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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Francis Luna-Lara,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.
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No. CV-16-01532-PHX-ROS
CR-03-01097-PHX-ROS

ORDER

15 On October 25, 2019, Magistrate Judge Michelle H. Burns issued a Report and
16 Recommendation (“R&R”) recommending the Amended Motion to Vacate, Set Aside, or
17 Correct Sentence Under 28 U.S.C. § 2255 be granted, Petitioner’s “conviction and sentence
18 be vacated, and the original charges in the Indictment be reinstated.” (Doc. 33 at 5). No
19 objections were filed. Based on the lack of objections, the R&R will be summarily adopted.
20 Before doing so, however, the Court will hold a status hearing.

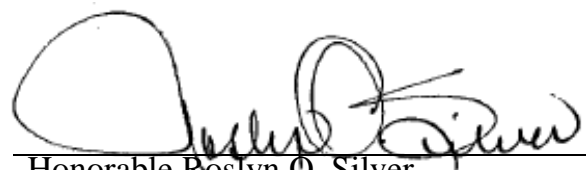
21 As explained in the R&R, Petitioner’s plea agreement provided that if his guilty plea
22 was “rejected, withdrawn, vacated, or reversed . . . any charges that have been dismissed
23 . . . will be automatically reinstated.” (Doc. 33 at 3). Thus, when the Court adopts the
24 R&R and vacates Petitioner’s conviction and sentence, the previously-dismissed charges
25 will automatically be reinstated. But vacating Petitioner’s conviction and sentence might
26 require immediate proceedings to determine if he should remain in custody. Moreover,
27 reinstating the previous charges might implicate the Speedy Trial Act. Therefore, before
28 formally adopting the R&R and granting the motion to vacate, the Court will hold a status

1 hearing. Prior to that hearing, the parties will be required to file a joint status report stating
2 how they wish to proceed after the Court adopts the R&R. That status report should also
3 indicate whether Petitioner's presence is necessary for the status hearing.

4 Accordingly,

5 **IT IS ORDERED** a status hearing is set for **December 17, 2019**, at **10:00 a.m.** No
6 later than **November 25, 2019**, the parties shall file a joint status report explaining how
7 they wish to proceed and whether Petitioner's presence at the status hearing is necessary.

8 Dated this 15th day of November, 2019.

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12 Honorable Roslyn O. Silver
13 Senior United States District Judge
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