IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 1:22cr32-AW/MAL

JOSEPH HARDING
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GOVERNMENT'S SENTENCING MEMORANDUM

Joseph Harding is a businessman and former member of the Florida House of Representatives. As he proudly served the citizens of Florida's 22nd District, Harding took advantage of relief programs designed to help businesses recover from the covid-19 pandemic, bilking the federal government of $150,000. For this conduct, Harding pleaded guilty to wire fraud (Count One), money laundering (Count Three), and making false statements (Count Five). For the reasons explained in this memorandum, § 3553(a) factors warrant a sentence of incarceration.

I. INTRODUCTION

The Presentence Investigation Report ("PSR"), ECF No. 42, and the Statement of Facts, ECF No. 29, set out the details of Harding's crimes. This Court may rely on the Statement of Facts and the undisputed facts in the PSR to impose its sentence. *United States v. Philidor*, 717 F.3d 883, 885 (11th Cir. 2013).

II. APPLICATION OF 18 U.S.C. § 3553(A) FACTORS

After the Court calculates a defendant's advisory guideline range, it "may impose a more severe or more lenient sentence as long as the sentence is reasonable." *United States v. Williams*, 435 F.3d 1350, 1353 (11th Cir. 2006) (quoting *United States v. Crawford*, 407 F.3d 1174, 1179 (11th Cir. 2005)). In determining the proper sentence, this Court must weigh the factors enumerated in § 3553(a). These include:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to protect the public; (5) the need to provide the defendant with needed educational or vocational training and medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims.

United States v. Ochoa-Torres, 519 F. App'x 583, 584 (11th Cir. 2013). The § 3553(a) factors mirror the reasons traditionally recognized for imposing sentence: (a) retribution, (b) deterrence, sometimes referred to as "general deterrence" (the need to deter others from committing like crimes), (c) incapacitation, sometimes referred to as "specific deterrence" (the need to prevent the defendant from committing crime), and (d) rehabilitation. *Bullington v.*

Missouri, 451 U.S. 430, 443 n.16 (1981); *United States v. Godfrey*, 22 F.3d 1048, 1058 (11th Cir. 1994).

In this case, the need for general deterrence is the most important factor, and it weighs in favor of a guideline sentence. However, the Government acknowledges that mitigating circumstances—including Harding's genuine remorse and exceptional acceptance of responsibility—may warrant a downward variance.

A. The Nature and Circumstance of the Offense and the History and Characteristics of the Defendant – 18 U.S.C. § 3553(a)(1)

1. The Offense Conduct

As the PSR and Statement of Facts lay out in detail, Harding fraudulently applied for two SBA loans. The Vak Shack, Inc., loan was funded, resulting in the loss of $150,000. The Harding Farms, LLC, loan was denied, but only because Harding did not provide the SBA with sufficient business and tax documentation (which he couldn't do because the application information was false). *See* Exhibit A at p.1 (start from bottom of page and read up). Although the pandemic-relief funds were intended for honest business owners—to whom these funds meant the difference between survival and financial ruin—Harding used them to pay his credit card balance and Shiloh Oil Company (owned by his brother-in-law, Patrick Walsh, who himself had committed extensive pandemic-related loan fraud).[1]

2. The History and Characteristics of the Defendant

Harding's family life and upbringing are set forth in the PSR. *See* ECF No. 36 at ¶¶ 51-66. Harding's professional accomplishments and contributions to the community are commendable. However, the guidelines "authorize no special sentencing discounts on account of economic or social status." *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013). Moreover, Harding's intentional criminal acts while serving as an elected state representative signify a betrayal of the public's trust. "[G]ood people can make bad decisions and they're still held accountable for their conduct." *United States v. Vaughan*, 525 F. App'x 871, 877 (10th Cir. 2013).

B. The Sentence Should Reflect the Seriousness of the Offense, Promote Respect for the Law, Afford Adequate Deterrence to Criminal Conduct, Protect the Public from Further Crimes of the Defendant, and Provide Just Punishment for the Offense - 18 U.S.C. § 3553(a)(2)

1. The Seriousness of the Offense

Section 3553(a)(2)(A) embraces the concept of "just deserts," "which carries the need for retribution, the need to make the punishment fit the crime, and the

[1] Patrick Walsh was sentenced by this Honorable Court on January 31, 2023, following his guilty plea to wire fraud and money laundering. *See* NDFL case # 1:22cr00024-AW. Walsh was sentenced by this Honorable Court to be imprisoned for 66 months.

need not just to punish but to punish justly." *United States v. Irey*, 612 F.3d 1160, 1206 (11th Cir. 2010) (en banc). This factor weighs in favor of a guideline sentence.

Economic crimes are as serious as many other cases that come before this Court. This is especially true when, as here, the case involves a scheme to defraud federal government benefit programs during an unprecedented pandemic. The Sentencing Guidelines should not be discounted simply because Harding is being sentenced for what are typically referred to as "white-collar" crimes. That Harding caused actual loss of only $150,000—a relatively small figure—should not overshadow the fact that he attempted to fraudulently obtain government funds via a separate, second false loan application.

The seriousness of the offense is exacerbated by another fact: at the time of the false applications, Harding was a state representative. Fraud committed by public officials, "even for relatively minor gains, impose a tremendous social cost when finally exposed, for they weaken the public's trust and confidence in government and breed a cynicism that only encourages more crime, more corruption, and more wrongdoing." *United States v. Loughry*, No. 2:18-CR-00134, 2019 WL 660353, at *7 (S.D.W. Va. Feb. 11, 2019). In other words, "[t]here has to be a sense that we give to the public that we are going to safeguard the integrity of our system...[t]hat we will hold our public officials to a higher standard[.]" *United States v. Sampson*, 898 F.3d 287, 314 (2d Cir. 2018).

In fact, the SBA-OIG estimates that the SBA disbursed over $200 billion in potentially fraudulent COVID-19 pandemic relief funds, including EIDLs, meaning at least 17 percent of all COVID-19 EIDL and PPP funds were disbursed to potentially fraudulent actors. *COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape*, SBA.GOV, https://www.sba.gov/document/report-23-09-covid-19-pandemic-eidl-ppp-loan-fraud-landscape (last visited August 8, 2023). The fruits of Harding's fraud, albeit not an exorbitant amount compared to some other bad actors, still contributed to "the biggest fleecing of America in American history." *In New Oversight Role, House Republicans Target Billions Lost to Covid Relief Fraud*, NBCNEWS.COM, https://www.nbcnews.com/politics/congress/billions-covid-loans-questionable-social-security-numbers-rcna68296 (last visited August 8, 2023).

2. *General Deterrence*

This Court's sentence must also give heed to general deterrence. As the Eleventh Circuit has explained, "general deterrence is a critical factor that must be considered and should play a role in sentencing defendants." *United States v. Howard*, 28 F.4th 180, 208 (11th Cir. 2022). And it is especially important in white collar cases. "The reason is that '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." *Id.* (quoting *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013)). *See also United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (recognizing that "the Congress that adopted the § 3553(a) sentencing factors emphasized the critical deterrent value of imprisoning serious white collar criminals, even where those criminals, even where those criminals might themselves be unlikely to commit another offense"). Indeed, "[w]hite collar criminals 'often calculate the financial gain and risk of loss' of their crimes, and 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 (quoting *Martin*, 455 F.3d 1240).

Although the PPP and EIDL programs are over, there is unfortunately no shortage of people who look to take advantage of government programs, such as disaster assistance programs, federal tax credits, or health care benefit programs. A sentence within the guideline range would send the message to others—including those elected to public office—that defrauding the federal government will result in significant deprivation of liberty and not merely the inconvenience of probation. In fashioning a reasonable sentence, this Court should keep in mind that "[l]eniency undermines general deterrence, and the extreme leniency of a probation sentence undermines it extremely." *Howard*, 28 F.4th at 209.

C. Avoiding Sentencing Disparities - 18 U.S.C. § 3553(a)(6)

The need to avoid unwarranted sentencing disparities also supports a guideline sentence. Courts have imposed lengthy prison sentences in other pandemic fraud cases. For example, the defendant in *Oudomsine* was sentenced to 36 months' imprisonment for wire fraud—an upward variance from the guidelines range of 8 to 14 months—for fraudulently obtaining an $85,000 Economic Injury Disaster Loan (EIDL) and using the proceeds to purchase a $57,789 Pokémon card. *Oudomsine*, 2023 WL 220349, at *3. In another case, a Florida couple was sentenced to 18 months and 30 months in prison, respectively, for their participation in a scheme to file four fraudulent PPP loan and EIDL applications seeking more than $1.1 million. https://www.justice.gov/opa/pr/couple-who-falsely-claimed-be-farmers-sentenced-11-million-covid-relief-fraud. Additionally, a Colorado physician was sentenced to 30 months in prison for fraudulently obtaining and misappropriating approximately $250,000 received from two separate COVID-19 relief loan applications. https://www.justice.gov/opa/pr/physician-sentenced-stealing-approximately-250k-covid-19-relief-programs. A Las Vegas man was sentenced to 21 months in prison for filing fraudulent loan applications seeking over $100,000 in COVID-19 relief loans. https://

www.justice.gov/usao-nv/pr/las-vegas-man-sentenced-prison-committing-covid-relief-fraud-while-pretrial-release.

The Government recognizes that, in terms of financial loss, Harding's crimes were not as egregious as some of the others noted above, or even that of his brother-in-law. But Harding's crimes were not an isolated occurrence; he fraudulently submitted *two* separate applications for SBA EIDL funds in the names of *two* different business entities. In support of the applications, Harding submitted altered bank statements (which were nearly identical to ones submitted in support of his brother-in-law's fraudulent loan application other than the entity name and address on the account and the account number). Compare Exhibit B (bank statement that Harding submitted to the SBA) with Exhibit C (bank statement that Patrick Walsh submitted to the SBA).

D. A Downward Variance May be Warranted[2]

Notwithstanding the foregoing, the Government recognizes that a downward variance may be warranted here. During the Government's investigation, law enforcement spoke with Harding multiple times. Harding readily confessed to his misconduct and provided law enforcement with information about how he ended up committing these crimes. In doing so, Harding did not minimize his own culpability or attempt to shirk responsibility for defrauding the SBA. Additionally,

[2] Yes, you are still reading the Government's sentencing memorandum.

within a few weeks of his initial interview with law enforcement, Harding had fully repaid the SBA.

"A sentence's variance outside the guidelines range, whether upward or downward, represents a district court's judgment that the combined force of the other § 3553(a) factors are entitled to greater weight than the guidelines range. Otherwise, there would never be any variances." *United States v. Rosales-Bruno*, 789 F.3d 1249, 1259 (11th Cir. 2015); *see also United States v. Irey*, 612 F.3d 1160, 1182 (11th Cir. 2010) (en banc) (explaining that a case falls "outside the heartland" when "there [is] something unusual, either about the defendant or the circumstances surrounding the crime," that warrants a sentence outside of the guidelines range). A district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case outside the heartland to which the Commission intends individual Guidelines to apply. *Kimbrough,* 552 U.S. at 109.

Harding made poor choices when he submitted his false applications for SBA loans. But since getting caught, Harding has done almost everything that could be expected of a person who is facing federal felony charges. He promptly confessed to law enforcement and paid restitution to the SBA, and he further assisted law enforcement with their investigations. Although he declined to be charged by information (which would have saved resources associated with the grand jury), Harding entered a guilty plea soon after his arraignment, enabling the government and the Court to allocate their resources efficiently. The government agrees that these facts could warrant a downward variance.

III. CONCLUSION

A *reasonable* variance below the guideline range is probably appropriate. But a term of prison is still necessary to accomplish the §3553(a) factors and the goals of sentencing—namely, general deterrence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

I HEREBY CERTIFY that this memorandum complies with the type-volume limitation of Local Rule 7.1(F) because this pleading contains approximately 2,293 words.

JUSTIN M. KEEN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this 31th day of August, 2023, which will send notification of such filing to all counsel of record.

JUSTIN M. KEEN
Assistant United States Attorney