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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 OSCAR DIAZ-MARTINEZ,
12 Movant,
13 v.
14 UNITED STATES OF AMERICA,
15 Respondent.

Case No.: 3:16-cv-01672-BEN
3:15-cr-01020-BEN-1

**ORDER DENYING AS MOOT
MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE UNDER
28 U.S.C. § 2255**

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17 On June 10, 2015, Movant Oscar Diaz-Martinez was convicted and sentenced to
18 30 months in custody for violating 8 U.S.C. §1326. Movant pleaded guilty pursuant to a
19 plea agreement wherein he waived his right to collaterally attack his conviction and
20 sentence. At the sentencing hearing he again waived his right to collaterally attack his
21 conviction and sentence. Notwithstanding his waiver, on June 27, 2016, Movant
22 proceeding pro se filed a Motion to Vacate, Set Aside, or Correct his Sentence pursuant
23 to 28 U.S.C. § 2255. (Docket No. 26.)¹ In short, Movant's motion asks the Court to
24 vacate his sentence and re-sentence him; he did not challenge his conviction. (*See*
25 *generally* Mot.) (requesting re-sentencing pursuant to *Johnson v. United States*, 135 S.
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28 ¹ All docket citations refer to the criminal case docket, No. 15-cr-01020-BEN-1.

1 Ct. 2551 (2015) on the grounds that his conviction fell under the Residual Clause of the
2 Armed Career Criminal Act). Respondent, the United States (“the government”), filed a
3 response, opposing the motion.

4 The Court takes judicial notice that on May 26, 2017, while Movant’s motion was
5 pending, he was released from the Bureau of Prisons’ (“BOP’s”) custody. *See* Federal
6 Bureau of Prisons Website, *Inmate Locator Detail for Oscar Diaz-Martinez, Register No.*
7 *49557-298, available at* <https://www.bop.gov/inmateloc/>; *Qureshi v. Sanders*, 563 F.
8 Supp. 2d 1154, 1156 n.2 (C.D. Cal. 2008) (taking judicial notice of BOP’s “Inmate
9 Locator” website, which showed petitioner’s release from BOP’s custody).

10 As a result, Movant’s motion is moot. *See Aaron v. Pepperas*, 790 F.2d 1360,
11 1361-62 (9th Cir. 1986) (concluding petitioner’s habeas petition moot where petitioner
12 has satisfied his sentence and “merely contests the imposition and duration of his
13 sentence”). Therefore, Movant’s motion is denied.

14 **IT IS SO ORDERED.**

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16 Dated: April 6, 2018

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18 Hon. Roger T. Benitez
19 United States District Judge
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