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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	1:21-CR-00206-JPB
ANDRE LEE GAINES,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
SEPTEMBER 17, 2021

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL COHEN CHAIKEN, ESQ.
NATHAN KITCHENS, ESQ.
ASSISTANT UNITED STATES ATTORNEY

ON BEHALF OF THE DEFENDANT:
BRIAN MENDELSOHN, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

(PROCEEDINGS HELD IN OPEN COURT AT 3:09 PM, ATLANTA, GEORGIA)

THE COURT: Good afternoon to all of you. And apologies again. I know that we were originally set for 2:30 and it's 3:15, but we just had a sentencing that went a little bit longer -- well, a lot longer than we had expected. So my apologies to counsel, Mr. Gaines and any family or friends that may also be here.

So with that, Ms. Walker, if you could call the case and then if counsel could announce their appearances.

COURTROOM DEPUTY CLERK: Yes, your Honor. This is case number 21-CR-206 and 20-CR-296, USA v. Gaines.

MS. CHAIKEN: Good afternoon, your Honor. Tal Chaiken and Nathan Kitchens from the US Attorney's Office for the United States.

THE COURT: Good afternoon to both of you.

MR. MENDELSOHN: Good afternoon. Brian Mendelsohn here with Mr. Gaines.

THE COURT: Good to see you, Mr. Mendelsohn.

And, Mr. Gaines, good to see you as well, sir.

Mr. Mendelsohn, if you and Mr. Gaines will please stand, Ms. Walker will swear him in.

(The defendant was duly sworn)

COURTROOM DEPUTY CLERK: Please say your name into the microphone, please.

THE DEFENDANT: Andre Lee Gaines.

THE COURT: Thank you, Ms. Walker.

Ms. Chaiken, if you can please verify the signatures on the plea agreement.

MS. CHAIKEN: Yes, your Honor.

Mr. Gaines, I'm showing you a document that's titled "Guilty Plea and Plea Agreement." On page 18 above where it says your name, is that your signature?

THE DEFENDANT: Yes.

MS. CHAIKEN: And, Mr. Mendelsohn, on page 18 above where it says your name, is that your signature?

MR. MENDELSOHN: Yes, it is.

MS. CHAIKEN: And for the record, this page 18 is also signed by a representative for the United States.

Mr. Gaines, on page 19 above where it says your name, is that your signature?

THE DEFENDANT: Yes.

MS. CHAIKEN: Mr. Mendelsohn, on page 20 above where it says your name, is that your signature?

MR. MENDELSOHN: Yes, it is.

MS. CHAIKEN: Your Honor, may I tender the plea agreement?

THE COURT: Sure.

Mr. Gaines, before I can accept your plea of guilty, I need to go over several matters with you. As we go through this process, if anything I state is unclear, let me know and

I will repeat or rephrase it for you. It's important that you understand not only my statements to you but also my questions. You need to understand my questions so that you can answer them truthfully. A failure to truthfully answer any question could result in additional charges being brought against you.

Also, as I ask questions, please answer the questions out loud. This will allow the court reporter to take down your responses so we can have an accurate record of these proceedings.

Do you understand, sir?

THE DEFENDANT: Yes.

THE COURT: How old are you, sir?

THE DEFENDANT: Sixty-seven.

THE COURT: How far did you go in school?

THE DEFENDANT: One year in college.

THE COURT: In the last 24 hours have you had any drugs, medicine, pills or had any alcoholic beverages to drink?

THE DEFENDANT: No alcohol. I took my regular pills.

THE COURT: Do they affect your judgment or actions in any manner or your ability to understand these proceedings and enter a knowing plea?

THE DEFENDANT: No.

THE COURT: Have you been treated recently for any

mental illness or addiction to alcohol or drugs?

THE DEFENDANT: No.

THE COURT: And, Mr. Mendelsohn, are you aware of any issues regarding your client's competence to enter a plea?

MR. MENDELSOHN: Judge, he's -- I believe he is competent to enter a plea. And as I'm sure we'll talk about later on, he does have a number of cognitive impairments as a result of a stroke that he had in or around 2018, but he is able to assist me and does -- and understands the parties and would satisfy the competency standards.

THE COURT: So I understand he had a stroke. When was that?

MR. MENDELSOHN: Approximately 2018.

THE COURT: Okay.

Mr. Gaines, when you answered my questions earlier, I asked a follow-up question about your medicine. And you mentioned that despite your medicine, you could still understand these proceedings and enter a knowing plea.

Let me ask you a little bit about your stroke there. And, again, I just want to make sure that you understand these proceedings and are competent to enter this plea. I'm not trying to otherwise or for any reason pry into your medical condition, but can you tell me a little bit about your stroke and how that has affected you.

THE DEFENDANT: It's affected me somewhat but not

much anymore.

THE COURT: Can you expand on that for me? When you say it doesn't affect you much anymore, what's the current effect of your stroke?

THE DEFENDANT: Just that it's hard for me to walk now. And my left side, my muscles, it's hard for me to lift.

THE COURT: It's more physical as opposed to any mental issues that are affecting your competence, is that right?

THE DEFENDANT: Right.

MR. MENDELSOHN: Judge, I don't want to mislead the Court any. I have had Mr. Gaines evaluated by a geriatric neuropsychologist. And I've shared that report with the government. And in part because of that report is why we're pleading to the false statement charge as opposed to the fraud charge.

The report found that he suffers from cognitive problems and has some vascular dementia. What that -- the impact that that has on him is that it causes some memory issues and some difficulties with executive function, so the logic, reasoning, decisionmaking ability to process lots of information.

Because of that, we have spent a lot of time going over it. I mean, it's not one of these things that it's impossible he can't do, the stroke has impacted that and

caused him some cognitive impairments. But with the work of going over the information with him, spending a lot of time doing it and working with him, he is able to understand and to do it. I mean, the difficulty comes in things like throwing a lot of information at him really quickly and having him try to sort all of that out. But since we have been able to spend a lot of time going over everything, he can be -- he can understand and he can do it.

THE COURT: Okay.

Mr. Gaines, do you agree with what your attorney just said?

THE DEFENDANT: Yes.

THE COURT: What's the government's position on this, Ms. Chaiken? It sounds like it's something y'all have had some discussions about and evaluation of.

MS. CHAIKEN: Yes, your Honor. We defer to Mr. Mendelsohn's -- he's obviously spent a lot more time with his client. We have engaged in discussions with him especially after receiving the psychological evaluation, and that is what led to the agreement that we've made here today to have Mr. Gaines plead to a much lesser charge than what he was initially charged with.

And as far as his competence to enter his -- this plea, we defer to Mr. Mendelsohn, who we understand has had lengthy meetings with him leading up to this proceeding.

THE COURT: Okay. Well, I'm satisfied based on what I've heard that both Mr. Gaines and Mr. Mendelsohn are aware of the issue and have discussed the issue and feel that Mr. Gaines is competent to enter a plea, but what I'm hearing is that we want to make sure that we're going slow enough and not throwing enough -- all at the same time that it gets confusing.

So I'm going to move a little bit slower than I normally would. And, Mr. Gaines, if we get to the point that you feel like it's too much and you don't understand, let me know or let your attorney know and we will either take a break and rejoin later today or we can do part of it today, part of it next week, part of it the week after that.

The bottom line is it sounds like we just need to make sure we're going slow and make sure you're digesting this. And you're going to need to be the one telling me.

And, Mr. Mendelsohn, I'll be looking to you as well to be checking in with your client.

Okay, Mr. Gaines?

THE DEFENDANT: Yes.

THE COURT: All right. What I'm going to do first is go over the rights that you're guaranteed under the Constitution and laws of the United States. I want to be sure that you understand your rights and that by entering this plea of guilty, you're giving up many of your rights.

The first thing I want to talk to you about is the fact that you were charged here by an information as opposed to an indictment.

Under the Constitution and laws of the United States you have the right to be -- right to require the government to present your case to a grand jury for indictment before entering a plea. The grand jury would receive evidence only from the government. And based on that evidence, the grand jury would determine if there was sufficient evidence presented to require you to answer the charges. If you waive or give up your right to an indictment, charges may be brought against you by means of an information filed by the United States Attorney.

The charges in your case have been brought by an information. Are you willing to give up your right to require the government to first present the charges to a grand jury and proceed on the information that's been filed by the United States Attorney?

THE DEFENDANT: Yes.

THE COURT: Do you understand that under the Constitution and laws of the United States you have the right to plead not guilty and have a trial by jury?

THE DEFENDANT: Yes.

THE COURT: Do you understand that you're entitled to a speedy and public trial on the charges against you?

THE DEFENDANT: Yes.

THE COURT: Bear with me a moment.

I'm sorry, I said "charges against you." I should have said the charge against you.

Do you understand that you have the right to be represented by an attorney throughout all proceedings, and if you cannot afford an attorney, one will be appointed to represent you at no cost to you?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you pled not guilty and went to trial, at the trial you would be presumed to be innocent and the government would have to overcome that presumption and prove you guilty beyond a reasonable doubt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that at a trial you would not have to prove that you're innocent because the burden would be on the government to prove you guilty beyond a reasonable doubt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that at a trial you would have the right to subpoena witnesses, which would be an order from the Court compelling their appearance at trial to testify on your behalf?

THE DEFENDANT: Yes.

THE COURT: Do you understand that during a trial

witnesses for the government must come to court and testify in your presence?

THE DEFENDANT: Yes.

THE COURT: Do you understand that your attorney would have the opportunity to cross-examine the witnesses for the government, object to evidence offered by the government and offer evidence on your behalf?

THE DEFENDANT: Yes.

THE COURT: Do you understand that at a trial, while you would have the right to testify if you chose to do so, you also would have the right not to testify?

THE DEFENDANT: Yes.

THE COURT: And do you understand that if you chose not to testify or put on any evidence, those facts could not be used against you?

THE DEFENDANT: Yes.

THE COURT: Do you understand that in order to convict you at a trial, the jury would have to reach a unanimous verdict that you were guilty of the crime with which you're charged?

THE DEFENDANT: Yes.

THE COURT: If I accept your plea of guilty, you will not have a trial and a jury will not decide your guilt, but I will find that you're guilty of the charge based on your admission that you're guilty. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you willing to give up your right to a trial and proceed with the plea of guilty at this time?

THE DEFENDANT: Yes.

THE COURT: I'm about to move on to, I guess, the second group of questions. Are you okay to go forward now or would you like a short break?

THE DEFENDANT: Yes.

MR. MENDELSOHN: Are you ready to go forward or do you want a break?

THE DEFENDANT: To go forward?

THE COURT: I took that to say, yes, you're okay to go forward, sir?

THE DEFENDANT: Yes.

THE COURT: You earlier verified your signature on the plea agreement that you entered into with the government. In a moment, I will ask the Assistant US Attorney to review the terms of the plea agreement other than the potential penalties and the factual basis of the plea, which we will discuss a bit later in the proceeding.

After that I'll be asking you whether the agreement as presented accurately reflects your understanding of the agreement that you've reached with the government.

Ms. Chaiken.

MS. CHAIKEN: Thank you, your Honor.

The plea agreement provides that Mr. Gaines will be pleading to Count 1 of the criminal information.

Pursuant to paragraph 11, the government agrees to dismiss the indictment against the defendant in case number 1:20-CR-296.

Paragraph 12 sets forth that the government agrees not to bring further charges related to the charges to which Mr. Gaines is pleading guilty.

Paragraphs 13 and 14 set forth a series of guideline stipulations. Specifically, paragraph -- specifically the applicable offense guideline is Section 2B1.1, and that there will be no adjustment pursuant to Section 2B1.1(b)(1) because the amount of loss is $6,500 or less.

Paragraph 15 provides that the government will recommend an adjustment for acceptance of responsibility to the maximum extent authorized by the guidelines subject to the exceptions that are listed in that paragraph.

Paragraph 16 provides that the parties recognize each party reserves the right to make recommendations for sentencing and that there are no agreements on the guidelines other than those mentioned in the agreement.

Paragraph 17 provides that the United States reserves the right to modify its sentencing recommendation if it receives additional information.

Paragraph 18 provides a cooperation agreement, that

the defendant agrees to cooperate truthfully and completely with the government, including producing all records requested, making himself available for interviews, responding truthfully to all government inquiries and at the government's request testifying at trial or other proceedings.

Paragraph 19 provides that the government agrees to abide by Section 1B1.8 of the United States Sentencing Guidelines to not use information previously unknown to the government for sentencing purposes with the caveat that if the defendant is not truthful or candid in cooperation, he may be prosecuted for perjury, false statements, obstruction and all information he provided may be used against him.

Paragraph 20 sets forth a conditional 5K and Rule 35 motion. The government agrees to inform the Court of the defendant's cooperation. And if the government determines that that cooperation qualifies as substantial assistance, it will file a motion for downward departure if that happens before sentencing, or Rule 35 motion for reduction of sentence if that happens after sentencing.

The defendant understands that the government alone determines if the defendant provided substantial assistance. And he understands that the government may recommend a sentence if it files such a motion but that the ultimate decision on his sentence rests with the Court.

Paragraph 21 provides that the government agrees to a

low-end recommendation subject to the caveat in paragraph 15 related to acceptance of responsibility.

Paragraph 22 provides that the government agrees to make no specific recommendation as to the fine to be imposed.

Paragraphs 23 through 28 provide that the defendant agrees to forfeiture of $177,828.46 seized from a JPMorgan Chase account held in the name of Gaines Reservation & Travel, and $9,314.28 from a PNC Bank account in the name of Gaines Reservation & Travel. And the defendant agrees to the forfeiture procedure set forth in paragraphs 23 through 28.

Paragraphs 29 through 30 provide that the defendant agrees to pay $806,710, plus applicable interest in restitution to the two victims and in the amounts identified in the plea agreement. And that the defendant agrees to cooperate fully in the collection of restitution.

Paragraph 31 provides that the defendant agrees to pay a special assessment of $100.

Paragraphs 32 through 36 provide that the defendant agrees to cooperate fully in the collection of any restitution or fine pursuant to the terms that are laid out in those paragraphs.

Paragraph 37 provides that the defendant understands the recommendations in the plea agreement are not binding on the Court.

Paragraph 38 sets forth a limited waiver of appeal,

which I will read in full into the record.

To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding, including but not limited to motions filed pursuant to 28 United States Code, Section 2255, on any ground except that the defendant may file a direct appeal of an upward departure or upward variance above the sentencing guideline range as calculated by the district court.

Claims that the defendant's counsel rendered constitutionally ineffective assistance are excepted from this waiver.

The defendant understands that this plea agreement does not limit the government's right to appeal, but if the government initiates a direct appeal of the sentence imposed, the defendant may file a cross-appeal of that same sentence.

Paragraph 39 sets forth the defendant agrees to the standard FOIA and Privacy Act waiver.

And paragraph 40 provides there are no other agreements between the parties.

THE COURT: Thank you.

Mr. Gaines, does that accurately reflect the agreement you believe you've reached with the government?

THE DEFENDANT: Yes.

THE COURT: Do you understand that any provisions in the agreement regarding recommendations to be made by the government are not binding on the Court?

THE DEFENDANT: Yes.

THE COURT: In other words, if I choose not to follow some recommendation that the government makes, do you understand that you will still be bound by your plea of guilty and would not be entitled to withdraw the plea based on the Court not following the recommendation?

THE DEFENDANT: Yes.

THE COURT: Is this the only agreement that you've entered into with the government?

THE DEFENDANT: Yes.

THE COURT: Other than the terms of this agreement has any promise of any kind been made to you to cause you to plead guilty?

THE DEFENDANT: Yes.

THE COURT: Okay. What other promise --

THE DEFENDANT: No. No, there's -- there's nothing else.

THE COURT: All right. So the answer to my question -- other than the terms of this agreement has any promise of any kind been made to you, the answer to that question is no?

THE DEFENDANT: The answer is no.

THE COURT: Okay. Thank you.

Per the terms of the plea agreement, the United States Attorney has agreed not to bring any additional charges related to the offense to which you're pleading guilty.

Other than those terms, has anyone threatened or forced you to plead guilty or told you that if you do not plead guilty further charges will be brought against you or other adverse action taken against you?

And that's a mouthful, so I'm going to let Mr. Mendelsohn talk with you a second just to make sure that you understand my question.

MR. MENDELSOHN: Judge, I boiled that down to has anybody made a threat against you or is anybody holding a gun to your head to make you plead guilty.

THE COURT: All right. What's the answer to that question, sir?

THE DEFENDANT: No.

THE COURT: All right. And, Mr. Mendelsohn, are you aware of any plea agreement or promise being made to your client other than what's been discussed here in open court?

MR. MENDELSOHN: No.

THE COURT: All right. Mr. Gaines, I'm going to now have Ms. Chaiken go over the factual basis for the plea. Would you like to take a break or are you okay to kind of go into this next section of the plea colloquy?

MR. MENDELSOHN: He feels okay to go forward.

THE COURT: What's that?

MR. MENDELSOHN: He feels okay to go forward.

THE COURT: So now I'm going to ask the Assistant US Attorney to state the elements of the offense to which you're pleading guilty. The elements of the offense are those matters that the government must prove beyond a reasonable doubt in order to convict you of the charge.

Ms. Chaiken.

MS. CHAIKEN: Your Honor, just so it's clear for the record, although Mr. Gaines was previously charged by a criminal indictment, this is his first appearance on the criminal information. And we do have the waiver of indictment form. And we just want to make sure that we have an opportunity to review the nature of the charge with him before that information is deemed filed and we get too far into the plea hearing.

THE COURT: Okay. I was not aware of that. So you want to take a moment and do that now?

MS. CHAIKEN: Yes, your Honor, if we could.

THE COURT: Go ahead.

MS. CHAIKEN: Would you like me to --

THE COURT: Sure. I've already asked him the question about the waiver of indictment, so go ahead.

MS. CHAIKEN: Mr. Gaines, do you understand that the

criminal information that we gave you a copy of charges you with a violation of Title 18 United States Code, Section 1001, which makes it a crime to make false statements to a federal law enforcement officer?

THE DEFENDANT: Yes.

MS. CHAIKEN: And have you had an opportunity to review the criminal information with your attorney?

THE DEFENDANT: Yes.

THE COURT: And do you understand that you have the right to be charged by criminal indictment rather than by this information, meaning that we would have to present your case to the grand jury and have them return an indictment as opposed to us coming to court in this information and making the allegation against you?

MR. MENDELSOHN: One second.

MS. CHAIKEN: That was a mouthful, sorry.

(Pause in the proceedings.)

MR. MENDELSOHN: So I translated that to do you understand that we could present -- you have the right to have this presented to a grand jury as opposed to having a charge made by the US Attorney. And his response is, yes, he does understand.

MS. CHAIKEN: Would you like us to read a copy of the information to you or do you waive a formal reading of the information?

THE DEFENDANT: Waive.

THE COURT: And given your understanding of these rights and of the nature of the charge in the information, is it your desire to waive formal indictment and proceed with charges pursuant to the criminal information?

THE DEFENDANT: Yes.

THE COURT: And is this your signature on the waiver of indictment form above your name?

THE DEFENDANT: Yes.

THE COURT: And, Mr. Mendelsohn, is that your signature on the waiver of indictment form above your name?

MR. MENDELSOHN: Yes, it is.

MS. CHAIKEN: Your Honor, may I tender the waiver of indictment form?

THE COURT: Sure. Thank you.

MS. CHAIKEN: Thank you.

THE COURT: Anything else on that front, Ms. Chaiken?

MS. CHAIKEN: No, your Honor. Would you like me to proceed with the elements?

THE COURT: Yes. Thank you.

MS. CHAIKEN: Thank you, your Honor.

Mr. Gaines is pleading guilty to Count 1 of the criminal information, which charges making a false statement to a department or agency of the United States in violation of Title 18 United States Code, Section 1001.

The elements of that offense are as follows:

One, the defendant made a statement or representation;

Two, the statement was false, fictitious or fraudulent;

Three, the statement or representation was material;

Four, the defendant acted knowingly and willfully;

And, five, the statement or representation pertained to a matter within the jurisdiction of the executive branch of the United States Government.

THE COURT: Thank you. And, Mr. Gaines, do you understand that those are the elements that the government would have to prove beyond a reasonable doubt in order to convict you of the charge?

THE DEFENDANT: Yes.

THE COURT: In a moment I will ask the Assistant US Attorney to summarize the evidence that the government would expect to present at trial to prove each of these elements. In other words, these are what the government contends are the facts of the case.

It's necessary for the government to state these facts because I must determine whether there's a factual basis for you to enter this plea of guilty.

After this statement I will ask you whether you disagree with any of the facts as stated by the prosecutor.

If you do, tell me, and we will discuss those facts at that time.

Ms. Chaiken.

MS. CHAIKEN: Thank you, your Honor.

If this case were to go to trial, the United States would prove by admissible evidence and beyond a reasonable doubt the following facts:

The Paycheck Protection Program, which is known as the PPP, was authorized as part of the Coronavirus Aid, Relief and Economic Security Act to provide forgivable loans to eligible small businesses.

Under the PPP small businesses could apply for loans that must be used for payroll expenses, interest on mortgage, rent and/or utilities.

The amount of a PPP loan that a business could receive was generally two-and-a-half times, or 250 percent, of the business's average monthly payroll cost.

While the United States Small Business Administration oversaw the PPP, individual PPP loans were issued by private approved lenders, including Cross River Bank, which is a federally insured financial institution.

The PPP borrower application form asked the applicant to provide information related to their loan application, including the amount of the business's average monthly payroll, the number of the business's employees and the

purpose of the loan, with options for payroll, lease or mortgage interest, utilities and/or other.

The lender then used this information to calculate the amount of the loan that the business was eligible to receive.

The application form also included certain representations and certifications, including certifications as to the accuracy of the information included in the application itself and in any supporting documents and a certification that the funds would be used to retain workers and maintain payroll or to make mortgage interest payments, lease payments and utility payments.

Defendant Andre Lee Gaines is the owner of a Georgia company called Gaines Reservation & Travel, which I'll refer to as Gaines Reservation.

On or about May 18th, 2020, Gaines Reservations submitted a PPP loan application. In the PPP loan application, Gaines Reservation represented that it had 69 employees and $322,684 in average monthly payroll and that the purpose of the loan was payroll, lease, mortgage interest or utilities.

To support these payroll figures, Gaines Reservations submitted IRS Form 941s, which are quarterly employer's tax returns for Gaines Reservations for each quarter of 2019 and a JPMorgan Chase Bank statement for Gaines Reservation for

February of 2020.

The documents submitted with Gaines Reservations PPP loan application were fabricated. The IRS confirmed that Gaines Reservation did not file a Form 941 for any quarter in 2019 and bank records for Gaines Reservations show that the bank statement submitted with the PPP loan application was fake.

In reality, Gaines Reservation did not have any employees or any monthly payroll costs.

Based on the false representations in Gaines Reservations' PPP loan application and the fabricated supporting documents, Cross River Bank issued a $806,710 PPP loan to Gaines Reservations.

On or about July 2nd, 2020, a special agent of the Federal Bureau of Investigation interviewed Mr. Gaines by telephone. During that telephonic interview, Gaines made various false statements about Gaines Reservations and its PPP loan application which were material facts of the investigation.

Among these false statements, Gaines represented that Gaines Reservation has 69 employees. At the time that he made that statement, Mr. Gaines knew that Gaines Reservations did not have any employees.

THE COURT: Thank you.

MR. MENDELSOHN: Judge, typically I know you would

ask Mr. Gaines about this. If I could add a couple of little details here to explain sort of what was going on just so the bigger picture is clear.

THE COURT: Sure.

MR. MENDELSOHN: The events that happened in this case happened in 2020, two years after Mr. Gaines' stroke.

Mr. Gaines did not file the PPP loan application. They were filed electronically by an individual who's named as a co-defendant in the PPP indictment.

Mr. Gaines never saw the application. Mr. Gaines never saw the supporting documentation.

He was misled as to what was being filed and what the whole purpose of this information was and only found out that a PPP loan was filed in the name of his company after the fact.

And as I've said to the government, it's argued that the evidence at trial would show that Mr. Gaines was a victim of some hustlers out there who took advantage of his cognitive impairments to file the loan on his behalf or in the name of his company.

After all of this happened and after all the funds were disbursed an FBI agent came -- or made phone calls to Mr. Gaines to ask him about the PPP loan. There was one phone call in which they had a discussion where I don't believe any false statements were made. There was a call later in the day

in which Mr. Gaines did make the false statement. In between that, it's my understanding that Mr. Gaines spoke with one of the individuals who had misled him and told him what to say.

So he acknowledges he made the false statement, but with that background about what happened with the PPP loan, I think it's important to have on the record that were this case to go to trial, that Mr. Gaines did not actually file the PPP loan application.

THE COURT: Mr. Gaines, let me ask you, do you disagree with anything that Ms. Chaiken has said with the caveats that Mr. Mendelsohn has given?

And I think -- Ms. Chaiken, Mr. Kitchens, chime in, but I think as far as the elements for false statements, even with those caveats, it seems like there is still a factual basis from my perspective, unless anyone disagrees.

MS. CHAIKEN: We agree, your Honor.

MR. MENDELSOHN: And we are in no way denying any part of -- what happened on July 2nd, he made the false statement. We totally --

THE COURT: I understand.

Mr. Gaines, my question is pending to you?

THE DEFENDANT: Yes.

THE COURT: All right. So you do not disagree with anything, correct?

THE DEFENDANT: Correct.

THE COURT: Let me ask you about those elements.

Do you admit that you made a statement or a representation that was false, fictitious or fraudulent?

THE DEFENDANT: Yes.

THE COURT: And do you admit that that statement or representation was material?

THE DEFENDANT: Yes.

THE COURT: Is the answer to my question "yes," sir?

THE DEFENDANT: Yes, sir.

THE COURT: And do you admit that you acted knowingly and willfully?

THE DEFENDANT: Yes.

THE COURT: Do you admit that the statement or representation pertained to a matter within the jurisdiction of the executive branch of the United States Government?

THE DEFENDANT: Yes.

THE COURT: And, sir, I'm now going to have Ms. Chaiken talk about the potential penalties that you face for the charge, including the maximum penalties and any mandatory minimums.

Are you okay to go forward with that now or would you like to take a break?

THE DEFENDANT: I would like to go forward.

THE COURT: All right. Ms. Chaiken, go ahead.

MS. CHAIKEN: Thank you, your Honor.

Mr. Gaines faces the following maximum and mandatory minimum penalties as to the offense charged:

The maximum term of imprisonment is five years.

There is no mandatory minimum term of imprisonment.

The authorized term of supervised release is zero to three years.

The maximum fine is $250,000 or twice the gain or twice the loss, whichever is greatest.

He will also have to pay full restitution, a mandatory special assessment of $100 and forfeiture of any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of the offense.

THE COURT: Thank you. Mr. Gaines, do you understand that those are the possible penalties that you could receive in this case?

THE DEFENDANT: Yes.

THE COURT: Do you understand that it's not possible for me to state to you today what your exact sentence will be?

THE DEFENDANT: Yes.

THE COURT: Do you understand that in deciding your sentence, I will consider sentencing guidelines and that the guidelines are advisory, which means that I have the discretion to impose a sentence that is either within the guidelines, greater than the guidelines or less than the

guidelines?

THE DEFENDANT: Yes.

THE COURT: And bear with me a moment.

In the plea agreement that was reviewed with you a little while ago you waived certain appeal rights. I want to be sure that you understand the meaning of that waiver.

Let me first state to you the rights you would have if you did not waive or give up those rights.

The defendant in every criminal case has the right to file a direct appeal immediately after his conviction and sentence. In that appeal you may raise any issue concerning the handling of your case in this court that you wish to raise. Those issues would be reviewed by the Court of Appeals. If errors were found, the Court of Appeals could order that action be taken to correct those errors.

Besides that right to a direct appeal, you would have an additional opportunity for review of your case by filing a writ of habeas corpus pursuant to 28 USC, Section 2255. That's another opportunity for you to challenge the legality of your conviction and/or your sentence.

These are rights that every defendant has unless he waives or gives them up.

In your plea agreement you have, for the most part, given up these rights. Your right of review will be limited to three specific circumstances.

First, if after calculating the sentencing guidelines that apply to your case, I then impose a sentence that is greater than the guidelines, you would have the right to file a direct appeal challenging that sentence.

Second, if the government files an appeal for any reason, you have a right to file a cross-appeal raising any issues that you wish to raise.

Finally, you always reserve the right to challenge constitutionally ineffective assistance of counsel.

But aside from these three very narrow circumstances, you will have no right of appeal and will be essentially bound by my decision.

Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: And, Mr. Mendelsohn, have you reviewed the rights with your client such that you're comfortable he understands both his rights and the waiver of those rights?

MR. MENDELSOHN: I have.

THE COURT: Mr. Gaines, I'm going to now go through some other issues. Are you okay to go forward or would you like to take a break?

THE DEFENDANT: I would like to go forward.

THE COURT: All right.

First, do you understand that parole has been abolished in the federal system and that if you're sentenced

to prison, you will not be released early on parole?

(Pause in the proceedings.)

THE DEFENDANT: Yes.

THE COURT: Do you understand that you may be sentenced to a term of supervised release that will follow any term of imprisonment and will include rules governing your conduct that if you violate could result in more time in prison?

THE DEFENDANT: Yes.

THE COURT: Bear with me a moment.

Do you understand you may be ordered to pay restitution to any victim of the offense?

THE DEFENDANT: Yes.

THE COURT: Are you a citizen of the United States Government, sir?

MR. MENDELSOHN: Are you a United States citizen?

THE DEFENDANT: Yes.

THE COURT: Do you understand that as part of your sentence certain property that's been identified by the government may be forfeited by you to the government?

THE DEFENDANT: Yes.

THE COURT: Is there anything we've talked about today that you do not feel you fully understand?

THE DEFENDANT: Yes.

MR. MENDELSOHN: Well -- I'm sorry, Judge. I just

said to him do you feel like you've understood everything.

THE COURT: Let me just ask it that way.

Sir, Mr. Gaines, have you understood everything we've discussed today?

THE DEFENDANT: Yes.

THE COURT: Have you had a sufficient opportunity to talk about your case with your attorney and have your attorney answer any questions that you have before entering your plea?

THE DEFENDANT: Yes.

THE COURT: Are you satisfied with the representation that your attorney has provided to you?

THE DEFENDANT: Yes.

THE COURT: How do you plea to the information, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Mr. Mendelsohn, do you feel that you've had a sufficient opportunity to investigate your client's case and advise him concerning the entry of this plea?

MR. MENDELSOHN: I do.

THE COURT: Are you aware of any reason I should not accept the plea?

MR. MENDELSOHN: I am not.

THE COURT: Is there anything else you want me to address with your client on the record at this time?

MR. MENDELSOHN: No. Thank you.

THE COURT: Ms. Chaiken, is there anything further that the government wishes the Court to address at this time?

MS. CHAIKEN: No, your Honor. Thank you.

THE COURT: Does the government object to the defendant remaining on bond subject to the previous conditions?

MS. CHAIKEN: No, your Honor.

THE COURT: Mr. Gaines, tell me in your own words what we've done here today.

THE DEFENDANT: We've discussed my plea agreement of -- my guilty plea with the US Attorney today. And I waived my right to -- and -- so that I could plead guilty to the charge of making a false statement to a federal agent.

THE COURT: Okay. Thank you, sir.

I find the defendant understands the charge and the consequences of the plea.

I've observed the defendant during this proceeding and he does not appear to be under the influence of any substance that might affect his judgment or actions in any manner.

I've also discussed at length his competence to enter the plea, and I'm satisfied that he is competent to enter a knowing plea here today and understands these proceedings.

I normally don't ask that final question of a defendant, what happened here today, what are we doing. And

the defendant stated without any prompting by his attorney I think exactly the purpose of today's proceeding and what we've done. And I thought he did so artfully.

So the Court finds that the plea has a factual basis and is free of any coercive influence of any kind.

I find that there have been no promises made to the defendant except those set out in the plea agreement.

I find that the defendant is competent to understand these proceedings and enter a knowing plea of guilty as just discussed in more detail.

I find that the plea is freely and voluntarily entered.

It's, therefore, entered that the plea of guilty of the defendant to the information is accepted and entered.

Mr. Gaines, you are hereby adjudged guilty of the charge contained in the information.

I will now be referring your case to a probation officer who will prepare a presentence report. Before I receive the report, Mr. Gaines, you and your attorney will receive a copy of the report and will have an opportunity to object to any findings in the report.

At your sentencing hearing I will hear from the government and any witnesses it wishes to present and from you, your attorney and any witnesses that you wish to present. At that time I will decide the proper sentence in your case.

Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: Counsel, anything else?

MS. CHAIKEN: Not from the government, your Honor.

MR. MENDELSOHN: No, Judge. Thank you.

THE COURT: All right. Good to see everyone.

And, Ms. Walker, Ms. Coudriet, Officer, thank you all very much.

We're adjourned.

(PROCEEDINGS REPORTED WERE CONCLUDED AT 4:03 PM.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 25th day of January, 2024.

Penny Pritty Coudriet

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER