

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**October 3, 2016**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker**  
**Clerk of Court**

In re: MARK KUPSTIS,  
  
Petitioner.

No. 16-5155

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**ORDER**

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Before **HOLMES, O'BRIEN, and MORITZ**, Circuit Judges.

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Mark Kupstis, a Texas state prisoner proceeding pro se, has filed a motion for authorization to file a second or successive § 2254 habeas petition. For the following reasons, we deny authorization.

Mr. Kupstis was convicted in Texas state court of a first degree felony offense of aggravated sexual assault of a child. He is currently incarcerated in Texas. He sought federal habeas relief in the Eastern District of Texas, but his § 2254 petition was dismissed. Since that dismissal, he has made repeated attempts to file a successive § 2254 habeas petition through filings in the Eastern District of Texas and the Fifth Circuit Court of Appeals. He has been unsuccessful in his attempts.

Mr. Kupstis now asserts that this court may grant him authorization to file a successive § 2254 petition based on his allegation that he was kidnapped from his residence in Illinois and taken to Texas, which required passing through Oklahoma. We disagree.

The Supreme Court has explained that, “[t]he plain language of the habeas statute . . . confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 124 S. Ct. 2711, 2722 (2004). Mr. Kupstis must therefore file his § 2254 habeas petition in the Eastern District of Texas where he is confined. And a defendant seeking to file a second or successive § 2254 petition must file a motion “in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Because Texas is within the jurisdiction of the Fifth Circuit Court of Appeals, *see* 28 U.S.C. § 41, we conclude that the Fifth Circuit is the appropriate court of appeals in which to file a motion seeking authorization to file a § 2254 habeas petition in the Eastern District of Texas.

Accordingly, we deny Mr. Kupstis’ motion for authorization. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk