

1 On September 29, 2014, Cazarez filed a petition pursuant to 28 U.S.C. § 2255 to
2 vacate his conviction for alien smuggling. The United States opposes that motion on the
3 grounds that the petition is time-barred and otherwise lacks merit. On November 10, the
4 Court held a hearing and received evidence. The Court made findings of fact and announced
5 its decision from the bench, but also specified that its decision from the bench would be
6 supplemented by a written decision.

7 In his petition, Cazarez argues that his trial counsel committed error under *Padilla v.*
8 *Kentucky*, 559 U.S. 356 (2010) by failing to adequately advise him of the risk of deportation.
9 As the party seeking to set aside his conviction, he bears the burden of showing he is
10 entitled to relief. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

11 **Hearing and Findings**

12 At the hearing, Cazarez called his trial counsel, Steven Pactor, who testified regarding
13 what advice he had given Cazarez while representing him on the alien smuggling charge.
14 Both sides agreed that Cazarez waived the attorney-client privilege by calling into question
15 the effectiveness of Mr. Pactor's legal representation, and that Mr. Pactor could testify
16 regarding the advice he gave regarding immigration consequences. Mr. Pactor testified at
17 length, and was subject to questioning by Cazarez and the Government, and also by the
18 Court. Cazarez did not testify, and did not present any other evidence beyond what he had
19 submitted in his written petition.

20 Mr. Pactor testified that he did not recall the specific words that he used in advising
21 Cazarez of the immigration consequences that would follow from an alien smuggling
22 conviction, but he stated that it is his practice to advise his clients regarding immigration
23 consequences, and that he did not deviate from his usual practice in this case. The essence
24 of Mr. Pactor's testimony was that he advised Cazarez that a guilty plea would definitely
25 result in deportation proceedings, and that he was likely to be deported. He characterized
26 his advice this way: "You're likely to be deported, but never say never." In other words,
27 deportation was likely, but Mr. Pactor could not positively rule out the possibility that Cazarez

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1 might avoid it. He testified that Cazarez's version of the advice, which ascribed a much more
2 tentative warning about deportation, did not “ring true” to him.

3 Mr. Pactor testified that his standard procedure is to tell all clients in Cazarez's
4 position that they are likely to be deported, but not to say that deportation is “certain.” He
5 explained that it would be irresponsible of him to tell a client that there was no chance at all
6 of avoiding deportation, because sometimes it can be avoided. For example, he testified
7 that a client might be eligible for asylum or for what he called a “snitch visa,” under which the
8 client avoids deportation by providing assistance to the government.¹ Mr. Pactor also
9 testified that he routinely advises his clients that they should hire an immigration attorney if
10 they are intent on avoiding deportation, and he tries not to provide detailed immigration
11 advice himself.

12 At Cazarez's change of plea hearing, Magistrate Judge William Gallo asked Mr.
13 Pactor whether he had advised Cazarez about the possibility of deportation. (Pet., Ex. B at
14 2:12–25.) Mr. Pactor responded that the portion of the plea agreement dealing with possible
15 immigration consequences “mimics the conversation [he] had with [Cazarez] yesterday.”
16 Cazarez argues that Pactor's statement meant that the lawyer had advised him only about
17 striking the stipulated deportation language from the plea agreement – a subject that came
18 up during the Rule 11 hearing – and not more. But the Court disagrees with this
19 interpretation and finds it implausible.

20 The colloquy between Mr. Pactor and Judge Gallo concerned Cazarez's desire to
21 strike the stipulated removal provision that was in the original draft of the plea agreement,
22 not whether Cazarez understood the likelihood of deportation. That was the subject
23 conversation that Pactor referred to when he stated that he had spoken with Cazarez
24 “yesterday” and that Pactor said “mimics” what was in the agreement. Mr. Pactor was not
25 asked by Judge Gallo to recount all previous advice he had provided to Cazarez about the
26 immigration consequences of an alien smuggling conviction – the subject that he testified

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28 ¹ Although Mr. Pactor did not testify regarding this, it is worth remembering that
Cazarez was a junior member of a team of alien smugglers. It is at least possible that he
might have been eligible for this form of relief.

1 about before this Court. When he took the stand at the § 2255 hearing, Mr. Pactor clarified
2 what general advice he had given. His advice regarding the likelihood of Cazarez's
3 deportation was far more thorough than the terse colloquy during the Rule 11 hearing, and
4 Mr. Pactor was thoroughly examined about it. After observing and considering Mr. Pactor's
5 testimony, the Court finds that it was credible in all particulars and believes his account.

6 In addition to the advice that Mr. Pactor gave Cazarez before he pled guilty, and in
7 addition to the warnings Cazarez received during the Rule 11 proceeding, both Mr. Pactor
8 and the Court discussed deportation during Cazarez's sentencing hearing. Mr. Pactor
9 related that his client:

10 is an individual who has substantial ties to the United States. He is someone
11 who is not a hundred percent going to be deported but definitely going to be
12 in deportation proceedings. The family has retained immigration counsel, and
I negotiated this plea. And I know enough to know what language is in there,
but we checked with immigration counsel.

13 (Sentencing Hearing Tr. (Docket no. 85) at 5:2–7). Mr. Pactor's statement at the sentencing
14 hearing fully corroborates his testimony at the § 2255 hearing. The Court finds it significant
15 that Cazarez was present during the sentencing hearing, and was obviously aware of what
16 was being said. In fact, the sentencing transcript reveals that shortly after Mr. Pactor spoke,
17 Cazarez was asked if he had anything to say. Cazarez took the opportunity to speak, but
18 he never disputed or sought to clarify anything that Mr. Pactor had said, nor did he even
19 mention the subject of deportation. (*Id.* at 5:18–6:1.) Later at the hearing, the Court
20 reiterated the likelihood of deportation while setting the conditions of supervised release. "If
21 Mr. Cazarez does not succeed in immigration court and he is deported, then there'll be two
22 conditions of supervised release" (*Id.* at 8:4–8.)

23 Based on all of the evidence, the Court finds Mr. Pactor told Cazarez that he would
24 definitely be in deportation proceedings, and that he would more than likely be deported,
25 although deportation was not 100% certain.

26 **Timeliness**

27 Cazarez recognizes that his petition under § 2255 was filed after the one-year
28 limitations period had already run. He nevertheless argues that the petition is not time-

1 barred for two reasons. First, he says his claim did not accrue until his removal became
2 administratively final. Second, he argues that he is entitled to equitable tolling because of
3 attorney abandonment. At the hearing, the Court denied Cazarez's petition as untimely
4 because it was brought well after the one-year limitations period had expired and there was
5 no sufficient basis to find tolling.

6 Cazarez relies on *Johnson v. United States*, 544 U.S. 295 (2005) in support of his
7 argument that the limitations period on his claim did not begin to run until his removal was
8 administratively final. In other words, he believes that his claim did not accrue as it ordinarily
9 would on the date his conviction became final. He argues that the final removal order
10 amounted to a new fact, and therefore pursuant to § 2255(f)(4), the limitations period began
11 to run on that later date. He also argues that until he was actually removed, he was relying
12 on his defense lawyer's allegedly inadequate advice. His claim therefore accrued, he
13 maintains, on the date of removal.

14 The Government points out that *Johnson* is distinguishable. In *Johnson*, a state
15 court's decision directly affected the petitioner's claim; he could not have filed a habeas
16 petition until the state court decision was entered. Here, by contrast, the removal order itself
17 was not a new fact underlying or giving rise to Cazarez's habeas claim. By no later than the
18 date that he pleaded guilty, Cazarez knew the facts underlying his habeas claim, *i.e.*, that
19 he had been given certain advice by his attorney, that he was not an American citizen, and
20 that he had to plead guilty to the offense of alien smuggling. That he may not have realized
21 the legal significance of those facts until later makes no difference. For example, in *Chang-*
22 *Cruz v. Hendricks*, 2013 WL 5966420, slip op. at *3 (D.N.J., Nov. 7, 2013), the court held
23 that a non-citizen's claim accrued in 2005, when he pleaded guilty, and not later when he
24 realized that the plea would result in his deportation. Although that court was dealing with
25 the limitations period of § 2244(d)(1), the analysis applies with equal force here:

26 Mr. Chang-Cruz was aware that he was not an American citizen. He was
27 aware that he had pled guilty to the drug offenses when his conviction
28 became final in 2005. Mr. Chang-Cruz may not have been aware of the
precise legal consequences of his guilty plea (potential deportation), but he
was aware of the vital facts underlying his claim. Furthermore, Mr.
Chang-Cruz was specifically instructed by the state court at the plea hearing

1 that his guilty plea could impact his immigration status. That placed him at
2 least on inquiry notice, even if the precise consequences of his guilty plea did
3 not materialize until he was picked up by immigration officials in June 2010.
4 These facts do not give rise to a claim of delayed accrual under Section
2244(d)(1)(D). The case law consistently draws a distinction between delayed
awareness of vital facts (which will delay accrual), and delayed awareness of
the legal significance of those facts (which will not).

5 *Id.*

6 A more recent Supreme Court decision confirms this conclusion. In *Chaidez v. United*
7 *States*, ___ U.S. ___, 133 S.Ct. 1103 (2013), the Court addressed the issue of whether *Padilla*
8 applied retroactively. The petitioner had pleaded guilty, and while she was still fighting
9 removal, *Padilla* was decided. *Id.* at 1106. The Court announced that *Padilla* was not
10 retroactive, and determined that she couldn't benefit from the decision, because her
11 conviction was final before it was decided. In other words, her *Padilla* claim accrued when
12 her conviction became final, and not later when she was finally ordered removed.

13 Nor is Cazarez entitled to pre-removal tolling based on lack of notice of the likelihood
14 of removal. In its ruling from the bench, the Court determined that the colloquy at sentencing
15 (discussed above) gave Cazarez notice that deportation was likely. At the very latest,
16 Cazarez knew that he would likely be deported when he was served with a order to show
17 cause notice (OSC) on June 21, 2013, that required him to show cause why he should not
18 be deported. It is undisputed that Cazarez was served with the OSC while he was in
19 custody, and that he remained in continuous immigration custody from the time he
20 completed his sentence until he was deported. During this period, he also hired an
21 immigration lawyer to fight the deportation. Cazarez offered no evidence that the
22 immigration lawyer failed to inform him of the likelihood of deportation.

23 Cazarez argues in the alternative that he is entitled to equitable tolling because his
24 subsequent immigration lawyer abandoned him. The petition provides only some of the
25 relevant dates. The facts as pleaded, however, make clear the attorney did not abandon
26 Cazarez. Rather, the attorney was hired on October 28, 2013, and he almost immediately
27 thereafter ordered and read the plea hearing transcript. After reading the transcript, the
28 attorney told Cazarez that he had no ineffective assistance of counsel claim, and so the

1 immigration lawyer did not file a § 2255 petition on Cazarez’s behalf. (Pet. at 11:19–25.)
2 This is not attorney abandonment; at most, it amounts to debatable legal advice. But even
3 if the immigration attorney’s actions amounted to malpractice — and the Court does not
4 believe that they did — it was not the kind of egregious misconduct that would support
5 equitable tolling. See *Hunter v. Galaza*, 366 Fed. Appx. 766, 767 (9th Cir. 2010) (citing *Frye*
6 *v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001) and *Shannon v. Newland*, 410 F.3d 1083,
7 1090 (9th Cir. 2005)) (“mere negligence or professional malpractice” will not meet the
8 threshold for equitable tolling under AEDPA; tolling is available only where the attorney has
9 committed “egregious misconduct”). It is also clear that Cazarez knew no petition had been
10 filed, and did not file one himself. Assuming the immigration attorney’s advice was wrong,
11 nothing prevented Cazarez himself from filing a § 2255 petition before the limitations period
12 had run. Instead, Cazarez waited ten months after the one-year limitations period had run
13 to hire an immigration attorney, and then he waited many months after that to file his petition
14 in this case. In fact, he waited over a year after he was specifically informed that his plea
15 to an aggravated felony rendered him deportable before filing anything. In other words, even
16 if equitable tolling applied during the period his immigration attorney allegedly mishandled
17 his case, it would not make his petition timely.

18 Because the petition is untimely, relief under § 2255 is unavailable, and the petition
19 is denied primarily for that reason. The Court emphasizes, however, that Cazarez has not
20 established that the performance of either Mr. Pactor or of the immigration attorney was
21 ineffective. Nor has he established that even if it was, he was prejudiced by the allegedly
22 deficient advice. See *Padilla*, 559 U.S. at 366 (holding that prejudice, *i.e.*, the reasonable
23 likelihood of a different outcome, is an element of an ineffective assistance of counsel claim).
24 The petition is therefore denied on those additional grounds.

25 **Ineffective Assistance**

26 Both *Padilla* and the Ninth Circuit’s decision in *United States v. Bonilla*, 637 F.3d 980
27 (9th Cir. 2011) hold that a defendant should be informed of any clear immigration
28 consequences before pleading guilty. The Court put it this way in *Padilla*: “when the

1 deportation consequence is truly clear . . . the duty to give correct advice is equally clear.”
2 559 U.S. at 369. Notably, this admonition does not establish a particular quantum of certainty
3 by which the clarity or thoroughness of defense counsel’s advice should be measured. In
4 *Bonilla*, the Ninth Circuit opined that a defendant has the right to be told that his deportation
5 is “virtually certain” when that is the case. 637 F.3d at 985. However, as was the case in
6 *Padilla*, the defendant in *Bonilla* received *no* advice regarding the risk of deportation before
7 pleading guilty — not merely misadvice about the likelihood of deportation. In *United States*
8 *v. Ruiz*, 548 Fed. Appx. 410 (9th Cir. 2013), the Ninth Circuit cited *Bonilla*’s “virtually certain”
9 language, and treated it as establishing a standard of performance. But *Ruiz*, like *Bonilla*,
10 was an appeal from the denial of a defendant’s motion to withdraw a guilty plea, and
11 discussed *Bonilla* in the context of applying the more generous “fair and just reason”
12 standard. See *Ruiz*, 548 Fed. Appx. at 411.

13 Older Ninth Circuit cases established a standard that attorneys need only inform their
14 clients of the “possible consequences,” “potential consequences,” or “likely consequences”
15 of their guilty pleas. See *Womack v. Del Papa*, 497 F.3d 998, 1003–04 (9th Cir. 2007);
16 *Gonzalez v. United States*, 33 F.3d 1047, 1048 (9th Cir. 1994). This standard required that
17 a defendant be informed of consequences that were likely, not the likelihood of each
18 consequence. See *Brady v. United States*, 742, 748 and n.6 (1970) (using both “likely
19 consequences” and “possible consequences” to describe advice a defendant must be given,
20 in order to render his plea knowing and intelligent). In fact, the Supreme Court has held that
21 an attorney’s mistaken predictions of the probability of the consequences of taking or
22 rejecting a plea does not amount to ineffective assistance of counsel and does not render
23 a plea involuntary. See *McMann v. Richardson*, 397 U.S. 759, 770–71 (1970). And, as
24 *Strickland* has made clear, “No particular set of detailed rules for counsel’s conduct can
25 satisfactorily take account of the variety of circumstances faced by defense counsel”
26 466 U.S. at 688–89.

27 In view of these precedents, this Court does not read *Padilla* as purporting to
28 announce a new, heightened standard for attorney effectiveness, higher than that

1 recognized in *McMann* and other decisions. Rather, this Court understands that the effect
2 of *Padilla* was to extend the *Strickland* standard and require attorneys to provide advice
3 about the collateral consequence of the risk of deportation. *Chaidez*, 133 S.Ct. at 1111–12
4 (explaining that *Padilla* had the effect of applying *Strickland* to immigration consequences,
5 and then conducted a *Strickland* analysis). In other words, the existing *Strickland* standard
6 still applied; *Padilla* did not announce a new, heightened standard for attorney performance
7 when advising about immigration matters. Reading *Padilla* as *Cazarez* does would have the
8 effect of overruling decades of precedent sub silentio, and would be unreasonable. This is
9 particularly true because that decision did cite other decisions it was disapproving. See
10 *Padilla*, 559 U.S. at 370 (citing with disapproval lower court decisions distinguishing between
11 failure to advise and affirmative misadvice). See also *Minority Television Project, Inc. v.*
12 *F.C.C.*, 736 F.3d 1192, 1198 (9th Cir. 2013) (“We do not credit Minority TV’s argument that
13 *Citizens United* . . . overruled decades of precedent sub silentio — especially given that the
14 Court there expressly overruled two other cases with no mention of [the precedent Minority
15 TV was challenging] or an intent to change the level of scrutiny . . .”). And because *Padilla*
16 did not undermine or change the earlier standard set forth in both Supreme Court and Ninth
17 Circuit decisions, the three-judge panel that decided *Bonilla* was bound by that earlier
18 standard as well.

19 This Court is reluctant to characterize the “virtually certain” language in *Bonilla* as
20 mere dicta that can be disregarded, or at least, that need not be followed as broadly as the
21 opinion suggests. But this Court believes that construing *Bonilla*’s “virtually certain”
22 admonition as dicta is the correct way to read the case. An earlier point bears reiteration:
23 Both *Padilla* and *Bonilla* dealt with defendants who received *no* advice at all. The issue of
24 an attorney’s obligation to tell a defendant that deportation was “virtually certain” (as
25 opposed to possible, probable, highly likely, or some other level of probability) was not
26 presented in either case — or in any other Supreme Court or Ninth Circuit decision that this
27 Court is aware of. Neither case purported to reject or set aside the older standard that
28 attorneys need only inform their clients of the “possible consequences,” “potential

1 consequences,” or “likely consequences” of their guilty pleas. And because no three-judge
2 panel of the Ninth Circuit has the power to overrule existing Circuit precedent, except in the
3 extremely narrow circumstance (not present here) where an older case is “clearly
4 irreconcilable” with higher authority, see *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003)
5 (en banc), it is unlikely that *Bonilla* intended to repudiate the holdings in *Womack* and
6 *Gonzalez* without even mentioning those cases by name. Furthermore, a *requirement* that
7 attorneys must couch advice concerning the likelihood of deportation in terms of “virtual
8 certainty” is inconsistent with the Supreme Court’s holding that an attorney’s mistaken
9 predictions of the probability of the consequences of taking or rejecting a plea does not
10 amount to ineffective assistance of counsel and does not render a plea involuntary. See
11 *McMann*, 397 at 770–71.

12 It’s also apparent to this Court that the “possible consequences” standard makes a
13 good deal more practical sense than the alternative of requiring attorneys to expertly quantify
14 the probability of deportation. Criminal defense attorneys are not, generally speaking, also
15 immigration attorneys. And even if they were, they would not be expected to predict with
16 absolute precision how an immigration court would rule on a given case. “Waiving trial
17 entails the inherent risk that the good-faith evaluations of a reasonably competent attorney
18 will turn out to be mistaken . . . as to what a court’s judgment might be on given facts.”
19 *McMann*, 397 U.S. at 770. A requirement that the likelihood of deportation be precisely
20 quantified also makes almost impossible the district courts’ responsibility of confirming that
21 defendants have been properly advised before they plead guilty. While competent in
22 immigration law, a district court does not have the same record in front of it that an
23 immigration court has, and cannot with any degree of precision predict the degree of
24 probability that any given defendant will be in fact deported. See *id.* That is to say, a district
25 court often will have no information to evaluate the advice an attorney gave to a defendant
26 regarding the relative likelihood of deportation, and thus to meaningfully assess the knowing
27 and intelligent character of the plea as it pertains to that advice.

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1 Furthermore, reading the remarks in *Padilla* and *Bonilla* as literally and broadly as
2 Cazarez would have the Court do would, at least sometimes, lead to incompetent advice.
3 Attorneys are supposed to give reasonable, balanced advice that permits their clients to
4 make informed decisions. See e.g., *Purdy v. United States* 208 F.3d 41, 44–45 (2d Cir.
5 2000) (citing *Strickland* and other cases for the principle that advising clients regarding plea
6 decisions amounts to steering between the “Scylla of inadequate advice and the Charybdis
7 of coercing a plea”). They are not required nor expected to provide the direst warnings
8 possible, or to give uniform warnings to every client according to an established script. See
9 *Strickland*, 466 U.S. at 688–89 (emphasizing the wide variety of correct ways to represent
10 clients, and the impossibility of setting rules to guarantee attorney competence). There are
11 a number of ways non-citizen defendants who plead guilty to aggravated felonies can avoid
12 deportation. If attorneys are universally required to advise their clients they were “virtually
13 certain” to be deported, most defendants would undoubtedly accept that advice as true, and
14 as a result some would be dissuaded from taking advantage of favorable provisions of law
15 that might exempt them from deportation. Others might effectively be coerced by
16 excessively dire warnings into going to trial when in fact, pleading guilty is their best option.
17 See *Iaea v. Sunn*, 800 F.2d 861, 866 (9th Cir. 1986) (coercion of a plea by a defendant’s
18 own counsel renders the plea involuntary).

19 This is not to suggest, of course, that attorneys may incorrectly characterize highly
20 probable consequences of a guilty plea as highly improbable (or vice versa), or otherwise
21 mislead their clients regarding the general likelihood of deportation. See, e.g., *United States*
22 *v. Kwan*, 407 F.3d 1005, 1008–09 (9th Cir. 2005) (abrogated on other grounds by *Padilla*)
23 (counsel’s incorrect advice that there was “no serious possibility” of deportation was
24 ineffective, where changes in immigration law had rendered deportation highly likely). This
25 Court merely concludes that an attorney’s responsibility does not extend so far as to require
26 him or her to provide formulaic warnings to every client, or to precisely handicap the
27 probability of deportation.

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1 This Court therefore adheres to the older standard, which it believes survives *Padilla*,
2 and concludes that even after *Padilla* attorneys need only inform their clients accurately of
3 the possible consequences of guilty pleas; they do not have to predict with exactitude the
4 likelihood of those consequences. In the context of this case, Mr. Pactor's advice that
5 deportation was likely though not completely certain was therefore competent.

6 **Prejudice**

7 A petitioner bringing an ineffective assistance of counsel claim must show a
8 "reasonable probability" that he was prejudiced by his attorney's errors. *See Strickland*, 466
9 U.S. at 688. Cazarez argues that he would have done all he could to avoid deportation,
10 including accepting the strong likelihood of a longer sentence. While this claim could
11 conceivably be true, the facts of the case and Mr. Pactor's testimony make it very
12 improbable to believe.

13 Cazarez argues that had he been told deportation was "virtually certain," he would not
14 have pled guilty, and instead would have held out for a plea deal that did not require him to
15 plead to an aggravated felony. If such a deal were not forthcoming, he says, he would have
16 gone to trial. He points to his refusal to stipulate to deportation in his plea agreement as
17 evidence supporting this stance.

18 The Court finds to the contrary that there is no reasonable likelihood that Cazarez
19 would have insisted on going to trial, nor was he in a position to negotiate a plea to a lesser
20 charge. The facts of the case bear out this conclusion. Cazarez was apprehended near the
21 U.S.-Mexico border after border patrol agents witnessed approximately eleven aliens getting
22 into a pickup truck that he was driving. When that agents pulled the truck over, gave
23 Cazarez *Miranda* warnings, and questioned him, Cazarez admitted that he was a smuggler
24 and that he was being paid \$100 per alien. (Pet., 5:16–23.) The prosecutor offered Cazarez
25 a plea agreement that included a two-level decrease for acceptance of responsibility and a
26 two-level departure for fast-track. In view of the strength of the evidence, going to trial and
27 foregoing the deal would have been irrational. And based on the Court's experience in
28 handling dozens of alien smuggling cases over the past 30 years, it is very unlikely that

1 Cazarez would have been successful in obtaining a plea deal any more favorable than the
2 one he received.

3 Mr. Pactor's testimony bolsters this conclusion. He testified that after reviewing the
4 evidence, he advised Cazarez to plead guilty because the case was "not defensible." Mr.
5 Pactor pointed out that had Cazarez gone to trial, he would have lost the benefit of fast-track
6 and the other concessions the Government was offering. In addition, the prosecutor may
7 have added other charges. Any of these circumstances would have increased Cazarez's
8 exposure to greater jail time. The best Mr. Pactor was able to do for Cazarez with regard to
9 immigration consequences, he said, was to have the stipulated deportation provision
10 stricken.

11 Other facts also call into question whether avoiding deportation was a priority to
12 Cazarez. Cazarez was told in June 2013 that his aggravated felony conviction rendered him
13 deportable, yet he made no attempt to withdraw his plea until approximately fifteen months
14 later. His current petition seems to be motivated more by his latest arrest for illegal reentry,
15 and his effort to defend against that charge. In other words, Cazarez's primary goal appears
16 to be avoiding conviction and punishment for the instant offense, rather than squabbling over
17 whether he was properly deported a year ago. These additional facts undercut his assertion
18 that had he known with "virtual certainty" that he would be deported, he would have done
19 whatever he could have to avoid that outcome or lessen the chances of it, even if it meant
20 accepting a longer sentence. Even assuming Mr. Pactor had advised Cazarez that
21 deportation was virtually certain instead of giving the advice he did, the Court finds that there
22 is no reasonable probability Cazarez would have made a different decision.

23 **Conclusion and Order**

24 The petition is **DENIED** because it is untimely. In the alternative, it is denied because
25 Cazarez's trial counsel was not ineffective in violation of *Padilla*. Also in the alternative, the

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1 petition is denied for failure to show prejudice; even if Cazarez's trial counsel was ineffective,
2 there is no reasonable probability of a different outcome.

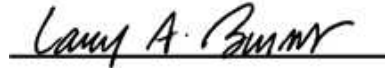
3 The petition is **DENIED**.

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5 **IT IS SO ORDERED.**

6 DATED: December 5, 2014

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HONORABLE LARRY ALAN BURNS
United States District Judge

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