IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 23-cr-60170-RNS**
	)	
	)	
ALEXANDRA ACOSTA,	)	
	)	
Defendant.	)	
______________________________	)	

MOTION JUDGMENT OF ACQUITTAL

COMES NOW, the Defendant, ALEXANDRA ACOSTA ("Acosta"), by and through the undersigned attorney, and respectfully motions this Court to enter a judgment of acquittal on counts 1, 2, 3, and 4 pursuant to Rule 29, Federal Rules of Criminal Procedure. In support thereof, Acosta states:

KEY

AH	=	Transcript of Althea Harris, SBA [DN-91]
SB	=	Transcript of Sammi Beechan, Cross River Bank [DN-92]
TJ	=	Transcript of Special Agent Tonya Johnson, FRB-OIG [DN-93]
AA	=	Transcript of Alexandra Acosta [DN-97, 98]

RELEVANT PROCEDURAL HISTORY

1. On March 14, 2024, a superseding indictment was filed that charged Acosta with the following offenses [DN-23]:

Count 1: **Conspiracy to Defraud the United States**
18 U.S.C. § 371

For allegedly conspiring with VILSAINT ST. LOUIS ("St. Louis") to submit a fraudulent PPP loan application and a fraudulent forgiveness application to the SBA to defraud the United States.

Count 2: **False Statements to the SBA**
18 USC § 645(a)

For allegedly making false statements to the SBA in an initial PPP loan application.

Count 3: **False Statements to the SBA**
18 USC § 645(a)

For allegedly making false statements to the SBA in a PPP loan forgiveness application.

Count 4: **Wire Fraud**
18 USC § 1343

For using a fraudulent initial PPP loan application to cause Cross River Bank to transfer $20,180 in loan proceeds via interstate wire to Acosta's account at SunTrust Bank.

2. On June 3, 2024, trial commenced on the superseding indictment. At the close of the government's case, Acosta made a first motion for judgment of acquittal. That motion was denied. The Defense then put on a case, Acosta testified, and Defense evidence was admitted. At the close of all evidence, Acosta made a second motion for judgment of acquittal, however the Court reserved ruling on that motion. At the end of trial, the jury returned guilty verdicts on all four counts. The Court then gave the Defendant an initial deadline of July 19, 2024 to file post-trial motions, including the instant one, however that deadline was later extended to July 26, 2024. The instant motion follows. A separate motion for new trial is being filed contemporaneously as well.

SUMMARY OF THE GOVERNMENT'S ALLEGATIONS

3. This case concerns allegations of *Paycheck Protection Program* ("PPP") fraud. At trial, the government accused Acosta of conspiring with her tax preparer, VILSAINT ST. LOUIS ("St. Louis"), to obtain a $20,800 PPP loan by fraud to pay an *estimated* IRS tax liability of approximately $18,000 that Acosta incurred due to errors St. Louis made on her taxes.

4. The government's case concerned two SBA applications: 1) an initial PPP loan application and 2) a PPP loan forgiveness application. Both were admitted into evidence at trial. **Exhibit 1 (Loan Application), Exhibit 2 (Forgiveness**

Application) The superseding indictment accused Acosta of submitting false statements in both applications.

5. On **February 3, 2021**, an initial loan application was submitted with the SBA that falsely claimed Acosta paid an average monthly payroll of $8,072. That application was also fraudulently substantiated with doctored tax documents that overstated Acosta's business income. Based on these false claims, Acosta's loan application was approved and Cross River bank loan Acosta $20,180 that was wired from Cross River to Acosta's account at SunTrust.

6. On **April 21, 2021**, a forgiveness application was filed with the SBA in Acosta's name seeking forgiveness of Acosta's PPP loan. That application falsely stated that Acosta used 100% of the loan proceeds to pay payroll when that was not true. As a result of these false claims, Acosta's forgiveness application was approved and the United States paid off Acosta's loan with Cross River.

BASIS FOR RELIEF

COUNT 1: Conspiracy to Defraud the United States (18 U.S.C. § 371)

COUNT 3: False Statements to the SBA (18 USC § 645(a))

7. To understand why relief should be granted in this case, it is first necessary to understand the distinct roles that the initial loan application and the

forgiveness application played in each count. As will be explained below, Counts 1 and 3 are connected in that they both ultimately hinge on the forgiveness application; whereas, Counts 2 and 4 are connected in that they both ultimately hinge on the initial loan application.

8. When the initial loan application was approved, the lender, Cross River Bank, was the party who was defrauded because they were the party who loaned Acosta the money – *not* the United States. [AH, pp.6, line 26 and p.7, lines 1-4] At that juncture, the United States was merely a *guarantor* of Acosta's loan. [AH, p.8, lines 1-4]. The United States was not defrauded until the SBA approved the fraudulent forgiveness application and the United States paid off Acosta's loan.

9. Thus, Cross River Bank was defrauded by the initial loan application whereas the United States was defrauded by the forgiveness application. Since Count 1 narrowly accuses Acosta of *only* defrauding the United States, Count 1 hinges on the sufficiency or insufficiency of the evidence concerning the forgiveness application. Count 3 obviously hinges on that as well.

10. As will be explained below, this is a fatal problem because the evidence admitted at trial to prove Acosta knew of the fraudulent components of the forgiveness application or that she was the person who signed and submitted it to the SBA was so insufficient that a reasonable jury would find that the evidence failed to establish guilt beyond a reasonable doubt.

Exculpatory Evidence Admitted at Trial

11. Defense Exhibit B, admitted at trial, is an email dated April 21, 2021, timestamped **2:34 PM EDT**, sent from Acosta's personal Gmail account to St. Louis at victorytaxes@gmail.com. [AA, p. 37, line 4] **Exhibit 3 (Defense Trial Exhibit B)** In this email, Acosta gave St. Louis her Gmail login credentials (login name and password) so that he could prepare and submit her forgiveness application. *Id.* The next page in Exhibit B contains a screenshot that St. Louis texted to Acosta showing **he** submitted her forgiveness application to the SBA on her behalf. *Id.* Following that screenshot is an email St. Louis sent from victorytaxes@gmail.com to Acosta's personal Gmail dated April 21, 2021, timestamped **3:47 PM EDT**, forwarding an email that shows **he** had successfully submitted her forgiveness application to the SBA on her behalf. *Id.* [*See also* AA, p. 46 line 24 – p. 48, line 7] Acosta received no other documents or information from St. Louis regarding the forgiveness application.

12. Cross River Bank's representative, SAMMI BEECHAN ("Beechan"), testified that <u>every</u> <u>single</u> <u>forgiveness</u> <u>application</u> submitted to the SBA or through a private lender was authenticated using Docusign or another service. [SB, p. 38, line 19-25, p. 39, lines 1-3] Her cross-examination revealed that the signature on the forgiveness application was not Docusigned and lacked any indicia that it was authenticated by any signature authentication service. [SB, pp. 38 – 43] The

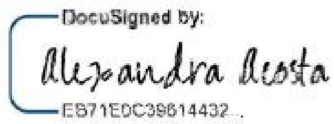
signature on the forgiveness application looked like someone merely typed Acosta's name into the application using a cursive font. Frankly, it looked amateurish.

13. When Beechan was shown a copy of the initial loan application, she was able to successfully identify and explain the various authenticators marked on that document when it was Docusigned. [SB, pp. 26-27 and pp. 39-43] Beechan was able to identify and discuss the Docusign envelope ID number, the distinct Docusign signature which appears logo-like, and the Docusign certificate. *Id.* She also testified that she uses Docusign personally and is familiar with it. *Id.*

14. However, when Beechan was presented with the copy of Acosta's forgiveness application, she agreed that it was devoid of any identifiers that would indicate the signature and two sets of initials found on the application were authenticated using Docusign or another service. [SB, p. 39-43] The forgiveness application was missing a Docusign style signature, did not have a Docusign envelope ID number on any page, and had no Docusign certificate – or any other indicia that would indicate the signature on the forgiveness application was authentic.

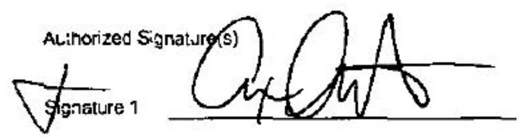
15. Illustrated below is a simple visual comparison of the signatures found on the initial loan application, the forgiveness application, and the signature card from Acosta's checking account at SunTrust. **Ex. 1, Ex. 2, Exhibit 4 (Acosta's Real Signature)**

<u>Initial Loan Application</u>



<u>Forgiveness Application</u>

<u>Acosta's Real Signature</u>



16. At the culmination of Ms. Beechan's cross-examination, the undersigned showed her the signature contained in the <u>forgiveness application</u> admitted by the government and the following exchange was had:

Counsel:	How do you know this is Ms. Acosta's signature, that she has put there? How do you know she is the one who signed this?
Beechan:	**I don't.**

SB, p. 43, lines 6-10

17. During her testimony, Acosta denied any knowledge of the fraudulent statements in her PPP applications and explained that St. Louis prepared and

submitted everything on his own. [AA, p. 48-49] She denied any knowledge of the false claims he made and said she had no reason to question his honesty or suspect that he would submit fraudulent information given their near 10-year history as customer and tax preparer. *Id.*

Significance of an Unauthenticated Signature

18. The signatures on the two applications are necessary because they are a sworn affirmation by the person signing the applications that indicates the contents of the application are true and correct. The Court is encouraged to review the fine print contained above the signature. Because the signature in these applications is a sworn affirmation that the claims made in the application were true, the signature must be authentic to have any effect.

19. Althea Harris agreed during her redirect when she stated that the signature indicated "that they [the applicant] understood what they were doing, **that they filled out the form and certified that the numbers were right, and correct,** that they were eligible for the money. And, one of the bullets there on the form said that, that they needed the money." [AH, p. 61] Yet that is exactly where the government's case came short. However, the evidence admitted during trial failed to establish that Acosta signed and submitted these applications. On the contrary, the evidence proves that St. Louis is the one who signed and submitted them and is therefore the person who actually attested to their veracity, not Acosta.

20. The evidence admitted at trial, such as the emails, only proved that Acosta knew St. Louis submitted a forgiveness application on her behalf using her Gmail login and password and that the application was later approved and her loan was forgiven. There is no evidence that she knew the claims made in the applications were false. There is no evidence that shows Acosta was the person who signed or submitted the forgiveness application or that she authorized St. Louis to submit false information on her behalf. Because Acosta's purported signature on the forgiveness application was never authenticated, the government failed to sufficiently prove that she knew of or affirmed the false statements in the application.

21. Viewing all the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable trier of fact could *not* find that the evidence established guilt beyond a reasonable doubt because the evidence establishing Acosta's knowledge of the fraud or her involvement in the preparation, signature and submission of the fraudulent applications was totally insufficient and was also rebutted by credible exculpatory evidence.

COUNT 2: FALSE STATEMENTS TO THE SBA (18 USC § 645(a))

COUNT 4: WIRE FRAUD (18 USC § 1343)

22. Counts 2 and 4 are connected in that they both focus on and concern the initial loan application. Count 2 accused Acosta of making false statements in the initial loan application only (it does not accuse of her of making false statements in the forgiveness application). Per paragraph 32 of the superseding indictment, Count 4 charged Acosta with wire fraud for causing the lender of her PPP loan (Cross River Bank) to wire the loan proceeds, $20,180, to Acosta's account at SunTrust. It should be *emphasized* that Count 4 does *not* charge Acosta with wire fraud for causing the United States to wire proceeds to Cross River Bank after approving the forgiveness application. In other words, Count 4 is limited in scope to the initial loan application.

23. The evidence admitted at trial to prove Acosta made false statements in her initial loan application or that she was responsible for the false statements in that application that caused Cross River to wire money to her SunTrust account was so insufficient that a reasonable jury would find that the evidence failed to establish guilt beyond a reasonable doubt.

ANALYSIS

Exculpatory Evidence Admitted at Trial

24. At trial, the government called an SBA employee named ALTHEA HARRIS ("Harris") to testify. Through her testimony, the government admitted a copy of Acosta's initial PPP loan application. The admitted loan application contained a Docusign certificate that was generated when the application was Docusigned and submitted to the SBA. This certificate memorialized all the authentication data that was recorded when the loan application was *purportedly* Docusigned by Acosta. **Ex. 1** Harris testified that this loan application was submitted to the SBA and was ultimately approved. Once approved, the lender, Cross River Bank, wired the loan proceeds, $20,180, to Acosta's account at SunTrust.

25. During cross-examination, the undersigned inspected the Docusign evidence with Mrs. Harris. After a painstakingly long review of the loan application before the jury, Mrs. Harris confirmed that the unique envelope ID number recorded on the Docusign certificate matched the envelope ID number printed on every page of the loan application. Mrs. Harris also confirmed that the Docusign certificate for the loan application recorded 4 signatures and 12 initials, which correctly corresponded to the number of signatures and initials in the SBA's initial loan application. Mrs. Harris also confirmed that the Docusign certificate indicated that

the loan application was signed by a user identifying as "Alexandra Acosta" from alexacosta03@gmail.com using IP address **73.56.139.104**.

26. Mrs. Harris also testified that the certificate contained the following timestamps:

Sent:	2/3/2021	6:32:22 AM
Viewed:	2/3/2021	6:32:39 AM
Signed:	2/3/2021	6:33:06 AM

According to these timestamps, the loan application was viewed and signed ***in less than 44 seconds***, which indicates whoever put the 4 signatures and 12 initials on this multi-page, small print, single-spaced document <u>did so without reading it first</u>.

<u>73.56.139.104 Belongs to St. Louis and</u>

<u>Proves He Docusigned Acosta's Loan Application</u>

27. Evidence admitted at trial proves that IP address 73.56.139.104 belongs to St. Louis. SA TONYA JOHNSON, the lead agent in the case, admitted that herinvestigation revealed IP address 73.56.139.104 is associated with St. Louis. [TJ, pp. 8-12] No evidence was admitted that associated 73.56.139.104 with Acosta.

28. Not only did 73.56.139.104 appear in the Docusign certificate generated when Acosta's loan application was signed and submitted, but it also appeared in a login record form a third-party loan servicer named Bluevine that was admitted by the government at trial. **Exhibit 5 (Bluevine Logs)** During cross-examination, Beechan successfully reviewed the portion of the logs that recorded St.

Loui's IP address, 73.56.139.104. [SB, p. 31 (line 19) – p. 33] In total, IP address 73.56.139.104 was recorded four different times during the initial loan application process. No other IP address was ever recorded, including any IP address associated with Acosta.

29. SA Johnson further testified that Acosta, through the undersigned, provided the government with a subpoena return obtained from Docusign. [TJ, p. 8, line 14) – p. 13, line 11)] In its return, Docusign produced a Docusign certificate that recorded a user identifying as "Vilsaint St. Louis" as having signed a document from the SBA on December 10, 2020 (well before Acosta's application was submitted) from victorytaxes@gmail.com using IP address 73.56.139.104. *Id.* **Exhibit 6 (St. Louis Docusign)** It is undisputed that St. Louis' email address is victorytaxes@gmail.com and that all the email exchanges he had with Acosta that were admitted at trial clearly show his email address as victorytaxes@gmail.com. **Exhibit 7 (Defense Trial Exhibits B & D)**

30. Additionally, Acosta's testimony that she gave her Gmail login credentials to St. Louis so that he could prepare and submit the initial loan application was substantiated by emails that she did the same thing when it came time to submit the forgiveness application. **Ex. 7** The fact that she gave him her Gmail login credentials explains how he was able to Docusign and submit the initial loan application using her personal email account. It explains how Acosta *appears*

to be the person responsible for signing and submitting the fraudulent loan application when in fact it was St. Louis the whole time. A reasonable jury would not disregard this conflict and would find that the government failed to prove its allegations beyond a reasonable doubt.

31. In her testimony, Acosta explained that she knew St. Louis for almost 9 years as her tax preparer and that he had prepared her taxes every years since about 2012. [AA. p. 13, lines 11-16] She explained that she trusted him and no reason to question his honest. [AA, p. 16 – 17] She also explained that he had handled her personal financial information every year for many years to prepare her taxes and never had a problem. *Id.*

32. Acosta explained that she gave St. Louis her Gmail login credentials two times. [AA, p. 26] The first time was on a sticky note so that St. Louis could prepare and submit the initial loan application. *Id.* The second time was via email so that St. Louis could prepare and submit the forgiveness application. *Id.* **Ex. 7** There was also a third email where Acosta shared her Home Depot login credentials with St. Louis. *Id.* The Home Depot email is relevant to show a pattern and course of conduct, namely that Acosta is telling the truth when she said she gave St. Louis access to her Gmail account so that he could prepare and submit her PPP applications.

ARGUMENT

33. While Acosta and St. Louis agreed that St. Louis would submit an initial loan application and a forgiveness application on Acosta's behalf, there was no evidence of any agreement to submit *fraudulent* applications. Additionally, no evidence was admitted that proves Acosta actually **knew** of the fraud that St. Louis was committing or that she **knowingly and voluntarily participated** in his fraud. On the contrary, the exculpatory evidence discussed above would inform a *reasonable* jury that the government failed to prove these elements of conspiracy beyond a reasonable doubt.

34. To take the government's side, the jury needed to unreasonably ignore the IP address in the Docusign certificates and the Bluevine logs, the emails that show Acosta gave her Gmail login credentials to St. Louis, and that he submitted the forgiveness application. **Ex. 1, Ex. 7**

35. Just like the forgiveness application in Counts 1 and 3 above, when an applicant signs the initial loan application, they are in essence making a sworn statement affirming the truthfulness of the application, its contents, supporting documents, and their agreement to its terms and conditions.

36. *So long as there is a question about whether or not Acosta actually signed and submitted those applications, it can never be said that she was the person who attested to the veracity of their contents even though her name was used. If she*

was not the person who attested to the veracity of their contents or submitted the applications, then she is not the person liable for misleading the SBA.

37. While Acosta may have generally consented to St. Louis preparing and submitting the applications, there is simply insufficient evidence establishing that she was aware of or consented to their false contents. As a result, a reasonable jury would find that the evidence failed to establish guilt beyond a reasonable doubt.

38. Additionally, Althea Harris' painstaking review of the loan application and loan documents revealed that there was <u>no clear indication</u> to an applicant or borrower regarding what exactly they were allowed to use the money for and what exactly they were not allowed to use the money for. Additionally, there is no clear indication to an applicant or borrower about the difference between an expenditure of loan proceeds that would qualify/disqualify them from forgiveness versus an expenditure of loan proceeds that would be criminal (other than the obvious illegal use of any money). These distinctions are material because they go to Acosta's state of mind and her knowledge.

39. Given that the offenses charged in this case required a finding of knowledge and willfulness, the evidence proving Acosta did anything criminal in how she spent the money is totally insufficient because there is no clear indication that she <u>fairly</u> knew what she was permitted to spend the money on versus what she was not permitted to spend the money on. The only evidence on the subject is

Acosta's testimony that St. Louis advised her the money did not only have to be spent on payroll and could be spent on other things.

MEMORANDUM OF LAW

40. "Whether there is sufficient evidence in the record to support a jury's verdict in a criminal trial is reviewed de novo, taking the evidence in the light most favorable to the Government. *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009) citing *United States v. Futrell*, 209 F.3d 1286, 1288 (11th Cir. 2000) A court "is obliged to resolve any conflicts in favor of the Government, draw all reasonable inferences that tend to support the prosecution's case, and assume that the jury made all credibility choices in support of the verdict." Maxwell at 1299 citing *United States v. Thompson*, 473 F.3d 1137, 1142 (11th Cir. 2006); *United States v. Ward*, 197 F.3d 1076, 1079 (11th Cir. 1999) "Evidence is sufficient to support a conviction if "a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt." *Id.* citing *United States v. Calhoon*, 97 F.3d 518, 523 (11th Cir. 1996).

41. "In rebutting the Government's evidence, '[i]t is not enough for a defendant to put forth a reasonable hypothesis of innocence, because the issue is not whether a jury reasonably could have acquitted but whether it **reasonably** could not have found guilt beyond a reasonable doubt.'" *Id.* citing *Thompson* at 1142.

42. "For sufficiency purposes, the evidence need not exclude every reasonable hypothesis of innocence; rather, the question is whether a reasonable trier of fact, when choosing among <u>reasonable</u> constructions of the evidence, could have found the Defendant guilty beyond a reasonable doubt." *U.S. v. Knowles*, 66 F.3d 1146, 1154 (11th Cir. 1995) A jury is free to choose among **reasonable** constructions of the evidence. *U.S. v. Abbell*, 271 F.3d 1286, 1295 (11th Cir. 2001

43. In a conspiracy case, there must be "substantial evidence" connecting an accused to a conspiracy. Alternative characterizations of the standard refer to the "reasonably minded jury" test. See generally *U.S. v. Clavis*, 977 F.2d 538, 539 (11th Cir. 1992); *U.S. v. Toler*, 144 F.3d 1423 (11th Cir. 1998); *U.S. v. Baker*, 432 F.3d 1189, 1231-1232 n.49 & n.50 (11th Cir. 2005).

44. To sustain a conspiracy conviction the Court must conclude that a reasonable fact-finder could determine that: 1) an agreement existed between two or more persons; 2) that the defendant **<u>knew</u>** of the general purpose of the agreement; and 3) that the defendant **<u>knowingly and voluntarily participated</u>** in the agreement. *U.S. v. High*, 117 F.3d 464 (11th Cir. 1997)

45. To prove the existence of a "scheme to defraud" the government had to show that Acosta misrepresented or concealed a material fact. *United States v. Slaton*, 801 F.3d 1308, 1314 (11th Cir. 2015), See *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009) "A scheme to defraud 'requires proof of material

misrepresentations, or the omission or concealment of material facts reasonably calculated to deceive persons of ordinary prudence.'" *Maxwell* at 1299

CONLCUSION

46. The claim that Acosta knew of the fraudulent contents of these applications has never been sufficiently proven with evidence. At the close of all evidence, there was a MAJOR reasonable doubt as to whether or not Acosta actually knew these applications contained false information or that she was the person who prepared, signed, or submitted them, or that St. Louis did so with her actual knowledge and approval. The evidence failed to establish that Acosta was the person who affirmed the veracity of the applications with a signature when they were submitted. The initial application fails because of the reasonable doubt created by the IP address evidence and the emails proving Acosta shared her Gmail login credentials. The forgiveness application fails because there is no evidence that proved the signature on the application authentically Acosta's or that it was placed by another person at her direction. There is simply not enough evidence to establish a sufficient connection between Acosta and the fraudulent components of the alleged conspiracy (the most important part). Based on all of the foregoing, a reasonably minded jury would have found that the evidence failed to establish guilt beyond a reasonable doubt on all counts.

WHEREFORE, the Defendant and the undersigned respectfully motion this Court to enter a judgment of acquittal on all counts (Counts 1, 2, 3, and 4), forthwith.

Respectfully Submitted,

/s/ *Brian Silber*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served on the following parties via CM/ECF on July 26, 2024.

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