IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TAMMY HOLLOWAY,   )
)
          Petitioner,   )
)
     v.   )   CASE NO. 2:09-CV-760-WKW
)
UNITED STATES OF AMERICA,   )
)
          Respondent.   )

AMENDED ORDER

This Amended Order VACATES the court's previous Order. (Doc. # 10.)

On August 11, 2009, Petitioner Tammy Holloway filed a petition (Doc. # 1) pursuant to 28 U.S.C. § 2255 seeking to vacate, set aside, or correct the sentence she received on October 29, 2008, in criminal case number 2:08-CR-62. The basis for Ms. Holloway's petition is the recent decision of the Supreme Court in *Flores-Figueroa v. United States*, 129 S. Ct. 1886, 1888 (2009), which interpreted the aggravated identify theft statute, 18 U.S.C. § 1028A, in a manner contrary to the interpretation of the Eleventh Circuit at the time of Ms. Holloway's sentencing. Ms. Holloway argues, and the Government concedes (Doc. # 6), that her conduct would have been insufficient to sustain a conviction under that statute were she being prosecuted today. The Government filed this concession in response to the order (Doc. # 3) of the Magistrate Judge; the Magistrate Judge then filed a Recommendation (Doc. # 7) that Ms. Holloway's petition be granted and she be re-sentenced. The court was unclear as

to the basis for the Government's concession, and so ordered (Doc. # 8) a fuller explanation,

which the Government provided (Doc. # 9).

Upon consideration of the foregoing, it is ORDERED that:

(1)   The Recommendation of the Magistrate Judge (Doc. # 7) is ADOPTED;

(2)   Ms. Holloway's Section 2255 petition (Doc. # 1) is GRANTED;

(3)   The judgment of conviction and sentence entered in case no. 2:08-CR-62 (Doc.

24 in that case) are VACATED, and;

(4)   The Clerk of the Court shall file, in case 2:08-CR-62, copies of this Amended

Order and the accompanying Final Judgment, along with the Magistrate Judge's

recommendation (Doc. # 7).

An appropriate judgment will be entered.

DONE this 26th day of October, 2009.

                        /s/   W. Keith Watkins
                        UNITED STATES DISTRICT JUDGE