

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	
	)	Case No. 21-CR-00061LEK
	)	
Plaintiff,	)	September 7, 2022
	)	1:29 p.m.
vs.	)	
	)	
MARTIN KAO,	)	
	)	U.S. District Court
Defendant.	)	300 Ala Moana Boulevard
	)	Honolulu, HI 96850
	)	

TRANSCRIPT OF VIDEO TELECONFERENCE OF HEARING ON MOTION FOR
WITHDRAWAL OF NOT GUILTY PLEA AND TO PLEAD ANEW
BEFORE THE HONORABLE KENNETH J. MANSFIELD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	Craig S. Nolan, Esq. U.S. Attorney's Office 300 Ala Moana Boulevard, #6100 Honolulu, HI 96850
For the Plaintiff:	Jennifer Bilinkas, Esq. U.S. Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, D.C. 20005
For Defendant:	Victor J. Bakke, Esq. 700 Bishop Street, Suite 2100 Honolulu, HI 96813
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Proceedings recorded by electronic sound recording;
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1 SEPTEMBER 7, 2022

1:29 P.M.

2 THE CLERK: United States District Court for the
3 District of Hawaii with the Honorable Kenneth J. Mansfield.
4 United States Magistrate Judge presiding, is now in session.
5 Criminal number 21-00061LEK, United States of America v. Martin
6 Kao. This hearing has been called for a change of plea hearing.
7 Counsel, please make your appearances for the record, starting
8 with the Government.

9 MR. NOLAN: Good afternoon, Your Honor. Craig Nolan
10 and Jennifer Bilinkas for the Government.

11 THE COURT: Good afternoon to both of you.

12 MR. BAKKE: And good afternoon, Your Honor. Attorney
13 Victor Bakke behalf of Mr. Martin Kao, who is present. We are
14 present by video in my conference, in my Your Honor.

15 THE COURT: Okay. Good afternoon to both of you as
16 well. Mr. Bakke, is it your understanding that Mr. Kao intends
17 to plead guilty today to the indictment in this case?

18 MR. BAKKE: Yes, Your Honor. And we have no objection
19 to proceeding via the video teleconference, obviously, today.
20 And then also, the Prosecutor did prepare a consent to Rule 11
21 plea in the felony case. I do have the written copy.

22 THE COURT: Okay.

23 MR. BAKKE: The Prosecutor and myself have signed it.
24 And I can have Mr. Kao sign it in front of the Court after the
25 Court goes over it with them and then we can file it with the

1 Court.

2 THE COURT: That would be great. Thank you very much.
3 We'll get to that in just a second.

4 Mr. Kao, before I can accept a guilty plea, I must
5 ensure that you understand what you are doing and that you are
6 pleading guilty freely and voluntarily. I must also establish an
7 adequate factual basis to convict you of the charges against you.
8 In order to make this determination, I will be asking you several
9 questions this afternoon. If you do not understand any questions
10 that I ask or any words that I use, would you please say so, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 Can I ask the Courtroom manager to administer the oath
14 to Mr. Kao?

15 THE CLERK: Yes, Your Honor. Mr. Kao, please raise
16 your right hand.

17 MARTIN KAO, DEFENDANT, SWORN

18 THE COURT: All right. Thank you, sir. You may be.

19 THE COURT: Mr. Kao, what is your full name?

20 THE DEFENDANT: Martin, middle initial Y, Kao K-A-O.

21 THE COURT: And how old are you, sir?

22 THE DEFENDANT: Forty-nine.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: Masters.

25 THE COURT: Okay. Have you taken any medication,

1 alcohol, or drugs of any kind today?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Do you feel well and alert this
4 afternoon?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand what is going on?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Have you had enough time to consider
9 whether to plead guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. And, Mr. Bakke, to the best of
12 your knowledge, is Mr. Kao fully competent to enter a valid plea
13 today?

14 MR. BAKKE: Yes, Your Honor.

15 THE COURT: All right. Mr. Kao, if you choose to enter
16 a guilty plea in your case, you do have the right to do so before
17 a United States District Judge, and the District Judge assigned
18 to your case is District Judge Leslie Kobayashi. If you consent,
19 though, you can enter your guilty plea before me, a U.S.
20 Magistrate Judge. And if you do that, Judge Kobayashi will
21 sentence you at a later date. Does that make sense to you?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. And is it your desire to waive your
24 right to change your plea before Judge Kobayashi and go ahead and
25 enter that plea before me this afternoon?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. And your attorney reference --
3 I think it's a two page form we have or maybe it's front and
4 back, entitled consent to Rule 11 plea in a felony case, which is
5 just written documentation of the discussion you and I just had.
6 Please take a second to review it. If you have any questions for
7 Mr. Bakke. We can give you privacy to have that discussion, but
8 I just need to ensure that you agree to that form and go ahead
9 and execute it.

10 THE DEFENDANT: And just a typo on the second page, but
11 other than that, it's fine.

12 THE COURT: Okay. Can I ask what the typo is? Is it
13 in your name or just so we could have a clear record?

14 MR. BAKKE: It's on the second page you're on. About
15 halfway down where it says district -- starting with District
16 Judge will then act on Magistrate Judge. There's an equal sign
17 instead of an apostrophe.

18 THE COURT: Okay. That's not significant. All right.
19 Thank you for pointing that out. Otherwise, if that's acceptable
20 -- let me ask you, Mr. Kao, do you have any questions either for
21 me or for your attorney?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Are you willing to execute that
24 form?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Please go ahead and do so. And
2 then, Mr. Bakke, if you can file that with the Court after the
3 hearing.

4 MR. BAKKE: Your Honor, may reflect the record reflect
5 he did sign it. I also went over it thoroughly with him prior to
6 starting Court today. So we will file that immediately after the
7 hearing.

8 THE COURT: Thank you. And I do find that the Defendant
9 has knowingly and voluntarily consented to enter a plea before a
10 U.S. Magistrate Judge. And obviously, as Mr. Bakke already
11 pointed out, we are proceeding by videoconference at the moment.
12 I do find and recommend that this hearing cannot be conducted in
13 person without seriously jeopardizing public health and safety,
14 and that specific reasons exist and require the change of plea to
15 be conducted by a video conference.

16 And there are two reasons in particular. One, I am
17 quarantining at home with COVIC in my house, so I'm not at Court
18 right now. And two, Mr. Kao was first charged by way of criminal
19 complaint back in September 29th, 2020. And under these
20 circumstances, further delaying his change of plea hearing until
21 it could safely be done in person would seriously harm the
22 interest of justice.

23 Nevertheless, Mr. Kao, we can't proceed without your
24 consent. So let me ask you, do you consent to proceeding with
25 your hearing this afternoon by video?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. I do find that the required
3 Cares Act findings have been made and that the Defendant consents
4 to proceeding by video conference.

5 Mr. Kao, have you received a copy of the indictment
6 pending against you? It's the written charges in this case. You
7 probably have it there somewhere.

8 THE DEFENDANT: Yes. Yes, Your Honor, I have.

9 THE COURT: Okay. Have you fully discussed those
10 charges and all of the facts surrounding them with your lawyer?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand everything your attorney
13 has told you about your case and the consequences of pleading
14 guilty?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you fully satisfied with the legal
17 representation you have received from your attorneys in this
18 case?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. And my understanding, counsel, there
21 is no written plea agreement. Is that correct, Mr. Bakke?

22 MR. BAKKE: That's correct, Your Honor.

23 THE COURT: All right. Mr. Kao, let me ask you, has
24 anyone made any promise or assurance of any kind in an effort to
25 get you to plead guilty?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Has anyone attempted to force you to plead
3 guilty or pressure you or threaten you in any way?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Okay. Mr. Nolan, can you confirm the
6 maximum penalties that might apply to a guilty plea in this case?

7 MR. NOLAN: Yes, Your Honor. As to each of counts 1
8 through 3, which charge wire fraud, a term of imprisonment of up
9 to 30 years and a fine of up to \$1 million, plus a term of
10 supervised release up to five years.

11 As to each of counts 4through 8, which charge money
12 laundering, a term of imprisonment of up to ten years and a fine
13 of up to \$250,000, or twice the amount of the criminally derived
14 property involved in the transaction, whichever is greater, plus
15 a term of supervised release up to three years.

16 In addition, the Court must impose a \$100 special
17 assessment as to each count to which the Defendant is pleading
18 guilty. Additionally, there's forfeiture pursuant to 18 USC,
19 Section 981(a)(2)(C) and 28 USC Section 2461.

20 There is forfeiture of any property, real or personal,
21 which constitutes or is derived from proceeds traceable to a
22 violation of a specified unlawful activity within the meaning of
23 18 USC 1956(c)(7), or conspiracy to commit such offense. And
24 there is forfeiture pursuant to 18 USC Section 982(a)(1), which
25 provides for forfeiture of any property, real or personal,

1 involved in the offense of violation of 18 USC 1956, 1957, or
2 1960, and property traceable to such property. The amount
3 subject to forfeiture in this case is not less than \$12,841,490
4 and may be greater.

5 Additionally, there's restitution. The Court must
6 award restitution pursuant to Title 18, United States Code,
7 Section 3663(A), to the persons and entities victimized by the
8 defense offenses.

9 The restitution amount the Defendant must pay in this
10 case is not less than \$13,181,787.62, and maybe greater, which
11 consists of loan principal, accrued interest, and processing fees
12 as of December 17, 2021, for the Paycheck Protection Program
13 loans fraudulently obtained by the Defendant in connection with
14 that charged scheme, and upon which the Defendant and his
15 companies defaulted, resulting in the purchase of the defaulted
16 loans by the Small Business Administration, which had guaranteed
17 the loans.

18 Your Honor, those are the potential penalties in this
19 matter.

20 THE COURT: Thank you. Mr. Bakke, do you agree with
21 the potential penalties as set forth by Mr. Nolan?

22 MR. BAKKE: Yes, Your Honor, with the following
23 exceptions. And I'm not sure on this and maybe Mr. Nolan can
24 help me out. Regarding the money laundering counts 4 to 8,
25 there's two ways that that could be calculated. The fine of up

1 to \$250,000 or twice -- or twice the amount of the criminally
2 derived property involved in the transaction. I didn't recall
3 seeing that whichever is greater language in there.

4 So the way I read the statute was that it was an
5 option, but it wasn't whichever is greater, which would tend to
6 make it sound more like it's mandatory that the Court would have
7 to go with whichever is greater.

8 MR. NOLAN: So, your Honor, I think I can answer that
9 simply. A fine is always within the discretion of the Court.
10 The whichever is greater language is statutory, and as I
11 understand it, of course, sets the maximum.

12 So if we're talking about an amount -- a money
13 laundering transaction that would increase the fine above
14 \$250,000, that would be the statutory maximum, and the District
15 Judge who sentences Mr. Kao would be able to go up to that
16 maximum, but, of course, could impose as little as zero dollars
17 in terms of a fine. There's no mandatory fine.

18 THE COURT: I think you two are in agreement. Mr.
19 Bakke was suggesting it's an option by the sentencing judge. Is
20 that what you're saying, Mr. Bakke?

21 MR. BAKKE: Yes, Your Honor.

22 THE COURT: And you're in agreement with that, Mr.
23 Nolan?

24 MR. NOLAN: I am, Your Honor.

25 THE COURT: All right. Thank you very much. Mr. Kao,

1 do you under --

2 MR. BAKKE: I'm sorry, Your Honor. The other matter is
3 regarding the forfeiture and the restitution. I agree with the
4 law cited, but we're not agreeing, at this time, to the actual
5 amount. I believe that this is an estimated amount as a minimum,
6 and it could be higher. But I just want to make that clear that
7 at this point -- because there is no plea agreement, we do not
8 have an agreement as to the amount.

9 THE COURT: Okay. Understood. As I understand the
10 situation and r. Nolan's remarks, the numbers he cited are the
11 Government's position, is that correct, Mr. Nolan?

12 MR. NOLAN: That's right. I just want to -- since
13 there's no plea agreement, I want to give fair notice to
14 Defendant it today as to where the Government is in terms of its
15 thinking on both forfeiture and restitution.

16 And of course, these numbers are not new for the
17 defense. They've had those numbers since January of this year.

18 MR. BAKKE: And that's correct, Your Honor. We
19 appreciate that.

20 THE COURT: Okay. Did you have anything else, Mr.
21 Bakke?

22 MR. BAKKE: No, Your Honor.

23 THE COURT: All right. Mr. Kao, do you understand that
24 these are the possible penalties which would apply if you enter a
25 guilty plea?

1 THE DEFENDANT: I'm sorry, you kind of broke up there.

2 THE COURT: Okay. I'm sorry. Do you understand that
3 these penalties Mr. Nolan just discussed and Mr. Bake as well,
4 that these are the possible penalties which will apply if you
5 enter a guilty plea?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. And if you are convicted of
8 more than one offense, the Court has authority to order
9 consecutive sentences. If the Court did so, it would mean that
10 you have to serve those sentences one at a time. Do you
11 understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. And Mr. Nolan referenced
14 supervised release. Your potential penalties include a term of
15 supervised release. During supervised release, you have to
16 comply with a set of conditions, including requirements that you
17 obey the law, that you report as required to a probation officer,
18 and other conditions.

19 If the Court finds that you violated any of those
20 conditions, you could be required to serve additional prison
21 time. Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And just to highlight the restitution and
24 forfeiture, again, the sentencing judge can require you to make
25 restitution to any victim of the offense. The Government

1 maintains that the amount of restitution is at least
2 \$13,181,787.62 and maybe greater. Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The District Judge might also require you
5 to forfeit property to the United States. And the Government
6 maintains that the amount subject to forfeiture is not less than
7 \$12,841,490 and may be greater. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: If you plead guilty to the charges in this
10 case, you may also lose valuable civil rights, including the
11 right to vote, the right to hold public office, the right to
12 serve on a jury, and the right to possess a firearm. Do you
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Regarding sentencing, sir, the U.S.
16 Sentencing Commission has issued guidelines for the sentencing
17 judge to consider in determining the sentence in a criminal case.
18 The sentencing judge must consider the guidelines when imposing
19 sentence, but the guidelines are advisory only. The Court will
20 consider other factors required by law.

21 Have you and your attorney talked about how these
22 sentencing guidelines and other sentencing factors might apply to
23 your case?

24 THE DEFENDANT: Yes. Yes, we have.

25 THE COURT: All right. Do you understand that the

1 Court will not be able to determine the guidelines for your case
2 until after a presentence report has been prepared?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you also understand that the Court will
5 consider the guidelines and the other factors required by law and
6 that the Court may impose a sentence more severe than the
7 sentence called for by the guidelines?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand that if the sentence is
10 worse than you expect, you will still be bound by your plea and
11 have no right to withdraw it?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you also understand that the sentence
14 imposed may be different from any estimate your lawyer has given
15 you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you understand that any
18 recommendation of a sentence agreed to by your lawyer and the
19 Government is not binding on the Court and you might, on the
20 basis of your guilty plea, receive up to the maximum sentence
21 permitted?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. Has anyone made any promise to you
24 what your sentence will be?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: All right. And, Mr. Kao, you have the
2 right to plead not guilty and to persist in that not guilty plea.
3 You would then have the right to trial by jury.

4 During that trial, you would have the right to
5 assistance of counsel for your defense the right to see and hear
6 all the witnesses and to have your lawyer cross-examine them, the
7 right to testify or to decline to testify and remain silent, and
8 the right to have the Court issue subpoenas for any witnesses you
9 wish to call.

10 At trial, you would be presumed innocent, and the
11 United States would have the burden of proving that you are
12 guilty beyond a reasonable doubt.

13 If you are found guilty after a trial you would have
14 the right to appeal that conviction to a higher court. And if
15 you could not afford the cost of an appeal the Government would
16 pay those costs for you.

17 Do you understand all of these rights?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. If you plead guilty, however, and
20 the Court accepts your guilty plea there will be no trial.
21 You'll be giving up all of these rights to a trial and appeal
22 rights that I have described. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And also, so long as you plead not guilty
25 you have the right to remain silent. But if you plead guilty,

1 you are waiving that right, and I will ask you some questions
2 about what occurred, and you must answer those questions
3 truthfully under oath even if your answers establish that you
4 committed crimes. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. Mr. Nolan, would you please
7 summarize for the Court and the Defendant the essential elements
8 which the United States would be required to prove at trial on
9 these charges?

10 MR. NOLAN: Yes, Your Honor. With respect to counts 1
11 through 3 wire fraud, 18 U.S.C. 1343, the elements are as
12 follows. First, the Defendant knowingly devised, intended to
13 devise, or participated in a scheme to defraud, or to obtain
14 money or property by means of false or fraudulent pretenses,
15 representations, or promises.

16 Second, the statements made as part of the scheme were
17 material. That is, they had a natural tendency to influence or
18 were capable of influencing a person to part with money or
19 property.

20 Third, the Defendant acted with the intent to defraud
21 that is, the intent to deceive or cheat.

22 Fourth, the Defendant used or caused to be used an
23 interstate or foreign wire communication to carry out or attempt
24 to carry out an essential part of the scheme.

25 And, fifth, the violation affected the financial

1 institution or involved a presidentially declared major disaster
2 or emergency.

3 With regard to counts 4 through 8, money laundering, 18
4 U.S.C., Section 1957, the elements are as follows.

5 First, the Defendant knowingly engaged or attempted to
6 engage in a monetary transaction.

7 Second, the Defendant knew the transaction involved
8 criminally derived property.

9 Third, the property had a value greater than \$10,000.

10 And, fourth, the property was, in fact, derived from
11 wire fraud. Thank you.

12 THE COURT: All right. Thank you. Mr. Bakke, do you
13 disagree in any respect with Mr. Nolan's recitation of the
14 essential elements?

15 MR. BAKKE: No, Your Honor, we agree.

16 THE COURT: Okay. Mr. Kao, do you understand that if
17 there were a trial on these charges, the United States would be
18 required to present evidence sufficient to prove each of these
19 essential elements beyond a reasonable doubt?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Mr. Nolan, would you please
22 summarize the factual basis for the plea? And Mr. Kao, I'm going
23 to ask you to listen to Mr. Nolan very carefully. After he
24 finishes, I'm going to ask you if everything he said is accurate.
25 Go ahead, Mr. Nolan.

1 MR. NOLAN: Yes, Your Honor. And I'm just going to
2 reference, for everyone's ease, that I'll be reading from the
3 factual basis in my letter of September 6, 2022 to the Court and
4 copied to the Defense.

5 If this matter were to proceed to trial, the Government
6 would prove the following facts through the introduction of
7 witness testimony, forensic digital evidence, company, bank, and
8 other records, statements by the Defendant and his co-
9 conspirator, and other evidence.

10 During the period from approximately March 2020 through
11 July 2020, Defendant Martin Kao owned 99 percent of Navatek, LLC
12 and served as its Chief Executive Officer. Headquartered in
13 Honolulu, Hawaii, Navatek, LLC, was a research, engineering,
14 design, and innovations company that specialized in novel systems
15 for the Department of Defense, hereinafter DOD, and other
16 partners in academia and other scientific fields. Nearly all of
17 Navatek, LLC's, revenue was from the DOD.

18 On approximately July 27, 2020, Navatek, LLC, changed
19 its name to Martin Defense Group, LLC. Navatek, LLC was the sole
20 member and manager of Navatek CFD Technologies, LLC, Navatek
21 Lifting Body Technologies, LLC, Navatek Alternative Energy
22 Technologies, LLC, and Navatek SHC, LLC, collectively,
23 hereinafter the Navatek subsidiaries.

24 On March 13, 2020, the President of the United States
25 declared a nationwide emergency pursuant to Section 501(b) of the

1 Stafford Act, 42 U.S.C., Section 5121, et seq, due to the COVID-
2 19 pandemic. In March 2020, Congress enacted the Coronavirus
3 Aid, Relief, and Economic Security here and after CARES Act,
4 which provided for the establishment of the Paycheck Protection
5 Program here and after PPP.

6 MR. BAKKE: I'm sorry, Your Honor. We lost the volume.

7 THE COURT: Okay. I can still hear Mr. Nolan. Can you
8 hear me?

9 MR. BAKKE: We can't hear any of you.

10 THE COURT: Okay. That might -- I can hear Mr. Nolan.
11 Fine. I can hear Mr. Bakke.

12 MR. NOLAN: And I can hear both Mr. Bakke and Your
13 Honor.

14 THE COURT: Let me ask the courtroom manager, do we
15 waive a cellphone for Mr. Bakke? Maybe I can call him.

16 THE CLERK: Your Honor, I think it's --

17 MR. NOLAN: You could text it on --

18 THE CLERK: Let me see.

19 MR. BAKKE: Your Honor, I don't know if you can hear
20 us. Can you hear us? You can hear us.

21 THE COURT: We can see and hear everybody. We think it
22 is on your end.

23 MR. BAKKE: Oh, there we go. Okay. You completely
24 went black. I can hear you now.

25 MR. NOLAN: Mr. Bakke, can you hear me?

1 MR. BAKKE: Yes, we can, Your Honor.

2 THE COURT: Okay. That was Mr. Nolan. This is Ken
3 Mansfield; can you hear me?

4 THE DEFENDANT: Yes.

5 MR. BAKKE: Yes, we can hear you.

6 THE COURT: Okay.

7 MR. BAKKE: Mr. Nolan, can you say something?

8 MR. NOLAN: Yes. Can you hear me?

9 MR. BAKKE: Yeah. Okay. We're back online, Your
10 Honor.

11 THE COURT: Okay. Maybe you need to move that mouse
12 every few minutes. I'm just guessing what it might have been,
13 but we think it was on your end, so we'll start again. Mr.
14 Bakke, can you let us know what you last heard, and we can ask
15 Mr. Nolan to back it up if we need to?

16 MR. BAKKE: Yes, Your Honor. I believe he was in about
17 the middle of paragraph two on page 3. In March 2020, Congress
18 enacted the Coronavirus relief.

19 THE COURT: All right. Thank you. And, Mr. Bakke, let
20 me just confirm, can you see us as well?

21 MR. BAKKE: Yes, Your Honor.

22 THE COURT: Okay. All right. Please proceed, Mr.
23 Nolan.

24 MR. NOLAN: Thank you. To obtain a PPP loan, a
25 qualifying business was required to submit a PPP loan application

1 signed by an authorized representative. The PPP loan application
2 required, among other things, the representative to acknowledge
3 the program rules, make specified affirmative certifications,
4 state the applicant's average monthly payroll expenses and number
5 of employees, which were used to calculate the amount of money
6 the applicant was eligible to receive under the PPP and provide
7 documentation supporting the payroll expenses.

8 Counts 1 through 3, wire Fraud. During approximately
9 March 2020 through July 2020, the Defendant knowingly devised and
10 intended to devise a scheme and artifice to obtain money for
11 which the Defendants, Navatek LLC, and the Navatek subsidiaries
12 were not eligible to receive under the PPP by submitting and
13 causing to be submitted false and fraudulent PPP loan
14 applications and representations to Bank One, Bank Two, and Bank
15 Three.

16 As a result, the Defendant fraudulently obtained more
17 than \$12.8 million in PPP funds for his companies and transferred
18 approximately \$2 million of those PPP funds to himself for his
19 personal benefits.

20 The Defendant's PPP loan application to Bank One. On
21 April 3, 2020, the Defendant caused to be submitted to Bank One,
22 which was a Hawaii based community bank, a PPP loan application
23 in the name and tax identification number of Navatek LLC, signed
24 by the Defendant, seeking the maximum amount of \$10 million in
25 PPP funds. The application contained materially false and

1 fraudulent representations as the average monthly payroll, number
2 of employees, and ownership of or common management with any
3 other business hereinafter Bank One PPP loan application.

4 In the Bank One PPP loan application, the Defendant
5 falsely and fraudulently stated that Navatek, LLC, had an average
6 monthly payroll of \$4,072,000 when the Defendant knew that
7 Navatek LLC and the Navatek subsidiaries had a combined average
8 monthly payroll of approximately \$829,385 during calendar year
9 2019 and through the application dates.

10 In the Bank One PPP loan application, the Defendant
11 falsely and fraudulently stated that Navatek, LLC, had 490
12 employees when the Defendant knew that Navatek, LLC and the
13 Navatek subsidiaries collectively employed approximately 140
14 employees during calendar year 2019 and through the application
15 date.

16 In the Bank One PPP loan application, the Defendant
17 falsely and fraudulently responded no to question three that
18 asked, is the applicant or any owner of the applicant an owner of
19 any other business or have common management with any other
20 business? The Defendant's response was false and fraudulent
21 because, as the Defendant knew, the Defendant owned and managed
22 the Navatek subsidiaries through his ownership and control of
23 Navatek, LLC. By responding falsely and fraudulently, the
24 Defendant avoided listing all such businesses and describing the
25 relationship of the businesses as required for an affirmative

1 response to question three.

2 In the Bank One PPP loan application, the Defendant
3 falsely and fraudulently certified that from February 15, 2020 to
4 December 31, 2020, Navatek, LLC has not and will not receive
5 another loan under the PPP.

6 In the Bank One PPP loan application, the Defendant
7 falsely and fraudulently certified that the information provided
8 in this application and the information provided in all
9 supporting documents and forms is true and accurate in all
10 material respects.

11 In support of the Bank One PPP loan application, the
12 Defendant caused to be submitted a false and fraudulent
13 spreadsheet used to calculate applicant Navatek, LLC's average
14 monthly payroll and number of employees that, as the Defendant
15 knew, included costs for employees that did not exist and were
16 not eligible for inclusion.

17 During approximately April 2020 to July 2020, the
18 Defendant made additional false and fraudulent representations to
19 Bank One in support of the Bank One PPP loan application,
20 intending these representations to pressure Bank One into quickly
21 and without scrutiny approving the Bank One PPP loan application
22 and to conceal the scheme.

23 By April 18, 2020, Bank One issued and funded the
24 requested PPP loan by depositing \$10 million into Navatek, LLC's
25 business checking account, ending in 9145 at Bank One. In 2021,

1 Navatek, LLC defaulted on the \$10 million PPP loan from Bank One.

2 The Defendant's PPP loan application to Bank Two. On
3 approximately April 20, 2020, the Defendant caused to be
4 submitted to Bank Two, which was a Mainland based national bank,
5 a PPP loan application in the name and tax identification number
6 of Navatek CFD Technologies, LLC, signed by the Defendant seeking
7 \$2,841,490 in PPP funds. The application contained materially
8 false and fraudulent representations as the average monthly
9 payroll, number of employees, and ownership of or common
10 management with any other business herein after the Bank Two PPP
11 loan application.

12 In an email accompanying the Bank Two PPP loan
13 application, the Defendant falsely and fraudulently stated to a
14 President of Bank Two, we did submit an application with a local
15 Hawaii bank for a completely separate company, and that is the
16 one that got fumbled. The Defendant's representation in the
17 email was false and fraudulent because, as the Defendant knew,
18 the PPP application to which he referred in the email had been
19 approved and funded by Bank One and the applicant for the Bank
20 One PPP loan was not a completely separate company. In fact, the
21 applicant for the first PPP loan was Navatek, LLC, the entity
22 that owned Navatek CFD Technologies, LLC.

23 In the Bank Two PPP loan application, the Defendant
24 falsely and fraudulently stated that Navatek CFD Technologies,
25 LLC, had an average monthly payroll of \$1,136,596 when the

1 Defendant knew that Navatek CFD Technologies, LLC, had an average
2 monthly payroll of approximately \$276,450 during calendar year
3 2019 and through the application dates.

4 In the Bank Two PPP loan application, the Defendant
5 falsely and fraudulently stated that Navatek CFD Technologies,
6 LLC, had 140 employees, when the Defendant knew that Navatek CFD
7 Technologies, LLC, employed approximately 40 employees during
8 calendar year 2019 and through the application date.

9 In the Bank Two PPP loan application, the Defendant
10 falsely and fraudulently responded, no, to question three that
11 asked, is the applicant or any owner of the applicant and owner
12 of any other business, or have common management with any other
13 business? The Defendant's response was false and fraudulent
14 because, as the Defendant knew, the Defendant owned and managed
15 the Navatek subsidiaries, including Navatek CFD Technologies,
16 LLC, through his ownership and control of Navatek LLC.

17 By responding falsely, the Defendant avoided listing
18 all such businesses and describing the relationship with the
19 businesses as required for an affirmative response to question
20 three, and thereby avoided the possibility that Bank Two and the
21 SBA would determine that Navatek CFD Technologies, LLC, was not
22 eligible for a PPP loan due to the Bank One PPP loan to Navatek
23 LLC.

24 In the Bank Two PPP loan application, the Defendant
25 falsely and fraudulently certified that from February 15, 2020 to

1 December 31, 2020, Navatek CFD Technologies, LLC, has not and
2 will not receive another loan under the PPP, when the Defendant
3 knew that Navatek CFD Technologies, LLC, had, approximately two
4 days earlier, received the Bank One PPP loan in the amount of \$10
5 million in the name of Navatek LLC.

6 In the Bank Two PPP loan application, the Defendant
7 falsely and fraudulently certified that the information provided
8 in this application and the information provided, all supporting
9 documents and forms, is true and accurate in all material
10 respects.

11 During approximately April 2020 through July 2020, the
12 Defendant made additional false and fraudulent representations to
13 Bank Two and others in support of the Bank Two PPP loan
14 application and to conceal the scheme.

15 By May 6, 2020, Bank Two had issued and funded the
16 requested PPP loan by depositing approximately \$2,841,490 into
17 Navatek LLC's account ending in 9145 at Bank One.

18 On approximately May 4, 2020, after Bank Two's approval
19 of the PPP loan application and funding of the Bank Two PPP loan,
20 the Defendant altered the previously submitted fully executed
21 promissory note for the Bank Two PPP loan by deleting all
22 references to the PPP. The Defendant then provided the altered
23 note to others to conceal his scheme to defraud.

24 In 2021, Navatek LLC and Navatek CFD Technologies, LLC
25 defaulted on the PPP loan from Bank Two.

1 The Defendant's PPP loan application to Bank Three. On
2 April 21, 2020, the Defendant caused to be submitted to Bank
3 Three, which was a Hawaii based regional bank, a PPP loan
4 application in the name and tax identification number of Navatek
5 SHC, LLC, signed by the Defendant seeking \$2,852,839 in PPP funds
6 and containing materially false and fraudulent representations as
7 the average monthly payroll number of employees and ownership of
8 or common management with any other business, hereinafter the
9 Bank Three PPP loan application.

10 In an email accompanying the Bank Three PPP loan
11 application, the Defendant falsely and fraudulently stated to a
12 vice president of Bank Three, as we discussed, we dropped the
13 ball with timing and process the first time. Our entire company
14 structure is complicated, to say the least. With operations,
15 offices, employees and entities all over the country, we really
16 got confused on how to apply.

17 Long story short, we discussed with SBA and figured it
18 out too late. Well, here's hopefully our second chance. The SHC
19 entity is our salaries Hawaii company entity. We are applying
20 under that entity alone and told that is the way to correctly do
21 it. So the application is correct, and all calculations have
22 been reviewed to eliminate all salary amounts in excess of
23 \$100,000.

24 The Defendant's representations in the email were false
25 and fraudulent because, as the Defendant knew, the PPP loan

1 application to which he referred in the email has been approved
2 and funded by Bank One.

3 In the Bank Three PPP loan application, the Defendant
4 falsely and fraudulently stated that Navatek SHC, LLC, had an
5 average monthly payroll of \$1,141,136, when the Defendant knew
6 that the Navatek SHC, LLC, had no payroll during calendar year
7 2019 and through the application date.

8 In the Bank Three PPP loan application, the Defendant
9 falsely and fraudulently stated that Navatek SHC, LLC, had 140
10 employees, when the Defendant knew the Navatek SHC, LLC, had no
11 employees during calendar year 2019 and through the application
12 date.

13 In the Bank Three PPP loan application, the Defendant
14 falsely and fraudulently responded, no, to question three that
15 asked is the applicant or any owner of the applicant an owner of
16 any other business, or have common management with any other
17 business? The Defendant's response was false and fraudulent
18 because, as the Defendant knew, the Defendant owned and managed
19 the Navatek subsidiaries, including Navatek SHC, LLC, through his
20 ownership and control of Navatek LLC.

21 By responding falsely, the Defendant initially avoided
22 listing all such assets -- excuse me, listing all such businesses
23 and describing the relationship of the businesses as required for
24 an affirmative response to question three, and thereby initially
25 avoided the possibility that Bank Three and the SBA would

1 determine that Navatek SHC, LLC was not eligible for a PPP loan
2 due to the Bank One PPP loan to Navatek LLC.

3 In the Bank Three PPP loan application, the Defendant
4 falsely and fraudulently certified that from February 15, 2020 to
5 December 31, 2020, Navatek SHC, LLC, has not and will not receive
6 another loan under the PPP, when the Defendant knew that Navatek
7 SHC, LLC, had, approximately three days earlier, received the
8 Bank One PPP loan in the name of Navatek, LLC.

9 In the Bank Three PPP loan application, the Defendant
10 falsely and fraudulently certified that the information provided
11 in this application and the information provided all supporting
12 documents and forms, is true and accurate in all material
13 respects.

14 From approximately April 2020 to July 2020, the
15 Defendant made additional false and fraudulent statements to Bank
16 Three, in support of the Bank Three PPP loan application, false
17 and fraudulent representations and certifications and revised
18 submissions of the Bank Three PPP loan application, and false and
19 fraudulent statements to Bank Three and others to conceal the
20 scheme. After a vice president at Bank Three informed the
21 Defendant that Navatek SHC, LLC's tax identification number was
22 different from those stated on payroll forms submitted in support
23 of the loan application, the Defendant falsely and fraudulently
24 stated in an email to the vice president, the varying entities
25 have employees, but all payroll is cleared through SHC Salaries

1 Hawaii company LLC.

2 The Defendant's statement was false and fraudulent
3 because, as the Defendant knew, payroll was not cleared through
4 Navatek SHC, LLC. In response -- excuse me. In response to the
5 Defendant's email, the vice president instructed the Defendant
6 to submit applications and the names of the entities that paid
7 the employees.

8 After the Defendant submitted the revised Bank Three
9 PPE loan applications and the names and tax identification
10 numbers of Navatek, LLC and Navatek CFD Technologies, LLC, Bank
11 Three determined through SBA systems that each of those two
12 entities had already been approved for a PPP loan.

13 When so advised by the Bank Three Vice President, the
14 Defendant falsely and fraudulently stated in an email to the vice
15 president on or about April 29, 2020, after much ado last night
16 and this morning, we have made no progress in getting to the
17 bottom of this and with the SBA on getting the actual approval
18 notifications or numbers. The Defendant then abandoned his
19 efforts to obtain additional PPP loans from Bank Three.

20 In executing the charge scheme, the Defendant caused to
21 be transmitted by means of interstate wire the following.

22 With respect to Count One, on or about April 3, 2020,
23 the submission of a PPP application to Bank One via an internet
24 portal. With respect to Count Two, on or about April 20, 2020,
25 submission of a PPP application to Bank Two via email. With

1 respect to Count three, on or about April 21, 2020, submission of
2 a PPP application to Bank Three via email.

3 Each of the foregoing three electronic loan application
4 submissions traveled across state lines from Hawaii and through
5 servers on the United States mainland.

6 On the following dates, the Defendant deposited into
7 the specified accounts the specified checks payable as specified
8 and drawn on Navatek LLC's account ending in 9145 at Bank One.
9 As the Defendant knew, each deposit included more than \$10,000 of
10 proceeds derived from Bank One's approval of the Defendant's
11 fraudulent PPP application charged in Count One as wire fraud.

12 Each deposit affected interstate commerce by, among
13 other things, utilizing interstate systems for the electronic
14 transfer of funds between and among financial institutions in the
15 United States.

16 With respect to Count Four, on or about April 21,
17 2020, check number 31029, payable to Navatek LLC, which was
18 deposited into Navatek's Merrill Lynch account ending in 3506,
19 in the amount of \$2 million.

20 With regard to Count five, on or about April 22, 2020,
21 check number 30986, payable to Mark Kao, the Defendants, and
22 deposited it into the Defendant's personal Merrill Lynch account
23 ending in 2641. In the amount of \$2 million.

24 With regard to Count six, on or about about April 29,
25 2020, check number 31124, payable to Navatek LLC, deposited into

1 Navatek's Merrill Lynch account ending in 3506 in the amount of
2 \$3 million.

3 With regard to Count seven. On or about May 7, 2020,
4 check number 31127 payable to Navatek LLC and deposited in the
5 Navatek's Merrill Lynch account ending in 3506, in the amount of
6 \$3 million.

7 And with regard to Count eight, on or about May 18,
8 2020, check number 31249, payable to Mark Kao, the Defendants,
9 and deposited into Defendant's personal FHB account ending in
10 1787, in the amount of \$20,200.

11 Your Honor, that is the factual basis which the
12 Government would anticipate proving at trial beyond a reasonable
13 doubt.

14 THE COURT: Alright. Thank you very much, Mr. Nolan. Mr.
15 Kao, Mr. Nolan said a lot there. What I need to understand from
16 you is whether you agree with all of the facts he just set forth.

17 MR. BAKKE: Can we have just a moment, Your Honor?
18 I'll just put us on mute.

19 THE COURT: Yes, you may.

20 (Counsel and Defendant confer)

21 MR. BAKKE: Thank you, Your Honor. As I explained to
22 Mr. Kao before, you know, we don't have a change of plea, so we
23 weren't stipulating to a factual basis. We did have a chance,
24 though, to review Mr. Nolan's factual basis, which he just
25 literally read from the document that we had, there are a few

1 things in there, such as like what happened after, I believe,
2 2021.

3 THE DEFENDANT: After my arrest on September 30th,
4 2020.

5 MR. BAKKE: After his arrest. So some of these minor
6 things like the company default and stuff like that, he was no
7 longer in the company. So a lot of that stuff he has no personal
8 knowledge of.

9 THE COURT: Okay.

10 MR. BAKKE: But in general, Your Honor, as far as the
11 overall, for lack of a better term, scheme and the money
12 laundering, we don't have any real objections, but I believe Mr.
13 Kao will put on the record why he believes he's pleading.

14 THE COURT: Okay. And I will ask him to do that in a
15 minute. So I need to hear it from you, Mr. Kao. Do you agree
16 with the factual basis set forth by Mr. Nolan?

17 THE DEFENDANT: In general, I agree.

18 THE COURT: Okay. Let's be specific. What is it you
19 either don't agree with or you just lack knowledge of? I want to
20 be -- there's a lot here, and so I want to be particular about
21 it. We all have -- maybe I should start with by asking the
22 lawyers, would it facilitate matters to file the September 6,
23 2022 letter, and then we can talk about the paragraphs in the
24 letter and make sure we have at least a common understanding.

25 MR. NOLAN: The Government has no objection to that.

1 I'm just carefully --

2 THE COURT: Yeah.

3 MR. NOLAN: -- I think individuals have been anonymized
4 other than, of course, the Defendant. So there's no objection to
5 that. And, Your Honor, the Defendant had this same factual basis
6 since January, not just since yesterday when you got it. So I
7 would hope there would not be today, for the first time, a
8 lengthy discussion indicating disagreement with the factual
9 basis, given that it's more than eight months in their hands.

10 THE COURT: Okay. Understood. Mr. Bakke, any
11 objection to us publicly filing this letter?

12 MR. BAKKE: No, Your Honor. And I believe it was just
13 the Court in the Court's questioning of the Defendant.

14 THE COURT: Okay. I think so, too. So, as part of
15 today's proceeding, we will file the September 6, 2022 letter
16 publicly. The letter from Mr. Nolan to me with a copy to you,
17 Mr. Bakke.

18 Okay. Mr. Kao, again, I need to understand now that we
19 know what we're talking about, if there's any paragraph or any
20 sentence within a paragraph in particular that you don't agree
21 with for any reason, whether it's because you think it is wrong
22 or because you don't have knowledge of what Mr. Nolan has
23 asserted, I want to walk through all of that right now.

24 THE DEFENDANT: Okay. Should I speak freely?

25 MR. BAKKE: Yeah. So refer to the document. They're

1 all numbered paragraphs, so refer to the paragraph and the page
2 number.

3 Your Honor, can I put you on mute again? Sorry.

4 THE COURT: You sure can. And really, what I'm
5 envisioning, you know, Mr. Nolan, read through the entire thing.
6 There are 37 paragraphs here -- 36 numbered paragraphs, and if
7 Mr. Kao doesn't unequivocally agree with everything that's here,
8 I think we all need to know that.

9 MR. BAKKE: Yes.

10 THE COURT: Mr. Bakke, if you need to mute the video
11 for a few minutes, you certainly can. I want you two have total
12 privacy. We're not in a rush. That's fine. We'll wait.

13 Counsel, I'm going to mute my video and audio until
14 they're done. Feel free to do the same if you'd like. We're
15 just standing by.

16 (Counsel and Defendant confer)

17 MR. BAKKE: Aloha, everyone. We're ready again, Your
18 Honor.

19 THE COURT: All right. Thank you. Please just hang on
20 a second. We'll wait till get everybody back. All right. And
21 Mr. Bakke, you can see and hear me?

22 MR. BAKKE: Yes, Your Honor.

23 THE COURT: All right. Mr. Nolan, you can see and hear
24 everybody?

25 MR. NOLAN: I can, Your Honor. Thank you.

1 THE COURT: Okay. All right. Great.

2 All right. I'll turn it back over to you, Mr. Bakke
3 and Mr. Kao. Again, my question is whether there are any facts
4 that the Government asserts it will prove at trial as set forth
5 in paragraphs 1 through 36 that you either disagree with or, due
6 to your lack of knowledge, are not able to agree with. That's
7 for you, Mr. Kao.

8 THE DEFENDANT: Okay. Thank your honor. Victor -- Mr.
9 Bakke explained to me and kind of clarified the question that
10 you're asking. And I understand, and I agree with the facts,
11 except for what -- anything that references post my arrest. I
12 was not involved in any of the company decisions or transactions,
13 so I do not know.

14 THE COURT: Okay. And if you can just help me. Are
15 there any particular facts that this issue of, you know, you were
16 out of the company after your arrest that you're referring to
17 here?

18 THE DEFENDANT: On page 5, paragraph 13, is one
19 example.

20 THE COURT: Okay. And let me just question you on
21 that. You don't -- what I'm hearing you say, don't let me put
22 words in your mouth, you can correct me, is you don't have
23 personal knowledge of the default because you were no longer a
24 part of the company?

25 THE DEFENDANT: That's correct, Your Honor.

1 THE COURT: Okay. All right, that's paragraph 13. Any
2 other paragraphs?

3 MR. BAKKE: The same, Your Honor, on page 7, paragraph
4 24.

5 THE COURT: Okay. I figured that. Any others?

6 THE DEFENDANT: That's it, Your Honor.

7 THE COURT: Okay. Let me just ask you one follow-up
8 question there, Mr. Kao. For paragraph 13 and 24 regarding the
9 defaults, do you have any basis from knowledge that you do have
10 to dispute Mr. Nolan's assertion? I'm not asking you whether you
11 agree with it, but whether you have enough knowledge to disagree
12 with it.

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. I mean, the Government is asserting
15 that Navatek defaulted on the \$10 million loan from Bank One. Do
16 you have any basis to dispute that assertion?

17 THE DEFENDANT: I'm not sure I understand.

18 MR. BAKKE: Yeah, Your Honor, I was involved
19 tangentially with the civil cases and stuff. He had different
20 counsel for that. But how that went down, whether it was a
21 default to the bank or to the Small Business Administration

22 THE COURT: Okay.

23 MR. BAKKE: -- is there. But, I mean, we agree with it
24 in the general sense that the loan was due, and whatever happened
25 to it, we don't know.

1 THE COURT: It was due, and it was not prepaid. Is
2 that a better way? If you don't like the word default, I can
3 understand that. That may not be the right word for you.

4 Okay. Let me pause you there. Mr. Nolan, given this
5 issue, where the Defendant, I guess, wasn't a part of the company
6 and maybe the default is more complicated than I'm certainly
7 aware of, do you have any problem proceeding if he, the
8 Defendant, does not affirm paragraphs 13 and 24?

9 MR. NOLAN: Your Honor, neither of those two go to the
10 elements. They, of course, perhaps go to restitution, some other
11 factors at sentencing, but there's not a need today for Mr. Kao
12 to admit the defaults. And so no need for him to admit to
13 paragraphs 13 and 24.

14 THE COURT: All right. Thank you, Mr. Nolan. All
15 right. Thank you, Mr. Kao. I'm done with that issue. Are there
16 any other paragraphs that you disagree with or don't have
17 knowledge of?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 All right. Mr. Kao, let me ask you in your own words,
21 if you can tell me what you did that constitutes the crimes
22 charged in Counts 1 through 8?

23 THE DEFENDANT: Should I go through one by one, or
24 just --

25 THE COURT: Yeah, it might be simplest to go through

1 one by one.

2 THE DEFENDANT: I apologize. I'm speaking slowly. I
3 want -- I want to be able to get across.

4 THE COURT: Thank you. Take all the time you need. I
5 trust this is a difficult afternoon for you. And like I said
6 earlier, we are in no rush. This is all I have for the rest of
7 the day, so you take your time. If you need a break, you tell
8 us. If you need to talk to your lawyer, you tell us. We'll
9 accommodate all of that.

10 MR. BAKKE: Start with Bank One, Count 1.

11 THE DEFENDANT: Okay. Many of these -- in fact, all
12 three counts have a similar theme, maybe the same theme. I
13 believe that maybe the means justify the end.

14 MR. BAKKE: Can I have just a moment?

15 THE COURT: Yes, please take all the time you need.

16 (Counsel and Defendant confer)

17 MR. BAKKE: Okay. Thank you, Your Honor.

18 THE COURT: Sure.

19 THE DEFENDANT: Okay. I guess I'll restart.

20 So, for Loan One, the application to Bank One for \$10
21 million, we applied using payroll numbers that were current as
22 well as estimated for our prospective hires for the period of the
23 PPP loan repayment. We knew or I knew that the calculation
24 specified to use 2019 average monthly payroll, but we used the
25 average payroll for what we had estimated to be our payroll cost

1 for the period of the PPP loan, as well as our current payroll at
2 the time of the application, which resulted in a higher loan
3 amount than what we would have otherwise qualified for strictly
4 using 2019 payroll. And, yes, we submitted the application via
5 the internet.

6 THE COURT: Okay. So again, for the Bank One loan that
7 was on or about April 3, 2020?

8 THE DEFENDANT: Correct, Your Honor.

9 THE COURT: And you misstated the monthly payroll; is
10 that correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you also misstated the number of
13 employees that you had?

14 THE DEFENDANT: Yes. Your Honor.

15 THE COURT: And then you also did not answer truthfully
16 that question number three about whether you had any common
17 ownership with another business; is that true?

18 THE DEFENDANT: Yes, I signed the application and that
19 was one of the questions.

20 THE COURT: Okay. And then ultimately, Bank One issued
21 the loan in the amount of \$10 million into Navatek, LLC's
22 business checking account?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. And you did that by means -- you
25 submitted that application by means of an internet portal?

1 THE DEFENDANT: I believe so.

2 THE COURT: Okay. All right. Mr. Nolan, is there any
3 other follow-up you would like as to Count 1?

4 MR. NOLAN: Your Honor, I think all the facts that were
5 just covered by you and the Defendant are sufficient for the
6 elements. He has already admitted to the somewhat more robust
7 factual basis I've given, but I don't think he needs to repeat
8 every fact again.

9 THE COURT: Okay. All right. Thank you.

10 All right. Mr. Kao, again, in your own words, if you
11 can tell me what you did with Bank Two, which is Count 2 of the
12 indictment?

13 THE DEFENDANT: For the second bank we applied for our
14 second loan, knowing like Mr. Nolan outlined, that we already
15 received the first one.

16 THE COURT: Okay. And again, you made
17 misrepresentations about payroll, and the number of employees and
18 whether you had any common ownership with businesses making
19 similar applications?

20 THE DEFENDANT: Yes. We made misrepresentation
21 regarding the payroll amount for 2019, for that second entity,
22 Navatek CFD Technologies, and the affiliation. Again, I signed
23 the application.

24 THE COURT: Okay. And for that application, the
25 Government asserts that you used email for that submission. Do

1 you agree with that?

2 THE DEFENDANT: Yes. Yes.

3 THE COURT: All right. Thank you. Mr. Nolan, is that
4 enough for Count 2?

5 MR. NOLAN: I think it is, Your Honor. The one thing I
6 would add, just with respect to all, maybe you intend to cover it
7 after Count 3, is that these statements that he's admitting to,
8 that he admits that they were material and, therefore, had the --
9 at least the potential to influence the decision makers here, the
10 banks.

11 THE COURT: Okay. I will cover that.

12 Mr. Kao, you heard Mr. Nolan's question. He's asking
13 me to ask you whether the misstatements you made as to Bank One,
14 Bank Two, and Bank Three were material in that you made
15 misstatements, and it appears that the Government relied on them
16 in making these loans. Do you agree with that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Thank you. And then lastly, tell me
19 in your own words, please, about Bank Three. The Bank Three
20 loan.

21 THE DEFENDANT: We applied for the Bank Three loan at
22 the same time, roughly, I think, maybe a day apart, I can't
23 remember exactly, with the Bank Two loan. I think there were for
24 nearly identical amounts, expecting to get one of them, and --
25 but that was for the same -- it was the same effects. We knew we

1 had the first loan already, but we applied for a second and third
2 loan, expecting to get either Bank Two or Bank Three.

3 THE COURT: And Bank Three, that application was also
4 by computer -- by email, I believe.

5 THE DEFENDANT: By email, yes.

6 THE COURT: Okay. Thank you. Mr. Nolan, anything
7 further as to Count 3?

8 MR. NOLAN: Your Honor, I think that's fine, as long as
9 he agrees that the statements were material --

10 THE COURT: He did.

11 MR. NOLAN: -- and that this whole -- the whole purpose
12 was to get funds he wasn't entitled to.

13 THE COURT: Okay. Do you agree with that, Mr. Kao?
14 The whole purpose of the misstatements were to get funds you were
15 not otherwise entitled to?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And lastly, Counts 4, 5, 6, 7,
18 and 8 are the money laundering counts. And the Government has
19 detailed in paragraph 36 exactly where the checks went. But can
20 you just tell me -- and you've told me you agree with paragraph
21 36, in your own words, what you did that constitutes the crimes
22 charged in Counts 4 through 8?

23 THE DEFENDANT: The PPP loan proceeds were deposited
24 into the company's general business account. That's the account
25 that all customer payments, invoices, transactions are conducted

1 out of. That account held a very large balance in it of cash
2 after the PPP loan proceeds were deposited, in addition to what
3 we collect every day, every week, every month from our customers.

4 So I had discussed with our CFO about moving large cash
5 balances into higher interest bearing accounts. And I understand
6 that because the funds were comingled with PPP funds, whatever
7 was moved, is the definition of money laundering, as Mr. Nolan
8 highlighted.

9 THE COURT: Okay. And it looks like Counts 4, 6, and
10 7, those checks went to the Navatek LLC account. And then Counts
11 5 and 8, those checks are made payable to you. Do you agree with
12 all of that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And because you're using electronic wires
15 among United States financial institutions, do you agree that
16 these check payments affected interstate commerce?

17 THE DEFENDANT: Yes. Yes, Your Honor.

18 THE COURT: All right. Mr. Nolan, anything further on
19 Counts 4 through 8? You're still muted, Mr. Nolan.

20 MR. NOLAN: Thank you. I'm surprised I did that only
21 once today. So I think Mr. Kao has covered that with Your Honor.

22 THE COURT: All right. Is there any other matter you
23 would like me to cover with the Defendant, Mr. Nolan?

24 MR. NOLAN: There is not. Thank you.

25 THE COURT: All right. Mr. Bakke, is there any reason

1 that you're aware that the Court should not accept to guilty plea
2 at this time?

3 MR. BAKKE: No, Your Honor.

4 THE COURT: All right. Mr. Kao, I'm going to ask you
5 now, how do you plead to the charges in counts 1, 2, 3, 4, 5, 6,
6 7, and 8 of the indictment, guilty or not guilty?

7 THE DEFENDANT: Guilty, Your Honor.

8 THE COURT: The Court finds that the Defendant is fully
9 competent and capable of entering an informed plea, that his
10 guilty plea is knowing and voluntary, and supported by an
11 independent basis in fact concerning each of the essential
12 elements of the offenses.

13 I'm therefore signing a report and recommendation
14 concerning plea of guilty, and I recommend that the Defendant be
15 adjudged guilty and have sentence imposed. Objections to this
16 report and recommendation are waived unless filed and served
17 within 14 days.

18 Mr. Kao, I'm also ordering Probation to prepare your
19 presentence report, and this document will be about you and your
20 case, and it will assist the District Judge at sentencing. The
21 probation officer is going to interview you. If you wish, your
22 attorney may be present at that interview. And you and your
23 lawyer will have the chance to read that report before
24 sentencing, to file any written objections to it. And you will
25 also have the opportunity to address the sentencing judge before

1 sentencing.

2 May we please have a sentencing date and time?

3 THE CLERK: Yes, Your Honor. Sentencing set for
4 Thursday, January 19, 2023, at 02:30 p.m., before Judge Kobayashi
5 in Aha Nonoi.

6 THE COURT: Thank you. Mr. Nolan, is there any
7 objection to the Defendant's continued release on bond?

8 MR. NOLAN: No, Your Honor.

9 THE COURT: Okay. So I will permit the Defendant to
10 stay out on bond on the current conditions. I don't have
11 anything further at this time.

12 Mr. Bakke, anything further for Mr. Kao?

13 MR. BAKKE: Your Honor, yes. And maybe Mr. Nolan might
14 agree with this, but I just want to make sure the record is clear
15 that Mr. Kao also has a pending federal case in Washington, D.C.,
16 and he has different counsel. He has a public defender back
17 there. That case is close to wrapping up with a plea. They were
18 waiting to see what happened in this case. But I just wanted it
19 to be clear that -- you have a plea deal in that case?

20 THE DEFENDANT: I think it's contingent on this. I
21 don't know what that means.

22 MR. BAKKE: Yeah. So I believe there's a plea deal to
23 resolve that case, and one of them is going to -- one of the
24 conditions is to have it somehow roll into this. I don't know
25 exactly what they've worked out, but I just want to make it clear

1 that he has not been made any promises or anything in that case
2 regarding the outcome of this case.

3 And so he's also under pretrial supervision with
4 Washington D.C., as well. So all those questions -- and so when
5 we get to the sentencing date, we may request maybe to move that
6 to accommodate maybe the Washington, D.C., case as well.

7 THE COURT: Okay. That's fine. I think you and Mr.
8 Nolan can discuss that when the time comes. Is that all right,
9 Mr. Nolan?

10 MR. NOLAN: Yes. And just to be clear, there is no
11 agreement whether one case or the other will be transferred after
12 plea for sentencing purposes. That could occur, but it may not
13 occur.

14 THE COURT: Okay. Thank you. And I assume we can find
15 any District Judge on that. So I think just see what comes, and
16 you can take it up as necessary.

17 Was there anything further, Mr. Bakke?

18 MR. BAKKE: No, Your Honor.

19 THE COURT: All right. Mr. Nolan?

20 MR. NOLAN: No. Thank you, Your Honor.

21 THE COURT: All right. Thank you all. Mr. Kao, best
22 of luck. We will be in recess, everybody.

23 MR. BAKKE: Thank you, Honor. Hope you feel better.

24 THE DEFENDANT: Thank you.

25 (Proceedings concluded at 2:46 p.m.)

CERTIFICATE

I, Jessica B. Cahill, Court approved transcriber, do hereby certify that pursuant to 28 U.S.C. §753, the foregoing is a complete, true, and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated: October 14, 2022



Jessica B. Cahill, CER/CET-708