

FILED by **KS** D.C.

Apr 15, 2021

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
21-20234-CR-ALTONAGA/TORRES
CASE NO. _____

18 U.S.C. § 1343
18 U.S.C. § 982(a)(2)(A)

UNITED STATES OF AMERICA

vs.

KIMBERLY CLEARE,

Defendant.

_____ /

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Economic Injury Disaster Loan Program

1. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act 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.

2. The Economic Injury Disaster Loan (“EIDL”) program was a Small Business Administration (“SBA”) program that existed before the COVID-19 pandemic to provide low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

3. The CARES Act authorized the SBA to provide EIDLs to eligible small businesses experiencing substantial financial disruptions due to the COVID-19 pandemic. In order to obtain a COVID-19 EIDL, a qualifying business was required to submit an EIDL application to the SBA and

provide information about its operations, such as the number of employees, gross revenues, and the cost of goods sold for the 12-month period preceding January 31, 2020. The applicant was also required to certify that all of the information in the application was true and correct to the best of the applicant's knowledge.

4. EIDL applications were submitted directly to the SBA and processed by the SBA with support from a government contractor. The amount of the loan was determined based, in part, on the information provided in the application concerning the number of employees, gross revenues, and cost of goods sold. Any EIDL funds were issued directly by the SBA.

The Defendant and Relevant Entities

5. Defendant, **KIMBERLY CLEARE**, is a resident of Miami-Dade County, Florida.

6. **KIMBERLY CLEARE** is the resident agent and president of What About the Children Foundation ("WATC"), a Florida corporation with its principal address listed as **KIMBERLY CLEARE**'s personal residence located in Miami-Dade County, Florida.

7. Applicant 1, Applicant 2, and Applicant 3 are residents of Miami-Dade County, Florida.

8. TD Bank is a financial institution headquartered in Cherry Hill, New Jersey, and has branches in Miami-Dade County, Florida.

9. JP Morgan Chase is a financial institution headquartered in New York, New York, and has branches in Miami-Dade County, Florida.

Counts 1-5
Wire Fraud
(18 U.S.C. § 1343)

1. Paragraphs 1 through 9 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as through fully set forth herein.

2. From on or about June 15, 2020, and continuing through on or about July 13, 2020, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the Defendant,

KIMBERLY CLEARE,

did knowingly, and with the 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 and foreign commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Sections 1343 and 2.

PURPOSE OF THE SCHEME AND ARTIFICE

3. The purpose of the scheme and artifice was for **KIMBERLY CLEARE** to unlawfully enrich herself and her accomplices by submitting and causing the submission of false and fraudulent EIDL applications, receiving kickbacks in return for submitting and causing the submission of false and fraudulent EIDL applications, and obtaining loan proceeds for **CLEARE**'s own use and benefit and for the use and benefit of her accomplices.

THE SCHEME AND ARTIFICE

The manner and means by which **KIMBERLY CLEARE** sought to accomplish the purpose of the scheme and artifice included, among others, the following:

4. **KIMBERLY CLEARE** submitted and caused to be submitted to the SBA, via interstate wire communications, false and fraudulent EIDL applications on behalf of fictitious companies in her own name and the names of her accomplices, often in exchange for kickbacks from the proceeds received through the fraudulently obtained EIDL loans.

5. The EIDL applications falsely and fraudulently represented the fictitious companies' annual gross revenues, cost of goods, rental property expenses, and the number of employees.

6. As a result of the false and fraudulent EIDL applications submitted and caused to be submitted by **KIMBERLY CLEARE**, the SBA approved and disbursed loan proceeds into bank accounts controlled by **CLEARE** and her accomplices.

USE OF WIRES

1. On or about the dates specified below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **KIMBERLY CLEARE**, for the purpose of executing and in furtherance of the aforesaid 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, did knowingly transmit and cause to be transmitted in interstate and foreign commerce, by means of wire communication, certain writings, signs, signals, pictures, and sounds, as described below:

Count	Approximate Date	Description of Wire
1	July 8, 2020	As a loan advance for an EIDL application submitted in the name of KIMBERLY CLEARE , assigned SBA no. 3308879580, wire transfer of approximately \$10,000 from the SBA to the TD account ending in 1954, causing a wire transmission from outside of the State of Florida to the Southern District of Florida.
2	July 8, 2020	Electronic transmission of an EIDL application submitted in the name of Applicant 1, assigned SBA no. 3309406339, causing a wire transmission from the Southern District of Florida to outside of the State of Florida.
3	July 8, 2020	As a loan advance for an EIDL application submitted in the name of Applicant 2, assigned SBA no. 3308906279, wire transfer of approximately \$10,000, from the SBA to the JP Morgan Chase account ending in 6158, causing a wire transmission from outside of the State of Florida to the Southern District of Florida.
4	July 8, 2020	Electronic transmission of an EIDL application submitted in the name of WATC, assigned SBA no. 3309634826, causing a wire transmission from the Southern District of Florida to outside of the State of Florida.
5	July 13, 2020	Electronic transmission of an EIDL application submitted in the name of Applicant 3, assigned SBA no. 3310425915, causing a wire transmission from the Southern District of Florida to outside of the State of Florida.

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE ALLEGATIONS

1. The allegations of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the Defendant, **KIMBERLY CLEARE**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1343, as alleged in this Indictment, the Defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting, or derived from, proceeds the Defendant obtained directly or indirectly, as the result of such violation.

All pursuant to Title 18, United States Code, Section 928(a)(2)(A), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

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FOREPERSON

V\



JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY



LAUREN A. ASTIGARRAGA
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

v.

CERTIFICATE OF TRIAL ATTORNEY*

KIMBERLY CLEARE,

Superseding Case Information:

Defendant _____/

Court Division: (Select One)

Miami Key West
 FTL WPB FTP

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

- 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.
- 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.
- Interpreter: (Yes or No) No
List language and/or dialect _____
- This case will take 4-5 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)

I 0 to 5 days
 II 6 to 10 days _____
 III 11 to 20 days _____
 IV 21 to 60 days _____
 V 61 days and over _____

(Check only one)

Petty _____
 Minor _____
 Misdem. _____
 Felony

6. Has this case previously been filed in this District Court? (Yes or No) _____

If yes: Judge Case No. _____

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) Yes

If yes: Magistrate Case No. 21-mj-02515-McAliley

Related miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

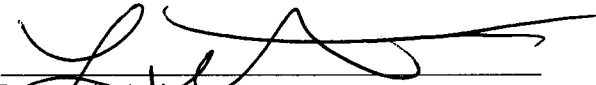
Rule 20 from the District of _____

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



 Lauren A. Astigarraga
 ASSISTANT UNITED STATES ATTORNEY
 Florida Bar No. 119473

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: KIMBERLY CLEARE

Case No: _____

Counts #: 1-5

Wire Fraud

Title 18, United States Code, Section 1343

***Max. Penalty:** Thirty (30) Years of Imprisonment

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