

No. _____

**In The
Supreme Court of the United States**

JULY TERM, 2026

ALI F. ELMEZAYEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

APPENDIX

Ali F. Elmezayen
Reg. No. 77172-112
USP Victorville
United States Penitentiary
P.O. Box 3900
Adelanto, CA 92301

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALI F. ELMEZAYEN, AKA Ali Fathelalah
Elmezayen, AKA Ali Fathellah Elmezayen,
AKA Ali Sayed, AKA Ali Fathelalhah
Sayed, AKA Ali F. Elmeza Yen,

Defendant - Appellant.

No. 25-3554

D.C. Nos. 2:18-cr-00809-JFW-1

2:24-cv-05517-JFW

Central District of California,
Los Angeles

ORDER

Before: CANBY and HURWITZ, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2255 motion and motion for reconsideration. The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown that "jurists of reason would find it debatable whether the [§ 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015).

Any pending motions are denied as moot.

DENIED.

APPENDIX “B”

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 23 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALI F. ELMEZAYEN, AKA Ali Fathelelah
Elmezayen, AKA Ali Fathellah Elmezayen,
AKA Ali Sayed, AKA Ali Fathelehah
Sayed, AKA Ali F. Elmeza Yen,

Defendant - Appellant.

No. 25-3554

D.C. Nos. 2:18-cr-00809-JFW-1
2:24-cv-05517-JFW

Central District of California,
Los Angeles

ORDER

Before: TALLMAN and M. SMITH, Circuit Judges.

The motion (Docket Entry No. 6) for reconsideration and reconsideration en banc is denied. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

APPENDIX “C”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES -- GENERAL

Case No. **CV 24-5517-JFW**
[CR 18-809(A)-JFW]

Date: January 14, 2025

Title: Ali F. Elmezayen -v- United States of America

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS): **ORDER DENYING PETITIONER'S MOTION UNDER § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY [filed 6/5/2024; Docket No. 1]**

On June 5, 2024, Petitioner Ali F. Elmezayen ("Petitioner") filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"). On October 24, 2024, Respondent United States of America (the "Government") filed its Opposition. Although the Court gave Petitioner an extension to file memorandum and/or reply in support of his § 2255 Motion, Petitioner failed to do so.

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's January 13, 2025 hearing calendar and the parties were given advance notice. After considering the moving and opposing papers, and the arguments therein, the Court rules as follows:

I. BACKGROUND

On October 29, 2019, after a nine-day jury trial, Petitioner was convicted of four counts of mail fraud, in violation of 18 U.S.C. § 1343, four counts of wire fraud, in violation of 18 U.S.C. § 1341, one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(i), and five counts of money laundering, in violation of 18 U.S.C. § 1957. All of the counts stem from defendant's scheme in which he acquired life and accidental death insurance policies on the lives of his domestic partner, Rabab Diab, and two disabled children, murdered the children and attempted to murder his domestic partner, and then collected the proceeds of the insurance policies on the

children by falsely claiming that they died in an accident.

Following Petitioner's convictions at trial, this Court sentenced him to 212 years' imprisonment. The Ninth Circuit affirmed Petitioner's convictions, and the Supreme Court denied his petition for a writ of certiorari on May 22, 2023.

In this § 2255 Motion, without providing any evidentiary support, Petitioner claims that the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose "information relating to the re-opening of [Diab's] immigration case" and "whether or not she received any consideration in exchange for her favorable testimony." He also claims that his defense counsel provided ineffective assistance of counsel because his counsel: (1) failed to investigate certain defenses; (2) failed to discuss with him the consequences of going to trial; (3) failed to move for a continuance of the trial on the basis that more time was needed to prepare an adequate defense; (4) failed to explain the weight of the evidence against him; (5) failed to present a meaningful defense at trial; (6) failed to exercise due diligence in securing the presence of defense witnesses at trial; (7) failed to timely file a motion to take Rule 15 depositions of unavailable witnesses; and (8) failed to investigate and question Diab's motivation for testifying at trial, including whether the re-opening of her immigration case impacted her testimony.

Petitioner did not submit a declaration or any exhibits in support of his § 2255 Motion, stating that he "anticipates obtaining outside of the record evidence in the coming days." Although the Court granted Petitioner an extension of time to file a memorandum (with supporting evidence) and/or reply, Petitioner has failed to file any evidence in support of his claims.

II. LEGAL STANDARD

A § 2255 petition entitles a prisoner to relief "[i]f the court finds that . . . there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack." 28 U.S.C. § 2255(b).

A. Standard for *Brady* claims

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). To establish a *Brady* violation, a criminal defendant must show that: (1) the evidence was favorable to him, because it is exculpatory or impeaching; (2) the evidence was willfully or inadvertently suppressed by the prosecution; and (3) prejudice from the non-disclosure. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). To establish prejudice, the suppressed evidence must be "material," i.e., that defendant must demonstrate that "there is a reasonable probability that the result of the trial would have been different if the suppressed [evidence] had been disclosed to the defense." *Strickler*, 527 U.S. at 289 (internal quotation marks omitted); *United States v. Bagley*, 473 U.S. 667, 682 (1985). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682. When determining materiality for purposes of *Brady*, the allegedly suppressed evidence is "considered collectively, not item by item." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). See also *United States v. Ross*, 372 F.3d 1097, 1108–09 (9th Cir. 2004) ("The materiality of omitted evidence is assessed in light of other evidence, not merely in terms of

its probative value standing alone.”).

B. Standard for Ineffective Assistance of Counsel

Ineffective assistance of counsel claims are evaluated under the two-prong test set forth by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail, a party must demonstrate that: (1) counsel's actions fell outside the range of professionally competent assistance; and (2) petitioner suffered prejudice as a result. *Id.* at 687-90; *see also United States v. Leonti*, 326 F.3d 1111, 1120-21 (9th Cir. 2003); *United States v. Allen*, 157 F.3d 661, 665 (9th Cir. 1998). The first prong of the test requires a “showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. Judicial scrutiny of counsel's performance is highly deferential, and courts will not – as a general rule – second guess the strategic choices made by counsel. *Id.* at 689 (“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time”).

Demonstrating prejudice under the second prong of the test requires more than a showing that the error in question might have had some conceivable effect on the outcome of the proceeding. Instead, there must be “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*; *see also Roe v. Flores-Ortega*, 528 U.S. 470, 482 (2000) (“We normally apply a strong presumption of reliability to judicial proceedings and require a defendant to overcome that presumption by showing how specific errors of counsel undermined the reliability of the finding of guilt. Thus, in cases involving mere ‘attorney error,’ we require the defendant to demonstrate that the errors actually had an adverse effect on the defense”) (citations and quotations omitted).

III. DISCUSSION

For the reasons stated by the Government, Petitioner's § 2255 Motion is baseless and is denied. In short, Petitioner's § 2255 Motion is not supported by any specific facts or evidence, and is refuted by the record.

In particular, with respect to the *Brady* claim, the Government has presented uncontroverted evidence that the Government did not offer, promise, or provide Diab with any consideration or benefit in connection with any immigration-related matter. Parker Decl. ¶ 3. Accordingly, the Court concludes that the Government complied with its *Brady* obligations.

Petitioner's ineffective assistance of counsel claims are likewise meritless and refuted by the record. For example, as demonstrated by the record and the declaration of Petitioner's lead defense counsel, defense counsel thoroughly investigated the evidence and possible defenses (including the potential immigration benefits Diab might accrue from testifying against Petitioner), retained expert witnesses, engaged in extensive pre-trial litigation, and presented a vigorous defense at trial. As to the specific defenses Petitioner claims that his counsel should have raised, certain of these defenses were flatly contradicted by the evidence, and others were in fact raised by defense counsel at trial. Moreover, contrary to Petitioner's unsupported assertions, the record

demonstrates that defense counsel discussed the evidence and the consequences of going to trial with Petitioner. In fact, much of that evidence was discussed in detail in his presence during the numerous pre-trial hearings in this case.

In addition, the Court finds Petitioner's argument that defense counsel was ineffective in failing to move for a trial continuance to obtain more time to prepare an adequate defense is frivolous. In fact, defense counsel sought and obtained multiple trial continuances from the original January 15, 2019 trial date. See Docket Nos. 35, 56, 57. And, on August 22, 2019, defense counsel filed an ex parte application to continue to trial date to April 14, 2020, arguing that they needed additional time to prepare in light of the fact that the State of California recently filed capital murder charges against Petitioner. The Court denied the application, finding in relevant part that "defense counsel have been diligent in preparing this case for trial," and a "denial of [the] continuance would not prejudice the defendant." Ryan Decl., Ex. 2 (RT 8/27/2019 at 29).

The Court also rejects Petitioner's argument that defense counsel was ineffective by failing to exercise due diligence in securing the presence of defense witnesses at trial and by failing to timely file a motion to take Rule 15 depositions of unavailable witnesses. Defense counsel made several attempts to obtain trial testimony from Petitioner's family members, including working with attorneys in Egypt to help them apply for visas. And, in any event, given the minimal relevance and questionable admissibility of these witnesses' proposed testimony, the extent of defense counsel's efforts to secure the witnesses was not unreasonable, and their inability to secure the witnesses did not prejudice Petitioner.

Finally, in light of the overwhelming strength of the evidence, the Court concludes that Petitioner was not prejudiced by any alleged deficiencies in the performance of his defense counsel.

In sum, Petitioner's claims are refuted by the uncontroverted record and, in light of the overwhelming evidence of Petitioner's guilt, could not have had any conceivable effect on the outcome of the proceeding.

IV. CONCLUSION

For the foregoing reasons, including for the reasons stated in the Government's Opposition, Petitioner's § 2255 Motion is **DENIED**.

No evidentiary hearing is required on Petitioner's claims. See *United States v. Quan*, 789 F.2d 711, 715 (9th Cir. 1986) ("Where a prisoner's motion presents no more than conclusory allegations, unsupported by facts and refuted by the record, an evidentiary hearing is not required."). In addition, because Petitioner has not "made a substantial showing of the denial of a constitutional right, the Court denies any request for a Certificate of Appealability. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

EXHIBIT "D"

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES -- GENERAL

Case No. **CV 24-5517-JFW**
[CR 18-809(A)-JFW]

Date: March 20, 2025

Title: Ali F. Elmezayen -v- United States of America

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS): **ORDER DENYING PETITIONER'S MOTION FOR
RECONSIDERATION [filed 1/30/2025; Docket No. 21]**

On January 27, 2025, Petitioner filed a Motion for Reconsideration (which was filed by the Clerk on January 30, 2025). On February 25, 2025, the Government filed its Opposition. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for April 7, 2025 is hereby vacated and the matter taken off calendar. After considering the moving and opposing papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 18, 2024,¹ Petitioner Ali F. Elmezayen ("Petitioner") filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"), just prior to expiration of the one-year limitations period to file a motion pursuant to 28 U.S.C. § 2255. That same day, Petitioner filed a Motion Seeking Extension of Time in which to File Memorandum in Support of 28 U.S.C. § 2255 Motion, seeking an extension of 45 days to file a memorandum in support of his § 2255 Motion. Petitioner represented that his memorandum would "focus exclusively on the claims raised in his tendered § 2255 Motion and [would] not be used to assert new claims or theories for relief."

¹Although the docket reflects a filing date of June 5, 2024, a prisoner's federal habeas petition is deemed timely filed if it is delivered to prison officials on or before the statutory deadline. See *Houston v. Lack*, 487 U.S. 266, 270-72 (1988), Fed. R. App. P. 4(c)(1); *Huizar v. Carey*, 273 F.3d 1220, 1222 (9th Cir. 2001).

On August 2, 2024, the Court issued a briefing schedule on the § 2255 Motion, ordering the Respondent United States of America (the "Government") to file its opposition by October 21, 2024, and Petitioner to file any reply by November 1, 2024, and setting a hearing for November 25, 2024. On October 21, 2024, the Government filed its Opposition. Petitioner did not file a reply by November 1, 2024. On November 6, 2024, Petitioner filed a request for a 45-day extension of time to file a reply. On November 15, 2024, the Court granted Petitioner's request, giving Petitioner "one final opportunity to file a memorandum and/or reply in support of his § 2255 Motion." The Court ordered Petitioner to file his memorandum and/or reply on or before December 16, 2024 and continued the hearing on the § 2255 Motion to January 13, 2025 at 11:00 a.m. Petitioner failed to file a memorandum and/or reply on or before December 16, 2024.

On January 7, 2025, just six days before the scheduled hearing, Petitioner mailed his Combined Memorandum in support of his § 2255 Motion and Response to the Government's Opposition ("Combined Memorandum"). It was not received by the Clerk until January 13, 2025 and was not entered on the docket until January 17, 2025.

On January 10, 2025, the Court took the matter under submission, stating that "the matter will be deemed submitted on the vacated hearing date." On January 14, 2025, the Court issued an order denying Petitioner's § 2255 Motion, without considering Petitioner's Combined Memorandum.

Petitioner now moves for reconsideration, on the grounds that the Combined Memorandum "may not have been fully considered before the Court rendered its decision."

II. LEGAL STANDARD

A motion for reconsideration under Federal Rule of Civil Procedure 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc) (citations and emphasis omitted); *see also Rishor v. Ferguson*, 822 F.3d 482, 491–92 (9th Cir. 2016) ("Rule 59(e) is an 'extraordinary remedy' usually available only when (1) the court committed manifest errors of law or fact, (2) the court is presented with newly discovered or previously unavailable evidence, (3) the decision was manifestly unjust, or (4) there is an intervening change in the controlling law.").

Similarly, Local Civil Rule 7-18 provides in relevant part:

A motion for reconsideration of an Order on any motion or application may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was entered, or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered. No motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion.

Local Civil Rule 7-18.

Reconsideration is "an extraordinary remedy, to be used sparingly and in the interest of finality and conservation of judicial resources." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

III. DISCUSSION

Petitioner fails to establish any appropriate basis for reconsideration of the Court's January 14, 2025 Order. Although the Court did not consider Petitioner's Combined Memorandum before issuing its January 14, 2025 Order, that Combined Memorandum was untimely. It was filed more than three weeks after the Court-ordered deadline of December 16, 2024. The Court set that deadline after Petitioner had already missed his prior opportunity to file a reply memorandum and warned that this would be his "final opportunity to file a memorandum and/or reply in support of his § 2255 Motion." Petitioner fails to provide any explanation for his late-filed Combined Memorandum, and the Court concludes that the evidence presented in that Combined Memorandum could have and should have been presented in conjunction with his original § 2255 Motion filed almost seven months prior. Accordingly, the Court declines to reconsider its January 14, 2025 Order.

In any event, even if the Court were to reconsider its January 14, 2025 Order and consider the evidence and arguments presented in Petitioner's Combined Memorandum, the Court would still deny Petitioner's § 2255 Motion for the reasons stated in the Government's Opposition.

For the foregoing reasons, Petitioner's Motion for Reconsideration is **DENIED**.

IT IS SO ORDERED.