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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 Ivory Crow,  
13 Defendant/Movant.  
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No. CV 16-02819-PHX-RJB  
CR 11-00285-PHX-RJB

**ORDER**

15 On August 22, 2016, Movant Ivory Crow, who is confined in the Federal  
16 Correctional Institution-La Tuna in Anthony, Texas, filed a pro se Motion Under 28  
17 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.<sup>1</sup>  
18 On September 6, 2016, Movant filed an Amended § 2255 Motion (Doc. 4). The Court  
19 will deny the Amended § 2255 Motion with leave to amend.

20 **I. Amended § 2255 - Failure to Use the Court-Approved Form**

21 An amended motion supersedes an original motion. *See Ferdik v. Bonzelet*, 963  
22 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d  
23

24  
25 <sup>1</sup> The Court notes that Movant filed two prior § 2255 motions. The current § 2255  
26 Motion is not considered a second or successive petition, however, because both motions  
27 were dismissed without prejudice and without an adjudication on the merits. *See Slack v.*  
28 *McDaniel*, 529 U.S. 473, 485-86 (2000) (habeas petition which is filed after a prior  
habeas petition was dismissed without adjudication on the merits for failure to exhaust  
state remedies is not a second or successive petition). The first motion, filed in CV 11-  
01914-PHX-ROS, was dismissed as premature because Movant had not been sentenced  
when he filed it. The second, filed in CV 13-02603-PHX-RJB (DKD), was dismissed  
because Movant had an appeal pending in the Ninth Circuit Court of Appeals.

1 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original motion as  
2 nonexistent. *Ferdik*, 963 F.2d at 1262.

3 The Rules Governing Section 2255 Proceedings for the United States District  
4 Courts allow the Court, by local rule, to prescribe a form to be used for filing a § 2255  
5 motion. *See* Rule 2(c), Rules Governing Section 2255 Proceedings, foll. 28 U.S.C.  
6 § 2255. Under this Court’s local rule, Movant must use the court-approved form when  
7 filing a pro se motion pursuant to 28 U.S.C. § 2255. *See* LRCiv 3.5(a). Movant did not  
8 use the court-approved form when filing his Amended § 2255 Motion.

9 The Court may, in its discretion, forgo the requirement that a movant use a court-  
10 approved form. *See* LRCiv 3.5(a). The Court will require use of the court-approved  
11 form because Movant’s Amended § 2255 Motion does not substantially comply with the  
12 court-approved form. Therefore, the Amended § 2255 Motion will be denied with leave  
13 to file a second amended motion within 30 days.

14 **II. Leave to Amend**

15 Within 30 days, Movant may submit a second amended motion on the court-  
16 approved form. The Clerk of Court will mail Movant a court-approved form to use for  
17 filing an amended motion. Movant must submit the second amended motion on the  
18 court-approved form and sign it under penalty of perjury. If Movant fails to file a second  
19 amended motion within 30 days from the date of filing of this Order, the Court will  
20 dismiss this § 2255 action without further notice to Movant. If Movant fails to use the  
21 court-approved form, the Court may strike the second amended motion and dismiss this  
22 § 2255 action without further notice to Movant.

23 Movant must clearly designate on the face of the document that it is a “Second  
24 Amended Motion.” The second amended motion must be retyped or rewritten in its  
25 entirety on a court-approved form and may not incorporate any part of the original  
26 Motion or Amended § 2255 Motion by reference. Movant must describe each ground for  
27 relief and the facts supporting each ground.

28 . . . .

1 A second amended motion supersedes the original Motion and the Amended  
2 § 2255 Motion. *See Ferdik*, 963 F.2d at 1262; *Hal Roach Studios*, 896 F.2d at 1546.  
3 After amendment, the Court will treat the original Motion and Amended § 2255 Motion  
4 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any ground for relief that was raised in the  
5 original Motion or the Amended § 2255 Motion and that was voluntarily dismissed or  
6 was dismissed without prejudice is waived if it is not alleged in a second amended  
7 motion. *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

8 **III. Warnings**

9 **A. Address Changes**

10 Movant must file and serve a notice of a change of address in accordance with  
11 Rule 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion  
12 for other relief with a notice of change of address. Failure to comply may result in  
13 dismissal of this § 2255 action.

14 **B. Copies**

15 Movant must submit an additional copy of every filing for use by the Court. *See*  
16 LRCiv 5.4. Failure to comply with this requirement may result in the filing being  
17 stricken without further notice to Movant.

18 **C. Possible Dismissal**

19 If Movant fails to timely comply with every provision of this Order, including  
20 these warnings, the Court may dismiss this § 2255 action without further notice. *See*  
21 *Ferdik*, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply  
22 with any order of the Court).

23 **IT IS ORDERED:**

24 (1) Movant's Amended § 2255 Motion (Doc. 4 in CV 16-02819-PHX-RJB) is  
25 **denied with leave to amend**. Movant has **30 days** from the date of filing of this Order to  
26 file a second amended motion in compliance with this Order.

27 (2) If Movant fails to file a second amended motion within 30 days, the Clerk  
28 of Court must, without further notice, terminate Document 317 in CR 11-00285-PHX-

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RJB and enter a judgment of dismissal of the civil action opened in connection with this § 2255 action (CV 16-02819-PHX-RJB), without prejudice.

(3) The Clerk of Court must mail Movant a court-approved form for filing a Motion to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody (28 U.S.C. § 2255).

Dated this 21<sup>st</sup> day of September, 2016.



ROBERT J. BRYAN  
United States District Judge