UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES

v. Criminal No. 2:20-cr-114-FTM-66MRM

CASEY DAVID CROWTHER
Defendant.
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DEFENDANT'S REPLY TO GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS ONE THROUGH FOUR OF THE SUPERSEDING INDICTMENT OR, IN THE ALTERNATIVE, REQUEST A BILL OF PARTICULARS

The Defendant, Casey David Crowther ("Crowther"), through undersigned counsel, hereby files his Reply to the Government's Opposition to Defendant's Motion to Dismiss Count One through Four of the Superseding Indictment. [D.E. 47]. The Government's Opposition continues to ignore the fact that, as a matter of law, Crowther has not violated the regulations governing the Paycheck Protection Program ("PPP"). Crowther understands the Superseding Indictment charges him with 18 USC §1344, 18 USC §1014, and 18 USC §1957 however these charges cannot be substantiated, or even exist, without the violation of an underlying regulation that governs the PPP. It is fundamentally unfair to believe that a business owner can adhere to the regulations governing a government program and still be prosecuted for a federal crime upon which he can lose his business and his freedom.

The theory of fraud that the Government relies upon for Counts One through Four of the Superseding Indictment is premised on the Government's misunderstanding and misapplication of the regulations that govern the CARES Act that was signed into law on March 27, 2020. This misguided interpretation of the standards and rules adopted by the Small Business Administration (**"**SBA**")** led to the premature arrest of Crowther and a created a legal deficiency that is fatal to the

Superseding Indictment as a matter of law. In the Government's Response to the Defendant's Motion to Dismiss the Superseding Indictment the Government states that "the superseding indictment does not charge the defendant with violating the CARES Act." [D.E. 47, pgs. 6, 7]. This assertion is illogical; the charges of bank fraud and related charges in Counts 1-4 rest solely upon alleged violations of the CARES Act and its governing regulations. If Crowther did not violate the CARES Act, he cannot be convicted of the charges within the Superseding Indictment.

The Superseding Indictment spends three (3) pages summarizing the Paycheck Protection Program (hereinafter "PPP"). [D.E. 32, pgs. 2-4]. The term "PPP" is utilized forty-six (46) times throughout the Superseding Indictment. [D.E. 32.][1] The Government's entire premise is that Crowther submitted a fraudulent PPP loan application on behalf of Target Roofing through the SBA. [D.E. 32, pg. 5]. The manner and means of the scheme to defraud focus solely upon the PPP application. [D.E., pgs. 4-6]. The PPP is governed and administered via federal regulations that are found within the twenty-five (25) Interim Final Rules ("IRFs") issued by the Small Business Administration ("SBA"). *SBA Paycheck Protection Program, Fed. Reg. Vol. 85, No. 73, pg. 20811 (April 25, 2020) (to be codified in 13 CFR Part 120), et al.* The SBA issued guidance to lenders and borrowers who participated in the PPP through the IRFs. The IRFs provided parameters for the PPP and set the requirements for loan qualifications, loan processing, and loan forgiveness. The borrowers and lenders were required to follow the IRFs as they were published in order to abide by the terms of the program, as well as abide by the law. Quite simply, there cannot be a charge of bank fraud or a charge of making a false statement to a financial institution without a violation of the CARES Act and its governing regulations. The Government fails to

[1] The Government states it did not charge Crowther with a violation of the CARES Act, however its press release on September 2, 2020, the date of Mr. Crowther's arrest, appears to state otherwise: "Fort Myers Business Owner Arrested and Charged With COVID Relief Fraud."

state which regulations governing the CARES Act, if any, Crowther violated. Without a violation of the regulations governing the PPP, there is no sufficient legal basis for the Government's theory of fraud.

The question before the Court is a matter of law. Crowther contends that the Government's interpretation of the CARES Act and its regulations is inaccurate which resulted in the premature arrest of Crowther and a fatally flawed Superseding Indictment. The regulations are clear that that the borrower is receiving a loan from the lender. *Paycheck Protection Program—Revisions to First Interim Final Rule, Fed. Reg. Vol. 85, No. 116 (June 16, 2020)*. The borrower has twenty-four weeks to spend PPP funds on certain allowable expenses to qualify for forgiveness. *Id*. The regulations do not require that specific funds be utilized or when those funds must be spent; a borrower can spend the entire amount of the loan in the final week of the twenty-four-week period and still qualify for forgiveness. The borrower also has the option of simply paying back the loan to the lender. Id. The regulations allow the borrower to utilize the money for expenses that may not be allowable expenses for forgiveness and still receive the benefit of a low interest loan. This is not only perfectly permissible pursuant to the regulations it is also good business.

Without any allegations of misrepresentations in the Superseding Indictment pertaining to qualifying requirements of the PPP loan application (ie. number of employees, payroll calculations, etc.), Crowther's arrest and subsequent charges prior to the conclusion of the twenty-four-week period are premature as a matter of law. The Government cannot create additional requirements beyond those that are found within the IRFs. As such, the Government cannot impute illegality on how a company accounts for the PPP funds or when those funds are spent if those requirements are not found within the regulations themselves. It is beyond comprehension to believe that a business owner can follow the regulations as stated in the IRFs and yet still be prosecuted for violating a federal crime. It is fundamentally unfair to allow the Government to do so.

The bill of particulars requested was a specific request for the Government to specify the regulations that Crowther allegedly violated pursuant to the PPP. Crowther is well aware of the facts of the case and plausible defenses. The entire defense team however remains baffled as to how the stipulated facts laid out in the Defendant's Motion to Dismiss Counts One through Four of the Superseding Indictment [D.E. 32, pgs. 3-4] constitute a violation of the regulations that govern the PPP. But for a violation of the regulations, a theory of fraud simply cannot exist.

Crowther maintains that the Government's misinterpretation of the CARES Act and its governing regulations creates a legal deficiency in Counts One through Four of the Superseding Indictment. The Government's claim that Crowther is not charged with a violation of the CARES Act is illogical and disingenuous. In order to charge a theory of fraud, the Government must allege that Crowther violated some regulation pertaining to the PPP. That regulation must also be placed within the context of all the IRFs and the intent of the PPP as stated within the regulations. The Government cannot be allowed to make its own rules. Accordingly, Defendant, Casey David Crowther respectfully requests that this Court dismiss Counts One through Four of the Superseding Indictment. In the alternative, Crowther respectfully requests that the Court order the Government to file a bill of particulars specifying which federal regulation governing the CARES Act Crowther is alleged to have violated.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Nicole H. Waid and Brian E. Dickerson, attorneys for Casey David Crowther, do hereby certify that we have, this day, December 13, 2020, filed the foregoing with the Clerk of Court via the CM/ECF system, which has caused a true and correct copy to be served on all counsel of record.

/s/ *Nicole H. Waid* /s/ *Brian E. Dickerson*
Nicole H. Waid, Esq. Brian E. Dickerson, Esq.