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 14, 2023
9:30 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 209

TRANSCRIPT OF TRIAL DAY 11
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, 9:30 a.m.)

THE COURT: Hi. Good morning to everyone.

Let me acknowledge the presence of the Defendant.

We have Mr. Motes here?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: All right. Come on forward, sir.

Are there any issues we need to address before we get started?

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

THE COURT: On behalf of the Defendant?

We have all of our jurors?

Hold on one second. Let me just get an acknowledgement.

MR. ETRA: Your Honor, sorry. I apologize. I don't have the -- okay. So some of the documents that came in, we talked about the, for lack of a better term, 404(b) issue. What we didn't cover is the fact that some of the documents make explicit reference to the Indictment and to the indication -- you know, evidence of fraud from the Indictment.

I think we had discussed this before, where that wouldn't be shown to the jury, and we would do the appropriate redaction when it goes back to the jury. So I'm just confirming that.

MS. MARTINEZ: Your Honor, I think what he might be referring to is that part of the SBA file includes internal records of the decisions they were making and how they were processing things.

MR. ETRA: I'm not referring to that. I'm not referring to that.

MS. MARTINEZ: Let me complete my explanation because I don't think you explained it. At the end of their notes, in some of the files it actually indicates a record that this person that applied and was funded was charged. There's nothing --

THE COURT: Is that the extent of it?

MS. MARTINEZ: That is it.

THE COURT: Is that the language?

MS. MARTINEZ: It's that there was an Indictment and -- what it says is: "Confirmed fraud." I will say that I think it says that.

THE COURT: Can we redact that part?

MS. MARTINEZ: We can go back and redact that part. I don't know if we can do that --

THE COURT: Is that the issue?

MR. ETRA: That is the issue, Your Honor.

THE COURT: All right. Then let's go ahead and redact that small part.

And we have all our jurors? Let's bring them in.

MS. WEINTRAUB: Judge, I'm also -- I need a --

THE COURT: Hold on. Hold on. Hold on.

MS. WEINTRAUB: Judge, I'm sorry. I didn't hear you.

We also need a clarification -- in reading the transcript last night, you know, we went back and forth and there might have been some confusion. We're not sure what the Court ruled, but I would like to say that it's my understanding that the Court ruled, over our objection, that acts that are not charged that are within the time frame of the Indictment -- the Court is permitting over our objection that there is a variance now of the evidence and the Indictment. However, with regards to an attempted loan or the loan outside the timing of the Indictment, it's my understanding that the Court was clear that is not coming in, and that I think the Government withdrew that from September '21.

MS. MARTINEZ: Your Honor, I want to make clear --

THE COURT: All right. Hold on. Hold on. Let me just clarify the Court's ruling, and then we can move on.

The Court specifically stated that the applications that were submitted in terms of proximity, at the same time -- which I understood to be July 24th, 2020 -- are all admissible.

Any applications that were submitted outside of the period set forth in the Indictment is not admissible, unless it has the application number and consists of an update, or a supplement, or relates to the application number that was submitted within the confines of the Indictment. I think that's clear.

All right. Let's bring in the jury.

MS. MARTINEZ: Thank you, Your Honor.

COURT SECURITY OFFICER: All rise for the jury.

MS. WEINTRAUB: Thank you, Judge, for the clarification.

(Before the Jury, 9:34 a.m.)

THE COURT: Hi. Good morning, Ladies and Gentlemen.

Please be seated, everyone.

It is good to see each of you.

Thank you for being prompt.

And we will continue with the direct examination of Mr. Mote [sic].

(Pause in proceedings.)

DIRECT EXAMINATION [CONTINUED]

BY MS. MARTINEZ:

Q. Good morning, Mr. Motes.

A. Good morning.

Q. See how I can speak to you -- you can hear me, right -- so I can speak to you without completely hiding behind the podium.

We spoke yesterday about Economic Injury Disaster Loans that were made available during the time that there was a declaration in the country regarding COVID-19, right?

A. That's correct.

Q. You explained that, when it became initially available, there were -- the loans under COVID EIDL, Economic Injury

Disaster Loan, that we sometimes call EIDL -- when they became available, that initially there was a cap; is that right?
A. That's correct. Initially, the cap was $150,000 or six months of lost margins, whichever was less.
Q. Whichever was less.
Did there come a time that there was available to have a larger amount of a loan?
A. Yes. In early 2021 we started to allow loans up to half a million dollars or 24 months' lost margins, whichever was less.
Q. And in that situation, if somebody had already been funded with 150,000, what would a borrower have to do to be able to increase the amount on that original application?
A. So all applications were put in through what we called a loan portal. It was an online resource for the applicants to submit applications. Applicants who had already been approved and funded for their initial loan, in order to receive the increase, simply needed to go back into the loan portal and go into that loan application and request a larger loan amount.
Q. Did you -- could you explain to the jury -- was there actually like a tool where the applicant could just modify their request?
A. There was. There was what we called a slider tool, and it gave the applicant access to their maximum eligible loan amount based upon figures, revenues, cost of goods sold, lost rents figures that they input into the initial application, and it

allowed them to pick their increased loan amount that they wished to receive.

Q. Now, this came around -- around that part of the time period? The first part was in the early part of 2020, right?

A. That's correct.

Q. And the second part?

A. Well, the first part never really went away. We processed those original loans all the way through the end. It's just the loan amounts -- the maximum loan amounts changed on those. The increases, though, to a half million dollars for previously approved applicants that maybe received their maximum $150,000, that came into play in approximately April of 2021.

Q. And if you were going to have an increase to 500, that was not an additional 500, right?

A. It was a total amount of 500. So in theory, if you initially received $150,000, you could receive an additional $350,000 to reach that maximum half-million-dollar mark.

Q. Was there a difference in how the SBA processed and evaluated the applications between the 150 requests and the request for the increase?

A. Yes. By that point in time, we had been allowed to request IRS Form 4506-T, which allowed us to request IRS transcripts from the IRS to verify that the figures that the applicants were providing to us on the initial application were actually true and accurate. And so every loan modification that increased a loan amount had those figures, actual hard figures from the IRS to verify the numbers.

Q. Whether it was at the beginning stages where you could only ask for 150, or whether it was later when you could increase it up to 500,000, in both times was the SBA, Small Business Administration, relying on the applicant certifying that the information was truthful?

A. Yes. Absolutely. And there were areas within the application where they were notified of that and did certify that the information was accurate.

Q. And did you further rely on the fact that if they submitted any application -- any -- if they uploaded any documents, made any representations to you, that they likewise would be truthful and authentic documents?

A. Yes. Any statements made by the applicants to receive the loan, any documents received from the applicant to -- in order to receive the loan, we relied on those being truthful and factual documents and statements.

Q. In fact, if you determined or had concerns that there was fraud, it would be SBA's decision not to fund that loan, correct?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Would the SBA fund a loan if they had known that there was fraud?

A. If we were suspicious of fraudulent intent on the applicant's part, we would not approve or fund that loan.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. During the testimony, I will show you a 4506-T Form from the files. But as a follow-up question, do you recall -- are those forms -- do they authorize -- when an applicant signs them, do they authorize specific documents that they're allowing you to look at?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Does the form -- is the form general or does the form require specific permissions? If you understand the question. If not --

A. Could you rephrase that question?

Q. And tell me if you can answer it without looking at a document, because I could show you a document.

When an applicant signs a 4506-T Form, does the form have slots for you to put in the specific years, tax years, that you're authorizing and giving permission to release to the SBA or is it some kind of general authorization?

A. No. The form allows us to pull specific information related to specific tax years that are listed on the form.

Q. So for example, if a 4506-T Form -- this form that an applicant can authorize you to look at some tax information -- if it did not include, for example, year 2020, would you -- would the SBA be able to ask the IRS for year 2020?
A. The IRS would not provide us with a tax year that was not listed on the 4506-T Form.
Q. And for example, if the 4506 Form authorized you to look at business returns but did not authorize you to look at personal returns, would you be able to -- which ones would you be able to get?
A. Yeah. The forms are specific to a entity or specific to an individual. So if an applicant were to provide us a 4506-T Form related to a specific business for a year, that's all the information that the IRS would provide. They would not provide us information regarding the individual or other tax years.
MS. MARTINEZ: Ms. Font, could you pull up what I have marked as Government's Sub-Exhibit 58-6. It's Bates labels 031145 to 031148.
COURTROOM DEPUTY: Is this already entered into evidence?
MS. MARTINEZ: Yes, Your Honor. Or -- yes.
So just as a recollection of the record from yesterday, with respect to this witness Exhibits 51 through 59 have been admitted, and I'm calling out sub-exhibits which are within the documents.

And just for the record, when I say: "Ms. Font," that's the paralegal at counsel's table.

Ms. Font, could you -- yes. She reads my mind.

Thank you for highlighting the top of the exhibit.

BY MS. MARTINEZ:

Q. Mr. Motes, could you explain to the jury, what are we looking at?

A. This is a electronic version of the data that we received on the intake application that an applicant would -- the information they provided to us when they submitted an application through the loan portal.

Q. So just to look at it initially, what we see at the top -- what is that application number?

A. I hate to admit this, but I'm getting older and the print on this screen is very small, and I am having a hard time reading it.

Q. Okay.

MS. MARTINEZ: Can we make that corner larger.

Thank you.

I bet you more than you needed that.

THE WITNESS: Now I can read it. Thank you.

Yeah. The application number is 3315047454.

BY MS. MARTINEZ:

Q. And what -- what is the application number that the Small Business Administration puts? Is that something that follows

the application?
A. It does. It follows it all the way through the loan process. And it actually is picked up in our funding software package which is called E-Tran. So there's a permanent record of that number on file with the SBA always.
Q. The name that follows, could you read that out.
A. It's HM Four, LLC. And in this case that would be the applicant business.
Q. And that's -- HM Four is actually -- doesn't have the numeral four. It has the word "Four," correct?
A. That's correct.
Q. And then it captures an Internet protocol address. Can you read the Internet protocol address that's captured.
A. Yes. It's 216.189.184.189.
MS. MARTINEZ: Could you go to a point lower in the document.
Let me direct you.
Could you just highlight the first seven questions for a moment.
BY MS. MARTINEZ:
Q. We don't have to go into detail with respect to these first seven questions, but let's -- for example, what is Question Number 2?
A. "The applicant is not engaged in any illegal activity, as defined by the federal guidelines."

Q. And for example, read Number 5.
A. "Applicant does not derive more than one-third of gross annual revenue from legal gambling activities."
Q. And just these general questions at the top, are these just basic eligibility questions? For example, again -- well, answer that question.
A. Yes. They are eligibility questions. We call these suitability questions. These are questions that if the applicant responds that they are engaged in illegal activities or are engaged in gambling activities, that would immediately rule them out of receiving a loan.
MS. MARTINEZ: Could you zoom out -- back out.
Could you just highlight in the same section but just the top right, the time stamps.
BY MS. MARTINEZ:
Q. What is the date and time stamp of this application?
A. This would be the point in time that the applicant in the portal answered those questions.
Q. And what's the date shown here?
A. October 22nd, 2020, at 4:42 p.m.
MS. MARTINEZ: Can you zoom back out.
BY MS. MARTINEZ:
Q. Now, you tell me if you need me to --
MS. MARTINEZ: No. Wait one second. I'm going to ask just a general question.

BY MS. MARTINEZ:
Q. You tell me if you need me to raise it out for you.
A. Oh, I will.
MS. MARTINEZ: In fact, how about this? What I'd like you to focus just -- is on the type -- on the Type column, and if you could just -- the Type column is in the middle and it goes down. You see?
No. No. "Type." That's -- no. "Type."
Where it says: "Radio check box."
Yeah, but go a little bit higher, so we can get even a "radio."
There you go.
Okay. Excellent. That's perfect.
BY MS. MARTINEZ:
Q. Okay. So could you explain to the jury, what does this tell the SBA, the Type column?
A. The Type column is just how the applicants were able to answer those questions in the portal. So a check box -- you can see a lot of those are simple yes-or-no questions. These are just areas where there's two boxes. The applicant can choose to answer yes or no. The pick list is a drop-down list, you may call it. You click in a box. The SBA provides examples or answers that the applicant can choose from. And a text box means that that's something that the applicant actually had to type in and answer on their own.

Q. And what is a radio?

A. A radio box is just a little round box where they would click, and it's the -- if you were alive in the '80s, it's the main way that we did it in the '80s.

Q. Thank you.

MS. MARTINEZ: Can you zoom back out.

Now, let's see if we can zoom -- I mean, if we can zoom out the entire section from Questions 8 to 33, the business information. And you don't need the time stamp column, we already have that, but just the questions and the answers.

BY MS. MARTINEZ:

Q. Mr. Motes, is that acceptable to you?

A. Yes. I can read it. Yes.

Q. Now, for example, you described a text box. So the first question is: "Business legal name," and that's a text box. So the name, that's where an applicant would type in the name?

A. That's correct. This is where, in this case, they typed in the business legal name, and they typed in HM Four, LLC.

Q. And the type -- it also gives you an opportunity to put in a trade name. In this case it's just the same name, but what ordinarily would be a trade name?

A. That's just the "doing business as" name. It's not the official legal name on file with the Secretary of State. It's the name your customers would more commonly know you by.

Q. And for example, a different corporation or a different LLC would not be your trade name, right? It would have to be the same company?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Well, let's go to the next question. What is the next question? Number 10.

A. Number 10, we were asking for the EIN or the Social Security number if the business is a sole proprietorship. The EIN is a identifier similar to a request for legal entities, LLCs and corporations.

Q. And in this case what is the EIN?

A. It is 45-2908315.

Q. So to go back to the question that I had asked you earlier, if you answer Questions 8 and 9, the business legal name and the trade name, should they both belong to the same company that has that same EIN?

A. Yes. What this application tells us is that HM Four, LLC utilizes the EIN number 45 -- now it went blurry -- 45-2908315.

Q. Next question is Number 11.

A. "Organization type."

Q. And what did the applicant say?

A. They say that it is a limited liability company.

Q. Now, Number 12, there's also a question regarding

non-profits?
A. That's correct.
Q. Did you treat those companies differently?
A. Yes. Non-profits were -- the loan amounts for non-profits were calculated differently. And some non-profits are not required to file a tax return, so we needed to know if an applicant was a non-profit.
Q. Now, could you explain to the jury the next two questions, sir, "Gross Revenues" and "Cost of Goods Sold."
A. Yeah. This is where the applicant is certifying to us what their injury is. This is really where the calculation for the loan amount is coming from for retail shops that have sales. And so they are telling us what their gross revenues are, generally from Line 1 of their tax return, or what their cost of goods sold are, generally from that top box, top section, on their federal income tax return.
MS. MARTINEZ: And could you highlight what was indicated here for the answers.
BY MS. MARTINEZ:
Q. Mr. Brent [sic] could you read out what the applicant put for 900 -- I'm sorry -- for cost -- for gross revenues.
A. Yes. In this case the applicant tells us that their gross revenues were $950,000 in the year prior to the COVID pandemic.
Q. So specifically, the question asks specifically the 12-month period prior to January 31st, 2020, right?

A. That's correct.

Q. And then, likewise, what was the answer that the applicant put for cost of goods sold for that same period?

A. They tell us that their cost of goods sold is $250,000 in the year prior to the pandemic.

Q. Now, in this case, the applicant also answered the next question. What is the next question?

A. The next question is for landlords.

MS. MARTINEZ: Could you highlight that as well.

THE WITNESS: And it simply says: "Rental properties, rental and commercial only, lost rents due to the disaster." So we're asking the applicant here: How much rent did you lose as a result of the pandemic?

BY MS. MARTINEZ:

Q. And what did the applicant say here?

A. $450,000.

Q. Now, you -- explain what type of applicant would you think would normally be applying for something based on cost of goods sold?

A. Retail outlets that have sales. Businesses that have sales. And they don't necessarily have to be retail. They could be wholesale-type businesses. But anybody involved in selling a good or service -- or I'm sorry -- a good, not a service.

Q. Right. So that you -- and then with respect to that question, gross revenues and cost of goods sold, again, can you explain to the jury how the SBA would calculate the loan amount.

A. Yes. We would determine what the margin was, which is simply the revenues minus the cost of goods sold.

So in this case, the annualized margins would be $700,000. And then we would simply provide them six months' worth of margins in the early going of the program. So we would divide that 750 by two. That would give us an eligible loan amount of $350,000. But again, at that point in time the loans were capped at $150,000. So based on those entries, this applicant would have received an eligibility of $150,000.

Q. In this situation you have an answer given also for the rental -- for the lost rents. Had you only had the lost rents, how would you have -- had you not had the upper answers, the 14 and 15, had you only had Question 16 answered, the lost rents, how would you have calculated the loan amount?

MR. ETRA: Objection. Hypothetical.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. How does the SBA calculate the loan amount for someone with 450 in lost rents -- 450,000 in lost --

A. So the system that we processed these loans in did all loan calculations for us. And it would take that -- in a situation where only lost rents were entered, they would be eligible for their lost rents with a maximum of $150,000 in the early going of the program.

Q. With this application, what was the -- I'm going down to the questions below. What was the primary business address that was given?

A. Yeah. So that's Line 20. And so the primary business address is 180 --

Q. Do we need it bigger?

A. Yeah. Just slightly bigger.

MS. MARTINEZ: Can you make bigger the bottom half of those questions.

THE WITNESS: Yeah. So looks like 180 Buy [sic] Cross Drive, Buy [sic] Harbour, Florida.

BY MS. MARTINEZ:

Q. I think that's an L.

A. Is that an L?

Bal Cross Drive and Bal Harbour, Florida.

Q. And what's the business phone?

A. (305)861-0088.

Q. And we're going to just go ahead and continue reading the alternate business phone.

A. (305)582-5529.

Q. And what was the business email given?

A. I'm having a hard time making that out, but it looks like HM --

Q. We can make this bigger. You like that?
A. Yes. Hmfourmanager@gmail.com.
Q. And what is the --
MS. MARTINEZ: Yeah. If you could highlight those answers starting with the first phone, so that we have the two phones.
There we go.
BY MS. MARTINEZ:
Q. So what type of business did it indicate that this company did?
A. They were in the overall industry of real estate, and specifically they were property management.
Q. And how many employees did the applicant state?
A. Three.
MS. MARTINEZ: Now, leaving that exhibit up, could you pull up what's been admitted into evidence as Government Exhibit 69.
Could you go down to Page 27.
BY MS. MARTINEZ:
Q. I'm showing you on the right an exhibit that's already been admitted into evidence.
MS. MARTINEZ: It's Page 27 of Exhibit 69.
Could you highlight the bottom part, the service information.
There you go.

And could you put it side by side with the phone number listed on the application, if possible.

BY MS. MARTINEZ:

Q. Mr. Motes, can you read to the jury the service information from AT&T from telephone number (305)861 -- I'm sorry -- 861-0088?

A. Yes. It says that the owner of that line is Eric Sheppard, with a service address of 180 Bal Cross Drive in Bal Harbour Village, Florida, and they have been a customer since April 22nd, 2008.

Q. Okay.

MS. MARTINEZ: Can you take down Exhibit 69.

Can you pull up Exhibit 8-3 that's already been admitted into evidence, from Google.

MR. ETRA: Your Honor, when I tried to show a witness the document that a witness said they hadn't seen before I wasn't allowed to.

THE COURT: And I agree. Is there an objection?

MR. ETRA: There's an objection --

THE COURT: Sustained.

MS. MARTINEZ: Can you go back to Government's Exhibit 58-6.

Can you highlight Question 34.

BY MS. MARTINEZ:

Q. Mr. Motes, can you explain to the jury, what is Question

34?

A. It's asking if this applicant entity, the business entity that's applying for the loan, is owned in turn by another business entity.

Q. Now, it's hard to tell because we don't see the columns, but the first answer is as to whether this question is required, right?

A. That's correct.

Q. And the Value column is the answer that the applicant gave to the question, right?

A. That's correct.

Q. So what did the applicant say in response to this question?

A. They indicate that this applicant business is not owned by another business entity.

MS. MARTINEZ: Can you go to the next page of the exhibit, and could you highlight the owner information given.

BY MS. MARTINEZ:

Q. Mr. Motes, who is the individual owner given for HM Four?

A. Jennifer Sheppard is a 80 percent owner of this business, per the entries on the application.

Q. And what is the mobile phone given?

A. 80 -- I'm sorry (305)613-5898.

Q. What's the ownership percent given?

A. Eighty percent.

Q. The email is the same as the email before, correct? What

is the email given?
A. Hmfourmanager@gmail.com.
Q. And the residential street address?
A. 180 Bal Cross Drive, in Bal Harbour, Florida.
MS. MARTINEZ: Can you zoom back out.
Go to the end of the application.
Is that the last page?
Could you highlight where the funds were to be sent.
THE WITNESS: Yes. These funds were to be sent -- if the loan was approved and funded, the loan funds would be sent to SunTrust Bank.
BY MS. MARTINEZ:
Q. And could you read out the last four digits of the account number.
A. 5817.
Q. And what does it say in Line 72?
A. This is the applicant's certification that under the penalty of perjury under the laws of the United States that the above is true and correct, meaning all data that they had provided to us at that point in time is truthful and factual.
MS. MARTINEZ: Could you zoom back out. And now with respect to the text below, could you highlight the paragraph that starts in capital letters: "Certification as to truthful information," and zoom that out.

BY MS. MARTINEZ:
Q. Mr. Motes, can you read that to the jury.
A. Yes. "Certification as to truthful information. By signing this application, you certify that all information in your application and submitted with your application is true and correct to the best of your knowledge, and that you will submit truthful information in the future."
(Pause in proceedings.)
MS. MARTINEZ: Can you zoom back out.
BY MS. MARTINEZ:
Q. With respect to this application, was it submitted electronically?
A. Yes. All of our applications in this system were submitted electronically.
Q. And that's where it captured the Internet protocol address, correct?
A. That's correct.
Q. Now, as we see from the application, it was submitted from Miami Beach, Florida. Where are the computer servers of the Small Business Administration?
A. They were in Virginia and California.
Q. During this time?
A. During that time for this program.
Q. And...
(Pause in proceedings.)

BY MS. MARTINEZ:
Q. Do you recall as this -- the COVID EIDL was a new program related to the same Economic Injury Disaster Loan programs that the SBA had. Do you recall approximately when the Small Business Administration set up the portal for you to be able to answer questions related to COVID EIDLs, as opposed to a general EIDL?
A. Yes. All COVID EIDL loans were submitted through a completely different process than our standard disaster applications, and that software package was stood up in March or April of 2020, if memory serves.
(Pause in proceedings.)
MS. MARTINEZ: Your Honor, I need to consult the paralegal one second.
(Pause in proceedings.)
MS. MARTINEZ: Your Honor, it relates to a redaction that was requested.
THE COURT: All right.
(Pause in proceedings.)
MS. MARTINEZ: I'm calling out what I've marked for identification -- well, it's an admitted exhibit. It's a sub-exhibit. I've marked it as 58-7. And the whole exhibit is the portion of 58 that's Bates labeled 031149 to 031165. I'm asking Ms. Font to begin at the back, which is 031165. And by the request of the parties, we are going to redact the first

two pages, which is 031149 and 50.

THE COURT: All right.

MS. MARTINEZ: So we're not going to get to there.

(Pause in proceedings.)

MS. MARTINEZ: Could you just go -- yeah, there. One more page.

Thank you.

BY MS. MARTINEZ:

Q. Okay. Mr. Motes, before we start going through this document, can you explain to the jury what type of records are these?

A. These are notes that we make on each application.

MR. ETRA: Your Honor, I think these are being shown to the jury right now.

MS. MARTINEZ: Yes. This is not redacted.

MR. ETRA: Oh. I'm sorry.

THE COURT: They're in evidence, sir.

THE WITNESS: So these are notes that we make on files. The notes is an area on the file in this processing software that would allow us to notate what a conversation with an applicant or a third party detailed, or to provide data or information as far as why a certain decision was being made on the loan at a certain time.

BY MS. MARTINEZ:

Q. So we had just looked at the application that -- it came in on October 22nd, 2020.

MS. MARTINEZ: Can you just slide up a little bit so we can see.

No. The other one, so we can just see the very initial note.

No. I'm sorry. The other way. It goes from the back forward chronologically.

BY MS. MARTINEZ:

Q. So the -- Mr. Motes, the initial comment here, why did it say that was being unqualified, this application?

MR. ETRA: Objection, Your Honor. Personal knowledge.

THE COURT: If the witness knows. Overruled.

BY MS. MARTINEZ:

Q. What does the admitted evidence record say?

A. This tells us that the deal, the loan, was initially being unqualified or denied due to the following reasons: "Does not meet eligibility criteria."

Q. And as you go forward, was the loan document then reactivated?

A. Yes. The loan document or the loan itself was reactivated on October 22nd, 2020.

Q. And what does it indicate in the notes as to the phone number (305)861-0088?

A. That tells us that the phone number is registered to Eric Sheppard.

Q. And who answered?
A. The individual that answered the phone.
MR. ETRA: That would indicate he's reading from the document and not from personal knowledge.
THE COURT: And this witness has the ability to testify with regard to what the documents say based on his position and the fact that they are in evidence. Overruled.
BY MS. MARTINEZ:
Q. So the SBA called the number registered to Eric Sheppard, but it was -- they were trying to reach Jennifer Sheppard, correct?
A. Yes. They would have called the 80 percent owner of the business in this case.
Q. And was Mrs. Sheppard available?
A. No. It does not appear so. It appears that a housekeeper answered the phone and stated that Mrs. Sheppard was unavailable.
MS. MARTINEZ: Can you scroll a little further up.
BY MS. MARTINEZ:
Q. Now, do the notes indicate that the mobile phone was registered to Mrs. Sheppard?
A. Yes.
Q. Who answered the phone?
A. Eric Sheppard answered the phone.
Q. And what did he state about Mrs. Sheppard -- not the

details, but was she available?
A. No. She was not available at the time.
MS. MARTINEZ: Can you go up.
BY MS. MARTINEZ:
Q. Can you describe to the jury, what is the SBA looking at now with respect to this application on October 29, 2020?
A. So we require that any individual or business that owns 20 percent or more of the applicant be on the loan application. In this case, Jennifer Sheppard stated that she was a 80 percent owner of the business, leaving the possibility that there was another 20 percent owner. We did not know who that other owner was and therefore were having an issue completing the processing of this loan.
Q. And what was the SBA looking into with respect to the bank account?
A. The bank account could not be verified. So we would have looked into that and tried to determine the reason why.
MS. MARTINEZ: Can you go up.
Stop.
BY MS. MARTINEZ:
Q. There's discussion regarding related deals. Could you explain to the jury, how does the SBA look at a deal being related?
A. Yeah. Related deals or related loans are loans that share commonalities between each other. It could be the individuals

on the loan are in common between different applications, the bank accounts are in common, phone numbers are in common, email addresses are in common. If any data point within one application matches a data point within another application, those loans are related to one another.

MS. MARTINEZ: Can you scroll up.

Continue.

Okay. Stop.

BY MS. MARTINEZ:

Q. With respect to these notes now, does it reflect whether the SBA was actually able to reach Mrs. Sheppard?

A. Yes. These notes indicate that Mrs. Sheppard did return the call, 1:44 Eastern time on October 29th, 2020.

Q. And did she confirm information on the form -- on the application form?

A. Yes. She confirmed that she did request the loan, putting aside some of the doubt that this processing loan officer may have had.

MS. MARTINEZ: If you scroll a little bit.

BY MS. MARTINEZ:

Q. If you just look at a little further down on the note, who did she say was the 20 percent owner of the corporation?

A. She states that Mr. Sheppard is the other 20 percent owner of the corporation.

MS. MARTINEZ: Can you go up.

Further up.

BY MS. MARTINEZ:

Q. Does the notes annotate when you receive documents normally?

A. Normally, yes.

MS. MARTINEZ: Could you just go up just a little bit more so we could see who that was sent to.

No. No. Too much. Just so that we could see.

BY MS. MARTINEZ:

Q. "LO" means loan officer, right?

A. That's correct.

Q. So the notes here document that an email was sent to hmfourmanager@gmail.com on October 29, 2020, right?

A. That's correct.

Q. And what type of information is being requested?

A. They asked for information that could help them determine if the business was in operation prior to the disaster date of January 31, 2020.

Q. And -- okay. And so a number of different items are requested. Can you just summarize them.

A. Yes. Proof of the business. They wanted at least two of the items listed below: Bills in the business name, business insurance, business accounts, credit card statements, other types of debt, business contracts, rental or lease agreements, and/or a business license.

Q. In addition, the loan -- the applicant needed to submit a driver's license, correct?
A. Yes. They asked for proof of identity in this particular case.
Q. And Number 4 actually asks for specific information regarding ownership of the business; is that right?
A. Yes. They wanted information pertaining to the original date of Mrs. Sheppard's ownership of the business.
Q. And Number 5, what does that request?
A. They wanted information on the specific type of real estate activity this business was involved in.
MS. MARTINEZ: Now, could you go up.
Yeah. Thank you.
Go to the comment from November 12th at the top.
Yeah. Just go to the top.
Oh. Slow down. Slow down. Slow down.
Okay. Go a little bit further down.
BY MS. MARTINEZ:
Q. Mr. Motes, looking at November 11th, 2020, Items 2 and 3, what is the SBA looking at?
A. This is an entry made by a loan officer. And he's basically entering what he feels like are potential issues on the loan. He says that the number one is the total ownership is below 81 percent, but then he has addressed that concern during the processing of the file and determined who the other

20 percent owners are. Here --
Q. And there it indicates that there's another company --
A. Yes.
Q. -- now?
A. Yes. Now it says her husband owns 15 percent, not the 20 percent that was originally noted, and that another company named JES Alafaya Holdings, LLC owns the remaining five percent.
Q. But it further explains that co-applicant Eric Sheppard may hold what?
A. "Co-Applicant Eric Sheppard may hold an ownership interest in Alafaya Holdings, LLC," and they note that that is a related deal. So -- meaning that Alafaya Holdings, LLC has an application in with us at the time that this loan is being processed.
Q. Now, what is the SBA looking at with respect to the bank accounts?
A. It was important to know that the funds that were being disbursed were going to the actual applicant or applicant business. The system in this case was unable to confirm initially that the bank account was owned by the applicant business. And in this particular note, the loan officer tells us they were unable to overcome that issue.

(Pause in proceedings.)

MS. MARTINEZ: Can you call up on the other side what

I've marked as a sub-exhibit, 58-2. It's Bates label 031142.

BY MS. MARTINEZ:

Q. Mr. Motes, could you read -- who -- who is this email from?

A. This email is from Eric Sheppard or the email address hmfourmanager@gmail.com.

Q. And what's the date?

A. The date is Thursday, November 12th of 2020.

Q. And it relates to this application that we're looking at that ends with 7454, right?

A. That's correct.

Q. And what does it indicate that it has as an attachment?

A. An account letter.

MS. MARTINEZ: So could you zoom out so we could see the text of the email including the sign -- right there.

BY MS. MARTINEZ:

Q. So can you read to the jury -- what --

A. Yes.

Q. -- what does the email say?

A. It says: "Hi, Mr. Blakeley. Attached is a letter sent to me from the manager of SunTrust Bank confirming the HM Four, LLC business account as provided in the application. He mentioned that he received a lot of requests of account verification from the SBA due to fraud, and if anyone has any questions, they can contact him. Please let me know if you need anything else."

Q. And who signs it?
A. Jennifer.
Q. When I say: "Sign it," I mean what printed name do you see there?
A. Jennifer.
MS. MARTINEZ: Could you pull up what I've marked as a sub-exhibit, 58-3. It's Bates label 031143.
BY MS. MARTINEZ:
Q. Mr. Motes, what is the -- what is this?
A. This appears to be the attachment from SunTrust.
Q. It has a letterhead from SunTrust?
A. It has a letterhead that says "SunTrust," yes.
Q. And what is the date?
A. November 11th of 2020.
Q. And the account -- the last four digits of the account that it's --
A. 5817.
MS. MARTINEZ: And could you just zoom to the letter.
BY MS. MARTINEZ:
Q. And -- Mr. Motes could you read what the letter says.
A. "To whom it may concern, Eric Sheppard and Jennifer Sheppard are a valued customer of SunTrust Bank. The account HM Four, LLC is in good standing at this time. They are members and owners of HM Four, LLC, and have been clients of SunTrust for over 10 years. If you have any additional

questions or concerns, I can be reached at (305)868-2644."
Q. And I know it might be difficult for you to pronounce the name on the letter. Could you try and then maybe could you spell it.
A. I'm going to go with Heimdal Barrios. That's H-E-I-M-D-A-L B-A-R-R-I-O-S.
Q. And what does the letter say that Mr. Barrios is?
A. A branch manager at the Bal Harbour branch.
MS. MARTINEZ: Could you pull up what I've marked as 58-4. It's Bates label 031132 to 031141. And again, could you highlight the top.
BY MS. MARTINEZ:
Q. Mr. Motes, could you read to the jury who is sending this email to the SBA and on what date.
A. Again, it's coming from the email address hmfourmanager@gmail.com, which is identified as Eric Sheppard, on Tuesday, November 17th, 2020.
Q. And what is the attachment?
A. It's a HM Four, LLC bank statement, November 2020 PDF, and HM Four, LLC bank statement, November 2020 PDF.
MS. MARTINEZ: And could you zoom back out so that we could see.
BY MS. MARTINEZ:
Q. What does the email say?
A. Says: "Good morning, Mr. Blakeley. I did not see your

email until last night. I apologize. I misunderstood as you thought" -- "as I thought you wanted the bank to authenticate the bank account and the company, so they sent a letter for that.

"In any event, the HM Four, LLC bank account for this specific project, I had the bank print and send over the November 2020 statement to verify your request, as I attached the statement. This account is used for ACH or wires to fund either the payroll account and vendor account for the work that is ongoing.

"As mentioned previously, HM Four, LLC has had a five-month negative impact due to the tenants not open and not paying; therefore, the company not receiving funds has significantly hurt the ability to complete the tenant build-out for Federal Express retail store, which will regenerate cash flow for a solid tenant.

"We would greatly appreciate anything the SBA can do with this relief, as it is needed. Thank you for reviewing everything, and please let me know if you need any other information.

"Thank you, Jennifer."

MS. MARTINEZ: Could you pull up what I've marked as a sub-exhibit, 58-5. It's Bates label 031110.

Okay. Now we have a blow-up -- I guess we're seeing the blow-up of the stationery. Can you blow up just maybe the bank statement so that we can see.

BY MS. MARTINEZ:

Q. Mr. Motes, what are we looking at here?

A. This appears to be the November -- or at least a partial November of 2020 bank statement for the applicant business through SunTrust Bank.

Q. So it's for -- what period is this statement?

A. November 1st, 2020 through November 17th, 2020.

Q. And in that time period, is there -- how many transactions are there?

A. There were two -- well...

Q. How many deposits?

A. There were two deposits.

Q. And what were they?

A. On November 12th there was an $80, and November 16th a $60,000 deposit.

MS. MARTINEZ: Could you zoom out and go to the bottom of the bank statement, and -- all the way to the bottom. I mean -- meaning the second half -- the second half of the ...

You can go a little lower. Just the second half of the document.

BY MS. MARTINEZ:

Q. What does the stamp say?

A. "SunTrust Bank Miam [sic], Bal Harbour office." That's blurred, but it looks like 9600 Collins Avenue, Bal Harbour, Florida 33164.

Q. And what does it say at the bottom?

A. "Printed by Heimdal Barrios."

MS. MARTINEZ: You can bring that down.

(Pause in proceedings.)

MS. MARTINEZ: Can you pull up what's also in the records as -- it's a separate exhibit -- 58-1. It starts at Bates label 031096.

BY MS. MARTINEZ:

Q. Mr. Brent, what is this document, just looking at it from the top?

A. This is a lease agreement.

Q. As -- we had looked at one of the requests from the SBA to the applicant related to the rental activities, correct?

A. That's correct.

Q. So this lease agreement -- what does it say at the top, like who is the landlord, who is the tenant?

A. HM Four, LLC is the landlord and Mattress1One is the tenant.

MS. MARTINEZ: And can you go to the last page.

Oh. We're going too far. Can you go to Bates label 031106.

There we go.

BY MS. MARTINEZ:

Q. Okay. So according to this document, who is the landlord,

and I guess both -- the printed company?
A. So the landlord is HM Four, LLC.
Q. And what is the printed name under -- of the individual under HM Four, LLC?
A. Eric Sheppard.
Q. And what does it indicate his position to be?
A. He is a manager or a minority member.
Q. And the date that's indicated for -- under Mr. Sheppard's printed name?
A. May 18th, 2020.
Q. And at the top, there are signatures. Who are the signers -- well, the printed names.
A. Jennifer Sheppard and Jeffrey Vasilas.
MS. MARTINEZ: And can you zoom to the bottom.
BY MS. MARTINEZ:
Q. What is the name given for the tenant company?
A. Pacific MS Management d/b/a Mattress1One.
Q. And that's Mattress1One, with the number one, and then with the word "one," right?
A. That's correct.
Q. That's a d/b/a of --
A. Of Pacific MS Management.
Q. Right. What is the printed name under that company?
A. Mages Salem.
Q. And could you spell what they have there.

A. M-A-G-E-S S-A-L-E-M.

Q. And what is his stated position in this document?

A. He is the president of Pacific MS Management, and the date signed is May 20th, 2020.

MS. MARTINEZ: You can put that down.

Can you pull up what I've marked as 58-8.

BY MS. MARTINEZ:

Q. Mr. Motes, what is that?

A. That is a driver's license for Jennifer Sheppard.

MS. MARTINEZ: And just for the record, it's Bates label 031113.

BY MS. MARTINEZ:

Q. And why is this in the file?

A. The loan officer requested it as an attempt to verify the identity of the business owner. And then, of course, it was provided by the applicant.

THE COURT: Ms. Martinez, the jurors are in need of a break.

MS. MARTINEZ: Okay.

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

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 10:46 a.m.)

THE COURT: All right. For the record, the court security officer handed me a note that says: "Can we take a break, please?" So we're on a 10-minute recess.

MS. MARTINEZ: Thank you.

(Recess from 10:47 a.m. to 10:59 a.m.)

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

Both sides ready to continue?

MR. ETRA: Defense is ready.

THE COURT: Ms. Martinez, do we have much more of the direct examination?

MS. MARTINEZ: Yes, Your Honor. I think I have till lunchtime.

THE COURT: You think it's going to take until lunchtime with this witness?

MS. MARTINEZ: Possibly, yes, Your Honor.

THE COURT: Did we talk yesterday about the possibility that the Government may conclude its case today?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: Was that -- what's changed?

MS. MARTINEZ: I intend to go quicker with the next loans, Your Honor. But I see the pace of answering the questions, and I'm just being honest, it may take more than 30 minutes.

THE COURT: It's eleven o'clock, and this witness has been on the stand for an hour and a half. You believe that you need another hour?

MS. WEINTRAUB: And yesterday.

MS. MARTINEZ: Your Honor, I'm going to try to go as quickly as possible on the next few loans, but I need to complete this one. We still haven't gone -- this is the first time the Small Business Administration has talked about Economic Injury Disaster Loans. I have to have him cover at least one loan document. And then after that I'm going to go quickly through the next applications.

THE COURT: All right. I've already given you the time that the Court has to try this case.

Let's bring in the jury.

MS. WEINTRAUB: All I can say, Judge, is I'm glad that you didn't have us bring witnesses because they're not resting today.

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

MR. ETRA: The cross will be somewhat lengthy as well, Your Honor.

(Before the Jury, 11:00 a.m.)

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

Please be seated.

We'll continue with the direct examination.

MS. MARTINEZ: Ms. Font, could you pull up what I marked as 58-9, which did not have a Bates number, but it's the loan agreement.

Yes.

BY MS. MARTINEZ:

Q. Mr. Motes, what is this?

A. This is our loan authorization and agreement.

Q. For the Economic Injury Disaster Loan, COVID?

A. Yes. And these are the documents that an applicant signs -- or one of the documents that an applicant signs in order to receive funding on their loan.

Q. And is this prepared after the application has been -- I think the words would be "obligated funding"?

A. That's correct. It's prepared after the loan is obligated.

Q. And it's -- how does the applicant get this?

A. The applicant receives an email link that's sent to the email address on record for each individual on the loan. And through that link they can re-access the portal and digitally sign or electronically sign these loan documents.

Q. What does it say on the first page of the document? You don't have to read the entire thing, but what is the capital letters and the explanation to the applicant?

A. "A properly signed document is required prior to any disbursement."

Q. And does it indicate to carefully read the document?

A. It does.

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

Stop.

Can you just highlight the top part all the way to payment terms -- down to payment terms.

A little further down.

Further down.

Just the top half of the document before "collateral."

Lower.

Let's see if we can -- that's as far as we got.

BY MS. MARTINEZ:

Q. Okay. So now here we have both the application number on the right and a different SBA loan number on the left. Is that specific only to when it's approved?

A. Yes. Once a loan is obligated, it receives a loan number in addition to the application number.

Q. And in this document, what's the effective date?

A. The effective date is November 17th, 2020.

Q. Now, that's not necessarily the exact same day when the applicant signs, right? It's when it's prepared by the SBA?

A. That's correct. That's the date these documents were prepared.

Q. And how much does it indicate that HM Four, LLC is going to get on this loan?

A. $150,000.

Q. And what is the number of years that HM Four would have to pay this back?

A. Thirty years.

Q. And the interest rate?
A. 3.75.
MS. MARTINEZ: Can you move to the next page.
Where it says: "Use of the loan proceeds," can you highlight that.
BY MS. MARTINEZ:
Q. What does the document say with respect to use of loan proceeds?
A. "The borrower will use all the proceeds of this loan solely as a" -- "as working capital to alleviate economic injury caused by disaster occurring in the month of January 31st, 2020, and continuing thereafter, and to pay Uniform Commercial Code, UCC, lien, filing fees" --
Q. That's okay. Those details -- too much.
So let me ask you: The borrower is HM Four, right?
A. That's correct.
Q. So can HM Four give this money now to another company and have another company use it?
A. No. These funds were to be used solely as working capital to alleviate the economic injury caused by the disaster to HM Four.
Q. To alleviate injury of HM Four?
A. That's correct.
(Pause in proceedings.)
MS. MARTINEZ: Can you go about two pages more down.

It's Page 5 of the document.

Thank you.

Could you highlight the third bullet under: "Borrower certifies that."

BY MS. MARTINEZ:

Q. Mr. Motes, could you read what the borrower is certifying.

A. "All representations in the borrower's loan application, including all supplementary submissions, are true, correct, and complete, and are offered to induce SBA to make this loan."

Q. Did the SBA rely on the truthfulness of this certification?

A. We did.

MS. MARTINEZ: Could you go to Page 7.

And can you highlight the signature -- just the signature.

There you go.

BY MS. MARTINEZ:

Q. Under HM Four it says: "DocuSigned" and a name. Can you read the name.

A. Jennifer Sheppard.

Q. And under the signature line, what is the title that it says there for her?

A. Owner/officer.

Q. Now, if we -- if we continue going down this document, there's other forms. There is also a note. So if you go down one -- the first one was the loan agreement, right?

A. It's the authorization and agreement. Yes.
Q. And then the note is another document that relates to the loan -- the borrowing of the loan?
A. The note is the actual loan document itself.
MS. MARTINEZ: Did we pass it?
Yeah. I think we passed it.
No. Go further down.
Further down.
BY MS. MARTINEZ:
Q. So this is --
MS. MARTINEZ: Stop there.
BY MS. MARTINEZ:
Q. This is the note?
A. Yes.
Q. And that also -- this page that we're on also indicates that it has to be carefully read?
A. Correct.
MS. MARTINEZ: Can you go to the next page.
Okay. Stop and highlight the top.
BY MS. MARTINEZ:
Q. Mr. Motes, what is this?
A. This is the heading of the actual note.
Q. And it indicates the loan amount, the interest rate?
A. That's correct. The date it was prepared and the SBA loan number.

Q. So this is a loan, again, being given -- the lender is the Small Business Administration?
A. That's correct. These loans are directly funded by the Treasury.
Q. The United States Treasury?
A. The United States Treasury.
MS. MARTINEZ: Can you go to the next page, and can you highlight the signature.
BY MS. MARTINEZ:
Q. Again, this is a DocuSigned document. What is the name under HM Four?
A. Jennifer Sheppard as owner/officer.
MS. MARTINEZ: Can you go to the next page.
Stop.
BY MS. MARTINEZ:
Q. What is a security agreement?
A. Any loan -- at the time, any loan that we did that exceeded $25,000 would have required a UCC-1 filing against their business contents.
Q. I know you know what UCC is. Uniform Commercial Code. It's some kind of guarantee --
A. It's a generalized lien against contents. It's almost like the lien that you have on your house or your mortgage, only it's not a real estate structure. It's on general business contents.

Q. Like equipment in the office?
A. Equipment, accounts receivable, inventory, that type of thing.
Q. Accounts receivable is like monies that are due to the company?
A. That's correct.
Q. And if a company didn't have any monies due to it, they actually would not have qualified for this loan?
A. No. Our loans are not dependent upon collateral. These loans -- we would have them sign the security agreement, and if they were in a position where they really had no collateral to offer, they would sign the security agreement and it would just be a UCC filing against nothing.
Q. And this was required to be signed as well, right?
A. That's correct.
MS. MARTINEZ: Can you go to the Certificate of Completion, which is -- I marked it as 58-10. It has no Bates label.
58-10 has no Bates label. It's a DocuSigned certificate.
BY MS. MARTINEZ:
Q. Mr. Motes, this is a record from the SBA HM Four file. If you look at the Signer Events section to the right, when does it state that Jennifer Sheppard viewed and signed this document?

A. It was viewed on November 18th, 2020, at 8:45 and one second, and signed twenty seconds later at 8:45 and 21 seconds.
Q. And does it capture the Internet protocol address?
A. It does.
Q. What is it?
A. It is 184.164.185.43.
Q. And what is the email associated with this DocuSign?
A. Hmfourmanager@gmail.com.
MS. MARTINEZ: You can put it down.
(Pause in proceedings.)
MS. MARTINEZ: I whispered with the microphone on. That was great.
BY MS. MARTINEZ:
Q. Mr. Motes, so that loan was funded, correct?
A. Yes.
MS. MARTINEZ: Can you pull up what I've marked as Sub-Exhibit 51-1. And it's Bates label 030447, 030450, from Composite Exhibit 51.
Can you just highlight the top.
BY MS. MARTINEZ:
Q. Now, Mr. Motes, since we have gone through this already, I'm going to ask you for less details regarding these documents, but just if you could tell me -- is this a different application?
A. Yes. This is a different application for a different LLC

called HM Management and Development, LLC.
Q. And what's the application number?
A. I need it a little larger.
3311797815.
Q. Okay.
MS. MARTINEZ: Can we go back to the bottom.
Can you highlight the section -- the second yellow section, the Business Information section, all the way to "the employees," if you can, so we can get it all.
BY MS. MARTINEZ:
Q. Mr. Motes, again, you had indicated the company legal name is HM Management and Development, LLC, right?
A. That's correct.
Q. What is the gross revenues listed here?
A. $1,540,000.
Q. And goods sold?
A. $850,000.
Q. Does this application indicate any lost rents?
A. No.
Q. What's the primary business address?
A. 180 Bal Cross Drive in Bal Harbour, Florida.
Q. What's the business phone?
A. (305)861-0088.
Q. And the alternate business phone?
A. (305)582-5529.

Q. And the number of employees indicated?
A. Fourteen.
MS. MARTINEZ: Can you bring up 58-6 on the other side, and can you just highlight the phone numbers on both.
BY MS. MARTINEZ:
Q. Mr. Motes, are the phone numbers given for the application of HM Four and the application for HM Management and Development the same?
A. Yes.
MS. MARTINEZ: You can bring that down.
If you could just go back to 51.1.
BY MS. MARTINEZ:
Q. Mr. Motes --
MS. MARTINEZ: Could you highlight again the section regarding -- yes, the Business Information.
Thank you.
BY MS. MARTINEZ:
Q. What is the email that's provided?
A. It is es.hmmd2020@yahoo.com.
Q. And what does it indicate is the detailed business activity?
A. Property management, realty.
Q. And the number of employees?
A. Fourteen.
MS. MARTINEZ: Can you zoom out.

Can you bring up what I marked as 51.2.

Make sure that you go to the back.

And if you could go to Bates label 034454. So just a little further up.

Stop.

Could you highlight the comment on August 10th, 2020.

You see that at the bottom?

There you go. August 10th, 2020, that comment.

Yes.

Oh, could you zoom it out so Mr. Motes could see it.

BY MS. MARTINEZ:

Q. Mr. Motes, what do the notes say from August 10th, 2020?

A. Mr. Sheppard had provided permission to speak with Nelly on his staff.

MS. MARTINEZ: Can you go to 51-3.

That's an exhibit. Sorry.

It's 030425, Bates label starting...

BY MS. MARTINEZ:

Q. Mr. Motes, what is this?

A. This is another loan authorization and agreement.

MS. MARTINEZ: And can you go to the next page.

Can you highlight which company this is.

BY MS. MARTINEZ:

Q. Who -- again, we were just looking at the application from HM Management. How much is HM Management and Development

getting in this loan from the SBA?
A. $150,000.
Q. And this is -- this document is being prepared by the SBA on August 6th, 2020, right?
A. Correct.
MS. MARTINEZ: Can you bring up side by side 51.1.
Just -- if you could just highlight the date when the application was submitted below. You're going to have -- I think you're going to have to go lower to get the date.
No. No. It's on -- there's a date column on the right, where it says "time stamp." Do you see the date column on the left? It says "time stamp." It's kind of small.
Okay. That's fine.
Just to -- oh. Did I give you the wrong one? No. I gave you the right one. 51.1.
Do me a favor. So it's clear, can you highlight the top so we can see the company name -- no. The top right. Top right. Just the company name and -- the dates when this is submitted.
There we go.
BY MS. MARTINEZ:
Q. Okay. So Mr. Motes, just to confirm, the application for HM Management was submitted to the SBA on what date?
A. July 24th, 2020.
Q. And you already had prepared the agreement for the funding

on August 6th, 2020, correct?

A. That's correct.

Q. Okay.

MS. MARTINEZ: Before we go away from -- keeping 51.1 on the right -- I'm sorry, can you zoom -- yeah. Zoom back out so I can direct you to another part of the right side.

Looking at the bottom of 51.1, could you just highlight who is the owner.

Bottom. Bottom. Bottom. Bottom. Bottom. There you go.

BY MS. MARTINEZ:

Q. Mr. Motes, who is the stated owner of HM Management and Development?

A. Eric Sheppard.

MS. MARTINEZ: And can you go further to the bottom -- I mean the next page all the way to the end.

Can you highlight what bank account is getting the money on the bottom right corner.

BY MS. MARTINEZ:

Q. Mr. Motes, the last four digits of the SunTrust Bank account receiving the money?

A. 7571.

Q. Okay.

MS. MARTINEZ: Going back to Exhibit 51.3 on the left.

BY MS. MARTINEZ:

Q. Again, this document has similar terms as the one that we looked at before?

A. Yes.

MS. MARTINEZ: The loan agreement, which is what I'm referring to.

Can you scroll down. Can you remove 51.1, and on 51.3 scroll down to the signature.

Okay. Can you highlight the signature.

BY MS. MARTINEZ:

Q. And what is the name under HM Management and Development as having DocuSigned this document?

A. Eric Sheppard as owner/officer.

MS. MARTINEZ: Can you go further down, so that we can see just the signature on the note.

Okay. Can you highlight that.

BY MS. MARTINEZ:

Q. And again, who is DocuSigning the note?

A. Eric Sheppard as owner/officer.

MS. MARTINEZ: Can you go to the Certificate of Completion, and that is -- I've marked it as 51-4.

BY MS. MARTINEZ:

Q. Mr. Motes, with respect to the DocuSigned Certificate of Completion, on what date does it say that it was viewed and signed?

A. August 6th of 2020.
Q. And what's the captured IP address?
A. 69.84.107.228.
(Pause in proceedings.)
MS. MARTINEZ: Can you bring up Government's Exhibit 52.5, and that's Bates label 030530.
BY MS. MARTINEZ:
Q. Now, this relates to the same application. Mr. Sheppard is -- what is he -- I guess I'll just ask you: Who's emailing the SBA?
A. In this case, Eric Sheppard is emailing the SBA from the email address es.hmmd2020@yahoo.com.
MS. MARTINEZ: Can you step away.
BY MS. MARTINEZ:
Q. And what does he say that he's sending?
MS. MARTINEZ: Can you highlight that.
THE WITNESS: He's providing a resolution and certification to apply for the loan.
MS. MARTINEZ: Can you bring up what I've marked as 52-6.
BY MS. MARTINEZ:
Q. What is this, Mr. Motes?
A. This is the resolution to apply for the loan.
Q. Does this relate to the loan increase?
A. Is there a date on this document?

Q. Yes.

MS. MARTINEZ: Go back.

Zoom out.

Yes.

BY MS. MARTINEZ:

Q. What's the date on the bottom -- oh. The date?

A. Yeah. So this resolution was provided to us on September 25th, 2021, which indicates it was in relation to a loan increase request.

MS. MARTINEZ: Can you bring up what's 52.4 -- oh. I'm sorry. Not 58.4, 52.4.

52 -- 2. 52.4.

There we go.

BY MS. MARTINEZ:

Q. Mr. Motes, what is this document?

A. This is an IRS Form 4506-T. This is the document the applicants complete and provide to us, which allows us to request IRS tax transcripts directly from the IRS for, in this case, HM Management and Development, LLC.

Q. And does it refer to a specific SBA application?

A. Yes. It is Application Number 3311797815.

MS. MARTINEZ: And can you go to the bottom, so we can see the bottom part.

BY MS. MARTINEZ:

Q. Now, we don't have a printed name, but we have a date.

What's the date given?

A. August 10th, 2021.

Q. And the phone number?

A. (305)582-5529.

Q. And what are the tax years allowed on this form -- or that are handwritten in?

A. 2017, 2018, and 2019.

Q. Were -- at what point was the SBA requesting these forms? Was it requesting it at the early stage of the 150,000 or at the increase stage?

A. No. It was requesting them at the increase stage.

(Pause in proceedings.)

MS. MARTINEZ: Can you bring up what I marked as 52.1.

Go a few steps down.

And further -- further down -- no. I'm sorry. The other way.

Oh, did we go all the way? Further up, then.

Stop.

BY MS. MARTINEZ:

Q. Without reading it in detail, what does this document indicate?

A. These are the notes on the file. And it indicates that there was a problem with the 4506-T provided by the applicant, that the address -- the business address listed on the 4506-T did not match the business address of record with the IRS.

(Pause in proceedings.)

MS. MARTINEZ: Can you go to the -- go all the way to the top.

BY MS. MARTINEZ:

Q. Does it show whether or not the loan modification was granted?

A. (No verbal response.)

Q. If it had been granted, it would be shown, right?

A. Yes. Yes.

Q. And is it there?

A. I don't see a note that says that it was obligated, not on this screen.

MS. MARTINEZ: Can you go to what I've marked as 53.1.

Yes. Thank you.

Can you highlight that but also include the time stamp so we can see the date.

BY MS. MARTINEZ:

Q. Mr. Motes, what is the name on this application?

A. Yes. This is a different business still. This is HM-UP Development Alafaya Trails, LLC.

Q. And what's the application number?

A. 3311801162.

Q. And on what date was this submitted?

A. July 24th, 2020.

Q. And that's the same date of the one that we just looked at.

Do you recall that?
A. That's correct.
MS. MARTINEZ: Can you zoom back out.
Can you just zoom the middle section.
BY MS. MARTINEZ:
Q. What does it indicate as HM-UP Development Alafaya Trails's gross revenues, cost of goods and rent lost?
A. $2,140,000 in revenues, $1,250,000 cost of goods sold, zero dollars rent loss.
Q. And what is the business address?
A. Business address is 1250 North Alafaya Trail, Orlando, Florida.
Q. And what is the -- what are the two phone numbers given?
A. (305)610-008 -- 0088 and (305)582-5529.
Q. And the number of employees?
A. Twelve.
MS. MARTINEZ: Can you go to the next page.
Just to show who are the -- no. No. No. Top. Top -- who are the two owners.
BY MS. MARTINEZ:
Q. Who was owner one?
A. Owner one is Eric Sheppard.
Q. And who is owner two?
A. Owner two is Robert Kallman.
MS. MARTINEZ: And can you go to the bottom.

BY MS. MARTINEZ:
Q. What account was this going to?
A. This is SunTrust Bank, last four digits 5973.
Q. Okay.
MS. MARTINEZ: Can you bring up what I've marked as 53.3.
One second.
Go to the bottom. Bottom. Bottom. Bottom.
Can you go to the note on August 17th.
Okay. Stop. Stop.
BY MS. MARTINEZ:
Q. Can you see on August 17th, a little bit above it, where it -- can you - Mr. Motes, can you see that, where it says the comment about Nelly?
A. Yes, I can.
Q. And what does it indicate?
A. That Nelly called about the account.
Q. And after that?
A. She spoke with Mr. Roberts, who verified PII and advised it was okay to speak with the caller. She's unable to access the portal.
Q. That's okay. Just --
A. Okay.
MS. MARTINEZ: Can you move to the note from September 9th. So move a little bit up.

So can you highlight -- zoom out on that middle section from September 9th.

BY MS. MARTINEZ:

Q. Can you read out that note.

A. "Received incoming call from Ms. Nelly and she three-way called Mr. Sheppard. Identity was verified.

Q. What does "BWR" mean?

A. Borrower.

Q. Okay.

MS. MARTINEZ: Can you go to 53-5.

Can you go to the next page.

Can you highlight the top.

BY MS. MARTINEZ:

Q. Was the loan granted to HM-UP Development Alafaya Trails?

A. Yes.

Q. And what amount?

A. $150,000.

MS. MARTINEZ: Can you scroll down to the signature.

BY MS. MARTINEZ:

Q. Does this document have the same certifications as the previous loan agreements?

A. Yes, it does.

Q. And who DocuSigned for HM-UP Development Alafaya Trails?

A. Eric Sheppard as owner/officer.

MS. MARTINEZ: Can you bring up 53.4.

BY MS. MARTINEZ:
Q. Now, with respect to this document, it indicates that it was originally sent August 6th, but when does it indicate that it was actually viewed and signed?
A. On September 25th, 2020.
MS. MARTINEZ: Can you go a little further down so we can see the IP.
Thank you.
BY MS. MARTINEZ:
Q. Mr. Motes, what is the IP address that was used for the DocuSign?
A. 69.84.107.228.
Q. Okay.
MS. MARTINEZ: Can you go to 54-4.
Take this down.
Thank you for starting in the back.
BY MS. MARTINEZ:
Q. What does it indicate there on April 27th, 2021 at the bottom?
A. Says --
Q. At the bottom. At the bottom.
A. "Comment from applicant on loan mod application." So the applicant had started a loan modification request on this application.
MS. MARTINEZ: Can you go to the note on

October 18th, 2021 -- October -- I'm sorry -- yeah.

Go higher.

Okay. Stop.

BY MS. MARTINEZ:

Q. So what is Mr. Sheppard saying here?

A. Says that the company HM-UP Development Alafaya Trails, LLC -- well, let's see. It says: "Myself and the comptroller of the company have forwarded the information multiple times to the COVID EIDL increase request; therefore, not sure if a glitch is in the system."

MS. MARTINEZ: Can you pull up 54-3.

BY MS. MARTINEZ:

Q. And what is this?

A. This is an IRS Form 4506-T for HM-UP Development Alafaya Trails, LLC.

Q. And can you see the bottom to see when it's signed?

A. It's signed August 4th, 2021.

MS. MARTINEZ: And can you pull up 54-5.

BY MS. MARTINEZ:

Q. And again, is this the type of resolution that you would ask for during the increase part of the request?

A. At that -- early in the loan modification, the loan increase phase, we were asking for this up front from the applicants. This is the owners of the business giving the business itself authorization to apply for the loan.

MS. MARTINEZ: Can you pull up what I marked as 55-1 and 56-1 together.
BY MS. MARTINEZ:
Q. Mr. Motes, could you read 55-1 and 56-1 in terms of -- what are they?
A. These are additional applications.
Q. And what dates were both of these applications submitted?
A. July 24th, 2020.
Q. The 55-1, which is the one on the left, what's the name of the business?
A. Sheppard Flagler Holdings, LLC.
Q. And the one on the right, what's the name of the business?
A. HM-UP Development Alafaya Trails TRU, LLC.
Q. And I'm not going to have you read the documents, but each of them include an application number, correct?
A. That's correct.
MR. ETRA: Your Honor, could we just have a continuing objection based on the argument we've had about these other loans?
THE COURT: Certainly.
BY MS. MARTINEZ:
Q. If there are no loan documents in the files, it indicates it wasn't funded, correct?
A. That's correct.
MS. MARTINEZ: Can you pull up 57-1.

BY MS. MARTINEZ:
Q. On what date was this application submitted?
A. September 5th, 2020.
Q. And what's the IP address?
A. 69.84.107.228.
Q. And the company name?
A. HM Six, LLC.
MS. MARTINEZ: Can we zoom out.
Can you take a look at the email that's provided and the phone numbers.
BY MS. MARTINEZ:
Q. What's the email that's provided for this company?
A. Eric.sheppard10@gmail.com.
Q. And how many employees does it say --
A. Nine.
Q. How many employees?
A. Nine.
MS. MARTINEZ: Can you go to the bottom of this document.
Stop.
Can you highlight who's the owner.
BY MS. MARTINEZ:
Q. Who's the owner?
A. Eric Sheppard.
MS. MARTINEZ: Now, can you pull up, with respect to

this application, 57.2.

BY MS. MARTINEZ:

Q. Before you do that, how many -- what's the percentage ownership of this company?

A. One hundred percent.

MS. MARTINEZ: With respect to this application, can you pull up 57-2.

BY MS. MARTINEZ:

Q. With respect to the notes that you can see there in September of 2020, September 16th, who's the person calling?

A. Eric Sheppard.

Q. September 14th, 2020, who's the person calling?

A. Mr. Sheppard.

Q. September 14th, further down, who is the person calling?

A. Eric.

MS. MARTINEZ: Can you take that down.

Can you bring up 56.2, which are the notes with respect to HM-UP Alafaya TRU.

Don't go at the front. Go in the back.

(Pause in proceedings.)

MS. MARTINEZ: Can you go to Bates label 031028.

BY MS. MARTINEZ:

Q. On the comment on January 20th, 2021, who does it say called?

A. Mr. Eric Sheppard.

Q. And so that we can be clear --

MS. MARTINEZ: Can you go to the top of the document.

BY MS. MARTINEZ:

Q. So that we can be clear, on 56.2, this relates to which company application?

A. This is HM-UP Development Alafaya Trails TRU, LLC.

Q. Okay.

(Pause in proceedings.)

MS. MARTINEZ: Okay. Can you pull up what I've marked -- but don't go to the front, just in case. Go to 55-2.

Can you -- well, right here, you can --

BY MS. MARTINEZ:

Q. Mr. Motes, who's calling --

MS. MARTINEZ: Is this the same...

Can you go further up to -- just go further down to the one that's September 21, 2020.

BY MS. MARTINEZ:

Q. Mr. Motes, who's calling in September of 2020?

A. Ms. Sheppard.

MS. MARTINEZ: And then go a little further up.

BY MS. MARTINEZ:

Q. Who's calling here?

A. Mr. and Mrs. Sheppard.

MS. MARTINEZ: And can you go to 030659.

BY MS. MARTINEZ:
Q. Okay. On January 21, 2021, who called -- January 21, 2021?
A. Mr. Sheppard.
Q. And on the day before, who called?
A. Mr. Eric Sheppard.
(Pause in proceedings.)
THE COURT: Any further direct examination?
MS. MARTINEZ: Yes, Your Honor. Yes, Your Honor.
Yes, Your Honor, I just need to show a document on ELMO.
THE COURT: All right.
BY MS. MARTINEZ:
Q. Mr. Motes, I'm going back to Government's Exhibit 58, which related to HM Four. It's not the machine. It's actually the email that's blurry. Would you be able to read out who's sending the email?
A. Eric Sheppard from the hmfourmanager@gmail.com email address.
Q. And the date?
A. The date is November 4th, 2020.
Q. I know it's a little blurry, but can you make out the attachments -- some of the attachments, first line?
A. I'm attempting.
Q. I can do something, too.
A. There's a -- at the end of the first line, it shows it's a

Mattress1One lease extension.

Q. And on the second line?

A. A management agreement for HM Four, but I can't make out the first word on the second line.

Q. And on -- so let's try reading the document.

A. Okay. It says: "Thank you for calling me the other day. I apologize for not getting right back; however, I had a pressing issue on another matter. I greatly appreciate you looking at my request during these difficult times in your follow-up with the list of questions so you might be able to help us in our business situation. With that said, I list the responses to your questions to the best of my ability and attach documentation I have.

"One" -- this is the request, presumably, from the applicant -- "I provide you with the management agreement in which HM Four manages and" -- I can't make out that word -- "worked for a shopping center, amongst others I did not attach. I provide you a lease agreement with one of the tenants, Mattress1One and HM Four, LLC. Attached is my driver's license front and back.

"The original date of my ownership of the entity HM Four, LLC commenced in 2021. I was a majority partner with my husband Mr. Eric Sheppard and have an entity we also owned. We had Mr. Jeffrey Graff as the manager up until May of 2019. As of January 1st, 2020, my ownership position increased for this particular company and decreased in a non-related entity. In order to make it easier for you, I attached a timeline of events for HM Four, LLC.

"I am certifying that HM Four, LLC" -- I can't make out that word -- "in the real estate business and receives funds to manage certain shopping centers, performs construction work for tenants at the shopping center, and has investment in two shopping centers.

"The other owner of HM Four, LLC is Eric Sheppard, my husband, as an individual, and his ownership is 15 percent. As I mentioned in our call, on the attachment, Mr. Sheppard manages with me. The remaining five percent is owned by a business entity JES Alafaya Holdings, LLC. I was not sure of the question, as the 20 percent is not owned by me but divided up 15 percent and five percent. If you have need, Mr. Sheppard's information" -- I can't make out that word -- "or the entity, I can provide that to you, as well as" -- "if you need.

"Although this is mostly my business, my husband does own other non-related businesses and is authorized to speak about this matter, as he handles the taxes and certain business functions for me. He can be reached at (305)582-5529 if you have any questions I cannot answer.

"I'm not sure if I missed anything. If I" -- "if I have, you can email me back any other questions."

Q. In this document the attachments both referred both to the Mattress1One lease that we previously reviewed as 58-1, and now it also refers to a management agreement. That one I'm going to show you on the projector which we call ELMO.

MR. ETRA: Is there an exhibit number?

MS. MARTINEZ: It's Bates label 032151 within Composite 58.

BY MS. MARTINEZ:

Q. Can you make out the date on this management agreement?

A. Let's see. March 13th, 2014.

Q. And it says that it is between what company and what company?

A. Between HM Four, LLC and HM Eight, LLC.

Q. And can you make out the printed names on the signature under HM Eight?

A. Jeanette Gonzalez.

Q. And the signature under HM Four?

A. Eric Sheppard.

Q. And of course, I really meant the printed names. And I know that's what you read.

(Pause in proceedings.)

MS. MARTINEZ: I have no further questions, Your Honor.

THE COURT: All right.

MR. ETRA: Should I begin cross now, Your Honor?

THE COURT: Ladies and Gentlemen, do you want to proceed for a little bit of cross-examination or would you like to take a lunch break at this time?

Why don't we go ahead and we'll start fresh with the cross-examination. So it is now 12:10. We'll take a lunch recess until 1:15.

Have a pleasant lunch. I'll see you back here at 1:15.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 12:08 p.m.)

THE COURT: All right. We do have a matter at one o'clock that we do need to address in the courtroom. So I'll see you back here at 1:15. But if you can clear the area so that we can have use of the counsel table.

Have a pleasant lunch.

Mr. Mote, I think I told you this last night. Let me just emphasize that since you are on the witness stand you're not to discuss your testimony or any aspect of the case.

I'll see you back here at 1:15.

THE WITNESS: Thank you.

(Recess from 12:09 p.m. to 1:22 p.m.)

THE COURT: We have all our jurors?

All right. Let me acknowledge the presence of the Defendant.

Are both sides ready to proceed?

On behalf of the Government?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Yes, Your Honor.

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

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 1:22 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 we will begin with the cross-examination of Mr. Mote [sic].

MR. ETRA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good afternoon, Mr. Motes.

A. Hello.

Q. We've never met before, correct?

A. That's correct.

Q. But you've met with the prosecutors several times?

A. A couple of times, yes.

Q. In fact, you work for the federal government, correct?

A. That's correct.

Q. You don't work for Mr. Sheppard's companies, right?
A. No.
Q. You were not involved in any of the loans that you have testified about to today; is that correct?
A. I believe that's a correct statement. I have no memory at all of being involved in those loans.
Q. And you didn't see -- and in the paperwork, you can see names of SBA employees who were involved, correct?
A. That's correct.
Q. And you don't see your name there, right?
A. That's correct.
Q. Okay. In fact, Cole Blakeley is a name that shows up a lot in the HM Four application, correct?
A. Yes.
Q. Do you know who Mr. Blakeley is?
A. That would have been a loan officer, a processing loan officer.
Q. Was he with the SBA at the time?
A. Yes. He was either directly hired with the SBA or with a contractor, most likely a direct hire.
Q. Was there a lot of hiring going on during COVID to deal with all the work?
A. Yes.
Q. Is Mr. Blakeley still at the SBA?
A. I don't believe so.

Q. So your testimony today is a combination of your review of documents, right?
A. That's correct.
Q. And your knowledge generally of the procedures and policies at the SBA; is that fair?
A. Sounds fair.
Q. But in terms of the decision-making that was going on for those loans, you really have to rely on the documents and what they tell you; is that correct?
A. That's correct.
Q. Okay. And you obviously don't have information about Mr. Sheppard or how his companies ran, right?
A. Outside of the documents in the file, no.
Q. Right. Okay. And were you aware of the fact there's been testimony in this case about a company called Nationwide Lending? Have you heard of a company called Nationwide Lending?
A. I've heard of many companies called Nationwide. I don't know for sure that I've heard of a company called Nationwide Lending.
Q. Did you know that Nationwide Lending was a professional financing company that provided advice and guidance to Mr. Sheppard --
MS. MARTINEZ: Objection. The witness answered he had no knowledge.

THE COURT: Sustained.

BY MR. ETRA:

Q. Do you know whether Mr. Sheppard -- based on the SBA documents, does it indicate whether Mr. Sheppard had the benefit or not of advice and guidance from a professional company?

A. I don't recall every application. But on the majority of the applications that I reviewed, there was not -- they did not complete that information.

Q. In fact, it wasn't on any of the applications, correct?

A. I don't recall every application I reviewed.

Q. We'll go through that.

A. Okay.

Q. And you did testify based on the documents several times that the documents reflect Mr. Sheppard having phone calls with the SBA, correct?

A. That's correct.

Q. And I think it's just about on every loan, correct?

A. I remember notes on almost every loan with Mr. Sheppard calling in.

Q. Right. And when -- and when you testified about that, you're simply relying on what you're seeing in the documents, right?

A. That's correct.

Q. And based on what you're seeing in the documents, did

Mr. Sheppard disclose his identity when he called?
A. Yes. They -- on several of those calls, they asked verifying information so that he could disclose his identity.
Q. So there's no indication that when Mr. Sheppard called he used a fake name to try to hide himself, right?
A. That's correct.
Q. I want to focus on the loan chronology a little bit and how this got set up, and then we'll talk about the applications. Okay?
A. (No verbal response.)
Q. You have to answer --
A. Oh. Yes. That's okay.
Q. For the record. Okay?
A. Okay.
Q. All right. Basically, you testified a lot about how the EIDL program's been around for quite some time, right?
A. That's correct.
Q. It's not an invention of COVID?
A. That's correct.
Q. And you testified about how typically it might occur for a local disaster, whether it's a hurricane, or a tornado, or flooding, or something else, right?
A. That's correct.
Q. But that's not what this program was. This was a different version of the EIDL, correct?

A. That's correct.
Q. And they actually -- because it was a nationwide pandemic?
A. All the -- most of the rules of the program were the same as our typical program. There were some variances.
Q. Let's talk about some of the variances. So they removed the requirement to get credit elsewhere, correct?
A. That's correct.
Q. And in terms of the requirement to show that you're capable of repaying the loan, they loosened that up, right?
A. Yes. In fact, that was waived for loans under $500,000.
Q. Right. Okay. So what I'd like to do before we go through the application is understand from you the actual eligibility requirements to get this loan. Okay?
A. Okay.
Q. And then we'll go through the individual loan applications and we'll talk about that, okay?
A. All right.
Q. As I understand it, the number one requirement is to -- well, maybe it's not number one, but I'll say the first one is to be a company in existence as of January 31st, 2020. Did I get that right?
A. It depends on your definition of "in existence."
Q. Okay. Did I get the date right?
A. January 31st, 2020.
Q. And why does it depend -- why did you answer like that?

I'm kind of curious.
A. Well, some companies are on file with the Secretary of State but are non-operating. And so a non-operating company would not have had a economic injury from COVID. And so those non-operating entities would not have the eligibility to apply.
Q. Fair enough. So it had to be operating as of January 31, 2020, correct?
A. Yes.
Q. Okay. And you mentioned something about economic injury, correct?
A. Yes.
Q. What was the requirement for economic injury to get a loan?
A. I'm sorry. Could you say that again?
Q. What was the requirement for economic injury to get a loan?
A. Well, there were several requirements. Primarily -- I think what you're asking is: How was the loan amount established?
Q. No.
A. No.
Q. Just to get a loan. What do you have to show to get a loan in terms of economic -- economic harm, is that what we're talking about?
A. Yes.
Q. What do you have to show?
A. Well, you would have to state -- certify on the application

what your revenues were, what your cost of goods sold were, if you were a retail or wholesale business. If you were a landlord, either residential or commercial, you would have to state your amount of lost rents. If you were a non-profit, you would state your annual operating expenses.
Q. Okay. Why don't we just get into the loan and -- well, before I do that, the issue of W-2 versus 1099ed workers, that may be very important in PPP loans; that's not really an issue for EIDL loans, right?
A. Right. W-2 workers for our program are not businesses, and so they would not have any eligibility to apply.
Q. Right. In other words, a company could be eligible for an EIDL loan even if it had no W-2 employees, right?
A. That's correct.
Q. And in fact, it doesn't have to have any employees. It could just be a solo practitioner, right?
A. That's correct.
Q. And you don't have to prove that you're a huge successful business before COVID, right?
A. No. We -- the system itself had automation in it that would verify whether or not a business was in existence. In cases where it could not make that verification, then it would be up to the processing loan officer to then further verify.
Q. Sir, I'm going to ask you that if I ask a yes-or-no question --

MS. MARTINEZ: Objection to counsel instructing the witness.

THE COURT: The question calls for a yes-or-no response. Certainly you can explain your answer. You may continue.

Did you complete your answer, sir?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. ETRA:

Q. And generally speaking, if you -- a company wanted to get an EIDL loan, all you have to do is type in "EIDL," end up on the SBA page and click and you're in the portal, right?

A. Yes. There were links on our SBA website that would lead you to the portal.

Q. Okay. Let's look at the -- start where the Government started with the HM Four application intake form, which is Exhibit 58-6.

MR. ETRA: If you could put that on the screen.

(Pause in proceedings.)

BY MR. ETRA:

Q. Do you see the -- it's called Rapid Intake Form Data Lookup for HM Four?

A. Yes.

Q. Is it -- I have the same problem with the print. Are you able to see it?

A. I can now.
Q. It says: "Rapid Intake Form," right?
A. Yes.
Q. That's a modified form created for COVID, right?
A. Yeah. In fact, what we're seeing now is just the data taken out of that form put into a separate format.
MR. ETRA: Your Honor, I'm having a -- I feel like I should be getting yes-or-no answers. And when I tried to politely suggest it, I was given an objection. And it --
THE COURT: The question calls for a yes-or-no response. If you need to explain your answer, you can do so.
BY MR. ETRA:
Q. Is this the Rapid Intake Form Data Lookup?
A. This is the data taken from that form, put into a different format for the purposes of long-term keeping.
Q. And is the Rapid Intake Form a change that was made in COVID?
A. We had a different application structure for COVID applications.
Q. And included a more rapid intake form, correct?
A. That's right.
Q. And the reason is you were trying to process the loans as fast at possible, correct?
A. Right. Due to the large number of applications anticipated, there was a need to expedite the process.

Q. Because of the demand given COVID, right?
A. Yes. Correct.
Q. And the first line is "Applicant" -- it says: "Eligibility Requirements, Applicant Type," and the issue is not more than 500 employees, right?
A. That's correct.
Q. Am I correct that if you're looking at this -- and this is the way -- the part on the left-hand side is the way the portal would read to the applicant, correct?
A. The questions that you see on the left-hand side would be the questions in the portal for the applicant.
Q. Exactly the way they appear, right?
A. For the most part, yes.
Q. If there's any changes that you can tell me about when we get there, would you let me know?
A. Yes.
Q. Okay. So am I correct this is the only part of the application which uses the term "eligibility"?
A. Yes. These are -- like we talked about earlier, these are the suitability questions that would be instant declines if they were answered the wrong way.
Q. Where does it say these are the suitability questions?
A. I said that they were the suitability questions.
Q. It doesn't say: "These are the suitability questions," correct?

A. That's correct.
Q. And Questions 2 through 7 are questions that are -- you refer to them as suitability questions, right?
A. That's correct.
Q. Like: "Are you a business that we don't want to be supporting?" You don't want government money going to things like that, like gambling?
A. That's correct.
Q. Right?
A. Yes.
Q. Or not being a member of Congress, right?
A. That's correct.
MR. ETRA: Could we go to Lines 59 to 61 on the second page.
Keep going.
Oh. This is -- it's on Page 47. I apologize.
BY MR. ETRA:
Q. All right. These are also -- it says: "Additional Information," but these are also basic eligibility-type questions, right?
A. Yes. These have to do with criminal offenses for the most part.
Q. And it applies to the business or the listed owner, right? They have to meet these requirements, right?
A. They both do, yes.

Q. And the no, meaning that they don't have certain criminal history, right?
A. That's -- yes.
Q. And the listed owners are only owners that are 20 percent or more, correct?
A. Twenty percent or more or otherwise have control.
Q. Where does it say -- let's go to -- okay -- "otherwise have control."
MR. ETRA: Let's go to where it talks about listed owners. Let's go to Line 34, and let's highlight the very bottom part. I need the whole part highlighted, please.
No. I need the whole part at the bottom highlighted, please.
BY MR. ETRA:
Q. Okay. This is Business Owner's Information --
MR. ETRA: Oh, that's the wrong part. I apologize.
Let's go to Line 45A.
Next page.
BY MR. ETRA:
Q. It says: "Individual Owners" and has "Owner one" there, right?
A. Yes.
Q. And that's where Jennifer Sheppard has -- with 80 percent, right?
A. Yes.

MR. ETRA: And let's go to the next part where it says: "Owner two."

BY MR. ETRA:

Q. Where in this application does it say that if you're a controlling person you have to put your name down?

A. That's one of those areas that we just spoke about where the actual portal would have been different than what you're seeing here.

Q. So you're saying what I'm seeing here that you produced is different from the portal as it appears?

A. There is a -- the question in the portal stipulated that owners who own 20 percent or more or have control would need to complete their information.

Q. Did you produce any copy of that portal to the Government for this criminal case?

A. I did not personally do that, no.

Q. Have you seen it in the production?

A. Yes.

Q. In the production that was produced in this case?

A. Oh, no. I thought you meant in the production environment for loan processing.

Q. I'm talking about that was produced to the Government in this case.

A. I understand that now. And that answer would be no.

Q. Sorry?

A. I understand that. And that answer would be no.
Q. I'm having a hard time hearing you. I apologize.
A. Oh, I'm sorry. Maybe I should get closer to the mic.
No, I have not seen that in the production.
Q. Okay. Okay. And you'll agree with me that in these applications -- in this application you have -- let me take a step back.
The Government -- when I showed you the lines --
MR. ETRA: Let me go back a minute -- I apologize -- to Lines 59 to 61.
BY MR. ETRA:
Q. Are these the only questions that ask specifically about the listed owners?
A. Yes. On the application they are.
Q. Right.
A. Yes.
Q. Okay. So the issue with a listed owner is for eligibility purposes they have to be able to say no to these questions, correct?
A. Well, answering no to these questions does not necessarily exclude an owner from being able to be a party to a company that applies for a loan. It may just simply introduce an additional hurdle to being approved.
Q. Right. One of the -- but at least the first hurdle would be if you could say no to these questions, correct?

A. If you say no to these questions, sure, processing is easier on the loan application.
Q. And you sort of check the box in terms of the issue with a listed owner, correct?
A. That's correct.
Q. Okay. And I could show it to you -- and I'm happy to -- but the other applications have Mr. Sheppard as listed owner, correct?
A. Yes.
Q. And they also answered no to those -- the applicant also answered no to these questions for Mr. Sheppard, correct?
A. That's correct.
Q. And one of the other applications at least had Mr. Robert Kallman. Do you recall that?
A. Yes.
Q. And they also answered no for that as well?
A. Yes. That's correct.
Q. So in terms of whether -- and that's the only issue with having a listed owner, making sure that if it's truthful that the answer is no, correct?
A. That's one of the issues.
Q. Okay. What's the other issue?
A. Well, they could be non-US citizens, which would create a hurdle. They could be living and residing within a foreign country. They could -- there are other eligibility issues

having to do with the individual owners.
Q. But we know from before that Mr. Sheppard being a listed owner in HM-UP and HM Management, the application was approved, correct?
A. Yes.
Q. And so he was deemed an acceptable listed owner, correct?
A. Yes. At that time.
Q. Same thing with Mr. Kallman, correct?
A. Yes.
Q. Okay. So the issue with listed owners -- whoever is listed here, the issue is you just want to make sure that you check the boxes on the things we've talked about, right?
A. Well, we need to, as an agency, know who the owners of that business are.
Q. I'm focusing on the eligibility requirements, okay?
A. Okay.
Q. In terms of the eligibility requirements, the SBA has already checked the box, so to speak --
A. Well, not entirely.
Q. Let me finish and then you can answer.
A. Okay.
Q. You've checked the box on Mr. Sheppard, right?
A. Yes.
Q. And on Eric Sheppard and Robert Kallman, correct?
A. Yes.

Q. Okay. When you say: "Not entirely," what am I missing?
A. Well, in hindsight at this point in time you can go back and say that you had that data and all the applications. But the processing loan officer who processed this application would not necessarily have seen all of that data in every application. They don't review every application at the same time.
Q. Yes. I'm just simply saying that if Mr. Sheppard was listed here as an owner, or Mr. Kallman was listed here as an owner, it wouldn't affect the eligibility because they would be able to check the box, correct?
A. It would not affect these questions. No.
Q. Okay. So are you saying that the actual application portal that was available to the borrower, we don't have in this case the way this was written?
A. Yeah. There were in -- some instructions in the application portal that do not show up on this form.
Q. So you're testifying from your memory about that portal, right?
A. Yes.
Q. Okay. There's also not a problem with having the same owner, say Mr. Sheppard or Mr. Kallman on multiple --
MS. MARTINEZ: Your Honor, I object to this continuing line of questions. It actually relates to a different exhibit, a different company that is not the company that's --

THE COURT: Just take down the exhibit. And you're not asking with reference to the exhibit, correct?

MR. ETRA: At the moment I'm not, but --

THE COURT: All right. Take down the exhibit.

MS. MARTINEZ: I would request that he put down the exhibit.

THE COURT: Take down the exhibit. You may continue with the question.

BY MR. ETRA:

Q. It's also not a problem for eligibility if you have the same person on multiple applications, correct?

A. It could in theory become a problem.

Q. It wasn't a problem here, correct?

A. It would only become a problem in situations in which the totality of loans provided to a specific owner exceeded $2 million.

Q. And that's not the case here, right?

A. Right.

Q. And in fact, if you look at all the applications, Mr. Sheppard is listed repeatedly as an owner, correct?

A. Yes.

Q. And that didn't stop the SBA from approving at least two of them, HM-UP and HM Management, when Mr. Sheppard was listed as an owner, correct?

A. Correct.

Q. Okay. And you'll agree with me that all these applications share a lot of data in common, what I mean by identifying data. Do you agree with me on that?
A. Yes.
Q. You have the same phone number sometimes?
A. Same phone numbers, principals' addresses, sometimes business addresses.
Q. Right. So -- and, in fact, many of the applications were made -- four of them were made on the exact same date, correct?
A. That's correct.
Q. From the same IP address, right?
A. I would have to see that again.
Q. Is it safe to say that the SBA recognized that these were interrelated companies based on the information given?
A. Yes.
Q. Okay. So there was no question the SBA understood these were all affiliated companies, right?
A. Well, our definition of affiliate isn't -- wouldn't meet that. HM Four would not be considered by our definition an affiliate to the other businesses because it was controlled and owned by another party, even though they were related by marriage. But if you talk about the applications as a whole being related in the system due to that identifying data, then yes, you would be correct.
Q. Certainly the identifying information was disclosed and it

was understood by the SBA, correct?

A. Yes.

Q. Okay. I want to go through some of your --

MR. ETRA: Could we put back up Exhibit 58-6.

BY MR. ETRA:

Q. I want to understand your testimony on Lines 14, 15, and 16.

MR. ETRA: Let's highlight that so it's easier on the eyes.

BY MR. ETRA:

Q. I'm just going to read Line 14, okay?

MS. MARTINEZ: Your Honor, I believe we're in exhibit 58, and I'm not sure that we have noted which company this is for the sake of the witness.

MR. ETRA: I have no problem noting that it's --

THE COURT: Let's just clarify for the jury, please. And it's Exhibit 58.

MR. ETRA: It's 58, and it's HM Four.

May I proceed?

THE COURT: You may.

BY MR. ETRA:

Q. Okay. Let's focus on Line 14. Says: "Gross revenues for the 12 months prior to date of the disaster," in parenthesis "January 31, 2020," correct?

A. Correct.

Q. Is that how it appears in the portal as well?
A. Yes.
Q. Okay. It doesn't define gross revenues, correct?
A. No. It doesn't give a definition for gross revenues, but that is a basic-enough term that we would expect an average business owner to understand it.
MR. ETRA: I move to strike the expectation.
THE COURT: The motion is denied.
BY MR. ETRA:
Q. Okay. The gross revenue -- well, I guess everything here is capitalized. So again, you don't actually define gross revenue, right?
A. That's correct.
Q. And you don't say that you have to look at what's in the tax returns, correct?
A. That's correct.
Q. And sometimes the tax returns could be accrual versus cash, and you can't always look to the tax return for this information, and the SBA understands that, right?
A. And this is from January 31st, 2020, a year prior. A tax return might be on a calendar year. It might have a different --
Q. You leave the business owner to calculate in good faith what the revenues are.
A. To correctly calculate in good faith. That's correct.

Q. And then the next line is "Cost of Goods Sold," right?
A. Yes.
Q. That's the same -- for the 12-month period, right?
A. Yes.
Q. And again, you don't define cost of goods sold here, correct?
A. That's right. And again, that's a basic-enough term that we would expect an average business owner to understand.
Q. And you gave testimony that cost of goods sold would be something like inventory, I think. Did you give that testimony?
A. I mentioned inventory in relation to the UCC filing.
Q. You're talking -- okay. Then I misunderstood. Okay. So you leave it to the business owner to determine how to apply the term "cost of goods sold," correct?
A. That's correct.
Q. Okay. Now, you also said that the difference between the two is supposed to be the economic injury?
A. The difference between the two is the margins. At this point in time, the economic injury was half of that amount.
Q. But just to be clear, what we're talking about is the 12-month period before COVID?
A. Correct.
Q. So the SBA takes the difference between revenue and cost of goods sold for the period before COVID, and takes half of it,

and that's the system for saying that's the economic injury?
A. That's the loan amount, yes.
Q. But those two lines don't say anything about economic injury from COVID, right?
A. That's correct.
Q. Okay. And the last line does talk about lost rents due to the disaster, right?
A. Yes.
Q. And that's simply lost rents.
Okay. But we've seen in the other --
MR. ETRA: Well, why don't we go to the other applications, then.
Let's go to HM Management which is 60 -- 51-1, and look at the same lines, which would be 14 to 16.
BY MR. ETRA:
Q. Okay. Here, there's nothing filled in for lost rents due to the disaster, right?
A. That's correct.
Q. Okay. It's simply there's revenue and cost of goods sold for the period beforehand, right?
A. Yes.
Q. Where in this application is the applicant claiming they had injury from COVID?
A. They are claiming that by completing the application in the first place.

Q. Where in the application does it say that you have -- that you're affirming that you have suffered from COVID financially? Where does it say that in the application?
A. Well, the -- I don't know that it says that specifically in the documentation.
Q. Okay.
MR. ETRA: Let's go back to HM-UP, which is 58 -- sorry -- 58-6.
And let's go to -- I meant -- I apologize. I said HM-UP. I meant to say HM Four. We're on HM Four.
Let's go to Line 33, Number of Employees.
BY MR. ETRA:
Q. That's as of the date of the disaster, January 31, right?
A. Yes.
Q. Okay. What -- if the number was one or 10, what impact would it have, versus three, whether this loan was approved?
A. It did not impact the loan itself. It would have impacted the advance.
Q. And you talked about an advance. I think at the very beginning of your testimony yesterday you talked about that there was availability of requesting -- I think $10,000 advances?
A. Up to $10,000. It was $1,000 per employee up to 10.
Q. But that's not what happened in this -- there's no evidence that these companies applied for the advance, right?

A. When you completed an application for a loan, you were automatically completing an application for the advance at the same time. However, at the time that these loans were made or submitted, we were out of funds for the advance.

Q. Where in the application does it say that when you're completing the application for the loan you're also completing an application for the --

A. I don't recall.

Q. And in terms of number of employees, there's no description of how to define employees or how to calculate employees, right?

A. No.

Q. There isn't. Okay.

MR. ETRA: Let's go to --

BY MR. ETRA:

Q. Oh, by the way, this one has -- talks about lost rents, right?

A. Yes.

Q. And if you go further down, it says: "Business Activity" --

MR. ETRA: If you go to 31 and 32.

BY MR. ETRA:

Q. -- "Business Activity" and "Detailed Business Activity"?

A. Yes.

Q. So I think, from what I recall, this description of real

estate and property managed realty, that's in all of the applications we've looked at, isn't it?
A. I believe you're correct. I would have to review each application to really say for sure.
Q. So certainly the applicant disclosed being in the real estate business, right?
A. Yes.
Q. And that wasn't an impediment to getting a loan approved, right?
A. Being in the real estate business is not an eligibility concern in and of itself.
Q. Right. And having rents due is not an eligibility concern itself, right, because it asks -- let me finish the question -- because it asks specifically about lost rents?
A. That's right.
Q. Okay.
A. Well, I mean -- what I mean is that it's -- having lost rents is not an eligibility concern. However, to apply for a loan if you're a landlord, you would need to have lost rents. That would be your injury. If you did not have lost rents, you would have no need for a below-market interest rate loan from your fellow taxpayer.
Q. Where in the application does it say that if you're a landlord you have to show lost rents?
A. Right on this line, Line --

Q. Which line is that?
A. -- 16.
Q. Okay. Says: "Rental Property." We're on 16. Right there.
A. "Rental Property. Rental property is rental and commercial only lost rents due to the disaster."
Q. Right.
MR. ETRA: Okay. Then let's go to the HM-UP application, which is -- I don't have the number.
MR. CAVALLO: It's 53-1.
MR. ETRA: I'm sorry?
MR. CAVALLO: 53-1.
MR. ETRA: 53-1.
BY MR. ETRA:
Q. Now, here, if you look at Lines 31 and 32, the business is disclosing the same business, right, real estate and property management realty, right?
A. That's correct.
Q. And the person filling this out, how is the -- and here it doesn't show lost rents, right?
A. That's correct.
Q. Where does it say here that if you're a landlord and you're applying for an EIDL you have -- the only way to show injury is lost rents?
A. Well, it says: "Lost rents only" on Line 16.

Q. Where does it say that you have to have lost rents to get any EIDL loan --
A. Line 16 tells you that.
Q. It tells you that?
A. Yes.
Q. Okay.
A. You -- you know if an applicant had questions about the completion of the application, we had an extraordinarily valuable customer service team that they could have called and answered those questions.
Q. Can you agree with me, sir, that Line 16 doesn't say -- it doesn't tell the landlord that the only way to get an EIDL loan is with lost rents? Can you agree with me that it doesn't say that?
A. It tells a landlord to list their lost rents on that field.
Q. Where is the word "landlord" on there?
A. It says: "Rental Properties. Rental and commercial only lost rents due to disaster." If not a landlord completing that field, I don't know who would.
Q. What I don't understand is if you show -- if you show profit and loss or -- sorry. I'm just going to go on.
MR. ETRA: Let's go back to the HM Four application, which is 58-6. Let's go to Line 69 to 71.
BY MR. ETRA:
Q. And this is asking for bank account information, correct?

A. Correct.
Q. And this is how it appears to the portal, right?
A. That's correct.
Q. There's no requirement to have an old account or a new account, right? You just have to have an account.
A. Right. This business would need to have an account for the direct deposit.
Q. It's simply you need to know that the money is going to an account in the name of the applicant?
A. That's correct. It was a fraud prevention measure.
Q. Okay. Is there an issue that you want a bank account because of Know Your Customer requirements? Is that a concern as well?
A. Know Your Customer requirements?
Q. Do you know what Know Your Customer means?
MS. MARTINEZ: Objection, Your Honor. That's a banking concept. There's no foundation --
THE COURT: If the witness knows. Overruled.
THE WITNESS: I'm not familiar with the term.
BY MR. ETRA:
Q. Fair enough.
And it has account -- the account here is 5817, right?
A. Yes. That's correct.
Q. The last four digits.
MR. ETRA: Let's go to the -- let's go to Line 28, the

email, business email.

BY MR. ETRA:

Q. Here, the business email -- and there's hmfourmanager@gmail.com. Is this the way it appears in the portal, business email?

A. Yes.

Q. And you can use any email you want for the business, correct?

A. Yes.

Q. There's no requirement about which email the company used, right?

A. We would want the email to be the actual email controlled by the principal.

Q. Okay.

A. But outside of that, then no, there's no limitation.

Q. Is it the case that -- there's been some testimony that you should have a separate email for every application. Is that consistent with your knowledge of the program?

A. I believe that we would have preferred there not be a separate email for every application.

Q. Either way, there's no -- it's not forbidden, right?

A. It's not forbidden.

Q. Okay. Okay. I forgot to also go over -- when you say what you would want, what are you referring to -- let me ask the question again.

Are you referring to your opinion?
A. In what regard?
Q. You said: "We would want the same email." Are you testifying about your opinion?
A. Yes. And I believe that other people at the SBA would share that opinion. The concern is, is that sometimes individuals submitting multiple applications would try to change some of the data points within those applications to try to evade our system's fraud detection measures. And so it could be construed as a red flag if an individual was using multiple emails on multiple applications.
Q. Okay. But here you had identifying information that you knew was the same person, right -- same people involved?
A. Yes. All the other data on the application matched.
Q. And you weren't involved, again, in the handling of these applications, correct?
A. That's correct.
Q. All right.
MR. ETRA: Let's go to Line 29.
Next line.
BY MR. ETRA:
Q. "Business Established." And it has 2014. Do you see that?
A. Yes.
Q. That's kind of important. That's the issue that the business is in existence at least or maybe operating as well

before the date of the disaster, right?
A. That's correct.
Q. If I just want to focus on what is critically eligible and necessary for this loan, could we go over that together?
A. Yes.
Q. Okay. You have to be able to answer the eligibility questions that we talked about, right -- or you called them suitability?
A. Correct.
Q. And the listed owners have to also be able to check those boxes, right?
A. That's correct.
Q. And you have to have -- be in existence or operating before the date of the disaster?
A. Correct.
Q. And you have to either have lost rents or a profit margin from the previous year, correct?
A. That's correct.
Q. Have I hit all the points?
A. That's enough to get the application through to a processing loan officer.
Q. Well, what are the other eligibility requirements for this loan other than what we've talked about just now?
A. Other eligibility requirements that a processing loan officer would look into, there's certain types of businesses

that go beyond what's listed on this application that would not be eligible to apply.

Q. What else?

A. They would need to be physically located within the United States or one of its territories.

Q. Okay. What else?

A. For the most part, I think that's it.

Q. Okay. Great. But let's proceed with the email exchange involving Mr. Cole Blakeley. I want to go through that with you, okay?

MR. ETRA: Your Honor, this is part of Government's Exhibit 58.

THE COURT: Bates number, please.

MR. ETRA: The Bates numbers are 031132 through 031141.

THE COURT: All right.

MS. MARTINEZ: What's the exhibit number?

THE COURT: Fifty-eight.

MS. MARTINEZ: Thank you.

BY MR. ETRA:

Q. I'm going to start at the bottom, which is the -- chronologically the first one.

A. All right.

Q. And we have to go up two pages to get to the beginning of that email. Do you see that?

A. Yes.

Q. Okay. So I'm looking at the email at the bottom here which -- and I can show you, but do you agree that it's the first email in the chain?

A. All of it? You want me to read it?

Q. No. I'm saying: Do you agree that's the first email --

A. Oh. Based on what you have displayed here, yes.

Q. Okay. That's what I want to do. So this is an email where Cole Blakeley is communicating with Ms. Sheppard, but it's really going to hmfourmanager, right?

A. Yes.

Q. Which this email shows as identified in your system as Eric Sheppard?

A. That's correct.

Q. So you guys knew Eric Sheppard was involved in this loan, in HM Four, right?

A. The way it would have been displayed to the loan officer at the time is, in the system, there would not have been an identifier saying that email went to Eric Sheppard. However, when the email came in, when Eric Sheppard sent an email to the loan officer, they would have seen that, at the top of the page, it came from Eric Sheppard at HM Four Management.

MR. ETRA: Your Honor, that could have been a yes. I'm having difficulty getting simple yes-or-no answers.

THE COURT: If we can get through the testimony. If you'll just listen to the answer [sic], and if it calls for a yes or no, you'll answer yes or no. And then if you have the need to explain, you can certainly do so.

BY MR. ETRA:

Q. Okay. If I can cut this short, the way -- fair enough. The way it came into the loan officer is it showed the name Eric Sheppard next to hmfourmanager, correct?

A. Yes.

Q. Okay. All right. And there are several items here, and I want to start on Item 5. Okay?

A. Okay.

Q. Item 5: "Certify the specific type of real estate activity that HM Four, LLC is engaged in," and it gives examples. Do you see that?

A. Yes.

Q. That the type of thing that you would expect the loan officer to be asking?

A. If they had questions concerning that. The reason why is that --

MR. ETRA: Your Honor, I asked a yes-or-no, and I'm getting a reason why.

THE WITNESS: All right.

THE COURT: Can the witness answer with a yes or no?

THE WITNESS: Yes. I would expect a loan officer in some cases.

BY MR. ETRA:

Q. Thank you.

Okay. And this question gets answered in the email exchange, correct?

A. Correct.

MR. ETRA: Now let's go there and see that answer. That's in Page -- the last digits are 138.

If you highlight Number 5.

BY MR. ETRA:

Q. "I am certifying that HM Four, LLC is solely in the real estate business and receives funds to manage certain shopping centers, performs construction work for tenants at the shopping center, and has investment in two shopping centers." Do you see that?

A. Yes.

Q. So do you agree that that provides -- based on your review of records, that issue has been responded to, correct?

A. Yes.

Q. A certification was requested, a certification was provided, right?

A. Yes.

Q. Okay. Now let's go back to the email that we were looking at, but I want to focus on Item 1.

MR. ETRA: Let's highlight -- maybe we could pull the second page right next to it, so we could see the whole Item 1.

There's another line that says: "Business License."

BY MR. ETRA:

Q. Okay. Do you see that, sir?

A. Yes.

Q. Okay. Great. So this is what I want to focus on for the next series of questions, okay, the proof of business. Okay, sir?

A. Yes, sir.

Q. "Please provide proof of business. Send at least two items listed below which must be dated prior to January 31, 2020." Do you see that?

A. Yes.

Q. Now, before I go further, is that an actual SBA requirement to have two proofs of business the way this is described or it's up to the loan officer?

A. It is not an SBA requirement.

Q. So -- fair enough. So this loan could have been approved without meeting this requirement, correct?

A. It could have been approved potentially without two listed items.

Q. Do you need one listed item?

A. In this case I would assume that you would need one listed item.

Q. You're assuming. I want you -- so let's talk for a minute. Based on the SBA policy, was it required to have any of these

listed items?
A. In some cases.
Q. Which ones?
A. Well, in cases in which the system was not able to verify the existence of a business, the loan officer would be required to gain documentation from the applicant to verify the existence of those businesses.
Q. Fair enough. And -- but do you agree with me when that happens, like we have here, it could have been or it would have to be two items that met this requirement?
A. Depending on the item provided, it could have been one.
Q. Because in fact, there was only one item that met this requirement in this package, correct?
A. I would have to go back to all the documents in this package.
Q. We'll go through it. But in terms of the kind of documents here, it's not a very demanding request, right?
A. No. And it's really not intended to be a demanding request. It's just intended to gather the necessary documentation from the applicant.
Q. Again, respectfully, if you can just answer yes or no --
MS. MARTINEZ: Objection, Your Honor.
THE COURT: The objection is sustained.
BY MR. ETRA:
Q. Okay. So for example, if you look at Item 1, a cell phone.

If you have a cell phone in the name of the business, you just click the item, right?
A. Right. They would email that item to the loan officer.
Q. And if you have a credit card in the name of the business, that's all you need?
A. Yes.
Q. All right.
MR. ETRA: Let's go to -- Your Honor, I'm showing a part of Exhibit 58, Bates range 31108 to 31109.
(Pause in proceedings.)
BY MR. ETRA:
Q. Do you recognize -- do you recognize the document -- you could ignore the sticker at the bottom. Do you recognize this document from the loan file?
A. Yes.
Q. Okay. And this is a printout from the Florida Sunbiz records that show -- of the articles of organization for HM Four, right?
A. Yes.
Q. And you'll agree the date stamp here is before the date of the disaster, correct?
A. Yes.
Q. Okay. Now, does -- would this meet the requirements?
A. No.
Q. Why?

A. As we discussed earlier, some businesses are on file with the Secretary of State in their respective states but are not operating.
Q. Fair enough.
MR. ETRA: Okay. Let's go to the management agreement, which is also in Exhibit 58. It's Bates range 32151 through 32158.
(Pause in proceedings.)
BY MR. ETRA:
Q. You recall being shown this document at the very, very end, I think, of the direct examination?
A. Yes.
Q. And you could look at the date at the top. What's the date there?
A. Can we enlarge it?
Q. Sorry?
A. Can we enlarge it?
Q. Oh, yeah. Sure.
A. March 13th, 2014.
Q. And if we go to the signature block for a moment, the last page shows that HM Eight is the owner and HM Four is the manager. Do you see that?
A. Yes.
Q. Okay. So here is a business contract that meets the requirements of the -- of Mr. Blakeley's email, correct?

A. This would establish that the business was active prior to the disaster date.
Q. So this does the job to show -- like you say, it's not just a filing but an actual business before the date of the disaster, right?
A. Yes.
Q. Okay. And in fact, it describes the manager's duties in the contract, right?
A. Correct.
Q. And it talks about -- let's take a quick look. Section 1.1: "Management. Owner hereby appoints Manager, and Manager hereby accepts the appointment, to manage the Property in accordance with the terms of the Agreement." Do you see that?
A. Yes.
Q. And if you look at the second paragraph, the property is defined as a location in Orlando. Do you see that?
A. Yes.
Q. So this satisfied the requirement that HM Four was an operational, real company, right?
A. Yes.
Q. And it met the requirements by -- of Mr. Blakeley, right?
A. Yes.
Q. I will show you other documents, but to your recollection there's no other document that met the requirements of Mr. Blakeley to show an active business before January 31,

2020; am I correct?
A. I believe you're correct.
Q. Okay. Because -- take a look at the lease, 58-1.
(Pause in proceedings.)
BY MR. ETRA:
Q. Okay. Do you see the lease on the screen? We'll make it bigger for you. Let's look at the -- you recall being asked about that on direct examination?
A. I do.
Q. Okay.
MR. ETRA: And let's go to the last page for the date. Sorry. Not the last page. I apologize.
BY MR. ETRA:
Q. So what is this dated, according to the signatures?
A. May 18th, 2020.
Q. So this was not anything that Mr. Blakeley had asked for, correct?
A. Mr. Blakeley asked for general documentation, and this may have been sent in response. But no, Mr. Blakeley did not directly ask for a lease agreement.
Q. Could we just say it's not in the email in which he asked for it?
MS. MARTINEZ: Objection, Your Honor. The entire exhibit would show what Mr. Blakeley asked for.
THE COURT: Sustained.

MR. ETRA: All right. Let's go back to the exhibit. Let's go back to --

MS. MARTINEZ: The entire Composite 58.

MR. ETRA: Your Honor -- let's go back to the email chain, which is Exhibit -- it's part of Exhibit 58, Bates range 132 to 141. And let's start where we left off with Item 1.

BY MR. ETRA:

Q. And you'll agree that that lease is not what's being asked for in Item 1 because it says literally: "Must be dated prior to January 31, 2020"? Do you agree with me.

A. It does say that.

Q. Okay. Is there anyplace else in the emails -- in these emails or any other documents I could show you to resolve the question about whether the lease was requested --

MS. MARTINEZ: Please show the witness.

THE COURT: Hold on. Hold on. Ms. Martinez, if the witness needs to see it, the witness will let counsel know.

Continue with your question.

BY MR. ETRA:

Q. Is there anything in this email chain or another document you think you want to tell me about which would indicate that Mr. Blakeley asked for this lease?

A. Only that he says: "Please provide proof of business," and theoretically an applicant could have sent something that's not in these bullet points to try to accomplish that.

Q. The question was: Isn't it true that Mr. Blakeley did not ask for the lease in any form; is that correct?
A. He asked to provide proof of business.
Q. Dated -- with two documents dated before the disaster, correct?
A. And on Bullet Point 5, it does say: "Rental lease agreements for business property."
Q. Okay. But that's after the colon, what must be dated prior to January 31, 2020; isn't that correct?
A. What I'm telling you is that Mr. Blakeley obviously, by reading this email, asked for lease agreements and for proof of the business, and the applicant provided a lease agreement.
Q. Okay. So did you ever talk to Mr. Blakeley?
A. It would be impossible for me to know.
Q. So could we just agree on what's in the document -- that there's nothing in the document that asks for a lease agreement?
A. Well, that's not true. Bullet Point 5 says --
Q. Let me -- there's nothing in the documents where Mr. Blakeley is asking for a lease agreement, except if it's dated before January 31; isn't that correct?
A. Well, there is that clause in there that it says prior to January 31st, 2021 -- or 2020.
Q. It said "Dated," right?
A. It does say "Dated." But he does, then, on Bullet Point 5,

ask for a rental and lease agreement.

Q. Do you really read that as not being controlled by the first paragraph? Is that how you read that?

A. What I'm telling you is I have a long history of dealing with applicants, and applicants don't always read the clause that says: "Dated prior to this date."

Q. Are you speculating about what the applicant is doing here?

A. I'm telling you what I have seen from other applicants.

Q. Are you speculating about what happened here?

A. I'm telling you that, on Bullet Point 5, it says: "Rental lease agreement," and I'm telling you that a lease agreement was provided by the applicant.

Q. Again, is there anything in the entire loan file which shows the SBA requesting a lease agreement that's dated --

A. I feel like we've talked about this.

Q. Let me ask the question, please.

A. Yes.

Q. Is there anything in the entire loan file that asks the applicant for a lease agreement other than those dated before January 31, 2020? Could I please get a yes or no?

MS. MARTINEZ: Your Honor, I object just because the file is very long. So that is a big question to ask of a witness.

THE COURT: The objection is overruled. If you know, sir.

THE WITNESS: This is the only thing that I see on the screen that indicates that he's asking for something prior to that date. I am not an expert on the notes in the file. We would have to review all notes and all other emails provided by the -- in the file to really be able to really answer that question in full.

BY MR. ETRA:

Q. Did you know you were going to testify before you walked into court today?

A. I did.

Q. Did you review the files?

A. I did.

Q. Did you see anything that requested a lease that was other than those dated prior to January 31?

A. I don't recall.

MS. MARTINEZ: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. ETRA:

Q. Is there anything you want me to point -- I mean, we have a lot of documents --

MS. MARTINEZ: Objection. Argumentative.

THE COURT: Sustained.

BY MR. ETRA:

Q. Do you have any idea where that requirement might be in the file?

A. It would have to be in the notes or in the uploaded documents.
Q. I'm sure in redirect if it's there we'll find it.
MR. ETRA: If we can go back to the lease, please.
BY MR. ETRA:
Q. Let me take a step back. When we were testifying about -- before we got into the documents, Mr. Motes --
MR. ETRA: Why don't we put this down for a second because maybe it's distracting the witness.
BY MR. ETRA:
Q. When we were testifying generally about the requirements for eligibility before I showed you the documents -- do you recall that discussion?
A. Yes.
Q. And you made a point of saying that it had to be not just organized -- a company before January 31, but it had to show that it was in business during that time?
A. Operating. Yes.
Q. And that's what one of the core issues was, showing operation before the date of the disaster?
A. Yes.
MR. ETRA: Let's go back to the lease.
BY MR. ETRA:
Q. And while we're talking about dates, let's look at Paragraph 1, Initial Lease Term. This indicates an initial

lease term starting on May 18th, 2020, and going through the beginning of 2021. Do you see that?

A. Yes.

Q. There's actually nothing in this document that even suggests -- for this document, business activity as of the date of the disaster, correct?

A. Based on those dates, I would say that's correct.

MR. ETRA: Let's just focus on the last page for a moment. The one we're looking at -- sorry -- the signature page.

BY MR. ETRA:

Q. Okay. Is it part of the policy practice at the time for the loan officer to verify -- see there's a tenant here, indicated Pacific Management with a name under it, right? Do you see that?

A. No -- oh, over on the right-hand side?

Q. Yeah.

A. Yes. I see that.

MR. ETRA: If we could only have that page, if that's easier.

BY MR. ETRA:

Q. In processing loans, I take it the SBA wasn't checking to see whether Mr. Maged Salem was a real person, correct?

A. Generally, no.

Q. And you haven't seen nothing in the file to suggest that,

correct?
A. That's correct.
Q. And generally any name could be there as the tenant and it wouldn't have affected the application, correct?
A. We would have trusted the document provided by the applicant.
Q. In other words, you weren't checking the identity of the signer for the tenant, correct?
A. Only in rare circumstances where there were significant red flags.
Q. You don't see that in this file, correct?
A. I do not.
Q. And for example, it could have even said "Authorized Representative" and not even had a name and you wouldn't have rejected the lease for that reason, correct?
A. Correct.
Q. So you will agree with me that the name, Maged Salem, or whatever the name really is, wasn't the critical aspect or crux of this loan application?
A. Yeah. Like I say, we trusted the loan documents provided by the applicant because of their certifications when completing the application that the documents they would provide would be true and correct.
Q. I understand that, and that's fine, but I'm asking a very specific question.

A. Yes.
Q. The name here wasn't the crux or key aspect -- the name here on a lease that's dated after the date of the disaster wasn't the critical aspect of the application, correct?
A. Right. On most lease agreements provided by applicants, the name would not have been the critical aspect.
Q. I didn't hear the first part of what you said. The what?
A. On lease agreements provided by applicants, the name of the tenant would not have been the critical aspect.
Q. And there's certainly nothing -- if you look at the actual document file, there's nothing to indicate that that made any difference for the file, correct? The name of the tenant or the name of the person signing for the tenant?
A. Oh. The name of the tenant? No. There's no reason to think the name of the tenant made a critical difference.
Q. And even though we're all here to tell the truth, if someone made up a fake name of John Doe that wasn't obvious, it wouldn't have affected the application, correct?
A. We would have trusted that document provided by the applicant, even though it was a false document, which would lead to us perhaps making a loan that we shouldn't have made.
Q. I was just asking whether --
A. I was just fully explaining so that you would understand.
Q. Okay. All right. Let's talk about the -- let's go through the rest of this email chain and talk about the -- I think

we're going to get to the bank records.

MR. ETRA: So we're back on the email chain that is part of Exhibit 58. It's SHEPP 1132 to 1141.

All right. So we're on Page 1136, the bottom third, right there.

BY MR. ETRA:

Q. So this is an email --

MR. ETRA: Blow that up so --

BY MR. ETRA:

Q. Are you able to read that, sir?

A. Yes.

Q. Okay. So we're on November 5th from Mr. Blakeley, and he's asking for a voided check and a recent bank account statement, correct?

A. Correct.

MR. ETRA: And let's look at the void check that's in the file.

Here it is.

Okay. It is part of 58. It's Bates Number -- well, Bates range 1120 to 1121.

(Pause in proceedings.)

THE COURT: Is there a question pending?

MR. ETRA: I apologize. I'm waiting -- looking for the document.

(Pause in proceedings.)

THE COURT: How is everybody doing, Ladies and Gentlemen?

All right. Let's go ahead and take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 2:28 p.m.)

THE COURT: How much longer do you have, Mr. Etra, in your cross?

MR. ETRA: I have at least an hour.

THE COURT: You have another hour?

MR. ETRA: At least an hour, Your Honor. It's going slower than I expected for reasons that I have raised.

THE COURT: What reasons?

MR. ETRA: I don't want to say it in front of the witness, unless you order me to.

THE COURT: Is this with regard to exhibits?

MR. ETRA: It's with regard to getting yes-or-no answers and not getting speculation about what must have been going on.

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

MS. WEINTRAUB: The direct was three hours almost.

(Recess from 2:29 p.m. to 2:38 p.m.)

THE COURT: All right. Both sides ready to continue?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: Do we need to wait for Ms. Weintraub or can we --

COURT SECURITY OFFICER: All rise for the jury.

THE COURT: Hold on one second.

Do we need to wait for Ms. Weintraub or are we ready to proceed?

MR. ETRA: I'm sorry?

THE COURT: Do we need to wait for Ms. Weintraub or are we ready to proceed?

MR. ETRA: We can proceed.

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

(Before the Jury, 2:39 p.m.)

THE COURT: Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we'll continue with the cross-examination.

MR. ETRA: If we can get back up on the screen the void check, which was from Exhibit 58, Bates Number 1120 -- it's actually a two-page document -- to 1121.

BY MR. ETRA:

Q. Do you see the void check on the screen?

A. Yes.

Q. And do you recognize that was to be something that was provided by the applicant for the HM Four loan?

A. Yes.

Q. In response to the request by Mr. Blakeley for a void

check, right?
A. Yes.
Q. And do you see that it doesn't have the name of the company on it, the check -- the account holder? Right?
A. That's correct.
Q. And it starts with a round number of a hundred, correct?
A. Yes.
Q. Do you recognize that to be essentially like a starter check?
A. Yes.
Q. And this was what was given to the SBA, a starter check, correct?
A. Correct.
Q. And then, on the second page, is a direct deposit enrollment form, right?
A. Yes.
Q. And if we could take that down and go back to the email exchange, which is from 1132 to 1141.
And if we go to Page -- let's follow the chain when it comes up.
Okay. So let's start where we left off on Page 36.
Right.
BY MR. ETRA:
Q. Do you see where we left off at the bottom where Mr. Blakeley is asking for a void check and an account

statement?
A. Yes.
Q. Okay.
MR. ETRA: Let's go further up and see what the response is.
BY MR. ETRA:
Q. The response from HM Four is --
MR. ETRA: No. No. No. You went too far --
BY MR. ETRA:
Q. -- "The controller is out. I will work on getting that." Do you see that?
A. Yes.
Q. Okay.
MR. ETRA: Let's go to the next email in the chain.
BY MR. ETRA:
Q. And here -- and again, hmfourmanager -- you see the name Eric Sheppard. That's what would appear to the SBA, right?
A. Correct.
Q. And here he writes: "Please see attached void check. Also, the bank sent me a direct deposit enrollment form." Do you see that?
A. I do.
Q. And that's where -- we just looked at those, right?
A. Yes.
Q. Okay.

MR. ETRA: Let's keep going.

BY MR. ETRA:

Q. And Mr. Blakeley responds: "Unfortunately, the void check you provided doesn't have the name of the owner on it," like we saw, correct? And he essentially reiterates: "Please give me a bank account statement," right?

A. Yes.

Q. And he makes it clear it's got to show that HM Four is the owner?

A. Yes.

Q. Because you don't have that from the void check, right?

A. Correct.

MR. ETRA: Let's go to the end.

BY MR. ETRA:

Q. And let's look at the next email. Following this is where the letter -- well, HM Four writes: "Attached is a letter sent to me from the manager of SunTrust Bank confirming HM Four business account as provided in the application." Do you see that?

A. Yes.

Q. Now, you'll agree with me that the letter was never requested by Mr. Blakeley?

A. Yes. I agree.

Q. Okay.

A. At least not in the documentation that we've seen today.

Q. Right. Or any of the documentation that you have reviewed?
A. Right. I don't recall that letter being requested.
Q. Okay. Fair enough.
Okay. Okay. And we saw the letter already --
MR. ETRA: Let's put up that letter anyway, while we're looking at it -- while we're looking at it -- while we're talking about it.
BY MR. ETRA:
Q. This is Exhibit 58-3. And in this letter -- this letter says -- you've seen reference letters before for applicants, have you not?
A. Maybe a handful of times.
Q. Okay. But in this letter, the letter says: "If you have any additional questions or concerns, I could be reached at," and it provides a phone number. Do you see that?
A. Yes.
Q. There's no indication in the record that anyone called that number from the SBA, right?
A. I don't recall there being a note where we called that number.
Q. And let's focus on the name Heimdal Barrios. Was that name critical to the -- well, let me take a step back.
MR. ETRA: Why don't we put this down.
BY MR. ETRA:
Q. We'll see the name and we'll keep going, okay?

A. Okay.
Q. All right. Why don't we go back to the email correspondence. Let's see how Mr. Blakeley responds to getting this letter.
MR. ETRA: Okay. Let's start -- let's go back to an earlier page.
BY MR. ETRA:
Q. Okay. So here's the letter we're looking at -- we just saw, where HM Four writes: "Here's" -- basically, "Here's the letter from SunTrust." Do you see that?
A. Yes.
Q. And in fact, in the email, HM Four or Mr. Sheppard writes that he mentioned -- meaning the bank officer -- he received a lot of requests -- do you see that --
A. Yes.
Q. -- from the SBA, due to fraud, and if anyone has any questions they can contact him, right?
A. Yes.
Q. So Mr. Sheppard was inviting the SBA to contact Mr. Barrios, right?
A. Yes.
Q. And I'm not being critical when I'm saying this, but the SBA never did that, right?
A. No. They would have trusted the information provided by the applicant.

MR. ETRA: And let's go to the next email up.

BY MR. ETRA:

Q. And the response from Mr. Blakeley is: Thanks but no thanks," right?

A. Well, he's asking for a -- continuing to ask for the bank statement.

Q. Right. In other words, he's not indicating -- he doesn't say anything about how helpful it was to get the bank letter, right?

A. Correct.

Q. He's simply saying: "Okay. Unfortunately, I still need what I asked for," which is the account statement, right?

A. Correct.

Q. There's no indication in any of the correspondence, first of all, that the bank letter was requested, correct?

A. Right. I don't recall that being a request.

Q. And there's no indication that the bank letter was reviewed by the -- or let me say it differently. There's no indication that the bank letter was wanted by the SBA, correct, in the record?

A. Well, right. That was not requested, so...

Q. And there's no evidence that the bank letter was relied upon, correct?

A. Well, I think that you can say that we were continuing to ask for additional documentation because the letter was not

sufficient.
Q. Right. And there's no indication at all that the letter was relied upon in any way; isn't that correct?
A. I think we rely on all the information provided by the applicant.
Q. I'm not asking what you think --
A. We rely on all the data provided by the applicant.
Q. Is there any indication -- I apologize for talking over you. I didn't realize --
MS. MARTINEZ: Objection, Your Honor.
THE COURT: Overruled. You may continue.
BY MR. ETRA:
Q. There's no indication in the record from Mr. Blakeley or anyone else who was involved in this application that the letter was relied upon by the SBA, correct?
A. We rely on all the documentation provided by the applicant.
Q. Is there anything in the record that says they relied on it?
MS. MARTINEZ: Objection. Asked and answered.
THE COURT: Is there anything in the record, sir?
THE WITNESS: There's nothing specifically in the record that mentions this specific document and reliance upon this specific document.
BY MR. ETRA:
Q. And let's talk about the name Mr. Barrios. Is there

anything in the record that shows that the name of the loan officer indicated -- or the bank officer, Mr. Barrios, was an important or critical part of the loan application?
A. I don't recall anything in the record.
Q. And do you know if -- was there anything in the loan application that said if it wanted any bank letter it had to have the actual name of a person on it from the bank?
A. I don't recall a request for the letter, so there wouldn't be anything requesting a specific name of a specific individual.
Q. And while we're all here to tell the truth, if someone made up a fake name and put it on a reference letter, that would have no impact on the SBA, right?
A. Well, as I explained, we rely on all the data provided by the applicant. So that could lead us to make a loan that should not be made.
Q. Right. But in terms of actually checking the boxes, you don't go and check the name of the loan officer when you're -- when they were doing the EIDL loans, right?
A. In most cases, you're correct.
Q. And they didn't do that here, right?
A. There's no indication that was done here.
Q. Okay. Let's do the -- go over the loan agreement.
MR. ETRA: O-21 -- or maybe it's an exhibit.
Let's go to -- I don't know the Bates number. It's

the seventh page of the loan agreement.

BY MR. ETRA:

Q. You testified that Jennifer Sheppard DocuSigned this document, correct?

A. Correct.

MR. ETRA: Let's go to the DocuSign.

BY MR. ETRA:

Q. Okay. Let me see if I understand mechanically what happens here. When the loan is approved, the information goes out to hmfourmanager to DocuSign, right?

A. Correct.

Q. And because the information from the SBA was that Jennifer was the owner, that name automatically appears as the DocuSign; is that correct?

A. I'm not familiar with the mechanics of when her name appears, if she needs to enter her name or if it's automatically there.

Q. You don't know one way or the other?

A. Correct.

Q. Okay. There's another document from the -- oh. Sorry. I should stay on this document while we're making progress.

MR. ETRA: Let's go to -- it's Page 3 of the actual loan application, the packet of material.

BY MR. ETRA:

Q. Here, in terms of use of loan proceeds -- do you recall

testifying about that in the direct examination?
A. Yes. Yes.
Q. And there's no place where whoever is DocuSigning -- there's no place to DocuSign on this particular paragraph, right?
A. That's correct.
Q. Okay. And if we go to -- I think you testified that the money has to be used for certain purposes, right?
A. Correct.
Q. And it's working capital to alleviate economic injury caused by the disaster, right?
A. Correct.
Q. That's the requirement here, correct?
A. Yes.
Q. I think yesterday in your testimony -- and I could have it wrong -- you were saying things like the program is designed for people who need to just get back up to -- well, you made all kinds of -- I withdraw the question and I'm going to start over again.
No other explanation for how to apply the funds except working capital, right?
A. Right. Specifically to alleviate the economic injury.
Q. And working capital in general means what?
A. Working capital in general to the SBA means paying debt service. It means paying operational expenses.

Q. It's kind of a broad term, right?
A. I can see how people outside of the lending world might see it that way. But inside of my world, working capital is pretty --
Q. Okay. Debt service would be like paying the mortgage?
A. Paying monthly payments on fixed debt.
Q. And paying operations?
A. Operational expenses, correct.
Q. All right. And if we go to -- am I correct that under the COVID program the proceeds could be used to make -- as part of working capital to make regular payments for operating expenses, including payroll?
A. Yes.
Q. Or rent or mortgage?
A. Yes.
Q. Or utilities?
A. Correct.
Q. Or other business expenses?
A. Right. Other operational expenses.
Q. And to pay debt -- to pay business debt incurred at any time past, present, and future; is that correct?
A. To pay the monthly payments on that business debt.
Q. Past or future, correct?
A. Correct.
Q. And in terms of --

MR. ETRA: Let's go to the next paragraph about requirements of use of loans and receipts, and let's look at the first paragraph there.

BY MR. ETRA:

Q. Says borrower will obtain and itemize receipts essentially for the loan spent and retain them for three years. Do you see that?

A. Yes.

Q. And what that means is that, in the end of the day, in theory at least, the SBA can come knocking on the door and say: "Prove how you spent the money," right?

A. Correct.

Q. And you do that by proving the use of money for the purposes we've been talking about, right?

A. That's right.

Q. But you don't have to prove that the individual dollar that goes to the bank account -- let's say an electronic serial number -- you don't have to prove that you used that exact dollar a certain way, right?

A. I don't know how that could be proven.

Q. Right. Sorry. Were you in the middle of your answer?

A. No. No. Go right ahead.

Q. Right. You understand that the SBA -- let me start again. I apologize. I'm speaking too fast.

The SBA understands that money is fungible, right?

A. Yes.

Q. And that therefore the money can go into a bank account on day one but it gets spent, say, on utilities over the course of months, right?

A. That's correct.

Q. Or other operational expenses over the course of months, right?

A. Correct.

Q. And during that time if you have an operating account, money comes and money goes, and you can't really trace the dollars, right?

A. Correct.

Q. And that was never a requirement, correct?

A. Well, the requirement is that they keep paid receipts showing what they did with the money.

Q. So when you say you have to use the funds, what you mean is you have to use the amount of the funds for these purposes, right?

A. Yes. Yes.

Q. So for example -- the SBA understands that businesses can have multiple bank accounts, right?

A. In their name, yes.

Q. Right. Do you understand that affiliated -- let me start with in their name. If it -- if the money goes to Account A but the money is spent from Accounts B and C, that's not a

problem, right?
A. Correct.
Q. Okay. And you also understand that some businesses -- I think -- take a step back.
I think if you use a general term, "affiliation," and not the SBA precise term, the SBA understood that this company had various affiliates, right?
A. Yes.
Q. Okay. And the SBA understands that some businesses and affiliated entities might use the business accounts of an affiliated company, right?
A. Right. But there's also an anticipation that these funds be used for this applicant business. The other businesses owned by this applicant also had the right to apply.
Q. Understood. So in the end of the day, those receipts have to bear -- have to directly relate to the needs of -- the working capital needs of HM Four in this case, correct?
A. Correct.
Q. Got it. Not really focused on what account it comes from, right?
A. Account it comes from?
Q. So in other words -- I'll withdraw the question and I'll move on.
MR. ETRA: Let's go to the note.

BY MR. ETRA:
Q. I think you were shown language maybe in the other document or in Paragraph 4, and I think you were shown similar language about a material misstatement in the loan agreement. Do you recall that?
A. I do.
Q. And now we see language like that in the note under Paragraph 4D and E. Do you see that?
A. I do.
Q. And essentially it's a term of default -- could be a term of default if the SBA determines that the applicant did not disclose material information or misrepresented something material, right?
A. Yes.
Q. Okay. And if you go to Paragraph 5, it talks about the SBA's rights if there is a default, right?
A. Yes.
Q. And one of the rights that the SBA has as a lender is to simply collect the note, foreclose, and exercise its rights as a lender, right?
A. They can demand it, yes.
Q. That has not happened here, correct?
A. I'm uncertain.
Q. Sorry?
A. I'm uncertain. I'm not sure if that's occurred or not.

Q. You don't know whether the SBA has taken action on an alleged default for misrepresentation on the --
A. I do not. That would be handled by a servicing office, and I don't work for a servicing office.
(Pause in proceedings.)
BY MR. ETRA:
Q. Are you familiar with an email address of covideidlincreaserequests@sba.gov?
A. I am.
Q. Could you explain what that email address is.
A. That was an email address used by applicants to provide a request for an increase initially for the COVID EIDL loan. At a later date it became a email address used by applicants who were initially denied their increase so they could request reconsideration.
Q. That was a part of the regular business of the SBA, to use that email address that way, correct?
A. For -- yes, for increase requests. We had several email addresses for different purposes.
Q. And reconsideration, I think you said?
A. For reconsideration of increase requests.
Q. I see. I see. Fair enough.
Okay. Did you review the records that took place -- the records of HM Four's requests for an increase in 2021?
A. Yes.

Q. Okay.

MR. ETRA: Your Honor, if I could put up for the witness only a document we've given to the Government. There's no Bates number, but it's Exhibit 0-44 [sic].

THE COURT: Exhibit?

MR. ETRA: 0-44 -- O. I'm sorry. O.

THE COURT: O-44. All right.

MS. MARTINEZ: Your Honor, I've just been handed this document. The only thing that I would ask that -- I do see a similar document in Government's Exhibit 59. So I would ask that the witness be shown the SBA record, as opposed to this other document.

MR. ETRA: Your Honor --

THE COURT: Well, is this an SBA record that you're intending to show the witness?

MR. ETRA: I want to use this version because it has the actual attachment to it. So it's the same version, but it's the one that had the --

THE COURT: But it's a different version, so it's not the same.

MR. ETRA: It's not identical.

MS. MARTINEZ: No. The email is not in the SBA record -- what I see in the SBA record.

THE COURT: Why don't you show the witness and see if the witness can identify Exhibit O-44.

BY MR. ETRA:
Q. Could you please take a look at the Exhibit O-44, and the first page. Without reading it out loud, why don't you read it to yourself and let me know when I can ask you a question.
MS. MARTINEZ: Your Honor, I object to this witness authenticating an email that is not in the SBA record.
THE COURT: Only whether he recognizes it. If it's not in the record, it's not in the record.
You may continue.
BY MR. ETRA:
Q. Have you had a chance?
A. Yes.
Q. Okay. Do you recognize this to be an email sent to the covideidlincreaserequests@sba.gov?
A. Yes.
Q. And this is the type of email that you were talking about before that's sent by applicants either seeking a modification or a reconsideration of a modification?
A. Yes.
Q. Okay. And in here, in particular, it's from -- you see hmfourmanager, correct?
A. Yes, it is.
Q. With Eric Sheppard, the same email address we've been talking about, right?
A. Yes.

Q. And do you recognize this therefore to be a business record sent to or from the SBA as part of its business?
A. Yes.
Q. Okay.
MR. ETRA: Your Honor, we offer -- and it's got an attachment as well, but he recognized the email. The Defense offers O-44.
THE COURT: Is that part of the certified records, Ms. Martinez?
MS. MARTINEZ: Your Honor, the attachment -- I have found the attachment in the record. What I do not have in the record is the email.
THE COURT: All right. Is there any objection to O-44, the email?
MS. MARTINEZ: Well, I cannot authenticate it, but I don't have an objection as to the form.
THE COURT: All right. Admitted into evidence.
(Defendant's Exhibit O-44 received into evidence.)
THE COURT: And then you have the attachment that is part of the Government's -- what exhibit?
MS. MARTINEZ: It's within Exhibit 59.
THE COURT: Okay.
MS. MARTINEZ: I have Bates label 031219 that appears to be the same as the attachment.
THE COURT: All right. Let's continue.

MR. ETRA: Your Honor, there are multiple versions of the 4506-T, and I want to take him through the chronology of what was sent by hmfourmanager, so I'd like to use the version that's attached to this email as an exhibit.

MS. MARTINEZ: Your Honor, I would ask that they show the witness --

THE COURT: Show the witness and see if the witness can --

MS. MARTINEZ: -- their own records --

THE COURT: The witness has already identified this email. Show the witness the attachment to the email.

BY MR. ETRA:

Q. Have you had a chance to -- if you need me more time, let me know -- to review the attachment sufficiently to --

A. Are these the same document on both left and right-hand side of the screen?

Q. So it seems. I only need the first one. So we can just do the first one and make it simpler and not put in the second one.

A. All right.

Q. Do you recognize that to be part of the record?

A. This is an IRS Form 4506-T, which we would have requested from the applicants when they applied for a loan increase.

MR. ETRA: Since it's an attachment to an email provided in the ordinary course of business, that's been admitted, we'd like to admit these two pages, the email and the attachment.

THE COURT: Is there any objection to the attachment to O-44, which is in evidence?

MS. MARTINEZ: No objection. Just --

THE COURT: All right. Admitted into evidence. Let's continue.

(Attachment to Defendant's Exhibit O-44 received into evidence.)

MR. ETRA: Okay. Let's go to the cover email and publish it to the jury, please.

BY MR. ETRA:

Q. And here you see that HM Four is writing to -- should we call it the COVID increase email? What should we call it?

A. That sounds fine to me.

Q. Okay. The COVID increase email. And the subject is a 4506-T, right?

A. Correct.

Q. Now, you testified before about the 4506-T. And in response to the question by the Government, you indicated that it's limited to whatever tax years or tax filings that are listed, correct?

A. Correct.

Q. But in fact, it was the SBA that made requests from the borrower what tax years to include in the 4506-T, correct?

A. We would have notified the borrower to provide the last two tax years for this style of business.
Q. Right. So the way this worked was the SBA asked for specific years of specific returns, and the borrower complied, correct?
A. Correct.
Q. It wasn't like the borrower was -- by complying, the borrower wasn't trying to limit what the SBA looked at. It was just complying with the request, right?
A. In theory, yes.
Q. All right. And here you see that Mr. Sheppard is providing the 4506-T, as requested by the SBA. You see that?
A. Yes.
Q. And that's consistent with your testimony that these were requested, right?
A. Correct.
Q. Now let's go to the attachment. Now, here this looks like an executed 4506-T for HM Four, correct?
A. Yes.
Q. And you see the first item, it says: "1065."
A. Yes.
Q. And that's because that's what you requested for an LLC that files as a partnership, right?
A. We would rely on -- for the purpose of an LLC, we would rely upon the applicant's knowledge of what tax form they file.

Q. Fair enough. And now if you go to the bottom, you see signatures. And here you see a purported signature for -- as manager, correct?
A. It's difficult to read, but --
Q. I'm not going to make you read it. That's why I said that.
A. Yes.
Q. You see the same cell phone number we saw before, the one that ends 5529, right?
A. Yes.
Q. But it turns out -- and it's got -- do you see the years? It's 2019, 2018, and 2017.
A. Yes.
Q. But there's a problem with this form.
MR. ETRA: Let's look at the top.
I'm sorry. I shouldn't say there's a problem with this form.
BY MR. ETRA:
Q. It has the address of 1200 -- 12000 -- excuse me -- Biscayne Boulevard. Do you see that?
A. Yes.
MR. ETRA: And if you go back to the cover email for a moment.
BY MR. ETRA:
Q. Who is indicated -- I wouldn't say signing, but as the -- what names are after the word "thank you"?

A. Jennifer Sheppard and Eric Sheppard.
Q. And again, by now certainly the SBA understood that Jennifer Sheppard and Eric Sheppard were involved in this application, correct?
A. Yes.
Q. Okay.
MR. ETRA: I want to go to the next document. This is also for the witness only. This is going to be the -- there's no Bates number. It's a Defense impeachment exhibit. 0 -- sorry. I keep saying zero. I apologize -- O-40. O-40.
I need the cover email.
BY MR. ETRA:
Q. By the way, while we're waiting, does it ever happen in the SBA when you ask for a 4506-T that the applicant says: "I changed my mind. I don't want to give that"?
MS. MARTINEZ: Objection. Speculation.
THE COURT: Sustained.
MR. ETRA: Okay. For the witness only.
BY MR. ETRA:
Q. So can you take a look at that email. We can show you the rest if you want. And I'll ask you some questions about it.
A. All right. Feel free to ask your questions.
Q. Do you recognize this to be another email from hmfourmanager to the COVID increase email?
A. Yes.

Q. A business record like the other one we looked at, right?
A. Correct.
Q. Okay. And if you go to the attachment, which is three pages in, do you recognize that to be the tax return of HM Four for 2019 that was provided to the SBA?
MS. MARTINEZ: Objection, unless the witness is provided Government's Exhibit 59 to compare.
MR. ETRA: Your Honor, why can't I ask the question --
THE COURT: The objection is overruled. You may continue with your cross-examination.
THE WITNESS: Yes. This appears to be a document provided by the applicant, and it is a 1065 tax return for the tax year 2019.
MR. ETRA: And Your Honor, the Government -- sorry -- the Defense offers O-40.
THE COURT: Is there any objection?
MS. MARTINEZ: No, Your Honor.
THE COURT: All right. Admitted into evidence.
(Defendant's Exhibit O-40 received into evidence.)
BY MR. ETRA:
Q. So here -- what's happening here is that just by -- I should have shown you. Do you recall the date of the prior email with the 4506-T?
A. I do not.
Q. Okay.

MR. ETRA: Let's go back to that briefly so we can just set a timeline. That's O-44. I apologize. I should have made a note.

BY MR. ETRA:

Q. So you see that email with the 4506-T is September 13, 2021. Do you see that?

A. Yes.

Q. All right. Now let's go to O-40. And now, this is a little later, September 16th. Do you see that?

A. Yes.

Q. And here, as you can see, Mr. Sheppard at hmfourmanager is responding to a request for the 2019 return. Do you see that?

A. Yes.

Q. And that's what he attaches. Do you see that? The jury didn't get to see it before. Do you see that that's the return?

A. Yes.

Q. At any point -- and this is -- at any point in time did the Government ever suggest to you, in preparing for testimony, that any of the returns provided by any of the Sheppard companies --

MS. MARTINEZ: Objection to conversations with counsel.

MR. ETRA: It's not privileged.

MS. MARTINEZ: I'm not arguing because it's privileged.

THE COURT: The objection is sustained.

BY MR. ETRA:

Q. At any --

MS. MARTINEZ: Objection. Relevance.

THE COURT: I haven't heard the question. What's the next question?

MR. ETRA: I apologize. I'm trying to work my way around the -- to the next question.

BY MR. ETRA:

Q. Do you have any information to suggest that any of the returns in your files from the HM companies were improper or fraudulent in any way?

A. At the time of loan processing, we would not have had any information for that.

Q. Sitting here now, do you have any information?

A. Only based on the tax transcript that is in the file for the loan increase request.

Q. What does that tax transcript say?

A. It shows that there was zero revenue, zero cost of goods sold, and zero rents collected in the 2019 tax year.

Q. Okay. But in terms of the information in the tax returns itself, do you have any reason to believe those tax returns --

A. Can you scroll down to the IRS Form 8825 on this, if there is an IRS Form 8825?

Q. There isn't. But I'm not sure -- I'm not asking you to compare the tax return to the information provided in the application. Okay? I'm asking if you have any information to suggest that the tax returns themselves are not the ones that were filed with the IRS.

A. I do not see anything on this that would indicate that.

Q. Okay. Okay. And until I asked you the question, you've never heard that suggested to you, correct?

A. I may have heard that suggested to me.

Q. Which returns might those be?

MS. MARTINEZ: Objection. Vague, irrelevant.

THE COURT: Why don't you narrow your question, please.

MR. ETRA: I tried to ask what the Government said, and I got an objection, Your Honor. I think that's the simplest way of doing it.

THE COURT: Just sharpen the question, sir.

MR. ETRA: All right. Let's go to the next document.

Why don't we put that side by side with the Government exhibit for the 2019 return.

(Pause in proceedings.)

MR. ETRA: All right. Let's move toward -- next document will be from Government 58, Bates range 31189...

(Pause in proceedings.)

BY MR. ETRA:

Q. Do you recall the circumstances of the modification of HM Four being rejected?

A. Yes.

Q. What was the reason?

A. The IRS tax transcript provided -- or provided by the IRS didn't show any prior years' revenues.

Q. And so, for that reason, basically -- from the -- from what I understand, the indication was there was no substantiation of loss in revenue when you looked at the tax return, correct?

A. The transcripts. Yes.

Q. Okay. There was no issue with the -- whether the tax returns were actually provided, correct?

MS. MARTINEZ: Objection. Asked and answered.

THE COURT: Sustained.

MR. ETRA: Did Your Honor sustain?

THE COURT: The objection is sustained.

BY MR. ETRA:

Q. Okay. And there was no issue with the 4506-T provided, correct?

A. I saw no issues with it.

(Pause in proceedings.)

BY MR. ETRA:

Q. Okay. All right. Let's talk about some of the other applications.

MR. ETRA: If we can go to the HM Management application, which is Government Exhibit 51-1.
BY MR. ETRA:
Q. In terms of the information provided by the applicant to get this -- this loan funded, correct?
A. Yes.
Q. Okay. I see the information here in this application. Were there any other documents provided, for example, tax returns or 4506-Ts, in order to get this initial application accepted?
A. I don't recall any other documentation, but I would have to recheck it to verify.
Q. So it wasn't a situation, for example, like where Mr. Blakeley was writing emails for HM Four asking for --
MS. MARTINEZ: Objection. The witness said he did not remember unless he reviewed the file.
THE COURT: Overruled at this point. You may continue.
BY MR. ETRA:
Q. You didn't see anything in the record along the lines of what you saw with the emails that Mr. Blakeley had for HM Four, correct?
A. I don't recall anything to that extent in this file.
Q. Okay. I want to show you Lines 62 to 68. Actually, let's first look at 68.

Here, the question is: "I would like to be considered for an advance of up to $10,000," and the answer is: "No." Do you see that?

A. Yes.

Q. Does that indicate that at least in this application there was no request for that advance?

A. Yes.

MR. ETRA: And then I want to go back broadly to the -- 62 to 67, but also the orange part on top that explains what's being asked.

BY MR. ETRA:

Q. Okay. It's hard to read. Should I read it out loud for you?

A. Please.

Q. "If anyone assisted you in completing this application, whether you pay a fee for this service or not, that person must enter their information below." Do you see that?

A. Yes.

Q. Okay. Explain to me what this part of the application is for.

A. This allows us to know if there was a loan packager involved in submitting the application and/or a different third party involved in submitting the application.

Q. Is that important for the SBA?

A. It is, especially in this loan program. It would help us

identify potential red flags or potential fraudulent behavior if we knew that information.
Q. Is there also a concern for -- that the professional might be overcharging?
A. In our normal program, our normal disaster-related program, we look heavily into that. For the purposes of COVID EIDL, that was really put on the back burner because of the number of applications that were coming in.
Q. And here what's indicated about whether someone was helping?
A. Well, they would put in their name, the name of the company, phone number. That would indicate that they made the application for this particular applicant.
Q. And so, from when the SBA is looking at this application, based on this information, the SBA understands that there wasn't a third party helping, correct?
A. That's correct.
Q. And the third party has to write their information, even if they're not -- whether or not they're charging a fee, right?
A. Yes. Yes.
Q. And is it -- there are rules within the EIDL about third parties helping an applicant, correct?
A. Can you be more specific?
Q. Sure. One of the rules is that if you're charging more than $2,500 you have to fill out a form and disclose that to

the SBA?
A. Yeah. That's -- again, that's what we do in our normal disaster program. But due to how busy we were for the COVID EIDL program, that was put aside.
Q. Another rule is that you can't charge depending on -- you can't charge a success fee. A charge can't be based on whether the application is granted; isn't that right?
A. That's correct.
Q. And let's go to the IP address up here at the very top. Can you read just the four digits -- I'll read it for you. I'll make it easy. I'm not trying to strain you. The first four digits are 2601. Do you see that?
A. Yes.
Q. You want me to make it bigger?
A. Yes. Yes. Now I see it.
Q. Do you remember when the Government took you through some other applications and asked you to read the IP address?
A. Yes.
Q. None of them started with 2601, right?
A. I don't remember them starting with a 2601.
Q. Okay.
MR. ETRA: And could we go now to the HM-UP version of the application, which is Exhibit 53-1. And let's go to the same section we looked at before.
No. I mean earlier, at the bottom.

BY MR. ETRA:
Q. Okay. So starting with Line 68, again, here the applicant is saying they are not seeking a $10,000 advance, right?
A. Correct.
Q. And here again, with the rest of the lines, this is where you would expect to see a third party identified if there was a third-party professional assisting, correct?
A. Yes.
Q. But there's none here, right?
A. Correct.
MR. ETRA: Now let's go to the IP address. And let's blow up the first four digits and not make Mr. Motes strain.
THE WITNESS: 2601.
BY MR. ETRA:
Q. Okay. Great. Again, the same one we saw just now from HM Management, right?
A. Yes. At least the first four prefix.
Q. Right. But different from the ones that the Government showed you?
A. As I recall, yes.
Q. Okay.
(Pause in proceedings.)
MR. ETRA: You can take this down.
BY MR. ETRA:
Q. You were shown some corporate resolutions. Do you recall

that?
A. Yes.
Q. That was because the SBA requested that as part of -- part of the loan modification part of the program?
A. We request that on every secured application. For the loan modifications, we started requesting it on the front end, rather than the back end of the loan process.
Q. So you're saying there were these resolutions for the $150,000 loans that were funded?
A. They were requested from the applicants.
Q. I just didn't see those in the file from that time period. Are you confident that they were there?
A. Not every applicant responded to the request for that documentation.
Q. So it wasn't required ultimately. It wouldn't stop the loan from being funded; is that fair?
A. That's correct in this case. That document is generally requested after obligation of the loan, but prior to funding. COVID EIDL loans funded so quickly that there wasn't time to request that documentation until after funding for the original loans.
Q. I want to go through the -- what took place for the HM Management modification time period. Okay?
A. Okay.
MR. ETRA: So why don't we put on the screen -- what's

the exhibit number -- part of Government Exhibit 52. It's Page -- Bates Number 30487.

BY MR. ETRA:

Q. By the way, as I understand it -- well, let me just ask it. For the initial loan in the EIDL program, there was no requirement for tax returns, correct?

A. For the COVID EIDL program, that's correct.

Q. Typically, there would be, but not during -- not for COVID, right?

A. Correct.

Q. And there was also no requirement for a 4506-T for the regular EIDL COVID program, right?

A. Right. Until early 2021.

Q. Right. And in this case, that's when the modifications are taking place, right?

A. Yes.

Q. And that's why we see requests, and discussions, and documentation on tax returns and 4506-T, right?

A. Correct.

Q. All right. So this is from the Government's exhibit. So here there's a 4506-T filled out for HM Management, provided by Mr. Sheppard as president. Do you see that?

A. Yes.

Q. And do you recall there was an issue -- do you recall being shown -- and I can show it to you, if you'd like -- where at some point there was an issue --

MR. ETRA: Well, why don't we just use the Government's Exhibit 52-1.

Sorry. I apologize. Could we just go back to the last document.

BY MR. ETRA:

Q. So this is a 4506-T that's executed on -- look at the bottom -- April 27th, 2021. Do you see that?

A. Yes.

Q. Okay. Sorry. I just want to try to follow the chronology. Okay?

MR. ETRA: Now let's go to Government's Exhibit 52-1. And at Page -- this is the third page of the document.

BY MR. ETRA:

Q. And here, in July -- do you recall being shown this on direct?

A. I do.

Q. Okay. So here in July of 2021, which is -- you'll agree with me that's after the 4506-T we looked at, right?

A. Yes.

Q. And essentially it's saying there's something wrong with the 4506-T?

A. Correct.

Q. And because the address doesn't -- the address for the company indicated on the 4506-T doesn't match the address for

the company indicated with the tax return. Is that accurate?
A. Yes.
Q. Okay. Great.
All right. So I think you were shown this, but I'm not sure you were shown the next 4506-T -- maybe you were.
MR. ETRA: So let's go to 52 --
BY MR. ETRA:
Q. And that was in July.
MR. ETRA: Now let's go to Exhibit 52-4.
BY MR. ETRA:
Q. Okay. So now we have another 4506-T, and it's a different address, although I didn't make you go over that. And here it's 12000 Biscayne Boulevard, right?
A. Yes.
MR. ETRA: And let's just look at the dates, so we can set the chronology. And make it big so -- we don't want to make anyone strain.
BY MR. ETRA:
Q. Do you see that's August 10th of 2020?
A. 2021, yes.
Q. I apologize. 2021.
And I don't have in the file any other 4506-T. Do you know if that was the correct one?
A. I can't say for sure, but I -- this seems to be a 4506-T provided in response to the initial issue.

Q. Am I correct that in your files there's no HM Management tax return for 2000 -- of any kind provided by the applicant?
A. I don't recall. I would have to review that information to know for sure.
Q. Certainly it wasn't shown on direct to your recollection?
A. Not to my recollection.
Q. Now I'm going to try to do the same thing with HM-UP, go through the modification history and the tax-type documents. Okay?
A. All right.

(Pause in proceedings.)

THE COURT: How is everyone doing? Okay?

All right. Let's continue.

MR. ETRA: Sorry, Your Honor. We're looking for the 4506-T Form.

Okay. Well, maybe we'll get back to it. Could we put up...

(Pause in proceedings.)

MR. ETRA: That's a good idea. I'm going to use the ELMO, Your Honor, if that's okay.

THE COURT: Sure.

BY MR. ETRA:
Q. All right. I'm zeroing out so you see it's a 4506-T. Okay? Then I'm going to zero in --

MS. MARTINEZ: Could we have an identification?

MR. ETRA: I apologize. It's Bates Number 30895, which is part of Exhibit --

MR. CAVALLO: It's 53 or 54.

MR. ETRA: It's HM-UP, which is either in Exhibit 53 or 54 because it's hard to tell them apart.

Could I check that at a break and put it on the record, Your Honor?

THE COURT: All right. Does the Government have the exhibit? Are we ready to proceed?

MS. MARTINEZ: Your Honor, I have no objection.

THE COURT: All right. Let's continue.

BY MR. ETRA:

Q. Okay. Do you see that that's a 4506-T?

A. I do.

Q. And do you see that the company is HM-UP? Sorry.

A. That's okay. I do.

Q. And you see that it's provided -- signed by Eric Sheppard on April 27th, 2021?

A. I do.

Q. And this one happens to have the years 2019 and 2018. Do you see that?

A. Yes.

Q. Again, it's whatever the SBA is requesting, right?

A. Correct.

MR. ETRA: Next I'm going to show Bates Number 03898, which is again 53 or 54. We'll get that confirmed at the break.

(Pause in proceedings.)

MR. ETRA: I just showed it to the Government, Your Honor. And I apologize for the handwriting. I didn't realize it was going to go -- so if the handwriting is distracting, I hope you can ignore it.

MS. MARTINEZ: Mr. Etra, could you just show the date on the left there?

MR. ETRA: Oh. Yes. Yeah. Sorry. Thank you.

BY MR. ETRA:

Q. So this is -- again, we're following the chronology. This is October of 2021. Do you see that?

A. Yes.

Q. And are you able to see the document?

A. Yes, I see the document.

Q. Generally, can you explain what's going on here.

A. Yes. This is an email that was sent from the applicant. And the applicant -- it says that he received an email that the application number -- that we were unable to locate. He provides an application number to us, and provides a loan number to us, and provides also a 4506-T and a 2019 tax return for HM-UP.

MR. ETRA: Okay. It looks like I did this out of order. I apologize. Let me start again.

BY MR. ETRA:
Q. So on Bates Number -- that I had before, which is 03895, it's -- the 4506-T of HM-UP is dated 4/27/2021, right?
A. Yes.
Q. Again, my apology for getting the order mixed up here.
The next document is an email, which is the Bates Number 03859. And in this email, this is coming from -- are you able to read this?
A. Yes.
Q. Okay. This is an email in your production from the SBA to this email address, the "rshm" something, right?
A. That's correct.
Q. And again, here there's a problem that the information on the 4506-T doesn't match -- the address doesn't match the tax return, right?
A. That appears to be the case.
Q. And that was July 23rd.
Okay. And then, on July 26th, there's a notice -- this is Bates Number 030860 to 61 -- where HM-UP -- basically, the SBA says, at least for now -- would you explain what this letter is saying.
A. The application was put on hold or withdrawn until the applicant could resolve the issue with the 4506-T.
Q. Okay. Great. And do you recall what happened next?
A. I don't, except from the document that you showed us

earlier out of order.

Q. You're right. I went ahead of myself.

MR. ETRA: Next document is Bates Number -- this actually might be Exhibit 56-3. But I'm just going to put it on as Bates Number 030890.

BY MR. ETRA:

Q. And do you see that's a 4506-T for HM-UP? Do you see that, sir?

A. I do.

Q. And do you see now the address is 12000 Biscayne Boulevard? Correct?

A. Yes.

Q. And here the date is August 4th?

A. Yes.

Q. So at least for now I've gotten my chronology down. Okay. Thank you.

The next document I have, which I showed earlier, was 030989, where -- well, to set this in context, there was a problem with the 4506-T, right?

A. Correct.

Q. So a letter from the SBA saying: "Get your act together," right?

A. Correct.

Q. And then there was a new 4506-T?

A. Correct.

Q. And now there's an email from Mr. Sheppard saying: "Let's go," right?

A. Right. It looks like he provided an additional 4506-T on top of the one that he provided earlier.

Q. Okay.

A. Based on my reading of that email.

Q. And then I have in your file -- the first page is 3 -- 030862 through 030884, an HM-UP 2019 tax return. Do you see that, sir?

A. I do.

Q. I'll just show the bottom because I'm sure you want to see what's there.

MS. MARTINEZ: From what exhibit is this?

MR. ETRA: It's either 53 or 54. I will get that at the break --

MS. MARTINEZ: Do you have a Bates number?

MR. ETRA: The Bates first page is 030862.

THE COURT: 03086?

MR. ETRA: Two.

THE COURT: All right. Thank you.

BY MR. ETRA:

Q. Okay. Is that -- this is the -- well, this is from your files, correct?

A. I recognize it from the files.

Q. And you're not aware of anything that's wrong with the tax returns in terms of whether it's inconsistent with what was filed with the IRS, correct?

A. That's correct.

MR. ETRA: Just for the witness.

I apologize. Just for the witness, O-39.

(Pause in proceedings.)

BY MR. ETRA:

Q. This is just for you. It's not in evidence, so I just -- please look at it and tell me when I can start asking you questions about it.

MS. MARTINEZ: Mr. Etra?

THE WITNESS: All right.

MS. MARTINEZ: Oh, okay. I guess I -- go ahead.

THE WITNESS: Feel free.

MR. ETRA: The Government consents. I'm moving O-39 into evidence.

MS. MARTINEZ: Well, Your Honor --

MR. ETRA: Maybe you won't.

MS. MARTINEZ: No. No. No.

THE COURT: Are you seeking to move O-39 into evidence?

MR. ETRA: I am, I thought.

THE COURT: Is there any objection?

MS. MARTINEZ: Your Honor, I don't think that they -- I don't know that they want to submit it in this format, but I have no objection.

THE COURT: All right. Without objection, admitted into evidence.

(Defendant's Exhibit O-39 received into evidence.)

BY MR. ETRA:

Q. Do you recognize this to be an email from Mr. Sheppard to the COVID website, right -- COVID email -- COVID --

A. I do.

Q. I should say the COVID increase email. And do you see here this is Mr. Sheppard transmitting the 2019 tax return that we looked at? Correct?

A. Yes. Of course we can't see the attachments here -- the actual attachments to the file. We just see the language in the body of the email.

Q. Okay. But there's no other 2019 return in your file, correct, for HM-UP?

A. I believe that's correct.

Q. Okay. And you don't have any other record of how you would -- the SBA would have gotten that return but for the email, correct?

A. Correct.

Q. And what ultimately happened with this request for a modification?

A. Well, we would have to review the record.

Q. I would show you a letter if I saw one. So I'm just

asking: As you sit here now, do you recall why the modification didn't go through?
A. I don't recall on this particular file why the modification did not go through.
Q. Okay.
MR. ETRA: Your Honor, may I have a few moments to confer with counsel?
(Pause in proceedings.)
MR. ETRA: Your Honor, I have just questions on one last topic, and I'll be...
(Pause in proceedings.)
MR. ETRA: The last document -- hopefully the last document. It's in evidence as Exhibit 53 or 54. We'll confirm at the break. It is -- oh, 58.
THE COURT: What exhibit number is it?
MR. ETRA: I apologize, Your Honor. I'm not -- I'm going faster than I can...
This is part of Exhibit 58. We're going back to HM Four. It's in evidence. And it's Bates Number 03115.
Just the first page is all I need.
BY MR. ETRA:
Q. Do you recall seeing this as part of the file --
A. I do.
Q. -- for HM Four? Sorry to jump around.
Okay. And I want to focus on January 1, 2020

ownership change. Do you see that?
A. I do.
Q. Says: "Transfer majority to Jennifer Sheppard TBE." Are you familiar with the concept tenancy by the entirety?
A. I am not.
Q. Okay.

MR. ETRA: Okay. I think that's my last question. Thank you.

THE COURT: All right. Any redirect?

MS. MARTINEZ: Yes, Your Honor.

However -- I'd ask for a break, however, because there are many tax returns in that exhibit, and we're still having trouble locating the one that he showed.

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

COURT SECURITY OFFICER: All rise.

(Jury not present, 3:46 p.m.)

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

(Recess from 3:46 p.m. to 3:54 p.m.)

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

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 3:54 p.m.)

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

Please be seated.

And we'll begin the redirect examination.

(Pause in proceedings.)

REDIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Mr. Motes, the first thing that I'm going to ask you is about the purpose of these loans, the Economic Injury Disaster Loans, during the COVID pandemic.

You were asked questions relating to the use and whether it was intended to be used for an economic injury. At the beginning of the title of the loan -- what is the title of the loan?

A. It's a COVID Economic Injury Disaster Loan. So within the title of the program is the indication that you need to have suffered an economic injury to apply.

Q. And as we covered in the loan agreement, does it describe that the use of the proceeds of the loan is for -- what?

A. For working capital to recover from the impact of the disaster.

Q. If you did not have operations previous to the pandemic, would the SBA consider that business to have had an economic injury?

A. No.

Q. You were asked -- you were asked how a company that receives rents -- a landlord, a commercial landlord, how they would show an economic injury, and you were trying to explain that in terms of the form. Could you explain to the jury if a business is a commercial business receiving rents, how would that business show to the SBA that they've had an economic injury?

A. Right. So if you're a landlord, a commercial landlord, your economic injury comes from rent that you did not collect directly due to the pandemic. If you did not lose rent due to the pandemic, you had no injury, and therefore you would not have the need to apply for a below-market disaster loan direct from US Treasury.

Q. Now, you were asked questions on cross-examination regarding how was that exactly explained in the words in a particular question on the form. Can you explain to the jury how it is that you believe that that question "commercial landlord lost rents" would be clear to a businessperson.

MR. ETRA: Your Honor, asking for his -- how he believes an application --

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. In your experience, why was that question common sense?

MR. ETRA: Objection, Your Honor.

THE COURT: Why was that --

MR. ETRA: Sorry?

THE COURT: The objection is sustained.

BY MS. MARTINEZ:
Q. Could you explain to the jury how a landlord would answer that question.
MR. ETRA: Objection. Speaking for a landlord, personal knowledge.
THE COURT: Sustained.
BY MS. MARTINEZ:
Q. In your experience, you have questions regarding showing economic injury for the Economic Injury Disaster Loan. With respect to a commercial landlord, what would have to be answered in the questions?
A. They would have to indicate that they had lost rents.
Q. As a result of --
A. Of the pandemic.
Q. -- of the disaster?
A. Right.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. You were asked a number of questions about --
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. -- about HM Four, including the request for an increase of the original loan that was granted to HM Four.
A. Yes.
(Pause in proceedings.)

MS. MARTINEZ: Is the ELMO on?

This is from Exhibit 59 that's been admitted into evidence. And it's -- it's Bates labeled 031199.

BY MS. MARTINEZ:

Q. What's the date of this letter?

A. December 9th, 2021.

Q. And it relates to which company?

A. HM Four, LLC.

Q. And it relates to the modification request, correct?

A. Correct.

Q. And what does the SBA tell Ms. Sheppard?

A. "The request for a loan increase is being declined because we cannot substantiate the economic injury."

Q. Again, from Exhibit 59, I'm going to show you -- it's Bates label 031220. Can you read what this is.

A. Yes. This is the -- this is what's called a partial tax transcript. These are data points provided by the IRS to the SBA.

Q. And this would be from what form?

A. The IRS Form 4506-T is what is used to request this information.

Q. Right. I guess I'm looking for the tax form at the top left of the document?

A. This form number is 1065, and it's for the 2019 tax year.

Q. Oh, yes. Okay.

So this particular form of this transcript, what did it show to the SBA was the gross receipts for HM Four?
A. The gross receipts were zero dollars.
Q. And the cost of goods?
A. Zero dollars.
Q. And if we go down to total gross rents.
A. Total gross rents reported to the IRS in 2019 was zero dollars.
Q. Actually, income -- everything on the form is zero, correct?
A. Correct.
Q. Is this at least part of the reason the SBA found that economic injury had not been substantiated?
A. That's correct. By the receipt of the IRS partial tax transcript, we were able to verify the figures provided on the original application were very inaccurate.
Q. Correct. So if you had actually had information about the fact that it was actually zero, zero, zero, would the SBA have granted the loan to HM Four, the original 150?
A. No, we would not.
Q. And I meant 150,000.
A. No.
Q. Now, in addition, you were asked with respect to HM Four with respect to a lease, a lease document that you were shown.
A. Yes.

Q. If the SBA had known that the lease was forged and completely false, would the SBA have given the loan?
A. No.
MR. ETRA: Objection. Speculation.
THE COURT: Sustained.
BY MS. MARTINEZ:
Q. If you received forged documents, would the SBA -- based on your experience at the SBA, that document that you were shown that Mr. Sheppard and his wife sent in to the SBA, if you -- based on your experience, if the SBA knew that that was a false and forged document, what would the SBA have done?
A. As soon as we become aware that there is a fictitious documented provided by the applicant, we immediately shut down the processing of the file and decline it. We will not allow the applicant to overcome that issue.
Q. And in part, it's -- in part the SBA makes an effort to detect fraud at -- like you said, and stop the processing of applications when there's fraud indicators, correct?
A. We make our best effort.
Q. The point being that, if there is an issue, it would impact you, and you would -- it would be important to you?
A. Yes. Absolutely.
Q. And by that, I meant an issue relating to fraud.
A. Yes.
Q. You indicated that a fictitious document would cause the

SBA to stop the processing. Likewise, if the SBA had known that the letter that had been provided by the banker was also forged and false, would you also have stopped the processing of the loan?
A. Yes.
Q. In fact, if any fictitious document is provided, does that make the original certification saying that all the items were truthful in itself false?
A. Yes.
Q. And wasn't it SBA's practice, especially in this program that was expedited and intended to help people who needed it -- wasn't it the practice to rely -- especially at the beginning of the program --
MR. ETRA: Leading, Your Honor.
BY MS. MARTINEZ:
Q. -- on truthfulness of that certification?
MR. ETRA: Leading.
THE COURT: Sustained.
BY MS. MARTINEZ:
Q. Was the certification of the truthfulness of all the documents submitted, as well as everything on the application, an important part in particular of the COVID Economic Injury Disaster Loan program?
A. We relied tremendously on the certifications.
Q. And why was it particularly important when it came to the

early part of the pandemic?
A. Because due to language in the CARES Act, we did not request tax return information from the applicant or tax transcript information from the IRS. We were -- the CARES Act for the most part forbade that. So the only thing we had left to verify the loan amount that the applicant would be eligible for is their honesty.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. I'm going to show you Government's Exhibit 51 that relates to HM Management and Development. In particular, I'm going to go to Bates label 030454 from the notes.
You were asked on cross-examination about whether information had been provided about whether anyone was assisting Mr. Sheppard with the HM Management and Development application. Now, on August 10th, 2020, can you read the comment.
A. Yes. It says --
MR. ETRA: Your Honor, objection. Beyond the scope. This was covered in direct but not in cross.
MS. MARTINEZ: It was exactly covered in cross.
THE COURT: Overruled.
BY MS. MARTINEZ:
Q. Yes. You could go ahead and read that comment.
A. All right. "Mr. Sheppard gave permission for me to speak

to Nelly on his staff."
Q. So here Mr. Sheppard described Nelly as being on his staff; is that right?
A. That's correct.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. You were asked on cross-examination in great detail with respect to -- now I'm back to HM Four. You were asked about the lease request, whether the SBA loan officer had specifically asked for the specific lease that the Defendant submitted. When -- what is your understanding of what the loan officer was trying to do when he was requesting the lease documents from Mr. Sheppard and Mrs. Sheppard?
MR. ETRA: Objection. His understanding of what the loan officer was trying to do --
THE COURT: Sustained.
BY MS. MARTINEZ:
Q. You were asked in detail in cross-examination about whether or not that lease was a response to the question from the SBA notes. Based on your experience, what -- what is it that the SBA was asking for and what is your experience about what someone would submit?
MR. ETRA: Same objection. It's interpreting what someone else was asking for when the writing is right there.
THE COURT: Sustained.

BY MS. MARTINEZ:

Q. You remember the questions on cross-examination, right?

A. Yes.

Q. Can you explain to the jury in a way that maybe you weren't permitted to explain during cross regarding that lease.

MR. ETRA: Request for a narrative.

THE COURT: Sustained. Rephrase, please.

BY MS. MARTINEZ:

Q. You were asked on cross-examination regarding the request by the SBA for lease documents and the fact that the lease document that was submitted was current as opposed to being from a previous time period.

MR. ETRA: Objection. That's not what I asked.

THE COURT: Hold on. That's the preface to the question. What's the question for the witness?

BY MS. MARTINEZ:

Q. The question is: Was the lease something that the SBA would look to, even though it was from a different time period?

MR. ETRA: Objection. Speculating about what was --

THE COURT: Overruled. I'll allow it.

THE WITNESS: We would look at all documentation provided by the applicant and use that documentation in our decision on a loan. So in this particular instance, if an applicant provided us a lease, we would look at that and use it in our loan decisions, even if that lease was dated after the disaster date.

MR. ETRA: Your Honor, I move to strike. It's based on speculation.

THE COURT: The motion is denied.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. You were asked on cross-examination repeatedly with respect to two documents. You were asked about the lease and the name of the tenant, and you were asked about the banker's letter and the name of the banker. If the SBA had known that the banker's name had been forged and that the tenant's name had been forged, would that have made a difference to the SBA?

MR. ETRA: Objection. Hypothetical.

THE COURT: Sustained.

MS. MARTINEZ: Your Honor, on cross he was asked whether the name --

THE COURT: I heard the cross. The objection is sustained.

BY MS. MARTINEZ:

Q. If the name is not -- if the names are forged, would that have made a difference to the SBA?

MR. ETRA: Objection. Same.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Does the SBA rely -- does the SBA rely on not receiving forged documents?

MR. ETRA: Objection.

THE COURT: And the basis?

MR. ETRA: We're far removed from what happened in the application.

THE COURT: Overruled. You may answer the question, sir.

THE WITNESS: Yes. We rely tremendously, especially for the COVID-19 loans, on the accuracy and the factual nature of the documents provided by applicants.

BY MS. MARTINEZ:

Q. In the HM Four application, the SBA was given information indicating a particular ownership by Mr. Sheppard. Do you rely on the truthfulness of the ownership information?

A. Yes.

(Pause in proceedings.)

MS. MARTINEZ: I have no further questions, Your Honor.

THE COURT: All right. Is the witness excused?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: All right. Thank you, Mr. Motes.

You are excused.

(Witness excused.)

THE COURT: Is there time for another witness before we --

MS. MARTINEZ: I hope so.

THE COURT: All right. Let's call your next witness, please.

MS. JIMENEZ: We have a short witness, Your Honor, we hope.

MS. MARTINEZ: It's an out-of-town witness, right?

MS. JIMENEZ: Yes.

Your Honor, the Government calls John Rodenhuis.

(Pause in proceedings.)

THE COURT: All right. Good afternoon, sir.

If you'll step forward, please.

Sir, if you'll step forward, remain standing, raise your right hand to be placed under oath, please.

JOHN RODENHUIS, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Please have a seat.

State your name and spell it for the record.

THE WITNESS: John Rodenhuis, R-O-D-E-N-H-U-I-S.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good afternoon, Mr. Rodenhuis. Is that --
A. Correct.
Q. Were you served with a subpoena to appear at this trial?
A. I was.
Q. Where do you work, sir?

A. Breezeline.
Q. What is Breezeline?
A. Breezeline is a Internet and television and phone provider over cable.
Q. Can you speak up?
A. Sorry. We provide Internet access and video over cable television.
Q. What is your position at Breezeline?
A. I'm the senior broadband operations manager.
Q. What are your responsibilities generally?
A. I manage the team that provisions cable modems and manages the IP address space for our company.
Q. How long have you been with Breezeline?
A. Breezeline probably about 10 years. About 39 years in the industry.
Q. Where is your office located?
A. In Rochester, New Hampshire.
Q. Did Breezeline produce records in response to several grand jury subpoenas?
A. We did.
Q. All right.
MS. JIMENEZ: Can we -- this record is in evidence. Can we show Government Exhibit 11, please.
BY MS. JIMENEZ:
Q. These are -- this is one of the pages of those records.

Does this look like a record that Breezeline produced?
A. Yes.
Q. That indicates Subsentio. What's Subsentio?
A. Subsentio is a third party that manages legal requests for Breezeline.
Q. All right.
MS. JIMENEZ: Can we go to -- see the last page of this exhibit.
It's several pages. It's just five pages. All right. One of these pages.
BY MS. JIMENEZ:
Q. Did Breezeline provide Internet service to this account that we're looking at here on the screen with a subscriber and service and billing address?
A. We did.
Q. To what address did Breezeline provide Internet service?
A. For this customer, 180 Bal Cross Drive, Bal Harbour, Florida.
Q. In whose name was that Internet service account?
A. Eric Sheppard.
Q. When was the account first established?
A. The account was first created on 4/16 of 2008.
Q. How do you provide Internet service to that address?
A. We provide it using coax cable television drops to a dwelling and then through a cable modem.

Q. And how does the -- how is the Internet accessed in the home?
A. The customer would connect their computer or other device to our cable modem and be provided Internet access to that device.
Q. What is an IP address?
A. IP address is a number that is assigned to a device on a network for a period of time so that it can access a network. Across the Internet, every IP is unique.
Q. Unique to what?
A. Unique to any other address. So there will never -- on the Internet, you would not see the same IP address twice. Think of it like a phone number.
Q. All right. And the target details here on this record, what does that indicate?
A. The target details, it indicates the customer name, the address.
Q. Right. I'm sorry. I don't -- that's right. Wrong column there. Where it says: IP address "129" --
A. Okay. Sorry my apologies. That was the request in the subpoena for what customer had that IP address on the specific date and time listed.
Q. All right. And were there multiple requests for multiple dates and also multiple IP addresses?
A. There were.

Q. What is -- looking at this particular record, what is the binding start time and binding end time for the IP address that's listed?

A. That would be the duration that the IP address was assigned to the customer listed, the beginning of when that IP address was assigned to the customer, and the end of when it was assigned to the customer.

Q. And that would be for this record for the date of March 12th, 2021; is that right?

A. That's correct. So that would fall within that window.

Q. The IP address listed here ending in 129, could it have been the IP address for this address for a longer period of time?

MS. WEINTRAUB: Objection, Your Honor.

THE WITNESS: It could.

MS. WEINTRAUB: Improper question. "Could it have been?"

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. What is a binding start time and binding end time based on?

A. When the customer or the device on the Internet first asks for access to the Internet, it's provided the address. And then it can at times be reassigned to the same customer if they are using it. In this indication, the time that they last used this address for this request was on 5/13/2021.

Q. All right. Now, what is relay agent remote ID?
A. That is the MAC address or the hardware address of the cable modem that Breezeline manages for the customer.
Q. Is that the modem that you provided to this account at that address?
A. That is correct.
Q. Now, during the binding start time and binding -- or the period between the binding start time and the binding end time, is that IP address that's listed unique to that modem that is receiving Internet service from Breezeline?
A. It is.
Q. And -- now, based on your experience at Breezeline, can someone use -- or if someone is using Internet service at a different location from a different modem, during this time period, would -- could they generate that IP address?
A. No.
MR. CAVALLO: Objection. Hypothetical.
MS. JIMENEZ: Based on his experience.
THE COURT: The objection is sustained.
MS. JIMENEZ: All right. And just for the witness, let me show this Exhibit, 19 -- I'm sorry -- 11-1.
BY MS. JIMENEZ:
Q. Mr. Rodenhuis, is this a document that you prepared?
A. It is.
Q. Is it derived from the records that Breezeline produced in

response to the various subpoenas --

A. It is.

Q. -- from the Government?

Does it summarize the records that are contained in Government Exhibit 11?

A. It does.

Q. Do those records contain a range of information about the account holder and the Internet service that Breezeline provided to that account?

A. It does.

Q. Does this summary fairly and accurately reflect the records that Breezeline produced in this case?

A. It does.

MS. JIMENEZ: I'd like to move in Government Exhibit 11-1, please.

THE COURT: Is there any objection?

MR. CAVALLO: No objection, Your Honor.

THE COURT: All right. Admitted into evidence.

(Government's Exhibit 11-1 received into evidence.)

THE COURT: And just let me know when it might be the right time to adjourn for the evening. Recall that today was until 4:30.

MS. JIMENEZ: I mean, I probably just have a couple of minutes with this witness. I don't know if it's possible to stay five or 10 minutes so that the witness could fly back home tonight.

THE COURT: Well, we would still have cross-examination, unless -- is there any cross-examination for this witness?

MR. CAVALLO: Yeah. Very minimal, Your Honor.

MS. JIMENEZ: Minimal is -- time?

MR. CAVALLO: Five minutes.

MS. JIMENEZ: Just a couple of questions.

THE COURT: All right. Maybe we could move it along.

MS. JIMENEZ: Yes.

BY MS. JIMENEZ:

Q. Mr. Rodenhuis, is the IP lease start and end time the same that you described before as the binding start and end time?

A. It is.

Q. All right. So -- and just one question about each of these IP addresses for that period of time. Where does it reflect that Internet service was being used?

A. The Internet service was -- it was being utilized at the customer address of 180 Bal Cross Drive, Bal Harbour, Florida.

Q. For those -- based on your experience at Breezeline, for these IP addresses that are listed in the summary, during the period of time that's reflected in the summary, could that IP address be generated from some other account at some other location?

MR. CAVALLO: Object to the form of the question, Your

Honor.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Based on this record, for each of these IP addresses -- well, are each of these IP addresses unique to this account at this location during the period of time that's reflected in this summary?

A. Yes, they are.

MS. JIMENEZ: One moment.

(Pause in proceedings.)

MS. JIMENEZ: That's all, Your Honor.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

BY MR. CAVALLO:

Q. Good afternoon, sir.

A. Good afternoon.

MR. CAVALLO: Could you please put up O-11, which is in the Government's 53, and also put up on the other half of the screen Government 11-1.

MS. JIMENEZ: Your Honor, this is outside the scope of this witness's testimony. He knows nothing about any SBA record.

THE COURT: Sustained.

MR. CAVALLO: Could you please put up 11-1, Government 11-1, just the records from Breezeline, the summary.

BY MR. CAVALLO:

Q. Sir, do you agree with me that for the period shown here, which, by my reading, is January 2019 through the date of legal process sometime in 2021, that an IP address starting with 2601 was not tied to 180 Bal Cross Drive?

MS. MARTINEZ: Objection.

MS. JIMENEZ: This is not 11-1.

MS. MARTINEZ: That's not the correct exhibit.

Could you show the exhibit for him.

THE COURT: All right. Let's put up 11-1, and let's take this off.

MS. MARTINEZ: It's okay. We can put it up for you.

MR. CAVALLO: Okay. I just want the summary.

MS. MARTINEZ: Can we go to the Government's counsel table.

There you go.

MR. CAVALLO: Thank you.

BY MR. CAVALLO:

Q. You agree with me, sir, that for the period shown here in this record summary prepared by your company, that an IP address starting with 2601 was not tied in any way to 180 Bal Cross Drive, correct?

A. Not according to the records here. That's correct.

Q. And based on your testimony, my understanding is you can only say, using an IP address, the location where the Internet

was accessed from, correct?
A. I'm sorry?
Q. Using the IP address, that tells you a location. That's what the IP address tells you.
A. Yes.
Q. It tells you -- I believe you said the location -- is it tied to the modem?
A. That is correct.
Q. Okay. The IP address doesn't in any way tell you who's using the device connected to the modem, correct?
A. It does not.
MR. CAVALLO: One second, Your Honor.
(Pause in proceedings.)
MR. CAVALLO: I don't have anything further.
THE COURT: All right. Any redirect?
MS. JIMENEZ: No redirect.
THE COURT: All right. Is the witness excused?
MS. JIMENEZ: Yes.
THE COURT: Thank you, Mr. Rodenhuis -- on behalf of the Defendant, is he excused?
MS. WEINTRAUB: Yes, ma'am.
THE COURT: All right. Thank you, Mr. Rodenhuis. You are excused.
(Witness excused.)
THE COURT: All right. Ladies and Gentlemen, we will

adjourn for the evening. Recall that we will not be in session tomorrow. You have been gracious with your time, and that means that we will see you on Monday morning, December 18th, and we will proceed at nine a.m. It will be a full day until five o'clock p.m.

Please remember that as we adjourn, and as you enjoy your day tomorrow and the weekend, you're not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned in this courtroom.

If you'll place your juror notebooks in the jury room. The jury room will remain locked.

Have a pleasant day tomorrow and weekend, and I'll see you Monday, December 18th, at nine a.m.

Thank you.

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:36 p.m.)

THE COURT: All right. Go ahead and have a seat.

We were able to get through two witnesses. Who's left on behalf of the Government?

MS. JIMENEZ: Three witnesses, Your Honor.

Mr. Heimdal Barrios, Mr. Maged Salem, and Mr. Ladi Hysa.

THE COURT: All right.

MS. JIMENEZ: We would ask to know who the Defense expects to call on Monday afternoon.

THE COURT: Well, you haven't gotten through your witnesses. So I mean, if this one witness, who's a processor, took the whole day, do you truly believe that these three witnesses you're going to get through in one day?

MS. JIMENEZ: Yes.

MS. MARTINEZ: Two are forgery witnesses. Their names were forged. And the other one is the accountant. He's just summarizing bank records and putting in 1006 summaries.

THE COURT: All right. So the Government believes that it will be able to rest on Monday?

MS. MARTINEZ: Yes, Your Honor. Again, we cannot predict cross, but yes.

THE COURT: All right. Then is there anything further that the Court can assist the parties with until I see you on Monday morning?

We will need full use of the courtroom tomorrow, so I would ask that you move your items.

MS. MARTINEZ: Your Honor, I think this would be a good time for me to renew our request for reciprocal discovery. Meaning -- shh. Court is in session -- the Defense case is going to begin. Is there any additional exhibits that they're going to be moving in in their defense case they have not provided? I would like to request them.

THE COURT: Ms. Weintraub?

MS. WEINTRAUB: Judge, I'll tell the Government what I tell the Government all the time when they tell me this.

(Court reporter interruption.)

MS. WEINTRAUB: I know my responsibilities and I know the rules. And at this particular time, I don't have any additional discovery to provide them. If, over the weekend, that changes, I will send it to them immediately.

As far as who my first witness is, I don't know because I've got to get flights for them and deal with it. And my understanding is we're doing things the night before. They didn't tell me on Friday. So -- as a matter of fact, I got emailed Sunday night, so that's what I'll do.

MS. JIMENEZ: I don't understand that response.

MS. WEINTRAUB: And I assume that we'll be doing -- I don't think we're going to get to a witness Monday.

THE COURT: Well, how many witnesses do you anticipate, Ms. Weintraub, that you will be calling?

MS. WEINTRAUB: Mr. Etra is saying it could be five or more, but I don't -- I don't --

MR. ETRA: Some very short.

MS. WEINTRAUB: Very. But I think that realistically it's probably four.

THE COURT: And does that --

MS. WEINTRAUB: No.

THE COURT: -- include whether Mr. Sheppard has made a decision yet?

MS. WEINTRAUB: Correct. It does not. It does not.

THE COURT: All right. And I will have a separate colloquy with Mr. Sheppard. But it appears extremely unlikely that we will be able to be in a position to even move forward with closing arguments until after the new year.

MS. JIMENEZ: Can we have the first couple witnesses that we would expect --

THE COURT: Who are the first two witnesses that the Defendant will be calling in its case?

MS. WEINTRAUB: Judge, honestly, I don't know. I will let them know as soon as -- I'm going to go back to my office and get flight information.

MS. JIMENEZ: Like everything else. We get no records. We get no information.

THE COURT: Hold on. Hold on. You've asked for the names. If you don't know now, Ms. Weintraub, I would request, since you have all day tomorrow -- you were going to come in here for a charge conference, so that is not on your plate -- that you can take the time, make the arrangements for the travel for your witnesses.

MS. WEINTRAUB: Yes, ma'am.

THE COURT: And if you will provide Ms. Jimenez by the close of tomorrow with the two witnesses that you'll be calling after the Government rests. All right?

MS. WEINTRAUB: Yes, ma'am.

MS. MARTINEZ: Your Honor, and I'd just like to renew a request for exhibits. It would be disingenuous to say that this team of the Defense is not prepared and does not have exhibits that they are contemplating moving in.

THE COURT: And once again, Ms. Weintraub has made the representation that they have provided all discovery. To the extent that there's additional discovery, then with regard to these two witnesses that most likely will be called on Tuesday --

MS. JIMENEZ: Monday. Monday. They should be ready for Monday.

THE COURT: No. On -- well, no. I don't believe so, not given that you have three witnesses to go through. But it would most likely be Tuesday. And if that's the case, then I would require that you provide any discovery that has not already been provided by tomorrow at five p.m.

So it's two items, the two witnesses and all discovery that will be reciprocal in nature.

Is there anything further to address this evening?

MS. MARTINEZ: Thank you, Your Honor.

MS. JIMENEZ: Thank you.

THE COURT: Okay. Take the time that you need. If you'll move your items.

Have a nice day tomorrow, a nice weekend, and I'll see you on Monday at nine a.m.

MS. MARTINEZ: Are we back here tomorrow at two?

THE COURT: Unfortunately, we are not. Because of where we are, there's no reason for us to gather together.

MS. MARTINEZ: Okay. So we will see you Monday, Your Honor.

THE COURT: Yes. Have a nice weekend.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 4:41 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 14th 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 - 209.

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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