

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CURTIS L. PRUITT,

Petitioner,

vs.

CIVIL ACTION
No. 12-3154-RDR

CLAUDE MAYE, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner, a federal prisoner incarcerated at the United States Penitentiary, Leavenworth (USPL), proceeds pro se.

Petitioner claims that during his incarceration at the USPL, he has been subjected to racial harassment, fabricated incident reports, retaliation, and the loss of privileges. He seeks damages.

As an initial matter, the court must consider whether petitioner's claims are properly presented in a petition for habeas corpus. A petition filed pursuant to § 2241 presents "an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure

release from illegal custody." *McIntosh v. U.S. Parole Commission*, 115 F.3d 809, 811 (10th Cir. 1997)(quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). In contrast, a prisoner who challenges the conditions of confinement, rather than the validity of that confinement, must proceed in a civil rights action. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012)(quoting *McIntosh*, 115 F.3d at 812).

Because petitioner's claims arise from the conditions of his confinement and do not present a challenge to the legality of his confinement, he must proceed in a civil rights action.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is dismissed. This dismissal is without prejudice to petitioner's pursuit of the claims herein in an appropriate action.

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 24th day of July, 2012.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States Senior District Judge