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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Before The Honorable Donald M. Middlebrooks, Judge

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 21-CR-20231-DMM
	)	
CARLOS VAZQUEZ,	)	
	)	
Defendant.	)	
_____	)	

Miami, Florida
Tuesday, November 16, 2021

TRANSCRIPT OF PROCEEDINGS

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Official Court Reporter

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1:02 p.m.

P R O C E E D I N G S

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THE COURT: Good afternoon.

Please be seated.

MR. O'BYRNE: Good afternoon.

THE DEFENDANT: Good afternoon.

THE COURT: This is a sentencing in the case of United States versus Carlos Vazquez, Case Number 21-20231.

Can we please have appearances. And if you'd like to remove your mask while you speak, you may.

MR. O'BYRNE: Good afternoon, Your Honor. AUSA Hayden O'Byrne on behalf of the United States. I'm here with my colleague, Annika Miranda, from the asset forfeiture group. I also have a case agent --

THE COURT: Hold on just a second, please.

Can we try to figure out what that is?

THE CLERK: Somebody's drilling somewhere.

THE COURT: Okay. Well, hopefully that doesn't happen again.

Okay. Mr. O'Byrne, you -- and --

MR. O'BYRNE: Your Honor, I also have my case agent. Giovanni Donies is here from the IRS. And I have a couple of witnesses outside in case we need them.

THE COURT: All right. Thank you.

1 **MS. MIRANDA:** Good afternoon, Your Honor.

2 **MR. LEVIN:** Your Honor, good afternoon. Albert Levin
3 on behalf of Carlos Vazquez, who's present before the Court.

4 **THE COURT:** Good afternoon, Mr. Levin.

5 I just got a moment ago a motion to withdraw a guilty plea
6 from Mr. Levin, which I've reviewed. I also reviewed -- I also
7 reviewed the transcript of the change of plea hearing before
8 Judge McAliley.

9 Does the Government want to respond to this?

10 **MR. O'BYRNE:** Briefly, Your Honor.

11 Just to bring to the Court's attention -- I'm not sure if
12 you're aware of it, but the Eleventh Circuit issued a case, I
13 believe, yesterday called *United States v. Whitehead*. I can
14 pass up a copy of that decision for you, which deals with the
15 consequences of --

16 **THE CLERK:** Thank you.

17 **MR. O'BYRNE:** The *Whitehead* opinion, on Page 8, sets
18 forth the standard in the Eleventh Circuit. It's a four-factor
19 test that went along with the Eleventh Circuit's (Inaudible).

20 (Court reporter requests clarification for the record.)

21 **THE CLERK:** Counsel, we cannot hear you.

22 **THE COURT:** What's going on? Do we have --

23 **COURT SECURITY OFFICER:** I already called. They're
24 going to come up and see where that's coming from.

25 **THE COURT:** Sounds like it's upstairs.

1 **THE CLERK:** Yeah. That's what it sounds like.

2 **COURT SECURITY OFFICER:** They're working on it, too.

3 **THE COURT:** Okay. Thank you.

4 **MR. O'BYRNE:** Thank you, Your Honor.

5 Page 8 of this *Whitehead* opinion from the Eleventh Circuit
6 explains that there's a four-factor test, but if the defendant
7 does not satisfy the first two of those factors, it is not
8 necessary to thoroughly analyze the remaining two factors.
9 Those factors are whether close assistance of counsel was
10 available and whether the plea was knowing and voluntary.

11 I think that if you look at the end of the plea colloquy
12 transcript -- I think it's Pages 37 to 39 -- all of those
13 factors were clearly addressed by Judge McAliley, and this is
14 not a situation where the change of plea was inappropriate.

15 **THE COURT:** All right. I'm -- I'm going to deny the
16 motion to withdraw the guilty plea.

17 I've reviewed the motion. The motion deals for the most
18 part with sentencing issues. It also contains statements that
19 conflict with the statements made by the defendant during the
20 plea colloquy with Judge McAliley. I've reviewed that entire
21 transcript, and it appears to me under these factors whether
22 close assistance of counsel was available.

23 Mr. Levin was there. Defendant expressed total confidence
24 and satisfaction with Mr. Levin, said he thought he was doing a
25 great job for him. The plea was knowing and voluntary. The

1 magistrate went through all of the factors, including whether
2 any representations or promises had been made to him by the
3 Government. And he agreed they had not, which conflicts with
4 what he is now saying in the motion.

5 And the motion deals with some issues that we would take
6 up at sentencing such as whether or not he gets acceptance of
7 responsibility. I'm frankly inclined to grant him an
8 acceptance, although he's doing everything he can to take
9 himself out of that category, it looks like, Mr. Levin, as he
10 goes through, including not even signing medical releases so
11 Probation can find out something about his medical
12 circumstance, which you've raised as well.

13 So I see absolutely no basis to allow withdrawal of this
14 plea, and the Eleventh Circuit in this opinion talks about the
15 delay between entry of plea and the motion to withdraw it.
16 This is done on the -- either -- I think the morning of
17 sentencing.

18 So let's -- let's proceed. I've -- and I have adopted the
19 report and recommendation of the magistrate, and I adjudge
20 Mr. Vazquez guilty of the crime charged. There is no written
21 plea agreement. There was a factual proffer that he agreed to
22 in the plea colloquy.

23 I've read the defendant's memorandum and request for a
24 variance, the Government's response, the Government's
25 objections, which went to acceptance and obstruction, the

1 addendum to the PSI. The PSI, as it presently stands, does not
2 grant acceptance. It does enhance for obstruction. Mr. Levin,
3 you also disagree with sophisticated means.

4 I will tell you -- I'm going to not cut off lawyers in
5 terms of argument. I'm inclined to agree with Mr. Levin on
6 that one. I'm not sure how sophisticated this was. It was
7 basically a defunct corporation that he revitalized. It's, I
8 guess, surprising to me the loan went through. But -- but I
9 don't find that tactic and then later on, I guess, the issuance
10 of the multiple checks to be all that sophisticated.

11 But if you want to -- I guess I'll first turn to the
12 Government. Do you want to argue on this sophisticated means?

13 **MR. O'BYRNE:** Your Honor, I agree with you. I think
14 it's a close case. The comments to the sentencing manual talk
15 about use of shell companies, and here that was the basis of
16 the fraud, using that defunct company to rehabilitate -- to
17 rehabilitate the company and then use that formerly defunct
18 company to get the loan.

19 But I agree with you, Your Honor. This is not the most
20 sophisticated case I've ever seen.

21 **THE COURT:** All right. I'm going to grant that --
22 that objection.

23 I'm also inclined -- although, as I say, it's a close
24 question because he's done everything he can other than -- he
25 did take the important step -- and I think it took three times,

1 but he did take the important step of -- he pled guilty. The
2 Government avoided the necessity of trial, although I think you
3 had to do some preparation.

4 I'm inclined to grant the two levels. The Government
5 controls the third. He also missed my deadline in terms of the
6 deadline for timely acceptance, but I am inclined to grant a
7 two-level adjustment for acceptance.

8 But, again, if you want to try to convince me otherwise,
9 go ahead.

10 **MR. O'BYRNE:** Your Honor, I think in this case -- I
11 think you pointed out this defendant is --

12 **THE COURT:** Have you heard anything yet?

13 **COURT SECURITY OFFICER:** They're sending -- they're
14 working on trying to locate it.

15 **THE COURT:** All right. When I was in private
16 practice, one of my lawyers, this happened to. And then he
17 kept trying to get them to stop, and they didn't. So he went
18 and he yanked the cord out of the drill --

19 (Laughter.)

20 **THE COURT:** -- which I think might be the best way to
21 handle this.

22 Go ahead.

23 **MR. O'BYRNE:** Yes, Your Honor.

24 My -- in this case, Your Honor, the defendant did plead
25 guilty. He had also tendered the check, which I think is of

1 importance --

2 **THE COURT:** Just rest a second.

3 **THE CLERK:** Maybe if you go to the podium and you're
4 closer to the microphone, we'll be able to hear you better.

5 **MR. O'BYRNE:** Is this better?

6 **THE COURT:** It is better, yeah, and -- but that drill
7 is awfully annoying, if that's what it is.

8 Go ahead.

9 **MR. O'BYRNE:** Certainly.

10 Your Honor, in this case, I think he -- he did plead
11 guilty. It took a little while to come around to do it. We
12 had to prepare for trial multiple times, and he did tender the
13 check. But after he pled guilty -- and I think you pointed out
14 he's sort of done everything he can to, you know, walk back on
15 that, including this morning filing the motion to withdraw his
16 guilty plea.

17 You know, we found out with the PSI that he had filed this
18 backdated deed. Right now, he's in violation of the conditions
19 of his bond that he not sell or encumber assets, which he did.

20 We also -- and then also at the change of plea hearing, he
21 insisted that he was a U.S. citizen during the part of the plea
22 colloquy when Judge McAliley asked if he was an American
23 citizen. And he said he was, and that was something that we
24 had to correct.

25 And now he's been adamant that he is an American citizen

1 throughout these proceedings, Your Honor, and we followed up on
2 that thoroughly because it's not something that we take for
3 granted. We actually got the entire A-file to review and found
4 that, you know, he was ordered deported.

5 He went through a Board of Immigration Appeals proceedings
6 on the exact issue he's raising, that he became a naturalized
7 citizen through his father -- through derived citizenship from
8 his father. That argument was before the Board of Immigration
9 Appeals, and it was rejected. This defendant was personally
10 served with that.

11 I mean, these are things that he knew, but he continued to
12 assert them at the change of plea hearing and then going
13 forward. And I do think they're relevant, and they made their
14 way into the PSI. So I think they're material.

15 **THE COURT:** All right. I'm going to -- you've made
16 good points on the acceptance issue, but he did plead guilty.
17 So I'm going to give him the two levels.

18 Mr. Levin, I'm inclined to agree with the Government on
19 the obstruction. Do you still object to the obstruction?

20 **MR. LEVIN:** Yeah, I do, Your Honor. I really object,
21 and I just want to say a couple things before I argue on that
22 particular issue.

23 As far as his motion for a new trial two hours before
24 sentencing, his concern -- just know that it was borne of fear
25 and frustration of Mr. Vazquez because this is obviously a very

1 important day in his life. So that's what -- that was what the
2 product of that was. He stands by his guilty plea. He
3 admitted after he got arrested that he did this.

4 Okay. As far as the previous two pleas that you couldn't
5 get through, I wasn't there. I don't know what happened. I
6 know this. He needs a lot of attention.

7 Okay. I don't know anything about Mr. Fleites. I don't
8 know anything about Mr. Cohen or whatever the other lawyer's
9 name was, but he didn't understand certain legal concepts
10 frankly, in my opinion, until I started representing him. And
11 then he understood the concept of deliberate ignorance, and
12 then he understood the concept of willful blindness.

13 And his whole position on this has been that he got
14 involved with this guy, who was paid \$170,000, who has yet to
15 be indicted. The Government doesn't want to hear from
16 Mr. Vazquez with regard to any substantial assistance he wanted
17 to provide with regard to the person that we believe was the
18 driving force of this fraud, not to take away from his
19 involvement.

20 But that as a backdrop leads me to the obstruction with
21 regard to where he was born, which, to me, is somewhat of an
22 absurdity only because it has nothing to do with the PPP.

23 Okay? This is not an immigration case. This is not an
24 immigration proceeding. This is a case involving a fraud on a
25 PPP loan. Now --

1 **THE COURT:** Doesn't it affect, though -- and I'll give
2 you a chance -- I think --

3 **MR. LEVIN:** Right.

4 **THE COURT:** -- the Government is going to have to put
5 some evidence on if you've objected, and you have. So I think
6 they're going to need to do that.

7 But -- I mean, the lines on citizenship -- and apparently
8 he told the probation officer something different still. He
9 told her he was born in Chicago, not any of this naturalized --

10 **MR. LEVIN:** Well, he made --

11 **THE COURT:** -- business.

12 **MR. LEVIN:** Yeah.

13 **THE COURT:** So -- but it -- doesn't it affect first
14 bond and then it affects the plea colloquy in terms of the
15 magistrate giving the advice or my -- my giving him of the
16 advice on the occasions where I had to deal with it? It
17 affects the Bureau of Prisons.

18 **MR. LEVIN:** Okay.

19 **THE COURT:** And so it seems to me that it is
20 important. I hear it raised a lot of times by both sides at
21 sentencing, usually defense counsel arguing that since he's
22 someone who's going to get removed, they shouldn't have to
23 serve a lengthy sentence. It seems like that is an important
24 and material problem.

25 **MR. LEVIN:** Well --

1 **THE COURT:** And -- but frankly, to me, the more
2 significant problem is this whole backdating of the -- of the
3 deed after a pretrial determination that he couldn't encumber
4 assets. And not only does he encumber them, he backdates the
5 deed to allow him to do it, according -- assuming the
6 Government can prove that.

7 And your objection, I think, to the PSI makes him have to
8 prove it.

9 **MR. LEVIN:** Okay. With regard -- if I may just
10 address the Court's comments on those particular issues, the
11 deed was dated 2019. That's not disputed. It was filed a
12 couple of weeks ago with the Clerk's Office.

13 **THE DEFENDANT:** No. No. July 12th.

14 **MR. LEVIN:** Okay. Excuse me. July 12th, it was filed
15 with the Clerk's Office.

16 **THE DEFENDANT:** Before I even hired you.

17 **MR. LEVIN:** Before I was even in the case. So --

18 **THE COURT:** Well, apparently these witnesses say it
19 was signed in 2021, don't they? Isn't that what the issue is?

20 **MR. LEVIN:** I think --

21 **THE COURT:** The notary and the person to whom he tried
22 to transfer the property both say this didn't happen in 2019.
23 It happened after --

24 **MR. LEVIN:** You're right.

25 **THE COURT:** -- he was arrested.

1 **MR. LEVIN:** You're right. That's what they're
2 alleging in their pleadings, correct, my mistake.

3 Regardless, as far as that is concerned, the deed has been
4 transferred back to him. It's -- the property is in
5 Mr. Vazquez's name. When he told me that this occurred, I
6 immediately instructed him that that needed to be undone, and
7 he did. So he tried to correct his wrong, if you will.

8 **THE DEFENDANT:** Yeah. I was told by Mr. Fleites --

9 **MR. LEVIN:** Okay. Okay. With regard to the
10 citizenship issue, it is our belief and his belief that he said
11 that he -- he was born in Havana but not -- not born in Chicago
12 but grew up in Chicago, where he did spend the first ten years
13 of his life.

14 I also provided to Probation a card which reflects that he
15 is a naturalized citizen. And it was his belief, his thought
16 that, in fact, he was a citizen based on derivative -- the
17 derivative citizenship from his parents. And that happened
18 20 -- I don't know.

19 You have the -- Madam Probation Officer, you have that
20 document; right?

21 **THE PROBATION OFFICER:** Yes.

22 **MR. LEVIN:** Okay. Whatever the date is on that
23 document, that reflects that he's a naturalized United States
24 citizen. Again, it is a material point. There's no question
25 about it.

1 But given what I believe the facts are going to show in
2 this case -- and I'll stipulate to most of this stuff so we
3 don't have to take up too much of the Court's time. I think
4 that you're -- as far as the deed is concerned, I mean, it's
5 something that he drafted up. He wasn't trying to transfer
6 assets.

7 The prosecutor -- and I don't really want to violate Rule
8 11, but one of the things that was a driving force was he
9 returned the 175,000-dollar check, which was made payable to
10 the IRS, which really makes no sense if you think about it.
11 There's an argument for that -- or a reason for that. I'm not
12 going to get into that because I don't want to waste any more
13 time with that because it's not really the issue.

14 But he gave him the check back. That showed his good
15 faith, his acceptance. Before I got involved is when he
16 transferred the property because he thought he was going to be
17 going to jail. He told me about it. He reversed that. He put
18 it back in his name.

19 **THE DEFENDANT:** It was more because of my health.

20 **MR. LEVIN:** And -- and he's got -- obviously, he has
21 health issues. He was in the hospital. He got out, like, two
22 days ago, and that's where we're at.

23 I don't know if you want to hear testimony or not. I
24 mean, I would stipulate that the document was dated then. I
25 will stipulate that these witnesses will say that it

1 happened -- what, a couple months ago?

2 **MR. O'BYRNE:** Yeah, I believe so, this summer.

3 **MR. LEVIN:** I mean, if the Court wants to hear
4 evidence on that, if the Court is still inclined to rule with
5 the Government, then yes, I have to so I don't have a --

6 **THE COURT:** Well, it takes two to stipulate.

7 **MR. LEVIN:** -- 2255 -- right.

8 **THE COURT:** So if you don't know if you're going to
9 accept a stipulation --

10 **MR. LEVIN:** I can't accept -- I can't accept it. I'm
11 going to have to let him put on some witnesses, Judge.

12 **THE COURT:** You do need to?

13 **MR. LEVIN:** I would have to. Otherwise, I would be --

14 **THE COURT:** Okay. Well, let's go ahead and do that,
15 then.

16 **MR. LEVIN:** Yeah. All right.

17 **MR. O'BYRNE:** At this point, the United States calls
18 Oscar Jose Estevez.

19 **THE CLERK:** Raise your right hand.

20 **OSCAR ESTEVEZ,**

21 called as a witness for the Government, having been duly sworn,
22 testified as follows:

23 **THE WITNESS:** I do.

24 **THE CLERK:** Yes.

25 When you have a seat, if you're comfortable removing your

1 mask, please do so. And please state your full name and spell
2 your name for the record for the court reporter.

3 Thank you.

4 **DIRECT EXAMINATION**

5 **BY MR. O'BYRNE:**

6 **Q.** Good afternoon, sir.

7 **A.** Good afternoon.

8 **Q.** Could you please state your name for the record.

9 **A.** Oscar Estevez, E-s-t-e-v-e-z.

10 **Q.** Thank you.

11 And, Mr. Estevez, could you briefly tell us where are you
12 employed?

13 **A.** I'm basically a full-time caretaker for my dad, but I
14 work, like, maybe six hours a week doing filing work for a
15 friend of mine.

16 **Q.** Do you know the defendant, Mr. Carlos Vazquez?

17 **A.** I've known him for about 46 years -- 45, 46 years.

18 **Q.** And was there a time that Mr. Vazquez came to you to ask
19 you if he could transfer a piece of property to you?

20 **A.** Yes, there was.

21 **Q.** Could you please tell me about that.

22 **A.** He was in a situation, a legal situation, and he thought
23 that he might go to jail. And his health has been really,
24 really bad over the years. And he asked me if he could
25 transfer the property to me because he didn't think that he

1 would make it while he was in jail. He wouldn't survive jail.
2 That's what he told me.

3 Q. Did he give you any further explanation as to why he
4 wanted to transfer the property to you?

5 A. I think his main concern was "I'm not going to survive
6 jail," and I don't think he has a good relationship with his
7 son. So I think -- I've been a friend to him over the years,
8 and he -- he asked me if he could transfer the property to me.

9 Q. At what time did Mr. Vazquez ask to transfer this piece of
10 property to you?

11 A. I don't recall the exact date, but it was a few months
12 ago.

13 Q. Was it during the year 2021?

14 A. Yes.

15 Q. Was it in the summer of 2021?

16 A. Around the summer, yes.

17 Q. Now, I've put in front of you a document -- and I
18 apologize. I forgot to label it, but we'll exhibit -- we'll
19 mark it as Exhibit A, which is styled "Quitclaim Deed."

20 (Government's Exhibit A marked for identification.)

21 THE WITNESS: Yes.

22 BY MR. O'BYRNE:

23 Q. Are you familiar with this document?

24 A. I received a copy from the Recorder's Office at my house.

25 Q. Prior to receiving that from the Recorder's Office, had

1 you seen it before?

2 A. I don't remember seeing this before, no.

3 Q. When did you receive this from the Recorder's Office?

4 A. I have -- I have the copy that I received from -- from the
5 Recorder's Office. So I've got to say sometime in late July.
6 I don't remember the exact date, but it's got to be late July.

7 Q. Did you pay Mr. Vazquez anything in consideration for this
8 property?

9 A. No.

10 Q. Did you have any discussions with Mr. Vazquez about the --
11 about the transaction that would result in you getting his
12 property?

13 A. A few times. He asked me initially -- well, he said he
14 wanted to transfer the property to me. I didn't want it. I --
15 you know, I learned later on that the property came with a
16 foreclosure, too many problems for me. I take care of my
17 96-year-old dad. So I said, "No."

18 Then he asked me again maybe one or two more times, and he
19 kept insisting -- or telling me that he knew he wasn't going to
20 survive jail, that he knew that if he went in, because of his
21 health condition, that he would not survive. And he doesn't
22 have a good relationship with his son.

23 He says, "You're the only person that I can transfer the
24 property to."

25 So eventually, I conceded. I said, "Yes."

1 Q. Did you and Mr. Vazquez have any discussions about your
2 return of the property to Mr. Vazquez?

3 A. I don't think there was any -- I don't remember having any
4 discussions. I never considered that property mine. I always
5 considered it his. If he went to jail and he came out, it was
6 his property. I -- you know, I never considered that my
7 property.

8 So -- you know, if he went in and something happened,
9 then -- to him, then I would have to deal with the property.
10 But if he came out, it's always his property. That's how I saw
11 it.

12 Q. And did you intend to return it to him?

13 A. I did return it to him.

14 Q. But at the time you received this property, did you intend
15 to return it to Mr. Vazquez if he asked you for it back?

16 A. Initially, no. I -- I told him that I didn't want the
17 property, that I wanted him to take it back. And then a few
18 weeks passed, and I remember I got a -- after I spoke to the
19 IRS agent, I realized he can't do anything at that point. The
20 property is in my name. Legally, it's in my name.

21 So I'm the one who's got to return the property back to
22 him. So I actually prepared a deed and transferred it back to
23 him.

24 Q. Well, let me clarify that for a second.

25 So at the time this deed was transferred to you, you

ESTEVEZ - CROSS / LEVIN

1 didn't know about it until you got a notice from the --

2 **A.** No. He did tell me before that he was going to transfer
3 the property, and then I got the deed in the mail. But then
4 after that, then we had discussions. I told him, "I don't want
5 the property. Please take it back." Then we had a -- maybe a
6 few times -- we did speak about that.

7 And then at some point, I realized, "Well, he can't take
8 it back anymore. The property is in my name. I've got to
9 transfer it back to him." That's what I did. I prepared the
10 deed and transferred it back to him.

11 **Q.** Did Mr. Vazquez ask you to transfer it back to him, or did
12 you do that on your own volition?

13 **A.** I think I did speak to him, and I told him I was going to
14 transfer it back. And he said yes, that he wanted the property
15 back.

16 **Q.** Thank you.

17 No further questions.

18 **A.** Sure.

CROSS-EXAMINATION

19
20 **BY MR. LEVIN:**

21 **Q.** Mr. Estevez, good afternoon.

22 **A.** Good afternoon.

23 **Q.** You've known Mr. Vazquez pretty much your entire life;
24 correct?

25 **A.** About 46 years, yes.

1 Q. Okay. And so this particular unit -- you know that this
2 unit belonged to his mother one time; right?

3 A. Yes, I did. Yes.

4 Q. She passed away; correct?

5 A. Yes. Yes, I knew that.

6 Q. Okay. And he's been asking you to take title to this
7 property for a number of years; correct?

8 A. I don't remember that.

9 Q. You don't remember him asking you a couple of years ago to
10 take the property?

11 A. I remember him mentioning -- talking to me about his
12 property, but that specific conversation, I don't remember. I
13 know he's -- he's had a lot of health issues over the years --

14 Q. Right.

15 A. -- and he's mentioned the property. But that specific
16 conversation, I do not remember.

17 Q. Okay. So he has discussed with you the property over the
18 years because he's had a lot of health problems, and he's been
19 concerned about his mortality; right?

20 A. Yes.

21 Q. Okay. And you don't know if you spoke to him in 2019
22 about it; right?

23 A. I don't remember. It's been a while.

24 Q. You don't remember?

25 A. Yeah.

1 Q. Now, this exhibit that you -- that bears your signature --
2 did you look at it when you signed it?

3 A. Which one?

4 Q. The one that you're looking at now. It says "Quitclaim
5 Deed" at the top.

6 A. The one that I prepared? The one that I prepared? The
7 one that I prepared?

8 Q. No, the one that Mr. Vazquez prepared.

9 A. I'm not -- I'm not seeing my signature on this one.

10 MR. LEVIN: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 MR. LEVIN: Thanks.

13 BY MR. LEVIN:

14 Q. Are you Oscar Jose Estevez?

15 A. Yes.

16 Q. Let me show you.

17 Is this your signature?

18 A. No.

19 Q. Not your signature?

20 A. No.

21 MR. LEVIN: Okay. I don't have any further questions,
22 Your Honor.

23 THE COURT: Is there redirect?

24 MR. O'BYRNE: Let me just clarify that point.

25 ///

REDIRECT EXAMINATION

BY MR. O'BYRNE:

Q. Mr. Estevez, just to clarify that point, the first document that we've been talking about, the one that's styled "Quitclaim Deed" and bears Court File Number 2021R0493913 --

A. I think Mr. Levin took the document back. I don't have that document with me.

MR. LEVIN: My mistake. Sorry, sir.

THE WITNESS: Thank you. Okay.

BY MR. O'BYRNE:

Q. So the document that we've been talking about styled "Quitclaim Deed" bearing Miami-Dade Court File Number 2021R0493913 -- it's styled "Quitclaim Deed." That's the deed purporting to transfer the property to you; correct?

A. That's correct, yes.

Q. And you learned from the property -- from the Recorder's Office that this property had been transferred to you?

A. Well, he did tell me he was going to transfer it before, but I learned that it was -- that it had been -- that it had been filed when I received it at home.

Q. Okay. And you -- you looked at something. I believe you have the original copy you got from the Recorder's Office with you; is that correct?

A. For this -- for this particular document?

Q. Yes.

1 **A.** Yes, I do. Yes. This is -- well, I'm not sure if this is
2 the original document, but this is the certified document that
3 the Recorder's Office sends out.

4 **Q.** Okay.

5 **A.** Yes. It's the same document that Mr. Levin was just
6 showing me now.

7 **MR. O'BYRNE:** Okay. I'd move that in as Exhibit 1 --
8 or Exhibit A.

9 **MR. LEVIN:** No objection.

10 **THE COURT:** You had an Exhibit A. What is this?

11 **MR. O'BYRNE:** This is Exhibit A. Let's call this
12 Exhibit A, Your Honor, the quitclaim deed with --

13 **THE COURT:** All right.

14 **MR. O'BYRNE:** -- Court File Number 2021R- --

15 **THE COURT:** Right.

16 **MR. O'BYRNE:** -- -0493913.

17 **THE COURT:** "A" is admitted without objection.

18 (Government's Exhibit A received in evidence.)

19 **BY MR. O'BYRNE:**

20 **Q.** All right. Let's now talk about the other deed I just
21 handed you with Court File Number 2021R0813381.

22 Do you have that document in front of you?

23 **A.** I do, yes.

24 **Q.** Now, is this -- are you the Oscar J. Estevez identified in
25 this document?

1 A. Yes, I am.

2 Q. And is that your signature at the bottom?

3 A. Yes, it is.

4 Q. And was this document -- did you record this document in
5 the Miami-Dade public records?

6 A. I personally did, yes.

7 Q. Okay. And what was your purpose in doing that?

8 A. I wanted to give Mr. Vazquez back the property. We had
9 spoken maybe -- I don't remember how many times, but I told him
10 that I didn't want the property. And at some point, he said
11 that he wanted the property transferred back.

12 We had some conversations, and I told him, "Please take it
13 back" because I didn't want the property. Then I realized that
14 he wasn't able to take it back because it was legally in my
15 name. So I went and transferred the property myself.

16 Q. And when did Mr. Vazquez ask you to transfer the property
17 back?

18 A. I don't recall exactly. It was sometime before the
19 transfer, but I don't recall exactly. We -- we -- I mean, we
20 spoke often. I haven't spoken to him or seen him since I got
21 served with the subpoena to come to court, but I've known him
22 46 years, and we did speak often.

23 And I couldn't tell you exactly when he asked me that, but
24 sometimes we spoke maybe two, three times a day. So I really
25 can't pinpoint the exact time and date that you're asking me

1 of.

2 **Q.** Was it between July and October of 2021?

3 **A.** As soon as the property was transferred to me, I wanted
4 the property transferred back. So we had many conversations
5 between July and October. In terms of specifically when that
6 occurred, the conversation that you're asking me about, I
7 couldn't tell you. But it was within that time frame, yes.

8 **Q.** All right. Thank you.

9 **MR. O'BYRNE:** At this point, the Government would move
10 Exhibit B into evidence.

11 (Government's Exhibit B marked for identification.)

12 **MR. LEVIN:** No objection, Your Honor.

13 **THE COURT:** B is admitted.

14 (Government's Exhibit B received in evidence.)

15 **MR. O'BYRNE:** And I realize I have a third page, which
16 I didn't mean to include, on the back of my sheet. This should
17 just be a two-page document, which is the deed.

18 Thank you. No further questions.

19 **THE WITNESS:** You're welcome.

20 **THE COURT:** All right. Thank you, sir.

21 **THE WITNESS:** Thank you.

22 **COURT SECURITY OFFICER:** Watch your step there.

23 **THE DEFENDANT:** God bless you.

24 **MR. O'BYRNE:** Your Honor, at this time, the United
25 States would call Estevan Valderrama, who I believe is in the

1 other room.

2 **COURT SECURITY OFFICER:** Face the clerk. She'll swear
3 you in.

4 **THE CLERK:** Please raise your right hand.

5 Do you speak English?

6 Do you swear or affirm the testimony you're about to give
7 will be the truth, the whole truth, and nothing but the truth?

8 Judge, it doesn't appear that he speaks English.

9 Counsel, your witness doesn't appear to understand
10 English.

11 **MR. O'BYRNE:** Your Honor, I think we can resolve -- I
12 think we can resolve this.

13 **THE DEFENDANT:** Where is he? Does he have any
14 warrants? Is he deported? Is he a criminal? Is he in federal
15 custody? No. I don't want to be the only bad guy here in the
16 courtroom. I want the honorable judge to understand --

17 **THE CLERK:** *Un momento, por favor.*

18 **THE WITNESS:** Okay.

19 **THE CLERK:** He doesn't understand -- I can't swear him
20 in. He doesn't understand what I'm saying.

21 **MR. O'BYRNE:** In that case --

22 **THE CLERK:** You would need an interpreter.

23 **MR. O'BYRNE:** Yeah. I apologize for that.

24 At this point, the United States will call Elvia
25 Gomez-Vega.

1 All right. Your Honor, we have a stipulation. The
2 stipulation is that Estevan Valderrama would stipulate -- let
3 me rephrase that, Your Honor.

4 The United States and the defense stipulate that Estevan
5 Valderrama would testify that he signed the quitclaim deed,
6 Exhibit A, in 2021.

7 **THE COURT:** Was he the notary? Is that who this
8 person is?

9 **MR. O'BYRNE:** Estevan Valderrama is the witness on
10 Page 3 of Exhibit A.

11 **THE COURT:** Okay. So the witness signed in 2021.
12 That's the stipulation?

13 **MR. O'BYRNE:** Yes, Your Honor.
14 You're stipulating to all the witnesses signing it?

15 **MR. LEVIN:** No, just that witness.

16 **MR. O'BYRNE:** Okay.

17 **MR. LEVIN:** That witness.

18 **THE COURT:** All right. And, Mr. Levin, that's -- you
19 agree with that stipulation that --

20 **MR. LEVIN:** Yes, Your Honor.

21 **THE COURT:** -- the witness signed the -- as the
22 witness in 2021?

23 **MR. LEVIN:** Correct.

24 **THE COURT:** All right.

25 **THE CLERK:** Please raise your right hand.

BOADA - DIRECT / O'BYRNE

BARBARA BOADA,

called as a witness for the Government, having been duly sworn,
testified as follows:

THE WITNESS: Yes, ma'am.

THE CLERK: Okay. When you have a seat, into the
microphone, please state your full name and spell your name for
the record.

MR. O'BYRNE: May I approach to hand the witness a
copy of Exhibit A?

THE WITNESS: Barbara Boada.

THE CLERK: I'm sorry. Can you repeat your name and
spell it for me?

THE WITNESS: Barbara, B-a-r-b-a-r-a, Boada,
B-o-a-d-a.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. O'BYRNE:

Q. Ms. Boada, thank you for coming in today.

Could you just briefly tell us where you're employed?

A. First Capital Property and Casualty.

Q. Okay. And are -- you're a notary public; correct?

A. Yes, I am.

Q. All right. I'd like to ask you a few questions about the
exhibit I just handed you, Exhibit A.

A. Yes, sir.

BOADA - CROSS / LEVIN

1 Q. Is that your signature that appears on the last page?

2 A. Yes, it is.

3 Q. Do you recall signing this document?

4 A. Yes, I do.

5 Q. And when you signed this document, was it the same
6 four-page document?

7 A. Yes, it was.

8 Q. Now, do you recall when this document was signed?

9 A. Sometime in, like, June, I believe, June -- first week of
10 June of this year.

11 Q. Of this year?

12 A. Correct.

13 Q. Now, it says here that the instrument was acknowledged
14 before you in March of 2019. I just want to confirm. That's
15 incorrect. This was -- this document was acknowledged and
16 signed in 2021; is that correct?

17 A. Correct.

18 Q. Thank you.

19 MR. O'BYRNE: No further questions.

20 MR. LEVIN: Can I have the exhibit?

21 **CROSS-EXAMINATION**

22 **BY MR. LEVIN:**

23 Q. So, Ms. Boada -- so you -- you signed this document, which
24 reflected a date of March 17th, 2019, even though it was 2- --
25 2021?

1 A. The last page doesn't say a date, sir.

2 Q. Are you looking at Page 4 of 4?

3 A. 4 of 4? Yes, it does.

4 Q. "The foregoing instrument was acknowledged before me, by
5 means of physical presence, this 17th day of March, 2019, by
6 Carlos Vazquez, who is personally known to me or who has
7 produced Florida ID as identification. Barbara Boada?"

8 A. Yes, sir, that's me.

9 Q. Okay. But it's -- how come it says March 17th, 2019, if
10 he signed it in '21?

11 A. I signed it in '21. I didn't say that he signed it in
12 '21.

13 Q. You signed it in 2021, but you're -- you're signing a
14 document which says the 17th of March, 2019, and that's when he
15 signed it. And it wasn't in your presence apparently, or was
16 it?

17 A. The document that I signed was the last page, and I didn't
18 read the date. I'm sorry I didn't read the date.

19 Q. Well, isn't it important to have the right dates on
20 documents that you notarize and you're swearing that it was
21 signed --

22 A. Well --

23 Q. Let me finish my question. Let me finish my question.

24 MR. LEVIN: Sorry, sir.

25 ///

BOADA - REDIRECT / O'BYRNE

1 **BY MR. LEVIN:**

2 **Q.** The date's important where you notarize somebody
3 signature's; right?

4 **A.** Correct.

5 **Q.** All right. But you didn't look -- you didn't look at that
6 date?

7 **A.** No, I didn't.

8 **Q.** Even though it says right above your signature March 19th?

9 **A.** I didn't read it.

10 **Q.** March 17th, 2019?

11 **A.** I didn't read it.

12 **Q.** Now, you work in a realty company?

13 **A.** No. Insurance agent.

14 **Q.** Oh. An insurance agency.

15 **MR. LEVIN:** Okay. All right. I have no further
16 questions. Thanks.

17 **THE COURT:** Is there any redirect?

18 **MR. O'BYRNE:** Just one question, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. O'BYRNE:**

21 **Q.** Ms. Boada, did you prepare this document?

22 **A.** Did I prepare it?

23 **Q.** Yes.

24 **A.** No, I did not. I signed it.

25 **Q.** Do you know who prepared it?

BOADA - REDIRECT / O'BYRNE

1 **A.** No, I do not.

2 **Q.** Thank you.

3 **MR. O'BYRNE:** No further questions.

4 **THE COURT:** All right. Thank you.

5 **COURT SECURITY OFFICER:** Watch your step.

6 **THE WITNESS:** No problem.

7 **THE COURT:** Is that it?

8 **MR. O'BYRNE:** That's it for the deed, Your Honor.

9 **THE COURT:** All right. Were you going to call anybody
10 on the other issue or -- or not?

11 **MR. O'BYRNE:** Yes. Yes, Your Honor. I have ICE
12 Special Agent Giorgio Garcia here to speak as to the
13 defendant's immigration status, if that's necessary.

14 **MR. LEVIN:** Judge, we're stipulating that -- at least
15 from our perspective, that he -- you're talking about whether
16 or not he's the subject of removal?

17 **MR. O'BYRNE:** Well --

18 **MR. LEVIN:** What's the issue?

19 **MR. O'BYRNE:** -- Agent Giorgio Garcia is going to
20 testify that this -- the defendant is not a U.S. citizen and
21 that he's gone through removal proceedings, including the Board
22 of Immigration Appeals.

23 **MR. LEVIN:** That -- we'll stipulate that that's what
24 this witness would say.

25 **THE COURT:** That he's not a citizen?

1 **MR. LEVIN:** That he's not a citizen. That's what the
2 witness would say.

3 **THE COURT:** Subject to removal?

4 **MR. LEVIN:** Correct.

5 **MR. O'BYRNE:** That's fine, Your Honor.

6 **THE COURT:** All right. And so that concludes your
7 witnesses?

8 **MR. O'BYRNE:** Yes, Your Honor.

9 **THE COURT:** All right. Do you want to make argument
10 on this point, Mr. Levin?

11 **MR. LEVIN:** Yes, Your Honor.

12 Your Honor, with regard to this issue about whether he's a
13 citizen or not, the Government is asking this Court to enhance
14 his sentence by two levels for obstruction of justice.

15 Now, in Mr. Vazquez's mind, in his mind, he felt that he
16 was a citizen based on the fact that he had derived citizenship
17 from his parents. I provided to Probation a card which
18 reflects that he is a naturalized United States citizen. That
19 is what he believed.

20 And he did not tell the probation officer that he was born
21 in Chicago. He told her he was raised in Chicago. He's told
22 everybody other than her that he's been born -- that he was
23 born in Havana. He told that to Magistrate McAliley. He
24 told -- he told that probably to Your Honor when he started
25 plea colloquies with you. He told Pretrial Services that.

1 So now to make this an issue because he said to the
2 probation officer that he was raised in Chicago or born in
3 Chicago -- I mean, he knows that he was born in Havana. But he
4 believed, based on the naturalization, based on derivative
5 citizenship from his parents, which I believe was the law back
6 in the day, that he, in his mind, was a United States citizen.

7 And that's really what I believe should control the
8 Court's determination, not this sideshow and these smoke and
9 mirrors that the Government is really throwing up on this
10 issue, which frankly I don't believe is even relevant to these
11 proceedings.

12 I mean, he came in. He pled guilty after three tries. He
13 returned a check for \$175,000. He's accepted responsibility.
14 They want to enhance him for this little -- what I consider to
15 be trivial. Maybe it's not. Maybe I'm wrong. But where he's
16 born -- and, you know, he's -- he's saying to the Court he's
17 from Havana. He said to this young lady that he's from Havana,
18 even though she heard "Chicago."

19 And it's really much, if you will, to do about nothing.
20 It shouldn't be considered in terms of calculating his
21 guideline.

22 **THE DEFENDANT:** I gave Mr. O'Byrne my word that I
23 would come in. I came in myself. They didn't arrest me.

24 **THE COURT:** All right. What's the -- what's the
25 Government's view of this?

1 **MR. O'BYRNE:** Your Honor --

2 **THE COURT:** Now, what -- is there -- I mean, the
3 probation officer thinks he said "Chicago." It's possible that
4 was a mistake between "raised" or "born." I could accept how
5 that could happen.

6 He says here he was born in Cuba before McAliley. I don't
7 remember what he told me frankly. I guess we can go back and
8 look at the transcript, but I don't remember that. Is there a
9 Pretrial Services report? What did he tell them?

10 **MR. O'BYRNE:** Yes, Your Honor. I think Probation can
11 speak to this if they have a copy.

12 But when he was initially interviewed, I believe he said
13 that he was an American citizen in March at his Pretrial
14 Services interview prior to his initial appearance. But that
15 Pretrial Services report also noted that he had -- I can't
16 remember the specifics, but I think it was an order of removal
17 for a warrant of deportation or something along those lines in
18 the initial Pretrial Services report at the detention hearing.

19 **THE COURT:** All right. Why does it make a difference
20 for the -- in terms of the obstruction here? I can -- assuming
21 we credit his statement, he's just confused about what his
22 status is.

23 He was born in Cuba, thinks he might have had some sort of
24 perceived -- some sort of citizenship from his parents. I
25 guess you would think someone would remember an order of

1 removal if that was -- if he attended these immigration
2 consequences -- immigration hearings.

3 But why -- tell me why it makes a difference, why he
4 should be enhanced for obstruction on this issue.

5 **MR. O'BYRNE:** Well, Your Honor, it comes back to
6 what's material for the Court, and I think there were a couple
7 situations here where it was material.

8 The first was with respect to the bond he got. When he
9 said he was an American citizen, you know, that is a factor the
10 magistrate would consider favorable in terms of not being a
11 risk of flight.

12 And then when we go forward with the sentencing, there's a
13 lot of differences as to whether or not somebody is an American
14 citizen or not. You know, if somebody is not an American
15 citizen, they'll usually be deported and removed from the
16 country. If they're not an American citizen, they're not
17 eligible for RDAP and other programs like that.

18 **THE COURT:** I'm not going to enhance for that reason.
19 Particularly in South Florida, I see a lot of cases where
20 people are uncertain or think they have some sort of derived
21 citizenship. Then they probably don't. Sometimes they do.
22 Sometimes they don't.

23 I've had cases getting to the very end where the lawyers
24 for the defendant are still trying to, I guess, show that
25 someone has some type of legal status. Here, you have the

1 additional issue that apparently he went through these
2 proceedings, and there was an order of removal.

3 And so it's hard for me to understand confusion of that
4 type, and I have -- I'm having a hard time often following the
5 statements Mr. Vazquez makes, but I don't think this is a basis
6 for obstruction.

7 But -- but, Mr. Levin, what about the other one? I mean,
8 that seems likely -- you may have tried to fix it after the
9 fact, but it looks to me like he's pretty flat-out trying to
10 transfer property to avoid the restriction against encumbrance,
11 and one of the reasons for that is to make sure the asset is
12 there for the Government to get payment for this money he
13 stole.

14 And so apparently he also signed the fellow's name that
15 was -- it was being transferred to. The notary was --
16 "careless" would be a kind word for it, but he basically
17 manufactured a document to -- and backdated it to try to
18 transfer property in direct defiance of the pretrial order.

19 Why is that not --

20 **MR. LEVIN:** I see -- I see the Court's point on this.

21 I will only say that Mr. Estevez, who told you that he was
22 a lifelong friend, that he had had these types of conversations
23 with Mr. Vazquez over the years, might have had a conversation
24 with him in 2019 about him transferring his property. These
25 documents were obviously not drafted by Greenberg Traurig, if

1 you will, or any of our other fine law firms in the world.

2 Mr. Vazquez drafted this document.

3 Why he didn't change the date on it is a mystery, but the
4 bottom line is it doesn't matter what the date on the document
5 is. It's the date it's filed. So there was no way he was
6 going to get around that. I mean, he filed it in July of 2021,
7 and the document says '19. Well, that's fine, but legally it
8 doesn't come into effect until the date it's filed, 2021.

9 So what I believe happened here is that this is something
10 he had been planning on doing or thinking about doing for
11 years. And, you know, Estevez finally said, "Okay. Fine.
12 Yeah. All right. I'll do it." And then they had a
13 conversation about transferring it back, and he said, "Yes, you
14 know, I want to take it back."

15 Now, yes, did he absolutely violate a bond condition? He
16 did. All right. Does it rise to the level of obstruction? I
17 don't know because I don't think it's material to these
18 proceedings, and I think that's what the commentary says with
19 regard to the guidelines. It's got to be material to these
20 proceedings.

21 **THE COURT:** Well --

22 **MR. LEVIN:** I understand.

23 **THE COURT:** -- I'm going to overrule against you on
24 that.

25 **MR. LEVIN:** No problem. Okay.

1 **THE COURT:** I think that this is obstruction. He --

2 **MR. LEVIN:** Yes.

3 **THE COURT:** -- basically backdated a deed to try to
4 avoid a restriction against encumbering assets that was part of
5 his bond.

6 And so -- and I think the reason he did it was to -- as he
7 said, he was -- thought he was -- he had legal problems and was
8 going to jail, and he wanted to get the property out of his
9 name and didn't -- apparently, he didn't want it to go to his
10 son. It doesn't look like he wanted it to go to the Government
11 to pay back the \$900,000. So I think obstruction does apply.

12 I think those are the rulings on the objections, which
13 leaves us with a Level 21, criminal history category of I. The
14 guidelines are 37 to 46 months.

15 So let me hear your recommendations, starting with the
16 Government.

17 **MR. O'BYRNE:** Just a second, Your Honor.

18 You said Level 21?

19 **THE COURT:** Yes. I gave him two levels for
20 acceptance, took away the enhancement for sophisticated means,
21 applied the enhancement for obstruction.

22 **MR. O'BYRNE:** Your Honor, I think you hit the nail on
23 the head from the beginning. This is a -- this is a tough one.
24 This defendant has done everything he can to unaccept
25 responsibility after he pled guilty, but ultimately he did

1 accept responsibility and did plead guilty to it.

2 But he has, you know, backdated this deed. He has been
3 very loose with the -- regarding his immigration status in
4 multiple proceedings. He's -- you know, even today, he filed
5 two motions to withdraw his guilty plea.

6 So with all of that, I thought -- you know, I think that,
7 you know, the real thing that he has going for him is the fact
8 that he gave up the check and he pled guilty, which is the
9 acceptance.

10 In this case, since he's already gotten credit for that, I
11 think I would recommend a sentence at the high end of the
12 guidelines, which you said -- because the acceptance has
13 already been factored into your calculation by going down to a
14 Level 21 and not remaining at the Level 25, which I believe was
15 the original calculation.

16 So with that, I think I'd recommend a high-end sentence.
17 I don't have the calculation in front of me but the high end of
18 a Level 21 with a criminal history category of I.

19 And the other thing I'll throw in there, Your Honor, is if
20 this defendant -- you know, he didn't have a lot of scorable
21 criminal history, but he has a lengthy criminal history from
22 years ago, and it's for a lot of different things, a lot of
23 credit card fraud. He had a huge narcotics-trafficking case.

24 This is somebody who, every couple years, comes back in
25 front of the criminal justice system and has other issues. And

1 this time, it was PPP fraud. And this time, he was caught with
2 it in nearly a million dollars that he defrauded the Government
3 of because he was trying for a program that was designed to
4 help people in a financial crisis.

5 So for all those reasons, I think that a high-end sentence
6 is appropriate.

7 **THE COURT:** All right. Thank you.

8 Mr. Levin?

9 **MR. LEVIN:** Your Honor, would you hear from my client
10 before I address the Court?

11 **THE COURT:** I usually give him last word. If you want
12 to -- if you'd prefer that, I'll hear from him first.

13 **MR. LEVIN:** Okay.

14 **THE COURT:** Usually, I hear from the defendant last.
15 You can keep your seat.

16 **THE CLERK:** Keep --

17 **THE COURT:** Just use the microphone.

18 **THE DEFENDANT:** First of all, Your Honor, I want to
19 thank you for the opportunity to come before you again. I
20 promised you that I'd be here, and I promised the --
21 Agent Donies that I would walk in and face the
22 responsibilities, as I did to Mr. O'Byrne.

23 I'd like to clear up a few things. That so-called
24 document -- I've been in terrible health since my mother died.
25 I lost my mother. I'm an only child. I lost my family. She's

1 here with me in court right now today because I don't know
2 what's going to happen to me. You know, I don't want to
3 abandon my mother. She's here with me right now.

4 I never did anything with bad intentions. Oscar
5 Estevez -- if anything would be -- to happen to him, I'll take
6 responsibility for that time and do that time, too. He's my
7 best friend since I'm ten years old. He lost his business. He
8 lost his license. He was duped by a best friend, lost his
9 relationship with his mother, and he's still caring for a
10 96-year-old father.

11 He's got my utmost respect. Not only would I give him my
12 property, I would give him my life and my freedom. So that's
13 why I put it in his name. I tried to give it to my son back in
14 2019. I -- he was going through marital situations. And quite
15 frankly, the divorce with my -- with my ex-wife wasn't a good
16 one. I was about to lose my life.

17 I ended up -- in fact, I'll show this to you. I'm cut up
18 and down here with four operations. He needs to see this. I
19 believe in -- I believe in making mistakes, and I -- people
20 have to believe in God. I don't care what anybody says,
21 Your Honor. I believe in the judge. I know he's a fair man.
22 I know people that have come before him before, and he's going
23 to do us right.

24 The only reason I did that -- Number 1, my private
25 attorney stated a bunch of times that the only condition that I

1 signed to was the property that was encumbered or -- on the
2 bond, which is not my property. It was a property -- if you
3 know the bond, it was not my -- that -- that property was not
4 on the bond. I didn't -- it was not a condition.

5 Maybe -- Fleites, my previous attorney, told me there's no
6 problem. He says, "As a matter of fact, you can even sell it,"
7 which I didn't. I gave it to my best friend because he's got
8 nothing, and he's still taking care of his father penniless and
9 living with little scraps that he gets here and there. And
10 I've gone through -- to want to help him however I can, and he
11 wouldn't even accept my help.

12 Okay. And I think it's fair to leave -- that property has
13 been ours since 1985. Nothing that had to do with this loan
14 has to do with that property, absolutely nothing. Nothing, not
15 one light bulb in that apartment, was done with that property.

16 As far as the deed is concerned, the paperwork, the
17 Government -- and Mr. Donies there, who will attest to -- who's
18 a decent human being as well -- went into the apartment, which
19 he knows is unlivable. It basically was -- was used as a -- as
20 a -- as a storage unit. He knows it was full of dust, dirt,
21 mildew. I didn't even live there.

22 Decent human being, went in there, got what the Government
23 authorized him to get, left a bunch of my mother's stuff,
24 jewelry, lifelong, as Mr. O'Byrne calls it, trinkets, which --
25 which -- on a phone call, I had to listen to him say, "No.

1 Don't worry. There's no problem with the property. I'm not
2 going to go after Vazquez's mother's trinkets." And I had to
3 listen to a humiliation and making fun of a dead person who's
4 never in her life had a speeding ticket in this country.

5 I was raised in Chicago until I was ten years old. I
6 provided my attorney with addresses, schools. I went to Saint
7 Theresa. I went to Trumbull. I showed him our property. I
8 Googled where I grew up. I came here when I was ten years old.
9 My father became a citizen of this country in 1976.

10 When I was 12 years old, he was provided, as was
11 Mr. O'Byrne, with the law -- the statute of the United States
12 Code stating that a son of a U.S. citizen derives citizenship
13 if he's under the age of 18. I lived with my father. I went
14 to Kinloch, where -- Mr. Estevez can attest to -- we went to
15 Kinloch Park Junior High together in 1976.

16 I provided my attorney -- I believe I might have provided
17 Mr. O'Byrne -- I'm not going to lie. I don't know whether he
18 has it or not -- with my school ID, with documentation that I
19 lived with my father. We lived in the same neighborhood. My
20 father was a citizen.

21 Mr. O'Byrne -- I mean Mr. Levin tried to contact him to
22 get a copy of the certificate to provide this honorable court
23 and yourself and Mr. O'Byrne -- I don't know. He said he spoke
24 to my dad, but he's an old-school 80-something-year-old, you
25 know, Cuban that's been here all his life, and he's sort of a

1 little bit intimidated by these court situations.

2 I did not exchange one cent with Mr. Estevez for that
3 property, nor did I do it to hide anything from the Government
4 at all, at all. I was told -- and I heard a conversation, like
5 I said, from -- with Mr. O'Byrne and Mr. Levin stating that the
6 property had nothing to do with anything. It's encumbered, and
7 this was not derived from anything having to do with this PPP
8 loan.

9 I've had this property in my name since my mother passed
10 away in 2014, late '15. Okay? It was done without any type
11 whatsoever of malice. I've complied with everything,
12 Your Honor, and this honorable court as long [sic] as
13 Mr. O'Byrne, who I'm very appreciative to because I remember
14 the last time I came to court, something was brought up of
15 being remanded or not.

16 And he acted as my defense attorney and said, "No, Your
17 Honor. This gentleman is not vaccinated. He's in bad health.
18 He turned himself in. He complied." So he, in essence, has
19 been my defense attorney on occasions in this courtroom, too,
20 as have you.

21 And you believed in me because that day you let me go back
22 home. You let me try to better my health. I haven't violated
23 any laws. I have not done any crimes. I have not hidden
24 anything whatsoever. I haven't lied to anybody.

25 Does it make sense to tell 12 people, my probation

1 officer, Your Honor, Ms. McAliley, the other judge that did the
2 hearing one day -- my probation officer now acted -- not the
3 one from Pretrial, the one that handles my case, Charisse.
4 Everybody, I've told the same story to.

5 I've provided Mr. Levin with the statute that was given to
6 me by three different prominent, high-line immigration
7 attorneys who told me, "Well, we're not going to steal your
8 money because all you need to do is bring this up into a court
9 and" -- you know, "and prove that you derive citizenship. All
10 you've got to do is come in with your father and show, you
11 know, that he became a citizen before the age of 18."

12 My mother obviously is dead. I didn't hide anything from
13 Pretrial. I've been sick. My computers -- Mr. Donies, on a --
14 on a couple of occasions, has said they're clean, they've been
15 checked from top to bottom, nothing bad, to return them.

16 Due to my health and my situation with transportation and
17 what I'm going through -- I'm on 17 different medicines -- 17,
18 sir -- including Oxycontin, Percocet. I -- it's a miracle that
19 I'm here. I'm here today. You know why? Because I have
20 self-respect and dignity, and I respect you and the United
21 States and Mr. O'Byrne and everybody in this court because I
22 should be in the hospital.

23 I checked out of a hospital purposely and expedited my
24 release to be here today because they didn't even want to
25 release me because they couldn't provide me with a -- with a

1 nurse that I needed at home. They couldn't provide me with
2 oxygen. They couldn't provide me with anything. So they
3 wanted me to stay.

4 And to not further, you know, make myself look bad and
5 make you mad and -- which is what my other attorney -- "Oh, you
6 don't want to piss" -- I don't -- sir, I'm here with the utmost
7 respect to you because I know how you are, that you're a good
8 human being.

9 And regardless of what Mr. O'Byrne has said here today,
10 he's a good human being because on one occasion he helped me
11 when he needed to. And if it wouldn't have been for him, I
12 wouldn't -- I wouldn't have been able to walk in here today and
13 face this Honorable Court.

14 As far as the offense is concerned, it hurts me in my
15 heart to see unindicted co-conspirator -- okay -- Armando Del
16 Portillo -- God knows where -- with \$171,000 of the Government,
17 and nothing happened to him. Nobody wants to hear from me.
18 I've offered my cooperation many times. I've offered my
19 cooperation.

20 And the Government has said, "Where are the emails? Where
21 are the text messages? Where's the" -- "where's your phone?"
22 Yet there's -- they didn't present this Honorable Court with
23 any emails, any -- anything that they're asking me to
24 corroborate and say the truth when they arrested me.

25 Where are the emails and where's the correspondence and

1 where's all the proof from del Portillo, who they know -- they
2 know that it was him that did the papers, that falsified my
3 signature, that sent them from his house or wherever he sent
4 them from, activated my defunct corporation with his credit
5 card. They know all of this.

6 And don't please take this as disrespect. I accept full
7 responsibility for whatever happens. I'm a man. And
8 obviously, if I die now when they take me in handcuffs --
9 because I'm not going to be able to make that walk. I'll die,
10 and I'll take responsibility for everything, for -- and for
11 Mr. Estevez, for whatever this Court wants me to take
12 responsibility for.

13 But I'm not going to sit here and lie like my other
14 attorney wanted me to do, lie and say you did -- I'm not the
15 type to commit anything even remotely close to this, sir. Yes,
16 I've had problems. I've had instability. I had a bad divorce.
17 I haven't been the most intelligent person, but I'm not a bad
18 human being.

19 And I'm not trying to sneak anything under anybody's
20 vision. I'm not trying to disrespect you. I'm here today. I
21 can very easily be in a hospital. Whether or not I get an
22 arrest warrant or whatever it is, I can very easily be in a
23 hospital. My blood pressure was 220-something with 150 when I
24 got here walking with my mother down the street, and here I am.
25 Here I am.

1 Okay. Regardless of what happens to me, I'm here to face
2 this situation, to face the Government, and to face everything
3 with the utmost respect and dignity. I understand that what I
4 did is wrong. I'm deeply shameful, deeply, but I'm not trying
5 to sneak anything here under anybody's eyes or -- or play games
6 with the Government.

7 Mr. -- Mr. Donies knows where my -- where my apartment
8 was, full of nice things. Not one thing, sir, not one thing,
9 since my mother died in 2015, have I had the heart or the nerve
10 to sell, not one thing. That's -- everything that she had when
11 she died is still there, and she's got a ton of things, like he
12 says, trinkets. They're not trinkets.

13 My mother was a law-abiding citizen, worked for Sony and
14 for Universal Music for many years, worked with Julio Iglesias,
15 worked with the biggest stars on the planet. A lot of
16 memorabilia, a lot of stuff that I could easily sell and turn
17 into money. And there's not one thing that I've sold since my
18 mother died, and he's a witness right there.

19 So with the utmost respect, I want you to understand that
20 I'm here to accept full responsibility. I'm in a terrible
21 state of health. I have hundreds, if not thousands, of papers
22 with all my issues. My heart is bad. My heart is supposed to
23 be working at 60 percent, and sometimes it's working from
24 15 percent to up to 45 at the best. I have hypertension. I
25 have -- I have problems with my vision. I have problems with

1 my head. I have problems with my digestive system.

2 I won't last a day in a situation like this. I was there
3 for two days and almost had a heart attack. I've tried every
4 way to cooperate with what happened. I wanted to sit down with
5 them since Day 1.

6 Jacob Cohen was the first one that called -- something --
7 queens for a day. I don't know what the legal term is -- then
8 repeatedly over and over and over and over with Mr. Levin, with
9 Mr. Fleites. They don't want to have anything to do with the
10 guy who really perpetrated this situation.

11 And I accept responsibility. Don't think that I'm trying
12 to get away from my responsibility, but why won't they go after
13 Armando del Portillo? That's why, with the utmost respect to
14 you, sir, I came on a couple occasions to try to plead guilty.

15 And when they read, you know, the statement, I'm not going
16 to sit here and perjure myself under -- under -- under God
17 Almighty and Your Honor and His Honorable Court and say, "Oh,
18 yes, this, this, this, and this" to get this out of the way.
19 I'm here to take my responsibility but with the truth, the
20 truth.

21 The truth is -- what don't they tell you the truth? Well,
22 the papers -- yeah. Okay. From this guy, but yeah, he signed
23 them. Yeah, it's not this guy's signature, blah, blah, blah,
24 blah, blah, the exact truth, which is what I'm sure you're here
25 to see. You told me the last time I was here, "Sir, I can't

1 take your plea." And you asked them, "What's going on with
2 this guy del Portillo?"

3 Well, guess what? This guy del Portillo is still in
4 Coconut Grove with his strippers, which I provided proof,
5 shuffling hundred-dollar bills off the back. Mr. Levin has the
6 videos. I mean, I don't know. Did you forward them to him?
7 No? See what I'm saying?

8 Total proof on the Internet of a guy who did fraud all
9 over the place, yet I'm -- you know, I'm the one here, and I'm
10 here because I gave you my word when you let me go home that I
11 would be here. I gave Mr. Donies my word. I gave Mr. O'Byrne
12 my word.

13 And this -- this gentleman has done for me what nobody has
14 done for me in my life, and my best friend is sitting here in
15 court with his 96-year-old father at home -- god knows who's
16 taking care of him -- because of this situation, which -- in
17 reality, you know, it breaks my heart.

18 Again, I can come here and take responsibility for
19 everything except for lying to you and saying, "Oh, you know,
20 blah." I'm not going to say I'm the smartest person in the
21 room, nor am I going to say that I'm the dumbest. But I have
22 as big a heart as anybody in this room, and there's a lot of
23 people in this room with great big hearts: Mr. Levin, O'Byrne,
24 Mr. Donies, who spoke to me with the utmost respect.

25 You, without knowing me, have given me the benefit of the

1 doubt of going home, of taking care of my health, accepting a
2 plea, walking in here today.

3 You know, I feel bad because what's being said here -- the
4 fact that a paper -- because of a tape, because of this -- that
5 paper was intended to -- because of my health. It goes to show
6 that what I'm saying is the truth because why would, in 2019, I
7 want to pass that property to my son or anybody if I wanted to
8 be concerned with my health when this situation didn't take
9 part until 2020-something?

10 I have excellent credit aside from all the trivial stuff
11 that, oh, I'm a bad guy, whatever. I have excellent credit. I
12 don't owe anybody anything. I'm a decent human being. I've
13 worked, served for many, many years with the most prominent,
14 upstanding, decent professional athletes. I don't know if you
15 provided -- did you provide anybody, you know, my background?

16 Nobody knows my background. With the most -- I've
17 represented Yasiel Puig. I've represented Yoenis Céspedes.
18 I've represented every professional Cuban boxer. I've never in
19 my life had one problem having to do with fraud or theft or
20 anything with all the people that I've worked with.

21 So, you know, I feel terrible about what's happened, and I
22 respectfully request that Your Honor take into consideration
23 everything that is going on here and what I'm going through and
24 please take into consideration my health because I won't last a
25 week incarcerated.

1 I'll be willing to work with the Government in every
2 possible way. I'm willing to do whatever to pay this back. If
3 I'm given an opportunity to work or be -- or take double the
4 time that I would be given if I was to be arrested in my house,
5 where I could have my proper attention and not be a burden on
6 the Government, to have all these doctors and all these -- and
7 have to send me to some prison with a hospital and a bunch of
8 medicines and be even a bigger expenditure.

9 Because I'm not going anywhere, sir. If I was going to
10 leave, I wouldn't have gone there and violently -- voluntarily
11 turned myself in. I wouldn't be here today. I'm not going
12 anywhere because, like I said, three prominent attorneys told
13 me, "We don't want to steal your money because all you need to
14 do is file an affidavit from your father, get the school
15 records. And with this law, you're an American citizen."

16 Why would I come in here and lie about something that's so
17 black and white? It's not even a gray area. You're either
18 here or you're not. Your father is either a citizen or he's
19 not. You either became a derived citizen before such age or
20 you didn't.

21 I don't want to -- I don't want to further bury myself by
22 saying, well, one or the other. I'm explaining what I've been
23 told because I was going to hire an attorney to come in here
24 today, and I've been really sick to the point where my heart
25 almost blew up the other day. I had to spend eight days in the

1 hospital. They didn't want to release me. They released me
2 with a home nurse.

3 And they told me, "We're not going to steal your money.
4 Just bring up the law. Have your attorney bring it to the
5 attention, and, you know, your father" -- Mr. Levin spoke to
6 him. I don't know exactly where that -- where -- but in
7 reality, I was going to pass the property to my son. He was
8 going through divorces.

9 And Mr. Donies has my computers. I didn't have -- it was
10 done with no bad intentions, sir. And regardless of the
11 ruling, which I respect totally and bow my head to this Court
12 with respect to you, whatever the ruling is, I'll accept
13 responsibility. But I want you to know deep down inside that I
14 didn't do that with any malice.

15 Why would I do a paper from X amount of days or whatever,
16 you know, year where you go and a clock stamps it, you know,
17 3:30, whatever the time, January, whatever the case may be?
18 Nothing here has been done with bad intentions by my part
19 except, you know, being a little off the wall with all the
20 medications I'm taking, the situation I face.

21 My mother was beat up at Doctors Hospital, dying of
22 cancer, blew up her face. If I was a money guy and if I was
23 worried about money or -- or millions or stealing money, I
24 would have sued Doctors Hospital, where my mother, Isel Ferro,
25 was beat up. I didn't even need to put a lawsuit. I was

1 asleep next to my mother's side on the floor for a year until
2 she passed away and didn't even do a lawsuit.

3 So I want this Court and Your Honor to know me well
4 because I should have been better prepared. I should have gone
5 outside the realms of legality and prepared a huge background
6 of myself so you can judge me accordingly.

7 And through my sickness, my desperation, everything that
8 I've been through, what I've been through back and forth, I
9 always expected from Mr. O'Byrne to say, "Yeah, come on in. We
10 want to hear what's going on."

11 If this deed happened, why is Mr. del Portillo sitting in
12 Coconut Grove as an unindicted co-conspirator and I'm here
13 today before this Honorable Court? It's all I'm saying. I
14 would please request that you do whatever is right by you, and
15 I'll accept responsibility and give you an opportunity to
16 redeem myself.

17 If -- if possible, send me to -- you know, to house arrest
18 or something or give me an opportunity to face my appointments.
19 I have a list here of seven appointments that I need to go to
20 that are real. This is not concocted. I didn't fake these
21 documents. I didn't pay Doctors Hospital about this. I'm in
22 serious health -- bad. I don't know if you want to show the
23 honorable judge.

24 You know, I need some time to get my life together, to
25 bury my mother, take her to some place where -- where I can

1 give her a place with dignity, to rest in peace, for whatever
2 happens to me. I don't know nothing.

3 And now, on top of this, my best friend in life is in this
4 situation, too. I can't even talk to him because I didn't even
5 know. I thought something had happened to him because we
6 talked many times a day, and all of a sudden, I called him and
7 called him and called him, and we never had a chance to talk.

8 Regardless of what happened, I request that you give me at
9 least the opportunity. I give you my word if I'm not back here
10 to turn myself in to wherever you send me, if you decide to
11 send me to a prison, you can give me ten times, ten times --
12 I'll sign a paper right now -- ten times whatever you're going
13 to give me.

14 If you're going to give me whatever months, I'll sign a
15 paper right now. You can give me ten times, and I'll approve
16 it, but give me an opportunity to get my life in order and my
17 health. I'm not vaccinated. I've been told by some people
18 that I -- that I run big risks, because of all my health
19 issues, to a reaction that may kill me. Even if I -- the
20 vaccine may kill me, or -- or the virus may kill me.

21 I haven't even left my house, sir, since you put me --
22 since you put me and Mr. O'Byrne and Mr. Donies -- since they
23 put me in my house, sir, I haven't even left. I've been in
24 there trying to do what I can, trying -- trying to fix my
25 situation, trying to get this process to, you know, gently

1 pass. I haven't been out. I haven't been doing anything.

2 I've been just laying low, doing my classes that you sent
3 me to. I did them. I did all the classes. I graduated
4 successfully from -- from the substance abuse classes. I've
5 done all the urine tests asked for me. All of them have
6 passed.

7 I've moved within an hour and a half from when they told
8 me to move back to my residence, which was full of dust,
9 mildew, dirt. You can ask Mr. Donies. It was unlivable, yet I
10 respected the court order, and I respect you and the Court and
11 the United States and everybody here to the utmost.

12 I just plead with you to do the right thing and let me --
13 if it means that I'm going to have to go to jail, give me at
14 least 90 days or something to get my situation in order, take
15 my mother somewhere and put her in a big dignified place, not
16 leave her alone in an apartment that -- when I -- you know, God
17 knows what's going to happen -- and get my health in order.

18 I'm not asking for anything aside from my health and my
19 mom. I don't care about monetary things. I don't care about
20 nothing. I was told many times that my apartment had nothing
21 to do with it because it wasn't on the bond.

22 It might have been a misunderstanding, whatever the case
23 may be, including the conversations on the speakerphone with
24 Mr. O'Byrne, who said, "No. We're not going to take his
25 mother's trinkets." It's encumbered or whatever that means,

1 that it's got a mortgage, no harm.

2 The minute I found out that this was a situation, it was
3 corrected. It was corrected because that gentleman sitting in
4 the court back there wouldn't take a grain of sand from the
5 beach from anybody due to his self-respect and his dignity and
6 his heart, and that's my best friend. And it's only fair. I'd
7 die in a situation like this.

8 I didn't do it to hide anything from the Government. He's
9 lost everything he had. It wasn't derived from anything. I
10 didn't know the technicalities. I was told that the only house
11 that couldn't be touched was the house that was used at my
12 bond, which had nothing to do with this.

13 And I'm sorry for going on and on and on and on, but this
14 is the biggest and most scariest and most important day of my
15 life. And from the recommendations and everybody I've heard
16 speak about you that, for some reason or another, have been in
17 front of you -- whether it's a legal attorney or a defendant,
18 everybody said the same. "He's a great man, and he's going to
19 do what's right, and he doesn't play games." And I haven't
20 played not even one game with you, sir.

21 Now, the fact -- the fact that he's against me, getting
22 ready -- or prepared myself for what's coming, talking about
23 remanding, talking about -- come on. I've been here all my
24 life, sir. All my life, sir. I've been in this country since
25 1969, since I was five years old. I've been here for 52 years.

1 If anything derived -- you know, if anything, I'll be here 52
2 years without doing any crime against the Government, without
3 being a spy, without doing anything.

4 Where am I going to go? To Communist Cuba? I have never
5 even left the country in my life. In my whole entire life,
6 I've never left this country. For someone to oppose me getting
7 an opportunity to get my life in order and having a little bit
8 of respect for a person that's going through what I'm going
9 through by myself -- I have nobody.

10 My best friend is sitting there today in a suit. Do you
11 see anybody else here for me? I had to walk in here today with
12 my legal papers and my mother and my grandmother because I
13 didn't know what was going to happen. I mean, I don't know how
14 else to put it. I trust you blindly to be -- I wouldn't be in
15 front of another -- a better judge because I know that you're
16 going to do the right thing.

17 I respectfully request that opportunity to get my life in
18 order, to get my health in order, to at least -- if I go and
19 got to do whatever, I promise you that I will go. I can't even
20 go to the bathroom and take care of my own situation. I can't
21 put on a pair of socks by myself. This is real. This is not a
22 lie. These socks were put on me by someone in my building
23 today because I couldn't even put on a pair of socks or shoes.

24 When I got remanded -- remanded -- or when I turned myself
25 in -- and they said there was a rule at the federal facility

1 that you have to wear socks. There was a guard that was nice
2 enough that -- I told him, "Listen, I'm going to have to get in
3 trouble because I can't" -- "I can't bend my leg or bend myself
4 down enough to put on socks."

5 And that guy was nice enough to put on socks for me, which
6 I didn't even take off. I didn't even take a shower waiting
7 for a bond because I didn't want to break the rules or get on
8 anybody's bad side and try to get out of this situation as best
9 as possible.

10 If there's anything you want to know from me that you feel
11 I haven't told you or anything that needs to be heard or
12 whatever, please ask me because I'm transparent. I'll be
13 willing to tell you. I may be a little off the pattern that
14 you're used to hearing people talk because I'm distraught with
15 what's going on.

16 **THE COURT:** All right. Thank you.

17 Mr. Levin, did you have something?

18 **MR. LEVIN:** Very briefly, Your Honor.

19 The guidelines are 37 to 46 months. The Court has to
20 consider all the 3553(a) factors, including the history and
21 characteristics of the defendant. There's not much more I need
22 to add.

23 I mean, you've seen Mr. Vazquez. He's definitely a unique
24 individual. He's definitely not the norm, but he is who he is.
25 He's had a very -- frankly, he's had a very sad life. I mean,

1 that's the only way to put it. He's had a very, very sad life.

2 The closest person in his life was his mom. She passed
3 away in 2015. He went off the rails then basically. And, you
4 know, it's not often you see somebody bringing their loved
5 one's remains to court, but that's also a part of his
6 personality. But it also shows how deeply he was -- he was
7 hurt by her demise.

8 He definitely needs to pay the penalty for stealing almost
9 a million dollars from the United States Government. In his
10 heart, it really wasn't his intention initially, which it
11 wasn't. He got approached by a guy who basically said, "Oh,
12 the Government's giving away money now. If you have a
13 business, you can apply. Here's what we'll do. This is how
14 you do it."

15 And he basically led him down the path until Vazquez
16 realized he was in deep and realized that, you know, "Wait a
17 second. I think this is really designed for people that
18 actually have real businesses, that are paying salaries." And
19 then he kind of, like, turned a blind eye to that reality, to
20 that notion.

21 But, you know, he's not -- not well educated. He's not
22 very bright frankly. He's obviously got a big personality.

23 **THE DEFENDANT:** Big heart.

24 **MR. LEVIN:** He's got a big heart. He doesn't know
25 when to stop talking.

1 You know, this is a decision that the Court has to make in
2 balancing all the -- all the factors. Of course, one of them
3 is the 37-to-46-month guideline range. The other -- the
4 others, of course, are the history and characteristics of this
5 defendant, who suffers from severe mental illness.

6 The Court ordered him for counseling during the pendency
7 of his -- that he's been out on bond. He's on medication, he's
8 morbidly obese, he's not vaccinated, all of his own doing, mind
9 you, which -- I constantly remind him of that. Okay? I've
10 tried to help him as best I can not only as a lawyer but as a
11 person.

12 He means well. He really does have good intentions, but
13 he just frankly didn't know when to stop here. He got -- third
14 time was a charm. He pled guilty. He's accepted
15 responsibility.

16 He returned a 175,000-dollar check to the Government that
17 was made out to the IRS, which is the first time I'd ever heard
18 of anything like that in any of these types of cases, which I
19 think also might have showed his state of mind with regard to
20 "Well, if I'm getting this money, don't I have to pay tax on
21 it? IRS? \$175,000?"

22 Your Honor, he's -- he's a very sick person physically,
23 and frankly he's got psychiatric issues. I don't think jail --
24 I mean, the Court does have to send a message to the community
25 to deter this type of conduct. I understand that. But I think

1 the Court can fashion a sentence that might take into
2 consideration all these issues: His issues, satisfying the
3 Government, and dispensing justice.

4 And I'm not here to tell the Court what I feel is an
5 appropriate sentence. I know the Court can decide that
6 himself.

7 Thank you, Your Honor.

8 **THE COURT:** All right. Thank you.

9 All right. I've considered the statements of all parties,
10 the presentence report, which contains the advisory guidelines,
11 and the statutory factors. It's the finding of the Court the
12 defendant is not able to pay a fine in addition to the
13 mandatory restitution.

14 I adopt the findings of the presentence investigation
15 report. However, I did grant a two-level decrease for
16 acceptance and remove the enhancement for sophisticated means,
17 which left an Offense Level 21, Criminal History Category I.
18 The advisory guideline is 37 to 46 months.

19 This was a serious crime. The loss was \$949,531, which is
20 the restitution amount. This program was meant for -- to --
21 for people with ongoing businesses that needed to pay employees
22 and to keep people employed during the pandemic, and this was a
23 brazen theft.

24 I've also reviewed the criminal history of the defendant.
25 He has a history of not being truthful. There are a number of

1 cases going back to when he was a young man for forgery, using
2 false credit cards, using false driver's licenses, theft.
3 There's a case where he claimed to be a police officer, and
4 when the police tried to stop him, he apparently ran over
5 the -- or hit the officer with his car.

6 There are a number of cases that were not scored, which
7 include in -- when he was 20, taking a gun and pointing it at a
8 victim. There was a case of battery on an elderly person where
9 there was no action. The history of the defendant belies the
10 fact that -- that he has led a law-abiding life.

11 And for those reasons, it's the judgment of the Court the
12 defendant, Carlos Vazquez, is committed to the Bureau of
13 Prisons for 42 months as to each of Counts 1 and 2, to be
14 served concurrently. It's ordered the defendant shall pay
15 restitution in the amount of \$949,531.25.

16 Upon release --

17 **MR. LEVIN:** Your Honor, can I stop you right there?
18 I'm sorry.

19 **THE COURT:** Yes.

20 **MR. LEVIN:** I think in fairness, the \$175,000 that he
21 returned should be --

22 **THE COURT:** He'll get a credit for that.

23 **MR. LEVIN:** Oh. He will get a credit for that?

24 **THE COURT:** Yeah, but I -- he will -- in fact, the
25 Government's filing says he gets a credit for the -- does it

1 not?

2 **MS. MIRANDA:** Your Honor, I just want to be very clear
3 between -- the sanction between forfeiture and restitution.

4 Shortly before the sentencing, if I may at this point
5 elaborate on forfeiture, the Government filed a motion seeking
6 a forfeiture money judgment in the amount of \$921,875. In
7 addition, the Government seeks the forfeiture of the cashier's
8 check in the amount of \$175,957.40.

9 However, the Government is seeking forfeiture of those
10 funds. In order for those funds to be applied to restitution,
11 the Government must apply for restoration through the Money
12 Laundering and Asset Recovery Section in Washington, DC. The
13 Attorney General has delegated the authority to restore
14 forfeited funds to the chief of what's commonly --

15 **THE COURT:** Well, what's this about? You want
16 forfeiture rather than the restitution to have priority? Is
17 that what you're doing?

18 **MS. MIRANDA:** So the funds will be forfeited, and
19 then -- although I can't make any promises, the Government is
20 reviewing this to submit a restoration request to MLARS. So
21 yes, we seek to have the cashier's check forwarded --
22 forfeited -- excuse me -- and --

23 **THE COURT:** Well, you said he'd get credit for it.

24 **MS. MIRANDA:** He'd get credit against the forfeiture
25 money judgment, as I relayed in my motion. And then once the

1 forfeiture process is completed, at that juncture, if the
2 defendant does not have the wherewithal to pay both --

3 **THE COURT:** Well, probably either. So --

4 **MS. MIRANDA:** So I --

5 **THE COURT:** Other than the check you're getting, I
6 suspect.

7 **MS. MIRANDA:** That's most likely.

8 Now, the Government --

9 **THE COURT:** What -- apparently, this was some sort of
10 private loan company.

11 So is the -- is the idea that the Government takes the
12 forfeiture first and then the loan company is in line? Is that
13 what you're doing?

14 **MS. MIRANDA:** Yeah. One of the victims has filed a
15 petition for admission to identify themselves as a victim in
16 the case. So what happens is the Government forfeits its funds
17 in any substitute assets that it can find.

18 Again, if the defendant does not have the wherewithal to
19 pay both, the line AUSA can then put together a restoration
20 package that is submitted to Washington, DC, and reviewed by
21 the Money Laundering and Asset Recovery Section. The Attorney
22 General has delegated his authority to the chief of that
23 section to review that.

24 If the restoration is approved, those forfeited funds and
25 assets are then restored for the purpose of the restitution and

1 paying victims. However, I cannot bypass the forfeiture
2 process and --

3 **THE COURT:** Well, he tried to give you a check. Was
4 the problem that it was made to the IRS? Is that the problem
5 with the check?

6 **MS. MIRANDA:** That is not the problem, Your Honor.
7 The Government -- to be more specific, the Department of
8 Justice is working with the Internal Revenue Service regarding
9 the forfeiture of those funds.

10 Those funds are not being paid to the IRS for taxes or
11 anything of the sort. They represent proceeds of the crime,
12 and I am working with IRS to have the funds forfeited,
13 assuming, Your Honor, this Court enters the forfeiture money
14 judgment and also the forfeiture of those funds.

15 We will also review potential substitute assets that the
16 defendant may or may not have, including but not limited to the
17 apartment that's been discussed today.

18 I just want to make clear for the record that just because
19 PPP fraud proceeds did not go into an asset does not mean that
20 the Government does not have the right to pursue that asset as
21 a substitute asset in partial satisfaction of the forfeiture
22 money judgment.

23 **THE COURT:** Well, I've done this before where the
24 Government seeks to go forward with restitution often against
25 people who can pay neither.

1 There was a case where some woman got Social Security
2 proceeds she wasn't entitled to and was trying to give it back,
3 and the Government was trying to get forfeiture and
4 restitution, which seems wrong.

5 **MS. MIRANDA:** Well, both forfeiture and restitution
6 are mandatory pursuant to case law and statute, which is set
7 forth in the filing that, admittedly, we filed a few minutes
8 before sentencing.

9 **THE COURT:** Well, that's fine, but there ought to be a
10 credit for the money that people pay back.

11 **MS. MIRANDA:** And that's why the restoration process
12 exists, but unfortunately -- or perhaps "unfortunately" is the
13 wrong word -- the Attorney General is the one who has the
14 authority to decide on that, and that he has delegated to the
15 Money Laundering and Asset Recovery Section.

16 So in this case, Your Honor, as the line AUSA, I can say
17 that I have begun to review it for a restoration request. But
18 until the forfeiture process is completed, I cannot submit that
19 package to the Money Laundering and Asset Recovery Section.

20 **THE COURT:** All right. Well, I am going to direct
21 that he get credit for the check he's trying to return back,
22 regardless of what -- I guess the posture of the various
23 agencies.

24 So where should he get the credit, the forfeiture or the
25 restitution?

1 **MS. MIRANDA:** The credit will be on the forfeiture,
2 Your Honor. And then at the end of the forfeiture process, I
3 am reviewing this file for a restoration request, which means
4 after we are done forfeiting everything and he will receive the
5 credit towards the forfeiture money judgment, I will put
6 together a package that will be sent to the Money Laundering
7 and Asset Recovery Section in Washington, DC.

8 And if they approve that these forfeited funds be applied
9 to the victims in this case for the purpose of restitution,
10 vis-a-vis through that process, Mr. Vazquez will essentially
11 receive a credit because those funds will go back for
12 restitution.

13 **THE COURT:** All right. Well, I'm going to order that
14 restitution be payable in the amount of \$949,531.25.

15 However, I also direct that the check for -- how much
16 money, Mr. Levin?

17 **MR. LEVIN:** I believe it was about -- it was
18 approximately 175-.

19 Do you know?

20 **MS. MIRANDA:** It was \$175,957.40.

21 **THE COURT:** And 40 cents.

22 I direct that that be applied as a credit to restitution.
23 Upon release from incarceration, the defendant shall pay
24 restitution at the rate of ten percent of monthly gross
25 earnings until such time as that schedule may be altered in the

1 interest of justice.

2 The Probation Office and U.S. Attorney's Office shall
3 monitor payment of restitution and report any material change
4 in ability to pay. These payments don't preclude the
5 Government from using any unexpected financial gains, assets,
6 or income of the defendant to satisfy restitution. Restitution
7 is payable to the Clerk, who will forward it to the victim.

8 Upon release from imprisonment, the defendant shall be
9 placed on supervised release for a term of three years as to
10 Counts 1 and 2, all such terms to run concurrently. Within 72
11 hours of release, the defendant shall report in person to the
12 Probation Office in the district to which he's released.

13 While on supervised release, the defendant shall comply
14 with mandatory and standard conditions of supervised release,
15 which include not committing any crime, being prohibited from
16 possessing a firearm or other dangerous device. He shall not
17 unlawfully possess a controlled substance and cooperate in the
18 collection of DNA.

19 The defendant shall also comply with the following special
20 conditions: Cooperation with Immigration during any removal
21 proceedings, the financial disclosure requirement, no-new-debt
22 restriction, credit card restriction, mental health treatment,
23 substance abuse treatment, and permissible search, as noted in
24 Part F of the presentence report. The defendant shall also pay
25 a special assessment of \$200.

1 So the total sentence is 42 months' imprisonment, three
2 years' supervised release, \$949,531.25 in restitution, and a
3 200-dollar special assessment. I will enter the order of
4 forfeiture, but I also direct that that credit of \$175,957.40
5 be provided with respect to any forfeiture judgment entered
6 with respect to this defendant.

7 When he's trying to turn the money back over, it is -- it
8 would be unfortunate to end up with two obligations of this
9 kind. The crime was serious, but that behavior is unbecoming
10 of the Government.

11 Mr. Vazquez, you have a right to appeal the sentence
12 imposed -- well, first, now that sentence has been -- been
13 imposed, does the defendant or his counsel object to the
14 Court's findings of fact or the manner in which sentence was
15 pronounced?

16 **MR. LEVIN:** None other than those previously
17 articulated.

18 **THE COURT:** All right. Thank you.

19 Mr. Vazquez, you have a right to appeal the sentence
20 imposed. Any Notice of Appeal must be filed within 14 days.
21 Failure to file a notice within that period would constitute a
22 waiver of your right to appeal.

23 I believe remand is appropriate at this time. I'm mindful
24 of the health issues of the defendant, but I think there are --
25 continued release is problematic. I do recommend that the

1 Bureau of Prisons take steps to deal with Mr. Vazquez's medical
2 condition.

3 And I wish you well, sir, but I think remand is necessary
4 at this point. I was tempted and almost did that before.
5 You're right. The prosecutor stepped forward and argued that I
6 shouldn't do it, and I didn't at that time. But I'm concerned
7 about aspects of this case and -- and the ability to follow the
8 law.

9 All right. Thank you all. Have a good day.

10 **THE CLERK:** All rise.

11 **COURT SECURITY OFFICER:** All rise.

12 (Proceedings adjourned at 2:42 p.m.)
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, December 20, 2021

/S/ James C. Pence-Aviles

James C. Pence-Aviles, RMR, CRR, CSR No. 13059
U.S. Court Reporter