UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, **Plaintiff-Respondent,** **v.** **JAYSON PETER COSTA,** **Defendant-Petitioner.**	**1:11-CR-00026-LJO** **REQUEST FOR SUPPLEMENTAL BRIEFING**

On October 7, 2015, this Court denied Appellant Jayson Peter Costa's ("Appellant's") motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Doc. 597. On December 21, 2015, Appellant filed a notice of appeal. Notice of Appeal ("NOA"), Doc. 604. Appellant asserts that when he filed his § 2255 motion, he was an inmate in federal custody and "about to be moved by the government . . . but he did not know where or when." *Id.* He claims that he was moved "before the court ruled on the petition or before the government filed any response to his petition." *Id.* Critically, he states that ". . . he received notice of the entry by the court of its ruling at his new institution . . . ," but does not state when this occurred. *Id.* Appellant acknowledges receiving a copy of the judgment sent by the United States Attorney's Office on November 19, 2015. *Id.* The Ninth Circuit subsequently remanded the case for the limited purpose of determining whether Appellant's NOA "may properly be construed as a timely Fed. R. App. P. 4(a)(6) motion to reopen time for appeal and, if so, to rule on that motion." Doc. 610.

Under Rule 4(a)(6), the district court may extend the time to file a notice of appeal upon a

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demonstration that the appellant did not receive notice under Fed. R. Civ.P. 77(d) of the judgment within 21 days of its entry and that no party would be prejudiced. Fed. R. App. P. 4(a)(6). Thus, Appellant's NOA may not properly be construed as a timely motion to reopen unless he received notice outside of this timeframe. Because it is not clear on the face of the NOA when he received notice of the judgment, the Court ORDERS supplemental briefing on this topic. The government will be given the opportunity to respond.

I. CONCLUSION AND ORDER

For the reasons discussed above, the Court ORDERS Appellant to describe, in a signed declaration, the date on which he first became aware of this Court's denial of his § 2255 motion. This declaration shall be no more than two sentences or one page in length. Any writing in excess of this limit shall not be considered. This declaration is due NO LATER THAN fourteen days after the filing of this order.

Should the government wish to respond, it may do so within seven days' of Appellant's filing. The government's response, if any, shall be no more than one page in length.

IT IS SO ORDERED.

Dated: **March 16, 2016**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE