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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 -VS-) DOCKET NO. 1:20-CR-00296-JPB
7) 1:21-CR-00206-JPB
8 ANDRE LEE GAINES,)
9)
10 DEFENDANT.)

11 TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
12 BEFORE THE HONORABLE J.P. BOULEE
13 UNITED STATES DISTRICT JUDGE
14 SEPTEMBER 17, 2021

15 APPEARANCES:

16 ON BEHALF OF THE GOVERNMENT:

17 TAL COHEN CHAIKEN, ESQ.
18 NATHAN KITCHENS, ESQ.
19 ASSISTANT UNITED STATES ATTORNEY

20 ON BEHALF OF THE DEFENDANT:

21 BRIAN MENDELSON, ESQ.

22 STENOGRAPHICALLY RECORDED BY:

23 PENNY PRITTY COUDRIET, RMR, CRR
24 OFFICIAL COURT REPORTER
25 UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

1 (PROCEEDINGS HELD IN OPEN COURT AT 3:09 PM, ATLANTA, GEORGIA)

2 THE COURT: Good afternoon to all of you. And
3 apologies again. I know that we were originally set for 2:30
4 and it's 3:15, but we just had a sentencing that went a little
5 bit longer -- well, a lot longer than we had expected. So my
6 apologies to counsel, Mr. Gaines and any family or friends
7 that may also be here.

8 So with that, Ms. Walker, if you could call the case
9 and then if counsel could announce their appearances.

10 COURTROOM DEPUTY CLERK: Yes, your Honor. This is
11 case number 21-CR-206 and 20-CR-296, USA v. Gaines.

12 MS. CHAIKEN: Good afternoon, your Honor. Tal
13 Chaiken and Nathan Kitchens from the US Attorney's Office for
14 the United States.

15 THE COURT: Good afternoon to both of you.

16 MR. MENDELSON: Good afternoon. Brian Mendelsohn
17 here with Mr. Gaines.

18 THE COURT: Good to see you, Mr. Mendelsohn.

19 And, Mr. Gaines, good to see you as well, sir.

20 Mr. Mendelsohn, if you and Mr. Gaines will please
21 stand, Ms. Walker will swear him in.

22 (The defendant was duly sworn)

23 COURTROOM DEPUTY CLERK: Please say your name into
24 the microphone, please.

25 THE DEFENDANT: Andre Lee Gaines.

1 THE COURT: Thank you, Ms. Walker.

2 Ms. Chaiken, if you can please verify the signatures
3 on the plea agreement.

4 MS. CHAIKEN: Yes, your Honor.

5 Mr. Gaines, I'm showing you a document that's titled
6 "Guilty Plea and Plea Agreement." On page 18 above where it
7 says your name, is that your signature?

8 THE DEFENDANT: Yes.

9 MS. CHAIKEN: And, Mr. Mendelsohn, on page 18 above
10 where it says your name, is that your signature?

11 MR. MENDELSON: Yes, it is.

12 MS. CHAIKEN: And for the record, this page 18 is
13 also signed by a representative for the United States.

14 Mr. Gaines, on page 19 above where it says your name,
15 is that your signature?

16 THE DEFENDANT: Yes.

17 MS. CHAIKEN: Mr. Mendelsohn, on page 20 above where
18 it says your name, is that your signature?

19 MR. MENDELSON: Yes, it is.

20 MS. CHAIKEN: Your Honor, may I tender the plea
21 agreement?

22 THE COURT: Sure.

23 Mr. Gaines, before I can accept your plea of guilty,
24 I need to go over several matters with you. As we go through
25 this process, if anything I state is unclear, let me know and

1 I will repeat or rephrase it for you. It's important that you
2 understand not only my statements to you but also my
3 questions. You need to understand my questions so that you
4 can answer them truthfully. A failure to truthfully answer
5 any question could result in additional charges being brought
6 against you.

7 Also, as I ask questions, please answer the questions
8 out loud. This will allow the court reporter to take down
9 your responses so we can have an accurate record of these
10 proceedings.

11 Do you understand, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: How old are you, sir?

14 THE DEFENDANT: Sixty-seven.

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: One year in college.

17 THE COURT: In the last 24 hours have you had any
18 drugs, medicine, pills or had any alcoholic beverages to
19 drink?

20 THE DEFENDANT: No alcohol. I took my regular pills.

21 THE COURT: Do they affect your judgment or actions
22 in any manner or your ability to understand these proceedings
23 and enter a knowing plea?

24 THE DEFENDANT: No.

25 THE COURT: Have you been treated recently for any

1 mental illness or addiction to alcohol or drugs?

2 THE DEFENDANT: No.

3 THE COURT: And, Mr. Mendelsohn, are you aware of any
4 issues regarding your client's competence to enter a plea?

5 MR. MENDELSON: Judge, he's -- I believe he is
6 competent to enter a plea. And as I'm sure we'll talk about
7 later on, he does have a number of cognitive impairments as a
8 result of a stroke that he had in or around 2018, but he is
9 able to assist me and does -- and understands the parties and
10 would satisfy the competency standards.

11 THE COURT: So I understand he had a stroke. When
12 was that?

13 MR. MENDELSON: Approximately 2018.

14 THE COURT: Okay.

15 Mr. Gaines, when you answered my questions earlier, I
16 asked a follow-up question about your medicine. And you
17 mentioned that despite your medicine, you could still
18 understand these proceedings and enter a knowing plea.

19 Let me ask you a little bit about your stroke there.
20 And, again, I just want to make sure that you understand these
21 proceedings and are competent to enter this plea. I'm not
22 trying to otherwise or for any reason pry into your medical
23 condition, but can you tell me a little bit about your stroke
24 and how that has affected you.

25 THE DEFENDANT: It's affected me somewhat but not

1 much anymore.

2 THE COURT: Can you expand on that for me? When you
3 say it doesn't affect you much anymore, what's the current
4 effect of your stroke?

5 THE DEFENDANT: Just that it's hard for me to walk
6 now. And my left side, my muscles, it's hard for me to lift.

7 THE COURT: It's more physical as opposed to any
8 mental issues that are affecting your competence, is that
9 right?

10 THE DEFENDANT: Right.

11 MR. MENDELSON: Judge, I don't want to mislead the
12 Court any. I have had Mr. Gaines evaluated by a geriatric
13 neuropsychologist. And I've shared that report with the
14 government. And in part because of that report is why we're
15 pleading to the false statement charge as opposed to the fraud
16 charge.

17 The report found that he suffers from cognitive
18 problems and has some vascular dementia. What that -- the
19 impact that that has on him is that it causes some memory
20 issues and some difficulties with executive function, so the
21 logic, reasoning, decisionmaking ability to process lots of
22 information.

23 Because of that, we have spent a lot of time going
24 over it. I mean, it's not one of these things that it's
25 impossible he can't do, the stroke has impacted that and

1 caused him some cognitive impairments. But with the work of
2 going over the information with him, spending a lot of time
3 doing it and working with him, he is able to understand and to
4 do it. I mean, the difficulty comes in things like throwing a
5 lot of information at him really quickly and having him try to
6 sort all of that out. But since we have been able to spend a
7 lot of time going over everything, he can be -- he can
8 understand and he can do it.

9 THE COURT: Okay.

10 Mr. Gaines, do you agree with what your attorney just
11 said?

12 THE DEFENDANT: Yes.

13 THE COURT: What's the government's position on this,
14 Ms. Chaiken? It sounds like it's something y'all have had
15 some discussions about and evaluation of.

16 MS. CHAIKEN: Yes, your Honor. We defer to
17 Mr. Mendelsohn's -- he's obviously spent a lot more time
18 with his client. We have engaged in discussions with him
19 especially after receiving the psychological evaluation, and
20 that is what led to the agreement that we've made here today
21 to have Mr. Gaines plead to a much lesser charge than what he
22 was initially charged with.

23 And as far as his competence to enter his -- this
24 plea, we defer to Mr. Mendelsohn, who we understand has had
25 lengthy meetings with him leading up to this proceeding.

1 THE COURT: Okay. Well, I'm satisfied based on what
2 I've heard that both Mr. Gaines and Mr. Mendelsohn are aware
3 of the issue and have discussed the issue and feel that
4 Mr. Gaines is competent to enter a plea, but what I'm hearing
5 is that we want to make sure that we're going slow enough and
6 not throwing enough -- all at the same time that it gets
7 confusing.

8 So I'm going to move a little bit slower than I
9 normally would. And, Mr. Gaines, if we get to the point that
10 you feel like it's too much and you don't understand, let me
11 know or let your attorney know and we will either take a break
12 and rejoin later today or we can do part of it today, part of
13 it next week, part of it the week after that.

14 The bottom line is it sounds like we just need to
15 make sure we're going slow and make sure you're digesting
16 this. And you're going to need to be the one telling me.

17 And, Mr. Mendelsohn, I'll be looking to you as well
18 to be checking in with your client.

19 Okay, Mr. Gaines?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. What I'm going to do first
22 is go over the rights that you're guaranteed under the
23 Constitution and laws of the United States. I want to be sure
24 that you understand your rights and that by entering this plea
25 of guilty, you're giving up many of your rights.

1 The first thing I want to talk to you about is the
2 fact that you were charged here by an information as opposed
3 to an indictment.

4 Under the Constitution and laws of the United States
5 you have the right to be -- right to require the government to
6 present your case to a grand jury for indictment before
7 entering a plea. The grand jury would receive evidence only
8 from the government. And based on that evidence, the grand
9 jury would determine if there was sufficient evidence
10 presented to require you to answer the charges. If you waive
11 or give up your right to an indictment, charges may be brought
12 against you by means of an information filed by the United
13 States Attorney.

14 The charges in your case have been brought by an
15 information. Are you willing to give up your right to require
16 the government to first present the charges to a grand jury
17 and proceed on the information that's been filed by the United
18 States Attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that under the
21 Constitution and laws of the United States you have the right
22 to plead not guilty and have a trial by jury?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that you're entitled to
25 a speedy and public trial on the charges against you?

1 THE DEFENDANT: Yes.

2 THE COURT: Bear with me a moment.

3 I'm sorry, I said "charges against you." I should
4 have said the charge against you.

5 Do you understand that you have the right to be
6 represented by an attorney throughout all proceedings, and if
7 you cannot afford an attorney, one will be appointed to
8 represent you at no cost to you?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that if you pled not
11 guilty and went to trial, at the trial you would be presumed
12 to be innocent and the government would have to overcome that
13 presumption and prove you guilty beyond a reasonable doubt?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that at a trial you
16 would not have to prove that you're innocent because the
17 burden would be on the government to prove you guilty beyond a
18 reasonable doubt?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that at a trial you
21 would have the right to subpoena witnesses, which would be an
22 order from the Court compelling their appearance at trial to
23 testify on your behalf?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that during a trial

1 witnesses for the government must come to court and testify in
2 your presence?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that your attorney
5 would have the opportunity to cross-examine the witnesses for
6 the government, object to evidence offered by the government
7 and offer evidence on your behalf?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that at a trial, while
10 you would have the right to testify if you chose to do so, you
11 also would have the right not to testify?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you understand that if you chose
14 not to testify or put on any evidence, those facts could not
15 be used against you?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that in order to
18 convict you at a trial, the jury would have to reach a
19 unanimous verdict that you were guilty of the crime with which
20 you're charged?

21 THE DEFENDANT: Yes.

22 THE COURT: If I accept your plea of guilty, you will
23 not have a trial and a jury will not decide your guilt, but I
24 will find that you're guilty of the charge based on your
25 admission that you're guilty. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Are you willing to give up your right to
3 a trial and proceed with the plea of guilty at this time?

4 THE DEFENDANT: Yes.

5 THE COURT: I'm about to move on to, I guess, the
6 second group of questions. Are you okay to go forward now or
7 would you like a short break?

8 THE DEFENDANT: Yes.

9 MR. MENDELSON: Are you ready to go forward or do
10 you want a break?

11 THE DEFENDANT: To go forward?

12 THE COURT: I took that to say, yes, you're okay to
13 go forward, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: You earlier verified your signature on
16 the plea agreement that you entered into with the government.
17 In a moment, I will ask the Assistant US Attorney to review
18 the terms of the plea agreement other than the potential
19 penalties and the factual basis of the plea, which we will
20 discuss a bit later in the proceeding.

21 After that I'll be asking you whether the agreement
22 as presented accurately reflects your understanding of the
23 agreement that you've reached with the government.

24 Ms. Chaiken.

25 MS. CHAIKEN: Thank you, your Honor.

1 The plea agreement provides that Mr. Gaines will be
2 pleading to Count 1 of the criminal information.

3 Pursuant to paragraph 11, the government agrees to
4 dismiss the indictment against the defendant in case number
5 1:20-CR-296.

6 Paragraph 12 sets forth that the government agrees
7 not to bring further charges related to the charges to which
8 Mr. Gaines is pleading guilty.

9 Paragraphs 13 and 14 set forth a series of guideline
10 stipulations. Specifically, paragraph -- specifically the
11 applicable offense guideline is Section 2B1.1, and that there
12 will be no adjustment pursuant to Section 2B1.1(b)(1) because
13 the amount of loss is \$6,500 or less.

14 Paragraph 15 provides that the government will
15 recommend an adjustment for acceptance of responsibility to
16 the maximum extent authorized by the guidelines subject to the
17 exceptions that are listed in that paragraph.

18 Paragraph 16 provides that the parties recognize
19 each party reserves the right to make recommendations for
20 sentencing and that there are no agreements on the guidelines
21 other than those mentioned in the agreement.

22 Paragraph 17 provides that the United States reserves
23 the right to modify its sentencing recommendation if it
24 receives additional information.

25 Paragraph 18 provides a cooperation agreement, that

1 the defendant agrees to cooperate truthfully and completely
2 with the government, including producing all records
3 requested, making himself available for interviews, responding
4 truthfully to all government inquiries and at the government's
5 request testifying at trial or other proceedings.

6 Paragraph 19 provides that the government agrees to
7 abide by Section 1B1.8 of the United States Sentencing
8 Guidelines to not use information previously unknown to the
9 government for sentencing purposes with the caveat that if the
10 defendant is not truthful or candid in cooperation, he may be
11 prosecuted for perjury, false statements, obstruction and all
12 information he provided may be used against him.

13 Paragraph 20 sets forth a conditional 5K and Rule 35
14 motion. The government agrees to inform the Court of the
15 defendant's cooperation. And if the government determines
16 that that cooperation qualifies as substantial assistance, it
17 will file a motion for downward departure if that happens
18 before sentencing, or Rule 35 motion for reduction of sentence
19 if that happens after sentencing.

20 The defendant understands that the government alone
21 determines if the defendant provided substantial assistance.
22 And he understands that the government may recommend a
23 sentence if it files such a motion but that the ultimate
24 decision on his sentence rests with the Court.

25 Paragraph 21 provides that the government agrees to a

1 low-end recommendation subject to the caveat in paragraph 15
2 related to acceptance of responsibility.

3 Paragraph 22 provides that the government agrees to
4 make no specific recommendation as to the fine to be imposed.

5 Paragraphs 23 through 28 provide that the defendant
6 agrees to forfeiture of \$177,828.46 seized from a JPMorgan
7 Chase account held in the name of Gaines Reservation & Travel,
8 and \$9,314.28 from a PNC Bank account in the name of Gaines
9 Reservation & Travel. And the defendant agrees to the
10 forfeiture procedure set forth in paragraphs 23 through 28.

11 Paragraphs 29 through 30 provide that the defendant
12 agrees to pay \$806,710, plus applicable interest in
13 restitution to the two victims and in the amounts identified
14 in the plea agreement. And that the defendant agrees to
15 cooperate fully in the collection of restitution.

16 Paragraph 31 provides that the defendant agrees to
17 pay a special assessment of \$100.

18 Paragraphs 32 through 36 provide that the defendant
19 agrees to cooperate fully in the collection of any restitution
20 or fine pursuant to the terms that are laid out in those
21 paragraphs.

22 Paragraph 37 provides that the defendant understands
23 the recommendations in the plea agreement are not binding on
24 the Court.

25 Paragraph 38 sets forth a limited waiver of appeal,

1 which I will read in full into the record.

2 To the maximum extent permitted by federal law, the
3 defendant voluntarily and expressly waives the right to appeal
4 his conviction and sentence and the right to collaterally
5 attack his conviction and sentence in any post-conviction
6 proceeding, including but not limited to motions filed
7 pursuant to 28 United States Code, Section 2255, on any ground
8 except that the defendant may file a direct appeal of an
9 upward departure or upward variance above the sentencing
10 guideline range as calculated by the district court.

11 Claims that the defendant's counsel rendered
12 constitutionally ineffective assistance are excepted from this
13 waiver.

14 The defendant understands that this plea agreement
15 does not limit the government's right to appeal, but if the
16 government initiates a direct appeal of the sentence imposed,
17 the defendant may file a cross-appeal of that same sentence.

18 Paragraph 39 sets forth the defendant agrees to the
19 standard FOIA and Privacy Act waiver.

20 And paragraph 40 provides there are no other
21 agreements between the parties.

22 THE COURT: Thank you.

23 Mr. Gaines, does that accurately reflect the
24 agreement you believe you've reached with the government?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that any provisions in
2 the agreement regarding recommendations to be made by the
3 government are not binding on the Court?

4 THE DEFENDANT: Yes.

5 THE COURT: In other words, if I choose not to follow
6 some recommendation that the government makes, do you
7 understand that you will still be bound by your plea of guilty
8 and would not be entitled to withdraw the plea based on the
9 Court not following the recommendation?

10 THE DEFENDANT: Yes.

11 THE COURT: Is this the only agreement that you've
12 entered into with the government?

13 THE DEFENDANT: Yes.

14 THE COURT: Other than the terms of this agreement
15 has any promise of any kind been made to you to cause you to
16 plead guilty?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. What other promise --

19 THE DEFENDANT: No. No, there's -- there's nothing
20 else.

21 THE COURT: All right. So the answer to my
22 question -- other than the terms of this agreement has any
23 promise of any kind been made to you, the answer to that
24 question is no?

25 THE DEFENDANT: The answer is no.

1 THE COURT: Okay. Thank you.

2 Per the terms of the plea agreement, the United
3 States Attorney has agreed not to bring any additional charges
4 related to the offense to which you're pleading guilty.

5 Other than those terms, has anyone threatened or
6 forced you to plead guilty or told you that if you do not
7 plead guilty further charges will be brought against you or
8 other adverse action taken against you?

9 And that's a mouthful, so I'm going to let
10 Mr. Mendelsohn talk with you a second just to make sure that
11 you understand my question.

12 MR. MENDELSON: Judge, I boiled that down to has
13 anybody made a threat against you or is anybody holding a gun
14 to your head to make you plead guilty.

15 THE COURT: All right. What's the answer to that
16 question, sir?

17 THE DEFENDANT: No.

18 THE COURT: All right. And, Mr. Mendelsohn, are you
19 aware of any plea agreement or promise being made to your
20 client other than what's been discussed here in open court?

21 MR. MENDELSON: No.

22 THE COURT: All right. Mr. Gaines, I'm going to now
23 have Ms. Chaiken go over the factual basis for the plea.
24 Would you like to take a break or are you okay to kind of go
25 into this next section of the plea colloquy?

1 MR. MENDELSON: He feels okay to go forward.

2 THE COURT: What's that?

3 MR. MENDELSON: He feels okay to go forward.

4 THE COURT: So now I'm going to ask the Assistant US
5 Attorney to state the elements of the offense to which you're
6 pleading guilty. The elements of the offense are those
7 matters that the government must prove beyond a reasonable
8 doubt in order to convict you of the charge.

9 Ms. Chaiken.

10 MS. CHAIKEN: Your Honor, just so it's clear for the
11 record, although Mr. Gaines was previously charged by a
12 criminal indictment, this is his first appearance on the
13 criminal information. And we do have the waiver of indictment
14 form. And we just want to make sure that we have an
15 opportunity to review the nature of the charge with him before
16 that information is deemed filed and we get too far into the
17 plea hearing.

18 THE COURT: Okay. I was not aware of that. So you
19 want to take a moment and do that now?

20 MS. CHAIKEN: Yes, your Honor, if we could.

21 THE COURT: Go ahead.

22 MS. CHAIKEN: Would you like me to --

23 THE COURT: Sure. I've already asked him the
24 question about the waiver of indictment, so go ahead.

25 MS. CHAIKEN: Mr. Gaines, do you understand that the

1 criminal information that we gave you a copy of charges you
2 with a violation of Title 18 United States Code, Section 1001,
3 which makes it a crime to make false statements to a federal
4 law enforcement officer?

5 THE DEFENDANT: Yes.

6 MS. CHAIKEN: And have you had an opportunity to
7 review the criminal information with your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that you have the
10 right to be charged by criminal indictment rather than by this
11 information, meaning that we would have to present your case
12 to the grand jury and have them return an indictment as
13 opposed to us coming to court in this information and making
14 the allegation against you?

15 MR. MENDELSON: One second.

16 MS. CHAIKEN: That was a mouthful, sorry.

17 (Pause in the proceedings.)

18 MR. MENDELSON: So I translated that to do you
19 understand that we could present -- you have the right to have
20 this presented to a grand jury as opposed to having a charge
21 made by the US Attorney. And his response is, yes, he does
22 understand.

23 MS. CHAIKEN: Would you like us to read a copy of the
24 information to you or do you waive a formal reading of the
25 information?

1 THE DEFENDANT: Waive.

2 THE COURT: And given your understanding of these
3 rights and of the nature of the charge in the information, is
4 it your desire to waive formal indictment and proceed with
5 charges pursuant to the criminal information?

6 THE DEFENDANT: Yes.

7 THE COURT: And is this your signature on the waiver
8 of indictment form above your name?

9 THE DEFENDANT: Yes.

10 THE COURT: And, Mr. Mendelsohn, is that your
11 signature on the waiver of indictment form above your name?

12 MR. MENDELSON: Yes, it is.

13 MS. CHAIKEN: Your Honor, may I tender the waiver of
14 indictment form?

15 THE COURT: Sure. Thank you.

16 MS. CHAIKEN: Thank you.

17 THE COURT: Anything else on that front, Ms. Chaiken?

18 MS. CHAIKEN: No, your Honor. Would you like me to
19 proceed with the elements?

20 THE COURT: Yes. Thank you.

21 MS. CHAIKEN: Thank you, your Honor.

22 Mr. Gaines is pleading guilty to Count 1 of the
23 criminal information, which charges making a false statement
24 to a department or agency of the United States in violation of
25 Title 18 United States Code, Section 1001.

1 The elements of that offense are as follows:

2 One, the defendant made a statement or
3 representation;

4 Two, the statement was false, fictitious or
5 fraudulent;

6 Three, the statement or representation was material;

7 Four, the defendant acted knowingly and willfully;

8 And, five, the statement or representation pertained
9 to a matter within the jurisdiction of the executive branch of
10 the United States Government.

11 THE COURT: Thank you. And, Mr. Gaines, do you
12 understand that those are the elements that the government
13 would have to prove beyond a reasonable doubt in order to
14 convict you of the charge?

15 THE DEFENDANT: Yes.

16 THE COURT: In a moment I will ask the Assistant US
17 Attorney to summarize the evidence that the government would
18 expect to present at trial to prove each of these elements.
19 In other words, these are what the government contends are the
20 facts of the case.

21 It's necessary for the government to state these
22 facts because I must determine whether there's a factual basis
23 for you to enter this plea of guilty.

24 After this statement I will ask you whether you
25 disagree with any of the facts as stated by the prosecutor.

1 If you do, tell me, and we will discuss those facts at that
2 time.

3 Ms. Chaiken.

4 MS. CHAIKEN: Thank you, your Honor.

5 If this case were to go to trial, the United States
6 would prove by admissible evidence and beyond a reasonable
7 doubt the following facts:

8 The Paycheck Protection Program, which is known as
9 the PPP, was authorized as part of the Coronavirus Aid, Relief
10 and Economic Security Act to provide forgivable loans to
11 eligible small businesses.

12 Under the PPP small businesses could apply for loans
13 that must be used for payroll expenses, interest on mortgage,
14 rent and/or utilities.

15 The amount of a PPP loan that a business could
16 receive was generally two-and-a-half times, or 250 percent, of
17 the business's average monthly payroll cost.

18 While the United States Small Business Administration
19 oversaw the PPP, individual PPP loans were issued by private
20 approved lenders, including Cross River Bank, which is a
21 federally insured financial institution.

22 The PPP borrower application form asked the applicant
23 to provide information related to their loan application,
24 including the amount of the business's average monthly
25 payroll, the number of the business's employees and the

1 purpose of the loan, with options for payroll, lease or
2 mortgage interest, utilities and/or other.

3 The lender then used this information to calculate
4 the amount of the loan that the business was eligible to
5 receive.

6 The application form also included certain
7 representations and certifications, including certifications
8 as to the accuracy of the information included in the
9 application itself and in any supporting documents and a
10 certification that the funds would be used to retain workers
11 and maintain payroll or to make mortgage interest payments,
12 lease payments and utility payments.

13 Defendant Andre Lee Gaines is the owner of a Georgia
14 company called Gaines Reservation & Travel, which I'll refer
15 to as Gaines Reservation.

16 On or about May 18th, 2020, Gaines Reservations
17 submitted a PPP loan application. In the PPP loan
18 application, Gaines Reservation represented that it had 69
19 employees and \$322,684 in average monthly payroll and that the
20 purpose of the loan was payroll, lease, mortgage interest or
21 utilities.

22 To support these payroll figures, Gaines Reservations
23 submitted IRS Form 941s, which are quarterly employer's tax
24 returns for Gaines Reservations for each quarter of 2019 and a
25 JPMorgan Chase Bank statement for Gaines Reservation for

1 February of 2020.

2 The documents submitted with Gaines Reservations PPP
3 loan application were fabricated. The IRS confirmed that
4 Gaines Reservation did not file a Form 941 for any quarter in
5 2019 and bank records for Gaines Reservations show that the
6 bank statement submitted with the PPP loan application was
7 fake.

8 In reality, Gaines Reservation did not have any
9 employees or any monthly payroll costs.

10 Based on the false representations in Gaines
11 Reservations' PPP loan application and the fabricated
12 supporting documents, Cross River Bank issued a \$806,710
13 PPP loan to Gaines Reservations.

14 On or about July 2nd, 2020, a special agent of the
15 Federal Bureau of Investigation interviewed Mr. Gaines by
16 telephone. During that telephonic interview, Gaines made
17 various false statements about Gaines Reservations and its PPP
18 loan application which were material facts of the
19 investigation.

20 Among these false statements, Gaines represented that
21 Gaines Reservation has 69 employees. At the time that he made
22 that statement, Mr. Gaines knew that Gaines Reservations did
23 not have any employees.

24 THE COURT: Thank you.

25 MR. MENDELSON: Judge, typically I know you would

1 ask Mr. Gaines about this. If I could add a couple of little
2 details here to explain sort of what was going on just so the
3 bigger picture is clear.

4 THE COURT: Sure.

5 MR. MENDELSON: The events that happened in this
6 case happened in 2020, two years after Mr. Gaines' stroke.

7 Mr. Gaines did not file the PPP loan application.
8 They were filed electronically by an individual who's named as
9 a co-defendant in the PPP indictment.

10 Mr. Gaines never saw the application. Mr. Gaines
11 never saw the supporting documentation.

12 He was misled as to what was being filed and what the
13 whole purpose of this information was and only found out that
14 a PPP loan was filed in the name of his company after the
15 fact.

16 And as I've said to the government, it's argued that
17 the evidence at trial would show that Mr. Gaines was a victim
18 of some hustlers out there who took advantage of his cognitive
19 impairments to file the loan on his behalf or in the name of
20 his company.

21 After all of this happened and after all the funds
22 were disbursed an FBI agent came -- or made phone calls to
23 Mr. Gaines to ask him about the PPP loan. There was one phone
24 call in which they had a discussion where I don't believe any
25 false statements were made. There was a call later in the day

1 in which Mr. Gaines did make the false statement. In between
2 that, it's my understanding that Mr. Gaines spoke with one of
3 the individuals who had misled him and told him what to say.

4 So he acknowledges he made the false statement, but
5 with that background about what happened with the PPP loan, I
6 think it's important to have on the record that were this case
7 to go to trial, that Mr. Gaines did not actually file the PPP
8 loan application.

9 THE COURT: Mr. Gaines, let me ask you, do you
10 disagree with anything that Ms. Chaiken has said with the
11 caveats that Mr. Mendelsohn has given?

12 And I think -- Ms. Chaiken, Mr. Kitchens, chime in,
13 but I think as far as the elements for false statements, even
14 with those caveats, it seems like there is still a factual
15 basis from my perspective, unless anyone disagrees.

16 MS. CHAIKEN: We agree, your Honor.

17 MR. MENDELSON: And we are in no way denying any
18 part of -- what happened on July 2nd, he made the false
19 statement. We totally --

20 THE COURT: I understand.

21 Mr. Gaines, my question is pending to you?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. So you do not disagree with
24 anything, correct?

25 THE DEFENDANT: Correct.

1 THE COURT: Let me ask you about those elements.

2 Do you admit that you made a statement or a
3 representation that was false, fictitious or fraudulent?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you admit that that statement or
6 representation was material?

7 THE DEFENDANT: Yes.

8 THE COURT: Is the answer to my question "yes," sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you admit that you acted knowingly
11 and willfully?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you admit that the statement or
14 representation pertained to a matter within the jurisdiction
15 of the executive branch of the United States Government?

16 THE DEFENDANT: Yes.

17 THE COURT: And, sir, I'm now going to have
18 Ms. Chaiken talk about the potential penalties that you face
19 for the charge, including the maximum penalties and any
20 mandatory minimums.

21 Are you okay to go forward with that now or would you
22 like to take a break?

23 THE DEFENDANT: I would like to go forward.

24 THE COURT: All right. Ms. Chaiken, go ahead.

25 MS. CHAIKEN: Thank you, your Honor.

1 Mr. Gaines faces the following maximum and mandatory
2 minimum penalties as to the offense charged:

3 The maximum term of imprisonment is five years.

4 There is no mandatory minimum term of imprisonment.

5 The authorized term of supervised release is zero to
6 three years.

7 The maximum fine is \$250,000 or twice the gain or
8 twice the loss, whichever is greatest.

9 He will also have to pay full restitution, a
10 mandatory special assessment of \$100 and forfeiture of any
11 property, real or personal, constituting or derived from
12 proceeds obtained directly or indirectly as a result of the
13 offense.

14 THE COURT: Thank you. Mr. Gaines, do you understand
15 that those are the possible penalties that you could receive
16 in this case?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that it's not possible
19 for me to state to you today what your exact sentence will be?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that in deciding your
22 sentence, I will consider sentencing guidelines and that the
23 guidelines are advisory, which means that I have the
24 discretion to impose a sentence that is either within the
25 guidelines, greater than the guidelines or less than the

1 guidelines?

2 THE DEFENDANT: Yes.

3 THE COURT: And bear with me a moment.

4 In the plea agreement that was reviewed with you a
5 little while ago you waived certain appeal rights. I want to
6 be sure that you understand the meaning of that waiver.

7 Let me first state to you the rights you would have
8 if you did not waive or give up those rights.

9 The defendant in every criminal case has the right
10 to file a direct appeal immediately after his conviction and
11 sentence. In that appeal you may raise any issue concerning
12 the handling of your case in this court that you wish to
13 raise. Those issues would be reviewed by the Court of
14 Appeals. If errors were found, the Court of Appeals could
15 order that action be taken to correct those errors.

16 Besides that right to a direct appeal, you would have
17 an additional opportunity for review of your case by filing a
18 writ of habeas corpus pursuant to 28 USC, Section 2255.
19 That's another opportunity for you to challenge the legality
20 of your conviction and/or your sentence.

21 These are rights that every defendant has unless he
22 waives or gives them up.

23 In your plea agreement you have, for the most part,
24 given up these rights. Your right of review will be limited
25 to three specific circumstances.

1 First, if after calculating the sentencing guidelines
2 that apply to your case, I then impose a sentence that is
3 greater than the guidelines, you would have the right to file
4 a direct appeal challenging that sentence.

5 Second, if the government files an appeal for any
6 reason, you have a right to file a cross-appeal raising any
7 issues that you wish to raise.

8 Finally, you always reserve the right to challenge
9 constitutionally ineffective assistance of counsel.

10 But aside from these three very narrow circumstances,
11 you will have no right of appeal and will be essentially bound
12 by my decision.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: And, Mr. Mendelsohn, have you reviewed
16 the rights with your client such that you're comfortable he
17 understands both his rights and the waiver of those rights?

18 MR. MENDELSON: I have.

19 THE COURT: Mr. Gaines, I'm going to now go through
20 some other issues. Are you okay to go forward or would you
21 like to take a break?

22 THE DEFENDANT: I would like to go forward.

23 THE COURT: All right.

24 First, do you understand that parole has been
25 abolished in the federal system and that if you're sentenced

1 to prison, you will not be released early on parole?

2 (Pause in the proceedings.)

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you may be
5 sentenced to a term of supervised release that will follow any
6 term of imprisonment and will include rules governing your
7 conduct that if you violate could result in more time in
8 prison?

9 THE DEFENDANT: Yes.

10 THE COURT: Bear with me a moment.

11 Do you understand you may be ordered to pay
12 restitution to any victim of the offense?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you a citizen of the United States
15 Government, sir?

16 MR. MENDELSON: Are you a United States citizen?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that as part of your
19 sentence certain property that's been identified by the
20 government may be forfeited by you to the government?

21 THE DEFENDANT: Yes.

22 THE COURT: Is there anything we've talked about
23 today that you do not feel you fully understand?

24 THE DEFENDANT: Yes.

25 MR. MENDELSON: Well -- I'm sorry, Judge. I just

1 said to him do you feel like you've understood everything.

2 THE COURT: Let me just ask it that way.

3 Sir, Mr. Gaines, have you understood everything we've
4 discussed today?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had a sufficient opportunity to
7 talk about your case with your attorney and have your attorney
8 answer any questions that you have before entering your plea?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with the representation
11 that your attorney has provided to you?

12 THE DEFENDANT: Yes.

13 THE COURT: How do you plea to the information,
14 guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Mr. Mendelsohn, do you feel that you've
17 had a sufficient opportunity to investigate your client's case
18 and advise him concerning the entry of this plea?

19 MR. MENDELSON: I do.

20 THE COURT: Are you aware of any reason I should not
21 accept the plea?

22 MR. MENDELSON: I am not.

23 THE COURT: Is there anything else you want me to
24 address with your client on the record at this time?

25 MR. MENDELSON: No. Thank you.

1 THE COURT: Ms. Chaiken, is there anything further
2 that the government wishes the Court to address at this time?

3 MS. CHAIKEN: No, your Honor. Thank you.

4 THE COURT: Does the government object to the
5 defendant remaining on bond subject to the previous
6 conditions?

7 MS. CHAIKEN: No, your Honor.

8 THE COURT: Mr. Gaines, tell me in your own words
9 what we've done here today.

10 THE DEFENDANT: We've discussed my plea agreement
11 of -- my guilty plea with the US Attorney today. And I waived
12 my right to -- and -- so that I could plead guilty to the
13 charge of making a false statement to a federal agent.

14 THE COURT: Okay. Thank you, sir.

15 I find the defendant understands the charge and the
16 consequences of the plea.

17 I've observed the defendant during this proceeding
18 and he does not appear to be under the influence of any
19 substance that might affect his judgment or actions in any
20 manner.

21 I've also discussed at length his competence to enter
22 the plea, and I'm satisfied that he is competent to enter a
23 knowing plea here today and understands these proceedings.

24 I normally don't ask that final question of a
25 defendant, what happened here today, what are we doing. And

1 the defendant stated without any prompting by his attorney I
2 think exactly the purpose of today's proceeding and what we've
3 done. And I thought he did so artfully.

4 So the Court finds that the plea has a factual basis
5 and is free of any coercive influence of any kind.

6 I find that there have been no promises made to the
7 defendant except those set out in the plea agreement.

8 I find that the defendant is competent to understand
9 these proceedings and enter a knowing plea of guilty as just
10 discussed in more detail.

11 I find that the plea is freely and voluntarily
12 entered.

13 It's, therefore, entered that the plea of guilty of
14 the defendant to the information is accepted and entered.

15 Mr. Gaines, you are hereby adjudged guilty of the
16 charge contained in the information.

17 I will now be referring your case to a probation
18 officer who will prepare a presentence report. Before I
19 receive the report, Mr. Gaines, you and your attorney will
20 receive a copy of the report and will have an opportunity to
21 object to any findings in the report.

22 At your sentencing hearing I will hear from the
23 government and any witnesses it wishes to present and from
24 you, your attorney and any witnesses that you wish to present.
25 At that time I will decide the proper sentence in your case.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Counsel, anything else?

4 MS. CHAIKEN: Not from the government, your Honor.

5 MR. MENDELSON: No, Judge. Thank you.

6 THE COURT: All right. Good to see everyone.

7 And, Ms. Walker, Ms. Coudriet, Officer, thank you all
8 very much.

9 We're adjourned.

10 (PROCEEDINGS REPORTED WERE CONCLUDED AT 4:03 PM.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true
and correct transcript of the proceedings taken down by me in
the case aforesaid.

This the 25th day of January, 2024.



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER