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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CASSIE WILL-DARNALL, Defendant.	**Case No.:** CR 24–00292 PCP **DEFENDANT'S REPLY TO GOVERNMENT'S SENTENCING MEMORANDUM** **Court:** Courtroom 8, 4th Floor

INTRODUCTION[1]

Ms. Cassie Will-Darnall respectfully submits this brief reply to address the following matters: (1) to provide supplemental Exb. D, consisting of her August 25, 2025, letter of employment as a Behavior Specialist with the Center for Social Dynamics, an agency that supports individuals diagnosed with autism; (2) to clarify issues regarding her alcohol use disorder and its relevance to her offense conduct; and (3) to respond to the government's arguments concerning the applicability of *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), in this case.

[1] The parties have conferred, and neither objects to the filing of a short reply by either side, in light of the intervening Labor Day weekend.

ARGUMENT

First, the government has questioned Ms. Will-Darnall's candor regarding her alcohol use and its role in the offense. Some of the confusion likely stems from the CAP assessment, which the defense requested only after Pretrial Services independently flagged her as preliminarily eligible. That assessment found her treatment needs were not presently acute, and she has since withdrawn her request for admission. Ms. Will-Darnall acknowledges her problematic drinking and its undoubted relationship to her offense but maintains she does not binge drink, based on her understanding of her patterns. She had her first drink at 13, struggled with alcohol in her twenties, and drank excessively during periods of anxiety and emotional distress, including at the time of the offense. She does not seek to minimize or exaggerate her drinking but recognizes that her impaired judgment was a contributing factor and relevant mitigation.

Second, the government misapprehends *United States v. Yafa*, 13 F.4th 1194 (9th Cir. 2021), which did not hold that the term "loss" in § 2B1.1 is ambiguous in all contexts. *Yafa* addressed Application Note 3(B), which permits the use of gain as a proxy where actual loss cannot reasonably be determined. The Ninth Circuit found "loss" ambiguous only in that narrow context, which involved a complex pump-and-dump securities fraud with incalculable losses. The panel expressly declined to address the reasonableness of Application Note 3(A), which is the commentary provision at issue here. The defense's position is straightforward: the term "loss" in § 2B1.1 is unambiguous as applied here, and no reasonable reading of the guideline's text alone would support interpreting "loss" to mean the greater of actual or intended loss, particularly where the intended harm was unlikely or impossible to occur. Unlike *Yafa*, this case involves a straightforward economic offense where the actual loss, approximately $2.8 million, is undisputed. The only question is whether the Court should expand "loss" beyond its plain-text meaning to include hypothetical "intended loss" based solely on the commentary. But *Yafa* confirms that Note 3(B) merely provides an alternate method to calculate actual loss, not an expansion of its definition, and cites *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022), recognizing that Note 3(A), unlike Note 3(B), seeks to expand the definition of loss altogether. Moreover, if the 2021 Guidelines clearly encompassed intended loss in every case, there would have been no need for the 2024 amendment modifying the textual definition. The text of

§ 2B1.1 in the 2019 Guidelines manual is unambiguous. Accordingly, under *Kisor v. Wilkie*, there is no basis to defer to the commentary's broader definition, and doing so would invert *Kisor* by allowing the commentary to create the ambiguity that justifies its own deference. Additionally, the Court should exercise caution before relying on an agency's interpretation, particularly one not enacted by Congress, as the basis for determining a fundamental liberty interest such as a term of imprisonment.

Finally, the government's reliance on *United States v. McCormac*, 309 F.3d 623 (9th Cir. 2002), is misplaced. That case addressed whether a defendant was entitled to a credit against loss for funds recovered by the victim. *Id.* at 627. That issue is not present here. Ms. Will-Darnall does not dispute the recovery of approximately $625,000, and the PSR correctly includes that recovery in calculating the actual loss as $2.8 million. Unlike in *McCormac*, there is no dispute here regarding offsets or credits. Nor does *McCormac* stand for the proposition that § 2B1.1's text always encompassed intended loss. The government's argument on that point relies not on the guideline's text, *but on the commentary,* the agency's own interpretation. Under *Kisor v. Wilkie*, such commentary is not entitled to deference unless the guideline text is genuinely ambiguous, and even then, only if the agency's interpretation is reasonable, authoritative, and reflects its substantive expertise. The commentary's attempt to expand "loss" to include "intended loss" cannot itself create the ambiguity that would justify deference. Such reasoning collapses the *Kisor* framework and serves to justify its own relevance. Because the term "loss" in § 2B1.1 is not ambiguous as applied to this basic economic offense with a known and undisputed actual loss, the Court should apply the guideline's text and decline to defer to the broader definition in the commentary. *See Banks* at 258. ("concluding that in the context of a sentencing enhancement for basic economic offenses, the ordinary meaning of the word "loss" is the loss the victim actually suffered")

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CONCLUSION

For the foregoing reasons, Ms. Will Darnall respectfully requests that the Court impose a sentence of home detention. In the alternative, she asks that the Court impose a custodial term of no more than one year and one day.

Dated: September 2, 2025

Respectfully submitted,

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