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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,	)	No. CR-06-00736-04-PHX-DGC
	)	
Plaintiff/Respondent,	)	No. CV-07-2585-PHX-DGC (BPV)
	)	
v.	)	<b>ORDER</b>
	)	
Reynaldo Moreno-Andrade,	)	
	)	
Defendant/Movant.	)	
	)	

Reynaldo Moreno-Andrade has filed a motion to vacate sentence pursuant to 28 U.S.C. § 2255. Dkt. #1. United States Magistrate Judge Bernardo P. Velasco has issued a report and a recommendation that the motion be granted in part and denied in part (“R&R”). Dkt. #2. The United States and Moreno-Andrade have both filed responses to the R&R, but neither party has objected to the R&R. Dkt. ##4, 17.

The Court has reviewed the portion of the R&R recommending that relief be granted, and finds it well taken. Under *United States v. Sandoval-Lopez*, 409 F.3d 1193 (9th Cir. 2004), Moreno-Andrade’s counsel’s failure to file an appeal at Moreno-Andrade’s request amounts to ineffective assistance of counsel, and this Court must grant the motion to vacate and re-enter judgment against Moreno-Andrade in criminal case CR-06-00736-PHX-DGC so that a timely appeal may be taken. *See id.* at 1198-99 (stating that “ineffective assistance of counsel” is a term of art and does not mean incompetence of counsel). Because the government does not object to the re-entry of judgment for this purpose, the Court concludes that no hearing is necessary.

1 Judge Velasco also recommends that the Court deny relief on grounds three and four  
2 of Moreno-Andrade's motion. The parties have not objected to this recommendation, which  
3 relieves the Court of its obligation to review. *See United States v. Reyna-Tapia*, 328 F.3d  
4 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)]  
5 does not . . . require any review at all . . . of any issue that is not the subject of an  
6 objection.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de novo any part  
7 of the magistrate judge's disposition that has been properly objected to.”).

8 The Court will accept the R&R and grant Moreno-Andrade's motion as to grounds  
9 one and two, and deny it as to grounds three and four. The Court will also appoint counsel  
10 for Moreno-Andrade to pursue a direct appeal in criminal case CR-06-00736-PHX-DGC.  
11 In order to give Moreno-Andrade and his counsel time to review the case and the merits of  
12 any appeal, the Court will not enter an order vacating and re-entering Moreno-Andrade's  
13 judgment in CR-06-00736-PHX-DGC until **January 29, 2010**. If Moreno-Andrade wishes  
14 to appeal, he must file his notice of appeal within 14 days of the new judgment being entered  
15 on January 29, 2010. Fed. R. App. P. 4(b).

16 **IT IS ORDERED:**

- 17 1. The R&R (Dkt. #2) is **accepted**.
- 18 2. The motion to vacate, set aside, or correct sentence (Dkt. #1) is **granted in**  
19 **part and denied in part**. The Court will, on January 29, 2010, enter an order  
20 vacating and re-entering Moreno-Andrade's judgment in CR-06-00736-PHX-  
21 DGC.
- 22 3. The Court appoints attorney Tonya Peterson to represent Moreno-Andrade on  
23 appeal from the re-entered judgment in CR-06-00736-PHX-DGC.

24 DATED this 21st day of December, 2009.

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David G. Campbell  
United States District Judge