

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

5:23-CR-00094-D-1

DONTRELL BARNES,

Defendant.

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FEBRUARY 22, 2024

SENTENCING HEARING

**(Pursuant to Standing Order 22-SO-1, portions of all guilty  
plea and sentencing transcripts are restricted.)**

BEFORE THE HONORABLE JAMES C. DEVER III  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

On Behalf of the Government:

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On Behalf of the Defendant:

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AMY M. CONDON, CRR, RPR, CSR  
Official Court Reporter  
United States District Court  
Raleigh, North Carolina  
Stenotype with computer-aided transcription

1 (Thursday, February 22, 2024, commencing at 1:00 p.m.)

2 **P R O C E E D I N G S**

3 THE COURT: Good afternoon, and welcome to the  
4 United States District Court for the Eastern District of North  
5 Carolina.

6 We'll take up the sentencing of Dontrell Barnes.

7 Hello, Mr. Jacquet-Freese. Are you and the  
8 defendant ready?

9 MR. JACQUET-FREESE: We are, Your Honor. Thank you.

10 THE COURT: Is the United States ready, Mr. Beraka?

11 MR. BERAKA: Yes, Your Honor. Good afternoon.

12 THE COURT: At this time I'd ask that the defendant  
13 be sworn or affirmed.

14 (The defendant, Dontrell Barnes, was duly sworn.)

15 THE COURT: Sir, do you understand that having been  
16 sworn, that your answers to my questions are subject to the  
17 penalty of perjury; and if you were to lie to me, you could be  
18 prosecuted for perjury or for making a false statement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you taken any kind of medicine or  
21 any other substance in the last 48 hours that affects your  
22 ability to hear and understand this proceeding?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Mr. Jacquet-Freese, do you have any  
2 reason to doubt Mr. Barnes' competence to go forward today?

3           MR. JACQUET-FREESE: No, Your Honor.

4           THE COURT: Mr. Beraka, does the United States have  
5 any reason to doubt Mr. Barnes' competence to go forward  
6 today?

7           MR. BERAKA: No, Your Honor.

8           THE COURT: Based on the defendant's answers to my  
9 questions, my observations of him, and the answers from  
10 counsel, I find that he is competent.

11           Sir, you're here today having entered a plea of  
12 guilty to the charge of conspiracy to commit wire fraud.

13           You entered a plea of guilty to that charge pursuant  
14 to a plea agreement. I hereby accept the plea agreement.

15           The sentencing guidelines are no longer mandatory;  
16 they're advisory. Nevertheless, I'm to take into account the  
17 now-advisory guidelines.

18           I do this by initially making findings of fact and  
19 calculating an advisory guideline range. I'll then consider  
20 any motion that might be made that might move that range  
21 either up or down.

22           I'll then consider all arguments that your lawyer  
23 makes on your behalf, both here in court and the ones he's  
24 made in the memo he submitted, any statement you'd like to  
25 make, and the arguments of the Assistant United States

1 Attorney.

2 I'll then determine your sentence, and I'll announce  
3 it here in court today. That'll be the process we'll follow.

4 Mr. Jacquet-Freese, did you receive a copy of the  
5 presentence report?

6 MR. JACQUET-FREESE: Yes, Your Honor.

7 THE COURT: And Mr. Barnes, did you speak with your  
8 lawyer about that report?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: At this time the Court directs that the  
11 presentence report be placed in the record under seal.

12 In accordance with Rule 32 of the Federal Rules of  
13 Criminal Procedure, the Court accepts as accurate the  
14 presentence report, except as to matters in dispute as set  
15 forth in the addendum.

16 I have reviewed the entire report, including the  
17 addendum. And the addendum does contain objections.

18 Does the defense want to be heard on those?

19 MR. JACQUET-FREESE: Briefly, Your Honor, on the  
20 first objection, the Section 1040.

21 THE COURT: Okay.

22 MR. JACQUET-FREESE: The second objection I had put  
23 in because the draft PSR had not included sort of that portion  
24 of the plea agreement. It's in the final so I don't need to  
25 be heard on that, but I would like to be heard on the Section

1 1040 issue.

2 THE COURT: Okay. I'll hear you.

3 MR. JACQUET-FREESE: Your Honor, I understand that I  
4 may have an uphill battle here because in another case you  
5 have already decided that Section 1040 applies. I do persist  
6 in the very strong belief that it does not apply to these  
7 cases.

8 Now, the only real authority on this issue is the  
9 Redfern decision from the Fourth Circuit. It is an  
10 unpublished decision; but in that decision, as I'm sure the  
11 Court is aware, the Fourth Circuit commented favorably on the  
12 district court's analysis. And in the district court's  
13 analysis, it determined that PPP fraud did not qualify as a  
14 Section 1040 offense while the fraud in EIDL loans did.

15 I have laid out the argument in my sentencing memo.  
16 I'm sure the Court understands that I would like to emphasize  
17 the statutory interpretation issue here. I think that the  
18 Government's interpretation and the interpretation that  
19 probation has put forward does change the statute. Congress  
20 made an intentional decision to tie the benefit not to the  
21 emergency or the disaster itself but to the declaration, and I  
22 think that the reason for that is that Congress was  
23 specifically attempting to target programs that flow from  
24 Stafford Act declarations, not any sort of fraud that has to  
25 do with any sort of emergency. And I would ask the Court to

1 accept Congress's judgment in that case and not to apply the  
2 enhancement.

3 And should the Court decide it applies anyway, we  
4 have arguments later on as to the equities.

5 THE COURT: Okay. I'll hear from the United States.

6 MR. BERAHA: Yes, Your Honor.

7 The Government believes that it is applicable not  
8 just to EIDL fraud but to PPP fraud as in this case.

9 Starting with the statutory interpretation, "in  
10 connection with" is broad language that Congress used. Of  
11 course it could have used narrower language such as "pursuant  
12 to." There's also a list of numerous verbs in the statute  
13 that generally suggest breadth.

14 You also have to read, the Government would submit,  
15 the statute harmoniously. There's -- in the definitional  
16 section of benefits, it includes state and local. Of course  
17 that would be -- the Government would contend surplus -- that  
18 would be surplus language if the benefit would have had to  
19 have been directly authorized by a declaration, then that  
20 language really wouldn't be necessary. Same for the  
21 jurisdictional requirement, that there be an interstate --  
22 nexus to interstate commerce.

23 THE COURT: What about this the equity argument in  
24 terms of I didn't apply it to his mother? I mean, putting  
25 aside sort of the legal argument.

1 MR. BERAKA: Of course, Your Honor.

2 So that would go under the Court's analysis under 18  
3 U.S.C. 3553, the Government could contend that -- excuse me.  
4 The Court, I think, should still apply the guideline if it's  
5 legally correct, which it is, and then the Court would be free  
6 to consider within the guidelines potentially lower than it  
7 might or, you know, in the Court's kind of -- I think it goes  
8 to the need to avoid unwarranted sentencing disparities  
9 truthfully, and we'd be prepared to address that, you know,  
10 when the Government makes its recommendation.

11 THE COURT: Okay. Anything else on the -- from the  
12 defense?

13 MR. JACQUET-FREESE: Very briefly, Your Honor.

14 On the legal question as to the statute's inclusion  
15 of state and local governments, that's actually not surplusage  
16 at all. The Stafford Act, when a Stafford Act declaration is  
17 made, it permits FEMA to disburse money, but it also unleashes  
18 money that goes to states that they can then distribute in  
19 their own disaster program. So, you know, tying it to the  
20 declaration in no way makes any part of the statute  
21 surplusage.

22 The Court has the rest of the arguments. And on the  
23 equity, Your Honor, if we're ready for that discussion --

24 THE COURT: Sure.

25 MR. JACQUET-FREESE: As the Court acknowledged, you

1 did not apply it to Mr. Barnes' mother, the co-defendant in  
2 this case.

3 I think more broadly, the Government's position on  
4 whether or not the 1040 has -- applies to COVID loans has  
5 changed -- I mean, they changed in the course of the Redfern  
6 decision where at the district court level the government was  
7 arguing that the position of the United States Federal  
8 Government was that they were not going to apply the  
9 enhancement because they wanted one rule to apply nationally  
10 and then that position changed at the appellate level.

11 So broadly, and more specifically for Mr. Barnes, I  
12 would urge the Court for equitable reasons not to apply the  
13 enhancements.

14 THE COURT: What about the argument about whether  
15 it's just part of the 3553(a) -- I mean, I understand the  
16 equity about just -- and I didn't apply it to his mother. I  
17 mean, that makes sense to me that just from an equitable  
18 standpoint it's a co-defendant in the same case.

19 Do you view that as a guideline calculation issue or  
20 more of a 3553(a)?

21 MR. JACQUET-FREESE: I think that's a 3553(a) -- the  
22 equity, sort of, avoidable unwarranted disparities.

23 THE COURT: I'll overrule the objection, but I'll  
24 hear from the Government. But I think there's force in the  
25 equity argument associated with I didn't apply this to his

1 mother and so, you know, I think probation properly calculated  
2 this, but I'm acutely aware that it would be an 11 and a I and  
3 an 8 to 14 if I did -- if I did sustain the objection instead  
4 of the 12 to 18 in terms of just treating for guideline  
5 calculation purposes and -- well, it's really more of the  
6 3553(a) component of avoiding unwarranted sentencing  
7 disparities. I think it's just more fair to treat him like I  
8 treated his mother. So that's my ruling.

9           So with that, I'll hear on the -- there's no other  
10 objections from the United States, right?

11           MR. BERAKA: That's right, Your Honor.

12           I did want to ask the Court to impose restitution  
13 that takes into account the interest and processing fees per  
14 paragraph 16, and I think in other cases I've styled that as  
15 an objection.

16           THE COURT: And what's that figure?

17           MR. BERAKA: That figure would be \$153,711.46.

18           THE COURT: Okay. Any objection to that from the  
19 defense?

20           MR. JACQUET-FREESE: I believe that's the amount  
21 that the Court imposed in his mother's case, so no objection.

22           THE COURT: Okay. Thank you.

23           Okay. All right. I'll hear from the defense on the  
24 3553(a) factors, then hear from Mr. Barnes, then hear from the  
25 United States, and I'll give Mr. Jacquet-Freese the last word

1 on the argument.

2 MR. JACQUET-FREESE: Thank you, Your Honor.

3 I spent some time thinking about what I would like  
4 the Court's takeaways to be from our discussion of Dontrell  
5 Barnes, and I think these are the highlights:

6 Mr. Barnes is a hard worker, a hard worker to the  
7 point that whenever we needed to schedule an in-person  
8 meeting, it had to be two weeks in advance because that's what  
9 he needed to do in order to request time off of work. He is  
10 working all the time. He's a medical transporter. He  
11 coordinates music for funerals. He's a choir director at his  
12 church. He's engaged in both sort of gainful employment  
13 activities and volunteer activities in his church in the  
14 community. This is someone who keeps busy, and I think that's  
15 relevant to a number of factors.

16 But I think at base, it indicates that he's not a  
17 bad person, Your Honor. He's someone who did a bad thing, and  
18 we will discuss the offense conduct certainly. But at base,  
19 Dontrell is a hard worker. He's someone who loves his family,  
20 and that's gotten him in trouble and it's gotten him in  
21 trouble in the past.

22 His only conviction is -- and I appreciate the Court  
23 taking into account in reading my late-filed sentencing  
24 memorandum, but his only criminal conviction was essentially a  
25 result of similar conduct. His cousin asking him to deliver a

1 package, him either turning a blind eye or just not asking  
2 sort of what was in it, and it turns out there was contraband  
3 in it. That caused him to lose his job. It gave him a  
4 criminal record. That -- it messed up his life, Your Honor.  
5 I think that's an indication that this is someone who is  
6 unfortunately somewhat susceptible to being swayed to doing  
7 things for family members. And that's not to suggest that he  
8 does not have responsibility in this case, because he does.  
9 But I think that it is a mitigating factor that we ask the  
10 Court to take into consideration.

11 I would also ask the Court to take into  
12 consideration that he understands that what he did was wrong.  
13 Mr. Barnes has struggled and -- I mean, he and his mother  
14 together have struggled. He did not have a sort of very  
15 well-off upbringing. They had food insecurity. They had sort  
16 of utilities insecurity that he'll talk to you about himself.  
17 And that's not a position that he wanted himself to be in  
18 anymore; it's not a position that he wanted his mother to be  
19 in anymore, and that's why he helped her -- sort of separate  
20 and apart from the offense conduct, that's why he helped her  
21 to establish this business and why he worked so hard to try  
22 and make it successful. That's why he works so hard now  
23 because he knows that he has to work hard to sort of get ahead  
24 in life.

25 That being said, the folks that the PPP program --

1 that the PPP was designed to help are people in similar  
2 situations. And I think I would be remiss if I did not point  
3 out to the Court that he and his mother are engaged in a small  
4 business in Eastern North Carolina that was negatively  
5 affected by the pandemic and that is the type of person that  
6 the program was intended to help.

7 Now, they went around trying to get that help, they  
8 went about it the wrong way, but they are of the same class.  
9 And because of that, Mr. Barnes understands that he cut in  
10 line; that he took something from other folks that were in his  
11 same position, and he is sorry for that and he feels that I  
12 think in a way that he didn't at the time of the offense  
13 conduct.

14 But he understands that he needs to make amends. He  
15 came today with a check for \$300 so that he can start to  
16 make -- to make those amends, to pay toward the restitution  
17 that he knows is going to be ordered in this case. That's  
18 something that he wants to continue to do. And if the Court  
19 were to grant him the opportunity of accepting our sentencing  
20 recommendation, then he could continue to do that. He could  
21 continue to work, set aside money to pay off the debt that he  
22 and his mother owe.

23 Finally, Your Honor, on the offense conduct itself.  
24 It was wrongful, and Mr. Barnes understands that. He is the  
25 less-culpable person in this case.

1           And if I can sort of take a moment to take a step  
2 back. Obviously, the Court has a broader view of this scheme,  
3 knows that the Barneses and people on their level were not  
4 sort of the main people perpetrating this scheme; that they  
5 themselves were targeted. That being said, they went along  
6 with it; they submitted fraudulent statements and took money  
7 that didn't belong to them.

8           Mr. Barnes, I think, is on a level that is slightly  
9 less culpable. He was there, he knew that what he was doing  
10 was wrong, but he was essentially following instructions from  
11 Mr. Whitaker and from his mother. And we know from his past  
12 that he's someone who's somewhat susceptible of being  
13 influenced in that way. And I'd ask the Court to take that  
14 into account as well.

15           The Government has agreed that he should get the  
16 mitigating role adjustment in conversations with both us and  
17 counsel and Ms. Barnes, and I would ask the Court to take that  
18 seriously. Ms. Barnes received a sentence of 12 months and a  
19 day, I think. As a less-culpable person, it should be below  
20 that, and we ask the Court to strongly consider the sentencing  
21 recommendation that we've made of probation with an  
22 eight-month period of home detention which --

23           THE COURT: What about general deterrence?

24           MR. JACQUET-FREESE: Certainly important, Your  
25 Honor. And I think the fact that someone has gone to prison

1 for this loan is a factor in support of general deterrence and  
2 it sends the message that the Court has, I think, made in  
3 other cases; that this is very serious, and it is.

4 And I think if you give Mr. Barnes a sentence of  
5 probation with eight months of home detention, then it is  
6 still the case that for every loan that was taken out that you  
7 sentenced, someone will have gone to prison. And that's an  
8 important message that the community will get. But it  
9 balances the severity of the offense conduct with Mr. Barnes'  
10 history and characteristics, with the fact that he is a little  
11 less culpable than some of the other defendants, that he and  
12 his mother had an actual bona fide business. They didn't sort  
13 of make up something in order to engage --

14 THE COURT: Most of the people had -- I mean, are  
15 you saying that on the offense conduct that the lies  
16 associated with the scope of the business and the amount of  
17 the loan -- I mean, people had businesses but then they just  
18 lied about saying how big the business was and then they got  
19 other people involved to say, I've got to write these fake  
20 checks to you and then you got to give me the money back but  
21 I'll give you a cut. I mean, are you saying they didn't do  
22 that?

23 MR. JACQUET-FREESE: No.

24 THE COURT: So in terms of the core of the scheme, I  
25 mean -- my memory is, you know -- and sadly, there's a lot of

1 thieves in our district who see an ocean of money flowing buy  
2 and say, "I'm going to steal some of it."

3           So, you know, if I've had some of just the pure  
4 completely fictitious business, it's distinct from people that  
5 say, well, I have this sort of LLC, or I have some business  
6 but now I'm going to lie and say, oh, I got a business with 10  
7 employees. That that's kind of the core of at least the  
8 heartland of the cases I see -- that I've seen in this, and  
9 they strike me as being in the heartland.

10           So if the argument is that they're not in the  
11 heartland because they actually had a business, I don't see  
12 it.

13           MR. JACQUET-FREESE: I understand, Your Honor. And  
14 you obviously have a broader view of these cases than I do.

15           And sort of what is in my mind is that person who,  
16 you know, completely makes something up --

17           THE COURT: Right. I mean, I would agree that that  
18 would be even more aggravated behavior if somebody just was  
19 approached by Whitaker who had no business and just said, I'll  
20 just completely make everything up and then get, you know,  
21 friends and family to be felons, even if they don't get to be  
22 charged with me I'll get them ultimately to be criminals by  
23 participating in a kickback scheme. But I understand your  
24 position.

25           Let me hear what Mr. Barnes has to say.

1 MR. JACQUET-FREESE: Thank you, Your Honor.

2 THE DEFENDANT: To the Honorable Judge Dever. Your  
3 Honor, I want to begin by apologizing to the Court and to the  
4 Government for the wrong that I've done.

5 While I didn't realize at the time, I understand now  
6 that the fraud my mother and I were involved in hurt real  
7 people, people who were struggling just like us. That was  
8 wrong, and I'm going to do whatever I can to make it right.

9 I want to explain to the Court how I got to this  
10 point. I was primarily brought up by my courageous mother who  
11 served as a single parent and faced significant financial  
12 challenges because of her extended medical absence from work.  
13 Her health struggles required her to take a prolonged leave  
14 creating substantial hardships for us during that time.

15 Despite the obstacles that came our way, my mother's  
16 unwavering determination shone through. She never gave up,  
17 preserved, ultimately triumphed over the adversities we faced  
18 demonstrating incredible strength and fortitude throughout our  
19 journey.

20 The struggle of not knowing if we will have enough  
21 food to eat, if we would have the necessity of electricity  
22 weighed very heavy on us. It was a constant source of stress  
23 and worry that impacted us both physically and emotionally,  
24 but the uncertainty of those circumstances at that time  
25 created a sense of instability that was hard to bear.

1 Which brings me to my work history and why it's so  
2 extensive. My professional background showcase a range of  
3 experiences that highlight my versatility and adaptability. I  
4 have held positions in corporate America, nonprofit  
5 organizations, Wilson County Fire and Rescue Service  
6 headquarters, and I served four years in law with the Wilson  
7 County Sheriff's Office.

8 I currently work as a medical transporter, a music  
9 instructor for Jackson Chapel and Carrons Funeral Home.

10 Excelling as a music instructor, I've contributed my  
11 expertise as an executive board member for the awards, EDDY  
12 awards, a prominent independent artist award show televised on  
13 the Impact Network.

14 Building on my very professional experiences, I  
15 leveraged my skills and insights to help my mom establish her  
16 food business in 2018 filed with the North Carolina Secretary  
17 of State.

18 Cooking has always been a passion for her, and it  
19 was important for me that I help her accomplish her goals just  
20 as our parents would do for us for greater.

21 In the food catering business, we maintain a strong  
22 commitment to professionalism by delivering a high quality  
23 culinary experience tailored to each client's needs. Services  
24 offered included menu planning, exquisite presentation,  
25 exceptional attention to detail, and a focus on customer

1 satisfaction, until we were faced with the pandemic that  
2 caused changes in consumer behavior, supply change disruption,  
3 health and safety regulations, and a decrease in sales,  
4 economic impact.

5           During this time my mother was introduced to Edward  
6 by someone she knew in reference to the PPP loan. I didn't  
7 learn until after the initial discussion between my mom and  
8 Edward that what was required from me.

9           If my mom wasn't available to send over the legal  
10 documents for the business requested by Edward, she would have  
11 him reach out to me or she would instruct me to send over what  
12 was needed for him. Those main documents that were requested  
13 were documents such as articles of assumed name, EIN,  
14 certificate of existence. Once the process was completed  
15 after a few months, I was instructed by Edward and my mother  
16 to issue checks that were for more than what we normally pay  
17 employees. That was failing on my part and that is what I  
18 want to make right.

19           I honestly believe if my mother knew the upfront  
20 logistics and paid attention to documents at signing, she  
21 wouldn't have embarked on this hurdle of chaos.

22           I assume that I am committed to rectify the  
23 situation and ensuring that such conduct will not happen  
24 again. I am actively taking steps to address the underlying  
25 issue improving moving forward. My vision for the future

1 first and foremost is to continue working hard and getting the  
2 debt paid off me and my mother owe collectively.

3 I currently have two other businesses that I own.  
4 D.R. Truffle Factory and D.R. Dynasty Logistics (phonetic)  
5 with three pending bids.

6 In my closing, I humbly ask for your understanding  
7 and forgiveness in this matter. I am truly sorry for my  
8 actions and my negative consequences because of harm they  
9 caused, which this doesn't define my character.

10 Thank you for your time, your consideration, and  
11 dedication to justice. Respectfully, myself, Dontrell Barnes.

12 THE COURT: Thank you. Now, was this when you were  
13 working for the sheriff's office?

14 THE DEFENDANT: Yes, sir. So when I -- when -- the  
15 days that I would be off if he couldn't get her or she  
16 couldn't send over, I would send the documents on. I was  
17 currently with the Wilson County Sheriff's Office at that  
18 time.

19 THE COURT: Thank you.

20 I'll hear from the United States.

21 MR. BERAHA: Yes, Your Honor. Thank you.

22 Starting with the nature and circumstances of the  
23 offense. The Court knows in hearing many of these cases that  
24 the PPP program was a critical program designed to help  
25 struggling small businesses during an extremely scary and

1 tumultuous economic time. As we know, many of those  
2 businesses didn't make it; many people lost their jobs.

3 Mr. Barnes and his mother saw that program and took  
4 the opportunity to steal from it, and that's why we're here  
5 today.

6 I agree with defense counsel that Mr. Barnes and his  
7 wife were not the main people, of course --

8 THE COURT: Mother.

9 MR. BERAKA: I'm sorry. Thank you.

10 Were not the main people, but they also weren't the  
11 lowest people either. They enlisted others, presumably people  
12 who had worked for them in the past or were friends and family  
13 who they trusted and trusted them and engaged them to  
14 participate in a money laundering scheme. So I think I need  
15 to stress that to the Court.

16 As far as the defendant's history and  
17 characteristics, I do agree also with defense counsel when he  
18 described Mr. Barnes' prior conviction as similar conduct. It  
19 was lying. It was a breach of trust. He was in charge of,  
20 you know, other -- of people in jail. He had enormous  
21 responsibility placed in him and he violated that trust.

22 The timing is also important. He was arrested in  
23 June of 2021, which was right in the middle of this  
24 conspiracy, and that didn't lead him to put the brakes on it.  
25 He went forward with it anyway.

1 THE COURT: Arrested on the contraband charge?

2 MR. BERAHA: Correct, Your Honor, yes.

3 And also, it's also, I think, worth pointing out to  
4 the Court that he pled guilty to this offense while he was  
5 still on probation. And luckily, for whatever reason, wasn't  
6 violated when, of course, he should have been because he  
7 violated that probation.

8 Respectfully, Your Honor, a probationary sentence or  
9 home confinement would not reflect the seriousness of the  
10 offense, it would not promote respect for the rule of law or  
11 provide just punishment. A noncustodial sentence does not  
12 provide adequate deterrence to criminal conduct, and I  
13 appreciate that the Court has stressed that correctly in all  
14 of these cases.

15 When another pandemic hits or there's a, for  
16 example, a hurricane that hits Eastern North Carolina, and  
17 everyone needs to know, I think, that you'll go to prison if  
18 you steal the money that's allocated to help people who are  
19 impacted and who are hurt and struggling by those disasters.

20 A custodial sentence, Your Honor, also avoids  
21 unwarranted sentencing disparities. Twelve months, Your  
22 Honor, is an appropriate sentence in this case, especially in  
23 those involving a loan like this of just under \$150,000.

24 We do -- we stand by the stipulation of Mr. Barnes'  
25 lesser role; but as I said, that doesn't -- that doesn't mean

1 he had the lowest role. He still was an active participant in  
2 the conspiracy. He was supervising others. He was directly  
3 communicating with Mr. Whitaker, and he profited financially  
4 from this fraud.

5 So even though he did play a lesser role, he  
6 financially benefited and he actively participated. He was  
7 texting Mr. Whitaker just like his mother was.

8 For all those reasons, Your Honor, the Government  
9 recommends 12 months as the sentence that is no greater than  
10 necessary in this case to meet the goals set forth in 18  
11 U.S.C. 3553.

12 The Government would also ask for three years of  
13 supervised release to give Mr. Barnes an opportunity to pay  
14 restitution, as his counsel has already stressed that he's  
15 eager to do and is making a small step today towards that  
16 goal, and I do believe he's sincere in that and I do accept  
17 his contrition as sincere.

18 THE COURT: Thank you.

19 Anything else from the defense?

20 MR. JACQUET-FREESE: Briefly, Your Honor.

21 As to Mr. Barnes' role in the offense, it's not in  
22 dispute. Everyone agrees that it was less culpable.

23 As to him texting with Edward Whitaker, it's true  
24 that there was some communication between them by text. There  
25 was also a number of e-mails that were exchanged primarily

1 between Monica and Mr. Whitaker and Dontrell was copied on  
2 them, but I think that indicates just sort of like who was in  
3 the driver's seat and sort of what the hierarchy was.

4 As to the timing, I disagree with the Government's  
5 characterization of the offenses as being similar in that way.  
6 I do think that the way they are similar is that he's being  
7 influenced by a family member, but --

8 THE COURT: I tell you, an aggravating factor to  
9 me -- and I want to give you a chance to respond -- is that  
10 he's a law enforcement official when he's doing this. That's  
11 a terrible fact, I mean, to me. It's just like -- I know that  
12 was involved in his other crime, but he's doing this crime and  
13 he's working for the Wilson County Sheriff's Office. So I  
14 want to give you a chance to respond, because I think that's  
15 just terrible.

16 MR. JACQUET-FREESE: Certainly, Your Honor. I  
17 think -- I'm inclined to agree if you just sort of look at it  
18 on its face, but I think if you think about sort of like what  
19 this process looked like. His mom has this business. He's  
20 trying to help her out. She comes to him at some point and  
21 says, Hey -- and they previously applied unsuccessfully for  
22 loans. She comes to him and says, Hey, someone has approached  
23 me and they are going to help me -- they are going to help us  
24 to apply for these loans successfully. Okay. I need you to  
25 send these documents. I need you to do this. I need you to

1 do that.

2 And he's not reviewing -- he doesn't sign the  
3 application, right? As far as I'm aware, the only thing that  
4 exists really to set off alarm bells for someone who's not  
5 normally in this space, who doesn't know that it's maybe a  
6 little suspicious if someone e-mails you from a Gmail and  
7 says, Hey, I can help you to apply for this PPP loan --

8 THE COURT: That you didn't get already. I mean,  
9 he's 30 years old and he's got some college, right? I mean,  
10 it's not like -- he's not a person that has an IQ of like 68.  
11 He's an intelligent adult.

12 MR. JACQUET-FREESE: Certainly, Your Honor.

13 But I think that sort of the first signal that  
14 something is amiss is when he's asked to write these checks  
15 for better -- for more than people normally get. And frankly,  
16 I don't know at what point that happens, whether it happens  
17 when he's employed by the sheriff's office or not.

18 But I would suggest to the Court that in terms of  
19 the timing that he's a law enforcement officer. I don't think  
20 it's apparent to him at the beginning that he's doing anything  
21 wrong. I think what --

22 THE COURT: Certainly at that point though -- again,  
23 I appreciate the -- trying to sort of address the chronology.

24 But let's say for discussion that he's arrested on  
25 the contraband, giving the contraband in the jail in Wilson

1 County and he loses his job and then he's involved in this  
2 with his mother and he's kind of aware of what her business is  
3 and what it's not. And then the mom says as part of this or  
4 just as part of it, it's like, write these checks that are not  
5 true checks to people who are really working, and he's just  
6 been arrested and presumably on bond because he doesn't  
7 resolve that charge for another year. And it's kind of -- the  
8 first rule of being out on bond is don't commit any more  
9 crimes and he's like, Okay, mom, I'm going to help you.

10 I mean, it's just not good.

11 MR. JACQUET-FREESE: I understand that perspective  
12 certainly, Your Honor. I --

13 THE COURT: Again, I just want to -- I'm just trying  
14 to get an understanding. That's at least how it appears. And  
15 if you think I'm wrong on the chronology or the facts, I'm  
16 listening because I've tried -- every case is unique, every  
17 defendant is unique, and I try to treat every sentencing as a  
18 unique sentencing to the best of my ability.

19 MR. JACQUET-FREESE: And the thing that I would  
20 emphasize is this is his mother who raised him sort of alone,  
21 and I think there's a very strong influence there.

22 In terms of his ability to perform on release, I'd  
23 ask the Court to look to his performance on pretrial release  
24 in this case, and it's my understanding that it's been  
25 sterling; that he moved to low-tensity supervision. I think

1 he's had very positive interactions with his officers.

2 That, again, he's come with money to try and start  
3 paying restitution. He's going to be best able to do that if  
4 there was not another interruption to his ability to work,  
5 someone that has already gone to prison for this loan. I'd  
6 ask the Court to take all of that into consideration when  
7 considering our sentencing requests.

8 THE COURT: Thank you.

9 (Pause in the proceeding.)

10 THE COURT: All right, Mr. Barnes. The Court  
11 recognizes its obligation to impose a sentence sufficient but  
12 not greater than necessary to comply with the purposes set  
13 forth in the statute.

14 I have considered all arguments that your counsel  
15 has made, both here in court and in the memo that he  
16 submitted. I have considered your statements, sir. I have  
17 considered the position of the United States. I have  
18 considered the advisory guideline range.

19 Among other things, I'm to consider the nature and  
20 circumstances of the offense and the history and  
21 characteristics of the defendant, the need for the sentence  
22 imposed to reflect the seriousness of the offense, to promote  
23 respect for the law, and to provide just punishment; the need  
24 for the sentence imposed to deter others who might choose to  
25 engage in the criminal behavior that brings you here; the need

1 for the sentence imposed to protect the public from further  
2 crime by you; the need for the sentence imposed to provide you  
3 with needed educational or vocational training, medical care,  
4 or other correctional treatment in the most effective manner;  
5 the need to avoid unwarranted sentencing disparities.

6           The statute lists numerous other factors. I've  
7 considered all those factors, although I won't mention each  
8 one individually.

9           As for the nature and circumstances of the offense,  
10 we talked about it here. You did participate in this  
11 conspiracy to commit wire fraud.

12           As we've talked about, your mother had a business,  
13 tried to get a loan through the PPP process, didn't get it,  
14 then is contacted by a person who's, you know, perpetrating a  
15 fraud and she goes down that path and you get involved, and  
16 you do it when you're -- at least the beginning of it, it  
17 starts when you're working for the Wilson County Sheriff's  
18 Office as described in the PSR employment history section  
19 where you had -- in paragraph 37.

20           And, again, I take what your lawyer said about your  
21 mother initially having the principal interaction and really  
22 the principal interaction throughout and you're being copied,  
23 but certainly during the course of this -- again, you're an  
24 intelligent man and at the time you're -- and you're now 33 so  
25 this -- you were 31 or 30, in the window, and you have some

1 college.

2 I understand that you grew up and your mom raised  
3 you as a single mom and there were challenges during the  
4 course of that period, but I also know you knew right from  
5 wrong and you knew that there were lies in this.

6 And, it was -- again, they're lies associated with a  
7 program, and I think it highlights kind of the seriousness, at  
8 least to me. We live in an extraordinarily generous country.  
9 And the generosity of the national legislature when there's  
10 something like a pandemic or a hurricane or some other natural  
11 disaster, these programs that are designed to help people who  
12 are hurting are all premised on the honor system.

13 They premise it on the honor system, Congress does,  
14 so that the money can get pushed out to people who are  
15 hurting, who the legislature has decided need to get the help  
16 through taxpayer money. And when people are dishonest about  
17 it, it is harmful.

18 I just don't think as long as the republic survives,  
19 however long that is, that the generosity of the people of  
20 this country will change. And as a body politic, we will try  
21 to help those who are hurting and we will build programs  
22 premised on the honor system.

23 And I think that people who lie and steal that money  
24 commit a very serious wrong. And I also think there are a lot  
25 of people that get the opportunity to do that who don't do it,

1 right? They basically are like, No, I'm not doing that.

2 That's not right. I'm not lying to get this money. It's not  
3 intended for me. So it's very serious.

4 And I think it's particularly serious, at least in  
5 part of the time period of this, this window, that I tried to  
6 explore in the discussion with your counsel and with the  
7 Assistant U.S. Attorney, is during part of it, you're working  
8 for the Wilson County Sheriff's Office. You get arrested --  
9 again, I understand your counsel said, you know, there's a  
10 cousin in jail and a different cousin says can you give this  
11 to the cousin that's in jail, but you have a responsibility as  
12 a correctional officer not to just do that, right? I mean,  
13 contraband in jail itself is a very serious problem. It's  
14 just -- that's a serious violation. And so there's an arrest  
15 in the midst of this for that contraband-related issue.

16 And then, as I understand it, these checks on the  
17 back end of the fraud get written after you've been arrested  
18 on that other charge. Where, again, to the extent that you're  
19 not really focusing on things until then, I think it's just  
20 absolutely clear by then that it's like, you know, mom and I  
21 are writing fake checks and then we're getting money kicked  
22 back and it's -- and you're getting some, and it's all  
23 stealing.

24 And so it's very serious. And I think that is an  
25 aggravator that wasn't present with respect to -- in terms of

1 your mom wasn't an employee of the Wilson County Sheriff's  
2 Office at any point when she was involved in this criminal  
3 activity. And so that's a very negative fact in my mind when  
4 I sort of think about this case.

5 And so even accounting for your lesser role relative  
6 to your mother and even accounting for the fact that your  
7 mother got a custodial sentence, I don't accept the argument  
8 that one person went to prison associated with the loan and  
9 that that should suffice and that a noncustodial sentence  
10 would be the sentence that would promote respect for the law  
11 or provide just punishment or would serve as a general  
12 deterrent.

13 You know, again, I would be surprised if you  
14 offended again. It's disappointing that you offended in part  
15 on this when you were on bond after getting arrested and then  
16 terminated from the job in the Wilson County Sheriff's Office.  
17 But I think throughout you've kind of known right from wrong.  
18 And you certainly have a work history that your counsel  
19 detailed in the memo that he submitted that I read and that  
20 the PSR reflects that. You're a very intelligent man. You're  
21 able-bodied. You have a strong work ethic. You know right  
22 from wrong.

23 You obviously did wrong in connection with this, but  
24 I think that to promote respect for the law and to provide  
25 just punishment that there needs to be and will be a custodial

1 sentence in this case. And then when I think about your mom  
2 in connection with this and unwarranted sentencing disparities  
3 and even the arguments about 1040 and where the guideline  
4 would be if it were -- you know, if I accepted the 1040  
5 argument and the guideline were 8 to 14, I really am deeply  
6 troubled that part of the time you engaged in this behavior  
7 you're working for the Wilson County Sheriff's Office. And  
8 then you get arrested with respect to the criminal conduct and  
9 your one criminal conviction and then the false statements and  
10 fraud continue after that in terms of being out on bond on  
11 that and knowing better and promising basically not to commit  
12 any crimes and then doing that.

13           So having fully considered all of that and the  
14 entire record, and the need to promote respect for the law, to  
15 provide just punishment, the need for general deterrence,  
16 accounting for the concept of unwarranted sentencing  
17 disparities but finding that there aren't any, even when I,  
18 you know, consider the absence of the 1040 issue with your  
19 mom, your lesser role that's in the plea agreement, which I  
20 accept, but then what I consider to be the aggravating thing  
21 associated with you being a Wilson County Sheriff's Office  
22 employee in the midst of this and then getting arrested for  
23 separate conduct associated with that and then continuing to  
24 do this, I don't think there's anything unwarranted ultimately  
25 about imposing a sentence and committing you to the custody of

1 the Bureau of Prisons to be imprisoned for 12 months and one  
2 day.

3           Upon release, you'll be placed on supervised release  
4 for three years.

5           After carefully considering the provisions of 18  
6 U.S.C., Section 3583(d) and 3553(a), you shall comply with the  
7 mandatory and standard conditions of supervision adopted in  
8 the Eastern District of North Carolina as referenced in the  
9 governing standing order.

10           You shall comply with the following special  
11 conditions which the Court imposes based on statutory  
12 requirements, the nature of the offense conduct, your history  
13 and characteristics, your need to pay restitution, and the  
14 need to supervise you:

15           One, you shall submit to financial or consumer  
16 credit counseling as directed by probation.

17           Two, you shall not incur new credit charges or open  
18 additional lines of credit without approval of probation.

19           Three, You shall provide probation with access to  
20 any requested financial information.

21           You shall make restitution in accordance with 18  
22 U.S.C., Section 3663 and 3663(a) or any other statute  
23 authorizing restitution.

24           If you have any unpaid amounts of restitution,  
25 fines, or special assessments, you'll notify probation of any

1 material change in economic circumstances that might affect  
2 your ability to pay.

3           You'll cooperate in the collection of DNA as  
4 directed by probation.

5           I suspend the drug testing condition of 18 U.S.C.,  
6 Section 3608 because I think you pose a low risk of future  
7 substance abuse.

8           Again, I acknowledge that you have performed well on  
9 supervision. And, again, I don't think I'll see you again. I  
10 think you'll serve this sentence, and then I think you'll  
11 successfully complete supervised release.

12           You'll pay a special assessment of \$100.

13           You owe restitution to the Small Business  
14 Administration in the amount of \$153,711.

15           Interest is waived on the restitution amount.

16           Any amount that is not payment in full will be  
17 divided proportionally among the victims named.

18           You're jointly and severally liable along with your  
19 co-defendants in this case and related cases to include Monica  
20 Faye Barnes in the amount of \$153,711.46; Quentin Allen  
21 Jackson in that same amount; Schunda Coleman in that same  
22 amount; and Edward Shelton Whitaker in that same amount.

23           No further payment shall be required after the sum  
24 of the amount is actually paid by all defendants has been  
25 fully covered for the compensable victim injuries.

1 I'm not imposing a fine in light of the restitution  
2 amount.

3 Payment of restitution is due in full immediately;  
4 but because you cannot pay in full immediately, you'll pay  
5 through the Inmate Financial Responsibility Program in the  
6 amount of \$25 a quarter.

7 When you get out you'll pay in installments of \$200  
8 a month to begin 60 days after your release.

9 At the time of your release, probation will take  
10 into account your ability to pay and notify me of any needed  
11 modification of the payment schedule.

12 I do think I've properly calculated the advisory  
13 guideline range -- and, again, I understand the legal issue  
14 about the 1040 enhancement -- but even if that ruling was  
15 incorrect, I would impose the same sentence as an alternative  
16 variant sentence. It actually would still be within the  
17 guideline, but even if I committed any other errors in  
18 calculating the advisory guideline range, the guidelines are  
19 advisory, and I think pursuant to U.S. v. Gomez-Jimenez, 750  
20 F.3d 370 (4th Cir. 2014) and U.S. v. Hargrove, 701 F.3d 156  
21 (4th Cir. 2012), that I'd impose the same sentence as an  
22 alternative variant sentence if I have in any way  
23 miscalculated the advisory guideline range.

24 This is the sentence sufficient but not greater than  
25 necessary for Mr. Barnes in light of all the 3553(a) factors.

1 I recommend that he serve his sentence at Butner.

2 I recommend vocational/educational opportunities so  
3 that he can continue to develop skills so that when he returns  
4 home that he'll live in a law-abiding and productive way.

5 You can appeal your conviction if you believe that  
6 your guilty plea was somehow unlawful or involuntary or if  
7 there's some other fundamental defect in the proceeding that  
8 was not waived by your guilty plea.

9 You also have a statutory right to appeal your  
10 sentence under certain circumstances, particularly if you  
11 think your sentence is contrary to law.

12 However, you did enter into a plea agreement that  
13 contains an appellate waiver. In light of your sentence, I  
14 believe you've waived your right to appeal.

15 If you believe the waiver is unenforceable or  
16 inapplicable for any reason, you can present that theory to  
17 the Appellate Court.

18 With few exceptions, any Notice of Appeal must be  
19 filed within 14 days of the judgment being entered on the  
20 docket in your case.

21 If you're unable to pay the cost of an appeal, you  
22 may apply for leave to appeal *in forma pauperis*.

23 If you so request, the Clerk of Court will prepare  
24 and file a Notice of Appeal on your behalf.

25 Do you want him to be able to self-report?

1           MR. JACQUET-FREESE: Yes, Your Honor. Could I have  
2 just a moment with him?

3           THE COURT: Sure. Does the United States want to be  
4 heard on that?

5           MR. BERAKA: No objection.

6           (Pause in the proceeding.)

7           MR. JACQUET-FREESE: Your Honor, if the Court would  
8 consider a self-report date, if this is even something you can  
9 do, after his mother is released. They live together. They  
10 rent the home. I believe --

11          THE COURT: When does she get out?

12          MR. JACQUET-FREESE: I think that she was sentenced  
13 July 28th, if I remember correctly. And I think 12 months and  
14 a day would end up being about 10 and a half months. 11  
15 months, I think, would be the end of June, but I'm not  
16 entirely sure. I haven't checked to see what her release date  
17 is.

18          (Pause in the proceeding.)

19          THE COURT: So what date do you want? I mean,  
20 because it would be easy -- well, assuming the BOP's website  
21 is accurate, they actually list -- they assume a person is  
22 going to get good-time credit and they list the date that she  
23 should get out.

24          Do you know when she went in?

25          MR. JACQUET-FREESE: I don't, Your Honor.

1 THE DEFENDANT: September the 27th, I think.

2 THE COURT: She went in September the 27th?

3 I'll ask our probation officer to go to the BOP  
4 website and look at what her release date is.

5 MR. JACQUET-FREESE: Thank you, Your Honor.

6 (Pause in the proceeding.)

7 THE PROBATION OFFICER: Your Honor, they have her  
8 potential release date as June the 19th of this year.

9 THE COURT: Okay. Does the Government want to be  
10 heard on that?

11 MR. BERAKA: No, Your Honor.

12 THE COURT: Okay. All right. Well, then I'll have  
13 a -- I'm fine with him not reporting any sooner than  
14 June 20th, 2024.

15 There's some paperwork that your counsel needs to go  
16 over with you, Mr. Barnes, and so Mr. Jacquet-Freese can come  
17 get it.

18 I'll write in on that fourth line that date, that it  
19 will be no earlier than June 20th, 2024.

20 So Mr. Barnes, what's going to happen is I  
21 recommended Butner, which is about an hour from here. I don't  
22 know that's where they are going to designate you. They could  
23 designate you somewhere else in the country. You have to get  
24 there on your own nickel. You cannot be one second late. If  
25 you're one second late, you're in violation of this Court's

1 order and you're subject to further imprisonment. I expect  
2 you to abide by all the same conditions that you've been  
3 abiding by while you're waiting to go.

4           Once you get your designation, I'm going to put in  
5 the order that it will be no sooner than June 20th, 2024; but  
6 whatever date they tell you, you got to be there; you got to  
7 get there on your own nickel, and you can't be one second  
8 late.

9           Do you understand that?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Okay.

12          (Pause in the proceeding.)

13          MR. JACQUET-FREESE: Thank you, Your Honor. May I  
14 approach?

15          THE COURT: All right, Mr. Barnes. So I have signed  
16 the order and said you'll report no sooner than June 20th,  
17 2024. You'll be notified when and where.

18          You will need to speak with the probation officer  
19 here in court before you leave.

20          Is there anything else from the defense today?

21          MR. JACQUET-FREESE: No, Your Honor.

22          THE COURT: Anything else from the Government?

23          MR. BERAKA: No, Your Honor.

24          If I may, I wanted to take the opportunity to  
25 introduce the new AUSA with our office. This is

1 Mr. Christopher Cogburn who has just joined the economic  
2 crimes section, particularly to prosecute COVID fraud.

3 THE COURT: Good to have you, Mr. Cogburn. Look  
4 forward to working with you.

5 That'll conclude the matter of Mr. Barnes.

6 Good luck to you, sir.

7 \* \* \*

8 (The proceedings concluded at 1:55 p.m.)

1 UNITED STATE DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA

3  
4 CERTIFICATE OF OFFICIAL REPORTER

5  
6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official  
7 Court Reporter, in and for the United States District Court  
8 for the Eastern District of North Carolina, do hereby certify  
9 that pursuant to Section 753, Title 28, United States Code,  
10 that the foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is  
13 in conformance with the regulations of the Judicial Conference  
14 of the United States.

15  
16  
17 Dated this 26th day of April, 2024.

18  
19 *Amy M. Condon*

20 /s/ Amy M. Condon  
21 Amy M. Condon, CRR, CSR, RPR  
22 U.S. Official Court Reporter  
23  
24  
25