

# United States Court of Appeals For the First Circuit

No. 18-1683

CARLOS E. RODRIGUEZ-MILIAN,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

Before

Howard, Chief Judge,  
Torruella and Barron, Circuit Judges.

## JUDGMENT

Entered: July 10, 2019

Petitioner Carlos E. Rodriguez-Milian seeks a certificate of appealability ("COA") as to the district court's rejection of his 28 U.S.C. § 2255 motion. We have reviewed carefully Rodriguez-Milian's submissions and relevant portions of the record. Setting aside the district court's suggestions that petitioner's claims of ineffective assistance of counsel either were barred due to prior pursuit of relevant points or due to procedural default, we conclude that the district court's alternative merits-based denials of petitioner's claims was neither debatable nor wrong and that, as a general matter, petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (same).

Rodriguez-Milian's request for appointment of counsel in this court is denied. See Bucci v. United States, 662 F.3d 18, 34 (1st Cir. 2011) (no constitutional right to counsel in a habeas proceeding); Ellis v. United States, 313 F.3d 636, 652 (1st Cir. 2002) (same). Rodriguez-Milian's motion to consolidate also is denied. See Fed. R. App. P. 3(b) (providing for consolidation only where "two or more parties ... interests make joinder practicable").

The application for a COA is denied, and the appeal is terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Johnny Rivera-Gonzalez Sr.  
Carlos E. Rodriguez-Milian  
Rafael Juan Lopez-Rivera  
Mariana E. Bauza Almonte