UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CR-20011-DPG

UNITED STATES OF AMERICA

vs.

DAVID TYLER HINES,

Defendant.
____/

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR
EARLY TERMINATION OF SUPERVISED RELEASE

The United States, by and through the undersigned Assistant United States Attorney, hereby files this response to movant's Motion for Early Termination of Supervised Release (the "Motion"). (DE 76). Having reviewed the Motion, the United States opposes the relief requested in this matter for the reasons set forth below.

FACTUAL BACKGROUND

In February 2021, the defendant pled guilty to one count of wire fraud (18 U.S.C. § 1343). The defendant submitted multiple Paycheck Protection Program ("PPP") applications totaling approximately $13.5 million claiming to have dozens of employees and millions of dollars in monthly payroll. The purported employees either did not exist or earned a fraction of what was claimed in the PPP applications. The defendant also aided and abetted others involved in preparing false and fraudulent PPP applications. The defendant caused the disbursement of approximately $4.8 million in fraudulent loan payments (with several million seized from the defendant's bank accounts) leaving a restitution balance of approximately one million dollars (for which defendant pays $287 per month). The defendant used the PPP loan funds, for among other things, a

Lamborghini purchased for approximately $318,000. The defendant was a criminal history category III at sentencing and received a sentence of over 6 years. The defendant has been out of Bureau of Prisons custody for a little over one year.

DISCUSSION

Title 18, United States Code, Section 3583 provides, in pertinent part, that the Court may:

> terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, *if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice*. (emphasis added)

United States v. Johnson, 877 F.3d 993, 998 (11th Cir. 2017). Upon a request for early termination, the statute requires consideration of the factors set forth in Title 18, United States Code, Section 3553(a). These sentencing factors include the nature and circumstance of the offense, the history and characteristics of the defendant, the need to afford adequate deterrence to criminal conduct, and the need to protect the public from further crimes of the defendant. 18 U.S.C. § 3583(e)(1).

The defendant contends in the motion that the factors set forth in Section 5D1.4 of the Sentencing Guidelines support the early termination request. Specifically, the defendant contends that (1) he has had no court-reported violations; (2) he has shown an ability to self-manage with full-time employment; (3) he has complied with conditions of release; (4) he has engagement with prosocial activities as husband and father of two children; (5) he has reduced his risk level by keeping his previous substance abuse in remission; and (6) he contends that termination will not jeopardize public safety.

Compliance alone with the terms of supervised release, while commendable, is insufficient on its face to merit early termination. See, e.g., United States v. Freeman, 05-CR-60224-Lenard, 2023 WL 7036343 at *6 (S.D. Fla. Oct. 26, 2023) ("Full compliance, after all, is merely what is expected of all people serving terms of supervised release") quoting Karacsonyi v. United States, 152 F.3d 918 (2d Cir. 1998).

The United States opposes the relief requested in this memorandum for the following reasons.

First, the defendant was involved in a serious offense. The case involved the defendant seeking over $13 million in PPP loans, obtaining several million dollars in loans, and then buying a $300,000 Lamborghini with the proceeds. The defendant still owes substantial restitution for that conduct.

Second, the defendant's pre-sentence report shows a pattern of criminal history that preceded the instant conduct. Specifically, the defendant has convictions for resisting an officer without violence (2018), battery (2019), and escape (2020) and committed the instant offense while under a criminal justice sentence. Moreover, the defendant had over 11 prior arrests, ranging from robbery, grand theft, and battery on a law enforcement.

Third, the defendant self reported at sentencing a prior history of significant controlled substance use including cocaine, crack cocaine, MDMA, and unprescribed use of amphetamine and Xanax. The defendant reported this drug use taking place from 2015 to 2020.

In short, while it's admirable that the defendant has spent the past year without infractions and seemingly on the right path, given the seriousness of the offense, the defendant's criminal history, the defendant's history of drug use, and the continued restitution obligations, the United States respectfully submits that early termination is not appropriate in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system and thereby transmitted to counsel of record.

By: /s/ Michael N. Berger
Assistant United States Attorney