

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

Civ. No. 16-705 MCA/KK
(Cr. No. 11-2561 MCA)

DONALD ROYBAL,

Defendant/Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on Defendant/Movant Donald Roybal's ("Defendant") Motion to Vacate Judgment under 28 U.S.C. § 2255 (Doc. 1) ("Section 2255 Motion"), filed June 24, 2016. United States Magistrate Judge Kirtan Khalsa entered Proposed Findings and a Recommended Disposition ("PFRD") regarding Defendant's Section 2255 Motion on April 27, 2017. (Doc. 18.) In her PFRD, Magistrate Judge Khalsa recommended that the Court deny the Section 2255 Motion and dismiss this case with prejudice. (*Id.* at 1-2.) As Magistrate Judge Khalsa explained, in *Beckles v. United States*, — U.S. —, 137 S. Ct. 886 (2017), the Supreme Court held that the advisory United States Sentencing Guidelines are not subject to void-for-vagueness challenges under the Fifth Amendment's Due Process Clause. *Id.* at 897. As such, the Supreme Court's holding in *Johnson v. United States*, — U.S. —, 135 S. Ct. 2551 (2015), does not invalidate the residual clause of U.S.S.G. § 4B1.2, or, by extension, U.S.S.G. § 2K2.1, the provision Defendant attempts to challenge in his Section 2255 Motion. *Beckles*, 137 S. Ct. at 897; (*see* Doc. 1 at 1, 6.) In light of *Beckles*, Defendant cannot challenge


the enhancement of his sentence pursuant to U.S.S.G. § 2K2.1 on void-for-vagueness grounds, and the application of this guideline to his sentence remains proper after *Johnson*.

The parties had until on or about Thursday, May 11, 2017, to timely object to the PFRD. (Doc. 18 at 2.) As of the date of entry of this Order, no objections have been filed; and, upon review of the record, the Court concurs with the Magistrate Judge's PFRD.

IT IS THEREFORE ORDERED that:

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 18) are ADOPTED as an order of the Court;
2. Defendant's Motion to Vacate Judgment under 28 U.S.C. § 2255 (Doc. 1) is DENIED; and,
3. This case is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.



HONORABLE M. CHRISTINA ARMIJO
CHIEF UNITED STATES DISTRICT JUDGE