

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Cr. No. 20-261 (DSD/TNL)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b>DEFENDANT SHARMA’S</b>
	)	<b>RESPONSE TO THE</b>
	)	<b>GOVERNMENT’S POSITION</b>
vs.	)	<b>REGARDING SENTENCING</b>
	)	
ADITYA RAJ SHARMA,	)	
	)	
Defendant.	)	

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Defendant Sharma, by and through his undersigned counsel, hereby submits this response to the government’s sentencing memorandum pursuant to Local Rule 83.10(g). Mr. Sharma submits this response to emphasize two considerations. First, Mr. Sharma disagrees with many of the factual assertions made by Crosscode and discussed in the government’s filing. The Court need not get involved in a factual dispute tangential to the case. Second, Mr. Sharma submits that the government fundamentally errs in its analysis of the 18 U.S.C. § 3553(a) factors.

I. The government’s filing is misplaced via its focus on Crosscode

Mr. Sharma pled guilty because he fraudulently applied for PPP loans. He acknowledged that, accepted responsibility, pled guilty, and admitted the pertinent facts.<sup>1</sup> This is the relevant inquiry at sentencing, not Crosscode or the related disputes.

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<sup>1</sup> Mr. Sharma disagrees with virtually all of the victim impact statement submitted by the CFO of Crosscode (ECF No. 92). He maintains and preserves his arguments made in the civil case filings, reports that Crosscode has not been candid in its representations, and again asserts that Crosscode was taken from him fraudulently.

Since Mr. Sharma was removed from Crosscode, there has been a long, bitter series of legal battles between them. There is a pending federal civil case, 21-cv-1766 (SRN/BRT). That civil case, not this criminal case, is the proper venue to litigate the disputes and financial requests made by Crosscode. There is no need for this Court to make factual determinations or hold an evidentiary hearing to litigate these—it is not necessary or relevant for the Court to do so to craft an appropriate sentence for Mr. Sharma’s PPP crime.

II. *The government’s filing does not provide a balanced perspective of the statutory sentencing factors.*

The government’s position regarding sentencing is dominated by vitriolic, aggressive remarks. The government claims, for example, that:

- Mr. Sharma is an “unscrupulous and opportunistic fraudster” with a “pronounced callous disregard for others” who “shamelessly engorged himself ... with no regard for the harm wrought by his crime.”
- Mr. Sharma’s “history and characteristics offer nothing that might mitigate his criminal conduct”; and
- A “downward departure or low-end sentence [of 63 months imprisonment would...] only incentive Sharma and others to engage in fraud.”

The record does not support such an extreme view. It shows, instead, that Mr. Sharma is a complex person who, after about 45 years of living a productive and law-abiding life, made a series of bad, criminal decisions—who pled guilty and accepted responsibility for those decisions—and who now awaits sentencing.

The record wholly does not support the claim that Mr. Sharma’s personal history and characteristics “offer nothing that might mitigate his criminal conduct.” Mr. Sharma is a 48-year-old man who worked hard his whole life to become educated, start

businesses, support his family, and come from India to build a life in the United States. He has zero criminal history points, and it appears his recent criminal activity coincides with both devastation at losing his company (PSR 52) and medically verified mental health and substance issues (PSR 54, 56). His lack of any criminal convictions in his 20+ years in the United States demonstrates that the current charges are an aberration of his character. These facts provide important context for the Court's sentencing decision.

The government's consistent implications that Mr. Sharma has a blatant disregard for the law is also belied by Mr. Sharma's actions. While under court jurisdiction, Mr. Sharma pled guilty without filing pretrial motions, cooperated with the Court and Probation, and appeared for Court when directed. All agree he has accepted responsibility under the meaning of the guidelines. Indeed, even in the domestic assault situation discussed by the government, when the officers came to the scene, he admitted what he had done and resolved the process through the court system. These show his respect for the legal system.

Finally, the government's position that any downward variance—and even a low-end of the guidelines sentence of 63 months—would “incentivize Mr. Sharma and others to engage in fraud” is simply not realistic. As previously referenced, the Department of Justice itself has acknowledged the scientific conclusions about deterrence. Those conclusions specifically include “Sending an individual convicted of a crime to prison isn't a very effective way to deter crime” and “Increasing the severity of punishment does

little to deter crime.”<sup>2</sup> For any offender, the prospect of being caught, indicted, and prosecuted alone presents a powerful deterrent. This Court should reject the proposition that a 63-month sentence would *incentivize*, rather than deter, anyone.

Overall, the government’s aggressive posture does not assist the Court in considering *all* 18 U.S.C. § 3553(a) factors—the good and the bad—to craft a sentence that is sufficient, but not greater than necessary, to achieve the statutory sentencing goals. Mr. Sharma continues to contend that a careful analysis of all relevant sentencing factors shows a substantial downward variance, to a probationary sentence, is appropriate.

Respectfully submitted,

**RYAN GARRY, ATTORNEY, LLC**

Dated: March 2, 2022

s/ Ryan Garry

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<sup>2</sup> U.S. Department of Justice, National Institute of Justice, Five Things About Deterrence 2 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.