

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge John L. Kane

11-CV-1177

Criminal Action No. 08-cr-00183-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL BROEMMEL,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY - 8 2011

GREGORY C. LANGHAM
CLERK

ORDER

Defendant Michael Broemmel is currently detained at the Arrowhead Correctional Center in Canon City, Colorado. On September 10, 2010, I sentenced Mr. Broemmel to serve eight months for violating the terms and conditions of his supervised release. Mr. Broemmel asserts that on October 18, 2010, he was also sentenced in a state case to a term of four years, followed by three years of parole. Although originally designated to a minimum security facility, Defendant asserts that was removed to a more restrictive facility because of the placement of a detainer on him relating to the sentence I imposed upon him for a supervised release violation.

On April 26, 2011, Mr. Broemmel submitted a pleading titled "Motion to Quash Detainer" (doc. 30). He seeks removal of this detainer so that he can be returned to a minimum security facility for the duration of his state sentence. I must construe Defendant's motion liberally because he is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, I should not act as a *pro se*

litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the Motion will be construed as filed pursuant to 28 U.S.C. § 2241.

In effect, Mr. Broemmel is challenging the execution, not the validity, of his sentence, and his claims are more appropriately addressed under 28 U.S.C. § 2241. *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). The Clerk of the Court, therefore, will be directed to open a separate action and process the Motion as filed pursuant to § 2241. Mr. Broemmel will be instructed to cure any deficiencies in the § 2241 action. Accordingly, it is

ORDERED that Mr. Broemmel's Motion to Quash Detainer, filed on April 26, 2011, is construed liberally as asserting claims pursuant to 28 U.S.C. § 2241. It is

FURTHER ORDERED that the Clerk of the Court is directed to open a separate action pursuant to 28 U.S.C. § 2241 and to direct Mr. Broemmel to cure any deficiencies in the § 2241 action. It is

FURTHER ORDERED that the Clerk of the Court shall place a copy of Mr. Broemmel's Motion to Quash Detainer, filed on April 26, 2011, in the newly created, separate action.

Dated: May 2, 2011

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Judge