

FILED

MAR 31 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LEIGHTON FAY,

Petitioner,

v.

ERIC HOLDER,

Respondent.

Civil Action No. **11 0650**

MEMORANDUM OPINION

This matter is before the Court on petitioner's application to proceed *in forma pauperis* and petition for a writ of habeas corpus. The Court will grant the former and deny the latter.

Petitioner was released from federal custody on November 8, 2005, and pursuant to the United States Parole Commission's decision in February 2007 to revoke parole, he will remain in custody until February 2021. Currently he is incarcerated at the United States Penitentiary in Leavenworth, Kansas. Petitioner alleges that, as a member of the Sioux Nation, he is not subject to the authority of the United States Government. On this basis petitioner contends that the federal courts which convicted and sentenced him, and the United States Parole Commission which has revoked his parole, lacked jurisdiction to take these actions.¹

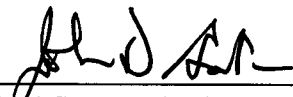
¹ The Court notes that petitioner unsuccessfully has raised substantially similar claims in a prior proceeding. *See Fay v. Chester*, No. 10-3225, 2011 WL 397720 (10th Cir. Feb. 8, 2011) (affirming district court's denial of petition for writ of habeas corpus).

(N)

Where, as here, petitioner challenges the jurisdiction of the federal court imposing sentence or attacks on the constitutionality of his conviction, he must do so in a motion in the sentencing court under 28 U.S.C. § 2255. *See Ojo v. Immigration & Naturalization Serv.*, 106 F.3d 680, 683 (5th Cir. 1997); *Taylor v. U.S. Board of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952). Although petitioner's challenges to the revocation of parole and the mandatory release date set by the Parole Commission are cognizable under 28 U.S.C. § 2241, this court is not the proper forum for their resolution because petitioner is incarcerated in Kansas. *Stokes v. U.S. Parole Comm'n*, 374 F.3d 1235, 1239 (D.C. Cir. 2004) ("[A] district court may not entertain a habeas petition involving present physical custody unless the respondent custodian is within its territorial jurisdiction.").

The Court will deny the petition without prejudice and will dismiss this civil action.
An Order is issued separately.

DATE: March 28, 2011



United States District Judge