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6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 JOSE LUIS SANDOVAL, ) No. CV-F-05-980 REC  
10 ) (No. CR-F-02-5043 REC)  
11 ) ORDER DENYING PETITIONER'S  
12 Petitioner, ) MOTION FOR RELIEF PURSUANT  
vs. ) TO 28 U.S.C. § 2255 AND  
13 ) DIRECTING ENTRY OF JUDGMENT  
14 ) FOR RESPONDENT  
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17 On July 11, 2005, petitioner Jose Luis Sandoval filed an "Ex  
18 Parte Application to Dismiss Outstanding Citations, Warrants,  
19 Informations, Charges, Complaints, and Fines or Detainer(s),  
20 Trespasses" and a "Motion to Dismiss for Lack of Territorial  
21 Jurisdiction" in the United States District Court for the Central  
22 District of California. By Order filed on July 19, 2005, these  
23 motions were recharacterized by the Central District as motions  
24 seeking relief pursuant to 28 U.S.C. § 2255 from the judgment  
25 entered against petitioner in United States v. Sandoval, No. CR-  
F-02-5043 REC, and transferred to this court.

1 Petitioner pleaded guilty pursuant to a written plea  
2 agreement to a violation of 21 U.S.C. § 843(b). Petitioner was  
3 sentenced on December 9, 2002 to 48 months in custody and 12  
4 months of supervised release. No appeal was filed.

5 The court denies petitioner's "Ex Parte Application to  
6 Dismiss Outstanding Citations, Warrants, Informations, Charges,  
7 Complaints, and Fines or Detainer(s), Trespasses". Petitioner  
8 has been released from custody by the Bureau of Prisons.  
9 Therefore, petitioner's demand that any detainees be served on  
10 him immediately, that he be released from federal incarceration  
11 and immediately deported pursuant to the INS detainer for  
12 possible deportation is mooted by his release.

13 To the extent that petitioner's motion challenge the  
14 legality of his conviction and sentence by this court in the  
15 criminal action pursuant to 28 U.S.C. § 2255, petitioner's motion  
16 is denied as untimely because it was not filed within the one-  
17 year period set forth in Section 2255 and petitioner makes no  
18 showing that he is entitled to equitable tolling of the one-year  
19 period.

20 However, even if this motion was timely filed, petitioner  
21 would not be entitled to relief. Petitioner's affidavit in  
22 support of his motion appears to be a "form" affidavit used  
23 indiscriminately in support of motions for relief from federal  
24 incarceration. In this affidavit, petitioner refers to 8 U.S.C.  
25 § 1325, contending that the "rule of Lenity" requires that "Count  
26 2" be dismissed as unlawful, that "No prior used against me was

1 (1) proven beyond a reasonable doubt, (2) admitted to  
2 voluntarily, knowingly or intelligently", that "To use priors as  
3 part of a Statute as [8 U.S.C. §§ 1325, 1326] requires a finding  
4 of fact by a jury or such statute violates the doctrine of  
5 Constitutional Avoidance." However, these claims are irrelevant  
6 to this petitioner. Petitioner was not charged in this action  
7 with violations of 8 U.S.C. § 1325 or 1326. If petitioner is  
8 contending that his sentence could not be enhanced by the court  
9 under the Sentencing Guidelines unless the fact(s) of his prior  
10 conviction(s) had been proved beyond a reasonable doubt,  
11 petitioner's claim is without merit. Neither Blakely v.  
12 Washington, 542 U.S. 296 (2004) nor United States v. Booker, \_\_\_\_  
13 U.S. \_\_\_, 125 S.Ct. 738 (2005) upset the rule that Apprendi v.  
14 New Jersey, 530 U.S. 466 (2000), carves out an exception for  
15 proving the fact of a prior conviction to the jury beyond a  
16 reasonable doubt or by admitting the prior conviction under oath  
17 during a guilty plea. See United States v. Brown, \_\_\_ F.3d \_\_\_,  
18 2005 WL 1863280 (9<sup>th</sup> Cir. 2005). Finally, petitioner's  
19 contention that dismissal of the criminal charges against him is  
20 required "because of the lack of exclusive jurisdictional  
21 authority over the exact geographical location where the alleged  
22 criminal activity in the indictment took place" is without merit  
23 and frivolous. See United States v. Sitton, 968 F.2d 947, 953  
24 (9<sup>th</sup> Cir. 1992).

25 ACCORDINGLY:

26 1. Petitioner's deemed motion for relief pursuant to 28

1 U.S.C. 2255 is denied.

2 2. The Clerk of the Court is directed to enter judgment for  
3 respondent.

4 IT IS SO ORDERED.

5 **Dated:** August 15, 2005  
668554

/s/ Robert E. Coyle  
UNITED STATES DISTRICT JUDGE

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