

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA B. CORDOVA,

Defendant

Case No. 1:19-CR-0754-KWR

**UNITED STATES' REPLY TO DEFENDANT'S
RESPONSE TO THE UNITED STATES' OBJECTION
TO THE PRESENTENCE INVESTIGATION REPORT**

The UNITED STATES OF AMERICA, by and through its undersigned attorneys, hereby replies to Defendant's Response in Opposition to United States' Objection to Presentence Investigation Report [Doc. 102].

This criminal case arises from defendant's fraudulent misuse of government-funded credit cards while employed at Sandia National Laboratories ("SNL"), a research facility of the United States operated by contractors for the United States Department of Energy. Following his punitive discharge from the United States Navy,¹ defendant was hired by one of those contractors to work at SNL.

During this tenure at SNL, defendant applied for and was issued Procurement Cards (also referred to as "Purchase Cards" and "P-Cards"). Those SNL Procurement Cards were credit cards

¹ Navy authorities brought multiple charges under the Uniform Code of Military Justice against defendant in or around July 2009. Pursuant to a plea agreement, in September 2009, defendant pled guilty before a Special Court-Martial to charges: that on divers occasions from February 2007 to April 2009, defendant wrongfully appropriated multiple items of property of the United States; that in November 2008, defendant wrongfully disposed of military property of the United States (defendant traded night vision equipment at a pawn shop for a diamond ring); that in April 2009, defendant removed military property from his residence to prevent its seizure during an authorized search of those premises. The military judge sentenced defendant to a Bad Conduct Discharge and 180 days of confinement, which was reduced to 60 days of confinement in accordance with defendant's plea agreement.

issued by U.S. Bank and funded by the United States Department of Energy for the limited purpose of enabling defendant to procure equipment and materials necessary to the performance of his duties at SNL. Defendant's use of Procurement Cards was not closely supervised. Rather, he was merely required to account for his transactions by providing a description of the items purchased in monthly reconciliation of charges. Defendant exploited the trust of SNL to use the government-funded Procurement Cards for his personal purposes. Beginning not later than August 2014 and continuing until on or about October 2018, defendant fraudulently used the Procurement Cards that had been entrusted to him to purchase hundreds of items for his personal use and the use of his family and friends. Defendant's purchases included jewelry, clothing, shoes, sunglasses, golf clubs and accessories, triathlon accessories, exercise equipment, watches, toys, tires, appliances, computer tablets, televisions, home theater sets, and various other items. Defendant also misused the government-funded Procurement Cards to furnish and equip a barber shop that he owned or was affiliated with. To conceal his fraudulent use of SNL Procurement Cards, defendant disguised the nature of his fraudulent purchases by providing false descriptions of the merchandise in his monthly reconciliation accounting.

Defendant's scheme was detected in 2018, and the ensuing review of data obtained from merchants (principally Amazon) revealed that defendant had entered false and misleading descriptions of hundreds of purchases totaling more than \$170,000. The matter was referred to criminal authorities, and a grand jury returned an indictment and superseding indictment in this case in 2019.

Following his indictment, defendant indicated through his counsel that he was willing to accept responsibility for *some* of the fraudulent charges on his assigned Procurement Cards. However, defendant has asserted that he is not criminally liable for many of the fraudulent

transactions, and he attributed an unspecified portion of the false and misleading entries in his reconciliation reports to others. Defendant brought a Motion to Compel [Doc. 41] discovery of detailed SNL records insisting that he needed those records to distinguish his fraudulent purchases from purchases which he did not conduct or which were authorized. Motion to Compel at p. 5 (“Mr. Cordova submits he is being charged for items that he did not steal, embezzle or defraud anyone out of, but because of Sandia’s poor record-keeping practices at the time of the offenses, poor oversight by supervisors, poor post-offense auditing, and what amounts to scapegoating, he is being charged for purchases that were authorized”).

In light of defendant’s contentions, the government re-examined the hundreds of transactions that had been identified as fraudulent. Notwithstanding defendant’s fraudulent description of purchases in his monthly reconciliation accounting, after consulting with SNL regarding whether the merchandise might have had a work-related application, the government removed from its tally purchases for which the nature of the item and the surrounding circumstances indicated might plausibly have been work-related. For example, notwithstanding that defendant had provided false descriptions in his monthly reconciliation report that thwarted SNL’s ability to inventory and track property, the government allowed that cellular telephones and other communications equipment that had been purchased from Amazon and shipped to SNL might have been work-related. The government provided a spreadsheet to defendant identifying the remaining fraudulent purchases totaling more than \$135,000. Defendant and his attorney reviewed that spreadsheet, and defendant identified purchases totaling \$75,258 that he admitted were fraudulent.

Under these circumstances (and in the midst of the COVID-19 pandemic), the parties entered into a Plea Agreement [Doc. 77] which left it to the Court to assess the amount of the losses for which defendant is responsible. The Plea Agreement provides in pertinent part:

While the parties agree that the aggregate loss from the Defendant's offenses and relevant conduct was not less than \$75,000 and not more than \$140,000, the parties have been unable to reach an agreement as to the precise amount of such losses. The parties therefore recommend and request that the Court conduct an evidentiary hearing to determine the amount of loss and commensurate Specific Offense Characteristic under § 2B1.1(b) of the Sentencing Guidelines.

Plea Agreement, ¶ 9(b). In the Plea Agreement, the UNITED STATES conditionally agreed to recommend a 2-Level reduction under § 3E1.1(a) of the Sentencing Guidelines for Acceptance of Responsibility.

As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to USSG § 3E1.1(a), so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines. Further, the United States is free to withdraw this recommendation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes, failing to appear in Court as required, providing false or misleading information to the Probation Office or the Court, and/or failing to obey any conditions of release that the Court may set.

Plea Agreement, ¶ 9(b). In light of defendant's refusal to accept responsibility for the full amount of the fraudulent purchases on his assigned Procurement Cards, the UNITED STATES *did not* agree to recommend an additional third-level downward adjustment under § 3E1.1(b). As explained in the United States' Objection to Presentence Investigation Report [Doc. 87], the government objects to such an adjustment.

After the UNITED STATES filed its Objection to Presentence Investigation Report, defendant filed his own Objections to PSR [Doc. 94]. In the attachment to his Objections [Doc. 94-1], defendant shamelessly asserts that an array of personal items—including clothing, shoes, elaborate hunting knives, triathlon accessories, golf clubs and equipment, exercise equipment, dietary supplements, televisions, toys, games, barber chairs and equipment, and even a trampoline—were allowable work-related purchases. Notwithstanding that defendant stipulated in the Plea Agreement “that the aggregate loss from the Defendant’s offenses and relevant conduct was not less than \$75,000,” defendant now asserts in his Objections to PSR that he is responsible for fraudulent transactions totaling only \$62,831.60: “If Mr. Cordova’s objections to the loss amount are all sustained, this leaves \$62,831.60 of fraudulent purchases for which Mr. Cordova agrees he is responsible.” *Id.* at p. 4. Defendant has reneged on his promises in the Plea Agreement placing any adjustment of Acceptance of Responsibility in doubt.

The Court has scheduled a hearing on this matter for November 18, 2021. Due to defendant’s recalcitrance, it will be necessary for the UNITED STATES to call multiple witnesses familiar with SNL’s Procurement Card program and the projects to which defendant has attributed his fraudulent purchases. The government submits that the testimony and evidence to be introduced at the sentencing hearing will establish that defendant’s contested purchases were not permissible under SNL’s Procurement Card program and were not allowable or appropriate purchases for the projects and tasks that defendant referenced in his monthly reconciliation accounting. Indeed, the testimony and evidence will show that the defendant objections are specious, and he has provided false or misleading information to the Probation Office or the Court. *Cf.* Plea Agreement, ¶ 9(b).

The dispute regarding the aggregate losses from defendant's fraudulent misuse of government-funded Procurement Cards cannot be resolved through these pleadings. Again, the parties have requested, and the Court has set, an evidentiary hearing in this matter. The UNITED STATES continues to maintain that if it prevails at that hearing—if the Court finds that defendant was responsible for losses of more than \$95,000, *see* USSG § 2B1.1(b)(1)(F)—then the Court should not award defendant a downward adjustment under § 3E1.1(b). However, the hearing will be dispositive. At the conclusion of that hearing, the Court will be able to assess whether a downward adjustment is warranted for Acceptance of Responsibility under §§ 3E1.1(a) and 3E1.1(b).

RESPECTFULLY SUBMITTED this 22nd day of October 2021.

Fred Federici
Acting United States Attorney

_____/s/_____
Timothy S. Vasquez
Assistant United States Attorney
United States Attorney's Office
201 Third NW, Suite 900
Albuquerque, NM 87102
(505) 346-7274

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, I filed the foregoing document electronically through the CM/ECF system. Pursuant to the CM/ECF Administrative Procedures Manual, §§ 1(a), 7(b)(2), such filing is the equivalent of service on parties of record.

_____/s/_____
Timothy S. Vasquez
Assistant United States Attorney