

ATTACHMENT A

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

May 11, 2020

#36285-177  
Mr. Kevin D. Moore  
FCI Seagoville  
P.O. Box 9000  
Seagoville, TX 75159-9000

No. 20-10121      In re: Kevin Moore  
USDC No. 3:20-CV-260  
USDC No. 3:07-CR-125-1

Dear Mr. Moore,

We are in receipt of your petition for panel rehearing pursuant to Fed.R.App.P. Rule 40.

28 U.S.C. Section 2244(b)(3)(E) does not permit review of the denial of your request to file a successive petition. We are taking no action on this document.

Sincerely,

LYLE W. CAYCE, Clerk

*Claudia N. Farrington*

By: \_\_\_\_\_  
Claudia N. Farrington, Deputy Clerk  
504-310-7706

RECEIVED May 19, 2020

ATTACHMENT B0

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 20-10121

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In re: KEVIN D. MOORE,

Movant

---

Motion for an order authorizing  
the United States District Court for the  
Northern District of Texas to consider  
a successive 28 U.S.C. § 2255 motion

---

Before JONES, CLEMENT, and HAYNES, Circuit Judges.

PER CURIAM:

Kevin D. Moore, federal prisoner # 36285-177, was convicted of transporting and shipping child pornography as well as possession of child pornography. His initial 28 U.S.C. § 2255 motion challenging these convictions was denied in 2013. Moore recently submitted to the district court a “petition to vacate” his convictions, purportedly based on various provisions of the Federal Rules of Civil Procedure, that presented new evidence in support of a new claim of ineffective assistance of counsel. The district court construed this filing as a successive § 2255 motion and accordingly transferred it to this court.

Although Moore now moves for authorization to file a successive § 2255 motion, he maintains that his petition to vacate was not a successive § 2255 motion requiring this court’s authorization. This argument lacks merit because the petition raised a new substantive claim, which does require our

RECEIVED APRIL 27, 2020

authorization. See *United States v. Hernandez*, 708 F.3d 680, 681 (5th Cir. 2013); *Williams v. Thaler*, 602 F.3d 291, 301-04 (5th Cir. 2010).

To obtain authorization to file a successive § 2255 motion, Moore must make a prima facie showing that his claim relies on either “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense” or “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” § 2255(h); see 28 U.S.C. § 2244(b)(3)(C); *Reyes-Requena v. United States*, 243 F.3d 893, 897-99 (5th Cir. 2001). In arguing that his counsel was ineffective for failing to advise him of a plea offer, Moore fails to meet this standard.

IT IS ORDERED that the motion for authorization is DENIED.

NOTE: NO SIGNATURES !!

ATTACHMENT CW

DKT 78

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KEVIN D. MOORE, 36285-177,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 3:11-cv-2540-O (BT)

No. 3:07-cr-0125-O (BT)

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered,

It is ORDERED, ADJUDGED and DECREED that the motion to vacate, set-aside, or correct sentence pursuant to 28 U.S.C. § 2255 is TRANSFERRED to the Fifth Circuit Court of Appeals as successive pursuant to *In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997).

It is further ORDERED that the Clerk shall transmit a true copy of this Judgment and the Memorandum Opinion and Order to the parties.

SIGNED this 31st day of January, 2020.

  
Reed O'Connor

UNITED STATES DISTRICT JUDGE

C(2)  
DKT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**KEVIN D. MOORE, 36285-177,**

**Movant,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**No. 3:11-cv-2540-O (BT)**

**No. 3:07-cr-0125-O (BT)**

**JUDGMENT**

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered,

It is ORDERED, ADJUDGED and DECREED that the motion to vacate, set-aside, or correct sentence pursuant to 28 U.S.C. § 2255 is TRANSFERRED to the Fifth Circuit Court of Appeals as successive pursuant to *In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997).

It is further ORDERED that the Clerk shall transmit a true copy of this Judgment and the Memorandum Opinion and Order to the parties.

SIGNED this 31st day of January, 2020.

  
Reed O'Connor

UNITED STATES DISTRICT JUDGE

ATTACHMENT 10

DKT 77

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KEVIN D. MOORE, 36285-177,	)	
Movant,	)	No. 3:11-cv-2540-O (BT)
	)	No. 3:07-cr-0125-O (BT)
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

**MEMORANDUM OPINION AND ORDER**

Movant Kevin D. Moore filed a motion to vacate his conviction under Fed. R. Civ. P. 59(e), 60(b)(2) and 60(b)(6). (ECF No. 76.) For the following reasons, the Court construes the motion as a motion to vacate, set-aside, or correct sentence under 28 U.S.C. § 2255 and transfers the motion to the Fifth Circuit Court of Appeals as successive.

I.

Moore was convicted of transporting child pornography, in violation of 18 U.S.C. §2252(a)(1) and (b)(1), and possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). He was sentenced to 240 months on Count One and a consecutive 120 month term on Count Two, for an aggregate sentence of 360 months in prison. On March 26, 2010, the Fifth Circuit Court of Appeals affirmed Moore's conviction and sentence. On October 4, 2010, the Supreme Court denied Moore's petition for writ of certiorari.

Moore has filed multiple § 2255 motions challenging his conviction. On September 26, 2011, Moore filed his first § 2255 motion, which the Court denied on July 31, 2013. *Moore v. United States*, No. 3:11-cv-2540-O (N.D. Tex.). On July 7, 2015, and December 9, 2019, Moore

filed his second and third § 2255 motions, which the Court transferred to the Fifth Circuit as successive. *Moore v. United States*, No. 3:15-cv-3198-O (N.D. Tex.) and *Moore v. United States*, 3:19-cv-2919-O (N.D. Tex.).

On December 27, 2019, Moore filed this motion to vacate under Fed. R. Civ. P. 59(e), 60(b)(2) and 60(b)(6). He claims he has newly discovered evidence that his counsel failed to inform him of a plea offer and argues his conviction should be vacated.

Although Moore states he filed this motion under Fed. R. Civ. P. 59 and 60, his motion challenges the validity of his conviction and is therefore properly construed as a § 2255 motion. The Fifth Circuit has held that “motions that federal prisoners purportedly bring under Rule 60(b), but which essentially seek to set aside their conviction on constitutional grounds,” should be treated as § 2255 motions. *Muyaba v. United States*, 2014 WL 5150537, \*2 (N.D. Tex. Oct. 14, 2015) (O’Connor, J.) (construing an attack based on the Sixth Amendment and brought under Rule 60(b)(6) as a § 2255 motion); accord *United States v. Rich*, 141 F.3d 550, 551 (5th Cir. 1998). The Fifth Circuit recognizes that “Rule 60(b) cannot be used to circumvent restraints on successive habeas petitions.” *Rich*, 141 F.3d at 553 (quoting *Felker v. Turpin*, 101 F.3d 657, 661 (11th Cir. 1996)).

Because Moore’s motion seeks to raise a ground for relief against the judgment in the underlying criminal case and does not attack the integrity of the habeas proceedings, the Court construes the motion as filed under § 2255.

## II.

The Antiterrorism and Effective Death Penalty Act of 1996 limits the circumstances under which a federal prisoner may file a second or successive motion for post-conviction relief.

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ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT, Pub. L. 104-132, 110 Stat. 1214 (1996). A defendant must show that the successive motion is based on: (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. 28 U.S.C. § 2255. This determination must be made by a three-judge panel of the court of appeals before Moore files his motion in district court. 28 U.S.C. §§ 2241 and 2255.

The Fifth Circuit has not issued an order authorizing this Court to consider the successive motion. The Court therefore TRANSFERS this motion to the Fifth Circuit Court of Appeals pursuant to *In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997).

The Clerk of Court is directed to open a new civil action (nature of suit 510), with direct assignment to District Judge O'Connor and Magistrate Judge Rutherford, docket Moore's motion, (ECF No. 76), in the new case and terminate the motion in this case.

SO ORDERED.

Signed this 31st day of January, 2020.


  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE



EXHIBIT E



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building  
175 N Street, NE  
Washington, DC 20530

(202) 252-6020  
FAX (202) 252-6048

December 11, 2018

Kevin Moore  
#36285-177  
FCI  
P.O. Box 9000  
Seagoville, TX 75159

Re: Request Number: FOIA-2018-005963 Date of Receipt: September 21, 2018  
Subject of Request: Self/Specific Records – USAO Northern Texas

Dear Requester:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys.

To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [ x ] partial denial.

Enclosed please find:

\_\_\_\_\_ page(s) are being released in full (RIF)  
5 page(s) are being released in part (RIP);  
\_\_\_\_\_ page(s) are withheld in full (WIF). The redacted/withheld documents were reviewed to determine if any information could be segregated for release.

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

(b)(3) in conjunction with Federal Rule of Criminal Procedure 6e (grand jury)  
(b)(6)/(b)(7)(C) – third party individual privacy protected

[ x ] A review of the material revealed:

RECEIVED DECEMBER 18, 2018

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☐ Our office located records that originated with another government component. **These records were found in the U.S. Attorney's Office files.** These records will be referred to the following component(s) listed for review and direct response to you:

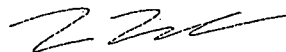
☐ There are public records which may be obtained from the clerk of the court or this office, upon specific request. If you wish to obtain a copy of these records, you must submit a new request. These records will be provided to you subject to copying fees.

☒ See additional information attached.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs  
Assistant Director

Enclosure(s)

E (3)



U.S. Department of Justice

United States Attorney  
Northern District of Texas

1100 Commerce St., 3rd Fl.  
Dallas, Texas 75242-1699

Telephone 214.659.8600  
Fax 214.659.8803

COPY

May 29, 2007

Carlton McLarty  
Assistant Federal Public Defender  
Federal Public Defender's Office  
525 Griffin, Suite 629  
Dallas, TX 75202

Re: *United States v. Kevin Moore*

Dear Mr. McLarty:

Please find enclosed for your consideration a proposed copy of a plea agreement and factual resume in this case. If you have any questions or would like to review the evidence in this case, please do not hesitate to give me a call at 214. b6, b7c

I sincerely hope that we can work together to efficiently dispose of this case, whether it be by plea or trial, and I will work toward that end.

Sincerely,

RICHARD B. ROPER  
UNITED STATES ATTORNEY

b6, b7c

AISHA SALEEM  
Assistant United States Attorney

# ATTACHMENT F

September 12, 2007

Carlton McLarty  
Federal Public Defender  
525 Griffin Street  
Suite 629  
Dallas, TX 75159

Mr. McLarty,

I want to thank you for your time here on September 10, 2007. I would like to get copies of all of the Factual Resumes that are being used in this case. I would also like to have a meeting with the prosecutor. There are a few things I would like to get out in the open. In our meeting on September 10, 2007, you stated that ALL of the other lawyers in your office, that you have spoken to about this case, have told you that what the government is doing to me is not only unfair, but is not right. with the other lawyers, and yourself, saying this, how come you are not filing all the motions you can to get these charges dropped? You should be filing motions on: Double Jeopardy, Sham Prosecution, Same Evidence, Same Charge, Suppression of Evidence, and Collateral Estoppel, and so on. All of these apply to this case.

Am I asking too many questions about my case? Is that why you sent my discovery to me, so that I can look up the answers myself? If this case is too much for you, then you should withdraw from it. I will write the judge and let him know about this. You still seem to be working for the prosecution. I did not feel comfortable giving you the reasons that I wanted the dates, that I have been trying to get you to give me for the last month or so. I feel that you will give this information to the prosecutor, so they can find a way around it.


What happened to you in the past few weeks to make you change your mind about helping me with this case? You were looking into getting more documents, filing motions, and so on. Now you are back to "sign here", so we can get this over and the prosecutor can get to the next case.

In our meeting on August 18, 2007, you said there was nothing more you could do. Even though you have not received anything that you were asking for from either the US or Canadian governments. You still have not received anything more from Mr. Paradis. How can you say you are done? In our meeting on September 10, 2007, you wanted me to sign an "open plea" agreement. You told me that if I do not sign this, that the next week the prosecutor is going to charge me with a second count. I am not sure if it you or the prosecutor, that is actually threatening me into signing this "open plea". You know as well as I do that I have a strong case of Double Jeopardy. Why at this point would I sign an "open plea", especially for the amount of time they are

F(2)

asking for? I also have a very strong case, that will win on appeal, if I lose this case at trial. I will stop here for now. I just want to verify that you stated the prosecutor did a preliminary test on the hard drives, that Jan and Kris, gave the government back in march 06. I would like to see ALL of the copies of the Factual Resumes, and the preliminary report on the hard drives. Thank you for your help on these issues!

Sincerely

  
Kevin Moore  
Reg. No. 36285-177  
Case No. 3:07-CR-125-R  
P.O. Box 9000  
Seagoville, TX 75159

ATTACHMENT G

January 4, 2019

United States Attorneys Office  
1100 Commerce Street  
3rd Floor  
Dallas, TX 75242

MAILED  
1-4-19

RE: Copy of plea agreement, case no: 3:07-CR-0125-0

Ms Aisha Saleem,

My name is Kevin Moore. I just received a copy of a letter, you wrote to my federal public defender, Mr Carlton McLarty. This letter states that you had sent him a copy of a plea agreement and a factual resume. I was never informed of this, nor were these presented/shown to me. This is the first I have heard of these documents.

Therefore, I am respectfully requesting to be provided with a copy of the plea agreement, that you sent to Mr McLarty, as well as the factual resume. Thank you for your time and help.

Respectfully submitted

Kevin Moore - 36285-177  
P.O. Box 9000  
Seagoville, TX 75159

NO RESPONSE EVER RECEIVED!!

VERIFICATION

I, Kevin Moore, declare under the penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

By:   
Kevin Moore

CERTIFICATE OF MAILING

I, Kevin Moore, hereby declare that a true and correct copy of this Petition for the Issuance of an Original Habeas Corpus; for Certiorari review, was provided to the Clerk of the Court, on this 8<sup>th</sup> day of June, 2020, by placing such in the inmate outgoing legal mail system with first class postage affixed to it and mailed to the address listed below by Certified Mail.

By:   
Kevin Moore

RE: USDC No: 3:20-CV-260  
USCA No: 20-10121

U.S. Supreme Court  
Clerk of the Court  
1 First Street NW  
Washington, District of Columbia, 20543

CERTIFIED MAIL RECEIPT NUMBER:

7016 2140 0000 6730 8256

## VERIFICATION

I, Kevin Moore, DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

By: CS: Kevin Dwayne Moore UCL-1-308/3-415

Kevin Dwayne Moore

## CERTIFICATE OF MAILING

I, Kevin Moore, HEREBY, DECLARE THAT A TRUE AND CORRECTED COPY OF THE APPLICATION FOR AN ORIGINAL HABEAS CORPUS, WAS PRESENTED TO THE CLERK OF THE COURT ON THE 22<sup>ND</sup> DAY OF JULY, 2020, BY PLACING SUCH IN THE INMATE OUTREACH MAIL SYSTEM WITH FIRST CLASS POSTAGE AFFIXED TO IT AND MAILED CERTIFIED MAIL TO THE ADDRESS LISTED BELOW.

By: CS: Kevin Dwayne Moore UCL-1-308/3-415

Kevin Dwayne Moore



RE: USDC No: 3:20-cv-260  
USCA No: 20-10121

U. S. Supreme Court  
CLERK OF THE COURT  
1 FIRST STREET NORTHWEST  
WASHINGTON, DISTRICT OF COLUMBIA [20543]

CERTIFIED MAIL RECEIPT NUMBER:

7016 2140 0000 6730 8249  
7016 2140 0000 6730 8249

CC: SOLICITOR GENERAL  
DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE NORTHWEST  
ROOM 5614  
WASHINGTON, DISTRICT OF COLUMBIA [20530-0001]

FACT THAT I WAS NOT GIVEN/SOLD A  
TYPEWRITER RIBBON FROM COMMISSARY -  
EVEN THOUGH I HAD ORDERED ONE. PLEASE  
SEE THE ENCLOSED COPY OF MY RECEIPT  
AND THE EMAIL TO TRIST FUNN<sup>①</sup> MR  
PAD BETT, AND HIS UNPROFESSIONAL AND  
DISRESPECTFUL REPLY TO MY REQUEST -  
NORMAL FOR MOST OF THE STAFF HERE.

THERE IS NO ONE FROM THE "UNIT  
TEAM" HERE TO NOTARIZE ANYTHING.  
THEREFORE, I CAN ONLY USE THE 28 USC  
§1246 DECLARATION. THERE IS NOTHING  
I CAN DO ABOUT THIS. I AM DOING THE  
BEST THAT I CAN TO COMPLY WITH  
EVERYTHING.

RESPECTFULLY SUBMITTED

BY: LS: ~~Kevin Dwayne~~ Moore UCC-1-308/3-415

Kevin Dwayne: Moore, UCC-1-308/3-415  
P/O 36285-177  
POST OFFICE BOX 9000  
SEABOARD, TEXAS [75159]

- ① THEY ARE HAVING COMPUTER ISSUES AND CANNOT  
PRINT OUT ANY EMAILS, AS OF THE DAY I PLACED  
THIS IN THE MAIL.

JULY 22, 2020

UNITED STATES SUPREME COURT

CLERK OF THE COURT

1 FIRST STREET NORTHWEST

WASHINGTON, DISTRICT OF COLUMBIA [20543]

RE: APPLICATION FOR THE ISSUANCE OF AN  
ORIGINAL HABEAS CORPUS

DEAR CLERK,

PLEASE FIND ENCLOSED THE CORRECTED  
APPLICATION FOR THE ISSUANCE OF AN  
ORIGINAL HABEAS CORPUS. I HAVE ALSO  
ENCLOSED THE COURT'S FORM FOR MOTION  
TO PROCEED IN FORMA PAUPERIS. JUST TO  
LET YOU KNOW, THERE WAS AN APPLICATION  
TO PROCEED IN FORMA PAUPERIS ENCLOSED  
WITH THE PREVIOUS HABEAS APPLICATION.  
I HAVE ENCLOSED THAT ONE AS WELL.

THIS PRISON - FCI SEABOARD, IS LOCKED  
DOWN UNDER QUARANTINE FOR COVID-19.  
THIS PRISON HAS THE HIGHEST NUMBER OF  
COVID 19 INFECTED PRISONERS IN THE FROP -  
OVER 1100 OF THE 1500 HERE.

THIS APPLICATION IS PARTLY HANDWRITTEN  
AND PARTLY TYPED. THIS IS DUE TO THE

