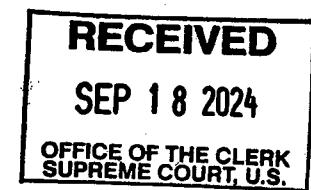


SUPREME COURT

APPENDIX A

Lopez-Alvarado v. United States, 2024 U.S. App. LEXIS 6461, U.S. Court of Appeals for the Eleventh Circuit. Order denying Motion for Certificate of Appealability.

Date of Order: March 18, 2024



In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12460

RAMON LOPEZ-ALVARADO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:21-cv-02068-PGB-EJK

ORDER:

Ramon Lopez-Alvarado is a federal prisoner serving a 168-month sentence for illegally reentering the country and failing to register as a sex offender. He filed an amended 28 U.S.C. § 2255 motion, raising claims that his trial counsel was ineffective for failing to:

- (1) challenge the government's standing to prosecute the case in the district court;
- (2) subject the government's case to meaningful adversarial testing by failing to challenge the government's standing and to obtain independent data regarding his immigration proceedings and citizenship status;
- (3) independently obtain the records of his participation in the naturalization process;
- (4) interview the witnesses for the government;
- (5) effectively subject the government's immigration and citizenship arguments to meaningful adversarial testing because of counsels' lack of investigation;
- (6) counsel him on the risks associated with testifying at trial;
- (7) effectively defend him against an obstruction-of-justice guideline enhancement;
- (8) prepare him for the presentation of his citizenship ceremony testing; and

23-12460

Order of the Court

3

- (9) stop the court from imposing a 53-month upward variance sentence.

He also raised claims that his appellate counsel was ineffective for failing to:

- (10) argue that the prosecution committed a *Brady*¹ violation;
- (11) argue that there was new evidence of his actual innocence on the failure to register charge; and
- (12) raise claims of ineffective assistance of trial counsel.

Other than listing the claims, he did not provide any facts or arguments in support of his claims.

The district court denied the motion and denied a certificate of appealability ("COA"). Mr. Lopez-Alvarado now moves this Court for a COA, leave to proceed *in forma pauperis* ("IFP"), appointment of counsel, and leave to file a COA motion out of time.²

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that the prosecution must turn over all evidence that might exonerate the defendant to the defense).

² To the extent this Court considers the arguments in his motion, his motion for leave to file a COA motion out of time is GRANTED.

§ 2253(c)(2). If a district court denied a habeas petition on substantive grounds, the petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would not debate the district court’s finding that Mr. Lopez-Alvarado failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Rivers v. United States*, 777 F.3d 1306, 1316 (11th Cir. 2015) (holding that movant bears the burden of proof in a § 2255 motion). His claims “are merely conclusory allegations unsupported by specifics,” that fail to show how counsel’s performance was deficient or argue how he was prejudiced. *See Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Accordingly, his motion for COA is DENIED. His motions for IFP and appointment of counsel are DENIED AS MOOT.

/s/ Jill Pryor

UNITED STATES CIRCUIT JUDGE

SUPREME COURT

APPENDIX B

- Lopez-Alvarado v. United States, No. 6:21-cv-02068, U.S. District Court for the Middle District of Florida. Order denying amended Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255.

Date of Order: May 31, 2023

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RAMON LOPEZ-ALVARADO,

Petitioner,

v.

Case No: 6:21-cv-2068-PGB-EJK
(6:18-cr-80-PGB-EJK)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This cause is before the Court on the Amended Motion to Vacate, Set Aside, or Correct Sentence ("Amended Motion to Vacate," Doc. 8) filed by Petitioner under 28 U.S.C. § 2255. The Government filed a Response in Opposition to the Amended Motion to Vacate ("Response," Doc. 21) in compliance with this Court's instructions and with the *Rules Governing Section 2255 Proceedings for the United States District Courts*. Petitioner filed a Reply (Doc. 26) to the Response. For the following reasons, the Court concludes that Petitioner is not entitled to relief on his claims.

I. PROCEDURAL BACKGROUND

A Grand Jury charged Petitioner by Indictment with one count of illegal re-entry into the United States (Count One) and one count of failure to register as a

sex offender (Count Two). (Criminal Case 6:18-cr-80-PGB-EJK, Doc. 10).¹ Petitioner entered a plea of guilty to Count Two of the Indictment before Magistrate Judge Karla Spaulding. Magistrate Judge Spaulding entered a Report and Recommendation Concerning Plea of Guilty (Criminal Case, Doc. 40) recommending that the plea be accepted, that Petitioner be adjudged guilty and have sentence imposed.² The Court then entered an Acceptance of Guilty Plea and Adjudication of Guilt (Criminal Case, Doc. 53) wherein Petitioner was adjudged guilty of Count Two. A jury trial was held as to Count One, and Petitioner was found guilty. (Criminal Case, Doc. 76). The Court entered a Judgement In A Criminal Case (Criminal Case, Doc. 111) and sentenced Petitioner to imprisonment for a total term of 168 months. The Eleventh Circuit Court of Appeals affirmed. (Criminal Case, Doc. 138).

II. LEGAL STANDARDS

A. Relief Under Section 2255

Section 2255 permits a federal prisoner to bring a collateral challenge by moving the sentencing court to vacate, set aside, or correct the sentence. 28 U.S.C. § 2255(a). A petitioner is entitled to an evidentiary hearing if he “alleges facts that,

¹ Criminal Case No. 6:18-cr-80-PGB-EJK will be referred to as “Criminal Case.”

² Count One of the Indictment remained pending for trial.

if true, would entitle him to relief." *Rosin v. United States*, 786 F.3d 873, 877 (11th Cir. 2015) (citation and quotation omitted). However, "a defendant must support his allegations with at least a proffer of some credible supporting evidence." *United States v. Marsh*, 548 F. Supp. 2d 1295, 1301 (N.D. Fla. 2008). The Court "is not required to grant a petitioner an evidentiary hearing if the § 2255 motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." *Rosin*, 786 F.3d at 877 (citation and quotation omitted).

B. Standard for Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, a defendant must establish two things: (1) "counsel's performance was deficient," meaning it "fell below an objective standard of reasonableness," and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To satisfy the deficient-performance prong, the defendant must show that counsel made errors so serious that he was not functioning as the counsel guaranteed by the Sixth Amendment. *Id.* at 687. The defendant must rebut the strong presumption that his counsel's conduct fell within the range of reasonable professional assistance. *Id.* at 689.

In *Hill v. Lockhart*, 474 U.S. 52, 58 (1985), the Supreme Court held that "the two part *Strickland v. Washington* test applies to challenges to guilty pleas based on

ineffective assistance of counsel.” A defendant may satisfy the prejudice prong by showing “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59. A “reasonable probability” is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

Further, a defendant’s knowing and voluntary guilty plea waives all non-jurisdictional defects in the proceedings. *Duhart v. United States*, 556 F. App’x 897, 898 (11th Cir. 2014). However, a defendant can still maintain an attack on the voluntary and knowing nature of the guilty plea itself. Such an attack can be based on ineffective assistance of counsel claims that go to the knowing and voluntary nature of the plea. *Id.*

III. ANALYSIS

A. Claim One

Petitioner alleges that he received ineffective assistance of counsel based on the following: (1) counsel failed to challenge the Government’s “[s]tanding to prosecute the case in the district court”; (2) counsel failed “to subject the Government’s case to meaningful adversarial testing . . . [by challenging] the Government’s standing to prosecute the case in the district court and to obtain independent data regarding [his] immigration and citizenship proceedings and

[s]tatus"; (3) counsel failed to "investigate or obtain all existing records concerning the documented stages of [his] participation in the naturalization ceremony process"; (4) counsel failed to interview the Government's witness prior to trial; (5) counsel failed to "subject the Government's immigration and citizenship arguments to meaningful testing during trial" because of the lack of "investigation and witness interviews"; (6) counsel failed to advise Petitioner as to "the risks associated at testifying at trial"; (7) counsel failed to "effectively defend" the imposition of "a guideline enhancement for obstruction of justice"; (8) counsel failed to "prepare [him] for the presentation of his citizenship ceremony testimony"; and (9) counsel was ineffective by allowing the imposition of "a 53-month upward variance to the final sentence." (Doc. 8 at 4-5).

1. *Issue One*

Petitioner argues that counsel failed to challenge the Government's "[s]tanding to prosecute the case in the district court." (Doc. 8 at 4). However, Petitioner fails to specify the offense (or offenses) that was improperly prosecuted, and he fails to explain how the Government lacked standing to prosecute the offense.

It is well settled that vague and conclusory allegations are insufficient to entitle a petitioner to relief under section 2255. *Sepulveda v. United States*, 69 F.

Supp. 2d 633, 639-40 (D.N.J. 1999); *see also United States v. Oladokun*, 905 F. Supp. 2d 310, 315 (D.D.C. 2012) (“vague and conclusory allegations . . . cannot support a finding that counsel’s performance fell below an objective standard of reasonableness.”) (quotations omitted) (citations omitted). This issue is nothing more than a vague and conclusory allegation, which may not serve as the basis for relief under section 2255. Petitioner’s allegations do not provide this Court with enough information to determine what the alleged deficiencies were in counsel’s representation or how those alleged deficiencies affected his conviction or sentence. Issue One will be denied.

2. *Issues Two and Five*

Petitioner argues that counsel failed “to subject the Government’s case to meaningful adversarial testing . . . [by challenging] the Government’s standing to prosecute the case in the district court and to obtain independent data regarding [his] immigration and citizenship proceedings and [s]tatus” (Issue Two) and to “subject the Government’s immigration and citizenship arguments to meaningful testing during trial” because of the lack of “investigation and witness interviews” (Issue Five). (Doc. 8 at 4-5).

Petitioner was represented by two experienced, competent attorneys at trial, and they vehemently advocated on his behalf. There is no question that his counsel

had sufficient time to prepare for trial, that his case was not particularly complex, that witnesses were readily accessible, and that the brief (two-day) trial dealt only with the illegal re-entry charge.

In addition, Petitioner's counsel vigorously cross-examined the Government's witnesses and presented a defense to the charge. Petitioner fails to point to anything in the record that would demonstrate that the trial process was in any manner unreliable. Finally, Petitioner fails explain how the Government's case was not subjected to "meaningful adversarial testing" or how counsel was ineffective with regard to these issues.

The Court finds that Petitioner has failed to demonstrate that counsel was ineffective with regard to the matters raised in Issues Two and Five or that he sustained prejudice. Issues Two and Five will be denied.

3. *Issues Three and Four*

Petitioner argues that counsel failed to "investigate or obtain all existing records concerning the documented stages of [his] participation in the naturalization ceremony process" (Issue Three) and that counsel failed to interview the Government's witness prior to trial (Issue Four). (Doc. 8 at 4-5).

Petitioner has presented no evidence that further efforts or investigation by his counsel would have been beneficial. Likewise, Petitioner has presented no

evidence that interviewing the Government's witnesses would have been beneficial. Petitioner has failed to show what further investigation would have revealed or what information would have been gathered by interviewing the Government's witnesses. Moreover, Petitioner has failed to specify what investigation should have been conducted, what records should have been obtained, and what witnesses were not interviewed

Petitioner's claim is merely a bare, speculative assertion that his counsel should have pursued further investigation or should have interviewed the Government's witnesses; however, allegations unsupported by any facts are insufficient to establish that counsel was ineffective under *Strickland*. See *Adkins v. Motley*, 2009 WL 960107, at *17 (E.D. Ky. April 7, 2009) (finding that, in order to establish prejudice, the petitioner must present evidence establishing that an expert witness could have been obtained to testify favorably for him or her on the pertinent issue).

Petitioner thus failed to satisfy either prong of the *Strickland* standard. Issues Three and Four will be denied.

4. *Issues Six and Eight*

Petitioner argues that counsel failed to advise him as to "the risks associated at testifying at trial" (Issue Six) and that counsel failed to "prepare [him] for the presentation of his citizenship ceremony testimony" (Issue Eight). (Doc. 8 at 5).

At trial, the Court discussed with Petitioner and his counsel whether Petitioner would testify:

[The Court]: All right. Has there been a discussion with Mr. Lopez-Alvarado as to whether he intends to testify in his defense?

[Defense Counsel]: Yes, Your Honor.

The Court: I'm assuming he does since we're having this conversation about the jury instructions?

Defense Counsel: Yes, Your Honor

The Court: All right. Mr. Lopez-Alvarado, it's important that you know that you have the absolute right to remain silent. You cannot be compelled to testify in your own defense. If you elect to testify in your own defense, you'll testify like any other witness, under oath and subject to cross examination.

Is it your intention to waive the Fifth Amendment and testify in this case?

[Lopez-Alvarado]: Yes, Your Honor.

(Criminal Case, Doc. 132 at 9-10). Petitioner made the decision to testify after being advised by his attorneys and by the Court. Moreover, even if Petitioner were in some manner misadvised as to his right to testify, he has not shown prejudice.

In addition, Petitioner has not explained how counsel should have prepared him for his citizenship ceremony testimony or how he was prejudiced. Petitioner's bare allegations with regard to this matter are insufficient to demonstrate ineffective assistance of counsel. The Court finds that Petitioner has failed to demonstrate that counsel acted deficiently or that he sustained prejudice, and Issues Six and Eight will be denied.

5. *Issues Seven and Nine*

Petitioner argues that counsel failed to "effectively defend" the imposition of "a guideline enhancement for obstruction of justice" (Issue Seven) and that counsel was ineffective by allowing the imposition of "a 53-month upward variance to the final sentence" (Issue Nine). (Doc. 8 at 5).

At trial, the Court found that Petitioner had perjured himself. (Criminal Case, Doc. 132 at 77). Petitioner has failed to specify what counsel could have done to "effectively defend" the guideline enhancement for obstruction of justice given Petitioner's perjured testimony.³

³ As reflected in the Presentence Investigation Report, Petitioner "had perjured himself during his testimony" and, therefore, he "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice." (Criminal Case Doc. 98 at 5).

In addition, at sentencing, defense counsel vigorously argued against the enhancement and the upward variance. (Criminal Case, Doc. 133 at 6-12, 38-41). Further, at sentencing, defense counsel cross-examined witnesses, objected to the Court's findings, and argued to mitigate the sentence imposed. The Court finds that Petitioner has failed to demonstrate that counsel acted deficiently or that he sustained prejudice. Issues Seven and Nine will be denied.

B. Claim Two

Petitioner argues that his appellate counsel was ineffective for failing to argue that (1) there was a "corruption of the truth-seeking [f]unction of the trial process based on prosecutorial misconduct . . ." (2) there was "new presented evidence of petitioner's actual innocence under count two of the indictment," and (3) there was "ineffective assistance of counsel that was clear from the trial record." (Doc. 8 at 6).

It is well established that a defendant has the right to effective counsel on appeal. *Alvord v. Wainwright*, 725 F.2d 1282, 1291 (11th Cir. 1984). The standard for analyzing ineffective assistance claims is the same for trial and appellate counsel, *Matire v. Wainwright*, 811 F.2d 1430, 1435 (11th Cir. 1987), and the Eleventh Circuit Court of Appeals has applied the Supreme Court's test for ineffective assistance at trial to guide its analysis of ineffective assistance of appellate counsel claims. *Heath v. Jones*, 941 F.2d 1126, 1130 (11th Cir. 1991).

The record reflects that Petitioner's appellate counsel raised four issues on direct appeal. Petitioner's appellate counsel submitted an initial brief which was comprehensive, thorough, and well-argued. Certainly, the record clearly evinces the thoroughness and reasonableness of appellate counsel's work. *Cf. Thomas v. Scully*, 854 F. Supp. 944 (E.D.N.Y. 1994) (the appellate brief submitted by counsel clearly showed the thoroughness of counsel's work). The fact that these other issues might have succeeded in the appellate court "does not lead automatically to the conclusion that [Petitioner] was deprived of a constitutional right when his lawyer failed to assert such a claim." *Woodfork v. Russell*, No. 92-4301, 1994 WL 56933, at *4 (6th Cir. February 24, 1994) (unpublished opinion). As discussed by the district court in *Richburg v. Hood*, 794 F. Supp. 75 (E.D.N.Y. 1992),

[T]he court simply notes that the decision of appellate counsel to choose among plausible options of appellate issues is preeminently a strategic choice and is "virtually unchallengeable." The petitioner has not even undertaken to demonstrate that the decision of his attorney not to raise this issue constituted an "unprofessional error" or that such error prejudiced his appeal.

Id. at 78.

In this case, the Court finds that appellate counsel's decision not to pursue these other issues was consistent with reasonable appellate strategy that, under the deferential standard of review articulated in *Strickland*, should not be second-guessed. *See Gray v. White*, No. C-94-2434 EFL, 1997 WL 16311, at *9 (N.D. Cal. January 6, 1997) ("appellate counsel does not have a constitutional duty to raise every nonfrivolous issue requested

by defendant. The weeding out of weaker issues is widely recognized as one of the hallmarks of effective appellate advocacy.”)(citations omitted); *Carlos v. Cruz*, No. CV 96-5209 (RED), 1997 WL 269591, at *4 (E.D.N.Y. April 21, 1997) (“On appeal, counsel is not required to argue every non-frivolous issue; rather, the better strategy may be to focus on a few more promising issues so as not to dilute the stronger arguments with a multitude of claims”; moreover, the Court must not second-guess the reasonable decisions of appellate counsel to press certain issues instead of others, and the lack of success on appeal is not a basis to impugn appellate counsel's reasonable choices or performance). Thus, given 1) the discretion afforded to appellate counsel in selecting those issues most promising for review, and 2) Petitioner's failure to demonstrate that the other issues would have been viable on appeal, the Court finds that appellate counsel's performance was not deficient and that Petitioner has not shown prejudice. Hence, Claim Two will be denied.

Allegations not specifically addressed herein are without merit.

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for a certificate of appealability only if the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing “[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484

(2000); *see also Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009).

However, the petitioner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner fails to demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Moreover, Petitioner cannot show that jurists of reason would find this Court's procedural rulings debatable. Petitioner fails to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

Accordingly, it is ORDERED and ADJUDGED as follows:

1. The Amended Motion to Vacate, Set Aside, or Correct Sentence (Doc. 8) is DENIED.
2. This case is DISMISSED with prejudice.
3. Petitioner is DENIED a certificate of appealability.
4. The Clerk of the Court is directed to enter judgment in favor of Respondent and to close this case. A copy of this Order and the judgment shall also be filed in criminal case number 6:18-cr-80-PGB-EJK.

5. The Clerk of the Court is directed to terminate the section 2255 motions (Criminal Case, Doc. Nos. 141, 142) filed in criminal case number 6:18-cr-80-PRB-EJK.

DONE and ORDERED in Orlando, Florida on May 31, 2023.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

SUPREME COURT

APPENDIX C

- Lopez-Alvarado v. United States, No. 23-12460, U.S. Court of Appeals for the Eleventh Circuit. Order denying Motion for Reconsideration of Certificate of Appealability.
Date of Order: June 11, 2024.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12460

RAMON LOPEZ-ALVARADO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:21-cv-02068-PGB-EJK

Before JORDAN and JILL PRYOR, Circuit Judges.

2

Order of the Court

23-12460

BY THE COURT:

Ramon Lopez-Alvarado has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's March 18, 2024, order denying a certificate of appealability, and denying leave to proceed on appeal *in forma pauperis* and appointment of counsel as moot, in his underlying 28 U.S.C. § 2255 motion to vacate. Upon review, Lopez-Alvarado's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

SUPREME COURT

APPENDIX D

- Exhibit A: INS Notice to Appear at INS Office on December 6, 1995
- Exhibit B: INS Decision on Application for Naturalization dated March 12, 1996, and excerpts from Record of Trial
- Exhibit C: INS Processing Sheet showing Oath of Renunciation and Allegiance
- Exhibit D: INS Application for Naturalization, Form N-400, signed by Ramon Lopez-Alvarado on February 16, 1995 and December 6, 1995
- Exhibit E: INS Notice of Action (Fingerprint Notification) dated August 11, 1998

Exhibit A

INS Notice to Appear at INS Office on December 6, 1995

5390 BEAR ROAD
ORLANDO, FL 32827

A38 102 573

11/07/1995

EXAMINER ID: ORLEXAMA

12/06/1995

8:30 AM

RAFAEL LOPEZ
105 FLORIDA AVE
WINTER PARK, FL 34787

5390 BEAR ROAD
ORLANDO, FL 32827
ROOM NUMBER 300

WALTER D. CADMAN
DISTRICT DIRECTOR

Exhibit B

- INS Decision on Application for Naturalization dated March 12, 1996,
and excerpts from Record of Trial

U.S. Department of Justice
Immigration & Naturalization Service

Decision on Application
for Naturalization

Refer to this File No.
A38 192 573

Name and Address of Applicant

| | |
|--------------------------------|---|
| { Ramon Lopez Alvarado |) |
| { 410 Florida Avenue |) |
| { Winter Garden, Florida 34787 |) |
| { |) |

Date: MAR 2 1996

DECISION

On December 6, 1995, you appeared for an examination on your application for naturalization, which was filed in accordance with Section 316 of the Immigration and Nationality Act.

Pursuant to the investigation and examination of your application it is determined that you are ineligible for naturalization for the following reasons:

SEE ATTACHMENT

This decision is made without prejudice toward the filing of a new application in the future. It is noted that you may be eligible to apply for naturalization again on or after:

At any time

If you desire to request a review hearing on this decision pursuant to Section 336(a) of the Act, you must file a request for a hearing within 30 days of the date of this notice. If no request for hearing is filed within the time allowed, this decision is final. A request for hearing may be made to the District Director, with the Immigration and Naturalization Service office which made the decision, on Form N-336, Request for Hearing on a Decision in Naturalization Proceeding under Section 336 of the Act, together with a fee of \$110.00. A brief or other written statement in support of your request may be submitted with the Request for Hearing.

Any questions which you have may be answered by the Service office nearest your residence, or at the address shown in the heading to this letter.

Sincerely,
Walter D. Carlson
District Director

X Enclosure(s)
Form N-335 (Rev. 10/24/91)N

A1

Exhibit B

Ramon Lopez Alvarado

A38 102 573

Your Application for Naturalization as a citizen of the United States was received by this Service on March 20, 1995. Your application was submitted under Section 316(a) of the Immigration and Nationality Act, as amended.

At your preliminary examination of December 6, 1993 you testified that you had been arrested on three different occasions. You were advised to submit certified copies of arrest reports and court dispositions for all three arrests. Subsequent to your examination, this Service received information that you have been arrested ten times.

Section 103.2(b)(8) of the Code of Federal Regulations states:

"... except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted ..."

Your failure to submit the requested documentation leaves the issue of your eligibility for naturalization unresolved. Therefore, your application for naturalization is denied.

1 A Yes.

2 Q Okay. And what is it?

3 A It's a denial notification.

4 Q And how do you recognize it? Is it a document that
5 you've seen before?

6 A Yes.

7 Q Okay.

8 A We do the denials based on template -- at the time, based
9 on templates.

10 Q And are your initials actually on the document?

11 A Yes.

12 Q And is that how you can recognize that you've seen this
13 document before?

14 A Yes.

15 Q And does that appear to be a true and accurate copy of
16 the form that you've seen before and that you would have
17 initialed at the time?

18 A Yes.

19 Q Okay.

*20 MS. WICK: At this time, the United States would ask
*21 to move into evidence 8-B.

*22 THE COURT: Any objection to 8-B?

*23 MR. HENDERSON: I'd object. Although it may have
*24 been issued by INS and initialed by Ms. Pardo, there's no
*25 indication that this document was ever received by Mr. Lopez.

1 THE COURT: The objection is overruled.
2 8-B is admitted.
3 MS. WICK: May I publish, Your Honor?
4 THE COURT: You may.
5 MS. WICK: If we could please pull up Bates 1498.
6 And that is labeled as Government's 8-B.
7 (Exhibit published.)
8 BY MS. WICK:
9 Q Okay. I see that this document is entitled "Decision."
10 Is this one of the denial decisions that you were just telling
11 us about that would come out in the event that a
12 defendant's -- excuse me -- an applicant's naturalization
13 application were to be denied?
14 A Yes.
15 Q And in this case, can you explain to the jury the name of
16 the applicant that this decision relates to?
17 A Ramon Lopez-Alvarado.
18 Q And is this a document that INS produces?
19 A As I said earlier, there are templates of denials, and
20 then we just put in the pertinent data as the reason for the
21 denial.
22 Q I see. And I see that this decision explains to the
23 applicant that in this case, on December 6th of 1995, they
24 appeared for an examination on their application for
25 naturalization; is that right?

Exhibit C

- INS Processing Sheet showing Oath of Renunciation and Allegiance

Section of Law: 816/319/322/328/329

File # 38102 573

Sex: M Marital Status: M Height: 6'0" Nationality: MEXICO
New Address Same

INS Standardized Test Action or documents still required
~~Passed/Failed~~ Govt/History English Govt/History
~~Passed/Failed~~ English Re-Exam on: _____ at: _____
 Speaks Read Write A File
English waived: 15/55 20/50 N-14 Other

LPR Verified: IV ANC
 I-181 CIS
Date of Entry: 06-11-83

Final Action

08/12/83 Granted Denied on:Documents presented: I-151

Examiner:

Ana Pardo DL or I-911-551

Reason(s):

Action: C Date: 12/10/83Examiner: Ana PardoComments: Answered
Court dispensation

OATH OF RENUNCIATION AND ALLEGIANCE

 Oath with INS Oath with Court Modified Oath

Name on Certificate

Ramon Lopez Alvarado

I HEREBY DECLARE, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom I have heretofore been a subject or citizen.

that I will support and defend the Constitution and Laws of the United States against all enemies, foreign and domestic;

that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by Law;

that I will perform noncombatant service in the Armed Forces of the United States when required by Law;

that I will perform work of national importance under civilian direction when required by Law;

and that I take this obligation freely without any mental reservation or purpose of evasion; SO HELP ME GOD.

In acknowledgement whereof, I have affixed my signature:

Ramon Lopez Alvarado
Signature of Applic
442

Denial Date: _____ Date Appeal Filed: _____ Date of Appeal: _____ Action:

Exhibit C

0280

Exhibit D

- INS Application for Naturalization, Form N-400, signed by Ramon Lopez-Alvarado on February 16, 1995 and December 6, 1995

START HERE - Please Type or Print

Part 1. Information about you

Family Name Lopez Given Name Ramona Middle Name A.
U.S. Mailing Address - Care of

Street Number and Name 410 Florida Ave Apt. #
City Winter Garden County Orange
State Florida Zip Code 34787
Date of Birth (month/day/year) 08-31-59 Country of Birth Mexico
Social Security # 594-16-6263 A# 36102573

Part 2. Basis for Eligibility (check one)

a. I have been a permanent resident for at least five (5) years.
 b. I have been a permanent resident for at least three (3) years and have been married to a United States Citizen for those three years.
 c. I am a permanent resident child of United States citizen parent(s).
 d. I am applying on the basis of qualifying military service in the Armed Forces of the U.S. and have attached completed Forms N-426 and G-325B.
 e. Other. (Please specify section of law)

Part 3. Additional information about you.

Date you became a permanent resident (month/day/year) 06-15-83 Port admitted with an immigrant visa or INS Office where granted adjustment of status.

Citizenship Mexican

Name on alien registration card (if different than in Part 1) Sam

Other names used since you became a permanent resident (including maiden name)

Sex Male Height 6" Marital Status: Single Divorced
 Female Married Widowed

Can you speak, read and write English? No Yes

Absences from the U.S.:

Have you been absent from the U.S. since becoming a permanent resident? No Yes

If you answered "Yes", complete the following. Begin with your most recent absence. If you need more room to explain the reason for an absence or to list more trips, continue on separate paper.

| Date left U.S. | Date returned | Did absence last 6 months or more? | Destination | Reason for trip |
|----------------|---------------|---|---------------|------------------|
| <u>1984</u> | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | <u>1 mo.</u> | <u>Mexico</u> |
| <u>NA</u> | <u>1993</u> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | <u>2 wks.</u> | <u>Excursion</u> |
| | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

FOR INS USE ONLY

| | |
|--|---------|
| Retired | Receipt |
| <i>MIA-CITZ #41</i> | |
| Resubmitted | |
| <i>MIA-CITZ #41</i> | |
| Reloc Sent | |
| <i>MIA-CITZ #41</i> | |
| Reloc Rec'd | |
| <i>MIA-CITZ #41</i> | |
| <input type="checkbox"/> Applicant Interviewed | |
| <i>MIA-CITZ #41</i> | |
| At interview | |
| <input type="checkbox"/> request naturalization ceremony at court | |
| Remarks | |
| <i>MIA-CITZ #41</i> | |
| Action | |
| <i>MIA-CITZ #41</i> | |
| <i>SEP 29 1995</i> | |
| <i>03/12/94</i> | |
| To Be Completed by Attorney or Representative, if any | |
| <input type="checkbox"/> Fill in box if G-28 is attached to represent the applicant | |
| VOLAGH | |
| ATTY State License # | |

Part 4. Information about your residences and employment.

A. List your addresses during the last five (5) years or since you became a permanent resident, whichever is less. Begin with your current address. If you need more space, continue on separate paper:

| Street Number and Name, City, State, Country, and Zip Code | Dates (month/day/year) | |
|--|------------------------|---------|
| | From | To |
| 410 Florida Ave Winter Garden FL 34787 | 11-89 | present |
| 816 Security Cir Ocoee, FLORIDA 34761 | 1-87 | 10-89 |

B. List your employers during the last five (5) years. List your present or most recent employer first. If none, write "None". If you need more space, continue on separate paper.

| Employer's Name | Employer's Address | Dates Employed (month/day/year) | Occupation/position |
|-------------------------|--|---------------------------------|---------------------|
| Mo Ngy Np | San Angel Inn, Inc. P.O. Box 99136 Lake Buena Vista, Florida 32830 | 06-27-87 Present | Waiter |
| Hicks Construction Inc. | Miami | 10-86 05-87 | labor |

Part 5. Information about your marital history.

A. Total number of times you have been married 2. If you are now married, complete the following regarding your husband or wife.

| Family name | Given name | Middle initial |
|-------------|------------|----------------|
| NA Lopez | Suzanne | M |

| Address | Date of birth (month/day/year) | Country of birth | Citizenship |
|---------|-----------------------------------|------------------|-------------|
| 5 Anne | 07/24/72 | U.S.A. | U.S. |

| Social Security# | A# (if applicable) | Immigration status (if not a U.S. citizen) |
|------------------|--------------------|---|
| 2 | 2 | 2 |

| Naturalization (If applicable) (month/day/year) | Place (City, State) |
|--|---------------------|
| 2 | 2 |

If you have ever previously been married or if your current spouse has been previously married, please provide the following on separate paper: Name of prior spouse, date of marriage, date marriage ended, how marriage ended and immigration status of prior spouse.

Part 6. Information about your children.

B. Total Number of Children 3. Complete the following information for each of your children. If the child lives with you, state "with me" in the address column; otherwise give city/state/country of child's current residence. If deceased, write "deceased" in the address column. If you need more space, continue on separate paper.

| Full name of child | Date of birth | Country of birth | Citizenship | A - Number | Address |
|-----------------------|---------------|------------------|-------------|------------|------------------------|
| Ramon Alejandro Lopez | 7-23-82 | U.S.A. | | | 221 S. Seminole 406 FL |
| Jennifer Reyna Lopez | 6-12-84 | U.S.A. | | | 221 S. Seminole 406 FL |
| Alex Lopez | 7-1-80 | U.S.A. | | | With me |
| | | | | | |
| | | | | | |
| | | | | | |

Continued on back

Part 7. Additional eligibility factors.

Please answer each of the following questions. If your answer is "Yes", explain on a separate paper.

- Are you now, or have you ever been a member of, or in any way connected or associated with the Communist Party, or ever knowingly aided or supported the Communist Party directly, or indirectly through another organization, group or person, or ever advocated, taught, believed in, or knowingly supported or furthered the interests of communism?
- During the period March 23, 1933 to May 8, 1945, did you serve in, or were you in any way affiliated with, either directly or indirectly, any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, citizen unit of the Nazi party or SS, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp, detention camp or transit camp, under the control or affiliated with:
 - The Nazi Government of Germany?
 - Any government in any area occupied by, allied with, or established with the assistance or cooperation of, the Nazi Government of Germany?
- Have you at any time, anywhere, ever ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion?
- Have you ever left the United States to avoid being drafted into the U.S. Armed Forces?
- Have you ever failed to comply with Selective Service laws?

If you have registered under the Selective Service laws, complete the following information:

Selective Service Number:

Date Registered:

If you registered before 1978, also provide the following:

Local Board Number:

Classification:

- Did you ever apply for exemption from military service because of alienage, conscientious objections or other reasons?
- Have you ever deserted from the military, air or naval forces of the United States?
- Since becoming a permanent resident, have you ever failed to file a federal income tax return?
- Since becoming a permanent resident, have you filed a federal income tax return as a nonresident or failed to file a federal return because you considered yourself to be a nonresident?
- Are deportation proceedings pending against you, or have you ever been deported, or ordered deported, or have you ever applied for suspension of deportation?
- Have you ever claimed in writing, or in any way, to be a United States citizen?

12. Have you ever:

- been a habitual drunkard?
- advocated or practiced polygamy?
- been a prostitute or procured anyone for prostitution?
- knowingly and for gain helped any alien to enter the U.S. illegally?
- been an illicit trafficker in narcotic drugs or marijuana?
- received income from illegal gambling?
- given false testimony for the purpose of obtaining any immigration benefit?

13. Have you ever been declared legally incompetent or have you ever been confined as a patient in a mental institution?

14. Were you born with, or have you acquired in some way, any title or order of nobility in any foreign State?

15. Have you ever:

- knowingly committed any crime for which you have not been arrested?
- been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic regulations?

(If you answer yes to 15, in your explanation give the following information for each incident or occurrence: the city, state, and country, where the offense took place, the date and nature of the offense, and the outcome or disposition of the case.)

Part 8. Allegiance to the U.S.

If your answer to any of the following questions is "NO", attach a full explanation:

- Do you believe in the Constitution and form of government of the U.S.?
- Are you willing to take the full Oath of Allegiance to the U.S.? (see instructions)
- If the law requires it, are you willing to bear arms on behalf of the U.S.?
- If the law requires it, are you willing to perform noncombatant services in the Armed Forces of the U.S.?
- If the law requires it, are you willing to perform work of national importance under civilian direction?

 Yes No Yes No

Part 9. Memberships and organizations.

A. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place. Include any military service in this part. If none, write "none". Include the name of organization, location, dates of membership and the nature of the organization. If additional space is needed, use separate paper.

None.

Part 10. Complete only if you checked block "C" in Part 2.

How many of your parents are U.S. citizens? One Both (Give the following about one U.S. citizen parent)

Family Name NA Given Name Middle Name
Address

Basis for citizenship: Birth Naturalization Cert. No. Relationship to you (check one): natural parent adoptive parent
 parent of child legitimated after birth

If adopted or legitimated after birth, give date of adoption or, legitimation: (month/day/year) NA

Does this parent have legal custody of you? Yes No

(Attach a copy of relating evidence to establish that you are the child of this U.S. citizen and evidence of this parent's citizenship.)

Part 11. Signature. (Read the information on penalties in the instructions before completing this section).

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature

2-16-95
Date

Ramón López

Please Note: If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for naturalization and this application may be denied.

Part 12. Signature of person preparing form if other than above. (Sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature

Print Your Name

Date

Firm Name
and Address

DO NOT COMPLETE THE FOLLOWING UNTIL INSTRUCTED TO DO SO AT THE INTERVIEW

I swear that I know the contents of this application, and supplemental pages 1 through 8, that the corrections, numbered 1 through , were made at my request, and that this amended application, is true to the best of my knowledge and belief.

Subscribed and sworn to before me by the applicant.

Ramón López 4/19/90
(Complete and true signature of applicant)

Q. Peas 12/06/95
(Examiner's Signature) Date

+ I want to be a united states citizen

Notice of Action

On 9/24/98, you must go to the INS office to have your fingerprints taken.

| | | |
|--|--|---|
| Fingerprint Notification | | NOTICE DATE August 11, 1998 |
| CASE TYPE N400 Application For Naturalization - Expired Fingerprint | | INS AW A 038 102 573 |
| APPLICATION NUMBER EPS*000216518 | RECEIVED DATE September 29, 1995 | PRIORITY DATE September 29, 1995 |
| APPLICANT NAME AND MAILING ADDRESS RAMON LOPEZ 410 FLORIDA AVE WINTER GARDEN, FL 34787 | | PAGE 1 of 2 |
| <p>To continue processing your application, INS must take your fingerprints again and submit them to the Federal Bureau of Investigation. If you were between the ages of 14 and 21 at the time of filing, you must have your fingerprints taken at an INS Application Support Center (ASC). You have been scheduled to be fingerprinted at the location listed below. If you have been fingerprinted in the last 120 days, please ignore this notice. PLEASE DISREGARD THIS NOTICE IF YOU HAVE ALREADY RECEIVED YOUR NATURALIZATION CERTIFICATE. INS REGRETS THIS INCONVENIENCE.</p> | | |
| Address INS ORLANDO 5449 SEMORAN BLVD HOFFNER COMMERCE CTR, UNIT 18C ORLANDO, FL 32822 | Dates 09/11/1998 09/18/1998 | Hours of Operation CLOSED ON FEDERAL HOLIDAYS Sun, Mon: Closed Tues, Thurs: 9am-8pm Wed, Fri: 9am-5pm Sat: 8am-2pm |
| <p>If you cannot go to the INS Application Support Center (ASC) during your scheduled 7-day period, you may go on any day except Wednesday, as long as you have your fingerprints taken by 12/04/1998. If you do not have them taken within that period, your application may be considered abandoned and therefore denied. Please do not appear before your scheduled date.</p> | | |
| <p>When you go to have your fingerprints taken, you must bring:</p> <ol style="list-style-type: none">1) THIS LETTER; and2) Your Alien Registration Card (ARC). If you do not have your ARC, you must bring alternative photo identification such as a passport, valid driver's license, national ID, military ID, State-issued photo ID, or other INS-issued photo ID. <p>Please be reminded that you must bring this letter and proper photo identification to have your fingerprints taken, and prevent further delay in the processing of your application. Please inform the office listed below immediately of any address changes.</p> | | |
| <p>Please take note that the staff at the INS ASC will not be able to answer any questions about the status of your application. If you have any questions regarding this notice or the status of your case, please contact our office at the address or customer service number listed below. You will be notified separately about any other cases you may have filed.</p> | | |
| INS Office Address: U.S. IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN, NE 68501-7400 | INS Customer Service Number: (888) 557-5398 | APPLICANT COPY |
| AUG 24 1998 6:30 AM 1590 | |  |

Notice of Action

APPLICATION NUMBER
EPS-000216518

NOTICE DATE
August 11, 1998

PAGE
2 of 2

Dear Applicant:

We at INS appreciate your patience while we are processing your application. Unfortunately, you are receiving this letter because we are not able to use the fingerprints you have already submitted for your background check. We apologize for the inconvenience this creates, but you must be fingerprinted again in order for us to continue processing your application. Without new fingerprints, INS cannot process your application at all.

INS sincerely regrets this and other delays you may have faced. In the last several years, we have experienced an enormous increase in the number of people applying for citizenship and other benefits. We simply have not been able to keep up with the record demand. We are, however, rebuilding our processes, increasing our staff and including new technology in our effort to provide the highest quality service.

Attached are instructions for new fingerprinting, which we will do free of charge. Please carefully read the attached instructions and note the date for which you are scheduled and the materials you must bring with you. If you are not able to have fingerprints taken at the time you are scheduled, you can visit your Application Support Center (ASC) on any Wednesday within 84 days of your scheduled week. Also, pay special attention to the address of the ASC because it may be different than the location where you were fingerprinted previously.

Of course, if you have already received your naturalization certificate, please disregard this notice with our apologies. Please be assured that we are doing everything we can to move your application forward.

PLEASE DO NOT APPEAR BEFORE YOUR SCHEDULED DATE.

U.S. Immigration and Naturalization Service

- Please save this notice for your records. Please enclose a copy if you have to write us or a U.S. Consulate about this case, or if you file another application based on this decision.
- You will be notified separately about any other applications or petitions you have filed.

Additional Information

GENERAL.

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

INQUIRIES.

You should contact the office listed on the reverse of this notice if you have questions about the notice, or questions about the status of your application or petition. We recommend you call. However, if you write us, please enclose a copy of this notice with your letter.

APPROVAL OF NONIMMIGRANT PETITION.

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

APPROVAL OF AN IMMIGRANT PETITION.

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I-485, Application to Register Permanent Residence or Adjust Status.