

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

United States of America,
Plaintiff,

vs.

Case No. 14-10045-JTM

Aaron Ramirez-Saucedo,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant Aaron Ramirez-Saucedo's Motion to Vacate Sentence under 28 U.S.C. § 2255. The defendant's direct appeal of his conviction and sentence is currently pending before the Tenth Circuit Court of Appeals.

"The appropriate course of action for addressing a § 2255 motion filed during the pendency of the direct appeal is to dismiss the § 2255 action without prejudice." *Blair v. United States*, 527 Fed.Appx. 838 (11th Cir. 2013) (citing *United States v. Dunham*, 240 F.3d 1328, 1329 (11th Cir. 2011)). *See also United States v. Smiley*, 60 Fed.Appx. 990 (4th Cir. 2003) (refusing to grant certificate of appealability following dismissal without prejudice of Section 2255 claim filed during pendency of direct appeal); *United States v. Allen*, 2014 WL 6872697 (D. Vt. 2014) (Section 2255 action filed during pendency of direct appeal dismissed

without prejudice in absence of showing that such action is "much more promising" than the direct appeal) (citing *United States v. Vilar*, 645 F.3d 543, 546 (2d Cir. 2011)). Here the defendant has made no attempt to demonstrate that the § 2255 action meets this standard.

IT IS ACCORDINGLY ORDERED this 20th day of February, 2015, that the defendant's Motion to Vacate (Dkt. 37) is hereby denied WITHOUT PREJUDICE.

s/J. Thomas Marten
J. THOMAS MARTEN, JUDGE