

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 21-cr-142-CMA

UNITED STATES OF AMERICA

Plaintiff,

v.

**1. FANICE ANDREA REED,
a/k/a Fanice Jones,**

Defendant,

**PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING**

The United States of America, by and through Pegeen D. Rhyne, Assistant United States Attorney for the United States Attorney's Office for the District of Colorado (the "government"), and the defendant, Fanice Andrea Reed ("Reed" or the "defendant"), personally and by counsel, Frank Moya, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees to:

**COURT EXHIBIT
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- (1) plead guilty to Count 7 of the Indictment, charging a violation of 18 U.S.C. § 641 (theft or conversion of government property);
- (2) waive certain appellate and collateral attack rights, as explained in detail below;
- (3) be liable for restitution to the victim in the amount of \$72,727.99, which is the economic harm to the victim resulting from all 14 counts charged in the indictment; and
- (4) not to contest forfeiture as more fully described below.

B. The Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A). The government agrees to move to dismiss Counts 1-6 and 8-14 of the Indictment with prejudice.

Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement and potentially file a superseding indictment.

Provided the defendant does not engage in prohibited conduct or otherwise implicate USSG §§ 3C1.1 and 3E1.1, cmt. n.4 between the guilty plea and sentencing in this case, the government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a) and agrees to file a motion requesting that the defendant receive a one-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b).

C. Defendant's Waiver of Appeal:

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding

this, and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

- (1) the sentence exceeds the maximum penalty provided in the statute of conviction, 18 U.S.C. § 641;
- (2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 17; or
- (3) the government appeals the sentence imposed.

If any of these three criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including the restitution order) in any collateral attack including, but not limited to, a motion brought under 28 U.S.C. § 2255. This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

- (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;
- (2) the defendant was deprived of the effective assistance of counsel; or
- (3) the defendant was prejudiced by prosecutorial misconduct.

D: Forfeiture of Assets:

The defendant admits the forfeiture allegations. The defendant further agrees to forfeit to the United States immediately and voluntarily any and all assets and property,

or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States, the defendant, the defendant's nominees, or elsewhere. The assets to be forfeited specifically include, but are not limited to: a money judgment in the amount of up to \$30,250. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant further agrees to the forfeiture of any substitute assets up to the value of any property described above pursuant to 21 U.S.C. § 853(p) and Federal Rules of Criminal Procedure 32.2(e).

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

The United States Attorney's Office for the District of Colorado will recommend to the Attorney General that any net proceeds derived from the sale of the judicially forfeited assets be remitted or restored to eligible victims of the offense, for which the defendant has pleaded guilty, pursuant to 18 U.S.C. § 981(e), 28 C.F.R. pt. 9, and any other applicable laws, if the legal requirements for recommendation are met. The defendant understands that the United States Attorney's Office only has authority to recommend such relief and that the final decision of whether to grant relief rests solely with the Department of Justice, which will make its decision in accordance with applicable law.

II. ELEMENTS OF THE OFFENSE

The parties agree that the elements of the theft or conversion of government property offense charged in Count 7 of the Indictment are as follows:

- A. the postage belonged to the United States government;
- B. the defendant knowingly and willfully stole or converted the postage intending to put it to her own use or gain or to the use or gain of another, or the defendant took the postage knowing it was not hers and intending to deprive the owner of the use or benefit of the postage; and
- C. the value of the postage was more than \$1,000.¹

III. STATUTORY PENALTIES

The maximum statutory penalties for a violation of 18 U.S.C. § 641 as charged in Count 7 of the Indictment is: not more than 10 years of imprisonment, a fine of not more than \$250,000, or both; not more than 3 years of supervised release; a \$100 mandatory victim's fund assessment fee; \$72,727.99 in restitution.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

V. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as

¹ Tenth Circuit Criminal Pattern Jury Instructions, 2021 Edition, § 2.31 (modified to include knowingly and willfully). See *Morissette v. United States*, 342 U.S. 246, 270 (1952); *United States v. Butler*, 494 F.2d 1246, 1249 (10th Cir. 1974).

part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts that may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties stipulate that the following facts are true and correct.

From at least February 2019 through at least March 2020, defendant Reed knowingly and willfully used, and caused others to use, counterfeit checks at United States Postal Service offices located in Colorado, Texas, and other states to obtain large quantities of postage stamps belonging to the United States Postal Service, which is an agency of the United States. The counterfeit checks that defendant Reed used purported to be drawn on the accounts of law firms, non-profit groups, or other business entities. The bank accounts listed on these counterfeit checks did not exist. When she was asked to provide personal identification during these counterfeit transactions, defendant Reed provided postal employees with false personal identifications to hide her true identity. On some occasions, defendant Reed told postal employees that her law firm needed the postage for a big mailing that was about to go out. On other occasions, she told postal employees that she was buying the postage on behalf of a non-profit organization so they could send postage to U.S. military troops for their use.

At all times, defendant Reed knew that the checks she was using to purchase postage were counterfeit and that the United States Postal Service would not receive any money in exchange for the postage. Defendant Reed knowingly and willfully used these counterfeit checks for the purpose of obtaining the postage without paying for it and putting it to her own use and gain.

On July 31, 2019, defendant Reed went twice to the United States Postal Service facility known as the Denver Finance Station in Denver, Colorado ("Denver Finance Station"). On her first visit, defendant Reed used a counterfeit check purporting to be drawn on the account for "Hope for Our Heroes, Shannon Mitchell" to purchase \$679.80 worth of postage. While she was there, defendant Reed spoke to the facility's supervisor and requested a significantly larger amount of postage. Reed told the supervisor that she worked with a non-profit that intended to put a coil of stamps in each care package that they would be sending to troops. Because the facility did not have enough postage on hand, the supervisor ordered more postage, and Reed returned that evening to obtain the postage. At approximately 6:20 p.m. on July 31, 2019, defendant Reed returned to the Denver Finance Station and knowingly and willfully used the following six counterfeit checks all purporting to be drawn on the account for "Hope for Our Heroes, Shannon Mitchell" to purchase \$30,250 worth of postage: check # 17746 for \$5,500; check # 17747 for \$3,300; check # 17748 for \$5,500; check # 17749 for \$5,500; and check # 17750 for \$5,500; check # 13470 for \$4,950. Defendant Reed knowingly and willfully used these counterfeit checks to purchase \$30,250 worth of postage so that she could obtain the postage for her own use and gain without actually paying for it. Defendant Reed took the \$30,250 worth of postage knowing that it was

not hers and intending to deprive the United States Postal Service of the benefit of this postage.

Notwithstanding the fact that this plea agreement allows defendant Reed to plead guilty to a single count, defendant Reed agrees to pay \$72,727.99 in restitution to the United States Postal Service for the loss caused by all fourteen counts charged in the Indictment.

At the sentencing hearing, the government intends to prove that the loss, including relevant conduct, for which defendant Reed is responsible is more than \$250,000 but less than \$550,000. **The defendant reserves the right to dispute that the loss was more than \$72,727.99.** At the sentencing hearing, the government also intends to prove that the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials. **The defendant reserves the right to dispute this.**

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good-faith estimate of the parties, but it is

only an estimate. The parties understand that the government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process, affect the estimate below.

- A. The base guideline is § 2B1.1, with a base offense level of 6.
§ 2B1.1(a)(2).
- B. A 12-level enhancement applies because the loss was more than \$250,000 but less than \$550,000. §2B1.1(b)(1)(G). **The defendant reserves the right to dispute the amount of loss.**
- C. A 2-level enhancement applies because the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials.
§ 2B1.1(b)(10). **The defendant reserves the right to dispute this enhancement.**
- D. If the government prevails in the loss and relocation enhancements set forth above, the adjusted offense level is 20.
- E. The defendant should receive a 3-level downward adjustment for timely acceptance of responsibility. The resulting total offense level is 17. § 3E1.1(a)-(b).
- F. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions.

Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be II.

- G. The career offender/criminal livelihood/armed career criminal adjustments would not apply.
- H. The advisory guideline range resulting from these calculations is 27-33 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 24 months (bottom of Category I) to 63 (top of Category IV). The guideline range would not exceed, in any case, the statutory maximum applicable to the count of conviction.
- I. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be \$10,000 to \$95,000, plus applicable interest and penalties.
- J. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is at least 1 year, but not more than 3 years.
- K. Pursuant to guideline §5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the victim's losses, and the defendant agrees to pay restitution for the loss resulting from all 14 counts charged in the indictment, which the parties agree is \$72,727.99.

The parties understand that the Court is free, upon consideration and proper

application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. ENTIRE AGREEMENT

The agreement disclosed to the Court is the entire agreement. There are no other promises, agreements or "side agreements," terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any other terms, promises, conditions or assurances.

9-22-21
Date
Fanice Reed
FANICE ANDREA REED
Defendant

9-22-21
Date
Frank Moya
FRANK MOYA
Attorney for Defendant Reed

9/22/21
Date
Pegeen D. Rhyne
PEGEEN D. RHYNE
Assistant U.S. Attorney