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

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United States of America,

No. CV 08-634-TUC-JMR

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Plaintiff,

No. CR 07-852-TUC-JMR (HCE)

11

v.

ORDER

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Ariel Orduno-Silva,

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Defendant/Movant.

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Movant Ariel Orduno-Silva, who is confined in the Central Arizona Detention Center in Florence, Arizona, has filed a *pro se* “Motion For Time Reduction By An Inmate In Federal Custody, (28 U.S.C. § 2255)” (“Motion”). The Court will deny the Motion with leave to amend.

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I. Failure to Use the Court-Approved Form

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The Rules Governing Section 2255 Proceedings for the United States District Courts allow the Court, by local rule, to prescribe a form to be used for filing a § 2255 motion. See Rule 2(c), Rules Governing Section 2255 Proceedings, foll. 28 U.S.C. § 2255. Under this Court’s local rule, Movant must use the court-approved form when he files a *pro se* motion pursuant to 28 U.S.C. § 2255. See LRCiv 3.5(a). Movant has not used the court-approved form.¹

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¹In addition, Movant did not sign the Motion. The Motion must be signed by Movant under penalty of perjury. See 28 U.S.C. § 2242; Rule 2(b) of the Rules Governing Section 2255 Proceedings.

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1 The Court may, in its discretion, forgo the requirement that a movant use a court-
2 approved form. See LRCiv 3.5(a). The Court will require use of the court-approved form
3 because Movant’s Motion does not substantially comply with the court-approved form.
4 Therefore, the Motion will be denied with leave to file an amended motion within 30 days.

5 **II. Leave to Amend**

6 Within 30 days, Movant may submit an amended motion on the court-approved form.
7 The Clerk of Court will mail Movant a court-approved form to use for filing an amended
8 motion. Movant must submit the amended motion on the court-approved form and sign it
9 under penalty of perjury. If Movant fails to file an amended motion within 30 days from the
10 date of filing of this Order, the Court will dismiss this § 2255 action without further notice
11 to Movant. If Movant fails to use the court-approved form, the Court may strike the
12 amended motion and dismiss this § 2255 action without further notice to Movant.

13 Movant must clearly designate on the face of the document that it is an “Amended
14 Motion.” The amended motion must be retyped or rewritten in its entirety on a court-
15 approved form and may not incorporate any part of the original Motion by reference.
16 Movant must describe each ground for relief and the facts supporting each ground.

17 An amended motion supersedes an original motion. See Ferdik v. Bonzelet, 963 F.2d
18 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546
19 (9th Cir. 1990). After amendment, the Court will treat an original motion as nonexistent.
20 Ferdik, 963 F.2d at 1262. Any ground for relief that was raised in the original Motion is
21 waived if it is not raised in an amended motion. See King v. Atiyeh, 814 F.2d 565, 567 (9th
22 Cir. 1987).

23 **III. Warnings**

24 **A. Address Changes**

25 Movant must file and serve a notice of a change of address in accordance with Rule
26 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion for other
27 relief with a notice of change of address. Failure to comply may result in dismissal of this
28 § 2255 action.

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B. Copies

Movant must submit an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply with this requirement may result in the filing being stricken without further notice to Movant.

C. Possible Dismissal

If Movant fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this § 2255 action without further notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court).

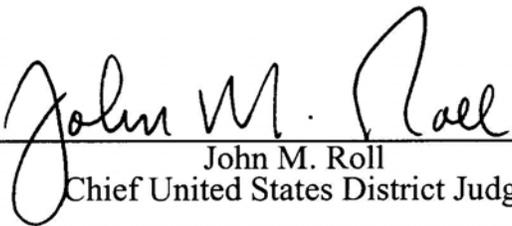
IT IS ORDERED:

(1) Movant’s “Motion For Time Reduction By An Inmate In Federal Custody, (28 U.S.C. § 2255)” (Doc. #1 in CV 08-634-TUC-JMR) is **denied with leave to amend**. Movant has **30 days** from the date of filing of this Order to file an amended motion in compliance with this Order.

(2) **If** Movant fails to file an amended motion within 30 days, the Clerk of Court must, without further notice, terminate Document #133 in CR 07-852-TUC-JMR (HCE) and enter a judgment of dismissal of the civil action opened in connection with this § 2255 action (CV 08-634-TUC-JMR), without prejudice.

(3) The Clerk of Court **must mail** Movant a court-approved form for filing a Motion to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody (28 U.S.C. § 2255).

DATED this 5th day of December, 2008.



John M. Roll
Chief United States District Judge