UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-20161-CR-BLOOM/OTAZO-REYES

18 U.S.C. § 1014
18 U.S.C. § 982(a)(2)

UNITED STATES OF AMERICA

vs.

BENJAMIN RAFAEL,

Defendant.
_______________________________/

INFORMATION

The United States Attorney charges:

GENERAL ALLEGATIONS

At all times material to this Information:

The Small Business Administration

1. The United States Small Business Administration ("SBA") was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters.

2. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans had government-backed guarantees.

The Paycheck Protection Program

3. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal

law enacted in or about March 2020 and was designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic.

4. One source of relief that the CARES Act provided for was the authorization of up to $349 billion in forgivable loans to small businesses for payroll, mortgage interest, rent/lease, and utilities, through a program referred to as the Paycheck Protection Program ("PPP"). In April 2020, Congress authorized up to $310 billion in additional PPP funding.

5. The PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds for payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time and used a certain percentage of the PPP loan proceeds for payroll expenses.

6. The amount of a PPP loan that a small business was eligible to receive was determined by the number of employees employed by the business and the business's average monthly payroll costs.

7. In order to obtain a PPP loan, a qualifying business was required 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. Specifically, PPP loan applications required the authorized representative of the small business to advise if an individual owning 20% or more of the equity of the business was subject to an indictment, criminal information, arraignment, or other means by which formal charges are brought. Additionally, PPP loan

applications required the authorized representative of the small business to advise if any owner of the business had, in the last five years, been convicted or pleaded guilty to any felony.

8. The SBA oversaw the PPP. However, individual PPP loans were issued by private, approved lenders who received and processed PPP applications and supporting documentation, and then made loans using the lenders' own funds, which were 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

9. TD Bank, N.A., ("TD Bank") was a U.S. bank whose deposits were insured by the Federal Deposit Insurance Corporation ("FDIC").

The Defendant and Related Entity

10. Defendant **BENJAMIN RAFAEL**, a resident of Miami-Dade County, Florida, was the president, registered agent, and sole owner of Benjamin Rafael P.A., a Florida corporation with its principal place of business in Miami-Dade County in the Southern District of Florida.

FALSE STATEMENT TO A FINANCIAL INSTITUTION
(18 U.S.C. § 1014)

On or about April 8, 2020, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

BENJAMIN RAFAEL,

did knowingly make a false statement for the purpose of influencing the actions of a financial institution, that is, TD Bank, the accounts of which were insured by the Federal Deposit Insurance Corporation, in connection with a PPP loan application in the amount of $12,500 on behalf of

Benjamin Rafael P.A., in that the defendant falsely represented in the loan application submitted to TD Bank that no owner of Benjamin Rafael P.A. had pleaded guilty to or been convicted of any felony within the last five years, when in truth and in fact, and as the defendant then and there well knew, he had, within the last five years, pleaded guilty to and was convicted of the felony offense of consipiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1014.

FORFEITURE
(18 U.S.C. § 982)

1. The allegations of this Information are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of certain property in which the defendant, **BENJAMIN RAFAEL**, has an interest.

2. Upon conviction of the violation of Title 18, United States Code, Section 1014, as alleged in this Information, the defendant shall forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result ofthe offense, pursuant to Title 18, United States Code, Section 982(a)(2).

3. If any of the property subject to forfeiture, 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, sold to, or deposited with, a third party;

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 divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Section 982(a)(2), and the procedures set forth in Title 21, United States Code, Section 853.

M.K.M. for:

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

Lacee Elizabeth Monk

LACEE ELIZABETH MONK
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

Benjamin Rafael,

Defendant. /

CASE NO. ____________________

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)
✓ Miami __ Key West
__ FTL __ WPB __ FTP

New defendant(s) Yes ____ No ____
Number of new defendants ____
Total number of counts ____

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
   List language and/or dialect ____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)			(Check only one)	
I	0 to 5 days	✓	Petty	
II	6 to 10 days		Minor	
III	11 to 20 days		Misdem.	
IV	21 to 60 days		Felony	✓
V	61 days and over			

6. Has this case previously been filed in this District Court? (Yes or No) No
   If yes: Judge Case No. ____
   (Attach copy of dispositive order)
   Has a complaint been filed in this matter? (Yes or No) No
   If yes: Magistrate Case No. ____
   Related miscellaneous numbers: 19-20447-CR-SINGHAL
   Defendant(s) in federal custody as of ____
   Defendant(s) in state custody as of ____
   Rule 20 from the District of ____

   Is this a potential death penalty case? (Yes or No) No
7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? Yes ____ No ✓
8. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? Yes ____ No ✓
9. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? Yes ____ No ✓

Lacee Elizabeth Monk
Lacee Elizabeth Monk
Assistant United States Attorney
Florida Bar No. 100322

*Penalty Sheet(s) attached

REV 6/5/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Benjamin Rafael

Case No:

Count #: 1

False Statement to a Financial Institution

Title 18, United States Code, Section 1014

*Max. Penalty: 30 Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the

United States of America	)	
v.	)	Case No.
Benjamin Rafael,	)	
	)	
Defendant	)	

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: ________________

____
Defendant's signature

____
Signature of defendant's attorney

____
Printed name of defendant's attorney

____
Judge's signature

____
Judge's printed name and title