

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 29, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: PIYARATH S. KAYARATH,

Movant.

No. 18-3225
(D.C. Nos. 5:01-CV-03267-MLB &
6:94-CR-10128-JTM-2)
(D. Kan.)

ORDER

Before **PHILLIPS**, **McHUGH**, and **EID**, Circuit Judges.

Piyarath S. Kayarath seeks authorization to file a second or successive 28 U.S.C. § 2255 motion based on this court’s recent decision in *United States v. Melgar-Cabrera*, 892 F.3d 1053 (10th Cir. 2018), *petition for cert. filed* (U.S. Sept. 6, 2018) (No. 18-6302). Section 2255(h)(2) permits authorization when a second or successive motion relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” But *Melgar-Cabrera* does not meet this standard.

Accordingly, we deny the motion for authorization. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk