

FEB 18 1998

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DAVID RAY CORY,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA.

Defendant-Appellee,

No. 97-2242
(D.C. No. CIV-97-585-JC)
(District of New Mexico)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY**, and **HENRY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

David Cory appeals from a judgment denying his application for relief under 28 U.S.C. § 2255 in which he claimed the judgment against him should be vacated because he was arrested by “Military forces.” The district court held the issue should have been raised by direct appeal, denied relief and dismissed the petition. The matter is pending before us upon application for a certificate of probable cause. Having reviewed the entire matter, we conclude the district court’s judgment was correct. We **DENY** a certificate of probable cause for the reasons stated by the district court in its memorandum opinion and order. We note also the legal capacity of arresting officers is moot after conviction. *See Washington v. United States*, 292 F.2d 452, 453 (8th Cir. 1961).

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge