

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Francisco HERRERA-GENAO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civ. No. 12-6119

**MEMORANDUM ORDER**

THOMPSON, U.S.D.J.

On November 14, 2014, this Court denied Petitioner Francisco Herrera-Genao's petition under 28 U.S.C. § 2255 seeking to vacate, set aside, or correct his sentence in light of alleged ineffective assistance of counsel he received. (Doc. No. 42, 43). While the Court rejected all three of Petitioner's alleged grounds for ineffective assistance of counsel—counsel's performance during plea negotiations, counsel's failure to sever trials, and counsel's decision to waive a competency hearing—the Court finds that, with respect to the first ground, Petitioner has made a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. 2253(c)(2). Accordingly, the Court hereby certifies for appeal Petitioner's Sixth Amendment ineffective assistance of counsel claim based on counsel's conduct during plea negotiations. However, the Court denies certification with respect to Petitioner's remaining two assertions of ineffective assistance of counsel.

Date: Nov. 20, 2014

*/s/ Anne E. Thompson*  
ANNE E. THOMPSON, U.S.D.J.