IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 22-cr-00262-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RICHARD REJAN NIETO,

Defendant.

INDICTMENT

The Grand Jury charges:

<u>COUNTS 1-3</u>
Wire Fraud, 18 U.S.C. § 1343

Background on COVID Relief Programs

1. The United States Small Business Administration ("SBA") is an executive branch agency of the United States government that provides support to entrepreneurs and small businesses.

2. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020. The CARES Act authorized emergency financial assistance to millions of Americans suffering economic harm caused by the COVID-19 pandemic.

3. The CARES Act provided relief by, among other things, authorizing the use of United States taxpayer funds to provide forgivable loans to small businesses for

payroll and certain other eligible expenses. These forgivable loans came through a program referred to as the Paycheck Protection Program ("PPP").

4. To obtain a PPP loan, a business was required to submit a PPP loan application, signed by an authorized representative of the business. The PPP loan application required the business's representative to include information about average monthly payroll expenses and number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP.

5. Businesses applying for a PPP loan were required to provide documentation verifying their payroll expenses and to certify that all contents of the application—along with the supporting documentation such as tax returns—were true and accurate. PPP loan applications were processed by participating lenders. If the lender approved the PPP loan application, the lender funded the PPP loan using its own monies, which were guaranteed by the SBA.

8. The lender transmitted data from successful PPP applications—including data about the business's payroll costs, number of employees, and the funded loan amount—to the SBA by entering the data electronically. The SBA servers that received the application data were located in Virginia.

9. For each PPP loan a lender funded, the SBA transmitted to the lender a processing fee. An SBA Finance Center in Denver, Colorado created and certified the payment file for this processing fee.

10. Small businesses could request forgiveness of up to the full amount of the PPP loan by filing a forgiveness application with the same lender. The forgiveness

application required the business to certify, among other things, that the loan was used for eligible payroll and other business costs, and that the business had verified the eligible payroll and nonpayroll costs for which the business requested forgiveness. The business also was required to submit documentation to the lender verifying payroll costs. Lenders transmitted data from PPP forgiveness applications to an SBA server located in Oregon.

Individuals and Entities

11. At all times relevant to this indictment, RICHARD REJAN NIETO ("NIETO") was a resident of the State and District of Colorado.

12. NIETO owned Denver Pro Painting and Contracting Inc. ("Denver Pro") and DenPro, Inc. ("DenPro"). NIETO certified in PPP loan applications that he was the sole owner of each business. Each business was registered with the Colorado Secretary of State. Corporate filings listed a principal office address in Denver, Colorado.

Financial Institutions

13. Lender 1 was a financial institution with branches throughout the United States, including in the District of Colorado. Lender 1 was an approved SBA lender of PPP loans. Lender 1's servers are located in Nebraska.

<u>The Scheme to Defraud</u>

14. Beginning in at least April 2020, and continuing until at least April 2021, within the State and District of Colorado and elsewhere, defendant RICHARD REJAN NIETO devised, intended to devise, and participated in a scheme and artifice to defraud

the United States and Lender 1, and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises.

15. NIETO unjustly enriched himself by obtaining $913,551.88 in PPP loans. He obtained the loans by inflating payroll costs, making false statements and certifications, and submitting fake tax returns.

16. Having unjustly obtained PPP loans, NIETO then applied for loan forgiveness for the full amount of the PPP loans. He obtained forgiveness of $176,956.09 through false representations and by submitting fake payroll checks.

Manner and Means of the Scheme to Defraud

17. The scheme to defraud operated and was carried out, in substance, as follows:

<u>PPP Loan Scheme</u>

18. NIETO submitted and caused to be submitted three fraudulent PPP applications to Lender 1. Lender 1 funded two applications, totaling $913,551.88. Lender 1 did not approve a third application wherein NIETO requested a $202,780.52 loan.

19. As to the first funded PPP application, on or about May 19, 2020, NIETO applied to Lender 1 on behalf of Denver Pro for a PPP loan of $175,384.83. The application listed NIETO as sole owner and authorized representative of Denver Pro. On or about May 20, 2020, Lender 1 disbursed $175,384.83 to NIETO. As part of the application:

a. NIETO falsely stated that he owned no other businesses. In truth, he also owned DenPro as well as other businesses.

b. NIETO falsely stated that Denver Pro had 15 employees and an average monthly payroll of $70,153. In a different federal loan application he filed the previous month, however, NIETO reported that Denver Pro had only three employees, and NIETO reported to the Colorado Department of Labor and Employee that Denver Pro paid only two employees in May 2020.

c. NIETO submitted fake quarterly federal tax returns known as Form 941 returns to Lender 1. The fake Forms 941 submitted by NIETO inflated wages and did not match those filed with the IRS. Denver Pro's actual tax returns showed wages for all of 2019 of $19,615.41, all in the fourth quarter of the year. Had he submitted true tax returns, the maximum PPP loan Denver Pro could have sought would have been far less than the $175,384.83 loan that NIETO received as a result of using falsified wages.

d. NIETO knowingly misrepresented to Lender 1 that he had received the tax returns submitted to Lender 1 from his accountant. At the time, NIETO knew the tax returns he submitted to Lender 1 were not from his accountant.

20. As to the second funded PPP application, on or about August 6, 2020, NIETO applied to Lender 1 on behalf of DenPro for a PPP loan of $738,167,05, listing himself as sole owner and authorized representative of DenPro. On or about August 6, 2020, Lender 1 disbursed $738,167.05 to NIETO. As part of the application:

a. NIETO falsely stated that DenPro had 62 employees and $295,266.82 in average monthly payroll for 2019. In truth, NIETO never reported any payroll wages to the IRS or the Colorado Department of Labor and Employment for DenPro in 2019.

b. NIETO submitted fake Form 941 quarterly tax returns for 2019 to Lender 1 to make it appear that DenPro was a legitimate business that had filed tax returns. In truth, DenPro did not file federal tax returns in 2019.

c. When NIETO falsely certified that he had provided true and accurate information and supporting documents in his application, he knew about the false representations and fake documentation submitted in and with his application.

21. On or about March 25, 2021, NIETO applied to Lender 1 on behalf of Denver Pro for another PPP loan of $202,780.52. As part of the application, NIETO falsely stated that Denver Pro had 14 employees and $81,112.17 in average monthly payroll. NIETO also falsely certified that all funds from Denver Pro's first PPP loan had been used for eligible expenses, a certification NIETO knew to be false. After submission of this application, Lender 1 emailed NIETO requesting additional information. Because the additional information was not provided, Lender 1 did not approve this March 2021 PPP loan application.

PPP Forgiveness Scheme

22. NIETO submitted and caused to be submitted two fraudulent PPP loan forgiveness applications to Lender 1.

23. On or about April 5, 2021, NIETO submitted to Lender 1 a PPP loan forgiveness application requesting forgiveness of the entire amount of the $175,384.83 loan given to Denver Pro.

a. NIETO falsely stated in the application that Denver Pro had incurred $200,000.32 in payroll costs after receiving the PPP loan and had eleven employees at the time of the forgiveness application. In truth, NIETO was Denver Pro's only employee in 2021, according to testimony NIETO provided under oath in an August 2021 civil proceeding.

b. NIETO also falsely certified that all tax documents he submitted to Lender 1 were consistent with the tax documents he submitted to the IRS. In truth, NIETO had submitted, and knew he had submitted, fake tax documents to Lender 1.

c. As part of the forgiveness application, NIETO submitted to Lender 1 thirteen fake payroll checks, each dated for a pay period of May 18-27, 2020. The checks were falsified to appear to have been drawn from a Denver Pro checking account and to show actual tax withholdings. In truth, during this period, Denver Pro did not write checks to or pay any of these individuals from this checking account, and the checks were fabricated.

d. Based on false representations and fake supporting documentation, Lender 1 recommended to the SBA forgiveness of the entire $175,384.83 PPP loan to Denver Pro.

e. Based on NIETO's false representations and fake supporting documentation, on or about April 13, 2021, the SBA transmitted a $176,956.09 loan forgiveness payment to Lender 1—which included forgiveness of the full $175,384.83 in principal and $1,571.26 in interest—before NIETO needed to submit a single payment on the PPP loan.

24. On or about August 18, 2021, NIETO submitted to Lender 1 a PPP loan forgiveness application requesting forgiveness of the entire amount of the $738,167.05 loan disbursed to DenPro.

a. NIETO falsely stated in the application that DenPro had incurred $742,000.00 in payroll costs after receiving the PPP loan and had 35 employees at the time of the forgiveness application.

b. NIETO also falsely certified that all tax documents he submitted to Lender 1 were consistent with the tax documents he submitted to the IRS. In truth, NIETO submitted, and knew he had submitted, fake tax documents to Lender 1.

c. As part of the application, NIETO submitted approximately 74 fake payroll checks to Lender 1, dated between September 2, 2020, and October 28, 2020. The checks were falsified to appear to have been drawn from a DenPro checking account and to show actual tax withholdings. In truth, during this period, DenPro did not write checks to or pay any of these individuals from this checking account, nor did DenPro report to the IRS having any employees, paying any wages, or withholding any taxes.

d. Lender 1 did not approve DenPro's loan forgiveness application.

25. On or about the dates set forth below, RICHARD REJAN NIETO, in the State and District of Colorado and elsewhere, with intent to defraud, having devised, intended to devise, and participated in a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, did, for purposes of executing the scheme and artifice, knowingly cause to be transmitted, by means of wire communication in interstate commerce, as set forth below:

Count	Date	Description of Wire
1	6/11/2020	Payment file for Lender 1 processing fee of $8,769.24 from SBA finance center in Colorado to U.S. Treasury disbursing office outside of Colorado caused by NIETO's submission of Denver Pro PPP loan application.
2	8/17/2020	Payment file for Lender 1 processing fee of $22,145.01 from SBA finance center in Colorado to U.S. Treasury disbursing office outside of Colorado caused by NIETO's submission of DenPro PPP loan application.
3	4/13/2021	Payment file for ACH loan forgiveness payment of $176,956.09 routed by wire from SBA finance center in Colorado to U.S. Treasury disbursing office outside of Colorado caused by NIETO's submission of Denver Pro PPP loan forgiveness application.

All in violation of Title 18, United States Code, Section 1343.

COUNTS 4-8
Money Laundering, 18 U.S.C. § 1957

26. The allegations in Paragraphs 1 through 25 are re-alleged and incorporated as if fully set forth herein.

27. On or about the dates set forth below, in the State and District of Colorado, and elsewhere, RICHARD REJAN NIETO, did knowingly engage and attempt to engage in a monetary transaction, as defined in Title 18, United States Code, Section 1957(f)(1), in criminally derived property of a value greater than $10,000.00, which was derived from a specified unlawful activity, that is, wire fraud, a violation of Title 18, United States Code, Section 1343.

Count	Date	Financial Transaction
4	August 19, 2020	Deposit of cashier's check numbered 9562417246 in amount of $50,000 to Key Bank account ending in 4788
5	August 19, 2020	Deposit of cashier's check numbered 9562417248 in amount of $50,000 to Key Bank account ending in 4788
6	December 9, 2020	Deposit of cashier's check numbered 9496412390 in amount of $35,000 to Wells Fargo account ending in 7506
7	December 9, 2020	Deposit of cashier's check numbered 9496412391 in amount of $42,000 to Wells Fargo account ending in 7506
8	January 7, 2021	Wire transfer of $40,000 from Wells Fargo account ending in 0343 to Coinbase.com account in name of RICHARD NIETO, for purchase of Bitcoin

All in violation of Title 18, United States Code, Section 1957.

Forfeiture Allegation

28. The allegations contained in Counts 1 through 8 of this Indictment hereby are re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(1), 982(a)(2), and Title 28, United States Code, Section 2461(c).

29. Upon conviction of one or more of the violations alleged in Counts 1 through 3 of this Indictment involving the commission of violations of Title 18, United States Code, Section 1343, defendant RICHARD REJAN NIETO shall forfeit to the

United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any and all rights, title, and interest in all property constituting and derived from any proceeds obtained directly and indirectly as a result of such offense or offenses, including, but not limited to: (1) $23,034 seized from his E*Trade account, Civil Case No. 22-mc-00080-NYW; (2) items of value including cryptocurrency seized from his Coinbase account, Civil Case No. 22-mc-00082-NYW; (3) items of value including cryptocurrency seized from his Binance US account, Civil Case No. 22-mc-00169-KHR; and (4) a money judgment in the amount of the proceeds obtained by the defendant's scheme.

30. Upon conviction of one or more of the violations alleged in Counts 4 through 8 of this Indictment involving the commission of violations of Title 18, United States Code, Section 1957, defendant RICHARD REJAN NIETO shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any and all rights, title, and interest in all property involved in such offense or offenses, or property traceable to such property, including, but not limited to: (1) items of value including cryptocurrency seized from his Coinbase account, Civil Case No. 22-mc-00082-NYW; (2) items of value including cryptocurrency seized from his Binance US account, Civil Case No. 22-mc-00169-KHR; and (3) a money judgment in the amount of the proceeds obtained by the defendant.

31. If any of the property described above, as a result of any act or omission of RICHARD REJAN NIETO, cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been substantially diminished in value; or has been commingled with other property that cannot be divided without difficulty, it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of RICHARD REJAN NIETO up to the value of the forfeitable property described above.

A TRUE BILL: Ink signature on file in Clerk's Office
FOREPERSON

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