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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

21 CR 247 (PAE)
Plea

6 AMOS MUNDENDI

7 Defendant

-----x

8 New York, N.Y.
9 April 4, 2022
11:10 a.m.

10 Before:

11 HON. PAUL E. ENGELMAYER

District Judge

12 APPEARANCES

13 DAMIAN WILLIAMS

14 United States Attorney for the
15 Southern District of New York

16 DINA McLEOD

Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK INC.

18 Attorney for Defendant

19 TAMARA L. GIWA

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(In open court; case called)

DEPUTY CLERK: Counsel, starting with the front table, please state your appearance for the record.

MS. McLEOD: Good morning, your Honor. Dina McLeod for the government.

THE COURT: Good morning, Ms. McLeod.

MS. GIWA: Federal Defenders of New York by Tamara Giwa, and next to me is Mr. Mundendi.

THE COURT: Good morning, Ms. Giwa.

And good morning to you, Mr. Mundendi. You may be seated.

Before we get started, just a reminder for those who haven't heard this before as to the current state of play with respect to Covid and masking. New rules. I don't have to wear the mask while I'm on the bench, and the same goes for anybody who is speaking provided that you are fully vaccinated. So feel at liberty when you're speaking -- this is primarily going to be germane to Mr. Mundendi, but when you're speaking, feel free to take the mask off for that period of time.

With that, Ms. Giwa, I have been informed that your client wishes today to plead guilty to Count Three of the indictment in this case pursuant to a plea agreement. Is that correct?

MS. GIWA: Yes, your Honor, that's correct.

THE COURT: Mr. Mundendi, is that in fact correct?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Very good. Counsel have handed up a
3 signed plea agreement. I am going to mark it Government
4 Exhibit 1. Later in this proceeding I will have questions for
5 counsel and for Mr. Mundendi about the agreement.

6 Mr. Mundendi, before I accept your guilty plea, I'm
7 going to ask you certain questions so that I can establish to
8 my satisfaction that you wish to plead guilty because you are
9 guilty and not for some other reason. If you don't understand
10 any of my questions or you'd like a further opportunity to
11 consult with your attorney, will you please let me know?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Are you able to speak and understand
14 English?

15 THE DEFENDANT: Yes, Judge.

16 THE COURT: Mr. Smallman, would you kindly place the
17 defendant under oath.

18 (Defendant sworn)

19 THE COURT: Mr. Mundendi, do you understand that you
20 are now under oath, and that if you answer any of my questions
21 falsely, your answers to my questions may be used against you
22 in another prosecution for perjury.

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: What is your full name?

25 THE DEFENDANT: Amos Mundendi.

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1 THE COURT: How old are you?

2 THE DEFENDANT: I'm 33.

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

4 THE DEFENDANT: I attended TCC, Tarrant County
5 College. TCC.

6 THE COURT: Oh, TCC? Can you spell that?

7 THE DEFENDANT: Tarrant, T-A-R-R-A-N-T, County
8 College.

9 THE COURT: Tarrant County College. Tarrant. That
10 may not be the way they pronounce it, but that's phonetic
11 anyway. Very good.

12 Have you ever been treated or hospitalized for any
13 mental illness?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Have you now or have you recently been
16 under the care of a doctor or psychiatrist?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Have you ever been hospitalized or treated
19 for addiction to any drugs or to alcohol?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: In the past 24 hours, have you taken any
22 drugs, medicine or pills or drunk any alcoholic beverages?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand what is happening in
2 this proceeding?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Ms. Giwa, do you have any doubt as to your
5 client's competence to plead at this time?

6 MS. GIWA: No, your Honor.

7 THE COURT: How about you, Ms. McLeod?

8 MS. McLEOD: No, your Honor.

9 THE COURT: Based upon his responses to my questions
10 and his demeanor as he appears before me, and as confirmed by
11 counsel's independent assessments, I find that Mr. Mundendi is
12 competent to enter a plea of guilty at this time.

13 Mr. Mundendi, have you have a sufficient opportunity
14 to discuss your case with your attorney?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you had a sufficient opportunity to
17 discuss the particular charge to which you intend to plead
18 guilty, any possible defenses to that charge, and the
19 consequences of entering a plea of guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you satisfied with your attorney's
22 representation of you, including in connection with reaching a
23 plea agreement?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I'm now going to explain certain

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1 constitutional rights that you have. You will be giving up
2 these rights if you enter a plea of guilty.

3 Under the Constitution and laws of the United States,
4 you're entitled to a speedy and a public trial by a jury on the
5 charges contained in the indictment. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: At that trial you would be presumed to be
8 innocent, and the government would be required to prove you
9 guilty by competent evidence and beyond a reasonable doubt
10 before you could be found guilty. You would not have to prove
11 that you were innocent. And a jury of 12 people would have to
12 agree unanimously that you were guilty. Do you understand
13 that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: At that trial and at every stage of your
16 case, you would be entitled to be represented by an attorney;
17 and if you could not afford one, one would be appointed to
18 represent you free of charge. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: During a trial, the witnesses for the
21 government would have to come to court and testify in your
22 presence, and your lawyer could cross-examine the witnesses for
23 the government, object to evidence offered by the government,
24 and, if you desired, issue subpoenas, offer evidence and compel
25 witnesses to testify on your behalf. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: At a trial, although you would have the
3 right to testify if you chose to do so, you would also have the
4 right not to testify, and no inference or suggestion of guilt
5 could be drawn from the fact that you did not testify if that
6 was what you chose to do. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: At a trial, the government would have to
9 prove each and every part or element of a charge beyond a
10 reasonable doubt for you to be convicted of a charge. Do you
11 understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if you were
14 convicted at a trial, you would then have the right to appeal
15 that verdict?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Even at this time right now, even as you
18 are in the process of entering this guilty plea, you have the
19 right to change your mind, plead not guilty and go to trial.
20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If you plead guilty, and I accept your
23 plea, you'll give up your right to a trial and the other rights
24 that I've just described. There will be no trial. And I will
25 enter a judgment of guilty and sentence you on the basis of

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1 your guilty plea after considering the submissions relating to
2 sentencing that I receive from you and your lawyer and the
3 government as well as a presentence report prepared by the
4 probation department. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: If you plead guilty, you'll also have to
7 give up your right not to incriminate yourself because today I
8 will ask you questions about what you did in order to satisfy
9 myself that you are guilty as charged. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you received a copy of the indictment
12 containing the charges against you?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you read it?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you discussed it with your lawyer?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you're charged in
19 Count Three with a crime of conspiracy to commit wire fraud?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Ms. McLeod, would you kindly set out the
22 elements of that offense.

23 MS. McLEOD: Yes, your Honor. There are two elements
24 to the crime of conspiracy to commit wire fraud:

25 First, that the conspiracy charged in the indictment

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1 existed; that is, that there was an agreement or understanding
2 to commit a federal crime, in this case wire fraud.

3 Second, that the defendant knowingly became a member
4 of that conspiracy.

5 The elements of wire fraud are:

6 First, that there was a scheme or artifice to defraud
7 or to obtain money or property by materially false and
8 fraudulent pretenses, representations or promises.

9 Second, that the defendant knowingly and willfully
10 participated in the scheme or artifice to defraud with
11 knowledge of its fraudulent nature and with specific intent to
12 defraud.

13 And, third, in execution of that scheme, the defendant
14 used or caused the use of interstate wires.

15 And, in addition, the government must prove by a
16 preponderance of the evidence that venue is proper in the
17 Southern District of New York.

18 THE COURT: Thank you.

19 Ms. Giwa, do you agree that those are the elements of
20 the offense?

21 MS. GIWA: Yes, your Honor.

22 THE COURT: Mr. Mundendi, did you hear and understand
23 AUSA McLeod as she set out the elements of the offense?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that were you to go to

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1 trial, the government would have to prove all of those elements
2 beyond a reasonable doubt?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And do you understand that the government
5 would also have to prove by a preponderance of the evidence
6 that venue was proper in this district?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand -- I'm turning now to
9 the penalties -- that the maximum possible penalty for this
10 offense is 20 years in prison?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The maximum fine for this offense may
13 reach the greatest of \$250,000 or twice the gross pecuniary
14 gain derived from the offense or twice the gross pecuniary loss
15 to persons other than you resulting from the offense. Do you
16 understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: For pleading guilty to this crime, you may
19 receive a term of up to three years' supervised release. Do
20 you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Supervised release means that you'll be
23 subject to monitoring when you are released from prison. There
24 are terms of supervised release with which a person must
25 comply. If you don't comply with them, you can be returned to

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1 prison without a jury trial for all or part of the term of
2 supervised release imposed by the court.

3 Under those circumstances, you would not be given any
4 credit towards that term for the time you had served in prison
5 as a result of your sentence for this crime, nor would you
6 necessarily be given any credit towards that term for any time
7 you had spent on post release supervision. Do you understand
8 that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For pleading guilty to this crime, you'll
11 be required to pay a mandatory \$100 special assessment. Do you
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: For pleading guilty to this crime, you may
15 be required to pay restitution to any person injured as a
16 result of your criminal conduct. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: And for pleading guilty to this crime, you
19 may be compelled to forfeit any and all property constituting
20 and derived from proceeds obtained by your criminal conduct.
21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that if I accept
24 your guilty plea and adjudge you guilty, that may deprive you
25 of valuable civil rights, such as the right to vote, the right

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1 to hold public office, the right to serve on a jury, and the
2 right to possess any kind of firearm?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a United States citizen?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Do you understand that as a result of your
7 guilty plea, there may be adverse effects on your immigration
8 status, including further detention after completion of your
9 sentence?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that as a result of your
12 guilty plea, you may be removed from the United States, denied
13 citizenship, and denied admission to the United States in the
14 future?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you discussed the possible
17 immigration consequences of your guilty plea with your lawyer?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Under current law, there are Sentencing
20 Guidelines as well as other factors set forth in the sentencing
21 statutes that judges must consider in determining a sentence.
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Have you spoken with your attorney about
25 the Sentencing Guidelines and those other factors?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that the Court will not
3 be able to determine the guideline range that will form one
4 part of my determination of what a reasonable and just sentence
5 will be in your case until after a presentence report has been
6 prepared and until after you and your attorney and the
7 government have all had an opportunity to challenge any of the
8 facts reported in that report by the probation officer?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And do you understand that even though the
11 parties in the plea agreement have agreed that the guidelines
12 recommend a sentence of between 57 and 71 months in this case,
13 that agreement as to what the guidelines recommend is not
14 binding on the probation department and it's not binding on the
15 Court?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that even after the
18 Court has determined what guideline range applies in your case,
19 the Court has the discretion under the current law to impose a
20 sentence that is higher or lower than the one recommended by
21 the Sentencing Guidelines?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that if your attorney or
24 anyone else has attempted to predict what your sentence will
25 be, their prediction could be wrong. No one -- not your

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1 attorney, not the government's attorney, no one -- can give you
2 any assurance of what your sentence will be because I'm going
3 to decide your sentence, and I'm not going to do that now, and
4 I really can't do that now. Instead, I'm going to wait until I
5 receive the presentence report prepared by the probation
6 department. I'm going to wait until I receive what I know will
7 be thoughtful sentencing submissions from both the defense and
8 the government. I'm going to review those materials carefully.
9 I'm going to make my own independent determination of what the
10 Sentencing Guidelines recommend. Most of all, I'm going to
11 determine what a just and reasonable sentence for you will be
12 based on all of the factors contained in the sentencing
13 statute, which is known as 3553(a). Do you understand all of
14 that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you discussed these issues and the
17 overall sentencing process with your attorney?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Even if your sentence is different from
20 what your attorney or anyone else has told you it might be,
21 even if it's different from what you expect even if it's
22 different from the advisory guideline range that appears in
23 your plea agreement, you would still be bound by your guilty
24 plea, and you would not be allowed to withdraw your plea of
25 guilty. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Has anyone threatened you or anyone else
3 or forced you in any way to plead guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: You said earlier that there is a plea
6 agreement that has been entered into. That's the one that
7 bears the typed date of March 8, 2022 and today's date on the
8 back and your signature alongside that date?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Ms. McLeod, I see on the back page your
11 signature and that of Timothy Howard, the co-chief of the
12 Complex Frauds and Cyber Crime Unit. Are those your
13 signatures?

14 MS. McLEOD: Yes, your Honor.

15 THE COURT: Ms. Giwa, is this your signature dated
16 today?

17 MS. GIWA: Yes, your Honor.

18 THE COURT: And, Mr. Mundendi, is this your signature
19 dated today?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you read this agreement before you
22 signed it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you discuss it with your attorney
25 before you signed it?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you believe you understood the
3 agreement at the time you signed it?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Did you willingly sign this agreement?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did anybody force you to sign it?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Do you have any agreement with the
10 government about your plea or your sentence that has been
11 omitted; that has been left out of this written agreement?

12 (Counsel and defendant consult)

13 THE DEFENDANT: Yes, your Honor. It covered
14 everything.

15 THE COURT: My question is, is there anything omitted?
16 Is there anything left out?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Ms. McLeod, would you kindly summarize the
19 material terms of the plea?

20 MS. McLEOD: Yes, your Honor.

21 The government agrees to accept a guilty plea from
22 Mr. Mundendi to Count Three of the indictment. At the time of
23 sentencing, the government will move to dismiss any open counts
24 against the defendant. The defendant admits to the forfeiture
25 allegation and agrees to forfeit a specific amount of money,

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1 specifically \$78,653, and also agrees to make restitution in an
2 amount ordered by the Court.

3 The parties stipulate that the Sentencing Guidelines
4 range that is appropriate is 57 to 71 months. And, in
5 addition, the agreement provides that the defendant will not
6 appeal any sentence that is within or below that guidelines
7 range that is stipulated, and the government will not an appeal
8 any sentence that is within or above that range.

9 THE COURT: Great. Thank you, Ms. McLeod.

10 Ms. Giwa, are you in agreement with Ms. McLeod's
11 summary of the terms that she covered?

12 MS. GIWA: Yes, your Honor.

13 THE COURT: Mr. Mundendi, did you hear and understand
14 the prosecutor, Ms. McLeod, as she set out those terms?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I'm going to highlight just one of the
17 terms. Do you understand that under the agreement, you're
18 giving up your right to appeal or otherwise challenge your
19 sentence, so long as I don't sentence you to more than 71
20 months in prison?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has anyone made any promise or done
23 anything, other than what's contained in the plea agreement, to
24 induce you to plead guilty?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Has anyone made a promise to you as to
2 what your sentence will be?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: We're now up to the point at which I'm
5 going to ask you to tell me in your own words what it is that
6 you did that makes you believe you are guilty of the charge in
7 Count Three of the indictment.

8 Before I do though, let me just ask, Ms. Giwa, whether
9 something has been written out that Mr. Mundendi will be
10 consulting as he enters the plea.

11 MS. GIWA: Yes, your Honor. Mr. Mundendi and I have
12 prepared a statement. He's made a lot of edits. These are
13 really his words.

14 THE COURT: That's what I need to confirm with you,
15 Mr. Mundendi. Before you read that aloud, I want to make sure
16 that you've reviewed it in advance and everything in what
17 you're about to read to me is accurate.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I'll ask you to go ahead, but for the
20 benefit, in particular, of the court reporter, please read nice
21 and slowly and maybe a little bit more loudly.

22 THE DEFENDANT: Yes, your Honor.

23 During a portion of the time period charged in Count
24 Three, I agreed to participate in a scheme to defraud by
25 participating in telephone conferences regarding making

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1 material misrepresentations for a PPP application -- for a PPP
2 loan application. Sorry.

3 I was not always explained the exact details in which
4 details were being exaggerated and/or falsified, but I knew
5 that some of the information provided would be false.

6 I obtained the information for the loan documents by
7 telephone with one of the participants in the fraud who was
8 located in the Southern District of New York.

9 At the time I participated in the collection of the
10 information, I knew that my engagement in this was wrong.

11 I am deeply and sincerely apologetic for my
12 participation taken during such a critical time in America.

13 My regret is deep, daily I am changing my life and
14 applying all I have learned from this situation to become a
15 better human overall and a better citizen. Thank you.

16 THE COURT: Thank you, Mr. Mundendi. I appreciate
17 what you said, particularly at the end of what you said.

18 Let me just go over a few details just to make sure
19 that you've covered all the necessary bases here.

20 You participated in this scheme with other people, I
21 take it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And you agreed with them that, I think you
24 said this, but I just want to make sure, you described that
25 although you didn't necessarily always know all the details,

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1 you understood that some information would be false that was
2 being provided to the people who had to decide whether to issue
3 the PPP loan?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And you knew that at the time?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you understand that that information
8 or some of that information was material; that it had the
9 capacity to affect whether the loan was awarded or not awarded?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Ms. McLeod, can you make a proffer to me
12 as it relates to the interstate wire element of the offense.
13 We'll get to venue in a moment, but just as to the interstate
14 wire element.

15 MS. McLEOD: Yes, your Honor.

16 As Mr. Mundendi, I think, alluded to, he communicated
17 with a co-conspirator, who was located in the Southern District
18 of New York, via phone and also, I believe, via text message
19 which would have constituted interstate wires.

20 THE COURT: Where did you understand him to be at the
21 time?

22 MS. McLEOD: The co-conspirator was located in the
23 Southern District of New York.

24 THE COURT: Sorry, and Mr. Mundendi was in?

25 MS. McLEOD: Texas.

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1 THE COURT: Texas, okay.

2 MS. McLEOD: And, in addition, as part of this scheme,
3 the co-conspirator, who was located in the Southern District of
4 New York, would have submitted applications online that would
5 have also crossed interstate lines.

6 THE COURT: Very good.

7 Ms. Giwa, first of all, does the defense stipulate,
8 agree to those factual representations, both about the
9 interstate phone calls in furtherance and the interstate
10 internet submissions in furtherance?

11 MS. GIWA: Yes, your Honor, as to both.

12 THE COURT: Mr. Mundendi, is what Ms. McLeod said
13 factually correct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I think that then, in turn, establishes
16 the S.D.N.Y. venue aspect.

17 You mentioned a moment ago that what you did, you knew
18 it was wrong. I think this is implicit, but just to be clear.
19 Did you appreciate as well that when you were engaged in the
20 process of causing false statements to be made to get PPP
21 money, that that was also against the law?

22 THE DEFENDANT: Do you mind if I ask?

23 THE COURT: Of course.

24 (Counsel and defendant consult)

25 THE DEFENDANT: Yes, your Honor. I didn't -- I can

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1 say right now I didn't really have a total understanding, but
2 I -- I had doubts and also feelings that there was something
3 not clear or legal about the whole process.

4 THE COURT: You had doubts about whether what you and
5 the other people were engaged in was legal?

6 THE DEFENDANT: It wasn't really clear to me exactly
7 what was really happening, but --

8 THE COURT: Mr. Mundendi, let me be a little more
9 precise. You said to me a moment ago -- and I appreciated your
10 honesty in saying it -- that you appreciated that some
11 information that was being given to the PPP program to get its
12 money was false.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you appreciate that making a false
15 statement to the government to get money from them is against
16 the law?

17 THE DEFENDANT: Yes, your Honor. Yes.

18 THE COURT: And did you appreciate that at the time?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right.

21 Does government counsel agree that there's a
22 sufficient factual predicate for a guilty plea?

23 MS. McLEOD: Yes, your Honor.

24 THE COURT: Does defense counsel?

25 MS. GIWA: Yes, your Honor.

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1 THE COURT: Does defense counsel know of any valid
2 defense that would prevail at trial or any reason why your
3 client should not be permitted to plead guilty?

4 MS. GIWA: No, your Honor.

5 THE COURT: Mr. Mundendi, are you pleading guilty
6 today voluntarily and of your own free will and because you
7 are, in fact, guilty.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Can government counsel represent that had
10 the case gone to trial, the government had sufficient evidence
11 of each element to establish a conviction.

12 MS. McLEOD: Yes, your Honor?

13 THE COURT: Because you acknowledge that you are in
14 fact guilty as charged in the indictment, because I'm satisfied
15 that you know of your rights, including your right to go to
16 trial, because I'm satisfied that you're aware of the
17 consequences of your plea, including the sentence that may be
18 imposed and because I find that you're voluntarily pleading
19 guilty, I accept your guilty plea and enter a judgment of
20 guilty on the one count, Count Three, to which you pled guilty,
21 and I'm also going to take this opportunity to sign the consent
22 preliminary order of forfeiture. And, Ms. McLeod, this is the
23 document referenced in the plea agreement, correct?

24 MS. McLEOD: Yes, your Honor.

25 THE COURT: And, Mr. Mundendi, this is your signature

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1 on the document?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Ms. Giwa, the same?

4 MS. GIWA: Yes, your Honor.

5 THE COURT: All right. Mr. Mundendi, the next step in
6 your case is going to involve a sentencing process, and I'm
7 going to ask you to pay close attention to what I'm about to
8 say.

9 The probation department is going to want to interview
10 you in connection with the presentence report that it prepares.
11 If you choose to speak with the probation department, please
12 make sure everything you say to them is truthful and accurate.
13 I read those reports carefully, and along with counsel's
14 sentencing submissions, they're very important to me. They're
15 almost always very important to me in deciding what a just and
16 reasonable sentence is in the particular case.

17 You and your counsel have the right to examine the
18 report and to comment on it at the time of the sentencing, and
19 I urge you to read it and to discuss it with Ms. Giwa before
20 sentencing. If there are any mistakes in the report, please
21 point them out to Ms. Giwa so that she can bring them to my
22 attention before sentencing. Would you agree to do that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Ms. Giwa, I take it this is not a case in
25 which you're seeking an expedited sentence?

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1 MS. GIWA: No, your Honor, not at all.

2 THE COURT: All right.

3 How about Counsel, Wednesday, August 10 at 11:00 a.m.?

4 MS. GIWA: That works for us.

5 MS. McLEOD: I am going to be away at that time, but
6 something in --

7 THE COURT: When are you back?

8 MS. McLEOD: I believe I'm back the 13th from that
9 trip, but I'm going to be away at the NAC, the training center
10 for DOJ, the week after that.

11 THE COURT: When are you next available for the
12 sentencing?

13 MS. McLEOD: The week of the 25th.

14 THE COURT: Ms. Giwa, are you around that week?

15 MS. GIWA: I'm actually out that week and the
16 following week, your Honor.

17 THE COURT: Let's push this to September. The
18 defendant is not in custody. The case benefits by having both
19 of you here. How about September 8 at 11:00 a.m.?

20 MS. GIWA: Your Honor, Mr. Mundendi is off from work
21 on Fridays. Would it be possible to get a Friday.

22 THE COURT: The 9th at 11:00 a.m.?

23 MS. GIWA: Thank you so much.

24 THE COURT: Ms. McLeod, I take it that works for you?

25 MS. McLEOD: That's fine.

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1 THE COURT: Happy to accommodate.

2 I'm going to set sentencing down for that date and
3 time. Ms. Giwa, you should arrange for your client to be
4 interviewed by the probation department within the next two
5 weeks. Government, you should provide your case summary to the
6 probation department within the next two weeks. The defense
7 sentencing submission two weeks before sentencing, and the
8 government submission is due one week before.

9 Ms. McLeod, I take it the defendant is currently
10 released on conditions of bail?

11 MS. McLEOD: Yes, your Honor.

12 THE COURT: Does the government have any objection to
13 the present conditions remaining in place through to the date
14 of sentencing?

15 MS. McLEOD: No, your Honor.

16 THE COURT: I'm happy then to keep those conditions in
17 place.

18 Mr. Mundendi, do you understand that all of the
19 conditions under which you have been released until now
20 continue to apply, and that a violation of any of those
21 conditions can have very serious consequences for you at the
22 time of sentencing?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You must be in this courtroom for
25 sentencing at the time and date that I've set or you'll be

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1 guilty of a separate crime called bail jumping and subject to a
2 fine or prison term, in addition to whatever sentence you may
3 receive, for the crime to which you've just pled guilty. Do
4 you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Anything further from the government?

7 MS. McLEOD: No, your Honor.

8 THE COURT: Anything further from the defense?

9 MS. GIWA: Nothing further, your Honor. Thank you.

10 THE COURT: I look forward to seeing everyone in
11 September. Thank you. Be well.

12 (Adjourned)