IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EDUARDO PINEDA, #27156-078	§	
	§	CIVIL ACTION NO. 6:20cv559
Vs.		CRIM. NO. 6:19cr39
	§	
UNITED STATES OF AMERICA	§	

FINAL JUDGMENT

The Court having considered Movant's case and rendered its decision by opinion issued this same date, it is hereby **ORDERED** that Movant's motion to vacate, set aside, or correct his federal sentence pursuant to 28 U.S.C. § 2255 is **DENIED**, the above-styled civil action is **DISMISSED** with prejudice, and Movant is **DENIED** a certificate of appealability *sua sponte*. The Clerk of Court is instructed to close this case.

So **ORDERED** and **SIGNED** this **28th** day of **June, 2021.**

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF TEXAS
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Vs.		CRIM. NO. 6:19cr39
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UNITED STATES OF AMERICA	§	

ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Movant Eduardo Pineda, a federal prisoner confined at the Beaumont Low Federal Correctional Institution proceeding *pro se*, brings this motion to vacate, set aside, or correct his federal sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition of the case.

In his motion, Movant challenges his conviction for one count of manufacture and possession with the intent to manufacture and distribute 100 or more marijuana plants as well as aiding an abetting—by arguing that the federal proscription against marijuana is unconstitutional because those plants were his constitutionally protected property. On June 10, 2021, Judge Love issued a Report recommending that Movant's section 2255 motion be denied and that the case be dismissed with prejudice. Docket No. 5. Judge Love further recommended that Movant be denied a certificate of appealability *sua sponte*.

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir.

1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending time to file objections from ten days to fourteen).

Here, Movant has timely filed objections. The Court has conducted a careful de novo review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such de novo review, the Court has determined that the Report of the United States Magistrate Judge is correct and that Movant's objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge (Docket No. 5) is **ADOPTED** as the opinion of the Court. Movant's objections (Docket No. 6) are **OVERRULED**. Further, it is

ORDERED that the above-styled habeas petition is **DENIED** and the above-styled civil action is **DISMISSED** with prejudice. Movant is also **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **28th** day of **June, 2021.**

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF TEXAS

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REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Movant Eduardo Pineda, a federal prisoner confined at the Beaumont Low Federal Correctional Institution proceeding *pro se*, brings this motion to vacate, set aside, or correct his federal sentence pursuant to 28 U.S.C. § 2255. The motion was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for disposition of the case.

For reasons explained below, the Court recommends that Pineda's section 2255 motion be denied, the case be dismissed with prejudice, and that Pineda be denied a certificate of appealability *sua sponte*.

I. Procedural History and Factual Background

On November 12, 2019, and after entering a guilty plea, Pineda was sentenced to 108 months' imprisonment for one count of manufacture and possession with the intent to manufacture and distribute 100 or more marijuana plants as well as aiding and abetting (Count 3). He did not file a direct appeal. Pineda filed this section 2255 motion in October 2020, (Dkt. #1), along with an affidavit in support, (Dkt. #4).

According to the factual basis submitted to the Court in support of the guilty plea, from on or about July 28, 2015, and continuing on or about March 7, 2017, in the Eastern District of Texas and elsewhere, Pineda conspired and agreed with others to violate 21 U.S.C. § 841(a)(1), prohibiting the knowing and intentional manufacture and distribute 100 or more marijuana plants. The overall scope of the conspiracy involved at least 1,000 or more marijuana plants. Pineda stipulated to the factual basis as both true and correct.

Subsequently, on June 3, 2016, Pineda traveled with a co-conspirator to the Davy Crockett National Forest in furtherance of manufacturing marijuana plants. In total, there were more than 100 marijuana plants on the property in the Davy Crockett National Forest. Pineda was involved in a number of marijuana grow operations throughout the Eastern District of Texas—grow operations near CR 419 in Smith County, in the Davy Crockett National Forest, in the Sabine National Forest, near CR 156 in Anderson County, near CR 2307 in Morris County, and near Periwinkle Road in Upshur County.

II. Pineda's Claims

Pineda maintains that his criminal conviction violates the Fourth and Fifth Amendments of the United States Constitution. An overarching argument contained in his motion is his contention that Congress cannot proscribe marijuana—as there was no compelling reason to do so. Specifically, he raises the following claims:

(1) There is no constitutional amendment proscribing marijuana;

(2) The historical definition of a "crime" includes a victim;

(3) Liberty and freedom from physical restraint is a constitutional right;

(4) Marijuana is not a constitutional right; instead, it is property and acquiring property is a constitutional right;

> (5) The operation and effect of federal prosecution in the enforcement of count 3 was the seizure of Mr. Pineda's person and deprivation of his constitutional right of liberty by the bounds of prison;
>
> (6) Marijuana does not meet all three criteria to be a controlled substance. It is safe to use without medical supervision; and
>
> (7) A reasonable regulated interstate commerce of this property, marijuana, does not present a substantial threat to the rights of others, to public safety or health, requiring the use of federal police power.

Pineda stresses that he was convicted for a political crime rather than a crime with victims.

While Pineda disclaims any claim for ineffective assistance of counsel—as he says that ground one has not been raised of "ineffective assistance of counsel." To the extent that he does argue that trial counsel was ineffective, Pineda maintains that (1) "counsel believes the marijuana laws are constitutional because marijuana is not a fundamental right"; (2) "counsel treats laws that authorize the use of police power as a political question violating the solemn oath to the court to uphold Amendment IV limiting police power to be reasonable"; (3) "counsel did not protect the right of Mr. Pineda to be secure against unreasonable deprivation of his constitutional right of liberty, freedom from physical restraint, and his right to property secured by Amendments IV & V"; (4) "counsel believes criminal laws are not an Article III justiciable controversy ripe for adjudication by this court under strict scrutiny standard of review"; and (5) "it is not in the best interest for counsel to raise ground one."

III. Legal Standards

A. Federal Habeas Corpus Proceedings

Section 2255 is "fundamentally different from a direct appeal." *United States v. Drobny*, 955 F.2d 990, 994 (5th Cir. 1992). Section 2255 "provides relief for a petitioner who can establish that either (1) his sentence was imposed in violation of the Constitution or laws of the United States, (2) the sentencing court was without jurisdiction to impose the sentence, (3) the sentence

was in excess of the maximum authorized by law, or (4) the sentence is subject to collateral attack." *U.S. v. Seyfert*, 67 F.3d 544, 546 (5th Cir. 1999) (citing *United States v. Faubion*, 19 F.3d 226, 232 (5th Cir. 1994)).

In other words, cognizable claims within a section 2255 motion are narrow; the movant may not present a generalized, broad attack challenging the legality of his or her conviction and, importantly, non-constitutional claims that could have been raised on direct appeal, but were not, may not be asserted in section 2255 proceedings—absent a showing of cause for the procedural default and actual prejudice ensuing from the error. *United States v. Shaid*, 936 F.2d 228, 232 (5th Cir. 1991); *see also Villasenor-Cruz v. United States*, 2017 WL 6627045 (E.D. Tex.—Sherman, Oct. 3, 2017) (same).

B. Guilty Pleas

A guilty plea will be upheld on habeas review if the plea was entered into knowingly, voluntarily, and intelligently. *United States v. Hernandez*, 234 F.3d 252, 254 (5th Cir. 2000). Whether a plea is knowing turns on whether the defendant understood the consequences of his plea; the defendant must have a full understanding of "what the plea connotes and of its consequences." *Id.* at 255. A defendant need only understand the direct consequences of the plea, and need not be made aware of every consequence that—absent the guilty plea—would not otherwise occur. *Id.* The consequences of a guilty plea, with respect to sentencing, means that the defendant must know the maximum prison term and the fine for the charged offense. *See United States v. Guerra*, 94 F.3d 989, 995 (5th Cir. 1996).

With respect to voluntariness, the question becomes whether the plea was induced by threats or improper promises. *Id.*; *see also U.S. v. Nunez*, 539 F. App'x 502, 503 (5th Cir. 2013) ("Whether a plea is knowing looks to whether the defendant understands the direct consequences

of his plea, while voluntariness looks to, inter alia, whether the plea was induced by threats or improper promises.").

Firm declarations in open court—including a plea colloquy—carry a strong presumption of verity. *See United States v. Perez*, 690 F. App'x 191, 192 (5th Cir. 2017) (Mem.) ("A defendant's solemn declarations in open court carry a strong presumption of truth.") (quoting *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). As a result, the movant faces the heavy burden of proving that she is entitled to relief through overcoming the evidence of her own words. *DeVille v. Whitley*, 21 F.3d 654, 659 (5th Cir. 1994); *see also United States v. Raetzsch*, 781 F.2d 1149, 1151 (5th Cir. 1986) (holding that there must be independent indicia of the likely merit of the petitioner's contentions; mere contradiction of the statements made at the guilty plea proceeding will not suffice).

Furthermore, the Fifth Circuit has held that an ineffective assistance claim will survive an appeal waiver where the alleged ineffectiveness directly affects the validity of the waiver or of the plea itself. *See United States v. White*, 307 F.3d 336, 343 (5th Cir. 2002) ("We also note that a defendant may always avoid a waiver on the limited grounds that the waiver of appeal itself was tainted by the ineffective assistance of counsel.").

IV. Discussion and Analysis

Pineda's section 2255 motion should be denied for several reasons. Pineda wholly failed to demonstrate a constitutional violation. His plethora of claims challenging the federal criminalization of marijuana are without merit.

A. Pineda's Guilty Plea and Ineffective Assistance of Counsel

While Pineda does not specifically challenge his guilty plea, one could argue—throughout his articulation of his claims—that he is maintaining that he could not have entered a constitutional

plea because his marijuana plants were constitutionally-protected property. Thus, in the interests of thoroughness, this Court's analysis must begin with Pineda's guilty plea. The record reveals that Pineda's plea hearing was conducted on July 25, 2019. A review of Pineda's guilty plea hearing demonstrates that he entered his guilty plea knowingly, voluntarily, and intelligently. *See* 6:17-cr-039, Dkt. #268 (minute entry for plea proceedings).

Crucially, Pineda's plea agreement contains a "Waiver of Right to Appeal or Otherwise Challenge Sentence." The waiver reads specifically as follows:

> Except as otherwise provided in this paragraph, the defendant waives the right to appeal the conviction, sentence, fine, order of restitution, or order of forfeiture in this case on all grounds. The defendant further agrees not to contest the conviction, sentence, fine, order of restitution, order of forfeiture in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. § 2255. The defendant, however, reserves the right to appeal the failure of the Court, after accepting this agreement, to impose a sentence in accordance with the terms of this agreement. The defendant also reserves the right to appeal or seek collateral review of a claim of ineffective assistance of counsel.

See 6:17-cr-39, Dkt. #269, pg. 6 (sealed plea agreement).

At first glance, then, it would appear that Pineda's plea waiver precludes all of his section 2255 claims—particularly because he insists that he is not arguing that trial counsel was ineffective. Although he insists that he is "disclaiming" any claim of ineffective assistance of counsel, the Court finds that to the extent he argues that counsel was ineffective for those five pieces of advice mentioned above, such claims are without merit. Counsel cannot be ineffective for correctly advising his client. *Strickland v. Washington*, 466 U.S. 668 (1984); *see also Loden v. McCarty*, 778 F.3d 484, 494 (5th Cir. 2016) (explaining that in evaluating whether an attorney's conduct was deficient, the question becomes whether the attorney's conduct fell below an objective standard of reasonableness based on "prevailing norms of practice.").

Additionally, none of Pineda's claims attack the validity of his guilty plea—which is fatal to his section 2255 motion. *See United States v. Olsen*, 845 F.3d 230, 231 (5th Cir. 2017) ("By

pleading guilty voluntarily and unconditionally, a criminal defendant waives his right to challenge any nonjurisdictional defects in the criminal proceedings that occurred before the plea."). Nonetheless, even without any waiver, Pineda's section 2255 claims are unpersuasive.

B. Merits Discussion

The theme of Pineda's section 2255 is that marijuana is property, which is a constitutional right. Because law enforcement searched and seized a plethora of marijuana plants—which he characterizes as his property—Pineda insists his rights were violated under the Fourth and Fifth Amendments. In other words, it appears that Pineda is challenging the legality and constitutionality of federal law criminalizing the possession, use, distribution, or sale of marijuana.

Indeed, Pineda's claims are cognizable under section 2255. While cognizable, a movant who fails to raise these claims on direct appeal must show cause of his procedural default and actual prejudice suffered as result of the alleged constitutional error. *See United States v. Samuels*, 59 F.3d 526, 528 (5th Cir. 1995) ("[O]n collateral attack, a defendant is limited to alleging errors of a 'constitutional or jurisdictional magnitude' . . . . Also, a defendant is required to show both cause for the procedural default in not raising the issue on direct appeal and some form of actual prejudice that he suffered as a result of the error.").

Here, Pineda made no allegations—whatsoever—that provide cause for his failure to file a direct appeal in his case or what prejudice he has suffered as a result of any alleged error. Accordingly, Pineda's section 2255 motion could be dismissed on those bases alone. *See United States v. Robinson*, 2020 WL 2476556, at *2 (W.D. La. May 13, 2020).

Even if Pineda could establish both cause and prejudice, his various constitutional challenges would fail. Turning to Pineda's Fourth Amendment argument, the Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated...." U.S. CONST., AMEND. IV. The United States Supreme Court has historically recognized, "[N]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968) (internal citation omitted). Persons arrested or detained without a probable cause finding could challenge such arrest/detention by appealing to the Fourth Amendment's protections "against unfounded invasions of liberty." *See Gerstein v. Pugh*, 420 U.S. 103, 125, n.27 (1975).

However, "once a trial has occurred, the Fourth Amendment drops out: A person challenging sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause." *See Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 920 & n.8 (2017).

Pineda does not argue that law enforcement lacked probable cause to search or seize his marijuana plants. Nor does he insist that his pre-trial process or his plea process were constitutionally deficient. Conversely, Pineda challenges the law under which he was convicted and his subsequent imprisonment subject to that very law. *See, e.g.*, *Robinson*, 2020 WL 2476556, at *3. Accordingly, the Fourth Amendment provides no basis for Pineda's claim. *Id.*

Turning to the crux of Pineda's challenges, under 21 U.S.C. § 812, marijuana is a Schedule I controlled substance. Under this meaning, "marijuana has no currently accepted medical use in treatment, and there is a lack of accepted safety for use of the ... substance under medical supervision." *See Wilson v. Lynch*, 835 F.3d 1083, 1099 (9th Cir. 2016) (rejecting plaintiff's assertion that "because a medical recommendation must be obtained to receive a marijuana registry card, a holder of a registry card who uses marijuana has not used a controlled substance in a manner

other than as prescribed by a licensed physician," and is thus a lawful user). There is no fundamental right to possess, use, or distribute marijuana. *See Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007).

To the extent that Pineda highlights that certain states do not proscribe marijuana while others do, such as Texas, this argument has been consistently rejected throughout federal courts across the country. The reason is simple: Marijuana remains illegal under federal law and Pineda need look no further than the Supremacy Clause of the United States Constitution. *See, e.g., United States v. Canori*, 737 F.3d 181, 184-85 (2d Cir. 2013) ("Marijuana remains illegal under federal law, even if those states in which medical marijuana has been legalized."); *see also United States v. Zachariah*, 2018 WL 3017362, at *1 (W.D. Tex. June 15, 2018) (collecting cases and rejecting defendant's argument that in 29 out of 50 states persons can legally possess marijuana that federal government has refused to preempt state laws in this arena, and that "this creates a state of affairs where a person faces no prosecution in the state courts, but faces prosecution in the federal courts, creating a violation of the Due Process Clause of the Fifth Amendment."); *United States v. White*, 2016 WL 4473803, at *2 (W.D. Mo. Aug. 23, 2016) ("[E]ven if the [Missouri] Right to Farm Amendment did decriminalize the manufacture of marijuana . . ., pursuant to the Supremacy Clause of the United States Constitution, the Right to Farm Amendment **would have no effect on the validity and enforceability of federal statutes** such as the Controlled Substances Act.") (emphasis added).

Pineda challenges the fact that Congress has proscribed marijuana. To the extent that Pineda maintains that Congress' decision to proscribe marijuana or by making possession/use/distribution of marijuana a federal crime, such claim is wholly without merit. Traditional rational basis review applies to the Controlled Substance Act. *Robinson*, 2020 WL

2476556 at *4. Specifically, to Pineda's case, rational basis review applies to Congress's actions in making the manufacture and possession with the intent to distribute marijuana a crime under Schedule I of the Act. *See Torres v. Chapman*, 359 F. App'x 459, 462 (5th Cir. 2009) ("In absence of the showing of a fundamental right or membership in a suspect class, we employ only rational-basis review."). Government action—i.e., creating federal law criminalizing marijuana—comports with substantive due process under the Fifth Amendment "if the action is rationally related to a legitimate governmental interest." *Robinson*, 2020 WL 2476556 at *4 (citing *FM Prop. Operating Co. v. City of Austin*, 93 F.3d 167, 174 (5th Cir. 1996)). Rational basis is a notoriously deferential standard.

Under the deferential standard of rational basis review, district courts have found that the provisions on the criminalization of marijuana survive Fifth Amendment challenges. Specifically, as highlighted by the *Robinson* court, the Western District of New York reasoned as follows:

> Congress's stated purpose for the passage of the [Controlled Substances Act] was public health and safety. One need only review the [Drug Enforcement Agency's] most recent denial of a petition to reschedule to recognize the continuing public health and safety issues associated with marijuana use—it "induces various psychoactive effects that can lead to behavioral impairment," *Denial of Petition to Initiate Proceeds to Reschedule Marijuana*, 81 Fed. Reg. 53,767, 653,774 (Aug. 12, 2016); it can result in a "decrease IQ and general neuropsychological performance" for those who commence using it as adolescents, *id.*; it may result in adverse impacts on children who were subjected to prenatal marijuana exposure, *id.* at 53,775; it "is the most commonly used illicit drug among Americans aged 12 years and older," *id.* at 53,770; and its use can cause recurrent problems related to family, school, and work, including repeated absences at work and neglect of family obligations, *id.* at 53,783-84.
>
> Even if there is a legitimate medical purpose associated with marijuana, under the rational basis standard of review, there are numerous conceivable public health and safety grounds that could justify Congress's and the DEA's continued regulation of marijuana as Schedule I controlled substance. Under no reasonable view of the facts could it be concluded that it is irrational for Congress to continue to regulate marijuana in the manner in which it has, and for the DEA to continue to adhere to a Schedule I classification for marijuana.

Robinson, 2020 2476556 at *4 (citing and quoting *United States v. Green*, 222 F.Supp.3d 267, 279 (W.D.N.Y. 2016)).

Here, Pineda pleaded guilty to manufacture and possession, with the intent to manufacture and distribute, 100 or more marijuana plants and aiding and abetting. Federal courts have consistently rejected claims such as those raised by Pineda. The federal prohibition against marijuana—through the Controlled Substances Act—is a valid federal law prohibiting Pineda's conduct. Because his conviction and sentence are valid, the Fourth and Fifth Amendments provide no relief.

V. Conclusion

Pineda pleaded guilty to manufacture and possession, with the intent to manufacture and distribute, 100 or more marijuana plants and aiding and abetting. While he insists that there is no constitutional amendment prohibiting marijuana and even if there are legitimate medical justifications for the use of marijuana, the bottom line is that Pineda violated a valid and constitutional federal law. He pleaded guilty to doing so. For the above-stated reasons, his section 2255 motion should be denied.

VI. Certificate of Appealability

An appeal may not be taken to the court of appeals from a final order in a section 2255 proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). Although Movant has not yet filed a notice of appeal, the Court may address whether he would be entitled to a certificate of appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (explaining that a district court may *sua sponte* rule on a certificate of appealability because "the district court that denies a [movant] relief is in the best position to

determine whether the [movant] has made a substantial showing of a denial of a constitutional right on the issues before the court.").

A certificate of appealability may issue only if a movant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the movant need only show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Supreme Court recently emphasized that the COA inquiry "is not coextensive with merits analysis" and "should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Buck*, 137 S. Ct. 773 (quoting *Miller-El*, 537 U.S. at 336). Moreover, "[w]hen the district court denied relief on procedural grounds, the [movant] seeking a COA must further show that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Rhoades v. Davis*, 852 F.3d 422, 427 (5th Cir. 2017) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012)).

Here, Movant Pineda failed to present a substantial showing of a denial of a constitutional right or that the issues he has presented are debatable among jurists of reason. He also failed to demonstrate that a court could resolve the issues in a different manner or that questions exist warranting further proceedings. Accordingly, he is not entitled to a certificate of appealability.

RECOMMENDATION

It is therefore recommended that the above-styled section 2255 motion be denied, the case be dismissed, with prejudice, and that Movant be denied a certificate of appealability *sua sponte*.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So ORDERED and SIGNED this 10th day of June, 2021.

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE