

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ROY ALLEN NICHOLS
(PETITIONER)

v.

UNITED STATES OF AMERICA
(RESPONDENT)

Originating Case No.:
3:17-cr-00372

Originating Jurisdiction:
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

A PETITION FOR A WRIT
OF HABEAS CORPUS, PURSUANT
TO 28 USC §2241

Roy Allen Nichols
Reg. No. 64972-060
Federal Correctional Inst.
P.O. Box 7007
Marianna, FL 32447-7007
(Petitioner)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

ROY ALLEN NICHOLS

Petitioner,

v.

Case No. 5:23cv241/TKW/MAL

UNITED STATES OF AMERICA

Respondents.

ORDER TO SHOW CAUSE

Petitioner Roy Allen Nichols is an inmate at the Federal Correctional Institution in Marianna, Florida with a projected release date of July 14, 2034. He initiated this case by filing a typewritten narrative "Petition for a Writ of Habeas Corpus, Pursuant to 28 U.S.C. § 2241." ECF No. 2. On September 15, 2023, the Court directed Petitioner to (1) file an amended § 2241 petition on the proper court form along with two (2) service copies thereof, and (2) pay the \$5.00 filing fee or file an application to proceed in forma pauperis. ECF No. 4. Petitioner was directed to comply on or before October 19, 2023, and he was warned that a failure to timely respond to a Court Order could result in a recommendation that this case be dismissed. The clerk received the filing fee on September 27, 2023, but Petitioner has not filed his amended § 2241 petition.¹

¹ Because Petitioner appears to challenge the validity of his federal conviction, the Court noted in its prior order that
Page 1 of 2

Accordingly, it is **ORDERED**:

1. Within **fourteen (14) days** from the date of this order, Petitioner must show cause, if any, why this case should not be dismissed for his failure to comply with a court order.
2. The Court will discharge the show cause order if Petitioner complies with the Court's September 15, 2023, order within the time provided by this order.
3. Petitioner's failure to comply with this order will result in a recommendation of dismissal of this case.

DONE AND ORDERED on October 24, 2023.

s/ Midori A. Lowry _____

Midori A. Lowry

United States Magistrate Judge

Note: The Court was wanting to construe the §2241 Petition as a §2255 Petition knowing that I would not be able to comply with the standards concerning a second and/or successive §2255, prompting me to withdraw the petition and file it in the 11th Cir. COA

his claims may not sound in habeas. It may be, then, that Petitioner has abandoned this action to pursue post-conviction relief with the sentencing court. If Petitioner does not intend to pursue § 2241 relief, he should file a notice of voluntary dismissal.

11th Circuit
Case No. 25-10677-J
transferred back to N.D. of
Ohio, W.D. (Toledo, OH) 3-4-25

IN THE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROY ALLEN NICHOLS
(PETITIONER)

vs

UNITED STATES OF AMERICA
(RESPONDENT)

: Originating Case No.:
: 3:17-cr-00372
:
: Originating Jurisdiction:
: UNITED STATES DISTRICT COURT
: FOR THE NORTHERN DISTRICT OF OHIO
: WESTERN DIVISION
:
: PETITION FOR A WRIT OF
: HABEAS CORPUS
:

Roy Allen Nichols
Reg. No. #64972-060
Federal Correctional Inst.
P.O. Box 7007
Marianna, FL 32447-7007
(Petitioner)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10677

In re: ROY ALLEN NICHOLS,

Petitioner.

On Petition for a Writ of Habeas Corpus, 28 U.S.C. § 2241, Petition for a Writ of Habeas Corpus, 28 U.S.C. § 2254, or Motion to Vacate, Set Aside, or Correct Sentence, 28 U.S.C. § 2255

ORDER:

Pursuant to Fed. R. App. P. 22(a), an application for an original writ of habeas corpus must be made to the appropriate

Over →

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Order of the Court

25-10677

district court and, if made to a circuit judge, the application must be transferred to the appropriate district court. Because this matter is or appears to be an application for an original writ of habeas corpus, this matter is TRANSFERRED to the United States District Court for the Northern District of Ohio. *See, e.g.*, 28 U.S.C. § 2241(a), 28 U.S.C. § 2241(d), or 28 U.S.C. § 2255(a).

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

U.S. COURT OF APPEALS
RECEIVED
CLERK
FEB 27 2025
FOR THE ELEVENTH CIRCUIT
ATLANTA, GA

FILED

MAR 18 2025

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

3:25 CV 529
JUDGE KNEPP

MAG JUDGE KNAPP

ROY ALLEN NICHOLS
(PETITIONER)

vs

UNITED STATES OF AMERICA
(RESPONDENT)

: Originating Case No.:
: 3:17-cr-00372

: Originating Jurisdiction:
: UNITED STATES DISTRICT COURT
: FOR THE NORTHERN DISTRICT OF OHIO
: WESTERN DIVISION

: PETITION FOR A WRIT OF
: HABEAS CORPUS

Roy Allen Nichols
Reg. No. #64972-060
Federal Correctional Inst.
P.O. Box 7007
Marianna, FL 32447-7007
(Petitioner)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROY ALLEN NICHOLS,

CASE NO. 3:25 CV 529

Petitioner,

v.

JUDGE JAMES R. KNEPP II

UNITED STATES OF AMERICA,

Respondent.

ORDER OF TRANSFER

Pro se Petitioner Roy Allen Nichols, a federal prisoner incarcerated at FCI Marianna in Marianna, Florida, has filed a Petition in this action for a Writ of Habeas Corpus. (Doc. 1). Petitioner was convicted and sentenced in this district in 2018, pursuant to a guilty plea, to one count of receiving and distributing child pornography and was sentenced to 235 months imprisonment. *See United States v. Nichols*, 3:17-cr-372 (N.D. Ohio) (Carr, J.). The sentencing court subsequently denied Petitioner's motions to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See id.* at Docs. 45, 53-56, 60.

In his present Petition, Petitioner challenges the validity of his federal conviction and seeks release from confinement, contending the sentencing court did not have jurisdiction in his criminal case. *See* Doc. 1, at 20, 25-26, 30. Petitioner originally filed his Petition in the Eleventh Circuit Court of Appeals, which transferred the action here. *See* Doc. 1-1.

Upon review, the Court construes the Petition as an attempt by Petitioner to file a second or successive motion to vacate, set aside, or correct his sentence under § 2255. A federal prisoner cannot file a second or successive § 2255 motion to vacate in the district court unless the prisoner first obtains permission to do so from the appropriate court of appeals. *Charles v. Chandler*, 180 F.3d 753, 758 (6th Cir. 1999). If a second or successive motion to vacate sentence

is filed with the district court, the court should transfer the motion to the court of appeals pursuant to 28 U.S.C. § 1631. *See In re Hanserd*, 123 F.3d 922, 934 (6th Cir. 1997) (citing *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997)).

For the foregoing reasons, good cause appearing, it is

ORDERED that, pursuant to 28 U.S.C. § 1631, this this matter is hereby TRANSFERRED to the Sixth Circuit Court of Appeals for a determination of whether Petitioner is entitled to a certificate of authorization to file a second or successive motion challenging his conviction under § 2255; and the Court

FURTHER CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

Dated: June 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
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Filed: June 18, 2025

Mr. Roy Allen Nichols
F.C.I. Marianna
P.O. Box 7007
Marianna, FL 32447

NOTICE

Re: Case No. 25-3450, *In re: Roy Nichols*
Originating Case No. 3:25-cv-00529

Dear Mr. Nichols:

The district court has transferred your case for this court to determine whether to grant you permission to file a second or successive habeas petition or motion to vacate. In order for the Court to consider your case, you need to satisfy certain obligations under Sixth Circuit Rule 22.

You must complete and return to the Clerk's office the attached application form by **July 18, 2025**; instructions are contained in the form. If you do not return the form or attach the documents required, this proceeding may be dismissed. The form will be deemed filed once it has been given to prison authorities for mailing and you have satisfied the verification requirements of Fed. R. App. P. 25(a)(2)(c).

Sincerely yours,

s/Patricia J. Elder, Senior Case Administrator
for Robin Baker, Case Manager

cc: Mr. Matthew B. Kall

Enclosure

No. 25-3450

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 21, 2025
KELLY L. STEPHENS, Clerk

In re: ROY ALLEN NICHOLS,

Movant.

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ORDER

Before: WHITE, BUSH, and NALBANDIAN, Circuit Judges.

Roy Allen Nichols, a pro se federal prisoner, moves to remand his case to the district court, which transferred his filing as a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence for the required authorization under § 2255(h). For the reasons below, we deny his motion to remand and deny him authorization.

In 2018, Nichols pleaded guilty to receiving and distributing child pornography, and the district court sentenced him to 235 months of imprisonment. We affirmed his sentence on appeal. *United States v. Nichols*, 802 F. App'x 172, 174 (6th Cir. 2020).

In 2020, Nichols filed a document that the district court determined to be a § 2255 motion. As required by *Castro v. United States*, 540 U.S. 375, 383 (2003), the district court advised Nichols that it was recharacterizing his filing as such and that, if it ruled on the motion, there would be consequences related to any second or successive § 2255 motions that he might later file. The court also gave him the opportunity to withdraw the filing. Nichols opted to proceed, and the district court denied his construed § 2255 motion. In 2021, Nichols moved for authorization to file a second or successive § 2255 motion, but we dismissed his case for want of prosecution. *See In re Nichols*, No. 21-3547 (6th Cir. Nov. 2, 2021).

In 2025, Nichols, who is imprisoned at FCI Marianna in Florida, filed with the Eleventh Circuit Court of Appeals what he termed a petition for a writ of habeas corpus under 28 U.S.C.

§ 2241. Nichols asserted, among other things, that “the Federal Government does not possess the Constitutional power and authority to . . . punish any moral conduct issues.” The Eleventh Circuit transferred the filing to the United States District Court for the Northern District of Ohio, the court in which he was convicted. The district court then construed the filing as a second or successive § 2255 motion and transferred it here for our authorization.

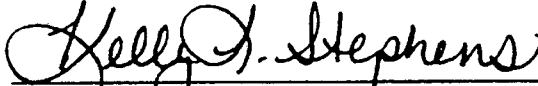
We directed Nichols to file a corrected motion for authorization. Instead, he moved to remand the case to the district court because that court did not “notify and inform” that it was recharacterizing his filing as a second or successive § 2255 motion. He also filed a reply brief reiterating the constitutional arguments that he raised in the transferred filing.

Before a prisoner may file a second or successive § 2255 motion in the district court, he must make a prima facie showing that the proposed motion relies on either (1) newly discovered evidence calling his conviction into question, or (2) a new, retroactive constitutional rule. 28 U.S.C. § 2255(h); *see also* 28 U.S.C. § 2244(b)(3)(C).

Nichols does not argue that his filing warrants authorization as a second or successive motion under § 2255(h), and his constitutional arguments do not rely on a new rule of constitutional law. And Nichols’s request for remand based on the procedure from *Castro* is unavailing because that applies when a district court “recharacterize[s] a *pro se* litigant’s motion as the litigant’s first § 2255 motion,” 540 U.S. at 377, not as a second or successive one.

Therefore, we **DENY** Nichols authorization to file a second or successive § 2255 motion and **DENY** his motion to remand.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk