

D/R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 14 2011 ★
BROOKLYN OFFICE

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MARIO ALBERTO ESTRELLA,

Petitioner,

ORDER

10-CV-3777 (NGG)

-against-

DUKE TERRELL, *Warden, Metropolitan Detention Center,*

Respondent.

-----X
GARAUFIS, United States District Judge.

On August 12, 2010, Petitioner, pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking a reduction of his criminal sentence under the United States Sentencing Guidelines § 5K2.0, due to the conditions of confinement at the Metropolitan Detention Center. (Pet. (Docket Entry # 1) at pg. 2.) Petitioner has been sentenced to a term of incarceration by the United States District Court for the District of New Jersey. See USA v. Estrella, 3:08-cr-00267-FLW.

By order dated May 13, 2011, this court noted that it was unclear whether Petitioner stated a cognizable claim under 28 U.S.C. § 2255 or § 2241. (Docket Entry # 2.) Accordingly, Petitioner was informed: (a) that if he wished to challenge the legality of the sentence imposed, he would have to bring the challenge under § 2255, and he must do so in the court that imposed his sentence, the United States District Court for the District of New Jersey, see 28 U.S.C. § 2255(a); and (b) that if he wished to challenge the constitutionality of the conditions of his confinement, he was granted forty-five (45) days leave to amend his Petition to assert any constitutional claims under § 2241. (Docket Entry # 2 at pgs. 2-3.) Petitioner was advised that if

he failed to replead his conditions of confinement claim in a timely manner, the Petition would be dismissed without prejudice. More than forty-five days have elapsed and Petitioner has failed to respond to the court's order.

Accordingly, the Petition is DISMISSED without prejudice.

SO ORDERED.

Dated: Brooklyn, New York
October 13, 2011

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge