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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

22 Cr. 251 (LJL)

RAFAEL MARTINEZ,

Defendant.

PLEA

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New York, N.Y.
March 23, 2023
2:30 p.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

BY: KATHERINE REILLY

MICAH FERGENSON

STEVEN KOCHEVAR

Assistant United States Attorneys

MICHAEL SCHACHTER

RANDALL JACKSON

Attorneys for Defendant

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(Case called; appearances noted)

THE COURT: Good morning. Ms. Ferguson, the reason for our appearance today?

MS. REILLY: Ms. Reilly, your Honor.

THE COURT: Ms. Reilly, sorry.

MS. REILLY: Yes, your Honor. We're here to have Mr. Martinez arraigned on the superseding information and for a change of plea.

THE COURT: Is that correct, Mr. Jackson and Mr. Schachter?

MR. SCHACHTER: Yes, your Honor.

THE COURT: I've got the waiver of indictment in front of me. I've got the superseding information and the plea agreement. Let me address myself to you, Mr. Martinez. I understand that you wish to waive indictment and to plead guilty to the superseding information. Is that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before I accept your guilty plea and your waiver of indictment, I'm going to ask you certain questions so that I can establish to my satisfaction that you wish to waive indictment and to plead guilty because you are guilty and not for some other reason. And also to establish that you know what you will be giving up by waiving indictment and by pleading guilty.

If you do not understand any of my questions or if you

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1 want to consult with your lawyers at any time for any reason,
2 just let me know and I will give you as much time as you need
3 to do that because it is essential in order to have a valid
4 waiver of indictment and a valid plea that you understand each
5 question before you answer.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Mr. Fishman, would you please swear in
9 Mr. Martinez.

10 (Defendant sworn)

11 THE COURT: You may be seated. So, Mr. Martinez,
12 you're now under oath, which means that if you answer any of my
13 questions falsely, you may be prosecuted for the separate crime
14 of perjury.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: What is your full name?

18 THE DEFENDANT: Rafael Nicholas Martinez.

19 THE COURT: And how old are you?

20 THE DEFENDANT: 57.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Three and three quarter years.

23 THE COURT: And where was that?

24 THE DEFENDANT: Between Syracuse and FIT for a
25 production management degree.

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1 THE COURT: Have you ever been treated or hospitalized
2 for any mental illness?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Are you now or have you recently been
5 under the care of a doctor or a psychiatrist?

6 THE DEFENDANT: No your Honor.

7 THE COURT: Have you ever been treated or hospitalized
8 for any type of addiction, including drug or alcohol addiction?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Have you taken any drugs, medicine or
11 pills or drunk any alcoholic beverages in the past two days?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Is your mind clear today?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand what is happening today?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Mr. Schachter, do you have any doubt as to
18 Mr. Martinez's competence to waive indictment and to plead at
19 this time?

20 MR. SCHACHTER: I do not.

21 THE COURT: Does the government have any doubt as to
22 Mr. Martinez's competence to waive indictment and to plead at
23 this time?

24 MS. REILLY: No, your Honor.

25 THE COURT: On the basis of Mr. Martinez's responses

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1 to my questions, my observations of his demeanor here in court
2 today and the representations of counsel, I find that he is
3 fully competent to waive indictment and to enter an informed
4 plea of guilty at this time.

5 Now, Mr. Martinez, have you received a copy of the
6 information containing the charge against you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you read it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you waive the public reading of the
11 information?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you had enough of a chance to discuss
14 with your lawyer the charge to which you intend to plead guilty
15 and any possible defenses to that charge?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Has your lawyer explained to you the
18 consequences of waiving indictment and of pleading guilty?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Are you satisfied with the reputation
21 you've received from your lawyers?

22 THE DEFENDANT: Very, yes, your Honor.

23 THE COURT: I have in front of me a waiver of
24 indictment form. I'm going to mark that as Court Exhibit No.
25 1. I'm going to give it today's date. I'm going to have my

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1 deputy show it to you and ask you to confirm that that is in
2 fact your signature on the waiver of indictment form. And then
3 after you've inspected the form, my deputy is going to give it
4 to Ms. Reilly for her to hold on to for safekeeping.

5 Do you have Court Exhibit No. 1, the waiver of
6 indictment form?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Is that your signature on the form?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Fishman, you may retrieve it. Before
11 you signed the form, Mr. Martinez, did you discuss it with your
12 lawyers?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did they explain it to you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that you are under no
17 obligation to waive indictment?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand if you do not waive
20 indictment and the government wants to prosecute you, it would
21 have to present the case to a grand jury which may or may not
22 indict you on this charge?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that by waiving
25 indictment, you're giving up your right to have this case

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presented to a grand jury?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand what a grand jury is?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Schachter, do you know of any reason that I should not find that Mr. Martinez has knowingly and voluntarily waived his right to be indicted by a grand jury?

MR. SCHACHTER: No, I do not.

THE COURT: Does the government know of any reason I should not find that the defendant Mr. Martinez has knowingly and voluntarily waived his right to be indicted by a grand jury?

MS. REILLY: No, your Honor.

THE COURT: I find that Mr. Martinez has knowingly and voluntarily waived his right to be indicted by a grand jury, and I authorize the filing of the information.

Now, sir, I'm going to explain to you certain constitutional rights that you have. These are rights that you will be giving up if you enter a guilty plea. Please listen carefully to what I am about to say. If you do not understand something, stop me and your lawyer or I will explain the matter more fully.

Under the Constitution and laws of the United States, you have a right to plead not guilty to the charge contained in the information. Do you understand that?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: If you did plead not guilty, you would be
3 entitled to a speedy and public trial by a jury on the charge
4 contained in the information.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: At a trial, you would be presumed to be
8 innocent, and the government would be required to prove you
9 guilty by competent evidence beyond a reasonable doubt before
10 you could be found guilty.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do, your Honor.

13 THE COURT: A jury of 12 people would have to agree
14 unanimously that you were guilty, and you would not have to
15 prove that you were innocent if you were to go to trial.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do, your Honor.

18 THE COURT: At that trial and at every stage of the
19 case, you would be entitled to be represented by a lawyer. And
20 if you could not afford a lawyer, one would be appointed at
21 public expense, free of cost or any charge to you to represent
22 you. Do you understand that?

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: During the trial, the witnesses for the
25 government would have to come to court and testify in your

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1 presence. Your lawyer could cross-examine the witnesses for
2 the government, object to evidence offered by the government
3 and offer evidence on your own behalf if you so desired. And
4 you would have the right to have subpoenas issued or other
5 process used to compel witnesses to testify in your defense.
6 Do you understand that?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: At a trial, although you would have the
9 right to testify if you chose to do so, you would also have the
10 right not to testify. And if you decided not to testify, no
11 one, including the jury could draw any inference or suggestion
12 of guilt from the fact that you did not testify.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: I'm not sure whether this is applicable,
16 but let me ask. Have you had a full opportunity to discuss
17 with your lawyers whether there is a basis to seek suppression
18 of some or all of the evidence against you on the grounds that
19 your constitutional rights were violated?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that by pleading guilty,
22 you are giving up your right to make any pretrial motions or to
23 seek suppression of any evidence against you other than the
24 motions you've made already?

25 THE DEFENDANT: Yes, I do, your Honor.

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1 THE COURT: If you were convicted at trial, you would
2 have the right to appeal that verdict. Do you understand that?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: Even now as you're entering this plea, you
5 have the right to change your mind and plead not guilty and go
6 to trial on the charges contained in the information.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do, your Honor.

9 THE COURT: If you plead guilty, and if I accept your
10 plea, you will give up your right to a trial and the other
11 rights I've just discussed, other than the right to a lawyer,
12 which you have regardless of whether or not you plead guilty.
13 But there will be no trial, and I will enter a judgment of
14 guilty and sentence you on the basis of your plea after I've
15 considered a presentence report and whatever submissions I get
16 from your lawyer and the lawyer for the government.

17 There will be no trial and no appeal with respect to
18 whether you did or did not commit the crime charged in the
19 information. Do you understand that?

20 THE DEFENDANT: Yes, I do, your Honor.

21 THE COURT: If you plead guilty, you will also have to
22 give up your right not to incriminate yourself, because I will
23 ask you questions about what you did in order to satisfy myself
24 that you're guilty as charge, and you'll have to admit and
25 acknowledge your guilt. Do you understand that?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: Do you understand each and everyone of
3 these rights?

4 THE DEFENDANT: Yes, I do, your Honor.

5 THE COURT: Mr. Martinez, are you willing to give up
6 your right to a trial and the other rights I've just discussed
7 with you?

8 THE DEFENDANT: Yes, I am, your Honor.

9 THE COURT: Do you understand you're charged in Count
10 One of the superseding information with conspiracy to commit
11 wire fraud in violation of 18 U.S.C. Section 371?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Would the government please state the
14 elements of the offense in question.

15 MS. REILLY: Certainly, your Honor. The offense has
16 three elements. First, that the conspiracy charged in the
17 superseding information existed, specifically that there was an
18 agreement or understanding between two or more people to commit
19 wire fraud.

20 Second, that the defendant knowingly and willfully
21 became a member of that conspiracy; and third that anyone of
22 the co-conspirators knowingly committed at least one overt act
23 in furtherance of the conspiracy.

24 THE COURT: Were you able to follow what the lawyer
25 for the government said?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And do you understand that if you were to
3 go to trial, the government would have to prove all of those
4 elements beyond a reasonable doubt?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand also that the government
7 would have to prove venue, an act occurred in this district by
8 a preponderance of the evidence?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Now I'm going to tell you about the
11 maximum possible penalty for this crime. The maximum means the
12 most that could possibly be imposed. It doesn't mean that that
13 is what you necessarily will receive, but you have to
14 understand that by pleading guilty you are exposing yourself to
15 the possibility of receiving any combination of punishments up
16 to the maximum I'm about to describe.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: First I'm going to tell you about the
20 possible restrictions on your liberty. The maximum term of
21 imprisonment for the crime charged in Count One is five years,
22 which could be followed by up to three years of supervised
23 release.

24 Supervised release means you will be subject to
25 supervision by the probation department. There will be rules

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1 of supervised released you'll have to follow. And if you
2 violate those rules, you can be returned to prison without a
3 jury trial to serve additional time with no credit for time you
4 served in prison as a result of your sentence, and no credit
5 for any time spent on post-release supervision.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: You should also understand that there is
9 no parole in the federal system. And that if you were sentence
10 to prison, you will not be released early on parole. There is a
11 limited opportunity to earn credit for good behavior, but
12 you'll have to serve at least 85 percent of the time you're
13 sentenced to. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Second, in addition to these restrictions
16 on your liberty, the maximum possible punishment also includes
17 certain financial penalties. The maximum allowable fine is
18 \$250,000 or twice the gross pecuniary gained derived from the
19 offense, or twice the gross pecuniary loss to persons other
20 than yourself, whichever is greater.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: In addition, I am required to order
24 restitution to any person or entity injured as a result of your
25 criminal conduct which you and the government agree is in the

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1 amount of \$71,711,893.07. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And is that the figure that you and the
4 government have agreed upon?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I can also order you to forfeit all
7 property constituting or derived from the offense.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: In your plea agreement with the
11 government, it is indicated that you admit to the forfeiture
12 allegation, and you agree to forfeit to the United States a sum
13 of money equal to \$44,546,712.94 representing proceeds
14 traceable to the commission of the offense and all right, title
15 and interest you have in a number of items of property that
16 I'll go over with you.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did you agree to that forfeiture?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Finally, I must also order a mandatory
22 special assessment of \$100 dollars.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand these are the possible

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1 maximum financial penalties?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Are you a United States citizen?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that as a result of your
6 guilty plea, you may lose certain valuable civil rights to the
7 extent that you have them or could otherwise obtain them now,
8 such as the right to vote, the right to hold public office, the
9 right to serve on a jury and the right to possess any kind of a
10 firearm. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you serving any other sentence, state
13 or federal or being prosecuted in state court for any crime?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Do you understand that if your lawyer or
16 anyone else has attempted to predict for you what your sentence
17 will be that their prediction could be wrong. No one, not your
18 lawyer, not the government's lawyer, no one can give you any
19 assurance of what your sentence will be since I'm going to
20 decide your sentence and I'm not going to do that now.

21 I'm going to wait until I receive a presentence report
22 prepared by the probation department and until I receive
23 sentencing submissions from your lawyer and the lawyer for the
24 government. After I receive that material, I'm going to do my
25 own independent calculation of the sentencing guidelines range.

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1 I'm going to consider it and any possible departures from it,
2 and I'm going to consider what a reasonable sentence is for you
3 based on the sentencing factors contained in the statute found
4 at 18 U.S.C Section 3553(a). Do you understand all of that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you discussed those issues with your
7 lawyer?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Even if your sentence is different from
10 what your lawyer or anyone else's told you it might be, even if
11 it's different from what you expect or from what's contain in
12 the written plea agreement you've entered into with the
13 government, you will still be bound by your guilty plea and
14 will not be allowed to withdraw your plea of guilty.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor, I'm aware.

17 THE COURT: I have the written plea agreement that
18 you've entered into with the government. I'm marking that as
19 Court Exhibit No. 2. I'm going to give it today's date, and in
20 a moment I'm going to have my courtroom deputy show it to you
21 for your inspection. It's dated March 15, 2023. It's
22 addressed to your lawyer Mr. Schachter, Mr. Jackson and
23 Mr. Kasulis, and it's from Assistant United States Attorney
24 Reilly.

25 I'm going to ask you, sir, whether that is in fact

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1 your signature on the last page of the agreement and whether
2 you signed it today in the presence of your lawyers.

3 Mr. Fishman. Do you have Court Exhibit No. 2 in front of you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Is that your signature on the last page?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you sign it today in the presence of
8 your lawyer?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Fishman, you may retrieve and bring it
11 back to me. Did you read the plea agreement before you signed
12 it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And did you discuss it with your lawyers
15 before you signed it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you fully understand it before you
18 signed it?

19 THE DEFENDANT: Yes, I did, your Honor.

20 THE COURT: Now, I want to go over some of the
21 features of the agreement that you've got with the government
22 to establish to my satisfaction that you understand the
23 agreement and what you've agreed to.

24 One of the features of your agreement with the
25 government is that you've agreed on the guidelines range that

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1 applies in this case. Something called a stipulated guideline
2 range. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Now the plea agreement provides that you
5 agree that the stipulated guidelines range would be 108 to 135
6 months of imprisonment; but because the statutory maximum for
7 your crime is 60 months of imprisonment, the applicable
8 guidelines is 60 months of imprisonment.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You also have agreed that the applicable
12 fine range is \$30,000 to \$300,000. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: That agreement is binding on you, and it's
15 binding on the government, but it's not binding on me. I have
16 my own obligation to determine the correct guidelines range and
17 what the appropriate sentence is in your case. I'm not saying
18 that I will come up with any range different from the one
19 you've agreed to with the government. But if I do, then I will
20 not let you withdraw your plea even if the range I determine is
21 higher than the one you've agreed to with the government.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In your plea agreement you've also waived
25 your right to appeal or otherwise challenge any sentence that

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1 is 60 months or below. In other words, if I sentence you to 60
2 months or anything less than 60 months, you would have no right
3 to appeal or otherwise try to challenge that sentence.

4 Do you understand that?

5 THE DEFENDANT: I understand that, your Honor.

6 THE COURT: You've also agreed not to appeal or bring
7 a collateral challenge to any fine that is less than or equal
8 to \$300,000. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You've also agreed not to appeal or bring
11 a collateral challenge to any restitution amount that is less
12 than or equal to \$71,711,893.07.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You've also agreed not to appeal or bring
16 a collateral challenge to any forfeiture amount that is less
17 than or equal to the sum of \$44,546,712.94.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: You've also agreed not to appeal or bring
21 a collateral challenge to the special assessment of \$100.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, I'd like to go over with you the
25 forfeiture provisions to make sure that you understand what's

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1 contained in the plea agreement and that you've agreed to it.
2 The plea agreement provides that you admit to the forfeiture
3 allegation, and that you agree to forfeit to the government
4 both a sum of money equal to \$44,546,712.94, and that you've
5 also agreed to forfeit all right, title and interest that you
6 have in a number of items of specific property numbered or
7 lettered A through J in the agreement.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And do you agree to forfeit both that sum
11 of money and all right, title and interest that you've got in
12 the specific property that is lettered A through J?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that you've also agreed
15 that you will not file a claim or petition for remission of
16 mitigation in any forfeiture proceeding involving that
17 specified specific property in A through J, and will not cause
18 or assist anyone else in doing so?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And you've also agreed to take all
21 necessary steps to pass clear title to that property, including
22 but not limited to the execution of all necessary
23 documentation.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And do you further understand that any
2 forfeiture of your assets will not be treated as satisfaction
3 of any fine, restitution, cost of imprisonment or any other
4 penalty that I may impose upon you in addition to forfeiture?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are there any other provisions of the plea
7 agreement, Ms. Reilly, that I should go over with the
8 defendant?

9 MS. REILLY: No, your Honor.

10 THE COURT: Mr. Schachter, any other provisions of the
11 plea agreement I should go over with the defendant?

12 MR. SCHACHTER: No, your Honor. I just wish to note
13 that with respect to some of the items of property, they are
14 actually not in Mr. Martinez's possession for some period of
15 time, which we've discussed with the government and the
16 government is aware of.

17 THE COURT: Mr. Martinez, does this written plea
18 agreement constitute your complete and total understanding of
19 the entire agreement between you and the government?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Other than what's written in this
22 agreement, has anyone made any promises to you or offered you
23 any inducements to plead guilty or to sign this agreement?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Has any threatened you or forced you to

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1 plead guilty or to sign the plea agreement?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone made a promise to you as to
4 what your sentence will be?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: OK. Now what I would like you to do now
7 is to explain to me in your own words what it is that you did
8 that makes you believe that you are guilty of the charge
9 contained in Count One of the information. Please take your
10 time so that I can hear you and the court reporter can pick it
11 up.

12 THE DEFENDANT: Sure, your Honor. So on April 20th--
13 excuse me, 2020, I participated in a conspiracy to commit wire
14 fraud. In furtherance of that, I submitted false documents to
15 the Small Business Administration, the SBA, in order to further
16 my company's application to become a PPP non-bank lender, which
17 was one of the programs available to finance companies at the
18 time.

19 We've also submitted documentation in question to
20 potential financial partners who were going to prefund some of
21 the original loans that we made. Providing loans at that point
22 was a critical issue for me, which was providing loans to women
23 minority owned companies. So I specifically took the
24 responsibility to do whatever I needed to do to submit those
25 applications. I understand interstate wires were sent from the

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1 Southern District in and out. And I'm here today to, as I've
2 always done, take responsibility for my actions. Embarrassed,
3 my daughter is here, and sorry because my entire life I've done
4 the right thing to help others. And as they say, I've went
5 over my skis, and I'm here to take full responsibility for my
6 actions.

7 THE COURT: As part of the conspiracy, was there a
8 false or a fraudulent form submitted to a financial
9 institution?

10 THE DEFENDANT: Yes.

11 THE COURT: And did you know what you was doing was
12 wrong?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you know that it was illegal?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are there any other questions that the
17 government would have me ask?

18 MS. REILLY: Your Honor, I think Mr. Martinez said at
19 the very beginning that he participated in a conspiracy, but we
20 would just ask that you allocute him specifically that he
21 agreed with someone else to undertake the conduct he's
22 described.

23 THE COURT: Let me ask that question. Did you agree
24 with somebody else to undertake the contact that you undertook?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Anything else from the government?

2 MS. REILLY: No, thank you, your Honor.

3 THE COURT: Mr. Schachter, let me ask you if you know
4 of any valid defense that would prevail at trial or any reason
5 why your client should not be permitted to plead guilty?

6 MR. SCHACHTER: No, your Honor.

7 THE COURT: Do you agree that there is a sufficient
8 factual predicate for the guilty plea?

9 MR. SCHACHTER: Yes, your Honor.

10 THE COURT: Do you know of any reason I should not
11 accept your client's plea of guilty?

12 MR. SCHACHTER: No, I do not.

13 THE COURT: Would the government please summarize for
14 me some of what the government's evidence would be if the
15 defendant were to go to trial.

16 MS. REILLY: Certainly, your Honor. If we were to
17 proceed to trial, the government would expect to introduce
18 communications with and applications submitted to the Small
19 Business Administration, the Federal Reserve Bank of New York,
20 an insurance company and a federally insured financial
21 institution. Those were submitted by the defendant, and they
22 include false statements, doctored documents and a fraudulent
23 signature. The government would also expect to introduce
24 financial records, tax returns and bank documents that show
25 both MBE, the defendant's company's true financial condition,

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1 as well as the receipt of funds from the insurance company, the
2 federal reserve bank and the Small Business Administration and
3 how those funds were dispersed.

4 The government would further expect to call witnesses
5 to testify, including individuals who worked for and with MBE,
6 individuals from the Small Business Administration, from the
7 federally insured financial institution, the Federal Reserve
8 Bank of New York, and the insurance company, as well as the
9 accountant whose signature was forged on the documents we
10 described.

11 THE COURT: Did you hear what the government lawyer
12 said, Mr. Martinez?

13 THE DEFENDANT: Yes, I did, your Honor.

14 THE COURT: And did you do the stuff that she said
15 that you did?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Does the government agree that there is a
18 sufficient factual predicate for the guilty plea?

19 MS. REILLY: Yes, your Honor.

20 THE COURT: Does the government know of any reason
21 that I should not accept the defendant's plea of guilty?

22 MS. REILLY: No.

23 THE COURT: Mr. Martinez, how do you plead to Count
24 One of the information?

25 THE DEFENDANT: Guilty, your Honor.

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1 THE COURT: Mr. Martinez, because you acknowledge that
2 you are in fact guilty as charged in Count One of the
3 information, because I am satisfied that you know of your
4 rights, including your right to go to trial, and that you're
5 aware of the consequences of your plea, including the sentence
6 which may be imposed; and because I find that you knowingly and
7 voluntarily entered into the plea agreement and are knowingly
8 and voluntarily pleading guilty, I accept your guilty plea to
9 Count One of the information, and I enter a judgment of guilty
10 on Count One of the information.

11 The probation department will want to interview you in
12 connection with a presentence report that it will prepare.
13 Mr. Schachter, Mr. Jackson, I assume that you wish to be
14 present for any interview in connection with that report?

15 MR. SCHACHTER: Yes, your Honor.

16 THE COURT: I order that there be no interview unless
17 counsel is present. Mr. Martinez, if you choose to speak to
18 the probation department, make sure that anything you say is
19 truthful and accurate. I will read the report carefully, and
20 it is important to me in deciding what sentence to impose. You
21 and your counsel have a right to examine the report and to
22 comment on it at the time of sentencing.

23 I urge you to read it and discuss it with your lawyer
24 before sentencing. If there are any mistake in it, point them
25 out to your lawyer so that your lawyers can bring the mistake

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1 or issues to my attention before sentence.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Let me come up with a proposed date for
5 sentencing. Mr. Schachter, Mr. Jackson, and your client, does
6 July 6, at 12 noon work for you? If you want to consult with
7 your client and with his family, that's fine.

8 MR. SCHACHTER: Your Honor, just because that's the
9 week of 4th of July, is it possible to do something in the
10 following week?

11 THE COURT: I'm sure we can arrange that. July 11th,
12 12 noon. You want to confer with your client and his daughter.

13 MR. SCHACHTER: Yes, your Honor. Thank you.

14 THE COURT: That works for government I assume?

15 MS. REILLY: Yes, your Honor.

16 THE COURT: Sentencing is set for July 11, 12 noon. I
17 direct the government to provide the probation officer with its
18 factual statement within seven days. Defense counsel must
19 arrange for the defendant to be interviewed by probation within
20 the next two weeks.

21 Counsel, I want to refer you to my individual rules
22 and practices for criminal cases available on the court's
23 website, which contain my rules regarding sentencing
24 submissions. In accordance with those rules, the defense
25 submissions are due two weeks prior to sentencing. The

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1 government submissions are due one week prior to sentencing. I
2 realize that that maybe July 4th. You can submit it on July
3 5th from the government's perspective.

4 Mr. Schachter, I don't impose any page limits on
5 sentencing submissions, so anything that you believe is
6 pertinent to sentencing, please bring to my attention. I
7 assume that bail can be continued as set?

8 MS. REILLY: Yes, your Honor.

9 THE COURT: What are the conditions? Can you remind
10 me.

11 MS. REILLY: Your Honor, just give me one moment. I
12 don't have those right at hand.

13 THE COURT: Was he released on his own recognizance?

14 MS. REILLY: He was released on a bond. I don't have
15 the precise conditions.

16 THE COURT: The bond will be continued as set.
17 Mr. Martinez, you should understand that all the conditions
18 under which you were released up to now continue to apply, and
19 that a violation of any of those conditions can have very
20 serious consequences for you at the time of sentencing.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: You also must be in this courtroom for
24 sentencing at the time and date set, or you will be guilty of a
25 separate crime, that of bail jumping, subject to a find and/or

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1 prison term, in addition to whatever sentence you may receive
2 for the crime to which you just plead guilty.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Anything further from the government?

6 MS. REILLY: Nothing further.

7 THE COURT: Anything further from the defense?

8 MR. SCHACHTER: No, your Honor.

9 THE COURT: Thank you both, and see you at the time of
10 sentencing.

11 (Adjourned)