

FILED

JAN 13 2009

**Clerk, U.S. District and
Bankruptcy Courts**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Bernard J. Drapeau, Jr.,)
)
Plaintiff,)
)
v.)
)
Michael Mukasey et al.,)
)
Defendants.)

Civil Action No. 09 0067

MEMORANDUM OPINION

Petitioner is a federal prisoner under criminal sentence imposed by the United States District Court for the District of South Dakota currently incarcerated at the Federal Correctional Institution, Englewood Facility, in Littleton, Colorado. He has applied to proceed *in forma pauperis* and submitted a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241. The Court will grant the application and dismiss the petition for lack of jurisdiction.

Petitioner has filed a petitioner under § 2241 to collaterally attack his conviction, questioning the court’s jurisdiction and stating that his Sixth Amendment right to confrontation was abridged. A § 2241 petition is not available for this purpose.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to [§ 2255] shall not be entertained if it appears that the applicant has failed to apply for [§ 2255] relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255. *See Ojo v. Immigration & Naturalization Service*, 106 F.3d 680, 683 (5th Cir. 1997) (the sentencing court is the only court with jurisdiction to hear defendant’s complaint regarding errors that occurred before or during sentencing). Petitioner has not demonstrated that remedy by motion under § 2255 is inadequate or ineffective to test the legality of his detention.

(w)

Because his challenged conviction was not entered by this Court, no basis exists for maintaining a *habeas* action here.

Accordingly, the case will be dismissed by separate Order issued contemporaneously.

Date: 12/18/08


United States District Judge