

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SERRANO-ARAUZ,

Plaintiff,

v.

CASE NO: 8:06-cv-2233-T-26TGW

UNITED STATES OF AMERICA,

Defendant.

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**ORDER**

Plaintiff has filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. The Court notes, however, that Plaintiff filed a direct appeal from his sentence in the underlying criminal case and that his appeal is still pending before the Eleventh Circuit Court of Appeals.<sup>1</sup> Given that circumstance, this Court is precluded from entertaining Plaintiff's motion to vacate. See United States v. Wilson, 894 F. 2d 1245, 1252 (11<sup>th</sup> Cir. 1990) (restating rule of the Eleventh Circuit that "[a] motion to vacate under 28 U.S.C. § 2255 will not be entertained during the pendency of a direct appeal, inasmuch as the disposition of the appeal may render the motion moot.") (quoting Welsh v. United States, 404 F. 2d 333 (5<sup>th</sup> Cir. 1968)).

Accordingly, it is ordered and adjudged as follows:

- 1) The Motion to Vacate (Dkt. 1) is dismissed without prejudice.
- 2) The Clerk is directed to enter judgment for Defendant and to close this case

**DONE AND ORDERED** at Tampa, Florida, on December 4, 2006.

*s/Richard A. Lazzara*

**RICHARD A. LAZZARA**

**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**

Counsel of Record

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<sup>1</sup> See case number 8:05-cr-194-T-26TGW, docket 84.