

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HARRESCIA HOPKINS,)
)
Defendant.)
_____)

CASE NO.: 1:22-cr-00284-SEG-CMS-1

**DEFENDANT’S RESPONSE TO THE GOVERNMENT’S SUPPLEMENTAL
SENTENCING MEMORANDUM**

COMES NOW, Defendant **HARRESCIA HOPKINS**, by and through her undersigned counsel, and respectfully files this Response to the Government’s Supplemental Sentencing Memorandum. For the reasons set forth below, this Court should overrule the government’s objection to her receiving credit for acceptance of responsibility and sentence her to time-served, followed by a period of supervised release.

Ms. Hopkins Has Fully Accepted Responsibility

Ms. Hopkins quickly pled guilty and admitted to the offenses charged against her in the Indictment. She did not file or litigate pretrial motions or require the government to begin preparing for trial. She has honored all the terms and conditions of her plea agreement and provided hundreds of pages of financial records to the government as part of their investigation into her assets, including providing additional documents this very

afternoon. She also voluntarily entered into a payment program with the SBA months ago to pay back the money she obtained.

However, despite these efforts, the government somehow attempts to argue to this Court that Ms. Hopkins has not accepted responsibility, citing several unprecedented and illogical reasons for doing so. Ms. Hopkins respectfully requests that this Court overrule the government's objection.

Pursuant to U.S.S.G. § 3E1.1, a defendant's offense level shall be decreased two-levels when she clearly demonstrates acceptance of responsibility. According to Application Note 3,

“Entry of a plea of guilty prior to the commencement of trial combined with truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable under §1B1.3...will constitute significant evidence of acceptance of responsibility for the purposes of subsection (a)”.

Further, “a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection.” U.S.S.G. § 3E1.1, Application Note 1(A).

A. Not Paying Restitution Early Is Not a Basis to Deny Acceptance of Responsibility

The government first argues that Ms. Hopkins has not accepted responsibility because she has not voluntarily made restitution payments prior to her sentencing. This is

both false and unpersuasive. Ms. Hopkins is not required as part of her plea agreement to make restitution payments early. Indeed, there is no restitution order currently in place as that will be entered at her sentencing. Undersigned counsel has also never in his entire career had someone not receive credit for acceptance of responsibility for not paying early restitution when it was not required by the plea agreement. Such an unprecedented and illogical argument borders on the extortive as it seeks to give Ms. Hopkins greater prison time if she cannot pay early restitution even when there is no obligation for her to do so. Ms. Hopkins respectfully asks this Court to reject this argument as adopting it would undoubtedly have a chilling effect on all future plea agreements and sentencings in this District wherein restitution is expected to be ordered.

The government is also factually wrong about this. Several months ago, Ms. Hopkins voluntarily entered into an agreement with the Small Business Administration to start repaying back her EIDL loan. The SBA put her on a payment plan and she is currently paying \$20.00 per month towards the interest on that loan. To date, she has made \$80 in interest payments on this loan. While that is perhaps not a lot of money, it does demonstrate her commitment to paying this restitution despite having been let go from several jobs due to her criminal record. *See* attached screenshots of her MySBA account information and balance. Undersigned counsel disclosed this to the government months ago and encouraged the government to check with the SBA as they could confirm this information. Undersigned counsel fails to understand how the government cannot independently

confirm this information when its own agency, the SBA, proposed, implemented, and administers this payment plan.

Therefore, since failure to pay restitution early is not a basis for denying a defendant acceptance of responsibility, and since Ms. Hopkins has indeed been paying restitution for several months directly to the SBA, she respectfully asks this Court to overrule the government's objection.

B. Ms. Hopkins Disclosed Her EIDL Loan and, Even If She Did Not, she is Still Entitled to Acceptance of Responsibility

As set forth above, Ms. Hopkins has provided and continues to provide hundreds of pages of her financial records to the government at their request. She provided these documents on May 17, 2023, May 30, 2023, and June 6, 2023. These documents provided the government with information regarding her EIDL loan. Ms. Hopkins never denied getting an EIDL loan. The government's failure to realize that this loan existed until yesterday, especially when the EIDL loan program is administered by the same agency as the PPP program, is not a basis to deny Ms. Hopkins acceptance of responsibility.

Further, the Application Notes make clear that a defendant is not required to volunteer information regarding relevant conduct beyond the offense of conviction to obtain a reduction for acceptance of responsibility. U.S.S.G. § 3E1.1, Application Note 1(A). Indeed, the Note explicitly provides that "A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection." *Id.* Therefore, Ms. Hopkins has not hidden or misled

the government in any way regarding this EIDL loan. She has provided all documents as requested by the government and cooperated fully with their investigation into her finances. Further, even if she did not affirmatively disclose this additional loan, that is not a basis to deny her acceptance of responsibility and this Court should overrule the government's objection.

C. Ms. Hopkins Appeal of her Termination from BOP Has Nothing To Do With Her Acceptance of Responsibility in her Criminal Case

Ms. Hopkins has every right to pursue whatever civil remedies are available to her regarding her termination from BOP. Pursuing these remedies in no way implicates her acknowledgment under oath regarding her actions in this case or her knowing and voluntary guilty plea. In the plea agreement, the government did not condition her plea of guilty or her acceptance of responsibility in this case upon her dismissing her termination appeal and the government has no idea whatsoever as to the validity of the claims made in her termination appeal. The government utterly fails to draw any logical connection between her termination appeal and her acceptance of responsibility in her criminal case. Once again, the government's argument is illogical, unprecedented, and will certainly impact future plea agreements should it be adopted by the Court. Requiring defendants to dismiss unrelated civil claims in order to receive acceptance of responsibility credit falls so far outside the scope of a federal criminal prosecution that it calls into question the motives for the government's decision to make this argument.

D. Ms. Hopkins' Alleged Statements to the MSPB Have Nothing to Do With Her Acceptance of Responsibility

This Court has already addressed Ms. Hopkins' alleged statements to the MSPB and determined that her plea was freely and voluntarily given. Ms. Hopkins has repeatedly told the government and this Court, through counsel, that this entire situation was a misunderstanding and that she does not feel her plea was coerced at all. Despite agreeing with the Court that Ms. Hopkins has confirmed under oath that her plea was freely and voluntarily given, the government now seeks to revoke her acceptance of responsibility based on alleged statements that Ms. Hopkins has disavowed. This argument has no basis in law or fact and should be dismissed.

E. Ms. Hopkins' Argument of the 3553(a) Factors Does not Implicate her Acceptance of Responsibility

18 U.S.C. § 3553(a) requires the Court, when making its sentencing determination, to consider other defendants who may be similarly situated to Ms. Hopkins. In her sentencing memo, Ms. Hopkins correctly pointed out that the US Attorney's Office for the Northern District of Georgia rarely prosecutes fraud crimes involving the dollar amount involved in this case. Ms. Hopkins also correctly pointed out that the government only became aware of her conduct because it was investigating guards at USP Atlanta.¹ Therefore, it is perfectly appropriate for Ms. Hopkins to argue to this Court that she is being

¹ Indeed, it is telling that AUSA Bradford is not assigned to the fraud unit but rather is the chief of the Public Integrity section.

treated differently than similarly situated defendants and this Court is required to consider that information pursuant to 18 U.S.C. § 3553(a). It is truly remarkable that the government would seek to revoke Ms. Hopkins' acceptance of responsibility for simply raising valid sentencing arguments. Such an argument is again illogical and unprecedented and should be rejected by this Court.

As set forth above, Ms. Hopkins has done everything this Court and the government have asked of her. She pled guilty, started paying restitution, made a full and transparent disclosure of her finances, and has raised nothing but perfectly legitimate arguments in her sentencing memo. The government cannot provide a single reasonable basis to deny her acceptance of responsibility and such illogical and frivolous arguments should be rejected by this Court.

A Non-Custodial Sentence Is Reasonable for Ms. Hopkins

When counsel for the government and undersigned counsel initially discussed this case, counsel for the government made it clear to undersigned counsel that he anticipated as part of the plea agreement that Ms. Hopkins would be able to request a probation sentence from this Court. However, when the initial PSR was disclosed, counsel for the government and undersigned counsel realized that, in this unique situation involving COVID Relief Fraud, a probation option is not statutorily available. Counsel discussed potential options and both parties agreed that this Court could legally sentence Ms. Hopkins to a sentence of time-served, to be followed by a period of supervised release. For the

reasons set forth in her prior sentencing memos, Ms. Hopkins respectfully asks this Court for such a sentence as it is both legally valid and reasonable in this case.

WHEREFORE, for the foregoing reasons, as well as additional arguments that Ms. Hopkins will make at her sentencing hearing, Ms. Hopkins respectfully requests a non-custodial sentence in her case.

This, the 6th day of June, 2023.

Respectfully submitted,

s/ Benjamin Black Alper

BENJAMIN BLACK ALPER

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CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This, the 6th day of June, 2023.

Respectfully submitted,

s/ Benjamin Black Alper

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the above date, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

Respectfully submitted,

s/ Benjamin Black Alper

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