

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Sergio Diaz Hernandez v. United States

Diaz Hernandez · No. 25-cv-2221 W; 25-cr-0966 W · Decided February 5, 2026

SUMMARY

The United States District Court for the Southern District of California denied Sergio Diaz Hernandez’s motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence for illegal reentry. The court rejected his ineffective-assistance claims concerning prior removal orders and alleged coercion to withdraw his appeal, relying in part on the valid appellate and collateral-attack waiver in his plea agreement. The court also denied a certificate of appealability and terminated his motion for status.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Thomas J. Whelan
JURISDICTION	United States District Court for the Southern District of California
DECIDED	February 5, 2026
DOCKET	25-cv-2221 W; 25-cr-0966 W
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner moved under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence based on ineffective assistance of counsel. The district court denied the petition, denied a certificate of appealability, and terminated his motion requesting a status update.
STANDARD OF REVIEW	To establish ineffective assistance of counsel, a petitioner must show deficient performance and prejudice under Strickland v. Washington. Prejudice requires a reasonable probability that, but for counsel's error, the result would have been different. The court also assessed whether reasonable jurists could debate its resolution of the claims in deciding whether to issue a certificate of appealability.
PRECEDENTIAL VALUE	unpublished
PARTIES	Sergio Diaz Hernandez v. United States of America

TOPICS

post-conviction relief

ineffective assistance

plea bargaining

appellate procedure

criminal immigration

PRACTICE AREAS

Federal post-conviction

Criminal procedure

Ineffective assistance of counsel

Immigration crimes

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to move to dismiss on the ground that Petitioner had not previously been ordered removed from the United States.
2. Whether counsel's alleged coercion of Petitioner into withdrawing his appeal constituted ineffective assistance causing prejudice.
3. Whether Petitioner was entitled to a certificate of appealability.

HOLDINGS

1. Petitioner failed to establish ineffective assistance because the record, including his plea-agreement admission and the government's evidence, showed that he had previously been removed from the United States.
2. Petitioner could not establish prejudice from counsel's alleged coercion in withdrawing the appeal because he had validly waived his appellate and collateral-attack rights in the plea agreement.
3. A certificate of appealability was denied because reasonable jurists would not find the court's assessment of the claims debatable or wrong.

KEY QUOTATIONS

“To prevail on an ineffective assistance of counsel claim, Petitioner must prove that his attorney’s performance was grossly deficient, and that Petitioner’s defense was prejudiced by the deficient performance.” (Opinion at 1)

“Given the “distorting effects of hindsight,” in evaluating an ineffective assistance of counsel claim, courts must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”” (Opinion at 1)

FACTUAL BACKGROUND

Petitioner was arrested on a vessel while attempting to reenter the United States without authorization after prior exclusion, deportation, and removal. He pleaded guilty to illegal reentry under 8 U.S.C. § 1326(a) and admitted in his plea agreement that he had been removed or deported on June 11, 2024. The district court sentenced him to 46 months in prison, and he later voluntarily dismissed his appeal. His § 2255 petition asserted that counsel failed to challenge the existence of a prior removal order and coerced him into withdrawing the appeal.

PROCEDURAL HISTORY

Petitioner pleaded guilty to illegal reentry under 8 U.S.C. § 1326(a) pursuant to a plea agreement containing appellate and collateral-attack waivers. The district court sentenced him to 46 months in prison. After filing a

notice of appeal, which he voluntarily dismissed, Petitioner filed this § 2255 petition alleging ineffective assistance based on counsel's failure to challenge his prior removals and alleged coercion in withdrawing the appeal.

DISPOSITION

dismissed

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- U.S. v. Quintero-Barraza, 78 F.3d 1344 (9th Cir. 1995)
- Slack v. McDaniel, 529 U.S. 473 (2000)

OPINION

Diaz-Hernandez

PER CURIAM.

1 2 3 4 5 6 7 8 9

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 13 SERGIO DIAZ HERNANDEZ, Case No.: 25-cv-2221 W 25-cr-0966 W 14 Petitioner,

15 v. ORDER DENYING (1) PETITION FOR

WRIT OF HABEAS CORPUS [DOC. 36]

16 UNITED STATES OF AMERICA,

(2) DENYING CERTIFICATE OF

17 Respondent. APPEALABILITY AND

(3) TERMINATING MOTON FOR

18

STATUS [DOC. 40]

19 20 Pending before the Court is Petitioner Sergio Diaz Hernandez’s Motion Under 28 21 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody 22 (the “Petition”). Petitioner is proceeding pro se. Respondent United States of America 23 opposes. 24 The Court decides the matter on the papers submitted and without oral argument. 25 See Civil Local Rule 7.1 (d.1). For the reasons stated below, the Court DENIES the 26 Petition [Doc. 36], DENIES a Certificate of Appealability, and TERMINATES the 27 motion for status [Doc. 40]. 28

1 I. BACKGROUND

2 According to the Complaint, on or about March 5, 2025, Petitioner was arrested on 3 a panga-style vessel while attempting to enter the United States without authorization and 4 after having been previously excluded, deported and removed from the United States. 5 (Compl. [Doc. 1] p. 2.) A routine record check of Petitioner revealed a criminal and 6 immigration history. (Id.) This

included immigration records from the Department of Homeland Security stating that Petitioner was previously deported to Mexico through Brownsville, Texas. (Id.) The records also showed that Petitioner has not applied for permission to return to the United States after being removed. (Id.) On May 14, 2025, Petitioner signed a Plea Agreement in which he pled guilty to a one-count Superseding Information charging him with an Illegal Reentry violation under 8 U.S.C. § 1326(a). (Plea Agree. [Doc. 25] ¶ A.1) The Plea Agreement included an appellate and collateral attack waiver. (Id. ¶ XI.) On June 16, 2025, this Court sentenced Petitioner to 46 months in prison. (See Judgment [Doc. 31].) On June 27, 2025, Petitioner filed a notice of appeal, which was then voluntarily dismissed on July 15, 2025. (See Notice of Appeal [Doc. 32]; USCA Dispositive Order [Doc. 35].) On August 25, 2025, Petitioner filed the Petition arguing ineffective assistance of counsel based on two theories. First, Petitioner argues that he was never previously ordered removed from the United States and his attorney failed to move to dismiss. (Petition [Doc. 36] p.4.) Second, Petitioner argues his attorney coerced him into dismissing his appeal. (Id. p.6.) On September 22, 2025, this Court issued a briefing schedule on the Petition. (See Scheduling Order [Doc. 37].) On October 20, 2025, the United States filed an opposition. (See Opp'n [Doc. 38].) Petitioner did not respond to the United States' opposition but on October 27, 2025, Petitioner filed a motion to set aside the United States' opposition. (See Motion [Doc. 39].) All docket references are to the criminal case, 25-CR-0966. A copy of the Plea Agreement is also attached.

On December 22, 2025, he filed a "motion" notifying the Court that he was transferred to Lompoc and requesting a status on the Petition. (Motion Re. 2255 [Doc. 40] p.1.) For the reasons that follow, the Court will deny the Petition.

II. DISCUSSION

To prevail on an ineffective assistance of counsel claim, Petitioner must prove that his attorney's performance was grossly deficient, and that Petitioner's defense was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Petitioner bears the burden of establishing both elements. *U.S. v. Quintero-Barraza*, 78 F.3d 1344, 1348 (9th Cir. 1995). Given the "distorting effects of hindsight," in evaluating an ineffective assistance of counsel claim, courts must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. Petitioner may establish prejudice only by demonstrating a reasonable probability that but for his attorney's error, the outcome of his trial would have been different. *Id.* at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.* With regard to Petitioner's first claim, it clearly lacks merit. It is premised on the theory that he had not previously been ordered removed from the United States. (Petition [Doc. 36] p.4.) But in the Plea Agreement, Petitioner admitted that he was removed or deported from the United States on June 11, 2024, approximately nine months before his most recent arrest. (Plea Agree. ¶ II.B.1.) Moreover, the United States' opposition details Petitioner's prior ordered removals. Specifically, the opposition explains that Petitioner was administratively removed after a 2010

conviction for an aggravated felony and was then removed again in 2016 and 2024 based on the reinstatement of the final administrative removal order. (Opp’n [Doc. 38] 3:19–4:7, citing Exhibits 6 – 11 [Docs. 27 28 1 through 38-11].) In light of these removals, Petitioner’s first ineffective assistance of counsel claim lacks merit. * 3 Regarding the theory that Petitioner’s attorney coerced him into dismissing the appeal, it is first important to emphasize that Petitioner is not contending his attorney’s performance was deficient in relation to the Plea Agreement. As a result, the Plea Agreement and all of its terms, including the appellate and collateral attack waiver, are valid. Because Petitioner waived his right to appeal, his defense could not have been prejudiced by his attorney’s alleged “coercion” to withdraw the appeal. 9

10 || TT. CONCLUSION & ORDER

11 For the foregoing reasons, the Court DENIES the Petition [Doc. 36]. Because reasonable jurists would not find the above assessment of the claims debatable or wrong, 13 Court DENIES a certificate of appealability. See *Slack v. McDaniel*, 529 U.S. 473, 14 (2000). The Clerk of the Court shall close the district court file and TERMINATE 15 motion for a status [Doc. 40]. 16 IT IS SO ORDERED. 17 || Dated: February 5, 2026 \

19 Hn. 7 omas J. Whelan

20 Unted States District Judge 21 22 23 24 25 26 27 28 2 As the Government notes, the appellate and collateral attack waiver in the Plea Agreement also bars his first claim. (Gov. Opp’n [Doc. 38] 4:15—5:4.)