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

United States of America,  
  
Plaintiff,  
  
vs.  
  
Oscar Bolanos-Nunez,  
  
Defendant/Movant.

No. CV 13-1088-PHX-GMS (LOA)  
CR 12-00199-PHX-GMS (LOA)

**ORDER**

Movant Oscar Bolanos-Nunez, who is confined in the Federal Correctional Institution Mendota in Mendota, California, 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. The Court will call for an answer to the § 2255 Motion.

**I. Procedural History**

Movant pled guilty, without a plea agreement, to Re-Entry of Removed Alien, in violation of 8 U.S.C. § 1326(a) with a sentencing enhancement pursuant to 8 U.S.C. § 1326(b)(1). On July 9, 2012, the Court sentenced Movant to a 46-month term of imprisonment followed by 3 years on supervised release.

**II. Section 2255 Motion**

In the § 2255 Motion, Movant raises two grounds for relief:

(1) Movant received ineffective assistance of counsel when his attorney advised him to reject the fast-track plea offer; and

1 (2) Movant received ineffective assistance of counsel when his attorney failed  
2 to file an appeal after Movant requested he do so.

3 The Court will require a response to the § 2255 Motion.

4 **III. Warnings**

5 **A. Address Changes**

6 Movant must file and serve a notice of a change of address in accordance with  
7 Rule 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion  
8 for other relief with a notice of change of address. Failure to comply may result in  
9 dismissal of this action.

10 **B. Copies**

11 Movant must serve Respondent, or counsel if an appearance has been entered, a  
12 copy of every document that Movant files. Fed. R. Civ. P. 5(a). Each filing must include  
13 a certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also,  
14 Movant must submit an additional copy of every filing for use by the Court. LRCiv 5.4.  
15 Failure to comply may result in the filing being stricken without further notice to Movant.

16 **C. Possible Dismissal**

17 If Movant fails to timely comply with every provision of this Order, including  
18 these warnings, the Court may dismiss this action without further notice. *See Ferdik v.*  
19 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action  
20 for failure to comply with any order of the Court).

21 **IT IS ORDERED:**

22 (1) The Clerk of Court must serve a copy of the § 2255 Motion (Doc. 1 in  
23 CV 13-1088-PHX-GMS (LOA)) and this Order on the United States Attorney for the  
24 District of Arizona.

25 (2) The parties and the Clerk of Court **must file** all documents related to the  
26 § 2255 Motion in the **civil case**.

27 (3) The United States Attorney for the District of Arizona has **60 days** from the  
28 date of service within which to answer the § 2255 Motion. The United States Attorney

1 may file an answer limited to relevant affirmative defenses, including but not limited to,  
2 statute of limitations, procedural bar, or non-retroactivity. If the answer is limited to  
3 affirmative defenses, only those portions of the record relevant to those defenses need be  
4 attached to the answer. Failure to set forth an affirmative defense in an answer may be  
5 treated as a waiver of the defense. *Day v. McDonough*, 547 U.S. 198, 209-11 (2006). If  
6 not limited to affirmative defenses, the answer must fully comply with all of the  
7 requirements of Rule 5 of the Rules Governing Section 2255 Cases.

8 (4) Movant may file a reply within **30 days** from the date of service of the  
9 answer to the § 2255 Motion.

10 (5) The matter is referred to Magistrate Judge Lawrence O. Anderson pursuant  
11 to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and  
12 a report and recommendation.

13 Dated this 20th day of August, 2013.

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17 G. Murray Snow  
18 United States District Judge  
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