

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00673-BNB

CLAUDE McCLAIN,

Plaintiff,

v.

[NO DEFENDANT NAMED],

Defendant.

ORDER CONSTRUING ACTION AS A
PRISONER COMPLAINT AND DIRECTING
PLAINTIFF TO CURE DEFICIENCIES

Plaintiff, Claude McClain, is in the custody of the United States Bureau of Prisons (BOP) and currently is incarcerated at the Federal Prison Camp in Florence, Colorado. Mr. McClain, acting *pro se*, filed a Letter with the Court on March 16, 2012. In the Letter, Mr. McClain indicates that he is filing a “2241 motion.” Letter at 1. Mr. Mitchell complains that his constitutional right to proper medical treatment is being denied by BOP prison staff.

Mr. McClain’s attempt to file this action pursuant to 28 U.S.C. § 2241 is improper. “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). 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). Accordingly, it is

ORDERED that Mr. McClain cure the deficiencies designated above by filing a Prisoner Complaint and either by paying the \$350.00 filing fee or by filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 within thirty days from the date of this Order. It is

FURTHER ORDERED that Mr. McClain shall obtain the court-approved Prisoner Complaint form and the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

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

DATED March 19, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge