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E-FILED - 9/28/12

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

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Plaintiff/Respondent,

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v.

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JUAN HERNANDEZ-TORRES

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Defendant/Movant.

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NO. CR-07-00363-RMW

(Related to: C-09-04234-RMW)

ORDER DISMISSING REMAINING CLAIM

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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. Hernandez-Torres was sentenced on January 16, 2009 to 65 months confinement following his open plea to illegal re-entry following deportation. He made 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.

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Grounds (2) - (4) were dismissed by order dated March 22, 2012. By order dated June 22, 2011 defendant was ordered to supply some clarifying facts regarding the first ground of his motion by July 29, 2011. Defendant was warned that if he failed to provide the requested information, his motion would be denied. Defendant has failed to submit the requested information. Therefore, his § 2255 motion is denied.

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1 Defendant has not shown that jurists of reason would find it debatable whether the motion
2 states a valid claim of the denial of a constitutional right or that they would find it debatable whether
3 this court was correct in its procedural ruling. Therefore, defendant is not entitled to a Certificate of
4 Appealability. *See* 28 U.S.C. §2253.

5 The Clerk shall close the file.

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7 DATED: 9/28/12



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9 RONALD M. WHYTE
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al,
Plaintiff,

Case Numbers: CV09-04234 RMW
CR-07-00373 RMW

v.

CERTIFICATE OF SERVICE

JUAN HERNANDEZ-TORRES,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 28, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Juan Hernandez-Torres
#10682-111
Federal Correctional Institution
PO Box 52020
Bennettsville, SC 29512

Dated: September 28, 2012

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk