

UNITED STATES DISTRICT COURT
for the
Eastern District of Texas

FILED

MAY 18 2020

United States of America
v.
SAMUEL MORGAN YATES
Defendant(s)

Case No.
5:20-MJ-15

Clerk, U.S. District Court
Texas Eastern
[Signature]

CRIMINAL COMPLAINT

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 April 14, 2020 to present in the county of Bowie in the
Eastern District of Texas, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Rows include 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1014 (False Statements to a Financial Institution), and 15 U.S.C. § 645(a) (False Statements to Small Business Administration).

This criminal complaint is based on these facts:

See attached affidavit of Special Agent Cole Ashcraft, Treasury Inspector General for Tax Administration.

[X] Continued on the attached sheet.

APPEARING BY PHONE AT 202-308-0518

Complainant's signature

Special Agent Cole Ashcraft, TIGTA

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Cr. P. 4.1 by telephone.

Date: May 18, 2020 @ 2:58 pm

Judge's signature

City and state: Texarkana, Texas

Caroline M. Craven, United States Magistrate Judge

Printed name and title

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

UNITED STATES OF AMERICA	)	
	)	<b><u>UNDER SEAL</u></b>
v.	)	
	)	5:20-MJ- 15
SAMUEL MORGAN YATES,	)	
	)	
Defendant.	)	

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I, Cole Ashcraft, being first duly sworn, hereby depose and state as follows:

**Affiant's Background**

1. I am a Special Agent with the Treasury Inspector General for Tax Administration (“TIGTA”) and have been since December 2019. Prior to that, I was a Special Agent with the U.S. Postal Service Office of Inspector General starting in 2013 and was assigned to their Computer Crimes Unit for the majority of that time. I have received formal training in both computer science and the investigation of computer crimes, including network intrusions and computer forensics. I have investigated or assisted in the investigation of numerous cases involving fraudulent activity in connection with computers. I am currently assigned to TIGTA’s Cybercrime Investigations Division and the FBI Washington Field Office Cyber Task Force. I investigate violations of federal laws regarding the programs and operations of the Internal Revenue Service (“IRS”) and federal tax administration. I have been a sworn law enforcement officer during all times herein.

2. Throughout the course of my career, I have conducted an array of criminal investigations involving money laundering, bank fraud, and many other illegal schemes impacting financial institutions. I have experience conducting search, seizure and arrest warrant operations. Recently, I have been assigned to work with the U.S. Department of Justice and other law

enforcement partners to investigate possible fraud associated with the stimulus and economic assistance programs created by the federal government in response to the COVID-19 pandemic.

3. This affidavit is made in support of a criminal complaint charging Samuel Yates with 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344(2) (Bank Fraud), 18 U.S.C. § 1014 (False Statements to a Financial Institution), and 15 U.S.C. § 645(a) (False Statements to the Small Business Administration).

4. 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.

#### **Probable Cause**

5. On March 27, 2020, the U.S. President signed a \$2 trillion stimulus bill called the CARES Act, which was intended to ameliorate the economic impact of the COVID-19 Pandemic. *See* Pub. L. 116-136. The CARES legislation authorized up to \$349 billion in forgivable loans to small businesses to pay their employees during the pandemic. In or around April 2020, Congress authorized up to \$310 billion of additional funding. *See* Pub. L. 116-139. This loan program is known as the Paycheck Protection Program (“PPP”). It is administered by the U.S. Small Business Administration (“SBA”), a federal government agency headquartered at 409 3<sup>rd</sup> Street, SW, Washington, D.C. 20416. *See* 13 C.F.R. Part 120. The PPP provides small businesses with funds to pay up to eight weeks of payroll costs, including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities. The SBA provides funds in the form of loans that may be fully

forgiven if used for payroll costs, interest on mortgages, rent, and utilities (the program requires that at least 75% of the loan amount be used for payroll costs to be considered for forgiveness). Under the PPP, the maximum loan amount for which an applicant may apply is the lesser of \$10 million or an amount based upon a payroll-based formula specified in the CARES Act.

6. Small businesses and sole proprietorships have applied for PPP relief through one of over 4,900 SBA designated lending institutions. To apply, applicants must complete and transmit to the lender an SBA Form 2483, which requires the applicant to identify the entity's average monthly payroll, as calculated according to the requirements of the CARES Act.

7. Once a borrower provides their application to a lender, the lender underwrites the loan and transmits the application to the SBA via an electronic platform known as ETRAN. Before a lender submits a PPP loan through ETRAN, the lender must have collected the information and certifications set forth in the SBA Form 2483. Loans guaranteed under the PPP will be 100% guaranteed by the SBA, and the full principal amount of the loans may qualify for loan forgiveness.

***Fraudulent PPP Loan Application Submitted to Ready Capital***

8. Ready Capital is a publicly traded real estate investment trust (REIT) which also participates in the SBA's PPP loan program as an SBA Preferred Lender. Ready Capital provided me an SBA Form 2483 ("the application") submitted on or about April 14, 2020 and bearing the signature of Samuel Yates. The application sought a PPP loan for a sole proprietorship called Lone Star Tuning in Maud, Texas. The application identified Yates as the "Primary Contact" for Lone Star Tuning and its sole owner. To support a PPP loan in the amount of \$5,203,400, the application represented that the sole proprietorship Lone Star Tuning has an average monthly payroll of \$2,081,386 and 412 employees.

9. According to IRS records and a copy of an IRS Notice CP 575 that Yates provided in connection with his application, the business was first issued an Employer Identification Number (“EIN”) on or about March 27, 2020. According to IRS records, Yates represented to the IRS that the business began operations in September 2014.

10. Ready Capital has provided several documents it received in support of Lone Star Tuning’s application. A review of those documents and records obtained from the IRS demonstrate that several of the documents provided to Ready Capital in support of the PPP loan application were falsified and/or included false statements about Lone Star Tuning’s operations:

- a. The applicant submitted a “Payroll Journal Summary Report” document which purported to list payroll and tax payments for each of the business’s claimed 412 employees, by name. Further investigation revealed that the names of all 412 purported employees also appear in a list of 500 random names found in the source code of a computer program posted on GitHub, a popular online source code hosting and software development collaboration platform. The user who posted this source file describes himself as a programmer located in Nairobi, Kenya and has no readily discernible connection to Yates. Additionally, I performed an internet search for multiple names on the list of purported employees and did not reveal any such persons with those names living in the Maud, Texas area.
- b. The application submitted a “Payroll Totals Report” document which purported to show totals of payroll expenditures and tax payments for Lone Star Tuning between approximately January 1, 2020 and February 29, 2020. This document claimed the business had 412 employees, issued 1,648 paychecks, and had payroll expenses of

\$4,893,261.80 for this period. As previously discussed, none of the employees listed on these files appear to be affiliated with this business or receiving payroll.

c. The applicant submitted an IRS Form 941, an Employer's Quarterly Federal Tax Return purporting to report wages and federal payroll tax information for Lone Star Tuning for the first quarter of 2020. According to the form, Lone Star Tuning had 412 employees in the first quarter and paid wages, tips, and total compensation totaling \$6,538,954.20.

i. Based on a search of available IRS records related to the EIN, no such IRS Form 941 has been filed by Lone Star Tuning for the first quarter of 2020 has been processed by the IRS.<sup>1</sup>

ii. IRS records also indicate a payroll processor electronically filed a first quarter 2020 Form 941 for Lone Star Tuning on April 8, 2020 reporting zero employees and paid wages, tips, and total compensation totaling \$0. (The IRS rejected this return for a technical reason; specifically, the primary name listed on the Form 941 was Lone Star Tuning, while the primary name on the EIN in IRS records is Samuel Yates and the secondary name on the EIN is Lonestar Tuning.)<sup>2</sup>

11. The PPP application was submitted in the name of Yates, who represented himself as the sole owner of Lonestar Tuning. In addition, Yates certified that, among other things, "[t]he

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<sup>1</sup> The IRS ordered its employees to evacuate its facilities on or about March 30, 2020 in response to the coronavirus, which significantly curtailed processing of paper documents submitted to the IRS. If such a document had been submitted, it would likely still be in the backlog of paper documents yet to be processed.

<sup>2</sup> The name of the business in IRS records is listed as "Lonestar Tuning." The PPP application and Yates' correspondence list the business name as "Lone Star Tuning." These variations of the name are used interchangeably in this affidavit to refer to the business.

funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule.” Yate also certified, “I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.”

12. On or about May 5, 2020, a Ready Capital representative exchanged a series of emails with Yates to request additional information and supporting documentation regarding Lone Star Tuning’s operations. During this exchange, Yates was asked to provide a copies of the business’s 2019 tax forms and EIN assignment letter to substantiate its existence. Yates responded, in part:

My business was not operable in 2019, and as such was not required to file a Schedule C or any Form 941 documents for the 2019 tax year. The planning for this company began in 2014, and I finally accumulated enough funding to begin operations on 1/1/20. I have attached a copy of my EIN to this email. [...] I have attached a copy of my Assumed Name Certificate, which was filed in 2014 to reserve the business name with my county clerks office.

I searched the online public records portal for the Bowie County, Texas Clerk’s Office and confirmed the submitted Assumed Name Certificate matched the certificate on file with that office.

13. When the Ready Capital representative asked for an explanation of the March 27, 2020 issuance date of the EIN, Yates asserted, in part:

The reason that the date on the EIN letter was for March 27th is due to a rare lapse of thought on my behalf. I forgot to apply for it at the beginning of the year, most likely due to the large amount of other tasks that needed to be completed at that time. I realized that I had not applied for it when it came close to time to prepare my quarterly taxes, and promptly applied for it at that time.

As discussed above, the PPP application for Lone Star Tuning contained a purported Form 941 for Lone Star Tuning for the first quarter of 2020. The submission of a Form 941 would have required an EIN, which Yates claimed not to have for Lone Star Tuning.

14. During his email exchange with Ready Capital, Yates further claimed that:

The company up to this point has not generated even its first dollar of revenue, and it was not expected to until early Q3 of 2020 but this time frame however is not valid now due to COVID-19 complications. As a result, I have been personally financing 100% of the ongoing operations, including the capital that has been required for payroll thus far. Payroll is handled via Direct Deposit and the funds required for payroll are deducted from my payroll account the week preceding the relevant pay date.

15. When asked how the company paid the \$6,538,954 first quarter 2020 payroll claimed on the Form 941 submitted with the loan application despite having no revenue for that quarter, Yates stated, in part:

[T]he capital required for payroll, and any other business expenses for that matter, has thus far been financed 100% personally by me. In addition to my personal holdings, I had access to a considerable amount of capital prior to the COVID-19 outbreak, but sadly this is now gone, and as such, the only way for my business to continue to operate, and subsequently continue to employ my over 400 employees was to apply for this PPP loan.

16. Because Ready Capital was unable to obtain sufficient documentation to substantiate Lone Star Tuning's existence prior to the February 15, 2020 cutoff date for PPP loan eligibility, Ready Capital did not approve the Lone Star Tuning's PPP loan application.

#### ***Further Investigation into Lone Star Tuning***

17. In or around May 2020, I also communicated with law enforcement officers who have investigated Lone Star Tuning on the ground in Maud, Texas. Members of the law enforcement team spoke to a Detective in the Bowie County Sherriff's Office where Maud, Texas is located. The Detective stated that there is no company in the part of the county that Maud occupies which employs 400 people, nor are there structures large enough for such employment.

18. I have searched for websites related to Lone Star Tuning. I have located none.

19. While applying for a PPP loan for Loan Star Tuning, Yates submitted a purported commercial lease to Ready Capital that listed Yate's home address. In this purported lease, a third

party agreed to rent additional industrial premises to Yates located at a separate, second known location.

20. Members of the law enforcement team conducted surveillance at both addresses identified on the lease. The observed activity at the listed addresses did not appear to be commensurate with the size of business claimed by the loan application. For example, the structures present at both locations did not appear to be sufficient to support a business with more than 400 employees.

***Fraudulent PPP Loan Application to Square Capital***

21. On or about May 15, 2020, I learned that Yates, after being turned down for a PPP loan from Ready Capital, had applied for an additional PPP loan through Square Capital, LLC (“Square Capital”), a California-based financial institution participating in the PPP loan program. I further learned that Lone Star Tuning had obtained a PPP loan through Square Capital’s partner, Celtic Bank, a federally insured financial institution. Celtic Bank disbursed approximately \$533,216 to Yates by depositing the funds in a bank account associated with Yates at Red River Employees Federal Credit Union, which is a federally insured credit union headquartered in Texarkana, Texas. Texarkana is located approximately 18 miles from Maud, Texas.

22. On or about May 15, 2020, I subsequently received loan application documents Yates had submitted to Square Capital, including a first quarter 2020 Form 941 for Lone Star Tuning. I compared this Form 941 to the first quarter 2020 Form 941 that Yates submitted with his previous PPP loan application to Ready Capital. Both Form 941 documents list the same Employer Identification Number, the same home address, and business name: Lone Star Tuning.

23. Despite the fact that two versions of the Form 941 supposedly relate to Lone Star Tuning, the two versions vary substantially.

- a. In the Form 941 submitted to Square Capital, Lone Star Tuning claimed only to employ 145 employees and have quarterly payroll of \$2,555,438.
- b. In the previous version of the Form 941 submitted to Ready Capital, Lone Star Tuning claimed 412 employees and quarterly wages of \$6,538,954.

24. I also reviewed a list of purported Lone Star Tuning employees that Yates submitted as part of the Square Capital PPP application. The list includes many of the same random names from the code posted on Github, as described above. Similarly, an internet search for multiple names on the list did not reveal any such persons with those names living in the greater Maud, Texas area. For these reasons, the PPP loan documents submitted to Square Capital appear to be fraudulent.

#### *Consensual Recording and Video Recording of Yates*

25. After receiving the documents, a member of the law enforcement team placed two phone calls to the phone number listed by Yates on the loan applications. On these call, Yates confirmed that he had applied for a second loan via Square Capital after Ready Capital denied his first loan application.

26. According to information provided by Red River Employees Federal Credit Union, on or about May 15, 2020, Yates traveled to multiple Red River Employees Federal Credit Union branch locations and began to withdraw funds from the account that had just received the PPP loan. At one location, Yates withdrew approximately \$5,000 in cash. At another location, Yates withdrew approximately \$3,000 in cash. Red River Employees Federal Credit Union provided a still photograph of surveillance video footage from a drive through teller window where Yates withdrew cash from the account that had just received the PPP funds. I then compared the video footage from the credit union to Yates's Texas driver's license photograph. Due to race, weight,

facial structure and general appearance, the individual pictured in the surveillance footage and the driver's license appear to be the same person.

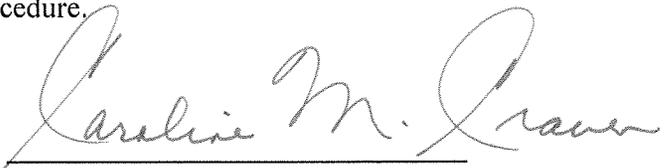
**Conclusion**

27. Based on my training and experience, and the information provided in this affidavit, I respectfully submit that there is probable cause to believe that beginning on a date unknown, but from at least in or around March 2020 to May 2020, within the Eastern District of Texas, Samuel Yates committed violations of 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344(2) (Bank Fraud), 18 U.S.C. § 1014 (False Statements to a Financial Institution), and 15 U.S.C. § 645(a) (False Statements to the Small Business Administration).

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

*Appearing by Phone at 202-308-0518*  
Special Agent Cole Ashcraft  
Treasury Inspector General for Tax  
Administration

Subscribed and sworn to before me on May 18, 2020, by reliable electronic means under Rule 4.1 of the Federal Rules of Criminal Procedure.

  
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The Honorable Caroline Craven  
United States Magistrate Judge