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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BORTOLO GIOVANNI VIVENZI,
Plaintiff,
v.
U.S.A.,
Defendant.

E-FILED - 9/30/09

CASE NOS.: C-06-04688-RMW
C-09-00104-RMW
(Criminal No.: CR-85-02160-RMW)

**ORDER DENYING MOTION TO
VACATE, SET ASIDE A CASE AND
MOTION FOR WRIT OF ERROR
CORAM NOBIS**

(Docket Nos.: 1, 1, 823, 824, 826, 827)

Bortolo Giovanni Vivenzi brings what he describes as a Petition for Writ of Error Coram Nobis (action # C-06-04688) and a Motion to Vacate, Set Aside a Case (action # C-09-00104). It appears that C-06-04688 concerns petitioner's federal conviction in action # 85-CR-02160 which involved a conviction for drug trafficking offenses. Petitioner, in essence, believes his plea agreement should have included a request for a judicial recommendation against deportation.


Alternatively, he seeks a reduction in his sentence in the hope that would enable him to avoid deportation. His papers do not set forth a basis for granting the relief he requests. Although at the time he was convicted, a judge could recommend against deportation, he sets forth no basis that he could have obtained such a recommendation or that it would have done any good. He also sets forth nothing that shows entitlement to an alternate sentence.

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In his Motion to Vacate, Set Aside Vivenzi references 28 U.S.C. 2255 and refers to being in federal custody. He, however, attaches papers from a state court criminal proceeding. Again, what petitioner appears to seek is an avenue for avoiding deportation. The court finds no basis for relief.

Both the petition and motion are denied. Vivenzi's request for a fee waiver is denied as moot.

DATED: September 30, 2009



RONALD M. WHYTE
U.S. DISTRICT JUDGE

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Copy of Order Mailed to:
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A# 36216291
1705 East Hanna Road
Eloy, AZ 85131
D-214