

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

ORLIS MACHADO-CANTILLO, )  
Petitioner, )  
vs. ) No. 4:17-cv-00033-TWP-TAB  
UNITED STATES OF AMERICA, )  
Respondent. )

## **Entry Providing Castro Notice and Directing Further Proceedings**

## I. Background

Petitioner Orlis Machado-Cantillo was convicted of interstate transportation of stolen property and conspiracy to possess goods stolen from interstate commerce after pleading guilty to those counts in 4:14-cr-00031-TWP-VTW-6. He was sentenced to 96 months imprisonment in the United States Bureau of Prisons. An Amended Judgment was entered on October 11, 2016.

On February 14, 2017, Mr. Machado-Cantillo filed a letter written in Spanish. The Court ordered it docketed and translated by a Federally Certified Spanish Interpreter. The English version of the letter was filed on February 16, 2017, and it prompted the opening of this action seeking relief under 28 U.S.C. § 2255.

## II. Castro Notice

A.

A Court may grant relief from a federal conviction or sentence pursuant to 28 U.S.C. § 2255 “upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the

sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” “[A]ny paper asking for the relief provided by § 2255 & 1 *is* a motion under § 2255, without regard to its caption or other details.” *Ellzey v. United States*, 324 F.3d 521, 524 (7th Cir. 2003) (citing cases).

As noted above, the Court has determined that Mr. Machado-Cantillo’s filing of February 14, 2017, attempts to seek relief within the scope of § 2255.

**B.**

Mr. Machado-Cantillo is entitled to notice of the fact that this case has been opened as a section 2255 action, and notice that any subsequent motion pursuant to § 2255 would be subject to restrictions. In essence, Mr. Machado-Cantillo will have one bite at the apple, one opportunity to file a complete section 2255 motion, if he chooses to do so. Therefore, he must also be afforded the opportunity to withdraw or amend his motion to include all § 2255 claims which he believes he has. *Castro v. United States*, 540 U.S. 375, 383 (2003).

Because of the circumstances just described, it is important that a petitioner seeking relief pursuant to section 2255 set forth all claims and grounds on which he seeks relief. The failure to do so jeopardizes the petitioner’s potential opportunity to present a claim which is omitted from the first such motion. As explained in *In Re Davenport*, 147 F.3d 605, 610 (7th Cir. 1998), “[t]he amended section 2255 gives a convicted defendant only one further bite at the apple after his direct appeal unless he can demonstrate a compelling reason, as defined in the section (newly discovered evidence of innocence or a new and retroactive rule of constitutional law)” for being allowed another bite. *Id.*

C.

The petitioner shall have **through March 27, 2017**, in which to either 1) file a **statement asserting that his letter** contains all of his claims of ineffective assistance of counsel and that the Court should proceed with the case as presented; or 2) **file an amended** motion to vacate under section 2255, with a complete statement of the claims and grounds on which he could and does challenge his conviction and/or sentence; or 3) **withdraw** his motion insofar as it could be thought to seek relief authorized by 28 U.S.C. § 2255.

The clerk shall **include with the petitioner's copy of this Entry** a copy of a Pro Se 2255 Motion AO-243 Form and **a copy of his letter** in Spanish (**docket 602**) and English (**docket 606**). Mr. Machado-Cantillo shall place the cause number for this case, 4:17-cv-00033-TWP-TAB, and the word "AMENDED" on the front page of his amended section 2255 motion, if he chooses to file it.

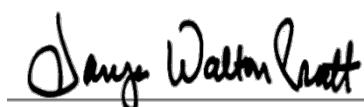
The **clerk shall also update the docket** by adding the petitioner's identification number, 15-43924, and facility name to his address on the docket.

**IT IS SO ORDERED.**

Date: 2/21/2017

Distribution:

ORLIS MACHADO-CANTILLO  
15-43924  
New River Valley Regional Jail  
P.O. Box 1067  
Dublin, VA 24084



---

TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana