IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:22-cr-20290-BB-1

UNITED STATES OF AMERICA,

Plaintiff, December 4, 2023
1:00 p.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 140

TRANSCRIPT OF TRIAL DAY 5
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
AIMEE C. JIMENEZ, AUSA
ANA MARIA MARTINEZ, AUSA
99 Northeast 4th Street
Miami, Florida 33132

FOR THE DEFENDANT: SALE & WEINTRAUB, PA
JAYNE C. WEINTRAUB, ESQ.
2 South Biscayne Boulevard, 21st Floor
Miami, Florida 33131

NELSON MULLINS
JONATHAN ETRA, ESQ.
CHRISTOPHER C. CAVALLO, ESQ.
2 South Biscayne Boulevard, 21st Floor
Miami, Florida 33131

COURT REPORTER: Yvette Hernandez
U.S. District Court
400 North Miami Avenue, Room 10-2
Miami, Florida 33128
yvette_hernandez@flsd.uscourts.gov

ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

Certificate.................................... 140

W I T N E S S

ON BEHALF OF THE GOVERNMENT:	PAGE
TAMARA OCH	
DIRECT EXAMINATION BY MS. MARTINEZ	6
CROSS-EXAMINATION BY MR. ETRA	54
REDIRECT EXAMINATION BY MS. MARTINEZ	71
DAVID TOYE	
DIRECT EXAMINATION BY MS. JIMENEZ	75

E X H I B I T S

GOVERNMENT'S EX. NO.:	OFFERED	ADMITTED
16-1 through 16-3	8	8
73	73	74
20-20 through 20-24	81	82

DEFENDANT'S EX. NO.:	OFFERED	ADMITTED
N-11	67	67

(Call to order of the Court, 1:00 p.m.)

MS. WEINTRAUB: Good morning, Judge -- good afternoon, Judge.

THE COURT: Good afternoon. Good to see everyone.

Let me acknowledge the presence of the Defendant.

Go ahead and have a seat.

If we could just confirm if we have all of our jurors, but don't bring them in yet, please.

All right. Before the Court is the United States's Motion to Preclude Defense Cross-Examination and argument regarding the alleged victim negligence. Is the Defendant aware that this has been filed?

MR. ETRA: Your Honor, we've seen the motion. I haven't had a chance to fully review it, but we're aware that it's been filed.

THE COURT: All right. You have not read it?

MR. ETRA: I have skimmed it. We would like the opportunity to fully brief it. But I would say one thing, Your Honor. It's a boilerplate motion. And while we have a lot of issues, the main argument we have is about the aggravated identity theft, which is not addressed in here, which means that because of -- as Your Honor may have seen, that's a big part of the defense in this case, is on the aggravated identity theft. And the cases say it has to be a key mover or the crux of the underlying crime, the wire fraud.

So they'd ask, you know: "What documents did you look at and rely upon?" We're challenging that. I think the presence of the aggravated identity theft just changes --

THE COURT: Either you're prepared to argue this, Mr. Etra, or you're not. Because if you're prepared to argue it, then we'll look at the Eleventh Circuit case law that appears to be binding with regard to the wire fraud. So let me know --

COURTROOM DEPUTY: Judge, I'm sorry. I'm sorry. If I can interrupt one second. If I can interrupt one second. We need to get the real-time on.

THE COURT: All right. Hold on one moment.

(Pause in proceedings.)

THE COURT: Are we ready to proceed?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: All right. Let me first ask, Ms. Jimenez, does your motion in limine implicate any of the witnesses that are expected to testify this afternoon?

MS. JIMENEZ: Not the first witness, Your Honor, but we anticipate the second witness to be a bank witness.

THE COURT: All right. Then if it doesn't implicate the first witness, then, Mr. Etra, why don't you take an opportunity to read it and then we can address it between the first witness and the second witness. All right?

We have all of our jurors?

Both sides ready to proceed?

MS. MARTINEZ: Would the Court like me to have the witness on the stand or to --

THE COURT: No. Why don't you call -- this is the -- we're calling this witness anew. So we can call the witness once the jury's in.

Okay. Both sides ready to proceed?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Defense is ready, Your Honor.

THE COURT: Okay. Let's bring the jury in.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 1:05 p.m.)

THE COURT: All right. Please be seated.

Welcome back, Ladies and Gentlemen. Thank you for being prompt.

And I hope, for those of you who traveled, that you had a safe travel and a nice weekend. And we are ready to get right back to work.

On behalf of the Government, your next witness, please.

MS. MARTINEZ: The United States calls Tamara Och. It's spelled O-C-H.

(Pause in proceedings.)

MS. MARTINEZ: I'm going to be using both.

THE COURT: Good afternoon.

TAMARA OCH, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

Please have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: Tamara Och. T-A-M-A-R-A. Last name Och, O-C-H.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Good afternoon, Ms. Och.

A. Hi.

Q. Ms. Och, what do you do for a living?

A. I work for the Department of Revenue.

Q. And what is your current position in the Department of Revenue?

A. I am a revenue administrator 3.

Q. And that is the Florida --

A. Yes. Florida Department of Revenue, yes.

Q. How long have you been employed by the Florida Department of Revenue?

A. I have been employed for the Department of Revenue for seven years.

Q. Can you generally explain to the jury what the Florida Department of Revenue does.

A. The Florida Department of Revenue administers the collection of various taxes for the State of Florida.
Q. And in -- your position at the Florida Department of Revenue, has it changed over the years?
A. Yes.
Q. From when you first started to now?
A. Yes, ma'am.
Q. Initially, your position was as an agent relating to collections; is that right?
A. Yes, ma'am.
Q. And now you're a supervisor, correct?
A. Yes, ma'am.
Q. Approximately how many people do you supervise?
A. I supervise a team of 10 agents.
Q. And in your experience, did you become familiar with taxes related to reemployment, sometimes otherwise known as unemployment taxes?
A. Yes, ma'am.
Q. Can you explain to the jury what an employer has to file with the Florida Department of Revenue with respect to W-2 employees that they have.
A. For reemployment tax, an employer would have to file a form that's known as an RT-6. They file it four times a year. And it's a form that will include wages of an employee, and the employer will pay a percentage of the first $7,000 of that

employee's wages.
Q. And so when you said that it's -- the obligation is to file it four times a year, that is -- at the end of -- approximately 30 days at the end of every quarter?
A. Yes, ma'am.
Q. And you described the form as RT-6. Does "RT" stand for --
A. It stands for reemployment tax. It's also known as a UCT-6, which is known as unemployment compensation. But that was a while ago. Now it's RT-6.
Q. In connection with this case, were you asked to review records that the Department of Revenue -- the Florida Department of Revenue had provided in this case?
A. Yes, ma'am.
MS. MARTINEZ: Your Honor, let me inquire.
Do you have any objection to the admissibility of 16-1, 16-2, and 16-3?
MR. ETRA: No objection.
THE COURT: All right. Admitted into evidence.
(Government's Exhibits 16-1, 16-2, and 16-3 received into evidence.)
MS. MARTINEZ: Could you pull up at counsel table 16-1. It's been admitted into evidence so we can publish it once it comes out.
THE COURT: Ladies and Gentlemen, is everyone's screen on?

All right, then.

BY MS. MARTINEZ:

Q. Ms. Och, have you previously reviewed Government's Exhibit 16-1?

A. Yes.

Q. What do you recognize that to be?

A. That looks to be a response to a records request search to the Department of Revenue.

Q. And what is the date of the response from the Florida Department of Revenue?

A. The date of the response is January 31st, 2022.

Q. I am going to direct your attention to the companies that are listed there. There are several where it indicates that no records were found. Can you tell the jury which are the ones where no records were found.

It would be -- not the bottom one, just the -- one, two, three -- the first five.

A. CJUF III Flagler, LLC; HM Four, LLC; HM-UP Development Alafaya Trails; TRU, LLC; HM-UP Development Alafaya Trails, LLC; HM-UP Development Alafaya Trails III, LLC.

Q. In addition to the record that we are reviewing right now, did you also confirm yourself that there were no reemployment tax records relating to these five companies that you just read out?

A. Yes.

MS. MARTINEZ: Can you highlight the bottom one, the bottom answer.

Thank you.

BY MS. MARTINEZ:

Q. With respect to HM Management and Development, LLC, what was the result of the search and your own confirmation?

A. Everything listed is correct except for the statement that says: "We were unable to locate reemployment assistance tax reports for first quarter 2018 through fourth quarter 2021." That should be first quarter 2019 through fourth quarter 2021.

Q. And --

MR. ETRA: Your Honor, briefly. I should have mentioned earlier. We had a motion in limine. Your Honor ruled against us on this, so I'm not rearguing the motion in limine, but we still have the objection.

THE COURT: All right. You want a standing objection?

MR. ETRA: I'm sorry?

THE COURT: You want a standing objection? Is that --

MR. ETRA: Yes, Your Honor.

THE COURT: All right. You certainly have it.

BY MS. MARTINEZ:

Q. Could you read the first paragraph response with respect to this company.

A. Correct. "Enclosed are printouts with wage listings of the reemployment assistance tax reports filed through the

Department's electronic data interchange system for first quarter 2013 through fourth quarter 2018 for the above-referenced business."

Q. So that paragraph clarifies that they did find it through the fourth quarter of 2018, correct?

A. Yes, ma'am.

Q. And so that's consistent with the correction that you just made to the typo on the second sentence, where it should have said nothing found from the first quarter of 2019 --

A. Yes, ma'am.

Q. -- forward?

A. Correct.

Q. Now --

MS. MARTINEZ: Can you go to the second page.

I'm sorry. The third page.

And just highlight the top section.

BY MS. MARTINEZ:

Q. For this exhibit there was a number of records that were produced, the ones that were found. This is the first page. Can you explain to the jury what they're looking at.

A. What this form is is an electronic data, if you will, of a reemployment report that was submitted to the Department of Revenue for the first quarter of 2013 for the business HM Management and Development, LLC.

Q. And what is that number -- business partner number?

A. Business partner, that's the number that we would use at the Department of Revenue to identify a business outside of a federal ID number.

MS. MARTINEZ: Could you highlight the bottom part of the page.

BY MS. MARTINEZ:

Q. So the second part of that report describes the gross wages paid in that particular quarter, correct?

A. Correct.

Q. It also has listed the number of employees for the first month, second month, and third month, correct?

A. Correct.

Q. And what's the number of employees listed?

A. The number of employees listed is three.

MS. MARTINEZ: Can you go to the next page.

And can you just highlight the box.

BY MS. MARTINEZ:

Q. What is this?

A. This is the wage record for the employees that were listed on the first page.

Q. And could you read out the three names?

A. I can. It would be Jeanette Gonzalez, Adianes Sosa, and Elva Baluarte.

MS. MARTINEZ: Could you scroll down slowly through the form, just so that we can...

BY MS. MARTINEZ:
Q. I want you to take a look at it just slowly as she goes through -- and slowly going through it till we get to 2018.
MS. MARTINEZ: Actually, I'm going to ask you to go to 2017. And if you want to go a little more quickly, it's Bates Label 760 -- ending in 760, 000760.
BY MS. MARTINEZ:
Q. As she goes through it, from having reviewed this form -- I mean, these records previously, it included similar reports for every quarter in the years from 2013 through 2018, correct?
A. Correct.
Q. So now we're going to the year 2017 or the end of 2016. How many employees are listed now?
A. The amount of employees listed is two.
MS. MARTINEZ: Can you go to the next page.
And can you highlight the box.
BY MS. MARTINEZ:
Q. Who were the employees listed?
A. That would be Jeanette Gonzalez and Elva Baluarte.
Q. And that's for the last quarter of 2016, correct?
A. Correct.
MS. MARTINEZ: Go to the next page.
And can you highlight the number of employees there.
BY MS. MARTINEZ:
Q. What is the number of employees for the next quarter?

A. Three.

MS. MARTINEZ: Can you go to the next page.

And can you highlight the box.

BY MS. MARTINEZ:

Q. So who is the third employee now?

A. The third employee now would be Vanessa Gonzalez.

Q. And the other two remain the same, correct?

A. Correct.

MS. MARTINEZ: Turn to -- the second-to-last page is 0076.

Can you first highlight the top.

BY MS. MARTINEZ:

Q. Again, we're looking at a continuation of records for which company?

A. HM Management and Development, LLC.

Q. And this is the quarter ending when?

A. This is the fourth quarter of 2018 ending December 31st, 2018.

MS. MARTINEZ: Can you highlight the box relating to the employees.

BY MS. MARTINEZ:

Q. Here, how many employees are listed at each month?

A. Three employees.

Q. And what are the gross wages paid?

A. The gross wages paid are 42,249.41.

MS. MARTINEZ: Go to the next page.
And highlight the employee box.
BY MS. MARTINEZ:
Q. For the last quarter of 2018, can you list each employee's name and the wages for that quarter.
A. Jeanette Gonzalez. The wages for the last quarter are 20,192.34. The wages for Vanessa Gonzalez for the third quarter, $13,461 with 56 cents. Elva Baluarte, for the fourth quarter of 2018, $8,595 with 51 cents.
Q. And the total for that quarter of employees wages for HM Management and Development was?
A. 42,249.41.
MS. MARTINEZ: Can you go back to the first page of this exhibit, and then also pull up next to it Exhibit 16-2.
On the -- Exhibit 16-1, can you highlight HM Management and Development Alafaya Trails, LLC.
And yes, if you could zoom it -- thank you -- a little bit.
And if you could do the -- highlight the results of the search of the second -- Exhibit 16-2.
BY MS. MARTINEZ:
Q. Did you also review Exhibit 16-2?
A. Yes.
Q. And in 16-2 there is an additional number that follows the name of the company. Are you familiar with what that type of

number is?
A. Yes.
Q. What is that?
A. That's the federal ID number, federal identification number.
Q. Now, both -- in both searches that were done, one in January of 2022 and one in May of 2023, what was the results?
A. After a search of the records for the Florida Department of Revenue, there were no records indicating that business registered to file reemployment tax.
Q. You sat back a little bit, and I'm not sure we heard that. To file reemployment tax? Is that what you said?
A. Correct.
Q. When -- and in addition to that, you yourself searched and confirmed that, correct?
A. Correct.
Q. Now, when you do your searches, in addition to using name, in addition to using these employment identification numbers or identification numbers for the companies, is there another tool that you have in your system to try to make sure you're not missing anything?
A. Yes.
Q. What is that?
A. You have something that's called a -- it's -- for lack of a better term, it's a wild card, whereas you could put in almost

like a keyword and then put an asterisk, and then our system will pull up anything relating to any business that has that keyword or words in the search.
Q. And when you did that, you did find that at some point a business with a name Alafaya was registered for at least sales tax in the past, correct?
A. Correct.
Q. The last period of time that you remember seeing that?
A. Approximately 2016.
Q. But nothing after that?
A. No, ma'am.
Q. And do commercial rental leases also have Florida sales tax?
A. Yes.
Q. Now, with respect to the records that we did --
MS. MARTINEZ: You can un-zoom this.
BY MS. MARTINEZ:
Q. For the records that you did find, the ones for HM Management and Development, what is it that the employer was required to file with the Department of Revenue?
A. Could you repeat that.
Q. What is it that the -- the records that we found with respect to HM Management from 2013 to 2018, what was it that the employer was required to file that provided those records to the Florida Department of Record -- Revenue?

A. They were required to file reemployment tax.
Q. A particular form?
A. An RT-6.
Q. And that was something that's required for W-2 employees but not required with respect to independent contractors; is that right?
A. Correct.
Q. And the employer is also required to be registered with the Florida Department of Revenue, correct?
A. Correct.

MS. MARTINEZ: Could you go to zoom for -- I'm sorry -- to -- what do you call this -- ELMO, please, for a second.

Let me see if I can get this to work.

MR. ETRA: Your Honor, while we're waiting, we have a request for a limiting instruction and a motion to strike as well, at sidebar.

THE COURT: With regard to this witness?

MR. ETRA: Yes.

MS. MARTINEZ: You don't like the way I handled the machine?

THE COURT: I'm sorry. You want a limiting instruction with regard to this witness that's being raised now?

MR. ETRA: With regard to the tax issues they're making, whether we paid taxes or not.

THE COURT: Okay. Hold on. Hold on. Hold on. I'm not going to entertain a motion before the jury. I'm wondering why this wasn't brought before the Court before the witness came in.

MR. ETRA: We've raised --

THE COURT: All right. Come sidebar.

(At sidebar on the record.)

MR. ETRA: May I proceed?

THE COURT: Yes.

MR. ETRA: Between the IRS agent and this witness, they are making whether or not the companies filed tax returns or paid taxes a feature of the case. It's uncharged. We did have a motion in limine on this. We lost. And we think a limiting instruction that that's not an issue for the jury is appropriate. That's point one.

Point two, I was shocked when the prosecutor asked about non-payment of sales taxes on rents. That came out of nowhere, and I wasn't able to react to it because I didn't expect it. That has nothing to do with anything involving -- in this case. And again, I would move to strike that portion. It doesn't go to the overall issue of who is a W-2 and who is not.

MS. WEINTRAUB: The last 15 minutes has all been about --

THE COURT: Response?

MS. MARTINEZ: Yes, Your Honor. As you'll see --

(Court reporter interruption.)

THE COURT: You need to pick up the microphone, please. You can pick it up. You can hold it.

MS. MARTINEZ: Can you hear me?

Your Honor, as you will see, with Government's Exhibit 19-16 that I'm about to show to the witness, which was submitted to a lender, it was a completely, a hundred percent, false, three-page Florida Department of Revenue form listing --

THE COURT: Is that part of your Indictment?

MS. MARTINEZ: Absolutely.

THE COURT: All right.

MS. MARTINEZ: It's a false form submitted to a lender. Multiple -- to multiple lenders, received -- yes, it is in evidence. Multiple lenders received Florida Department of Revenue forms that I will show to this witness, and she'll say she searched the records. They do not exist. I will compare that form to the records that were submitted that found no records for the individuals listed on that form, and it will show that the form was completely false.

In other words, we are just simply bringing government employees to show that the government forms that were submitted to the lenders were completely non-existent and false.

THE COURT: All right. And response to the request for a limiting instruction and the issue with regard to the non-payment of sales tax?

MS. MARTINEZ: Your Honor --

THE COURT: I want to hear the response.

MS. MARTINEZ: Your Honor, this is a hundred percent inextricably intertwined. Let me tell you why. If you pay something, then your records are in there. The fact that you don't file the form is -- goes together with the non-payment.

With respect to the sales tax -- I want to address that. My effort was simply to be truthful and honest with the jury as to what was found and not found, not any kind of addition, nor -- and even if it were so, it is inextricably intertwined with his business and him submitting forms. Because, as you will see, the false form that I'm going to be showing to the witness is from that particular business that she just said was registered in the past for something else, but they submitted a false reemployment tax form. So it's completely inextricably intertwined, complete. And I will actually say that's not even prejudicial. It is part of the way the case is going.

THE COURT: All right. Further response?

MR. ETRA: Your Honor, two points. The request for a limiting instruction isn't just on the sales tax. It's essentially about tax violations generally. Whether or not Your Honor lets it in, it's still not what the jury is going to be considering, and that's point one.

Point two, the argument that the alleged non-payment of sales tax is part of the fraud is -- I'm hearing it for the first time today. I had no notion this was coming up today. So whether it's really covered within the Indictment, it seems like it's -- I haven't seen it before. I haven't seen it in the Bill of Particulars. I haven't seen it in the Indictment. So I'm just caught flat-footed because I don't think it's part of the case. The prosecutor is saying it is, but I don't recall seeing.

THE COURT: I don't know how the non-payment of sales tax on rent is inextricably intertwined. Is it already contained in those three exhibits?

MS. MARTINEZ: I did not even say that. Neither did the witness.

THE COURT: Okay. But you just told me that the non-payment of sales tax on rent is inextricably intertwined, and I'm failing to see that.

MS. MARTINEZ: I don't know if I said that.

THE COURT: Yes. That was your second point.

MS. JIMENEZ: My point is that everything that he did is inextricably intertwined.

THE COURT: Well, I'm not seeing specifically how the non-payment of sales tax on rent is inextricably intertwined.

MS. MARTINEZ: And let me add, it shows that he knows how to register, he knows -- and he picks which businesses to register for what. But let me clarify. I did not hear the witness say anything about non-payment or anything. She did not -- all she said is that there was a registration in the past. She did not address anything about non-payment.

THE COURT: All right. If it's contained within the exhibit, it's fair game. The request for a limiting instruction is granted in part. I will give a limiting instruction, which I should, at the end of the case. It is premature at this point.

With regard to the sales tax, I don't see how that's relevant so you've got to stay away from that. No further questions with regard to that.

MS. MARTINEZ: The only reason was to, again, be truthful about what he had been registered for and not --

THE COURT: I've already told you it's not relevant and I'm not going to permit it. The non-payment of sales tax on rent, I don't see how that's tied to anything contained within the Indictment.

MS. JIMENEZ: We did not address non-payment. The witness did not.

THE COURT: All right. Let's continue.

MR. ETRA: Can it be stricken, if it's in the record --

THE COURT: Well, you'll have to find that. And then at the appropriate time, I'll advise the jury with regard to the limiting instruction.

MS. WEINTRAUB: Judge, they are going to highlight that he was required to pay these taxes and he didn't. And that is not intertwined to whether or not --

THE COURT: That's why I'll allow a limiting instruction. I'll allow a limiting instruction with regard to any of that evidence.

MS. MARTINEZ: Your Honor, he is telling the lenders that he is paying tax. That is what he's saying.

THE COURT: But that's not the scope of your Indictment.

MS. MARTINEZ: It's a further lie.

THE COURT: It's not part of your Indictment.

MS. MARTINEZ: Hold on. Wait a second. The Indictment does say that he falsely -- makes false representations to the lenders, including forms. In fact, to the lenders, you're --

THE COURT: A falsified lease agreement, a falsified letter. I mean, I'm looking at your Second Superseding Indictment. I don't see it.

MS. MARTINEZ: Your Honor, it is part of the case that he submitted false -- I'm going to show it. It's in evidence.

THE COURT: Okay. At this point, we're speaking specifically of the sales tax on rent, and I've already said that it's not relevant.

All right. Let's step back.

(End of discussion at sidebar.)

THE COURT: All right. Thank you for your patience, Ladies and Gentlemen.

Let's continue.

MS. MARTINEZ: I'm going to go to counsel table.

19-3 -- I'm sorry -- 16-3.

This is already admitted into evidence.

THE COURT: It's in evidence.

BY MS. MARTINEZ:

Q. Are you familiar with reviewing what's been admitted into evidence as Government's Exhibit 16-3?

A. Yes. Yes.

Q. And that exhibit included multiple searches regarding whether there was reemployment tax information as to several individuals, correct?

A. Correct.

Q. In this page --

MS. MARTINEZ: Could you just highlight Jeanette Mendoza [sic] and Vanessa Gonzalez.

BY MS. MARTINEZ:

Q. Does it indicate that it did find information with respect to these two individuals?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow that.

BY MS. MARTINEZ:

Q. Can you tell the jury what the records search reveals with respect to --

A. The records show that there is wage information for Jeanette Gonzalez and Vanessa Gonzalez with the Florida Department of Revenue.

MS. MARTINEZ: Can you -- can you scroll down to 781. And highlight that.

BY MS. MARTINEZ:

Q. What does this show?

A. This shows the wage information that the -- our systems showed from 2013 through 2018 wage records for Jeanette Gonzalez.

Q. And it shows it -- wages by quarter, correct?

A. Correct.

Q. And the last quarter shown is...

A. The last quarter of 2018, quarter four, ending December 31, 2018.

Q. And what is the amount shown for Jeanette Gonzalez?

A. The total amount from 2013 through 2018 shows gross wages totaling $448,594.44.

MS. MARTINEZ: Can you bring up next to this Government's Exhibit 19-6 that's already been admitted into evidence.

BY MS. MARTINEZ:
Q. Have you reviewed Government's Exhibit 19-16?
A. Yes.
MS. MARTINEZ: For Government's Exhibit 19-16, can you highlight the top.
I'm afraid like that we can't see the quarter that they are submitting for. Can you highlight a little bit further -- the top left, so we can see the quarter ending.
BY MS. MARTINEZ:
Q. What does this form -- first let me ask you: Did you find any record of this form in the Florida Department of Revenue systems?
A. No.
Q. So in your systems this does not exist?
A. No, it does not.
Q. This purports to be a form from -- ending in what quarter?
A. This looks to be an RT-6 submitted for the first quarter of 2020.
Q. And what's the company name listed on this?
A. The company listed -- the name is HM-UP Development Alafaya Trails, care of HM Management and Development.
Q. And what's the address listed?
A. 12 --
Q. Oh. There's two.
A. There is. There's a mailing address at the top, 12000

Biscayne Boulevard, Suite 508, Miami, Florida 33181. The address underneath is the physical location of said business, 1250 North Alafaya Trails, Orlando, Florida 32828.

Q. I understand that this is not in your system, but which company would you -- if you had received this, which company would you be reading it for, the first one or the second one?

A. We would be reading it for the second one.

Q. The care of or the first one?

A. The care of. But we would assign it based on the RT account number that's on the top right.

Q. Did that RT account number -- did you look up that RT account number?

A. Yes, I did.

Q. And what did it go back to?

A. That goes back to HM Management and Land Development, LLC.

Q. And is that the reason for your saying that you would look at it for the second company, not the first?

A. Correct.

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

MS. MARTINEZ: Can you go to the second page of this -- of 19-16.

Can you just highlight Jeanette Gonzalez -- oh. Go to the top, the name of the company that's there on the continuation page.

BY MS. MARTINEZ:

Q. What does it indicate here on the continuation page?

A. It indicates that the business is HM-UP Development Alafaya Trails.

Q. And what did you find with respect to the RT account number --

A. The RT account number does not belong to HM-UP Development Alafaya Trails. It belongs to the care of HM Management and Land Development.

MS. MARTINEZ: Could you just highlight Jeanette Gonzalez on 19-16.

BY MS. MARTINEZ:

Q. What does it indicate for Jeanette Gonzalez on this form?

A. It indicates Jeanette Gonzalez had wages of $18,600 for the first quarter of 2020.

Q. From which company, according to this form?

A. According to this form, it's from HM-UP Development Alafaya Trails.

Q. And looking at Government's Exhibit 16-3, which is on the left, are there any records for Jeanette Gonzalez receiving wages from any company after December of 2018.

A. No.

MS. MARTINEZ: Go back to the first page of 19-16.

Could you highlight the signature and the date and the phone number.

BY MS. MARTINEZ:
Q. What is the date that this purports to be signed?
A. April 26th, 2020.
Q. And what's the phone number given?
A. The phone number on the form is (305)582-5529.
MS. MARTINEZ: Can you erase the zoom.
BY MS. MARTINEZ:
Q. With respect to that form, were there other things that were not consistent with Florida Department of Revenue records? For example, is the tax rate correct?
A. The --
MR. ETRA: Objection. Leading.
THE COURT: Overruled. I'll allow it.
THE WITNESS: The tax rate would be incorrect. It would never be .0029. It would be .0027, .0054. It's not a normal tax rate that would be used, number one.
Number two, the amount enclosed at the top of the form shows $96.43, the bottom shows 385.70, which is inconsistent. I don't know why that inconsistency exists.
BY MS. MARTINEZ:
Q. Well, just --
MS. MARTINEZ: Could you highlight the gross wages at the bottom of the first page.
Just the bottom of the first page.
Yeah, that's fine.

BY MS. MARTINEZ:
Q. What's the total that is purporting to have been paid in gross wages in the first quarter of 2020?
A. $166,848.
Q. And the amount that you were saying enclosed is what?
A. At the bottom it shows 385.70. At the top it shows a different number.
Q. And that's purporting to be a payment made?
A. That's what it reports on the form, correct.
Q. And that's what you were saying was inconsistent with a line above that should have been the same as this 385 or just the same number?
A. Correct.
Q. The gross wages that are listed here in what's been admitted into evidence as Government's Exhibit 19-16 and -- that total of 166,848 that is on the form, it's supposed to be an addition of what? Like, how do you add on the Florida Department of Revenue form to get to 166? What else do you have to include in a form so that you can come to that total?
A. The gross wages are -- you come to the gross wages by establishing the gross wages for all the employees that worked for the company for that first quarter, January, February, and March.
MS. MARTINEZ: Can you go to the second page of 19-16.

BY MS. MARTINEZ:
Q. On the form, what is the second page? What is -- what is an employer supposed to be listing on the second page?
A. The second page is going to be a list of -- it's called wage records, and it would list all the employees and their wages for that quarter, gross wages and taxable wages.
Q. Now, with respect to the last name there, on that form --
MS. MARTINEZ: Can you highlight it.
Oh. I'm sorry.
Yeah, there you go.
It's -- the last name is the last two lines.
Do you see it?
BY MS. MARTINEZ:
Q. Okay. What's the last employee listed there according to this form?
A. According to this form, "Vanessa3 Gonzalez."
Q. And could you -- did you actually obtain records from your -- from the Florida Department of Revenue specifically with respect to Vanessa Gonzalez that you provided to us?
A. Yes. Yes.
Q. In a different format -- like, these did not come from Tallahassee. It came from your office?
A. Correct. Yes.
MS. MARTINEZ: I'm going to try to see -- I'm going to try to go to ELMO again. I hope it will work.

Can you go to ELMO?

BY MS. MARTINEZ:

Q. Do you recognize these records that are part of Government's Exhibit 16-3 --

A. Yes.

Q. -- as records that you provided to us regarding Vanessa Gonzalez?

A. Yes.

Q. And with respect to the business partner number that ends in 928, do you see the number ending with 928?

A. Yes.

Q. My arrows are coming out a little bit high. Can you see where I've placed the arrows for Business Partner 3770928?

A. Yes.

Q. And do you see it in the record coming up after December of 2018?

A. No, I do not.

Q. Do you see other records coming up for Vanessa from other employers?

A. Yes.

Q. Now, again, what is the business partner number?

A. The business partner number is a number that we assign to each account we would take care of as an internal identification number, like an account number.

MS. MARTINEZ: Can you go back to counsel table.

And I'm going to ask you for -- on the left, can you switch out -- on the left, can you switch out for Exhibit 16-1.

And if you would go to the last page of the document.

Oh. I'm sorry. 16-1. Did I...

There you go. Last page.

The page before that.

And the top portion.

BY MS. MARTINEZ:

Q. Could you read out again from Government's Exhibit 16-1, Bates Label 776, what is the business partner number for HM Management and Development, LLC?

A. Business partner number is 3770928.

MS. MARTINEZ: Now I'm going to ask you to go back to where we were again to Exhibit 16-3.

BY MS. MARTINEZ:

Q. With respect to Mr. Sheppard, on this form were you able to find wage information?

A. No.

Q. With respect to Jennifer Sheppard?

A. No.

Q. Now, with respect to Jeffrey Lawrence Graff?

A. Yes.

MS. MARTINEZ: Can you scroll to the third page.

And can you highlight that.

BY MS. MARTINEZ:
Q. What does it show from 2013 to 2020 as the company reporting wages for Mr. Jeffrey Graff?
A. Jeffrey Graff was receiving wages from the first quarter of 2013 through the third quarter of 2020 from a business called Graffco, Corp.
Q. Although I see that the last money amounts reported are through the end of 2019, correct?
A. Correct.
MS. MARTINEZ: Could you put to the right of it Exhibit 19-16.
And can you go to the third page of Exhibit 19-16.
Stop.
Highlight the top.
BY MS. MARTINEZ:
Q. Can you read the employer's name on the third page of Government's Exhibit 19-16.
A. The employer's name is HM-UP Development Alafaya Trails.
Q. Now, this form is purporting to say what about Jeff Graff --
MS. MARTINEZ: Can you highlight Jeff Graff's name at the middle -- it's backwards. It says Jack Graff -- Jeffrey -- Graff, Jeffrey is the order. Or you can just do a portion of it.
Can you redo that. It gets confusing with the other

first name.

Thank you.

BY MS. MARTINEZ:

Q. What does Government's Exhibit 19-16 purport to say about Mr. Graff?

A. This says that for the first quarter of 2020 Jeffrey Graff had gross wages from HM-UP Development Alafaya Trails in the amount of $28,846.

MS. MARTINEZ: Could you highlight Mr. Sheppard's name, Sheppard, Eric.

BY MS. MARTINEZ:

Q. What does this form purport to say as to Mr. Eric Sheppard?

A. The form reports that Eric Sheppard received gross wages from HM-UP Development Alafaya Trails for the first quarter of 2020 in the amount of $21,000.

Q. Now, again, just to explain to the jury, every time we see wages, we see another number right below it. What is that?

A. The number below it would coincide with the taxable wages, reemployment tax. Every employee is taxed on the first $7,000 of their wages. So in this form specifically, it shows Eric Sheppard had gross wages of $21,000 and taxable wages of $1,750.

MS. MARTINEZ: Can you un-zoom.

BY MS. MARTINEZ:

Q. Now, with respect to this third page of Government's

Exhibit 19-16, there's a number at the bottom, a total.

MS. MARTINEZ: Can you highlight that.

BY MS. MARTINEZ:

Q. That 168,936 there is -- how -- are there supposed to be information on these forms that add up to this amount?

A. Yes. All the wages on that form -- all the Lines A and B on that form would add up to equal the gross wages.

Q. Did you review the two pages of names that were listed, and do they add up to 168,936?

A. No.

Q. No, that they don't add up, or no --

A. No, they do not add up. Sorry.

Q. Okay.

MS. MARTINEZ: Could you un-zoom that.

On 19 -- I'm sorry. On 16-3, on the left. Can you un-zoom it and can you just scroll down.

Keep going.

Keep going.

Stop.

BY MS. MARTINEZ:

Q. What does Government's Exhibit 16-3 say about the search for records regarding Carlos Diaz?

A. Records request that was returned said there were two different Carlos Diaz, two different Social Security numbers. One of them there were no wage records found, and the other

Social Security number there were wage records and they were included in the records request.

MS. MARTINEZ: Can you go to the next page.

And can you zoom out on that.

BY MS. MARTINEZ:

Q. For Carlos Diaz, what were the names of the employers?

A. The employers for Carlos Diaz were Employer's Alliance III, LLC, and TriNet HR II-A, Inc.

Q. Were there any records relating to HM-UP Development Alafaya Trails as to Carlos Diaz?

A. No, there were not.

MS. MARTINEZ: On Exhibit 19-16, can you go one page up and highlight Carlos Diaz.

BY MS. MARTINEZ:

Q. And what does Government's Exhibit 19-16 purport to say regarding Carlos Diaz?

A. It reports Carlos Diaz had gross wages for the first quarter of 2020 for HM-UP Development Alafaya Trails in the amount of $13,500.

MS. MARTINEZ: Can you un-zoom.

Go back to Government's Exhibit 16-3 and just go one page up back -- one page up.

The other way. The other way.

No. The other way.

And highlight the two bottom names.

BY MS. MARTINEZ:
Q. What did the record search reveal regarding Martin Joseph Beirne and Jeffrey Vasilas?
A. There were no wages found for either Martin Joseph Beirne or Jeffrey Vasilas in our system.
MS. MARTINEZ: Can you keep that one highlighted but go to Exhibit 19-16 and highlight the names Beirne, Joseph and Vasilas, Jeffrey in the middle, if you can see them. It's the third and fourth name.
BY MS. MARTINEZ:
Q. And what does Exhibit 19-16 purport to say about Joseph Beirne and Jeff Vasilas?
A. Joseph Beirne was paid gross wages in the amount of $12,185 from HM-UP Alafaya Trails for the first quarter of 2020, and Jeffrey Vasilas had gross wages of $6,600 from HM-UP Alafaya Trails for the first quarter of 2020.
MS. MARTINEZ: On Exhibit 19-16, can you highlight the second name on that form -- un-zoom and then highlight the second name -- the second name on the form, Seprish, Samuel.
BY MS. MARTINEZ:
Q. Again, what is Exhibit 19-16 purport to say about Samuel Seprish?
A. Samuel Seprish received gross wages in the amount of $1,780 for the first quarter of 2020 from HM-UP Alafaya Trails.
MS. MARTINEZ: Now can you go to Exhibit 16-3 and

highlight what it says -- oh. I need you to go a few pages down.

Stop.

There you go.

Stop.

There you go.

Can you highlight that.

BY MS. MARTINEZ:

Q. What does the record search from Florida Department of Revenue say?

A. We found wage records for Samuel Seprish.

MS. MARTINEZ: Can you un-zoom that and go a little further down on Government's Exhibit 16-3.

It's 253.

There you go.

Can you highlight -- stop. Stop.

Highlight that.

BY MS. MARTINEZ:

Q. What does the record in the Florida Department of Revenue say?

A. The Florida Department of Revenue record shows Samuel Seprish received wages from a business called IT Business Solutions Group, Inc.

Q. For what time periods do you show in the Department of Revenue?

A. The records show from the first quarter of 2018 through the second quarter of 2020.

MS. MARTINEZ: On the exhibit on the right, 19-16, can you bring down the zoom for a second and can you just highlight the quarter that is -- the top part of the form.

Right there.

BY MS. MARTINEZ:

Q. So Exhibit 19-16 is inconsistent with the Florida Department of Revenue records, correct?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: Correct.

BY MS. MARTINEZ:

Q. Exhibit 19-16 is purporting to report wages, as it indicates there, for the quarter ending March 2020, correct?

A. Correct.

Q. For HM-UP Development Alafaya Trails?

A. Yes.

Q. And again, on Exhibit 16-3, with respect to Sam Seprish, what was actually his employer?

A. The first quarter wages were reported by IT Business Solutions Group, Inc., in the amount of 10,489.58.

MS. MARTINEZ: On Government's Exhibit 19-16, can you go to the next page, the handwritten page.

And there's a name towards the bottom, Gazza -- I can't read out the first name.

Thank you.

And on Government's Exhibit 16-3, if you could just go a little bit further up from where you were, a page -- a little bit further up.

That's it. Stop.

BY MS. MARTINEZ:

Q. What does it say regarding Mr. Gazza?

A. It says that we found wage information for Giuliano Gazza.

MS. MARTINEZ: And on 16-3 can you scroll a little further down.

A little more.

There. Stop.

Highlight that.

BY MS. MARTINEZ:

Q. What was found in the Florida Department of Revenue records regarding Mr. Giuliano Gazza?

A. Giuliano Gazza received gross wages in the amount of $15,258.60, from the third quarter of '22 through the first quarter of 2023, from a business that starts with "South Florida." I can't see the rest of it.

Q. There are no records showing for 2020, correct?

A. No, ma'am.

MS. MARTINEZ: On 19-16 could you highlight the name that follows Mr. Gazza.

BY MS. MARTINEZ:

Q. What does Exhibit 19-16 purport to say about what is listed as a Mr. Carlos Granada [sic]?

A. Carlos Granada [sic] received gross wages for the first quarter of 2020 in the amount of $14,000 from HM-UP Development Alafaya Trails.

MS. MARTINEZ: And on Exhibit 16-3, can you just go just a little further down. Let's not go to the top. Just go just a little further down.

And you can highlight that.

BY MS. MARTINEZ:

Q. What did the Florida Department of Revenue records show for Carlos Granda?

A. It shows wages from the last quarter of 2018 through the first quarter of 2023 -- gross wages totaling $95,520.75 from --

Q. Let's take it in steps. Let me ask you: For the last quarter ending 2018, who was the employer?

A. The employer was CG Builder Corp.

Q. And for 2020 who was the employer?

A. 2020's employer was Power Design, Inc.

Q. And for 2021 who was the employer?

A. For 2021, the employer was Innovar Structures, LLC.

Q. And for 2022 and 2023, who was the employer?

A. The employer was National College of Business and

Technology Company, Inc.
Q. HM-UP Development Alafaya Trails is not listed, correct?
A. Correct.
MS. MARTINEZ: On Exhibit 19-16 could you highlight the last name on that handwritten form.
BY MS. MARTINEZ:
Q. What does Exhibit 19-16 purport to say about Mr. Carlos Perez?
A. It shows Carlos Perez received gross wages for the first quarter of 2020 in the amount of $6,000 from HM-UP Development Alafaya Trails.
MS. MARTINEZ: And in Government's Exhibit 16-3, can you scroll up to the cover page of this section.
I will tell you it's 251 -- 030251.
Stop. Stop. Stop.
Highlight the Carlos Perezes.
BY MS. MARTINEZ:
Q. What does the Florida Department of Revenue search reveal?
A. We were unable to locate wage information for Carlos Perez with two different Social Security numbers.
MS. MARTINEZ: In Government's Exhibit 19-16, can you highlight the name at the top of that third handwritten page.
BY MS. MARTINEZ:
Q. What does Government's Exhibit 19-16 purport to say about Mr. Matias Andina?

A. It shows Matias Andina received gross wages in the amount of $1,500 for the first quarter of 2020 from HM-UP Development Alafaya Trails.

MS. MARTINEZ: And on Government's Exhibit 16-3 can you scroll down to the next coversheet. It's 247, the Bates label.

Two four seven.

There we go.

Stop. Highlight the two Matias Andina.

BY MS. MARTINEZ:

Q. What does the Florida Department of Revenue search reveal for Mr. Matias Andina?

A. There were no wage records found for Matias Andina.

MS. MARTINEZ: In Government's Exhibit 19-16, could you highlight the third number -- the third name handwritten.

BY MS. MARTINEZ:

Q. What does Exhibit 19-6 purport to say about Ms. Elva Baluarte?

A. It says Elva Baluarte received gross wages in the amount of $4,911 for the first quarter of 2020 from HM-UP Development Alafaya Trails.

MS. MARTINEZ: And in Government's Exhibit 16-3, can you highlight what it says about Elva Baluarte.

BY MS. MARTINEZ:

Q. Can you read to the jury what it says about Elva Baluarte from the Florida Department of Revenue.

A. It says: "Enclosed is the wage information for first quarter of 2018 through fourth quarter of 2018 for the above-referenced individual. The wage information for second quarter of 2023 is not due yet. We were unable to locate wage information for first quarter of 2019 through first quarter of 2023 for the above-referenced business."

MS. MARTINEZ: Can you scroll down on Exhibit 16-3.

Continue.

Stop and highlight.

BY MS. MARTINEZ:

Q. What is the record that was found regarding Ms. Elva Baluarte?

A. Elva Baluarte received gross wages for 2018 for all four quarters in the amount of 31,926 with 18 cents from HM Management and Development, LLC.

MS. MARTINEZ: And in Government's Exhibit 19-16, can you highlight the name above Ms. Baluarte.

BY MS. MARTINEZ:

Q. What does Government's Exhibit 19-16 purport to say about Ms. Maria Ataca?

A. Maria Ataca received gross wages for the first quarter of 2020 in the amount of $5,200 from HM-UP Development Alafaya Trails.

MS. MARTINEZ: And in Exhibit 16-3, can you go to the cover page.

It's up -- the other way.

Stop and highlight what it says about Maria Pilar Ataca.

BY MS. MARTINEZ:

Q. What does the Florida Department of Records [sic] show regarding Maria Pilar Ataca?

A. There are no wages that could be located from the first quarter of 2018 through the first quarter of 2023 for Maria Ataca.

THE COURT: Ms. Martinez, let me know when it might be a good time to give the jurors a 10-minute recess.

MS. MARTINEZ: Now's a good time.

THE COURT: Okay. Let's go ahead and take a 10-minute recess, please.

COURT SECURITY OFFICER: All rise.

(Jury not present, 2:30 p.m.)

THE COURT: Before we recess, go ahead and have a seat for a moment.

There are several exhibits that have individuals' Social Security numbers. And I want to make sure that -- it's obvious the parties have reached an agreement with regard to Mr. Sheppard's Social Security number, but I saw other individuals that are reflected on some of the exhibits published. So have we agreed to redact other individuals'

Social Security numbers?

MS. JIMENEZ: Your Honor, I believe for the other individuals it is only the last four digits that are reflected. We do expect to have a witness say, when shown this document, that those are not the digits of his Social Security number.

THE COURT: Can you look on the spreadsheet and make sure that we have redacted the other numbers. It appeared that there was a Social Security number on the spreadsheet.

MS. MARTINEZ: Spreadsheet?

THE COURT: Yes. I'm not sure which exhibit number it is.

MS. MARTINEZ: Yes.

MS. JIMENEZ: Those should be redacted, yes.

MS. MARTINEZ: Yes, Your Honor. We just -- yes. We will redact those.

THE COURT: Let's just do that during the break and make sure that the jurors are not shown that.

Okay. We're on a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Recess from 2:32 p.m. to 2:42 p.m.)

THE COURT: Both sides ready to continue?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: On behalf of the Government?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Yes, Your Honor.

THE COURT: Okay. Let's bring in the jury.

MS. JIMENEZ: Did Your Honor want to address the motion in limine, so that we don't take a break --

THE COURT: Well, I don't know how long the cross is. You're not even done with the direct.

MS. MARTINEZ: Your Honor, in front of the jury I will announce that I'm done with the direct.

THE COURT: Oh. All right.

How much do you think you have on the cross?

MR. ETRA: Not as long as direct. Maybe 20 minutes, 25 at the most.

THE COURT: All right. Then let's address the -- go ahead and have a seat. And we'll address the next witness in terms of the issue.

All right. There's a motion in limine that's before the Court. Is there an objection on behalf of the Defendant?

MR. ETRA: Yes, Your Honor, there is.

THE COURT: All right. Is there -- and I understand that -- and I wish that this had been filed perhaps on Saturday, on Sunday, perhaps this morning. This was filed -- I received it about 12:15, which gave me 45 minutes to review. I don't have a response from the Defense.

MS. JIMENEZ: Your Honor -- right. I looked into it last night. I would say that -- you know, I know that the

Court has essentially ruled -- you know, this obviously came up with the PayPal witness, and we had a sidebar, and the Court ruled and did not allow the Defense to go into the questions about their ineptitude potentially or their financial interest in processing those loans.

And rather than, you know, raise an objection and approach the Court at sidebar with a couple of cases from the Eleventh Circuit, I thought I would do this. But yes, I do apologize that it was very last minute.

MR. ETRA: Is it my turn to speak?

THE COURT: Well, I mean, at this point, I have Eleventh Circuit case law that tells the Court -- and it's very clear to the Court that the negligence on the part of the lender is not relevant, whether the lender or any individual on behalf of the lender who was processing, or alleged to be processing the loan, is not sophisticated is not material.

I have Eleventh Circuit case law that tells the Court very well -- clearly that it's the Defendant's intent and not the victim's negligence. And it appears that any profit that any of the lenders may have made is certainly not material and certainly should not be asked by way of questions.

So I mean, there's five points that have been made. Each point has been referenced by an Eleventh Circuit case. So it would appear that this Court is duty bound to follow that law.

I've looked at the one case, the Sixth Circuit case that distinguished the case that the Court reviewed, which specifically is United States v. Rabuffo. And I don't find that that case is even germane to the facts here.

MR. ETRA: Your Honor, there are many things I could say in response, if now is the time to say it.

Yeah. Okay. Number one, as I was starting to argue before, here we have also the aggravated identity theft statute claim, which under the Dubin and its progeny requires a finding by the jury, and the Government has to prove that it was the crux of what caused the underlying crime, the key mover, things like that.

I think that has not been addressed in their motion, and I have to explore what role the different documents played, what was the key, what was not the key. So notwithstanding the circuit law that Your Honor is bound by, and I accept, we are not -- it's not necessarily to prove negligence but to prove what the -- essentially, I'm not trying to prove negligence for purposes of a defense to wire fraud.

So in a sense, I don't object to that extent. However, I think the motion goes beyond that. So I'm not challenging the Eleventh Circuit law. I'm just saying under the facts of this case, a lot of my questions -- and I can go through some of them from PayPal -- are necessary and relevant. So one issue is aggravated identity theft. And they specifically asked on direct from Ms. Hutcheson: "Did you rely on this? Did you" -- you know, "Were the tax returns important?"

So it's AIT, and it's also -- relatedly, Your Honor, it's cross-examination.

THE COURT: But I think what you're arguing, Mr. Etra, that the roles that the particular documents play is separate and apart from any attempt to show that the witness had no knowledge or that the witness was not sophisticated or the bank profited. And I want to make sure that we're germane to the five points that are raised in the motion.

MR. ETRA: Well -- sorry. I'm not following. I understand the motion is -- on its face, the cases say what they say about wire fraud. But they don't relate to aggravated identity theft. That's my first point.

So I mean, those don't address aggravated identity theft --

THE COURT: Well, it doesn't. It addresses questioning on the part of the witness. And why don't we do this -- I now know what the law is. And to the extent that the Defendant attempts to show that the victim is not sophisticated, or the lack of the victim's knowledge, or that the victim profited, then I agree that the Eleventh Circuit has ruled to that regard, and the Court will follow that guidance, and the motion in limine is granted.

With regard to the role that certain documents played, that doesn't mean that the Court's not going to allow you to inquire with regard to specific documents.

MR. ETRA: And one thing I'm not clear on, Your Honor. Is the Government now saying that on the PPP loans the banks are the victims? Because I feel like it's been a bit of a moving target in terms of whether the banks are the victims or the Government is the victim. And I think that does relate to this issue as well. Because if the banks are not the victim, then it's just another player in the scheme and I could inquire -- I don't know if those cases would apply to an intermediary that's not a victim.

THE COURT: Well, as stated in the motion: "The Government intends to call as witnesses representatives from Cross River Bank, Northeast Bank, and the SBA, which administered the Defendant's EIDL loans. These witnesses, in addition to PayPal and WebBank, are the victims of the Defendant's fraud."

MR. ETRA: Okay. I just wanted that clear because I'm not sure I had that clear before, Your Honor.

THE COURT: Okay. Well, that's what's set forth in the motion.

All right. Let's continue the trial.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 2:49 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated.

And we'll continue with the direct examination.

MS. MARTINEZ: Yes, Your Honor. Just for the record, the United States concludes its direct examination.

THE COURT: All right. Cross-examination.

MR. ETRA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good morning, Ms. Och. How are you?

A. I'm well. Thank you.

Q. We have not met before, correct?

A. Correct.

Q. You have not done any investigation into the loan applications in this case, correct?

A. Correct.

Q. And you haven't done any investigation into the HM companies -- other than the filings that may or may not have been, the companies -- you haven't done an investigation into the actual companies and how they operate; is that right?

A. Correct.

Q. And also, other than the filings that have been made with respect to Mr. Sheppard, you haven't done any investigation into how Mr. Sheppard is involved or not involved in his

companies, correct?
A. Correct.
Q. And you don't know who handled the RT-6 filings -- or they were UTC before? Is that what they were?
A. Yes.
Q. Okay. You don't know who in the HM -- who in these various companies handled those matters, correct?
A. Correct.
Q. And you don't know who handled the classification of W-2 versus 1099 in those companies?
A. Correct.
Q. And you don't know Mr. Sheppard's knowledge or not of all those issues, correct?
A. Correct.
Q. And your testimony is about filings with the State with respect to W-2 wages; is that correct?
A. Correct.
Q. So you have no information about the amount of money that Mr. Sheppard's companies paid various workers? For example, the names that you saw, you don't know how much his companies may have paid them, right?
A. Correct.
Q. You're just looking at the filings that were made with respect to W-2, correct?
A. Correct.

Q. And the contribution from the company for reemployment insurance, it's relatively low, right?
A. Pardon?
Q. When a company reports W-2 wages to the Florida Department of Revenue, the contribution requirement for the unemployment insurance is relatively low, correct?
A. Correct. It's a percentage.
Q. At most, it's $300 an employee, correct?
A. Correct. I would be -- I would be more inclined to say the percentage -- at the most, 5.4 percent.
Q. Well, 5.4 percent of the first $7,000?
A. Correct.
Q. Nothing beyond that?
A. Correct.
MR. ETRA: Let's pull up Exhibit 16-1, please.
BY MR. ETRA:
Q. Okay. Do you have 16-1 in front of you, ma'am?
A. Yes, sir.
Q. And I think you corrected on the record the mistake at the bottom of the page, correct?
A. Correct.
Q. You were able to find filings for 2018, correct?
A. Yes, sir.
Q. Okay. And there's a reference to files -- materials that are electronically filed; is that correct?

A. Correct.
Q. And is one of the ways to file with the State electronically?
A. Correct.
Q. And is that what your search was? Was it just electronic -- or let me start again.
Could you also file by hand?
A. Yes, sir.
Q. And in fact, during COVID, companies could provide checks and file by hand; is that correct?
A. Yes.
Q. And that's in the office you have out at the Dolphin Mall off of 836, right?
A. No, sir.
Q. No? Somewhere else?
A. We are at 3750 Northwest 87th Avenue. We're not in the Dolphin Mall.
Q. Close to it?
A. Yes, sir.
Q. That's what I meant.
A. Correct.
Q. Did you also search for materials that were filed by hand?
A. Correct.
Q. You did both as well?
A. Yes, sir.

Q. And you couldn't find anything for 2019, correct?
A. No, sir.
Q. Or after?
A. Correct.
Q. And in CJUF Flagler, it says up here that you don't find evidence that the company registered for reemployment assistance with tax with the Department, right?
A. Correct.
Q. And by that, does that mean that they can't pay the unemployment insurance -- unemployment tax? Sorry.
A. No.
Q. So let me ask you: Does any of your testimony cover the extent to which the HM companies actually paid or contributed the unemployment tax to the Florida Department of Revenue?
A. Could you repeat that?
MS. MARTINEZ: Objection. Vague. He said: "HM companies."
THE COURT: I don't think she understood. So the objection is sustained. Rephrase.
MR. ETRA: Sure. Sure.
BY MR. ETRA:
Q. With respect to the companies you investigated --
A. Correct.
Q. -- is your testimony that in 2019 and forward they did not pay -- make any payment to the Department of Revenue for the

unemployment tax?
A. No. I would say there's no record of any filing --
Q. I see.
A. -- or payment.
Q. So you're just talking about filings. You're not talking about the actual payments made to the Department of Revenue?
MS. MARTINEZ: Misstating the answer just given.
THE COURT: The objection is overruled. The witness can respond.
THE WITNESS: The records request would include anything filed and paid.
BY MR. ETRA:
Q. So now I'm a little unclear. Did you investigate the extent to which these companies paid unemployment tax to the Florida Department of Revenue?
A. I did not.
Q. Did someone else?
A. Yes.
Q. Who did?
A. The people that submitted the responses --
Q. Okay.
A. -- on these record request forms.
Q. And did you also say there was no payment of taxes -- sales taxes on -- for leases? Did you also testify to that?
A. No.

Q. Okay. You didn't look at that?
A. No, sir.
Q. Okay.
MR. ETRA: Could we put up Exhibit 17-5 in evidence. Go to Page 11335.
And for the record, Your Honor, these are the bank record submitted with the first PayPal loan.
THE COURT: All right.
MR. ETRA: And could we look at the bottom of 1335 [sic], the left-hand side.
BY MR. ETRA:
Q. It's a little hard to read, but can you see that that might be a check from CJUF to the Florida Department of Revenue?
A. Maybe. I can't read it really.
Q. Okay. And the date of the check is -- let me make it a little smaller. This is an account statement from May of 2019.
MS. MARTINEZ: Objection. Counsel is testifying.
MR. ETRA: I'm --
THE COURT: It's in evidence. You can refer to it.
MR. ETRA: Thank you.
THE COURT: Overruled.
BY MR. ETRA:
Q. And the -- it's now on the screen. That is from May of 2019.
Is it possible that this is a -- based on all your

knowledge and your investigation, that, in fact, CJUF did pay payroll tax to -- excuse me -- I said payroll tax.

MS. MARTINEZ: Objection, Your Honor. The witness said she could barely read the check.

THE COURT: Sustained.

BY MR. ETRA:

Q. Do you deny -- is it your testimony that the companies never paid -- that CJUF never paid unemployment insurance to the Department of Revenue in 2019?

A. My testimony is I can certify that the records that were requested confirmed there were no reemployment tax filings or registration for CJUF.

Q. How about payments?

A. We were unable to locate that as well.

Q. Does that mean they weren't done or is it possible --

A. When they do the records request research for reemployment, they would also find payments, and that would be included in the response. We were unable to locate that in the records request search.

Q. You personally were not involved in that search, correct?

A. No, sir.

Q. Okay.

MR. ETRA: Let's go to Exhibit 18-2.

For the record, these are the bank records submitted to PayPal for forgiveness.

And we're on Page 302529 [sic], second page.
BY MS. JIMENEZ:
Q. And if you look at the top right-hand corner -- it's a little easier to read -- you could see a check from HM Management and Development to the Florida Department of Revenue, and the memo line references CJUF. Do you see that?
A. Yes, sir.
Q. Is this a check made by some of the companies you investigated for unemployment tax?
A. Are you asking my opinion?
Q. Well, do you know?
A. My opinion is these checks are made for a sales tax certificate. And the reason I say that is because the memo has a sales tax certificate number, which would not have anything to do with reemployment tax.
Q. Okay. You did not investigate filings made for companies outside of Florida, correct?
A. Correct.
Q. Do you know the extent to which Mr. Sheppard's companies -- has companies outside of Florida?
A. No, sir.
Q. Or the extent to which they are operated collectively through the various affiliates?
A. No, sir. I do not.
Q. And you only investigated -- your investigation only

related to those workers, those employees in Florida for whom a W-2 was filed?

A. Correct.

MR. ETRA: I want to go to Exhibit Number -- I think we're still on 16-1 -- sorry. Make that 16-3.

I want to go to the page on Graffco coming up soon.

Okay. Here.

BY MR. ETRA:

Q. This is Bates Number 780. Do you see that there?

A. Yes, sir.

Q. And I think -- this report's for the W-2 wages that's reported by Graffco for payments to Mr. Graff, correct?

A. Correct. If I can explain, these are all the wage records that the Department of Revenue could find for Jeffrey Graff.

Q. Okay. You're not here to testify about -- you don't know how much money Mr. Sheppard's company paid Graffco, right?

A. No, sir.

Q. Right. And for example, it shows here that Graffco paid Mr. Graff in 2018 -- if you add up those numbers, it's about $17,500. Does that look right?

A. Actually, it looks to be about $22,500.

Q. I should have said 2019. Sorry.

A. Oh, 2019.

Yes, sir. 17,500.

Q. But that doesn't mean that Graffco only received $17,500 in

2019, correct?
A. I kind of don't understand. What this paper is saying is that the Department of Revenue, in their research to find the wage information for Jeffrey Graff, was able to locate wage information for Jeffrey Graff. And the only employer that paid wages to Jeffrey Graff, according to our system and our research, was Graffco, Corp.
Q. Paid wages as W-2 employee, correct?
A. Correct.
Q. As reported to the Department of Revenue, correct?
A. Correct.
MR. ETRA: Let's go to the next page, Ms. Gonzalez, Jeanette Gonzalez.
BY MR. ETRA:
Q. For 2019 do you know how much money HM Management and Development paid Ms. Gonzalez?
A. No.
Q. Do you know whether or not, from your investigation, HM Management and Development paid Ms. Gonzalez in 2019 or '20 or '21?
A. There were no wage records found for HM Management and Development beyond the fourth quarter of 2018 for Jeanette Gonzalez.
Q. Meaning -- I apologize for talking while you were speaking.
A. It's okay.

Q. Meaning that this is the information based on reports to the Department of Revenue for W-2 employees, correct?
A. Correct.
Q. Sorry?
A. Correct.
Q. Okay. All right.
MR. ETRA: Let's go to the Sam Seprish information. That's 302523.
(Pause in proceedings.)
BY MR. ETRA:
Q. Okay. Sorry for the delay. This page -- and I can go up and down -- is this the only page you found -- or your department found with respect to Sam Seprish?
A. Yes.
Q. And what it shows, that IT Business Solutions Group paid Sam Seprish the W-2 wages as reflected here, correct?
A. Correct.
Q. Based on the filings, correct?
A. Correct.
Q. Okay.
MR. ETRA: I'd like to put up Exhibit 9-11, just not -- for the witness at the moment.
MR. CAVALLO: It's our N-11.
MR. ETRA: I'm sorry. I apologize. It's our N, as in Nancy, 11. It's Composite Exhibit 39 SunTrust.

MS. JIMENEZ: What is our...

(Pause in proceedings.)

MR. ETRA: Your Honor, I offer Exhibit N-11. It's from the Government's documents from SunTrust for which there's -- SunTrust for which there's a certificate.

THE COURT: It's already in evidence, then?

MR. ETRA: I'm offering it into evidence.

THE COURT: Well, is it in evidence?

MR. ETRA: Not yet. I'm offering it now.

THE COURT: Well, then it's not part of the Government's exhibit.

MR. ETRA: It was from their exhibit that was on their exhibit list.

MR. DRAY: Your Honor, I just -- I just need to know which account and what Bates label.

THE COURT: Is there a -- is there a Bates stamp?

MR. CAVALLO: These would all be located in the Government's Composite Exhibit 39, which is a composite of all SunTrust records. And the Bates -- it doesn't appear to be a Bates on the first page. Every other page has a Bates. It starts 8093, the Government's Bates 8093.

MS. MARTINEZ: Do you know which account this is?

MR. CAVALLO: Yes. These are all from SunTrust, HM Management 7571. There's also a CJUF 5696. And there's also the HM-UP account at SunTrust, which is Account Number 5973.

And these are all from the Government production.

THE COURT: All right. Exhibit 39 is not in evidence.

Is there any objection to the introduction of N-11?

MS. MARTINEZ: One -- one second, Your Honor.

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I have no objection. I just want to note that I am certain that two of the accounts are going to be in the Government's exhibits. One of the accounts I am -- I would need to check. But I do not have an objection, Your Honor.

THE COURT: All right. N-11 admitted into evidence.

(Defendant's Exhibit N-11 received into evidence.)

MR. ETRA: May I publish it?

THE COURT: You may publish it.

MS. MARTINEZ: Do we have a copy of this?

MR. ETRA: It's a piece of paper. It's on the screen.

MS. MARTINEZ: No. No. What I'm saying is: You're questioning the witness about it. Could I have a copy of this, because this is...

MR. ETRA: I don't have a copy.

THE COURT: Is N-11 the one page?

MR. ETRA: Yes. One page.

MS. MARTINEZ: Oh. It's one page. Oh, okay.

THE COURT: All right. So let's look on the screen together.

MS. MARTINEZ: It's not one page.

THE COURT: Well, it's one page, correct?

MR. ETRA: Yes, Your Honor.

THE COURT: N-11 consists of one page.

MS. MARTINEZ: Well --

THE COURT: Well, that's what Mr. Etra is saying, and the gentleman over there is not at the podium. So N-11 is one page.

Let's continue.

BY MR. ETRA:

Q. Do you see the exhibit in front of you, N-11?

A. Yes.

Q. Do you see that it's a check from 2020 from CJUF Flagler to Sam Seprish?

A. Yes.

Q. That's not reflected on anything you found in your investigation, correct?

A. Correct.

Q. You didn't find, for example, that Sam Seprish, when he got this check, paid himself or paid taxes or didn't pay taxes on it, right?

A. Correct.

Q. The -- the documents you were shown that are purported RT-6s from 2020, do you recall spending some time on those?

A. Correct.

Q. And you were asked pretty much line by line almost everything on there, correct?
A. Correct.
Q. Now, you don't know whether, in fact, those individuals that are on that list were paid that money as 1099ed workers, correct?
A. Correct.
Q. That is outside the scope of your knowledge, correct?
A. Correct.
MR. ETRA: May I have a moment, Your Honor?
THE COURT: Yes. Certainly.
(Pause in proceedings.)
MR. ETRA: May I continue?
THE COURT: Yes.
BY MR. ETRA:
Q. And if those individuals on those purported RT-6s from 2020 were paid those amounts as 1099ed workers, then the companies wouldn't be required to pay the unemployment insurance, correct?
A. I would disagree.
Q. How so?
A. Because sometimes an independent contractor would be paid as payroll. There's different ways to define an independent contractor.
Q. Essentially, you're suggesting that people paid as 1099

were misclassified and should have been W-2. Is that what you're saying?
A. No. I'm not saying that. I'm saying an RT-6 can be W-2s. It could be distributions for a corporate officer. It could be independent contractor work. It kind of depends on who controls the employee.
Q. Let me take a step back and see if we're agreeing or not. You investigated the companies -- you investigated CJUF and some of these companies called HM-UP and HM Management and Development, right?
A. Correct.
Q. To the extent that they paid workers as 1099 in 2019, or '20, or '21, there was no requirement to file the RT-6, correct?
A. I can't say that. No.
Q. You don't know one way or the other?
A. Correct.
Q. Because you don't know enough about these companies and what they did?
A. Correct.
Q. You didn't investigate those things, correct?
A. Correct.
MR. ETRA: No further questions.
THE COURT: All right. Any redirect?
MS. MARTINEZ: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. MARTINEZ:

Q. You recall counsel showing you a check from a company called CJUF that was purporting to be for the Florida Department of Revenue, and you pointed out that there was something on the memo line regarding a sales certificate?

A. Correct.

Q. What is that?

A. The number at the bottom of the memo would coincide with a sales tax certificate which somebody would have if they're charging sales tax. It could be a commercial rental. It could be a number of things. But anything where you would collect sales tax, that's what that sales tax certificate number is.

Q. And that is not --

A. It has nothing to do with reemployment tax.

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I'd like to inquire if counsel has objections to a form.

THE COURT: All right.

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I'd like to move into evidence a form instruction for the --

THE COURT: What is the exhibit number, please?

MS. MARTINEZ: Excuse me?

THE COURT: What's the exhibit number?

MS. MARTINEZ: No. I don't have an exhibit number. It's just a form. It's instructions for employer's quarterly --

THE COURT: All right. Hold on. Hold on. Before -- so it will be Government's Exhibit 70. It's a new exhibit that you're seeking to introduce?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: Is there any objection?

MR. ETRA: Your Honor, she would have to authenticate what it is, as well as beyond the scope --

THE COURT: All right. Lay the foundation.

MS. MARTINEZ: If I may show it to the witness. So I would go to ELMO.

THE COURT: This is for the witness only.

MS. MARTINEZ: Right. It is.

If I can just get this thing to -- ELMO is being picky today.

Your Honor, may I just approach the witness? It's --

THE COURT: Yes.

MS. MARTINEZ: Yes.

MR. ETRA: I don't have a copy. I was hoping to see it on the screen.

MS. MARTINEZ: Let's see if ELMO will cooperate.

COURTROOM DEPUTY: Just turn autofocus on. I think it was off.

There you go.

MS. MARTINEZ: Thank you so much.

BY MS. MARTINEZ:

Q. Without stating what it is, do you recognize this type of form?

A. Yes.

Q. Let me give you the full -- if I go like that, it doesn't -- I'm going to have to go close for you to see it.

Does this form relate to the employer's RT-6 forms that we were discussing previously?

A. Yes.

Q. And how does it relate to it?

A. The form tells you how to fill out the RT-6.

Q. So it would be connected to the forms that employers file, correct?

A. Correct.

MS. MARTINEZ: Your Honor, at this time, I would move into evidence Government's Exhibit -- did we get a number?

THE COURT: I've given it -- do you want to give it your next number?

MS. JIMENEZ: Seventy-three, Your Honor.

THE COURT: All right. Any objection?

MR. ETRA: Your Honor, not on the foundation but beyond the scope.

THE COURT: All right. Overruled. I'll allow it.

Exhibit 73 in evidence.

MS. MARTINEZ: Thank you, Your Honor.

(Government's Exhibit 73 received into evidence.)

BY MS. MARTINEZ:

Q. Could you take a look at the paragraph that says "Employees" on Page 2.

And read to the jury the last sentence in the paragraph that says "Employees."

A. "The term 'employee' does not include an individual hired for casual labor which is to be performed entirely within a private residence, or an independent contractor as defined in federal laws or regulations hired to perform a specified portion of labor or services."

MS. MARTINEZ: I have no further questions.

THE COURT: Is Ms. Och excused?

MS. MARTINEZ: Yes.

THE COURT: On behalf of the Defendant?

MS. WEINTRAUB: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: Thank you. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: And the Government's next witness, please.

MS. JIMENEZ: Yes, Your Honor. The Government calls David Toye.

(Pause in proceedings.)

THE COURT: All right. Good afternoon, sir.

DAVID TOYE, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

Have a seat.

Could you please state your name and also spell it for the record.

THE WITNESS: David, D-A-V-I-D. Toye, T-O-Y-E.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good afternoon, Mr. Toye. Were you served with a subpoena to appear at this trial?

A. Yes, I was.

Q. Can you please tell the jury where it is that you work.

A. I work at Northeast Bank.

Q. Where is Northeast Bank located?

A. So Northeast Bank is a community bank based in Maine. We have a national lending office based in Boston, Massachusetts.

Q. And where is your office located?

A. My office is in Portland, Maine.

Q. How long have you been employed by Northeast Bank?

A. I've worked at Northeast Bank since 2009.

Q. Tell the Members of the Jury what it is that you have done at Northeast Bank since you've joined in 2009.

A. Sure. Started off in 2009 doing some kind of commercial credit analysis, as well as some asset management, portfolio management of loans, also worked in our SBA division, SBA 7(a).

And currently, right now, I'm in charge of or oversee two different things, our national commercial real estate origination portfolio, so managing those loans, and then we also have a national 7(a) small-dollar lending platform that I oversee as well.

Q. And what is your current title with Northeast Bank?

A. I'm a senior vice president at the bank.

Q. Mr. Toye, you mentioned -- or you made a reference to 7(a) loans. What are those?

A. 7(a) loans are -- it's a program offered by the Small Business Administration to kind of entice lenders to make loans to borrowers that may not have credit available elsewhere. So it's a guaranteed program that helps banks do loans to borrowers that just may not have credit at other lenders.

Q. Now, in 2020 and 2021, did Northeast Bank participate in the Paycheck Protection Program?

A. Yes, we did.

Q. Did you have any responsibilities at Northeast Bank related to that program?

A. Yes. I oversaw -- kind of managed a group of people reviewing triple P applications.

Q. Is that work normally referred to as underwriting at a

bank?
A. Yes. This was a very abbreviated type of underwriting. Yes.
Q. And generally, what is underwriting at a bank?
A. Underwriting is kind of a loan request comes in, along with kind of a package of information. So it could contain financials and information about the request. And someone at the bank would sit down and, you know, for a regular loan spend, you know, a few weeks looking at all this information and reviewing it and asking questions of the borrower to make sure that the bank really understands the loan request and all the risks involved. That's really what credit underwriting is.
Q. And would the bank want to try to understand the -- get a better financial picture of the borrower if it's a business?
MR. ETRA: Objection. Leading.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. What kind of information would the underwriting department at a bank look at or what issues are they trying to ascertain when they are trying to process a loan?
A. For a regular commercial real estate loan, we're looking for repayment ability. We want to make sure that the borrower can repay the loan. We're looking at, you know, collateral coverage to make sure that we're adequately secured.
And then the third thing we're usually looking at is

guarantor support. We want to make sure that if the cash flow from the property or the business were to disappear the guarantor has the means to pay back the loan.
Q. All right. And so, during the Paycheck Protection Program, you were overseeing individuals who were reviewing PPP loan applications; is that right?
A. Correct.
Q. Okay. Was that process somewhat expedited from the normal process that you would undertake when you review a loan application?
A. Yes. Definitely.
Q. Through your work at Northeast Bank and being team leader during the Paycheck Protection Program, did you become familiar with Northeast Bank's policies and procedures regarding the PPP program?
A. Yes, I did.
Q. Was Northeast Bank working with a loan processor at that time?
A. Yes. We worked with a loan service provider called -- they were called ACAP at the time.
Q. Is that ACAP SME?
A. Correct.
Q. And what did ACAP SME do for Northeast Bank in relation to PPP loans?
A. So ACAP was the customer-facing part of the process. They

were doing the interactions with the borrower or the applicants, collecting the documents from the borrower and applicants to make sure that there was a complete file, and doing -- just making sure -- they were kind of teeing it up for the bank to take a look at or to review.
Q. Did ACAP SME receive any guidelines or directives from Northeast Bank in carrying out their responsibilities relating to the PPP program?
A. Yes, they did.
Q. Generally, what was that?
A. To -- so they were collecting documents that we needed to review the files. They were making sure that the borrowers kind of --
MR. ETRA: Objection, Your Honor. The question was did they receive instructions, and the answer is what the ACAP actually did, not what instructions they got.
THE COURT: Well, the follow-up was: "Generally, what was that?" That was the question, so it is responsive. Overruled.
MS. JIMENEZ: I'm sorry --
THE COURT: You may continue, sir.
THE WITNESS: Sorry. Can you repeat the question, please.
BY MS. JIMENEZ:
Q. Yes. Generally, what guidance did Northeast Bank provide

to ACAP in carrying out their responsibilities in the PPP program?
A. So we made sure that they were up-to-date on all the SBA rules and requirements for triple P. We wanted to make sure they were screening those up front. And then we were also -- we gave them kind of the rules for what documents we wanted to see.
Q. And how would ACAP receive the information and the records that were provided by an applicant for a PPP loan?
A. There was an application portal. So the borrower would go online and apply. They would upload all their information to the portal and that's where NEWITY would receive the documents and the information.
Q. Between ACAP and Northeast Bank, who made the decision to fund the loan?
A. Northeast Bank made the final decision.
Q. In March of 2021, did Northeast Bank receive a second draw PPP loan application from a business entity named HM-UP Development Alafaya Trails, LLC?
A. Yes, we did.
Q. Did Northeast Bank produce records to the Government pursuant to a subpoena for records relating to that loan application?
A. Yes, we did.
Q. Did Northeast Bank produce records relating to that loan

application?
A. Yes, we did.
Q. Now, were the records received directly by Northeast Bank or were the records received initially by ACAP SME?
A. They were initially received by ACAP SME.
Q. Were the records that Northeast Bank received or reviewed in connection with the loan applications essentially the same records that ACAP SME received --
MR. ETRA: Objection.
BY MS. JIMENEZ:
Q. -- into the portal?
MR. ETRA: Leading.
THE COURT: Overruled. I'll allow that.
THE WITNESS: Yes. Northeast Bank, NEWITY, or ACAP saw the exact same things, so we had the same information.
MS. JIMENEZ: Your Honor, I'd like to move in the records for ACAP SME, as well as the records for Northeast Bank. They both have business records certifications. The ones identified as ACAP SME are Composite Exhibit 20, 20-2 through 20-17.
The records identified and produced by Northeast Bank were 20-1, and I have 20-18 through 20-24 as sub-exhibits. So it's essentially 20 through 24.
THE COURT: Is there any objection?
MR. ETRA: Your Honor, only with -- no objection with

respect to the certificate of authenticity admissibility, only with respect to two documents that we've raised with the Government for some time now that we objected to.

THE COURT: Within which exhibit?

MR. ETRA: It's the large composite.

MS. JIMENEZ: Exhibit 20 has -- it's part of the loan file identify -- it's part of the loan file, so I've asked --

THE COURT: All right. We can look at it at the appropriate break. But at this point if there are only two documents within Composite Exhibit 20 that are -- that you're opposing, Mr. Etra, then let's introduce the other documents, 20 to 20-24. And those two documents within Composite Exhibit 20, we can address outside the presence of the jury.

(Government's Exhibits 20-20 through 20-24 received into evidence.)

MS. JIMENEZ: That's fine, Your Honor. And the documents at issue I'm not going to be displaying at this point.

THE COURT: All right.

All right. You may continue.

BY MS. JIMENEZ:

Q. All right. The records pertaining to HM-UP Development Alafaya Trails, was this a first draw or a second draw?

A. This was a second draw application for a triple P loan.

Q. Now, the loan documents that ACAP received, do you know

where the server -- well, let me ask you this: Do you know where ACAP was located?
A. ACAP is located in Chicago, Illinois.
Q. Do you know where the server was located that received the records that both ACAP and Northeast Bank accessed?
A. Yes. The server was located in Virginia.
Q. This second draw loan application submitted to ACAP and Northeast Bank, was this loan application ultimately approved and funded?
A. It was.
Q. For this loan did the applicant need to provide any collateral?
A. No collateral is required for this loan.
Q. And that's -- was collateral required for any Paycheck Protection Program loan?
A. No. All triple P loans were unsecured, completely unsecured.
Q. Unsecured, but was the SBA involved in guaranteeing the loans?
A. The SBA provided a guarantee for the -- a hundred percent of the loan, yes.
Q. Generally, what is it that Northeast Bank and the SBA required for a business to be eligible for a second draw PPP loan if you're applying as a business with employees?
A. I believe during this time when this loan was -- when they

applied, there was a window for businesses with 20 employees or less. For a second draw loan, you had to demonstrate a revenue decline of 25 percent or more. Those were the big kind of qualifying factors. And then just to fill out the application.
Q. Now, a business that is not eligible for a first draw loan, would that business be eligible for a second draw loan?
A. No.
Q. Is the business -- in order to apply for a second draw loan, is it required to have spent the full amount of the first draw loan on authorized expenses?
A. Yes.
MR. ETRA: Objection. Leading.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Is there any type of requirement as to the business applying for a second draw loan as to how -- well, as to, one, whether it should have spent the funds disbursed to it in connection with a first draw loan?
A. So the whole point of the triple P program was to pay wages of employees. So the main factor was to use the money to make -- pay salaries and wages. They were also allowed to pay some other expenses of the business, like rent and utilities. They could pay for that. But the main factor or main portion of the funds was supposed to be used for salaries and wages.
Q. And so when a business came for a second draw loan, was it

required to have spent any of the funds it received in the first draw?

A. Yes. I believe it was supposed to have spent all of the money from its first draw loan.

Q. Was it supposed to have spent the money on the first draw loan on certain uses authorized by the program?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: Yes. It was supposed to use the money for the -- yes -- pay salaries and wages primarily.

BY MS. JIMENEZ:

Q. Now, in order to be eligible for a second draw loan, were there certain types of businesses that were not allowed to apply for the PPP?

A. Yes, there was.

Q. Ineligible rather?

A. Correct. Yeah. Passive businesses are traditionally not eligible for SBA or were not eligible for triple P. So those were kind of rental -- landlords, kind of anything speculative isn't eligible for SBA, so construction development. Those are things that were not eligible for the program.

Q. And you referred to the traditional SBA loans, certain types of businesses, like passive businesses, were not authorized to receive 7(a) or SBA loans, right?

A. That's correct.

Q. And did that carry over to this program?
A. Yes.
Q. So you mentioned real estate developers, but what about a construction business?
A. If it was an active operating construction business, that would be eligible. But someone who is a passive company or a non-operating company that's getting passive income is not eligible.
Q. What about the owner of a shopping center?
A. Landlords are not eligible for SBA or triple P.
Q. What about a real estate developer?
A. That falls into the speculative category and not eligible for SBA for triple P.
Q. All right.
MS. JIMENEZ: Could we show the witness Exhibit 20-2.
BY MS. JIMENEZ:
Q. Mr. Toye, showing you Exhibit 20-2. What is this?
A. So this is the application platform and portal that we use to review loan documents or loan applications.
Q. And this particular page that we're looking at, is it from this loan application submitted by HM-UP Development Alafaya Trails?
A. Correct.
Q. The top indicates a loan amount. Is that the loan amount that was funded?

A. Correct. Yes.
Q. All right. Who was listed as the owner of this company?
A. The owner was listed as Eric Sheppard.
Q. What was his job title?
A. His job title is managing member.
Q. What ownership interest did he indicate that he had in this business?

MR. ETRA: Objection, Your Honor. There's no evidence about who applied or even whether the person applying identified himself or herself --

THE COURT: The objection is noted. At this point, the exhibit is in evidence and the witness is reading from the exhibit. You'll have an opportunity to cross-examine.

MR. ETRA: She's asking what he -- what Mr. Sheppard did. That's the basis for the objection.

THE COURT: All right. You may continue.

You'll have an opportunity to cross-examine.

BY MS. JIMENEZ:
Q. Mr. Toye, the ownership that is indicated here for Mr. Sheppard, what percentage is indicated?
A. Eighty-five percent.
Q. Was there any type of requirement under the PPP rules in terms of identifying who the owners of the business are?
A. They were supposed to identify all owners of 20 percent or more.

Q. And so if this ownership interest was below -- was 80 percent or less, would he have had to indicate anybody else as owner?

A. Yes. Correct.

Q. Potentially, if they were least 20 percent owner?

A. Correct. If he was 80 and there was another 20 percent owner, one individual, then, yes, both individuals would need to be listed on the application.

Q. All right.

MS. JIMENEZ: Could we go to the next page.

COURTROOM DEPUTY: Counsel, is this in evidence?

THE COURT: Yeah. It's in evidence.

MS. JIMENEZ: This document is in evidence, yes. 20-24 should be in evidence.

MS. MARTINEZ: The jury, I don't think, saw the last page.

THE COURT: It's in evidence. So it should be published to the jury.

MS. JIMENEZ: The jury did not see the page?

MS. MARTINEZ: The first page. Did not see.

MS. JIMENEZ: All right. Could we go back to the first page. Sorry.

BY MS. JIMENEZ:

Q. All right. So we identified the loan amount on the top, the name of the owner as a managing member and the percentage ownership.

MS. JIMENEZ: All right. Let's go to the next page.

BY MS. JIMENEZ:

Q. All right. So the loan amount here is listed as somewhat different.

MS. JIMENEZ: Go back.

BY MS. JIMENEZ:

Q. All right. Does this indicate -- does the business indicate how many employees it had?

A. It does. It indicates that it has 19 employees.

Q. At this time, would you have -- would you have been able to review an application with 19 employees?

A. Yes. During this time frame when the application was received, SBA had a special kind of window where small businesses with 20 or less employees could apply. And that -- they did that in order to kind of have lenders focus on some of the smaller loans. So yes, this one would have been eligible to be reviewed.

Q. Based on your experience with this Paycheck Protection Program, what was the loan amount supposed to be based on?

A. So the loan amount was supposed to be based off of -- it was a calculation. So it was two and a half times monthly payroll.

Q. All right.

MS. JIMENEZ: Could we go down this page.

All right. Let's go down -- I'm sorry. Go down a little further.

I'm sorry. Go back up.

BY MS. JIMENEZ:

Q. Okay. Was the payroll information provided for this business?

A. It was.

Q. All right. Can you indicate how much was provided?

A. So the total payroll was $712,310.

Q. All right. And so that was the payroll information provided, and what was the bank to do with that?

A. The bank would divide that number by 12, find and multiply that number by two and a half to find a loan amount.

Q. So that's two and a half months' worth of the business's payroll; is that right?

A. Correct.

Q. Now, what was the payroll amount supposed to be based on?

A. It was supposed to be based on salaries and wages for the business.

Q. Wages to W-2 employees?

A. Correct. Yes. W-2 employees.

Q. Now, if the business indicated this amount, $712,310, and provided to Northeast Bank or through ACAP records indicating that it was paying 19 contractors -- independent contractors -- that amount of money for their -- you know, their compensation, as well as whatever health benefits it wanted to provide to those independent contractors, what would Northeast Bank do with that information?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

MS. JIMENEZ: It's not leading.

THE WITNESS: Independent contractors were -- the way the program was set up was independent contractors were required to apply on their own, since they were considered self-employed individuals. So anyone that was W-2 would come through the borrower or the business. And if you were an independent contractor, you would apply on your own.

BY MS. JIMENEZ:

Q. All right. So if with this application information that's provided through the portal the business provided records for 1099ed workers or indicating that these are the payments that this business makes to its 1099ed contractors, amounting to $712,000 for the year, what would Northeast Bank do with that information?

A. We would tell the borrower they were not eligible for that amount of -- that loan amount and suggest that their independent contractors apply on their own.

Q. All right.

MS. JIMENEZ: If we can go up for a moment a little bit.

BY MS. JIMENEZ:
Q. All right. So to apply for a second draw loan, was there a revenue requirement?
A. There was. You had to show or demonstrate a loss of 25 percent or more in revenues.
Q. And 25 percent loss of revenue for what time frame?
A. So it could be year-over-year or could be quarter-over-quarter. So 2019 compared to 2020 or any quarter in those two years as well.
Q. For this loan application, this business, HM-UP Development Alafaya Trails, what was the revenue comparison that they were providing to you?
A. They provided an annual comparison.
Q. Are the figures reflected here?
A. Oh, yes. So in -- yeah. In 2019 they reported to us revenue of 1,414,576. And then, in 2020, they reported annual revenues to us of $1,047,653.
Q. Without doing the math right now, was that at least a 25 percent revenue decrease in 2020 from 2019?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we go down.
BY MS. JIMENEZ:
Q. All right. And so based on the information provided regarding its payroll, it generated this loan amount; is that

right?

A. That's correct.

Q. Okay.

MS. JIMENEZ: Can we go up for a moment.

Okay. Stop, please.

All right. If we can go up.

Okay. Stop.

Okay. Go up one more.

All right. Stop on this page.

Okay. Can we go to Exhibit 20-4, please.

Could we make that -- those questions and answers a little bit bigger.

BY MS. JIMENEZ:

Q. All right. Question Number 2, can you read the question and the answer, please.

A. Question Number 2: "Do any owners of the business own any other businesses?"

Q. What was the answer?

A. "No."

Q. Does that matter to Northeast Bank?

A. It does. There were certain affiliate rules, so the borrowers were only allowed so much -- I think there was a $2 million limit in total loans under one corporate umbrella. So if they had other affiliates, they would need to disclose those.

Q. Okay.

MS. JIMENEZ: Is there another page or is this it?

All right. Can we go to 20-3.

Okay. Is that the one you -- did you go to the ELMO for -- no? Is that the one you go to the computer for?

I'm sorry, Your Honor. If I could have just a moment.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. All right. So what does this document reflect?

A. So this was the document the bank and ACAP used to review each loan application -- triple P loan application.

Q. Okay. Is this something that the borrower or the applicant sees or this is something that you and ACAP see?

A. This is something the bank and ACAP would see.

Q. Is the applicant being asked questions from -- well, is it -- are you seeing answers that the applicant is providing to questions you're indicating?

A. Yes.

MR. ETRA: Objection. Leading.

THE WITNESS: This is --

THE COURT: Overruled. I'll allow it.

THE WITNESS: This is all information. So -- so this page or this tab was all information that was straight from that portal that we just saw. So information that would have been entered by the borrower. The application ID would have been system generated, but the business name, second draw, their NAICS code, their business legal structure, how many employees they had, how much they're asking for a loan amount, what their monthly payroll and annual payroll was, those numbers would have come from the borrower.

BY MS. JIMENEZ:

Q. All right. The industry code, which is NAICS code, did the applicant have instructions as to where to draw that information from?

A. Yes. I believe there was a link to find -- you could enter in what your business was and it would populate the code.

Q. All right. Was that also on the 2483 application?

A. Correct. Yes.

Q. Now, there are tabs on the bottom of this. If the business -- the business legal structure for this entity, what was it?

A. So what the borrower disclosed or input as data was that they were an LLC.

Q. So limited liability company?

A. Correct.

Q. All right. Now, here there's a tab for partnership. What --

MS. JIMENEZ: Can we go to that tab for partnership?

BY MS. JIMENEZ:

Q. And if you -- so on here it indicates that you're in the

wrong tab. Do you see that? Why does it say that?
A. This whole spreadsheet was driven by borrower inputs. And it was to try and make our process very easy and efficient, so that was -- whoever was reviewing the loan documents or the application knew exactly which tab they had to be in.
So since the borrower said they were an LLC, this -- if you go to the LLC tab, they would -- the underwriter, whoever was reviewing the application, would know to work in the LLC tab because based on the business structure some of the questions or documents might be a little bit different.
Q. And now, did this business at some point provide a tax return?
A. They did.
Q. Did the tax return indicate that it was a partnership?
A. Yes. It was a partnership.
Q. All right. So if we go down this particular tab, you've got "Verifier" -- what does that mean -- and then "Underwriter."
A. So "Verifier" was -- that was ACAP. And that was kind of like their job to tee up the file to make sure that the file was ready for the bank's review. So any time you see "Verifier," you can think ACAP. And any time you see "Underwriter," you can think Northeast Bank.
So the verifier was really -- it was really data input kind of things from the application and the borrower portal.

And then the underwriter tasks here were more looking at a document and pulling out a number.

Q. All right. So if we go down this page, if the business had indicated it was a partnership, was anything required of the partnership?

A. Yes. So partnerships' loan amounts were calculated a little bit differently. You would start on the K-1s because that's how partnerships get they -- get paid --

Q. What is a K-1?

A. A K-1 is a tax document that reports an individual owner's income or -- losses or income from a business.

Q. And is that part of a 1065 tax return?

A. Yes.

Q. All right. And so, for a partnership, what is Northeast Bank looking to receive from the business?

A. So if we knew this was a partnership, we would be looking for their 1065 and their K-1s so we could double-check what was due to the partners and include that in our calculation. And then we would also be looking for any W-2 employees that the business had to include in their payroll for that.

Q. And so, for payroll, what document did you primarily require or request?

A. So the most common was a 940, an IRS Form 940, which is an annual statement. The other common one was to get four 941s. 941s were the quarterly version. So if you added those four numbers up, you would get the same number as what was on the 940.

MS. JIMENEZ: Go down this page a little bit.

BY MS. JIMENEZ:

Q. Did you have different approaches or requirements if the loan amount was above 150 versus -- I'm sorry -- 150,000 versus below 150,000?

A. We did. The SBA drew kind of a bright line at 150,000 and had different rules for different loan amounts. So under $150,000 it was a little bit more of a streamlined process and less work and less kind of review. Over $150,000 there was more work and more review to do.

Q. Was it the case that you would request additional documentation for loans above 150,000 than if they were below 150,000?

A. We would, yes. Over 150,000 we were -- the borrower was required to provide their revenue decline information or documents up front. Under $150,000 they could provide those later at forgiveness.

MS. JIMENEZ: Let's go to Exhibit 20-5.

All right. Could we expand the middle here.

Yeah. It's got the list of records.

Can you just capture all of them.

BY MS. JIMENEZ:

Q. All right. So what is this record that we're looking at,

Government Exhibit 20-5?
A. So this was a tab in the application portal where the bank and ACAP would access the documents that were submitted by the borrower as part of their application for a triple P loan.
Q. Okay.
MS. JIMENEZ: Can you go back out for a second, and then capture everything below the -- where it begins "optional."
Go all the way down -- go...
BY MS. JIMENEZ:
Q. Now, what was submitted here, you're -- the portal for ACAP says: "Optional based on your eligibility amount." What does that indicate?
A. So I think that would probably refer to some of the business tax returns of the revenue items. A lot of these things weren't really optional. They would depend or vary based on what type of business you were. So if you were an LLC, you would have to provide a 940. Those would be kind of standard documents. But if you were a partnership, you may not have employees. So you may not have to provide a 940. So it really depended on what type of business you were as to what document you would have to provide.
Q. All right.
MS. JIMENEZ: Let's go to 20-6, please.

BY MS. JIMENEZ:
Q. What is this at 20-6?
A. This is a Florida driver's license for Eric Dean Sheppard.
Q. Did you require this?
A. We did.
Q. Why?
A. For a couple different reasons. We would use this to cross-reference the application -- some of the information on the information application, and we'd run a background check to make sure that everything matched up. We'd also just make sure that the license was not expired.
MS. JIMENEZ: Can we go to 20-7 at the top, and capture the monthly.
BY MS. JIMENEZ:
Q. Yes. So what is this record?
A. This is a SunTrust Bank account checking account statement for HM-UP Development Alafaya Trails, LLC.
Q. For what time frame?
A. For -- looks like it ends as of -- yeah. For February 2020.
Q. Did you require anything about the business being -- needing to be in business by a certain period of time?
A. Yes. The SBA required that a business was -- an applicant was in business prior to, I think, February 15th. And so we would collect bank statements. That was one way to easily

figure out or confirm that they were in business.

Q. All right.

MS. JIMENEZ: Let's go to 2021, please.

BY MS. JIMENEZ:

Q. All right. What is this document?

A. So this is a SBA Form 2483-SD. So this is the application for a second draw triple P loan.

Q. At what point in the application process is this document generated?

A. This document is generated up front. So when the borrower completes -- as part of the borrower completing the application portal, this document would be generated. So they're answering all these questions as part of their application.

Q. And this particular document, the 2438, is it generated when they first go into the portal and answer questions or later?

A. It's generated after they -- so they would go into the portal, answer the questions, and then it would be sent to them via DocuSign to sign.

Q. And the information that's provided on this record, from whom did this information come?

A. This came from the borrower, HM-UP Development Alafaya Trails, LLC.

Q. All right.

A. And the person who filled it out was Eric Sheppard.

Q. And then -- and so -- but it's generated by Northeast Bank and then sent to the borrower?

MR. ETRA: Objection, Your Honor, to the last statement. It wasn't asked, and there was no basis for it. Move to strike.

Move to strike the last statement the person who filled it out from the portal was Eric Sheppard.

THE COURT: All right. You'll have an opportunity to cross-examine. The motion to strike is denied.

You may continue.

MS. JIMENEZ: All right. If we can go back out, please.

BY MS. JIMENEZ:

Q. For this application, the payroll amount --

MS. JIMENEZ: I'm sorry. I didn't mean for you to go back out.

BY MS. JIMENEZ:

Q. The payroll amount that was indicated -- indicated -- I'm sorry -- it indicated an average monthly payroll of what?

A. $59,359.

Q. Can that amount include any payments to independent contractors?

A. This amount should not include payments to independent contractors. It should just be for W-2 wage earners. And if it was truly a partnership, the partnership could include their

draws in there as well.
Q. Well, their net earnings?
A. Their net earnings --
Q. Is that capped at a certain amount?
A. One hundred thousand dollars per partner.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit 20-8, please.
BY MS. JIMENEZ:
Q. All right. What is this?
A. So this is the IRS Form 940 for 2020. This was the most common document that borrowers would submit during triple P to verify and document their annual wages, and for us to verify that the loan they're requesting was eligible.
Q. Was this document submitted with this loan application?
A. It was.
Q. How much does it indicate it paid its employees in 2020?
A. This report indicates payments to all employees of $815,358.
Q. All right.
MS. JIMENEZ: If we can go back out.
Go to the second page, please.
BY MS. JIMENEZ:
Q. All right. And does it indicate who is the person who signed this document?
A. So --

MS. JIMENEZ: Part 7, please.
THE WITNESS: -- the printed --
MR. ETRA: Objection. No foundation for him to know who signed the document.
THE COURT: You want to establish the foundation?
Sustained at this point.
BY MS. JIMENEZ:
Q. Does this document have a place for the -- for someone to sign?
A. It does. Yes.
Q. Does it have a signature?
A. It has a signature.
Q. Does it indicate who is the person who signed the document?
A. It does.
Q. What is the name?
A. The printed name is Eric Sheppard.
Q. All right.
MS. JIMENEZ: Go back.
Okay. Let's go to Exhibit 20-9, please.
Actually, if we can go back to 20-8 for a moment.
If you can -- if we can pull up 12-5, please -- nope, not 12-5. 13-4.
Alongside it, please.
BY MS. JIMENEZ:
Q. All right. I'm showing you a record from the IRS that is

in evidence, 13-4. Can you read the taxpayer name here.
A. The taxpayer name is HM-UP Development Alafaya Trails, LLC.
Q. All right. And then the description of information --
MS. JIMENEZ: Can you zoom in, please.
All right.
BY MS. JIMENEZ:
Q. All right. For Form 940, Employer's Annual Federal Unemployment, what does the IRS indicate?
A. It says -- this form says: "As of June 26th, 2022, the Internal Revenue Service shows no return filed for the following tax years pertaining to the individual described above."
Q. That is for 2019, 2020, and 2021?
A. Correct.
Q. All right.
MS. JIMENEZ: Can we go back.
BY MS. JIMENEZ:
Q. And Exhibit 20-8, what is the tax year for HM-UP Development Alafaya Trails?
A. This is tax year 2020.
Q. Did you have any indication in your records that this document was false?
A. We did not.
MS. JIMENEZ: All right. If we can go to 20-9, please.

BY MS. JIMENEZ:
Q. All right. What is this?
A. So this is an IRS Form 941 for 2020 for the first quarter of the year.
MS. JIMENEZ: Can we go to the second page.
All right. If we can go to the signature block, please.
BY MS. JIMENEZ:
Q. All right. Does this record indicate who the signer was of this document?
A. It does, yes.
Q. Who is that?
A. The printed name is Eric Sheppard.
Q. All right.
MS. JIMENEZ: Let's go back to the first page.
BY MS. JIMENEZ:
Q. How many employees are listed for this term, this period?
A. So Line Number 1 indicates 19 employees.
Q. How much were they paid?
A. They were paid wages of 16,000 -- or $166,848.
Q. All right.
MS. JIMENEZ: If we can go back.
BY MS. JIMENEZ:
Q. What's the time frame for this return -- this tax return?
A. This was the first quarter of 2020. So January, February,

and March.

Q. All right.

MS. JIMENEZ: Can we show 19-8, please, which is part of the PayPal records, alongside it.

Can you pull up what we had, 20-9.

BY MS. JIMENEZ:

Q. All right. Looking at the other document, 20 -- I'm sorry -- 19-8, which is in evidence, for what --

MS. JIMENEZ: Oh. Sorry. Wrong one.

Can you find the first quarter for 19-8?

THE COURT: Ladies and Gentlemen, how is everybody doing? Does anyone need a stretch break?

Yeah?

Okay. Let's go ahead and take a 10-minute recess, please.

MS. JIMENEZ: Okay.

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:10 p.m.)

THE COURT: Okay. We're on a 10-minute recess.

(Recess from 4:10 p.m. to 4:23 p.m.)

THE COURT: Both sides ready to continue?

MS. JIMENEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: All right. Let's bring in the jury.

COURT SECURITY OFFICER: They are in the bathroom, Your Honor.

THE COURT: Okay. Not a problem.

Thank you.

(Pause in proceedings.)

(Before the Jury, 4:23 p.m.)

THE COURT: Welcome back, Ladies and Gentlemen.

Please be seated.

And we'll continue with the direct examination.

BY MS. JIMENEZ:

Q. All right. Mr. Toye, looking at Government Exhibit 20-9, is that Form 941 submitted to ACAP and Northeast Bank?

A. Yes. That's correct.

Q. And if we can take a look at Exhibit 19-8, which is in evidence with the PayPal records. This is Page 11 of that record. What quarter -- the document on the right, for what business and what quarter is reflected on that document?

A. The business name is HM-UP Development Alafaya Trails, and the quarter is the first quarter of 2020, January, February March.

Q. And how many employees are listed there?

A. Line 1 indicates 68 employees.

Q. And how much were they paid in wages?

A. $166,848.

Q. All right. Now, looking at the document you received, 20-9, is it for the same quarter, same year?

A. Yes.
Q. How many employees?
A. Line 1 indicates 19 employees.
Q. And how much were they paid in wages?
A. Line 2 indicates wages of $166,848.
Q. Is that the same amount on both?
A. That is correct.
MS. JIMENEZ: Could we go to Page 2 of both of the documents.
BY MS. JIMENEZ:
Q. The document on the right, the signature block, does it indicate the name of the individual who signed the document?
A. The printed name is Eric Sheppard.
Q. And the document -- Exhibit 20-9, which is your record, the printed name for the signer is who?
A. Eric Sheppard.
MS. JIMENEZ: Can we go to Exhibit 13-5, please. Leave the document on the right -- I'm sorry -- the document on the left -- no. I meant leave the document on the left.
If we go to the fist page of 20-9.
All right. The document on the right -- for the record, it's an IRS record, 13-5.
BY MS. JIMENEZ:
Q. Can you indicate the taxpayer?
A. The taxpayer name is HM-UP Development Alafaya Trails, LLC.

Q. And the information provided for this record regarding Form 941 Quarterly Tax Return, what does it indicate?
A. So it says: "As of June 26th, 2022, the Internal Revenue Service shows no return filed for the following tax years pertaining to the individual described above." And so for period --
Q. I'm sorry. I'm sorry to interrupt you. I don't want you to state every quarter, but just tell me what years.
A. 2019, 2020, and 2021.
Q. All right. Did you have any --
MS. JIMENEZ: If you can zoom back out.
BY MS. JIMENEZ:
Q. Did you have any indication from your loan file that that Form 941, Exhibit 20-9, was a false document?
A. We did not.
Q. If you had been made aware that the Form 941 submitted to Northeast Bank and the Form 940 submitted to Northeast Bank were false, would you have approved and funded this loan?
A. We would not have.
Q. All right. Now, for the revenue decrease --
MS. JIMENEZ: Can we go back to Exhibit 20-21, please. Yeah. If we can remove 13-5.
BY MS. JIMENEZ:
Q. The -- looking at the revenues for 2020 and 2019, what was provided by the applicant on this form?

A. So the borrower provided annual comparison, so annual 2020 versus annual 2019. For 2019, they reported annual revenues of $1,414,576. And then for annual revenues in 2020, they reported $1,047,653.

Q. All right. Now, to -- did the SBA and Northeast Bank -- for an annual revenue reduction, did it require any documentation?

A. So the -- we would have requested financial statements, most likely tax returns.

Q. Was a tax return provided?

A. A tax return was provided.

Q. And in terms of the timing for a loan of an amount below -- of 150,000 or below, did the SBA or Northeast Bank have a requirement as to when those records need to be provided?

A. So for a second draw, the revenue comparison documents, they would have to be provided before or at forgiveness. So you could provide them up front during application, but you weren't required to.

Q. So in this case, you were provided a 2020 1065 return for this business, HM-UP Development Alafaya Trails; is that right?

A. That's correct.

Q. All right.

MS. JIMENEZ: Can we show Exhibit 20-20.

BY MS. JIMENEZ:

Q. What is Exhibit 20-20?

A. So this is IRS Form 1065. It's a US Return of Partnership Income for the year 2020.
Q. Was this provided to Northeast Bank for this loan?
A. Yes, it was.
Q. For the tax return that was submitted, did you require that the tax return be prepared and signed if it has not yet been filed with the IRS?
A. Yes. That was one of SBA's requirements or rules, was that if you haven't filed it yet, to sign the document showing that you're certifying that this is accurate and true.
Q. All right.
MS. JIMENEZ: Okay. Could we show the signature block here on the first page.
BY MS. JIMENEZ:
Q. All right. And so this tax return indicates that it was signed by the partner and also signed by a preparer; is that right?
A. That's correct.
Q. Does it indicate who the preparer was?
MR. ETRA: Objection.
THE COURT: Basis?
MR. ETRA: She's saying: "Signed by the partner," and it doesn't say that. He would be speculating that it's the partner --
THE COURT: All right. Re-ask the question and focus

on the document, please.
BY MS. JIMENEZ:
Q. Does the document indicate that it is signed by the partner or limited liability company member and also by the preparer?
A. Correct. Yes.
Q. And who is the preparer?
A. The preparer's name -- printed name is Neal A. Cupersmith.
Q. Now, for this tax return, was it required to be signed under penalty of perjury?
A. Yes.
Q. And the penalty -- under penalty of perjury, the signers had to certify that to the best of their knowledge it was true, correct, and --
MR. ETRA: Objection. Leading. He's not the IRS.
THE COURT: The objection is sustained on grounds of leading.
BY MS. JIMENEZ:
Q. All right. Under penalty of perjury -- can you just read that first sentence?
A. "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete."
Q. All right.
MS. JIMENEZ: If you can go back out to the document.

Go back to the fist page, please.
BY MS. JIMENEZ:
Q. All right. For this return, it lists a business code number. Do you see that in the upper left side of the return?
A. Yes, I do.
Q. And did the Form 2483, as revised for 2021 -- did it tell the applicant to use the business code of their tax return?
MR. ETRA: Objection. Leading.
THE WITNESS: Yes.
THE COURT: Sustained.
MS. JIMENEZ: All right. If we can go to Exhibit 20-21, please.
If we can go to Page 4.
BY MS. JIMENEZ:
Q. Let me ask you this --
MS. JIMENEZ: Actually, Page 5.
Stop.
I've got to find it.
BY MS. JIMENEZ:
Q. Anyway, do you recall whether Form 2483, in 2021, directed the applicant to use the business code that was on their tax return?
A. Yes, it did. That was the easiest way to confirm that the codes were accurate or, you know, matched.
MS. JIMENEZ: Can we go to Page 9 of the tax return

that we had up, 20-20, Exhibit 20-20.

BY MS. JIMENEZ:

Q. All right. What -- is this -- what document is this?

A. So this is IRS Form 8825, part of the tax return that was submitted. So this is for rental real estate income and expenses of a partnership or an S corporation.

Q. All right. Can you indicate what is provided for gross rents on Line 2.

A. So Line 2, gross rents -- reported gross rents are $1,047,653.

Q. And does that amount match what was submitted on the application for gross rents for 2020 -- or gross revenues for 2020?

A. Yes.

Q. What about wages and salaries on Line 13? How much does it indicate that this business paid in wages and salaries in 2020?

A. Line 13 indicates $815,358.

MS. JIMENEZ: Can we show Exhibit -- can we show Exhibit 19-13, please.

I'm sorry. For this exhibit, if you go to the first page, 2020. And then leave it.

And then, also, if you could -- yeah -- show Exhibit 19-13. 19-13 is from PayPal, for the record.

BY MS. JIMENEZ:

Q. The -- Exhibit 19-13, does it indicate what business and

what year tax return this is?
A. So 19-13 is an IRS Form 1065. It's a US Return of Partnership Income for the year 2020.
Q. All right. And the business code listed for the tax return on the right, 19-13 --
MS. JIMENEZ: Can we -- the top box -- can you...
BY MS. JIMENEZ:
Q. All right. What business code does it provide?
A. The business code listed is 531120.
Q. Do you know offhand what these business codes mean?
A. Not off the top of my head. I don't know what each code is but...
Q. All right. Okay. Can we -- and then the one that was submitted to you, Northeast Bank, which is the document on the left, 20-20, does it have a different business code number?
A. Yes. It's a different business code. This business code is 236200.
Q. Was there any indication in the documents that you received that this was a business that was ineligible for a PPP loan?
A. Not to my knowledge.
Q. Did you have -- let me --
MS. JIMENEZ: If we could show Exhibit 13 -- 13-3, please.
BY MS. JIMENEZ:
Q. This is an IRS record for -- who was the taxpayer?

A. The taxpayer name is HM-UP Development Alafaya Trails, LLC.
Q. And the description -- for this 1065 partnership return for that business, what did IRS -- what information did IRS provide?
A. So it says: "As of June 4th, 2022, the Internal Revenue Service shows no return filed for the following tax years pertaining to the individual described above."
The tax years listed are 2020 and 2021.
Q. Did you have any indication that the 1065 tax return that you were provided was a false document?
A. We did not.
Q. Did you have any indication that the tax return that you were provided was a forged document?
A. We did not.
Q. If you had information that that 1065 tax return was falsified as to the business code and the wages, and the gross rents, and that the tax preparer's name was forged on that document, would it have affected the decision that you made with respect to this loan?
A. Yes. Definitely.
Q. What would it have done?
A. We wouldn't have funded the loan.
MS. JIMENEZ: Can we go back to 20-21.
20-21. Can we go to the signature page.

BY MS. JIMENEZ:

Q. Okay. This 2483 that was sent to Eric Sheppard, was it signed?

A. Yes. It was DocuSigned.

Q. All right. And before it was -- before the portion where the individual would DocuSign, did you have certifications on this form?

A. Yes, we did.

Q. All right.

MS. JIMENEZ: If we can actually go -- go up.

Go up to the previous page.

Okay. Stop.

If you can highlight the third certification that's initialed.

BY MS. JIMENEZ:

Q. Can you read that first sentence.

A. So "the applicant," that one?

"The applicant has realized a reduction in gross receipts in excess of 25,000 relative to the relevant comparison time period."

Q. Was that one of the certifications on this form?

A. Yes, it was.

Q. All right.

MS. JIMENEZ: Can we go to the last page.

Stop. Yeah -- no. I'm sorry. The signature page.

Above the signature, the second-to-last certification, could we highlight just that box and then down to the signature.

BY MS. JIMENEZ:

Q. Okay. Can you read that first sentence of that certification.

A. "I further certify that the information provided in this application, and the information provided in all supporting documents and forms, is true and accurate in all material respects."

Q. All right. Did the applicant -- well, did it matter to Northeast Bank whether these certifications were executed?

A. Yes. Absolutely.

Q. Why?

A. This is what the whole program was based off. It was based off certifications. The SBA said --

MR. ETRA: Objection Your, Honor. Testifying what the SBA program -- he's not an SBA representative.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Why did it matter to Northeast Bank whether or not someone executed these certifications?

A. The bank was making the loan to the borrower based on these certifications that the information was true.

Q. Did you, in connection with PPP loans, conduct an

independent investigation of the information that the borrower was supplying to you?
A. The bank did a good-faith review in a reasonable amount of time but was really just double-checking what the borrower provided us.
Q. Was the PPP program that you were carrying out -- was it more expedited than your normal loan application and loan underwriting process?
A. Yes, very much so.
Q. Did the certifications have anything to do with that?
A. Yes, they did.
Q. All right. So this document was DocuSigned on what date?
A. This was DocuSigned on March 12th, 2020.
Q. Was the SBA involved in this loan process?
A. The SBA would issue the loan number. The bank would approve the loan, submit it to SBA, and then the SBA would issue the loan number to the bank.
MS. JIMENEZ: Can we go to document 20-16, please.
BY MS. JIMENEZ:
Q. All right. Showing you 20-16. What is this?
A. That is a upload history of the documents that were uploaded to the borrower portal.
Q. All right. And does this capture the date and time when the information or documents were transmitted from the borrower to ACAP SME and ultimately Northeast Bank?

A. Yes. They were all done within a few weeks of the -- of March 2021.
Q. All right. When was the information or when did the applicant -- as to this record, when did the applicant initially answer questions and provide information about its business, its payroll, its employees, and ultimately that generated the loan amount?
A. So it looks like this was on March 15th, 2021, they finished the -- or they submitted all the documents between March 11th and March 14th, 2021.
Q. And then the initial information that they provided, when did they provide that?
A. They initially provided information on March 11th, 2021.
Q. All right. And does the record indicate when the business uploaded to ACAP the IRS Form 940?
A. Yes, it does.
Q. When was that?
A. That was on March 11th, 2021.
Q. By separate transmission?
A. Yes. It was uploaded individually to the application portal.
Q. All right. And then does it indicate when the 2020 tax return for the business was submitted to the portal?
A. The 2020 tax return was submitted to the portal on March 11th, 2021.

Q. Was that a separate transmission from the other records --
A. Yes.
Q. -- based on this record?
A. Yes.
MS. JIMENEZ: Can we go to Exhibit 20-10, please.
BY MS. JIMENEZ:
Q. What is this?
A. So this is a Florida Department of Revenue Employer's Quarterly Report.
Q. For what period of time and what business?
A. So this is for the quarter ending March 31st, 2020, and the business name is HM-UP Development Alafaya Trails.
Q. Care of HM Management and Development?
A. Yes. Care of HM Management and Development.
Q. Did you have any indication that this record was false?
A. We did not.
Q. Okay.
MS. JIMENEZ: Can we go to 20-22, please.
BY MS. JIMENEZ:
Q. All right. What is this document?
A. So this is the loan note. Once the loan number was received from SBA, that means the loan was approved and ready to be funded. So the bank would populate -- this was the legal document that governed the borrowing relationship.
Q. All right.

MS. JIMENEZ: Can we scroll down slowly.
BY MS. JIMENEZ:
Q. All right. What is the interest rate on the loan?
A. The interest rate -- it's under "Payment Terms," 3B. It's right there, too, at the front. Fixed rate equal to one percent per annum.
Q. And -- okay. We'll come back to that in a moment.
MS. JIMENEZ: Can we go down.
Go down, please.
Just find the signature.
BY MS. JIMENEZ:
Q. Okay. Was the loan note DocuSigned?
A. Yes. The loan note was DocuSigned.
Q. Does it indicate who signed it?
A. The printed name is Eric Sheppard.
Q. All right.
MS. JIMENEZ: Can we go back.
Keep going down, please.
All right. So -- stop.
BY MS. JIMENEZ:
Q. What is this form?
A. So this is a second copy of the 2438, the application, SBA application.
Q. All right.
MS. JIMENEZ: Let's scroll down.

Keep going, please, to the signature block.

All right. Stop here.

BY MS. JIMENEZ:

Q. The signature block -- what date does it indicate it was DocuSigned?

A. DocuSign date is March 17th, 2021.

Q. All right. The other document that we saw, 20-21, had a DocuSign date of March 12th. Do you remember that?

A. I remember.

Q. Why is there a second one with March 17th?

A. For all of our triple P loans, we had the borrower sign and complete an application at the beginning of the process, and then we had them also sign at the end with their note, just as one more kind of step to make sure that everything on that application -- to give them another chance to just make sure to review it and confirm it's accurate.

Q. All right.

MS. JIMENEZ: Can we scroll down.

Is that the end of that?

Okay. Let's go to Document 20-23.

BY MS. JIMENEZ:

Q. What is this record?

A. So this is the DocuSign tracking or envelope. So it kind of gives you all the background information for anyone that signs a document.

Q. All right. And below the signature block, it indicates an IP address. Do you see that?
A. I do.
Q. And what is that IP address?
A. The IP address is --
Q. No. What is it supposed to reflect?
A. Oh. It reflects -- it's a unique identifier from where the document was signed.
Q. Okay. And does this DocuSign record indicate when the document was signed?
A. The document was signed on March 25th, 2021.
Q. Is that the loan documents that we saw, the note and the 2483?
A. Yes. Correct.
Q. All right.
MS. JIMENEZ: Can we go to 20-17.
BY MS. JIMENEZ:
Q. What is this?
A. So this appears to be an email from Eric Sheppard sent on Tuesday, March 30th, 2021, to someone that works at ACAP.
Q. Okay. Does it capture an email address for Eric Sheppard?
A. It does.
Q. At the --
A. At the top.
MS. JIMENEZ: Keep going down to March 12.

THE WITNESS: Yes. There's an email address for Eric Sheppard on this email.

BY MS. JIMENEZ:

Q. And so, on March 12th, Ms. Boyd, what did she request of Mr. Sheppard?

A. So she asked for a copy of some bank information. So either a bank -- a check -- I think we'd require a check and a bank statement, so that we could confirm the accounts that we were wiring the money to.

Q. All right. And did Mr. Sheppard respond?

A. Yes, he did.

Q. Okay. And what did he say?

A. He said: "I will provide the bank statement and voided check to the portal. Please" --

Q. What else?

A. And he said: "Please revert to me so I can upload."

The way the portal would work is you would have to -- it had different stages. And so if you were requesting information from a borrower, you'd have to push it back to them so they would have access to it, so they could do whatever was being asked of them. And then whenever they finished their work, they would send it back to NEWITY or ACAP, and ACAP would review and then send it back to the bank.

Q. And above this email there's another email. And then, on March 30th, from Eric Sheppard, what did he ask or what did he

say in the first sentence?
A. "I was inquiring regarding my company HM-UP Development Alafaya Trails, LLC, and the status of the funding."
Q. And then what does he say in the next sentence?
A. "I was sent the DocuSign last week and received an SBA number" --
Q. Okay. You don't have to read the number.
All right. Was this loan funded?
A. Yes. It was funded.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit 20-24.
BY MS. JIMENEZ:
Q. What is this?
A. This is a copy of a voided bank check for HM-UP Development Alafaya Trails, LLC.
Q. All right.
MS. JIMENEZ: And can we go to Exhibit 20-18.
Let's go -- no. I'm sorry. Go back out. Let's go toward the bottom of this document.
Okay. Here. Stop.
Yeah.
And -- no. Keep going.
Okay. Here. The bottom portion of this -- no. I'm sorry. Go back -- no. Stop. Stop. Stop. Can't see.
Oh, yeah. If you can capture the -- what is -- just

the -- the bottom half of this document. I'm sorry.

BY MS. JIMENEZ:

Q. All right. Does that -- what is this record?

A. So this is a screenshot from the application portal where we would review triple P loan applications. This specific section in the middle there is where the borrower would put in their bank account information. So that's where we would fund the loan. And so we would confirm the bank account information using the voided check and bank statement that was provided by the applicant.

Q. All right. Now, you said that the loan amount was one percent. Was -- did the applicant for this loan apply for forgiveness for this loan?

A. They did not apply for forgiveness.

Q. And if someone applies for forgiveness, and they have used the funds in the way that the SBA directed, and can show that to Northeast Bank, what would happen to this loan amount?

A. The loan would be forgiven by the SBA in full.

Q. And so would that mean that they don't have to pay the loan back?

A. Correct.

Q. And if they do have to pay the loan back, what is the interest rate of the loan?

A. The interest rate was one percent.

Q. Now, in your experience dealing with these applicants for

Paycheck Protection Program loans, did they prefer to have their loan forgiven or did they want to have to pay the loan back?

MR. ETRA: Objection. Speculating about who seeks forgiveness and why they do and why they don't.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Based on your experience with these loans, did you see a fair number of applicants submit forgiveness applications?

A. The overwhelming majority of our applicants submitted for forgiveness.

THE COURT: Ms. Jimenez, just let me know when it might be a good time for us to adjourn for the evening.

MS. JIMENEZ: Yes. I just have a question or two, Your Honor.

(Pause in proceedings.)

MS. JIMENEZ: Your Honor, we could stop.

THE COURT: All right. Then Ladies and Gentlemen, we will adjourn for the evening.

For the rest of the week, tomorrow will be a full day, from nine until five. On Wednesday it may be 9:30, but it will be a full day until five o'clock p.m.

Please remember that as you leave the courthouse you're not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned within this courtroom.

Have a pleasant evening. If you'll place your juror notebooks in the jury room. And I'll see you tomorrow morning at 9:00 a.m.

Have a pleasant evening.

COURT SECURITY OFFICER: All rise.

(Jury not present, 5:01 p.m.)

THE COURT: Mr. Toye, we will begin tomorrow with your testimony. Now, since you are on the witness stand, you're not to discuss your anticipated testimony, the testimony of any other individual, or any aspect of the case. I'll see you tomorrow morning at nine a.m., sir.

Have a pleasant evening.

Are there any issues we need to discuss at this time? On behalf of the Government?

Thank you. You're free to go, sir.

MS. JIMENEZ: Your Honor, I would simply ask what the -- well, let me just wait for a moment.

(Pause in proceedings.)

MS. JIMENEZ: Your Honor, what I believe counsel is objecting to, as part -- to admit as part of the loan file for Northeast Bank and ACAP was a credit report, which is -- was part of the loan file. I've asked them to indicate what in the credit report they have issues with. They said everything except the name of the businesses that are affiliated with the

Defendant.

I mean, there is -- there are names of family members and I think some information about family members. I have no -- no problem with redacting out any information about family members, but the credit report is part of the loan file, and the PayPal witness was cross-examined about the credit report and the PayPal application.

MR. ETRA: Your Honor, the PayPal witness was cross-examined about the credit report because it was the reason for the decision to reject, if you'll recall.

The issue we have -- and we understand it's part of the loan package, but Mr. Sheppard is on trial, and we should be controlling what information goes to the jury. Just reading from the Table of Contents, it's got political donations, criminal records, warrants, traffic citations, bankruptcy records, lawsuit records, judgments. It just has a lot of information that is not really critical to the loan or material to any issue in this case. But it's got -- I mean, it's -- I'm holding it up. It's a big document.

THE COURT: All right. And go ahead and have a seat, everyone.

Ms. Jimenez, with the -- and I understand that it is part of the loan package, but what within that credit report would be important for the Government to not redact? It appears that any criminal history, any -- and I haven't looked at the document. It might be helpful if we have a copy of it. I can look at it. But why is the Government not agreeing to redact those portions?

MS. MARTINEZ: Your Honor, we just don't know what it is that they have an objection to. I actually --

THE COURT: Well, Mr. Etra just said what he's objecting to.

MS. MARTINEZ: Right. But some of the sections he referred to, there's nothing in the report. I looked at it myself, 300 pages, and --

THE COURT: All right. Put it up on the screen for me, if you will. Let me see what the issue is.

MS. MARTINEZ: For example, I didn't see anything relating to criminal history. I don't know what other things he said. But in other words, all --

MS. JIMENEZ: The Table of Contents, there's categories that are probably run, but there's no criminal history. There's no...

THE COURT: Well, what is it within the credit report that's necessary for the Government?

MS. MARTINEZ: Your Honor, one concern that I have is that he already cross-examined one witness specifically about the credit report. I believe that it's important for the credit report to be part of the file because it's part of what they do.

Now, we do not believe --

THE COURT: But it was another credit report, correct?

MS. MARTINEZ: It's true.

THE COURT: With the SBA, not this one. So in terms of this one, this loan package, what is it within this credit report that is necessary?

MS. MARTINEZ: Interestingly, Your Honor, just to point out, it is exactly the same loan application. It's just that he was denied by PayPal and he moved it over to this other lender. And then he changed the business code and then got it through. So it is part and parcel -- it is the same loan application. It's the second draw for the Paycheck Protection Program.

So Your Honor, what I suggest to resolve this issue is just really to give the parties an opportunity for the Defense to just let us know what parts of the credit report they would like to redact. I really did take the time to look at it. The portions are very divisible. You can really divide the portions. And we would be happy to work with them. I just don't think it's appropriate to entirely make the file look like there was never a report pulled.

THE COURT: All right. Do you think we could do that tonight, Mr. Etra, just look at it and see what needs to be redacted?

MR. ETRA: Sure, Your Honor. But I've already told them everything but the list of affiliated companies. That one, it could come in. They could see that there's a credit report. The rest is redacted. And they told -- they didn't respond to that.

MS. MARTINEZ: I would appreciate, for example, knowing what pages it is that you're talking about.

MR. ETRA: The first few pages. It lists the number -- it lists the --

THE COURT: And again, how many pages are there? Could we just resolve this? I mean, it seems like we're taking a lot of time that's not necessary.

Let me just -- let me see the exhibit.

MR. ETRA: Do you want me to hand it up?

THE COURT: Yeah.

(Pause in proceedings.)

THE COURT: Just that one -- how many pages is the credit report?

MS. MARTINEZ: Three hundred pages, Your Honor.

THE COURT: Oh, okay. Give that back to Mr. Etra.

MS. WEINTRAUB: Your Honor, I would also add that the Government has made a big deal about his assets, you know: "He's rich. He doesn't need the loan." They said it in opening and they asked one or two of the witnesses over my objection. And this credit report clearly shows he is a man of substance, of wealth, and that should not be before the jury because it's irrelevant to the loan.

THE COURT: For purposes of this loan application, if there are discrepancies in this credit report versus another credit report, or if there is a partnership number -- whatever it is that the Government feels that is necessary, then I understand that it should be maintained. I'm not saying that it should be taken out, but portions should be properly redacted that are not relevant.

So why don't you take the time, Ms. Martinez, and Mr. Etra, or Ms. Weintraub, and just confer and agree what portions are necessary for the Government, what other portions should be redacted.

MS. MARTINEZ: Yes, Your Honor.

And just to add, both in opening statement, as well as in the expert notice, the Defense has stated that they believe -- and they want their expert to come up and say that you need to take a global view to the business, that you need to look at all the businesses, and that you need to look at the flow of all the businesses. And indeed, they cross-examined my tax expert regarding: "Did you look up all the businesses?"

Now, this credit report includes a time period that overlaps with this case. It includes records from 2018 through 2020, which include some of the Defendant's other businesses. And I understand that there are -- there is some negative information in there. Honestly, we ourselves do not intend to be highlighting it or bringing it up. But it's unfair for the Defense to bring an expert to say you have to take everything into account, and to say that to the jury in the form of an expert opinion, and for me not to be able to cross-examine that expert with this.

THE COURT: All right. I agree to that extent. That if, in fact, there is testimony that does relate to the credit report or a credit history, you certainly have the right to cross-examine that expert.

MS. MARTINEZ: It includes information about the Defendant, his other businesses, including tax liens, including JES Alafaya Holdings, including a variety of things. And so I should -- if the Defense is going to put on an expert stating an opinion that you have to take a global view, I should be able to cross-examine that witness.

THE COURT: All right. You're not planning on using this credit report with this witness, correct?

MS. JIMENEZ: No, Your Honor.

THE COURT: And when would you plan on using it, if at all, in the Government's case in chief?

MS. MARTINEZ: Your Honor, it really is only -- as I'm stating to the Court, the way it's coming to mind is as a response to what they said in opening and in their expert notice, that it's only fair -- yeah, and it may come up, but --

THE COURT: It may come up in cross-examination of the

Defendant's expert?

MS. MARTINEZ: It certainly might.

THE COURT: Okay. So to that extent, the Court will defer ruling with regard to certain redactions to give the Government the opportunity if the Defendant opens the door with regard to the information that's in that credit report. Otherwise, we'll hold that out, and then the parties shall confer following that testimony to include the proper redactions.

MS. MARTINEZ: And to repeat, Your Honor, we're a hundred percent amenable to agreeing to remove substantial portions of it.

THE COURT: All right. Who is going to be testifying tomorrow after Mr. Toye?

MS. JIMENEZ: After Mr. Toye, we expect Carlos Granda, Spencer Lord from Cross River Bank, Maria Ataca.

THE COURT: Okay. Do you believe that will take us through the day? Any issues with regard to these witnesses?

MR. ETRA: No. I was just going to raise a different issue, is that, in terms of the motion in limine, I just would suggest that when we deal with cross-examination I would suggest now a lot of doors got opened on direct about what the bank relied upon, how they would have acted if they saw something different. And I think that may implicate some of the general rulings on the in limine. I'm just putting that out for the Court to -- for tomorrow, basically.

THE COURT: All right. Let me be clear. The lender's negligence is inadmissible. With regard to any documents that the lender may or may not have relied upon is fair game, based on the questions that were posed in direct.

MR. ETRA: Thank you, Your Honor.

THE COURT: Whether the lender, who is a victim, is sophisticated is immaterial to the Defendant's intent to defraud.

As well -- and again, the Court is looking at Eleventh Circuit case law. And if there is other case law for the Court to consider, I'm happy to -- there shall be no evidence or argument concerning any profit by the lenders as a result of issuing these loans.

MR. ETRA: Could I ask Your Honor, though, because it's a wire fraud, and the object of the fraud has to be to deprive the victim -- in this case, the banks -- of money or property -- which the cases say it's not the right to control, it's money -- can I explore the upside or downside to the bank from the application because that goes to the issue of whether this fits within the charged wire fraud?

THE COURT: No. All that is is an attempt to show that the bank was profiting from the issuance of these loans, and the Court has already ruled that that's not admissible.

MR. ETRA: Well, then, can I ask about -- I could ask about whether they stand to lose money from it, then, right? Because that would be the wire fraud.

THE COURT: And again, Mr. Etra, if there is a basis for you to ask those questions, then you can provide the Court with some case law.

MR. ETRA: Okay.

THE COURT: But the Government has provided case law that appears to inform this Court.

MR. ETRA: I understand, Your Honor.

Thank you.

THE COURT: All right. Is there anything further?

MR. ETRA: No, Your Honor.

THE COURT: On behalf of the Government?

MS. JIMENEZ: No, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: No, Your Honor.

THE COURT: All right. The courtroom will be open at 8:30 tomorrow. We do not need the courtroom, so you are free to leave your items in the conference rooms that will be locked.

Have a pleasant evening. I'll see you tomorrow morning.

MR. ETRA: Thank you.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 5:14 p.m.)

UNITED STATES OF AMERICA)
ss:
SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Yvette Hernandez, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at, and reported in machine shorthand, the proceedings had the 4th day of December, 2023, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 140.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

/s/Yvette Hernandez
Yvette Hernandez, CSR, RPR, CLR, CRR, RMR
400 North Miami Avenue, 10-2
Miami, Florida 33128
(305) 523-5698
yvette_hernandez@flsd.uscourts.gov