

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RUBEN PARTIDA-CERVANTES,

Petitioner,

v.

CASE NO. 12-3023-RDR

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

Petitioner commenced this matter as an action filed pursuant to 28 U.S.C. § 2241. By its Memorandum and Order dated February 2, 2012, the court dismissed the matter without prejudice and held that petitioner's claims were challenges to the validity of his conviction which should be brought pursuant to 28 U.S.C. § 2255. Because the petition stated that petitioner previously had sought relief pursuant to § 2255, the court advised petitioner that he must seek prior authorization from the U.S. Court of Appeals for the Tenth Circuit to proceed in a new motion filed pursuant to § 2255.

Petitioner has filed a motion seeking to change the nature of this action for a motion pursuant to § 2255 and requesting authorization to file a successive motion under that section.

Because authorization to file a successive motion must be made by the appropriate court of appeals, the court will direct the transfer of this matter to the U.S. Court of Appeals for the Tenth

Circuit for consideration pursuant to 28 U.S.C. § 2255(h).

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion (Doc. 4) is construed a request for authorization pursuant to 28 U.S.C. § 2255(h) and is transferred to the U.S. Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

DATED: This 8th day of March, 2012, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States Senior District Judge