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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 729 (LAK)

5 CHANETTE LEWIS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 31, 2024
2:00 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 MICHAEL D. NEFF

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 MARK GOMBINER

20 ALSO PRESENT: Special Agent Timothy Schmidt, U.S. DoL-OIG

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1 THE DEPUTY CLERK: United States v. Chanette Lewis.
2 Government, are you ready?

3 MR. NEFF: Good afternoon, your Honor. Michael Neff
4 for the government. I'm joined at counsel table by Special
5 Agent Tim Schmidt from the Department of Labor.

6 THE COURT: Good afternoon.

7 THE DEPUTY CLERK: Defendant, are you ready?

8 MR. GOMBINER: Well, in one second. Mark Gombiner,
9 Federal Defenders for Ms. Lewis.

10 And Judge, Ms. Lewis is about eight months' pregnant.
11 She was sitting here, she told me she had to use the restroom,
12 so I mean I didn't know -- I said okay. So I had my paralegal
13 go get her. So she'll be back in a second.

14 (Pause)

15 THE COURT: That's your client, right, Mr. Gombiner?

16 MR. GOMBINER: Yes, it is, Judge.

17 THE COURT: Mr. Gombiner, have you and your client had
18 the presentence report for the necessary period?

19 MR. GOMBINER: Yes, we have, your Honor.

20 THE COURT: Ms. Lewis, have you read the presentence
21 report all the way through, everything?

22 THE DEFENDANT: Yes.

23 THE COURT: Thank you. Are there any unresolved
24 objections to the presentence report?

25 MR. GOMBINER: Other than that we've agreed that the

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1 guideline range would be lower, because she was assessed two
2 criminal history points for committing the offense while on
3 parole, and that's not part of the present guidelines. So I
4 think the government agrees that the correct guideline range is
5 41 to 51 months.

6 THE COURT: Is that right?

7 MR. NEFF: Yes, your Honor.

8 THE COURT: Okay. I adopt the presentence report and
9 the guideline computation and range it contains, with the
10 exception of that noted by counsel which I adopt in place of
11 what the presentence report says.

12 MR. NEFF: My apologies, Judge. May I offer three
13 very modest corrections or edits as well?

14 THE COURT: Well, it depends. Is any of them
15 material?

16 MR. NEFF: I don't believe so, Judge. But I wanted
17 to, if anything, they redound slightly to Ms. Lewis's benefit
18 even though --

19 THE COURT: The corrections or the errors redound to
20 her benefit?

21 MR. NEFF: The corrections would redound to her
22 benefit.

23 THE COURT: Go ahead.

24 MR. NEFF: Thank you, Judge, and my apologies.

25 First in paragraph 73, which is on page 16, there is a

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1 reference to the defendant having submitted fraudulent
2 materials to NYCHA on behalf of approximately 35 individuals.
3 After further investigation, we believe that approximately 32,
4 not 35, is the correct number. There were a few individuals, I
5 believe two, where Ms. Lewis had seemingly fraudulent documents
6 on her computer, but for which she did not --

7 THE COURT: I am going to adopt the correction to 32.
8 Let's move along.

9 MR. NEFF: Thank you.

10 In paragraph 88, which relates to the same scheme,
11 there is a reference to eight of Ms. Lewis' customers in fact
12 receiving housing benefits based on fraudulent applications.
13 After further investigation, we believe that approximately at
14 least seven, not eight, is correct.

15 THE COURT: I adopt that one too.

16 MR. NEFF: Thank you.

17 Finally, the second sentence of that same paragraph
18 states that "This fraud scheme also deprived or at least
19 delayed deserving NYCHA applicants of those benefits in part."
20 That is not necessarily incorrect, but I think a more
21 conservative formulation may be safer, which is to say simply
22 that "this scheme may have delayed," because it is very
23 difficult to point to a specific person whose benefits were
24 delayed, even though it could be a reasonable inference that
25 that was a consequence of this scheme.

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1 THE COURT: I'll make that change too.

2 MR. NEFF: Thank you.

3 THE COURT: I've received in relation to the
4 sentencing, the presentence report. There is in my file a
5 September 25, 2023, memorandum from pretrial services. I have
6 the government's sentencing memorandum and I have an executed
7 consent proposed order of restitution.

8 Is there anything else I should be aware that I
9 haven't mentioned?

10 MR. GOMBINER: Judge, that's kind of -- I filed three
11 separate sentencing submissions in this case. I did not,
12 because they contain very personal information, I didn't file
13 them online. I didn't file them through ECF. But -- I did --

14 THE COURT: I don't have them.

15 MR. GOMBINER: Okay. Judge, that's --

16 THE COURT: If you want me to read them, you better
17 give them to me.

18 MR. GOMBINER: Well, I mean there -- I do -- obviously
19 I want you to read them.

20 THE COURT: There is a way to file things.

21 MR. GOMBINER: Well, I did have some communications
22 with your deputy about this. I thought I had done -- I thought
23 that was the right way I was supposed to be doing this. But I
24 had a sentencing submission of June 5 and then a supplemental
25 submission --

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1 THE COURT: Can I see them now if you want me to read
2 them?

3 MR. GOMBINER: Yes, I do want you to read them.

4 THE COURT: Thank you.

5 (Pause)

6 THE COURT: For the record, I've just read three
7 letters from Mr. Gombiner dated June 5, June 7, and
8 September 14, 2023. I do note that the September 14 letter was
9 filed on ECF.

10 MR. GOMBINER: Judge, I mean, I have to say, I am
11 concerned about proceeding with sentencing at this point. I
12 understand that this is, you know, irritating I'm sure for me
13 to say this, but, I mean.

14 THE COURT: You couldn't have said that a day ago,
15 right?

16 MR. GOMBINER: What?

17 THE COURT: You couldn't have let me that a day ago or
18 two days ago.

19 MR. GOMBINER: Judge, I was under the impression until
20 about five minutes ago that all these letters had been received
21 and reviewed.

22 THE COURT: They have now been received and reviewed.

23 MR. GOMBINER: I understand that that's the case.
24 But, I mean, I had good reason to believe, and I mean, I could,
25 if I went back to my office and turned on my computer, I could

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1 provide the Court with the various communications, e-mail
2 communications I had about this, but --

3 THE COURT: What difference would it make? I've read
4 them now.

5 MR. GOMBINER: The difference it makes to me, I mean,
6 to me, obviously I am totally prepared to argue this right now.
7 I don't have any problem with that. But, for my client, who
8 this is like the pivotal moment of her life right now, I mean,
9 I think it's difficult to, you know, I spent a lot of time
10 writing these sentencing submissions, particularly my first
11 one. There's lots of information contained in it, and I feel
12 very uncomfortable being in a position where the Court has --
13 I'm not in any way saying anybody did anything wrong, but the
14 fact is that the Court has now just for a few minutes read
15 something that, you know, and had probably already come to some
16 conclusions about what sentence was appropriate. And to just
17 be the last second to have, okay, well, here's something you
18 wrote and read it, I think that puts us at a significant
19 disadvantage and I mean, I think --

20 THE COURT: I would say to you that what's putting you
21 to a disadvantage, if there is anything, which there is not,
22 it's what you've just been saying.

23 MR. GOMBINER: Okay.

24 THE COURT: It's inappropriate.

25 MR. GOMBINER: Well, all right, Judge. I have to

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1 make -- I mean, I feel I have to make a record about that so
2 I'm wanting to move on.

3 THE COURT: Would you like an adjournment,
4 Mr. Gombiner?

5 MR. GOMBINER: Yes.

6 THE COURT: Andy, let's get another date.

7 THE DEPUTY CLERK: How much time, Judge?

8 THE COURT: How much time do you want, Mr. Gombiner?

9 MR. GOMBINER: A week. That's fine. Can we do it
10 next Monday? Whatever. I just want some time. That's all I
11 want.

12 THE DEPUTY CLERK: Wednesday the 7th at 2 o'clock,
13 Judge.

14 THE COURT: How's that.

15 THE DEFENDANT: I have a prenatal appointment
16 Wednesday the 7th.

17 THE COURT: Well, Mr. Gombiner?

18 MR. GOMBINER: Well, Judge.

19 THE COURT: Andy, give us another date.

20 MR. GOMBINER: We can do it earlier or later.

21 THE DEPUTY CLERK: Judge, how about Thursday the 8th
22 at 2 o'clock.

23 MR. GOMBINER: That's fine, Judge.

24 THE COURT: That suits you?

25 MR. GOMBINER: Yes, your Honor. Thank you.

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1 THE COURT: All right. Thursday the 8th at 2 o'clock.
2 Thursday the 8th at 2 o'clock.

3 MR. GOMBINER: Thank you.

4 (Adjourned)

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