

APPENDIX B

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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

March 16, 2023

Mr. Philip Devlin  
Western District of Texas, San Antonio  
United States District Court  
655 E. Cesar E. Chavez Boulevard  
Suite G65  
San Antonio, TX 78206

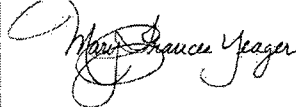
No. 22-50522      Moreno v. Lumpkin  
USDC No. 5:22-CV-497

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Mary Frances Yeager, Deputy Clerk  
504-310-7686

cc: Mr. Edward Larry Marshall  
Mr. Juan A. Moreno

APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 22-50522

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JUAN A. MORENO,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,*  
*Correctional Institutions Division,*

*Respondent—Appellee.*

---

Application for Certificate of Appealability  
the United States District Court  
for the Western District of Texas  
USDC No. 5:22-CV-497

---

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

Juan A. Moreno, Texas prisoner # 1689833, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application as an unauthorized, successive application. Moreno does not challenge the district court's determinations that his § 2254 application was successive and that he had not obtained authorization from this court as required by 28 U.S.C. § 2244(b)(2); accordingly, he has abandoned any



United States Court of Appeals  
for the Fifth Circuit APPENDIX.D.T.C

No. 22-40008

United States Court of Appeals  
Fifth Circuit

**FILED**

February 1, 2022

Lyle W. Cayce  
Clerk

*Petitioner.*

IN RE: JUAN A. MORENO,

Petition for a Writ of Mandamus

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Petitioner is seeking a writ of mandamus compelling the Texas Court of Criminal Appeals to order him released from custody because his habeas petition has been pending before the court for four and a half years.

“[F]ederal courts have no general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.” *See Lamar v. 118th Jud. Dist. Ct.*, 440 F.2d 383, 384 (5th Cir. 1971) (per curiam). Accordingly, the petition is DISMISSED for want of jurisdiction.

Petitioner might be able to pursue his claims via a federal habeas petition and to argue that the state court’s years-long delay in acting on his habeas petition constitutes a “circumstance[] . . . that render[s] [the state habeas remedy] ineffective.” 28 U.S.C. 2254(b)(1)(B)(ii); *Burks v. Thaler*, 421 F.

COPY  
APPENDIX D

EX PARTE:

\*

IN THE DISTRICT COURT

JUAN A. MORENO

\*

379<sup>TH</sup> JUDICIAL DISTRICT

APPLICANT

\*

BEXAR COUNTY, TEXAS

The Criminal Appeals WR-79,518-03 Austin Texas 78711

STATE'S RESPONSE TO APPLICANT'S PETITION  
FOR WRIT OF HABEAS CORPUS

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TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the State of Texas by and through its Criminal District Attorney, Nicholas "Nico" LaHood, and files this response to the Applicant's Petition for Writ of Habeas Corpus.

I. Habeas Writ Filed

The Applicant, Juan A. Moreno filed this petition for a post-conviction writ of habeas corpus pursuant to art. 11.07, § 3(a), Texas Code of Criminal Procedure. The State files this mandatory answer pursuant to art. 11.07 § 3(b).

II. Statement of the Case

The Applicant, as a repeat offender, was convicted of the offense of Traffic of Persons in Cause No. 2009-CR-8626D and punishment was assessed at confinement for LIFE. His petition for a writ of habeas corpus was filed on February 10, 2017. The State was served by the District Clerk of Bexar County on February 16, 2017.

III. State's General Denial

The State generally and specifically denies each and every allegation of fact made by the Applicant and demands strict proof of same.

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
2017 MAR 14 PM 1:50  
CLERK

**CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the State would ask that the trial court enter an ORDER recommending the relief be denied.

Respectfully submitted,

**NICHOLAS "NICO" LAHOOD**  
Criminal District Attorney  
Bexar County, Texas

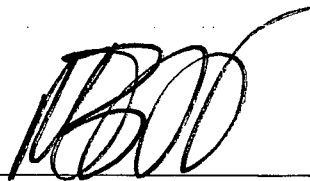


**MATTHEW B. HOWARD**  
Assistant Criminal District Attorney  
Bexar County, Texas  
Paul Elizondo Tower  
101 W. Nueva  
San Antonio, Texas 78205  
SBN: 24085860  
(210) 335-2736  
(210) 335-2436-FAX

*Attorneys for the State*

**CERTIFICATE OF SERVICE**

I, Matthew B. Howard, Assistant Criminal District Attorney, Bexar County, Texas, certify that a true and correct copy of the foregoing response will be mailed to Juan A. Moreno, McConnell Unit, 3001 S. Emily Dr., Beeville, TX 78102 on this the 14th day of March, 2017.



**MATTHEW B. HOWARD**

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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

February 22, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50522      Moreno v. Lumpkin  
USDC No. 5:22-CV-497

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Casey A. Sullivan, Deputy Clerk  
504-310-7642

Mr. Philip Devlin  
Mr. Edward Larry Marshall  
Mr. Juan A. Moreno

United States Court of Appeals  
for the Fifth Circuit

---

No. 22-50522

---

JUAN A. MORENO,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division,*

*Respondent—Appellee.*

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Application for Certificate of Appealability  
the United States District Court  
for the Western District of Texas  
USDC No. 5:22-CV-497

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UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

Juan A. Moreno, Texas prisoner # 1689833, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application as an unauthorized, successive application. Moreno does not challenge the district court's determinations that his § 2254 application was successive and that he had not obtained authorization from this court as required by 28 U.S.C. § 2244(b)(2); accordingly, he has abandoned any



No. 22-50522

challenge to those determinations. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Instead, he contends that the district court should have considered the merits of his successive § 2254 application, despite that he had not first obtained § 2244(b)(2) authorization, because he is actually innocent.

To obtain a COA with respect to the denial of a § 2254 application, a prisoner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). When a district court has denied a request for habeas relief on procedural grounds, the prisoner must show “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.” *Slack*, 529 U.S. at 484.

Moreno fails to make the necessary showing. Accordingly, his motions for a COA and leave to proceed in forma pauperis are DENIED. As Moreno fails to make the required showing for a COA on his constitutional claims, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

***United States Court of Appeals***

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Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Casey A. Sullivan, Deputy Clerk  
504-310-7642

Mr. Philip Devlin  
Mr. Edward Larry Marshall  
Mr. Juan A. Moreno



jurisdiction to consider a successive § 2254 petition since petitioner did not obtain authorization from the court of appeals); *In re Campbell*, 750 F.3d 523, 529 (5th Cir. 2014) (petitioner must receive authorization before filing successive habeas petition).

Accordingly, **IT IS HEREBY ORDERED** that:

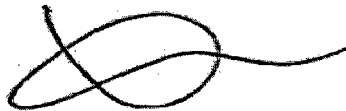
1. Petitioner Juan A. Moreno's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction;

2. Petitioner failed to make "a substantial showing of the denial of a federal right" and cannot make a substantial showing that this Court's procedural rulings are incorrect as required by Fed. R. App. P. 22 for a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Therefore, this Court **DENIES** Petitioner a certificate of appealability. *See* Rule 11(a) of the Rules Governing § 2254 Proceedings; and

3. All remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

It is so **ORDERED**.

**SIGNED** this 23rd day of May, 2022.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

---

XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JUAN A. MORENO,  
TDCJ No. 01689833,

Petitioner,

v.

BOBBY LUMPKIN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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Civil No. SA-22-CA-0497-XR

**J U D G M E N T**

The Court has considered the Judgment to be entered in the above-styled and numbered cause.

Pursuant to this Court's Dismissal Order of even date herewith, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) filed by Petitioner Juan A. Moreno is **DISMISSED WITHOUT PREJUDICE**. No Certificate of Appealability shall issue in this case. This case is now **CLOSED**.

It is so **ORDERED**.

**SIGNED** this 23rd day of May, 2022.



XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE