

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WALTER J. HIMMELREICH : **CIVIL ACTION**
v. :
UNITED STATES OF AMERICA, et al. : **NO. 05-cv-6158**

WALTER J. HIMMELREICH : **CIVIL ACTION**
v. :
UNITED STATES OF AMERICA, et al. : **NO. 06-cv-_____**

MEMORANDUM AND ORDER

Prisoner Walter J. Himmelreich filed his first petition in this court seeking relief pursuant to 42 U.S.C. §1983 on November 29, 2005; it was properly labeled by the court as 05-cv-6158. Two days later, on December 1, 2005, this court ordered that 05-cv-6158 be dismissed without prejudice on grounds that Himmelreich had not tendered the requisite \$250.00 filing fee to the court, as required by 28 U.S.C. §1915.

On December 12, 2005, Himmelreich filed a motion for a temporary restraining order in 05-cv-6158. On January 23, 2006, this court entered an order in 05-cv-6158 denying the motion for a temporary restraining order. On February 8, 2006, Himmelreich appealed the denial of the motion for a temporary restraining order to the United States Court of Appeals for the Third Circuit. On August 29, 2006, the United States Court of Appeals for the Third Circuit dismissed the appeal for lack of appellate jurisdiction because the even sought to be enjoined occurred.

Himmelreich filed a "Petition For A Writ of Habeas Corpus Regarding Denial of First Amendment Right to Freedom of Religion" on March 21, 2006. Himmelreich's sole complaint in this March 21, 2006 petition was that prison officials had allegedly taken his cross away from him, allegedly leaving him unable to fully practice his religious

beliefs. Despite the caption of this petition as one for "Habeas Corpus," the Clerk's Office was of the view when this document was really part of his 42 U.S.C. §1983 case, 05-cv-6158, as it only complains about prison conditions and does not seek release from custody. This aforesaid document filed March 21, 2006 was accordingly filed by the Clerk's Office as Document #22 in his 42 U.S.C. §1983 case, 05-cv-6158.

After careful review and consideration, this court is of the view that Document #22 in 05-cv-6158 is best treated as a petition seeking habeas corpus relief pursuant to 28 U.S.C. §2241. Accordingly, this 7th Day of September, 2006, it is hereby

ORDERED as follows:

1. The Clerk of this Court shall make a true and accurate photocopy of Document #22 in 05-6158.
2. The Clerk shall then place the aforesaid photocopy in the casefile for 05-cv-6158.
3. The Clerk shall then cross out the document number "22" written in ink on the original of the aforesaid document filed on March 21, 2006.
4. The Clerk shall then reclassify the original of the document filed on March 21, 2006 as Document "1" in a new civil action brought pursuant to 28 U.S.C. §2241, which shall be assigned a new civil action number, and assigned to the calendar of an Article III judge of this court chosen in accordance with this court's Local Civil Rule 40.1.
5. The Clerk shall write this new civil number in ink on the indicated space in the caption of the instant memorandum and order.
6. After a new civil action number is written on the indicated space in the

caption of the instant memorandum and order, the Clerk shall make a true and accurate photocopy of it; the photocopy shall be treated as Document #24 in 05-cv-6158; the original shall be treated as Document #2 of the aforesaid new civil action.

/s Paul S. Diamond

PAUL S. DIAMOND

U.S. District Judge