

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 1:21-CR-20231-DMM-1

5 UNITED STATES OF AMERICA

Davie, Florida

6 vs.

September 13, 2021
Monday

7 CARLOS VAZQUEZ

Scheduled for 11:00 a.m.
10:58 a.m. to 11:53 a.m.

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10 **CHANGE OF PLEA HEARING**
11 **(VIA ZOOM)**

12 BEFORE THE HONORABLE CHRIS M. MCALILEY
13 UNITED STATES MAGISTRATE JUDGE

14 APPEARANCES (VIA ZOOM) :

15 ON BEHALF OF GOVERNMENT:

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19 ON BEHALF OF DEFENDANT:

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23 STENOGRAPHICALLY
24 REPORTED BY:

GLENDIA M. POWERS, RPR, CRR, FPR
Official Court Reporter
United States District Court
400 North Miami Avenue
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1 (Call to the order of the Court:)

2 COURTROOM DEPUTY: In the United States Court for the
3 Southern District of Florida, with the Honorable Chris M.
4 McAliley presiding.

5 THE COURT: All right. Good morning, everyone.

6 This is Case Number 21-20231, Criminal, United States
7 versus Carlos Vazquez.

8 Government counsel, would you like to go ahead and
9 state your appearance.

10 MR. O'BYRNE: Good morning, Your Honor.

11 AUSA Hayden O'Byrne on behalf of the United States.

12 I'm here with IRS Special Agent Christy Voelker and
13 AUSA Beth Young is also on the line.

14 THE COURT: AUSA Beth Young?

15 MR. O'BYRNE: She was; I think she just clicked off.

16 THE COURT: Okay. All right. And defense counsel?

17 MR. LEVIN: Your Honor, good morning.

18 Albert Levin, appearing with Mr. Carlos Vazquez, who's
19 present, you can see Mr. Vazquez over my shoulder there.

20 THE COURT: Yes. Can you hear me well, Mr. Vazquez?

21 THE DEFENDANT: Yes, I can, Your Honor. Good morning.

22 THE COURT: Okay. Good morning. All right.

23 So we're here, I understand, Mr. Vazquez, you want to
24 enter a plea of guilty; is that right?

25 THE DEFENDANT: Yes, ma'am, I do.

1 THE COURT: Mr. Levin, I know there's been two other
2 efforts for Mr. Vazquez to enter a guilty plea.

3 Is there any background that you want to give me that
4 would be helpful, or should I just start working my way through
5 it?

6 MR. LEVIN: I think just start working your way through
7 it, Your Honor.

8 THE COURT: Okay. I understand there's no plea
9 agreement; is that correct?

10 MR. LEVIN: That's correct, there is no plea agreement.

11 THE COURT: Okay. I was given a factual basis in
12 support of plea this morning that has a signature of Mr. Levin
13 and Mr. Vazquez, and not yours, Mr. O'Byrne, yet.

14 How can we be assured that you all have the same
15 document that I have, because I know there were prior versions.

16 MR. O'BYRNE: Your Honor, I sent that version back to
17 Nicole a few minutes after I received it.

18 I don't know if it's come through yet.

19 THE COURT: You mean, with your signature?

20 MR. O'BYRNE: With my signature.

21 THE COURT: Oh, okay. Okay. This is another of two
22 versions -- I guess what we'll do in this instance, we might
23 need it, depending on what we're trying to avoid, so let's get
24 to that. Okay. We will put that aside, if we could.

25 Would you raise your right hand, Mr. Vazquez, please.

1 Do you solemnly swear or affirm that the testimony
2 you're going to give will be the entire truth?

3 THE DEFENDANT: Yes, ma'am, I do.

4 THE COURT: All right. Thank you. You can put your
5 hand down.

6 First, it's my obligation to remind you that because
7 you're under oath you have a legal duty to be truthful; and if
8 you are not truthful during this guilty plea hearing, the
9 Government could prosecute you for the additional crime of
10 perjury. Do you understand that, sir?

11 THE DEFENDANT: Yes, ma'am, I do.

12 THE COURT: Okay. It's really important, Mr. Vazquez,
13 that you understand everything that is said here today.

14 May I have your assurance, sir, that if you have any
15 questions for your attorney, or for me, or if you do not
16 understand anything that's said, that you'll stop me and let me
17 know that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Very good. How old are you, sir?

20 THE DEFENDANT: I did not hear what you said, ma'am.

21 THE COURT: How old are you?

22 THE DEFENDANT: 57 years old, ma'am.

23 THE COURT: All right. However -- how much education
24 did you receive?

25 THE DEFENDANT: High school, ma'am.

1 THE COURT: Okay. Have you ever suffered from or been
2 treated for any form of mental illness?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Tell me a bit about that.

5 THE DEFENDANT: I'm currently enrolled in a program
6 suggested by the Honorable Judge Mr. Middlebrooks, and I was
7 taking a class -- I still am participating on Tuesdays from
8 5:30 to 7. I was prescribed three different medications.

9 I was also put on the medication last year. I was in
10 the hospital for 38 days. I went through some operations, some
11 difficulties, nearly lost my life, and they had to remove part
12 of my colon, my liver, they told me, possibly. I got a
13 catheter, so I was there for like 38 days, and they put me on
14 medication, ma'am.

15 THE COURT: Okay. So I need to focus on this: Have
16 you been diagnosed with any form of mental illness?

17 THE DEFENDANT: I have no idea.

18 THE COURT: Because the question was not about physical
19 illness, but mental illness, whether you have suffered from or
20 been treated for any form of mental illness.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. Well, what is that?

23 What have you been treated for, what condition?

24 MR. LEVIN: Judge, if I can shed some light on this?

25 THE COURT: Yeah.

1 MR. LEVIN: When he was hospitalized, about a year ago,
2 he had an episode there, and as a result of the episode -- he
3 had a mental break, an episode, if you will.

4 They put him on medications for that.

5 THE COURT: Okay.

6 MR. LEVIN: He wasn't necessarily told he was
7 schizophrenia/bipolar, or bipolar, he wasn't actually given a
8 diagnosis. And since he's been on bond, it's been recommended
9 that he have counseling -- and that's what he was referring to
10 -- every Tuesday, and this was new to me.

11 But, apparently, he speaks to a physician's assistant
12 who has put him on antidepressants --

13 THE COURT: Okay.

14 MR. LEVIN: -- in this program. So that's what he's
15 referring to; you asked him the question, have you ever been
16 treated for mental illness.

17 THE COURT: Okay. All right. So, Mr. Vazquez, have
18 you suffered from any -- other than this mental break that
19 you've had while hospitalized -- I'm curious, were in ICU for
20 an extended period of time?

21 THE DEFENDANT: Yes, ma'am, I was.

22 THE COURT: I don't know, but I certainly have seen
23 people who have experienced psychosis from prolonged ICU
24 treatment, but that was over a year ago?

25 THE DEFENDANT: 38 days, Your Honor, I almost lost my

1 life.

2 THE COURT: I heard you say that, and I'm glad you
3 didn't lose your life.

4 THE DEFENDANT: Okay.

5 THE COURT: At this point, other than depression, is
6 there any other mental health for which you're being medicated?

7 THE DEFENDANT: No, just the pill they gave me.

8 THE COURT: Are you able to think well, and is your
9 thinking in good order?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. All right. And the medication that
12 you're on now is for depression and other health conditions; is
13 that right?

14 THE DEFENDANT: Yes, I have heart medicine as well,
15 high blood pressure -- I have like 11.

16 THE COURT: Okay. And have you had a dependency at any
17 time on any drugs, medication or alcohol?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: In the last several days, other than the
20 medications you've told me about, have you taken any drugs or
21 alcohol?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Okay. How is your thinking today?
24 Are you thinking clearly?

25 THE DEFENDANT: Yes, ma'am, I'm grateful to be here in

1 this situation.

2 THE COURT: So, as you know, Judge Middlebrooks is the
3 presiding judge in your case. You have the right to have
4 Judge Middlebrooks hear your guilty plea or everything's --

5 (Interruption.)

6 MR. LEVIN: Judge, he's saying he didn't hear you.

7 THE COURT: Okay.

8 THE DEFENDANT: I heard "Judge Middlebrooks."

9 THE COURT: He's the presiding judge in your case.

10 THE DEFENDANT: Okay.

11 THE COURT: You have the right to have him hear your
12 guilty plea, unless, of course, you, your lawyer and the
13 Government agree that I can hear your guilty plea.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: So, Mr. Levin, is my being here today for
16 the guilty plea today okay with you and your client?

17 MR. LEVIN: Yes, it is.

18 THE COURT: Okay. Mr. O'Byrne?

19 MR. O'BYRNE: No objection from the Government,
20 Your Honor.

21 THE COURT: Okay. Here's another thing. You have the
22 right, Mr. Vazquez, to be present in the courtroom with me.

23 We can do this by video conference if I have your
24 consent, and if there is some justification for it that
25 supports the ends of justice.

1 So, first of all, is it okay with you --

2 THE DEFENDANT: I absolutely agree, yes, ma'am.

3 THE COURT: -- to have this plea done by video --

4 THE DEFENDANT: I agree to give you permission, the
5 Honorable Mr. Hayden O'Byrne, and my attorney.

6 I'm good with this. I have no objection.

7 THE COURT: -- doing this by video conference?

8 THE DEFENDANT: Yes, ma'am, I agree, Your Honor.

9 THE COURT: Okay. Mr. Levin, perhaps you can help me
10 understand. There are different reasons that people want to do
11 this. Some are concerned about this risks of Covid and feel
12 more comfortable doing it by video conference.

13 You tell me what the purpose is from your end in doing
14 this by video conference.

15 MR. LEVIN: Well, I mean, he was given a choice to do
16 it by video conference, so he asked for video conference. If
17 he was told to come into open court, he would have come into
18 open court.

19 THE COURT: Okay.

20 MR. LEVIN: So I guess maybe convenience.

21 THE COURT: Right, right. So there certainly is a
22 convenience to that, and I'd rather set you for this, it gets
23 done a little more quickly. There was an issue with your
24 scheduling, I was on criminal duty last week, and I know you
25 wanted to do this earlier.

1 MR. LEVIN: Right.

2 THE COURT: So I just want to make sure that he would
3 be happy to do this in court. Mr. Levin, it's okay with you
4 and your client that we're doing this by video conference?

5 MR. LEVIN: Yes, Your Honor, definitely.

6 THE COURT: Mr. O'Byrne, is that okay with the
7 Government?

8 MR. O'BYRNE: Yes, Your Honor.

9 THE COURT: So, Mr. Vazquez, you certainly have a very
10 competent attorney. I know that you recently hired him and you
11 had prior counsel.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So have you had time that you need to speak
14 to your attorney or attorneys about this case, get your
15 questions answered, understand what your options are;
16 understand what the Government's accused you of and how they
17 might prove it; understand what defenses you might have and how
18 you might prove them; and, of course, to decide whether to go
19 to trial or enter a plea of guilty.

20 Have you had the opportunity to get some legal advice
21 from your lawyers that you feel you need?

22 THE DEFENDANT: I am extremely grateful from having
23 Mr. Levin represent me. I'm extremely happy with his zealously
24 in this case, I have no complaints.

25 And I'm extremely appreciative and grateful to

1 Mr. Hayden O'Byrne as well for his treatment of me and the way
2 he's handled my situation.

3 I'm extremely grateful to Judge Middlebrooks as well,
4 yes, ma'am, I am.

5 THE COURT: Well, I hear all that, and I gather you
6 feel you've had the time you need to consult with your attorney
7 before entering your guilty plea today; is that right?

8 THE DEFENDANT: Yes, ma'am, I have had the time I
9 needed.

10 THE COURT: Before the Court can accept your guilty
11 plea, we do need to be sure that you understand legal rights
12 that you would give up today by pleading guilty, so I'm going
13 to review them with you.

14 First, you have a right to plead not guilty, you can
15 insist upon your innocence and have a trial before a jury. You
16 would be assured of the assistance of competent counsel.

17 If, for any reason, Mr. Levin could not continue as
18 your attorney and if you could not afford to hire counsel, the
19 Court would appoint an attorney for you.

20 So, do you understand that you have those rights at a
21 trial?

22 THE DEFENDANT: Yes, I fully understand.

23 THE COURT: Okay. At a trial, everyone in the
24 courtroom would be required to presume your innocence, that's
25 because it would be the job of the Government to persuade a

1 jury beyond a reasonable doubt of each element of the two
2 crimes that you've been charged with.

3 You would also have a right to hear the Government's
4 witnesses, to see the Government's evidence, and have your
5 lawyer question the Government witnesses -- that's what we call
6 cross-examination -- possibly bring out information that would
7 be useful to you.

8 You have those rights, do you understand that?

9 THE DEFENDANT: Yes, ma'am, I understand.

10 THE COURT: All right. You have a choice on how to
11 defend yourself at trial. You could get on the witness stand
12 and testify. You could call witnesses. You could have
13 subpoenas issued to anybody who you think might have
14 information that could assist you in your defense and that
15 would compel their attendance at trial, and you could call
16 those witnesses. You could put evidence before the Court.

17 Or you could do none of that. You could sit there
18 silently and have your lawyer, you know, challenge the
19 Government's evidence to see if it has done its job of
20 persuading a jury beyond a reasonable doubt of your guilt.

21 Both are acceptable ways to defend one self at trial.
22 Do you understand that?

23 THE DEFENDANT: Yes, ma'am, I do, Your Honor.

24 THE COURT: Okay. By pleading guilty today you give up
25 each of the rights I've just summarized for you.

1 Do you understand that?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: Okay. Very good. The crimes you're
4 pleading guilty to are felonies. Under our laws, when someone
5 is convicted of a felony, it typically causes the state
6 authorities to withdraw certain civil rights that we have, such
7 as the right to vote, hold public office, sit on a jury and
8 possess a firearm.

9 So I need you to understand a consequence of pleading
10 guilty is that you are likely to lose some of your important
11 civil rights. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay.

14 THE DEFENDANT: Never had a firearm in my life. I
15 don't have guns.

16 THE COURT: Okay. Well, that's good.

17 Were you born in the United States?

18 THE DEFENDANT: I was born in Cuba.

19 THE COURT: What is your status in this country?

20 THE DEFENDANT: I've been an American citizen since
21 1976.

22 THE COURT: Okay. I think it is very unlikely that
23 your conviction would cause you any trouble with your status in
24 this country, but because I am not certain of it, I'm telling
25 you that a felony conviction could cause U.S. Immigration

1 authorities to re-evaluate your citizenship; and if that were
2 to happen, it's conceivable that you could have it revoked and
3 that you would be ordered removed from the country.

4 So, I need to advise you that that is a possibility.
5 Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay.

8 MR. LEVIN: Your Honor, could I have one minute with
9 Mr. Vazquez?

10 THE COURT: Sure.

11 MR. LEVIN: Thank you.

12 (Counsel and defendant had discussion off the record.)

13 MR. LEVIN: Your Honor, I wanted to have Mr. Vazquez
14 and myself clarify something that was stated earlier.

15 You had asked Mr. Vazquez about a firearm, and then you
16 advised him that he would not be able to possess a firearm as a
17 result of being convicted in his case.

18 And he stated something to the effect that he's never
19 owned a firearm and had a firearm. When he got arrested -- I
20 want Mr. Vazquez to clarify this for the Court and for the
21 record, since he's under oath, I want him to clarify that
22 previous statement.

23 THE DEFENDANT: Your Honor, I would like to clarify it
24 for the record, respectfully, that I never owned a firearm, but
25 then when I was arrested they served a search warrant and a

1 firearm was found at the address where the search warrant was
2 served, and it was not mine. I'm sure they did a background
3 check or whatever, and it was my ex -- my mother's ex -- my
4 stepfather, my ex-stepfather. My mother passed away.

5 So I just wanted to make sure for the record that you
6 know that it's not mine. I had no idea it was there. I was
7 not at the apartment. I didn't even reside there.

8 So, just for the record --

9 THE COURT: Right.

10 THE DEFENDANT: -- so I don't come across as a liar, I
11 want to make sure that you're aware of that situation, as
12 Mr. O'Byrne as well.

13 THE COURT: Okay. All right. You have a very good
14 lawyer, Mr. Vazquez.

15 THE DEFENDANT: The best in the world.

16 THE COURT: He's looking out for you.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay.

19 THE DEFENDANT: Mr. O'Byrne is a great gentleman, too.
20 He's helped me a lot as well.

21 THE COURT: Good, I'm glad to hear that.

22 MR. O'BYRNE: Your Honor, also, before we move on to
23 the next section, I know we weren't able to confirm exactly
24 Mr. Vazquez's immigration status because it's a very common
25 name, so, I guess, can we do the full, you know, I guess plea

1 colloquy on this point, so if he is a citizen or not a citizen,
2 so we've covered both bases?

3 THE COURT: I'm sorry, what else did you want me to
4 ask?

5 MR. O'BYRNE: Just to say that if he's not a citizen,
6 he may be removed from this country. And again, I don't -- we
7 weren't able to confirm one way or the other.

8 THE COURT: Right. Well, okay. Right. Mr. Vazquez,
9 I was relying upon what you told me, that you are a citizen.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: I mean, if for some reason you're not, if
12 that were wrong --

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: -- the probability that you would be
15 removed from this country would be much greater than if you are
16 one.

17 THE DEFENDANT: Yes.

18 THE COURT: The point here is the Court does not have
19 the authority over immigration matters. That's left for
20 immigration authorities, so I have no insight beyond this.

21 THE DEFENDANT: Your Honor --

22 THE COURT: Listen to me.

23 THE DEFENDANT: Your Honor -- yes. Yes.

24 THE COURT: Listen to me. You're pleading guilty to a
25 felony, and it could cause the immigration authorities to take

1 a look at your status in this country and could lead to an
2 order of removal from this country, and I'm going to leave it
3 at that. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. All right. So, the indictment --
6 I have a copy of the indictment, it was filed with the Court on
7 April 16th. It has two counts of wire fraud. It is six pages
8 long.

9 Mr. Vazquez, have you read that indictment carefully,
10 and I'm going to guess, maybe multiple times?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Have you reviewed it with your attorney,
13 Mr. Levin?

14 THE DEFENDANT: Yes, ma'am, thoroughly.

15 THE COURT: Do you feel you understand what you've been
16 accused of?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: Okay. Now, I also see this -- I also have
19 this plea page, factual basis in support of plea document; and
20 on the third page, it has a signature above your name,
21 Mr. Vazquez, with today's date.

22 Do you have a copy -- you're looking at a copy of it;
23 am I right?

24 THE DEFENDANT: (Witness holding up document for Judge
25 to see via Zoom screen.)

1 THE COURT: Very good. All right. Is that your
2 signature above your name?

3 THE DEFENDANT: Yes, I signed that right here in the
4 presence of Mr. Levin.

5 THE COURT: This morning?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And did you read every word of it?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Do you feel you understand what is in this
10 factual proffer?

11 THE DEFENDANT: Yes, I do, Your Honor.

12 THE COURT: Do you agree that what's in there is the
13 truth?

14 THE DEFENDANT: Yes, Your Honor, I agree.

15 THE COURT: Okay. All right. So what I would want, I
16 think, the Government to do is to tell us what the elements are
17 of wire fraud. There are two wire fraud charges against you,
18 Mr. Vazquez. And I understand, you are pleading guilty to both
19 charges -- to everything that is in that indictment?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Okay. Then next we'll go to the
24 elements.

25 THE DEFENDANT: What did she say?

1 THE COURT: We'll go to the elements.

2 On the forfeiture allegation -- there is a forfeiture
3 allegation after the two charges, and it asks that the
4 defendant have to forfeit any property that he got from his
5 illegal conduct.

6 Am I right that you are agreeing to do that?

7 THE DEFENDANT: That I obtained from having to do with
8 this?

9 THE COURT: Yes.

10 THE DEFENDANT: Yes, I agree to give, yes, any property
11 that I obtained from this, yes, ma'am -- not before, that I did
12 have since '85.

13 THE COURT: No. No. All right, let's talk about
14 forfeiture.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: We're getting ahead here a little bit, but
17 I understand that by fraud you received a lot of money in a PPP
18 loan illegally; correct?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Now, if you still had that money,
21 you would have to give that money back, that would be
22 forfeiture. Do you understand that concept?

23 THE DEFENDANT: I understand.

24 THE COURT: If you used that money to buy yourself
25 something -- I'm just going to give you an example, if you used

1 it to buy a car --

2 THE DEFENDANT: Yes.

3 THE COURT: -- you would have to give the car back to
4 the Government. Do you understand that?

5 THE DEFENDANT: Yes, I fully understand.

6 THE COURT: So either the assets themselves that you
7 got illegally -- or what we call "substitute property" --
8 things that you used the money to get, you're agreeing to give
9 that back to the Government?

10 THE DEFENDANT: Absolutely.

11 THE COURT: Okay.

12 THE DEFENDANT: Absolutely. I did not buy or obtain
13 absolutely nothing.

14 THE COURT: Okay. Well, I'm just making sure you
15 understand the idea of forfeiture and what you're agreeing to
16 about forfeiture.

17 THE DEFENDANT: I understand anything that I done
18 before this -- or after this happened, I am responsible to give
19 back to -- I fully understand.

20 THE COURT: Giving back to the Government? Okay.

21 So, going backwards, now let's go to the two crimes
22 that are charged in the indictment, and I'd like Government
23 counsel to tell us all what the elements are of wire fraud.

24 Now, what we'll do, Mr. Vazquez, when Congress says it
25 is illegal for us to do something, we want to break that down

1 into parts, and we call it the "elements of the offense." All
2 right. It's pretty important and pretty technical, because the
3 Government -- they have to prove you guilty, the Government
4 would have to convince a jury beyond a reasonable doubt each
5 element of the offense. Do you understand that concept?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: So before we talk about the indictment, I
8 want to be clear what it is that the Government would have to
9 prove for you to be found guilty of the two charges in the
10 indictment. So, go ahead, Government counsel.

11 MR. O'BYRNE: To establish these charges, the
12 United States must prove the following elements beyond a
13 reasonable doubt:

14 First, the defendant knowingly devised or participated
15 in a scheme to defraud someone by using false or fraudulent
16 pretenses, representations, or promises.

17 Second, the false pretenses, representations, or
18 promises were material.

19 Third, the defendant acted with the intent to defraud.

20 And fourth, the defendant transmitted or caused to be
21 transmitted by wire some communication in interstate commerce
22 to help carry out the scheme to defraud.

23 THE COURT: Okay. So you have already told me that you
24 read every word of the indictment, Mr. Vazquez, and you
25 understand what you've been accused of.

1 Do you agree that what's in that indictment is the
2 truth?

3 THE DEFENDANT: Yes, Your Honor, I do.

4 THE COURT: Okay. So you are charged with wire fraud,
5 and there are two particular dates that you were engaging in
6 wire fraud. The first was June 30th of 2020.

7 And what did you do on June 30th of 2020? Do you
8 remember? On June 30th of 2020.

9 THE DEFENDANT: June 30th of 2020?

10 THE COURT: Yes.

11 THE DEFENDANT: Give my information and my social
12 security and --

13 THE COURT: Here's what the indictment says:

14 That on that date you submitted to a lender -- and
15 through the lender to this Small Business Administration --
16 that's the way it works -- a false PPP loan application for a
17 company you had, Big League, LLC.

18 THE DEFENDANT: Yes, I did, through another individual,
19 ma'am, yes, I did.

20 THE COURT: You said "through another individual?"

21 THE DEFENDANT: He's named on the indictment.

22 THE COURT: Okay. Individual one.

23 MR. LEVIN: Individual number one.

24 THE COURT: That's right, I understand that you worked
25 hand-in-hand with individual number one to do this; is that

1 right?

2 THE DEFENDANT: Okay. Yes, ma'am.

3 THE COURT: Okay. On June 30th you submitted this
4 application to get a PPP loan for your business called Big
5 League, LLC; is that right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. And this says it was over the
8 internet, I think; right?

9 Is it the internet -- internet application?

10 THE DEFENDANT: Yes.

11 THE COURT: Correct, okay. So -- the internet.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So that was a wire communication in
14 interstate or foreign commerce. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. So, on June 30th you submitted this
17 phony application, an application that had false information,
18 for PPP loan using the internet, that meant it was a wire and
19 interstate foreign communication. Do you understand that?

20 MR. LEVIN: Your Honor, can I have a minute with
21 Mr. Vazquez?

22 THE COURT: Yes. Yes.

23 (Counsel and defendant had discussion off the record.)

24 MR. LEVIN: Your Honor, Mr. Vazquez is suggesting --
25 not suggesting -- he's telling you that he doesn't know if it

1 was through the internet or through fax --

2 THE COURT: Okay.

3 MR. LEVIN: -- but he does know that it was a company
4 that was -- is not in Florida.

5 THE COURT: Okay. A company that was what?

6 MR. LEVIN: Not in Florida, not located in Florida.

7 THE COURT: Okay. All right. So whether or not it was
8 by internet or by fax -- that's a fair point, that would be a
9 communication though interstate commerce, by wire.

10 Do you understand that, Mr. Vazquez?

11 THE DEFENDANT: Yes, I do, Your Honor.

12 THE COURT: Okay. All right. And I see that on
13 July 6th of 2020 you got a deposit electronically from this
14 bank, right, which was lending the money for the Government of
15 \$921,875, and it went into the account that you created at
16 Chase for Big League, LLC?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Is that right?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And that was the PPP loan monies that you
21 got, correct, that came to you -- and again, that would be a
22 wire communication in interstate commerce.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Does that make sense?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. I understand that in your
2 application you made some false statements to get this loan; is
3 that true?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. And let me ask Mr. O'Byrne if you
6 have a preference here. We could go right into the proffer,
7 because the proffer, I think, covers the indictment.

8 I don't want to re-read the indictment.

9 Any thoughts, Mr. O'Byrne?

10 MR. O'BYRNE: Yeah, I think that makes sense, if you
11 want either me or Mr. Levin to read the factual proffer.

12 I mean, I know we usually do it, but Albert Levin has
13 the copy that was signed by Mr. Vazquez; and either way, one of
14 us can read it, the other one can read off what we have.

15 THE COURT: Okay. So let's do that, okay, in
16 particular, because I want to be 1,000 percent certain that the
17 factual proffer you signed is the one I have in front of me and
18 the one we're talking about.

19 And so, Mr. Levin, why don't you read it and stop at
20 certain points and I will ask Mr. Vazquez, are these statements
21 in the proffer true.

22 MR. LEVIN: Listen to what I'm saying.

23 It says, the United States of America versus Carlos
24 Vazquez.

25 THE COURT: Remember the court reporter has to keep up

1 with you.

2 MR. LEVIN: Okay, I'll -- that's true. I forget there
3 was a court reporter somewhere here.

4 Factual Basis in Support of Plea.

5 Defendant, Carlos Vazquez, his counsel and the United
6 States agree that had this case proceeded to trial the
7 United States would have proven the following facts beyond a
8 reasonable doubt:

9 At all material times defendant is and was the CEO and
10 100 percent owner of Big League, LLC.

11 On or about June 30th, 2020, defendant, with the
12 assistance of individual number one, submitted an application
13 for a Paycheck Protection Program loan in the amount of
14 \$921,875 on behalf of Big League to a Georgia-based internet
15 loan processor and PPP lender, lender number one.

16 The note in the amount of \$921,875 was executed on the
17 same day and contained defendant's docu-signed signature.

18 This application was transmitted in interstate commerce
19 by defendant and individual number one from Miami, Florida, to
20 Georgia.

21 This application contains a number of materially false
22 statements that defendant and individual number one knew to be
23 untrue at the time they submit it.

24 THE COURT: Let me stop you right there.

25 Mr. Vazquez, do you understand everything that we've

1 just read?

2 THE DEFENDANT: Yes, ma'am, Your Honor.

3 THE COURT: Do you agree that what Mr. Levin just said
4 is true?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Now we're going to turn to some of
7 the false statements in the application.

8 Go ahead, Mr. Levin.

9 MR. LEVIN: Specifically, the application certifies
10 that the applicant Big League was in operation on February
11 15th, 2020, and had employees for whom it paid salaries and
12 payroll taxes, or paid independent contractors, as reported on
13 Form 1099-miscellaneous.

14 The application states that Big League's average
15 monthly payroll is \$368,750. The application states that Big
16 League has 64 employees. A purported IRS Form W-3 for the 2019
17 tax year was submitted in support of the application, which
18 claims Big League paid wages in the amount of \$4,425,000.

19 THE COURT: Let me stop you there.

20 So there, on that document that you've signed,
21 Mr. Vazquez, your lawyer has just read four statements, four
22 bullet points.

23 Were all of those statements made in the application?

24 THE DEFENDANT: Yes, ma'am, Your Honor.

25 THE COURT: Okay. Go ahead, Mr. Levin. Thank you.

1 MR. LEVIN: As of February 15th, 2020, Big League was
2 not in operation and did not have employees or payroll.

3 Big League has never registered to file taxes in
4 Florida with the Florida Department of Revenue.

5 Thus, the representations defendant and individual
6 number one made to lender number one were false, and defendant
7 and individual number one intended to defraud lender one.

8 THE COURT: Mr. Vazquez, is that true, that you and
9 this other person you were working with knew that you were
10 trying to defraud the Government in unlawfully getting this PPP
11 loan?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Go ahead, Mr. Levin. Thank you.

14 MR. LEVIN: Sure. A few days after reinstating Big
15 League, on June 29th, 2020, defendant opened a Chase business
16 account for Big League.

17 Defendant was the sole signatory on the account.

18 Chase bank's business records show that on June 30th,
19 2020, someone logged into defendant Chase business account for
20 Big League from the same IP address -- 172.58.11.67 -- that was
21 used to apply for the PPP loan that day.

22 A week later, on July 6th, 2020, \$921,875, in PPP loan
23 funds were deposited into this Chase bank account in Miami,
24 Florida, from outside the State of Florida by lender number
25 one.

1 From September 21, 2020, until the end of the year,
2 defendant issued hundreds of checks, almost all in the
3 approximate amount of \$1,494 from Big League's account.

4 These checks purport to be payroll checks and had
5 monies and amounts for FICA, SS and Medicare.

6 THE COURT: Am I right, Mr. Vazquez, that those checks
7 really were not payroll?

8 MR. LEVIN: Is the Court correct in stating that those
9 checks were not really payroll?

10 THE DEFENDANT: Yes, Your Honor.

11 MR. LEVIN: The above-described facts only serve as a
12 summary of the evidence in this case and is not intended to be
13 an exhaustive account of all the information available to the
14 Government and the defendant concerning the offenses charged in
15 the indictment.

16 One, Antonio Gonzalez, acting United States Attorney,
17 by -- and Mr. Robert O'Byrne has signed a copy that the Court
18 now has, obviously, showing my signature and Mr. Vazquez's
19 signature on today's date of 9-13-2021.

20 THE COURT: All right.

21 MR. LEVIN: Your Honor, Mr. Vazquez would like a
22 moment.

23 THE COURT: Okay.

24 MR. LEVIN: Do you want a conference with me?

25 Excuse me one second.

1 THE COURT: Okay. Okay.

2 (Counsel and defendant had discussion off the record.)

3 MR. LEVIN: Your Honor --

4 THE COURT: Yes.

5 MR. LEVIN: -- to clarify something that Mr. Vazquez
6 said. When we were reviewing the factual proffer,
7 specifically: The application certified that Big League was in
8 operation on February 15th, 2020, and it had employees for whom
9 it paid salaries.

10 The case is that he did not have employees prior to
11 receiving the proceeds of this loan.

12 However, when he got the loan, the checks that he wrote
13 were, in fact, for payroll. So they were for payroll.

14 After he received the loan, he was paying payroll.

15 Before he received the loan, he never had a payroll,
16 which was a fraudulent misrepresentation made on the
17 application.

18 But when he did get the proceeds, he did, in fact, pay
19 people for work that they were actually performing.

20 That's what he wanted me to clarify; is that correct,
21 Mr. Vazquez?

22 THE DEFENDANT: Yes, that's absolutely correct.

23 THE COURT: Mr. O'Byrne, any issue there?

24 MR. O'BYRNE: Your Honor, I don't think so. I don't
25 think it changes the fraud with respect to the submission of

1 the application.

2 THE COURT: Right, okay, that makes sense to me.

3 THE DEFENDANT: I agree with Mr. O'Byrne as well.

4 THE COURT: Okay. All right. So let me ask,
5 Mr. O'Byrne, what are the penalties for wire fraud?

6 MR. O'BYRNE: Certainly, Your Honor.

7 The maximum sentence is 20 years, even though the
8 Stafford Act authorizes 30 years, that's not applicable for a
9 PPP loan --

10 THE COURT: Okay.

11 MR. O'BYRNE: -- as per the recent guidance we've
12 gotten, so it would be 20 years.

13 THE COURT: Okay.

14 THE DEFENDANT: Did he say 30 years?

15 MR. LEVIN: 20 years, 2-0.

16 MR. O'BYRNE: Now, 20, 2-0, is the maximum with 30-year
17 enhancement for a Stafford Act violations does not apply in
18 this context based on our most recent guidance.

19 Also, a fine of up to one million dollars, up to five
20 years of supervised release, and a special assessment of \$100
21 per count.

22 THE COURT: So there's no mandatory minimum supervised
23 release? It's an up-to?

24 MR. O'BYRNE: I believe so, Your Honor.

25 THE COURT: Okay, that makes sense. All right.

1 So, Mr. Vazquez --

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: -- you understand, sir, at sentencing,
4 Judge Middlebrooks -- the authority that Congress gives him is
5 the following:

6 He could sentence you to a period of incarceration on
7 one or both counts that you're admitting to, and with the
8 authority he has from Congress is any period of time from no
9 time in prison up to 20 years.

10 Do you understand that that's the range of power that
11 Judge Middlebrooks has to sentence you to prison on each count?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: So, in theory, I think this is quite
14 unlikely, but in theory, he could sentence you to 20 years on
15 Count 1 and 20 years on Count 2, given the authority to
16 sentence you to 40 years incarceration.

17 Do you understand that Congress gave him that power?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Now, he can also order that you pay
20 a fine of any amount, from zero dollars up to a million
21 dollars.

22 Again, since you have two counts, that means that
23 Congress gave Judge Middlebrooks the authority to order a fine
24 of up to two million dollars. Do you understand that?

25 THE DEFENDANT: Yes, I do, Your Honor.

1 THE COURT: So after any period of incarceration, Judge
2 Middlebrooks could sentence you to a period of supervision by
3 the probation office. We call that "supervised release."

4 It could be from no time at all up to five years of
5 being under supervision of probation. So again, I think, he
6 could make it 10 years because of the two counts. It's
7 unlikely, but that's his authority.

8 Do you understand that?

9 THE DEFENDANT: Yes, I do, Your Honor.

10 THE COURT: Okay. You also would be expected to pay on
11 your sentencing date a \$100 special assessment for each count,
12 so that is \$200 that you're going to have to pay as a special
13 assessment. Do you understand that?

14 THE DEFENDANT: I can pay it right now, Your Honor.

15 THE COURT: Yeah, but that's for your sentencing date.

16 THE DEFENDANT: Okay.

17 THE COURT: Okay. So have you understood the penalties
18 that I've set?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Now let's talk about the sentencing
21 guidelines; is that something your lawyers have talked to you
22 about?

23 (Cellular interruption.)

24 MR. LEVIN: Your Honor, one moment. One second.

25 (Brief pause in the proceedings.)

1 THE COURT: You heard something about the sentencing
2 guidelines before; am I right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. So here's how I'm going to summarize
5 it. There are a series of rules that Congress requires this
6 Court to follow to do a numerical calculation that reflects
7 what you actually did to commit the crime.

8 And so at this point, you start with a starting number
9 and points get added or subtracted based on the particular
10 circumstances of the crimes that you've committed.

11 And at the end of that calculation there will be a
12 final number called the "adjusted offense level," and my guess
13 is Mr. Levin has shown you the back page of the sentencing
14 guideline book that has a chart that shows on the left numbers
15 and it corresponds to recommended periods of incarceration.

16 Does all that sound familiar to you?

17 Mr. Vazquez, what I described to you, does that sound
18 familiar?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. So what's important to understand
21 is, that the Court will do a calculation under the sentencing
22 guidelines. In fact, you will meet shortly with a probation
23 officer who will sit down with you and will get information
24 from you, and she or he will do the same thing with the
25 Government, and the probation officer will prepare a report

1 that you'll get to see before your sentencing.

2 And an important part of that report is the probation
3 officer will do a calculation of the sentencing guidelines.

4 Judge Middlebrooks will get this.

5 If anybody thinks the probation office made some
6 mistakes, it's up to Judge Middlebrooks. In the end, he
7 decides what the sentencing guideline calculation is, and then
8 he is obligated to give it a lot of thought to following the
9 recommendation of the sentencing guidelines.

10 If he does, and he imposes a sentence that is within
11 the proposed ranges of punishment -- and I'm talking now about
12 incarceration, a fine, supervision, by probation, the
13 guidelines will propose what punishment in each of those
14 categories should be applied -- if he follows the sentencing
15 guidelines, he will be sentencing you within the proposed
16 guideline range. Do you understand that concept?

17 THE DEFENDANT: Yes, ma'am, Your Honor, I do.

18 THE COURT: Is it making sense?

19 THE DEFENDANT: Yes, sir -- Your Honor, ma'am.

20 THE COURT: Okay. Now, there are circumstances,
21 however, where Judge Middlebrooks can depart, or vary, from
22 what the guidelines propose. So he could give you a lighter
23 sentence than they propose or a heavier one.

24 He has that authority. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Now, I want to get to something
2 pretty important. As you sit here today, Mr. Vazquez, when you
3 plead guilty, you do not have any assurance, any guarantee of
4 what the penalty will be that will be imposed at your sentence.

5 The only thing you know is that it can't be more than
6 those maximum penalties I told you about.

7 THE DEFENDANT: I understand, Your Honor, yes.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, I am also going to guess that
11 you've asked Mr. Levin and maybe your private lawyers -- prior
12 lawyers, and who knows --

13 THE DEFENDANT: Oh, he was terrible.

14 THE COURT: Well, let's just --

15 THE DEFENDANT: He -- from the beginning, he was --

16 THE COURT: Could you stay with me, Mr. Vazquez, listen
17 to what I'm saying.

18 THE DEFENDANT: Okay.

19 THE COURT: I'm going to guess that you have asked your
20 attorneys for their opinion about the sentence that Judge
21 Middlebrooks will impose.

22 If I were in your shoes, I would be asking my lawyers
23 those questions. And if you had that conversation -- which is
24 private, and I don't want you to share it with me -- but if you
25 did, your lawyers would have given their best educated guess of

1 what Judge Middlebrooks will do at sentencing.

2 And it is only that, it's a guess.

3 And I just want to be clear with you, sir, that any
4 hopes or expectations you have about how Judge Middlebrooks
5 will treat you at your sentencing are only hopes and
6 expectations, and any opinions you've gotten from your lawyers
7 are only opinions.

8 And I need you to be very clear about this, that the
9 sentence that Judge Middlebrooks imposes is his decision alone
10 to make; and if you don't like it, you can't withdraw your
11 guilty plea.

12 So the point I'm making here is, you have some
13 unknowns, and even though there are -- this important question
14 of your sentence is unknown, what you're doing today is final;
15 it's a final decision, regardless of how your sentencing turns
16 out. Do you feel you understand what I've just said, sir?

17 THE DEFENDANT: Yes, ma'am, I do, Your Honor.

18 THE COURT: Okay. Okay. Now I know there's no written
19 plea agreement between you and the Government, but still I need
20 to ask you, has anyone, the Government, any other person, made
21 any promise to you or maybe even pressured you or threatened
22 you to persuade you to plead guilty, has anything like that
23 happened?

24 THE DEFENDANT: Not with Mr. Levin, Your Honor.

25 My previous attorney, yes. But not Mr. Levin.

1 The other attorney was a liar. He's a liar.

2 THE COURT: I'm putting aside your fine attorney that
3 you have now.

4 THE DEFENDANT: Correct.

5 THE COURT: Has anybody else, from the Government,
6 anyone else pressured you or talked you into pleading guilty
7 today?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Is it fair to say then that after educating
10 yourself with the assistance of your counsel and in getting
11 your questions answered, and being able to get your counsel's
12 advice, that your decision to plead guilty today is yours
13 alone, and it's voluntary; is that true?

14 THE DEFENDANT: One second, please.

15 THE COURT: All right.

16 (Counsel and defendant had discussion off the record.)

17 THE COURT: Mr. O'Byrne, I cut you off, and I think my
18 double-checking on the list of this, I think we have covered
19 everything.

20 MR. O'BYRNE: Yeah, let me just check my rule book,
21 too.

22 THE COURT: Okay. Where was I? I think I was asking
23 if this decision was yours alone and if it was voluntary.

24 THE DEFENDANT: Yes, it is, Your Honor, and it's my
25 decision alone. And I'm happy with my advice from my lawyer,

1 as I am with Mr. O'Byrne, I'm happy with Your Honor.

2 THE COURT: The point I'm interested in right now is
3 not how happy you are with them, but if you are not being
4 coerced, or pressured, or promised something to get you to
5 plead guilty; is that a fair statement?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. I think I've covered everything.
8 Anything else, Mr. O'Byrne?

9 MR. O'BYRNE: I think that's it, Your Honor.

10 THE COURT: Mr. Levin, anything else?

11 MR. LEVIN: I think you covered everything.

12 THE COURT: All right, good.

13 Let me ask you -- and this is the final question --
14 Mr. Vazquez, how do you plead to Counts 1 and 2 of the
15 indictment, guilty or not guilty?

16 THE DEFENDANT: I plead guilty, Your Honor.

17 THE COURT: Okay. So what I'm going to do is prepare a
18 report and recommendation for Judge Middlebrooks. I will tell
19 him that I certainly think you are mentally competent, you're
20 intelligent, that you understand your options and the choice
21 that you made, and that it's voluntary.

22 I will tell Judge Middlebrooks that I do think that
23 there is evidence that could cause a jury to find you guilty of
24 these charges, and I will recommend that he accept your guilty
25 plea.

1 He has notified me that your sentencing date is
2 November 16th, at 1:15 p.m., in Miami, before him, and you will
3 get a written notice, but you can go ahead and make a note of
4 that now. Okay.

5 We will file -- I think -- oh, interesting, do I have
6 the plea agreement that -- excuse me, the factual proffer --
7 Mr. O'Byrne, did you sign the same document that they signed?

8 MR. O'BYRNE: Yes, Your Honor, I signed the same
9 document they signed, and I -- let me just check, I think I
10 sent it to Nicole, and at 10:47 a.m. this morning.

11 Would you like me to --

12 THE COURT: Okay. Yes, I've got it here. So we will
13 file that. We have it. We will file it. Okay.

14 We're adjourned. Thank you very much.

15 MR. LEVIN: Your Honor, thank you.

16 (Proceedings concluded at 11:53 a.m.)

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an
19 accurate transcription of the proceedings in the
20 above-entitled matter via "Zoom" during Covid-19.

21
22 October 31st, 2021 Glenda M. Powers

23
24 GLEND A M. POWERS, RPR, CRR, FPR
25 United States District Court
 400 North Miami Avenue
 Miami, Florida 33128

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