

No. 24-

IN THE
Supreme Court of the United States

ELVIN TORRES-ESTRADA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A *WRIT* OF *CERTIORARI* TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A *WRIT* OF *CERTIORARI*

EZEKIEL E. CORTEZ
LAW OFFICES OF EZEKIEL E. CORTEZ
550 West C Street, Suite 620
San Diego, California 92101
(619) 237-0309
lawforjustice@gmail.com
Attorney for Petitioner
Torres-Estrada

QUESTION PRESENTED FOR REVIEW

In *Missouri v. Frye*, 566 U.S. 134 (2012), this Court underscored what it then saw as important differences between the plea-bargaining issues raised in *Hill*¹ and *Padilla*²—on one hand—and the unique issue later raised in *Frye*—on the other—by noting the flux inherent in the plea-bargaining process where a defendant rejects a plea offer:

When a plea offer *has . . . been rejected*, however, no formal court proceedings are involved. This underscores that the plea-bargaining process *is often in flux, with no clear standards* or timelines *and with no judicial supervision of the discussions between prosecution and defense*. Indeed, discussions between client and defense counsel are privileged. So *the prosecution* has little or *no notice* if something may be amiss *and perhaps no capacity to intervene in any event*.

Frye at 143, emphasis added. Because Elvin Torres-Estrada (Mr. Torres-Estrada) presents unique, undisputed facts and a novel *Frye* scenario, the issue he presents is therefore:

1. Whether the inaccurate advice by Mr. Torres-Estrada's rogue attorney to reject a favorable plea agreement during plea negotiations, with the prosecutor's contemporaneous awareness, deprived Torres-Estrada of his right to the effective assistance of counsel just as in *Lafler v. Cooper*?³

1. *Hill v. Lockhart*, 474 U.S. 52 (1985).

2. *Padilla v. Kentucky*, 559 U.S. 356 (2010).

3. 566 U.S. 134 (2012).

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

Petitioner Elvin Torres-Estrada was the Petitioner-defendant in the district court proceedings and appellant in the court of appeal proceedings. Respondent United State of America was the plaintiff in the district court proceedings and appellee in the court of appeal proceedings.

RULE 14(B) STATEMENT OF RELATED CASES

- *USA v. Elvin Torres-Estrada*, First Circuit Court of Appeals, No. 19-1485, December 6, 2024.
- *Torres-Estrada v. Cases, et al*, 88 F.4th 14 (1st Cir. 2023)
- *Torres-Estrada v. United States*, 2022 U.S. App. LEXIS 37989, February 23, 2022.
- *United States v. Torres-Estrada*, 817 F.3d 376 (1st Cir. 2016).
- *USA v. Elvin Torres-Estrada*, No. 3:17-cv-01373-PG, U.S. District Court for the District of Puerto Rico, April 26, 2019.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT.....	ii
RULE 14(B) STATEMENT OF RELATED CASES ...	iii
TABLE OF CONTENTS.....	iv
TABLE OF APPENDICES	vi
TABLE OF CITED AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI.....	1
Introduction.....	1
ORDERS BELOW	5
JURISDICTION.....	5
CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE	5
STATEMENT OF THE CASE	5

Table of Contents

	<i>Page</i>
REASONS FOR GRANTING THE PETITION.....	8
I. The Court must grant this <i>writ</i> because the inaccurate advice to reject a favorable plea agreement during plea negotiations by Mr. Torres-Estrada’s rogue attorney, with the prosecutor’s contemporaneous awareness, deprived Torres-Estrada of his right to the effective assistance of counsel, just as in <i>Lafler</i>	8
a. Torres-Estrada was Denied Effective Assistance of Counsel During Plea Negotiations	9
b. The facts here fit squarely within those of <i>Lafler</i>	25
CONCLUSION	29

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED DECEMBER 6, 2024	1a
APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, FILED APRIL 26, 2019	44a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Hill v. Lockhart</i> , 474 U.S. 52 (1985)	i, 8
<i>Lafler v. Cooper</i> , 566 U.S. 134 (2012)	i, 1-4, 8, 9, 13, 21-23, 25, 26, 28
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012)	i, 2, 8, 26, 27
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	i, 8
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	1, 8, 23
<i>Torres-Estrada v. Cases, et al.</i> , 88 F.4th 14 (1st Cir. 2023)	iii
<i>Torres-Estrada v. United States</i> , 2022 U.S. App. LEXIS 37989, February 23, 2022 . . .	iii
<i>Torres-Estrada v. United States</i> , Civ. No. 17-1373, 2019 WL 1878294 (D.P.R. Apr. 26, 2019)	7
<i>United States v. Torres-Estrada</i> , 817 F.3d 376 (1st Cir. 2016)	iii

Cited Authorities

	<i>Page</i>
<i>USA v. Elvin Torres-Estrada</i> , First Circuit Court of Appeals, No. 19-1485, December 6, 2024.	iii
<i>USA v. Elvin Torres-Estrada</i> , No. 3:17-cv-01373-PG, U.S. District Court for the District of Puerto Rico, April 26, 2019	iii

Constitutional Provisions

U.S. Const. amend. V	5
U.S. Const. amend. VI	4, 5, 23, 24

Statutes

28 U.S.C. § 1651(a)	5
28 U.S.C. § 1254(1)	5
28 U.S.C. § 2255	7, 24

Rules

Supreme Court Rule 14(B)	iii
Supreme Court Rule 29.6	ii

PETITION FOR WRIT OF CERTIORARI

Introduction

In *Lafler v. Cooper*, this Court established what became a general legal principle for lower courts to apply in cases where a defendant rejected a plea agreement because of a lawyer's bad advice resulting in Ineffective Assistance of Counsel (IAC). In *Lafler*, this Court noted:

In this case all parties agree the performance of respondent's counsel was deficient when he advised respondent to reject the plea offer ***on the grounds he could not be convicted at trial.*** In light of this concession, it is unnecessary for this Court to explore the issue.

Lafler at 163, emphasis added. The Court then went on to determine whether the defendant in *Lafler* suffered prejudice by going through a fair trial. A majority of this Court determined that Lafler had suffered prejudice because:

In addition, ***as a result of not accepting the plea*** and being convicted at trial, ***respondent received*** a minimum sentence ***3½ times greater*** than he would have received under the plea. The standard for ineffective assistance under *Strickland* has thus been satisfied.

Id., at 174, emphasis added. In such a case, this Court held that the two-part *Strickland v. Washington*, 466 U.S. 668 (1984), test was to be applied to the critical plea negotiating stage of a case. In *Lafler*, the Court

specifically held – “In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice.” *Lafler* at 162-63; citing to *Lafler*’s companion case—*Missouri v. Frye*, 566 U.S. 134, 148 (2012).

The Court’s general principles from *Lafler* and *Frye*, may need clarification because lower courts may misapply the test and many defense attorneys may be left in a classic dilemma between encouraging the client to enter a guilty plea; or, to go to trial. For Torres-Estrada, the undisputed facts show that the First Circuit and the district court misapplied *Lafler/Frye*. The First Circuit court accepted that the rogue attorney misadvising Torres-Estrada indeed sabotaged the plea negotiations. But then, the court went on to blame the sabotage, not on the attorney as required by *Lafler*, but on Mr. Torres-Estrada – the unsuspecting defendant.

The lower court improperly shifted the *Lafler/Frye* analysis from the conduct of the lawyer at issue and concluded:

Torres-Estrada chose Garcia’s aggressive strategy with no guarantee of its outcome, and despite explicit warnings from Granger and Sapone that delay could result in the government’s withdrawing ***or increasing its offer for reasons that included the filing of new charges***. [Note omitted] We see no reasonable probability that, but for Garcia’s repeated assurances that the government was deliberating about the specific thirteen-year/six-month proposal, ***Torres-Estrada would***

have abandoned his commitment to Garcia's aggressive strategy – and the goal of obtaining some better deal – before the government's offer was off the table.

App. 42a, emphasis added. The lower court's palpable error lies in the inescapable conclusion that the defendant in *Lafler* similarly *chose his lawyer's aggressive strategy*. This Court observed of the defendant's conduct in *Lafler*:

On two occasions, the prosecution offered to dismiss some of the charges and to recommend a sentence of 51 to 85 months for the remaining charges, in exchange for a guilty plea. In a communication with the court respondent admitted guilt and expressed a willingness to accept the offer. ***Respondent, however, later rejected the offer on both occasions, allegedly after his attorney convinced him*** that the prosecution would be unable to establish his intent to murder Mundy because she had been shot below the waist. ***On the first day of trial the prosecution offered a significantly less favorable plea deal, which respondent again rejected.***

Lafler at 161, emphasis added. The choices by the defendant in *Lafler* were almost identical to those specifically singled out for blame by the lower courts for Torres-Estrada. Yet, in *Lafler* the parties stipulated that Lafler's lawyer committed IAC in his *incorrect advice*. What was the incorrect advice? That Lafler could not be legally convicted at trial of the main charge and should, therefore, reject the favorable offer.

Mr. Torres-Estrada's mostly undisputed facts present an almost exact match to *the type* of facts in *Lafler*. Yet, the First Circuit court misapplied this Court's guidance. This is so, because the lower court impermissibly shifted the *Lafler* Sixth Amendment obligations of a lawyer, during a critical part of the judicial process - the plea-bargaining process – onto defendant Mr. Torres-Estrada.

Mr. Torres-Estrada's equally culpable rogue attorney Ramon Garcia, who palpably sabotaged the plea negotiations, was somehow unfairly absolved by the lower court. The lower court uniquely blamed Mr. Torres-Estrada for having elected to accept his lawyer's *wrong* "aggressive" advice, despite him doing no different than the defendant in *Lafler*, who himself *rejected three separate offers*. *Lafler* at 161.

Here, Mr. Torres-Estrada rejected one prosecutor's offer as he accepted his Attorney's incorrect advice about what USSG Guidelines sentence was "normal" for a case like his in Puerto Rico. And in doing so, Torres-Estrada's rogue lawyer was factually and contextually incorrect in his reckless advice.

Elvin Torres-Estrada respectfully petitions for a *Writ of Certiorari* to review the judgment of the United States Court of Appeals for the First Circuit, wrongfully denying his 2255 *habeas petition* on December 6, 2024. App.1a. Mr. Torres-Estrada brings a unique case where the First Circuit palpably ignored the standard established by this Court in *Lafler*, distorted it, and then generated questionable precedent about applicability of the Sixth Amendment obligations of defense lawyers.

ORDERS BELOW

On December 6, 2024, the Court of Appeals for the First Circuit issued its Order affirming the District Court’s denial of Torres-Estrada’s *habeas* petition. App.1a.

JURISDICTION

On December 6, 2024, the First Circuit issued its Order denying Petitioner’s 2255 *habeas*. App.1. In so doing, the First Circuit refused to reverse the District Court’s Memorandum and Order of April 26, 2019, *summarily* denying Torres-Estrada’s *habeas*. App.2a. Jurisdiction of this Court is invoked under Title 28 U.S.C. §§ 1651(a) and 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

United States Constitution, Fifth Amendment:

“No person shall . . . be deprived of . . . liberty . . . without due process of law. . . .”

United States Constitution, Sixth Amendment:

“In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.”

STATEMENT OF THE CASE

The facts and process of this case have been provided in the First Circuit’s Opinion affirming the district court.

App.1a-43a. A complete summary of the facts, with footnotes omitted, states that:

In April 2010, Torres-Estrada and sixty-four other individuals were charged in a superseding indictment with, inter alia, conspiring to distribute large amounts of controlled substances near a public housing project from roughly 1995 to 2009. [Note omitted] As described in detail below, ***plea negotiations initiated by Torres-Estrada's attorneys stretched into the fall of 2010. Then, in February 2011 – with no plea bargain relating to the earlier indictment yet in place – Torres-Estrada and three others were charged in a separate, single-count indictment with conspiring to import controlled substances into the United States.***

[Note omitted] App.2a-3a. Emphasis added.

Then:

On the eve of trial on the initial charges, in March 2011, Torres-Estrada signed a consolidated plea agreement in which he agreed to plead guilty to one count of each indictment. The agreement specified that Torres-Estrada could request a sentence of ***264 months (twenty-two years), while the government was permitted to argue for a 288-month (twenty-four-year)*** term of imprisonment. As noted above, ***the district court imposed the higher of those two possibilities.*** [Note omitted]

App.3a. Emphasis added.

Following an unsuccessful direct appeal, Torres-Estrada filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, raising the ineffective assistance of counsel claim that is at issue in this appeal, [Note omitted] among other rationales for vacating his convictions and sentence. The district court rejected all grounds for relief. See *Torres-Estrada v. United States*, Civ. No. 17-1373, 2019 WL 1878294, at *8 (D.P.R. Apr. 26, 2019). ***We granted a certificate of appealability solely on the question of whether Torres-Estrada received ineffective assistance from his local counsel “in relation to plea-bargain negotiations with the United States.”*** We therefore set forth below only the facts relevant to that issue, [Note omitted] ***drawing primarily from the affirmations filed by Torres-Estrada and one of his attorneys in the district court.*** [Note omitted] ***The facts are largely undisputed; the debate concerns their legal significance.***

App. 4a., emphasis added.

REASONS FOR GRANTING THE PETITION

- I. **The Court must grant this *writ* because the inaccurate advice to reject a favorable plea agreement during plea negotiations by Mr. Torres-Estrada's rogue attorney, with the prosecutor's contemporaneous awareness, deprived Torres-Estrada of his right to the effective assistance of counsel, just as in *Lafler*.**

This case presents a unique opportunity for the Court to develop the *Strickland* principles first explicitly applied to the plea-bargaining process in *Lafler/Frye*. The undisputed facts presented by Torres-Estrada raise a different, nuanced scenario, compelling application of *Lafler/Frye* to his rogue lawyer's prejudicial sabotage of the negotiation process. Sabotage that was contemporaneously known to the prosecutor. Because of the prosecutor's knowledge of the sabotage as it happened here, this Court's rulings in *Hill* and *Padilla*, noted above, do not illuminate the rare issue presented here.

For ineffective assistance of counsel during plea negotiations, a defendant must show that, but for the ineffective advice of counsel, there was a reasonable probability that the plea offer would have been presented to the court, the court would have accepted its terms, and the conviction and/or sentence under the offer's terms would have been less severe than under the judgment and sentence imposed. *Lafler* at 164. Torres-Estrada submits that he has comfortably met this standard.

a. Torres-Estrada was Denied Effective Assistance of Counsel During Plea Negotiations.

The underlying undisputed facts demonstrating that Mr. Torres-Estrada is entitled to relief have been meticulously noted by the First Circuit's decision provided here as App. 1a-43a. Though lengthy, these facts are critical to this Petition because they reveal the sabotaging *prejudicial* nature of rogue Attorney Garcia and how he harmed Mr. Torres-Estrada by giving him inaccurate advice, no different in kind than that given by the lawyer in *Lafler*.

After being arrested, Mr. Torres-Estrada was represented by out of district New York Attorneys Raymond Granger and Edward Sapone, who were in turn sponsored *pro hac vice* by local Puerto Rico Attorney Ramon Garcia. App.5a.

Granger and Sapone, as lead counsel, engaged in plea negotiations as follows:

Early in their representation, Granger and Sapone concluded that Torres-Estrada might benefit from a joint plea deal with one of his co-defendants. . . . With their client's agreement, the two attorneys began coordinating with [the co-defendant's lawyers]. Through that collaboration, ***and from meetings with the lead prosecutor***, Granger and Sapone learned that the government had refused a proposed eleven-year term of imprisonment for [the co-defendant] and would be seeking a sentencing recommendation for Torres-Estrada ***roughly***

two years longer . . . based on the government's view of their relative culpability. Garcia did not attend most of these meetings, consistent with his limited role as local counsel.

App.5a, emphasis added.

Then, on September 20, 2010:

[T]he government offered Torres-Estrada a plea deal that allowed him to request a ***188-month sentence (fifteen years/eight months)***, while the government would argue for a sentence up to 210 months (***seventeen years/six months***). In his affirmation, Granger stated that the prosecutor, Assistant United States Attorney (“AUSA”) Timothy Henwood, made two representations about the proposed plea deal that were not included in the email: (1) the government would not strongly argue for the higher sentence, with the expectation that the district court ***would accept the defense recommendation based on its “track record of honoring plea agreements,”*** and (2) ***the government would not prosecute Torres-Estrada on additional charges.*** At about the same time, [the co-defendant] was offered a deal allowing him to argue for a sentence of 168 months (fourteen years).

App.6a, emphasis added. Attorneys Granger and Sapone then proceeded to coordinate with the co-defendant’s lawyers any counter offers to be made. The group then met two days later—September 22—to carefully and

methodically coordinate *as a team* how they were going to counter to the prosecutor. Local Attorney Garcia attended this meeting. App. 7a.

But at the September 22 meeting, the careful and methodical approach was suddenly shattered. According to Attorney Granger's undisputed Declaration:

“Mr. Garcia suddenly interjected that he was going to recommend to Mr. Torres-Estrada that the [counteroffer] for him should be 13 years (156 months),” rather than fourteen years (168 months). When [co-defendant's attorney] pointed out that such a counteroffer ***was inconsistent with the government's demand*** for a two-year spread between the two defendants, Garcia responded that **“did not care about”** [about the co-defendant] Granger . . pushed back, noting that the government's offers were premised on both defendants pleading guilty and that Torres-Estrada had benefited from the sharing of information between the two sets of attorneys.

When the meeting ended, the four attorneys . . . headed to MDC Guaynabo to speak jointly with their clients.

App.7a, emphasis added. These undisputed facts begin to show the sabotage ultimately injected by Attorney Garcia into the *team's* delicate plea negotiation process for Mr. Torres-Estrada and his co-defendant. The sabotage would get worse.

At the same meeting, the lead lawyers expressed *urgency* and caution:

Among other factors, they cited the need for a two-year differential in the proposed sentences; [***the prosecutor’s insistence on guilty pleas before the first trial in the case***, which was then scheduled for late October 2010; ***and the risk that “delaying too long could result not just in the offer being withdrawn by the government but also in new charges being lodged against them based on new information.”*** In emphasizing the need to act promptly, the attorneys also pointed out that “another defendant viewed [as] less culpable by the government might reach a plea bargain with the government ***in the meantime that potentially could raise the minimum sentence[s] that the government would insist upon for”*** Torres-Estrada and [co-defendant].

App.7a-8a., emphasis added. The lead lawyers’ warning about acting promptly *to prevent additional charges* would prove prophetic.

Soon after the meeting between the lawyers:

Garcia met separately with Torres-Estrada ***several times***, including after the September 22, 2010 meeting, and gave him ***advice at odds with the lead attorneys’ positive assessment of the government’s offer, explaining that “he knew better”*** than the New York-based lawyers about the plea-bargaining possibilities

because “his entire legal career had been spent in Puerto Rico.” According to Torres-Estrada in his affirmation, Garcia told him that drug suppliers in Puerto Rico ***typically receive sentences between eight and twelve years in length***, and Garcia expressed confidence that “he could obtain a plea agreement in that range” for Torres-Estrada. At one point, Garcia advised Torres-Estrada that he should not agree to a counteroffer of more than thirteen years (156 months) ***“because he [Garcia] did not believe the government had enough evidence¹ to justify a sentence longer than that.”*** Garcia also told Torres-Estrada that any pre-trial plea offer from the government ***would remain available after the trial of the first group of defendants*** – which at that time did not include Torres-Estrada – and Garcia also suggested that he might be able to negotiate a better deal for Torres-Estrada after that initial trial.

App.8a-9a, emphasis added. This undisputed set of facts makes Attorney Garcia’s sabotaging opinions about the prosecutor’s offers *almost indistinguishable* from those of the defense lawyer in *Lafter*. And it got even worse still.

The day before the group needed to give their answer to the prosecutor, September 27, lead Attorney Granger received:

1. Local Attorney Garcia had not reviewed the available discovery sufficiently enough to make an informed opinion about what evidence the Government had.

[t]he following email from Garcia:

Good morning Ray:

Yesterday I met with Elvin [Torres-Estrada] and he informed me that the [counteroffer] has to be 13 years, he will not authorize a [counteroffer] of 14 years.

Have a nice day

Ramon.

App.10a. The following actions were then taken by Mr. Torres-Estrada's lead attorneys:

The next morning, before meeting with [the prosecutor], Granger and Sapone went to MDC Guaynabo to discuss Garcia's email with Torres-Estrada. They told him that it was "inappropriate" for Garcia to advise him to change the agreed-upon counteroffer "not only because it was beyond his role as local counsel" but also because "no changes in strategy should be made without first consulting [co-defendant's] attorneys."

App.11a. By this point in the plea negotiations, Mr. Torres-Estrada was palpably under the stress from the back-and-forth sabotaging pressures from Garcia.

They pointed out that it was "extraordinarily irresponsible for Mr. Garcia *to upset the joint-defense planning at the last minute.*" The

attorneys also told Torres-Estrada that *they “had observed a deterioration in his emotional and mental state” in recent weeks and that, in their view, “Mr. Garcia was capitalizing on his weakened condition and manipulating him.”*

[Note omitted] They again explained the basis for the twelve and fourteen-year counteroffers and told Torres-Estrada that a thirteen-year counteroffer *“would be a fundamental, and likely disastrous, mistake.”* They reiterated that *“time was of the essence”* and that Garcia’s suggestion that the government’s same plea offer would remain available after the first trial *“made no sense and, in any event, was contrary to [the prosecutor’s] explicit warning” that the offer would not extend beyond the first trial.*

App.11a-12a, emphasis added. Whether these warnings from lead counsel to Torres-Estrada were able to overcome the heavy improper influence by Garcia remained to be seen.

After this discussion, Torres-Estrada authorized *the lead attorneys* to make a counteroffer of thirteen years/eight months (164 months), with Granger recalling that he *“appeared confused and to struggle with his decision.”* Although Granger recommended against including Garcia in the meeting with Henwood [the prosecutor] later that day, Torres-Estrada said he wanted all three of his lawyers present. Granger therefore notified Garcia to meet the others at the U.S. Attorney’s office in San Juan. While the attorneys were gathered

in the reception area, Granger and Sapone told Garcia that Torres-Estrada had agreed to a thirteen years/eight-month counteroffer during their meeting with him earlier in the day. Shortly thereafter, the attorneys entered the conference room for the meeting with [the prosecutor].

App.12a, emphasis added.

Predictably, the meeting with the prosecutor did not go well.

In the meeting, [co-defendant's counsel] first argued for a lower plea offer for [co-defendant] and proposed the twelve-year (144-month) term. [The prosecutor] responded that the offer was "reasonable." Granger then spoke on behalf of Torres-Estrada, explaining that ***Sapone would add comments*** and then present their counteroffer. As Granger was turning to Sapone for his remarks, however, ***Garcia interrupted and told [the prosecutor] that Torres-Estrada's counteroffer was thirteen years (156 months)***. When [the prosecutor] ***immediately rejected that offer, Garcia asked if he would consider thirteen years/six months (162 months)***. [The prosecutor] said he would think about it, and Garcia then left. The meeting ended a short time later. Granger's affirmation does not report any comments by [the prosecutor] after Garcia's departure.

App. 12a-13a. The prosecutor, and all the lawyers participating in the meeting were not of one mind –

Attorney Garcia was *injecting disagreement* into the delicate, time-sensitive process.

At that point, Granger visited Torres-Estrada in the jail and told him that “the meeting had not gone well.” App. 13a. The lead lawyer then told Torres-Estrada: “[T]hat he ‘felt **Mr. Garcia was manipulating him** at a time when his emotional and mental state **had been deteriorating.**’ Granger said he planned to meet with Garcia the next day, **and Torres-Estrada agreed that he should.**” App. 13a., emphasis added. But though Garcia had earlier in the meeting with the prosecutor and lead counsel said that he would be available to meet with the defense lawyers the following day, he refused to do so.

As he left the meeting with [the prosecutor], Garcia indicated that **he would be available to meet with Granger the next day. Nonetheless, Garcia refused to do so.** Granger also learned that morning – i.e., **on September 29, 2010** – that the government **would not lower the plea offers.** After conferring with Sapone and [co-defendant’s] attorneys, Granger **sent an email to [the prosecutor]** explaining that Garcia’s interjected thirteen-year counteroffer was unauthorized by their client and that he and Sapone were “furious” when Garcia intervened in the discussion. Granger reported that even Garcia’s follow-up counteroffer of thirteen years/six months (162 months) was lower than Torres-Estrada had authorized (a counteroffer of 164 months).

App. 13a-14a, emphasis added. In the email, Attorney Granger informed the prosecutor of Garcia’s unreasonable

counter offers and him being out of step with Torres-Estrada's wishes. App. 14a. Granger continued to communicate with the prosecutor trying to salvage the delicate negotiations. App. 14a.

Granger also learned that Garcia was also trying to negotiate with the prosecutor on his own and wrote a letter to Garcia telling him to stand down. App. 14a. *Approximately one week later*, the prosecutor confirmed to Granger that the Government's offer "would not be reduced." App. 15a.

But later:

According to Torres-Estrada, Garcia ***nonetheless*** continued to advise him "in one or more meetings at MDC Guaynabo ***not to believe that that was the government's final offer***, and that he [Garcia] would be able to obtain ***a better deal than that from the government.***" Garcia also told Torres-Estrada that, ***if he discharged Granger and Sapone, Garcia could invoke the change of counsel in requesting that Torres-Estrada be excluded from the first group of defendants scheduled for trial later in October.***

App. 16a, emphasis added. Because of Garcia's sabotage, on "October 15, 2010, Granger and Sapone filed notices to withdraw from representing Torres-Estrada, which Granger said they did at Torres-Estrada's direction." App. 16a.

After Granger and Sapone withdrew from the case, the following was done by Garcia on his own:

According to Torres-Estrada, Garcia thereafter ***“repeatedly told [him] that the government was still considering his [counteroffer] of 162 months’*** (13 years, 6 months’) imprisonment.” In a sworn statement, Garcia reported that he had attempted to meet with AUSA Henwood “[s]ince December 2010,” but received no response before the government resumed negotiations ***after the filing of the second indictment in February 2011.*** [Note omitted]

App. 16a, emphasis added. Garcia’s repeated reassurance to Torres-Estrada that “the government was still considering his [counteroffer] of 162 months” were not true. From this point forward, Torres-Estrada’s hopes for the original reasonable plea agreement offer were doomed.

After the Prosecutors predictably ignored Garcia’s attempts to negotiate:

On March 18, 2011, Garcia met with Torres-Estrada at MDC Guaynabo. Although Torres-Estrada and Garcia recounted some details of this conversation differently, the basic thrust of Garcia’s message was that the resumed plea negotiations were focused on a deal that would provide for a proposed sentence ***of 264 months*** (twenty-two years) in exchange for a guilty plea to ***both indictments***. According to Torres-Estrada, Garcia recommended that he agree to such a deal. That same day, Garcia filed a motion

for a change of plea for Torres-Estrada, and the district court scheduled a change-of-plea hearing for March 21—the day jury selection was scheduled to start.

App. 17a-18a, emphasis added.

On the morning of March 21, Garcia presented Torres-Estrada with a plea agreement in writing *for the first time*. It contained the sentencing proposal that the attorney had partially described a few days earlier, allowing Torres-Estrada to request a sentence of 264 months (twenty-two years) but stating that the government reserved the right to argue for 288 months (twenty-four years). The agreement was in English, and because he has “only limited ability to read English,” Torres-Estrada asked Garcia to help him review the document. Garcia then explained the provisions as they “browsed it together.” In his affirmation, *Torres-Estrada said he did not fully understand the provisions and was “frightened and confused,” but he felt compelled to sign the agreement because “Mr. Garcia clearly was unprepared to begin the trial” that otherwise would have started that day.* [note omitted]

App. 18a-19a, emphasis added. Torres-Estrada acted as expected of a client who felt betrayed and improperly manipulated:

Within weeks after signing the plea agreement, Torres-Estrada “discharged” Garcia and

hired new counsel—part of a flurry of changes in defense attorneys during the next couple of years that included a brief reappearance by Garcia and, most notably, the rehiring of Granger and Sapone in August 2011. In June 2012, in advance of Torres-Estrada’s then-scheduled sentencing later that month, ***Granger filed a motion asserting that Garcia had rendered ineffective assistance of counsel and seeking an order that Torres-Estrada be given the benefit of the fifteen-year/eight-month (188-month) plea bargain the government had offered in September 2010.*** [Note omitted]

App. 19a, emphasis added. The result for Torres-Estrada’s unsuspectingly following Garcia’s wrong advice, as described by the lower court, was that:

Roughly two-and-a-half years later, after the sentencing hearing was rescheduled multiple times for various reasons, [note omitted] Torres-Estrada was sentenced in February 2015 to the twenty-four-year (288-month) term of imprisonment recommended by the government pursuant to the plea agreement.

App. 20a. A result far harsher than the favorable plea agreement made available by the prosecutor, sabotaged by Garcia.

Despite the preceding facts, the First Circuit court’s interpretation of *Lafler* was captured in the following passage from its opinion: “Yet, the relevant considerations in evaluating Garcia’s conduct materially differ from

those in *Lafler*. Here, in Garcia’s last face-to-face meeting with Torres-Estrada, Torres-Estrada authorized the aggressive proposal of thirteen years.” App. 29a-30a. But in making this conclusion, the lower court ignored that in *Lafler*, the defendant had also authorized his lawyer’s aggressive choice to proceed to trial.

The First Circuit court also acknowledged the following:

Finally, added to this mix is the fact that unlike in *Lafler*, Garcia’s strategy was not objectively wrong in its understanding of the law.² See 566 U.S. at 162. In fact, after Garcia blindsided Granger and Sapone with his thirteen-year proposal on the eve of the scheduled plea-negotiation meeting, the lead attorneys and Torres-Estrada settled on a lower counteroffer than initially contemplated for the defense team to propose to [the prosecutor] the following day. And when Garcia subsequently undercut that compromise counteroffer by another two months at the meeting (requesting thirteen years/six months, after quickly adjusting upward from the immediately rebuffed thirteen years), [the prosecutor] still responded by saying he would think about it.

App. 30a. But the prosecutor’s comments at this point were palpably unreliable, as they later proved to be. The lower court went on to explain its conclusion:

2. But Garcia’s advice may have also been legally wrong – the Guideline range he assured Torres-Estrada for cases in Puerto Rico was legally wrong. But it was also definitely factually wrong and reckless.

In sum, we need not view Garcia’s disruptive performance in advance of, and during, the September 28 meeting as entirely defensible to conclude that Torres-Estrada has failed to establish a violation of his Sixth Amendment right to the effective assistance of counsel based on Garcia’s interactions with lead counsel and [the prosecutor]. Before the September 28 plea negotiations—and beyond—all of his attorneys were counseling Torres-Estrada to push for a more lenient plea deal, and the government’s original offer remained available well after that meeting. Moreover, given Henwood’s reaction at the meeting to Garcia’s second counteroffer, and the continuing discussion of a possible lower sentencing proposal, the record fails to show that Garcia’s meeting related tactics affected “the outcome of the plea process,” as required to satisfy *Strickland*’s prejudice prong. *Lafler*, 566 U.S. at 163.

App. 31a-32a. But the preceding facts show that Garcia’s actions *did* in fact materially influence Torres-Estrada; influenced him to the extreme of him firing Granger and Sapone, for questionable tactical reasons provided by Garcia.

Of all this, the First Circuit’s final interpretation was:

Nevertheless, for the purpose of resolving the issue before us, ***we will assume favorably to Torres-Estrada that Garcia did misrepresent the state of the negotiations when he repeatedly indicated***—after Henwood had said that the

government would not reduce its offer of fifteen years/eight months (188 months)—***that the government was still actively considering the thirteen-year/six-month*** (162-month) counteroffer that Garcia had made at the September 28 meeting with Henwood.²⁶ ***Even if those misrepresentations amounted to deficient performance***, [note omitted] however, Torres-Estrada could not satisfy the prejudice prong of his Sixth Amendment claim because the record shows that the statements, given their timing, ***had no impact on his loss of the government's offer.***

App. 39a, emphasis added.

Importantly, of the prosecutor's role in this entire scenario, at note 26 of its opinion, the lower court acknowledged:

26. In making that assumption, ***we note that the government bears some responsibility for the lack of a more detailed record on this issue***, having argued to the district court that Torres-Estrada's § 2255 motion should be denied ***without an evidentiary hearing. Nor does the government in its brief to us provide its understanding of the status of the thirteen-year/six-month counteroffer after mid-October 2010 and before it suspended plea negotiations on the first indictment.***

App. 39a, emphasis added. Torres-Estrada respectfully submits that, given these critical noted gaps in the record, the First Circuit's opinion becomes unreliable.

b. The facts here fit squarely within those of *Lafler*.

The preceding undisputed facts place Mr. Torres-Estrada’s fact scenario squarely under those facts regarding the *conduct* of the lawyer in *Lafler*. Like the lawyer in *Lafler*, who the parties stipulated committed IAC, attorney Garcia’s *conduct* here is almost indistinguishable in kind. The lawyer in *Lafler* gave incorrect legal advice. Garcia here gave a mix of incorrect factual and false legal advice – that the sentences (Guidelines) for cases in Puerto Rico like his were lower, and that the Government was still considering Garcia’s counteroffer, among other incorrect factual misrepresentations as developed above.

In *Lafler*, the defendant also followed the more aggressive plea negotiation strategy of his lawyer, in a case of assault with intent to commit murder and *rejected three separate offers* from the prosecution. That defendant did so, after his own counsel “aggressively” convinced him to do so. The advice of the lawyer in *Lafler* was legally and factually incorrect - *that the prosecution there would not be able to make its case and prove intent to murder because the defendant had shot his victim below the waist*. *Lafler* 160. Here, Garcia assured Torres-Estrada (without full review of discovery) that the prosecutor did not have *enough evidence* to support the sentence it sought. After trial, the defendant in *Lafler* was convicted and received the mandatory minimum sentence of 185 to 360 months in custody. *Id.* 161. Here, Torres-Estrada received *two* convictions and sentences in each, double what the prosecutor first offered before the new charges were filed.

In *Lafler*, this Court noted – “Even if the trial itself is free from constitutional flaw, the defendant who goes

to trial instead of taking a more favorable plea may be ***prejudiced*** from either a conviction on more serious counts ***or the imposition of a more severe sentence.***” *Id.* at 166, emphasis added. It is exactly the “***imposition of a more severe sentence***” that forms the palpable prejudice here for Torres-Estrada.

Like the *Lafler* and *Frye* defendants, Mr. Torres-Estrada was denied his right to effective assistance of counsel during plea negotiations when rogue attorney Ramon Garcia misinformed him of the offers and gave him unrealistically subjective, inaccurate advice about the potential sentence he would face in Puerto Rico upon tendering a guilty plea. Just as for the defendant in *Lafler*. And so, Mr. Torres rejected the advice of his other lawyers in favor of Garcia’s inaccurate more “aggressive” advice.

It should be significant here that Mr. Torres-Estrada was simultaneously being counseled with conflicting legal advice by his lead attorneys, Raymond Granger and Edward Sapone. Unfortunately for Mr. Torres-Estrada, Attorney Garcia injected prejudicial division into the defense camp by engaging in secret meetings with Mr. Torres-Estrada, and in furtive communications with the prosecutor, without the presence or approval of the lead New York counsel.

During Attorney Garcia’s secret meetings with Mr. Torres-Estrada, Garcia undermined the defense strategy regarding sensitive plea negotiations and, inexplicably, directed Torres-Estrada to reject the favorable September 2010 offer and suggested a substantially lower *unrealistic* counteroffer—a counteroffer that all should have known would be rejected. Like the defendant in *Lafler*, Torres-

Estrada accepted Attorney Garcia's "more aggressive" advice and proceeded to unsuspectingly reject a favorable plea agreement.

Predictably, this led to the favorable September 2010 plea offer being revoked, and Mr. Torres-Estrada subsequently faced *additional charges* and a substantially more severe sentence; just as Garcia had been warned by lead counsel. App. 7a-8a. Eventually, Mr. Torres-Estrada was left with no choice but to plead guilty and face far more serious consequences than he otherwise would have, had his own counsel not ineffectively advised him to reject the September 2010 plea offer. App.15a.

Because of Attorney Garcia's unrealistic IAC actions, by February 9, 2011, Mr. Torres-Estrada suffered the prejudice the First Circuit opined that he did not. The Government acknowledged, "the plea negotiations were suspended when it developed evidence that, in addition to the previously charged conspiracy, Torres-Estrada 'had also been a principal member of a narcotics importation organization that brought large shipments of cocaine from the Dominican Republic to Puerto Rico.'" App. 17a.

Because of Attorney Garcia's sabotage of the plea negotiation process, and his ignoring the urgency of settling the case before additional evidence was developed, the favorable September 2010 offer was revoked, and Torres-Estrada lost the opportunity to accept it before the Government continued its investigation and brought subsequent charges against him.

Much like the defendant in *Frye*, he was left facing a higher guideline range – not including the subsequently

charged conduct – than he would have if he had had the opportunity to accept the September 2010 offer. Just as in *Lafler*, where the defendant ended up facing 185 to 360 months in prison after he “later rejected the [prosecutor’s] offer on both occasions, allegedly ***after his attorney convinced him that the prosecution would be unable to establish his intent*** to murder Mundy because she had been shot below the waist.” *Id.* at 161, emphasis added.

The later plea agreement that Torres-Estrada did sign –in the courtroom right before his trial was to commence, under extremely high stress and strikingly questionable circumstances – subjected him to much more severe penalties, with his counsel only permitted to argue for a whopping 264 month’s custody, and the Government free to argue for 288 months custody. In his uncontradicted declaration, Torres-Estrada states how he did not understand *these* (Guideline) *penalties* at the time he was hastily persuaded to accept the offer – when Attorney Garcia told him, in the courtroom, that he had to accept an offer at that very moment to avoid the impending trial.

The undisputed facts here establish that, absent Garcia’s constitutionally ineffective participating in the early plea negotiations, at worst, Mr. Torres-Estrada would have accepted the favorable September 2010 plea offer. Instead of the “significantly higher” plea agreement that Attorney Garcia hastily convinced him to sign at the eve of trial at the Lecter in the courtroom. The very same *type* of prejudice easily found by the lower court for *Lafler*.

CONCLUSION

For the foregoing reasons, Elvin Torres-Estrada respectfully requests this Court grant his Petition for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

EZEKIEL E. CORTEZ
LAW OFFICES OF EZEKIEL E. CORTEZ
550 West C Street, Suite 620
San Diego, California 92101
(619) 237-0309
lawforjustice@gmail.com
Attorney for Petitioner
Torres-Estrada

Dated: March 4, 2025.

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED DECEMBER 6, 2024	1a
APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, FILED APRIL 26, 2019	44a

1a

**APPENDIX A — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT,
FILED DECEMBER 6, 2024**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 19-1485

ELVIN TORRES-ESTRADA,

Petitioner, Appellant,

v.

UNITED STATES OF AMERICA,

Respondent, Appellee.

December 6, 2024, Decided

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Juan M. Pérez-Giménez, *U.S. District Judge*]

Before Lipez, Thompson, and Kayatta, *Circuit Judges*.

LIPEZ, *Circuit Judge*. In this collateral criminal appeal, we consider an ineffective assistance of counsel claim brought by a defendant who relied on the plea-bargaining advice of one of his attorneys despite warnings from his other attorneys against accepting that advice.

Appendix A

Appellant Elvin Torres-Estrada maintains that the bad advice—along with that same attorney’s obstruction of plea negotiations—entitles him to resentencing under the principles of *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), and *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012).

More specifically, Torres-Estrada claims that, but for the ineffective assistance of his local counsel, he would have had a more favorable plea agreement and sentencing outcome: a likely term of 188 months’ imprisonment instead of 288 months. He therefore argues that he is entitled to resentencing according to the terms originally proposed by the government. We disagree, concluding that his local attorney’s representation was not constitutionally deficient and that Torres-Estrada’s own decision-making drove the outcome of his plea-bargaining process. We therefore affirm the district court’s denial of sentencing relief.

I.**A. Overview**

In April 2010, Torres-Estrada and sixty-four other individuals were charged in a superseding indictment with, inter alia, conspiring to distribute large amounts of controlled substances near a public housing project from roughly 1995 to 2009.¹ As described in detail below,

1. The original indictment was filed in September 2009, and Torres-Estrada remained a fugitive until June 2010. See *United States v. Torres-Estrada*, 817 F.3d 376, 377 (1st Cir. 2016). Torres-

Appendix A

plea negotiations initiated by Torres-Estrada's attorneys stretched into the fall of 2010. Then, in February 2011—with no plea bargain relating to the earlier indictment yet in place—Torres-Estrada and three others were charged in a separate, single-count indictment with conspiring to import controlled substances into the United States.² On the eve of trial on the initial charges, in March 2011, Torres-Estrada signed a consolidated plea agreement in which he agreed to plead guilty to one count of each indictment. The agreement specified that Torres-Estrada could request a sentence of 264 months (twenty-two years), while the government was permitted to argue for a 288-month (twenty-four-year) term of imprisonment. As noted above, the district court imposed the higher of those two possibilities.³

Estrada was charged in seven of the superseding indictment's eleven counts. Count One charged the conspiracy to possess with intent to distribute controlled substances near a public housing project. Counts Three through Six charged him with possession with intent to distribute various drugs: heroin (Count Three), crack cocaine (Count Four), cocaine (Count Five), and marijuana (Count Six). He was charged in Counts Seven and Eleven with conspiring to commit money laundering.

2. A superseding indictment filed in the second case in September 2013 charged twenty-seven additional defendants with conspiring to import, and to possess with the intent to distribute, controlled substances. The superseding indictment also charged those individuals with conspiracy to commit money laundering and international money laundering.

3. The court sentenced Torres-Estrada to the 288-month term on the first indictment and imposed a concurrent 120-month term for the importation conspiracy. *See Torres-Estrada*, 817 F.3d at 378.

Appendix A

Following an unsuccessful direct appeal, Torres-Estrada filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, raising the ineffective assistance of counsel claim that is at issue in this appeal,⁴ among other rationales for vacating his convictions and sentence. The district court rejected all grounds for relief. *See Torres-Estrada v. United States*, Civ. No. 17-1373, 2019 U.S. Dist. LEXIS 71200, 2019 WL 1878294, at *8 (D.P.R. Apr. 26, 2019). We granted a certificate of appealability solely on the question of whether Torres-Estrada received ineffective assistance from his local counsel “in relation to plea-bargain negotiations with the United States.” We therefore set forth below only the facts relevant to that issue,⁵ drawing primarily from the affirmations filed by Torres-Estrada and one of his attorneys in the district court.⁶ The facts are largely undisputed; the debate concerns their legal significance.

4. Although Torres-Estrada pressed his ineffective assistance of counsel claim in his direct appeal, we did not address the issue there. *See* 817 F.3d at 378-79.

5. Torres-Estrada includes in his brief an argument based on attorney conflict-of-interest. That issue is not only outside the scope of this appeal but also was disposed of during Torres-Estrada’s direct appeal. *See* 817 F.3d at 378 n.2. We therefore do not address it.

6. An “affirmation” given in the context of legal proceedings is defined as “[a] solemn or formal declaration or asseveration . . . that the witness will tell the truth, . . . this being substituted for an oath in certain cases.” The L. Dictionary, “Affirm Definition & Legal Meaning,” <https://thelawdictionary.org/affirm> [<https://perma.cc/F67U-PTJ7>].

*Appendix A***B. The First Indictment and Early Plea-Bargaining Process**

Following Torres-Estrada's arrest in June 2010 on the charges alleged in the first indictment, New York attorneys Raymond Granger and Edward Sapone appeared pro hac vice on his behalf at a bail hearing, along with a local counsel who later withdrew from the case. Shortly thereafter, Ramón García García ("García"), also a local Puerto Rico attorney, filed a notice of appearance to join the defense team. According to Torres-Estrada, García, who had been his attorney for an unrelated Commonwealth criminal matter, had asked to join the defense in the federal case as local counsel.

Early in their representation, Granger and Sapone concluded that Torres-Estrada might benefit from a joint plea deal with one of his co-defendants, Samuel Negrón-Hernández. With their client's agreement, the two attorneys began coordinating with Negrón-Hernández's attorneys, Rafael Castro-Lang and Steven Potolsky. Through that collaboration, and from meetings with the lead prosecutor, Granger and Sapone learned that the government had refused a proposed eleven-year term of imprisonment for Negrón-Hernández and would be seeking a sentencing recommendation for Torres-Estrada roughly two years longer than Negrón-Hernández's based on the government's view of their relative culpability. García did not attend most of these meetings, consistent with his limited role as local counsel.

Appendix A

On September 20, 2010, via email, the government offered Torres-Estrada a plea deal that allowed him to request a 188-month sentence (fifteen years/eight months), while the government would argue for a sentence up to 210 months (seventeen years/six months). In his affirmation, Granger stated that the prosecutor, Assistant United States Attorney (“AUSA”) Timothy Henwood, made two representations about the proposed plea deal that were not included in the email: (1) the government would not strongly argue for the higher sentence, with the expectation that the district court would accept the defense recommendation based on its “track record of honoring plea agreements,” and (2) the government would not prosecute Torres-Estrada on additional charges. At about the same time, Negrón-Hernández was offered a deal allowing him to argue for a sentence of 168 months (fourteen years).

On September 22, two days after receiving the government’s plea offer, Granger and Sapone met with one of Negrón-Hernández’s attorneys, Castro-Lang, to discuss how to respond. The attorneys concluded that counteroffers would be appropriate since Henwood had not said that the government’s offers were final. They settled on a joint counteroffer of twelve years (144 months) for Negrón-Hernández and fourteen years (168 months) for Torres-Estrada—consistent with the understanding that the government wanted a two-year differential between the two defendants and the government’s rejection of Negrón-Hernández’s earlier proposal for an eleven-year sentence. The attorneys further “reasoned that, even though the government might reject [those counteroffers,

Appendix A

they] would be considered reasonable and might induce the government at least to lower the offers it had just made.”

Garcia also attended this meeting, having been invited “as a matter of courtesy.” Granger recounted that, at some point during the strategy discussion, “Mr. Garcia suddenly interjected that he was going to recommend to Mr. Torres-Estrada that the [counteroffer] for him should be 13 years (156 months),” rather than fourteen years (168 months). When Castro-Lang pointed out that such a counteroffer was inconsistent with the government’s demand for a two-year spread between the two defendants, Garcia responded that he “did not care about” Negrón-Hernandez. Granger pushed back, noting that the government’s offers were premised on both defendants pleading guilty and that Torres-Estrada had benefited from the sharing of information between the two sets of attorneys. When the meeting ended, the four attorneys, as well as Potolsky, headed to MDC Guaynabo to speak jointly with their clients.

At that client meeting, the lead attorneys discussed the government’s plea offers and explained “why [they] believed them to be excellent offers that should be given serious consideration.” The attorneys also explained why they nevertheless believed counteroffers were appropriate, the basis for the specific counteroffers they were proposing, and why they felt it was important to reach a plea deal soon. Among other factors, they cited the need for a two-year differential in the proposed sentences; AUSA Henwood’s insistence on guilty pleas before the first trial in the case, which was then scheduled for late October

Appendix A

2010; and the risk that “delaying too long could result not just in the offer being withdrawn by the government but also in new charges being lodged against them based on new information.” In emphasizing the need to act promptly, the attorneys also pointed out that “another defendant viewed [as] less culpable by the government might reach a plea bargain with the government in the meantime that potentially could raise the minimum sentence[s] that the government would insist upon for” Torres-Estrada and Negrón-Hernández.

According to Granger, by the end of the meeting, all five attorneys—including García—agreed that the counteroffers should be fourteen years’ (168 months’) imprisonment for Torres-Estrada and twelve years (144 months) for Negrón-Hernández. Granger stated that the two defendants also were advised that the attorneys “considered these to be the lowest [counteroffers] the government would consider credible in light of the prior plea negotiations and of offers made to other defendants in the case.” Torres-Estrada and Negrón-Hernández endorsed the proposed counteroffer strategy. García did not bring up at this meeting the thirteen-year counteroffer he had earlier announced that he would recommend to Torres-Estrada.

However, García met separately with Torres-Estrada several times, including after the September 22, 2010 meeting, and gave him advice at odds with the lead attorneys’ positive assessment of the government’s offer, explaining that “he knew better” than the New York-based lawyers about the plea-bargaining possibilities because

Appendix A

“his entire legal career had been spent in Puerto Rico.” According to Torres-Estrada in his affirmation, Garcia told him that drug suppliers in Puerto Rico typically receive sentences between eight and twelve years in length, and Garcia expressed confidence that “he could obtain a plea agreement in that range” for Torres-Estrada. At one point, Garcia advised Torres-Estrada that he should not agree to a counteroffer of more than thirteen years (156 months) “because he [Garcia] did not believe the government had enough evidence to justify a sentence longer than that.” Garcia also told Torres-Estrada that any pre-trial plea offer from the government would remain available after the trial of the first group of defendants—which at that time did not include Torres-Estrada—and Garcia also suggested that he might be able to negotiate a better deal for Torres-Estrada after that initial trial.

When Torres-Estrada told Granger and Sapone about Garcia’s assertions, they responded that “Mr. Garcia was simply wrong and was giving him very bad advice.” They explained, among other disagreements with Garcia, that plea deals in previous drug-conspiracy cases in Puerto Rico “did not provide an accurate measure of what constituted a realistic plea bargain” for him because his case “involve[d] volumes of narcotics significantly higher than those in prior cases in Puerto Rico.”

Meanwhile, after the September 22 attorney-client meeting at MDC Guaynabo, Granger arranged for the four lead attorneys to meet with AUSA Henwood on September 28.

Appendix A

C. The Plea-Bargaining Events of September 27 and 28, 2010

On September 27, the day before the scheduled meeting with Henwood, Granger received the following email from Garcia:

Good morning Ray:

Yesterday I met with Elvin [Torres-Estrada] and he informed me that the [counteroffer] has to be 13 years, he will not authorize a [counteroffer] of 14 years.

Have a nice day

Ramon

As set forth in his affirmation, Granger responded to Garcia at length. Among other criticisms, he chastised Garcia for discussing “pivotal issues” with Torres-Estrada without consulting the lead attorneys, asserted that Garcia was undermining the other attorneys “to the [] client’s detriment,” and had “raised [Torres-Estrada]’s expectations to unrealistic levels.” Granger reminded Garcia that the government had rejected Negrón-Hernández’s eleven-year proposed sentence and “ha[d] insisted on approximately a two-year spread between” the two defendants. Granger also pointed out that Garcia had agreed with the other lawyers’ strategy during the session at MDC Guaynabo, and he asserted that Garcia should have advised Torres-Estrada not to make “such

Appendix A

an important decision”—i.e., changing the proposed counteroffer—“without first conferring with all the attorneys involved and with [Negron-Hernandez].”

The next morning, before meeting with AUSA Henwood, Granger and Sapone went to MDC Guaynabo to discuss Garcia’s email with Torres-Estrada. They told him that it was “inappropriate” for Garcia to advise him to change the agreed-upon counteroffer “not only because it was beyond his role as local counsel” but also because “no changes in strategy should be made without first consulting [Negron-Hernandez’s] attorneys.” They pointed out that it was “extraordinarily irresponsible for Mr. Garcia to upset the joint-defense planning at the last minute.” The attorneys also told Torres-Estrada that they “had observed a deterioration in his emotional and mental state” in recent weeks and that, in their view, “Mr. Garcia was capitalizing on his weakened condition and manipulating him.”⁷ They again explained the basis for the twelve-and fourteen-year counteroffers and told Torres-Estrada that a thirteen-year counteroffer “would be a fundamental, and likely disastrous, mistake.” They reiterated that “time was of the essence” and that Garcia’s

7. In his affirmation, Torres-Estrada reported that his attorneys had expressed this concern, but he did not state that he had in fact felt manipulated by Garcia. Rather, he said that he was “confused and nervous” when Garcia told him that he should not authorize a counteroffer of more than thirteen years’ imprisonment shortly after the lead attorneys had secured his agreement to the fourteen-year counteroffer. He reported that he was “unsure what to do” and ultimately deferred to Garcia, “notwithstanding [his] doubts,” after Garcia “persisted.”

Appendix A

suggestion that the government's same plea offer would remain available after the first trial "made no sense and, in any event, was contrary to AUSA Henwood's explicit warning" that the offer would not extend beyond the first trial.

After this discussion, Torres-Estrada authorized the lead attorneys to make a counteroffer of thirteen years/eight months (164 months), with Granger recalling that he "appeared confused and to struggle with his decision." Although Granger recommended against including Garcia in the meeting with Henwood later that day, Torres-Estrada said he wanted all three of his lawyers present. Granger therefore notified Garcia to meet the others at the U.S. Attorney's office in San Juan. While the attorneys were gathered in the reception area, Granger and Sapone told Garcia that Torres-Estrada had agreed to a thirteen-year/eight-month counteroffer during their meeting with him earlier in the day. Shortly thereafter, the attorneys entered the conference room for the meeting with Henwood.

In the meeting, Castro-Lang first argued for a lower plea offer for Negrón-Hernández and proposed the twelve-year (144-month) term. Henwood responded that the offer was "reasonable." Granger then spoke on behalf of Torres-Estrada, explaining that Sapone would add comments and then present their counteroffer. As Granger was turning to Sapone for his remarks, however, Garcia interrupted and told Henwood that Torres-Estrada's counteroffer was thirteen years (156 months). When Henwood immediately rejected that offer, Garcia asked if he would consider

Appendix A

thirteen years/six months (162 months). Henwood said he would think about it, and Garcia then left. The meeting ended a short time later. Granger's affirmation does not report any comments by Henwood after Garcia's departure.

Following the meeting, Granger returned to MDC Guaynabo and told Torres-Estrada "the meeting had not gone well." In describing what happened, Granger said that, because Henwood had characterized the twelve-year (144 months) offer for Negron-Hernandez as reasonable, he and Sapone believed the prosecutor also would have considered reasonable a fourteen-year (168-month) counteroffer for Torres-Estrada—"and possibly even one of 13 years and 8 months" (164 months)—and that such an offer "would not have spoiled the negotiating atmosphere." Granger again told Torres-Estrada that he "felt Mr. Garcia was manipulating him at a time when his emotional and mental state had been deteriorating." Granger said he planned to meet with Garcia the next day, and Torres-Estrada agreed that he should.

D. The Plea-Bargaining Events Following the September 28 Meeting

As he left the meeting with AUSA Henwood, Garcia indicated that he would be available to meet with Granger the next day. Nonetheless, Garcia refused to do so. Granger also learned that morning—i.e., on September 29, 2010—that the government would not lower the plea offers. After conferring with Sapone and Negron-Hernandez's attorneys, Granger sent an email to

Appendix A

Henwood explaining that Garcia's interjected thirteen-year counteroffer was unauthorized by their client and that he and Sapone were "furious" when Garcia intervened in the discussion. Granger reported that even Garcia's follow-up counteroffer of thirteen years/six months (162 months) was lower than Torres-Estrada had authorized (a counteroffer of 164 months). The email, sent on September 30, included the following assessment of the meeting and request to continue negotiations:

My sense, particularly after your having described [Castro-Lang]'s [counteroffer] as "reasonable," is that the counters made by Garcia were viewed as so unreasonable that they spoiled the negotiating atmosphere, resulting in your supervisors becoming so annoyed that they refused to authorize any movement by your side even if they otherwise might have considered it. . . .

The bottom line is that Ed [Sapone], Rafael [Castro-Lang], Steve [Potolsky], and I believe a deal is still possible and would appreciate a chance to discuss that possibility. Do you have a few minutes later today or tomorrow to talk?

In his affirmation, Granger reported that he "continued to communicate with AUSA Henwood in early October 2010 in an effort to get the government to reconsider its position." Meanwhile, Granger learned that Garcia also was attempting to meet with the government. On October 8, Granger sent Garcia a letter telling him to stop such efforts. Granger told Garcia that Torres-Estrada had

Appendix A

authorized Sapone and him to continue the negotiations, and Granger informed Garcia that Henwood had agreed to “discuss with his supervisor whether to reconsider the government’s present position.” The letter to Garcia concluded with the following paragraph:

As Mr. Torres-Estrada knows, I have explained to AUSA Henwood that you spoke out of turn and inconsistent with Mr. Torres-Estrada’s instructions at the meeting held on September 28. It is on that basis that AUSA Henwood agreed to revisit the issue of whether the government would be willing to lower its offers to both Mr. Torres-Estrada and Samuel Negrón-Hernández. . . . After I had spoken with AUSA Henwood earlier this week, Mr. Torres-Estrada advised me that he wanted to hear the government’s response, which AUSA Henwood believes he will be in a position to convey later today. Accordingly, any further efforts by you to negotiate with the government would be contrary to our instructions, but would also, in any event, make little sense.

Roughly a week later, on October 14, AUSA Henwood, apparently having consulted with his supervisor, confirmed to Granger that the original offer to Torres-Estrada—fifteen years/eight months (188 months)—would not be reduced.⁸ Torres-Estrada was informed of the

8. We note that, in describing the various offers under discussion, we refer generally to the sentencing recommendation that would be made by Torres-Estrada rather than the higher recommendation that the government would be authorized to make. As recounted above, both parties anticipated that the

Appendix A

government's position, stating in his affirmation that he learned "[i]n early October 2010 . . . that the government had refused to lower its original plea offer of 188 months' (15 years, eight months') imprisonment and that it was the government's final offer." According to Torres-Estrada, Garcia nonetheless continued to advise him "in one or more meetings at MDC Guaynabo not to believe that that was the government's final offer, and that he [Garcia] would be able to obtain a better deal than that from the government." Garcia also told Torres-Estrada that, if he discharged Granger and Sapone, Garcia could invoke the change of counsel in requesting that Torres-Estrada be excluded from the first group of defendants scheduled for trial later in October.

On October 15, 2010, Granger and Sapone filed notices to withdraw from representing Torres-Estrada, which Granger said they did at Torres-Estrada's direction. According to Torres-Estrada, Garcia thereafter "repeatedly told [him] that the government was still considering his [counteroffer] of 162 months' (13 years, 6 months') imprisonment." In a sworn statement, Garcia reported that he had attempted to meet with AUSA Henwood "[s]ince December 2010," but received no response before the government resumed negotiations after the filing of the second indictment in February 2011.⁹

district court would adopt each defendant's recommendation. *See supra* Section I.B.

9. Garcia's statement was included as an attachment to a supplemental motion in which Torres-Estrada asked to file a reply to the government's response to his § 2255 motion. The district

Appendix A

According to the government, the plea negotiations were suspended when it developed evidence that, in addition to the previously charged conspiracy, Torres-Estrada “had also been a principal member of a narcotics importation organization that brought large shipments of cocaine from the Dominican Republic to Puerto Rico.”

E. The Second Indictment, Plea Process, and *Lafler-Frye* Motion

Torres-Estrada’s circumstances in early 2011 were complex. In addition to the new charges in the importation indictment, Torres-Estrada was facing trial in March on the original charges.¹⁰ According to Torres-Estrada, after the trial was set for March 21, Garcia told him he could get it delayed—“thereby gaining more time to negotiate a plea bargain”—because Garcia had another case going to trial in March that would take priority.¹¹ On March 18,

court denied the motion because the deadline for filing a reply had passed. However, Garcia’s statement is largely consistent with the affirmations of Granger and Torres-Estrada, and we therefore choose to refer to the statement in recounting the background of the case. We note, in addition, that Torres-Estrada appears to correctly assert that the district court granted the government more leeway with deadlines than it allowed him.

10. Torres-Estrada was now among the first group of defendants to be tried, with the trial rescheduled from fall 2010 to March 2011.

11. Garcia did file a motion to sever Torres-Estrada’s case from those of the other defendants scheduled for trial in March based on the timing of the trial in his other case and on the need to obtain and review discovery related to the new indictment.

Appendix A

2011, Garcia met with Torres-Estrada at MDC Guaynabo. Although Torres-Estrada and Garcia recounted some details of this conversation differently, the basic thrust of Garcia's message was that the resumed plea negotiations were focused on a deal that would provide for a proposed sentence of 264 months (twenty-two years) in exchange for a guilty plea to both indictments. According to Torres-Estrada, Garcia recommended that he agree to such a deal. That same day, Garcia filed a motion for a change of plea for Torres-Estrada, and the district court scheduled a change-of-plea hearing for March 21—the day jury selection was scheduled to start.

On the morning of March 21, Garcia presented Torres-Estrada with a plea agreement in writing for the first time. It contained the sentencing proposal that the attorney had partially described a few days earlier, allowing Torres-Estrada to request a sentence of 264 months (twenty-two years) but stating that the government reserved the right to argue for 288 months (twenty-four years). The agreement was in English, and because he has “only limited ability to read English,” Torres-Estrada asked Garcia to help him review the document. Garcia then explained the provisions as they “browsed it together.” In his affirmation, Torres-Estrada said he did not fully understand the provisions and was “frightened and confused,” but he felt compelled to sign the agreement

Garcia also stated in the motion that he “had been negotiating with the government to try to reach a plea agreement that would have disposed of the case.” The motion, which was filed on February 23, was denied on March 4.

Appendix A

because “Mr. Garcia clearly was unprepared to begin the trial” that otherwise would have started that day.¹²

Within weeks after signing the plea agreement, Torres-Estrada “discharged” Garcia and hired new counsel—part of a flurry of changes in defense attorneys during the next couple of years that included a brief reappearance by Garcia and, most notably, the rehiring of Granger and Sapone in August 2011. In June 2012, in advance of Torres-Estrada’s then-scheduled sentencing later that month, Granger filed a motion asserting that Garcia had rendered ineffective assistance of counsel and seeking an order that Torres-Estrada be given the benefit of the fifteen-year/eight-month (188-month) plea bargain the government had offered in September 2010.¹³ This so-called *Lafler-Frye* motion, named for the two leading Supreme Court cases detailing the obligations of attorneys in plea negotiations, included a request for an evidentiary hearing. *See Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012); *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012). The district court denied the motion in September 2012 in a docket order, without explanation.

12. Negron-Hernandez also signed a consolidated plea agreement on the same day that resolved both cases against him. The agreement allowed Negron-Hernandez to request a sentence of 210 months (seventeen and one-half years) and the government to argue for 240 months’ (twenty years’) imprisonment.

13. The affirmations of Granger and Torres-Estrada on which we have relied to describe the plea-bargaining process were submitted in connection with this motion.

Appendix A

Roughly two-and-a-half years later, after the sentencing hearing was rescheduled multiple times for various reasons,¹⁴ Torres-Estrada was sentenced in February 2015 to the twenty-four-year (288-month) term of imprisonment recommended by the government pursuant to the plea agreement. As described above, after we affirmed his conviction and sentence on direct appeal, Torres-Estrada unsuccessfully sought relief in the district court under § 2255 on the ground, inter alia, that Garcia's ineffective assistance deprived him of the more favorable fifteen-year/eight-month (188-month) plea deal originally offered by the government. In rejecting that claim, the district court concluded that Garcia's strategy was "sound," that the conduct challenged by Torres-Estrada as ineffective assistance of counsel "is nothing more than infighting between the attorneys caused or allowed by Torres-Estrada himself," and that Torres-Estrada had failed to show prejudice. *Torres-Estrada*, 2019 U.S. Dist. LEXIS 71200, 2019 WL 1878294, at *6.¹⁵

14. Some of the delay is attributable to the changes in defense counsel, including the second withdrawal of Granger and Sapone in January 2013.

15. With respect to prejudice, the district court stated that "there is nothing in the record that shows that [Torres-Estrada] would have accepted [the government's original offer] . . . because even 'lead counsel' was advocating for a 14-year counter-offer" and Torres-Estrada "decided to authorize one for 13 years and 8 months." *Torres-Estrada*, 2019 U.S. Dist. LEXIS 71200, 2019 WL 1878294, at *6. The court further observed that Torres-Estrada "has failed to show that the trial court would have accepted the 188-month sentencing recommendation." *Id.* at *7.

Appendix A

As noted, we granted Torres-Estrada’s request for a certificate of appealability on his Sixth Amendment claim, concluding that Torres-Estrada had raised an issue of deficient representation by Garcia “in relation to plea-bargain negotiations with the United States” sufficiently debatable to warrant our review. *Torres-Estrada v. United States*, No. 19-1485, 2022 U.S. App. LEXIS 37989 (1st Cir. Feb. 23, 2022), ECF No. 15; *see also, e.g., Feliciano-Rodríguez v. United States*, 986 F.3d 30, 36 (1st Cir. 2021) (explaining that a petitioner seeking a certificate of appealability “must make ‘a substantial showing of the denial of a constitutional right’”—i.e., “that the issues are debatable among jurists of reason” (first quoting 28 U.S.C. § 2253(c)(2), then quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983))). We now turn to our discussion of that claim.¹⁶

II.

In *Frye*, the Supreme Court held for the first time that “the constitutional right to counsel extends to the negotiation and consideration of plea offers that lapse or are rejected,” and it reiterated the longstanding principle that “[t]he right to counsel is the right to effective

16. Although Torres-Estrada asserts in his brief that Garcia was unprepared for trial in March 2011, and that he therefore felt pressure to sign the consolidated plea agreement on the morning the trial was scheduled to begin, this aspect of Garcia’s alleged poor performance is undeveloped and outside the narrow scope of our review (limited to Garcia’s plea-negotiation conduct). We therefore do not further address this assertion.

Appendix A

assistance of counsel.” 566 U.S. at 138.¹⁷ In both *Frye* and *Lafler*, decided the same day, the performance of defense counsel in the plea-bargaining process was determined to be constitutionally deficient. *See infra*. Torres-Estrada argues that his Sixth Amendment claim is equivalent to those considered in *Frye* and *Lafler* and that, based on the precedent they established, he is entitled to resentencing consistent with the government’s original plea offer. We review the law governing Torres-Estrada’s Sixth Amendment claim, and the Supreme Court’s application of that law in *Frye* and *Lafler*, before turning to Torres-Estrada’s contention that he has established a constitutional violation entitling him to relief.

A. The Ineffective-Assistance-of-Counsel Inquiry

When evaluating a Sixth Amendment claim of ineffective assistance of counsel brought under 28 U.S.C. § 2255, we conduct a two-pronged inquiry, asking whether (1) counsel provided objectively deficient representation (the performance prong), and, if so, (2)

17. As the Court noted in *Frye*, prior cases had established that the Sixth Amendment applied to defense counsel’s obligations “in advising a client with respect to a plea offer that leads to a guilty plea.” 566 U.S. at 141 (discussing *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985), and *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)). The claims in those cases had focused on counsel’s “incorrect advice” that “le[d] to acceptance of a plea offer.” *Id.* at 141-42. *Frye* and its companion case, *Lafler*, differed because “[t]he challenge[s] [were] not to the advice pertaining to the plea that was accepted but rather to the course of legal representation that preceded it with respect to other potential pleas and plea offers.” *Id.*

Appendix A

is there “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” (the prejudice prong)? *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *see also Casey v. United States*, 100 F.4th 34, 42 (1st Cir. 2024). “The petitioner bears a heavy burden on each prong.” *Casey*, 100 F.4th at 42.

Attorney performance will be found deficient “[o]nly when counsel’s strategy was ‘so patently unreasonable that no competent attorney would have made it.’” *Watson v. United States*, 37 F.4th 22, 28 (1st Cir. 2022) (quoting *Tevlin v. Spencer*, 621 F.3d 59, 66 (1st Cir. 2010)). For claims asserting deficient performance in plea negotiations, the prejudice prong requires defendants to prove that “the outcome of the plea process would have been different with competent advice.” *Lafler*, 566 U.S. at 163. That is, “defendants must demonstrate a reasonable probability they would have accepted” a lower plea offer and that “the plea would have been entered without the prosecution canceling [the offer] or the trial court refusing to accept it.” *Frye*, 566 U.S. at 147; *see also Rivera-Rivera v. United States*, 844 F.3d 367, 372-73 (1st Cir. 2016).

In reviewing the district court’s rejection of Torres-Estrada’s claim of ineffective assistance of counsel, we assess any factual findings for clear error and the court’s legal conclusions de novo. *See Casey*, 100 F.4th at 44. Both prongs of the ineffective-assistance “inquiry are mixed questions of law and fact,” *United States v. Valerio*, 676 F.3d 237, 246 (1st Cir. 2012) (quoting *Strickland*, 466 U.S. at 698), and the applicable standard of review depends

Appendix A

on whether “a particular question is fact-dominated or law-dominated,” *id.* (quoting *Dugas v. Coplan*, 506 F.3d 1, 8 (1st Cir. 2007)). The district court did not hold an evidentiary hearing and thus made no explicit findings of fact. We see the inquiry here as law-dominated and, accordingly, review the district court’s decision de novo.

B. *Frye* and *Lafler*

In *Frye* and *Lafler*, the Supreme Court addressed two different scenarios in which defendants claimed that their attorneys’ ineffective assistance caused their failure to take advantage of a plea offer, with the result that “further proceedings led to a less favorable outcome.” *Lafler*, 566 U.S. at 160; *see also Frye*, 566 U.S. at 138. As we shall describe, both scenarios inform our assessment of the case now before us.

In *Frye*, the defendant’s attorney never told his client that the prosecutor had offered two possible plea bargains and had given an expiration date for making a choice. *See* 566 U.S. at 138-39. The offers lapsed, and Frye subsequently pled guilty without a plea agreement, subjecting him “to a maximum sentence of four years instead of one year.” *Id.* at 139-40 (internal quotation marks omitted). The Court (a five-justice majority) concluded that Frye’s attorney, by failing to “make a meaningful attempt to inform the defendant of a written plea offer before the offer expired,” *id.* at 149, had provided representation that “fell below an objective standard of reasonableness,” *id.* (quoting *Strickland*, 466 U.S. at 688).

Appendix A

The prejudice prong of the *Strickland* inquiry was less straightforward. By the time of the scheduled preliminary hearing and guilty plea, Frye had committed an additional offense. *See id.* at 139, 151. The Supreme Court observed that the new arrest, among other considerations, gave “reason to doubt that the prosecution would have adhered to the agreement or that the trial court would have accepted it . . . unless they were required by state law to do so.” *Id.* at 151. The Court therefore remanded the case to the state appeals court so it could address the state-law questions bearing on the prejudice question “in the first instance.” *Id.*

In *Lafler*, the defendant was charged with five state-law crimes related to his shooting of a woman who survived his assault. *Id.* at 161. The prosecutor initially offered to dismiss some of the charges and to recommend a negotiated sentence covering the remaining charges. *Id.* Based on the incorrect understanding that the defendant “could not be convicted at trial,”¹⁸ defense counsel advised his client to reject that plea offer and the defendant also

18. As the Supreme Court described the alleged circumstances, defense counsel had told Lafler he “could not be convicted for assault with intent to murder as a matter of law” because he had shot the victim below the waist. 566 U.S. at 174. That assurance rested on an objectively incorrect explanation of the law. *See id.* at 161-63 (noting the Sixth Circuit’s determination that counsel had informed Lafler of “an incorrect legal rule” (quoting *Cooper v. Lafler*, 376 Fed. App’x 563, 570 (2010))). The case came to the Supreme Court with all parties agreeing that counsel’s performance “was deficient when he advised [Lafler] to reject the plea offer on the grounds he could not be convicted at trial.” *Id.* at 163.

Appendix A

rejected another plea deal offered on the first day of trial. *Id.* at 163. The defendant thereafter had “a full and fair trial,” in which the jury found him guilty on all counts. *Id.* at 160-61. He was sentenced to a “mandatory minimum sentence of 185 to 360 months’ imprisonment,” *id.* at 161, which the Supreme Court observed was a minimum more than three times longer than the minimum in the original plea offer (fifty-one months), *id.* at 174.

The Court found that Lafler had satisfied *Strickland*’s two-part test for ineffective assistance of counsel claims: The parties had conceded that defense counsel’s performance was deficient, and the defendant “ha[d] shown that but for counsel’s deficient performance there is a reasonable probability he and the trial court would have accepted the guilty plea.” *Id.* The Supreme Court remanded the case for further proceedings so the trial court could determine an appropriate remedy. *See id.* at 174-75.¹⁹

19. Lafler’s case was in federal court pursuant to a petition for habeas relief under 28 U.S.C. § 2254. The district court had “ordered specific performance of the original plea agreement,” but the Supreme Court stated that “[t]he correct remedy in these circumstances . . . is to order the State [of Michigan] to reoffer the plea agreement.” 566 U.S. at 174. The Court explained that, if the defendant accepted the renewed offer, the state trial court would have discretion to determine how to proceed. *Id.* Among the choices noted by the Court were vacating the convictions, with resentencing pursuant to the plea agreement, and “leav[ing] the convictions and sentence from trial undisturbed.” *Id.* (citing a state rule giving the court such discretion).

Appendix A

In addition to the guidance provided by these two fact patterns, the justices in *Frye* made general observations about plea negotiations that are pertinent here. The Court acknowledged the challenge of “defin[ing] the duty and responsibilities of defense counsel in the plea bargain process,” 566 U.S. at 144, and noted the “nuanced” nature of “[t]he art of negotiation,” *id.* (quoting *Premo v. Moore*, 562 U.S. 115, 125, 131 S. Ct. 733, 178 L. Ed. 2d 649 (2011)); *see also* *Premo*, 562 U.S. at 124 (“Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks.”). The *Frye* Court then continued:

Bargaining is, by its nature, defined to a substantial degree by personal style. The alternative courses and tactics in negotiation are so individual that it may be neither prudent nor practicable to try to elaborate or define detailed standards for the proper discharge of defense counsel’s participation in the process.

566 U.S. at 145. The Court observed that, in any event, it had no need to formulate such standards for Frye’s situation because it was clear that Frye was denied “the effective assistance the Constitution requires” when “counsel allowed the [plea] offer to expire without advising [him] or allowing him to consider it.” *Id.*

With this background in mind, we turn to Torres-Estrada’s claim that Garcia’s representation was constitutionally deficient and that he would have achieved a

Appendix A

more favorable plea-bargaining outcome “with competent advice.” *Lafler*, 566 U.S. at 163.

III.

We have no doubt that Garcia overstepped his intended role as local counsel during the plea-bargaining process.²⁰ Most significantly, he interrupted the carefully planned negotiation session with AUSA Henwood on September 28, 2010, to make an unauthorized counteroffer, and he met with Torres-Estrada independently—and secretly—to persuade him to demand a lower proposed sentence than the one that had been agreed upon by the two defendants and all five defense attorneys (including Garcia). Garcia also attempted to meet independently with the government while Granger and Sapone remained the lead attorneys and, after they withdrew, he may have misrepresented (or at least overstated) the status of the plea negotiations when he told Torres-Estrada that the government was still considering the specific counteroffer of thirteen years/six months (162 months).

But acknowledging certain of Garcia’s actions as troubling does not inevitably mean that his actions

20. The district court noted that neither the federal nor Puerto Rico rules governing criminal procedure “make a distinction between *lead* and *local* counsel,” and thus “all counsel appearing in a case are fully accountable to their client and the court regardless of the term used.” *Torres-Estrada*, 2019 U.S. Dist. LEXIS 71200, 2019 WL 1878294, at *4. Granger and Sapone, however, viewed Garcia’s role as more limited than theirs as lead counsel, and Torres-Estrada agreed to that limitation.

Appendix A

denied Torres-Estrada the effective assistance of counsel. To determine whether Torres-Estrada has satisfied *Strickland*'s requirements for establishing a Sixth Amendment violation, we think it useful to separately examine the two primary aspects of Garcia's representation challenged by Torres-Estrada: first, his conduct leading up to, and during, the defense's presentation of a counteroffer on September 28, and, second, his advice to Torres-Estrada apart from that meeting.

A. The September 28 Negotiation Session

Before assessing the details surrounding the September 28 meeting, we note that the facts here are a far cry from those at issue in *Frye*, which involved "an uncommunicated, lapsed plea" offer from the government. 566 U.S. at 148. Unlike the defendant in *Frye*, Torres-Estrada had knowledge of the government's original plea proposal, and he was also an active participant in his plea process. *Lafler* is a closer analog in that it involves adverse consequences from the defendant's reliance on his attorney's advice. Indeed, Garcia's conduct at the September 28 meeting was arguably even more problematic because he made a counteroffer more aggressive than his co-counsel reported the client had authorized.

Yet, the relevant considerations in evaluating Garcia's conduct materially differ from those in *Lafler*. Here, in Garcia's last face-to-face meeting with Torres-Estrada, Torres-Estrada authorized the aggressive proposal of

Appendix A

thirteen years. That authority was called into question only by the assertions of his co-counsel just before the meeting with AUSA Henwood began. Moreover, a counteroffer of thirteen years does not preclude making a subsequent offer of thirteen years and eight months, and in that sense can be seen as an aggressive preparing of the ground for the less-aggressive final offer. Finally, added to this mix is the fact that unlike in *Lafter*, Garcia's strategy was not objectively wrong in its understanding of the law. *See* 566 U.S. at 162. In fact, after Garcia blindsided Granger and Sapone with his thirteen-year proposal on the eve of the scheduled plea-negotiation meeting, the lead attorneys and Torres-Estrada settled on a lower counteroffer than initially contemplated for the defense team to propose to Henwood the following day. And when Garcia subsequently undercut that compromise counteroffer by another two months at the meeting (requesting thirteen years/six months, after quickly adjusting upward from the immediately rebuffed thirteen years), Henwood still responded by saying he would think about it.

The circumstances surrounding the meeting thus diminish the force of Torres-Estrada's claim that Garcia's disruptive actions were incompatible with an attempt by competent counsel to secure the best possible deal for his client. Given Henwood's stated willingness at the meeting to consider Garcia's rogue thirteen-year/six-month (162-month) proposal, one could reasonably say that Garcia's aggressive (though discourteous) tactics had advanced the plea negotiations and, accordingly, were "within the range of competence demanded of attorneys in criminal cases." *Strickland*, 466 U.S. at 687 (quoting

Appendix A

McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)); *see also id.* at 689 (“There are countless ways to provide effective assistance in any given case.”).

But even if we were to conclude that Garcia’s disregard of his co-counsel’s and client’s agreed-upon and more conservative plan for the negotiation session amounted to deficient performance, Torres-Estrada could not demonstrate ineffective assistance of counsel on that basis because he would still be unable to satisfy *Strickland*’s prejudice prong. Despite Granger and Sapone’s view that the meeting with Henwood had gone poorly because of Garcia’s interference, the record makes plain that Garcia’s conduct did not result in termination of the plea-bargaining process. Rather, as Granger reported to Garcia, after Henwood was told that Garcia “spoke out of turn and inconsistent with Mr. Torres-Estrada’s instructions,” Henwood “on that basis . . . agreed to revisit” the possibility of lowering the offers to both defendants. And, as late as October 14—more than two weeks after Garcia’s hijacking of the negotiation session—the original offer of fifteen years/eight months (188 months) remained on the table. *See supra*. Indeed, Granger filed a motion on October 13 asking to extend the original deadline for the acceptance of a plea deal, originally set for that day, because the parties were still in active plea negotiations.

In sum, we need not view Garcia’s disruptive performance in advance of, and during, the September 28 meeting as entirely defensible to conclude that Torres-Estrada has failed to establish a violation of his Sixth

Appendix A

Amendment right to the effective assistance of counsel based on Garcia’s interactions with lead counsel and Henwood. Before the September 28 plea negotiations—and beyond—all of his attorneys were counseling Torres-Estrada to push for a more lenient plea deal, and the government’s original offer remained available well after that meeting. Moreover, given Henwood’s reaction at the meeting to Garcia’s second counteroffer, and the continuing discussion of a possible lower sentencing proposal, the record fails to show that Garcia’s meeting-related tactics affected “the outcome of the plea process,” as required to satisfy *Strickland*’s prejudice prong. *Lafler*, 566 U.S. at 163.

B. The Advice to Prolong the Plea Negotiations

Both contemporaneously with the events surrounding the September 28 meeting and, in its aftermath, Garcia gave Torres-Estrada advice that Torres-Estrada now challenges as constitutionally deficient. Garcia told Torres-Estrada that he could, and should, wait to accept a plea deal until after the first trial of his co-defendants. He posited that the outcome of the trial could lead the government to make a more favorable offer, and he assured Torres-Estrada that, as a local attorney, he knew better and could secure a lower sentence than his New York-based lead counsel. Immediately after Henwood reported that the government would stick to its original plea offer—in mid-October 2010—Garcia urged Torres-Estrada to discharge Granger and Sapone because it would delay his trial and give Garcia time to negotiate a better deal. Garcia subsequently told Torres-Estrada

Appendix A

that the rejected offer of thirteen years/six months (162 months) was still being considered by the government when that consideration may have been Garcia's hope but not necessarily the reality.

As indicated above, Garcia's advice to Torres-Estrada is distinguishable from the attorney's assurances in *Lafler* because it amounted to a subjective assessment about the possible outcome of the plea-negotiation process rather than the guarantee of a particular outcome, based upon an incorrect statement of law, that Lafler's attorney gave to him. *See supra* note 18. As the government points out, advising a defendant to delay accepting a plea is not a novel strategy, and, in certain circumstances, might even prove advantageous—for example, if an intervening trial of co-defendants reveals weaknesses in the government's evidence. *See, e.g., Premo*, 562 U.S. at 125 (noting that the government's "case can begin to fall apart as stories change, witnesses become unavailable, and new suspects are identified"). Of course, as it turned out, Garcia plainly overestimated the strength of Torres-Estrada's prospects. When the initial trial was rescheduled to March, Torres-Estrada was included in the first group of defendants. At the same time, the government was moving toward the second indictment.

With the benefit of hindsight, Torres-Estrada argues that Garcia's strategy of delay was so risky—"so patently unreasonable"—that "no competent attorney would have [pursued] it." *Watson*, 37 F.4th at 28 (quoting *Tevlin*, 621 F.3d at 66). But Garcia's performance cannot be evaluated based on what transpired later. *See, e.g., Miller*

Appendix A

v. United States, 77 F.4th 1, 6 (1st Cir. 2023) (stating that, when “appraising counsel’s performance, . . . we must make ‘every effort . . . to eliminate the distorting effects of hindsight’” (second ellipsis in original) (quoting *Strickland*, 466 U.S. at 689)). As the Supreme Court noted, plea negotiations are by their nature “suffused with uncertainty,” and, inevitably, the results of a defense attorney’s “balancing [of] opportunities and risks” will not always be successful. *Premo*, 562 U.S. at 124. If the government had been unable to develop sufficient evidence to charge Torres-Estrada in the importation conspiracy, Garcia’s effort to extend the plea negotiations on the first indictment may have had a more favorable outcome.²¹

Indeed, if Garcia had been Torres-Estrada’s only attorney and had advised the same aggressive strategy of delaying acceptance of the government’s offer while pursuing a better deal, we could not say that Garcia’s tactics—i.e., his “personal style” of bargaining, *Frye*, 566 U.S. at 145—amounted to ineffective assistance of counsel, despite the strategy’s ultimate lack of success.

21. The impact of the second indictment on the government’s approach to a plea deal is reflected in Negron-Hernandez’s efforts to reach an agreement. On November 30, 2010, his attorney filed a motion asking for another extension of the deadline for finalizing plea negotiations, explaining that “[t]he prosecutor apparently due to the heavy workload has been unable to inform defendant of the final terms of a plea offer which includes the forfeiture provisions.” Then in February, roughly a week after the second indictment was issued, Henwood emailed Negron-Hernandez’s attorney stating that the circumstances had changed: “You guys are going to have to tell him that the new offer will be higher based on the new case, if he insists on the 13 years he is going to have to face two trials.”

Appendix A

The counteroffers that the attorneys had planned to make at the September 28 meeting—twelve years (144 months) for Negron-Hernandez and thirteen years/eight months (164 months) for Torres-Estrada—featured the same twenty-month differential contained in the government’s original plea offer (fourteen years and fifteen years/eight months). Garcia’s attempt to slightly narrow that gap for Torres-Estrada, and his continuing effort to move the needle away from the government’s original proposal, may have been unduly optimistic, but we cannot say that his approach falls short of professional competence on the record before us. *See, e.g., Feliciano-Rodríguez*, 986 F.3d at 37 (stating that deficient performance will be found “only where, *given the facts known at the time*, counsel’s choice was so patently unreasonable that no competent attorney would have made it” (emphasis added) (quoting *Knight v. Spencer*, 447 F.3d 6, 15 (1st Cir. 2006))).

Notably, as described in our earlier discussion, Henwood did not dismiss Garcia’s adjusted proposal out-of-hand at the September 28 meeting, an indication that Garcia’s attempt to revive negotiations over that counteroffer—or some offer lower than the original fifteen years/eight months (188 months)—was not inevitably a non-starter. Indeed, Negron-Hernandez’s attorneys apparently continued negotiating for a more favorable plea agreement covering the first indictment through early 2011, and the offer being discussed when the second indictment was issued (a defense recommendation of thirteen years (156 months) instead of fourteen years (168 months)) would have been more favorable to Negron-Hernandez than the government’s original offer. *See supra*

Appendix A

note 21.²² In addition, one of the timing constraints that Henwood had imposed—the entry of guilty pleas before the first trial in the case—shifted shortly after Henwood told Granger the government’s offer would not be lowered. Roughly a week after Henwood’s communication, the late-October trial date was being reconsidered, and, on November 30, the court rescheduled the trial—now including Torres-Estrada—for March.

For the most part, then, Garcia’s advice considered in isolation (apart from the contrary advice offered by Granger and Sapone) was not “so patently unreasonable that no competent attorney would have made it.” *Watson*, 37 F.4th at 28 (quoting *Tevlin*, 621 F.3d at 66). Although Torres-Estrada emphasizes the conflict among his attorneys,²³ neither the fact that Granger

22. We recognize that the government may have been more willing to negotiate with Negrón-Hernández than with Torres-Estrada and, indeed, the district court’s docket indicates active plea negotiations for him through the fall. The district court granted a request to extend the deadline for Negrón-Hernández to complete plea negotiations until December 27, and his attorney subsequently sought another extension to January 12, 2011. The latter motion was denied as moot in March after Negrón-Hernández entered into his consolidated plea agreement. Regardless of any differences in the government’s approach to the two defendants, it is pertinent in assessing Garcia’s strategy that Negrón-Hernández’s attorneys, like Garcia, continued efforts to obtain a more favorable plea deal on the first set of charges.

23. Torres-Estrada does not explicitly assert that Granger and Sapone advised him to accept the government’s original offer in October 2010 after Henwood communicated the government’s rejection of counteroffers. As Torres-Estrada had instructed—at

Appendix A

and Sapone disagreed with Garcia's advice nor Torres-Estrada's feeling "confused and nervous" when faced with his attorneys' conflicting views means that Garcia's performance was deficient. By its nature, plea-bargaining can involve difficult choices: whether to take an offered plea, whether to make a counteroffer, and whether to reject a plea deal and leave one's fate in the hands of a jury. Torres-Estrada's decision on how to respond to the government's "final" offer inevitably would have been stressful even if he had only one defense attorney presenting him with the risks and advantages of various incompatible strategies similar to those presented by his multiple attorneys here.²⁴

Garcia's suggestion—the two attorneys moved to withdraw from the case the day after Granger reported hearing from Henwood. However, we think a recommendation to accept the offer at that point is implicit in the guidance they did give—i.e., that the original offers to Torres-Estrada and Negrón-Hernández were "excellent," that counteroffers were appropriate when the government's offers had not yet been described as final, and that time was of the essence in making a plea deal.

24. In making this observation, we note that the multiple-attorney situation uniquely poses the possibility of conflicts over defense strategy. We cannot anticipate what disagreements may arise among members of a defense team, and we therefore speak only to the nature of the conflict that arose here. As we have described, Torres-Estrada faced competing, competent advice about the balancing of risk versus possible benefit that is an inherent part of plea negotiations. Even if Garcia's disagreement with the lead attorneys made the choice of strategy more difficult than if one attorney had outlined various options, Torres-Estrada's struggle nonetheless reflected only the typical predicament of defendants weighing their options in plea negotiations rather than any deficiency in Garcia's performance.

Appendix A

One aspect of Garcia’s performance, however, requires particular attention: his repeated assurance that the government was still considering the specific counteroffer of thirteen years/six months (162 months). Torres-Estrada stated in his declaration that Garcia made that representation from the time he (Torres-Estrada) discharged the lead attorneys “until a few days before” he pleaded guilty. We found no evidence in the record of ongoing consideration by the government of that specific counteroffer during that time period—or, for that matter, any evidence of the government’s response to Garcia’s efforts to secure a better deal. In other words, the record lacks details on Garcia’s interactions with the government after Granger and Sapone withdrew.²⁵

25. Although the record does not reveal the government’s bargaining position toward Torres-Estrada in the months after Henwood reported in October 2010 that the government offer would not be reduced, there is evidence that the parties were engaged in plea negotiations during that period. In its response to Torres-Estrada’s pre-sentencing *Lafler-Frye* motion, the government stated that “[p]rior to the second indictment, the parties had been negotiating a plea that would have resolved [Torres-Estrada’s] criminal liability” under the first indictment, and in its brief on appeal, the government described those negotiations as continuing until “the new criminal charges were imminent.” The government also pointed out in its brief that “the same situation occurred with co-defendant” Negron-Hernandez and noted that his negotiations continued “even after October 2010.” In addition, as recounted above, in a motion Garcia filed in February 2011 seeking to sever Torres-Estrada’s case from those of the other defendants scheduled for trial the next month, Garcia stated that he “had been negotiating with the government to try to reach a plea agreement.”

Appendix A

Nevertheless, for the purpose of resolving the issue before us, we will assume favorably to Torres-Estrada that Garcia did misrepresent the state of the negotiations when he repeatedly indicated—after Henwood had said that the government would not reduce its offer of fifteen years/eight months (188 months)—that the government was still actively considering the thirteen-year/six-month (162-month) counteroffer that Garcia had made at the September 28 meeting with Henwood.²⁶ Even if those misrepresentations amounted to deficient performance,²⁷ however, Torres-Estrada could not satisfy the prejudice prong of his Sixth Amendment claim because the record shows that the statements, given their timing, had no impact on his loss of the government's offer.

26. In making that assumption, we note that the government bears some responsibility for the lack of a more detailed record on this issue, having argued to the district court that Torres-Estrada's § 2255 motion should be denied without an evidentiary hearing. Nor does the government in its brief to us provide its understanding of the status of the thirteen-year/six-month counteroffer after mid-October 2010 and before it suspended plea negotiations on the first indictment.

27. Although we raise the possibility of deficient performance based on Garcia's falsely telling his client that the thirteen-year/six-month counteroffer was under active consideration, we again note the significant differences from *Frye* and *Lafler*, where the attorneys either failed to convey a plea offer at all (*Frye*) or gave advice based on a mistaken understanding of the law (*Lafler*). Here, the assumed misrepresentation was limited to telling Torres-Estrada that the best-case outcome for the renewed plea negotiations was currently being considered.

Appendix A

That is to say, the timing of Garcia's comments relative to Torres-Estrada's decision-making ends up being critical to our prejudice analysis. In describing his decision to sign onto Garcia's strategy in October 2010, Torres-Estrada said he did so after Garcia told him he "would be able to obtain a better deal" and that Garcia "would continue *trying to obtain* an offer of 162 months' (13 years, 6 months') imprisonment." (Emphasis added.) Garcia's stated goal, in other words, was to lower the government's original offer of fifteen years/eight months (188 months), ideally by resurrecting the thirteen-year/six-month (162-month) deal that Garcia had proposed at the September 28 meeting and that Henwood later rejected. But, despite Garcia's confidence about his negotiating ability, he made no claim that he could obtain that specific deal before Torres-Estrada decided in October 2010 to "follow[] Mr. Garcia's advice" to discharge Granger and Sapone and allow Garcia to continue negotiating. Hence, the record makes clear that Torres-Estrada's decision to forgo the government's offer at that time did not depend on the thirteen-year/six-month deal. Indeed, Torres-Estrada knew that the government had just rejected that counteroffer, and he thus necessarily understood that any reconsideration of it by the government at that point would simply reflect Garcia's "trying to obtain" it.

According to Torres-Estrada, Garcia's misrepresentations about the government's actual consideration of the thirteen-year/six-month counteroffer only began thereafter, i.e., "[f]rom the time that [Torres-Estrada] discharged . . . Granger and Sapone." Yet, by this point, Torres-Estrada had already made the decision to

Appendix A

accept the risk of delaying acceptance of the government's offer based only on Garcia's assertion that he would be able to improve the government's offer, and not necessarily by obtaining the previously rejected thirteen-year/six-month deal. To be sure, Garcia's repeated representations about that deal may have amplified Torres-Estrada's hope that the government would agree to it. We cannot conclude, however, that Garcia's statements about the government's actual consideration of that counteroffer were the reason Torres-Estrada stuck with Garcia's strategy during the limited relevant timeframe—i.e., from mid-October 2010, when Torres-Estrada chose Garcia's approach, and the point when the government decided to suspend negotiations on the first indictment in anticipation of the second indictment.²⁸

Garcia's representations about the thirteen-year/six-month counteroffer during that period, even if misleadingly based on what he was seeking rather than on any signal from the government, were simply a version of the same over-confident claim that had prompted Torres-Estrada to discharge Granger and Sapone in the first place—i.e., that Garcia would be able to negotiate a better deal for

28. We think it likely that the government considered the new charges "imminent" by late December 2010 or early in January 2011. *See supra* note 25. We infer that timing from two facts: Negron-Hernandez received no response to his late December request to extend the deadline for his plea negotiations to January 12, and the second indictment was filed in early February. *See id.* The government states that it resumed negotiations after the second indictment "so that the parties could negotiate a consolidated plea agreement that would dispose of both cases."

Appendix A

him than his lead attorneys and that he was trying for the one he had proposed at the September 28 meeting. Torres-Estrada chose Garcia's aggressive strategy with no guarantee of its outcome, and despite explicit warnings from Granger and Sapone that delay could result in the government's withdrawing or increasing its offer for reasons that included the filing of new charges.²⁹ We see no reasonable probability that, but for Garcia's repeated assurances that the government was deliberating about the specific thirteen-year/six-month proposal, Torres-Estrada would have abandoned his commitment to Garcia's aggressive strategy—and the goal of obtaining *some* better deal—before the government's offer was off the table. *See Frye*, 566 U.S. at 147 (explaining that ineffective-assistance-of-counsel claims premised on the loss of a more favorable plea deal require defendants to demonstrate, *inter alia*, “a reasonable probability” that they would have accepted the lower plea offer before “the prosecution cancel[ed] it”). Hence, even if Garcia's reports on the thirteen-year/six-month counteroffer misrepresented the status of that specific deal, Torres-Estrada has failed to show that those statements led to

29. As noted, *see supra* Section I.B, Granger stated that the government's original plea offer included a verbal promise that it would not pursue new charges against Torres-Estrada. The government maintains that, even if the parties “agreed to the proposed terms in September of 2010, [Torres-Estrada] still would have faced a subsequent indictment.” We need not dwell on the scope of Henwood's promise, however, because whether the government's original offer would have foreclosed the second indictment would be a pertinent issue only if Torres-Estrada could show that he would have accepted that offer while it remained available.

Appendix A

a less favorable sentencing outcome—i.e., that he would have accepted the government’s original offer before “the prosecution cancel[ed] it.” *Frye*, 566 U.S. at 147.

* * *

In sum, we cannot conclude that Garcia’s plea-negotiation performance amounted to “constitutionally deficient” representation that resulted in Torres-Estrada losing a more favorable plea deal than the one he ultimately obtained. *Walker v. Medeiros*, 911 F.3d 629, 633 (1st Cir. 2018). We thus hold that Torres-Estrada has failed to show a violation of his Sixth Amendment rights and, accordingly, affirm the district court’s denial of his request for sentencing relief.

So ordered.

**APPENDIX B — OPINION AND ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO,
FILED APRIL 26, 2019**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 17-1373 (PG)¹

ELVIN TORRES-ESTRADA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

Before the court is Petitioner Elvin-Torres Estrada’s (“Petitioner” or “Torres-Estrada”) motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255² (Dockets No. 7 and No. 9), and the United States’ (or the “Government”) opposition thereto (Docket No. 25). For the following reasons, the court **DENIES** Petitioner’s motion to vacate.

1. Related Crims. No. 09-173-5 (PG); 11-045-1 (PG).

2. Petitioner failed to request leave to file a reply under Local Rule 7(c). Therefore, Petitioner’s Reply (actually called Request for Consideration of New U.S. Supreme Court Precedent in Support of 2255) (Docket No. 39) is hereby stricken from the record.

*Appendix B***I. BACKGROUND**

On September 28, 2009, a Grand Jury returned a seven-count First Superseding Indictment charging Petitioner and 64 co-defendants of various drug trafficking offenses. *See* Criminal Case No. 09-173 (PG). On April 15, 2010, a Grand Jury returned an 11-count Second Superseding Indictment charging the same co-defendants of the same or similar offenses. In the Second Superseding Indictment, Torres-Estrada was charged with: (1) conspiracy to distribute large amounts (stated in kilograms) of heroin, cocaine base, cocaine, marijuana, and detectable amounts of Percocet and Xanax within 1,000 feet of a public housing project, in violation of 21 U.S.C. §§ 841, 846, and 860 (Count One); (2) three counts of possession with intent to distribute in excess of 1 kilogram of heroin, 50 grams of cocaine base, 5 kilograms of cocaine, and 1,000 kilograms of marijuana, within 1,000 feet of a public housing project, in violation of 21 U.S.C. § 841 (Counts Three, Four, Five and Six); (3) two counts of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), (Counts Seven and Eleven); and (4) narcotics and money laundering forfeiture allegations pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 982. *See* Crim. No. 09-173, Docket No. at 4-45. On February 9, 2011, a Grand Jury returned a one-count Indictment charging Petitioner and three other co-defendants with: (1) conspiracy to import controlled substances into the United States, in violation of 21 U.S.C. §§ 952(a) and 963. *See* Crim. No. 11-045, Docket No. at 1-3. On March 21, 2011 Torres-Estrada entered a guilty plea as to Count One of the Second Superseding Indictment in Criminal Case No. 09-173 (PG) and Count One of the Indictment

Appendix B

in Criminal Case No. 11-045 (PG). *See* Crim. No. 09-173, Docket No. 1513. On February 12, 2015, Torres-Estrada was sentenced to 288-months of imprisonment as to Count One in Criminal Case No. 09-173, and 120-months of imprisonment as to Count One in Crim. Case No. 11-045, to be served concurrently with each other. *See* Crim. No. 09-173, Docket No. 3451. Torres-Estrada filed notices of appeal in both cases on February 21, 2015. *See* Crim. No. 09-173, Docket No. 3459. On April 19, 2016, the Court affirmed the District Court's sentence and dismissed the appeal. *See* Crim. No. 09-173, Docket No. 3706.

II. STANDARD OF REVIEW

Under 28 U.S.C. § 2255, a federal prisoner may move to vacate, set aside, or correct his sentence “upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a); *Hill v. United States*, 368 U.S. 424, 426-427, 82 S. Ct. 468, 7 L. Ed. 2d 417 (1962); *Ellis v. United States*, 313 F.3d 636, 641 (1st Cir. 2002). Furthermore, “it is firmly settled that issues disposed of on a prior appeal will not be reviewed again by way of such a motion.” *Dirring v. United States*, 370 F.2d 862 (1st Cir. 1967).

Ineffective Assistance of Counsel Claims

The Sixth Amendment guarantees that in all criminal prosecutions, the accused have a right to the assistance of counsel for their defense. U.S. Const. amend. VI.

Appendix B

It has long been recognized that the right to counsel means the right to effective legal assistance. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n. 14, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)). Where, as here, a petitioner moves to vacate his sentence on ineffective assistance of counsel grounds, he must show that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686; *see also Argencourt v. United States*, 78 F.3d 14, 16 (1st Cir. 1996) (a petitioner seeking to vacate his sentence based on the ineffective assistance of counsel bears a very heavy burden). “Judicial scrutiny of counsel’s performance must be highly deferential.” *Strickland*, 466 U.S. at 689.

For Petitioner’s ineffective assistance of counsel claim to succeed, he must satisfy a two-part test. First, Petitioner needs to show that “counsel’s representation ‘fell below an objective standard of reasonableness.’” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010) (quoting *Strickland*, 466 U.S. at 688). Second, Petitioner must establish that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been more favorable to him. *See United States v. Carrigan*, 724 F.3d 39, 44 (1st Cir. 2013) (citing *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 1409, 182 L. Ed. 2d 379 (2012)). Petitioner must demonstrate both incompetence and prejudice. Failure to prove one element proves fatal for the other. *See United States v. Caparotta*, 676 F.3d

Appendix B

213, 219 (1st Cir. 2012). Nonetheless, the court “need not address both requirements if the evidence as to either is lacking.” *Sleeper v. Spencer*, 510 F.3d 32, 39 (1st Cir. 2007). Thus, “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice...that course should be followed.” *Strickland*, 466 U.S. at 679.

III. DISCUSSION

On March 17, 2017, Torres-Estrada filed the pending motion to vacate attacking his conviction and sentence. *See* Docket No. 7. At the underbelly of every argument contained in the motion is the belief that the Government has schemed to deprive Torres-Estrada of his constitutional rights and that he was deprived of effective assistance of counsel.

In regards to claims not presented on appeal, Petitioner has the added burden of proving good cause and actual prejudice with respect to the procedurally defaulted claims. *See Owens v. United States*, 483 F.3d 48, 56 (1st Cir. 2007) (setting forth analysis of claims subject to procedural default doctrine). The First Circuit has held that “[o]ne way to meet the cause requirement is to show constitutionally ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).” *Wider v. United States*, 806 F.3d 653, 658 (1st Cir. 2015). Conversely, if Petitioner fails to establish that the procedural default was the result of his attorney’s ineffectiveness, then such claims cannot be presented by way of a § 2255 motion. *See United States v. Frady*, 456 U.S. 152, 165, 102 S. Ct. 1584, 71 L. Ed. 2d

Appendix B

816 (1982) (holding that “a collateral challenge may not do service for an appeal”).

Furthermore, the court has deemed waived any other argument that is merely mentioned in passing or is hidden behind Petitioner’s primary complaints as a mere afterthought. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (holding that “issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived”).

Against this background, the court will address Petitioner’s adequately developed claims in turn.

A. Government’s Scheme/Misconduct to Violate Constitutional Rights

Petitioner makes several arguments to further his viewpoint that the Government schemed to deprive him of his Fifth Amendment right to due process, Sixth Amendment right to effective assistance of counsel, and Eight Amendment right against cruel and unusual punishments. *See* Docket No. 7 at 9. Likewise, as part of the alleged scheme, Petitioner argues that the Government intentionally withheld critical *Brady/Giglio*³ material that would have been helpful in the plea bargaining process.

3. *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) (finding that a reversal of the judgment of conviction is proper when the Government used false testimony to secure a conviction.). *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (holding that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or punishment”).

Appendix B

Id. Petitioner claims that a “[d]ismissal of [the] indictment can be the only just remedy where an accused establishes a pattern of serious prosecutorial misconduct.” Docket No. 7 at 17.

i. Fifth Amendment, Sixth Amendment, and Eight Amendment Claim

As noted before, Petitioner argues that the Government has schemed to deprive him of his rights of due process, effective assistance of counsel, and protection against cruel and unusual punishment. As explained below, the relevant facts used to buttress his claim are not germane to his conviction or sentence. As such, his request for relief on this ground fails.

The situation that gave rise to this claim has to do with the murder of a correctional officer at the MDC Guaynabo in Puerto Rico. *See* Docket No. 7 at 5. Torres-Estrada argues that he was falsely accused of using smuggled cell phones to plan the murder. As a result, he was subjected “to degrading, inhumane, and physically harmful treatment by BOP employees...” *Id.* Not only was he subjected to a cavity search, but he was also subjected to several rounds of X-rays. Both of these methods proved to be ineffective in the search for the smuggled cell phones. But, according to Petitioner, the pattern of misconduct and abuse did not end there. Torres-Estrada alleges that he was placed in solitary confinement for over 26 months precisely so he could then be surrounded by jailhouse informants after he was psychologically weakened in solitary confinement. *See* Docket No. 7 at 18. Furthermore, Torres-Estrada alleges that he was deprived of his Sixth Amendment right to

Appendix B

effective assistance of counsel because he had no access to his attorneys as the Government purposely delayed charges for the murder of the correctional officer as it tried to gather information through informants.⁴

The problem with Torres-Estrada's claim is that his conditions of confinement are not subject to collateral review under 28 U.S.C. § 2255. To challenge his conditions of confinement, Petitioner has to exhaust administrative remedies, as "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Therefore, no court could entertain this specific claim until Petitioner exhausts administrative remedies. Petitioner's motion to vacate is thus denied on this ground.

ii. Exploitation of Conflict During Plea Negotiations

Torres-Estrada argues that (1) the Government encouraged local counsel, Ramon Garcia Garcia ("Mr. Garcia"), to provide legal advice that conflicted with the advice offered by his lead counsels, Edward Sapone ("Mr. Sapone") and Raymond Granger ("Mr. Granger"); (2) the Government secretly encouraged local counsel to represent Petitioner in a way that conflicted with the

4. Petitioner is referring to the murder of Lieutenant Osvaldo Albarati, for which another individual was charged and convicted after trial by jury.

Appendix B

advice provided by lead counsel; (3) the Government took advantage of the serious conflict erupting between local and lead counsel by negotiating with local counsel instead of lead counsel. *See* Docket No. 7 at 33. The first two claims were argued in a perfunctory manner and are unsupported, so the court will address the third claim. *See Zannino*, 895 F.2d at 17 (issues adverted to in a perfunctory manner are deemed waived).

Neither the Federal Rules of Criminal Procedure nor the Local Rules of the District of Puerto Rico make a distinction between *lead* and *local* counsel. Therefore, all counsel appearing in a case are fully accountable to their client and the court regardless of the term used. Petitioner makes reference to a sworn statement from Mr. Granger, which does not contain any details for the court to conclude that Mr. Garcia had less responsibility than Mr. Granger and Mr. Sapone.⁵ As for Petitioner's statement that Mr. Garcia sabotaged lead counsel by engaging in plea negotiations without authorization from lead counsel, the court must note that:

[A]lthough the term 'local counsel' at one time may have meant less responsibility on the part of attorneys so designated, it is clear to the court, and should be to every lawyer who litigates in this country, that in the last ten years developments in the law have invalidated this prior meaning. The trend is, properly away from the view that some counsel have only limited responsibility and represent a client in

5. *See* Crim. No. 09-173, Docket No. 2864 at 3.

Appendix B

court in a limited capacity, or that local counsel is somewhat less the attorney for the client than is lead counsel.

Gould, Inc. v. Mitsui Min. & Smelting Co., 738 F. Supp. 1121, 1125 (N.D. Ohio 1990).

In this court, counsel is counsel regardless of the term used.⁶ Therefore, the Government did not violate any norm by engaging in plea negotiations with Mr. Garcia. Petitioner could have proven that he intended Mr. Garcia to have limited responsibility, but he has not. It would be hard for the court to conclude so given that Petitioner discharged his so called “*lead*” counsel and at some point decided to remain with Mr. Garcia as far as his choice of legal representation is concerned. Petitioner needed to at least identify the contractual limitations imposed on Mr. Garcia, but again he did not. The court has no other option but to conclude that Mr. Garcia had the same responsibilities and duties as “lead counsels.” Thus, Petitioner’s request for habeas relief on this ground is denied. The court will discuss Mr. Garcia’s actual performance later on.

iii. *Brady* Claim

Torres-Estrada contends that the Government failed to disclose “information that was critical to his counsel’s ability to engage in effective plea negotiations.” Docket No.

6. See also Local Civil Rule 83A(f) and Local Criminal Rule 162 (D.P.R. 2009).

Appendix B

7 at 69. This material, Petitioner argues, was necessary for the sentencing phase of his case, thus under the purview of *Brady*. This information was listed on a letter sent to the Government on February 7, 2014. *See* Docket No. 7 at 68. Petitioner also claims that the Government failed to reveal sworn statements of witness Maribel Olivo. *Id.* at 69-70. Upon careful review of the motion and supporting documents, Petitioner's *Brady* claim is riddled with conclusory statements many of which were already settled. *See* Crim. No. 09-173, Docket No. 3447. Moreover, Petitioner failed to show how any of the withheld material caused him prejudice.

In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the Supreme Court held that the government violates the accused's due process rights whenever it suppresses evidence favorable to the accused, because it is material to determining either guilt or punishment. A true *Brady* violation has three components, namely, [t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-282, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999). To prove prejudice, Petitioner has to show that there was a "reasonable probability that the result of the trial would have been different if the suppressed documents had been disclosed to the defense." *Jackson v. Marshall*, 634 F.Supp.2d 146, 160 (D. Mass. 2009) (quoting *Strickler*, 527 U.S. at 289). The right Petitioner has to discover exculpatory evidence does not require the prosecution to

Appendix B

submit its entire file to the Petitioner, *see United States v. Agurs*, 427 U.S. 97, 109, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976), nor does it include “the unsupervised authority to search through the [government’s] files.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 59, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987).

When it comes to Torres-Estrada’s enumerated list of supposed *Brady* material, most, if not all, of the requested evidence was decided by this court. In other words, the list in question, found in the letter dated February 7, 2014, contains the same material requested by Petitioner in his Motion for Release of Brady Material for Sentencing, which was denied. *See* Crim. No. 09-173 (PG), Docket No. 3337. At any rate, the court finds that Petitioner failed to prove the third element of the alleged violation, i.e., that the withholding of material caused him prejudice. Petitioner must prove that if it were not for the Government’s suppression of the sworn testimony, Torres-Estrada would not have pleaded guilty, but instead gone to trial. *See Ferrara v. United States*, 456 F.3d 278, 291 (1st Cir. 2006). Again, even if the court were to reconsider previously settled issues, Petitioner fails to demonstrate prejudice.

As far as the sworn statement of Maribel Olivo is concerned, the court does not find that there was a *Brady* violation. Assuming, *arguendo*, that the sworn statement is indeed a favorable piece of evidence, that is not enough to prove that the Government “committed a classic *Brady* violation.” *See* Docket No. 7 at 71. Petitioner must still prove the element of prejudice, which he has not. Nothing in the record suggests that, were it not for the

Appendix B

Government's suppression of Olivo's testimony, Torres-Estrada would have proceeded to trial, or absent that disclosure the result of his case would have been different. However, Petitioner seems to presume that the mere withholding of evidence constitutes a *Brady* violation, which in and of itself requires vacating his conviction and sentence. Petitioner's motions fall woefully short of showing his entitlement to such extraordinary relief. On the record as it stands, the court concludes that his *Brady* violation claims lack merit and his motion on those grounds is denied.

B. *Lafler/Frye*⁷ Claim

Petitioner claims that (1) Mr. Garcia provided ineffective assistance of counsel during the 'first round' of plea negotiations which led to the more severe plea that Torres-Estrada accepted and that (2) his ineffective assistance of counsel waiver does not apply to Mr. Garcia as it pertains to the plea negotiations. *See* Docket No. 7 29-43. It has been established by the Supreme Court that "[d]efendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." *Lafler v. Cooper*, 566 U.S. 156, 162, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012). We agree with Petitioner that his ineffective assistance of counsel waiver does not extend to Mr. Garcia. Now, even in that case, the court would be hard-pressed to find that Mr. Garcia provided ineffective assistance of counsel during the plea-bargaining process.

7. *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376, 182 L. Ed. 2d 398 (2012) and *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012).

Appendix B

For his ineffective assistance claim to succeed, Petitioner must pass the *Strickland* test in the plea-bargaining context. Torres-Estrada must thus establish two things: (1) that Mr. Garcia's representation fell below an objective standard of reasonableness, and (2) such subpar representation caused him prejudice. At this stage, the court asks "whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill*, 474 U.S. at 59; *Lafler*, 566 U.S. at 163, 132 S. Ct. at 1384. Petitioner argues that Mr. Garcia's representation fell below an objective standard of reasoning because (1) Mr. Garcia *sabotaged* plea negotiations when it went against "*lead* counsel's" strategy; and (2) Mr. Garcia gave erroneous advice when he told Petitioner that he "should be facing a low-end sentence of 8-9 years, up to a high-end sentence of 11-12 years, but no more than that." *See* Docket No. 7 at 35. Torres-Estrada argues that he suffered prejudice because were it not for Mr. Garcia's ineffective assistance, he would have had the benefit of the Government's original plea rather than being "forced" to take the less favorable plea offer that led to his conviction. *See id.* at 32-33. For the following reasons the court finds that Petitioner has not proven either of the *Strickland* prongs.

i. Objective Standard of Reasonableness

The Government's original plea offer was of 188 months, or 15 years and 8 months, of imprisonment. *See* Crim. No. 09-173, Docket No. 2863-2. Petitioner's "lead counsel" devised a strategy and gained authorization from Torres-Estrada to counter-offer 14 years. *See* Crim.

Appendix B

No. 09-173, Docket No. 2865 at 9. Shortly after Petitioner agreed to the counter-offer devised by Mr. Granger and Mr. Sapone, Mr. Garcia met with Torres-Estrada. In this meeting, Mr. Garcia allegedly convinced Torres-Estrada “not [to] authorize a counter-offer of more than 13 years (156 months).” *Id.* at 8. On or about September 28, 2010, Mr. Sapone and Mr. Granger tried to convince Petitioner that he should re-authorize the 14-year counter-offer. What did Torres-Estrada do? By his own admissions, he authorized a counter-offer of 13 years and 8 months because he “did not feel comfortable changing [his] decision again.” *Id.* at 10. What is more, Torres-Estrada insisted that Mr. Garcia be present during the negotiations even when Mr. Granger and Mr. Sapone advised him to remove Mr. Garcia from negotiations. *Id.* So, even when notified of Mr. Garcia’s actions, Torres-Estrada decided to trust Mr. Garcia and keep him in his dream-team of attorneys.

Based on the circumstances explained up to this point, the court cannot indulge Petitioner’s assertion that attorney Garcia intended to sabotage, or was successful in sabotaging his client’s plea negotiations with the prosecution. Mr. Garcia was confident that he could negotiate a better deal than the 14-year counter-offer, so he devised a strategy and presented it to Torres-Estrada, who then authorized the counter-offer. Mr. Sapone and Mr. Granger then provided their own input on the viability of Mr. Garcia’s offer, which resulted in Torres-Estrada authorizing a 13 years and 8 months counter-offer. If anything, the record here heavily suggests that Petitioner received input from various experienced attorneys and ultimately decided what he wanted to authorize.

Appendix B

That being said, Mr. Garcia's strategy proved to be a sound one, to say the least. At the September 28, 2010 meeting with the Government, Mr. Garcia participated and proposed a deal—for the parties to recommend 13 years and 6 months of imprisonment—, which the Government at the very least heard, but ultimately rejected. *Id.* At the end of the day, the Government was not obligated to accept any counter-offer. Indeed, prosecutors are not required to offer pleas or enter into negotiations, period. By his own admission, it can be deduced that the root cause of what Petitioner is characterizing as ineffective assistance of counsel is nothing more than infighting between the attorneys caused or allowed by Torres-Estrada himself. After all, even after being informed that Mr. Garcia was affecting his defense strategy, Petitioner decided to trust and remain with Mr. Garcia and discharge Mr. Sapone and Mr. Granger. *See* Crim. No. 09-173 (PG), Docket No. 1208. Petitioner cannot now rely on his own strategic mistakes to attack his conviction and sentence on ineffective assistance of counsel grounds. Petitioner also forgets that the sentencing judge was never bound by any plea agreement, more or less favorable, or the would be sentencing recommendations made by either side.

ii. Prejudice

Petitioner argues that he suffered prejudice because Mr. Garcia provided legally uninformed and ineffective advice. Apparently, Mr. Garcia told him that he would be facing a low-end sentence of 8-9 years and a high-end sentence of 11-12 years. *See* Docket No. 7 at 35. Petitioner had to elaborate more on this assertion instead

Appendix B

of presuming that he received legally uninformed advice. But for argument's sake, the court will assume that Mr. Garcia's advice was indeed unsound to move on to the next prong. Withal, Torres-Estrada has shown no prejudice.

To show prejudice Torres-Estrada needed to prove two things: (1) that but for counsel's deficient performance there is a reasonable probability Torres-Estrada would have accepted the original plea offer, and (2) that the trial court would have accepted the guilty plea and sentenced him accordingly. *See United States v. Rivera-Ruperto*, 852 F.3d 1, 7-9 (1st Cir. 2017) (citing *Lafler*, 566 U.S. at 164, 132 S. Ct. at 1385, and *Strickland*, 466 U.S. at 688) (finding no ineffective assistance of counsel at the plea bargaining stage where Petitioner failed to show requisite prejudice, and specifically, that there was a reasonable probability that any plea deal (much less the allegedly favorable 12-year plea deal) would have been presented to the court but for counsel's purported ineffective assistance). As it pertains to the original offer, there is nothing in the record that shows that Petitioner would have accepted said offer. This is so because even "lead counsel" was advocating for a 14-year counter-offer. Moreover, even after listening to everything defense counsels had to say about plea negotiation strategy, Torres-Estrada decided to authorize one for 13 years and 8 months. Therefore, it would be hard for this court to conclude that Torres-Estrada would have accepted the original offer if it were not for Mr. Garcia.

Even if Torres-Estrada had shown that he would have accepted the original offer in time, he has failed to show that the trial court would have accepted the 188-month

Appendix B

sentencing recommendation without more. *See Rivera-Rivera v. United States*, 844 F.3d 367, 372-73 (1st Cir. 2016) (citing *Frye*, 132 S. Ct. at 1409) (explaining that to show prejudice in the plea negotiation context, petitioner “must adduce facts indicating a reasonable probability that the prosecution would not have withdrawn the plea offer and that the district court would have imposed a sentence in accordance with the terms of the offer.”). And even if prejudice was shown, a dismissal of the indictment is not the only just remedy Torres-Estrada is entitled to, as the “trial court can...exercise its discretion in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence respondent accordingly, or to leave the convictions and sentence from trial undisturbed.” *Lafler*, 566 U.S. at 174, 132 S. Ct. at 1391. Because Torres-Estrada has not shown actual prejudice his motion to vacate on these grounds is denied.

To sum up...

Again, what Petitioner fails to comprehend—even after all of the years he has been relitigating the alleged internal discord created by attorney Garcia and the missed opportunity to accept a better plea offer—is that no sentencing recommendation made pursuant to any plea agreement would have been binding on the sentencing court. In this regard, Petitioner’s arguments are wholly speculative.

On a related note, the extensive record of underlying criminal proceedings and the plea agreement signed by

Appendix B

Petitioner demonstrate that his decision to enter a guilty plea was made knowingly and voluntarily, and not the product of any of his attorney's ineffective assistance or coercion. As the trial record shows, Petitioner indeed exercised his right to retain and be represented by the attorneys of his choice, and just as importantly, the court complied with its duty to inquire and probe into the purported conflicts or issues continually asserted by Torres-Estrada and his legal team through the criminal prosecution.⁸ See *United States v. Diaz-Rodriguez*, 745 F.3d 586, 590 (discussing the trial court's duty to inquire into the reasons for a defendant's dissatisfaction with *appointed* counsel). Conversely, Petitioner has failed to point to any evidence to show that his guilty plea was invalid on any basis. In fact, he has not even requested to withdraw it.⁹ Rather, Petitioner presses for dismissal of the charges against him. This the court cannot do.

At the end of the day, Torres-Estrada still has not shown that Mr. Garcia's or any of his other attorneys' performance "in advising his guilty plea fell below the standard of performance of reasonable proficient counsel, and second, that by such inadequate performance, [he] was induced to enter a guilty plea which he otherwise would not have entered." *United States v. Dunfee*, 821 F.3d 120,

8. As the parties are well aware, per their own motions and due to the sensitive nature of some of the attorney-defendant and plea bargaining issues, portions of the trial record have remained under seal or their viewing restricted to selected parties and court users only.

9. And he should know by now that, were the court to withdraw his guilty plea, he would still be up against the ropes.

Appendix B

128 (quotation marks omitted) (quoting *Lopez-Nieves v. United States*, 917 F.2d 645, 647 (1st Cir. 1990)) (further noting that “[w]here...the defendant was represented by multiple attorneys, an ineffective assistance challenge is particularly difficult to mount”). See *United States v. Salamon*, 220 F. Supp. 3d 202, 207-08 (D. Mass. 2016) (rejecting ineffective assistance of counsel claim upon finding that petitioner failed to establish that his sentence would have been any shorter if, despite counsel’s advice, he had chosen to offer another plea or declined to plead guilty and proceeded to trial).

IV. EVIDENTIARY HEARING

Torres-Estrada has requested an evidentiary hearing. See Docket No. 7 at 21. The United States, in turn, believes that such a hearing is not necessary. Evidentiary hearings in § 2255 cases are the exception, not the norm, and there is a heavy burden on the petitioner to demonstrate that an evidentiary hearing is warranted. See *Moreno-Morales v. United States*, 334 F.3d 140 (1st Cir. 2003). A hearing “is not necessary when a § 2255 petition is inadequate on its face, or although facially adequate, is conclusively refuted as to the alleged facts by the files and records of the case.” *United States v. DiCarlo*, 575 F.2d 952, 954 (1st Cir. 1978).

In Torres-Estrada’s case, even if the court deemed his petition as facially adequate, the fact of the matter is that the record belies his allegations. Having ruled that the Torres-Estrada’s claims, including those regarding the alleged ineffective assistance of counsel, lack merit, the court finds that a hearing is not warranted. Accordingly, Petitioner’s request is **DENIED**.

Appendix B

V. CONCLUSION

For the reasons previously explained, the court finds that Torres-Estrada's claims lack merit. Accordingly, his request for habeas relief under 28 U.S.C. § 2255 (Dockets No. 7 and No. 9) is **DENIED**. The case is, therefore, **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

VI. CERTIFICATE OF APPEALABILITY

It is further ordered that no certificate of appealability should be issued in the event that the Petitioner files a notice of appeal because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

In San Juan, Puerto Rico, April 26, 2019.

S/ JUAN M. PÉREZ-GIMÉNEZ
JUAN M. PEREZ-GIMENEZ
SENIOR U.S. DISTRICT JUDGE