UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CRIMINAL DIVISION
CASE NO. 23-CR-60173 WILLIAMS (GRAHAM)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CAROLYN D. WADE,

Defendant.

Miami, Florida

May 13, 2024

WITNESS: ARLENE EMBREY

Pages 1 to 49

TRANSCRIPT (EXCERPT) OF TRIAL

HELD BEFORE THE HONORABLE DONALD L. GRAHAM

UNITED STATES DISTRICT JUDGE

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United States District Court
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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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(Call to the Order of the Court.)

* * * * *

THE COURT: Thank you for your opening statements, counsel.

Government, you may call your first witness.

MR. SNIDER: Thank you, Your Honor.

The United States calls Arlene Embrey.

(Government witness, ARLENE EMBREY, duly sworn.)

COURT CLERK: Please be seated and if you can please state your name and spell it for the record.

THE WITNESS: Arlene Embrey, A-R-L-E-N-E, E-M-B-R-E-Y.

DIRECT EXAMINATION

BY MR. SNIDER:

Q. Good afternoon, Ms. Embrey.

A. Good afternoon.

Q. How are you doing today?

A. Well. How are you?

Q. Good. Thank you.

Can you please tell the jury where you work?

A. I work at the US Small Business Administration.

Q. What's your position there?

A. I'm a trial attorney.

Q. How long have you been at the Small Business Administration?

A. 26 years.
Q. I'm going to refer to the Small Business Administration as the SBA. Okay?
A. Yes.
Q. So 26 years at the SBA. And have you had the same position the whole time?
A. I have, yes.
Q. What are your duties and responsibilities as a trial attorney for the SBA?
A. I work in the office of litigation. I handle defense of litigation where the agency gets sued. I also handle administrative appeals. I also offer assistance to program offices as needed.
Q. Tell the jury generally. What does the SBA do?
A. SBA's mission is to promote small businesses. It is to promote them, to nourish them, to help them flourish and grow. That has been its mission in the 60 years that it's been in business.
Q. Do small businesses rely on the SBA for assistance?
A. Yes, they do.
Q. And in general, what kind of assistance does the SBA provide to small businesses?
A. SBA has two main types of programs. One is a government contracting program, which is called an 8(a), named after the section in the statute. That's helped small businesses get a

foot in into government contracting and various buildings and types. The most commonly known aid is the guaranteed loan program, and that's where a small business needs a loan and it doesn't have established credit or it's basically brand new. And so in order to make the loan, a bank will ask SBA to guarantee the loan or a portion of that loan so that then the business owner can get their funds.

Q. Did the SBA provide that type of assistance to small businesses during the COVID-19 pandemic?

A. It did. It provided -- it continued to provide that same type of guarantee assistance, but it also implemented a new program that was slightly different but also guaranteed.

Q. What was that program called?

A. Paycheck Protection Program.

Q. So when was the Paycheck Protection Program created?

A. It was actually passed as law on March 27, but Congress and the President and our agency had been working on it for about three to four weeks before that.

Q. Was that in the year 2020?

A. It was.

Q. And the statute that was passed by Congress and authorized the Paycheck Protection Program, what was that called?

A. The Coronavirus Aid, Recovery, and Security Act.

Q. Is that commonly referred --

A. I'm sorry. The Coronavirus Aid, Recovery, and Economic

Security Act.
Q. Okay. That's a lot of words. Does it have an acronym that's commonly used?
A. It is. It's called the CARES Act.
Q. So let's go back to that time period, March of 2020, when the CARES Act was enacted and the PPP, Paycheck Protection Program, was created. What was going on at the time in March of 2020?
A. When the statute itself was passed, we were already two weeks into a national lockdown. Our agency had been working with the Department of the Treasury to try to provide aid to small businesses knowing, of course, that people couldn't go to work through no fault of their own and therefore, most likely, would not be getting a paycheck.

At the time, it was thought that it would be short-term relief, but that was the intent was to provide employees who didn't have a job to go to to still get paid.
Q. And was that the purpose of the PPP?
A. Absolutely. Yes.
Q. Through your work at the Small Business Administration, did you become familiar with the program and how it operated?
A. Yes, I did.
Q. And what was it about small businesses that were being targeted by -- maybe target is not the right word.

What was it about small businesses that the CARES Act

and the PPP were intending to help?
A. The concern was small businesses because they're small they wouldn't have as much reserve as other, bigger companies --
MR. WILCOX: Objection, Judge. I'm going to object to the editorializing.
THE COURT: Overruled.
BY MR. SNIDER:
Q. You may continue.
A. So the concern was that small businesses did not have the same amount of reserves, savings, et cetera, that a larger company or a big corporation would have that the majority of the businesses that would get small business loans or were eligible for them -- really a lot of the entities and maybe a lot of the workers of those entities -- the employees -- were living paycheck to paycheck. And going two weeks, four weeks, six weeks without pay would be brutal.
Q. And how does the SBA view small businesses in the overall economy?
A. Small businesses --
MR. WILCOX: Objection, Judge, to relevance.
THE COURT: Rephrase your question, please.
MR. SNIDER: Sure.
BY MR. SNIDER:
Q. Was there a particular need that the SBA was trying to

address through the PPP?
A. Yes, there was.
Q. And what was that need?
A. There was the need to make sure that -- number one, the economic survival of the country -- just trade in general, but number two, that the small businesses themselves would be able to survive whatever period of time it took that they were shuttered or closed.
Q. Why is it important for small businesses to survive?
A. Because they're the engine of the economy --
MR. WILCOX: Objection, Judge. This calls for speculation.
THE COURT: Well, I'm not sure if it's speculation. Let's move into the core of the case, please.
Sustained.
BY MR. SNIDER:
Q. So let's talk about the PPP program.
Did the SBA provide funding directly to small business owners or did it partner with private lenders?
A. No. It partnered with lenders that were already part of the 7(a) program under which the Paycheck Protection Program was passed.
Q. Why was it done that way?
A. It was done that way because it was thought to be easier because that way a borrower would then be able to go through

its lender through which it already had an established relationship to be able to then get the funds as opposed to having to apply with someone brand new that did not have a lot of their information.

Q. Was there a sense of urgency?

A. Yes.

Q. Explain that.

A. There was a sense of almost desperation at the time. Back when this was passed --

MR. WILCOX: I'm just going to object to the gratuitous nature of the testimony.

THE COURT: Give me a legal objection, you know, like relevance --

MR. WILCOX: Prejudice. It's prejudicial, Judge. It's Rule 403. It's probative value -- if the probative value is substantially outweighed by the prejudicial nature of the testimony.

THE COURT: Overruled.

You may respond.

THE WITNESS: Thank you, Your Honor.

So at the time, when the statute was passed -- as I said before, we were in the second, approaching the third, week of lockdown. Things at that time were very chaotic not only in my office or in my agency trying to get the program up and running but also across the country.

I mean, I remember there were -- you know, every day it was on TV there was something about where was the coronavirus, how many cases of the coronavirus had there been, how many people were dying --

MR. WILCOX: Objection, Judge. It's a narrative.

THE COURT: Sustained.

Let's get to the issues in this case, please.

BY MR. SNIDER:

Q. So the lending through the PPP, was that traditional lending or was it something different, designed for the emergency that you testified about?

A. It was designed for the coronavirus pandemic.

Q. How so?

A. It was targeted in such a way that the moneys --

THE COURT: All right. One moment. I think a juror is trying to get my attention. Do we need to take a short break?

All right. Let's take a short break and we'll resume and we're going to end at about 4:00 today. So let us know as soon as you're ready to return so that we can get started again.

(Jury exited at 3:11 PM.)

THE COURT: You may be seated.

So I allowed a little testimony about the background and the purpose for the legislation, but we need to get right

to the issues in this case. The purpose of the legislation is not really crucial, and so let's get to the facts of this case.

MR. SNIDER: Okay.

THE COURT: And that response -- the last one was a bit of a narrative, so let's stay on point.

MR. SNIDER: Okay, Judge.

THE COURT: Thank you. We are in recess. We'll get started hopefully in about five or six minutes.

MR. SNIDER: Thank you, Your Honor.

(Recess from 3:13 PM to 3:20 PM.)

(Jury entered at 3:20 PM.)

MR. SNIDER: Thank you, Your Honor.

BY MR. SNIDER:

Q. Prior to the break, Ms. Embrey, we were starting to talk about how the PPP program was different from traditional lending by the SBA, and I asked you what made it different.

Can you explain the lending component of the PPP? How was that different than traditional SBA lending?

A. What we call underwriting -- the underwriting criteria or qualification criteria was changed in order for the money to be able to be lent quickly to the particular borrower.

Q. Okay. So what about the underwriting requirements changed? What did you do instead of the traditional -- what did SBA do instead of traditional underwriting?

A. Generally, when someone applied for a loan under the 7(a) program, which the PPP was part of, there was what's called an underwriting process where the lender making the loan to the borrower had to do due diligence and check collateral, credit history, whether there would be the ability to repay, things like that.

With the PPP program, because it was essential to get the money out the door as quickly as possible, those requirements were relaxed.

Q. Okay. And did you do something else, then, in place of the traditional underwriting --

A. Yes.

Q. -- and due diligence?

What was it?

A. Lenders were allowed to rely on borrowers' certifications on the application forms. So that means they didn't have -- we didn't -- the lender did not have to go behind what was said on the application for the funds to determine whether or not a loan would be issued except for three things.

Q. And that certification, where was that located?

A. The certifications were located on the PPP application form.

Q. Who was required to sign the certification?

A. The applicant.

Q. The person applying for the loan?

A. Yes.
Q. Let's talk about the basic requirements to obtain a PPP loan.
What information had to be submitted in order to be eligible to be considered for a PPP loan?
A. So if a borrower went to the lender and asked for a PPP loan guaranteed by SBA, the borrower had to establish that it was in business before February 15 of 2020. The borrower had to, in essence, say it had less than 500 employees or that it had employees in the year 2019, and the borrower then also had to show the lender some proof that the company existed or, like I said, had been in business and indeed had payroll.
Q. Was one of the requirements that the information be submitted that you just listed be truthful?
A. Absolutely.
Q. Now, if a business didn't have employees, could it apply for a PPP loan?
A. No. It could apply. It wouldn't get one -- or shouldn't.
Q. If a business was structured as a sole proprietorship, could a sole proprietorship apply for a PPP loan?
A. Yes, it could.
Q. And do sole proprietors typically have employees, to your knowledge?
A. Usually one.
Q. So if you worked for yourself and you had a business,

could you apply for a PPP loan?
A. You could, yes.
Q. Were there any restrictions or limits to the amount of a PPP loan that one could obtain?
A. There were. So there was a calculation in the statute itself as to the maximum loan amount that the -- that a person or a borrower could get under the PPP program. That is listed in the statute as well as in the application itself.
Q. And what was that limit?
A. Well, the limit would have been the average monthly payroll for 2019 divided by 12 -- so that you could get the monthly average -- and then multiplied by 2.5, which would have been two and a half months that the government -- hoping at that time that the pandemic would last ten weeks or less.
Q. And if you were a sole proprietor applying, was there a maximum amount that a sole proprietor could seek as a PPP loan?
A. There was. There was actually a limit on anyone. So whenever anyone's payroll was averaged, it had to be capped at a hundred thousand. So if you made $115,000 a year, you would still have to cap the earnings at 100,000. That's for everyone in every company.
Q. So if you only worked for yourself, then the calculation would be on a cap of $100,000?
A. That's correct.

Q. Was there a minimum amount that one could apply for a PPP loan based upon?
A. No, there was not.
Q. So, for example, if you had a business that made $6,800 in 2019, could you apply for a PPP loan based on income from that business of $6,800?
A. Yes, you could.
Q. Was the funding for the Paycheck Protection Program unlimited?
A. No, it was not.
Q. Was there only one round of PPP funding?
A. No. In fact, as it turned out, there were four rounds --
MR. WILCOX: Judge, this is irrelevant. Just --
THE COURT: Overruled.
THE WITNESS: There were four rounds of PPP funding. The initial funding took place on April 2nd and the program opened on April 3rd. It ran out of funds on April 16. Eight days later, it was funding again, and then it was funded two more times at the end of 2020 and 2021.
BY MR. SNIDER:
Q. So there was a round of funding made available in May of 2021?
A. April -- oh, I'm sorry. 2021? Yeah, there was a round of funding made available in March of 2021. That was the last one that lasted through May of 2021.

Q. Okay. Now, are you familiar with the process of applying for a PPP loan?

A. I am, yes.

Q. Explain how that process worked. What would a borrower who would want a PPP loan do?

A. So in order to apply for a loan, it would all depend on the lender's criteria because, again, the relationship was between the borrower and the lender, and SBA would be the guarantor. So if you had a bank that you usually banked with, you would go on their website and you would follow their procedures to submit an -- it's called an SBA Form 2483. You would fill it out, submit it to your lender.

The lender would do the minimal due diligence, which was to ask -- you know, to make sure that the borrower had certified everywhere that the borrower was supposed to certify, ensure however it could with whatever documentation the borrower provided that the borrower had been in business since February 15 of 2020 and then ensure with whatever the borrower provided that there were employees of that company in 2019.

And then the borrower would then submit this to the lender. The lender would then submit the amount, the name of the business, and an application number to SBA on something called a lender portal. So this was a system they had set up between participating lenders and SBA. Once that information

was submitted to SBA, SBA would then send an SBA loan number, and it would dedicate those funds for that loan number.

Q. How was this process designed to be in terms of usability or ease of use?

A. It was supposed to be very simple because it was supposed to be done very quickly.

Q. I'm sorry. Say that one more time.

A. I'm sorry. I said it was supposed to be very simple because it was supposed to be done very quickly.

Q. And the information, was it based on historical information or forward-looking information?

A. Which -- what was requested from the borrower?

Q. Correct. The information to determine the amount of loan --

A. Historical. Historical information from the prior year.

Q. You testified that these loans -- these PPP loans were backed by the SBA. What does that mean?

A. It means they were guaranteed. So if the borrower were to default on the loan, then the government would pay the lender that loan and take on the debt itself.

Q. In addition to it being backed, was there a forgiveness component of the PPP?

A. There was.

Q. And tell the jury about the forgiveness component.

A. Unlike the other type of 7(a) guaranteed loan programs,

with the Paycheck Protection Program, Congress passed in the CARES Act the ability for the borrower -- the business itself to have the loan forgiven, meaning that if it met certain criteria, then the loan would not have to be paid back by the business because, again, the purpose was to help the businesses' employees. And so at the end of the day, the government didn't want the burden of the loan to fall on the business itself.

Q. You testified that there was a certification in the application for the PPP loan that required the borrower to certify that all the information was true; correct?

A. That's correct.

Q. Was there also a certification in connection with the forgiveness application?

A. Yes, there was.

Q. What generally was that certifying?

A. That would certify, again, that the information provided in the forgiveness application was true and correct. And within that forgiveness application, the borrower had to certify that it had used the amount that it got in a proper way.

Q. Now, you've testified about an SBA Form 2483; is that right?

A. That's correct.

Q. Are you familiar with that form?

A. I am.
Q. Have you seen it before?
A. Yes.
Q. And the SBA, did it keep records of the loans that it had issued?
A. It kept electronic records of the loan numbers and the loan amounts that it had authorized to lenders in order to keep track of how much money was left or had been spent at that time.
MR. SNIDER: Your Honor, at this time I'm going to publish for the witness and the jury some exhibits that have been admitted into evidence starting with Government Exhibit 117.
THE COURT: Just refer to them as Government Exhibit and the number.
MR. SNIDER: In evidence.
THE COURT: Well, you can say in evidence, but if you say Government Exhibit 1, we know it's in evidence. If you say Government Exhibit 1 for identification, then we know it's not in evidence. But any way you want to handle it.
MR. SNIDER: The less words the better.
BY MR. SNIDER:
Q. Okay. Ms. Embrey, I've published for you Government Exhibit 117. Do you see Government Exhibit 117 on your screen?

A. Yes.

MR. WILCOX: We don't see it, Judge.

MR. SMITH: It's very blurry.

MR. WILCOX: It's not legible here, Judge.

THE COURT: We'll take a look and see if we can work that out.

BY MR. SNIDER:

Q. Ms. Embrey, is it legible on your screen?

A. It is, yes.

THE COURT: All right. I'm not sure what the problem is. It's clear on my screen. I understand it's clear on the second screen and I assume it's clear in the jury box. So I'm not sure. If you like, you can move over and take a look and we'll have our tech people come up and see why this particular screen is not functioning.

Do you all have a copy of the exhibit?

MR. WILCOX: I have a copy.

THE COURT: All right. You may proceed.

MR. SNIDER: Thank you, Your Honor.

BY MR. SNIDER:

Q. Ms. Embrey, I'm going to enlarge the top portion of Government's Exhibit 117 so it's easier for everyone to read. Do you see the portion that I've enlarged?

A. Yes, I do.

Q. What is Government Exhibit 117? What kind of document is

this?
A. It's a Paycheck Protection Program Borrower Application Form for Schedule C filers.
Q. Okay. And do you know what a Schedule C filer is?
A. Yes.
Q. What is a Schedule C filer?
A. It's someone who along with their income tax return files something called a Schedule C in support of their income.
Q. Now let's go through this. I'm going to start with the first box, top left. Do you see the section of Government 117 that I have enlarged?
A. I do.
Q. What is this portion of the application?
A. This is where the borrower is to identify what type of Schedule C filer it is.
Q. And what is selected here?
A. There's a checkmark next to sole proprietor.
Q. The box below it I'm enlarging, which -- the box is titled business legal name. Do you see that?
A. I do.
Q. What's the business legal name for this application?
A. Carolyn Wade.
Q. Do you see the section where it says d/b/a or trade name?
A. I do.
Q. What is the d/b/a or trade name for this application?

A. Carolyn Wade.
Q. Now, you testified a moment ago that one of the requirements of the program was that the business had been established before February of 2020; is that right?
A. February 15, 2020, that's correct.
Q. According to this application, when was this business, Carolyn Wade, established?
A. January 1st of 2011.
Q. Now, there's some other information in the top section of the application, which I'm going to enlarge for you. Is there a business address listed?
A. There is, yes.
Q. What is that for the record?
A. 6110 Reese Road, Apartment 207, Fort Lauderdale, Florida 33314.
Q. Okay. Who is the primary contact for this application, according to this application?
A. Carolyn Wade.
Q. Is there a business phone number that's provided?
A. There is, yes.
Q. Can you read that for the record?
A. (954) 274-6800.
Q. Is there an email address that is provided?
A. There is.
Q. Can you read that email address for the record?

A. Yes. It's ckidd1226@gmail.com.
Q. Business TIN and then there's, in parentheses, EIN/SSN/TIN.
Do you know what information is being asked to provide in that box?
A. Yes. What's being asked is the tax identification number of the business.
Q. Okay. What is the tax ID in this case?
A. 59-2090026.
Q. Okay. Let's go to the next section of the application. And by the way, what is this number at the bottom?
A. That is the SBA form number. It's SBA Form 2483. There is a dash C and (3/21). That is the version of the form that was in use at the time.
Q. So is this a standard form that was used for the Schedule C filers?
A. Yes, it was.
Q. And who created the form itself?
A. The forms and their variations -- versions of it were created by SBA in conjunction with the Department of the Treasury.
Q. All right. Now I'm going to enlarge this section in the middle of the application. Do you see the section I've enlarged?
A. Yes, I do.

Q. Let's start with the box on the left. Tell the jury what is being asked to be reported in that box and what do you see there?
A. So what the form is requesting is the total amount of gross income directly from the IRS Form 1040, Schedule C, line 7.
Q. And what is the number that was reported for this application?
A. $113,560.
Q. All right. Moving to the center box. What is in that box?
A. The form is requesting what tax year is being used for gross income. So basically what tax year the IRS Form 1040, Schedule C, was attached to.
Q. And what is selected?
A. 2019.
Q. According to this application, how many employees worked for the business Carolyn Wade?
A. One.
Q. I'm moving down now to the next section of the application. What do we have here?
A. This is just another section. However, this is where the maximum loan amount is computed.
Q. What is the maximum loan amount that is requested in this application?

A. $20,833.
Q. Is that based on the amount of income that was represented to be in this application?
A. It is. And so on A, it asks what the gross income -- literally what the amount was again. And then in B, if you see, it says "Divide by 12. If more than 8,333, enter 8,333." So that's the $100,000 cap that I was referring to. That's -- the way the math turns out is 8,333. And then times 2.5, which is the approximately two and a half months that the aid was requested for.
Q. So based on that, it would appear that the -- this application sought the maximum amount that a sole proprietor with one employee could get. Is that --
A. That's correct.
Q. I'm moving farther down and I have enlarged a section that's titled purpose of the loan. Do you see that?
A. I do.
Q. According to this application, what was the purpose of this loan?
A. For payroll costs, including proprietary expenses equal to business expenses, plus owner compensation.
Q. We're moving on now to page 2 of Government's 117, and I'm going to enlarge the second half of this page. Do you see the section I've enlarged?
A. I do.

Q. What are we looking at here?
A. These are questions that were asked of the borrower to ensure that the borrower was eligible for the loan.
Q. Okay. And were these questions that had to be answered during the application process?
A. Yes.
Q. I'm looking now at line 5, which I've highlighted, and line 6.
A. Yes.
Q. Do you see what appears to be initials on those lines?
A. Yes.
Q. Do you have an understanding of why those lines needed to be initialed?
A. Yes. There were some certifications and some questions that SBA and Treasury deemed were so important and so critical they wanted to make sure that the borrower did not miss them and so they asked the borrower to initial them.
Q. We're moving on now to page 3 of Government 117. The Bates number is 2952. And I'm going to start by enlarging the first two bullets, Ms. Embrey.
Can you read the section that I have highlighted here?
A. Yes. It says, "By signing below, you make the following representations, authorizations, and certifications: I certify that I have read the statements included in this form,

including the statements required by law and executive orders and I understand them."

The second bullet point, "The applicant is eligible to receive the loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) and the Department of the Treasury (Treasury), implementing the Paycheck Protection Program under Division A, Title 1, of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and Title 5 of the American Rescue Plan Act of 2021. The Paycheck Protection Program rules."

Q. Thank you.

Then the second portion of -- the lower half of Government 117, does that appear to have some initials as well?

A. Yes, it does.

Q. What are the initials that you see throughout this document?

A. They appear to be a C and a W.

Q. I'm going to highlight for you the last -- you know what? I'm going to make this bigger. Let's look at the last bullet.

Ms. Embrey, can you read what is in the last bullet on page 2952 of Government 117 with the initials CW next to it?

A. It says, "I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000, under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000, and, if submitted to a federally insured substitution, under 18 USC 1014 by imprisonment of not more than 30 years and/or a fine of not more than $1 million."

Q. Thank you.

I was asking you some questions earlier about how the SBA relied on information that was submitted in these applications and you said there was a certification. Is this the certification that you were testifying about?

A. All of these are, but yes.

Q. Ms. Embrey, would the SBA have issued a loan number for this loan to the business Carolyn Wade if it had known that the information in here regarding the business income for 2019 was false?

A. No.

Q. I'm now on page 4, which is Bates-stamped 2953 of Government 117, and I'm enlarging the last section. What do

you see on the section that I just enlarged?
A. It says, "Signature of authorized representative of applicant," and there are the initials CW. Where it says, "print name above that," it says Carolyn Wade. There is a date of 5/28/2021, and there is a section that says title and it looks like "owner" has been typed in or put in.
Q. And who was authorized under the PPP program to sign this PPP application?
A. It had to be the borrower.
Q. It says here signer or authorized representative?
A. Yes.
Q. Who would have been an authorized representative?
A. So it's whoever under the corporate documentation established by the company was able to sign for the company or bind the company legally to a debt.
Q. So if a family member was not on the corporate documents for the company, could a family member sign this?
A. No.
Q. If a friend who was helping with the application was not authorized from the company, could that friend have signed this --
A. No.
Q. -- under the PPP rules?
A. No. That's correct. No.
Q. We're now on Government 117 on the Bates number that ends

2957. Do you see this section?
A. I do.
Q. Is this information that the SBA was required to collect during the application process?
A. The lender was required to collect that as part -- yes.
Q. Was the lender required because the SBA required it?
A. Yeah.
Q. And what do we see here?
A. So here they're asking the ownership of the applicant, and it says the owner's name is Carolyn Wade, title owner. There's a request for ownership percentage, which is 100 percent, and then a request again for the tax identification number of the owner or owners and then the address of the respective owner.
Q. Ms. Embrey, I'm publishing Government Exhibit 113 in evidence. Do you see Government 113 on your screen?
A. I do.
Q. Do you recognize this type of document?
A. Yes.
Q. What type of document is this?
A. This is a Schedule C that would be filed with an IRS tax return for a sole proprietor.
Q. Okay. Is this the type of document that would have been required to be submitted if an individual was applying for a PPP loan as a sole proprietor?

A. Yes. This is where the income would have come from for the maximum loan amount.
Q. Okay. Let's look at the top section of this Schedule C that's in evidence as Government Exhibit 113. What is the name of the proprietor?
A. The name of the proprietor, Carolyn Wade.
Q. What is the principal business or profession?
A. It doesn't have one. It just says Carolyn Wade again.
Q. And it has the address for that business?
A. Yes. The business address on here is 6110 Reese Road, Davie, Florida 33314.
Q. Is there also a Social Security number printed on this Schedule C?
A. Yes, there is.
Q. Can you read it for the record?
A. 592-09-0026.
Q. Now, I'm going to enlarge what is part one of this Schedule C. Do you see that?
A. I do.
Q. Do you see line 7?
A. I do.
Q. What in this Schedule C is reported in line 7?
A. There is a figure of 113,560.
Q. And is that the line 7 that was required to be put into the PPP application that we looked at a minute ago, that

Form 2483-C?
A. Yes, this is the amount that should have been transferred over onto the 2483.
Q. Did this information, the supporting information, need to be true?
A. Yes.
Q. Would the SBA have issued a loan number for this loan to Carolyn Wade if the information in this Schedule C was false?
A. No.
Q. Let me rephrase that -- if the SBA had known that the information was false?
A. No, it would not have.
Q. The certification that we looked at a minute ago, did that cover supporting documents like this as certifying that they're true?
A. Yes, it did.
Q. I'm publishing Government Exhibit 118 in evidence. Ms. Embrey, do you see 118 on your screen?
A. I do.
Q. Do you recognize this type of document?
A. I do.
Q. What kind of document is this?
A. This is a Paycheck Protection Program Loan Forgiveness Application Form, also called a Form 3508.
Q. What was this used for?

A. This was used to apply for forgiveness so that the borrower would not have to repay the loan that it had taken out to pay its employees.

Q. I'm showing you -- enlarging the bottom part of this screen. Is that the form number you just read?

A. Yes. This says SBA Form 3508S (07/21).

Q. And was this a standard SBA form?

A. Yes.

Q. And who designed this form, the template?

A. SBA designed that in conjunction with the Department of the Treasury.

Q. Okay. Let's look at the top section here below the header. What is the business legal name of the borrower for this forgiveness application?

A. Carolyn Wade.

Q. What's the business address?

A. 6110 Reese Road, Apartment 207, Davie, Florida 33314.

Q. And the trade name or d/b/a for this business?

A. It says "Carolyn Wade."

Q. Who's the primary contact?

A. Carolyn Wade.

Q. Is there a phone number supplied?

A. There is.

Q. What does the phone number end in?

A. 00.

Q. Okay. That's true.

What about the last four?

A. Oh. 6800.

Q. Is there an email address?

A. There is.

Q. And what is that email address for the record?

A. ckidd1226@gmail.com.

Q. I'm looking at the middle section of Government 118. What does it say in the section I just highlighted?

A. "By signing below, you make the following representations and certifications on behalf of the borrower."

Q. Okay. And what's the next line?

A. "The authorized representative of the borrower certifies to all of the below by initialling next to each one."

Q. Let's look at the first -- what's being certified in the first section?

A. This says, "The borrower has complied with all requirements in the Paycheck Protection Program rules, Sections 7(a)36, 7(a)37, and 7(a) of the Small Business Act, the PPP interim final rules, and guidance issued by SBA through the date of this application, including the rules related to: eligible uses of PPP loan proceeds, the amount of PPP loan proceeds that must be used for payroll costs, including proprietor expenses for borrowers that applied for loans using SBA Form 2483-C or 2483-SD-C, the calculation and

documentation of the borrower's revenue reduction, if applicable, and the calculation of the borrower's requested loan forgiveness amount.

"Information regarding these requirements may be found in the Form 3508S instructions and the Paycheck Protection Program rules."

Q. Are you familiar with the eligible use of PPP funds?

A. I am, yes.

Q. Could a borrower have assistance in completing their PPP loan application? Was that allowed?

A. Sure.

Q. Could a borrower pay for assistance to have someone do parts of their PPP loan?

A. If they wanted to, yes, of course.

Q. Could a borrower use the funds that were obtained through the Paycheck Protection Program to pay that person who assisted or helped with the application?

A. No.

Q. That was not one of the eligible uses?

A. It was not, no.

Q. And the section I just highlighted or enlarged here, what is in this section?

A. This states, "The information provided in this application is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness

of an SBA guaranteed loan is punishable under the law, including 18 USC 1001 and 3571, by imprisonment of not more than five years and/or a fine of up to $250,000, under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000, and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than 30 years and/or a fine of not more than $1 million."

Q. As part of this certification, is the authorized representative or the borrower -- the borrower or the authorized representative certifying, among other things, that the borrower was entitled to a loan in the first place?

A. Yes.

Q. Now we're looking at the bottom section. According to this document, who is the signatory on this?

A. There appears to be an electronic signature for Carolyn Wade.

Q. What is the print name?

A. Carolyn Wade.

Q. What is the date, according to this application for forgiveness, that it was signed?

A. August 7, 2021.

Q. What is the title of the person signing?

A. Sole proprietor title.

Q. Are you familiar generally with DocuSign?

A. I know what it is, but no, I'm not familiar with it from a

technical perspective.
Q. Are you aware that DocuSign was used to sign documents that were a part of the PPP program?
A. Yes. It was understood that the documents would be electronically signed because when the PPP was first implemented, all the businesses, including the lenders -- the branches were closed.
Q. Publishing Government Exhibit 119 in evidence. Do you recognize Government 119?
A. Yes, I do.
Q. What is this?
A. This is a notice of paycheck protection forgiveness payment.
Q. And who were these notices sent to?
A. Those notices were sent by SBA to the lender of record of a particular loan informing the lender that the loan had been forgiven and also including the amount of the forgiveness remitted by SBA to the lender to credit the borrower's loan.
Q. So who was the borrower whose loan was forgiven, according to this letter?
A. Carolyn Wade.
Q. Who is the lender of record?
A. Harvest Small Business Finance, LLC.
Q. And what is the SBA loan number?
A. 6697269001.

Q. And what was the date that this loan was approved?
A. The 5/23/21.
Q. And what is the loan disbursement amount?
A. The amount disbursed by the lender was $20,833.
Q. Was this loan forgiven?
A. Yes, it was.
Q. How much was forgiven?
A. The entire amount of $20,833 in principal and $38.81 that had accrued in interest.
Q. And what was the forgiveness date?
A. August 11, 2021.
Q. Ms. Embrey, if a borrower had submitted false information in connection with the underlying PPP application, would that borrower be entitled to have that loan forgiven?
A. No.
Q. If the SBA had known that a borrower had submitted a PPP application that contained false information about the business's income in 2019, would the SBA have forgiven that loan?
A. No.

MR. SNIDER: No further questions on direct, Your Honor.

THE COURT: All right. Do you know how long your cross will be?

MR. WILCOX: I believe it's going to be fairly

lengthy, Your Honor.

THE COURT: If you want to leave early and -- why don't you come sidebar.

(The following proceedings were held sidebar:)

THE COURT: I don't want to get into a discussion about what fairly long means. So here's a witness out of town who wants to try to get back and -- you know, at a hotel. The government has to pay for it. It creates all sorts of issues. So what does fairly long mean?

MR. WILCOX: Approximately -- Judge, at least 30 minutes.

THE COURT: And what time does the program start -- the memorial service?

MR. WILCOX: I need to be there at 5:30.

THE COURT: I thought you told me --

MR. WILCOX: The service starts at 6:00.

THE COURT: Well, then you need to be there at 6:00; right? But you see the problem?

MR. WILCOX: I do understand the issue, but I have another issue. I have an elderly person I need to pick up on the way there. That's why I was trying to get there a little earlier so I could pick them up.

THE COURT: What's the Government's position?

MR. SNIDER: I mean, with all due respect to Mr. Wilcox, I know you're in a tight spot, but I also have to

balance the Government's interest in having this witness complete her testimony --

THE COURT: Today.

MR. SNIDER: I mean, for the reasons that the Court just articulated, it is certainly within the Government's interest to have this witness --

THE COURT: Does she have a flight scheduled?

MR. SNIDER: No, she does not.

THE COURT: Well --

MR. SNIDER: I could defer to the Court.

THE COURT: Is there even a flight back tonight?

MR. SNIDER: No.

THE COURT: There's not a flight back tonight.

MR. SNIDER: I don't think she has a flight back tonight, no.

THE COURT: I'm sorry. What is the --

MR. SNIDER: She does not -- it's my understanding -- I haven't -- it's my understanding that she does not have a flight tonight.

THE COURT: So she had originally booked tomorrow to go back?

MR. SNIDER: I don't know her return itinerary, personally, off the top of my head, but it's my understanding that she is available tomorrow if we need her. So she can come back tomorrow. I just -- do you want to start the cross?

Are there any questions --

THE COURT: If she doesn't have a flight, then I'll have her come back tomorrow. Maybe she likes Miami. I don't know.

MR. SNIDER: I think she does.

THE COURT: Lawyers always file pleadings and they say it doesn't inconvenience anybody. Yeah, it inconveniences my needs, the staff -- not in this instance, but everybody thinks that we can just schedule everything. We try to accommodate and we're going to accommodate him, but just think about it. All right.

MR. SNIDER: Okay. Judge, thanks.

(The following proceedings were held in open court:)

THE COURT: All right. Ladies and gentlemen, we will recess at this time. We will return tomorrow morning at 9:30. Remember my statement about the traffic. I don't know if you all have been here a long time in Miami, but the traffic now is much more of a problem than it used to be.

In any event, remember not to discuss the case in any way, and we will look forward to seeing you tomorrow morning. Have a great evening. You are excused, except I see one hand up --

A JUROR: Is the traffic worse at 9:00 -- before 9:30 than it is at 8:30?

THE COURT: I can't answer that because I don't

really have to travel a distance. But does anyone know one way or the other?

A COURT SECURITY OFFICER: It depends where you're coming from.

THE COURT: All right. Very good. Thank you, ladies and gentlemen. Have a good evening.

(Jury exited at 4:05 PM.)

THE COURT: Have a good afternoon.

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcription of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

DATE: 14th of July, 2024

/s/Lance W. Steinbeisser
Lance W. Steinbeisser,
FCRR, RPR, FPR-C
Official Court Reporter
United States District Court
Southern District of Florida
Miami, Florida

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