

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50241  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AUDELIO ARZOLA-AMAYA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC Nos. EP-87-CR-162-ALL-H  
EP-95-CV-473-H  
- - - - -

January 3, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Audelio Arzola-Amaya, federal prisoner # 38898-080, appeals from the denial of his FED. R. CIV. P. 60(b) and 59(e) motions following the denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Arzola-Amaya's request to file a reply brief out of time is granted. Arzola-Amaya's notice of appeal is construed as a request for a certificate of appealability (COA) pursuant to FED. R. APP. P. 22(b). See Slack v. McDaniel, 120 S. Ct. 1595, 1600 (2000).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Before a movant may request a COA from this court, the district court must first determine whether a COA should issue. Muniz v. Johnson, 114 F. 3d 43, 45 (5th Cir. 1997). No such ruling has been made by the district court in this case. Accordingly, the case is REMANDED to the district court for it to determine whether a COA should issue.