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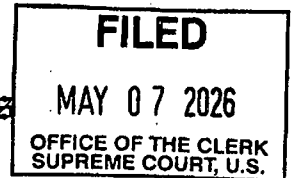
No. \_\_\_\_\_

ORIGINAL

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

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Nicholas Godsey

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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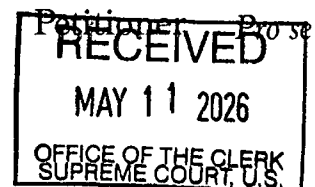
**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Petitioner presents the following question for review:

Where a criminal defendant provides competent evidence that counsel failed to investigate matters which, if true, would have made a lower sentence reasonably probable, does § 2255 require an evidentiary hearing?

## PARTIES TO THE PROCEEDING

Petitioner Nicholas Godsey and the United States of America are parties to the proceeding.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Nicholas Godsey, proceeding *pro se*, respectfully prays that a writ of certiorari be issued to the United States Court of Appeals for the Fifth Circuit, so that this Court may review the judgment below.

## OPINIONS BELOW

This matter seeks discretionary review of the denial of the United States Court for the Fifth Circuit of Godsey's *Application for a Certificate of Appealability*.

The text of the Court of Appeal's *Order* denying Godsey's *Application for a Certificate of Appealability* entered December 9, 2025, appears at Appendix A. The *Memorandum Opinion and Order and Judgment*, both issued February 14, 2025, denying his *Motion to Vacate Under 28 U.S.C. § 2255* (ECF 76), are attached as Appendix B.

These opinions are all unreported.

## JURISDICTION

Petitioner seeks review of the *Order* of the United States Court of Appeals for the Fifth Circuit in Case No. 25-60192, entered December 9, 2025, which denied Godsey's *Application for a Certificate of Appealability*. This Court has jurisdiction to hear this *Petition* pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal statutory provision addressed by the issue raised in this *Petition* is 28 U.S.C. § 2255, attached as Appendix C. The principal constitutional provision addressed by the issue raised herein is the Sixth Amendment, which holds that

[i]n 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.

## STATEMENT OF THE CASE

On July 28, 2021, Godsey was indicted on one count of conspiracy to possess with intent to distribute methamphetamine in violation of 21 U.S.C. § 846 (Count 1); one count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) (Count 2); one count of possession of a firearm by a person knowing that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count 3); and one count of possession of a counterfeit Federal Reserve Note in violation of 18 U.S.C. § 472.

On February 14, 2022, Godsey signed a *Plea Agreement*. He was classified as a career offender under USSG § 4B1.1. Because the statutory maximum sentence for his offense of conviction was 20 years, Godsey's Guidelines Adjusted Offense Level would be set at 32 (§ 4B1.1(b)(3)) and his Criminal History Category would be

set at VI. The Adjusted Offense Level would be reduced to a Total Offense Level of 29 with application of a 3-level reduction for acceptance of responsibility under § 3E1.1.

However, Godsey was held responsible for 51 ounces of methamphetamine (1,446 grams), which drove his Total Offense Level calculated independent of USSG § 4B1.1 to 35. That higher calculation became the Total Offense Level for purposes of calculating his Guidelines.

Godsey's advisory sentencing range was thus 292-365 months. However, because he was convicted of only one count with a statutory maximum sentence of 20 years (240 months), his advisory sentencing range began and ended at 240 months.

On July 8, 2022, Godsey was sentenced to 210 months in prison, with three years of supervised release, a \$5,000.00 fine and a \$100.00 special assessment. He timely filed a *Notice of Appeal*, but the U.S. Court of Appeals for the Fifth Circuit dismissed the appeal on the government's motion due to a plea waiver (Case No. 22-60392).

Thereafter, Godsey timely filed a § 2255 *Motion* raising three issues, all with respect to deficient representation by his attorney. The two relevant to this petition are:

Ground 2: The attorney rendered ineffective assistance in advising and representing me regarding entry of the guilty plea; and

Ground 3: The attorney rendered ineffective assistance prior to and during sentencing.

In the second Ground, Godsey alleged that his attorney's incompetence extended into the change-of-plea proceeding, because he never explained that Godsey was pleading to a § 846 drug trafficking conspiracy rather merely to a § 922(g)(1) felon-in-possession count and – when the fact that Godsey faced multiple counts became apparent to him part way through the change-of-plea proceeding – the Attorney advised Godsey that because he was “careered out,” Godsey should go ahead and plead to the drug conspiracy count because it would not matter to his sentence.

Godsey also alleged that the Attorney's incompetence continued up to and during sentencing. The Government produced a video taken from Godsey's phone showing the hands and arms of a male handling a bowl full of methamphetamine, claiming that the person in the video was Godsey. Godsey denied that he was the person whose hands and arms were showing – among other matters, the heavy tattoos on the arms were inconsistent with Godsey's hands and arms. In Ground 3, Godsey complained that the Attorney's failure to investigate evidence that most of the methamphetamine that was assigned to Godsey was not his, as well as other government claims that Godsey met with a supplier in Mexico and often traveled to and across the border in pursuit of drug and gun trafficking was ineffective assistance and left him with a higher base offense level than was correct.

The Government opposed Godsey's § 2255 *Motion* in a filing docketed on April 4, 2024. It based its showing largely on an affidavit from the Attorney and its contention that the change-of-plea and sentencing records belied Godsey's assertions that he was not aware that he was pleading to a drug conspiracy and

that he had admitted that he was the person in the video evidence the Government possessed.

The Court issued a *Memorandum Opinion and Order* ( "*Order*") on February 14, 2025, denying the § 2255 *Motion*. Appendix B. The Court ruled that the records of the case showed that Godsey knew that he was pleading to a drug conspiracy all along and that he admitted that Godsey was the one in the videos. What was more, the Court held, at sentencing Godsey stated that he agreed with the drug quantities set out in the *Presentence Report*, and even if the Court had held that the 40 grams of methamphetamine in the bowl was not attributed to Godsey, it would have imposed the same sentence.

#### STATEMENT OF FACTS

On July 8, 2021, law enforcement stopped Godsey as he drove to various casinos near Biloxi, Mississippi, with a female passenger. In the car, agents found a handgun with ammunition, a digital scale, \$130.00 in U.S. currency, several counterfeit \$100 bills, and two baggies with 1.2 grams of methamphetamine. The agents arrested Godsey for being a felon-in-possession pursuant to 18 U.S.C. § 922(g)(1).

The attorney that Godsey's mother hired to represent Godsey was a novice in federal criminal law, as well as apparently being in the midst of a breakup of the three-man law practice in which he was a partner. As of January 2024, PACER showed that the attorney had appeared in only two federal cases in the Southern District of Mississippi, with Godsey's case being the first. Early on, the Attorney

confused the charges, conflating an 18 U.S.C. § 922(g)(1) with an 18 U.S.C. § 924(c)'s mandatory sentence. The Attorney expressed surprise to Godsey's sister that the Government had not provided Godsey with a copy of the case discovery directly. (§ 2255 Motion, Exhibit 8, p.1). Likewise, in June 2022, when she asked him repeatedly to provide Godsey with a copy of the Presentence Report, the Attorney responded that, "Yes. I'm still surprised they did not provide him with a copy."

Godsey never saw the *Plea Agreement* until the Attorney brought it to him in jail on February 9, 2022. He told Godsey that they "had to get this done or we got to go to trial." Godsey had less than half an hour with him, and Godsey was left with believing that he was pleading to a felon-in-possession charge. Godsey, who had been jailed since his arrest and for whom the arraignment was waived by counsel, never saw the Government's discovery package. Nowhere in the *Plea Agreement* did the word "conspiracy" appear, only the reference to 21 U.S.C. § 846, a reference which told him nothing.

During the February jail meeting, the Attorney told Godsey that he was looking at 292 to 365 months in prison if he went to trial. He told Godsey that the government had taken incriminating videos from his cellphone, and – disbelieving that such existed – Godsey asked to see them. The Attorney told Godsey he could not show him the videos because the jail lacked a DVD player.

The *Plea Agreement* itself made no mention of drug amount, an omission that Godsey did not find surprising because he believed that he was pleading to a §

922(g)(1) count. The Attorney assured Godsey that he had gone over the evidence and that the Government possessed videos on which Godsey could be heard, claiming that some methamphetamine in plastic bags he was allegedly holding was "good shit." Godsey did not believe such videos existed, but he was willing to admit that he had unlawfully possessed a gun. Godsey found the prospect of 292 months in prison so frightening that he felt he had little choice but to plead guilty to what he knew he had done, which was possessing the firearm unlawfully.

At the change of plea hearing, when the District Court asked Godsey about whether he had seen the *Indictment*, Godsey replied, "Yes, sir, 922(g)." Godsey affirmed that he had seen the *Indictment* and had reviewed it with counsel.

A few minutes later in the hearing, when the Assistant United States Attorney began discussing a drug conspiracy, Godsey was shocked. He leaned over and asked the Attorney what was going on. The Attorney responded that it did not matter because Godsey was "careered out," so nothing that was being said would affect his sentence.

This advice was absolutely wrong. First, under USSG § 4B1.1, one cannot be a career offender if the offense is neither a crime of violence nor a controlled substance offense. A violation of 18 U.S.C. § 922(g)(1) is not a crime of violence where the firearm is not one defined in 26 U.S.C. § 5845(a). USSG § 4B1.2(a). Second, the statutory maximum sentence for a violation of 18 U.S.C. § 922(g)(1) at the time was five years. The statutory maximum for a violation of 21 U.S.C. § 846 (where the substantive violation fell under 21 U.S.C. § 841(b)(1)(C)) was 20 years.

But Godsey knew none of this at the time, and he was still relying on the Attorney's advice.

After the change-of-plea proceeding, Godsey finally had a chance to see the video that had been extracted from his phone. It depicted a person whose face is never shown on camera, handling two or three plastic bags containing methamphetamine-like material. The camera then pans away from the methamphetamine to show several firearms. Godsey and his sister separately made it clear to the Attorney that the person in the video was not Godsey and that the video had not been made on Godsey's phone. Rather, the video had been sent to Godsey's phone by a man named Dalton Thrash, who had posted it on Godsey's Facebook page.

Both Godsey and his sister notified the Attorney that the person in the video was Dalton Thrash and that the large quantity of methamphetamine in the video was not mine.

Subsequently, Godsey's sister was able to contact Mr. Thrash, who sent another video through Godsey's Facebook page after Godsey was incarcerated. Mr. Thrash provided a still photo of him with a female holding large amounts of money. It is abundantly clear from comparing a photo of Godsey to the Thrash photo to his (provided in the § 2255 *Motion*) that the person in the videos with the methamphetamine and guns was not Godsey. Godsey's § 2255 *Motion* also included an affidavit from Mr. Thrash in which he stated that he (not Godsey) is the person in the video, that he is a Caucasian male, whereas Godsey is of mixed race. Mr. Thrash states:

Our skin colors do vastly differ... I do hereby take full ownership of this video that originated from my phone. If properly investigated this will all be found to be true.

Godsey's sister provided this information to the Attorney along with an affidavit from a third party, Gabrielle, who stated that she received the same video from Dalton Thrash by email during the same time frame. Godsey's sister repeatedly relayed to the Attorney that Godsey desired to challenge the videos, specifically, that they did not originate from Godsey's phone.

Godsey also wanted to challenge the allegation made in the *PSR* that he had been crossing the border and importing methamphetamine to the United States from Mexico. The *PSR* claimed:

Videos recovered from Godsey's cell phone depicted him in an unknown location in Mexico with his "SOS" (Source of Supply) as the source showed Godsey parts of his drug distribution operation. Other investigative means revealed Godsey traveled in his vehicle to within 25 miles of the Mexican border as recently as June/July 2021. Further, the methamphetamine seized from the defendant on July 8, 2021, was verified by a laboratory analysis to have purity levels of 96% and 100%, which are indicative of importation. The evidence supports an enhancement pursuant to USSG §2D1.1(b)(5)(A), as the offense involved the importation of methamphetamine into the United States. Accordingly, two levels are added.

Godsey pointed out to the Attorney that he lacked a passport and thus could not travel to Mexico. Verification that he had no passport would have been easy for Attorney Taylor to obtain. Godsey's mother stated in a declaration that "from 2020 until his time of incarceration, Nicholas was on my Life360 plan. This is a[] GPS application where I could track his whereabouts. He never entered Mexico based on my GPS application."

Godsey did travel to within 25 miles of the Mexican border on regular occasions, but not for nefarious purposes. Rather, when he had lived in Laredo, Texas (a border town), he fathered a child with Veronica Mendoza. Although he and Ms. Mendoza no longer maintained a romantic relationship, Godsey and she worked together to co-parent their toddler son, who lived with Veronica. The Godsey § 2255 *Motion* included an affidavit from Ms. Mendoza establishing that he visited her and their son in Laredo, and that he did not go to Mexico.

The *PSR* held Godsey responsible for “at least 51 ounces of methamphetamine (eight ounces referenced in a conversation with "Travis;" three ounces purchased from Zamudio; and 2.5 pounds (40 ounces) seen in a video on Godsey's phone). This amount equates to approximately 1,445.85 grams or 1.45 kilograms of methamphetamine.” The 40 ounces was inferred to be Godsey's because the Government maintained and the Attorney tacitly conceded that Godsey was the unseen person in the video handling the methamphetamine.

On the day of his sentencing, Godsey's sister made a final plea to the Attorney outside of the courtroom to raise objections about the provenance of the video and the erroneous identity of Dalton Thrash as Godsey to establish the quantity of methamphetamine. The Attorney flatly refused to do so, telling her that to do so “would piss the judge off”. He told her that “the video has no bearing and is not adding any additional time to Nicholas' sentencing so we should not worry about it.” Godsey's sister asked the Attorney whether he had told the government that Mr. Thrash admitted to being the author of the videos, that a third party,

Gabrielle, had received the same video from Mr. Thrash as what was found on Godsey's phone, and that Mr. Thrash had been arrested with the same drugs seen in the video.

The Attorney told Godsey's sister that he had done so, but she then observed him walk over to the prosecution table to tell them about Godsey's demand that he object to the video. She said in her declaration, "The prosecution then scoffs, and says, 'it is clearly him in the video,' to which Mr. Taylor responds, 'Well I can't argue with you there'." The exchange was also heard by Jennifer Vasquez, who noted in her affidavit that the Attorney "stated numerous times that if Nicholas did not take responsibility for the video, the Court was 'going to throw the book at him'."

The Attorney's belief that "the video has no bearing and is not adding any additional time to Nicholas' sentencing, so we should not worry about it," was wrong. As a USSG § 4B1.1 career offender, Godsey's Guidelines Adjusted Offense Level was 32, reduced to 29 with a 3-level adjustment under USSG § 3E1.1 with a Criminal History Category of VI. *PSR* at ¶ 43. Had the Attorney objected to the misidentification of Mr. Thrash fondling three bags of methamphetamine on the video as being Godsey, and had the Attorney objected to the baseless claim that Godsey was traveling to Mexico to import methamphetamine, Godsey's adjusted offense level independent of the career offender calculation would have been 25 rather than 29.

The advisory sentencing range associated with a Total Offense Level of 29 and Godsey's presumed Criminal History Category of VI is 151-188 months rather than the 292-365 months range (capped at 240 months) applied to him. The Attorney's assertion to Godsey's sister that the exclusion of the 40 ounces assumed from the video would have had no effect on Godsey's Guidelines advisory sentencing range was absolutely wrong.

The Government provided an affidavit from the Attorney. That affidavit did not refute many of Godsey's claims: He did not address

- whether he ever provided Godsey with a copy of the indictment,
- whether he told Godsey during the brief meeting prior to the change-of-plea proceeding when Godsey signed the plea agreement that he was pleading to a drug conspiracy,
- whether he told Godsey during that meeting that the Government had a video of Godsey holding drugs, and whether Godsey explained to him that that could not be possible,
- whether he ever permitted Godsey to see the video,
- whether he advised Godsey during the change-of-plea hearing that Godsey should just agree with the plea to a drug charge of which he was unaware, because Godsey was "careered out," so it would make no difference,
- whether he told Godsey's sister before sentencing that the drug quantity found in the *PSR* would not affect the sentence because Godsey was a career offender.<sup>1</sup>

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<sup>1</sup> Some of the Attorney declaration is self-serving: "Mr. Godsey and his mother were aware of both [x] Law Firm and myself would be assisting on the case. In fact, this was first to the delight of the Godsey family as it meant a team of attorneys would be putting eyes on the case, with myself navigating the most crucial part of the proceedings," and "in my extensive time as a criminal defense attorney, this is again the first time for me to be requested an affidavit in any manner, and my diligence used for every single client does not vary no matter the situation period" (*id.* at p.2). Some of it is simply gibberish: "Moreover, the assist-

Nevertheless, the Attorney does specifically aver that "[t]he computation of the weight of the substance was objected to yet overruled by his Honor. The video mentioned and substance contained within was also applied in the most conservative manner by the Government by interpreting language in a light most favorable to Godsey. Mr. Godsey was advised fully, kept complete autonomy, and chose not to challenge this after considering the standard that would need to be met by the Government in its determination."

This is absolutely contrary to the record:

COURT: So your objection, as I appreciate it, is not to the 1.45-kilogram calculation, it's just to the purity?

MR. TAYLOR: No, Your Honor. It's to the purity of things and videos from years, months ago that we have not been able to test or there is nothing -- nothing even said in the videos or to actually show that this is a potent enough level to qualify at this level, Your Honor, for the enhancement.

*Sentencing Transcript* at p. 5. In fact, Attorney Taylor, while on one hand contending that he raised the issue of drug quantity, on the other hand, explains that he did not raise the issue of the 40 ounces in the video because Godsey did not bring it to his attention. He stated that Godsey's § 2255 *Motion*

states that the video contains a person and only shows the arms of the individual in question, as well as some audio. This was asserted close to the conclusion of the case and the name was given to the Government for further investigation. An individual not named at any point earlier in the process and the assertion he was the one in the video and wanted to take the blame for the content, did not materialize in any way nor did the individual need myself to make such an admission.

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ance I am referring to and take caution in same, which show the acknowledgement of his intent to plea as such assistance would be superfluous for trial purposes." *Id.* at p.2.

Again, I was contacted by the Godsey family on so many different occasions, usually outside the prescribed hours of the workday, it is not possible to address same without context. Mr. Godsey did not assert that a Mr. Dalton was responsible for the video at anytime in his representation, unless the message was sent from a cell phone contained within the jail. The person who sent a text about Mr. Dalton did not come from Godsey, but instead someone within his family and friends. It strikes me as odd that if this were so, Mr. Godsey would have failed to say so with multiple opportunities on the record.

*Id.* at p. 4.

Godsey did not assert to the Attorney that Mr. Thrash was the person in the video for the simple reason that the Attorney never showed Godsey the video. Only when Godsey's sister showed him the video did he ask her to notify the Attorney that the person in the video was Dalton Thrash.

The Attorney said that "[t]he person who sent a text about Mr. Dalton did not come from Godsey, but instead someone within his family and friends." The Attorney knew and reasonably knew that a prisoner in a detention center has no texting capability. Indeed, he knew that Godsey had to rely on his sister to pass along his requests – such as for a look at his *PSR* only three days before sentencing – to the Attorney. The Attorney said it struck him as "odd" that if Dalton Thrash were on the video, "Mr. Godsey would have failed to say so with multiple opportunities on the record." But there was only one such opportunity, because the Attorney never showed Godsey the video. Rather, Godsey had to learn of its contents from his sister shortly before sentencing.

## REASONS FOR GRANTING THE WRIT

Godsey raises questions of substantial significance. In the past two years, LEXIS has reported over 6,100 federal district court cases under 28 U.S.C. § 2255 raising ineffective assistance of counsel issues. When § 2254 cases are added for the same period, the number swells to over 13,000.

The Court could deliver certainty to courts and litigants alike addressing again the issue considered over 50 years ago in *Machibroda v. United States*, 368 U.S. 487, 494 (1962), which is the standard a § 2255 petitioner must meet to entitle himself or herself to an evidentiary hearing on post-conviction claims.

Grant of *certiorari* in this case, which on its face lies on the far shore of reasoned discretion, will provide guidance in thousands of federal and state criminal prosecutions and *habeas corpus* proceedings.

## ARGUMENT

Where a criminal defendant provides competent evidence that counsel failed to investigate matters which, if true, would have made a lower sentence reasonably probable, does § 2255 require an evidentiary hearing?

Section 2255 of Title 28 enables a prisoner's exercise of the writ of *habeas corpus ad subjiciendum*, a writ of "extraordinary prestige... [in] Anglo-American jurisprudence, indeed 'the most celebrated writ in the English law.' *Fay v. Noia*, 372 U.S. 391, 399-400 (1963), citing 3 BLACKSTONE COMMENTARIES 129. It is "a writ

antecedent to statute, and throwing its root deep into the genius of our common law... It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay, supra*, citing *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603, 609 (H. L.).

The early Supreme Court acknowledged *habeas corpus* to be a "great constitutional privilege." *Ex parte Bollman and Swartwout*, 4 Cranch 75, 95. The Supreme Court has called it "the common law world's 'freedom writ' by whose orderly processes the production of a prisoner in court may be required and the legality of the grounds for his incarceration inquired into, failing which the prisoner is set free." *Smith v. Bennett*, 365 U.S. 708, 712-13 (1961). The Court has observed that "there is no higher duty than to maintain [the writ] 'unimpaired' and unsuspended, save only in the cases specified in our Constitution." *Id.*, quoting *Bowen v. Johnston*, 306 U.S. 19, 26 (1939).

In deciding a § 2255 motion, a district court must hold a hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief..." 28 U.S.C. § 2255(b). Hearings are unnecessary where a movant's allegations are "vague, conclusory, or palpably incredible." *Machibroda, supra* at 368 U.S. 494. To warrant a hearing, a motion must set forth specific facts supported by competent evidence, raising detailed and controverted issues of fact that, if proven at a hearing, would entitle him to relief. *Id.* at 368 U.S. 494-95.

Conversely, where facts, if true, would entitle a movant to relief, and where those facts are “contested... section 2255 cases cannot be resolved on the basis of affidavits alone.” *Williams v. United States*, 660 Fed. Appx. 847, 850 (11<sup>th</sup> Cir. 2016), citing *Friedman v. United States*, 588 F.2d 1010, 1015 (5<sup>th</sup> Cir. 1979) (where “allegations were reasonably specific and supported, not affirmatively contradicted by the record, and not patently frivolous, [t]he district court abused its discretion by denying [movant’s] § 2255 motion without an evidentiary hearing”). Thus, in determining whether to conduct a hearing on allegations made in support of a § 2255 motion, the Court looks to the sufficiency of the affidavits and other evidence proffered in support of the allegations. *United States v. Aiello*, 814 F.2d 109, 113 (2d Cir. 1987); *Dalli v. United States*, 491 F.2d 758, 760 (2d Cir. 1974). Allegations that are “insufficient in law, undisputed, immaterial, vague, conclusory, palpably false or patently frivolous” do not warrant a hearing. *United States v. Malcolm*, 432 F.2d 809, 812 (2d Cir. 1970). Affidavits are sufficient to grant a hearing if they proffer evidence, admissible at a hearing, that provides grounds upon which relief could be granted. *Dalli*, *supra* at 491 F.2d 760; *Machibroda*, *supra* at 368 U.S. 495.

The District Court denied Godsey’s § 2255 Motion on the grounds that the transcript of the change-of-plea hearing and the sentencing hearing disproved his allegations. It held that Godsey was fully apprised of the conspiracy charge during the change-of-plea hearing. But the first mention of “conspiracy” occurs at pp. 10-12 of the transcript, and the un rebutted facts establish that as soon as counsel for the Government finished his description of the charge, Godsey conferred twice with the

Attorney. It is at that time he asked about where the “conspiracy” charge came from and where the Attorney told him to simply agree because he will be “careered” out regardless, so the amount of time Godsey would serve will be unaffected.<sup>2</sup>

The District Court noted that “Taylor ‘whispered to [Godsey] that the drug conspiracy conviction didn’t matter because [he] was ‘careered out’ anyway, so [his] sentence would not be affected,’ which advice Godsey argues was “dead wrong,’ because the maximum sentence would have only been 10 years for the firearms charge at that time. But Godsey states that he ‘did not know this at the time, and [he] was relying on [Taylor’s] hurried advice in the middle of the hearing.’ *Id.* According to Godsey, Taylor ‘had little understanding what was going on in [his] federal prosecution’ and ‘failed [Godsey] in advising [him] to enter into the plea agreement and to plead to a 21 U.S.C. § 846 drug conspiracy charge.’” *Order* at p. 14.

The *Order* failed to factor in that Godsey alleged the specific facts surrounding the change-of-plea hearing under oath, that at the change-of-plea hearing, he first stated he was pleading guilty to a § 922(g)(1) offense, which is consistent with his § 2255 claims, that the proceeding was paused so that Godsey could confer with his attorney, consistent with his claim that the Attorney misadvised him at the time and that the misadvice was related to Godsey’s

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<sup>2</sup> The District Judge describes conspiracy in detail starting at page 25, but by then the damage had been done by the Attorney’s whispered misadvice that Godsey should just plead to conspiracy because his sentence would be the same as if he just pled to one § 922(g)(1) count.

confusion over what he was pleading to, and the Attorney did not deny that he told Godsey to just go ahead and plead because it would not affect the sentence.

The Attorney had ample opportunity to specifically rebut Godsey's claim of misadvice with a detailed explanation of what happened when Godsey conferred with him during the change-of-plea hearing. His silence on the matter and the fact that corroborative evidence in the record supports Godsey's claim should have been sufficient to entitle Godsey to an evidentiary hearing.

The extent to which defendants – untrained in the law, fearful of the outcome of their criminal proceeding and, a Benjamin Franklin put it about a countryman between two lawyers, being “like a fish between two cats” – should be held to their representations made at change-of-plea hearings is debatable. What cannot be debated, however, is that defendants are entitled to competent legal advice before and during the change-of-plea hearing. There is a reason that the Sixth Amendment guarantees effective assistance of counsel. When a defendant is wrongly advised, his decisions can hardly be said to be knowing, intelligent and voluntary.

When Attorney Taylor met with Godsey on February 9, 2022, to convince him to sign the plea agreement, he told Godsey the Government had a video from Godsey's phone that showed Godsey with drugs and guns. Godsey had wanted to see the discovery, but the Attorney told Godsey he could not show it to him because the jail lacked a DVD player. At that time, even prior to the change-of-plea hearing, Godsey told him that it could not be Godsey in the video, but that he had no idea who it might be or where it came from.

Likewise, the Attorney nowhere denied in his *Declaration* that Godsey failed show him the video or any other part of the discovery. In fact, the text messages Godsey produced show that the Attorney never did so, instead telling Godsey's sister that he figured the government had sent Godsey a copy directly (a supposition that is extraordinarily naïve). Godsey finally got to see the video, but never because Attorney Taylor saw fit to show it to him.<sup>3</sup>

The District Court dismissed Godsey's complaint that he was unable to express his position on the Dalton Thrash video because at the change-of-plea hearing, the Government stated in its factual basis that Godsey's phone "contained videos of him working with a woman teaching him how to make counterfeit currency [and] multiple videos and text messages regarding Godsey with firearms and working drug deals with others, including his supplier of methamphetamine... [I]n addition to the observed activity of the defendant by the DEA agents, there were considerable videos and text messages in the cell phone involving Mr. Godsey that were clearly evidence of conspiring to traffic methamphetamine with suppliers of methamphetamine, Mr. Godsey reviewing methamphetamine and firearms together, a video including a supplier in Mexico."

Did this single paragraph out of pages of Government recitation place Godsey on notice that the government placed him in Mexico or as the star of a lurid Dalton

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<sup>3</sup> Attorney Taylor likewise thought the government was responsible for providing Godsey with a copy of the *PSR*. Only three days before sentencing, Godsey still had not seen the document.

Thrash video of him handling over 2 lbs of methamphetamine? Godsey was already aware from the Attorney that the Government claimed to have videos and texts. Had he shown Godsey the discovery – especially the videos – Godsey could have challenged those that were wrong. However, the standard at play is not whether there was contrary evidence (even an inference from a defendant's failure to rebut a government summary during a change-of-plea hearing), but rather whether the evidence was sufficiently detailed and plausible so as to justify further taking of evidence.

The Court makes much of the fact that, after the Attorney advised Godsey that raising the issue of the video and the 40 ounces of methamphetamine shown in it would just "piss off" the Court, Godsey told the Court that he had no other issues to raise. A defendant's "statements under oath are entitled to a *strong presumption* that they are true. *United States v. Rivera*, 191 Fed.Appx 309, 311 (5th Cir. 2006), citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977). But that is a strong presumption, not an irrebuttable one. It supposes that the defendant has been competently counseled. Here, the Attorney – someone who comes with a "strong presumption" of competence, legal experience and training – warned Godsey that if he tried to raise the video issue he would only succeed in angering someone who within the following hour would decide how many years Godsey should be imprisoned.

In *United States v. Perez*, 227 Fed.Appx 357 (5th Cir. 2007), this Circuit has described an exception to the *Blackledge* rule. "Nevertheless, a defendant may seek

habeas relief on the basis of alleged promises, though inconsistent with representations [he] made in open court when entering [his] guilty plea, by proving (1) the exact terms of the alleged promise, (2) exactly when, where, and by whom the promise was made, and (3) the precise identity of an eyewitness to the promise." *Id.* (citation omitted). "If the defendant produces independent indicia of the likely merit of [his] allegations, typically in the form of one or more affidavits from reliable third parties, [he] is entitled to an evidentiary hearing on the issue." *Id.* at 227 Fed.Appx 360, citing *United States v. Cervantes*, 132 F.3d 1106, 1110 (5th Cir. 1998).

Godsey has cited the precise terms of the threat (that raising the issue would infuriate the Court), when and where it was made (in the courtroom on July 8, 2022), and who the third-party witnesses were (Natalie Godsey and Jennifer Vasquez). This showing should be sufficient – especially in light of the detailed showing Godsey made that the Dalton Thrash video was produced elsewhere and nowhere featured Godsey – to justify an evidentiary hearing.

The Attorney did not investigate any of the information Godsey and his sister provided to him – that the videos did not depict Godsey, that Godsey had never been to Mexico nor could he have been there, and that Godsey's trips to near the border were to see his son.<sup>4</sup> At the time, he said he did not want to "piss the judge off". Later, the Attorney's explanation morphed into being that *Godsey* never told him

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<sup>4</sup> The Court observed that Godsey claimed he had been doing to the border area to see his "girlfriend, not to traffic drugs." *Order* at p. 20. This is incorrect and belittles what Godsey was doing, visiting his toddler son, not a girlfriend. Godsey was being a parent, not a paramour.

the man in the video was Dalton Thrash, only his family did so. Godsey showed that the Attorney had not shown the video, and the Attorney never contradicted that. All he said in his defense is that Godsey's family sent him a lot of messages, and that many of those came outside business hours.

Those reasons for not investigating the video and other claims are nonsense. Godsey's sister has sworn that the reasons the Attorney gave for not investigating had nothing to do with who told him about the video. Rather than arguing that he would not investigate because Godsey had not mentioned Thrash to him or because it came too close to the end of the case, the Attorney told Godsey's sister that "the video has no bearing and is not adding any additional time to Nicholas' sentencing so we should not worry about it." He also claimed that if Godsey did not take responsibility for the video, "they were going to throw the book at [me]."

The District Court makes one final claim that merits review. It held that "even if there were some arguable claim of deficient performance at sentencing, Godsey must show that his counsel's ineffectiveness was prejudicial, meaning that it is reasonably likely the result of the proceeding would have been different... But after evaluating the relevant sentencing factors found at 18 U.S.C. § 3553, the Court stated at sentencing that in the event it erred in calculating any of the sentencing guidelines in this case or in resolving any objections, the Court would've imposed the same sentence as a variance or non-guideline sentence based upon the offense conduct in this case, the characteristics of the defendant, and the other 3553

factors as the Court has discussed them here today.” *Id.* citing sentencing transcript at p. 24.

As a matter of law, the District Court’s *post hoc* position can hardly be credited. It’s one thing for the Court to reject Guidelines objections from a Defendant and then note that even if those objections had been credited, the Court would have not sentenced any differently. It is a different matter altogether for a court to never hear the merits of an objection but to claim that even if it had heard objections never presented to it, its position would have not changed. Here, Godsey’s position was that 80% of the quantity of methamphetamine that was used to determine his Total Offense Level did not belong to him. Due to the Attorney’s incompetent representation, the Court never heard that argument. Thus, its contemporaneous statement that had the Court ruled differently on objections, it still would have sentenced Godsey to 210 months, simply cannot be credited.

In most cases, “a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome. *Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016); accord, *United States v. De Leon-Sanchez*, Case No. 21-40303 (5th Cir. June 8, 2022), 2022 U.S. App. LEXIS 15791, at \*6. That being the case, the Attorney’s failure to investigate meritorious arguments that the amount of methamphetamine attributed to Godsey was fatally flawed and grossly overstated constituted ineffective assistance. Had the Attorney not failed to investigate, there

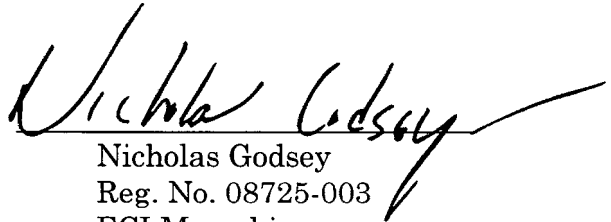
is a reasonable probability that Godsey's Guidelines sentencing range would have been lower.

### CONCLUSION

The issue here is not whether Godsey proved his entitlement to withdrawing his plea, but rather whether he should have been permitted to develop the record in an evidentiary hearing in order to prove the detailed allegations of fact he advanced in his § 2255 *Motion*. To the extent that *Machibroda* has not clearly delineated when a showing entitles a movant to an evidentiary hearing, this case provides an ideal vehicle to do so.

WHEREFORE, this *Petition* should be granted.

Executed May 5, 2026

  
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