

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION**

GLADYS HARUN

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

CR323-003

GOVERNMENT’S MOTION TO DISMISS HARUN’S
28 U.S.C. § 2255 MOTION

Harun is not entitled to relief on her 28 U.S.C. § 2255 motion because her claims are either waived or unavailing. The Court should dismiss her motion.

Background

A. *Facts.*

Harun was the owner and operator of a tax-preparation business. (Doc. 28 at 6.) She submitted materially false information to the United States Small Business Administration (“SBA”) to obtain relief funding intended to support small businesses struggling with the economic impact of COVID-19. (Doc. 28 at 5-7.)

B. Superseding Indictment and Guilty Plea.

The grand jury returned a seven-count superseding indictment against Harun, charging her in Count One with false declaration, in violation of 18 U.S.C. § 1623; in Counts Two and Seven with wire fraud, in violation of 18 U.S.C. § 1343; and in Counts Three through Six with money laundering transaction, in violation of 18 U.S.C. §

1957.¹ (Doc. 28 at 4.) Trial counsel² negotiated with the Government a plea agreement for Harun, allowing her to plead guilty to a single-count information charging her with false statements, in violation of 18 U.S.C. § 1001(a)(2), in exchange for dismissal of the superseding indictment. (Docs. 1-1 at 4-5; 8 at 9; 47 at 4; 48 at 59.)

1. Plea Agreement.

The plea agreement stated that Harun was waiving her right to be charged by indictment and was pleading guilty by information to one count of false statements. (Doc. 8 at 1.) The agreement set forth the offense's elements and factual basis, which Harun stipulated was "true and accurate in every respect." (Doc. 8 at 1, 11.) According to the factual basis, Harun prepared and submitted, in the Southern District of Georgia, a false application for an Economic Injury Disaster Loan ("EIDL"), using the personal identifying information of K.E.W. (Doc. 8 at 2.) On the application, Harun stated that K.E.W. had a business, but Harun knew that K.E.W. did not actually have a business. (Doc. 8 at 2.) Harun also provided fictitious gross revenues and costs of goods on the application. (Doc. 8 at 2.)

¹ Harun was indicted under case number CR 322-009.

² After the grand jury returned the original indictment, Harun was represented by Jimmy Thomas Howell, Jr. (Doc. 17; CR 322-009, Docs. 1, 38.) After the grand jury returned the superseding indictment, Harun was represented by Dale Robert Busbee. (Doc. 17; CR 322-009, Docs. 60-61, 63.) Harun was represented by Teri L. Thompson and Mohammed S. Luwemba before and during her guilty plea. (Docs. 17; 47 at 3.) She was represented by Johnny E.C. Vines at sentencing. (Docs. 22; 33; 48 at 1.)

The plea agreement stated that Harun would be subject to a maximum prison sentence of five years and “such restitution as may be ordered by the Court.” (Doc. 8 at 2.) The plea agreement explained how the Court would use the guidelines in imposing her sentence and that she was not promised any particular sentence. (Doc. 8 at 3.) The Government promised to recommend a low-end guideline sentence. (Doc. 8 at 4.) The Court was not bound by any sentence recommendation or required to impose a sentence within the guidelines range. (Doc. 8 at 3-4.) The Government agreed to recommend to the United States Probation Office that the amount of loss, for guidelines purposes, was “less than \$550,000.” (Doc. 8 at 4.) The agreement noted that “[t]he amount of restitution ordered by the Court shall include restitution for the full loss caused by Defendant’s conduct. Restitution is not limited to the specific count to which Defendant is pleading guilty.” (Doc. 8 at 5.) Finally, the agreement stated that Harun was waiving all of her jury-trial rights as well as her rights to challenge venue and collaterally attack her conviction and sentence with exception to ineffective-assistance-of-counsel claims. (Doc. 8 at 7.) Harun signed the agreement after careful review with trial counsel whom she believed “ha[d] represented [her] faithfully, skillfully, and diligently” and with whom she was “completely satisfied.” (Doc. 8 at 9, 11.)

2. Rule 11 Hearing.

The Court engaged in a lengthy and detailed colloquy at Harun’s Rule 11 hearing. (Docs. 5 at 1; 47.) First, the Court placed Harun under oath “to make sure that [it was] getting the most reliable information.” (Doc. 47 at 3.) The Court elicited

from Harun her background information. (Doc. 47 at 4.) Harun stated that she had a Ph.D. in education and had received tax training from the Internal Revenue Service (“IRS”). (Doc. 47 at 5.) She had taught special education and prepared taxes. (Doc. 47 at 5, 45.) She had used the money she generated from her tax-preparation business to support underprivileged school children in Kenya. (Doc. 47 at 6.) Trial counsel told the Court that Harun, who had no prior convictions, was the primary caregiver to her six children—ages 15, 13, 10, 7, 5, and 3. (Doc. 47 at 44-45.) Her oldest child was a varsity basketball star in high school. (Doc. 47 at 44.)

The Court ensured that Harun understood that she was pleading guilty to an information filed by the Government, and that she was waiving her right to be charged by the grand jury in an indictment. (Doc. 47 at 4, 8.) Harun told the Court that she understood. (Doc. 47 at 4, 8-10.) The Court asked Harun whether she had had enough time to discuss her case with trial counsel. (Doc. 47 at 8.) Harun answered that she had. (Doc. 47 at 8.) The Court asked whether she was “entirely satisfied” with trial counsel’s preparation and handling of her case.” (Doc. 47 at 8.) Harun answered that she was. (Doc. 47 at 8.)

The Court asked Harun whether she had been in regular contact with trial counsel about the plea negotiations which resulted in the information. (Doc. 47 at 9.) Harun answered that she had. (Doc. 47 at 9.) The Court asked Harun whether she had reviewed the information with trial counsel. (Doc. 47 at 12.) Harun answered that she had reviewed it with trial counsel a month before and had talked about it, again, that morning. (Doc. 47 at 13.) The Court did not want Harun “to have any

question in her mind about what she's agreeing to here." (Doc. 47 at 13.) So, it recessed to allow Harun and trial counsel more time to review the information. (Doc. 47 at 13.) Afterward, Harun told the Court that she had reacquainted herself with the information's allegations. (Doc. 47 at 14.) The prosecutor also summarized the information. (Doc. 47 at 14-18.) Harun told the Court that she understood the information and had no questions "about what the government lawyer would have to prove in order to get [her] a verdict of guilty." (Doc. 47 at 14-19.)

The Court also reviewed with Harun the elements of the false-statements offense as set forth in the plea agreement. (Doc. 47 at 19-20.) Harun told the Court that she understood and that she had no questions. (Doc. 47 at 20.) The Court explained that Harun was waiving her jury-trial rights, including the right to the presumption of innocence, which required the Government to prove her guilty beyond a reasonable doubt. (Doc. 47 at 21-22.) Harun stated that she understood. (Doc. 47 at 21-23.) The Court asked Harun whether she was familiar with the sentencing guidelines. (Doc. 47 at 23.) Harun answered that she was. (Doc. 47 at 23.) The Court told her that it would consider the guidelines as well as her background, history, and other factors outlined in federal statutes to impose her sentence. (Doc. 47 at 23.)

The Court asked Harun whether it was her signature on the plea agreement. (Doc. 47 at 24.) Harun confirmed that it was hers, and she stated that no one had forced, pressured, or threatened her into pleading guilty. (Doc. 47 at 24.) The Court summarized the plea agreement. (Doc. 47 at 26.) The Court explained that although

the agreement stated that the Government would recommend a low-end guideline sentence, “that is not an agreement with respect to the sentence” and that “[n]o promises had been made to you regarding any particular sentence.” (Doc. 47 at 26.) The Court told her that she was subject to a maximum sentence of five years in prison. (Doc. 47 at 26.) Harun answered that she understood. (Doc. 47 at 26.) The Court stated that she was agreeing to pay restitution for the full loss caused by her total criminal conduct which was not limited to the count in the information. (Doc. 47 at 27, 42.) The Court told her that the restitution could be anywhere under \$550,000, the loss amount that the Government was recommending to the Court for guidelines purposes, and that the total restitution amount had not been calculated yet. (Doc. 47 at 27-28, 42.) The Court also stated that it may impose a payment schedule to collect the restitution. (Doc. 47 at 28-29.) Harun responded that she understood. (Doc. 47 at 29, 42-43.)

Next, the Court directly addressed the plea agreement’s collateral-attack waiver, telling Harun, “You’ve also agreed to waive any collateral attack, any habeas corpus or other attack on the fact of conviction or sentence unless you state that you received ineffective assistance of counsel.” (Doc. 47 at 29.) The Court informed her that she “agreed to waive any claim with respect to venue in this case.” (Doc. 47 at 30.) The Court asked Harun whether she understood its summary of the plea agreement and whether it left anything out. (Doc. 47 at 26, 30.) Harun answered that she understood the agreement, and that the Court was “clear” and “covered it all.” (Doc. 47 at 31.) Harun confirmed that no one had given her “any other promise,

any hope of benefit, guarantee or deal” other than what was outlined in the plea agreement. (Doc. 47 at 31.)

Then, the Government presented the factual basis. (Doc. 47 at 32.) One of the case agents testified that Harun had submitted a false EIDL application in the Southern District of Georgia for Katina Wells. (Doc. 47 at 35.) The agent made this determination by interviewing Wells and reviewing emails between Wells and Harun. (Doc. 47 at 35-36.) The application falsely stated that Wells was an independent contractor who opened a business, and it stated fictitious revenue for the fictitious business. (Doc. 47 at 36-37.) Harun said that she did not disagree with these facts, but that she had prepared the EIDL application with data from Wells’s tax return. (Doc. 47 at 38.) The Court wanted to know whether Harun was stating that she had not prepared a false application. (Doc. 47 at 38-40.) Again, the Court gave Harun and trial counsel time to confer. (Doc. 47 at 40.) After the conference, Harun told the Court that she did not disagree with the factual basis. (Doc. 47 at 41-42.) And, the Court told her that when she is sentenced, it would consider her entire conduct involving other false applications, and that she would be facing restitution owed for those too. (Doc. 47 at 42.) Harun said that she understood. (Doc. 47 at 42.) The Court told Harun, “I just don’t want you to come back and say that you misunderstood something along that line.” (Doc. 47 at 42.) Harun answered that she understood. (Doc. 47 at 42-43.)

The Court asked Harun, “Is there anything else you want to tell me or any exculpatory statement you want to make?” (Doc. 47 at 43.) Harun responded, “No,

Your Honor.” (Doc. 47 at 43.) She stated that she wanted to resolve her case by pleading guilty; that her wish to plead guilty was consistent with the terms of her plea agreement; and that she was, in fact, guilty as charged in the information. (Doc. 47 at 43.) Harun signed her guilty plea, and it was filed with, and accepted by, the Court. (Docs. 6 at 1; 47 at 44.).

C. Sentencing.

1. PSR.

The PSR determined that Harun had a base offense level of 6, under U.S.S.G. § 2B1.1(a)(2), for her false-statements offense. (Doc. 28 at 19.) Her base offense level was enhanced by 14 points, under U.S.S.G. § 2B1.1(b)(1)(H), because the total loss and restitution amount owed to the SBA was \$552,679.14. (Doc. 28 at 17, 19.) Harun had fraudulently applied for five Paycheck Protection Program (“PPP”) loans and two EIDL loans. (Doc. 28 at 17.) The first PPP loan was funded for \$46,440.36 plus \$2,301.65 in lender fees paid by the SBA. (Doc. 28 at 17.) The second PPP loan was funded for \$20,787.09 plus \$2,500 in lender fees. (Doc. 28 at 17.) The third PPP loan was funded for \$301,975.42 plus \$14,955.65 in lender fees. (Doc. 28 at 17.) The fourth PPP loan was funded for \$15,625 plus \$2,500 in lender fees. (Doc. 28 at 17.) The fifth PPP loan was funded for \$8,283.26 plus \$2,500 in lender fees. (Doc. 28 at 17.) The first EIDL loan was funded for \$119,810.71. (Doc. 28 at 17.) The second EIDL loan was funded for \$15,000. (Doc. 28 at 17.) The sum of the calculations equaled a total loss of \$552,679.14 to the SBA. (Doc. 28 at 17.)

Harris's offense level was enhanced by two additional points, under U.S.S.G. § 3C1.1, for obstruction of justice because, while she was incarcerated, she contacted her son and asked him to hide any cash in their home. (Doc. 28 at 19.) Because Harun obstructed justice, under Application Note 4 of U.S.S.G. § 3E1.1, she received no reduction for acceptance of responsibility. (Doc. 28 at 19.) Finally, her offense level was reduced by two points, under U.S.S.G. § 4C1.1(a) and (b), as a zero-point offender. (Doc. 28 at 19.) Harun had a total offense level of 20 with a criminal history category of I, and an advisory guideline range of 33 to 41 months' imprisonment. (Doc. 28 at 26.)

The PSR also detailed information about Harun's background. (Doc. 28 at 22.) Harun was born in Kenya, Africa. (Doc. 28 at 22.) Her father ran a school there and she was married there. (Doc. 28 at 22.) Her husband had filed for divorce, and he was staying in their home where he was taking care of their six children. (Doc. 28 at 22.) Harun had a bachelor's degree in education, a Master of Science degree, and a Ph.D. in education. (Doc. 28 at 23-24.) She operated a non-profit organization, Embrace Africa, which supported her father's school in Kenya. (Doc. 28 at 24.) And, she operated a tax-preparation service and had served as a special-education teacher. (Doc. 28 at 24.)

2. PSR Objections.

Harun, through counsel, objected to the PSR. (Doc. 28 at 29-30.) Harun objected that, in light of the plea agreement, that the actual loss amount and restitution owed to the SBA should have been less than \$550,000. (Doc. 28 at 29.)

Harun provided documents to assert that the funding she received was used for business purposes. (Doc. 28 at 29.) The first set of documentation “provide[d] figures and a list of what the funds were reportedly used for without providing receipts or other proof of these expenditures.” (Doc. 28 at 29.) The second set of documentation simply stated that she ran a charity school in Kenya “which sponsor[ed] orphans and children from poor backgrounds to access education.” (Doc. 28 at 32.) And, it stated that she had provided “free or reduced tax filing to seniors, low economic families and individuals struggling to afford normal Tax preparation fees.” (Doc. 28 at 32.) Because Harun maintained that the restitution and actual-loss amount was less than \$550,000, she argued that the base offense level should have been increased by 12 levels, not 14. (Doc. 28 at 30.) She further objected to the total offense level, arguing that she should have received a three-point reduction for acceptance of responsibility. (Doc. 28 at 30.)

3. Sentencing Memorandum.

Before sentencing, trial counsel filed several letters in support of Harun. (Doc. 33.) There was a letter of good character from Harun’s pastor in Kenya who wrote that Harun had regularly attended church, and had volunteered to train teachers as part of his initiative to develop skills for the youth in the community. (Doc. 33-1 at 1.) There was another letter from a clergy group which wrote about Harun’s hard work and her dedication to her family, the church, and the community, including her having organized a medical camp to save lives. (Doc. 33-1 at 2.) The letter also mentioned Harun’s “looming divorce that engineered what she is going through now.”

(Doc. 33-1 at 2.) Next, her best friend wrote about her hard work and good character. (Doc. 33-1 at 3.) Finally, another friend also described her as a hard worker, who was dedicated to her family and the community. (Doc. 33-1 at 4.)

4. Sentencing Hearing.

At sentencing, the Court asked Harun whether she had had the opportunity to read and discuss the PSR with trial counsel. (Doc. 48 at 3.) Harun answered that she had. (Doc. 48 at 3.) The Court asked trial counsel whether there were any objections to the PSR. (Doc. 48 at 3.) Trial counsel stated that the defense objected to the actual-loss amount and restitution owed to the SBA. (Doc. 48 at 3.) Trial counsel argued that Harun had provided documentation to the U.S. Probation Office, which showed that she had used the funding she had received for legitimate business purposes. (Doc. 48 at 4.) The Government presented the testimony of Special Agent Brian Jack of the IRS and Special Agent Justin Lott from the SBA to show actual loss and restitution. (Doc. 48 at 4.)

Jack testified about how the loan applications were fraudulent, and Lott testified about the funding amounts. (Doc. 48 at 6-14.) Jack testified that Harun had applied for three PPP loans for herself for which she had received funding, and she had applied for PPP and EIDL loans for four other individuals who had also received funding. (Doc. 48 at 6-7.) In her PPP loan applications, Harun grossly inflated her payroll “like tenfold.” (Doc. 48 at 10.) Jack told the Court that he and other investigators had talked to all of the four individuals for whom Harun had prepared the loan applications, and “all of them said that they did not have businesses during

the timeframe that SBA required businesses to have actually already been established.” (Doc. 48 at 7.) Lott testified about the loan amounts consistent with the loan amounts listed in the PSR. (Docs. 28 at 17; 48 at 12-13.) However, Lott clarified that the loan for \$119,810.71 had already collected \$6,101.23 in payments, making its balance \$113,913.95. (Doc. 48 at 14.) So, the total actual loss and restitution owed to the SBA was \$547,095.07. (Doc. 48 at 20.) The Court asked Lott if he had “review[ed] the documents that were supplied to the probation office here as an explanation of where all this money went.” (Doc. 48 at 17.) Lott stated that he had, and that his overall conclusion was that there was “an overwhelming lack of support.” (Doc. 48 at 18.)

Harun told the Court that she wanted “to take the stand.” (Doc. 48 at 22.) She told the Court that she had been an employer of a tax-preparation service as a Jackson Hewitt franchisee, and she had operated 12 locations with 55 employees. (Doc. 48 at 23.) She had applied for the PPP loans for the payroll, to pay the rent, and to pay for business supplies. (Doc. 48 at 23.) She explained that she had paid her employees more than what she had reported to the IRS and that she had issues with her payroll provider. (Doc. 48 at 23.) That is why she had qualified for the money she had applied for even though it had appeared as if she did not. (Doc. 48 at 23.) As for the loan applications Harun had submitted on behalf of others, Harun told the Court that they had qualified for the money as independent contractors based on their tax returns for the previous year. (Doc. 48 at 24.) She said she had called the SBA to confirm that they had qualified for the loans. (Doc. 48 at 25-26.) She said

that the SBA had also approved her loans after it had interviewed her. (Doc. 48 at 26.) When the Court asked Harun about how the funding was used, she stated that it was used for payroll, and that the IRS had proof. (Doc. 48 at 30.) She stated that she had copies of this proof, but she did not provide the copies to the Court. (Doc. 48 at 31.) She told the Court that she had complied with all of the loan-application requirements, but that she may have made a mistake. (Doc. 48 at 31.) The Court reminded her that she had pleaded guilty. (Doc. 48 at 32.) She acknowledged that she had pleaded guilty for the application regarding Katina Wells. (Doc. 48 at 32.)

Trial counsel asked for a total offense level of 18 instead of 20 because the total loss amount was more than \$250,000 but less than \$550,000. (Doc. 48 at 34.) Trial counsel argued that the offense level of 18 made Harun's advisory guideline range 33 to 41 months' imprisonment. (Doc. 48 at 34.) Trial counsel also asked for a reduction based on Harun's acceptance of responsibility, recognizing that Harun had "an uphill battle" of proving it. (Doc. 48 at 34-35.) Trial counsel further argued for \$433,181.12 in restitution because payments were already being made on the loan that was funded for \$119,810.71. (Doc. 48 at 35.)

The Court sustained the objection regarding the loss amount. (Doc. 48 at 36.) It found that Harun had a total offense level of 18 with a criminal history category of I, and an advisory guideline range of 27 to 33 months' imprisonment. (Doc. 48 at 37.) The Court calculated the restitution owed as \$547,095.07. (Doc. 48 at 37.) The Court did not reduce Harun's offense level for acceptance of responsibility. (Doc. 48 at 37.) The Government recommended a low-end guideline sentence pursuant to the plea

agreement. (Doc. 48 at 37.) The Court told Harun that it was considering a sentence “anywhere from the low end of the guidelines to the maximum statutory punishment.” (Doc. 48 at 38.) So, it asked Harun whether she wanted to delay sentencing. (Doc. 48 at 38.) After conferring with Harun, trial counsel told the Court that she wanted “to move forward.” (Doc. 48 at 38.)

Trial counsel presented the testimony of Harun’s son, daughter, and cousin in mitigation. (Doc. 48 at 40-43.) They testified that Harun was a supportive mother, hardworking, and dedicated to community service. (Doc. 48 at 40-43.) Harun’s cousin added that Harun had helped “the needy to file their taxes very discounted or for free.” (Doc. 48 at 44.) And, Harun had helped run a school for needy children. (Doc. 48 at 44.) Harun made a personal statement to the Court. (Doc. 48 at 45.) She stated that she grew up in a remote area of Kenya without vehicles where people made only four to eight dollars a day. (Doc. 48 at 45.) She stated that she had helped prepare taxes for seniors at a reduced rate and had helped her father with community-service projects in Kenya. (Doc. 48 at 46.)

Trial counsel asked for a low-end guideline sentence. (Doc. 48 at 40.) Again, he asked for restitution in the amount of \$433,181.12 or less. (Doc. 48 at 49.) The Court varied upward and sentenced Harun to 60 months’ imprisonment, the statutory maximum, in light of the 18 U.S.C. § 3553(a) factors. (Doc. 48 at 54, 56.) The Court ordered Harun to pay \$547,095.07 in restitution to the SBA.³ (Docs. 48 at

³ “[T]he restitution amount read into the record at the conclusion of the sentencing hearing was misstated to be \$552,679.14.” (Doc. 39 at 1.) The Court

58; 38 at 6; 39 at 1.) The Court dismissed the superseding indictment. (Doc. 48 at 59.) Harun did not directly appeal. She is currently at a residential reentry center operated by Dismas Charities in Macon, Georgia with a projected release date of June 10, 2026.⁴

Argument

No Relief for Ineffective-Assistance Claims.

Harun’s motion raises ineffective-assistance claims regarding her counsel’s performance before and after her guilty plea. (Docs. 57 at 6-7, 10, 14, 17-21, 24-25, 28-36, 38-42, 44-51; 58 at 2-3, 6-9, 11-12.) Harun is not entitled to relief for these claims. The standard announced in *Strickland v. Washington*, 466 U.S. 668 (1984) applies. Under *Strickland*,

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

clarified, in a written order, that the correct restitution amount was \$547,095.07. (Doc. 39 at 1.)

⁴ BOP Inmate Locator, *available at* <https://www.bop.gov/inmateloc/> (last visited May 1, 2025). Projected release date indicates release from BOP custody and may not reflect date by which BOP will consider defendant for placement in a halfway house, a residential reentry center or home confinement.

Id. at 687. Failure to establish either prong is fatal and makes it unnecessary to consider the other. *Id.* at 697.

1. No Relief for Pre-Plea Ineffective-Assistance Claims.

Harun’s pre-plea claims allege that trial counsel failed to: (1) challenge venue; (2) adequately investigate and challenge her guilt, including by not hiring an unnamed and unspecified expert; (3) challenge the Government’s investigation; (4) secure a dismissal of all charges, including by not presenting “any evidence of mitigating circumstances to the Court and to the Government;” (5) challenge overreach and misconduct by the prosecution by not arguing that one, the prosecution violated her rights under the Contracts, Takings, and Double-Jeopardy Clauses for bringing charges instead of allowing her to proceed with the terms and conditions of the loans; and two, the prosecution failed to disclose unspecified emails and communications as well as the loan applicants’ tax transcripts; and (6) challenge the plea agreement’s factual basis and the Court’s non-consideration of the sentencing guidelines. (Docs. 57 at 7, 10, 14, 17-18, 21, 25, 28-30, 32-35, 39-42, 44-50, 57; 28 at 2, 3, 6-9.)

Harun waived these claims by pleading guilty. A knowing, voluntary, and unconditional guilty plea waives all non-jurisdictional defects, including ineffective-assistance-of-counsel claims, occurring before the entry of the plea. *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992); *Tiemens v. United States*, 724 F.2d 928, 929 (11th Cir. 1984); *Edwards v. United States*, No. 17-10322-D, 2018 WL 3586866, at *1 (11th Cir. June 4, 2018) (“[I]n accordance with his plea agreement and guilty

plea, Edwards has waived the ineffective assistance claim concerning counsel's alleged failure to investigate the inventory search officers."). For a guilty plea to be knowing and voluntary, the court accepting the plea must "specifically address three 'core principles,' ensuring that a defendant (1) enters [her] guilty plea free from coercion, (2) understands the nature of the charges, and (3) understands the consequences of [her] plea." *United States v. Moriarty*, 429 F.3d 1012, 1019 (11th Cir. 2005). Here, the Rule 11 colloquy ensured that each of these core principles was met.

a. Harun entered her guilty plea free from coercion.

First, the Court confirmed that Harun's plea was free from coercion. Harun told the Court that she had had enough time to discuss her case with trial counsel, and that she had been in regular contact with counsel about the plea negotiations. (Doc. 47 at 8-9.) Harun confirmed her signature on the plea agreement, and stated that no one had forced, pressured, or threatened her into pleading guilty. (Doc. 47 at 24.) No one had given her any promise, hope of benefit, guarantee or deal to plead guilty. (Doc. 47 at 31.) Harun stated that she wanted to resolve her case by pleading guilty, that her wish to plead guilty was consistent with the terms of her plea agreement, and that she was, in fact, guilty. (Doc. 47 at 43.) She signed her guilty plea during the proceedings before it was filed with the Court. (Docs. 6 at 1; 47 at 44.)

b. Harun understood the nature of her false-statements charge.

Second, the Court confirmed that Harun understood the nature of her false-statements charge. Harun told the Court that she understood that she was pleading

guilty to an information filed by the Government, and that she was waiving her right to be charged by the grand jury in an indictment. (Doc. 47 at 4, 8-10.) Harun told the Court that she had reviewed the information with trial counsel, and the Court allowed them additional time for review. (Doc. 47 at 13.) The prosecutor summarized the information, and Harun told the Court she had no questions about it. (Doc. 47 at 14-19.) Harun also told the Court that she understood the elements of the false-statements offense charged in the information, which the Court reviewed with her, and she said that she had no questions. (Doc. 47 at 19-20.) The Court summarized the plea agreement. (Doc. 47 at 26.) Harun stated that the Court's summary was "clear" and "covered it all." (Doc. 47 at 31.) The Government presented the factual basis for the false-statements charge—that she knowingly prepared and submitted an EIDL application in the Southern District of Georgia for Katina Wells, which falsely stated fake revenue for a fake business. (Doc. 47 at 36-37.) When pressed by the Court and after conferring with trial counsel, Harun told the Court that she did not disagree with the factual basis. (Doc. 47 at 41-42.)

c. Harun understood the consequences of her plea.

Third, the Court confirmed that Harun understood the consequences of her guilty plea. Harun stated that she understood that she was waiving her jury-trial rights. (Doc. 47 at 21-23.) She understood that although the Government promised to recommend a low-end guideline sentence, she was subject to a maximum sentence of five years in prison. (Doc. 47 at 26.) *See United States v. Jones*, 143 F.3d 1417, 1420 (11th Cir. 1998) ("We hold that where a signed, written plea agreement

describing a mandatory minimum sentence is specifically referred to during a Rule 11 plea colloquy, the core principle that the defendant be aware of the consequences of his plea has been complied with.”) She understood that the Court would consider the guidelines as well as her background, history, and other factors in imposing her sentence. (Doc. 47 at 23.) She understood that the Court would consider her entire conduct involving other false applications, and that she would be facing restitution owed for those applications too. (Doc. 47 at 42.) She understood that she was agreeing to pay restitution for the full loss caused by her total criminal conduct which was not limited to the false-statements offense in the information. (Doc. 47 at 27, 42.)

Additionally, the above ineffective-assistance claims are without merit because they are belied by the Rule 11 colloquy. When the Court reviewed the elements of the false-statements offense, including it having been committed in the Southern District of Georgia, Harun never contested venue. (Doc. 47 at 20.) The Court asked whether she was “entirely satisfied” with trial counsel’s preparation and handling of her case.” (Doc. 47 at 8.) She never complained about trial counsel’s failure to adequately investigate her guilt, mitigating circumstances, or the Government’s investigation. (Doc. 47 at 8.) She never stated that she wanted trial counsel to hire an expert. (Doc. 47 at 8.) She never stated that she wanted trial counsel to secure a dismissal of all the charges. (Doc. 47 at 21-23.) Notably, trial counsel did secure a dismissal of the superseding indictment through the negotiated plea agreement. (Docs. 8 at 9; 47 at 4; 48 at 59.) The Court asked whether she disagreed with the plea

agreement's factual basis, and she did not. (Doc. 47 at 41-42.) The Court told her that it did not want her to come back and say she misunderstood something about the factual basis. (Doc. 47 at 42.) Still, she never told the Court that she wanted to challenge the factual basis.⁵ (Doc. 47 at 42.) And, contrary to her contention, both the plea agreement and the Court stated that the Court would consider the sentencing guidelines. (Docs. 8 at 3; 47 at 23). The Court asked Harun whether she wanted to make any exculpatory statement. (Doc. 47 at 43.) Harun never complained about the Government's investigation or its failure to disclose information. (Doc. 47 at 43.)

And, any challenge to prosecutorial overreach under the Contracts, Takings, or Double-Jeopardy clauses would have been unsuccessful. The Contracts Clause applies only to the States, not the Federal Government. *See Cox Cable Communications, Inc. v. United States*, 992 F.2d 1178, 1182 (11th Cir. 1993). Harun contends that trial counsel should have argued that the Government's decision to prosecute her impaired her loan contracts to the point of depriving her of her property rights as a Takings-Clause violation. (Doc. 57 at 48.) Putting aside that her fraud impaired her loan contracts and that the Government did not take any property, the Takings Clause does not apply to property taken pursuant to criminal statutes. *See Bennis v. Michigan*, 516 U.S. 442, 452 (1996). Harun also argues that trial counsel

⁵ Harun argues that the factual basis is implausible under Federal Rule of Civil Procedure 12(b)(6). (Doc. 57 at 32-33.) However, the Federal Rules of Civil Procedure apply only to civil cases, not criminal cases. *United States v. Beiter*, No. 22-11334, 2022 WL 14458322, at *1 (11th Cir. Oct. 25, 2022).

should have claimed that the Government violated the Double-Jeopardy Clause because it pursued civil and criminal remedies for her conduct. (Doc. 57 at 45-47.) But, Harun fails to identify what civil remedies the Government pursued. And, the Double-Jeopardy Clause does not preclude the Government from pursuing both criminal and civil penalties for the same offense. *Cole v. United States Dep't of Agric.*, 133 F.3d 803, 805 (11th Cir. 1998).

Harun further alleges that trial counsel failed to challenge the Court's jurisdiction because the information failed to charge a criminal offense. (Doc. 57 at 3, 7, 33.) Even if Harun's guilty plea may not have waived this claim, it is without merit. *United States v. Bonilla*, 579 F.3d 1233, 1240 (11th Cir. 2009) ("A plea of guilty to a charge does not waive a claim that judged on its face the charge is one which the [Government] may not constitutionally prosecute.") (internal quotation marks and citation omitted). The information charged Harun with making false statements under 18 U.S.C. § 1001(a)(2). (Doc. 1-1 at 4-5.) Federal district courts have jurisdiction over "all offenses against the laws of the United States." *See* 18 U.S.C. § 3231.

To the extent that Harun raises stand-alone challenges to her guilt and prosecutorial misconduct, they are also unavailing. (Docs. 57 at 1, 30-31, 39, 40, 42; 58 at 2, 6, 8-9, 11.) They are waived by the guilty plea for the same reasons above. They are also barred by the collateral-attack waiver in the plea agreement, which the Court specifically questioned Harun about during the Rule 11 hearing and the record shows that Harun understood the waiver's full significance. (Doc. 47 at 29.) *United*

States v. Benitez-Zapata, 131 F.3d 1444, 1446 (11th Cir. 1997). The claims are also procedurally defaulted because they were not raised on direct appeal, and Harun fails to show cause and actual prejudice to overcome the default. *Schumaker v. United States*, No. 16-15314-B, 2017 U.S. App. LEXIS 28250, at *6 (11th Cir. Feb. 10, 2017). Moreover, free-standing claims of actual innocence are non-cognizable. *See, e.g., McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *House v. Bell*, 547 U.S. 518, 522 (2006); *Herrera v. Collins*, 506 U.S. 390, 400 (1993); *Brownlee v. Haley*, 306 F.3d 1043, 1065 (11th Cir. 2002).

Consequently, Harun is entitled to no relief with respect to her pre-plea ineffective-assistance claims—either on the merits or because of waiver.

2. No Relief for Post-Plea Ineffective-Assistance Claims.

Nor is Harun entitled to relief for her post-plea ineffective-assistance claims. She claims that, at sentencing, trial counsel failed to: (1) challenge the Government's presentation; (2) make an adequate mitigation presentation; and (3) challenge her sentence and restitution.

a. Failure to Challenge Government's Sentencing Presentation.

Harun alleges that trial counsel failed to challenge the Government's sentencing presentation in two ways. One, she argues that the Government's presentation was speculative because it declared that her loans were improper without specificity. (Doc. 57 at 38.) Two, she argues that IRS Special Agent Jack testified falsely. (Docs. 57 at 40; 58 at 8.) Harun's allegation is without merit for two reasons. First, it is belied by the record. Jack testified that Harun's PPP loan

applications were false because they grossly inflated her payroll. (Doc. 48 at 10.) He further testified that the four people on whose behalf Harun had prepared and submitted EIDL or PPP loan applications had told Jack that they did not own businesses, a necessary condition for the loans. (Doc. 48 at 7.) Second, Harun's claim is vague and unsupported. She fails to show how Jack's testimony was false. She only generally asserts that some unnamed individuals to whom Jack had spoken were confused about his questions. (Doc. 57 at 42.)

b. Failure to Make Adequate Mitigation Presentation.

Next, Harun alleges that trial counsel failed to make an adequate mitigation presentation at sentencing. She argues that trial counsel failed to present evidence regarding her background, "charity work, education, family life and work involvement." (Docs. 57 at 14; 58 at 9, 12.) She further argues that trial counsel failed to tell the Court that her case involved minor infractions, that she acted in good faith and did not misuse the loan proceeds, that the loan applications for the other individuals were based on their tax returns, and that her payroll was not inflated. (Docs. 57 at 10, 17, 19, 21, 30, 34; 58 at 8, 11.) Harun's claim is unavailing because this information was presented to the Court at the Rule 11 hearing; in the PSR and the defense's objections to the PSR; trial counsel's sentencing memorandum; and in the statements made by Harun, her children, and her cousin at sentencing. (Docs. 47 at 4-5, 44-45; 28 at 22-24, 29, 32; 33-1 at 1-4; 48 at 23-26, 30-31, 40-46, 50.) See *Raheem v. GDCP Warden*, 995 F.3d 895, 922, 925 (11th Cir. 2021) (holding that

counsel was not ineffective for failing to uncover evidence that was cumulative to evidence presented at trial).

c. Failure to Challenge Sentence.

Lastly, Harun alleges that trial counsel failed to object to the Court's imposition of sentence and restitution. First, she argues that trial counsel failed to object to her above-guideline sentence as a breach of the plea agreement and as cruel and harsh in violation of the Eighth Amendment. (Doc. 57 at 50-51.) Second, she argues that trial counsel failed to object to the restitution amount of \$547,095.07 as too large. (Doc. 57 at 50.) She also contends that trial counsel should have objected to her payment schedule because it was different than the loans' repayment plans. (Doc. 57 at 48.) Harun's allegation is without merit because trial counsel's objections would not have been sustained. The above-guideline sentence was not a breach of the plea agreement. Although, under the agreement, the Government promised to recommend a low-end guideline sentence, the Court was not bound by this recommendation. (Doc. 8 at 2-4.) At the Rule 11 hearing, Harun told the Court that she understood that the Court was not bound by this recommendation. (Doc. 47 at 26.)

Nor was Harun's prison sentence of 60 months, the maximum for false statements, a violation of the Eighth Amendment because "[i]n general, a sentence within the limits imposed by statute is neither excessive nor cruel and unusual under the Eighth Amendment." *Moriarty*, 429 F.3d at 1024; § 1001(a). Moreover, Harun agreed, pursuant to her plea agreement, that the amount of loss in the case was "less

than \$550,000,” and that “[t]he amount of restitution ordered by the Court shall include restitution for the full loss caused by [her] conduct.” (Doc. 8 at 4.) It was based on the funds received, the lender fees, and interest for each false loan she applied for as testified to by SBA Special Agent Lott. (Doc. 48 at 12-14, 20.) And, trial counsel did object to the total-loss amount in the PSR, and he asked for restitution less than the amount calculated by Lott. (Docs. 28 at 29; 48 at 3, 35.) As for the payment schedule, at the Rule 11 hearing, Harun told the Court that she understood that the Court may impose a payment schedule to collect restitution. (Doc. 47 at 28-29.)

Harun also raises stand-alone challenges regarding her restitution, guidelines calculation, and the reasonableness of her sentence. (Doc. 57 at 17, 24, 43-44, 50-51.) These claims are non-cognizable. *United States v. Addonizio*, 442 U.S. 178, 185 (1973); *Mamone v. United States*, 559 F3d 1209, 1211 (11th Cir. 2009).

Conclusion

For the above reasons, this Court should dismiss Harun’s § 2255 motion.

Respectfully submitted,

TARA M. LYONS
ACTING UNITED STATES ATTORNEY

//s// Channell V. Singh
Channell V. Singh
Assistant United States Attorney
Georgia Bar No. 216540

P.O. Box 8970
Savannah, Georgia 31412
(912) 652-4422

CERTIFICATE OF SERVICE

This is to certify that I have on this day served all the parties in this case in accordance with the notice of electronic filing (“NEF”) that was generated as a result of electronic filing in this Court. In addition, I mailed a paper copy via U.S.

Postal Service to:

Gladys Harun, Reg. No. 09407-510
714 Second Street
Macon, GA 31201

This May 1, 2025.

Respectfully submitted,

TARA M. LYONS
ACTING UNITED STATES ATTORNEY

//s/ Channell V. Singh
Channell V. Singh
Assistant United States Attorney
Georgia Bar No. 216540

P.O. Box 8970
Savannah, Georgia 31412
(912) 652-4422