CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney

MARTHA BOERSCH (CABN 126569)
Chief, Criminal Division

JOHNNY E. JAMES JR. (SCBN 101260)
Special Assistant United States Attorney

60 South Market Street, Suite 1200
San Jose, California 95113
Telephone: (408) 535-5061
FAX: (408) 535-5081
johnny.james@usdoj.gov

Attorneys for United States of America

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' SENTENCING MEMORANDUM**

TABLE OF CONTENTS

I. Introduction 3
II. Facts & Procedural History 3
III. Proposed Disposition & Argument 3
A. Legal Standard 3
B. Sentences Available and Guidelines - Sections 3553(a)(3), (4), & (5) 4
1. Maximum Penalties 4
2. Sentencing Guidelines 5
C. Application of Section 3553(a) Factors 10
1. The Nature and Circumstances of the Offense - Section 3553(a)(1) 11
2. The History and Characteristics of the Defendant - Section 3553(a)(1) 12
3. Punishment, Deterrence, Incapacitation, Rehabilitation - Section 3553(a)(2) 14
4. Comparative Data – Section 3553(a)(6) 15
5. Restitution - Section 3553(a)(7) 15
D. Recommended Sentence 16
IV. Conclusion 17

I. Introduction

At the height of the 2020 pandemic, defendant Cassie Will-Darnall purloined through lies and deceit $2,833,554.00 in CARES Act funds from lenders, credit extended by the federal government through partner lenders to stave off deprivation and economic failure for millions of American workers, families, and businesses. Not only that, but Will-Darnall tried to fraudulently obtain much more: $9,175,083.65. Although Will-Darnall has no prior criminal history, the punitive cost of fraud cannot be less than a year per million stolen, lest such theft be incentivized in the future. Accordingly, the United States recommends the Court impose a sentence of 41 months, within the sentencing guidelines range.

II. Facts & Procedural History

The presentence report contains an accurate description of the background facts, procedural history, and the offense conduct that resulted in the indictment against Will-Darnall. *See, generally* ECF No. 59. The United States would supplement the facts set forth in the presentence report with those set forth in its forfeiture application filed on April 9, 2025, incorporated here as though restated in full. *See, generally* ECF No. 59 (Application of the United States for Preliminary Order of Forfeiture). The United States would also supplement the facts with the substance of the three exhibits attached hereto and addressed when appropriate below.

III. Proposed Disposition & Argument

Will-Darnall's admitted offense conduct and attendant circumstances presents significant aggravating factors and some lesser mitigating factors. The sheer amount of funds fraudulently obtained is an overwhelmingly aggravating factor. That Will-Darnall has and continues to attempt to hide her ill-gotten gains through title-clouded property is additionally aggravating. Will-Darnall lays blame for her wrongdoing on desperation and substance abuse, but while alcohol may appropriately mitigate some criminal conduct, it does not meaningfully mitigate the theft of millions of dollars. Accordingly, the United States recommends the Court impose a sentence within the guidelines: 41 months.

A. Legal Standard

"From the beginning of the Republic, federal judges were entrusted with wide sentencing discretion." *Concepcion v. United States*, 597 U.S. 481, 490 (2022) (quotation omitted). "Federal courts historically have exercised this broad discretion to consider all relevant information at an initial

sentencing hearing, consistent with their responsibility to sentence the whole person before them." *Id.* at 491; *see also Dean v. United States*, 581 U.S. 62, 66 (2017) (citing *Pepper v. United States*, 562 U.S. 476, 487-89 (2011)) ("Sentencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence."). In setting an appropriate sentence consistent with statutory directives, the Court must "'impose a sentence sufficient, but not greater than necessary, to comply with' the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation." *Id.* at 67 (quoting 18 U.S.C. § 3553(a)).

Procedurally, "the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual in light of the statutory sentencing factors, . . . explaining any variance from the former with reference to the latter." *Nelson v. United States*, 555 U.S. 350, 351 (2009).

B. Sentences Available and Guidelines - Sections 3553(a)(3), (4), & (5)

Following the *Nelson* order of operations, we first consider the possible sentences and the sentencing guidelines. The United States concurs with the United States Probation Office as to the maximum penalties which may be imposed and has received no indication that Will-Darnall disagrees with the applicable statutory maximums. However, the United States, Will-Darnall, and Probation each reach different conclusions as to the applicable calculations under the United States Sentencing Guidelines.

1. Maximum Penalties

As to Count One, a violation of 18 U.S.C. § 1344(2) (Bank Fraud) as alleged in this case carries the following potential penalties:

Count One	Minimum	Maximum	Statute
Incarceration	None	30 Years	18 U.S.C. § 1344
Supervised Release	None	5 Years	18 U.S.C. § 3583(b)(1)
Fine	$0.00	$1,000,000.00	18 U.S.C. § 1344
Special Assessment	$100.00 per Count		18 U.S.C. § 3013(a)(2)(A)

As to Count Two, a violation of 18 U.S.C. § 1343 (Wire Fraud) as alleged in this case carries the following potential penalties:

Count Two	Minimum	Maximum	Statute
Incarceration	None	20 Years	18 U.S.C. § 2252(b)(2)
Supervised Release	None	5 Years	18 U.S.C. § 3583(b)(1)
Fine	$0.00	$250,000.00	18 U.S.C. § 3571(b)(3)[1]
Special Assessment	$100.00 per Count		18 U.S.C. § 3013(a)(2)(A)

2. Sentencing Guidelines

The United States, Will-Darnall, and Probation agree that the Sentencing Guidelines offense level should be calculated under U.S.S.G. § 2B1.1, and group the multiple counts together as the same general type under these facts. From there, the parties diverge. To clarify the differences, the United States below first sets forth its own guidelines calculation, then addresses the contentions of Probation and Will-Darnall in turn.

(i) Applicable Guidelines Manual

The Court should apply the 2024 Guidelines Manual. Generally speaking, a defendant's sentence should be based on the guidelines "that are in effect on the date the defendant is sentenced." 18 U.S.C. § 3553(a)(4); U.S.S.G. § 1B1.11(a). "If the court determines that use of the Guidelines Manual in effect on the date that the defendant is sentenced would violate the *ex post facto* clause of the United States Constitution," then the Court must use the guidelines manual in effect on the date of the offense conduct. U.S.S.G. § 1B1.11(b)(1); *see also, generally Peugh v. United States*, 569 U.S. 530 (2013) (application of sentencing guidelines which are amended after the offense conduct to result in a recommendation of a more severe sentence implicates the *ex post facto* clause). Whichever guidelines manual a Court chooses to use, it must apply the appropriate manual in its entirety, and may not apply guidelines piecemeal from multiple different iterations. U.S.S.G. § 1B1.11(b)(2); *United States v. Warren*, 980 F.2d 1300, 1304-06 (9th Cir. 1992).

[1] An argument exists that the appropriate maximum fine is that provided for in 18 U.S.C. § 3571(d), which sets the maximum as "not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process." However, as the parties have to this point agreed and proceeded under the understanding that the maximum fine for wire fraud in this case is the standard $250,000.00 for felonies as set forth in 18 U.S.C. § 3571(3), any insistence on the contrary would undoubtedly "complicate or prolong the sentencing process." As such, the United States agrees the maximum fine in this case is $250,000.00, but flags the subsection as potentially relevant in future cases involving pecuniary gain.

Here, the current manual in effect is the 2024 Guidelines Manual, effective November 1, 2024. The offense conduct concluded in March 2021, at which time the 2018 Guidelines Manual was in effect. Between the two versions, the sentencing guidelines were amended in two relevant parts. First, section 4C1.1 was added to provide for a new "zero-point offender" adjustment. U.S.S.G. App. C., Amendment 821. Second, section 2B1.1 was amended to move language defining "loss" from the commentary into the body text of the guideline. U.S.S.G. App. C, Amendment 827. Those amendments, taken together, provide that the 2024 Guidelines Manual recommends a sentence that is less than or equal to that which would have been recommended by the 2018 Guidelines Manual.

The first amendment, to include the new "zero-point offender" adjustment, tends to provide that the 2024 Guidelines Manual is more favorable to Will-Darnall than the 2018 Guidelines Manual, as Probation concludes (and the United States agrees) that she qualifies for that two-point adjustment.

The second amendment—to move the commentary definition of "loss" (as the greater of actual or intended loss) into the body text of the guideline, *see* U.S.S.G. § 2B1.1, cmt. 3(A)—is of no practical effect in this district because the definition is entitled to deference by this Court in either location. Generally, to determine whether it is appropriate to defer to the commentary's interpretation of a Guideline, a court must first consider whether (1) the text of the guideline is "genuinely ambiguous," (2) the interpretation is "reasonable," and (3) the interpretation is entitled to "controlling weight." *United States v. Yafa*, 136 F.4th 1194, 1197 (9th Cir. 2025) (quoting *Kisor v. Wilkie*, 588 U.S. 558, 574-79 (2019)); *see also United States v. Castillo*, 69 F.4th 648, 655-56 (9th Cir. 2023) (finding *Kisor* deference extends to the sentencing guidelines). As to the first question, the Ninth Circuit in *Yafa* held that the term "loss" in § 2B1.1 was genuinely ambiguous. 136 F.4th at 1197. As to the remaining two, while the Ninth Circuit in *Yafa* expressly noted it was not passing upon the reasonableness of Application Note 3(A), 136 F.4th at 1199 n.5, the court did favorably cite to and rely upon other circuit precedents which did find Application Note 3(A) to be reasonable such that the definition of "loss" could include "intended loss." *See United States v. Boler*, 115 F.4th 316, 327-28 (4th Cir. 2024) (finding Note 3(A) to be reasonable and entitled to controlling weight); *United States v. You*, 74 F.4th 378, 398 (6th Cir. 2023) (same). Furthermore, the inclusion of "intended loss" is an established practice when interpreting loss in this circuit. *United States v. Hackett*, 132 F.4th 1005, 1013 (9th Cir. 2024) (citations omitted); *see also,*

e.g. United States v. McCormac, 309 F.3d 623, 627-28 (9th Cir. 2002) (describing the definition of "loss" as the greater of actual or intended loss as "the core rule" going back to at least the 1988 Sentencing Guidelines and circuit precedents, and explaining how the inclusion of "intended loss" serves to prevent a reduction of culpability where a victim otherwise recovers part of its loss). Altogether, given that "loss" is genuinely ambiguous as applied in § 2B1.1, and given the interpretation's reasonableness is established explicitly in other circuits applying the *Kisor* framework and inferentially in this circuit's established practice, the Court—if it were to apply the 2018 Guidelines Manual—must also defer to the commentary definition of "loss" as the greater of "actual loss" and "intended loss." Thus, that the definition of "loss" is in the commentary in the 2018 Sentencing Guidelines and moved to the body text of the 2024 Sentencing Guidelines is irrelevant because the definition in force—that loss is the greater of actual loss or intended loss—is the same in either instance.

With these amendments thus considered, the United States interprets the 2024 Sentencing Guidelines to produce a calculation of Will-Darnall's total offense level as two points less than what would be recommended under the 2018 Sentencing Guidelines because of the new "zero-point offender" adjustment. Because a result more favorable to a defendant does not implicate any *ex post facto* concerns, we must therefore apply the 2024 Sentencing Guidelines.

It is possible[2] Will-Darnall may still contend that her guidelines should be calculated only with a mind to "actual loss" and only under the 2018 Sentencing Guidelines, but practical aspects of this case alleviate the Court of any need to directly address such a contention. As Will-Darnall's "intended loss" exceeded $3,500,000.00, but did not exceed $9,500,000.00, the specific offense characteristic enhancement for her "intended loss" is 18 points. U.S.S.G. § 2B.1.1(b)(1)(J). As Will-Darnall's "actual loss" exceeded $1,500,000.00, but did not exceed $3,500,000.00, the specific offense characteristic enhancement for her "actual loss" would be 16 points. U.S.S.G. § 2B1.1(b)(1)(I). Thus, a calculation under the 2018 Sentencing Guidelines relying only on "actual loss" as compared to a calculation relying on "intended loss" would only produce for Will-Darnall a theoretical two-point benefit. Meanwhile, the

[2] Consistent with the standards and practice of cordial engagement in this division of the district, counsels for the parties (to include probation) have exchanged amicable and productive e-mails exploring the issue since defense counsel first raised it on the evening of August 16, 2025. The United States anticipates the defense will make an argument for "actual loss" in its own memorandum.

same 2018 Sentencing Guidelines on which Will-Darnall would rely to argue for the "actual loss" calculation do not contain the two-point reduction of the "zero-point offender" adjustment present in the 2024 Guidelines Manual. Because the Court must use a manual in its totality under *Warren* and U.S.S.G. § 1B1.11(b)(2), and cannot pluck specific provisions from other guidelines manuals in making its calculations, Will-Darnall cannot argue to apply the "zero-point offender" adjustment in the context of the 2018 Guidelines Manual. Therefore, even if one assumes *ad arguendo* that Will-Darnall could obtain a lower specific offense characteristic enhancement for the amount of loss in the 2018 Guidelines Manual, it would be equally offset by the omission of the "zero-point offender" adjustment in the 2024 Guidelines Manual, and so would produce the same total offense level calculation and the same guidelines. In such a circumstance, no *ex post facto* issue is implicated, and the 2024 Guidelines Manual must be applied.

(ii) Guidelines Calculations

Applying the 2024 Guidelines Manual § 2B1.1, the United States calculates the following offense level:

Base offense level: § 2B1.1(a)(1)	7
Specific offense characteristics:	
§ 2B1.1(b)(1)(J) – Loss More than $3,500,000.00	+18
§ 2B1.1(b)(10)(C) – Sophisticated Means	+2
Adjusted offense level:	27
Acceptance of responsibility: § 3E1.1	-3
Zero-Point Offender: § 4C1.1	-2
Total offense level:	**22**

The above calculation includes a contested enhancement for "sophisticated means" that is discussed below. All parties agree that Will-Darnall has no prior convictions and thus a Criminal History Category of I.

The United States requests the Court apply the "sophisticated means" enhancement set forth in U.S.S.G. § 2B1.1(b)(10)(C). "Sophisticated means" means "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G § 2B1.1 cmt. 9(B).

"Conduct need not involve highly complex schemes or exhibit exceptional brilliance to justify a sophisticated means enhancement." *United States v. Jennings*, 711 F.3d 1144, 1145 (9th Cir. 2013); *see also United States v. O'Neil*, No. 24-811, 2024 WL 5074908 at *1 (9th Cir. Dec. 11, 2024) (citing same in application of "sophisticated means" to PPP fraud). The enhancement can apply where a defendant engages in "dozens of various acts" or "coordinated and repetitive steps" to attempt the criminal ends. *United States v. Augare*, 800 F.3d 1173, 1175-76 (9th Cir. 2015); *see also O'Neil*, 2024 WL 5074908 at *1 (citing same in application of "sophisticated means" to PPP fraud). The generation of misleading documents and use of shell corporations also support a "sophisticated means" enhancement. *See, e.g. United States v. Garro*, 517 F.3d 1163, 1169 (9th Cir. 2008) (Use of misleading documents, forged signatures, and shell corporations in effectuating wire fraud scheme was conduct involving sophisticated means within Sentencing Guidelines enhancement for offenses involving fraud or deceit); *see also United States v. Lebnitz Tran*, 3:21-CR-269-WHO, ECF Nos. 32, 39, 40, 46 (N.D.Cal. 2022) (PPP fraudster subject to sophisticated means enhancement after he "did not merely enter false information, he created fake payroll documents and tax forms on a large scale to support those applications and facilitate his fraud[,]" and where he "used a complicated network of bank accounts and money transfers at the back end of the fraud" alongside falsified checks).

Here, Will-Darnall generated numerous false and fraudulent documents in support of her seven fraudulent applications, including false tax documents, false bank statements, and deceptive voided checks. Will-Darnall submitted the applications in the name of corporate shells, deposited funds into bank accounts held in the name of said corporate shells, and diverted funds to her personal benefit in part to assets whose titles were clouded apparently to defeat judgment from lawsuits occurring prior to this offense.[3] Will-Darnall was civilly deposed on August 11, 2021, and when asked about the nature of the business Alternative Health Services Inc., Will-Darnall responded "There is no business. It was never established." U.S. Exhibit A at 8. The Rosswood entities, while they once functioned, were never business concerns of the scope represented.

By generating these meticulously false documents, and by fraudulently applying for funds under

[3] For greater detail, *see, generally* ECF No. 43.

the guise of multiple entities, Will-Darnall employed especially intricate efforts to support her fraudulent applications, well above and beyond more typical PPP fraudsters who simply fabricate the existence of sole-proprietorships without supporting documentation. As such, a "sophisticated means" enhancement should apply. Probation's reasoning to the contrary—that the means were not sophisticated "since she altered old business records for non-operating companies to make it appear they were still operating to obtain a loan," ECF No. 59 at 21—does not follow, as the pre-existing character of the shell companies used increased the credibility of the fraudulent applications and increased the sophistication of the effort rather than reduce it.

As a separate issue, the United States initially requested that Probation apply a two-point enhancement pursuant to U.S.S.G. § 2B1.1(b)(17)(A), for deriving more than $1,000,000 in gross receipts from one or more financial institutions. Probation agreed with the United States' request at that time, over Will-Darnall's objection, on the basis that both Cross River Bank ($968,989.00 in gross receipts) and Fundbox ($1,864,565 in gross receipts) appeared to be "financial institutions" within the meaning of the sentencing guidelines. ECF No. 59 at 10, 22. However, subsequent to the disclosure of the PSR on May 29, 2025, the United States received additional information which leads it to believe that (1) Fundbox is not itself a "financial institution" within the meaning of the sentencing guidelines and (2) the underwriting of Fundbox's funds was not from an entity that qualifies as a "financial institution" within the meaning of the sentencing guidelines. Consequently, on or about August 4, 2025, the United States submitted revised comments to Probation withdrawing its request for the enhancement. At this time, the United States agrees with Will-Darnall that the two-point enhancement under § 2B1.1(b)(17)(A) is inapplicable and should be excluded.

Accordingly, the United States advises the Court to apply to Will-Darnall an offense level of 22 with a criminal history category of I. The attendant guidelines range is therefore 41 to 51 months. U.S.S.G. § 5A. Because Will-Darnall's guideline range is in Zone D of the sentencing table, the minimum term should be satisfied by a sentence of imprisonment, and not by any substitute. U.S.S.G. § 5C1.1(f). The guidelines also recommend a fine of between $15,000 and $150,000. U.S.S.G. § 5E1.2.

C. Application of Section 3553(a) Factors

The facts of Will-Darnall's offense conduct show her sophistication and involve numerous shell

entities, but in the end her conduct was plain fraud. Consequently, the application of the factors set forth in 18 U.S.C. § 3553(a) is similarly straightforward, if subject to a considerable range of interpretation and judicial discretion. Taken together, aggravating characteristics considered under the § 3553 factors supports a guidelines sentence, while the mitigating characteristics of her personal circumstances militate against a sentence in the upper end of the range as the United States presently calculates it.

1. The Nature and Circumstances of the Offense - Section 3553(a)(1)

Fraud, alongside the offense's other larcenous cousins in the code, is morally contemptible. Indeed, "fraud crimes are categorically crimes involving moral turpitude, simply by virtue of their fraudulent nature." *Planes v. Holder*, 652 F.3d 991, 997 (9th Cir. 2011). Further emphasis that stealing is bad need not be belabored.

Certain details about the COVID-19 relief programs, however, cast unique light on the gravity of Will-Darnall's offense. According to the Small Business Association (SBA), across the 11,823,594 loans approved under the PPP, the program disbursed nearly $800 billion, and the overall average loan size was about $42,000. U.S. Small Business Administration, *Paycheck Protection Program (PPP) Report* at 6 (May 31, 2021), accessible at https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf. An overwhelming 87.1% of loans disbursed were for $50,000 or less, while loans over $1 million made up only about 0.4% by count. *Id.*

Of that money, the SBA estimated in 2023 that over $200 billion in pandemic assistance loans, or at least 17% of COVID-19 Economic Injury Disaster Loans and PPP loans, "were disbursed to potentially fraudulent actors." U.S. Small Business Administration Office of Inspector General, *COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape* at 8 (June 27, 2023), accessible at https://www.sba.gov/document/report-23-09-covid-19-pandemic-eidl-ppp-loan-fraud-landscape. Of those frauds prosecuted by the Pandemic Response Accountability Committee (PRAC) Fraud Task Force, perhaps the largest charged involved 14 individuals who allegedly operated a $53 million PPP fraud scheme. U.S. Department of Justice, *COVID-19 Fraud Enforcement Task Force 2024 Report* at 18 (April 9, 2024), accessible at https://www.justice.gov/coronavirus/media/1347161/dl?inline.

In this context, Will-Darnall's successful acquisition of $2,833,554.00 upon an intended $9,175,083.65, represents a rather significant example of COVID relief fraud. In fact, as compared to

those loans approved across the life of the Paycheck Protection Program, Will-Darnall's fraudulent loan from Fundbox for $1,864,595.00 falls into the top 0.4% of all PPP loans disbursed. In stealing over $2.8 million, Will-Darnall effectuated a particularly large theft from the program, especially for a fraudster acting alone.

The unique facts of this case additionally encourage, under the § 3553(a) factors, a more severe punishment than that provided for in the guidelines. As acknowledged above, through because of the structure of the lenders and their own financing, Fundbox does not qualify as a "financial institution" under the guidelines. Meanwhile, the loan extended to Will-Darnall from Cross River Bank, which is a financial institution, falls a bit short of a million dollars. The consequence is that Will-Darnall, due to structural and legal quirks wholly disconnected from her own motives and efforts, avoids a two-point enhancement under the guidelines that, if it were applied, would increase her guidelines range to 51-63 months. Will-Darnall's culpability is not meaningfully illuminated by the fact that Fundbox approved a fraudulent loan where Bank of America did not, particularly where she attempted to defraud each. The Court should, in applying the § 3553(a) factors, give some weight to the fact that Will-Darnall endeavored to defraud more than a million dollars from what are undeniably "financial institutions" in the lay sense, even if the sum of actual thefts from "financial institutions" under the guidelines fell narrowly below the threshold necessary for enhancement.

Altogether, the application of this factor serves to support a severe, but not the most severe penalty which the Court may impose.

2. The History and Characteristics of the Defendant - Section 3553(a)(1)

Will-Darnall's personal history and characteristics provide both mitigative and aggravating context to her wrongdoing. Perhaps most significantly, Will-Darnall has no prior criminal history, but the sentencing guidelines capably take as much into account through both her low criminal history category and "zero-point offender" adjustment. Will-Darnall has accepted responsibility and pled guilty before this court, acknowledging her wrongdoing.

Will-Darnall is 53-years-old, an age sufficient to have grown from the criminologically significant characteristics of youth, but not so advanced as to make a significant custodial sentence disproportionately severe. Thus, Will-Darnall's age favors neither a more or less severe penalty.

Will-Darnall reports having suffered significant health challenges in recent years, but their severity is not so great as to have inhibited her from travelling to Scottsdale, Arizona to attend Major League Baseball spring training in March of this year, or to multiple cities along the east coast to attend MLB games in July of this year. ECF Nos. 38, 70.[4] How Will-Darnall has the resources to travel and enjoy live sports in Boston, Baltimore, and Atlanta, is unknown to the United States as she provided no financial information to Probation, ECF No. 59 at 16, and is reliant on the services of the public defender.

Will-Darnall also reports she has long struggled with alcohol abuse. She claimed to have ceased drinking after November 2024, ECF No. 59 at 15, until she recently violated the terms of her pre-trial release by purportedly binge drinking for two months. ECF No. 71. When Will-Darnall appeared for a Violation Hearing on July 3, 2025, ECF No. 75 (minutes only), she gave conflicting information regarding the seriousness of her alcohol abuse. Will-Darnall attributes her wrongdoing in part to her alcoholism, as it inhibited her from seeking help, ECF No. 59 at 15, but the United States shares in Probations' assessment that the primary motivation and cause of committing fraud was simply greed. *Id.* at 25. Will-Darnall's inconsistent information regarding her alcohol consumption is simultaneously evidence of her alcoholism[5] and evidence of her continued dishonesty with Probation, the Court, and herself. The United States favors granting greater weight to these inconsistencies as evidence of her continued dishonesty, but cannot entirely discount the mitigative weight that Will-Darnall is almost certainly struggling with an alcohol use disorder.

Altogether, the application of this factor serves to support a severe, but not the most severe penalty which the Court may impose.

[4] A fair-minded observer may note the July travel was unopposed and question the fairness of the government's critique. While the United States did not oppose the request to travel in July, it did contemporaneously advise counsel by e-mail on June 24, 2025, that it reserved the right to critique Will-Darnall's travels in its sentencing memorandum.

[5] *See, generally* Schuckit, et. al., *Characteristics associated with denial of problem drinking among two generations of individuals with alcohol use disorders* (2020), accessible at https://pmc.ncbi.nlm.nih.gov/articles/PMC7736262/ (study on characteristics most closely linked to denial of an alcohol use disorder, inclusive of a review of other literature exploring denial as a common characteristic and aggravating factor of AUDs).

3. Punishment, Deterrence, Incapacitation, Rehabilitation - Section 3553(a)(2)

The need to punish those who defraud lenders and government programs of millions, and deter others from doing so, is significant. As to punishment, the widespread public perception of the justice system is that white-collar criminals often receive milder punishments than those criminals convicted of less serious offenses, and it is important that the Court not permit the restorative aims of rehabilitation to infringe upon the retribution necessary to maintain public confidence in the system. *See United States v. Moose*, 893 F.3d 951, 958 (7th Cir. 2018) (briefly exploring scholarly work acknowledging the import of punishment as a factor in fraud cases and reaffirming "the importance of longer prison terms that respond to public concern for fairness.").

As to deterrence, "[b]ecause economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013) (quoting *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)). Because "defendants in white-collar crimes often calculate the financial gain and risk of loss, . . . white-collar crime therefore can be affected and reduced with serious punishment." *Id.* (cleaned up). This value persists even where a defendant is unlikely to commit another offense. *Id.* at 1328-29.

Thus, as here, where a defendant through cheats and frauds manages to swindle millions from lending institutions, a very significant need for punishment and deterrence exists which can only be satisfied by a severe punishment. A too-lenient sentence of probation or short custodial time may entice observers to weigh the potential gain of criminality against the risk of getting caught. Probation's recommended sentence of 24 months invites the question of whether one would risk a year in prison for $1,416,777. Since many criminal actors risk prison for much less, the answer is that many would.

As to rehabilitation, Will-Darnall's continued difficulty with alcohol and continued inconsistent representations to the Court in relation thereto suggests a continued need for rehabilitation. Any term sufficient to satisfy the government's interest in punishment and deterrence should dwarf the time necessary to rehabilitate Will-Darnall in this regard, but the Court should advise the Bureau of Prisons to make its placement decision with a mind to substance abuse treatment programs available at the designated facility.

4. Comparative Data – Section 3553(a)(6)

The presentence report provides comparative data consistent with the guideline calculations reached by the United States. As noted, for a defendant sentenced under § 2B1.1 with offense level 22 and a criminal history category of I, the average length of imprisonment was 33 months and the median length of imprisonment was 35 months. Probation's recommended sentence (and presumably what will be requested by Will-Darnall) fall comfortably below the average for similarly situated defendants based on this comparative data.

The sentence recommended by the United States, admittedly, exceeds the average and median for the present offense level, but for the narrow purpose of the application of this factor, and consistent with its argument to consider technically avoided enhancements for defrauding financial institutions, the United States also considers the JSIN data for a defendant with offense level 24 and a criminal history category of I. Of the 98% of defendants over the last five fiscal years (FY2020-2024) who have received custodial sentences for such an offense level and criminal history, the average and median length of the sentences imposed was 41 months, consistent with the United States' recommendation.

As such, the United States recommends that Will-Darnall receive a sentence more severe than the average and median sentences imposed for similarly situated defendants under her present guidelines calculation, but the comparative data discourages a recommendation of a maximally severe sentence.

5. Restitution - Section 3553(a)(7)

Will-Darnall's criminal acts deprived the Small Business Administration of significant funds. To the knowledge of the United States, Will-Darnall has made no effort to repay the SBA the money she defrauded through its partner lenders. Will-Darnall also provided no information to Probation regarding her own financial resources, the financial needs and earning ability of herself and her dependents, or any other information that may otherwise militate against an award of restitution. As such, the SBA is entitled to restitution.

Under 18 U.S.C. § 3663, restitution can include prejudgment interest. *United States v. Catherine*, 55 F.3d 1462, 1465 (9th Cir. 1995). As of the most recent certification by the SBA in January 2025, for the fraudulent loan issued through Cross River Bank to Alternative Health Services Inc., Will-Darnall owes $1,043,640.98. U.S. Exhibit B. As of the most recent certification by the SBA

in January 2025, for the fraudulent loan issued through Fundbox, Inc. to Rosswood Properties, LLC, Will-Darnall owes $2,000,667.47. U.S. Exhibit C. Altogether, SBA most recently reported that Will-Darnall owes to them $3,044,308.45. A more current statement of the accounts can be provided at a restitution hearing.

As such, the United States requests the Court order restitution by Will-Darnall to the SBA in the amount of $3,044,308.45, plus such prejudgment interest as may continue to accrue until a restitution order is entered. The United States requests the Court schedule a separate hearing to finalize restitution.

D. Recommended Sentence

For all of the reasons forgoing, the United States recommends the Court sentence Will-Darnall to imprisonment in the custody of the Federal Bureau of Prisons for concurrent terms of 41 months each for Counts 1 & 2 of the information. The United States defers to the Court's judgment as to a fine, but emphasizes that the greater priority should be an order of restitution. The United States recommends the Court further sentence Will-Darnall to a 3-year term of supervised release, consistent with Probation's recommendation. Finally, the United States recommends the Court impose a total special assessment of $200.00: $100.00 for each of the counts to which Will-Darnall pled guilty.

It is the recommendation of the United States that such a sentence is sufficient, but not greater than necessary, to address the requirements of 18 U.S.C. § 3553.

As to restitution, the United States requests the Court schedule a hearing to order restitution in the amount of $3,044,308.45, plus such prejudgment interest as may continue to accrue until a restitution order is entered to the Small Business Administration.

IV. Conclusion

Will-Darnall stole a significant amount of money, and as such must submit to a significant term in custody. Therefore, and for the reasons foregoing, the United States recommends a concurrent, total sentence of 41 months, and other such terms as set forth above.

DATED: August 27, 2025

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

Johnny E. James Jr.
JOHNNY E. JAMES JR.
Special Assistant United States Attorney