

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

JOHN ALEXIS MOJICA-BÁEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 14-1141 (JAF)

(Crim. No. 97-110-4)

5
6 **OPINION AND ORDER**

7 John Alexis Mojica-Báez (“Mojica-Báez”) comes before the court with a petition
8 under Title 28 U.S.C. §§ 2241(a)(c)(3) and 1651. (Docket No. 1.) However, because his
9 motion falls within the substantive scope of 28 U.S.C. § 2255, we must re-characterize it
10 as a § 2255 petition. Trenkler v. United States, 536 F.3d 85, 97 (2008). In light of this
11 re-characterization, we must dismiss Mojica-Báez’s petition as a successive petition.

12 **I.**

13 **Background**

14 Mojica-Báez was indicted on May 28, 1997, and began a jury trial on May 29,
15 1998. (Crim. No. 97-110). He was convicted of two counts of armed robbery, one
16 count of assault, one count of breaking and entering, and one count of using and carrying
17 a firearm in relation to a crime of violence. U.S. v. Mojica-Báez, 229 F.3d 292, 297 (1st
18 Cir. 2000). We sentenced Mojica-Báez to a total of three-hundred thirty (330) months
19 imprisonment. (Crim. No. 97-110, Docket No. 330.) He appealed, and the First Circuit
20 affirmed his conviction and sentence. Mojica-Báez, 229 F.3d at 313. Mojica-Báez then
21 petitioned for a writ of certiorari, which was denied. Mojica-Báez v. United States, 121
22 S. Ct. 2215 (2001).

1 § 2241 petition as a petition under § 2255). A petition such as this, brought by a
2 currently-incarcerated federal prisoner, and that “challenges his sentence as unauthorized
3 under the statutes of conviction [...falls...] squarely within the heartland carved out by
4 Congress in section 2255.” Id. In 2003, we dismissed Mojica-Báez’s first § 2255
5 petition. (Crim No. 97-110, Docket No. 512; Civ. No. 02-1841, Docket No. 2-3.)
6 Therefore, this is properly deemed a successive petition.

7 Before filing a second or successive petition under § 2255, a petitioner “shall
8 move the appropriate court of appeals for an order authorizing the district court to
9 consider the application.” 28 U.S.C. § 2244(b)(3)(A); see also, 28 U.S.C. § 2255 (“A
10 second or successive motion must be certified as provided in section 2244 by a panel of
11 the appropriate court of appeals....”). Without this prior certification, a district court
12 lacks jurisdiction. Trenkler, 536 F.3d at 96. On December 17, 2004, the First Circuit
13 denied Mojica-Báez’s motion for a certificate of appealability. (Court of Appeals Docket
14 No. 04-1267.) On February 6, 2006, the First Circuit denied Mojica-Báez’s request for
15 permission to file a successive § 2255 petition. (Court of Appeals Docket No. 06-1122.)
16 Because the First Circuit has not granted Mojica-Báez certification to file a successive
17 petition, we lack jurisdiction to entertain one.

18 III.

19 Certificate of Appealability

20

21 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
22 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
23 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing
24 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,
25 “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s

1 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537
2 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We see no
3 way in which a reasonable jurist could find our assessment of his constitutional claims
4 debatable or wrong. Mojica-Báez may once again request a COA directly from the First
5 Circuit, pursuant to Rule of Appellate Procedure 22.

6 **IV.**

7 **Conclusion**

8 For the foregoing reasons, we hereby **DENY** Mojica-Báez’s motion, properly
9 characterized as one under § 2255. (Docket No. 1). Pursuant to Rule 4(b) of the Rules
10 Governing § 2255 Proceedings, summary dismissal is in order because it plainly appears
11 from the record that Mojica-Báez is not entitled to § 2255 relief from this court.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 22nd day of April, 2014.

14 S/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 U. S. DISTRICT JUDGE