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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WILLIAM BOOHER,)	Case No. CV 17-02206-R (JDE)
Petitioner,)	
v.)	ORDER SUMMARILY
THE PEOPLE OF THE STATE OF)	DISMISSING PETITION FOR
CALIFORNIA,)	WRIT OF HABEAS CORPUS FOR
Respondent.)	LACK OF SUBJECT MATTER
)	JURISDICTION

I.

INTRODUCTION

On March 21, 2017, Petitioner William Booher (“Petitioner”)¹ commenced this action by filing a document entitled, “Motion Requesting

¹ Petitioner captions the pleading “The People of the State of California, Plaintiff, v. William Booher, Defendant.” (Pet. at 1). Because Petitioner asks the Court to treat the filing as a Petition for Writ of Habeas Corpus, the caption is hereby amended to reflect the titles and status of the parties consistent with such a Petition.

1 Final Disposition of Charge(s),” in which Petitioner requests the Court “[t]o
2 consider this as a Writ of Habeas Corpus requesting that I be brought before
3 this Court within the next 180 days.” (Dkt. 1, “Petition” or “Pet.” at 2). For
4 the reasons set forth below, the Petition is dismissed for lack of subject matter
5 jurisdiction.

6 II.

7 PROCEDURAL HISTORY

8 The substance of the Petition, which is unsigned, recites, in full (spelling,
9 capitalization and punctuation in original):

10 Comes now the defendant William Booher Pro Se asking this
11 Honorable Court to grant this motion in order that he may move
12 forward through the Justice system without the restrictions that are
13 placed on someone that has an out of state Detainer, even though
14 this particular Detainer may not be considered an extraditable
15 issue, the Colorado Dept of Corrections stills sees it as a type of
16 Detainer. therefore prohibiting me from moving forward through
17 the rehabilitation process. The defendant would as this Honorable
18 Court to consider one of the following:

- 19 1. To Run the time that I have remaining there, with the
20 Colorado time that I am currently doing;
- 21 2. To dismiss the current charge as time served
- 22 3. To consider this as a Writ of Habeas Corpus
23 requesting that I be brought before this court within
24 the next 180 days.

25 (Pet. at 1-2).

26 Petitioner lists his address as the FCF P.O. Box 999 Canon City,
27 Colorado, which would appear to be Fremont Correctional Facility, a
28 Colorado state prison facility. The Petition title references “The People of the

1 State of California” and on the form where “Case No.” is typed, the Petition
2 states “LAA 783022.” From this information, the Court interprets Petitioner’s
3 alternative requests to either “run the time [Petitioner has] remaining there” or
4 “to dismiss the current charge as time served” as referring to some charges
5 pending with a state court in California. The Court has reviewed the
6 CM/ECF electronic records index and has found no record of a criminal case
7 involving Petitioner, pending or closed, having been brought in this District,
8 nor does Petitioner include a case number or the name of any case pending or
9 closed in this District.

10 III.

11 DISCUSSION

12 A. THE COURT LACKS JURISDICTION TO CONSIDER THE 13 PETITION BECAUSE PETITIONER SEEKS A REMEDY NOT 14 AVAILABLE UNDER HABEAS CORPUS

15 “[T]he essence of habeas corpus is an attack by a person in state custody
16 upon the legality of that custody, and the traditional function of the writ is to
17 secure release from illegal custody.” Preiser v. Rodriguez, 411 U.S. 475, 484
18 (1973); Burnett v. Lampert, 432 F.3d 996, 999 (9th Cir. 2005); see also Lujan
19 v. Garcia, 734 F.3d 917 (9th Cir. 2013) (district court lacked jurisdiction to
20 reduce first-degree murder conviction to second-degree murder conviction).

21 A habeas court has power to release a prisoner (upon a requisite
22 showing), “but has no other power,” and cannot revise a state court judgment
23 or order a state court to resentencing a petitioner. Douglas v. Jacquez, 626 F.3d
24 501, 504 (9th Cir. 2010). Although a district court in a habeas proceeding
25 “may issue a conditional writ that requires the state to release a petitioner
26 unless it takes some other remedial actions, such as retrial of the petitioner”
27 (Lujan, 734 F.3d at 934), such a conditional writ is only possible if, *ipso facto*,
28 the petitioner is in the custody of the state or municipality to whom the writ is

1 directed.

2 Here, Petitioner does not seek release, or any relief, from his current
3 custody by the State of Colorado, even if the venue rules of 28 U.S.C. § 2241
4 or 28 U.S.C. § 2244 permitted such action. Rather, he appears to be seeking an
5 order relating to the calculation of his sentence in different jurisdiction, a
6 California state court. But he is not in custody in California resulting from a
7 California conviction. He is in custody in Colorado from a Colorado
8 conviction. Thus, no habeas relief direct to “the People of the State of
9 California,” or any other formation involving a California person or
10 institution, is possible or lawful.²

11 Simply, habeas relief is not available here.

12
13 **B. SUMMARY DISMISSAL IS WARRANTED**

14 Local Rule 72-3.2 provides:

15 The Magistrate Judge promptly shall examine a
16 petition for writ of habeas corpus, and if it plainly
17 appears from the face of the petition and any exhibits
18 annexed to it that the petitioner is not entitled to relief,
19 the Magistrate Judge may prepare a proposed order
20 for summary dismissal and submit it and a proposed
21 judgment to the District Judge

22 Here, it plainly appears from the face of the Petition that the Petitioner is not
23 entitled to the relief he seeks, rendering the Petition subject to summary
24 dismissal.

25 ///

26 _____
27 ² To the extent Petitioner is attempting to initiate notice under the Interstate
28 Agreement on Detainers, Petitioner is directed to 18 U.S.C. App. § 2.

1 **ORDER**

2 Pursuant to Rule 4 of the Rules Governing Section 2254 cases in the
3 United States District Courts and Local Rule 72-3.2-3(a), IT IS ORDERED
4 that judgment be entered summarily dismissing the Petition without prejudice
5 for lack of jurisdiction.

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7 Dated: April 5, 2017



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MANUEL L. REAL
United States District Judge

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11 Presented by:

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John D. Early
United States Magistrate Judge