

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION**

UNITED STATES OF AMERICA	)	
	)	
v.	)	4:21-CR-00239-GKF-1
	)	
ALETA NECOLE THOMAS	)	

**MOTION TO STAY SURRENDER DATE AND
MOTION FOR BOND PENDING 28 U.S.C. § 2255 MOTION**

Ms. ALETA NECOLE THOMAS, pursuant to 18 U.S.C. § 3143(a)(1), respectfully moves this Court to stay her surrender date pending the litigation of the simultaneously filed Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255, or, at the very least, to extend the surrender date by 90 days; and, to allow her to remain on release pending the disposition of her 2255 motion.

I. Relevant Procedural History

On June 8, 2022, this Court sentenced Ms. Thomas, *inter alia*, to serve a term of imprisonment of thirty months, and ordered that Ms. Thomas voluntarily surrender to the Federal Bureau of Prisons' designated institution on July 20, 2022, before 2:00 p.m. (J., ECF No. 113, at 2.)

II. Factual Assertions

On July 13, 2022, Ms. Thomas filed a Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255, which she submits is meritorious,

with a likelihood to succeed, and that is unlikely to be adjudicated by this Court prior to her previously scheduled voluntary surrender date.

III. Memorandum of Law

In order to receive bail pending a decision on the merits of a habeas corpus petition, prisoners must be able to show not only a substantial claim of law based on the facts surrounding the petition but also the existence of “some circumstance making [the motion for bail] exceptional and deserving of special treatment in the interests of justice.” *Aronson v. May*, 85 S. Ct. 3, 5 (1964).

Ms. Thomas’ 2255 motion demonstrates two claims of ineffective assistance of counsel:

First, Former counsel who handled Ms. Thomas’ sentencing received approximately 30 to 40 character letters in support of Ms. Thomas’ mitigation at sentencing. However, counsel never submitted the character letters. Thus, counsel's deficiency caused the Court to impose a disfavoring sentence accordingly and deprived Ms. Thomas a fair sentencing, all to Ms. Thomas’ prejudice.

Second, both co-defendants in this case hold the position that Ms. Thomas was not involved in the charged offenses. The attorney of one of the co-defendants informed Ms. Thomas’ former counsel that his client (the co-defendant) advised that Ms. Thomas did not participate in criminal conduct, and the co-defendant was willing to provide information as to Ms. Thomas’

innocence. Upon learning such critical information, any reasonable lawyer would immediately initiate an investigation of the relevant facts to assess and prepare a potential defense, which could be very compelling, and/or, at the very least, a strategy to minimize Ms. Thomas' involvement in the offenses. However, former counsel failed to do his due diligence to pursue these vehicles for Ms. Thomas' exoneration and/or defense. Had counsel done so, the outcome of Ms. Thomas' case could have been different.

If Ms. Thomas' 2255 motion ultimately is successful, it is likely that she will have to serve the thirty-month term of imprisonment resulting from the convictions that she is challenging, if she is not allowed to remain on release pending this Court's resolution of the motion. That circumstance, therefore, causes Ms. Thomas' 2255 motion to be an exceptional one that deserves special treatment in the interests of justice.

This Court, by its allowing Ms. Thomas to remain on release pending the execution of her sentence, necessarily found by clear and convincing evidence that she is not likely to flee or to pose a danger to the community. *See* 18 U.S.C. § 3143(a)(1). Ms. Thomas respectfully submits that she remains in compliance with the conditions of release imposed by this Court, and that she continues to pose no risk of flight or any danger to the community.

IV. Conclusion

Ms. Thomas, based on the foregoing assertions and argument, prays that this Court stay her surrender date pending the litigation of the

simultaneously filed Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255, or, at the very least, to extend by 90 days; and, to allow her to remain on release pending the disposition of her 2255 motion.

Date: July 13, 2022

s/ Matthew Allen Chivari, Esq.

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CERTIFICATE OF SERVICE

I certify that on July 13, 2022, I electronically filed the forgoing
MOTION TO EXTEND SURRENDER DATE AND MOTION FOR BOND
PENDING 28 U.S.C. § 2255 MOTION with the Clerk of the United States
District Court for the Northern District of Oklahoma by way of the CM/ECF
system, which automatically will serve this document on the attorneys of
record for the parties in this case by electronic mail.

Date: July 13, 2022

s/Matthew Allen Chivari, Esq.

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