

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DAVID MCINTOSH

§
§
§
§
§

V.

A-10-CA-958-JRN

REBECCA TAMEZ

ORDER

Before the Court is the Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 filed on December 16, 2010. By standing order, the Application is before the Court pursuant to 28 U.S.C. § 636(b) and Rule 1(c) of the Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to Magistrate Judges.

This Court lacks jurisdiction over the petition since McIntosh is incarcerated in the Northern District of Texas. “A section 2241 petition . . . must be filed in the same district *where the prisoner is incarcerated.*” *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (emphasis added). Further, “[o]nly the custodial court has the jurisdiction to determine whether a petitioner's claims are properly brought under § 2241 via the savings clause of § 2255,” which is the argument McIntosh is making in this case. *Padilla v. United States*, 416 F.3d 424, 426 (5th Cir. 2005) (citing *Hooker v. Sivley*, 187 F.3d 680, 682 (5th Cir.1999)). As this Court lacks the authority to provide the relief requested, it HEREBY TRANSFERS this case to the Northern District of Texas.

SIGNED this 4th day of January, 2011.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE