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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CASSIE WILL-DARNALL, Defendant.	**CASE NO. 5:24-CR-00292-PCP** **UNITED STATES' MEMORANDUM IN OPPOSITION TO REQUEST FOR POST-PLEA CAP ASSESSMENT**

Defendant Cassie Will-Darnall, who purloined more than $2.8 million in pandemic loans after attempting to fraudulently obtain more than $9 million, requests this Court order a full assessment of her for the Conviction Alternatives Program (CAP, formerly ATIP). The United States opposes the request as substantively inappropriate. CAP is an alternative sentencing program primarily designed for offenders who are wrestling with drug addiction and overcoming challenging backgrounds in a committed effort to put their lives back on track. CAP is not intended as a path for individuals committing deliberate and calculated fraudulent schemes to avoid jail time. Will-Darnall should not be considered as a candidate for the program, and her request for a CAP assessment should be denied.

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I. Procedural History

Will-Darnall initially appeared upon a criminal information on May 30, 2024. ECF No. 3. Will-Darnall thereafter entered an open plea of guilty on January 15, 2025, to one count of bank fraud in violation of 18 U.S.C. § 1344(2) and one count of wire fraud in violation of 18 U.S.C. § 1343. ECF Nos. 1, 35. As set forth in the information and the pre-sentence report, Will-Darnall defrauded Paycheck Protection Program (PPP) lenders of $2,833,554.00 after submitting a total of five PPP and two Economic Injury Disaster Loan Program applications requesting a total $9,175,083.65. ECF No. 1 at 6-7; ECF No. 59 at 7-9. Despite a commitment to repay the millions she defrauded from lenders, ECF No. 59 at 10, Will-Darnall has to date not repaid one red cent to the knowledge of the United States, and curiously declined to provide any personal financial information to the U.S. Probation Office. *See* ECF No. 59 at 16 (Paragraph 78). Forfeiture proceedings are ongoing.

Sentencing was previously scheduled for April 23, 2025, but continued by stipulation and leave of Court to permit Will-Darnall additional time to conclude its mitigation investigation and meet with United States Probation. ECF No. 42. U.S. Probation filed a presentence investigation report on May 29, 2025, in anticipation of a June 11, 2025, sentencing. ECF No. 59. However, sentencing was again continued by stipulation and leave of Court to permit Will-Darnall additional time to prepare and to investigate an enhancement applied by U.S. Probation in the PSR. ECF No. 64.

Will-Darnall then sought and obtained from the U.S. Pretrial Services Agency (PSA) on June 6, 2025, a letter indicating that Will-Darnall "does meet the preliminary minimum criteria for CAP eligibility." Precisely when Will-Darnall sought this screening is unknown to the United States, but the government promptly informed counsel that it would oppose a CAP referral for Will-Darnall.

On June 8, 2025, counsel for Will-Darnall requested PSA conduct a full assessment. The following day, June 9, 2025, PSA informed counsel that it could only do so if the government was in agreement or if the Court ordered the full assessment, and that a full assessment would take at least 45 days. The United States informed defendant and PSA that it opposed CAP assessment. The request now before the Court followed.

Forty-five days from the date of the hearing scheduled on this request falls upon Saturday, August 2, 2025. Sentencing is presently scheduled for September 3, 2025. ECF No. 64.

II. The Conviction Alternatives Program, generally, is aimed to intervene in the lives of offenders with moderate-to-high risk factors for reoffense—typically young drug offenders.

CAP is a joint effort between the Court, PSA, Probation, the U.S. Attorney's Office, and the Federal Public Defender. *See, generally* Alternative Sentencing Programs in the Northern District of California, Agreement Among Stakeholders (Dec. 2024), accessible at https://cand.uscourts.gov/wp-content/uploads/Stakeholder-Agreement-for-Presentence-programs.pdf; *see also, generally* Problem Solving Courts & Programs, United States District Court Northern District of California (June 16, 2025 at 10:23 AM), accessible at https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/. The purpose of CAP is to provide particularized resources and attention to qualifying defendants who are at a higher risk of reoffending and reflect a high need for personalized intervention for rehabilitation. Persons for whom CAP is potentially appropriate are those who are young, who suffer from substance abuse and addictions, who have failed prior treatment or rehabilitation attempts, who have suffered from a history of violence, and/or have prior felony convictions. *See, generally, id.*; *see also* Christine S. Scott-Hayward, *Rethinking Federal Diversion: The Rise of Specialized Criminal Courts*, 22 Berkeley J. Crim. L. 47, 78-79 (2017) (noting that CAP focuses on "individuals whose criminal conduct appears motivated by substance abuse issues or other underlying causes that may be amenable to treatment through available programs."). For CAP, a candidate's risk factors must be moderate to high—the program is not intended to provide another backdoor to diversion for defendants who have committed white-collar offenses which historically received a disproportionate share of diversionary outcomes. *See* Problem Solving Courts & Programs, *supra*; *see also* Scott-Hayward, *supra*, at 96 ("For courts like these that purport to divert people from prison, it is important that people who previously would have received traditional pretrial diversion are not referred to the more onerous specialized criminal court instead.").

In exchange for completion of CAP, defendants receive any incentives that may have been promised as part of the plea agreement which supported the CAP referral, which may include dismissal of the underlying charge(s), a non-custodial sentence, dismissal of mandatory minimum charge(s) or sentence-enhancing allegations, or an agreement to recommend a lower sentence.

Defendants who may be potentially eligible are initially assessed within 30 and up to 60 days

from their initial appearance. *Agreement Among Stakeholders* at 4. If a defendant receives a positive initial assessment, the parties may then request a full assessment, which can take up to an additional 60 days. *Id.*

III. Defendant Will-Darnall does not reflect the characteristics of a person appropriate for CAP assessment, and a diversionary program is generally inappropriate for a person charged with a multi-million dollar fraud.

Defendant Will-Darnall is not the kind of defendant for whom CAP was designed. Will-Darnall is 53-years-old and has no prior arrests or convictions. ECF No. 59 at 3, 24. Will-Darnall is well educated, is capably employed, attends church, contributes to charities, and was raised by parents who were college professors. *Id.* at 12-14. Will-Darnall reports childhood trauma and a relapse into alcohol abuse, but there is no clear nexus linking those challenges to the crime she committed. *Id.* at 15. To the contrary, her motivation for committing fraud was simply greed. ECF No. 59 at 25. The CAP is not intended to help defendants like Will-Darnall, a white-collar defendant of the kind who has historically received disproportionate diversion, but those decidedly unlike her—those defendants who never really had a realistic chance of avoiding the criminal justice system because of strife, trauma, and addiction afflicting them early in their lives

To grant Will-Darnall a full assessment would unhelpfully expend limited PSA resources to no good end. That an assessment is inappropriate is particularly evident when Will-Darnall has already withheld information from Probation when interviewed for the purposes of the PSR. *See* ECF No. 59 at 16 (Defendant declining to provide any financial information). Indeed, to request a full assessment now, after Probation has already published its presentence report finding that Will-Darnall was motivated by greed, and not by CAP factors, would essentially ask PSA whether it agrees with Probation's conclusion as to Will-Darnall's criminal motivation—CAP treats addiction and trauma born of strife, not greed-motivated crime. The undersigned is unaware of any other instance in which the Court would have PSA double-check the work of Probation, or potentially pit its various organs against one another in such a way.

The conundrum above results because Will-Darnall is asking for this assessment much too late in the process. Irrespective of the substance of the PSR, a defendant who waits to seek CAP assessment until after it is published has waited too long. Under the rules of the program, a defendant is intended to

be initially assessed within two months of their initial appearance. Here, Will-Darnall did not seek and receive an initial assessment until after she pled guilty, after the PSR was published, and after a year had passed since her initial appearance. As a practical matter, a full assessment takes at least 45 days, and can take more; there is a significant possibility that granting a full assessment will necessitate the further continuance of sentencing from its presently scheduled date on September 3, 2025, in order to both permit completion of any such assessment and to then permit the parties and probation to incorporate any findings therein into their respective filings to the Court. As sentencing has already been continued twice, the United States cannot reasonably agree to a further continuance, or to a course of action that renders a future request for one a *fait accompli*. There must be some point at which it is too late to call upon the Court for CAP; wherever that point may fall, surely we have passed it in this case.

Finally, it is not clear what CAP would provide to Will-Darnall that she has not already otherwise pursued. One of the conditions of Will-Darnall's pre-trial release was that she submit to drug and/or alcohol testing and participate in substance abuse treatment as directed by PSA. ECF No. 8. Will-Darnall reports she completed a 60-day chemical dependency recovery program and has been sober since a visit to the emergency room in November 2024. ECF No. 59 at 15. As Will-Darnall purports in mitigation to have resumed sobriety, and otherwise does not reflect the particularized criminogenic factors typically present in CAP-eligible defendants, the United States is unclear what CAP can add to her rehabilitation.

IV. Conclusion

For the reasons above, the United States must respectfully oppose Will-Darnall's request for a full assessment for CAP. If the Court should nonetheless grant the request for a full assessment, the United States would respectfully reserve its right to respond to the assessment after it is produced.

DATED: June 17, 2025

Respectfully submitted,

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