

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ADITYA RAJ SHARMA,)
)
Defendant.)

**GOVERNMENT’S SENTENCING
RESPONSE**

Defendant Aditya Sharma suggests that he is entitled to a probationary sentence because, in his estimation, his unique history and characteristics warrant extraordinary leniency. The government disagrees and respectfully submits that such a non-custodial sentence would largely ignore the tenets of 18 U.S.C. § 3553(a), particularly when weighed against the gravity of Sharma’s massive \$9.6 million fraud scheme at the taxpayers’ expense.

As discussed below, Sharma’s sentencing position—that he has somehow been punished enough and society is better served if he can focus on a business venture that he actually launched using fraudulently obtained PPP money—is unavailing and further demonstrates that Sharma lacks respect for the law and remains undeterred to this day. The United States respectfully submits that a 70-month sentence, which falls at the midpoint of the Guideline range, is appropriate and fully comports with the goals of 18 U.S.C. § 3553(a).

I. SHARMA IS INELIGIBLE FOR A DEPARTURE BECAUSE HIS INTENDED LOSS ACCURATELY REFLECTS HIS INTENDED HARM.

Sharma seeks a downward departure pursuant to § 2B1.1, cmt. 21(C), because, in his view, “the amount of loss, while accurately calculated, substantially overstates the seriousness of the offense.” (Dkt. 89.) Sharma’s rationale lacks merit.

The Guidelines are clear that loss is “the greater of the actual loss or intended loss,” and that intended loss is “the pecuniary harm that the defendant purposefully sought to inflict.” USSG § 2B1.1, cmt. n. 3(A), (C). But a downward departure might be warranted when the offense level “substantially overstates the seriousness of the offense.” USSG § 2B1.1, cmt. n. 21(C). The Guidelines example of this is a public fraudulent securities statement that drives a high market loss diffused among numerous investors. *Id.* Such a situation may substantially overstate the actual loss given the ephemeral nature of the market, the enhancement for the large number of victims, and the relatively small actual losses. *Id.*

Sharma’s crime is not one in which the harm is artificially and substantially inflated. Sharma fraudulently applied for over \$9.6 million in COVID-19 relief funding by providing intentionally false information for the express purpose of netting the maximum amount of fraudulent proceeds. His lies—forged tax documents, bogus account information, wholly fake business details—highlight his elaborate and systematic efforts to defraud the PPP. Sharma knowingly submitted *sixteen* such fraudulent applications and continued to apply even after receiving fraudulent payouts. This evolution included changing the logistics of his applications to avoid being caught as a “double dipper.” Sharma’s fraud scheme took a great deal

of effort and he intended to receive every penny of the \$9.6 million in relief funding he sought.

Sharma's intended loss accurately reflects the pecuniary harm he purposefully sought to inflict. Accordingly, the Court should deny Sharma's effort to obtain a departure that minimizes his intended loss.

II. A GUIDELINES SENTENCE IS NECESSARY TO EFFECTUATE JUST PUNISHMENT

Despite the Guidelines prohibiting a probationary disposition, (PSR ¶ 77), Sharma nonetheless argues that the purported combination of his remorse, ability to make restitution, and the collateral consequences of his conviction are more than sufficient to achieve the goals of sentencing. Rather ironically—given Sharma's crime involved raiding the public fisc—Sharma even notes the supposed public savings of a probationary disposition. These arguments are meritless, and only underscore the need for a Guidelines sentence to hold Sharma accountable, promote respect for the law, and achieve deterrence.

A. Sharma's Acceptance of Responsibility and Purported Ability to Pay Restitution Do Not Entitle Him to a Probationary Sentence.

Sharma relies heavily on his acceptance of responsibility and apparent ability to pay restitution as justifications for a non-custodial sentence. However, Sharma's Guidelines calculation already is adjusted downward to account for his acceptance of responsibility. And particularly problematic is Sharma's suggestion that he should receive a non-custodial sentence so that restitution, if any, might be paid as a result of his professed business acumen.

First, while laudable, there is nothing particularly exceptional about Sharma's acceptance of responsibility. His criminal conduct did not come to light because, for example, Sharma's guilty conscience compelled him to come forward. Sharma displayed no compunction as he continually applied for PPP funds and spent his fraudulent proceeds on a private pool, unrelated legal debts, and as seed money for his business ventures. Instead, the discrepancies in Sharma's numerous fraudulent applications mounted until he finally got caught. Sharma only admitted any wrongdoing after being indicted, arrested, and having his assets frozen. Even then—as demonstrated by his troubling record while on release—there is nothing in the record to suggest that Sharma's acceptance of responsibility entitles him to the exceptional relief he now seeks. To be clear, the government has no objection to Sharma receiving the full 3-point adjustment to his Guidelines calculation for acceptance of responsibility. Rather, the government's objection is to the idea that Sharma's acceptance of responsibility uniquely positions him to avoid facing the consequences of his actions.

Second, Sharma's purported ability to pay restitution—even if true—does not warrant the extraordinary leniency he seeks. Sharma repeatedly mentions his supposed business prowess and even highlights his view that his new company, Neoforma, will generate significant economic prosperity for Minnesota. (Dkt. 91 at 14.) Sharma conveniently omits that Neoforma is one of the entities he used to submit fraudulent PPP applications. Sharma also carefully details his restitution obligation and notes he “will do whatever he can to pay the amount he owes as soon

as he can,” which includes that “he has already obtained the required guarantees to make the payment.” (Dkt. 91 at 11.) Although Sharma has provided the Court with no information as to what these “required guarantees” might encompass, the government has reason to doubt that Sharma will do “whatever he can to pay the amount he owes.” For instance, in recent weeks, Sharma represented to the U.S. Attorney’s Office that he has supposedly been “blacklisted” from numerous American banks and that he had to “move his money overseas.” Regardless, despite his own claims of significant net worth and assets as detailed in the PSR, Sharma has yet to make *any* actual payment toward his agreed-upon restitution.

These realities aside, the government’s fundamental objection is to Sharma’s argument that his financial means and prospective ability to pay restitution should foster an extremely lenient sentence. Indeed, such an argument has led numerous courts to respond with “concerns of sentencing disparities according to socio-economic status.” *United States v. Sample*, 901 F.3d 1196, 1201 (10th Cir. 2018) (citing *United States v. Levinson*, 543 F.3d 190, 201 (3rd Cir. 2008); *see also United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006) (noting the importance of “minimize[ing] discrepancies between white- and blue-collar offenses, and limit[ing] the ability of those with money or earning potential to buy their way out of jail”).

The *Sample* case is particularly instructive. Defendant Sample, like Sharma, was a savvy businessman who committed fraud for his own personal benefit. *See Sample*, 901 F.3d at 1197. Despite a Guidelines range of 78-97 months’ imprisonment, the district court “imposed a lenient probation sentence” because—

similar to Sharma’s arguments here—Defendant Sample’s income “allowed him to make restitution payments.” *Id.* at 1198. Because the district court imposed a lenient sentence based on Defendant Sample’s financial means, the Tenth Circuit vacated the sentence as unreasonable and inconsistent with the general sentencing objectives of 3553(a). *Id.* at 1201.

More fundamentally, “[g]iving probation” to a defendant like Sharma who engaged in a “multimillion dollar fraud scheme ... perpetuates one of the problems Congress sought to eliminate in creating the Sentencing Commission: that sentencing white-collar criminals to ‘little or no imprisonment ... creates the impression that certain offenses are punishable only by a small fine that can be written off as a cost of doing business.’” *United States v. Hoffman*, 901 F.3d 523, 556 (5th Cir. 2018) (citing *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)) (citations omitted). As courts have acknowledged, “[a]nother problem with probation in multimillion dollar fraud cases is that it undermines public confidence in whether the justice system is do[ing] equal right to the poor and to the rich,” and so courts “have repeatedly expressed a distaste for sentencing that reflects different standards of justice being applied to white- and blue-collar criminals.” *Hoffman*, 901 F.3d at 556-57 (citations and quotation marks omitted).

Here, neither Sharma’s acceptance of responsibility nor his purported resources should distract from the tenets of 3553(a). A sentence within the Guidelines range will avoid any concerns about economic disparities in sentencing. Such a sentence also will hold Sharma accountable.

B. Collateral Consequences Are Not a Component of Criminal Sentencing and Do Not Warrant a Probationary Disposition

Sharma also asserts that the collateral consequences that flow from the stigma of a felony conviction—for both himself and his family—further warrant a probationary disposition. (Dkt. 91 at 13-14.) This argument is misplaced. Once again, Sharma’s argument deflects from the collateral consequences of his crime—he depleted a limited emergency resource, and those actions directly affected the public at large. But, more importantly, any collateral consequences that follow Sharma’s conviction are not tethered to the imposition of his sentence and are instead the inevitable consequences of his criminal conduct.

Indeed, Sharma’s arguments in this regard have been analyzed and rejected on numerous occasions. For example, in *United States v. Musgrave*, the district court varied from a Guidelines range of 57 to 71 months to a single day in prison when sentencing an accountant for his fraudulent conduct. 761 F.3d 602, 607 (6th Cir. 2014). The district court explained its variance as justified because the defendant “had already been punished extraordinarily by four years of legal proceedings, legal fees, the likely loss of his CPA license, and felony convictions that would follow him for the rest of his life.” *Id.* The Sixth Circuit vacated the sentence as unreasonable because a diminished sentence based on such collateral consequences did not reflect the seriousness of the offense, effect just punishment, or afford adequate deterrence. *Id.* at 609; *see also United States v. Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012) (rejecting imposition of lighter sentences on white-collar defendants because such defendants face greater reputational harm or have more to lose from conviction); *United States*

v. Morgan, 635 Fed.Appx. 423, 445-46 (10th Cir. 2015) (vacating downward variance based on collateral consequences to defendant's legal practice because such considerations "impermissibly favor criminals . . . with privileged backgrounds.").

The collateral consequences of Sharma's conviction on his family, although unfortunate, similarly are not the result of Sharma's sentence but are the natural byproduct of his criminal conduct. The law does not favorably view such requests for leniency, when the defendant could have avoided such effects by simply remaining law abiding. *See, e.g., United States v. Racette*, 807 Fed.Appx. 587, 588 (8th Cir. 2020) (recognizing the Guidelines discourage downward variances based on likelihood of familial hardship); *United States v. Anderson*, 251 Fed.Appx. 365, 369 (7th Cir. 2007) (explaining that Sentencing Commission deemed family circumstances not ordinarily relevant to sentencing because the negative impacts of incarceration on defendant's family is an unfortunately common reality); *United States v. Gary*, 613 F.3d 706, 710 (7th Cir. 2010) (same).

For these reasons, the government respectfully submits that the Court should reject Sharma's assertions that collateral consequences, if any, warrant such extraordinary leniency. Sharma risked these consequences when he elected to repeatedly defraud the PPP program for his own benefit. He should not be entitled to avoid these consequences simply because he only now realizes the magnitude of his actions.

C. A Guidelines Sentence Fully Comports with All Aspects of 18 U.S.C. § 3553(a).

Sharma's sentencing position focuses almost exclusively on how this criminal prosecution will negatively affect Sharma's life. But it is vital that criminal sentencing reflect the unique realities of each crime, including its broad impact on society. Here, that must account for the fact that Sharma stole *millions* of dollars from a limited pandemic-relief program intended to stem the tide of a national health crisis. Given Sharma's significant assets and household income, it is clear that he did not need to resort to fraud. Instead, he knowingly defrauded the program for convenience. This heightens the need to craft a sentence that reflects the seriousness of this offense, provides just punishment for it, and afford both specific and general deterrence.

Put simply, the record is bereft of any mitigating circumstances that warrant a downward departure or variance from a Guidelines sentence. Sharma's offense conduct was egregious, and his violations on pretrial release only underscore the need for a sentence that promotes respect for the law and specifically deters him from reoffending. It is equally important that the sentence achieve general deterrence. The message cannot be that white-collar criminals can subsidize their business ventures by defrauding the public. A non-custodial sentence may well invite others to deem such fraud as worth the risk, particularly given that these crimes often can go undetected for significant periods of time.

III. CONCLUSION

The government respectfully recommends that the Court sentence Defendant Aditya Raj Sharma to a 70-month term of imprisonment—a sentence that falls at the midpoint of the applicable Guidelines range—and that it order him to pay mandatory restitution in the agreed-upon amount of \$1,773,600. The government contends that such a sentence achieves all aspects of the United States Sentencing Guidelines and the goals of Title 18, United States Code, Section 3553(a).

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Respectfully submitted,

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