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

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| UNITED STATES OF AMERICA<br>*v.*<br>ALEEM RASHID | Criminal Action No.<br>1:21-CR-259-1-JPB |

**United States' 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, respectfully files this Sentencing Memorandum in advance of Defendant Aleem Rashid's sentencing, which is set for December 1, 2022 at 1:30 p.m. Defendant pleaded guilty to conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. As set forth below, the United States submits that a Guidelines sentence of 24 months' imprisonment – at the low end of the Guidelines range – is sufficient, but not greater than necessary, to comply with the purposes set forth in Title 18, United States Code, Section 3553(a).

**A Guidelines Sentence is Appropriate Given the Section 3553(a) Factors.**

**1. The Nature and Circumstances of the Offense.**

Defendant's offense was serious, motivated by personal greed during an unprecedented global crisis. In early 2020, the COVID-19 pandemic sent stock markets crashing and unemployment rates skyrocketing, while nationwide lockdowns ground the economy to a halt. Many American businesses – and in particular, small businesses – struggled to stay afloat as consumer demand plummeted, creating daunting uncertainty for the businesses, their employees, and the families who rely on them. Against that backdrop, Congress passed the Paycheck Protection Program (the "PPP") as one of the mechanisms for providing relief to small businesses and their employees. To obtain a loan, a business had to certify that the loan would be used to pay for payroll, lease or mortgage interest, or utilities, and the loan was forgivable if the business spent a certain percentage of the loan on payroll costs.

Because Congress's intent was to "provide relief to America's small businesses expeditiously," the PPP streamlined the Small Business Administration's typical lending requirements. Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811-01 (Apr. 15, 2020). For example, the PPP "allow[ed] lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness." *Id*. These procedures were designed to quickly get much-needed funds to small businesses so they could keep their workers employed during an economic and public health crisis that threatened the viability of many small businesses and their ability to keep their employees on the payroll. Defendant, however, sought to take advantage of the PPP's streamlined procedures to line his own pockets.

Several aspects of Defendant's conduct underscore the seriousness of his offense. *First*, Defendant's fraud was not a one-time mistake. Defendant did not just conspire with Darrell Thomas to obtain a fraudulent loan for Thomas's business, Bellator Phront Group, Inc. ("Bellator"). Rather, he also independently obtained a loan for his *own* business, Dream Team Real Estate ("Dream Team"), for which he fabricated documents, made false statements, and received all of the proceeds. (PSR, ¶¶ 39-41.) And he later submitted another fraudulent PPP loan application for Dream Team, seeking even more money (though that loan was denied). Defendant's fraudulent conduct lasted at least nine months, from April 2020 to January 2021, and involved repeated, deliberate acts of fraud. (*Id.* ¶¶ 37-41.)

*Second*, Defendant knew from the outset the fraudulent nature of Thomas's scheme. For example, on March 30, 2020, Thomas sent Defendant a WhatsApp message that said: "10k per body we need ss card or social, no cpn and copy of drivers license. Send everything to Tardean83@gmail.com." (Ex. 1 at 1.) Over the next several days, Defendant and Thomas discussed the PPP program, with Thomas telling Defendant, "I have 30 corps and doing all the financials for them to be good, bring as many bodies as possible," and Defendant eventually telling Thomas that he collected 70 people to list as employees. (Ex. 1 at 1-41.) By way of further example, on April 17, 2020, Defendant forwarded to Thomas an email from Radius Bank informing Defendant that no funds were available to process his PPP loan application. (Ex. 2.) Thomas then responded, "Yeah just make sure everything is ready to go, *the actual small businesses will get this round of money* but take the app to libertysbf.com they're a direct lender and I have all the apps there." (*Id*. (emphasis added).)

*Third*, Defendant's fraudulent conduct was increasingly brazen. In January 2021, approximately eight months after he obtained a $105,208 fraudulent PPP loan for Dream Team (and after Thomas had been indicted in connection with

Bellator's fraudulent PPP loan), Defendant submitted an application for a second-draw PPP loan. (PSR, ¶¶ 41-42.) The second application reported that Dream Team had 21 employees (compared to only 6 employees reported in April 2020) and requested a loan amount of $355,407. (*Id.* ¶ 42.) Though that loan application was denied, Defendant's submission of it demonstrates a concerning pattern of fraud, undeterred by the indictment of a co-conspirator.

*Finally*, when the FBI interviewed Defendant by phone on March 8, 2021, he lied to the agent repeatedly.[1] Specifically, Defendant denied having any involvement with Thomas regarding PPP loans, denied sending Thomas employee names, and denied having any interactions with Thomas other than in the real estate context.

While Defendant's Sentencing Memorandum places much of the blame on Thomas, Defendant is one of the few co-defendants who, because of his relationship and direct communications with Thomas, was uniquely situated to understand Thomas's fraudulent scheme. And Defendant's filing of *two* fraudulent loans on behalf of his own business without Thomas's involvement – which is undisputed in the PSR (PSR, ¶¶ 39, 42) – flatly refutes any suggestion that Thomas persuaded him to commit fraud that he would not otherwise have committed.

Defendant also argues that the Court should depart or vary downward because the loss table in Section 2B1.1 "is not based on empirical data." (DE 67 at

[1] At the Court's request, the United States can provide a copy of the audio-recorded interview.

2.)[2] To support his argument, Defendant relies extensively on an article from the Ohio State Journal of Criminal Law. (DE 67 at 6-7.) But Defendant does not identify any Circuit precedent (or any other case) adopting his argument. Indeed, in a lengthy decision, the Seventh Circuit rejected a similar challenge that the loss amounts "are inherently unreasonable" because they are not based on empirical data. *United States v. Moose*, 893 F.3d 951, 957 (7th Cir. 2018). The *Moose* court explained that "[e]ven if the [loss amount] enhancements may lack robust empirical support related to deterrence, they have foundations in empirical data and national experience related to the goals of fair sentencing and retribution." *Id.* at 957-58.

More importantly, to the extent Defendant suggests that the loss amount attributable to him overstates his culpability, he fails to recognize that his Guidelines range *already accounts* for that. Specifically, Defendant contends that "[t]he loss amount that Mr. Rashid is responsible for is largely driven by the almost $800,000 loan which was obtained by Darrell Thomas, from which Mr. Rashid benefitted marginally." (DE 67 at 7.) That is true, and for that reason, the United States agreed to recommend a two-level downward adjustment for Defendant's role in the offense. (PSR, ¶ 51.) That is, the United States took into the account that Defendant's loss amount included significant losses for which Defendant was

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[2] While Defendant seeks a departure, he does not identify any provision of the Sentencing Guidelines supporting such a departure. The only authorized basis for a downward departure in the Sentencing Guidelines is where "the offense level determined under [Section 2B1.1] substantially overstates the seriousness of the offense." U.S.S.G. § 2B1.1, cmt. (n.21(C)). Defendant's loss amount does not overstate the seriousness of the offense because it is based on the actual loan proceeds that Defendant participated in obtaining.

not fully responsible. Defendant's request for a two-level downward departure seeks a double benefit: he asks the Court to grant a two-level adjustment for the same reason the United States already agreed to recommend a two-level downward adjustment.

Finally, Defendant incorrectly suggests that the Court has departed from the advisory range on this basis for other defendants sentenced as part of Thomas's scheme. (DE 67 at 5.) While the Court has varied downward for some defendants – including those defendants identified in footnote 8 of Defendant's Memorandum – it has not identified the loss table as a basis for any variance it has imposed. In connection with Thomas's scheme, the Court has calculated each Defendant's guidelines range based on the loss table set forth in Section 2B1.1. It should do the same here.

**2. Defendant's History and Characteristics.**

The Circuit has cautioned that a defendant's history and characteristics "cannot be considered in isolation and without regard to the criminal conduct for which the defendant has been convicted and the characteristics it reveals." *Howard*, 28 F.4th at 218–20 (reversing sentence of probation where the district court considered the history and characteristics of the defendant as a "single-minded focus to the detriment of all other factors"). Defendant's remorse and acceptance of responsibility likewise do not require a downward variance, as the Eleventh Circuit has recognized genuine remorse and low likelihood of reoffending as factors that "are usually present in most white-collar cases resulting in a guilty plea." *United States v. Hayes*, 762 F.3d 1300, 1308 (11th Cir. 2014). When considered in conjunction with the other Section 3553(a) factors – in particular, the nature and circumstances of the offense and the need to provide just punishment and afford adequate deterrence – Defendant's history and characteristics do not support a non-Guidelines sentence.

Defendant seeks a downward departure on the basis that his criminal history category – Category II – "substantially over-represents the seriousness of his criminal history and the likelihood that he will commit other crimes." (DE 67 at 8). While the Court has authority to depart, it should not. The fact that Defendant has two prior convictions for the same offense reflects his prior recidivism after criminal convictions and is an important indicator of the likelihood that he will commit other crimes. Moreover, Defendant's criminal history category based on his prior convictions appropriately distinguishes him from the co-defendants who have been before this Court with no prior convictions and who are appropriately in Criminal History Category I.

In addition, Defendant asks for a downward variance based on family caretaking obligations in that he contends that his parents depend on his support financially and emotionally. (DE 67 at 11-12.) While the United States is sympathetic to Defendant's family, the circumstances here do not warrant a variance. While the Court has granted downward variances to two co-defendants – Derek Parker and David Belgrave – in part based on family caretaking obligations, those obligations were far more significant than those described here and were shown to be essentially irreplaceable. In any event, the variances in those other cases (which were also based on other factors) resulted in custodial sentences of 18 months' imprisonment (for Parker) and 9 months' imprisonment followed by 18 months' of home confinement (for Belgrave).

Defendant has not submitted any evidence reflecting his caretaking responsibilities for his parents, other than brief letters from his parents. However, the record in this case undermines Defendant's current claim. After he was detained following his arrest,[3] Defendant filed a motion for reconsideration of his bond. (*See* DE 18.) In that motion, Defendant stated that his parents moved to Texas in late 2020 "and they are willing to stay in the Northern District of Georgia, where they have many ties, if the Court would consider releasing Mr. Rashid to reside with them." (*Id*. at 2 n.1.) Defendant's motion also identified many family members in the Atlanta area. (*Id*. at 2.)

Thus, according to Defendant, as recently as 16 months ago, Defendant's parents were living in another state, moved back to Atlanta only because of Defendant's indictment, and have many family members in the Atlanta area. Defendant has made no showing that any care or assistance that he provides to his parents is meaningfully different than the support that many defendants facing sentencing by this Court provide to parents, children, and other family members.

**3. The Need for Punishment and Adequate Deterrence.**

A sentence within the Guidelines range is necessary to afford adequate deterrence and to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2).

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[3] Contrary to Defendant's assertion, he was not the only defendant detained pretrial in connection with Thomas's scheme. Charles Petty likewise was detained pending trial and, unlike Defendant, was not later granted a bond. Petty received a Guidelines sentence of 46 months' imprisonment after spending more than six months in pretrial detention before his sentencing hearing.

Defendant contends that his background and personal characteristics show that he is not likely to reoffend. (DE 67 at 2.) But the facts of this case show that specific deterrence is an important consideration for sentencing in this case. Specifically, Defendant submitted a fraudulent PPP loan application for Dream Team months *after* Thomas was indicted for various fraud and money laundering offenses in connection with various PPP loans, including Bellator's fraudulent PPP loan, which Defendant conspired with Thomas to obtain. Thus, even after criminal charges were brought against his co-conspirator, Defendant remained undeterred, committing another criminal offense for personal gain. And when he was confronted by the FBI, he lied rather than coming clean. Defendant's conduct warrants a meaningful custodial sentence to afford specific deterrence.

Moreover, the Eleventh Circuit has identified general deterrence as "an important goal of sentencing in a white-collar crime prosecution." *United States v. Kuhlman*, 711 F.3d 1321, 1328 (11th Cir. 2013); *see also Howard*, 28 F.4th at 209 ("General deterrence is more apt, not less apt, in white collar crime cases."); *United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) ("[T]he threat of spending time on probation simply does not, and cannot, provide the same level of deterrence as can the threat of incarceration in a federal penitentiary for a meaningful period of time."); *United States v. McQueen*, 727 F.3d 1144, 1158 (11th Cir. 2013) (recognizing that general deterrence is one of the "'key purposes of sentencing'") (citation omitted).

A non-custodial (or a below-Guidelines) sentence would do little to dissuade Defendant or others from committing a similar crime in the future. To the contrary, it would encourage would-be white-collar offenders to view probation or a short prison sentence as part of the cost of doing business. Nor would a lenient sentence reflect the seriousness of fraudulently obtaining for personal gain funds intended for struggling small businesses and their employees in the midst of a global crisis. *Hayes*, 762 F.3d at 1308 (collecting cases where the Eleventh Circuit has "set aside sentences of little to no imprisonment" in white collar cases "because they do not constitute just punishment for the offense, do not promote respect for the law, and will not do much to deter similar activity by others"); *see also United States v. Shah*, 476 F. Supp. 3d 619, 623 (E.D. Mich. Aug. 4, 2020) (noting the seriousness of an offense that involved "bilk[ing] the government out of . . . funds that were earmarked to pay for the medical expenses of vulnerable and needy individuals").

As the Eleventh Circuit has recognized, deterrence is especially important in the context of crimes, like Defendant's crime in this case, that "may easily go undetected and unpunished." *See McQueen*, 727 F.3d at 1158–59 (reversing the district court's lenient sentence because it "sap[ped] the goal of general deterrence"); *see also United States v. Engle*, 592 F.3d 495, 502 (4th Cir. 2010) (explaining that because tax evasion offenses are infrequently prosecuted, "[w]ithout a real possibility of imprisonment, there would be little incentive for a wavering would-be evader to choose the straight-and-narrow over the wayward path); *United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.").

A recent analysis found that approximately 12.3% of the PPP loans granted to small businesses, totaling $64.2 billion, have at least one indicator of potential fraud. *See* John M. Griffin *et al.*, *Did FinTech Lenders Facilitate PPP Fraud?* (Aug. 5, 2022), available online at https://ssrn.com/abstract=3906395 (last visited Aug. 15, 2022). And because of the sheer number of PPP loans as well as the streamlined documentation necessary to obtain them, the United States is unlikely to detect and/or to prosecute most individuals who obtained fraudulent PPP loans. The need for general deterrence is therefore significant in this case. Simply put, a below-Guidelines sentence would signal to others considering engaging in white-collar crime that there is a significant benefit to be gained and little to be lost by committing the offense. A below-Guidelines sentence would undermine, rather than promote, Section 3553(a)'s purposes.

**4. The Sentencing Commission's Policy Statement.**

"In deciding a sentence, district courts should consider the policies behind the applicable guidelines provision." *United States v. Crisp*, 454 F.3d 1285, 1291 (11th Cir. 2006); *see also* 18 U.S.C. § 3553(a)(5) (directing district courts to consider the Sentencing Commission's policy statements). For fraud-related offenses, the Sentencing Commission has explained that "along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under [U.S.S.G. § 2B1.1]." U.S.S.G. § 2B.1.1, cmt. backg'd.

The Sentencing Commission's policy statement supports imposing a Guidelines sentence in this case given the seriousness of Defendant's offense.

**5. Unwarranted Sentencing Disparities.**

As explained above, because Defendant both conspired with Thomas and committed his own, independent PPP fraud, he is uniquely situated among co-defendants in this case. However, while the Court has granted downward variances to some co-defendants involved in Thomas's scheme, Defendant has not identified any similar reasons for a variance here – *e.g.* payment of extraordinary restitution; extraordinary, irreplaceable family care-taking obligations; extraordinary medical conditions; or military or community service.

**6. The Need to Provide Restitution.**

The Eleventh Circuit has rejected the argument that a large restitution award warrants a shorter custodial sentence. *See Crisp*, 454 F.3d at 1291 (explaining that shortening a defendant's sentence "in order to increase the time for the defendant to earn money to pay restitution" would turn the Sentencing Commission's policy on its head because it would mean that the more loss a defendant inflicts, the shorter their sentence). While Defendant's restitution obligation is significant, the need to provide restitution does not outweigh Section 3553(a)'s other considerations and does not warrant a downward variance.

## Conclusion

For these reasons, the United States respectfully requests that the Court impose a sentence at the low-end of the applicable Guidelines range.

Dated: November 25, 2022.

Respectfully submitted,

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