**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF GEORGIA**
**AUGUSTA DIVISION**

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| **UNITED STATES OF AMERICA** | ) | |
| | ) | **CIVIL ACTION FILE NO.** |
| **Plaintiff,** | ) | |
| | ) | **3:22-CR-0009-DHB-BKE-1** |
| | ) | **1:22-mj-00051-BKE** |
| **v.** | ) | |
| | ) | |
| **GLADYS HARUN,** | ) | |
| | ) | |
| **Defendant.** | ) | |
| | ) | |

**DEFENDANT'S OBJECTION AND APPEAL OF THE MAGISTRATE JUDGE'S DETENTION ORDER DATED JULY 21, 2022**

COMES NOW Defendant Gladys Harun ("Mrs. Harun" or "Defendant"), by and through the undersigned counsel, and, pursuant to Federal Rule of Criminal Procedure 59(a) and 28 U.S.C. § 636(b)(1)(A), and by and under the authority contained in 18 U.S.C. § 3145, files this Defendant's Objection and Appeal (the "Objection and Appeal") of the Magistrate Judge's Order of July 21, 2022[1], see 1:22-mj-000510BKE, Doc[2]. 25; 3:22-cr-0009-DHB-BKE-1, Doc. 19 (the "Detention Order"). Defendant submits that the Magistrate Judge's Detention Order must be

[1] See United States v. King, 849 F.2d 485, 486 (11th Cir. 1988) (discussing a motion to amend or revoke magistrate's pre-trial detention order under 18 U.S.C. § 3145).

[2] "Doc. __" refers to the Court's docket entries in the correspondingly cited case.

amended and/or otherwise revoked based on the record before this Court. Mrs. Harun respectfully shows this Honorable Court as follows:

## I. PROCEDURAL HISTORY

The instant matter concerns and relates to *United States v. Gladys Harun*, case number(s) 1:2022mj00051 and corresponding 3:2022cr0009. On July 13, 2022, Defendant was indicted for one (1) count of wire fraud. See generally 3:22-cr-0009-DHB-BKE-1, Doc. 1. The initial appearance and arraignment was set for July 19, 2022 by way of a Notice of Hearing entered on July 15, 2022, see id., Doc. 7, and the Pretrial Services Report as to Defendant was entered on the docket on July 18, 2022, see id. at Doc. 10. A Motion for Protective Order was also filed on July 18, 2022, see id. at Doc. 12, a 'Not Guilty' Plea was subsequently entered, see id. at Doc. 13, and a Scheduling Order was issued on July 19, 2022, see id. at Doc. 14.

The Detention Order was entered on July 21, 2022, see No. 1:22-mj-00051-BKE-1, Doc. 25, see also 3:22-cr-0009-DHB-BKE-1, Doc. 19, the subject of this Objection and Appeal, and the docket likewise reflects and clarifies that the matter of detention was addressed in MJ 122-051, which was held on July 8, 2022, and the determination of Defendant being detained pending trial was likewise reflected on the docket on July 19, 2022, see 3:22-cr-0009-DHB-BKE-1, Doc. 13; see also No. 1:22-mj-00051-BKE-1, Doc. 18. The notice of filing of the official transcript of the detention hearing proceedings was also reflected on July 19, 2022. See No. 1:22-mj-00051-BKE-1, Doc. 24. The end result of the detention hearing was the granting of the government's "oral" motion for detention and is the basis for the instant Objection and Appeal concerning the Detention Order. see No. 1:22-mj-00051-BKE-1, Doc. 25 at p. 1, see also 3:22-cr-0009-DHB-BKE-1, Doc. 19, at p. 1.

## II. STANDARD OF REVIEW

Federal Rule of Criminal Procedure 59(a), concerning non-dispositive matters, provides that: "[a] district judge may refer to a magistrate judge for determination any matter that does not dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings and, when appropriate, enter on the record an oral or written order stating the determination." Further, "[a] party may serve and file objections to the order within 14 days after being served with a copy of a written order or after the oral order is stated on the record, or at some other time the court sets." Id. "The district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous. Failure to object in accordance with this rule waives a party's right to review." Id.

Pursuant to 28 U.S.C. § 636(b)(1)(A), "a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action." Importantly, "[a] judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."

Finally, 18 U.S.C. § 3145(b) provides: "If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the other. The motion shall be determined timely."

Defendant herein timely files the instant Objection and Appeal relating to the Detention Order and in accordance with applicable law, as the Detention Order is contrary to law and clearly erroneous and the facts at bar mandate a pretrial release.

## III. ARGUMENT AND CITATIONS TO AUTHORITY

As the Magistrate Judge correctly noted, "[t]he Bail Reform Act of 1984 (the "Act") ***mandates the pretrial release*** of a defendant unless the government carries its burden of proving there is no bond condition or combination of conditions that would 'reasonably assure' the defendant's appearance in court or the safety of the community." See Detention Order, Doc 25, at pp. 6-7 (emphasis added). Similarly, "[t]here is ***no statutory presumption*** of Defendant arising from the nature of the charge against Defendant." Id. at p. 7 (emphasis supplied). To be sure, "[t]he ***government's burden*** with respect to dangerousness is by 'clear and convincing' evidence and the ***government's burden*** as to appearance in court is by a 'preponderance of the evidence.'" Id. (internal citations omitted) (emphasis added).

The Magistrate Judge was likewise correct in articulating the factors concerning the Act that determine whether there are conditions to reasonably assure the safety and appearance: "(1) the nature and circumstances of the offense charged, including whether it is a crime of violence or terrorism, or involves a minor victim, controlled substance, firearm, or explosive device; (2) the weight of the evidence; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community posed by the defendant's release. Id. § 3142(g)(1)-(4)." See Doc. 25, p. 7. From there, the proper analysis of the case at bar by the Magistrate Judge terminates and Defendant was improperly ordered to be detained by way of the Detention Order.

The Magistrate Judge's Detention Order is organized as follows: a detailed discussion of the "alleged offense conduct," id. at pp. 1-3, the "pretrial services report," see id. at 3, "plans for unauthorized trip to Kenya," id. at pp. 3-4, "deception of Court Officials," id. at pp. 5-6, "intimidation of potential witnesses," id. at p. 6, and is followed by the ultimate discussion and rationale for the Detention Order, id. at 6-10. Because the Magistrate Judge's ruling concerning the Detention Order fails to meet and apply the applicable legal standard based on the evidence before the Court, is contrary to law and clearly erroneous, Mrs. Harun herein files the instant Objection and Appeal and respectfully requests the Court to immediately terminate the Detention Order and mandate the Defendant to be released on conditions to reasonably assure safety and appearance.

In the Detention Order, the Magistrate Judge correctly noted that the "nature and circumstances of the charged offense do **not** weigh in favor of detention," see Doc. 25, at p. 7 (emphasis added); yet, oddly enough, the Magistrate Judge violently deviates from the aforementioned statement and goes to exorbitant measures to justify detention as to Mrs. Harun. See id. at pp. 8-10. For instance, the Magistrate Judge correctly notes that the "history and characteristics" of a person must be considered when determining pretrial detention, id. at p. 8, and correctly recognizes those factors in favor of Defendant's particular pretrial release, including: "**[1]** her physical condition, **[2]** family ties to the community because of her **[a]** six children, **[b]** employment, **[c]** clean criminal history, and **[d]** the absence of any indication she abuses drugs or alcohol." Id. (enumerations and emphasis added). Yet, outweighing all of these favorable considerations was, in a word, "character." Id. And the Magistrate Judge made that point abundantly clear in the Detention Order. See id. at p. 8 ("**Rarely does the Court encounter a person less credible than Defendant.**"); id. at p. 9 ("**Defendant cannot be trusted to tell the truth.**"). The Magistrate Judge attempted to justify its harsh reasoning by elaborating that Defendant "lied" to the Middle District of Georgia.[3] see id., "lied" to the probation officer in the case,[4] see id., and provided testimony "fully of inconsistencies, obfuscations, and implausible scenarios" thereby making her testimony unbelievable -- in the Magistrate Judge's view -- and otherwise disregarded or discounted all of the recognized factors in favor of Mrs. Harun's pretrial release. See id.

Taking a step back from the unsavory analysis and viewed objectively and practically, however, most if not all of the concerns raised by the Magistrate Judge

[3] See Transcript, at p. 27, lines 14-25 (explaining why Defendant asked the Middle District of Georgia Court for financial assistance with an attorney); at p. 28, lines 6-25 at pp. 32-33, lines 20-25, and lines 1-3 (explaining why Defendant, a seasonal employer/employee, was not employed at certain intervals of the year).

[4] See Transcript, at pp. 30 (explaining the confusion between the Probation Officer and Defendant concerning certain items in the pretrial services report including income, whether the questions pertain to personal or business matters, and Defendant's actual statement where she affirmatively advised: "I don't remember that discussion," and her testifying that what was recorded in the report was "not" accurate as to what she testified to that the probation officer wrote up. Plainly, there were miscommunications at play here and not necessarily "lies" as suggested).

were simply at best misunderstood or articulated unclearly by the Defendant, but more accurately depicted as seemingly overlooked or otherwise disregarded facts and practical explanations and applications. For example, the discussion of the "alleged offense conduct," see id. at pp. 1-3, as it relates to a "present danger to the community" by the Magistrate Judge can be summarized as follows: any time a "financial crime" is at issue as to a defendant, especially someone that has been apparently successful in business,[5] he or she should necessarily be detained because they will have access to the internet and may otherwise interact with the community if not detained and therefore could be a potential danger to the community at large,[6] see id., at pp. 8-9. However, Defendant submits that this sort of analysis as it pertains

[5] In fact, one of Mrs. Harun's regrets of being detained was that she could not pay her employees the Friday of the detention hearing, "which was their payday," of which her full-time employees need "in order to provide for their families." See Transcript, at p. 11.

[6] The Magistrate Judge recognized the type of conduct sought to be avoided by the "dangerousness" analysis of the Bail Report Act, see Doc. 25, at p. 8 (citing United States v. King, 849 F.2d 485 (11th Cir. 1988)), and even goes so far as to quote the "primary focus of [the factor] is the risk of physical violence toward a particular person such as a victim or witness," but thereafter alludes to examples that the Magistrate Judge apparently deems akin to the Defendant's situation at bar, including: "potential corruption of a union or the obvious perils drug trafficking poses to a community." See Doc. 25, at p. 9. Defendant submits that the above-referenced examples are a wholly strained analogy which further supports an immediate pretrial release of a forty-three-year-old mother of six (6) small children with no criminal record.

to her case ignores the relevant factors, belabors the obvious reality of the real world outside incarceration under *any set of facts or circumstances* and inevitably *eviscerates the applicable legal standard* and prevents any defendant charged with a financial crime to obtain a pretrial release. Instead, however, Mrs. Harun submits that the alleged offense conduct should have been considered more practically and rationally alongside the fact that the Defendant has no criminal record, id. at 8, has been participating in this case voluntarily even before she was indicted, see id. at p. 3, has not fled the country previously with ample opportunity and resources to do so and is not otherwise charged with any crime inherently dangerous and will not otherwise be privy to a scenario not atypical of any other "innocent" defendant not detained and out on bond.

Moreover, the "pretrial services report" as well as the "deception of Court Officials" discussion, one that was coined as "lie[s]" by the Magistrate Judge, in reality overlooks the readily obvious fact that there is a language barrier between the Defendant and the Government (including the Court) which can necessarily create possible misstatements, miscommunications and/or misunderstandings (which was raised during the "closing" argument). The support of this unquestionable point is readily apparent from the transcript of the detention hearing itself (E.g., Q. "Do your employees have family?" A. "No, I don't have family," id. at p. 11); (E.g., Q. "But you not only represented to the Court … that you didn't have a business but also that you weren't employed; is that right?" A. "My business is charity. And so when you talk about Embrace Africa, there are so many lives that depend on leaders of charity, so I don't see it really as a business. It's more of a nonprofit," id. at p. 28).

The truthfulness or untruthfulness of Mrs. Harun must necessarily be taken into situational context, particularly when Defendant's capability of understanding is so easily noticeable from the record. While no "competency" issue has been raised in the case in regards of Defendant's capability to understand the English language, *as certainly she can* as demonstrated by her successful businesses and non-profit enterprise in the United States and abroad, it is likewise understandable that a Kenyan born native may have certain difficulty articulating herself with sufficient clarity that everyone in a court proceeding can understand fully the complicated point she is trying to make, particularly when facing surprising criminal charges.[7]

[7] The rush to arresting Mrs. Harun pre-indictment due to her apparent 'risk of flight' is almost laughable (were it not so sad and embarrassing), where Mrs. Harun was vacationing on Savannah / Tybee Island with her family and arrested in a bathing suit in front of her children while she was "changing their diapers, wiping their noses, and changing their clothes so we can head home." See Transcript, at pp. 11-12, lines 21-25, and 1-18 ("And I told them there was no need of that. I would have surrendered myself if they had told me that they needed me. You know, I've been cooperating with them the whole time.").

As far as the "unauthorized" trip to Kenya discussion, the most fundamental components of that analysis that are completely overlooked or ignored is the fact that Defendant: **(1)** had **NOT** actually booked a trip to Kenya, see Transcript of Detention Hearing, at pp. 12-13 and 36; and **(2)** has six (6) children who do **NOT** all have passports permitting them to travel, see id. at pp. 6-8 (which necessarily suggests that a mother – one who has no family to watch[8] after her children while she is incarcerated and is otherwise using "friends," see id., at pp. 7-8, – could possibly flee the country and abandon her children and home); **(3)** regularly travels to her home country yearly to visit her family and her non-profit charitable school; and **(4)** was fully cooperating concerning travel and other matters with the government,[9] which was patently unnoticed objectively and practically, see Doc. 25,

[8] The record reflects that Defendant's husband (and father of the children) has no involvement with the children and lives in a hotel, and the Magistrate Judge did at least acknowledge that Defendant is going through a divorce according to Court records, seeming to suggest that Defendant's statement is believable to him. See Transcript, pp. 7-8, lines 13-25, 1-6.

[9] See Transcript, at p. 13 ("And Mr. Howard had promised that, you know, he was going to communicate to -- -- me and through you and tell me what's going to happen. I was under the impression that it was -- -- we would be negotiating and taking about the whole things back and forth") ("Q. And you stated, before you made – finalized any plans to go anywhere, you would run it through me, and I would have to, in fact, ask the Government for their permission before you traveled; is that correct? A. Yes. Q. Okay. Have you complied with that request? A. Yes, I did.).

at p. 9. A review of this particular record, in order to reach the result of the Detention Order, would have to completely ignore the salient fact(s) that this mother, Mrs. Harun, has no criminal record, was willing to cooperate with the government at all times, is willing to "surrender her passport,"[10] and has six (6) children with no family to look after them and cannot travel abroad as they have no passports;[11] in fact, the Magistrate Judge had to belabor quite diligently (and colorfully) to explain away these points to come to the difficult outcome resulting in detention, but to do so strains plausibility and ignores practically the implications of such a bizarre and implausible possibility for a mother of six (6) children with no criminal record. Simply put, Mrs. Harun is not a flight risk at all and certainly is not dangerous.

[10] Defendant's counsel, J. Thomas Howell, Esq., states in his place that he has in his possession Mrs. Harun's passport and stands ready and able to surrender same to the Court or to whoever the Court instructs him to do so, for purposes of pretrial release.

[11] Even if the Defendant did have $100,000.00 cash on hand, assuming that Defendant did not intend to send the monies to her non-profit Charity (Embrace Africa), what practical good would $100,000.00 do for a mother seeking to flee the country if she had no passport (*i.e.*, it was surrendered) and her children were confirmed to not all have valid passports to travel or otherwise be restricted from travel? Financial resources do not automatically provide a 'free pass' to flee the country, certainly not in this particular fact pattern. Moreover, the explanation concerning cash withdraws for wire transfers was explained by Defendant at the detention hearing, whether the government agrees with how she conducts business or not. See Transcript, at p. 25, lines 14-18 ("Sometimes I withdraw cash from Wells Fargo and go to SunTrust and wire transfer that money because sometimes Wells Fargo gives me trouble – a lot of trouble doing international transfers.").

While the Magistrate Judge may not have found certain of Defendant's testimony believable, it should have nevertheless taken into consideration the incontrovertible facts that Mrs. Harun: **(a)** voluntarily met with the prosecution pre-indictment, see id. at pp. 8-9, and **(b)** voluntarily testified at the detention hearing, id. at pp. 4-5, thereby demonstrating that she is actually willing to and *did in fact* participate in any Court related proceedings, to be sure, **(c)** Mrs. Harun is in the midst of a divorce proceeding, id. at p. 6, which will be impossible to participate in should she flee the country, and **(d)** she has also hired counsel to defend herself in this criminal action. In other words, while the Court may subjectively believe that some of her testimony is not reliable based on a limited first-hand impression (although, the reality of the situation is that Mrs. Harun and the Court may have had communication difficulties based on a language barrier), an objective view of the facts that have *actually and consistently occurred* and are before the Court prove that she is not avoiding participation in this case and is not a flight risk.

Under this particular fact pattern, Mrs. Harun finds it nearly impossible for the Court to conclude: "(1) by clear and convicting evidence that there is ***no*** **bond condition or combination of conditions** that would *reasonably assure* the safety of the community; and (2) by a preponderance of the evidence that ***no*** **bond condition or combination of conditions** will *reasonably assure* Defendant's appearance in court." Id. at p. 10. To hold otherwise gives the Court and the Government little to no credit for whatever creative or plausible bond conditions are practical, possible and obtainable, and implies that the Court and the government cannot otherwise manage and track a forty-three (43) year old, married and employed, Church attending, home mortgage bearing (yes, her home mortgage is current), Kenyan Native and American naturalized female citizen and mother of six (6) small children who retained counsel to defend herself in the instant case.

Mrs. Harun humbly submits that such is not the case and the federal government and its respective courts are not incapable of reasonable conditions to warrant a release, which would certainly assist her family, employees and friends, and which would certainly be helpful in proffering a legitimate defense to an innocent (no criminal record), non-violent, mother of six (6) children subject to a complicated wire fraud charge (which will involve voluminous review of records, loan applications, financials and filings that, as of now, have to be reviewed in-person and in a jail setting without the capability of leaving 'homework for her' inside the facility),[12] and the undersigned certainly has more faith in its bodies of government than that otherwise afforded to itself under its own respective analysis

[12] See 3:22-cr-00009-DHB-BKE, Doc. 20, (Order Granting Motion for Protective Order) (July 22, 2022).

in the Detention Order. To be sure, the U.S. Probation Office seems to agree with Mrs. Harun and the undersigned on that front. See 3:22-cr-0009-DHB-BKE, Doc. 10, at p. 4 ("Recommendation" of Pretrial Services Officer Wright E. White, reviewed by Christopher A. Doughtie, Sr., Supervisory United States Probation Officer (dated July 6, 2022)). Mrs. Harun, therefore, should be afforded pretrial release.

## IV. CONCLUSION

For the foregoing reasons, Mrs. Harun respectfully requests that the Court reverse the Detention Order, order an immediately release with proper and reasonable conditions for bond, and/or otherwise hold an evidentiary hearing to practically and reasonably review the decision as appropriate.

Respectfully submitted, this 2nd day of August, 2022.

By: /s/ J. Thomas Howell
J. Thomas Howell
Georgia Bar No. 594902
*Counsel for Defendant*

**HOWELL LAW, LLC**
18 Simmons Center
Statesboro, Georgia 30458
(912) 416-7111 – Office
(912) 489-4316 – Facsimile
thomas@attorneystatesboro.com
www.attorneystatesboro.com

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and forgoing **DEFENDANT'S OBJECTION AND APPEAL OF THE MAGISTRATE JUDGE'S DETENTION ORDER DATED JULY 21, 2022** on all parties in accordance with the Federal Rule of Civil Procedure by way of the Electronic Filing System ("EFC") which was generated as a result of electronic filing in this Court. Service has also be effectuated to by way of the following:

Chris Howard
Assistant United States Attorney
Southern District of Georgia
22 Barnard Street, Suite 300
Savannah, Georgia 31401
Christopher.Howard@usdoj.gov

RESPECTFULLY SUBMITTED this 2nd day of August, 2022.

By: /s/ J. Thomas Howell
J. Thomas Howell
Georgia Bar No. 594902
*Counsel for Defendant*

**HOWELL LAW, LLC**
18 Simmons Center
Statesboro, Georgia 30458
(912) 416-7111 – Office
(912) 489-4316 – Facsimile
thomas@attorneystatesboro.com
www.attorneystatesboro.com