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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Olaf Peter Juda,

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No. CV 09-1475-PHX-JAT

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Petitioner,

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ORDER

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vs.

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Ricardo E. Chavez,

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Respondents.

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Pending before this Court is Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241. On February 26, 2010, the Magistrate Judge to whom this case was assigned issued a Report and Recommendation (R&R) recommending that the Petition be denied. On March 8, 2010, Petitioner timely filed objections to the R&R.

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This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). It is “clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*). Because Petitioner filed objections, the Court will review the R&R *de novo*.

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Petitioner’s claim in this case stems from the Second Chance Act, which permits the Bureau of Prisons to release an inmate to either a community correctional facility or home confinement up to twelve months before the inmate’s release date to increase the likelihood

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1 of the inmate's successful reentry into the community. R&R at 2-3. The Bureau of Prisons
2 evaluated Petitioner for this program and determined he would be placed in a community
3 correctional facility six months prior to his release date. *Id.* at 2. Petitioner appealed this
4 decision through the prison's administrative review process arguing he wanted to be placed
5 in the community correctional facility twelve months prior to his release.¹ *Id.*

6 Petitioner does not dispute the R&R's recounting of the factors the law requires the
7 Bureau of Prisons to consider in deciding pre-release placement, nor the factual result of
8 Petitioner's individual review. R&R at 2-4. Instead Petitioner argues more globally that the
9 review process is not really individualized,² which the law requires, and that the Bureau of
10 Prison has a "presumptive" six month placement policy. Objections at 3. Petitioner's
11 evidence for this assertion is his observations of what other inmates have received and some
12 information he asserts he learned from a symposium in 2008. Objections at 2. Finally,
13 Petitioner asserts that discovery in this case would show the Bureau of Prison's "real"
14 procedure. Objections at 3.

15 As the R&R recounts, the Bureau of Prisons has discretion of how to implement the
16 Second Chance Act, within certain guidelines. R&R at 2-3. In Petitioner's case, the Bureau
17 of Prisons exercised that discretion and specifically applied the guidelines. R&R at 3
18 (quoting the Warden's decision in Petitioner's case). Petitioner claims that, with discovery
19 into other inmate's releases, he could establish that the Warden's exercise of his discretion
20 is the same in every case.

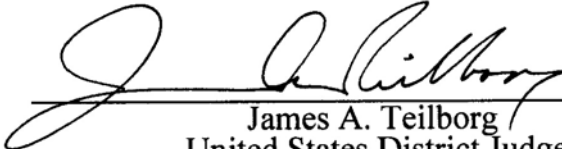
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25 ¹ The R&R calculates Petitioner's release date to be in August 2010, which is less
26 than six months from today. Therefore, the Petition may be moot. However, Petitioner in
27 his objections at footnote 1 specifically claims the Petition is not moot.

28 ² Conversely, the Warden's finding specifically said it was an individualized review.
R&R at 3.

1 The Court finds that discovery in this case is not warranted.³ Specifically, even if
2 Petitioner's claims were true, i.e. that in the majority of cases the Warden determines six
3 months prior to release is appropriate, such claims would not mean the that the Warden was
4 failing to "really" exercise discretion and simply applying a pre-determined six month
5 number. Further, the Court agrees with the R&R that there is nothing in this record to
6 suggest Petitioner did not receive all consideration to which he was entitled under the Second
7 Chance Act. R&R at 4. Accordingly,

8 **IT IS ORDERED** that the R&R (Doc. #22) is accepted and adopted, the Objections
9 (Doc. #23) are overruled, the Petition (Doc. #1) is denied, with prejudice, and the Clerk of
10 the Court shall enter judgment accordingly.

11 DATED this 22nd day of March, 2010.

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15 James A. Teilborg
16 United States District Judge
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27 ³ Discovery is available in habeas cases only if Petitioner shows "good cause."
28 *Estrada v. Chavez*, 2009 WL 1383328, *1 (D. Ariz. 2009) (applying Rule 6(a) of the Rules
Governing Section 2254 to a Section 2241 case).