

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 14-20014-12-KHV
)	
FAUSTINO SOTO,)	
)	
Defendant,)	
_____)	

ORDER

This matter is before the Court on Defendant’s Motion To Vacate And Discharge With Prejudice Under 28 U.S.C. § 2255 (Doc. #786) filed March 14, 2019. The government concedes that defendant is entitled to relief on his claim that counsel provided ineffective assistance. Government’s Response To Defendant’s Motion To Vacate And Discharge With Prejudice Under 28 U.S.C. § 2255 (Doc. #825) filed August 1, 2019, at 17. For substantially the reasons stated in the Government’s Response To Defendant’s Motion To Vacate And Discharge With Prejudice Under 28 U.S.C. § 2255 (Doc. #825), the Court vacates defendant’s conviction and sentence.

The government has not responded to the substantive merit of defendant’s alternative claim that he is entitled to dismissal with prejudice because the government violated his Sixth Amendment right to confidential communication with counsel. Defense counsel has informed the Court that defendant will not file a reply brief on his Section 2255 motion. It appears that further factual investigation is necessary on defendant’s Sixth Amendment claim after a ruling in United States v. Black, D. Kan. No. 16-20032-JAR. On the present record, defendant has not established that this matter should be dismissed with prejudice based on the allegations related to the Black investigation. Accordingly, pretrial proceedings will move forward in this matter. Defendant may

renew his claim related to the Black investigation at a later date if appropriate.

IT IS THEREFORE ORDERED that Defendant's Motion To Vacate And Discharge With Prejudice Under 28 U.S.C. § 2255 (Doc. #786) filed March 14, 2019 is **SUSTAINED in part. The Court VACATES defendant's sentence, Judgment In A Criminal Case (Doc. #565) filed August 25, 2016, and conviction, Petition To Enter Plea Of Guilty And Order Entering Plea (Doc. #392) filed February 4, 2016.**

IT IS FURTHER ORDERED that this matter shall be set for a status conference before a magistrate judge no later than August 30, 2019.

Dated this 7th day of August, 2019 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge