IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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| UNITED STATES,<br>Plaintiff/Appellee,<br><br>v.<br><br>JENIFER O'NEAL.<br>Defendant/Appellant. | case no. 26-2528<br>DVI case no. 3:25-cr-1 |

**MOTION FOR RELEASE PENDING APPEAL**

**COMES NOW,** Appellant Jenifer O'Neal, by and through undersigned counsel, pursuant to Fed. R. App. P. 9(b) and 18 U.S.C. § 3143(b), moves the Court to release O'Neal pending appeal. Counsel for the Government objects to the requested relief. In support thereof, Appellant states the following.

**INTRODUCTION**

Jenifer O'Neal is serving eighty-four months' imprisonment for accepting a commercial-lease payment that the Government's own cooperating witness admits he told her came from a friend and colleague. Her appeal presents a legal question that governs every one of her four convictions and that this Court has never answered: whether a public official commits bribery when the sole "official" act attributed to her is a general directive that pending federal-grant invoices be processed in the ordinary payment cycle, a directive that names no contractor and identifies no invoice. The

District Court sustained the convictions by reading 18 U.S.C. § 666 to require no "official act" at all, while candidly acknowledging in the very same opinion that this "Court of Appeals has not resolved whether *McDonnell* applies to section 666." ECF 210 at 30.[1]

A question of first impression, reopened by the Supreme Court's 2024 decision in *Snyder v. United States,* that would vacate all four counts if resolved in Ms. O'Neal's favor, is the paradigm case for release pending appeal. Ms. O'Neal is not a flight risk, and the United States does not contend she is a danger to anyone. Her appeal is not for delay. Under the governing standard she need not show that she will win; she need show only that her appeal presents a question that is "significant" and "fairly debatable" and that, if decided her way, requires reversal or a new trial. She meets that standard several times over. Weeks ago, on the same day the District Court denied her relief below, this Court granted release pending appeal to another Virgin Islands public official in materially similar circumstances. It should do the same here.

## QUESTIONS PRESENTED

1. Where the only official act attributed to Ms. O'Neal was a general directive that pending federal-grant invoices be processed in the ordinary payment cycle, naming no contractor and identifying no invoice, does her appeal present a substantial

[1] References to the docket entries before the District Court are "ECF __ at ___."

question, unresolved in this Court, whether her convictions can stand under *McDonnell v. United States* and *Snyder v. United States?*

2. Where the Government's cooperating witness admitted that he told Ms. O'Neal the payment "was coming from Commissioner Martinez" and that "[a]t no time" did he tell her otherwise, does her appeal present a substantial question whether the evidence proved the corrupt intent that *Snyder* requires?

3. Where the grand jury was told that Ms. O'Neal's official act was "pressuring" a subordinate, and the Government abandoned that theory at trial and obtained a conviction on a general grant-processing directive, does her appeal present a substantial question of constructive amendment or fatal variance?

4. Where Ms. O'Neal stated on the recording that she did not want a wire and did not send, direct, or select the method of the wire, does her appeal present a substantial question whether the evidence proved that she reasonably foresaw an interstate wire?

5. Where each of these questions attacks the bribery predicate common to all four concurrent counts, would a favorable ruling require reversal or a new trial on every count?

## STATEMENT OF FACTS & PROCEDURAL HISTORY

### I. The Parties, the Cooperating Witness, and the Origin of the Payment.

Jenifer O'Neal served as Director of the Virgin Islands Office of Management and Budget ("OMB"). OMB administered federal grant funds, including funds under the American Rescue Plan Act of 2021 (the "Rescue Plan Act"), and handled disbursement and budget functions; it did not award contracts. Grants manager Jamie Gaston testified that the OMB "did not make the ultimate decision whether an invoice got paid." ECF 210 at 11, fn. 103; 12/9/25 Tr. 214:3–5.

David Whitaker owned Mon Ethos Pro Support, LLC, a private contractor to Virgin Islands agencies. By September 2023, Whitaker was cooperating with the FBI. He admitted "multiple felony convictions involving fraud, deceit, lies, and stealing," including a 2008 federal wire-fraud scheme for which he received a sentence of over five years, and that, shortly before trial, he "pled guilty to two counts of wire fraud and one count of bribery," and that he was cooperating in the hope of a reduced sentence. ECF 210 at 16; 12/8/25 Tr. 148:23–149:8. The primary target of the investigation was co-defendant Ray Martinez, the Commissioner of the Virgin Islands Police Department (the "VIPD"). Whitaker had been cooperating with the FBI since September 2023, months before he approached Ms. O'Neal about the January 2024 invoice; the investigation began to focus on her only as it "moved into January of 2024." 12/9/25 Tr. 40:20-41:9 (Special Agent Whitworth).

## II. THE JANUARY AND APRIL 2024 RECORDINGS AND WHITAKER'S CROSS-EXAMINATION.

In January 2024, Martinez directed Whitaker to add money "for" Ms. O'Neal to an upcoming Mon Ethos invoice. At a recorded January 14, 2024, meeting, Whitaker told Ms. O'Neal that Martinez "talked to [him] about making sure [they] had fifteen grand extra for [her]." Trial Ex. 74A-T at 3. Ms. O'Neal, on that same recording, tied the money to her coffee-shop lease: "We still need to pay the 17. That's the down-payment." Trial Ex. 74B-T at 20; 12/5/25 Tr. 16:14–19. Whitaker confirmed the reference was to "the down-payment that Jenifer O'Neal needed to pay Yacht Haven Grande for the lease for the location where she's putting in her coffee shop." 12/5/25 Tr. 16:17-19.

The source of the money was not left to inference. On cross-examination, Whitaker admitted he told Ms. O'Neal that the lease money "was coming from Commissioner Martinez." 12/8/25 Tr. 143:14-17. He further admitted: "[a]t no time" did he say "it's not coming from" Martinez, but "coming from elsewhere." 12/8/25 Tr. 143:18-144:2. The District Court's own opinion records the admission. ECF 210 at 13. Whitaker also testified that he had told Ms. O'Neal "on the whole process along the way" that they "want[ed] to steal money from the Government of the Virgin Islands," 12/8/25 Tr. 144:3–145:17.

## III. Ms. O'Neal's Recorded Statements Concerning the Method of Payment.

At a recorded April 6, 2024, meeting attended by Whitaker, Martinez, and Ms. O'Neal, Martinez said "take twenty … out of this for her lease." Trial Ex. 88-T at 13. Ms. O'Neal put the figure at "Seventeen, eighteen." Trial Ex. 88-T at 13; 12/5/25 Tr. 45:22–47:15. When Whitaker asked whether to wire the payment, Ms. O'Neal answered, "I guess," and then immediately volunteered: "I don't like traces of anything," and "[w]ire means it's traced." Trial Ex. 88-T at 17, 18; 12/5/25 Tr. 45:22–47:15. Nine days later, on April 15, 2024, Whitaker alone wired $17,730 to the landlord from a separate account he controlled. Ms. O'Neal did not send the wire, did not identify the sending account, and did not select the method of payment.

## IV. The Abandoned "Pressuring" Theory.

The indictment and the Government's trial memorandum alleged that Ms. O'Neal's official act, the act for which she supposedly received the payment, was "pressuring" Gaston to approve Mon Ethos invoices. Ms. O'Neal contends the Government abandoned that theory at trial; the District Court recounted that contention in declining to impose a sanction. ECF 210 at 34 n.283.

The jury was then left to convict on a different act: Ms. O'Neal's general January 20, 2024, message asking that pending Rescue Plan Act payments, including COVID-era "premium pay" unrelated to Mon Ethos, be processed for the next payment cycle. The phrase "priority payment list" was grants manager Gaston's description of the Department of Finance process that "all agencies utilize," not language in Ms. O'Neal's message. 12/9/25 Tr. 204:3-9; 206:22-207:8 (Gaston). That general directive named no contractor and identified no invoice, and it was never presented to the grand jury as the charged official act.

## V. PROCEDURAL HISTORY.

A jury convicted Ms. O'Neal on December 11, 2025, of honest-services wire fraud (Counts 4 and 5), federal-program bribery under 18 U.S.C. § 666 (Count 7), and money-laundering conspiracy (Count 8). At the close of the Government's case, Ms. O'Neal moved under Rule 29, arguing the absence of a qualifying official act and of corrupt intent under *Snyder*, and that the bribery count was "a component element of the honest services wire fraud" and of the money-laundering count. 12/10/25 Tr. 10:12–18. The District Court denied the motion, ruling that "the motions are well presented and denied and certainly preserved for purposes of any appeal should any be necessary." *Id.* 46:3–5. The trial court later denied acquittal and a new trial. ECF 210, 211.

On June 11, 2026, the trial court imposed concurrent eighty-four-month terms on all four counts. ECF 234. Ms. O'Neal moved for release pending appeal (ECF 251); after argument, the District Court denied the motion and declined to further stay her July 1, 2026, surrender date. ECF 259. She has surrendered and is presently incarcerated.

## LEGAL STANDARD

Section 3143(b) requires release pending appeal when the court finds, first, "by clear and convincing evidence that the person is not likely to flee or pose a danger," and second, "that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in" reversal, a new trial, a non-custodial sentence, or a reduced term less than the expected duration of the appeal. 18 U.S.C. § 3143(b).

This Court applies that command in two steps. A "substantial" question is one "which is either novel, which has not been decided by controlling precedent, or which is fairly doubtful." *United States v. Miller,* 753 F.2d 19, 23 (3d Cir. 1985). The phrase "likely to result in reversal" does not ask the court to forecast its own reversal; it asks whether the question "is so integral to the merits of the conviction" that "a contrary appellate holding is likely to require reversal of the conviction or a new trial." *Id.*

In *United States v. Smith,* 793 F.2d 85 (3d Cir. 1986), this Court refined *Miller.* The question must "be significant in addition to being novel, not governed by controlling precedent or fairly doubtful," *id.* at 89, and this Court "adopt[ed] the historical approach of the *Handy* court" that a substantial question is one that is "fairly debatable," *id*. at 90. A defendant "need not show that he should prevail on the merits." *Id.* A single substantial question suffices, but where the defendant is sentenced on concurrent counts, that question must reach "all of those counts," or "bail may be denied" as to any count it does not affect. *Miller,* 753 F.2d at 24.

This Court does not defer to the trial court on the ultimate question. It "ha[s] an obligation to assess independently" both the motion and the district court's ruling. *United States v. Provenzano*, 605 F.2d 85, 92 (3d Cir. 1979). And even where the statute permits detention, that outcome "should be denied only as [a] manner of last resort": any "danger to [the] community posed by [a] defendant must be of such dimension that only his incarceration can protect against it," and "whenever a court can fashion conditions of [release]" to avert any risk, "it must do so and grant [the] motion for release." *Id*. at 95.

## ARGUMENT

### I. THE FIRST REQUIREMENT IS SATISFIED AND UNCONTESTED: MS. O'NEAL IS NOT A FLIGHT RISK AND POSES NO DANGER.

The parties agree on this prong. As the District Court found, "[t]he parties do not dispute Ms. O'Neal is not likely to flee or pose a danger to the safety of another person or the community." ECF 259 at 2 fn. 1. The concession is well founded. Ms.

O'Neal is a United States citizen who has worked in the Virgin Islands since 2014 and has deep family and community roots there; her long-standing residence is in Maryland, where her children live. She holds no foreign passport and has no foreign residences, accounts, or business interests. She complied with every condition of supervised release for more than eighteen months without a single violation, appeared at every proceeding, and sought and honored six separate travel orders. ECF 52, 54, 65, 71, 87, 167. The District Court twice extended her surrender date and kept her on home detention rather than remanding her, an implicit finding that conditions of release protect every interest detention would.

This is a non-violent financial case. Ms. O'Neal threatened no witness, tampered with no evidence, and obstructed no proceeding. Under *Provenzano,* detention is warranted only where the appeal "lacks the requisite legal merit," or where any danger "is of such dimension that only [] incarceration can protect against it." 605 F.2d at 95. Neither condition is present. The first requirement of Section 3143(b) is satisfied by clear and convincing evidence.

## II. THE APPEAL RAISES SUBSTANTIAL QUESTIONS OF LAW AND FACT.

### A. Whether Ms. O'Neal's convictions can stand where the only "official act" was a general grant-processing directive that *McDonnell* excludes is a substantial, unresolved question.

The analysis begins with the statutory text. Section 666 makes it a crime for a covered official to "corruptly" solicit, accept, or agree to accept "anything of value" "intending to be influenced or rewarded in connection with" any government business or "transaction" worth $5,000 or more. 18 U.S.C. § 666(a)(1)(B), (b); *see Snyder v. United States*, 603 U.S. 1, 5 (2024) (quoting the statute). The text ties the forbidden exchange to official "business" or a "transaction"; it does not itself define what conduct counts as that business or transaction. The question these convictions present is whether that conduct must satisfy the definition the Supreme Court has given the parallel term "official act," and, if so, whether the only conduct identified here meets it.

Honest-services wire fraud reaches "only bribery and kickback schemes." *Skilling v. United States*, 561 U.S. 358, 368 (2010). A bribery scheme requires a corrupt exchange, a quid pro quo, for an "official act," and the Supreme Court has defined that term narrowly. An official act must involve "a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee," and must be "something specific and focused that is pending or may by law be brought before a public official." *McDonnell v. United States*, 579 U.S. 550, 574 (2016). "Setting up a meeting, talking to another official, or organizing an event—without more—does not fit that definition of 'official act.'" *Id.* The Court adopted that limiting construction to avoid the serious constitutional concerns that a boundless reading of the bribery laws would raise. *Id.* at 576–77.

The only official act the Government attributed to Ms. O'Neal was her January 20 message directing that Rescue Plan Act invoices be placed on the priority list. That directive named no contractor, identified no invoice, and, on the grants manager's own testimony, did not determine whether anything was paid. 12/9/25 Tr. 214:3–5. A general instruction to process a category of federal-grant invoices in the ordinary cycle is not a "formal exercise of governmental power" over a "specific and focused" matter. *McDonnell*, 579 U.S. at 574. If *McDonnell* supplies the measure of an official act here, the evidence does not meet it.

The District Court avoided that conclusion by holding that Section 666 requires no official act, and the Government will state the point at its strongest: every court of appeals to decide whether Section 666 itself contains an official-act element has held it does not. *See United States v. Ng Lap Seng*, 934 F.3d 110, 133 (2d Cir. 2019) ("*McDonnell*'s 'official act' standard does not pertain to bribery as proscribed by §

666”); *United States v. Roberson*, 998 F.3d 1237, 1247 (11th Cir. 2021) (“we do not read into section 666 limitations unsupported by the language of the statute”); *United States v. Lindberg*, 39 F.4th 151, 170 (4th Cir. 2022) (“the district court did not err in declining to read the ‘official act’ requirement of 18 U.S.C. § 201 into 18 U.S.C. § 666”).

Taken on its own terms, those authorities do not reach this case, for three reasons.

*First*, those decisions resolve only whether Section 666 standing alone contains an official-act element; none holds that honest-services fraud lacks one. To the contrary, they assume the opposite. *Lindberg* vacated an honest-services conviction precisely because the jury was wrongly told that an “official act—an element of the crime of honest services fraud—was present as a matter of law,” and it further vacated the companion Section 666 count because that error “improperly infected” it. *Id.* at 175. *Roberson* likewise analyzed its facts “[a]ssuming that the official act requirement, for honest services wire fraud, applied when the offense was premised on federal program bribery.” 998 F.3d at 1247. Ms. O’Neal’s honest-services counts therefore carry an official-act element regardless of how Section 666 is read, and the same deficient act, i.e., the general grant directive, underlies both those counts and the Section 666 count.

*Second*, *Snyder* was decided after every circuit decision cited above, which unsettled the premise on which they rest by holding that Section "666 is a bribery statute and not a gratuities statute," and requiring that "the official have a corrupt state of mind and accept (or agree to accept) the payment intending to be influenced in the official act." 603 U.S. at 8, 10. Because Section 666 is construed to demand a corrupt exchange for an "official act," the question whether that act must satisfy *McDonnell* is open and consequential, and no court of appeals has answered it since *Snyder*.

*Third*, this Court has not decided the question; the District Court said as much. ECF 210. Indeed, this Court has expressly reserved the question. *See United States v. Cordaro*, 933 F.3d 232, 243 (3d Cir. 2019) ("we need not resolve whether *McDonnell* in fact applies to § 666"); *see also* ECF 210 at 30 n.253 (citing *Cordaro*). This Court's prior decision in *Ferriero* addressed a state bribery statute, not Section 666. *See Ng Lap Seng*, 934 F.3d at 133 (citing *United States v. Ferriero*, 866 F.3d 107, 127–28 (3d Cir. 2017), for "declining to apply *McDonnell* standard derived from § 201 to state bribery"). Under *Miller* and *Smith*, a question need not have divided the circuits to be substantial; it must be "significant" and "fairly *debatable.*" *Miller*, 793 F.2d at 89-90. A first-impression question, reopened by the Supreme Court, that controls all four convictions is both.

**B. Whether the evidence proved corrupt intent under *Snyder* is a substantial question, because the Government's own witness told Ms. O'Neal the money came from Martinez.**

Even assuming Section 666 needs no official act, *Snyder* independently requires "a corrupt state of mind." 603 U.S. at 10. On sufficiency review, the question is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The Government's proof of Ms. O'Neal's corrupt intent rested entirely on Whitaker, and Whitaker undercut it. He admitted he told her the lease money "was coming from Commissioner Martinez," and that "[a]t no time" did he tell her otherwise. 12/8/25 Tr. 143:8–144:2.

On the same recordings, Ms. O'Neal treated the money as a lease "down-payment" for her coffee shop. Trial Ex. 74B-T at 21; 12/5/25 Tr. 16:14–19. A person told by the Government's own agent that she is receiving a payment from a friend and colleague does not, on that evidence, hold the corrupt intent to be "influenced" in an official act that *Snyder* demands.

The Government's control of the framing deepens the question. Whitaker had cooperated for months before he ever approached Ms. O'Neal, and on the recordings, he consistently attributed the money to Martinez. The Government's own witness thus supplied the very understanding, a payment from a colleague, that the corrupt-intent theory must overcome. The recordings bear that out. And on a June 14, 2024, call recorded without his knowledge, when Whitaker asked whether Ms. O'Neal knew that the $70,000 had been added to the invoice, Commissioner Martinez, the alleged architect of the scheme, answered, "She won't know that," because "we never had a conversation with her like that. She's not gonna know that." Trial Ex. 95C-T at 3.

A co-defendant's own recorded statement that Ms. O'Neal did not know the payment's corrupt significance is evidence a rational jury could credit in her favor. Whether a rational jury could find corrupt intent on this record is, at a minimum, fairly debatable, and the challenge was raised by the Rule 29 motion the District Court found "well presented" and "certainly preserved." 12/10/25 Tr. 46:3–5.

### C. Whether the Government's abandonment of the charged "pressuring" theory worked a constructive amendment or a fatal variance is a substantial question.

A defendant may be tried only on the charges the grand jury returned; after indictment, "its charges may not be broadened through amendment except by the grand jury itself." *Stirone v. United States,* 361 U.S. 212, 215–16 (1960). A constructive amendment "constitutes [a] per se violation of the Fifth Amendment's Grand Jury Clause," *United States v. McKee,* 506 F.3d 225, 229 (3d Cir. 2007), and cannot be "dismissed as harmless error," *Stirone,* 361 U.S. at 217. A variance, which arises "where the charging terms of the indictment are unchanged, but the evidence at trial proves facts materially different from those alleged," requires reversal where it prejudices the defense. *United States v. Daraio,* 445 F.3d 253, 259–62 (3d Cir. 2006).

The grand jury was told that Ms. O'Neal's official act was "pressuring" Gaston to approve Mon Ethos invoices. Ms. O'Neal contends the Government abandoned that theory at trial; the District Court recounted that contention while declining to impose a sanction, ECF 210 at 34 n.283, though it rejected her official-act challenge on the view that the directive could be found to exert "pressure" on another official or to have "provided advice" for official action, ECF 210 at 32 The Government then secured a conviction on a different act never charged as the official act: a general grant-processing directive. Substituting an uncharged, routine directive for the charged, targeted act of "pressuring" a subordinate either broadened the indictment, a constructive amendment reversible *per se* under *McKee,* or worked a variance that deprived Ms. O'Neal of the opportunity to defend the theory on which she was actually convicted, *Daraio,* 445 F.3d at 262. Ms. O'Neal prepared to meet a coercion theory; she was convicted on a routine-administration theory. Which characterization controls is, at a minimum, a substantial question, and it was preserved. 12/10/25 Tr. 22:22–23:3, 41:2–6.

### D. Whether the evidence proved that Ms. O'Neal reasonably foresaw an interstate wire is a substantial question.

Wire fraud requires that the defendant used the interstate wire or that "such use can reasonably be foreseen." *United States v. Bentz,* 21 F.3d 37, 40 (3d Cir. 1994) (quoting *Pereira v. United States,* 347 U.S. 1, 8–9 (1954)). Foreseeability is "an objective test," and this Court has reversed a wire-fraud conviction where the record did not show that the defendant "should reasonably have anticipated" the transmission. *Id.* at 41. The record here affirmatively negates foreseeability of the April 15 wire underlying Count 5. Nine days before it, asked whether to wire the lease payment, Ms. O'Neal said, "I don't like traces of anything" and "[w]ire means it's traced." Trial Ex. 88-T at 18; 12/5/25 Tr. 45:22–47:15. Whitaker alone chose to wire the funds, from an account Ms. O'Neal neither controlled nor knew of, by the very method she had just disavowed. Whether a single equivocal "I guess," (Trial Ex. 88-T at 17) followed at once by an objection to wires, proves beyond a reasonable doubt that she "reasonably foresaw" an interstate wire is fairly debatable under *Bentz*.

## III. Each Substantial Question, Resolved Favorably, Requires Reversal Or a New Trial on All Four Concurrent Counts.

Because the sentences are concurrent, the substantial question must reach every count. *Miller,* 753 F.2d at 24. These questions do, because they attack the bribery that is the common core of all four convictions.

Honest-services fraud "covers only bribery and kickback schemes," *Skilling*, 561 U.S. at 368, and an "official act" is "an element of the crime of honest services fraud," *Lindberg*, 39 F.4th at 175. The money-laundering conspiracy in Count 8 requires proceeds of a specified unlawful activity, and the only unlawful activity charged is the same fraud and bribery. If the bribery predicate fails for want of a qualifying official act or of corrupt intent, the honest-services counts fail with it, and the money-laundering count, having no independent predicate, falls as well. *Lindberg* proves the point concretely: an official-act error on the fraud count "improperly infected" the companion Section 666 count and required vacatur of both. *Id.*

The District Court reasoned that the honest-services counts received an official-act instruction of their own and so would survive a Section 666 ruling. ECF 259 at 2. That does not defeat release. Ms. O'Neal's sufficiency challenges under *Snyder* and *Jackson* do not depend on any instructional objection: if the evidence of a corrupt exchange for a qualifying official act was insufficient, it was insufficient on every count that requires it, and no instruction can cure missing proof. The same deficient act and the same absent corrupt intent underlie the fraud, the bribery, and the laundering alike. A favorable ruling is therefore "likely to result in reversal or an order for a new trial of all counts." *Miller*, 753 F.2d at 24.

### IV. This Appeal is Not For Delay, the Questions are Preserved, and the District Court's Contrary Grounds do Not Survive the Correct Standard.

Ms. O'Neal moved at every stage without delay: a preserved Rule 29 motion, timely post-trial motions, a timely notice of appeal, and a release motion filed days after sentencing. The questions are genuine and forward-looking, not contrived. The District Court's three grounds for denial do not withstand the standard this Court applies on independent review.

*First*, the trial court faulted Ms. O'Neal for identifying no circuit that has adopted her reading of Section 666. ECF 259 at 2. But *Miller* and *Smith* require a "significant" and "fairly debatable" question, not a favorable circuit split. *See Miller*, 793 F.2d at 89–90. The trial court's own opinion supplies the substantiality: a question of first impression it acknowledged this Court "has not resolved," reopened by *Snyder*, that controls every count.

*Second*, the trial court read counsel's argument as conceding non-preservation of the Section 666 official-act theory. ECF 259 at 2. The dispositive challenges here, the sufficiency of the official act and of corrupt intent, were squarely raised in the Rule 29 motion the trial court itself found "well presented" and "certainly preserved." 12/10/25 Tr. 46:3–5. Sufficiency review does not turn on an instructional objection, and a constructive amendment is reviewable regardless.

*Third*, the trial court invoked the concurrent honest-services and money-laundering sentences. ECF 259 at 3. As Part III shows, the substantial questions reach those counts through the shared bribery predicate. Applied to this record, the correct standard is met.

## V. THE EQUITIES FAVOR RELEASE, AS THIS COURT RECOGNIZED WEEKS AGO IN A MATERIALLY SIMILAR VIRGIN ISLANDS APPEAL.

This Court need not decide these questions in the abstract. On June 30, 2026, the same day the District Court denied Ms. O'Neal relief, this Court granted release pending appeal to another Virgin Islands public official convicted after a jury trial in the District of the Virgin Islands. *See United States v. Richardson,* No. 26-1785 (3d Cir. June 30, 2026) (order granting release pending appeal). Like Ms. O'Neal, Richardson was a non-violent defendant who satisfied the flight-and-danger prong and whose appeal raised substantial questions going to the counts of conviction, in circumstances where he risked serving the challenged custodial term before the appeal could be decided. The parallels here are stronger, not weaker: Ms. O'Neal's substantial questions would vacate not one count but all four, and she is serving an eighty-four-month term that rests entirely on convictions her appeal may set aside in full. If ordinary appellate timing is allowed to run, she will serve years of a sentence whose lawfulness this Court has not yet reviewed, on questions the District Court itself conceded are unresolved. That is the injustice Section 3143(b) exists to prevent.

## CONCLUSION

**WHEREFORE,** the Court should grant the motion and order Ms. O'Neal released on appropriate conditions, including the home-detention conditions she observed without violation for more than eighteen months, pending the disposition of her appeal. In the alternative, Ms. O'Neal requests expedited consideration, because she is serving a sentence that rests on convictions her appeal may vacate in full.

Dated: July 20, 2026

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III
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## CERTIFICATE OF COMPLIANCE

Appellant certifies, pursuant to FRAP 32(g)(1), that this motion is under the 5,200 word limit (4,813) under FRAP 27(d)(2)(A).

/s/ Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on ECF on July 20, 2026, and a NEF will be delivered on counsel of record.

/s/ Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III