United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASSIE WILL-DARNALL,

Defendant.

Case No. 24-cr-00292-PCP-1

ORDER REGARDING SENTENCING GUIDELINES CALCULATIONS

Re: Dkt. No. 88

Defendant Cassie Will-Darnall pleaded guilty 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. Both counts arise from her submission of false applications for federal Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) loans. Specifically, between March 2020 and March 2021, Will-Darnall submitted seven fraudulent applications for loans valued at a total of $9,175,083.65. Two of her PPP loan applications worth a total of $2,833,554 were approved. The approved applications were submitted in the names of two different corporate entities associated with Will-Darnall. Both applications falsely stated the applicant entity's average monthly payroll. The applications were accompanied by falsified tax returns for each entity, and one included a falsified bank statement and falsified checks.

Will-Darnall appeared before the Court for sentencing on September 3, 2025. At the hearing, the parties disagreed about two issues respecting the Court's application of the United States Sentencing Commission's Sentencing Guidelines to Will-Darnall. After hearing argument from the parties, the Court deferred Will-Darnall's sentencing to September 24, 2025, and requested supplemental briefing on the dispute. This Order sets forth the Court's conclusions and holding with respect to the application of the Sentencing Guidelines to this case.

The parties and the United States Probation Officer agree on some of the calculations that

apply here. They agree that the two counts are grouped for purposes of the Court's guidelines calculations, and that the base offense level for that group is 7. *See* U.S.S.G. § 2B1.1. The parties also agree that Will-Darnell is entitled to a three-level decrease in the offense level based on her acceptance of responsibility. *See* U.S.S.G. § 3E1.1.[1] There is also no dispute that Will-Darnall's criminal history score is zero and that her criminal history category is therefore I.

The parties' disputes center on two issues. First, although courts generally apply the Sentencing Guidelines that are in effect on the date of sentencing, *see* U.S.S.G. § 1B1.11(a), Will-Darnall contends that the Court should apply the 2018 version of the Sentencing Guidelines to avoid *ex post facto* concerns, *see* U.S.S.G. § 1B1.11(b)(1). Second, the government contends that Will-Darnall's offense level should be adjusted upward by two levels based on her use of a sophisticated means to accomplish her offense. *See* U.S.S.G. § 2B1.1(b)(10)(C). The Court will address each in turn.

Will-Darnall's *ex post facto* argument is premised on a 2024 amendment to § 2B1.1(b)(1). The Guidelines provision at issue provides for an increase in the offense level based on the loss involved and provides a table with increases ranging from 2 points (for a loss of more than $6,500 but no more than $15,000) to 30 points (for a loss exceeding $550,000,000).

Prior to 2024, § 2B1.1(b)(1) itself did not define "loss." The commentary to the provision, however, specified that loss should be measured by "the greater of actual loss or intended loss." In 2024, the Sentencing Commission amended § 2B1.1(b)(1) to include that language in the Guidelines rather than in commentary. *See* § 2B1.1(b)(1) *Notes to Table (A) ("Loss is the greater of actual or intended loss.").[2]

Will-Darnall contends that applying the 2024 version of the Sentencing Guidelines to her offense (which occurred when the 2018 Guidelines were in effect) poses an *ex post facto* problem

---

[1] At the September 3, 2025 hearing, the Court granted the government's motion for a 1-level decrease pursuant to U.S.S.G. § 3E1.1(b).

[2] The Commission did so after the Third Circuit held, in 2022, that defining "loss" to include "intended loss" was inconsistent with the plain meaning of the word "loss" and that the commentary was therefore not binding on the courts. *See United States v. Banks*, 55 F.4th 246 (3d Cir. 2022).

because, if the Court applies the current Guidelines, she will be deprived of the opportunity to argue that "loss" should be measured solely by the actual loss. The amount of the actual loss here is $2,833,554, which results in a 16-level increase under § 2B1.1(b)(1). The amount of the intended loss is $9,175,083.65. If that amount is used to measure loss, it results in an 18-level increase. Accordingly, measuring loss by the intended loss rather than the actual loss will result in a two-level increase in Will-Darnall's offense level.

Because the definition of loss as the greater of intended or actual loss is incorporated into the 2024 Guidelines, that definition is binding on this Court if it applies that version of the Guidelines. Will-Darnall contends that if this Court applies the 2018 version of the Guidelines, however, she can argue that the commentary defining loss should be ignored because "loss" is unambiguous and includes only actual loss. *See Kisor v. Wilkie*, 588 U.S. 558, 574–76 (2019) (concluding that courts should defer to an agency's interpretation of its own rules only where the rule is genuinely ambiguous, the agency's reading is reasonable, and the "character and context" of the interpretation entitle it to controlling weight); *United States v. Castillo*, 69 F.4th 648, 655 (9th Cir. 2023) ("The more demanding deference standard articulated in *Kisor* applies to the Guidelines' commentary"); *Banks*, 55 F.4th 246 (declining to defer to commentary's definition of "loss" as including "intended loss").

For several reasons, the Court concludes that the circumstances here do not pose any *ex post facto* concerns and that the Court must therefore apply the 2024 Guidelines.[3]

First, it is not at all clear that the commentary to the pre-2024 Guidelines could be disregarded even when applying *Kisor* deference. The Ninth Circuit has held that the term "loss" is genuinely ambiguous and that the Sentencing Commission's commentary is of a "character and

[3] Under the specific circumstances of this case, the ultimate adjusted offense level is the same under either version of the Guidelines, because the 2024 Guidelines, unlike the 2018 Guidelines, provide for a 2-point reduction in Will-Darnall's offense level due to her status as a zero-point offender, *see* U.S.S.G. § 4C1.1, and the Court must apply any particular Guidelines Manual in its entirety, *see* U.S.S.G. § 1B1.11(b)(2). Because it seems that the question of whether a particular Guidelines amendment creates *ex post facto* concerns should be the same whether or not a particular defendant is entitled to a different reduction that is entirely unrelated to the amendment at issue, the Court will not rely upon that reduction's availability in determining whether to apply the 2018 Guidelines.

context" that generally entitles it to controlling weight. *See United States v. Yafa*, 136 F.4th 1194, 1198–99 (9th Cir. 2025). Accordingly, the only question is whether the Commission's commentary defining loss to include actual or intended loss is reasonable.[4] As the Ninth Circuit recently noted in an unpublished disposition, the commentary's definition of loss to include actual or intended loss is consistent with other Guidelines provisions that define "harm" to include both the harm that resulted from the defendant's conduct and the harm that was "the object" of that conduct. *United States v. Diop*, 2025 WL 2602277, at *2 (9th Cir. Sept. 9, 2025) (discussing U.S.S.G. § 1B1.3(a)(3)). As the Ninth Circuit noted, this interpretation permits courts to fully assess the seriousness of the offense and the defendant's culpability. *Id.* (citing *Yafa*, 136 F.4th at 1198).

Second, and more importantly, the concerns that animate the *ex post facto* clause are not implicated by applying the 2024 Guidelines here. That clause was designed to prevent legislatures from enacting "arbitrary or vindictive" legislation. *Miller v. Florida*, 482 U.S. 423, 429 (1987). "[C]entral to the *ex post facto* prohibition is a concern for 'the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated.'" *Id.* at 430. Here, there is no suggestion that the 2024 Guidelines amendment was "arbitrary or vindicative," and Will-Darnall cannot reasonably contend that she was denied fair notice that intended loss might be used in calculating her Guidelines sentence. As noted already, even in 2018 the Commission's commentary expressly provided her with notice of the Commission's view as to the proper definition of loss. That view was entitled to "controlling weight" at least until the Supreme Court's 2019 decision in *Kisor*, and arguably until the Ninth Circuit suggested in 2023—well after the conduct at issue here—that its prior decisions recognizing the weight owed to the Commission's commentary were irreconcilable with *Kisor*. *See Castillo*, 69 F.4th at 655–56. Unsurprisingly, then, if Will-Darnall were to have researched Ninth Circuit precedent at the time of her conduct, she would have found numerous decisions applying the commentary's definition of loss to include intended loss. *See, e.g.*, *United States v.*

[4] As Will-Darnall notes, the Ninth Circuit expressly declined to address this issue in *Yafa*.

Morris, 744 F.3d 1373, 1374 (9th Cir. 2014) ("Under § 2B1.1, a defendant's base offense level is increased according to the amount of loss caused by the offense, where the initial measure of 'loss' is the greater of actual or intended loss."); *United States v. Lindsey*, 775 Fed. Appx. 333 (9th Cir. Aug. 19, 2019) (affirming district court's intended loss calculation).

Under these circumstances, the Court cannot conclude that *ex post facto* concerns counsel against applying the 2024 Guidelines. Accordingly, the Court will determine the amount of loss here by the greater of the actual or intended loss. As noted already, the intended loss here was $9,175,083.65—more than $6,000,000 above the actual loss. Ms. Will-Darnall's offense level will accordingly be increased by 18 levels pursuant to U.S.S.G. § 2B1.1(b)(1)(J).

As noted above, the government contends that Ms. Will-Darnall's offense level should be increased by 2 additional levels based on her use of a sophisticated means. *See* U.S.S.G. § 2B1.1(b)(10)(C).[5] The Guidelines commentary defines sophisticated means as "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). Here, Ms. Will-Darnall's offense conduct was neither especially complex nor especially intricate. Although she applied for the loans at issue through two corporate entities, the evidence before the Court suggests that those entities were actual entities associated with Ms. Will-Darnall, rather than fictitious entities created solely for the purposes of submitting false applications. And while her applications included some falsified tax and bank records, the number of falsified documents was relatively small and the modifications to the records at issue were the kind of changes anyone with access to PDF editing software could make. In the context of Ms. Will-Darnall's overall course of fraudulent conduct, the means through which she accomplished her fraud were not especially sophisticated and did not go significantly beyond what may be seen in a typical fraud case.[6]

[5] Neither the probation officer nor Ms. Will-Darnall believes that the sophisticated means enhancement applies here.

[6] The government notes that Ms. Will-Darnall is also accused of diverting funds into assets with clouded titles in order to protect the funds from judgments in certain pre-conduct lawsuits. Because this conduct does not relate to the means Ms. Will-Darnall used to defraud the government, however, it would not support applying a sophisticated means analysis here.

Based on the foregoing analysis, the Court calculates Ms. Will-Darnall's adjusted offense level under the 2024 Guidelines as follows:

Base offense level:	7	U.S.S.G. § 2B1.1(a)(1)
Specific offense characteristics:		
Loss of more than $3,500,000:	18	U.S.S.G. § 2B1.1(b)(1)(J)
Acceptance of responsibility:	-3	U.S.S.G. § 3E1.1
Zero-point offender:	-2	U.S.S.G. § 4C1.1
Adjusted Offense Level:	**20**	

As noted already, Ms. Will-Darnall's criminal history score is zero and her criminal history category is I. The Guidelines therefore recommend the following sentence for Ms. Will-Darnall: a term of 33-41 months satisfied by a term of imprisonment, *see* U.S.S.G. § 5C1.1(f); a term of supervised release of 2 to 5 years on Count 1, *see* U.S.S.G. § 5D1.2(a)(1), and 1 to 3 years on Count 2, *see* U.S.S.G. § 5D1.2(a)(2), a fine of $15,000 to $1,000,000, *see* U.S.S.G. § 5E1.2; restitution in the full amount of the victim's loss, *see* U.S.S.G. § 5E1.1; a mandatory assessment of $100 per count, 18 U.S.C. § 3013; and forfeiture as provided by statute, *see* 18 U.S.C. § 982(a)(2)(A).

At the continued sentencing hearing on September 24, 2025, the parties should be prepared to address this Guidelines recommendation as well as the other sentencing factors set forth in 18 U.S.C. § 3553(a).

IT IS SO ORDERED.

Dated: September 22, 2025

P. Casey Pitts
United States District Judge