

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**NADINE CONSUELO JACKSON,**

**Defendant.**

**CASE NO. 3:20-CR-112**

**JUDGE MICHAEL J. NEWMAN**

**SENTENCING MEMORANDUM  
OF THE UNITED STATES**

The United States hereby submits its Sentencing Memorandum for the Court's consideration in connection with the sentencing of Defendant Nadine Consuelo Jackson. Ms. Jackson pleaded guilty to two counts of wire fraud and one count of making a false statement in connection with her fraudulent applications for more than \$2.5 million in emergency COVID-19 relief loans. The funds were meant to keep workers on the job at businesses suffering from the effects of the pandemic. Out of pure avarice, Ms. Jackson misdirected the funds to her own pocket. For the reasons that follow, this serious criminal conduct warrants a guidelines sentence of 41 months of imprisonment, a 3-year term of supervised release, and a restitution order of \$6,020.30.

**BACKGROUND**

Nadine Consuelo Jackson lied to steal millions of dollars from programs designed to help small businesses and the workers they employ. As the virus that causes COVID-19 spread across our Nation, and as the American public came to realize the danger the virus causes, a public health crisis became an economic crisis. Markets crashed, businesses shuttered, and workers lost their jobs. In response to this economic fallout, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act. *See* Pub. L. No. 116-136, 134 Stat. 281 (2020). One of the goals of the Act was to keep workers employed by helping businesses make payroll and pay

operating expenses. To that important end, the CARES Act created one new government program and expanded one existing government program.

The new government program was the Paycheck Protection Program. Created under a CARES Act provision entitled “Keeping American Workers Paid and Employed Act,” the PPP authorized qualifying small businesses to receive forgivable loans to help pay payroll costs, rent, utilities, interest on mortgages, and other permissible expenses. PSR ¶ 23. The size of the PPP loan a particular business may receive is based in part on its average monthly payroll costs. *Id.* PPP loans are entirely forgivable if the funds are used for specified expenses. *Id.*; 15 U.S.C. § 9005(b). In order to obtain a PPP loan, a business must submit a loan application to a financial institution. PSR ¶ 24. The loan application must be signed by an authorized representative of the business and must contain certain information, such as average monthly payroll expenses and number of employees. *Id.* Applicants must also provide supporting documentation, such as payroll reports and federal tax returns. *Id.* Any PPP loans that are funded by financial institutions are fully guaranteed by the United States Small Business Administration. *Id.*

The existing program that the CARES Act expanded was the Economic Injury Disaster Loan Program. Under the EIDL Program, the Small Business Administration provides loans to small businesses experiencing a temporary loss of revenue due to the COVID-19 pandemic. PSR ¶ 25. Whereas financial institutions review PPP applications and fund PPP loans, the Small Business Administration itself administers and funds the EIDL Program. *Id.* Applicants must provide certain business information, such as gross revenue, number of employees, and so on. *Id.* Federal law authorizes EIDL proceeds to be used to pay fixed debts, payroll, accounts payable, and other approved expenses. *Id.* At the time, applicants could receive EIDL advances of up to \$10,000. These advance funds did not have to be repaid.

In many respects, the PPP and EIDL Programs were successful in their goal of keeping workers on the job and keeping businesses open. The Small Business Administration's rapid response quickly made billions of dollars of capital available to businesses harmed by the pandemic. But speed had a cost. Fraudulent borrowers were able to take advantage of the loan programs and tap into the money, to the detriment of struggling businesses.

Defendant Nadine Consuelo Jackson was one of these fraudulent opportunists. On March 29, 2020—two days after the CARES Act was enacted—Ms. Jackson submitted a loan application to the EIDL Program on behalf on Extract LLC. PSR ¶ 28. Extract LLC was a company that Ms. Jackson had established in 2016. PSR ¶ 26. The company had obtained a license to be a Private Investigation and Security Service business. *Id.* To maintain such a license, a business must register any employees with the State of Ohio. *Id.* In its paperwork to the State, the only listed employee for Extract LLC was Ms. Jackson. Notwithstanding that fact, Ms. Jackson's EIDL application reported that she had eight employees. PSR ¶ 28.

On April 3, 2020, Ms. Jackson applied to First Home Bank for a PPP loan of \$1,315,491.12. PSR ¶ 29. Contrary to both her EIDL application and reality, the application stated that Extract LLC had 73 employees and a monthly average payroll of \$526,196.45. *Id.* In addition to the false statements, Ms. Jackson submitted false documents. She provided false Wage and Tax Reports, a false Schedule C, and a false personal income tax return. PSR ¶ 30. Ms. Jackson certified that all this information was true and accurate and that the tax documents were identical to those submitted to the IRS. *Id.*

While Ms. Jackson awaited approval on the PPP loan, her EIDL loan application was approved. On April 14, 2020, Ms. Jackson received an EIDL advance of \$8,000. PSR ¶ 28. Eight

days later, Ms. Jackson received the loan proceeds of \$46,000. *Id.* She would have not received these funds but for her fraudulent application. *Id.*

Unsatisfied with one EIDL loan and one PPP loan, Ms. Jackson applied for a second PPP loan. PSR ¶ 31. On April 20, 2020, she submitted an application to WebBank falsely representing that Extract LLC had 73 employees, but this time stating that its average monthly payroll was \$494,727. *Id.* She supplied the same fraudulent tax documents that she provided to First Home Bank. *Id.* This application sought a loan of \$1,236,817. *Id.*

In early May 2020, First Home Bank approved Ms. Jackson's first PPP loan, though it reduced the loan amount from \$1,315,491.12 to \$1,021,300. PSR ¶ 32. Ms. Jackson approved the reduction and requested that the new amount be processed. *Id.* First Home Bank wired the money to Extract LLC's bank account at River Valley Credit Union in Dayton. *Id.* An eagle-eyed bank employee noticed that this wire was out of pattern for Extract LLC's past account activity and contacted both First Home Bank and law enforcement. *Id.* First Home Bank recalled the wire. *Id.*

On May 27, 2020, WebBank approved Ms. Jackson's second PPP loan and wired \$1,236,817 to Extract LLC's bank account at River Valley Credit Union. PSR ¶ 33. Alert once again, River Valley contacted law enforcement, which obtained a warrant to seize the fraudulent loan proceeds. *Id.* Law enforcement also obtained a seizure warrant for the EIDL proceeds that remained in Ms. Jackson's accounts. Due to the fast work of River Valley Credit Union and federal investigators, all but \$6,020.30 of the \$2,312,117 in fraudulent loan proceeds that had been issued under the three loans was recovered. PSR ¶ 36.

On June 23, 2020, the United States obtained a Criminal Complaint, charging Ms. Jackson with Bank Fraud and Making a False Statement Within the Jurisdiction of an Agency of the United States. (R.1.) The following day, she was arrested. Following plea negotiations, on October 8,

2020, the United States Attorney filed a Bill of Information charging Ms. Jackson with two counts of Wire Fraud, in violation of 18 U.S.C. § 1343, and one count of Making a False Statement Within the Jurisdiction of an Agency of the United States, in violation of 18 U.S.C. § 1001(a)(2). (Information, R.21 at 54–56.) On November 16, 2020, the Parties filed a Plea Agreement, wherein Ms. Jackson agreed to plead guilty to all counts of the Information, to forfeit the proceeds of her criminal activity, and to pay restitution to victims of her crimes. (Plea Agreement, R.24 at 64, 66–67.) On November 18, 2020, Ms. Jackson pleaded guilty. The Court accepted her pleas and adjudged her guilty.

The final Presentence Investigation Report was issued on February 1, 2021. Sentencing in this matter is scheduled for March 16, 2021.

#### **APPLICABLE STATUTORY AND GUIDELINES CALCULATIONS**

##### **A. Statutory Maximum Sentence**

Ms. Jackson’s convictions for two counts of wire fraud in violation of 18 U.S.C. § 1343 subject her to a maximum term of twenty years of imprisonment on each count, a term of supervised release of not more than three years, a fine of not more than \$250,000, and a \$200 special assessment. Ms. Jackson’s conviction for making a false statement within the jurisdiction of an agency of the United States in violation of 18 U.S.C. § 1001(a)(2) subjects her to a maximum term of five years of imprisonment, a term of supervised release of up to three years, a fine of not more than \$250,000, and a \$100 special assessment.

##### **B. Guidelines Calculations**

The Probation Officer calculated that Ms. Jackson’s Total Offense Level is 24 and her Criminal History Category is I. The Probation Officer correctly noted that these calculations would result in advisory guidelines ranges of 51–63 months of imprisonment; a fine of \$20,000 to

\$200,000; and a term of supervised release of 1 to 3 years. PSR ¶¶ 93, 100, 106. There are no unresolved objections, though as described below, the United States believes one downward adjustment to the guidelines is appropriate.

**1. Base Offense Level and Specific Offense Characteristics**

As laid out in the PSR, the base offense level is calculated by looking at all relevant conduct and “grouping” the counts together. PSR ¶¶ 39–44. The governing guideline section for all three counts of conviction here (wire fraud and false statement) is U.S.S.G. § 2B1.1 because the offense level is determined by the total amount of harm or loss. PSR ¶ 44.

Under U.S.S.G. § 2B1.1, the base offense level is seven. PSR ¶ 45. The offense level is increased by sixteen levels pursuant to U.S.S.G. § 2B1.1(b)(1)(I) for a loss of greater than \$1.5 million but less than \$3.5 million. PSR ¶ 46. Ms. Jackson applied for two PPP loans and an EIDL loan through the Small Business Administration totaling \$2,598,408.12. The lenders agreed to send Ms. Jackson \$2,312,117—the actual loss. *Id.*

The United States believes one downward adjustment to the Final PSR’s guidelines calculations is appropriate. Although the Probation Officer applied the two-level increase under U.S.S.G. § 2B1.1(b)(12), the United States will not seek to prove at sentencing that the offense involved conduct described in 18 U.S.C. § 1040. *See* PSR ¶ 47. That statute criminalizes fraud in connection with disaster assistance benefits. More particularly, the relevant portion of Section 1040 prohibits benefits fraud “in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5191).” In other words, Section 1040 does not prohibit fraud in connection with *all* benefits targeted at a disaster, but only benefits in connection with a disaster

declaration under the Stafford Act. Some COVID-19-related government benefits were in connection with a disaster declaration under the Stafford Act, but the United States will not seek to establish at sentencing that the PPP and EIDL benefits Ms. Jackson received in this case fit the bill. The resulting adjustment would lower the Total Offense Level by two levels.

Pursuant to U.S.S.G. § 2B1.1(b)(17)(A), there is a two-level increase if defendant derived more than \$1,000,000 in gross receipts from a financial institution as a result of the offense. PSR ¶ 48. Ms. Jackson received \$1,021,300 from First Home Bank and \$1,236,817 from WebBank.

## **2. Acceptance of Responsibility**

The government agrees that Ms. Jackson is entitled to a three-level downward adjustment to the offense level for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and (b).

With the downward adjustment described above, Ms. Jackson's Total Offense Level would be 22. Her resulting guidelines ranges would be 41–51 months of imprisonment; a fine of \$15,000 to \$150,000; and a term of supervised release of 1 to 3 years.

## **ARGUMENT**

Based on the sentencing factors in 18 U.S.C. § 3553(a), the United States recommends a sentence of 41 months of imprisonment, a 3-year term of supervised release, and a restitution order of \$6,020.30.

*Nature and circumstances of the offense.* Ms. Jackson fraudulently sought to obtain over two million dollars in emergency assistance out of personal greed. The Paycheck Protection Program is designed to help legitimate small business owners to keep their doors open and Americans employed during the current pandemic. But PPP funds are not unlimited, and misdirecting emergency assistance from small businesses who need it to stay afloat harms all of us.

Three aspects of Ms. Jackson's loan applications aggravate her culpability: the number of loans, the value of the loans, and the timing of the loans. Number: Ms. Jackson fraudulently applied for *three* loans under programs meant to protect businesses harmed by COVID-19. Value: Two of the loans exceeded \$1 million, and the attempted loss totaled \$2,598,402.12. Timing: Ms. Jackson submitted her first fraudulent loan application two days after the CARES Act was enacted, and she wasted no time in submitting the other two loans—all three loans applications were submitted in a 22-day period.

Ms. Jackson's crimes are particularly significant in light of the fraud loss. She attempted to receive more than \$2.5 million in SBA loans. PSR ¶ 46. That is not just a large loss in the context of CARES Act cases—it is a large loss in the context of *all* fraud cases. To place this case in a nationwide frame of reference, the loss amount alone makes this a significant criminal fraud case. In fiscal year 2019, all district courts applied the fraud guideline 5,845 times. *See* United States Sentencing Commission, *Use of Guidelines and Specific Offense Characteristics*, at 9–10, *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2019/Use\\_of\\_SOC\\_Guideline\\_Based.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2019/Use_of_SOC_Guideline_Based.pdf). Of those, only 811 involved loss of more than \$1.5 million, as this case does. *Id.* That means Ms. Jackson's offense is in the top 15% of federal fraud offenses, when measured by fraud loss. The sentence should reflect the relative seriousness of her offense.

As small businesses tried to keep their heads about water, Ms. Jackson tried to become a multi-millionaire. It does not mitigate her culpability that the loan proceeds were recovered. She did not return them voluntarily; a financial institution and law enforcement recovered the funds before she could spend them. Given the number, size, and timing of her loans, a substantial term of imprisonment is warranted.

*The need to afford adequate deterrence.* The need to afford general deterrence warrants a substantial term of imprisonment here. “Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Peppel*, 707 F.3d 707 F.3d 627, 637 (6th Cir. 2013) (internal quotation marks omitted).

The importance of affording general deterrence through meaningful sentences is particularly acute when it comes to PPP and EIDL fraud. First, prosecution of loan fraud protects the public interest in preserving the integrity of federal COVID-19 relief programs. These programs will work best when the public knows that the loans go to deserving applicants and that those who cheat the system will be punished. Second, this is the first PPP or EIDL fraud prosecution in this District. Businesses can still apply for PPP and EIDL loans. Others who are tempted to defraud these programs may be deterred by the sentence the Court hands down. The United States’ recommended sentence will promote deterrence of further emergency assistance fraud.

*History and characteristics of the defendant.* The primary mitigating factor in this case is the effect Ms. Jackson’s incarceration will have on four minor children. Ms. Jackson has two sons and also cares for two young children of a family member. PSR ¶¶ 80–81. Sadly, any time a parent of minor children is sentenced, innocent kids suffer. This reality is even more tragic because Ms. Jackson knew this risk when she committed her crimes, and she did it anyway.

The record does not provide sufficient information to evaluate whether a downward departure or variance is appropriate here. Generally speaking, “family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.” U.S.S.G. § 5H1.6. Such a departure may be appropriate where a guidelines sentence “will cause a substantial, direct,

and specific loss of essential caretaking, or essential financial support, to the defendant’s family,” where the defendant’s caretaking is “irreplaceable,” and where the departure will effectively address the loss. U.S.S.G. § 5H1.6 app. n. 1(B). Ms. Jackson bears the burden of establishing an entitlement for a departure. On the current record, she has not met her burden. The PSR does not indicate who would care for the children during Ms. Jackson’s incarceration, though it does indicate that she and the children currently live with her mother and brother in Dayton. PSR ¶ 78. The PSR provides that the fathers of her children pay child support. PSR ¶ 80. It is not clear whether Ms. Jackson’s mother and brother, or alternatively the fathers of her children, would care for the children during Ms. Jackson’s incarceration. Without this information it is not possible to evaluate whether Ms. Jackson meets the high standard for a departure under U.S.S.G. § 5H1.6. On the record currently before the Court, a within-guidelines sentence is appropriate.

Ms. Jackson’s other past hardships do not justify a below-guidelines sentence. After a stable and happy childhood, Ms. Jackson suffered what appears to be severe abuse in her late teens and early adulthood. *See* PSR ¶¶ 77, 79. It is not clear how this abuse would mitigate her culpability. This abuse does not seem to have directly led to her wrongdoing—for example, she did not seek fraudulent loans for funds to escape her abuser or seek mental health treatment—and nothing about that history mitigates her criminality in this fraud case.

*Kinds of sentences available.* Taking all of the factors of § 3553(a) together, a sentence at the low end of the guidelines range would be sufficient but not greater than necessary to achieve the statutory purposes of sentencing. Ms. Jackson has been on pretrial release since this case was initiated. Ms. Jackson has some prior health conditions. *See* PSR ¶¶ 84–85. The United States does not oppose allowing Ms. Jackson to voluntarily surrender for sentencing, and to set her surrender date later than usual. Public health conditions do not justify a noncustodial sentence in this matter.

As vaccines roll out, there is hope that the end of the pandemic is in sight. The Court has the power to set—and if it later becomes necessary, to re-set—a surrender date that will avoid or mitigate any risks to Ms. Jackson from the ongoing pandemic.

### **CONCLUSION**

For these reasons, a sentence of 41 months of imprisonment, a 3-year term of supervised release, and a restitution order of \$6,020.30 would be sufficient but not greater than necessary to achieve the statutory goals of sentencing.

**Respectfully submitted,**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Sentencing Memorandum of the United States was served this 8th day of March, 2021, electronically upon all counsel of record.

s/Peter K. Glenn-Applegate  
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