IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:22-cr-00084**

MALIK BRECKENRIDGE

SENTENCING MEMORANDUM OF THE UNITED STATES

The United States submits this sentencing memorandum requesting a guideline sentence for Malik Breckenridge ("Defendant"). Defendant pleaded guilty to Count One of the two-count Indictment, charging him with wire fraud, in violation of 18 U.S.C. § 1343. The Probation Officer correctly calculated his guideline range to be eight to fourteen months. Neither party submitted any objections to the presentence report ("PSR").

I. 18 U.S.C. § 3553(a) Factors

(A) Nature and Circumstances of the Offense

March of 2020 will forever be linked to the deadly coronavirus pandemic. Two years later, this country is still suffering from the aftershocks of Covid-19. The Center for Disease Control and Prevention reported that there were over one million deaths from the virus as of October 19, 2022. COVID Data Tracker Weekly Review CDC, (October 21, 2022), https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html. Furthermore, the pandemic was not only characterized by death and serious illness, but was also a time of true economic uncertainty, which lead to panics of a second American Great Depression. The U.S. real gross domestic product (GDP) "fell by 8.9 percent in the second quarter of 2020 … the largest single-quarter contraction in more than 70 years." The U.S. Economy and the Global Pandemic, Chapter 3, (April 26, 2022, 4:00 p.m.), https://www.whitehouse.gov/wpcontent/uploads/2022/04/

Chapter-3-new.pdf. In response to the looming financial peril threatening the country, Congress passed the Coronavirus Aid Relief (CARES) Act. The CARES Act authorized the Small Business Administration (SBA) to provide forgivable loans to small businesses through banks or other lenders with government-backed guarantees. The CARES Act authorized billions in forgivable loans to small businesses for job retention and other business-related expenses through a program known as the Paycheck Protection Plan (PPP).

Unfortunately, many individuals like Defendant, choose to take advantage of a national and global crisis to apply for PPP loans that they were not entitled to receive. There are estimates that as much as $80 billion of the PPP funds were fraudulently taken. Ken Dilanian and Lauara Strickler, Biggest fraud in a generation': The looting of the Covid relief program known as PPP, NBC News, https://www.nbcnews.com/politics/justice-department/biggest-fraud-generation-looting-covid-relief-program-known-ppp-n1279664 (last visited Oct. 27, 2022). Taking advantage of government programs during a time of such suffering is disheartening and should be punished appropriately. However, the fact that Defendant created a completely fabricated business to apply for a PPP loan and then chose to spend a large percentage of the disaster relief funds on sports gambling truly highlights the egregious nature of his fraud scheme. In light of the seriousness of Defendant's actions in fraudulently obtaining pandemic benefits, a guideline sentence is warranted.

(B) The Seriousness of the Offense, Promotion of Respect for the Law, and Provision of Just Punishment

Federal emergency benefits are meant to help people whose lives have been severely affected by major disasters like the pandemic. Defendant's fraud misappropriated taxpayer dollars, reduced monies available to true victims, and potentially eroded public confidence in relief programs. A sentence of imprisonment within the guideline range would be a just punishment, particularly because Defendant's fraud reduced resources available to the truly needy.

(C) Adequate Deterrence

Congress has recognized that general deterrence is particularly important in the context of white-collar crime. *United States v. Sample*, 901 F.3d 1196, 1200 (10th Cir. 2018) (citing *United States v. Martin*, 455 F.3d 1227, 1240 (11th 2006) ("[T]he Congress that adopted the § 3553 sentencing factors emphasized the critical deterrent value of imprisoning serious white collar criminals, when where those criminals might themselves be unlikely to commit another offense."); S. Rep. No. 98-225, at 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259 ("The second purpose of sentencing is to deter others from committing the offense. This is particularly important in the area of white-collar crime.")). "In enacting § 3553, Congress was especially concerned that prior to the Sentencing Guidelines, major white-collar criminals often were sentenced to small fines and little or no imprisonment." *United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) (cleaned up). "White collar criminals may be particularly susceptible to general deterrence because '[d]efendants in white-collar crimes often calculate the financial gain and risk of loss, and white-collar crime therefore can be affected and reduced with serious punishment.'" *Sample*, 901 F.3d at 1200; *see also United States v. Vrancea*, 136 F. Supp. 3d 378, 392 (E.D.N.Y. 2015) ("Persons who commit white-collar crimes like [D]efendant's are capable of capable of calculating the costs and benefits of their illegal activities relative to the severity of punishments that may be imposed. A serious sentence is required to discourage such crimes.") Courts have expressed a "distaste for sentencing that reflects different standards of justice being applied to white and blue collar criminals." *United States v. Saleh*, 257 Fed. Appx. 740, 745 (5th Cir. 2007).

Although pandemics are hopefully unique events faced roughly about once a century, other major disasters such as natural disasters — particularly floods — are a continuing problem in West

Virginia, making general deterrence of emergency benefits fraud a crucial consideration in this case. Deterrence would be best served through a sentence of imprisonment. The Court should impose a sentence that will deter those, like Defendant, who would seek to exploit such emergencies for personal gain. A sentence of imprisonment within the guidelines range is needed to reflect the seriousness of this offense.

In conclusion, a guideline sentence is needed to reflect the seriousness of the offense, provide a just punishment, promote respect for the law, as well as to afford general deterrence against fraud schemes.

II. Sentencing Options

Defendant's adjusted offense level falls within Zone B of the Sentencing Table. Zone B sentences may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in U.S.S.G. § 5C1.1(e), provided that at least one month is satisfied by imprisonment or (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement or home detention for imprisonment according to the schedule in subsection (e). U.S.S.G. § 5C1.1(c).

III. Restitution

Pursuant to the Mandatory Victims Restitution Act, the Court *shall* order restitution for the full amount of the victim's loss caused by Defendant's criminal conduct. 18 U.S.C. §§ 3663A(c)(1)(B); 3664(f)(1)(A). Moreover, Defendant agreed he owes restitution in the amount of $41,666.00 and he has agreed to not oppose the government's efforts to collect restitution. *See* ECF No. 31. After entering into the plea agreement, the United States has received Certified Statements from the SBA attached as Exhibit A, certifying the actual loss to the SBA was $46,680.01, not the $41,666.00 agreed to by the parties.

The United States respectfully requests the Court order the following terms in the judgment order concerning the terms of payment of restitution pursuant to the terms of the Plea Agreement, the PSR, and the Court's authority under 18 U.S.C. §§ 3572 and 3664(f), until such time as Defendant has satisfied the financial obligations to be imposed by the judgment:

1. Defendant must pay the special assessment of $100.00, due immediately.[1]
2. Payment of restitution is due and payable immediately.
3. Defendant is to be placed on the Treasury Offset Program.
4. Any criminal monetary penalties that remain outstanding when the Defendant's supervision commences is to be paid on a monthly basis at a rate of at least twenty-five percent (25%) of the Defendant's gross income, or at least $200.00 a month, whichever is greater, to be modified during supervision, if needed, based on the Defendant's changed circumstances, pursuant to 18 U.S.C. § 3572(d)(3).

Conclusion

For the foregoing reasons, the United States requests that the Court sentence Defendant to a guideline sentence and order restitution of $41,666.00 to the SBA, payment instructions identified in the PSR, and that the Court impose the aforementioned conditions of payment of the restitution pursuant to its authority under 18 U.S.C. §§ 3572 and 3664(f).

[1] Already paid. ECF No. 33.

Respectfully submitted,

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "SENTENCING MEMORANDUM OF THE UNITED STATES" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing on this 27th day of October, 2022.

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