No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MALIK MARSHALL

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX

Respectfully submitted,

STOWERS & NELSEN, PLC
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United States Court of Appeals
For the Eighth Circuit

No. 25-2666

United States of America

Plaintiff - Appellee

v.

Latroy L. Currie, also known as Mook

Defendant - Appellant

No. 25-3141

United States of America

Plaintiff - Appellee

v.

Malik K. Marshall, also known as Thang, also known as M. Thang

Defendant - Appellant

Appeals from United States District Court
for the Southern District of Iowa - Central

Submitted: April 15, 2026
Filed: August 5, 2026

Before LOKEN, SHEPHERD, and STRAS, Circuit Judges.

LOKEN, Circuit Judge.

Co-defendants Latroy Currie and Malik Marshall were leaders of a large bank fraud conspiracy. The conspirators acquired stolen checks by purchase or theft, then created fictitious businesses with names similar to the stolen checks' intended recipients, opened fraudulent bank accounts for those businesses, deposited the checks, and withdrew the money. The conspirators attempted to deposit at least $15 million and successfully obtained over $2.9 million of fraudulent proceeds.

Currie was a founding member of the conspiracy, participating from December 2021 through at least August 2024. He pleaded guilty to conspiracy to commit bank fraud, 18 U.S.C. §§ 1344, 1349. His Presentence Investigation Report (PSR) calculated an intended loss of $15.4 million and an actual loss of $2.9 million. Marshall joined the conspiracy no later than January 2023. He pleaded guilty to conspiracy to commit bank fraud and to money laundering over $10,000. His PSR calculated an intended loss of $10.9 million and an actual loss of $1.6 million. For the fraud offenses, both PSRs applied a 20-level enhancement based on the intended loss amount. See USSG § 2B1.1(b)(1)(K).

At sentencing, the district court[1] adopted the PSRs' findings including the 20-level intended fraud enhancements. It sentenced Currie to 135 months and Marshall to 188 months imprisonment for the bank fraud offenses and Marshall to a concurrent

[1]The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

120 months for his money laundering offense. They separately appeal their sentences. The sole issue raised in each appeal is whether the district court erred in using intended loss in calculating the advisory sentencing guidelines range. We have not consolidated the appeals, but they raise the same issue so we will address them in a single opinion. See United States v. Shuler, 598 F.3d 444, 446 (8th Cir. 2010).

Section 2B1.1 of the Guidelines provides the base offense level for embezzlement, theft, fraud, and other economic offenses. It provides for an enhancement "[i]f the loss exceeded $6,500" in § 2B1.1(b)(1), with escalating penalties for greater losses. The commentary explains that "loss is the greater of actual loss or intended loss." USSG § 2B1.1, comment. (n.3) (2023).

In Stinson v. United States, 508 U.S. 36, 38 (1993), the Supreme Court held that "commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." Our cases have followed and applied this commentary since at least 1997, "look[ing] to the amount of loss a defendant actually intended to cause his creditors." United States v. Holthaus, 486 F.3d 451, 455 (8th Cir. 2007) (citations omitted). Defendants argue Stinson no longer correctly describes the deference we must give to Sentencing Guidelines commentary after the Supreme Court's decision in Kisor v. Wilkie, 588 U.S. 558 (2019).[2] The

[2]Anticipating this issue, the Sentencing Commission amended § 2B1.1 in November 2024, moving the intended loss language from the commentary to the text of the Guideline. See USSG § 2B1.1, note (A) (2024). Currie and Marshall were sentenced in August and October 2025. Ordinarily, the 2024 Sentencing Guidelines would apply, but the *Ex Post Facto* Clause complicates the analysis because it applies to a "retrospective increase in the Guidelines range [that] creates a sufficient risk of a higher sentence." United States v. Roberts, 747 F.3d 990, 991 (8th Cir. 2014), quoting Peugh v. United States, 569 U.S. 530, 544 (2013); see USSG § 1B1.11(b)(1).

Supreme Court has granted certiorari to consider a circuit split on this issue. See Beaird v. United States, No. 25-5343, 2026 WL 1052007 (U.S. Apr. 20, 2026).

In United States v. Nock, we rejected this argument, as both defendants acknowledge:

> [E]ven after Kisor we consider the Guidelines together with their commentary . . . [which] will be given controlling weight unless plainly erroneous. Our court, moreover, has applied the commentary directing courts to use the greater of actual and intended loss even after Kisor. Precedent therefore forecloses Nock's contention.

148 F.4th 607, 619 (8th Cir. 2025) (quotation and citations omitted), cert. denied, 146 S. Ct. 1814 (2026). Therefore, the district court correctly followed controlling Eighth Circuit precedent when it considered intended loss in calculating Currie and Marshall's offense levels.

As this is the sole argument Currie and Marshall raise on appeal, the judgments of the district court are affirmed.

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 25-3141

UNITED STATES OF AMERICA,

APPELLEE,

v.

MALIK MARSHALL,

APPELLANT.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
HONORABLE REBECCA GOODGAME EBINGER,
U.S. DISTRICT COURT JUDGE

APPELLANT'S BRIEF

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SUMMARY OF THE CASE AND WAIVER OF ORAL ARGUMENT

Mr. Marshall, along with 18 co-conspirators, was charged by a 50-count indictment with violations of Count 1 Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. §1344 and §1349, Count 14 Conspiracy to Commit Money Laundering in violation of 18 U.S.C. §1957 and §1956, and Counts 47 and 48 Money Laundering in violation of 18 U.S.C. §1957 and §2 on August 20, 2024. (R. Doc. 2). The indictment was the culmination of an expansive investigation into a check theft and bank fraud scheme.

Marshall entered a guilty plea to Count 1 Conspiracy to Commit Bank Fraud and Count 47 Money Laundering. (R. Doc. 793). Deposits of $10,924,671.11 was attempted by various members of the conspiracy, of which $1,619,302.42 was withdrawn. The PSR attributed a 20-level increase for loss pursuant to U.S.S.G. 2B1.1(b)(1)(K) (PSR p. 22). Marshall objected to the base offense level based upon the amount of loss in reliance upon 3rd Circuit case law, *United States v. Banks*, 55 F.4th 246, 255 (3d Cir. 2022). (R. Doc. 963). Marshall was sentenced to 188 months on Count 1, and 120 months on Count 47 to run concurrently on October 15, 2025. (R. Doc. 1025).

Marshall filed a notice of appeal on October 22, 2025, and contends *Kisor* compels a conclusion consistent with *Banks*. (R. Doc. 1027). Mr. Marshall does not request oral argument.

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JURISDICTIONAL STATEMENT

Marshall appeals from the judgment of conviction in this matter entered against him on October 15, 2025, in the Southern District of Iowa, on Conspiracy to Commit Bank Fraud, and Money Laundering in violation of 18 U.S.C. §1344, §1349, and §1957(b). The United States District Court had jurisdiction over Marshall's federal criminal case pursuant to 18 U.S.C. § 3231 (2012). This Court has jurisdiction of the appeal pursuant to 28 U.S.C. § 1291. Marshall filed a timely notice of appeal on October 22, 2025, from the judgment formally entered on October 15, 2025.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE LANGAUGE OF U.S.S.G. §2B1.1(b)(1) IS NOT AMBIGUOUS AND AS SUCH THE LOSS CALCULATION SHOULD NOT INCLUDE INTENDED LOSS.

Kisor v. Wilkie, 588 U.S. 558 (2019)

United States v. Banks, 55 F.4th 246, 255 (3d Cir. 2022)

United States v. Nock, 2025 WL2250564 (8th Cir. Aug. 7, 2025)

United States v. Donath, 107 F.4th 830, 838 (8th Cir. 2024)

STATEMENT OF THE CASE

Nature of the Case: This is a direct appeal by Mr. Malik Marshall from his sentence following a guilty plea to a violation of 18 U.S.C §1957 in the Southern District of Iowa. Mr. Marshall appeals his sentence.

Factual and Procedural Background:

Mr. Marshall was charged in Counts 1, 14, 47 and 48 of a 50 count Indictment with violations of 18 U.S.C. §1344, 18 U.S.C. §1349, 18 U.S.C. §1956, 18 U.S.C. §1957 and 18 U.S.C. §2 on or about August 20, 2024. (R. Doc 2). The offense subjected Mr. Marshall to a maximum of 30 years in prison, if convicted of Conspiracy to Commit Bank Fraud, and 10 years on each count related to money laundering.

The indictment alleged that between December 2021 to May 2024, Mr. Marshall and others conspired to defraud financial institutions by a scheme which involved creating fraudulent business entities which matched the names of payees from stolen checks. The checks were then deposited into banks accounts which were opened by co-conspirators in the name of the fraudulent business entities and the proceeds were then withdrawn from the accounts. (R. Doc. 2).

Mr. Marshall entered a plea on or about May 23, 2025. The plea was accepted, and Mr. Marshall proceeded to sentencing on October 15, 2025. Prior to sentencing, Mr. Marshall objected to the United States Sentencing Guidelines loss

calculations, and asserted the applicable amount of loss established a lesser guideline range in reliance upon *United States v. Banks*, 55 F.4th 246, 255 (3d Cir. 2022). (R. Doc. 963). The District Court overruled Marshall's objection and Marshall was sentenced to 188 months. (R. Doc. 1025).

Marshall now appeals. (R. Doc. 1027).

SUMMARY OF THE ARGUMENT

The district court's reliance on 8th Circuit precedent was erroneous as the Eighth Circuit determination of actual versus intended loss in *Nock* was in error. Marshall contends the appropriate guideline calculation where the guidelines are not ambiguous is actual loss, and contends that where the guidelines are not ambiguous, the 'intended loss' is contradictory, creates ambiguity, and should be given no weight.

ARGUMENT

I. THE LANGAUGE OF U.S.S.G. §2B1.1(b)(1) IS NOT AMBIGUOUS AND AS SUCH THE LOSS CALCULATION SHOULD NOT INCLUDE INTENDED LOSS

A. The Standard of Review of District Court's Application of Guidelines and Imposition of Sentencing Enhancement is De Novo.

"We review the district court's application of the Guidelines and imposition of sentencing enhancements de novo" and "review factual findings at sentencing for clear error." *United States v. Foard*, 108 F.4th 729, 736 (8th Cir. 2024).

B. The Language of U.S.S.G. 2B1.1(b)(1) Regarding Loss is Not Ambiguous, Loss Means Loss, and Intended Loss which is Identified in the Notes Should Not Be Applied to the Loss Table.

The PSR in this matter attributed a specific loss amount to Mr. Marshall, as well as a loss amount which was attempted but not completed. The record establishes that defendants attempted to deposit approximately $10,924,671.11, of which $1,619,302.43 was successfully withdrawn. (PSR p. 57). The amount of loss is unambiguously identifiable as the amount withdrawn.

The graduated scale of sentencing level increases based upon the amount of loss, with increasing enhancements to defendant's offense level based on victim's monetary loss. Actual loss is a net loss calculation. *See United States v. Hartstein*, 500 F.3d 790, 798 n.3 (8th Cir. 2007)(actual loss is a net loss concept). Actual loss, thus, does not include intended loss, but rather only applies to actual loss the victim

sustained as a result of the crime. *Id.* U.S.S.G. §2B1.1 provides a graduated scale based on the monetary amount of loss, which increases as the amount of loss increases. U.S.S.G. §2B1.1. The application of the loss enhancement hinges upon the meaning of the term 'loss' as used in §2B1.1. Neither "actual" loss nor "intended" loss is mentioned in the guideline language, only 'loss.' 'Actual loss' and 'intended loss' appears only in the notes and commentary. U.S.S.G. §2B1.1. The meaning of the word 'loss' as used in the guideline itself is unambiguous and thus not subject to interpretive rule of notes and commentary.

Courts treat the Sentencing Guidelines as legislative rules, and the Sentencing Commissions comments interpreting its Guidelines as interpretive rules. *United States v. Banks*, 55 F.4th 246, 255 (3d Cir. 2022). Historically, courts deferred to the Sentencing Commission's interpretation of its own regulations. *Id.* citing *Bowles v. Seminole Red Rock and Sand Company*, 325 U.S. 410 (1945); *Auer v. Robbins*, 519 U.S. 452 (1997). However, the Supreme Court has made clear that before according deference to legislative interpretive rules, a court must exhaust all traditional tools of construction and determine that a regulation is genuinely ambiguous. *Kisor v. Wilkie*, 588 U.S. 558 (2019). Under *Kisor*, then, a court must consider the "text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on" before concluding that the regulation is genuinely ambiguous and relying upon interpretive rules. *Kisor v. Wilkie*, 588 U.S. at 559. Thus, there

must be a genuine ambiguity in an agency's regulation and the character and context of an agency's interpretation must fall within the regulation's zone of ambiguity. *United States v. Banks*, 55 F.4th at 256. In *Kisor*, the Court cut back on what had been understood to be uncritical and broad deference to agency interpretations of regulations and explained that *Auer*, or *Seminole Rock*, deference should *only* be applied when a regulation is genuinely *ambiguous*. *Id.* at 2414-15. (emphasis added).

The loss table contained in U.S.S.G. §2B1.1 is *not* ambiguous. Specifically, §2B1.1(b)(1) states: if the *loss* exceeded $6,500.00, increase the offense level as follows: which is then followed by the loss table. U.S.S.G. §2B1.1(b)(1) (emphasis added). "Loss" is defined in Black's Law Dictionary as:

> loss: 1. The failure to keep possession of; 2. A decrease in value, the amount by which a thing's original cost exceeds its later selling price; 3. The amount of financial detriment caused by an insured person's death or insured property's damage for which the insurer becomes liable.

Black's Law Dictionary, (2d Pocket Edition, Garner, 2001). The ordinary meaning of loss is also defined by Webster:

> loss: 1. Destruction/ruin, 2. the act or fact of being unable to keep or maintain someone or something, 3. A person, or thing, or amount that is lost, 4. A failure to win, gain, obtain or utilize, 5. Decrease in amount, magnitude, value or degree, 6. The amount of an insured's financial detriment by death or damages that the insurer is liable for, 7. Football: the distance the ball is moved away from the goal during a play.

LOSS Definition & Meaning - Merriam-Webster, https://www.merriam-webster.com /dictionary/loss?src=search-dict-hed. In this matter, the loss was an identifiable amount which was withdrawn from bank accounts.

The language preceding the loss table and the table itself is followed thereafter by interpretive "notes to the table" which includes language about 'actual' and 'intended' loss. U.S.S.G. §2B1.1(b)(1). The absence of the language 'actual' or 'intended' in the actual Guideline indicates that the Guideline does not include intended loss and refers to 'actual' loss, or loss. Where loss can be ascertained, as in this matter, the term 'loss' used in the guideline is not ambiguous. Where loss is specifically identified, as here, the commentary expands the definition beyond the guideline and does so where the Guideline is not ambiguous. As such the 'intended loss' language included in the commentary should be given no weight. *United States v. Banks*, 55 F. 4th at 258; *Kisor v. Wilkie*, 588 U.S. 558 (2019).

The Eighth Circuit has explained, however, that even after *Kisor* the Court considers the Guidelines together with their commentary, and a "lawfully adopted, noncontradictory comment or application note that interprets or explains a Guideline will be given controlling weight unless plainly erroneous." *See United States v. Donath*, 107 F.4th 830, 838 (8th Cir. 2024); *see also United States v. Cupples*, 105 F.4th 1096, 1097–98 (8th Cir. 2024) (per curiam) (citing *United States v. Rivera*, 76

F.4th 1085, 1091 (8th Cir. 2023)). The Eighth Circuit has applied the commentary directing courts to use the greater of actual loss and intended loss even after *Kisor*. *See, e.g., United States v. Harris*, 83 F.4th 1093, 1098 (8th Cir. 2023); *United States v. Ruzicka*, 988 F.3d 997, 1012 (8th Cir. 2021). Even in the wake of *Kisor*, the Eight Circuit has continued to rely upon the notes of §2B1.1(b)(1) which suggest 'loss is the greater of actual or intended loss'. U.S.S.G. §2B1.1(b)(1), notes to table. However, the only ambiguity which exists to justify reliance upon the notes, is contained within the notes themselves. Defendant recognizes this argument is contrary to 8th Circuit precedent in *United States v. Nock*, 2025 WL2250564 (8th Cir. Aug. 7, 2025). However, Defendant contends *Kisor* was appropriately interpreted in *Banks*. *United States v. Banks*, 55 F.4th 246, 255 (3d Cir. 2022). And further, where loss is a 'net loss' concept, use of loss and 'intended loss' where no additional loss has occurred creates the ambiguity, and is plainly erroneous. *See United States v. Donath*, 107 F.4th 830, 838 (8th Cir. 2024); *see also United States v. Cupples*, 105 F.4th 1096, 1097–98 (8th Cir. 2024) (per curiam) (citing *United States v. Rivera*, 76 F.4th 1085, 1091 (8th Cir. 2023)). Marshall contends this Court should determine that 'loss' means loss, and as used in U.S.S.G. §2B1.1(b)(1) 'loss' is not ambiguous, is not subject to unnecessary expansion and interpretation by notes to the table, and further determine that reliance upon the notes to the table creates the ambiguity and is plainly erroneous.

CONCLUSION

For the reasons asserted herein, Marshall contends this Court should conclude that U.S.S.G. §2B1.1(b)(1) is not ambiguous as it relates to 'loss' and reliance upon the notes to include 'intended loss' in the application of guidelines in this matter is erroneous and Mr. Marshall should be remanded for resentencing based upon the identifiable loss established at sentencing.

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Appendix B16
Appellate Case: 25-3141 Page: 16 Date Filed: 01/12/2026 Entry ID: 5596093

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because Brief of Appellant contains 1,816 words, excluding parts of the motion exempted by Fed. R. App. P. 32(f). The brief uses a proportional space, 14-point Times New Roman font.

CERTIFICATE OF SUBMISSION AND VIRUS SCAN

I hereby certify that on this 9th day of January, 2026, I electronically submitted the Brief of Appellant with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system after scanning it for viruses by using the Vipre's Antivirus Virus Scan program, which reported no viruses found. Paper copies will be transmitted upon receipt of the Notice of Filing from the Clerk of Court.

/s/ Amy Pille
Legal Assistant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the ____ day of January, 2026, I mailed two copies of the Brief of Appellant by first-class mail deposited in the United States Mail, postage prepaid, addressed to the counsel of record listed below.

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By: /s/ Amy Pille
Legal Assistant

Date: January 9, 2026.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
vl Sheet 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
MALIK K. MARSHALL
a/k/a: "Thang" and "M Thang"

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24-cr-00108-003

USM Number: 49222-511

James S. Nelsen
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 and 47 of the Indictment filed on August 20, 2024.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1344, 1349	Conspiracy to Commit Bank Fraud	05/2024	1
18 U.S.C. § 1957(b)	Money Laundering Over $10,000	07/31/2023	47

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 14 and 48 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 15, 2025
Date of Imposition of Judgment


Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge
Name of Judge Title of Judge

October 15, 2025
Date

Appendix C1

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang"
CASE NUMBER: 4:24-cr-00108-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

188 months, consisting of 188 months as to Count 1 and 120 months as to Count 47, to be served concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

The defendant be afforded the opportunity to participate in the 500-hour Residential Drug Abuse Program (RDAP) and any other substance use treatment as well as mental health treatment; be designated to a facility that allows him to participate in UNICOR and training in welding, electrical, and plumbing trades; and, if possible with his treatment needs and vocational training requests and commensurate with his security and classification needs, be placed at a facility near Chicago, Illinois.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang" Judgment Page: 3 of 8
CASE NUMBER: 4:24-cr-00108-003

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Count 1 and three years as to Count 47, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang" Judgment Page: 4 of 8
CASE NUMBER: 4:24-cr-00108-003

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang"
CASE NUMBER: 4:24-cr-00108-003

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must pay restitution in the amount of $166,173.10. You will cooperate with the U.S. Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the U.S. Probation Office. You may be required to participate in an IRS Offset Program and/or Treasury Offset Program which may include the garnishment of wages or seizure of all or part of any income tax refund and/or any government payment to be applied toward the restitution balance.

You must not apply for, solicit, or incur any further debt, included but not limited to loans, lines of credit, or credit card charges, either as a principal or cosigner, as an individual, or through any corporate entity, without first obtaining written permission from the U.S. Probation Officer.

You must provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang"
CASE NUMBER: 4:24-cr-00108-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$166,173.10	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
Cumis Insurance Society (Community Choice Credit Uni P.O. Box 1221 Madison, WI 53701		$99,736.00	
Bank of America Security Recovery Support MO1-800-06-15 PO Box 790087 St. Louis, MO 63179		$66,437.10	
TOTALS	$0.00	$166,173.10	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang"
CASE NUMBER: 4:24-cr-00108-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 166,373.10 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to:
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All crimnal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☑ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Malik Marshall and all applicable codefendants in Docket Number 4:24-cr-00108	$ 66,437.10	$ 66,437.10	Bank of America

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: MALIK K. MARSHALL a/k/a: "Thang" and "M Thang
CASE NUMBER: 4:24-cr-00108-003

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Malik Marshall and all applicable codefendants in Docket Number 4:24-cr-00108	$99,736.00	$99,736.00	CUMIS Insurance Society (Community Choice Credit Union)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,	Case No. 4:24-cr-108
vs.	
MALIK K. MARSHALL, Defendant.	SENTENCING HEARING TRANSCRIPT

Courtroom 410
U.S. Courthouse
111 Locust Street
Des Moines, Iowa
Wednesday, October 15, 2025
10:18 a.m.

BEFORE: THE HONORABLE REBECCA GOODGAME EBINGER

APPEARANCES:

For the Plaintiff: JOSEPH LUBBEN, ESQ.
KRISTIN HERRERA, ESQ.
United States Attorney's Office
210 Walnut Street, Suite 455
Des Moines, Iowa 50309

For the Defendant: JAMES NELSEN, ESQ.
Stowers & Nelsen
650 South Prairie View Drive, Suite 130
West Des Moines, Iowa 50265

KARLA M. HALE, CSR, RDR, CRR
United States Courthouse
111 Locust Street, Room 521
Des Moines, Iowa 50309

P R O C E E D I N G S

(In open court, with the defendant present.)

THE COURT: Thank you. Please be seated. We are here in the matter of the United States of America vs. Malik Marshall. This is Case Number 4:24-cr-108. This is the time and date set for a sentencing hearing. My name, as you know, is Rebecca Goodgame Ebinger, and I am the district judge presiding.

My apologies for the brief delay. I had an unexpected criminal matter come up this morning that I needed to deal with in an expedited way. Thank you for your patience.

Mr. Marshall, do you recall being charged by way of an indictment filed here in this district with a number of fraud-related offenses?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Nelsen?

MR. NELSEN: Yes, Your Honor?

THE COURT: Would you help him with the microphone?

MR. NELSEN: Oh, I'm sorry.

THE COURT: And before we proceed, if counsel would identify themselves for purposes of the record.

MR. LUBBEN: Joseph Lubben and Kristin Herrera on behalf of the Government.

MR. NELSEN: James Nelsen for the defendant.

THE COURT: The defendant is personally present as well.

Mr. Marshall, you were charged among a number of other individuals in a 50-count indictment that was filed back on August 20th of 2024. You were named in four of the counts. Count 1 alleged conspiracy to commit bank fraud, Count 14 alleged conspiracy to commit money laundering, and then Counts 47 and 48 each alleged money laundering in an amount greater than $10,000. Do you recall that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You initially entered a plea of not guilty to all of the charges against you; and then subsequent to that time, you appeared in front of the United States magistrate judge, and you pleaded guilty to Counts 1 and 47 of that 50-count indictment pursuant to a plea agreement. Do you recall that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: At the time of your plea, the United States magistrate judge explained to you that Count 1, a violation of Title 18, United States Code, Section 1344 and 1349, carried a maximum potential penalty of 30 years of imprisonment; and then Count 47, money laundering over $10,000, a violation of Title 18, United States Code, Section 1957(b), carried a maximum potential penalty of ten years, and those sentences could be run concurrently, or at the same time, or consecutively, meaning back to back. Do you recall that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: As part of the plea agreement, the Government agreed to dismiss those other charges against you at the time of sentencing, and we will address that at the appropriate time.

The magistrate judge recommended to me that I accept your plea of guilty and adjudicate you guilty, and I did so on June 9th of this year. Do you understand, Mr. Marshall, that you are here today for the purpose of being sentenced on those pleas of guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you continue to acknowledge that you are indeed guilty of the crimes in Count 1 and 47, conspiring to commit bank fraud and laundering money over $10,000?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Before I proceed further with the hearing, I need to confirm that you are fully able to participate here today. Are you currently under the influence of alcohol?

THE DEFENDANT: No.

THE COURT: Are you under the influence of any illegal substances?

THE DEFENDANT: No.

THE COURT: Are you taking any prescription medications? The presentence investigation report informs me that there's some medications that you have been taking. Is that accurate, sir?

Appendix D4

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are those -- the medications listed are in paragraph 111 of the presentence report. Are you taking those medications as prescribed?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there anything about your use of those medications that would negatively affect your ability to understand or participate in today's hearing?

THE DEFENDANT: No.

THE COURT: Are you suffering from any mental health or physical illness or ailment that would cause you to be unable to understand or participate in today's hearing?

THE DEFENDANT: No.

THE COURT: If at any time during this hearing, Mr. Marshall, you do not understand something I say or you have a question, would you please stop me and let me know?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The most important thing is that you understand the proceedings.

In anticipation of this hearing, the United States Probation Office prepared a presentence investigation report.

I should note that the probation office is represented here today by U.S. Probation Officer Hollinrake.

I have reviewed the presentence investigation report in this case. I have reviewed the memoranda filed by the parties.

I have reviewed the proposed exhibits from the Government. There were ten proposed exhibits.

I received a letter of support for the defendant that I reviewed that are on the docket.

I have reviewed the docket as a whole and the materials related to the plea.

I have sentenced almost all of the co-defendants in this case thus far. I have a sentence immediately following this one today for the one remaining defendant. Otherwise, all other defendants have been sentenced.

Some of the sentences are not on the cover sheet of the presentence report, but they would have been reflected on the docket at this time.

Mr. Thomas was sentenced to 12 months and one day. The other two identified as pending sentences have not yet been sentenced. And so there is Ms. Renfroe, who is immediately after this hearing, and Ms. Smith, whose sentencing date has been continued to an indeterminate date at this time.

So those are all of the materials I have reviewed.

I also received some materials in regards to loss amount and restitution, although I don't believe I saw any -- I did receive some victim impact statements as well from a number of the victim institutions.

Any other materials that need to be brought to my attention, Mr. Lubben?

MR. LUBBEN: No, Your Honor.

THE COURT: Any objection to the Court's consideration of the letter of support identified on the docket?

MR. LUBBEN: No, Your Honor.

THE COURT: Any additional materials to be brought to the Court's attention on behalf of the defense, Mr. Nelsen?

MR. NELSEN: No, Your Honor.

THE COURT: Any objection to Government's Exhibits 1 through 10?

MR. NELSEN: No, Your Honor.

THE COURT: Okay. One through 10 are admitted.

Let's turn our attention to the presentence investigation report in this case.

Mr. Lubben, have you reviewed that report on behalf of the United States?

MR. LUBBEN: I have, Your Honor.

THE COURT: And does the Government have any outstanding factual objections or corrections to that report?

MR. LUBBEN: No factual objections.

THE COURT: Thank you.

Mr. Nelsen, have you and your client had the opportunity to review the presentence investigation report in this case?

MR. NELSEN: Yes, Your Honor.

THE COURT: Could you make a record as to how you went about reviewing the document with Mr. Marshall.

MR. NELSEN: I reviewed the document at the Polk County Jail with him.

THE COURT: After that review, do you have any outstanding factual objections or corrections to the report factually?

MR. NELSEN: Your Honor, just to clarify the objections that I made, largely our objections were to the conclusions, not to the conduct that's alleged. Clearly, there is information evidence to suggest that Mr. Marshall was in possession of firearms and potentially possession of controlled substances, but our objections largely are that those do not impact the sentencing guidelines. The guidelines are an otherwise presumptively reasonable sentence, and it appears both parties are asking for guidelines sentences. So largely the information in those objections in our opinion was not relevant to the guideline calculations and the ultimate --

THE COURT: You acknowledged in your written materials that the Court, under 3553(a) and the other sentencing statutes, has the ability to consider information outside of the information that specifically deals with the guidelines; correct?

MR. NELSEN: Correct, Your Honor.

THE COURT: And you're not objecting factually that the material isn't sufficiently supported; correct?

MR. NELSEN: The only objection that we would maintain,

Your Honor, is with respect to the conclusion that he was involved in drug trafficking. I think that his mere presence, mere association at the time of his arrest in Minnesota, isn't sufficient to establish that he is involved in drug trafficking, especially with the large quantity that was found in Minnesota.

You know, when you're charged with a criminal offense, you have specificity as to the offense, the elements. You're entitled to discovery, which we don't have the discovery file relating to the investigation and prosecution in Minnesota, but Mr. Marshall was not charged with that offense.

THE COURT: And I don't see that anything was -- so I'm looking specifically at the paragraph dealing with the 10,000 pills that were found in Minnesota, and that's paragraph 56. I see that as factual, and you're not objecting to those facts?

MR. NELSEN: I'm not objecting to the fact that there were 10,000 pills that were located at the residence where he was arrested. He was obviously arrested in Minnesota at this residence, but his mere proximity, mere presence there, isn't sufficient to establish that he was involved in drug trafficking.

THE COURT: And is there a specific place where that's -- that conclusion is made that you want to object to? I didn't -- that's certainly an inference the Court can make, that the defendant's presence at a location with 10,000 pills, which everyone acknowledges is trafficking quantities, is there, but I

didn't see a specific conclusion that you were objecting to.

MR. NELSEN: Well, we objected to the inference that he is involved in drug trafficking in other paragraphs, Your Honor.

THE COURT: Okay. Can you direct me to those paragraphs, Mr. Nelsen? I'm sorry if I'm being dense.

MR. NELSEN: That's fine, Your Honor. Paragraph -- or objection number 2 at paragraph 25. Paragraph 49 objects to the conclusion that he is involved in drug trafficking.

THE COURT: And that's separate from -- I guess I'm saying that's separate from the 10,000 pills. That's in reference to the interpretation of communications; correct?

MR. NELSEN: Well, that's in reference to the conclusion of the presentence investigation report writer that he is involved in drug trafficking as a whole --

THE COURT: Okay.

MR. NELSEN: -- which would encompass also the information related to Minnesota.

THE COURT: And so the conclusion that you are referring to is that "and his drug trafficking" in paragraph 25?

MR. NELSEN: I'm sorry, Judge?

THE COURT: Is there a place in this report that you can point me to where the probation office says he was involved in drug trafficking?

MR. NELSEN: I believe it was in paragraph 25 and 49.

THE COURT: Okay. So that's what -- I was just asking,

where it says, "Along with Marshall's references to blues and his drug trafficking"?

MR. NELSEN: Correct.

THE COURT: Okay. And then in 49, it is -- so those would be your specific objections, to that conclusion in 25 and then in 49 where Wright and Marshall also texted about committing other forms of fraud, including fraud involving Government relief, and they discussed Wright obtaining blues and percs from Marshall?

MR. NELSEN: Correct. And at paragraph 56, we objected to the inclusion of uncharged, unproven conduct, which would be the Minnesota arrest.

THE COURT: Okay. But, again, you're not factually objecting to paragraph 56, that he was eventually found in the Minnesota area on November 26th, 2024, when the Minnesota Bureau of Criminal Apprehension executed a search warrant at a residence. Law enforcement officers also found approximately 10,000 suspected fentanyl pills, 2 pounds of fentanyl powder, bulk United States currency, and firearms at the residence?

MR. NELSEN: We are not objecting that those items existed where he was found.

THE COURT: Okay. Thank you.

All right. Mr. Marshall, we have been talking about the presentence investigation report in this case. Mr. Nelsen explained to me how you-all went about reviewing this document.

He said he came to the Polk County Jail and talked with you about the report. Do you recall going over the presentence investigation report with your attorney as he described?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you had a full and fair opportunity to review the material contained in the report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Nelsen has maintained an objection to some of the facts here that conclude that you were involved in drug trafficking. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Other than that, Mr. Nelsen has explained that there are no other facts that are wrong or things that are incorrect in the report that he needs to bring to my attention. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you agree that the report, other than that specific objection in regards to drug trafficking, is factually accurate or correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Thank you, sir.

Based upon that record, the Court will rely upon the unobjected-to factual information contained in the presentence investigation report for purposes of determining the appropriate sentence to impose in this case.

The defense has maintained an objection to a reference in paragraph 25 about his drug trafficking, a reference in paragraph 49 to obtaining blues and percs, and then an objection to an inference from paragraph 56 that that evidence supports a conclusion that Mr. Marshall was engaged in drug trafficking.

I have received the exhibits from the Government, Exhibits 1 through 10, some of which deal with those issues.

Was there additional evidence, Mr. Lubben, that you'd like to provide to the Court as to the establishment by a preponderance of the evidence of the defendant's engagement in drug trafficking?

MR. LUBBEN: No, Your Honor, not beyond the exhibits.

THE COURT: Would you like to be heard on that issue?

MR. LUBBEN: Just very briefly. I don't think any of these paragraphs are inaccurate factually. I think we've gone over that in paragraph 56.

Paragraph 49 discusses conversations between Mr. Marshall and Ms. Wright regarding blues and percs. Those conversations are reflected in Government's Exhibit 10.

And then I believe the last paragraph -- or the last objection was to paragraph 25, which, again -- and I would acknowledge this doesn't affect his guidelines range, but I think it is a fair inference to draw here, based on the Government's exhibits and the unobjected-to portions of the PSR, that Mr. Marshall was involved in drug trafficking, not only in

relation to what was found in Minnesota at the residence, but also conversations that he was having with Ms. Wright, Government's Exhibit 10, and then also many photos found throughout his device, photos of Mr. Marshall with various types of drugs -- guns, drugs, stolen checks, images sometimes all present in one image. And so I think it is a fair conclusion to draw here, and we would ask that the PSR be left as is.

THE COURT: So looking at the specific factual objections, acknowledging that the drug activity does not have an impact on the guideline calculation, it is information that the Court can consider, if established by a preponderance of the evidence, for purposes of determining the appropriate sentence to impose in this case.

The Government has provided the Court with Exhibits 1 through 10. Many of those provide insight into the defendant's activity in regards to illegal controlled substances. The photographs -- for example, in Exhibit 1, the text messages reflected in paragraph 25 and the substance of which they are not objected to as being inaccurate or not reflected in the Government's discovery materials all support the conclusion by a preponderance of the evidence that this defendant was engaged in drug trafficking.

Certainly, mere proximity is not enough to establish drug trafficking by -- and a burden of proof of a -- beyond a reasonable doubt at a criminal trial. But here, looking at the

seized evidence reflected in paragraph 56 in conjunction with the text messages, the photographic evidence, and the other evidence that's unobjected to reflected in the presentence investigation report as well as the exhibits entered here today, the Court does find that the Government has met its burden of establishing by a preponderance that this defendant was engaged in drug trafficking consistent with that communication he was having with others about percs and blues and his photographs of controlled substances on his devices.

For that reason, to the extent that those factual objections go to facts in the presentence report, they are overruled.

Any additional record in that regard from the Government?

MR. LUBBEN: No, Your Honor.

THE COURT: From the defense?

MR. NELSEN: No. Thank you, Your Honor.

THE COURT: Okay.

So that brings us to a discussion of the United States Sentencing Guidelines. As we know, the United States Sentencing Guidelines are advisory, and the Court treats them as such, but I am required to accurately calculate and consider the applicable advisory guideline range.

In this case, the offenses are grouped together for a calculation of the offense level. That begins on page 22 at paragraph 65.

The report scores a 31 base offense level based upon the nature of the conviction, the amount of loss, the sophisticated means.

There is a single-level upward adjustment because of the conviction under 1957 for the money laundering.

There is a four-level upward adjustment because the defendant was a leader or organizer of an extensive criminal activity involving five or more participants.

That results in an adjusted offense level of 36.

There are two levels off for acceptance of responsibility.

Does the Government move for the third level?

MR. LUBBEN: Yes, Your Honor.

THE COURT: The Court grants that motion.

So that results in a total offense level of 33.

The defendant is a criminal history category IV, I believe, with eight criminal history points.

That results in an advisory guideline range of between 188 and 235 months.

Supervised release is recommended between two and five years on Count 1 and one and three years on Count 47.

Probation is not an option for these offenses.

And then the fine is between 35,000 and $1 million.

Does the Government have any objection to those calculations?

MR. LUBBEN: It objects to the lack of a trafficking

stolen property enhancement.

THE COURT: Thank you.

And Mr. Nelsen?

MR. NELSEN: Nothing other than what we submitted in our sentencing memo, Judge.

THE COURT: And my understanding from the sentencing memo is that you're objecting to the amount of loss attribution that forms the basis for at least part of the determination of the base offense level?

MR. NELSEN: Based on *Banks*, which is a Third Circuit case, which is obviously foreclosed by Eighth Circuit precedent.

THE COURT: Okay. I appreciate that acknowledgment.

You acknowledge the Court's required to apply binding Eighth Circuit precedent which does say that the Court looks to intended loss in determining the amount of loss attributable under the guidelines?

MR. NELSEN: Yeah, and I think the *Nock* case actually specifically referenced the *Kisor* and the *Banks* case that came out five days or ten days after our objections. So yes, Your Honor.

THE COURT: Thank you.

With that record, I don't imagine the Government wants to be heard further on amount of loss?

MR. LUBBEN: No, Your Honor. Thank you.

THE COURT: So the objection, which is made for the

defendant's benefit to preserve that issue, is overruled. The probation office has correctly scored the amount of loss under the Eighth Circuit precedent that's applicable here.

The Government bears the burden on their objection in terms of the stolen property adjustment.

Did you want to present any evidence on that, Mr. Lubben?

MR. LUBBEN: No, Your Honor.

THE COURT: Did you want to --

Mr. Nelsen, I can't imagine you want to present any evidence on that?

MR. NELSEN: No, Your Honor.

THE COURT: Did you want to be heard about that separately?

MR. LUBBEN: Just briefly. I'd primarily rest on our briefing here, Your Honor. I don't think there is much of an argument that Mr. Marshall was not receiving large numbers of stolen checks, stolen property in this case.

THE COURT: In all of the cases we've had so far, I don't recall you ever seeking this for anyone else. Am I remembering that incorrectly?

MR. LUBBEN: No. That's correct, Your Honor.

THE COURT: And how is this different in terms of his providing these checks to other members of the conspiracy for purposes of the conspiracy as opposed to a separate sale of these checks that isn't just in furtherance of the conspiracy?

MR. LUBBEN: Yeah, and that's exactly right, Your Honor. Mr. Lee, Mr. Currie doing similar things and obtaining stolen checks and then just using them in furtherance of the conspiracy. We see evidence of Mr. Marshall doing a similar thing to an extent. But then he's also taking stolen checks and selling those checks to other individuals, specifically Ms. Wright.

THE COURT: Looking at the text messages there, it doesn't seem like that was -- I mean, Ms. Wright is a member of the conspiracy?

MR. LUBBEN: Correct, Your Honor.

THE COURT: And it seems like he was contemplating selling them to her separately but also was using them as part of the conspiracy generally; is that right?

MR. LUBBEN: I think there were -- there were certainly some instances where Ms. Wright was acting in furtherance of the conspiracy as a whole. But I think based on these text conversations -- and I'll direct the Court specifically to pages 13 through 15 --

THE COURT: Of Exhibit?

MR. LUBBEN: Ten. I'm sorry, Your Honor.

And in this case -- or in these text messages, Ms. Wright and Mr. Marshall are discussing Mr. Marshall obtaining slips, or stolen checks. Ms. Wright asked him if he has some, asks him how much he is charging for them, and then he encourages her to

go out and do similar frauds on her own. And I would interpret that as separate from the regular conspiracy.

He references on page 14, top of page 14, he references her coming with 500 or 1,000 to get her own slips and to do fraud with an individual named Tasia it's evident from these text message exchanges. And so it's different from what Mr. Currie and Mr. Lee were doing in that they were just obtaining these checks in furtherance of the fraud as a whole.

It appears, based on these messages, that Mr. Marshall is obtaining checks for the fraud. He absolutely is doing that. But he's also then taking certain checks, selling them to another individual, and encouraging that individual to go out and do their own fraudulent acts.

THE COURT: Looking at page 13, it seems like this is a negotiation in regards to what she is doing for him as opposed to, you know, being able to have these separately or simply as part of the fraud. Would you read that similarly?

MR. LUBBEN: I'm sorry, Your Honor. Would you restate that?

THE COURT: On page 13, it appears that the checks are available to her as part of the fraud should she want to engage in a relationship with Mr. Marshall. But should she not, then she would have to pay for them and then do them separately. I think that's a fair reading of that exchange.

MR. LUBBEN: That -- that could be true, Your Honor.

I -- our position would still be that it appears he is offering these checks for sale so that Ms. Wright can go out and do her own fraud.

THE COURT: Is offering them for sale sufficient for the adjustment?

MR. LUBBEN: I would say that it shows that Mr. Marshall is not only providing them to the conspiracy as a whole but also to Ms. Wright, likely other individuals based on this conversation, so that they can go and enact their own fraud.

THE COURT: Thank you.

MR. LUBBEN: But I understand it, Your Honor, if I'm reading that differently. That's understandable.

THE COURT: Mr. Nelsen?

MR. NELSEN: Thank you, Your Honor.

I think that the enhancement requires more than -- even if this were selling, which I would agree with the Court's interpretation that at best, this might be reimbursement for payment that he has made for the checks in furtherance of the conspiracy or that if she is going to go do her own thing, she's going to have to pay for the checks that he gets.

But beyond that, I think that the enhancement requires more than the selling of checks, if that is how the Court would interpret it. It has to be in the business.

Under the *Vickers* case, which is an Eighth Circuit case

from 2008, they cited -- it's 528 F.3d 1116. They cited *United States vs. St. Cyr*, which was a First Circuit case, 977 F.2d 698.

And what the *Vickers* case basically says is that *St. Cyr* outlines what's really reasonably necessary to establish in the business for purposes of -- at the time of the guideline, it was called a fencing enhancement. But there has to be more than just selling of checks or reimbursement for the obtaining of checks. It has to be activities demonstrated, be it continuing, expanding, past activities relating to these types of offenses and the income generated through the fencing activities. None of those things are present here.

This isn't a sophisticated situation. It's essentially a conversation where Mr. Marshall and Ms. Wright are talking about the cost of the checks, the potential reimbursement of the checks, and how to use them in furtherance of the conspiracy, and we don't think that that rises to the level of supporting the enhancement, Your Honor.

THE COURT: Thank you.

So the question here under 2B1.1(b)(4) is whether the defendant's offense involved receiving stolen property and the defendant was a person in the business of selling and receiving stolen property.

Here, this entire conspiracy involved checks being distributed to members of the conspiracy and then funds from

those fake checks that had been purchased or those stolen checks that had been purchased being funds brought back to the conspirators, both the people that brought the checks in and other people in part of the conspiracy as a whole.

I don't find compelling Exhibit 10 and the text messages between Ms. Wright, who is a member of the conspiracy, and the defendant as demonstrating that the defendant is separately in the business of receiving and selling stolen property. I don't disagree with the Government's citation to cases where checks can be property and can be the stolen property that's a part of this adjustment.

But under this case, under these facts, the Court finds that the Government has not established by a preponderance that this defendant was in the business of receiving and selling stolen property separate from or as a part of this other conspiracy, which was taking these checks and getting the checks cashed and then getting money back from those checks.

And so for that reason, the Court finds that the adjustment was properly omitted from the presentence investigation report, and the objection is overruled.

Any additional record in that regard from the Government?

MR. LUBBEN: No, Your Honor.

THE COURT: From the defense?

MR. NELSEN: No. Thank you, Your Honor.

THE COURT: And I don't believe either party sought a

traditional departure; correct?

MR. LUBBEN: That's correct, Your Honor.

THE COURT: Mr. Nelsen, no departure?

MR. NELSEN: No departure, Your Honor. Thank you.

THE COURT: Thank you.

That brings us to the ultimate question in the case, which is the appropriate disposition.

I have noted the evidence I have already reviewed in regards to disposition.

Does the United States wish to present any other evidence?

MR. LUBBEN: No, Your Honor.

THE COURT: Mr. Nelsen, any evidence?

MR. NELSEN: No, Your Honor. Thank you.

THE COURT: This is a victim case. Victims have the right to be heard orally in court.

Do you have any information about victims which wish to be heard here in court today, Mr. Lubben?

MR. LUBBEN: No, Your Honor.

THE COURT: All right. So then we'll proceed to the positions of the parties as to sentencing.

Mr. Nelsen, would you like to be heard?

MR. NELSEN: Briefly, Your Honor. We would largely rest on our memo, but the bottom line -- the bottom of the guideline range is 188 months in this matter. It's a nonviolent offense. We think that 188 months is sufficient, but not

greater than necessary, in light of all the factors, and that's what we would ask the Court to impose.

THE COURT: Thank you, Mr. Nelsen.

Mr. Marshall, now is the time during the hearing where you have the opportunity to speak. You do not have to say anything, but if you'd like to, the Court will consider it. Is there anything you would like to say, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I see you have something that you'd like to read, and that's fine. Just please speak into the microphone slowly so that I can understand you and so the record can reflect what you say here today. You can remain seated, sir. Thank you.

THE DEFENDANT: Good morning, Your Honor. I'm writing this letter with the utmost respect and humility as you prepare to make your sentencing decision.

I want to begin by taking full responsibility for my actions. I deeply regret the choices I made that led me here, and I understand that my actions were wrong regardless of my circumstances.

While I've been incarcerated, I have taken time to reflect on the impact of my behavior, not only on myself but on those around me, including my family. I know I have let people down, and I truly regret that.

I am committed to making meaningful changes in my life.

While incarcerated, I want to do programs to better myself, programs like RDAP, mental health, and substance abuse classes.

This experience has been a wake-up call for me. I want nothing more than the chance to move forward in a positive direction and prove that I can be a better person. I am not the same person I was when I made this mistake, and I am actually working to be someone my family, friends, and the community can be proud of.

I respectfully ask the Court for leniency in my sentencing and to judge me off my character and not the picture that was painted of me. Regardless of the outcome, I want the Court to know that I am truly remorseful and committed to doing better.

THE COURT: Thank you, Mr. Marshall.

On behalf of the United States?

MR. LUBBEN: Thank you, Your Honor.

Your Honor, here the defendant obtained tens of millions of dollars of stolen checks, managed many fraudsters, both individuals going in to commit substantive counts of bank fraud and then also managing the people who were in the middle of the chain of command here, managing the middle managers, as it were, of these substantive fraudsters.

And he did this all while he was on probation for very serious gun charges in Illinois. He kept doing it while his co-conspirators were caught, and then eventually he fled when the ring started to fall apart. And then he got caught in

Minnesota surrounded by pounds of fentanyl pills, pounds of fentanyl powder, guns, cash, more evidence of fraud on his phone.

And while the defendant might have joined the conspiracies later than some of the other co-conspirators like Thaddeus Lee, Latroy Currie, Johnnie Thomas, his conduct in many ways goes beyond what they were doing. He managed many, quote, unquote, heads and managers of heads directly. He bought or obtained millions and millions of dollars' worth of stolen checks. Again, over $85 million worth of stolen checks found on his phone.

And then after he got caught and search warrants were executed on his home, he went on the run. And the whole time he was trafficking drugs, evident in the Government's exhibits and throughout the PSR, possessing many guns despite clearly being prohibited on several levels from doing so.

And while Mr. Lee, Mr. Thomas, and Mr. Currie had relatively minor criminal histories, Defendant has a very concerning one. In the sentencing memo, I believe the defendant asked the Court to consider what he claims is a lack of significant violent criminal history.

The Government would like the Court to consider his criminal history as well, and the Government believes it's quite concerning. We have battery, fleeing from police, aggravated assault, aggravated unlawful use of a weapon. It's not a dated

criminal history. It continues throughout Mr. Marshall's adult life. It continues up and through the instant offense here.

Defendant presents a significant danger to the community. He presents an evident disregard for the law. The Government requests a middle-of-the-guidelines sentence in recognition of the seriousness of the defendant's crimes to protect the public and then to deter others from committing or attempting similar conduct.

THE COURT: Thank you, Mr. Lubben.

In determining the appropriate sentence to impose in this and every case, the Court's required to consider a number of factors, and those factors are set forth in Title 18, United States Code, Section 3553(a). They include the defendant's history and characteristics and the nature and circumstances of the offense.

The Court must also consider the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, and to adequately deter future criminal conduct, both for this defendant and for others who might contemplate committing such an offense in the future.

The Court has to consider the need for the sentence to protect the public and to provide the defendant with needed correctional treatment in the most effective manner.

The Court has to consider the sentencing guidelines and the

advice they provide as well as the need to avoid unwarranted sentencing disparity.

I also must consider the need to provide restitution, and we'll speak about that subsequently.

I may not speak about each one of the statutory considerations specifically in articulating the reasoning for my sentence, but in determining the appropriate sentence to impose, I have considered each and every one of them.

Ultimately, the sentence the Court imposes must be sufficient, but not greater than necessary, to serve these purposes.

This is an incredibly serious offense. The amount of loss here is high. Both actual and intended loss is high. The defendant's role is at the top tier of the individuals involved in this nationwide scheme. He was involved for a considerable period of time and then continued, despite the intervention of law enforcement, other people's arrests, but also fled when he felt the pressure of law enforcement coming around him.

The defendant's proximity to and involvement with significant drug trafficking is of concern to the Court because of the safety of the community and the need to protect the public. The history with firearms and the photographic evidence that shows that the defendant was surrounding himself with firearms is of concern to the Court, again, with the need to protect the public. So all of this is aggravating in terms of

the seriousness of the offense and the defendant's choices to engage in this conduct while on the supervision of the Court as well being on probation.

Looking at the other aspects of the defendant's history and characteristics, there are some mitigating factors here, and the Court recognizes that. The defendant had early onset use of alcohol reflected in paragraph 115. He's had some childhood trauma and challenges, including a history of abuse, mental health diagnoses, reflected in paragraphs 110 and 111. The Court recognizes those things as being mitigating factors as part of Defendant's history.

Counsel, do you know of any legal reason why the Court should not impose sentence at this time?

MR. LUBBEN: No, Your Honor.

MR. NELSEN: No, Your Honor.

THE COURT: So for the foregoing reasons and after considering all of the relevant statutory factors and the materials I previously discussed, it is the judgment of the Court that the defendant, Malik K. Marshall, is sentenced on Count 1 to a period of incarceration of 188 months and on Count 47 for 120 months with those sentences to be served concurrently, or at the same time, for a total effective sentence of 188 months.

That is at the bottom of the advisory guideline range and is imposed for the reasons I have stated. This is a large

range, 188 to 235 months.

I have sentenced at the bottom of the range despite the aggravating factors that are present here, including the defendant's drug involvement, the leadership here, the persistence in the conduct despite the knowledge of the investigation going on because of the mitigating factors that are present here in terms of the defendant's history and characteristics.

Notably, that sentence is higher than relatively similarly situated other co-defendants, but the higher sentence is warranted because of the defendant's criminal history. That is something that distinguishes him from some of his co-conspirators who were scored lower criminal history categories appropriately.

I recognize my authority to sentence higher in the guideline range, as advocated for by the Government, or to sentence up to the statutory maximum for Count 1, which is 30 years. Having considered all of the relevant statutory factors and the materials I previously discussed, it is the judgment of the Court that that 188-month sentence is sufficient, but not greater than necessary, to serve the purposes of sentencing.

I do not impose a fine, finding that the defendant does not have the reasonable ability to pay a fine.

Mr. Lubben, where are we with restitution as to this defendant?

MR. LUBBEN: The Government is requesting $166,173.10 of restitution. These stem from losses requested by -- restitution requests submitted by Bank of America and Cumis Insurance Society, the insurer for Community Choice Credit Union. These are losses relating to an account that was opened in July of 2023. Mr. Marshall received a large cashier's check that was proceeds from that account. He also participated in managing the opening of that fraudulent account by a co-defendant.

THE COURT: Mr. Nelsen, as part of the plea agreement, you agreed to restitution. Do you agree that this restitution is appropriately ordered at this time?

MR. NELSEN: Yes, Your Honor.

THE COURT: So the Court will order restitution to the identified victims, Bank of America and Cumis Insurance Society. That is in the total amount of 166,700 -- excuse me, $166,173.10.

The amount is joint and several with any other applicable co-defendants in this case. I am going to waive interest on that amount, which is due and payable immediately, and the means of payment will be set forth in the judgment.

Bank of America's restitution specifically is $66,437.10.

Is that right, Mr. Lubben?

MR. LUBBEN: Yes, Your Honor.

THE COURT: With the remainder of that amount going to

Cumis Insurance?

MR. LUBBEN: That's correct.

THE COURT: And the Brookshire Grocery Company is not ordered restitution for this defendant; correct?

MR. LUBBEN: That's correct, Your Honor.

THE COURT: All right.

I do also impose a $100 special assessment on each count of conviction for a total of $200 due and payable immediately without interest to the United States Clerk of Court for the Southern District of Iowa.

In addition to the terms of imprisonment, I also will impose a term of supervised release. On Count 1, I am going to impose a five-year term; on Count 47, a three-year term. Those are served concurrently, or at the same time, for a total effective term of five years.

Mr. Marshall, within 72 hours of your release from the custody of the Bureau of Prisons, you will be required to report in person to the probation office in the district to which you are released.

I understand you don't have ties to the Southern District of Iowa. If you want to have your term of supervised release supervised elsewhere, you'll need to talk about that with your counselors at the Bureau of Prisons.

Wherever it is you think you would be more likely to have success, you can seek a transfer there. That jurisdiction has

to accept you as a transfer for that to occur, but I encourage you to look into that before you transition back into the community.

While you're on supervised release, you shall not commit another federal, state, or local crime.

You shall not unlawfully possess a controlled substance, and you shall not unlawfully use a controlled substance.

You will be subject to at least one drug test within 15 days of your release and at least 2 more thereafter.

And you must cooperate in the collection of DNA.

You are a felon. As you know, you cannot possess a firearm, destructive device, or ammunition either during your term of supervised release or any time thereafter.

You'll be required to abide by the standard conditions of supervised release that have been set forth by the United States Sentencing Commission, and those will be reflected in the written judgment entered here today as well as the special conditions of supervised release that were proposed in the presentence investigation report and were unobjected to by the defense.

I'll briefly summarize those for you now, sir. You should note they will be implemented and enforced in full as written. They are in part F of the report beginning at paragraph 155.

You must participate in a program of testing and treatment for substance abuse.

In furtherance of that treatment, you must not use alcohol or other intoxicants while you're on supervision.

You must not patronize business establishments where more than 50 percent of the revenue is derived from the sale of alcohol; so bars, taverns, and the like.

You must submit to a mental health evaluation and then comply with any treatment that's recommended.

You must pay restitution in the amount that I have ordered.

In furtherance of getting that restitution paid, you'll have to comply with Treasury offset or other programs. It can also be garnishment of wages.

You must not apply for or incur any debt without first getting the permission of the probation office. Again, that's designed to make sure that restitution is paid promptly.

And you must provide complete access to the probation office to your financial information so they can work with you to put a payment plan together to get that restitution paid.

You will be subject to a search condition. That search condition can be effectuated with or without the assistance of law enforcement, including the United States Marshals Service.

Both the length of the term of supervision and the conditions I have imposed are based upon an individualized assessment of this defendant's supervision needs after reviewing and considering the relevant factors under 18 United States Code Section 3553(a) and 3563(b).

During his allocution, Mr. Marshall mentioned a couple of items he wanted to pursue while he is on -- in the custody of the Bureau of Prisons. I'm happy to recommend to the Bureau of Prisons that the defendant be afforded the opportunity to participate in the 500-hour residential drug abuse treatment program and any other substance abuse treatment program and that he be afforded any needed mental health treatment.

Mr. Nelsen, any other recommendations you'd like me to make?

MR. NELSEN: Yes, Your Honor. He requested that UNICOR be recommended as well as he wants to pursue vocational trades; welding, electric, plumbing.

And placement, if possible -- it would be third on his list -- close to Chicago. If these things exist elsewhere other than Chicago, that's fine. But he said if he can be close to Chicago, he would prefer that.

THE COURT: So I'll recommend to the Bureau of Prisons the treatment I already said and then that he be designated to a facility to allow him to participate in UNICOR, in vocational training in welding, electric, plumbing trades and, to a lesser extent, if possible, while still being able to pursue that vocational training to be designated in close proximity to Chicago.

Have I missed anything, Mr. Nelsen?

MR. NELSEN: I don't believe so. Thank you, Your

Honor.

THE COURT: Of course.

MR. NELSEN: You did say RDAP?

THE COURT: I did. I said that first because Mr. Marshall asked for that in his allocution.

I believe your materials said you're no longer pursuing forfeiture?

MR. LUBBEN: That's correct, Your Honor.

THE COURT: But we do have counts to be dismissed?

MR. LUBBEN: Yes. The Government moves to dismiss Counts 14 and 48.

THE COURT: The Court grants that motion.

Mr. Marshall, you do have the right to appeal the sentence that I have just imposed. If you wish to pursue an appeal, you must file a written notice of appeal within 14 days of the entry of judgment. Do you understand the time limit for filing a notice of appeal, sir?

THE DEFENDANT: Yes.

THE COURT: Additionally, if you wish to pursue an appeal and you cannot afford an attorney, one can be appointed to represent you. You can also have transcripts of this or any other relevant proceedings made at no cost to you in furtherance of your appeal if you qualify financially.

Do you understand your appeal rights, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Lubben, any matters I failed to address?

MR. LUBBEN: No, Your Honor.

THE COURT: Anything further on behalf of the Government?

MR. LUBBEN: No, Your Honor. Thank you.

THE COURT: Mr. Nelsen, anything you need to bring to my attention?

MR. NELSEN: No, Your Honor. Thank you.

THE COURT: The defendant is committed to the custody of the United States Marshals Service for transportation to the designated Bureau of Prisons facility.

Mr. Marshall, I wish you the best moving forward, sir.

THE DEFENDANT: Thank you.

THE COURT: That will conclude the hearing.

(The proceedings concluded at 11:09 a.m.)

I N D E X

E X H I B I T S

GOVERNMENT EXHIBITS:	ADMITTED
1. Sealed Exhibit, ECF 1009	7
2. Sealed Exhibit, ECF 1009-1	7
3. Sealed Exhibit, ECF 1009-2	7
4. Sealed Exhibit, ECF 1009-3	7
5. Sealed Exhibit, ECF 1009-4	7
6. Sealed Exhibit, ECF 1009-5	7
7. Sealed Exhibit, ECF 1009-6	7
8. Sealed Exhibit, ECF 1009-7	7
9. Sealed Exhibit, ECF 1009-8	7
10. Sealed Exhibit, ECF 1009-9	7

C E R T I F I C A T E

I, Karla M. Hale, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28 U.S.C. Section 753, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated at Des Moines, Iowa, November 17th, 2025.

/s/ Karla M. Hale
Karla M. Hale CSR, RDR, CRR
Federal Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
		CASE NO. 24-cr-108
Plaintiff,	:	
vs.	:	
	:	DEFENDANT'S SENTENCING MEMORANDUM AND REQUEST FOR VARIANCE
MALIK MARSHALL,	:	
	:	
Defendant.	:	

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I. INTRODUCTION OFFENSE

Defendant, Malik Marshall, entered a guilty plea to Count 1 Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. §1349 and Count 47 Money Laundering Over $10,000.00 in violation of 18 U.S.C. §1957 on or about May 23, 2025. Mr. Marshall's sentencing is scheduled to be held October 15, 2025. The violations subject the Defendant to a maximum term of thirty (30) years in prison and a maximum fine of $1,000,000.00, and a term of supervised release of not more than five (5) years on Count

1; and a maximum term of of ten (10) years in prison, a maximum fine of $250,000.00, and a term of supervised release of not more than three (3) years on Count 47.

II. THE ADVISORY GUIDELINE RANGE

Defendant identified objections to the PSR which relate to the loss calculations. The guidelines should be calculated based upon the loss sustained, not 'intended' or 'attempted' loss which is identified in the commentary of the Guidelines.

The graduated scale of sentencing level increases based upon the amount of loss, with increasing enhancements to defendant's offense level based on victim's monetary loss, does not included intended loss, but rather only applies to actual loss the victim sustained as a result of the crime. U.S.S.G. §2B1.1 provides a graduated scale based on the monetary amount of loss, which increases as the amount of loss increases. U.S.S.G. §2B1.1. The application of the loss enhancement hinges upon the meaning of the term 'loss' as used in §2B1.1. Neither "actual" loss nor "intended" loss is mentioned in the guideline, that language appears only in the notes and commentary. U.S.S.G. §2B1.1. The meaning of the word 'loss' as used in the guideline is unambiguous and thus not subject to interpretive rule of notes and commentary.

Courts treat the Sentencing Guidelines as legislative rules, and the Sentencing Commissions comments interpreting its Guidelines as interpretive rules. *United States v. Banks*, 55 F.4th 246, 255 (3d Cir. 2022). Historically, courts deferred to the Sentencing Commission's interpretation of its own regulations. *Id.* citing *Bowles v. Seminole Red Rock and Sand Company*, 325 U.S. 410 (1945); *Auer v. Robbins*, 519 U.S. 452 (1997). However, the Supreme Court has made clear that before according deference to legislative interpretive rules, a court must exhaust all traditional tools of construction and

determine that a regulation is genuinely ambiguous. *Kisor v. Wilkie*, 588 U.S. 558 (2019). Under *Kisor*, then, a court must consider the "text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on" before concluding that the regulation is genuinely ambiguous and relying upon interpretive rules. *Kisor v. Wilkie*, 588 U.S. at 559. Thus, there must be a genuine ambiguity in an agency's regulation and the character and context of an agency's interpretation must fall within the regulation's zone of ambiguity. *United States v. Banks*, 55 F.4th at 256. In *Kisor*, the Court cut back on what had been understood to be uncritical and broad deference to agency interpretations of regulations and explained that *Auer*, or *Seminole Rock*, deference should *only* be applied when a regulation is genuinely ambiguous. *Id.* at 2414-15. (emphasis added).

The loss table contained U.S.S.G. §2B1.1 is not ambiguous. Specifically, §2B1.1(b)(1) states: if the *loss* exceeded $6,500.00, increase the offense level as follows: which is then followed by the loss table. U.S.S.G. §2B1.1(b)(1) (emphasis added). "Loss" is defined in Black's Law Dictionary as:

> loss: 1. The failure to keep possession of; 2. A decrease in value, the amount by which a thing's original cost exceeds its later selling price; 3. The amount of financial detriment caused by an insured person's death or insured property's damage for which the insurer becomes liable.

Black's Law Dictionary, (2d Pocket Edition, Garner, 2001). The ordinary meaning of loss is also defined by Webster:

> loss: 1. Destruction/ruin, 2. the act or fact of being unable to keep or maintain someone or something, 3. A person, or thing, or amount that is lost, 4. A failure to win, gain, obtain or utilize, 5. Decrease in amount, magnitude, value or degree, 6. The amount of an insured's financial detriment by death or damages that the insurer is liable for, 7. Football: the distance the ball is moved away from the goal during a play.

LOSS Definition & Meaning - Merriam-Webster, https://www.merriam-webster.com /dictionary/loss?src=search-dict-hed. The language preceding the loss table and the table itself is followed thereafter by interpretive "notes to the table" which includes language about actual and intended loss. *Id.* The absence of the use of 'actual' or 'intended' in the actual language of the Guideline indicates the Guidelines does not include intended loss. The commentary expands the definition beyond the guideline where the Guideline is not ambiguous, and as such the 'intended loss' language included in the commentary should be given no weight. *United States v. Banks*, 55 F. 4th at 258; *Kisor v. Wilkie*, 588 U.S. 558 (2019).

Defendant recognizes this argument is contrary to 8th Circuit precedent in *United States v. Nock*, 2025 WL2250564 (8th Cir. Aug. 7, 2025). However, Defendant contends *Kisor* was appropriately interpreted in *Banks* and raises this issue to preserve error as there is a split in circuits.

The Government contends a 2-level increase is appropriate pursuant to §2B1.1(b)(4). The discovery establishes Mr. Marshall and Ms. Wright, as well as others, were coconspirators. Text messages between Mr. Marshall and Ms. Wright establish they were jointly obtaining checks in furtherance of the conspiracy. While the costs associated with obtaining checks was discussed in the messages, the messages do not establish Mr. Marshall was in the business of selling the checks to Ms. Wright or anyone else. The overall discovery establishes Mr. Marshall was obtaining checks for use in the fraudulent activity and thereafter obtaining a financial benefit from the use of the checks. Defendant agrees with the conclusion of the P.S.R. which did not attribute a 2-level

increase. Mr. Marshall contends the P.S.R. accurately reflects that no increase in offense level is appropriate pursuant to §2b1.1(b)(4).

In light of these objections, Defendant thus contends the appropriate amount of loss as identified in the P.S.R as the 'actual loss', roughly $1,600,000 (P.S.R. 57) is the amount of loss which is not unreasonably foreseeable and applicable. Defendant contends this amount of loss results in an increase of 16 levels, as opposed to the 20 levels which are attributed in the P.S.R. The appropriate resulting base offense level including all other unobjected to increases is thus 27, as opposed to 31 which is attributed in the P.S.R. Defendant agrees a 1-level increase pursuant to §2S1.1(b)(2)(A), and a 4-level increase pursuant to §3B1.1(a) is applicable. Defendant further agrees as a 3-level reduction pursuant to §3E1.1 is applicable and contends the appropriate total offense level is 29. Defendant is criminal history category IV which results in a guideline range of 121-151.

III. THE REASONABLE SENTENCE UNDER SECTION 3553(a)

Section 3553(a)(1) requires the sentencing court to consider "the nature and circumstances of the offense and the history and characteristics of the defendant" in every case, and the statute trumps any guideline or policy statement to the contrary. *See Stinson v. United States*, 508 U.S. 36, 38, 44, 45 (1993); *United States v. LaBonte*, 520 U.S. 751, 757 (1997).

The United States Code at 18 UCS § 3553 provides in part:

> **(a) Factors to be considered in imposing a sentence.**--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

> **(1)** the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> **(2)** the need for the sentence imposed--
>
> > **(A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> >
> > **(B)** to afford adequate deterrence to criminal conduct;
> >
> > **(C)** to protect the public from further crimes of the defendant; and
> >
> > **(D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
>
> **(3)** the kinds of sentences available;
>
> **(4)** the kinds of sentence and the sentencing range established for--

The court is aware of their discretion to impose a sentence that is reasonable and just. The court has almost unfettered discretion in fashioning a sentence which addresses the purposes of sentencing, a sentence which is sufficient but not greater than necessary, and must take all factors in 3553(a) into consideration in determining an appropriate sentence, with the overarching consideration being reasonableness of sentence. *Gall v. United States,* 552 U.S. 38, (2007). The Guidelines thus continue to guide district courts in exercising their discretion by serving as the framework for sentencing, but they do not constrain that discretion. *Peugh v. United States,* 569 U.S. 530 (2013). Although the Guidelines remain "the starting point and the initial benchmark" for sentencing, a sentencing court may no longer rely exclusively on the Guidelines range; rather, the court "must make an individualized assessment based on the facts presented" and the other statutory factors. *Beckles v. United States*, 137 S.Ct. 886, 894 (2017).

Mr. Marshall objected to the court's reliance upon information in various paragraphs which are uncharged allegations and not relevant conduct in this matter and asks the court to not give undue consideration to such uncharged conduct. (Def. Obj. 1, 2, 3, 5, 6, 7, 9). The allegations relate to firearms, drug trafficking, and other fraudulent activity. This conduct was appropriately not attributed as 'relevant conduct' for purposes of the Guidelines calculation in this matter.

Mr. Marshall does not deny by his objections that there is information which suggests additional offenses may have been committed. Mr. Marshall does not deny the substance of the police reports and other information contained in discovery supporting the allegations including the information which was relied upon and included in the PSR paragraphs by the PSR writer. However, Mr. Marshall contends the conduct alleged and included in those paragraphs as neither relevant conduct pursuant to 1B1.3, nor conduct which has been charged and proven in a manner consistent with Mr. Marshall's due process rights, indictment and proof beyond a reasonable doubt to a jury, should not be used to increase any sentence in this matter. Mr. Marshall contends the ultimate sentence should be based upon the conduct of conviction.

Counsel understands the court has discretion to consider various types of evidence and recognizes precedent affords the court effectively unfettered discretion as to how to apply such facts to the ultimate sentence under 18 U.S.C. §3553, and the court may consider without limitation information related to character and history of Mr. Marshall pursuant to 18 U.S.C. §3661. In an advisory sentencing scheme, judicial factfinding of not relevant conduct largely informs the court's discretion. *See Generally, Apprendi, Booker, Blakely, Alleyne*. Nevertheless, Mr. Marshall asks the court to consider all

relevant conduct and factors which relate to the offense of conviction and not give weight to allegations which have not been established by indictment and proof beyond a reasonable doubt to a jury. The court is bound by statutory provisions to impose a substantively reasonable sentence which is sufficient but not greater than necessary. Mr. Marshall contends that there is ample information relating to the offense of conviction to fashion an appropriate sentence without further reliance upon uncharged conduct which is not relevant conduct. An increase in any sentence imposed in this matter based upon such factors of unrelated and uncharged conduct could result in a sentence which would be substantively unreasonable, greater than necessary, and in reliance upon information which has not been effectively vetted through due process.

IV. HISTORY AND CHARACTERISTICS OF THE DEFENDANT.

Malik Marshall was born on February 27, 1995 in Chicago, Illinois. His parents separated and Marshall grew up split between gang infested low-income Chicago neighborhoods, often having to navigate between rival gangs when he would split time between residences. He witnessed significant violence as a child. Marshall was physically attacked on multiple occasions and witnessed the murders of many friends and relatives. He was further subjected to sexual abuse as a child. His childhood experiences have caused Marshall to suffer from depression and post-traumatic stress. Nevertheless, Marshall managed to refrain from engaging in violent criminal behavior, but admittedly, as evidenced by his criminal history, did possess firearms as a means of protection.

For all intents and purposes, Malik is a man of relative youth who has had a very turbulent childhood and upbringing, witnessing and experiencing things most

people will never have to deal with. He has firm family support, enjoying a good relationship with both parents, siblings, and extended family. While coming of age in a chaotic, dangerous, and violent environment, Malik has managed to avoid engaging in significant violent criminal activity. He is not a danger to society, certainly not public enemy number one, and not a dangerous individual. He entered into a plea agreement in this matter, accepted responsibility for his actions, and entered a plea.

V. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE.

Defendant asks the court to impose a sentence in this matter that is sufficient, but not greater than necessary, in consideration of Defendant's characteristics and the circumstances of the offense. The offense in this matter, while significant, was non-violent. Defendant is not a C.E.O. or hedge fund manager to be sure, but the offense in this matter involved no more violence than a similar offense. While the Guidelines recommend a significant sentence, Defendant is still young, and thus has the opportunity for rehabilitation and time to ultimately lead a productive life. Defendant has expressed a desire to grow and be productive and use this setback as an opportunity to improve himself. While in custody at Polk County, defendant has engaged in programming including substance abuse meetings and other rehabilitative efforts. Further, Marshall enjoys significant family and community support which will be instrumental in maintaining a life absent criminal activity upon release.

Also, the court should consider Defendant's lack of significant violent criminal history. Generally, a lack of violent criminal history is not a baseline that one should be impressed by, however, in light of where Defendant grew up and the violence he has been subjected to, experienced, and witnessed through his life, largely refraining from such

violent behavior speaks to Defendant's character. Concededly, Defendant has a prior Battery conviction from now over ten years ago, and a more recent firearm possession offense. However, much of Defendant's criminal history points are accounted for by the single three-point single firearm offense. Aside from that single offense, Defendant has four single point convictions and an additional point due to his probation status at the time of the offense. While not insubstantial, Marshall's history of criminal convictions is relatively limited. He committed effectively a 'white collar' offense in a non-violent manner. Any term of incarceration is very significant for a man of relative youth, and such time is largely with diminishing returns, certainly in the federal penal system. Defendant asks the court to take this significant factor into consideration when fashioning a sentence which is sufficient but not greater than necessary.

VI. THE KINDS OF SENTENCES AVAILABLE.

The defendant pleaded guilty to two offenses which carry no mandatory term of incarceration and both of which are non-violent offenses. The court is required by §3553(a) to consider the types of sentences available and the nature and circumstances of the individual case. The Guideline range is only one of many factors for the Court to consider. *Gall v. United States,* 552 U.S. 38, (2007). It carries no more weight than any other factor.

In this matter, Mr. Marshall has fully taken responsibility for his actions related to this offense and asks the court to consider all the issues which have been presented and all of the sentencing factors of 3553(a) outlined in the P.S.R. and all other factors in this matter in fashioning a sentence that is sufficient but not greater than necessary. Mr. Marshall requests the court sentence him to a sentence below or at least at the bottom of

the guideline range. A sentence below or at the bottom of the established guideline range is a very significant sentence for a non-violent offense, and sufficient but not greater than necessary in consideration of all of the factors in 3553(a), and all the issues raised and which are relevant in this matter.

Respectfully submitted,

_____/s/ *James S. Nelsen*_____
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james@stowersnelsen.com
ATTORNEY FOR DEFENDANT

Copy to: Joseph Lubben

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on October 14, 2025.

By: ☐ **Email**

Signature **/s/ Amy Pille**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, Plaintiff, vs. MALIK K. MARSHALL, Defendant.	4:24-cr-00108-RGE-HCA-3

REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY

The United States of America and the Defendant, having both filed a written consent, appeared before me pursuant to Rule 11, Fed. R. Crim. P. and L. Cr. R. 11. The Defendant entered a plea of guilty to Counts 1 and 47 of the Indictment. After cautioning and examining the Defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty pleas were knowing and voluntary as to each count, and that the offenses charged are supported by an independent factual basis concerning each of the essential elements of such offenses. Defendant understands and agrees to be bound by the terms of the plea agreement. I, therefore, recommend that the pleas of guilty be accepted, that a pre-sentence investigation and report be prepared, and that the Defendant be adjudged guilty and have sentence imposed accordingly.

Date: May 23, 2025

Helen C. Adams
HELEN C. ADAMS
U.S. MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	)	Criminal No. 4:24-cr-108
v.	)	
MALIK K. MARSHALL,	)	**PLEA AGREEMENT**
Defendant.	)	

The United States of America (also referred to as "the Government"), Defendant, MALIK K. MARSHALL, and Defendant's attorney, enter into this Plea Agreement.

A. CHARGES

1. Subject Offenses. Defendant will plead guilty to Count 1 of the Indictment, that is, Conspiracy to Commit Bank Fraud, in violation of Title 18, United States Code, Section 1349, and Count 47 of the Indictment, that is, Money Laundering Over $10,000, in violation of Title 18, United States Code, Sections 1957 and 2. Defendant also agrees to forfeiture of a sum of money equal to the amount of gross proceeds Defendant obtained, as set forth in the Plea Agreement and described in the Indictment.

2. Charges Being Dismissed. If the Court accepts this Plea Agreement, Count 14 of the Indictment, that is, Conspiracy to Commit Money Laundering, in violation of Title 18, United States Code, Section 1956(h), and Count 48 of the Indictment, that is, Money Laundering Over $10,000, in violation of Title 18, United States Code, Sections 1957 and 2, will be dismissed at the time of sentencing.

Defendant understands that, even though Counts 14 and 48 will be dismissed, all relevant conduct including the conduct that supported the charge in Counts 14 and 48 will be considered by the Court at the time of sentencing.

B. MAXIMUM PENALTIES

3. Maximum Punishment. Defendant understands that the crime to which Defendant is pleading guilty in Count 1 carries a maximum sentence of 30 years in prison; a maximum fine of $1 million; and a term of supervised release of not more than 5 years. Defendant further understands that the crime to which Defendant is pleading guilty in Count 47 carries a maximum sentence of 10 years in prison; a maximum fine of $250,000; and a term of supervised release of not more than 3 years. A mandatory special assessment of $100 per count must also be imposed by the Court. Defendant understands that these sentences may be imposed consecutively.

4. Supervised Release—Explained. Defendant understands that, during any period of supervised release or probation, Defendant will be under supervision and will be required to comply with certain conditions. If Defendant were to violate a condition of supervised release, Defendant could be sentenced to not more than 3 years in prison on any such revocation, without any credit for time previously served.

5. Detention. Defendant agrees to remain in custody following the completion of the entry of Defendant's guilty plea to await the imposition of sentence.

C. NATURE OF THE OFFENSE – FACTUAL BASIS

6. Elements Understood. Defendant understands that to prove the offense alleged under **Count 1 (Conspiracy to Commit Bank Fraud)**, the Government would be required to prove beyond a reasonable doubt the following elements:

(a) On or before the date charged, two or more persons reached an agreement to commit bank fraud (*i.e.*, to defraud a financial institution or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises);

(b) Defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

(c) At the time Defendant joined the agreement or understanding, he knew the purpose of the agreement or understanding.

Defendant further understands that to prove the offense alleged under **Count 47 (Money Laundering Over $10,000)**, the Government would be required to prove beyond a reasonable doubt the following elements:

(a) On or about the date charged, Defendant knowingly engaged in a monetary transaction;

(b) The monetary transaction was of property of a value greater than $10,000 derived from a specified unlawful activity, namely, conspiracy to commit bank fraud in Count 1;

(c) Defendant knew that the monetary transaction involved proceeds of a criminal offense;

(d) The monetary transaction took place within the United States or special maritime and territorial jurisdiction; and

(e) The monetary transaction in some way or degree affected interstate commerce.

7. Factual Stipulations. Attached hereto as Attachment "A," and incorporated by reference herein, are factual stipulations entered into between the parties, including the factual stipulations of Defendant's offense conduct relating to each subject offense. Defendant acknowledges that these statements are true.

8. Truthfulness of Factual Basis. Defendant understands that, during the change of plea hearing, the judge and the prosecutor may ask Defendant questions under oath about the offense to which Defendant is pleading guilty, in the presence of Defendant's attorney. Defendant understands that Defendant must answer these questions truthfully, and that Defendant can be prosecuted for perjury if Defendant gives any false answers.

9. Waiver of Rule 410 Rights. Defendant expressly waives Defendant's rights under Rule 410 of the Federal Rules of Evidence and agrees that all factual statements made in this Plea Agreement, including under Attachment A, are admissible against Defendant. Should Defendant fail to plead guilty pursuant to this Plea Agreement or move to withdraw Defendant's plea or to set aside Defendant's conviction, then these admissions may be used against Defendant in the Government's case-in-chief and otherwise, including during the continuing prosecution of this case.

10. Venue. Defendant agrees that venue for this case is proper for the United States District Court for the Southern District of Iowa.

D. SENTENCING

11. Sentencing Guidelines. Defendant understands that Defendant's sentence will be determined by the Court after considering the advisory United States Sentencing Guidelines, together with other factors set forth by law. The Sentencing Guidelines establish a sentencing range based upon factors determined to be present in the case, which include, but are not limited to the following:

(a) The nature of the offenses to which Defendant is pleading guilty;

(b) The losses, actual and intended, which resulted from the offenses;

(c) The number of victims;

(d) Whether sophisticated means were used to commit all or part of the offense;

(e) Defendant's role in the offense;

(f) Whether Defendant attempted to obstruct justice in the investigation or prosecution of the offense;

(g) The nature and extent of Defendant's criminal history (prior convictions); and

(h) Acceptance or lack of acceptance of responsibility.

Defendant understands that, under some circumstances, the Court may "depart" or "vary" from the Sentencing Guidelines and impose a sentence more severe or less severe than provided by the guidelines, up to the maximum in the statute of conviction. Defendant has discussed the Sentencing Guidelines with Defendant's attorney.

12. Acceptance of Responsibility. The Government agrees as a recommendation to the District Court that Defendant receive credit for acceptance of responsibility under USSG §3E1.1(a), and if Defendant qualifies for a decrease under

§3E1.1(a), and the offense level is 16 or above, as determined by the Court, the Government agrees to make a motion to the Court that Defendant should receive an additional 1-level reduction under USSG §3E1.1(b), based on timely notification to the Government of Defendant's intent to plead guilty; *provided, however,* that if after the plea proceeding Defendant obstructs justice, fails to cooperate fully and truthfully with the United States Probation Office, attempts to withdraw Defendant's plea, or otherwise fails to demonstrate acceptance of responsibility, then the Government, based on any interest identified in §3E1.1, may (i) oppose a reduction under §3E1.1(a) and (ii) not move for the 1-level reduction under §3E1.1(b).

13. Presentence Report. Defendant understands that the Court may defer a decision as to whether to accept this Plea Agreement until after a Presentence Report has been prepared by the United States Probation Office, and after Defendant's attorney and the Government have had an opportunity to review and challenge the Presentence Report. The parties are free to provide all relevant information to the Probation Office for use in preparing a Presentence Report.

14. Disclosure of Presentence Investigation Reports. The United States District Court for the Southern District of Iowa has issued the following Administrative Order:

> The presentence investigation report is a sealed and confidential document. Unless specifically authorized by the district court, a defendant may not disseminate, disclose, or distribute a presentence investigation report, or any part or page of a presentence investigation report, in either draft or final form. A defendant who violates this order, may be subject to prosecution for contempt of court under 18 U.S.C. § 401(3). This order does not apply to a defendant's review of a presentence investigation report with the defendant's own attorney.

Defendant acknowledges and understands this order.

15. Evidence at Sentencing. The parties may make whatever comment and evidentiary offer they deem appropriate at the time of sentencing and entry of plea, provided that such offer or comment does not violate any other provision of this Plea Agreement. Nothing in this Plea Agreement restricts the right of Defendant or any victim to make an allocution statement, to the extent permitted under the Federal Rules of Criminal Procedure, nor does this Plea Agreement convey any rights to appear at proceedings or make statements that do not otherwise exist.

16. Sentence to be Decided by Judge – No Promises. This Plea Agreement is entered pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure. Defendant understands that the final sentence, including the application of the Sentencing Guidelines and any upward or downward departures, is within the sole discretion of the sentencing judge, and that the sentencing judge is not required to accept any factual or legal stipulations agreed to by the parties. Any estimate of the possible sentence to be imposed, by a defense attorney or the Government, is only a prediction, and not a promise, and is not binding. Therefore, it is uncertain at this time what Defendant's actual sentence will be.

17. No Right to Withdraw Plea. Defendant understands that Defendant will have no right to withdraw Defendant's plea if the sentence imposed, or the application of the Sentencing Guidelines, is other than what Defendant anticipated, or if the sentencing judge declines to follow the parties' recommendations.

E. FINES, COSTS, FORFEITURE, AND RESTITUTION

18. Forfeiture. Defendant agrees to forfeiture of the property identified in the Indictment, specifically a money judgment for the gross proceeds Defendant obtained as a result of the offenses. Defendant will execute any documents as directed by the Government to complete the forfeiture.

19. Waivers Regarding Forfeiture. Defendant waives all challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds. Defendant further agrees that the forfeiture provisions of this Plea Agreement are intended to, and will, survive Defendant notwithstanding the abatement of any underlying criminal conviction after execution of this Plea Agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if Defendant had survived and that determination shall be binding upon Defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full.

20. Consent to Judgment of Forfeiture. Defendant agrees to waive all interest in assets subject to this Plea Agreement in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing,

and incorporation of the forfeiture in the judgment. Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

21. Fines and Costs. Issues relating to fines and/or costs of incarceration are not dealt with in this agreement, and the parties are free to espouse their respective positions at sentencing.

22. Special Assessment. Defendant agrees to pay the mandatory special assessment of $100 per count of conviction at or before the time of sentencing, as required by 18 U.S.C. § 3013.

23. Restitution. Defendant agrees that the Court should impose an order of restitution for all relevant conduct including all conduct related to the dismissed counts, in an amount to be determined by the Court; that such order of restitution shall be due and payable immediately; and that if Defendant is not able to make full payment immediately, Defendant shall cooperate with the United States Probation Office in establishing an appropriate payment plan, which shall be subject to the approval of the Court, and thereafter in making the required payments. Any such payment plan does not preclude the Government from utilizing any collections procedures pursuant to the Federal Debt Collections Act and including the Treasury offset program.

24. Financial Statement. Defendant agrees to complete truthfully and in full a financial statement provided by the U.S. Attorney's Office, and return the financial statement to the U.S. Attorney's Office within 30 days of the filing of this Plea Agreement.

F. LIMITED SCOPE OF AGREEMENT

25. Limited Scope of Agreement. This Plea Agreement does not limit, in any way, the right or ability of the Government to investigate or prosecute Defendant for crimes occurring outside the scope of this Plea Agreement. Additionally, this Plea Agreement does not preclude the Government from pursuing any civil or administrative matters against Defendant, including, but not limited to, civil tax matters and civil forfeiture which arise from, or are related to, the facts upon which this investigation is based.

26. Agreement Limited to Southern District of Iowa. This Plea Agreement is limited to the United States Attorney's Office for the Southern District of Iowa, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities.

27. Victims Not a Party to this Agreement. Defendant understands that the financial institutions and business entities described in Attachment A, and their insurers, are not a party to this Plea Agreement, and that the "loss" and "restitution" amounts applicable to this criminal case do not resolve any claims that those institutions, entities, or their insurers may have against Defendant. Defendant understands that those institutions, entities, or insurers remain free to pursue all lawful civil remedies they may deem appropriate.

G. WAIVER OF TRIAL, APPEAL AND POST-CONVICTION RIGHTS

28. Trial Rights Explained. Defendant understands that this guilty plea waives the right to:

(a) Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

(b) A speedy and public trial by jury, which must unanimously find Defendant guilty before there can be a conviction;

(c) The assistance of an attorney at all stages of trial and related proceedings, to be paid at Government expense if Defendant cannot afford to hire an attorney;

(d) Confront and cross-examine adverse witnesses;

(e) Present evidence and to have witnesses testify on behalf of Defendant, including having the Court issue subpoenas to compel witnesses to testify on Defendant's behalf;

(f) Not testify or have any adverse inferences drawn from the failure to testify (although Defendant also has the right to testify, if Defendant so chooses); and

(g) If Defendant is convicted, the right to appeal, with the assistance of an attorney, to be paid at Government expense if Defendant cannot afford to hire an attorney.

29. Waiver of Appeal and Post-Conviction Review. Defendant knowingly and expressly waives any and all rights to appeal Defendant's conviction in this case, including a waiver of all motions, defenses and objections which Defendant could assert to the charge(s) or to the Court's entry of judgment against Defendant; except that both Defendant and the United States preserve the right to appeal any sentence imposed by the Court, to the extent that an appeal is authorized by law. Also, Defendant knowingly and expressly waives any and all rights to contest Defendant's

conviction and sentence in any post-conviction proceedings, including any proceedings under 28 U.S.C. § 2255. These waivers are full and complete, except that they do not extend to the right to appeal or seek post-conviction relief based on grounds of ineffective assistance of counsel or prosecutorial misconduct.

H. VOLUNTARINESS OF PLEA AND OPPORTUNITY TO CONSULT WITH COUNSEL

30. Voluntariness of Plea. Defendant represents that Defendant's decision to plead guilty is Defendant's own, voluntary decision, and that the following is true:

(a) Defendant has had a full opportunity to discuss all the facts and circumstances of this case with Defendant's attorney, and Defendant has a clear understanding of the charges and the consequences of this plea, including the maximum penalties provided by law.

(b) No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this written agreement.

(c) No one has threatened Defendant or Defendant's family to induce this guilty plea.

(d) Defendant is pleading guilty because in truth and in fact Defendant is guilty and for no other reason.

31. Consultation with Attorney. Defendant has discussed this case and this plea with Defendant's attorney and states that the following is true:

(a) Defendant states that Defendant is satisfied with the representation provided by Defendant's attorney.

(b) Defendant has no complaint about the time or attention Defendant's attorney has devoted to this case nor the advice the attorney has given.

(c) Although Defendant's attorney has given Defendant advice on this guilty plea, the decision to plead guilty is Defendant's own

decision. Defendant's decision to enter this plea was made after full and careful thought, with the advice of Defendant's attorney, and with a full understanding of Defendant's rights, the facts and circumstances of the case, and the consequences of the plea.

I. GENERAL PROVISIONS

32. Entire Agreement. This Plea Agreement, and any attachments, is the entire agreement between the parties. Any modifications to this Plea Agreement must be in writing and signed by all parties.

33. Public Interest. The parties state this Plea Agreement is in the public interest and it takes into account the benefit to the public of a prompt and certain disposition of the case and furnishes adequate protection to the public interest and is in keeping with the gravity of the offense and promotes respect for the law.

34. Execution/Effective Date. This Plea Agreement does not become valid and binding until executed by each of the individuals (or their designated representatives) shown below.

J. SIGNATURES

35. Defendant. I have read all of this Plea Agreement and have discussed it with my attorney. I fully understand the Plea Agreement and accept and agree to it without reservation. I do this voluntarily and of my own free will. No promises have been made to me other than the promises in this Plea Agreement. I have not been threatened in any way to get me to enter into this Plea Agreement. I am satisfied with the services of my attorney with regard to this Plea Agreement and other matters associated with this case. I am entering into this Plea Agreement and will enter my plea of guilty under this Plea Agreement because I committed the crime

to which I am pleading guilty. I know that I may ask my attorney and the judge any questions about this Plea Agreement, and about the rights that I am giving up, before entering into the plea of guilty.

5-13-25
Date

Malik K. Marshall

36. Defendant's Attorney. I have read this Plea Agreement and have discussed it in its entirety with my client. There is no Plea Agreement other than the agreement set forth in this writing. My client fully understands this Plea Agreement. I am satisfied my client is capable of entering into this Plea Agreement, and does so voluntarily of Defendant's own free will, with full knowledge of Defendant's legal rights, and without any coercion or compulsion. I have had full access to the Government's discovery materials, and I believe there is a factual basis for the plea. I concur with my client entering into this Plea Agreement and in entering a plea of guilty pursuant to the Plea Agreement.

5/13/25
Date

James S. Nelsen
Stowers & Nelsen PLC
650 South Prairie View Dr., Suite 130
West Des Moines, Iowa 50266
Telephone: 515-224-7446
Telefax: 515-225-6215
E-Mail: james@stowersnelsen.com

38. United States. The Government agrees to the terms of this Plea Agreement.

Richard D. Westphal
United States Attorney

5/21/2025
Date

By: _____

Joseph H. Lubben
Kristin M. Herrera
Assistant U.S. Attorneys
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E-mail: Joseph.Lubben@usdoj.gov

Attachment "A"

STIPULATION OF FACTS

1. As a factual basis for Defendant's pleas of guilty, and as relevant conduct to the offenses charged in the Indictment, Defendant admits the following:

2. At some point prior to in or about January 2023, more than two people reached an agreement to commit bank fraud by defrauding federally insured financial institutions and by obtaining moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, federally insured financial institutions, by means of false or fraudulent pretenses, representations, or promises.

3. At some point prior to in or about January 2023, more than two people reached an agreement to engage in monetary transactions in property derived from a specified unlawful activity (namely, conspiracy to commit bank fraud as described in paragraph 2), with said property valuing in excess of $10,000.

4. The agreements described in paragraphs 2 and 3 remained in effect until at least in or about May 2024.

5. Defendant knowingly, intentionally, and voluntarily joined in the foregoing agreements. Defendant specifically committed acts in furtherance of the conspiracy with Thaddeus Jerome Lee, Stephan Rashad Haley, Toni Lynette Renfroe, Jazlinn Chaute Tapp, and others.

6. Defendant and other co-conspirators operated the conspiracies in the following manner:

a. Defendant obtained stolen business checks from other co-conspirators; (Defendant and his co-conspirators called these checks "slips");

b. Defendant recruited co-conspirators from at least Iowa and Illinois who would send (usually via text) Defendant and other co-conspirators their identifying information (Defendant and his co-conspirators called the recruits "heads");

c. Upon receiving the information from a "head," co-conspirators used the information to create fraudulent business documents for

sham entities with names similar to those of the intended recipients of the stolen business checks;

d. Co-conspirators would then ship or transmit the fraudulent business documents and stolen business checks to the "heads," sometimes through Defendant or another intermediary co-conspirator;

e. The "heads" then performed acts of bank fraud and money laundering by using the stolen business checks and fraudulent business documents to open fraudulent accounts at federally insured financial institutions, depositing the stolen checks into the fraudulent accounts, and withdrawing the funds from those accounts in the form of cash or official checks; and

f. Some co-conspirators created sham entities to receive and further launder stolen check proceeds.

7. To complete acts in furtherance of the conspiracies, Defendant and his co-conspirators used and caused to be used several instrumentalities of interstate commerce, including, but not limited to, the defrauded financial institutions, text-message and email communications, Zelle, and FedEx.

8. Defendant participated mainly in the conspiracies from Iowa and Illinois, working with co-conspirators in other parts of the country to achieve the conspiracies' purposes.

9. Defendant communicated with individuals who had access to stolen business checks, *i.e.*, "slips," and purchased stolen business checks from those individuals. Defendant then provided and/or sold the stolen business checks to other co-conspirators so that other co-conspirators could attempt to deposit the checks and defraud financial institutions.

10. Defendant coordinated the conspiracies with other co-conspirators, including, but not limited to, Thaddeus Jerome Lee, Stephan Rashad Haley, and Kila R. Wright. Defendant, among other things, spoke with Lee, Haley, and Wright, often via text messaging, to further the conspiracies, and he sent and received stolen business checks.

11. Defendant's texts with Lee, which continued until in or about May 2024, discussed committing acts of bank fraud and money laundering. On or about August 14, 2023, Defendant sent Lee via text messaging a series of images of stolen business checks to which Defendant had access; Lee then responded that he wanted roughly half a dozen checks for use by other co-conspirators in committing bank fraud and directed Defendant to ship the checks via FedEx to co-conspirator Tiarra Lenae Jones at 402 E Greenway Pkwy, Unit 19, in Phoenix, Arizona.

12. On or about August 17, 2023:

- Lee sent Defendant via text messaging an image of a bank receipt showing a balance in a PNC Bank account of $221,500. Defendant then sent two addresses to Lee (including one for "Malik Marshall" at 20291 Western Ave., in Chicago) so that Lee or another co-conspirator could launder the ill-gotten funds in the account to Defendant; and

- Defendant sent Lee via text messaging images of a series of stolen business checks; Lee responded that he wanted four of the checks for use by other co-conspirators in committing bank fraud; Lee added that he had "heads" to complete bank fraud for two of the checks, and that Defendant would need to find "heads" for the remaining two checks. Lee then told Defendant to send the checks to co-conspirator Tiarra Lenae Jones at 8325 W Bell Road, in Peoria, Arizona.

13. On October 10, 2023, Defendant had the following exchange with Kila R. Wright about obtaining stolen business checks:

Wright: You got slips?

Defendant: Yea

Wright: Ok how much for the slip

Defendant: U gotta wait till I get em from sin nunu got dese from his ppl

14. Defendant recruited co-conspirators to perform acts of bank fraud and money laundering (the "heads"), provided instructions to those co-conspirators on how best to complete the bank fraud and money laundering, and sometimes

transported co-conspirators to the financial institutions where a co-conspirator would attempt to commit acts of bank fraud and money laundering.

15. For example, in the summer of 2023, Defendant and Stephan Rashad Haley communicated via text messaging about arranging for Toni Lynette Renfroe and Jazlinn Chaute Tapp to commit acts of bank fraud and money laundering in Iowa.

16. On July 28, 2023, after Renfroe had successfully deposited a stolen business check into a fraudulently obtained account at Community Choice Credit Union, Defendant directed Haley to have Renfroe perform various acts of money laundering. Specifically, Defendant told Haley that Renfroe should obtain checks from the fraudulently obtained account as follows:

MALIK MARSHALL – 70,436.46

LEE TRANSPORTATION LLC- 70,034.89

KIRA JOHNSON- 32,000$

TELL HIM WHEN SHE GO IN PUT

MALIK MARSHALL – 70,436.46

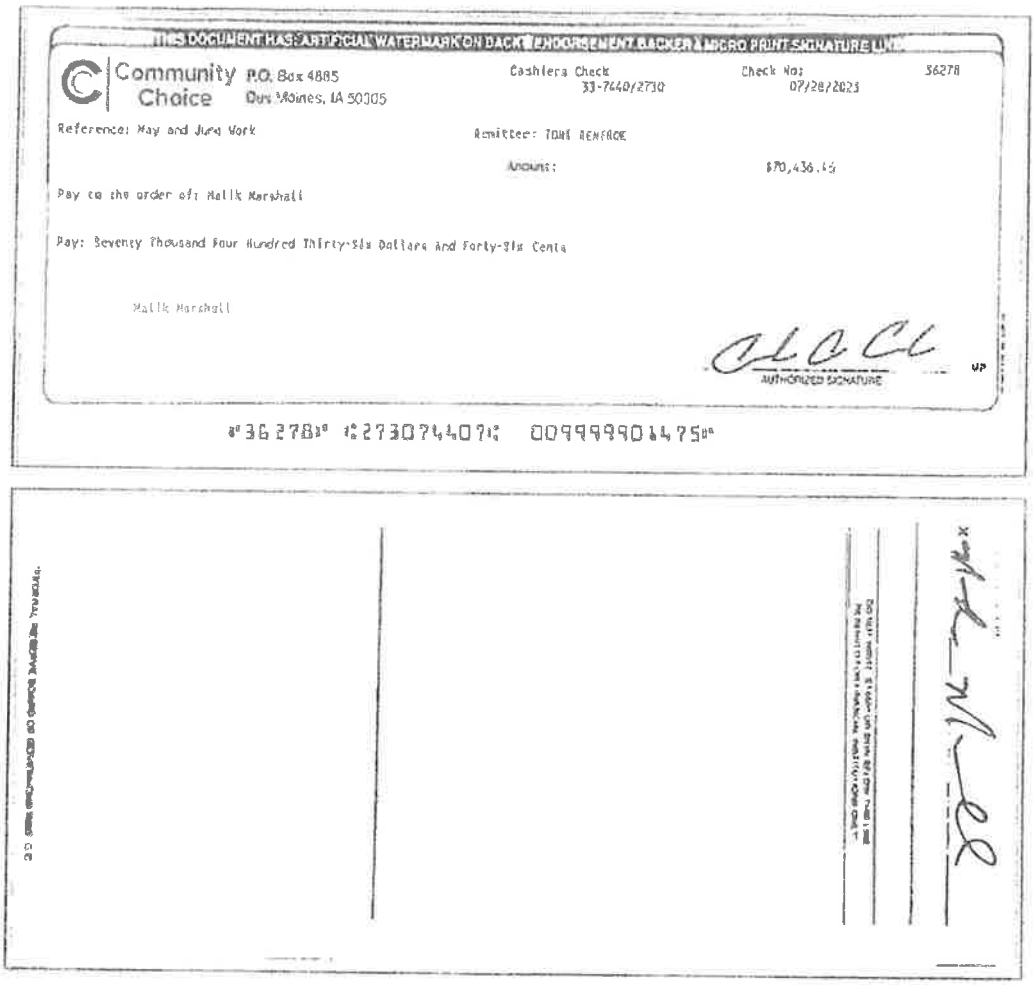
"MEMO" FOR MAY & JUNE WORK

LEE TRANSPORTATION LLC-

70,034.89- "MEMO" PENSKE SEMI TRUCK

17. In accordance with the instructions, Renfroe obtained the checks, and Defendant was provided with a cashier's check from the fraudulently obtained account in the amount of $70,436.46.

18. On July 31, 2023, Defendant opened a savings account at Bank of America. That same day, Defendant deposited the $70,436.46 check into the savings account. The deposited check and Defendant's endorsement on the back of the check appear here:



19. At all relevant times, Community Choice Credit Union had accounts which were insured by the National Credit Union Administration, and Bank of America had accounts which were insured by the Federal Deposit Insurance Corporation.

20. Defendant agrees that one or more of the acts constituting, and necessary to, the offenses charged in Counts 1 and 47 of the Indictment occurred in the Southern District of Iowa.

Appendix G20

21. Defendant hereby certifies that the facts set forth above are true and accurate to the best of Defendant's knowledge.

5-13-25
Date

Malik K. Marshall
Defendant

5/13/25
Date

James S. Nelsen
Attorney for Malik K. Marshall

Richard D. Westphal
United States Attorney

05/21/2025
Date

By:
Joseph H. Lubben
Kristin M. Herrera
Assistant United States Attorneys