

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

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CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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AHMED M. SARY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal Case Number: 1:23-cr-00344-RDB-1

(Civil Case Number: 1:25-cv-02198-RDB)

Honorable Judge Richard D. Bennett

REPLY TO GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION UNDER
28 U.S.C. § 2255

I. INTRODUCTION

MOVANT **AHMED M. SARY**, proceeding *pro se*, respectfully submits this Reply to the Government's Response in Opposition (ECF 118, filed Sept. 19, 2025).

The Government's filing fails to satisfy Rule 4(b) of the Rules Governing § 2255 Proceedings. It provides no affidavit from prior counsel, no contemporaneous evidence, and no credible rebuttal to Movant's sworn factual claims.

Instead, the Government relies solely on selective excerpts from the Rule 11 colloquy and sentencing transcript. Those materials cannot conclusively refute the detailed allegations in Mr.

Sary's § 2255 Motion (ECF 111, filed July 3, 2025) and his sworn "Full Delivery" Affidavit (Exhibit A). Under *Machibroda v. United States*, 368 U.S. 487 (1962), and *United States v. White*, 366 F.3d 291 (4th Cir. 2004), disputed factual issues of this nature require an evidentiary hearing.

II. PROCEDURAL BACKGROUND

a) **Oct. 18, 2023:** Movant pleaded guilty before Judge Bennett to one count of wire-fraud conspiracy (18 U.S.C. § 1349). (ECF 65–66).

b) **June 25, 2024:** The Court imposed 84 months' imprisonment, three years of supervised release (first 12 months home confinement), and \$17,901,279.37 in restitution. (ECF 84).

c) **July 3, 2025:** Movant filed his § 2255 Motion. (ECF 111).

d) **Aug. 1, 2025:** The Court ordered a Government response. (ECF 113).

e) **Sept. 19, 2025:** The Government filed its Opposition (ECF 118) with plea (ECF 114) and sentencing (ECF 116) transcripts attached.

The contemporaneous "Full Delivery" Affidavit (Exhibit A) elaborates on counsel's failures, restitution misadvice, and omitted mitigation.

III. LEGAL STANDARD

Rule 4(b) allows summary dismissal only when the motion and record **conclusively show** the prisoner is not entitled to relief. If factual disputes exist, the court must hold a hearing. *White*, 366 F.3d at 302; *United States v. Witherspoon*, 231 F.3d 923 (4th Cir. 2000).

IV. ARGUMENT

A. Counsel Rendered Constitutionally Deficient Assistance

1. Failure to Advise of True Restitution Exposure

Counsel never informed Mr. Sary that restitution could exceed \$17.9 million or be **joint and several** among co-defendants. The Plea Agreement (ECF 66 ¶ 20) deferred restitution “to be determined,” yet counsel conducted no financial investigation and falsely assured Movant that liability would be limited.

At the plea hearing, when asked if he understood restitution, Mr. Sary hesitated—responding, “*I think so.*” (ECF 114 at 27 ll. 4-5). That answer reflects uncertainty, not comprehension. Had counsel correctly advised him that restitution would approach \$18 million, Mr. Sary would have pursued trial or a capped agreement. *United States v. Mayhew*, 995 F.3d 171, 181 (4th Cir. 2021) (plea involuntary where counsel misadvised on restitution and exposure).

2. **Failure to Investigate and Challenge Loss Calculation**

The Presentence Report applied a 22-level enhancement under U.S.S.G. § 2B1.1(b)(1)(L) for a purported \$17 million loss. Counsel filed no objection, sought no evidentiary hearing, and retained no forensic accountant despite contrary documentation. This omission increased the Guidelines range by roughly 63 months. Under *Glover v. United States*, 531 U.S. 198 (2001), any increase in imprisonment caused by deficient performance establishes prejudice.

3. **Failure to Present Available Mitigation**

Mr. Sary provided employment, family, and medical records demonstrating reduced culpability and rehabilitation. None were presented. The sealed filings (ECF 75, 78) contained only cursory character letters. Omitting such evidence violated counsel's duty of reasonable investigation and presentation. *Wiggins v. Smith*, 539 U.S. 510 (2003).

B. Rule 11 Colloquy Does Not Cure Pre-Plea Misadvice

The Government's reliance on *United States v. Lemaster*, 403 F.3d 216 (4th Cir. 2005), and *Brady v. United States*, 397 U.S. 742 (1970), is misplaced.

Rule 11 answers are probative but not preclusive. When a plea rests on **off-record misrepresentations**, the colloquy cannot cure the defect. *Lambey v. United States*, 974 F.2d 1389 (4th Cir. 1992) (en banc). The cited transcript excerpts omit counsel's prior misstatements and Movant's incomplete understanding of restitution.

C. Procedural Default Is Excused

Ineffective assistance constitutes both *cause* and *prejudice*. *Murray v. Carrier*, 477 U.S. 478 (1986). Moreover, *Massaro v. United States*, 538 U.S. 500 (2003), permits such claims to be raised initially under § 2255. Because plea counsel advised Mr. Sary not to appeal, any default is excused.

D. The Government Has Not Rebutted Sworn Allegations

The Government submitted no affidavit from prior counsel and no documentary rebuttal. Where material facts are disputed, the court may not resolve credibility issues or rely solely on the existing record. **Section 2255(b)** mandates a hearing unless “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief,” and *Machibroda v. United States*, 368 U.S. 487, 494–96 (1962), reversed a summary denial where the district court decided factual issues on the papers. See also *United States v. White*, 366 F.3d 291, 302 (4th Cir. 2004) (hearing required when specific allegations are not conclusively refuted by the record). The Government’s reliance on the “bare record” therefore fails to meet its burden to foreclose an evidentiary hearing.

V. AN EVIDENTIARY HEARING IS REQUIRED

Material factual disputes remain concerning:

1. What restitution and loss figures counsel disclosed pre-plea;

2. Whether counsel reviewed or objected to the PSR's calculations; and
3. Whether counsel ignored mitigation evidence provided by Movant.

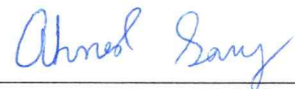
Each issue involves credibility and off-record facts. Summary denial would contravene *White* and *Witherspoon*. In the alternative, the Court should order limited discovery or require counsel's affidavit under Rule 6(a).

VI. CONCLUSION

Because the record does not conclusively show that Movant is ineligible for relief, Mr. Sary respectfully requests that this Court:

1. **Deny** the Government's request for summary dismissal;
2. **Grant an evidentiary hearing** on all ineffective-assistance and involuntary-plea claims;
3. **Permit limited discovery** or direct the Government to obtain and file counsel's affidavit;
- and
4. Grant such other and further relief as justice requires.

Respectfully Submitted,



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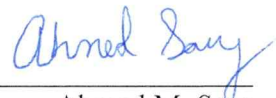
Case No.: 1:23-cr-00344-RDB-1

VERIFICATION

Pursuant to 28 U.S. C. 1746, I declare and verify, under the penalty of perjury under the laws of the United States of America, that I have read the foregoing and that it is true and correct to the best of my ability, knowledge & belief.

Dated this 5th day of October 2025.

Signed,


Ahmed M. Sary

CERTIFICATE OF SERVICE

I, hereby certify that I have caused to be served to the U.S. District Clerk (Baltimore), a copy of the foregoing document via U.S. pre-paid & first-class postage through the United States Postal Service via the prison mailbox.

Dated this 5th day of October 2025.

Signed,


Ahmed M. Sary