

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

OPINION

Diaz-Hernandez

PER CURIAM.

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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 7 Homeland Security stating that Petitioner
was previously deported to Mexico through 8 Brownsville, Texas. (Id.) The records also showed
that Petitioner has not applied for 9 permission to return to the United States after being removed.
(Id.) 10 On May 14, 2025, Petitioner signed a Plea Agreement in which he pled guilty to a 11 one-
count Superseding Information charging him with an Illegal Reentry violation under 12 8 U.S.C. §

1326(a). (Plea Agree. [Doc. 25] ¶ A.1) The Plea Agreement included an 13 appellate and collateral attack waiver. (Id. ¶ XI.) 14 On June 16, 2025, this Court sentenced Petitioner to 46 months in prison. (See 15 Judgment [Doc. 31].) On June 27, 2025, Petitioner filed a notice of appeal, which was 16 then voluntarily dismissed on July 15, 2025. (See Notice of Appeal [Doc. 32]; USCA 17 Dispositive Order [Doc. 35].) 18 On August 25, 2025, Petitioner filed the Petition arguing ineffective assistance of 19 counsel based on two theories. First, Petitioner argues that he was never previously 20 ordered removed from the United States and his attorney failed to move to dismiss. 21 (Petition [Doc. 36] p.4.) Second, Petitioner argues his attorney coerced him into 22 dismissing his appeal. (Id. p.6.) 23 On September 22, 2025, this Court issued a briefing schedule on the Petition. (See 24 Scheduling Order [Doc. 37].) On October 20, 2025, the United States filed an opposition. 25 (See Opp’n [Doc. 38].) Petitioner did not respond to the United States’ opposition but on 26 27 1 All docket references are to the criminal case, 25-CR-0966. A copy of the Plea Agreement is also 28

1 December 22, 2025, he filed a “motion” notifying the Court that he was transferred to 2 Lompoc and requesting a status on the Petition. (Motion Re. 2255 [Doc. 40] p.1.) 3 For the reasons that follow, the Court will deny the Petition. 4

5 II. DISCUSSION

6 To prevail on an ineffective assistance of counsel claim, Petitioner must prove that 7 his attorney’s performance was grossly deficient, and that Petitioner’s defense was 8 prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 9 (1984). Petitioner bears the burden of establishing both elements. *U.S. v. Quintero- 10 Barraza*, 78 F.3d 1344, 1348 (9th Cir. 1995). 11 Given the “distorting effects of hindsight,” in evaluating an ineffective assistance 12 of counsel claim, courts must “indulge a strong presumption that counsel’s conduct falls 13 within the wide range of reasonable professional assistance.” *Strickland*, 466 U.S. at 689. 14 Petitioner may establish prejudice only by demonstrating a reasonable probability that but 15 for his attorney’s error, the outcome of his trial would have been different. *Id.* at 694. A 16 reasonable probability is “a probability sufficient to undermine confidence in the 17 outcome.” *Id.* 18 With regard to Petitioner’s first claim, it clearly lacks merit. It is premised on the 19 theory that he had not previously been ordered removed from the United States. (Petition 20 [Doc. 36] p.4.) But in the Plea Agreement, Petitioner admitted that he was removed or 21 deported from the United States on June 11, 2024, approximately nine months before his 22 most recent arrest. (Plea Agree. ¶ II.B.1.) Moreover, the United States’ opposition details 23 Petitioner’s prior ordered removals. Specifically, the opposition explains that Petitioner 24 was administratively removed after a 2010 conviction for an aggravated felony and was 25 then removed again in 2016 and 2024 based on the reinstatement of the final 26 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 2 || counsel claim lacks merit. * 3 Regarding the theory that Petitioner’s attorney coerced him into dismissing the 4 || 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.

TT. CONCLUSION & ORDER

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, 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 motion for a status [Doc. 40]. IT IS SO ORDERED. Dated: February 5, 2026 \

Hon. Thomas J. Whelan

United States District Judge 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.)