IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* DENESSERIA SLATON A/K/A DENESERRIE SLATON	Criminal Action No. 1:21-CR-179-JPB

United States' Supplemental Sentencing Memorandum

The United States of America, by Ryan K. Buchanan, United States Attorney, and Tal C. Chaiken and Nathan P. Kitchens, Assistant United States Attorneys for the Northern District of Georgia, and Babasijibomi Moore, Trial Attorney for the United States Department of Justice, respectfully files this Supplemental Sentencing Memorandum. The Supplemental Sentencing Memorandum addresses the Eleventh Circuit's application of a three-level aggravating role adjustment under United States Sentencing Guidelines Section 3B1.1(b).

A. Courts Apply Seven Factors Primarily to Distinguish Between a Three-Level and Four-Level Enhancement, not to Determine Whether an Aggravating Role Enhancement Should Apply at All.

In her Sentencing Memorandum, Defendant urged the Court to consider the seven factors identified in the commentary to Section 3B1.1 in deciding whether to apply a three-level upward adjustment for Defendant's role in the offense. (DE 22 at 3–4.) But the commentary explains that those factors are to be used "[i]n *distinguishing* a leadership and organizational role from one of mere management or supervision" – *i.e.* in deciding whether to apply a four-level adjustment under Section 3B1.1(a) or a three-level adjustment under Section 3B1.1(b). U.S.S.G. § 3B1.1 cmt. n.4. In other words, those seven factors offer little guidance for the determination of whether an aggravating role adjustment applies in the first instance.

The Eleventh Circuit recently addressed this issue, explaining that even if it agreed with the defendant's analysis of the application of the seven factors to his conduct, it "would only know that [the defendant] was not in a leadership or organizational role; [it] would not know much about whether he held a management or supervision role." *United States v. Guerra Perez*, 842 F. App'x 465, 468 (11th Cir. 2021) (emphasizing that the seven factors apply to distinguish a four-level enhancement from a three-level enhancement); *see also United States v. Espinoza*, 651 F. App'x 898, 900 (11th Cir. 2016) (concluding that the seven factors "are relevant mainly to distinguish leadership or organizational roles from managerial or supervisory roles"); *United States v. Wolf*, 860 F.3d 175, 199 (4th Cir. 2017) ("By its very terms . . . , application note four does not provide guidance for determining whether to apply—in the first place—an aggravating role enhancement. Rather, it is for 'distinguishing a leadership and organizational role from one of mere management or supervision.'").

In sum, the seven factors that Defendant analyzed are relevant primarily to a determination of whether a defendant was an organizer and leader subject to a four-level adjustment or a manager or supervisor subject to a three-level adjustment. Here, that analysis is unnecessary because the PSR does not recommend, and the United States does not argue for, a four-level upward adjustment.

B. Recruitment of One Participant is Sufficient to Warrant an Adjustment Under Section 3B1.1(b).

Defendant's suggestion that the seven factors enumerated in Application Note 4 guide the Court's decision on the application of any aggravating role enhancement is flawed for another reason pertinent here: it ignores a line of Eleventh Circuit authority holding that recruiting accomplices is, by itself, sufficient to support an aggravating role enhancement. *See United States v. Vasquez*, 486 F. App'x 830, 835 (11th Cir. 2012) ("[W]e have held many times that a defendant's recruitment of co-conspirators supports a § 3B1.1 enhancement."); *United States v. Cunningham*, 537 F. App'x 878, 880 (11th Cir. 2013) (upholding three-level upward adjustment where the defendant's only managerial act was recruiting others to join scheme); *United States v. Ducuara De Saiz*, 511 F. App'x 892, 897 (11th Cir. 2013) (affirming three-level aggravating role enhancement based solely on defendant's role in "finding and recruiting couriers to transport drugs"); *United States v. Ndiaye*, 434 F.3d 1270, 1304 (11th Cir. 2006) (upholding four-level enhancement based on evidence that defendant "recruit[ed] and instruct[ed] co-conspirators"); *United States v. Thomas*, 446 F.3d 1348, 1355 n.2 (11th Cir. 2006) (affirming application of aggravating role enhancement based solely on evidence that defendant recruited others). In these cases, the Eleventh Circuit affirmed the application of an aggravating role enhancement based solely on the recruitment of accomplices, even though this conduct is only one of the seven factors enumerated in Application Note 4. U.S.S.G. § 3B1.1 cmt. n.4. Defendant here conceded that she recruited at least one business owner into the scheme to obtain a fraudulent Paycheck Protection Program loan. Based on that concession alone, a three-level enhancement under Section 3B1.1 is proper.

While Defendant's recruitment of a co-conspirator alone is sufficient to warrant the enhancement, her undisputed conduct here included supervising and providing direction to the owners of Infinite Education, Continuing Success, and Transportation Management. (PSR ¶ 36.) That supervision of other participants likewise supports the three-level upward adjustment. *See United states v. Sosa*, 777 F.3d 1279, 1301 (11th Cir. 2015) (upholding three-level adjustment, without reference to seven factors, because "[e]ven if [the defendant] was a supervisor or manager only of [one other participant], that single underling is enough to qualify [the defendant] as a manager or supervisor under the Guidelines"). The fact that Darrell Thomas orchestrated the fraudulent scheme and may have influenced Defendant's supervision and management of other co-conspirators does not change the fact that Defendant's role vis-à-vis the business-owners was one of management and supervision. *See e.g., United States v. Stroman*, 661 F. App'x 600, 603 (11th Cir. 2016) (upholding three-level upward adjustment and rejecting the defendant's argument that she simply followed the mastermind's instructions because the evidence showed that the defendant "specifically directed other codefendants in the tax fraud conspiracy").

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Respectfully submitted,

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