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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' REPLY TO DEFENDANT'S SENTENCING MEMORANDUM**

In response to defendant Cassie Will-Darnall's sentencing memorandum filed August 27, 2025, ECF No. 84, the United States (1) here provides additional information to the Court which tends to contradict a number of the personal life characteristics and circumstances represented by Will-Darnall to Probation and to the Court; and (2) reaffirms its arguments set forth in its own sentencing memorandum regarding the correct guidelines to apply and calculations thereunder.

I. Will-Darnall's ex-spouse disputes many of the claims made by Will-Darnall, particularly as to the needs of their child-in-common.

In the presentence report, Will-Darnall participated in a presentence investigation interview and provided numerous facts relating to her personal life and characteristics. ECF No. 59 at 12-16. At the time of the presentation of the draft PSR to the parties, the publication of the PSR to the Court, and

submission of the sentencing memoranda, the United States had no reason to question specific details presented by Will-Darnall to the Court regarding the details of her personal history. Rather, the United States could only express its generalized concern regarding Will-Darnall's pattern of dishonesty in light of the admitted offense conduct, efforts to retain ill-gotten gains, and inconsistent representations as to her alcohol use.

Subsequent to the filing of the parties' sentencing memoranda, the United States received information suggesting inaccuracies in Will-Darnall's construction of her own life. Law enforcement thereafter interviewed Will-Darnall's ex-wife, Sheri Darnall, and a redacted[1] copy of the report of that interview is here attached. U.S. Exh. D. The witness contests certain details which, in the Court's discretion and if not contested, might otherwise tend to mitigate the punishment Will-Darnall receives, including:

- Sheri Darnall disputes any claim that she suffers from mental health issues, or that she would not be able to care for their child-in-common on her own, and that the two share custody of the minor. *Contrast* U.S. Exh. D at 2, *with* ECF No. 59 at 13 *and* ECF No. 84 at 9.
- Sheri Darnall disputes that her child-in-common with Will-Darnall was adopted, and instead asserts the child was born through *in vitro* fertilization from a donor embryo. *Contrast* U.S. Exh. D at 2, *with* ECF No. 59 at 13, 24 *and* ECF No. 84 at 9.
- Sheri Darnall disputes that her child-in-common with Will-Darnall suffers from Obsessive Compulsive Disorder or requires extensive time coordinating education and therapy, and instead asserts the child only sporadically sees a counselor and attends a private school in mainstream classes. *Contrast* U.S. Exh. D. at 3, *with* ECF No. 59 at 13 *and* ECF Nos. 84-2 at 2, 84-3 at 2

Sheri Darnall also contests other details, but the United States notes these three points of contention as potentially relevant to the Court's application of the § 3553 factors.

That a dependent minor may be impacted by the imposition of a sentence on a defendant gives weight to both sides of the scales of justice. On one hand, the Court may reasonably consider whether a particular sentence would adversely impact the interests of society through its negative impacts on a

[1] The report redacts information tending to identify a minor.

dependent minor. On the other hand, that a dependent minor would be so adversely impacted if caught, convicted, and sentenced is a fact that was foreseeable to the defendant when they went out and engaged in the offense conduct, and reflects poorly on such a defendant.

Here, the United States can only notify the Court that certain claims made by Will-Darnall are contested. The United States does not have additional materials or documentation to weigh the veracity of one construction of Will-Darnall's personal life over another, nor would further investigation into secondary and tertiary questions appear to be of material assistance to the Court in rendering a sentence when compared to the significance of the offense conduct itself and other matters identified in the government's sentencing memorandum. Given Will-Darnall's admitted crime of dishonesty and pattern of making representations to the Court which are too clever by half, the United States is inclined to give some weight to Sheri Darnall's objections and encourages the Court to do the same.

Whatever the case may be, at the United States is compelled to recommend a significant term of incarceration, and that means Will-Darnall's child will be deprived of her free presence for an extended period of time. However unfortunate, Will-Darnall must have known such might come to pass when she decided to steal millions of dollars from lenders. The reverberations of Will-Darnall's own crimes must echo back through her, to her detriment and not her benefit. As such, the United States reaffirms the recommendation of 41 months as set forth in its sentencing memorandum.

II. The United States reaffirms that the 2024 Guidelines Manual should be applied and that, even if the 2018 Guidelines Manual were applied, the calculations would be the same for all the reasons previously stated and because Amendment 827 applies retroactively.

Will-Darnall erroneously asserts that the 2021 Sentencing Guidelines should apply to this proceeding. ECF No. 84 at 12-20. In so asserting, Will-Darnall accurately notes the time at which her offense conduct concluded, but fails to note that the effective date of the 2021 Guidelines Manual was November 1, 2021, per its cover. Because Will-Darnall's offense conduct ended before the 2021 Sentencing Guidelines were published, and because they are no longer in effect, the United States is aware of no authority or argument that would justify their use. Thus, the United States' analysis comparing the impact of reliance on the 2024 Guidelines Manual versus the 2018 Guidelines Manual remains accurate.

Whether the Court compares the 2024 Guidelines Manual to 2021 or 2018, the analysis set forth

in the government's sentencing memorandum remains clear and valid. Will-Darnall, on the other hand, calls upon this Court to employ an older guidelines manual, but not the commentary of the older guidelines manual, while also taking from the current guidelines manual, but without taking the "subsequent clarifying amendments" specifically authorized in U.S.S.G. § 1B1.11(b)(2) and comment 1. None of the "illustrative" examples provided by Will-Darnall reflect the sort of sentencing chop suey she calls upon the Court to employ.

Additionally, an *ex post facto* concern does not exist because Amendment 827 (moving the definition of "loss" from the commentary into the body text) is a clarifying amendment consistent with Ninth Circuit precedent, such that it is retroactive. Where an amendment to the sentencing guidelines serves to clarify a circuit split, it is generally interpreted as a "clarifying amendment" and applied retroactively. *See United States v. Sanders*, 67 F.3d 855, 856-57 (9th Cir. 1995) (citing *In re Adams*, 761 F.2d 1422, 1427 (9th Cir. 1985)) ("The Ninth Circuit has consistently stated that when an amendment is a clarification, rather than an alteration, of existing law, then it should be ised in interpreting the provision in question retroactively. [. . .] An amendment that resolves a circuit split generally clarifies and does not modify existing law."); *United States v. Morgan*, 376 F.3d 1002, 1012-13 (9th Cir. 2004) (whether the commission explicitly describes an amendment as a clarification is of little significance; the chief circumstance to examine is the role of the amendment in harmonizing previously conflicting circuit precedent). Where an amendment overrules circuit precedent, it may implicate the *ex post facto* clause and not be applied retroactively. *See Morgan*, 376 F.3d at 1013 (noting that a clarifying amendment can apply retroactively even if it changes the law of the circuit so long as it does not implicate *ex post facto*). However, where an amendment only reaffirms circuit precedent and long existing interpretation of a guideline, it categorically cannot implicate the *ex post facto* clause—the defendant is not resultantly exposed to any greater possible punishment, only that which he or she traditionally would have received.

Here, as noted in the government's sentencing memorandum, ECF No. 85 at 6-7, the longstanding interpretation of "loss" in the Ninth Circuit has been the greater of "actual loss" or "intended loss," consistent with the commentary to Section 2B1.1. *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 Guidelines Manual and circuit precedents). Although it never uses the word "clarify," Amendment 827 explicitly states it exists to address a circuit split between the Third Circuit and elsewhere in the calculation of "loss" and bring the Third Circuit back in line with other circuits, including this one. The amendment does not change the law of this circuit, but rather seeks to bring another circuit in line with this circuit's precedent. Amendment 827 is therefore, under the reasoning articulated in *Sanders* and *Morgan*, a clarifying amendment retroactively applicable to the 2021 and 2018 Guidelines Manuals.

Applying Amendment 827 retroactively obviates any possible argument by Will-Darnall that the commentary definition of "loss" cannot be enforced. The precedent in this circuit's history is that "loss" is the greater of actual or intended loss. The commentary supports that and the retroactive application of the amendment seals it. As such, the guidelines calculations Will-Darnall may face under the 2018 Guidelines Manual can in no circumstance be less than what she faces under the 2024 Guidelines Manual. Accordingly, the 2024 Guidelines Manual should apply.

III. Conclusion

For the reasons forgoing and as previously set forth, the United States reaffirms its recommendation as set forth in its sentencing memorandum at ECF No. 85.

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Respectfully submitted,

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