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NO. 32414-1-III & 32420-6-III

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COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

FELIX RUBEN RODRIGUEZ, APPELLANT

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APPEAL FROM THE SUPERIOR COURT OF GRANT COUNTY

BRIEF OF RESPONDENT

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**I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR**

- A. DID COUNSEL'S FAILURE TO ADVISE RODRIGUEZ OF THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEAS DEPRIVE HIM OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE CANNOT SHOW RESULTING PREJUDICE?  
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- D. ARE RODRIGUEZ' COLLATERAL ATTACKS TIMELY BECAUSE HE WAS NOT ADVISED OF HIS DIRECT AND COLLATERAL APPEAL RIGHTS AT THE TIME HE ENTERED HIS GUILTY PLEAS OR BECAUSE OF *PADILLA*'S RETROACTIVE APPLICATION?  
(ASSIGNMENT OF ERROR No. 4)

**II. STATEMENT OF THE CASE<sup>1</sup>**

The State adopts the facts in Appellant's Opening Brief and supplements those facts as follows. RAP 10.3(b).

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<sup>1</sup> To avoid confusion, the State follows Appellant/Petitioner's form of citation to the record in these four consolidated matters. Documents from Superior Court Cause No. 00-1-00528-1, consolidated COA numbers 324141 and 324159, are cited 528-1CP \_\_; documents from Superior Court Cause No. 01-1-00335-9, consolidated COA numbers 324206 and 324168, are cited 335-9CP \_\_.

A. UNDERLYING FACTS: CAUSE NO. 00-1-00528-1

In the early morning hours of July 31, 2000, when he was 18, Appellant/Petitioner Felix Ruben Rodriguez was involved in an altercation with an older man. 528-1CP 04. The reporting party was the daughter of the older man and told law enforcement Rodriguez was intoxicated and might have a weapon. *Id.* The responding officer found Rodriguez with “a yellow pit-bull looking dog.” *Id.* Rodriguez told the officer the older man had called him a “son of a bitch” and that he was taking the dog to the older man to defend his mother’s honor. *Id.*

The officer smelled the odor of an alcoholic beverage on Rodriguez, an odor that grew stronger as they talked. *Id.* Rodriguez’ eyes were red and glassy. *Id.* His speech was slurred. *Id.* He admitted drinking four or five beers and his Alco-Sensor III result was .180. *Id.* The officer arrested Rodriguez for alcohol consumption. *Id.* During a search incident to that arrest, the officer found a folded dollar bill with white, powdery residue inside that field-tested positive as cocaine. *Id.* He also found a cigarette with about half its tobacco missing and the empty sleeve twisted at the top. *Id.* A white, powdery substance was mixed with the remaining tobacco. *Id.*

Later that day, the State charged Rodriguez with possession of cocaine and minor possessing, consuming, or acquiring liquor. 528-1CP 1.

On October 2, 2000, Rodriguez entered a guilty plea to the cocaine charge. 528-1CP 5. The State dismissed the alcohol charge. *Id.* The standard sentencing range for cocaine possession was zero-to-90 days confinement. Under the plea agreement, Rodriguez was sentenced to 20 days, all converted to 160 hours of community service. 528-1CP 19.

Rodriguez signed his Statement of Defendant on Plea of Guilty, acknowledging an interpreter had read to him the entire statement and that he understood it. 528-1CP 13. 12–13.

Rodriguez' plea statement included acknowledgment that for a noncitizen "a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." 528-1CP 8. Rodriguez now states he does not remember anything about these immigration warnings. 528-1CP 34. He now states he thought because his mother filled out an application for status on his behalf he "would be okay" despite his undocumented status. 528-1CP 33–34.

Rodriguez also claims he could not speak directly with his attorney because his attorney did not speak Spanish. *Id.* In fact, Rodriguez had completed the 10<sup>th</sup> grade in Quincy, Washington. 528-1CP 5. He spoke English and did not need an interpreter for normal conversation. Appendix A, ¶¶ 4–6. Rodriguez' English language skills were sufficient for him to

have interpreted for a Spanish speaking family member in an unrelated QPD investigation. *Id.* at ¶5. Rodriguez had extensive contacts with local law enforcement prior to this arrest and had previous arrests for alcohol offenses, for assault, and for malicious mischief. Appendix A, Ex. A.

Trial counsel, Thomas J. Earl, has declared under penalty of perjury he has no independent recollection of Rodriguez but that he made it clear to any client who asked about immigration issues that he had no knowledge in that area. 528-1CP 38.

B. UNDERLYING FACTS: CAUSE NO. 01-1-00335-9—PHASE I

On June 8, 2001, about 8 months after Rodriguez' guilty plea in the first case. Quincy Police Officer Paul Snyder arrested him for possession of cocaine and minor operating a motor vehicle after consuming alcohol. 335-9CP 4–6. At 11:05 on a Friday night, Rodriguez had attempted to drive around two police vehicles blocking a street while fire department personnel extinguished a vehicle fire. 335-9CP 4–5. He was dazed and, despite flashing emergency lights, did not appear to realize the street was blocked off. 335-9CP 5.

Snyder smelled a faint odor of alcohol coming from Rodriguez, then age 19, and observed his eyes were glassy and watery. 335-9CP 5. “Rodriguez kept running his tongue over the front of his upper teeth and rubbing his nose with his hand. He did not appear to have a runny nose.”

*Id.* Rodriguez admitted he drank a glass of wine at a friend's graduation party. *Id.* Snyder arrested him for minor in possession or consumption of alcohol. *Id.*

Snyder searched Rodriguez and found a silver colored metal pipe with burnt vegetable material in his left front pants pocket. *Id.* Knowing Rodriguez had the prior cocaine arrest, Snyder asked where the cocaine was and Rodriguez told him it was in his shoe. *Id.* Nothing was in Rodriguez' shoes. *Id.* Rodriguez said he did not know where the cocaine went. *Id.* Rodriguez told Snyder the cocaine was in a small baggie, that he had just used some, and that he had used marijuana about two hours earlier. *Id.* A narcotics detection dog alerted to Rodriguez' vehicle ashtray. *Id.* White powder spilled around the ashtray field-tested positive for cocaine. *Id.*

Rodriguez and Snyder did not need an interpreter and communicated in English during their encounter. Appendix A at 1.

Rodriguez was charged with possession of cocaine and driving under twenty-one consuming alcohol. 335-9CP 1. He posted \$1,000 bail following his first appearance. 335-9CP 32. He was released into the custody of U.S. Immigration and Customs Enforcement (ICE) and immediately transported to a Seattle detention center. *Id.*

C. IMMIGRATION: FIRST REMOVAL AND REENTRY

Rodriguez entered this country illegally with his parents when he was 11 years old. 528-1CP 33. At the time of his first arrest, he had not acquired any form of legal permission to stay in the United States. *Id.* At the Seattle detention center, Rodriguez spoke with immigration attorneys provided at no expense to him. 335-9CP 32. They advised him there was nothing they could do to prevent his removal and that he would be deported. *Id.* His July 2, 2001 Warrant of Removal/Deportation states his removal was based on findings by an immigration judge that he had violated two provisions of Section 212 of the Immigration and Nationality Act of 1952 (INA), Inadmissible Aliens. Appendix B at 1. The immigration judge found Rodriguez violated INA §212(a)(6)(A)(i),<sup>2</sup> which denies admissibility to undocumented noncitizens, and INA §212(a)(2)(A)(i)(II),<sup>3</sup> which denies admissibility to noncitizens convicted of drug crimes. *Id.* Rodriguez signed the removal warrant. Appendix B at 2. The warrant notified Rodriguez he was “prohibited from entering,

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<sup>2</sup> §212(a)(6)(A)(i) provides: “In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”

<sup>3</sup> INA §212(a)(2)(A)(i)(II) provides: “(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of- . . . (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.”

attempting to enter, or being in the United States . . . for a period of 10 years from the date of [his] departure.” Appendix B at 3. Rodriguez departed to Mexico July 3, 2001. Appendix B at 2. He illegally reentered the United States two years later. 335-9CP 32–33.

D. UNDERLYING FACTS: CAUSE NO. 01-1-00335-9—PHASE II

Rodriguez appeared on September 15, 2003 for arraignment in the second cocaine case, assisted by the same attorney who had represented him in his first cocaine conviction. 335-9CP 118. One month later, he pleaded guilty to possession of cocaine and to driving under 21 consuming alcohol. *Id.* At the time of this plea, he had completed the 11<sup>th</sup> grade of high school in Quincy. 335-9CP 7. He was sentenced to two months confinement on the cocaine charge and 90 days, all suspended, on the driving charge. 335-9CP 21, 23.

E. IMMIGRATION: SECOND REMOVAL AND REENTRY; FEDERAL CHARGES

Rodriguez was deported to Mexico again on September 6, 2007, this time under INA §241(a)(5),<sup>4</sup> a provision authorizing reinstatement of

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<sup>4</sup> INA §241(a)(5) provides: “Reinstatement of removal orders against aliens illegally reentering. -If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.”.

prior removal orders against aliens illegally reentering. Appendix C at 1. This time, Rodriguez received written notification he was prohibited from reentry for 20 years. Appendix C at 3. Rodriguez chose not to contest the determination. Appendix C at 4.

There is nothing in the record showing the date Rodriguez reentered the United States following his second deportation. In July 2010, he was arrested in Washington on an unrelated matter, taken to Spokane, and eventually convicted in federal court of the crime of reentering the United States after having been deported.<sup>5</sup> 528-9CP 34; 335-9CP 33.

#### F. CRR 7.8(B) MOTIONS

On February 6, 2012, Rodriguez filed in each case a Memorandum of Authorities in Support of Motion to Vacate Guilty Plea and a Notice of Appearance of attorney Brent De Young. 528-1CP 75, 335-9CP 76. These documents were the first documents filed in either case since their conclusion in late 2003.<sup>6</sup>

In both cases, counsel inexplicably asserted Rodriguez “was first

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<sup>5</sup> 8 USC 1326(a), (b)(1) provides: “(a) . . . Subject to subsection (b) of this section, any alien who – (1) has been denied admission, excluded, deported, or removed . . . and thereafter (2) enters, attempts to enter, or is at any time found in, the United States, unless . . . the Attorney General has expressly consented to such alien’s reapplying for admission . . . (b)(1) whose removal was subsequent to a conviction for commission of . . . a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both.”

<sup>6</sup> Post-conviction proceedings in Cause No. 00-1-00528-1, unrelated to the issues here, concluded in September 2003.

informed *approximately 6 and a half months ago* that his guilty plea made it impossible for him to remain in the United States . . . .” 528-1CP 76; 335-9CP 78 (emphasis added). Rodriguez’ two declarations are silent on that issue. 528-1CP 33–35; 335-9CP 31–34.

### III. ARGUMENT

- A. COUNSEL’S FAILURE TO ADVISE RODRIGUEZ OF THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEAS DID NOT DEPRIVE HIM OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HE CANNOT SHOW RESULTING PREJUDICE.

The State agrees trial counsel’s representation fell below an objective standard of reasonableness for not having advised Rodriguez of the immigration consequences of his guilty pleas. *Padilla v. Kentucky*, 559 U.S. 356, 364, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010). Nevertheless, Rodriguez’ consolidated direct appeals and personal restraint petitions should be denied and dismissed because Rodriguez cannot show prejudice.

*Padilla* did not hold that counsel’s failure to advise of immigration consequences is a per se violation of the Sixth Amendment right to effective assistance of counsel. *Padilla* held “deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.” *Padilla*, 559 U.S. at 364. As such, advice about the risk of deportation falls within the ambit of the Sixth Amendment’s guarantee of

effective assistance of competent counsel and the question of whether this is a direct or collateral consequence of a plea is immaterial. *Id.* at 366.

*Padilla* clearly did not hold counsel's failure to advise of immigration consequences is, by itself, sufficient to prove ineffective assistance of counsel. Instead, the Court held the question of whether a noncitizen's right to effective assistance was violated must be assessed under the two-pronged *Strickland*<sup>7</sup> analysis. *Id.* The first prong is "whether counsel's representation 'fell below an objective standard of reasonableness.'" *Id.* (quoting *Strickland*, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)). Here, it did.

An affirmative answer to the first prong does not end the analysis. *Id.* at 369. Whether a noncitizen defendant who pleaded guilty without having been advised of immigration consequences is "entitled to relief on his claim will depend on whether he can satisfy *Strickland's* second prong, prejudice . . . ." *Id.* Here, Rodriguez cannot.

Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "A

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<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984).

bare allegation that a petitioner would not have pleaded guilty if he had known all of the consequences of the plea is not sufficient to establish prejudice under the *Strickland* test.” *In re Pers. Restraint of Riley*, 122 Wn.2d 772, 782, 863 P.2d 554 (1993). The burden is on Rodriguez, who “must convince the court that a decision to reject the plea bargain [in each case] would have been rational under the circumstances.” *Padilla*, 559 U.S. at 374.

1. *Rodriguez cannot show prejudice in his first case because rejection of the plea deal would have been irrational when the State’s case was strong, he received a favorable plea deal, and it is unlikely the State would have agreed to alter the cocaine charge.*

The State had a strong case against Rodriguez in 2000. Law enforcement had received a report of a potentially dangerous altercation in progress. 528-1CP 4. Rodriguez was reported to be intoxicated and possibly armed. *Id.* The responding officer found Rodriguez with a “yellow pit-bull looking dog” he was intending to deploy on a neighbor after the neighbor called him a “son of a bitch,” a phrase Rodriguez took to be an insult to his mother. *Id.* Rodriguez, age 18, showed obvious signs of intoxication and smelled of alcohol. *Id.* A search incident to his arrest for consuming alcohol turned up cocaine residue on a folded dollar bill and white powder mixed into the tobacco remaining in an altered cigarette.

*Id.* These items were found on Rodriguez' person. *Id.*

Rodriguez' trial counsel declares he had no experience in immigration matters and made his lack of knowledge clear to his clients (528-1CP 38), directly contradicting Rodriguez' claim that his attorney affirmatively provided inaccurate advice. Rodriguez also claims he knew nothing about how drugs could have been found in his pocket and that he does not speak English. These claims, too, are not credible. 528-1CP 33–34. Rodriguez spoke sufficient English to have completed the 10th grade in Quincy and to have communicated in English numerous times with law enforcement, once serving as an interpreter for another family member. Appendix A, Ex. B. While he may have needed an interpreter for legal terminology, he could have spoken directly with his attorney had he chosen not to hide his ability to speak conversational English.

Rodriguez received a favorable settlement. The alcohol charge was dismissed. 528-1CP 5. The standard sentencing range on the cocaine charge was zero-to-90 days. 528-1CP 16. If convicted at trial, a presumptive mid-range sentence would have been 45 days confinement. Under the plea deal, the court sentenced Rodriguez to 20 days confinement converted to 160 hours community service. 528-1CP 19.

A competently prosecuted trial could have had but one outcome: guilty verdicts on both charges. Choosing to take the case to trial would

not have been rational, regardless of immigration consequences. “A defendant has no entitlement to the luck of a lawless decisionmaker.” *Strickland*, 466 U.S. at 695. Reviewing courts assessing prejudice should exclude consideration of “the possibility of arbitrariness, whimsy, caprice, ‘nullification,’ and the like.” *Id.* Such possibilities “are irrelevant to the prejudice inquiry.” *Id.* Unfortunately, “the luck of the lawless decisionmaker” would have been all Rodriguez had going for him. Nothing in the record suggests grounds to suppress evidence or that evidence was insufficient to support a guilty verdict.

Conviction at trial would have resulted in deportation. Any violation or attempted violation of any law or regulation relating to a controlled substance renders a noncitizen inadmissible. INA §212(a)(2)(A)(i)(II). Under the facts here, is highly speculative and irrational to conclude the State would have agreed to allow Rodriguez to plead to crime entirely unrelated to controlled substances in order to avoid adverse immigration consequences. Rodriguez had multiple contacts with local law enforcement prior to this arrest, contacts related to alcohol offenses, assaults, malicious mischief, and various driving violations. Appendix A, Ex. A. His criminal activity started when he was a juvenile and showed no signs of abating. *Id.* He was arrested as he was on his way to attack a neighbor with his pit bull. 528-1CP 04.

Rodriguez was undocumented and deportable on that basis alone. INA §212(a)(6)(A)(i). His 2001 removal order was based, in part, on his undocumented status. Appendix B. Considering Rodriguez' immigration status, his criminal history at the time of his plea, and the circumstances of his arrest, it is improbable the State would have agreed to amend the cocaine based on its immigration consequences.

A decision to reject a plea bargain converting minimal confinement to community service hours would not have been rational under these circumstances. Rodriguez has failed to show prejudice as a result of his counsel's deficient performance.

2. *Rodriguez cannot show prejudice from counsel's failure to advise prior to his 2003 guilty plea because he was already fully informed of its adverse immigration consequences, the plea did not alter his status as an inadmissible noncitizen, and a decision to take the case to trial under these circumstances would have been irrational.*

Counsel's failure in 2003 to advise Rodriguez he would be deported if he pleaded guilty to his second cocaine charge had no prejudicial effect whatsoever. The outcome of this case would not have been different had defense counsel fully and accurately informed Rodriguez of its immigration consequences. Rodriguez now knew through personal experience a cocaine conviction was grounds for deportation. Immigration attorneys advised him during his removal proceedings two

years earlier they could do nothing to prevent his removal. 335-9CP 33. He had received written notice that his 2001 removal was based, in part, on his 2000 cocaine conviction. Appendix B at 1. His knowledge that this conviction could have dire immigration consequences came from his own experience, a warning more potent than words recited by a lawyer.

A critical fact in *Padilla* was that the guilty plea altered the immigration status of a defendant who had been a lawful permanent resident of the United States for more than 40 years. *Padilla*, 559 U.S. at 359. Rodriguez' presence in Washington at the time he changed his plea in this case violated his 2001 removal order and was, itself, grounds for federal criminal charges and eventual deportation. Appendix B at 3. A noncitizen who has previously been removed or deported and reenters the United States can be removed again—as Rodriguez was in 2007—under the earlier removal order. *See* 8 U.S.C. § 1231(a)(5).<sup>8</sup> The scope of inquiry in removal proceedings under that section is much narrower. “The *only* question is whether the alien has illegally reentered after having left the country while subject to a removal order.” *Morales-Izquierdo v. Gonzales*,

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<sup>8</sup> 8 U.S.C. § 1231(a)(5): *Reinstatement of removal orders against aliens illegally reentering*. If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

477 F.3d 691, 697 (9th Cir. 2007) (emphasis in original).

In this case, too, Rodriguez received a favorable plea deal. His standard sentencing range was two-to-six months on the cocaine charge, zero-to-90 days for driving under twenty-one consuming alcohol. 335-9CP 17. Under the plea agreement, the court sentenced Rodriguez to a low-end two months confinement for cocaine possession, and imposed and suspended 90 days on the alcohol charge.

Considering the totality of these circumstances, it is improbable that immigration consequences played any part in Rodriguez' 2003 plea decision. Rodriguez knew he was inadmissible and deportable, regardless of the outcome. He had received written warning against reentry into the United States and notice of potential criminal charges for doing so. Yet he chose to return and, after returning, chose to plead guilty within a month of his reappearance. It was rational for him to choose to minimize the time he spent in jail through a beneficial plea deal. It would have been irrational to proceed to trial. Rodriguez cannot show prejudice.

B. THE QUESTION OF WHETHER IT IS HARMLESS ERROR TO FAIL TO ADVISE A NONCITIZEN DEFENDANT REGARDING IMMIGRATION CONSEQUENCES OF A GUILTY PLEA RESTATES THE QUESTION OF PREJUDICE.

While failure to advise noncitizen clients concerning immigration consequences of a guilty plea is usually deficient performance, counsel's

error will be deemed legally harmless when there is no prejudice. In these types of cases, focus of the harmless error analysis should be narrowed through the prejudice prong assessment outlined in *Strickland*.

C. UNDER ESTABLISHED WASHINGTON LAW, THE RULE IN *PADILLA* IS APPLIED RETROACTIVELY.

The question of *Padilla*'s retroactive application in Washington was definitively answered in *In re Pers. Restraint of Yung-Cheng Tsai*, which held *Padilla* did not announce a new rule under Washington law and applies retroactively to matters on collateral review. 183 Wn.2d 91, 103, 351 P.3d 138 (2015).

D. RODRIGUEZ' COLLATERAL ATTACKS ARE TIMELY BECAUSE HE WAS NOT ADVISED OF HIS DIRECT AND COLLATERAL APPEAL RIGHTS AT THE TIME HE ENTERED HIS PLEAS, NOT BECAUSE OF *PADILLA*'S RETROACTIVE APPLICATION.

Following *Padilla*, defense counsel's failure to advise of the immigration consequences of a guilty plea falls within the "significant change" exception to collateral attack time limits of RCW 10.73.100(6). *Tsai*, 183 Wn.2d at 103. Here, however, analysis properly falls under RCW 10.73.090 because Rodriguez' cases in superior court are not yet final.

The Washington State Constitution guarantees the right to appeal to all criminal defendants and courts must balance strict application of filing deadlines against this constitutional right. *State v. Chetty*, 167 Wn.

App. 432, 438–39, 272 P.3d 918, 921 (2012) (citing *State v. Kells*, 134 Wn.2d 309, 314, 949 P.2d 818 (1998)). Immediately following entry of a guilty plea and sentencing, the trial court must advise a criminal defendant of the limited right to direct appeal and of the collateral attack time limits under RCW 10.73.090 and .100. CrR 7.2(b)(6). A sentencing court's failure to advise of these rights and time limits can be an extraordinary circumstance justifying extension of filing deadlines under RAP 18.8(b) and RCW 10.73.090. *State v. Lewis*, 42 Wn. App. 789, 794, 715 P.2d 137 (1986); *In the Matter of the Personal Restraint of Vega*, 118 Wn.2d 449, 454, 823 P.2d 1111 (1992).

A criminal appeal, regardless of when filed, is deemed timely unless the State can show a defendant, understanding his right to appeal, voluntarily, knowingly, and intelligently waived or abandoned that right. *State v. Sweet*, 90 Wn.2d 282, 287, 581 P.2d 579 (1978) (waiver); *Kells*, *supra*, 134 Wn.2d at 313 (abandonment). The State has no evidence Rodriguez was advised in either case of the direct and collateral appeal rights available following his guilty pleas. He cannot be deemed to have knowingly and voluntarily waived this constitutional right in either case. His collateral attacks are timely.

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**IV. CONCLUSION**

Although Rodriguez' collateral attacks on his 2001 and 2003 guilty pleas are timely, he is not entitled to withdraw those pleas and vacate his convictions because he suffered no prejudice from counsel's deficient performance. His personal restraint petitions should be denied and his appeals dismissed.

DATED this 1st day of July, 2016.

Respectfully submitted,

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**NO. 32414-1-III & 32420-6-III**

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BRIEF OF RESPONDENT

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**APPENDIX A**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

FELIX RUBEN RODRIGUEZ,

Petitioner/Appellant.

COA No. 32414-1-III  
No. 01-1-00335-9

DECLARATION OF  
PAUL SNYDER

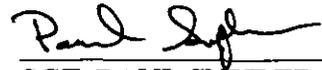
I, Paul Snyder declare under penalty of perjury under the laws of the state of Washington the following statements are true and correct to the best of my knowledge and belief:

1. I am a sergeant with the Quincy (Washington) Police Department (QPD). In 2000 and 2001, I was a patrol officer with the QPD.
2. I was the arresting officer in this case. I, and other QPD officers, had numerous contacts with Felix Rodriguez around that time. A copy of Mr. Rodriguez's criminal contact history is attached to this declaration as Exhibit A and incorporated by reference.
3. To the best of my recollection, Mr. Rodriguez was attending high school in Quincy.
4. I have limited Spanish language skills. I do not recall ever needing an interpreter to communicate with Mr. Rodriguez. I did not need an interpreter to communicate with him on the night of his arrest in this case. My report has been submitted to this Court as 335-9CP 4-6. All of the statements in that report were obtained from Mr. Rodriguez without the assistance of an interpreter.
5. I am aware that at least one of our officers, now deceased, used Mr. Rodriguez to

interpret during an investigative interview of a family member. A copy of that report is attached to this declaration as Exhibit B.

6. While Mr. Rodriguez may have benefitted from an interpreter during formal court appearances, he certainly did not need assistance in normal conversation.

Signed this 10<sup>th</sup> day of June, 2016 at Ephrata, Washington.



SGT. PAUL SNYDER  
Quincy Police Department

06/09/2016  
10:50

Quincy Police Department  
Main Names Table:

352  
Page: 1

Name and Address

Numbr: 55065  
Last: RODRIGUEZ Fst: FELIX Mid: RUBEN JR  
Addr: 208 I ST SW Hst: 12 C ST NW  
City: QUINCY ST: WA ZIP: 98848 QUINCY WA 98848  
Death: / / Alias For:

Personal Identification

DL Number: RODRIFR188K3 ID SSN: - - State ID: WA20083467  
DL State: WA Class: FBI: 242608PB9 Local ID: INS A7916747  
Home Tel: (509)787-1363 Other Tel:  
Work Tel: ( ) - Internet:

Physical Description

DOB: 05/23/1982 34 yrs Eyes: BRO Brown Cmplxn: MBR Medium Brown  
Race: H Hispanic Glasses: N No Glasses/ConSpeech: ART Articulate  
Sex: M Male Hair: BLK Black Teeth: STR Straight  
Height: 5'03" 160 cm Hairstyle: MED Medium Build: SLDR Slender  
Weight: 135lbs 61 kg Beard: G Goatee Ethnic: H Hispanic

Traits

Name Type: INDIVR Sub Type:  
Scars, Marks, and Tattoos: & &  
MO:

Narrative/Other

Alert Codes: LF9 DNA  
Comments: Parents: Blanca Santiago Rodriguez/Ruben Rodriguez  
Addresses: Premis: Xtra: & Visited Inmates: & Had Visitors: &  
Image: PHO & Merge:

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
WA	01W4686	09/15/2003	FTA/VUCSA-POSS COCAINE/DRIVE U	*Served, Returned to
WA	01W4758	09/15/2003	FTA ASSAULT FOURTH DEGREE	*Served, Returned to
WA	01W4759	09/15/2003	FTA MIP MIC	*Served, Returned to
WA	01W5787	09/15/2003	FTPF-MIP/MIC	*Served, Returned to
WA	02W05170	09/15/2003	PROB VIOL/VUCSA; POSSESSION OF	*Served, Returned to
WA	01W4584	06/14/2001	POSSESSION COCAINE/DRIVING VEH	*Served, Returned to
WA	00W8143	11/13/2000	FTPF-MIP/MIC	*Served, Returned to
WA	00W6074	08/05/2000	POSESS COCAINE/MIP MIC	*Served, Returned to
WA	99W6359	04/13/2000	FTPF-NVOL W/OUT ID	*Served, Not Yet Retu
AR	03GSJ4121	11/18/2003	Grant Dist. Warrant-FTA	*Arrested
AR	01GSJ2142	06/11/2001	POSS MARIJUANA LESS THAN 40 G	*Arrested
AR	01QUJ0136	05/01/2001	ASSAULT 4TH DEGREE	*Arrested
AR	01QUJ0107	04/16/2001	MINOR POSS &-O CONSU	*Arrested

AR	00QUJ0324	12/29/2000	MINOR POSS &-O CONSU	*Arrested
AR	00GSJ4886	11/12/2000	Grant District Warrant-FTPF	*Arrested
AR	00GSJ3216	07/31/2000	SCHED I,II,III OTHER	*Arrested
AR	00QUJ0137	06/19/2000	MINOR POSS &-O CONSU	*Arrested
LW	03QU2637	09/13/2003	Arrest	arrested/warrants
LW	01QU2680	09/30/2001	Runaway Juvenil	Possibly Involved
LW	01QU1493	06/15/2001	Assist Agency	Arrested U.S. I.N.S
LW	01QU1444	06/08/2001	Traffic Offense	Suspect/booked
LW	01QU1044	04/30/2001	Disturbance	CITED
LW	01QU0884	04/15/2001	Alcohol Offense	Arrested-MIP
LW	01QU0732	03/29/2001	Noise	III
LW	01QU0401	02/21/2001	Mal Mis	*Complainant
LW	01QU0315	02/11/2001	Traffic Offense	Passenger
LW	01QU0208	01/29/2001	Sex Offense	Brother of Suspect
LW	01QU0071	01/14/2001	Mal Mis	Possible suspect
LW	00QU3234	12/28/2000	Alcohol Offense	Suspect #2
LW	00QU2866	11/11/2000	Arrest	Suspect
LW	00QU1871	08/01/2000	Animal Dangerou	suspect
LW	00QU1867	07/31/2000	Disturbance	Suspect arrested
LW	00QU1465	06/19/2000	Alcohol Offense	Cited-MIP
LW	00QU0908	04/22/2000	Alcohol Offense	witness
LW	00QU0836	04/13/2000	Arrest	Arrested
LW	00QU0822	04/12/2000	Juvenile	Interpreter
LW	00QU0751	04/04/2000	Assault	Victim
LW	00QU0378	03/22/2000	Assault	witness #2
LW	00QU0266	02/04/2000	Juvenile	Juvenile
LW	99QU2474	09/23/1999	Fraud	Victim 2
LW	98QU2665	10/17/1998	Arrest	cited
LW	98QU0636	04/06/1998	Weapon Offense	suspect 1
CT	I51739	10/11/2010	SPEEDING & more	*Defendant
CT	Q03516C	04/30/2001	ASSAULT 4TH DEGREE	*Defendant
CT	Q03307C	04/14/2001	MINOR POSS &-O CONSU	*Defendant
CT	Q03372C	12/28/2000	MINOR POSS &-O CONSU	*Defendant
CT	Q02856C	06/18/2000	MINOR POSS &-O CONSU	*Defendant
CT	Q02515C	10/17/1998	NVOL W/O Identification	*Defendant
CT	Q12619I	10/17/1998	EXP VEH TAB LS 2 MON	*Defendant
VH	103909	05/11/2011	GLD 1985 CHEV BLAZER WA	*Owner
CA	C00075124	07/31/2000	01:43 07/31/2000 Disturbance	involved
CA	C00041815	04/13/2000	20:38 04/13/2000 Arrest	Arrested
CA	C00040403	04/03/2000	22:38 04/03/2000 Assault	Contact
CA	981042743	10/17/1998	16:55 10/17/1998 Arrest	cited for NVOL

Name history:

		Name/Address/Phone History						
Expired	Address	City	ST	Zip	Phone	Last Name	First	M
09/14/2003	12 C ST NW	QUINCY	WA	98848	(509)79	RODRIGUEZ	FELIX	RU
06/09/2001	339 G ST SE; P	QUINCY	WA	98848	(509)78	RODRIGUEZ	FELIX	RU
05/01/2001	12 C ST NW; PC	QUINCY	WA	98848	(509)78	RODRIGUEZ	FELIX	RU
05/01/2001	12 C ST NW	QUINCY	WA	98848	(509)78	RODRIGUEZ	FELIX	RU
03/13/2001	339 G ST SE	QUINCY	WA	98848	( )	RODRIGUEZ	FELIX	RU
04/12/2000	405 D ST SE; u	QUINCY	WA	98848	( )	RODRIGUEZ	FELIX	RU
04/03/2000	405 D ST SE; u	QUINCY	WA	98848	( )	Rodríguez	Felix	Ru
10/17/1998	405 D ST SE; P	QUINCY	WA	98848	( )	Rodríguez	Felix	

Local identification detail:

	Local ID	
Seq Type		ID
1 INS Alien ID Number		A79167473

Alert codes for names:

	Alert Codes
Seq Code	
1 LF9 Logged on Form 9 SID/FBI	
2 DNA DNA-Corvicted Felon DNA drawn	

Additional Name Information:

b Name and Address  
Number: 55065  
Last: RODRIGUEZ JR First: FELIX Mid: RUBEN  
Addr& 208 I ST SW Phone: (509)787-1363  
City: QUINCY ST: WA ZIP: 98848 DOB: 05/23/1982 SSN: - -

e

b Demographics

Birth City: MEXICO	State: MX	Education: 10 years
Citizenship: MX Mexico		Shoe Size: 6
Birth Cntry:		Cover Size: MED
Religion:		Misc. Size:
Marital: N Not Married		Commissary:
School:		

e

b Contact

Contact: Victor Espinoza	Relationship: BL Brother-In-Law
Address: MOSES LAKE	Phone: (509)989-5319

e

b Employer

Employer:	Employer Phone: ( ) -
Address:	
Job Desc:	Job Phone: ( 09) -
Job Locatn:	Date Hired: / / -
Supervisor:	Super Work Phone: ( ) -
Prof Licenses:	Super Home Phone: ( ) -

e

b Probation

Probation:	Prob Officer:
Henry:	Attorney:

NCIC Print:

Image codes for names:

Seq Code	Image Codes	Id Description
1 PHO	PHOTOGRAPH	Photograph
2 GCSO	GRANT COUNTY SO	BOOKING PHOTO



# Quincy Police Department

## Prosecutor Report for Incident 00QU0822

**Nature:** Juvenile  
**Location:**

**Address:** 339 G ST SE  
QUINCY WA 98848

**Offense Codes:** JRUN  
**Circumstances:** LT20  
**Received By:** Beppe Lucinda      **How Received:** Telephone      **Agency:** QUPD  
**Responding Officers:** Goodwin Francis  
**Responsible Officers:** Goodwin Francis      **Disposition:** Closed Case 04/12/00  
**When Reported:** 07:59:28 04/12/00      **Clearance:** Report Taken  
**Occurred Between:** 07:59:28 04/12/00 and 07:59:28 04/12/00

### COMPLAINANT:

**Name:** SANTIAGO-RECINOS, BLANCA D.      **Name Number:** 108720  
**Race:** H      **Sex:** F      **DOB:** 08/24/59      **Height:** 5'01"      **Weight:** 100      **Hair:** BLK      **Eyes:** BRO

**Address:** 1003 VANDENBERG LP, MOSES LAKE, WA 98837  
**Home Phone:** (509)750-1798      **Work Phone:** (509)760-7352

### JUVENILE:

**Name:** RODRIGUEZ, JOSE A.      **Name Number:** 93811  
**Race:** H      **Sex:** M      **DOB:** 01/12/84      **Height:** 5'06"      **Weight:** 145      **Hair:** BLK      **Eyes:** BRO

**Address:** 627 S BURRESS AVE, MOSES LAKE, WA 98837  
**Home Phone:** (509)398-2862      **Work Phone:** (509)782-4220

### INVOLVEMENTS

nmmain	55065	04/12/00	Interpreter
nmmain	93811	04/12/00	Runaway Juvenile
nmmain	108720	04/12/00	Complainant

Supplemental Narrative:

Name:

Date: \*\*:\*\* \*\*/\*\*

Wed Apr 12 09:54:49 PDT 2000

On 04-12-00 at 0800 hours, I Officer S. GOODWIN #307 of the Quincy Police Dept. responded to 339 G Street SE in reference to a runaway juvenile complaint. Upon my arrival I contacted SANTIAGO-RECINOS, BLANCA DEL CARMEN D.O.B 08-24-59 who through an interpreter, RODRIGUEZ, FELIX R. D.O.B 05-23-82, reported that her 15 year old son, RODRIGUEZ, JOSE A. D.O.B 01-12-84, had left 339 G Street SE on 04-11-00 at 1800 hours and has not been heard from since. FELIX R. RODRIGUEZ stated that he was told that on 04-11-00 at about 2200 hours JOSE A. RODRIGUEZ was seen with two girls in the North East section of Quincy. One of the girls was identified as "GRACIELLA BLANCAS". A runaway report was completed and signed by SANTIAGO to list JOSE A. RODRIGUEZ as a runaway. JOSE A. RODRIGUEZ was entered into WASIC/NCIC as a runaway juvenile on 04-12-00 at 1003 hours.

04122000 1233 hrs Mother called and advised Jose A. Rodriguez had come home, taken out of WASIC/NCIC - cb

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Deputy \_\_\_\_\_ Badge \_\_\_\_\_ Date \_\_\_\_\_

Approved \_\_\_\_\_ Date \_\_\_\_\_

Distribution: PA \_\_\_ ODC \_\_\_ RDC \_\_\_ JUV \_\_\_ OPD \_\_\_ RPD \_\_\_ CPS \_\_\_ OTHER \_\_\_\_\_

**NO. 32414-1-III & 32420-6-III**

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BRIEF OF RESPONDENT

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**APPENDIX B**

File No: A79 167 473

Date: July 02, 2001

To any officer of the United States Immigration and Naturalization Service:

RODRIGUEZ, Felix Ruben AKA: RODRIGUEZ-Santiago, Felix Ruben  
(Full name of alien)

who entered the United States at An Unknown Place on 1991  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation or removal proceedings
- a district director or a district director's designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 212(a)(6)(A)(i)  
Section 212(a)(2)(A)(i)(II)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

The appropriation, "Salaries and Expenses, Immigration and Naturalization Service 2001, including the expenses of an attendant if necessary."

Bob Coleman  
 111 Robert S. Coleman Jr. *for*  
 (Signature of INS official)  
 District Director  
 (Title of INS official)  
 07/02/2001 Seattle, WA  
 (Date and office location)

To be completed by Service officer executing the warrant:

Name of alien being removed:

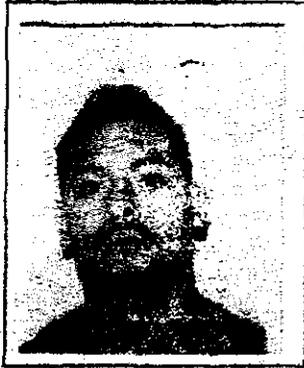
RODRIGUEZ, Felix

Rubert

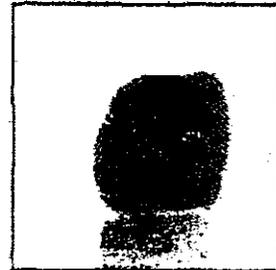
AKA: RODRIGUEZ-Santiago, Felix Reuben

Port, date, and manner of removal:

OTM  
JUL -0 3 2001  
A FOOT  
MEXICO



Photograph of alien removed



Right index fingerprint of alien removed

*Felix Rodriguez*  
\_\_\_\_\_  
(Signature of alien being fingerprinted)

*[Signature]*  
\_\_\_\_\_  
(Signature and title of INS official taking print)

Departure witnessed by:

*[Signature]*  
\_\_\_\_\_  
(Signature and title of INS official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by:

\_\_\_\_\_  
(Signature and title of INS official)

File No: A79 167 473

Date: July 02, 2001

RODRIGUEZ, Felix

Ruben

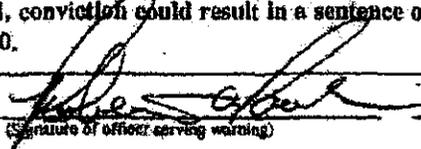
Allen's full name: AKA: RODRIGUEZ-Santiago, Felix Ruben

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

- For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.
- For a period of 10 years from the date of your departure from the United States because you have been found:
  - deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
  - deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.
- For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:
  - inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
  - deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
  - to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.
- At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

**WARNING:** Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to \$250,000.

  
(Signature of officer serving warning)

DEO  
(Title of Officer)

SEA  
(Title of INS office)

Form I-294 (Rev. 6-1-97)N

Appendix B  
Page 3 of 4

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
1000 SECOND AVE., SUITE 2500  
SEATTLE, WA 98104

In the Matter of:  
RODRIGUEZ, FELIX RUBEN

Case No.: A79-167-473

Docket: SEATTLE DETENTION CENTER C/O U.S. INS

RESPONDENT:

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear.

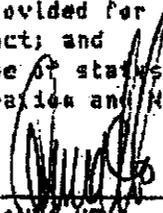
Respondent has made no application for relief from removal.

It is HEREBY ORDERED that the respondent be removed from the United States to Mexico on the charge(s) contained in the Notice to Appear.

It is FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within 30 days following original inquiry whether it will or will not accept respondent into its territory, respondent shall be removed to \_\_\_\_\_.

If you fail to appear for removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances), you will not be eligible for the following forms of relief for a period of ten (10) years after the date you were required to appear for removal:

- (1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
- (2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
- (3) Adjustment of status or change of status as provided for in sections 245, 246 or 249 of the Immigration and Nationality Act.

  
ANNA HO  
Immigration Judge

Date: Jul 2, 2001

7X

Appeal: RESERVED/MAILED (A/B)

SHB

**NO. 32414-1-III & 32420-6-III**

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**BRIEF OF RESPONDENT**

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**APPENDIX C**

**Warrant of Removal/Deportation**

File No: A079187473

Event No: NGL0708000433

Date: August 22, 2007

To any officer of the United States Immigration and Naturalization Service:

Felix Ruben RODRIGUEZ AEA;  
RICARDO RODRIGUEZ-SIBELGA  
FELIX R. RODRIGUEZ-SANTIAGO

\_\_\_\_\_  
(Full name of alien)

who entered the United States at Mesa, Arizona on December 12, 2003  
(Place of entry) (Date of entry)

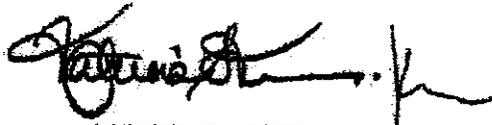
is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a district director or a district director's designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:  
241(a)(6)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

Salaries and Expenses, Department of Homeland Security 2007.



KATRINA S. KANE

(Signature of INS official)

FIELD OFFICE DIRECTOR

(Title of INS official)

August 22, 2007, Elav, AZ

(Date and office location)

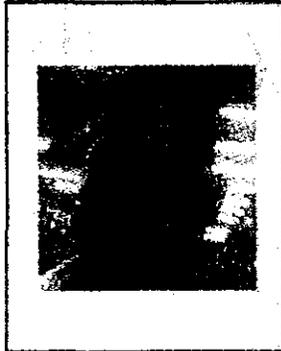
Form I-205 (Rev. 4-1-97)N

To be completed by Service officer executing the warrant.  
Name of alien being removed:

**Felix Ruben RODRIGUEZ**

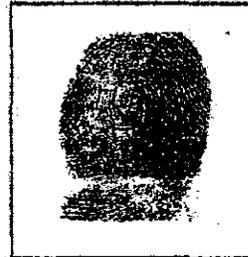
**DEPORTED TO MEXICO  
VIA NOGALES, AFOOT**

Port, date, and manner of removal:



Photograph of alien removed

**SEP 06 2007**



Right index fingerprint of alien removed

*Felix Rodriguez*  
(Signature of alien being fingerprinted)

*[Signature]*  
(Signature and title of INS official taking print)

**Arthur Stannard**  
Immigration Enforcement Agent

Departure witnessed by:

*m. Ortiz*  
(Signature and title of INS official)

**Marcus A. Ortiz**  
Immigration Enforcement Agent

If actual departure is not witnessed, fully identify source or means of verification of departure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by:

*[Signature]*  
(Signature and title of INS official)

**Julio D. Garcia**  
Immigration Enforcement Agent

Form I-205 (Rev. 4-1-97)N

**Warning to Alien Ordered Removed or Deported**

Event No: REL0208000433  
File No: A879 367 473

Date: 08/22/2007

**Felix Ruben RODRIGUEZ AKA:**

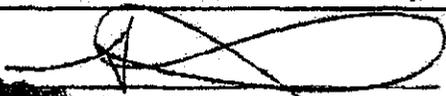
Alien's full name: RODRIGUEZ-SANTIAGO, FELIX REUBEN

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

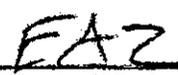
- For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.
- For a period of 10 years from the date of your departure from the United States because you have been found:
  - deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
  - deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.
- For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:
  - inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
  - deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
  - deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
  - to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.
- At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

**WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to \$250,000.**

  
(Signature of officer serving warning)

**Arthur Stannard**  
Immigration Enforcement Agent  
(Title of officer)

  
(Location of ICS office)

Form I-294 (6-1-97)M

Notice of Intent/Decision to Reinstate Prior Order

File No. A078 167 473

Event No: NGLO708000433

FIN #: 909158707

Date: August 22, 2007

Name: Felix Ruben RODRIGUEZ AKA: RODRIGUEZ-SANTIAGO, FELIX REUBEN

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR 241.8, you are hereby notified that the Attorney General intends to reinstate the order of Removal entered against you. This intent is based on the following determinations:

1. You are an alien subject to a prior order of deportation / exclusion / removal entered on July 2, 2001 at Seattle, WA

2. You have been identified as an alien who:

- was removed on July 3, 2001 pursuant to an order of deportation / exclusion / removal
- departed voluntarily on \_\_\_\_\_ pursuant to an order of deportation / exclusion / removal on or after the date on which such order took effect (i.e., who self-deported).

3. You illegally reentered the United States on or about December 12, 2003 at or near Noogles, Arizona

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the SPANISH language.

KLAAS HUBERT  
(Printed or typed name of official)

[Signature]  
(Signature of officer)  
**DEPORTATION OFFICER**  
(Title of officer)

**Acknowledgment and Response**  
 do  do not wish to make a statement contesting this determination.  
8/22/2007 Felix Rodriguez  
(Date) (Signature of Alien)

**Decision, Order, and Officer's Certification**  
Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.  
August 22, 2007 ELOY, AZ  
(Date) (Location)  
CHRISTINE SCLAF [Signature]  
(Printed or typed name of official) (Signature of authorized deciding INS officer)  
SDDO  
(Title)

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

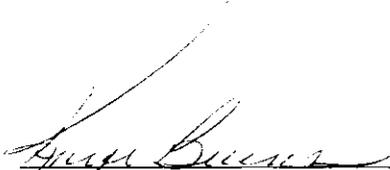
State of Washington,	)	
	)	
Respondent.	)	No. 32414-1-III &
	)	No. 32420-6-III
vs.	)	
	)	
Felix Ruben Rodriguez,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
_____		

Under penalty of perjury of the laws of the State of Washington,  
the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this  
matter by e-mail on the following party, receipt confirmed, pursuant to the  
parties' agreement:

Janet G. Gemberling  
[admin@gemberlaw.com](mailto:admin@gemberlaw.com)

Dated: July 1, 2016.

  
\_\_\_\_\_  
Kaye Burns