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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Randy Jenkins,)	No. CV 11-472-TUC-RCC (JM)
Petitioner,)	
vs.)	ORDER
)	
Craig Apker, et al.,)	
Respondents.)	

Petitioner filed a *pro se* Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc.11-1). The matter was referred to United States Magistrate Judge Jacqueline Marshall, who issued a Report and Recommendation recommending that the Court grant in part and deny in part the Petition. Plaintiff has filed a written Objection.

BACKGROUND

Petitioner was sentenced to a 90-month prison term and has a projected release date of November 20, 2012. (Doc. 27, p. 7). BOP evaluated Petitioner for prerelease custody and recommended a 7- to 9-month Residential Re-entry Center (“RRC”) placement to afford him a reasonable time to adjust and prepare for reentering the community. (Doc. 27, p. 10). BOP based its recommendation on Petitioner’s high level of education, lack of substance abuse history, and Inmate Skills Development Plan which outlined his activities

1 and progress in prison. (Doc. 27, p. 13-21). In addition, the final recommendation was
2 based on his “homelessness, lack of marketable job skills, length of sentence [and] no
3 prior history as an employee.” (Doc. 27, p. 10).

4 After exhausting his administrative remedies, Petitioner filed a *pro se* Amended
5 Petition for Writ of Habeas Corpus on September 9, 2011 pursuant to 28 U.S.C. §
6 2241(c)(3). (Doc. 11-1). He alleged that he was not considered for and subsequently
7 denied a 12-month RRC placement and that BOP failed to assist him with obtaining a
8 driver’s license as required by statute. (Doc. 11-1, p. 1). Respondents argued that
9 Petitioner was evaluated and recommended for a RRC placement in compliance with 18
10 U.S.C. § 3621(b), but did not address Petitioner’s identification assistance allegations.
11 Magistrate Judge Marshall recommended this Court deny Petitioner’s request for the writ
12 and order that Respondents assist Petitioner with obtaining a driver’s license prior to his
13 release. Petitioner timely filed his Objections. *See* 28 U.S.C. § 636(b)(1).

14 **DISCUSSION**

15 Petitioner makes the following arguments in his Amended Petition: (1) BOP abused
16 its discretion in determining his RRC placement; (2) he is entitled to a limited discovery
17 period to investigate these allegations; (3) the Court should order BOP to reconsider him for
18 a 12-month RRC placement as an incentive allowed by statute; and (4) the Court should order
19 the Attorney General and BOP to create an incentive program required by statute.¹ Each issue
20 is addressed in turn.

21 **I. BOP’s RRC Placement Recommendation (18 U.S.C. §§ 3624(c)(1), 3621(b))**

22 BOP’s RRC recommendation was in compliance with its statutory duty. The BOP
23 Director must allow, when practical, a prisoner to spend a portion of the end of the sentence
24 in a setting that will afford the prisoner a reasonable time to prepare for community reentry.

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27 ¹Petitioner does not object to the R&R’s recommendation that BOP assist him with
28 obtaining a drivers license; therefore, this Court adopts it. *See* 42 U.S.C. § 17541(b)(1).

1 18 U.S.C. § 3624(c)(1). This adjustment period cannot “exceed 12 months,” § 3624(c)(1),
2 but must be sufficient to provide prisoners with the “greatest likelihood” of successful reentry
3 based on an individual assessment of that prisoner. § 3624(c)(6)(C); *see also Bruce v. Apker*,
4 2009 U.S. Dist. WL 2509170, at *5 (D.Ariz. Aug. 17, 2009) (section 3624(c) does not require
5 a 12-month RRC placement nor prohibit a shorter one). Additionally, BOP should consider:
6 (1) the facility’s resources; (2) the nature and circumstances of the offense; (3) the prisoner’s
7 characteristics and history; (4) any sentencing court recommendation; and (5) any pertinent
8 policy statement from the Sentencing Commission. 18 U.S.C. § 3621(b).

9 In this case, Petitioner argues that he is entitled to the maximum 12-month term in a
10 RRC. BOP, however, is only required to provide Petitioner with a length of time that will
11 improve his chances of successful community reentry. BOP complied with § 3621(b) by
12 considering Petitioner’s case on an individual basis, as evidenced by the Inmate Skills
13 Development Plan, and basing its recommendation on his homelessness, lack of job skills and
14 employment history, and prison term. Furthermore, BOP documents its consideration of the
15 facility’s resources in a response to Petitioner’s Regional Administrative Remedy Appeal.
16 For these reasons, BOP’s recommendation was not an abuse of its discretion.

17 **A. Limited Discovery Period**

18 Petitioner’s request for a limited discovery period to investigate BOP’s consideration
19 of the factors listed in 18 U.S.C. § 3621(b) is unnecessary. The record indicates that BOP
20 considered each factor before recommending Petitioner’s RRC placement. Although he
21 argues that BOP did not consider the facility’s resources, BOP’s response to Petitioner’s
22 Regional Administrative Remedy Appeal addressed them. Furthermore, § 3621(b) allows
23 BOP to make any recommendation that “meets minimum standards of health and habitability.
24 . . .” Petitioner does not allege that the Phoenix RRC does not meet these minimum standards.
25 Petitioner’s request for a limited discovery period is denied.

26 **II. BOP’s RRC Recommendation (42 U.S.C. § 17541(a)(1)(G))**

