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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RAFAEL MACIAS-VASQUEZ,  
12 Petitioner,  
13 v.  
14 UNITED STATES OF AMERICA,  
15 Respondent.

Case No.: 19-cr-432-AJB

**ORDER DENYING PETITIONER'S  
MOTION TO VACATE, SET ASIDE,  
OR CORRECT SENTENCE  
PURSUANT TO 28 U.S.C. § 2255**

**(Doc. No. 44)**

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18 Petitioner Rafael Macias-Vasquez moves under 28 U.S.C. § 2255 (“Section 2255”)  
19 to Vacate, Set Aside, or Correct his Sentence on the basis of ineffective assistance of  
20 counsel. (Doc. No. 44.) The United States opposed the motion. (Doc. No. 52.) For the  
21 reasons discussed below, the Court **DENIES** the Section 2255 motion.

22 **I. BACKGROUND**

23 On February 7, 2019, Petitioner waived Indictment and the United States filed an  
24 Information charging Petitioner with importation of methamphetamine, in violation of 21  
25 U.S.C. §§ 952, 960. (Doc. No. 11.) On December 17, 2019, Petitioner pleaded guilty to the  
26 single-count Information. (Doc. No. 36.) An interpreter was present during the December  
27 17, 2019 plea colloquy. (See Doc. No. 52, Exh. 1.) During that plea hearing, Petitioner was  
28 represented by his attorney, Mr. Frederick M. Carroll. Petitioner confirmed that his plea

1 agreement was translated into Spanish for him, and that he understood the plea agreement.  
2 (*Id.*) On March 9, 2020, the Court sentenced Petitioner to 46 months in custody. (Doc. No.  
3 43.) On June 30, 2020, Defendant filed a motion requesting habeas relief pursuant to 28  
4 U.S.C. § 2255. (Doc. No. 52.) On September 30, 2020, the United States moved the Court  
5 for an order waiving the attorney-client privilege as to all matters and facts presented in  
6 Petitioner’s Section 2255 motion. (Doc. No. 49.) The Court ordered that on or before  
7 November 1, 2020, Petitioner must respond in writing as to whether he desired to pursue  
8 his Section 2255 motion, or whether he desired to abandon the claim in order to avoid the  
9 privilege waiver. (Doc. No. 50.) The Court noted that if Petitioner did not respond by  
10 November 1, 2020, the Court would deem all communications between Petitioner and his  
11 former counsel waived. (*Id.*) Petitioner did not respond by the deadline, and accordingly  
12 waived his attorney-client privilege. The Court also ordered that the United States respond  
13 to the Section 2255 motion by January 1, 2021, and that Petitioner be permitted to file a  
14 reply by February 1, 2021. The United States filed an opposition on December 21, 2020,  
15 but Petitioner did not reply. This order follows.

## 16 **II. LEGAL STANDARD**

17 Under Section 2255, a petitioner is entitled to relief if the sentence (1) was imposed  
18 in violation of the Constitution or the laws of the United States, (2) was given by a court  
19 without jurisdiction to do so, (3) was in excess of the maximum sentence authorized by  
20 law, or (4) is otherwise subject to collateral attack. 28 U.S.C. § 2255; *United States v.*  
21 *Speelman*, 431 F.3d 1226, 1230 n.2 (9th Cir. 2005). Here, Petitioner alleges his sentence  
22 was imposed in violation of his Sixth Amendment right to effective assistance of counsel.  
23 *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *United States v. Alferahin*, 433 F.3d  
24 1148, 1160–61 (9th Cir. 2006).

## 25 **III. DISCUSSION**

26 Petitioner alleges his counsel was ineffective due to (1) a language barrier that  
27 caused Petitioner to not understand the nature of the charge and the consequences of his  
28 plea, and (2) Counsel’s failure to communicate mitigating factors to the Court. (Doc. No.

1 44.) The Court addresses both arguments below.

2 **A. Ineffective Assistance of Counsel**

3 The Supreme Court has held “that the two-part *Strickland v. Washington* test applies  
4 to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*,  
5 474 U.S. 52, 58–59 (1985). In a claim of ineffective assistance of counsel, the petitioner  
6 must meet the *Strickland* test by showing that (1) under an objective standard, “counsel’s  
7 assistance was not within the range of competence demanded of counsel in criminal cases”  
8 and (2) the petitioner suffered actual prejudice because of this incompetence. *See Lambert*  
9 *v. Blodgett*, 393 F.3d 943, 979–80 (9th Cir. 2004). “Unless a defendant makes both  
10 showings, it cannot be said that the conviction . . . resulted from a breakdown in the  
11 adversary process that renders the result unreliable.” *Strickland*, 466 U.S. at 687.

12 With respect to the first factor, “[w]hen a convicted defendant complains of the  
13 ineffectiveness of counsel’s assistance, the defendant must show that counsel’s  
14 representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at  
15 687–88. This involves proving “that counsel’s performance was deficient,” by “showing  
16 that counsel made errors so serious that counsel was not functioning as the ‘counsel’  
17 guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687; *see also*  
18 *Iaea v. Sunnn*, 800 F.2d 861, 864 (9th Cir. 1986) (citing *Strickland*).

19 As to the second factor, “in order to satisfy the ‘prejudice’ requirement, the  
20 defendant must show that there is a reasonable probability that, but for counsel’s errors, he  
21 would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at  
22 58–59. “The purpose of the Sixth Amendment guarantee of counsel is to ensure that a  
23 defendant has the assistance necessary to justify reliance on the outcome of the  
24 proceeding.” *Strickland*, 466 U.S. at 691–92. “A convicted defendant making a claim of  
25 ineffective assistance must identify the acts or omissions of counsel that are alleged not to  
26 have been the result of reasonable professional judgment.” *Id.* at 690. Then, the court  
27 evaluates “whether, in light of all the circumstances, the identified acts or omissions were  
28 outside the wide range of professionally competent assistance.” *Id.*

1                   **1.     Petitioner’s Argument That He Did Not Understand the Nature of**  
2                   **The Charge and the Consequences of His Plea**

3                   Petitioner’s first basis in arguing ineffective assistance of counsel is that due to a  
4 “language barrier,” and “lack of knowledge,” Petitioner did not appreciate the nature and  
5 consequences of his guilty plea. (Doc. No. 44 at 6.) In particular, Petitioner states he was  
6 “under the impression” that his sentence would be lower, and he would be able to serve  
7 time under home confinement due to his age and underlying medical conditions. (*Id.*) The  
8 United States responds by pointing out that Petitioner offers no support or evidence for this  
9 claim. The Court agrees with the United States.

10                  Contrary to Petitioner’s contention that he did not appreciate the nature or  
11 consequences of his plea, the record is abundant with evidence that Petitioner fully  
12 understood his plea, and the possible consequences. First, in the Plea Agreement, (Doc.  
13 No. 36), Petitioner indicated that he understood the possible consequences of the crime to  
14 which he was pleading guilty, including that the crime carried a mandatory minimum of  
15 ten years in prison. (*Id.* at 4.) Petitioner also affixed his initials to each page of the Plea  
16 Agreement, signed the last page, and attested that he understood the charges and the  
17 consequences of the plea. (*Id.*)

18                  Secondly, at the change of plea hearing before Magistrate Judge Michael S. Berg,  
19 Judge Berg, with an interpreter present, confirmed that Petitioner initialed and signed each  
20 page of the Plea Agreement. (Doc. No. 52-1 at 5–6.) Petitioner also represented at the  
21 hearing that the Plea Agreement was “translated . . . into Spanish.” (*Id.*) Judge Berg also  
22 proceeded through a comprehensive and thorough Rule 11 colloquy to ensure that  
23 Petitioner was competent to enter the plea, understood the rights he was waiving, and  
24 understood the immigration implications of entering a guilty plea. (*Id.*)

25                  Third, Petitioner’s former counsel, Mr. Carroll submitted a declaration, explaining  
26 that throughout the course of his representation of Petitioner, counsel routinely met with  
27 Petitioner, including before each court appearance. Counsel states that “[d]uring each of  
28 these meetings, I was assisted by a Spanish language interpreter.” (Doc. No. 52-3 at 3.)

1 Moreover, counsel also affirmed that before Petitioner pleaded guilty, counsel “personally  
2 reviewed the Plea Agreement with Mr. Macias Vasquez. During this meeting, I was  
3 assisted by a Spanish language interpreter.” (Doc. No. 52-3 at 3.)

4 Petitioner has not provided any evidence or further argument to rebut any of these  
5 facts. Under the first *Strickland* prong, counsel’s assistance was well within the range of  
6 competence demanded of counsel in criminal cases. There is no evidence otherwise. As  
7 such, the Court need not reach the second *Strickland* prong. The Court concludes that this  
8 ground does not constitute an adequate basis to find ineffective assistance of counsel.

9 **2. Petitioner’s Argument That Counsel Did Not Effectively**  
10 **Communicate to the Court Petitioner’s Medical Condition and**  
11 **Vulnerability to COVID-19**

12 Petitioner’s second claim for relief fares no better. In Petitioner’s second argument  
13 alleging ineffective assistance of counsel, Petitioner argues that his former attorney did not  
14 inform the Court of Petitioner’s medical condition, and vulnerability to COVID-19. (Doc.  
15 No. 44 at 6.) First, as the United States persuasively argues, Petitioner was sentenced on  
16 March 9, 2020, a time at which the impact of COVID-19 was not fully known within the  
17 United States. (Doc. No. 52 at 8.) Thus, it would be unreasonable to require counsel to  
18 argue that Petitioner was at a high risk for contracting COVID-19 before the impact of the  
19 virus on the United States was fully understood.

20 Second, Petitioner’s claim that counsel failed to bring Petitioner’s medical  
21 conditions to the Court’s attention is belied by the record. Indeed, in Petitioner’s sentencing  
22 memorandum, (Doc. No. 41), counsel cited to Petitioner’s medical condition and gambling  
23 addiction to argue for a 24-month sentence. Furthermore, counsel again addressed  
24 Petitioner’s medical condition before the Court at the March 9, 2020 sentencing hearing.  
25 (Doc. No. 48.)


26 Because Petitioner has failed to establish that counsel’s conduct was deficient under  
27 the first *Strickland* prong, the Court will not address the second *Strickland* prong. This  
28 claim for relief thus fails.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioner’s motion is **DENIED**. Because the record  
3 refutes Petitioner’s allegations and otherwise precludes habeas relief, Petitioner’s motion  
4 is **DENIED** without an evidentiary hearing. Finally, the Court denies Petitioner a  
5 certificate of appealability. A petitioner is required to obtain a certificate of appealability  
6 in order to appeal a decision denying a motion under 28 U.S.C. § 2255. A court may issue  
7 a certificate of appealability where the petitioner has made a “substantial showing of the  
8 denial of a constitutional right,” and reasonable jurists could debate whether the motion  
9 should have been resolved differently, or that the issues presented deserve encouragement  
10 to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003). This Court finds  
11 that Petitioner has not made the necessary showing. A certificate of appealability is  
12 therefore **DENIED**.

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14 **IT IS SO ORDERED.**

15 Dated: May 12, 2021

16   
17 Hon. Anthony J. Battaglia  
18 United States District Judge  
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