

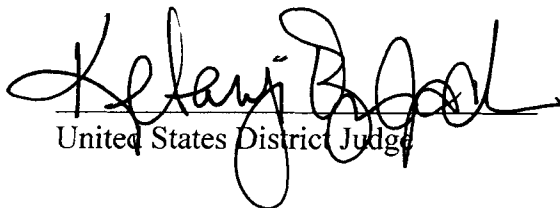
choose to proceed to a jury trial, plaintiff asks to “be resentenced to any sentence that was available at the time of the original sentencing without utilization of the unconstitutional 21 U.S.C. § 851 practice.” *Id.* at 6.

Insofar as plaintiff raises a challenge to his criminal sentence in the guise of a civil rights complaint, this case must be dismissed. Under 28 U.S.C. § 2255:

[a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a) (emphasis added). In other words, “§ 2255 . . . is the proper means of attacking errors that occurred during or before sentencing,” and “the only court with jurisdiction to hear [such claims] is the court that sentenced him” *Ojo v. Immigration & Naturalization Serv.*, 106 F.3d 680, 683 (5th Cir. 1997) (citations omitted).

The Court will dismiss the complaint for lack of jurisdiction. An Order accompanies this Memorandum Opinion.


United States District Judge

DATE: 12/19/14