Appendix A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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December 17, 2025

Mauricio Gonzalez
FCI Oakdale II - Inmate Legal Mail
PO BOX 5010
OAKDALE, LA 71463

Appeal Number: 25-11443-G
Case Style: Mauricio Gonzalez v. USA
District Court Docket No: 9:24-cv-81525-DMM
Secondary Case Number: 9:21-cr-80087-DMM-1

The enclosed order has been ENTERED.

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MOT-2 Notice of Court Action

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11443

MAURICIO GONZALEZ,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:24-cv-81525-DMM

Before GRANT and KIDD, Circuit Judges.

BY THE COURT:

Mauricio Gonzalez is a federal prisoner seeking a certificate of appealability and leave to proceed in forma pauperis to appeal the denial of his 28 U.S.C. § 2255 motion, and the denial of his Fed. R. Civ. P. 59(e) motion. He now moves this Court to reconsider its September 25, 2025, order denying a certificate of appealability and denying leave to proceed in forma pauperis as moot. After

careful review, Gonzalez's motion for reconsideration is DENIED, as he has offered no new evidence or arguments of merit to warrant relief.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-81525-CV-MIDDLEBROOKS
(CASE NO. 21-80087-CR-MIDDLEBROOKS)

MAURICIO GONZALEZ,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER DENYING MOTION TO VACATE BROUGHT PURSUANT TO 28 U.S.C. § 2255

THIS CAUSE is before the Court on the *pro se* Amended Motion to Vacate ("Amended Motion") (DE 8)[1] brought pursuant to 28 U.S.C. § 2255 by Movant Mauricio Gonzalez ("Movant") attacking his convictions and sentences for receipt of child pornography and transportation of a minor with intent to engage in criminal sexual activity following a jury verdict. *See United States v. Gonzalez*, No. 9:21-cr-80087-DMM (S.D. Fla. 2021). Movant raises a claim of prosecutorial misconduct, and three claims alleging ineffective assistance of counsel prior to trial, at trial and sentencing. (*Id.* at 4–8). For the reasons set forth below, Movant's Amended Motions is **DENIED**.

[1] The notation "CDE ___" refers to docket entries in the criminal case, while the notation "DE ___" refers to docket entries in this civil proceeding.

I. BACKGROUND

A. Criminal Proceedings

On June 3, 2021, a federal grand jury returned a three-count Indictment charging Movant with attempted production of child pornography (Count 1), receipt of child pornography (Count 2), and transportation of a minor with intent to engage in criminal sexual activity (Count 3). (CDE 14). Prior to trial, Movant filed a counseled motion to dismiss Counts 1 and 2 of the Indictment on the basis that it failed to adequately notify Movant of the nature of the charges against him in that it did not identify the specific images or media involved in the offenses. (CDE 28). On July 27, 2021, I entered an Order denying the Movant's motion, finding that the Indictment "satisfied minimal constitutional notice requirements." (CDE 47). On July 26, 2021, Movant filed a counseled Written waiver of jury trial pursuant to Fed. R. Crim. P. 23(a). (CDE 43). On July 27, 2021, Movant proceeded to a one-day bench trial, at the conclusion of which I acquitted Movant as to Count 1 and found him guilty as to Counts 2 and 3. (CDE 50; CDE 59 at T. 141).[2]

Prior to sentencing, the probation officer prepared a Presentence Investigation Report ("PSI") which described Movant's crimes and calculated his criminal history. Because Movant was previously convicted of violating 8 U.S.C. § 1327, the base offense level was set at 23. (PSI ¶ 112). The base offense level was increased to a level 41 based on a career offender enhancement, specific offense characteristics, and obstruction of justice. (PSI ¶¶ 30–32, 35, 37). Movant had one criminal history points which established a criminal history category I. (PSI ¶¶ 50, 51). Based upon a total offense level 41 and a criminal history category I, Movant's guideline imprisonment

[2] Citations to the trial transcripts are also designated by the letter "T." followed by the actual page number.

range was 324 months to 405 months in prison. (PSI ¶ 92). Statutorily, Movant faced the following statutory maximums terms of imprisonment: (a) twenty (20) years as to Count 2; and (b) life in prison as to Count 3. (PSI ¶ 91).

On November 4, 2021, Movant appeared for a sentencing hearing. (CDE 104). At the hearing, Special Task Force Officer Addo Trimino ("Officer Trimino"), testified that three hours after Movant was arrested, Movant's cellmate reported that Movant had offered to pay him $10,000 to murder A.S. (CDE 104 at T. 9–11, 13). Officer Trimino testified that Movant's cellmate had been a reliable law enforcement source in the past, and as related to the Movant, provided specific details about Movant's arrest, the location and walking habits of A.S., and correctly identified Movant in a photographic line-up. (*Id.* at 10–16). After considering the statements of the parties, the PSI containing the advisory guidelines, and the statutory factors, I adopted the findings of the PSI with the exception that I granted several of the objections with respect to enhancements and overruled the objections relating to the obstruction and the pattern of sexual activity, and the acceptance of responsibility. (*Id.* at 55). Thereafter, I sentenced Movant to two concurrent terms of 240 months in prison. (*Id.* at 55–56). Upon release from prison, Movant was ordered to serve twenty-five (25) years of supervised release. (*Id.* at 56). On November 8, 2021, the written Judgment was entered by the Clerk of Court. (CDE 87).

On May 11, 2023, the Eleventh Circuit Court of Appeals (the "Eleventh Circuit") *per curiam* affirmed Movant's convictions and sentences in a written but unpublished opinion.[3] *United States v. Gonzalez*, No. 21-13950, 2023 WL 3376578, *8 (11th Cir. May 11, 2023);

[3] On appeal, Movant asserted four claims of trial court error, including sufficiency of the evidence and calculation of his guideline sentence. (CDE 122).

(CDE 122). On December 11, 2023, the United States Supreme Court ("Supreme Court") denied Movant's petition for writ of certiorari. *Gonzalez v. United States*, 144 S. Ct. 498 (2023).

Undeterred in 2024, Movant filed numerous postconviction motions,[4] including a motion for new trial based on "newly discovered evidence" withheld by the Government regarding subscriber information for A.S.'s cell phone ending in 4039. (CDE 178). On September 12, 2024, I denied Movant's motion for new trial. (CDE 192). Petitioner appealed (CDE 194), and review of the Eleventh Circuit's on-line docket for this appeal, assigned case number 24-13030-G, reveals that Movant has filed his reply brief on February 26, 2025, and the appeal remains pending.

B. Motion to Vacate Proceedings

On December 1, 2024,[5] Movant filed an initial *pro se* § 2255 Motion (DE 1) together with a supporting Memorandum of Law (DE 1-1), and exhibits (DE 1-2, DE 1-4). Simultaneously, Movant filed a motion for leave to exceed the page limitations for filing a § 2255 Motion. (DE 3). On December 6, 2024, I denied the Movant's Motion and ordered Movant to file an amended motion, if he chose to do so. (DE 5). On December 15, 2024, Movant complied, timely filing the Amended Motion (DE 8) with supporting Affidavits (DE 8 at 13–21). In the Amended Motion, Movant raises the following grounds for relief: (1) The Government engaged in prosecutorial misconduct by coercing the victim Alexus Smith ("the victim") to testify falsely under threats by

[4] The previously filed multiple postconviction motions (CDE 164, CDE 165), which I denied (CDE 166; CDE 167). Petitioner appealed (CDE 168, CDE 169), and on September 30, 2024, the Eleventh Circuit *per curiam* affirmed my Orders denying Movant's multiple motions. *United States v. Gonzalez*, No. 24-12214, 2024 WL 4346699, *2 (11th Cir. Sept. 30, 2024); *see also* (CDE 204).

[5] Absent evidence to the contrary, in accordance with the prison mailbox rule, a *pro se* prisoner's filing is deemed filed on the date it is executed and handed to prison authorities for mailing. *Washington v. United States,* 243 F.3d 1299, 1301 (11th Cir. 2001); Fed. R. App. 4(c)(1).

the Government to deport and/or prosecute her and her family (DE 8 at 4); (2) He was denied effective assistance of pretrial counsel, who (a) erroneously allowed Movant to be interviewed by Natalie Lopez, a state attorney; (b) failed to challenge the use of prior predicate offenses; and (c) failed to investigate and consult with experts regarding the presentation of WhatsApp messages introduced at trial (DE 8 at 5); (3) He was denied effective assistance of trial counsel, for failing to: (a) challenge consent laws under federal and state law; (b) object to the predicate offense under 18 U.S.C. § 2243(a) by ignoring statutory elements which allowed the Government to broaden the charges beyond Congress's intent; (c) present a defense to Counts 2 and 3 of the Indictment; (d) cross-examine key Government witnesses; and (e)"secure closing arguments" thereby losing the chance to address factual errors and deficiencies in the Government's case (DE 8 at 7); and (4) He was denied effective assistance of sentencing counsel, for failing to object to the probation officer's enhancements to Movant's base offense level based on specific offense characteristics, obstruction of justice, and falsely stating that Movant faced deportation. (DE 8 at 8). The Government has filed a Response (DE 19), and Movant has filed a Request for Judicial Notice (DE 21) and a Reply (DE 22).

II. APPLICABLE LEGAL STANDARDS

A. 28 U.S.C. § 2255

The grounds for relief under 28 U.S.C. § 2255 are extremely limited. An inmate is entitled to relief under Section 2255 if the court imposed a sentence that: (1) violated the Constitution or laws of the United States, (2) exceeded its jurisdiction, (3) exceeded the maximum authorized by law, or (4) is otherwise subject to collateral attack. 28 U.S.C. § 2255(a); *McKay v. United States*, 657 F.3d 1190, 1194 n.8 (11th Cir. 2011) (citing § 2255(a)). A claim is procedurally defaulted if it could have been, but was not raised on direct appeal, unless Movant shows: (1) cause for the

default and actual prejudice or (2) a miscarriage of justice (also known as the "actual innocence" exception). *See McKay*, 657 F.3d at 1196 (citing *Lynn v. United States*, 365 F.3d 1225, 1234 (11th Cir. 2004)).

B. Ineffective Assistance of Counsel Principles

A prisoner challenging counsel's effectiveness must demonstrate that: (1) counsel's performance was deficient, and (2) a reasonable probability that the deficiency resulted in prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). The *Strickland* standard also applies to claims of ineffective assistance of counsel on appeal. *See Chateloin v. Singletary*, 89 F.3d 749, 752 (11th Cir. 1996) (citing *Matire v. Wainwright*, 811 F.2d 1430, 1435 (11th Cir. 1987) ("The standard for ineffective assistance is the same for trial and appellate counsel."); *see also Eagle v. Linahan*, 279 F.3d 926, 937 (11th Cir. 2001) (citing *Murray v. Carrier*, 477 U.S. 478, 488 (1986) (holding "[a]ttorney error is cause for procedural default only if the error rises to the level of constitutionally deficient assistance of counsel under the Sixth Amendment").

Deficient performance requires Movant to demonstrate counsel's actions were unreasonable or fell below prevailing professional norms. *See Strickland*, 466 U.S. at 688. The *Strickland* deficiency prong does not require a showing of what the best or "most good lawyers" would have done, but rather whether "[s]ome reasonable lawyer at trial the trial could have acted as defense counsel acted in the trial at issue and not what 'most good lawyers' would have done." *Dingle v. Sec'y, Dep't of Corr.*, 480 F.3d 1092, 1099 (11th Cir. 2007) (quoting *Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004)). "Even if counsel's decision appears to have been unwise in retrospect, the decision will be held to have been ineffective assistance only if it was 'so patently unreasonable that no competent attorney would have chosen it.'" *Id.* (quoting *Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir.1983)). *Strickland*'s prejudice prong

requires Movant to establish that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. If Movant cannot meet one of *Strickland*'s prongs, the Court need not address the other prong. *See id.* at 697; *Brown v. United States*, 720 F.3d 1316, 1326 (11th Cir. 2013). Bare and conclusory allegations of ineffective assistance are insufficient to satisfy the *Strickland* test. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *Boyd v. Comm'r, Ala. Dep't of Corr.*, 697 F.3d 1320, 1332–33 (11th Cir. 2012). Movant, not the Government, bears the burden of proof establishing that vacatur of the judgment is appropriate. *See Beeman v. United States*, 899 F.3d 1218, 1220–21 (11th Cir. 2018) (*en banc*).

III. DISCUSSION

A. Prosecutorial Misconduct Claim.

In claim 1, Movant asserts that the Government engaged in prosecutorial misconduct by : coercing Ms. Smith to testify falsely and threatening Ms. Smith and her family with deportation and filing criminal charges against them. (DE 8 at 4).

1. Procedural Default Defense.

The Government correctly argues the prosecutorial misconduct claim is procedurally defaulted because it could have been but was not raised on direct appeal. (DE 19 at 13–14). As cause to excuse the procedural default, Movant argues in his reply that counsel was ineffective for failing to pursue the issue on appeal. (DE 22 at 2). A claim of ineffective assistance of counsel may constitute cause for a procedural default. *See Murray*, 477 U.S. at 488. However, only a meritorious claim of ineffective assistance of counsel can constitute "cause," which occurs when "[t]he arguments the defendant alleges his counsel failed to raise were significant enough to have affected the outcome of his appeal." *United States v. Nyhuis*, 211 F.3d 1340, 1344 (11th Cir. 2000) (citing *Miller v. Dugger*, 858 F.2d 1536, 1538 (11th Cir. 1988)).

As discussed below, Movant has not demonstrated that counsel was ineffective, much less that had his prosecutorial misconduct claim been raised on direct appeal, his convictions and sentences would have been reversed, therefore, the claim is procedurally defaulted. *McKay*, 657 F.3d at 1196. Moreover, Movant has also not shown that a fundamental miscarriage of justice exception applies to excuse the procedural default as he has not demonstrated actual innocence of the charges for which he was convicted. *McKay*, 657 F.3d at 1196 (citing *Dretke v. Haley*, 541 U.S. 386, 388 (2004)). "[A]ctual innocence means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998) (citation omitted). Movant has not demonstrated that reasonable jurists would have found he was factually innocent of the charged offenses and the record proves otherwise. *See Mize v. Hall,* 532 F.3d 1184, 1195 (11th Cir. 2008) (habeas petitioner bears the burden of "establish[ing] actual innocence under the fundamental miscarriage of justice exception to the procedural default doctrine."). Consequently, the Movant's prosecutorial misconduct claim is procedurally defaulted from review in this Section 2255 proceeding.

2. Merits Discussion.

a. *Prosecutorial Misconduct.*

Movant asserts that the Government coerced Alexus Smith, the victim, to testify falsely at trial under threats by the Government to deport and/or prosecute her and her family. (DE 8 at 4). Movant provides a December 16, 2024 Affidavit from the victim affirming that she met the Movant in the summer of 2020, and that their relationship "from the very beginning . . . was a connection that felt genuine, natural, and deeply loving."[6] (*Id.* at 15). The victim claims that their "bond grew

[6] Movant fails to demonstrate why the victim's recanting Affidavit could not have been discovered and filed with the Court shortly after trial concluded and certainly while his direct appeal was still ongoing.

stronger," and now that she is twenty-one years old, her "love and commitment to him have only deepened." (*Id.*). The victim claims she and the Movant plan "to build a future together, to marry and start a family." (*Id.*). At the time she was a minor, the victim states that Movant always treated her "with respect, with kindness, and with a deep love." (*Id.* at 16). The victim claims the Government has "distorted" the love between her and the Movant. (*Id.*). The victim denies ever feeling "like a victim." (*Id.*). The victim now recants her trial testimony, averring that the Government made her "believe th[e] trial was all about some alleged murder-for-hire plot against [her] life" and threatened to charge her with "sex crimes committed by those who exploited [her], and destroy any hope of staying in the United States." (*Id.*). The victim contends the Government used "intimidation" and "victim-shaming" to forcer her into "submission," rather than protect her from her "abusers—who remain uncharged and free after over four years." (*Id.*) The victim maintains that the only way to stop the Government was to "tell them what they wanted to hear." (*Id.*). According to the victim, the Government's pressure and tactics "impacted" her ability to "think clearly, making it impossible for [her] to recount events truthfully." (*Id.* at 17). As a result, the victim alleges she "was forced to say what they wanted." (*Id.*). The victim maintains that the Government's "leading questions . . . forced [her] to affirm their version of events, leaving [her] unable to testify freely or truthfully." (*Id.*). Now, the victim denies Movant ever "asked [her] for sexually explicit pornographic material." (*Id.* at 18). Rather, the victim affirms that her testimony at trial regarding this fact was "simply not true." (*Id.*). The victim confirms being aware of and discussing with Movant the fact that the age consent in Florida is eighteen (18), varies by state, and that federally it is sixteen (16). (*Id.*). The victim further affirms that her "sexual discussions" with Movant "were never intended to continue illegal sexual activity in Florida" but "meant to avoid any violations of Florida law." (*Id.* at 18, 19). Instead, the victim claims the conversations

"explicitly referred to sexual activity [they] would have in other parts of the world, such as the Bahamas, Costa Rica, Puerto Rico, or even states like Georgia and Alabama, where [they] could not risk breaking Florida law." (*Id.* at 19). Regarding her sexual activity with Movant, the victim claims that, on October 16, 2020, they were at a hotel room, and when their intimacy "escalated," Movant asked her to "stop," therefore, there was "no sexual activity," because they were "both committed to waiting to avoid any legal issues." (*Id.*).

Here, the victim's Affidavit, recanting her trial testimony is viewed with extreme suspicion. *See Jackson v. Sec'y, Fla. Dep't of Corr.*, No. X, 2017 WL 11679839, at *5 (11th Cir. Nov. 29, 2017) (noting that "recantations of trial testimony 'are viewed with extreme suspicion by the courts'") (quoting *United States v. Santiago*, 837 F.2d 1545, 1550 (11th Cir. 1988)) (finding recantation is a new version of facts which constitutes new evidence, but noting that "recantations are viewed with extreme suspicion by the courts") (citing *Newman v. United States*, 238 F.2d 861, 862 (5th Cir. 1956)); *United States v. Dumas*, 280 F. App'x 848, 852 (11th Cir. 2008) (accord) (citation omitted). Recantation testimony is thus viewed because it "upsets society's interest in the finality of convictions, is very often unreliable and given for suspect motives, and most often serves merely to impeach cumulative evidence rather than to undermine confidence in the accuracy of the conviction." *In re Davis*, 565 F.3d 810, 825 (11th Cir. 2009) (quoting *Dobbert v. Wainwright*, 468 U.S. 1231, 1233–34 (1984) (Brennan, J., dissenting)).

The timing of the victim's recantations, uncorroborated by other evidence, is highly suspect. Her Affidavit was executed years after Movant's trial, and Movant did not present this Affidavit until now. I have reviewed the victim's Affidavit and find it contradicts her trial testimony, is highly suspect, and "would probably not produce a different result at a new trial." *See United States v. Calles*, 271 F. App'x 931, 943 (11th Cir. 2008); *see also United States v. Lee*,

68 F.3d 1267, 1274 (11th Cir. 1995) (finding new testimony would probably not produce a new result where Government was likely to impeach the new testimony with the witness's own inconsistent trial testimony). Notwithstanding, I further find there was more than sufficient direct and circumstantial evidence adduced at trial to support the Movant's convictions. *See* (CDE 59). Consequently, appellate counsel was not ineffective for failing to pursue this claim on appeal, and the claims remains procedurally defaulted, failing on the merits. Accordingly, claim 1 is DENIED.

b. ***Government Suborned Perjury.***

In claim 1, Movant also contends the Government suborned perjury by permitting the victim to testify falsely at trial. (DE 8). Success on a claim of prosecutorial misconduct requires a showing that the conduct infected the trial with unfairness so as to make the resulting conviction a denial of due process. *Greer v. Miller,* 483 U.S. 756, 765 (1987) (quoting *Donnelly v. DeChristoforo,* 416 U.S. 637, 643 (1974)). The Supreme Court has stated that "[t]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor." *Smith v. Phillips,* 455 U.S. 209, 219 (1982). Thus, a federal habeas court must determine whether the prosecutor's actions were so egregious that his misconduct amounted to a denial of constitutional due process. *Id.* Of course, a defendant is denied due process when the Government knowingly uses perjured testimony at trial or allows untrue testimony to go uncorrected. *Giglio v. United States,* 405 U.S. 150, 153 (1972); *Napue v. Illinois,* 360 U.S. 264, 269 (1959).

I find the record does not support a finding that the victim testified falsely at trial regarding her relationship with Movant. At trial, the victim testified she was eighteen (18) years old, and at

the time of the offenses she was seventeen (17) years old.[7] (DE 59 at T. 9). In July 2020, the victim testified she first met Movant at a family function, recalled exchanging phone numbers with him, and Movant asking whether she would be willing to make a sexual video with him, offering to pay her, but the victim declined. (*Id.* at T. 11–12). The victim further affirmed sending Movant a video of herself masturbating. (*Id.* at T. 10). The victim understood that a request by Movant to "send me pussy shots," meant he wanted her to send him pictures of her vagina.[8] (*Id.*). Later, during the summer of 2020, after going out with the Movant "a few times," she told Movant she does not have sex for free, so on two occasions Movant paid the victim to have sex with him. (*Id.* at T. 12–13).[9] In August 2020, the victim testified she and the Movant took a video that was sexual in nature and showed Movant masturbating her vaginal area with a blue toy.[10] (*Id.* at T. 17–18).

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[7] The victim testified that, at the time she met Movant, she had told him she was nineteen (19) years old. (*Id.* at T. 25, 53). However, by the time she returned to the Bahamas, she had conversations with Movant where she told him she was seventeen (17) years old and they discussed when she would be turning eighteen (18). (*Id.* at T. 53–54). The victim admitted she and Rene engaged were prostitutes, and that when she came to Miami, she would pay Renee's rent. (*Id.* at T. 27–28). According to the victim, Rene would set her up with "dates." (*Id.* at T. 28–29).

[8] The victim affirmed that the September 6, 2020 text in blue stating, "Send me pussy shots. Please hurry. Missed video call. Missed voice mail." all came from Movant. (*Id.* at T. 58–59). At that time, she did not send Movant the images because they were sent later on. (*Id.* at T. 59).

[9] The victim testified that her friend Renee who is a prostitute, convinced her to come to Florida. (*Id.* at T. 26–28).

[10] The victim testified the video was saved on her phone. (*Id.* at T. 18). The victim identified her phone, introduced into evidence by the Government, as the one she used to chat with Movant while she was in the Bahamas. (*Id.* at T. 23–24). In all, the victim stated that two or three sexual videos were recorded during the summer of 2020 when she was seventeen (17) years old and had sex with him over ten times. (*Id.* at T. 18, 22). The victim further recalled that after her return to the Bahamas, Movant was going to visit her there, but missed his flight, so he bought her an airline ticket so she could visit him in Florida. (*Id.* at T. 22–23). Upon her arrival, the victim testified she and the Movant stayed at a hotel where she engaged in oral sex with the Movant. (*Id.* at T. 22–23).

During that summer, she was living with Movant. (*Id.* at T. 15). The victim further testified that she and the Movant "went out a lot," and that Movant had taken her to Key West and Orlando. (*Id.* T. 13–14). At the time, the victim was a Bahamian national residing in Nassau but visiting the United States. (*Id.* at T. 14). While in the Bahamas, the victim testified she communicated with Movant by WatsApp and Facebook. (*Id.* at T. 15). During cross-examination, the victim admitted advising the Government that she did not want to testify against the Movant, but denied being provided housing by the Government, stating she was in foster care. (*Id.* at T. 32). However, the victim them equivocated, conceding the Government had provided a safe house for her to stay from October to May, and $200 for groceries and $200 as an "allowance." (*Id.* at T. 32–33, 36). The victim denied being made any promises from the Government. (*Id.* at T. 34–35). During re-direct, the victim admitted that her shelter/lodging was provided by the Department of Children and Families and denied being offered any kind of immigration status in exchange for her testimony. (*Id.* at T. 54, 56).

The victim acknowledged meeting with Detective Tremino on October 22nd and November 5th, 2020. (*Id.* at T. 38–39). Accordingly, to the victim, the Movant would not send her sexual photographs of himself, the photographs were always of them together. (*Id.* at T. 39–40). During cross-examination, the victim equivocated stating that Movant never asked her to send him sexual photographs, she just "sent them" of her own accord. (*Id.* at T. 40–41.) The victim again equivocated, admitting that he asked one time, but claims it was sent it to him "own [her] own time." (*Id.* at T. 41). The victim further admitted that no one from the Government had instructed her on how she should testify at trial, only to "tell the truth." (*Id.* at T. 60).

Special Agent Brian Ray ("Agent Ray"), with Homeland Security Investigations, and a computer forensic analyst, testified as an expert for the Government. (*Id.* at T. 74). Specifically,

Agent Ray testified that he performed specific forensic tasks on an IPhone introduced as Government's Exhibit 2, analyzing data extracted from the phone. (*Id.* at T. 75). Agent Ray next identified that the progress report, marked Government's Exhibit 7 showed data about the phone, its model number, international equipment identifiers, and "hash values of the file of the data that was extracted from the phone," including the fact that the data extracted from the phone was identical to the data he examined. (*Id.* at T. 76–77). Next, Agent Ray identified Government's Exhibit 8, a Cellebrite extraction report, containing the user accounts that were extracted from the phone, which identifies the email address and certain identifiers for 28 accounts, that include Facebook and Pinterest, set up on the phone, in addition to the username and email addresses, all relating to the victim. (*Id.* at T. 77–78). Agent Ray confirmed that the user of the IPhone was the victim, Alexus Smith. (*Id.* at T. 78). Next, Agent Ray identified that Government's Exhibit 9, a DVD, contained production of a WhatsApp chat extracted from the phone, including all the text communications back and forth, audio and video recordings, and photos. (*Id.* at T. 78–79). The WhatsApp chat involved the victim's IPhone and Movant's T-Mobile phone ending in 0067. (*Id.* at T. 79–80).

Importantly, Agent Ray testified that, on September 30, 2022, while using WhatsApp, a "closeup shot of a vagina being digitally penetrated" was transmitted from the victim's phone to Movant's phone. (*Id.* T. 81). Agent Ray then identified that Government's Exhibit 10, and the defense stipulated, that it is a "sexually explicit" content. (*Id.* at T. 83). Agent Ray identified the Government's composite Exhibit 11, as a compact disk from a camera roll that was used as the basis for a video transmitted on the WhatsApp chat, along with a screen shot of that video, and a map Agent Ray produced based on latitude and longitude information associated with that video file. (*Id.* at T. 84). Agent Ray confirmed that the video was saved on the camera roll of the victim's

IPhone, was produced approximately 15 minutes prior to it being sent by WhatsApp, and contained the geo location data confirming the item was transmitted on September 30, 2020 from Nassau. (*Id.* at T. 84–87). Next, Agent Ray identified Government's Exhibit 12, a compact disk containing a video, created in Palm Beach County on August 20, 2020, and recovered from the victim's phone "portraying interaction between two people, one of whom is being masturbated with a small blue object." (*Id.* at T. 88–90).

Next, Special Agent Louise Miller ("Agent Miller") confirmed that the text message sent on September 2, 2020 at 4:31 p.m., which says "Damn, I want you so bad" was sent by Movant to the victim. (*Id.* at T. 96–970). On September 28, 2020, Movant sent a pornographic video to the victim, with the comment, "You said nasty and this is that." (*Id.* at T. 99–100). Agent Miller also identified September 8, 2020 text message from the Movant to the victim stating that he watches the movies he and the victim made. (*Id.* at T. 102). Agent Miller confirmed that two text messages, sent on September 15, 2020, September 16, 2020, and September 22, 2020, between Movant and the victim confirmed they "had a lot of sex," contained sexual language, and a video link to a pornographic website—Spank Bang, and another of the victim exposing her breasts. (*Id.* at T. 103–11). Agent Miller testified she reviewed the video link which depicted a female dressed in a schoolgirl outfit having sex. (*Id.* at T. 105, 107). Notably, Agent Miller identified text messages between Movant and the victim on October 12, 2020, where the victim discussed how she wanted to protect Movant about the age issue and her intended plan to visit Movant in the United States.[11] (*Id.* at T. 114–15).

[11] Records obtained from American Airlines and U.S. Customs and Border Protection confirmed the victim traveled to the United States on October 16, 2020. (*Id.* at T. 119–20). Agent Miller further testified that records established the victim traveled to the United States on July 2, 2020 and exited the United States on August 28, 2020. (*Id.* at T. 120–21). Further, Agent Miller recalled that, at the time a search warrant was executed at Movant's home, the victim and Movant were

Given the foregoing, I find nothing in the record to support a finding that the Government knowingly engaged in prosecutorial misconduct or otherwise suborned perjury. As previously determined by me, I do not find that the victim's post-trial recanting Affidavit alters my findings that Movant was guilty as to Counts 2 and 3. To the contrary, the alleged recantation Affidavit is highly suspect and incredible. Alternatively, even if the Government knowingly suborned perjury, allowing the victim to testify falsely at trial, Movant has not demonstrated that the Government's actions infected the trial proceeding with unfairness, therefore, no due process violation has been established. Thus, this claim is denied.

B. Ineffective Assistance of Counsel Claims.

In his remaining claims, claims 2 through 4, Movant asserts that counsel was ineffective during pretrial, at trial, and sentencing for a plethora of reasons. (DE 8 at 5, 7, 8).

1. *Claims Challenging Counsel's Pretrial Preparation.*

In claim 2, Movant asserts that during pretrial preparations, counsel, Omar F. Johansson, Esquire ("Mr. Johansson") was ineffective for "hand[ing] [Movant] off for pretrial counsel services to Natalie Lopez, a state attorney, who is not accredited or recognized federally;" for failing to challenge the use of prior predicate offenses; and for failing to investigate and consult with experts regarding the presentation of the WhatsApp messages that were introduced by the Government at trial. (DE 8 at 5).

First, Movant's claims that Mr. Johansson was ineffective for "hand[ing] [Movant] off for pretrial counsel services to Natalie Lopez ("Ms. Lopez"), a state attorney, who is not accredited or recognized federally, to strategize, interview [Movant], review evidence, and prepare [his]

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both there. (*Id.* at T. 128). At that time, the victim was over the age of eighteen (18). (*Id.* at T. 130).

defense[,]" resulting in "significant errors" prior to trial. (DE 8 at 5). Movant's claim that Ms. Lopez was not accredited to practice in this Court at the time of his trial preparation is patently frivolous , because the Court's on-line "FLSD Bar Admission Status" and the underlying criminal case now-challenged, reveals Ms. Lopez was admitted to practice before this Court on April 16, 2020 and remains a "Member in Good Standing," and at the time she appeared before the Court in Movant's case, she was also an attorney at Johannson & Lopez Attorneys, P.A., Mr. Johansson's law firm. *See* (CDE 48 at 1). Consequently, Movant has not shown that Ms. Lopez was not authorized to practice before this Court, therefore, the claim is DENIED as patently frivolous.

Second, Movant claims Ms. Lopez was ineffective for failing to challenge the use of Fla. Stat. § 794.05 as a predicate offense relating to the transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a) (Count 3). (DE 8 at 5). The lawfulness of Movant's conviction for violation of § 2423 was thoroughly explored on direct appeal. *See United States v. Gonzalez*, No. 21-13950, 2023 WL 3376578, *1–*4 (11th Cir. May 11, 2023); *see also* (CDE 122). Movant argues he did not intend to violate Fla. Stat. § 794.05, because there exists an "ambiguity" in the Florida statute which makes it "incompatible" with federal law. (DE 8 at 5). In his Reply (DE 22), Movant claims that his Request for Judicial Notice (the "Notice") (DE 21) resolves this issue in his favor. (DE 22 at 5, n.4). In the Notice, Movant claims Fla. Stat. § 794.05 was amended in 1996 "so that only persons over the age of twenty-four, instead of 'any person,' could be guilty of violating the statute," thereby excluding "any person" from being charged.[12] (DE 21 at 1; DE 22 at 6). There is nothing in § 2423(a) which

[12] Movant was charged with violating § 2423(a), which criminalizes, in relevant part, "[a] person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution, or in any sexual activity for which *any person* can be charged with a criminal offense," and requires a term of imprisonment of "not less than 10 years or for life." *See* (CDE 14 citing 18 U.S.C. § 2423(a))

decriminalizes an offense where the predicate offense limits the age of the defendant to those individuals that are over the age of twenty-four, much less that the predicate offense needed to be charged in the Indictment. In this case, the Government filed a request for judicial notice of the existence of Fla. Stat. § 794.05, attaching a copy of the Florida statute to the notice, and later filed its exhibit list identifying that it was relying on Fla. Stat. § 794.05. *See* (CDE 38; CDE 44). The relevant Florida statute was then introduced at trial as Government's Exhibit 5, without objection. (CDE 59 at 131). On this record, Movant cannot demonstrate *Strickland* deficiency or prejudice

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(emphasis added). "To prove a violation of 18 U.S.C. § 2423(a), the government must show: (1) the defendant knowingly transported the victim in interstate commerce, (2) the victim was under 18, and (3) the defendant intended to engage in criminal sexual activity with the minor." *Gonzalez*, 2023 WL 3376578 at *2 (citing 18 U.S.C. § 2423(a)). Here, a violation of Florida law falls within the plain meaning of § 2423(a) prohibiting "any person" from transporting in interstate commerce a victim under 18 with the intent to engage in criminal sexual activity with the minor. Further, there was more than sufficient evidence adduced at trial to support the charged offense. Finally, the Supreme Court has made clear that "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind." *Ali Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008). Thus, courts to have given broad interpretation to the term "for which any person can be charged with a criminal offense," finding it covers acts that violate federal and state felony and misdemeanor laws." *See, e.g., United States v. Shill*, 740 F.3d 1347, 1352 (9th Cir. 2014).

Movant maintains that, because Fla. Stat. § 794.05 only criminalizes conduct by persons over the age of twenty-four, instead of "any person," then his § 2423 conviction cannot stand. The Eleventh Circuit, in analyzing a similar argument raised by Movant on appeal, however, noted that nothing in the statutory language of § 2243 indicates that "the predicate offense underlying the conviction for transportation of a minor, a violation of Fla. Stat. § 794.05(1), was not an offense for which 'any person' can be charged. . .." *Gonzalez*, 2023 WL 3376578 at *2. In so ruling, the appellate court determined that "the word 'any' could mean any one or some or all indiscriminately," therefore, it was not clear from the statutory language of Fla. Stat. § 794.05(1) that it is "not an offense for which 'any person' can be charged." *Id.* On this record, Movant has not shown that the Indictment was legally insufficient because it charges the language in the federal statute and provides sufficient factual detail. *United States v. McNair*, 605 F.3d 1152, 1186 (11th Cir. 2010) ("It is well established in this Circuit that an indictment is sufficient if it tracks the language of the statute and provides a statement of facts that gives notice of the offense to the accused."). For all of the foregoing reasons, Movant has not demonstrated *Strickland* prejudice arising from counsel's failure to pursue a challenge to the Indictment on the basis now postured by Movant. Therefore, the claim is denied.

arising from counsel's failure to challenge the Indictment as alleged. Any such argument would have failed. Thus, this claim is denied.

Third, Movant claims counsel was ineffective for failing to investigate,[13] consult with, and retain an expert regarding the presentation of the WhatsApp messages introduced at trial. (DE 8 at 5). According to the Movant, the WhatsApp messages were "incomplete" and an expert would have established that there was no evidence of "video upload/download data" relating to the September 30th video introduced at trial, and there were "discrepancies between the WhatsApp data and the device evidence." (*Id.*). Whether to call a particular witness is generally a question of trial strategy, which seldom, if ever, will be second-guessed. *See United States v. Costa*, 691 F.2d 1358, 1364 (11 Cir. 1982); *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995). The prejudice prong in failing to call a witness is a heavy one because it requires "allegations of what a witness would have testified to" which are often "largely speculative." *Sullivan v. DeLoach*, 459 F.3d 1097, 1109 (11th Cir. 2006) (quoting *United States v. Guerra*, 628 F.2d 410, 413 (5th Cir. 1980)). Speculation about the substance of the witnesses' testimony is insufficient to establish *Strickland's* prejudice-prong. *See Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004). Of course, Movant cannot maintain an ineffective assistance of counsel claim "simply by pointing to additional evidence that could have been presented." *Van Poyck v. Fla. Dep't of Corr.*, 290 F.3d 1318, 1324 (11th Cir. 2002). Movant does not provide any evidence that a "tech" expert would

[13] In his Reply, Movant argues that Mr. Johansson did not "personally inspect any of the evidence, including the devices and WhatsApp chat logs." (DE 22 at 6). Movant cannot demonstrate *Strickland* prejudice arising from counsel's purported deficiency in failing to investigate or otherwise challenge that the XR phone containing the WhatsApp chats was the "wrong device" and that the messages were "incomplete." (DE 8 at 5). The victim testified at trial that the XR phone belonged to her and that the WhatsApp messages introduced were, in fact, conversations between her and the Movant. Thus, Movant cannot demonstrate deficiency or prejudice from counsel's failure to further investigate this issue.

have testified as suggested, much less that it would have affected the guilt phase portion of his trial. *See Johnson v. Alabama*, 256 F.3d 1156, 1187 (11th Cir. 2001) ("Johnson offers only speculation that the missing witnesses would have been helpful. This kind of speculation is 'insufficient to carry the burden of a habeas corpus petition.'") (quoting *Aldrich v. Wainwright*, 777 F.2d 630, 636 (11th Cir. 1985)). Thus, Movant has not met *Strickland*'s deficiency or prejudice prong.

2. *Claims Challenging Counsel's Effectiveness During Trial.*

In claim 3, Movant asserts that trial counsel was ineffective for failing to: (a) challenge consent laws under federal and state law; (b) object to the predicate offense under 18 U.S.C. § 2243(a) by ignoring statutory elements which allowed the Government to broaden the charges beyond Congress's intent; (c) present a defense as to Counts 2 and 3; (d) cross-examine key Government witnesses; and (e) "secure closing arguments" thereby losing the chance to address factual errors and deficiencies in the Government's case. (DE 8 at 7). None of the purported claims warrant federal habeas corpus relief.

In his first two argument, Movant renews his previously raised argument, now claiming that trial counsel was ineffective for failing to raise the identical claim during trial. For the reasons previously stated in relation to his claim regarding counsel's pre-trial effectiveness, Movant has not shown that the Indictment was unlawful, much less that any argument by counsel during trial on the basis that it broadened Congress's intent and allowed to misrepresent the age of consent fails. The Indictment tracked the statutory language of § 2423(a). Movant was aware of the Government's intent to rely on Fla. Stat. § 794.05. At the time of the charged offenses, Movant was over well over 30 years old and the victim was a 17-year-old. Section 2423(a), criminalizes conduct involving a minor that is "under the age of 18 years." 18 U.S.C. § 2423(a). Even if

counsel had objected to the Indictment on the basis now alleged, I would have overruled the objection and found that the Indictment sufficiently complied with the statutory language of § 2423(a). Thus, Movant has not demonstrated deficient or prejudice under *Strickland* arising from trial counsel's failure to pursue this claim.

Next, Movant asserts that trial counsel was ineffective for failing to pursue a defense as to Counts 2 and 3 at trial. (DE 8 at 7). This claim is refuted by the record which reveals that counsel did, in fact, challenge the Government's proof at trial through effective cross-examination, and at the conclusion of all the evidence, moved for a judgment of acquittal as to all charges on the bases that there was insufficient evidence to support the charges. (CDE 59 at T. 131). Arguably, counsel then strategically focused his closing argument solely on Count 1, emphasizing that he did not "want to lose [his] credibility with the Court on [Counts 2 and 3]," but wanted to focus on Count 1, stating it was a "strategic call" to do so. (CDE 59 at T. 150). On September 29, 2021, I entered a lengthy, detailed Order finding Movant not guilty of Count One on the basis that Movant "did not attempt to induce A.S. to engage in sexually explicit conduct *for the purpose* of creating a visual depiction of that conduct." (CDE 75 at T. 7, 11) (emphasis in original). I then concluded that Movant "lacked the requisite *mens rea* to commit the offense charged in Count One," and adjudicated Movant not guilty as to Count One of the Indictment. (*Id.* at 12). Given the foregoing record, Movant cannot demonstrate that counsel's strategic decision to focus on Count 1, rather than all the counts was unreasonable. Further, even if counsel had more vigorously argued for judgments of acquittal as to Counts 2 and 3, Movant has not demonstrated that I would have acquitted him of those charges. To the contrary, I find there was ample evidence in the record to support these convictions. Therefore, Movant is not entitled to relief on this basis.

Next, Movant claims counsel was ineffective for failing to effectively cross-examine the victim, Agent Ray, and Ms. Miller. (DE 8 at 7). Even if, as suggested, counsel had further cross-examined these witnesses as now alleged by Movant, I find there remained more than ample evidence to support Movant's convictions on Counts 2 and 3.

When reviewing a sufficiency of the evidence claim, I must consider the evidence adduced at trial in the light most favorable to the Government and draw all reasonable inferences and credibility choices in favor of my verdict. *See United States v. Trujillo*, 146 F.3d 838, 845 (11th Cir. 1998) (citations omitted). "'[E]vidence is sufficient to support a conviction if a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt.'" *United States v. Estrada*, 969 F.3d 1245, 1265–66 (11th Cir. 2020) (quoting *United States v. Williams*, 527 F.3d 1235, 1244 (11th Cir. 2008) (internal quotation marks omitted). Here, there was ample evidence adduced at trial to support Movant's convictions on Counts 2 and 3 so that further cross-examination of the Government witnesses as suggested here would not have altered my finding that Movant committed the charged offenses. Therefore, he has not shown *Strickland* prejudice and is not entitled to relief on this claim.

Finally, Movant claims counsel failed to "secure closing arguments" thereby losing the chance to address factual errors and deficiencies in the Government's case. (DE 8 at 7). Movant does not identify what "factual errors and deficiencies" counsel needed to argue during closing. Nonetheless, I find that Movant has not shown how he was prejudiced by counsel's failure to properly provide the Court with the now-challenged information during closing argument. Given the evidence adduced at trial, I find that such argument would not have resulted in a judgment of acquittal as to Counts 2 and 3. Therefore, Movant has not satisfied *Strickland's* prejudice prong and is not entitled to relief on this claim.

3. *Claims Challenging Counsel's Effectiveness at Sentencing.*

In claim 4, Movant asserts that trial counsel was ineffective at sentencing for failing to object to the enhancements to Movant's base offense level based on specific offense characteristics, obstruction of justice, and falsely stating that Movant faced deportation. (DE 8 at 8). Movant is not entitled to relief on this claim because he has not shown deficiency or prejudice under *Strickland.*

First, regarding the failure to object to the PSI two-level enhancement under U.S. Sentencing Guidelines ("USSG") § 2G1.3(b)(4), the claim is refuted by the record which confirms Movant was properly enhanced under USSG § 2G1.3(b)(4)(A), and not USSG § 2G1.3(b)(4)(B).[14] *See* (CDE 78 at 5, ¶ 14). Consequently, this argument fails on the merits.

Second, Movant's claim that counsel should have objected to the five-level enhancement under USSG § 4B1.5(b)(1) (DE 78 at 6, ¶ 17) is refuted by the record, and procedurally barred as the substantive issue underlying Movant's ineffective assistance of counsel claim was raised and rejected on direct appeal.[15] *See Gonzalez*, 2023 WL 3376578 at *6–*7 (finding "[t]he district court did not err in imposing an enhancement for pattern of activity involving prohibited sexual conduct because Gonzalez paid A.S. for sex twice and produced child pornography"). There has been no

[14] The two-level enhancement is written in the disjunctive. Here, USSG § 2G1.3(b)(4)(A) and not USSG § 2G1.3(b)(4)(B) applies because ". . .the offense involved the commission of a sex actor sexual contact." *See* USSG 2G1.3(b)(4)(A). Thus, the alternative means of supporting the is not applicable. Accordingly, Movant has not demonstrated that had counsel lodged this meritless objection his guideline range would have been reduced.

[15] Movant claims the enhancement is unlawful because his "sex acts" with the minor were not criminal offenses under federal law as the minor was seventeen years old at the time of the sex acts. (DE 8 at 6). In his Reply, Movant argues for the first time that the "enhancement was based on conduct that was explicitly excluded at sentencing," as conceded by the Government on direct appeal. (DE 22 at 9). The commentary to USSG § 4B1.5(b), providing that "'***prohibited sexual conduct***' means . . .

intervening change in the law, therefore, the claim is essentially a challenge on the Eleventh Circuit's conclusion, presented under the guise of an ineffective assistance of counsel claim.[16] Consequently, I find Movant's claim barred; and, in the alternative, I find no deficiency or prejudice under *Strickland* arising from counsel's failure to pursue this claim on the basis now argued by Movant.

Third, Movant claims counsel should have objected to the obstruction of justice enhancement, claiming it was "based on allegations of a 'murder-for-hire' plot," and no corroborating evidence was established at sentencing, where Detective Tremino affirmed that "none existed." (DE 8 at 8). This claim is refuted by the record which confirms counsel did object to the enhancement on that basis.[17] *See* (CDE 78 at 3–4, ¶ 10). Even if counsel had further pursued

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[16] Where, as here, the substantive issue underlying Movant's claim was decided against him on direct appeal, he may not reallege the claim for relief in a § 2255 proceeding, absent a showing of an intervening change in the law. *See Rozier v. United States*, 701 F.3d 681, 684 (11th Cir. 2012); *see also United States v. Nyhuis*, 211 F.3d 1340, 1343 (11th Cir. 2000) ("Once matter has been decided adversely to a defendant on direct appeal it cannot be re-litigated in a collateral attack under section 2255."). Moreover, the substantive claim does not merit rehearing or reconsideration on a different, but previously available legal theory. *See Nyhuis*, 211 F.3d 1343.

[17] At sentencing, Agent Addo Tremino ("Agent Tremino") testified that about three hours after Movant's arrest, an inmate called him about a "murder-for-hire" plot involving Movant and the victim. (DE 104 at 10). As a result, Agent Tremino testified he obtained a recorded statement from the inmate, who indicated he reported the incident because he opined "it was messed up that a juvenile female would die." (*Id.* at 11). Agent Tremino further testified that he confirmed that the information provided related to the Movant, because the inmate identified Movant from a six-pack photo array. (*Id.* at 11–12). The jail cell recording was published and played to the Court and its content corroborated by Agent Tremino. (*Id.* at 11, 13–14). Agent Tremino explained that Movant had offered the inmate $10,000 for murdering the minor victim by shooting her in the head. (*Id.* at 13). Movant explained that the murder was to be done "in a public manner, so he would get the information," and "since he was in jail, there was no way it would come back to him." Given Agent Tremino's testimony, Movant's conclusory claim that there was "murder-for-hire" plot is belied by the record. Given this evidence, the obstruction of justice enhancement was proper. Thus, Movant has not demonstrated *Strickland* deficiency or prejudice arising from counsel's failure to further pursue this nonmeritorious claim at sentencing.

the issue as alleged here, Movant cannot demonstrate *Strickland* prejudice because I would not have sustained the objection and would not have further reduced Movant's advisory guideline range.

Finally, Movant claims counsel fails to object to the PSI's determination that Movant was facing deportation as he is "an American" and such representation "distorted the sentencing process." (DE 8 at 8). Movant cannot establish *Strickland* deficiency or prejudice, having failed to demonstrate that he is a U.S. citizen and not a Costa Rican national. The PSI reflects Movant was born in San Jose, Costa Rica, possessed a Costa Rican passport, and a Costa Rican national. (PSI at 3; 23, ¶ 66). Further, Michael Santucci ("Mr. Santucci"), the probation officer, states he reviewed Movant's immigration records, and confirmed Movant moved from Costa Rica to the United States in June 1991 when he was ten years old. (PSI ¶ 73). Although he lived in the U.S. as a legal permanent resident, Mr. Santucci stated that Movant will be subject to removal proceedings given his convictions now being challenged. (*Id.*).

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that:

1. Movant's Amended Motion (DE 8) is **DENIED**;
2. Judgment in favor of the Government will be entered by separate order;
3. All pending motions not otherwise ruled upon are **DISMISSED, as moot**; and
4. No certificate of appealability shall issue.

SIGNED in Chambers at West Palm Beach, Florida, this 7th day of April, 2025.

Donald M. Middlebrooks
United States District Judge

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