

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-10010-CIV-SEITZ/WHITE**

SANTOS ROSA HERRERA-CRUZ,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

**ORDER AFFIRMING AND ADOPTING REPORT OF MAGISTRATE JUDGE,
DENYING CERTIFICATE OF APPEALABILITY, AND CLOSING CASE**

THIS CAUSE is before the Court on the Report of Magistrate Judge [DE-5]. In that Report, Magistrate Judge White recommends that Movant's Motion to Vacate, Set Aside or Dismiss Sentence Pursuant to 28 U.S.C. § 2255 [DE-1] be denied. The Report finds that the Movant's Motion lacks merit because it challenges the power of Congress to regulate drug trafficking in international waters. As noted in the Report, the Eleventh Circuit has upheld the interdiction and seizure of vessels in international waters under the Maritime Drug Law Enforcement Act, the statute under which Movant was convicted. Movant has not filed any objections to the Report. Having considered the Report and the record, and given that Movant has not filed objections, the Court will affirm the Report and deny the Motion.

The Court will also deny issuance of a certificate of appealability for Movant's motion pursuant to Rule 11 of the Rules Governing Section 2255 Cases. The Court, having established grounds for entering a "final order adverse to the applicant" on this motion, "must issue or deny a certificate of appealability." In order to obtain a certificate of appealability, Movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This

standard is satisfied “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Jones v. Secretary*, 607 F.3d 1346, 1349 (11th Cir. 2010) (quotation omitted). Here, Movant has not made this showing.

Thus, having carefully reviewed, *de novo*, Magistrate Judge White’s Report and the record, and given that Movant has not filed objections, it is

ORDERED that:

(1) The above-mentioned Report of Magistrate Judge [DE-5] is AFFIRMED and ADOPTED, and incorporated by reference into this Court’s Order;

(2) Movant’s Motion to Vacate, Set Aside or Dismiss Sentence Pursuant to 28 U.S.C. § 2255 [DE-1] is DENIED.

(3) All pending motions not otherwise ruled upon in this Order are DENIED AS MOOT;

(4) A certificate of appealability is DENIED; and

(5) This case is CLOSED.

DONE and ORDERED in Miami, Florida, this 21st day of February, 2017.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge White
All Counsel of Record/Pro se parties