

## NOV 1 2 2019

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Clerk, U.S. District and Bankruptcy Courts

| JOHN JOSEPH GASSEW, JR.,        | ) |                                |
|---------------------------------|---|--------------------------------|
|                                 | ) |                                |
| Petitioner,                     | ) |                                |
| v.                              | ) | Civil Action No. 19-3279 (UNA) |
|                                 | ) |                                |
| UNITED STATES ATTORNEY GENERAL, | ) |                                |
|                                 | ) |                                |
| Respondent.                     | ) |                                |

## **MEMORANDUM OPINION**

This matter is before the Court on consideration of John Gassew's petition for a writ of habeas corpus. Petitioner states that he was extradited from the Court of Common Pleas in order to face federal charges in the United States District Court for the Eastern District of Pennsylvania. He contends that the extradition was unlawful, and demands his immediate release from federal custody.

To the extent that a remedy is available to Petitioner, he must pursue it in the sentencing court by motion under 28 U.S.C. § 2255. *Taylor v. U.S. Bd. of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952) (per curiam) (concluding that motion under § 2255 is proper remedy for attack on constitutionality of statute under which petitioner was convicted and sentenced); *see Ojo v. Immigration & Naturalization Serv.*, 106 F.3d 680, 683 (5th Cir. 1997) (noting "that 28 U.S.C. § 2255 . . . is the proper means of attacking errors that occurred during or before sentencing"). In relevant part, Section 2255 provides:

[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). "Petitioner 'could have raised his extradition claim in the sentencing court, either at the time of sentencing or thereafter in his motion to vacate the sentence under § 2255." *Manuel v. Gillis*, No. 1:05-cv-1130, 2005 WL 1563507, at \*2 (M.D. Pa. July 1, 2005) (quoting *Quezadaruiz v. Nash*, No. 04-cv-5544, 2005 WL 1398506, \*3 (D.N.J. June 14, 2005)).

This is not the federal district court which sentenced Petitioner and, therefore, the Court will grant his motion to proceed *in forma pauperis* and dismiss his petition without prejudice.

An order is issued separately.

TANYA S CHUTKAN
United States District Judge