

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERTO ARMENDARIZ-LOZANO §
v. § CIVIL ACTION NO. 6:08cv228
Crim. No. 6:07cr68
UNITED STATES OF AMERICA §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON MOVANT'S MOTION TO ALTER OR AMEND JUDGMENT

This motion to vacate or correct sentence was denied on March 16, 2009. The movant Roberto Armendariz had been given until March 10, 2009, in which to file objections to the Magistrate Judge's Report; these objections were received on March 16, but were not docketed until after final judgment had been entered.

On April 1, 2009, Armendariz filed a motion to vacate judgment, stating that he had mailed his objections on March 10 but they had not been considered. The Magistrate Judge properly concluded that Armendariz's objections should be construed as a motion to alter or amend the judgment and reviewed them as such.

Armendariz says in his objections that he claimed that his attorney, Kenneth Hawk, was requested to file a notice of appeal but did not do so. This claim was raised in his petition but the Government did not respond to it. The Magistrate Judge recommended that the Movant's motion to alter or amend the judgment be granted and that the final judgment be set aside for the limited purpose of determining the merits of this contention.

Copies of this Report were sent to the parties, but no objections have been filed; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review


of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Movant's motion to vacate judgment (docket no. 17) is GRANTED. The final judgment in this cause shall be and hereby is VACATED, for the purpose of determining the merits of the Petitioner's claim that he asked his attorney to file a notice of appeal, but that no such notice was filed.

SIGNED this 22nd day of July, 2009.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE