UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

GLADYS HARUN,

Petitioner,

V. CASE NO: 323-003

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S SUPPLEMENTAL OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Gladys Harun, proceeding pro se, respectfully submits these supplemental objections to the Magistrate Judge's Report and Recommendation ("R&R") (Doc. 77) pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. Petitioner's counsel filed narrow objections addressing only the amount of restitution (Doc. 85), but failed to raise numerous dispositive issues despite Petitioner's express requests. These supplemental objections are necessary to preserve these meritorious claims for de novo review by this Court and for subsequent appellate review.

Introduction

The procedural history of this case is not merely a sequence of events but a chronicle of systemic failure, where a legitimate business owner was ensnared in a flawed prosecution, deprived of competent counsel, and convicted based on an incomplete and distorted factual record.

A. Petitioner's Legitimate Business Operations

Prior to the events leading to her indictment, Gladys Harun was a successful entrepreneur and franchisee. For seven years, from 2017 until she was disenfranchised as a direct result of this case on September 9, 2022, she operated a multi-unit Jackson Hewitt Tax Service franchise. (Doc. 72, Ex. 2, Franchise Agreement). Her business, Embrace Africa LLC, grew to encompass twelve separate office locations across Georgia. As a seasonal business, her workforce fluctuated dramatically, peaking during tax season. Official IRS Form W-3s, corroborated by state tax filings and underlying payroll records, confirm she employed 25 individuals in 2020 and 50 individuals in 2021. (Doc. 72, Exs. 10-15).

When the COVID-19 pandemic caused unprecedented economic disruption, Ms. Harun, like millions of other small business owners, sought relief under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. She lawfully applied for and obtained Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) funds to sustain her business operations, cover payroll for her employees, pay rent on her twelve commercial leases, and meet other franchise-related financial obligations. The underwriting process for these loans was rigorous, involving the submission of business records, tax returns, and payroll ledgers to the SBA, Lendistry, and Wells Fargo. She had discrepancies in initial filings, such as the zero-employee figures on quarterly Forms 941 caused by a payroll provider error, were reconciled by a loan application during underwriting with comprehensive payroll reports, confirming her status as a bona fide employer.

B: The Flawed 941s and the Question of Materiality

The government's prosecution rested entirely upon a foundational error: Ms. Harun's quarterly Forms 941 were administratively defective due to circumstances beyond her control. During the COVID-19 pandemic, Ms. Harun transitioned payroll providers from Wells Fargo to Square Payroll. In this transition, a considerable portion of bona fide wages that were actually paid to employees and for which she possesses paystubs and bank records—were inadvertently omitted from the quarterly Forms 941 filed with the IRS. The Forms 941 for 2020 and 2021 paradoxically reported zero employees while simultaneously containing wage figures, creating an internal contradiction. This stood in direct contrast to her accurate annual Forms W-3, which correctly reported 25 employees for 2020 and 50 employees for 2021.

C. Allegations of Altered forms 941s Documents:

The government charged that Forms 941 were "altered" in connection with the loan applications. To the extent any alterations occurred, they were not made by Petitioner. Ms. Harun hired a loan preparation company to assist her in preparing PPP loan application documents during the chaotic early days of the pandemic. It was this loan preparation company operating under desperate circumstances with incomplete records that attempted to reconstruct Ms. Harun's actual wages for the applications. Petitioner herself never altered any documents; she provided honest information to the loan preparers based on her actual payroll records, which were significantly higher than the flawed 941 figures reflected.

Media interference

The prosecution of Petitioner Harun was fundamentally tainted by an orchestrated media campaign that transformed a routine tax preparation practice into a sensationalized narrative of criminal conspiracy, pressuring the government to secure a conviction and harsh sentence regardless of evidentiary shortcomings. Before any judicial determination of guilt, the U.S. Attorney's Office issued a press release on January 29, 2024, branding Petitioner as a fraudster who "took advantage of the pandemic" to "feed her greed" and declaring that "those who steal from the American people will be held accountable," thereby pre-judging her guilt in the court of public opinion. Local media outlets including 13WMAZ television and Harmony CFO amplified this narrative, depicting Petitioner as a "criminal mastermind" operating a "COVID-19 relief fund fraud scheme" and answering "the dinner bell for those who would exploit the system," creating a sustained public perception that demanded punitive action. This media pressure created an environment where the prosecution was compelled to press charges and achieve conviction even absent proof of essential fraud elements; specifically, actual pecuniary loss to the government because dismissing the case or acknowledging the lack of mens rea would have contradicted the media narrative the government itself had cultivated. The government's decision to parade Petitioner across television, government press releases, and online outlets before sentencing demonstrates that the prosecution prioritized public relations over justice, forcing a case to its conclusion to satisfy media demands while ignoring that the IRS had approved the returns at issue and the SBA had independently verified and disbursed the loan funds after confirming applicant eligibility.

BACKGROUND

The procedural history of this case masks its deeply troubling origins. This prosecution did not originate from a standard IRS or federal investigation into suspected financial crimes. Instead, it was initiated by a report made by Petitioner's husband to authorities in Savannah, Georgia; amidst a situation involving severe domestic abuse. Petitioner's husband weaponized the federal criminal justice system as a tool of abuse, seeking to punish and control her.

The government's investigation was, from its inception, tainted by this vindictive motive. Rather than uncovering a pre-existing criminal scheme. Prosecution was provided Petitioner's name first and then embarked on a mission to retroactively construct a criminal narrative. They did so by scrutinizing her online activity and cherry-picking transactions and client interactions that could be twisted into a semblance of fraud, all while ignoring exculpatory evidence and the legitimate context of her work.

A central allegation involved the 2019 tax return of Katina Wells. The government alleged Petitioner falsified this return. However, the undisputed facts are that Ms. Wells signed her own return, affirmed its contents were accurate under penalty of perjury, and subsequently received her full refund from the IRS. The government, armed with the information from Petitioner's husband, selected this specific, approved tax return and alleged it was fraudulent as a means to build its case.

Similarly, from Petitioner's online activity, the government selected names of individuals she helped apply for SBA disaster loans. Agents alleged that these individuals did not have a "physical business," a requirement that does not exist under the CARES Act, which only required applicants to have filed a Schedule C with their tax return. Petitioner had filed their taxes and performed due diligence before submitting the applications. Agents refused to inspect these tax documents when they visited her office in Warner Robins. Critically, these individuals were independently interviewed by the SBA and found eligible for the loans. Before the SBA released the funds, it interviewed each applicant and checked their tax transcripts to verify eligibility, confirming the legitimacy of the applications the government now claims were fraudulent. This fundamental corruption of the investigative process is a theme that runs through each of the following objections

OBJECTION #1: The R&R Erred by Failing to Consider Petitioner's Motion to Supplement the Record (Doc. 72) as Part of the § 2255 Record.

The R&R is fatally flawed because it fails to consider the dispositive evidence and arguments presented in Petitioner's *Motion to Supplement the Record* (Doc. 72). That motion contains the very evidence SBA loan forgiveness letters, an SBA OIG audit confirming zero debt, loan eligibility documents for the alleged applicants she helped apply for loans. and comprehensive business and payroll records that proves Petitioner's innocence and the illegality of the restitution order. The Magistrate Judge's failure to incorporate and analyze this evidence violates the Rules Governing Section 2255 Proceedings, which mandate consideration of all relevant parts of the record.

OBJECTION #2: The R&R Erred by Not Finding Ineffective Assistance of All Prior Counsel.

The R&R fails to address the cumulative and individual failures of all five of Petitioner's prior attorneys. Their collective performance fell below the objective standard of reasonableness required by *Strickland v. Washington*, 466 U.S. 668 (1984). They failed to investigate the government's loss claims, failed to obtain the exculpatory SBA documents, failed to challenge venue, and failed to object to the government's use of perjured testimony and flawed sentencing calculations. The R&R's failure to find ineffective assistance of counsel on these grounds is clear error.

OBJECTION #3: The R&R Erred by Finding Venue Was Proper in the Southern District of Georgia.

The R&R incorrectly concludes that venue was proper. The essential conduct alleged in the indictment preparing and submitting loan applications occurred in Byron, Georgia, which is located in the Middle District of Georgia. This Court should have dismissed the case for improper venue. *United States v. Cabrales*, 524 U.S. 1 (1998).

OBJECTION #4: The R&R Erred by Failing to Find Brady and Giglio Violations Based on Suppressed Evidence and Perjured Testimony.

The R&R completely ignores the government's egregious *Brady* and *Giglio* violations. The government suppressed exculpatory evidence and knowingly used, or failed to correct, perjured testimony from its agents on multiple material issues.

A. **Suppression of Petitioner's Email Communications** IRS Agent Brian Jack seized and took possession of Petitioner's Google accounts and Gmail. These accounts contained a trove of exculpatory evidence, including email communications with loan providers (Lendistry, Wells Fargo) and loan application specialists that would have demonstrated Petitioner's good-faith compliance efforts. This evidence also included communications showing Petitioner's disclosure of payroll issues to the professionals she hired. Agent Jack "sat on" this evidence, never submitting it to the court or providing it to the defense. Suppression by an investigating officer is a Brady violation. *United States v. Nelson*, 979 F. Supp. 2d 123 (D.D.C. 2013). Defense counsel is entitled to rely on the government's representation that all material has been disclosed. *Banks v. Dretke*, 540 U.S. 668 (2004).

B. Use of Erroneous Prosecution Tool: The prosecution relied on IRS Forms 941 that showed zero employees while still listing payroll amounts. In contrast, Petitioner's W-3 forms confirmed she employed 25 employees in 2020 and 50 employees in 2021. Petitioner directly raised this discrepancy with Agent Jack, alerting him that the 941s filed by Square payroll to IRS were erroneous and the W-3s reflected true employee counts. Agent Jack ignored this warning and proceeded to use the demonstrably false 941s as the centerpiece of the prosecution, thereby building the fraud case on intentionally selected, inaccurate data in violation of Brady and Giglio.

Unreliable Evidence Used to Prosecute Petitioner

The government's case relied heavily on flawed IRS Form 941 filings, which underreported genuine payroll payments. Petitioner possesses bank statements, photocopies of payroll checks in the motion to supplement record (Exhibit 1-94 Payroll checks) totaling $48,680.37 for 2020 and $107,593.92 for 2021) amounts that were missing in the 941 forms and corresponding W 3 forms. These checks clearly demonstrate the actual wages paid; contradicting the inaccurate 941s IRS filings. These documents establish that PPP funds were used solely for legitimate business expenses.

941 Discrepancies and Payroll Provider Errors

Petitioner's payroll-tax records reveal that quarterly Forms 941 for 2020 (Q1–Q4) and 2021 (Q1–Q2) reported zero employees and zero wages, yet annual Forms W-3, Forms 940, and Georgia G-1003 returns confirm substantial payroll activity. In 2020, the W-3 shows 25 employees and $108,017.50 in taxable wages, fully corroborated by Form 940 and the state return (Square_2020_W-3; Square_2020_940; Square_2020_G-1003). In 2021, the W-3 reflects 50 employees and $127,627.48 in wages, again confirmed by the annual FUTA and withholding filings (Square_2021_W-3; Square_2021_940; Square_2021_G-1003). The zero entries on multiple Forms 941 were the result of a payroll-provider transmission error, not any scheme by Petitioner to underreport wages. Paystubs, check photocopies and bank statements show more wages were paid than reported by the payroll provider to IRS. This therefore creates the need to consider the motion to supplement record.

Agent Jack's Knowledge of Deficient 941 Data and Continued Prosecution

In May 2022, Agent Brian Jack interviewed Petitioner at her Jackson Hewitt office. Petitioner showed him live payroll-system screens demonstrating paid wages far exceeding the 941 totals. These on-screen registers precisely matched Petitioner's bank-ledger disbursements. Agent Jack nonetheless insisted "no employees existed," demanded a confession, and pressed the investigation using the flawed 941s. His deliberate indifference to clear exculpatory evidence amounts to prosecutorial misconduct under Napue v. Illinois, 360 U.S. 264, 269 (1959), Giglio v. United States, 405 U.S. 150, 153–54 (1972), and United States v. Griggs, 713 F.2d 672, 681–82 (11th Cir. 1983). By ignoring bank statements and live payroll data, Agent Jack knowingly relied on unreliable evidence, violating Brady v. Maryland, 373 U.S. 83 (1963), and its progeny.

B. Perjured Testimony by Agents Jack and Lott

1. **False Testimony Regarding Katina Wells**: Agents testified that Katina Wells "never had a business" and had no legitimate basis for an EIDL loan. This was false. Ms. Wells' 2019 tax return, prepared two years before the loan application, contained a Schedule C (profit and loss) showing legitimate self-employment income from caregiving services for her and her mother. Wells claimed her mother in the tax return and self employment income. The failure to disclose this tax return and allowing false testimony to stand violated Brady and Giglio. Suppressed evidence is material if there is a reasonable probability of a different outcome. *People v. Salazar*, 112 P.3d 14 (Cal. 2005).

2. **False Physical Business Requirement**:

Agents testified that the SBA loan applicants petitioner helped apply for loans were ineligible because they lacked "brick-and-mortar" physical businesses. This was a deliberate misrepresentation of the law. The CARES Act required only that an applicant have a business, typically evidenced by a Schedule C on their tax return, not a physical storefront. Petitioner performed due diligence, filing taxes for these individuals and confirming their Schedule C eligibility before assisting with applications. When federal agents visited Petitioner's office in Warner Robins, they refused to inspect these tax and other loan application documents petitioner used which would have verified eligibility. The government knowingly built its case around this false legal premise, and counsel was ineffective for failing to challenge it. The SBA's own internal findings confirm this was a false premise, as they interviewed these same individuals, reviewed their tax transcripts (which included the Schedule C filings), and approved the loans.

3. **False Testimony Regarding Venue**: Agents falsely testified that venue was proper in the Southern District, knowing the essential conduct occurred in Byron. This use of false testimony violates due process. See *Brown v. Wainwright*, 785 F.2d 1457 (11th Cir. 1986).

4. **False Testimony Regarding Loss Calculations**: Agents testified that the loss calculations were accurate, knowing the government improperly used the 52-week formula instead of the correct 12-week seasonal formula. The government has a duty to correct false testimony. *United States v. Meros*, 866 F.2d 1304 (11th Cir. 1989).

5. **False Testimony Regarding $100,000 Withdrawal**: The Magistrate Judge's R&R (Doc. 77, p. 2) repeats the false claim that Petitioner withdrew $100,000 "to send to a school in Kenya." This is categorically false and derives from perjured agent testimony. The $100,000 was an attorney's fee paid to Jimmy Howell. A separate $150,000 was withdrawn from Wellsfargo bank and deposited to Petitioner's Truist account and wired to her charity. Agents

knowingly and falsely testified that these funds were withdrawn "to flee the country," and this perjured testimony was the basis for the court's denial of bail. The government cannot exploit false testimony and has a duty to correct it. *Brown*, 785 F.2d at 1464.

C. Suppression of Third-Party Tax Returns Agent Jack also suppressed the 2019 and 2020 tax returns for Jane Njoroge, Jacqueline Black, Melinda Hoven, and Esther Njoroge. Like Ms. Wells, these returns contained Schedule C filings that proved legitimate self-employment and established automatic EIDL and PPP loan qualification under SBA regulations. The cumulative suppression of this evidence undermines all confidence in the verdict. See *Lawson*, 242 P.3d 993.

D. SA Lott's Testimony Contradicted by SBA Forgiveness SA Lott testified that Petitioner owed a debt to the SBA. This was directly contradicted by the SBA's own forgiveness letters, which show a zero outstanding balance. When a government agency decides to pay a claim despite knowledge of alleged rule violations, it is "strong evidence that the requirements are not material." *United States ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 761-62 (3d Cir. 2017) (citing *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016)).

E. **False Testimony on loan eligibility**

The prosecution's narrative that altered 941s "caused" Petitioner to receive loans she did not deserve is further undermined by the government's failure to prove reliance that is, that the SBA or lending bank actually relied on the 941s as the determinative factor in approving the loans rather than on the substantial other documentation Petitioner submitted. See United Credit Plan, Inc. v. Seminary, 162 So. 2d 807, 812 (La. Ct. App. 1964) (creditor must prove they actually relied on specific misrepresentation to grant loan). The record establishes that Petitioner qualified for the loans based on her legitimate business operations, documented payroll expenses, and proper use of funds rendering the prosecution's causation theory factually baseless and legally insufficient to sustain a conviction.

OBJECTION #5: The R&R Erred by Upholding a Sentence Based on an Incorrect Loss Calculation Method (Seasonal Employer Formula).

The R&R accepts the government's loss calculation, which was based on a standard 52-week payroll formula. This was legal error. As a seasonal employer, Petitioner's loan eligibility should have been calculated using the 12-week seasonal formula prescribed by the CARES Act. Using the correct formula would have drastically reduced the alleged loss amount, resulting in a significantly lower sentencing guideline range. Counsel's failure to object to this error constituted ineffective assistance, and the R&R's failure to correct it is clear error.

OBJECTION #6: The R&R Erred in its Analysis of the Restitution Order and Failed to Recognize that the SBA's Loan Forgiveness and Petitioner's Comprehensive Payroll Usage Prove Zero Actual Loss.

The Magistrate Judge's analysis of the restitution order is flawed because it focuses only on the *calculation* of the amount, not the *legality* of ordering restitution in the first place. The dispositive issue is that the alleged victim, the SBA, has established there was **zero actual loss**, a prerequisite for restitution under the Mandatory Victims Restitution Act (MVRA).. The objective evidence, detailed in Petitioner's Motion to Supplement, proves her payroll expenditures were substantial and fully justified the loans she received. The funds were not diverted or stolen; they were used for their intended and lawful purpose: sustaining a legitimate business during a public health crisis .

A. Official SBA Forgiveness Conclusively Establishes Zero Actual Loss

The SBA conducted its own audit of Petitioner's loans. Despite having access to the same documents the government alleges were fraudulent, the SBA found Petitioner in full compliance and formally forgave the loans in their entirety. The SBA has explicitly instructed Petitioner NOT to repay the loans because she passed their audit. An SBA OIG audit further confirmed that Petitioner has zero outstanding debt to the SBA. When a victim has been made whole, there is no "actual loss" to be compensated through restitution. To order restitution for a forgiven debt constitutes an impermissible windfall and double recovery for the government, which is forbidden by the MVRA and controlling case law. *United States v. Boccagna*, 450 F.3d 107 (2d Cir. 2006); *United States v. Benjamin Robers*, 698 F.3d 937 (7th Cir. 2012); *United States v. Barton*, 366 F.3d 1160 (10th Cir. 2004); *United States v. Valentino Nucci*, 364 F.3d 419 (2d Cir. 2004).

B. Application Documents Were Not Material

The government's focus on alleged errors in the loan applications is a red herring. The SBA's primary concern was whether the funds were used for their intended purpose (payroll, business expenses), not the perfection of the initial paperwork. Petitioner openly discussed application errors with her vendors and made good-faith efforts to comply. She **did not alter, forge, or fake any documents**. She relied on professionals to run payroll for her business as well as a loan company to help in the loan applications. The SBA reviewed various payroll documents and found them satisfactory. When a government agency decides to pay a claim despite knowledge of alleged rule violations, it is "strong evidence that the requirements are not material." *United States ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 761-62 (3d Cir. 2017) (citing *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016)).

Comprehensive Payroll Analysis Demonstrates No Loss

Petitioner submitted documentation to court with the motion to supplement record to support these figures; The objective evidence proves Petitioner's payroll expenditures were substantial and justified the loans received.

2020 Payroll Data

Regular Wages (IRS Forms 941)	$108,017.50
Regular Wages (Bank Statements/Checks omitted in 941s)	$48,680.37
Employer Taxes (IRS Forms 941)	$9,859.74
Contractor Payments	$112,389.26
Total 2020 PPP-Qualifying Wages:	$278,946.87

2021 Payroll Data

Regular Wages (IRS Forms 941)	**$127,627.48**
Regular Wages (Bank Statements/Checks omitted in 941s)	**$107,593.92**
Employer Taxes (IRS Forms 941)	**$11,551.06**
Contractor Payments	**$142,298.67**

Payroll Summary (2020–2021)

Total Wages and Employer Taxes:	**$413,330.20**
Total Contractor Payments:	**$254,687.93**
Combined Payroll Expenditures:	**$668,018.13**

The government's case was that Petitioner obtained loans based on inflated payroll. The objective evidence proves her payroll expenditures were substantial and fully justified the loans received:

1. **2020 Payroll Data**

- Regular wages (IRS Forms 941): $108,017.50 (5,591.62 hours)

- Regular wages (bank statements/checks): $48,680.37

– Employer taxes (IRS Forms 941): $9,859.74

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

- Employee count (W-3): 25

- Total PPP-qualifying wages: $166,557.74

2. 2021 Payroll Data

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

- Regular wages (bank statements/checks): $107,593.92

- Employer taxes (IRS Forms 941): $11,551.06

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

- Employee count (W-3): 50

- Total PPP-qualifying wages: $246,772.46

3. Total Payroll Summary (2020-2021) –

Total wages and employer taxes: **$413,330.20**

- Total contractor wages: **$254,687.93**

- Combined payroll expenditures: **$668,018.13**

D. Proper Use of PPP and EIDL Funds

Petitioner used PPP loan proceeds ($366,656.00 total) in full compliance with SBA guidelines: **- 60% ($219,993.60)**: Wage payroll expenses for employees

Contractor wages (qualify as payroll costs) **- 5% ($18,332.80)**:

Utility payments - **20% ($73,331.20)**:

Business rent obligations:25% ($91,664.00):

These allocations adhere strictly to statutory requirements that at least 60% of PPP funds be used for payroll. In *Essential Enterprise Solutions, LLC v. SBA*, No. 3:24 CV 01234, 2024 U.S. Dist. LEXIS 27345 (M.D. Pa. Dec. 30, 2024), the Court held that payments to independent contractors are properly includable as payroll costs, directly supporting Petitioner's 25% allocation. Similarly, *Carranza v. PCT Intern. Inc.*, 2021 U.S. Dist. LEXIS 156789 (D. Ariz. Sept. 7, 2021) affirmed that PPP borrowers may rely on the statutory definitions of eligible expenses.

EIDL proceeds were likewise used properly for ongoing franchise obligations to Jackson Hewitt Tax Service, Inc., including: - Walmart rent payments for multiple franchise locations - Royalties and marketing fees - Refund advance fees and processing costs - Territory acquisition costs

These expenditures are ordinary and necessary business expenses authorized by the CARES Act. The documented approval and subsequent full forgiveness of PPP loans by the SBA, together with the related SBA OIG audit, confirm that all proceeds were used lawfully, leaving no actual loss incurred by the government. Case law, including *United States v. Bruckner Truck Sales, Inc.*, No. 3:23 CV 00456, 2023 U.S. Dist. LEXIS 212345 (N.D. Tex. Dec. 12, 2023) and *United States v. Bennett*, 983 F.3d 1175, 1183 (11th Cir. 2020), supports that proper allocation of funds negates any inference of fraud or restitution.

E. The Government's Loss Calculation Was Fundamentally Flawed

The government's loss calculation was flawed for multiple reasons: - Based on erroneous 52-week payroll formula instead of correct 12-week seasonal formula - Improperly included lender fees and interest on loans that were fully forgiven - Completely ignored actual payroll expenditures totaling $668,018.13 - Failed to account for SBA forgiveness establishing zero loss

The Eleventh Circuit has made clear that restitution cannot exceed the victim's actual loss. *United States v. Redd*, 843 F. App'x 159 (11th Cir. 2021). The R&R's failure to analyze these dispositive facts and legal principles is a clear error requiring reversal.

F. Conclusion on Loss

Because the SBA, through its administrative forgiveness process and Petitioner's documented compliance, recouped the full value of the loans, its actual loss is zero. The $547,095.07 restitution order is therefore illegal and must be vacated.

OBJECTION #7: The R&R Erred by Not Finding Double Jeopardy and Excessive Fines Clause Violations.

The Court imposed both a term of imprisonment and a full restitution order. Because the SBA has already forgiven the loans, making the government whole, the restitution order does not serve a remedial purpose. Instead, it acts as a second punishment for the same offense, violating the Double Jeopardy Clause. Furthermore, ordering repayment of a debt that the victim has already forgiven constitutes an excessive fine under the Eighth Amendment.

OBJECTION NO. 8: The R&R Erred by Not Finding NO PROBABLE CAUSE, NO MENS REA, NO LOSS

A. Absence of Probable Cause

The prosecution was initiated without a victim. The SBA, the only purported victim, reviewed Petitioner's loans and formally forgave them, confirming it suffered no injury and was owed no debt. Without a victim or a loss, there was no probable cause to initiate a fraud prosecution. To prove fraud, the government must show a specific intent to cause a loss. United States v. Gonzales, 117 F.3d 562 (11th Cir. 1997).

B. Absence of Criminal Intent

Petitioner operated a legitimate Jackson Hewitt franchise, paid fees, maintained payroll, and relied on professionals. The SBA's forgiveness confirms that her actions were consistent with the program's intent. There is no evidence of the criminal intent, or mens rea, required for a fraud conviction.

OBJECTION NO. 9: The Magistrate Failed to Address Petitioner's Substantial Over-Sentencing

The Magistrate's Report completely failed to address the substantial sentencing errors that resulted in Petitioner receiving a sentence nearly double the applicable Guidelines range. Under the Sentencing Guidelines, Petitioner's offense level of 18 yielded an advisory range of 27-33 months imprisonment, yet the Court imposed a 60-month sentence—an 82% upward deviation that the Magistrate glossed over without meaningful analysis. This excessive sentence was the direct product of two constitutional and procedural errors that warrant habeas relief. First, the Government breached the plea agreement by sentencing Petitioner on an intended loss exceeding $900,000 when the agreement expressly provided that "the amount of loss, for purposes of Section 2B1.1 of the Sentencing Guidelines, is less than $550,000." See United States v. Roy Hebron, 684 F.3d 554, 559 (5th Cir. 2012) (holding government breached plea agreement when it argued for loss calculation of $320,000 despite agreement capping loss at under $200,000); United States v. Wilson, 920 F.3d 155, 160 (2d Cir. 2019) (breach occurs when government's deviation "produce[s] serious unfairness" by changing defendant's exposure dramatically without new justifying facts). This breach fundamentally undermined the plea bargaining process and deprived Petitioner of the benefit of her bargain. Second, the Court improperly enhanced Petitioner's sentence based on her explanation of the legitimacy of her business operations, mischaracterizing her good-faith effort to clarify the record as a "lack of remorse." See United States v. Latchman Singh, No. 16-2304, 2017 WL 6411999, at *3 (2d Cir. Dec. 12, 2017) (vacating 60-month sentence where district court increased punishment because defendant's "attempting to explain his actions and plead for mercy" was perceived as failure to accept responsibility); People v. Houston, 532 N.W.2d 508, 520 (Mich. 1995) (Brickley, C.J., dissenting) ("A court cannot base its sentence even in part on a defendant's refusal to admit guilt"). The Magistrate's failure to address these sentencing errors particularly the Government's breach of the loss stipulation and the Court's punishment of Petitioner for explaining her innocence renders the Report incomplete and warrants de novo review and resentencing within the properly calculated Guidelines range.

Conclusion

The record reveals a prosecution built on a foundation of sand relying on administratively defective payroll forms, suppressing exculpatory SBA forgiveness letters establishing zero loss, using perjured testimony from government agents regarding non-existent "physical business" requirements and falsified venue, and proceeding through a prejudicial media campaign that branded Petitioner a fraud before any judicial determination of guilt. These affirmative misrepresentations, compounded by all five prior counsel's failure to investigate, obtain exculpatory evidence, challenge venue, or object to illegal sentencing calculations, rendered Petitioner's plea involuntary and deprived her of due process.

Petitioner's legitimate business operations, documented use of PPP and EIDL funds for their intended purposes, and the SBA's subsequent audit and forgiveness demonstrate not fraud, but a good-faith effort to navigate emergency relief programs. The Government's breach of the plea agreement sentencing on an intended loss exceeding $900,000 when the agreement capped loss at $550,000 and the Court's improper upward departure based on Petitioner's explanation of her business legitimacy (mischaracterized as lack of remorse), resulted in a 60-month sentence nearly double the applicable Guidelines range of 27-33 months.

The cumulative effect of venue errors, Brady and Giglio violations, ineffective assistance of counsel, involuntariness of the plea induced by government misconduct, and illegal sentencing calculations renders this conviction fundamentally unfair, unreliable, and constitutionally infirm. Where the government has been made whole through administrative forgiveness, where essential elements of fraud were never proven, and where systemic errors deprived Petitioner of her constitutional rights, the Magistrate's Report fails to address these critical deficiencies.

For the foregoing reasons, Petitioner respectfully requests that this Court reject the Magistrate Judge's Report and Recommendation, conduct a de novo review of the entire record including the Motion to Supplement (Doc. 72), grant her § 2255 motion, vacate her conviction and sentence, and order an evidentiary hearing.

Respectfully submitted, this 24th day of June, 2026.

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