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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ANDREW MARNELL,

16 Defendant.
17

No. 2:20-CR-00319-RGK

GOVERNMENT'S SUPPLEMENTAL
SENTENCING POSITION

18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney and Assistant United States
20 Attorney Kerry L. Quinn, hereby files a supplemental sentencing
21 position for defendant ANDREW MARNELL ("defendant") on the following
22 two topics: (1) the application of the +2 enhancement for use of an
23 "authentication feature" under § 2B1.1(b)(11)(A)(ii) of the United
24 States Sentencing Guidelines ("USSG"); and (2) defendant's
25 submissions on criminal history and likelihood of recidivism.

26 **I. The +2 Enhancement under § 2B1.1(b)(11)(A)(ii) applies**

27 In the Second Addendum to the Presentence Report ("PSR") as
28 filed by the United States Probation and Pretrial Services Office

1 ("USPO") (docket no. 88), the USPO declines to apply the
2 +2 sentencing enhancement for use of an "authentication feature"
3 because defendant used a fake identification document rather than a
4 real one. The government respectfully submits the USPO is incorrect
5 on both the law and the facts.

6 On the law, the government respectfully refers the Court to
7 United States v. Sardariani, 754 F.3d 1118 (9th Cir. 2014), in which
8 the Ninth Circuit held the "authentication feature" enhancement
9 covers the use of forged notary seals, and the only question in that
10 case was whether the forged notary seals were sufficiently connected
11 to a governmental authority to be true "authentication features."
12 The use of fake or forged documents with real authentication features
13 is exactly what USSG § 2B1.1(b)(11)(A)(ii) is designed to cover -
14 this exact situation. It is aimed at the use of real authentication
15 features to make a fake document look real. United States v.
16 Sardariani, 754 F.3d at 1121-1122; see also 2B1.1 Application Note
17 10(B) ("Offenses involving authentication features, identification
18 documents, **false identification documents**, and means of
19 identification, in violation of 18 U.S.C. § 1028, also are covered by
20 this guideline.") (emphasis added).

21 On the facts, defendant used the identity (and personal
22 identifiers) of another person, namely his husband, S.R., unlawfully
23 to obtain a loan in S.R.'s name, and thus, the +2 enhancement under
24 USSG § 2B1.1(b)(11) applies for the additional reason that defendant
25 used a means of identification of another person unlawfully to obtain
26 another means of identification, which is covered by USSG
27 § 2B1.1(b)(11)(C)(ii). But the defendant also used forged passports
28

1 in the course of the fraud, and thus, the § 2B1.1(b)(11) enhancement
2 also applies because of the use of the "authentication feature," as
3 stated above.

4 **II. Defendant's Criminal History Category Is, If Anything,**
5 **Understated**

6 In response to the defendant's submissions on criminal history
7 and likelihood of recidivism, the government submits defendant's
8 criminal history is, if anything, understated. In addition to the
9 criminal history detailed in PSR, and the criminal conduct committed
10 in this case, defendant has been the subject of numerous reports to
11 law enforcement of other fraudulent activity for which he was never
12 charged, including everything from credit card bust out schemes,
13 check kiting, merchant fraud, identity theft, forex freeriding fraud,
14 and other fraudulent attempts to obtain loans for businesses he
15 claimed to operate. The government thus respectfully disagrees with
16 defense that defendant's criminal history is overstated and the
17 likelihood of recidivism is low.

18 The government again submits a low-end guideline sentence of 97
19 months is appropriate for this case.

20 Dated: July 7, 2023

Respectfully submitted,

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United States Attorney

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Assistant United States Attorney
23 Chief, Criminal Division

24 /s/
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