No. 25-

IN THE

SUPREME COURT OF THE UNITED STATES

COREY CORTEZ,
Petitioner,

v.

BOBBY LUMPKIN,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner,Corey Cortez,pursuant to Sup.Ct.R.39.1&2,asks for leave to file the accompanying Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis.Petitioner has appeared pro se on federal habeas review pursuant to 28 U.S.C.S § 1915(a). The federal court's did not provide a copy to proceed in forma pauperis.

Respectfully Submitted,

COREY CORTEZ
Pro Se

Corey Cortez
TDCJ-ID No.01781679
James Lynaugh Unit
1098 South Highway 2037
Fort Stockton,Texas 79735

(B) tdc01n60 - PASSPORT Wednesday, June 11, 2025, 7:26:27 AM

CSINIB02/CINIB02 TEXAS DEPARTMENT OF CRIMINAL JUSTICE 06/11/25
1N60/PR00140 IN-FORMA-PAUPERIS DATA 07:26:20
TDCJ#: 01781679 SID#: 06626696 LOCATION: JAMES LYNAUGH INDIGENT DTE: 08/02/22
NAME: CORTEZ,COREY BEGINNING PERIOD:
PREVIOUS TDCJ NUMBERS:
CURRENT BAL: 0.00 TOT HOLD AMT: 0.00 3MTH TOT DEP:
6MTH DEP: 6MTH AVG BAL: 6MTH AVG DEP:
MONTH HIGHEST BALANCE TOTAL DEPOSITS MONTH HIGHEST BALANCE TOTAL DEPOSITS

NO BANKING ACTIVITY
WITHIN THE PAST 6
MONTH PERIOD.

STATE OF TEXAS COUNTY OF Pecos
ON THIS THE 11th DAY OF June 2025, I CERTIFY THAT THIS DOCUMENT IS A TRUE, COMPLETE,AND UNALTERED COPY MADE BY ME OF INFORMATION CONTAINED IN THE COMPUTER DATABASE REGARDING THE OFFENDER'S ACCOUNT. NP SIG: Romelia R Paredes
PF1-HELP PF3-END ENTER NEXT TDCJ NUMBER: 01781679 OR SID NUMBER: 06626696

Romelia R. Paredes
ID# 133286969
Notary Public, State of Texas
My Commission Expires
08/19/2025
Notary Without Bond

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF TEXAS
_____ DIVISION

Carter Corey
Plaintiff's name and ID Number

James Lynaugh
Place of Confinement

CASE NO. _____
(Clerk will assign the number)

V.

APPLICATION TO PROCEED IN FORMA PAUPERIS

Bobby Lumpkin
Defendant's name and address

I, Carter, declare, depose, and say I am the Plaintiff in the above entitled case. In support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state because of my poverty, I am unable to pay in advance the filing fee for said proceedings or to give security for the filing fee. I believe I am entitled to relief.

I, further declare the responses which I have made to the questions and instructions below are true.

1. Have you received, within the last 12 months, any money from any of the following sources?

a.	Business, profession or from self-employment?	Yes ☐	No ☑
b.	Rent payments, interest or dividends?	Yes ☐	No ☑
c.	Pensions, annuities or life insurance payments?	Yes ☐	No ☑
d.	Gifts or inheritances?	Yes ☐	No ☑
e.	Family or friends?	Yes ☐	No ☑
f.	Any other sources?	Yes ☐	No ☑

If you answered **YES** to any of the questions above, describe each source of money and state the amount received from each during the past 12 months.

_____
_____

2. Do you own cash, or do you have money in a checking or savings account, including any funds in prison accounts?

Yes ☐ No ☑

If you answered **YES** to any of the questions above, state the total value of the items owned.

_____
_____

3. Do you own real estate, stocks, bonds, note, automobiles, or other valuable property, excluding ordinary household furnishings and clothing?

Yes ☐ No ☑

If you answered **YES**, describe the property and state its approximate value.

_____

_____

I understand a false statement in answer to any question in this affidavit will subject me to penalties for perjury. I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct (28 U.S.C. §1746).

Signed this the Corey Reed day of June 11, 2025.

_____

Signature of Plaintiff ID Number

YOU MUST ATTACH A CURRENT SIX (6) MONTH HISTORY OF YOUR INMATE TRUST ACCOUNT. YOU CAN ACQUIRE THE APPROPRIATE INMATE ACCOUNT CERTIFICATE FROM THE LAW LIBRARY AT YOUR PRISON UNIT.

No. 25-

IN THE

SUPREME COURT OF THE UNITED STATES

COREY CORTEZ,
Petitioner,

v.

BOBBY LUMPKIN,
Respondent.

PETITION FOR WRIT OF CERTIORARI

COREY CORTEZ
Pro Se

Corey Cortez
TDCJ-ID No.01781679
James Lynaugh Unit
1098 South Highway 2037
Fort Stockton,Texas 79735

QUESTIONS PRESENTED

1. Did the conflict between the application of the AEDPA statute of limitations and the PLRA deny Petitioner Due Process under the Fourteenth Amendment?

2. How does the AEDPA's statute of limitations and the restrictions of the PLRA conflict with the ADA?

PARTIES

Petitioner: Corey Cortez

Respondent: Bobby Lumpkin

RELATED PROCEEDING

There are no related proceedings.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

PAGE

FEDERAL

STATE

UNITED STATES CONSTITUTION

UNITED STATES CODES AND RULES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Corey Cortez respectfully petitions for a writ of certiorari to review the judgment of the United States District Court for the Western District of Texas,denied a federal habeas review and a certificate of appealability.The United States Supreme Court of Appeals,the court of last resort in the State of Texas for a state prisoner challenging a disciplinary conviction,denied a certificate of appealability.

OPINION BELOW

No opinion provided.

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked under 28 U.S.C § 1257(1). See also Sup.Ct.R.13.1.The Court of Appeals for the Fifth Circuit, denied a certificate of appealability on March 12,2025.The petition is therefore timely under Rule 13.1 of the Supeme Court Rules.See Houston v. Lack, 487 U.S. 266,108 (1988).See Sup.Ct.R13.1.

CONSTITUTIONAL AND PROVISION INVOLVED

The Fourteenth Amendment provides,in relevant,that:

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;nor shall any state deprive any person of life,liberty,or property,without due process of law;nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF CASE

Relevant facts and proceedings in State and Federal Courts

State

In 2021,Petitioner was found guilty of two major prison disciplinary offenses for assaulting a correctional officer without a weapon,non serious injury,and tampering with a locking mechanism or food tray slot.He was not present at or aware of these hearings.He was not permitted to present a defense.

When Petitioner was eventually made aware of,three months later, the disciplinary convictions in these cases he pursued all available state law remedies through a series of step 1 and step 2 grievances.

Petitioner was reviewed for,and denied parole by the Texas Board of Pardons and Parole.On or about February 28,2023 he received a written response to his request for special parole review.The Board identified the sole cause of this denial were the disciplinary convictions in case numbers 2021014291 and 20210159167.

As this is the first indication that the Due Process violations had a demonstrable impact on Petitioner's liberty interest he filed a step 1 grievance containing similar operational facts as previous grievances.He received a final written response to his step 2 grievance on or about October 31,2023.

Petitioner filed his application for writ of habeas corpus, § 2254 within 30 days of receipt of the State's response.

Federal

Petitioner exhausted all available State law remedies to address violations of his rights under the Fourteenth Amendment of the United States Constitution.An application for a writ of habeas corpus was filed in the U.S District Court for the Western District of Texas.

The District Court denied the application,dismissed the claim with prejudice,and denied a certificate of appealability.The Court futher denied his motion for reconsideration and a certificate of appealability.

The Court determined Petitioner's application to be Time-Barred under the AEDPA and does not qualify for equitable tolling.

The Fifth Circuit upheld the District Courts ruling.

REASONS FOR GRANTING THE PETITION

1.Did the conflicts between the application of the AEDPA statute of limitations and the PLRA deny Petitioner Due Process under the Fourteenth Amendment?

At issue is 1) the inconsistent application of the AEDPA statute limitations,2) the conflicts arising from the PLRA exhaustion requirements, and 3) the attachment of the AEDPA,when a cognizable claim is discovered. The Federal District Court's dismissal of Petitioner's habeas petition as time barred resulted in a denial of Due Process protected by the Fourteenth Admendment.

Conflict arises in the application of the twelve month statute of limitations in relation to state prisoner disciplinary review.See 1 Federal Habeas Corpus Practice and Procedure § 5.2,n.5 (2025).

> "Because the provisions of section 2244 are structured to fit the context of court proceedings,not an administrative context, applying the statute of limitations to petitions challenging administrative decisions presents difficul questions of statutory construction.Compare,e.g.,Kimbell v. Cockrell,311 F.3d 361,363-64 (5th Circuit concludes that the point of finality for purposes of AEDPA 's statute of limintations is date of the prison's administative review process for the disciplinary proceeding) with Reed v. McGrath,343 F.3d 1077,1084 & n.11(9th Circuit 's rejects 5th Circuit's view in Kimbrell v. Cockrell and holds that limitations period begains to run day after administrative decision became final as a result of denial of administrative appeal).Similarly ,courts apply the statute of limitations to petitions challenging disciplinary proceedings have had to rely on the equitable tolling doctrine to afford protections analogous to those provided by section 2244 (d) in the context of (and worded to apply only to) review of state court proceedings.See Foley v. Cockrell,222 F.Supp 2d 826,828-29(N.D.Tex.2002)(upon determining that worded of section 2244 (d)(2) prevents prisoner from receiving statutory tolling during administrative appeals,court grants equitable tolling: exhaustion of grievence process is required prior to

bringing habeas action in federal court.Under these circumstances, strict application of the statute of limitations would be inequitable). See Goodall v. Cockrell,2002 U.S. Dist. LEXIS 15051,at *5 n.6 (N.D.Tex.15,2002)(it would be illogical not to afford the inmate equitable tolling for the time it takes to complete a state administrative review process that by necessity will coincide with the running of that year limitation period).See Kimbrell v. Cockrell,311 F.3d at 364 (the timely pendency of prison grievance procedures would have tolled the one-year period) (quoting ibid.,at n.5).

This Court has not yet ruled on the question how or when the one-year AEDPA's statute of limitations applies to a parole board or prison disciplinary board final decision.State prisoners who are in the custody pursuant to a state judgment,their only relief is through a federal hadeas review under 28 U.S.C. § 2254,and the inmate must exhaust their administrative remedies by following the two-step grievance process available in Texas prison prior to filing a petition in federal court.See Anthony v. Johnson,177 F.3d 978,978 (5th Cir.1999)(vacated)(per curiam).The PLRA exhaustion requirement applies to all inmate suits about prison life,whether they involve general circumstances or particular episodes,and whether they allege excessive force or some other wrong.See Porter v. Nussle,534 U.S. 516,532 (2002).

The District Court's dismissal of Petitioner's habeas petition conflicts with the Fifth Circuit's published opinion in Goodwin v. Dretke,118 Fed.Appx. 817,818 (5th Cir.2004)(subsection 2244 (d)(1)(D) governs timeliness of claims predicate on parole decisions). At no time did the punishment imposed on Petioner at the disciplinary hearings constitute a constitutional liberty interest to trigger the protections of the Due Process Clause.Upon receipt of his parole administrative denial to his request for a special review the protections of the Due Process Clause were triggered.The parole board's denial letter cited the disciplinary cases as reason to deny his 2021 release on parole,which gave rise to an addittional prison grievance.His step 1 grievance was accepted and he received a response at the informal level.He appealed that decision to the next level ,on or about October 31,2023,he received his step 2 response.His

grievances at the informal levels answered the merits of his claims, and his grievances were considered timely.Because he filed his heabeas petition on November 28,2023,his petition was within the limitations period.

The Federal Circuit Courts are divided as to apply the AEDPA's statute of limintations.To add to the conflict,the Exhaustion Requirements of the PLRA are inconsistently applied.These issues are moot under the current case as §§ 2244 requires a cognizable claim to purssue habeas relief.By dismissing Petitioner's habeas petition as time-barred under the AEDPA in spite of the date in which the cognizable claim was discovered the District Court,and subsequently the Fifth Circuit,denied Petitioner Due Process under the Fourteenth Amendment.

2. How does the AEDPA's statute of limitations and the restricts of the PLRA conflict with the ADA?

Petitioner was placed in "Crisis Management" based on a diagnosed mental health disability.During this period the State's policy prevents an inmate the ability to pursue recourse of a disciplinary hearing.The State,and then the Federal Courts,failed to consider this time in Crisis Management in calculating the time limits of the AEDPA.This futher conflicts with the requirements of the PLRA.This,therfore,discriminates against thoes with mental health ~~health~~ disabilities in violation of the ADA and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

These policies allow an inmate to be convicted at a hearing without his presence,knowledge,or ability to present a defense.It then prevents an inmate from seeking and administrative remedy (appeal) until released from Crisis Management.The time spent in Crisis Management is arbitrary and can lead to long delys preventing timely appeals.Crisis Management refers to the status of an inmate who is determined to be at imminent risk of significant self-injury or suicide.Crawford v. Texas Dep't of CRIM.Justice,2023 U.S. Dist.LEXIS 44419,11 & n.3(E.D.tex.2023).

At least three Circuit Courts of appeal have recognized an exception to the grievance filing deadlines if an inmate is physically or mentally incapacitated and unable to timely file a grievance.See Days v. Johnson,322 F.2d 863,868(5th Cir.2003)(administrative remedies "unavailable" when an inmate's untimely filing of a grievace is due to a physical injury and the prison rejects the inmate's subsequent attempt to exhaust based on the untimely of the grievance); Braswell v. Corrections Corp. of American,419 Fed.Appx.,622,626(6th Cir.2011)(fact question whether grievance procedure was "available" to seriously injured inmate)(unpublished);Hurst v. Hantke,634 F.3d 409, 412(7th Cir.2011)(a remedy not available within the meaning of the PLRA when a person is physically unable to pursue it)(quoting Poindexter v. Andrews,2016 U.s. Dist.LEXIS 184217(E.D.Ark.2016).

This Court has yet to establish a precedent the Circuit and District Court's could follow.As to weather a transfer to a different Unit or to a prison psychiatric hospital excuses the AEDPA's statute of limitations and the PLRA's requirements.Courts have reached different conclusions as to whether transfer from one correctional facility to another makes administratives remedies unavailable to an inmate.Some have held that, when the relevant grievance procedures make no provision for the submission of complaints by prisoners no longer detained at a certain facility,administrative remedies are unavailable to a transferred inmate...In contrast,other courts have held that an inmate's transfer leaves intact his or her access to administrative remedies,and that inmate retains his or her obligation to exhaust those remedies.(quotig Hontz v. Baerk County Prision,2014 U.S. Dist.LEXIS 37249,*7(E.D.Pa.Mar. 21,2014).

The State does not have an established grievance policy,which addresses the protctions of ADA.

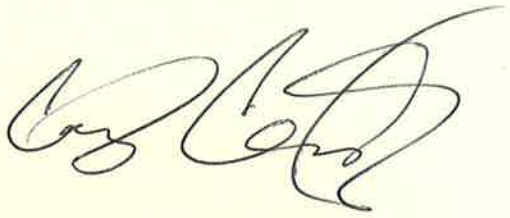
The lower Court's dismissed Petitioner's habeas application as time-barred.The period of time Petitioner was placed in Crisi Management was not tolled against the AEDPA statute of limitations.The requirements under the PLRA,similarly,were not assessed for tolling.By application of the AEDPA and the PLRA requirements in conflict with the ADA Petitioner's is denied Due Process and Equal Protection of Law.

CONCLUSION

For the aforementioned reasons Petitioner's prays this HONORABLE COURT may grant this petition.

Respectfully Subitted,

Excuted on this 11th day of June 2025.



Corey Cortez
TDCJ-ID No.01781679
James Lynaugh Unit
1098 South Highway 2037
Fortstokton,Texas 79735

APPENDIX A

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

COREY CORTEZ, *Plaintiff*	§	
v.	§	**P-23-CV-00048-DC**
BOBBY LUMPKIN, *Defendant*	§	

ORDER DENYING PETITIONER'S 28 U.S.C. §2254 AND DENYING A CERTIFICATE OF APPEALABILITY

Before the Court are Petitioner Corey Cortez's (Petitioner) Application for Writ of Habeas Corpus by a Person in State Custody filed pursuant to 28 U.S.C. §2254 (§2254), as well as Respondent Bobby Lumpkin's (Respondent) Amended Answer with Brief in Support. [docket numbers 1 & 24, respectively]. Respondent's Amended Answer was filed on June 26, 2024. [docket number 24]. Petitioner never replied to Respondent's Amended Answer and the time to do so has now definitively passed. [*See generally* docket]. This case is ready for a decision.

After reviewing the pleadings and the applicable law under Rule 4 of the Rules Governing §2254 Cases in the United States District Courts, the Court concludes that this case must be dismissed with prejudice as it is time-barred and Petitioner does not qualify for equitable tolling of the statute of limitations, nor does Petitioner raise actual innocence.[1]

[1] The U.S. Supreme Court has held a plea of actual innocence may serve as a gateway exception through which a petitioner may avoid procedural bars or the expiration of the statute of limitations. *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013). The Supreme Court made it clear, however, that "tenable actual-innocence gateway pleas are rare" and "a petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* Petitioner fails to cite any newly discovered evidence showing he satisfies the demanding actual innocence standard. The Court finds Petitioner has failed to meet the rigorous actual innocence standard to excuse the operation of the statute of limitations in this case.

I. Jurisdiction

While Petitioner was sentenced from the 331st Judicial District Court of Travis County, Texas, for two counts of aggravated kidnapping and two counts of aggravated robbery, he is incarcerated in the Texas Department of Criminal Justice's (TDCJ) Lynaugh Unit in Ft. Stockton, Texas, which is encompassed by the Pecos Division of the Western District of Texas. That said, in this §2254 he is challenging prison disciplinary case number 20210142911. This Court has jurisdiction over the matter, as jurisdiction is proper in either the district where the person is in custody or in the district in which the state court convicted and sentenced him. *Wadsworth v. Johnson*, 235 F.3d 959, 961 (5th Cir. 2000).

II. Background

On March 26, 2021, Petitioner was notified that he was being charged with violating offense code 3.3 of the TDCJ-CID Disciplinary Rules and Procedures for Offenders[2] for assaulting another person, who was not an offender, without a weapon, resulting in a non-serious injury or no injury on March 3, 2021. [docket number 25-2 at 4]. It was alleged that he pushed an Officer Sanchez without any resulting injury. [*Id.*].

On April 5, 2021, the disciplinary hearing officer found Petitioner guilty and assessed his punishment at: (1) loss of 45 days of recreation privileges; (2) loss of 60 days of commissary privileges; (3) loss of 45 days property privileges; and (4) a reduction in line class from S3 to L1. [docket number 25-2 at 3]. Petitioner filed the instant federal petition on November 27, 2023. [docket number 1-1 at 2]. There, he raised the following claims:

> 1. Petitioner was denied Due Process under the Fourteenth Amendment when his involuntary commitment to a prison mental hospital interfered with his prison disciplinary hearing rights because:

[2] *See* TDCJ-CID, Disciplinary Rules and Procedures for Offenders, which can be found at—http://www.tdcj.texas.gov/documents/cid/Disciplinary_Rules_and_Procedures_for_Offenders_English.pdf.

i. he was not allowed to present evidence;
ii. was not allowed to present witnesses;
iii. the hearing was held without him;
iv. any action during the hearing was not prompted by medical or mental health staff;
v. he was not allowed to immediately appeal.

2. Medical evidence was suppressed, which could prove that the disciplinary offenses were not possible or appropriate.
3. Petitioner was denied parole and a parole special review.
4. Petitioner was assaulted by security while he was physically disabled and a false report covered up the assault, resulting in his denial of release to parole.

[docket number 4 at 5, 7–8, & 10].

III. Statute of limitations

According to the unrebutted assertion by Respondent, Petitioner's §2254 is barred by the statute of limitations. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) specifies a period of limitations for federal habeas corpus applications:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. §2244(d).

IV. Calculation of the statute of limitations

The one-year period of limitations in §2244(d)(1) is to be construed as a statute of limitations, and not a jurisdictional bar. *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998). The tolling provision of §2244(d)(2) is only activated with a "properly filed application for State post-conviction or other collateral review." *Duncan v. Walker*, 533 U.S. 167 (2001) (prohibiting tolling of one-year limitation, under §2244(d)(2), for federal habeas petition filing as it is not an "application for State post-conviction or other collateral review"). A court may entertain a habeas petition after the statutory limit has passed in rare and exceptional circumstances based on reasons of equity. *Davis*, 158 F.3d at 811.

Petitioner has not alleged any unconstitutional state action prevented him from filing a timely federal habeas petition under §2244(d)(1)(B). Additionally, his claims do not concern a constitutional right recognized by the Supreme Court within the last year and made retroactive to cases on collateral review under §2244(d)(1)(C). Lastly, Petitioner has not alleged his limitations period should be based on a different factual predicate under §2244(d)(1)(D).

Accordingly, the date the limitations period on his claims began to run was "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." *Kimbrell v. Cockrell*, 311 F.3d 361, 362-63 (5th Cir. 2002) (holding that the AEDPA statute of limitation under 28 U.S.C. §2254(d)(1) applies to challenges to prison disciplinary proceedings); 28 U.S.C. §2244(d)(1)(D).

Through "due diligence," Petitioner could have discovered his claims relating to disciplinary proceeding number 20210142911 on the day he was found guilty at his disciplinary hearing on April 5, 2021. [docket number 25-2 at 3]; *Kimbrell*, 311 F.3d at 364 (holding that AEDPA limitations period for a challenge to a disciplinary proceeding begins to run the day the disciplinary hearing was held). Thus, Petitioner's AEDPA limitations period expired one year later, on Tuesday, April 5, 2022. Petitioner did not pursue any available TDCJ grievance procedures, which have been construed to toll the AEDPA limitations period during the time when the grievance procedures were pending. *Kimbrell*, 311 F.3d at 364 (stating that timely filed grievance procedures would have tolled the petitioner's AEDPA limitations period). Petitioner then mail-filed his federal petition on Monday, November 27, 2023. [docket number 1-1 at 2]. This meant Petitioner's §2254, when filed, was 601 days late.

V. Equitable tolling

Petitioner has not shown this Court that the one-year time limitation set forth in 28 U.S.C. §2244(d)(1) should be equitably tolled by this Court because of a rare and exceptional circumstance presented in his case. This is especially true since Petitioner has chosen not to reply to Respondent's Amended Answer addressing the time-bar assertion.

> In past cases, we have focused on the reasons for missing the deadline rather than on the magnitude of the tardiness. At the margins, all statutes of limitations and filing deadlines appear arbitrary. AEDPA relies on precise filing deadlines to trigger specific accrual and tolling provisions. Adjusting the deadlines by only a few days in both state and federal courts would make navigating AEDPA's timetable impossible. Such laxity would reduce predictability and would prevent us from treating the similarly situated equally. We consistently have denied tolling even where the petition was only a few days late.

Lookingbill v. Cockrell, 293 F.3d 256, 264–65 (5th Cir. 2002) (four days late). *See also*, e.g., *United States v. Locke*, 471 U.S. 84, 100–01 (1985) ("If 1-day late filings are acceptable, 10-day

late filings might be equally acceptable, and so on in a cascade of exceptions that would engulf the rule erected by the filing deadline ... A filing deadline cannot be complied with, substantially or otherwise, by filing late—even by one day.").

Petitioner bears the burden of establishing entitlement to equitable tolling in the AEDPA context. *Phillips v. Donnelly*, 216 F.3d 508, 511 (5th Cir. 2000). Petitioner has not alleged: (1) the State created an impediment to the filing of this action in violation of the Constitution or laws of the United States; (2) a new right has been recognized by the Supreme Court which has been made retroactively applicable to this case on collateral review; or (3) that he could not have discovered the factual predicate of the claims presented through the exercise of due diligence.

Any claim that he knew nothing about the law or how to proceed in filing a *pro se* habeas application does not warrant further equitable relief. *See Flores v. Quarterman*, 467 F.3d 484, 486 (5th Cir. 2006) (quoting *Fierro v. Cockrell*, 294 F.3d 674, 683 (5th Cir. 2002)) ("We have previously 'made it clear that a lack of knowledge of the law, however understandable it may be, does not ordinarily justify equitable tolling.'").

Petitioner's *pro se* status also does not merit equitable tolling, *see Turner v. Johnson*, 177 F.3d 390, 392 (5th Cir. 1999), and it is well-settled that ignorance of the law is not a "rare and exceptional circumstance" for tolling purposes. *See, e.g., Fierro*, 294 F.3d at 682; *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000) (neither inmate's ignorance of the law nor inadequacy of services of inmate law clerk who helped draft his habeas petition entitled petitioner to equitable tolling of the limitations period); *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999); *see also Saahir v. Collins*, 956 F.2d 115, 118–19 (5th Cir. 1992) (neither prisoner's *pro se* status nor ignorance of the law constitutes cause for failing to include a legal claim in his prior petition).

Petitioner's filings, even when liberally construed considering his *pro se* status, do not present "rare and exceptional circumstances" warranting equitable tolling. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (to be entitled to equitable tolling, a petitioner must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing."); *see also Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755–756 (2016). Unexplained delays do not reflect due diligence or rare and extraordinary circumstances. *Fisher*, 174 F.3d at 715; *Coleman v. Johnson*, 184 F.3d 398, 403 (5th Cir. 1999) ("In order for equitable tolling to apply, the applicant must diligently pursue ... [habeas] relief.").

As for the "pursuing his rights diligently" requirement, Petitioner must demonstrate "'reasonable diligence,' not 'maximum feasible diligence.'" *Jones v. Stephens*, 541 F. App'x 499, 503 (5th Cir. 2013) (quoting *Holland v. Florida*, 560 U.S. 631, 653 (2010)). "[N]either excusable neglect nor ignorance of the law is sufficient to justify equitable tolling." *Id.* at 503 (quoting *Fierro*, 294 F.3d at 682). And this is simply not a case in which Petitioner pursued "the process with diligence and alacrity." *Phillips*, 216 F.3d at 511.

The doctrine of equitable tolling is available in only the most rare and exceptional circumstances, particularly when the plaintiff is "actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." *See Flores v. Quarterman*, 467 F.3d 484, 486 (5th Cir. 2000). Here, Petitioner never even asks for equitable tolling or explains why his §2254 was 601 days late. It is well-settled that a prisoner's incarceration, lack of materials, lack of legal knowledge, transfer to another prison, or lack of access to a law library do not support equitable tolling. *Id.* at 487; *see also Fisher v. Johnson*, 174 F.3d 710, 715 (5th Cir. 1999) (tolling not justified during petitioner's 17-day stay in

psychiatric ward, during which he was confined, medicated, separated from his glasses and thus rendered legally blind, and denied meaningful access to the courts); *Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (petitioner not entitled to equitable tolling simply because he remained in administrative segregation and had limited access to law library); *Dodd v. United States*, 365 F .3d 1273, 1283 (11th Cir. 2004), *cert. denied*, 543 U.S. 999 (2004) ("lockdowns and periods in which a prisoner is separated from his legal papers are not 'extraordinary circumstances' in which equitable tolling is appropriate,").

Transfers and delays in receiving paperwork are parts of prison life that do not, alone, constitute grounds for equitable tolling. *Lewis v. Casey*, 518 U.S. 343, 362 (1996); *see also United States v. Cockerham*, Civ. No. SA-12-CA-714-WRF, 2012 WL 12867870, at *2 (W.D. Tex. Aug. 27, 2012) ("Transfers to other facilities resulting in separation from legal papers are not rare and extraordinary and do not warrant equitable tolling."); *see, e.g., Wallace v. United States*, 981 F. Supp.2d 1160, 1165 (N.D. Ala. 2013) (transfers between institutions and lack of ready access to legal paperwork and law libraries are not extraordinary circumstances — they are typical incidents of prison life). Any allegation that there were periods when Petitioner could not access legal materials or the law library, without facts describing how the lack of access prevented him from timely filing his §2254 motion, is not an extraordinary circumstance that warrants equitable tolling. *See, e.g., United States v. Guerra-Guevara*, Civil No. 4:23-CV-00032, 2023 WL4765602 (S.D. Tex. July 26, 2023).

To invoke equitable tolling because of the inability to visit the law library, a movant must show that "the lack of library access ... 'actually *prevented* [him] from timely filing his habeas petition.'" *United States v. Clay*, Crim. No. 2:18-1282-10, 2021 WL 2018996, at *3 (S.D. Tex. May 18, 2021) (quoting *Krause v. Thaler*, 637 F.3d 558, 561 (5th Cir. 2011)) (emphasis in

original); *Tate v. Parker*, 439 F. App'x 375, 376 (5th Cir. 2011) (Temporary denial of access to research materials and inadequacies in the prison law library were not extraordinary circumstances sufficient to warrant equitable tolling).

Further, courts in this Circuit have repeatedly found that prison lockdowns, including COVID-19 related lockdowns, that occur during the one-year limitations period do not justify equitable tolling. *Cruz v. Lumpkin*, No. 4:21-CV-610-P, 2021 WL 3710568, at ** 2–3 (N.D. Tex. Aug. 18, 2021) (Intermittent lockdowns, limited access to the prison law library and an inability to obtain legal assistance because of COVID-19 pandemic procedures did not prevent petitioner from filing a federal habeas petition and are therefore not grounds for equitable tolling).

Petitioner has not shown that an allegedly extraordinary circumstance proximately prevented the timely filing of the federal habeas petition. *Cf., e.g., Krause v. Thaler*, 637 F.3d 558, 561 (5th Cir. 2011) ("Rather, [a petitioner] must also show that the lack of adequate legal materials actually *prevented* him from timely filing his habeas petition." (citations omitted) (analyzing tolling under §2244(d)(1)(B))). And "common problems of inmates who are trying to pursue postconviction habeas relief" do not alone—or even in the aggregate—justify equitable tolling. *Webster v. Stephens*, No. 4:13-CV-859-A, 2014 WL 201707, at *2 (N.D. Tex. Jan. 17, 2014) ("It is well settled ... that a petitioner's *pro se* status, indigence and lack of knowledge of the law, all common problems of inmates who are trying to pursue postconviction habeas relief, do not warrant equitable tolling of the limitations period." (citing *Felder v. Johnson*, 204 F.3d 168, 171–72 (5th Cir. 2000); *Turner v. Johnson*, 177 F.3d 390, 391 (5th Cir. 1999))); *see also Tate v. Parker*, 439 F. App'x 375, 376 (5th Cir. 2011) (per curiam) ("The alleged extraordinary circumstances endured by Tate, such as ignorance of the law, lack of knowledge of filing deadlines, a claim of actual innocence, temporary denial of access to research materials or the

law library, and inadequacies in the prison law library, are not sufficient to warrant equitable tolling.") (citing *Felder*, 204 F.3d at 171–72); *Scott v. Johnson*, 227 F.3d 260, 263 & n. 3 (5th Cir. 2000)); *Zepeda v. Stephens*, No. 3:14-CV-2072-B, 2015 WL 105165, at *3 (N.D. Tex. Jan. 6, 2015) ("Petitioner's *pro se* status, lack of legal training, or ignorance of the law do not justify equitable tolling. His conclusory claim that he did not have adequate access to a law library does not show he is entitled to equitable tolling. And whether claims have merit is not a factor in determining equitable tolling. Petitioner has not shown he is entitled to equitable tolling." (citing *Felder*, 204 F.3d at 171–72)).

Absent a causal relationship between an extraordinary circumstance beyond his control and the untimely filing of the federal habeas petition, any request for equitable tolling fails. *White v. Director, TDCJ-CID*, No. 6:19-CV-231, 2021 WL 1015951, at *4 (E.D. Tex. Feb. 5, 2021), *R&R adopted*, 2021 WL 978760 (E.D. Tex. Mar. 16, 2021) (finding diminished library access did not "actually prevent" petitioner from filing and thus was not constitute an extraordinary circumstance); *see also Delarosa v. Dir., TDCJ-CID*, No. 3:21-CV-2414-D-BK, 2022 WL 850041, at **2–3 (N.D. Tex. Feb. 22, 2022), *R&R adopted sub nom.*, 2022 WL 847216 (N.D. Tex. Mar. 22, 2022) (finding no evidence that diminished library access "actually prevented" petitioner from filing his federal petition; although it may have been more challenging for him to prepare the habeas petition and mail it, he did not establish that any pandemic-related circumstances prevented its filing); *Bradden v. Lumpkin*, No. 4:21-CV-126-O, 2021 WL 4866992, at *3 (N.D. Tex. Sept. 17, 2021) (finding access to some law library material—albeit on a limited and sometimes delayed basis because of the COVID-19 pandemic—and sporadic lockdowns were not grounds for equitable tolling); *United States v. Pizarro*, No. CR 16-63, 2021 WL 76405, at *2 (E.D. La. Jan. 8, 2021) (finding a COVID-19

lockdown did not justify equitable tolling as it did not actually prevent the petitioner filing his habeas petition); *Sheppard v. Stephens*, No. 5:16-cv-426, 2016 WL 4276292, at *2 (W.D. Tex. May 26, 2016); *Harrison v. Stephens*, No. H-14-2991, 2015 WL 3507888, at *3 (S.D. Tex. June 3, 2015) (petitioner failed to explain why the security lockdowns constitute "extraordinary circumstances" or show that he diligently pursued his rights during the remaining portion of the limitations period).

Because Petitioner has not met his burden to demonstrate both that he was diligent and that some extraordinary circumstance stood in his way to prevent him from timely filing his federal petition, he is not entitled to equitable tolling. *See Holland*, 560 U.S. at 648; *see also Alexander v. Cockrell*, 294 F.3d 626, 629 (5th Cir. 2002). His unexplainable 601-day delay does not exemplify due diligence.

The Court finds that Petitioner failed to file his §2254 timely and does not qualify for equitable tolling. For equitable tolling to apply, the applicant must diligently pursue his §2254 relief. *Coleman v. Johnson*, 184 F.3d 398, 403 (5th Cir. 1999). "[E]quity is not intended for those who sleep on their rights." *Covey v. Arkansas River Co.*, 865 F.2d 660, 662 (5th Cir. 1989). This Court finds Petitioner failed to pursue federal relief with diligence. The party seeking equitable tolling bears the burden of showing entitlement to such tolling. *United States v. Petty*, 530 F.3d 361, 366 (5th Cir. 2008); *Alexander*, 294 F.3d at 629. "A petitioner's failure to satisfy the statute of limitations must result from external factors beyond his control; delays of the petitioner's own making do not qualify." *In re Wilson*, 442 F.3d 872, 875 (5th Cir. 2006). Petitioner has not shown how this course of events constitutes state action (or even inaction) preventing him from filing his §2254. *Krause v. Thaler*, 637 F.3d 558, 562 (5th Cir. 2011); *Egerton v. Cockrell*, 334 F.3d 433, 438–39 (5th Cir. 2003).

Additionally, a garden variety claim of excusable neglect, such as a simple miscalculation that leads one to miss a filing deadline by 601 days, does not warrant equitable tolling. *Holland v. Florida*, 560 U.S. 631, 651–52 (2010). The diligence required for equitable tolling purposes is reasonable diligence. *Id.* at 653. The petitioner bears the burden of establishing entitlement to equitable tolling. *Petty*, 530 F.3d at 365.

Because Petitioner has not carried his burden to show that equitable tolling is warranted, this Court, in its discretion, will refuse to apply equitable tolling. Petitioner has not shown that any principles of equitable tolling save his §2254, and since none of the claims raised by Petitioner were based on any new facts or newly discovered evidence Petitioner did not have at his disposal when he received his disciplinary punishment, his case is time-barred.

VI. Certificate of appealability

Because this habeas corpus petition is governed by AEDPA, codified as amended at 28 U.S.C. §2253, a certificate of appealability (COA) is required before an appeal may proceed. *See Hallmark v. Johnson*, 118 F.3d 1073, 1076 (5th Cir. 1997) (noting that actions filed under either 28 U.S.C. §2254 or §2255 require a COA). "This is a jurisdictional prerequisite because the COA statute mandates that '[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals ....'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citing 28 U.S.C. §2253(c)(1)).

A COA will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. §2253(c)(2), which requires a petitioner to demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, this requires a petitioner to 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.'" *Miller-El*, 537 U.S. at 336. Where denial of relief is based on procedural grounds, the petitioner must show not only that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," but also that they "would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

A district court may deny a COA, *sua sponte*, without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). For the reasons discussed above, the Court concludes that jurists of reason would not debate whether any procedural ruling here was correct or whether the petitioner stated a valid claim of the denial of a constitutional right. Therefore, a COA will not be issued in this case.

VII. Conclusion

Accordingly, it is hereby **ORDERED** Petitioner's §2254 is **DENIED** and **DISMISSED WITH PREJUDICE** as it is time-barred, and a **COA WILL NOT BE ISSUED** in this case.

It is so **ORDERED**.

SIGNED this 8th day of August, 2024.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

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

COREY CORTEZ,
Plaintiff

v.

BOBBY LUMPKIN,
Defendant

§
§
§
§
§
§
§
§
§

P-23-CV-00048-DC

FINAL JUDGMENT

On this day, the Court entered an Order Dismissing Petitioner's Application for Writ of Habeas Corpus by a Person in State Custody filed pursuant to 28 U.S.C. §2254 (§2254), as time-barred. The Court now enters its Final Judgment under Federal Rule of Civil Procedure 58.

Accordingly, it is hereby **ORDERED** that Petitioner's §2254 is **DENIED AND DISMISSED**.

It is further **ORDERED** that Petitioner's §2254 is **DISMISSED WITH PREJUDICE**, with the Parties to bear their own costs.

It is finally **ORDERED** that all other pending motions, if any, are **DENIED AS MOOT AND A CERTIFICATE OF APPEALABILITY WILL NOT BE ISSUED IN THIS CASE.**

It is so **ORDERED**.

SIGNED this 8th day of August, 2024.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

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

COREY CORTEZ, *Petitioner*	§	
v.	§	**P-23-CV-00048-DC**
BOBBY LUMPKIN, *Respondent*	§	

ORDER DENYING MOTION FOR RECONSIDERATION UNDER RULE 59(e) AND DENYING A CERTIFICATE OF APPEALABILITY [DOCKET NUMBER 31]

Before the Court is Petitioner's Motion for New Trial filed pursuant to Fed. R. Civ. P. 59(e) and construed by this Court as a Motion for Reconsideration, timely filed on August 22, 2024. [docket number 31]. Petitioner seeks reconsideration of the Court's Orders of August 8, 2024, denying Petitioner's 28 U.S.C. §2254 as being time-barred by 601 days. [docket numbers 29 & 30].

A motion for reconsideration may be made under either Federal Rules of Civil Procedure 59(e) or 60(b). *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n. 1 (5th Cir. 2004). Such a motion "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (quoting *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)). A Rule 59(e) motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Id.* at 479. Instead, Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Id.*

Relief under Rule 59(e) is also appropriate "when there has been an intervening change in the controlling law." *Schiller v. Physicians Resource Grp.*, 342 F.3d 563, 567 (5th Cir. 2003). Altering, amending, or reconsidering a judgment is an extraordinary remedy that courts should

use sparingly. *Templet*, 367 F.3d at 479. Petitioner's Rule 59(e) motion just fails to establish manifest error or offer newly discovered evidence to support Rule 59(e) relief.

After consideration of Petitioner's Motion, the entire court record and relevant case law, the Court concludes that Petitioner has failed to satisfy the requirements for obtaining relief pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Petitioner has failed to show a manifest error of law or present any new evidence to support a Rule 59(e) motion. Petitioner's Motion for Reconsideration fails to make this Court question whether this case is time-barred. Accordingly, Petitioner's Motion for Reconsideration is **DENIED**. [docket number 31].

An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. §2253(c)(1)(A). An appeal from the denial of a Rule 59(e) or Rule 60 motion requires a certificate of appealability (COA) in all but very narrow circumstances. *Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007) ("We therefore hold ... that a COA is not required to appeal the denial of a Rule 60(b) motion ... only when the purpose of the motion is to reinstate appellate jurisdiction over the original denial of habeas relief.").

Moreover, should Petitioner seek appellate review of the denial of this denial of his Rule 59(e) Motion, he will need to obtain a COA. *See Canales v. Quarterman*, 507 F.3d 884, 887–88 (5th Cir. 2007) (finding that a habeas petitioner needs a COA to appeal a Rule 60(b) motion). Petitioner has asked this Court for a COA, though this Court could consider the issue *sua sponte*. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). A court may only issue a COA when "[a petitioner] has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A COA may issue when the claims "presented were adequate to deserve encouragement to proceed further." *Slack*,

529 U.S. at 484. As the issues in this case do not deserve encouragement to proceed further, this Court will not issue a COA. If the District Judge has denied the COA, Petitioner may then request issuance of the certificate by a Circuit Judge. Fed. R. App. P. 22(b).

Based on the above standards, and upon consideration of the record as a whole, the Court concludes that Petitioner is not entitled to a COA. That is, reasonable jurists could not debate the Court's resolution of his claims, nor do these issues deserve encouragement to proceed. *See United States v. Jones,* 287 F.3d 325, 329 (5th Cir. 2002). Therefore, a COA will not issue.

It is so **ORDERED**.

SIGNED this 27th day of August, 2024.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

APPENDIX B

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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

May 06, 2025

#01781679
Mr. Corey Cortez
CID Lynaugh Prison
1098 S. Highway 2037
Fort Stockton, TX 79735-0000

No. 24-50785 Cortez v. Guerrero
USDC No. 4:23-CV-48

Dear Mr. Cortez,

We are taking no action on your motion for reconsideration because it is untimely.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675

cc:
Ms. Sarah Miranda Harp
Mr. Edward Larry Marshall

United States Court of Appeals for the Fifth Circuit

No. 24-50785

United States Court of Appeals
Fifth Circuit
FILED
March 12, 2025
Lyle W. Cayce
Clerk

COREY CORTEZ,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 4:23-CV-48

ORDER:

Corey Cortez, Texas prisoner # 01781679, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application, which challenged his 2021 prison disciplinary conviction arising out of an assault on an officer in March 2021, and his Federal Rule of Civil Procedure 59(e) motion. The district court dismissed Cortez's application as untimely pursuant to 28 U.S.C. § 2244(d). Cortez asserts that the district court incorrectly determined the dates upon which he could have ascertained the factual predicate of his claims and maintains that he acted diligently in

pursuing his administrative remedies. In addition, he contends that the respondent erred in stating that he failed to state a valid habeas claim, as he asserts that he was denied due process during his disciplinary hearing and that he was denied parole as a result of the unconstitutional hearing. Although Cortez also seeks to challenge a second disciplinary hearing in his COA brief before this court, he may not do so in the first instance. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

To obtain a COA to appeal the dismissal of a § 2254 application, Cortez must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Because the district court dismissed Cortez's application on procedural grounds without reaching the merits of his claims, he must show "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. Cortez has not made the requisite showing. Accordingly, his motion for a COA is DENIED. His motion to proceed in forma pauperis on appeal is likewise DENIED.

Dana M. Douglas

DANA M. DOUGLAS
United States Circuit Judge