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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY MCKINNEY,

Plaintiff,

v.

T. CASEY, et. al.

Defendants.

No. 1:04-CV-06030-SMM

**ORDER**

Before the Court is Plaintiff’s Motion for Writ of Habeas Corpus Ad Testificandum (Doc. 66). Plaintiff asks the Court to issue a writ of habeas corpus ad testificandum and order the warden to transport Plaintiff and his brother Henri Charles Brother to court to testify at trial.

28 U.S.C. 2241 provides, in part,

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

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(c) The writ of habeas corpus shall not extend to a prisoner unless—  
(5) It is necessary to bring him into court to testify or for trial.

A writ of habeas corpus ad testificandum may be used to remove a prisoner in order for him or her to give testimony in a court proceeding. The writ will not issue if there is no proceeding pending before the court in which the prisoner wishes to testify.

1 Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962). In the present case, there are no  
2 hearings or trial currently scheduled. Therefore, no appearance by the parties is necessary  
3 and Plaintiff's motion will be denied with leave to refile should a trial be scheduled in the  
4 future.

5 Accordingly,

6 **IT IS HEREBY ORDERED DENYING** Plaintiff's Motion for Writ of Habeas  
7 Corpus Ad Testificandum (Doc. 66) without prejudice with leave to refile.

8 DATED this 13<sup>th</sup> day of April, 2009.

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Stephen M. McNamee  
United States District Judge