

APPENDIX A

U.S. DISTRICT COURT, DISTRICT OF
FLORIDA - JUDGMENTS & COMMITMENTS

FILED

S. MARSHAL

P 18 AM 9:57

E DIST. OF FLORIDA
TAMPA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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THE DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

FIRST AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

CASE NUMBER: 8:99-CR-158-T-17MSS

vs.

JOSE LUIS AREVALO

Defendant's Attorney: Frank Rubino, Retained

DATE: 9-23-02

TELEPHONE #: 913-301-5400

NAME & TITLE OF PERSON CONTACTED

FOR VERIFICATION: *Court Clerk*

THE DEFENDANT:

XX was found guilty on count(s) One and Three after a plea of not guilty.

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

TITLE & SECTION	NATURE OF OFFENSE	DATE OFFENSE CONCLUDED	STAFF SIGNATURE: <i>[Signature]</i>
			COUNT NUMBER(S)
21:USC:846	Conspiracy to distribute marijuana	7/14/99	1
18:USC:1956(a)(1)(A)(i), Conspiracy to commit money laundering (B)(i) and (ii) and (h)		5/7/99	3

The defendant is sentenced as provided in pages 2 through 9 of this First Amended Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 526-25-8246

Defendant's Date of Birth: 1/11/57

Original Date of Imposition of Sentence: January 12, 2001

Defendant's USM No.: 06927-196

First Amended Date of Imposition of Sentence: September 13, 2002

Defendant's Mailing Address: U.S. Marshal Service

Defendant's Residence Address: Same

I certify the foregoing to be a true
and correct copy of the original.
SHERYL L. LOESCH, Clerk
United States District Court
Middle District of Florida

ELIZABETH A. KOVACHEVICH
CHIEF UNITED STATES DISTRICT JUDGE

DATE: September 16, 2002

Jennifer O'Boyle

Defendant: JOSE LUIS AREVALO
Case No.: 8:99-CR-158-T-17MSS

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ONE HUNDRED TWENTY (120) MONTHS as to Count 1; TWO HUNDRED FORTY (240) MONTHS as to Count 3; Count 3 to run CONSECUTIVE to Count 1 with credit for time served.

XX. The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on 2-28-01 to FCI - PHX at
Phoenix, AZ, with a certified copy of this judgment.

Stephen F. Pontesio, warden
United States Marshal

By: J. Hob LIE
Deputy Marshal

Defendant: JOSE LUIS AREVALO
Case No.: 8:99-CR-158-T-17MSSFirst Amended Judgment - Page 3 of 9**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of SIX (6) YEARS as to Count 1; THREE (3) YEARS as to Count 3; Count 3 to run CONCURRENT with Count 1.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: JOSE LUIS AREVALO
Case No.: 8:99-CR-158-T-17MSS

First Amended Judgment - Page 4 of 9

SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

XX The defendant shall provide the probation officer access to any requested financial information.

Defendant: JOSE LUIS AREVALO
Case No.: 8:99-CR-158-T-17MSSFirst Amended Judgment - Page 5 of 9

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

<u>Assessment</u>	<u>Fine</u>	<u>Total Restitution</u>
Totals: \$200.00	\$25,000.00	\$N/A

— The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

— The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Totals:	\$ _____	\$ _____	

— If applicable, restitution amount ordered pursuant to plea agreement \$ _____.

— The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

XX The court determined that the defendant does not have the ability to pay interest, and is ordered that;

XX the interest requirement is waived for the XX fine and/or ____ restitution.

— the interest requirement for the ____ fine and/or ____ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

Defendant: JOSE LUIS AREVALO
Case No.: 8:99-CR-158-T-17MSSFirst Amended Judgment - Page 6 of 9**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. XX Lump sum payment of \$ 25,200.00 due immediately.

 not later than , or

 in accordance with C, D, or E below; or

B. You are hereby ordered to begin payment immediately and continue to make payments to the best of your ability until this obligation is satisfied. If in custody you are directed to participate in the Bureau of Prisons Financial Responsibility Program if eligible, and upon your release from custody you shall adhere to a payment schedule as determined by the Probation Office.

C. Payment in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence days (e.g., 30 or 60 days) after date of this judgment; or

D. Payment in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years) to commence after release from imprisonment to a term of supervision; or

E. Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

 Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

 The defendant shall pay the cost of prosecution.

 The defendant shall pay the following court cost(s):

XX The defendant shall forfeit the defendant's interest in the following property to the United States:

See attached Preliminary Order of Forfeiture.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED

SPB

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 8:99-Cr-158-T-17(F)

JOSE LUIS AREVALO,

Defendant.

PRELIMINARY ORDER OF FORFEITURE

THIS CAUSE comes before the Court upon the filing of the Motion of the United States of America for a Preliminary Order of Forfeiture. For good cause shown, the Motion of the United States is GRANTED.

It is hereby ORDERED, ADJUDGED and DECREED that all right, title and interest of the defendant Jose Luis Arevalo in the following properties is hereby FORFEITED to the United States of America:

a. The real property located at 5040 North Amapola Drive, Tucson, Arizona 85745, including all improvements thereon and appurtenances thereto, whose legal description is as follows:

That portion of the Southeast Quarter of Section 13, Township 13 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

Commencing at the interior quarter corner of said Section 13, a 1 1/4 inch lead capped pipe;

Thence South 00 degrees 08 minutes 56 seconds East, along the West line of said Southeast Quarter, 786.20 feet;

Thence North 89 degrees 58 minutes 35 seconds East, 1089.23 feet to the Point of Beginning;

Thence continues North 89 degrees 58 minutes 35 seconds East 214.02 feet;

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Thence South 00 degrees 08 minutes 56 seconds East, 204.00 feet;
Thence South 89 degrees 58 minutes 35 seconds West, parallel with the
North line of said parcel, 214.02 feet;
Thence North 00 degrees 08 minutes 56 seconds West, parallel with the
East line of said parcel, 204.00 feet to the Point of Beginning;
Subject to and together with easements recorded in Docket 8549 at page
101, in Docket 8054 at pages 2672 and 2678, in Docket 8802 at page
2109 and in Docket 5668 at page 633;

b. The real property located at 5051 Avenida de La Colina North,
Tucson, Arizona 85749-8751, including all improvements thereon and
appurtenances thereto, whose legal description is as follows:

Lot 1, of RANCHITOS DE LOS SAGUAROS, a subdivision of Pima
County, Arizona, as set forth in the office of the Pima County Recorder, in
Book 24 of maps at Page 65;

c. 1999 Chevrolet Tahoe, Vehicle Identification Number
1GNEK13R6XJ358352;

d. 1991 Harley Davidson Motorcycle, Vehicle Identification Number
1HD1ELL16MY135419;

e. \$17,250,000.00 in proceeds of federal narcotics violations.

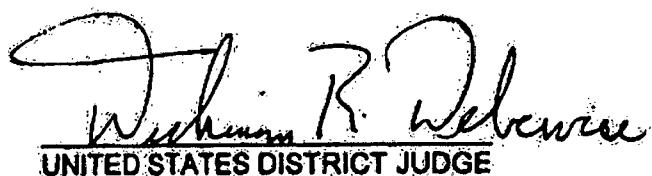
It is further ORDERED that the United States Customs Service seize the
aforementioned properties pursuant to the provisions of 21 U.S.C. § 853(g).

The United States will, pursuant to 21 U.S.C. § 853(n)(1), provide direct written
notice to all third parties known to have alleged an interest in the above-referenced
properties. The United States shall publish notice of the order and of its intent to
dispose of the properties in such manner as the Attorney General may direct.

Upon adjudication of all third-party interests, this Court will enter a Final Order of
Forfeiture, pursuant to the provisions of 21 U.S.C. § 853(n)(7), in which the interest of
all parties will be addressed.

DONE and ORDERED in Chambers in Tampa, Florida, this 10th day of

April, 2000.



William R. Webewise

UNITED STATES DISTRICT JUDGE

Copies to:

Bryant R. Camarena
Assistant United States Attorney

Frank A. Rubino, Esquire

Counsel of Record

APPENDIX - B

U.S. COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

LIMITED REMAND
BEFORE THE
UNITED STATES CIRCUIT JUDGES

MARTIN & JILL PRIOR

06/14/2017

DENIAL OF CERTIFICATE OF APPEALABILITY
BEFORE THE
UNITED STATES CIRCUIT JUDGE
FRANK M. HALL
NOVEMBER 08, 2017

DENIAL OF RECONSIDERATION MOTION
BEFORE THE
UNITED STATES CIRCUIT JUDGES
FRANK M. HALL
&
WILLIAM PRIOR

January 16, 2018

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10053-E

JOSE LUIS AREVALO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

BEFORE: MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Jose Arevalo, a federal prisoner, seeks a certificate of appealability ("COA") and leave to proceed on appeal *in forma pauperis* ("IFP"). Mr. Arevalo is serving a 360-month sentence after a jury convicted him of conspiracy to possess with intent to distribute marijuana and conspiracy to commit money laundering. In October 2003, Mr. Arevalo filed a 28 U.S.C. § 2255 motion, raising four claims for relief. At the same time, he moved the district court to hold his § 2255 motion in abeyance, as there was an unresolved issue pending before this Court. He asserted that, in an abundance of caution, he filed his § 2255 motion without a memorandum before the limitations period expired, but, when the issues were resolved before this Court, he would file a memorandum in support.

The district court granted Mr. Arevalo's motion to stay, as this Court had not entered a mandate in his appeal. Mr. Arevalo later filed his supporting memorandum in July 2004, in which he also raised two new grounds for relief. In 2005, after the government responded and Mr. Arevalo replied, the district court denied his § 2255 motion. The district court found that the two new claims were untimely because they were not raised in his initial § 2255 motion, and did not relate back to the claims raised. As to the remaining grounds, the court stated that it reviewed the record and considered Mr. Arevalo's grounds for relief and memorandum, the government's response, and Mr. Arevalo's reply. The district court found the government's arguments persuasive, adopted and incorporated those arguments, and denied the § 2255 motion.

In November 2016, Mr. Arevalo filed the present motion to reopen his original § 2255 proceeding, pursuant to Fed. R. Civ. P. 60(b)(6). He asserted that his Rule 60(b) motion should not be construed as a second or successive § 2255 motion because he was attacking a defect in the integrity of his initial § 2255 proceeding. He argued that the district court denied relief in his § 2255 proceeding by adopting and incorporating the government's arguments, but this violated § 2255(b).¹ Mr. Arevalo cited to an unpublished Fifth Circuit case for the proposition that, even if a prisoner is plainly entitled to no relief, the district court must state why. He argued that, here, the district court did not provide any findings of fact or conclusions of law, and did not articulate why a denial was warranted, besides referencing the government's response.

Next, he contended that the district court erroneously found that two of his claims were time-barred, preventing a merits adjudication on those claims. Lastly, he contended that the district court gave him an erroneous time limit in which to file his first § 2255 motion, also in violation of § 2255(a) and (b).

¹ Section 2255(b) provides in relevant part that, unless the motion and record conclusively show that the prisoner is not entitled to relief, the court shall make findings of fact and conclusions of law with respect to the issues involved. 28 U.S.C. § 2255

The district court denied Mr. Arevalo's Rule 60(b)(6) motion in an endorsed order, without any comment.¹ Mr. Arevalo sought from the district court an extension of time in which to file a COA, which the court "den[ied] without prejudice to refiling in the Eleventh Circuit."² The district court, however, never explicitly ruled on whether a COA was warranted.

DISCUSSION

A COA is required to appeal from the denial of any Rule 60(b) motion arising from a § 2255 proceeding. *Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2005). "District courts must consider and rule upon the propriety of issuing the COA first, that is, before a request for a COA will be received or acted on by this [C]ourt or a judge of this [C]ourt." *Edwards v. United States*, 114 F.3d 1083, 1084 (11th Cir. 1997).

Here, Mr. Arevalo brought a true Rule 60(b) motion, instead of a successive § 2255 motion. He asserted that the district court erroneously determined that two of his claims were time-barred, which prevented a merits determination on these claims, an argument which is properly brought in a Rule 60(b) motion. Although he also seemingly attacked the district court's resolution of his other claims on the merits, by arguing that the district court did not make findings of fact, he raised at least one potentially meritorious Rule 60(b) claim. However, the district court did not explain why it was denying the Rule 60(b) motion, and also did not rule on whether a COA was warranted. Because this appeal requires a COA, and the district court first must rule on such, this case is hereby REMANDED to the district court to rule on a COA. Mr. Arevalo's motion for IFP status is HELD IN ABEYANCE.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10053-E

JOSE LUIS AREVALO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Jose Arevalo is a federal prisoner who was convicted, on February 15, 2000, of conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1), and conspiracy to commit money laundering, in violation of 21 U.S.C. § 1956(a)(1)(A)(i), (B)(i), (ii) (Count 3). He was sentenced to 120 months' imprisonment for Count 1, and 240 months' imprisonment for Count 3, to be served consecutively, and judgment was entered in his case on January 17, 2001. This Court affirmed his convictions and sentences on April 25, 2002. On September 16, 2002, the district court entered an amended judgment to incorporate a preliminary order of forfeiture. This Court affirmed the amended judgment on June 13, 2003, and the mandate issued on June 18, 2004.

On October 6, 2003, while the direct appeal of the amended judgment was pending, Arevalo filed a *pro se* 28 U.S.C. § 2255 motion, raising four claims for relief. Specifically, he maintained that:

- (1) counsel was ineffective for failing to argue that venue did not exist for his money laundering charge, and this Court erred by finding that evidence was presented at trial to support venue;
- (2) counsel was ineffective for failing to ensure that the jury was properly instructed concerning the elements of a conspiracy and that the proceeds from prior crimes could not be attributed to the money laundering charge in the current indictment;
- (3) counsel was ineffective for failing to challenge the government's inadequate notice of his 21 U.S.C. § 851 enhancement and the use of his prior convictions to enhance his sentence, pursuant to § 841(b)(1)(D);
- (4) the district court's drug quantity computations and the use of his prior convictions to enhance his sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

The district court stayed Arevalo's § 2255 proceedings while the direct appeal from his amended judgment was pending, and then lifted the stay and ordered briefing after this Court affirmed his amended judgment.

The government responded to the § 2255 motion, contending that Claim 1 was procedurally barred, because it was raised and rejected on direct appeal. The government noted that, on direct appeal, this Court held that evidence was presented at trial to support jurisdiction and venue. Specifically, this Court held that:

[t]he district court did not err by exercising its jurisdiction to sentence Arevalo on the money laundering count. We are unpersuaded by Arevalo's arguments that there was insufficient evidence presented at trial that his trafficking activities extended into Florida.

The government maintained that Claim 2 was belied by the record, as the district court did instruct the jury regarding concealment when it reviewed the elements of money laundering, by providing the following:

[t]o knowingly conduct and attempt to conduct financial transactions knowing that the proceeds involved in the financial transactions represented the proceeds of some form of unlawful activity, when the financial transactions, in fact, involved the proceeds of a specified unlawful activity, to wit: the importation, sale, and otherwise dealing in marijuana, in part to conceal or disguise the nature or location, the source, and the ownership of the proceeds of the specified unlawful activity, contrary to the provisions from Title 18, U.S.C. § 1956(a)(1)(B)(i).

Because Arevalo did not demonstrate that the jury was improperly instructed, the government maintained, Arevalo failed to demonstrate that counsel's performance was deficient, or that he was prejudiced from any alleged failure to challenge the jury instructions.

The government maintained that Claim 3 was raised and rejected on direct appeal, where Arevalo argued that the district court erred by utilizing the enhancement provision of § 841(b)(1)(D) to sentence him to ten years' imprisonment for his drug conspiracy conviction, because the prior convictions stemmed from substantive offenses that were part of the conspiracy for which he was convicted in the instant case. This Court held that his claim was foreclosed by *United States v. Hansley*, 54 F.3d 709, 717 (11th Cir. 1995), as Arevalo continued his involvement in the conspiracy to traffic in marijuana for years following his prior convictions.

In addition, the government noted that Arevalo's *Apprendi* allegation was without merit, as *Apprendi* specifically held that prior convictions used to increase a penalty beyond the statutory maximum did not need to be submitted to a jury. Moreover, Arevalo was sentenced below his statutory maximum. The government further argued that the court limited his sentence for the drug conspiracy to ten years, pursuant to § 841(b)(1)(D).

Arevalo replied to the government's response, re-asserting his arguments raised in the § 2255 motion. On March 7, 2005 the district court entered an order that denied Arevalo's § 2255 motion. The district court found the government's arguments persuasive and adopted and incorporated those arguments into its order. The district court later denied a COA, and Arevalo sought a COA and IFP status from this Court. On August 5, 2005, this Court denied Arevalo a COA and IFP status. (See Case No. 05-12629). Arevalo filed a motion for reconsideration, which this Court denied on October 11, 2005.

On November 16, 2016, Arevalo filed the instant motion to reopen his original § 2255 proceedings, pursuant to Fed. R. Civ. P. 60(b). He argued that the district court violated § 2255(b) when it denied his § 2255 motion by adopting and incorporating the government's arguments.¹ He maintained that the district court did not provide any findings of fact or conclusions of law in its order denying relief, and did not articulate why a denial was warranted, besides referencing the government's response.

On November 22, 2016, the district court denied Arevalo's Rule 60(b) motion in an endorsed order, without any comment. Arevalo filed a notice of appeal and moved for IFP status with this Court. This Court entered a limited remand, so that the district court could rule on whether a COA was warranted from the denial of his Rule 60(b) motion. The district court entered an order denying Arevalo a COA and IFP status, in order to appeal the denial of his Rule 60(b) motion, and he now seeks a COA and leave to proceed IFP from this Court.

¹ Section 2255(b) provides that, unless the motion and record conclusively show that the prisoner is not entitled to relief, the court shall make findings of fact and conclusions of law with respect to the issues involved. 28 U.S.C. § 2255(b).

DISCUSSION:

A COA is required for the appeal of any denial of a Rule 60(b) motion in a § 2255 proceeding. *Jackson v. Crosby*, 437 F.3d 1290, 1295-96 (11th Cir. 2006). In order to obtain a COA, a movant must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Under this standard, a prisoner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

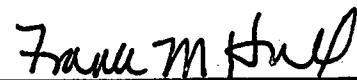
Rule 60(b) allows a party to seek relief or reopen his case based upon the following limited circumstances: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been discharged; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b). The appeal of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion, and does not extend to the validity of the underlying judgment *per se*. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). To demonstrate that the district court abused its discretion in denying a Rule 60(b) motion, a movant must prove some justification for relief, and cannot prevail simply because the district court properly could have vacated its order. *Solaroll Shade & Shutter Corp., Inc. v. Bio-Energy Sys., Inc.*, 803 F.2d 1130, 1132 (11th Cir. 1986). Rather, the movant must demonstrate a justification so compelling that the court was required to vacate its order. *Id.*

A Rule 60(b)(4) motion must be filed "within a reasonable time." Fed. R. Civ. P. 60(c)(1). In determining whether the timing of the motion is reasonable, this Court looks to whether the parties have been prejudiced by the delay and whether a good reason has been presented for failing to take the action sooner. *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008).

Arevalo has not shown that the district court abused its discretion by denying his Rule 60(b) motion. His allegation that the district court erred by adopting and incorporating the government's arguments in its dismissal of his § 2255 motion does not constitute mistake, fraud, or newly discovered evidence. *See Fed. R. Civ. P. 60(b).* He has not demonstrated that his judgment is void or that it has been discharged, or provided any other justification so compelling as to demonstrate that the court was required to vacate its order. *See id.; Solaroll Shade & Shutter Corp., 803 F.2d at 1132.*

Moreover, he did not file his Rule 60(b) motion within a reasonable time of the alleged error. Arevalo argues that the district court erred by dismissing his § 2255 motion in 2005, however, he waited over ten years to file the instant Rule 60(b) motion. Arevalo has not provided a good reason for failing to take action sooner. *See BUC Int'l Corp., 517 F.3d at 1275.* As such, Arevalo has not demonstrated that he is entitled to a COA in this matter.

Because reasonable jurists would not find debatable the district court's denial of Arevalo's Rule 60(b) motion, Arevalo's motion for a COA is DENIED, and his motion for IFP status is DENIED as MOOT. *See Slack, 529 U.S. at 484.*


Frank M. Hull
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10053-E

JOSE LUIS AREVALO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before WILLIAM PRYOR and HULL, Circuit Judges.

BY THE COURT:

Jose Arevalo filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's November 8, 2017, order denying a certificate of appealability, in order to appeal the denial of his Fed. R. Civ. P. 60(b) motion. Upon review, Arevalo's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.
