United States District Court
Southern District of Texas
ENTERED
May 07, 2026
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:21-CR-00054
	§	
LOLA KASALI	§	

JUDGE PALERMO'S REPORT AND RECOMMENDATION & ORDER

Pending before the Court is Defendant Lola Kasali's motion to vacate her sentence, brought under 28 U.S.C. § 2255. ECF No. 448.[1] Under Rule 3 of the Rules Governing § 2255 Proceedings for the United States District Courts, the motion must be entered on the criminal docket of the case in which the challenged judgment was entered, thus, it has been filed in this criminal case, No. 4:21-cr-54. R. Gov. Sec. 2255 Proceedings 3(b). [2] Rule 4 requires the court to promptly examine the motion, its attached exhibits, and the record of prior proceedings. R. Gov. Sec. 2255 Proceedings 4(b). If the motion shows the movant is not entitled to relief, the Court

[1] The district judge to whom this case is assigned referred all pending matters and matters related to the Supervised Release Petition, ECF No. 396, to this Court. Order, ECF No. 411. Under Rule 10 of the Rules Governing Section 2255 Proceedings, a magistrate judge may perform the duties of a district judge pursuant to 28 U.S.C. § 636. Since the motion to vacate references the Supervised Release Petition, ECF No. 448, this motion is properly before the Court.

[2] The motion was originally filed as a separate civil proceeding in Civil No. 4:26-cv-2441 but was transferred into this criminal case.

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must dismiss the motion and direct the clerk to notify the movant. *Id.*[3] Having conducted the required examination, and considering the briefing and applicable law, the Court finds that Defendant's motion is without merit and should be dismissed.[4]

I. BACKGROUND.

Defendant was convicted of four counts of fraud in April 2022. *United States v. Kasali*, 111 F.4th 637, 640 (5th Cir. 2024), *cert. denied,* 145 S. Ct. 1462, 221 L. Ed. 2d 572 (2025); ECF No. 377 at 3 (filed on August 2, 2024). Following her conviction, she was sentenced to 70 months of imprisonment and five years of supervised release on each count, running concurrently. *Kasali*, 111 F.4th at 642; ECF No. 377 at 6.[5] She appealed her conviction and sentence, contending the district court erred in "(1) denying her motions to substitute counsel, (2) conducting the first day of her trial in her absence, (3) applying a sentencing enhancement under intended loss, and (4) awarding restitution to the [Small Business Administration] when no actual loss occurred." *Kasali*, 111 F.4th at 642–43; ECF No. 377 at 6. The Fifth Circuit affirmed. *Kasali*, 111 F.4th at 640; ECF No. 377 at 1.

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[3] Under Rule 9, the movant must obtain an order from the court of appeals before presenting a second or successive motion.

[4] The Government filed a motion seeking an extension to respond, ECF No. 458, which the Court granted, Order, ECF No. 459. Defendant filed two motions to strike the Government's motion, ECF No. 458, and the Court's order, ECF No. 459, or the order of detention, ECF No. 427. ECF No. 471, 477. Defendant's motions are without merit and are denied.

[5] Defendant's sentence was later reduced to 57 months under revised sentencing guidelines. Order, ECF No. 371.

Defendant now moves to vacate her sentence, asserting four constitutional violations: (1) denial of her right to be present at trial; (2) a stipulation regarding sentencing enhancements was entered without her knowledge or consent; (3) ineffective assistance of counsel due to conflicts with counsel; and (4) inability to retain counsel of her choice because she was denied the right to make phone calls. ECF No. 448 at 6–10.

II. STANDARD FOR A MOTION TO VACATE UNDER § 2255.

"It is well settled that following a conviction and exhaustion or waiver of the right to direct appeal, courts presume a defendant stands fairly and finally convicted." *Plata-Garza v. United States*, No. CR 7:23-00679-2, 2026 WL 942243, at *13 (S.D. Tex. Jan. 28, 2026) (quoting *United States v. Cervantes*, 132 F.3d 1106, 1009 (5th Cir. 1998)), *adopted*, No. 7:23-CR-00679-2, 2026 WL 939625 (S.D. Tex. Apr. 6, 2026). A federal prisoner may move to vacate, set aside, or correct their sentence on four limited grounds: (1) constitutional violations; (2) jurisdictional challenges; (3) challenges to the sentence length as in excess of the statutory maximum; and (4) claims that the sentence is otherwise subject to collateral attack. *Id.* (quoting 28 U.S.C. § 2255(a)).

Where claims under those grounds are raised on appeal, however, they are foreclosed for review in a § 2255 motion. *Rogers v. United States*, No. 4:24-CR-0002-P, 2025 WL 3677528, *3 (N.D. Tex. Dec. 18, 2025) (citing *United States v.*

Kalish, 780 F.2d 506, 508 (5th Cir. 1986)). Moreover, a petitioner cannot raise a new issue "for the first time on collateral review without showing both 'cause' for his procedural default, and 'actual prejudice' resulting from the error." *Plata-Garza*, 2026 WL 942243, at *13 (quoting *United States v. Shaid*, 937 F.2d 228, 232 (5th Cir. 1991)). This "rigorous standard" applies even where fundamental constitutional error is alleged. *Id.* (quoting *Shaid*, 937 F.2d at 232). There is a limited exception to this requirement: "where 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.'" *Id.* (quoting *Shaid*, 937 F.2d at 232).

III. DEFENDANT'S MOTION SHOULD BE DENIED.

A. Defendant's Motion Is Untimely.

A motion brought under 28 U.S.C. § 2255 must be filed within one year of the latest of four events, which here is the date the judgment became final. *Id.* at *12 (citing 28 U.S.C § 2255(f)(1)). A judgment becomes final when the Supreme Court denies certiorari review. *Ramirez v. Lumpkin*, No. 7:18-CV-386, 2024 WL 4509123, at *40 (S.D. Tex. May 31, 2024) (citing *Giesberg v. Cockrell*, 288 F.3d 268, 271 (5th Cir. 2002 (per curiam)), *adopted in part, rejected in part,* No. 7:18-CV-0386, 2024 WL 4491822 (S.D. Tex. Oct. 15, 2024).

The Supreme Court denied Defendant's petition for a writ of certiorari on March 24, 2025. ECF No. 394. The judgment became final on that date. *Ramirez*, 2024 WL 4509123, at *40. Defendant's deadline to file her motion under § 2255

was one year later, March 24, 2026. Her motion was filed on March 26, 2026. ECF No. 448. It is untimely on the face of the motion and record. 28 U.S.C § 2255(f)(1).

However, under Rule 3, an inmate filing is timely if deposited in the internal mailing system of the institution where the inmate is confined on or before the last day for filing. R. Gov. Sec. 2255 Proceedings 3(d). The motion is signed and dated March 23, 2026 in handwriting, ECF No. 448 at 14, however, Rule 3 requires a declaration or notarized statement setting forth the date of deposit and that first-class postage has been prepaid. R. Gov. Sec. 2255 Proceedings 3(d). The form contains a preprinted declaration that the motion was placed in the prison mail system, but it does not state that the postage was prepaid. Defendant has filed no such declaration or statement otherwise, only stating in her motion that it is timely. ECF No. 448 at 13 ("motion is timely"); *id.* at 20 (same). Thus, she has failed to prove that the filing was timely under the Rules.

The Defendant's motion therefore should be denied on this basis.

B. Defendant's Claim She Was Denied Her Right To Be Present At Trial and Ineffective Assistance of Counsel Are Barred Because They Were Raised On Appeal.

Even if the Court were to consider Defendant's untimely motion, two of her arguments fail because they were raised and addressed in her direct appeal. *Rogers*, 2025 WL 3677528, *3. First, Kasali asserted that she was denied her constitutional right to be present at trial. ECF No. 448 at 6. The Fifth Circuit, applying *de novo*

review, determined that she had waived her right to be present at trial, finding that her "actions and continued misconduct were sufficient for the district court to imply a voluntary waiver of [Defendant]'s presence" at trial." *Kasali*, 111 F.4th at 648; ECF No. 377 at 15. Because this claim was raised on appeal, it is foreclosed for review in a § 2255 motion. *Rogers*, 2025 WL 3677528, *3 (citing *Kalish*, 780 F.2d at 508).

As her third argument, Kasali claims ineffective assistance of counsel due to conflicts with her appointed counsel and that she was not permitted to substitute counsel. ECF No. 448 at 9–10. The Fifth Circuit detailed the district court's denials of her motions to substitute counsel, finding no error because Defendant's "intransigence was the root cause of the attorney-client communication issues." *Kasali*, 111 F.4th at 641, 643–44; ECF No. 377 at 9. Because the Fifth Circuit has already decided this issue, it cannot be the basis of a § 2255 motion. *Rogers*, 2025 WL 3677528, *3.

Defendant's motion asserting denial of her right to be present at trial and ineffective assistance of counsel are without merit.

C. Defendant's Claim of Ineffective Assistance Of Counsel and Inability to Retain Counsel Fail Because Defendant Does Not Demonstrate Cause And Prejudice For Failing To Raise These Issues On Appeal.

Finally, Defendant's remaining arguments—that her right to effective assistance of counsel was violated because of sentencing enhancements agreed to

without her consent, and that she could not make phone calls to retain her own counsel of choice—fail because she does not demonstrate cause for failing to raise these grounds as error on direct appeal and prejudice. ECF No. 448 at 7, 9; *Plata-Garza*, 2026 WL 942243, at *13.

"'This cause and actual prejudice standard presents 'a significantly higher hurdle' than the 'plain error' standard [applied] on direct appeal.'" *Plata-Garza*, 2026 WL 942243, at *13 (quoting *Shaid*, 937 F.2d at 232 (citing *United States v. Frady*, 456 U.S. 152, 168 (1982))). "[A] petitioner must explain why the constitutional or jurisdictional claim was not brought up on direct appeal (the cause for the procedural default to not appealing the issue) and the harm caused by said claim (the prejudice resulting from such claim)." *Id.* "This 'rigorous standard' is applied 'to ensure that final judgments command respect and that their binding effect does not last only until the 'next in a series of endless postconviction collateral attacks.'" *Id.* (citing *Shaid*, 937 F.2d at 232 (quoting *Frady*, 456 U.S. at 165-66)).

Defendant claims that she raised both issues on appeal in her motion, but the Fifth Circuit's opinion does not address these specific constitutional violations, so Defendant has failed to prove cause. In addition, Defendant has failed to explain the harm caused. ECF No. 448 at 7–11. Because Defendant has not met her significantly higher burden, these arguments cannot support a motion under § 2255. *See Plata-Garza*, 2026 WL 942243, at *13.

Thus, these two claims are without merit.

IV. CONCLUSION

Defendant's motion under § 2255 is untimely. Moreover, none of the grounds asserted can provide the basis of a motion under § 2255. Therefore, the Court **RECOMMENDS** that Defendant's motion to vacate her sentence, ECF No. 448, should be **DENIED WITH PREJUDICE**.

Certificate of Appealability

It is further recommended that the district judge deny a certificate of appealability. An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). The Rules Governing Section 2255 Proceeding instruct that the district judge "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." R. Gov. Sec. 2255 Proceedings 11. Because the Court recommends denial with prejudice of Defendant's motion to vacate, the Court may be required to address whether Defendant is entitled to a certificate of appealability.

To be entitled to a certificate, the applicant must show she has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The statute requires "an overview of the claims in the habeas petition and a general assessment of their merits." *Plata-Garza*, 2026 WL 942243, at *24 (quoting *Miller-*

El v. Cockrell, 537 U.S. 322, 336 (2003)). For claims denied on their merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *United States v. Jones*, 287 F.3d 325, 329 (5th Cir. 2002) (applying the *Slack* standard to a COA determination in the context of a § 2255 proceeding)). Petitioner may also satisfy this standard by showing that "jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.* (citing *Miller-El*, 537 U.S. at 327; *see also Jones*, 287 F.3d at 329). For claims that a district court rejects solely on procedural grounds, the petitioner must show both that "jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* (quoting *Slack*, 529 U.S. at 484).

Based on the record and for the reasons explained above, Defendant would not be able to demonstrate that reasonable jurists would find the "district court's assessment of the constitutional claims debatable or wrong[,]" nor would she be able to show that the issues "deserve encouragement to proceed further." *Id.* (citations omitted). Accordingly, Defendant is not entitled to a certificate of appealability.

ORDER

The following motions are **DENIED AS MOOT**: ECF Nos. 443 (motion to

proceed IFP), 445 (motion to appoint counsel for evidentiary hearing), 446 (motion to show cause against the Government why the motion to vacate should not be granted), 447 (motion requesting copies of court documents), 449 (motion to amend motion to vacate), 457 (emergency motion for hearing), 468 (motion for emergency hearing), 469 (motion for a discovery hearing), 470 (motion for service of process), 475 (motion to show cause regarding appointment of expert witness), 476 (motion for emergency hearing), 478 (motion for service of process), and 479 (motion for discovery hearing).

It is further **ORDERED** that Defendant's motions to revoke Judge Bryan's detention order, ECF No. 427, are **DENIED as MOOT**, ECF Nos. 467 & 474. Defendant is no longer held in detention pursuant to Judge Bryan's order, but pursuant to Judge Palermo's order, Minute Entry, dated Mar. 9, 2026 (Defendant is remanded to custody) and R&R, ECF No. 464 (recommending term of supervised release be revoked and Defendant be sentenced to additional prison time).

It is further **ORDERED** that Defendant's motions to strike, ECF Nos. 471 & 477, are **DENIED**.

Notice to the Parties

The Parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). Failure to file timely objections will preclude review of factual

findings or legal conclusions, except for plain error. *Quinn v. Guerrero*, 863 F.3d 353, 358 (5th Cir. 2017).

The Clerk shall provide copies of this R&R and Order to Defendant and counsel for the Government.

Signed at Houston, Texas, on May 7, 2026.|

Dena Palermo

Dena Hanovice Palermo
United States Magistrate Judge