



fol. § 2255.

Summary dismissal is appropriate in this case. A federal prisoner challenging the legality of his conviction or sentence must file a motion to vacate, correct, or modify a sentence pursuant to 28 U.S.C. § 2255 in the sentencing court. See 28 U.S.C. § 2255(a); *Davis v. United States*, 417 U.S. 333, 343-44 (1974); *In re Dorsainvil*, 119 F.3d 245, 249 (3d Cir. 1997). Wherever Herrera may have been prosecuted, it was not in the District of Delaware. Therefore, to the extent Herrera is seeking relief under 28 U.S.C. § 2255, this court does not have jurisdiction.

Alternatively, a federal prisoner challenging his physical custody and the manner in which his sentence is being executed must file a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004); see *United States v. Jack*, 774 F.2d 605, 607 n.1 (3d Cir. 1985)(a habeas corpus petition pursuant to § 2241 is appropriate in the district of confinement). The Federal Correctional Institution in Lompoc, California, is located in the Central District of California. Consequently, to the extent Herrera is challenging his physical custody pursuant to 28 U.S.C. § 2241, the court does not have jurisdiction over the proceeding.

For the reasons set forth above, this court does not have jurisdiction, and therefore will summarily dismiss Herrera's petition for emergency writ of habeas corpus for lack of jurisdiction, and will not issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997); 3d Cir. L.A.R. 22.2

(2011). A separate order follows.

December 10, 2014  
DATE

Richard G. Anderson  
UNITED STATES DISTRICT JUDGE