

SAMUEL A. DUBYAK,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 08-1697 (PLF)

Petitioner has filed a petition for a writ of habeas corpus challenging his conviction in California state court. He filed his petition in this District, even though he is currently incarcerated in a California state prison. As petitioner is “in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts,” his application for a writ of habeas corpus may be filed either “in the district court for the district wherein [he] is in custody or in the district court for the district within which the State court was held which convicted and sentenced him.” 28 U.S.C. § 2241(d); see Magee v. Hatch, No. 07-2176, U.S. Dist. LEXIS 90145, *1 (D.D.C. Dec. 10, 2007) (quoting Braden v. 30th Judicial Circuit Court of Ky., 410 U.S. 484, 497 (1973) (“[A] prisoner contesting a conviction and sentence of a state court of a State which contains two or more federal judicial districts, who is confined in a district within the State other than that in which the sentencing court is located, has the option of seeking habeas corpus either in the district where he is confined or the district where the sentencing court is located.”)). The proper forum for habeas review is thus either the

district where petitioner is in custody, or the district where he was convicted and sentenced, both of which are in California.

There is no basis for petitioner to maintain a habeas action in this District, because he was not convicted and sentenced by this Court, nor is he currently confined in this District. The case therefore will be dismissed without prejudice. See Magee v. Hatch, No. 07-2176, U.S. Dist. LEXIS 90145 at *2 (dismissing habeas petition filed by a state prisoner in California seeking review of a conviction entered by a California state court). Accordingly, it is hereby

ORDERED that this civil action is DISMISSED WITHOUT PREJUDICE. This is a final appealable Order. See Fed. R. App. P. 4(a).

SO ORDERED.

/s/
PAUL L. FRIEDMAN
United States District Judge

DATE: November 18, 2008