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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. HASSAN KANYIKE, Defendant.	No. CR 21-00081-VAP RESPONSE TO DEFENDANT'S MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2).

The United States of America, by and through undersigned counsel, responds to defendant Hassan Kanyike's Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2). ECF No. 109. Kanyike's motion is predicated on Amendment 821 to the U.S. Sentencing Guidelines (USSG), which creates a new provision, Section 4C1.1, that gives a two-level downward adjustment for certain offenders who have zero criminal

history points. Because it concludes that the new provision applies retroactively to the defendant, the government does not oppose the defendant's motion to the extent this Court reduces his sentence by no more than 10 months, equivalent to the low end of the amended Guidelines range, with an effective date of February 1, 2024.

BACKGROUND

On December 8, 2020, the defendant was arrested on a complaint charging him with defrauding the Small Business Administration's Paycheck Protection Program (PPP) and Economic Injury & Disaster Loan (EIDL) program. ECF No. 1 & 3. The next day the defendant was ordered detained pending trial. ECF No. 6.

On March 29, 2021, the defendant pleaded guilty to a one-count information charging him with wire fraud in violation of 18 U.S.C. § 1343. ECF No. 42 & 51. As part of the statement of facts accompanying his guilty plea, the defendant admitted to fraudulently obtaining $1,002,550 in PPP funds and $300,000 in EIDL funds. ECF No. 44.

The PSR calculated his offense level as 24, corresponding to a guidelines range of 51-63 months. ECF No. 64. At the sentencing hearing on November 15, 2021, this Court adopted the PSR's offense level calculation and imposed a sentence of 51 months. ECF No. 66 & 67. The defendant is currently incarcerated at FCI Victorville; he has no disciplinary record so far, and has an estimated release date of December 8, 2024. U.S. Bureau of Prisons, Inmate Locator, *available at* https://www.bop.gov/inmateloc/ (last accessed Dec. 4, 2023).

LEGAL AUTHORITY

Pursuant to 18 U.S.C. § 3582(c)(2), this Court has the authority to reduce the sentence of a defendant "sentenced to a term of imprisonment based on a sentencing range that has subsequently been

lowered by the Sentencing Commission . . . after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

In determining whether to lower a sentence, the applicable policy statement directs this Court to "determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced." U.S.S.G. § 1B1.10 (Nov. 1, 2023).

Amendment 821 to the USSG, creating § 4C1.1 and effective starting on November 1, 2023, provides for a two-level reduction for certain offenders who have zero criminal history points. Among other disqualifications, the reduction is not available to those who "personally cause[d] substantial financial hardship" or received a leadership enhancement under § 3B1.1. U.S.S.G. § 4C1.1. While the Sentencing Commission has made the amendment retroactively applicable, any order granting a sentence reduction must be effective on February 1, 2024. U.S.S.G. § 1B1.10(d) & (e)(2).

The maximum by which this Court should reduce any sentence due to Amendment 821 is determined by the "the minimum of the amended guideline range." *Id.* § 1B1.10(b)(2)(A).

ARGUMENT

The defendant would be eligible for the zero-point offender reduction if he were sentenced today. According to the defendant's PSR, he had zero criminal history points. ECF No. 64. None of the carveouts in Amendment 821 that would otherwise make a zero-point offender ineligible for the reduction, such as leadership role or substantial financial hardship, apply to the defendant. Accordingly, the reduction is retroactively applicable to the defendant.

The two level reduction to the offense level this Court adopted at sentencing would yield an amended offense level of 22, corresponding to a guidelines range of 41-51 months. Accordingly, the maximum reduction that the defendant is eligible for is 10-month reduction from 51 months to 41 months. *See* U.S.S.G. § 1B1.10(b)(2)(A). The effective date for this reduction may not be before February 1, 2024. U.S.S.G. § 1B1.10(d) & (e)(2).

The factors set forth in 18 U.S.C. § 3553(a) do not weigh against a 10-month reduction in the defendant's sentence. While the defendant deliberately stole more than $1 million from the SBA, the defendant's criminal conduct is no more severe than the typical PPP fraudster who exploited an emergency benefit program for his own personal gain; such offenders would be entitled to the zero-point offender reduction. His personal characteristics also do not militate against a reduction: he has incurred no disciplinary record while incarcerated. Accordingly, the defendant should receive the benefit of Amendment 821.

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CONCLUSION

For the foregoing reasons, the government does not oppose a 10 month reduction in the defendant's sentence so long as it has an

effective date of February 1, 2024.

Dated: December 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **ALLISON FREITAS**, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

RESPONSE TO DEFENDANT'S MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2).

service was:

☐ Placed in a closed envelope for collection and inter-office delivery, addressed as follows:

☒ Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

☐ By hand delivery, addressed as follows:

☐ By facsimile, as follows:

☐ By messenger, as follows:

☐ By Federal Express, as follows:

☐ By E-mail, as follows:

Hassan Kanyike

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This Certificate is executed on **December 11, 2023**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ Allison Freitas
ALLISON FREITAS