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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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9 United States of America,)	No. CV-13-1088-PHX-GMS (LOA)
)	No. CR-12-199-PHX-GMS
10 Plaintiff/Respondent,)	
)	ORDER
11 vs.)	
)	
12 Oscar Bolanos-Nunez,)	
)	
13 Defendant/Movant.)	
)	
14)	

15 This matter arises on Movant Oscar Bolanos-Nunez’s Motion for Leave to Amend. (Doc.
16 7) Movant seeks leave to file an Amended Motion to Vacate, Set Aside or Correct Sentence
17 Pursuant to 28 U.S.C. § 2255. Respondent United States of America has not filed a response to
18 the motion and the time to do so has expired. *See* Civil Rule of Practice (“Local Rule” or
19 “LRCiv”) 7.2(c). The Court construes Respondent’s failure to respond as consent to the granting
20 of the motion. *See* LRCiv 7.2(i) (failure to file a response to a motion may be deemed a consent
21 to the granting of the motion and the Court may dispose of it summarily).

22 Movant initiated this action by filing a Motion to Vacate, Set Aside or Correct Sentence
23 Pursuant to 28 U.S.C. § 2255 on May 28, 2013. (Doc. 1) The assigned District Judge reviewed
24 the Motion and, on August 20, 2013, ordered Respondent to file an answer. (Doc. 3) On
25 December 20, 2013, Respondent filed a Response in Opposition to Motion to Vacate, Set Aside
26 or Correct Sentence Pursuant to 28 U.S.C. § 2255. (Doc. 6) Movant has not filed a reply.

27 In the instant motion, Movant seeks leave to amend because, since filing his Motion
28 to Vacate, he has received information and documentation from his trial-level counsel that is

1 relevant to his claims of ineffective assistance. Movant contends the additional information will
2 allow him to more fully support his claims for relief. Movant, however, has failed to comply
3 with LRCiv 15.1(a) by not “[a]ttach[ing] a copy of the proposed amended pleading as an exhibit
4 to the motion, which must indicate in what respect it differs from the pleading which it amends,
5 by bracketing or striking through the text to be deleted and underlining the text to be added.”

6 Pursuant to Rule 12 of the Rules Governing Section 2255 Proceedings for the United
7 States District Courts, the Federal Rules of Civil Procedure (“Fed.R.Civ.P”) may be applied to
8 § 2255 proceedings, “[t]o the extent that they are not inconsistent with any statutory provisions
9 or these rules.” Rule 15(a)(1), Fed.R.Civ.P., provides, in relevant part, that “[a] party may
10 amend its pleading once as a matter of course within . . . 21 days after service of a responsive
11 pleading.” “In all other cases, a party may amend its pleading only with the opposing party’s
12 written consent or the [district] court’s leave.” Fed.R.Civ.P. 15(a)(2). “The court should freely
13 give leave when justice so requires.” *Id.*

14 Here, because more than 21 days had passed since Respondent filed its responsive
15 pleading, Movant properly sought leave of court to amend his Motion to Vacate. Absent any
16 opposition and in light of the policy to freely grant leave when justice so requires, the Motion
17 for Leave to Amend will be granted even though a copy of the proposed petition was not
18 attached to the motion as mandated by LRCiv 15.1(a). Movant will be provided twenty days
19 from the date of this Order to file an Amended Motion to Vacate, Set Aside or Correct Sentence
20 Pursuant to 28 U.S.C. § 2255.

21 Respondent will be directed to file an answer to the Amended Motion to Vacate within
22 forty (40) days of the date the Amended Motion to Vacate is filed. With the exception of the
23 deadline for Respondent to file an answer, the District Judge’s August 20, 2013 Order, doc. 3,
24 remains in effect.

25 Accordingly,

26 **IT IS ORDERED** that Movant’s Motion for Leave to Amend, doc. 7, is **GRANTED**.
27 Within twenty (20) days of the date of this Order is filed, Movant may file Amended Motion
28 to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255.

