

No. _____

19-7225

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL LARA SALAS
(Your Name)

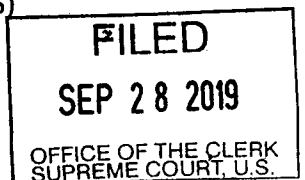
— PETITIONER

vs.

ORIGINAL

UNITED STATES DISTRICT COURT RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Salas
(Your Name)

P.O. Box 26020, Beaumont-low
(Address)

Beaumont, TX 77720
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Please read on page 22, Motion requesting on Petition for a writ of certiorari also please read Exhibit-C-Page-24-26; also please read as follow the police report, and then please read the Factual Background page 15-16-line 1-26,

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Burrage v. United States, 134 S.Ct. 881, 137 L.Ed.2d 715 (2014)

Alleyne v. United States, 133, S.Ct. 2151, 136 L.Ed.2d 314 (2013)

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CASES Burrage v. United States, 134 S.Ct. 881,187 PAGE NUMBER 19
11 L.Ed.2d 715 (2014).

STATUTES AND RULES In Burrage, the Supreme Court held that "at least where the use of drug distribution by the defendant is not an independent sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(c) unless use is a but-for cause of the death or injury. " (571 U.S. at 218-19).

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at UNITED STATES COURT OF APPEALS; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 10, 2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Defendant Salas's Motion for Consideration of Newly Recognized Right. Salas argues he should be resentenced pursuant to Alleyne v. United States, 133 S.Ct. 2151 (2013) and United States v. Burrage, 134 S.Ct. 881 (2014). In Alleyne, the Supreme Court held any fact that increases the mandatory minimum sentence for a crime is an "element" of the criminal offense and must be proven beyond a reasonable doubt by submission to the jury.

In Burrage, the Supreme Court held a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841 (b)(1)(C) unless the use of a drug distributed by the defendant is a but-for cause of death or injury.

STATEMENT OF THE CASE

The genesis of Michael Lara Salas (hereinafter "Appellant") protracted litigation, is his case in the United States District Court for the Western District of Texas, case No. A-09-CR-550(1)-ss, wherein Appellant pled guilty to violations of 21 U.S.C. § 846 - conspiracy to possess with intent to distribute a controlled substance; 21 U.S.C. § 841(-)possession with intent to distribute a controlled substance; and 21 U.S.C. § 851(a)(1)- enhanced sentence, and sentenced to a sentence of two hundred eighty-eight (288) months imprisonment and a \$100 special assessment, and six years supervised release. Appellant filed a direct appeal in the United States Court of Appeal for the Fifth Circuit, which affirmed, on July 15, 2011, the District Court's judgment of conviction and sentence. (See United States v. Salas, No. 10-50369 (5th Cir. 2011)).

In this direct appeal Appellant initially raised the following issues: Appellant did not raise any substantive issues. Appellant's Counsel filed an Anders brief. Subsequently, Appellant's direct appeal was dismissed on July 15, 2011 (citation/opinion No. 10-50369).

Appellant filed a 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence, wherein Appellant sought assistance from another inmate. The resulting 28 U.S.C. § 2255 Motion was, as the District Court observed, "rambling and incoherent" WITH "fantastic and frivolous claims." It may be that Appellant raised one substantive ground for relief, that is, though inartfully argued, that the plea agreement was void or voidable for want of consideration and/or lack of a "meeting of the minds" or mutual assent, Denied on Oct 24, 2012.

On June 2014, Appellant filed a Motion for "Consideration of Newly Recognized Right" (See "Transfer Order"), approximately six (6) months after the United

States Supreme Court's decision in Burrage v. United States, 134 S.Ct. 881, 187, L.Ed.2d 715 (2014). Here Appellant raised grounds (1) Alleyne error - the District Court found fact based on a preponderance of evidence and rank speculation that increased Appellant's mandatory minimum sentence to Twenty (20) years imprisonment; and (2) Appellant's sentence is in violation of the law and Constitution of the United States, as the Supreme Court in Burrage v United States, 134, S.Ct. 881, 187 L.Ed.2d 715 (2014) held that a conviction and enhanced sentence under 21 U.S.C. § 841(a)(1), (b)(1)(c) requires "but for causation." There was no admission by Appellant of a finding beyond a reasonable doubt of the "but for causation" element that would comply with due process, nor did the Appellant's superseding indictment charge "but for causation" regarding the application of a "death" enhancement under § 841 (b)(1)(c); nor did the appellant admit facts that would overcome the mandate contained in Alleyne v United States, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), regarding proof beyond a reasonable doubt as to any fact increasing a mandatory minimum. An evidentiary hearing was not granted and the District Court construed Appellant's Motion as a second or successive 28 U.S.C. § 2255 Motion and transferred to the file to the United States Court of Appeals for the Fifth Circuit on August 12, 2014. (See "Transfer Order"). Subsequently, the Fifth Circuit dismissed Appellant's Motion for "Consideration of Newly Recognized Right," construed as a second or successive 28 U.S.C. § 2255 Motion on August 12, 2014, for "failure to comply with this Court's notice of June 27, 2014" (See Fifth Circuit Order).

Appellant did not appeal because until Burrage, circuit precedent foreclose any challenge. After Burrage and recent circuit court holdings, Appellant brought his application as some circuit court have held Burrage to be retroactive on collateral review.

On or about June 8, 2018, Appellant filed the instant Petitioner for Writ of

Habeas Corpus under 28 U.S.C. § 2241, relying on Burrage to challenge whether or not Appellant could attack his enhanced sentence and conviction retroactively.

On June 20, 2018, United States Magistrate Judge, Zack Hawthorn, issued his Report and Recommendation, recommending that Appellant's § 2241 Motion be dismissed, holding that it was barred by the Fifth Circuit precedent established by Reyes-Requena v United States, 243 F.3d 893 (5th Cir. 2001)(See Salas v M.K. Lewis, Warden, Civil Action No. 1:18-cv-00276-MAC-ZJH (E.D.Tex. June 20, 2018)). Appellant filed his objections to the Magistrate Judge's Report and Recommendation on July 12, 2018. On July 24, 2018 United States District Court Judge Marcia A Crone overruled Appellant's objections and adopted the Magistrate Judge's Report and Recommendation, subsequently, entering FINAL JUDGMENT dismissing Appellant's Petition for Writ Habeas Corpus. Appellant filed his notice of appeal on Oct.19, 2018 along with his Motion for leave to Appeal in forma pauperis. Appellant received notice of docketing Notice of Appeal from USCA (Case No. 18-40999) on or about Oct.28, 2018. On or about December 3, 2018, Appellant received an Order from the United States District Court for the Eastern District of Texas (Beaumont Division) that his Motion to proceed in Forma Pauperis was Granted. On Dec. 6, 2018 Appellant's appeal was docket by the United States Court of Appeal for the Fifth Circuit. It is from the above "Final Judgment" and the holding and findings adopted from the Magistrate Judge's Report Recommendation that Appellant bring this appeal.

REASONS FOR GRANTING THE PETITION

A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, if the circuit court acquires no jurisdiction of the causes. The same logic governs a challenge to a punishment that the constitution deprives state to a authority to impose. A conviction or sentence impose in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. It follow, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

Appellant's Sixth Amendment right to due process of law, and a fair and impartial right to trial was violated by the Government and the District Court by coercing, and threatening the Appellant with the Government seeking life in prison (21 U.S.C. §841(b)(1)(C)) as a sentence to be impose on Appellant if he did not accept the sentence of 288 months imprisonment under the plea Agreement. These threats of sentencing under 21 U.S.C. § 841 (b)(1)(C) were either known or should have been known by the Government to be untrue. Appellant's detention is based on an unknowing and involuntary plea of guilty entered by the Appellant in fear of dying in prison. The records demonstrates that Appellant did not supply Steven Jones-DECEASED with either heroin or cocaine on the day of Steven Jones death. The Fifth Circuit has found Burrage retroactive to cases on collateral review holding "because Burrage applies retroactively, we reverse and remand." therefore the Appellant's ask this Honorable Court to grant him a writ of Certiorari.

CONCLUSION

Appellant, based on the aforesaid argument and authority respectfully request that this Honorable Court grant Appellant for a writ of Certiorari.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael L. Salas

Date: 12/04/2019

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40999
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 10, 2019

Lyle W. Cayce
Clerk

MICHAEL LARA SALAS,

Petitioner-Appellant

v.

N. VAZQUEZ, Warden, Federal Correctional Institute Beaumont,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CV-276

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Michael Lara Salas, federal prisoner # 56427-080, appeals the dismissal of his federal habeas corpus petition under 28 U.S.C. § 2241. We review the district court's legal conclusions de novo and its factual findings for clear error. *Padilla v. United States*, 416 F.3d 424, 425 (5th Cir. 2005). Because Salas filed his petition under § 2241, he does not need a COA to appeal its dismissal. See *id.*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

EXhibit - F-1-14

The district court dismissed the petition as not being properly brought under § 2241. Salas correctly notes that, under *Burrage v. United States*, 571 U.S. 204, 218-19 (2014), he was allowed to file a § 2241 petition rather than a § 2255 motion. See § 2255(e); *Santillana v. Upton*, 846 F.3d 779, 783-84 (5th Cir. 2017). But we may affirm the dismissal of the § 2241 petition on any ground supported by the record. See *Hunter v. Tamez*, 622 F.3d 427, 430 (5th Cir. 2010).

Burrage ultimately provides Salas no relief. In *Burrage*, the Supreme Court held that a defendant cannot be subject to a life sentence under 21 U.S.C. § 841(b)(1)(C) unless the use of drugs provided by the defendant “is a but-for cause of the death or injury.” *Burrage*, 571 U.S. at 218-19 (emphasis added); see *Santillana*, 846 F.3d at 783-84. *Burrage* thus made it more difficult for the Government to prove that drugs provided by a defendant caused a user’s death. See *Santillana*, 846 F.3d at 783-84. In *Santillana*, we held that the Government’s inability to prove “but for” causation under *Burrage* meant that the defendant had “satisfied her burden to show that she was potentially convicted of a nonexistent offense.” *Id.* at 785.

But Salas was not sentenced to life under § 841(b)(1)(C); he was sentenced to 288 months in prison pursuant to a written plea agreement. Salas contends only that his plea is invalid because he pleaded guilty due to the threat of a life sentence under § 841(b)(1)(C), which threat proved to be illusory because it did not account for the increased burden of proof imposed by *Burrage*. Salas also asserts that, in light of *Burrage*, his counsel was ineffective for advising him to plead guilty.

Salas’s otherwise voluntary and valid plea “cannot subsequently be invalidated on contentions that it was made through subjective fear of receiving a heavier penalty if convicted after trial, or because, in the light of

hindsight, competent counsel failed to anticipate a change in the law that would have enhanced his bargaining position.” *Morse v. Texas*, 691 F.2d 770, 773 (5th Cir. 1982); *see also Brady v. United States*, 397 U.S. 742, 757 (1970) (holding that “a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise”). Further, Salas’s plea counsel in 2010 did not have the benefit of the 2014 *Burrage* decision and was not required to anticipate developments in the law. *See Nelson v. Estelle*, 642 F.2d 903, 908 (5th Cir. 1981); *Cooks v. United States*, 461 F.2d 530, 532 (5th Cir. 1972) (“Clairvoyance is not a required attribute of effective representation.”). *Burrage* does not establish that Salas was “imprisoned for conduct that was not prohibited by law.” *Reyes-Requena*, 243 F.3d at 903. The judgment is AFFIRMED.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MICHAEL LARA SALAS,

Petitioner,

versus

M.K. LEWIS,

Respondent.

~~~~~

**CIVIL ACTION NO. 1:18-CV-276**

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner Michael Lara Salas, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be dismissed.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in light of the pleadings and the applicable law.

Petitioner is challenging a conviction for conspiring to possess controlled substances with the intent to distribute. The magistrate judge correctly concluded that as petitioner's grounds for review are not based on a retroactively applicable Supreme Court decision that establishes he may have been convicted of a nonexistent offense, he may not assert his grounds for review in a petition filed pursuant to Section 2241. *Reyes-Requena v. United States*, 243 F.3d 893, 894 (5th Cir. 2001).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing the petition.

SIGNED at Beaumont, Texas, this 24th day of August, 2018.

A handwritten signature in cursive script, reading "Marcia A. Crone".

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MICHAEL LARA SALAS

§

VS.

§

CIVIL ACTION NO. 1:18cv276

M.K. LEWIS

§

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Michael Lara Salas, an inmate incarcerated within the Bureau of Prisons, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

In 2010, pursuant to a plea of guilty entered in the United States District Court for the Western District of Texas, petitioner was convicted of conspiring to possess controlled substances with the intent to distribute. He was sentenced to 268 months of imprisonment. The United States Court of Appeals for the Fifth Circuit dismissed petitioner's appeal as frivolous after his attorney filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). *United States v. Salas*, 430 F. App'x 295 (5th Cir. 2011).

Petitioner subsequently filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion to vacate was denied by the trial court. *Salas v. United States*, 2012 WL 12994997 (W.D. Tex. Oct. 25, 2012). The Fifth Circuit later denied movant leave to file a successive motion to vacate. *In re Salas*, 880 F.3d 150 (5th Cir. 2018).

### The Petition

Petitioner asserts the following grounds for review: (a) he was coerced into accepting a plea agreement and his plea of guilty was involuntary and (b) the record demonstrates he did not supply Steven Jones with heroin as alleged by the prosecution.

### Analysis

Petitioner is not challenging the manner in which his sentence is being executed. Instead, petitioner attacks his conviction itself, as well as the sentence imposed by the trial court. While a petition for writ of habeas corpus filed under 28 U.S.C. § 2241 is the proper method for challenging the manner in which a sentence is being executed, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992), a motion to vacate, set aside or correct sentence filed pursuant to 28 U.S.C. § 2255 is normally the proper method for challenging a conviction or sentence itself. *Cox v. Warden*, 911 F.2d 1111, 1113 (5th Cir. 1990) (“Section 2255 provides the primary means of collateral attack on a federal sentence.”). There is one exception to this general rule. A prisoner may utilize Section 2241 to attack a conviction or sentence if it appears the remedy afforded by Section 2255 “is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255. The burden of establishing the inadequacy or ineffectiveness of the remedy afforded by Section 2255 falls on the petitioner. *Christopher v. Miles*, 342 F.3d 378, 382 (5th Cir. 2003).

The United States Court of Appeals for the Fifth Circuit has recognized one circumstance in which Section 2255 is inadequate to test the legality of a prisoner’s detention. In *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001), the Fifth Circuit held Section 2255 was inadequate or ineffective with respect to a claim which: (a) is based on a retroactively applicable Supreme Court decision which establishes the petitioner may have been convicted of a nonexistent

offense and (b) was foreclosed by established circuit law at the time when the claim should have been raised during the petitioner's trial, direct appeal or initial motion to vacate filed under Section 2255.

The grounds for review asserted by petitioner are not based on a retroactively applicable decision of the Supreme Court which establishes he may have been convicted of a nonexistent offense. He has therefore failed to carry his burden of demonstrating Section 2255 is inadequate or ineffective to challenge the legality of his detention. His Section 2241 petition should therefore be dismissed.

Recommendation

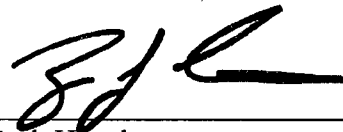
This petition for writ of habeas corpus should be dismissed.

Objections

Objections must be (1) specific, (2) in writing, and (3) served and filed within 14 days after being served with a copy of this report. 28 U.S.C. § 636(b)(1).

A party's failure to object bars that party from (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of unobjected-to factual findings and legal conclusions accepted by the court, *Douglass v. United Serv. Auto. Ass'n.*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

SIGNED this 20th day of June, 2018.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', is written over a horizontal line.

Zack Hawthorn  
United States Magistrate Judge