

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

UNITED STATES OF AMERICA

PLAINTIFF

vs.

CRIMINAL NO. 3:06CR-90-H
Electronically Filed

JIAN TIAN LIN

DEFENDANT

RESPONSE TO MOTION TO VACATE FINAL JUDGMENT

Comes the United States of America, by counsel, and responds to Defendant Jian Tian Lin's Motion to Vacate Final Judgment [DN 69-2]. This Court should deny Lin's Motion to Vacate Final Judgment because there is no authority cited in the Defendant's brief that would permit the court to enter such ruling.

PROCEDURAL BACKGROUND

1. History of Jian Tian Lin's Sentencing and Subsequent Motion to Vacate

On December 18, 2006, the Defendant entered a plea to one count of harboring aliens, in violation of Title 8 U.S.C. Sections 1324(a)(1)(A)(v)(I) & 1324(a)(1)(B)(I). This was pursuant to a written plea agreement with the government. On this same date, the Defendant was sentenced to credit for time served, which amounted to about 7 months. A term of supervised release was also imposed by the court. On November 13, 2008, the Defendant's term of supervised release was terminated by the court.

On July 3, 2012, over five and a half years after being sentenced, the Defendant filed his Motion to Vacate Final Judgment based upon the ruling in Padilla v. Kentucky, 130 S.Ct. 1473 (2010). The decision in Padilla v. Kentucky was entered by the Supreme Court on March 31,

2010, more than two years before the Defendant filed his Motion to Vacate Final Judgment. It is unclear why the Defendant waited more than two years after the ruling in Padilla v. Kentucky, to file his Motion to Vacate Final Judgment.

2. Pending Supreme Court Case

On October 30, 2012, the Supreme Court will hear oral argument for the case of Chaidez v. United States, 11-820, which will determine whether or not the holding in Padilla v. Kentucky is retroactive. If the Supreme Court rules that Padilla is retroactive, then Defendant Lin may have a basis to attack his guilty plea and subsequent sentence. However, at this point, Defendant Lin has cited no authority in which to attack his guilty plea and subsequent sentence. As a result, the court should deny his motion to vacate final judgment.

CONCLUSION

The Court should deny Jian Tian Lin's Motion to Vacate Final Judgment since the Defendant cites no authority which would permit the court to enter such ruling at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2012, I electronically filed the foregoing response with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the defendant's attorney in this case.

s/Daniel P. Kinnicutt

Daniel P. Kinnicutt

Assistant U.S. Attorney

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ORDER

This matter having come before the court on the defendant's Motion to Vacate Final Judgment [DN 69-2], the United States having objected thereto, and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the defendant's Motion is **DENIED**.