

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VICTOR RODRIGUEZ,

v.

TROY LEVI.

No. 07-4194

**MEMORANDUM/ORDER**

May 29, 2008.

On October 15, 2007, petitioner filed a motion challenging the constitutionality of his detention. Docket # 1. The motion was improperly styled as a motion under 28 U.S.C. § 2241, rather than a petition pursuant to 28 U.S.C. § 2255 (petitioner currently has a separate § 2255 petition pending before the court). On January 17, 2008, this court issued an order providing petitioner with the opportunity to correct this defect.

Specifically, the court ordered (1) that the Clerk of Court provide petitioner with a form for motions under 28 U.S.C. § 2255, and (2) that petitioner notify the court within thirty days of the order as to whether he consents to reclassification of his October 15 motion as a petition pursuant to 28 U.S.C. § 2255, or wished to resubmit his petition on the correct § 2255 form. The order stated that if petitioner failed to respond to the order within thirty days of its issuance, the court would dismiss the petition. Docket # 2.

Petitioner did not respond to the order within thirty days of its issuance. Instead, on April 3, 2008, petitioner filed another motion challenging the constitutionality of his conviction, which also improperly invoked 28 U.S.C. § 2244. Docket # 3. Having

already given petitioner sufficient notice that any constitutional challenges to his conviction must be brought pursuant to 28 U.S.C. § 2255, the court will deny petitioner's motions of October 15, 2007, docket # 1, and April 3, 2008, docket # 3, without prejudice.

ACCORDINGLY, it is hereby ORDERED that:

- (1) Petitioner's motion filed October 15, 2007, docket # 1, is DENIED without prejudice; and
- (2) Petitioner's motion filed on April 13, 2008, docket # 3, is DENIED without prejudice.
- (3) The Clerk shall mark this civil action as CLOSED for statistical purposes.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.