health treatment, as specified in the
19 presentence report, and this one I think is important because I
20 can't help but think that all of the experiences that you've
21 endured have contributed in some way to where you are now, and
22 I hope that mental health treatment will help you get back to a
23 place where you can really experience the best of your life.
24 You're still a very young man with a lot of years ahead of you
25 that I hope you can live in a productive way.

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 You must not incur new credit charges or open
2 additional lines of credit without the approval of the
3 probation officer, unless you're in compliance with your
4 installment payment schedule.

5 Once released, you'll submit to a search of your home,
6 vehicle, workplace, anywhere under your control, as provided in
7 the presentence report.

8 You'll provide the probation officer with access to
9 any requested financial information.

10 After you're released from prison, you are to report
11 to the nearest probation office within 72 hours. You'll be
12 supervised in the district of your residence.

13 I am not imposing any fine because given the very
14 substantial restitution and forfeiture obligations you've
15 undertaken, I don't believe you will have the ability to pay a
16 fine.

17 The restitution order which I will separately sign is
18 for \$578,389.85; and the forfeiture order that I will sign is
19 in the same amount.

20 And I'm also required to impose a special assessment
21 of \$200, which will be due immediately.

22 Does either counsel know of any legal reason why the
23 sentence should not be imposed as stated?

24 MR. XIANG: No, your Honor.

25 MS. WILLIS: No, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 THE COURT: The sentence as stated is imposed.

2 Are there any applications in connection with the
3 sentence?

4 MR. XIANG: Yes, your Honor. Two things. First,
5 there are open counts in the underlying indictment which the
6 government would move to dismiss.

7 THE COURT: I grant that motion.

8 MR. XIANG: And second, as to at least the forfeiture
9 order, the parties are in the process of physically signing
10 them for submission to the Court, and we will do that.

11 THE COURT: Okay. Thank you.

12 So in other words, you're saying you all will sign the
13 agreements and then you will forward them to me.

14 MR. XIANG: Yes, your Honor. We have them right here
15 and we'll sign them.

16 THE COURT: Okay. So then maybe you'll just give them
17 to my law clerk.

18 Subject to your waiver of rights in the plea
19 agreement, you may have the right to appeal your conviction and
20 sentence. If you're unable to pay the cost of appeal, you may
21 apply for leave to appeal *in forma pauperis*. The notice of
22 appeal must be filed within 14 days of the judgment of
23 conviction.

24 What are the parties' positions on bail?

25 MR. XIANG: Your Honor, the parties have not had the

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 opportunity to discuss it. The government would not oppose a
2 short self-surrender date in light of the pandemic and for the
3 BOP office's need to designate.

4 MS. WILLIS: Your Honor, I would need a surrender
5 date. I hear the government saying a short surrender date. In
6 my experience, prior to the pandemic, it took several weeks,
7 perhaps three or four, for the Bureau of Prisons to actually do
8 the designation and then send the information to the parties
9 about what facility someone was designated to. For in-custody
10 clients of mine, it has been taking longer. I don't know
11 what's been happening with respect to out-of-custody --

12 THE COURT: I'm just going to interrupt for a second
13 because I actually have the Marshals here, and I had not
14 contemplated a self-surrender date, and part of the reason for
15 that is because the defendant travels internationally, he has
16 ties in Rwanda, and he spent some good part of the recent past
17 there, for reasons that we've heard all about.

18 So let me just explain what my perspective and what my
19 obligation is. Under 18 U.S.C. 3143(b), I am required to apply
20 that statute regarding the defendant's release while awaiting
21 sentence. And except as provided in another paragraph that's
22 not relevant, a person who is sentenced to a term of
23 imprisonment must be detained unless the Court finds by clear
24 and convincing evidence that the defendant is not likely to
25 flee or pose a danger to a person or the community. And the

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 flight here is what I'm concerned about.

2 And, an additional point, the appeal will raise a
3 substantial question of law or fact likely to result in
4 reversal and an order for a new trial; a sentence that does not
5 include imprisonment, or a reduced sentence less than the total
6 of time served plus the expected duration of the appeals
7 process. And as you know, there is a plea agreement here where
8 the defendant waived his right to appeal any sentence that was
9 basically within the guidelines range or lower. The sentence
10 that I've imposed is within the guidelines range.

11 So I need to hear what legal basis there is for me to
12 release Mr. Mutimura.

13 MR. XIANG: Your Honor, the government doesn't
14 disagree with any of what the Court just said. As your Honor
15 may recall, upon this defendant's initial arrest, the
16 government sought detention on a standard that was much more
17 favorable to the defendant. Over the government's objection,
18 bail conditions were set. The government is certainly not
19 making an application or requesting a delayed self-surrender
20 date. Again, it was only because the parties had not had an
21 opportunity to confer and the government wanted to put on the
22 record that there was no objection potentially if that request
23 had been made, but the government certainly is on board with
24 him being remanded today. Thank you, your Honor.

25 THE COURT: Do you have anything to say about risk of

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 flight?

2 MR. XIANG: Yes, your Honor.

3 The government made a risk of flight argument, as I
4 said, upon the defendant's arrest. He, for many months prior
5 to the arrest, was abroad in Africa, again, coming to the
6 United States for days-long business trips. I think the trip
7 on which he was arrested, there was a return flight booked
8 maybe four or five days later, something like that. And
9 certainly the government believes risk of flight is a concern
10 here. The only family that the government is aware of that the
11 defendant has here is a wife, from whom he is estranged and
12 who, I think according to the pretrial report, is certainly not
13 vouching for him.

14 THE COURT: Okay. Thank you.

15 Ms. Willis, do you have anything to say about risk of
16 flight?

17 MS. WILLIS: Yes, your Honor.

18 Obviously, at the time of the initial presentment, I
19 argued successfully -- I understand it's certainly a different
20 standard, but Mr. Mutimura was not a flight risk, and now we
21 have an entire year of data that bears that out. He has been
22 released on pretrial supervision since September --

23 THE COURT: What are his bail conditions?

24 MS. WILLIS: He is on strict pretrial supervision
25 still, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 Your Honor, it was a \$150,000 personal recognizance
2 bond that was cosigned by three financially responsible people.
3 It was secured by \$25,000 cash or property. He also had travel
4 restrictions to the Southern and Eastern Districts --

5 THE COURT: And who are the three people?

6 MS. WILLIS: I believe it's Sebastian Rukarisha was
7 one, who I believe --

8 THE COURT: Who I believe submitted a letter.

9 MS. WILLIS: Yeah, he did in fact submit a letter,
10 your Honor. And at the time that he was originally released on
11 bail, there was a condition for him to live with Mr. Rukarisha
12 in Albany. There was a point where he had requested permission
13 to move to the city for employment.

14 THE COURT: Which was granted.

15 MS. WILLIS: That was granted. He has just recently
16 moved back to Albany again. He was finding it very difficult
17 to sort of function and live in the city. As of just a few
18 weeks ago, he'd moved back to Albany.

19 The other two co-signers -- another one of the
20 co-signers, your Honor, also authored a letter. It's Christian
21 Payizere. I'm just looking for which letter.

22 THE COURT: While you're looking, let me just ask the
23 government: Can you confirm the offense date for the charges.
24 I need to put an offense date in the judgment.

25 MR. XIANG: Yes, your Honor. I have a copy of the

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 information. It is from at least in or about April 2016 up to
2 and including in or about March 2019.

3 THE COURT: March what?

4 MR. XIANG: 2019, your Honor.

5 THE COURT: Do you have a date? March 31, 2019, would
6 that be accurate?

7 MR. XIANG: I think that's fine for purposes of the
8 paperwork, your Honor. It says in or about March.

9 THE COURT: All right. That's fine. Well, I'll save
10 you doing that if it's not handy.

11 MS. WILLIS: I now have the names, your Honor.
12 Christian Payizere, P-A-Y-I-Z-E-R-E. And I misspoke when I
13 said we had a letter from him.

14 And the other name, Rebien (ph) M-S-I-Z-I.

15 THE COURT: Okay.

16 MS. WILLIS: And so as I was saying, it was the three
17 financially responsible people. It was a bond that was secured
18 by \$25,000. It also included initially home incarceration,
19 where he was confined to his apartment, and there were some
20 modifications to that particular condition over time. The home
21 incarceration was secured by a GPS device attached to
22 Mr. Mutimura as opposed to just a house phone. And there were
23 specific conditions that there was to be sort of an immediate
24 notification basically to pretrial or whomever else if he was
25 in proximity to an airport. So that was a particular condition

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 that was added. He was to have no contact with victims or
2 witnesses who had been identified by the government, and I
3 believe the government provided at that time a list of names.

4 I can't read my own handwriting here, but no
5 employment that would allow him to have access to personal
6 identifying information --

7 THE COURT: Okay. I don't really need to hear all of
8 the conditions. What I was really interested in were the
9 conditions of bail to secure his presence, and I understand now
10 what those were.

11 Unfortunately, I feel that I must order the defendant
12 to be taken into custody immediately, because I don't find any
13 basis in the record to suggest that he'll raise a substantial
14 issue on appeal; and with regard to risk of flight, as I
15 mentioned, he has very substantial ties overseas; and because
16 of the nature of the crime, I don't find the sureties of these
17 three people necessarily persuasive as something that will keep
18 him here, because the crime itself involved a breach of trust
19 of people.

20 So with that, the defendant is remanded to the custody
21 of the United States Marshal.

22 And is there anything else we need to do?

23 MR. XIANG: Not from the government, your Honor.

24 Thank you.

25 THE COURT: All right. Ms. Willis?

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 MS. WILLIS: Your Honor, I obviously understand the
2 Court's ruling. Mr. Mutimura has just asked me about his
3 personal property and personal effects, and I am, on his
4 behalf, making one last request to perhaps just have a brief,
5 brief delay, your Honor, even just a day or two, so that he is
6 able to secure the things in his apartment, you know, leave his
7 keys and things with someone who would be able to keep those
8 things for him. He had not made those arrangements in advance.
9 Our situation is that the plea was an automatic remand and
10 someone knows at the time they come to court that they will be
11 going into custody and they make those kind of arrangements.
12 While I did discuss with him the steps and the things that
13 might happen at sentencing, I did discuss with him that it is
14 possible for someone to be remanded at the time of sentencing.
15 I also had told him that I did not think that was likely to
16 happen today, and obviously that is my error. But as a result,
17 he had not made any arrangements for his apartment, for his
18 personal things, for anything, your Honor. And so I certainly
19 understand the Court's ruling, but I am requesting perhaps just
20 a day or two so that he could make those arrangements.

21 And as to the Court's concern, even if it's just a 24-
22 or 48-hour stay of the Court's order, he has surrendered his
23 passport. The Court says that he has ties overseas.
24 Mr. Mutimura does not have family anywhere. This is not
25 someone who, you know, has extensive family overseas who might

SOUTHERN DISTRICT REPORTERS, P.C.

K8p1muts

1 be able to provide aid and shelter and money and has ties to
2 the United States. He has a collection of friends. Those
3 friends are scattered around. The friends specifically who
4 posted bond, one of them is in Albany, one is in California.
5 Obviously we've had some brief discussion about his estranged
6 wife, who is in Texas.

7 That is my request, your Honor, at least for a brief,
8 brief reprieve, a stay of the Court's order, so that he would
9 be able to make those arrangements.

10 THE COURT: Mr. Xiang, do you have any thoughts on
11 this?

12 MR. XIANG: The government doesn't object to that. As
13 your Honor knows, the government would not have objected to a
14 very short stay.

15 THE COURT: Okay. So apologies to the Marshals. I
16 think you need to surrender at the MCC by 2:00. Today is what
17 day? Tuesday. So 2:00 Thursday.

18 And you need to understand that if you don't surrender
19 at that time and at that place, you can be charged with a
20 separate crime. And all of your conditions of bail that are in
21 place now will continue to be in place. So you need to make
22 whatever arrangements you need to make consistent with your
23 conditions. Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay.

SOUTHERN DISTRICT REPORTERS, P.C.

K8plmuts

1 MS. WILLIS: Your Honor, thank you. As a point of
2 clarification, is it the MCC or the Marshals on the fourth
3 floor at 500 Pearl?

4 THE COURT: Mr. Street is not here. Do the gentlemen
5 here know where he would surrender on Thursday by 2:00?

6 THE DEPUTY CLERK: Judge, I think he can surrender at
7 the U.S. Marshals or the MCC. It doesn't matter.

8 THE COURT: Mr. Street says either one.

9 THE DEPUTY CLERK: You should specify for the judgment
10 which location.

11 THE COURT: I couldn't understand that.

12 THE DEPUTY CLERK: Sorry. You should specify which
13 location for the judgment.

14 THE COURT: Oh, I should specify which location. So
15 which location do you want?

16 You may be excused, Marshals. Thank you.

17 Okay. So at 500 Pearl before 12 noon on Thursday.
18 Okay. Mr. Street, did you get that?

19 THE DEPUTY CLERK: Yes, Judge.

20 THE COURT: Okay. All right. Thank you very much.
21 We're adjourned.

22 MS. WILLIS: Thank you, your Honor.

23 MR. XIANG: Thank you, your Honor.

24 o0o

25

SOUTHERN DISTRICT REPORTERS, P.C.