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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES) CASE NO: 3:23 CR 00003

RESPONDENT)

V)

GLADYS HARUN)

PETITIONER)

CV325- 012

PRO SE MOTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL UNDER AUTHORITY OF 28 U.S.C 2255 AND STAY OF MONETARY FORFEITURE OF 547095.07 $

Now comes pro se petitioner Gladys Harun to ask this honorable court for relief and reconsideration pursuant to 28 U.S.C 2255, ineffective assistance of counsel. Petitioner advances several claims of relief including that she was deprived the effective assistance of counsel, deprived due provess of law and her plea was unknowing and involuntary. Additionally she suffered prosecutorial misconduct.

STATEMENT OF THE CASE

Petitioner pleaded guilty to one count of False Statements in Violation of 18 USC 1001(a)(2).
Petitioner pleaded guilty on 04/27/2023. Thereafter on January 23 2024, petitioner was sentenced to 60 months incarceration with additional 3 years of supervised release. Petitioner is currently housed in a federal facility, Alderson Federal Prison Camp located at One Glen Ray Rd, Alderson West Virginia 24910.

JURISDICTION

The Southern District Court did not have jurisdiction of the case The court acted outside its limited jurisdiction as discussed further in the motion.

LEGAL STANDARDS

A.) DUE PROCESS CLAIMS

The Fifth Amendment provides in relevant part "no person shall be... deprived life, liberty, or property without the due process of the law". Importantly, "due process is flexible and calls for such procedural protections as the particular situation demands".Morrissey v. Brewer, 408 U.S 471,481(1972). But, "in order to state a claim for failure to provide due process, a petitioner must have taken advantage of the processes that are available to him or her..."Alvin v. Suzuki, 227 F.3d 107, 116 (3rd Cir. 2000). Where the Petitioner attempted to avail herself the procees that are available to her, and those processes are not provided to her through no fault of her own, the due process is necessarily violated.

B.) PRO SE LITIGANT

Harun is appearing pro se in this matter and respectfully requests the court to take judicial notice of same and accord Her filings a liberal construction. Due to the unlawful arrest, Petitioner is indeed confined at Alderson Federal Prison Camp in West Virgia, where she does not have access to outside legal assistance and very limited access to legal materials.

Emergency situations such as lockdowns far beyond control further curtail her limited access to what can be described as a sparse law library. Finally, She is forced to prepare her court filings using an antiquated typewriter and the preparation of her filings is further hampered because her typing skills are at best rudimentary.

With respect to pro se filings, the Supreme Court, in Erickson v. Pardus, 551 U.S. 89,93 (2002) (per Curiam), declared "a document filed pro se is to be liberally construed" (citing and quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976). According pro se litigants a special solitude is consistent with the high standard of fundamental fairness constitution requires in case where life and liberty are at stake. (Fay v. Noia, 372 U.S 391 (1963((Brennan, J.)).

Because Petitioner is proceeding pro se, she respectfully requests the court to take notice of her pro se status and accord her the benefit of liberal construction.

C.) INEFFECTIVE ASSISTANCE OF COUNSEL

It is well settled that claims of ineffective assistance of counsel are cognizable directly in a 2255 action. (United States v. Anderson, 2018) (Anderson, J.) citing Mcmann v. Richardson, 397 U.S.759, 771 n.14(1970)).

A successful claim of ineffective assistance of counsel requires the movant to "prove that counsel's performance fell below an objective standard of reasonableness, and counsel's deficiencies prejudiced his defense." (id. citing strictland v. Washington, 466 U.S 668 (1984)). Importantly, a claim of ineffective assistancerequires a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different."(id). The "reasonable probability" standard should not be confused with the preponderance standard (see e.g Frost v. Pryor, 749 F. 3d 1212, 1225 (10th Circuit. 2014 (discussing "reasonable probability" standard and finding "if a state court were to reject a prisoner's claim of ineffective on the ground that he had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different absent counsel's deficient performance, that decision would be contrary to clearly established Supreme Court precedent because the prisoner need only demonstrate a reasonable probability that the result of the proceeding would have been different.") (emphasis in original, internal quotation brackets and citations omitted).

As explained in more detail below, Petitioner contends her counsel was constitutionally ineffective in that counsel failed to:

(a) Properly investigate the law with regard to this case
(b) Conduct an indepth interview with petitioner
(c) Research the law
(d) Review Discovery
(e) Conduct an investigation
(f) Pursue a defense strategy and dismiss charges
(g) Impeach false testimony
(h) Present exculpatory evidence favorable to petitioner
(i) Review documents
(j) Interview witnesses
(K) Failure to Clarify issues during sentencing
(L) General failure to advocate
(M) failure to challenge constitutional violation
(N) Challenge prosecutorial misconduct
(O) Challenge abuse of discretion by court

FAILURE OF ATTORNEY TO ADDRESS LACK OF JURISDICTION BY THE SOUTHERN DISTRICT COURT

The Southern District court of Georgia did not have jurisdiction over this case. All attorneys failed to address the lack of jurisdiction. Rule 26.2 of criminal rule of procedure states that the governement must prosecute an offense in a district where the offense was committed. Courts must set the place of trial within the district with regard for the convenience of the defendant, any victims and the witnesses in the prompt administration of justice.

Petitioner asserts that the alleged crime in the plea agreement and all conduct in the dismissed cases took place in Byron Georgia in the Middle District. The plea agreement charges petitioner for fraudulently falsifying information on a loan application for K. Wells in eastman Georgia. Wells lives in eastman but the loan was prepared in Byron Georgia. Petitioner contends that the loan application began, continued and completed in Byron Georgia. Petitioner did not have a business in Eastman at the time of the loan application. Petitioner did not travel to the Southern District(Eastman GA) and did not meet Wells there. Petitioner's business had closed down in Eastman by then.

The agents and prosecution in this case intentionally interfered with the venue so they could prosecute the case in Savannah Georgia in the Southern District where they work. Agents Truax who prepared the warrants misrepresented that petitioner committed the ofense in Eastman Georgia. Petitioner was prosecuted in the wrong venue which prejudiced her substantially. Petitioner lives and had her central business office 2.5 hours from Augusta Georgia where the proceedings mostly took place including sentencing.

Petitioner's employees and community members could not drive 2.5 hours to suport her or testify for her. No witness was wiling to drive that long. There was judicial misconduct and bias when agents committed perjury in the indictment document and used southern district as the venue of the case in Agent's favor. Agents were able to come testify at their convenience while petitioner could not get any of her employees and comunity members to drive that long. Petitioner's children paid 350$ for Ubber to drop them in court.

Petitioner was unknowingly made to waiver her right to challenge venue on 04/27/23 when she took a plea. This was 9 months after being held in custody in the wrong district as she was held in Jefferson County jail in Lousville Georgia.

Petitioner applied for her disaster loans in Byron Georgia and she did all the EIDL AND PPP LOAN applications for all her clients in Byron Georgia. She met them in Warner Robins Georgia when they came to file their taxes.

All the charges were filled in connection to her IPP INTERNET activity from her home located in 192 Amelia Dr Byron Georgia 31008. This IPP INTERNET is proof that petitioner did all the applications in Byron Georgia. This internet based evidence from her IPP address satisfies the constitutional venue statue. The agents falsified information on the venue which violated jurisdictional requirements.

Petitioner contends that venue "turns on the action by the defendant that is essential to the offense and where that specific action took place. Because the "essential conduct of the charged false statements offense is the making of the false statement and the false statements were made in an online loan application using her internet in Byron Georgia then southern district was not a proper venue

The southern District court therefore does not have jurisdiction of the charged offense. While defendants can agree to a change of venue, they cannot waive this right if the court in the chosen venue lacks the authority to hear the case.

All attorneys for petitioner did not argue that venue was improper

FAILURE OF ATTORNEY TO INVESTIGATE, OBTAIN OR PRESENT ANY EVIDENCE OF MITIGATING CIRCUMSTANCES

Petitioner argues that her sentence should be vacated because her counsel failed to investigate, obtain or present any evidence of mitigating circumstances to the court and to the government during the pretrial, plea phase and sentencing phase.

Strickland holds that a criminal defense lawyer has a duty to conduct reasonable investigations into her client's case which extends to the law as well as facts. As that duty pertains to investigation of the law, counsel is obligated to research relevant law to make an informed decision whether certain avenues will prove fruitful. the American Bar Association also suggests that under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced in trial. The extent to which the counsel will be obligated to research the law in order to perform at a constitutionally adequate level of competency will vary case by case: as Supreme Court observed in Strickland, starategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgements support the limitations on the investigation. But the decision not to investigate cannot be deemed reasonable if it is uniformed.

An attorney has a duty to investigate independently the charges against his client. Wiggins v. Smith, 539 U.S. 510, 524 123 S. Ct. 2527, 156 L.Ed 2d 471 (2003). Under the court's jurispendence, there must be a "reasonable amount" of pre trial investigation. Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir 1994) strictland explains that if an investigation is incomplete, a court should weigh that incompleteness only to the extent that "reasonable professional judgements support the limitations on the investigation because "counsel has a duty to make... a reasonable decision that makes particular investigations unnecessary." Stickland, 466 U.S at 690-91

While counsel's selection of a strategy is unchallengeable See stricklane, 466 U.S. at 691, the sixth, seventh and ninth circuits have held that the selection of a defense strategy before a reasonable investigation is ineffective. Richey v. Mitchell, 395 F.3d 660, 685 (6th Cir 2005), red'd on other ground Bradshaw v. Richey, 546 U.S. 74, 126 S. Ct. 602,163 L.Ed 2d 407 (2005); White v. Godizen, 301 F. 3d 796, 801, 803 (7th cir 2002) Rios v. Rocha, 299 F. 3d 796, 805-07 (9th cir 2002). . Informed evaluation of potential defenses to criminal charges and meaningful discussions with one's client of the realities of of his case are cornestones of effective assistance of counsel . Washington v. Watkins, 655 F.2d 1346, 1355 (5th circuit 1981) (citing Gaines v. Hopper, 575 F. 2d 1147, 1149-50 (5th circuit 1978).

In Wiggins v. Smith 539 U.S. 510, 123 S. Ct. 2527 (2003), the court stated that its principal concern was whether counsel's investigation of defendant's background was itself reasonable. the court concluded that counsel did not conduct a reasonable investigation because they did not expand their investigation beyond a presentence investigation and information contained in the records of the Department of social services. It was unreasonable for counsel not to continue their investigation after discovering facts from the DSS records concerning the defendant's alcoholic mother and his problems in foster care. Counsel's failure to investigate missed the facts of defendant's diminished mental capacity and sexual abuse in foster care as well as his homelessness. The court concluded that had these facts been presented at trial, there was a reasonable probability of a different decision by the jury.

In Rompilla v. Beard 545 U.S 374, 125 S. Ct 2456 (2005), the court held that even when a defendant and his family members have suggested that no mitigating evidence is available, The lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will rely on.. the court further found that there was inefective assistance of counsel in failing to present significant mitigating evidence about the defendant's childhood, mental capacity and health and alcoholism. The court in this case also relied upon and cited the ABA standards for criminal justice which stated, "it is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction... the duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty" (1 ABA Standards for Criminal Justice 4-4. 1,. 2ed. 1982 Supp). the court further cited Wiggins, Supra in stating that the ABA guidelines provide that investigation into mitigating evidence should comprise efforts to discover all reasonable available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. (1989 ABA GUIDELINES 11.4.1.C). The court finally concluded that such evidence might well have influenced the jury's appraisal of defendant's culpability.

In examining the investigation that counsel made, a court must not only consider the quantum of evidence already known to counsel, but also whether this evidence known to counsel would lead a reasonable attorney to investigate further (Strickland, supra; Haliym v. Mitchell, 492 F. 3d 680, 6th Cir 2007). In assessing counsel's performance, a court must thus consider whether counsel adequately folowed up on the "leads" that were available to them (Haliym, supra; Strickland, supra; Harries v. Bell 417 F.3d 631, 6th Cr 2005).

The facts of this case are very similar to those of the cases cited herein. Mr Vines did not make any efforts to discover all reasonable available mitigating evidence to rebut aggravated false evidence that prosecutor used against petitioner. Vines did not gather an indepth information concerning petititioner's backgroround concerning her charity work, education, family life and work involvement.Because no amount of strategic deference could compel any fair conclusion other than that petitioner was denied effective assistance of counsel.

Counsel (Luwemba) advised petitioner to take a plea without conducting investigation in her business, payroll and charity work. He never investigated issues sorrounding the application of disaster loans and how petitioner used them. He adopted prosecutor's file and advised petitioner to pay whatever amount the government deemed fit. when a lawyer advises his client to plea a bargain to an offense which the attorney has not investigated such conduct is always unreasonable. (see Woodard V. Collins, 898 F. 2d 1027, 1029 (5th Cir 1990).Despite having time to investigate all attorn did not devote any efforts to investigate.

Allegations of ineffective assistance of counsel centered on a supposed failure to investigate must indicate what would have been obtained from the investigation and whether such information would have produced a different result.. see United States ex rel Cross v. DeRobertis, 811 F. 2d 1008, 1016 (7th Cir 1987). Petitioner therefore presents evidence that attorneys failed to produce.

DEFENDANT'S OPERATIONS AND BUSINESS STRUCTURE

Petitioner had three businesses merged in operation. She had blue sky started in 2010, Embrace Africa (non profit) and Jackson Hewitt Tax Service which is a forprofit franchiseed business. Petitioner had 12 locations in her franchiseed tax business with Jackson Hewitt. she had bought various territories and was in the process of expanding when she abruptly became incarcerated (see a list of her business locations and territories in Jackson Hewitt defrachising letter Exhibit 1)

Petitioner had over 50 workers in 2020 and 2021. Some were paid as independent contractors and others received a wage as employees. Her tax business was seasonal as it involved doing taxes.

Petitioner offered various charity programs under Embrace Africa. She administered free tax programs or discounted rates to help middle Georgia community especially seniors who had challenges mostly filing taxes. Petitioner also sponsored orphans and needy children in Kenya. Petitioner's father run a school in Nyandarua in Central Kenya region. This school has been running since 2004. Petitioners had various initiatives to pull women out of poverty in Africa and sponsored educational programs and intiatives in Kenya.

Petitioner paid her employees out of her bank accounts using a payroll provider and issued annual w2s reflecting paid wages. late in 2019, Wells fargo her provide stopped offering payroll

UNDERREPORTING OF WAGES

Petitioner paid workers via wells fargo payroll company but they terminated these services end of 2019. There was a misunderstanding between petitioner and Wells fargo. Wells fargo did not report some of the wages paid by petitioner to IRS. This company claimed to have sent petitioner a letter advising her to handle her employer filings with IRS but petitioner never received such a letter. Employees from Dublin reported problems with IRS as they filed their personal taxes in 2020. As a result of this, Petitioner ended up having paid more wages than reported to IRS; her paystubs for workers demonstrate this. This was a genuine error, some workers reported not to recieve a w2 or a 1099 at the end of the 2020 year .

Petitioner then used square payroll provider; Square payroll was not able to import petitioner all wages from Wellsfargo.

Petitioner reported thi to IRS in 2021. Petitioner sent her some of her payroll documentation to Social Security office, petitioner was working with both IRS and Social Security to correct her employee wages. This process was not completed due to covid shut downs. Both agencies understood that this task would take time due to Covid . petitioner was undegoing this civil action to resolve the challenges when the governmnt arrested her and turned it into a criminal case

FAILURE OF ATTORNEY TO CHALLENGE MIS_REPRESENTATION OF PPP RULE AND OVEREACHING BY Prosecution

All attorneys in this case did not challenge the government's false interpretation of PPP program rules which prejudiced petitioner. The PPP loan rules contained in the ACT U.S.C 636 (a)(36) stipulated that if funds are knowingly used for anauthorized purposes,the federal government may hold someone liable legally such as for charges of fraud. The federal government may pursue recovery of loan amounts and or civil or criminal charges. Petitioner asserts that her conduct did not amount to fraud as as defined by the CARES ACT RULE because she never mis-used PPP AND EIDL loan proceeds. There was no personal financial gain or fraudulent intent in petitioner's conduct. Her prosecution and closure of her business locations was improper. The court erred in ordering her to pay restitution in recovery of PPP that were not fraudulently used. Petitioner used all her loans to pay for payroll, business rent, business marketing fees and royalties to Jackson Hewitt her franchisor and paying for business utilities. petitioner did not use PPP and EIDL funds to pay for a car, mortgage and personal expenses as charged by the government.

ALL ATTORNEYS FAILED TO ARGUE THAT PETITIONER'S CASE INVOLVED MINOR INFRACTIONS THAT DOES NOT CONSTITUTE FRAUD

In prosecuting petitioner, the government focused on technical violations and minor discrepancies in PPP loan applications; hers was not a clear cut case of fraud. Petitioner asserts that she made unintentional errors due to the rushed nature of the program and complex regulations.

Petitioner was given severe penalties including a hefty restitution of 547, 095.07$ and 60 months incarceration plus 3 years of

Supervised release. Petitioner asserts she received a harsh and cruel punishment for unintentional misrepresentations in the PPP loan application.. Attorney Vines failed to urgue that these penalties are disproportionate to the offense alleged. This severe punishment runied her life and shut down her businesses. Attorneys failed to argue that lack of clarity in regulations on PPP loan applications made it difficult for petitioner and other business persons to ensure full compliance. Petitioner did not have clear guidance on what to do when her wages were under reported to IRS. Petitioner called SBA for direction in good faith. She was advised to come up with a work-around solution to help her get the PPPloan she was qualified for. This was interpreted as crime by prosecution.

FAILURE OF ALL ATTORNEYS TO PURSUE A VALID DEFENSE AND DISMISS CHARGES

All attorneys in this case did not research, never investigated that petitioner was innocent of the crime charged. Counsels ignored and remained indifferent to the fact that petitioner did not defraud SBA. Petitioner did not have the intent to defraud SBA either. She therefore had a Men's Rea defense available to her. If attorneys considered this defense, there is a reasonable probability that charges against petitioner would have been dismissed

ATTORNEYS FAILED TO DISPUTE FRAUD CHARGES

All attorneys failed to challenges various issues that sorrounded the fraud charges that petitioner received.

A. Falsity

"The FCA does not define false." United States v. Bourseau, 531 F.3d 1159, 1164 (9th Cir 2008) "rather , courts decide whether a claim is false or fraudulent by determining whether a defendant's representations are accurate in light of applicable law" and applicable law is subject to judicial interpretation. (citing U.S. ex rel. Oliver v. Parsons co., 195 F.3d 457, 463 (9th Cir 1999). courts must further interprete the FCA broadly in keeping with the congress's intention to reach all types of fraud, without qualification, that might result in financial loss to the government (Winter ex rel u.s v. Gardens Reg'l Hosp. & Med. Ctr., inc, 953 F.3d 1108,1116, (9th Cir 2020)) (quoting United states v. Neifert -white co., 390 U.S. 228, 232, 88 S. Ct. 959, 19 L.Ed. 2d 1061 1968)) The supreme court has constistently refused to accept a rigid, restrictive reading of the FCA... AND HAS CAUTIONED COURTS against adopting a circumscribed view of what it means for a clai m to be false or fraudulent. id (quoting Universal Health Servs v. U.S ex rel. escobar (Escobar 1, 579 U.S 176, 192, 136 S.Ct. 1989, 195 L.Ed 2d 348 (2016))

1.) Payroll costs

All attorneys failed to challenge prosecution's theory of liability that petitioner falsely reported payroll expenses on her PPP loan application that she did not have. Prosecution solely relied on forms 941's from the IRS. Petitioner contends that the CARES ACT and subsequent SBA rules and guidanc e define payroll costs such that petitioner's payments of employee salaries from its bank account and issuing paystubs fulfilled PPP requirements. Thus according to petitioner, her listing of payroll costs on her PPP loan application could not be false despite those figures not have been reported fully in IRS FORM 941s

The errors in the 941s is attributed to her payroll provider. Petitioner's 941s had less wages reported. Petitioner had 25 employees in 2020 and 50 employees in 2021. Her forms 941s shows zero as the number of employees. The government used this errors to prosecute petitioner unjustly. IRS forms w3s for 2020 and 2021 report the number of employees while 941s have none.

The payroll costs petitioner asserted in her application for loans were legitimate and false statements. Petitioner had payrol expenses as amatter of accounting. She had eligible payroll costs "payment of ... compensation with respect to employees" as define d by the PPP 15 U.S.C. 636 (a)(36)(A)(viii)(1).

The SBA subsequently issued an interim and further guidance providing compatible definitions of the term, see Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed . Reg. 20811, 20813 (April 15, 2020, (payroll costs includes all cash compensation paid to employees subject to the 100,000 annual compensation per employee limitation.

Petitioner asserts that she paid hourly wages and bonus to her employees.

2.) Economic uncertainty

Attorneys failed to argue that petitioner's certifications of economic uncertainty in her PPP loan applications could not constitute falsities for purposes of the FCA.

In applying for both her 1st and 2nd draw PPP loans, petitioner certified that "current economic uncertainty made the loan request necessary to support her ongoing operations...". These certifications were derived from statutory borrower requirements in the CARES ACT, WHICH REQUIRED ELIGIBLE PPP loan recipients to make make a good faith certification.... that the uncertainty of current covid makes the loan necessary"

Petitioner asserts that she made her economic uncertainty certification in good faith and therefore could not be false per the applicable SBA rule.

3. PROPER USE OF PPP LOAN PROCEEDS

Both of petitioner's PPP loan applications required her to certify that all loan proceeds will be used only for business related purposes as specified in the loan application and consistent with the Paycheck Protection Rule"i.e to maintain payroll and retain workers. Petitioner's 2nd draw laon aplication made her certify that she would use use the full loan amount for eligible expenses . Petitioner fulfilled her contractual obligation for both PPP loans as certified in the applications. Her loans were used only for business related purposes as specified in the loan applications and consistent with the PPP RULE "to retain workers and maintain payroll(see 15 u.s.c 636 (a)(36)9g)(i)(11) Petitioner qualified and received LOAN forgiveness for both loans because she used her loans to costs that are eligible for forgiveness such as "payroll costs to retain employees" Petitioner used at least 60% of the loan on payroll. (see 636m (d)(8)

B. MATERIALITY

All attorneys failed to challenge the materiality of the government case against petitioner. The government's case mainly rested on the premise that petitioner's PPP applications were differing and had fraudulent information about numbers of employees and the monthly payroll of her business.

Petitioner asserts that the misrepresentation the case was based upon were not material for SBA's decision to give PPP LOAN.

lenders knowledge of the facts underlying the alleged false record or statement can negate scienter required for FCA VIOLATION.

Petitioner asserts that in consideration of her loans, lenders did not rely entirely on the forms 941s. They had interviews with petitioner where she was interviewed about her expenses in payroll and other expenses. There were email exchanges with the lenders and other payroll documents were considered besides the 941s. The mistatements in 941s wre simply not material to the lender's decision issue loan .

SBA DID NOT ISSUE a loan that was not used properly. petitioner did not pocket any money or used any for her personal illegitimate reasons. The disaster loans went into the right purposes. SBA did not incur any loss in these transactions. Lendistry and SBA knew that petitioner as a bonafide employer had discrepancies in the payroll she paid and the amount reported to IRS. Petitioner has paystubs to show this.

The lender and petitioner knew why a wage reconstruction was was being used and why.

Nevertheless the loan was approved. the lenders can hardly be faulted for paying even though they knew the information identifying the payroll data is not accurate.

Wells fargo as a lender was aware that it did not report petitioner's wages accurately. This was not an issue with them.

These lenders were concerned with making sure that disaster loans were dispelled to business owners in a timely manner to eleviate effects of covid shut downs so businesses can stay afloet and not close down.

As a direct result of Covid 19 pandemic, petitioner's business was negatively impacted and suffered economic injury If the disaster loans were declined, petitioner's business would have suffered closure. She would not have been able to stay open or pay employees, contractors and pay business bills and other obligations and expenses.

The disaster loans sustained her business during pandemic which aligns with congressional intent for CARES ACT. The misstatements that gave rise to this case allowed 20 employee in 2020 and 50 employees in 2021 to remain employed and 12 business locations to remain open. Petitioner was able to help her community overcome covid shutdowns by offering 600 free stimulus returns and discounting fees to enable seniors and other groups get stimulus money and refunds on time. Petitioner delivered tax and stimulus charity drives that helped many people. Overall good was achieved as a result of these loans. Petitioner was able able to help the community through the employees that were sustained by the disaster loans.

The misstatements in her loan applications are precisely the type of insubstantial mistatements where materiality cannot be found.

Prosecution misrepresented and converted a genuine unprofitable PPP loan application and proper use of funds into a fraud case. The reconstructed 941s were intended as one thing and one thing only, they were intended to derive a technical formula that was used to calculate a fair share of PPP loan for a seasonal employees who had paid more wages than reported. This prevented petitioner from missing out on disaster loans as a legitimate employer who was affected by Covid 19 shut downs. Petitioner's employees needed pay amidst Covid shut downs when

when customers were not visiting petitioner's business locations for fear of Covid 19 exposure. These employees needed their pay to sustain themselves and their families amidst low business productivity due to covid 19 shut downs..
Those employees needed their pay upon which the loan applications were based on. Nothing suggests that the data derived from the 941s or the workaround that prevented a legitimate business from missing out on disaster loans served anything other than the practical purpose of facilitating acquisition of PPP loans which were later used for legitimate purposes.
the whole activity ended up as spending expense for petitioner. She matched her PPP loans by providing covid relief services that put money on many American's pockets helping them survive the shut down. .
Attorneys failed to argue that petitioner's actions were business and charity oriented not greed motivated .

Petitioner contends that her payroll documentation including paystubs and bank statements clarify clearly that the 941s that Agent Jack from IRS used as a benchmark for this prosecution were in error. Prosecutor Howard and Agent Brian Truax all three were informed about this issue at the start of the case. However, they ignored petitioner's concerns and pushed through with the prosecution.
Petitioner Asserts that the government did not meet the material standard required to sustain a false claims act for fraud charges petitioner asserts that a restitution in repayment of these forgiven and properly used loans is a miscarriage of justice.

No single fact or occurence determines materiality. Instead, multiple factors inform materiality analysis such as whether the government alleged violation goes to the essense of the bargain and how the government responds to claims when it has knowledge of violations. Ecobar 1, 579 U.S at 193 n.5 194-95.

The materiality standard is demanding, The false Claims Act is not an all purpose anti fraud statue or a vehicle for punishing garden-variety breaches of contract or regulatory violations. By enforcing the materiality requirement rigorously, courts ensure that government contractors do not face onerous and unforeseen FCA liability as the result of noncompliance with any of the potential hundreds of legal requirements (united states ex rel Kelly V. Serco, inc., 846 F.3d 325,333 (9th Cir 2017)(citation ommitted

A misrepresentation cannot be deemed material merely because the government designates compliance with a particular statutory regulatory, or contractual requirement actions. A misrepresent as a condition for payment. Nor is it sufficient for a finding of materiality that the government would have the option to decline to pay if it knew of the defendant's non compliance. Materiality cannot be found where non compliance is minor or insubstantial. see United States ex rel Marcus v. Hess, 317 U.S. 537, 543, 63 S CT. 379, 87 L.ed.443 (1943))

Failure of Attorneys to assert Government knowledge inference

No attorney was willing to advocate for petitioner on the lack of intent to defraud in her loan applications.

Attorneys chose to distance themselves from the wage differences that petitioner faced in her IRS reported wages and what she real paid.

Petitioner asserts that she had discussed her wage discrepancies with SBA and lenders before hand. SBA directed petitioner to apply for a PPP loan with Lendistry. SBA checked its system and gave petitioner 5 names of lenders who still had money left to give under the PPP program. At this point the money was in the verge of depletion most lenders were out of money.

There is therefore government knowledge inference that undermines the materiality and fraud charges from the government. Her loan lenders knowledge of the alledged false records negate the scienter required for an FCA violation.

A classic example of the government knowledge inference occurs when the government with the knowledge of the facts underlying an allegedly false claim, authorizes a contractor to make that claim For instance in the United States ex rel Durcholz v. KKW, Inc officers at a naval facility directed the defendant general contractor to use incorrect line-items in order to expedite the biddip process. The officers did so because they were more interested in speed than cost and made their decisions in accordance with these priorities. The court of appeals for the seventh Circuit declined to hold the defendant reliable for defrauding the govenment by following the government's explicit directions. The court explained that the government knew what it wanted and it got what it paid for. Though such direct and contract specific authorization is not required to support the govenment knowledge inference, generally where the government and a contractor have been working together albeit outside the written provisions of the contract, to reach a common solution to a problem, no claim arises

The government inference arises when the government knows and approves of the facts underlying an allegedly false claim prior to presentment and the defendant knows that the governemnt is aware of the false informetion in a claim. There is a two prong test that must be met before the government knowledge inference can preclude liability. The two prong requires that

(1) The government agency knew about the alleged false statements

(2) The defendant knew the government knew

In Shaw v. AAA Engineering & drafting, inc, the court of appeals for the 10 circuit distinguished the decisions of the court of appeals for the ninth cirsuit in united states ex rel butler v. hughes inc and wang ex rel united States v. FMC CORP. The 10th circuit stressed that in Butler and Wang, the defendant and the government had completely cooperated and shared all information and had an ongoing dialogue about the problems

Petitioner asserts that she had cooperated with the lenders and SBA, shared information and had an ongoing dialogue about her payroll problems. This SBA/LENDERS KNOWLEDGE was sufficient to negate the intent requirement under the FCA as a matter of law

(1) The government knew about the alledged false statements

(2) Petitioner knew that the government knew government knew

There was cooperation and colaborative problem solving going on. The workaround could arguably described as a creative common sense solution to a very real and perplexing problem . Petitioner asserts that there is nothing that would justify calling it fraud. Her loan applications were neither false nor fraudulent. Nothing in the text or history of the FCA leads to the conclusion that congress intended conduct such as this to morph into an actionable fraud prosecution.

[illegible] all charges even dismissed ones. She therefore discusses all charges here.

PETITIONER DID NOT COMMIT MONEY LAUNDERING

Petitioner asserts that her conduct did not involve unlawful money activities . She never concealed, disgusted the nature of of location, the source, the ownershipp or control of the proceed of any unlawful activity. Petitoner aserts that her loans were not criminally derived. She rightfully acquired an EIDL LOAN that was used for business purposes.

Her PPP loans were qualified by lender and used properly too.

PETITIONER DID NOT COMMIT WIRE FRAUD

All Counsels did not challenge the charges of wire fraud and money laundering. The petitioner asserts that

The united States burden under the wire fraud requires a showing that the defendant had the intent to deceive and cheat- in other words to deprive the victim of money or property by means of deception(United States v. Miller, 953 F.3d 1095,1103(9th cir 2020)). This requires that defendant made false or fraudulent pretenses, representations or promises. Evidence that petitioner submitted false information when applying for disaster EIDL AND PPP LOAN IS INSUFFICIENT TO SUPPORT a conviction of wire fraud charge under 18 USC 1343. Petitioner did not defraud SBA OF MONEY or property by receiving disaster loans. A rational trier of fact could not conclude the government did not receive the benefit of its bargain.

Petitioner therefore seeks reversal of her restitution order on the basis of insufficiency of evidence. There is no plausible evidence showing that SBA did not receive the benefit of the bargain or was subject to a scheme to deprive it of money or property. The court should challenge the sufficiency of the evidence de novo, asking whether viewing the evidence in the in the light most favorable to the verdict, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (United states v. Boyd, 803 F.3d 690. 692 (D.C Cir 2015)).(quoting Jackson v. Virginia 443 U.S 307, 319 (1979)).

The evidence presented fails to prove beyond a reasonable doubt that petitioner was not acting in good faith as a legitimate busi●ness owner desperately trying to save her business in a time of crisis due to Covid 19. Where the evidence supporting a fraud charge fails to prove a loss of money or property, it fails. Court s have held that where the evidence supporting a fraud charge failed to prove a loss of money or property, it could reverse for insufficiency of the evidence under either the plain error or denovo review (United States v. Barrow, 109 F.4th 521 526 (D.C Cir 2024).

Petitioner asks that the restitution be reversed.

Attorney Luwemba and Thompso did not challenge plea agreement;

FAILURE OF ATTORNEYS TO CHALLENGE LACK OF CRIMINAL CONDUCT CHARGED IN THE PLEA AGREEMENT

Petitioner pled to a charge of false statements in violation of 18 USC 1001(a). Petitioner helped K.W FREE of charge to apply for an EIDL loan. Wells was a cancer survivor at the time petit ioner applied for this loan. Petitioner met Wells through her mum Lotsie Gordon who was a long time friend of petitioner and a neighbor. Both Wells and her mum were battling cancer in 2021. They approac hed petitioner to help them apply for a grant. Petitioner apllied for wells EIDL loan using her tax transcript for 2019 tax year which indicated that she had self employment. Wells and her Mum had supplied documentation to Jackson hewitt when they filed th taxes in 2020 concerning their self employment income.

Prosecutor Howard and Agents Jack and Truax who interviewed petitioner had the opinion that to qualify for a PPP loan or EIDL, a person has to have an actual business like a store front. petitioner argued with them because an a loan applicant did not require to have an "actual business" but need to have self employment. Having a business and having self employment are two different requirements.

The Coronavirus Aid Relief and Economic Act (CARES ACT) stipulated that small businees include

(a) sole proprietors

(b) Self employed individuals

(c) Independent contractors

in the EIDL and PPP loan applications the above sole proprietors, independent contractors and self employed individuals were all classified as businesses in a broad category to include them all. The plea agreement on page 2 charged petitioner for making false statements that Wells had a business "Defendant knew at the time of the application that K.E.W did not have such business". Allegations in this charge were similar to others where prosecution required a aloan applicant to have a real traditional or actual business. They never recognized other categories recognized as businesses by SBA as listed above.

Petitioner asserts that the EIDL/PPP loan applications that she prepared for her few clients were based on their data from their tax returns showing they were qualified for the loan. These clients had schedule c in their tax returns for 2019 and 2020 tax years. Agents refused to review their tax returns and relied on their word of mouth or hearsay evidence that was not factual.

Petitioner discussed with wells that in order to get a disaster gran she had to apply for the EIDL loan since there was no stand alone application for a grant . Even thought her tax transcript qualified her for the EIDL loan, there was a zero probability she could get the loan since her credit score was below 575. She told petitioner that her credit got messed up when she battled cancer and did not take care of various payments.Her low credit score disqualified her for the EIDL loan but she applied to try see if she could get the grants associated with the loan.

Once petitioner applied for the EIDL loan for wells, Wells received a username in her emails from SBA. She went onto SBA portal and created a password. A verification code was sent on he phone. She logged into SBA portal read all loan application disclosures and application details. She then signed all relevant paperwork and gave SBA permission to process the loan.

Petitioner asserts that wells by signing these documents inside SBA portal made herself responsible and legally reliable for her loan applications. Wells reviewed her loan application and completed it by signing therefore petitioner cannot be held responsible for it. This applies also to Jane Njeru, Esther Njoroge, and Jacqueline Black. They all reviewed their loan applications, read disclosures and loan agreements with SBA and the lenders. This removed liability from petitioner as a loan preparer. These applicants signed their their loan applications therfore are responsible for the loan details. They signed their loans and got into contractual agreements and were therefore legally responsible for their loans.

As a loan preparer, petitioner fulfilled her due diligence by preparing their loans according to their tax records. This was the acceptable and required procedure for the application of disaster loans. Their loans were also proper and legitimate court erred in ordering petitioner to pay back these loans. Petitiner argues that there is no statue that punishes a loan preparer for using an applicant's tax transcript details to apply for a loan. This charge was therefore improper.

FAILURE OF ATTORNEY TO CHALLENGE LACK OF PLAUSIBILITY IN THE PLEA AGREEMENT

Attorney Luwemba did not address the plea agreement's facial invalidity since no valid crime was alledged. The plea did not state an offense on its face. The falsity alledged in the application (Loan) details was invalid because as discussed the loan was prepared using Wells tax return for 2019. Wells had signed her tax return in 2020 and indicated that the details listed in the return was accurate and prepared according to the information she furnished Jackson Hewitt. In 2021, she used this tax return to apply for a loan. She had indicated that she had self employment with her mum for year 2019. She also claimed her nephew in the tax return. Wells and her mum took care of their sibling who was bound in a wheelchair. Wells and her mum claimed in their taxes that the rest of the family gave them some money for it. Her mum also baby sat in their home. They claimed this as joint income in the tax return.

Petitioner had paid Wells mum on various occassions to baby sit for her. Petitioner has attached an affidavit showing that they babay sat in their home. see affidavit from Emmanuel Githinji exhibit 10)

Petitioner was charged with a crime that was simply not a crime. Her attorneys failed to advocate for her in this issue. The plea did not charge facts that constitute a federal crime.

petitioner lacked knowledge of the material facts in the plea because facts in the plea are inconsistent with the crime. the government's charge of fraud in this case was implausible based on the correct use of Well's tax information; petitioner's plea was not fully informed. The plea failed to allege fraudulent intent, the indictment did not charge petitioner with an express misrepresentation to obtain the loan at issue. The courts review dismissal under Fed R. CIV P. 12(b)(6) de novo. Under rule 12(b)(6), the court reviews for plausability, specifically whether enough facts have been pled to state a plausible claim. see Bell atl corp v. Twombly, 550 U.S 544, 570, 127 S.ct 1955, 167 L.Ed 2d 929 (2007). Rule 8(a) dismissals are reviewed for an abuse of discretion but to overcome a motion to dismiss, plantiff's allegations must move from conceivable to plausible see Ashcroft v. Iqbal, 129 S. Ct 1937, 1950-51, 173 L.Ed 2d 868 (2009)

Petitioner asserts that section 2255 relief will be if the information or indictment failed to charge an offense, because the error is one that divests the court of jurisdiction see e.g United states v. Harper 901 F.2d 471, 472-73 (5th cir)

FAILURE OF ATTORNEY TO REVIEW AND SUBMITT BUSINESS DOCUMENTS TO COURT

Attorney Vines did not contact square payroll or wells fargo to obtain and review business records for petitioner's business Vines adopted prosecutor's file and never investigated further.

Petitioner desperately emailed him some of the payroll documents and other business records through her family. Counsel never submitted them to court.

Counsel refused to submitt petitioner's IRS FORMS W2s , W3s, 1099s, payroll reports, transaction details from Jackson Hewitt, Business licenses, employee clock in hours etc. This would have cured the misunderstanding that petitioner used disaster loans for anauthorized purposes.

Petitioner has attached some of these documents here.
She will send more in when the Prison officials allow her to.

FAILURE OF ATTORNEY TO ASSERT THAT OPETITIONER ACTED IN GOOD FAITH

Petitioner asserts that she received ineffective assistance of counsel because all attorneys did not defend her actions through good faith. Petitioner asserts that she applied for the EIDL AND PPP LOAN IN good faith. She projected data from using her rightfull paystubs and reconstructed her missing wages in good faith. A person who acts on a belief or an opinion honestly held is not punishable --- merely because the belief or opinion turns out to be inaccurate, incorrect or wrong. An honest mistake in judgement does not rise to the level of criminal conduct. Good faith encompasses among other things a belief or opinion honestly held, an absence of malice or ill will and an intention to avoid taking advantage of others. Petitioner was extra dedicated to making sure her workers keep their jobs during covid, she was dedicated to helping seniors and the needy in the society during covid, she was dedicated to helping orphans and needy children in

Africa in good faith. Petitioner believed in good faith that it was appropriate to apply for EIDL and PPP loans and use them to sustain her business during covid shut downs. She believed in good faith it was appropriate to match her disaster loans and offered tax filing charitable services towards seniors, people who were bed ridden in hospitals and homes due to Covid. she helped them to get their stimulus and refunds in a timely manner.

petitioner believed in good faith that her actions were authorized and consistent with principles of charity work upheld by embrace Africa. Her actions of helping the less fortunate and needy in society is recognized and accepted standard of practice for chariety organizations as stipulated by Internal Revenue Service - charity division.

The government cannot prove beyond a reasonable doubt that her business actions and charity actions were malevolent rather than benevolent. For this reason, the sentence verdict need to be vacated

FAILURE OF ATTORNEY TO CHALLENGE AND DISMISS CHARGES ON EIDL LOAN FRAUD

Consel did not present mitigating evidence to exonorate petitioner on charges that she committed EIDL loan fraud. During pre-trial, plea and sentencing phase of the case all attorneys did not challenge this charge.The government charged that petitioner illegally obtained and mis-used 137,000.00$ from EIDL loan. The government declared the loan improper and charged that petitioner misused these funds on personal expenditure including buying a car, making mortgage payments, sending international transfers(wire payments) and on personal purchases.

During sentencing, Vines kept quite and did not advocate for petitioner on this issue. He did not explain mitigating circumstances

Petitioner had a business with not more than 500 employees, she paid payroll and had 12 business locations. Petitioner was in business for the one year required period prior to covid 19 disaster. To qualify for her loan, SBA run and approved the loan based on petitioner's credit score which was more than 575 as required by SBA. SBA further determined that petitioner was able to repay the loan since Jackson Hewitt and Embrace Africa were operational. In addition to giving petitioner an EIDL loan of 127,000.00, SBA freely also gave petitioner an advance grant of 10,000.00$Both EIDL loan and EIDL grants were used for appropriate business purposes as stipulated by SBA. petitioner had enough funds in her account to cover for her personal international wire transfers and expenditure within America . Petitioner used her business income from Jackson Hewitt to buy the car, pay mortgage and send money to her family in Africa. None of the EIDL loan went for illegitimate personal uses.

Prosesution selectively picked some transactions from her account to use against her but never recognized that she had enough deposits to cover her expenses from Jackson Hewitt.

Petitioner has attached a breakdown of how he spent the EIDL loan (see exhibit 39) Petitioner used 219,944.00 on payroll which was 60% of 366,656 ppp Loan. She used all EIDL to pay for Business Rent for 12 locations. and other expenses.

Petitioner was facing a critical moment in her business; she was in the verge of closing because customers were not coming to her business locations in fear that they would contract the virus. Her EIDL loan enabled her to pay her payroll, to pay for franchise obligations with Jackson Hewitt such as marketing fees and royalties Petitioner was able to pay for utilities and supplies therefore saving her business. The EIDL funds thus helped Embrace Africa and Jackson Hewitt survive the Covid 19 economic challenges. Our

The United States burden under the wire fraud statute requires a showing that defendant had the "intent to deceive and cheat- in other words to deprive the victim of money or property by means of deception" United States v. Miller 953 F.3d 1095, 1103 (9th Cir 2020). This requires that the defendant made "false or fraudulent pretenses, representations, or promises (id).

Petitioner asserts that her EIDL loan application was proper and no fake or fraudulent pretenses or representations or promise were made. Petitioner was qualified for 9009 - 15USC 636(b)(2) EIDL Loan in response to covid 19 during the covered period.

Petitioner had a qualifying business; in the loan application she gave truthful information about her business. The information she gave concerning her business was correct. As agreed on the loan authorization and agreement, petitioner used the EIDL FUNDS AS working capital, to cover payroll expenses and other business obligations including rent, debts, supplies and utilities. prosecution ~~Mr Saama~~ during sentencing was speculative and declared the loan improper without specificity on why petitioner's EIDL loan was not appropriate.

Rule 9(b) requires that allegations of fraud or mistake must state with particularity the circumstances constituting fraud. Fed. R. CIV. P.9(b).. The circumstances required by rule 9 procedure are the "who, what, when, where, and how" of the fraudulent activity. (see Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir 2003)). see also Neubronner v Milken 6. F.3d 666, 672 (9th Cir 1993).

In addition, the allegation must set forth what is false or misleading about a statement and why it is false. See Vess 317 F.3d at 1106(quoting Decker v. Glenfed, inc. (in re Glenfed, inc sec. litig), 42 F.3d 1541, 1548(9th Cir 1994). This heightened pleading standard ensures that the allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can DEFEND against the charge and not just deny that they have done anythinbg wrong (Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir 1985).

7.) GOVERNMENT INTERFERENCE WITH VALID CONTRACTS

The constitution prohibits the government from interfering with legitimate activities and actions.(United States v Williams, 514 U.S 527 (1995). The government declared petitioner's loan illegitimate after she met all contractual obligations . This interference violates her rights under the contracts clause. Petitioner had a valid contract with SBA to repay the EIDL loan in 30 years. This illegitimate interference from the governement went against the constitution article 1 section 10. The government interfered with petitioner's loan after a valid underwriting actions that violated her right to contract freely (see Kaiser Aetna v United States, 444 U.S 164(1979). Government is prohibited from overreach into private property and contract matters(Loretto v. Teleprompter manhattan CATV CORP 458 U.S 419 (1982)

The government declared petitioner's EIDL loan illegitimate after she met all contractual obligations. This interference violates her rights under the contract clause. Government interference with legitimate actions is prejudicial(United States v. Willims 514 U.S 527 (1995). The government interfered after a valid underwriting process completed. This violated petitioner's right to contract freely. The government improperly interfered with legitimate actions (Kaiser Aetna v. United States, 444 u.s 164 (1929)

FAILURE OF ATTORNEY TO CHALLENGE PROSECUTORIAL MISCONDUCT

All attorneys did not submit a prosecutorial misconduct challenge despite evidence that the government engaged in intentional misconduct which violate brady, he federal rules of criminal procedure and the constitution. attorneys refused to object various prosecutorial misconducts:

Investigating officers in this case prosecuted petitioner by preparing and or signing an accusatory instrument which they knew to be incomplete, misleading and false.

Petitioner contends that this misconduct was clear, devious and willful.

GOVERNMENT USE OF PERJURED TESTIMONY

Petitioner contends that her due process was violated because Agent Brian Jack who worked the case mainly presented false testimony and the prosecutor Christopher Howard allowed it to go uncorrected. This false testimony was imputed to the prosecution

PROSECUTORIAL MISCONDUCT: FAILURE TO DISCLOSE EXCULPATORY EVIDENCE

InBrady v. maryland 373 83 s.ct 1194, 10 L Ed 2d 215 1963) the supreme court held that the suppression by prosecution of evidenc ffavorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good or bad faith of the prosecution.

for a brady claim to succeed, petititioner must show that

1. that the evidence at issue is favorable to the accused
2. that it was suppressed by the prosecution, either willfully or inadvertently
3. it was material see Banks v. Dretke 540 U.S 668, 691, 124 S.Ct 1256, 157 L.Ed 2d 1166 (2004)

In the course of applying for PPPlloan petitioner exchanged emails with Lendistry and SBA. agents removed these emails from her inbox kept them and they never presented them to defense counsels nor to court. agents directly tampered with evidence and spoiled it.The emailsawere kept by agents and petitioner couldnnot access them. Petitioner was informed by the email company that agents had taken them.These emails contained evidence that petitioner , SBA, andlendistry cooperated and worked a problem solution on how her loans were calculated amidst inaccurate form 941s. Agents suppressed this evidence to the prosecution's advantage. counsel for petitioner (all attorneys) refused to addess this iss issue.

Agent Jackffrom IRS WITHHELD tax transcripts for

a. Melinda Hoven

b. Jane Njeru

c. Esther Njoroge

d. Francis Leki

2

e. jacqueline black.

These persons had filed taxes with Jackson Hewitt for years. They had self employment uin their tax returns for 2019 and or 2020 tax years; this qualified them for disaster laons. Prosecution charged petitioner with wire fraud and deemed these loan applications illegitimate and fraudulent. Prosecution relied on a false premise thet "you have to have a physical business to qualify for the loans. Agent Lott from SBA TESTIFIED during sentencing that they had to have an "actual business" to qualify for disaster loans. Consel failed to contend for petitioner that that was not a requirement by the CARES ACT USC 636 (a)(36)(B)(F). Agent Jack visited some of these individuals and asked them specifically "did you have a business in 2019?" Most of them answered no out of misunderstanding. Prosecution used these misrepresentations to convict petitioner.

These tax transcripts are material evidence and if they were produced, no jury would have indicted petitioner for wire fraud. Restitution could not as well been ordered. Petitioner was ordered to pay back the EIDL loan of Jane Njeru in the amountof 119 810.71. Njeru was interviewed and approved by a loan specialist from SBA. Agents suppressed this information against petitioner. Njeru had worked as an independent contractor for 2019 and 2020 she was qualified for the EIDL loan.Agents testified that she was not but SBA qualified her after undergoing underwriting . see her attached AFFIDAVIT. Exhibit 14.

agent Lott From SBA SUPPRESSED various communications between SBA and these loan applicants. These phone calls and emails would have shown that trhe loans were proper and nothing fraudulent was associated with them.

These tax returns, emails and phone call communications were favorable to petitioner because they were both exculpatory and impeaching. They contradict prosecution theory that these loans were improper.

in PRESENTENCING REPORT , agents misrepresented that petitioner used disaster loans to buy airticket, groceries, dental fees, mortgage payments and a rental car (PSI ITEM 24) this is non factual as petitioner used all her loans for allowable purposes.

2. In PSI item 28, agents accused petitioner of taking a PPP LOAN of 20,000 and not using it appropriately agents state that "within the application , Harun agreed that not more than 40 percent of the forgiven loan amount may be used for non payroll costs. subsequent debits were examined and was determined that Harun mispent the funds at best Harun used approximately 47.5 percent of the funds on payroll rather than 60% percent as required by law". This falsity is unquestionably egregious and outrageous as petitioner spent over 600,000.00$ for payrollfor forboth 2020 and 2012 periods (wages and contractor pay).

3. PSI ITEM 23 accused petitioner of fraudulently getting loans ignoring the work around they discussed with lendistry.

SBA allowed business oweners to apply for PPP loans with multiple lenders because money was running out. This increased chances of a businesssgetting money as money was depleting fast. Petitioner was advised by SBA to apply with various lenders which she did. there was a zero probability that all 5 lenders could have given her a loan (just like you cannot get multiple refunds onyour taxes using a social security number). Petitioner used the same EIN number(Employer Identification Number) when applying for PPP loan with 5 lenders. SBA system had a mechanism to drop all other applications if one was approved. This was the case with petitioner, the other four lenders dropped her applications, 4 of them when she was approved by Lendistry. The government falsely accused petitioner of attempting to obtain an extra 397, 075.00$ PPP loan. This impossible loan of 397,075.00 was imputed into sen sentencing which gave her an intended loss enhancement in her criminal points in the sentencing guideline tables. This increased her points with 12. This gave rise to violation of her due proces rights. The restitution should be vacated.

petitoner asserts that these misrepresentations resulted into her severe sentence and excessive restitution

Petitioner ASSERTS that she never met Agent Justin Lott from SBA. She saw him the first time during sentencing. He never interrogated petitioner. He never corrected misconceptions on disaster loans which led to this unduly prosecution. He never clarified on the issues of contraversy, he went along vouching for false testimony mainly from Agent Jack who interected with petitioner

Attorneys for petitioner never sort aslaon specialist to

~~resolve the misunderstanding~~

resolve the bias that petitoner faced as a result of falsity on key application elements and requirements of disaster loans which was distorted by prosecution in their favor.

~~prosecutorial misconduct~~

PROSECUTORIAL MISCONDUCT: FAILURE OF INVESTIGATORS TO REVIEW DUE DILIGENCE RECORDS

Counsels for petitioner did not advocate for petitioner. They nev never challenged Agents developing crimes from petitioner's online IPPPINTERNET activity without reviewing documents.

Agent Jack from IRS is well versed ~~wiht~~ with the inspection requirement of due diligence records towards Electronic Return Originator (ERO) petitioner was an approved IRS approved provider who originated and submitted returns. Agent jack did not review the documents that petitioner used to prepare tax returns and loan applications for her clients. He did not review records associated with applications for Jane Njeru, Esther Njoroge, Melinda Hoven a dn Jacqueline Black. He concluded from the internet ipp address that their applications were fraudulent. IRS HAS A COMPREHENSIVE procedure to evaluate compliance with ERO providers. If he followed this procedure, petitioner would have been able to demonstrate that she followed due diligence in her work as a preparer. This illustrates further bias in the investigation.

PROSECUTORIAL MISCONDUCT: GOVERNMENT RECALLED PETITIONER'S FORGIVEN PPP LOANS AND DEMANDED REPAYMENT

COUNSEL FOR PETITIONER DID NOT OBJECT WHEN PROSECUTION OVER_REACHED counsel for petitioner did not object when prosecution overeached and over stepped SBA's decision to forgive petitioner her loans. Petitioner did not get a formal review from SBA in reviewing her forgiven loans. On the contrary she received emails from SBA inviting her to apply for more EIDL funding. Exhibit 7

Petitioner asserts she would have passed the review and allowed to keep funds since she used all her loans properly and as well donated her money to help the community during covid. Agents did not allow this fair review to tske place. They recalled the loan on their criteria

SBA had a mechanism to ensure that the employers who did not use all ppp funds for payroll (60%) would repaythe loan. Petitoner asserts that this would have allowed her to keep her business if prosecution allowed SBA to solve the issue instead of the prosecution and shutting down of ther business.

petitioner was already undergoing and pursuing civil remedies with IRS and Social Security concerning her unreported wages. Petitioner asserts that the governement selectively prosecuted her personally instead of her corporation Embrace Africa despite government knowledge of ongoing civil remedies , this was unfair treatment towards her. Charging the petitioner personally for payroll data already being addressed by the cooporation in civil remedies with IRS AND SOCIAL SECURITY CREATED A DE FACTO DOUBLE PUNISHMENT that carrries a double jeopady concern.

Counsels did not address these overlapping civil and criminal issues. Disregarding that civil remedies were in progress and pursuing criminal charges on her personally instead of the corporation constituted government overreach and a violation of due process. petitioner contends that she was entitled to a resolution of her PPP loan liability through SBA and an update of her employer records with IRS. Petitioner asserts she was entitled to these administrative processes with the two agencies before criminal liability was imposed in United States v. Lasalle National Bank, 437 U.S 298 (1978), limits the use of IRS investigations to gather evidence for criminal prosecution if civil remedies are actively pursued. Misuse of overlapping civil and criminal processes may constitute misconduct. (United states v. Kattar, 840 F.2d 11 8 (1st Cir 1988)

PROSECUTORIAL MISCONDUCT: USE OF WRONG PPP LOAN CALCULATION FORMULA

Throughout the case agents maintained that petitioner was only suppose to get 25,000.00$ worth of PPP loan. Agents divided the wage reported for 2020 which was 108017.50 divided it by 12 then charged petitioner of getting a loan 7 times more than she was supposed to get.

Petitioner was prejudiced by this formula since her loans were calculated using a different formula. she was a seasonal business, her loan amount should have been more than the agents calculated. Agents used the wrong formula willfully and intentionally to prejudice her.

Agents would have derived a way more different amount if they calculated it right. They calculated petitioners loan using the annual formula, that divided a years wage by 12 then multiplied by 2.5 . For example if the agents were near being fair, petitioner was a seasonal employer, for fairness her loan would have been 108,000 divide by 3 multiply by 3.5 which would have given her 126,000.00 this is a major difference that prejudiced her. however, lendistry used her wages for a period of 12 weeks and mutliplied by 3.5 since she qualified for a exception in NAICS CODE 72. She was entitled to more loan than calculated by Agents.

Petitoner's loan was calculated by Lendistry AS a seasonal business, agents calculated it as if she was a full year annual business. This added fraud liability on her violating her due process.

FAILURE OF ATTORNEY TO CHALLENGE COURT'S ABUSE OF DISCRETION

Petitioner asserts that her attorney wqas deficient during sentencing for failure to object when the court changed her laqn contractual obligation. The court changed petitioner's contractual loan obligation for her EIDL LOAN. she was supposed to pay in 30 years but she was ordered to repay it by making 400 dollars payment everymonth upon release from prison. Petitioner invokes the "Taking Clause" of the 5th amendment. This court and governement action substanntially impared her loan contract to the point of depriving her of its property rights. It could also be considered a "taking" requiring just compensation. The due processs clause of the 5th and 14th amendments states that governements interference with contracts must be rationally related to a legitimate government purpose and cannot be abitrary.

Petitioner was generating income in her Jackson Hewitt loacations she was already scheduled to start making payments on her EIDL starting December of 2022. Petitioner was in forebearance because SBA gave businesses a grace period to then start making payments on loans by December of 2022. There was no need for prosecution and a court order for restitution on this loan.

ABUSE OF DISCRETION BY COURT

A district court abuses its discretion when it relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law. Attorneys, for petitioner did not raise plain error review. Plain error has four elements
(1) an error (2) that is clear and abvious
(3) that affected the defendant's substantial rights and
(4) whose adverse impact seriously affected the fairness, integrity, or public reputation of the judicial proceedings. But an error satisfies all four elements only in exceptional circumstances where it is so plain that the trial judge and prosecutor were derelicit in countenancing it.

In this case petitioner asserts that the entire evidence was based on a false premise creating a definite and firm conviction that a mistake was committed. Thus the district courts account of the evidence is not plausible in the light of the record. The court should vacate this sentence.

The evidence of knowledge and intent was not sufficient to convict petitioner of wire fraud and false statements. Granting habeas relief based on prosecutorial misconduct is proper because prosecution committed improprieties during their investigation that was unduly prejudicial. Petitioner contends that this impropriety was flagrant because

(a) it misled the jury to indict petitioner in the first place
(b) it was extensive
(c) it was deliberate
(d) the evidence against petitioner was weak.

The court's erroneous consideration of false evidence and fabricated testimony affected the substantial right of petitioner.

Petitioner received cruel AND harsh punishment from the court because the sentencing decision was based on improper basis. The errors resulted to a harsh sentence and high restitution amount.

These errors were ~~ag~~ aggregated in nature. Due to ineffective assistance of counsel, the errors were not addressed leading to a miscarriage of justice.

FAILURE OF ATTORNEY TO OBJECT OVERSENTENCING

Attorney Vines did not object when s petitioner was sentenced outside guidelines. Petitioner was deprived to be sentenced under a sentence guideline range which had a minimum and a maximum.. The plea agreement on page 4 item d promised petitioner the low end of the advisory guidelinerrange range. This was determined by court to be 27-33 months of incarceration. Petitioner asserts that court breached this agreement by sentencing her to 60 months in prison. Petitioner asserts it is unconstitutional unconscionability for a plea proffer to take a quantum leap of 547,000.00$ and suggest to the court without objection of defense counsel and claim that petitioner owes that large an amount of restitution toward a 2114 c claim in gross revenue loan claim. It is improper for a plea agreement without objection of attorney to claim a 5 year possible sentence should be applicable in ~~pe~~ petitioners case without giving consideration to a sentencing guideline pursuant to U.S.S.G . This plea also shows an ambiguous calculation between actual and intended loss.

Petitioner asserts that her sentence was substantively unreasonable. The court reviews the substantive reasonableness of a sentence for abuse of discretion (United states v. Kirlin, 859 F.3d 539, 545 (8th Cir 2017). A district court abuses its discretion (a) when it fails to consider a relevant factor that should have received significant weight
(b) gives a significant weight to an improper or irrelevant factor or (3) considers only the appropriate factors but in weighing those factors commits a clear error of judgement (United States v. Borromeo, 657 F.3d 754, 756 (8th Cir 2011). A defendant challenging his sentence must show more than the fact that the district court disagreed with his view of what weight ought to be accorded certain sentencing factors (United states v. Townsend 617 F.3d 991, 995 (8th Cir 2010). a within guideline sentence is is presumptively reasonable on appeal.
Attorney Vines did not object to the cruel and harsh sentencing that petitioner received in court.
The court did not do any inquiry on the various issues petitioner raised during sentencing. Petitioner informed the court that IRS as a branch of the government already has her employer wages sufficient to demonstrate that she used loans properly and that the errors in her loan application could have been overlooked because she did not cause any loss to the government. The court discredited her entire testimony and condemned her with harsh words and severe penalties. Court did not assess the prosecutor's evidence in the light of defendants challenges to its reliability. By evaluating only the the prosecution's investigating evidence, the court could not reach no logical conclusion regarding petitioner's testimony to rebut or cast doubt on the government's case.

Court errored in giving all weight and consideration to the agent's testimonies and rejecting her testimony totally. The court did not conduct a particularized inquiry and may be give some credibility to her testimony. It was an error for the court to reject her testimony as unnecessary and unbelievable.
Attorney Vines did not advocate or vouch for petitioner's testimony in court especially during sentencing where court rejected her entire testimony and gave her cruel and harsh punishment in violation of 8th amendment. (Robinson vs California 370 us 660 (1962)

CONCLUSION

Petitioners has included her bank statements and payroll documents for 2022 year. This is to demonstrate that the disaster loans she received sustained her business and survived Covid 19 as congress intended. The government prosecuted her and did not allow the civil procedure within SBA and other agencies like IRS to resolve the issue. The ultimate goal for disaster loans was to safeguard businesses; this happened but the government shut down petitioners businesses and sent her to prison. Over 50 of her workers were rendered jobless as a result. This was against congressional intent for disaster loans. The decision to place criminal liability for a disaster loan that was used for legitimate business purposes as stipulated by SBA IS capricious and arbitrary.

petitioner entrusted her attorney with her liberty and that trust resulted in a horrific injustice.

Therefore petitioner asks the court to consider all aggregated errors that predujiced her and vacate the guilty plea and the sentence.

petitioner asks the court to place a stay on the monetary penalty of 547095.07 until final disposition of this case. Finally petitioner requests the court to grant her all such relief she is entitled or is proper including an evidentiary hearing.

respectfully submitted

02/05/2025

Gladys Harun