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2019 Decisions

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States Court of Appeals  
for the Third Circuit

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8-9-2019

## In Re: Francisco Herrera-Genao

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-1429

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IN RE: FRANCISCO HERRERA-GENAO,  
Petitioner

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On Petition for Writ of Mandamus from the  
United States District Court for the District of New Jersey  
(Related to D.N.J. Crim. No. 3:07-cr-00454-002)

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Submitted Pursuant to Fed. R. App. P. 21  
March 18, 2019

Before: SMITH, Chief Judge, AMBRO and ROTH, Circuit Judges

(Opinion filed: August 9, 2019)

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OPINION\*

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PER CURIAM

Pro se petitioner Francisco Herrera-Genao seeks a writ of mandamus to compel the District Court to rule on a motion he filed to correct his restitution obligation in his judgment of sentence. A writ of mandamus may be warranted where a district court's "undue delay is tantamount to a failure to exercise jurisdiction." See Madden v. Myers,

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

102 F.3d 74, 79 (3d Cir. 1996). On July 30, 2019, the District Court entered an order directing the Government to respond to Herrera-Genao's motion. Because the case is now moving forward, we find no reason to grant the "drastic remedy" of mandamus relief. See In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). We have full confidence that the District Court will rule on Herrera-Genao's motion within a reasonable time. Accordingly, we will deny Herrera-Genao's mandamus petition.