

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

FILED
U.S. DISTRICT COURT

2009 JUN 15 A 9:44

CLERK *B. McCarthy*

ROBERTO A. GUTIERREZ,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

CV 109-003
(Formerly CR 105-071)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, the motion to dismiss is **DENIED**, (doc. no. 4), and Petitioner's motion to hold his § 2255 motion is **DENIED**, (doc. no. 2). Respondent shall have sixty (60) days from the date of this Order to file its brief on the merits.¹

SO ORDERED this 15th day of June, 2009, at Augusta, Georgia:

[Signature]
UNITED STATES DISTRICT JUDGE

¹If Mr. Charles H.S. Lyons, III, Petitioner's former counsel, is in possession of the trial transcript and/or any other related materials and wishes to let Petitioner have access to the same, Mr. Lyons is hereby authorized to send them to Petitioner at the following address: Roberto A. Gutierrez, Inmate No. 12331-021, United States Penitentiary-Atlanta, P.O. Box 150160, Atlanta, Georgia, 30315. The **CLERK** is **DIRECTED** to serve a copy of this Order on Mr. Lyons at his address of record at 336 Telfair Street, Augusta, Georgia 30901.