IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RAFAEL GUERECA,

Petitioner,

v. **CASE NO. 10-3199-RDR**

CLAUDE CHESTER
Warden, USPL,

Respondent.

O R D E R

On October 14, 2010, this court entered an Order granting petitioner time to show cause why this action should not be dismissed for the reasons stated therein. Petitioner has filed his Response. Having considered the Response, the court finds that petitioner simply disagrees with the court's prior Order and states that this court must adjudicate his claims under § 2241. The court finds that petitioner alleges no facts showing that this court has jurisdiction over his claims, which are clearly challenges to his criminal conviction. Nor does he make any attempt to satisfy his burden of showing that the motion under 28 U.S.C. § 2255 is "inadequate or ineffective to test the legality of [his] detention" based upon his claims. As noted in its prior Order, the Tenth Circuit has explicitly rejected the contention that § 2241 is the only remedy for a habeas claim based on a Vienna treaty violation, and has held that a federal prisoner who seeks to collaterally attack his conviction based upon such a claim must do so under § 2255 rather than § 2241. See Juarez-Lozano v. Chester, 2010 WL

2747505 (10th Cir. July 13, 2010)(copy attached); see also Gibson v. Fleming, 28 Fed.Appx. 911, 913 (10th Cir. 2001)(court should have dismissed § 2241 habeas petition without prejudice for lack of jurisdiction where petition challenged federal conviction or sentence and petitioner did not show § 2255 remedy was inadequate or ineffective). Petitioner has not alleged facts that distinguish his case from the legal authority cited by the court. The court finds that petitioner has failed to show cause why this action should not be dismissed.

IT IS THEREFORE ORDERED that this action is dismissed and all relief is denied, without prejudice, for the reasons stated herein and in the court's Order dated October 14, 2010.

IT IS SO ORDERED.

DATED: This 12th day of November, 2010, at Topeka, Kansas.

s/RICHARD D. ROGERS
United States District Judge