

only one choice, to order dismissal of [plaintiff's] indictment and conviction ab initio." Compl. at 17.

Among other relief, plaintiff demands that the Court order the Attorney General "to answer the legal question asked of him," Compl. at 20, regarding the constitutionality of Public Law 80-772, *see* Compl. at 10-11. He thus appears to demand a petition for a writ of mandamus under 28 U.S.C. § 1361. *See* Compl. at 6. Absent from plaintiff's submission is any showing that he "has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff." *Council of and for the Blind of Delaware County Valley v. Regan*, 709 F.2d 1521, 1533 (D.C. Cir. 1983) (en banc).

It appears instead that plaintiff does have a means by which to challenge the constitutionality of the criminal statute under which he was convicted: he may file a motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. *See Taylor v. U.S. Bd. of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952) (stating that an attack on the constitutionality of the statute under which a defendant was convicted and sentenced is properly pursued by motion under 28 U.S.C. § 2255). Such a motion must be filed in the court which imposed the sentence, and the plaintiff may avoid this process only if the remedy is found to be inadequate or ineffective. *See* 28 U.S.C. § 2255(e). It does not appear that this district is the appropriate forum for adjudication of the claim, however, because plaintiff was tried, convicted, or sentenced elsewhere.

An Order accompanies this Memorandum Opinion.

DATE: 2/7/12


United States District Judge