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

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:24-cr-00053**

LYDIA SPENCER

SENTENCING MEMORANDUM OF THE UNITED STATES

Comes now the United States of America, by Holly J. Wilson, Assistant United States Attorney, and submits this Sentencing Memorandum requesting that this Court impose a within-Guidelines sentence for defendant Lydia Spencer ("Ms. Spencer").

INTRODUCTION

On April 5, 2024, Ms. Spencer pled guilty to conspiracy to commit bank fraud in violation of 18 U.S.C. §§ 1344 and 1349. PSR ¶ 2. The United States has no outstanding objections to the Presentence Report ("PSR"). The Probation Officer correctly calculated the total offense to be 9. PSR ¶¶ 17-25, 62. Ms. Spencer is in criminal history category II, and her advisory guideline range is 6-12 months' imprisonment. PSR ¶ 62.

AVAILABLE SENTENCES

Ms. Spencer's adjusted offense level falls within Zone B of the Sentencing Table. Zone B sentences may be satisfied by (1) a sentence of imprisonment; (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 U.S.S.G. § 5C1.1(e).

SENTENCING RECOMMENDATION

The 18 U.S.C. § 3553(a) factors all justify a within-Guidelines term of imprisonment in this case.

A. Nature and Circumstances of the Offense

The nature and circumstances of the offense are particularly troubling because Ms. Spencer exploited a generational tragedy to enrich herself through fraud.

In late 2019, the Coronavirus Disease 2019 ("COVID-19") began spreading throughout the world. This new virus brought sickness, death, and fear on an unfathomable scale. Upon learning of COVID-19 and its potential impacts, the United States government implemented extraordinary measures aimed to protect its citizens and the economy. Chief among these measures was the passage of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. PSR ¶ 5. The CARES Act, in part, created the Paycheck Protection Program ("PPP"). PSR ¶ 5. The PPP provided forgivable government-backed loans to all qualifying small businesses impacted by COVID-19 that used the loaned money on qualifying business expenses. PSR ¶ 5. The PPP's purpose was to provide an infusion of cash to businesses victimized by COVID-19 and to keep the U.S. economy afloat in the process.

It was during this time of great suffering that Ms. Spencer and her friends, K.S. and S.W. and others, saw an opportunity to fraudulently enrich themselves. In the spring of 2021, S.W. approached Ms. Spencer and explained to her how she could get easy money through the PPP. PSR ¶ 6; Stip. of Facts at 2. It was simple. Ms. Spencer would give her personal information to S.W., S.W. would provide the information to K.S., and K.S. would apply for fraudulent PPP loans in Ms. Spencer's name. PSR ¶ 6; Stip. of Facts at 2. Once Ms. Spencer received the PPP loan money, she would send K.S. a portion as payment for her help. PSR ¶ 6; Stip. of Facts at 2. Ms. Spencer agreed. Stipulation of Facts 2. Thereafter, Ms. Spencer provided the information needed, K.S. submitted two fraudulent

PPP loans in Ms. Spencer's name, and Ms. Spencer received $31,250 of fraudulent PPP loan proceeds. PSR ¶¶ 6-8. Ms. Spencer then sent $4,000 of the money to K.S. in CashApp for K.S.'s help, and she labelled the transfers as for "marketing" to obscure the true nature of the funds. PSR ¶ 10. She spent the rest of the money on herself. PSR ¶ 9.

B. History and Characteristics of the Defendant

Ms. Spencer's history and characteristics do not support a sentence outside of her applicable Guidelines range. She has no special conditions that would indicate she is not an appropriate candidate for incarceration.

She is 33 years old, and she is currently housed in South Central Regional Jail while she awaits trial on pending charges. PSR at 2. She received her high school diploma from Capitol High School in 2009. PSR ¶ 55.

Ms. Spencer's criminal history includes a drug related conviction. PSR ¶ 27. Additionally, she has admitted to possessing a firearm, despite being prohibited from doing so. PSR ¶ 36 ("The officer asked the defendant if she had a weapon, and she responded that she had a firearm in her bag."); *see United States v. Berry*, 553 F.3d 273 (3d Cir. 2009) (noting that while "a sentencing court can not base sentencing decisions on a bare arrest record[,] . . . appellate courts do permit consideration of the underlying conduct where reliable evidence of that conduct is proffered or where the PSR adequately details the underlying facts without objection from the defendant.").

In 2014, Ms. Spencer admitted to having drank alcohol heavily when she was 18 years old. PSR ¶ 54. More recent information regarding her substance abuse is unavailable. PSR ¶ 54.

Ms. Spencer timely accepted responsibility for her actions and agreed to restitution for the offense of conviction. PSR ¶ 15.

C. The Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Provide Adequate Deterrence, and Protect the Public

A sentence of imprisonment between 6 to 12 months would also reflect the seriousness of the offense, promote respect for the law, provide just punishment, provide adequate deterrence, and protect the public.

Ms. Spencer took advantage of governmental efforts to aid those in need, for her own financial gain. While uncertainty and suffering increased worldwide, Ms. Spencer's bank account increased through fraud. Her actions are serious, and the impact extends beyond this case. Each time federal benefits are obtained through fraud, it misappropriates taxpayer dollars and erodes public confidence in government. Ms. Spencer's conduct demonstrates a disregard for the law and a fundamental failure to appreciate the purpose of COVID-19 relief funds. A Guidelines-term of imprisonment would provide just punishment for such a serious offense.

A sentence within Ms. Spencer's advisory Guidelines range is also needed to protect the public and deter Ms. Spencer, and others, from engaging in similar conduct. Ms. Spencer is now a recidivist, and she has shown that she lacks adequate respect for the law to avoid criminal conduct—despite having already served a term of imprisonment. PSR ¶ 27. She also has a history that involves drugs and guns. *Id.* ¶¶ 27, 36. She therefore presents a risk to the public. A within-Guidelines sentence would protect this community and send Ms. Spencer a clear message: you must obey the law.

Further, Government program fraud is highly susceptible to general deterrence because it is a deliberate and calculated crime of choice. *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (finding that crimes that are "rational, cool, and calculated" rather than "crimes of passion or opportunity" are "prime candidate[s] for general deterrence") (citation omitted). And, 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, even 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.")). "[I]n 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).

CONCLUSION

Ms. Spencer used fraud and deception to profit from a worldwide pandemic. A sentence within Ms. Spencer's advisory guideline range of 6 to 12 months would be an appropriate sentence considering all the factors under 18 U.S.C. § 3553(a). The United States does not intend to call any witnesses at the sentencing hearing and believes the hearing can be conducted in thirty minutes.

Respectfully submitted,

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