

MANDATE



E.D.N.Y.—Bklyn
04-cr-706
19-cv-3100
22-cv-6001
Block, J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of January, two thousand twenty-three.

Present:

José A. Cabranes,
William J. Nardini,
Circuit Judges,
Jed S. Rakoff,
*District Judge.**

Damion Hardy,

Petitioner,

v.

22-6521

United States of America,

Respondent.

Petitioner moves to remand this proceeding back to the district court, or, in the alternative, for leave to file a successive 28 U.S.C. § 2255 motion. Upon due consideration, it is hereby ORDERED that the motion to remand is DENIED because the district court properly construed Petitioner's 28 U.S.C. § 2241 petition as a § 2255 motion, and properly transferred it to this Court as successive. *See Adams v. United States*, 372 F.3d 132, 134–35 (2d Cir. 2004) (Section “2255 is the appropriate vehicle for a federal prisoner to challenge the *imposition* of his sentence. Section 2241 by contrast is the proper means to challenge the *execution* of a sentence.”) (emphasis in original; citations omitted); *see also Vu v. United States*, 648 F.3d 111, 113 (2d Cir. 2011) (defining “successive”); *Whab v. United States*, 408 F.3d 116, 118–19 (2d Cir. 2005) (same). Petitioner is in custody pursuant to his judgment of conviction and has not demonstrated that § 2255 is an inadequate or inappropriate means to challenge that judgment; although he claims to be challenging his pre-conviction arrest and detention, he is not currently in custody pursuant to that detention, which expired upon his conviction. *See Scanio v. United States*, 37 F.3d 858, 860 (2d Cir. 1994) (requiring that a movant “satisfy the jurisdictional ‘in custody’ requirement” to seek § 2255 relief).

It is further ORDERED that Petitioner's motion for leave to file a successive § 2255 motion is

* Judge Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

MANDATE ISSUED ON 03/20/2023

Appendix A