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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,

11 v.

12 Erasmo Lopez-Valencia,
13 Defendant/Movant.
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No. CV 15-1320-PHX-SMM (JFM)
CR 14-1153-PHX-SMM

ORDER

15 On July 13, 2015, Movant Erasmo Lopez-Valencia, who is confined in the Giles
16 W. Dalby Correctional Facility in Post, Texas, filed a *pro se* Motion Under 28 U.S.C.
17 § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The
18 Court will summarily deny the Motion.

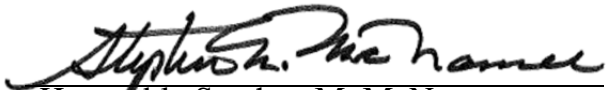
19 Movant pled guilty to Re-Entry of Removed Alien, in violation of 8 U.S.C.
20 § 1326(a), with sentencing enhancement pursuant to 8 U.S.C. § 1326(b)(1). On
21 December 11, 2014, the Court sentenced Movant to a 27-month term of imprisonment
22 followed by 3 years on supervised release.

23 On June 29, 2015, Movant filed a Notice of Appeal to the United States Court of
24 Appeals for the Ninth Circuit from the judgment of conviction and sentence. The United
25 States Court of Appeals for the Ninth Circuit has instructed the district courts that they
26 should not entertain § 2255 motions while there is a direct appeal pending in either the
27 Ninth Circuit or the Supreme Court. *United States v. Deeb*, 944 F.2d 545, 548 (9th Cir.
28 1991); *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987); *see also United States*

1 v. *Pirro*, 104 F.3d 297, 299 (9th Cir. 1997); Rule 5, Rules Governing Section 2255
2 Proceedings for the United States District Courts, Advisory Comm. Note (1976) (absent
3 extraordinary circumstances, the orderly administration of criminal justice precludes a
4 district court from considering a § 2255 motion while review of the direct appeal is still
5 pending). Accordingly, Movant's § 2255 Motion will be denied without prejudice
6 pending resolution of Movant's direct appeal.

7 **IT IS THEREFORE ORDERED** that the Motion Under 28 U.S.C. § 2255 to
8 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 36 in
9 CR 14-1153-PHX-SMM) is **denied** and that the civil action opened in connection with
10 this Motion (CV 15-1320-PHX-SMM (JFM)) is **dismissed without prejudice**. The
11 Clerk of Court must enter judgment accordingly.

12 DATED this 22nd day of July, 2016.

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16 Honorable Stephen M. McNamee
17 Senior United States District Judge
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