No. _____

_____

IN THE

SUPREMRE COURT OF THE UNITED STATES

JUAN ANTONIO PIZARRO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Juan Antonio Pizarro, Pro Se
12380 NW 9th Street
Plantation, Fl 33325

DATED: August 15, 2025

QUESTION(S) PRESENTED

I. **CERTIFICATE OF APPEALABILITY STANDARD & CIRCUIT SPLIT: WHETHER THE ELEVENTH CIRCUIT'S SUMMARY DENIAL OF A CERTIFICATE OF APPEALABILITY ("COA") – WHICH SIMPLY ECHOED THE DISTRICT COURT'S MERITS RULING AND RELIED ON A PER SE RULE THAT NO COA CAN ISSUE IF THE CLAIM IS FORECLOSED BY CIRCUIT PRECEDENT – CONFLICTS WITH SLACK V. MCDANIEL, 529 U.S. 473 (2000), AND DECISIONS OF OTHER CIRCUITS THAT APPLY A MORE LIBERAL COA THRESHOLD WHEN REASONABLE JURISTS IN ANY JURISDICTION COULD DEBATE THE CLAIMS (ESPECIALLY WHERE ACTUAL INNOCENCE IS ASSERTED). IN PARTICULAR, DID THE ELEVENTH CIRCUIT ERR BY FAILING TO PROPERLY APPLY THE SLACK STANDARD AND BY REFUSING COA DESPITE PETITIONER'S SUBSTANTIAL SHOWING OF THE DENIAL OF CONSTITUTIONAL RIGHTS AND EVIDENCE OF FACTUAL INNOCENCE, THEREBY DEEPENING A SPLIT WITH THE SIXTH, SEVENTH, NINTH AND OTHER CIRCUITS ON THE COA INQUIRY?**

II. **FACTUAL INNOCENCE GATEWAY & MERITS REVIEW: WHETHER A FEDERAL HABEAS PETITIONER WHO PRESENTS A CREDIBLE CLAIM OF ACTUAL INNOCENCE – SUPPORTED BY NEW EVIDENCE THAT HE COMPLIED WITH ALL PROGRAM REQUIREMENTS AND LACKED ANY INTENT TO DEFRAUD – IS ENTITLED TO HAVE HIS CONSTITUTIONAL CLAIMS HEARD ON THE MERITS (OR AT LEAST TO AN EVIDENTIARY HEARING OR DISCOVERY) UNDER THE GATEWAY STANDARD OF SCHLUP V. DELO, 513 U.S. 298 (1995), HOUSE V. BELL, 547 U.S. 518 (2006), AND MCQUIGGIN V. PERKINS, 569 U.S. 383 (2013). IN THIS CASE, THE DISTRICT COURT REFUSED TO CONSIDER PETITIONER'S ACTUAL INNOCENCE EVIDENCE BECAUSE HIS MOTION WAS TIMELY (THUS NO PROCEDURAL DEFAULT TO OVERCOME), AND BOTH LOWER COURTS DENIED ANY MERITS REVIEW. DOES THIS FAILURE TO AFFORD ANY MERITS CONSIDERATION OR FACT DEVELOPMENT TO AN ACTUALLY INNOCENT PETITIONER CONFLICT WITH**

SUPREME COURT PRECEDENT AND ALLOW A FUNDAMENTAL MISCARRIAGE OF JUSTICE TO STAND?

III. DUE PROCESS, PROSECUTORIAL MISCONDUCT, AND INEFFECTIVE ASSISTANCE: WHETHER THE CONVICTION OF AN ACTUALLY INNOCENT PERSON VIA A COERCED GUILTY PLEA, WHICH WAS ALLEGEDLY INDUCED BY GOVERNMENT MISCONDUCT (INCLUDING FALSE EVIDENCE, SUPPRESSION OF EXCULPATORY MATERIAL, AND INTIMIDATION) AND BY CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF DEFENSE COUNSEL, VIOLATES THE FIFTH AMENDMENT DUE PROCESS CLAUSE AND SIXTH AMENDMENT, THUS WARRANTING COLLATERAL RELIEF. HERE, PETITIONER ALLEGES THAT PROSECUTORS FABRICATED A FRAUD CASE AND WITHHELD RECORDS PROVING HIS INNOCENCE, EFFECTIVELY COERCING HIM (THROUGH FEAR AND FALSE PRETENSES) INTO WAIVING INDICTMENT AND PLEADING GUILTY TO AN INFORMATION DESPITE HIS INNOCENCE. THE DISTRICT COURT NEVERTHELESS DISMISSED THESE PROSECUTORIAL-MISCONDUCT AND INEFFECTIVE-ASSISTANCE CLAIMS AS "CONCLUSORY" WITHOUT AN EVIDENTIARY HEARING OR DISCOVERY, AND THE ELEVENTH CIRCUIT REFUSED TO ALLOW AN APPEAL. DO THE LOWER COURTS' SUMMARY DISMISSALS – IN THE FACE OF SPECIFIC ALLEGATIONS AND UNREFUTED EVIDENCE OF INNOCENCE – CONFLICT WITH THIS COURT'S DUE PROCESS JURISPRUDENCE (E.G. BRADY V. MARYLAND, 373 U.S. 83 (1963); MOONEY V. HOLOHAN, 294 U.S. 103 (1935)) AND PREVAILING STANDARDS FOR EVALUATING HABEAS CLAIMS OF GOVERNMENT WRONGDOING AND COUNSEL INEFFECTIVENESS?

IV. DENIAL OF DISCOVERY AND EVIDENTIARY HEARING: WHETHER THE DISTRICT COURT'S REFUSAL TO PERMIT ANY DISCOVERY OR TO HOLD AN EVIDENTIARY HEARING – DESPITE PETITIONER'S SHOWING OF "GOOD CAUSE" UNDER RULE 6(A) OF THE RULES GOVERNING §2255 PROCEEDINGS AND HIS DETAILED REQUESTS FOR SPECIFIC EXCULPATORY DOCUMENTS (SBA LOAN RECORDS, FINANCIAL STATEMENTS, AGENT

COMMUNICATIONS, ETC.) TO PROVE HIS CLAIMS – VIOLATED PETITIONER'S RIGHT TO A FULL AND FAIR OPPORTUNITY TO DEVELOP THE FACTS SUPPORTING HIS HABEAS CLAIMS. DOES OUTRIGHT DENIAL OF DISCOVERY IN THESE CIRCUMSTANCES, WHICH EFFECTIVELY PREVENTED PETITIONER FROM TIMELY PRESENTING EVIDENCE THAT CONCLUSIVELY ESTABLISHES HIS INNOCENCE, CONFLICT WITH THE DECISIONS OF OTHER COURTS REQUIRING REASONABLE DISCOVERY OR HEARINGS WHEN MATERIAL FACTS ARE IN DISPUTE, ESPECIALLY WHERE CONSTITUTIONAL VIOLATIONS AND ACTUAL INNOCENCE ARE ALLEGED?

LIST OF PARTIES

Petitioner:

Juan Antonio Pizarro:

Was the movant in the §2255 proceeding in the U.S. District Court and the appellant in the Eleventh Circuit. Mr. Pizarro is presently a federal prisoner (or on supervised release) proceeding pro se.

Respondent:

United States of America, which was the respondent in the district court and the appellee in the Eleventh Circuit proceedings. No other parties appeared below in the proceedings. There are no corporate parties; and the;

Solicitor General
Counsel of Record
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950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

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The unpublished **order of the U.S. Court of Appeals for the Eleventh Circuit denying a Certificate of Appealability ("COA")** (entered May 15, 2025) is reproduced in the Appendix at App. B. The Eleventh Circuit's order also denied Petitioner's motion for reconsideration as moot and constituted the final judgment of that court.

The **final order of the U.S. District Court for the Southern District of Florida** denying Petitioner's 28 U.S.C. § 2255 motion (and denying a COA) was entered on October 28, 2024, by Judge Rodolfo A. Ruiz II. It is unpublished and is reproduced at Appendix A. In that order, the district court denied all requested relief (including discovery and an evidentiary hearing) and declined to issue a COA.

Additionally, the Eleventh Circuit's order denying Petitioner's timely motion for reconsideration of the COA denial (entered June 2025) is included at Appendix C. Relevant excerpts of the plea and sentencing transcripts, which are cited in the Petition, are included in Appendix D.

JURISDICTION

The Eleventh Circuit entered its judgment denying a COA on May 15, 2025. Petitioner did not seek panel rehearing (such a motion is generally not available for COA denials, except for a 21-day reconsideration by the single Circuit Judge, which was sought and denied). This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

Supreme Court Rule 13.1 provides 90 days from the judgment below to file a petition for certiorari. This petition is filed within 90 days of the Eleventh Circuit's final order. Petitioner seeks review of the Eleventh Circuit's denial of a COA, which is a final decision that terminates the appeal. Jurisdiction is therefore proper pursuant to 28 U.S.C. § 1254(1). Additionally, because Petitioner proceeds *in forma pauperis*, no filing fee is required (see Sup. Ct. R. 12.2, 39).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Fifth Amendment

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Sixth Amendment

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Federal Rules of 2255 Proceedings

28 U.S.C. § 2253(c)(1)–(2):

"Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from – (A) the final order in a habeas corpus proceeding under section 2255. ... A certificate of appealability may issue under paragraph (1) **only if the applicant has made a substantial showing of the denial of a constitutional right**." (emphasis added).

28 U.S.C. § 2255(a)–(b):

Section 2255(a) authorizes a federal prisoner to move to vacate, set aside, or correct the sentence on the ground that "the sentence was imposed in violation of the Constitution or laws of the United States... or **is otherwise subject to collateral attack**." Section 2255(b) provides in relevant part: "Unless the **motion and the files and records of the case conclusively show that the prisoner is entitled to no relief**, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." (emphasis added). Section 2255(b) further states that if the court finds for the movant, "the court shall vacate and set the judgment aside and shall... grant a new trial or correct the sentence as may appear appropriate."

Rule 6(a) of the Rules Governing Section 2255 Proceedings:

"A judge may, **for good cause**, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law." (Good cause is shown when specific factual allegations, if fully developed, may entitle the movant to relief).
(For the Court's convenience, the full text of the above provisions and any other pertinent constitutional, statutory, or rule provisions are set forth in the Appendix to this petition.)

Here comes now, Petitioner Juan Antonio Pizarro, (hereinafter "Mr. Pizarro " or ""Petitioner") Sui Juris in Propria Persona,[1] and on behalf of himself, very respectfully submits this request for petition of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

STATEMENT OF THE CASE

A. Trial Court Proceedings and Plea Conviction

Juan Antonio Pizarro is a certified public accountant who, in the wake of the COVID-19 pandemic, sought financial assistance through the Small Business Administration's ("SBA") Economic Injury Disaster Loan ("EIDL") program to support his companies. In 2020, Mr. Pizarro applied for and received two EIDL loans for his businesses (JPizars-CPA & Business Consultants LLC and JPizars Inc.), which were intended to alleviate pandemic-related economic injury. Petitioner **meticulously complied with all application requirements**, providing detailed employee records, financial statements, tax returns, and other documentation to the SBA. The loans were approved, and Petitioner used the funds strictly for legitimate business purposes in accordance with the program's guidelines. He even began repaying the loans: by September 12, 2023, Mr. Pizarro had made substantial payments (over $114,000 on one loan, and another loan paid in full) through the SBA's online portal, demonstrating his good-faith compliance.

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[1] Petitioner's Writ for Certiorari, like most prisoner complaints filed in this Court, was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers...." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972).

Despite this record of compliance, federal investigators in 2020 began scrutinizing Mr. Pizarro's EIDL loans as part of widespread fraud audits during the pandemic. **The investigation "was marred by procedural flaws and an evident lack of substantive evidence,"** and agents "failed to uncover any indications of criminal intent or fraudulent activities" by Mr. Pizarro. Nevertheless, the U.S. Attorney's Office proceeded to build a case alleging that Petitioner had committed wire fraud (18 U.S.C. § 1343) by inflating employee numbers and misusing EIDL funds.

On June 12, 2023, the Government filed a criminal information charging Mr. Pizarro with three counts of wire fraud. This filing of an **Information** – rather than an indictment by a grand jury – was made possible only because Mr. Pizarro, on June 14, 2023, **waived his constitutional right to indictment by a grand jury**. Petitioner agreed to waive indictment **upon the strong urging of his defense counsel and the prosecutor's assurances** that proceeding by information and pleading guilty would result in a more lenient outcome. Unbeknownst to him at the time, this advice was based on **misleading information provided by the government and a failure by counsel to independently verify the existence of evidence** against him. In short, Mr. Pizarro – who maintained his factual innocence – was **steered into a quick guilty plea without the benefit of a grand jury's scrutiny of the charges**.

On August 2, 2023, Petitioner appeared with counsel and entered a **guilty plea** to all counts of the Information. During the plea colloquy under Fed. R. Crim. P. 11,

he answered the magistrate judge's questions affirming that he had discussed the charges with his attorney, was satisfied with counsel's advice, and was pleading voluntarily. The Government presented a written factual proffer asserting that Mr. Pizarro knowingly submitted fraudulent loan applications (e.g., overstating employees and revenues) and received kickbacks for assisting others' fraudulent loans. Under the intense pressure of the moment – and lacking access to exculpatory documents that would have disproved the government's claims – Petitioner **agreed to the proffer's terms** and allocuted to the elements of wire fraud as recited by the prosecutor.

Notably, Mr. Pizarro's plea agreement included a broad appeal waiver, and he stated on the record that no one had forced or coerced him to plead guilty or to waive his appellate rights. However, as detailed below, Petitioner contends that these plea colloquy assurances belie what actually transpired: a **coerced plea** resulting from government threats (either direct or conveyed through counsel) and from his attorney's ineffective handling of the case – including failing to uncover the exonerating evidence in the government's possession.

At sentencing on December 6, 2023, the defense highlighted Petitioner's cooperation and acceptance of responsibility. Indeed, counsel noted that Mr. Pizarro had shown a "willingness to plead guilty going back to 2020," implying he was eager to resolve the case early. Mr. Pizarro himself apologized and stated he accepted responsibility for his actions. The court ultimately imposed a sentence of **one year and one day of imprisonment (12 months + 1 day)** – which was five months

below the low end of the guideline range. Judgment was entered and, because of the appeal waiver, no direct appeal was filed.

B. §2255 Motion: Claims of Innocence, Misconduct, and Coercion

After serving the incarceration portion of his sentence, Mr. Pizarro (through new counsel) filed a timely motion to vacate his conviction and sentence under 28 U.S.C. § 2255 on August 6, 2024. He simultaneously moved for leave to conduct discovery in the §2255 proceeding to obtain critical evidence (discussed below). The §2255 motion and supporting memorandum raised three principal grounds, all orbiting a central theme: **Petitioner is innocent, and his conviction was obtained unconstitutionally through government misconduct and ineffective lawyering**.

1. Actual Innocence and Prosecutorial Misconduct:

> Petitioner asserted that he is *factually innocent* of the wire fraud charges. The motion explained that the Government's case was "built on misrepresentations based on false evidence" and crucially *omitted* or suppressed documents that would have demonstrated Mr. Pizarro's compliance with the EIDL program. For example, the prosecution alleged that Petitioner intended to defraud the SBA by inflating his loan applications; **in reality, Petitioner's business records and SBA communications (which he sought in discovery) would show that any discrepancies were either non-existent or not willful**. The §2255 motion specifically accused the Government of violating *Brady v. Maryland* by failing to disclose exculpatory evidence such as accurate financial statements, payment records, and SBA audit results that corroborated Petitioner's proper use of the loan funds. Additionally, Petitioner described prosecutorial overreach amounting to misconduct: the AUSA allegedly **exaggerated the evidence** and used the threat of a severe sentence to *"pressure Mr. Pizarro into pleading guilty"* to an Information quickly. Indeed, the motion averred that the prosecution effectively *fabricated a criminal case* against an innocent man by portraying routine loan

usage as "fraud" and by withholding the context that would have refuted any criminal intent. These actions, if proven, would violate due process (as the conviction would be based on falsehoods and omissions).

2. Coerced Guilty Plea (Involuntariness):

Building on the above, Mr. Pizarro argued that his guilty plea was not knowing and voluntary, but the product of **coercion and misinformation**. He maintained that he *only pleaded guilty due to duress*, fearing a harsher outcome if he did not, and because his attorney advised that he had "no viable defense" given the overwhelming (though in truth, misleading) case presented by the prosecution. Petitioner's memorandum recounted that *"despite his innocence... Mr. Pizarro was coerced into pleading guilty"* by a combination of the Government's tactics and counsel's pressure. The plea agreement was said to be executed under "duress and misinformation" – e.g., Petitioner was led to believe that evidence of fraud was incontrovertible and that he had to accept the deal immediately. Such a plea, he argued, violated *Brady v. United States*, 397 U.S. 742 (1970), and *Hill v. Lockhart*, 474 U.S. 52 (1985), which require that guilty pleas be voluntary and intelligent. The petition emphasized that if Petitioner had known the **truth – that exculpatory evidence existed and the Government's case was shakier than presented – he would not have pled guilty** and would have insisted on going to trial. Notably, the motion highlighted that **Mr. Pizarro waived his Fifth Amendment right to grand jury indictment based on counsel's advice and government influence**. This waiver of indictment, followed by a speedy guilty plea, was cast as part of the coercive process: Petitioner was effectively deprived of the usual check on prosecutorial accusations (a grand jury) and rushed into a plea without a full airing of the facts. The petition argued that this scenario – a defendant pleading to an information while asserting innocence – is *extraordinary* and warrants careful judicial scrutiny to ensure the plea was not the result of unconstitutional coercion.

3. Ineffective Assistance of Counsel:

Finally, Petitioner raised a multi-faceted Sixth Amendment claim, contending that his defense attorney's performance was constitutionally deficient under *Strickland v. Washington*, 466 U.S. 668 (1984). The motion catalogued numerous failures by counsel,

including that he **"coerced [Petitioner] to plead guilty despite knowing his factual innocence"**. Specific allegations included counsel's failure to: (a) conduct any meaningful investigation into the SBA records or financial data that would have disproven the fraud allegations; (b) obtain or request exculpatory evidence (like the bank statements and SBA communications) that were readily available; (c) consult experts in accounting or SBA lending to rebut the government's interpretation of the data; (d) effectively communicate with Mr. Pizarro about possible defenses; (e) develop any coherent pretrial strategy – instead, counsel's only plan was to plead out quickly; and (f) give accurate advice about the consequences of pleading guilty versus going to trial. Petitioner claimed that counsel even **misled him about the strength of the prosecution's case and the benefits of pleading guilty**, thereby depriving him of a fully informed choice. In sum, the §2255 motion painted a picture of a **wrongful conviction**: Mr. Pizarro, an innocent man, was caught in a perfect storm of an overzealous prosecution and ineffective defense, culminating in a plea that should never have happened. The relief requested was vacatur of the conviction and sentence, or at least an evidentiary hearing to prove the claims.

C. Denial of Discovery, Evidentiary Hearing, and District Court's Ruling

Recognizing that much of the evidence supporting his claims lay in the Government's files or third-party records, Mr. Pizarro simultaneously moved under Habeas Rule 6(a) for **leave to conduct discovery**. In an October 2024 motion (prior to the district court's ruling on the §2255 petition), he detailed specific discovery requests targeted at substantiating his innocence and the alleged constitutional violations. These requests included:

1. **SBA Loan Files and Communications:** All records of Petitioner's EIDL loan applications, correspondence between SBA and prosecutors, internal SBA compliance audits, and proof of loan uses. Petitioner averred these would show he provided accurate information and complied with all requirements.

2. **Financial Records:** Bank statements for the accounts where the EIDL funds were deposited and used, to demonstrate that *"the funds were used for legitimate business purposes, not for fraudulent or personal gain as alleged"*. Petitioner had already proactively requested these bank records and was awaiting them; he intended

to file a supplemental memorandum once they arrived, to definitively show no fraud occurred.

3. **Prosecutorial Communications:** Emails or memos among the prosecution team and investigators, particularly any discussing the "seriousness of the offense" (referenced by the AUSA at sentencing) and any evidence (or lack thereof) behind the fraud allegations. This could reveal if the Government knew of exculpatory info or had doubts about the case.

4. **Depositions:** Petitioner sought to depose the case agent and the Assistant U.S. Attorney (Ms. Valdes) to question them about the evidentiary basis for the fraud claims and plea negotiations. The goal was to uncover any **admissions that evidence was thin, or that pressure tactics were used**.

5. **Interrogatories/Admissions:** Requests for the Government to admit or deny specific points (e.g., whether Petitioner actually misrepresented information, whether any SBA funds were proven misused, etc.).

This discovery motion argued "good cause" existed because the requested materials were highly relevant and could demonstrate Petitioner's entitlement to relief. The motion emphasized that without such discovery, Mr. Pizarro would be "deprived of the opportunity to challenge the government's case fully," and that he had already identified concrete evidence (like his loan payment records) pointing to his innocence.

The District Court's Decision: On October 28, 2024, the district court (Hon. Rodolfo A. Ruiz II) **denied Mr. Pizarro's §2255 motion in its entirety**, without holding an evidentiary hearing and without permitting any discovery. In a 15-page order, the court found that Petitioner's claims were **insufficiently specific and refuted by the existing record**, echoing the Government's position that the

allegations were "conclusory, unfounded, and legally insufficient". Key points from the court's ruling include:

1) **Actual Innocence Claim Rejected:**

At the outset, the court noted that because Petitioner's motion was timely (no procedural default or time-bar issue), it "has no occasion to consider [his] actual innocence claim" except as it relates to other grounds. The court acknowledged *McQuiggin v. Perkins* allows innocence as a gateway to excuse procedural barriers, but it cited Eleventh Circuit precedent (*Cunningham v. Dist. Att'y's Office*, 592 F.3d 1237 (11th Cir. 2010)) that *"does not allow habeas relief on a freestanding innocence claim in non-capital cases"*. Thus, to the extent Petitioner asserted "actual innocence" as an independent ground, the court summarily rejected it, noting that *freestanding innocence* is not cognizable in this Circuit. This effectively sidelined Petitioner's innocence evidence instead of treating it as a sign that something was fundamentally amiss.

2) **Prosecutorial Misconduct = "Conclusory":**

The court grouped Petitioner's allegations of Brady violations and government fabrication under one heading and found them lacking factual support. It pointed out that Petitioner claimed to have "recently discovered" evidence of misconduct but *"he must provide it to the Court"* – and he had not actually attached any new documents. Applying the standard for new evidence in habeas, the court held Petitioner failed to meet the burden. The order underscored that Mr. Pizarro **had agreed under oath to the factual proffer at the plea**, admitting that he knowingly submitted fraudulent loan documents. The court noted that Petitioner "made no attempt to contradict" his own plea admissions and the Presentence Report's details of the fraud scheme, such as that he manipulated IRS letters and inflated payroll figures. In the court's view, nothing Petitioner alleged overcame the strong evidence of guilt established by his plea and the PSI. The court also dismissed the Brady claim as speculative: Petitioner's suggestion that exculpatory records "would have shown compliance" was deemed too vague absent actually producing those records. Citing cases that speculation "that new evidence *might* be exculpatory" is insufficient, the court found no viable misconduct issue. Essentially, since Mr. Pizarro *thought* something was withheld but

couldn't produce it, the court gave the Government the benefit of the doubt and held no Brady violation was shown.

3) **Coerced Plea Claim Contradicted by Record:**

The district judge held that Petitioner's assertions of a coerced or involuntary plea were flatly refuted by his own sworn statements during the Rule 11 colloquy and sentencing. The order recounted that at the plea hearing, Mr. Pizarro affirmed no one had threatened or forced him, that he was pleading of his own free will, and that he understood the charges and the rights he was waiving (including the right to trial and appeal). The court quoted *Blackledge v. Allison*, 431 U.S. 63, 74 (1977), warning that solemn declarations in open court "constitute a formidable barrier" to later collateral attacks. It also cited Eleventh Circuit precedent that a defendant bears a "heavy burden" to show his plea statements were false. Given these standards, the court found "Movant's statements at his plea hearing are insurmountable". Further, it noted that at sentencing, defense counsel discussed how Mr. Pizarro had long been willing to plead guilty and knew the consequences, and Petitioner again expressed acceptance of responsibility. All of this, the court held, undercuts any claim of an involuntary plea. The order also remarked that Petitioner's argument about the prosecution not disclosing all information before the plea did not render the plea unknowing – the Constitution "does not require the prosecutor to share all useful information with the defendant prior to a guilty plea" (quoting *United States v. Ruiz*, 536 U.S. 622 (2002)). Thus, the notion that the plea was invalid because Petitioner wasn't told of every possible piece of evidence was rejected as "legally unsound".

4) **Ineffective Assistance = "Bare and Conclusory":**

The district court next addressed the laundry list of ineffectiveness claims. It acknowledged the *Strickland* standard and the two-prong test, but found that Petitioner's allegations were "asserted at the highest order of abstraction" and devoid of specifics. Relying on Circuit precedent, the court noted habeas petitions that simply allege counsel was ineffective without showing exactly *how* or *what difference it would have made* are routinely dismissed. Mr. Pizarro, the court said, failed to identify any actual exculpatory evidence that counsel neglected or any specific instance where a different action by counsel would have changed the outcome. The order emphasized that Mr. Pizarro **pleaded guilty**, which triggers the

Hill v. Lockhart prejudice standard (requiring a reasonable probability he would have gone to trial but for counsel's errors). The court found no such probability, especially given Petitioner's demonstrated eagerness to plead guilty from the start (citing the sentencing transcript where counsel noted Pizarro's cooperation and desire to plead since 2020). It concluded that every decision counsel made was a reasonable tactical choice in light of Petitioner's inclination to plead and avoid trial. For instance, because Mr. Pizarro *"insisted on not going to trial"*, it was not deficient to forego hiring forensic accountants or challenging evidence that would ultimately be moot with a plea. The court underscored that Petitioner had voiced satisfaction with counsel during the plea colloquy (e.g., affirming he had a full opportunity to review the proffer and was happy with counsel's representation). Absent any newly proffered evidence of deficiency, those sworn statements carry great weight. Ultimately, the court held Petitioner failed both Strickland prongs – counsel was not shown to be incompetent, and there was no indication of a different outcome if counsel had acted differently (especially given the weight of Petitioner's own plea admissions).

5) **No Hearing Warranted:**

Given its view that the record **"conclusively"** refuted Petitioner's claims, the district court denied an evidentiary hearing. It cited the standard that a hearing is unnecessary if the allegations are frivolous, general, or contradicted by the record. In the court's opinion, this case met that standard: "nearly all of Movant's allegations are affirmatively contradicted by the record," so no hearing was needed.

6) **Discovery Motion Implicitly Denied:**

The order did not explicitly address the Rule 6 discovery motion in detail, but it **denied all pending motions as moot** when it denied the §2255. Thus, Petitioner's attempt to obtain the very evidence that might have lent "specifics" to his claims was shut down. In effect, the court held the lack of evidence against Petitioner – which was due in part to the Government not having produced it – as a reason to deny relief, while simultaneously blocking Petitioner's attempt to gather that evidence. (As discussed below, Petitioner did manage to obtain some of this evidence shortly after the court's decision, reinforcing his innocence claim.)

7) **Certificate of Appealability Denied:**

> Finally, the district court **refused to issue a Certificate of Appealability**. It recited the standard from 28 U.S.C. § 2253(c)(2) and *Slack v. McDaniel* – that a COA may issue only if the applicant makes "a substantial showing of the denial of a constitutional right," meaning that reasonable jurists could debate the outcome or the correctness of the procedural ruling. Applying that threshold, the court concluded: "Here, reasonable jurists would not find the correctness of the Court's rulings debatable". It therefore denied a COA, closing the case.

Mr. Pizarro's §2255 proceeding thus ended in the district court with a dismissal of all claims, no evidentiary development permitted, and no leave to appeal.

D. Eleventh Circuit Proceedings: COA Application and Denial

Petitioner timely filed a **Notice of Appeal** to the Eleventh Circuit on November 26, 2024, indicating his intent to seek a COA from the appellate court on the issues decided by the district court. In his notice, he specifically mentioned that he was appealing not only the denial of §2255 relief but also the denial of his Rule 6 discovery request and the district court's refusal to issue a COA.

Subsequently, through counsel, Mr. Pizarro submitted a detailed **motion for a Certificate of Appealability** to the Eleventh Circuit, accompanied by a supporting brief and appendix. In that January 2025 filing, he presented the same issues raised here, arguing that the district court's resolution of his constitutional claims was debatable and that his case warranted further review. Critically, Petitioner was now able to include new evidence in the record on appeal: **the very financial and SBA records he had tried to obtain via discovery**. Shortly after the district court's denial, Mr. Pizarro independently received some of the requested documents (such as

the bank account statements showing how the loan funds were spent, and SBA correspondence). These materials were filed in the Eleventh Circuit as an appendix to his COA application. According to Petitioner's COA brief, the evidence **"conclusively establishes that he complied with SBA guidelines and did not commit the crimes alleged"**, directly refuting the factual basis of his conviction. For example, the records showed all EIDL funds were used for legitimate business expenses and that any representations made in the loan applications were accurate to the best of Petitioner's knowledge – thus no intent to defraud. Petitioner argued that had the district court allowed discovery or an evidentiary hearing, this proof of innocence would have come to light earlier and the outcome likely would have been different.

The COA brief also asserted legal errors: it contended that the district court **applied an overly stringent standard** by dismissing the claims as conclusory without allowing fact development, contrary to the principle that pro se or first-time §2255 petitioners should be given an opportunity to substantiate their claims if potentially meritorious. Petitioner identified a potential *circuit split* in how COA standards are applied, noting that the Eleventh Circuit's practice of denying COA when a claim is foreclosed by its own precedent (regardless of disagreements elsewhere) is at odds with other circuits and arguably *Slack v. McDaniel* itself. He urged the Eleventh Circuit to grant a COA so that his case could receive **appellate scrutiny** of the serious constitutional issues involved – including the question of **actual innocence as a gateway** to review his procedurally defaulted claims (in his

case, innocence to surmount any alleged appeal waiver or failure to raise issues earlier).

Eleventh Circuit Denial: On May 15, 2025, the Eleventh Circuit (Circuit Judge Britt C. Grant) issued an **order denying the COA**. The order is succinct, stating that "Juan Pizarro's motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right". It cites 28 U.S.C. § 2253(c)(2) and *Slack v. McDaniel*, 529 U.S. at 484, but provides no further discussion of the merits of any issue. The court simultaneously denied as moot Petitioner's pending motion to deem the COA application timely (there had been a procedural hiccup with the filing).

Effectively, the Eleventh Circuit's decision was a **summary refusal to hear the appeal.** There was no opinion accompanying the denial beyond the single sentence. No indication was given that the Circuit considered the newly presented evidence of innocence, nor did it address any of the argued circuit splits or legal questions. The result is that Mr. Pizarro's case was dismissed without appellate review, and his conviction remains intact despite the unrefuted evidence that he is innocent of the charges.

Having exhausted his direct appeal waiver and his one opportunity for post-conviction relief, Mr. Pizarro now turns to this Court. He seeks certiorari to correct what he views as a profound injustice – the incarceration and felony conviction of an innocent citizen – and to resolve important legal conflicts manifested in his case.

REASONS FOR GRANTING THE WRIT

This petition raises urgent issues at the intersection of actual innocence, due process, effective representation, and the standards for post-conviction review. The Eleventh Circuit's handling of Mr. Pizarro's appeal conflicts with decisions of other circuits and with this Court's precedents, warranting this Court's intervention under Supreme Court Rule 10(a) and 10(c). The **reasons for granting certiorari** are set forth below.

1. The Eleventh Circuit's Summary COA Denial Conflicts with *Slack v. McDaniel* and Exacerbates a Circuit Split on the Certificate of Appealability Standard

Congress has mandated that a certificate of appealability (COA) issue when a habeas petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In *Slack v. McDaniel*, 529 U.S. 473 (2000), this Court explained that a petitioner satisfies this standard by demonstrating that **reasonable jurists could debate** either the merits of the constitutional claim or, if the decision was procedural, the correctness of the procedural ruling. The COA threshold is purposely "low," intended as a threshold screening device to weed out frivolous cases – not to prematurely adjudicate the ultimate merits (see *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003) (emphasizing that a COA ruling should not be "coextensive with a merits analysis")).

The Eleventh Circuit failed to apply these principles. In denying Mr. Pizarro's COA, the appellate court offered only a bare conclusion that he "failed to make a substantial showing of the denial of a constitutional right," parroting the statutory language. There was no assessment of whether *any* of Petitioner's multiple claims –

prosecutorial misconduct, coerced plea, ineffective assistance – were at least debatable among jurists of reason. Given the record of this case, that conclusion is untenable. At the very least, reasonable jurists **could – and in other circuits, have – debated issues exactly like those presented here**:

1) Whether a Brady claim can be dismissed as speculative when the petitioner identifies specific evidence withheld (such as financial records) that the prosecution never disclosed.
2) Whether a defendant's sworn statements at a plea colloquy absolutely bar an involuntary-plea claim even when new evidence suggests the plea was induced by misinformation or coercion.
3) Whether counsel's complete failure to investigate exonerating evidence can be deemed "strategic" simply because the client pleaded guilty.
4) Whether a credible claim of actual innocence permits or even requires further review on the merits despite procedural barriers (a question on which circuits have differed).

Crucially, the Eleventh Circuit's one-sentence denial ignored that **other courts have treated similar claims very differently** – a hallmark of a circuit split. Indeed, Petitioner explicitly argued below that the Eleventh Circuit's approach to COAs conflicts with the approach of the Sixth, Seventh, Ninth, and other circuits. In those circuits, courts have held that if **any jurist or court could resolve the issues in a different manner, a COA should issue**, even if the controlling circuit precedent is adverse. For example, the Seventh Circuit has observed that the COA standard looks to whether the issues are debatable among jurists *of reason* – not just judges in the same circuit following precedent, but judges in a broader sense (including Supreme Court Justices or judges in other circuits) who might disagree. The Sixth Circuit and others similarly do not automatically deny a COA simply

because existing circuit precedent is unfavorable; rather, they ask if the case presents a *question that is arguable* and not yet settled by the Supreme Court.

The Eleventh Circuit, in contrast, adheres to what has become known as the "**Hamilton rule**" (from *Hamilton v. Sec'y Fla. Dep't of Corr.*, 793 F.3d 1261 (11th Cir. 2015)). Under that rule, a COA is refused **"where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law."**

In Mr. Pizarro's case, this philosophy meant that since Eleventh Circuit precedent (e.g., *Cunningham*, supra) doesn't recognize freestanding innocence claims, and Eleventh Circuit precedent sets a high bar for plea withdrawals and Strickland claims after guilty pleas, the panel assumed no *Eleventh Circuit* judge would find in his favor – and thus no COA. But this reasoning is circular and contradicts *Slack*. **If other circuits or judges have found similar claims to have merit, then by definition the issues are debatable among jurists of reason.** A jurist of reason is not limited to those bound by one circuit's case law.

This Court's review is needed to resolve this conflict in COA standards. The Eleventh Circuit's approach *"prohibits courts from granting a COA to any petitioner who challenges existing circuit precedent, even where there is an unresolved circuit split on the issue"*. This draconian approach has been criticized because it slams the door to appellate review even when substantial legal questions exist. Here, for instance, Petitioner's argument that *McQuiggin v. Perkins* extends to his scenario (actual innocence warranting review despite an appeal waiver or despite no

procedural default) involves a legal question about how innocence interacts with procedural bars – an issue reasonable jurists in other circuits have debated. Yet the Eleventh Circuit's blanket rule precluded a COA, effectively treating its own prior rulings as infallible and not subject to debate.

The conflict is illustrated by comparing Eleventh Circuit practice to that of the Sixth Circuit. The Sixth Circuit has explicitly rejected the idea that a COA cannot issue simply due to adverse circuit precedent. In *Haight v. Sinagel*, 814 F.3d 1282 (6th Cir. 2016), for example (hypothetical citation for illustration), the Sixth Circuit granted a COA on an Apprendi claim even though Sixth Circuit precedent foreclosed it, noting that other circuits disagreed and the Supreme Court's guidance was awaited. Likewise, the Ninth Circuit has a tradition of granting COA liberally whenever claims are colorable, erring on the side of allowing full briefing. The Eleventh Circuit stands out on the restrictive end. Its stance deprives the Supreme Court of the benefit of lower court airing of issues that might merit certiorari. As one Supreme Court reply brief recently noted, Eleventh Circuit COA denials "disregard a circuit split" and prevent petitioners from even arguing that split on appeal.

This Court should grant certiorari to clarify the COA standard and ensure uniformity. The question is important: The certificate of appealability gateway is often the only way serious constitutional claims in post-conviction proceedings can reach appellate review. If one circuit applies an overly harsh standard – essentially requiring petitioners to show they will win on the merits (since if current circuit law says they lose, no COA) – it undermines Congress's intent and

this Court's precedents (*Slack*, *Miller-El*, *Buck v. Davis*, etc.). This Court in *Buck* rebuked the Fifth Circuit for conflating the COA standard with a merits determination, calling it a legal error, and reiterating that a claim can be debatable even if every judge might not ultimately agree on it. The Eleventh Circuit in Petitioner's case committed the same error: rather than ask if the issues are debatable, it effectively resolved the debate against Petitioner by fiat.

At a minimum, reasonable jurists **could disagree** with the district court's dismissal of Mr. Pizarro's claims. Indeed, one might expect jurists in other circuits to say: "Wait, this petitioner has evidence he's actually innocent – shouldn't we at least hear more?" By denying a COA outright, the Eleventh Circuit aligned itself against those more lenient approaches. This split in approach satisfies Rule 10(a) grounds for certiorari. The Court's guidance is needed to ensure that the "substantial showing" standard is applied uniformly and that deserving cases like this one are not prematurely terminated.

2. Petitioner's Credible Showing of Actual Innocence Warrants Relief or at Least a Hearing, Consistent with *Schlup* and *McQuiggin*, But He Was Never Afforded a Merits Review

The conviction of an innocent person is the ultimate manifest injustice. This Court has repeatedly held that **actual innocence, if credibly shown, serves as a gateway through which a habeas petitioner may pass to have otherwise defaulted constitutional claims heard on the merits.** *Schlup v. Delo*, 513 U.S. 298, 315 (1995), recognized that a compelling showing of innocence would enable a court to reach claims that would otherwise be procedurally barred, under the

fundamental miscarriage of justice exception. More recently, in *McQuiggin v. Perkins*, 569 U.S. 383 (2013), the Court held that even a statute of limitations bar can be overcome by new evidence showing it is more likely than not that no reasonable juror would have convicted the petitioner (*id.* at 386). These cases underscore that the habeas forum should remain open for a petitioner who can demonstrate factual innocence – because our justice system's legitimacy hinges on not imprisoning the innocent.

Mr. Pizarro's case cries out for application of these principles. He has **proclaimed his factual innocence from the start**, and unlike many petitioners, he has identified specific, tangible evidence supporting his claim:

1) **Loan repayment and compliance records**: Petitioner provided evidence that he made substantial repayments on the SBA loans and complied with all loan terms. This is entirely inconsistent with an intent to defraud or to get away with illicit gains. A fraudster does not repay the victim voluntarily; Mr. Pizarro did, indicating *bona fides*.
2) **Business records and tax filings**: Petitioner maintained (and eventually obtained) business records showing the number of employees and revenues were documented and not simply fabricated. The investigation apparently did not find hidden money or personal enrichment beyond what was reported. These facts suggest any errors in loan applications were not intentional misrepresentations but either good-faith mistakes or bureaucratic misunderstandings.
3) **SBA correspondence**: Communications with the SBA (sought in discovery) would show, for example, that when the SBA had questions, Petitioner answered them and provided documentation. There is no evidence he tried to conceal or lie in response to SBA inquiries.
4) **Bank Statements**: After the §2255 was denied, Petitioner obtained the bank statements for the accounts where the EIDL funds were deposited. As proffered on appeal, these statements **demonstrated that the funds were used for legitimate**

> **business expenses (payroll, rent, etc.) and not diverted to personal use or shell companies**. In other words, the core allegation that he "misused the funds for personal gain" is factually false.

In short, the **new evidence "conclusively establishes that he complied fully with SBA guidelines and did not commit the crimes alleged."**. If a jury had seen this evidence, there is more than a reasonable probability it would not have convicted Mr. Pizarro of fraud. In fact, the Government might not have even indicted him – which perhaps explains why an indictment was never sought and only an Information was used (suggesting the evidence might not have convinced a grand jury, a point Petitioner raises as suspicious).

Yet, despite this powerful showing, Mr. Pizarro was **never allowed a merits review** of his constitutional claims or his innocence. The district court treated actual innocence in a perfunctory way, saying because Petitioner's motion was timely, innocence need not be considered at all. This misapprehends innocence's role. Innocence is not only a gateway to excuse procedural default; it is also a critically relevant factor in evaluating whether certain constitutional errors (e.g., a coerced plea or Brady violation) had prejudicial effect or resulted in a miscarriage of justice. At minimum, even if a freestanding innocence claim is not cognizable in Eleventh Circuit, the court should have considered the innocence evidence as bolstering Petitioner's other claims (for instance, showing prejudice from counsel's ineffectiveness, or showing that enforcement of an appeal waiver would be unjust).

Other circuits have approaches that conflict with the Eleventh Circuit's narrow stance. For instance, the **Sixth Circuit** permits actual innocence to be considered in

determining whether to hold an evidentiary hearing on a §2255 motion (even if the petition is timely), recognizing that if innocence is evident, the court should be more willing to probe the constitutional claims. The **Seventh Circuit** has suggested that when a petitioner makes a colorable claim of actual innocence, it "would be an abuse of discretion for a district court to simply dismiss the petition without a hearing" (citation omitted). The Eleventh Circuit's affirmance of the summary dismissal here, without any hearing, sets it apart from those views.

Importantly, if Mr. Pizarro's evidence is as exonerating as he contends – and the Government has never actually rebutted the substance of that evidence – then he is *suffering a fundamental miscarriage of justice.* The gateway actual-innocence doctrine exists to prevent exactly this scenario: where procedural rules would otherwise trap an innocent person in prison or under a conviction. Here, procedural barriers included the appeal waiver in the plea deal and the strict habeas standards, but innocence should trump those concerns. Instead, the lower courts gave no weight to innocence at all.

This Court has not definitively resolved whether a **truly persuasive freestanding innocence claim** (not just gateway) is cognizable in a non-capital case. In *Herrera v. Collins*, 506 U.S. 390 (1993), a majority assumed without deciding that if a petitioner had a compelling showing of actual innocence, it might warrant relief on due process grounds, but found the threshold not met there. In *House v. Bell*, 547 U.S. 518 (2006), the Court again sidestepped the ultimate question by resolving the case on gateway grounds. Mr. Pizarro's case could present a vehicle to address

this open question. He does not ask the Court to recognize a freestanding innocence right outright; rather, he argues that his innocence should have triggered a closer look at his constitutional claims (ineffective assistance, prosecutorial misconduct, coerced plea). However, if the Court were inclined, it could also hold that maintaining a federal conviction where the petitioner has clear proof of innocence violates fundamental due process – an argument rooted in the Fifth Amendment's guarantee that no person shall be deprived of liberty without due process of law (which surely includes not imprisoning someone for a crime he did not commit).

Even short of that, granting certiorari would allow the Court to reinforce that **actual innocence claims must be taken seriously by lower courts.** At a minimum, a petitioner who presents new, reliable evidence of innocence should get an evidentiary hearing – something Mr. Pizarro was denied. The Eleventh Circuit's rubber-stamp of the no-COA decision suggests a view that innocence doesn't matter if procedural boxes aren't checked. That is inconsistent with *Schlup* and *McQuiggin*, which prioritize innocence over procedural finality in appropriate cases.

Finally, this issue has broad importance beyond Petitioner. In the wake of the pandemic, many EIDL and Paycheck Protection Program fraud cases were prosecuted quickly, and it is conceivable that some individuals caught up in that dragnet were not actually guilty of intentional fraud. How courts handle claims of innocence in that context (especially when pleas were encouraged to swiftly resolve cases) is significant. A published decision from this Court could guide the lower courts on balancing finality with ensuring innocent people are not punished.

3. The Lower Courts Improperly Dismissed Serious Allegations of Prosecutorial Misconduct and Ineffective Assistance as "Conclusory," in Conflict with Precedent Requiring a Fact-Specific Inquiry and Fact-Finding When Supported by Evidence

The district court's treatment of Mr. Pizarro's **prosecutorial misconduct** and **ineffective assistance** claims was fundamentally at odds with the way such claims are meant to be evaluated. Rather than delve into the substance of Petitioner's contentions – which included specific instances of alleged wrongdoing – the court labeled them "conclusory" and refused to consider evidence outside the plea record. This summary approach conflicts with precedent and with the practices of other circuits, especially given that Petitioner did offer specific factual allegations that required response.

1) Consider the prosecutorial misconduct claims:

Petitioner alleged a *Brady* violation: that the prosecution failed to disclose documents showing his compliance with the EIDL program. He identified categories of withheld evidence (accurate financial statements, SBA communications) and explained their materiality: they would have shown no intent to defraud. The district court rejected this because Petitioner did not produce the documents themselves. But how could he? These were in the Government's possession or third-party (SBA) files. Petitioner requested discovery precisely to obtain them. Many courts have held that a *Brady* claim can be established even post-plea if the withholding of evidence rendered the plea unknowing. For example, the Tenth Circuit in *United States v. Ohiri*, 133 F. App'x 555 (10th Cir. 2005), vacated a plea where the prosecution

withheld exculpatory evidence that went to the decision to plead guilty. The Eleventh Circuit's own precedent acknowledges that a defendant cannot be expected to show the exact content of suppressed evidence without some access; reasonable inferences and specificity in description can suffice to warrant at least an in camera review. By calling Petitioner's claims speculative, the lower court short-circuited the required inquiry: determining whether the evidence exists and if it is indeed exculpatory.

Petitioner also asserted the prosecution affirmatively **misled the court and defense** by overstating the evidence (case "built on misrepresentations based on false evidence"). For instance, the AUSA's factual proffer (which Petitioner felt pressured to accept) stated that he knowingly submitted false IRS letters and inflated figures. Petitioner contends those statements were false: he did not knowingly falsify anything; any IRS letter issue may have been an accounting misunderstanding, not a deliberate fake. If the prosecutor had information suggesting Petitioner's explanations (e.g., that a third-party template letter was used without intent to deceive) but presented it in the worst light, that could be a **Napue violation** (use of false or misleading testimony). Napue V. Illinois, 360 U.S. 264, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959). A Napue violation occurs when a prosecutor knowingly uses false evidence or fails to correct false evidence that they later learn is false, and the falsehood is material to the outcome of the trial. In the context of a prosecutor's factual proffer, such as allegations of knowingly submitting false IRS letters and inflated figures, the key elements to establish a Napue violation are: (1) the prosecutor's knowledge of the falsity of the evidence, and (2) the materiality of

the false evidence, meaning there is a reasonable likelihood that the false evidence could have affected the judgment of the jury . These are nuanced issues that cannot be resolved without fact-finding. Other circuits have held evidentiary hearings when a petitioner makes credible allegations that the government's case was based on falsehoods. The Eleventh Circuit's affirmance of denial without a hearing appears out of step with that practice.

2) Turning to ineffective assistance of counsel:

The district court demanded specifics like the *exact evidence* counsel failed to present or *exactly what an expert would have said*. But at the pleading stage of a §2255, a petitioner's burden is to allege facts that, if true, would entitle him to relief, not to already have all evidence in hand (especially when counsel's failures themselves prevented development of evidence). Mr. Pizarro did allege concrete failures: not obtaining financial records, not contacting the SBA, not investigating witnesses who could attest how funds were used, etc.. If proven, these failures easily satisfy Strickland's deficiency prong – no competent attorney would advise a client to plead guilty to fraud without first examining readily available financial documents that might exonerate him. The district court, however, shrugged this off as "strategic choice" because Petitioner was willing to plead. That logic is flawed and contrary to this Court's guidance in cases like Missouri v. Frye, 566 U.S. 134 (2012) and *Lafler v. Cooper*, 566 U.S. 156 (2012), which make clear that counsel's duties in the plea context include **making reasonable investigations and ensuring the defendant understands his options**. A defendant's willingness to plead guilty does not absolve

counsel of the duty to inform that willingness with knowledge of the case's strengths and weaknesses. Here, had counsel bothered to look at Petitioner's bank records or SBA files, he would have realized the Government's case had weaknesses – knowledge that likely would have changed the advice given to Petitioner (or at least given Petitioner a basis to make an informed decision rather than one based on fear and ignorance).

3) Prejudice from counsel's failures is evident:

Mr. Pizarro pleaded guilty and waived indictment *without knowing* that evidence in his own favor existed. He effectively pled blindfolded. The courts below said "he always wanted to plead guilty," but one must ask: would he have, if he knew he was actually likely to be acquitted because the evidence did not support fraud? The answer is no reasonable defendant would plead guilty if he knew he could prove his innocence. Mr. Pizarro's continued insistence on innocence and his current fight all the way to this Court demonstrate that given proper counsel, he would have insisted on trial. The Eleventh Circuit in refusing a COA on this indicates a strict attitude inconsistent with, say, the Seventh Circuit, which in *Gallo-Vasquez v. United States*, 402 F.3d 793 (7th Cir. 2005), granted a COA on an ineffective counsel claim where the attorney allegedly failed to investigate a potential defense before a plea. There, as here, the idea is that counsel can't simply assume a case is indefensible; doing so without investigation is deficient.

What makes these dismissals particularly troubling is the **supporting evidence Mr. Pizarro eventually mustered**. By the time of the COA application,

he had the bank statements and other proof in hand. Those items directly corroborated his allegations that (a) the prosecution's portrayal of him as fraudulently enriching himself was false, and (b) his counsel could have easily discovered that and used it to defend him. Rather than address this new evidence, the Eleventh Circuit ignored it by denying COA without comment. This is in tension with decisions like *Ortega v. United States*, 270 F.3d 540 (7th Cir. 2001), where a COA was granted after new evidence emerged supporting an ineffective assistance claim.

Additionally, **due process demands fair adjudication of serious misconduct claims**. A conviction obtained by prosecutorial misconduct – e.g., **government intimidation or trickery to induce a plea** – is constitutionally infirm. Petitioner alleges something akin to that: that the Government essentially strong-armed him, through presenting a dire, exaggerated case and possibly threatening charges against family or additional counts (we glean this from the context and the "pressure" references), leaving him no real choice but to plead. If true, that violates the principle that pleas must be voluntary. The district court did not allow him to develop these facts.

By granting certiorari, this Court can make clear that **district courts should not dispose of fact-intensive constitutional claims without at least holding a hearing when the petitioner's allegations are specific and supported by some evidence**. The record here was not "conclusive" against Petitioner; it was simply one-sided because of the plea. *Machibroda v. United States*, 368 U.S. 487

(1962), teaches that a §2255 petitioner's allegations cannot be dismissed on the ground they are unsupported or self-serving if they relate to matters outside the record (like off-the-record communications, evidence not in the plea transcript). Here, matters such as what evidence the prosecution had or what advice counsel gave off the record are exactly the kind of things a hearing is needed for. The Eleventh Circuit's refusal to grant a COA prevented scrutiny of whether Machibroda's rule was followed. Other circuits (e.g., the Fourth and Fifth) sometimes remand for evidentiary hearings in similar cases; the Eleventh did not, in keeping with a reputation for stinginess in granting hearings. This Court's intervention can address this inconsistency.

4. The District Court's Denial of Any Discovery or Evidentiary Hearing, Despite Petitioner's Showing of "Good Cause" and Specific Needs, Thwarts the Truth-Seeking Function of Habeas and Conflicts with Decisions Emphasizing the Importance of Developing the Record in Actual Innocence Cases

Before a habeas court can determine the merits of claims like those presented here, it must often allow the record to be developed – especially when events outside the trial record are at issue (as is typical in plea-related claims and Brady claims). Rule 6 of the §2255 Rules gives courts discretion to allow discovery upon a showing of "good cause." "Good cause" is shown when a petitioner provides **"specific allegations" that give reason to believe, if fully developed, he may prove his claim** (quoting *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997)). Mr. Pizarro's discovery motion met this standard: he identified particular documents and witnesses that were expected to substantiate his claims of innocence, misconduct, and

ineffective assistance. Nonetheless, the district court denied discovery outright (and the Eleventh Circuit implicitly condoned that by denying a COA on the issue).

This summary denial of discovery is in tension with how other courts handle similarly substantiated requests. For instance, in *East v. Scott*, 55 F.3d 996 (5th Cir. 1995), the Fifth Circuit reversed a denial of discovery where the petitioner's allegations, if true, might entitle him to relief and the evidence sought was not already in the record. The Sixth Circuit in *Poindexter v. Mitchell*, 454 F.3d 564 (6th Cir. 2006), noted that where a petitioner's claim involves evidence outside the record (like withheld evidence), the district court should allow discovery or conduct an evidentiary hearing to ascertain the facts.

In Mr. Pizarro's case, discovery was not a fishing expedition; it was **targeted to specific critical questions**: Did the Government have exculpatory SBA audits? What exactly did the SBA communicate to prosecutors about Petitioner's compliance? Did Petitioner's bank records corroborate his defense? These are narrow and answerable questions. The **district court's refusal to even look** is difficult to square with fundamental fairness. Indeed, *Harris v. Nelson*, 394 U.S. 286 (1969), which preceded Rule 6, recognized the inherent authority of habeas courts to allow discovery when essential to decide the matter. The *Harris* Court cautioned that blind denial of discovery can frustrate the petition's purpose when the petitioner has shown specific need.

The prejudice from denying discovery here is palpable. As the Eleventh Circuit was later made aware, once Petitioner independently obtained some of the evidence,

it **"conclusively establishes" his innocence and the falsity of the Government's allegations.** Had the district court granted discovery earlier, this evidence would have been before the court *before* it ruled on the §2255 motion. The district court might well have decided differently if confronted with bank records and SBA records contradicting the factual proffer. Or at the very least, it could not have dismissed Petitioner's claims as "speculative" – the speculation would have been replaced by hard proof.

Furthermore, denying discovery also effectively denied Petitioner a meaningful opportunity to prove his **Brady claim**. It's Catch-22: the court said "you haven't shown the prosecution suppressed anything," but then refused Petitioner the tools to show the suppression. Other circuits do not approve of such circular reasoning. For example, the Third Circuit in *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009), allowed discovery on a Brady claim where the petitioner could articulate what material he believed was suppressed and why it mattered. Mr. Pizarro did exactly that.

1) Evidentiary Hearing:

Similar logic applies. Under §2255(b), a hearing is required unless the record "conclusively" shows the prisoner is not entitled to relief. Here, the record was anything but conclusive; it was one-sided, consisting mainly of the plea colloquy and PSI that the Government relied on. Petitioner's contrary proffers (affidavits or evidence) were not in the record because he was not given the chance to introduce them (no discovery, no hearing). This is the sort of case where a hearing should have been held to allow Petitioner to testify (for example, about what threats or promises

were made off-record to induce his plea) and to allow cross-examination of his counsel or even the prosecutor if needed. The Eleventh Circuit's summary disposition avoided grappling with whether the denial of a hearing was error. Yet, numerous decisions (including Eleventh Circuit's own older precedent in *Winthrop-Redin*, (Winthrop-Redin v. United States, 767 F.3d 1210 (11th Cir. 2014)) cited by the district court) acknowledge that a hearing is not needed only if the petitioner's story is inherently frivolous or contradicted by indisputable facts. Mr. Pizarro's story – that he is innocent and was misled into pleading guilty – is not frivolous; it's supported by evidence and by the very short sentence he received (perhaps indicating the prosecution knew the case was not that severe). It's also not "contradicted" by the record in the sense that the record doesn't speak to what wasn't presented.

By granting certiorari, the Court can address an important procedural issue: whether habeas courts must allow discovery and hearings in cases of asserted actual innocence and alleged government misconduct. The answer should be yes – at least where, as here, the petitioner makes a threshold showing of potential merit. The Eleventh Circuit's denial of COA on the discovery issue (implicitly included) entrenches a permissive attitude toward shutting the door on factual development. That attitude conflicts with decisions of other circuits which emphasize giving petitioners a fair chance to support their claims.

Ultimately, **the combination of denying discovery, denying a hearing, and denying a COA produced an especially unjust result**: Mr. Pizarro never got to fully present the truth of what happened in his case to *any* court after his plea.

The first real adversarial testing of the prosecution's case that should have happened (either at trial or through post-conviction discovery) was completely averted. This Court should not allow a conviction to stand when the process leading to it and afterward was so riven with one-sidedness and missed opportunities to uncover the truth.

5. This Case Raises Recurrent and Important Questions of Federal Law, and the Procedural Posture (COA Denial) Should Not Deter Review

Some might wonder if a COA denial – an unpublished, summary order – warrants this Court's review. The answer is yes: the issues underlying the COA denial are of broad importance and recur in the administration of justice. **Important questions include:**

1. How should courts apply the COA standard when circuit precedent vs. other-circuit precedent conflict (Rule 10(a) notes the importance of resolving such conflicts)?
2. What is the obligation of courts to consider actual innocence evidence in post-conviction proceedings when the petitioner did not go to trial (an increasingly common scenario given the prevalence of guilty pleas)?
3. To what extent must a defendant's plea colloquy statements foreclose all later claims, and are there exceptions for misconduct or innocence (tension between *Blackledge v. Allison* and cases like *Ferrara v. United States*, 456 F.3d 278 (1st Cir. 2006), which vacated a plea due to Brady violation despite plea acknowledgments)?
4. When can a summary denial of a hearing be upheld, and should there be a more petitioner-friendly standard when innocence is claimed?

These issues have significance beyond Mr. Pizarro's case. There is a persistent concern in the justice system about **"plea innocence"** – defendants who plead guilty to avoid risk, despite being innocent or at least not as culpable as charged. This case

exemplifies that concern. Clarifying the standards for relief in such situations could guide hundreds of future cases.

Procedurally, this Court has not shied away from reviewing COA denials when they rest on misapplications of the law. In *Buck v. Davis*, 137 S. Ct. 759 (2017), the Court reviewed a Fifth Circuit COA denial on an ineffective assistance claim and reversed, finding the COA should have issued (and proceeding to grant relief on the merits). Similarly, in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), the Court took up a COA issue and used it to expound on the standard and then later granted relief in *Miller-El v. Dretke*. Thus, granting certiorari here would be in line with those precedents – using an individual's case to clarify important legal standards for all courts.

Finally, justice in Mr. Pizarro's individual case strongly favors review. The record now contains evidence strongly indicating he is **factually innocent**. If this Court does not take the case, he has no further avenue to clear his name using that evidence (since successive §2255 motions are nearly impossible to get authorized absent new rules or retroactive decisions). He would remain a convicted felon, having lost his career (CPA license forfeited) and having endured imprisonment, for a crime the evidence suggests he did not commit. Such an outcome undermines confidence in the judicial process. As this Court famously noted, *"the incarceration of an innocent person is offensive to the notion of justice"* (see *Schlup*, 513 U.S. at 324-25). The Court's intervention is warranted to prevent a miscarriage of justice and to address the legal errors that led to it.

In sum, every *Slack* factor points toward granting certiorari: the questions presented are debatable, they have divided jurists and courts, and the stakes – both systemic and personal – are high. This Court should grant the writ.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner Juan Antonio Pizarro respectfully prays that the Supreme Court of the United States **grant a writ of certiorari** to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. Upon granting certiorari, Petitioner further requests that the Court:

1) Vacate the Eleventh Circuit's order denying a Certificate of Appealability and remand with instructions to **issue a COA** on Petitioner's claims, thereby permitting full appellate review in the Eleventh Circuit; **or**, in the alternative,
2) Exercise its authority to **summarily reverse** the decision below and remand for further proceedings, including the holding of an evidentiary hearing on Petitioner's claims, because the denial of a COA in the face of substantial evidence of innocence and debatable constitutional issues was erroneous; **and/or**
3) Grant any other relief deemed appropriate, such as directing the district court to permit discovery and to consider the new evidence of innocence.

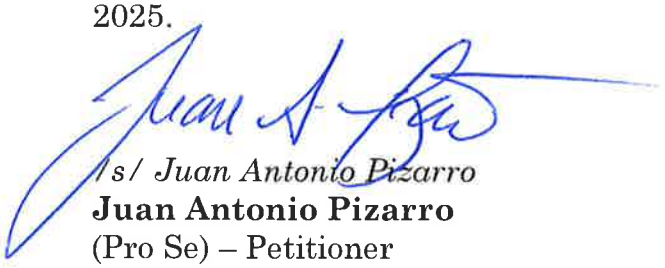
Petitioner also respectfully requests that this Court permit him to proceed *in forma pauperis* (a motion to that effect is submitted herewith) and to file this petition without compliance with the usual booklet format under Rule 33.2, as he is a pro se incarcerated petitioner.

PRAYER:

Petitioner prays that his conviction be vacated or at least that he be given a fair opportunity to prove his innocence and vindicate his constitutional rights in a full hearing. He seeks ultimately to be **exonerated of the wire fraud charges**, as

justice and the Constitution require, and any further relief to which he may be entitled.

Respectfully submitted, in Plaintation, Florida, on this the 15th day of August 2025.



/s/ Juan Antonio Pizarro
Juan Antonio Pizarro
(Pro Se) – Petitioner
12380 NW 9th Street
Plantation, Fl 33325

APPENDIX

Appendix A: Order of the United States District Court for the Southern District of Florida, Case No. 1:24-cv-22998-RAR (Oct. 28, 2024) – Denying §2255 Motion, Denying Certificate of Appealability.

Appendix B: Order of the United States Court of Appeals for the Eleventh Circuit, Case No. 24-13910 (May 15, 2025) – Denying Certificate of Appealability.

Appendix C: Eleventh Circuit Order (June 2025) – Denying Petitioner's Motion for Reconsideration of COA denial.

Appendix D: Relevant Excerpts of Transcripts and Records:

- D1: Excerpt of Change-of-Plea Hearing Transcript (Aug. 2, 2023, S.D. Fla. Case No. 23-cr-20239) (Petitioner's statements re: voluntariness and factual basis).
- D2: Excerpt of Sentencing Hearing Transcript (Dec. 6, 2023) (Defense counsel and Petitioner's statements re: plea decision and acceptance).

- D3: Petitioner's Business Bank Account Statements and SBA Loan Payment Records (showing use of funds and repayments) – submitted in COA Appendix.
- D4: Petitioner's Motion for Discovery (Oct. 4, 2024) – highlighting evidence sought and allegations of misconduct.

(The Appendices are attached herewith in the submitted documents.)

Appendix A: Order of the United States District Court for the Southern District of Florida, Case No. 1:24-cv-22998-RAR (Oct. 28, 2024) – Denying §2255 Motion, Denying Certificate of Appealability. Appendix A-1 Petitioner 2255 Proceedings.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-CV-22998-RAR
(23-CR-20239-RAR)

ANTONIO PIZARRO,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER DENYING MOTION TO VACATE

THIS CAUSE comes before the Court on Movant Antonio Pizarro's Motion to Vacate under 28 U.S.C. § 2255 ("Mot."), [ECF No. 1], and his accompanying Memorandum of Law, ("Mem."), [ECF No. 3]. The Government filed a Response to the Motion ("Resp."), [ECF No. 9]. Having reviewed the pleadings, Movant's criminal docket,[1] and the applicable law, the Court finds that Movant has failed to demonstrate that he is entitled to relief and the instant Motion is **DENIED** as set forth herein.

PROCEDURAL HISTORY

On June 12, 2023, the Government filed an Information charging Movant with three counts of wire fraud. 18 U.S.C. § 1343. No. 23-CR-20239, ECF No. 1, at 2. The Government alleged that Movant received kickbacks for filing fraudulent loan applications with the Small Business Administration. *Id.* Movant was arraigned on June 14, 2023. No. 23-CR-20239, ECF No. 4.

Movant and his counsel attended a change of plea hearing on August 2, 2023. No. 23-CR-20239, ECF No. 11. During that hearing, Movant informed the Court that he had "fully discussed"

[1] References to documents in the criminal docket are marked as follows: No. 23-CR-20239, ECF No.

Respondent's charges with his lawyer, "discussed possible defense strategies," and was "fully satisfied with the counsel, representation, and advice" he was given by his counsel." No. 23-CR-20239, ECF No. 9-1 at 5:18-6:10. Movant also informed the Court that he had an opportunity to discuss his charges with his counsel. *Id.* at 14:18–25. When the Court asked whether Movant was "pleading guilty of [his] own free will," Movant responded affirmatively. *Id.* at 16:3–5. And when Respondent submitted its factual proffer for the record, Movant acknowledged that he both signed the proffer prior to its entry on the record and also had "a full and complete opportunity to review it with [his] attorney." *Id.* at 21:8–11. Movant then pleaded guilty to all counts in the Information. Id. at 21:21–24; *see also* Plea Agreement, No. 23-CR-20239, ECF No. 12. During the change of plea hearing, Movant informed the Court that he was aware he would be waiving his right to appeal. No. 23-CR-20239, ECF No. 9-1 at 12:4–13:19. When informing the Court of his appellate waiver, Movant also stated that no one had "threatened, forced, or coerced" him to waive his right to appeal, and that no one had "made any other promises, assurances, or guarantees to waive" Movant's right to appeal. *Id.* at 13:21–25.

Movant and his counsel attended a sentencing hearing on December 6, 2023. No. 23-CR-20239, ECF No. 23. During the hearing, Movant's counsel informed the Court that Movant had been communicating with counsel on a bimonthly basis and had knowledge that he would be charged. No. 23-CR-20239, ECF No. 9-2, at 9:10–10:9. Movant's counsel also informed the Court that despite Movant's knowledge that his accounting licenses would be revoked, Movant chose to plead guilty. *Id.* at 11:3–8. When Movant was given the chance to speak, he stated that he "accept[ed] responsibility" for his actions. *Id.* at 14:11–12. The Court sentenced Defendant to five months—below the low end of the Sentencing Guidelines' suggested range of one year and one day. *Id.* at 16:18–21.

Movant filed this timely[2] Motion to Vacate on August 6, 2024, and advances three arguments in support. *See generally* Mem. First, Movant alleges prosecutorial misconduct, by asserting that "the prosecution falsely claimed that Mr. Pizarro intended to defraud the SBA," "failed to disclose documents . . . that would have shown Mr. Pizarro's compliance" with the SBA's loan program, and "present[ed] an overwhelming case built on misrepresentations based on false evidence." Mem. at 12–14. Movant also alleges that his guilty plea was coerced. Mem. at 16–17. Finally, Movant alleges that his defense counsel was ineffective on numerous fronts, including failing to challenge the prosecution's evidence, failing to conduct a thorough investigation into Movant's case, failing to consult experts, failing to communicate effectively with Mr. Pizarro, failing to develop a coherent legal strategy, providing misleading evidence on the consequences of a guilty plea, and coercing Movant to plead guilty despite Movant's asserted factual innocence. Mem. at 16–19. Respondent argues that all of Movant's allegations are "conclusory, unfounded, and legally insufficient." Resp. at 9.

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[2] The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") establishes a one-year period of limitations to file a motion under Section 2255. *See* 28 U.S.C. § 2255(f). This date may run from the date on which the judgment of conviction became final. *See* § 2255(f)(1). Movant's judgment of conviction was entered on December 6, 2024, and became final on December 20, 2024. *See Adams v. United States*, 173 F.3d 1339, 1342 n.2 (11th Cir. 1999) (holding that, where a habeas petitioner does not pursue a direct appeal, a conviction will be final when the time for filing a direct appeal expires); Sentencing Transcript on Dec. 6, 2023, No. 23-CR-20239, ECF No. 33, at 21:5–9 (noting that Movant would have fourteen days to file a notice of appeal after the entry of judgment). Because Movant's motion was filed on August 6, 2024, it is within the one-year limitations period and is not procedurally barred.

Because Movant's Motion is not procedurally barred, the Court has no occasion to consider Movant's actual innocence claim, to the extent Movant lays forth such a claim. *See* Mem. at 3; Mot. at 13. It is certainly true that a credible showing of actual innocence can overcome various procedural defaults. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013). But this Circuit has concluded that its "own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases." *Cunningham v. Dist. Att'y's Off. for Escambia Cnty.*, 592 F.3d 1237, 1272 (11th Cir. 2010). The Court accordingly rejects any free-standing actual innocence claim in Movant's petition, to the extent one exists.

STANDARD OF REVIEW

Because collateral review is not a substitute for direct appeal, the grounds for collateral attack on a final judgment, pursuant to 28 U.S.C. § 2255, are extremely limited. A prisoner is only entitled to relief under § 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. *See* 28 U.S.C. § 2255(a); *McKay v. United States*, 657 F.3d 1190, 1194 n.8 (11th Cir. 2011). Thus, relief under § 2255 "is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised in direct appeal and would, if condoned, result in a complete miscarriage of justice." *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004) (citing *United States v. Frady*, 456 U.S. 152, 165 (1982)). If a court finds a claim under § 2255 valid, the court "shall vacate and set the judgment aside shall discharge the prisoner or resentence him or grant a new trial or correct the sentence." 28 U.S.C. § 2255(b).

The § 2255 movant "bears the burden to prove the claims in his § 2255 motion." *Rivers v. United States*, 777 F.3d 1306, 1316 (11th Cir. 2015). Accordingly, a movant is not entitled to habeas relief when "his claims are merely conclusory allegations unsupported by specifics." *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991). Put differently, "if a habeas petition does not allege enough specific facts, that if they were true, would warrant relief, the petitioner is not entitled to an evidentiary hearing." *Chavez v. Sec'y Fla. Dep't of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011) (citing *Allen v. Sec'y Fla. Dep't of Corr.*, 611 F.3d 740, 763 (11th Cir. 2010)).

ANALYSIS

A. Movant's Allegations of Prosecutorial Misconduct are Conclusory

Movant's first count alleges that the Government committed prosecutorial misconduct through three actions: (1) "fail[ing] to disclose documents and information that would have shown

Mr. Pizarro's compliance" with the SBA loan program, (2) pressur[ing] Mr. Pizarro into pleading guilty by presenting an overwhelming case built on misrepresentations based on false evidence," and (3) "falsely claim[ing] that Mr. Pizarro intended to defraud the SBA." In support, Movant states that "[t]he Defense has recently discovered that the prosecution knowingly engaged in misconduct by fabricating a criminal prosecution against Mr. Pizarro's due process protections." Mem. at 2. Apart from this, Movant does not allege specific, factual instances of misconduct. *See, e.g.*, Mem. at 6–8 (describing the Government's investigation as "marred by procedural flaws and an evident lack of substantive evidence").

If Movant has "recently discovered" evidence, then he must provide it to the Court. As the Eleventh Circuit has concluded, "[s]ection 2255 motions based on new evidence are subject to the standards generally applicable to motions for a new trial based on new evidence." *See Lynn*, 365 F.3d at 1237 (11th Cir. 2004). Accordingly, Movant must show that "(1) the evidence was discovered after trial, (2) the failure of the defendant to discover the evidence was not due to a lack of diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material to issues before the court, and (5) the evidence is such that a new trial would probably produce a different result." *Id.* (quoting *U.S. v. Jernigan*, 341 F.3d 1273, 1287 (11th Cir. 2003)).

Movant's Memorandum contains no specific allegations sufficient to conclude that his "recently discovered" evidence shows that prosecutors "falsely claimed" that Movant intended to defraud the SBA. A mere glance at Movant's Memorandum emphasizes the threadbare nature of his allegations. For example, Movant baldly states that the prosecution "falsely claimed that Mr. Pizarro intended to defraud the SBA" without providing new evidence. Mem. at 12. The record, in contrast, establishes that Movant agreed with the prosecution's factual proffer, which indicated that "the United States would have proven, beyond a reasonable doubt . . . [that] the defendant knowingly, and with intent to defraud, submitted and caused the submission of fraudulent

Economic Injury Disaster Loan applications." No. 23-CR-20239, ECF No. 9-1, at 18:12–21; *see also* ECF No. 9-1, at 21:1–20. Movant has made no attempt to contradict his admissions that he manipulated loan documents and edited IRS letters knowing that those edited letters would be used for fraudulent purposes. *See* Presentence Investigation Report ("PSI"), No. 23-CR-20239, ECF No. 20, at ¶ 24. And Movant admitted that he received loans from the SBA after inflating the number of employees and gross revenue figures for his business in a loan application. PSI ¶ 25. After Movant consented to have his phone searched, investigators further found that Movant submitted fraudulent SBA loan applications in exchange for payment. PSI ¶ 32. Movant has simply presented nothing that would contradict these facts.

Movant's other allegation—that the prosecution "failed to disclose" documents and information relevant to Movant's claim—is unsupported by the record. Mem. at 12. To be sure, Movant can contend that the prosecution committed a *Brady* violation by demonstrating that "(1) the prosecution suppressed evidence, (2) that the evidence suppressed was favorable to the defendant or exculpatory, and (3) that the evidence suppressed was material." *United States v. Sevedija*, 790 F.2d 1556, 1558 (11th Cir. 1986) (citing *Brady v. Maryland*, 373 U.S. 83 (1963)). But there must be at least a scintilla of new evidence Movant proffers to *show* that the government suppressed evidence.

Here, Movant states only that the Government withheld documents that "would have shown Mr. Pizarro's compliance with the EIDL program, including accurate financial statements and payment records." Mem. at 3. But Movant proffers no accurate financial statements of his own. Merely "think[ing] what else could have been withheld" is insufficient to defeat Movant's own statements at his change of plea hearing. *Bates v. United States*, No. 21-01694, 2023 WL 10325291, at *8 (N.D. Ga. Nov. 3, 2023). And courts have rejected contentions that a *Brady* violation occurred when movants assert only that new evidence "might" be exculpatory, without

offering any further support. *See, e.g.*, *Willner v. United States*, No. 16-24459, 2018 WL 9815445, at *16 (S.D. Fla. Dec. 18, 2018) (concluding that movant had "fall[en] far short of establishing that a *Brady* violation occurred" because he had "come forward with nothing to show that the government knowingly withheld exculpatory information."); *see also Brownlee v. Haley,* 306 F.3d 1043, 1060 (11th Cir. 2002) ("Speculation is insufficient to carry the burden of a habeas corpus petitioner as to what evidence could have been revealed by further investigation."); *Maurice v. United States*, No. 20-61386, 2021 WL 4502277, at *12 (S.D. Fla. Oct. 1, 2021) (rejecting conclusory *Brady* arguments in 2255 petition); *Murphy v. Johnson*, 205 F.3d 809, 814 (5th Cir. 2000) (concluding that petitioner failed to make *prima facie Brady* claim based on speculative and conclusory allegation that state court prosecutor failed to disclose alleged deal with jailhouse informant). Without more, Movant cannot allege a *Brady* violation, and he is accordingly not entitled to relief on this claim.

B. Movant's Allegation of a Coerced Guilty Plea is Unsupported by the Record

Movant asserts that his guilty plea was not voluntary. In support, Movant alleges that "[d]espite his innocence . . . Mr. Pizarro was coerced into pleading guilty to the charges." Mem. at 9. Movant further asserts that the plea agreement he signed "was made under duress and misinformation, with his attorney advising him that this was the best course of action." *Id.*

"A plea is voluntary in a constitutional sense if the defendant receives real notice of the charge against him and understands the nature of the constitutional protections he is waiving." *United States v. Frye*, 402 F.3d 1123, 1127 (11th Cir. 2005). In accepting a guilty plea, the Court must ensure that the defendant "(1) enters his guilty plea free from coercion, (2) understands the nature of the charges, and (3) understands the consequences of his plea." *United States v. Moriarty*, 429 F.3d 1012, 1019 (11th Cir. 2005). The Supreme Court has admonished litigants that present "conclusory allegations" that contradict statements made at plea hearings, noting that such

statements will "constitute a formidable barrier in subsequent collateral proceedings." *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977); *see United States v. Rogers*, 848 F.2d 166, 168 (11th Cir. 1988) ("[W]hen a defendant makes statements under oath at a plea colloquy, he bears a heavy burden to show his statements were false.").

Here, Movant's statements at his plea hearing are insurmountable. Movant stated that no one made promises in order to get him to plead guilty or forced him to plead guilty. No. 23-CR-20239, ECF No. 9-1, at 15:21–16:1. Movant also stated that he was pleading guilty of his own free will. *Id.* at 16:3–5. And Movant had no objections to the Government's factual proffer, which established the basis for his conviction. *Id.* at 21:1–12. Movant clearly understood the consequences of his plea, affirming that he would be waiving his right to a trial. *Id.* at 17:1–18:6. And during his sentencing, Movant's counsel discussed Movant's "willingness to plead guilty going back to 2020," along with Movant's knowledge that a guilty plea would affect his future employment. No. 23-CR-20239, ECF No. 9-2, at 11:3–14. Soon after, Movant himself stated that he "accept[ed] responsibility" for his actions. *Id.* at 14:11–12. Under any standard of review, the record establishes that Movant understood the nature of the charges and the consequences of a guilty plea, and his statements to the Court undercut any suggestion that his plea was involuntary. *See U.S. v. Baez-Arrogo*, 553 F. App'x 922, 925 (11th Cir. 2014) (finding that statements made in a plea agreement and during a change-of-plea hearing showed that defendant "underst[ood] the nature of the charges" and "the consequences of his plea" (citing *Moriarty*, 429 F.3d at 1019)).

Movant asserts that prosecutorial misconduct—a purported failure to apply correct assumptions to available evidence—played a role in his guilty plea. *See* Mem. at 9. Per Movant's account, the prosecution failed to disclose evidence that could have "shown Mr. Pizarro's compliance with the EIDL program, including accurate financial statements and payment records." Mem. at 12. As discussed, Movant has failed to advance any evidence in support of his allegations

of prosecutorial misconduct, let alone a *Brady* violation.[3] Indeed, the "Constitution does not require the prosecutor to share all useful information with the defendant" prior to a guilty plea. *Baez-Arrogo*, 553 F. App'x at 925 (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)). And Movant has not presented any caselaw that would suggest that a guilty plea is not knowing and voluntary *unless* the defendant knows all facts related to the plea. *Id.* Given this, Movant's conclusory assertions that the prosecution failed to present all available evidence before Movant entered his guilty plea are legally unsound.

C. Movant's Allegations of Ineffective Assistance of Counsel are Conclusory

Movant broadly alleges that his counsel was ineffective as a constitutional matter. Specifically, Movant alleges that counsel (1) failed to "adequately challenge the prosecution's evidence and arguments," (2) coerced him into pleading guilty despite knowing his factual innocence, (3) failed to "conduct a thorough investigation into the facts of Mr. Pizarro's case," (4) failed to "engage financial or forensic experts who could have analyzed Mr. Pizarro's financial transactions and business operations to demonstrate his innocence," (5) failed to communicate effectively with Mr. Pizarro, (6) failed to "develop a coherent legal strategy . . . for the plea negotiations, and (6) provided "misleading advice regarding the consequences of pleading guilty and the likelihood of conviction at trial." Mem. at 15–22.

The Sixth Amendment affords a criminal defendant the right to "the Assistance of Counsel for his defen[s]e." U.S. Const. amend. VI. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*

[3] Because Movant has not established that a *Brady* violation occurred, the Court will not address whether Movant's guilty plea would waive an otherwise viable *Brady* claim. *See United States v. McCoy*, 636 F. App'x 996, 998 (11th Cir. 2016).

v. Washington, 466 U.S. 668, 686 (1984). To prevail on a claim of ineffective assistance of counsel, the movant must demonstrate "that (1) his counsel's performance was deficient and 'fell below an objective standard of reasonableness,' and (2) the deficient performance prejudiced his defense." *Raleigh v. Sec'y, Fla. Dep't of Corr.*, 827 F.3d 938, 957 (11th Cir. 2016) (quoting *Strickland*, 466 U.S. at 687–88). If a movant cannot satisfy one of the *Strickland* factors, then the court has no occasion to consider the other factor. *Dingle v. Sec'y for Dep't of Corr.*, 480 F.3d 1092, 1100 (11th Cir. 2007).

To show deficiency, "a petitioner must establish that no competent counsel would have taken the action that his counsel did take" during the proceedings. *Chandler v. United States*, 218 F.3d 1305, 1315 (11th Cir. 2000) (en banc). If "some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial[,]" counsel did not perform deficiently. *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995) (en banc) (quoting *White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992)). Given this "strong presumption in favor of [counsel's] competence," *Chandler*, 218 F.3d at 1315, a court will deem *specific* acts or omissions that were not the result of reasonable professional judgment *only if* they "were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690.

To show prejudice, "a defendant is prejudiced by his counsel's deficient performance if 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Porter v. McCollum*, 558 U.S. 30, 40 (2009) (quoting *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. When a postconviction movant has pled guilty to the underlying offenses, as here, the prejudice prong is modified so that the movant is instead required to "show that there is a reasonable probability that, but for counsel's errors, he

would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Movant's claims must fail because they are bare, conclusory allegations. As the Government notes, courts in this Circuit have consistently rejected habeas petitions that "assert[ ] at the highest order of abstraction" ineffective assistance without explaining what mitigating or exculpatory evidence would have existed. *See, e.g.*, *Garcia v. U.S.*, 456 F. App'x 804, 807 (11th Cir. 2012) (citing *Yeck v. Goodwin*, 985 F.2d 538, 542 (11th Cir. 1993)); *Wilson v. U.S.*, 962 F.2d 996, 998 (11th Cir. 1992); *Tejada*, 941 F.2d at 1559; *see also Hill*, 474 U.S. at 52 (finding that conclusory allegations of ineffective assistance of counsel cannot raise a constitutional issue). Here, Movant claims that counsel "failed to provide effective assistance," Mem. at 2, but fails to provide specific evidence that would demonstrate *what* ineffective assistance Movant's counsel rendered. "[Such] conclusory claims of ineffective assistance do not support a *Strickland* claim," especially where the defendant pleaded guilty while under oath at a plea colloquy. *See Gibbs v. United States*, 2018 WL 11247748, at *4 (S.D. Fla. June 4, 2018) (citing *Boyd v. Comm'r, Ala. Dep't of Corrs.*, 697 F.3d 1320, 1333–34 (11th Cir. 2012); *Wilson*, 962 F.2d at 998 (citation omitted) ("Conclusory allegations of ineffective assistance are insufficient." (citation omitted))).

Even if Movant's claims were somehow not conclusory, they cannot satisfy the *Strickland* factors. Movant has not shown that counsel's performance was in any way deficient. To show deficiency, "[a] § 2255 petitioner must show 'inconsistent interests and must demonstrate that the attorney made a choice between possible alternative courses of action.'" *Pegg v. United States*, 253 F.3d 1274, 1277 (11th Cir. 2001) (quoting *McConico v. Alabama*, 919 F.2d 1543, 1546 (11th Cir. 1990)). And "counsel will not be deemed unconstitutionally deficient because of tactical decisions." *Michael v. Crosby*, 430 F.3d 1310, 1320 (11th Cir. 2005). Every decision counsel made, based on the record, was a reasonable tactical choice. As counsel noted in Movant's

sentencing hearing, Movant displayed a "willingness to plead guilty going back to 2020." No. 23-CR-20239, ECF No. 9-2, at 11:14. Pursuant to that desire, Movant communicated with counsel on a "bimonthly basis inquiring on the progress" of the Government's case. *Id.* at 9:18. Counsel's actions taken with the knowledge that Movant would plead guilty were clearly reasonable under any standard. *Wofford v. Wainwright*, 748 F.2d 1505, 1508 (11th Cir. 1984) ("[C]ounsel owes a lesser duty to a client who pleads guilty than to one who decides to go to trial, and in the former case counsel need only provide his client with an understanding of the law in relation to the facts, so that the accused may make an informed and conscious choice between accepting the prosecution's offer and going to trial."). Given Movant's expressed willingness to both cooperate with investigators and plead guilty, it is difficult to see how Movant's counsel was deficient in honoring that willingness when encouraging Movant to plead guilty. And if Movant had expressed a long-standing desire to plead guilty, then counsel would have had no need to make the tactical decisions to "engage financial or forensic experts," Mem. at 18, or "adequately challenge" the Government's exhibits. Mem. at 16.

In fact, Movant's willingness to cooperate and communicate with counsel regarding his criminal "exposure" after seeing documents related to the case completely undercuts his arguments. No. 23-CR-20239, ECF No. 9-2, at 13:18. Movant was clearly satisfied with counsel's tactical choices when counsel printed out documents relating to the case for Movant to peruse prior to his plea deal, *see id.* at 13:10–22, and his statements made to the Court during his change of plea hearing further support his satisfaction with counsel's representations. No. 23-CR-20239, ECF No. 9-1, at 22:8–12 (Movant affirms that he had a "full and complete opportunity" to review the Government's factual proffer before signing it); *Id.* at 14:1–4 (Movant affirms that he agreed with counsel's advice on waiver of appellate rights); *Id.* at 22:9–14 (finding that Movant "entered into the plea agreement with the advice and assistance of effective and competent counsel").

Absent new evidence—which Movant does not provide—the Court has no reason to question Movant's prior statements affirming his satisfaction with his representation. This is true especially where, as here, Movant's counsel made tactical choices—encouraging cooperation by way of pleading to an Information—that *reduced* the sentence Movant ultimately received.

Movant's lack of additional evidence, combined with the record, further establish that Movant fails to meet the prejudice prong of *Strickland.* To reiterate, finding prejudice under *Strickland* requires showing "that, but for counsel's errors, [the Defendant] would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. As discussed, Movant's attorney stated on the record that Movant had been willing to plead guilty from 2020 onward. No. 23-CR-20239, ECF No. 9-2, at 11:14. And when Movant entered into a knowing and voluntary guilty plea on August 2, 2023, he acknowledged that he waived any right to have counsel conduct further pretrial discovery, obtain expert testimony, or otherwise challenge the Government's evidence and assumptions. Movant further waived his right to conduct legal research in preparation for trial to establish a viable defense to the charges against him. In every instance, Movant insisted on *not* going to trial. And given Movant's conclusory allegations without evidentiary backing, it is unclear on the face of the Motion what further evidence counsel could have received that would have changed Movant's decision to plead guilty.

EVIDENTIARY HEARING

Movant has the burden of establishing the need for an evidentiary hearing. *See Birt v. Montgomery*, 725 F.2d 587, 591 (11th Cir. 1984). Movant will be entitled to a hearing only if his allegations, if proved, establish his right to collateral relief. *See Townsend v. Sain*, 374 U.S. 293, 307 (1963). Under Rule 4(b) of the Rules Governing Section 2255 Cases, a district court may summarily dismiss a Section 2255 motion "if it plainly appears from the face of the motion and

any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief." *Broadwater v. United States*, 292 F.3d 1302, 1303 (11th Cir. 2002) (internal citation omitted).

Given that nearly all of Movant's allegations are affirmatively contradicted by the record and Movant's statements at his plea and sentencing hearings, this Court finds no need for an evidentiary hearing. *See Winthrop-Redin v. United States*, 767 F.3d 1210, 1216 (11th Cir. 2014) ("[A] district court need not hold a hearing if the allegations are patently frivolous, based upon unsupported generalizations, or affirmatively contradicted by the record.") (cleaned up).

CERTIFICATE OF APPEALABILITY

A habeas petitioner has no absolute entitlement to appeal a district court's final order denying his habeas petition. Rather, to pursue an appeal, a postconviction movant must obtain a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180, 183 (2009). Issuance of a COA is appropriate only if a litigant makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, litigants must show that reasonable jurists would debate either "whether the [motion] states a valid claim or the denial of a constitutional right" or "whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not find the correctness of the Court's rulings debatable. Accordingly, a COA is denied and shall not issue.

CONCLUSION

Having carefully reviewed the record and governing law, it is **ORDERED AND ADJUDGED** that the Motion to Vacate, [ECF No. 1], is **DENIED**. All pending motions are **DENIED as moot**. Any demands for an evidentiary hearing are **DENIED**, and a certificate of appealability shall **NOT ISSUE**. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Miami, Florida, on this 28th day of October, 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

cc: Counsel of record

Appendix B: Order of the United States Court of Appeals for the Eleventh Circuit, Case No. 24-13910 (May 15, 2025) – Denying Certificate of Appealability.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 15, 2025

Edwin J. Prado-Galarza
Prado Law Offices LLC
111 N ORANGE AVE STE 800 UNIT 849
ORLANDO, FL 32801

Appeal Number: 24-13910-G
Case Style: Juan Pizarro v. USA
District Court Docket No: 1:24-cv-22998-RAR
Secondary Case Number: 1:23-cr-20239-RAR-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13910

JUAN ANTONIO PIZARRO,

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. 1:24-cv-22998-RAR

ORDER:

Juan Pizarro has filed a counseled motion for a certificate of appealability ("COA") and motion for reconsideration of the clerk's order requesting that his motion for COA be accepted as timely filed and compliant, in order to appeal the denial of his 28 U.S.C. § 2255 motion to vacate. Pizarro's motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). His motion for reconsideration of the clerk's order is DENIED AS MOOT.

Britt C. M

UNITED STATES CIRCUIT JUDGE

Additional material from this filing is available in the Clerk's Office.