

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOSE MONROY VILLEDA,	:	CIVIL ACTION NO. 12-7448 (MLC)
	:	
Movant,	:	<b>O P I N I O N</b>
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

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**THE MOVANT**, listing himself herein as Jose Monroy Villeda, seeks to, inter alia, challenge a judgment of conviction entered in state court in 1992. (See dkt. entry no. 1.) In pursuit of that challenge, the movant has filed a form entitled, "Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody" ("2255 Form"). (Id.)<sup>1</sup> But federal law provides "for the review of . . . federal court convictions under 28 U.S.C. § 2255". Borden v. Allen, 646 F.3d 785, 809 (11th Cir. 2011), cert. denied, 132 S.Ct. 1910 (2012); see United States v. Biberfeld, 957 F.2d 98, 101 (3d Cir. 1992) (stating that Section 2255 permits a motion to correct a federal court's sentence).

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<sup>1</sup> The documents "filed pursuant to . . . § 2255 are commonly referred to as habeas petitions". Santana v. United States, 98 F.3d 752, 753 n.1 (3d Cir. 1996). But Section 2255 directs that a party seeking relief thereunder proceed by filing a motion. See generally 28 U.S.C. § 2255.

**THE MOVANT** cannot proceed under Section 2255 to challenge a judgment of conviction entered in state court. But the Court notes that the movant has had a criminal indictment brought against him in this Court under Criminal No. 12-570 (MLC), has entered a plea of guilt thereunder, and is awaiting sentencing.<sup>2</sup> The Court also notes that the movant filed – simultaneously with the 2255 Form – a separate petition for a writ of coram nobis, which was docketed under Civil Action No. 12-7449 (MLC). Therefore, the Court intends to deny this Motion without prejudice, and direct the movant to seek relief under Criminal No. 12-570 (MLC) and Civil Action No. 12-7449 (MLC) only. The Court will issue an appropriate order.

s/ Mary L. Cooper  
**MARY L. COOPER**  
United States District Judge

Dated: December 13, 2012

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<sup>2</sup> The movant is named in the criminal matter as Jose Monroy-Villeda. See generally Crim. No. 12-570 (MLC).