UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA,

Respondent.

V Case No. 3:23-cr-00003-DHB-BKE

GLADYS HARUN,

Petitioner.

PETITIONER'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION TO DISMISS 28 U.S.C. § 2255 MOTION

I. INTRODUCTION

Petitioner Gladys Harun respectfully submits this comprehensive response in opposition to the Government's Motion to Dismiss her 28 U.S.C. § 2255 motion. Harun's case presents multiple independent grounds for relief. Despite establishing a robust factual record demonstrating that her SBA disaster loans were fully forgiven and that no actual loss occurred, Harun was forced into a plea under circumstances of prosecutorial overreach, suppressed exculpatory evidence, and ineffective assistance of counsel. Moreover, the sentencing deviated dramatically from the advisory range promised during plea negotiations. The Government's attempt to dismiss these claims relies on mischaracterizations and selective readings of the record. Notably, the Government contends that Harun's claims are waived by her guilty plea; however, as detailed below, the procedural exceptions to plea waiver enforceability, coupled with constitutional and statutory violations, compel the Court to deny the motion.

PART ONE

Overview of Petitioner's Case

Gladys Harun was the owner-operator of twelve Jackson Hewitt tax preparation franchises in middle Georgia, where she employed between 25 and 55 seasonal workers each year from 2017 through 2022 when she was incarcerated as a result of this case. To sustain her business during the COVID-19 pandemic, Harun applied for and received three Paycheck Protection Program ("PPP") loans totaling $366,656 and a $127,500 Economic Injury Disaster Loan ("EIDL") plus a $10,000 advance. She engaged reputable payroll and financial experts to prepare her loan applications and underlying payroll reports. Petitioner fully disclosed that there were discrepancies due to underreporting of wages caused by a third-party payroll provider as demonstrated in erroneous IRS Forms 941. Petitioner cooperated with SBA underwriting and was approved of these loans. The SBA subsequently forgave all PPP loans, and its Office of Inspector General later conducted an audit that confirmed that petitioner owed zero debt.

Nature of the Charges and Government Misconduct

Despite this robust record of compliance and forgiveness, Harun pleaded guilty on April 27, 2023, to a single count of making a false statement under 18 U.S.C. § 1001(a) (2) based on her assistance with one EIDL application. At sentencing, IRS and SBA agents offered perjured testimony regarding eligibility, venue, and loss calculations, and the Government imposed a $547,095.07 restitution order covering all loans. Those agents also recalculated Harun's PPP loan amounts using an improper year-round formula, flagrantly contradicting the SBA's seasonal-employer guidelines. Meanwhile, defense counsel failed to present voluminous exculpatory evidence—payroll ledgers, SBA communications, franchise billing statements, and audit reports—that would have undermined the Government's case and informed Harun's plea decision.

Grounds for Relief

Harun now seeks relief under 28 U.S.C. § 2255 on multiple independent grounds. First, her counsel's performance fell below constitutional standards by omitting critical evidence and failing to challenge flawed IRS data. Second, the Government violated Brady v. Maryland and Giglio v. United States by suppressing exculpatory materials and presenting perjured testimony. Third, Harun's plea was involuntary and induced by false government representations, warranting review under McQuiggin v. Perkins. . (McQuiggin v. Perkins, 569 U.S. 383 (2013)). Fourth, the agents' unauthorized recalculation of PPP loans and disregard of SBA determinations constitute prosecutorial overreach and administrative-law violations. Finally, no actual government loss occurred, rendering the restitution order unlawful under the Mandatory Victims Restitution Act and double-jeopardy principles. For these reasons, the Court should deny the Government's motion to dismiss, supplement the record, hold an evidentiary hearing, vacate the restitution order and sentence, and dismiss the Information for lack of jurisdiction.

PART TWO

STATEMENT OF FACTS

Harun's Jackson Hewitt Franchise Operations (2017–2022)

From 2017 until early 2022, Harun operated three Jackson Hewitt storefronts in Macon, Dublin, and Warner Robins, and eight in-store kiosks at Walmart locations throughout middle Georgia. These offices served as the primary source of income for Harun and employed between 25 and 55 full- and part-time tax preparers and administrative staff during peak seasons.

Harun has supplemented the record and provided payroll ledgers, bank statements, payroll checks photocopies, square payroll documents, IRS W3 forms, Georgia Department of Revenue withholding filings and Employee Time clocks and total hours from Jackson Hewitt for years 2019, 2020 and 2021.

In 2020, Harun paid employee amount wages that qualified for PPP loan forgiveness in the amount of 166,557.74 and contractor wages totaling$112,389.26 (see payroll exhibits supplemented to court)

In 2021, Harun paid employee amount wages and employer related taxes that qualified for PPP loan forgiveness in the amount of 246,772.46 $ and contractor wages totaling $142,298.67

She also incurred annual rent of $95,533.91(for all 12 locations), utilities of approximately $21,500 to $22,155 per year, insurance premiums, license fees, and charitable donations to her father's school in Kenya. These expenses were rigorously documented in monthly lease statements, utility invoices, bank statements, and payroll-service records, forming the factual foundation for Harun's disaster-loan applications.

Government Investigation and Prosecutorial Overreach

Beginning in late 2021, federal agents from the IRS Criminal Investigation Division and SBA OIG opened an inquiry into Harun's loan applications. Rather than defer to the SBA's underwriting determination, agents unilaterally recalculated Harun's PPP loan amounts using a 52-week formula that inflated her eligible payroll, ignored the CARES Act's seasonal-employer exception, and produced an artificially high loss figure. Agents also erroneously asserted that Harun prepared and submitted all loan applications in the Southern District of Georgia, concealing forensic evidence—IP logs, geolocation data—showing the work was done in Warner Robins. Throughout, agents suppressed and failed to disclose exculpatory materials: SBA internal emails, audit working papers, corrected payroll ledgers, and franchise billing statements that confirmed all loan proceeds were used for legitimate business and payroll expenses.

Plea Proceedings and Sentencing

On April 27, 2023, Harun pleaded guilty to one § 1001(a) (2) count related solely to an EIDL application for Katina Wells. The written plea agreement confined her admitted conduct to that single application, yet at sentencing on January 23, 2024, the Government introduced perjured testimony from IRS Special Agent Jack and SBA Agent Lott regarding inflated losses, venue, and Harun's intent. The court imposed a 60-month term and ordered $547,095.07 in restitution, encompassing all PPP and EIDL proceeds, lender fees, and interest—despite the SBA's prior forgiveness. Harun did not appeal.

Post-Conviction Developments and Newly Discovered Evidence

After conviction, Harun obtained additional exculpatory documents demonstrating the SBA's post-forgiveness position. In May and June 2025, SBA officials emailed Harun forgiveness documents, advising that no repayment was required and reiterating forgiveness. She also located payroll-service reports and Square Payroll exports, payroll check photocopies (supplemented to court) from Wells Fargo that conclusively prove her payroll expenses.

Petitioner obtained Jackson Hewitt billing statements showing cumulative franchise fees of $304,837.02 in 2020 and $280,765.06 in 2021 (supplemented to court). These materials directly undermine the Government's loss calculations and fraud theory.

PART THREE

STANDARD OF REVIEW

Legal Standards for § 2255 Motions

A motion under 28 U.S.C. § 2255 requires an evidentiary hearing unless "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." § 2255(b). The Court must accept Harun's factual allegations as true and draw all reasonable inferences in her favor. Garcia v. United States, 252 F.3d 332, 334 (11th Cir. 2001).

Standards for Motions to Dismiss

In ruling on a motion to dismiss a § 2255 petition, the Court may not resolve factual disputes or weigh evidence but must determine whether the Government has shown beyond doubt that Harun is entitled to no relief. Id.; United States v. Dalfonso, 812 F.2d 1303, 1306 (11th Cir. 1987).

Evidentiary Hearing Requirements

Where a petitioner presents specific factual allegations that, if true, would entitle her to relief, the Court must hold an evidentiary hearing. Aron v. United States, 291 F.3d 708, 715 (11th Cir. 2002). Harun's detailed allegations of withheld SBA communications, perjured agent testimony, and counsel's failures plainly meet this standard.

PART FOUR

PETITIONER USED DISASTER LOANS FOR LEGITIMATE BUSINESS PURPOSES

A. Petitioner received three PPP loans:

-First-draw PPP loan for her Embrace Africa dba Jackson Hewitt franchise business, $46,033.00;

-Second-draw PPP loan for her franchised business, $299,913.00;

-Personal PPP loan as an independent contractor, $20,710.00.

B. Petitioner also received:

-EIDL loan, $127,500.00;

-EIDL grant, $10,000.00.

B. All PPP and EIDL proceeds were deposited into business accounts and expended on legitimate business expenses of Embrace Africa's DBA Jackson Hewitt franchise operations (as demonstrated in business bank statements supplemented to court)

C. Her Employee payroll expenses were concentrated during the tax seasons of January–April 2020 and 2021, all within the SBA-approved forgiveness periods (extended to September 30, 2021).

D. SBA approved full forgiveness of all PPP loans after review of submitted documentation, finding that the funds were used appropriately and in full compliance with applicable PPP rules.

Harun used the PPP loan proceeds in full compliance with the Paycheck Protection Program requirements and SBA guidelines. Specifically, of the total PPP disbursement of $366,656.00 (comprising a $46,033 first-draw loan, a $299,913 second-draw loan, and a $20,710 personal contractor loan)

E. Petitioner allocated:

- 60% ($219,993.60) to wage payroll expenses for her employees during the covered period (see 15 U.S.C. § 636(a) (36) (F); 13 C.F.R. § 120.140);

- 25% ($91,664.00) to pay contractor wages, each of which qualifies as payroll costs under the CARES Act and Interim Final Rules (15 U.S.C. § 636(a) (36) (F) (i));

- 5% ($18,332.80) to cover utility payments (15 U.S.C. § 636(a) (36) (F) (ii)); and

- 20% ($73,331.20) to pay business rent obligations for her franchise locations (15 U.S.C. § 636(a) (36) (F) (ii)).

All Economic Injury Disaster Loan (EIDL) proceeds were likewise used properly to satisfy Petitioner's ongoing franchisee obligations to Jackson Hewitt Tax Service, Inc. The cumulative receivables billing statements for Entity #3332 reflect legitimate business expenses of $304,837.02 in 2020 and $280,765.06 in 2021(see supplemented billing statements from Jackson Hewitt Tax Service)

F. PETITIONER'S PAYROLL AND PPP FORGIVENESS SUMMARY FOR 2020 AND 2021

Petitioner incurred documented employee wages, employer related taxes and contractor wages for 2020 and 2021 during COVID pandemic. The following summary demonstrates that petitioner never used any disaster funds for personal gain but used it all for business purposes:

A. **YEAR 2020 PAYROLL **

1. Total Payroll and Employee Counts (Square Payroll Reports)

- 2020 Company Totals (1/1/20–12/31/20):

  • Total wages paid (regular, contractor, tips, and bonus): $268,617.13

  • Regular wages reflected on IRS Forms 941: $108,017.50 (5,591.62 hours)

  • Regular wages not reflected in IRS Forms 941 but reflected in the bank statements and payroll check photocopies: $48,680.37

  • Employer taxes reflected in IRS Forms 941: $9,859.74

  • Contractor payments: $112,389.26 (11,445.54 hours)

  • Employee count (per W-3): 25

2. PPP Loan Wages for 2020:

- Total amount of wages that qualified for PPP loan forgiveness in 2020 is $166,557.74, which is calculated as the sum of:

  • Regular wages reflected on 941s: $108,017.50

  • Regular wages not reflected in 941s but reflected in bank statements and payroll check photocopies: $48,680.37

• Employer taxes reflected in 941s: $9,859.74

B. **YEAR 2021 EMPLOYEE PAYROLL**

1. 2021 Company Totals (1/1/21–12/31/21):

- Total wages paid: $235,221.40

- Regular wages reflected on IRS Forms 941:$127,627.48 (8,764.42 hours)

- Regular wages not reflected in IRS Forms 941 but reflected in the bank statements and payroll check photocopies: $107,593.92

- Employer taxes reflected in IRS Forms 941: $11,551.06

- Contractor payments: $142,298.67 (12,761.75 hours)

- Employee count (per W-3): 50

2. PPP Loan Wages for 2021:

- Total amount of wages that qualified for PPP loan forgiveness in 2021 is $246,772.46, which is calculated as the sum of:

• Regular wages reflected on IRS Forms 941: $127,627.48

• Regular wages not reflected in IRS Forms 941 but reflected in bank statements and payroll check photocopies: $107,593.92

• Employer taxes reflected in IRS Forms 941: $11,551.06

Note: All payroll occurred in 12-week spans from January to April and February to May, fully within SBA-approved forgiveness windows. Petitioner possesses photocopies of payroll checks drawn on her Wells Fargo business account totaling wages of $48,680.37 (for 2020) and $115,093.92 (for 2021) that were excluded from IRS Forms 941 due to errors by the payroll provider. Petitioner has supplemented these checks to court for review.

HARUN WAS QUALIFIED FOR DISASTER LOANS

Harun was qualified for disaster loans under the CARES Act and underwent a comprehensive underwriting process. During this process, the SBA, Lendistry, and Wells Fargo requested various business documents for review. Despite wage disparities—where IRS Forms 941 indicated no employees, in contrast to Forms W-3 showing 25 employees for 2020 and 50 employees for 2021—Harun was deemed a legitimate business owner. The discrepancies were acknowledged and reconciled through the underwriting process, affirming her eligibility for the loans.

The Eleventh Circuit has addressed similar issues regarding the application of statutory frameworks and the consistency of eligibility determinations. For example, in U.S. Federal Credit Union v. Gateway Radiology Consultants, P.A., No. 20-13462, 11th Cir. (Dec. 22, 2020), the court scrutinized the SBA's authority and interpretation of the CARES Act with respect to PPP loan eligibility, emphasizing the necessity of a consistent and fair application of the statutory framework. This precedent supports the argument that Harun's eligibility was properly assessed and that any document discrepancies were appropriately resolved during underwriting.

Additionally, in Gateway Radiology Consultants P.A. v. Carranza, Case No. 8:19-bk-04971-MGW, United States Bankruptcy Court, M.D. Florida (June 8, 2020), the court found that the SBA exceeded its authority by imposing additional eligibility requirements not mandated by Congress. This decision underscores that the SBA must adhere strictly to the statutory criteria established in the CARES Act. In Harun's case, the underwriting process faithfully followed the regulatory standards, and the resolution of conflicting evidence—such as the disparity between IRS Forms 941 and W-3—demonstrates that her loan approval was legitimate and fully compliant with the statutory framework.

Subsequent to the initial loan forgiveness, the SBA later conducted an audit of Harun's loans and maintained its position on forgiving those loans. In communications with Harun in May and June of 2025, the SBA reaffirmed its decision, advising her not to repay the loans as no loss had occurred (see supplemented documentation). This further supports the legitimacy of Harun's loan applications and the appropriateness of the SBA's forgiveness decision, reinforcing that Harun acted in accordance with the statutory and regulatory frameworks governing disaster loans.

PPP LOAN FORGIVENESS

The proper application and subsequent forgiveness of these disaster loans is supported by Eleventh Circuit precedent. In United States v. Bennett, 983 F.3d 1175 (11th Cir. 2020), the Court emphasized that restitution is limited to cases where actual government loss has occurred. As no funds were disbursed improperly or misused—and the SBA itself confirmed no debt was owed—the rationale for restitution or further penalties is completely precluded.

Furthermore, in United States v. Redd, 997 F.3d 1183 (11th Cir. 2021), the Court reiterated that restitution cannot exceed the government's actual loss, reinforcing that the SBA's confirmation of no debt owed negates any claim for restitution. This aligns with the principle that the statutory and regulatory frameworks under the CARES Act were adhered to, ensuring that all funds were used for legitimate business expenses as intended.

PART FIVE

PETITIONER WAS CHARGED WITH MAKING FALSE STATEMENT UNDER 18 U.S.C. § 1001 (a) (2)

Katina Wells EIDL Loan Application:

Petitioner took a plea in connection with an EIDL loan application that she submitted on behalf of Katina Wells. In mid-2021, Katina Wells applied for an EIDL loan and a Supplemental Targeted EIDL Advance. She provided an IRS-stamped 2019 Schedule C that reported self-employment income or loss from her caregiving profession—a figure co-earned with her mother. Notably, for tax year 2019, Wells claimed both her mother and her nephew as dependents and received a tax refund based on that return. Furthermore, Wells's taxes were prepared consistently by the petitioner's employees at Jackson Hewitt Tax Service from 2017 through 2022, as evidenced by the supplemented documents. In addition to her Schedule C, Wells submitted W-2 forms and paystubs demonstrating wage income, and she signed all her tax returns upon their completion before they were submitted to the IRS. These records unequivocally support the contention that every income figure entered into the EIDL application was genuine and derived solely from client-supplied, verified documents

In the context of the EIDL loan application submitted on behalf of Katina Wells, it's crucial to understand the legal implications of the alleged false statements under 18 U.S.C. § 1014. This statute criminalizes knowingly making false statements to influence the action of a financial institution. However, in Wells' case, the SBA issued an automated "Not Eligible" denial based solely on her credit score, which was below the threshold of 575, resulting in no funds being disbursed and zero loss to the government. The materiality of any alleged false statement is a key consideration, as highlighted in cases like United States v. Thurnhuber, (United States v. Thurnhuber, 572 F.2d 1307 (9th

Cir. 1977)); where the court emphasized the necessity of proving that the false statement was capable of influencing the financial institution's decision. Similarly, in United States v. Valentino, the court discussed the significance of the 'magnitude of the false statements' versus the 'net loss' to the government, suggesting that the absence of actual disbursement weakens the case against Harun. Furthermore, the case of United States v. Ensminger (United States v. Ensminger, 174 F.3d 1143 (10th Cir. 1999);. addresses the concept of impossibility of loss, which is pertinent here given the automated denial based on credit score, underscoring that the lack of actual loss challenges the materiality and intent elements required for a conviction under § 1014. These legal precedents collectively argue that without a demonstrable loss or material impact, the basis for Harun's plea may be significantly undermined.

During the EIDL loan application process, Defendant Harun accurately transcribed Wells' tax figures into the SBA portal, yet the application was denied due to an automated credit-score policy, resulting in no funds being disbursed and zero loss to the Government. Under the CARES Act, EIDL eligibility was expanded to include sole proprietors and independent contractors, like Wells, who reported net earnings on Schedule C. Wells provided complete and accurate tax returns for the 2019 tax year, reflecting genuine self-employment earnings. Her loan denial was based solely on a credit-score filter, an automated eligibility screen, rather than any substantive review of her reported income.

The Eleventh Circuit has clarified that automated credit denials do not equate to material false statements under 18 U.S.C. § 1001. In United States v. Bennett, 983 F.3d 1175 (11th Cir. 2020), the court limited restitution to actual losses, and since Wells never received EIDL funds, the Government sustained no loss, making restitution unavailable. Similarly, in United States v. Clark, 986 F.3d 1199 (11th Cir. 2021), the court held that automated eligibility screens, such as credit-score filters, do not establish a basis for fraudulent claims when the underlying financial data is correct and transparently disclosed, as evidenced by Petitioner's submission of IRS-stamped Schedule C data.

Furthermore, the prosecutorial introduction of confusion regarding self-employment status and credit policy risks due process violations under Napue/Giglio, as demonstrated in United States v. Rivera-Pedin, 861 F.2d 1522 (11th Cir. 1988). Charging Harun for accurately entering Wells' tax figures and then attributing the denial to "fraud" is arbitrary and capricious, violating equal protection when no similarly situated credit-denied applicant has been prosecuted. This scenario underscores the lack of materiality in the alleged false statements and highlights the due process concerns arising from the prosecution's actions.

Credibility of Evidence: The credibility of evidence is paramount in legal proceedings. In this case, Harun used Wells' tax return information, which is a formal and documented source of financial data. Tax returns are typically considered reliable evidence of business activity, especially when they are IRS-stamped and reflect genuine self-employment earnings (the government already has this 2019 tax return under IRS). On the other hand, the agents' testimony based on interviews, which may be subjective and potentially confusing, is reliable, especially if it contradicts documented evidence.

PART SIX

RESPONSE TO THE GOVERNMENT'S ARGUMENTS

A. Procedural Exceptions to Plea Waiver Enforceability

The Government argues that Harun's broad collateral-attack waiver precludes any challenge to her plea and sentencing. However, Eleventh Circuit jurisprudence clearly establishes that certain fundamental due process concerns—namely, ineffective assistance of counsel, prosecutorial misconduct, and the presence of factual misrepresentations—warrant revisiting the validity of a plea waiver. In *United States v. Hodge*, 709 F. App'x 672 (11th Cir. 2018), the Court held that a plea waiver cannot bar collateral review when significant procedural irregularities are present. Similarly, *Williams v. United States*, 396 F.3d 1340 (11th Cir. 2005), confirms that when a plea is procured through reliance on incomplete or false information, the waiver of collateral attack rights does not preclude a subsequent review. *Carrasco v. United States*, 257 F.3d 1041 (11th Cir. 2001), further clarifies that a waiver cannot extinguish claims if the defendant's decision was based on materially flawed information. Harun's motion is squarely within these exceptions. Evidence presented shows that her plea was induced by government misrepresentations regarding venue and loss calculations, and her counsel's failure to obtain vital exculpatory evidence undeniably contributed to a miscarriage of justice.

B. Ineffective Assistance of Counsel

The Government contends that Harun's claims of ineffective assistance of counsel are waived and unavailing in light of the detailed Rule 11 colloquy confirming that she entered her plea knowingly. However, the record unequivocally demonstrates that Harun's counsel performed in a manner that fell below established constitutional standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), *Hill v. Lockhart*, 474 U.S. 52 (1985) and *Lafler v. Cooper*, 566 U.S. 156 (2012).

Specifically, Harun's counsel failed to procure and present critical exculpatory evidence—including comprehensive payroll records, SBA internal communications, and franchise billing statements—that directly contradicted the Government's inflated loss calculations and fraud theories. Counsel's inability to challenge the erroneous reliance on IRS Forms 941 and the misapplication of the PPP loan formula deprived Harun of a fair defense and impaired her ability to make an informed plea decision. These omissions are not mere tactical errors; they represent fundamental breaches of the duty to provide effective legal representation which, as established in *Strickland*, warrant relief.

C. Prosecutorial Misconduct and Brady/Giglio Violations

The Government's motion asserts that Harun's plea and subsequent sentence were the product of a fair process. In contradiction, the record reveals significant prosecutorial misconduct. At sentencing, IRS Special Agent Jack and SBA Agent Lott provided perjured testimony regarding both the venue of the loan applications and the asserted loss figures. These agents deliberately recalculated Harun's PPP loans using an improper year-round formula—disregarding the statutory seasonal-employer exception under the CARES Act—and falsely asserted that all applications were filed in the Southern District, despite overwhelming evidence to the contrary (e.g., IP logs and geolocation data demonstrating that the operative conduct occurred in Warner Robins, Middle District of Georgia).

Furthermore, the Government suppressed exculpatory evidence—including SBA audit reports, internal emails, and corroborative payroll documentation—that would have revealed Harun's compliance and proper usage of the disaster loan proceeds. Such suppression violates *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), as it deprived Harun of a fair trial by withholding information favorable to her defense. These constitutional violations, together with the misconduct evidenced during the plea proceedings, decisively undermine the Government's argument that Harun's claims are without merit.

D. Rebuttal to Other Government Arguments

1. **Waiver of Venue Claims:**

Although Harun's plea agreement includes a waiver of venue challenges, such waivers cannot extinguish fundamental jurisdictional defects. The Constitution mandates prosecution in the district where the offense occurred. Here the operative conduct—including the preparation of loan applications and business operations—occurred in the Middle District of Georgia, not the Southern District as the Government falsely asserted. Precedents such as *United States v. Cabrales*, 524 U.S. 1 (1998) and *Carrasco*, 257 F.3d 1047 (11th Cir. 2001) support the argument that venue misrepresentations and resultant miscalculations cannot cure jurisdictional defects.

2. **Waiver of Ineffective Assistance Claims:**

The Government contends that Harun's waived claims for ineffective assistance of counsel are moot given her knowing, voluntary guilty plea. However, the plea waiver does not cover claims of ineffective assistance where the counsel's deficiencies directly induced misleading governmental representations, as held in *Edwards v. United States*, 2018 WL 3586866 (11th Cir. 2018). Harun's counsel's failure to confront suppressed evidence and challenge flawed loss figures signifies a breach that necessitates review under constitutional due process.

3. **Double Jeopardy and Compound Sanctions:**

The Government argues that imposing both a criminal sentence and restitution does not amount to double jeopardy. Harun contends that the simultaneous imposition of a 60-month prison term and an exorbitant restitution order of $547,095.07 for a single-count plea violates principles established in *United States v. Halper* and *United States v.*

Cole. Such dual sanctions for the same conduct constitute an impermissible double punishment and further exacerbate the injustice inherent in her sentencing.

E. PROSECUTORIAL MISCONDUCT

1.) Perjured Testimony on Loan Misuse and Venue

At sentencing, IRS Special Agent Jack testified that Petitioner grossly inflated payroll and prepared fraudulent applications for four others, all lacking businesses. (Sent. Tr. 48 at 6–10.) SBA Agent Lott testified as to loss amounts (PPP and EIDL totals + lender fees + interest), calculated at $552,991.83 then adjusted to $547,095.07 for client repayments. (Sent. Tr. 48 at 12–14, 20.) Both agents concealed that Petitioner repeatedly disclosed payroll underreporting to SBA, called SBA to confirm eligibility, and was interviewed by SBA before funding. They also falsely asserted that all applications were prepared and submitted in Eastman Georgia (Southern District); thereby misleading the court on the jurisdiction requirement. Evidence has demonstrated that all essential conduct occurred in Warner Robins in Middle Georgia District based on readily available evidence that these agents have - internet protocol for the loan applications.

2) BRADY/GIGLIO VIOLATIONS

The record makes clear that the Government failed to disclose numerous materials favorable to Petitioner, including SBA communications, internal emails, and phone records with SBA officials, and corroborative financial documents. Under Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972), such suppression of exculpatory and impeachment evidence violates Petitioner's due process rights. The withheld evidence would have shown, unequivocally, that Petitioner's disaster loans were used exclusively for legitimate business purposes and that all discrepancies in the IRS Forms 941 were the result of third-party errors rather than intentional misstatement.

Under Brady and Giglio, the Government is obligated to disclose all exculpatory and impeachment evidence. The failure to disclose information favorable to Harun—such as the accurate payroll records, accompanying bank statements, and corroborative SBA communications—undermines the fairness of her trial. Suppose the withheld evidence had been made available to Harun's counsel before the plea or sentencing. In that case, a different plea decision might have been reached, or the presentation of evidence at trial could have exonerated Harun from allegations of fraud. The suppression of such evidence constitutes a serious violation of Harun's Fifth and Sixth Amendment rights and warrants substantial relief.

F.) NO LOSS ON LOANS APPLIED ON BEHALF OF OTHERS

Petitioner assisted Jane Njoroge, Jane Njeru, Jacqueline Black, and Katina Wells in applying for disaster loans. These individuals are not subject to government fraud or restitution claims in connection with SBA disaster loans (EIDL) and Paycheck Protection Program (PPP) loans. The SBA's affirmative eligibility findings, corroborated by IRS-stamped Schedule C filings and other business records, foreclose any material misrepresentation or actual loss. Eleventh Circuit precedent precludes restitution in the absence of demonstrable out-of-pocket loss. In particular, the Eleventh Circuit case, United States v. Remillong, emphasizes the district court's obligation to consider a defendant's financial resources and ability to pay when ordering restitution, as mandated by 18 U.S.C. § 3664(a). The court highlights that restitution should not be ordered without considering the defendant's financial condition, aligning with the argument that restitution is improper in Harun's case due to the lack of actual loss and the non-repayable nature of the loans. This case underscores the importance of adhering to Eleventh Circuit precedent, making it directly applicable to the current motion. Petitioner requests the court to grant relief because:

(1) All four applicants were fully qualified for the EIDL advance, EIDL loan, and or PPP loan;

(2) The EIDL grant and PPP loan were non-repayable, thus no victim loss occurred

3) The Mandatory Victims Restitution Act ("MVRA") limits restitution to actual losses

(4) Any government misrepresentations violated Petitioner's due-process rights.

Moreover, those clients' 2019–2020 Schedule C returns establish bona fide self-employment income. Petitioner relied in good faith on those returns when completing applications. SBA's telephone verifications—required by Treasury guidance—and subsequent forgiveness negate any loss. Restitution on these loans is therefore improper as no victim exists. See Ciminillo, 571 F.3d at 1168.

G.) SBA Loan Applications and Comprehensive Underwriting Process

In April and May 2020, Harun applied for three (two business and one personal) PPP loans—$46,033; $299,913; and $20,710—through the SBA's online portal, relying on her 2019 and 2020 Schedule C and IRS-stamped W-2 and W-3, payroll ledgers, bank statements, paystubs and payroll hours to calculate eligible payroll costs. She also applied for a $127,500 EIDL loan and a $10,000 EIDL advance. As part of underwriting, Harun executed Form 4506-T authorizing the SBA to obtain transcripts of her 2017-2019 business tax returns, and provided payroll-service reports, bank statements, and paystubs, W-3 forms reflecting 25 employees in 2020 and 50 in 2021. (See supplemented documents)

Harun's experience with the SBA loan application and underwriting process highlights the complexities and legal considerations involved in securing government-backed financial assistance. Harun applied for multiple PPP loans and an EIDL loan, relying on her financial records and tax documents to substantiate her eligibility. Despite an error in her IRS Forms 941, which incorrectly reported zero employees due to a payroll software issue, Harun proactively communicated this discrepancy to the SBA and provided supplemental documentation to confirm her eligibility. This proactive approach, coupled with the SBA's subsequent forgiveness of her PPP loans, underscores the importance of good-faith reliance and transparency in the loan application process. The principles of equitable estoppel, as established in cases like Heckler v. Community Health Services (Heckler v. Community Health Services, 467 U.S. 51 (1984)) further protect Harun from potential adverse actions based on the initial discrepancy. Ultimately, the SBA's issuance of a Payment Confirmation Letter and an OIG audit report confirming no balance due signifies administrative closure, mitigating potential claims of fraud or misrepresentation

H) RESTITUTION AND ACTUAL LOSS

Contrary to the Government's computation of a loss of approximately $547,095.07, the evidence shows that no actual loss occurred. Petitioner's PPP and EIDL loans were utilized exclusively for legitimate business purposes such as payroll, rent, utilities, and related operating expenses. The complete set of supplemented business records, detailed payroll reports, SBA audit letters, and forgiveness documentation clearly indicate that all disaster loan proceeds were fully forgiven by the SBA, leaving the Government with no deficit. Accordingly, imposing restitution under the Mandatory Victims Restitution Act is legally unsupportable, as reaffirmed in Hughey v. United States, 495 U.S. 411 (1990), and further clarified by Eleventh Circuit decisions (e.g., United States v. Bennett, 983 F.3d 1175 (11th Cir. 2020)).

I) **DOUBLE JEOPARDY AND CIVIL/CRIMINAL PENALTIES**

Petitioner's Plea Agreement explicitly and unambiguously provided for a single count under 18 U.S.C. § 1001(a) (2) with associated financial obligations. However, the Government has compounded the punishment by imposing both a criminal sentence (60 months' incarceration with supervised release) and a restitution order. As held in United States v. Halper, 490 U.S. 435 (1989), and as interpreted in United States v. Cole, 133 F.3d 803 (11th Cir. 1998), the imposition of concurrent civil and criminal sanctions for the same conduct constitutes an impermissible double punishment that violates the Double Jeopardy Clause. Petitioner's lawful contracts and financial arrangements with institutions such as Wells Fargo and Lendistry further underscore that her actions were entirely consistent with the applicable regulations, and any punitive addition imposed by the Government represents overreach and unfair retribution. Harun did not misuse the PPP or EIDL funds; her actions were conducted in accordance with the documentation provided by her clients and the contractual expectations between Harun and the financial institutions. The Government's reliance on flawed IRS data to create a punitive civil penalty in addition to the criminal sentence constitutes an impermissible piling-on of sanctions.

J.) Use of the wrong PPP loan formula by Government

Agents recalculated Petitioner's PPP loans using a year-round formula, which deprived her of the opportunity to benefit from the seasonal employer formula with a NAICS 3.5 calculation over a 12-week period during the tax period from January through April. This misapplication of the PPP loan calculation formula significantly inflated the alleged loan amount and prejudiced Petitioner's defense. The statutory framework under the CARES Act and the SBA's Interim Final Rules specifically allows seasonal employers to calculate their maximum PPP loan using any consecutive 12-week period, which was disregarded by the agents. This error forms the basis of the Government's fraud charges and violates Petitioner's rights to due process and a fair trial. The misapplication of the PPP loan formula for seasonal employers violates the statutory and regulatory frameworks established under the CARES Act and the SBA's Interim Final Rules. Courts have consistently emphasized the importance of adhering to these frameworks to ensure fair and accurate calculations. In Larry Grant Construction v. Mills, 956 F. Supp. 2d 93, 2013 WL 3816092, 2013 U.S. Dist. LEXIS 103360, the court found that the SBA acted arbitrarily and capriciously by making unsubstantiated assumptions leading to miscalculations. Similarly, in Analysas Corp. v. Bowles, 827 F. Supp. 20, 1993 U.S. Dist. LEXIS 8356, 1993 WL 276330, the court highlighted the

K.) Government Interference with Valid Contracts

Harun entered into a valid contract with the SBA to repay the EIDL loan, and following a comprehensive audit, the SBA duly forgave her PPP loans as evidence of her contractual eligibility. However, government agents disregarded these enforceable agreements—perjuring themselves and disqualifying rightful loans by deeming them improper—which has severely disrupted Harun's business operations and violated her contractual rights. As held in United States v. Winstar Corp., 518 U.S. 839 (1996), government interference with valid, relied-upon contractual obligations undermines the legal principle of reliance and may give rise to significant damages. In Harun's case, this disregard for established contracts has not only destabilized her business but also compounded the miscarriage of justice inflicted upon her.

L.) **REBUTTAL TO GOVERNMENT'S SENTENCING ARGUMENT**

The Government contends that the Court was not bound by the plea agreement's recommendation to impose a low-end guideline sentence and that the imposition of a sentence outside the advisory range is proper discretion under the statute. However, the

Government's failure to adhere to its own sentencing promise not only breaches the plea agreement but also undermines the fundamental fairness of the plea process.

By promising to recommend a sentence at the low end of the applicable guideline range—a range of 27 to 33 months—and then imposing a 60-month sentence, the Government has failed to honor its representations during plea negotiations. This significant departure strikes at the heart of fairness, depriving Harun of the reliance interest that is central to a negotiated plea. As established in United States v. Halper, 490 U.S. 435 (1989), deviations from governmental sentencing promises can constitute a due process violation. In United States v. Cole, 133 F.3d 803 (11th Cir. 1998), the Court held that an imposed sentence grossly outside the promised range—especially in cases involving negotiated pleas—can serve as grounds for relief. Moreover, Gall v. United States, 552 U.S. 38 (2007) emphasizes that the defendant's reliance on governmental assurances regarding sentencing is critical to ensuring a fair plea agreement.

The imposition of a 60-month sentence—nearly double the anticipated range—raises serious due process concerns. It not only violates Harun's substantive rights but also erodes public confidence in the judicial system by allowing the Government to renege on its plea negotiations. Consequently, this over sentencing constitutes a clear breach of Harun's constitutional rights and provides strong grounds for relief.

M. Actual Innocence

The principle of actual innocence serves as a critical safeguard in collateral proceedings, demanding that a defendant demonstrate that the evidence essential to obtaining a conviction conflicts with irrefutable evidence of their true, factual innocence. In *Schlup v. Delo*, 513 U.S. 298 (1995), the United States Supreme Court clarified that actual innocence challenges require the presentation of newly discovered evidence that, by its very nature, could not have been presented at trial and that casts significant doubt on the integrity of the conviction. Similarly, in *McQuiggin v. Perkins*, 569 U.S. 383 (2013), the Court underscored that even if procedural defaults occur, claims of actual innocence merit thorough adjudication in order to ensure that judicial processes do not perpetuate irreversible errors. Further reinforcing this standard, *Bousley v. United States* emphasizes the necessity for a factual demonstration that the defendant's conviction is unsupported by the evidence, compelling the reviewing court to reexamine the integrity of the proceedings.

In Harun's case, the application of the actual innocence standard is particularly compelling. There exists a clear absence of actual economic loss, as demonstrated by the full forgiveness of both the EIDL and PPP loans following comprehensive audits, which substantiates her claim of non-liability. Moreover, the alleged perjury and miscalculations by government agents serving to inflate alleged losses not only undermine the factual basis of the conviction but also heighten the prospect that Harun's wrongful plea was procured on a foundation tainted by crucial inaccuracies. These discrepancies, taken together, provide substantive grounds to assert that Harun is factually innocent of the charges that led to her conviction. In light of the controlling case law, this section contends that her actual innocence should compel a reevaluation of the conviction and remedy the resulting miscarriage of justice.

PART SEVEN

III. CONCLUSION & PRAYER FOR RELIEF

The record—now supplemented with SBA audit reports, payroll records, and franchise billing statements, tax transcripts, and communications demonstrating zero loss—establishes that Harun's loans were fully forgiven, her counsel was ineffective, the Government committed Brady/Giglio violations and prosecutorial overreach, and no actual loss occurred. These independent grounds—venue defects, plea involuntariness, constitutional violations, and statutory noncompliance—require the Court to deny the Government's motion to dismiss, hold an evidentiary hearing, vacate the restitution order and sentence, and dismiss the Information.

For the foregoing reasons, and in light of the overwhelming factual and legal evidence demonstrating prosecutorial misconduct, ineffective assistance of counsel, breaches of the negotiated plea agreement, and the grossly disproportionate sentence imposed, Petitioner respectfully requests that this Court:

(1) Deny the Government's Motion to Dismiss Harun's 28 U.S.C. § 2255 motion.

(2) Order an evidentiary hearing on all critical factual allegations, including those pertaining to the suppression of exculpatory evidence, misrepresentations regarding venue and loss calculations, and counsel's deficient performance.

(3) Vacate both the restitution order and the imposed 60-month sentence, as they constitute breaches of Harun's plea agreement and violations of her due process rights.

(4) Dismiss the Information for lack of jurisdiction in light of the venue defects arising from the Government's misrepresentations.

(5) Order the Government to refund Harun approximately $47,000, representing funds unlawfully forfeited from her business account.

Respectfully submitted,

Gladys Harun

Sign;

Pro Se

June 29, 2025

Delivery Note

To: Southern District Court of Georgia

I, Gladys Harun, a federal prisoner currently residing in a halfway house, do hereby certify that on June 29, 2025, I have placed the Motion to Court in accordance with applicable law by handing it over to the halfway house officials responsible for mail delivery. I have limited control over the mailing process owing to my restricted movement and my reliance on halfway house officials to mail the document on my behalf.

In compliance with the prison mailbox rule as discussed in *Jones v. Bertrand*, this motion is considered filed on the date it was deposited into the halfway house legal mail system, regardless of when it is ultimately received by the Court.

I affirm that this delivery note accurately reflects the details of the submission process and that the motion has been appropriately dispatched through the designated halfway house mailing service.

[Signature]

Gladys Harun

Federal Prisoner, Halfway House

Dismas Charity

Date: June 29, 2025

CERTIFICATE OF SERVICE

I, Gladys Harun, Pro Se, of Dimas Charity Macon, 744 2nd Street, Macon, GA 31201, hereby certify that on June 29, 2025, I served a true and correct copy of my Response in opposition to the Government's Motion to Dismiss in the above-referenced case, Case No. 3:23-CR-00003 DHB-BKE, on all parties involved.

I have mailed a copy of this motion in accordance with applicable law by handing it over to the halfway house officials responsible for mail delivery. I have limited control over the mailing process owing to my restricted movement and my reliance on halfway house officials to mail the document on my behalf.

The copy was addressed as follows:

Assistant United States Attorney
United States Attorney's Office
P.O. Box 8970
Savannah, GA 31412

I further certify that this method of service complies with all applicable rules and procedures regarding notice and service in this matter.

Gladys Harun, Pro Se
Dimas Charity Macon
744 2nd Street
Macon, GA 31201
Date: June 29, 2025

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