

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4

CESAR HERNANDEZ-DE-LA-ROSA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 14-1132 (JAF)

(Crim. No. 08-37-1)

5  
6 **OPINION AND ORDER**

7 Petitioner César Hernández-de-la-Rosa (“Hernández-de-la-Rosa”) comes before  
8 the court with a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the  
9 sentence we imposed in Criminal No. 08-37-1. (Docket No. 1.) We deny his petition  
10 because it is time-barred and we, therefore, lack jurisdiction.

11 **I.**

12 **Background**

13 On September 21, 2009, a jury found Hernández-de-la-Rosa guilty of conspiracy  
14 both (1) to import and (2) to possess with the intent to distribute four-hundred and forty-  
15 eight (448) kilograms of cocaine. (Crim. No. 08-37, Docket Nos. 310, 354.) On  
16 December 21, 2009, we sentenced him to three-hundred sixty (360) months  
17 imprisonment on each of the two counts, to be served concurrently with each other.  
18 (Crim. No. 08-37, Docket No. 354.)

19 Hernández-de-la-Rosa timely appealed his conviction and sentence. On  
20 November 14, 2012, the First Circuit affirmed his conviction and sentence. United States  
21 v. Espinal-Almeida, 699 F.3d 588 (1<sup>st</sup> Cir. 2012) (Crim. No. 08-37, Docket No. 470.) On

1 February 19, 2014, Hernández-de-la-Rosa filed the instant motion to vacate his sentence,  
2 set aside, or correct his sentence. (Docket No. 1.)

## 3 II.

### 4 Jurisdiction

5 Hernández-de-la-Rosa is currently in federal custody, having been sentenced by  
6 this district court. To file a timely motion, Hernández-de-la-Rosa had one year from the  
7 date his judgment became final. 28 U.S.C. § 2255(f). His judgment became final on the  
8 last day that he could have filed a petition for a writ of certiorari, which was ninety days  
9 after the entry of the Court of Appeals' judgment. Sup. Ct. R. 13(1); Clay v. United  
10 States, 537 U.S. 522 (2003). The Court of Appeals entered judgment on November 14,  
11 2012, and, therefore, Hernández-de-la-Rosa had until February 12, 2014, to file his  
12 § 2255 petition. Because he filed on February 19, 2014, we lack jurisdiction and must  
13 deny the petition.

14 To avoid any confusion in the mind of the Petitioner, and because the dates are so  
15 close, we add a clarification. Under Clay, and according to Supreme Court Rule 13(3),  
16 “[t]he time to file a petition for a writ of certiorari runs from the date of entry of the  
17 judgment or order sought to be reviewed, and not from the issuance date of the mandate.”  
18 Clay, 537 U.S. at 527; S. Ct. R. 13(3). Therefore, the controlling date is November 14,  
19 2012, and not December 7, 2012, when the mandate was issued. Espinal-Almeida, 699  
20 F.3d 588; Appeal No. 10-1090; Crim. No. 08-37, Docket No. 470.

## 21 III.

### 22 Certificate of Appealability

23  
24 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever  
25 issuing a denial of § 2255 relief we must concurrently determine whether to issue a

1 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing  
2 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,  
3 “[t]he petitioner must demonstrate that reasonable jurists would find the district court's  
4 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537  
5 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While  
6 Hernández-de-la-Rosa has not yet requested a COA, we see no way in which a  
7 reasonable jurist could find our assessment of his constitutional claims debatable or  
8 wrong. Hernández-de-la-Rosa may request a COA directly from the First Circuit,  
9 pursuant to Rule of Appellate Procedure 22.

10 **V.**

11 **Conclusion**

12 For the foregoing reasons, we hereby **DENY** Hernández-de-la-Rosa’s § 2255  
13 motion (Docket No. 1). Pursuant to Rule 4(b) of the Rules Governing § 2255  
14 Proceedings, summary dismissal is in order because it plainly appears from the record  
15 that Hernández-de-la-Rosa is not entitled to § 2255 relief from this court.

16 **IT IS SO ORDERED.**

17 San Juan, Puerto Rico, this 8th day of May, 2014.

18 S/José Antonio Fusté  
19 JOSE ANTONIO FUSTE  
20 U. S. DISTRICT JUDGE