IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 21-CR-239-GKF
	)	
ALETA NECOLE THOMAS,	)	
	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL

UNITED STATES DISTRICT JUDGE

JUNE 7, 2022

A P P E A R A N C E S

Kristin F. Harrington and Cymetra Williams, Assistant U.S. Attorneys, 110 West Seventh Street, Suite 300, Tulsa, Oklahoma, 74119, attorneys on behalf of the Plaintiff;

Keith A. Ward, Attorney at Law, 1874 South Boulder Avenue, Tulsa, Oklahoma, 74119, attorney on behalf of the Defendant.

REPORTED BY: BRIAN P. NEIL, RMR-CRR
United States Court Reporter

Tuesday, June 7, 2022

* * * * *

DEPUTY COURT CLERK: This is Case No. 21-CR-239-GKF, United States of America v. Aleta Necole Thomas. Counsel, please state your appearances for the record.

MS. HARRINGTON: Kristin Harrington on behalf of the United States, along with Cymetra Williams and Special Agent Michael Bernier from the Federal Reserve Board.

THE COURT: Good morning.

MR. WARD: Good morning, Your Honor. Ms. Thomas appears with her counsel, Keith Ward.

THE COURT: Good morning. Ms. Thomas, two questions as we begin: First of all, did you receive a copy of the revised presentence investigation report dated April 28th in a timely fashion?

THE DEFENDANT: Yes, sir.

THE COURT: Secondly, have you had a full, fair, and complete opportunity to review the contents of that report with Mr. Ward as your attorney?

THE DEFENDANT: Yes.

THE COURT: Very well. Counsel, I know there are objections. I've read the objections and the responses. Anything to add to those objections?

MS. HARRINGTON: Your Honor, the government has no objections to the presentence report and would stand on its written response to the defendant's objections.

THE COURT: Very well. And because it is pertinent to the court's findings as to the offense level, any arguments to be made with respect to the government's motion to withdraw the third point?

MS. HARRINGTON: Yes. May I approach the podium, Your Honor?

THE COURT: Please.

MS. HARRINGTON: Thank you. Your Honor, the government respectfully requests to withdraw its motion for a third point and asks the court to deny Ms. Thomas' acceptance of responsibility based upon three of her objections to the PSR; in particular, in paragraphs 14, 21, and 23. These objections deal most primarily with Aleta Thomas recruiting and instructing ten close friends and family members. In these objections, she is denying that she assisted and instructed those family members and quite contrary to her own e-mail communications with the case agent, Jason Hartwig, at the time that her bank with account was frozen.

In those e-mail communications, she identifies by name ten people who she solicited to apply for fraudulent Paycheck Protection Program loans. Most notably at Bates stamp No. 3027, Special Agent Jason Hartwig asks Ms. Thomas, "What exactly was the nature of your role?" And this Bates stamp number that I'm referencing is Exhibit 1 to filing docket

No. 108.

And in response to Special Agent Jason Hartwig's request about Ms. Thomas' role, Ms. Thomas responds, "My role is I told them about it. I told them how to apply through Womply. I will have to get everyone to send me a copy of their application, then I will send it." She goes on in other communications, most notably at Bates stamp No. 3021, to talk about how these applications, and the proceeds of these applications, were routed through her account at Tulsa Federal Credit Union.

These additional applications of these ten people are properly considered in the presentence report as relevant conduct to Counts 3 and 4 of the second superseding indictment, and her objections directly contradict Ms. Thomas' own statements to the agent, along with the e-mail communications of at least six of these ten people, along with numerous Grand Jury interviews and witness interviews in which her co-defendants and close friends and family members describe the process through which they provided Ms. Thomas their names, their Social Security numbers, their dates of birth, and other pertinent information in order for Ms. Thomas to type loan applications on her laptop computer that were then communicated to the government for the fraudulent Paycheck Protection Program and many of these loan proceeds were then deposited into Ms. Thomas' account.

THE COURT: Very good. Thank you very much.

Anything to add, Mr. Ward, to the objections or the motion to respond to the government's motion to withdraw the third point?

MR. WARD: Yes, Your Honor, just briefly. The essence of the government's motion would be that Ms. Thomas has somehow not accepted responsibility or complicated the sentencing process. And with all due respect, sometimes the government confuses the actions of the defendant with the actions of defendant's counsel; that's me. And when I read a presentence report -- and I have spoken with people, some of whom are here in the audience today, who deny that Ms. Thomas organized, managed, or somehow induced them to commit a criminal offense, then I have a professional obligation to object to that portion of the presentence report, and that's what I did on behalf of my client.

There is a sharp factual dispute there because, as I mentioned, I've spoken personally with some of the people that the government claims that Ms. Thomas induced to commit a crime, and they tell me that she didn't do that. So I don't think that the government should be permitted to withdraw its motion for a third point simply because defense counsel challenged the presentence report on a matter where there's a sharp factual difference.

THE COURT: All right. Now, in the plea agreement, you did agree, and the defendant agreed, to pay -- and let me get the actual wording here of the plea agreement. This is in paragraphs 8 and 9 and this has to do with restitution both for the offense of conviction and restitution for other offenses. The defendant agreed to pay restitution for the entire $774,753.50, including the amounts in paragraph 9 which cover the other applications that we're talking about today.

MR. WARD: Yes, sir.

THE COURT: So square that for me, if you would.

MR. WARD: Well, from an historical perspective, what happened -- and part of what -- the reason I had requested additional time before this sentencing today is because the means by which these other people applied for their individual PPP loans was by a phone app, and the phone app specifically requires that you have a bank account in which the lender deposits the money and they didn't. They only had Cash App or other apps on their phone, didn't have a bank account. So with Ms. Thomas' permission, she allowed them to send the money to her account.

Now, going forward what happened was that kind of coincided with the timing of the government's investigation, and the government discovered through its investigation that those people's money, as well as a substantial amount of the money that Ms. Thomas got on her own, was in her bank account, and therefore, froze or otherwise seized those funds. Those seized funds, of course, should be applied against any restitution. But Ms. Thomas doesn't dispute that the individuals put the money in her account, and to that extent she would be responsible for it being returned to the government. So that's kind of where we're coming from on that.

THE COURT: All right. Anything else?

MR. WARD: No, sir.

THE COURT: Any reply?

MS. HARRINGTON: Just briefly, Your Honor.

THE COURT: Please.

MS. HARRINGTON: The issue of whether these ten individuals used a DocuSign application or the permissibility of the money going into Ms. Thomas' account is not the issue before the court and which causes the government great concern here. The issue before the court is Ms. Thomas recruited, assisted, and instructed, as evidenced by her e-mail messages and the statements of multiple individuals, how to apply for fraudulent PPP loans and even created fake tax returns that were submitted both in support of her own PPP loan and that are identical and match the tax returns submitted in support of four other people's PPP loans.

And so the issue isn't necessarily the use of the money and going into the account, it's Ms. Thomas' actions in recruiting and instructing the individuals in applying for fraudulent PPP loans. Thank you.

THE COURT: All right. Thank you. Let me ask here with regard to the forfeiture money judgment: Those monies that were in the various accounts in the Tulsa Federal Credit Union have not yet been applied to restitution; is that correct?

MS. HARRINGTON: No, they have not.

THE COURT: All right.

MS. HARRINGTON: They are going through the administration processes of the FBI forfeiture process, banks are submitting claims, and the federal government is submitting claims for those monies.

THE COURT: I see. And what's the total amount there that was seized?

MS. HARRINGTON: May I look at the plea agreement, Your Honor?

THE COURT: Please.

MS. HARRINGTON: The total amount that was seized, consistent with page 8 in paragraph 11, it is approximately $220,000. I don't have that exact number in front of me. In the discovery, there are checks that have been submitted from the Tulsa Federal Credit Union to the federal government for the amounts listed in paragraphs 2, 3, and 4 of the forfeiture paragraph at paragraph 11. So --

THE COURT: That's more like $210,000, I believe, isn't it?

MS. HARRINGTON: Yes. Yes, Your Honor, $210,000. Thank you.

THE COURT: Okay. Thank you very much.

MS. HARRINGTON: Uh-huh.

THE COURT: The court has reviewed the defendant's objections to the presentence investigation report at docket No. 98. The defendant objects to paragraphs 14, 16, 21, 23, and 29 as they relate to the defendant's involvement and role in the instant offense, the enhancement for obstruction of justice, the losses attributable to the defendant, and the total offense level computation. The court has also reviewed the plaintiff's response to the defendant's objection to the presentence investigation report at docket No. 103.

The defendant objects to paragraph 14 of the presentence report as it relates to the defendant's involvement in the instant offense. The defendant argues she did not instruct anyone to submit fraudulent Paycheck Protection Program loans and that she provided no assistance to the individuals who voluntarily submitted fraudulent loans.

The defendant further argues that although the individuals had the loan proceeds deposited into her Tulsa Federal Credit Union bank account, this was done because the other individuals did not have their own bank accounts and she took no consideration or money for allowing this to be done.

This case involved the defendant recruiting other individuals via Facebook Messenger to participate in her fraudulent PPP loan scheme. Once the individuals were recruited, the defendant provided detailed instructions and encouragement to the individuals to guide them through the loan application process. Despite some individuals possessing bank accounts, the defendant provided the individuals with her bank account information so the loan proceeds would be directly deposited to defendant's Tulsa Federal Credit Union account. After the loan proceeds were secured, according to credible witness testimony and defendant's messages on Facebook, defendant kept some of the proceeds in exchange for her assistance with the loan application.

Therefore, the court overrules the objection to paragraph 14.

Defendant objects to paragraphs 16 and 24 of the presentence report as they relate to the application of the two-level upward adjustment for obstruction of justice. Defendant argues she did not obstruct justice by informing investigators of a Joniayah Harrison, who she alleged helped her fill out forms and loan applications. Defendant argues that the investigators' inability to locate Joniayah Harrison is not proof that she does not exist; it simply means that investigators were not able to locate her. The defendant further argues that the presentence investigation report failed to provide information as to how defendant's statements "significantly impeded the investigation."

On February 19, 2021, Thomas testified before a Grand Jury in the Northern District of Oklahoma. Thomas testified that she knew little about PPP loans and had been guided through the application process by two women, Joniayah Harrison and Gail Jackson, who she had met through Facebook. She further testified that Harrison and Jackson had met her at the Woodland Hills Mall food court in Tulsa, Oklahoma, to assist her in filling out the necessary forms and gathering the required information.

The discovery, which included Thomas' Facebook Messenger history, contained no conversations with, or mentions of, Harrison or Jackson. Further, no conversations involving the logistics of meetings at Woodland Hills Mall were found. On the contrary, the discovery contains Facebook Messenger and e-mail conversations wherein Thomas herself provides detailed instructions and encouragement to other individuals to guide them through the loan application process.

Therefore, the court finds that Thomas provided false testimony to the Grand Jury in order to minimize her role in the instant offenses. Additionally, investigators took steps to attempt to validate the existence of Joniayah Harrison and Gail Jackson but were unable to do so which significantly impeded the investigation. During this investigation, the defendant continued her fraud scheme and secured additional funds from fraudulent PPP loans.

Based on this evidence provided by the government, the court overrules the objection to paragraphs 16 and 24.

Defendant objects to paragraph 21 of the presentence report as it relates to the losses attributable to the defendant. Defendant argues she is not responsible for $774,753.50 worth of losses related to PPP loans made to various other individuals. As outlined in the second superseding indictment at docket No. 48, the defendant received at least $621,152.50 from the fraudulent PPP loan scheme. As previously stated, the defendant recruited, instructed, and encouraged other individuals to participate in this the fraud scheme.

Pursuant to U.S. Sentencing Guidelines, Section 1B1.3(a)(1)(A), the losses accrued by the co-defendants in this case can be attributed to this defendant as relevant conduct. Furthermore, the 17 approved fraudulent loans applied for by defendant and other individuals totaled $795,158.50 in losses. However, the 33 loans the defendant and other individuals applied for would have had a total loss of $1,842,068.50, and whether the total loss was $621,152.50 or $774,753.50, if losses exceed $550,000, but are less than $1.5 million, a two-level enhancement is added pursuant to sentencing guidelines Section 2B1.1(b)(1)(H). In addition, the parties entered into a binding plea agreement whereby defendant agreed to pay restitution to the victims of the offense of conviction in relevant conduct which defendant agreed totaled $774,753.50.

Therefore, the presentence investigation report properly calculated the specific offense characteristic found at sentencing guideline Section 2B1.1(b)(1)(H). Thus, the defendant's objection to paragraph 21 is overruled.

The defendant objects to paragraph 23 of the presentence report as it relates to the defendant's role in the instant offense. The defendant argues she did not organize or manage other individuals and she single-handedly made her own PPP loan applications. The defendant further argues that other individuals committing similar acts by filing fraudulent PPP loan applications is not evidence of her organizing or managing the other individuals.

Section 3B1.1(a) provides a four-level upward adjustment to the offense level if the defendant was an organizer or leader of a criminal activity that involved five or more participants. Those participants must be criminally responsible but need not be convicted. The court references Section 3B1.1, and the commentary at note 1.

As previously mentioned, the defendant recruited other individuals via Facebook Messenger to participate in her fraudulent PPP loan scheme. Once the individuals were recruited, the defendant provided detailed instructions and encouragement to the individuals to guide them through the loan application process. On occasion, the defendant provided detailed information to the individuals for filling out the applications and typed some applications for individuals.

The defendant recruited and assisted her two co-defendants, Katrina West and Pepper Jones, along with Danee Thomas, Kyren Pittman, Kennedy Hudson, Marqwesha Davis, and Jayveon Hudson, among others, in applying for fraudulent PPP loans and ultimately controlling the funds granted to each participant by directing the loan proceeds through her bank account.

Based on this evidence, the court finds that the presentence investigation report properly calculated the adjustment for her role in the offense found at sentencing guideline Section 3B1.1(a) and overrules the objection to paragraph 23 of the presentence investigation report.

The defendant objects to paragraph 29 -- oh, that's all right. I've got six kids. It's not going to bother me. You keep him in here. I've been around it plenty.

Defendant objects to paragraph 29 of the presentence investigation report as it relates to the defendant's total offense level. The defendant argues her total offense level should be a 18, rather than a 24, because the four levels for an aggravated role and the two levels for obstruction of justice should not be applied.

For the aforementioned reasons, the defendant's objection to paragraph 29 of the report is overruled.

The government filed a motion to withdraw the motion for third level of acceptance at docket No. 108.

(Discussion held off the record)

THE COURT: Based upon the foregoing findings as to the defendant's objections and the government's response, the government finds that the government's -- or the court finds that the government's motion shall be granted. Therefore, paragraphs 28, 29, 48, and 58 of the presentence report -- maybe I was wrong -- therefore, paragraphs 28, 29, 48, and 58 of the presentence investigation report shall be revised. The total offense level is 25. Combined with a criminal history category of II, the resulting guideline range is 63 to 78 months. The fine range is $20,000 to $1 million.

With those findings and rulings, the court makes the following findings with regard to the sentencing guidelines:

The total offense level in this case is a 25 and the criminal history category is a II. The term of custody under the statute on Counts 3 and 4 is not more than 30 years per count; under the guidelines, the term of custody ranges from 63 to 78 months.

The term of supervised release on Counts 3 and 4 is not more than five years per count; under the guidelines, the term of supervised release ranges from two to five years. The defendant is ineligible for probation under both the statute and the guidelines.

The fine under the statute on Counts 3 and 4 is not more than $1 million per count; under the guidelines, the fine ranges from $20,000 to $1 million. Restitution stands in the amount of $774,753.50. The special monetary assessment under both the statute and the guidelines is $200.

Other than the objections previously made and ruled on, are there any objections to those findings or issues with regard to the presentence report?

MS. HARRINGTON: Not from the government, Your Honor.

MR. WARD: Well, of course, we object to the court's findings but not to the court's recitation that it just provided.

THE COURT: Based upon those rulings?

MR. WARD: Yes.

THE COURT: Yes, sir. Thank you.

MR. WARD: And the court would also note the younger members of the audience's objections also. I think that's what they were trying to communicate to the court.

THE COURT: I understand. Maybe so.

Mr. Ward, I'd be pleased to hear any statements that you have on behalf of the defendant.

MR. WARD: Thank you. And the court hasn't specifically ruled on the motion for variance yet?

THE COURT: No, sir.

MR. WARD: Okay. Let me kind of put it this way.

When you do my job, you see people accused of bad conduct all the time and this isn't my first PPP loan case. The clients always have their reasoning, their justification for what happened, and Ms. Thomas is no different in this particular case.

However, I think what is extremely difficult from my perspective is to communicate to the court the type of person that Ms. Thomas really is. Because the court has seen my motion for variance, the court has seen the letters attached as exhibits, the court probably has gotten a picture of who she might be insofar as she is a person who is absolutely selfless. What person in the world would adopt six children from drug-addicted mothers who otherwise have no chance at life?

And it's not just those six kids. She --

THE COURT: Let me ask you a question in that regard because you raised the topic.

But explain to me why the defendant adopted two of those children while under federal investigation and then two additional children, those six, after being indicted federally? Does that show care and concern for those children?

MR. WARD: Well, I've never discussed that point with her so I can't really give you the court a direct response. I can give the court an indirect response, which is that I find the quality of Ms. Thomas is that she simply has no limits to what she is willing to do for other people. I think perhaps she might have been in somewhat of a state of denial that this day would actually come at the time that she made those adoptions. But I think the short answer for the court is that she just simply has no limits to the amount that she's willing to give to other people.

If I can continue?

THE COURT: Of course, sir.

MR. WARD: But it's not just the six kids that she's adopted. There are other people in the courtroom today who she's taken under her wing and provided guidance to and essentially saved their lives. Pastor Green is here today. If he were to testify to the court, he would tell the court that he's been Ms. Thomas' pastor for over 20 years, that Ms. Thomas has always participated in the mission work of the church, she has provided guidance and spirituality to untold numbers of underprivileged children's in north Tulsa and elsewhere, she gives selflessly to the church and its missions, and that she has always been faithful in her work, in her church work, in her mission work.

But when you start comparing money to human lives, it doesn't make for a very good comparison. Because if Ms. Thomas just saved one of those children's life, gave one of those children an opportunity to have a meaningful, productive life, what would it be worth in terms of society? You can't put a dollar on it. And even though there is a loss in this case, a large loss, that's doubtful Ms. Thomas can ever fully repay in her lifetime, one would one must wonder what societal good would come of separating Ms. Thomas from her mission work where she works with underprivileged children, the lives of her adoptive children. What are those lives worth?

I simply would suggest to the court that you can't put a dollar on it and that the best resolution, in my opinion, in this case would be to give her the longest term of probation allowable, to give her an extremely high amount of community service hours, which she does already, which she could easily provide to the court, and to allow her to continue in her life's mission of raising these children who are in serious, serious need of a parent and to continue her mission work that she does in her church.

THE COURT: Thank you, sir. Ms. Thomas, I'd be pleased to hear any statements that you might have on your own behalf.

MR. WARD: Just stand there at the microphone.

THE COURT: Good morning.

THE DEFENDANT: Your Honor, I read over the information that my attorney had given me about the reports and the variances and different responses, and I would have never -- I would never do anything intentionally to separate me from my kids or my grandmother or my grandma who's 81. I've been taking care of them myself.

Your Honor, all I've done -- I did the Womply loan myself. I copied it off of the Internet. I never, ever instructed anybody, never -- and these people here in this audience are some of the people and they wrote statements saying that I did not do this. I gave my attorney a packet and it's all the stuff in there about the Womply loan where you cannot even do it on a computer. The prosecution keeps saying that I sat in front of a computer and did this on a laptop and I did not. Everyone has to use their own device because it's a Fast Lane loan.

I did get duped at the mall and he said basically that I was stupid for giving my information to somebody, but I didn't feel like I was being misled because you give your information out all the time online and you give it out on the phone. I met this lady and I needed help because people in my community that were working for me were working for me for free because they were losing their other jobs and people that had jobs needed their kids watched and I've done this since 1998 when my nephew was born.

You could ask anybody in this audience, I have never taken nothing from nobody. I would never do the thing that it says that I need to go to jail because people don't know about what happened. It was on the news. My character has been defamed. I sit on the board of my church. I'm a Pathfinder director at my church. I'm a master guide at the highest level in Pathfinder that you can be. My daughter is in the Pathfinder club and my great niece and nephew and I've had to sit and explain to them why I'm going to court. That is so -- no money is worth your character and that's all I have. And all these young people -- all these young people in this audience, they know that I teach them the right way to go, including my niece, Danee Thomas, and I would never, ever instruct her to do anything wrong because I've always taught her to do the right thing. I've never told none of these kids to do nothing bad. And I say "kids" because they're young people.

In the prosecution thing, it said that I have numerous nieces and nephews to take care of my kids and my grandmother. I do not. I have one adult niece, Danee Thomas, and my niece Ashley. She just graduated high school. There is no one to take care of them.

I accept responsibility and I accept responsibility for what I did as far as the Womply loan, Your Honor, because I did do that loan myself. I did look on YouTube and do it. I have proof that you can only do it on a phone. You can only do it on a phone because it's a Fast Lane loan. It's nothing -- it's like you answer the questions if you're a gig worker. And why in the world if I have all this money that I've been -- I've been harassed. My house got broke into because people thought I had all this money that the paper is saying. My grandmother and them couldn't go out for a long time because they're scared because people were calling me saying, let me get some money, let me borrow money, do you got this, do you got that?

And Jayveon Hudson, he is here in the court today. His attorney when they went -- when this whole thing started up, it started in a lie because these people were subpoenaed to court as targets, and when they got to the thing to testify -- go talk, they were witnesses against me.

And then I was -- I brought Jayveon Hudson to the court, I brought him. I'm the one who turned in the names to the government. I told him these names because these people were gig workers because they worked for me at my day care doing different stuff, lawns, they were cooks, they were watching kids and all that. That's what that loan was for, gig workers, contract workers. It's a big list of what it is.

I did not instruct them. I only told them, hey, you can get -- you need to apply at Womply. That's it. I did not do anything on a laptop. I can show you the paperwork where it says you have to use your own device because you have to have your own facial recognition. You have to use your ID. You have to have your e-mail. You have to use your phone number.

The reason I know, yes, that's what I thought I was pleading guilty to, two false statements, because the loan is two loans, it's two draws. That's what I thought I was pleading guilty to, not all this money. Because when I -- the other money I was told that I was going to get loan forgiveness when she came back and she never came back so I'm stuck with this big old bill.

THE COURT: You say "she." Which --

THE DEFENDANT: Joniayah Harrison. She told me, she said, "You're going to get the loan forgiveness. Once this is done, I'm going to come back and I'm going to get with you and I'm going to help you do the forgiveness." There's no way I would have done this. I -- I had all this money --

MR. WARD: Okay. Listen to me for just a second.

(Discussion held off the record)

THE DEFENDANT: I need everybody to know it. I did not do anything intentional and I would never do anything to these young people. I would never do nothing to them that would make them do something illegal. That's why I have them here today because in the deal it says that I need to go to jail because I've been a bad example to young people. That is my plight. That is my mission to -- I've done youth ministries.

My nephew was killed in 2019 in Owasso and I would never do anything to make a young person fall. As God as my witness, I would not. I would never do anything to take -- I'm so sorry. I'm sorry. I'm sorry. Because in the report it says that I'm not sorry but I am sorry. And that's why I have these young people here today to let them know you have to do things the right way all the way.

I'm sorry, Your Honor, for anything that I've done that's brought shame upon God, number one, upon my family, my grandma who raised me from a little kid -- I would never do anything to shame her -- to my children that I stand before every day and try to teach them the right way, and to my church and my community. I would never do anything like that.

And I am sorry for what I did. I am sorry for what -- I welcomed these people into my home when they came. When Jason Hartwig came to my home, this Jason guy that came in, the FBI agents that came in, I never did say, no, you can't come in because I could have but I had nothing to hide. Every time they came I was in the middle of day-care every time, every time. And they keep saying I don't have a day care and I did and the owner of the home sent all the stuff in. Everything they asked of me I gave it to them, and they said I didn't send in the reports as far as the Jason Hartwig said I didn't send in the stuff -- the information for the day care. I did. As soon as he asked for it, I e-mailed it and I have proof of that too. I printed everything out. And I have all the statements of the people saying that I did not do this to them. Saying that I have mind control, I don't. How can you have mind control of somebody who's an adult?

THE COURT: I don't know that they're saying that you didn't have a day care but rather you didn't have 45 employees.

THE DEFENDANT: I didn't.

THE COURT: All right.

THE DEFENDANT: I didn't have 45 employees.

THE COURT: Correct.

THE DEFENDANT: Yeah.

THE COURT: The application said you did.

THE DEFENDANT: I did not do it. I gave my information to her.

THE COURT: You didn't make the application?

THE DEFENDANT: No, sir. I just met her and she said, "I will handle it." And I said, "Okay."

THE COURT: All right. Anything further?

THE DEFENDANT: Can I sit down?

THE COURT: Yes, please.

MS. HARRINGTON: Thank you.

THE COURT: What says the government?

MS. HARRINGTON: Thank you, Your Honor. On behalf of the government, the government respectfully urges the court to sentence Ms. Thomas to a period of incarceration while the government appreciates the display of emotion and the remorse here today, the government cannot disregard the facts of the underlying investigation related to this case. Ms. Thomas maintained she was in a state of denial about being caught and discovered in her loans and that she was duped by two women at Woodland Hills Mall in May and June of 2022. That overlooks the fact that Ms. Thomas was interviewed in November of 2020 and informed at that time she was under investigation for Paycheck Protection Program loan fraud. She, again, was served a Grand Jury subpoena in February of 2021, testified after being advised of her rights pursuant to a target letter, and then five days later agents re-reminded her that she was under investigation. All the while, Ms. Thomas continued to violate the law and continued to submit fraudulent Paycheck Protection Program loan applications both on behalf of her own business, which allegedly these two women, Joniayah Harrison and Gail Jackson, had aided her in applying for a loan on behalf of her day dare in 2020, and then using the exact same loan documents submitted a subsequent loan to Arvest Bank in May of -- excuse me -- April 1st of 2021 knowing she was under investigation for Paycheck Protection Program loan fraud in conjunction with that very loan.

The government is deeply concerned about her role as a pillar of her church, as a matriarch in her community, and the influence she exhibits over young people and her co-defendants in this case as evidenced by the numerous loan applications that were submitted in this case and by the numerous statements by individuals stating that Ms. Thomas instructed them and recruited them in submitting their loan applications.

Concerning this argument about Ms. Thomas being duped, I think it's well worth noting that the Facebook Messenger messages of Ms. Thomas and people, such as Heather Overstreet ShaRita Yarbrough from April 29th of 2020 and July 5th, 2020, indicate that Ms. Thomas was, in fact, well aware of the details of both the Paycheck Protection Program loan offered by the Small Business Administration as well as the Economic Impact Disaster loan, or the EIDL loan, and her detailed knowledge of these two loans belie the fact that she now maintains that she was duped by Harrison and Jackson.

Ms. Thomas maintains that she was simply trying to assist gig workers, and in every instance she applied for the maximum amount, $100,000 or $20,833, on behalf of these alleged gig workers. That means each one of these day-care workers lawn care workers, maintenance workers made a hundred-thousand dollars per year. Nevertheless, in at least four instances, the 2019 1040 Schedule Cs for both Ms. Thomas and for other individuals reflect the exact same expenses. They are substantially the same in every material respect.

While Ms. Thomas has certainly provided some care to family members, to community members, and do good works, those good works do not undo the fact that she unlawfully obtained money she was not eligible to receive and she should pay the price, which is a term of imprisonment. This term of imprisonment is necessary in order to show a wide range of young community members that it is not societally acceptable to steal from banks and the government, as well as to ensure that her sentence is consistent with other Paycheck Protection Program defendants who have been sentenced in this district.

As I describe in my response motion to Ms. Thomas' motion for variance, there are other mothers of young children who have obtained far fewer loans and far less money than Ms. Thomas. The instance that is at the forefront of my mind is Teosha Etuk. She played a very minor role in the case involving Ibanga Etuk and only obtained approximately $150,000, and last year Judge Eagan sentenced Ms. Etuk to a year and a day for her Paycheck Protection Program fraud.

THE COURT: How much?

MS. HARRINGTON: How much?

THE COURT: Yeah. How much was involved?

MS. HARRINGTON: That was $150,000 of actual loss involving Teosha Etuk.

There's the instance of Benjamin Hayford. He was the first Paycheck Protection Program loan fraud case prosecuted in this district. He applied for $4.4 million worth of Paycheck Protection Program loan money and obtained $165,000. Mr. Hayford, who was an executive for Walmart, was sentenced to two years of imprisonment.

Just recently Olusola Ojo, who received just $150,000 and applied for approximately seven loans, was sentenced to four years for his role in a Paycheck Protection Program bank fraud scheme.

Ms. Thomas, like many of these individuals, has done good work in the community. She's a faithful member of her church. Nevertheless, those factors do not undo the economic harm that she has caused by defrauding banks and the federal government of Paycheck Protection Program loan funds. Thank you.

THE COURT: Two questions.

MS. HARRINGTON: Yes.

THE COURT: Ms. Thomas makes much of -- and this is something of a new issue being brought to the court in her statement -- that one cannot make an application by computer, one had to make it by phone. What should the court make of that arguments?

MS. HARRINGTON: That argument is immaterial, Your Honor. The statements of the individuals in their e-mails state specifically that Ms. Thomas instructed and recruited them to apply for the loans. Whether they were merely using an app to sign the document, the actual loan documents, or whether it was prepared by Ms. Thomas, as many of the individuals stated in front of the Grand Jury and in witness statements to federal law enforcement and then subsequently signed them, that distinction is immaterial. Because at the end of the day, it's

Ms. Thomas who caused people to apply for loans that probably never would have sought out these Paycheck Protection Program loans but for Ms. Thomas introducing them to this fraud scheme.

THE COURT: Second question. This relates to Ms. Thomas' motion for sentencing variance, docket No. 97, at page 15, wherein the defendant states that when her PPP loans were funded, she gave the following amounts to various individuals -- 13 individuals are set forth -- as compensation for their past and future services.

First question: Were these people given money from the loans that were -- the two loans referenced in Counts 3 and 4, the monies that she applied for and pled guilty to?

MS. HARRINGTON: May I have just a second to get two additional documents that will aid me in answering this question?

THE COURT: Yes.

MS. HARRINGTON: Thank you. Is there anything else, Your Honor, in terms of the numbers and the amounts given that are described in --

THE COURT: I'm just curious. Because I've added up in my head these 13 people amount to somewhere between 265 and 270 thousand dollars. my question is, first of all, were these funded out of the monies that she -- there is no issue that she applied for?

And then secondly, I'm curious, Danee Thomas received

$32,700; Jayveon Hudson, who's been described to me as a young man with a learning disability, ADHD, and major health problems, given $26,500. Were these from applications that they made or were these funded from the monies that she received?

MS. HARRINGTON: Your Honor, I don't have the answer to those questions. We have looked at Ms. Thomas' Tulsa Federal Credit Union account in-depth. There were cash withdrawals to the range of $224,000 and transfers in the amount of $201,000 that are not readily traceable or identifiable. We also looked at Ms. Thomas' Cash App transactions. For instance, on Danee Thomas, there were approximately $6,988 worth of Cash App transactions between Ms. Thomas and Danee Thomas. These amounts are round dollars amounts.

The government has requested from Ms. Thomas in the form of a Grand Jury subpoena that was served on her on April the 24th of 2021 for records or information about how she paid her alleged employees and contractors and so on and so forth. Ms. Thomas did not provide records at all in response to that specific question, and so there's no way of the government being able to trace these individual amounts given to her Cash App transactions or to her Tulsa Federal Credit Union account. As well as many of the people listed here; for instance, May Bruner, Demetrius Harrison, Amari Hudson, Asia last name unknown, and Amara Thomas, these are not people who applied for Paycheck Protection Program plans to the government's knowledge.

THE COURT: Amara Thomas is eleven years old. I take it that -- so, in other words, these amounts are amounts that the defendant is representing to the court that the defendant paid to these individuals presumably for work performed at the day care center --

MS. HARRINGTON: Yes.

THE COURT: -- is that correct?

All right. And 265 to 270 thousand dollars?

MS. HARRINGTON: I calculated it at $269,300.

THE COURT: Wasn't far off.

MS. HARRINGTON: There you go.

THE COURT: Okay. Anything else?

MS. HARRINGTON: No, Your Honor. Thank you.

THE COURT: All right. And I saw counsel springing to his feet. Any rejoinder?

MR. WARD: Let me address that for just a second.

The amounts the court was speaking about there, those were cash withdrawals that she gave to these people in cash. I asked her for her record and her record was a handwritten record that she kept because that's what she intended to use for loan forgiveness.

Now, I don't want to go back into the commission of the offense, because we pled guilty to it and the court's found us guilty of that, but that's why she did it because she understood to get forgiveness, you've got to pay the money out to people. That's why she gave the money to these people, but those were cash withdrawals that she gave to people in cash.

Now, if I could just wind up by going back to the motion for variance. As I mentioned in my opening remarks, regardless of what the court does, it's unlikely that she'll be able to repay all the money in her lifetime.

Where the government and I kind of part company, in terms of the motion for variance, is that the government doesn't suggest anything that's going to make society a better society or a better community or make these children have better lives. The government completely ignores the collateral consequences of a sentence of imprisonment to Ms. Thomas.

And interestingly in my research, when I was doing some research, I noticed that the Compassionate Care Act is no longer the Compassionate Care Act. It's been subsumed by Section 3553(a), and the court postjudgment can rely on 3553(a) to grant compassionate release to people. The courts can also use 3553(a) to grant probation to people that the court feels like should have probation.

If there were not such catastrophic collateral consequences to a sentence of imprisonment, I wouldn't argue so hard about it. But Ms. Thomas undoubtedly -- undoubtedly --

has made society better because of her efforts and will continue to make society better with her efforts regardless of what sentence the court imposes. But the notion of taking her out of the community where she's doing the most good is just simply a punishment that I don't believe should be inflicted.

THE COURT: Thank you very much. Any further statement?

MS. HARRINGTON: Nothing, Your Honor.

THE COURT: We'll be in recess for ten or fifteen minutes and we'll return after the recess.

(Short recess)

THE COURT: The court has received and reviewed the numerous letters outlined in the defendant's motion for downward variance at docket No. 97. And are there any victims' representatives who wish to be heard today?

MS. HARRINGTON: No, Your Honor.

THE COURT: The defendant's pleas of guilty to Counts 3 and 4 of the second superseding indictment were made pursuant to a written plea agreement at docket No. 78. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agreed that the appropriate disposition in this case is a sentence of not greater than 48 months imprisonment.

Based on the factors listed in the plea agreement and a review of the presentence investigation report, the court finds that the stipulation agreed to by the parties is reasonable and does not undermine the statutory purposes of sentencing.

Therefore, the court formally accepts the plea agreement as written and will depart downward eight levels, pursuant to sentencing guideline Section 5K2.0(d)(4), and the comment at note 5, to a total offense level of 17. Combined with a criminal history category of II, the resulting departure guideline range is 27 to 33 months.

The court has received and reviewed the defendant's motion for downward variance at docket No. 97 requesting that the court vary downward and sentence the defendant to a term of probation based on her physical health and her family responsibilities. However, the defendant is statutorily ineligible for a sentence of probation as the counts of conviction are class B felonies. Therefore, the court will construe this request as a zero-month custody request.

The court has also received and reviewed the plaintiff's response in opposition to the defendant's motion for downward variance at docket No. 101 and requesting that the court deny the defendant's motion for downward variance at docket No. 97 and sentence the defendant to 48 months imprisonment in accordance with the plea agreement. The plaintiff contends that a sentence of probation will not adequately deter this defendant nor would it reflect the seriousness of the instant offenses. The plaintiff further contends that a probationary sentence would create unwarranted sentencing disparities among defendants charged with similar criminal activity.

The court recognizes that the sentencing guidelines are advisory and are not mandatory but has considered the guidelines, along with all of the factors set forth in Title 18 United States Code Section 3553(a), to reach an appropriate and reasonable sentence in this case. In determining a sentence, the court has considered the nature of the offense, the defendant's criminal history, and her personal characteristics.

This case involved the defendant recruiting and instructing her co-defendants/acquaintances, Pepper Jones and Katrina West, and eight other individuals, to submit 33 fraudulent PPP loan applications on behalf of businesses, both real and fictitious, to various banks and lenders.

Based on these factors, a sentence within the variance guideline range will serve as an adequate deterrent to this defendant, as well as others, promote respect for the law, provide just punishment for the offense, and provide protection for the public. Sentencing disparities among defendants were considered in determining an appropriate sentence in this case.

A term of supervised release is required with special conditions, based upon the aforementioned factors, and will allow the defendant time to reintegrate into the community upon her release from imprisonment and be monitored for future law violations. And restitution is mandatory.

Ms. Thomas, if you'll rise, please. In accordance with applicable law, the court hereby imposes the following sentence:

It is the order and judgment of this court that the defendant, Aleta Necole Thomas, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 30 months as to each of Counts 3 and 4. Said counts shall run concurrently, each with the other.

The court orders that the order for entry of forfeiture money judgment at docket No. 89 is hereby incorporated by reference.

The defendant shall pay restitution in the total amount of $774,753.50 to the victims and in the amounts as listed in paragraph 59 of the presentence report.

And you may be seated.

Based upon the defendant's financial profile, as outlined in the presentence report, and the mandatory restitution, the court finds that the defendant does not have the ability to pay a fine, in addition to restitution, and therefore, no fine will be imposed. Any monetary penalty is due in full immediately but is payable on a schedule to be determined -- any monetary penalty is due in full immediately -- any monetary penalty is due in full immediately but is payable on a schedule to be determined pursuant to the policy provisions of the federal Bureau of Prisons' inmate financial responsibility program while imprisoned, if the defendant voluntarily participates in that program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of $500, or 10 percent of net income, whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this judgment. And interest on the restitution shall accrue.

Upon release from imprisonment, the defendant shall be placed on a term of supervised release for a period of five years as to each of Counts 3 and 4. Said terms shall run concurrently, each with the other. Should the terms of supervised release be revoked, additional terms of imprisonment of up to three years per count could be imposed at each revocation.

Immediately upon release from confinement, but in no event later than 72 hours thereafter, the defendant must report in person to the probation office in the district where she is authorized to reside. While on supervised release, the defendant must not commit another federal, state, or local crime. The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or other dangerous weapon.

The defendant must, at the direction of the U.S. probation officer, cooperate with and submit to the collection of a DNA sample for submission to the combined DNA index system. Further, the defendant must not possess a controlled substance and must refrain from any unlawful use of a controlled substance. The defendant must comply with the standard conditions that have been adopted by this court and must comply with the following additional special conditions:

Number one, the special search and seizure condition; number two, the special mental health condition, number three, the special financial conditions.

Pursuant to Title 18 United States Code Section 3563(a)(5), the requirement for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of drug abuse. However, the probation office retains the authority to administer such tests for cause as permitted by the standard conditions of supervision.

It's further ordered that a $100 special monetary assessment per count for a total of $200 be paid immediately to the U.S. Court Clerk for the Northern District of Oklahoma.

Mr. Ward, I know you're aware of your obligation to consult with the defendant regarding the advantages and disadvantages of perfecting an appeal and making a reasonable effort to ascertain whether she desires to perfect an appeal. In order that the record is clear that you've complied with those obligations, I'm directing you to file within 14 days of the date the judgment is filed either a notice of appeal or an affidavit signed by you and Ms. Thomas advising the court that you've consulted with her and that she's advised you that she does not wish to perfect an appeal. Very well?

MR. WARD: Yes, sir. Can I address the court for just a moment?

THE COURT: You may, sir.

MR. WARD: Judgment and Sentence having been pronounced by the court, I would request that the court make a recommendation to the Bureau of Prisons that she be placed in a facility as close as possible to Tulsa, Oklahoma.

THE COURT: Of course.

MR. WARD: And I would also make a request that the court allow her a voluntary report date.

THE COURT: There's no question about that.

MR. WARD: Okay.

THE COURT: All right. The government should move to dismiss Counts 1, 2, and 5 through 17 of the second superseding indictment, as well as the indictment and the superseding indictment as to Ms. Thomas.

MS. HARRINGTON: Yes, Your Honor. At this time the government would move to dismiss the indictment and superseding indictment as to Ms. Thomas, as well as all remaining counts, except for Counts 3 and 4 of the second superseding indictment. Thank you.

THE COURT: Very well. The indictment and superseding indictment, as well as Counts 1, 2, and 5 through 17 of the second superseding indictment are dismissed as to Ms. Thomas only.

The court finds that the defendant is a suitable candidate for voluntary surrender. I take it there's no objection there?

MS. HARRINGTON: No, Your Honor.

THE COURT: Therefore, the defendant shall surrender to the designated facility before 2:00 p.m. on January 20th, 2022, which is a Wednesday. Is there anything further?

MS. HARRINGTON: No, Your Honor.

MR. WARD: I didn't get that date.

(Discussion held off the record)

THE COURT: Oh, did I say January? Sorry. The J months. July, July 20th, 2022.

All right. Anything further, Mr. Ward?

MR. WARD: No, Your Honor.

THE COURT: Anything from the government?

MS. HARRINGTON: No, Your Honor.

THE COURT: Very well. We are adjourned.

(The proceedings were concluded)

C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Northern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 12th day of July 2022.

s/ Brian P. Neil

Brian P. Neil, RMR-CRR
United States Court Reporter