

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

JUL 31 2025

FILED

UNITED STATES OF AMERICA,
Respondent,

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

V.

GLADYS HARUN,
Petitioner.

PETITIONER'S MOTION FOR RELEASE PENDING ADJUDICATION OF 28 U.S.C.
§ 2255 MOTION

INTRODUCTION

Petitioner Gladys Harun, Pro se respectfully moves this Court for her release from custody pending adjudication of her pending motion under 28 U.S.C. § 2255. Ms. Harun has presented newly discovered exculpatory evidence establishing a substantial likelihood of success on her § 2255 motion and demonstrating her actual innocence of the charged offense. Additionally, petitioner has exceptional circumstances; she is a mother to 6 minor children who are now starting a new school year. Her status as a caregiver to take care of these six children compel her release. She poses no flight risk or danger to the community and has strong family and community ties. In support, Petitioner shows as follows.

LEGAL STANDARD

Although there is no explicit statutory provision for release pending a § 2255 motion, courts in this Circuit recognize inherent authority to order bail where the petitioner demonstrates (1) a substantial likelihood of success on the merits of the § 2255 motion, and (2) extraordinary circumstances that make release necessary to preserve the effectiveness of the habeas remedy. See *Cousar v. Attorney General*, 2021 U.S. Dist. LEXIS 125891, at *3 (D. Md. Aug. 30, 2021) (extending authority recognized in immigration habeas cases to § 2255 motions in absence of express statute); *Miller v. United States Army*, 2018 WL 11063086, at *1 (11th Cir. Dec. 20, 2018) (unpublished) (recognizing power to order interim release pending habeas resolution). In habeas cases, the Eleventh Circuit has confirmed that these principles mirror the standards for release pending appeal in criminal cases under 18 U.S.C. § 3143. See *Gomez v. United States*, 899 F.2d 1124, 1125 (11th Cir. 1990) (en banc); *Wilcox v. Ford*, 813 F.2d 1141, 1151 (11th Cir. 1987) (applying same two-part test to habeas petitioners who have exhausted direct review).

In Eleventh Circuit decisions on release pending appeal, the court held a petitioner must demonstrate:

- A substantial likelihood of success on the merits of a substantial constitutional claim; and
- Extraordinary and exceptional circumstances rendering release necessary to make the habeas remedy effective.

See *Gomez*, 899 F.2d at 1125 (citing *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974)); *Wilcox*, 813 F.2d at 1151; *Love v. McKoy*, 625 F.2d 390, 393 (5th Cir. 1980) (extraordinary circumstances include serious deterioration in health). The court placed the burden on the petitioner to satisfy both prongs. *Gonzalez v. United States*, 722 F. Supp. 1557, 1560 (S.D. Fla. 1989) (“Petitioner has the burden of establishing both likelihood of success and extraordinary circumstances.”). Extraordinary circumstances may include acute health crises, significant family responsibilities, or prolonged delays in adjudication. See *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (serious health condition); *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721 (2020) (prolonged delays).

Here, Eleventh Circuit precedent is controlling: release pending habeas requires a two-part showing as set forth in *Gomez*, and the Court must apply that standard to § 2255 motions. *Calley*, *Love*, *Wilcox*, and *Gomez* establish that the same criteria govern pre-appearance release and habeas interim release in this Circuit.

ARGUMENT

I. Petitioner Demonstrates a Substantial Likelihood of Success on the Merits of Her § 2255 Motion.

A. Newly Discovered Evidence Proves Actual Innocence.

Petitioner's § 2255 motion presents newly discovered evidence that the SBA fully forgave all PPP and EIDL loans, confirmed by official forgiveness letters and audit reports. Comprehensive payroll and banking documents prove legitimate use of funds. This evidence directly contradicts the government's loss calculations and fraud theory, establishing her innocence. Under *McQuiggin v. Perkins*, 569 U.S. 383 (2013), actual innocence can overcome procedural bars when new evidence shows it is "more likely than not that no reasonable juror would have convicted." *Id.* at 386. Here, the extensive post-conviction documentation meets that high standard.

B. Prosecutorial Misconduct and Brady/Giglio Violations Undermine the Conviction.

Petitioner's suppression-of-evidence claims reveal that IRS and SBA agents knowingly presented false testimony and withheld exculpatory materials, violating *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). Courts recognize that constitutional violations arising from withheld impeachment or exculpatory evidence warrant relief. See *United States v. Agurs*, 427 U.S. 97 (1976); *Cone v. Bell*, 556 U.S. 449 (2009). This misconduct further strengthens her likelihood of success on her § 2255 motion.

II. Extraordinary Circumstances Warrant Release to Make Habeas Effective.

A. Primary Caregiver to Six Minor Children.

Petitioner is the sole caregiver for her six minor children and their well-being depends entirely on her presence. While incarcerated, they face educational setbacks, emotional distress, and potential harm in her absence. In *Gomez*, the Eleventh Circuit recognized that extraordinary family circumstances, such as caregiving obligations, may justify

release pending appeal. Gomez, 899 F.2d at 1126; see also *In re Wainwright*, 518 F.2d 173, 174 (5th Cir. 1975) (family responsibilities constitute exceptional circumstances).

B. No Flight Risk or Danger to the Community.

Petitioner has no prior criminal record, strong community ties, home ownership and stable family support. Under 18 U.S.C. § 3143 and Eleventh Circuit precedent, these factors show she poses neither a risk of flight nor danger to the community. Gomez, 899 F.2d at 1125–26; Wilcox, 813 F.2d at 1151–52.

C. Prolonged Delay Heightens Prejudice.

A § 2255 proceeding can take many months or years. Continued incarceration pending its conclusion would inflict irreparable harm on Petitioner and her children. The extraordinary circumstances—her caregiving role and strong merits of her innocence claim—mandate interim release to preserve habeas relief. See Miller, 2018 WL 11063086, at *1; *Wainwright*, 518 F.2d at 174.

III. Bond Conditions Can Adequately Assure Appearance and Safety.

If this Court orders release, conditions such as electronic monitoring, home confinement to her residence, regular reporting, and restrictions on business activities can ensure her appearance and community safety. See 18 U.S.C. § 3143(b) (1) (B) (conditions must reasonably assure appearance and safety).

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant her release from custody pending resolution of her 28 U.S.C. § 2255 motion;
2. Order her transferred to pretrial services supervision with conditions including electronic monitoring and home confinement;
3. Order the government to respond to her § 2255 motion on an expedited schedule; and
4. Grant such other relief as may be just and proper.

Respectfully submitted this 22nd day of July, 2025.

Gladys Harun

192 Amelia Dr

Byron Ga 31008



CERTIFICATE OF SERVICE / Mailing address Change

I, Gladys Harun, Pro Se, of Dimas Charity Macon, hereby certify that on July 23 , 2025, I served a true and correct copy of my

- (a) Motion to supplement the record in the case, Case No. 3:23-CR-00003 DHB-BKE,
- (b) Motion for sequencing of pending motions and priority consideration of motion to supplement record.
- (c) Petitioner's motion for release pending adjudication of 28 U.S.C. § 2255 MOTION

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