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\*E-FILED - 8/2/10\*

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

UNITED STATES OF AMERICA,  
  
Plaintiffs,  
  
v.  
  
JUAN HERNANDEZ-TORRES,  
  
Defendant.

Case No. CR-07-00363-RMW

(Related to C-09-04234-RMW)

ORDER DISMISSING THREE CLAIMS  
AND REQUIRING RESPONSE ON ONE  
CLAIM ON MOTION UNDER § 2255

On September 11, 2009 Juan Hernandez-Torres filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. He was sentenced on January 16, 2009 to 65 months confinement following his open plea to illegal re-entry following deportation. He makes four claims for relief in his § 2255 motion: (1) ineffective assistance of counsel for counsel's failure to file a promised notice of appeal; (2) his sentence was unreasonable because he should have received a departure under Guideline § 5K3.1 for the early disposition program; (3) his sentence was unreasonable because the court failed to take into consideration his family ties and responsibilities; and (4) he should be released for deportation. Grounds (2) - (4) have no merit and are summarily dismissed. Hernandez-Torres did not enter into a Fast Track program with the government and the court had discretion to consider movant's family ties and responsibilities as it saw fit. The movant actually received a sentence under 18 U.S.C. § 3553 which was below the guideline range.

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With respect to ground (1), however, and pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings, the government is hereby ordered to file a response by August 27, 2010.

DATED: 7/30/10



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RONALD M. WHYTE  
United States District Judge