

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 24, 2026

Lyle W. Cayce
Clerk

No. 25-40516

ADRIAN ALDON KEATON,

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 Eastern District of Texas
USDC No. 4:22-CV-329

UNPUBLISHED ORDER

Before GRAVES, HO, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

Adrian Aldon Keaton, Texas prisoner # 2295075, moves for a certificate of appealability (COA) to appeal the time-bar dismissal of his 28 U.S.C. § 2254 application challenging his convictions and sentences for assault on a public servant and retaliation and the denial of his Federal Rule of Civil Procedure 59(e) motion. When his pro se pleadings are construed

No. 25-40516

liberally, Keaton contends that the district court erred by determining that (1) he was not entitled to equitable tolling of the 28 U.S.C. § 2244(d)(1)(A) limitations period, and (2) he had not proven his claims of actual innocence and miscarriage of justice as required to serve as a gateway for consideration of his otherwise time-barred constitutional claims. We will not consider Keaton's claim, raised for the first time on appeal, that he is not required to obtain a COA because his § 2254 application also constitutes a 28 U.S.C. § 2241 petition. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

A COA may issue only if the applicant has made "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). When the district court denies relief on procedural grounds, a COA should issue only if the applicant establishes that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Slack*, 529 at 484.

Keaton fails to make the necessary showing. Accordingly, his motion for a COA is DENIED. All other pending motions are likewise DENIED. As Keaton fails to make the required showing for a COA on his constitutional claims, we do not reach the question whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ADRIAN ALDON KEATON, #02295075

VS.

DIRECTOR, TDCJ-CID

§
§
§
§
§

CIVIL ACTION NO. 4:22cv329

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Aileen Goldman Durrett, who issued a Report and Recommendation (“the Report”) (Dkt. #55) concluding that the petition for writ of habeas corpus should be denied and dismissed with prejudice as time-barred. Petitioner filed objections. (Dkt. #56).

In the objections, Petitioner complains that the Magistrate Judge did not address the claims in his § 2254 petition and then continues to argue the merits of those claims. The Report did not address the merits of his claims because it recommended that the petition be denied and dismissed as time-barred. Petitioner fails to show that the Report is in error. Petitioner’s objections are without merit.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** that the petition for a writ of habeas corpus is **DENIED** and that the case is **DISMISSED** with prejudice as time-barred. It is also **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that all other motions not previously ruled on are hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this 1st day of August, 2025.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ADRIAN ALDON KEATON, #02295075	§	
	§	
VS.	§	CIVIL ACTION NO. 4:22cv329
	§	
DIRECTOR, TDCJ-CID	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pro Se Petitioner Adrian Aldon Keaton filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge.

MOTION FOR SUMMARY JUDGMENT

On August 30, 2022, Petitioner filed a motion for summary judgment. (Dkt. #24). A motion for summary judgment, however, is not a proper method of adjudicating a § 2254 petition. *See Browder v. Dir., Ill. Dep't of Corr.*, 434 U.S. 257, 269 n.14 (1978); *Gordon v. Dir., TDCJ-CID*, No. 4:17CV786, 2018 WL 3060533, at *1 (E.D. Tex. Apr. 25, 2018), *report and recommendation adopted*, No. 4:17CV786, 2018 WL 3046540 (E.D. Tex. June 19, 2018); *Crow v. Dir., TDCJ-CID*, No. 4:16CV545, 2018 WL 2144503, at *1 (E.D. Tex. Mar. 22, 2018), *report and recommendation adopted*, No. 4:16-CV-545, 2018 WL 2129107 (E.D. Tex. May 7, 2018); *see also United States v. Hurley*, 2005 WL 1473828, at *2 n.5 (N.D. Tex. June 22, 2005), *report and recommendation adopted*, 2005 WL 1614017 (N.D. Tex. July 8, 2005) (a motion for summary judgment is not proper method for adjudicating a motion pursuant to U.S.C. § 2255); *Ziolkowski v. Dir., TDCJ-*

CID, No. 5:17-CV-50, 2019 WL 4580425, at *1 (E.D. Tex. May 13, 2019) (“A motion for summary judgment is a highly disfavored, if not improper, method of adjudicating a petition for writ of habeas corpus.”). *The Rules Governing Section 2254 Cases in the United States District Courts* do not contemplate such a motion. Although Rule 12 permits a court to apply the Federal Rules of Civil Procedure when appropriate, a dispositive motion, such as the instant motion, is not appropriate or necessary in the habeas context. This is especially true where the motion essentially seeks the same relief as that sought in the underlying petition for writ of habeas corpus. For these reasons, the Court should summarily deny the motion.

RECOMMENDATION

It is accordingly recommended that the motion for summary judgment (Dkt. #24) be **DENIED** without prejudice.

Within fourteen (14) days after service of the magistrate judge’s report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). 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.

Failure to file specific, written objections will bar the party from appealing the unobjected to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 15th day of September, 2022.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 1, 2026

Lyle W. Cayce
Clerk

No. 25-40516

ADRIAN ALDON KEATON,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:22-CV-329

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before GRAVES, Ho, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R.40 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**