UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

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| UNITED STATES OF AMERICA | ) | |
| | ) | Case No. 1:22-cr-54 |
| v. | ) | Judge Atchley |
| | ) | Magistrate Judge Steger |
| GEORGE THACKER | ) | |

**UNITED STATES' RESPONSE**
**TO DEFENDANT'S MOTION FOR DEPARTURE AND VARIANCE**

The defendant moves the Court to vary and depart downward from his 33- to 41-month advisory Guidelines range. (Doc. 16). The Guidelines have accurately captured the requisite statutory considerations, and a sentence within the range they prescribe is sufficient, but not greater than necessary, to achieve the goals of 18 U.S.C. § 3553(a). A sentence outside that range is inappropriate in this case, and the defendant's requested sentence of home confinement would run directly contrary to the statutory sentencing mandate.

As Rhea County Executive, the defendant was an elected official entrusted to serve the public good. Rather than uphold that trust, he exploited his private business and stole over $650,000 in public funds – funds that were designed to help businesses and workers suffering in the midst of a once-in-a-generation pandemic. His crime is serious, and it calls for serious consequences.

The Court should deny the defendant's motion and sentence him to a term of imprisonment with the advisory Guidelines range.

**BACKGROUND**

On April 21, 2022, the defendant pleaded guilty to a one-count Bill of Information, charging him with wire fraud, in violation of 18 U.S.C. § 1343.

The defendant's sentencing hearing is set for October 6, 2022. The Presentence Investigation Report ("PSR") computed his advisory sentence range under the United States Sentencing Guidelines as 33 to 41 months' imprisonment. (PSR, ¶ 78). This computation is based on a Total Offense Level of 20 and Criminal History Category I. (*Id.*).

On September 9, 2022, the defendant filed his motion seeking a downward variance and departure from the advisory Sentencing Guidelines range articulated in the PSR. (Doc. 16). The United States respectfully responds that a variance is not warranted in this case. A sentence within the defendant's Guidelines range is sufficient but not greater than necessary to effect the purposes set out in 18 U.S.C. § 3553(a).

**ANALYSIS**

**I. <u>Departures are not Appropriate in this Case</u>**

The defendant moves the Court to depart from the Guidelines range based on the Policy Statements found at U.S.S.G. §§ 5H1.5 (based on his employment record) and 5H1.11 (based on his claim to public service and good works). The Policy Statements themselves counsel against their application here: the purpose of their inclusion in the Guidelines is to point out that a defendant's record of employment, public service, and good works are "*not* ordinarily relevant" to a sentencing determination. U.S.S.G. §§ 5H1.5, 5H1.11 (emphasis added). The Court should heed the Statements' plain text. A departure is not warranted.

In any event, while the defendant identifies some laudable activities he has undertaken, nothing in his employment or charitable histories is so extraordinary as to merit a departure. Indeed, to the extent his service and business activities are out of the ordinary, they function to his detriment: he was stealing money from the same public he was elected to serve, and he was using his business as the vehicle by which to do it.

The Court can – and should – consider the defendant's history and characteristics in fashioning its sentence. However, departing based on the defendant's employment record and purported history of good works and public service is inappropriate.

## II. <u>A Variance is not Appropriate Pursuant to 18 U.S.C. § 3553(a)</u>

*The Nature and Circumstances of the Offense*

In 2020, the United States Government passed The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in an effort to ameliorate economic suffering inflicted on millions of Americans as a result of the COVID-19 pandemic. Two resulting programs – the Paycheck Protection Program ("PPP") and The Economic Injury Disaster Loan ("EIDL") program – provided forgivable or low-interest loans to businesses affected by the pandemic. Though the programs functioned somewhat differently, their ultimate goals were the same: ensuring that American businesses kept their lights on and that American workers continued to get paid.

Wire fraud is a serious offense. It is especially serious when it results in over $650,000 of stolen funds. Here, the gravity of the offense is amplified even further. The money the defendant used for his own frivolous ends belonged to the American public. It was intended to function as a lifeboat in uncertain economic waters. It was designed to ease the fear experienced by millions of workers and businesses facing a time of unprecedented crisis. The defendant took this money and used it to enrich himself.

The defendant brazenly lied so that he could divert public relief funds for his own private gain. Falsely claiming that he would use the money for the good of his employees and his business, he applied for and received hundreds of thousands of dollars in public funds, which he then transferred to his personal financial accounts. And unsatisfied with the initial round of criminal proceeds, he then submitted two subsequent fraudulent loan applications, receiving hundreds of thousands of dollars more as a result.

The defendant's lies netted him over $650,000 in gains. The funds did not go where they were intended (i.e., into the defendant's business operating accounts or into his workers' hands). There are few conceivable uses for relief funds that are more selfish or more contrary to the public good than the ends to which the defendant put them: paying his credit card bill; funding his E*Trade investment account; and even purchasing Ether, Bitcoin, and other cryptocurrency.

The nature and circumstances of this offense militate in favor of a meaningful term of imprisonment. The Sentencing Guidelines have defined just such a term, and the Court should not vary from the range they prescribe.

*History and Characteristics of the Defendant*

When it determines the defendant's sentence, the Court should follow the Guidelines, which properly contemplate the defendant's lack of reportable criminal conduct. He has zero criminal history points and two arrests – each of which resulted in charges that were either dismissed or expunged. (PSR, ¶ 54, 57-58). By placing him in Criminal History Category I, the Guidelines have appropriately captured the defendant's criminal history.

The defendant contends the instant offense is an aberration that is unlikely to be repeated. But he did not make a single, isolated mistake and try to move on with his life. He unlawfully obtained government money through fraud…and shortly thereafter, he did it again. And then, approximately eight months later, he did it a third time. (*See* PSR, ¶ 25). To the extent his conduct was aberrant, it was aberrant on multiple separate occasions, occurring over the course of nearly a year.

The defendant highlights his rocky upbringing as a basis on which to vary from the Guidelines range. While it is true that the defendant's childhood is unenviable to say the least, it is no basis for a below-Guidelines sentence. "Unfortunately, troubled childhoods plague many criminal defendants." *United States v. Collier*, 506 F. App'x 459, 464 (6th Cir. 2012). Criminal defendants routinely appear before this Court and identify challenging formative experiences in their lives – abuse and neglect are all-too-common. They are not, however, bases for a variance in this case.

Moreover, many individuals rise above challenging childhoods and do not commit crime at all. Indeed, the defendant himself appeared well-set on that path until his greed – not his childhood – motivated him to commit this crime. The defendant's childhood experiences do not appear to bear any relationship to his decision to commit COVID-19 relief fraud. Accordingly, the Court should not vary on the basis of the defendant's upbringing.

The defendant asserts that, were he to be imprisoned, the business impact on his community would be profound, potentially including the closure of Spring City's only hotel and the loss of 14 jobs in the community. These dire predictions are not inescapable conclusions. Management of a hotel – while no doubt nuanced – is by no means a task impossible for others to do in the defendant's stead. If the defendant is as committed to his business and his community as he asserts, the United States is confident that he will do his best to ensure that management of the hotel is in suitable hands during his period of incarceration.[1]

The hotel the defendant relies on for his variance request is an instrumentality of his crime. Although he now expresses his concern for hotel employees, not long ago, he was lining his own

[1] It is for this reason that the United States would not oppose a request by the defendant to self-report after a reasonable period of time.

pockets with money designed to pay their salaries. He asks to be relieved from a prison sentence so that he may serve his business, but the best way to serve his business would have been to use the COVID-19 relief funds to their intended purpose. He had three separate opportunities to do so. Three separate times, he refused.

Finally, the United States notes that, at the time the defendant committed this fraud, he was the County Executive for Rhea County. While the United States has no information that the defendant used his office in furtherance of his fraud, he was nevertheless in a highly visible position of public service. By committing COVID-19 fraud while simultaneously serving as an elected official, he uniquely betrayed the public trust, and the Court should consider that betrayal when fashioning its sentence.

The defendant's lack of criminal history is laudable, but it is properly reflected in his Criminal History Category. The remainder of his history and characteristics does not militate in favor of a variance.

*The Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment for the Offense, Afford Adequate Deterrence, Protect the Public from Further Crimes of the Defendant, and Provide the Defendant with Needed Correctional Treatment*

As above, the United States submits that the instant offense is serious. A Guidelines sentence is needed to further the goals of 18 U.S.C. § 3553(a)(2).

For example, by "going back to the well" and applying for three different PPP and EIDL loans, the defendant demonstrated a profound lack of respect for the law. That lack of respect calls for redress.

Likewise, the Court's sentence should promote deterrence. Federal funds – and COVID-19 relief funds specifically – may seem like an "easy target" for those who are looking to get rich quick. The Court's sentence should make clear to those who may feel such temptation that there are serious consequences for anyone who seeks to exploit Government programs that are designed to promote the country's well-being.

A Guidelines sentence will reflect the seriousness of the offense, promote respect for the law, provide just punishment, and serve as an acute deterrence for any who are inclined to commit these offenses. A variance would do the opposite, in clear contravention to the goals of § 3553(a).

*Parity in Sentencing*

The Court should sentence the defendant in a way that advances parity in sentences for offenses of this type. 18 U.S.C. § 3553(a)(6). An in-Guidelines sentence achieves this end.

Parity in sentencing among federal defendants is a critical aspect of the impartial administration of justice. *United States v. Swafford*, 639 F.3d 265, 270 (6th Cir. 2011) ("[T]he point of the guidelines is to decrease sentencing disparities, an objective *furthered* by a within-guidelines sentence, as opposed to a sentence that varies above or below the advisory guidelines range.") (emphasis in original). This is contemplated by the Sentencing Guidelines, which are "almost certainly the best indication of ordinary practice since most sentences are within the guidelines." *United States v. Simmons*, 501 F.3d 620, 626 (6th Cir. 2007) (internal quotation omitted); *see also Gall v. United States*, 552 U.S. 38, 54 (2007) ("As with the seriousness of the offense conduct, avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges.").

Concerns of parity are particularly acute here. The defendant may be an elected official and a business owner, but that does not relieve him of legal consequence for his crime. The Court's sentence should reaffirm the core legal principle that no one is above the law.

In this case, the Guidelines have captured the seriousness of this offense and the defendant's history. A variance from that range would run directly counter to the goal of Section 3553(a)(6) and *create* an unwarranted and unnecessary disparity between the defendant and other similarly situated defendants convicted of similar offenses. A sentence within the defendant's Guidelines range furthers the aim of 18 U.S.C. § 3553(a), and the United States respectfully submits that the Court should sentence the defendant accordingly.

## CONCLUSION

For the above-stated reasons, the United States respectfully requests that the Court deny the defendant's motion and sentence him within the advisory range set out by the United States Sentencing Guidelines.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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