

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3:23CR3
	)	
Gladys Harun,	)	
	)	
Defendant.	)	
_____	)	

SENTENCING HEARING
BEFORE THE HONORABLE DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT COURT JUDGE
TUESDAY, JANUARY 23, 2024; 1:59 P.M.

FOR THE PLAINTIFF:

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EXHIBITS

NO.	IDENTIFICATION	EVD.
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(None offered)

1 (Call to Order at 1:59 p.m.)

2 THE CLERK: Case 3:23CR3, United States of America
3 versus Gladys Harun, is called for sentencing. Representing
4 the United States, Alex Hamner. Representing defendant, Johnny
5 Vines.

6 MR. HAMNER: Alex Hamner on behalf of the United
7 States, Your Honor. We're ready to proceed.

8 MR. VINES: Afternoon, Judge. The defense is ready.

9 THE COURT: Ms. Gladys Harun, on April 27, 2023, you
10 entered into a plea of guilty as to count one of an Information
11 charging you with making false statements, and that, of course,
12 in a violation of federal law. Have you had the opportunity to
13 read and discuss the Presentence Investigation Report with your
14 lawyer?

15 THE DEFENDANT: Yes, sir. Thank you.

16 THE COURT: Now, Mr. Vines, I understand there is an
17 objection. Is that correct?

18 MR. VINES: Yes, Your Honor, approximately three.

19 THE COURT: All right. Well, we can count all the way
20 up to three. Approximation not necessary. Tell me about the
21 first one.

22 MR. VINES: Thank you, Your Honor. Your Honor,
23 objection one deals with paragraphs 69 and 41 of the victim
24 impact and restitution. Your Honor, our calculations are
25 somewhat different from as calculated by the U.S. Probation,

1 Your Honor, and so, therefore, we're objecting to that in that,
2 Your Honor, my client -- according to our estimates she
3 received a total of \$504,156 in loans and grants, Your Honor,
4 and she provided documentation to the United States Probation
5 Office that showed that she used those for legitimate purposes
6 regarding her business and, therefore, we're arguing that the
7 restitution amount is therefore flawed.

8 THE COURT: All right. Mr. Hamner, what do you have
9 to respond there?

10 MR. HAMNER: Your Honor, the -- it's kind of hard to
11 respond in the sense in that the information that we have is
12 the same as probation has. It's the amounts that were received
13 by Gladys and by those that she assisted with obtaining some
14 EIDL loans -- specifically, Jacqueline Black for a PPP loan;
15 Jane Njeru for an EIDL loan, and Esther whose last name I don't
16 know how to pronounce for an EIDL loan as well. Those total
17 amounts total to \$552,649.14.

18 I have agents -- Special Agent Brian Jack of the IRS
19 and Special Agent Justin Lott from the SBA -- who can testify
20 as to those amounts and how they came up with those figures --
21 specifically being the amounts that would cover the loan amount
22 in addition to the lender fees and I am prepared to present
23 them to the Court.

24 THE COURT: Well, let's be direct about it. The
25 offense here is making false statements --

1 MR. HAMNER: Yes, sir.

2 THE COURT: -- in the acquisition of EIDL loans,
3 grants or other loans. It doesn't matter how the money was
4 spent if it was obtained wrongfully.

5 Now, Mr. Vines, is that a concept that you are
6 disagreeing with?

7 MR. VINES: Unfortunately not, Judge.

8 THE COURT: All right. Now you say in the objection
9 that the money was spent "for business purposes". Where is
10 this accounting that shows that?

11 MR. VINES: Your Honor, my client has provided me a
12 statement from Embrace Africa that had laid out everything that
13 it was spent on, Your Honor. It should be attached as part of
14 the Presentencing Report, Your Honor.

15 THE COURT: And this is it?

16 MR. VINES: Unfortunately.

17 THE COURT: All right. Okay. Y'all have a seat for a
18 moment.

19 I think under the circumstances it's best to get a
20 testimonial record of the amounts, Mr. Hamner.

21 MR. HAMNER: Yes, sir. I will start with Special
22 Agent Brian Jack. Your Honor, I am trying to get the paperwork
23 so they can properly identify the amounts.

24 THE COURT: Sure.

25 (Brian Jack is duly sworn.)

(Brian Jack - Direct by Mr. Hamner)

6

1 THE CLERK: Please come up. Have a seat. State your
2 name spelling the same and your occupation.

3 THE WITNESS: Brian Jack. B-R-I-A-N J-A-C-K, Special
4 Agent, IRS Criminal Investigation.

5 **DIRECT EXAMINATION**

6 BY MR. HAMNER:

7 Q Thank you, Special Agent Jack. Would you mind briefly
8 summarizing -- I mean briefly -- the extent of the
9 investigation you conducted on this?

10 A Sure. So we started by interviewing the defendant,
11 Ms. Harun, at her business in middle Georgia. I don't recall
12 if it was Dublin. I think it might have been Dublin.

13 Q I am going to ask you to speak up a little bit. I'm having
14 a hard time hearing you.

15 A Okay. Yeah, I'll talk a little bit louder. So we started
16 off by interviewing Ms. Harun at her place of employment and I
17 don't recall if it was Dublin or Macon, but it was one of her
18 Jackson Hewitt enterprises and we confronted her about her PPP
19 loans at the time and she, essentially, just denied and stated
20 that she was entitled to the money that was obtained.

21 Q Let me back up for a second. What PPP loans are you
22 referring to?

23 A Talking about three specific PPP loans, all of which she
24 received. One of -- I'll go chronologically. To the best of
25 my recollection the first one was a PPP loan for approximately

(Brian Jack - Direct by Mr. Hamner)

7

1 \$46,033. That one was obtained from Wells Fargo.

2 Secondly, there was a PPP loan for approximately \$25,000
3 and that number could be off a little bit -- 25, \$26,000. That
4 one was a Truist -- I believe it was a Truist PPP loan and
5 then, thirdly, was the big one and that one was obtained
6 from -- Lendistry was the lender -- Lendistry Bank. It was
7 either doing business as BSD Capital or vice versa and that one
8 was approximately \$299,913. Those are the three PPP loans that
9 Ms. Harun claimed that she was entitled to but also physically
10 obtained the money.

11 There were four other individuals that Ms. Harun assisted
12 in preparing their either PPP or EIDL loan/grant and all of
13 which we talked to and all of them said that they did not have
14 businesses during the timeframe that SBA required businesses to
15 have actually already been established.

16 Q Okay. So let me stop you for a second. Let's start with
17 one of those individuals -- Melinda Hoven.

18 A Melinda Hoven. She started a t-shirt printing business in
19 or about 2020 -- mid-2020 to the best of my memory -- but the
20 requirement to have obtained a PPP loan was right around
21 mid-February of 2020. Like, you already had to have had a
22 business prior to mid-February of 2020. Her t-shirt company
23 had not started at that point; therefore, she was not entitled
24 to have obtained any money.

25 Q Okay. Do you recall approximately the amount from

(Brian Jack - Direct by Mr. Hamner)

8

1 Ms. Hoven's PPP loan?

2 A I would have to go through my notes here.

3 Q Please do. I think the Court wants as exact figures as you
4 can get. So please provide those.

5 A Exact figures. Sure. So the amount of Ms. Hoven's loan
6 was 15,625.

7 Q Okay. And in addition to that loan were there SBA lender
8 fees that were paid?

9 A Yes. Yes. Lender fees of \$2500 and then there is interest
10 of \$272.69. So collectively that's 18,397.69.

11 Q And Ms. Hoven's application for PPP was determined to be
12 fraudulent because her business was not in existence at the
13 time?

14 A Correct.

15 Q Okay. Let's move on to Jacqueline Black, please.

16 A Jacqueline Black was the same exact situation. There was
17 no -- there was no business during the time that she was
18 required to have had a business so she did not qualify.

19 Q Who prepared the PPP loan?

20 A I'm sorry?

21 Q Who prepared the loan?

22 A Ms. Harun.

23 Q The application?

24 A Yes, and the same thing with Ms. Hoven. Ms. Harun provided
25 hers -- prepared hers as well.

(Brian Jack - Direct by Mr. Hamner)

9

1 Q And how much was the amount for the PPP loan that was given
2 by SBA to Ms. Jacqueline Black?

3 A Ms. Black received \$8,240 --

4 Q Were there lender fees?

5 A -- \$2,500, interest \$43.26. Collectively, that's
6 10,783.26. I'll move on when you're ready.

7 Q Okay. Let's move on to Jane Njeru.

8 A Jane Njeru. This was EIDL. The following one will be
9 EIDLs. Same principle applies. You had to have had an actual
10 business and Ms. Njeru did not. She told us she did not. She
11 obtained from SBA in the form of an EIDL \$116,300. There was
12 no lender fees in that situation, but there was interest of
13 \$3,510.71. Collectively, that's 119,810.71.

14 Q Okay. We'll come back to her in just a second. What about
15 Esther N-J-O-R-O-G-E?

16 A Esther Njoroge. This was another EIDL advance and the same
17 thing applies here was that she just didn't have a business
18 when she was required to have a business. She received an EIDL
19 advance of \$15,000. Therefore, no lender fees and no interest.
20 So in total \$15,000.

21 Q Okay. All right. Let's go back to the PPP loans that
22 Ms. Harun had obtained. What was fraudulent about her
23 applications?

24 A All three of them were -- it was a combination in some
25 cases, but the big one -- Lendistry -- was a -- I would call it

(Brian Jack - Direct by Mr. Hamner)

10

1 a gross inflation of her payroll. So the PPP calculation to
2 secure a PPP loan was heavily driven by payroll, by average
3 monthly payroll specifically during 2019 and then if they opted
4 to use 2020 they could do so, and the payroll was just grossly
5 inflated like tenfold. So she obtained approximately \$300,000.
6 It was \$299,913 and the best I could tell she was actually
7 entitled to approximately \$25,000. I have never ran the exact
8 number, but it was right around \$25,000, not 299,913.

9 Q Okay. And this same form of fraud was perpetrated for all
10 three of these PPP loans?

11 A It was perpetrated for the Wells Fargo on \$46,033. That
12 one the payroll was also inflated and it was also done for the
13 other PPP amount, and let me flip through here, but I believe
14 that one was obtained from Truist. That one was around
15 \$25,000. Let me see if I can find the exact number. I don't
16 know where that is in this folder, but it was approximately
17 25,000. I can find it if you need me to.

18 Q Let me say it this way. Probation calculated the first PPP
19 loan at \$46,440.36. Does that sound like an accurate figure?

20 A It sounds pretty close, yes.

21 Q Okay. Well, I think the Court is going to be determining
22 some of the restitution that's going to be owed based on these
23 figures. So do you have the actual amounts that are needed for
24 restitution in the binder that you have?

25 A I don't know.

(Brian Jack - Direct by Mr. Hamner)

11

1 Q Okay.

2 A This was not prepared by me.

3 Q That's okay.

4 Your Honor, if I may call Special Agent Justin Lot. These
5 are the questions I had for Brian Jack regarding the
6 investigation. He was the lead case agent in the
7 investigation. Special Agent ---

8 THE COURT: Let me just be direct, Mr. Hamner. This
9 objection has been outstanding for quite a while. It is
10 obvious that we need to establish a record for it. I would
11 have thought that these witnesses might be a little better
12 prepared.

13 MR. HAMNER: Your Honor, I believe that Special Agent
14 Lott is the one that prepared the actual figures. He is
15 sitting right here behind me. I was going to have him come up
16 and testify.

17 THE COURT: Okay. Well, thank you very much,
18 Mr. Jack, but, now, Mr. Vines, do you have any questions for
19 Mr. Jack on what he's told you so far?

20 MR. VINES: Your Honor, since the case agent is coming
21 up, no questions for this witness.

22 THE COURT: All right. Thank you.

23 Thank you, Mr. Jack.

24 MR. HAMNER: We would call Special Agent Justin Lott,
25 Your Honor.

(Justin Lott - Direct by Mr. Hamner)

12

1 (Justin Lott is duly sworn.)

2 THE CLERK: Please state your name for the record and
3 your occupation.

4 THE WITNESS: My name is Justin Lott. Last name is
5 spelled L-O-T-T. I am a Special Agent with the United States
6 Small Business Administration, Office of Inspector General.

7 **DIRECT EXAMINATION**

8 BY MR. HAMNER:

9 Q Special Agent Lott, the question that we have at this time
10 is the amounts that are owed in restitution; specifically, the
11 amount that Gladys Harun received for her PPP loans.

12 A Yes.

13 Q As well as the amount that was received by Melinda Hoven,
14 Jacqueline Black, Jane Njeru, Esther Njoroge.

15 Would you be so kind as to give me the figures for those?

16 A Yes, I will. Starting with Embrace Africa DBA Jackson
17 Hewitt Tax associated with Gladys Harun, PPP loan ending 7702,
18 she received \$46,033. In addition to that the SBA paid the
19 lender \$2,301.65 in lender fees and interest of \$407.36 for a
20 total of \$48,742.01.

21 Q Okay.

22 A Next we have for Gladys Harun, PPP loan ending 8907. She
23 received \$20,710. In addition to that amount the SBA paid out
24 \$2,500 in lender fees, interest of \$77.09 for a total of
25 \$23,287.09.

(Justin Lott - Direct by Mr. Hamner)

13

1 Next was PPP loan ending 9010. That was for Embrace
2 Africa. The loan amount she received was \$299,913. The lender
3 fees paid out by the SBA were \$14,995.65.

4 Q I'm sorry. Did you say 995 or 955?

5 A 14,995.65.

6 Q Thank you.

7 A And the interest for that loan was \$2,062.42. That totals
8 to \$316,971.07.

9 Next was the PPP loan for Melinda Hovan. That's PPP loan
10 ending 8608. The total amount she received was \$15,625. The
11 SBA paid out lender fees of 2,500 as well as interest totaling
12 \$272.69 for a total amount of \$18,397.69.

13 Next we had EIDL advances that were paid out Njoroge. That
14 totaled to \$15,000. There was no lender fees or interest
15 associated with that. It was just a total of 15,000.

16 Next was the EIDL ending 9104 for Jane Njeru. The total
17 amount of the loan she received was \$116,300. That was a
18 combination of the loans and the EIDL grants and advances she
19 received. There was no lender fee for that because it was
20 funded directly through the SBA and not PPP lenders, but the
21 interest calculated on that loan was \$3,510.71 for a total of
22 \$119,810.71.

23 Q Okay.

24 A The last was PPP loan ending 8710 for Jacqueline Black.
25 She received \$8,240, lender fees paid out of \$2,500, interest

(Justin Lott - Direct by Mr. Hamner)

14

1 of \$43.26 for a total of \$10,783.26.

2 Q Now ---

3 THE COURT: Ten thousand how much?

4 THE WITNESS: I'm sorry, sir?

5 THE COURT: Ten thousand and how much?

6 THE WITNESS: \$10,783.26. And collectively my
7 calculation comes to \$552,991.83 which is just, I believe, two
8 or \$300 just over what probation's calculation was.

9 Q And I believe that came from the interest -- the interest
10 of \$273 that was previously mentioned?

11 A Yes, I believe in our original calculation we left off
12 interest of roughly two to \$300 for Melinda Hoven.

13 Q Okay. And the one final thing I want to bring up with
14 these figures is I believe that since probation prepared this
15 report Jane Njeru had paid approximately \$6,101.23 back on her
16 EIDL loan. Is that right?

17 A Approximately, her current balance owed as of when this was
18 calculated in December was \$113,913.95.

19 Q Which if I am correct would bring the total amount that you
20 had mentioned before down by \$6,101.23; correct? Does that
21 sound about right?

22 A Sounds about right. I don't have a calculator with me, but
23 sounds about right.

24 MR. HAMNER: Your Honor, I have no further questions
25 regarding the amounts that are owed to the SBA.

(Justin Lott - Cross by Mr. Vines)

15

1 THE COURT: Mr. Vines, you want to ask any questions
2 of Mr. Lott?

3 MR. VINES: Yes, Your Honor.

4 THE COURT: All right.

5 CROSS EXAMINATION

6 BY MR. VINES:

7 Q So Special Agent?

8 A Yes, sir.

9 Q Special Agent, so I just want to get this straight. So
10 Ms. Jane -- what's her last name?

11 A Njeru. I am not sure if I am saying that correctly.

12 Q \$119,810.71. She actually received that and she's making
13 payments on it?

14 A She received physically \$116,300 and in addition to that
15 interest that has accrued on that loan since it has not been
16 paid in full was \$3,510.71.

17 Q The long and short is that she received it; she's making
18 payments on it?

19 A She or somebody else has started making payments towards
20 that loan, yes.

21 MR. VINES: Thank you. No further questions.

22 MR. HAMNER: I have no further questions for the
23 witness, Your Honor.

24 THE COURT: I'm thinking. Go back to the Njeru loan
25 for me, Special Agent Lott. What were the circumstances for

1 the origination of that loan?

2 THE WITNESS: For Ms. Jane Njeru?

3 THE COURT: Yes.

4 THE WITNESS: The total calculated for the loan plus
5 the interest accrued was \$119,810.71.

6 THE COURT: Well, what did Ms. Harun have to do with
7 the initiation of that loan?

8 THE WITNESS: The loan for Ms. Jane Njeru, I believe
9 if memory serves me correct, that her loan application actually
10 identified Ms. Gladys Harun on the application itself as the
11 preparer of the application. It was also tied via the IP
12 address and some other methods and we also interviewed Ms. Jane
13 Njeru out in Washington state who admitted that Ms. Gladys
14 prepared the application on her behalf and was paid a fee for
15 doing so.

16 THE COURT: Well, who got the money?

17 THE WITNESS: The money went to Ms. Jane Najero.

18 THE COURT: Okay.

19 THE WITNESS: Minus a portion that she indicated was
20 paid to Ms. Gladys.

21 THE COURT: And what portion was that?

22 THE WITNESS: I can't recall directly. I want to say
23 if memory serves me roughly \$1,000, I believe.

24 THE COURT: Well, I am trying to get to some
25 understanding of the importance of that rather large amount.

1 Is it fair to say of all of the loans that you saw this is the
2 one that more likely approaches some legitimacy?

3 THE WITNESS: Ms. Jane Njeru's loan had no legitimacy
4 at all.

5 THE COURT: All right.

6 A In fact, Ms. Jane explained to us that she had no business
7 in operation at the time and, therefore, would not have been
8 eligible for any EIDL or PPP funds.

9 THE COURT: But in any event, she's the one that got
10 the money for it?

11 THE WITNESS: That is correct. She received ---

12 THE COURT: As far as you know.

13 THE WITNESS: -- the funds. We identified the funds
14 went to Ms. Jane Njeru and I believe approximately half of that
15 money was shared with her sister Esther Njoroge which the
16 proceeds were used towards funding education for children and I
17 believe a boat purchase in Kenya, Africa.

18 THE COURT: According to her statement.

19 THE WITNESS: That's correct.

20 THE COURT: All right. Did you review the documents
21 that were supplied to the probation office here as an
22 explanation of where all this money went?

23 THE WITNESS: I did have a chance to read through the
24 explanation of how the money was spent.

25 THE COURT: And tell me what your conclusion was when

1 you saw that.

2 THE WITNESS: My overall conclusion is that it seemed
3 to be an overwhelming lack of support. There were no receipts,
4 any type of documentation to provide validity to how the money
5 was spent, and based on our review throughout the investigation
6 we identified various wire payments going over to Africa as
7 well as other spending that would not be conducive of eligible
8 business spending for either the EIDL or PPP.

9 THE COURT: Well, sometimes it goes without saying
10 needs to be said. Is there anything in the EIDL or PPP
11 programs that authorizes the recipient of a loan, grant, or
12 other payment to expend the money in foreign countries?

13 THE WITNESS: I would caveat that with it depends.
14 Primarily, it has to have a direct business correlation to the
15 business that applied. So, thinking outside of the box, if
16 there were a scenario where a U.S. based corporation possibly
17 had employees -- legitimate employees -- overseas, there could
18 be a scenario where that could be warranted.

19 THE COURT: Yeah, a business employee. It doesn't
20 allow for or it doesn't even mention anywhere charitable
21 purposes in a foreign country.

22 THE WITNESS: That's correct. Charitable ---

23 THE COURT: You can't run your own foreign aid
24 program.

25 THE WITNESS: That's correct. The EIDL or the PPP

1 were not established to provide for a charitable benefit.

2 THE COURT: Curiosity compels me to ask, Special Agent
3 Lott, how these lender fees are calculated. They seem pretty
4 hefty.

5 THE WITNESS: Yes, sir. So the way the PPP program
6 operates is the SBA delegates authority to third-party lender
7 financial institutions --

8 THE COURT: I remember.

9 THE WITNESS: -- in exchange --

10 THE COURT: I didn't know it was like this. You had a
11 \$8,000 loan that had a \$2,500 lender fee, did you?

12 THE WITNESS: That's correct.

13 THE COURT: Yeah.

14 THE WITNESS: So throughout the period of the program
15 there were some changes as to how those lender fees were
16 calculated. At one point in time lenders would receive
17 50 percent of the processing fee or \$2,500, whichever is less,
18 for loans that were less than \$50,000.

19 THE COURT: Okay.

20 THE WITNESS: And another point in time it was based
21 on a 5 percent calculation.

22 THE COURT: Okay. Well, thank you.

23 Anything else, Mr. Hamner, Mr. Vines?

24 MR. HAMNER: No, Your Honor.

25 MR. VINES: No, Your Honor.

1 THE COURT: Okay. What else, Mr. Hamner?

2 MR. HAMNER: With regards to this objection, Your
3 Honor, nothing further.

4 THE COURT: Well, let me get a total on what Special
5 Agent Lott now -- have you got a total of all of this?

6 THE WITNESS: Yes, Your Honor. I've got a total of
7 \$552,991.83 of actual loss. If we account for the payments
8 that have been applied towards Ms. Jane Njeru's loan, that
9 brings that actual total due today of \$547,095.07.

10 THE COURT: Well, thank you very much, sir.
11 Anything else?

12 MR. VINES: Just a small argument, Judge.

13 THE COURT: Go ahead.

14 MR. VINES: Thank You, Judge. Judge, one of the
15 biggest issues that we take -- what we'd like to point out is
16 that Ms. Jane, \$119,810.71 -- she's making payments. She
17 received that money. She's making that money. So if you
18 deduct that from what they are -- the state or the government
19 is referring to as actual loss, my calculation comes to
20 \$433,181.12.

21 THE COURT: Is that a question to him?

22 MR. VINES: No, Judge. It was just argument.

23 THE COURT: Well, we'll take that a little later.

24 MR. VINES: My apologies, Judge.

25 THE COURT: Okay. I am going to give you an

1 opportunity to go over the whole thing.

2 MR. VINES: My apologies. I'll sit down and shut up.

3 THE COURT: Candidly, Special Agent Lott, the lender
4 fees really had very little, if anything, to do with checking
5 out the veracity of the application; is that correct?

6 THE WITNESS: That's correct. It is moreso an
7 unintended consequence I would classify it as taking out the
8 loan therefore caused the payment of those lender fees and the
9 accrued interest to the U.S. Government.

10 THE COURT: The Congress and everybody else was not
11 blind to the fact that there was going to be some fraud. There
12 was going to be all of these things and the objective was to
13 get the money out quickly and not to spend three or four months
14 looking over the application.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay. All right. Anything else, counsel?

17 MR. HAMNER: No, Your Honor.

18 THE COURT: Thank you, Special Agent Lott.

19 All right. What else do you want to say on
20 restitution, Mr. Vines? You have the floor.

21 MR. VINES: Thank you, Your Honor. If I may have one
22 moment.

23 THE COURT: I assume you were finished there,
24 Mr. Hamner?

25 MR. HAMNER: Yes, Your Honor. Thank you.

1 THE COURT: Okay.

2 MR. VINES: Judge, against my advice my client would
3 like to take the stand.

4 THE COURT: All right. You want her at the lectern
5 where I can look at her or does she want to -- it depends on
6 how long she's going to be. If she's going to be seated,
7 that'll be one thing.

8 THE DEFENDANT: I can stand.

9 THE COURT: All right. Take an oath.

10 (Gladys Harun is duly sworn.)

11 THE COURT: Go ahead, Mr. Vines.

12 MR. VINES: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 BY MR. VINES:

15 Q Please state your name for the record.

16 A My name is Gladys Harun.

17 Q Ms. Harun, I want to ask you a few questions regarding
18 your ---

19 THE COURT: Pull that microphone over closer to you,
20 Mr. Vines.

21 MR. VINES: Yes, Your Honor.

22 THE COURT: Thank you.

23 Q Ms. Harun, I would like to ask you a couple of questions
24 regarding some of these loans. First, I'll begin with the
25 April 10 loan for -- ending in 7702, \$46,033 which was -- you

1 received. Could you tell us about that?

2 A Yes, Your Honor. I have been an employer since 2016 when I
3 became a Jackson Hewitt. So I had 12 locations and I had like
4 55 employees and I applied this loan to pay for the payroll, to
5 pay for the rent, and to pay for my supplies as given by SBA.

6 Q I'd like to bring your attention now to the July 1 ending
7 in 9010 which would be the bulk it appears of 2000 -- \$299,913.
8 Could you please explain that?

9 A That one was I applied in 2011. I called SBA because as an
10 employer I had paid in more wages than it was reported to IRS.
11 I had hired a company called Square Payroll to handle my
12 payroll. So, unfortunately, I used to pay my employees and
13 contractors bonuses and the bonuses were not included in there
14 and so I called SBA and SBA give me the phone number to call
15 Lendistry and so I called Lendistry and I explained to them the
16 problems I was having and so Lendistry offered to help me get
17 enough money for me to pay for my employees and to pay for
18 everything and then when I received the money, Your Honor, I
19 paid everything to the employees.

20 My total -- my total payroll for those two years was
21 617,000 and that's what is recorded in the IRS. They already
22 knew I had issues with my payroll. I wasn't trying to be
23 shrewd. I was trying to get money for my business and
24 Lendistry offered to help me and they give me that money.

25 Q I want to bring your attention to 8907; 20,710. Would you

1 mind explaining to the Court?

2 A They said I qualified, also, for a grant that was 10,000
3 and something. They added that one to me, too.

4 Q Okay.

5 A Yes, sir.

6 Q Now Mr. Black ---

7 A Jacqueline.

8 Q I'm sorry. Ms. Jacqueline Black. Is there anything you'd
9 like to tell the Court regarding that?

10 A Jacqueline Black -- I had done her taxes for like two
11 years. Everybody that I applied for I did my due diligence.
12 They qualified for the money as independent contractors.
13 Independent contractors don't really have to have a business.
14 You just have to have self-employed income like if you do
15 something on the side. So Jacqueline Black told me -- when she
16 came to my office she told me that she had a hotel or a
17 restaurant in Florida in 2018 and so she also give me her tax
18 return for 2019 that I attached and give it to SBA. So she
19 qualified for the money.

20 Q To your knowledge did she receive the money?

21 A She received the money, yes. She received the money in her
22 bank.

23 Q How much of that did you receive as fees?

24 A She came and gave me a donation of like 800. I told her we
25 have a school in Africa and I sent my father the money.

1 I wasn't charging them a fee, Your Honor. I was just doing
2 it and then if you feel like donating anything, you bring me a
3 donation. That's all. Whoever didn't feel like giving me
4 anything, that's fine.

5 Q Okay. How about Hoven?

6 A Who is that? Who was that?

7 Q Well, we'll move on. Ms. Jane?

8 A Oh, Ms. Jane. Jane was -- is an independent contractor.
9 She has been an independent contractor for so long and hers was
10 a lot of money and I remember she was called by SBA. It's a
11 lady called Savannah from SBA who did her a phone interview
12 before they released the money and so Savannah, Jane Njeru --
13 they added me on the call and I spoke to lady in SBA before she
14 released the money. She told me, "Can you explain to me her
15 tax returns?" And I explained to her that Jane was paid as an
16 independent contractor as a caregiver all those years and
17 afterwards Ms. Savannah qualified her for the money. So I did
18 my due diligence. I even called SBA for her and there were
19 emails from SBA. There were a lot of communications from SBA
20 and I attached also her tax returns for the previous years.

21 Q Now how much of that money did you receive?

22 A I think she donated like 1000 or something. I didn't ask
23 her for the money. She just gave it to me.

24 Q Lastly, I want to talk about Esther Njoroge.

25 A Esther Njoroge -- most of them were qualified for the

1 grants. I never applied for grants for anybody, but SBA was
2 giving them the grants freely, but overall whoever came to me I
3 was doing their tax returns before. I made sure that they had
4 what we call a Schedule C which is a profit and loss in their
5 taxes and that is what I was using to qualify them. Esther had
6 one and she was an independent contractor as a caregiver in the
7 state of Washington.

8 Q Is there anything else you'd like to tell the Court?

9 A I would like to tell the Court all the applications I did I
10 did my due diligence. I asked them for their tax returns and
11 most all of them were independent contractors and I also was
12 calling SBA just to confirm that they really qualified for the
13 money, but SBA also qualified them for the grants. I didn't
14 ask for the grants, but the government give them the grants.

15 Q No further questions.

16 A Okay.

17 Q I'm sorry. Is there anything else you wish to address the
18 Court?

19 A And even for mine I was interviewed by SBA before they
20 release my EIDL loan. Your Honor, when I applied for that EIDL
21 loan I declared less money. I declared that I made \$650,000,
22 but I had made approximately 850. So, basically, SBA gave me
23 less money because I had put less income in the application,
24 and it went to the right purposes.

25 MR. VINES: No further questions, Your Honor.

1 THE DEFENDANT: Thank you.

2 MR. VINES: The government will have ---

3 THE COURT: Wait just a minute.

4 Mr. Hamner, she's under oath. Did you want to ask her
5 any questions?

6 MR. HAMNER: Just a couple, Your Honor. Is it okay if
7 I do it here from the table?

8 THE COURT: Sure.

9 **CROSS EXAMINATION**

10 BY MR. HAMNER:

11 Q Ms. Harun, you applied for three PPP loans at least that
12 you received funding for; is that correct?

13 A I believe I applied for more. They told me the money was
14 coming to an end. So SBA told me to apply like a minimum of
15 five lenders so one of them can give me the money. So I
16 applied I think to five lenders, but one of them qualified me.
17 They told me not to fear, just apply. If one gives you the
18 money, the others will not give you money. They'll see in the
19 system.

20 Q Did you apply for a PPP loan on April 10 that was for
21 approximately \$46,000?

22 A Yes, sir. I did.

23 Q And in that application how many employees did you state
24 you had?

25 A I can't recall how many employees I had at that time, but I

1 told SBA and everybody else I had errors. I was using Wells
2 Fargo as my payroll company and I switched to Square Payroll
3 and some of the data was lost and I was forthcoming with this
4 information to the government and to everybody else. They knew
5 that.

6 Q Okay. I am not going to ask any more questions about the
7 loans. Do you recall after this investigation began that you
8 withdrew \$100,000?

9 A Yes, Your Honor. Yes. I'm sorry.

10 Q What did you do with that money?

11 A It was for my attorney fees.

12 THE COURT: For what?

13 THE WITNESS: Attorney fees. It went to my first
14 attorney was Jimmy Howell.

15 Q So after you received a grand jury subpoena from the United
16 States letting you know that you were under Investigation you
17 immediately went and withdraw \$100,000 from your bank account;
18 is that correct?

19 A I apologize. Because I am not from America, I don't know
20 what you're supposed to do or what you're not supposed to do.
21 I wasn't doing it for malice. I was just drawing money for my
22 attorney. I wasn't doing it for anything else. I didn't know
23 you can't withdraw money if you're under federal investigation.
24 Nobody told me about that. I didn't know that.

25 Q So you withdrew \$100,000 after you got the grand jury

1 subpoena?

2 A Yes, I did that.

3 Q What did you do with that \$100,000?

4 A It was for my legal fees. That's all. It went to my
5 attorney.

6 Q Okay. Did you make a phonecall to Tanisha Roberson after
7 you found out you were under investigation on May 17, 2022?

8 A Tanisha Roberson has been my friend since 2011. She comes
9 to my house, spends the night. So we call each other like 20
10 times in a day.

11 Q So is --

12 A We've been close friends.

13 Q -- it fair to say that you made a phonecall to her after
14 you found out you were under investigation?

15 A I don't recall calling her that particular moment, but she
16 came to my house several times and spent the night. My
17 children are here. They can tell you. We have been close
18 friends and, you know, we've been hanging out together and
19 everything.

20 MR. HAMNER: Okay. Your Honor, I don't have any
21 further questions. I don't think it's going to be productive.

22 THE COURT: Ms. Harun --

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: -- you supplied to the probation officer
25 a -- shall we say an effort in explanation of where the money

1 went. How was that money transferred? Did you use checks?

2 THE DEFENDANT: To the employees? Yeah, I paid them
3 through a payroll company called Square and the government has
4 all the W-2s and the 1099s and it will total to 617,000. The
5 government already has that.

6 THE COURT: Who in the government has that?

7 THE DEFENDANT: IRS.

8 THE COURT: Huh?

9 THE WITNESS: IRS. Internal Revenue Service.

10 THE COURT: The what?

11 THE DEFENDANT: Internal Revenue Service.

12 THE COURT: Well, when you gave this explanation to
13 probation, did you supply any backup information or any
14 checks --

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: -- or indicia of payment to these
17 investigators from SBA?

18 THE DEFENDANT: I did everything, Your Honor. Even my
19 attorney right now has all of the W-2s. He has all the rent
20 payments. They have everything. They have everything. Even
21 during the investigation I remember when they called me for the
22 proffer we sent them everything, but it was a previous DA.

23 Q So you have copies of everything you sent?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: And, yet, you supplied no more information

1 than what this listing that you gave to the probation office?

2 THE DEFENDANT: I gave my attorney a bigger stack of
3 documents. He has all the W-2s, all the 1099s, and all the
4 Square Payroll documents. I don't see them there. Maybe the
5 probation office is missing something, but I have everything --
6 everything from Square Payroll.

7 THE COURT: Ms. Harun, I will be candid enough to tell
8 you that I don't think I understood everything you said.

9 THE DEFENDANT: I'm sorry.

10 THE COURT: However, I believe that you said,
11 essentially, when you wrapped up your testimony that you did
12 everything in compliance with the loans and grants that you
13 applied for.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So you really haven't committed a crime
16 here?

17 THE DEFENDANT: No, I didn't mean that. I said I
18 could have made a mistake, but it was not intentional. I
19 wasn't trying to rob the government or anything. The mistakes
20 I did I sincerely apologize for them.

21 MR. VINES: Your Honor, if I may approach to talk to
22 my client right quick.

23 THE COURT: Well, I am okay if you -- always you may
24 consult with your client, Mr. Vines.

25 MR. VINES: Thank you.

1 Your Honor, my client would like to clarify. She
2 admits her wrongdoing, Judge, but as the old saying goes, the
3 road to hell was paved with good intentions.

4 THE COURT: Am I to hear that from her? She's under
5 oath and testifying. Now you called her to this witness stand.

6 MR. VINES: Over my --

7 THE COURT: Are you going to -- you're going to
8 testify?

9 MR. VINES: Against my advice, Judge.

10 THE COURT: I understand that, but I want to know who
11 is testifying here, Mr. Vines.

12 MR. VINES: I'll sit down, Judge.

13 THE COURT: All right.

14 Look, Ms. Harun, you plead guilty to an Information.
15 When you plead guilty to an Information all of the conduct
16 comes in. It doesn't matter if it is a very small part of a
17 case. I have to review every part of it. You went on telling
18 me how everything was actually very legitimate and you had
19 backup for all of it. Now are you telling me that you didn't
20 commit any crimes or what? Tell me what you're telling me.

21 THE DEFENDANT: The application I did for Katina
22 Wells -- I think that's what I was charged with, the one for
23 Katina Wells. There was an application that I did for her.
24 That's the one I took the plea for. Mr. Jack told me that I
25 did not complete some information for Ms. Wells. That's my

1 understanding, Your Honor.

2 THE COURT: Okay. Anything else, Counsel?

3 MR. HAMNER: No, Your Honor.

4 THE COURT: Have a seat, Ms. Harun.

5 Mr. Vines, are there other objections that you wish to
6 pursue?

7 MR. VINES: Your Honor, I will jump over to ---

8 THE COURT: For example, we have the item no. 2, the
9 offense level.

10 MR. VINES: Yes, Your Honor.

11 THE COURT: You were seeking a -- well, you'll have to
12 explain it to me.

13 MR. VINES: Thank you, Your Honor. Your Honor, the
14 Plea Agreement states that the U.S. Government will recommend
15 and the defendant will recommend to the Court and probation
16 that for the purposes of Section 2B1.1 of the Sentencing
17 Guidelines that it's less than \$550,000. That would put her
18 offense level -- total offense level with not getting
19 acceptance and everything at an 18 instead of a 20, Your Honor.
20 It would be 14 as it is now with enhancement. We're saying
21 that according to the Plea Agreement it should be a 12. I have
22 researched the case law and long and short of it is it is
23 within the sole discretion of the Court whether the Court
24 accepts the Plea Agreement recommendation or not, but we're
25 asking the Court to keep the sanctity of the Plea Agreement

1 whole and allow her to have those two -- that two-point
2 reduction -- and that would, in effect, put her at, I believe,
3 it's 27 to 33 -- yes, Your Honor -- 27 to 33 is base level
4 offense or total offense level of 18 instead of 20 which is 33
5 to 41, Your Honor.

6 THE COURT: Mr. Hamner, any comments on that issue?

7 MR. HAMNER: Briefly, Your Honor. Just that we did
8 agree in the Plea Agreement to an amount less than \$550,000 and
9 that amount was based on the actual loss incurred by the SBA.
10 I understand probation's point is the intended loss was closer
11 to a million dollars. I don't dispute the amounts as
12 calculated. Our recommendation we continue to make in
13 accordance with the Plea Agreement and it was based on the
14 actual loss, Your Honor.

15 THE COURT: And that's more than 250 but less than
16 550?

17 MR. HAMNER: Correct, Your Honor. I believe the
18 testimony today was approximately \$547,000 which is in that
19 range.

20 THE COURT: You wanted to talk about acceptance of
21 responsibility, also, Mr. Vines. Is that correct?

22 MR. VINES: Yes, Your Honor. The case law is very
23 clear on that that the defense has the burden of proving that.
24 The case law says it's an uphill battle. Your Honor, given the
25 testimony that was given by my client and the totality of the

1 circumstances, we would rest and say that we would ask the
2 Court to give her acceptance of responsibility.

3 THE COURT: So noted. Anything else with respect to
4 objections?

5 MR. HAMNER: Not on behalf of the United States, Your
6 Honor.

7 THE COURT: Mr. Vines, anything else with respect to
8 the objections?

9 MR. VINES: Your Honor, I would just point out
10 regarding objection number one my calculation that if the Court
11 does go with 552,991.83, we would ask the Court to deduct
12 Ms. Jane's \$119,810.71 and grant restitution \$433,181.12 or
13 less.

14 THE COURT: Thank you. With respect to the objections
15 that have been raised by counsel for Ms. Harun, paragraph 69
16 and 141, the probation officer's response is instructive. The
17 so-called documentation supplied by Ms. Harun is a
18 self-serving, auto-supportive writing which has no basis or
19 support in genuine or conventionally-accepted business
20 practices. It is a bland and grossly general statement which
21 can be interpreted as nothing but pretext. Moreover, with
22 respect to questions of how monies were spent, it may seem
23 important to Ms. Harun, but it's unimportant to the Court
24 because these loans forgivable or not or grants, EIDL, PPP or
25 otherwise were obtained generally by false pretenses, false

1 statements which is the offense to which she plead guilty.

2 Now the negotiated Plea Agreement does not make it,
3 shall we say, infinitely easy for the Court to calculate
4 because, apparently, the parties picked the lowest ranking and
5 least egregious transaction to identify as that which is
6 announced in the Information, but, of course, all relevant
7 conduct is to be considered by the Court in sentencing. The
8 vehicular means of this Information were selected by the
9 parties in their independent -- their entirely independent --
10 plea negotiations for one purpose and that is to arrive at a
11 single count that would have a maximum penalty attached
12 acceptable to both sides for whatever reasons they had at the
13 moment.

14 The objections regarding paragraph 69 and 141 relate
15 to the amount of actual loss and the only genuinely supported
16 information before the Court is the testimony of Special Agent
17 Lott that that sum is \$547,095.07. That is above \$250,000,
18 below \$550,000, and that is the figure that will be used in
19 calculating the actual loss and other dependent figures. The
20 probation office has calculated the restitution amount or loss
21 amount at 552,679.14. So a recalculation will be required
22 there.

23 With respect to paragraph 84 and the probation
24 officer's response, I will note that it is the defendant's role
25 to support in any way she can the entitlement to a reduction in

1 the offense level on account of acceptance of responsibility.
2 Acceptance of responsibility involves, in addition to mere
3 acknowledgment, some level of remorse, contrition or other
4 genuine manifestation or demonstration of regret. I see none
5 here, especially with the attempt to obstruct justice in
6 tampering with witness and statements made in connection
7 therewith as reported in the probation officer's response
8 number three.

9 Accordingly, the offense level will remain at 18,
10 criminal history category I, providing for 27 to 33 months
11 imprisonment, one to three years of supervised release, 10,000
12 to \$100,000 in fines, restitution in the amount of \$547,095.07,
13 and a \$100 special assessment. The maximum statutory penalty,
14 of course, is a prison term of five years.

15 What was your recommendation in this case, Mr. Hamner?

16 MR. HAMNER: The recommendation?

17 THE COURT: With respect to sentencing. Did you agree
18 to a recommendation?

19 MR. HAMNER: We agreed to a low-end guideline
20 recommendation, Your Honor.

21 THE COURT: I see. And it is recommended by probation
22 -- I don't know if that's public or not, but it was 41 months.

23 MR. HAMNER: I believe that was based on the ---

24 THE COURT: Earlier guidelines.

25 Mr. Vines, Ms. Harun, I will tell you directly at this

1 point that the Court is considering a sentence in this case of
2 anywhere from the low end of the guidelines to the maximum
3 statutory punishment. You're entitled to know that prior to
4 sentencing. It is before the Court and if that in your mind
5 requires some delay, then I will grant a period of time for you
6 to have that under consideration. If you would like to confer
7 about that, you may also have a few moments to do that.

8 MR. VINES: If I may confer, Judge.

9 THE COURT: Say that again.

10 MR. VINES: If I may have a few moments.

11 THE COURT: All right.

12 MR. VINES: Your Honor, after speaking with my client,
13 she'd like to move forward today.

14 THE COURT: So noted. Mr. Hamner, do you see anything
15 else that needs to be done before we go into matters of
16 allocution?

17 MR. HAMNER: No, Your Honor. I think we've covered
18 the amount of restitution and the guidelines that are
19 applicable. I don't believe there is anything else, Your
20 Honor. Thank you.

21 THE COURT: Mr. Vines, is there any reason why we
22 should not proceed into matters of allocution?

23 MR. VINES: Another moment, Judge.

24 Judge, once again, over my advice, my client is
25 wanting the Court -- asking the Court to revisit the issue of

1 restitution. I have explained to her that we've moved past
2 that matter, but she wants me to ask.

3 THE COURT: Well, you can bring up anything you want
4 to in allocution --

5 MR. VINES: Thank you, Judge.

6 THE COURT: -- mitigation, that sort of thing.

7 MR. VINES: Yes, sir.

8 THE COURT: Just because the amount of loss is
9 established doesn't mean that has to be ordered as restitution.

10 MR. VINES: Thank you, Judge.

11 THE COURT: What I want to know is can we go from one
12 phase to the other now?

13 MR. VINES: Judge, she's wanting to move forward
14 today.

15 THE COURT: All right. Is there any reason why we
16 should not proceed with sentencing at this time?

17 MR. VINES: No, Your Honor. I have two to three
18 witnesses here, Judge, regarding sentencing.

19 THE COURT: All right. Then let me proceed to say
20 this.

21 Ms. Harun, we're going into the question of sentencing
22 now. You have a right to make a personal statement. Not only
23 do you have that right, I always encourage it. Mr. Vines will
24 call on you when he is ready for you to do so.

25 All right. Mr. Vines.

(Emanuel Githinji - Direct by Mr. Vines)

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1 MR. VINES: Thank you, Your Honor.

2 THE COURT: Proceed. You have the floor.

3 MR. VINES: Your Honor, At this time I would call Mr.
4 Emanuel.

5 THE COURT: Go ahead, Mr. Vines.

6 MR. VINES: Sir, please state your name. Well,
7 actually, raise your right hand.

8 THE COURT: Johnny, get up here by that microphone.

9 MR. VINES: Yes, sir.

10 THE COURT: There you are.

11 (Emanuel Githinji is duly sworn by Mr. Vines)

12 **DIRECT EXAMINATION**

13 BY MR. VINES:

14 Q You got to speak up. Please state your name for the
15 record.

16 A Emanuel. Emanuel Githinji.

17 Q Could your spell your last name?

18 A G-I-T-H-I-N-J-I.

19 Q And, sir, what is your relationship with my client?

20 A She's my mother.

21 Q And how old are you, sir?

22 A Say what?

23 Q How old are you?

24 A 16 years old.

25 Q Is there anything you want to tell the Court?

(Emanuel Githinji - Direct by Mr. Vines)

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1 A I just want to say that we need our mother home, everybody
2 in the house.

3 Q Sir, you have to speak a lot louder.

4 A We want her back home. It's been tough without her and we
5 need her back. Yeah, that's it.

6 Q I'm sorry, sir. I couldn't hear you.

7 A Just we want her back home. Everybody -- everybody wants
8 her back home.

9 Q Has she always supported y'all?

10 A Yes. She's always supported me through basketball, always
11 encouraging me, uplifting me like a good mother would.

12 Q And during her 19-month incarceration has she been in
13 constant communication with y'all?

14 A Yes, she has. We talk every day. I have talked to her
15 about everything: Basketball, school -- you know, everything.

16 Q Okay. And while she provides support would y'all be
17 willing to provide support to her?

18 A Yes, we would.

19 Q Is there anything else you'd like the Court to know?

20 A No. That's it.

21 Q Thank you.

22 THE COURT: I know she appreciates your being here.

23 MR. VINES: Wait a minute. The government may have
24 some questions for you.

25 MR. HAMNER: I have no questions for her son.

(Ann Wangui - Direct by Mr. Vines)

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1 MR. VINES: Miss Ann.

2 (Ann Wangui is duly sworn by Mr. Vines)

3 DIRECT EXAMINATION

4 BY MR. VINES:

5 Q Please state your name.

6 A Ann Wangui.

7 Q Please spell your last name.

8 A W-A-N-G-U-I.

9 Q And how old are you?

10 A 13 years old.

11 Q And what is your relationship with my client?

12 A She's my mother. A loving mother.

13 Q And is there anything you'd like to tell the Court? Is
14 there anything you'd like to tell the Court?

15 A She's a very hard-working mother. I mean, she deserves my
16 respect. I look up to her like a lot. We really need her
17 back, you know. She's very helpful. Yeah.

18 Q To your knowledge has she always been helpful to the
19 community?

20 A Yes.

21 Q Has she always been a viable member of the community?

22 A Yes.

23 Q With y'all's support do you think that she would continue to
24 be that?

25 A Yes, I do.

(Simon Juchu - Direct by Mr. Vines)

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1 Q Anything else?

2 A No.

3 Q Thank you. The government may have a question.

4 MR. HAMNER: No questions, Your Honor.

5 THE COURT: I know she appreciates your being here
6 today.

7 MR. VINES: Mr. Simon. Sir, please state your name.

8 THE WITNESS: My name is Simon Juchu. My name -- last
9 is spelled by J-U-C-H-U.

10 (Simon Juchu is duly sworn by Mr. Vines)

11 **DIRECT EXAMINATION**

12 BY MR. VINES:

13 Q Sir, what is your relationship to my client?

14 A Say that again.

15 Q What is your relationship to my client?

16 A She's my cousin.

17 Q How long have you known her?

18 A Since childhood. We grew up together. She immigrated to
19 the U.S. and I later came and found her here.

20 Q And to your knowledge has she always been a pillar of the
21 community, if you will?

22 A Yes. To my knowledge she's been very hard-working, very
23 helpful person, and very helpful person in the community. She
24 made a bad choice, but that's out of her character. Overall,
25 she's very helpful even in our own community. I know even in

(Simon Juchu - Direct by Mr. Vines)

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1 our own company she had a program where she was helping the
2 needy to file their taxes very discounted or for free for those
3 who could not afford and I know she was doing that.

4 So she -- the family, anybody who needed help. I know the
5 family runs a school that helps the needy and she was very
6 instrumental in organizing people here to help and supporting
7 needy kids. So she's been very helpful and I know that even
8 through this experience she's going to reinvent herself. She
9 has learned her mistakes and I believe that she's going to
10 reinvent herself and be a better person like she has always
11 been.

12 Q Is there anything else you'd like to tell the Court?

13 A I would like to tell the Court that Gladys is a very
14 dedicated mother who supports her six children. The youngest
15 one -- she was taken in when he was two. He's now three. She
16 is the pillar to that home and these kids like Ann here --
17 she's been doing most of the cooking for the kids and she's
18 telling me she just wants mama home. They need her. I believe
19 that the judge will consider that as -- the honorable judge
20 will consider that as he sentences that she will be able to
21 support the community and also her children who are very
22 intelligent, smart kids and they look at her as a role model.
23 Thank you.

24 MR. VINES: Thank you. I believe the government may
25 have a question for you.

1 MR. HAMNER: No questions on that either, Your Honor.

2 MR. VINES: Your Honor, I believe my client would like
3 to make a statement to the Court.

4 THE COURT: All right.

5 MR. VINES: If she can approach, Judge.

6 THE COURT: Please.

7 THE DEFENDANT: Thank you, Your Honor, for this
8 opportunity to address the Court. I'm forever grateful for
9 coming to America. I count it a blessing every day. I do not
10 take anything for granted because I came to America in 2005
11 with only \$20 in my pocket. I slept in my friend's living room
12 in a couch for several months as I settled down in America. I
13 pray to God every day to bless me and I promise God that I
14 would be a blessing to other people especially back in Kenya
15 where we don't have anything.

16 I grew up in a remote area in Kenya called Nyahururu
17 (phonetic). I walked to school 2 miles each morning like all
18 the other children. We didn't have no vehicles. We didn't
19 have a lot in our families, and most of the public schools do
20 not have any school buses and rain was not an excuse for
21 missing school and so every child had to carry their food,
22 water back to school and even today as I stand before you the
23 community struggles every day with the economy. People make
24 like between eight and four dollars a day. We don't have
25 programs like Medicaid, food stamps or DFACS or all those

1 things. When I drive a car in America when I go through a
2 drive-thru, Your Honor, when I see a bus picking up my kids
3 every morning, I see -- I thank God for my blessings every day.

4 Even as I stand before you it has been a blessing for
5 me to run a business in America, to attend college, even to
6 raise a family. I am grateful because my children are having a
7 better life than I had, you know. They have a quality life
8 and, sure, it has been a blessing for me to be in this country.
9 I wanted you to know that, and I founded Embrace Africa so I
10 could help seniors with taxes to reduce taxes for them. I have
11 done that since 2017. When you come to my locations you get a
12 discount between 40 and 100 if you're 65 and up. I also help
13 my father and other people in the community where I came. I
14 try to help other people because I know God has really helped
15 and blessed me, Your Honor.

16 At the time of my arrest in 2012 I was supposed to
17 travel to Kenya. We had the water project with my father. In
18 2018 we had dug a well and the chemist had told me to try to
19 purify the water because the water was affecting the children's
20 teeth. So that was a problem. So overall I started with a
21 genuine interest to help other people and it wasn't my
22 intention to be here actually standing in your court.

23 I never intended to wrong anybody especially the
24 government that enabled me to be here. I sincerely apologize
25 for mistakes done, shortcomings, and omissions that I committed

1 to everybody and at this time -- at this point I ask that you
2 give me a chance to take care of my six children.

3 I have been doing some Bible studies when in custody.
4 I have done several through correspondence, and if you'd like
5 to -- I would like to give you the certificates -- some
6 certificates that they give to me and, you know, reading the
7 word of God every day and praying I believe has made me
8 reflect -- you know, reflect and think to myself as an
9 individual and from this time on I have made up my mind to
10 pursue peace with everybody.

11 I want to be a productive law-abiding person. I want
12 to be a joy to my family. I want to be a joy to my children
13 and I want to put this behind me so I can continue to be a
14 blessing to everybody and so I apologize for all my mistakes,
15 all my -- whatever, you know.

16 Me being from another country sometimes you find
17 yourself you really don't understand how to do stuff in America
18 and I found myself overwhelmed running a big business and so
19 much responsibilities without a mentor, but overall I have
20 learned from my mistakes and I'll be a better person in life.
21 I will be a better mother and a productive person. I am a
22 hard-working mother like they have told you. I will be able to
23 sustain myself and be a blessing to my community and, again, I
24 plead for your mercy.

25 I never intended all this to happen or anything and I

1 apologize for all the mistakes I done and I pray that you may
2 have a place in your heart to forgive me. Thank you, Your
3 Honor.

4 THE COURT: Mr. Vines?

5 MR. VINES: Thank you, Judge. To circle back around
6 to what I expressed before, the road to hell was paved with
7 good intentions, Your Honor.

8 THE COURT: That's what my mother always said.

9 MR. VINES: Yes, sir. Your Honor, she's stumbled. I
10 would argue that she's fallen. She's been now incarcerated
11 since July 5 of 2022, Your Honor. During her time in
12 incarceration she has completed the Disciple Institute. She
13 received a certificate from there, several other certificates
14 from Gospel Express Evangelist Team. Your Honor, she showed
15 growth.

16 While in our current vernacular, if you will, she --
17 you could say that she hasn't expressed remorse or anything.
18 We would argue that it's due to a language barrier and a
19 cultural barrier. She is remorseful. She is here. She's
20 entered a guilty plea, Your Honor. Her family is here to
21 support her. She's wanting to put this matter behind her and
22 move forward with her life, Your Honor, and, therefore, we
23 would ask that the Court either adopt the low end of the
24 guideline or in the alternative sentence her to 33 months, Your
25 Honor, and with regards to restitution we would ask that the

1 Court order restitution in the amount of \$433,181.12 or less.

2 THE COURT: Anything else?

3 MR. VINES: No.

4 THE COURT: Y'all can have a seat for a moment.

5 MR. VINES: Thank you, Your Honor.

6 THE COURT: Mr. Hamner, my comments from the United
7 States?

8 MR. HAMNER: Your Honor, for the record in terms of
9 our Plea Agreement I am constrained to recommend a low end of
10 the guidelines recommendation. I have not heard the defendant
11 ask for a variation or departure from that, Njoroge has the
12 Court indicated that it's inclined to do so. So I think I am
13 prohibited for arguing much beyond that.

14 The only thing I can argue for is the restitution
15 amount that we've calculated here in court. I do believe that
16 is the correct amount as indicated by Special Agent Lott. We
17 went through the facts and figures and I believe probation
18 recalculated those to the tune of approximately \$547,000 which
19 is the correct calculation, and we argue that that ought to be
20 considered as restitution in the order.

21 To the extent the defendant has portrayed any language
22 barriers or concerns, I think it is prudent to put on the
23 record that she does have or at least is alleged to have a
24 doctorate degree as well as other educational degrees that
25 she's obtained while here in the United States and she's been

1 articulate and seems to be very clear and understand the
2 entirety of the proceedings as well as the interviews in which
3 she's participated. Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Hamner.

5 I'll tell you when to stand up. Thank you.

6 MR. VINES: My apologies.

7 THE COURT: I have a few things to say first. In this
8 matter of the United States against Gladys Harun we have
9 explored a number of specific matters. We have heard
10 allocution of counsel and a statement in mitigation from the
11 defendant and some comments from the Assistant United States
12 Attorney. I have resolved the objections and the potential
13 restitution amount. The resolution of those issues is in the
14 record of this proceeding and supported by the record of this
15 proceeding.

16 With respect to matters to which no objections were
17 filed or expressed during the hearing, I will adopt those
18 statements as the Court's own findings of fact. As earlier
19 announced the statutory penalty has a maximum of five years
20 imprisonment. The guidelines have already been announced. We
21 know that the total offense level is 18, criminal history
22 category is "I" and which would provide for 27 to 33 months
23 imprisonment, one to three years on supervised release, 10,000
24 to \$100,000 in fines, restitution up to \$547,095.07 with a \$100
25 special assessment.

1 In this matter we have heard from the defendant,
2 Gladys Harun, throughout the proceeding but twice in an
3 extended statement. The United States is somewhat restricted
4 because of the agreements made at an earlier time. I would
5 also feel constrained to mention that prior to this sentencing
6 hearing a number of matters have come before the Court. I have
7 two file folders which I brought here out of an abundance of
8 caution so that should some matter of earlier import come up by
9 reference I would have these available. This has not simply
10 been a two-hearing criminal case where there was a simple
11 appearance for a guilty plea and then a sentencing hearing. A
12 great deal more water has gone over this dam, so to speak.

13 We have concluded the matter with the appearance of
14 Attorney Johnny Vines who has piloted this matter through some
15 murky and irregular waters to bring it to conclusion, albeit
16 with zealous representation of his client. Without this
17 guidance it may have, as it seemed in earlier times, foundered
18 upon some misunderstandings. Mr. Vines appears by appointment
19 and it appears that Ms. Harun has retained other counsel. All
20 of that aside, none of which is important, it is only proper to
21 say that Mr. Vines' appearance and handling of this case has,
22 in addition to providing an appropriate level of advocacy for
23 this defendant, brought a calming influence into the entirety
24 of the progress of this case.

25 Ms. Gladys Harun's statement by way of allocution

1 telling her story in court today as it were is likely one which
2 has been rehearsed before: The story of her life, the story of
3 her immigration, the story of her childhood, the hardships that
4 she began with and the successes that she found in coming to
5 America. Those comments are a very interesting account, a
6 story of successes against very difficult odds, and I believe
7 those parts of Ms. Harun's story. I have no doubts.

8 There began to be some comments which prompted me to
9 have some doubts beyond what I've developed during my review of
10 this Presentence Investigation Report. I will say, quite
11 frankly, when Ms. Harun with her intelligence and her ability
12 and her background and her successes in many avenues in this
13 world, in this life, and in this country -- when she tells me
14 sometimes you don't know how to do stuff in America, coming
15 from her that is a tall tale. She has developed not only an
16 understanding, a knack, but a great deal of experience in how
17 to do stuff in America. The only problem is it's been about
18 how to do the wrong stuff in America.

19 Mr. Vines, bending to the needs of his client shall we
20 say, talks of a language and cultural barrier. If I have to
21 comment on that, I will say that that is a somewhat ephemeral
22 barrier which is often used by Ms. Harun as a ladder or a force
23 propelling her upward in our very diverse society in this
24 country. She has used any accent or apparent linguistic
25 inability and her multi-cultural knowledge to her advantage in

1 every way.

2 I will be as candid and direct as I must in this
3 matter. Ms. Harun has given us a self-serving,
4 ludicrously-optimistic statement of how the money was spent for
5 legitimate business purposes while the facts are more as
6 Special Agent Lott has testified. I know that some entities,
7 some corporations, some gifted prevaricators have applied for
8 and stolen more federal money than this lady has; nevertheless,
9 for someone who sometimes you don't know how to do stuff in
10 America, for someone to apply for and obtained EIDL and PPP
11 funds well over a half million dollars, as far as her
12 capability and her ingenuity at stealing money from the
13 government from a program devised in haste by the most
14 well-intended Congress from the most benevolent sovereign on
15 earth, Ms. Harun has done about as well as anyone could do. As
16 far as defrauding the United States of America, she is a
17 success story with few equal.

18 Now the government has its reasons for taking a plea
19 to an Information which is probably the most innocuous of all
20 of the loans or intended loans -- the KEW transaction. That's
21 the U.S. Attorney's business and they can recommend the low end
22 of the guidelines if they want to, but in a manner similar to
23 what I found in the Vinath Oudomsine case, I see here a pattern
24 of activity, a practiced art, if you will, in her relevant
25 conduct that shows more than an utter disregard for the

1 legitimate business owners and taxpayers of America. I see a
2 virtual contempt for those entities that make all of this
3 possible, an almost vindictive effort to take as much as
4 possible and to flaunt it.

5 We spent a lot of time today worrying about the amount
6 of restitution and appropriately so, I suppose, although
7 speculation from the bench is that that really is the least of
8 anyone's concern because it's the least likely of any of our
9 possibilities here. Some may be paid, but it'll probably be a
10 far cry from \$547,000.

11 I am notorious for quoting Section '553(a). I have
12 gone through sentencings in this court since 1979 and before
13 while I was practicing law from ultimately conventional
14 sentencing now to advisory guideline sentencing, but the one
15 thing that remains the same, the one thing that stands alone,
16 the one thing that does not change much is Section 3553(a) and
17 glaring in 3553(a) is the element of sentencing that requires
18 that a court take in account of the factor of deterrence.

19 That's what this sentencing is all about: To deter --
20 not just to deter Ms. Harun from committing the same or similar
21 conduct again. Who knows? We'll see. But the point is to
22 deter others who might be like-minded from committing the same
23 or similar conduct, from defrauding the United States of
24 America, from taking advantage of a well-intended Congress and
25 a benevolent sovereign by stealing as much money as possible

1 while the world was in shock and horror from this Covid virus.

2 Of course, the powers of the Court's ability to deter
3 are limited here -- limited to the statutory maximum of five
4 years in prison. Some people might come in and say, well, half
5 a million for five years, let me just kind of figure that out
6 and see if that's worth it. It wouldn't be to me, but it might
7 be to some. It might be a pretty good risk to take, but it
8 should be known that when the risk is taken and when the
9 consequences are brought effectively and properly to the court
10 and when the conviction is known that the consequences will be
11 significant.

12 With respect to all of the excuses and all the
13 protests of innocence that I've heard today and a virtual
14 denial of any genuine contrition of guilty conduct as I have
15 heard it, indeed, throughout this proceeding, I just don't
16 believe Ms. Harun. Everything she did was intentional.
17 Everything she did was calculated. Everything she did was for
18 her benefit or for the benefit of her own individualized
19 idiosyncratic purposes -- to support charities in Kenya --
20 otherwise, perhaps, a noble objective, something really good to
21 be done with her own money, but not with money that she has
22 defrauded from Washington.

23 Accordingly, it is the conclusion of the Presiding
24 Judge that a fair and proper sentence involving and including
25 the element of deterrence and the other factors of Title 18,

1 United States Code, Section 3553 a must be more severe than the
2 guidelines that have been filed.

3 Ms. Harun, you and your attorney may rise.

4 Upon the foregoing and for the reasons stated the
5 defendant in this case, Gladys Harun, is committed to the
6 custody of the Bureau of Prisons for the purpose of
7 imprisonment for the term of 60 months which is the statutory
8 maximum. There will be no variance or departure. I am
9 departing from the sentencing range called for by the
10 guidelines as a variance or as a departure because the facts of
11 this case are of a kind beyond the contemplations of the
12 Sentencing Commission.

13 This is an extraordinary case, albeit within the
14 numbers that drive the guidelines. This is a situation of a
15 practiced effort to defraud the United States of America at a
16 time when not only the country, the Congress, but every citizen
17 was acting from forces and influences of vulnerability
18 throughout. Society was in a very vulnerable state and this
19 fraudulent activity was made possible in these amounts only
20 because of that extraordinary era in our nation.

21 Upon release from imprisonment the defendant is to be
22 placed on supervised release for a term of three years. While
23 on supervised release this defendant is to comply with the
24 standard conditions of supervision adopted by this court and
25 the mandatory conditions required by federal law. Those

1 include, but are not limited to, urine testing, a prohibition
2 against possession of any firearm or other dangerous weapon and
3 a prohibition against the violation of any law, statute or
4 ordinance. Further, this defendant is to cooperate in the
5 collection of a DNA sample as directed.

6 While on supervised release the defendant is to comply
7 with certain special conditions imposed by the Court. I have
8 determined that these conditions are reasonably necessary to
9 achieve the purposes of sentencing. The following special
10 conditions are imposed. The defendant and her lawyer may be
11 seated.

12 Ms. Watson, would you please announce the conditions?

13 THE PROBATION OFFICER: Yes, Your Honor.

14 The defendant must submit to substance abuse testing
15 to determine if the defendant has used a prohibited substance.
16 The defendant must not attempt to obstruct or tamper with the
17 testing methods. The defendant must provide the probation
18 officer with access to any requested financial information and
19 authorize the release of any financial information. The
20 probation office may share financial information with the U.S.
21 Attorney's Office. The defendant must not incur new credit
22 charges or open additional lines of credit without the approval
23 of the probation officer. The defendant shall not maintain
24 more than one financial institution account or be a signer on a
25 financial institution account without the prior approval of the

1 probation officer. The defendant must pay the financial
2 penalty in accordance with the Schedule of Payment sheet of
3 this Judgment. The defendant must also notify the court of any
4 changes in economic circumstances that might affect her ability
5 to pay this financial penalty.

6 The defendant must submit her person, property, house,
7 residence, office, vehicle, papers, computers, other
8 electronic-communications or data-storage devices or media to a
9 search conducted by a United States Probation Officer. Failure
10 to submit to a search may be grounds for revocation of release.
11 The defendant must warn any other occupants that the premises
12 may be subject to searches pursuant to this condition.

13 A curfew is imposed as a special condition of
14 supervision. The defendant must comply with the conditions of
15 a curfew from 10 p.m. until 6 a.m. for the period of
16 supervision. During this time the defendant will remain at her
17 place of residence at all times and shall not leave except when
18 such leave is approved in advance by the probation officer.

19 Those are the special conditions, Your Honor.

20 THE COURT: The probation office is directed to
21 provide to the defendant a statement setting forth all of the
22 conditions to which her term of supervised release is subject.
23 Restitution is due in the amount of \$552,679.14 to the United
24 States Small Business Administration. I am not going to try to
25 wrestle at this moment with the idea of making installment

1 payments. I am going to suggest to the United States Attorney
2 that they without delay simply present a judgment to be entered
3 in this case against this defendant to be collected as the
4 United States Attorney may see fit at some time in the future.
5 I am more concerned about restitution; accordingly, I will not
6 impose a fine. Special assessment due and payable immediately
7 in the amount of \$100.

8 I am accepting the Plea Agreement for the usual
9 reasons. The remaining counts of an indictment against this
10 defendant are dismissed. This defendant is remanded to the
11 custody of the United States Marshal.

12 This defendant has waived any right to appeal except
13 with respect to the imposition of the sentence in this case at
14 the statutory maximum which is above the sentencing guidelines
15 found by the court in this case.

16 Now that sentence has been imposed, other than
17 objections earlier stated in the record are there any
18 objections to the Court's findings of fact, conclusions of law
19 or the manner in which sentence was imposed?

20 MR. HAMNER: Not from the United States, Your Honor.

21 MR. VINES: No, Your Honor.

22 THE COURT: All right. Mr. Hamner, you understood my
23 comments about getting a judgment?

24 MR. HAMNER: Yes, Your Honor.

25 THE COURT: Talk to your financial people. I don't

1 think it needs to wait any longer, quite frankly, than the
2 Judgment and Commitment Order.

3 MR. HAMNER: It ought to be done this week, Your
4 Honor.

5 THE COURT: All right. Thank you very much.

6 Counsel, I thank you for your patience today. That
7 concludes the matter. You're free to go.

8 MR. VINES: Thank you, Your Honor.

9 THE COURT: The defendant is remanded.

10 (The hearing is concluded.)
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1 CERTIFICATE OF REPORTER
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5 I, Lisa H. Davenport, Federal Official Reporter, in and
6 for the United States District Court for the Southern District
7 of Georgia, do hereby certify that pursuant to Section 753,
8 Title 28, United States Code that the foregoing is a true and
9 correct transcript of the stenographically-reported proceedings
10 held and that the transcript page format is in conformance with
11 the regulations of the Judicial Conference of the United
12 States.

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15 Lisa H Davenport, RPR, FCRR
16 Federal Official Reporter
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