

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GOMESINDO MENDEZ,)	
ID # 39506-177,)	
Movant,)	No. 3:18-CV-2116-D
vs.)	No. 3:09-CR-318-D (02)
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

ORDER

After reviewing all relevant matters of record in this case, including the findings, conclusions, and recommendation of the United States Magistrate Judge and movant's September 27, 2018 objections, in accordance with 28 U.S.C. § 636(b)(1), the court is of the opinion that the findings and conclusions of the magistrate judge are correct, and they are adopted as the findings and conclusions of the court. For the reasons stated in the findings, conclusions, and recommendation of the United States Magistrate Judge, the petition to set aside sentence and adhere to established sentencing guidelines as mandated is construed as a motion to vacate and is transferred to the United States Court of Appeals for the Fifth Circuit pursuant to *United States v. Fulton*, 780 F.3d 683 (5th Cir. 2015).

In accordance with Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the magistrate judge, the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that no certificate of appealability is required to appeal an order that transfers a motion to vacate to the United States Court of Appeals for the Fifth Circuit pursuant to *Fulton*, 780 F.3d at 686.

In the event movant files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* that is accompanied by a properly signed certificate of inmate trust account.

SO ORDERED.

October 3, 2018.



SIDNEY A. FITZWATER
SENIOR JUDGE