

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EUGENIO LÓPEZ RODRIGUEZ,

Petitioner,

vs.

No. CV 17-01177 KG/SMV

STATE OF NEW MEXICO,

Respondent.

ORDER TO TRANSFER TO THE NORTHERN DISTRICT OF TEXAS

THIS MATTER is before the Court on the Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Eugenio López Rodriguez on November 29, 2017. (Doc. 1). This Court construes the Petition as a request for habeas corpus relief under 28 U.S.C. § 2241 will order the case to be transferred to the Northern District of Texas, Amarillo Division.

Petitioner Eugenio López Rodriguez has multiple convictions in New Mexico and Texas for armed robbery, robbery, conspiracy, murder, and escape. (Doc. 1 at 1). In his Petition, Rodriguez states that:

“This is not a challenge to the conviction, this is a challenge to the disregard to Petitioner’s rights to due process and of an unlawful stacking of sentence which automatically make any and all sentences regardless of its length “a life without Parole.”

(Doc. 1 at 13). An attack on the manner in which a sentence is executed properly proceeds under 28 U.S.C. § 2241. *See Tolliver v. Dobre*, 211 F.3d 876, 877–78 (5th Cir.2000); *see, also, Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). Because Rodriguez is challenging the manner in which his sentences are being executed rather than the validity of his underlying convictions, his

petition arises under 28 U.S.C. § 2241 rather than § 2254. *See Montez v. McKinna*, 208 F.3d 862 (10th Cir.2000). The Court finds that Rodriguez's Petition should be construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. *Maxwell v. Janecka*, 191 F. App'x 717, 718 (10th Cir. 2006); *Davis v. Fechtel*, 150 F.3d 486, 487 (5th Cir. 1998).

Petitioner may only seek § 2241 relief in the District where Rodriguez is incarcerated and must proceed against his present physical custodian. *Rumsfeld v. Padilla*, 452 U.S. 426, 442-43 (2004). Rodriguez is presently incarcerated in the William P. Clements Unit of the Texas Department of Corrections in Amarillo, Texas. (Doc. 1 at 1). For judicial purposes, the William P. Clements Unit of the Texas Department of Corrections is located in the Northern District of Texas, Amarillo Division. *See* www.uscourts.gov/court-locator. The Warden of the William P. Clements Unit is Kevin Foley. Because Rodriguez is incarcerated in the Northern District of Texas, this Court will order substitution of Warden Kevin Foley as Respondent and will transfer the case to the Northern District of Texas.

IT IS ORDERED that Warden Kevin Foley is substituted as Respondent in place of the State of New Mexico and the Clerk is DIRECTED to transfer this case to the Northern District of Texas, Amarillo Division.


UNITED STATES DISTRICT JUDGE