

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CRIMINAL NOS. 21-00061-LEK
4) 23-00003-LEK
5 Plaintiff,)
6 vs.) Honolulu, Hawaii
7) February 13, 2025
8 MARTIN KAO,)
9 Defendant.) SENTENCING AS TO COUNTS 1
) THROUGH 8 UNDER CRIMINAL
) NUMBER 21-00061 AND COUNT 1
) UNDER 23-00003 TO THE
) INDICTMENT

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE LESLIE E. KOBAYASHI,
12 SENIOR UNITED STATES DISTRICT COURT JUDGE

12 APPEARANCES:

13 For the Plaintiff: CRAIG S. NOLAN, ESQ.
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16 For the Defendant: VICTOR J. BAKKE, ESQ.
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23 United States District Court
24 300 Ala Moana Boulevard
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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 February 13, 2025 1:33 p.m.

01:33PM 2 THE CLERK: Criminal Numbers 21-00061-LEK and

01:33PM 3 23-00003-LEK, United States of America versus Martin Kao.

01:33PM 4 This case has been called for sentencing as to Counts

01:33PM 5 1 through 8 under Criminal Number 21-61 and Count 1 under 23-03

01:33PM 6 to the indictment.

01:33PM 7 Counsel, please make your appearances for the record.

01:33PM 8 MR. NOLAN: Good afternoon, Your Honor. Craig Nolan

01:33PM 9 for the government. Also present is Sara Nieling of the

01:33PM 10 probation office.

01:33PM 11 THE COURT: Good afternoon to you both.

01:33PM 12 MR. BAKKE: Good afternoon, Your Honor. Attorney

01:33PM 13 Victor Bakke on behalf of Mr. Kao.

01:33PM 14 Your Honor, I'm representing him in Criminal Number

01:34PM 15 21-00061, and Mr. Kao is obviously present.

01:34PM 16 THE COURT: All right. The record will reflect the

01:34PM 17 presence of Mr. Kao. How are you today, sir?

01:34PM 18 THE DEFENDANT: I'm okay. Thank you for asking.

01:34PM 19 THE COURT: Thank you.

01:34PM 20 Ms. Yamaga.

01:34PM 21 MS. YAMAGA: Thank you, Your Honor. Good afternoon,

01:34PM 22 Melinda Yamaga, I am also representing Mr. Kao; however, I am

01:34PM 23 representing him in Criminal Number 23-00003-LEK.

01:34PM 24 THE COURT: All right. Will each of you or only one

01:34PM 25 of you be making argument with regard to sentencing?

01:34PM 1 MR. BAKKE: I will be, Your Honor. I will be lead on
01:34PM 2 this.

01:34PM 3 THE COURT: All right. Very good. Do you need some
01:34PM 4 time to have the hearing assistance? I saw you struggling.

01:34PM 5 MR. BAKKE: No, we did it ahead of time.

01:34PM 6 THE COURT: Very good. Is it working?

01:34PM 7 MR. BAKKE: Yes.

01:34PM 8 THE COURT: Do you need help? Very good.

01:34PM 9 MS. YAMAGA: I will have one comment specific to my
01:34PM 10 case in the criminal forfeiture order that was signed; that's
01:34PM 11 it.

01:34PM 12 MR. BAKKE: So we won't be overlapping, Judge.

01:35PM 13 THE COURT: Sounds very good. Thank you. So everyone
01:35PM 14 but Mr. Kao and Mr. Bakke may be seated.

01:35PM 15 All right. So, Mr. Kao, we are here -- you need to
01:35PM 16 stand -- so we're here today for your sentencing hearing. At
01:35PM 17 this hearing, I'm going to make certain factual findings and
01:35PM 18 then I'm going to go over what I believe to be the aggravating
01:35PM 19 and mitigating factors in your case. And then I'm going to
01:35PM 20 hear from Mr. Nolan on behalf of the government, on the
01:35PM 21 government's position on what an appropriate sentence is for
01:35PM 22 you.

01:35PM 23 An appropriate sentence is one under the law that's
01:35PM 24 sufficient but not greater than necessary to meet the goals of
01:35PM 25 sentencing. And the goals of sentencing include just

01:35PM 1 punishment for the harm that you have done to our community, an
01:35PM 2 opportunity to prevent you and others from committing these
01:35PM 3 types of crimes in our community, and to give you an
01:36PM 4 opportunity for rehabilitation.

01:36PM 5 And then of course I'm going to hear from Mr. Bakke
01:36PM 6 and Ms. Yamaga, and then you'll have an opportunity to speak on
01:36PM 7 your behalf, if you wish. You don't have to, it won't be held
01:36PM 8 against you if you don't. And then I'm going to take all of
01:36PM 9 this information, in addition to the very comprehensive
01:36PM 10 presentence investigation report, and I will use that to
01:36PM 11 fashion your sentence. All right?

01:36PM 12 So let me first ask you to confirm that you and your
01:36PM 13 attorneys have had a full opportunity to reread, review and to
01:36PM 14 file any objections to the contents of the presentence
01:36PM 15 investigation report. Have you had that opportunity, Mr. Kao?

01:36PM 16 THE DEFENDANT: Yes, Your Honor.

01:36PM 17 THE COURT: You would agree with that, Mr. Bakke?

01:36PM 18 MR. BAKKE: Yes, Your Honor.

01:36PM 19 THE COURT: Ms. Yamaga.

01:36PM 20 MS. YAMAGA: Yes, Your Honor.

01:36PM 21 THE COURT: All right. You may all be seated.

01:36PM 22 The Court makes the following factual findings that on
01:36PM 23 September 7, 2022, Mr. Kao, you pled guilty to the eight-count
01:37PM 24 indictment charging you in Criminal Number number 21-61, Counts
01:37PM 25 1, 2, 3, which charged you with Wire Fraud Scheme in Relation

01:37PM 1 to a Presidentially Declared Emergency in violation of federal
01:37PM 2 law; Counts 4 through 8, Money Laundering, in violation of
01:37PM 3 federal law; and in Criminal Number 23-03, to Count 1, Bank
01:37PM 4 Fraud.

01:37PM 5 I now place the presentence investigation report in
01:37PM 6 the record under seal. If an appeal is taken, counsel will
01:37PM 7 have access to all of the report including the confidential
01:37PM 8 recommendation.

01:37PM 9 I have received several letters in support that were
01:37PM 10 attached to your sentencing memorandum in 23-0003-LEK and I've
01:37PM 11 gone through all of them.

01:37PM 12 Mr. Nolan, it's my understanding the government has no
01:37PM 13 remaining objections to either the factual findings or the
01:38PM 14 application of the guidelines to the facts; is this correct?

01:38PM 15 MR. NOLAN: That is correct, Your Honor.

01:38PM 16 THE COURT: Mr. Bakke and Ms. Yamaga, are there any
01:38PM 17 remaining objections that the Court needs to address?

01:38PM 18 MR. BAKKE: None from me, Your Honor.

01:38PM 19 MS. YAMAGA: No, Your Honor. Thank you.

01:38PM 20 THE COURT: Then the Court adopts the factual findings
01:38PM 21 in the presentence report including the addendum that addressed
01:38PM 22 all of the objections. I agree with probation.

01:38PM 23 There has been a request for the Court to consider
01:38PM 24 specific 3553(a) factors of Mr. Kao, and that's set forth in
01:38PM 25 the sentencing memorandum, in which I have read. So based on

01:38PM 1 all of this information, the Court determines that the
01:38PM 2 applicable guidelines are: Total offense level 29, criminal
01:38PM 3 history category 1. This gives a guideline range of 87 to
01:38PM 4 108 months, as to Counts 1 through 3, under Criminal Number
01:39PM 5 21-61; and Count 1, under Criminal Number 23-03; and as to
01:39PM 6 Counts 4 through 8, under Criminal Number 21-61.

01:39PM 7 Supervised release, the guideline range is two to five
01:39PM 8 years, as to Counts 1 through 3, under Criminal Number 21-61;
01:39PM 9 Count 1, under Criminal Number 23-03, the statutory maximum is
01:39PM 10 up to five years; as to Counts 4 through 8, under Criminal
01:39PM 11 Number 21-61, the statutory maximum is up to three years.

01:39PM 12 Fine plus cost of imprisonment and supervised release,
01:39PM 13 the guideline range is \$30,000 to \$1 million. The statutory
01:39PM 14 provisions are for Counts 1 through 3, under Criminal Number
01:39PM 15 21-61, and Count 1, under Criminal Number 23-03, is up to
01:40PM 16 \$1 million. As to Counts 4 through 8, under Criminal Number
01:40PM 17 21-61, the statutory provision is up to \$250,000 or twice the
01:40PM 18 amount of the criminally derived property involved.

01:40PM 19 Restitution is in the amount of \$12,841,490. And
01:40PM 20 there's a mandatory special assessment of \$100 per count for a
01:40PM 21 total of \$900.

01:40PM 22 So these are the factors the Court sees in aggravation
01:40PM 23 and mitigation, Mr. Kao.

01:40PM 24 In aggravation, I first turn to the nature and
01:40PM 25 circumstances of the offenses to which you pled guilty. In

01:40PM 1 your situation you, through your company Navatek, applied for
01:40PM 2 three Paycheck Protection Program loans during the COVID-19
01:41PM 3 pandemic. These loan requests totalled \$15,694,329. You
01:41PM 4 committed fraud because the applications contained false
01:41PM 5 information about your company's payroll and the number of
01:41PM 6 employees which were all falsified. You also falsely stated
01:41PM 7 that Navatek would not receive any other PPP loans.

01:41PM 8 To compound this falsity, you used influence and
01:41PM 9 pressure on senior bank officials to process the loan quickly
01:41PM 10 by stating you had a relationship with our senators and
01:41PM 11 congresswoman in congress, and that they supported a quick
01:41PM 12 approval. As a result of these false applications, you
01:41PM 13 received \$12,841,491 for two loans, the third loan was denied,
01:42PM 14 and you directed others to move those loan proceeds to
01:42PM 15 different accounts, including \$2 million to your personal
01:42PM 16 account. You enriched yourself at the expense of local
01:42PM 17 businesses that were struggling and suffering and needed
01:42PM 18 emergency funds. And ultimately, as a result of your actions,
01:42PM 19 it's the taxpayers of this country, of our community, who have
01:42PM 20 been defrauded and left holding literally the bag to pay for
01:42PM 21 all of these millions.

01:42PM 22 Other factors are characteristics. You have a prior
01:42PM 23 conviction for assault, so you have a history of violence. You
01:42PM 24 pled guilty and are awaiting sentencing in the District of
01:42PM 25 Columbia for conspiring to make unlawful federal campaign

01:43PM 1 contributions and then submitting false documents to hide these
01:43PM 2 contributions. This demonstrates to the Court that you have
01:43PM 3 lived a life of a pattern of deceit and embezzlement and
01:43PM 4 entitlement and with a disregard for the law.

01:43PM 5 Another victim in your case is the Bank of Hawaii.
01:43PM 6 You altered multiple documents, when applying for a residence
01:43PM 7 on Kahala Avenue, and received a \$3 million mortgage loan for
01:43PM 8 which you were not eligible. As a result of your falsity, the
01:43PM 9 bank was forced to spend legal fees to foreclose, which will
01:43PM 10 continue incurring costs until the loan is paid off.

01:43PM 11 I've looked at your financial information in the
01:43PM 12 presentence report. There are several properties that you are
01:43PM 13 on deed for, two in Kahala one in Beverly Hills; there's
01:44PM 14 investment properties; there are cars, including a Mercedes and
01:44PM 15 Ferrari. So the question becomes why. And I can only conclude
01:44PM 16 it was simply and blatantly greed.

01:44PM 17 There are factors in mitigation. You have education
01:44PM 18 and training to support yourself in a legally and acceptable
01:44PM 19 way; you have no history of mental illness; you have no history
01:44PM 20 of drug addiction, although to your credit you self-reported an
01:44PM 21 alcohol addiction while on bond; you have the support of your
01:44PM 22 wife; you have two young children, ages eight and 9, one of
01:44PM 23 whom has disabilities and needs assistance in that for autism
01:44PM 24 and hearing impairment; and you have done volunteer work while
01:44PM 25 on bond with your church, Meals on Wheels. So those are the

01:44PM 1 factors in mitigation.

01:45PM 2 So I'll turn now to Mr. Nolan with regard to the
01:45PM 3 government's position on an appropriate sentence.

01:45PM 4 Mr. Nolan.

01:45PM 5 MR. NOLAN: Sure. Thank you, Your Honor. Before I
01:45PM 6 get to our position, I just want to put on the record that
01:45PM 7 PacMar, through its -- I may get his title wrong --
01:45PM 8 president/owner, Steven Loui, is present. The probation office
01:45PM 9 found to be PacMar victim, couldn't sort out the legal bills
01:45PM 10 well enough to come up with a definitive restitution figure.

01:45PM 11 Mr. Loui, through his attorney, Jesse Schiel, who is also
01:45PM 12 present, has asked to address the Court. So is the Court --

01:45PM 13 THE COURT: Yes, absolutely. Victims have a right to,
01:45PM 14 and if there is anyone from Bank of Hawaii, I would encourage
01:45PM 15 them to come forward as well.

01:45PM 16 MR. NOLAN: We don't have representatives of the
01:45PM 17 victim banks here or the Small Business Administration. Would
01:46PM 18 you like Mr. Loui to come forward now?

01:46PM 19 THE COURT: Yes, please, to the podium if he's
01:46PM 20 comfortable. If not, then next to you at counsel table.
01:46PM 21 Whatever you are comfortable with. Aloha. Welcome.

01:46PM 22 MR. LOUI: Your Honor, thank you for allowing me the
01:46PM 23 opportunity to speak today. I am Steven Loui, owner of PacMar
01:46PM 24 Technologies, formally known as Navatek. I'm here to redeem
01:46PM 25 myself from transferring the company I love and started to the

01:46PM 1 con man and criminal Martin Kao, who has damaged the company I
01:46PM 2 founded and its loyal and outstanding employees.

01:46PM 3 Pacific Marine & Supply Company is a ship-repair
01:46PM 4 company founded in 1944 by my father, Fred Loui. After my
01:46PM 5 father unexpectedly passed away in 1969, I returned home after
01:46PM 6 college, after graduating in engineering, to take over the
01:47PM 7 operations of the company. Under my leadership, Pacific Marine
01:47PM 8 became the largest commercial ship repair and dry-docking
01:47PM 9 company in Hawaii.

01:47PM 10 To complement Pacific Marine's operations, I started
01:47PM 11 PacMar Technologies in the 1970s under its original name
01:47PM 12 "Navatek Limited." Since its formation, PacMar's focus was on
01:47PM 13 developing advanced ships and marine technologies to improve
01:47PM 14 passenger ride quality, reduce operator injury, and improve
01:47PM 15 hull efficiency. PacMar has since grown into a diversified
01:47PM 16 technology company with an international presence, leading the
01:47PM 17 way in research engineering, design, innovation and
01:47PM 18 hydrodynamics.

01:47PM 19 Mr. Kao joined Pacific Marine in 2008, several decades
01:47PM 20 after the company had been formed, and I would like to say
01:47PM 21 successful. We are well known for our SWATH ships, dinner
01:47PM 22 boats and research ships that we had built. Unbeknownst to me
01:48PM 23 until very recently, Mr. Kao's deceit began at hiring, where he
01:48PM 24 falsely represented orally, and in his resume, that he held law
01:48PM 25 degrees from UCLA and NYU. It was only through his initial

01:48PM 1 deceit that I offered Mr. Kao a job.

01:48PM 2 In or around August 2018, after 40 years of running
01:48PM 3 the company, I decided to step away from the day-to-day
01:48PM 4 operations and believed I had found a worthy successor in
01:48PM 5 Mr. Kao to keep the company prospering and he would be one who
01:48PM 6 took good care of the employees.

01:48PM 7 Unfortunately, Mr. Kao did the opposite, running the
01:48PM 8 company immediately into the ground just one year through
01:48PM 9 numerous acts of criminality. Mr. Kao's, criminality included
01:48PM 10 not only the PPP fraud but also campaign finance fraud and
01:49PM 11 mortgage fraud, all of which the Court is well aware of.

01:49PM 12 Upon learning of Mr. Kao's outsized PPP loans through
01:49PM 13 an article in the Star Advertiser in the summer of 2020, I
01:49PM 14 immediately reported Kao's fraud to law enforcement and
01:49PM 15 participated in law enforcement investigations to ensure that
01:49PM 16 Mr. Kao was held responsible for his actions and to make sure
01:49PM 17 that the company's reputation and name remained clear.
01:49PM 18 Thereafter, I immediately initiated state proceedings to have
01:49PM 19 Mr. Kao removed from the company and began the lengthy process
01:49PM 20 of saving the company.

01:49PM 21 In this short period, Kao virtually destroyed a very
01:49PM 22 productive and local company, one which had a great reputation
01:49PM 23 at all times prior to Mr. Kao joining it. Approximately 91
01:49PM 24 employees, roughly half the company's work force, resigned
01:50PM 25 within nine months of Kao's arrest. Kao's criminality

01:50PM 1 paralyzed the company's ability to secure vital government
01:50PM 2 contracts that are the life blood of its business. Our
01:50PM 3 security holdings for our top secret research were put on hold
01:50PM 4 for many months until we were able to clear it. In that time
01:50PM 5 we lost many jobs. The company has managed to survive but only
01:50PM 6 through the loyal and incredibly dedicated work of its
01:50PM 7 remaining employees, some of which are here today. I also
01:50PM 8 provided large financial support to meet the cash needs of the
01:50PM 9 company.

01:50PM 10 While Mr. Kao cannot defend his past, he now seeks the
01:50PM 11 mercy of the Court at sentencing conveniently asserting that he
01:50PM 12 has been reborn and found new meaning in life. Put simply,
01:50PM 13 Martin's story, and all he has said about his request for a
01:51PM 14 reduction in sentencing because of his asserted rehabilitation
01:51PM 15 I believe is a fallacy.

01:51PM 16 Contrary to self-serving statements to this Court,
01:51PM 17 Mr. Kao has shown absolutely no remorse for the harm he has
01:51PM 18 caused to me, to the company, and the senior employees he fired
01:51PM 19 to clear a way for his criminal cohorts. And certainly not to
01:51PM 20 any of the employees, including many of the hard-working loyal
01:51PM 21 employees who lost their jobs due to the wreckage he left
01:51PM 22 behind. These -- the employees who stayed are the ones really
01:51PM 23 responsible for saving the company.

01:51PM 24 Mr. Kao has also shown no remorse by refusing to pay
01:51PM 25 the company back the millions he stole from it. Instead of

01:51PM 1 repaying the company, Mr. Kao has hidden his millions in assets
01:51PM 2 through a series of fraudulent conveyances and other
01:51PM 3 misconduct. We have multiple lawsuits to recover those funds.
01:52PM 4 Mr. Kao has defied all attempts and has not paid any of the
01:52PM 5 millions in damages that have been awarded against him, much of
01:52PM 6 which was simply stolen from the company. For example, he --
01:52PM 7 contrary to the company's operating charter, he had the company
01:52PM 8 issue checks to pay for his defense attorney shortly after his
01:52PM 9 arrest. Any amounts the company has received to date are due
01:52PM 10 to our costly legal actions to garnish wage and rental income.
01:52PM 11 The total Circuit Court awarded damages and accrued interest he
01:52PM 12 owes the company, as of the end of January, is \$8,079,945.
01:52PM 13 This month, in fact it was posted on the internet this morning,
01:52PM 14 the company has incurred further costs of \$500,000 in Federal
01:52PM 15 Election Commission fines and legal fees because of Kao's
01:52PM 16 political fraud.

01:53PM 17 Mr. Kao's claim of rebirth and enlightenment also run
01:53PM 18 contrary to his conduct before the Hawaii judiciary over the
01:53PM 19 past three years. In the same state court case that led to his
01:53PM 20 disassociation from the company, Mr. Kao has been found and
01:53PM 21 held in contempt of court three times in 2024 alone.

01:53PM 22 The contempt orders arose from Martin's attempted end
01:53PM 23 around the Court's rulings against him related to the
01:53PM 24 garnishment of rental proceeds for two luxury properties owned
01:53PM 25 by Kao and his wife, Tiffany Lam -- one worth over 6 million in

01:53PM 1 Kahala and the other worth several million in Hawaii Loa Ridge.

01:53PM 2 After Mr. Kao refused to comply with the Court's

01:53PM 3 orders in that case, the Court found Mr. Kao in contempt of

01:53PM 4 court entered on May 2, 2024. The Court's findings that Kao

01:53PM 5 engaged in bad faith and they stated:

01:53PM 6 "The Court views Mr. Kao's behavior as delaying the

01:54PM 7 proceedings in bad faith so that he can engage in evasive

01:54PM 8 behavior... The Court therefore finds that Kao had violated the

01:54PM 9 Court order and finds that Kao in contempt for violating that

01:54PM 10 order... Kao lacked a good faith excuse or reasonable basis for

01:54PM 11 failing to comply with the Court's order... Consequently, the

01:54PM 12 Court finds that Kao's contempt -- Kao's conduct in refusing to

01:54PM 13 comply with the Court's order was 'entirely without color' and

01:54PM 14 advanced 'for reasons of harassment and other improper

01:54PM 15 purposes.'"

01:54PM 16 A month later, after he did not comply with the court

01:54PM 17 order, on June 13, 2024, the Court issued a second contempt

01:54PM 18 order. Mr. Kao was found in contempt of court with the Court

01:54PM 19 finding as follows:

01:54PM 20 "The Court finds that Kao is in violation of the

01:54PM 21 Court's Contempt Order... Despite these repeated reminders and

01:54PM 22 efforts to compel Defendant Kao's compliance with the Court's

01:55PM 23 Contempt Order, Defendant Kao has refused to comply with the

01:55PM 24 Court's Contempt Order, just as he refused to comply with the

01:55PM 25 Court's prior orders which ultimately led to the Court's

01:55PM 1 Contempt Order. This Court bent over backwards to try to be
01:55PM 2 fair to Defendant Kao. But with his record of constant
01:55PM 3 evasion, no effort to try to lend any cooperation, recognition
01:55PM 4 that he had an enormous judgment debt, and doing everything to
01:55PM 5 avoid paying every penny, this Court is not able to issue a
01:55PM 6 ruling that would essentially excuse Defendant Kao and justify
01:55PM 7 his evasive behavior."

01:55PM 8 Defendant Kao was ordered to pay a civil fine to the
01:55PM 9 Court in the amount of \$200 per day.

01:55PM 10 After Kao failed to comply with the second contempt
01:55PM 11 order, Kao was again found in contempt of court a third time
01:55PM 12 and entered on November 22, 2024. The judge found as follows:

01:55PM 13 "The Court... finds that there is a record of
01:56PM 14 extremely evasive conduct by Kao, that his noncompliance with
01:56PM 15 the Court's Contempt Orders is and has been knowing and
01:56PM 16 willful, and that his defense of inability to pay and/or
01:56PM 17 poverty is not well taken given the extreme efforts he has
01:56PM 18 undertaken to avoid compliance of the Court's Contempt Orders."

01:56PM 19 Mr. Kao was ordered to pay a contempt fine of \$500 per
01:56PM 20 day under the third contempt order. Mr. Kao currently owes the
01:56PM 21 circuit court well over \$80,000 in civil fines, which he has
01:56PM 22 refused to pay the judiciary to date and he continues to ignore
01:56PM 23 and defy the Court's rulings.

01:56PM 24 Mr. Kao has not made any restitution to the company or
01:56PM 25 to the Hawaii state judiciary in spite of owing or co-owning

01:56PM 1 with family members six properties in Hawaii with a fair market
01:56PM 2 value in excess of \$15 million. Additionally, after his arrest
01:56PM 3 in September 2000, he sold a Beverly Hills condo in June 2021
01:57PM 4 for \$1,245,000 and was in the process of selling a Taiwan
01:57PM 5 property valued at \$800,000. We knew about the Taiwan property
01:57PM 6 because Kao illegally had the company pay his personal bills to
01:57PM 7 that attorney. So in the over \$2 million received from these
01:57PM 8 properties, none of it was used to make restitution to the
01:57PM 9 company or to the Hawaii judiciary. If he was truly remorseful
01:57PM 10 of his actions and all the damages he caused, he would have
01:57PM 11 used the cash and sold as many additional properties that he
01:57PM 12 controlled to pay the court damages.

01:57PM 13 Mr. Kao continues his fraudulent transgressions
01:57PM 14 extending to the Department of Justice. For his Washington
01:57PM 15 D.C. political fraud case, he was given a public defender
01:57PM 16 because of his claims of insolvency. We know that throughout
01:57PM 17 2022 and possibly earlier, Kao was receiving \$16,000 a month
01:58PM 18 from the Kahala property and \$8,100 a month from the Hawaii Loa
01:58PM 19 property. These were the rentals subject to our garnishment
01:58PM 20 orders which he also refused to acknowledge.

01:58PM 21 In addition to his real estate and rental property
01:58PM 22 income, Kao and his family committed charity fraud and
01:58PM 23 illegally received over \$3.1 million cash from the liquidation
01:58PM 24 of a charity asset, a luxury San Francisco condominium on Nob
01:58PM 25 Hill. These transgressions are a subject of two separate

01:58PM 1 lawsuits the company has filed -- excuse me, for charity fraud
01:58PM 2 and fraudulent property transfers. From the discovery in those
01:58PM 3 cases, the stocks owned in the Kao family Ameritrade account
01:58PM 4 are worth over \$4 million in 2021. I had my staff update the
01:59PM 5 value of those stocks. As of the end of the year they were
01:59PM 6 worth more than \$9 million.

01:59PM 7 With Kao's extensive resources, he should have been
01:59PM 8 using them to pay the multiple court awards totalling
01:59PM 9 \$8.2 million as part of his path to rehabilitation and
01:59PM 10 respecting laws and justice. Instead, he is lavishing himself
01:59PM 11 by attending Harvard classes which we estimate cost in excess
01:59PM 12 of \$30,000.

01:59PM 13 Based on all of the above and much more, PacMar
01:59PM 14 believes Mr. Kao deserves the maximum jail sentence allowable
01:59PM 15 by law. His lack of providing any restitution to those damages
01:59PM 16 from his crimes demonstrates his lack of remorse or accepting
01:59PM 17 responsibility for his transgressions. Far from being a
01:59PM 18 first-time offender, he has pled guilty to three separate
01:59PM 19 indictments and there are many more crimes that he has
01:59PM 20 committed and continues to commit that he has not been held
01:59PM 21 accountable for yet. His request to the Court for a reduced
02:00PM 22 sentence citing his rehabilitation in my opinion is just a
02:00PM 23 continuing scam. Thank you.

02:00PM 24 THE COURT: Thank you very much. I appreciate you
02:00PM 25 taking the time and those also from your company who came here

02:00PM 1 today. You obviously put a lot of time and thought in your
02:00PM 2 statement, and I have listened to all of it. So I thank you,
02:00PM 3 thank you very much. Good luck to you, sir.

02:00PM 4 MR. NOLAN: Thank you, Your Honor. There is not a lot
02:00PM 5 more for the government to say. The Court clearly has done its
02:00PM 6 reading, it's read everything, it had a comprehensive report by
02:00PM 7 the probation office, really an exceptional report in my view.
02:00PM 8 The Court has gone through aggravators and mitigators, but the
02:00PM 9 Court has distilled it. It's greed, deceit and entitlement.
02:00PM 10 And me saying that ten more times doesn't make it any worse.

02:01PM 11 I do just want to take a moment though to recall that
02:01PM 12 about ten days before Mr. Kao submitted the first application,
02:01PM 13 the one for \$10 million, this county was put under a
02:01PM 14 Stay-At-Home order. So the world had come to a standstill in
02:01PM 15 March of 2020. We didn't know what was happening. We were
02:01PM 16 wiping down groceries with bleach wipes because we didn't
02:01PM 17 understand what was going on around us.

02:01PM 18 And while that was happening, we were trying to figure
02:01PM 19 out, How do we move forward? How do we engage in business?
02:01PM 20 How do we do our work? How do we take care of our kids? How
02:01PM 21 do our kids get schooled? I think it's fair to say that we
02:01PM 22 were all in some state of relative panic. And so the
02:02PM 23 government's response at the municipal level, at the state
02:02PM 24 level, at the national level was to essentially shut us down
02:02PM 25 and shut down the economy.

02:02PM 1 This is a state full of small businesses, not unlike
02:02PM 2 many other states, but mom-and-pop shops, mom-and-pop
02:02PM 3 restaurants, family-owned institutions that have been around
02:02PM 4 for generations, new businesses struggling to make it for the
02:02PM 5 first time. And their customer base was just wiped out, and
02:02PM 6 their employee base was wiped out. Most of us were told to
02:02PM 7 stay at home, unless you performed an essential function.

02:02PM 8 And so the government through congress decided to pour
02:02PM 9 billions of money through the economy to pump that out as
02:02PM 10 quickly as it could to save the economy, so that employers who
02:03PM 11 had no income coming in or greatly reduced income coming in
02:03PM 12 could pay their employees; so their employees could buy food,
02:03PM 13 spend some money in their local neighborhoods, and do the
02:03PM 14 things we do every day and take for granted even when the
02:03PM 15 economy is bad. It was about as bad as things could get.

02:03PM 16 And so congress enacted the PPP program, Paycheck
02:03PM 17 Protection Program, for just that purpose; so that employers
02:03PM 18 could pay their employees, keep them on the payroll, hopefully
02:03PM 19 ride out the storm. We never thought it would be as long as it
02:03PM 20 lasted. We had some reprieves and thought we were done and
02:03PM 21 then we went back into it, and congress poured more and more
02:03PM 22 money in.

02:03PM 23 So along comes Mr. Kao right at the beginning of this
02:03PM 24 program. In fact, his first submission for the first loan was
02:04PM 25 actually done on a form that was changed that very night, and

02:04PM 1 he was asked to redo it on the current form, because the SBA
02:04PM 2 was scrambling to put together this program. And it did put
02:04PM 3 together this program, and it gave -- it told the banks to push
02:04PM 4 out the money, and it said it was going to guarantee all of
02:04PM 5 those loans up to \$10 million. And so while mom-and-pop shops
02:04PM 6 around the state and around the country were applying for
02:04PM 7 10,000 or 25,000, Mr. Kao decided that he would apply for 10
02:04PM 8 million.

02:04PM 9 Now Mr. Kao's company at the time named Navatek was
02:04PM 10 eligible for a fraction of that. It could have applied for its
02:04PM 11 -- based on its 140-or-so employees and done the formula, the
02:04PM 12 formula that took into account the salaries of those employees
02:04PM 13 up to a hundred thousand, and his company would have been
02:05PM 14 entitled to couple million, maybe a little more, maybe a little
02:05PM 15 less depending on how you really calculate it, he could have
02:05PM 16 done that. He didn't need to do it because he was a defense
02:05PM 17 contractor. And even if there was a slight disruption in the
02:05PM 18 money that flowed, that money continued to flow.

02:05PM 19 His customer didn't go away because his primary
02:05PM 20 customer was the U.S. Government. And that company that was
02:05PM 21 founded by Mr. Loui's father, or at least the related company
02:05PM 22 was, and then grown by Mr. Loui, is a valued defense contractor
02:05PM 23 primarily to the navy. They deal with boats and ships and
02:05PM 24 hulls and all sorts of things. Frankly, I don't understand.

02:05PM 25 They employed 140 people, about a hundred in Hawaii at

02:05PM 1 the time of that loan. Many of the jobs were high paying
02:05PM 2 engineer jobs, as you might expect. And so he didn't need the
02:06PM 3 money for his company, but he was eligible for a fraction. But
02:06PM 4 that wasn't good enough. So he put down 400-some-odd
02:06PM 5 employees, when it was 140. They did the calculation, it was
02:06PM 6 very simple, it came out above the 10 million max; he got the
02:06PM 7 10 million max.

02:06PM 8 And then he went to another bank and he lied to that
02:06PM 9 bank. He said, oh, we're entitled to this. He used the
02:06PM 10 same -- this time he did stick with his 140 employees; but as
02:06PM 11 we know, he had already gotten 10 million to cover those 140
02:06PM 12 and then a bunch of imaginary employees. So he lied to them
02:06PM 13 and he got his 2.8 million. He used a different -- he had a
02:06PM 14 number of LLCs related, they were not entitled to different
02:06PM 15 pots of money, they were entitled to -- there was one group of
02:06PM 16 employees, no matter which payroll they were on, and that's how
02:07PM 17 he considered it as well.

02:07PM 18 So he got the 2.8 million through deceit, through
02:07PM 19 lies. And then he doctored -- he actually altered the
02:07PM 20 promissory note after the fact so that some people, not
02:07PM 21 everyone in his organization, because some people knew, but
02:07PM 22 some people, perhaps accountants who knew about the earlier
02:07PM 23 PPP, perhaps others wouldn't see. So he took that note and he
02:07PM 24 literally on his computer redacted in white all references to
02:07PM 25 the PPP program. So it looked like a standard SBA note to hide

02:07PM 1 and conceal on top of his lies.

02:07PM 2 And then he went to a third bank, it was the second
02:07PM 3 institution in this state, and he lied to them and they pushed
02:07PM 4 back and he lied again. And finally they denied it. They
02:07PM 5 caught him.

02:08PM 6 And so he did all those things when he didn't need to
02:08PM 7 in the first place. He took \$2 million and transferred it to
02:08PM 8 his own coffers. In part, that 2 million we don't trace it to
02:08PM 9 the Kahala home, that's case number two, but it was in there
02:08PM 10 and it was for evaluation purposes when Merrill Lynch, B of A
02:08PM 11 looked at his application.

02:08PM 12 So he did all those things to the detriment of others
02:08PM 13 who really couldn't pay their employees, who couldn't pay their
02:08PM 14 rent or mortgage for their business, which was one of the other
02:08PM 15 eligible categories. He didn't need any of that money. And
02:08PM 16 while doing this, as the Court said, he used influence. He
02:08PM 17 touted his connections to politicians in this state and beyond
02:08PM 18 and their staffs. There were implied threats to the first bank
02:08PM 19 that, oh, they would be in touch, they would call, did he need
02:09PM 20 to call them on that bank, one of our largest banks, right?

02:09PM 21 Banks don't want senators being told that they are not
02:09PM 22 abiding by the dictates of a federal program. They were just
02:09PM 23 struggling with, what do we have to verify? He was one of the
02:09PM 24 first applicants. How do we do this? What standards do we
02:09PM 25 apply? And he was pushing, pushing, pushing, but the Court

02:09PM 1 knows that.

02:09PM 2 The emails are replete. The company emails are
02:09PM 3 replete with him and some of his colleagues joking about what
02:09PM 4 they were doing, making fun of it, making fun of others. It
02:09PM 5 was really terrible stuff, appalling stuff.

02:09PM 6 And so amazingly and incredibly, during that same very
02:09PM 7 time period, he applies -- in the second case, he applies to
02:09PM 8 buy yet another property, and the Court has his financial
02:10PM 9 assets, a \$4.5 million property in Kahala. Pretty nice. And
02:10PM 10 he wants a loan, so he gets that through Merrill Lynch and B of
02:10PM 11 A and he gets \$3 million. In doing that, he wants -- he again
02:10PM 12 sat down at his computer and he doctored his investment
02:10PM 13 portfolio, and he represented that he had much more money than
02:10PM 14 he did. Those were material statements. Whether or not he
02:10PM 15 would have qualified, that bank was going to look at that
02:10PM 16 because that's important. What does he have? Does he have the
02:10PM 17 ability to pay? Can we go against his other assets? The stuff
02:10PM 18 that is just standard business practices for banks.

02:10PM 19 Why he did that, I don't know. It makes no sense.
02:10PM 20 Did he need another house? He had many already in places like
02:10PM 21 Beverly Hills and here and Honolulu. But to actually engage in
02:11PM 22 that kind of conduct as a professional, he worked -- I don't
02:11PM 23 know whether he has a law degree or not, but he was a business
02:11PM 24 man leading one of the leading companies, maybe not the
02:11PM 25 biggest, but one of the leading companies in this state. He

02:11PM 1 was sophisticated, he worked for an accounting firm for years
02:11PM 2 before he joined Mr. Loui. There is no reason he should have
02:11PM 3 done this. Absolutely no reason. It was greed, it was deceit,
02:11PM 4 and it was entitlement. But the Court knows that.

02:11PM 5 So here's what the government recommends. First of
02:11PM 6 all, the government recommends the low end of the guidelines,
02:11PM 7 87 months. And we are recommending the low end of the
02:11PM 8 guidelines because we have taken into consideration his
02:12PM 9 post-offense rehabilitative conduct and his volunteering and
02:12PM 10 all of that. So that's where the government gives him credit
02:12PM 11 for that. It's ultimately of course up to the Court.

02:12PM 12 I will say, and I've been granted authority to say
02:12PM 13 this by the folks in DC who debriefed him, because you've heard
02:12PM 14 about that, they debriefed him extensively, he provided a lot
02:12PM 15 of information. No investigation has been launched as a result
02:12PM 16 of those debriefings. Whether something does, I don't know.
02:12PM 17 And if something does and the prosecutors in Washington are
02:12PM 18 involved with that, and they believe he's entitled to some
02:12PM 19 cooperation credit down the road for that, then they will call
02:12PM 20 me and we will make a decision collectively. And if he is
02:12PM 21 entitled to it, we will bring the issue back to the Court of
02:13PM 22 course.

02:13PM 23 But from the government's perspective, the Court
02:13PM 24 certainly can take into consideration his debriefings under the
02:13PM 25 statutory sentencing factors, but it did not amount to

02:13PM 1 substantial assistance.

02:13PM 2 All right, so back to the 87 months. The government
02:13PM 3 defers to the Court on supervised release; that's the Court's
02:13PM 4 resources through its probation office. With regard to the
02:13PM 5 rest, the forfeiture the Court has already articulated it is
02:13PM 6 \$12,841,490 that should be payable to the Small Business
02:13PM 7 Administration. There is a forfeiture order already in the PPP
02:13PM 8 case for that -- it should be that same amount. And the Court
02:14PM 9 has already ordered the forfeiture of the over 10 million that
02:14PM 10 the government seized pursuant to warrant from his own
02:14PM 11 accounts, 2 million, and his company's accounts somewhat north
02:14PM 12 of 8 million. And he will get credit for that toward that
02:14PM 13 forfeiture money judgment of course.

02:14PM 14 With regard to the fine, the government advocates for
02:14PM 15 a \$1 million fine. I mean, Mr. Loui went through some of his
02:14PM 16 assets, the probation has gone through some of his assets, the
02:14PM 17 nature of the crime, I'm not going to belabor it, but the
02:14PM 18 government feels this is one of those relatively rare cases
02:14PM 19 where a fine is appropriate. And we suggest the top of the
02:14PM 20 guideline, 1 million.

02:14PM 21 I know Ms. Yamaga will have something to say about the
02:14PM 22 criminal forfeiture order entered in the mortgage fraud case
02:15PM 23 and of course you'll listen to her on that. From the
02:15PM 24 government's perspective, and I do apologize we should have
02:15PM 25 gotten that in earlier, but it's a placeholder, there is no

02:15PM 1 doubt that the government is entitled to forfeiture of the
02:15PM 2 proceeds of that fraud, which are at least 3 million, and
02:15PM 3 that's what came out of that.

02:15PM 4 And the government feels the law is very clear,
02:15PM 5 provided some additional case law that Ms. Yamaga today just
02:15PM 6 moments before, that made clear that the government also gets
02:15PM 7 the appreciation prorated in that house for two-thirds of bank
02:15PM 8 money fraudulently obtained bought that house, one-third of
02:15PM 9 other money, the Kao's money, bought that.

02:15PM 10 But what the Court has entered, from the government's
02:15PM 11 perspective, is a placeholder until we have a foreclosure and a
02:15PM 12 sale. We just felt, why speculate, why estimate when there is
02:16PM 13 a state process that's going to come up with real numbers.
02:16PM 14 Now, the county says it's worth 7.2, 7.3 million, we'll see
02:16PM 15 what it sells for.

02:16PM 16 I will point out that PacMar has obviously submitted
02:16PM 17 to the probation office a request for restitution. The
02:16PM 18 probation office has looked at that, I've discussed it with the
02:16PM 19 probation office, PacMar has said to me they would like a
02:16PM 20 restitution hearing so that they can prove up restitution.
02:16PM 21 Essentially, what we are talking about are legal bills, legal
02:16PM 22 costs incurred in responding to subpoenas we issued here for
02:16PM 23 this investigation specific to the PPP case, I think. And the
02:16PM 24 probation office didn't feel that they could come up with a
02:16PM 25 number based on the submissions.

02:16PM 1 The government is really not in a better position than
02:17PM 2 the probation office, and so I've told PacMar through its
02:17PM 3 counsel that it really needs to parse the legal bills and put
02:17PM 4 them in piles so that the appropriate PAR can be considered by
02:17PM 5 the Court. If the Court is inclined to set a restitution
02:17PM 6 hearing, it is, of course, my hope that if you do set a
02:17PM 7 restitution hearing that counsel, PacMar, the government, with
02:17PM 8 help from the probation office, will come up with an agreed
02:17PM 9 upon number for the Court's consideration.

02:17PM 10 THE COURT: So on that, I have a couple of questions.
02:17PM 11 I didn't want to interrupt you, but if you wanted to finish up
02:17PM 12 I'm happy to do that. So my questions are threefold. It has
02:17PM 13 to do with the fine, it has to do with PacMar's request for
02:17PM 14 restitution, and I just have a question how come there is no
02:17PM 15 investment information in terms of Mr. Loui had mentioned that
02:17PM 16 he had all of these investment assets. I didn't see any of
02:18PM 17 that. I mean, I see the two Mercedes, the Ferrari, the Rolls
02:18PM 18 Royce and then all of this luxury real estate.

02:18PM 19 So the dilemma I find myself in in a fine is that I
02:18PM 20 know that there are several -- I'm personally aware of, because
02:18PM 21 it's in the federal court as a civil lawsuit, one. So if there
02:18PM 22 was any chance of recovering any kind of damage award, they
02:18PM 23 wouldn't be able to touch the money that he would have to pay
02:18PM 24 towards the fine, because that goes to the government, and I
02:18PM 25 certainly couldn't double dip if PacMar is given a restitution

02:19PM 1 amount that would then be an offset or a setoff, or what have
02:19PM 2 you, that they wouldn't be able to recover those amounts.

02:19PM 3 I'm just trying to figure out on different tracks. I
02:19PM 4 agree with you that this is one of those rare cases where a
02:19PM 5 fine makes sense, except for the fact that you have all of
02:19PM 6 these other victims that are out there that are seeking civil
02:19PM 7 remedies for the harm that's been done to them. And the
02:19PM 8 dilemma I find is is it just punishment, so there is an
02:19PM 9 argument for that. But yet does it then thwart ultimately any
02:19PM 10 kind of recompense to actual victims?

02:19PM 11 MR. NOLAN: Right. No, I appreciate the Court's
02:19PM 12 question and observations because that's true. One reason not
02:19PM 13 to impose a fine here is that PacMar is looking to recover, the
02:20PM 14 SBA is looking to recover, Bank of America is looking to
02:20PM 15 recover. Frankly, we are hindered here because, at least to my
02:20PM 16 knowledge, and certainly the probation office can correct me if
02:20PM 17 things change, but Mr. Kao never provided a financial
02:20PM 18 disclosure. And I'm seeing the probation office confirming it.

02:20PM 19 He was asked to provide one, of course. He didn't
02:20PM 20 sign a plea agreement so I don't have a contractual, right, but
02:20PM 21 in the normal course the probation office asked for that. And
02:20PM 22 we only have the information -- I believe it goes back to the
02:20PM 23 bail reports. I don't know if the probation office was able to
02:20PM 24 get more, but Mr. Kao declined to tell the probation office, in
02:20PM 25 response to this request, as to what he has out there.

02:20PM 1 So the government certainly understands that the Court
02:20PM 2 thinks it prudent, given all his outstanding forfeiture
02:21PM 3 judgments, given all of his outstanding judgments in the state
02:21PM 4 and arbitration proceedings, and given what the restitution
02:21PM 5 judgments will be in this case, if the Court decides not to
02:21PM 6 impose a fine.

02:21PM 7 THE COURT: Yes. So that's my question with regard to
02:21PM 8 the fines. That makes sense about the financial disclosure.
02:21PM 9 As I read in the presentence report, it's publicly available
02:21PM 10 information that was provided, obviously, what you do a real
02:21PM 11 estate --

02:21PM 12 MR. NOLAN: Sure.

02:21PM 13 THE COURT: -- look it up in the commuter with regard
02:21PM 14 to that and with regard to the automobiles and the outstanding
02:21PM 15 loans. So that's what would show up. And there was a report
02:21PM 16 of, even though there were all these properties, who was on the
02:21PM 17 deed. Okay, so that -- I was just wondering, somebody with
02:21PM 18 these assets, I imagine would have an investment account and
02:22PM 19 Mr. Loui mentioned it, but that makes sense. Okay.

02:22PM 20 MR. NOLAN: Right. So Mr. Loui has been able to do a
02:22PM 21 better job than the government at the moment on some of that.
02:22PM 22 I, of course, haven't verified that information with regard to
02:22PM 23 investment accounts and the like.

02:22PM 24 THE COURT: They have all those civil actions across
02:22PM 25 the street too, so I'm sure they have gotten a lot of

02:22PM 1 information from that.

02:22PM 2 MR. NOLAN: And I anticipate of course that after we
02:22PM 3 have judgments from the court that our civil division will
02:22PM 4 start -- will seek leave of court to conduct some discovery and
02:22PM 5 pursue assets out there as well. The IRS has a lien on that
02:22PM 6 Kahala house. I think that's in the PSR. It's somewhere north
02:22PM 7 of a million dollars. They are a codefendant in the -- or a
02:22PM 8 party in the foreclosure actions.

02:22PM 9 So that's the recommendation of the government. I'm
02:22PM 10 happy to answer any further questions.

02:22PM 11 THE COURT: No. Thank you very much. I appreciate
02:22PM 12 that.

02:23PM 13 Mr. Bakke.

02:23PM 14 MR. BAKKE: Your Honor, could I have one moment to
02:23PM 15 consult with the probation officer? I have a question.

02:23PM 16 THE COURT: You may.

02:23PM 17 Mr. Bakke, I'm sorry to interrupt. We have been going
02:23PM 18 for almost an hour. I think it's fair to the court reporter
02:23PM 19 that we take a brief recess. Could you consult and then just
02:23PM 20 let Ms. Cortez know when you are ready to proceed and we will
02:23PM 21 take like a ten-minute recess. Thank you very much. We stand
02:23PM 22 in recess.

02:23PM 23 (Proceedings were recessed at 2:23 p.m. to 2:32 p.m.)

02:32PM 24 THE COURT: The record will reflect the presence of
02:32PM 25 counsel and Mr. Kao and Ms. Nieling.

02:32PM 1 So, Mr. Bakke.

02:32PM 2 MR. BAKKE: Yes, Your Honor. Thank you.

02:32PM 3 Your Honor, before I get started, on page 23 of the

02:33PM 4 presentence report it talks about criminal history. And I

02:33PM 5 believe that on paragraph 97, if the Court had earlier said

02:33PM 6 today that the defendant had a prior conviction. But that was

02:33PM 7 not a conviction under state law, that was a deferral, and the

02:33PM 8 case was dismissed. So there was never any conviction. I just

02:33PM 9 wanted to clarify that.

02:33PM 10 THE COURT: Okay, thank you.

02:33PM 11 MR. BAKKE: Your Honor, when it comes to sentencing we

02:33PM 12 can sit here all day and talk about what a person did. And

02:33PM 13 that obviously is where we have to start, okay. But that is

02:33PM 14 not the end of the story, and we have to balance that under the

02:33PM 15 3553(a) factors with the mitigating factors.

02:33PM 16 And, in fact, just the general life history of a

02:33PM 17 person, because although people have to be held to answer for

02:33PM 18 their individual acts, individual actions don't always

02:34PM 19 completely define a person for their whole life. And

02:34PM 20 especially at Mr. Kao's age, he hasn't led a life of crime.

02:34PM 21 And these allegations that have brought him here are more types

02:34PM 22 of crimes of opportunity and things like that, as opposed to an

02:34PM 23 orchestrated long running -- this is not a Ponzi scheme, this

02:34PM 24 isn't --

02:34PM 25 THE COURT: It's not a Ponzi scheme, but it's very

02:34PM 1 involved and it was deliberate. This is not a bank teller who
02:34PM 2 at Christmas maybe is a single mother and somebody deposits
02:34PM 3 \$5,000 of cash and in a moment of weakness she takes the cash.
02:34PM 4 That's understandable. This took planning, this took
02:34PM 5 leadership. This was not a matter of just putting in one piece
02:34PM 6 of paper or making a phone call.

02:34PM 7 So I understand what you are saying, it's not a Ponzi
02:34PM 8 scheme where you're reaching out -- but it was quite
02:34PM 9 sophisticated.

02:34PM 10 MR. BAKKE: Your Honor, with all due respect, we
02:35PM 11 completely disagree with that in a sense of I went through that
02:35PM 12 same situation. Nobody this side of the bar had to deal with
02:35PM 13 employees, the COVID, the paying your rent, everything like
02:35PM 14 that. It was chaos. The problem is Mr. Kao took advantage of
02:35PM 15 that. And as we know across the country many people took
02:35PM 16 advantage of it that most didn't have any criminal history.
02:35PM 17 But when they saw it there and they saw that opportunity they
02:35PM 18 took it, and it was done over a relatively short period of
02:35PM 19 time. But I do agree with the Court that, yes, you kind of
02:35PM 20 have had to know what you were doing, you know.

02:35PM 21 THE COURT: And you kind of had to have the ability to
02:35PM 22 threaten that you could use relationships with senators and
02:35PM 23 congresswomen and throw your weight around with regard to that.
02:35PM 24 That's an aspect of this.

02:35PM 25 MR. BAKKE: That's correct. Mr. Kao actually had that

02:35PM 1 weight, so to speak, to throw around.

02:35PM 2 THE COURT: Right.

02:35PM 3 MR. BAKKE: So but the real problem started with him
02:36PM 4 even coming up with the stupid idea that we can get a bunch of
02:36PM 5 money here. And like the prosecutor said, he would have been
02:36PM 6 entitled to something, it looks like, under the regular rules.
02:36PM 7 It's just the way it was calculated. And there were other
02:36PM 8 companies, if you recall.

02:36PM 9 THE COURT: The way it was calculated because of
02:36PM 10 abject fraud. He took numbers of individuals that you said
02:36PM 11 were on your payroll and you inflated it by a factor of
02:36PM 12 several, not double.

02:36PM 13 MR. BAKKE: Absolutely. But I think what Mr. Nolan
02:36PM 14 and I were kind of getting at is this was so stupid because it
02:36PM 15 didn't have to be done. He could have just gone in and said,
02:36PM 16 you know what, I legitimately need this -- even though I have a
02:36PM 17 big company he still could have qualified for something. But
02:36PM 18 that goes back to greed and despair. Why didn't he just apply
02:36PM 19 normally, instead of trying to milk it for more than the
02:36PM 20 program --

02:36PM 21 THE COURT: Well, you could get six times more than
02:36PM 22 apparently he might have been able to qualify for. Although, I
02:37PM 23 don't know if he really qualified for it because it wasn't
02:37PM 24 meant for people who had like Uncle Sam as the provider. But
02:37PM 25 even assuming that to be true, we're talking -- well, Mr. Nolan

02:37PM 1 had mentioned somewhere in the neighborhood of \$2 million -- we
02:37PM 2 are talking about almost \$13 million.

02:37PM 3 MR. BAKKE: Absolutely, correct, and that's where the
02:37PM 4 crime comes in, Your Honor. So I'm trying to get into -- you
02:37PM 5 know, about this being a long, drawn out, thought out process.
02:37PM 6 This was something that just came up in a very short period of
02:37PM 7 time, there weren't a lot of rules, it was ripe for abuse,
02:37PM 8 which we found out later through all the cases across the
02:37PM 9 country, and he absolutely has to be held accountable for that.

02:37PM 10 But I'm trying to put it in kind of a framework like
02:37PM 11 we didn't know what was going on. You had places like Ruth's
02:37PM 12 Chris, Shake Shack, you had major companies all applying for
02:37PM 13 these maximum \$10 million loans that they qualified evidently
02:37PM 14 for under the rules. But when the public kind of heard about
02:38PM 15 it, a lot of those companies let the loan go because of the
02:38PM 16 optics. It looked bad, why does this big company get all this
02:38PM 17 money and the mom-and-pop shops hardly get anything?

02:38PM 18 Again, not any excuses. I'm not making any excuses.
02:38PM 19 I'm just trying to put it in a little bit of context because we
02:38PM 20 are talking about Martin's overall character of his whole life
02:38PM 21 that this was a very short period of time.

02:38PM 22 Now, he was very busy during that short period of
02:38PM 23 time, but he had 50 years before that. He was a good guy,
02:38PM 24 father, all of that stuff. He was successful. He had the
02:38PM 25 Ferraris -- he had more than one Ferrari, he had the

02:38PM 1 properties, he was living a successful lifestyle that came from
02:38PM 2 legitimate work. He is not a drug dealer or something.

02:38PM 3 So we go through all that and then, all of sudden, now
02:39PM 4 he is greedy and deceitful and everything like that. And I'm
02:39PM 5 looking at that and going, what changed from Martin and the
02:39PM 6 father and everything to this? Where did he get lost? Because
02:39PM 7 he wasn't like that before, and the only thing I can find, Your
02:39PM 8 Honor, is when he got involved with Navatek and Mr. Loui and he
02:39PM 9 went to work for them. And that --

02:39PM 10 THE COURT: Wait, wait. Okay, honestly I got to head
02:39PM 11 you off here. So you are saying because he started working at
02:39PM 12 this firm, from which he has stolen millions of dollars, that
02:39PM 13 that somehow they made him do it or influenced him to do these
02:39PM 14 actions?

02:39PM 15 MR. BAKKE: Well, Your Honor, I'm unaware of him
02:39PM 16 having stolen millions of dollars from the company.

02:39PM 17 THE COURT: Well, it was supposed to go to the
02:39PM 18 company, right? Didn't he apply for the PPP? It was not for
02:39PM 19 him personally, he wasn't supposed to personally get the money,
02:40PM 20 correct?

02:40PM 21 MR. BAKKE: Correct, for the company.

02:40PM 22 THE COURT: Right. And he put the company's name on
02:40PM 23 it, and he made representations about the company qualifying
02:40PM 24 for PPP.

02:40PM 25 MR. BAKKE: Yes.

02:40PM 1 THE COURT: And so then when those get approved, then
02:40PM 2 that money is supposed to go to the applicant, Navatek. So I'm
02:40PM 3 kind of losing you with saying, well, yeah, but Navatek really
02:40PM 4 didn't lose any money or there is no evidence of Navatek --

02:40PM 5 MR. BAKKE: They didn't because they weren't entitled
02:40PM 6 to that money to begin with.

02:40PM 7 THE COURT: You know what, so I get that. So you are
02:40PM 8 saying that the whole fraud of this, the only victims then are
02:40PM 9 the taxpayer and the banks?

02:40PM 10 MR. BAKKE: Correct, Your Honor.

02:40PM 11 THE COURT: Navatek is not a victim. Is that the
02:40PM 12 point you are trying to make?

02:40PM 13 MR. BAKKE: As far as the PPP loan itself, because I
02:40PM 14 got a little lost with Mr. Loui talking about all this other
02:40PM 15 collateral damage that may come, and that may be going to
02:40PM 16 restitution. But where I was going with this, Your Honor, is
02:41PM 17 not he went to work for the company so he stole money from the
02:41PM 18 PPP loan, because we also have the Washington D.C. case.

02:41PM 19 THE COURT: Yeah, absolutely, which I am taking into
02:41PM 20 account as 3553(a) factors of sentencing because he is a
02:41PM 21 convicted felon in another matter, and I know generally what
02:41PM 22 that involves. So that's an additional factor I can take into
02:41PM 23 account in evaluating what an appropriate sentence is. But I
02:41PM 24 don't make any judgment with regard to what happened there
02:41PM 25 because that's not part of my case.

02:41PM 1 MR. BAKKE: Correct, Your Honor. We know that it was
02:41PM 2 campaign fraud, making illegal donations to elected officials.

02:41PM 3 THE COURT: Correct.

02:41PM 4 MR. BAKKE: So that's kind of where I'm saying is when
02:41PM 5 Mr. Kao came into Navatek, he was not a businessman, he wasn't
02:41PM 6 experiencing government contracting. Quite frankly, I don't
02:41PM 7 know how he got 99 percent of the company, why they gave it to
02:41PM 8 him. It appears because they were happy that he did something
02:42PM 9 good for them.

02:42PM 10 THE COURT: Well, I don't know and I don't want to
02:42PM 11 make any judgment. What's your point with regard to --

02:42PM 12 MR. BAKKE: My point, Your Honor, is when he came in
02:42PM 13 that company was rotten already. And so he learned from
02:42PM 14 Mr. Loui, he learned from them the way they did things, and the
02:42PM 15 way they did things when he came in was already in place. You
02:42PM 16 pay people for influence, you throw your weight around, you do
02:42PM 17 those kinds of things.

02:42PM 18 Before this thing, when he started, he wasn't any of
02:42PM 19 that kind of stuff. But he got in there and that's where he
02:42PM 20 lost his way, Your Honor. He got into that environment, it was
02:42PM 21 big money, it was relatively easy money, and he loved the whole
02:42PM 22 thing of it. He loved everyone looking up to him and being the
02:42PM 23 boss and flying to DC and being the big company in Hawaii. And
02:42PM 24 he just got lost. He got lost in all of that. And the money,
02:42PM 25 the Ferraris, the whole thing, right.

02:42PM 1 And that's where I'm just trying to put in a little
02:43PM 2 bit of context that that's where -- he went from a normal guy
02:43PM 3 to this super star in the industry and all the benefits that
02:43PM 4 came with it. And he got lost, he took advantage of it, and
02:43PM 5 then that brings us to the rehabilitation. Because as high as
02:43PM 6 he went, he fell just as far.

02:43PM 7 And as the -- Court is aware, I don't need to go
02:43PM 8 through all the rehabilitation, but this was all done on his
02:43PM 9 own. I mean, to me, and I know the Court has read through
02:43PM 10 everything and the Court really I think in other cases, you
02:43PM 11 really take into consideration the letters, right? Not because
02:43PM 12 it's a letter from a bank president, it's somebody that really
02:43PM 13 knows him and somebody that can really talk to the person.

02:43PM 14 And I've never seen in a case like this where you have
02:43PM 15 letters from the Cheese Cake Factory from his co-workers, where
02:43PM 16 he spent over two years excelling in a job that many people
02:43PM 17 would say, well, that's so below him. Obviously, there is
02:44PM 18 nothing wrong with working at the Cheese Cake Factory, but it's
02:44PM 19 not the CEO of Navatek.

02:44PM 20 THE COURT: Understood. Understood.

02:44PM 21 MR. BAKKE: And so those things are looking at -- when
02:44PM 22 I go back to 3553(a) is that he has humbled himself, because he
02:44PM 23 went from kind of the zero to the hundred back down almost to
02:44PM 24 the zero. And that takes a lot of character and a lot of
02:44PM 25 humbling, and he did well, and he excelled at it. And I think

02:44PM 1 his values changed.

02:44PM 2 And I remember I told him one time, I went to visit

02:44PM 3 him and he said, oh, look at this Ferrari. I got this Ferrari.

02:44PM 4 And I go, yeah, but you know what, Martin, what's important now

02:44PM 5 is not what's in your garage, it's who lives in your house.

02:44PM 6 That's where your focus and goals are. And he just looked at

02:44PM 7 me like, I never thought of it that way. And he's got a

02:44PM 8 beautiful family, and he put them through hell through all of

02:45PM 9 this, and he'll have to attenuate to that.

02:45PM 10 But it's that kind of situation where, you know -- the

02:45PM 11 Harvard thing. I was like, what do you mean you got into

02:45PM 12 Harvard? He didn't even tell me. I found out --

02:45PM 13 THE COURT: Did it really cost \$30,000?

02:45PM 14 MR. BAKKE: I don't know how much the tuition is.

02:45PM 15 THE DEFENDANT: It's about \$900 a college credit,

02:45PM 16 graduate credit. I've taken 20 credits already.

02:45PM 17 THE COURT: And you took 20 credits. Thank you.

02:45PM 18 Okay.

02:45PM 19 MR. BAKKE: Again, it's not one of these cases where

02:45PM 20 we are looking so hard at rehabilitation, because that's, as

02:45PM 21 the Court said, that's just one of the factors. Just one of

02:45PM 22 them. But it's also a very important one.

02:45PM 23 Obviously, restitution and all that stuff it sounds

02:45PM 24 like we're probably going to have to have a restitution study

02:45PM 25 to sort that out more. There's also the \$2 million after we

02:46PM 1 are done with court here. We have to go downstairs because
02:46PM 2 they are going to take the \$2 million that is up on the bail;
02:46PM 3 so we are going to have to sort that out more.

02:46PM 4 What I'm really here about now is with Martin because
02:46PM 5 we hear everything, well, he lied, he lied, he lied. Yeah, no
02:46PM 6 doubt that he lied. I guess my position is, does it really
02:46PM 7 raise it to that much of an aggravating factor in a situation
02:46PM 8 where really the whole charge is lying? I mean, everyone that
02:46PM 9 was charged with PPP loans lied. So it's kind of like that is
02:46PM 10 the crime.

02:46PM 11 THE COURT: Well, it is the crime. Fraud is the
02:46PM 12 crime, right? And then we look at also the amount that the
02:46PM 13 person benefitted by, right? So I admit to you there was a lot
02:46PM 14 of PPP fraud apparently. I don't think the statistics will
02:46PM 15 bear out that there were a lot of fraud in excess of
02:46PM 16 \$12 million.

02:46PM 17 MR. BAKKE: I would agree with that. It's about 1 to
02:47PM 18 2 million and then after that it's like 15 or 20. It's kind of
02:47PM 19 like not a real gap in the middle from the cases that I saw.

02:47PM 20 THE COURT: Right. So this is a pretty egregious case
02:47PM 21 in terms of the amount and also his role.

02:47PM 22 So where are you on what's an appropriate sentence?

02:47PM 23 MR. BAKKE: Your Honor, I just believe that under the
02:47PM 24 very unique circumstances of this case, especially such as an
02:47PM 25 exemplary post-offense rehabilitation, I don't know where the

02:47PM 1 actual range should be. But I would recommend that a guideline
02:47PM 2 range of 87 months is more than necessary to comply with the
02:47PM 3 sentencing goals in 3553(a)(2). How much? I'll defer to the
02:47PM 4 Court, Your Honor.

02:47PM 5 But with his background, prior to starting at Navatek
02:47PM 6 and ending at Navatek, prior to that he's led a good life, and
02:48PM 7 he's going to come out of this at some point. We just got to
02:48PM 8 make sure that it's -- and this is the hard job for you, Your
02:48PM 9 Honor, is the Goldilocks, which is we don't want it too hash
02:48PM 10 but not too soft either. He definitely has to be made an
02:48PM 11 example of, and he has to atone, and he has to pay and all of
02:48PM 12 that. I just don't know where that perfect bowl of porridge is
02:48PM 13 at the end of the day, but I believe that 87 months is more
02:48PM 14 than necessary.

02:48PM 15 THE COURT: Okay. Thank you very much.

02:48PM 16 Ms. Yamaga, is there anything you wanted to add and
02:48PM 17 then I'll give Mr. Kao an opportunity to speak on his behalf.

02:48PM 18 MS. YAMAGA: Nothing with respect to the sentence. I
02:48PM 19 just have a comment on the criminal forfeiture. Do you want me
02:48PM 20 to address that now?

02:48PM 21 THE COURT: Sure.

02:48PM 22 MS. YAMAGA: So as Mr. Nolan alluded to, he and I have
02:48PM 23 had a conversation, I just noted that his motion and proposed
02:48PM 24 order was only filed two days ago, which gave me very little
02:49PM 25 time to review it, in particular, little time to review it with

02:49PM 1 Mr. Kao.

02:49PM 2 I can go through the one legal issue that I noted upon
02:49PM 3 my initial perusal, but what I'm ultimately asking the Court to
02:49PM 4 do is to hold off on the final order of judgment and just give
02:49PM 5 me one week to review it with Mr. Kao --

02:49PM 6 THE COURT: Absolutely.

02:49PM 7 MS. YAMAGA: -- and we might not make this one
02:49PM 8 objection that I had already highlighted to Mr. Nolan.

02:49PM 9 THE COURT: Yes, I think so. And I think the way the
02:49PM 10 proposed order was is that it was just the fact of the
02:49PM 11 forfeiture wasn't entitled to under the case but not the
02:49PM 12 amount. And then we're going to have to talk about the
02:49PM 13 calculations. So I just assume that you are not challenging
02:49PM 14 that the government is entitled to forfeiture, but you are
02:49PM 15 really challenging how that's going to be calculated in the
02:49PM 16 final amount.

02:49PM 17 MS. YAMAGA: That's correct. It's the appreciation
02:49PM 18 whether that's --

02:49PM 19 THE COURT: Yes, and that might be a legal issue for
02:49PM 20 me to rule on.

02:49PM 21 MS. YAMAGA: Yes, Your Honor. That's the only issue
02:49PM 22 right now.

02:49PM 23 THE COURT: Right. And then the other issue that came
02:49PM 24 up is potentially a restitution hearing with regard to
02:49PM 25 Navatek's claim.

02:49PM 1 Do you guys have any position on that, or you guys
02:50PM 2 want to think about it and we'll have a status conference?
02:50PM 3 MS. YAMAGA: I'd defer to Mr. Bakke.
02:50PM 4 THE COURT: Because that's on his, yes. You're on the
02:50PM 5 bank loan. Sorry.
02:50PM 6 Mr. Bakke.
02:50PM 7 MR. BAKKE: Maybe we can have a status conference on
02:50PM 8 it.
02:50PM 9 THE COURT: Okay, very good. Let's do that because I
02:50PM 10 don't have enough information to do that.
02:50PM 11 Mr. Kao, you have an opportunity to speak on your
02:50PM 12 behalf, it's this time, if you wish. If you don't, it won't be
02:50PM 13 held against you. Do you wish to say something to the Court?
02:50PM 14 THE DEFENDANT: Yes, Your Honor.
02:50PM 15 THE COURT: All right. Please.
02:50PM 16 THE DEFENDANT: First of all, good afternoon.
02:50PM 17 THE COURT: Good afternoon.
02:50PM 18 THE DEFENDANT: Thank you for this opportunity to
02:50PM 19 address the Court.
02:50PM 20 I'm here because I failed. I'm here today to accept
02:50PM 21 responsibility for my mistakes and face the consequences of my
02:50PM 22 actions. So I say before this Court, I'm sorry, I have no
02:50PM 23 excuses, I acknowledge my mistakes, and I accept full
02:51PM 24 responsibility for the wrongs I've committed.
02:51PM 25 I can assure the Court that these statements are not

02:51PM 1 said impiously, but I also do not believe that anything I say
02:51PM 2 today, however genuine, could ever excuse my actions. At the
02:51PM 3 end, only my actions can.

02:51PM 4 As I've come to learn through my own epistemology, a
02:51PM 5 life journey towards repentance, any genuine contrition,
02:51PM 6 accountability and acceptance of my mistakes cannot be
02:51PM 7 proclaimed, they must be ensued through and from my actions.

02:51PM 8 A lot of people have said a lot of things about me and
02:51PM 9 the person I was when I committed these offenses. So today let
02:51PM 10 me tell the Court who I was.

02:51PM 11 I was a naive and ignoramus imposture. So naive, so
02:52PM 12 ignorant that I had no fear or even understanding of the
02:52PM 13 consequences of my actions. I didn't think that it was illegal
02:52PM 14 or that lying could be prosecuted as a crime. I wrongfully
02:52PM 15 thought that fraud would result in no direct physical or
02:52PM 16 visceral financial harm was of any consequence. None of the
02:52PM 17 crimes I'm here before the Court today were contrived or
02:52PM 18 premeditated. Instead, everything was by opportunity and by
02:52PM 19 chance.

02:52PM 20 So when the banks told me to just apply as I saw fit,
02:52PM 21 to just apply, however it made sense for my company, don't
02:52PM 22 worry about how you apply, we'll figure it out later. It
02:52PM 23 doesn't matter how you apply. It only matters how you spend
02:52PM 24 the money.

02:52PM 25 So I saw opportunities in the chaos with the pandemic.

02:52PM 1 And if someone asked questions later -- and I took advantage of
02:53PM 2 it. And if someone asked questions later, I would just deal
02:53PM 3 with it at that time. Both of my offenses occurred around the
02:53PM 4 same time, both during the height and frenzy of the pandemic,
02:53PM 5 both crimes of opportunity committed without planning or any
02:53PM 6 forethought.

02:53PM 7 While my mistakes may be borne from situational
02:53PM 8 circumstances, it doesn't make -- mean that there is no
02:53PM 9 accountability for my actions. For too long I have allowed
02:53PM 10 myself to hide behind the misguided notions of ethics and
02:53PM 11 philosophies of consequentialism, that somehow the end justify
02:53PM 12 the means. From the false narrative I've painted in my mind,
02:53PM 13 that despite my wrongful conduct and how the company applied
02:53PM 14 for the PPP loans, my actions were justified and even to be
02:53PM 15 celebrated. Because in the calendar year 2020, despite COVID,
02:53PM 16 despite Hawaii shutting down, despite America shutting down,
02:54PM 17 despite the world shutting down, I still spent \$16 million.
02:54PM 18 \$15,850,461 to be exact on my employees' payroll salary and
02:54PM 19 wages, most of which are here today. It included my own salary
02:54PM 20 of \$1. I spent far in excess in payroll in 2020 in the 12.8
02:54PM 21 million my company received in PPP loans.

02:54PM 22 I know this is not a time to get into the details, but
02:54PM 23 I can assure this Court that I did not receive one penny of the
02:54PM 24 PPP money.

02:54PM 25 THE COURT: I'm sorry, what about the \$2 million that

02:54PM 1 was put into your account?

02:54PM 2 THE DEFENDANT: The \$2 million was a distribution for
02:54PM 3 my personal capital account. And the reason he was able to
02:54PM 4 trace it was because the PPP funds weren't deposited into the
02:55PM 5 company's general business account, which pays payroll, my
02:55PM 6 distributions --

02:55PM 7 THE COURT: But you know you are being held
02:55PM 8 accountable for the \$2 million that was transferred.

02:55PM 9 THE DEFENDANT: I know. I understand.

02:55PM 10 THE COURT: And now you're saying that that was money
02:55PM 11 you were legally entitled to and that was not part of the crime
02:55PM 12 that you committed. I just want to make sure what you're
02:55PM 13 telling me so I understand it correctly.

02:55PM 14 THE DEFENDANT: I'm not sure how to explain the
02:55PM 15 semantics other than to say that when we received the PPP
02:55PM 16 loans --

02:55PM 17 THE COURT: Right. It went into the company account,
02:55PM 18 it got commingled --

02:55PM 19 THE DEFENDANT: It went into the company account, two
02:55PM 20 tranches: One for 10 million and one for 2.8. When we
02:55PM 21 received the 10 million, we moved 8 million of it into a
02:55PM 22 company account, a higher bearing interest brokerage account.

02:55PM 23 THE COURT: Okay.

02:55PM 24 THE DEFENDANT: Company account, company account.
02:55PM 25 From our general business account where we paid salaries, wages

02:56PM 1 and everything else, I made a distribution to myself --
02:56PM 2 actually a loan for \$2 million. So I understand the
02:56PM 3 traceability rule and the money being tainted. So I understand
02:56PM 4 that dynamic, and I don't --

02:56PM 5 THE COURT: And that's why I'm having a little
02:56PM 6 difficulty swallowing that you didn't take -- you know, I have
02:56PM 7 to say it's interesting because the dilemma I have on
02:56PM 8 sentencing, quite frankly -- well, I'll let you finish and then
02:56PM 9 I'll let you know some of the concerns I have, but go ahead.

02:56PM 10 THE DEFENDANT: You know all this, you know, the money
02:56PM 11 fungibility issues, how much money I spent on payroll, I agree
02:56PM 12 it all fueled my delusions of self-righteousness. I even sent
02:56PM 13 emails that are bragging that our company will be the poster
02:56PM 14 child of PPP. Once the Small Business Administration came in
02:57PM 15 and audited us on how we spent the money, once congress saw
02:57PM 16 that we talked about my congressional influence on
02:57PM 17 relationships, once they saw how we spent -- how much money we
02:57PM 18 spent on payroll, how I hired and created jobs during the
02:57PM 19 pandemic in each of their individual states, this was across 12
02:57PM 20 different states.

02:57PM 21 THE COURT: So you're like Robin Hood then, you're
02:57PM 22 actually a good guy doing all of these things. So no matter
02:57PM 23 how you robbed other people to pay for that, you did only good
02:57PM 24 things with it; is that what you are telling me?

02:57PM 25 THE DEFENDANT: That's what I fooled myself into

02:57PM 1 believing.

02:57PM 2 THE COURT: But you understand that's not what
02:57PM 3 happened now, or do you still believe that? That's the problem
02:57PM 4 I'm having.

02:57PM 5 THE DEFENDANT: I do believe that. I do believe that
02:57PM 6 I'm here today because I made a mistake. I justified my own
02:57PM 7 actions in how I applied. And I can confess to the crimes I've
02:57PM 8 done, but I cannot accept the things that I didn't do.

02:58PM 9 THE COURT: Like what, that you didn't do, that are
02:58PM 10 you going to be held accountable in the sentencing or that
02:58PM 11 there are other things that people are mad at you about that
02:58PM 12 has nothing -- what we are talking about is a sentencing. I'm
02:58PM 13 trying to figure out an appropriate sentence for you, so I'm
02:58PM 14 just -- I just need clarity in my mind. You said you're not
02:58PM 15 responsible for the things that you didn't do.

02:58PM 16 THE DEFENDANT: Right.

02:58PM 17 THE COURT: And I know Mr. Loui talked about a lot of
02:58PM 18 different things and that's in state court. I'm just looking
02:58PM 19 at what's in the presentence report.

02:58PM 20 THE DEFENDANT: Okay. Then I'll disregard what
02:58PM 21 Mr. Loui said.

02:58PM 22 THE COURT: Yeah. I don't know what's going on, and I
02:58PM 23 make no judgment with regard to that. The victims have an
02:58PM 24 opportunity to speak, and they can talk about whatever they
02:58PM 25 want to talk about because they have a right to talk about how

02:58PM 1 they believe they've been affected. So whatever is going for
02:58PM 2 the garnishment and everything else, that's not part of this
02:58PM 3 case.

02:58PM 4 THE DEFENDANT: I'll disregard that then. I'll
02:59PM 5 retract that statement.

02:59PM 6 THE COURT: Great.

02:59PM 7 THE DEFENDANT: I understand that lying to myself only
02:59PM 8 prolonged my mental anguish, and I could not accept the
02:59PM 9 consequences of my actions because I refused to confront the
02:59PM 10 reality of my own choices, insisting that I was a victim of
02:59PM 11 prosecutorial zeal.

02:59PM 12 Today I truly see and can clearly see that my mistakes
02:59PM 13 and failures, while manifested in my criminal actions before
02:59PM 14 this court today, are so much more embodied in my failure as a
02:59PM 15 CEO and leader in our business community. There was no book,
02:59PM 16 no manual, no courses you could take -- that I could take to
02:59PM 17 learn how to be a CEO. For me, all I knew how to do wrongfully
02:59PM 18 was to emulate those I worked for, their behavior.

02:59PM 19 THE COURT: So you are not in a drug conspiracy where
03:00PM 20 you are working for the mafia, the Mexican cartel. This was a
03:00PM 21 whole idea of filling out forms to seek money from a government
03:00PM 22 program where you falsified information. So what you are
03:00PM 23 telling me is that other people made you do this?

03:00PM 24 THE DEFENDANT: No, I'm not telling you that at all.

03:00PM 25 THE COURT: Okay. You are telling me that you are in

03:00PM 1 a culture where somehow you got the message that this is what
03:00PM 2 you are supposed to do, even though nobody told you directly to
03:00PM 3 multiply the number of -- to falsify and multiply by almost a
03:00PM 4 factor of like three, right, from 150 to 400 employees, that's
03:00PM 5 because you were working in this terrible culture?

03:00PM 6 THE DEFENDANT: No, my culture that I'm referring to
03:00PM 7 is the culture of political influence and the culture of maybe
03:00PM 8 lawless dispensations. So when I applied for the PPP loans,
03:01PM 9 the reason I applied the way I applied was, at the time we were
03:01PM 10 growing our company exponentially and, the truth be told, the
03:01PM 11 way we grew our company was by making promises to senate
03:01PM 12 appropriations, congressional appropriation members in exchange
03:01PM 13 for creating jobs in their state.

03:01PM 14 So when the pandemic hit, I was asked and directed by
03:01PM 15 members that I served, Will you continue to honor the job
03:01PM 16 commitments you made in my state? And I couldn't do that. I
03:01PM 17 could not have done it without the PPP loan.

03:01PM 18 THE COURT: Without falsifying the PPP loan so that
03:01PM 19 you would get a six-fold kind of money.

03:02PM 20 THE DEFENDANT: Correct. So the PPP loan, the way
03:02PM 21 it's calculated, it's based on historical data.

03:02PM 22 THE COURT: Right. So I guess what you are saying is
03:02PM 23 you are arguing it was a crime of necessity? You had a gun to
03:02PM 24 your head and you had to do this because you made these
03:02PM 25 promises and, therefore, you had to commit fraud? Honestly, I

03:02PM 1 wouldn't recommend you go down this road, I have to tell you,
03:02PM 2 because it's kind of like blaming your mother for all of this.
03:02PM 3 Well, she didn't raise me right and therefore I committed this.
03:02PM 4 I'm sure that's not what you intend to say.

03:02PM 5 THE DEFENDANT: No, it's not.

03:02PM 6 THE COURT: Yeah, but it's going down that road. So I
03:02PM 7 would just ask you to think about what you want to share with
03:02PM 8 me. Because what I have before me are fairly discreet acts,
03:02PM 9 right, the two loans, the misrepresentations, six times the
03:02PM 10 amount that the company would have been entitled to, according
03:02PM 11 to the government, and then fraudulently conducting yourself
03:03PM 12 with regard to the mortgage loan.

03:03PM 13 So I don't think anybody else applied for those
03:03PM 14 things, and I understand what you are saying about the
03:03PM 15 different tranches, and then you're being paid out and you
03:03PM 16 ordered this thing. But the way that the information is is
03:03PM 17 that the 2 million that went into your personal account came
03:03PM 18 from the PPP -- came after the PPP money was deposited with the
03:03PM 19 company.

03:03PM 20 So I'm just going to ask you, what's the point that
03:03PM 21 you're trying to make in terms of explaining to me why you did
03:03PM 22 this other than greed -- or it was greed, but you have a reason
03:03PM 23 for it, like people made you do it.

03:03PM 24 THE DEFENDANT: It's not that someone made me do it.
03:04PM 25 It's -- whether it's greed or personal pride, I was in a

03:04PM 1 position where during COVID a lot of people were asking for a
03:04PM 2 lot of things, and it felt good to be able to meet those
03:04PM 3 expectations -- rightfully or wrongfully.

03:04PM 4 And as much up as I had hoped to placate my
03:04PM 5 benefactors, maybe wrongfully, through using PPP funds, I
03:05PM 6 understand now that -- and I'm not making excuses for what
03:05PM 7 happened, and I apologize if it came out that way; but again, I
03:05PM 8 can't change the past.

03:05PM 9 THE COURT: Sure.

03:05PM 10 THE DEFENDANT: All I can do is accept what I've done.
03:05PM 11 I'm reminded of -- as I stand here before you, facing
03:05PM 12 incarceration, losing my freedom, I'm reminded of a quote from
03:05PM 13 one of my favorite books, Man's Search For Meaning.
03:05PM 14 "Everything can be taken from a man but one thing: the last of
03:05PM 15 the human freedoms. To choose one's own attitude in any given
03:06PM 16 set of circumstances, to choose one's own way."

03:06PM 17 I am reminded of a speech I once heard by Chief
03:06PM 18 Justice John Roberts where he gave this commencement speech at
03:06PM 19 his son's graduation and he titled it: I Wish You Bad Luck.
03:06PM 20 It was a facetious title but one with a great message. The
03:06PM 21 message being that it's often through life's misfortunes and
03:06PM 22 how we respond that we learn life's greatest lessons.

03:06PM 23 As you know, before going back to school, I worked as
03:07PM 24 a dishwasher and cook. Before that I applied to work at the
03:07PM 25 American Red Cross and was turned down after they did a

03:07PM 1 background check. The pain of being rejected doing work when
03:07PM 2 you are offering to do it for free is kind of indescribable.
03:07PM 3 But that misfortune turned what was a pride-swallowing siege of
03:07PM 4 washing dishes and mopping floors into a real appreciation for
03:07PM 5 just having a job. It turned the misfortune of this
03:07PM 6 circumstance to be working at the restaurant for two years
03:07PM 7 where I met some of the most hard-working and resilient people
03:07PM 8 in my life.

03:08PM 9 Although I can't change the past, I can only look at
03:08PM 10 this process in what it's supposed to be for me. Truth be
03:08PM 11 told, when I was first arrested and released, my mind went to a
03:08PM 12 very dark place. I kind of immersed myself -- I became a
03:08PM 13 full-blown alcoholic in less than a month. I immersed myself
03:08PM 14 in readings of Dostoevsky, Franz Kafka, Tolstoy, those dark
03:08PM 15 allegories of the injustices of our justice system seemed to
03:08PM 16 resonate with me at that time.

03:08PM 17 But do I recognize that this process, while it's easy
03:08PM 18 to forget about the rehabilitation side because of how violent
03:08PM 19 the -- I guess the prosecution and punitive side of it is, I do
03:09PM 20 understand that we are not opponents and that we are actually
03:09PM 21 on the same side. I think you want for me to be the best
03:09PM 22 version of me possible.

03:09PM 23 THE COURT: I also want you to pay back all your
03:09PM 24 victims.

03:09PM 25 THE DEFENDANT: Sure.

03:09PM 1 THE COURT: So I agree. I really want you to
03:09PM 2 rehabilitate, I want you to experience remorse and ask for
03:09PM 3 forgiveness. But most of all, the point is, how are you going
03:09PM 4 to make amends to your family for being away from them for
03:09PM 5 years, to the victims, to your former colleagues for the
03:09PM 6 financial harm and distress?

03:09PM 7 You don't have to give me an answer now. I don't
03:09PM 8 think there is an answer. But that's what I'm interested in,
03:09PM 9 you figuring that out during your period of incarceration. And
03:09PM 10 when you come out and you are on supervised release, there is
03:10PM 11 going to be a significant community service component, because
03:10PM 12 I think you owe that to our community, and then you'll be able
03:10PM 13 to work with probation on criminal thinking. Because that's
03:10PM 14 what you are describing, this idea that you are better than
03:10PM 15 everybody else, that this is somehow doing actions that serve
03:10PM 16 the greater good. That's criminal thinking, and they can help
03:10PM 17 you with that.

03:10PM 18 THE DEFENDANT: I understand. Thank you for
03:10PM 19 listening.

03:10PM 20 THE COURT: So my dilemma, what I wanted to share with
03:10PM 21 you, Mr. Kao, is that typically people who stand before me,
03:10PM 22 like when you were saying sort of the defense of necessity,
03:10PM 23 that you felt like you were required to do this because you had
03:10PM 24 to keep your company afloat or what have you, but there are
03:10PM 25 people who facilitate pounds of methamphetamine into our state

03:10PM 1 that destroys families, children, many people's lives and has
03:11PM 2 been for decades that literally have come before me, and it's
03:11PM 3 true that the Mexican mafia had taken their sister and shot her
03:11PM 4 in the head and said, If you don't do this and go to the Big
03:11PM 5 Island and facilitate pounds of making coming into the Big
03:11PM 6 Island, we're going to kill your kid and then we're going to
03:11PM 7 kill you. So that person is still convicted and sentenced to a
03:11PM 8 mandatory minimum of 20 years.

03:11PM 9 And I've got to say if anybody gets to sort of argue
03:11PM 10 necessity, that's a pretty good thing. What you told me really
03:11PM 11 doesn't move the needle of necessity; so that's the context I'm
03:11PM 12 putting it in. I'm putting it in the context of the
03:11PM 13 21-year-old that I need to sentence who has been sexually,
03:11PM 14 physically abused in his childhood, his addictions started
03:11PM 15 because his parents started giving him meth when he was nine or
03:11PM 16 10, your kids' age -- this kid didn't have a chance -- and he
03:12PM 17 has an addiction and he agrees to carry a bag or receive or
03:12PM 18 whatever. 60 months, five years out of his life, mandatory
03:12PM 19 mandatory minimum. So that's the context I'm looking at it.

03:12PM 20 And then I look at you, and I look at you with this
03:12PM 21 tremendously privileged life, tremendous intelligence,
03:12PM 22 tremendous abilities, you come from a good family, that you
03:12PM 23 have a good family, that you have the kind of material goods in
03:12PM 24 your life, beautiful homes, rental properties, luxury cars.
03:12PM 25 That 21-year-old never had a chance coming out.

03:12PM 1 Now the law is what the law is and I have to sentence
03:12PM 2 him to five years in prison. How that's going to help him get
03:12PM 3 a GED, hopefully he will get it in prison and then come back
03:12PM 4 out and work with probation and I'll meet with him regularly
03:12PM 5 because no one has ever taught him that this is the way that
03:12PM 6 you need to proceed in the world. And it's tough and you have
03:12PM 7 all this trauma, whether you can do this.

03:13PM 8 It's really hard. I hear what you are saying. I'm
03:13PM 9 sure it has been devastating for you to be indicted and
03:13PM 10 arrested and have to look at serious time. The dilemma I have
03:13PM 11 is, in many ways, thinking this through, going through the
03:13PM 12 materials, there is a thing called upward departure, and I
03:13PM 13 think the egregious actions by you in this case really could
03:13PM 14 justify an upward departure way past the top of the guidelines
03:13PM 15 in this case. Because what you did there was no need to do
03:13PM 16 except for entitlement and greed.

03:13PM 17 On the other hand, I think, how does this help the
03:13PM 18 victims, right? So there is just punishment, that's a
03:13PM 19 component, to prevent you and others from committing this kind
03:13PM 20 of fraud, so the next time there is a government program that
03:13PM 21 people can apply for, people are going to remember Martin Kao
03:14PM 22 and they are going to say, you know what, the government might
03:14PM 23 come after me, it's not worth the risk.

03:14PM 24 But then there is the other component of this, how do
03:14PM 25 we make amends for the victims, and having you come out of

03:14PM 1 prison earlier rather than later, and I know you are able to
03:14PM 2 work, whether it's going to be at the Cheesecake Factory or
03:14PM 3 someplace else, there is an ability to earn money that you can
03:14PM 4 do that may provide some recompense to the victims. So that's
03:14PM 5 really what I'm weighing on.

03:14PM 6 The government is saying low end of the guidelines,
03:14PM 7 I've told you that I think there is some basis to upwardly
03:14PM 8 depart to you having a significant amount. When I think about
03:14PM 9 the 21-year-old kid who gets the 60-month mandatory minimum for
03:14PM 10 being stupid, being poor, being traumatized, and then I hear
03:14PM 11 your story, I look at 12.8 million, it's really, really hard to
03:15PM 12 evaluate. But I need to concentrate on your 3553(a) factors,
03:15PM 13 your personal characteristics, the facts of the offense, the
03:15PM 14 harm that's done to our community by your actions. And that's
03:15PM 15 what I'm going to do.

03:15PM 16 But I appreciate you sharing your thoughts. I hope
03:15PM 17 that you will think about what I've said and think about what
03:15PM 18 you can do when you get out in terms of making amends.

03:15PM 19 So the Court is going to state the sentence and
03:15PM 20 reasons for the sentence and then I'll invite the attorneys for
03:15PM 21 any legal objections with regard to the sentence.

03:15PM 22 So the guideline range of imprisonment is 87 to
03:15PM 23 108 months for Counts 1 through 3 and Count 1 and Counts 4
03:15PM 24 through 8 as to each of them. There are separate counts that
03:16PM 25 could run concurrent or consecutive, which means it would have

03:16PM 1 to be served one at a time.

03:16PM 2 So upon consideration of all the 3553(a) factors, you
03:16PM 3 are committed to the custody of the Bureau of Prisons for a
03:16PM 4 term of 87 months as to each -- let's see, let's make it
03:16PM 5 specific. As to Counts 1 through 3 under Criminal Number
03:16PM 6 21-61, and Count 1 under Criminal Number 23-03, and Counts 4
03:16PM 7 through 8 under Criminal Number 21-61, to run concurrently.

03:16PM 8 Supervised release of five years as to Counts 1
03:16PM 9 through 3 under Criminal Number 21-61, and Count 1 under
03:16PM 10 Criminal Number 23-03, and three years as to Counts 4 through 8
03:16PM 11 under Criminal Number 21-61. And that's to run concurrently.

03:17PM 12 No fine. And I'm making the specific finding that you
03:17PM 13 have financial obligations to the victims. And rather than
03:17PM 14 imposing a fine that would be paid only to the government after
03:17PM 15 the forfeiture any other financial holdings that you have, I
03:17PM 16 believe should be made available through court means to the
03:17PM 17 victims.

03:17PM 18 Special assessment of \$900, \$100 for each count for a
03:17PM 19 total of \$100.

03:17PM 20 And then the conditions of your supervised release are
03:17PM 21 as follows. You were previously provided with the 13 standard
03:17PM 22 conditions of release.

03:17PM 23 Do we have a stipulation, Mr. Bakke and Ms. Yamaga?

03:17PM 24 MR. BAKKE: Yes, Your Honor.

03:17PM 25 MS. YAMAGA: Yes, Your Honor.

03:17PM 1 THE COURT: So the Court doesn't need to -- those are
03:17PM 2 imposed without the Court reading it.

03:17PM 3 You must abide by the mandatory and standard
03:17PM 4 conditions of supervision including the following:

03:18PM 5 You do not have a recent history of substance abuse
03:18PM 6 and the offense is not drug related, so I waive the mandatory
03:18PM 7 drug test condition.

03:18PM 8 You must cooperate in the collection of DNA as
03:18PM 9 directed by probation.

03:18PM 10 You must report to the probation office in the federal
03:18PM 11 judicial district where you authorized to reside within 72
03:18PM 12 hours of the time you are released, unless probation instructs
03:18PM 13 you to report to a different probation office or within a
03:18PM 14 different time frame.

03:18PM 15 You must abide by the follow special conditions:

03:18PM 16 You must not possess or use alcohol during the term of
03:18PM 17 your supervision. You must warn any other residents or guests
03:18PM 18 that you are prohibited from possessing any alcohol on your
03:18PM 19 residence and on your property. You must submit to alcohol
03:18PM 20 testing at the direction of probation.

03:18PM 21 You must participate in an outpatient mental health
03:18PM 22 treatment program and follow the rules and regulations of that
03:18PM 23 program. The probation officer, in consultation with the
03:18PM 24 treatment provider, will supervise your participation in the
03:18PM 25 program such as provider, location, modality, duration, and

03:19PM 1 intensity.

03:19PM 2 Restitution of \$12,841,490 is due, less any amounts

03:19PM 3 paid to the Small Business Administration, 721, 19th Street,

03:19PM 4 3rd Floor, Room 301, Denver, Colorado 80202. Any unpaid

03:19PM 5 balance is to be paid during the period of supervision through

03:19PM 6 a monthly installments of 10% of your gross monthly income

03:19PM 7 commencing 30 days after the start of supervision. The Court

03:19PM 8 may order this requirement to be changed from time to time, as

03:19PM 9 circumstances warrant, but no court order shall be required for

03:19PM 10 your voluntary agreement to pay more than the court-ordered

03:19PM 11 amount. Interest will begin accruing 30 days after the start

03:19PM 12 of supervision. Payments must be made by payroll deduction

03:19PM 13 when applicable. You must notify the probation officer of any

03:19PM 14 change in your financial circumstances that affect your ability

03:19PM 15 to pay. Your financial circumstances must be reviewed by the

03:20PM 16 probation officer on at least an annual basis.

03:20PM 17 You must provide the probation officer access to any

03:20PM 18 requested financial information and authorize the release of

03:20PM 19 any financial information. The probation office may share

03:20PM 20 financial information with the U.S. Attorney's office.

03:20PM 21 You must apply all monies received from income tax

03:20PM 22 refunds, lottery winnings, inheritance, judgments and any

03:20PM 23 anticipated or unexpected financial gains to the outstanding

03:20PM 24 court-ordered financial obligation, at the discretion and

03:20PM 25 direction of the Court.

03:20PM 1 You must not incur new credit charges, or open
03:20PM 2 additional lines of credit, or apply for any loans without
03:20PM 3 prior approval of probation. You must not borrow money or take
03:20PM 4 personal loans from any individual without prior approval of
03:20PM 5 the probation officer.

03:20PM 6 You must maintain a single personal bank account,
03:20PM 7 separate and apart from your spouse, any family members or
03:20PM 8 others, into which all income, financial proceeds, and gains
03:20PM 9 must be deposited and from which all expenses must be paid.

03:20PM 10 You must notify the probation officer of any
03:21PM 11 contemplated employment and must obtain approval from the
03:21PM 12 probation officer for all employment. Unless you are
03:21PM 13 self-employed, you may not be employed in any capacity wherein
03:21PM 14 you have custody, control or management of your employees'
03:21PM 15 funds.

03:21PM 16 You must complete 12,800 hours of community service.
03:21PM 17 The probation officer will supervise your completion of
03:21PM 18 community service hours, including approving the community
03:21PM 19 service site, the frequency of participation, etcetera. You
03:21PM 20 must provide written verification of completed hours to the
03:21PM 21 probation officer.

03:21PM 22 Finally, you must submit your person, property house,
03:21PM 23 residence, vehicle, papers or office to a search conducted by a
03:21PM 24 United States probation officer. Failure to submit to a search
03:21PM 25 may be grounds for revocation of release. You must warn any

03:21PM 1 other occupants that the premises may be subject to searches
03:21PM 2 pursuant to this condition. The probation officer may conduct
03:21PM 3 the search under this condition only when reasonable suspicion
03:22PM 4 exists that you have violated a condition of supervision and
03:22PM 5 that the areas to be searched contains evidence of this
03:22PM 6 violation. Any search must be conducted at a reasonable time
03:22PM 7 and in a reasonable manner.

03:22PM 8 Before I impose the sentence as stated, any legal
03:22PM 9 objections from the government?

03:22PM 10 MR. NOLAN: Your Honor, I just wanted to ask the Court
03:22PM 11 in 21-61 to incorporate the forfeiture orders at the PPP case
03:22PM 12 at ECF numbers 116 and 123. And then you've said you are going
03:22PM 13 to give the defense some time I think in 23-3.

03:22PM 14 THE COURT: Yes. And so in 21-61 that will be
03:22PM 15 incorporated -- the order of forfeiture will be incorporated
03:22PM 16 into the judgment. We'll just have to wait for the amount.

03:22PM 17 MR. NOLAN: And no legal objections.

03:22PM 18 THE COURT: All right.

03:22PM 19 Mr. Bakke.

03:22PM 20 MR. BAKKE: No legal objections, Your Honor.

03:22PM 21 THE COURT: Ms. Yamaga.

03:22PM 22 MS. YAMAGA: So I do -- I'm asking that the order of
03:23PM 23 forfeiture in 23-03-LEK not be made final today. It's not
03:23PM 24 titled as a preliminary order of forfeiture, but I'm acting as
03:23PM 25 if it is a preliminary, and I'm asking that it not be made

03:23PM 1 final so that I may make legal objections if needed.

03:23PM 2 THE COURT: Okay, very well. So I'm going to give you
03:23PM 3 a week.

03:23PM 4 And what date would that be, Ms. Cortez?

03:23PM 5 So if you could file any objections and then, Mr.
03:23PM 6 Nolan, if you want to file a response, let me know.

03:23PM 7 MR. NOLAN: Okay, thank you.

03:23PM 8 THE CLERK: Your Honor, February 20th.

03:23PM 9 THE COURT: Any objection? By February 20th, of
03:23PM 10 course, meet and confer. If you can work it out, that would be
03:23PM 11 great.

03:23PM 12 MS. YAMAGA: Thank you.

03:23PM 13 THE COURT: And the import of the 12,800 community
03:23PM 14 service hours, which is the most I've ever imposed, obviously
03:23PM 15 is to reflect the harm to the community of \$12,800,000.

03:23PM 16 All right. So I impose the sentence as stated. I
03:24PM 17 have considered the advisory guideline computations and the
03:24PM 18 sentencing factors under 18 U.S.C., Section 3553(a). As I
03:24PM 19 explained more fully in my assessment of the specific
03:24PM 20 aggravating and mitigating factors in your case, Mr. Kao, I
03:24PM 21 have considered your history and characteristics as well as the
03:24PM 22 serious harm to our community caused by your offenses.

03:24PM 23 I have read the letters received on your behalf, I
03:24PM 24 believe the sentence provides just punishment and, equally
03:24PM 25 important, I hope it serves as an adequate deterrence to others

03:24PM 1 who may consider this type of fraud.

03:24PM 2 I hope that this sentence will discourage others from
03:24PM 3 heading down such a life-altering path. I have considered the
03:24PM 4 sentencing guidelines and the policy statements and the law.
03:24PM 5 So I impose the sentence as stated.

03:24PM 6 You do have the right to appeal your sentence and the
03:25PM 7 manner in which it was determined. But the deadline to file
03:25PM 8 your notice of appeal is 14 days after your judgment is filed.
03:25PM 9 If you file after those 14 days, you may be found to be too
03:25PM 10 late and given up your right to appeal. Do you understand
03:25PM 11 this?

03:25PM 12 THE DEFENDANT: Yes, Your Honor.

03:25PM 13 THE COURT: All right. So do you want me to make any
03:25PM 14 recommendations to the Bureau of Prisons as to designation?

03:25PM 15 MR. BAKKE: Yes, Your Honor. To Sheridan. I think
03:25PM 16 it's FCI Sheridan.

03:25PM 17 THE COURT: Okay, FCI Sheridan. That's it? There is
03:25PM 18 no programming or anything. He doesn't have a drug problem,
03:25PM 19 he's already got a college degree.

03:25PM 20 MR. BAKKE: Well, Your Honor, he would like help with
03:25PM 21 the RDAP program for the alcohol.

03:25PM 22 THE COURT: I can make a recommendation for the
03:25PM 23 500-hour residential drug treatment program.

03:25PM 24 MR. BAKKE: Yes, if you could.

03:25PM 25 THE COURT: Okay. All right. And so any objection to

03:25PM 1 self-surrender?

03:25PM 2 MR. NOLAN: No, Your Honor. It was recommended by the
03:25PM 3 probation office and the government will follow their
03:25PM 4 recommendation.

03:25PM 5 THE COURT: All right, very good. Let's have a date
03:26PM 6 for the self-surrender.

03:26PM 7 THE CLERK: Yes, Your Honor. Self-surrender to the
03:26PM 8 facility will be March 25, 2025.

03:26PM 9 THE COURT: All right, March 25, 2025, Mr. Bakke and
03:26PM 10 Ms. Yamaga.

03:26PM 11 Mr. Kao, do you intend to pay for your own way and
03:26PM 12 self-surrender, or do you want to turn yourself into the
03:26PM 13 marshals here?

03:26PM 14 MR. BAKKE: I'll discuss with that with him because we
03:26PM 15 still have that case in DC to deal with logistically.

03:26PM 16 THE COURT: I understand that, but he has to
03:26PM 17 self-surrender on March 25th.

03:26PM 18 MR. BAKKE: Correct. But I'm just saying between
03:26PM 19 turning himself -- I'm sorry, did you say turn himself into
03:26PM 20 FDC?

03:26PM 21 THE COURT: So Bureau of Prisons is going to designate
03:26PM 22 him to the facility that he is going to be serving the time at.
03:26PM 23 So he can either fly on his own expense or he can turn himself
03:26PM 24 in to the marshals and be held here and then the marshals will
03:26PM 25 transport him.

03:26PM 1 MR. BAKKE: Right, I understand that. Just so I

03:27PM 2 understand -- yes, we want to self-surrender.

03:27PM 3 THE COURT: Right. And so you are ordered to

03:27PM 4 self-surrender by March 25, noon of the time zone in which the

03:27PM 5 facility you've been designated to serve your term of

03:27PM 6 incarceration. If you fail to show up or you show up late, a

03:27PM 7 bench warrant can issue for your arrest and that would not be a

03:27PM 8 good thing.

03:27PM 9 So you have the date, you can work with pretrial

03:27PM 10 services on what you need to do in order to turn yourself in at

03:27PM 11 the Bureau of Prisons facility.

03:27PM 12 Anything else?

03:27PM 13 MR. NOLAN: No, Your Honor. Thank you.

03:27PM 14 THE COURT: All right. And then I guess I would want

03:27PM 15 briefing or something from you on what we should do with

03:27PM 16 Navatek's restitution request. So I would suggest that you

03:27PM 17 confer with counsel and maybe Navatek and then write me a

03:27PM 18 letter with a CC to everybody, this is the discussion, this is

03:27PM 19 what we believe we want from the Court.

03:27PM 20 MR. NOLAN: Could we have two weeks to do that?

03:28PM 21 THE COURT: Absolutely, yes. I don't think there is

03:28PM 22 any rush.

03:28PM 23 MR. NOLAN: Okay. Thank you.

03:28PM 24 THE COURT: Two weeks would be.

03:28PM 25 THE CLERK: February 27, 2025.

03:28PM 1 THE COURT: All right, February 27th, see if you could
03:28PM 2 get me that.

03:28PM 3 MR. NOLAN: Thank you.

03:28PM 4 THE COURT: Very good. Nothing further, Ms. Yamaga.

03:28PM 5 MS. YAMAGA: No, Your Honor. Thank you.

03:28PM 6 THE COURT: Mr. Bakke.

03:28PM 7 MR. BAKKE: Nothing, Your Honor.

03:28PM 8 THE COURT: And, Ms. Nieling, anything else?

03:28PM 9 MS. NIELING: No, Your Honor.

03:28PM 10 THE COURT: All right. So good luck to you, Mr. Kao.

03:28PM 11 We stand in recess. Thank you everyone.

03:28PM 12 (Proceedings were concluded at 3:28 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 28, 2025.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCR

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