

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO: 09-123

CHARLES MOSS

SECTION: "S" (3)

ORDER AND REASONS

Before the court is a motion filed by Charles Moss titled "Petitioner's 'Actual Innocence' Claim, and Motion for Declaratory Judgment, Pursuant to Article III, §2, Clause 1, and §21, Collateral Legal Consequences of Sentence (B. Criminal Matters) within the Concept of a 'Case' or 'Actual Controversy' and the Federal Declaratory Judgment Act 28 USCS § 2201" (Doc. #478). After reviewing the motion, the court has determined that it is more properly characterized as a petition for habeas corpus under 28 U.S.C. §2255.

Pursuant to Castro v. United States, 124 S.Ct. 786, 792 (2003), when a district court determines that a motion by a prisoner not labeled as a motion under §2255 should be treated as such, "the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent §2255 motion will be subject to restrictions on 'second or successive' motions, and provide the litigant with an opportunity to withdraw the motion or to amend it so that it contains all of the §2255 claims he believes he has."

IT IS HEREBY ORDERED that Charles Moss' pending motion (Doc. #478) will be construed as a motion under §2255, and he is granted leave to amend or withdraw his pending motion within 30 days of the date of this order. If he does not act, the court will proceed with the motion and analyze it under §2255.

IT IS FURTHER ORDERED that the Clerk of Court provide Charles Moss with the §2255 form along with a copy of this order.

New Orleans, Louisiana, this 17th day of July, 2014.



MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE