UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

RAFAEL MARTINEZ,

Defendant.

- - - - - - - - - - - - - - - - x

INDICTMENT

22 Cr.

22 CRIM 251

COUNT ONE
(Wire Fraud)

The Grand Jury charges:

1. From in or about April 2020 through at least in or about February 2022, in the Southern District of New York and elsewhere, RAFAEL MARTINEZ, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, which affected a financial institution, to wit, MARTINEZ used false and fraudulent pretenses, representations, and documents to fraudulently obtain the approval of the United States Small Business Administration (the "SBA") for his company, MBE Capital Partners, LLC ("MBE"), to be a non-bank lender through the

Paycheck Protection Program (the "PPP"), and then MARTINEZ used that approval to obtain millions of dollars in capital to issue PPP loans and earn lender fees.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT TWO
(Making False Statements to the SBA)

The Grand Jury further charges:

2. From at least in or about April 2020 through at least in or about February 2022, in the Southern District of New York and elsewhere, RAFAEL MARTINEZ, the defendant, knowingly and willfully made a false statement, knowing such statement to be false, for the purpose of obtaining a loan, and extension thereof by renewal, deferment of action, and otherwise, and the acceptance, release, and substitution of security therefor, for himself and an applicant, influencing in any way the action of the SBA, and obtaining money, property, and anything of value, under Chapter 14 of Title 15 of the United States Code, to wit, MARTINEZ made false statements to the SBA regarding, among other things, the audited financial statements of MBE, for the purpose of obtaining the approval of the SBA for MBE to be a non-bank lender through the PPP.

(Title 15, United States Code, Sections 645(a), and Title 18, United States Code, Section 2.)

COUNT THREE
(Bank Fraud)

The Grand Jury further charges:

3. From at least in or about April 2020 through at least in or about September 2021, in the Southern District of New York and elsewhere, RAFAEL MARTINEZ, the defendant, willfully and knowingly executed, and attempted to execute, a scheme and artifice to defraud a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC"), and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations and promises, to wit, MARTINEZ engaged in a scheme to obtain a Government-guaranteed loan for MBE through the PPP from an FDIC-insured bank by means of false and fraudulent pretenses, representations, and documents.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT FOUR
(Making False Statements to a Bank)

The Grand Jury further charges:

4. From at least in or about April 2020 through at least in or about September 2021, in the Southern District of New York and elsewhere, RAFAEL MARTINEZ, the defendant, knowingly made false statements and reports, and willfully overvalued land,

property, and security, for the purpose of influencing the actions of a financial institution, the accounts of which were insured by the FDIC, in connection with an application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, and insurance agreement and application for insurance and a guarantee, and charge and extension of any of the same, by renewal, deferment of action and otherwise, and the acceptance, release, and substitution of security therefor, to wit, MARTINEZ made false statements to an FDIC-insured bank regarding, among other things, the number of employees of MBE and the wages paid to MBE employees, for the purpose of obtaining a Government-guaranteed loan for MBE through the PPP.

(Title 18, United States Code, Sections 1014 and 2.)

COUNT FIVE
(Aggravated Identity Theft)

The Grand Jury further charges:

5. From at least in or about April 2020 through at least in or about September 2021, RAFAEL MARTINEZ, the defendant, knowingly did transfer, possess, and use, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, MARTINEZ used the name and identity of another person, specifically, a tax preparer, in connection with the submission of a fraudulent loan application and supporting documentation to at least one

financial institution during and in relation to the bank fraud and false statement charges in Counts Three and Four of this Indictment.

(Title 18, United States Code, Sections 1028A(a)(1), (b) & (c)(4)-(5), and 2.)

FORFEITURE ALLEGATIONS

6. As the result of committing the offenses charged in Counts One, Three, and Four of this Indictment, RAFAEL MARTINEZ, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any and all property constituting, or derived from, proceeds obtained directly or indirectly, as a result of the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision

7. If any of the above-described forfeitable property, as a result of any act or omission of the 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 which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)

FOREPERSON

Damian Williams
DAMIAN WILLIAMS
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

RAFAEL MARTINEZ,

Defendant.

INDICTMENT

22 Cr.

(15 U.S.C. § 645(a); 18 U.S.C. §§ 1014, 1028A, 1343, and 1344.)

DAMIAN WILLIAMS
United States Attorney

Brian Carroll
Foreperson

5/2/22

Filed Indictment
Case assigned to Judge Liman

USMJ Gorenstein