



Correctional Center,<sup>2</sup> he "was denied a due process hearing," Doc. 6 at 1, when he was "remov[ed] . . . from his religious diet[, which he] enjoyed under protection of [the] [first] amendment [to the United States Constitution]." Id.; e.g., Doc. 6-1 at 2-3 (petitioner was removed from Halal diet without due process hearing, notification or verification of dietary requirements). In his Petition, Malipurathu had requested "habeas relief," Doc. 6-1 at 1, and his Amended Petition cites to title 28, section 2254 of the United States Code.

A petition properly brought under section 2254 challenges the validity of an inmate's conviction and sentence,<sup>3</sup> e.g., Montez v. McKinna, 208 F.3d 862, 865 (10<sup>th</sup> Cir. 2000), and, as Magistrate Judge Erwin found, Malipurathu has not questioned the constitutionality of his state court convictions and sentences; rather, Malipurathu has challenged the conditions of his confinement. Because such challenges by state inmates are more properly brought under title 28, section 1983 of the United States Code, dismissal of the instant action is warranted. E.g., Rael v. Williams, 223 F.3d 1153, 1154 (10<sup>th</sup> Cir. 2000) (conditions-of-confinement claims must be brought in complaint seeking relief under section 1983, and not in habeas petition).

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<sup>2</sup>The respondent, Jason Bryant, is the warden at James Crabtree Correctional Center, the facility at which the alleged constitutional deprivation occurred. Malipurathu is now housed at Northeast Oklahoma Correctional Center. See Doc. 1.

<sup>3</sup>Malipurathu has advised that he requested a copy of a habeas petition seeking relief under 28 U.S.C. § 2241 and that the Clerk of the Court sent him a copy of the section 2254 habeas form even though this "is not a [section] 2254 action." Doc. 11 at 2. Malipurathu has argued that his "claims will have effect under . . . [section] 2241[.]" Doc. 11 at 2. The Court disagrees.

A petition under section 2241 "attack[s] the execution of a sentence," McIntosh v. United States Parole Commission, 115 F.3d 809, 811 (10<sup>th</sup> Cir. 1997)(citation omitted), and "affect[s] the fact or duration of the petitioner's custody." Id. at 812. In contrast, a petition under section 2254, as stated, challenges the validity of the petitioner's conviction and sentence. E.g., Montez, 208 F.3d at 865. Under the circumstances, neither section 2241 nor section 2254 is the appropriate vehicle for relief for Malipurathu's claims.

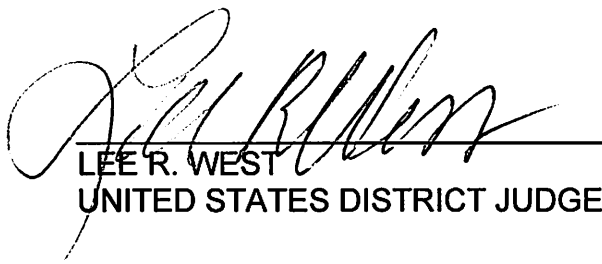
Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 9] filed on April 10, 2015;

(2) DISMISSES the Petition [Doc. 1] and Amended Petition [Doc. 6] without prejudice; and

(3) DENIES Malipurathu's "In Forma Pauperis Application" [Doc. 7] file-stamped March 23, 2015.

ENTERED this 27<sup>th</sup> day of April, 2015.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE