

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:24-CR-00192

KISHA SUTTON - 1
SHAMIESE WRIGHT - 2

GOVERNMENT'S MOTION FOR JUDICIAL NOTICE

Comes now the United States of America, by Jonathan T. Storage, Assistant United States Attorney for the Southern District of West Virginia, and respectfully moves of the entry of an order taking judicial notice of federal administrative rules applicable to the implementation of the Paycheck Protection Program. Additionally, the government requests that the Court take judicial notice of the fact that Huntington, Cabell County, West Virginia; Charleston, Kanawha County, West Virginia; and South Charleston, Kanawha County, West Virginia, are within the Southern District of West Virginia.

I. LEGAL STANDARD

The Court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). The court may take

judicial notice on its own, or it must take judicial notice if a party requests it, and the court is supplied with the necessary information. Fed. R. Evid. 201(c). "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d). "This rule governs judicial notice of an adjudicative fact only, not a legislative fact." Fed. R. Evid. 201(a).

"Adjudicative facts are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." Fed. R. Evid. 201 advisory committee's note to 1972 proposed rules.

"The doctrine of judicial notice is predicated upon the assumption that the source materials from which the court takes judicial notice are reliable." United States v. Horn, 185 F. Supp. 2d 530, 549 (D. Md. 2002).

"The publication in the Federal Register of a document creates a rebuttable presumption (1) that it was duly issued, prescribed, or promulgated; (2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the published notation; (3) that the copy contained in the Federal Register is a true copy of the original; and (4) that all requirements of this chapter and the regulations

prescribed under it relative to the document have been complied with.” 44 U.S.C. § 1507.

“The contents of the Federal Register shall be judicially noticed.” 44 U.S.C. § 1507.

“[W]hether an offense occurred within particular geographical boundaries is an appropriate subject for judicial notice. *United States v. Wilkerson*, 444 F. App’x 708, 709 (4th Cir. 2011).

II. DISCUSSION

A. The SBA’s PPP Rules

The Court should take judicial notice of the Paycheck Protection Program (“PPP”) rules and regulations promulgated by the United States Small Business Administration and reported in the Federal Register. The program rules, such as loan eligibility requirements, are relevant to the case, and the rules are not subject to reasonable dispute because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

1. What is the Federal Register?

The Federal Register “is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.” <https://www.govinfo.gov/help/fr#about> (last visited June 23, 2025).

"The Archivist of the United States, acting through the Office of the Federal Register, is charged with the custody and, together with the Director of the Government Publishing Office, with the prompt and uniform publishing of the documents required or authorized to be published by section 1505 of this title." 44 U.S.C. § 1502.

"Documents required or authorized to be published by [44 U.S.C. § 1505] shall be published immediately by the Government Publishing Office in a serial publication designated the 'Federal Register.'" 44 U.S.C. § 1504. The codification of documents published in the Federal Register is known as the Code of Federal Regulations. 44 U.S.C. § 1510(b).

2. Paycheck Protection Program Rules

On April 15, 2020, the U.S. Small Business Administration's ("SBA") interim final rule implementing sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") took effect. 83 Fed. Reg. 20811 (April 15, 2020). Section 1102 of the CARES Act established the temporary Paycheck Protection Program under the SBA. Id.

The PPP rules were amended numerous times. See, e.g., 85 Fed. Reg. 21747 (April 20, 2020) ("This interim final rule supplements the First PPP Interim Final Rule with guidance for individuals with self-employment income who file a Form 1040, Schedule C.");

85 Fed. Reg. 23450 (April 28, 2020) ("This interim final rule supplements the previously posted interim final rules with additional guidance."); 85 Fed. Reg. 36717 (June 18, 2020) ("This interim final rule revises SBA's interim final rule published in the Federal Register on April 15, 2020 by changing the eligibility requirement related to felony convictions of applicants or owners of the applicant."); 86 Fed. Reg. 15083 (March 22, 2021) ("[T]his interim final rule clarifies the eligibility for first draw PPP loans for applicants that are assigned a North American Industry Classification System (NAICS) code beginning with 72 and have more than one physical location and clarifies certain payroll cost exclusions included in the Economic Aid Act.").

The PPP rules, as amended, established the purpose of the program, the eligibility requirements for a PPP loan, the manner by which an applicant could apply for a loan, the spending requirements for any proceeds received, and the requirements for loan forgiveness.

The SBA's PPP rules were duly published in the Federal Register, and their existence cannot be subject to reasonable dispute. Moreover, the content of the rules can be accurately and readily determined "from sources whose accuracy cannot reasonably be questioned" - the Federal Register, itself. Importantly, Congress specifically enacted a statute commanding that the

contents of the Federal Register "shall be judicially noticed." 44 U.S.C. § 1507. A compilation of the relevant PPP rules is attached hereto as Exhibit A.

3. Relevance of the PPP Rules in this Case

The PPP rules are a central focus of the government's case because the rules on eligibility, income certifications, intended use of loan proceeds, etc., help explain the defendants' execution of their fraud scheme. The government's evidence about the defendants' falsehoods on PPP loan documents is put into context when the jury can consider the underlying rules of the program.

4. Use of Rule 1006 Summary Charts

Importantly, the government does not intend to simply introduce dozens of pages of SBA rules from the Federal Register and expect the Court, the jury, and the witnesses to digest the volume. Rather, the government intends to synthesize the rules into a Rule 1006 summary chart that clearly and accurately spells out eligibility and other program requirements. Moreover, taking judicial notice of the SBA PPP rules, to be followed-up with a Rule 1006 summary chart, will reduce the amount of time at trial needed to explain background matters relating to the PPP program and its requirements.

B. Judicial Notice of Geographic Locations

The government also seeks judicial notice of the fact that

the municipalities of Huntington, Cabell County, West Virginia; Charleston, Kanawha County, West Virginia; and South Charleston, Kanawha County, West Virginia, are within the Southern District of West Virginia. These municipalities are "generally known within the trial court's territorial jurisdiction," and judicial notice of their location within the district is appropriate. See Wilkerson, 444 F. App'x at 709 ("[W]hether an offense occurred within particular geographical boundaries is an appropriate subject for judicial notice.").

III. CONCLUSION

For the reasons stated herein, the government respectfully requests that the Court take judicial notice of U.S. Small Business Administration's Paycheck Protection Program rules, as published in the Federal Register, as well as the fact that the municipalities of Huntington, Cabell County, West Virginia; Charleston, Kanawha County, West Virginia; and South Charleston, Kanawha County, West Virginia, are within the Southern District of West Virginia.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "GOVERNMENT'S MOTION FOR JUDICIAL NOTICE" has been electronically filed and service has been made on opposing counsel by virtue of electronic mail this the 23rd day of June, 2025, to:

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