

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

Civil Action No. 07-cv-00507-BNB

SAUL SAUCEDO,

Applicant,

v.

AUDIE SHERROD, Warden, FCI Englewood Federal Correctional Institution,

Respondent.

MAR 19 2007

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED PLEADING

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Applicant Saul Saucedo is a pretrial detainee who currently is confined at the Federal Correctional Institution in Littleton, Colorado. Mr. Saucedo has filed through counsel an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and a supporting brief. He also has paid the \$5.00 filing fee for a habeas corpus action. For the reasons stated below, Mr. Saucedo will be ordered to file an amended pleading.

The Court has reviewed the application filed in this action and finds that the claims Mr. Saucedo asserts are not habeas corpus claims. "The essence of habeas corpus is 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." **See Preiser v. Rodriguez**, 411 U.S. 475, 484 (1973). Mr. Saucedo is not challenging the validity of his custody. Instead, he challenges the conditions of his confinement. He specifically challenges his confinement in "a segregated state in a Special Housing Unit," application at 2, as a pretrial detainee in **United States v. Saucedo**, No. 03-cr-00615-

REB. On March 14, 2007, he also filed a motion for hearing on the conditions of his pretrial detention confinement in No. 03-cr-00615-REB. The Court is scheduled to conduct a hearing on the motion on March 22, 2007.

Generally, a federal prisoner's challenge to his conditions of confinement is cognizable under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *See, e.g., Richards v. Bellmon*, 941 F.2d 1015, 1018 (10th Cir. 1991). Therefore, because the claims Mr. Saucedo raises in this action properly should be asserted in a civil rights action, he will be directed to file a Prisoner Complaint against the individuals who allegedly have violated his rights if he wishes to pursue his claims in this action.

Finally, the Court notes that Mr. Saucedo has paid the \$5.00 filing fee for a habeas corpus action. However, because the Court has determined that this action properly is construed as a *Bivens*-type civil rights action, Mr. Saucedo is required to pay the \$350.00 filing fee. *See* 28 U.S.C. § 1915. Therefore, Mr. Saucedo also will be ordered to submit the balance of \$345.00 or, if he is unable to pay the entire balance at this time, to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 together with a certified copy of his inmate trust fund account statement as required pursuant to 28 U.S.C. § 1915(a)(2). If leave to proceed pursuant to § 1915 is granted, Mr. Saucedo will be allowed to pay the balance of the filing fee in installments. *See* 28 U.S.C. § 1915(b). Accordingly, it is

ORDERED that Mr. Saucedo cure the deficiencies in this action by submitting to the Court **within thirty (30) days from the date of this order** a Prisoner Complaint

and either a payment in the amount of \$345.00 or a properly supported Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Saucedo, together with a copy of this order, two copies of the following forms: Prisoner Complaint; Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that, if Mr. Saucedo fails within the time allowed to cure the designated deficiencies, the action will be dismissed without further notice.

DATED March 19, 2007, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 07-cv-00507-BNB

Vickers L. Cunningham, Sr.  
Attorney at Law  
3500 Maple Ave., Suite 900  
Dallas, TX 75219-3939

I hereby certify that I have mailed a copy of the **ORDER and two copies of Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and Prisoner Complaint** to the above-named individuals on 3/19/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk