IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	**CRIMINAL NO. RDB-23-0344**
v.	*	
	*	**CIV. NO. RDB-25-02198**
AHMED SARY,	*	
	*	
Defendant.	*	
	*	

* * * * * * *

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION UNDER 28 U.S.C. § 2255 TO VACATE CONVICTION AND SENTENCE

The United States of America, by and through its attorneys, Kelly O. Hayes, United States Attorney for the District of Maryland, and Paul A. Riley, Assistant United States Attorney, respectfully submits the following opposition to Defendant Ahmed Sary's Motion Under 28 U.S.C. § 2255 ("Motion to Vacate" or "Mem.") (ECF No. 111). For the reasons set forth below, the Court should summarily deny Defendant's motion without a hearing.

BACKGROUND

A. The Offense Conduct.

As detailed in the parties' plea agreement filed October 18, 2023 (ECF No. 66) and the Presentence Investigation Report (PSR) filed December 20, 2023 (ECF No. 69), for a period of nearly two years—beginning in April 2020 and continuing through January 2022—Defendant and his co-conspirators (including co-conspirator H.D.) repeatedly defrauded the United States Small Business Administration (SBA) and various financial institutions to obtain numerous fraudulent Paycheck Protection Program (PPP) loans and Economic Injury Disaster Loans (EIDLs).

Defendant prepared nearly 150 false and fraudulent EIDL and PPP loan applications for purported businesses that did not exist in any legitimate capacity and that included false information concerning, among other things, number of employees, monthly payroll costs, and revenue. The PPP applications routinely included false and fraudulent Internal Revenue Service ("IRS") tax forms created by H.D. and that were provided to Defendant, along with fabricated bank statements prepared by Defendant. These forms were submitted by Defendant and his co-conspirators with the PPP applications to substantiate the false representations made in the applications.

Defendant received kickback payments from the loan borrowers in exchange for his assistance in connection with the submission of fraudulent PPP and EIDL applications, ultimately receiving $2,714,217.22 in kickbacks as a result of the scheme to defraud charged in Count One of the Information. These kickbacks amounted to, at times, up to 30% of the amount of the loan amount.

Defendant used the fraudulently obtained funds to travel to Dubai and Egypt on multiple occasions, to stay at luxury hotels (including the Four Seasons) while there, to purchase property in Egypt and to, among other things, open a beachfront restaurant in Alexandria, Egypt called Sary's Kitchen.

The conspiracy resulted in the disbursement of at least $14,807,609.37 in fraudulently obtained PPP funds in connection with more than 85 fraudulent PPP loans. More than 10 financial institutions were victims in connection with the scheme, and Defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of his offense.

The conspiracy likewise resulted in the disbursement of $3,093,670.50 in EIDL funds in connection with 57 EIDL applications.

In addition to the loan fee kickbacks, Defendant himself received $959,559.00 in PPP/EIDL funds for various purported businesses that he controlled. Defendant's crimes are discussed in further detail below.

Fraudulent Applications For Businesses Associated With Defendant

As an initial matter, in connection with the conspiracy and scheme to defraud, Defendant submitted multiple false and fraudulent EIDL and PPP loan applications in connection with various purported businesses for which he owned or otherwise had an interest—a purported financial services business (AMEX Financial Group), a purported meatpacking business (Am Halal Meat), a purported clothing company (Exclusive Menswear) and a purported talent agency (Sary Stars). In fact, none of these businesses existed in any legitimate capacity. Information about each of these fraudulently obtained loans are set forth in the below table:

Entity	SBA Loan Type	Loan Amount	Funded Date
Am Halal Meat Inc	PPP	$119,311	6/19/2020
Am Halal Meat Inc	EIDL Advance	$10,000	6/23/2020
Am Halal Meat Inc	EIDL	$40,000	6/24/2020
Am Halal Meat Inc	PPP	$119,310	2/20/2021
AMEX Financial Group Inc	EIDL	$145,000	6/11/2020
Sary Stars Inc	PPP	$102,000	5/27/2020
Sary Stars Inc	EIDL Advance	$8,000	6/23/2020
Sary Stars Inc	EIDL	$117,000	6/24/2020
Exclusive Menswear Inc.	EIDL Advance	$10,000	7/07/2020

Sary Stars Inc	PPP	$102,000	2/24/2021
Exclusive Menswear Inc.	PPP	$70,326	6/23/2020
Exclusive Menswear Inc.	PPP	$70,325	2/11/2021
Total		**$913,272**	

Defendant also submitted fraudulent loan applications for a purported pizza business (AMT Pizza) that he owned that resulted in the funding of a $65,000 EIDL loan and a $139,938 PPP loan. All of these loan funds were ultimately returned to the PPP lender and the SBA in light of suspected fraud.

The EIDL applications associated with each of the above EIDLs contained multiple material misrepresentations concerning each purported business's existence, gross revenues and operating expenses, and each application resulted in the disbursement of funds to bank accounts controlled by Defendant.

Likewise, the PPP applications associated with each of the above PPP loans contained multiple material misrepresentations concerning, among other things, each purported business's existence, number of employees, and wages paid, and each application resulted in the disbursement of funds to bank accounts controlled by Defendant.

The PPP applications also contained false and fraudulent IRS Forms 1120 (Corporation Income Tax Return), 941 (Employer's Quarterly Federal Tax Return), 944 (Employer's Annual Federal Tax Return) and W-3 (Transmittal of Wage and Tax Statements), which contained multiple material misrepresentations including the number of employees of each purported business and the wages paid; this information was used to substantiate information in the PPP loan applications.

IRS records indicated that there was no record of business tax filings for any of Am Halal Meat, AMEX Financial Group, AMT Pizza, and Sary Stars for the tax years 2019 or 2020.

Loan Kickback Scheme

In addition to obtaining fraudulent PPP and EIDL funds for his own purported businesses, Defendant engaged in a scheme with co-conspirator H.D. to assist other co-conspirators with obtaining EIDL and PPP loans for various purported businesses that did not exist in any legitimate capacity in exchange for a kickback payment. Sary would receive a kickback (typically 20% to 30% of the fraudulent loan amount) in exchange for his services and, at times, would give H.D. a small portion of that fee (typically 2% to 5% of the fraudulent amount) if H.D. assisted with the fraudulent application.

These applications grossly inflated the numbers of employees and grossly inflated monthly payroll costs of the purported businesses. The PPP applications contained various false and fraudulent IRS records prepared by H.D. and provided to Defendant to support the payroll figures included in the fraudulent PPP applications, including false United States Internal Revenue Service ("IRS") Forms 940 (Employer's Annual Federal Unemployment Tax Return, 941 (Employer's Quarterly Federal Tax Return), and 944 (Employer's Annual Federal Tax Return) for the purported businesses.

The purpose of the false IRS and fraudulent Forms 940, 941, and 944 was to circumvent Cross River Bank's requirement and the requirement of other SBA-approved lenders that prospective borrowers submit documentation to support the payroll figures that served as the basis for the PPP loan amount.

The PPP applications likewise contained false and fraudulent February 2020 bank statements prepared by Defendant, which were meant to circumvent Cross River Bank's requirement and the requirement of other SBA-approved lenders that prospective borrowers submit documentation to support the certification that the business was in operation on February 15, 2020.

Regarding Defendant's receipt of kickbacks in exchange for his work on the fraudulent PPP and EIDL applications, in order to conceal the nature of his scheme, Defendant laundered the payments through bank accounts he controlled but that were in the names of various associates and more than 15 shell companies controlled by Defendant, including the following entities: Am Halal Meat, AMEX Financial Group, AMT Pizza, Sary Stars, Black Diamond Sedan, Diva Productions, Vertical Payment Processing, Holand Livestock, NR1 Transport, and Exclusive Menswear.

The kickback payments were structured by Defendant and made in a manner to conceal the nature and total amount of the payments, and created the appearance that the payments were for legitimate business purposes—including by containing memos that indicated falsely that the payments were for business related purposes.

Defendant typically demanded that the loan recipient pay him for his services in connection with the fraudulent loan application. After the loan funds were received by the recipient, the recipient would typically provide Defendant multiple (sometimes up to seven) checks that were signed by the loan recipient and that listed a payment amount and date but that left the payee name blank. Defendant would then write a payee name on each of those checks and deposit them.

In connection with some of the fraudulent obtained PPP loans for purported businesses, Defendant also assisted the loan recipients with setting up payroll services with Payroll Processor 1 to make it appear that the fraudulently obtained PPP loan funds were being used for permissible purposes when they, in fact, were not.

Defendant was aware that proceeds from a PPP loan were required to be used only for certain permissible business expenses, including payroll costs, mortgage interest, rent, and utilities. Defendant was aware that, under the applicable PPP rules, interest and principal on a legitimate PPP loan were eligible for forgiveness, if the business spent the loan proceeds on permissible items within a designated period of time and used a certain portion of the loan toward payroll expenses.

The purpose of establishing payroll services for the loan recipients after receipt of the fraudulently obtained PPP loan funds was to facilitate the creation of documentation that could be used to substantiate a request for each respective PPP loan to be forgiven.

Nutscola Street Promotions

For example, on March 21, 2021, Defendant submitted a fraudulent PPP loan application to Cross River Bank for Nutscola Street Promotions (Nutscola), a business for which co-conspirator L.W. was the owner and resident agent and which had no employees at the time and was not in operation.

The PPP loan application contained multiple material misrepresentations, including that Nutscola had 13 employees and an average monthly payroll of $104,900.87. In support of the loan application, a fabricated Internal Revenue Service (IRS) Form 940—Employer's Annual Federal Unemployment Tax Return—was submitted, which falsely indicated that Nutscola's "[t]otal payments to all employees" in 2019 was $1,258,810.53.

The IRS Form 940 was not legitimate, and the information within it was false; Nutscola did not pay any wages to or withhold federal income tax from any employees during the 2019 tax year—as confirmed by IRS records.

Defendant also submitted with the application a fake and fraudulent February 2020 bank statement he prepared that purported to be from the Nutscola Chase account.

Based on the false representations and fraudulent submissions, on March 26, 2021, the PPP loan funded, and approximately $262,252 was distributed by Cross River Bank to the Chase account controlled by L.W.

L.W. agreed to pay Defendant a kickback payment for his work in submitting the false application and obtaining the fraudulent PPP loan. After the PPP loan funds were received by L.W., he provided Defendant with two checks totaling $78,000—one in the amount of $40,000 and one in the amount of $38,000—or approximately 30 percent of the PPP loan amount.

On each of those checks, L.W. left the payee name blank, and Defendant wrote the payee name on the checks. Defendant made the $40,000 check out to Am Halal Meat, and he made the $38,000 check out to Diva Productions—both entities Defendant controlled—in order to conceal the nature of his scheme. Defendant deposited both of the checks, and they were drawn on the bank account controlled by L.W.

Shortly thereafter, Defendant assisted L.W. with establishing payroll services for Nutscola with Payroll Processor 1 to facilitate the creation of documentation that could be used to substantiate a request for the PPP loan to be forgiven. In total, $159,000 in sham payroll payments were made using funds traceable to the PPP loan obtained by L.W. and Nutscola.

Yazee, Inc.

Likewise, on March 14, 2021, Defendant submitted a fraudulent PPP loan application to Cross River Bank for Yazee, Inc. (Yazee), a business for which co-conspirator A.Q. was the owner and resident agent.

The PPP loan application contained multiple material misrepresentations, including that Yazee had 16 employees and an average monthly payroll of $100,289. In support of the loan application, a fabricated IRS Form 940—Employer's Annual Federal Unemployment Tax

Return—was submitted, which falsely indicated that Yazee's "[t]otal payments to all employees" in 2019 was $1,203,471.52. The IRS Form 940 was not legitimate, and the information within it was false; Yazee did not pay any wages to or withhold federal income tax from any employees during the 2019 tax year.

Based on the false representations and fraudulent submissions made on behalf of A.Q. as the owner of Yazee, on March 22, 2021, the PPP loan funded, and approximately $250,723.00 was distributed by Cross River Bank to the Wells Fargo account controlled by A.Q.

A.Q. agreed to pay Defendant a kickback for his work in submitting the false application and obtaining the fraudulent loan. After the PPP loan funds were received by A.Q., he provided Defendant with eight checks totaling $75,000, or approximately 30 percent of the PPP loan. On each of those checks, A.Q. wrote the amount, but left the payee name blank. Attempting to conceal the nature of the payments, Defendant then wrote a payee name on each of the checks, making the checks out to entities that Defendant controlled—AMEX Financial Group, Am Halal Meat, Black Diamond Sedan, Diva Productions, Exclusive Menswear, and NR1 Transport. Defendant further attempted to create the appearance that the payments were for legitimate business purposes when they in fact were not—including by writing memos that indicated the payments were for business related purposes.

For example, the $5,000 check to Exclusive Menswear contained a memo written by Defendant falsely indicating that the check was for "uniforms." The $10,000 check to Diva Productions contained a memo written by Defendant falsely indicating that the check was for "marketing." The $10,000 check to NR1 Transport contained a memo written by Defendant falsely indicating that the check was for "transportation." The $10,000 check to AMEX Financial

Group contained a memo written by Defendant falsely indicating that the check was for "financial planning."

Defendant also assisted A.Q. with establishing payroll services for Yazee with Payroll Processor 1 to facilitate the creation of documentation that could be used to substantiate a request for the PPP loan to be forgiven, which it ultimately was. In total, $144,647.21 in sham payroll payments were made using funds traceable to the PPP loan obtained by A.Q. and Yazee.

Total Actual Losses Associated With the Conspiracy

In total, Defendant's conspiracy with H.D. resulted in the disbursement of $14,807,609.37 of fraudulently obtained funds in connection with more than 85 fraudulent PPP loans.

Moreover, as noted above, Defendant submitted numerous fraudulent EIDL applications in connection with his scheme. Ultimately, $3,093,670.50 in EIDL funds were disbursed in connection with 57 EIDL applications which contained material misrepresentations concerning, among other things, each purported business's existence, gross revenues and operating expenses.

Federal Search Warrant

Defendant was arrested on April 29, 2022 and, that same day, search warrants were executed at the office of AMEX Financial Group located at 1600 Hanover Street in Baltimore, an apartment adjoining the office, and Defendant's residence. From Defendant's office and the apartment adjoining Defendant's office, law enforcement seized numerous pieces of evidence related to Defendant's scheme.

Law enforcement seized over 90 hard copies of files related to the submission of PPP/EIDL applications for various entities. These files contained large amounts of personal identifying information—copies of driver's licenses, social security cards and numbers, bank statements, as well as copies of checks, and PPP application paperwork.

Some of the files contained the false and fabricated bank statements and tax documents submitted by Defendant in connection with fraudulent PPP applications. Law enforcement likewise seized numerous kickback checks from entities that received PPP loans. The checks were signed and a payment amount was listed, but the payee was blank. Law enforcement also seized pre-signed blank checks from a number of the entities used by Defendant to launder the kickback payments from the PPP loan recipients.

B. Defendant's Guilty Plea and Sentencing.

On October 18, 2023, the Court accepted Defendant's guilty plea to Count One of a criminal Information, charging him with Wire Fraud Conspiracy, in violation of 18 U.S.C. §§ 1343, 1349. The guilty plea was pursuant to a plea agreement. *See* ECF No. 66 (Plea Agreement).

During the Rule 11 proceeding, Defendant entered a knowing and voluntary plea of guilty to Count One of the Information. *See* Ex. 1 (Plea Transcript) at 44-45. Defendant stated under oath, among other things, that:

- He had fully discussed the charges in the Information with his lawyer. *Id.* at 15.
- He was "fully satisfied" with the services of his lawyer and acknowledged that there is nothing Defendant "asked her to do which she has not done." *Id.*
- He was not forced against his will to enter into the plea agreement. *Id.* at 18.
- He was not under the influence of a substance that would affect his thinking. *Id.* at 5.
- He understood the charges (including the elements of the charges) he was pleading guilty to and the punishments associated with the charges. *Id.* at 6-8; *id.* at 34-35.

- He understood the collection of rights associated with his right to a jury trial. *Id.* at 30-34.
- He understood the collateral consequences of pleading guilty. *Id.* at 19-20.
- He understood the applicability of the sentencing guidelines and the sentencing factor analysis. *Id.* at 24-27.
- He understood that the parties' plea agreement was pursuant to Fed. R. Crim. P. 11(c)(1)(C) and contemplated a sentencing range of 60 to 114 months' incarceration. *Id.* at 10.
- He understood that the Court may order restitution and that the parties' plea agreement contemplated $17.9 million in restitution payable by Defendant. *Id.* at 22.
- He agreed that the Statement of Facts read by the Government were an accurate summary of the facts in this case. *Id.* at 43-44.
- He agreed that he did in fact commit the crime as summarized by the Government. *Id.* at 44.

The Court accepted Defendant's guilty plea to Count One of the Information concluding that Defendant had made his decision knowingly, intelligently, and voluntarily. *Id.* at 44-45.

On June 25, 2024, the Court sentenced Defendant to a total sentence of 84 months' imprisonment as to Count One and three years of supervised release. *Id.* at 74-75. The Court also ordered restitution in the amount $17,901,279.37. *Id.* at 76.

Defendant did not note an appeal; the parties' plea agreement provided for a waiver of Defendant's appellate rights in any event.

C. Defendant's Motion to Vacate.

On July 3, 2024, Defendant's *pro se* Motion to Vacate, Set Aside or Correct Sentence and accompanying Memorandum of Law ("Mem.") were received by the Clerk of Court and docketed.

ECF Nos. 111, 111-1. In his timely filed § 2255 Motion, Defendant argues that he received ineffective assistance of counsel on various grounds. Specifically, Defendant argues that he received ineffective assistance of counsel because, he claims (1) counsel "failed to explain the implications of the factual stipulation and plea agreement, particularly the binding effect of stipulating to an aggregate $17.9 million loss" under the sentencing guidelines, Mem. at 2; (2) counsel failed at sentencing to present "mitigation memorandum, present character evidence, or rebut inflammatory allegations in the government's sentencing memorandum," Mem. at 3; and (3) counsel did not argue for a downward variance at sentencing," *id.*

Defendant further argues that his due process rights were violated when the Court allegedly "relied heavily on unchallenged factual allegations from the government." Mem. at 3. And, finally, Defendant claims that the restitution order was "imposed without proper apportionment." *Id.* at 4.

For the reasons that follow, the Court should summarily deny Defendant's motion without a hearing.

ARGUMENT

A. Legal Standard.

A motion filed under 28 U.S.C. § 2255 allows a prisoner in federal custody to challenge the legality of a federal sentence on four grounds: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the sentencing court lacked jurisdiction; (3) the sentence exceeded the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. *See* 28 U.S.C. § 2255(a). Relief under § 2255 is therefore designed to remedy fundamental constitutional, jurisdictional, or other errors, and is reserved for situations in which failure to grant relief "inherently results in a complete miscarriage of justice." *United States v. Addonizio,* 442 U.S. 178, 185 (1979) (quoting *Hill v. United States*, 386 U.S. 424, 428 (1962)).

When seeking relief under § 2255, a defendant bears the burden of proving the asserted grounds for collateral relief by a preponderance of the evidence. *See, e.g.*, *Vanater v. Boles*, 377 F.2d 898, 900 (4th Cir. 1967)). This is in keeping with the fundamental principal that "a final judgment commands respect." *United States v. Frady*, 456 U.S. 152, 165 (1982). The standard of review that courts must apply in reviewing a § 2255 is therefore necessarily higher than would be applied on direct appeal. *Id.* at 165-66. "Once the defendant's chance to appeal has been waived or exhausted . . . we are entitled to presume he stands fairly and finally convicted . . . ." *Id.* at 164.

Where, as here, a judgment of conviction upon a guilty plea is subjected to a collateral attack, such as by a § 2255 motion, the court's inquiry is "ordinarily confined to whether the underlying plea was both counseled and voluntary." *United States v. Broce*, 488 U.S. 563, 569 (1989). In order to be cognizable under § 2255, an alleged error must amount to a "fundamental defect which inherently results in a complete miscarriage of justice," or an "omission inconsistent with the rudimentary demands of fair procedure." *Hill*, 368 U.S. at 428.

By pleading guilty, a petitioner waives all non-jurisdictional issues, including allegations of constitutional error, unless he entered a conditional plea and specifically reserved her right to raise such claims. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea"); *United States v. Bundy*, 392 F.3d 641, 644 (4th Cir. 2004).

Regarding guilty pleas, they are constitutionally valid only if they are made "voluntar[ily]" and "intelligent[ly]." *Bousley v. United States*, 523 U.S. 614, 618 (1998) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). "[A] guilty plea is a grave and solemn act" that is "accepted only with care and discernment." *Brady*, 397 U.S. at 748. Once a guilty plea is entered, there is "a strong presumption that the plea is final and binding." *United States v. Lambey*, 974 F.3d 1389, 1394 (4th Cir. 1992). A guilty plea represents an admission by the defendant that "he actually committed the crimes," and that "he is pleading guilty because he is guilty." *United States v. Hyde*, 520 U.S. 670, 676 (1997). Therefore, a defendant's admissions of guilt are entitled to significant weight and must be granted "a presumption of truthfulness." *Walton v. Angelone*, 321 F.3d 442, 462 (4th Cir. 2003).

If the defendant is "fully aware of the direct consequences," his guilty plea must stand, so long as it was not "induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled and unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business." *Brady*, 397 U.S. at 755.

Furthermore, the Fourth Circuit has held that "in the absence of extraordinary circumstances, the truth of sworn statements made during a Rule 11 colloquy is conclusively established, and a district court should . . . dismiss any § 2255 motion that necessarily relies on allegations that contradict the sworn statements." *United States v. Lemaster*, 403 F.3d 216, 221–22 (4th Cir. 2005); *Fields v. Attorney Gen. of State of Md.*, 956 F.2d 1290, 1299 (4th Cir. 1992) ("Absent clear and convincing evidence to the contrary, a defendant is bound by the representations he makes under oath during a plea colloquy."). Indeed, a defendant's statements at the plea hearing are "strong evidence of the voluntariness of his plea." *United States v. DeFusco*, 949 F.2d 114, 119 (4th Cir. 1991).

B. Defendant's Guilty Plea Was Knowing And Voluntary.

For starters, there is no question that Defendant's guilty plea to Count One of the Information was knowing and voluntarily. The plea hearing on October 18, 2023 complied with all requirements of Fed. R. Crim. P. 11 to ensure that Defendant's plea of guilty was well informed.

In accordance with Rule 11(b)(1), the Court questioned and advised Defendant regarding his right to persist in a plea of not guilty (Ex. 1 at 30), his right to a jury trial (*id.*), his right to counsel (*id.* at 31); his rights to confrontation and cross-examination, against compelled self-incrimination, to testify and present evidence, and to compel witnesses (*id.* at 31-33); his waiver of these trial rights by pleading guilty (*id.* at 34); the Government's right to use Defendant's sworn statements against him in a prosecution for perjury or false statement (*id.* at 13); the nature of the charges to which he was pleading guilty (*id.* at 34-35), the maximum penalties, and mandatory minimum penalties (*id.* at 22); the sentencing guidelines and other sentencing factors (*id.* at 24-27) and his waiver of appellate rights as outlined in the plea agreement (*id.* at 29).

In accordance with Rule 11(b)(2), Defendant confirmed that he was pleading guilty and had entered into his plea agreement without force or threat (*id.* at 18), and, based on Defendant's responses during the plea colloquy, the Court found that Defendant was entering his guilty plea knowingly and voluntarily. *Id.* at 44-45. The Court also found a factual basis for the plea in accordance with Rule 11(b)(3). *Id.* at 44. Indeed, Defendant agreed that the plea agreement's Statement of Facts as summarized by the Government counsel was "an accurate summary of the facts in this case." *Id.* at 43-44.

Defendant also affirmed that he was "fully satisfied" with the legal representation of his counsel and that there was nothing that he asked her to do that she did not do. *Id.* at 15. At no point during the guilty plea hearing did Defendant express his lack of understanding of the provisions in his plea agreement or express any dissatisfaction with his counsel's performance.

Simply put, there is thus no indication in the record that Defendant's guilty plea was anything but knowing and intelligent.

C. Defendant's Counsel Was Not Constitutionally Ineffective.

Defendant complains that his counsel was constitutionally ineffective for various reasons. The Court can summarily deny all of these claims.

1. Legal Standard As To Ineffective Assistance Of Counsel.

The touchstone for evaluating a criminal defendant's claim of ineffective assistance of counsel is whether the conduct of his attorney fell "within the range of competence normally demanded of attorneys in criminal cases." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In *Strickland*, the Court instructed that claims of ineffective assistance of counsel are decided by the following two-prong test: "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* In other words, the criminal defendant must show that "his counsel's performance 'fell below an objective standard of reasonableness' measured by 'prevailing professional norms[.]'" *Christian v. Ballard*, 792 F.3d 427, 443–44 (4th Cir. 2015) (quoting *Strickland*, 466 U.S. at 687, 688). Counsel's performance is evaluated from counsel's perspective at the time and is presumed to "fall[] within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

"Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687.

In order to show prejudice in cases where, as here, the conviction is based upon a guilty plea, the criminal defendant must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *United States v. Fugit*, 703 F.3d 248, 259 (4th Cir. 2012) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). He must also "'convince the court' that such a decision 'would have been rational under the circumstances.'" *Id.* at 260 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)). In other words, he must show that a decision to proceed to trial "would have been objectively reasonable in light of all of the facts." *Id.* His subjective preferences are not dispositive. *Id.*

"Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable." *Strickland*, 466 U.S. at 687. *Strickland* sets a "high bar," and surmounting it "is never an easy task." *Padilla*, 559 U.S. at 371. Indeed, it is "often quite difficult for petitioners who have acknowledged their guilt" to satisfy *Strickland*'s high standard. *Id* at 371 n.12.

2. Defendant Noted His Satisfaction With Counsel Under Oath.

As a general matter, Defendant cannot establish that his lawyer's assistance was ineffective. Nor was his counsel ineffective. Indeed, his counsel advocated zealously for Defendant during plea negotiations and at sentencing. What's more, Defendant testified to his satisfaction with his lawyer during the Rule 11 proceeding:

> THE COURT: Are you fully satisfied with Ms. Reamy
> and her representation and the advice which she's given you?
> THE DEFENDANT: Yes.

Ex. 1 at 15.

The Fourth Circuit has held that "in the absence of extraordinary circumstances, the truth of sworn statements made during a Rule 11 colloquy is conclusively established, and a district court should . . . dismiss any § 2255 motion that necessarily relies on allegations that contradict the sworn statements." *Lemaster*, 403 F.3d at 221–22; *Fields v. Attorney Gen. of State of Md.*, 956 F.2d 1290, 1299 (4th Cir. 1992) ("Absent clear and convincing evidence to the contrary, a defendant is bound by the representations he makes under oath during a plea colloquy.").

The bare and self-serving assertions Defendant makes concerning his counsel's purported ineffectiveness here are belied by his statements under oath, and are therefore entitled to no credit. *See Salliey v. United States*, No. RDB-13-1443, 2014 WL 3846049, at *3 (D. Md. Aug. 1, 2014) (rejecting *Strickland* claim where "Petitioner testified to his satisfaction with his counsel in his Rule 11 colloquy" and "alleged no further facts to show deficiency in counsel's performance"); *Powell v. United States*, No. PJM-15-0440, 2017 WL 3172831, at *5–6 (D. Md. July 26, 2017) (rejecting petitioner's *Strickland* claim that was contradicted by her responses during Rule 11 colloquy). Indeed, Defendant is bound by the statements he made at his Rule 11 hearing, and those statements cannot be set aside merely on the basis of his post-judgment assertions to the contrary. Defendant's statements under oath "constitute a formidable barrier" to this post-judgment attack—a barrier that he does not and cannot overcome. *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977). In any event, each of Defendant's specific claims fail on the merits.

First, Defendant claims that his lawyer was ineffective for the purported "failure to explain the implications of the factual stipulation and plea agreement, particularly the binding effect of stipulating to an aggregate $17.9 million loss." Mem. at 2. But this claim cannot be squared with Defendant's acknowledgments during the Rule 11 proceeding that he understood the sentencing guideline calculation (including the enhancement based on loss), Ex. 1 at 26, and that he would be obligated pursuant to the parties' plea agreement at paragraph 20 to pay restitution in the amount of $17.9 million, Ex. 1 at 22-23. Further, Defendant faults counsel for not conducting a "forensic audit" regarding the losses he admitted to under oath—essentially failing to investigate. Mem. at 2. But Defendant's conclusory allegations that "his counsel was deficient for failure to investigate . . . cannot prevail because he does not provide the court with more specific details regarding what the investigation would have revealed." *D'Amico v. United States*, No. CR RWT-10-0777-3, 2018 WL 3707831, at *3 (D. Md. Aug. 2, 2018) (citing *Bassette v. Thompson*, 915 F.2d 932, 94041 (4th

Cir. 1990)). Instead, the claim essentially boils down to vague and speculative allegations that come nowhere close to satisfying Defendant's burden of establishing deficient performance and prejudice. *E.g.*, *United States v. Dyes*, 730 F.3d 354, 359 (4th Cir. 2013) ("[V]ague and conclusory allegations contained in a § 2255 petition may be disposed of without further investigation by the District Court." (internal quotation marks and citation omitted)). For instance, Defendant does not explain what a "forensic audit" would have revealed and how the information in any such audit would have helped him. *Cf. United States v. Thompson*, No. RDB-09-0271, 2012 WL 1405946, at *3 (D. Md. Apr. 20, 2012) (denying claim because defendant did not "offer[] any evidence to meet [his] burden of proving that but for [his counsel's] failure" to investigate the certain evidence he "would have rejected [his] plea [agreement]" or that it would have been objectively reasonable to do so).

Second, Defendant claims that his lawyer was ineffective for "failing to file a mitigation memorandum, present character evidence, or rebut inflammatory allegations in the government's sentencing memorandum." Mem. at 3. Not so. Defense counsel in fact filed a sentencing memorandum and multiple character letters on behalf of Defendant, ECF Nos. 78, 78-1-78-7. Multiple individuals spoke on Defendant's behalf at sentencing—his sons, his wife, and a close family friend. Ex. 2 at 52-65. And counsel argued vigorously at sentencing too. Ex. 2 at 36-51. Defendant claims that counsel "did not argue for a downward variance" at sentencing. Mem. at 3. But this is wrong too. The guidelines sentencing range determined by the Court was 108 months' to 135 months' imprisonment. Ex. 2 at 16-17. And counsel at sentencing argued for a sentence of 60 months' imprisonment—a variant sentence four years beneath the bottom of the sentencing guideline range. *Id.* at 51.

Third, Defendant claims that his counsel was ineffective for "fail[ing] to object or request a restitution hearing" regarding the amount of restitution and for failing to request apportionment.

Mem. at 4. But the Defendant agreed in the parties' plea agreement regarding the amount of restitution, and the Court specifically referenced it during the Rule 11 colloquy. Ex. 1 at 22-23 ("THE COURT: And I've already mentioned the Court may also order restitution, and Paragraph 20 notes a restitution figure that would be joint and several with other defendants of some $17.9 million. Do you understand that? THE DEFENDANT: Yes."). Indeed, the parties' plea agreement specifically notes that Defendant "agrees to the entry of a restitution order for the full amount of the victims' losses"—here, $17,901,279.87. ECF No. 66 at 8-9.[1]

Simply put, apportionment was simply not contemplated by the parties' plea agreement. In any event, in determining a restitution order, the district court is not required to use any particular formula for apportionment among defendants or, indeed, to apportion the loss at all. *See* 18 U.S.C. § 3664(f)(1)(A) ("If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant."); *see also* *United States v. Kerekes*, No. 09 CR 137 HB, 2012 WL 3526608, at *2 (S.D.N.Y. Aug. 15, 2012), aff'd, 531 F. App'x 182 (2d Cir. 2013) ("[T]he concern is voiced by the Defendant as to whether the Court can impose individualized versus joint and several liability. This too is resolved by statute. Put another way, courts have discretion in deciding whether to apportion liability." (collecting authority).

Thus, any argument by counsel along the lines of the one Defendant makes here, would have been meritless and futile. It is not constitutionally ineffective assistance for counsel to fail to pursue futile claims. *See, e.g.*, *Truesdale v. Moore*, 142 F.3d 749, 755 (4th Cir. 1998).

Accordingly, all of Defendant's ineffective assistance of counsel claims are meritless.

[1] The judgment reflects joint and several liability among Defendants who contributed to victims' losses. ECF No. 64 at 7. Joint and several liability was discussed at sentencing too. Ex. 2 at 82-83.

D. Defendant's Other Claims Are Procedurally Defaulted, And He Cannot Show Cause, Prejudice, or Actual Innocence.

As for Defendant's claims that do not relate to purported ineffective assistance of counsel—a purported illegal restitution order, a denial of due process, a violation of the Eighth Amendment, and a violation of the First Step Act[2]—they are all procedurally defaulted because they were not raised on direct appeal, and Defendant cannot show cause and prejudice or actual innocence to overcome the default.

The scope of collateral attack under § 2255 is narrower than on appeal, and a "collateral challenge may not do service for an appeal." *Frady*, 456 U.S. at 165. Accordingly, "claims not raised on direct appeal may not be raised on collateral review unless the [defendant] shows cause and prejudice" or actual innocence. *Massaro v. United States*, 538 U.S. 500, 504 (2003); *see also Dorsett v. United States*, No. GLR-07-445, 2017 WL 2335603, at *1 (D. Md. May 30, 2017). Furthermore, it is well-settled that "[a] plea agreement that prevents a defendant from appealing is not sufficient cause for his procedural default." *Dorsett*, 2017 WL 2335603, at *1; *see also United States v. Jones*, 56 F.3d 62, *1 (4th Cir. 1995) (unpublished) ("Although Jones's plea agreement prevented him from appealing, this is not sufficient cause for his procedural default."); *Ho v. United States*, No. CR JKB-19-0397-4, 2022 WL 7091402, at *4 (D. Md. Oct. 11, 2022) (reasoning that "[a]lthough Petitioner's plea agreement included a waiver of his right to pursue a direct appeal, under *Linder*, this Court may not entertain the claim now because it could have been considered on direct appeal" and concluding that claim was procedurally defaulted); *United States v. Galloway*, 2014 WL 584047, at *10 (E.D. Va. Feb. 12, 2014) (same).

---

[2] Defendant's claims are vague, unparticularized, and undeveloped. Indeed, Defendant himself notes that nearly all the boilerplate claims are "included to preserve issues for appeal or future amendment." Mem. at 5. Further, though Defendant claims that his due process rights were violated by relying on "unchallenged factual allegations," he ignores the fact that the facts relied upon by the Court were the facts admitted by Defendant under oath at the Rule 11 hearing. Ex. 1 at 43-44.

Indeed, when a petitioner, by signing a plea agreement, waives his right to pursue a direct appeal, "he is precluded from raising [on collateral review] claims that are the sort that *could have* been raised on appeal," *United States v. Linder*, 552 F.3d 391, 396–97 (4th Cir. 2009) (emphasis in original) (quoting Brian R. Means, *Fed. Habeas Practitioner Guide*, Jurisdiction ¶ 1.23.0 (2006/2007) (emphasis in original)), precisely the situation here.

"The existence of cause for a procedural default must turn on something external to the defense, such as the novelty of the claim or a denial of effective assistance of counsel." *United States v. Mikalajunas*, 186 F.3d 490, 493 (4th Cir. 1999). Regarding novelty of the claim, "a claim that 'is so novel that its legal basis is not reasonably available to counsel' may constitute cause for a procedural default[.]" *Bousley v. United States*, 523 U.S. 614, 622 (1998) (quoting *Reed v. Ross*, 468 U.S. 1, 16 (1984)). To establish prejudice, a defendant must show that the error "worked to his actual and substantial disadvantage." *Frady*, 456 U.S. at 170.[3]

Further, "[i]n order to demonstrate that a miscarriage of justice would result from the refusal of the court to entertain the collateral attack, a movant must show actual innocence by clear and convincing evidence." *Id.* "Typically, to establish actual innocence, a petitioner must demonstrate actual factual innocence of the offense of conviction, *i.e.*, that petitioner did not commit the crime of which he was convicted; this standard is not satisfied by a showing that a petitioner is legally, but not factually, innocent." *Id.* at 494. "New evidence may consist of exculpatory scientific evidence, credible declarations of guilt by another, trustworthy eyewitness accounts, and certain physical evidence. The new evidence must be evaluated with any other admissible evidence of guilt. The new evidence must do more than undermine the finding of guilt; it must affirmatively demonstrate innocence." *Webb-El v. Stewart*, No. PWG-13-2785, 2014 WL

[3] "The Supreme Court has yet to define the exact contours of the prejudice standard in the § 2255 procedural-default context." *United States v. McKinney*, 60 F.4th 188, 195 (4th Cir. 2023).

4662609, at *6 (D. Md. Sept. 16, 2014). The movant must show that "it is more likely than not that no reasonable juror would have convicted him." *Schlup v. Delo*, 513 U.S. 298, 327 (1995). As the Fourth Circuit put it, a movant must "demonstrate that the totality of the evidence would prevent any reasonable juror from finding him guilty beyond a reasonable doubt, such that his incarceration is a miscarriage of justice. It is an exacting standard, based on a holistic judgment about all the evidence" *Finch v. McKoy*, 914 F.3d 29, 299 (4th Cir. 2019) (cleaned up).[4]

Resolution of Defendant's Motion thus involves a straightforward application of the above principles. Defendant did not file an appeal and thus did not raise on appeal any of the issues he complains of now. His claims are thus procedurally defaulted.

Further, the fact that Defendant's plea agreement barred him from raising his claims on direct appeal is not sufficient to show cause and prejudice to overcome the procedural default. *See, e.g.*, *Linder*, 552 F.3d at 396. What's more, it cannot be said that his claims were so novel so as to be not reasonably available to counsel during the time in which any appeal could be filed. *See, e.g.*, *Reed*, 468 U.S. at 17. And, finally, Defendant has not even tried to make a credible showing of actual innocence that could overcome his procedural default. Indeed, he has chosen not to address the issue of his procedural default at all.

Accordingly, because Defendant's claims are procedurally defaulted and because he has not and cannot show cause and prejudice to overcome the default (or actual innocence), his claims should be denied.

CONCLUSION

For all of the foregoing reasons, the Court should deny Defendant's motion. Moreover, no hearing is necessary because "the motion and the files and the records … conclusively show that

[4] *McKoy* involved a § 2254 motion, but "the grounds for relief under § 2255 are equivalent to those encompassed by § 2254 [and] § 2255 was intended to mirror § 2254 in operative effect." *Davis v. United States*, 417 U.S. 333, 344 (1974).

the prisoner is entitled to no relief." *United States v. Lemaster*, 403 F.3d 216, 220–23 (4th Cir. 2005).

Nor should the Court issue a certificate of appealability. Rule 11(a) of the Rules Governing § 2255 Proceedings provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 474 (2000); *Miller-El v. Cockrell*, 537 U.S. 322, 322 (2003). A prisoner satisfies this standard by "demonstrat[ing] that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong," and that any dispositive procedural ruling by the district court is likewise debatable. *Miller-El*, 537 U.S. at 338 (quoting *Slack*, 529 U.S. at 484). Defendant falls far short of this burden and thus no certificate of appealability should issue.

Respectfully submitted,

Kelly O. Hayes
United States Attorney

/s/

By: ______________________________
Paul A. Riley
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about September 19, 2025, a copy of the foregoing Opposition to the Motion Under 28 U.S.C. § 2255 will be sent by first class mail, postage prepaid to:

Ahmed Sary, BOP # 98545-509
FCI-Schuykill
PO Box 759
Minersville, PA 17954

_____/s/___________________________
PAUL A. RILEY
ASSISTANT U.S. ATTORNEY