

United States District Court
Southern District of Texas

ENTERED

December 04, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

EMANUEL HERNANDEZ- HERNANDEZ	§	
Movant	§	CIVIL ACTION NO. M-15-267
	§	
VS.	§	CRIMINAL NO. M-11-805-1
	§	
UNITED STATES OF AMERICA	§	
Respondent		

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, which motion had been referred to the Magistrate Court for a report and recommendation. On October 11, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Movant's section 2255 motion be dismissed without prejudice as moot, that Respondent's Motion to Dismiss be dismissed without prejudice, and that a Certificate of Appealability be denied upon the issuance of this Court's final order. The time for filing objections has passed, and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Movant's section 2255 motion is **DISMISSED** without prejudice as moot, Respondent's Motion to Dismiss (Dkt. Entry No. 5) is **DISMISSED**

¹As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United Services Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P.72(b) advisory committee's note (1983)) *superseded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n.5 (5th Cir. April 2, 2012).

without prejudice. A Certificate of Appealability is **DENIED**.

SO ORDERED this 4th day of December, 2017, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive style with a horizontal line underneath it.

Randy Crane
United States District Judge