

TRINA A. HIGGINS, United States Attorney (#7349)
RUTH HACKFORD-PEER, ASSISTANT UNITED STATES ATTORNEY (#15049)
SACHIKO J. JEPSON, Special Assistant United States Attorney (#17077)
Attorneys for the United States of America
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
sachiko.jepson@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,	:	Case No: 20-CR-383-HCN-JCB-5
Plaintiff,	:	
vs.	:	UNITED STATES' POSITION WITH
	:	RESPECT TO SENTENCING
EMMANUEL NINA PEREZ,	:	FACTORS AND SENTENCING
	:	MEMORANDUM
Defendant.	:	
	:	Judge Howard C. Nielson

Pursuant to DUCrim 32-1(b), the United States of America respectfully submits its Position with Respect to Sentencing Factors. After reviewing the Presentence Report (“PSR”), the United States has conferred in good faith with opposing counsel and the probation officers through correspondence and conversations, in an attempt to resolve any disputed matters.

In 2020, EMMANUEL NINA-PEREZ (NINA) was arrested for his conduct related

to a team that defrauded gas station customers (and the customers' banks) using skimming equipment to surreptitiously steal the customers' credit card information. NINA and others thereafter created "cloned" cards with the stolen information and used those cards to fraudulently purchase gasoline and other items.

The documented losses attributed to this conspiracy total over \$200,000. As such, the United States recommends the Court adopt the PSR and impose a sentence of 21 months' imprisonment on Count 1 (conspiracy to commit bank fraud), and the mandatory, consecutive 24 months' imprisonment on Count 12 (aggravated identity theft), with 3 years of supervised release to follow. The Court should further order NINA to pay \$201,468.50 in restitution to the victims¹ jointly and severally with his co-defendants.

I RELEVANT FACTS

The Operation Catches the Attention of SLCPD in 2019

In 2019, the SLCPD began receiving complaints that victims' credit cards had been cloned and used to complete fraudulent transactions at local gas stations. SLCPD responded to the gas stations, often obtaining surveillance footage of defendants in this case completing the fraudulent transactions. In fact, the investigation began as officers reviewed a video recording that showed Yarislani Padron-Cruz using a cloned credit card at a gas station.

¹ As was the case in sentencing co-defendants in this case, the United States requests that the Court prioritize restitution payments to victims ATS Welding and Drill Tech Drilling.

Unlike traditional “skimming” operations that use an “overlay” type of molding placed on top of the ATM or Gas Pump targeted for “skimming,” this group used a Bluetooth wireless device that is installed onto the computer motherboard of the internal computer that controls the ATM/Gas pump.

Later, one of the co-defendants would arrive at the location to get within the necessary range of the Bluetooth “skimming” device. Without leaving their vehicle, they could then initiate a wireless Bluetooth connection to the device still inside the ATM/gas pump computer cabinet. The defendants could then download all the digital credit card/ATM card information that had been captured and stored by the device.

With this trove of “skimmed” credit card information, this group was able to “clone” and create duplicate cards encoded with the same data as the original (genuine) credit card/ATM card. Once several of these “cloned cards” were made, one of the co-conspirators would take a batch to a nearby Redbox or car wash with a vending machine. The co-conspirator would then attempt to make small charges with each of the cloned cards. This allowed the group to identify which of the cloned cards would work for larger purchases.

With a group of working cloned cards, the co-conspirators would use them for the “cash out” phase of the scheme. Several of the co-conspirators, including NINA, were either “long haul” truck drivers themselves or had close connections to trucking transportation companies who operated fleets of long-haul trucks (the operation of these trucks requires regular purchases of large amounts of gasoline or diesel fuel). Typically, the group use the cloned cards to purchase fuel either for themselves or for trusted associates.

These fuel purchases typically happened via three different means: (1) the co-conspirator would simply use the cloned card for large fuel purchases for a truck they were driving/operating; (2) a co-conspirator would arrange to meet a trusted associate (purchaser) at a predetermined gas station location with a truck needing fuel, or (3) a co-conspirator would purchase fuel with cloned cards, which fuel they loaded into external tanks installed in the beds of their pickup trucks. They would then either pump the fuel directly into other semi-trucks or offload it into large storage containers at fuel offload sites – for future use or resale.

NINA's 8/5/2020 Murphy Express Transactions

On August 5, 2020, Yosbel Delgado-Valdes and NINA both visited the Murphy Express gas station in Riverton, UT from 6:12 to 6:33 pm. In that time, they collectively completed 8 different gasoline purchases, using 5 separate cloned cards. The charge NINA pleaded guilty to is the 6:31 pm transaction (\$100) at pump 6.

Stills of the security footage from Murphy Express show NINA arrive at the pump in a white 2000 Ford F350 at approximately 6:07 pm (Delgado showed up shortly thereafter in a 2014 Dodge Ram, parking next to pump 5). They both entered the store to purchase snacks together (though the middle image below of the two men only shows their torsos).



The Victim, whose card was used for the \$100 6:31 pm purchase at pump 6, did not complete the purchase or authorize it. In fact, he has not traveled to Utah recently. He also did not recognize NINA.

Following these transactions, pole camera footage shows NINA and Delgado arriving at a fuel offload site in American Fork, UT at approximately 6:53 pm. They both offloaded their fuel into a storage container hidden inside the semi-trailer.

NINA's Wire Interceptions (with Delgado)

As explained previously, the Government intercepted Delgado's phone for a month (from 8/14/2020 to 9/12/2020) and gathered significant evidence of NINA's involvement through those interceptions.

We intercepted *numerous* conversation between NINA and Delgado discussing the criminal activity (NINA spoke with Delgado more than any other co-conspirator).

For instance, in an 8/29/2020 conversation (session #1131), NINA said in a crisis that he [NINA] "took the guy about 200 gallons." NINA and Delgado then discuss the price of gasoline

("\$2.25, and in some places \$2.19") and that their price for resold fuel is "1.25," but they're going to raise it to "\$1.40.

In another conversation on 9/1/2020 (session #1390), NINA tells Delgado that he has not found a "good location" to put the "little iron pieces" [Bluetooth skimmers]. Delgado replies that he's found a place, and NINA asks if it's "an old Valero [gas station] on 35th before Bangerter." Delgado responds that "it [skimmer] would work there" but he thinks they have "seals over there [seals on the gas pumps that will indicate to gas station owners if the pumps have been opened and tampered with]." NINA then responds that he doesn't think they "check anything there," though Delgado thinks that location had problems before, so they started to put "seals on them [gas pumps]."

In one more example, on 9/9/2020 at approximately 10:58 pm (session #1993), NINA calls Delgado to tell him that the "Flying J is closed because the power is out." NINA then asks if Delgado "wants to install a thing [Bluetooth skimmer] on there [gas pump(s)]." Delgado then responds that they "have six [6 Bluetooth skimmers already installed at the Flying J]."

Additionally, intercepted calls with other co-conspirators implicate NINA. In one instance Padron and Delgado further discuss that it "might be a bad batch [of cloned cards]" and that "El Nino [Jandry Artigas-Reyes] gave Emmanuel [NINA] 14 [cloned cards] and those are all gone, too."

Finally, May 15, 2020 tracking data on NINA's 2009 red Toyota truck showed that the vehicle had visited a Tesoro gas station in Sunset, Utah just after midnight, just a couple of weeks after two of the co-defendants installed skimmers on a pump there. The store's surveillance footage

shows NINA walking up to the store door and then departing.

NINA has pleaded guilty to Counts 1 and 12 for his involvement in this scheme.

II SENTENCING DISCUSSION

As this Court is aware, all sentencing proceedings should begin with correctly calculated sentencing guidelines. *United States v. Rosales-Miranda*, 755 F.3d 1253, 1259 (10th Cir. 2014). Here, the United States believes that the Probation Office has correctly calculated the sentencing guidelines in this case, as reflected in the PSR. Given that NINA is in criminal history category I, the applicable advisory sentencing guideline range is 21 to 27 months (45 to 51 months with the consecutive two-year sentence on Count 12). As noted above, the United States submits that, when considering all relevant factors under 18 U.S.C. § 3553(a), an appropriate sentence here is 21 months' imprisonment on Count 1, and a consecutive 24-month sentence on Count 12 (totaling 45 months) with a three-year term of supervised release to follow.

A. Nature and Circumstances of the Offense

As set forth above and in the PSR, NINA participated in a bank fraud scheme that spanned several years involving the theft of credit card information from unsuspecting customers at gas stations all over Utah and Idaho (if not also elsewhere). The documented losses associated with this scheme exceed \$200,000, though agents believe the actual losses are significantly higher. The theft – of both victims' funds and identities – caused significant financial harm when considered in the aggregate. The nature and circumstances of the offense here warrants the significant punishment requested.

B. History and Characteristics of the Defendant

NINA has minimal known criminal history in the United States and is a criminal history category 1.

C. The Sentence Reflects the Seriousness of the Offense

Collectively, the group is responsible for over \$200,000 in losses. That amount, in and of itself, is serious. The harm inflicted here, though, is compounded by the fact that NINA and his co-conspirators acquired these funds by stealing the identities and information of unwitting customers at gas stations. Though NINA does not appear to have any leadership role in the conspiracy, his sentence should reflect the seriousness of the offense.

D. The Sentence Promotes Respect for the Law

To promote adequate respect for the law, NINA's punishment needs to be significant. The requested 45-month sentence would accomplish that purpose.

E. The Sentence Provides Just Punishment

The seriousness of NINA's conduct, and the extent of the harm he and others caused, requires a significant sentence to provide just punishment. The requested 45-month sentence strikes the proper balance of providing adequate punishment without being greater than necessary.

F. The Sentence Affords Adequate Deterrence to Criminal Conduct

The need for deterrence here is two-fold: to deter NINA from future offenses, and to deter the general public from considering similar crimes.

The United States is confident that the proposed custodial sentence (45 months) and collateral consequences of this case will prevent NINA from committing similar crimes in the future. A 45-month sentence should also deter others considering similar offenses.

G. The Sentence Protects the Public from Further Crimes of the Defendant

As noted above, the United States believes that the requested 45-month sentence, and the collateral consequences of his conviction, will protect the public from NINA committing similar crimes in the future.

H. The Sentence Can Provide Correctional Treatment and Educational Training

The United States anticipates that NINA will have the opportunity to avail himself of educational/vocational programs while serving his sentence as he has not begun to serve any part of his sentence yet.

I. The Sentence Avoids Unwarranted Sentencing Disparities

The negotiated sentence of 45 months' imprisonment **is the low end of the applicable Guidelines range**. The co-defendants in this case have been sentenced to 36 months (Almonte), 39 months (Pereda), 45 months (Artigas), 48 months (Padron), and 50 months (Valdes). Therefore, this sentence is in the middle of the sentencing range and not disparate.

The facts and circumstances discussed above justify a sentence of 45 months' imprisonment. This significant custodial sentence would appropriately punish and deter NINA, while avoiding any unwarranted disparities among similarly situated defendants.

III CONCLUSION

Based on the foregoing, the United States recommends that the Court sentence NINA to 21 months in custody on Count 1, another 24 months consecutive on Count 12, and 3 years of supervised release to follow. Pursuant to the plea agreement, we further ask the Court to order NINA to pay \$201,468.50 restitution to the victims, jointly and severally with his co-defendants. The Court has already ordered the forfeiture of \$38,372 cash seized from his co-defendants' residence in connection with their arrests. As set forth above, this sentence would be sufficient, but not greater than necessary, to punish and deter NINA and others.

RESPECTFULLY SUBMITTED,

TRINA A. HIGGINS
United States Attorney



Ruth Hackford-Peer
Assistant United States Attorney