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 5, 2023
9:04 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 293

TRANSCRIPT OF TRIAL DAY 6
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

E X H I B I T S

(Call to order of the Court, 9:04 a.m.)

THE COURT: Good morning to everyone.

Let me acknowledge the presence of the Defendant.

Go ahead and have a seat.

All of our jurors are here. I just want to make sure they're not in the restroom.

And do we have our -- do we have our witness present?

MS. JIMENEZ: Yes, Your Honor, we do.

THE COURT: All right. Are there any issues that we need to address this morning?

MS. JIMENEZ: I don't believe so, Your Honor.

MR. ETRA: No, Your Honor.

THE COURT: On behalf of the Defendant -- okay.

MS. JIMENEZ: No, Your Honor.

THE COURT: All right. We just need the witness.

(Pause in proceedings.)

THE COURT: All right. Good morning, Mr. Toye.

All right. Today will be a full day. Obviously, we'll take a one-hour recess for lunch with the appropriate comfort breaks.

(Pause in proceedings.)

THE COURT: All right. My apologies. We are still waiting for one juror.

(Pause in proceedings.)

COURT SECURITY OFFICER: All rise.

(Before the Jury, 9:09 a.m.)

THE COURT: All right. It's great to see you, Ladies and Gentlemen.

Please be seated, everyone.

And we will continue with the direct examination of Mr. Toye.

Mr. Toye, let me remind you, you were previously placed under oath.

Ms. Jimenez?

DIRECT EXAMINATION [CONTINUED]

BY MS. JIMENEZ:

Q. Good morning, Mr. Toye.

A. Morning.

MS. JIMENEZ: I'd love a little music for intermission.

All right. If we can take a look at Exhibit 20-16, please.

BY MS. JIMENEZ:

Q. Mr. Toye, you remember we looked at this record yesterday; is that right?

A. Correct.

Q. And what is this record?

A. So this is a tracking history of documents uploaded to the application platform by the borrower.

Q. And does it also reflect information supplied through the

portal by the borrower?
A. Correct. It shows an item-by-item timeline of when each item -- of what each item is, and then also when each item was uploaded to the portal.
Q. The second item on this list, does that indicate that information was provided to the portal on that date?
A. Yes, it does.
Q. All right.
MS. JIMENEZ: Could we take a look at Exhibit 20-12, please, alongside this.
BY MS. JIMENEZ:
Q. What is 20-12?
A. 20-12 is SBA Form 2483-SD. So this is the application form for a second draw triple P loan.
MS. JIMENEZ: Can we go to the signature page.
All right. Stop here.
BY MS. JIMENEZ:
Q. What is the date indicated on the DocuSign signature?
A. The date listed is March 12th, 2021.
Q. Does this document 2483 reflect --
MS. JIMENEZ: Can we go back to the first page for a moment.
BY MS. JIMENEZ:
Q. -- reflect the information that was supplied by the applicant on March 11 of 2021?

A. Yes, it does.
Q. Okay.
MS. JIMENEZ: I'm sorry. Let's go back down to that signature block.
BY MS. JIMENEZ:
Q. Okay. The signature block, it indicates -- who does the signature block ask to have sign this document?
A. So the -- the printed name is Eric Sheppard.
Q. All right. But the -- well, let me ask you this: Underneath the DocuSigned name, what does it indicate?
A. It indicates: "Signature of authorized representative of applicant."
Q. And who is it that Northeast Bank wants to take responsibility for the information provided and the documents supplied with this loan application?
A. The person who signed the application.
Q. Their authorized representative; is that right?
A. Yes. Correct.
Q. All right.
MS. JIMENEZ: Can we go back to the -- well, let's go to Page 6 of this document.
BY MS. JIMENEZ:
Q. Okay. The first sentence of the third paragraph, what is that? Can you read that.
A. So: "For purposes of reporting NAICS code applicants must

match the business activity code provided on their IRS income tax filings, if applicable."

Q. All right.

MS. JIMENEZ: So I found it. Can we go back to the first page, please.

BY MS. JIMENEZ:

Q. All right. So the top right box provides the NAICS code, and the instructions tell the applicant to draw that information from where?

A. Their business tax return.

Q. All right.

MS. JIMENEZ: Can we go to Exhibit 19-2, please, the PayPal, just alongside -- alongside 20-12.

This is from a PayPal record alongside 20-12.

BY MS. JIMENEZ:

Q. All right. The 2483 Form submitted to Northeast Bank indicates that the owner, Eric Sheppard, has what percentage ownership of HM-UP Development Alafaya Trails?

A. Our application shows 85 percent ownership by Eric Sheppard.

Q. All right. Can you read -- with respect to the document on the left side, 19-2, left side of the document, halfway down the page, does it indicate ownership percentage of the business HM-UP Development Alafaya Trails?

A. Yes. This ownership percentage is listed as 52 percent.

Q. All right.

MS. JIMENEZ: The document on the left side, 19-2, could you go to the second page for a moment, please.

BY MS. JIMENEZ:

Q. It indicates "Industry," and underneath it to the left there's a number. Can you read that number?

A. So the number listed is 531120.

Q. Is that a different industry code that's reflect -- than the one reflected on your application?

A. It is. The one on our application is 236220.

Q. And the one in the document on the left side, what does it indicate that industry to be?

A. That code is indicated as lessors of non-residential buildings, except for mini-warehouses.

Q. Lessors would be landlords of non-residential buildings?

A. Correct. Yes.

Q. Is that a category of business that is eligible for a PPP loan?

A. It is not.

Q. Now, if Northeast Bank had reason to believe that the information provided to the portal on March 11, 2021, that supplied the information for this form reflected on document 20-12 -- if you had information -- if you had reason to believe that the information provided, such as number of employees, average monthly payroll, ownership amount, or ownership percentage revenue decrease, business industry code -- if that information was false, would Northeast Bank have funded this loan?

A. We would not have funded the loan.

Q. And regarding the average monthly payroll amount that is reflected on this application document, 20-12, if the information that you had received from the borrower was, one, that there were no net earnings paid to the partner, and that the figure reflects one hundred percent payments, for instance, for independent contractors, what would the loan amount be?

A. The loan amount would be zero dollars.

Q. With respect to a standard or regular commercial loan, would Northeast Bank -- well, commercial loan where the applicant is a business, would the bank want to review the business's income tax return?

A. Yes, we would.

Q. Why would you want to review it?

A. For a regular loan, we would review business tax returns for -- primarily for cash flow, to make sure that the borrower could support the debt that they are requesting.

Q. All right.

MS. JIMENEZ: Can we go to document 20-13, please.

BY MS. JIMENEZ:

Q. What is this document?

A. So this is SBA Form 2484-SD. This is basically the

lender's application for a triple P loan guarantee. So the SBA required both a borrower application and a lender application. And our lender application basically -- it's basically the same information that's on the borrower application, just signed by the bank.
Q. So in addition to the 2483, this is the information that you supplied to the SBA?
A. Yes. Correct.
Q. When you supply this information to the SBA, what is the SBA supposed to do?
A. The SBA would review it. And as long as it's complete and accurate, they would issue the loan number.
Q. And -- you had said: "Complete and accurate." The accuracy of this information that you're supplying, what is it based on?
A. It's based on data input by the borrower.
Q. What about the certifications on that form?
A. Yes. And on the -- that we can take the borrower's certifications and that all the information they provided as true and accurate.
Q. All right. And you are -- are you indicating to the SBA that this applicant has a certain -- had a certain revenue decrease in 2020 of at least 25 percent that qualified the applicant for a second draw?
A. Yes, we are, based on the information provided by the

borrower.

Q. And that gross receipts or gross rents figure from 2020, was that also reflected on the 2020 income tax return that was supplied to you by the borrower?

A. Yes, it was.

MS. JIMENEZ: If I could have a moment.

THE COURT: Certainly.

(Pause in proceedings.)

MS. JIMENEZ: Your Honor, I don't have any other questions of the witness.

THE COURT: All right. Cross-examination.

(Pause in proceedings.)

MR. ETRA: May I proceed?

THE COURT: Yes. Of course.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good morning, Mr. Toye. How are you?

A. Good morning.

Q. We have never met, correct?

A. That is correct.

Q. You have no personal -- you had no personal involvement in the loan that you have been testifying about today, correct?

A. No direct involvement in this loan.

Q. You had no involvement in the loan, correct?

A. I had no specific direct involvement in this particular

loan. I managed a group of people who were doing the work.
Q. So you weren't the person who looked at the information that came in, correct?
A. When this loan was reviewed, I did not look at the information.
Q. You weren't the person who decided whether more information was needed, correct?
A. Yes.
Q. And in terms of what the people -- and there are people at the bank that were doing this, right?
A. Yes.
Q. It's just not you, correct?
A. I was not the reviewer of this application.
Q. And there were people at the bank that were making decisions about what they can rely on and not rely on, right?
A. Yes.
Q. You testified on direct about what the bank relied on and what the bank didn't rely on on this loan, correct?
MS. JIMENEZ: Objection. He did not say anything like that.
THE COURT: Overruled. The witness can answer.
THE WITNESS: Can you repeat the question.
BY MR. ETRA:
Q. You testified on direct about what the bank relied on or didn't rely on for this loan, correct?

A. Yes.
Q. And that was not based on any personal knowledge that you have.
A. I understand how the process worked and what the documents were. These were very kind of cookie-cutter applications and loans, so they were very similar based on what the business type was. So I understand what the -- while I didn't directly approve or review this loan when it was under review, I know what to look for and what all the applications are and what all the documents are.
Q. But you don't know what the people working on the loan looked at and relied upon when they were reviewing this information back in 2021? Yes or no, please.
A. Well, I think that -- we did show the underwriting template yesterday, and you can see from that template what the person that reviewed the loan did for work. So that would be the template or kind of the source to go back to to see how they reviewed -- what documents they looked at and how they reviewed the loan.
Q. And I understand what you're saying, and I agree that's fair. You're able to look at documents and explain what you see in the documents, correct?
A. Yes.
Q. In terms of what the people who are making the decisions or analyzing this information -- how they were doing their jobs,

correct?
A. Can you repeat the question?
Q. Sure. You were able to look at the documents, for example, the loan verifier document, and say: "Okay. I see what this person was doing. I see what this loan officer was relying on or not relying on," right?
A. Yes. You could see what the -- whoever reviewed the application, what their work was.
Q. But your testimony about the bank policies are about what the bank policies were supposed -- or how the officers were supposed to act -- let me start again.
When you talk about the bank's procedures for a PPP loan, you're describing what was supposed to happen with each loan, correct?
A. Yeah. We had a very standard checklist and process in that spreadsheet that, you know, I think was very straightforward.
Q. I'm going to ask the question and ask if you can answer yes or no. When you testify about the policies and procedures at the bank, you're testifying about what was supposed to happen; is that correct?
A. Yes.
Q. Okay. And so you weren't personally involved in this loan, correct?
A. I did not underwrite this loan.
Q. And you're able -- you can't say whether -- what policy --

you can't say what the people who did underwrite the loan -- what they actually did, except what you can see in the documents. Is that fair?

MS. JIMENEZ: Objection.

THE COURT: Basis?

MS. JIMENEZ: (No verbal response.)

THE COURT: Overruled. Let's continue.

THE WITNESS: Can you repeat the question.

BY MR. ETRA:

Q. Sure. When you talk about what happened with this loan, all you could do is look at the Northeast or ACAP documents and try and interpret them for us two and a half years later, correct?

A. Yes.

Q. Okay. And you were not -- you're here for Northeast, not for ACAP, correct?

A. I work at Northeast Bank.

Q. Okay. So you had no personal involvement with what was going on at ACAP on this loan, correct?

A. We worked hand in hand on this project, so there was constant communication in between the teams.

Q. I'd like you to answer yes or no if you can. You had no personal involvement in what ACAP was doing on this loan; is that true?

A. I don't know if I can answer that in a yes-or-no question

because it's not a yes-or-no question. But the bank and ACAP worked hand in hand every single day on these loans, working together trying to figure them out. So it's not a yes-or-no question. It's a we worked together. So I wasn't in their office. I was in the bank's office. But we worked hand in hand talking to NEWITY or ACAP every day on how to perform these loans and what the issues we saw in them were.
Q. I'm talking about this loan. Okay?
A. Okay.
Q. Were you personally involved with working with ACAP on this particular loan?
A. I was not.
Q. I've heard you mention the name Eric Sheppard many times in your testimony. Correct?
A. Yes.
Q. Do you know Mr. Sheppard?
A. I do not.
Q. Did you ever meet Mr. Sheppard?
A. I have not met him.
Q. Did you ever speak to Mr. Sheppard?
A. I have not spoken with him.
Q. And based on the documents available to you at Northeast, you have no information about whether Mr. Sheppard, for example, filled out the online portal, correct?
A. We have the information that was in the application.

Q. I'm going to ask it again and see if you can answer yes or no. Based on the information that Northeast has -- well, you -- let me start again.

You personally don't know whether Mr. Sheppard filled out the online application in the portal, correct?

A. I know what's in the application.

Q. And if you can answer yes or no, please. You personally don't know whether Mr. Sheppard filled out the online application in the portal. Yes or no?

A. I don't know -- I know what's in the application. I'm not trying to be difficult, but I know that the application says Eric Sheppard. So that's all that I know.

Q. So you don't know whether he filled it out, right?

A. I mean, we can accept the application and the certifications in there that that's all accurate and true, and that's what the name was on the application.

Q. Does the online application say it's being filled out by Mr. Sheppard?

A. It was signed and dated and printed name with Eric Sheppard.

Q. Talking about the online portal application. It has the name Eric Sheppard as owner, but it doesn't actually say it's being filled out by Eric Sheppard, correct?

A. It says that the authorized representative who's completing the application is Eric Sheppard.

Q. Could I get -- could I get a yes or no, please? The online application for the portal, it says Eric Sheppard is the owner, but it doesn't actually say that it's being filled out by Eric Sheppard. Is that true or do you not know?
A. I would assume based on the application that it was filled out by Eric Sheppard.
Q. So you don't know?
A. I would assume based on the application that it was filled out by Eric Sheppard. That's the only answer I can provide.
Q. So you're here to assume --
MS. JIMENEZ: Objection. He's being argumentative. The witness has answered the question multiple times.
THE COURT: Overruled.
BY MR. ETRA:
Q. You know we're in a criminal trial, right?
A. I understand.
Q. You know this is important for Mr. Sheppard, right?
A. I understand.
Q. You're not coming here to assume what happened?
MS. JIMENEZ: Objection. Argumentative.
THE COURT: Sustained.
BY MR. ETRA:
Q. Is your testimony based on assumptions?
A. My testimony is based on the documents we provided.
Q. And your assumptions about them?

MS. JIMENEZ: Objection.

THE COURT: And the basis?

MS. JIMENEZ: It's argumentative.

THE COURT: Overruled at this point.

BY MR. ETRA:

Q. Are you here to testify about assumptions in this criminal trial? Yes or no?

A. I'm here to testify based on the documents the bank provided or received.

Q. And do those documents say that Mr. Sheppard sat at the portal and filled out the online application? Yes or no?

A. The documents don't say that he sat at the portal, but they do have his name on the application.

Q. As an owner?

A. And as the signer of the document.

Q. On the online portal, there's no signer, correct? That first day, the online application, there's no signer, correct?

A. The portal would send someone a DocuSign based on the information input into the --

Q. We'll go document by document. Is it your testimony that Mr. Sheppard uploaded all the information into the portal? Is that your testimony?

A. Yes.

Q. And that's based on what?

A. Based on -- I'm basing my information on the -- or my testimony on what happened in the portal, by the -- we were able to take the application that that's the person who uploaded the information.

Q. All right. We will go document by document, then.

MR. ETRA: Put up Exhibit 112, please, in evidence.

MR. CAVALLO: 112?

MR. ETRA: Sorry. 20-16.

BY MR. ETRA:

Q. Okay. I call this a log. What do you call this document?

A. I think a log is fine. It's a log of data that was submitted to the online application portal.

Q. Okay. Does it have a place to show where the -- there's an online application that's filled out on March 11th. You testified about, correct?

A. Correct.

Q. Is that shown on this log?

A. The application?

Q. Yeah, of March 11th, on the portal.

A. So the application is not on this list. It would have been sent via DocuSign.

Q. We're talking about what happens on March 11th with the first online application. Are you saying that's sent in DocuSign?

A. It was signed via DocuSign -- the application was signed via DocuSign.

Q. When was it signed?
A. I'd have to look at the application.
Q. All right. Let's just focus on what's here, then. This shows that certain things happened on March 11th, correct?
A. Correct.
Q. The driver's license was uploaded, correct?
A. Correct.
Q. The document that says: "Owner HM-UP Development Alafaya, LLC Information PDF" was uploaded, correct?
A. Correct.
Q. The 940 was uploaded, correct?
A. Correct.
Q. The next document, which also has 940 and similar documents, was also uploaded, correct?
A. Correct.
Q. And the 2020 tax return was uploaded, correct?
A. Correct.
Q. And it's all done around -- well, not completely all around the same time, but all done on March 11th.
A. Correct.
Q. And you're testifying that Mr. Sheppard personally uploaded these?
A. Based -- I'm testifying based on the application we received.
Q. And when you say the application you received, you're

talking about the online portal or --
A. I'm testifying based off the SBA Form 2483.
Q. So when we get to that form, I want you to tell me where it says that Mr. Sheppard uploaded these documents. Will you do that when we get there?
A. I will review the form when you put it up, yes.
Q. Okay. Great.
And you don't have any IP address for what happened on March 11th, correct?
A. I do not have one.
Q. And same thing for the -- well, I'm -- maybe I'm using terms differently from you.
MR. ETRA: So let's just pull up Exhibit 22 -- 20-2. Excuse me.
BY MR. ETRA:
Q. What do you call this document?
A. This would be -- we can call it the application portal.
Q. Application portal. Okay. And this is filled out on the portal on March 11th, 2021, correct?
A. Correct.
Q. And I think you testified that this was -- that you know that Mr. Sheppard is the one who inputted this information. Is that your testimony?
MS. JIMENEZ: Objection. Misstates the testimony.
THE COURT: Overruled.

THE WITNESS: Can you repeat the question, please?

BY MR. ETRA:

Q. Your testimony is that you, David Toye, know that Mr. Sheppard sat at his computer and filled out this information on March 11th. Is that your testimony?

A. My testimony is all based on the 2483 that we received. So I'm assuming based off that form that that was completed by the person who signed and dated the application form.

Q. So you're making an assumption?

A. I'm making an assumption based on what's provided in the form, the 2483 application.

Q. Okay. Well, we'll get to the 2483 application.

Now I want to go through different parts of this portal application. Let's start with -- by the way, does this application -- this portal application say that it's being filled out by a person? In other words, does whoever is sitting at the computer say: "Oh. I'm filling it out, and my name is Bob Smith or Eric Sheppard or David Toye"?

A. The person whose name appears at the top of 2483 is generally the person who is filling out the form.

Q. I'm asking you if this --

A. Yes. So the person who is filling out the online application, their contact information is the one that's at the top of the 2483.

Q. Where does it show here -- where does it show in

Northeast's system that the person filling out the online application is told: "Who are you," and they put their name? Show me where that is. We can go through. You want -- should we thumb through this document for you?
A. Sure.
Q. So just tell us when you want us to turn the page.
A. You can turn the page.
There should be -- thank you. If you look at a 2483, there's contact information at the top of that form. And that's the person -- so I don't know exactly what tab this is on, but that's who was filling out this information in the borrower portal -- or the application portal. Sorry.
Q. Is there anything on this form that says -- is this -- this document we're looking at, is this the way the portal -- the questions appeared to the person filling it out?
A. This is how it appeared to the lender. This is the lender's portal.
Q. Oh. Does it -- do you have for us -- did you produce to us the prompts the way it appeared to the applicant when they filled out the online application?
A. I'd have to check and see what the documents we provided were.
Q. So you don't know whether the prompts that appear here appeared that way when whoever filled this out filled it out on March 11th?

A. It was all the same questions. Like, the loan eligibility -- these are all the same questions that the borrower would see, and this is just us seeing what their responses are.
Q. But did it have the same explanations and comments about how to answer the questions?
A. It should. I believe all those different circle eyes had -- you could hover over those and it would tell you -- if you had any questions, it would give you kind of some explanations.
Q. Do you know that for a fact that what we're looking at here by way of the questions was on the online application?
A. Yes.
Q. And that you hover over the circle eye and get information?
A. Yes.
Q. Well, this is a PDF. I can't hover over it. Do you know what's behind the eye?
A. Not off the top of my head.
Q. All right. I still want to go through this. And please tell me where it says that the person filling out the online form -- online application is asked: "Tell me who you are." So please, let's go through the whole thing at your pace.
A. It's not on this screen.
MR. ETRA: Go to the next.
THE WITNESS: It's not on this screen.

MR. ETRA: Next.

THE WITNESS: It's not on this screen.

MR. ETRA: Next.

THE WITNESS: Is there a contacts tab?

BY MR. ETRA:

Q. I only have what -- the Government produced to us what I assume that you produced to the Government. I only have this. I don't have anything else for this document.

A. If you scroll back up to the top.

(Pause in proceedings.)

THE WITNESS: So the best answer I have is at some point in the borrower application portal they would ask for contact information for who is filling out the application, and you would see that contact information at the top of the 2483.

BY MR. ETRA:

Q. So that is -- when you say -- I want to get the terms straight -- we're using the word "application" differently for different documents, right? You have a portal application we're looking at, right?

A. Correct.

Q. And you have the 2483 with the DocuSign at the end of -- towards the end of the process, correct?

A. Correct.

Q. So at some point they ask for the contact information for who is signing the 2483, correct?

A. The top of the 2483 asks for the contact information for who's filling out the document or who's filling out the application.

Q. Who's filling out the 2483, right?

A. Yes. And the 2483 is based on the information provided in the borrower -- the application portal.

Q. Right. The point is that you have -- and you need the contact information for the 2483 because you have to send the DocuSign to that person, right?

A. Yes.

Q. But this is not a DocuSigned document, the online application, right?

A. The online portal is not a DocuSign.

Q. Right. And it's certainly possible that the person who is filling out the online portal is different from the person who is given as the contact information and who DocuSigns the 2483. Isn't that fair to say?

A. It's possible that it's different.

Q. That it's what?

A. I said: "It's possible that it's different." But I would assume that it's one person doing both.

Q. Just because that's your assumption?

A. Because that's how most people do these, yes.

Q. Do you know that's how most people do these?

A. I reviewed hundreds and hundreds of these files, and just

based on my experience the names always matched up.
Q. And did you conclude that from reviewing this file, that Mr. Sheppard did the online application, just like he DocuSigned it? Is that part of your analysis?
A. I just assumed, based on the name at the top of the application, and the name on the top of the 2483, and the name on the bottom of the 2483, that it was the same person.
Q. Do you work with --
(Phone ringing.)
THE COURT: Thank you.
BY MR. ETRA:
Q. Is part of your job to work with the Government when they have a criminal investigation or prosecution?
A. When these things arise, I will comply with their requests, yes.
Q. I'm asking -- asking about you personally, not the bank. Are you personally involved as part of your job assisting the Government when they contact the bank about government investigations or criminal prosecutions?
A. If someone at the bank asks me to assist, I will.
Q. Have you assisted before this case?
A. Yes.
Q. Okay. And you're certainly assisting the Government now, correct?
A. We were subpoenaed. So we complied with the subpoena.

Q. And did you meet with the Government before you showed up today?
A. I think we had our regular trial prep sessions.
Q. I'm not characterizing them, but you prepared with the Government, right?
A. We had -- yes -- regular, you know, trial prep sessions.
Q. You didn't meet with us, right?
A. I did not meet with you.
Q. Did you conduct any kind of investigation to determine who filled out this online application?
A. We did not complete an investigation into who filled out the application.
Q. Okay. Let's look at the business --
MR. ETRA: Sorry. Let's go back to 20-2.
BY MR. ETRA:
Q. I want to focus in on -- how many times did you meet with the Government, whether in person or by Zoom or phone call?
A. I think we maybe had maybe a handful of meetings.
Q. Could you give a number for a handful? I don't want to -- that's kind of a vague term.
A. I would say no more than five.
Q. No more than five. Did you ever email with the Government?
A. Yes.
Q. Did you ever -- when you were meeting with the Government did -- did that involve one of the FBI agents, for example,

Special Agent Halleran?
A. She was copied on the emails, yes.
Q. And what about meetings with Special Agent Halleran attending any of those meetings?
A. She was on some of the calls, I believe. But I don't remember exactly which calls she was on and which ones she was not.
Q. Do you know if any notes were taken during those meetings?
A. I'm unsure.
Q. Okay. Let's talk about...
(Pause in proceedings.)
MR. ETRA: I'll continue, Your Honor, if I may.
BY MR. ETRA:
Q. It has -- the business legal name is HM-UP, right?
A. The business legal name is HM-UP Development Alafaya Trails, LLC.
Q. And was that an LLC?
A. That is what the name says.
Q. And it has the phone number that ends in 5529 as a business phone number, right?
A. Yes. Correct. 1(305)582-5529.
Q. And then it has an industry code. It says: "Industry", parenthesis, "NAICS code," and it has that on the prompt, right?
A. That is correct.

Q. And then what's written here is the number that starts with a two for construction. Can we say that?
A. Yes. The industry code listed is 236220, commercial and institutional building construction.
Q. Now, I'm focusing on this online application. I promise you we'll get to the 2483 later. Okay?
A. Okay.
Q. On this online application, where does it say that you have to use the code that's on the tax return?
A. The online application, I would imagine it would say it when you're applying --
MR. ETRA: Objection. Move to strike.
THE COURT: And the basis?
MR. ETRA: He says: "I imagine."
THE COURT: All right. Why don't you re-ask the question where the witness can testify based on his personal knowledge.
BY MR. ETRA:
Q. Do you know whether the online application says to whoever is filling it out to use the code -- the industry code that's on the tax return? Do you know, yes or no?
A. Off the top of my head, I don't know.
Q. Okay. I'm not asking you off the top of your head. I'm asking you as a witness in a criminal trial. Do you know or do you not know?

A. I do not know if it specifically said that on the application portal, but it does say that on the 2483.
Q. We'll get to the 2483. Okay. So I'm focusing on the application portal. Okay?
You testified that the program was not for passive businesses; is that correct?
A. That's correct.
Q. It doesn't say that on the online portal, does it?
A. It would say -- if you input your NAICS case code, that was an ineligible industry, it would say that you're not eligible.
Q. But just looking at the online portal where it asks you for industry, there's nothing on the online portal that says: "Oh, by the way, passive businesses aren't eligible," correct?
A. Based on what's shown here, it doesn't say that.
Q. And you also testified that it's not for a commercial landlord to collect rent, right?
A. Correct.
Q. Didn't say that on the prompt on the online portal, did it?
A. It would be the same thing here, where if you were to put in that NAICS code in the portal, it would say you're not eligible.
Q. Right. But just looking at the prompt, the prompt doesn't tell you, correct?
A. This prompt does not say that.
Q. Okay. You also said it's not available for risky

businesses. Did you say that?
A. I said speculative businesses.
Q. Speculative business. And where does it say that -- the prompt doesn't tell you -- let me start again, please.
Where in the prompt -- isn't it true the prompt doesn't say if you have a speculative business it doesn't apply to you? Right?
A. The prompt does not say that.
Q. And there's no definition of speculative business in any of these documents, correct?
A. The SBA issued --
Q. I'm asking you about these documents that were produced that we've -- you've talked about in your direct. There's no definition of speculative businesses in those documents, correct?
A. Yes.
Q. Okay. All businesses are speculative to some extent, right?
A. I think the SBA has a specific definition of what a speculative business is. And so it's -- you know, on a very broad brush, everything's speculative.
Q. Right. And it doesn't say any of that in the documents that were produced by Northeast, correct?
A. It doesn't say that this was a speculative business.
Q. Do you have any reason to believe that construction was not

the main business activity of HM-UP in March of 2021?
A. All I have to believe is what the borrower attested to and certified in their 2483. So they said that was their NAICS code, so that's what the bank believed.
Q. You don't know what they were doing, right?
A. I just know what's based on what they provided us.
Q. Do you know whether HM-UP had a $21 million construction loan during this time period?
A. I wouldn't know that information.
Q. You've been banking for quite some time, right?
A. Yes.
Q. And part of your banking involves non-government loans, right?
A. That's correct.
Q. Have you dealt with construction loans?
A. I have.
Q. Do you recognize that a $21 million construction loan --
MS. JIMENEZ: Objection. Outside the scope.
THE COURT: Sustained.
BY MR. ETRA:
Q. Do you know what the overall costs -- construction costs were for the --
MS. JIMENEZ: Objection. Same objection.
THE COURT: Sustained.

BY MR. ETRA:
Q. Let's go to "business legal structure." Do you see that?
A. Yes.
Q. And what did the applicant fill out?
A. "LLC."
Q. Which is limited liability corporation -- or company, I guess, right?
A. Yes.
Q. Okay. So here, the applicant is identifying itself as an LLC, right?
A. They have.
Q. Not as a partnership, correct?
A. Correct.
Q. I'm just curious. There's an eye here next -- like, an eye like in your head next to the next line. Do you know what that is?
A. I think if you press that button it would turn it -- it would hide the EIN.
Q. I see.
MR. ETRA: Let's go to "owner guarantee" -- "guarantor."
BY MR. ETRA:
Q. Here they ask for the owner information for HM-UP, right?
A. Correct.
Q. And that's where Mr. Sheppard's name appears?

A. Correct.
Q. This isn't asking who is filling out the application. It's asking who the owner is.
A. That is correct.
Q. Okay.
MR. ETRA: Let's keep going.
Next page, please.
BY MR. ETRA:
Q. Okay. The top part is the first round loan, right?
A. That's correct.
MR. ETRA: And let's go further down to the bottom. Let's go to "Number of Employees."
BY MR. ETRA:
Q. It says: "How many employees does your business have?" Do you see that?
A. I do.
Q. And the answer is 19?
A. Correct. It says: "19 employees."
Q. And at least here it doesn't necessarily -- it doesn't say: "Don't include independent contractors," right?
A. It doesn't say it on this prompt right now.
Q. Okay. And when you testified about this on direct, I think you said that on March 11th the ineligibility requirement was to have less than 20 employees. Did you say that?
A. Yes.

Q. And that was incorrect, wasn't it?
A. There was an -- what was incorrect?
MR. ETRA: Let's go to Exhibit 19-19 from PayPal, at Page 11501.
Let's blow that up.
It's not this one. Below that.
BY MR. ETRA:
Q. Okay. So this is an email from the PayPal system that's sent on March 2nd. Do you see that?
A. I do.
Q. Okay. And it's to the applicant. So we'll just say that's HM-UP, because that's what the evidence shows, okay?
MS. JIMENEZ: Your Honor, objection. No personal knowledge about this document.
THE COURT: Overruled.
BY MR. ETRA:
Q. And what the email says from PayPal to HM-UP is: "We're writing to provide you an update regarding your PPP loan application." Do you see that?
A. I do see that.
Q. And then it says: "On February 24, 2021, the SBA instituted a 14-day period ending on March 10th, 2021, during which it will only accept applications from business owners with fewer than 20 employees for review." Do you see that?
A. I see that line.

Q. Isn't it a fact that the period of time in which the SBA was only accepting applications for businesses with fewer than 20 employees was the period that ended on March 10th, 2021?
A. Based on this email.
Q. Okay. And you have no reason to dispute what's in this email, right?
A. I don't have any reason to dispute it. I would -- I think a better source document for this would be the SBA guidance on this.
Q. Well, how about you, sir? You came in here and testified that on March 11th that there was an eligibility requirement of fewer than 20 employees. Do you know that that's the case or are you not sure exactly if that's the case?
A. I know that -- so if this email is accurate, there was a 14-day window where they made it very clear to focus on small businesses. So that was really apparent for lenders, and then also was eye-opening for borrowers. The borrowers knew that this was their window to get in -- for smaller borrowers.
So there was a window, and it was, you know, publicized so that borrowers would know that they had kind of a shot to get in, and we were trying to process them as fast as we could.
Q. Let me re-ask the question. When you testified that on March 11th, when the online portal application came in, there was an eligibility requirement that the company had to have

fewer than 20 employees, you were not really sure about that, correct?

A. I thought that that was when the window was open.

Q. And now are you certain that that's when the window was open?

A. Well, this is an email, not an SBA guidance. So I would defer to SBA guidance.

Q. I don't want to argue with you. I just want to know where you stand based on your knowledge, what you came to testify about, and seeing this email. What is your testimony about whether on March 11th there was an eligibility requirement of having fewer than 20 employees? What is your testimony on that?

A. So the borrower would still be eligible. So I mean, they still had an eligible number of employees, whether it be 20 or less, or the larger guideline, which I think it was either 200 or 300. So they would have been eligible either way. There was a short-term application portal for small borrowers, and they took advantage of that. We tried to prioritize these.

Q. Okay. Can I ask you not to speculate about who took advantage of what and what you probably tried to do.

MS. JIMENEZ: Objection.

MR. ETRA: It's cross-examination.

MS. JIMENEZ: Commenting on the answer.

THE COURT: There's no need to give the witness instruction. Let's ask the next question.

MR. ETRA: Let me try to wrap this up.

BY MR. ETRA:

Q. There was a 14-day period where the SBA prioritized companies with fewer than 20 employees, correct?

A. That's correct.

Q. And even when they prioritized employees with fewer than 20 employees, you could still be eligible with more employees, right?

A. You could be eligible, but you wouldn't receive a loan number during that time frame.

Q. And your testimony is that -- the 14-day period -- I just want to know where you come out on this. Was that in effect on March 11th or not?

A. So based on this email, the 14-day period ended on March 10th.

Q. And do you have any reason to believe that's wrong?

A. I just -- I would always go back to the SBA guidelines. I just don't -- I don't know anything about this email. I've never seen it before today.

Q. Right. But you're here as a witness and I want to know what you know. Do you know whether --

MS. JIMENEZ: Objection. He's been asked the same question.

THE COURT: Overruled at this point.

MS. JIMENEZ: Asked and answered.

BY MR. ETRA:

Q. You're the witness. Maybe I'll find an SBA regulation this morning, maybe I won't. I'm asking you: From your knowledge, is it your testimony that the 14-day period was in effect on March 11th? Is that your testimony? Yes or no?

A. Based on this email, it wasn't.

MR. ETRA: Let's go back to the online portal application, 20-2.

Let's go to the next page, please.

This has the revenue reduction, and we'll talk about that more with the 2483.

Let's go to the next part of the document.

BY MR. ETRA:

Q. Now, this is the total payroll as represented by whoever is filling out the applicant -- and it's for the year 2020, right?

A. That's correct.

Q. And this includes, as indicated, not just the dollars of payroll checks, say, but also benefits like insurance, right?

A. Insurance for employees.

Q. Right. Okay. The total amount is 712,310 on this application, right?

A. That's correct.

MR. ETRA: Let's go to the next page.

BY MR. ETRA:
Q. Now, here it says: "Number of employees as of February 15, 2020," right?
A. That's correct.
Q. Why is it asking how many as of February 15, 2020?
A. That was the deadline set by the SBA for the program.
Q. So when the -- when they asked how many employees earlier, is that supposed to be also as of February 15th, 2020?
A. Yes.
Q. Oh, okay.
MR. ETRA: So let's -- so let's go back to that, then, where it says: "Number of Employees" on the second page of the document towards the bottom.
BY MR. ETRA:
Q. Where it says: "How many employees does your business have," you're saying the portal is telling the person to say -- to answer the question as of February 15th, 2020?
A. On this particular question, it doesn't say that in the document that's shown. I would assume, based off the little eye bubble, the eye circle, that if you hovered over that it would tell you that you had to -- that the date was as of February 15th.
Q. That's an assumption you're making?
A. I'm assuming based on this document, yes.
Q. And we're not able to see what's in the eye bubble here

today, right?
A. That's correct.
Q. All right.
MR. ETRA: Let's go to -- let's go where we left -- let's go to the third-to-last page, 11 -- sorry -- 242, PDF 242.
Sorry. Two more pages up. Keep going, please.
BY MR. ETRA:
Q. Okay. It says: "Number of Employees," and then there's a spot to say some of these employees are contractors/file Form 1099, right?
A. It does say that.
Q. Why does it say that?
A. I think if you were to check that box, it would ask you a different question.
Q. Right. So let's focus on the big picture here. Under the SBA rules, payments to 1099ed workers are not -- do not count for payroll, right?
A. For the triple P program, businesses with -- they were allowed to apply for W-2 workers but were not allowed to apply for 1099s. 1099s would apply by themselves.
Q. Here -- this is an ACAP form or a Northeast form?
A. This is the application portal.
Q. Who put this together, ACAP or Northeast?
A. It was a combined effort.

Q. Okay. So here, between ACAP and Northeast, by March of 2021, realize that some people who were filling in number of employees may think of independent contractors as employees, right?
A. I mean, I think this was a standard question so we could try and filter out businesses that were -- that included 1099s.
Q. Right. "Some of these employees are contractors/file Form 1099." That's what it says here, right?
A. That's what this says.
Q. Right. And technically an employee is a W-2, right?
A. Yes.
Q. But it says some employees may file 1099. You see how it's written?
A. I see how it's written.
Q. And that's because ACAP or Northeast recognized certainly by this date that the term "employees" can be confusing and some people might think it includes 1099ed workers, right?
A. Correct.
Q. That's what you're specifically saying here: "Okay. If you consider some of your employees" -- "if you have 1099ed workers you consider your employees, you better check this box," right?
A. Correct.
Q. Okay. That explanation is not in the 2484 -- 2483, is it?
A. There is an explanation in the 2483 about independent

contractors, I believe.

Q. But there's nowhere in the 2483 DocuSigned application where it says: "Don't include 1099ed workers as employees," correct?

A. I'd have to double-check the language.

Q. We'll get there. We'll get there.

MR. ETRA: Okay. Let's go further down.

BY MR. ETRA:

Q. You have "Average Monthly Payroll," right?

A. Correct.

Q. And some people could think of payroll as including money spent on independent contractors, right?

A. Some people may, but that formula does tell you to subtract it out.

Q. Exactly. By this time, Northeast or ACAP give a specific formula that tells you to subtract -- says "minus," right? "Minus payroll for 1099," right?

A. Correct.

Q. And that's written because some owners may consider payroll to include 1099ed workers, right?

A. Correct.

Q. Because -- right. Okay. So that's here to make it clear to whoever is filling out the online application don't include payroll for 1099 in your average monthly payroll, right?

A. Correct.

Q. But that is not -- that clarification is not in the 2483 application that is DocuSigned, correct?
A. I'm sure we'll talk about that when we get to the 2483.
Q. Any concern at your company that -- let me take a step back.
You recognize small business owners may have more than one person working there?
A. What was the question?
Q. Did Northeast understand that small business owners may have more than one person working at a small business?
A. Yes.
Q. Did Northeast understand that small business owners may have people doing payroll or back-office work?
A. Yes.
Q. Or may be a mid-level executive that helped out on things, right?
A. Sure.
Q. What steps did Northeast take to make sure that the person filling out the online portal application was the same person filling out the 2483?
A. The bank wasn't responsible for that. That was outside of our purview. The application -- it was all on the certifications.
Q. Fair. So Northeast didn't know whether the same person filling out the online -- whether the person filling out the

online portal with these explanations was the same person who was DocuSigning the 2483? Northeast did not know that, correct?

A. Correct.

MR. ETRA: Let's go back to the I-12 -- sorry -- 20-16, the log.

BY MR. ETRA:

Q. All right. So I want to go through the documents that were uploaded on March 11th. Okay?

A. Okay.

Q. That's why I'm showing this to you. We can go back to it later, if you want. The first one is the driver's license. That's 20-6.

MR. ETRA: Pull that up, please.

BY MR. ETRA:

Q. What IP address was this uploaded from?

A. I don't know if we have that record.

Q. What human being uploaded it?

A. We don't specifically know. We just know who completed the 2483.

Q. So you don't know, correct?

A. I know who completed the 2483.

MR. ETRA: Let's go to the next document. Oh. Sorry. This is a document that I think was not put in evidence by the Government, but it's from the production. We have it as K-9.

It's the Sunbiz records.

MS. JIMENEZ: It's in evidence.

THE COURT: All right. In evidence as what exhibit?

MS. JIMENEZ: It should be Composite -- it's part of the Composite 20 or 20-1.

THE COURT: All right.

(Pause in proceedings.)

MR. ETRA: May I proceed?

THE COURT: Of course.

MR. ETRA: I'm sorry. I was waiting.

BY MR. ETRA:

Q. Sir, do you have the document on the screen?

A. I do.

Q. Okay. And do you recognize it to be a -- take a step back -- let me take a step back.

From your experience, do you know that companies -- that companies get organized under state law? Right?

A. Correct.

Q. And if you want to find out some information -- and people who start a company have to file documents with the Secretary of State of each state. You know that from your experience, right?

A. Yes.

Q. Do you understand that this is a printout from the Florida version of that process called Sunbiz?

A. Yes.
Q. Okay. And what this says is -- you recognize this comes from a State website, right?
A. Correct.
Q. Okay. And this was uploaded -- this is one of the documents that was uploaded on March 11th, correct?
A. Yes.
Q. Okay. And it indicates that the entity name is HM-UP Development Alafaya Trails, LLC, right?
A. Yes.
Q. Okay. And it indicates that the -- and the top line indicates that it's a foreign limited liability company reinstatement.
MR. ETRA: Okay. Fair enough.
Let's continue.
Let's go to the next document that was uploaded, which is Exhibit 20-8.
MR. CAVALLO: 20-8?
MR. ETRA: Yeah.
BY MR. ETRA:
Q. Was this document, the 940 for the year 2020 -- was this uploaded also on March 11th?
A. Yes.
Q. And do you know -- you don't know what role --
MR. ETRA: And let's go to the second page with the

signature.

BY MR. ETRA:

Q. You didn't watch this document being signed, right?

A. I did not watch this document being signed.

Q. So you don't know if, in fact, it was signed by Mr. Eric Sheppard, right?

A. Correct.

Q. And if it was signed by him, you don't know what information he was given about it, correct?

A. I only know what it says on this document.

Q. Right. And you know sometimes small business owners, or large business owners, rely on back-office and payroll people for those kind of functions, right?

MS. JIMENEZ: Objection. Calls for speculation. The witness doesn't know.

THE COURT: Sustained.

BY MR. ETRA:

Q. Isn't it a fact that Mr. Sheppard did not upload this document on March 11th?

A. I -- we just know that it was uploaded, and we know who signed and dated the 2483.

Q. And you know who signed and dated the 2483. Is that what you said?

A. That's what I said.

Q. Okay. Nothing else?

A. Correct.
Q. Okay.
MR. ETRA: Let's go to the next -- let's go to -- 20-9 I think is the next document.
BY MR. ETRA:
Q. This is the document on the log that has the funny name on it that just has "311" on it, right?
A. This is the IRS Form 941 for 2020.
Q. Okay. But this was --
MR. ETRA: Let's go back to the log for the moment.
BY MR. ETRA:
Q. You see the fourth line has --
A. Correct.
Q. It's got a date essentially of March 11th, and got some other code on it. Do you see that?
A. I see that.
MR. ETRA: Let's go now back to 20-9.
BY MR. ETRA:
Q. Exhibit 20-9 is that entry there, correct?
A. Correct.
Q. Okay. That's all I wanted to know.
MR. ETRA: We can put the log down.
And going to the signature line.
BY MR. ETRA:
Q. Okay. Same question. You don't know who signed it or

under what circumstances, correct?
A. I did not witness the signature. All I know is what's on this document.
Q. Okay.
MR. ETRA: And let me just go back to the first page of this document.
BY MR. ETRA:
Q. This is supposed to be a 941 for 2020, correct?
A. Correct.
Q. It's a quarterly form, right?
A. Correct.
Q. And you only got one quarterly form, right?
A. Wasn't there -- do we have all four?
Q. So --
A. We got the 940. So that would cover all four quarters anyway.
Q. Right. So the 940, that covers -- 940 is an annual form, right?
A. Correct.
Q. And what's what you relied on to verify the payroll amount, right?
A. Yes. We relied on the 940.
Q. Right. That's all I wanted to show. So the 941 -- and the records show there was only one quarterly report filed. Do you know that?

A. I just know what's in this document.
Q. Okay. It doesn't seem to serve a purpose to file just one quarterly report, right, in the context of the PPP loan?
A. Well, I don't -- I would assume that the 940 would add up to whatever you report on the four 941s.
Q. Right. But here the evidence is only one quarterly report was put in for the first quarter of 2020, which I'm showing that to you.
A. Okay.
Q. If they disagree, they can ask you on redirect. Okay?
A. Okay.
Q. If that's true, what I'm saying, based on the evidence, the quarterly report here doesn't really serve any purpose because it only covers one quarter, right?
A. That's correct. If we had a 940, we would just look at the 940. It's better to look at one document than four.
Q. And you did have a 940, and that's what you relied on for payroll, right?
A. Correct.
Q. Okay. And this is supposed to cover the first three months of 2020, right?
A. That's what this document says.
Q. And you know from your experience in this world that if it covers the first three months it can only be executed after the three-month period is over, correct?

A. That would make sense.
Q. Okay. Let's look at the signature block. What's the date that this is supposedly signed?
A. March 17, 2020.
Q. That doesn't really comport with common sense, right?
A. I guess the only explanation would be that if they didn't have it or had all their payroll by that period. But you would expect it to be after March 31st.
Q. Right. You would expect it to be after. Right? It's odd. Could we call it that?
A. Sure.
Q. Okay. And then the next page has the RT-6, correct?
MR. CAVALLO: That's at 20-10.
BY MR. ETRA:
Q. All right. So Exhibit 20-10 is the RT-6. That was also submitted on March 11th, correct?
A. Correct.
Q. Okay. And there's no signature here, right?
A. I do not see a signature.
MR. ETRA: Let's go to the tax returns.
BY MR. ETRA:
Q. This was also submitted -- uploaded to the portal on March 11th, 2021, correct?
A. Correct.
Q. And Mr. Sheppard did not upload this document, correct?

A. We know who signed the -- who signed the 2483.
Q. Right. So you don't know who uploaded this document?
A. Correct.
Q. Okay. Fair enough.
And generally tax returns for entities are due -- at least the earliest date is March 15 of the following year, correct?
A. Yes. That would be the initial way you could file. But most businesses -- yeah. If someone's going to file, like that would be the earliest, right.
Q. Right.
A. Or they might file for an extension.
Q. Right. But oftentimes companies get extensions and it gets filed later, right?
A. Correct. Yes.
Q. Okay. Here the dates that are supposedly of those supposed signatures are on February of 2021 for a 2020 return. Do you see that?
A. I see that. Yes.
Q. Also a little odd, right, to have signatures that early?
A. It is. I believe there was a reg that said if you don't have your tax return yet, you can fill it out and sign it. And so the tax returns are apples to apples, right? So it's easier to review a tax return. So people might have filled out a tax return, and provided that and signed it as their kind of

reporting of their financial results.
Q. Let me take a step back. You talked about -- you said that for Northeast if a tax return was going to be submitted it had to be signed, correct?
A. Yes. That's what the SBA regulation said.
Q. Signed by the borrower, correct?
A. Yes. Signed by -- yes.
Q. Sorry. Signed by the taxpayer.
A. Sure.
Q. There's no requirement at Northeast for any information from a tax preparer in order to accept a tax return, correct?
A. I think the only -- it was just that it needed to be signed.
Q. Signed -- I want to make sure I understand what you're saying. The only thing it had to be signed, you mean --
A. By the borrower.
Q. By the borrower -- the taxpayer, right?
A. Correct.
Q. It doesn't have to be signed by a tax preparer, correct?
A. Correct.
Q. Doesn't have to be prepared by a tax preparer?
A. Correct.
Q. And it doesn't -- and even if it was prepared by a tax preparer, it could be a copy. It doesn't have to have his name on it -- or her name on it, correct?

A. Correct.
Q. Okay. There's nothing about any tax preparer information that was necessary or important for the approval process of the PPP loan, correct?
A. The specific tax return?
Q. Let me -- I'm sorry. I don't want to cut you off. Are you asking me?
A. Can you clarify or re-ask the question?
Q. Sure. You've been answering about what the policy was at Northeast about tax returns, correct?
A. Correct.
Q. So let's stick to policy. Okay?
A. Okay.
Q. There was no policy to require tax preparer information on a tax return, correct?
A. Correct.
Q. And there are several reasons for that, right?
A. Sure. They may not have filed it. The borrower may have self-prepared. There's all kinds of -- yeah.
Q. Or it could be a copy and it doesn't have the preparer's name on it, correct?
A. Sure.
Q. Okay. I mean, you recognized you weren't getting originals. You're not the IRS. You get copies, right?
A. Yes.

Q. Okay. I want to dig into the issue of tax returns that you talked about and whether these were part of the approval process or not, leaving aside the tax preparer information, okay?

Is there any document in this file that indicates that this tax return, this 2020 purported tax return -- that this was relevant or used in the approval process?

A. So for loans under $150,000, the borrower wasn't required to provide their tax return or their revenue analysis up front, but they could provide it.

Q. Is that your answer? I don't know if you were done.

A. Yes. That's my answer.

Q. I'm going to ask the same question again. There's nothing in the documentation provided by Northeast or from ACAP that you have in your files that indicate that this tax return was relied upon in the approval process; is that correct?

A. That's correct.

Q. You personally weren't involved in this approval process, correct?

A. I did not approve this loan.

Q. All you have is the documents to determine what was relied upon, correct?

A. Yes.

Q. And they don't say that they relied upon the tax return, correct?

A. They don't say they relied upon the business tax return.
Q. Let's talk about the year-to-year comparison that we've talked about on and off of revenue -- revenue -- loss of revenue year to year. Right?
A. Okay.
Q. Okay. I think your testimony when you looked at the documents is that, certainly by this period, if the loan is for $150,000 or less, the borrower does not have to substantiate the loss in revenue, correct?
A. Correct. They put it on the application, the 2483, and we're allowed to rely on that certification and that information.
Q. Right. So the bank did not require that HM-UP substantiate the loss in revenue between 2019 and 2020, correct?
A. Correct. For that loan size, they weren't required to provide documentation.
Q. So the bank did not require the submission of tax returns, 2019 versus 2020, in order to substantiate? The bank did not require that, right?
A. We didn't require it up front. But yes --
Q. I want to know what "up front". Let's talk about up front.
A. Up front, when you apply, versus forgiveness. So I think for loans under 150,000 you could supply that information any time up to forgiveness.
Q. HM-UP did not apply for forgiveness for this loan, correct?

A. That's correct.
Q. You're here to testify about what happened for the approval of the actual loan, not forgiveness, right?
A. Correct.
Q. And for the approval of the loan, Northeast did not require any business tax returns to substantiate the loss in revenue, correct?
A. That's correct.
Q. In fact, you didn't even have the 2019 tax returns to be able to compare to anything, right?
A. That's correct.
Q. I want to talk about this business about partnerships and LLCs, and see if I can go in the deep end of the ocean with you.
MR. ETRA: Let's look at the 2483 application DocuSigned, the final version. That should be Exhibit 20-14.
Let's go to Page 31390.
BY MR. ETRA:
Q. Do you recognize the page in front of you? I'm happy to show you, sir, any pages if you would like.
A. Yes. I recognize it.
Q. Okay. Great. And you were asked about the -- some of the text on this page in direct, correct?
A. Correct.
Q. All right. Let's focus on the term "For purposes" -- the

paragraph "For purposes of calculating Average Monthly Payroll."

So the paragraph -- the sentence we're going to get to about partnerships is about calculating the average monthly payroll, right?

A. Correct.

Q. Okay. And you could use 2019 or 2020, right?

A. Correct.

Q. And this is for the second round, correct?

A. Yes.

Q. So there's some double counting that's built into the system potentially, correct?

A. (No verbal response.)

Q. Let me rephrase that. Even under the PPP rules, you can get a first round loan for -- based on 2019 payroll data?

A. Yes.

Q. And a second round loan based on the same 2019 payroll data, correct?

A. Correct.

Q. That's what I meant by double counting.

A. Okay. Yes. That's true.

Q. But you were right not to answer it the way I asked.

MR. ETRA: All right. Now, let's go to the middle of the paragraph, where it says: "For farmers and ranchers."

BY MR. ETRA:

Q. Starting here --

MR. ETRA: Well, actually, we should go to the previous sentence: "For new businesses."

BY MR. ETRA:

Q. So here, the SBA is providing specific rules for certain types of businesses, right?

A. Yes.

Q. In other words, the first part of the paragraph is generally how to calculate average monthly payroll, and then they've got specific rules for specific businesses. Do you see that?

A. Yes.

Q. So the first one is for businesses without 12 months of payroll, right?

A. Correct.

Q. And then the next sentence is: "For farmers and ranchers," right?

A. Correct.

Q. And the next sentence is: "For applicants that file IRS Form 1040, Schedule C," correct?

A. Correct.

Q. That's like a self-employed person, right?

A. Yes. Sole prop.

Q. The last sentence is the one that we've talked about on

direct and I want to focus on, which is: "For applicants that are partnerships." Do you see that?
A. Yes.
Q. Now, your testimony is that this applies -- this applied to the HM-UP loan. Is that your testimony?
A. So my testimony was that the tax return was for a partnership. So it was a partnership tax return.
Q. Is your testimony that this sentence applied to the HM-UP loan? Yes or no?
A. So I would assume based off of the tax return that they would have claimed this as a partnership versus an LLC.
Q. When you said: "They would have claimed this as," what does that mean?
A. So I always think the tax return should match the application. So if I was a borrower filling this out, I would make sure that my tax return matched the application.
Q. We agree that the applicant identified itself as an LLC, correct?
A. Correct.
Q. We agree it provided Sunbiz records about being an LLC, correct?
A. Yes.
Q. Okay. So you would assume -- are you saying that you would assume a borrower, if they filed a 1065, should have self-identified as a partnership? Is that your testimony?

A. Yes. Because if you were a partnership, then you would have extra items that you could include in your calculation.

Q. Oh. It would be helpful. Okay.

MR. ETRA: Let's go to the first page of the --

BY MR. ETRA:

Q. Actually, before we leave this, even for partnerships, they're not saying -- this isn't saying you need the entire tax return, right?

A. So you wouldn't -- you wouldn't use -- it doesn't say that. It says the K-1s, and then you would go to kind of your other payroll documentations. The tax returns were primarily for revenue declines.

Q. So even if the company had self-identified as a partnership, the only thing you would need is the K-1 portion of a tax return, correct?

A. Correct. To calculate payroll costs, average payroll costs.

Q. And the K-1 portion of the tax return, which, believe it or not, this jury has seen many examples of, doesn't have a place for the tax preparer on it, correct?

A. I'd have to look at it, but I don't think there's a signature on the K-1.

THE COURT: Mr. Etra, let me know when it might be a good time to give the jurors a break.

MR. ETRA: Maybe three questions.

THE COURT: All right.

BY MR. ETRA:

Q. And certainly there's no --

MR. ETRA: Your Honor, we could just pick up after this. I don't --

THE COURT: All right. Ladies and Gentlemen, let's take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 10:32 a.m.)

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

(Recess from 10:32 a.m. to 10:44 a.m.)

THE COURT: All right. Welcome back.

Are we ready to continue?

MR. ETRA: Yes, Your Honor.

MS. JIMENEZ: Yes, Your Honor.

THE COURT: See if they are ready.

Thank you.

COURT SECURITY OFFICER: Remain standing for the jury, please.

(Before the Jury, 10:45 a.m.)

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

Please be seated, everyone.

And we'll continue with the cross-examination.

MR. ETRA: Put the application back up where we left off.

BY MR. ETRA:

Q. Mr. Toye, we're putting the instructions on average monthly payroll back up where we left off. Do you see that?

A. I see it.

Q. And again, it says: "For applicants that are partnerships," right?

A. Correct.

MR. ETRA: Let's go to the first page of the 2483 for this document.

BY MR. ETRA:

Q. On the very top upper left-hand corner, which item -- which item is checked? Is it "LLC" or "partnership"?

A. The borrower checked "LLC."

Q. Actually, not only -- actually, this -- this 2483 Form was filled in -- logistically physically filled in by ACAP or Northeast; isn't that right?

A. It was filled in via answers the borrower put into the application portal.

Q. Right. Okay. But this document was generated by some combination of ACAP and Northeast, based on information provided in the portal, right?

A. Based on information provided by the borrower.

Q. And it shows that the company was an LLC, not a

partnership, right?
A. That's what this document says.
Q. And that's why that sentence doesn't apply, correct?
A. Yes. So if the borrower were to identify it as an LLC, we would treat them as an LLC.
Q. And further, we can go to the verifier document, which is 20-3.
MR. ETRA: We need the Excel version.
(Pause in proceedings.)
BY MR. ETRA:
Q. Do you recognize the document part of the screen?
A. I recognize this Excel spreadsheet, yes.
Q. And this is a spreadsheet that's maintained by ACAP or Northeast or both?
A. It was the joint effort between ACAP and Northeast Bank.
Q. Okay. And this is sort of keeping track of the diligence and checking the boxes?
A. Yeah. This is how the -- how -- ACAP and the bank completed our review of each application using this spreadsheet.
Q. So if we want to know how, in fact, ACAP and the bank treated this application, and what they relied on in the analysis, this is a good place to look, right?
A. Correct.
Q. Okay. And what is listed for business legal structure?

A. So it's listed as an LLC.
Q. Right. Okay. And that is how it was -- that's how ACAP and Northeast -- that's how their records showed -- your records -- sorry. Let me start again.
And therefore, in all the records of Northeast and ACAP, HM-UP is an LLC, not a partnership, correct?
A. So this is all based off of information pulled from the portal. So if it was put in as an LLC, it was treated as an LLC throughout the process.
Q. Fair enough. Fair enough. And if we go to the -- there are a bunch of tabs -- there's some tabs at the bottom. Do you see that?
A. I see that.
Q. And the prosecutor showed you the Partnership tab. Let's click -- do you remember doing that with the prosecutor?
A. I remember.
Q. When you press on the Partnership tab, what do you see in the top right-hand corner?
A. It says: "You are in the wrong tab."
Q. What does that mean?
A. That means that you should not be working on this tab.
Q. And if we just go down a little further, the prosecutor nevertheless went over this tab with you, correct?
A. They did.
Q. If we go down a little further, under "Calculator

Underwriter," on the fourth line it says: "Enter amount from 2019 or 2020 K-1," and it's got more words in there. Do you see that?
A. I see that.
Q. That actually wasn't done by ACAP or Northeast because it wasn't treated -- the company wasn't treated as a partnership, correct?
A. That's correct. We relied on what the borrower put into the application for their business structure, and we underwrote it based on that.
Q. Okay. And then at the very bottom of this page -- let's see what it says at the very, very bottom -- it says: "Loan review fail." Do you see that?
A. Yep.
Q. And why does it say: "Loan review fail"?
A. Because you're in the wrong tab. So all the questions would have to be checked yes for it to pass.
Q. And it says: "Action. Wrong tab. Return to verifier," right?
A. Correct.
MR. ETRA: So let's return to the verifier page. Now let's go to the Corporation tab at the bottom.
Let's go to the very top.
BY MR. ETRA:
Q. What does it say there?

A. It says: "You are in the correct tab."

MR. ETRA: And let's go to the very, very bottom of it.

BY MR. ETRA:

Q. What does it say about loan review?

A. It says the action was to approve the loan.

Q. And -- very good. And it passed the loan review, right?

A. Correct.

Q. This shows that in reality ACAP and Northeast treated this as an LLC, correct?

A. We treated it based on how the borrower classified it in the application, yes.

Q. As an LLC, right?

A. As an LLC.

Q. Fair enough. And there's nothing in this tab -- I can go through it with you -- which analyzes or considers any part of the 1065 Form, correct?

A. Correct. Our job was to do a good-faith review in a reasonable amount of time. And one of the prongs on that was basically just to confirm the loan amount. So the borrower asked for one loan amount. They gave us a 940. We plugged that information in, it confirmed the loan amount, and so that's what we did.

Q. And like you said, the loan amount was based on payroll. And payroll you verified based on the 940 Form, correct?

A. Yes. We verified payroll based on the 940.

MR. ETRA: Let's go to the main page of this Excel spreadsheet, please.

BY MR. ETRA:

Q. If we go a little further down on this page, there's a line that says: "For LLCs only, select document provided by applicant." Do you see that?

A. Yes.

MR. ETRA: And let's click -- let's click the arrow there.

BY MR. ETRA:

Q. And this shows the kind of documents that potentially a borrower who is an LLC could provide, right?

A. Yes. I think this drop-down -- if I'm -- depending on -- this was like -- so you were to put in a special -- it would tell you what tab to use. So these are all the different types of payroll-supporting documentation --

Q. Okay.

MR. ETRA: All right. Let's go to...

(Pause in proceedings.)

BY MR. ETRA:

Q. Showing you Exhibit 20-5 -- 20-5. Do you recall going over this with the prosecutor on your direct?

A. Yes. This is a listing of all the documents that were uploaded to the application portal by the borrower for the bank or the lender to review.

Q. Well, hang on a second.

MR. ETRA: Don't move anymore, please.

BY MR. ETRA:

Q. Just reading what this document says, it says: "Optional based on your eligibility amount of 148,000." Do you see that?

A. It does say: "Optional based on" -- yes.

Q. And it says -- but you recommend providing the documents for faster processing, right?

A. That's what this says.

Q. Okay. And if you go further down to the bottom, one option that's optional is the 2019 tax returns, right?

A. Correct.

Q. Optional, not required?

A. Correct.

Q. But this form here -- it says that, in fact, the 2020 were provided, right?

A. Correct.

Q. But in terms of the template from ACAP and Northeast, the list of optional documents only included one type of business -- one kind of business return, and that was 2019, right?

A. So I think those items that you showed in the drop-down were specific to verifying payroll.

Q. Right. So -- fair enough. Let's move past that.

This page, the part in the dark bold lettering is from the portal, right?
A. That's correct.
Q. And the part in the lighter lettering just shows what documents were submitted, correct?
A. Correct.
Q. So with respect to tax returns that were even optional to consider, the portal showed that the only kind of tax return that was even considered optional was a 2019 tax return, right?
A. That's what this shows.
Q. It doesn't show even a suggestion of an optional for 2020 returns, right?
A. Correct.
MR. ETRA: Take that down.
BY MR. ETRA:
Q. I want to go through the emails that you went through.
MR. ETRA: Go to the email that's at -- the last email, which is the earliest in time email.
BY MR. ETRA:
Q. Okay. Do you see that, sir?
A. I do.
Q. Now, we talked about the -- the actual application -- the 2483 that was operative was on -- was dated March 17th, correct?
A. So yes, there was two 2483s that were signed and dated.

Q. But the one that counted, from your perspective, was the March 17. That's the one that was the operative one, right?
A. Yes.
Q. Okay. But there was also one on March 12, right?
A. Correct.
Q. And I believe -- I didn't read the transcript, but I believe your testimony was you did an earlier version to -- so that the borrower can have an extra chance to review the information and make sure the information in the application was correct. That was your testimony?
A. It was.
Q. That is not what this -- that is not what ACAP told the applicant, correct?
A. (No verbal response.)
Q. Let's go through it. This is a March 12 email from Bria Boyd. Do you know which company she works for?
A. She works for ACAP.
Q. Okay. To Eric Sheppard at his Gmail email. Do you see that?
A. Yes.
Q. And the second paragraph says: "I have just sent you the SBA PPP loan application form for eSignature. Please note we are requesting your eSignature at this stage as a test to walk through the eSignature process and ensure we have the correct email on file." Do you see that?

A. I see that.
Q. In fact, that was -- and that was what ACAP told Mr. Sheppard at that email address, correct?
A. That's what this email says, yes.
Q. That it's just to make sure you know how to use the DocuSign, right?
A. That's what it says.
Q. Nothing here says: "Oh, please take a look at the information now. We want to make sure we're accurate. Doesn't say that in this email," does it?
A. It doesn't say that in this email.
Q. Doesn't say that in any other email, correct?
A. Correct. If I was signing a document I would make sure that the information was accurate, though, before I signed it.
Q. Thank you for that.
He's literally being told: "Just to check the DocuSign," correct?
A. It says: "Test to walk through the eSignature process and make sure we have the correct email address on file."
Q. And it's the day after the information is first uploaded, correct?
A. Correct.
Q. It's not saying: "This is going to be your final information," correct?
A. Correct.

MR. ETRA: Let's go to the next -- and -- okay. Let's go to the next email on the way up.
BY MR. ETRA:
Q. Okay. Now Ms. Boyd writes to Mr. Sheppard on a different issue. Do you see that?
A. I do.
Q. Okay. And what she writes is -- this is on March 12th at 1:47 p.m. Do you see that?
A. Yes.
Q. Just curious. You're on the East Coast. We're on the East Coast here. Is it your understanding these are East Coast times or do you not know?
A. I'm not sure. They could be Central. ACAP is based in Chicago.
Q. It says: "We are reviewing your PPP loan application and noted the routing number and/or account number you provided with your application does not agree to the fields in the canceled check image." Did I read that correct?
A. You did.
Q. Correctly.
Now, what that means is that, by this point, someone had uploaded an account number into -- a bank account number into the portal, right?
A. That's correct.
Q. And someone had provided some kind of a canceled check,

correct?
A. Correct.
Q. And whoever was doing that didn't actually get the account number correct, right? It didn't match the canceled check.
A. Correct.
Q. And was that done on March 12th?
A. The review?
Q. No. The uploading of the wrong check.
A. I'd have to double-check with the track, the log, but I would assume that it was done on the 12th.
Q. Okay. And let's just finish up these emails quickly.
MR. ETRA: Go to the next email.
BY MR. ETRA:
Q. And there's a second email from Ms. Boyd before there's a response from the Eric Sheppard Gmail account, right?
A. Yes.
Q. Just to follow up because there's no response, correct?
A. Correct.
Q. Okay. And then from the Eric Sheppard email account, it says: "Okay. I'll provide the bank statement and voided check to the portal," correct?
A. Correct.
Q. You testified that the importance of the bank statement and voided check was to show that it's a legitimate company. Did you testify to something along those lines on direct?

A. I testified that we used that information to know where we were sending the money.
Q. Okay. Was part of the issue to -- do you know what KYC is in your field?
A. I do.
Q. What is KYC?
A. Know Your Customer.
Q. Was part of the reason to get a bank statement and voided check to make sure -- as a way of -- it's like a verification it's a real company because you have to be a real company to get a bank account?
A. That's correct.
Q. Okay.
MR. ETRA: All right. Let's go to the next email up.
BY MR. ETRA:
Q. And then on March 13 is when your -- ACAP writes that they basically opened up access to the portal for the new information, right?
A. Yes.
Q. Okay. Let's go now to the log. We can try to figure out what happened on what day.
So this shows that on March 12th there was one or more voided checks submitted and a SunTrust statement from November-December of 2020; is that right?
A. Correct.

Q. And presumably that was the information that didn't match, right?
A. Correct.
Q. Okay. By the way, I've not seen in your production the bank statement from November -- November and December 2020. Do you know if you have that in your files?
A. I believe we provided everything that we had.
Q. Okay. All right. And then what happens on March 14th?
A. So on March 14th, three items were uploaded, two voided checks and a February 2020 bank statement.
Q. Okay.
MR. ETRA: Let's put up Exhibit 20-7.
BY MR. ETRA:
Q. And is this the bank statement that was provided on the 14th?
A. Yes.
Q. And this is an account statement for an account ending in the last four digits 5973 for HM-UP, right?
A. That's correct.
Q. And if we just go a little further -- go a little further to the document, the statement period is February of 2020, right?
A. That's correct.
Q. And the main -- in reality, you needed to have a bank account to send the money to, right?

A. That's correct.
Q. So you're looking for an account that's -- basically that the borrower designates to receive the money?
A. Yes.
Q. Okay. And here you see that this account had been opened for at least a year before the application, right?
A. That's true. It also served as a indication that the business -- the borrower was in business prior to the deadline. So...
Q. Right. Killed two birds with one stone. It was okay to send PPP money to an existing operating account, right?
A. Yes.
Q. There was no requirement to send it to a segregated account where it would stay far away and uncontaminated by other money. Do you agree with me?
A. I agree that you could send it to whatever account the borrower -- or a business bank account. Right.
Q. Right. And here, Northeast/ACAP understood that the money -- PPP money was being sent to an ongoing business account, right?
A. Yes.
Q. Okay. Which gets commingled with other money, right?
A. Yes.
Q. And that's okay from the perspective of Northeast and ACAP, right?

A. Correct.
Q. You talked on your direct about the need to know why -- well, let me start again.
You talked on direct about the relevance of information about affiliates, right?
A. Yes.
Q. And I think you said one of the concerns was there was a maximum amount that you could lend to a group of affiliated companies, right?
A. Yeah. Based on their corporate umbrella, there was a maximum loan amount.
Q. And you said that was about $2 million, right?
A. I believe so, yes.
Q. So if you're under $2 million, the PPP program permitted affiliates to each apply for their own loan, correct?
A. Yes.
Q. Another reason you wanted to know about affiliates is because if you add up all the whole corporate structure you want to make sure you don't go over the maximum number of employees, right?
A. Yes.
Q. And that's 300 or 500, depending on the time period, correct?
A. Correct.
Q. Okay. Now I want to go a little more carefully through the

2438 application that got DocuSigned -- the operative one, okay?

A. Okay.

MR. ETRA: So let's go to 20-14.

BY MR. ETRA:

Q. Okay. Now, let's start with the NAICS code. It's here as 236220, right?

A. Correct.

Q. And I want to go back to the instructions -- let me start again and say: When we talked about this with the online portal application, I think you said that the 2483 gives instructions to use the tax returns. Do you recall saying that?

A. Yes.

Q. Okay. Not a memory test, but you do recall?

A. I recall.

Q. Okay. No problem.

MR. ETRA: All right. Let's go to the part of the returns that talk about -- excuse me -- part of the form that gives instruction on the NAICS code, which is Bates 31391.

Next one.

Okay. So it's the third paragraph, first sentence.

BY MR. ETRA:

Q. This is the part of the 2483 you're referring to, right, sir?

A. Correct.
Q. And it says: "For purposes of recording NAICS code, applicants must match the business activity code provided on their IRS income tax filings, if applicable," correct?
A. Correct.
Q. So it doesn't say you have to provide the activity code on the IRS income tax filings necessarily. Only if applicable, correct?
A. Correct.
Q. And that's because at any given point in time -- at the time of the application, the applicant's primary activity might be different than what was listed in their prior tax return, correct?
A. Can you repeat the question?
Q. You know, I'm not going to ask -- I'll just withdraw and leave it at that.
A. Okay.
Q. By the way, there's only so many places where there's a place to DocuSign this application, correct?
A. You DocuSign -- you initial the certifications and you DocuSign at the end.
Q. Do you DocuSign the instructions on NAICS code?
A. So I think those instructions are covered in one of the other certifications above.
Q. Well, why don't you first answer my question. Do you

DocuSign this part where it talks about the NAICS code?
A. No. You're not required to DocuSign this part.
Q. Okay.
MR. ETRA: Let's go back to the beginning of the application and go through it.
BY MR. ETRA:
Q. Is there a place to DocuSign anything on the first page?
A. There is not.
Q. What steps did ACAP or Northeast take to make sure the person DocuSigning it would be directed to other parts of the application?
A. The borrower had to fill out -- the way the online portal was structured is you had to answer all the questions first, before you could get the DocuSign sent to you.
Q. You had to answer what questions?
A. All the questions on the application.
Q. Do you mean the online portal application?
A. The online portal application was where these answers were pulled from. So the borrower was answering these questions via the online portal, and it was being populated onto the 2483.
Q. And we have already established the person answering the online portal application could be different from the person doing the DocuSign, correct?
A. Correct.
Q. Okay.

MR. ETRA: Let's go to the next page.

BY MR. ETRA:

Q. I'm going to focus on where it has a DocuSign. Only two questions on this page, right?

A. Correct.

Q. Whether the applicant or anyone who owned 20 percent or more of the equity is in jail or has other serious criminal problems, right?

A. Correct.

Q. And the next one is whether the applicant or an owner has had other -- other serious problems, shall we say, correct?

A. Correct.

Q. Okay.

MR. ETRA: Let's go to the next page.

BY MR. ETRA:

Q. There's -- on the top portion here, there are certifications, right?

A. That's correct.

Q. But there's no place to DocuSign, correct?

A. Not in this specific section.

Q. Okay.

A. But it does say above it: "By signing below, you make the following representations, authorizations, and certifications."

Q. Right. But if you're following the DocuSign --

MR. ETRA: Let's go to the second half of the page --

BY MR. ETRA:
Q. -- you end up in the middle of the page, right?
A. Yes.
Q. You don't end up at the top part?
A. So if you were DocuSigning, it would -- this is where you would input your initials.
Q. This is where you would be directed by the DocuSign function, correct?
A. Correct.
Q. And let's talk about what you see here. On the top line it says: "The authorized representative of the applicant must certify in good faith to all of the below by initialing next to each one." Do you see that?
A. Yes.
Q. So the operative duty is good faith, right?
A. Yes.
Q. Okay.
MR. ETRA: Let's go to the first certification.
BY MR. ETRA:
Q. "The applicant was in operation on February 15, 2020, has not permanently closed, and was either" -- excuse me -- "and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees" -- stopping there -- "or had employees for whom it paid salaries and payroll taxes, or it paid independent contractors, as

reported on Form 1099-MISC." Do you see that?
A. Uh-huh.
Q. That was the very first certification that gets initialed by the applicant, correct?
A. That's correct.
Q. And it specifically talks about having 1099ed workers, correct?
A. It says that in this certification.
Q. And certainly in this certification it doesn't say not to include payments to 1099ed workers as payroll?
A. Correct.
Q. Certainly it doesn't say: "Don't treat your" -- strike that.
(Pause in proceedings.)
BY MR. ETRA:
Q. And this certification doesn't say you only exclude W-2 workers, correct?
A. It doesn't say "W-2 workers" in here.
MR. ETRA: Go to Exhibit L-11. That's our document.
(Pause in proceedings.)
MR. ETRA: Your Honor, this is not in evidence. I just want to show it to the witness.
THE COURT: All right. Just to the witness.
What is the -- just for identification purposes, what is the number?

MR. ETRA: L-11.

THE COURT: Thank you.

MS. MARTINEZ: Can you just go back to the first page for a second.

Okay. I just wanted to see the date.

MR. ETRA: May I proceed?

THE COURT: You may.

BY MR. ETRA:

Q. Do you recognize this document?

A. It looks like an SBA PowerPoint Deck.

Q. Well, it looks like instructions to lenders. Do you see that it appears to be that?

A. Correct.

Q. Did the SBA provide written guidance to lenders from time to time for the PPP program?

A. Yes. Quite frequently.

Q. Were there a lot of updates to the program?

A. There were.

Q. Were there about 32 interim final rules over time?

A. Sounds directionally right.

Q. Okay. It kept changing and it was confusing, right?

A. It definitely kept changing.

Q. Okay. And do you recognize this particular document?

A. Not the cover page but maybe the contents of it.

Q. All right.

MR. ETRA: Let's go to Page 30 of that document.

BY MR. ETRA:

Q. And I will show you more if you want to see more, of course. But I want to focus on where it talks about -- this page talks about verifying loan applicant and underwriting criteria. Do you see that?

A. Okay.

Q. And I want to direct you to the second bullet. Do you now recognize this document as being instructions from the SBA to lenders such as Northeast?

A. Yes.

Q. Okay.

MR. ETRA: Your Honor, we offer L-11.

MS. JIMENEZ: I object. First of all, I haven't reviewed it. Secondly, the witness has identified a sentence in a multipage document.

THE COURT: The objection is sustained.

BY MR. ETRA:

Q. Do you recognize the document in general?

A. In -- this looks like a PowerPoint deck that kind of goes through some of the rules of the program. It was also from April of 2020. So you know...

Q. I recognize this is only a certain date, but could I go through more of the document with you and you could tell me if you recognize it?

A. (No verbal response.)
Q. Sure. Why don't we start at the beginning and scroll through.
MS. JIMENEZ: I object, Your Honor. If he has a question for the witness, the witness could answer. I mean, it is --
THE COURT: The objection is sustained. The witness says: "It looks like it," and it's insufficient.
Let's continue.
BY MR. ETRA:
Q. Do you now recognize the document?
A. This looks like a PowerPoint that the SBA put out. They put out a lot of different guidance, and some of it -- most of it was in the form of like narrative memos or procedure updates. I'm not -- I don't know if I've actually seen this specific PowerPoint deck. It looks like this is a deck that pulls information from those procedural notices.
Q. So you're not necessarily familiar with all of the SBA guidance to lenders, correct?
A. I'm familiar with the SBA guidance to directors -- to banks -- to lenders. But this specific document is a PowerPoint deck. That covers a lot of stuff in here. I mean, the first thing was to become an SBA lender and how to create an SBA account, which we already had. So...
Q. Let's focus on where I left off before on the second

bullet. Do you see how that second bullet is different from the first certification we looked at?

A. So I think the key I did hear right is that this is as of April 2020, so first draw loans. This is specific to first draw loans. And the 2483 that we were looking at was for second draw loans.

Q. The certification we were looking at talked about companies that paid employees, paid payroll taxes or filed -- independent contractors that filed 1099s, right?

A. Yes. In the 2483.

Q. Right. But this instruction to the borrower -- to the lender didn't have that language about 1099ed workers, right?

A. It does not say 1099ed workers in this statement.

Q. Otherwise, it's essentially the same thing as the certification that the borrower sees, correct?

A. It's a very high-level statement that just says confirm they paid salaries and payroll taxes to -- or that they had paid them around February 15th.

MR. ETRA: Let's put this document down. Let's go back to the application.

BY MR. ETRA:

Q. Isn't it true that the SBA was telling borrowers --

MR. ETRA: Let's go back to the first certification.

BY MR. ETRA:

Q. This first certification -- isn't it true that at some

point the SBA was telling the lenders to confirm that the borrowers were in existence on February 15th, 2020, and had employees who paid salaries and payroll taxes? Correct?
A. Correct.
Q. That's what we just saw on the document, right?
A. Yes.
Q. And it didn't have -- or told the lenders -- it didn't have the part about: "Or paid independent contractors," correct?
A. It didn't have the 1099 language in there.
Q. But here the application that the borrower sees where they are DocuSigning, the first one, also talks about 1099ed workers, right?
A. This statement talks about 1099ed workers.
Q. Okay.
MR. ETRA: Let's go to the next certification that's initialed.
MR. CAVALLO: For the jury?
BY MR. ETRA:
Q. It says: "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant," correct?
A. Correct.
Q. There's no --
MR. CAVALLO: It's not up for the jury.
MR. ETRA: Oh. Sorry. Let's put this on the -- Your

Honor, may we publish this? We're back on evidence.

THE COURT: This is in evidence.

MR. CAVALLO: It was not on there for when you just did the 1099.

BY MR. ETRA:

Q. There's no explanation given in the 2483 for what level of economic uncertainty -- what level of necessity is needed by economic uncertainty, right?

A. I mean, there's no additional definition or explanation. That's just the only certification, yes.

Q. This is COVID. Almost every business had economic uncertainty, right?

A. Sure.

MR. ETRA: Let's go to the next line.

BY MR. ETRA:

Q. This talks about the loss in revenue, that you don't need to document it until you -- unless and until you seek forgiveness for loans that are 150 or less, right?

A. Correct.

MR. ETRA: Let's drop down to the fifth -- keep going. This one.

BY MR. ETRA:

Q. This says: "The funds will be used to retain workers and maintain payroll," right?

A. That's what the certification says.

Q. And workers is not limited -- doesn't say: "W-2 employees," right?
A. This certification does not define workers or payroll.
Q. And ACAP, as we saw -- slash Northeast recognized the word "payroll" might be ambiguous. That's why, in their online portal, they explained payroll doesn't -- to minus payroll paid to 1099ed workers, right?
A. Yes. We provided a formula to --
Q. Right.
A. Yes.
Q. You guys did that on your online application, right?
A. Yes.
Q. But that's not here in the certification signed by whoever is certifying this document, right?
A. It does not say anything about W-2 or 1099s in this specific certification.
Q. And I think you said in your direct that -- something like this. I may have it wrong -- the point of the program was to pay payroll. Did you say something like that in your direct?
A. It's the Paycheck Protection Program. So yes, it was used to make payroll and for employees.
Q. But you could use all the money for purposes other than payroll, correct?
A. You could use the -- there were other acceptable or approvable expenses.

Q. You weren't required to pay the payroll, right?
A. There was a -- I think there was a percentage -- I think like 60 percent of the funds. I'm -- that had to be used for payroll.
Q. If you wanted forgiveness?
A. For -- to be eligible for forgiveness.
Q. Right. Okay.
MR. ETRA: Let's go to the second-to-last certification.
BY MR. ETRA:
Q. Here it says: "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," correct?
A. Correct.
Q. That goes under the heading of "In Good Faith," right?
A. Yes.
Q. Okay. And the next sentence says: "I understand that knowingly making a false statement is punishable by a crime." Do you see that?
A. That's what this certification says.
Q. So just to be clear -- I don't know if you said it before but I want to be clear. We now have the 2483. Is there any part of the 2483 that tells the borrower in plain terms not to include 1099ed workers in their payroll calculation?

A. So in the certification it does not say that. I think there's some additional language or instructions below that it may be in there. But I believe this was a pretty widely known or distributed rule that 1099ed workers were supposed to apply on their own. That's how we purposely did this, so we could identify -- if there were 1099s, we'd recommend that they apply on their own.

MR. ETRA: Okay. I move to strike the last part of his answer as non-responsive.

THE COURT: Overruled. That motion is denied.

BY MR. ETRA:

Q. You believed that what was widely known?

A. That 1099ed workers applied for their own triple P loan.

Q. Where does it say -- I understand that 1099ed workers could apply on their own. I'm not arguing with you about that. Where does it say that the company that pays them can't apply using those payments?

A. It doesn't say it in these certifications.

Q. Where in the 2483 does it say it -- or does it say in the 2483?

A. We would have to look at those instructions.

Q. Let's go look.

A. If there was instructions, there was also additional guidance from the SBA on how to calculate your triple P loan.

Q. Why don't we look? Let's just look and we --

MR. ETRA: Go to the next page, please.

THE WITNESS: Yeah. So there's that -- well...

BY MR. ETRA:

Q. Okay. First paragraph under "Instructions," do you see that?

A. Yeah.

Q. Let's make it a little larger so you can see it. Nothing in there says you don't pay -- that payroll costs don't include payments to 1099ed workers, correct?

A. Let's -- "And for an independent contractor or sole proprietor wage" -- I was just looking for independent contractor to try and see what it says.

Okay. I think that's just specific to kind of setting you up for how you would calculate it. So if you were an independent contractor, this is what you would do.

(Pause in proceedings.)

MS. JIMENEZ: Objection, Your Honor. This is unnecessary.

MR. ETRA: I'm waiting for him to answer.

THE COURT: Yeah. Let's -- hold on. Give the witness an opportunity.

THE WITNESS: So the last line looks like this is the applicable line to this. It doesn't specifically say 1099, but what it does say: "Plus any eligible payroll costs for employees." So I think that's where you would kind of tag that this is specific for W-2 and not 1099s.

BY MR. ETRA:

Q. Because it says "payroll," right?

A. It says: "Plus eligible payroll costs for employees."

Q. And you know from the portal application that the word "payroll" is not clear that it doesn't include 1099ed workers. That's why you add language about that in your portal application, correct?

A. Yeah. So we gave a prompt to let them know how to calculate it.

MR. ETRA: Could we go to the ELMO, please.

(Pause in proceedings.)

MS. JIMENEZ: Objection. Is this evidence?

MR. ETRA: It's O-1 in evidence.

THE COURT: O-1 in evidence?

MR. ETRA: Letter O-1.

BY MR. ETRA:

Q. Do you see -- this is from the regulations. Do you recognize the regulation here?

A. I do. Is there a date or a number on it?

Q. It's the first -- I'm going to represent it's the first interim final rule. If it's not the first, it's one of the first.

A. Okay.

Q. Do you see it says: "Payroll costs consist of compensation

to employees" there? Right?
A. Yes.
Q. And it talks about payroll costs or payroll taxes, whatever it is you said before. Do you see that?
A. Yes.
Q. And then later the regulations say: "Question: Do independent contractors count as employees for purposes of PPP loan calculations?"
Answer: "No. Independent contractors have the ability to apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan calculation."
Do you see that there?
A. I see that.
Q. And you're probably familiar with this regulation, correct?
A. Correct.
Q. You didn't need me to show it to you probably if I just asked you about it, right?
A. Correct.
Q. Okay. That language there is not anywhere in the 2483 application, correct?
A. Specifically, no.
Q. Let's continue and talk about the loan agreement, which is part of 20-14.
MR. ETRA: We're going to go back to the screen -- computers. We're at the very first page of the document.

Well...
BY MR. ETRA:
Q. This is an SBA form of a -- sorry -- is this a note or a loan agreement?
A. Promissory note.
Q. Okay. And this is the promissory note that was provided by Northeast for the borrower, correct?
A. Correct.
Q. And it's an SBA form?
A. Correct.
Q. Okay. And by the way, the terms of all these PPP loans are the same, regardless of other characteristics, correct?
A. Generally. I think there was -- some of the early ones have slightly different terms, but directionally they all have the same terms.
Q. Right. In other words, you're either eligible or not. And if you're eligible, you get the same terms?
A. It's cookie-cutter. Yes.
Q. Okay. Great. And if you go to the second page, Section C, it says: "Use of Proceeds. Borrower shall use the proceeds of this loan only for eligible expenses under the terms of the PPP." Do you see that?
A. Yes.
Q. That includes any of the eligible expenses. It could be a mortgage or utility, whatever was included at the time that was

allowed, right?
A. Correct.
Q. So even though the 2483 application may have checked off some uses, in the end of the day, according to the note, you could use it for any of those purposes, right?
A. That's correct.
Q. And the certification said the same thing, correct?
A. Correct.
Q. Okay. And if we go to the next page for default: "An area of default" -- "An item of default" -- or let me start again.
"Default." It says: "Borrower is in default under this note if borrower does not make a payment due under this note" with the parentheses about forgiven. And then it says: "Or if borrower" -- and look at C -- "does not disclose, or anyone on their behalf does not disclose, any material fact to lender or SBA." Do you see that?
A. Yes.
Q. And D: "Makes" -- or "Anyone acting on their behalf makes a materially false or misleading representation to the lender or the SBA," correct?
A. Correct.
Q. Northeast did not default this loan, correct?
A. Yeah. This loan -- NEWITY or ACAP owns the loan now and they do the servicing.
Q. And ACAP had not defaulted this loan, correct?

A. Not to my knowledge.
Q. It's still going forward and the borrower is still making payments, correct?
A. I'm not -- I don't know if they are making payments or not.
Q. It hasn't been defaulted?
A. Not to my knowledge.
Q. We'll get to the payments.
MR. ETRA: Could we put up for the witness only -- Your Honor, I'm showing the witness O-2, which is our exhibit number, but it's part of the production which is in evidence collectively, correct?
MS. JIMENEZ: Yes.
THE COURT: So the parties agree O-2 is in evidence?
MR. ETRA: I'm going to have to use the ELMO.
THE COURT: Is that correct, Ms. Jimenez?
MS. JIMENEZ: Yes. I believe it is.
THE COURT: All right.
MR. ETRA: May I proceed with the ELMO?
THE COURT: All right. I have O-1, but if the Government has O-2 --
MS. JIMENEZ: My objection is that this is outside the scope of direct.
THE COURT: Let me see what you're showing the witness and not shown to the jury.
MS. MARTINEZ: Now it's shown to the jury.

MR. ETRA: Sorry. Apologize.
THE COURT: Not to the jury.
MR. ETRA: Should I put it on now?
Your Honor, should I put it on now?
THE COURT: Yes.
All right. With the caveat that this is in evidence, and the understanding that O-2 is in evidence, you may continue. The objection is overruled at this point.
MR. ETRA: Can I publish it to the jury?
THE COURT: If it's in evidence, you may.
BY MR. ETRA:
Q. Okay. Do you recognize this document?
A. This document looks like an account history summary of the triple P loan.
Q. Of a triple P loan. That's PPP. And do you see that's the loan for HM-UP?
A. Correct.
Q. And in fact, your bank provided this to the Government in response to a subpoena, correct?
A. Either the bank or ACAP.
Q. Okay. And does it show, in fact, that payments -- at least for the time it was printed, payments were being made on this loan?
A. Yes. It shows payments being made.
MR. ETRA: We can get off the ELMO.

Let's go back to the 20-14 document.

Let's go to Page 031794.

MR. CAVALLO: Jonathan, that Bates doesn't...

(Pause in proceedings.)

BY MR. ETRA:

Q. Showing you the part of 20-14 that shows the DocuSigning. Do you see that?

A. I see it.

Q. Okay. Can you tell from this whether there was -- it says: "Security," under "Signer Events," "Security level email account authentication, none." Do you see that?

A. Yes.

Q. Do you know what that means?

A. I'm not sure. I'm not a DocuSign --

Q. Do you know if there was any testing -- like sometimes for DocuSigning they ask you: "Is one of these cars yours," or something like that. Do you know if they had that, if that was done for this loan?

A. I'm not sure.

Q. But this does show that the papers to DocuSign were sent to the Eric Sheppard email account on March 17th, correct?

A. Correct.

Q. And it was not viewed for the first time until March 25th. Do you see that?

A. Yes.

Q. And then it was DocuSigned, correct?
A. Correct.
Q. Is that typical to have such a long delay between sending the 2483 and note the time that the borrower actually opens the email to DocuSign it?
A. I think that all borrowers have different things going on, especially small business owners. Some small business owners are, you know, busy doing their business and they may not have time to -- you know, may be delayed to sign and review the document.
Q. We talked about the uses of the loan for proper proceeds, correct -- you have to use it for the right purposes, right?
A. That's correct.
Q. What you really mean is the amount of the loan has to be used for those purposes, correct?
A. Yes.
Q. Because commingling and fungible -- money is fungible, that kind of thing, right?
A. You have to be able -- for forgiveness, you have to be able to prove that you had expenses that -- for those eligible categories that equal the loan amount.
Q. Right. And that doesn't involve the tracing of like electronic serial numbers from Northeast to payroll, correct?
A. I don't believe so.
Q. Right. And even without forgiveness, you just have to use

it for proper purposes. But you have to use the amount of the loan for proper purposes. You don't have to trace the electronic serial numbers, right?
A. Correct. I think you just have to show receipts that you had eligible expenses and you paid for them.
Q. You testified a little about -- on direct, about the difference between a PPP loan and a regular loan. Do you recall doing that?
A. Yes.
Q. And for example, I think you testified I think yesterday that due diligence and a normal loan could be something like two weeks. Did you say that?
A. Yes.
Q. Could be longer, depending --
A. Could be longer.
Q. And it could involve a lot of back-and-forth and professionals, right?
A. Yes. It's a process.
Q. It's a process. It's a give-and-take. That did not happen with respect -- that wasn't the way the PPP loan program was set up, right?
A. That's correct.
Q. Essentially, it's supposed to be done quickly, right?
A. Yes.
Q. And you're basically checking the boxes, right?

A. Right. We're doing a good-faith review in a reasonable amount of time.
Q. Right. And checking that they meet certain criteria and then get it out, right?
A. Correct.
Q. And in a typical loan, part of the due diligence is to do a credit analysis, right?
A. In a regular commercial loan, yes.
Q. And that's because the bank has money that it has to decide how it wants to deploy, and they want to make sure it's not too risky, right?
A. Correct.
Q. Or if it's risky, they may want to have certain protections, like collateral, personal guarantee, or a higher interest rate to protect yourself, right?
A. Yes.
Q. It's all part of the credit review process, right?
A. Correct.
Q. That is not what took place for the PPP loan, right?
A. That's not how the program was set up.
Q. Right. It's not set up that way because you're either eligible -- and then you get the same terms for everyone, correct?
A. Everyone got the same terms, yes.
Q. Right. Because it wasn't a concern for the bank's credit.

It's a different concern, right?

A. Yeah. Everyone got the same terms.

Q. Right.

MR. ETRA: Could I have a moment to confer with counsel?

THE COURT: Certainly.

(Pause in proceedings.)

THE COURT: Any further cross-examination?

MS. WEINTRAUB: Judge, could we just have one minute?

(Pause in proceedings.)

MR. ETRA: No further questions, Your Honor.

THE COURT: All right. Any redirect?

MS. JIMENEZ: Yes.

MS. WEINTRAUB: Ms. Jimenez, can you just wait one second?

(Pause in proceedings.)

MS. WEINTRAUB: Thank you, Your Honor. I apologize.

THE COURT: All right. Let's continue with the redirect.

REDIRECT EXAMINATION

BY MS. JIMENEZ:

Q. All right. Mr. Toye, you were asked about the 2483, the SBA form, having a signature for the owner or authorized representative. Do you recall that?

A. Yes.

MS. JIMENEZ: Can we pull up 20-12, please.

BY MS. JIMENEZ:

Q. Does the authorized representative of the business -- does the authorized representative of the business -- does it need to be the owner?

A. It doesn't have to be the owner.

Q. Could the authorized representative be someone who works for the owner?

A. That's correct.

Q. Could the authorized representative be someone whom the owner trusts to fill out, to answer the questions, and submit the documents, and provide the information?

A. Sure.

Q. In this case, who was the authorized representative?

A. So per this document, the signer was Eric Sheppard.

Q. The signer was Eric Sheppard. Was there any document that you reviewed in connection with this loan where there was someone besides Eric Sheppard indicated as the signer?

A. There was not.

Q. Apart from the tax return that had two signers -- do you recall that, Mr. Neal Cupersmith?

A. Correct. Yes. That's correct.

Q. Aside from that document, was there any information that you received about anyone, either another owner or another authorized representative besides Eric Sheppard?

A. No. The only name that we saw was Eric Sheppard.

MS. JIMENEZ: Can we go to 20-16 for a moment.

BY MS. JIMENEZ:

Q. You were asked some questions about this document. Is it the case that for the instances in which the IP, Internet Protocol, address was captured -- was that in connection with the DocuSigning?

A. Yes.

Q. Aside from the IP address, did you have information from the records you received or the information that was provided about the person who was providing that information?

A. (No verbal response.)

Q. Well, let me ask you this: Were you provided an email address in connection with this application?

A. Yes, we were.

Q. Was it eric.sheppard10@gmail.com?

A. Yes.

Q. Were you provided a phone number with this application?

A. We were.

MS. JIMENEZ: Can you go to 20-12, please.

BY MS. JIMENEZ:

Q. Let me ask you: With respect to the email address, in the records that you reviewed, was there ever another email address that communicated with ACAP SME and then indirectly to you, to Northeast Bank?

A. Not that I saw.

Q. Were the documents -- the DocuSigned documents that went back to the applicant, did they go to that email address eric.sheppard10@gmail.com?

A. Yes. That's the email address they were sent to.

Q. The email we reviewed here in court, were they all between ACAP SME and eric.sheppard10@gmail.com?

A. Correct.

Q. There was a phone number provided with the business as a contact number; is that right?

A. That's correct.

Q. And that's the number -- is that the number listed here, (305)582-5529?

A. That's correct.

Q. At any point during this process, based on the records that you reviewed, was there another phone number provided for ACAP to contact someone else besides this phone number?

A. Not that I'm aware of.

MS. JIMENEZ: Can we look at 20-16 again, please.

BY MS. JIMENEZ:

Q. Looking at the items that were provided on March 11 -- and we spent some time on Item 2 here, which is the information -- the questions answered in the portal, is that right, on March 11?

A. Correct.

Q. All right. Was there also on that same day a driver's license provided?
A. Yes.
Q. Mr. Toye, based on your own personal experience, do you normally carry your driver's license or does someone else?
MR. ETRA: Objection.
THE COURT: Basis?
MR. ETRA: Irrelevant.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. The driver's license that was provided here, did it indicate to whom it belonged?
A. It was a driver's license for Eric Sheppard.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. You were asked a lot of questions about W-2 versus independent contractors. Let me ask you: With respect to the SBA regulations, guidelines, directives, did they ever change on the issue of what constitutes payroll in terms of whether payments to 1099ed workers could be included? Was that eligibility -- or that requirement regarding payroll, did that ever change?
A. Not to my knowledge.
Q. Was there a requirement that the applicant had to be in business as of a specific point in time?

A. There was.
Q. What was that point in time?
A. February 15th, 2020.
Q. All right.
MS. JIMENEZ: Can we take a look at that 2483 again -- 20-12.
Go to the next page.
All right. Keep going, please.
BY MS. JIMENEZ:
Q. All right. The first initialed certification that you were asked questions about, the applicant was in operation on February 15, 2020, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors. Can a business have both wage employees and individuals to whom it pays as independent contractors?
A. Yes.
Q. Was the import of this statement the fact that the business had to be in operation as of February 15th, 2020?
MR. ETRA: Objection. Personal knowledge of the import of the SBA rule.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. What was your understanding, based on your experience with

the PPP program, as to what was the thrust of this statement or this certification?

MR. ETRA: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: It's that first sentence, that you were in operation as of February 15th, 2020.

MS. JIMENEZ: Let's go to 20-2.

Go down, please.

BY MS. JIMENEZ:

Q. Now, this loan application was in what time frame?

A. This was in March 2021.

Q. All right.

MS. JIMENEZ: Let's go down, please.

Okay. Stop.

BY MS. JIMENEZ:

Q. The three boxes here -- now, what was this -- this document 20-2 that we're looking at?

A. This is the -- the application portal.

Q. And the records that you have indicated that this -- these questions were answered approximately March 11, 2021?

A. Correct.

Q. All right. Now, in your portal it indicated -- the applicant indicated how many employees?

A. They indicated 19 employees.

Q. Did they also indicate that some of the employees were

1099ed contractors, if they were confused about that?
A. They did not check this box.
Q. Did you, in the records that you reviewed in connection with this application, receive a single 1099 document?
A. We did not receive a 1099 document.
Q. Did you receive any information that was provided through ACAP -- any information that the payroll that was provided -- the payroll figures was based on a single payment to a single 1099ed contractor?
A. We did not.
Q. Did you receive a Form 940 with this application as a supporting document?
A. Yes. We received a Form 940.
Q. Based on your familiarity with that document, is that a document that is generated for someone who's being paid as an independent contractor?
A. No. 940 reports W-2 wages.
Q. You received the first-quarter 941 IRS Form as well; is that right?
A. That's correct.
Q. Based on your understanding of that type of record, is that a record that's generated with respect to a payment to a 1099ed worker?
A. No. It's a payment to W-2 employees.
Q. Were you provided any IRS records to indicate to you that

there were payments to 1099ed workers?
A. We were not.
Q. You were asked questions about the SBA moratorium, the two-week period during which you could only process applications for businesses with fewer than 20 employees; is that right?
A. Correct.
Q. Do you recall whether that moratorium was extended beyond March 10th?
A. Not off the top of my head.
Q. Was it the case that in that time frame, at least through March 10th, you were and had to be focused on processing applications for businesses with fewer than 20 employees?
A. Yeah. That's correct. So we could only get SBA loan numbers for businesses with that number of employees. So we were trying to actively find those loans in our portal and push them through, push them forward.
Q. Here in 20-2 --
MS. JIMENEZ: If you can go up, please.
Go up some more.
Okay. Stop. Stop.
BY MS. JIMENEZ:
Q. -- there's a question about the number of employees the business had. Do you see that?
A. Yes.

Q. And there was a little eye circle?
A. Correct.
Q. Did the applicant have the option to check information as to what the -- what that meant, what that question was geared toward?
A. Yes. If you had a question, you could hover over that circle and it would provide you further guidance.
Q. Do you remember what that guidance was?
A. I would assume that it says --
MR. ETRA: Objection, Your Honor.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Do you recall generally what that information was?
A. Probably indicating --
MR. ETRA: Objection.
THE COURT: Sustained.
THE WITNESS: Indicating --
BY MS. JIMENEZ:
Q. If you recall --
THE COURT: The objection is sustained.
BY MS. JIMENEZ:
Q. If you recall generally what that information was.
A. Indicating what date the employees would have been as of.
Q. As of the date?
A. As of the date, yeah.

Q. And that's as of February 15th, 2020, or some other date?
A. February 15th, 2020. How many employees did you have as of February 2020.
MS. JIMENEZ: If we can go down.
If we can go down, please.
If we can go down some more, please.
Okay. Go down.
BY MS. JIMENEZ:
Q. Okay. Here, the average monthly payroll figure.
A. Yes.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. You were shown on, I believe --
MS. JIMENEZ: Was it the template that had a Form 941 with the drop-down menu? Was that the template that you showed the witness?
MR. ETRA: The verifier.
MS. JIMENEZ: It was the verifier?
MR. ETRA: The Excel verifier, I think, if that's what you are asking, if I'm understanding your question.
MS. JIMENEZ: Can we pull up Document 20-8 and 20-9, please, side by side.
BY MS. JIMENEZ:
Q. Are these -- these are the records that you received, the Form 940 and the first quarter 941 --

MS. JIMENEZ: Could we go down to the signature page for both of these, please.

BY MS. JIMENEZ:

Q. You were asked a question whether you witnessed -- actually witnessed the signature. Do you remember that question?

A. Yes.

Q. Is it reasonable for the bank to receive these documents believing that the signer indicated was actually the signer of the document?

MR. ETRA: Objection.

THE COURT: Basis?

MR. ETRA: I -- I don't know how we could say what's reasonable for the bank to expect.

THE COURT: Objection, legal basis.

The objection is overruled. You may continue.

BY MS. JIMENEZ:

Q. Go ahead. Please answer.

A. Can you repeat the question?

Q. Yes. Was it reasonable for the bank -- upon receiving these documents, that the signer indicated on the document was the signer of the document?

A. Yes. That's reasonable.

Q. Did you require that the individual submitting signed IRS tax records sign them in the presence of the bank?

A. We did not require that.

Q. Do these records that are signed -- do they indicate above the signature that they are signed under penalty of perjury?
A. They do say that.
Q. Do they indicate that they're signed under penalty of perjury and that they are being signed to the best of their knowledge and belief and are true and correct and complete?
A. Yes.
MS. JIMENEZ: Could we go to 20-16 again, please.
BY MS. JIMENEZ:
Q. All right. You see that it indicates when the tax return -- and that's the income tax return -- was uploaded?
A. Yes.
Q. That was March 11, 2021; is that right?
A. That's correct.
Q. And then, was it the following day, March 12th, 2021, that a DocuSigned version of the 2483 went back to the applicant to their email address?
A. Yes.
Q. And on that next day, on that document we've seen, the DocuSigned 2483 -- multiple times -- did that capture an IP address the following day?
A. Yes.
Q. The -- with respect to the gross revenue reduction, that was a requirement for a second draw loan; is that right?
A. Yes. Correct.

Q. Okay. The comparison that was on the 2483 --

MS. JIMENEZ: If we could show 20-12 again, please.

BY MS. JIMENEZ:

Q. The comparison that was on the 2483, it was an annual comparison; is that right?

A. That's correct.

Q. Was a tax return, or tax returns, required to prove up the annual comparison either at this point in time or at some point in time --

MR. ETRA: Objection, Your Honor.

MS. JIMENEZ: Let me finish my question, please.

BY MS. JIMENEZ:

Q. -- before you -- or at the time that you submit your forgiveness application?

MR. ETRA: Objection. Multiple -- this should be broken down separately.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Was there a tax -- an income tax return, or income tax returns, required to substantiate the revenue decrease?

A. Yes.

Q. And could that be provided at this point or some time later?

A. Yes. It could be provided at application or -- as long as it was provided before forgiveness.

Q. Was there, in fact, an income tax return provided to you?
A. There was.
MS. JIMENEZ: And we'll talk about the fact that it was a partnership return in a moment. But can we turn to 20 -- 20-20, please. If we go to 20-20, Page 9.
BY MS. JIMENEZ:
Q. All right. Now, it indicated gross rents, right?
A. It indicates gross rents of -- yeah -- $1,047,603.
Q. That is a tax return for 2020; is that right?
A. Correct.
Q. And you were asked the question whether there was nothing to compare it to if you provided a tax return. Was there information provided on the application about the gross rents or gross revenues for 2019?
A. There was.
MS. JIMENEZ: Could we go to 20-12 again, please.
BY MS. JIMENEZ:
Q. So is that information provided on the application as well?
A. Yes. That information is provided on the 2483.
Q. So this provides you both figures; is that right?
A. That's right.
Q. Is it reasonable to think that at the time of -- of a forgiveness application for this applicant that a 2019 tax return would also be requested?
MR. ETRA: Objection. Irrelevant.

THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Okay. On the income tax return, that was actually a partnership return; is that right?
A. Correct.
Q. Do you know whether a corporation can be both -- well, can a corporation, if it has two or more members, be a partnership -- or let me rephrase that question.
A corporation -- and specifically a limited liability company -- if it has two or more members, isn't it, in fact, a partnership?
A. So --
MR. ETRA: Leading.
THE COURT: Sustained. Rephrase.
BY MS. JIMENEZ:
Q. Is it a partnership if an LLC has two or more members?
A. It can be a partnership.
Q. Now, on this 2483 -- which, by the way, was it submitted to the applicant more than once to DocuSign?
A. Yes. It was submitted twice.
Q. The very top box --
MS. JIMENEZ: If we can go in there, please.
BY MS. JIMENEZ:
Q. You can check just one; is that right?
A. That's correct.

Q. And if you're an independent contractor, you check a different box than "LLC"; is that right?
A. Correct. You'd check "Independent Contractor."
Q. Okay.
MS. JIMENEZ: Now can we go to the template 20-3, please.
Okay. Let's go to Corporations. We've got an LLC. Corporations.
Okay. Go down, please.
Okay. Stop here.
BY MS. JIMENEZ:
Q. Is it the case that for -- to calculate the payroll of employees you would enter or include payments for employee health insurance?
MR. ETRA: Objection. Leading.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. On this document, this template, is there a line for -- advising the underwriter to locate payments to employees for their health insurance?
A. Yes, there is.
Q. What about -- does the template ask the underwriter to look for employee retirement plans?
A. It does.
Q. Why does it ask for employee retirement plans?

A. Those were eligible to be calculated as part of the loan amount.
Q. For payroll?
A. Yes.
Q. And is that the case for employee health insurance as well?
A. Yes.
Q. All right. So then now we go to the right side with the blue-shaded boxes.
A. Yeah.
Q. Do you see that?
A. Yes.
Q. Now, it references 940 and 941s. Do you see that?
A. Yes.
Q. And then, Note 2, it refers to an IRS Form 1120, or 1120X, or 990 IX. Do you know what a Form 1120 is?
A. So an 1120 would be the tax form for a C corp.
Q. It's an income tax?
A. An income tax -- yeah, income tax return.
Q. For a corporation?
A. Yes.
Q. This corporation had an income tax return; is that right?
A. That's correct.
Q. And was it an 1120?
A. It was not.
MS. JIMENEZ: Can we go to the Partnership tab,

please.

If you go down -- not too far. Go down a little bit. Yes -- sorry. The other way.

All right. Stop here.

BY MS. JIMENEZ:

Q. Do you see lines 41 and 42? Does it ask the underwriter at the bank to locate that information on Lines 41 and 42, Employee Health Insurance, Employee Retirement Plans?

A. Yes.

Q. And what is that for?

A. So you could include those amounts as part of your calculation of your loan amount.

Q. All right.

MS. JIMENEZ: Let's go to the right side. It's in white.

BY MS. JIMENEZ:

Q. And then here does it indicate what tax documents to obtain to get that information from?

A. Yes. You could obtain the IRS Form 1065, and you could use these lines to find the expenses associated with those items.

Q. The IRS Form 1065 is where -- is that where the underwriter is being asked to look to find payments for employee health insurance and employee retirement?

MR. ETRA: Objection. Contrary to the evidence that the underwriter didn't use this tab, that this was the wrong tab. That was the testimony.

THE COURT: The objection is overruled. If the witness knows.

THE WITNESS: Can you repeat the question?

BY MS. JIMENEZ:

Q. For a partnership, is that -- would the underwriter go to the partnership return to find payments for employee health insurance and employee retirement plans?

A. Yes. If there was a business tax return uploaded, they would look to see if those amounts were there.

Q. Is there a tab for the 941 on this template?

A. (No verbal response.)

Q. I'm trying to locate what you were shown before that was a 941 with a drop-down.

A. Oh. So that would be on the first -- that first tab.

Yeah. If you scroll down.

Q. All right. Let's click on here. So if an LLC would be -- well, what does this tab indicate?

A. So this indicates documents -- select payroll documents provided by the applicant.

Q. All right. And if the applicant is a partnership, where can the applicant look for payments that may qualify as part of their payroll?

A. So they -- a partnership could look at their K-1s. And if they had W-2 employees, they would submit -- they could submit

a 940, 941s. Yeah.
Q. W-2s?
A. W-2s.
Q. Right. And does the K-1 document -- does it exist by itself or is it part of the 1065 partnership return?
A. It was included as part of the return.
Q. There's somewhere on here where the template directs you to -- oh. That's -- I think that's -- for the template -- hold on a second.
MS. JIMENEZ: Could we go to 20-4, please.
Go down.
All right. 20-5.
BY MS. JIMENEZ:
Q. All right. So you were asked about -- now, what does this document reflect?
A. So this reflects all the documents that were uploaded to the application portal.
Q. And then you were shown, toward the bottom of this page, that it refers to a 2019 business tax return. Do you see that?
A. I see it.
Q. Now, what was submitted -- what was submitted?
A. A 2020 tax return was submitted.
Q. Now, part of the SBA and Northeast Bank, the -- in 2021, the applicable year that the borrower could look to for their documentation, was it the case that they could look to 2019 or

2020?
A. Yes.
Q. They could look to either; is that right?
A. Correct.
Q. Okay.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. You were asked questions about how this -- the proceeds of this loan amount can be used.
MS. JIMENEZ: Can we go to the 2483, the -- the 2483 that's part of 20-22.
Go down.
Stop.
BY MS. JIMENEZ:
Q. Was this 2483 previously sent to the applicant?
A. Yes. This was originally sent when they originally applied.
Q. And then we'll go down to the date on this in a moment, but does this indicate the purpose --
MS. JIMENEZ: If we can get the middle box here --
BY MS. JIMENEZ:
Q. -- the purpose of the loan? "Select all that apply."
A. Correct. Yes.
Q. Did they indicate that the purpose of the loan would be for payroll?

A. They did.
Q. What is the date of this document?
A. This is the -- I believe this is the March -- it was sent on March 17th and signed on the 25th.
MS. JIMENEZ: Can we put this up side by side with 20-12.
BY MS. JIMENEZ:
Q. On March 12th, what was indicated as the purpose of the loan?
A. Payroll costs, utilities, covered worker protection expenditures.
Q. Did the purpose of the loan change from the first DocuSign version of this document to the second?
A. It did not.
Q. Did any other information that you observed change -- or any information that was relevant for that loan application change between the first document -- first DocuSigned version and the second DocuSigned version?
A. It did not.
Q. Did you notice that anything changed?
A. I don't see any changes.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. Did you -- or did you have ACAP request a credit report for this loan application?

MR. ETRA: Objection. Beyond the scope and existing issue we discussed as well.

MS. JIMENEZ: He was asked about a credit analysis.

THE COURT: The objection is overruled.

And Ms. Jimenez, just -- I would like to give the jury a lunch recess at about 12:30. I'm not sure how much more you have of redirect.

MS. JIMENEZ: We'll be fine.

THE COURT: Okay.

THE WITNESS: We didn't pull a credit report for the borrower.

BY MS. JIMENEZ:

Q. That you recall?

A. I don't think we pulled credit reports for -- not that I recall. I don't think we pulled credit reports as part of the process. We pulled background checks, but...

Q. And what about ACAP? Did they pull a credit report?

A. Not that I'm aware of.

Q. Is it something you don't remember?

A. I don't think we -- for a triple P, we didn't pull credit reports for borrowers that I recall.

Q. Okay.

(Pause in proceedings.)

MS. JIMENEZ: Can we go to the signature page on both of these documents.

Okay. Stop.

BY MS. JIMENEZ:

Q. All right. On both of these documents, could someone -- did the authorized representative have to be the owner of the business for purposes of signing this 2483?

A. No.

Q. Could it have been someone besides the owner of the business?

A. It could have been someone else.

Q. Who was indicated -- who's indicated on both of these DocuSigned certified documents was the individual who was signing for this business?

A. So the printed name is Eric Sheppard on both.

MS. JIMENEZ: Your Honor, the Government doesn't have any other questions of the witness.

THE COURT: All right. Is Mr. Toye excused, Ms. Jimenez?

MS. JIMENEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: All right. Thank you, sir. You are excused.

(Witness excused.)

THE COURT: And Ladies and Gentlemen, at this point in time we will take our one-hour recess for lunch. I'll see you back here at 1:30.

Have a pleasant lunch.

COURT SECURITY OFFICER: All rise.

(Jury not present, 12:26 p.m.)

MS. WEINTRAUB: Judge, can we know the lineup for the afternoon?

THE COURT: Yes.

Ms. Jimenez?

MS. MARTINEZ: Aimee? I've lost her.

MS. WEINTRAUB: Don't you know?

THE COURT: Is everything okay?

MS. MARTINEZ: I'm sorry. What was the question?

THE COURT: Ms. Weintraub asked for who would be your next witness. I know that we discussed this yesterday.

MS. JIMENEZ: Yes, Your Honor. The Government is expecting to call Mr. Carlos Granda next.

THE COURT: Okay. All right, then.

MS. WEINTRAUB: After that? That's going to be very quick, Judge.

THE COURT: Oh. That's going to be a short witness?

All right. After Mr. Granda?

MS. JIMENEZ: Are they promising that? Is that -- I mean, can we hold them to that, please?

THE COURT: Well, I would certainly welcome any type of promise by both sides.

All right. So after Mr. Granda will be Spencer Lord and Maria Ataca?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: All right, then. Have a nice lunch. I'll see you back here at 1:30.

(Recess from 12:27 p.m. to 1:32 p.m.)

THE COURT: All right. Welcome back.

I trust everyone had a pleasant lunch.

Are we ready to get back to work?

MS. JIMENEZ: Yes, Your Honor.

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: Okay. Can we see if we have all -- there are 14.

Thank you.

(Pause in proceedings.)

COURT SECURITY OFFICER: Yes, Judge.

THE COURT: Okay. Thank you. We can bring them in.

Thanks so much.

(Before the Jury, 1:33 p.m.)

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

Please be seated, everyone.

I trust that you had a pleasant lunch and ready to get back to work.

And if the Government will call its next witness, please.

MS. JIMENEZ: Yes, Your Honor. The Government calls Carlos Granda.

(Pause in proceedings.)

THE COURT: Good afternoon, sir.

If you'll come forward, please.

COURT SECURITY OFFICER: Please remain standing to be sworn in.

CARLOS GRANDA, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

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

THE WITNESS: My name is Carlos Alberto Granda.

COURTROOM DEPUTY: Can you spell it.

THE WITNESS: Carlos, C-A-R-L-O-S. Alberto, A-L-B-E-R-T-O-N --T-O. And Granda, G-R-A-N-D-A.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

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

A. Yes, ma'am.

Q. Briefly, what is your educational background?

A. Recently got my master's degree in electrical engineering from UCF. I got a master in electrical trade and electrical contractor.

Q. I'm sorry. What was the last thing you said?
A. And electrical contractor as well.
Q. If you could speak up.
A. Okay.
Q. Where do you live?
A. I live in Orlando, Florida.
Q. What do you do for a living, Mr. Granda?
A. I'm electrical contractor, electrician.
Q. Do you have your own company?
A. Yes. I have my own company.
Q. What is the name of your company?
A. CG Electric.
Q. In the 2021 time frame -- or I should say 2019 and 2020 time frame, did you have your own company then?
A. Yes.
Q. Was it the same company?
A. The same company.
Q. In 2020, did you go do work at a location in Orlando called the Shoppes at Alafaya?
A. Yes.
Q. What was your involvement with that location?
A. That was a project in Burlington store. We take over the job in the electrical construction part.
Q. You took over the job you said?
A. Yeah. That was -- somebody else was -- start it but never

finish it. So I took over the job.
Q. Approximately when was that?
A. Around May.
Q. May of 2020?
A. In '20, yeah.
Q. And the project was already underway?
A. Yeah. The project was already started, yeah, at that time.
Q. And you say: "The Burlington project." Could you explain what you were doing at that location?
A. It's -- electrical contractor. We run all the wiring, conduit, install lights, electrical panels, as was put in the blueprints in the project.
Q. And this is for --
A. For the Burlington.
Q. Was this a retail store?
A. Yeah. A retail store, Burlington. That's the name of the brand.
Q. The shopping center, did it have other stores?
A. Yeah. They had -- I remember they have a DICK'S store and restaurant there. Bahama Breeze, I believe it is. And then some other smaller stores.
Q. Who hired you to do this project?
A. Jeff Vasilas.
Q. What was Mr. Jeff Vasilas's role in relation to this project?

A. At the beginning, I thought he was a general contractor. But after the project was going, I believe he was like a manager of construction, supervising.
Q. Like a project manager of sorts?
A. Yeah. Probably like a project manager.
Q. How often did you see Jeff Vasilas when you were doing this work?
A. He was mostly between three or four days per week.
Q. And --
A. Three days per week, yeah.
Q. Where did you see him?
A. At the site on Burlington. He was supervising all the materials, checking.
Q. Was he physically located at the Orlando shopping center?
A. Yeah. I mean, he was there in the shopping center.
Q. Now, did you enter into a contract to do the work for this project?
A. Yes.
Q. And do you remember the name of the company that the --
A. H -- HM Alafaya Trails something.
Q. All right. Who was the owner of that business with whom you entered into a contract?
A. The owner of the business that was referred by Jeff, Mr. Eric something -- Eric Sheppard.
Q. Did you work with someone by the name of Martin Joe Beirne

at that location?

A. Can you repeat that, please?

Q. Did you work with someone named Martin Joe Beirne at that location?

A. Martin Joe Beirne?

Q. Joe Beirne.

A. Joe Beirne. Ah, Joe, yeah. He was working there. He was practically managing the project.

Q. Did you see Joe Beirne often?

A. Oh, yeah. He was -- every day he always being early, like six, 6:30. And then leave the last -- the same, six p.m., 6:30 p.m. He was every day there.

Q. How were you paid?

A. I was being paid according when the money available. Because it was by contract, so as soon as they have something accomplished -- when we have something accomplished, I got paid.

Q. And how were you paid? Was it by check --

A. Yeah. That was by check. At the beginning was by this company, and then later on that was check for different company named Diamond something.

Q. All right. So at first you were paid by the HM-UP Development Alafaya Trails company?

A. Yes. Uh-huh.

Q. Okay. And then you said at some point you were paid by

another company?
A. Yes.
Q. Approximately at what point did that change?
A. Well, the money was very slow. They were -- start owing money. And then looks to me at some point Jeff took over the payments. And then he told me it was his company and he's paying by his company.
Q. And that company was Diamonds?
A. Diamond. Yeah.
Q. And how did Jeff Vasilas pay you from his -- was that also a check?
A. That was a check. And then sometimes I remember he made a deposit himself in my account.
Q. And who made those payments to you?
A. Jeff.
Q. Jeff Vasilas?
A. Yeah.
Q. Did you at some point meet Eric Sheppard when you were doing this project?
A. Only, I believe, twice. Only twice.
Q. And what was Mr. Sheppard's role in this project?
A. The first time when I was introduced, he told me he is the owner of the property, he will not supply the money, but -- that was my understanding. That was the first time. And second time was when we have issues with the plumber. It was

close to finalize the project, calling for finals, and then I guess he show up to deal with the Burlington and I guess deal with the plumber, and that was the second time I see him.
Q. Now, were you paid -- when you were paid by HM-UP Development Alafaya Trails, were you paid as a wage employee or were you paid as an independent contractor?
A. No. No. That was by a contract.
Q. Were you always a contractor?
A. Always been contractor.
Q. And with respect to the payments that you received, were there any type of withholdings like for Medicare taxes?
A. No.
Q. Social Security taxes?
A. None of those. The amount they would allow -- I mean they want to pay, nothing holding on it.
Q. All right. From start to finish, you were an independent contractor?
A. Yeah. Always been contractor. Yeah.
MS. JIMENEZ: Can we show Government's Exhibit 18-3, please. This is from records in evidence with PayPal's forgiveness application, 18-3. This is very small.
Thank you.
All right. If we can go down.
I can't see.
Okay. Keep going. I know I've seen it.

Okay. Could we go down here to July 3rd -- oh. There we go.

BY MS. JIMENEZ:

Q. June 25th, do you see "Carlos Granda"?

A. Yes. I see that.

Q. Were you paid wages, sir?

A. No.

Q. All right.

MS. JIMENEZ: Can we go to -- can we go to 19-4, please.

Down.

Keep going, please.

Okay. Here. All right. This is -- 19-14 is, for the record, PayPal second draw loan application for HM-UP Development Alafaya Trails.

BY MS. JIMENEZ:

Q. Okay. On February 2020 -- so it looks -- were you -- well, you started the job you testified sometime in 2020; is that right?

A. Yeah. That was around May.

Q. I think you said you started in May. Is that your best recollection, May 2020?

A. Yeah. Yeah.

Q. Okay. You see the top of the fourth column here? It says: "Gross wages paid"?

A. Uh-huh.
Q. And "Withholdings"?
A. Yeah. I see that. Yeah.
Q. I'm going to ask you again: Did this company, HM-UP Development Alafaya Trails, pay you gross wages and withhold any portion of your pay for Medicare, Social Security, income tax?
A. No.
Q. All right. How long did you stay at this project at the Shoppes at Alafaya?
A. Probably we started May, we finish around February, and then I still going to do some other stuff that Jeff asked me to do.
Q. All right. So you'd say May 2020 to approximately February 2021?
A. Approximately. That was around the final inspection.
Q. Final inspection?
A. Approximately. We have to check that. But it's approximately that. And then after that I was -- Jeff called me to do more stuff.
Q. All right. When you say "Jeff," that's Jeff Vasilas?
A. Jeff, yeah.
Q. And he called you to do more things where?
A. In the same shopping center. They have problems with the lighting on the DICK'S, I remember, sports retail store, and

replace more lights. The same in Burlington, more issues on the parking lot lights.

Q. Okay. So before I ask you about that, when you finished the project -- or was it considered finished after it passed the final inspection?

A. It's considered finished according to the -- we inspect it and we agree.

Q. Is that your contract? Is that what you mean?

A. In the contract was -- have many things. We agreed just to continue --

MS. WEINTRAUB: Referring to a contract that's not been produced or in evidence.

MS. JIMENEZ: Talking about his contract.

THE COURT: I'm sorry?

MS. JIMENEZ: I said he could talk about his contract.

THE COURT: The objection is overruled at this point.

BY MS. JIMENEZ:

Q. I'm sorry, Mr. Granda. So my question was: Was your -- let me ask this question: Was your -- did you consider your contract to be completed at the point in time when there was a final inspection that you passed?

A. Yes. Yes. It was considered according with the terms safety rule, yes.

Q. What is that?

A. Safety rule, when pass inspection.

Q. Okay. Now, did your contract call for you to be paid? Were you supposed to be paid?
A. I have to be paid, yes. After finish whatever I have to do in the agreement, yes, I have to be paid.
Q. Now, at the point at which that project was completed, were you owed any money for the work that you had done?
A. Yes.
Q. Approximately how much money were you owed?
MS. WEINTRAUB: Your Honor, I'm going to object on --
(Court reporter interruption.)
THE COURT: I'm sorry. On what grounds?
MS. WEINTRAUB: I'm objecting, Your Honor, on grounds previously raised with the Court.
THE COURT: The objection is overruled.
You may continue.
Do you understand the question, sir?
THE WITNESS: Yes. How much they still owe me.
BY MS. JIMENEZ:
Q. Yes.
A. Yeah. So when I get -- my account say about 15,000 that was to be paid, approximately. That was included more jobs I did over there after the inspection.
Q. So that -- the 15,000 -- well, how much were you owed approximately at the point in time when you completed the Burlington project and it passed inspection?

A. I don't remember that but probably it's close to 7,000 something.
Q. So approximately half of that money?
A. Approximately half, yeah.
Q. All right. And then you continued to do some jobs, you indicated?
A. Yeah. Yeah.
Q. Yes?
A. Yeah.
Q. Who asked you to do additional work?
A. Jeff.
Q. Jeff Vasilas?
A. Yeah.
Q. And was -- where was the additional work that you were doing?
A. That was on the parking lot mostly, and the other shopping centers have issues -- I mean the other retail stores have issues.
Q. It was at the same shopping center?
A. The shopping center. Yeah.
Q. Now, to do the additional work, did you enter into another contract?
A. No. That was a verbal agreement with him. I make him sign some paper.
Q. Who?

A. Making sign to -- Jeff -- some paper for the job needs to be done as an agreement.
Q. And essentially what was the agreement that you had with Mr. Jeff --
A. Well, since we have some money to be paid -- so if I agree with him, helping any other job he needed if he pay me in advance.
Q. So from then on you wanted to be paid --
A. In advance for other jobs he required.
Q. Did Mr. Jeff Vasilas comply with that?
A. Yeah. With, I guess, two or three jobs they needed, he pay me in advance.
Q. How -- did he pay you in person?
A. Yeah. He pay me in person. We did a check, personal check.
Q. Where did he pay you?
A. Where? He pay me right in Burlington store when I met him.
Q. In Orlando?
A. In Orlando, yeah.
Q. What was the time frame of those occasions when Mr. Vasilas paid you?
A. Definitely it was after the final. Probably it was around March, May, something.
Q. How often did you see Mr. Vasilas in 2021?
A. At that time, after that, that was probably once a week

maybe.
Q. All right. And you saw him in person in Orlando?
A. Yeah.
Q. And those payments that Mr. Vasilas made to you in 2021, were you paid by check or were you paid some other --
A. Yeah. That was paid by check. A couple he made a deposit.
Q. What do you mean that he made a deposit?
A. Yeah. He asked me for the checking account and he made deposit directly, couple of payments.
Q. So he requested your checking account information and deposited funds in your account?
A. Yeah.
Q. All right. And then were there other occasions when he paid you by check?
A. Paid me by check, yeah.
Q. What company?
A. The same, Diamond something.
Q. And what did you understand that Diamonds company to be?
A. He told me it's his company, and that's where he's paying from.
Q. Okay. What -- did you at some point in 2021 stop doing work at the Shoppes at Alafaya?
A. At some point I stopped because the money was very slow. I needed money to pay my guys. And then, yes, I stop a couple times. Yeah.

Q. And did there come a point in 2021 when you stopped and did no more work?
A. I'm sorry. Yeah, 2021. I was confused. 2020 we did the job and then I stop. 2021 it was we do extra work.
Q. In 2021 did there come a time when you no longer did any work at the Shoppes at Alafaya?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. How did that come about, sir? Why did you stop?
A. Well, at that point after final inspection, and then I only go when I had to go back by Jeff's request. That's it.
Q. Did you have requests from Jeff Vasilas to do additional work?
A. Yes. And then also to do a bid for another project that he had in mind, and then check some plans he has -- he asked me to help him with -- as a consultant, but I never charged anything for it.
Q. You're saying there's things that you did not charge for?
A. Yeah. Yeah. Because we become a little friendly. He tried to make this work. And then I see I can help him with something in my knowledge.
Q. Did Mr. Vasilas try to make payments to you?
A. Yeah. I think we try. He try. Well, that's my understanding --

MS. WEINTRAUB: Judge, objection.

THE COURT: The basis?

MS. WEINTRAUB: It's total speculation. He doesn't know. It's not from his personal knowledge.

THE COURT: Overruled.

BY MS. JIMENEZ:

Q. All right. Now, what was the last assignment that -- job request that you received from Mr. Vasilas?

A. Jeff text me he got the problems with -- the shopping center lights went out. That was late at night. And he told me to go there.

And then, well, I guess I told him by the -- I remember we have -- had a payment in advance, but he told me to go because he's in the hospital. And then I went that night with my guy, check it out. They show me what's going on. We found the problem. And then I tried to contact him after that, but he never replied back.

Q. Approximately when in 2021 did that happen?

A. That was July.

Q. July?

A. Yeah.

Q. Did you speak to the -- did you speak to Eric Sheppard after that at any point?

A. Yeah. After couple days he call me.

Q. Who is "he"?

A. Mr. Sheppard.
Q. Okay.
A. Because Jeff send me a picture. He was in the hospital. That's why I went to see the shopping center.
Q. How did Mr. Vasilas look in that picture?
A. He got all the things on the mouth and the nose. He -- in the text he told me he got pneumonia.
Q. Okay. But from the hospital he directed you to go to --
A. Yeah. To the shopping center to turn on the lights because the lights were out.
And well, like I said, I find the problem and then tried to contact him, never reply me back. So since -- I couldn't fix it, because it's a big part to buy. So I couldn't do it for myself. And a few days later, I got a call from Mr. Sheppard, told me Jeff die.
Q. He told you that Mr. Vasilas --
A. Die, pass away.
Q. -- had died?
A. Yeah.
Q. Did he tell you what he died of?
A. Exactly the day, no. But he told me he die. That was, you know --
Q. Did you learn that it was COVID?
A. Well, he told me that was COVID. That was the way I knew.
Q. Okay. And what did Mr. Sheppard tell you -- well, what did

you discuss in that conversation with Mr. Sheppard?
A. We discuss the problem in that shopping center and what needs to be doing in order to be fixed. I mentioned I need to get paid in advance because that was the agreement with Jeff, and then I mentioned still the money being owed.
Q. Did you tell him how much money was still --
A. No. I say: "Some money is still owed. Jeff sign it." That's it.
Q. How much money were you owed at that point?
A. At that point, that was almost 15,000. This is -- 14,070. So 14,000 and something.
Q. Did you ask Mr. Sheppard to pay you?
A. I mention that Jeff signed something for monies owed. And then he mention that -- he say: "I didn't sign it," and he hang the phone.
Q. I'm sorry. What is it that he said?
A. He didn't sign it and hang the phone.
Q. He didn't sign it, and then he hung up the phone?
A. Yeah.
Q. Okay. Did you have any other communication with Eric Sheppard?
A. After that, no. I tried to contact him, but no. And then I guess his brother --
Q. How did you try to contact him?
A. The same phone number he call me. So I try to contact him.

Q. Did you speak with him?
A. No. After that, no.
Q. Did you leave any messages?
A. I left message. That's it, one. One or twice, that's it. But nothing. And then mostly I tried to contact by text because I guess I thought it was the most efficient way. But no -- the brother reply me back, but that's it.
Q. And then did there come a time when Eric Sheppard reached out to you?
A. After that?
Q. Yes.
A. No.
Q. Did he ask you to do any other jobs?
A. No.
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: The objection -- is the -- what's the basis of the objection?
MS. WEINTRAUB: Asked and answered.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did anyone affiliated with this project ask you to do any other work after that?
A. After that, no.
Q. Did -- of the $15,000 that you were owed, how much of it was work that you had done at the Shoppes at Alafaya?

A. That was -- everything was done. Everything they asked was done.
Q. At that location, at the same location?
A. Yeah. Yeah. Yeah.
Q. At any point did Eric Sheppard tell you that he was coming into Paycheck Protection Program or Economic --
A. No.
Q. -- Injury Disaster Loan money to pay you?
A. No. I never -- never heard from him until I got contact from the FBI office.
MS. JIMENEZ: No other questions, Your Honor.
THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

BY MS. WEINTRAUB:
Q. Good afternoon, Mr. Granda.
A. Good afternoon. Good afternoon, ma'am.
Q. Mr. Granda, when the pandemic hit, were you working at that time, at the end of March, beginning of April of 2020?
A. Yeah. I was working for -- as a superintendent for a different company.
Q. And were you sent home when the pandemic hit, from that job?
A. No.
Q. And were you available -- you were not working when you went looking for a job at Burlington, right?

A. I didn't looking. I was contact to do the job.
Q. You were contacted by a friend of yours?
A. Yes.
Q. Who said that they were looking for people to work?
A. They were -- contact me to do the job.
Q. And you then spoke with Jeff Vasilas?
A. Yes.
Q. And Jeff Vasilas hired you?
A. After discuss the terms, yes.
Q. And Jeff Vasilas was the one who gave you direction and told you what he wanted you to do, right?
A. Basically, he handed me the plans, and then he told me: "What needs to be done?" And then I told him what needs to be done.
Q. Right. And Jeff Vasilas paid you, right?
A. He paid me at some point after stopped the payments -- regular payments by the company.
Q. Okay. And you said -- you told the prosecutor a few minutes ago that you were -- your companies -- the checks were made out to your company. Is that what you said?
A. Yes. They were made by my company.
Q. Okay. Isn't it true that -- I'm going to show you an exhibit. Did you file a 1099 that year for 2021?
A. A 1099? Yes. I file it.
Q. And you filed it as an individual, not as a company,

correct?

A. No.

Q. You filed it as a company?

A. As a company. The accountant told me --

MS. WEINTRAUB: Can we bring up and show the witness only N-9.

BY MS. WEINTRAUB:

Q. Do you see this form, Mr. Granda?

A. Yes. I see it.

Q. Do you see that it's made out -- recipient's name -- to an individual? It says: "Carlos Granda."

A. I see that. Yes.

Q. Doesn't say your company's name, right?

A. No. It doesn't say.

MS. WEINTRAUB: Your Honor, at this time...

MS. JIMENEZ: Your Honor, I object. I don't know where this comes from.

THE COURT: Do you want to ask him if he recognizes it in order to lay a proper foundation?

THE WITNESS: Well, I see my name on it, but --

THE COURT: Hold on. Hold on, Mr. Granda. There's no question pending at this time.

BY MS. WEINTRAUB:

Q. Mr. Granda, would you look at the next two pages?

A. I see that. Yes.

Q. Is that your address?
A. That was my address.
Q. And do you remember receiving this?
A. Don't remember receiving that.
(Pause in proceedings.)
BY MS. WEINTRAUB:
Q. And this is from the company HM Management?
A. Uh-huh.
Q. You have to say yes or no.
THE COURT: Sir, you have to answer verbally, either a yes or no.
THE WITNESS: Yes. Yes. I see that.
BY MS. WEINTRAUB:
Q. And that's the company that the paychecks were made out from, correct?
A. That's the company. Yeah.
Q. And that is your home address?
A. That was my old address. It doesn't show at the apartment, but yeah.
MS. WEINTRAUB: At this time, Your Honor, most respectfully, I would move this into evidence.
THE COURT: Is there an objection?
MS. JIMENEZ: Same objection.
THE COURT: Yeah. It hasn't been identified. The objection is sustained.

BY MS. WEINTRAUB:
Q. Now, it was your testimony that you did not get checks individually, right?
A. (No verbal response.)
Q. I'm going to ask you to look at some checks.
A. Uh-huh.
Q. And tell me if those checks were made out to you.
MS. WEINTRAUB: N-8 only to the witness.
Not that one.
BY MS. WEINTRAUB:
Q. Do you see the check that's on your screen?
A. Uh-huh. Uh-huh.
Q. Yeah. I'm sorry. Mr. Granda, you have to say --
THE COURT: Yes or no.
THE WITNESS: Yes, ma'am. Yes, ma'am.
BY MS. WEINTRAUB:
Q. And is that check a check made out to you? Is that a paycheck of yours?
A. Yeah, it is.
Q. It is, right? And is it made out to your company or is it made out to you, Carlos Granda?
A. It looks -- it's made out to me.
Q. And that check is $7,000?
A. Uh-huh.
Q. You have to say yes or no.

A. Yes. I'm sorry.

Q. Sorry. The next check is made out for $4,600. It's made out to Carlos Granda?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Again, it's not made out to your company. It's made out to you, right?

A. Yes. But can I explain one thing? At that time, I didn't have a personal checking account. Everything was straight to my company.

Q. Okay. You might have -- you mean you deposited it into your company?

A. Yes.

Q. Okay. But the checks were made out to you. Okay. That explains things. So -- strike that. Let me start again.

So you deposited the checks into your company's bank account?

A. Yes.

Q. Okay. But the checks were made out to you as an individual, to Carlos Granda, like we see here?

A. Yeah. That I see. Yes.

Q. Okay.

MS. WEINTRAUB: With that said, Your Honor, at this time I would move N-8 into evidence.

THE COURT: I'm sorry. You said --

MS. WEINTRAUB: N-10.

THE COURT: Any objection?

MS. JIMENEZ: No objection --

THE COURT: Admitted into evidence.

MS. JIMENEZ: -- to the check.

(Defendant's Exhibit N-10 received into evidence.)

BY MS. WEINTRAUB:

Q. Now, you said that you were owed money at the end, right?

A. At the end, yes.

Q. Now, Burlington -- the project was over at the end of October, beginning of November, right?

A. Totally, with all the extras, yes. I believe so.

Q. And --

A. November what year?

Q. 2020.

A. No. The project wasn't ended then. It was still going.

Q. There were still other things to do, but --

A. Yeah.

Q. -- the main project was done?

A. Yeah. Yeah. The main project was done. The main project, yes.

Q. And the store opened?

A. The store opened probably around that, yes.

Q. And Jeff Vasilas at that time was the one that was paying

you?
A. Yes.
Q. And Jeff Vasilas is the one that you looked to to get the rest of the money, right?
A. Yes. He was the representative of the company where he was actually working for.
Q. And you don't know what the financial arrangement was between Mr. Sheppard, the owner, and Jeff Vasilas, do you?
A. No.
Q. You don't know if he gave money to Jeff Vasilas to pay you do, you?
A. I don't know.
Q. When -- you told Jeff Vasilas that you called Eric Sheppard. Yes?
A. Yes. Because he handed me the phone number.
Q. And didn't you tell the Government, the FBI agent, that Jeff Vasilas told you: "Don't call Mr. Sheppard about me not paying you"?
A. He told me: "Don't let him know I give you his phone number."
Q. He didn't tell you not to let him -- not to talk to him about it?
A. I don't remember he told me: "Don't tell him I didn't pay you." He told me: "Don't let him know I give you his phone number."

Q. Do you remember speaking with the FBI agent in June of this year?
A. I don't remember.
Q. You don't remember?
A. It was sometime, but I don't remember exactly. It was June or May.
Q. Okay. If the FBI agent wrote down that you --
MS. JIMENEZ: Objection. Objection. Calls for --
MS. WEINTRAUB: I haven't even asked the question yet.
THE COURT: Let me hear the question.
BY MS. WEINTRAUB:
Q. If the FBI agent wrote down that: "Granda said Vasilas called him and said not to call Eric Sheppard about his paychecks," would that have been wrong? Did she mishear it?
A. I don't know. I don't know.
Q. Are you denying that you said that?
A. No. I not denying. I don't remember now I say that.
Q. Okay. Does that refresh your recollection that that's what you said?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Sustained.
(Pause in proceedings.)
MS. WEINTRAUB: Can you pull up N-8 for the witness only.

BY MS. WEINTRAUB:
Q. Mr. Granda, isn't it true that -- you're paid by HM-UP Development Alafaya Trails, right? We established that before?
A. Yes.
Q. Yes. And...
(Pause in proceedings.)
THE COURT: For the witness only. What is the exhibit number?
MS. WEINTRAUB: There we go. It is N-8, Your Honor.
THE COURT: N as in Nancy.
BY MS. WEINTRAUB:
Q. Mr. Granda, I'm asking you to look at this check. This is an HM-UP Development check. Yes?
A. Yes. I see that.
Q. And that's like your paychecks?
A. Looks like a paycheck, yeah.
Q. And can you see on the bottom what the memo says? "For Carlos, the electrician, final payment"? Can you see that?
A. I see that, yes.
Q. And it's dated 11/30/2020. Do you see that -- the check?
A. Yes.
Q. And it's made out to Jeff Vasilas, right?
A. Yes. I see that.
MS. JIMENEZ: Objection, Your Honor. This check is not in evidence and the --

THE COURT: Is that an objection?

MS. JIMENEZ: It is an objection.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. All along weren't you told that you were being paid by HM-UP Development because the checks came from HM-UP Development and the money came -- and was given to Jeff Vasilas to pay you?

A. Yeah. That's what they said. Yes.

Q. This check indicates that it was a final payment in November --

MS. JIMENEZ: Objection.

THE COURT: The objection is sustained. The exhibit is not in evidence. Please don't read from the exhibit.

BY MS. WEINTRAUB:

Q. Is it your testimony that you were not paid in November of 2020?

A. November 2020?

Q. If you remember.

A. I don't remember, to be honest with you.

Q. The money that you were paid on that Burlington project, was that money that -- was that job a job that you had -- you would not have been bringing home money otherwise?

A. Can you repeat the question, please?

Q. If you weren't working at Burlington --

A. Uh-huh.
Q. -- during the COVID -- yes?
A. During the COVID -- after COVID.
Q. During COVID. During the pandemic.
A. After pandemic.
Q. Would you have been making money somewhere else or was that a good thing that you had that job?
A. Well, I was working as superintendent for another company in that moment during the pandemia. So to take this job, I quit that job. So to take this project, I quit my job.
Q. Because this was a better job, yeah?
A. No.
Q. It was not a good job?
A. Well, was a job -- one from other contracts I have it, which came out after pandemia.
MS. WEINTRAUB: If I can just have a moment, Judge.
THE COURT: All right.
(Pause in proceedings.)
BY MS. WEINTRAUB:
Q. After Burlington did you do any work on the -- on the Chase Bank?
A. No.
Q. And what about the FedEx store?
A. I did the -- couple demo he -- Jeff ask me to do. And then the bid, he ask me to put it on it. That's it.

Q. But you do agree that your hiring and not being paid, that was all between you and Jeff Vasilas, right?
A. Well, my understanding is between me and the company he represents.
Q. And that's what Jeff told you?
A. Yes.
MS. WEINTRAUB: I have no further questions.
THE COURT: All right. Any redirect?

REDIRECT EXAMINATION

BY MS. JIMENEZ:
Q. Mr. Granda --
A. Yes?
Q. -- to clarify, did you finish -- did you stop working at the Shoppes at Alafaya in October, November 2020?
A. I would say yes, around that time.
Q. I thought you said the job -- the final inspection was in February 2021.
A. Well, my -- I have to recall -- yes. I tell you that, yes.
Q. Did you continue to go to the Shoppes at Alafaya to do various jobs?
A. Yeah. Jeff told me to come back to do other things which wasn't in the agreement.
Q. In 2021?
A. Yes.
Q. Is that right?

A. Yes.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. Did you -- before you -- well, let me ask you: After you finished -- or after the project had passed final inspection in 2021, did you reach out to Eric Sheppard to try to be paid?

A. No. Because before inspection -- before the final, I was ready to -- like I said, I was about to stop the job. And then since the money was slow, and then I was promised to get paid, I was ready to leave.

Q. Okay. Who promised to pay you?

A. Jeff. Jeff. Jeff working out -- what I see, I believe he was working out hard to get me pay. At least he give me something. I see he show up to shake hands and: "Hey, this is money." So he willing to fix the things. That's my understanding.

Q. And you continued -- why did you continue to do jobs at the location even though you were owed money?

A. At that moment, because I see Jeff, and then I feel that he got the heart to get the things straight and right. And then also his charismatic way to actually, I believe, convince me to get with other jobs. So trying not to lose the business because maybe he got the slow money, and then just give it a chance to get paid, and don't get that desperate decision don't do business at all, when probably in the future have a good

opportunity to continue doing business. So that's why -- the reason I keep going.
Q. And did Jeff keep trying to have you work at this shopping center to do the jobs?
A. Yes, I did that. And then the agreement was: "At this point you have to pay me in advance. You buy the materials. I do the job. You pay me the labor in advance."
Q. And then, from that point when you had that agreement with Jeff Vasilas to be paid in advance, did he pay you in advance --
A. Yeah. For the --
Q. Let me finish my question, please. Did he pay you in advance each time that you met with him to do additional work that he requested?
A. Yes.
Q. Until the last time when he died?
MS. WEINTRAUB: Objection. Leading.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did he, in -- well, let me ask you: Did he, each time that you -- that he asked you to do additional work -- did he keep his promise and pay you the money?
A. Yeah. He kept the promise. Yeah. He kept the promise.
Q. Then the last time that he asked you to do work, did he pay you?

A. Well, I started but didn't pay me because he was sick.
Q. He was sick?
A. He was sick. So once he send me the picture, I can't -- well, he was nice with me, so I try to keep it nice as well with him, and then be considerate he was sick.
Q. And so did you reach out to Eric Sheppard to be paid --
A. No. The --
Q. -- money you were owed?
A. After that, no. No, because once I have his phone number, a few months ago, I didn't have the success to keep calling. So when I called, never answer. So I never try again after -- after Jeff passed. No, I never tried. No.
Q. But did you try the one time you had a conversation?
MS. WEINTRAUB: Objection, Your Honor.
THE WITNESS: After that, yes.
MS. WEINTRAUB: Asked and answered.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did you have any conversation with Eric Sheppard?
A. Yeah. That -- when he told me Jeff passed, then I have the conversation.
Q. Okay. Now, if Eric Sheppard was suggesting that Mr. Vasilas had done something wrong, based on you knowing Mr. Vasilas, would he want to come to this trial and tell the jury --

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: And the basis?

MS. WEINTRAUB: Hypothetical. It's an improper question. It calls for speculation.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Well, you knew Mr. Vasilas.

A. Yes.

Q. Were you friendly with Mr. Vasilas?

A. Yes. He was a good friend.

Q. Would he want to come here and --

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

MS. JIMENEZ: No further questions.

THE COURT: All right. Is Mr. Granda excused?

MS. JIMENEZ: Yes, Your Honor.

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: All right. Thank you, sir. You are excused.

(Witness excused.)

THE COURT: And the Government's next witness.

MS. JIMENEZ: Yes, Your Honor.

The Government calls Spencer Lord.

(Pause in proceedings.)

THE COURT: Good afternoon, sir.

SPENCER LORD, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

You can have a seat.

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

THE WITNESS: Spencer Lord. S-P-E-N-C-E-R L-O-R-D.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good afternoon. Mr. Lord, were you subpoenaed to come to this trial?

A. Yes.

Q. Where do you work, sir?

A. Cross River Bank.

Q. Where is Cross River Bank located?

A. New Jersey.

Q. Where is your office located?

A. I work remotely from Washington State.

Q. Washington State?

A. Yes.

Q. What is your current position with Cross River Bank?

A. Associate program manager.

Q. What are your responsibilities as associate program manager?

A. Assisting, managing, and maintaining the Paycheck

Protection Program.
Q. How long have you been employed by Cross River Bank?
A. Since December of 2020.
Q. Were you -- in 2021, did you work in -- well, was Cross River Bank, in 2021, involved in the Paycheck Protection Program?
A. Yes.
Q. In 2021, were you involved at Cross River Bank working on the Paycheck Protection Program loan applications?
A. Yes. I was working in customer support at the time.
Q. Are you familiar with the policies and procedures that Cross River Bank had in place in 2021 to process PPP loan applications?
A. Yes.
Q. In 2021, where were Cross River Bank's servers located to receive PPP loan application information and documentation?
A. Pennsylvania.
Q. All right. Now, in January and March of 2021, did a business by the name of HM Management and Development, LLC apply for a PPP loan with Cross River Bank?
A. Yes.
Q. Did Cross River Bank produce records to the Government in response to a grand jury subpoena?
A. Yes.
MS. JIMENEZ: Your Honor, we'd like to move into

evidence Exhibit 21 and all of the sub-exhibits. It's actually 21 through 21-3.

THE COURT: Any objection?

MR. ETRA: Your Honor, we had raised an issue -- generally no, but we had raised an issue with respect to a portion of certain of the documents which cover the other issue we talked about for the other loan, the same type of material summarized in these reports.

THE COURT: Are you going to be referring to those documents? This was what he addressed at sidebar.

MS. JIMENEZ: No. I'm not going to display that document.

THE COURT: All right, then. Subject to what we spoke about, then, 21, 21-1, 2, and 3 are admitted into evidence.

(Government's Exhibits 21, 21-1, 21-2, and 21-3 received into evidence.)

MS. JIMENEZ: Also, Your Honor, 22-1 through 22-7 are also Cross River Bank records.

THE COURT: Any objection?

MR. ETRA: Only for the same issue if it applies to those documents. I...

THE COURT: All right. Subject to the same condition. 22-1 through 7 admitted into evidence.

(Government's Exhibits 22-1 through 22-7 received into evidence.)

MS. JIMENEZ: I would also like to move in the DocuSign records for all of the companies, 10 -- they have a business records certification -- 10-1 through 10-12.

THE COURT: Any objection?

MS. JIMENEZ: I mean, a lot of them are in evidence insofar as --

MR. ETRA: I understand they're subject to certification. So based on that, we don't object.

THE COURT: I'm sorry. Subject to certification?

MR. ETRA: There are certifications that support them; therefore, we don't object.

THE COURT: All right. Then 10-1 to 10-12 are admitted into evidence.

(Government's Exhibits 10-1 through 10-12 received into evidence.)

BY MS. JIMENEZ:

Q. All right. Now, Mr. Lord, how would someone interested in applying for a Paycheck Protection Program loan with Cross River Bank go about doing that?

A. By accessing our website where there's a splash page with information about the PPP loans and eligibility and ineligibility.

Q. I'm sorry. I didn't hear. Could you speak up, please.

A. Yeah. Sorry. So by going to our website, and there was a splash page that had information about the Paycheck Protection

Program loans and if -- eligibility and ineligibility questions. So they could kind of decide if they could apply for a loan or not through our website.
Q. Was the entire process done online?
A. Yes.
Q. Now, with respect to Cross River Bank's loan application process, can you briefly explain -- can you briefly explain how that application process worked in terms of when the information would be supplied to Cross River Bank versus documentation?
A. Yes. So they could start the application process by entering in basic personal and business information, such as like address, things like that. And then the application flow would prompt them with further questions about their business, and they could proceed through the application flow answering the questions and providing the requested information. And then, finally, the last step was uploading the requested documents to the application.
Q. Could the person applying for the loan submit information and then later -- submit information to Cross River Bank that Cross River Bank would receive, and then later, when they came upon records that were requested, submit those at a later time? Could someone do that?
A. Information, yes. Documents, no.
Q. So when -- okay. And what does that mean: "Information

yes, documents no"?

A. Like, if they had started their application and only put in their basic personal information, they could continue where they left off. But if they had entered in -- if they had uploaded documents, that was the final step of the application.

Q. So did the information and documentation go to Cross River Bank all at once together in one transmission?

A. They did, yes. That was -- the full application submission was information and documents.

Q. Now, as to the January or March 2021 application from HM Management and Development, were either of those loan applications approved and funded?

A. No.

Q. Was one or the other?

A. There was one that was accepted, but there was two that were -- one was accepted and one was incomplete.

Q. Okay. All right. So let's talk about the January submission.

MS. JIMENEZ: Can we pull up Exhibit 21-2, please.

COURTROOM DEPUTY: Is this in evidence for the jury to see?

MS. JIMENEZ: All 21 and 22 should be in evidence.

THE COURT: It's in evidence.

All right.

BY MS. JIMENEZ:
Q. Mr. Lord, we're looking at Exhibit 21-2. Do you see it?
A. I do, yes.
Q. What is this?
A. That's the electronic record of the loan application that was propagated after the application was submitted.
Q. And what time frame is this?
A. January 19th, 2021.
Q. All right. Does this record provide an email address entered into by the person who applied?
A. It does.
Q. What is that email address?
A. Hmfourmanager@gmail.com.
MS. JIMENEZ: Can we look at Exhibit 8-3, please.
All right.
BY MS. JIMENEZ:
Q. Do you see the --
MS. JIMENEZ: Could we highlight the email address.
BY MS. JIMENEZ:
Q. For that email hmfourmanager@gmail.com, does it indicate who the subscriber was?
A. Yes.
Q. Who?
A. Eric Sheppard.
Q. Does it indicate created on?

A. Yes.
Q. When was it created?
A. Yes.
Q. When?
A. November 20th or -- October 20th, '20.
Q. All right.
MS. JIMENEZ: Can we go back to 21-2.
BY MS. JIMENEZ:
Q. Now, for this record of Cross River Bank, it has an IP address; is that right?
A. Correct.
Q. What does -- at what point in time did Cross River Bank capture an IP address?
A. When the application was submitted fully.
Q. When the application was submitted what?
A. Fully.
Q. Fully. So is it -- the information and documentation together; is that right?
A. Correct.
Q. Okay.
MS. JIMENEZ: Can we go to the next page.
BY MS. JIMENEZ:
Q. All right. So what does this page indicate?
A. That's the information that the borrower input into the application flow.

Q. And when you say: "Application flow," does that mean that the person applying is answering questions in your portal?
A. Correct. Or filling out like blanks. It will say their name and they'll input the information.
Q. All right. Now, the name of the business that's applying here is what?
A. HM Management and Development.
Q. And it has a d/b/a of the same name, right?
A. Correct.
Q. Okay. It provides an address. Do you see that address?
A. Yes.
Q. What is the address?
A. 180 Bal Cross drive -- 180 Bal Cross Drive, Bal Harbour, Florida 33154.
Q. And it provides a phone number, right?
A. Correct.
Q. What is that phone number?
A. (305)582-5529.
Q. All right. Now, this is January 19, 2021?
A. Correct.
Q. So what are the number of employees listed on this application?
A. Twenty-three.
Q. What is an NAICS code?
A. It's the industry code for the type of business.

Q. Do you know what this code represents?
A. Not offhand, no.
MS. JIMENEZ: Could you go back in.
BY MS. JIMENEZ:
Q. On this application, in the middle box, did the applicant provide payroll information?
A. Yes.
Q. And what did you use the payroll information for?
A. To determine the loan amount.
Q. And was that two and a half times the average monthly payroll?
A. Correct.
Q. Okay. And so that resulted in this loan amount?
A. Correct.
Q. And what is this loan amount?
A. 179,633.
Q. All right. And then --
MS. JIMENEZ: Go back.
BY MS. JIMENEZ:
Q. And then, as you go down, provides owner information?
A. Correct.
Q. And this is the same information previously provided above; is that right --
A. Correct.
Q. -- essentially?

MS. JIMENEZ: Okay. Let's go down.
All right. "I understand that checking the box below, confirming that" -- could we -- okay.
BY MS. JIMENEZ:
Q. Can you read the first bullet dot there?
A. "To the best of my knowledge, the business information I provided in this application is accurate and complete and..."
Q. Okay.
MS. JIMENEZ: Let's go back.
Okay. And then go down.
Halfway into the -- this page it refers to ineligible businesses.
And then this actually -- if you can go back and then it --
BY MS. JIMENEZ:
Q. This list goes on, is that right, of ineligible businesses?
A. Correct.
Q. Okay.
MS. JIMENEZ: Can we go down.
All right. Stop.
Can you highlight the -- Number 1.
BY MS. JIMENEZ:
Q. All right. Can you read the first bullet.
A. "Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved

with the loan proceeds, except as eligible passive companies under 13 CFR 120.111, are not eligible."

Q. All right. And then can you read the third bullet, please.

A. "Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide services" --

Q. Okay. Thank you. That's enough.

So -- and you indicated this is January 19th -- oh.

MS. JIMENEZ: I'm sorry. Go back to the page.

And then if we scroll down.

Okay. Stop.

BY MS. JIMENEZ:

Q. Is the box checked --

MS. JIMENEZ: Can we highlight the box that's checked.

BY MS. JIMENEZ:

Q. So what did the individual indicate?

A. That they confirmed and agreed to all the statements above.

Q. All right. And this was January 19th, 2021?

A. Correct.

MS. JIMENEZ: Can we go to Exhibit 19-2, please.

All right. Could we go to the next page. This is, for the record, a PayPal record.

I'm sorry. No. The next page.

All right. This is -- if we can go all the way down, so we could see the date on this.

BY MS. JIMENEZ:

Q. This is an application submitted -- what is the date reflected?

A. January 19th, 2021.

Q. Is that the same day as your Cross River application?

A. Yes.

Q. Okay.

MS. JIMENEZ: Can we go to the business that's applying.

BY MS. JIMENEZ:

Q. The legal name of the business for this application was what, on the right-hand side in the middle?

A. HM-UP Development Alafaya Trails.

Q. All right. And then on the left-hand side, doing business as who?

A. HM Management and Development.

Q. Is that the name of the business that applied to you on that day, January 19th, 2021?

A. Yes.

Q. All right.

MS. JIMENEZ: Can we go back to 21-2, please.

BY MS. JIMENEZ:

Q. All right. Now, were there any documents produced with this application?

A. Yes.

MS. JIMENEZ: Can we go to 21-1.

BY MS. JIMENEZ:

Q. Is this a document, 21-1, that was produced with this loan application?

A. Yes.

Q. All right. And it indicates total payments to employees in the amount of?

A. 910,340 and 25 cents.

Q. And that is for tax year 2019?

A. Yes.

Q. All right.

MS. JIMENEZ: Can you go back out.

Go to the second page.

BY MS. JIMENEZ:

Q. All right. Was this document signed?

A. Yes.

MS. JIMENEZ: Can we go to Part 7.

BY MS. JIMENEZ:

Q. Does the document indicate who signed this IRS Form 940?

A. Yes.

Q. Who does it indicate signed the document?

A. Eric Sheppard.

Q. Is that the phone number 5529 provided on the application?

A. Yes.

MS. JIMENEZ: Can we go to Exhibit 12-5, please.

BY MS. JIMENEZ:

Q. This is an IRS record for taxpayer HM Management and Development. Now, for Form 940 Employer's Annual Federal Unemployment, what does it indicate? What does the IRS indicate?

A. The -- for the 940?

Q. For the 940. The portion that's highlighted, what did the IRS say?

A. "As of June 4th, 2020, the Internal Revenue Service shows no return filed for the following tax years pertaining to the individual described above."

Q. And the tax years are 2019, 2020, and 2021?

A. Correct.

Q. All right. Was there also a portion of a tax return provided with this application?

A. Correct.

(Pause in proceedings.)

MS. JIMENEZ: If we can go to the ELMO for a moment.

BY MS. JIMENEZ:

Q. This is Composite Exhibit 21, Bates Stamp Number 106052. Is this document a document that was provided --

A. Yes.

Q. -- for this loan? And what is it?

A. A Schedule K-1.
Q. Does that belong with the tax return 1065 for this business?
A. Yes.
Q. And the business listed is who?
A. HM Management and Development.
Q. And the 99 percent owner is who?
A. Eric Sheppard.
MR. ETRA: Aimee, is there an exhibit number to this?
MS. JIMENEZ: I don't have a sub-exhibit for this. It's 21. Yes.
MR. ETRA: Part of 21?
MS. JIMENEZ: Yes.
BY MS. JIMENEZ:
Q. And then this page, Bates Stamp Number 10585, was this also provided to you with this loan application?
A. Yes.
Q. Again, was this all part of the same submittal January 19th, 2021?
A. Yes.
Q. All right. What is that page?
A. That is a list of affiliated businesses.
Q. That was produced to you from this company?
A. Correct.
Q. Okay. Do you see the name of a business HM-UP Development

Alafaya Trails, LLC?
A. Yes.
Q. Well -- well, is it -- are you reading this one here?
A. Yes.
Q. Okay. This one is HM-UP Development Alafaya Trails TRU, LLC. Do you see that?
A. Yes.
Q. Do you see one with a name HM-UP Development Alafaya Trails, LLC?
A. No.
Q. Did you see a company by the name of CJUF Roman numeral III Flagler, LLC?
A. No.
Q. Do you see a business name HM Six, LLC?
A. No.
Q. This document that we were just looking at, it's an addendum to what?
A. The application?
Q. Was there a 2483 SBA form executed with this application?
A. No.
MS. JIMENEZ: Can we look at 21-2, please.
(Pause in proceedings.)
MS. MARTINEZ: It's on the ELMO, so it needs to be at counsel's table.
Ms. Jimenez, do you want counsel table?

Okay. We have counsel's table. So...

MS. JIMENEZ: Okay. So I have the wrong number. Hold on.

Okay. All right. Let's go to 21-3, please.

BY MS. JIMENEZ:

Q. All right. What is this record that we're looking at?

A. That is an email sent to our support email.

Q. Okay. Who sent this email?

A. Eric Sheppard.

Q. And what is the email address provided?

A. HM --

Q. I'm sorry. What is the email that it came from?

A. Hmfourmanager@gmail.com.

Q. Okay. "To support."

MS. JIMENEZ: Can you highlight the first sentence, please.

BY MS. JIMENEZ:

Q. What did Mr. Sheppard say in this email?

A. "To support. As managing member on behalf of my company HM Management and Development, LLC, a Florida limited liability company, last four TIN Number 4219, I submitted to Cross River a complete PPP application last Tuesday."

Q. All right.

MS. JIMENEZ: Can we go back.

Can you highlight the second -- well, just highlight the rest of the email so that it's not piecemeal.

BY MS. JIMENEZ:

Q. So in the next sentence, what does he say?

A. "I have not received any email communication verifying full complete receipt of the application."

Q. All right. And then does he indicate that he could be reached and where he could be reached?

A. Yes.

Q. And what does he say?

A. "I can be reached through this email or on my cell phone, (305)582-5529."

Q. All right. Now, what happened with this application?

A. It looks like it wasn't able to be responded to. There's an assignee, Ayanna Thomas.

Q. I'm sorry. Say that again.

A. There's an assignee, Ayanna Thomas. If you could --

MS. JIMENEZ: Go back.

Yes.

BY MS. JIMENEZ:

Q. So there's an assignee, Ayanna Thomas. What does that mean?

A. That means with our support staff it was assigned to that person -- the ticket was.

Q. All right. Was there a decision made on this application?

A. Yes.

Q. What was the decision made on this application?
A. That it wasn't able to be completed because of incomplete documentation.
Q. Was that communicated to the applicant?
A. Would you mind going to the next page, please.
MS. JIMENEZ: Go ahead.
Yes. Okay. Can we highlight the whole thing.
THE WITNESS: So in the second line it says: "After checking further into your application, unfortunately, it was not successful on this attempt for approval through our automated system."
BY MS. JIMENEZ:
Q. All right. And then, in your records, did you find what the reason was as to why the loan application was not approved?
A. The automatic system wasn't able to read the documents correctly, but that's all that I know of. We had an underwriting team that would have more details, but that's all the information that we as support staff were given.
Q. All right. So ultimately, this application was not funded.
A. Correct.
Q. Is that right?
Okay. Then did you receive a subsequent application from this same business entity, HM Management and Development, LLC?
A. Yes.

Q. All right.

MS. JIMENEZ: Can we --

BY MS. JIMENEZ:

Q. And was that in March of 2021?

A. Yes.

Q. Was that application submission funded?

A. Yes.

Q. All right.

MS. JIMENEZ: Can we look at 22-1, please.

BY MS. JIMENEZ:

Q. This looks like a similar record as the one we previously saw; is that right?

A. It is, yes.

Q. What does this record reflect?

A. The same information as the previous electronic record of loan with the information that the applicant provided in the application.

Q. And does this record indicate whether all of the information and all of the documentation was supplied to Cross River Bank all at once on this date and time from this IP address?

A. Yes.

Q. What is the email that was provided here?

A. Eshmmanagementndev@gmail.com.

Q. All right.

MS. JIMENEZ: Can we go to Google, 8-2.
BY MS. JIMENEZ:
Q. Okay. For eshmmanagementndev@gmail.com, does this record provide subscriber information?
A. Yes.
Q. Who is the subscriber?
A. Eric Sheppard.
Q. When was this email created, based on this record?
A. March 13th, 2021.
THE COURT: Ms. Jimenez, just let me know when it might be a good time to give the jurors a little break.
MS. JIMENEZ: Sure. Now is good, Your Honor.
THE COURT: Okay. Ladies and Gentlemen, let's take a 10-minute comfort break.
COURT SECURITY OFFICER: All rise.
(Jury not present, 2:54 p.m.)
THE COURT: All right. We're on a 10-minute recess.
MR. ETRA: Your Honor, are we finishing at five today?
THE COURT: I'm sorry.
MR. ETRA: Are we finishing at 4:30 or five? I didn't recall.
THE COURT: We're finishing at five.
And just for purposes of scheduling tomorrow, we do have one matter in the morning, so we'll start at 9:30.
MS. MARTINEZ: And we'll go till five?

THE COURT: Yes.

MS. MARTINEZ: Thank you.

(Recess from 2:54 p.m. to 3:06 p.m.)

THE COURT: All right. Let me acknowledge the presence of the Defendant.

Are both sides ready to continue?

MS. JIMENEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

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

(Before the Jury, 3:06 p.m.)

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

Please be seated, everyone.

And we'll continue with the direct examination.

MS. JIMENEZ: Thank you. Can we display 21-2, please. 21-2.

BY MS. JIMENEZ:

Q. All right. So looking at 21-2, the -- oh.

MS. JIMENEZ: Oh. I'm sorry. 22-2 -- no. Hold on.

BY MS. JIMENEZ:

Q. All right. What is this?

A. The identification that was submitted by the borrower.

Q. Whose driver's license is this?

A. Eric Sheppard.

Q. All right.

MS. JIMENEZ: Go back to 22-1.

BY MS. JIMENEZ:

Q. Okay. For 22-1, the information and documentation, on what day was it submitted?

A. March 12th, 2021.

Q. And the IP address that was captured, is that the one reflected on this record?

A. Yes.

Q. Ending in 129?

A. Yes.

Q. Okay.

MS. JIMENEZ: Let's go back and go to the next page.

BY MS. JIMENEZ:

Q. Okay. Here, the business information, what did the applicant provide? What is the name of the business?

A. HM Management and Development.

Q. And it's doing business as what?

A. Construction Service X.

Q. What is your understanding of what the d/b/a is?

A. It's the name of the business. That might not be the -- they could be doing business as a different name.

Q. A different name?

A. Uh-huh.

Q. And for this application in March of 2021, how many employees did the applicant indicate were in the business?

A. Eighteen.
Q. You remember how many employees were listed in the January application?
A. Twenty-three.
Q. All right. Is this the same phone number that was previously provided in January?
A. Yes.
Q. All right. And then Eric -- eric.sheppard10@gmail.com, was that an email provided in addition to the eshmmanagementndev@gmail.com?
A. Yes.
Q. Okay.
MS. JIMENEZ: Let's go back.
BY MS. JIMENEZ:
Q. All right. Loan information -- all right. Now, was this payroll information or payroll figures different than the ones provided in January of 2021?
A. Yes.
Q. In January 2021 was the amount -- the loan amount that it generated above or below 150,000?
A. I don't remember.
Q. You don't remember.
MS. JIMENEZ: All right. Can we just quickly take a look at 12-2.

BY MS. JIMENEZ:
Q. The January application, was the loan amount below or above 150,000?
A. Above.
Q. All right.
MS. JIMENEZ: Now, let's go back to 22-1, please.
BY MS. JIMENEZ:
Q. And then, what is the -- is the owner the same owner as previously provided, Eric Sheppard?
A. Correct.
Q. All right.
MS. JIMENEZ: Let's go back, and go down.
Okay. Stop.
Can you highlight: "I understand that by checking the box below."
BY MS. JIMENEZ:
Q. The first bullet point, what does it say?
A. "To the best of my knowledge, the business information I provided in this application is accurate and complete."
Q. All right.
MS. JIMENEZ: Go back.
And then that same box -- can you just highlight the first half of the page.
BY MS. JIMENEZ:
Q. All right. And then did the applicant give Cross River

Bank permission to obtain his personal credit report?
A. Yes.
Q. And whose credit report is being requested?
A. Eric Sheppard.
Q. Did you obtain a credit report for Eric Sheppard?
A. Yes.
Q. All right.
MS. JIMENEZ: Can you go back.
BY MS. JIMENEZ:
Q. Was that credit report part of the loan file that someone reviewed?
A. Yes.
Q. All right. Okay. And then you have the same series of questions about whether or not the business is eligible; is that right?
A. Correct.
Q. Okay.
MS. JIMENEZ: Can we go back to the first page.
Okay. Stop.
Okay. Next page, please.
BY MS. JIMENEZ:
Q. Okay. So the loan amount that the payroll information generated, what was the amount?
A. 148,592.
Q. Now, for the business payroll, what did -- what was it

supposed to be based on?
A. Wages and salary to employees.
Q. What supporting documents did Cross River request?
A. Filed tax forms, identification, and voided check.
Q. Okay. And the tax forms -- what tax forms did you request?
A. It depended on the type of business.
Q. Okay. In this case what tax forms were provided?
A. A 1065 and a 940.
Q. Was there also a 941?
A. I think it was just the 940.
Q. Okay. Now, for this loan application, what time frame did you require the tax documents be from, 2019 or 2020, or could it be either?
A. It could be either.
Q. Did you receive any record -- any document or any information from HM Management and Development doing business as Construction Service X -- any information or record indicating that the payroll calculation was based on payments to 1099ed workers?
A. No.
Q. Did you receive any 1099s?
A. No.
Q. What would the loan amount be -- if the payroll information you were provided were, for instance, a bunch of 1099s, what would the payroll amount be?

A. Zero.
Q. Okay.
MS. JIMENEZ: Let's go to Exhibit 22-3.
BY MS. JIMENEZ:
Q. What is this?
A. That's the 1065 Form that was included in the application.
Q. All right. Now, does it indicate, Line 9, which we barely caught -- Line 9, does it indicate salaries and wages paid by this business?
A. Yes.
Q. What is the amount?
A. 815,358.
Q. All right. And the top left has a business code number. What is that business code?
A. 636220.
Q. Okay. The gross receipts for this business indicated on this tax return, what was it?
A. One thousand -- or 1,263,837.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit 12-4.
BY MS. JIMENEZ:
Q. All right. This is an IRS record for HM Management and Development for tax return 1065. What does the IRS say?
A. "As of June 4th, 2022, the Internal Revenue Service shows no return filed for the following tax years pertaining to the

individual described above."

Q. And that's tax years 2018, 2020, and 2021?

A. Correct.

Q. Now, you said a tax return was provided -- or was requested. Did you request a tax return for a specific year or could the applicant submit a tax return for either 2019 or 2020?

A. It could be either year.

MS. JIMENEZ: Now, can we look at 12-1.

BY MS. JIMENEZ:

Q. All right. This is an IRS record, 1065 return for HM Management and Development. For what tax year is this?

A. 2019.

Q. All right. Does it indicate any salaries and wages?

A. Yes.

Q. What is that amount?

A. 134,811.

Q. Does it indicate a business code?

A. Yes.

Q. What is that?

A. 531390.

Q. Is that the same code that you were supplied or a different one?

A. Different.

Q. Now, in a -- when Cross River -- when someone applies to

Cross River as a business owner seeking a loan outside the PPP context, does Cross River request an income tax return for the business?

A. I don't know. I only know about the PPP.

Q. You only know about the PPP?

A. Correct.

Q. And then, for the PPP loans, did it request tax returns?

A. Yes.

Q. Income tax returns?

A. Yes.

Q. All right.

MS. JIMENEZ: Can we look at 22-4.

BY MS. JIMENEZ:

Q. Was this document supplied to you?

A. Yes.

Q. It's an IRS Form 940 for tax year 2020, correct?

A. Correct.

Q. For this business, same business?

A. Correct.

Q. All right. What does it indicate in 2020 the business paid to its employees?

A. 713,420.

Q. All right.

MS. JIMENEZ: Can we look at 12-5, please.

BY MS. JIMENEZ:
Q. For this IRS record for HM Management and Development, what does the IRS say about Forms 940 for this business?
A. "As of June 4th, 2022, the Internal Revenue Service shows no return filed for the following tax years pertaining to the individual described above."
Q. Now, the 1065 income tax return that was provided for this business, did Cross River Bank have any information that the tax return had false information?
A. No.
Q. Did you have any indication that the tax preparer's signature on that return had been forged?
A. No.
Q. If you had that information, that the income tax return had false information regarding salaries and wages, the business code, and that the accountant's signature had been forged, would Cross River Bank have approved the loan?
A. No.
Q. For the IRS Form 940, did you have any information that the Form 940 was false?
A. No.
Q. That it had false information about wages?
A. No.
Q. If you had that information, and you had information that the 940 submitted to Cross River Bank was a false record -- a

falsified record, would the loan have been approved and funded?
A. No.
Q. All right. Did you acquire a voided check?
A. Yes.
Q. For what reason?
A. To verify the -- either if it was a business account or to make sure that the account and routing information for the F5 that they were requesting was legitimate.
Q. Is that the account to which the funds would go --
A. Yes.
Q. -- if the loan was funded?
A. Yes, it was.
Q. All right.
MS. JIMENEZ: Can we look at 22-6, please.
BY MS. JIMENEZ:
Q. All right. 22-6 is several pages long. What is this?
A. That is the closing contract that was sent to the borrower after the SBA had approved the loan.
Q. Okay.
MS. JIMENEZ: Can we go down this page.
BY MS. JIMENEZ:
Q. So is this a record that --
MS. JIMENEZ: Let's -- I'm sorry. Let's just keep going down for a moment.
All right here.

BY MS. JIMENEZ:

Q. Is this a record that Cross River Bank generated or that the applicant sent to you?

A. It was generated.

Q. And who provided the information that is on this 2483?

A. The borrower.

Q. From the record that you have dated March 12, 2021; is that right?

A. Correct.

Q. Okay. Does this information match the information that you received on March 12, 2021?

A. Yes.

Q. Okay.

MS. JIMENEZ: Can we go down. Can we just go back out.

All right. Can you highlight the middle.

The other middle.

"Average Monthly Payroll."

BY MS. JIMENEZ:

Q. Okay. Here, the average monthly payroll amount -- was this based on the information in the records you received?

A. Correct.

Q. The purpose of the loan -- did the applicant tell you what the money -- or what the reason for the loan was, what they were going to use the money for?

A. Correct.
Q. And they indicated payroll?
A. Payroll, utilities --
Q. And the payroll information that was provided to you, did it have any information about payments to 1099?
A. No.
Q. Okay.
MS. JIMENEZ: Let's go down.
BY MS. JIMENEZ:
Q. This form --
MS. JIMENEZ: If we can go down. Next page.
And the next page.
BY MS. JIMENEZ:
Q. -- it has certifications, right, that you're familiar with?
A. Yes.
Q. Were the applicant certifications important to the loan application process for Cross River Bank?
A. Yes.
Q. Why?
A. To verify that the information was correct.
Q. Did Cross River Bank, in the context of PPP loans, conduct an independent investigation of the information and the documentation that was provided by the applicant?
A. No.
Q. Was the process intended to be somewhat expedited?

A. Yes.

MS. JIMENEZ: And the last two paragraphs here, before -- with the signature, can we highlight that.

I'm sorry. The last two initialed paragraphs and the signature block.

BY MS. JIMENEZ:

Q. All right. So if you could just read the certification: "I further certify."

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. Was this certification in all of your 2483 Forms?

A. Yes.

Q. The signature provided indicates that who signed this document?

A. Eric Sheppard.

Q. Did you require the owner of the business to sign or an authorized representative of the business to sign?

A. Yes.

Q. Either one?

A. Yes.

Q. Okay. Can the authorized representative be someone other than Eric Sheppard?

A. Yes.

Q. All right. What is the date indicated on this signature block?
A. March 25th, 2021.
Q. All right. Then up, which is --
MS. JIMENEZ: Can we go to Page 15.
Stop here.
Go up.
BY MS. JIMENEZ:
Q. What is the Resolution to Borrow?
A. That is a promissory note from the SBA.
Q. Okay.
MS. JIMENEZ: And can you go back out.
BY MS. JIMENEZ:
Q. Does the applicant DocuSign this document as well?
A. Yes.
Q. What are they certifying?
A. That the --
MS. JIMENEZ: Go back out.
BY MS. JIMENEZ:
Q. Well, generally, what is the Resolution to Borrow? What are they supposed to be signing?
A. That they are accepting the terms of the loan.
Q. And the terms of the loan -- what were the terms of the loan? What was the interest rate of the loan?
A. One percent.

Q. But if they have to pay the loan back; is that right?
A. Correct.
MS. JIMENEZ: Can we go to Page 18 of this record.
BY MS. JIMENEZ:
Q. All right. What is this document?
A. That is the 4506-T, which is a Request for Transcript of Tax Return.
Q. Is this signed at the bottom?
A. Yes.
Q. Indicated to be Eric Sheppard?
A. Yes.
Q. And what does this record do? What does this document do?
A. It gives Cross River Bank the right to request the transcript of tax return from the IRS.
Q. For this business; is that right?
A. Correct.
Q. So with this signature on this document, you can turn to the IRS and request IRS records for HM Management and Development; is that right?
A. Correct.
MS. JIMENEZ: Can we go to Exhibit 10 -- 10-6.
BY MS. JIMENEZ:
Q. The 2483 Form that we were looking at, was it DocuSigned?
A. Correct.
Q. And what is this document, 10-6?

A. That's a Certificate of Completion for the DocuSign that was sent to the borrower.
Q. Is that the 2483 that was sent to him with the note, with the loan note?
A. Correct. It was -- all the previous pages were together as one, the closing contract for the loan.
Q. All right. And what is the day that this -- that the 2483 and the other documents were signed?
A. March 25th, 2021.
Q. And with that -- at the time that the documents were signed, did DocuSign capture an IP address?
A. Correct.
Q. And what does the IP address indicate?
A. The IP address from which the DocuSign was signed.
Q. And that's the IP address ending in 129?
A. Correct.
Q. Now, this loan was funded in the amount of $148,591; is that right?
A. Correct.
Q. The voided check, which is Exhibit Number --
MS. JIMENEZ: Give me a second.
22-5, please.
BY MS. JIMENEZ:
Q. All right. Is this -- does this check indicate the account to which the funds were sent?

A. Yes.

Q. HM Management and Development, account ending in 7571, at SunTrust Bank?

A. Yes.

Q. If --

MS. JIMENEZ: Let's go back to 22-1.

BY MS. JIMENEZ:

Q. This is the moment in time when the information was provided that populated the 2483; is that right?

A. Correct.

Q. Okay. And so if Cross River Bank had reason to believe that the information provided by the applicant on March 12th, 2021, such as its payroll amount, number of employees, business industry, was false, would this loan have been funded?

A. No.

Q. Did this borrower apply for forgiveness for this loan?

A. No.

Q. In your experience at Cross River Bank, did most -- did -- approximately what percentage of applicants whose PPP loans were funded applied for forgiveness? Is it a large percentage?

A. It is, yes. I'd say currently close to -- I think it's about -- for the first round I think it's about 90, and the second round it's a bit lower.

Q. Percent you mean?

A. Yes.

MS. JIMENEZ: If I could just have a moment, Your Honor.

THE COURT: Certainly.

(Pause in proceedings.)

MS. JIMENEZ: Okay. One second.

(Pause in proceedings.)

MS. JIMENEZ: Could we take a look at 22-7, please.

BY MS. JIMENEZ:

Q. What is this record?

A. This is the internal loan report we have, with a description of the loan and the information included.

Q. So -- and it -- does this indicate that the loan was funded?

A. Yes.

MS. JIMENEZ: Okay. All right. I don't have any other questions.

THE COURT: All right. Cross-examination.

MR. ETRA: Yes, Your Honor.

(Pause in proceedings.)

MR. ETRA: May I proceed, Your Honor?

THE COURT: Yes. Of course.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good afternoon, Mr. Lord. How are you?

A. Good. How are you?
Q. We're never met before, correct?
A. Correct.
Q. But you have met with the Government, right?
A. Correct.
Q. To prepare for trial?
A. Correct.
Q. Approximately how many times did you meet with the Government?
A. Three to four.
Q. Was Special Agent Halleran there?
A. Yes.
Q. And the prosecutors?
A. Yes.
Q. Were they asking you questions?
A. Yes.
Q. Did you answer them?
A. Yes.
Q. Did they take any notes?
A. I'm sorry. Did they take notes or did I take notes?
Q. Well, let's start with them. Did they take notes?
A. It was over a video call, so I couldn't say for sure.
Q. Didn't see. Okay. You were not involved in this loan application, correct -- or these loan applications, correct?
A. No.

Q. Are you agreeing with me?
A. I -- I'm not involved, no.
Q. Okay. I wasn't sure, the way you answered the question.
A. Yeah. Sorry.
Q. So you don't have any personal knowledge about the actions that were taken by Cross River in connection with this loan, right?
A. Outside of my job, no.
Q. Well, outside of your job. I want to keep your job into it. You don't have any personal knowledge, for example, of information requested from Cross River to the borrower, correct?
A. I'm sorry. Can you --
Q. Okay. Just -- I want to take a step back and take a big picture. You're a manager at Cross River, right?
A. Yes.
Q. And you had managerial responsibility for the PPP program, correct?
A. Not at the time of the loan application in question.
Q. Okay. So at the time of the application in question, you were not a manager in PPP?
A. Correct.
Q. You were not handling these loans?
A. Correct.
Q. You were not the person dealing with the information,

right?
A. Correct.
Q. You were not the person asking for information?
A. Correct.
Q. You were not the person reviewing information?
A. Correct.
Q. You're not the person making underwriting decisions or recommendations, correct?
A. Correct.
Q. Other people were doing that?
A. Correct.
Q. So you don't have any personal knowledge about all those things I just described, correct?
A. No. But through my job, yes.
Q. When you say through your job, yes, what does that mean?
A. That we were trained to know about the program.
Q. So your training is in what the procedures are supposed -- what the procedures are supposed to be, correct?
A. Correct.
Q. You're not -- that training doesn't tell you what actually happened with this loan, right?
A. It prepares you for things that could happen and gives you an overview of the loan process, whether it would be successful or unsuccessful.
Q. Right. But it doesn't tell you what actually happened in

this case, correct?
A. I mean, we could see the application. We would see --
Q. Okay. Are you done with your answer?
A. Well, because we could see an application as it was going through the process. So that was mainly where we would come in, was the borrowers would call in or email if they had questions, and we would assist them through the process.
Q. You're here and you're capable of explaining some of the documents, right?
A. Yes.
Q. But if it's not in the documents, you can't say what happened with this loan, right?
A. Correct.
Q. Okay. Let me just ask -- cut to the chase on one of these issues. The 1065 tax return that you talked about -- correct --
A. Correct.
Q. -- there is no document that shows that that document -- that the 1065 was requested from HM Management; am I correct?
A. Not a physical document now, but it was on the application flow of the requested documents.
Q. Okay. You've produced documents in this case, correct?
A. Correct.
Q. Is there -- any of the documents that you have produced show or evidence Cross River asking for the 1065 return from HM

Management?

A. It was on the website.

Q. What does that mean, it's on the website?

A. It was part of the application flow where that was a requested document for them to provide.

Q. Did you produce that thing you call the application flow that shows or requests that the 1065s were being requested?

A. No.

Q. Okay. So for all the documents that you produced to the Government, which they presumably produced to us, none of those documents show that Cross River asked for the 1065 from HM Management, correct?

A. No. But it was listed on the application portal.

Q. Okay. When you say: "The application flow," I don't know what that means. What is the application flow?

A. Whenever a potential borrower would log on to the website, the application flow, which was what was in question of the information they would provide, it would state the 1065 as a required form, if that was -- if they were the business type that required that.

Q. If it was a requirement. Do you know if it was a requirement for this applicant?

A. If they listed that that's how they filed, yes.

Q. I'm sorry. I didn't understand your answer. Could you repeat yourself a little louder, please.

A. Yeah. I'm sorry. If that was how they filed -- if that was how they were filing their taxes, then yes.
Q. I don't understand your question [sic]. Under what circumstances did Cross River request the 1065 -- a 1065 tax return?
A. If the potential borrower was filing as a business entity that required it.
Q. And which business entity required it?
A. Partnership.
Q. Okay. In fact, didn't -- didn't the -- HM Management file as an LLC?
A. Yes.
Q. So if you file it as an LLC, Cross River doesn't demand or request the tax return, correct?
A. A tax return, yes, still.
Q. I'm sorry?
A. They still have to return -- they still have to provide a tax form, regardless of what they are filing as.
Q. So I thought you said earlier it depends on what you're filing as, and if you're a partnership that's when you have to provide the tax return. I thought you said that earlier, didn't you?
A. I did. It depends on what type they were. Like if they were a sole proprietorship, then it would be the relevant form, which is a 1040. If they were an S corp., it would be an 1120.

If they were a partnership, it would be an 1165.
Q. And if it's an LLC, is a tax return always required?
A. Yes.
Q. But you didn't produce the documents that show that, correct?
A. No.
Q. And what is done with that tax return when it's required?
A. The information provided is reviewed for the loan application.
Q. For which part?
A. For which one, the loan application or which part of the form?
Q. Yeah.
A. For the payroll amount.
Q. And where on the documents that you provided does it show that the 1065 was reviewed for the payroll amount?
A. It didn't.
Q. It doesn't show that?
A. Correct.
Q. Okay. None of the documents you produced show that the 1065 was requested, correct?
A. Correct.
Q. None of the documents you produced show that the 1065 was relied upon for the payroll amount, correct?
A. It says the tax forms they provided, which -- information

they provided, which was the 1065.

Q. Do the documents that you produced show that Cross River requested the 1065? That's my question.

A. No.

Q. Okay. And none of the documents you produced show that anyone at Cross River even read the 1065 tax return; isn't that correct?

A. No.

Q. No, it's not correct?

A. No.

Q. Which documents here that you produced -- and I'll put them up if you want -- show that the Cross River actually read the 1065?

A. On the March application, there was a underwriter that says: "UW analysis notes," and there's an underwriter that signed their name that they reviewed the documents.

Q. Okay. We'll get there and you'll show me when we get there.

Okay. Who did the underwriting? Was it Cross River or was it Revenued?

A. Cross River.

Q. Okay. Do you know how it comes about that -- I think you said that -- why don't we just start with the first document, Bates SHEPP 3.

THE COURT: Just for the witness or is this in evidence?

MR. ETRA: Well, first it's for the witness. It is in evidence. It was in evidence as the large group of documents put into evidence.

THE COURT: Right. But what exhibit number?

MR. ETRA: Through 21.

THE COURT: I'm sorry. Through 21?

MR. ETRA: Sorry. The Government's Exhibit 21 is the full collection of documents. This is from that.

MS. JIMENEZ: Well, 21 is --

(Pause in proceedings.)

THE COURT: All right. So this document on the screen is in evidence as Exhibit 21, Mr. Etra?

MR. ETRA: It's part of Exhibit 21 that the Government offered for the full collection --

THE COURT: All right. But it's part of those exhibits?

MR. ETRA: Okay.

THE COURT: All right. Then it may be shown to the jury.

MR. ETRA: Thank you.

BY MR. ETRA:

Q. Sir, do you see the document on the screen?

A. Yes.

Q. You didn't go over this with the Government in your direct,

did you?
A. No.
Q. This actually shows something happened before the first document you went over on your direct, correct?
A. Correct.
Q. And what's going on in this document?
A. That is an incomplete application.
Q. And submitted on January 18th?
A. Yes.
Q. Okay.
MR. ETRA: And could we go down a little further, please.
BY MR. ETRA:
Q. Do you see the -- it says: "Opportunity Name." What does that mean, "opportunity name," in your parlance?
A. That is just the application name.
Q. Okay. And it says: "HM Management and Development," right?
A. Correct.
Q. And then d/b/a name, it has "HM Management and Development," right?
A. Yes.
Q. And what does it say under "Account Name"?
A. "HM-UP Development Alafaya Trails, LLC."
Q. So the borrower was identifying an affiliate here of HM-UP

Development Alafaya Trails, LLC, correct?
A. Correct.
Q. Okay. And that was in the first contact that the borrower had with Cross River, correct?
A. Correct.
Q. If you go to Referral Source, a little further down, do you see that?
A. Yes.
Q. What does that mean?
A. That was who the borrower is referred from.
Q. Could you explain how that works -- how that worked -- referral source for a borrower in the context of the PPP loan and Cross River?
A. Yes. So it would be -- we had a lot of different referral sources, where they would be kind of -- I mean, if they were just referred to Cross River Bank from different organizations for PPP -- for potentially receiving a PPP loan.
Q. Are these --
MS. JIMENEZ: Objection. Outside the scope. Irrelevant.
THE COURT: Overruled at this point.
BY MR. ETRA:
Q. Is this essentially like a lead generator? They find leads and they send them to Cross River?
A. I don't know.

Q. Do you know how it is that the applicant first got to Cross River?
A. I don't.
Q. Do you know if the applicant was --
MS. JIMENEZ: He said no.
BY MR. ETRA:
Q. Is one of the ways that Cross River got borrowers is to have sent emails out soliciting applications?
MS. JIMENEZ: Objection. Irrelevant.
THE COURT: Sustained.
BY MR. ETRA:
Q. Do you know what information was provided -- do you know if the applicant on their own went to the website or whether they were solicited by someone?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Sustained.
BY MR. ETRA:
Q. Well, you testified on direct that the way you started an application is by going to the website, right?
A. Correct.
Q. Doesn't the process start earlier when the applicant is given information about Cross River to go to the website?
A. It depends.
Q. So in some cases the applicant is first given information by someone saying: "Hey, this is the deal. Go to the

website," right?
A. Possibly, yes.
Q. And that's what Yarrow was doing here, right?
A. I don't know.
Q. And do you know what happened to this opportunity?
A. It was timed out because it was incomplete.
Q. It only took a day for it to be timed out, right, because there's another one the next day?
A. Correct.
Q. Do you know why it gets timed out so quickly?
A. I think if you go back to the other -- if you scroll down a little bit, it's not timed out immediately. It's generally after 72 hours.
Q. Okay. All right. And before we leave this, what email -- let's go to the email there. It says: "Preferred email." Do you see that?
A. Yes.
Q. And what email address is listed there by the applicant?
A. Eric.sheppard10@gmail.com.
Q. And when it says "Preferred Email," why does the form say preferred email and not just email?
A. I don't know.
Q. You're telling the borrower they can use any email they want, right?
A. Yes.

Q. You had no rules about what email to use, right?
A. No.
Q. Correct?
A. Yeah. That's correct. We had no rules.
Q. For example, it didn't say: "Use the email you use for your accounts receivable" or something like that?
A. Correct.
Q. You could do whatever you want?
A. (No verbal response.)
MR. ETRA: Let's go to the January 18th application -- January 19th application, 21-2.
BY MR. ETRA:
Q. This is the January 19th application that got aged out, correct?
A. Correct.
Q. Okay. And I was a little confused by your testimony about the IP address. At what point does the IP address -- let me ask it differently.
Someone went on the portal and filled out information, and that's what we have here for this electronic record of loan application, correct?
A. Correct.
Q. And you have the IP address of that act, right?
A. Yes.
Q. Okay. So according to this, on January 19th, 2020, at

maybe three o'clock in the afternoon, someone filled out this information from the IP address listed, right?

A. Yes.

Q. Okay. And here it's indicated the name Eric Sheppard, and it's a different email address used, hmfourmanager@gmail.com. Do you see that?

A. Yes.

Q. Nothing wrong with using a different email, right?

A. Correct.

Q. Okay. And in fact, isn't it the case that in this program you had to use a different email for a different loan application -- let me say it differently.

You couldn't use the same email for multiple loan applications; isn't that correct?

A. Correct.

Q. Okay. So if you're a manager of multiple companies and affiliates, and you're applying for loans for each of them, you have to use a different email address for each of them, correct?

A. Correct.

Q. Okay.

MR. ETRA: Let's go to the next page, please.

BY MR. ETRA:

Q. For "Number of Employees" it says 23, right?

A. Correct.

Q. Is this the way -- it says: "Number of Employees," and the information -- sorry. Let me start again.
These are a series of prompts, and there are answers to it, right?
A. Yes.
Q. Are the prompts that appear here the way they appeared on the portal?
A. Appeared like -- if that was just like this but blank, but they would fill it in?
Q. Right.
A. No. It was like prompted with questions. It looked different.
Q. So for example, where it says: "Legal Name," colon -- do you see where it says that in the document?
A. Yes.
Q. And then the person fills in: "HM Management and Development, LLC." Do you see that?
A. Yes.
Q. Are you saying the prompt said something other than "Legal Name"?
A. It would say name of the business, like legal business name, yes.
Q. So did you produce to the Government, for the Government to produce to us, what the prompts looked like for the person filling out the online application?

A. No.
Q. Why not?
A. Because it's unavailable.
Q. So we don't have the ability to see what the questions looked like when the person was filling it in, correct?
A. We have -- for training purposes internally we have screenshots of the application flow, but we can't access the -- like what it looked like exactly.
Q. But you did not produce that, correct?
A. No.
Q. All right. So for number of employees, where it says -- well, for -- let's start off with NAICS code, where that's the question. Is that how it appeared in the portal?
A. Yes.
Q. And "Number of Employees" -- that's the question -- is that how it appeared in the portal?
A. Yes.
Q. So the portal didn't specifically state that -- only count W-2 employees, correct?
A. Yes.
Q. You're agreeing with me?
A. It did state to count only W-2 employees.
Q. It says: "Only count W-2 employees"?
A. Yes. Because 1099s could get their own loans, so they weren't eligible.

Q. I'm not asking what the rules were or how you understood the rules. But the prompt just said: "Number of Employees," correct?
A. It said: "Number of W-2 employees."
Q. And where does it say that?
A. On the application flow.
Q. Which you did not produce?
A. Correct.
Q. Did you tell the Government that the prompts are different than the way they appear here?
A. It's the same information, so no.
Q. Well, here it says: "Number of Employees." It doesn't say: "Number of W-2 employees." Before you walked into court today, did you tell the Government that the prompts appear differently in the portal than they do on this page?
A. No.
Q. You think that would be important information to share?
A. Well, non-W-2 employees weren't accepted, so it would only have been W-2 employees.
Q. You understand that, correct?
A. Correct.
Q. You are very involved in this program as a professional, correct?
A. Correct.
Q. But to your experience, does every person in the public

know that?
A. How would I know that?
MS. JIMENEZ: Objection. Speculative.
THE COURT: Sustained.
BY MR. ETRA:
Q. Okay. Let's go to the next box. "Average Monthly Payroll," do you see that?
A. Yes.
Q. That's what -- it doesn't say in -- right here to only include payments to W-2 employees, correct?
A. Correct.
Q. But your testimony is that somewhere else that's where it says, but we can't see it?
A. Yes.
Q. What else is in the portals -- portal that we don't get to see on this document?
A. This is an -- information that is taken from the potential borrower in response to the questions.
Q. I'm talking about the questions. We see words that are questions here. I want to know everything that's in the portal that's not written here as questions so we know what the portal says.
A. It was two years ago. I can't provide that.
Q. So it was two years ago. You don't remember, right?
A. Yes.

Q. Okay. So -- yet, you remember that when it says: "Number of Employees" here in the portal, it really says: "Number of W-2 employees"? Is that your testimony?

A. Yes. I remember relevant things about the application, but I don't remember every aspect of it.

Q. And you remember that where it says: "Payroll" here, from two years ago, in the portal that we can't see, it says: "Don't include 1099ed workers," right? That's your testimony?

A. I don't remember if on that part it included not including 1099s.

MR. ETRA: Your Honor, can we come sidebar for a moment?

THE COURT: All right. Come on forward.

(At sidebar on the record.)

MR. ETRA: Your Honor, we move to strike his testimony. He has no personal knowledge. He's testifying about the documents, but when I push him now there are these other documents that we've never seen. And he's here -- I can't cross-examine him about what he's seen -- remembers from two years ago. It's a moving target.

None of this is personal knowledge to begin with. So as it is, all these witnesses are kind of stretching the notion of a percipient fact witness, and now I'm chasing goats about documents I've never seen that's never come up before. I think it's improper.

THE COURT: Okay. Response?

MS. JIMENEZ: Do I need to respond to that?

These are not documents that were never seen before. He's described over and over again, answering the questions, this is what someone logging into the portal would observe. And he remembers the germane aspects of the questions that were being asked, the most germane of which is, you know, employees and payroll.

There's not a physical document that -- first of all, he's not the person at Cross River Bank who produced records. But apart from that, it's not a record. I mean, the business records are the records that they maintained. This is not a record that they maintained, and he's answered that question multiple times.

THE COURT: All right.

MR. ETRA: May I add, Your Honor?

If I had gotten the screenshots which existed, I would have handled this witness the way I handled the last witness, where I would have said: "You made it clear in the portal, but you didn't make it clear in the 2483."

Now, I look kind of like an idiot by suggesting -- taking a different approach based on the documents produced and fighting with him about documents that I'm never going to get to see and I doubt exist.

THE COURT: All right. I think I've heard enough.

The motion to strike the testimony is denied. This is a fact witness. The exhibits were admitted into evidence without objection. The witness's knowledge or lack of knowledge with regard to the specific process and the actual exhibits goes to the weight of his testimony, certainly not to the admissibility.

So you'll have an opportunity to cross-examine. You have an opportunity to extrapolate that lack of knowledge at the time of your closing argument or with other witnesses. But right now, there's no basis to strike the witness's testimony. Let's continue.

(End of discussion at sidebar.)

THE COURT: All right. Mr. Etra, Ms. Jimenez, one of the jurors is in need of a comfort break.

Not a problem.

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

COURT SECURITY OFFICER: All rise.

(Jury not present, 3:59 p.m.)

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

(Recess from 4:00 p.m. to 4:12 p.m.)

THE COURT: All right. Let me acknowledge the presence of the Defendant, Mr. Sheppard.

Are we ready to proceed?

MS. JIMENEZ: Yes, Your Honor.

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: See if they're ready.

(Pause in proceedings.)

(Before the Jury, 4:12 p.m.)

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

Please be seated, everyone.

And we'll continue with the cross-examination.

BY MR. ETRA:

Q. Mr. Lord, I was -- wanted to go back to what you were doing in beginning of 2021, what your job was in connection with the PPP program.

A. So I was working with the customer support team at the time.

Q. So you weren't managing the flow of information or the flow of documents, right?

A. No.

Q. And you've seen training materials, screenshots that reference the fact that "Number of Employees" is W-2, correct?

A. Yes.

Q. That doesn't necessarily mean that that's how the portal read the date here in January 19 of 2021, correct?

A. There was screenshots of the portal at that time.

Q. So you're saying you actually remember seeing screenshots of the portal as they appeared on January 19th, 2021, on that very date. Is that your testimony?

A. There were screenshots of the portal, but I can't confirm the date that that -- that exact date.

Q. So you don't know -- so you can't say what the portal prompts looked like when the applicant answered the questions on January 19th, correct?

A. Not on that specific day, no.

Q. Okay. Did the prompts change over time?

A. Slightly.

Q. What do you mean "slightly"?

A. Well, the application, but the prompts --

Q. The prompts -- sorry?

A. The prompts wouldn't.

Q. They never changed?

A. No.

Q. Not once in the entire time of the PPP program? The prompts never changed?

A. Well, I mean, the eligibility was the same throughout the whole program, so -- or not the whole program, for each year.

Q. At no point during the process did Cross River decide to make the prompts -- improve them or make them clearer. They just kept them the same from the very beginning of the program till the very end of the program. Is that your testimony?

A. I don't know enough to answer that.

Q. You don't know. You don't know if the prompts changed over time, correct?

A. I know that they did at some point, but I don't know enough to say why.
Q. You can't say what the prompts looked like on January 19th, 2021, correct?
A. Not on that exact day, no.
Q. How about January 18th? Can you say on that day?
A. No.
MR. ETRA: Let's go back to 21-2, please.
BY MR. ETRA:
Q. I just want to clarify the d/b/a here -- this is the January 19th portal application, right?
A. Correct.
Q. Is that a fair term, "portal application"?
A. Yes.
Q. And the d/b/a here is HM Management and Development, right?
A. Yes.
MR. ETRA: Let's go to the list of ineligible businesses a few pages down.
BY MR. ETRA:
Q. Now, this is -- the way it appeared in the portal, it looks like -- the way this appears here, the information we're looking at on ineligible businesses is after you provide information. It seems to follow that; is that correct?
A. That it's after the information?
Q. So there's no place to -- for the -- there's no place where

Cross River says: "Click here so you see this information," correct?
A. That was part of the portal. It was listed.
Q. But it was after the -- the last click here seems to be the one that you're looking at at the top of the page, basically agreeing to give permission to run a credit, right?
A. Yes.
Q. Okay. And the rest of the information after that, Cross River wasn't putting places to click to make sure the borrower was looking at the information, correct?
A. I don't recall the exact format of the application --
Q. You don't know whether there's any way -- any clicking or prompts for the borrower to see that information, right?
A. They were provided that information, but I can't confirm on whether it was a click or whichever one you're meaning.
Q. How old are those screenshots you were testifying about?
A. I don't know.
Q. When's the last time you saw them?
A. Earlier this year.
Q. Okay. Let's talk about what it says about ineligible businesses. Says: "Ineligible businesses for Cross River's SBA Paycheck Protection Program," right?
A. Yes.
Q. Doesn't say: "For the PPP program." It says: "For Cross River's PPPP [sic] program," correct?

A. Yes.
Q. I added a P there by accident.
MR. ETRA: Okay. Now let's go down to the next page.
BY MR. ETRA:
Q. And it talks about passive businesses and it gives specific examples, correct?
A. Correct.
Q. So I want to understand if any of these apply to the company HM Management and Development if it provides managerial and construction services for affiliated companies. Does that make it a passive business under any of these definitions?
A. I don't know.
Q. It doesn't make it a passive business under these definitions, correct?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Sustained.
BY MR. ETRA:
Q. Did you say you don't know? I wasn't sure I heard your answer before the sustaining of the objection. So do you know whether that type of business is a passive business under these definitions?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Sustained.
"Does that make it a passive business under those definitions?" The answer was: "I don't know."

MR. ETRA: Oh. I wasn't sure. "I don't know."
THE COURT: Yes.
MR. ETRA: Sorry, Your Honor.
BY MR. ETRA:
Q. Okay. Well, let's look at the fourth bullet. It says: "Businesses that have entered into a management agreement with a third party that gives the management company sole discretion to manage the operations of a business." Do you see that?
A. Yes.
Q. That's not the situation I'm talking about where the management company is working with affiliated companies, correct? Or do you not know?
A. I don't know.
Q. Okay. Fair enough. So you have no information to suggest that HM Management and Development was an ineligible business, correct?
A. Other than that they certified that they were not an ineligible business.
Q. I'm sorry?
A. Other than that they certified they weren't an ineligible business.
Q. Okay. All right.
MR. ETRA: Let's go a little further down. It says: "Speculation" or "Speculative."

BY MR. ETRA:
Q. Under 11, "Speculation. Speculative businesses are not eligible. This prohibits loans for an applicant for" --
MR. ETRA: Go to the second bullet point.
BY MR. ETRA:
Q. -- "engaging in a risky business for the chance of an unusually large profit." Do you see that?
A. Yes.
Q. Is there any explanation for what that means?
A. I don't know.
Q. So if the business is risky for a large profit, does that make it ineligible under Cross River's PPP program?
MS. JIMENEZ: Objection. He said he did not know.
THE COURT: Sustained.
MR. ETRA: Let's go to --
BY MR. ETRA:
Q. Do you know who reviewed these actual applications within Cross River?
A. It was through an automated system. And then, if anything was flagged it was done manually.
Q. I'm sorry. It was done manually or it wasn't done manually?
A. If anything was flagged, it was done manually.
Q. If anything was what?
A. Flagged.

Q. Flagged. Before you came to testify, did you locate the individuals who were involved in reviewing these applications?
A. No.
Q. Did you do an investigation to determine what had happened beyond what we can see in these documents?
A. Me personally, no.
(Pause in proceedings.)
MR. ETRA: For the witness only, Your Honor.
THE COURT: All right. The exhibit number, please.
MR. ETRA: It's part of Exhibit 21. We're using a part that wasn't put up by the Government.
THE COURT: I'm sorry. So it is in Exhibit 21?
MR. ETRA: It is part of Exhibit 21.
THE COURT: All right. Then if it's part of Exhibit 21, then it can be shown to the jury.
MS. JIMENEZ: Can we see what it is?
MR. ETRA: It goes along with the -- it's the opportunity and goes along with the January 19.
BY MR. ETRA:
Q. Do you recognize this document?
A. Yes.
Q. Could you explain what it is?
A. It's the -- the application that was submitted on January 19th, 2021.
Q. What's the relationship between the previous document we

looked at and this document?
A. It's the same business.
Q. Essentially this is more of an internal record about what happened with the application?
A. Correct. Yes. This is an internal view of the application information.
MR. ETRA: If we could just go down to the middle of the page, where it says: "D/b/a name."
BY MR. ETRA:
Q. Do you see it says: "Opportunity Name: HM Management and Development"?
A. Yes.
Q. You see it says: "D/b/a Name: Construction Service X"?
A. Yes.
Q. That's a mistake, isn't it?
A. It's whatever the borrower would have entered.
Q. Well, if we just saw in the application for January 19th they didn't use the -- the person who submitted the application on January 19th didn't use the d/b/a of Construction Service X, they used a d/b/a of HM Management and Development -- do you remember that?
A. Yes.
Q. So why does it put here this d/b/a name that comes later in March?
MS. JIMENEZ: Objection. Asks the witness to

speculate as to why the borrower put that information.

MR. ETRA: No. That's not -- I don't know if you want me to respond.

THE COURT: The witness may answer the question, if he has personal knowledge.

THE WITNESS: I don't have personal knowledge.

BY MR. ETRA:

Q. But do you agree with me that this is a case where, according to the records of Cross River, the January 19th applicant put the d/b/a name Construction Service X but we saw a document that shows that the January 19th applicant didn't use that d/b/a name? Do you agree with me on that?

A. It has the d/b/a listed as Construction Service X, so they must have put it in at some point.

Q. Well, that probably happened in March, right?

A. No. Because it's from January.

Q. So where do you see -- okay.

MR. ETRA: Let's go back to 1 -- let's go back to 21-2.

BY MR. ETRA:

Q. This is the portal application submitted on January 19th, right?

A. Yes.

Q. Is there any other information submitted on January 19th besides what's in here?

A. The documents that they provided.
Q. Where does it show what documents were provided?
A. It doesn't say on this -- the electronic record of loan application.
Q. And on this electronic record it shows a d/b/a we saw of HM Management, right?
A. Yes.
Q. You testified that the 940 Form was submitted with this application, correct?
A. Yes.
Q. And what is the basis for saying that?
A. The basis was that the borrower uploaded it with the application.
Q. Do you know that from personal knowledge?
A. How would I know?
Q. I don't know. I'm trying to find out how you would know.
A. I mean, I wouldn't. I'm not there with him when he's submitting the application.
Q. Where in the records does it show --
MR. ETRA: Let's go back to the -- let's go back to Bates 117.
BY MR. ETRA:
Q. This is the internal record that goes with the January 19th application, right?
A. Yes.

Q. Just tell me where it shows that the 940 was submitted with the January 19th application. Do you want us -- we can go page --
A. If you scroll down further, a little more.
I'm sorry. If you keep going, I'll tell you when to stop.
So in this -- sorry. If you go back up.
So if you -- in this section, the Documents tab, it generally shows the documents provided.
Q. I'm having a hard time hearing you. Could you say that louder, please?
A. Yeah. So in this bracket of the application view, this is the section where it includes the documents.
Q. And where does it say the 941 was filed?
A. So it doesn't on this one.
Q. Okay. So you don't know when the 940 for 2019 was filed, correct?
A. When it was filed with the application or when it was filed by the borrower to the IRS?
Q. Sorry. It says: "Zero items," right?
A. Right.
Q. So no documents were submitted with this application, correct?
A. I can't confirm that because sometimes the page doesn't load correctly. So "zero" there doesn't necessarily mean zero.

Q. So at least based on the documents you produced to us, if we rely on those, then no documents were submitted with the January 19 online application, correct?

A. Could you scroll to the top, please.

So for the -- for this opportunity, internally we have -- it goes by opportunity number -- or opportunity ID, rather. So any opportunity that was submitted has a unique opportunity ID, which internally we have a folder for each opportunity ID which includes the documents that the borrower uploaded, if there were any.

Q. And does it show that -- does it show that the 941 was submitted with the January 19 application? Yes or no?

A. On this page, no.

Q. Does it show it anywhere on this document?

A. If you scroll down a little more, there's a note that says -- there's a bracket that says: "UW analysis."

Q. Okay. Let's look for it.

A. I think it's, I think, about midway.

Okay. That's it.

Q. Where? Please tell me where we're looking.

A. It will say: "UW analysis notes." Sometimes they'll state the reason for documents, which was if documents needed to be reviewed. So I was just seeing if they had noted that the 940 was reviewed.

Q. Do they say here in UW analysis -- does it identify any

documents submitted?
A. No.
Q. Okay. So again, in this entire document, is there any indication that documents were submitted with the January 19th portal application? Yes or no?
A. No. But it could be an outdated version of the page.
Q. You're speculating, aren't you?
A. (No verbal response.)
Q. Sorry. You're speculating, aren't you?
A. I mean, no.
Q. How -- so the -- okay. You've come to court and you've said that the 940 was submitted with this application, correct?
A. Correct.
Q. And you said that the K-1 was submitted with the application, correct?
A. Correct.
Q. And you said that the page that had affiliates on it was submitted with this application, correct?
A. Correct.
Q. And this document is where you would see -- document on the screen right now, which would identify which documents were submitted with the application, correct?
A. Yes.
Q. And yet none are identified, correct?
A. Correct.

Q. Okay.

MR. ETRA: Okay. Could we put up -- could we put up the K-1.

We could take that down.

Your Honor, this is also -- well, this was offered by the Government.

THE COURT: Is this part of Exhibit --

MR. ETRA: This is in evidence as part of 21, right?

Yes. This is part of 21 in evidence.

THE COURT: All right.

BY MR. ETRA:

Q. This was submitted at some point to Cross River, right?

A. Yes.

Q. Okay. We can agree on that. All right.

And this is a K-1, right?

A. Yes.

Q. Okay. And there's no place to put information for a tax preparer in this form, correct?

A. Can you scroll down, please.

Not on the page provided.

Q. Okay. And we looked at the email -- well, actually, you looked at it with the prosecutor, where Cross River is telling the applicant that the January 19th application didn't work. Remember that?

A. Yes.

Q. And there's nothing in there that said the applicant wasn't qualified, right?
A. Yes.
Q. It was simply that it didn't work for the automated system, right?
A. Correct.
Q. And feel free to reapply?
A. Correct.
Q. Is that right?
A. Yes.
Q. Okay.
MR. ETRA: Okay. Let's turn to the March 12th paperwork, Exhibit 22-1 in evidence.
BY MR. ETRA:
Q. This is now -- we're now jumping forward to March 12th, right?
A. Yes.
Q. Okay. And it's like the other version, but now we're on March 12th?
A. Yes.
Q. Same kind of document. And you also have the IP address for this, correct?
A. Correct.
Q. Okay. And here the applicant gives the name of Eric Sheppard, right?

A. Yes.

Q. And the -- a different email address of eshmmanagementndev@gmail. Do you see that?

A. Yes.

Q. Again, no rule against which email you use, correct?

A. Correct.

MR. ETRA: Now let's go to the next page.

BY MR. ETRA:

Q. Here, in March, the applicant puts the d/b/a name of Construction Service X, correct?

A. Correct.

Q. Isn't that why that name got put into the January 19th internal data?

A. I don't know.

Q. Okay. You don't know one way or the other?

A. Right.

Q. Okay. Fair enough. But here also you do have the ericsheppard10 Gmail email as well, correct?

A. Correct.

MR. ETRA: Let's go to the loan information.

BY MR. ETRA:

Q. And here the average monthly payroll is $59,437, correct?

A. Correct.

Q. Okay. And if you multiply that by 12, it's about $713,000. Do you know if that's the case?

A. Yes.

Q. Okay.

MR. ETRA: Now let's go to the 940 for 2020. It's Exhibit Number 22-4.

BY MR. ETRA:

Q. And you see -- what's the amount listed as wages there? 713,000, right?

A. Yes.

Q. Pretty much the exact match with 12 times the average monthly payroll, right?

A. Correct.

Q. And isn't it a fact that Cross River used this form as support to verify the payroll amount? Correct?

A. Yes.

Q. Okay.

MR. ETRA: Let's go back to the application form.

Actually, we can move past that.

Let's go to the document that starts Bates 110.

BY MR. ETRA:

Q. Do you recognize this -- sorry.

MR. ETRA: Is that the exhibit number or no?

This is part of Exhibit 21 in evidence, Your Honor.

THE COURT: All right.

MR. ETRA: May I proceed?

MS. JIMENEZ: No objection.

THE COURT: It's in evidence. You may continue.

MR. ETRA: Okay. Thank you.

BY MR. ETRA:

Q. Do you recognize this page?

A. Yes.

Q. Could you tell me what this is.

A. This is the application from March 12th, 2021.

Q. Right. So it's the --

A. The internal view.

Q. It's the internal version of what the user is using, right?

A. Yes.

Q. We saw that for January 19th. Now we're seeing it for March 12th, right?

A. Correct.

Q. Okay. Great. And what I'd like you to do is tell me where in here it shows that the underwriter reviewed or analyzed the 1065 Form. Okay? Because I think you said that it would be here.

A. So in the -- I mentioned in the previous one there's -- the back of this that says: "UW analysis."

MR. ETRA: Well, let's go to UW analysis. It's on Page 112.

THE WITNESS: I think if you go up a little bit.

MR. ETRA: No. That's not UW analysis. Keep going. It's 112.

There it is.
BY MR. ETRA:
Q. Okay. Do you see it, sir?
A. Yes. So the UW analysis notes.
Q. Where in here does it say that the underwriter reviewed the 1065 tax returns?
A. So it doesn't specify the 1065. But whenever they date it and sign it, they would have reviewed all the documents.
Q. Okay. So let's first focus on what's here. You said earlier -- I asked you: "Isn't it a fact that there's no record of anyone reading the 1065 return?" And you said: "No. I think it would be in the UW analysis." Do you remember that?
A. Yes.
Q. And we're looking at that UW analysis here, correct?
A. Correct.
Q. And it's not here, correct?
A. It's not that they -- they didn't list the 1065 out.
Q. So is there any -- anything in the records that verify that a single person at Cross River actually read the 1065 return?
A. Not that was specifically notated.
Q. Okay. And again, you don't have personal knowledge, right?
A. Right.
Q. My colleague pointed out something to me. It actually refers to a different form here, correct?
A. Correct.

Q. What form does it refer to?
A. The 940.
Q. The 940?
A. Yes.
Q. And that shows that the payroll -- the underwriters definitely reviewed the 940, right?
A. Yes.
Q. And that's how they verified payroll, right?
A. Yes.
(Pause in proceedings.)
MR. ETRA: Could we put up the 1065 tax return.
BY MR. ETRA:
Q. I have Exhibit 22-3 on the screen. That's a 1065 tax return. Do you see that?
A. Yes.
Q. And again, there's no evidence showing -- let me take a step back.
MR. ETRA: Let's go up to look at the top of the form, please.
BY MR. ETRA:
Q. The NAICS code put there, do you see that?
A. Yes.
Q. You see it says 636220. Do you see that?
A. Yes.
Q. Do you know what number that is?

A. Do I know what business that refers to?
Q. Yeah.
A. No.
Q. That's not the number that was used in the final application, correct?
A. If you can go back and confirm.
Q. Okay. We'll go back to that later, okay? Fair enough.
MR. ETRA: Let's go to the bottom of the page.
BY MR. ETRA:
Q. You see here there's a purported -- signatures and dates, right?
A. Yes.
Q. And there's a place for the tax preparer -- unfortunately the sticker covers it up, but you recognize that line with "Mr. Cupersmith" is for the tax preparer, correct?
A. Correct.
Q. And in this case, it shows "Mr. Cupersmith," his purported signature, date, and a PTIN number. Do you see that?
A. Yes.
Q. Am I correct that to the extent Cross River ever needed tax returns, it didn't require any information from a CPA, correct?
A. Correct.
Q. It could have been blank, right?
A. Correct.
Q. In fact, it could have had a fake CPA number and Cross

River wouldn't check, right?
A. Correct.
Q. In theory, right?
A. Initially, no.
Q. Hopefully not, but -- okay. It was -- it accepted applications without a CPA name or information, right?
A. Correct.
Q. Partially because some people file without CPAs, right?
A. Correct.
Q. And partially because you know you're getting copies and you don't have that information?
A. Correct.
MR. ETRA: Let's go to Exhibit J -- I'm sorry -- not J-3.
(Pause in proceedings.)
BY MR. ETRA:
Q. Putting up 22-6, which is the package of materials that were DocuSigned. You see that, sir?
A. Yes.
Q. Now, this indicates that it's not just the 2483 and a note but several other documents, right?
A. Correct.
Q. That was Cross River's option to include additional documents that the borrower had to sign, right?
A. Correct.

Q. What was the reasoning in including additional documents for Cross River? Do you recall?
A. I don't recall.
Q. Okay.
MR. ETRA: All right. Let's go to the 2483 application, which is Bates 59.
BY MR. ETRA:
Q. And just to close the loop, because I had asked you and you wanted to see it, do you see the NAICS code here?
A. Yes.
Q. Do you see that it starts with a two?
A. Uh-huh.
Q. And the one in the tax return, or the purported tax return, started with a six. You recall that?
A. Yes.
Q. So no one took the NAICS code from the tax return and put it on this application, right?
A. Correct.
MR. ETRA: Let's go to the --
BY MR. ETRA:
Q. You'll agree with me that the 2483 Form doesn't say not to include payments to 1099ed workers in the payroll, correct?
A. Correct.
Q. And when it talks about employees, it doesn't say: "Employees only means W-2," correct?

A. Correct.
Q. Okay.
MR. ETRA: Let's go to Document 1006 --
BY MR. ETRA:
Q. Before I do that, do you have -- do you use the term "working capital" in your business?
A. Not personally, no.
Q. You don't know what the term means?
A. Not personally, no.
Q. Okay.
MR. ETRA: Let's go to Page 00067.
Sorry. I've got the wrong Bates. I apologize.
(Pause in proceedings.)
BY MR. ETRA:
Q. Is this one of the documents that the applicant had to DocuSign for the loan?
A. Yes.
Q. It's a settlement sheet. Can you explain what a settlement sheet is.
A. I don't recall. Sorry.
Q. Okay. Well, it's in evidence, so I'll just read it. It says the amount of the loan, HM management is the payer, and it says: "Working Capital." Do you see that?
A. Yes.
Q. But you don't know what working capital is, right?

A. I don't. I'm sorry.
Q. You don't know whether that goes beyond the authorized uses of the loan?
A. I don't.
Q. In the 4506-T that you talked about before --
MR. ETRA: Let's go to that one as well.
BY MR. ETRA:
Q. This is a form that by signing it the signer is basically authorizing the taxpayer here -- which is HM Management, right --
A. Yes.
Q. -- is authorizing your company to go to the IRS and get all the actual filed returns, correct?
A. Correct.
Q. And in this case, did HM Management agree to sign it?
A. Yes.
Q. Okay. Thereby giving you guys access to all of the returns?
A. Correct.
MR. ETRA: No further questions, Your Honor.
THE COURT: All right. Any redirect?
MS. JIMENEZ: Yes.
REDIRECT EXAMINATION
BY MS. JIMENEZ:
Q. Mr. Lord, your -- do your responsibilities at Cross River

Bank include anything relating to PPP loans?
A. Yes.
Q. What do you do relating to PPP loans?
A. I'm currently -- since the application stage is over, it's mostly dealing with forgiveness.
Q. Do you manage PPP loans that were previously funded? Is that part of your responsibilities?
A. Yes. But again, it's mostly in the forgiveness stage.
Q. Right. At this point, there are no -- there are no loans being funded, right?
A. Correct. It ended in May of '21.
Q. And I think you indicate you received training on what the portal for Cross River Bank provided in 2021; is that right?
A. Correct.
Q. Did you receive training on whether the -- on the way the portal looked to applicants in 2021?
A. Yes.
Q. Did you yourself have responsibility for producing the records to the Government in this case?
A. Yes.
Q. You yourself did?
A. I did, yes.
Q. All right. And so the portal information that Cross River -- or the way the portal looked to applicants in 2021 by Cross River, was that available as a document to produce to the

Government at this time?
A. It's -- we have like an internal kind of -- a knowledge base that we have. So it's screenshots but not in a way they can really be presented.
Q. Now, the screenshots that you were asked about, did you testify that they included information that the applicant was supposed to supply about employees -- number of employees?
MR. ETRA: Objection. Leading.
THE COURT: I'll allow it. Overruled.
THE WITNESS: I do not recall if that was one of the specific screenshots. There were screenshots of the application flow, but I don't recall if it's start to finish or which ones it specifically states.
BY MS. JIMENEZ:
Q. And was it the case that there were specific ones that you did have some recollection about?
A. Yes. The -- kind of the basic information ones.
Q. Was it basic information to provide number of W-2 employees?
A. I don't recall if that was one of the screenshots. It was primarily like business name, the NAICS code, and kind of I think ownership.
Q. Did you testify that the term "employees" was defined as W-2 employees?
A. I don't recall if there's -- if we have an actual

screenshot that shows that listed. I remember that being part of the application, but I don't know if we have a specific screenshot of that section.

Q. You're talking about screenshots. But in the portal at the time, did it indicate W-2 employees?

A. Yes.

Q. All right. And you were asked about whether the eligibility changed. Did the eligibility change at any point as to whether or not the payroll amount for a business claiming employees -- did it ever change as to whether you could include independent contractors -- payments to independent contractors?

A. No.

Q. Did that aspect of the loan application system ever change?

A. No. Because 1099s could file -- they could file for PPP loans themselves.

Q. The --

MS. JIMENEZ: Can we go to Exhibit 21-1, please.

No -- sorry. 21-2.

BY MS. JIMENEZ:

Q. Mr. Lord, when someone logs into your portal at the time, in 2021, did you indicate, sir, whether or not someone could actually -- well, did you indicate at what point in time the applicant can submit documents supporting their loan application?

MR. ETRA: Objection. Leading and lack of personal knowledge.

THE COURT: Overruled. I'll allow it.

THE WITNESS: At the top of the application flow, when they're looking at it, there was kind of tabs for this stage, and the final tab was document upload.

BY MS. JIMENEZ:

Q. Document upload. What does that mean?

A. That was a stage in which they would -- it would prompt them to upload the relevant documents for their business.

Q. And can an applicant submit the information first and submit their documentation later at another point in time, based on the way that Cross River Bank had the portal set up?

A. They can enter in the information, but it's not -- the application isn't submitted.

Q. Is the application considered complete before the documentation is uploaded and supplied?

A. No. It's incomplete until documents are provided.

Q. Incomplete -- okay. But does that mean that -- can there be a transmission -- an electronic transmission from the applicant inputting the information before documents are uploaded?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: This is showing an electronic record of loan application. This is only propagated when the full loan application is submitted. But like on the -- I think January 18th, to where it said: "Aged," and there was no further information, that was an example of when they could enter in information into the portal but not complete the application. So there was evidence that they had started like putting their name, business information, whichever one it was, and then had left the application to be incomplete and not followed through with it.

BY MS. JIMENEZ:

Q. So did Cross River Bank capture in its system someone entering some information on that occasion, January 18?

A. Yes. In the form of the -- the Salesforce page of January 18th.

Q. Okay. But then, specifically with respect to the January 19th, 2021, file that you have, did that reflect information provided and records submitted all at once on that date?

A. Yes.

Q. All right.

MS. JIMENEZ: Can we take a look at Government Exhibit 21, just Page 10574.

BY MS. JIMENEZ:

Q. I think you were --

MS. JIMENEZ: I'm sorry. Could we switch to the ELMO.

BY MS. JIMENEZ:

Q. I think you were asked about this record, and it's very small for me anyway.

MS. JIMENEZ: That's blurry. Is this on autofocus?

BY MR. ETRA:

Q. All right. The -- there's some notations on the left-hand side of this record. Do you see that?

A. Yes.

Q. What are those notations?

A. So those are recent items. That's kind of like the view history of whichever user was accessing the page at the time.

Q. All right. Does that indicate whether those documents were uploaded, where it says: "IRS 940 HM Management and Development LLC tax return"?

A. Right. So those were -- we can only view documents that were uploaded.

Q. Okay. And so, based on the way that your system was set up, would those documents have to have been uploaded January 19th, 2021, and submitted -- or rather uploaded whenever, but submitted January 19th, 2021?

A. Correct.

Q. And then below the 940 it indicates "2020 K-1 Tax Return 1065." Do you see that?

A. Yes.

Q. For that same transmission, January 19th, 2021, is that

when that document would have been transmitted to Cross River?
A. Yes.
Q. All right. Now, for the March 12 application, was Cross River's portal the same at that point in time, meaning that you needed to upload your documents and everything goes in one transmission to Cross River?
A. Yes.
Q. All right. So for March 12, 2021 --
MS. JIMENEZ: Are we not seeing my documents?
Okay. Yes, we are.
BY MS. JIMENEZ:
Q. All right. For March, down here, it indicates -- I guess when it says: "Created by" -- "on January 18th, 2021," what does that mean?
A. That is whenever -- I think it's the -- whenever the page is created in Salesforce, but I'm not positive. That was kind of through a different system that we weren't --
Q. Okay. So for the March 12th, 2021 application, are the records listed on the left-hand side of this record?
A. I'm sorry. Could you repeat the question?
Q. Yes. For the March 12th, 2021 application here, are the records listed on the top left corner of this record?
A. I'm not --
Q. Let me ask you this: For the March 2021 application, was there a 1065 tax return provided?

A. Yes.
Q. Was there a Form 940 provided?
A. Yes.
Q. Was there a driver's license provided?
A. Yes.
Q. And the way the Cross River portal was set up, were those documents required to be uploaded and transmitted all at once with the application information on March 12th, 2021?
A. Yes.
MS. JIMENEZ: Can we go to 22-1, please.
And I'm sorry. Back to the table.
Thank you.
BY MS. JIMENEZ:
Q. All right. So then this is the beginning of the -- is this the beginning of the record that you have for that transmission of March 12th, 2021, from the applicant to Cross River Bank?
A. Yes.
Q. Would you have been able to receive those documents in the mail?
A. No.
Q. Would you have been able to receive those documents at some other point in time?
A. No.
THE COURT: Ms. Jimenez, how much more time do you think you need? Do we need to bring this witness back

tomorrow?

MS. JIMENEZ: I mean, I have maybe five -- ten minutes maximum.

THE COURT: All right. All right, then.

BY MS. JIMENEZ:

Q. All right. A 1065 tax return was provided with this application, the March 12th, 2021 application, right?

A. Yes.

Q. And did you indicate that that is one -- the tax return, the income tax return, is one of the records that you require for the application?

A. Yes.

Q. Are you aware whether for a partnership earnings of a partner can be included toward payroll?

A. I'm not sure.

Q. The --

MS. JIMENEZ: Can we pull up the 1065-T -- I'm sorry -- the 4506-T. That is with 22-6, please.

Could we go down toward the bottom of that.

I'm sorry. One second. Let me go back for a moment to 22 -- the -- 22-3. I'm sorry.

BY MS. JIMENEZ:

Q. All right. The bottom of this return, the signature -- you were asked questions about the preparer. Do you see that?

A. Yes.

Q. Is it reasonable for the bank to believe that the tax preparer information provided was real?

MR. ETRA: Objection. We're not allowed to ask standard of care. They shouldn't be allowed to ask standard of care.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Did the bank accept this income tax return as a real income tax return?

A. Yes.

Q. Did the bank have any indication that -- well, let me ask you this: If the bank had reason to believe that the preparer's information was forged, and that the applicant's accountant was unaware that this was being submitted with his signature, and that it had false wage information, what would Cross River do with that information?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: They would not have accepted the loan.

MS. JIMENEZ: Okay. Now let's go to the 4506-T, please.

Okay. Let me give you the number.

22-6, toward the bottom.

Okay. Here. Stop here.

BY MS. JIMENEZ:
Q. You testified that with this signature Mr. Sheppard is allowing you to turn to the IRS and get his tax return information; is that right?
A. Correct.
Q. Did Cross River Bank go to the IRS and obtain tax return information for Mr. Sheppard or his business HM Management and Development?
A. Not that I'm aware of.
Q. Did you -- did you tell the applicant -- did you tell Mr. Sheppard that you had not gotten any information from the IRS?
A. No.
Q. So Mr. Sheppard didn't know that you didn't know; is that right?
MR. ETRA: Objection.
THE COURT: Sustained.
THE WITNESS: Correct.
THE COURT: There's no need to answer that question.
THE WITNESS: Yes.
THE COURT: There's no need to answer the question, sir.
BY MS. JIMENEZ:
Q. Did you provide any information to Mr. Sheppard to let him know whether or not you were going to obtain any records from

the IRS?
A. No.
MS. JIMENEZ: No further questions.
THE COURT: All right. Is Mr. Lord excused?
MS. JIMENEZ: Yes.
THE COURT: On behalf of the Defendant?
MR. ETRA: Your Honor, request under case law -- new material came up in redirect. We'd like permission to recross.
THE COURT: The request is denied.
Thank you, Mr. Lord. You are excused, sir.
(Witness excused.)
THE COURT: Ladies and Gentlemen -- go ahead, sir. You are free to go. Thank you.
We will adjourn for the evening. Recall tomorrow we will begin at 9:30, and it will be a full day until five o'clock p.m.
Please remember that you're not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned within the courtroom.
If you'll place your juror notebooks in the jury room. And if you'll plan on being prompt, so we can get started right at 9:30.
Have a pleasant evening. I'll see you at that time.
COURT SECURITY OFFICER: All rise for the jury.
(Jury not present, 5:07 p.m.)

THE COURT: All right. Go ahead and have a seat.

I am quite concerned about the progress of this case. We have now completed five and a half days of trial and have only completed eight witnesses. And my concern is that, given the days that were requested, and the days that were given to you based on that request, that we are not going to be able to complete this case on Tuesday, December 12th.

Recall that I am not able to address this case on the 7th or the 8th. I'm out of the district. And I can give you the 11th and the 12th, but we have many matters that are set on the 13th, 14th, and 15th. And we have another case on the 18th that is a non-jury trial that is expected to begin on that date, and then I'm out of the district.

So I can give you -- based on the trial schedule, if we're not able to finish this on December 12th, I would see if the jurors are available to come back on January 8th, and that's where we are. And let me say that you have asked for the time. I gave you the time and --

MS. JIMENEZ: Your Honor, the Court did ask the Government how much time we expected the case to take, and we indicated 10 days. That is correct. At no point did the Defense tell the Government or advise the Court that they had extensive multi-binder, multi-hour cross-examination of witnesses that were going to essentially double the time that it would take to try this case.

At no point did the Defense advise the Government of that information, or I would certainly have requested at least twice as much time of this Court. I had no idea that that was going to happen.

THE COURT: Well, how much more time do you anticipate and how many witnesses do you have?

MS. JIMENEZ: Your Honor, the Government has approximately 11 more witnesses.

I mean, it's -- I mean, we've all been at the same trial. I don't think that -- the Government's direct examination has taken half as long as the cross-examinations in this case. And again, at no point did the Defense indicate that to the Government or to the Court.

MS. WEINTRAUB: Judge, that's not even a proper argument to --

MS. JIMENEZ: These binders showed up when the first witness was going to be cross-examined.

MS. WEINTRAUB: Imagine that we did our homework and are trying to protect our client's rights.

Also, please understand, Your Honor, that we stipulated to admit documents that, God, I wished we didn't and I didn't want to. And the admission of those documents today is a perfect example why I should never, ever do that, and my instincts are right. Because had I not admitted and stipulated to an admission of the Cross River document, it still wouldn't be here. This man had no competence to testify whatsoever about those documents. And I'm actually insulted that I'm being reprimanded by the Government for cross-examining their witnesses. Heaven for Betsy.

THE COURT: It is the Government's burden.

The Government has 11 more witnesses? Is that correct, Ms. Jimenez?

MS. JIMENEZ: It could be 12.

THE COURT: Then I will ask the courtroom deputy to see if the jurors are available. Should we not conclude on December 12th, we'll bring back the jury on Monday, January 8th, and use that week. I don't have January 12th. We have many other cases that are set that day. But I can give you the 8th, 9th, 10th, and 11th, that Monday through Thursday, and then we'll see how far we get.

MS. WEINTRAUB: Judge, respectfully, we object.

THE COURT: Well, of course. I understand. But there's just so many days that I have to give to you.

MS. WEINTRAUB: Judge, it's -- it's through no fault of the Defendant, obviously. And it is completely prejudicial now, in the middle of what I'm going to say I believe are well-taken cross-examinations and very fruitful for the Defense, to now take a month's break. That's very troubling. You know, we want to strike while the iron is hot. I hate to say something like that, but it's true.

THE COURT: Well, I can't tell you how to try your case. But Ms. Jimenez, if that's what you need -- and certainly the Defendant is entitled to cross-examine these witnesses, and I've ruled on objections that are before the Court -- then that's what I can provide you. And I believe that the Eleventh Circuit has told the trial courts that: "You are to schedule the trials at the time that's available," and that's the time that's available.

MS. JIMENEZ: It's extremely prejudicial to the Government's case to give this jury a month between -- you know, just essentially breaking up the Government's case in half. It is extremely prejudicial to the Government. The latter part of the trial will be spent on the Defense, I assume. So the most prejudice here is to the Government, and the Government has the burden in this case.

THE COURT: Well, I understand it would be inconvenient to --

MS. JIMENEZ: It's not the inconvenience.

THE COURT: -- to the Government and certainly to the Defendant, but at this point my concern is having enough trial days for this case. And at the calendar call, I gave you the days you requested. Binders or no binders, the witnesses have -- certainly were subject to cross-examination and redirect. And you've taken -- both sides have taken full advantage of that ability.

So we will see what the jurors' schedule calls for. And on our end, I'll work with Liz and see what we can do on -- I already know on the 13th I can give you 10:30 to twelve, and then three to five because I already know that we have matters.

The 14th we have from ten to four. And on the 15th from 1:30 to five. We have a matter in the morning. And then, as I stated, there's another case that we've already gone through a calendar call and they are already scheduled for the 18th.

MS. JIMENEZ: Well, if it's a non-jury trial, I mean, they potentially could be moved.

THE COURT: Well, that's why I'll work with the courtroom deputy and see what the parties say in terms of their witnesses and their availability. But I just don't know, even if I give you these days, whether these jurors are going to be available. We only asked the jurors up until the 12th. We had to accommodate one of the jurors because that was his schedule. And we'll see. I don't know what to say, other than we'll try to work on our end to try to reshuffle matters and see if the jurors are even available.

MS. WEINTRAUB: Judge, I'd be remiss -- I don't want to be accused of not speaking up when, for one -- you know, I don't want the Court to say why didn't I tell you. So I'm going to say that I do expect that we have a Defense case.

THE COURT: Well, then it makes sense to bring the jury back in January when we have more time.

MS. WEINTRAUB: Judge -- Judge, we strenuously would object to that.

THE COURT: Well, I understand. I can only give you what I have on my calendar.

MS. WEINTRAUB: Well, I hate to join the Defense [sic], but for the non-jury trial, I would just urge the Court to reschedule that, so that we can finish our criminal case. I mean, again -- I don't know if that's a criminal trial. I assume it is not.

THE COURT: No, it's not.

MS. WEINTRAUB: I assume it's civil, but --

THE COURT: Well, that would only give you -- it's only going to give you two days.

MS. WEINTRAUB: That would do it, I think. I believe that the Government will rest its case by Tuesday, the end of business, based on what I know.

MS. JIMENEZ: Well...

THE COURT: Well, let me see. I'll ask Liz to speak to the jurors about the 13th, 14th, and 15th. I'm not certain -- there are some matters that we need to work on on our end. And then, in terms of the 18th and 19th, that would be -- that would be depending upon the other attorneys.

And then, once we get to the 19th, if we're still not done, then we would bring the jurors back. So I'll ask Liz to ask the jurors about January 8th.

MS. MARTINEZ: Your Honor, I just -- for case management, I just would like to ask the Defense what is their estimate of the Defense case.

MS. WEINTRAUB: Two days.

MS. MARTINEZ: Including my cross-examination?

MS. WEINTRAUB: Two days.

MS. MARTINEZ: Okay. Your Honor, I think the parties can try -- both sides -- to be aware of the time requirements. So in other words, I think both sides can make an effort to move things quicker, and that it would not be unfair to either side for us to try to do that.

I'm just expressing a willingness for the United States to do that, and I'm requesting for the Defense to do the same. Having -- I mean, having tried cases for 30 years, there are times where there is no need to repeat the same question on cross multiple times.

MS. WEINTRAUB: I've tried a couple of cases, too, Judge. And --

THE COURT: All right. Well, you are each experienced and you're doing what you feel you need to do on behalf of the Government and the Defendant. So I'm not pointing fingers. I'm merely stating the obvious, and that is that we are running out of days available.

So I will see you tomorrow at 9:30. You don't need to move your items because it is a hearing by Zoom. And then I will see -- we'll see about the 13th, 14th, and 15th, and as well as the 18th and 19th. And if we cannot get done, then we will ask the jurors about January 8th through the 11th.

MS. WEINTRAUB: Judge, I'm not sure what you're saying. Are you saying that you are going to adjourn after Tuesday?

THE COURT: After Tuesday?

MS. WEINTRAUB: You're going to ask the jury if they can --

THE COURT: If they have the time available. I don't know what their schedule is. I only asked them until December 12th.

MS. WEINTRAUB: Okay. Two other things, Judge. One is we wanted to make a very quick proffer on the recross because it's becoming a pattern with the Government to introduce something new, which is not permitted. And then the reason that it's not permitted is because there is recross. And we have the cases to cite to the Court about recross, when -- from the Eleventh Circuit.

When material new activities are brought out on redirect, the confrontation clause of the Sixth Amendment mandates the opposing party be given the right of recross on those new matters. And that's Ross, 33 F.3d at 1518, Eleventh Circuit --

THE COURT: And what was the new matter?

MS. WEINTRAUB: I'm sorry?

THE COURT: What was the new matter raised on redirect?

MR. ETRA: May I, Your Honor? The new matter was the form -- one of the many Salesforce documents on the right-hand side lists documents, which it says: "Recent items," which obviously means that the reader read.

And on redirect -- no one had gone through this part of the document before. On redirect, the prosecutor asked the witness: "Doesn't this show that these documents were submitted at this time," which doesn't make any sense if you read the document and look at the form.

So it's an argument about the submission of the returns and other documents in January that had not been used that I was not able to counter on.

MS. JIMENEZ: Your Honor, the witness was cross-examined extensively about that document and was not asked about the very things that were in the top of the document on the left-hand side.

MS. WEINTRAUB: That's right. Was not asked until they asked it on redirect.

MS. JIMENEZ: But the witness was shown the document for the purpose of trying to establish that those documents could not have possibly been submitted on that day, or there's no indication that they were submitted on that day, when they were as plain as day on the upper left corner of the document. And so I was simply pointing out to the witness what was not asked of him on cross-examination.

MS. MARTINEZ: In a document that was in evidence.

MR. ETRA: Because --

MS. JIMENEZ: That the witness was asked about on cross-examination.

MR. ETRA: Because I would need my head examined to ask about this. Because if you read what's shown it's obvious that this came later. The dates of the documents are later. It's simply the way these forms read that whoever was pulling up these documents had opened up these forms.

One of the documents referenced doesn't even involve my client. It involves something called RSM or something. It just has nothing to do with the case. They took that --

THE COURT: All right.

MR. ETRA: -- feature of this document form and made an argument on redirect that I'm not able to deal with.

THE COURT: Whether matters were brought up for the first time on redirect that would allow the Defendant to be entitled to a recross is a preserved issue at this time.

Are there any other issues that we need to address at this time?

MS. WEINTRAUB: We'd like to know the witnesses for tomorrow, Judge.

THE COURT: Yes. If we could have the lineup, Ms. Jimenez.

MR. ETRA: Yes. Jeffrey Graff. Nelia Palancar. I think Mr. Graff is going to be a somewhat lengthy witness, Your Honor.

THE COURT: Do you believe we'll only get through two witnesses?

MS. JIMENEZ: Yes.

MS. WEINTRAUB: Judge, I think then we will be sitting with a half a day. I mean --

THE COURT: Is there a third witness that you anticipate to the extent that you don't --

MS. JIMENEZ: Oh, I'm sorry. We have Maria Ataca, Jeffrey Graff, Nelia Palancar.

THE COURT: All right.

MS. WEINTRAUB: Judge, I just want to warn the Court that tomorrow when they call Jeffrey Graff to the stand there is the issue -- the 404 issue. So I just want to bring it to the Court's attention now that, again, I don't believe -- the issue that the Government has noticed for 404(b) is an INS form that this witness will not say that Eric Sheppard forged his name. But the Government nevertheless keeps putting that out there and putting it in pleadings, even though we've spoken with him also and he says the opposite.

I just want to advise the Court in advance, so that when the Court is listening to the testimony, the Court will be able to, I hope at sidebar, before they're allowed to elicit that evidence -- I hope that we'll be able to be heard.

THE COURT: Well, is the Government intending to elicit that testimony about a false INS form?

MS. JIMENEZ: Your Honor, the Court has ruled on this testimony. There was extensive briefing on both sides. There are three documents, and the witness will talk about the fact that at some point in 2019 he asked to be removed as the manager -- as the listed manager on the Sunbiz record for several companies.

And the reason that that came about is he was alerted by an attorney that the Defendant hired of Mr. Graff being the sponsor on a visa application, and the documents were forwarded to Mr. Graff. He will say that those -- that the representations made, one, in the engagement letter of the law firm, and the documents submitted for the visa application, he did not -- he was unaware. He didn't authorize that he'd be the sponsor of this visa application nor did he sign the documents.

And we went over this extensively in the briefing, where Mr. Graff -- because the Defense made the argument, well, he -- you know, Mr. Sheppard didn't actually -- or the witness can't say that Mr. Sheppard actually forged Documents 2 and 3.

And Mr. -- and Mr. Graff would say that, yes, he recognizes the Defendant's handwriting on one of the forged documents, the engagement letter.

And as to the other two, the documents were signed with his name without his permission, without his authorization. And that the Defendant's office, which consists of two and a half people -- the half being a part-time worker -- are individuals who would not be engaging a law firm or submitting visa sponsorships without the direction and authorization of the Defendant. And so this was poured over in the briefing and the Court ruled on the 404(b) motion.

MS. WEINTRAUB: Judge, I would have expected, though, that you would have seen a lot of evidence about forgeries and the way that Mr. Sheppard directs people to forge documents. You haven't seen any of that yet. And I would submit to the Court that you don't have any basis or that there is no basis to even entertain allowing this into evidence at this point.

(Court reporter interruption.)

MS. WEINTRAUB: Or allowing it into evidence at this point.

Additionally, Your Honor, the signature that is at issue, I wish -- Chris, can you pull it up?

Judge, it is the most feminine signature I have ever seen. I hate to be so sexist, but I don't know what else to say. It is written like a seventh-grade girl. There is no way that that can be attenuated to Eric Sheppard.

And in speaking with this lawyer, it's pretty obvious that it's the girl applicant who was submitting the documents to the lawyer. And this evidence coming before the Court, particularly -- particularly based on the record that's in front of this jury, would be making it a feature of the case, which 404 prohibits, and there's no relevance yet. I mean, maybe by the end of their case, but I doubt it.

THE COURT: All right. Docket Entry 123 is the Court's order with regard to the 404(b) issue. And the issue, quite frankly, is properly preserved. And I'm not going to entertain at sidebar any issue that the Court has already addressed. I want to move this trial along and --

MS. WEINTRAUB: Judge -- Judge, if I might be heard for just one more minute. I understand the Court wants to move this trial along, and we have been doing whatever we can to make sure that happens. At the same time, there is about a three, on a one to 15, of evidence in this case against my client, and this is going to put it way over the scale. When the Court did the order, we had asked for an evidentiary hearing. And I don't think the Court could have appreciated the significance of the testimony that's about to come.

And I will do more one thing. I will advise the Court as an officer of this court that I have spoken with Jeffrey Graff twice personally with witnesses and he has not said what he is telling the Government.

THE COURT: And to the extent that his testimony reveals that that was not the case -- but in terms of asking the Court to reconsider its ruling, I'm looking at the Court's order. The Court relied upon the Barrington case, and the Court specifically states that: "Conduct that tends to show the Defendant knowingly used the means of identification of another person without lawful authority in a prior instance is relevant to his intent with respect to the charged conduct." And --

MS. WEINTRAUB: Judge, the charged conduct of forgery -- has the Court heard any evidence that he forged any documents? I haven't. And I haven't heard any that he directed anybody to do it. All I hear is the Government, in opening statement, submitting that that's what they're going to prove. I haven't seen it yet, and we're at day number six.

THE COURT: And to the extent that Mr. Graff's testimony is inconsistent with what the Government has proffered certainly is to their detriment, if they want to call him and he testifies otherwise.

MS. WEINTRAUB: Judge, 404(b) is to build on top of a case that they have already made a forgery. There is no case of forgery to give 404(b) any --

THE COURT: Well, is there any -- does the Government anticipate that Mr. Graff is going to testify with regard to forgery of any of the documents in this case?

MS. JIMENEZ: Mr. Graff -- no, not as to the forgeries in this case. He'll talk -- I mean, he worked at this company for 20 years and will talk about, you know, his role at the company and various things about the company.

There obviously will be individuals who will state that as to these documents that have been put in evidence that were submitted to the lenders -- that, you know, the tax returns were forged and other documents that are going to come in for the EIDL loans were forged.

MS. WEINTRAUB: We haven't even heard from the people that claimed that they were forged. So how are they going to put in similar act evidence, when you don't have the other part of that? You don't have the act evidence yet.

Cupersmith hasn't testified. Nobody who's -- and the banker hasn't testified. And those are the two people who are going to claim forgery, except only one of them will be able to say anything. And there's no evidence that it was at his direction. So how do we have similar act evidence coming in? Similar to what?

THE COURT: Ms. Weintraub raises a very good point.

MS. JIMENEZ: Well, it's certainly going to come in.

THE COURT: Well, but it hasn't come in.

MS. JIMENEZ: Right. I mean, well, the documents that are forged are in.

THE COURT: But what competent testimony has established that there was any forgery?

MS. JIMENEZ: That has not come in yet.

THE COURT: That's right.

MS. MARTINEZ: Oh, Your Honor, we have put in tax records from the IRS saying that these documents either did not exist or that there was another true one that was not the one that was submitted. So one hundred percent we have already proven that the documents submitted were forged, were false, were not the authentic documents.

MS. JIMENEZ: There is, for instance, a 2019 tax return that is with the IRS records for HM-UP Development Alafaya Trails, which is at least true in the sense that that's the true one that was submitted to the IRS.

And there is a 2019 tax return in the HM-UP Alafaya Trails PayPal second loan application, which is different, with different figures, different dates, different signature of Mr. Cupersmith. Mr. Cupersmith hasn't come in yet to testify about the documents. One, we were waiting for the lenders to be able to put in those records. And secondly, Mr. Cupersmith is elderly, and I did not want to have him here on a day when I wasn't sure I was going to be able to put him on, quite frankly.

MS. WEINTRAUB: You know what, Judge? The fact that he's elderly -- he's in his seventies. He's not in bad health.

And my client's rights and custody is at stake. They have two-year mandatory minimum -- four charges of two-year minimums based on his testimony and what's going on in this courtroom, and they're saying they should be allowed more leeway?

MS. JIMENEZ: I didn't say anything about leeway --

MS. WEINTRAUB: Judge, that's nothing to build on and --

THE COURT: Ms. Weintraub, if there's a case that the Defendant can provide to the Court that would require that the Government, in terms of its order of presentation of witnesses, present testimony of the use of someone's identification, or forging a document before this extrinsic evidence is admissible, then I'm --

MS. WEINTRAUB: Judge, it's common sense because 404(b) is similar act evidence.

THE COURT: Well, similar act evidence to the charged offense.

MS. WEINTRAUB: That's not --

THE COURT: That doesn't mean necessarily that in terms of the order of presentation that there needs to be testimony or other evidence that establishes the charged offense in this case, the aggravated identity theft counts, before Mr. Graff's testimony is admissible.

MS. WEINTRAUB: Judge, what they're trying to do is back-door the case. They're trying to prejudice the jury by putting in all this -- now the jury is going to hear about a forgery and an INS document, and all this extrinsic garbage that has nothing to do with the charge before them, before they even have the evidence on the charge before them.

THE COURT: But didn't you just tell the Court that that's not how Mr. Graff is going to testify?

MS. WEINTRAUB: Judge, I don't know what he's going to say anymore. I know what he told me, and I know what was said, and I know what his lawyer, Mr. Wax, said. But I -- since then the Government has spoken with him six times, and I've spoken to him once, not to mention the bias that will be able to be shown.

THE COURT: All right.

MS. WEINTRAUB: But Judge, it is so prejudicial.

THE COURT: Well, let me say that if there's case law for the Court to consider -- I've considered the case law that was presented by way of the motion and the response, and the Court entered its order accordingly. If there is case law that requires that the Government admit certain evidence before it's allowed to introduce the extrinsic evidence under 404(b), then I'm happy to consider it.

MS. WEINTRAUB: Judge, honestly -- and I've briefed this. I have never seen a 404(b) case where the evidence didn't come in first, and then the Court deals with: Is it similar? It doesn't go to prove the four things, the identity, the motive -- I mean, what is the Court going to analyze? There is nothing to analyze if it shows motive or intent because it's not proven in the case at bar yet.

MS. MARTINEZ: Your Honor, I could add that I do believe that it has been already substantially proven. Let me add a couple of points. Number one, we have already put in evidence of false tax returns that were submitted. I put on the IRS witness. We have put in all the loan documents. So that's number one.

MS. JIMENEZ: The PPP loan documents.

MS. MARTINEZ: The PPP loan documents.

And -- because I'm focusing on that. I'm focusing on the tax returns. Your Honor, there is no requirement that evidence be direct. Evidence can be circumstantial. In this case, the Defendant is clearly the one benefiting from every single one of these loans.

So number one, there can be circumstantial evidence already in the case that he has received at least these PPP loans for his benefit at his application, and with them went what has been already proven to be false IRS tax returns. So -- and the case law and the jury instructions includes that a defendant does not have to do every single act on his own. A defendant can do acts by directing others or having others do it for him.

So there is no requirement that we prove at any point that his hand was on any forgery. The only requirement is that he caused it to happen and that he benefited from it. And we have already substantially proven that, certainly enough for this evidence, which is actually, in my view, not extrinsic in the least. It is inextricably intertwined. It is like the narcotics cases, Your Honor, where somebody is completing the story of how they know the defendant, the relationship to the defendant, why their name is no longer on the forms. This is actually inextricably intertwined evidence. We make the argument --

THE COURT: All right. I've now reread the briefing. And with regard to the cases that were cited, I believe that the Court ruled correctly in ECF Number 123.

With regard to the limiting instruction, the Court has already advised the parties that I will give a limiting instruction with regard to the 404(b) evidence. If there's additional case law for the Court to consider, then I'm happy to do so.

At this point, we are going to adjourn for the evening, and I'll see everyone here tomorrow at 9:30.

Have a pleasant evening.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 5:38 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 5th 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 - 293.

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

/s/Yvette Hernandez

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