IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA	**)**	
	)	
v.	**)**	**5:23-CR-00087-MHH-HNJ**
	)	
JENNIFER CORINNE SCOGGINS	**)**	

GOVERNMENT'S SENTENCING MEMORANDUM AND OPPOSITION TO DEFENDANT'S MOTION FOR DOWNWARD VARIANCE

The United States opposes the Defendant's Motion for a Downward Variance, Dkt. No. 33, and requests a 21-month custodial sentence because it is sufficient, but not greater than necessary, to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence.

I. FACTUAL AND PROCEDURAL BACKGROUND

During the span of several months in 2021, the Defendant conspired with her husband to fraudulently obtain Paycheck Protection Program (PPP) loans totaling more than $1.14 million. *See generally* PSR ¶¶ 12-25. The Defendant submitted several PPP loan applications replete with material misrepresentations and supported by fraudulent documentation, including fake tax records, payroll documents, and bank statements. *Id.* ¶¶ 18-25. The Defendant did not spend the PPP loan proceeds to retain employees during the COVID-19 pandemic, but, rather, spent the proceeds on a home, automobiles, family vacations, and personal expenses. *Id*. ¶ 25.

As a result of this conduct, the Defendant and her husband, John David Scoggins, were charged in a five-count Indictment with conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 and substantive wire fraud in violation of 18 U.S.C. § 1343. *Id*. ¶¶ 1-6. The Defendant pleaded guilty as charged to Count 1 of the Indictment and the government agreed to dismiss the remaining counts. *Id*. ¶¶ 8, 73. The parties stipulated for the purposes of sentencing that the total loss amount was greater than $550,000 but less than $1,500,000. *Id*. ¶ 31.

II. SENTENCING RECOMMENDATION

A. The Calculation of the Defendant's Guidelines Range

Although the guidelines are advisory, they remain "the starting point and the initial benchmark" in determining the sentence that would be "sufficient, but not greater than necessary, to comply with the purposes set forth in" 18 U.S.C. § 3553(a). *Gall v. United States*, 552 U.S. 38, 49 (2007). The guidelines reflect the Sentencing Commission's examination of "tens of thousands of sentences" over many years, and they "seek to embody the Section 3553(a) considerations, both in principle and in practice." *Rita v. United States*, 551 U.S. 338, 349 (2007). It is therefore "fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve" those statutory goals. *Id.*

Here, the PSR calculates the Defendant's total offense level as follows:

- The Sentencing Guideline for 18 U.S.C. § 1349 is U.S.S.G. § 2B1.1. PSR ¶ 30. Pursuant to § 2B1.1(a)(1), because of the twenty-year statutory maximum, the base offense level is 7. *Id.*

- Pursuant to U.S.S.G. § 2B1.1(b)(1)(F) because the loss exceeded $550,000 but did not exceed $1,500,000, the offense level is increased by 14 levels. *Id.* ¶ 31.

- Pursuant to §§ 3E1.1(a)-(b) because the defendant has demonstrated acceptance of responsibility for the offense and timely assisted authorities in the investigation or prosecution of her own misconduct, the offense level is decreased by 3 levels. *Id.* ¶¶ 37-38.

- Pursuant to U.S.S.G. §§ 4C1.1(a) and (b) because the defendant is a Zero-Point Offender, the offense level is reduced by two levels. *Id.* ¶ 39.

Probation determined her total offense level is 16, *id.* ¶ 40, her criminal history category is I, *id.* ¶ 45, and therefore her advisory guidelines sentencing range is between 21 and 27 months within Zone D of the Sentencing Table. *Id.* ¶ 72.

B. Objections to the PSR

Neither party objected to the PSR.

C. The Recommended Sentence is Fair and Reasonable

A custodial sentence of 21 months is appropriate and would meet the objectives set forth in 18 U.S.C. § 3553(a), particularly given the nature and circumstances of the Defendant's crime; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; and the need to afford adequate deterrence. 18 U.S.C. § 3553(a)(1), (2)(A)-(B).

First, the nature and circumstances of the Defendant's crimes support a custodial sentence. *See* 18 U.S.C. § 3553(a)(1). Though the Defendant is not being sentenced for a crime of violence, economic crimes, like those at issue here, are just as serious as violent crimes and drug offenses. Thus, the Sentencing Guidelines should not be ignored or discounted just because the Defendant is being sentenced for what is typically referred to as a "white-collar" crime. The Defendant's conduct is particularly pernicious because she purposefully defrauded a government program designed to aid struggling small businesses and prevent countless Americans from losing their jobs and livelihoods due to the pandemic. Such egregious conduct, and the greed demonstrated by the Defendant, support the government's recommended sentence.

Second, a 21-month custodial sentence will "reflect the seriousness of the offense, [] promote respect for the law, and [] provide just punishment." 18 U.S.C. § 3553(a)(2)(A). The Defendant's conduct demonstrated a disregard for the law and a fundamental failure to appreciate the purpose of the PPP loans designed to aid legitimate small businesses suffering financial harm because of the COVID-19 pandemic. The seriousness of the offense is reflected in the scale and audacity of the fraud. The Defendant did not simply apply for a fraudulent PPP loan in her own name, but rather concocted a scheme to create multiple, fictitious business entities that claimed to employ dozens of people who, in fact, did not exist. *See generally*

PSR ¶¶ 18-25.

For instance, the Defendant submitted a PPP loan application in the name of River Peach Apparel claiming to employ 11 people at an average monthly payroll of $83,017. *Id*. ¶ 23. The Defendant supported this lie with fraudulent IRS Form 941s ("Employer's Quarterly Federal Tax Return) she never filed, payroll records for non-existent employees, and false customer shipping records with U.S. Postal Service tracking numbers resolving to different destinations than listed. *Id*. The Defendant scaled this scheme and ultimately defrauded taxpayers of more than $1.14 million. The sheer volume of the Defendant's fraud belies her argument that due to the pandemic she "became deeply afraid and desperate to secure the safety and wellbeing of her family through those uncertain times." Dkt. No. 33 at 4. Securing the wellbeing of one's family is a far cry from using PPP loans to buy new cars and pay for family vacations.

Third, the recommended sentence is necessary to promote deterrence. *See* 18 U.S.C. § 3553(a)(2)(B). As the Eleventh Circuit recently explained, "Congress, the United States Sentencing Commission, and this Court have all decided that general deterrence is a critical factor that must be considered and should play a role in sentencing defendants, including those who wear white collars . . . ." *United States v. Howard*, 28 F.4th 180, 208 (11th Cir. 2022) (citations omitted). Indeed, this § 3553(a) factor is particularly important in cases like this one. That is "[b]ecause economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity," which makes them "prime candidates for general deterrence." *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal marks and citations omitted). "White collar criminals often calculate the financial gain and risk of loss of their crimes, and an overly lenient sentence sends the message that would-be white-collar criminals stand to lose little more than a portion of their ill-gotten gains and practically none of their liberty." *Howard*, 28 F.4th at 209 (internal marks and citations omitted).

COVID-19 pandemic fraud, whether in the form of PPP loans, increased unemployment insurance benefits, or other government programs, must be sentenced with an eye toward deterring such criminal acts in the future. It is widely reported that pandemic stimulus programs resulted in unprecedented fraud and billions of dollars in estimated loss. *See e.g.*, *Justice Department Reports More than $8 Billion in Alleged Fraud Tied to Federal Coronavirus Aid Programs*, THE WASHINGTON POST (Mar. 10, 2022) (*available at* https://www.washingtonpost.com/us-policy/2022/03/10/justice-department-coronavirus-aid-fraud/). Rigorous sentences for COVID-19 program fraudsters will deter crimes against such programs during America's next pandemic or equivalent disaster.

D. A Downward Variance is Not Warranted

The Defendant seeks a custodial sentence of 12 months plus one day, an approximately 43 percent departure from the government's low-end recommendation. *See* Dkt. No. 33 at 4-5. A downward variance is not warranted here for the reasons stated above. Moreover, to the extent the Defendant is asking the Court to consider her acceptance of responsibility or "her lack of prior criminal history" as justifications for the variance, *id*., Probation already applied three- and two-level reductions for acceptance of responsibility and Zero-Point Offender status respectively. PSR ¶¶ 37-39.

III. CONCLUSION

The Defendant's crimes were serious. The government recommends a custodial sentence of 21 months and opposes the Defendant's Motion for a Downward Variance.

Dated: April 18, 2024
Birmingham, Alabama

Respectfully submitted,

PRIM F. ESCALONA
United States Attorney

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CERTIFICATE OF SERVICE

I certify that on April 18, 2024, I filed a copy of the above pleading electronically using CM/ECF, which caused a copy to be sent to counsel of record.

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