

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-MJ-02532-TORRES

UNITED STATES OF AMERICA

v.

YAMIL LAZARO HERRERA,

Defendant

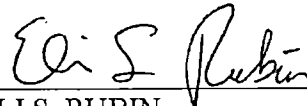
CRIMINAL COVER SHEET

1. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia Valle)?  Yes  No
2. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)?  Yes  No
3. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)?  Yes  No
4. Did this matter originate from a matter pending in the Southern Region of the United States Attorney's Office prior to November 23, 2020 (Judge Aileen M. Cannon)?  Yes  No

Respectfully submitted,

ARIANA FAJARDO ORSHAN  
UNITED STATES ATTORNEY

BY:



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Southern District of Florida  
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AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America  
v.

YAMIL LAZARO HERRERA

Case No. 21-MJ-02532-TORRES

Defendant(s)

CRIMINAL COMPLAINT BY TELEPHONE OR OTHER RELIABLE ELECTORNIC MEANS

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 1 through August 31, 2020, in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Code Section  
18 U.S.C. § 1343

Offense Description  
Wire Fraud

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT.

Continued on the attached sheet.

*James J. Kaelin*  
Complainant's signature

FBI Special Agent James J. Kaelin

Printed name and title

ID 17143

Attested to by the Applicant in accordance with the requirements of Fed.R.Crim. 4.1 by Telephone

Date Mar. 22, 2021

*Edwin G. Torres*  
Judge's signature

City and state: Miami, Florida

Hon. Edwin G. Torres, U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT**

I, James J. Kaelin, being first duly sworn, hereby depose and state as follows:

**AGENT BACKGROUND AND INTRODUCTION**

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"). I have been employed with the FBI since 2001. I am currently assigned to investigate, among other things, bank fraud, money laundering, and other frauds.

2. This affidavit is made in support of a criminal complaint charging YAMIL LAZARO HERRERA ("HERRERA") with violating Title 18, United States Code, Sections 1343 (Wire Fraud).

3. This affidavit is based on my personal investigation and investigation by others, including federal and local law enforcement officials whom I know to be reliable and trustworthy. The facts contained herein have been obtained by interviewing witnesses and examining documents obtained in the course of the investigation as well as through other means. This affidavit does not include every fact known to me about this investigation, but rather only those facts sufficient to establish probable cause.

**BACKGROUND OF THE CARES ACT AND EIDL PROGRAM**

4. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. 116-136, 134 Stat. 281, is a federal law enacted in or around March 2020 designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.

5. The Economic Injury Disaster Loan ("EIDL") program is a U.S. Small Business Administration ("SBA") program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

6. The CARES Act authorized the SBA to provide EIDLs of up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL. The amount of the advance was determined by the number of employees the applicant certified having. The advances did not have to be repaid.

7. EIDL applications are submitted directly to the SBA and processed by the agency with support from a government contractor, Rapid Finance. In order to obtain an EIDL and advance, a qualifying business had to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. The applicant must also certify that all of the information in the application is true and correct to the best of the applicant's knowledge.

8. EIDL funds can be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments.

9. All EIDL-related payments are processed by the SBA from Denver, Colorado.

10. Within the SBA, the Office of Disaster Assistance was responsible for the EIDL program and was headquartered at 409 3rd Street SW, Washington, D.C., 20416.

## **OVERVIEW OF THE SCHEME**

### ***Background***

11. The United States is investigating two false and fraudulent EIDL applications HERRERA submitted on behalf of two companies he controlled, Downtown CCS, LLC ("Downtown") and G & H Brands, LLC ("G&H"). The SBA approved both applications and

wired HERRERA approximately \$309,800 in total. Evidence indicates that HERRERA spent a majority of the proceeds on personal expenses.

12. In 2010, HERRERA pleaded guilty to conspiring to commit wire and bank fraud. Plea Agreement, *United States v. Herrera*, 10-20033-CR-UNGARO, Dkt. No. 158 (S.D. Fla. Apr. 9, 2010). HERRERA conspired with others to engage in mortgage fraud, causing losses greater than \$2,500,000 but not more than \$7,000,000. *Id.* at ¶ 8(a). HERRERA was sentenced to 63-months' incarceration. Judgment in a Criminal Case, *United States v. Herrera*, 10-20033-CR-UNGARO, Dkt. No. 310 (S.D. Fla. Oct. 10, 2010).

***HERRERA Applied for EIDLs on Behalf of Downtown and G&H***

13. On approximately June 1, 2020, HERRERA applied for an EIDL in the name of Downtown, a Florida limited liability company. HERRERA had become the registered agent and sole officer of Downtown on approximately January 22, 2019.

14. HERRERA submitted his EIDL application using the SBA online portal, accessible at covid19relief.sba.gov. HERRERA accessed the site using an internet protocol ("IP") address assigned to Coral Gables, Florida.

15. In his application, HERRERA claimed that Downtown was an "Agriculture" business with 13 employees. He further claimed that the company's gross revenue for the 12 months preceding January 31, 2020, was \$640,058; the "cost of goods sold" for the same time period was \$240,558; and the company's "Agricultural Enterprise Cost of Operation" for the same time period was \$345,018.

16. On June 4, 2020, the SBA wired \$10,000—Downtown’s advance—into Downtown’s bank account, an account at Bank A ending in 3056 (“Account 3056”). HERRERA had opened Account 3056 on March 1, 2019, using his Florida driver’s license.<sup>1</sup>

17. On June 18, 2020, after approving HERRERA’s application, the SBA wired \$149,900—the proceeds of the loan—into Account 3056.

18. The following day, June 19, 2020, HERRERA transferred \$100,000 from Account 3056 to his personal bank account at Bank A ending in 2532 (“Account 2532”). HERRERA had opened Account 2532 on approximately November 16, 2018. He was the sole signatory on the account.

19. Also on June 19, 2020, HERRERA wired \$90,000 from his personal account, Account 2532, to a personal brokerage account ending in 7894 he maintained at Broker-Dealer 1. The wire transfer stated, “FURTHER CREDIT TO YAMIL HERRERA[.]”

20. HERRERA proceeded to use the loan proceeds to make bets on the stock market, for example, by buying call and put options on companies such as Tesla Inc., Apple Inc., and Levi Strauss & Co.

21. On June 26, 2020, HERRERA transferred an additional \$25,000 from Downtown’s account, Account 3056, to HERRERA’s personal account, Account 2532.

22. After spending the vast majority of the proceeds of the Downtown EIDL, HERRERA obtained an EIDL on behalf of G&H.

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<sup>1</sup> Bank A is headquartered in San Francisco, California, and federally insured by the Federal Deposit Insurance Corporation.

23. G&H was formed in 2017. No annual reports were filed on the company's behalf in 2018 or 2019. On June 25, 2020, approximately one week after HERRERA received the proceeds of his first EIDL, HERRERA reinstated G&H with the Florida Division of Corporations. HERRERA was the company's registered agent and only named officer. The company's principal place of business and mailing address were both HERRERA's home address.

24. On June 29, 2020, HERRERA opened an account in G&H's name at Bank A. The account ended in 2835 ("Account 2835"). HERRERA used his Florida driver's license to open the account.

25. The next day, June 30, 2020, HERRERA applied for an EIDL advance and loan on G&H's behalf. HERRERA again submitted his application using the SBA online portal, accessible at [covid19relief.sba.gov](https://covid19relief.sba.gov).

26. In his application, HERRERA claimed that G&H had 13 employees and worked in "Import[ing and] Export[ing]" in the "Wholesale" space. He further claimed that the company's gross revenue for the 12 months preceding January 31, 2020, was \$582,000; the "cost of goods sold" for the same time period was \$123,860; and the company's "Non-Profit or Agricultural Enterprise Cost of Operation" for the same time period was \$271,000. Based on the representations made in the application, however, G&H was neither a non-profit organization nor an agricultural enterprise.

27. On August 19, 2020, an employee of the SBA's Office of Disaster Assistance, which, as noted above, was responsible for the EIDL program and was headquartered in Washington, D.C., emailed HERRERA regarding the G&H EIDL application. The SBA employee requested "a document dated before January 31, 2020 like a previous tax document to show the business as being active prior to the disaster[.]"

28. Subsequently, HERRERA provided the SBA with an Internal Revenue Service (“IRS”) Form 1120-S, purportedly filed with the IRS on approximately May 1, 2020, on G&H’s behalf.

29. On August 31, 2020, HERRERA received the proceeds of the EIDL, \$149,900 into Account 2835.<sup>2</sup>

30. Rather than use the proceeds on payroll or legitimate business expenses, HERRERA used the EIDL proceeds in Account 2835 for personal transactions, for example, by spending \$2,500 at Doral Toyota on September 21, 2020, and transferring \$26,390 to HERRERA’s personal account (Account 2532) on September 24, 2020.

*False and Fraudulent Statements on EIDL Applications*

31. HERRERA made a number of false and fraudulent statements on both of his EIDL applications.

32. In his EIDL application on behalf of Downtown, HERRERA stated that the company was engaged in “Agriculture” and that it had 13 employees. He further stated that (i) Downtown’s gross revenue for the 12 months prior to January 31, 2020, was \$640,058; (ii) its “Cost of Goods Sold” for the same time period was \$240,558; and (iii) its “Agricultural Enterprise Cost of Operation” for the same time period was \$345,018.

33. However, the company’s website, downtownccsllc.com, stated that the company was not engaged in “Agriculture,” but rather “personal and business consulting.”

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<sup>2</sup> On July 11, 2020, the SBA announced that it would no longer grant advances under the EIDL program.



34. Further, as a Florida-based employer, the company was required to register with and pay the Florida Department of Revenue employment tax based on certain wages paid. However, as of September 10, 2020, Downtown had not even registered with the Florida Department of Revenue, let alone paid taxes on wages for 13 employees.

35. Nor did the company file any tax returns with the Internal Revenue Service (“IRS”) in 2018, 2019, or the first two quarters of 2020.

36. Nor did records for the company’s bank account, Account 3056, reveal such activity. Rather, the account’s records revealed that HERRERA spent the vast majority of the account’s proceeds on everyday expenses, such as purchases at restaurants, gas stations, and credit card bills.

37. HERRERA’s representations on G&H’s EIDL were similarly false and fraudulent.

38. In his application, HERRERA claimed that G&H worked in “Import[ing and] Export[ing]” in the “Wholesale” space. However, HERRERA told Bank A when opening Account 2835 that the company worked in “WOOD KITCHEN AND CABINETS MANUFACTURING[.]”<sup>3</sup> The company does not appear to have a website.

39. Further, HERRERA claimed in the application that G&H (i) had revenue of \$582,000 in the 12 months’ preceding January 31, 2020; (ii) the company’s “Costs of Goods Sold” during that same time period was \$123,860; and (iii) its “Non-profit or Agricultural Enterprise Cost of Operation” was \$271,000.

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<sup>3</sup> Both applications included the following question: “If anyone assisted you in completing this application, whether you pay a fee for this service or not, that person must enter their information below.” Neither of HERRERA’s applications included responsive information, implying that no one assisted him in completing the applications. Despite this implication, it is possible HERRERA was assisted by associates in submitting the applications.

40. Records from Bank A, however, show that G&H only opened a bank account in June 2020. Furthermore, records from Florida Division of Corporations show that the company was inactive from approximately 2018 through June 2020, the same month HERRERA applied for the EIDL.

41. Further, in his EIDL application, HERRERA claimed that G&H had 13 employees, the same number as Downtown. But again, there is no record of such payroll activity. G&H had not registered to pay employment taxes with the Florida Department of Revenue, and records of the company's bank account, opened only on June 29, 2020, contain no such payroll activity.

**HERRERA CONVERTED A PORTION OF THE EIDL PROCEEDS**

42. As noted above, rather than use the money as required on payroll and legitimate business expenses, HERRERA spent the loan proceeds on personal items and engaged in transactions designed to conceal the nature and source of the funds.

43. On June 19, 2020, the day after receiving the proceeds of Downtown's EIDL, HERRERA transferred \$100,000 from Downtown's account, Account 3056, to HERRERA's personal account, Account 2532.

44. That same day, HERRERA wired \$90,000—nearly all of the transferred proceeds—from Account 2532 to a personal brokerage account ending in 7894 at Broker-Dealer 1.

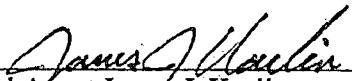
CONCLUSION

45. Based on my training and experience, and the information provided in this affidavit,

I respectfully submit that there is probable cause to believe that:

- From on or about June 1, 2020, through on or about August 31, 2020, in Miami-Dade County, the Southern District of Florida, and elsewhere, the defendant, YAMIL LAZARO HERRERA, did knowingly, and with intent to defraud, devise, and intend to devise, a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and, for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals, punctures and sounds, in violation of title 18, United States code, Section 1343.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Special Agent James J. Kaelin  
Federal Bureau of Investigation

Attested to by the applicant in accordance with Fed. R. Crim. P. 4.1 by Telephone  
this 22 day of March, 2021, in Miami, Florida.

  
HONORABLE EDWIN G. TORRES  
UNITED STATES MAGISTRATE JUDGE