Appendix A

United States v. Fagot-Maximo

United States Court of Appeals for the Fourth Circuit

September 13, 2023, Submitted; November 3, 2023, Decided

No. 22-7082

Reporter

2023 U.S. App. LEXIS 29311 *; 2023 WL 7272101

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. ARNULFO FAGOT-MAXIMO, a/k/a El Tio, Defendant - Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. (1:15-cr-00290-LMB-6; 1:21-cv-00849-LO). Liam O'Grady, Senior District Judge.

United States v. Fagot-Maximo, 2019 U.S. Dist. LEXIS 88121, 2019 WL 2251703 (E.D. Va., May 23, 2019)

Disposition: DISMISSED.

Counsel: Arnulfo Fagot-Maximo, Appellant, Pro se.

Judges: Before AGEE and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Opinion

PER CURIAM:

Arnulfo Fagot-Maximo seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17, 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41, 132 S. Ct. 641, 181 L. Ed. 2d 619 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)).

We have independently reviewed the record and conclude that Fagot-Maximo has not made the requisite [*2] showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA v. ARNULFO FAGOT-MAXIMO, *Defendant.*	Criminal Action No. 1:15-cr-00290 Hon. Liam O'Grady

ORDER

Before the Court is a Motion to Vacate under 28 U.S.C. § 2255 filed by Mr. Arnulfo Fagot-Maximo ("Petitioner") in the above-captioned action. Dkt. 383. The Governments has responded in opposition, Dkt. 397, and Petitioner has replied in support, Dkt. 402. For the reasons that follow, Petitioner's Motion, Dkt. 383, is **DENIED**.

I. BACKGROUND

A. Indictment and Pretrial Litigation

On October 8, 2015, a grand jury in the Eastern District of Virginia returned a single count indictment charging six members and associates of the Montes-Bobadilla drug-trafficking organization (Montes DTO) with conspiring to distribute cocaine for importation into the United States, in violation of 21 U.S.C. § 963. *See* Indictment (Oct. 8, 2015) (Dkt. 1). As alleged in the Indictment, the Montes DTO, one of the largest drug-trafficking organizations in Honduras, received multi-ton quantities of cocaine from South American sources and distributed that cocaine to other Central American and Mexican drug-trafficking organizations for eventual importation into the United States. *See id.* ¶¶ 1-2, 8, 18. The indictment charged Petitioner for his

participation in the conspiracy as an associate who received cocaine for the Montes DTO in the Department of Gracias a Dios, Honduras. *See id.* ¶¶ 6(f), 12-13.

In 2017, Honduran authorities arrested Petitioner and extradited him to the United States. After an initial appearance in December 2017, Petitioner was arraigned in this Court on January 19, 2018. One of his co-defendants, Noe Montes-Bobadilla (Montes), had been arrested and extradited earlier in 2017. Montes and Petitioner were originally scheduled to be tried jointly, but Montes pleaded guilty before trial.

Leading up to Petitioner's trial, the parties engaged in extensive pretrial litigation. Petitioner's counsel filed numerous motions on his behalf, including a motion for a bill of particulars (Dkt. 41), motion to sever (Dkt. 58), motion to suppress certain in-court identifications (Dkt. 138), and numerous discovery motions, particularly related to the Government's cooperating witnesses (Dkt. Nos. 59, 60, 63, 64, 65, 122, 147). Petitioner's counsel, however, did not file a motion challenging the jury venire or venue.

Petitioner went to trial from November 27, 2018 to December 3, 2018. During jury selection, the defense made a *Batson* challenge to the Government's decision to strike a juror with the last name "Osorto." *See* Dkt. 393-1 at 4. Defense counsel noted that while he was "not sure," he "believe[d] [the juror was] Hispanic of some nature." *Id.* The Government explained that it struck the juror because it recognized the juror's last name as one that had arisen in this investigation and related investigations. *See id.* at 4-5. The Government stated that it did not want to run the risk that the juror knew or was somehow related to someone involved in the case. *See id.* The Court likewise noted that it "had probably 40 defendants come out of this conspiracy, and Osorto is clearly a name [that the Court] recognize[d]." *Id.* at 5. The Court found that the Government's "explanation [was] a neutral explanation" and overruled the *Batson* challenge. *Id.*

Otherwise, Petitioner's counsel did not object to the jury venire or the composition of the petit jury that was impaneled. *See* Dkt. 393-2 at 3.

B. Trial

After the jury was sworn, the Court gave preliminary instructions and the parties delivered opening statements. The defense emphasized in its opening that the Government's witnesses "are coming to this court with the hopes of reducing their sentence." Dkt. 393-3 at 5.

The Government introduced testimony from 11 witnesses: one expert witness, nine cooperating defendants, and the lead case agent. The Government's first witness, Special Agent Gregg Mervis, a 20-year veteran of the DEA, testified as an expert in the "methods, operations, and practices of international drug trafficking organizations."

The Government then called its nine cooperating defendants. The Government and defense counsel questioned all nine cooperating defendants as to their cooperation agreements, including details about their convictions, the length of sentences they were serving, the fact that the witnesses had entered into cooperation agreements with the Government, the witnesses' understanding of their obligations under the agreements, the witnesses' hope to get a sentence reduction, and the witnesses' understanding of the procedure for moving for a sentence reduction. *See* Dkt. 393 at 4-10.

The final witness was the lead case agent, DEA Task Force Officer (TFO) Edmund J. Kelly, who testified to establish venue. In his testimony, TFO Kelly described how he brought Petitioner in custody from Honduras to the United States, landing at Dulles International Airport (Dulles Airport). As TFO Kelley testified, while they stopped in Guantanamo Bay to refuel, they did not stop in any other judicial district. *Id.* at 10.

At the conclusion of the Government's case, the defense moved for judgment of acquittal. The defense argued, among other things, that the Government failed to prove venue because it did not establish what airspace the DEA plane first entered in the United States. The Court denied the motion, ruling that the Government had sufficiently proved venue. Petitioner did not testify or call any witnesses. During closing arguments, the defense emphasized the Government's cooperating witnesses' incentive to testify falsely to obtain a sentence reduction. After deliberating for fewer than five hours, the jury convicted Petitioner of the single count charged in the indictment. *Id.* at 10-11.

C. Postconviction Litigation and Appeal

In April 2019, Petitioner filed a motion for a new trial based on allegations that the Government suppressed evidence favorable to his defense. Dkt. 256. On May 9, 2019, the Court heard argument and denied the motion. Dkt. 282. The Court then sentenced Petitioner to 33 years of imprisonment. Dkt. 284.

Petitioner filed a notice of appeal, Dkt. 286, and retained new appellate counsel. On appeal, Petitioner raised three arguments: (1) that the Court erred in denying his motion to suppress in-court identifications by three witnesses; (2) that the Government did not introduce sufficient evidence to prove his guilt; and (3) that the Court erred in denying his motion for a new trial based on alleged *Brady* and *Giglio* violations. *See United States v. Fagot- Maximo*, 795 F. App'x 213 (4th Cir. 2020). On February 26, 2020, the Fourth Circuit issued its opinion, rejecting Petitioner's arguments and affirming his conviction. *See id.*

In July 2021, Petitioner filed the instant Motion to Vacate under § 2255 – his first such motion. Dkt. 383. In this § 2255 Motion, Petitioner argues that he received ineffective assistance of counsel due to his counsel's failure: (1) "to challenge the jury venire," (2) "to challenge the

venue for the 21 U.S.C. § 963 conspiracy offense," and (3) "to object to the government's improper vouching for the testimony of witness[es] . . . Suazo . . . and . . . Carrion . . . after the government inferred that [their] testimony was truthful during [their] direct [examination]." Dkt. 383 at 4-7; *see also* Dkt. 384 (Memorandum in Support). The Government has responded in opposition. Dkt. 393. Petitioner has replied in support. Dkt. 402.

II. LEGAL STANDARD

A Petitioner is entitled to relief under 28 U.S.C. § 2255 if he can demonstrate that (1) his sentence was imposed in violation of the Constitution or laws of the United States, (2) the sentencing court was without jurisdiction to impose his sentence, (3) his sentence was in excess of the maximum authorized by law, or (4) his sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255. The Petitioner bears the burden of proving grounds for collateral relief by a preponderance of the evidence. *See Vanater v. Boles*, 377 F.2d 898, 900 (4th Cir. 1967). Factual and legal errors do not warrant a successful collateral attack unless the error constitutes "a fundamental defect which inherently results in a complete miscarriage of justice." *United States v. Addonizio*, 442 U.S. 178, 185 (1979) (superseded by statute on other grounds).

III. DISCUSSION

A federal prisoner who "claim[s] the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a). As the party seeking relief, Petitioner must prove his grounds for relief by a preponderance of the evidence. *See Miller v. United States*, 261 F.2d 546, 547 (4th Cir. 1958).

Because Petitioner is a *pro se* litigant, the Court construes his motion liberally. *See Aikens v. Ingram*, 652 F.3d 496, 504 (4th Cir. 2011) (en banc).

All of Petitioner's claims in his § 2255 motion allege that he received ineffective assistance of counsel in violation of the Sixth Amendment. To establish ineffective assistance of counsel, Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under the first prong, Petitioner must show deficient performance by his attorneys, that is, his attorneys' "representation fell below an objective standard of reasonableness . . . under prevailing professional norms." *United States v. Basham*, 789 F.3d 358, 371 (4th Cir. 2015) (quoting *Strickland*, 466 U.S. at 688). "A reviewing court must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance." *Id.* (internal citations omitted). Under the second prong, Petitioner must show that his attorneys' deficient performance "prejudiced his defense." *Id.* In that regard, Petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland*, 466 U.S. at 694).

As stated above, Petitioner argues that he received ineffective assistance of counsel due to his counsel's failure: (1) "to challenge the jury venire," (2) "to challenge the venue for the 21 U.S.C. § 963 conspiracy offense," and (3) "to object to the government's improper vouching for the testimony of witness[es] . . . Suazo . . . and . . . Carrion . . . after the government inferred that [their] testimony was truthful during [their] direct [examination]." Dkt. 383 at 4-7. Each of these assertions is addressed in turn.

A. Defense Counsel Was Effective During Jury Selection.

Construing Petitioner's motion liberally, he appears to assert that his counsel was ineffective by failing to raise two issues related to jury selection: first, a Sixth Amendment claim that the jury venire was not drawn from a fair cross-section of the community and, second, a *Batson* challenge to the Government's peremptory strike of a Hispanic juror. Petitioner fails to make a viable claim on either issue, and therefore does not establish that his counsel was ineffective in failing to make such arguments.

First, defense counsel was reasonable in not challenging whether the jury venire was drawn from a fair cross-section of the community. It is well established that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). To state a prima facie violation of this right, a defendant must satisfy the following three-prong test:

> (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Duren v. Missouri, 439 U.S. 357, 364 (1979). It is on the second and third prongs that Petitioner's argument fails.

Congress codified the fair cross-section requirement in the Jury Selection and Service Act of 1968 (JSSA), 28 U.S.C. § 1861 *et seq*. The JSSA requires that each district court "devise and place into operation a written plan for random selection of . . . jurors" that is designed to ensure compliance with the fair cross-section requirement. *Id.* § 1863(a).

Pursuant to the JSSA, the U.S. District Court for the Eastern District of Virginia has promulgated and follows a plan that draws jury venires at random from the voter registration list.

See U.S. District Court for the Eastern District of Virginia, Plan for the Random Selection of Grand and Petit Jurors (Feb. 2003) (the "Plan"). The Plan notes that the voter registration list "represents a fair cross-section of the community in the Eastern District of Virginia." *Id.* at 2. As required by the JSSA, the Plan has been approved by a reviewing panel and ordered into operation by the Chief Judge of the Fourth Circuit. *See* Dkt. 393 at 14-15. In addition to complying with the JSSA, this Court's method of selecting jurors randomly from the voter registration list is consistent with longstanding precedent. The Fourth Circuit has held that the selection of jury venires at random from voter registration lists presumptively complies with the constitutional fair cross-section requirement. *See, e.g., Truesdale v. Moore*, 142 F.3d 749, 755-56 (4th Cir. 1998).

Petitioner provides no evidence that the Court deviated from the Plan in drawing the jury venire. Instead, relying on statistics that he offers without attribution, Petitioner argues that Hispanics were underrepresented on this particular jury venire as compared to their proportion of the total population in the community. *See* Dkt. 384. Even assuming the accuracy of this unsupported assertion, such assertion is insufficient to overcome the presumption in favor of the Court's method of drawing jury venires from the voter registration list. Indeed, the Fourth Circuit has held that "the Constitution does not require that the juror selection process be a statistical mirror of the community; it is sufficient that the selection be in terms of a fair-cross section gathered without active discrimination." *United States v. Cecil*, 836 F.2d 1431, 1445 (4th Cir. 1988) (en banc) (internal quotation marks omitted).

Petitioner fails to demonstrate that any "underrepresentation [was] due to systematic exclusion of the group in the jury-selection process." *Duren*, 439 U.S. at 364. His "[m]ere

allegations are insufficient to make out a prima facia violation of the fair cross section requirement." *Beyle v. United States*, 269 F. Supp. 3d 716, 738 (E.D. Va. 2017).

Second, Petitioner has not demonstrated that his counsel was ineffective in making a *Batson* challenge. The Equal Protection Clause forbids the use of a peremptory challenge to strike a prospective juror on the basis of race. *See Batson v. Kentucky*, 476 U.S. 79, 86 (1986). To establish that the government committed a *Batson* violation, the defendant carries the initial burden of "mak[ing] a prima facie showing that the government exercised a peremptory challenge on the basis of race." *United States v. Dinkins*, 691 F.3d 358, 380 (4th Cir 2012). "[O]nce the defendant has made such a prima facie showing, the burden shifts to the government to provide a non-discriminatory reason for its use of the peremptory challenge." *Id.* If the government offers a race-neutral explanation, the burden then shifts back to the defendant to "establish that the government's proffered reasons were pretextual, *and* that the government engaged in intentional discrimination." *Id.* (emphasis added).

Petitioner alleges that "[t]he Government used a peremptory challenge to strike the *only* Hispanic in the complete jury pool." Dkt. 384 at 15. At trial, Petitioner's counsel actually raised a *Batson* challenge to this strike. *See* Dkt. 393-1. The Government then explained that it struck the juror because it recognized the juror's last name as one that had arisen in this investigation and related investigations, and that it did not want to run the risk that the juror knew or was somehow related to someone involved in the case. *See id.* at 4-5. In overruling the challenge, the Court likewise acknowledged that the last name was one that it recognized from handling cases related to this conspiracy and found the Government's explanation to be race neutral. *See id.* at 5.

Therefore, in this case, the Government's explanation did not reflect any discriminatory intent. Instead, it reflected a concern that the juror could potentially have a connection to the case

(and therefore be partial to one side) because the Government recognized his last name as one that had arisen in this investigation and related investigations. Such a concern is a valid, race-neutral reason for exercising a peremptory challenge. *See United States v. Bynum*, 3 F.3d 769, 772 (4th Cir. 1993). Because there was no evidence that the Government acted with discriminatory intent, the *Batson* challenge was without merit, and Petitioner's trial and appellate counsel were not ineffective by declining to pursue it further.

B. Petitioner's Ineffective Assistance Claims Related to Venue are Meritless.

Petitioner claims that his counsel was ineffective by failing to challenge the basis for venue. *See* Dkt. 384 at 16-18. He appears to argue that his counsel should have made the following two contentions: (1) venue was not proper in the Eastern District of Virginia because his extradition flight landed in Washington, D.C., and (2) the applicable venue statute was the version of 21 U.S.C. § 959(c) in effect when he was charged in 2015, not 18 U.S.C § 3238. Neither argument has merit.

First, the Government established venue in this case by relying on the general venue statute for extraterritorial offenses. That statute provides, in relevant part, that "[t]he trial of all offenses begun or committed . . . out of the jurisdiction of any particular State or district . . . shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought." 18 U.S.C. § 3238. "'First brought' within the context of the statute means first brought *in custody* with liberty restrained." *United States v. Erdos*, 474 F.2d 157, 161 (4th Cir. 1973). A defendant is "brought" into a judicial district when he lands in it, not by flying over its airspace. *See United States v. Ghanem*, 993 F.3d 1113, 1122 (9th Cir. 2021); *Chandler v. United States*, 171 F.2d 921, 933 (1st Cir. 1948).

Petitioner claims that venue was not proper in the Eastern District of Virginia because his extradition flight landed in Washington, D.C. *See* Dkt. 384 at 17-18. However, the uncontroverted evidence at trial was that Petitioner was first brought to Dulles Airport in the Eastern District of Virginia. TFO Kelly testified that he took custody of Petitioner on December 12, 2017, at Toncontín International Airport in Tegucigalpa, Honduras. TFO Kelly testified that he then transported Fagot-Maximo to the Eastern District of Virginia on a DEA aircraft, which flew from Toncontín International Airport to Guantanamo Bay, Cuba, to refuel, and then from Guantanamo Bay to Dulles Airport. TFO Kelly confirmed that Dulles Airport is located in the Eastern District of Virginia and that they did not stop in any other judicial district prior to landing at Dulles Airport. *See* Dkt. 393 at 19-20. In light of this uncontroverted evidence, Petitioner's counsel was reasonable in declining to argue that Petitioner first landed in Washington, D.C. Indeed, as there is no international airport in Washington, D.C., this assertion likely reflects a misunderstanding of where Dulles Airport is located. *Id.* at 21.

Second, Petitioner suggests that his counsel was ineffective by "fail[ing] to challenge the statutory basis for the venue." Dkt. 384 at 17. Construing Petitioner's motion liberally, he appears to assert that the applicable venue statute was the version of 21 U.S.C. § 959(c) in effect at the time of his Indictment.

By way of background, at the time of Petitioner's Indictment in October 2015, § 959(c) included the following venue requirement:

> This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates *this section* shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

21 U.S.C. § 959(c) (2015) (emphasis added). Congress, however, removed this venue provision in December 2017, *see* National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 1012, 131 Stat. 1283, 1546 (2017), and § 959 no longer contains a venue provision, *see* 21 U.S.C. § 959. As a result, venue for extraterritorial violations of § 959 generally rests on § 3238. *See United States v. Alexander*, 958 F.3d 1, 10 (1st Cir. 2020).

The clear and unambiguous text of the former § 959(c) demonstrates that its venue provision did not apply in this case. By its terms, the provision applied to violations of "this section," meaning violations of § 959. But Petitioner was charged with committing a conspiracy offense under a different section, that is, 21 U.S.C. § 963. Section 963 did not (and does not) mention venue or otherwise indicate that the former venue provision in § 959(c) applied. *See* 21 U.S.C. § 963 (2015). Thus, the plain language of the statutes reflects that the former venue provision in § 959(c) applied only to substantive violations of § 959 and not to conspiracy offenses under § 963. *See United States v. Ramirez-Bravo*, 2019 WL 7559786, at *4 (N.D. Ga. Aug. 2, 2019) (rejecting argument that former venue provision in § 959(c) applied to charges under § 963).

Moreover, even if the former venue provision in § 959(c) had applied, which it did not, Petitioner has not demonstrated that it would have made any difference if his counsel had raised it. "Like § 3238, § 959(c) link[ed] the 'point of entry' to a judicial district." *Rojas*, 812 F.3d at 395. As described above, the first judicial district that Petitioner entered was the Eastern District of Virginia, when he landed at Dulles Airport. *See supra* pp. 20-21. Because venue would have been proper under either statute, Petitioner has not shown that his counsel was deficient in declining to raise the issue or that he was prejudiced.

For these reasons, Petitioner's ineffective assistance of counsel claims related to venue are meritless.

C. Petitioner's Ineffective Assistance Claims Related to Vouching are Meritless.

Third and finally, Petitioner claims that his counsel was ineffective by failing to object to the Government's questioning of two of its witnesses, Suazo and Carrion, about their prior sentence reductions. *See* Dkt. 384 at 18-22. According to Petitioner, the Government improperly vouched for these two witnesses by eliciting testimony that they had previously had their sentences reduced, which he argues signaled to the jury that they had been found to be truthful. *See id.* at 21-22.

It is improper for prosecutors to bolster or vouch for their own witnesses. *See United States v. Lighty*, 616 F.3d 321, 359 (4th Cir. 2010). "Vouching occurs when a prosecutor indicates a personal belief in the credibility or honesty of a witness; bolstering is an implication by the government that the testimony of a witness is corroborated by evidence known to the government but not known to the jury." *United States v. Sanchez*, 118 F.3d 192, 198 (4th Cir. 1997). Under Fourth Circuit precedent, prosecutors may question witnesses on direct examination about their cooperation agreements, including provisions requiring the witness to be truthful, without running afoul of the rule against bolstering or vouching. *See e.g., United States v. Jones*, 471 F.3d 535, 543-44 (4th Cir. 2006). In doing so, however, prosecutors may not "explicitly or implicitly indicate that they can monitor and accurately verify the truthfulness of the witness['s] testimony." *United States v. Jones*, 471 F.3d 535, 543-44 (4th Cir. 2006).

As described above, after questioning Suazo and Carrion about their convictions and cooperation agreements, the Government only asked a few matter-of-fact questions about their prior sentence reductions. *See supra* pp. 6-9. For Suazo, the Government asked, "Have you had

your sentence reduced yet? . . . Is that the result of cooperation in other cases? . . . What's your current sentence?" For Carrion, the Government asked, "Have you testified in a criminal case before? . . . Have you been cooperating with the United States Government for a couple of years now? . . . Have you previously received a reduction in your sentence? . . . What's your sentence now?" *See* Dkt. 393 at 26. The Government's questioning did not constitute vouching. None of the questions "convey[ed], either implicitly or explicitly, an expression of the prosecutor's or the government's opinion as to the witness[es'] veracity." *Jones*, 471 F.3d at 544. Moreover, the Government made no suggestion – neither during the questioning nor in argument to the jury – that the prior sentence reductions demonstrated the witnesses' truthfulness. And indeed, defense counsel focused on these same topics during their cross-examination of the Government's witnesses. Under these circumstances, defense counsel was reasonable in not objecting to testimony about the sentence reductions when they themselves focused on this topic during cross-examination.

Moreover, in addition to being unable to show deficient performance, Petitioner cannot demonstrate that he was prejudiced by his counsel's failure to object to the Government's questions about Suazo's and Carrion's prior sentence reductions. Indeed, defense counsel put the same information in front of the jury when cross-examining the witnesses to try to establish bias. The jury therefore would have been privy to the same information even if the Government had not elicited it. Furthermore, in light of the overwhelming evidence in this case, there is no reason to think that the brief testimony about two witnesses' sentence reductions affected the outcome. Seven other cooperating witnesses testified against Petitioner, and provided overwhelming evidence of his participation in the conspiracy.

For these reasons, Petitioner's ineffective assistance of counsel claims related to venue are meritless.

IV. CONCLUSION

For the foregoing reasons, Petitioner's Motion to Vacate under 28 U.S.C. § 2255, Dkt. 383, is **DENIED**. Petitioner also filed a "Motion for a 30-Day Enlargement of Time to File a Reply Brief," Dkt. 397. Subsequently, Petitioner filed a Reply before the issuance of this Order. *See* Dkt. 402. As such, Petitioner's Motion, Dkt. 397, is **DENIED AS MOOT**.

The Clerk is directed to forward copies of this Order to Petitioner. This is a final Order for purposes of appeal. To appeal, Petitioner must file a written notice of appeal with the Clerk's Office within sixty (60) days of the date of this Order. *See* Fed. F. App. P. 4(a)(1)(B). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order that Petitioner wishes to appeal. Petitioner need not explain the grounds for appeal until so directed by the appellate court. Petitioner must also request a certificate of appealability from a circuit justice or judge. *See* 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). For the reasons stated above, this Court expressly declines to issue such a certificate.

It is **SO ORDERED.**

August 17, 2022
Alexandria, Virginia

Liam O'Grady
United States District Judge