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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 United States of America,
12 Plaintiff,
13 v.
14 Elvira Contreras,
15 Defendant

18-CR-2001-JGZ-1
Sentencing Memorandum
Sentencing: January 14, 2020
9:15 a.m.

16
17 Plaintiff, United States of America, by its attorneys, Michael Bailey, United States
18 Attorney for the District of Arizona, and Jane L. Westby and Tiffany J. Underwood,
19 Assistant United States Attorneys, hereby submits its Sentencing Memorandum in the
20 above captioned matter.
21

22 **I. Status of the Case**
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24 On September 18, 2019, the Defendant plead guilty to Counts 1 and 8 of the
25 Indictment, charging Defendant with wire fraud in violation of Title 18 U.S.C. § 1343.
26 The Defendant agreed to a stipulated sentence of 18 months imprisonment. The parties
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1 agreed that Defendant would pay restitution in an amount up to \$90,935 to be determined
2 by the by the District Court.

3 **II. Statement of Facts**

4 At her change of plea hearing, Defendant admitted the following facts:

5 The Scheme to Defraud

6 Beginning in 2014, and continuing through April, 2018,
7 Defendant intentionally, knowingly and willfully devised a scheme to
8 defraud others to obtain money and property by means of materially
9 false and fraudulent pretenses, representations, and promises, and
with the intentional concealment of material facts.

10 In furtherance of the scheme to defraud, beginning about 2014,
11 and continuing through about April, 2018, Defendant knowingly,
12 willfully, and with the intent to defraud, made materially false and
13 fraudulent representations and promises that she could obtain U.S.
14 immigration documents, a contractor's license, and a driver's license
15 (collectively "documents"), and also, legal representation, social
16 security numbers, U.S. citizenship, and tax refunds in exchange for a
17 fee when Defendant knew that she could not and would not provide
18 any such documents, social security numbers, U.S. citizenship, legal
19 representation, or tax refunds for the victims as Defendant falsely
20 represented. Defendant's false statements were material and caused
the victims to pay Defendant in advance for the documents, legal
representation, social security numbers, U.S. citizenship, and tax
refunds. Defendant knew that she could not provide any such
services.

21 More specifically, in furtherance of the scheme to defraud,
22 Defendant made materially false and fraudulent representations and
23 promises to others, including, but not limited to, L.R.M., F.C.M,
24 A.F.G.R., B.M.L., J.G., N.F. (collectively, "the victims"), and an
25 undercover law enforcement agent ("UC Agent") that she could
26 obtain U.S. immigration documents because: 1) she knew or worked
with immigration attorney D.L.; or 3) she was immigration attorney
D.L. The real D.L. is an actual immigration attorney who Defendant
impersonated as part of her scheme to defraud.

27 As a result of Defendant's material and intentional false
28 promises and representations, Defendant intentionally defrauded the

1 victims of funds, and sought and received funds from the UC agent,
2 in an amount up to \$90,935.

3 The victims and the UC Agent never received the U.S.
4 immigration documents, U.S. citizenship, legal representation, social
5 security numbers, contractor's license, driver's license, or \$100,000
6 in tax refunds. Defendant knowingly provided L.R.M. and F.C.M.
7 with social security numbers that were false and fraudulent.

8 In the execution of her scheme to defraud, Defendant used
9 interstate wire communications. Between approximately February 5,
10 2018 and February 20, 2018, Defendant caused interstate
11 communications when Defendant executed her fraud scheme using
12 the phone and WhatsApp text messaging to communicate with and
13 B.M.L. while B.M.L. was in Mexico and Defendant was in Arizona.

14 Count 1

15 In furtherance of the Defendant's knowing and willful scheme
16 to defraud and to execute it, on February 5, 2018, Defendant caused
17 B.M.L. to send electronically a photo of B.M.L.'s birth certificate via
18 WhatsApp text messaging to Defendant. Defendant intended to
19 defraud B.M.L. when Defendant falsely told B.M.L. that Defendant
20 could obtain U.S. immigration documents for B.M.L. and that
21 Defendant needed a copy of B.M.L.'s birth certificate to do so.
22 Defendant's statement to B.M.L. were materially false and caused
23 B.M.L. to send Defendant \$1,835 for U.S. immigration documents.
24 At the time of the WhatsApp text message transmitting B.M.L.'s birth
25 certificate, Defendant was in Arizona and B.M.L. was in the Republic
26 of Mexico.

27 Count 8

28 In furtherance of the Defendant's knowing and willful scheme
to defraud and to execute it, on or about July 13, 2017, Defendant
caused A.F.G.R. to receive \$3,000 via wire transfer from his family
in Guatemala, so that A.F.G.R. could provide said funds to Defendant
for immigration documents. Defendant caused the wire transfer by
falsely representing to A.F.G.R. that she could provide U.S.
immigration documents for A.F.G.R. when the Defendant knew this
was not true. A.F.G.R. used the funds to pay the Defendant. The funds
were wired from Guatemala to Arizona.

(Dkt. No. 65, Plea Agreement).

1 The parties agreed that the Court shall decide the total amount of restitution
2 owed. (Dkt. No. 65, Factual Basis).

3 At the change of plea hearing, Defendant would not admit that she falsely
4 represented to victims that she worked for U.S. Immigration and Customs
5 Enforcement (ICE) as set forth in the factual basis of the plea agreement (Dkt. No.
6 65).
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9 **III. Government’s Sentencing Recommendation**

10 **1. The Guideline Calculations in the Plea Agreement**

11 In the plea agreement, the parties agreed to the following total offense level.

12	Base Offense Level (§ 2B1.1(a)(1))	7
13	Specific Offense Characteristic (2B1.1(b)(1)(D))	+6
14	Misrepresentation as government agent (2B1.1(b)(9)(A))	+2
15	Acceptance of Responsibility (§ 3E1.1)	<u>-2</u>
16	Total Offense Level	<u>13</u>

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19 The government calculated a six-level increase for the Specific Offense
20 Characteristic under USSG § 2B1.1(b)(1)(D)) based upon an intended loss of more than
21 \$40,000 and less than \$95,000.00. The amount of intended loss was estimated to fall within
22 this range based on a reasonable estimate of provable victim losses. The addition of a two-
23 level enhancement for more than 10 victims (as included by U.S. Probation), USSG
24 § 2B1.1 (b)(2)(A)(i), is also appropriate, but was inadvertently not included in the total
25 offense level agreed to in the plea agreement. In this case, the government disagrees that
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1 the two-level enhancement for hate crimes\vulnerable victim as applied in the PSR is
2 appropriate. § 3A1.1(b)(1).

3 The upper limit of the advisory sentencing guideline range for the agreed upon
4 offense level of 13 and Defendant's Criminal History Category 1 is 18-months
5 imprisonment. (In accord with the government's recommendation of 18-months
6 imprisonment, even if the two-level enhancement for more than ten victims had been
7 included in the plea agreement, the guideline range would be 15 to 21 months
8 imprisonment). Therefore, 18-months imprisonment is a reasonable and appropriate
9 sentence under the advisory sentencing guidelines.
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12 **IV. Section 3553(a) Factors Regarding Sentencing**

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14 *United States v. Booker*, 543 U.S. 220 (2005), permits this Court to impose a
15 reasonable sentence after consideration of the advisory Sentencing Guidelines and the
16 sentencing factors set forth in 18 U.S.C. § 3553(a). See also *United States v. Carty*, 520
17 F.3d 984, 991 (9th Cir. 2008). Those factors are: (1) the nature and circumstances of the
18 offense and the history and characteristics of the defendant; (2) the need for the sentence
19 imposed to reflect the seriousness of the offense, promote respect for the law, provide
20 punishment for the offense, afford adequate deterrence, to protect the public from further
21 crimes of the defendant, and provide the defendant with needed training, care or other
22 treatment in the most effective manner; (3) the kinds of sentences available; (4) the kind of
23 sentence and sentencing range provided for by the Sentencing Guidelines; (5) any pertinent
24 policy statements by the Sentencing Commission; (6) the need to avoid unwanted
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1 sentencing disparities among similarly situated defendants; and (7) the need to provide for
2 restitution to any victims of the offense. *Carty*, 520 F.3d at 989.

3 The government believes that a reasonable sentence supported by the sentencing
4 factors set forth in 18 U.S.C. § 3553(a), would be a sentence of 18-months imprisonment
5 to be followed by three (3) years supervised release, a special assessment of \$200, and
6 restitution as discussed below.
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9 **1. Nature & Circumstances of Offense and History and
Characteristics of Defendant**

10 **A. Nature & Circumstances of Offense**

11 Defendant went to great lengths to defraud numerous victims by fraudulently
12 representing that she could help them obtain immigration documents, licenses, and social
13 security numbers. Her actions were callous and she seems to have little remorse. At one
14 point Defendant even impersonated an immigration attorney in Tucson to obtain funds
15 from victims. Defendant lied to others by telling them she worked for ICE or knew others
16 that worked for ICE. This caused the victims substantial financial loss and stress.
17 Defendant's conduct spanned numerous years and was part of a pattern of conduct that
18 demonstrated unbridled deceit in her efforts to steal from others.
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22 **B. History and Characteristics of Defendant**

23 Next, the history and characteristics of the Defendant are to be considered. The
24 Probation Officer has thoroughly set forth the Defendant's background, and it will not be
25 repeated here. (PSR at ¶¶ 62 - 81.)
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1 **2. Need for Sentence to Reflect Seriousness of Offense & Deter and**
2 **Protect Public**

3 A felony conviction and a sentence of 18-months imprisonment followed by three
4 (3) years supervised release reflects the seriousness of the offenses of conviction and will
5 act as a deterrent. Defendant will likely be deported and this will act as an additional
6 deterrent and consequence of her criminal conduct.
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8 **3. Kind of Sentences Available to Court for Imposition**

9 The third factor to consider under § 3553(a) are the kinds of sentences available to
10 the Court for possible imposition. The statutory maximum is ten (20) years imprisonment
11 for the counts of conviction and/or a fine of \$250,000; restitution to the victims; and a
12 special penalty assessment of \$100 for the count of conviction.
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15 **4. Kind of Sentence and Sentencing Range Provided for by Sentencing**
16 **Guidelines**

17 The Defendant's Criminal History Category is I. (PSR, p. 23.) The advisory
18 sentencing range for an offense level of 14 (which includes a two-level adjustment for more
19 than ten victims as discussed above) is an advisory sentencing range of 15 to 21 months
20 imprisonment without any further adjustments, departures or variances.
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22 **5. Pertinent Policy Statements by Sentencing Commission**

23 The government knows of no pertinent policy statements by the Sentencing
24 Commission which would apply to Defendant or the offenses of conviction.
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1 **6. Need to Avoid Unwanted Sentencing Disparities**

2 The need to avoid unwanted sentencing disparities among similarly situated
3 defendants is the sixth factor to consider. The Sentencing Commission has access to
4 sentencing statistics and has been charged with the mission to establish guidelines to assist
5 in preventing unwarranted sentencing disparities among similarly situated defendants.
6 Based on the facts and circumstances of this case, the advisory guideline range of 12 to 18
7 months based on the total offense level of 13 under the plea agreement is not unreasonable.
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10 **7. Need to Provide Restitution to Victims**

11 The final factor is the need to provide for restitution to any victims of the offense.

12 Full restitution is mandatory for Defendant's offense of conviction involving fraud
13 and deceit. 18 U.S.C. § 3663A(c)(1)(A)(ii). The government's burden in establishing the
14 proper amount of loss for restitution purposes is by a preponderance of the evidence. Title
15 18, United States Code, Section 3664(e). In this case, the parties have agreed to a
16 restitution cap. (Dkt. No. 65, Factual Basis).
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19 Defendant has agreed to pay restitution in the amount of up to \$90,935 to be
20 determined by the by the District Court. (Dkt. No. 65). On January 7, 2020, an Amended
21 Restitution Agreement was filed after additional victims provided restitution information
22 and after the restitution amount requested by at least one victim changed. (Dkt. No. 73).
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24 The Defendant agreed to pay restitution up to the following amounts for each victim
25 and the Department of Homeland Security as follows. Victims Impact Statements, Victim
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1 Affidavits, and other documentation in support of restitution can be found at Attachment
 2 A, filed under seal, as indicated below:

Victim	Restitution Amount	Attachment A Page No.
L.R.M. & F.C.M. ¹	\$55,100	1 - 16
A.F.G.R.	\$18,500	
B.M.L.	\$335	
J.G.	\$2,000	
DHS	\$2,500	19-24
N.F.	\$5,000	17-18
P.D.	\$2,500	25
H.M.Z.	\$4,000	26
Total	\$89,935	

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 18 The government has not received affidavits from A.F.G.R., B.M.L. or J.G. The
 19 government asks that restitution be ordered for L.R.M., F.C.M., DHS, N.F., P.D., and
 20 H.M.Z. in the amounts stated above. The government further requests leave to file
 21 affidavits from A.F.G.R., B.M.L., and J.G. within 90 days should these victims respond to
 22 the government's request for affidavits from them.
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 26 ¹ L.R.M. and F.C.M. are spouses. The affidavit supplied by F.C.M. was less
 27 inclusive than the affidavit filed by L.R.M. All of the amounts contained in F.C.M.s
 28 affidavit are included in L.R.M.s affidavit with the exception of \$1500 claimed by
 F.C.M. for a contractor's license. Therefore, including the total from L.R.M.'s
 affidavit (\$53,600) and adding the additional amount provided by F.C.M. (\$1500)
 resulted in a total restitution amount of \$55,100.

1 **V. Sentencing Recommendation**

2 The Ninth Circuit in *United States v. Carty*, 520 F.3d 984 (9th Cir. 2008), set forth
3 the framework for a defendant’s sentencing. “The overarching statutory charge for a
4 district court is to impose a sentence sufficient, but not greater than necessary to reflect the
5 seriousness of the offense, promote respect for the law, and provide just punishment; to
6 afford adequate deterrence; to protect the public; and to provide the defendant with needed
7 educational or vocational training, medical care, or other correctional treatment.” *Id.* at
8 991 citing 18 U.S.C. § 3553(a) and (a)(2). Based on an adjusted offense level of 13, the
9 government believes that the Defendant should receive a sentence of imprisonment of 18
10 months under the terms of the plea agreement; three (3) years supervised release, a \$200
11 special assessment, and restitution to the victims as determined by District Court.
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15 Respectfully submitted this 8th day of January, 2020.

16 MICHAEL BAILEY
17 United States Attorney
18 District of Arizona

19 s/Jane L. Westby
20 Jane L. Westby
21 Tiffany J. Underwood
22 Assistant U.S. Attorneys

23 Copy of the foregoing served electronically
24 or by other means this 8th day of January, 2020, to:

25 Walter Goncalves, Esq.
26
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Attachment A
(Filed Under Seal)