

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Case No. 3:09cv429
[Criminal Case No. 3:08cr55]**

)	
RAFAEL WILFREDO RIVAS,)	
)	
Petitioner,)	
vs.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.))	

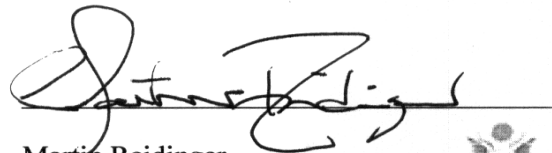
THIS MATTER is before the Court on the Petitioner's Motion for Reconsideration of Order Denying Petition to Vacate Conviction and Correct Sentence Under 28 U.S.C. § 2255, or alternatively, Application for a Certificate of Appealability Pursuant to 28 U.S.C. § 2253(c)(1)(B) [Doc. 4].

The Court finds that the Government should respond to the motion and specifically, should address Schriro v. Summerlin, 542 U.S. 348, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004); United States v. Fernandez-Cruz, 2009 WL 3488352, and United States v. Venancio-Dominguez, __ F.Supp.2d __, 2009 WL 3234217 (E.D.Va. 2009). The Government should also clarify for the record in this matter whether the discovery in the underlying criminal case

contained evidence that the Defendant knew that the means of identification which he possessed belonged to another person.

IT IS, THEREFORE, ORDERED that on or before thirty (30) days from entry of this Order, the Government shall file response.

Signed: November 3, 2009


Martin Reidinger
United States District Judge

