

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Adam Eugene Martin — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. Court of Appeals - Ninth Circuit

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.


☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.



(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Adam Eugene Martin, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Income from real property (such as rental income)	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Interest and dividends	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Gifts	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Alimony	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Child Support	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Unemployment payments	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Public-assistance (such as welfare)	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Other (specify): _____	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____
Total monthly income:	\$ <u>0</u>	\$ _____	\$ <u>0</u>	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Unemployed			\$ 0
Unemployed			\$ 0
Unemployed			\$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
	\$	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings. *NO Assets*

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

No One

Amount owed to you

\$ 0

\$ 0

\$ 0

Amount owed to your spouse

\$ 0

\$ 0

\$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name

Relationship

Age

No One

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 0

\$ 0

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ 0

\$ 0

Home maintenance (repairs and upkeep)

\$ 0

\$ 0

Food

\$ 0

\$ 0

Clothing

\$ 0

\$ 0

Laundry and dry-cleaning

\$ 0

\$ 0

Medical and dental expenses

\$ 0

\$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 0	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$
Life	\$ 0	\$
Health	\$ 0	\$
Motor Vehicle	\$ 0	\$
Other: _____	\$ 0	\$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$
Installment payments		
Motor Vehicle	\$ 0	\$
Credit card(s)	\$ 0	\$
Department store(s)	\$ 0	\$
Other: _____	\$ 0	\$
Alimony, maintenance, and support paid to others	\$ 0	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$
Other (specify): _____	\$ 0	\$
Total monthly expenses:	\$ 0	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I'm incarcerated & in the SHU.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: MAY 16, 2022



(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Adam Eugene Martin — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals-Ninth Circuit Case No. 19-15605
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Adam Martin #39706-180
(Your Name)

USP-Allenwood, P.O. Box 3000
(Address)

White Deer, PA, 17887
(City, State, Zip Code)

NA
(Phone Number)

* Borden v. United States 141 S.Ct 1817 (2021) *

ISSUE

QUESTION(S) PRESENTED

Texas Penal Code 29.02 Robbery can be committed by reckless conduct, and the State of Texas case law clearly finds the statute indivisible. Nonetheless the Ninth Circuit made its own interpretation of the clearly established substantive law of Texas, contrary to Erie Co. v. Thompkins 304 U.S. 64 (1938), in finding the Texas robbery statute was divisible and Martin was of the threats portion of the statute, relying on an infirm Texas felony information.

①. Did the Ninth Circuit err in its interpretation of the substantive law of the State of Texas, circumventing established Supreme Court precedent of Erie Co. v. Thompkins 304 U.S. 64 (1938), when the Ninth Circuit independently decided that the State of Texas Robbery statute 29.02 was divisible, contrary to Texas statutory and case law that shows its indivisible?

②. Did the Ninth Circuit err when it failed to apply Moncrieffe v. Holder 569 U.S. 184 (2013) to Martin's Texas robbery conviction which has a mens rea of recklessness, and is indivisible?

③. Did the Ninth Circuit err when they chose ignore the substantive State of Texas law in Ex parte Santellana 606 S.W.2d 331 (Tx Crim App. 1980 (en banc)), which supported Ex parte County 577 S.W.2d 260 (Tx Crim App. 1979) in their review of Martin's infirm felony information?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

App 1A-5a - U.S. Court of Appeals - Ninth Circuit Case No. 19-15605

App 6A-15a - U.S. District Court - District of Arizona - Tucson - Case No. 4:17-CV-00371-JGZ

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1a-5a to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix 6a-15a to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12-22-21.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution Amendment V - No person shall be deprived of life, liberty, or property, without due process of law.
2. U.S. Constitution Amendment X - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively.
3. 18 USC 3559(c)(1)(A)(i); (2)(F)(i) "Three Strikes"
4. Texas Penal Code 1.07(a)(8) - Definitions - (8) "Bodily Injury" means physical pain, illness, or any impairment of the physical condition.
5. Texas Penal Code 29.02 - Robbery - (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 (Theft) and with ~~the~~ intent to obtain or maintain control of the property, he:
 - (1). intentionally, knowingly, or recklessly causes bodily injury to another; or
 - (2). intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

Statement of the Case

"CR" refers to the Clerks Record in 4:17-CV-00371-JGZ, followed by document number(s); "App" refers to Petitioners Appendix, followed by the page number(s).

On July 31, 2017, Martin filed a Petition for Writ of Habeas Corpus pursuant to 28 USC 2241, in the U.S. District Court - District of Arizona - Tucson raising a single issue of actual and

STATEMENT OF THE CASE (cont.)

factual innocence of 18 USC 3559 (c)(2) life sentence, stating that his prior state convictions in Texas for Robbery (App 16a-19a) and Arizona for Aggravated Assault do not meet the requirements and the two (2) 1988 bank robberies were consolidated, and the Government had all the paperwork in their care and custody. (CR 1). Specifically stating that Martin is actually and factually innocent of having two or more serious violent felony convictions because his Texas Robbery and Arizona Agg. Assault were not serious violent felonies; thus he only has one prior violent felony, which renders him actually and factually innocent of the 18 USC 3559(c) Life sentence. On October 5, 2017 the govt. responded to the 2241 petition claiming the court lacked jurisdiction (CR 15). On August 13, 2018, Martin filed for Declaratory Judgement (CR 27). On August 30, 2018 the Govt. filed its response conceding that Martin's two 1988 bank robberies were consolidated and count for one predicate felony. (CR 21, CR 22, CR 30, p. 13; CR 32 p. 3; CR 43, p. 4, FN 1). The Government also conceded Martin's Arizona Agg. Assault is not a crime of violence by failing to dispute it. See, United States v. Esparza-Herrera 557 F3d 1019 (9th Cir 2009).

The district held that it lacked jurisdiction and that the Texas Robbery statute was indivisible under Taylor v. United States 495 U.S. 575, 577-78 (1990) (CR 43 p. 6; and CR 43 p. 10) determining that when analyzed under the categorical approach Martin's Texas Robbery conviction was a violent offense.

The district decision was appeal to the Ninth Circuit

Statement of Case (cont.)

in case no. 19-15605. The Ninth Circuit filed its memorandum decision on December 22, 2021. Contrary to the district court, the Ninth Circuit determined that Texas Penal Code 29.02 was divisible and should be analyzed under the modified categorical approach and not the categorical approach. (App'x). Mandate followed on February 14, 2022.

Reasons For Granting Petition

1). The Ninth Circuit declined to accept the substantive law of the State of Texas, which clearly establishes that the Texas Penal Code 29.02 is "indivisible", circumventing Erie Co. v. Thompson 304 U.S. 64 (1938), reinterpreting the substantive law of Texas to find that the Texas Penal Code 29.02 was "divisible" to allow the Ninth Circuit's analysis under the modified categorical approach. Cooper v. State of Texas 430 S.W.3d 426, 427 (Tex. Crim. App. 2014) directly speaks to the State of Texas' interpretation of their own statute of robbery under Texas Penal Code 29.02. (Tex. Crim. App. is the highest state court on criminal matters).

In Cooper the prosecutor believed that the Robbery statute was divisible into two separate robbery offenses. 1). By causing injury, and 2). by threatening such an injury. Id at 428. Cooper was found guilty of both parts of the Texas statute. Texas' high court over-turned the convictions under double jeopardy. At Cooper at 435 determined that "... we should accord determinative weight to the legislators' decision to place these different means of committing

REASONS FOR GRANTING THE PETITION (CONT.)

Robbery in the same statutory section and hold that they are alternative means of committing the same offense," and thus the double jeopardy clause was violated. The second concurring opinion, joined by an additional justice, applied a slightly different analysis in determining that the "threat" and bodily injury elements of... robbery are simply alternative methods of committing... a robbery. *Id.* at 439. Even though there are two different concurring opinions, both opinions reached the same conclusion that double jeopardy was violated. Thus, Texas Penal Code 29.02 is indivisible.

Burton v. State of Texas 510 S.W.3d 232 (Tex. Crim. App. 2017) again addressed Texas Penal Code 29.02 as to causing bodily injury and threatening bodily injury. The court's jury instruction presented the elements to the jury in the disjunctive that if they found either allegation to be true beyond a reasonable doubt, then their vote should be guilty. *Id.* at 236-37. Here the defendant raised the statute was divisible. *Id.* The Texas Court of Appeals held, "Reading Rangel", and Cooper together leads us to conclude that it was not error for the charge of aggravated robbery to be

1. In Rangel v. State of Texas 199 SW3d 523, 540 (Tex. App. Ft. Worth 2006) the Court held, "a trial court may submit a disjunctive jury charge and obtain a general verdict where alternative theories involve the commission of the 'same offense'."

Reasons For Granting Petition (cont.)

submitted in the disjunctive causing bodily injury or threatening the victim are different methods of committing the same offense." *Id.* at 237. Hence, the jury need not identify how many voted for each of the two ways of committing robbery, as it is a single indivisible statute. *Id.* at 237.

The Ninth Circuit Memorandum decision dismissed the decisions

of the Texas Court in both Cooper and Burton in a single sentence; "While we acknowledge that the Texas state courts have been ambiguous as to whether these two subsections are alternative means or elements,

see Cooper, Burton, we conclude the statute is divisible for

three reasons." (*App'l* at p. 3, ¶ 11). Using that announcement to

allow them to take a "peek" at the record documents to determine

if the statute is divisible." (*Id.* at 3 quoting U.S.v. Mathis 136 S.Ct.

2243, 2256 (2016)). A plain and fair reading of Cooper and Burton clear establish the substantive law of the State of Texas. The Texas Penal Code 29.02 is indivisible.

2). Under the categorical approach of an indivisible statute

is not crime of violence if the defendant did not admit to

the elements of a "generic offense". Martin's guilty plea does not

admit to any elements of anything but Robbery. And since the

district court and Ninth Circuit can only look at the documents

presented to the sentencing court at sentencing, which were the

Texas Robbery guilty plea of which was a certified copy on

2-17-04, and the probation paper certified copy of 2-17-04

Reasons For Granting Petition (cont.)

(App. 17a and 18a) which were the only certified copies presented to the sentencing court, both simply stating Robbery, with no statutory cited, the habeas district court is bound by Moncrieffe v. Holder 569 U.S. 184 (2013) to apply the "least of the acts criminalized"; not go above and beyond what the sentencing court perused in determining Martin's guilt in the Texas Robbery, ~~which~~ which has a mens rea of recklessness, which under Borden v. United States 141 S.Ct. 1817 (2021) is a non-violent felony.

3). The Ninth Circuit erred when they used an infirm felony information to determine Martin threatened injury; violating the substantive law of the State of Texas as set forth by Ex parte Santellana 606 S.W.2d 331 (Tex.Crim.App.1980 (en banc)), which supported Ex parte County 577 S.W.2d 260 (Tex.Crim.App.1979) which touches on "all fours" with Martin's felony information being infirm for not properly following legislative intended statutory law that specifically requires a 4(a) or 4(b) before the word "threaten". Lack of the 4(a) or 4(b) mens rea being in the proper legislatively intended statutory verbage makes Martin's felony information for Aggravated Robbery infirm and unusable, which is why only App. 17a and 18a are the documents presented to the sentencing court, showing that Martin only plead guilty to Robbery. (Texas Penal Code 29.02)

Texas Robbery under 29.02 requires a theft and an assault. The mens rea in Martin's felony information (App. 16a) states, "intentionally and knowingly committed theft...", which is part (1) of the information, setting the mens rea for theft. The (4a) or (4b) mens rea required by Texas legislative statute, and Texas case law in Ex parte County, affirmed en banc under Ex parte Santellana is missing in Martin's information. The mens rea cited for the theft portion, does not reach the assault portion, as per Ex parte Santellana, quoting Ex parte County. So, Martin's felony information is an infirm document and cannot be used in the "categorical or modified categorical approach" of Taylor or Mathis. Martin's Judgment (App. 17a) states "Robbery Lesser Included Offense Count One", no statutory cite, and since Count One of the felony information fails to state an Agg. Robbery under 29.03, or Robbery under 29.02, Count One offers no guidance, nor does the Probation document (App. 18a), so the Rule of Lenity goes to Martin, and he is actually and factually innocent of the 18 USC 3559(c) Life sentence, since no reasonable fact finder can find Martin has more than one (1) predicate violent felony. The Ninth Circuit erred in light of Borden which states a "reckless" mens rea is not violent.

Therefore Martin meets both actual and factual innocence of the 18 USC 3559(c) Life sentence, because he lacks the predicate offenses for the 3559(c) Life sentence, as no reasonable fact finder can find he has two predicate offenses. This is not legal insufficiency, it material fact. See, Bouseley v. United States, 523 U.S. 614, 623 (1998).

CONCLUSION

Based upon the material facts herein Martin request that the Ninth Circuits decision be reversed and declare him actually innocent of the 3559(c) Life sentence since he does not have two or more predicate crimes of violence. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Adam M.

Date: 5-16-2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Adam Eugene Martin — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

PROOF OF SERVICE

I, Adam Eugene Martin, do swear or declare that on this date, _____, 20____, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General 950 Pennsylvania Ave. NW, Washington, D.C. 20530-
0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 16th of May, 2022

Ad Martin
(Signature)

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9/10/11

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADAM EUGENE MARTIN,

Petitioner-Appellant,

v.

KRIS KLINE, Warden,

Defendant-Appellee.

No. 19-15605

D.C. No. 4:17-cv-00371-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer Zipps, District Judge, Presiding

Argued and Submitted December 7, 2021
San Francisco, California

Before: WARDLAW, BRESS, and BUMATAY, Circuit Judges.

Adam Martin, a federal prisoner, petitioned the district court for habeas relief under 28 U.S.C. § 2241. The district court denied Martin's petition, holding that it lacked jurisdiction to consider a petition brought under § 2241 because Martin did not meet the requirements set out in § 2255(e), known as the escape hatch provision.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Martin appeals the dismissal of his petition. We review the district court's decision de novo, *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006), and affirm.

The district court correctly determined that Martin is not “actual[ly] innocen[t]” of his sentencing enhancement, and is thus ineligible for the escape hatch, because his Texas robbery conviction was a “serious violent felony” under § 3559(c), and therefore was a valid predicate offense. *Id.* at 898.

1. The Texas robbery statute Martin was convicted under is divisible, so we analyze whether it counts as a predicate offense under the modified categorical approach. *See Rendon v. Holder*, 764 F.3d 1077, 1084 (9th Cir. 2014); *Syed v. Barr*, 969 F.3d 1012, 1017 (9th Cir. 2020).

The “critical distinction” between indivisible and divisible statutes is that “while indivisible statutes may contain multiple, alternative *means* of committing the crime, only divisible statutes contain multiple, alternative *elements* of functionally separate crimes.” *Rendon*, 764 F.3d at 1084–85 (emphasis original). With an element of a crime, a jury “must unanimously agree,” while with the means of committing a crime a jury “may disagree yet still convict.” *Id.* at 1086; *see also Richardson v. United States*, 526 U.S. 813, 818 (1999).

Here, the Texas robbery statute Martin was convicted under has two subsections: robbery by bodily injury, Tex. Penal Code § 29.02(a)(1), and robbery by threat, *id.* § 29.02(a)(2). While we acknowledge that Texas state courts have been

ambiguous as to whether these two subsections are alternative means or elements, *see Cooper v. State*, 430 S.W.3d 426, 427 (Tex. Crim. App. 2014); *Burton v. State*, 510 S.W.3d 232, 237 (Tex. App. 2017), we conclude that the statute is divisible for three reasons:

First, the statute sets forth different sets of mens rea elements for each version of robbery—“intentionally, knowingly, or recklessly” for robbery by bodily injury and “intentionally and knowingly” for robbery by threat. A mens rea requirement is an element of a crime—not a means of committing a given crime. Indeed, “the general rule is that a guilty mind is a necessary *element* in the indictment and proof of every crime.” *Elonis v. United States*, 575 U.S. 723, 734 (2015) (simplified) (emphasis added). The inclusion of different sets of mens rea elements is strong evidence that the Texas robbery statute is divisible.

Second, Texas provides different sample jury instructions for robbery by threat and robbery by bodily injury. *Compare* Texas Crim. Jury Charges § 8:380, Robbery (Threats), *with* Texas Crim. Jury Charges § 8:370, Robbery (Bodily Injury). This suggests that robbery by threat and robbery by bodily injury are separate crimes within one statute. *See Almanza-Arenas v. Lynch*, 815 F.3d 469, 482 (9th Cir. 2016) (looking to state jury instructions to determine if a statute is divisible).

Finally, “if state law fails to provide clear answers,” courts may take a “peek” at the record documents to determine if a statute is divisible. *U.S. v. Mathis*, 136 S.

Ct. 2243, 2256 (2016). Here, Martin's information suggests that robbery by threat is a separate crime because it tracks § 29.02(a)(2) with no mention of the elements in § 29.02(a)(1).

Taken together, the Texas robbery statute's differing mens rea elements, differing jury instructions, and the charging documents establish that the statute is divisible and subject to analysis under the modified categorical approach.

2. Applying the modified categorical approach, we conclude that Martin was convicted of robbery by threat—not robbery by bodily injury. Counts 1 and 2 of Martin's felony information stated that Martin, "intentionally and knowingly, while in the course of committing theft of property and with intent to obtain and maintain control of said property, threaten and place [the victims] in fear of imminent bodily injury and death, and [Martin] did then and there use and exhibit a deadly weapon, to-wit [a] firearm." Thus, according to the plain terms of the information, Martin was charged with "threaten[ing]" his victims—not causing them bodily injury. Moreover, as the government notes, the relevant documents do not indicate that any victim actually suffered physical injuries. As a result, the record demonstrates that Martin was convicted of robbery by threat.

3. Robbery by threat is a valid predicate offense under 18 U.S.C. § 3559(c) because it tracks the generic federal robbery crime. *Compare* Tex. Penal Code § 29.02(a)(2), *with* 18 U.S.C. §§ 2111, 2113, 2118. Martin's conviction was thus a

serious violent felony for purposes of § 3559(c)'s mandatory sentencing enhancement and his actual innocence claim fails.¹

AFFIRMED.

¹ Because Martin's actual innocence argument fails, we do not reach whether Martin had an unobstructed procedural shot to make his argument. *Stephens*, 464 F.3d at 898.

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Adam Eugene Martin,

10 Petitioner,

11 v.

12 Unknown Party,

13 Respondent.
14

No. CV-17-00371-TUC-JGZ

ORDER

15 Petitioner Adam E. Martin has filed a Petition for Writ of Habeas Corpus pursuant
16 to 28 U.S.C. § 2241 challenging the sentence imposed by the United States District Court
17 for the Western District of Texas. (Doc. 1.) At the time of filing, Petitioner was
18 incarcerated at USP-Tucson, Arizona. (*Id.*) Respondent filed a Return and Answer and a
19 Motion to Dismiss for Lack of Jurisdiction. (Doc. 15.) Martin filed a reply (Doc. 21) and
20 an addendum to the reply. (Doc. 22.) Also pending before the Court is Petitioner's
21 Motion for Clarification and Motion for Declaratory Judgment. (Docs. 26 & 27.)
22 Respondent filed a Response to the Motion for Declaratory Judgment on August 30,
23 2018. (Doc. 30.)

24 This matter was referred to Magistrate Judge Jacqueline M. Rateau for a report
25 and recommendation. (Doc. 3.) On August 30, 2018, Judge Rateau issued her Report,
26 recommending that the Court grant Respondent's motion to dismiss, deny Petitioner's
27 outstanding motions as moot, and dismiss the action without prejudice. (Doc. 31.)
28 Petitioner filed objections to the Report on September 14, 2018 (Doc. 32), and the

Respondent filed a response to Petitioner's objections on September 20, 2018. (Doc. 33.) Since the filing of the Magistrate Judge's Report, Petitioner has filed a motion to expedite (Doc. 34), a second motion to expedite (Doc. 41), and a motion to add as respondent the warden of Petitioner's most recent housing assignment. (Doc. 35.) Upon independent review of the record, the Court will adopt the Report and Recommendation, as modified by this Order, dismiss the Petition for lack of jurisdiction, and dismiss the remaining motions as moot.

I. LEGAL STANDARD

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). "[T]he district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original). District courts are not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). See also 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Reyna-Tapia*, 328 F.3d at 1121; *Schmidt v. Johnstone*, 263 F.Supp. 2d 1219, 1226 (D. Ariz. 2003).

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 18, 2004, Martin was convicted, following a jury trial, of eight counts of bank robbery, and subsequently sentenced to eight concurrent life sentences. *United States v. Martin*, 431 F.3d 846, 850 (5th Cir. 2005). Petitioner was sentenced subject to a mandatory enhancement under the "Three Strikes" statute, 18 U.S.C. § 3559, which states that a person convicted of a serious violent felony "shall be sentenced to life imprisonment if . . . the person has been convicted . . . on separate prior occasions . . . of . . . 2 or more serious violent felonies." 18 U.S.C. § 3559(c)(1)(A)(i). At the time of sentencing, Petitioner had four prior felony convictions: two federal bank robbery convictions in violation of 18 U.S.C. § 2113(a); a Texas state robbery conviction, in violation of Tex. Penal Code § 29.02; and an Arizona state Aggravated Assault

conviction in violation of Ariz. Rev. Stat. §§ 13-1203, 13-1204(A)(1), 13-701, 13-801. (Doc. 30 at 2; Doc. 30-2, Exs. 2-5; Doc. 32 at 4, 5.)

On December 2, 2005, the United States Court of Appeals for the Fifth Circuit affirmed Martin's convictions and sentences, addressing, among other things, Petitioner's argument that his mandatory life sentence, based on the three strikes law, did not violate the Eight Amendment. *Martin*, 431 F.3d at 850. The Supreme Court denied a petition for a writ of certiorari. *Martin v. United States*, 547 U.S. 1059 (2006).

Petitioner's first collateral attack of his conviction and sentence was made on January 31, 2006, when Petitioner filed a § 2255 motion in the sentencing court, which was denied. See Criminal Docket for Case No. 1:03-CR-250 Western District of Texas, docket entry #215 (Order denying relief). The Fifth Circuit denied Martin's motion for a certificate of appealability and also dismissed his appeal of the trial court's order denying relief on his section 2255 motion. See *United States v. Martin*, 1:06-CV-57 (W.D. Tex. May 24, 2006), *certificate of appealability denied*, No. 06-50962 (5th Cir. Jan. 5, 2007). Petitioner has made several additional efforts to obtain collateral relief on various grounds, all of which were unsuccessful. (See Doc. 30 and attachments thereto.)

On July 31, 2017, Petitioner filed the pending Petition pursuant to 28 U.S.C. § 2241, asserting that his sentence was illegal and that he is factually innocent of the sentence enhancement imposed by the United States District Court for the Western District of Texas under the Three Strikes statute, 18 U.S.C. § 3559(c). He seeks an order vacating his illegal sentence and the issuance of a "certificate of innocence."

The Respondent moved to dismiss the Petition, arguing that the Petition challenges the validity of Petitioner's conviction and sentence and, therefore, must be brought as a motion pursuant to 28 U.S.C. § 2255 in the sentencing court, and not as a § 2241 habeas petition. See *Harrison v. Ollison*, 519 F.3d 952, 954 (9th Cir. 2008). The Magistrate Judge agreed and recommends dismissing the Petition. (Doc. 31.)

Petitioner filed objections to the Report and Recommendation, asserting that he is eligible for relief under 28 U.S.C. § 2241. Petitioner argues that he is factually innocent

1 of the sentencing enhancement because he does not have two prior serious felony
 2 convictions as that term is defined by 18 U.S.C. § 3559(c). Petitioner objects to the
 3 Magistrate Judge's finding that his federal felony bank robbery convictions in the
 4 Western District of Oklahoma count as two prior serious violent felonies sufficient to
 5 support the sentencing enhancement. Petitioner argues that the convictions did not
 6 become final on separate prior occasions and thus count only as a single predicate felony
 7 for the purposes of 18 U.S.C. § 3559(c). (Doc. 32 at 4.)¹ Petitioner further asserts that his
 8 convictions for Arizona aggravated assault and Texas robbery are divisible and therefore
 9 are "not deemed violent" for the purposes of sentencing enhancement. (Doc. 1 at 4.)²
 10 Finally, Petitioner argues that relief under 28 U.S.C. § 2241 is proper because he did not
 11 have an unobstructed procedural shot at presenting his claims. Petitioner states that he
 12 did not have a crystal ball to foresee the argument that the state statutes were divisible
 13 (Doc. 21 at 4–5), and therefore "not deemed violent." (Doc. 1 at 4.)

14 III. DISCUSSION

15 A. The Court Lacks Jurisdiction over Petitioner's Successive § 2255 Petition

16 Although the Petition references 28 U.S.C. § 2241, the Petition is properly
 17 brought under § 2255, not § 2241. "A federal prisoner who seeks to challenge the
 18 legality of confinement must generally rely on a § 2255 motion to do so." *Marrero v.*
 19 *Ives*, 682 F.3d 1190, 1192 (9th Cir. 2012); *see also Stephens v. Herrera*, 464 F.3d 895,
 20 897 (9th Cir. 2006) ("The general rule is that a motion under 28 U.S.C. § 2255 is the
 21 exclusive means by which a federal prisoner may test the legality of his
 22 detention, . . . and that restrictions on the availability of a § 2255 motion cannot be
 23 avoided through a petition under 28 U.S.C. § 2241."). An exception to this general rule

24 ¹ In its Response, the Government agrees that Petitioner's two bank robbery convictions
 25 from the Western District of Oklahoma count as only one predicate felony. (Doc. 30 at
 26 13.) The Magistrate Judge did not have the benefit of the Government's Response before
 concluding that the two federal convictions counted as separate serious violent felonies;
 the Report and Recommendation was filed the same date as the Government's Response.

27 ² Having concluded that Petitioner's federal bank robbery convictions counted as two
 28 separate serious violent felonies, the Magistrate Judge did not address whether the
 Arizona assault or the Texas robbery conviction qualified as a serious violent felony. (*See*
 Doc. 31.)

1 is created by § 2255(e), which is also known as the “escape hatch.” The escape hatch
 2 permits a habeas petition under § 2241 to challenge the legality of a sentence when the
 3 prisoner’s remedy under § 2255 is “inadequate or ineffective to test the legality of his
 4 detention.” 28 U.S.C. § 2255(e).

5 The escape hatch is a limited exception. *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th
 6 Cir. 2003); *Tripati v. Hennan*, 843 F.2d 1160, 1162-63 (9th Cir. 1988). A prisoner may
 7 file a § 2241 petition under the escape hatch only when the prisoner “(1) makes a claim
 8 of actual innocence, and (2) has not had an unobstructed procedural shot at presenting
 9 that claim.” *Herrera*, 464 F.3d at 898 (internal quotation marks and citation omitted). A
 10 prisoner must satisfy both requirements to get through section 2255’s escape hatch. *Muth*
 11 *v. Fondren*, 676 F.3d 815, 819 (9th Cir. 2012). The burden of coming forward with
 12 evidence affirmatively showing the inadequacy or ineffectiveness of the § 2255 remedy
 13 rests with the petitioner. *Redfield v. United States*, 315 F.2d 76, 83 (9th Cir. 1963).
 14 Here, Petitioner has failed to establish either of the escape hatch requirements.

15 1. Unobstructed Procedural Shot

16 When determining whether a petitioner has been denied an “unobstructed
 17 procedural shot,” the Court must consider “(1) whether the legal basis for petitioner’s
 18 claim did not arise until after he had exhausted his direct appeal and first § 2255 motion;
 19 and (2) whether the law changed in any way relevant to petitioner’s claim after that first §
 20 2255 motion.” *Harrison*, 519 F.3d at 960 (internal quotation marks and citation omitted).
 21 To establish that he has not had an unobstructed procedural shot, “it is not enough that
 22 the petitioner is presently barred from raising his claim of innocence by motion under §
 23 2255. He must never have had the opportunity to raise it by motion.” *Ivy*, 328 F.3d at
 24 1060.

25 Petitioner fails to demonstrate that he has not had an unobstructed procedural shot
 26 to present his claim. The record reflects that Petitioner has filed for authorization, or had
 27 the opportunity to seek authorization to file a successive § 2255 motion attacking his
 28 sentence, and that he has specifically previously challenged the use of his prior

convictions as qualifying serious violent felonies pursuant to the enhanced sentencing provisions of 18 U.S.C. § 3559(c)(2). This history is set out in Respondent's Response to Petitioner's Request for Declaratory Judgment. *See e.g.*, Doc. 30, Exs. 1 & 13 (2007 motion claiming federal bank robberies should be counted as one offense, and state convictions were non-dangerous lesser included offenses); Doc. 30, Ex. 17 (2016 application for leave to file successive § 2255 motion claiming material change in law meant that prior felony convictions were no longer crimes of violence); and Doc. 30, Ex. 19 (2017 application for leave to file a successive § 2255 motion arguing material change in the law meant that prior conviction were no longer crimes of violence).

Petitioner does not dispute his history of filings as described by the Government. Rather, he argues that "divisibility of a state statute did not become available as a legal basis of a claim until 2013, well past petitioner's direct appeal and initial 2255 [petition]." (Doc 32, p. 2.) The Court disagrees. Petitioner's procedural shot at bringing his first claim was not obstructed by any adverse law that subsequently underwent a material change relevant to his claims. The legal analysis employed to evaluate Petitioner's challenge to the applicability of the sentencing enhancement was in place at the time of Petitioner's sentencing. In *Taylor v. United States*, 495 U.S. 575, 577–78 (1990), the Supreme Court established the rule for determining when a defendant's prior conviction counts as a predicate offense under a sentencing enhancement statute—there, the Armed Career Criminals Act (ACCA).³

Taylor adopted a "formal categorical approach": Sentencing courts may "look only to the statutory definitions"—i.e., the elements—of a defendant's prior offenses, and *not* "to the particular facts underlying those convictions." If the relevant statute has the same elements as the "generic" ACCA crime, then the prior conviction can serve as an ACCA predicate; so too if the statute defines the crime more narrowly, because anyone convicted under that law is "necessarily ... guilty of all the [generic crime's] elements." But if the statute sweeps more broadly than the generic crime, a conviction under that law cannot count as an ACCA predicate, even if the defendant actually committed the offense in its generic form. The key, we emphasized, is elements, not facts.

³ That Act provided for a sentence enhancement where a defendant who is convicted under 18 U.S.C. § 922(g) (unlawful possession of a firearm) has three prior convictions for specified types of offenses.

1 *Descamps v. United States*, 570 U.S. 254, 260–61 (2013) (internal citations omitted).
 2 *Taylor* also “recognized a ‘narrow range of cases’ in which sentencing courts—applying
 3 what [the Court] would later dub the ‘modified categorical approach’— may look beyond
 4 the statutory elements to ‘the charging paper and jury instructions’ used in a case.” *Id.* at
 5 261. Moreover, although the Supreme Court further clarified its divisibility analysis in
 6 later cases, its clarification does not benefit Petitioner. As discussed in section III.A.2.
 7 below, under the divisibility analysis, Petitioner’s conviction for robbery in Texas
 8 qualifies as a serious violent felony.

9 In sum, Petitioner cannot demonstrate that he has not had an unobstructed
 10 procedural shot at presenting his claim. Petitioner had the opportunity to present the same
 11 arguments in prior petitions and Petitioner’s procedural shot at bringing his claims was
 12 not obstructed by any adverse law that subsequently underwent a material change
 13 relevant to his claims. Petitioner’s failure to demonstrate that he lacked an unobstructed
 14 procedural shot at presenting his claims is dispositive of this action and provides a basis
 15 for dismissal.

16 2. Actual Innocence

17 In addition, Petitioner cannot demonstrate actual innocence.⁴ To show factual
 18 innocence of the sentencing enhancement, Petitioner must demonstrate that at least two
 19 of his prior felony convictions do not qualify as violent felonies for the purposes of
 20 sentencing enhancement under § 3559(c). The Three Strikes Statute expressly identifies
 21 as a serious violent felony, “a Federal or State offense, by whatever designation and
 22 wherever committed, consisting of . . . robbery (as described in section 2111, 2113, or
 23 2118).” 18 U.S.C. § 3559(c)(2)(F)(i). Petitioner concedes in his Objection that his
 24 consolidated Western District of Oklahoma bank robbery convictions, in violation of 18
 25

26 ⁴ This Court acknowledges a claim of actual innocence of a noncapital sentencing
 27 enhancement has not been recognized in this context. *See Marrero*, 682 F.3d at 1193,
 28 1195 (expressly declining to decide whether a petitioner may bring a claim of statutory
 ineligibility for a non-capital sentence using the § 2255(e) escape hatch). It is not
 necessary for the Court to reach this issue, however, in light of the Court’s other
 holdings.

1 U.S.C. § 2113, count as one predicate violent felony. (Doc. 32 at 3.) *See also United*
 2 *States v. Watson*, 881 F.3d 782, 786 (9th Cir. 2018) (armed bank robbery under § 2113(a)
 3 and (d) categorically qualifies as a crime of violence under § 924(c)). Petitioner's Texas
 4 conviction for robbery counts as a second violent felony.

5 Applying the categorical approach, the Court concludes that the elements of Texas
 6 Robbery, Tex. Penal Code, § 29.02(a)(2), correspond in substantial part to the elements
 7 of the generic offense of robbery. Generic robbery as commonly understood is
 8 "aggravated larceny, containing at least the elements of misappropriation of property
 9 under circumstances involving immediate danger to the person." *United States v. Molinar*
 10 881 F.3d 1064, 1071 (9th Cir. 2017) (internal quotation marks and citation omitted). In
 11 order "for a state crime to be equivalent to generic robbery, it must require property to be
 12 taken from a person or a person's presence by means of force or putting in fear." *Id.* at
 13 1072 (citing *United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380-81 (5th Cir.
 14 2006), *abrogated on other grounds by United States v. Rodriguez*, 711 F.3d 541 (5th Cir.
 15 2013) (en banc)).

16 Petitioner was charged in a Felony Information with Aggravated Robbery –
 17 Deadly Weapon and pled guilty to "the lesser included offense of Count One." (Doc. 30-
 18 2, Ex. 4.) The language of that Count tracks the Texas offense for Aggravated Robbery.⁵
 19 In Texas, an Aggravated Robbery is committed when "a person . . . commits robbery as
 20 defined in Section 29.02, and he . . . uses or exhibits a deadly weapon." Texas Penal
 21 Code § 29.03. Texas Penal Code § 29.02(a)(2), defines the offense Robbery as follows:

22 (a) A person commits an offense if, in the course of committing theft . . .
 23 and with intent to obtain or maintain control of the property, he:

24 (1) intentionally, knowingly, or recklessly causes bodily injury to
 25 another, or

26 (2) intentionally or knowingly threatens or places another in fear of

27 ⁵Count One alleged Petitioner "intentionally and knowingly, while in the course of
 28 committing theft of property and with intent to obtain and maintain control of said
 property, [did] threaten and place Sandy Jardelins in fear of imminent bodily injury and
 death, and the Defendant did then and there use and exhibit a deadly weapon of to wit:
 firearm." (Doc. 30-2, Ex. 4 at 39.)

1 imminent bodily injury or death.

2 Texas Penal Code § 29.02(a)(2). The “lesser included offense of Count One” is robbery.
3 (Doc. 30-2, Ex. 4 at 34.)

4 Under Texas law, robbery occurs when, “in the course of committing theft ... and
5 with intent to obtain or maintain control of the property, [a person]: ... (2) intentionally
6 or knowingly threatens or places another in fear of imminent bodily injury or death.”⁶
7 *United States v. Davis*, 487 F.3d 282, 286 (5th Cir. 2007); *Nelson v. State*, 848 S.W.2d
8 126, 131 (Tex. Crim. App. 1992). The defining feature of a conviction under the Texas
9 statute is the actual or threatened assaultive conduct. *Davis*, 487 F.3d at 286. To commit
10 robbery, an individual must interact with the victim in order to cause bodily injury or
11 place the victim in fear of it. *Davis*, 487 F.3d at 286; *see Nelson*, 848 S.W.2d at 131.
12 Petitioner’s robbery conviction under Tex. Penal Code § 29.02(a)(2) categorically
13 qualifies as an enumerated predicate offense under section 3559(c)(2)(F)(i). *See*
14 *Santiesteban-Hernandez*, 469 F.3d at 380-81 (holding that Texas robbery qualifies as a
15 crime of violence for purposes of applying U.S.S.G § 2L1.2 enhancement because the
16 statute substantially corresponds to the basic elements of the generic offense of robbery
17 in that they both involve theft and threat of immediate danger to a person); *United States*
18 *v. Nunez-Medrano*, No. 17-206445, 2018 WL 5095809 at *4 (5th Cir. Oct. 17, 2018)
19 (unpublished) (“reaffirm[ing] that Texas robbery is no broader than generic robbery” and
20 thus qualifies as a serious violent felony for purposes of applying U.S.S.G § 2L1.2).

21 In sum, assuming the section 2255(e) escape hatch is available for a sentencing
22 enhancement, Petitioner cannot demonstrate that he is actually innocent of his sentence.
23 Petitioner’s consolidated federal robbery felony conviction from the Western District of
24 Oklahoma and his Texas robbery conviction each constitute a serious violent felony for
25 the purposes of 18 U.S.C. § 3559(c). Thus, the sentencing enhancement under 18 U.S.C.
26 § 3559(c) was properly applied.

27
28 ⁶ The Texas Robbery statute also includes the mens rea of “recklessly” placing another in
fear of imminent bodily injury or death. Texas Penal Code § 29.02(a)(1). Petitioner,
however, was not charged with robbery under this section.

B. The Court Lacks Jurisdiction to Consider the Petition

Because Petitioner does not qualify for the escape hatch, this Court lacks jurisdiction to consider his Petition. See *Ivy*, 328 F.3d at 1061

THEREFORE, IT IS ORDERED that the Report and Recommendation (Doc. 31) is ACCEPTED and ADOPTED as modified by this Order. Petitioner's Objection (Doc. 32) is OVERRULED.

IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is DIMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that Petitioner's Motion for Declaratory Judgment is DENIED. (Doc. 27.)

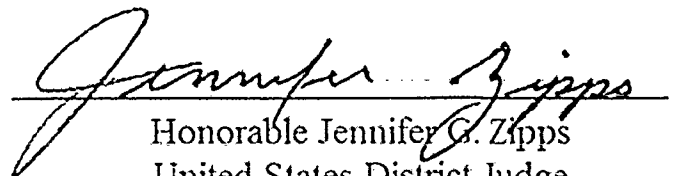
IT IS FURTHER ORDERED that Petitioner's Request for Clarification (Doc. 26) and Motions to Expedite (Docs. 34, 41) are DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion to add Respondent (Doc. 35) is DENIED as moot.

Although Petitioner has brought his claims in a § 2241 petition, a certificate of appealability is required where a § 2241 petition attacks the petitioner's conviction or sentence. See *Porter v. Adams*, 244 F.3d 1006, 1007 (9th. Cir. 2001). Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, in the event Movant files an appeal, the Court declines to issue a certificate of appealability because reasonable jurists would not find the Court's procedural ruling debatable. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Clerk of Court shall enter judgment accordingly and close its file in this case.

Dated this 25th day of January, 2019.


Honorable Jennifer G. Zipps
United States District Judge

NAME ADAM EUGENE MARTIN
 ADDRESS 00310 LILLY BLVD.
 CONROE TX
 RACE & SEX M AGE 18 DOB 03-20-80
 CASE NO. 0200055 FILED: (DATE) 02-11-83
 TRANSFER: COURT DATE
 Felony Information # 206955 w
 INDICTMENT NO. 0200055

OFFENSE AGG BODILY-DEADLY WPN
 DATE 01-26-83 J.P. NO.
 I.P. SANDY BARDOLINE
 C.C.
 AGENCY RIVER OAKS PD
 OFFENSE NO. 0000000 COURT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Comes now the undersigned Assistant District Attorney of Tarrant County,
 Texas, in behalf of the State of Texas, and presents in and to the * * *
 213th District Court of Tarrant County, Texas that * * *

ADAM EUGENE MARTIN hereinafter called Defendant, in the County of
 Tarrant and State aforesaid, on or about the 20TH day of JANUARY 1983, did
 THEN AND THERE INTENTIONALLY AND KNOWINGLY, WHILE IN THE COURSE OF COMMITTING
 THEFT OF PROPERTY AND WITH INTENT TO OBTAIN AND MAINTAIN CONTROL OF SAID
 PROPERTY, THREATEN AND PLACE SANDY BARDOLINE IN FEAR OF IMMINENT BODILY INJURY
 AND DEATH, AND THE DEFENDANT DID THEN AND THERE USE AND EXHIBIT A DEADLY
 WEAPON, TO-WIT: FIREARM.

COUNT TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT THAT THE SAID
 ADAM EUGENE MARTIN, IN THE COUNTY OF TARRANT AND STATE AFORESAID, ON OR ABOUT
 THE 20TH DAY OF JANUARY, 1983, DID THEN AND THERE INTENTIONALLY AND KNOWINGLY,
 WHILE IN THE COURSE OF COMMITTING THEFT OF PROPERTY AND WITH INTENT TO OBTAIN
 AND MAINTAIN CONTROL OF SAID PROPERTY, THREATEN AND PLACE JENNET DOOLEY IN FEAR
 OF IMMINENT BODILY INJURY AND DEATH, AND THE DEFENDANT DID THEN AND THERE USE
 AND EXHIBIT A DEADLY WEAPON, TO-WIT: A FIREARM.

COUNT THREE: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT THAT THE SAID
 ADAM EUGENE MARTIN, IN THE COUNTY OF TARRANT AND STATE AFORESAID, ON OR ABOUT
 THE 20TH DAY OF JANUARY, 1983, DID THEN AND THERE INTENTIONALLY, WITH THE
 SPECIFIC INTENT TO COMMIT THE OFFENSE OF MURDER OF DOUG COLLINS, DO AN ACT
 TO-WIT: BROOK AT THE SAID DOUG COLLINS WITH A FIREARM, AND SAID ACT AMOUNTED TO
 MORE THAN MERE PREPARATION AND TENDED TO EFFECT THE COMMISSION OF SAID MURDER.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Filed (Clerk's use only)
 213th FILED
 CRIMINAL DISTRICT COURT
 TARRANT COUNTY, TEXAS
 APR 14 1983
 J. W. BOORMAN
 DISTRICT CLERK
 By h m Deputy

Reynolds D. [Signature]
 Assistant District Attorney

DC-323R GPC-1035

THE STATE OF TEXAS

IN THE 215TH DISTRICT

VS.

NO. 206955W

COURT NO. OF

ADAM EUGENE MARTIN

TARRANT COUNTY, TEXAS

JUDGMENT ON PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT

WAIVER OF JURY TRIAL

Date of Entry : APRIL 14, 1983 Indictment Date: WAIVED

Defendant : ADAM EUGENE MARTIN

Judge Presiding : HON. TOBY GOLDSMITH

Attorney for State : TIM CURRY Assistant District Attorney: ALEJANDRO GONZALES

Criminal District Attorney : ALLEN BUTCHER

Attorney for Defendant : ROBBERY

Offense : ROBBERY

Date JANUARY 26, 1983

Offense:

Charging Instrument : FELONY INFORMATION Count and/or LESSER INCLUDED OFFENSE OF Paragraph(s) COUNT ONE

Date of Arraignment : WAIVED Fines: GUILTY

Enhancement Paragraph(s) : NONE

Punishment and Place of Confinement : FIVE (5) YEARS IN THE TEXAS DEPARTMENT OF CORRECTIONS

Date of Sentence : APRIL 14, 1983 Code: \$85.00

Sentence and Place of Confinement : FIVE (5) YEARS IN THE TEXAS DEPARTMENT OF CORRECTIONS

Credit on Sentence : FROM 2-11-83 TO DATE OF SENTENCE

Cumulation : NONE

On this day, set forth above, this cause came for trial and came The State of Texas, by its above-named attorney, and the Defendant appeared in person and by the above-named attorney for the Defendant, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel; and announced ready for trial, the Defendant having been heretofore arraigned, as shown above, and having agreed that the testimony may be stipulated in this cause and the Defendant, his counsel, and the State's attorney having agreed in writing in open court to waive a jury in the trial of this cause and to submit this cause to the Court, and the Court having agreed to the same, the said attorney for the State read the instrument charging the offense as shown, and the Defendant entered the above shown plea thereto; and it appearing to the Court that the Defendant is mentally competent and the plea is free and voluntary, and the Court having duly admonished the Defendant as to the consequences of such plea, including the range of punishment attached to the offense and the fact that any recommendation of the prosecuting attorney as to punishment is not binding on the Court, yet the Defendant persisted in entering such plea, said plea is by the Court received and now entered of record upon the minutes of the Court as the plea made of said Defendant. And the Court, after having heard all the evidence submitted for the State and the Defendant and argument of counsel, is of the opinion and so finds that the said Defendant is guilty of the offense as confessed and set forth above.

And when shown above, that the charging instrument contains enhancement paragraph(s), which were not waived, and alleges Defendant to have been convicted previously of any felony or offenses for the purpose of enhancement of punishment, then the Court asked Defendant if such allegations were true or false and Defendant answered "True". Thereupon, the Court, after having heard all of the evidence as to such alleged prior convictions, is of the opinion and finds Defendant has been heretofore convicted as alleged in said enhancement paragraph(s) as may be shown above.

IT IS, THEREFORE, CONSIDERED AND ORDERED by the Court, in the presence of the Defendant, that said judgment be, and the same is hereby in all things approved and confirmed, and that said Defendant is adjudged guilty of the offense set forth above, by the Court (a jury having been waived in accordance with law) and that said Defendant be punished in accordance with terms set forth above, and the Defendant is sentenced to a term of imprisonment or fine or both as set forth above, and be delivered by the Sheriff to the Director of the Department of Corrections of the State of Texas, or other person legally authorized to receive such convicts for the punishment and execution may issue as necessary.

And, if shown above that Defendant has been duly and legally convicted of a prior offense by showing the Court, Cause Number and Offense together with his punishment for such offense and date Defendant was sentenced for such offense in accordance with such conviction, then it is further ORDERED AND ADJUDGED that the punishment herein adjudged against the said Defendant shall begin when the judgment and sentence in such prior offense, then shown above, shall have ceased to operate.

And the said Defendant is remanded to jail until said Sheriff can obey the direction of this judgment.

Fine:
As to:

PRESIDING JUDGE

APRIL 15, 1983

DATE SIGNED

Notice of Appeal: _____
Appeal Withdrawn: _____
Mandate Received: _____

A CERTIFIED COPY
ATTEST: 2-17-04
THOMAS A. WILDER
DISTRICT CLERK
BY: [Signature]
TARRANT COUNTY, TEXAS
DEPUTY

9 GPC-1533

STATE OF TEXAS

IN THE 213th DISTRICT

NO. 206955W

COURT OF

Adam Eugene Martin

TARRANT COUNTY, TEXAS

ORDER PLACING DEFENDANT ON PROBATION
UNDER ARTICLE 42.12, SECTION 3E (A-B)

On this the 6th day of September, 19 83, came on to be heard the Defendant, Adam Eugene Martin, Motion for Suspension of Sentence, pursuant to Article 42.12, Section 3E (A-B) of the Texas Code of Criminal Procedure.

BE IT REMEMBERED that on the 14th day of April, 19 83, sentence was imposed on the Defendant subsequent to conviction for the felony offense of Robbery. Pursuant to said imposition of sentence Defendant is presently confined in the Texas Department of Corrections serving a term of 5 years. Defendant arrived at the Texas Department of Correction and actually began serving his sentence on April 23, 1983.

BE IT REMEMBERED that more than sixty (60) days since the actual beginning of execution of said sentence has now elapsed and that the Defendant's Motion for Suspension of Sentence was filed prior to the expiration of 180 days from said date. Said Defendant having timely filed his application for probation herein is eligible for probation under Article 42.12, having never been convicted of any felony offense before, and is also eligible hereunder for probation in that the sentence imposed herein was not for the offense of criminal homicide, rape, or robbery. And that the Court has plenary jurisdiction herein for a period of 180 days subsequent to the actual beginning of the execution of defendant's sentence, and said defendant's record while incarcerated in the Texas Department of Corrections has been reviewed by the Court and the Court being of the opinion the defendant would not benefit from further incarceration in a penitentiary.

The Court is of the opinion that further execution of sentence should be suspended and Defendant placed on Probation in accordance with the authority conferred by the Adult Probation and Parole Law of the State of Texas, and that defendant be released from the Texas Department of Corrections.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that further execution of sentence imposed in the above-styled and numbered cause be suspended and defendant Adam Eugene Martin be placed on (5) years probation under Article 42.12 Section 3E (A-B) of the Texas Code of Criminal Procedure, and also that defendant be released from the Texas Department of Corrections. And, in accordance with the authority conferred by the Adult Probation and Parole Law of The State of Texas, it is further ORDERED that the defendant, Adam Eugene Martin, shall comply with the following terms and conditions of Probation, to commence on September 6, 1983.

- Commit no offense against the laws of this State or any other State, or the United States;
- Avoid lewdness or vicious habits;
- Avoid persons and places of disreputable or harmful character;
- Report to the Adult Probation Officer of Tarrant County, Texas, on the 3rd day of October 19 83, and on the 3rd day of each month thereafter during Probation;
- Permit the Probation Officer to visit at your home or elsewhere;
- Work faithfully at suitable employment as far as possible;
- Remain within the limits of Tarrant County, Texas, unless given permission by the Tarrant County Adult Probation Officer to leave therefrom;
- Support your dependents;
- Notify the Adult Probation Officer of Tarrant County, Texas, if your address or employment is changed within five (5) days from date of change;
- Pay to and through the Adult Probation Officer of Tarrant County, Texas, the following:
- Submit to a period of detention in the Tarrant County Jail or other institution.
- Obtain victim's compensation.

1. COURT COST in the amount of 95.00 at the rate of 10.00 per month: The first payment to be made on the 3rd day of October, 19 83, and a like payment on the 3rd day of each month thereafter until full payment is made;

2. PROBATION FEE in the amount of 15.00 on the 3rd day of October 19 83, and on the 3rd day of each month thereafter during Probation;

L. Crime Victims compensation Act.

M. Participate fully in and comply with the Tarrant County Adult Probation Department's Intensive Mental Health Mental Retardation Program to include Mental Health Mental Retardation Counseling and/or treatment, pay for service in accordance with program requirements and continue to participate and comply until released by the court.

The Clerk of this Court will furnish the Defendant a copy of the above terms and conditions and note the date of delivery of such copy on the docket and the Clerk of this Court is hereby further ordered to furnish the officials at the Texas Department of Corrections with certified copy of this order.

* or comparable program. Art. 42:12 CCP Sec 3 (A) & (B) Hook

THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

A CERTIFIED COPY
ATTEST: THOMAS A. WILDER
DISTRICT CLERK
BY: TARRANT COUNTY, TEXAS
DEPUTY

jp

DC-560R GPC-1615

THE STATE OF TEXAS

IN THE 213th DISTRICT

VS.

NO. 206955W

COURT 0

Adam Eugene Martin

TARRANT COUNTY, TEXAS

JUDGMENT REVOKING PROBATION

Date of Entry
of this Order : September 5, 1984

Defendant : Adam Eugene Martin

Judge Presiding : Hon. John Bradshaw

Attorney for State

Criminal District Attorney : Tim Curry

Assistant

District Attorney : Alex Gonzalez

Attorney

for Defendant : Hon. Allan Butcher

Offense

Robbery

Date
Offense: January 26, 1984Date of
Probation Order : September 6, 1983Date of
Violation: December 3, 1Paragraph Violated and
Grounds for Revocation

Para #1 - Failed To Report To The Adult Probation Officer
Tarrant County, Texas; #2 - Failed To Work at Suitable Emplo
ment; # - Failed To Notify Adult Probation Officer Of Address Change; #4 - Fai
To Pay Court Cost and Probation Fee To The Adult Probation Officer Of Tarrant
County, Texas; #5 - Failed To Comply With Tarrant County Adult Probation Depar
ments Intensive Mental Health Mental Retardation Program

As set out in State's

Original

Petition to Revoke Probatio

Original Term of

Imprisonment Assessed : Five (5) Years

Reduction

Allowed by Court: One (1) Year

Sentence and

Place of Confinement : Four (4) Years In The Texas Department of Corrections

Date of

Sentence

: September 5, 1984

Restitution/or

Reparation: \$308.70

Costs: \$70.00

From 1-26-83 to 4-22-83; From 8-26-83 to 9-6-83

Time Credited

: From 7-24-84 To Date Of Sentence

Cumulation

: None

On this day, set forth above, the Motion of the State to Revoke Probation in this cause came on for hearing; came the State of Texas, by its above named attorney, and the Defendant appeared in person and by the above named attorney for Defendant, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel; and announced ready for hearing, the Defendant having been heretofore served with a copy of the Motion to Revoke Probation alleging violations of paragraphs of the probation order of the Court as set forth above and filed herein; and the Court after considering the pleadings, and hearing the evidence offered by both the State and the Defendant and the arguments of counsel, being of the opinion and finding that since the time Defendant was placed on probation herein and within the term of the probationary period set by the Court, Defendant has violated the terms and conditions of such probation in the manner set forth above as Grounds for Revocation, and that said probation should be revoked;

And, when shown above that a reduction of imprisonment has been allowed by the Court, the Court determined that the best interests of society and the probationer would be served by such shorter term of imprisonment and so reduced the term of imprisonment originally assessed;

It is therefore CONSIDERED by the Court that the Defendant be, and is hereby, adjudged to have violated the terms and conditions of probation in this cause in the manner set forth above, and that the Order Suspending the Imposition of Sentence and Placing Defendant on Probation heretofore entered in this cause be, and the same is hereby, REVOKED, and it is hereby ORDERED by the Court that the Defendant be now sentenced herein, in accordance with the Judgment heretofore entered in this cause and in compliance with this order.

IT IS, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, in the presence of said Defendant, that the Judgment and Order of the Court Revoking Probation entered herein be in all things approved and confirmed, and the Defendant, who has been adjudged guilty of the above named offense, by the verdict of the jury or by the Court's Finding, as shown in the Judgment heretofore entered, together with all reductions and credits in accordance with law and the discretion of the Court in the Judgment Revoking Probation as set forth above, after the Imposition of Sentence was Suspended and the Defendant placed on probation and said probation having been thereafter Revoked, as shown above, and that the Defendant is sentenced to a term of imprisonment or fine or both, as set forth above, and Defendant is to be delivered by the Sheriff to the Director of the Department of Corrections of the State of Texas or other person legally authorized to receive such convicts for the punishment assessed herein, and the said Defendant shall be confined for the above named term in accordance with the provisions of law governing such punishment and execution may issue as necessary.

And, if shown above that Defendant has been duly and legally convicted of a prior offense by showing the Court, cause number and offense together with the punishment for such offense and date Defendant was sentenced for such offense in accordance with such conviction, then it is ORDERED AND ADJUDGED that the punishment herein adjudged against the said Defendant shall begin when the judgment and sentence in such prior offense, when shown above, shall have ceased to operate.

And the Defendant is remanded to jail until said Sheriff can obey the directions of this judgment.


PRESIDING JUDGE

Notice of Appeal: _____

Appeal Withdrawn: _____

Mandate Received: _____

September 6, 1984

DATE SIGNED

JP