

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**UNITED STATES OF AMERICA,
PLAINTIFF,**

V.

CASE NO.: 2:24-cr-00192-01

**KISHA SUTTON,
DEFENDANT.**

DEFENDANT'S SENTENCING MEMORANDUM

NOW COMES the Defendant, Kisha Sutton, by and through her counsel, Connor Robertson, and submits the following Sentencing Memorandum:

CONVICTION AND GUIDELINE CALCULATION

As the Court is aware, Ms. Sutton stands convicted of *aiding and abetting bank fraud* in violation of **18 U.S.C. §§1344 and 2**, and of *aiding and abetting money laundering* in violation of **18 U.S.C. §§ 1956(a)(1)(B)(i) and (2)**. As indicated in the Presentence Investigation Report ("PSR"), dated November 17, 2025, the **Total Offense Level** for Ms. Sutton is 19. *See PSR* ¶ 87. Ms. Sutton's **Total Criminal History Score** places her in Category I as a zero point offender. *Id.* Thus, Ms. Sutton's corresponding sentencing guideline range, as calculated by probation, is **30-37 months**.

For all of the reasons set forth below, Ms. Sutton respectfully requests the Court to sentence her well below this guideline range after applying the following departures and variances which will allow the Court to fashion a sentence for Ms. Sutton that is sufficient, but not greater than necessary. To be clear, Ms. Sutton seeks a probationary or home confinement sentence. Ms. Sutton's letter to the Court is attached as *Exhibit 1*.

RELEVANT GUIDELINE DEPARTURES

A. §5H1.6 Family Ties and Responsibilities - Loss of Caretaking and Support

Ms. Sutton carries significant family responsibilities. She is the sole provider for her household and the only source of financial support. She pays the rent, utilities, phone, and all household expenses. Ms. Sutton is the mother of two children, and her youngest, who is 18 years old, is currently in college and six months pregnant. Her pregnancy is high risk and requires continuous medical attention. Ms. Sutton provides health insurance through

her employment and she assists with all medical and pregnancy related costs for her daughter. Ms. Sutton also serves as her doula, attending her daughter's appointments and preparing to support her through childbirth. Without Ms. Sutton's presence for her daughter, she would have no reliable caretaker or financial stability during this critical time in her life.

Additionally, Ms. Sutton has taken in her niece's three children - ages 7, 10, and 15 - while their mother recovers from serious health complications in a nursing home. Ms. Sutton has cared for them for the past three months, ensuring they have stability, love, and support. Ms. Sutton is also responsible for assisting her elderly and disabled mother with daily living needs, including cooking, cleaning, and transportation. These dependants all rely on Ms. Sutton daily, both emotionally and financially.

§ 5H1.6 sets forth a non-exhaustive list of circumstances for the Court to consider in determining whether a departure for family ties and responsibilities is warranted. Ms. Sutton certainly appreciates the seriousness of the offense and by further argument does not intend to suggest otherwise; however, in comparison to other statutory offenses this Court sees regularly (drugs, guns, and other violence), her offense's seriousness is somewhat lessened. Ms. Sutton's elevated guideline is tied to the dollar figure amount of loss, but she did not receive the financial benefit of the total amounts. Ms. Sutton recognizes her responsibility in the total loss amounts, but her co-defendants, who each received substantially greater amounts of the money, all received lesser sentences. This factor should weigh in Ms. Sutton's favor. The next two factors are not relevant to Ms. Sutton's offense conduct.

Beyond the factors above, because Ms. Ball is seeking departure on the basis of loss of caretaking or financial support, the following circumstances must also be present: (i) a within-range sentence would "cause a substantial, direct and specific loss" of either essential caretaking or financial support of Ms. Ball's family; (ii) such a loss "exceeds" the harm ordinarily incident to incarceration for a similarly situated defendant; (iii) "no effective remedial or ameliorative programs are reasonably available," so that the defendant's support is "irreplaceable"; (iv) a departure "effectively will address the loss of caretaking of financial support."

Again, in Ms. Sutton's case, all of these circumstances are present. A prison sentence of 30-37 months would leave three school aged children without their sole-caretaker. Those children would be without financial support provided by Ms. Sutton as well as medical, educational, and housing. Ms. Sutton's youngest daughter will lose her insurance and medical support by incarceration. Incarceration would impact Ms. Sutton's family and dependents more substantially than any other mother facing charges. First, there are likely far fewer single mothers and caretakers of four children who have no fatherly or extended family support; thus, finding a similarly situated mother would be difficult. Regardless, a prison sentence for Ms. Sutton would essentially orphan her three dependents. This is not a just result. Foster care for her niece's children and loss of medical insurance and care can and should in no way be considered an "effective remedial program" to substitute for her care and financial support. In many ways, as the Court can imagine, foster care does more harm than good to children. Finally, a departure into a probationary or alternative sentence would solve the financial and supportive care for Ms. Sutton's dependents, while also appropriately addressing the seriousness of her offense. Ms. Sutton's familial relationship with her dependents is irreplaceable and more unique than the average family. This is especially true when her mother is disabled and her niece is in a nursing home.

B. §Aberrant Behavior

Ms. Sutton is 44 years of age and has zero criminal history. Not a single crime has ever been charged against her. Ms. Sutton is not a criminal, she is a single mother who has been employed and a productive member of society. It is undeniable that covid was a strange time for people with strange government regulations programs, Ms. Sutton got caught up in the weirdness of the times. Ms. Sutton meets all of the aberrant behavior criteria as Ms. Ball's instant offense was essentially a single scheme of limited duration and represents a marked deviation by Ms. Sutton from and otherwise law-abiding life. §5K2.20(b).

C. Combination of Factors

The Court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which otherwise suffices as a basis for departure when (1) such offender characteristics or other

circumstances, taken together, make the case an exceptional one; and (2) each offender characteristic or other circumstance is present to a substantial degree; and identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily relevant to a determination of whether a departure is warranted. §5K2.0(c). This allows the Court to consider Ms. Sutton's Loss of Familial Support and Aberrant Behavior together.

RELEVANT §3553(a) FACTORS

Ms. Sutton incorporates herein each and every argument stated above as the Court has the ability to use those arguments to support a variance outside the narrow prescriptions of specific policy statements.

A. The nature and circumstances of the offense.

Ms. Sutton certainly respects the seriousness of her offense(s) conviction and how the victims of this scheme suffered loss. Ms. Sutton, however, did not know that this money was coming from a financial institution as defined by law. She also relied upon her lawyer's advice that the venue in the Southern District of West Virginia was questionable. For those two reasons alone, she chose to go to trial. She could not in good conscience agree to plead guilty to an offense that defied her knowledge. Instead, she attempted to negotiate with the government where she offered to plead guilty to conspiracy to make false statements to a government organization. A crime that the guidelines would treat the same for all intents and purposes. It was the government that refused her acceptance of responsibility.

Ms. Sutton's pretrial release conduct should also be considered. Ms. Sutton has substantially complied with all pre-trial requirements. She has maintained steady employment, supported her family, and attended each and every court appearance. Her home is well qualified and suited for an alternative sentence. Positive Pre-Trial release conduct supports consideration of a variance. *See United States v. Davis*, 20 F.4th 1217, 1221 (8th Cir. 2022). (8th Circuit affirmed a downward variance based upon a combination of the defendant's "meritorious military career" and positive pretrial release conduct).

B. The history and characteristics of Ms. Sutton.

As stated above, Ms. Sutton has no criminal history, has maintained a productive employment record, and is a caretaker for her family. For the past seven years, Ms. Sutton has been employed with an organization that provides vital support and services to individuals living with HIV. Her position allows her to give back to the community in meaningful ways, helping vulnerable members access care and maintain stability. Her work is not just a job, it represents her commitment to serving others and being a positive force in the community. She is proud of her work. In addition, she is currently in counseling to address depression, anxiety, and stress. Ms. Sutton's sessions have been an essential part of her growth in getting her through this prosecution. Through counseling, she has gained a greater understanding of her choices, the consequences, and how to move forward in a positive and responsible manner. Ms. Sutton is committed to continuing this work for her mental and emotional health, and to ensure that she does not repeat the mistakes of her past.

C. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment.

A probationary sentence or home confinement would reflect the seriousness of Ms. Sutton's conduct. Ms. Sutton has never been imprisoned in her life. Prison has greater significance for those imprisoned for the first time. Federal Courts have granted variances after considering that a defendant has not previously served time in prison. Judge Chambers frequently considers this argument out of the Huntington Division. . *See United States v. Baker*, 445 F.3d 987 (7th Cir. 2006) (affirming non-guideline sentence, justified in part by judge's finding that a imprisonment would mean more to this defendant than one who has been imprisoned before, which resonated with the goal of "just punishment" in Section 3553(a)(2)(A) and "adequate deterrence" in Section 3553(a)(2)(B)).

A probationary or home confinement sentence would reflect the seriousness of the offense, promote respect for the law, and provide just punishment all while allowing her to continue her employment and make restitution to the victims.

CONCLUSION

For the reasons stated above, the Defendant, Kisha Sutton, begs for mercy from this Court and respectfully asks for a sentence of probation.

Respectfully submitted,

Kisha Sutton

By counsel,

s:// Connor Robertson
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CERTIFICATE OF SERVICE

I, Connor D. Robertson, do hereby certify that on this 24th day of November, 2025, I electronically filed the foregoing "DEFENDANT'S SENTENCING MEMORANDUM" with the court using the CM/ECF system which will send notification of such filing to the below counsel of record addressed to:

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Assistant United States Attorney
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