

## APPENDIX A

# United States Court of Appeals For the First Circuit

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No. 22-1682

BRAD A. SMITH.

Petitioner - Appellant.

v.

UNITED STATES,

Respondent - Appellee.

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Before

Barron, Chief Judge,  
Gelpí and Montecalvo, Circuit Judges.

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## JUDGMENT

Entered: April 17, 2024

Petitioner-Appellant Brad Smith seeks a certificate of appealability ("COA") to appeal from the denial of his § 2255 petition in the district court. After careful review of petitioner's submissions and of the record below, we conclude that the district court's disposition of the petition was neither debatable nor wrong, and that petitioner has therefore failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, Smith's request for a COA is denied.

Petitioner-Appellant also filed a motion for appointment of appellate counsel. "[P]etitioners have no constitutional right to counsel in [habeas corpus] proceedings." Bucci v. United States, 662 F.3d 18, 34 (1st Cir. 2011), cert. denied, 133 S.Ct. 277 (2012). We are not persuaded that "the interests of justice" require appointment of counsel in this case. 18 U.S.C. §3006A(a)(2)(B). Accordingly, Smith's motion for appointment of appellate counsel is also denied.

The appeal is hereby terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Richard C. Guerriero Jr.  
David M. Lieberman

## APPENDIX B

# United States Court of Appeals For the First Circuit

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No. 22-1682

BRAD A. SMITH,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

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Before

Barron, Chief Judge,

Kayatta, Gelpí,

Montecalvo and Rikelman, Circuit Judges.

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## ORDER OF COURT

Entered: August 19, 2024

Petitioner-Appellant Brad A. Smith has filed a "Petition for Rehearing and/or Rehearing En Banc" relative to this court's denial of a certificate of appealability from the district court's denial of his petition for habeas corpus filed pursuant to 28 U.S.C. § 2255. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be **DENIED**.

It is so ordered.

By the Court:

Maria R. Hamilton, Clerk

cc:

Richard C. Guerriero Jr.  
Brad A. Smith  
David M. Lieberman

**U.S. District Court**  
**District of New Hampshire (Concord)**  
**CIVIL DOCKET FOR CASE #: 1:20-cv-01034-JL**

Smith v. USA

Assigned to: Judge Joseph N. Laplante

Related Case: [1:16-cr-00091-JL-1](#)

Case in other court: First Circuit Court of Appeals, 22-01682

Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 10/13/2020

Date Terminated: 09/01/2022

Jury Demand: None

Nature of Suit: 510 Prisoner: Vacate

Sentence

Jurisdiction: U.S. Government Defendant

**Petitioner****Brad A. Smith**represented by **Richard Guerriero**

Lothstein Guerriero

39 Central Sq, Ste 202

Keene, NH 03431

603 352-5000

Email: [richard@nhdefender.com](mailto:richard@nhdefender.com)*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

V.

**Respondent****USA**represented by **Seth R. Aframe**

US Attorney's Office (NH)

James C Cleveland Federal Bldg

53 Pleasant St, 4th Flr

Concord, NH 03301

603 230-2532

Email: [seth.aframe@usdoj.gov](mailto:seth.aframe@usdoj.gov)*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
10/13/2020	<u>1</u>	MOTION to Vacate Sentence under 28 USC 2255. Notice of Filing to US Attorney with copy of the motion. See also Criminal Case No. 1:16-cr-00091-JL-1. filed by Brad A. Smith. (Attachments: # <u>1</u> Exhibits, # <u>2</u> Cover Letter, # <u>3</u> Envelope) (ed) (Entered: 10/15/2020)
10/13/2020		NOTICE of Filing - Case filed under 28 U.S.C. 2255. A copy of the petition has been electronically sent via ECF to your office. No further action is required by the United States Attorney unless directed by the presiding judge. (ed) (Entered: 10/15/2020)

10/13/2020		Case assigned to Judge Joseph N. Laplante. The case designation is: 1:20-cv-1034-JL. Please show this number with the judge designation on all future pleadings. (ed) (Entered: 10/15/2020)
10/15/2020		NOTICE. This case has been designated for Electronic Case Filing. All further submissions shall be filed in compliance with the Administrative Procedures for Electronic Case Filing. Pro se litigants are not required to file electronically and may continue to file documents in paper format. Persons filing electronically are strongly encouraged to complete the interactive training modules available on the courts website. To access these modules, click <a href="#">HERE</a> . (ed) (Entered: 10/15/2020)
10/16/2020	<u>2</u>	<b>ORDER re <u>1</u> Motion to Vacate Sentence - 2255. Government to respond within thirty (30) days if petition filed untimely; sixty (60) days if timely filed. So Ordered by Judge Joseph N. Laplante.(jb)</b> (Entered: 10/19/2020)
10/29/2020	<u>3</u>	NOTICE of Attorney Appearance by Seth R. Aframe on behalf of USA Attorney Seth R. Aframe added to party USA(pty:res).(Aframe, Seth) (Entered: 10/29/2020)
11/02/2020	<u>4</u>	Addendum/ (Missing page 37) to <u>1</u> Motion to Vacate Sentence - 2255 by Brad A. Smith. (cmp) (Entered: 11/04/2020)
12/08/2020	<u>5</u>	MOTION to Appoint Counsel filed by USA.(Aframe, Seth) (Entered: 12/08/2020)
12/15/2020		<b>ENDORSED ORDER granting <u>5</u> Motion to Appoint Counsel. Appointment of Attorney Richard Guerriero for Brad A. Smith. Assignment accepted on 12/15/2020. Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.(jb)</b> (Entered: 12/15/2020)
12/15/2020		<b>ENDORSED ORDER re <u>1</u> Motion to Vacate Sentence - 2255. Text of Order: Appointed counsel shall review the petition and the trial record, and confer with the petitioner, and file an amended petition on or before February 16, 2021. The amended petition shall be limited to claims counsel can advance in good faith consistent with his obligations to his client and to the court under the Rules of Professional Conduct. The government's response shall be filed on or before March 18, 2021. So Ordered by Judge Joseph N. Laplante.(jb)</b> (Entered: 12/15/2020)
02/05/2021	<u>6</u>	Assented to MOTION to Continue and Extend Deadlines to Amend 2255 Motion to 4/16/2021 filed by Brad A. Smith.(Guerriero, Richard) (Entered: 02/05/2021)
02/09/2021		<b>ENDORSED ORDER granting <u>6</u> Motion to Continue and Extend Deadlines to Amend 2255 Motion to 4/16/2021. Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.(jb)</b> (Entered: 02/09/2021)
04/14/2021	<u>7</u>	Assented to MOTION to Extend Time to 5/17/2021 filed by Brad A. Smith.(Guerriero, Richard) (Entered: 04/14/2021)
04/15/2021		<b>ENDORSED ORDER granting <u>7</u> Motion to Extend Time to 5/17/2021. Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.(jb)</b> (Entered: 04/15/2021)
05/14/2021	<u>8</u>	MOTION to Extend Time to July 16, 2021 filed by Brad A. Smith.Follow up on Objection on 5/28/2021. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).(Guerriero, Richard) (Entered: 05/14/2021)

05/17/2021		ORAL Notice of ASSENT by United States of America as to <u>8</u> MOTION to Extend Time to July 16, 2021.(jb) (Entered: 05/18/2021)
05/18/2021		<b>ENDORSED ORDER granting <u>8</u> Motion to Extend Time to July 16, 2021. <i>Text of Order: Granted. So Ordered by Judge Joseph N. Laplante. Amended Pleadings due by 7/16/2021. Response deadline set for 8/16/2021.</i>(jb)</b> Modified on 5/18/2021 to correct amended pleading deadline (jb). (Entered: 05/18/2021)
07/19/2021	<u>9</u>	AMENDED MOTION to Vacate Sentence pursuant to 28 USC 2255 re Order,, <u>1</u> Motion to Vacate Sentence - 2255 filed by Brad A. Smith. Related document: Order,, <u>1</u> Motion to Vacate Sentence - 2255 filed by Brad A. Smith. (Attachments: # <u>1</u> Exhibit Exhibit A - Transcript 1/14/2016 Interrogation)(Guerriero, Richard) (Entered: 07/19/2021)
07/19/2021	<u>10</u>	Assented to MOTION to Extend Time to 7/19/2021 for <i>Amended Motion to Vacate Sentence</i> filed by Brad A. Smith.(Guerriero, Richard) (Entered: 07/19/2021)
07/20/2021		<b>ENDORSED ORDER granting <u>10</u> Assented to Motion to Extend Time to 7/19/2021 for Amended Motion to Vacate Sentence. <i>Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.</i>(ko)</b> (Entered: 07/20/2021)
08/09/2021	<u>11</u>	Assented to MOTION to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, to September 27, 2021 filed by USA.(Aframe, Seth) (Entered: 08/09/2021)
08/09/2021		<b>ENDORSED ORDER granting <u>11</u> Assented to MOTION to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255. <i>Text of Order: Granted. So Ordered by Judge Joseph N. Laplante. Follow up on Objection on 9/27/2021. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).</i>(ko)</b> (Entered: 08/10/2021)
10/05/2021	<u>12</u>	Assented to MOTION to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, to December 4, 2021 filed by USA.(Aframe, Seth) (Entered: 10/05/2021)
10/05/2021		<b>ENDORSED ORDER granting <u>12</u> Assented to MOTION to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, to December 4, 2021. <i>Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.</i>(jb)</b> (Entered: 10/05/2021)
11/30/2021	<u>13</u>	Assented to MOTION to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, to January 14, 2022 filed by USA.(Aframe, Seth) (Entered: 11/30/2021)
11/30/2021		<b>ENDORSED ORDER granting <u>13</u> Assented to Motion to Extend Time to Object/Respond to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, to January 14, 2022. <i>Text of Order: Granted. So Ordered by Judge Joseph N. Laplante.</i> (ko)</b> (Entered: 12/01/2021)
01/11/2022	<u>14</u>	Objection to <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255, filed by USA. (Aframe, Seth) (Entered: 01/11/2022)
03/03/2022		NOTICE of Video Hearing. Conference set for 3/10/2022 at 11:00 AM before Judge Joseph N. Laplante.(ko) (Entered: 03/03/2022)

03/10/2022		Minute Entry for proceedings held before Judge Joseph N. Laplante. STATUS CONFERENCE held on 3/10/2022. Order to issue. (Pltfs Atty: Richard Guerriero) (Defts Atty: Seth R. Aframe)(Total Hearing Time: 10 minutes)(CJA Time: 20 minutes) (ko) (Entered: 03/10/2022)
03/10/2022		<b>ENDORSED ORDER:</b> <i>In a recent filing and in a conference earlier today, Smith's counsel stated that he may wish to allege an additional claim not contained in his petition. On or before April 11, counsel shall notify the court whether he intends to do so.</i> So Ordered by Judge Joseph N. Laplante. (Compliance Deadline set for 4/11/2022.) (ko) (Entered: 03/10/2022)
04/13/2022		<b>ENDORSED ORDER:</b> As defense counsel has not notified the court of any intent to supplement the petition as discussed at the conference, counsel shall confer and jointly arrange with the deputy clerk for a hearing, informing her on the number of and identity of witnesses involved. So Ordered by Judge Joseph N. Laplante. (ko) (Entered: 04/13/2022)
04/15/2022	<u>15</u>	Supplement to <u>9</u> Amended Motion to Vacate Convictions and Sentences filed by Brad A. Smith. <b>HEARING REQUESTED.</b> Follow up on Objection on 4/29/2022. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c). (Guerriero, Richard) Modified on 8/22/2022 to terminate as a motion (ko). (Entered: 04/15/2022)
04/15/2022	<u>16</u>	Assented to MOTION to Extend Time to Supplement Amended Motion to Vacate Conviction and Sentence filed by Brad A. Smith. (Guerriero, Richard) (Entered: 04/15/2022)
04/15/2022		NOTICE of Hearing re: <u>9</u> Amended Motion to Vacate Sentence - pursuant to 2255. Evidentiary Hearing set for 6/2/2022 at 10:00 AM before Judge Joseph N. Laplante. (ko) (Entered: 04/15/2022)
04/15/2022		<b>ENDORSED ORDER</b> granting re <u>16</u> Assented to Motion to Extend Time to Supplement Amended Motion to Vacate Conviction and Sentence. <i>Text of Order: Granted.</i> So Ordered by Judge Joseph N. Laplante. (ko) (Entered: 04/15/2022)
05/25/2022		NOTICE of Video Hearing. Conference set for 5/25/2022 at 11:15 AM before Judge Joseph N. Laplante. (ko) (Entered: 05/25/2022)
05/25/2022		Minute Entry for proceedings held before Judge Joseph N. Laplante. STATUS CONFERENCE held on 5/25/2022. (Pltfs Atty: Richard Guerriero) (Defts Atty: Seth R. Aframe)(Total Hearing Time: 15 minutes)(CJA Time: 30 minutes) (ko) (Entered: 05/25/2022)
05/31/2022		<b>ENDORSED ORDER:</b> <i>Based on the recent conference, the clerk shall remove the current hearing date from the calendar. Counsel shall confer and jointly arrange with the Deputy Clerk for a new hearing date.</i> So Ordered by Judge Joseph N. Laplante. (ko) (Entered: 05/31/2022)
06/02/2022		NOTICE of Hearing re: <u>15</u> MOTION to Supplement Amended Motion to Vacate Convictions and Sentences . Oral Argument set for 8/25/2022 at 10:00 AM before Judge Joseph N. Laplante. (ko) (Entered: 06/02/2022)
06/03/2022		RESCHEDULING NOTICE of Hearing. (As to hearing type only) Evidentiary Hearing set for 8/25/2022 at 10:00 AM before Judge Joseph N. Laplante. (ko) (Entered: 06/03/2022)

08/18/2022	<u>17</u>	Exhibit List for Hearing 8/25/2022 by Brad A. Smith(Guerriero, Richard) (Entered: 08/18/2022)
08/18/2022	<u>18</u>	Witness List for Hearing 8/25/2022 by Brad A. Smith(Guerriero, Richard) (Entered: 08/18/2022)
08/24/2022	<u>19</u>	Amendment to §2255 Motion by Brad A. Smith(Guerriero, Richard) (Entered: 08/24/2022)
08/24/2022		<b>ENDORSED ORDER re <u>19</u> Amendment to § 2255 Motion. <i>Text of Order: Reviewed. So Ordered by Judge Joseph N. Laplante. (ko)</i></b> (Entered: 08/25/2022)
08/25/2022		Minute Entry for proceedings held before Judge Joseph N. Laplante. EVIDENTIARY HEARING held on 8/25/2022 Witnessess Appearing: Jeffrey Levin. (Court Reporter: Liza Dubois) (Plts Atty: Richard Guerriero) (Defts Atty: Seth R. Aframe)(Total Hearing Time: 1 hour, 9 minutes)(CJA Time: 1 hour, 18 minutes) (jb) (Entered: 08/25/2022)
08/25/2022		<b>///ENDORSED ORDER denying <u>9</u> AMENDED MOTION to Vacate Sentence pursuant to 28 USC 2255 <u>1</u> Motion to Vacate Sentence - 2255. <i>Text of Order: Denied for the reasons stated on the record. So Ordered by Judge Joseph N. Laplante.(jb)</i></b> Modified on 9/1/2022 to add: ///(ko). (Entered: 08/25/2022)
08/25/2022		ORAL MOTION for Certificate of Appealability filed by Brad A. Smith.Follow up on Objection on 9/8/2022. (jb) (Entered: 08/25/2022)
08/25/2022		<b>ORAL ORDER taking under advisement ORAL MOTION for Certificate of Appealability. <i>Text of Order: Taken under advisement. So Ordered by Judge Joseph N. Laplante.(jb)</i></b> (Entered: 08/25/2022)
08/30/2022		<b>///ENDORSED ORDER denying ORAL MOTION for Certificate of Appealability. <i>Text of Order: Denied. The court declines to issue a certificate of appealability. The petitioner has not shown that reasonable jurists could debate whether the petition should have been resolved in a different manner, that the issues presented were adequate to deserve encouragement to proceed further, or otherwise made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). So Ordered by Judge Joseph N. Laplante.(jb)</i></b> Modified on 9/1/2022 to add:/// (ko). (Entered: 08/30/2022)
09/01/2022	<u>20</u>	NOTICE OF APPEAL by Brad A. Smith. (No fee paid, USA or IFP.) [NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the Forms & Notices section of the First Circuit website at <a href="http://www.ca1.uscourts.gov">www.ca1.uscourts.gov</a> , MUST be completed and submitted to the U.S. Court of Appeals for the First Circuit.]  <b>NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at <a href="http://pacer.psc.uscourts.gov/cmecf/">http://pacer.psc.uscourts.gov/cmecf/</a>. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at <a href="http://www.ca1.uscourts.gov/cmecf">http://www.ca1.uscourts.gov/cmecf</a> (Guerriero, Richard)</b> (Entered: 09/01/2022)
09/01/2022	<u>21</u>	<b>JUDGMENT is hereby entered in accordance with Order, Order on Motion for Certificate of Appealability. Signed by Daniel J. Lynch, Clerk of Court. (Case Closed) (ko)</b> (Entered: 09/01/2022)

09/01/2022	<u>22</u>	Appeal Cover Sheet as to <u>20</u> Notice of Appeal filed by Brad A. Smith. (ko) (Entered: 09/01/2022)
09/01/2022	<u>23</u>	Clerk's Certificate transmitting Record on Appeal to US Court of Appeals re Endorsed Orders dated 8/25/2022, 9/30/2022, doc. nos. 20, and 21. re <u>20</u> Notice of Appeal. (ko) (Entered: 09/01/2022)
09/02/2022		Appellate Case Number: First Circuit Court of Appeals 22-1682 re <u>20</u> Notice of Appeal filed by Brad A. Smith.(jb) (Entered: 09/02/2022)
04/03/2023	<u>24</u>	<p>TRANSCRIPT of Proceedings for Evidentiary Hearing held on 8/25/2022. Court of Appeals Docket Number 22-01682. Court Reporter: Liza Dubois, Telephone # 603-225-1442. Transcript is available for public inspection, but may not be copied or otherwise reproduced, at the Clerk's Office for a period of 90 days. Additionally, only attorneys of record and pro se parties with an ECF login and password who purchase a transcript from the court reporter will have access to the transcript through PACER during this 90-day period. If you would like to order a copy, please contact the court reporter at the above listed phone number.</p> <p><b>NOTICE: Any party who requests an original transcript has 21 days from service of this notice to determine whether it is necessary to redact any personal identifiers and, if so, to electronically file a Redaction Request.</b></p> <p>Redaction Request Follow Up 4/24/2023. Redacted Transcript Follow Up 5/4/2023. Release of Transcript Restriction set for 7/3/2023.(ko) (Entered: 04/03/2023)</p>
04/18/2024		USCA JUDGMENT as to <u>20</u> Notice of Appeal filed by Brad A. Smith. Smith's request for a COA is denied.(ko) (Entered: 04/18/2024)
07/15/2024	<u>25</u>	MANDATE of USCA as to Judgment re <u>20</u> Notice of Appeal filed by Brad A. Smith. In accordance with the judgment of April 17, 2024, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.(ko) (Entered: 07/15/2024)
08/28/2024	<u>26</u>	MANDATE of USCA as to Judgment on <u>20</u> Notice of Appeal filed by Brad A. Smith (jb) (Entered: 08/28/2024)

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