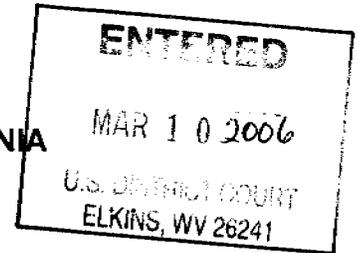


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA



CESAR BENITEZ-ARZATE,

Petitioner,

v.

Civil Action No. 2:03CV56
Criminal Action No. 2:01CR13
(Judge Maxwell)

UNITED STATES OF AMERICA,

Respondent.

ORDER

It will be recalled that on September 19, 2005, Magistrate Judge Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his motion, which was filed pursuant to 28 U.S.C. §2255, wherein Petitioner seeks to have his sentence vacated, set aside or corrected, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's §2255 Motion be, and the same hereby is, **DENIED IN PART and GRANTED IN PART**. It is further

ORDERED that, in the interest of restoring the Petitioner's right of direct appeal, the Judgment and Commitment Order in the above-styled criminal action, filed by this Court on July 15, 2002, be, and the same hereby is, **VACATED**. The Court will reenter judgment on this date by a separate Judgment and Commitment Order. It is further

ORDERED that the Petitioner's Motion for Leave to Supplement be, and the same hereby is, **DENIED**, as more fully set forth in Magistrate Judge Kaul's Report and Recommendation. It is further

ORDERED that the Government's Motion to Dismiss be, and the same hereby is, **DENIED**, as more fully set forth in Magistrate Judge Kaul's Report and Recommendation. It is further

ORDERED that the above styled action be, and the same hereby is, **DISMISSED** and **STRICKEN** from the docket of this Court. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: March 10th, 2006


United States District Judge