

## **APPENDIX A**

**JUDGEMENT OF THE FIFTH CIRCUIT COURT OF APPEALS**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-50807

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In re: DAVID LOPEZ,

Petitioner

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Petition for a Writ of Mandamus  
to the United States District Court for the  
Western District of Texas

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ON MOTION FOR RECONSIDERATION AND REHEARING EN BANC

Before JONES, CLEMENT, and HAYNES, Circuit Judges.

PER CURIAM:

(X) The Motion for Reconsideration is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5<sup>TH</sup> CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Motion for Reconsideration is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5<sup>TH</sup> CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT: 12-26-2019

Cowher  
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-50807

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In re: DAVID LOPEZ,

A True Copy  
Certified order issued Nov 21, 2019

*Tyke W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner

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Petition for a Writ of Mandamus to the  
United States District Court for the  
Western District of Texas

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Before JONES, CLEMENT and HAYNES, Circuit Judges.

PER CURIAM:

David Lopez, federal prisoner # 17702-180, has filed in this court a pro se petition for a writ of mandamus. Lopez seeks to challenge his 2017 conviction for conspiracy to possess marijuana with intent to distribute and possession of marijuana with intent to distribute, for which he was sentenced to a total of 293 months in prison and ordered to forfeit certain property.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* “Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

Lopez fails to show that he has no other adequate means to obtain relief. Lopez had a direct appeal, and we affirmed his conviction and sentence. *United States v. Lopez*, 749 F. App'x 273 (5th Cir. 2018). Any current claims that were or could have been raised in that appeal are not remediable by way of mandamus. Further, he recently filed a motion to vacate pursuant to 28 U.S.C. § 2255, raising some of the same challenges raised in his mandamus petition. If the district court rules against him, Lopez will have an appellate remedy. Thus, mandamus relief is not warranted.

To the extent Lopez seeks postconviction relief from us in the first instance, we decline to grant it. Even if circuit judges retain authority to entertain an original habeas corpus petition pursuant to 28 U.S.C. § 2241, which is unclear in light of the Antiterrorism and Effective Death Penalty Act of 1996, *see Felker v. Turpin*, 518 U.S. 651, 660-61 & n.3 (1996), any such authority rests in the hands of individual circuit judges, not the court of appeals itself, *see Zimmerman v. Spears*, 565 F.2d 310, 316 (5th Cir. 1977). Each member of this panel declines to exercise whatever original jurisdiction may exist in individual circuit judges. *See id.*

The petition for a writ of mandamus is DENIED. Lopez's request that we stay the order of forfeiture is likewise DENIED.

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