

APPENDIX B


District Court Order and Judgment

Denying Section 2255 Relief,

(Sept. 19, 2022)

FILED

SEP 19 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISIONTOMAS JARAMILLO,
PETITIONER,§
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V.

A-21-CV-902-LY
(1:19-CR-318-LY-8)UNITED STATES OF AMERICA,
RESPONDENT.**ORDER ON REPORT AND RECOMMENDATION**

Before the court are Petitioner Tomas Jaramillo's Motion to Vacate under 28 U.S.C. § 2255 and Memorandum of Law and Facts in Support (Doc. #427), the Government's response (Doc. #433), and Jaramillo's reply (Doc. #434), which were referred to the United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72; Loc. R. W.D. Tex. App'x C, R. 1(d). The magistrate judge rendered a Report and Recommendation on March 2, 2022 (Doc. #441), recommending that this court deny Jaramillo's motion to vacate.

A party may serve and file specific, written objections to the proposed findings and recommendations of the magistrate judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the district court. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

Jaramillo filed objections to the report and recommendation on March 15, 2022 (Doc. #444). The Government responded to Jaramillo's objections on March 25, 2022 (Doc. #447). In light of Jaramillo's objections, the court has undertaken a *de novo* review of the entire case file and finds that the magistrate judge's Report and Recommendation should be approved and accepted by the court for substantially the reasons stated therein.

An appeal may not be taken to the court of appeals from a final order in a proceeding under section 2255 "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c) (1)(A). Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Proceedings, effective December 1, 2009, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

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). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In cases where a district court rejected a movant's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* "When a district court denies a habeas petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a [certificate of appealability] should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

In this case, reasonable jurists could not debate the dismissal of the movant's section 2255 motion on substantive or procedural grounds, nor find that the issues presented are

adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, a certificate of appealability shall not be issued.

IT IS THEREFORE ORDERED Petitioner Tomas Jaramillo's objections to the magistrate judge's Report and Recommendation (Doc. #444) are **OVERRULED**.

IT IS FURTHER ORDERED that the United States Magistrate Judge's Report and Recommendation (Doc. #441) filed in this cause is hereby **APPROVED** and **ACCEPTED** by the court.

IT IS FURTHER ORDERED that Petitioner Tomas Jaramillo's Motion to Vacate under 28 U.S.C. § 2255 and Memorandum of Law and Facts in Support (Doc. #427) is **DENIED**.

IT IS FINALLY ORDERED that a Certificate of Appealability is **DENIED**.

SIGNED this 19th day of September, 2022.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION


TOMAS JARAMILLO,
PETITIONER,

V.

UNITED STATES OF AMERICA,
RESPONDENT.

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BY  DEPUTY CLERK

FINAL JUDGMENT

Before the court is the above-entitled cause of action. On this date, the court denied Petitioner Tomas Jaramillo's Motion to Vacate under 28 U.S.C. § 2255. Accordingly, the court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that the above-entitled cause of action is hereby **CLOSED**.

SIGNED this 19th day of September, 2022.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE