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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 10-00702-JVS (SACR 08-00320-JVS) Date December 3, 2010

Title Gabriel Garcia Garcia v. United States of America

Present: The Honorable James V. Selna

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order Dismissing Petition

Gabriel Garcia-Garcia (“Garcia-Garcia”) petitions the Court pursuant to 28 U.S.C. § 2255 for collateral relief from his 2008 conviction for violation of 8 U.S.C. § 1326(a), an alien illegally found in the United States. Section 2255 provides in part:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255. He seeks relief because as an illegal alien he is not entitled to a number of benefits, including access to the Bureau of Prison’s community-based 500-hour drug program, which can result in a one-year reduction in sentence.

The petition must be denied for three reasons.

First, the petition is time-barred because it was not brought within a year of his conviction becoming final. 28 U.S.C. 2255(f). In the absence of an appeal, his conviction became final on May 11, 2009, the day the time for filing a notice of appeal lapsed. United States v. Schwartz, 274 F.2d 1220, 1223 (9th Cir. 2001). However, he

