No.

IN THE

SUPREME COURT OF THE UNITED STATES

MELCHOR MUNOZ,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

Document **Page**

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14688

Non-Argument Calendar

MELCHOR MUNOZ,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court

for the Northern District of Florida

D.C. Docket No. 4:18-cv-00489-RH-MAF

Before WILLIAM PRYOR, Chief Judge, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Our previous opinion in this appeal issued on October 12, 2021. The Court *sua sponte* vacates that opinion and substitutes the following opinion in its place.

Melchor Munoz, a federal prisoner, appeals the denial of his motion to vacate his sentence. 28 U.S.C. § 2255. Munoz, a naturalized citizen, argues that his trial counsel was ineffective for advising him that he "could," instead of that he "would," have his citizenship revoked for failing to disclose his drug crimes in his application for naturalization. We affirm the denial of Munoz's motion.

Munoz illegally entered the United States from

Mexico in 1992 and, after becoming a legal resident in 2004, began trafficking drugs. In 2011, Munoz was indicted for conspiring to distribute five or more kilograms of cocaine and 100 or more kilograms of marijuana between June 1, 2008, and May 30, 2011. 21 U.S.C. §§ 841(a)(1), 846. In his written agreement with the government, Munoz acknowledged that his plea of guilty "specifically excludes and does not bind any other state or federal agency, including other United States Attorneys . . . from asserting any civil, criminal, or administrative claim against [him]." Munoz also acknowledged "that [his] conviction may adversely affect [his] immigration status and may lead to revocation of his citizenship and deportation."

During Munoz's change of plea hearing, the prosecutor highlighted that Munoz "is a nationalized citizen of the United States, originally from Mexico"

and "[t]he law provides that, if someone was engaged in criminal activity and thus not of good moral character as they professed when becoming a citizen, that that citizen is subject to revocation." The prosecutor stated that "one of the potential consequences of [the] plea of guilty is that the government may seek to revoke Mr. Munoz's citizenship and have him deported at the conclusion of his sentence" and that "[t]he decision has not been made whether or not to do that, but that is a possibility in this case." The district court asked whether it "need[ed] to talk to Mr. Munoz about that" and defense counsel responded "that was in the plea agreement. It was reviewed in detail and discussed with my client." Nevertheless, the district court told Munoz that his plea of guilty "could have an effect on your citizenship status," but the district court "[did]n't know that it

will" or whether "it won't." The district court asked Munoz whether "anybody made any promises to [him] one way or the other . . . about whether or not this will affect your citizenship status," and Munoz responded, "no." And when the district court asked Munoz if he was "pleading guilty because [he is], in fact, guilty of this charge," he replied, "Yeah, I'm guilty."

In 2012, the district court sentenced Munoz to 188 months of imprisonment. Munoz did not appeal. In 2016, Munoz succeeded in having his sentence reduced to 151 months of imprisonment. *See* 18 U.S.C. § 3582(c)(2).

In 2018, Munoz moved to vacate his conviction. He argued that his trial counsel was ineffective for misrepresenting what effect his conviction would have on his U.S. citizenship. Munoz attached to his motion affidavits from his trial counsel stating that his advice

was consistent with what he was told in his plea agreement and by the district court and from his postconviction counsel stating that Munoz "was not properly advised of the immediate immigration consequences of his plea." Munoz also submitted a copy of a complaint filed in July 2018 to revoke his United States citizenship for participating in a conspiracy to traffic drugs and filing an application for naturalization that falsely denied involvement in any criminal activities. *See* 8 U.S.C. § 1451(a).

The government opposed Munoz's motion as untimely and, in the alternative, as without merit. The government argued that Munoz failed to exercise due diligence to challenge his conviction when he knew of the potential effect his guilty plea would have on his status as a U.S. citizen before his change of plea hearing. *See* 28 U.S.C. § 2255(f)(1). The government

also argued that Munoz was dilatory in filing his postconviction motion more than a year after the Department of Justice mailed him a letter dated September 25, 2017, when his immigration lawyer responded to the letter on October 26, 2017. *See id.* § 2255(f)(4). Alternatively, the government argued that Munoz's counsel did not perform deficiently by misjudging the immigration consequences of his guilty plea and that Munoz suffered no prejudice given that he submitted no evidence that he had pleaded guilty to retain his citizenship and overwhelming evidence supported his conviction.

The government attached to its response the letter that the Department sent Munoz. The letter warned that the Department "plan[ned] to bring denaturalization proceedings against [Munoz] to revoke your United States citizenship." The letter

stated that Munoz had "illegally obtained . . . citizenship" by "engag[ing] in . . . [a] conspiracy to distribute and possess cocaine and marijuana . . . during the period in which Congress required you to have good moral character" and by "conceal[ing] and misrepresent[ing] your criminal misconduct during the naturalization process." The letter explained that Munoz's "Application for Naturalization (Form-400), [falsely] attest[ed] that [he] had not knowingly committed any crime for which [he] had not been arrested, and that [he] never sold or smuggled controlled substances, illegal drugs, or narcotics" and that, during his interview "on July 6, 2009," he "affirmed . . . [those false] answers." The letter offered to "explore the possibility of settlement prior to filing proceedings against [Munoz]," but it was "not negotiable" that "any settlement must, at a minimum,

include that [he] give up . . . [his] United States citizenship."

The government also submitted correspondence that Munoz's immigration attorney sent the Department. In a letter dated October 26, 2017, Munoz's immigration attorney stated his firm is "now the attorney of record and request[ed] any further matters [be] forwarded to our attention."

A magistrate judge recommended that the district court deny Munoz's motion as untimely, but the district court denied the motion on the merits. The district court ruled that Munoz could not prove trial counsel performed deficiently because he provided accurate advice that loss of citizenship was a possibility but not a certainty. The district court determined that counsel's advice was accurate because the government exercised some discretion in revoking

citizenship for a drug crime and because Munoz admitted specifically to wrongdoing in 2011, but not in the five years before he applied for citizenship. The district court ruled that reasonable jurists could disagree about its decision and granted Munoz a certificate of appealability.

The decision to deny Munoz's claim of ineffectiveness of trial counsel is subject to plenary review. We review findings of fact for clear error and the application of the law to those facts de novo. *Hollis v. United States*, 958 F.3d 1120, 1122 (11th Cir. 2020). "Regardless of the ground stated in the district court's order or judgment, we may affirm on any ground supported by the record." *Beeman v. United States*, 871 F.3d 1215, 1221 (11th Cir. 2017) (internal quotation marks omitted and alteration adopted).

A federal prisoner has one year from the latest

of four specified events to file a postconviction motion seeking relief from his sentence. 28 U.S.C. § 2255(f). The one-year period commences, for purposes of this appeal, on either "the date on which the judgment of conviction becomes final" or "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." *Id.* § 2255(f)(1), (4). Due diligence required Munoz "to make reasonable efforts" to discover the facts supporting his claim for relief. *See Aron v. United States*, 291 F.3d 708, 712 (11th Cir. 2002).

Munoz's motion to vacate is untimely. Munoz was warned before and during his change of plea hearing of the possibility that his citizenship could be revoked due to his conviction, but he made no efforts to discover whether his citizenship was in jeopardy in the more than five years between his conviction and the

commencement of revocation proceedings. *See* 28 U.S.C. § 2255(f)(1). But even if we assume that the multiple warnings Munoz received were insufficient to trigger the one-year deadline, he knew to a certainty that the Department would revoke his citizenship when he received its letter dated September 25, 2017. Munoz made no "reasonable effort" to challenge his conviction promptly. *See Aron*, 291 F.3d at 712. Munoz's immigration attorney responded to the letter from the Department on October 26, 2017, but Munoz waited until October 29, 2018, to file his postconviction motion, more than a year after receiving the letter from the Department. *See 28* U.S.C. § 2255(f)(4). The district court correctly denied Munoz's motion.

We **AFFIRM** the denial of Munoz's motion to vacate.

The original opinion, issued on October 12, 2021, was the same as the substituted opinion, with the exception of the following sentence within the second to last paragraph of the opinion:

"Munoz's immigration attorney responded to the letter from the Department by October 26, 2017. Even using that date, Munoz missed the one-year deadline by waiting until October 29, 2018, to file his postconviction motion."

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14688

Non-Argument Calendar

MELCHOR MUNOZ,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court

for the Northern District of Florida

D.C. Docket No. 4:18-cv-00489-RH-MAF

Before WILLIAM PRYOR, Chief Judge, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Melchor Munoz's petition for rehearing by the panel is **DENIED AS MOOT**.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

v. CASES NO. 4:11cr37-RH-MAF

4:18cv489-RH-MAF

MELCHOR MUNOZ,

Defendant.

_____/

ORDER DENYING THE § 2255 MOTION AND GRANTING A CERTIFICATE OF APPEALABILITY

In this criminal case, the defendant Melchor Munoz pled guilty to a drug trafficking offense. He is a naturalized United States citizen. In a separate case, the government is seeking to revoke Mr. Munoz's citizenship based on both the underlying conduct—the

drug trafficking—and the resulting conviction.

Mr. Munoz has moved for relief from the conviction under 28 U.S.C. § 2255. He asserts his attorney rendered ineffective assistance—that the attorney provided incorrect advice on the citizenship consequences of a guilty plea. Mr. Munoz says the plea was involuntary because it was based on a misunderstanding of the citizenship consequences.

The § 2255 motion is before the court on the magistrate judge's report and recommendation, which concludes the motion is untimely. This order concludes the motion is timely but unfounded on the merits: the attorney's advice was not incorrect, and Mr. Munoz acknowledged at his plea proceeding that he understood—accurately as it turns out—that his conviction might or might not lead to revocation of his citizenship.

I. Naturalization

On June 6, 2009, Mr. Munoz applied to become a United States citizen. As part of the application, signed under penalty of perjury, he said he had never sold illegal drugs or committed any offense for which he had not been arrested. In an interview on July 6, 2009, Mr. Munoz again said, after being sworn, that he had never sold illegal drugs. On September 8, 2009, Mr. Munoz submitted a statement under oath that he had not illicitly trafficked in drugs or committed any offense since his interview. On that same day, September 8, Mr. Munoz took the oath and became a citizen.

As it turns out, Mr. Munoz's statements were false. He was actively engaged in the distribution of marijuana starting in late 2008. The record establishes this without dispute. On July 26, 2018, the government

filed a complaint in a separate proceeding in this court seeking to revoke Mr. Munoz's citizenship.

II. The Criminal Case

On June 7, 2011, a grand jury indicted Mr. Munoz and others on a single count: conspiring between January 1, 2010 and May 30, 2011 to distribute and possess with intent to distribute cocaine and marijuana. ECF No. 46. A superseding indictment added defendants but did not change the dates of the alleged conspiracy. ECF No. 83. A second superseding indictment expanded the dates, now alleging a conspiracy between June 1, 2008 and May 30, 2011. ECF No. 202.

Mr. Munoz pled guilty on April 9, 2012. He signed a plea agreement that included this statement: "The Defendant understands that this conviction *may* adversely affect the Defendant's immigration status

and *may* lead to revocation of his citizenship and deportation." ECF No. 321 at 3 (emphasis added). At the plea proceeding, during which Mr. Munoz was under oath, the government's attorney addressed the possible effect of the guilty plea on Mr. Munoz's citizenship:

> Mr. Munoz is a nationalized citizen of the United States, originally from Mexico. Mr. Munoz was nationalized, I believe, in October of 2009. The law provides that, if someone was engaged in criminal activity and thus not of good moral character as they professed when becoming a citizen, that that citizen is subject to revocation.
>
> So one of the *potential* consequences of this plea of guilty is that

> the government *may* seek to revoke Mr. Munoz's citizenship and have him deported at the conclusion of his sentence. *The decision has not been made whether or not to do that, but that is a possibility in this case.*

ECF No. 587 at 18 (emphasis added). Mr. Munoz's attorney responded that this was in the plea agreement and "was reviewed in detail and discussed with my client." *Id.* at 19.

I followed up, making sure Mr. Munoz understood:

> I am not a judge who deals with citizenship matters. So I will have nothing to do with the question of whether this case has any effect on your citizenship status. What I want you to

> understand is – well, just what I told you, I'm not the judge that deals with this. This *could* have an effect on your citizenship status. *I don't know that it will; I don't know that it won't.* I just want to make sure that nobody has made any promises to you about whether or not this will affect your citizenship status.

Id. at 19-20 (emphasis added). Mr. Munoz confirmed that nobody had made any promises to him on this subject. *Id.* at 20.

After this exchange, Mr. Munoz pled guilty. He was sentenced on July 27, 2012, to 188 months in prison, the low end of the guideline range. He did not appeal. Based on United States Sentencing Guidelines Amendment 782, the sentence was later reduced to 151 months. Mr. Munoz is serving that sentence.

III. The § 2255 Motion

Mr. Munoz filed the instant § 2255 motion—his first—on October 29, 2018. He says his attorney's advice on citizenship was incorrect—that revocation of citizenship based on the conviction was not just possible, as the attorney said, but mandated by law and thus certain. If that is correct—if revocation was mandatory—then the government's attorney also provided incorrect information at the plea proceeding, saying revocation was possible and that no decision on whether to seek revocation had been made. And likewise, if revocation was mandatory, my statement to Mr. Munoz at the plea proceeding was incorrect or at least incomplete; I said only that revocation "could" have an effect on his citizenship status.

Mr. Munoz says he would not have pled guilty had he known revocation of citizenship would be

mandatory. He seeks relief on the ground that his attorney rendered ineffective assistance by providing incorrect advice on this subject and that the plea was involuntary because it was based on an incorrect understanding of the plea's effect on citizenship.

IV. Statute of Limitations

A § 2255 motion must be brought within a one-year limitations period. The period runs from the latest of four possible triggers. *Id.* The trigger that applies in this case is "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(f)(4).

This order analyzes the limitations issue on the assumption that Mr. Munoz is correct on the merits—that revocation is mandatory based on the criminal conviction. Whether that assumption is

indeed correct—that is, whether Mr. Munoz is right on the merits—is addressed in the next section of this order.

By letter dated September 25, 2017, the government notified Mr. Munoz of its intent to bring a revocation proceeding. On October 26, 2017, an immigration attorney gave the government notice of his representation of Mr. Munoz. The government says that with diligence Mr. Munoz could have discovered that revocation was mandatory based on the September 25 letter. Indeed, the government says Mr. Munoz *did* recognize this, as shown by his retention of an immigration attorney. This occurred more than one year before October 29, 2018, the date on which the § 2255 motion was filed. The magistrate judge entered a report and recommendation accepting this argument and concluding the § 2255 motion is untimely.

The flaw in the argument is this. The September 25, 2017 notice indicated only that the government intended to seek revocation, not that this was mandatory. Mr. Munoz was told at the plea proceeding in 2012 that the government might seek revocation; his complaint now is not that the government *could* do this, but that the government *was required* to do this. Nothing in the September 25 notice indicated a revocation proceeding was mandatory rather than discretionary. So nothing in the September 25 notice informed Mr. Munoz of the "facts supporting the [current] claim." 28 U.S.C. § 2255(f)(4).

Nor does the record indicate that the retention and appearance of an immigration attorney provided immediate notice to Mr. Munoz that revocation was mandatory. Attorneys, even good ones with expertise in a particular area, often must do research to

determine the law applicable in specific circumstances. Mr. Munoz's attorney had dealt with a similar case in this court, *United States v. Choi*, 581 F. Supp. 2d 1162 (N.D. Fla. 2008), but that case involved not revocation of citizenship but removal of a noncitizen—a markedly different issue governed by different statutory provisions. The record does not indicate that with diligence Mr. Munoz could have learned from the immigration attorney by October 29, 2017—a date one year before he filed the § 2255 motion—that the information given Mr. Munoz in connection with the guilty plea was incorrect.

That the limitation period runs from the date when Mr. Munoz knew or should have known the information was wrong is consistent with *Gonzalez v. United States*, No. 19-11182 (11th Cir. Nov. 20, 2020). There an alien defendant filed a coram nobis petition

challenging a guilty plea entered in reliance on incorrect advice that the plea would not be a basis for deportation. The court held the timeliness of the petition should be analyzed from, at the latest, the date when the defendant knew the advice was wrong. The petition was filed 20 months after that date and thus was untimely. Here, in contrast, the delay from the date when Mr. Munoz knew or should have known the advice he received was wrong was less than the one-year limitations period.

In sum, the record does not show that the § 2255 motion is barred by the statute of limitations.

V. Merits

The record leaves little doubt about what Mr. Munoz was told when he decided to plead guilty—by his attorney, by the government's attorney, and by the court. He was told the conviction *could* lead to

revocation of his citizenship, not that it necessarily *would* lead to revocation. Indeed, he was told by the government's attorney that no decision about this had yet been made.

Mr. Munoz now says this was wrong—that the conviction left the government no discretion but instead mandated revocation. Properly analyzed, the contention raises two questions: first, is revocation mandatory when a conviction establishes that the defendant engaged in drug trafficking during the relevant period; and second, does this conviction establish that Mr. Munoz engaged in drug trafficking during that period. The answer to the first question may be unclear. The answer to the second question is no, and this is fatal to Mr. Munoz's claim.

A. Is Revocation Mandatory

An applicant for citizenship must be "of good

moral character" during the relevant period, that is, from five years before the citizenship application to the date of naturalization. *See* 8 U.S.C. § 1427(a)(3). After an application is granted—that is, after a person becomes a naturalized citizen—the person's citizenship may be revoked on a showing that the person was not in fact a person of good moral character during the relevant period. *See* 8 U.S.C. § 1451(a); 8 C.F.R. § 316.10(b). And the person's citizenship may be revoked on a showing that the person made a material misrepresentation in connection with the application. *See* 8 U.S.C. § 1451(a); 8 U.S.C. § 1101(f)(6).

Mr. Munoz says, and has filed the declaration of a well-qualified immigration attorney averring, that a naturalized citizen "who is convicted of a controlled substance offense that occurred prior to naturalization *will have* his citizenship revoked." ECF No. 593-3 at 2

(emphasis in original). For this, the attorney cites only 8 U.S.C. § 1451 and 8 C.F.R. § 340.2. Neither clearly directs the government to seek revocation in every case meeting the statutory criteria.

Under 8 C.F.R. § 340.2(a), the United States Citizenship and Immigration Service ("USCIS") "will make a recommendation regarding revocation" when it "appears" that naturalization was procured illegally or by willful misrepresentation or concealment of a material fact. At least on its face, this does not make clear whether the recommendation must be to pursue revocation or whether, instead, the recommendation may come out on either side, that is, to pursue or not to pursue revocation.

Under 8 U.S.C. § 1451(a), it "shall be the duty" of the United States Attorney in the relevant district to institute a revocation proceeding "upon affidavit

showing good cause therefor." If § 340.2(a) requires USCIS to pursue revocation and USCIS provides the United States Attorney an affidavit showing good cause, § 1451(a) may require the United States Attorney to go forward. At least one court has suggested, though, that here, as elsewhere, a United States Attorney retains prosecutorial discretion. *See United States v. Clarke*, 628 F. Supp. 2d 1, 11 (D.D.C. 2009). This is consistent with the general rule that government agencies have discretion whether to bring enforcement proceedings even in the face of "seemingly mandatory legislative commands." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 761 (2005); *see also Heckler v. Chaney*, 470 U.S. 821, 835 (1985).

In sum, USCIS and a United States Attorney might or might not be obligated to seek to revoke the citizenship of a person convicted of drug trafficking

that occurred during the relevant period prior to naturalization. Put differently, revocation in these circumstances might or might not be mandatory as Mr. Munoz now contends; reasonable jurists could disagree on this. And so an attorney providing effective assistance might well advise a defendant that revocation is possible, even likely, but not necessarily certain. A court taking a plea might well tell a defendant the same thing.

B. Is This Conviction Disqualifying?

Even if USCIS and the United States Attorney must seek revocation when grounds are shown—that is, even if revocation is mandatory—Mr. Munoz's § 2255 motion presents an additional question: did this conviction, standing alone, establish grounds for revocation? The answer is no.

With exceptions not relevant here, a person is,

by statutory definition, not "of good moral character" if any one of these three things is true: the person has been convicted of a drug-trafficking offense; the person has admitted committing a drug-trafficking offense; or the person has engaged in a drug-trafficking offense. 8 U.S.C. § 1182(a)(2)(A)(i)(II), (C)(i).

The relevant period is from five years prior to the application for citizenship to the date of naturalization. For Mr. Munoz, that period is from June 6, 2004 to September 8, 2009. Mr. Munoz's citizenship thus can be—perhaps must be—revoked if any of these three things is true: he was convicted of a drug-trafficking offense committed between June 6, 2004 and September 8, 2009; he admitted committing a drug-trafficking offense during that period; or he was engaged in drug trafficking during that period.

The second superseding indictment charged Mr.

Munoz with conspiring to distribute and possess with intent to distribute cocaine and marijuana between June 1, 2008 and May 30, 2011. His guilty plea and resulting conviction establish that he committed this offense—that he was a member of the charged conspiracy—at some time within that period. The plea and conviction do not establish that Mr. Munoz's involvement began on or before September 8, 2009. So the plea and conviction, without more, do not establish that Mr. Munoz's citizenship may be revoked.

That a charge and conviction do not always line up is well illustrated by this case. Nothing in the record suggests Mr. Munoz was engaged in drug trafficking as early as June 1, 2008, the start date alleged in the indictment. Instead, during the plea colloquy, Mr. Munoz said he did not begin trafficking in cocaine until 2010. He said he began trafficking in

marijuana in late 2008—but he volunteered this information without being asked, and it was not essential to the conviction. See ECF No. 587 at 9.

In sum, Mr. Munoz's conviction, without more, does not provide a basis for revocation of his citizenship. The government will prevail in the separate revocation proceeding only by showing that Mr. Munoz was in fact engaged in drug trafficking during the relevant period or that he admitted it. As it turns out, Mr. Munoz admitted it during the plea colloquy. But his attorney could not have told him in advance that the conviction would make revocation mandatory—because it would not. The government's statement that the conviction might or might not lead to revocation was correct. So was my statement during the plea colloquy.

The proper course, under these circumstances,

was to handle this as it was handled—to tell Mr. Munoz that the citizenship consequences of the plea would not be determined in the criminal case, and that the conviction might or might not lead to revocation. Mr. Munoz said he understood this. He pled guilty anyway, probably because the government was prepared to prove his guilt at the imminently scheduled trial.

VI. Certificate of Appealability

A defendant may appeal the denial of a § 2255 motion only if the district court or court of appeals issues a certificate of appealability. Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Barefoot v. Estelle*, 463 U.S.

880, 893 n.4 (1983); *see also Williams v. Taylor*, 529 U.S. 362, 402-13 (2000) (setting out the standards applicable to a § 2254 petition on the merits). As the Court said in Slack:

> To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further."

529 U.S. at 483-84 (quoting *Barefoot*, 463 U.S. at 893 n.4).

Mr. Munoz has made the required showing. This order thus grants a certificate of appealability.

VII. Conclusion

Mr. Munoz's challenge to his conviction is timely but unfounded on the merits. Even so, reasonable jurists could disagree. Accordingly,

IT IS ORDERED:

1. The report and recommendation, ECF No. 608, is accepted but on different grounds.

2. The § 2255 motion, ECF No. 593, is denied on the merits.

3. The clerk must enter judgment.

4. A certificate of appealability is granted on this issue: whether Mr. Munoz is entitled to relief on the ground that his attorney, the government, and the court told him at the time of his guilty plea that the resulting conviction might, not that it necessarily

would, lead to revocation of his citizenship.

SO ORDERED on November 23, 2020.

s/Robert L. Hinkle

United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

MELCHOR MUNOZ

VS CASE NO. 4:11cr37-RH-MAF

4:18cv489-RH-MAF

UNITED STATES OF AMERICA

JUDGMENT

The § 2255 motion, ECF No. 593, is denied on the merits.

JESSICA J. LYUBLANOVITS

CLERK OF COURT

November 23, 2020 s/Betsy Breeden

DATE Deputy Clerk: Betsy Breeden