UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

David Ezell Simpson,   )
)
         Petitioner,   )
)
    v.   )   Civil Action No.   **10 1589**
)
Judith Simon Garrett *et al.*,   )
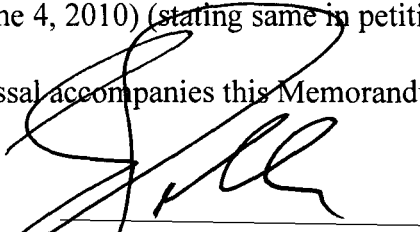   )
         Respondents.   )

<u>MEMORANDUM OPINION</u>

This matter, brought *pro se*, is before the Court on its initial review of the petition for a writ of mandamus and application to proceed *in forma pauperis*. The Court will grant the application to proceed *in forma pauperis* and dismiss the case for lack of jurisdiction.

Petitioner is a federal prisoner confined at a state or local facility in Raleigh, North Carolina, awaiting trial on state charges. He seeks issuance of a writ of mandamus to compel his "immediate return to federal custody." Pet. at 14. Because this claim is properly pursued by applying for a writ of *habeas corpus*, mandamus relief is not available. *See Muhammad v. Close*, 540 U.S. 749, 750 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus[.]") (citation omitted); *Chatman-Bey v. Thornburgh*, 864 F.2d 804, 806 (D.C. Cir. 1988) (where "habeas is an available and potentially efficacious remedy, it is clear beyond reasonable dispute that mandamus will not appropriately lie"). Moreover, only the Court having jurisdiction over petitioner's immediate custodian, namely, the United States District Court for the Eastern District of North Carolina, may entertain the habeas claim. *See Rooney v. Sec'y of Army*, 405 F.3d 1029, 1032 (D.C. Cir. 2005) (habeas

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"jurisdiction is proper only in the district in which the immediate, not the ultimate, custodian is located.") (internal citations and quotation marks omitted); *Simpson v. Dep't of Justice*, Civ. Action No. 10-0920 (Transfer Order, June 4, 2010) (stating same in petitioner's previously filed civil action). A separate Order of dismissal accompanies this Memorandum Opinion.

United States District Judge

Date: September 17, 2010