UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES

V.

GLADYS HARUN

CASE No: 3:23 CR 00003

STATEMENT OF FACTS AND DECLARATION OF GLADYS HARUN IN SUPPORT OF MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE UNDER AUTHORITY 28 USC 2255.

Gladys Harun, petitioner pro se declares and states the following to be true and correct under the penalties of perjury:

1. I am the petitioner inthe above styled and captioned case.

2. I am making this declaration in support of my motion to vacate, set aside or correct sentence under 28 U.S.C. 2255

3. I was the defendant in the collateral criminal case bearing case number 3:23 CR 00003.

4. I am from Byron Georgia where I resided during the events charged in this case.

5. I have been incarcerated since 07/05/2022.

6. The charges were brought when my husband of 15 years made damaging allegations against me to authorities that I was deeply involved in crime and running a ponzi scheme.

9. Prosecution had my name first then searched for crimes.

10. I was charged with various crimes when law enforcement searched through my home internet IPP address, they derived charges out of the internet activity.

11. I was charged with defrauding SBA by obtaining EIDL and PPP loans.

12. I vehemently deny defrauding SBA through disaster loan programs

13. I never took advantage of the EIDL AND PPP LOAN programs

14. I was a bonafide business owner; a franchisee with Jackson Hewitt Tax Service.

15. Before becoming a franchisee I run business under the name Blue sky.

16. I had a non profit called Embrace Africa too.

17. I had 12 Business locations spread in Macon, Dublin and Warner Robins in Middle Georgia.

18. In May of 2022, Brian Jack the investigator in this case called my phone and requested to meet with me

19. He then gave me target letters telling me I was being investigated for various crimes.

20. I hired Jimmy Howell as my attorney in May of 2022

21. I requested Howell to mitigate the situation so I do not get charged.

22. Early in June 2022,I emailed Howell sufficient documents to show that I used EIDL and PPP funds for legitimate uses and that not a single penny was misused.

23. At the end of June 2022, Howell called me and informed me he will accompany me to meet prosecutor Christopher Howard, and investigating agents Brian Jack and Brian Truax in Statesboro Georgia.

24. In the meeting, they informed me that they were charging me with many crimes

25. I begged Howell to dismiss the disaster loan charges as evidence was insufficient to carry a conviction because the charges were based on the loan application and not misuse of funds. He never attempted to mitigate and dismiss these charges.

26. I was arrested and taken to custody on 07/05/22

27. Howell told me to cooperate with the prosecutor.

28. On 09/20/2022, Howell came to visit me and informed me that he was dropping my case but would not refund me the fee.

29. Howell said he was not a criminal lawyer and apologized for taking the case in the first place . He promised to do right by giving me a competent attorney with years of experience and winning.

30. Howell stepped out of the attorney visitation area in the county jail and brought attorney Robert Busbee with him

31. Robert Busbee had a folder containing a contract so I could hire him.

32. Howell persuaded me to hire Busbee with the promise that he will make the charges go away

33. I reluctantly agreed out of desperation because I had 2nd supersiding charges pending.

34. Busbee took the case that day. He then became mean, unhelpful and un- approachable.

35. He demanded that I do not go after Howell not to even ask for a refund of fee as they are family.

36. Busbee refused to investigate the case, refused to dismiss the charges for lack of Men's Rea and fully adopted the prosecution file.

37. Busbee did not discuss any defense strategies with me

38. He insisted that I need to take a plea.

39. I begged him to analyze my payrol documents and mitigate by talking to the prosecutor on my behalf as an employer.

40. I specifically told Busbee I was a seasonal employer doing

business January through April as it involved filing taxes.

41. Busbee went into my bank accounts for 2020 and 2021, pulled payroll data from July to September which showed very little payroll was paid. He then said I never paid any payroll and should plead guilty to all charges of wire Fraud, money laundering and false statements.

42. Busbee had no interest in helping me or resolving the case in my favor.

43. He then came one day excited and informed me that I would be deported to Kenya as my financial crimes called for deportation.

44. He further informed me that ICE immigration law enforcement were reviewing the case and that they will communicate deportation details with me. He informed me to just cooperate and be shipped back in Kenya.

45. I shared with my family that Robert was working against me instead of helping.

46. Fearing my deportation,my family fired him and hired an attorney who could also fight deportation.

47. My family hired Mohammed Luwemba.

48. Luwemba came to visit me in the county jail and informed me that he would be working the case with another attorney Terri Thompson

49. He was paid half of his fee 25,000. He gave my family a later date to pay another 25,000$.

50. Luwemba never clearly disclosed to me his working relationship with Thompson.

51. After some time there was tension and conflict between the two attorneys because of the fee

52. Thompson visited me alone and complained that she had done all

the work so far but had not been paid and that Luwemba cannot practice in the Southern District of Georgia Court by himself.

53. Thompson demanded that I pay her the rest of the money else she would quit working the case.

54. She used the F word B Sh.. all sort of profanities angry that I had not cleared the balance..

55. Luwemba brought me a plea deal in March of 2023

56. He never gave me time to read or think. He said I needed to sign it as he was in ahurry and that his wife was tired waiting in the car as they had drove 3.5 hours from Atlanta to Jefferson county jail..

57. He told me to sign then message him later with any questions and concerns.

58. After I read the plea, I realized the conduct charged was not a crime. I noticed various errors in the plea. The plea did not give a specific restitution amount but said I would be required to pay all money related to my overall criminal conduct.

59.The plea was based on an EIDL application I had submited for a client and a friend of mine Lotsie Gordon. She never received any money as she passed away from cancer.

60. I called SBA cancelled the loan over the phone and had previously emailed them on the same. Because of my call, SBA cancelled her loan application.

61. Prosecution charged me alleging that I attempted to obtain money using her information without authorization.

62. I texted Luwemba informed him that I had applied for a total of 14 loans for this lady twice every year through Jackson Hewitt

63. I never took advantage of her but delivered her tax refund associated loans from various banks promptly. I helped the lady nothing

pay her powerbill with Georgia power.

64. Money gram has records showing that several times I sent her money via walmart to walmart. She picked the money in Eastman walmart location.

65. I bought her a visa card prepaid debit when she was in a rehabilitation center. She called me for help with gas money.

66. I registered the card inmy address with her permission so I could receive the permanent one in my address as she was not home

67. At the time of her death, this debit card still had the money I gave her.

68. Prosecution alleged I was attempting to defraud her and SBA

69. Luwemba refused to clear these misunderstandins and dismiss charges.

70. Luwemba then accompanied me to court to take a plea before the Judge.

71. I was hesitant to take the plea as it was not plausible. The plea was changed to another one involving a client K.W who I helped apply for an EIDL loan.

72. She never received the loan because her credit score could did not qualify as it was below 575.

73. The loan was applied using her tax return for 2019 that showed she had self employment.

74. Prosecution alleged that I falsified informationthat she had an actual business.

75. I requested Mohammed Luwemba to dismiss this charge as well because having "self employment" and having a "business" are two different things accounting and tax wise.

76. disaster loans were plainly applied using data in tax returns

77. I was oppressed and wrongly prosecuted onthis charge nothing

was criminal in this loan application.

78. K.W and her mum provided documentation to Jackson Hewitt showing they had self employment in 2019

79. Luwemba and Thompson failed to raise viable and mitigating defense and failed to conduct any adversarial challenge.

80. I emailed Luwemba all my payroll documents but they both failed to inspect potentially exculpatory evidence.

81. Luwemba and Thompson told me they would adopt the prosecutor's restitution amount they declined to challenege any loss amount

82. I protested their approach and asked them how they could resolve a money case without calculating the money from my business standpoint to ascertain the alleged loss amount.

83. They did not care how many points I would get on the sentencing guideline based on the loss amount.

84. Thompson came to see me in the county jail and said she was not going to do any more work until she was paid in full

85. She said she was not going to challenge anything on the PSI REPORT AND cursed using profanities concerning her money.

86. My family lost confidence in Luwemba and Thompson, they got them out of the case.

87. I applied for a public defender and the court appointed John Vines as my attorney.

88. Vines like the rest of the attorneys adopted the prosecution files.

89. He never mitigated any issues and never investigated the case

90. Vines never called any witnesses

91. I told him there was no loss in my case but he said I misused money from the EIDL/PPPprogram. He said the agents have verified I never used the money properly.

92. Vines never submitted my payroll documents to court even though he had them. He lied to me that he submitted my w2s and all business records for sentencing.

93. During sentencing I realized too late that the court never received those documents.

94. Vines only submitted a summary on how I used the money which the judge rejected and said it was not sufficient to show how the loan proceeds were used.

95. I suffered prosecutorial misconduct in this case.

96. Government deliberately concealed and suppressed evidence favorable to me.

97. Prosecution alleged that I used disaster loans for personal purposes.

98. I vehemently deny using disaster funds for illegitimate purposes.

OVERALL INEFECTIVE ASSISTANCE OF COUNSEL

99. .All the attorneys in this case refused to conduct appropriate investigations both factual and legal.

100. Attorneys advised me to plea bargain to an offense which they had not investigated.

101. None of the attorneys conducted a pre trial investigation of mitigating circumstances, my business, charity work and background

102. I was forthcoming with information but attorneys failed to investigate what I told them.

103. Attorneys failed to track down readily available and likely useful evidence and witnesses that I asked them to obtain.

104. Attorneys failed to impeach perjured government witnesses.

105. Counsel failed to raise any defense

106. Attorneys failed to adequately investigate and to introduce into evidence my business records that demonstrate my factual

and actual innocence.

107. Attorneys failed to dismiss the charges due to insufficiency of evidence as there was no actual or intended loss in the fraud case.

108. Attorneys failed to challenge prosecutorial misconduct

MARITAL ABUSE

109. Petitioner came to America in 2005 and went back to Kenya in 2006 and go married to Harun Mwaura. She then filed a greencard for him and he was able to come to America in 2012.

110. We both have 6 minor children aged 5, 7, 8, 12, 14 and 17. (three boys and three girls).

111. My marriage to Mwaura has been very difficult due to cultural differences.

112. In my culture the wife is submissive to the husband does not control money, answer back, she cannot question or go against her husband's words.

113. Mwaura domineered at home, oppressed me and never listened to my opinion.

114. He became abusive when I refused to be treated like a slave in America.

115. Even when I did not have a business, she never helped financially. He demanded I buy him clothes, shoes, feed him good food but he never gave any money towards the family

116. For 9 years he worked but never bought groceries or paid a single bill in the house.

117He never helped with home chores like cooking or bathing kids

118. He misused his money sending it to various women and supposedly his family in Kenya.

119. When I complained of his behavior, he called family members accusing me of being "stubborn" "Americanized" and "disrepectful"

120. In 2016, he abandoned me with the kids and went lived in Kenya for the whole year.

121. I became a franchisee with Jackson Hewitt this year when Mwaura had gone to Kenya.

122. When he came back, he demanded I turn over the business to him and register it in his name. I told him it was not possible.

123. Ever since then he became more abusive and watched me struggle alone taking care of kids by myself.

124. He moved out in 2021 July and later filled for divorce.

125. He left with my car and as usual continued to live in a motel as I paid car note and insurance for the car. I paid for one year and got tired. He refused to pay the note and insurance for 1 year.

126. I went took my car from the motel parking lot one night

127. He came to my house threatened to remove "horns" from me he complained that I am no longer a submissive good wife and

127. He promised to teach me a lesson. He said he will get me broke and broken

128. I remember him saying in swahili "utalia, nitachukua vitu zako zote" U shall cry, I shall take everything from you.

129. From then, he weaponized the government against me.

130. Mwaura accused me of buying a car and a house in 2021 without his knowledge and consent. I denied it all because there was not such a thing.

131. When I went for proffer, Prosecutor Howard demanded to know where is the house and car I bought in 2021.

132. At that point I realized Mwaura had lied to get me in trouble

purposeful and intentionally.

133. When I got arrested, he called family members in Kenya and told them he has succeeded teaching me a lesson.

FRAUD ALLEGATIONS

134. Overall the government was made aware in the beginning that there was no clear cut fraud here. I did unintentional errors not intending to defraud SBA.

135. I had errors in my w2s and 941 payroll documents because they did not reflect all the wages I paid my employees.

136. There was an under reporting issue where an employer pays more wages but less is reported to IRS. This happened not directly from me but my payroll provider closed for business without reporting all the wages I paid.

137. In the process of curing these deficits because my payroll records reflected different figures from w2, I hired a company to help me ascertain the amount of wages I was missing.

138. I needed to get a ppp loan and money was running out

139. This company projected my wages but altered form 941s in the process of computing pay from paytubs which was more and figuring out the deficits. I have bank statements showing I paid more

140. As an employer, I do not have an indepth knowledge of employer taxes. I Never altered any Forms. I became aware of it late.

141. There was no criminal intent but to help project my wages to help me get a ppp loan

142. I got a PPP LOAN THAT HELPED ME TO STAY open for business

143. I was able to pay workers, buy business supplies, pay rents and royalties and marketing fees.

144. All loans went to business purposes including an EIDL loan I received.

145. My PPP and EIDL loans were used on my franchiseed business. however I matched them to help the community in Middle Georgia

146. I offered tax related free and discounted services that costed me roughly 500,000$

146. Documentation from Jackson Hewitt shows this.

147. Prosecution took a blind eye on my charity work in Georgia never recognized it and insisted that I spent disaster loans on international charity work.

148. Petitioner's disaster loans not only helped her business stay afloat but helped her achieve philanthropic purposes by helping middle Georgia community.

149. I declare the above to be true according to my belief and knowlede