

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 21 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LEANTHONY T. WINSTON,

No. 23-15187

Petitioner-Appellant,

D.C. No. 5:22-cv-07009-EJD

v.

MEMORANDUM\*

B. M. TRATE, Warden,

Respondent-Appellee.

Appeal from the United States District Court  
for the Northern District of California  
Edward J. Davila, District Judge, Presiding

Submitted September 12, 2023\*\*

Before: CANBY, CALLAHAN, and OWENS, Circuit Judges.

Federal prisoner LeAnthony T. Winston appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *see Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir. 1988), and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Winston’s § 2241 petition, filed in the Northern District of California, alleged claims challenging the validity of his conviction from the Eastern District of Virginia.<sup>1</sup> As the district court noted, these types of claims must generally be raised in a § 2255 motion in the sentencing court. *See Jones v. Hendrix*, 143 S. Ct. 1857, 1866 (2023) (discussing history and scope of § 2255 motions). Winston asserts that a § 2255 motion is inadequate or ineffective because federal agents failed to recognize his rights, and he is unable to research state law due to the conditions of his confinement. These arguments fail to demonstrate that “unusual circumstances make it impossible or impracticable [for Winston] to seek relief in the sentencing court.” *Id.* at 1868. Winston thus has not shown his claims can be brought in a § 2241 petition under § 2255(e)’s saving clause. *See id.* at 1866-68 (discussing scope of saving clause). Moreover, Winston’s claims relating to the conditions of his confinement are not cognizable in a § 2241 petition. *See Pinson v. Carvajal*, 69 F.4th 1059, 1068-69 (9th Cir. 2023) (stating that allegations of “ancillary harms resulting from the conditions of confinement” cannot be raised in a § 2241 petition). The district court therefore properly dismissed his petition for lack of jurisdiction. *See Tripathi*, 843 F.2d at 1163. Finally, Winston’s mere

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<sup>1</sup> Winston was housed at USP – Atwater, which is located in Merced County, when he filed the § 2241 petition. The proper custodial court was therefore the Eastern District of California. *See* 28 U.S.C. § 84(b). We will not remand for that district court to consider Winston’s petition because, for the reasons stated in this disposition, Winston’s claims cannot be raised in a § 2241 petition.

allegation that the district judge should have recused himself due to a financial interest is insufficient to demonstrate an appearance of impropriety. *See Martinez v. Ryan*, 926 F.3d 1215, 1226-27 (9th Cir. 2019) (appearance of impropriety cannot be shown through unfounded speculation).

All pending motions are denied.

**AFFIRMED.**