



United States Department of State

*United States Permanent Mission to the  
Organization of American States*

*Washington, D.C. 20520*

April 3, 2019

Dr. Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Julius Omar Robinson, P-561-12**  
**Further Observations of the United States**

Dear Dr. Abrão:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights ("Commission") further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of Mr. Robinson dated April 2, 2018, which were transmitted to the United States via a letter on October 12, 2018. Please find enclosed the United States' observations. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'C. Trujillo', written over a light blue horizontal line.

Carlos Trujillo  
Ambassador

Enclosures: as stated

Enclosures:

1. *Julius Omar Robinson (02) v. United States of America*, Case 4:05-cv-00756-Y, Memorandum Opinion and Order Transferring 60(b) Motion (June 20, 2018).
2. *In re: Julius Omar Robinson (United States v. Robinson)*, No. 18-10732, Reply Brief Regarding Issues Not Requiring A Certificate of Appealability, (Nov. 2, 2018).
3. Letter from the IACHR to Julius Robinson of September 20, 2017.

**JULIUS OMAR ROBINSON, P-561-12**  
**FURTHER OBSERVATIONS OF THE UNITED STATES**

We appreciate the opportunity to provide further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of Mr. Robinson dated April 2, 2018, which were transmitted to the United States via a letter on October 12, 2018.

The United States recalls its submission of September 7, 2016, in this matter. In that submission, we explained that the Petition is inadmissible and does not demonstrate a failure of the United States to live up to any commitment under the American Declaration. Although the Commission subsequently invoked Article 36(3) of the Rules of Procedure (“the Rules”) to defer a decision on the admissibility of the Petition,<sup>1</sup> the United States reiterates the positions of the September 2016 submission and respectfully requests again that the Commission find the Petition inadmissible.

For the reasons explained below, the Petition remains inadmissible under Article 31 of the Rules because Petitioner has not exhausted his domestic remedies and continues to litigate his case in the domestic courts of the United States. Moreover, Petitioner’s new “Claim VII” under Article XXVI of the American Declaration is out of order under Article 34(b) of the Rules and is therefore inadmissible. Finally, the United States urges the Commission to refrain from operating as a court of fourth instance in this matter.

**I. Petition is inadmissible because Petitioner has not exhausted domestic remedies**

The United States respectfully submits that the matter addressed by the Petition is not admissible and must be dismissed because it fails to meet the Commission’s established criteria in Article 34 of its Rules of Procedure (“Rules”). In particular, supervening information and evidence presented in this response

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<sup>1</sup> Letter from the IACHR to the United States of September 20, 2017.

pursuant to Article 34(c) demonstrates that Petitioner continues to pursue domestic remedies on the very matters raised in this Petition.

Petitioner continues to litigate his case before the federal courts of the United States. On February 28, 2018—shortly before Petitioner’s most recent submission to the Commission—Petitioner filed a motion to reopen the judgment of the U.S. District Court for the Northern District of Texas pursuant to Federal Rule of Civil Procedure 60(b)(6). On June 20, 2018, the District Court issued an opinion and order transferring Petitioner’s motion to the U.S. Court of Appeals for the Fifth Circuit.<sup>2</sup> Attached, for the convenience of the Commission, is the most recent opinion in this matter, as well as Petitioner’s most recent brief in this matter, filed on November 2, 2018.<sup>3</sup> To be sure, the United States supports Petitioner’s pursuit of all domestic remedies, as he must under Article 31 of the Rules, however Petitioner’s representation to the Commission in his submission of April 2, 2018, that “he has exhausted all domestic remedies” is plainly erroneous as he remained actively engaged in domestic litigation.<sup>4</sup>

As these ongoing proceedings demonstrate, Petitioner continues to litigate the question of whether denial of his Certificate of Appealability (COA) by the U.S. Court of Appeals for the Fifth Circuit was proper. This is the very same claim Petitioner presents in his Petition as “Claim VI.” Not only does resolution of *ongoing* domestic proceedings in the United States obviate Petitioner’s “Claim VI” in its entirety, but favorable disposition of such litigation would provide Petitioner further avenue to pursue the other claims contained in his Petition. A favorable outcome of his pending motion could therefore provide Petitioner with the material relief he currently seeks from the Commission. Moreover, Petitioner continues to press his substantive claims in U.S. courts: for example, Petitioner continues to litigate his claims of racial discrimination and indictment error, the very same allegations underpinning “Claim I,” “Claim II,” and “Claim III” of his Petition.

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<sup>2</sup> See Enclosure #1 (*Julius Omar Robinson (02) v. United States of America*, Case 4:05-cv-00756-Y, Memorandum Opinion and Order Transferring 60(b) Motion (June 20, 2018)).

<sup>3</sup> See Enclosure #2 (*In re: Julius Robinson (United States v. Robinson)*, Reply Brief Regarding Issues Not Requiring A Certificate of Appealability, Case No. 18-10732 (Nov. 2, 2018)).

<sup>4</sup> Petitioner Additional Observations, at 4.

The Commission has repeatedly emphasized that a petitioner has the duty to pursue all available domestic remedies. Article 31(1) of the Rules states that “[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.” As the Commission is aware, the requirement of exhaustion of domestic remedies stems from customary international law, as a means of respecting State sovereignty. It ensures that the State on whose territory a human rights violation allegedly has occurred has the opportunity to redress the allegation by its own means within the framework of its own domestic legal system.<sup>5</sup> It is a sovereign right of a State conducting judicial proceedings for its national system to be given the opportunity to determine the merits of a claim and decide the appropriate remedy before resort to an international body.<sup>6</sup> The Inter-American Court of Human Rights has remarked that the exhaustion requirement is of particular importance “in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction.”<sup>7</sup> The Commission has repeatedly made clear that the petitioner has the duty to pursue *all* available domestic remedies.<sup>8</sup> And, as the Commission has stated, “[m]ere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies.”<sup>9</sup>

The Commission must declare the Petition inadmissible because Petitioner has not satisfied his duty to demonstrate that he has “invoked and exhausted” domestic remedies under Article 20(c) of the Commission’s Statute and Article 31 of the Rules. The Commission should not intervene at any stage of ongoing domestic court proceedings where success in those proceedings would provide the

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<sup>5</sup> See, e.g., *Interhandel Case* (Switzerland v. United States) [1959] I.C.J. 6, 26–27; *Panevezys-Saldutiskis Railway Case* (Estonia v. Lithuania), 1939 P.C.I.J., Ser. A/B, No. 76.

<sup>6</sup> THOMAS HAESLER, *THE EXHAUSTION OF LOCAL REMEDIES IN THE CASE LAW OF INTERNATIONAL COURTS AND TRIBUNALS* (1968), at 18–19.

<sup>7</sup> *Velásquez Rodríguez Case*, Judgment of July 29, 1988, ¶ 61, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).

<sup>8</sup> See, e.g., *Páez García v. Venezuela*, Petition No. 670-01, Report No. 13/13, Mar. 20, 2013, Analysis § B(1) & Conclusions ¶ 35 (finding petition inadmissible for failure to exhaust because petitioner did not avail himself of remedies available to him in the domestic system).

<sup>9</sup> *Sánchez et al. v. United States* (“Operation Gatekeeper”), Petition No. 65/99, Inadmissibility (“Operation Gatekeeper Inadmissibility Decision”), ¶ 67.

relief the petitioner seeks from the Commission. Further, the Commission cannot—consistent with the Rules and the principles of international law reflected therein—assess the merits of the Petition while ongoing domestic litigation could provide Petitioner with the redress he seeks from the Commission.

## **II. Petitioner’s new “Claim VII” under Article XXVI of the American Declaration is Out of Order**

The United States further recalls that the Petition raised six claims,<sup>10</sup> and that the United States submitted in its prior submission that the claims in the Petition lack merit because the Petition does not show a failure to live up to the commitments the United States has made under the American Declaration. However Petitioner now introduces a new claim under Article XXVI of the American Declaration not included in the Petition. In its letter dated September 20, 2017, the Commission requested that the Petitioner submit “additional observations on the merits of the case.”<sup>11</sup> Although Petitioner has characterized this as a request for a submission “addressing the admissibility and merits of his claims,”<sup>12</sup> the Commission did not invite Petitioner to present further admissibility arguments, much less introduce entirely new claims. Petitioner cannot be permitted to introduce by sleight of hand an entirely new claim at the merits phase of this proceeding. Nothing in the Rules permits Petitioner, at this stage, to introduce new claims beyond those in the Petition, and Petitioner’s “Claim VII” is plainly out of order under Article 34(b) of the Rules and, as such, inadmissible.

Moreover, the Commission’s stated purpose in invoking Article 36(3) of the Rules to defer an admissibility decision is to reduce its procedural backlog.<sup>13</sup> However, allowing Petitioner to introduce new claims at this stage would undermine the stated purpose of such joinder because it would require additional submissions on the admissibility of such new claims prior to reaching their merits. Allowing Petitioner to expand the scope of the Petition by introducing new claims at this stage undermines the Commission’s procedures and challenges the integrity of the Commission’s practice of joining the admissibility and merits consideration

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<sup>10</sup> Petition at 11.

<sup>11</sup> Enclosure #2 (Letter from the IACHR to Julius Robinson of September 20, 2017).

<sup>12</sup> Petitioner Additional Observations, at 10.

<sup>13</sup> See Enclosure #2 (Letter from the IACHR to Julius Robinson of September 20, 2017.)

of a petition. Accordingly, and because Petitioner has not first established the admissibility of those new claims pursuant the Rules, it must be deemed inadmissible at this stage under Article 34(b) of the Rules. The United States therefore regards the scope of the Petition to remain those claims raised by Petitioner in the Petition.<sup>14</sup>

### **III. Applicable Authority and Fourth Instance Formula**

In his most recent submission, Petitioner again alleges that the United States has “violated”<sup>15</sup> certain specific rights recognized in the American Declaration of the Rights and Duties of Man (“American Declaration”). As noted in numerous prior submissions, the United States has undertaken a political commitment to uphold the American Declaration, an instrument that does not itself create legal rights or impose legal obligations on member States of the Organization of American States (OAS).<sup>16</sup> Article 20 of the Statute of the Commission sets forth

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<sup>14</sup> In the event the Commission were to entertain Petitioner’s new “Claim VII” under Article XXVI of the Declaration, that claim is plainly inadmissible under Articles 31 and 34 of the Rules. Plaintiff has failed to demonstrate that he has exhausted his domestic remedies with respect to this claim, and instead concedes that the matter is “in litigation.” See Petitioner Additional Observations, at 33. Nor has Petitioner demonstrated the timeliness of this claim under Article 32 of the Rules. Petitioner’s claim that the United States “does not contend” the admissibility of this claims is plainly without merit as this claim has been raised for the first time in Petitioner’s submission of its observation on merits.

<sup>15</sup> As the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member states of the Organization of American States, *see infra* note 2, the United States understands that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration.

<sup>16</sup> The United States has consistently maintained that the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member states of the OAS. U.S. courts of appeal have independently held that the American Declaration is nonbinding and that the Commission’s decisions do not bind the United States. *See, e.g.,* Garza v. Lappin, 253 F.3d 918, 925 (7th Cir. 2001); *accord, e.g.,* Flores-Nova v. Attorney General of the United States, 652 F.3d 488, 493–94 (3rd Cir. 2011); *In re Hicks*, 375 F.3d 1237, 1241 n.2 (11th Cir. 2004). As explained by the U.S. Court of Appeals for the Seventh Circuit in *Garza*, “[n]othing in the OAS Charter suggests an intention that member states will be bound by the Commission’s decisions before the American Convention goes into effect. To the contrary, the OAS Charter’s reference to the Convention shows that the signatories to the Charter intended to leave for another day any agreement to create an international human rights organization with the power to bind members. The language of the Commission’s statute similarly shows that the Commission does not have the power to bind member states.” *Accord* Commission Statute, art. 20 (setting forth recommendatory but not binding powers). For a further discussion of the U.S. position regarding the nonbinding nature of the American Declaration, *see* Request for an Advisory Opinion Submitted by the Government of Colombia to the

the Commission’s powers that relate specifically to OAS member States that, like the United States, are not parties to the legally binding American Convention on Human Rights, including to pay particular attention to observance of certain enumerated human rights set forth in the American Declaration, to examine communications and make recommendations to the State, and to verify whether in such cases domestic legal procedures and remedies have been applied and exhausted. The Commission lacks competence to issue a binding decision vis-à-vis the United States on matters arising under other international human rights treaties (whether or not the United States is a party) or under customary international law.<sup>17</sup>

It is against this backdrop that Petitioner’s assertions regarding applicable authorities must be measured. Petitioner claims that the “applicable authorities here are the American Declaration and Inter-American jurisprudence (informed by relevant treaties) – not U.S. domestic case law.”<sup>18</sup> To be sure, the Commission’s competence with respect to the United States is limited to the American Declaration. However, the Commission is necessarily distinguishable from the Inter-American Court—the jurisdiction of which the United States has not accepted—and is not empowered to issue legally-binding decisions vis-à-vis the United States. The authority of the Commission under Article 20(b) of the Statute with respect to the United States is “to make recommendations to it, when it finds appropriate, in order to bring about more effective observance of human rights.”<sup>19</sup> Accordingly, the reports of the Commission are not properly construed as “legal authorities,”<sup>20</sup> do not constitute “applicable law” in any sense of the term,<sup>21</sup> and do not collectively constitute “governing case law” or “jurisprudence.”<sup>22</sup> The reports of the Commission do not constitute international law and nothing in the Statute of the Commission or the OAS Charter suggests otherwise. Given this, there can be

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Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, available at <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>.

<sup>17</sup> Petitioner’s reference to Article 38 of the Statute of the International Court of Justice—which establishes the competence of the ICJ—suggests a fundamental misapprehension of the competence of the Commission. See Petitioner’s submission of May 10, 2018, at 2 fn. 5.

<sup>18</sup> Petitioner Additional Observations, at 41.

<sup>19</sup> Statute Art. 20(b).

<sup>20</sup> Petitioner Additional Observations, at 43.

<sup>21</sup> *Id.* at 44.

<sup>22</sup> *Id.*



no “conflict” between the domestic law of the United States and the reports of the Commission—and recommendations contained therein—because there is no international law with which to conflict.

Whether or not Petitioner’s rights to life, equal protection, fair trial, petition, and due process—rights affirmed at the regional level in the American Declaration—have been respected is squarely a question of whether these protections have been afforded under domestic law. Consequently, the legal authorities relevant to the merits of the Petition under review *are* domestic authorities.<sup>23</sup> The 2016 submission of the United States correctly framed the issues as such, and conclusively demonstrated that domestic law did in fact afford the protections affirmed in the Declaration. The Commission is complimentary to domestic systems and operates with the aspiration that States will, over time, draw upon the guidance and example provided by it in developing their domestic protections and processes. To this end, as noted immediately above, the Commission can make recommendations in order to bring about more effective observance of human rights.<sup>24</sup> However the Commission is not empowered to supplant the domestic law of the United States to achieve this end.

As a result, Petitioner’s claims should be dismissed because the Commission lacks competence to sit as a court of fourth instance. The Commission has repeatedly stated that it may not “serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction”—a doctrine the Commission calls the “fourth instance formula.”<sup>25</sup> The fourth instance formula recognizes the proper role of the Commission as subsidiary to States’ domestic judiciaries,<sup>26</sup> and indeed, nothing in the American Declaration, the OAS Charter, the Commission’s Statute, or the

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<sup>23</sup> See, e.g., American Declaration, para. 4 (“The *affirmation* of essential human rights by the American States together with the *guarantees given by the internal regimes of the states* establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions” (emphasis added)).

<sup>24</sup> Statute Art. 20(b).

<sup>25</sup> Marzioni v. Argentina, Case No. 11.673, Report No. 39/96, Inadmissibility, Oct. 15, 1996, ¶ 51 (“*Marzioni* Inadmissibility Report”).

<sup>26</sup> See Castro Tortrino v. Argentina, Case No. 11.597, Report No. 7/98, Admissibility, Mar. 2, 1998, ¶ 17.

Rules gives the Commission the authority to act as an appellate body. The Commission has elaborated on the limitations that underpin the fourth instance formula in the following terms: “The Commission ... lacks jurisdiction to substitute its judgment for that of the national courts on matters that involve the interpretation and explanation of domestic law or the evaluation of the facts.”<sup>27</sup> It is not the Commission’s place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a state’s domestic courts in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task. Under the fourth instance formula, the Commission’s review of Petitioner’s claims is precluded. Petitioner raised before domestic courts the very allegations he makes in the Petition. Domestic courts have carefully deliberated on these matters, and in fact continue to do so.

The Commission must consequently decline this invitation to sit as a court of fourth instance. Acting to the contrary would have the Commission second-guessing the legal and factual determinations of both state and federal courts at multiple levels, conducted in full conformity with due process protections under the U.S. Constitution and fully consistently with U.S. commitments under the American Declaration. The Commission has long recognized that “if [a petition] contains nothing but the allegation that the decision [by a domestic court] was wrong or unjust in itself, the petition must be dismissed under [the fourth instance formula].”<sup>28</sup> The Commission has also reiterated that “the fact that the outcome [of a domestic proceeding] was unfavorable ... does not constitute a violation.”<sup>29</sup> Petitioner attempts to circumvent the fourth instance formula by arguing that it

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<sup>27</sup> *Macedo García de Uribe v. Mexico*, Petition No. 859-03, Report No. 24/12, Inadmissibility, Mar. 20, 2012 (“*Macedo* Inadmissibility Report”), ¶ 40. The Commission has interpreted and applied the fourth instance formula in the same way for OAS Member States that are parties to the legally binding American Convention and for those, including the United States, for which review is instead undertaken pursuant to the nonbinding American Declaration, where there must be even more deference. *See, e.g., id.* at ¶ 40 (emphasis added) (“The judicial protection afforded by the [American] Convention [on Human Rights] includes the right to fair, impartial, and prompt proceedings which give rise to the possibility, *but never the guarantee*, of a favorable outcome. Thus, the interpretation of the law, the relevant proceeding, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.”).

<sup>28</sup> *Marzioni* Inadmissibility Report, *supra* note 42, ¶ 51.

<sup>29</sup> *Maldonado Manzanilla v. Mexico*, Petition No. 733-04, Report No. 87/07, Inadmissibility, Oct. 17, 2007, ¶ 58 (quoting and citing *Rodríguez v. Argentina*, Case No. 10.382, Report No. 6/98, Inadmissibility, Feb. 21, 1998, ¶ 71).

“does not apply . . . [to] rights recognized by the American Declaration.”<sup>30</sup> Given that the competence of the Commission is limited to the rights affirmed in the American Declaration, however, Petitioner’s interpretation of the well-established fourth instance formula would render the principle a nullity: Petitioner’s proposed exception would consume the general rule in its entirety. The claims raised in the Petition are precisely those precluded by application of the fourth instance formula. The fourth instance formula therefore precludes the review sought by Petitioner.

#### **IV. Conclusion**

The Commission should declare the Petition to be inadmissible because Petitioner has not stated facts that tend to establish a violation of any rights in the American Declaration. Moreover, Petitioner continues to litigate this matter in the domestic courts of the United States and introduces a new claim that is out of order, further reasons this Petition should be found inadmissible. Moreover, the Commission should decline the invitation to operate as a court of fourth instance to review Petitioner’s claims which have been carefully adjudicated by the courts of the United States. Should the Commission nevertheless declare the Petition admissible and examine its merits, the United States urges it to find the Petition without merit and deny Mr. Robinson’s request for relief.

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<sup>30</sup> Petitioner Additional Observations, at 47.

2018 WL 3046255

Only the Westlaw citation is currently available.

United States District Court,  
N.D. Texas, Fort Worth Division.

Julius Omar ROBINSON (02), Petitioner,

v.

UNITED STATES of America, Respondent.

Civil No. 4:05-CV-756-Y

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(Criminal No. 4:00-CR-0260-Y)

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Signed 06/20/2018

**Attorneys and Law Firms**

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**MEMORANDUM OPINION AND  
ORDER TRANSFERRING 60(b) MOTION**

**TERRY R. MEANS**, UNITED STATES DISTRICT JUDGE

\*1 Before the Court is Julius Omar Robinson's Motion for Relief from Judgment Pursuant to [Federal Rule of Civil Procedure 60\(b\)\(6\)](#), filed on February 28, 2018. ("Motion," CV doc. 10).<sup>1</sup> Robinson moves to reopen the Court's judgment in a proceeding under [28 U.S.C. § 2255](#). The Motion challenges the validity of Robinson's conviction by attacking various procedural rulings with new case law. Because the Motion is in actuality a second or successive petition for habeas relief, the Court **TRANSFERS** the Motion to the United States Court of Appeals for the Fifth Circuit.

**Background**

This Court sentenced Robinson to death in 2002 after a jury convicted him of murdering Johnny Lee Shelton and Juan Reyes. Robinson was also sentenced to life imprisonment for complicity in a criminal enterprise resulting in the death of Rudolfo Resendez. The Court assessed a second sentence of life imprisonment and a consecutive 300-month sentence on two other counts. (CR doc. 1740.) In 2004, the Fifth Circuit affirmed Robinson's convictions and sentences. [United States v. Robinson](#), 367 F.3d 278 (5th Cir. 2004), *cert. denied*, 543 U.S. 1005 (2004).

In 2005, Robinson moved to vacate the judgment pursuant to [28 U.S.C. § 2255](#). (CR doc. 2279.) Following three years of litigation, the Court denied the motion. [Robinson v. United States](#), No. 4:05-CV-756-Y, No. 4:00-CR-260-Y(2), 2008 WL 4906272 (N.D. Tex. Nov. 7, 2008) (CR doc. 2453.) Robinson moved for reconsideration, which this Court denied. (CR doc. 2456, 2465.) The Court by separate order denied a certificate of appealability ("COA"). (CR doc. 2473.) In 2010, the Fifth Circuit denied Robinson's request for a COA and denied rehearing. (CR doc. 2477, 2482). The Supreme Court denied Robinson's petition for certiorari. (CV doc. 7.)

Robinson moves to reopen the [§ 2255](#) proceedings based on Supreme Court cases that have been decided since this Court denied relief. Respondent contends the Motion fails to meet the standards for relief under [Rule 60\(b\)](#) and, to the extent it raises new claims, it should be transferred to the Court of Appeals as a second or successive petition.

**Applicable Law**

[Federal Rule of Civil Procedure 60\(b\)\(6\)](#) allows a district court to grant relief from a final judgment, order, or proceeding for any reason that justifies relief. *See Fed. R. Civ. P. 60(b)(6)*. The purpose of [Rule 60\(b\)](#) is to "balance the principle of finality of a judgment with the interest of the court in seeing that justice is done in light of all the facts." [Hernandez v. Thaler](#), 630 F.3d 420, 429-30 (5th Cir. 2011). To succeed under [Rule 60\(b\)\(6\)](#), the movant must show that extraordinary circumstances exist that justify the reopening of a final judgment. *See Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

\*2 District courts have jurisdiction to consider [Rule 60\(b\)](#) motions in [28 U.S.C. § 2254](#) habeas proceedings so long as the motion attacks not the substance of the court's

resolution of the claim on the merits, but some defect in the integrity of the habeas proceedings. See *Gonzalez*, 545 U.S. at 532. Because 28 U.S.C. § 2254 and § 2255 are nearly identical in substance, this Circuit applies *Gonzalez* to Rule 60(b) motions to reopen § 2255 proceedings. See *Williams v. Thaler*, 602 F.3d 291, 302 n.5 (5th Cir. 2010); *Davis v. United States*, 417 U.S. 333, 343 (1974) (section 2255 is “intended to afford federal prisoners a remedy identical in scope to federal habeas corpus”). Examples of Rule 60(b) motions that properly raise a defect in the integrity of the habeas proceedings include a claim of fraud on the court or challenges to a procedural ruling that precluded a merits determination, such as failure to exhaust, procedural default, or time bar. *Gonzalez*, 545 U.S. at 532 nn. 4, 5.

The law limits the defendant to one § 2255 motion unless he obtains certification for a successive motion from the Court of Appeals. See 28 U.S.C. §§ 2244, 2255(e), (h); *Gonzalez*, 545 U.S. at 528 (addressing § 2254). Because of the comparative lenience of Rule 60(b), petitioners “sometimes attempt to file what are in fact second-or-successive habeas petitions under the guise of Rule 60(b) motions.” *In re Edwards*, 865 F.3d 197, 203 (5th Cir.), cert. denied sub nom. *Edwards v. Davis*, 137 S. Ct. 909 (2017) (citing *Gonzalez*, 545 U.S. at 531–32). A Rule 60(b) motion that (1) presents a new habeas claim, (2) attacks the federal court’s previous resolution of a claim on the merits, or (3) presents new evidence or new law in support of a claim already litigated, should be treated as a second or successive habeas petition. See *Gonzalez*, 545 U.S. at 531–32. The rationale is that such motions could circumvent the strict successive-petition requirements in § 2255(h). See *id.* (addressing similarly worded provision in § 2244(b)(2)(A)).

### Denial of COA

Robinson first contends that an erroneously high standard was used in denying a COA on his ineffective-assistance-of-counsel claim. He cites *Buck v. Davis*, 137 S. Ct. 759 (2017) as “the Supreme Court’s most recent case on the COA standard” and argues that this Court and the Court of Appeals erred under *Buck* by making a COA determination on the merits rather than simply asking whether the district court ruling was debatable. Motion, p. 5–9. Robinson argues that the COA is a valid subject for Rule 60(b) relief because it is by definition a “non-merits

based decision.” See *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); see Reply, p. 1.

To the extent Robinson seeks to reopen this Court’s order denying a COA, it is not a proper Rule 60(b) motion. *Gonzalez* allows the reopening of procedural decisions that precluded a merits determination. *Gonzalez*, 545 U.S. at 532, n. 4. The denial of COA did not preclude a merits determination; it followed this Court’s merits-based ruling on the ineffective-trial-counsel claim. Robinson simply seeks vindication of the claim through a second round of appellate review. It is, “if not in substance a ‘habeas corpus application,’ at least similar enough that failing to subject it to the same requirements would be ‘inconsistent with’ the statute” governing successive petitions. See *id.* at 531; § 2255(h). The Court has no jurisdiction to consider it.

### Inability to Question Jurors

Next, Robinson reasserts a request to interview jurors that this Court had denied during the § 2255 litigation. He argues that he should be permitted to “conduct an investigation no more intrusive than necessary to determine what role, if any, racial bias played in his convictions and sentences.” Motion, p. 11. This request relies on *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017), which held that the “no impeachment” evidence rule for jurors must yield to the Sixth Amendment when a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict. See *Fed. R. Evid. 606(b)*; see also L. Cr. R. 24.1 (N.D. Tex.); Motion, p. 9–11.

\*3 Robinson made a similar request during the § 2255 litigation “to vindicate his Sixth Amendment right to an impartial jury,” but Robinson’s § 2255 motion did not contain an impartial-jury claim under the Sixth Amendment. (CR doc. 2279.) Robinson conceded he had no evidence of a Sixth Amendment violation. (CR doc. 2385, p. 1–5.) This Court denied the request as an improper fishing expedition in support of a hypothetical claim. (CR doc. 2388, p. 2–3.)

Robinson’s present request again seeks to develop evidence in support of an impartial-jury claim under the Sixth Amendment. Although Robinson argues in his reply that a discovery denial is not a decision on the merits, the case he relies upon is not a Rule 60(b) case. *In re Sessions*,

672 F.2d 564 (5th Cir. 1982). Moreover, discovery in habeas cases must be tied to a showing that, if the facts are more fully developed, the petitioner may be entitled to relief. *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997). It follows that the only legitimate purpose for which the Court could grant the requested discovery is for Robinson to present a claim for relief. This Court has no jurisdiction to consider it in a Rule 60(b) Motion. See *Gonzalez*, 545 U.S. at 531.

### Indictment Error

Robinson's final argument challenges a ruling by the Court of Appeals in the direct appeal. The Court of Appeals held that the government's failure to charge by indictment the aggravating factors used to justify a death sentence constituted harmless error. See *Robinson*, 367 F.3d at 287-88. During the initial § 2255 litigation, Robinson moved to amend the motion to include this indictment-error claim. (CR doc. 2422.) The Court denied the motion because the claim had already been decided on appeal and because the new Supreme Court cases he relied upon were not applicable to the indictment issue and were not retroactive. (CR doc. 2430, p. 2-3). Robinson now argues that the Supreme Court opinions in *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) and *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016) provide new support for his argument that the indictment error should not have been subjected to a harmless error analysis. Motion, p. 15-19; see *Robinson*, 367 F.3d at 286-89.

Robinson's argument is based solely on a purported change in substantive law regarding the definition of structural error which, he asserts, would alter the outcome of his appellate claim. It is prohibited by *Gonzalez*, 545 U.S. at 531, because it potentially circumvents the successive-petition requirements in § 2255. To avoid this conclusion, Robinson argues that the denial of leave to amend is merely a procedural denial, not a merits-based denial. But the procedural ruling is inextricably tied to the indictment-error claim offered as a ground for challenging his conviction. Because Robinson seeks vindication of a substantive claim previously denied on appeal, it is a second or successive petition.

Robinson asserts in his reply that, because the *rulings* he challenges are procedural rather than merits-based, they are all subject to being reopened under Rule 60(b),

irrespective of his ultimate intent to litigate the underlying substantive claims for relief. This argument, which necessarily characterizes any allegation of procedural error as "extraordinary circumstances" under Rule 60(b)(6), would potentially swallow the general rule. At a minimum, it conflicts with the holding in *Gonzalez* that extraordinary circumstances "will rarely occur in the habeas context." *Id.* at 535. Nevertheless, Robinson cites *Gonzalez* for support, because it held that challenging a timeliness denial was a proper use of Rule 60(b), even as it would have allowed the petitioner to litigate the underlying substantive claims for relief.

\*4 Robinson's argument badly misreads *Gonzalez*. The difference between the limitations ruling challenged in *Gonzalez* and the procedural rulings challenged by Robinson is that the limitations ruling *precluded* a merits determination. Here, Robinson challenges a ruling that did not prevent any merits determination (the COA) or leverages "procedural" errors to present new claims challenging his conviction (the impartial-jury claim and indictment error). Even though couched in terms of procedural error, these issues are, at bottom, merits-based challenges to his conviction.

*Gonzalez* defines "on the merits" as a determination that there exist or do not exist "grounds" entitling a petitioner to relief. *Id.* at 532 n.4. The Supreme Court clarified that a Rule 60(b) movant is making a habeas-corpus claim when he asserts one of those "grounds" or asserts that "a previous ruling regarding one of those grounds" was in error. *Id.* Robinson is doing the latter. He asserts grounds for relief by challenging procedural rulings using new Supreme Court law which may or may not satisfy the requirements in § 2255 that such laws be retroactive rules of constitutional law. This is the type of end-run around the successive petition rules that *Gonzalez* prohibits.

### Transfer

Because the Motion raises new claims or seeks to relitigate claims decided on the merits, it is a second or successive petition under 28 U.S.C. § 2255(h). Before this Court may accept a second or successive petition for filing, it must be certified by the court of appeals to contain either newly discovered evidence showing a high probability of actual innocence or a new and retroactive rule of constitutional

law. See § 2255(h); see also § 2244(b)(2); *Gonzalez*, 545 U.S. at 529-30.

This Court may either dismiss the motion for lack of jurisdiction or transfer it to the Court of Appeals for a determination under § 2255(h). See *In re Hartzog*, 444 Fed.Appx. 63, 65 (5th Cir. 2011) (citing *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000) ). The Court finds that it is in the interest of justice to transfer the motion to the Court of Appeals rather than dismiss. See *United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015) (stating that a COA requirement, necessitated by dismissal, presents a judicially inefficient procedural

mechanism that would have little practical benefit as compared to transfer).

\* \* \* \* \*

The Clerk of Court is directed to **TRANSFER** Robinson's Motion (CV doc. 10) to the United States Court of Appeals for the Fifth Circuit.

#### All Citations

Slip Copy, 2018 WL 3046255

#### Footnotes

- 1 When Robinson filed his § 2255 motion, it was the Court's practice to file documents related to § 2255 motions in the criminal case. The practice ended and such documents are now filed in the civil case. Because relevant documents are filed under both cause numbers, "CR doc." refers to the criminal docket number 4:00-CR-260-Y, and "CV doc." refers to the civil docket number 4:05-CV-756-Y.

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No. 18-10732

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**IN RE: JULIUS OMAR ROBINSON**  
MOVANT

---

CONSOLIDATED WITH CASE NO. 18-70022

**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee*

v.

**JULIUS OMAR ROBINSON, also known as Face, also known as Scar,  
also known as Scarface,**

*Defendant-Appellant*

---

On Appeal from, and Motion for Authorization to File a Second or Successive  
Section 2255 Motion in, the United States District Court for the Northern District  
of Texas, Fort Worth Division, Civ. Action No. 4:05-cv-756

---

**REPLY BRIEF REGARDING ISSUES NOT REQUIRING  
A CERTIFICATE OF APPEALABILITY**

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## **CERTIFICATE OF INTERESTED PERSONS**

In re Julius Omar Robinson

*Movant*

No. 18-10732

CONSOLIDATED WITH CASE NO. 18-70022

United States of America,  
*Plaintiff-Appellee*

v.

Julius Omar Robinson,  
*Defendant-Appellant*

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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**REPLY BRIEF REGARDING ISSUES NOT REQUIRING A  
CERTIFICATE OF APPEALABILITY**

When a Rule 60(b) motion does not present a claim for relief, “there is no basis for contending that the Rule 60(b) motion should be treated like a habeas corpus application.” *Gonzalez v. Crosby*, 545 U.S. 524, 533 (2005). The Government, however, urges the Court to adopt a new, bright-line rule stating that if the Rule 60(b) motion presents an issue that may, in the future, lead to the movant raising a new claim for relief, then that motion must be considered a habeas corpus application. There is no support for the Government’s position in the caselaw and it is refuted by binding precedent of this Court.

**A. Issue One: Robinson’s Challenge to the COA Denials by the District Court and This Court Was Appropriately Raised in a Rule 60 Motion and this Motion Was Not a Disguised Second or Successive Section 2255 Motion**

Respondent repeatedly argues that the COA denials did not preclude a merits determination of his ineffective-assistance-of-counsel claim because the rulings “*followed* the district court’s merits-based ruling on Robinson’s ineffective assistance of counsel claim.” Answer pp. 14, 19 (emphasis in original).

Respondent relies upon *United States v. Hernandez*, 708 F.3d 680, 681-82 (5th Cir. 2013) in support of that argument, but *Hernandez* fails to provide the support Respondent seeks. In *Hernandez*, the decision challenged in petitioner’s Rule 60(b) motion was the denial of relief under § 2255, not the denial of a COA—and

the 60(b) motion “consisted entirely of his recapitulated [§ 2255 claim]” that was denied on the merits. *Hernandes*, 708 F.3d at 681. As a result, the ruling that “precipitated the Rule 60(b) motion” in *Hernandes* was exactly the kind of relitigation on the merits that is strictly foreclosed in Rule 60(b) litigation. *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). In contrast, the COA decisions at issue here deprived this Court of jurisdiction and merits review, and thus are properly litigated in a Rule 60(b) motion.

Moreover, “Rule 60(b) motions can legitimately ask a court to reevaluate already-decided claims—as long as the motion credibly alleges a non-merits defect in the prior habeas proceedings.” *United States v. Vialva*, 2018 U.S. App. LEXIS 26142, \*10 (5th Cir. 2018).<sup>1</sup> Here, the “non-merits defect in the prior habeas

---

<sup>1</sup> In *Vialva*, this Court held that the petitioner’s claim that the district court misapplied the COA standard was “fundamentally substantive” and therefore an improper second or successive habeas claim. *Vialva*, 2018 U.S. App. LEXIS at \*13. Robinson’s case is distinguishable from *Vialva* in two respects. First, *Vialva* was faulted by this Court for “fail[ing] to explain how the error present in *Buck* was also present” in his case. However, unlike the petitioner in *Vialva*, Robinson provided examples of the numerous ways in which the district court and this Court engaged in an improper merits analysis of his ineffective-assistance-of-counsel claim. Appellant’s Opening Brief (“AOB”) pp. 12-14. Second, much of *Vialva*’s criticism of the district court’s COA denial impermissibly piggybacked on previously raised judicial misconduct claims. *See Vialva*, 2018 U.S. LEXIS at \*10-11. In contrast, Robinson’s argument is the same as the argument successfully raised in *Buck*: the district court and this Court required Robinson to prove he would succeed on appeal before granting him the right to appeal. AOB pp. 12-14. As *Buck* clearly establishes, this approach was wrong. *Buck*, 137 S. Ct. at 773.

proceedings” was the denial of appellate jurisdiction caused by the district court and this Court engaging in “ultimate merits determinations [that] the [courts] should not have reached.” *Buck v. Davis*, 137 S. Ct. 759, 774 (2017). As the United States Supreme Court explained in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), “§2253(c)(1)’s plain terms—‘Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals’—establish that ‘until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners.’” *Id.* at 336. By “essentially decid[ing] the case on the merits” in direct contravention of the COA standard of review, *Buck*, 137 S. Ct. at 774, the COA denials erroneously deprived this Court of appellate jurisdiction. Denial of a COA is therefore akin to other procedural rulings (e.g., expiration of the statute of limitations under AEDPA, which typically deprives a district court of the power to hear a case, absent a grant of equitable tolling) that preclude a merits determination and may be challenged via a Rule 60(b) motion. *Gonzalez*, 545 U.S. at 532 nn. 4, 5.

The Government does not deny Robinson’s assertion that the district court and this Court engaged in an improper COA analysis. Rather, he argues that Robinson was not improperly deprived of merits review of his ineffective-assistance-of-counsel claim because “the very error that Robinson alleges”—that the courts engaged in merits review rather than the “debatable” COA standard—



gave Robinson the merits review of his claim that he now seeks. Answer p. 17.

The Government also argues that this denial of merits review is somehow permissible because a circuit court of appeal “only ‘affirms’ or ‘vacates’ the district court’s judgment”—without actually “granting” or “denying” relief on any habeas claim. Answer p. 18. But that assertion must come as some surprise to this Court, considering how routinely it engages in *de novo* review of habeas claims. See *United States v. O’Keefe*, 128 F.3d 885, 894 (5th Cir. 1997) (explaining that *de novo* review means that the Court “undertake[s] an independent appellate analysis to determine whether the facts found by the trial court rise to the level of the applicable legal standard”); *Robertson v. Cain*, 324 F.3d 297, 301 (5th Cir. 2003) (discussing when *de novo* review is applied in § 2254 habeas cases); *Reyes-Requena v. United States*, 243 F.3d 893, 900 (5th Cir. 2001) (discussing when *de novo* review is applied in § 2255 cases).

Finally, the Government also claims that a COA decision cannot be procedural because by definition it involves a “threshold” merits analysis. *Id.* at 16-17. However, the Supreme Court in *Buck* made clear that there is a distinct difference between a claim being “meritorious” and a claim being “debatable.” *Buck*, 137 S. Ct. at 773-74. And the Supreme Court has plainly stated that “invert[ing] the statutory order of operations and ‘first decid[ing] the merits of an

appeal, . . . then justif[ying] its denial of a COA based on its adjudication of the actual merits”” is “flatly prohibit[ed].” *Id.* (quoting *Miller-El*, 537 U.S. at 336-37).

That is the bottom line in this case: the district court and this Court applied a COA standard of review that is prohibited by long-established Supreme Court jurisprudence. By placing too heavy a burden on Robinson at the COA stage, Robinson was deprived of his right to have this Court engage in a proper merits analysis on appeal of his claim. A challenge to improper COA analysis is properly raised in a Rule 60(b) motion, and the district court erred in finding otherwise.

**B. Issue Two: Robinson’s Request to Interview His Trial Jurors was Appropriately Raised in a Rule 60 Motion and this Motion Was Not a Disguised Second or Successive Section 2255 Motion**

In his opening brief, Robinson cited to *Ruiz v. Quarterman*, 504 F.3d 523 (5th Cir. 2007), as an example of a case where the movant validly moved under Rule 60(b) to reopen his case, and later raised new claims for relief. AOB p. 23. The Government contends that *Ruiz* is inapposite because the motion did not seek discovery for new claims and *Ruiz* was pursuing his first federal petition. Robinson is also pursuing his first section 2255 motion; the focus of the Rule 60(b) motion is challenging procedural rulings that deprived Robinson of an ability to have portions of his first (and only) section 2255 motion decided on their merits. More importantly, the Government’s analysis does not address the fact that after *Ruiz*’s Rule 60(b) motion was granted, *Ruiz* was permitted to litigate his habeas

petition, was granted an evidentiary hearing, put on new evidence, and raised new claims. *See Ruiz*, 504 F.3d at 911 and 953-55 (discussing a new basis for an ineffective assistance claim raised after the Rule 60(b) was granted). Indeed, the granting of Ruiz’s Rule 60(b) motion put Ruiz back in the position he would have been in had the district court never issued its erroneous procedural decision. That is exactly the same relief Robinson is seeking via his Rule 60(b) motion.

The Government cites *Blystone v. Horn*, 664 F.3d 397 (3d Cir. 2011) for the proposition that a post-judgment motion seeking to admit newly discovered evidence in response to a claim that was previously denied constitutes a second habeas petition. Answer p. 21. As an initial matter, *Blystone* is not a Rule 60(b) case; it actually concerns a post-judgment motion filed under Rule 59(e). Regardless, this case is not particularly elucidating because Robinson is not seeking to add evidence to support a previously denied claim. Robinson seeks only the discovery that he was erroneously denied.

The Government asserts that federal courts disfavor post-verdict interviewing of jurors. Answer pp. 23-24. More accurately, the particular locale where Robinson was tried, the Northern District of Texas, disfavors post-verdict juror interviews. Indeed, in the Western District of Texas, the local rules contain no prohibition on post-verdict interviews. And in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017), the Supreme Court addressed the “practical mechanics of

acquiring and presenting [evidence of juror bias]” and obtaining such evidence “will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel’s post-trial contact with jurors.” *Id.* at 869. Far from disfavoring post-verdict juror interviews, the Supreme Court urges practicality, not an outright ban as in the Northern District of Texas. *See* Local Criminal Rule 24.1 (preventing *any* contact between the parties and a juror absent permission of the court).

The Government argues that the “rules and principles governing discovery and a party’s access to jurors operated exactly as intended” in this case. Answer p. 24. If the intention is to limit Robinson’s ability to adequately investigate his conviction and death sentences, then the Government is correct. The Government notes that Robinson has no specific indication of juror misconduct. Answer p. 23. Similarly, the trial proceedings in *Pena-Rodriguez* did not establish that any misconduct had occurred. In fact, it was not until *Pena-Rodriguez*’s defense counsel spoke with the jurors post-trial that the evidence of misconduct emerged. *Pena-Rodriguez*, 137 S. Ct. at 861. Robinson seeks this same opportunity.

**C. Issue Three: Robinson’s Request to Amend His Section 2255 Motion With a Defective-Indictment Claim was Appropriately Raised in a Rule 60 Motion and this Motion Was Not a Disguised Second or Successive Section 2255 Motion**

With regard to Robinson’s challenge to the denial of his motion to amend his indictment-error claim, the Government argues that this is somehow both a “new

claim” and an attempt to relitigate the district court’s merits-based resolution of the claim that was previously raised on appeal. Answer pp. 26, 29. Both contentions are misguided.

First, Robinson does not seek to file a new claim, and the Government’s reliance on out-of-circuit caselaw in support of that argument is unavailing. The Government points to *Clark v. United States*, 764 F. 3d 653, 658-59 & n. 2 (6th Cir. 2014) and *United States v. Nelson*, 465 F.3d 1145, 1146, 1148-49 (10th Cir. 2006), which held that a motion to amend a § 2255 motion—filed after the § 2255 motion was denied and the movant failed to appeal the denial—amounted to a second or successive § 2255 motion. However, those holdings are inapposite to Robinson’s case, because Robinson moved to amend *before* the § 2255 motion was denied. ROA.4981-83; 5303-07; 5712-5758; 5945-55. Indeed, *Clark* recognized that “[a] motion to amend is not a second or successive § 2255 motion when it is filed before the adjudication of the initial § 2255 motion is complete—i.e., before the petitioner has lost on the merits and exhausted her appellate remedies.” *Clark*, 764 F.3d at 658 (citations omitted).

Second, the Government’s argument that Robinson is improperly attacking the district court’s “merits-based ruling” on his proposed defective-indictment claim is predicated on the incorrect assumption that the motion to amend was denied because it was “frivolous or legally insufficient on its face.” Answer p. 27.

Yet as Robinson explained in his opening brief, the district court’s denial of leave to amend was based in large part on this Circuit’s rule that bars § 2255 litigants from raising claims that were previously denied on appeal. ROA.5304-05. The Government does not address this ruling, which was essentially a “law of the case” determination; nor does the Government address Robinson’s argument about the exceptions to that rule. AOB pp. 31-32.

Moreover, simply calling the denial of a motion for leave to amend a “merits-based ruling” does not make it so. Like the district court below, the Government cites to no authority for the proposition that the denial of a motion for leave to amend is a “merits-based ruling” that cannot be challenged under Rule 60(b). And the Government provides no contrary authority for the discussion in *Mayle v. Felix*, 545 U.S. 644, 655 (2005) or the strictures of the Federal Rules of Civil Procedure (e.g., Rule 15 and Rule 81(a)(2)) which establish that motions to amend are rooted in procedural analysis. As Robinson argued below and in his opening brief, there is no basis for treating a motion for leave to amend any differently from other procedural rulings that preclude merits review and therefore are properly challenged in the Rule 60(b) context.

## CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's order to transfer this case and remand Robinson's motion for further proceedings.

Respectfully submitted,

HILARY POTASHNER  
Federal Public Defender

DATED: November 2, 2018

By /s/ Jonathan Aminoff

---

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that: (1) this reply brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because it contains 2,311 words; and (2) this reply brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman size 14 font.

DATED: November 2, 2018

*/s/ Jonathan C. Aminoff*  
JONATHAN C. AMINOFF

**CERTIFICATE OF SERVICE**

I certify that on November 2, 2018, I electronically filed the foregoing document in the Fifth Circuit Court of Appeals using the Court's electronic case filing system.

*/s/ Jonathan C. Aminoff*  
JONATHAN C. AMINOFF



September 20, 2017

**RE: Julius O. Robinson  
Case 13.361  
United States**

Dear Petitioners:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights (IACHR) regarding petition P-561-12.

This letter is to inform you that the Inter-American Commission has decided to implement Article 36(3) of its Rules of Procedure, in conjunction with its Resolution 1/16, *On measures to reduce the procedural backlog*, which is attached to this letter and is available online at the following link:

[http://www.oas.org/en/iachr/media\\_center/PReleases/2016/150.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/150.asp).

By means of Resolution 1/16, the IACHR announced a series of criteria to implement Article 36(3) of its Rules of Procedure and thereby decide in due course on the admissibility and the merits of a case at the same time.

The petition referenced above falls under one of these criteria, specifically:

v. The The petition refers to the use of the death penalty.

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By virtue of the above, the Commission decided to open the case under number 13.361. In addition, pursuant to the provisions of Article 37(1) of its Rules of Procedure, the IACHR asks that you submit your additional observations on the merits of the case within four months from the date of this letter.

In addition, based on the provisions of Article 37(4) of the IACHR Rules of Procedure, the Commission makes itself available to the parties with a view to reaching a friendly settlement of the matter. Therefore, I would ask that you inform us as soon as possible if you are interested in initiating this procedure.

I would be grateful if you would please refer to the case number mentioned above in future communications.

Sincerely,

206A6C84  
F45F  
6469  
6A94CBCD8293  
Elizabeth Abi-Mershed  
Assistant Executive  
Secretary