

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ATENEDORO HERNANDEZ-GOMEZ,

Defendant.

Criminal Dkt.: 4:16-cr-00044-BLW-2
Civil Dkt.: 4:16-cv-00557-BLW

MEMORANDUM DECISION AND
ORDER

BACKGROUND

This Court previously ordered the Government to provide notice of whether it intended to continue opposing Mr. Hernandez-Gomez's motion under 28 U.S.C. § 2255. Dkt. 13. In response, the Government provided notice that it does. Dkt. 14. In the same filing, the Government requested a stay pending the issuance of a decision from the United States Supreme Court in *Garza v. Idaho*, 405 P.3d 576 (Idaho 2017), *cert. granted* 138 S. Ct. 2649 (U.S. June 18, 2018), 17-1206. For the reasons set forth below, the Government's motion (Dkt. 14) is DENIED AS MOOT.

Analysis

After the Government filed its Motion seeking a stay, the Supreme Court issued its decision in *Garza v. Idaho*, No. 17-1026, 2019 WL 938523, at *1 (U.S. Feb. 27, 2019). In its decision, the Supreme Court reversed the Idaho Supreme Court and held that "where an attorney perform[s] deficiently in failing to file a notice of appeal despite the

defendant's express instructions, prejudice is presumed with no further showing from the defendant of the merits of his underlying claims." *Id.* at 8 (internal quotations omitted).

After the Supreme Court issued its decision, the Government acknowledged that its request for a stay was moot and that an evidentiary hearing was needed. Dkt. 15.

Accordingly, this Court must hold an evidentiary hearing to determine if Mr. Hernandez-Gomez instructed Mr. Randall to file an appeal.

ORDER

IT IS ORDERED:

1. The Government's Motion for a Stay Pending the Supreme Court's Resolution of *Garza v. Idaho* (Dkt. 14) is **DENIED AS MOOT**.
2. The Government is **ORDERED** to coordinate with the United States Marshall's Service and the United States Bureau of Prisons to arrange for Mr. Hernandez-Gomez's transport to Pocatello, Idaho.
3. The Clerk of the Court is **ORDERED** to appoint counsel for Mr. Hernandez-Gomez under the Criminal Justice Act.
4. An evidentiary hearing will be held in this matter on July 17, 2019 at 11:00 AM in the United States Courthouse in Pocatello, Idaho.



DATED: March 27, 2019

B. Lynn Winmill

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U.S. District Court Judge