

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-12181

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT January 29, 2004 THOMAS K. KAHN CLERK</p>

D. C. Docket No. 97-00097-CV-4

HERNAN O'RYAN CASTRO,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(January 29, 2004)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before WILSON, RONEY and FAY, Circuit Judges.

PER CURIAM:

On December 15, 2003, the United States Supreme Court reversed our decision in this matter,¹ holding that when a district court treats as a request for habeas relief under 28 U.S.C. § 2255 a motion that a pro se federal prisoner has labeled differently, “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 the restrictions on ‘second or successive’ motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.” *Castro v. United States*, ___ U.S. ___, 124 S. Ct. 786, 792 (2003). In light of the Supreme Court’s holding, we REVERSE and REMAND this case to the district court to consider the merits of Castro’s petition.

¹See *O’Ryan Castro v. United States*, 290 F.3d 1270 (11th Cir. 2002).