DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT ☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

OFFENSE CHARGED

Count 1: 18 U.S.C. 1349 - Conspiracy to commit bank fraud
Count 2: 26 U.S.C. 7206(2) - Aiding or Advising a False Tax Return

☐ Petty
☐ Minor
☐ Misde-meanor
☒ Felony

PENALTY: Count 1: 30 years imprisonment; $1,000,000 fine; 3 years supervised release; mandatory $100 special assessment; forfeiture.
Count 2: 3 years imprisonment; $100,000 fine; 3 years supervised release; mandatory $100 special assessment; forfeiture.

DEFENDANT - U.S

Frank Mosley

DISTRICT COURT NUMBER
4:23-cr-00134-AMO

FILED
May 3 2023
Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

PROCEEDING

Name of Complaintant Agency, or Person (& Title, if any)

IRS - Criminal Investigations

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:
☐ U.S. ATTORNEY ☐ DEFENSE
SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under
MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on this form: Ismail J. Ramsey
☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): Abraham Fine

DEFENDANT

IS *NOT* IN CUSTODY

1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction } ☐ Federal ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No } If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT Bail Amount:

If Summons, complete following:
☐ Arraignment ☐ Initial Appearance

** Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

Defendant Address:

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DEFENDANT - U.S

Reginald Mosley

DISTRICT COURT NUMBER

4:23-cr-00134-AMO

FILED
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OAKLAND

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Name and Office of Person Furnishing Information on this form: Ismail J. Ramsey

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): Abraham Fine

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Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

OFFENSE CHARGED

Count 1: 18 U.S.C. 1349 - Conspiracy to commit bank fraud

☐ Petty
☐ Minor
☐ Misde-meanor
☒ Felony

PENALTY: Count 1: 30 years imprisonment; $1,000,000 fine; 3 years supervised release; mandatory $100 special assessment; forfeiture.

DEFENDANT - U.S

Marcus Wilborn

DISTRICT COURT NUMBER
4:23-cr-00134-AMO

FILED
May 3 2023
Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

PROCEEDING

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SHOW DOCKET NO.

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Name and Office of Person Furnishing Information on this form: Ismail J. Ramsey
☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): Abraham Fine

DEFENDANT

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Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

OFFENSE CHARGED

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☐ Petty
☐ Minor
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PENALTY: Count 1: 30 years imprisonment; $1,000,000 fine; 3 years supervised release; mandatory $100 special assessment; forfeiture.

DEFENDANT - U.S

Aaron Boren

DISTRICT COURT NUMBER

4:23-cr-00134-AMO

FILED
May 3 2023
Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

PROCEEDING

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on this form: Ismail J. Ramsey

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): Abraham Fine

DEFENDANT

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ADDITIONAL INFORMATION OR COMMENTS

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Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

OFFENSE CHARGED

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☐ Petty
☐ Minor
☐ Misde-meanor
☒ Felony

PENALTY: Count 1: 30 years imprisonment; $1,000,000 fine; 3 years supervised release; mandatory $100 special assessment; forfeiture.

DEFENDANT - U.S

Scott Conway

DISTRICT COURT NUMBER

4:23-cr-00134-AMO

FILED
May 3 2023
Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

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MAGISTRATE CASE NO.

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Name and Office of Person Furnishing Information on this form: Ismail J. Ramsey

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): Abraham Fine

DEFENDANT

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Date/Time: Before Judge:

Comments:

ISMAIL J. RAMSEY (CABN 189820)
United States Attorney

FILED

May 3 2023

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FRANK MOSLEY, REGINALD MOSLEY, MARCUS WILBORN, AARON BOREN, and SCOTT CONWAY, Defendants.	CASE NO. 4:23-cr-00134-AMO <u>VIOLATIONS</u>: 18 U.S.C. § 1349 – Conspiracy to Commit Bank Fraud; 26 U.S.C. § 7206(2) – Aiding or Advising a False Tax Return; 18 U.S.C. § 981(a)(1)(C), (b)(1) and 28 U.S.C. § 2461(c) – Forfeiture Allegation OAKLAND VENUE

INFORMATION

The United States Attorney charges:

Introductory Allegations

At all times relevant to this Information:

1. Defendant FRANK MOSLEY resided in the Northern District of California.

2. Defendant REGINALD MOSLEY resided in the Eastern District of California.

3. Defendant MARCUS WILBORN resided in the Eastern District of California.

4. Defendant AARON BOREN resided in the Eastern District of California.

5. Defendant SCOTT CONWAY resided in the Eastern District of California.

6. Forward Thinking Investors, Inc. ("FTI") was an entity headquartered in Oakland

California. FRANK MOSLEY and REGINALD MOSLEY had ownership and control over FTI and were signatories for a financial account at Bank 2 ending in 6953 ("FTI 6953").

7. MDK Consulting, Inc. ("MDK") was an entity headquartered in Elk Grove, California. Defendant MARCUS WILBORN had ownership and control over MDK and was the signatory for financial accounts at Bank 3 ending in 0258 ("MDK 0258") and 6201 ("MDK 6201").

8. AB Consulting Group, Inc. ("ABCG") was an entity headquartered in Roseville, California. Defendant AARON BOREN had ownership and control over ABCG and was the signatory for a financial account at Bank 2 ending in 3752 ("ABCG 3752").

9. CTES Industries, Inc. ("CTES") was an entity headquartered in Rocklin, California. Defendant SCOTT CONWAY had ownership and control over CTES and was the signatory for a financial account at Bank 4 ending in 0567 ("CTES 0567").

10. Bank 1 was a financial institution headquartered in Fort Lee, New Jersey, whose deposits were insured by the Federal Deposit Insurance Corporation.

11. Bank 2 was a financial institution headquartered in San Francisco, California.

12. Bank 3 was a financial institution headquartered in Charlotte, North Carolina.

13. Bank 4 was a financial institution headquartered in New York, New York.

14. Financial Services Company 1 was a brokerage services company headquartered in Boston, Massachusetts.

15. Payroll Company 1 was a cloud-based payroll, benefits, and human resources company headquartered in San Francisco, California.

The Paycheck Protection Program

16. The Paycheck Protection Program ("PPP") was a COVID-19 pandemic relief program administered by the Small Business Administration ("SBA") that provided forgivable loans to small businesses for job retention and certain other expenses. The PPP permitted participating third-party lenders to approve and disburse SBA-backed PPP loans to cover payroll, fixed debts, utilities, rent/mortgage, accounts payable and other bills incurred by qualifying businesses during, and resulting from, the COVID-19 pandemic. PPP loans were fully guaranteed by the SBA.

17. To obtain a PPP loan, a qualifying business had to submit a PPP loan application, which

was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan, including that the business was in operation and either had employees for whom it paid salaries and payroll taxes or paid independent contractors. A business applying for a PPP loan was required to provide documentation showing its payroll expenses, such as filed federal income tax documents.

18. PPP loan applications were electronically submitted or caused to be submitted by the borrower and received through SBA servers located in Virginia or Oregon. Once approved, the business received the PPP loan proceeds via an electronic funds transfer from the third-party lender to a financial account under the control of the business.

19. The proceeds of a PPP loan could be used for certain specified items, such as payroll costs, costs related to the continuation of group health care benefits, or mortgage interest payments. The proceeds of a PPP loan were not permitted to be used by the borrowers to purchase consumer goods, automobiles, personal residences, clothing, jewelry, to pay the borrower's personal federal income taxes, or to fund the borrower's ordinary day-to-day living expenses unrelated to the specified authorized expenses.

20. Bank 1 was a third-party participating lender in the PPP and a federally insured financial institution as defined in 18 U.S.C. § 20.

<u>FRANK MOSLEY's Employment History</u>

21. FRANK MOSLEY was an employee at the Internal Revenue Service ("IRS") from 1987 until 2000. His last position before separating from the IRS was Revenue Officer. Revenue Officers are civil collections and enforcement agents of the IRS. Revenue Officers do not perform audits of taxpayers. Instead they educate and inform taxpayers, and also enforce levies and liens against taxpayers' assets when the taxpayers owe delinquent tax debts. Revenue Officers commonly encounter schemes by taxpayers, such as placing assets in nominee names, using shell corporations to obscure ownership of assets and bank accounts, and other similar measures to evade the IRS. Revenue Officers are trained to detect and investigate these schemes as part of civil, non-criminal, tax compliance efforts.

22. Since 2011, FRANK MOSLEY worked as a Tax Enforcement Officer for the City of

Oakland.

The Scheme to Defraud

23. Beginning at a date unknown, but no later than on or about July 2, 2020, and continuing to a date unknown, but to at least on or about approximately September 30, 2021, the defendants,

FRANK MOSLEY,
REGINALD MOSLEY,
MARCUS WILBORN,
AARON BOREN, and
SCOTT CONWAY

devised a scheme and artifice to defraud through which they obtained approximately $3 million as a result of fraudulent PPP-loan applications submitted on behalf of FTI, MDK, ABCG, and CTES. Although each of the companies' PPP loan applications certified that each company had between 19 and 49 employees and between approximately $150,000 and $430,000 in monthly payroll, in reality all four companies were little more than shell companies, with no payroll expenses. Upon receipt of the PPP loan proceeds, FRANK MOSLEY, REGINALD MOSLEY, WILBORN, BOREN, and CONWAY did not use the funds for any legitimate business expenses, such as to pay employees. Rather, they used the funds for significant personal expenses, personal credit cards, personal investments, and distributions to their family members. To cover up the scheme, FRANK MOSLEY and REGINALD MOSLEY created fake payroll accounts for some of the companies and submitted false payroll tax returns to the IRS.

Manner and Means

24. The objective of FRANK MOSLEY, REGINALD MOSLEY, WILBORN, BOREN, and CONWAY's scheme was to obtain funds for personal use by submitting fraudulent loan applications for PPP funds. FRANK MOSLEY and REGINALD MOSLEY submitted the first successful loan application on behalf of FTI in August of 2020. After receiving those fraudulently obtained funds, FRANK MOSLEY and REGINALD MOSLEY recruited others who owned companies that existed prior to February 2020 to submit fraudulent loan applications, including WILBORN, BOREN, and CONWAY, who were longtime acquaintances of REGINALD MOSLEY. FRANK MOSLEY and REGINALD MOSLEY helped prepare the fraudulent loan applications for WILBORN, BOREN, and CONWAY. Per a written agreement that the defendants exchanged via email, FRANK MOSLEY and

REGINALD MOSLEY received a kickback of at least 15% of the fraudulently obtained proceeds for loans submitted by each of the other three co-conspirators, in return for helping prepare and submit the fraudulent loan applications.

25. In furtherance of their conspiracy to defraud, the defendants in total submitted four fraudulent PPP loan applications. The submission of each of these loan applications was an overt act in furtherance of the conspiracy.

FTI'S $1.07 Million PPP Loan

26. On or about August 6, 2020, FTI applied for a $1,070,795.00 PPP loan through Bank 1. The loan application listed FRANK MOSLEY's home address in Oakland as the location of the business and listed REGINALD MOSLEY as the owner of the business. The application falsely stated that FTI had an average monthly payroll of $428,318.00 and 49 employees. The application included a Form 941 Employer's Quarterly Federal Tax Return for the second quarter (April, May, June) of 2020, which was supposedly filed with the IRS, that stated that FTI made wage payments to employees totaling $1,195,413.00 during that period. The application also included a Form 940 Employer's Annual Federal Unemployment Tax Return for 2020, which was supposedly filed with the IRS, in which FTI estimated it would pay a total of $4,781,652.00 to all employees during 2020. These Forms 940 and 941 were fraudulent. In fact, FTI paid no payroll taxes and reported no employees from January 1, 2019 through June 30, 2020.

27. On or about August 10, 2020, the $1,070,795.00 PPP loan to FTI was approved and the proceeds were deposited into the FTI 6953 bank account. On that same day, FRANK MOSLEY transferred $128,965.40 from the FTI 6953 account into a personal bank account. Activity in that account subsequent to August 10, 2020, revealed a pattern of activity that was not consistent with a company that has average monthly payroll of $428,318.00. Instead of being used to pay any legitimate business expenses, the funds were used to make payments to credit cards held in the name of FRANK MOSLEY, multiple transfers to personal bank accounts of the MOSLEYS, and multiple transfers totaling to over $450,000.00 to an investment account at Financial Services Company 1, for which FRANK MOSLEY and REGINALD MOSLEY are the two accountholders.

28. After receiving the loan proceeds, FRANK MOSLEY and REGINALD MOSLEY,

through FTI, filed false tax returns to cover up their fraudulent scheme. On or about November 9, 2020, FTI filed a Form 941 covering the 3rd Quarter of 2020 that reported that FTI had 49 employees and paid $182,035.30 in wages during July, August, and September of 2020. On or about February 22, 2021, FTI filed a Form 941 covering the 4th Quarter of 2020 that reported that FTI had 50 employees and paid $728,141.20 in wages during October, November, December of 2020. On or about February 8, 2021, FTI filed a Form 940 for 2020 that reported that FTI paid $910,176.50 in wages during 2020. Each of these federal tax returns was fraudulent, as FTI did not have any legitimate employees during this time period.

29. In addition to the August 2020 PPP loan, FTI received approximately $112,000 in fraudulent loan proceeds through other COVID-related loan programs.

MDK'S $1.02 Million PPP Loan

30. On or about March 12, 2021, MDK applied for a $1,018,709.00 PPP Loan from Bank 1. The loan application listed WILBORN as the owner of the business. The application falsely stated that MDK had 49 employees with an average monthly payroll of $407,483.66. The application also contained false income tax returns, supposedly filed with the IRS and signed by WILBORN, asserting that MDK received $5,678,414.00 in gross receipts during 2020 and paid a total of $4,889,804.00 to all employees in 2020. In fact, MDK did not file any tax documents for this time period.

31. On or about March 19, 2021, the loan was approved and Bank 1 deposited $1,018,709.00 into the MDK 0258 bank account. After receiving the money, WILBORN used it for various personal expenses, wired $152,700.00 to the FTI 6953 bank account belonging to FRANK MOSLEY and REGINALD MOSLEY (15% of the total loan amount), and transferred $866,009.00 to the MDK 6201 bank account.

32. After moving $866,009.00 to the MDK 6201 account, WILBORN, with the aid of FRANK MOSLEY and REGINALD MOSLEY, began conducting payroll transactions through the MDK 6201 bank account using Payroll Company 1. The purpose of these payroll transactions was to disguise the fraudulent scheme and make it appear as though the PPP funds were actually being used to make payroll payments when they were not. The supposed MDK "employees" that were paid through the Payroll Company 1 platform were WILBORN's family members and others connected to FRANK

MOSLEY and REGINALD MOSLEY. In fact, 43 of the 53 MDK employees that entered into the MDK account at Payroll Company 1 and were supposedly paid wages by MDK through Payroll Company 1 were listed as having the home address of a P.O. Box in Oakland, California, that was registered to FRANK MOSLEY.

ABCG's $500,000 PPP Loan

33. On or about February 25, 2021, ABCG applied for a $500,000.00 PPP Loan from Bank 1. The application listed BOREN as the owner of the business. The application falsely stated that ABCG had 25 employees with an average monthly payroll of $200,000.00. The application also contained false income tax returns, supposedly filed with the IRS and signed by BOREN, asserting that ABCG received $2,689,151.00 in gross receipts during 2020 and that ABCG paid a total of $2,400,000.00 to all employees in 2020. In fact, ABCG did not file any tax documents for this time period.

34. On or about March 22, 2021, the loan was approved and Bank 1 deposited $500,000.00 into the ABCG 3752 bank account. In the days that followed, BOREN used these funds to pay for various personal expenses and wired $75,000.00 to the FTI 6953 bank account belonging to FRANK MOSLEY and REGINALD MOSLEY.

CTES's $380,000 PPP Loan

35. On or about March 4, 2021, CTES applied for a $380,000.00 PPP Loan from Bank 1. The application listed CONWAY as the owner of the business. The application falsely stated that CTES had 19 employees with an average monthly payroll of $152,000.00. The application also contained false income tax returns, supposedly filed with the IRS and signed by CONWAY, asserting that CTES received $2,184,444.00 in gross receipts during 2020 and that CTES paid a total of $1,824,000.00 to all employees in 2020. In fact, CTES did not file any tax documents for this time period.

36. On or about March 15, 2021, the loan was approved and Bank 1 deposited $380,000.00 into the CTES 0567 bank account. In the days that followed, CONWAY used these funds to pay for various personal expenses and wired $57,000.00 to the FTI 6953 bank account belonging to FRANK MOSLEY and REGINALD MOSLEY.

COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Bank Fraud)

37. The factual allegations in Paragraphs 1 through 36 are re-alleged and incorporated herein

as if set forth in full.

38. Beginning on a date unknown but no later than on or about July 2, 2020, and continuing to a date unknown, but to at least on or about September 30, 2021, in the Northern District of California and elsewhere, the defendants,

FRANK MOSLEY,
REGINALD MOSLEY,
MARCUS WILBORN,
AARON BOREN, and
SCOTT CONWAY,

and others known and unknown to the United States Attorney, did knowingly conspire to devise and intend to devise a material scheme and artifice to defraud, and to obtain money and property from a federally insured financial institution by means of materially false and fraudulent pretenses, representations, and promises, and by omissions and concealment of material facts, in violation of Title 18, United States Code, Section 1344.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO: (26 U.S.C. § 7206(2) – Aiding and Advising False Tax Returns)

39. The factual allegations in Paragraphs 1 through 38 of this Information are re-alleged and incorporated as if fully set forth here.

40. On or about February 8, 2021, in the Northern District of California and elsewhere, the defendants

FRANK MOSLEY and
REGINALD MOSLEY

did willfully aid and assist in, procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of a U.S. Federal Income Tax Return, Form 940, for FTI, for calendar year 2020, which return was false and fraudulent as to a material matter, in that it contained false employee and payroll tax figures, whereas the defendants FRANK MOSLEY and REGINALD MOSLEY then and there knew that the employee numbers and payroll tax figures included on the return were false, in violation of Title 26, United States Code, Section 7206(2).

FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and (b)(1) & 28 U.S.C. § 2461(c) – Criminal Forfeiture)

41. All of the allegations contained in this Information are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and (b)(1) and Title 28, United States Code, Section 2461(c).

42. Upon a conviction for the offenses alleged in Count One of this Information, the defendants,

FRANK MOSLEY,
REGINALD MOSLEY,
MARCUS WILBORN,
AARON BOREN, and
SCOTT CONWAY,

shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and (b)(1) and 28 U.S.C. § 2461(c) all property constituting, and derived from, proceeds the defendant obtained directly and indirectly, as the result of those violations.

43. If any of the aforementioned property, as a result of any act or omission of defendant –

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property that cannot be divided without difficulty;

any and all interest the defendant has in other property shall be vested in the United States and forfeited to the United States pursuant to 21 U.S.C. § 853p, as incorporated by 18 U.S.C. § 982(b)(1).

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and (b)(1), Title 28, United States Code, Section 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure.

DATED: May 3, 2023

ISMAIL J. RAMSEY
United States Attorney

/s/ Abraham Fine

ABRAHAM FINE
Assistant United States Attorney