

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

CARLOS VARGAS, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:09cv766-WKW
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

After careful review of the pleadings and record in this case, the court has determined that, pursuant to Rule 8, *Rules Governing Section 2255 Proceedings for the United States District Court*, an evidentiary hearing is required for resolution of the following issues presented in petitioner Carlos Vargas, Jr.’s 28 U.S.C. § 2255 motion:

- (1) Vargas’s claim that his counsel rendered ineffective assistance by failing to file a direct appeal on his behalf after he requested that counsel do so; and
- (2) whether Vargas’s counsel rendered ineffective assistance by failing to argue that Vargas should not have been sentenced as a career offender.

The court finds that Vargas, who is currently incarcerated, is eligible for the appointment of counsel under the Criminal Justice Act, 18 U.S.C. § 3006A. Accordingly, it is

ORDERED as follows:

1. The Federal Defender for the Middle District of Alabama is hereby appointed to represent Vargas on the above-mentioned issues set for an evidentiary hearing.
2. Pursuant to this appointment and limited purpose, counsel shall proceed to confer with Vargas and otherwise make an appropriate investigation concerning these issues.
3. A pretrial conference with counsel for Vargas and counsel for the United States is scheduled for **10:00 a.m. on September 1, 2011**, in courtroom 5-B, Frank M. Johnson, Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.
4. An evidentiary hearing is scheduled for **10:00 a.m. on September 7, 2011**, in courtroom 5-B, Frank M. Johnson, Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.
5. Vargas shall be brought to this district not less than a week in advance of the scheduled evidentiary hearing in order to facilitate communications with appointed counsel in preparation for the hearing.

6. Counsel for Vargas and counsel for the United States shall exchange, and file with the court, lists of witnesses and exhibits not later than **August 18, 2011**. All exhibits shall be pre-marked using the same numbers indicated on the exhibit lists, and each party shall deliver to the courtroom deputy prior to commencement of the hearing the original, pre-marked exhibits along with a copy of the exhibits for use by the court.
7. The Clerk is DIRECTED to serve this order upon the Federal Defender for the Middle District of Alabama and to make the case file available as reasonably requested.

Done this 8<sup>th</sup> day of June, 2011.

/s/Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE