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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANCISCO ANDRES-FRANCISCO,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent - Appellee.</p>
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No. 10-55620

D.C. Nos. 2:10-cv-00070-GHK
2:08-cr-00295-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, Chief Judge, Presiding

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Federal prisoner Francisco Andres-Francisco appeals from the district court’s order denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Andres-Francisco contends counsel's failure to file a notice of appeal constituted constitutionally deficient performance. We review a district court's denial of a section 2255 motion de novo. *See United States v. Manzo*, 675 F.3d 1204, 1209 (9th Cir. 2012). The district court properly denied the motion because Andres-Francisco has not shown that there is a reasonable probability that he would have appealed had his trial attorney consulted with him explicitly about the merits of appealing his criminal history calculation. *See Roe v. Flores-Ortega*, 528 U.S. 470, 484-86 (2000).

AFFIRMED.