

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

CHARLES HILL IV

Criminal Action No.

1:20-CR-296-16-JPB

United States' Sentencing Memorandum

The United States of America, by Kurt R. Erskine, United States Attorney, Tal C. Chaiken and Nathan P. Kitchens, Assistant United States Attorneys for the Northern District of Georgia, and Siji Moore, Trial Attorney for the Department of Justice, respectfully files this Sentencing Memorandum in advance of Defendant Charles Hill IV's sentencing, which is set for January 12, 2022. Defendant pleaded guilty to conspiracy to commit wire fraud in violation of Title 18, United States Code, Section 1349.

As set forth below, the United States respectfully submits that a sentence of 5 years' probation, with a condition that 27 months be served on home confinement, is sufficient, but not greater than necessary, to comply with the purposes set forth in Title 18, United States Code, Section 3553(a). This sentence would require a downward variance from Defendant's Guidelines range of 27 to 33 months' incarceration. The United States recommends this downward variance – pursuant to which Defendant would serve home confinement for the same length of time as the low-end of his Guidelines range – because of Defendant's very rare and incurable autoimmune disease, which makes a custodial setting

inappropriate for Defendant but does not lessen the seriousness of his conduct or the need to provide adequate deterrence.

**A Downward Variance is Appropriate Under the Section 3553(a) Factors
Because of Defendant’s Unique Medical Condition**

1. The Nature and Circumstances of the Offense.

Defendant’s offense was serious, motivated by personal greed during an unprecedented global crisis. In early 2020, the COVID-19 pandemic sent stock markets crashing and unemployment rates skyrocketing, while nationwide lockdowns ground the economy to a halt. Many American businesses – and in particular, small businesses – struggled to stay afloat as consumer demand plummeted, creating daunting uncertainty for the businesses, their employees, and the families who rely on them. Against that backdrop, Congress passed the Paycheck Protection Program (the “PPP”) as one of the mechanisms for providing relief to small businesses and their employees. To obtain a loan, a business had to certify that the loan would be used to pay for payroll, lease or mortgage interest, or utilities, and the loan was forgivable if the business spent a certain percentage of the loan on payroll costs.

Because Congress’s intent was to “provide relief to America’s small businesses expeditiously,” the PPP streamlined the Small Business Administration’s typical lending requirements. Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811-01 (Apr. 15, 2020). For example, the PPP “allow[ed] lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness.” *Id.* These procedures

were designed to quickly get much-needed funds to small businesses so they could keep their workers employed during an economic and public health crisis that threatened the viability of many small businesses and their ability to keep their employees on the payroll.

Defendant sought to take advantage of the PPP's streamlined procedures to line his own pockets. Defendant was not a small business owner worried about his employees and the mouths they were responsible for feeding. Rather, he saw in the PPP an opportunity to get free money to use for personal expenses. And though CDC Small Business Finance ("CDC SBF") funded the loans, the funds that were stolen were taxpayer funds administered by the Small Business Administration. Furthermore, because the PPP had a limited amount of funds, Defendant's actions deprived legitimate business owners who desperately needed funds.

2. The Defendant's History and Characteristics.

The United States understands based on information provided by one of Defendant's medical providers that Defendant suffers from a very rare and incurable autoimmune disease.¹ According to Defendant's provider, any period of incarceration in a prison would pose significant risk of permanent damage to Defendant's health. Based on the medical opinions explained by Defendant's

¹ Because this Sentencing Memorandum is being publicly filed, the United States is not providing additional details regarding Defendant's medical condition. However, the United States expects that, at sentencing, Defendant's counsel will be able to provide additional information to the Court regarding Defendant's medical condition.

provider, the United States agrees that incarceration in a custodial setting is not appropriate.

However, while Defendant's condition bears on the appropriate *location* for service of his sentence, it has no bearing on the appropriate *length* of his sentence based on the other Section 3553(a) factors. For that reason, the United States recommends a period of home confinement that equals the low end of Defendant's Guidelines range.

3. The Need for Adequate Deterrence.

The Eleventh Circuit has identified general deterrence as "an important goal of sentencing in a white-collar crime prosecution." *United States v. Kuhlman*, 711 F.3d 1321, 1328 (11th Cir. 2013); *United States v. McQueen*, 727 F.3d 1144, 1158 (11th Cir. 2013) (recognizing that general deterrence is one of the "key purposes of sentencing") (citation omitted). And deterrence is especially important in the context of crimes, like Defendant's crime in this case, that "may easily go undetected and unpunished." *See McQueen*, 727 F.3d at 1158-59 (reversing the district court's lenient sentence because it "sap[ped] the goal of general deterrence"); *see also United States v. Engle*, 592 F.3d 495, 502 (4th Cir. 2010) (explaining that because tax evasion offenses are infrequently prosecuted, "[w]ithout a real possibility of imprisonment, there would be little incentive for a wavering would-be evader to choose the straight-and-narrow over the wayward path).

While Defendant's medical condition renders custodial imprisonment inappropriate, the recommended sentence of 5 years' probation with 27 months of home confinement is necessary to afford adequate deterrence and to reflect the

seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2).

4. Unwarranted Sentencing Disparities.

While several of Defendant's co-defendants have received sentences at the low end of their adjusted Guidelines range, Defendant is not similarly situated to these already-sentenced co-defendants because of his unique medical condition. For that reason, the recommended sentence would not create *unwarranted* sentencing disparities.

Conclusion

For these reasons, the United States respectfully requests that the Court grant a downward variance and impose a sentence of 5 years' probation, with 27 months to be served on home confinement.

Dated: December 30, 2021.

Respectfully submitted,

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Akil K. Secret

December 30, 2021

/s/ TAL C. CHAIKEN

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Assistant United States Attorney