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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Dwayne Terry Landrum,
Petitioner,
v.
State of Arizona,
Respondent.

No. CV 14-2645-PHX-DGC (DKD)

ORDER

Petitioner Dwayne Terry Landrum, who is confined in the Federal Correctional Institution in Lompoc, California, has filed a *pro se* Petition for Writ of Mandamus pursuant to 28 U.S.C. § 1651(a). Petitioner’s Mandamus Petition and this action will be dismissed without prejudice to filing a new action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, and either paying the \$5.00 filing fee or filing an Application to Proceed *In Forma Pauperis* (Habeas).

I. Petition

Put briefly, Petitioner alleges that in November 2012, he was sentenced in federal court to a 40-month term of imprisonment. Subsequently, in October 2013, he was sentenced in a related state case to a 2.5-year term of imprisonment that was to run concurrently to his federal sentence (which he had begun serving in January 2013). Petitioner was also given credit for time already served in the state matter. Petitioner appears to allege that the Federal Bureau of Prisons (“BOP”) is either not calculating his two sentences as concurrent to each other, or is not giving him proper credit for the time

1 he served pre-sentence in the state matter. As a result, Petitioner alleges that he should
2 have been entitled to halfway house placement in October 2014 under the Second Chance
3 Act of 2014, but that, due to BOP's miscalculation, he has not been so classified and
4 remains incarcerated past the expiration of his sentence.

5 **II. Mandamus Relief**

6 The issuance of a writ of mandamus is an extraordinary remedy which may be
7 granted only in the exercise of sound discretion. *Miller v. French*, 530 U.S. 327, 339
8 (2000). Mandamus relief is available to compel an officer or agency of the United States
9 to perform a duty only when: (1) that petitioner has a clear and certain claim; (2) the
10 respondent has a non-discretionary, ministerial duty, which is so plain as to be free from
11 doubt; and (3) the petitioner does not have another adequate and available remedy. 28
12 U.S.C. § 1361; *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003); *Benny v. United*
13 *States Parole Comm'n*, 295 F.3d 977, 898 (9th Cir. 2002); *Barron v. Reich*, 13 F.3d
14 1370, 1374 (9th Cir. 1994).

15 Petitioner has an adequate available remedy under 28 U.S.C. § 2241, which he
16 may use to challenge the fact or duration of his confinement or the execution of his
17 sentence. *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006); *Hernandez v.*
18 *Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). Because Petitioner has failed to satisfy at
19 least one of the three prongs for mandamus relief, his Mandamus Petition and this action
20 will be summarily dismissed without prejudice to Petitioner commencing a new action
21 under 28 U.S.C. § 2241. To do so, Petitioner must use the court-approved form for
22 seeking habeas relief pursuant to § 2241. LRCiv 3.4. In addition, he must either pay the
23 \$5.00 filing fee or file an Application to Proceed *In Forma Pauperis* on this District's
24 court-approved form. The Clerk of Court will provide Movant with the appropriate form
25 to use in filing a *new* case pursuant to 28 U.S.C. § 2241, as well as the form for seeking
26 *In Forma Pauperis* status should he choose to do so.

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IT IS ORDERED:

(1) Petitioner’s Petition for Writ of Mandamus is **denied** (Doc. 1) and this action is dismissed without prejudice to Petitioner commencing a new case pursuant to 28 U.S.C. § 2241, and the Clerk of Court is directed to enter judgment accordingly.

(2) The Clerk of the Court must mail to Petitioner a court-approved form for filing an Application to Proceed *In Forma Pauperis* (Habeas) **and** a Petition Under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a Person in Federal Custody.

Dated this 16th day of March, 2015.



David G. Campbell
United States District Judge

**Instructions for Filing a Petition Under 28 U.S.C. § 2241
for Writ of Habeas Corpus by a Person in Federal Custody
in the United States District Court for the District of Arizona**

1. Who May Use This Form. If you are detained in Arizona, you may use this form to challenge your detention by federal immigration authorities or to challenge the execution of your federal sentence by the United States Bureau of Prisons. You are asking for release or earlier release on the grounds that your detention or future detention violates the United States Constitution or other federal law. You should not use this form to challenge a state or federal judgment of conviction or sentence. If you are challenging a conviction or sentence entered against you by a state court, you should file a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. If you are challenging a judgment of conviction or sentence entered by a federal court, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment. Any claim that may be brought or has already been brought in a motion under 28 U.S.C. § 2255 may not be brought using this form unless it appears that the § 2255 motion is inadequate or ineffective to test the legality of your detention. **This form should not be used in death penalty cases.** If you were sentenced to death, you are entitled to the assistance of counsel and you should request the appointment of counsel.

2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.5(a) provides that habeas corpus petitions must be filed on the court-approved form.** The form must be typed or neatly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. You do not need to cite law. If you want to file a brief or arguments, you must attach a separate memorandum.

3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. The Filing Fee. The filing fee for this action is \$5.00. If you are unable to pay the filing fee, you may request permission to proceed *in forma pauperis* by completing and signing the Application to Proceed *In Forma Pauperis* provided with the petition form. You must have an official at the prison or jail complete the certificate at the bottom of the application form. If the amount of money in your account exceeds \$25.00, you must pay the \$5.00 filing fee. LRCiv 3.5(b).

5. Original and Judge's Copy. You must send an **original plus one copy** of your petition and of any other document submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You should **file your petition in the division where you are detained.** See LRCiv 5.1(a). If you are detained in Maricopa, Pinal, Yuma, La Paz, or Gila County, you should file your petition in the Phoenix Division. If you are detained in Apache, Navajo, Coconino, Mohave, or Yavapai County, you should file your petition in the Prescott Division.

If you are detained in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, you should file your petition in the Tucson Division. See LRCiv 5.1(b) and 77.1(a). **Mail the original and one copy of your petition with the \$5.00 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and respondents in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must provide the respondents with a copy of any document you submit to the Court (except the initial petition and application to proceed *in forma pauperis*). Each original document (except the initial petition and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the respondents and the address to that it was mailed. Fed. R. Civ. P. 5(a), (d). Any document received by the Court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Respondent(s)

(Signature)

9. Amended Petition. If you need to change any of the information in the initial petition, you must file an amended petition. The amended petition must be written on the court-approved petition for writ of habeas corpus form. You may file one amended petition without leave (permission) of Court before any respondent has answered your original petition. See Fed. R. Civ. P. 15(a). After any respondent has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended petition. LRCiv 15.1. An amended petition may not incorporate by reference any part of your prior petition. LRCiv 15.1(a)(2). **Any grounds not included in the amended petition are considered dismissed.**

10. Exhibits. If available, you should attach a copy of all federal court and administrative written decisions regarding the detention you are challenging. You should **not** submit any other exhibits with the petition. Instead, the relevant information should be paraphrased in the petition.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Exhaustion. In order to proceed with this petition in federal court, you ordinarily must exhaust any administrative remedies available to you. If you did not fairly present each of your grounds to the appropriate administrative agencies, your petition may be dismissed.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your petition being stricken or dismissed by the Court. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the petition is being continued and number all pages.

Name and Prisoner Number/Alien Registration Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,)
(Full Name of Petitioner))
)
Petitioner,)
)
vs.)
)
_____,)
(Name of Warden, Jailor or authorized person)
having custody of Petitioner))
)
Respondent.)
_____)

CASE NO. _____
(To be supplied by the Clerk)

**PETITION UNDER 28 U.S.C. § 2241
FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN FEDERAL CUSTODY**

PETITION

1. What are you challenging in this petition?
 Immigration detention
 Bureau of Prisons sentence calculation or loss of good-time credits
 Probation, parole or supervised release
 Other (explain): _____

2. (a) Name and location of the agency or court that made the decision you are challenging: _____

- (b) Case or opinion number: _____

- (c) Decision made by the agency or court: _____

(d) Date of the decision: _____

3. Did you appeal the decision to a higher agency or court? Yes No

If yes, answer the following:

(a) First appeal:

(1) Name of the agency or court: _____

(2) Date you filed: _____

(3) Opinion or case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Second appeal:

(1) Name of the agency or court: _____

(2) Date you filed: _____

(3) Opinion or case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(c) Third appeal:

(1) Name of the agency or court: _____

(2) Date you filed: _____

(3) Opinion or case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

4. If you did not appeal the decision to a higher agency or court, explain why you did not: _____

5. Other than the appeals listed above, have you filed any other petitions, applications or motions concerning the issues raised in this petition? Yes No

If yes, answer the following:

(a) Name of the agency or court: _____

(b) Date you filed: _____

(c) Opinion or case number: _____

(d) Result: _____

(e) Date of result: _____

(f) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

6. For this petition, **state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States.** Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available administrative remedies on each ground on which you request action by the federal court.

Please answer these additional questions about this petition:

7. Are you challenging your conviction or sentence in any of the grounds raised above? Yes No
(Claims challenging a federal conviction or sentence may only be raised in a motion under 28 U.S.C. § 2255, unless the § 2255 motion is legally inadequate or ineffective.)

If yes, answer the following:

(a) Have you filed a motion under 28 U.S.C. § 2255? Yes No

If yes, answer the following:

(1) Name of court: _____

(2) Case number: _____

(3) Opinion or case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Explain why the remedy under § 2255 is inadequate or ineffective: _____

8. If this case concerns immigration removal proceedings, answer the following:

(a) Date you were taken into immigration custody: _____

(b) Date of removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals? Yes No

(1) Date you filed: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(d) Did you file an appeal with the federal court of appeals? Yes No

(1) Name of the court: _____

(2) Date you filed: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

9. Petitioner asks that the Court grant the following relief: _____

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____(month, day, year).

Signature of Petitioner

Signature of attorney, if any

Date

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

)	
)	
Petitioner,)	CASE NO. _____
)	
vs.)	
)	APPLICATION TO PROCEED
)	<i>IN FORMA PAUPERIS</i>
Respondent(s).)	BY A PRISONER
)	(HABEAS)

I, _____, declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently employed at the institution where you are confined? Yes No
 If "Yes," state the amount of your pay and where you work. _____

2. Do you receive any other payments from the institution where you are confined? Yes No
 If "Yes," state the source and amount of the payments. _____

3. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? Yes No
If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL
AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, _____, certify that as of the date applicant signed this application:
(Printed name of official)

The applicant's trust account balance at this institution is: \$_____.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION