

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14312-E

TARAS LAFRANCE EDWARDS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

ORDER:

Taras LaFrance Edwards has filed motions for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") on appeal in order to appeal the district court's dismissal of his successive 28 U.S.C. § 2255 motion and denial of his Fed. R. Civ. P. 60(b) motion. Edwards submitted his successive § 2255 motion and Rule 60(b) in a combined motion. In *Hubbard v. Campbell*, this Court held that the district court's dismissal of a successive habeas motion does not constitute a "final order in a habeas corpus proceeding" for purposes of 28 U.S.C. § 2253(c). 378 F.3d 1245, 1247 (11th Cir. 2004). Therefore, Edwards's motion for a COA is DENIED AS UNNECESSARY, as to the dismissal of his § 2255 motion, and DENIED, as to his Rule 60(b) motion. Further, his motion for IFP status is DENIED AS MOOT.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TARAS LaFRANCE EDWARD,	)	
BOP Reg. # 10378-003,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CIVIL ACTION 17-0301-CG
	)	CRIMINAL NO. 08-00206-CG-N
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

After due and proper consideration of the issues raised, and a de novo determination of those portions of the Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is adopted as the opinion of this Court.

DONE and ORDERED this 12th day of September, 2017.

/s/ Callie V. S. Granade
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

TARAS LaFRANCE EDWARDS	)	
BOP Reg. # 10378-003,	)	
Movant,	)	
	)	CIVIL ACTION NO. 17-00301-CG
v.	)	
	)	CRIMINAL ACTION NO. 08-00206-CG-N
UNITED STATES OF AMERICA,	)	
Respondent.	)	

REPORT AND RECOMMENDATIONS

Taras LaFrance Edwards, a federal prisoner proceeding *pro se*, has filed a second Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, subheaded "Motion to Excuse Prior Procedural Default" (Doc. 156¹) (hereinafter, "the Second § 2255 Motion") and supporting memorandum (Doc. 157).² The motion has been referred to the undersigned Magistrate Judge who, under S.D. Ala. GenLR 72(a)(2)(R), is authorized to require responses, issue orders to show cause and any other orders necessary to develop a complete record, and to prepare a report and recommendation to the District Judge as to appropriate disposition of these proceedings brought under 28

¹ All "Doc." citations herein refer to the docket of the above-styled criminal action.

² Edwards subsequently filed an amended memorandum (Doc. 160), along with a motion for leave to file said amended memorandum for the purpose of providing "complete and correct...case citations..." (Doc. 159). It is **ORDERED** that the motion for leave to amend (Doc. 159) is **MOOT**. Because the Government has not yet filed a responsive pleading to the Second § 2255 Motion, Edwards is permitted to amend the motion once as matter of course. *See* Fed. R. Civ. P. 15(a)(1)(B). However, the amended memorandum (Doc. 160) has no impact on the recommendations made herein.

Edwards's motion to proceed *in forma pauperis* (Doc. 158) filed contemporaneously with the Second § 2255 Motion is also **MOOT**, as no filing fee is required for § 2255 motions. *See* Rule 3 of the Rules Governing Section 2255 Proceedings for the United States District Courts, advisory committee's note to 1976 adoption ("There is no filing fee required of a movant under these rules...[T]here is no need to have a forma pauperis affidavit to proceed with the action since there is no requirement of a fee for filing the motion...").

U.S.C. § 2255, in accordance with 28 U.S.C. § 636(b)(1)(B)-(C), Rule 10 of the Rules Governing Section 2255 Proceedings for the United States District Courts. *See* S.D. Ala. GenLR 72(b); (6/30/2017 electronic reference). After conducting preliminary review of the Second § 2255 Motion in accordance with Rule 4(b) of the Rules Governing Section 2255 Proceedings, the undersigned finds that Edwards is due no relief and that the motion is therefore due to be dismissed.

I. Background

A jury found Edwards guilty of Counts 1 and 3 of the Superseding Indictment in the above-styled criminal action (Doc. 6), and the Court sentenced him to a total term of 300 months in prison, to be followed by a period of supervised release. (*See* Doc. 76). Edwards appealed his convictions, which the Eleventh Circuit Court of Appeals affirmed on September 25, 2009. (Doc. 124); *United States v. Edwards*, 343 F. App'x 468, 471 (11th Cir. 2009) (*per curiam*) (unpublished).

Edwards subsequently filed his first Motion to Vacate, Set aside, or Correct Sentence under § 2255 (Doc. 129) (“the First § 2255 Motion”). In a Report and Recommendation issued August 9, 2011 (Doc. 146), the undersigned found that Edwards was not entitled to an evidentiary hearing on any of the claims in the First § 2255 Motion, that his first claim (challenging the Court’s previous denial of his motion to suppress) was procedurally barred as already having been raised and rejected on direct appeal,³ and that his other seven claims were meritless. Thus, the undersigned

³ “It is long settled that a prisoner is procedurally barred from raising arguments in a motion to vacate his sentence, 28 U.S.C. § 2255, that he already raised and that we[re] rejected in his direct appeal.” *Stoufflet v. United States*, 757 F.3d 1236, 1239 (11th Cir. 2014). Though the Report and Recommendation (Doc. 146) contained some general discussion of “procedural default” (*see* Doc. 146 at 7 – 9), the substantive reasoning

recommended that the Court deny the First § 2255 Motion. The undersigned further recommended that Edwards be denied a Certificate of Appealability (COA) in conjunction with the denial.

Over Edwards's objections, on August 29, 2011, the Court adopted the Report and Recommendation in full, dismissed the First § 2255 Motion with prejudice, and denied Edwards a COA. (Docs. 148, 149). The Eleventh Circuit also denied Edwards a COA on January 19, 2012. (Doc. 155).⁴ Edwards filed the Second § 2255 Motion on June 27, 2017, the date he certifies under penalty of perjury that it was delivered to prison officials for mailing. *See* Rule 3(d), Rules Governing Section 2255 Proceedings for the United States District Courts.

II. Analysis

A. Second § 2255 Motion

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), before a petitioner can file a second or successive § 2255 motion, he must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); Rule 9, Rules Governing Section 2255 Proceedings for the United States District Courts. "Without authorization, the district

addressing this claim indicates it was rejected pursuant to the procedural bar for re-litigating in § 2255 motions issues rejected on direct appeal. (*See id.* at 11 – 13).

⁴ Edwards filed *pro se* the First § 2255 motion. However, retained counsel subsequently appeared his behalf and litigated through the Eleventh Circuit's denial of a COA.

Though not reflected in the record of this action, the Second § 2255 Motion indicates that Edwards sought certiorari review with the United States Supreme Court sometime in 2012 (U.S. Supreme Court Case No. 12-9796). (*See* Doc. 156 at 3). His petition for a writ of certiorari was summarily denied on May 20, 2013, and his petition for rehearing of that denial was summarily denied on August 12, 2013. *See Edwards v. United States*, 133 S. Ct. 2402 (2013); *Edwards v. United States*, 134 S. Ct. 37 (2013).

court lacks jurisdiction to consider a second or successive petition.” *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003) (per curiam) (citing *Hill v. Hopper*, 112 F.3d 1088, 1089 (11th Cir. 1997) (per curiam)). Here, there is no indication in the record that Edwards has sought, much less obtained, such an order from the Eleventh Circuit. Accordingly, the Second § 2255 Motion is due to be **DISMISSED without prejudice** for lack of jurisdiction as a second or successive motion.

However, the Second § 2255 Motion and supporting memorandum are both labeled “Motion to Excuse the Prior Procedural Default.” Liberally construing these *pro se* filings, as the Court must,⁵ the undersigned finds that they could also be considered a motion for relief from a final order or judgment under Federal Rule of Civil Procedure 60(b). “In *Gonzalez v. Crosby*, 545 U.S. 524, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005), the Supreme Court discussed criteria for determining when a Rule 60(b) motion in a habeas case should be treated as an attempt to circumvent the AEDPA limitations on second or successive petitions.” *Zakrzewski v. McDonough*, 490 F.3d 1264, 1267 (11th Cir. 2007) (per curiam).

The Supreme Court held in *Gonzalez* that a Rule 60(b) motion is to be treated as a successive habeas petition if it: (1) “seeks to add a new ground of relief;” or (2) “attacks the federal court’s previous resolution of a claim *on the merits*.” [545 U.S.] at 532, 125 S. Ct. at 2648. Where, however, a Rule 60(b) motion “attacks, not the substance of the federal court’s resolution of a claim on the merits, but some defect in the integrity

⁵ “It is well established that the standards governing the sufficiency of habeas corpus petitions are less stringent when the petition is drafted *pro se* and without the aid of counsel.” *Williams v. Griswald*, 743 F.2d 1533, 1542 (11th Cir. 1984). Thus, the Court must “liberally construe *pro se* filings, including *pro se* applications for relief pursuant to § 2255.” *Winthrop-Redin v. United States*, 767 F.3d 1210, 1215 (11th Cir. 2014). See also *Means v. Alabama*, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam) (“[F]ederal courts must look beyond the labels of motions filed by *pro se* inmates to interpret them under whatever statute would provide relief.”).

of the federal habeas proceedings,” the motion is not a successive habeas petition. *Id.* A “claim,” as described by the Court in *Gonzalez*, is “an asserted federal basis for relief from a state court’s judgment of conviction.” *Id.* at 530, 125 S. Ct. at 2647. The Supreme Court further explained in *Gonzalez* that:

The term “on the merits” has multiple usages. We refer here to a determination that there exist or do not exist grounds entitling a petitioner to habeas corpus relief under 28 U.S.C. § 2254(a) and (b). When a movant asserts one of those grounds (or asserts that a previous ruling regarding one of those grounds was in error) he is making a habeas corpus claim. He is not doing so when he merely asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar.

Id. at 532 n.4, 125 S. Ct. at 2648 n.4 (citation omitted).

When a Rule 60(b) motion qualifies as a second or successive habeas petition as defined in *Gonzalez*, it must comply with the requirements for such petitions under the AEDPA. *See* 28 U.S.C. § 2244.

Williams v. Chatman, 510 F.3d 1290, 1293–94 (11th Cir. 2007) (per curiam).⁶

Much of the Second § 2255 Motion and supporting memorandum is devoted to raising new claims for relief, and to re-litigating claims previously raised in the First § 2255 motion and denied on the merits. Thus, even construing the Second § 2255 Motion and supporting memorandum as a Rule 60(b) motion, the motion must be treated as a second or successive § 2255 motion as to those claims.

The motion is a “true” Rule 60(b) motion, however, to the extent Edwards asserts error in the Court’s denial of one claim as procedurally barred, as this is an assertion

⁶ Though *Gonzalez* involved a habeas petition by a state prisoner brought under 28 U.S.C. § 2254, the Eleventh Circuit has held “that the standard announced in *Gonzalez* applies to federal prisoner cases as well.” *Gilbert v. United States*, 640 F.3d 1293, 1323 (11th Cir. 2011) (en banc).

“that a previous ruling which precluded a merits determination was in error.”⁷ However, while the Court may consider this aspect of the motion, Edwards is due no relief under Rule 60(b). First, Rule 60(b) relief is due to be denied as untimely sought. “A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of judgment or order...” Fed. R. Civ. P. 60(c)(1). Here, Edwards did not file the Second § 2255 Motion until almost six years after the Court denied the First § 2255 Motion, and approximately five-and-a-half years after the Eleventh Circuit denied him a COA to appeal that denial. Edwards fails to offer any explanation or raise any issue that would justify such a lengthy delay. *Cf. Ramsey v. Walker*, 304 F. App'x 827, 829 (11th Cir. 2008) (per curiam) (unpublished) (“[T]he district court did not abuse its discretion in denying Ramsey's Rule 60(b) motion because it was not filed within a reasonable time of the court's denial of his § 2254 petition. Notably, he filed the motion more than six years after the denial of his § 2254 petition and two years after the cases on which he relied were decided.” (footnote omitted)).

Notwithstanding untimeliness, Edwards has also failed to show that he merits Rule 60(b) relief.⁸ “Under Rule 60(b), [a movant] must prove ‘extraordinary

⁷ See *United States v. Saint Surin*, No. 16-11351, 2017 WL 2180925, at *2 (11th Cir. May 17, 2017) (per curiam) (unpublished) (“A prisoner may file a Rule 60(b) motion on a ‘limited basis’ to allege a defect in the integrity of the habeas proceedings with respect to the denial of his § 2255 motion. *Williams v. Chatman*, 510 F.3d 1290, 1293–94 (11th Cir. 2007). These include an error based upon failure to exhaust, a procedural default, or a statute of limitations bar. *Id.* But, a prisoner may not file a Rule 60(b) motion to challenge the substance of the federal court's resolution of the § 2255 claim on the merits. *Id.*”).

⁸ Under Rule 60(b), “the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence,

circumstances” justifying the reopening of a final judgment.’ ” *Howell v. Sec’y, Fla. Dep’t of Corr.*, 730 F.3d 1257, 1260 (11th Cir. 2013) (quoting *Gonzalez*, 545 U.S. at 535 (quoting *Ackermann v. United States*, 340 U.S. 193, 199, (1950))). “The Supreme Court has explained that extraordinary circumstances that warrant the reopening of a judgment ‘will rarely occur in the habeas context,’ ” *Id.* (quoting *Gonzalez*, 545 U.S. at 535), and Edwards has failed to show that such “extraordinary circumstances” are present here.

By way of the present motion, Edwards asks “to excuse the prior procedural default” of the claim in his First § 2255 Motion challenging the denial of his motion to suppress. “Under the procedural default rule, a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal or else the defendant is barred from presenting that claim in a § 2255 proceeding.” *Lynn v. United States*, 365 F.3d 1225, 1234 (11th Cir. 2004) (per curiam). When a claim is procedurally defaulted, a defendant can nevertheless avoid the default either by showing cause for not raising the claim of error on direct appeal and actual prejudice from the alleged error, or by demonstrating a constitutional violation has probably resulted in the conviction of one who is actually innocent. *Id.*

surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.” Because nothing in the Second § 2255 Motion and supporting memorandum justifies application of Rule 60(b)(1)-(5), the undersigned treats them as a motion brought under the catch-all provision of Rule 60(b)(6).

Edwards's claim, however, was not denied as procedurally "defaulted" for failure to raise it on appeal. Quite the contrary, it was denied as procedurally "barred" for having already been raised and rejected on direct appeal. "At least where there has been no intervening change in controlling law, a claim or issue that was decided against a defendant on direct appeal may not be the basis for relief in a § 2255 proceeding." *Rozier v. United States*, 701 F.3d 681, 684 (11th Cir. 2012). Edwards points to no intervening change in controlling law that would call into question the Eleventh Circuit's rejection of his appeal of the denial of his motion to suppress.⁹ Thus, he has failed to show any circumstances, much less "extraordinary" ones, that entitle him to relief under Rule 60(b)(6) on his procedurally barred claim.

Accordingly, the undersigned finds that the Second § 2255 Motion, to the extent it is construed as Rule 60(b)(6) motion, is due to be **DISMISSED in part** for lack of jurisdiction as a second or successive § 2255 motion and **DENIED in part** as both untimely and without merit.

B. Certificate of Appealability

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant" in a § 2255 proceeding. Rule 11(a) of the Rules Governing § 2255 Proceedings. However, a COA is unnecessary when the district court is dismissing a successive petition for lack of jurisdiction. *See Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (per curiam). "It is still the law of this circuit that

⁹ Moreover, it has been recognized in the habeas context that "a change in decisional law is insufficient to create the 'extraordinary circumstance' necessary to invoke Rule 60(b)(6)." *Arthur v. Thomas*, 739 F.3d 611, 631 (11th Cir. 2014). Therefore, even if Edwards had cited a change in controlling law in the present motion, it is doubtful it would afford him any relief at this stage.

a certificate of appealability is required for the appeal of any denial of a Rule 60(b) motion for relief from a judgment in a 28 U.S.C. § 2254 or 28 U.S.C. § 2255 proceeding. Where a district court lacks subject matter jurisdiction over a Rule 60(b) motion, however, it also lacks jurisdiction to grant a COA.” *Williams v. Chatman*, 510 F.3d 1290, 1294 (11th Cir. 2007) (per curiam) (citation and quotation omitted). Thus, the undersigned addresses only whether a COA should issue on the Second § 2255 Motion only to the extent it challenges the Court’s previous procedural bar ruling under Rule 60(b).

The habeas corpus statute makes clear that an applicant is entitled to appeal a district court’s denial of his habeas corpus petition only where a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Where the district court “has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The 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 Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (“Under the controlling standard, a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” (citations omitted and punctuation modified)). Where habeas relief is denied on procedural grounds without reaching the merits of the underlying constitutional claim(s), “a COA should issue [only] when the prisoner shows . . . 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. “A prisoner seeking a COA must prove something more than the absence of frivolity or the existence of mere good faith on his or her part.” *Miller-El*, 537 U.S. at 338 (quotations omitted).

The undersigned finds that reasonable jurists could not debate whether Edward’s claim for Rule 60(b) relief on the Court’s previous procedural bar ruling should be resolved in a different manner, either as to timeliness or merit, or that the issue presented is adequate to deserve encouragement to proceed further. Accordingly, the undersigned finds that Edwards should be **DENIED** a Certificate of Appealability in conjunction with the Court’s ruling on the Second § 2255 Motion.

Rule 11(a) further provides: “Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue.” If there is an objection to this recommendation by the petitioner, he may bring this argument to the attention of the district judge in the objections permitted to this report and recommendation. *See, e.g., Brightwell v. Patterson*, No. CA 11-0165-WS-C, 2011 WL 1930676, at *6 (S.D. Ala. Apr. 11, 2011), *report & recommendation adopted*, 2011 WL 1930662 (S.D. Ala. May 19, 2011); *Griffin v. DeRosa*, No. 3:10cv342/RV/MD, 2010 WL 3943702, at *4 (N.D. Fla. Sep. 20, 2010) (providing for same procedure), *report & recommendation adopted*, 2010 W: 3943699 (N.D. Oct. 5, 2010).

C. Appeal In Forma Pauperis

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3).

A party demonstrates good faith by seeking appellate review of any issue that is not frivolous when examined under an objective standard. *See*

Coppedge v. United States, 369 U.S. 438, 445, 82 S. Ct. 917, 921, 8 L. Ed. 2d 21 (1962). An issue is frivolous when it appears that “the legal theories are indisputably meritless.” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (citations omitted). In other words, an IFP action is frivolous, and thus not brought in good faith, if it is *860 “without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001). More specifically, “arguable means capable of being convincingly argued.” *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (internal quotations and citations omitted). Nevertheless, where a “claim is arguable, but ultimately will be unsuccessful,” it should be allowed to proceed. *Cofield v. Ala. Pub. Serv. Comm’n*, 936 F.2d 512, 515 (11th Cir. 1991).

Ghee v. Retailers Nat. Bank, 271 F. App’x 858, 859-60 (11th Cir. 2008) (per curiam) (unpublished).

Having considered the issues raised as set forth above, the undersigned **RECOMMENDS** the Court certify that any appeal by Edwards of the disposition of his Second § 2255 Motion recommended herein would be without merit and therefore not taken in good faith.

III. Conclusion

In accordance with the foregoing analysis, it is **RECOMMENDED** that Edwards’s Second § 2255 Motion (Doc. 156) be **DISMISSED without prejudice** for lack of jurisdiction as an unauthorized second or successive motion. It is further **RECOMMENDED** that the Second § 2255 Motion (Doc. 156) also be construed as a motion for relief under Federal Rule of Civil Procedure 60(b)(6) and that, so construed, it be **DISMISSED in part** for lack of jurisdiction as a second or successive § 2255 motion and **DENIED in part** as both untimely and without merit. Finally, it is **RECOMMENDED** the Court find Edwards not entitled to a Certificate of Appealability in conjunction with this recommended disposition, and that the Court certify that any appeal by Edwards would not be taken in good faith, thus preventing

him from proceeding *in forma pauperis* on appeal.

IV. Notice of Right to File Objections

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to this recommendation or anything in it must, within fourteen (14) days of the date of service of this document, file specific written objections with the Clerk of this Court. *See* 28 U.S.C. § 636(b)(1); Rule 8(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts; S.D. Ala. GenLR 72(c). The parties should note that under Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.” 11th Cir. R. 3-1. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the Magistrate Judge’s report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the Magistrate Judge is not specific.

DONE and ORDERED this the 9th day of August 2017.

/s/ Katherine P. Nelson
KATHERINE P. NELSON
UNITED STATES MAGISTRATE JUDGE