

Pursuant to the factors set forth in 18 U.S.C. § 3553(a), though, there are many reasons in this case that support a non-custodial sentence. Mrs. Williams recognizes and accepts responsibility for her actions, promptly admitted wrongdoing and pled guilty to an Information; has paid and will continue to pay substantial restitution; and has incurred serious collateral consequences.

II. The Offense Conduct and the Presentence Report.

Mrs. Williams accepts full responsibility for her decision and actions in this case. As detailed in the PSI, and acknowledged by Mrs. Williams, her “actions were serious.”² Mrs. Williams stands by her acknowledgement of her illegal conduct and her acceptance of responsibility for her involvement.³

The Revised Presentence Investigation Report sets Mrs. Williams’s base offense level at 7, pursuant to U.S.S.G. § 2B1.1. Then, pursuant to U.S.S.G. § 2B1.1(b)(1)(E), an 8-level enhancement is added based solely on the intended loss amount attributable to Mrs. Williams, which raises the adjusted offense level to 15, double the base offense level. Then, the PSI provides for a two-level reduction for acceptance of responsibility under to U.S.S.G. § 3E1.1(a), resulting in a total offense level of 13.

Mrs. Williams has no criminal history points and is therefore a criminal history category I.⁴

² PSI, ¶ 37.

³ *Id.*

⁴ PSI, ¶¶ 50 – 54; 74.

The advisory guideline range of imprisonment for a total offense level 13 and a Criminal History Category I is 12-18 months.⁵ This advisory guideline range places Mrs. Williams in Zone C of the Sentencing Table, which advises that the Court may fashion a sentence that includes a term of supervised release that substitutes community or home confinement substituted for one-half of the advisory term of imprisonment.⁶

III. Sentencing Considerations Which Call for a Downward Variance to Accomplish the Purposes Set Forth in 18 U.S.C. 3553(a)(2).

Once the Court has properly calculated the advisory range under the Sentencing Guidelines, the Court is ultimately tasked to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” listed in 18 U.S.C. 3553(a)(2). Put differently, the Guidelines are just “the starting point” for the Court to consider, along with all the § 3553(a) factors. *Gall v. United States*, 552 U.S. 38, 49 (2007). In considering the Guidelines as the “starting point,” the Court “may not presume that the Guidelines range is reasonable. [Rather, the Court] must make an individualized assessment based on the facts presented.” *Id.* at 50, *see also Neslon v. United States*, 555 U.S. 350, 352 (2009) (“The guidelines are not only not mandatory, on sentencing courts; they are also not to be presumed reasonable.”).

Notably, the ultimate guide of Section 3553(a)’s sufficient-but-not-greater-than-necessary clause sets an independent and certain limit on the sentence that a court may impose to meet the goals of sentencing. *See, e.g., United States v. Baker*,

⁵ PSI, ¶ 74.

⁶ *Id.*; U.S.S.G. § 5C1.1(d); *see also* U.S.S.G. § 5C1.1, Application Note 5.

655 F.3d 677, 683 n. 1 (7th Cir. 2011) (stating that the sentencing court is to impose “a minimally sufficient sentence”); *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008) (explaining that a district court evaluating a variant sentence request should consider all relevant § 3553(a) factors as a group and strive to construct a sentence that is minimally sufficient to achieve the broad goals of sentencing”).

Thus, a below guidelines sentence does not have to be justified by “extraordinary” circumstances and is not governed by any “rigid mathematical formula.” *Gall*, 552 U.S. at 47.

Mrs. Williams respectfully submits that after consideration of the § 3553(a) factors, a non-custodial sentence is appropriate in this case.

1. Personal History and Characteristics of Jacinthia Williams.

Mrs. Williams, now 44 years’ old, has lived a commendable life: from raising three children⁷ (one of which was born to Mrs. Williams when she was only sixteen years old);⁸ and then completing her high school education; to strengthening her relationship with her father and now serving him as his sole caretaker during the last stages of his life in hospice care; to earning no criminal history prior to this immediate case;⁹ and working good jobs in the human resources field for the past eighteen years.¹⁰

⁷ PSI, ¶ 60.

⁸ *Id.* at ¶ 67.

⁹ *Id.* at ¶¶ 50 – 54.

¹⁰ *Id.* at 69.

Mrs. Williams's decisions that serve as the basis of this case are a complete departure from her otherwise commendable life.¹¹ As Mrs. Williams noted in her statement of acceptance of responsibility: "[l]ooking back, I cannot believe that I submitted those applications to get money." This case is a stark contrast from the rest of Mrs. Williams's life and not who she is as a person.

Mrs. Williams's true nature is a light that brings hope to others around her. As her husband details in his letter of support:¹²

Jacinthia my wife is the love of my life. I met this adorable lady when I was in a bad struggle and in a dark place in my life ... She really gave me back life to look forward to because I had just lost my mother and brother two months apart and was in deep depression. ... She has three kids that she love with all of her heart, doing and proving as a single mother, really inspired me more.

Perhaps most special to Mrs. Williams, at this time, is her devotion and attention to care for her dying father.¹³ Her father has been living in Windemere nursing home since 2016 and has faced serious battles for his life – his legs have had to amputated twice and he has withered away to a shell of his former self. Sadly, on March 28, 2021, Mrs. Williams's father was placed on hospice care because his kidneys began to fail him. At this time, Mrs. Williams continues to care for her father the best that she can, but also spends her time planning his funeral. Mrs. Williams's

¹¹ In the Statement of Reasons Form (GAS 245 B) required to be completed in all felony cases, "aberrant behavior" is explicitly listed a reason for a variance under the 18 U.S.C. § 3553(a) factors.

¹² Mr. Williams's letter of support is attached hereto as Exhibit 1.

¹³ PSI, ¶ 58 notes that Mrs. Williams's father is 71 years' old and "resides in a nursing home in Augusta, Georgia."

father is expected to pass soon. As Mrs. Williams has relayed to counsel in our preparations to stand before the Court at sentencing:¹⁴

My father has talked to me concerning his burial. I am the only child that sees and cares for my father since he has been sick. I've been seeing my daddy faithful every week since they have opened back up on in April of this year, before that I went window visit every week (I take him his favorite food every week) some time he will have a nurse to call me for special request (food or snacks) ... My father don't talk to many ppl or our family. But he talk to his baby girl about everything. I am a daddy's girl.

Guided by her true nature, Mrs. Williams has done everything that she can to accept full responsibility for her actions and try to right her wrong. She agreed to waive her right to an Indictment and plead guilty to an Information.¹⁵ She has paid back a substantial portion of the loan amounts and will appear before the Court with another substantial payment towards restitution. In her own words: "I will do all that I can to correct the bad decisions that I have made."

¹⁴ This is a text message between Mrs. Williams and undersigned counsel, included here with Mrs. Williams's authorization.

¹⁵ The timeline of Mrs. Williams's plea further demonstrates her true acceptance of responsibility. The target letter to Mrs. Williams was dated September 8, 2020. Mrs. Williams retained undersigned counsel on September 22, 2020. Just two days later, on September 24, 2020, undersigned counsel and Mrs. Williams had their first discussions with the United States Attorney's Office. The Information was filed on November 19, 2020. Mrs. Williams repaid the \$75,900 EIDL loan amount issued to her husband on November 19, 2020.

As another comparison point of Mrs. Williams's true acceptance, the Court can compare the timelines in Mrs. Williams's case to several other defendants were Indicted on similar charges. *See United States v. Whitney Adwan Mack*, 1:20-cr-00104, (indicted on November 5, 2020 and guilty plea entered on June 1, 2021 after pre-trial motions); *United States v. Darryl T. Williams, Sr.*, 1:20-cr-105 (indicted on November 5, 2020 and guilty plea entered on April 27, 2021 after pre-trial motions); *United States v. Orrell Plummer*, 1:20-cr-00106 (indicted on November 5, 2020, superseding indictment returned on June 9, 2021, no guilty plea entered).

2. The Nature and Circumstances of the Offense.

Without minimizing the significance of her actions or making excuses for her conduct, Mrs. Williams respectfully requests that the Court judge the offense not only by its initial conduct, but also by several mitigating factors.

First, Mrs. Williams's conduct was limited in time and scope. Mrs. Williams submitted three loan applications in approximately one month's time. She did not assist others to commit a similar offense or provide any assistance to others to commit a similar crime.

Second, Mrs. Williams admitted her conduct and began efforts to repay the loan proceeds almost immediately. Within two weeks of her first contact with law enforcement agents, Mrs. Williams had met with agents on several occasions. Importantly, Mrs. Williams called to schedule the August 27, 2020 meeting¹⁶ and came in voluntarily and provided a full statement about her conduct in this case.

As an interesting question to guide the Court to a just result, when a crime is committed so similarly as those alleged in this case and in the other PPP loan fraud cases, how does the Court distinguish the culpability of each individual defendant? The United States Sentencing Guidelines suggest a simple, "cookie cutter" equation, driven, almost exclusively, by the amount of loss. Justice in this case, though, should not be handed down in such a formulaic manner because Mrs. Williams's immediate and continuing conduct after contact with law enforcement distinguishes her character and her case from others who have committed similar crimes.

¹⁶ PSI, ¶ 26.

3. **The Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide for Just Punishment.**

The Supreme Court recognized in *Gall* that fashioning a sentence “to promote respect for the law” does not invariably point towards harsher sentences. Referring to the “unique facts of Gall’s situation” -- which included his voluntary rehabilitation -- the Court agreed that “a sentence of imprisonment may work to promote not respect, but derision, of the law, if the law is viewed merely as a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing.” *Gall*, 552 U.S. at 54.

Here, Mrs. Williams has had to live with the consequences of her decisions for over a year, a time plagued by anxiety, stress, and restlessness, during which she voluntarily met with law enforcement agents and began making plans to repay the loan proceeds before she received any notification of criminal charges. Because of the uncertainty of her future, Mrs. Williams had to resign from her well-paying job. Mrs. Williams paid back the vast majority of the loan proceeds and lost what she gained in this crime. For the unique circumstances of this case, a sentence of imprisonment is not necessary to promote respect for the law.

4. **The Need for the Sentence to Deter Crime and Protect the Public from Further Crimes of the Defendant.**

While the certainty of being caught and punished has a deterrent effect, research has shown that “increases in severity of punishments do not yield significant (if any) marginal deterrent effects.” *Michael Tonry, Purposes and Functions of Sentencing*, 34 *Crime & Just.* 1, 28 (2006) (three National Academy of Science panels

reached that conclusion, as has every major survey of the evidence.). This is especially true in a “white collar” case, because there is no proof that a sentence of lengthy imprisonment leads to greater general deterrence of white-collar crimes generally. *See United States v. Yeaman*, 248, F.3d 223, 238 (3rd Cir. 2001) (Nygaard, J., dissenting) (“It is widely recognized that the duration of incarceration provides little or no general deterrence for white collar crimes”).

Here, Mrs. Williams has led a commendable life that was never driven by greed or self-aggrandizement. Her involvement in this case was not driven by factors that this Court needs to protect against in the future and there are no factors, such as criminal history, that enhance the risk of recidivism. *See William Rhodes, et al., Recidivism of Offenders on Federal Community Supervision 11* (Abt. Assocs., 2012). Further, Mrs. Williams has distinguished herself from other defendants charged with similar crimes through her quick and complete acceptance of responsibility and her payment of extraordinary restitution. Simply put, the serious consequences of her actions and the stress and anxiety that this case has caused herself and her family are lesson enough that the Court can be assured that Mrs. Williams will not re-offend in the future. Indeed, a study by the United States Sentencing Commission, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* (March 9, 2017), finds that offenders with zero criminal history points and no prior contact with criminal justice system have the lowest recidivism rate of any offenders.

5. The Need to Provide Restitution.

Understanding the serious nature of her conduct, Mrs. Williams has returned all of the loan proceeds that were still in her possession: approximately \$75,900.00 was paid back last November and Mrs. Williams will pay an additional \$35,000.00 at the time of her sentencing. In total, at the time of her sentencing, Mrs. Williams will have paid \$111,000.00 restitution, or approximately 80% of the \$137,500 loss amount. *See United States v. Kim*, 364 F.3d 1235 (11th Cir. 2004) (holding that district court's downward departure based upon "extraordinary restitution" was appropriate because it demonstrated defendant's "sincere remorse and acceptance of responsibility"). Imposing a non-custodial sentence will allow Mrs. Williams to regain employment, continue to work, and to make full restitution.

IV. Conclusion.

For the reasons above, the Defendant, Mrs. Jacinthia Williams, respectfully requests that the Court impose a non-custodial sentence below the advisory guideline range. In the alternative, if the Court chooses to impose a sentence within the advisory guideline range, Mrs. Williams pleads with the Court to fashion a sentence which will substitute a portion of her imprisonment with a term of home or community confinement.

Respectfully submitted, this 11th day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing SENTENCING MEMORANDUM AND MOTION FOR DOWNWARD VARIANCE on all the parties in this case by electronic notification generated as a result of filing this document.

This 11th day of June, 2021.

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