

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES EARL GOOLSBY,

Plaintiff,

v.

CASE NO. 17-3120-SAC-DJW

**NICOLE ENGLISH, Warden,
USP-Leavenworth,**

Defendant.

ORDER

Plaintiff filed this matter as a petition for writ of habeas corpus under 28 U.S.C. § 2241. Plaintiff, a prisoner in federal custody at USP-Leavenworth (“USPL”), proceeds *pro se*. Plaintiff has filed a motion for leave to proceed *in forma pauperis* (Doc. 2). Plaintiff alleges that he is being denied medical treatment for his cystic kidneys and liver.

A petition under 28 U.S.C. § 2241 provides the remedy to challenge the execution of a sentence. *Brace v. United States*, 634 F.3d 1167, 1169 (10th Cir. 2011). Thus, a petitioner may challenge the fact or duration of his confinement and may seek release or a shorter period of confinement. *See Palma-Salazar v. Davis*, 677 F.3d 1031, 1037 n.2 (10th Cir. 2012). However, claims challenging a prisoner’s conditions of confinement do not arise under Section 2241. *See McIntosh v. United States Parole Comm’n*, 115 F.3d 809, 811–12 (10th Cir. 1997) (contrasting suits under Section 2241 and conditions of confinement claims).

In the present case, Plaintiff does not complain of the loss of good conduct time or of any negative impact on the duration of his sentence. Accordingly, he may not challenge the denial of medical treatment in a habeas corpus action; rather, he must proceed, if at all, in a civil rights

action filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *See Requena v. Roberts*, 552 F. App'x. 853 (10th Cir. April 7, 2014).

The filing fee for a *Bivens* action is \$350.00. Based on Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2) and the account information submitted with that motion, he would be granted leave to proceed *in forma pauperis* if he proceeds with a *Bivens* action, and would owe an initial partial filing fee of \$54.00. Although Plaintiff would be granted leave to proceed *in forma pauperis*, he would remain obligated to pay the full \$350.00 filing fee, but would be allowed to do so through payments automatically deducted from his institutional account. The Court offers no opinion on the merits of such an action.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff is granted until **August 25, 2017**, to advise the Court whether he intends to proceed in this matter under *Bivens*. If so, he must file his complaint on court-approved forms. *See* D. Kan. Rule 9.1(a). If Plaintiff fails to file a response, this matter will be dismissed.

The clerk is directed to send Plaintiff forms for filing a *Bivens* action under 28 U.S.C. § 1331.

IT IS SO ORDERED.

Dated in Kansas City, Kansas, on this 27th day of July, 2017.

s/ David J. Waxse
DAVID J. WAXSE
U. S. MAGISTRATE JUDGE