

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHN G. WESTINE,

Petitioner,

vs.

CIVIL ACTION
No. 11-3093-RDR

(FNU) HOLLINGSWORTH, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on a petition for mandamus filed pursuant to 28 U.S.C. § 1651. Petitioner has submitted a motion for leave to proceed in forma pauperis and certified financial records. The court has considered the record and denies leave to proceed in forma pauperis.

Petitioner is a federal prisoner in segregated housing. He seeks mandamus relief to obtain Kosher meals and Kiddish supplies. The description of the meals provided in petitioner's affidavit (Doc. 3) suggests petitioner believes the meals are inadequate. He also states he has not received Kiddish supplies, although he does not elaborate on these items or his efforts to obtain them.

The writ of mandamus is "a drastic remedy, available only

in extraordinary circumstances. Furthermore, the writ is not available when review by other means is possible." *W. Shoshone Bus. Council v. Babbitt*, 1 F.3d 1052, 1059 (10th Cir. 1993). Here, the record does not support a finding of extraordinary circumstances. Likewise, petitioner has an administrative remedy available through the Bureau of Prisons, see 28 C.F.R. §§ 542.10 - 542.19, and, if that remedy is not adequate, he may proceed under *Bivens v. Six Unknown Fed. Narcotics Agents* 403 U.S. 833 (1971). The court therefore concludes the present matter fails to state a claim for mandamus relief.¹

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is denied.

IT IS FURTHER ORDERED the petition for mandamus is denied for failure to state a claim for relief.

A copy of this order shall be transmitted to the petitioner.

¹

The court advises petitioner that the "three strikes" provision of 28 U.S.C. § 1915(g) applies to mandamus actions. See *Cauthon v. Rogers*, 116 F.3d 1334, 1336 (10th Cir.1997).

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 10th day of June, 2011.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States Senior District Judge