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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**LEBRON SAMUELS,**  
  
Petitioner,  
  
**v.**  
  
**PAUL COPENHAVER, Warden,**  
  
Respondent.

**Case No. 1:14-cv-00372-DAD-MJS (HC)**  
  
**FINDINGS AND RECOMMENDATIONS  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS AND TO GRANT  
RESPONDENT'S MOTION TO DISMISS**  
  
**(ECF No. 9)**

Petitioner is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner claims entitlement to a credit against his federal sentence for time spent in custody from May 6, 2009 to October 2, 2009 prior to the commencement of his federal sentences. (See Pet., ECF No. 1.) On May 19, 2014, Respondent filed a motion to dismiss and an answer to Petitioner's petition for writ of habeas corpus. (ECF No. 9.) Petitioner filed a reply on January 26, 2015. (ECF No. 14.)

**I. FACTUAL BACKGROUND**

The instant petition does not challenge Petitioner's conviction. Rather, Petitioner contends that the Bureau of Prisons ("BOP") is executing Petitioner's sentence in a way

1 that violates federal law because the BOP refuses to give Petitioner credit for his pre-trial  
2 detention from May 6, 2009 to October 2, 2009<sup>1</sup>; Petitioner claims further that that time  
3 was not credited against any other sentence.

4 **A. Petitioner's Federal and State Convictions**

5 On May 6, 2009, Petitioner was arrested on Oklahoma state charges for an  
6 outstanding state warrant in case number CF-05-7398, obstructing an officer, and  
7 possession of a firearm after former conviction of a felony. (ECF Nos. 9-2 at 2; 9-3 at 4.)

8 On May 11, 2009, Petitioner was charged federally with being a Felon in Possession of a  
9 Firearm in the Western District of Oklahoma. (ECF No. 9-3 at 2.) The Western District  
10 of Oklahoma issued a detainer for Petitioner to the Oklahoma County Detention Center,  
11 where he was being held in state custody. (See ECF No. 9-4 at 2.) On September 30,  
12 2009<sup>2</sup>, in Case No. CF-2009-2945, Oklahoma County issued an order releasing  
13 Petitioner on bond from the custody of the Oklahoma County Sheriff into federal custody.  
14 (ECF No. 9-6 at 2.)

15 On November 17, 2009, the Western District of Oklahoma sentenced Petitioner to  
16 46 months on the Felon in Possession of a Firearm charge. (ECF No. 9-8 at 2-7.)

17 On December 18, 2009, Petitioner was sentenced in Oklahoma state Case No.  
18 CF-09-2945 on two counts of possession of a controlled dangerous substance. (ECF  
19 No. 9-9 at 2.) Respondent submits a declaration from Dawn Giddings, a BOP employee,  
20 who avers that Petitioner's charges in this case stem from his May 6, 2009 arrest. (ECF  
21 No. 17 at 3.) On Count 1, Petitioner received a four-year sentence, and on Count 2,  
22 Petitioner received a one-year sentence. (ECF No. 9-9 at 2.) The Judge ordered that  
23 Petitioner "receive credit for time served on this case", and the sentences were to run

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24 <sup>1</sup> It is not clear from the record how much of this time Petitioner spent in the Oklahoma County Jail  
25 ("OCJ") and how much he spent in a federal holding cell. (ECF No. 9-18 at 12.) (Petitioner was  
26 "borrowed" approximately four times from the state" prior to October 2, 2009)), *cf.* (ECF No. 17 at 2.)  
27 (noting that Petitioner was writted over to federal custody on only one occasion on May 15, 2009).  
28 Regardless, the record is clear that Petitioner remained in the primary custody of the state during this time  
period. *See infra*, Section III.B.1.

<sup>2</sup> The order is dated September 30, 2009, but indicates that it was filed on October 1, 2009. (ECF No. 9-6  
at 2.) It is undisputed that the relevant time period is through October 1, 2009.

1 concurrent to one another and with Petitioner's sentence in federal case "number  
2 #174422064"<sup>3</sup>. (*Id.*)

3 On December 15, 2010, Petitioner was sentenced to "48 months, to be served  
4 consecutive to any other sentence [he was] serving", for use of a communication facility  
5 to facilitate the acquisition of a cocaine base. (ECF No. 9-10 at 2-3.)

6 The BOP applied 57 days of credit to Petitioner's sentence pursuant to *Kayfez v.*  
7 *Gasele*, 993 F.2d 1288 (7th Cir. 1993). (ECF No. 17 at 5-6.) Petitioner's projected  
8 release date with Good Conduct Time is September 29, 2016. (ECF No. 9-17.)

### 9 **B. Administrative Grievance Process**

10 The BOP administrative grievance process has four levels of review: one informal  
11 and three formal. 28 C.F.R. §§ 542.10 - 542.19. The first informal level of review  
12 requires an inmate to attempt to resolve the issue by presenting it to staff. 28 C.F.R. §  
13 542.13(a). If the inmate is unsatisfied with the informal resolution, the inmate may  
14 submit a formal written Administrative Remedy Request. 28 C.F.R. § 542.14. Unless  
15 determined to be an emergency, the Warden has 20 calendar days to respond and may  
16 extend this period up to 20 days with written notice to the inmate. 28 C.F.R. § 542.18. If  
17 the inmate is not satisfied with the Warden's response, he may proceed to the second  
18 formal level of review by appealing the matter to the Regional Director. 28 C.F.R. §  
19 542.15(a). Finally, if dissatisfied, the inmate may appeal to the final level of review – the  
20 General Counsel in the Central Office. *Id.* An inmate has not exhausted his  
21 administrative remedies until he pursues his claim through all three formal levels of  
22 review.

## 23 24 **II. JURISDICTION**

### 25 **A. Subject Matter Jurisdiction**

26 \_\_\_\_\_  
27 <sup>3</sup> It is not clear from the record what federal case the state judgment is referencing. The record does not  
28 reflect that Petitioner has a federal case with this number. However, the federal court documents for case  
numbers CR-09-00164-001-L (felon in possession case) and CR-10-144-1-F (drug case) indicate that  
Petitioner's U.S. Marshal Number is 17442-064. (ECF No. 9-8 at 2; ECF No. 9-10 at 2.)

1 Relief by way of a writ of habeas corpus extends to a prisoner in custody under  
2 the authority of the United States who shows that the custody violates the Constitution,  
3 laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3). Although a federal  
4 prisoner who challenges the validity or constitutionality of his conviction must file a  
5 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255, a federal prisoner  
6 challenging the manner, location, or conditions of the execution of a sentence must bring  
7 a petition for writ of habeas corpus under 28 U.S.C. § 2241. *Hernandez v. Campbell*,  
8 204 F.3d 861, 864-65 (9th Cir. 2000).

9 Petitioner asserts that the Bureau of Prisons improperly calculated his prior  
10 custody credits. The Court properly has subject matter jurisdiction over this petition.  
11 See *Tucker v. Carlson*, 925 F.2d 330, 331 (9th Cir. 1991) (action over whether the parole  
12 commission had improperly failed to credit the prisoner's federal sentence with time  
13 served in state custody was properly brought under § 2241).

#### 14 **B. Jurisdiction over the Person**

15 Title 28 U.S.C. § 2241(a) provides that writs of habeas corpus may be granted by  
16 the district courts "within their respective jurisdictions." A writ of habeas corpus operates  
17 not upon the prisoner, but upon the prisoner's custodian. *Braden v. 30th Judicial Circuit*  
18 *Court of Kentucky*, 410 U.S. 484, 494-495 (1973). A petitioner filing a petition for writ of  
19 habeas corpus under § 2241 must file the petition in the judicial district of the Petitioner's  
20 custodian. *Brown v. United States*, 610 F.2d 672, 677 (9th Cir. 1980). The warden of  
21 the penitentiary where a prisoner is confined constitutes the custodian who must be  
22 named in the petition, and the petition must be filed in the district of confinement. *Id.*;  
23 *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004). It is sufficient if the custodian is in the  
24 territorial jurisdiction of the court at the time the petition is filed; transfer of the petitioner  
25 thereafter does not defeat personal jurisdiction that has once been properly established.  
26 *Ahrens v. Clark*, 335 U.S. 188, 193 (1948); *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir.  
27 1990). A failure to name and serve the custodian deprives the Court of personal  
28 jurisdiction. *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003).

1           Petitioner was incarcerated at USP Atwater at the time of filing. USP Atwater is  
2 located within the Eastern District of California. Accordingly, the Court concludes that it  
3 has personal jurisdiction over the custodian as Petitioner was confined in the district at  
4 the time of filing. It is noted that Petitioner has since been transferred to Petersburg Low  
5 Federal Correctional Institution in Petersburg, Virginia. (ECF No. 10.)

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7 **III. ANALYSIS**

8 **A. Exhaustion of Administrative Remedies**

9           In general, federal prisoners must exhaust federal administrative remedies prior to  
10 filing a habeas petition pursuant to 28 U.S.C. § 2241. *Martinez v. Roberts*, 804 F.2d  
11 570, 571 (9th Cir.1986). Exhaustion of administrative remedies is a judicially created  
12 requirement. See *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir.1990), overruled on other  
13 grounds; *Castro-Cortez v. Immigration & Naturalization Serv.*, 239 F.3d 1037, 1047 (9th  
14 Cir. 2001), abrogated on other grounds (“[S]ection [2241] does not specifically require  
15 petitioners to exhaust direct appeals before filing petitions for habeas corpus. However,  
16 . . . as a prudential matter” petitioners should). Requiring exhaustion allows for the  
17 development of a factual record, conserves the court’s time, “and allow[s] the  
18 administrative agency an opportunity to correct errors occurring in the course of  
19 administrative proceedings.” *Ruviwat v. Smith*, 701 F.2d 844, 845 (9th Cir.1983).

20           Courts have discretion to waive the exhaustion requirement where “administrative  
21 remedies are inadequate or not efficacious, pursuit of administrative remedies would be  
22 a futile gesture, irreparable injury will result, or the administrative proceedings would be  
23 void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

24           Respondent argues that Petitioner failed to exhaust his administrative remedies  
25 prior to filing suit by not submitting his appeal to the final level of review. Since the time  
26 for Petitioner to appeal to the Central Office has passed, Respondent contends that he  
27 has procedurally defaulted and his petition should be dismissed. In his reply, Petitioner  
28 does not respond to the argument that he failed to exhaust his administrative remedies.

1 Respondent has submitted a declaration from a BOP Paralegal Specialist who  
2 avers that Petitioner failed to exhaust his administrative remedies because he never filed  
3 a final review form with the Central Office. Petitioner fails to submit any evidence to the  
4 contrary or articulate any reason why he should be excused from the exhaustion  
5 requirement. Therefore, the Court finds that Petitioner has failed to exhaust his  
6 administrative remedies and recommends that Respondent's motion to dismiss be  
7 granted.

8 **B. Credit for Pre-sentence Custody from May 6, 2009 to October 2, 2009**

9 Even if Petitioner had exhausted his claim, or the Court otherwise excused  
10 Petitioner's failure to exhaust his administrative remedies, his claim fails on the merits.

11 Petitioner seeks pre-sentence custody credit from May 6, 2009 to October 2,  
12 2009. (Pet. at 12-13.) Petitioner contends that he was never in state custody during this  
13 pretrial period and that this time was not credited towards his state sentence. Since  
14 Petitioner was sentenced federally first and the charges were related, he claims that the  
15 time should be credited to his federal sentence.

16 Respondent argues that the BOP correctly calculated Petitioner's sentence  
17 pursuant to 18 U.S.C. 3585(b), BOP policy, and the applicable case law. The BOP did  
18 not accept primary jurisdiction of Petitioner until October 2, 2009, after he was released  
19 on bond from the state. Because Petitioner's judgment in the state case indicates that  
20 he will receive state credit for "time served" and Petitioner remained in the primary  
21 custody of the state through October 1, 2009, the BOP did not award Petitioner credit for  
22 the time period from May 6, 2009 through October 1, 2009. Petitioner received federal  
23 custody credit for the time spent in custody after October 1st. Additionally, Petitioner  
24 received 57 days of credit pursuant to *Kayfez*.

25 1. State Has Primary Jurisdiction from May 6, 2009 to October 2, 2009

26 Federal custody does not begin until the state authorities relinquish the prisoner  
27 upon satisfaction of the state obligation. *Del Guzzi v. United States*, 980 F.2d 1269,  
28 1270-71 (9th Cir. 1992). "Normally, the sovereign which first arrests an individual

1 acquires priority of jurisdiction for purposes of trial, sentencing, and incarceration.”  
2 *Reynolds v. Thomas*, 603 F.3d 1144, 1152 (9th Cir. 2010) (internal quotation marks  
3 omitted) (citation omitted), overruled on other grounds by *Setser v. United States*, 132  
4 S.Ct. 1463, 1473 (2012); see also *Taylor v. Reno*, 164 F.3d 440, 444 n.1 (9th Cir. 1998).  
5 This priority of jurisdiction is often referred to as “primary jurisdiction.” *Taylor*, 164 F.3d  
6 at 444 n. 1. “When an accused is transferred pursuant to a writ of habeas corpus ad  
7 prosequendum he is considered to be 'on loan' to the federal authorities so that the  
8 sending state's jurisdiction over the accused continues uninterruptedly.” *Thomas v.*  
9 *Brewer*, 923 F.2d 1361, 1367 (9th Cir. 1991) (quoting *Crawford v. Jackson*, 589 F.2d  
10 693, 695 (D.C. Cir. 1978)).

11 Here, Petitioner was arrested by the Oklahoma City Police Department on May 6,  
12 2009. (ECF Nos. 9-2 at 2; 9-3 at 4-8.) He was not released on bond from the state and  
13 transferred into federal custody until October 1, 2009. (ECF No. 9-6 at 2.) Therefore,  
14 the state of Oklahoma retained primary jurisdiction over Petitioner from May 6, 2009 up  
15 to October 2, 2009. See *Taylor*, 164 F.3d at 445 (federal government relinquished  
16 primary jurisdiction when it released defendant on his own recognizance).

17 2. Section 3585(b) Does Not Authorize Petitioner to Receive Pre-sentence  
18 Credit in his Federal Gun Case from May 6, 2009 to October 2, 2009

19 The authority to compute a federal prisoner’s sentence is delegated to the United  
20 States Attorney General, who exercises this authority through the BOP. *United States v.*  
21 *Wilson*, 503 U.S. 329, 334-35 (1992). “Computing a federal sentence requires two  
22 separate determinations: first, when the sentence commences; and, second, to what  
23 extent the defendant in question may receive credit for any time already spent in  
24 custody.” *United States v. Smith*, 812 F. Supp. 368, 370 (E.D. N.Y. 1993).

25 Section 3585(b) requires the BOP to give credit for time spent in official detention  
26 prior to the date the federal sentence commences, but only if that time “has not been  
27 credited against another sentence.” 18 U.S.C. § 3585(b). Section 3585(b) does not  
28 state when the BOP must determine whether the credits at issue have been credited

1 against another sentence. BOP policy provides that regardless of whether the state  
2 sentence is imposed before or after the commencement of the federal sentence, the  
3 BOP presumes that the state has or will give an inmate credit for time spent in state  
4 custody prior to imposition of the sentence. Fed. Bureau Prisons, Program Statement  
5 5880.28 (Feb. 14, 1997).

6 On November 17, 2009, Petitioner was sentenced to 46 months in the federal gun  
7 case. (ECF No. 9-8 at 2-7.) Subsequently, Petitioner was sentenced in the state in  
8 Case No. CF-09-2945 on unrelated drug charges. Dawn Giddings, a BOP employee,  
9 avers that Petitioner's charges in the state case stem from his May 6, 2009 arrest. (ECF  
10 No. 17 at 3.) Additionally, the order releasing Petitioner on bond from the state and into  
11 federal custody (the event that triggered the state losing its primary jurisdiction) indicates  
12 the case number is CF-09-2945. (ECF No. 9-6 at 2.) While it does not appear that  
13 Petitioner was initially charged with a drug offense when he was arrested on May 6,  
14 2009, (ECF No. 9-2 at 2.), the record does reflect that he was being held in custody on  
15 the drug charges in Case No. CF-09-2945. When sentenced, the Judge ordered that  
16 Petitioner "receive credit for time served on th[at] case." (ECF No. 9-9 at 2.) In other  
17 words, the judgment provides that Petitioner will receive pre-sentence credit in the state  
18 for the period from May 6, 2009 to October 2, 2009, when the state maintained primary  
19 jurisdiction over Petitioner. Moreover, the state confirmed to Petitioner in a letter dated  
20 February 15, 2012 that because his state sentence was ordered concurrent to the  
21 sentence in his federal gun case, he would receive credit for "time spent in the county jail  
22 on the Oklahoma sentence" as well as "day for day credit toward the Oklahoma  
23 sentence for time spent in the custody of the other jurisdiction." (ECF No. 9-14 at 2-3.)

24 While Petitioner contends that he did not receive credit from the state of  
25 Oklahoma for this time period, he provides no evidence to support his contention. Since  
26 Section 3585(b) does not allow Petitioner to receive pre-sentence credit for time that has  
27 "been credited against another sentence," Petitioner is not allowed federal credit from  
28 May 6, 2009 to October 2, 2009.



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3. *Kayfez* Credits

While Section 3585(b) does not authorize Petitioner to receive credit for the time period he seeks, the BOP did award Petitioner pre-sentence custody credits pursuant to *Kayfez*. BOP policy and case law has created two exceptions to Section 3585(b) to allow an inmate to receive presentence custody credits already credited to a concurrent state sentence when it is determined that the credits will be of “no benefit” to the federal prisoner. These credits are called *Willis* and *Kayfez* credits and are based on the judicially-created exceptions to Section 3585(b) set forth in *Kayfez v. Gasele*, 993 F.2d 1288 (7th Cir. 1993) and *Willis v. United States*, 438 F.2d 923 (5th Cir. 1971).

In Petitioner’s case, the BOP determined that he was entitled to 57 days of *Kayfez* credits because the date of the full term of his concurrent state sentence after the application of qualified presentence time is less than the full term of his concurrent federal sentence. (ECF No. 17 at 6.) Petitioner does not contest the BOP’s application of *Kayfez*, which is allowing him to receive pre-sentence credits for a portion of the time period he is contesting, or its calculation of these credits.

**IV. CONCLUSION AND RECOMMENDATION**

Based on the above, it is RECOMMENDED that Respondent’s motion to dismiss be GRANTED and the petition for writ of habeas corpus be DENIED.

These findings and recommendations are submitted to the United States District Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Replies to the objections shall be served and filed within fourteen (14) days (plus three days if served by mail) after service of the objections. The Court

1 will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(c).  
2 Petitioner is advised that failure to file objections within the specified time may  
3 waive the right to appeal the District Court's order. *Wilkerson v. Wheeler*, 772 F.3d  
4 834, 839 (9th Cir. 2014).

5  
6 IT IS SO ORDERED.

7 Dated: January 29, 2016

/s/ Michael J. Seng  
8 UNITED STATES MAGISTRATE JUDGE

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