

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

CASE NO. 8:11-CR-572-T-17MAP

OMAR BELALCAZAR GARCIA.

_____ /

ORDER

This cause is before the Court on:

Dkt. 236 Pro Se Motion for Status of Rule 35 and Motion Directing BOP to
Transfer Defendant

Defendant Omar Belalcazar Garcia requests that the Court order the Government to notify Defendant whether a Rule 35(b) Motion will be filed.

No Rule 35 Motion has been filed by the Government. The Court previously denied Defendant's Motion for a Rule 35, and has explained the reason. (Dkt. 226, Exh. A.). After consideration, the Court adopts and incorporates the prior Order, and denies Defendant's request without prejudice.

Defendant Omar Belalcazar Garcia further requests injunctive relief requiring the BOP to transfer Defendant. Defendant Belalcazar Garcia says Defendant is constantly harassed by other inmates due to Defendant's cooperation, and says "someone might end up getting hurt." Defendant Belalcazar alleges that Defendant has been "involved in heated arguments almost daily."

The Prison Litigation Reform Act requires exhaustion of administrative remedies as to any challenge to prison conditions. Courts do not have the discretion to waive the exhaustion requirement. Even if a prisoner has initiated a grievance procedure, he

Case No. 8:11-CR-572-T-17MAP

must fully complete the process before filing a lawsuit. See Harper v. Jenkin, 1790 F.3d 1311, 1312 (11th Cir. 1999).

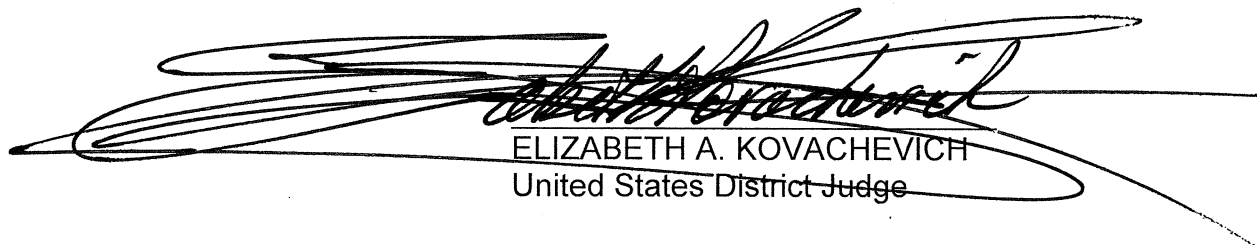
The BOP has created the Administrative Remedy Program, a three-step process which allows inmates “to seek formal review of an issue which relates to any aspect of their confinement.” Initially an inmate must attempt to informally resolve his complaint with the BOP staff. See 28 C.F.R. Sec. 542.13(a). If the attempt fails, the inmate may then file a Request for Administrative Remedy (BP-9 form) and submit it to the warden within twenty days “following the date on which the basis for the Request occurred.” See 28 C.F.R. Sec. 542.14. If not satisfied with the response of the Regional Director, the inmate may submit another appeal, using the appropriate form to the BOP’s General Counsel. See 28 C.F.R. Sec. 542.15(a). The prisoner may file the initial request directly with the Regional Director instead of the warden, however, “[i]f the inmate reasonably believes the issue is sensitive and the inmate’s safety or well-being would be placed in danger if the Request became known at the institution.” See 28 C.F.R. Sec. 542.14(d)(12). Proper exhaustion requires timely appeal through all levels, including to the General Counsel that complies with BOP regulations so that it is decided on the merits at all levels.

After consideration, the Court denies Defendant’s request for injunctive relief without prejudice for lack of jurisdiction. Accordingly, it is

ORDERED that pro se Defendant Omar Belalcazar’s Motion for Status of Rule 35 is **denied without prejudice**. The Court **adopts and incorporates** the prior Order (Dkt. 226). Defendant’s Motion Directing the BOP to Transfer Defendant is **denied without prejudice** for lack of jurisdiction. Defendant **shall pursue** the available administrative remedies. The Clerk of Court **shall provide** a copy of this Order to pro se Defendant Omar Belalcazar Garcia at the address below.

Case No. 8:11-CR-572-T-17MAP

DONE and ORDERED in Chambers in Tampa, Florida on this 29th day of
November, 2017.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record

Omar Belalcazar Garcia
#424561-018
FCI Bastrop
P.O. Box 1010
Bastrop, Texas 78602