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

United States of America,	)	No. CV 12-013-PHX-DGC (DKD)
Plaintiff,	)	No. CR 11-1252-PHX-DGC
v.	)	<b>ORDER</b>
Ramon Alcantar-Gonzalez,	)	
Defendant/Movant.	)	

Movant Ramon Alcantar-Gonzalez, who is confined in the Corrections Corporation of America-Florence Correctional Center, has filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (“Motion”). The Court will grant the Motion, order the appointment of counsel, and set a status hearing.

**I. Factual and Procedural Background**

Pursuant to a plea agreement, Movant pled guilty to Importation of Heroin, in violation of 21 U.S.C. § 952(a)(1) and (b)(1)(A). On December 12, 2011, the Court sentenced movant to a 108-month term of imprisonment followed by 4 years on supervised release. On January 3, 2012, Movant filed his § 2255 Motion.<sup>1</sup> Although not formally served with the Motion, on March 16, 2012, the Government filed a Response.

**II. Government’s Response**

In its Response, the Government states that there is now newly discovered information

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<sup>1</sup>Movant’s § 2255 Motion is simply a request for a reduction in his sentence; it does not contain any factual or legal arguments.

1 which, if known prior to Defendant's change of plea hearing, would have resulted in a lower  
2 sentence. Specifically, the Government states that on February 2, 2012, counsel received  
3 notice from the case agent that the seized drugs had recently been tested at the Drug  
4 Enforcement Agency Southwest Laboratory and that, contrary to field test results, the  
5 laboratory test revealed the drugs were cocaine, not heroin. The Government further states  
6 that "upon request from . . . counsel, the case agent confirmed with a lab supervisor that the  
7 drugs were tested in accordance with DEA policy and did, in fact, test positive for cocaine."  
8 The Government further states that the corrected factual basis will result in a final offense  
9 level of 27, with an adjusted sentencing range of 70 to 87 months. The Government states  
10 that at the time of re-sentencing, it will recommend a sentence of 70 months.

### 11 **III. Appointment of Counsel and Status Hearing**

12 Based on the newly discovered evidence offered in the Government's Response, the  
13 Court will grant Movant's § 2255 Motion, will appoint counsel to represent Movant, and will  
14 set a date to conduct a status hearing.

15 The Court will direct the Clerk of Court to send the Federal Public Defender a copy  
16 of this Order and the Government's March 16, 2012 Response for the purpose of selecting  
17 counsel to represent Movant under the Criminal Justice Act ("CJA"). See General Order 07-  
18 08 at 13. The Federal Public Defender must first contact Movant's sentencing counsel, John  
19 R. Minore of Edgar & Minore PC, to determine whether Mr. Minore is able to accept  
20 appointment in this action. If Mr. Minore is unavailable, the Federal Public Defender shall  
21 select counsel for appointment from its office or locate an available CJA panel member. Id.

22 Within 30 days of the filing date of this Order, the selected attorney must file a Notice  
23 of Appearance.

24 The Court will set a status hearing for Tuesday, July 10, 2012 at 3:00 p.m.

25 Before the status hearing, the Government shall file a memorandum stating whether  
26 re-sentencing is sufficient in this case, or whether there also must be an amendment of the  
27 indictment that presumably charged Defendant importation of heroin.

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1 **IT IS ORDERED:**

2 (1) Movant's January 3, 2012 Motion pursuant to 28 U.S.C. § 2255 (Doc. 1 in CV  
3 12-13-PHX-DGC (DKD) and Doc. 33 in CR 11-1252-PHX-DGC) is **granted**; the December  
4 16, 2011 Judgment of Conviction is **vacated**.

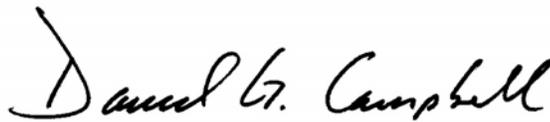
5 (2) The Clerk of Court **must close** the civil case opened in connection with this  
6 action, CV 12-13-PHX-DGC (DKD), and enter judgment.

7 (3) A **status hearing** in CR 11-1252 is set for **Tuesday, July 10, 2012 at 3:00**  
8 **p.m.**

9 (4) The Clerk of Court must **send** to the Federal Public Defender for the District  
10 of Arizona, **by certified mail**, a copy of this Order and the Government's March 16, 2012  
11 Response (Doc. 34 in CR 11-1252) for the purpose of selecting counsel to represent Movant  
12 pursuant to the Criminal Justice Act. The **Federal Public Defender must contact** Movant's  
13 sentencing counsel, John R. Minore, to determine whether Mr. Minore is available to  
14 represent Movant in further proceedings. If Mr. Minore is unavailable, the Federal Public  
15 Defender must locate counsel to represent Movant in accordance with General Order 07-08.

16 (5) Within **30 days** of the filing date of this Order, the selected attorney must file  
17 a notice of appearance in CR 11-1252-PHX-DGC (DKD).

18 DATED this 27<sup>th</sup> day of April, 2012.

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23 David G. Campbell  
24 United States District Judge  
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