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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

XAVIER MONIQUE FIELDS,)	NO. ED CV 08-426-VAP(E)
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
JOSEPH WOODRING, Warden,)	UNITED STATES MAGISTRATE JUDGE
)	
Respondent.)	
)	
_____)	

This Report and Recommendation is submitted to the Honorable Virginia A. Phillips, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in Federal Custody" on March 31, 2008. The Petition appears to challenge the Bureau of Prisons' refusal, in accordance with 28 C.F.R. section 570.21, to consider transferring Petitioner to a

1 "CCC" ("Community Corrections Center")¹ prior to Petitioner's service
2 of 90 percent of his sentence and prior to the last six months of
3 Petitioner's sentence. See Attachment to Petition; Declaration of
4 Corinne M. Nastro filed with Respondent's Answer (the "Nastro Decl.")
5 at ¶ 6, Exhibits B and C). As enforced at the time of the Petition,
6 28 C.F.R. section 570.21(a) provided:

7
8 The Bureau will designate inmates to community confinement
9 only as part of pre-release custody and programming, during
10 the last ten percent of the prison sentence to be served,
11 not to exceed six months.²

12
13 Petitioner asserts that the regulation is invalid as inconsistent with
14 18 U.S.C. section 3621(b), and has asked the Court to declare that
15 section 570.21 is an improper exercise of the Bureau of Prisons'
16 rulemaking authority.

17
18 ¹ The Bureau of Prisons defines a "Community Corrections
19 Center" (now known as a "Residential Reentry Center") as:

20 The location in which the Contractor's programs are
21 operated; also called facility, center, community
22 treatment center (CTC), or halfway house. A CCC is
23 considered a penal or correctional facility.

24 See Bureau of Prisons, Statement of Work, Community Corrections
25 Center, Attachment F, p. 1 (Revision Dec. 2005), available at
26 www.bop.gov/locations/cc/SOW_CCCs.pdf (last visited Oct. 3,
27 2008); see also Bureau of Prisons, Statement of Work, Residential
28 Reentry Center, Attachment F (Aug. 2007) (defining "Residential
Reentry Center"), available at [www.bop.gov/locations/cc/
res_reentry_ctr_sow_2007.pdf](http://www.bop.gov/locations/cc/res_reentry_ctr_sow_2007.pdf) (last visited Oct. 3, 2008);
Rodriguez v. Smith, 2008 WL 4070264 *1, n.1 (9th Cir. Sept. 4,
2008) (discussing same).

² As discussed infra, the Bureau no longer enforces this
aspect of section 570.21(a).

1 Respondent filed an Answer on August 13, 2008. Respondent
2 submits that the Petition is now moot because, based on new
3 legislation and new Bureau of Prisons' policies, the Bureau of Prisons
4 recently has given Petitioner the individualized consideration for
5 early CCC placement Petitioner sought in the Petition. Petitioner
6 filed a Traverse on September 8, 2008.

7
8 **BACKGROUND**
9

10 Following a guilty plea, the Court sentenced Petitioner in 2002
11 to 117 months in federal prison for armed bank robbery (Petition,
12 p. 2). Petitioner currently is serving his sentence at the Terminal
13 Island Federal Correctional Institution in San Pedro, California
14 (Nastro Decl. at ¶ 4(A)). Assuming Petitioner earns all available
15 good conduct time, he will be eligible for release on August 22, 2009
16 (Nastro Decl. at ¶ 4(C)).

17
18 On March 22, 2007, Petitioner submitted an "Inmate Request to
19 Staff" form to his case manager, requesting that the Bureau of Prisons
20 (the "Bureau") consider Petitioner for placement in a CCC facility for
21 the last twelve months of his sentence (i.e., from August 22, 2008
22 through August 22, 2009) (Nastro Decl., Exhibit C). On May 22, 2007,
23 Petitioner's case manager denied the request, noting the need for
24 uniformity under section 3621(b), and finding: "Six months maximum is
25 the BOP's (not to exceed 10%) decision/exercised discretion. (At this
26 time.)" (Nastro Decl., Exhibit C).

27
28 On April 5, 2007, Petitioner submitted a second "Inmate Request

1 to Staff" form to his case manager, asking for reconsideration in
2 light of Wedelstedt v. Wiley, 477 F.3d 1160, 1162, 1167 (10th Cir.
3 2007) (Nastro Decl., Exhibit C). On April 9, 2007, the case manager
4 denied Petitioner's request, asserting that Petitioner would have to
5 have been convicted in the Tenth Circuit and housed in the Tenth
6 Circuit to qualify for consideration under the Wedelstedt case (Nastro
7 Decl., Exhibit C).

8
9 On April 16, 2007, Petitioner submitted an "Informal Resolution"
10 form to his correctional counselor, asking again for consideration for
11 placement in a CCC for twelve months (Nastro Decl., Exhibit C). The
12 correctional counselor denied the request, claiming that August 2008
13 is the soonest Petitioner could be "submitted for [consideration of]
14 community confinement" (Id.).

15
16 On or about April 26, 2007, Petitioner submitted a "Request for
17 Administrative Remedy" to his warden, asking again to be considered
18 for CCC placement beginning on August 22, 2008 (Nastro Decl., Exhibit
19 C). The warden denied Petitioner's request on May 18, 2007, citing
20 Program Statement 7310.04, which provided: "An inmate may be referred
21 [to a CCC] up to 180 days, with placement beyond 180 days highly
22 unusual, and only possible with extraordinary justification" (Nastro
23
24
25
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1 Decl., Exhibit C).³

2
3 On May 23, 2007, Petitioner submitted a "Regional Administrative
4 Remedy Appeal" form requesting immediate consideration for placement
5 in a CCC during the last twelve months of his sentence (Nastro Decl.,
6 Exhibit C). On June 12, 2007, the regional director denied the
7 request, in accordance with Program Statement 7310.04's former
8 timeline for making placement decisions. See Nastro Decl., Exhibit C
9 (also noting "we concur with the Warden's response"); see also Program
10 Statement 7310.04 ("A final and specific release preparation plan,
11 including a decision as to CCC referral, is normally established at a
12 team meeting no later than 11 to 13 months before an inmate's
13 projected release date.").

14
15 On July 16, 2007, Petitioner submitted a "Central Office
16 Administrative Remedy Appeal," requesting immediate consideration for
17 placement for twelve months in a CCC facility (Nastro Decl., Exhibit
18 C). The Administrator of National Inmate Appeals denied the request
19 on October 4, 2007, noting that the staff would review Petitioner's
20 pre-release needs as he got closer to his release date and would make
21 an appropriate recommendation in accordance with 28 C.F.R. section
22 570.21 (Nastro Decl., Exhibit C).

23 ///

24
25 ³ Program Statement 7310.04 was the Bureau's Program
26 Statement concerning CCC placement procedures. See Bureau of
27 Prisons, Community Corrections Center (CCC) Utilization and
28 Transfer Procedures (Dec. 16, 1998), available at
http://www.bop.gov/policy/progstat/7310_004.pdf (last visited
Oct. 2, 2008). The Statement set forth the Bureau's predecessor
policy to 28 C.F.R. sections 570.20 and 570.21.

1 DISCUSSION⁴

2
3 I. Mootness Standards

4
5 A federal court's jurisdiction is limited to cases or
6 controversies. U.S. Const. art. III, § 2; see also Iron Arrow Honor
7 Society v. Heckler, 464 U.S. 67, 70 (1983) (discussing same). "[A]
8 federal court has no authority 'to give opinions upon moot questions
9 or abstract propositions, or to declare principles or rules of law
10 which cannot affect the matter in issue in the case before it.'" Church of Scientology of Cal. v. United States, 506 U.S. 9, 12 (1992)
11 (quoting Mills v. Green, 159 U.S. 651, 653 (1895)). "If an event
12 occurs that prevents the court from granting effective relief, the
13 claim is moot and must be dismissed." American Rivers v. National
14 Marine Fisheries Service, 126 F.3d 1118, 1123 (9th Cir. 1997)
15 (citation omitted); see also Church of Scientology of Cal., 506 U.S.
16 at 12 (noting that a case becomes moot when it is "impossible for the
17 court to grant 'any effectual relief whatever' to a prevailing party,"
18 quoting Mills, 159 U.S. at 653). A court cannot grant any effectual
19 relief where a plaintiff or petitioner already has received all of the
20 relief sought. See Von Staich v. Hamlet, 2007 WL 3001726 *1 (9th Cir.

21
22 _____
23 ⁴ Contrary to Respondent's assertion that Petitioner
24 failed to allege a cognizable claim, Petitioner's challenge to
25 the Bureau's decision concerning the location of his confinement
26 is cognizable on habeas review. A section 2241 petition is
27 proper where, as here, a federal prisoner is challenging the
28 manner, location, or conditions under which his or her sentence
is being executed. Hernandez v. Campbell, 204 F.3d 861, 864 (9th
Cir. 2000); Tucker v. Carlson, 925 F.2d 330, 331 (9th Cir. 1990);
see also Rodriguez v. Smith, 2008 WL 4070264 (9th Cir. Sept. 4,
2008) (affirming district court's grant of habeas relief on
similar claim).

1 Oct. 16, 2007) (unpublished);⁵ see Coleman v. California Board of
2 Prison Terms, 228 Fed. App'x. 673 (9th Cir. Apr. 6, 2007)
3 (unpublished) (implementation of desired parole procedure moots
4 controversy regarding whether such procedure previously was withheld
5 illegally); DeMille v. Belshe, 1995 WL 23636 (N.D. Cal. Jan. 12, 1995)
6 (administrative promulgation of desired procedures moots controversy
7 concerning the alleged legal necessity of such procedures).

8
9 **II. Petitioner's Challenge to the Validity of 28 C.F.R. Section**
10 **570.21 is Moot.**

11
12 Petitioner asserts that 28 C.F.R. section 570.21 is invalid as
13 inconsistent with 18 U.S.C. section 3621(b).⁶ Petitioner has asked

14
15 ⁵ The Court may cite unpublished Ninth Circuit opinions
16 issued on or after January 1, 2007. See U.S. Ct. App. 9th Cir.
17 Rule 36-3(b); Fed. R. App. P. 32.1(a).

18 ⁶ Section 3621 of Title 18 provides in pertinent part:

19 (b) Place of imprisonment. The Bureau of Prisons
20 shall designate the place of the prisoner's
21 imprisonment. The Bureau may designate any available
22 penal or correctional facility that meets minimum
23 standards of health and habitability established by the
24 Bureau, whether maintained by the Federal Government or
25 otherwise and whether within or without the judicial
26 district in which the person was convicted, that the
27 Bureau determines to be appropriate and suitable,
28 considering--

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence--
 - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
 - (B) recommending a type of penal or correctional facility as appropriate;[] and
- (5) any pertinent policy statement issued by the Sentencing

(continued...)

1 the Court to declare that section 570.21 is an improper exercise of
2 the Bureau's rulemaking authority (Attachment to Petition).

3
4 In Rodriguez v. Smith, supra, 2008 WL 4070264, the Ninth Circuit
5 recently declared that section 570.21 is invalid as inconsistent with
6 18 U.S.C. section 3621(b). In holding that the Bureau of Prison's
7 categorical exercise of discretion under 28 C.F.R. sections 570.20 and
8 570.21 to exclude prisoners from CCC placement with more than 10
9 percent of their sentences remaining violates Congressional intent
10 expressed in 18 U.S.C. section 3621(b), the Rodriguez Court joined the
11 majority of circuit courts to address the issue. Rodriguez v. Smith,
12 2008 WL 4070264 at *3-*6; see Wedelstedt v. Wiley, 477 F.3d at 1162,
13 1167 (finding "regulations contradict Congress' clear intent that all
14 inmate placement and transfer decisions be made individually and with
15 regard to the five factors enumerated in 18 U.S.C. § 3621(b)"); Levine
16 v. Apker, 455 F.3d 71, 87 (2d Cir. 2006) (finding that regulations are
17 an "improper exercise" of the Bureau's rulemaking authority because
18 they "sort[] prisoners' eligibility for one of the institutions on the
19 'available penal or correctional facility list' only according to the
20 portion of time served," which "unlawfully excised [section 3621(b)'s]
21 parameters from the statute"); Fults v. Sanders, 442 F.3d 1088, 1092
22 (8th Cir. 2006) (finding regulations improperly "removed the

23
24 _____
25 ⁶(...continued)

Commission pursuant to section 994(a)(2) of title 28.

26 . . . The Bureau may at any time, having regard for
27 the same matters, direct the transfer of a prisoner
from one penal or correctional facility to another.

28 18 U.S.C. § 3621(b) (emphasis added).

1 opportunity for the Bureau to exercise discretion for all inmates not
2 serving the last ten percent of their sentences"); Woodall v. Federal
3 Bureau of Prisons, 432 F.3d 235, 240, 244 (3d Cir. 2005) (opining
4 that, while the issue is "far from clear" and courts have been
5 divided, the regulations are unlawful because they "do not allow the
6 [Bureau] to consider the nature and circumstances of an inmate's
7 offense, his or her history or pertinent characteristics, or most
8 importantly, any statement by the sentencing court concerning a
9 placement recommendation and the purposes for the sentence"); but see
10 Muniz v. Sabol, 517 F.3d 29, 31 (1st Cir. 2008), cert. denied, 2008 WL
11 2273253 (U.S. Oct. 6, 2008) (holding that the Bureau's regulations
12 constituted an appropriate exercise of discretion and should be
13 afforded deference and noting, "While we are loath to create a circuit
14 split, we respectfully side with the dissenters [in the other
15 circuits]."). Accordingly, to the extent Petitioner seeks a judicial
16 declaration that section 570.21 is invalid, the request is moot; the
17 Ninth Circuit authoritatively has so declared. This Court must follow
18 Rodriguez. Zuniga v. United Can Co., 812 F.2d 443, 450 (9th Cir.
19 1987) ("[D]istrict Courts are, of course, bound by the law of their
20 own circuit.").

21
22 **III. Petitioner's Challenge to the Bureau's Application of 28 C.F.R.**
23 **Section 570.21 to Deny Petitioner Immediate Individualized**
24 **Consideration for CCC Placement Also is Moot.**
25

26 To the extent Petitioner requests that the Court require the
27 Bureau immediately to consider Petitioner for placement in a CCC in
28 accordance with 18 U.S.C. section 3621(b), such request is also moot.

1 As discussed below, under the prompting of recent legislation, the
2 Bureau already has given Petitioner individualized consideration for
3 CCC placement (Nastro Decl. at ¶ 10).

4
5 On April 9, 2008 - shortly after the filing of the Petition - the
6 President signed into law the "Second Chance Act of 2007," Pub. L.
7 110-199, 122 Stat. 657 (2007) ("the Act"). The Act requires the
8 Bureau to modify section 570.21 of the regulations. See 18 U.S.C. §
9 3624(c)(6) (as amended) (requiring the issuance of regulations to
10 ensure that placement in a CCC is conducted in a manner consistent
11 with 18 U.S.C. § 3621(b) and determined on an individual basis); House
12 Report 110-140, 2007 WL 1378789 at *46 (May 9, 2007) (indicating that
13 the amendment to section 3624 will require modification of section
14 570.21 of the regulations). The Act's amendment to section 3624 also
15 lengthens from 6 to 12 months the maximum portion of the sentence that
16 may demarcate the "reasonable opportunity to adjust to and prepare for
17 the prisoner's reentry into the community." 18 U.S.C. § 3624(c)(1)
18 (as amended).

19
20 On April 14, 2008, the Bureau issued a memorandum advising how
21 the Bureau will now make pre-release CCC placement decisions in light
22 of the Act (Nastro Decl., Exhibit D). The memorandum provides that 28
23 C.F.R. section 570.21 is no longer applicable and must no longer be
24 followed in making placement decisions (Id. at p. 3). The Bureau must
25 now review inmates for pre-release placements 17 to 19 months before
26 the projected release date (Id.). The Bureau must also assess inmates
27 individually, considering the pre-release factors set out in 18 U.S.C.
28 section 3621(b) (Nastro Decl., Exhibit D, p. 3). To ensure each

1 placement is "of sufficient duration to provide the greatest
2 likelihood of successful reintegration into the community," the Bureau
3 must review each case with the understanding that an inmate is
4 eligible for a maximum of twelve months CCC placement (Id. citing 18
5 U.S.C. § 3624(c)(6) (as amended)).
6

7 On July 29, 2008, Petitioner received individualized
8 consideration for CCC placement in accordance with the Act and the
9 Bureau's new policy memorandum (Nastro Decl., ¶ 10). Based on this
10 consideration, the Bureau determined that Petitioner will receive a
11 180-day CCC placement (i.e., beginning on or about February 22, 2009
12 (Id.)).
13

14 Thus, although Petitioner may not receive as much time in a CCC
15 as he desires, Petitioner has already received the only relief this
16 Court properly could order, i.e., individualized consideration for CCC
17 placement in accordance with sections 3621(b) and 3624(c) (and
18 notwithstanding the limitations of 28 C.F.R. section 570.21(a)).⁷
19 Accordingly, the Petition is moot. See, e.g., Sparks v. Smith, 2008
20

21 ⁷ The Bureau is solely responsible for designating the
22 place of confinement. 18 U.S.C. § 3621(b); see also United
23 States v. Dagna, 746 F.2d 457, 458 (9th Cir. 1984), cert.
24 denied, 469 U.S. 1211 (1985) (district court does not have
25 jurisdiction to decide the location of a defendant's
26 incarceration; that decision rests solely with the executive
27 branch); United States v. Charry Cubillos, 91 F.3d 1342, 1343 n.1
28 (9th Cir. 1996) (same); Arred v. Phillips, 2008 WL 4219074 *3,
n.2 (N.D. W.Va. Sept. 15, 2008) (noting that the court lacks
authority to order the Bureau to afford a longer period of CCC
placement once a decision is made). Where a court finds the
Bureau's policies are unlawful, the resulting relief is not an
order for transfer, only an order for the individualized
consideration of transfer, which Petitioner already has received.
See id.

1 WL 2509435 *4-*5 (E.D. Cal. June 23, 2008), adopted, 2008 WL 4177736
2 (E.D. Cal. Sept. 8, 2008) (challenge to Bureau's prior placement
3 decision moot where the Bureau already had conducted a second
4 assessment in accordance with the Second Chance Act, providing all the
5 relief the Court could provide); Safa v. Phillips, 2008 WL 2275409
6 (N.D. W.Va. June 2, 2008) (Bureau's individualized consideration of
7 the petitioner's request for transfer to a CCC mooted the petitioner's
8 challenge to section 570.21, even though the Bureau ultimately refused
9 to transfer the petitioner); Chaves v. Wrigley, 2007 WL 4322785 (E.D.
10 Cal. Dec. 7, 2007) (same issue moot where the petitioner was given
11 individualized consideration, although court failed to note the
12 outcome of the consideration); Carroll v. Smith, 2007 WL 2900221 (E.D.
13 Cal. Oct. 4, 2007), adopted, 2007 WL 3293404 (E.D. Cal. Nov. 5, 2007)
14 (same issue moot where individualized consideration resulted in a
15 finding that the petitioner would be placed in a CCC for only 30-40
16 days).

17
18 Because the Bureau's individualized consideration of Petitioner's
19 request for placement in a CCC has given Petitioner all the relief to
20 which he conceivably could be entitled at this time, the Petition
21 should be dismissed as moot.⁸

22
23 **IV. Any Challenge Petitioner May Have to the Bureau's Post-Second**
24 **Chance Act Placement Decision is Unexhausted.**

25
26 _____
27 ⁸ This dismissal should be without prejudice to any
28 rights or remedies Petitioner may have under Bivens v. Six
Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S.
388 (1971), the Federal Tort Claims Act, or any other federal law
potentially authorizing the recovery of damages.

1 In his Traverse, Petitioner claims that the Bureau now
2 categorically denies all inmates the benefit of CCC placement for
3 twelve months, notwithstanding the announced change in Bureau policy
4 following the Act (Traverse, p. 2). Petitioner claims, without
5 evidence, that the Bureau has not placed any inmate in a CCC for as
6 long as twelve months (Id. (asserting that the Bureau's new placement
7 decisions have "created a new issue" for the Court to resolve)).
8 Petitioner requests that the Court order the Bureau to follow the
9 Congressional intent presumably behind 18 U.S.C. section 3624(c). For
10 the reasons set forth below, Petitioner's new claim should be
11 dismissed for failure to exhaust administrative remedies available
12 under 28 C.F.R. section 542.10 et seq.

13
14 Although exhaustion is not jurisdictional, petitioners may be
15 required, as a prudential matter, to exhaust available administrative
16 remedies before seeking relief under 28 U.S.C. section 2241. See
17 Laing v. Ashcroft, 370 F.3d 994, 997 (9th Cir. 2004); Castro-Cortez v.
18 Immigration and Naturalization Serv., 239 F.3d 1037, 1047 (9th Cir.
19 2001), abrogated on other grounds, Fernandez-Vargas v. Gonzales, 548
20 U.S. 30 (2006) ("[S]ection [2241] does not specifically require
21 petitioners to exhaust direct appeals before filing petitions for
22 habeas corpus. However, we require, as a prudential matter, that
23 habeas petitioners exhaust available judicial and administrative
24 remedies before seeking relief under § 2241." (citation and footnote
25 omitted)); see also Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990),
26 overruled on other grounds, Reno v. Koray, 515 U.S. 50 (1995)
27 (discussing same).

1 Courts have discretion to waive prudential exhaustion
2 requirements where "administrative remedies are inadequate or not
3 efficacious, pursuit of administrative remedies would be a futile
4 gesture, irreparable injury will result, or the administrative
5 proceedings would be void." Laing, 370 F.3d at 1000 (quoting S.E.C.
6 v. G.C. George Sec., Inc., 637 F.2d 685, 688 (9th Cir. 1981) (internal
7 quotations omitted). A "key consideration" in exercising such
8 discretion is whether "relaxation of the requirement would encourage
9 the deliberate bypass of the administrative scheme." Laing, 370 F.3d
10 at 1000 (quoting Montes v. Thornburgh, 919 F.2d 531, 537 (9th Cir.
11 1990) (internal quotations omitted). Where administrative exhaustion
12 may allow an agency an opportunity to remedy its mistakes before being
13 haled into court, exhaustion is appropriate. See McCarthy v. Madigan,
14 503 U.S. 140, 145 (1992). However, where the agency has predetermined
15 an issue before it, exhaustion would be futile and should be excused.
16 Id. at 148.

17
18 Here, Petitioner does not claim to have exhausted his
19 administrative remedies concerning the Bureau's most recent placement
20 decision for Petitioner under the Bureau's new policies. Rather,
21 Petitioner maintains there is no need to file a claim for
22 administrative relief because, even under the new policies, the Bureau
23 has negatively predetermined the issue concerning placements of up to
24 twelve months, so exhaustion allegedly would be futile in all cases.
25 See Traverse, p. 2.

26
27 Petitioner assumes what he wishes to prove, and does so based on
28 pure speculation. This Court should not assume that the Bureau

1 falsely has vowed to give prisoners individualized consideration for
2 up to twelve months of CCC placement and then merely has pretended to
3 do so while actually continuing to apply the Bureau's now discredited
4 six-month categorical limitation. See Withrow v. Larkin, 421 U.S. 35,
5 47 (1975) (there exists "a presumption of honesty and integrity in
6 those serving as [administrative] adjudicators").

7
8 If Petitioner pursues his new claim administratively, the Bureau
9 could remedy any alleged mistakes in implementing its new procedures.
10 At a minimum, administrative exhaustion would further develop the
11 record concerning the Bureau's most recent decision regarding
12 Petitioner and the existence or nonexistence of the six-month policy
13 Petitioner contends is still in force. There is no proof in the
14 record that the Bureau would fail honestly to respond to Petitioner's
15 pursuance of administrative remedies. Under the circumstances, this
16 Court should not excuse the exhaustion requirement with respect to
17 Petitioner's new claim.⁹ Cf. Miller v. Whitehead, 527 F.3d 752, 757-
18 58 (8th Cir. 2008) (no cause for relief where petitioner did not
19 provide any evidence that the warden failed to consider relevant
20 statutory factors or acted other than in good faith in reaching CCC
21 placement decision).

22
23 **RECOMMENDATION**
24

25
26 ⁹ As a practical matter, because Petitioner is now within
27 eleven months of release and only five months from being placed
28 in a CCC, his most timely remedy may come from further
administrative review. If, after exhaustion, Petitioner remains
dissatisfied, the Court could entertain another habeas petition
on an accelerated basis, if appropriate.

1 For all the foregoing reasons, IT IS RECOMMENDED that the Court
2 issue an Order: (1) approving and adopting this Report and
3 recommendation; and (2) directing that Judgment be entered denying and
4 dismissing the Petition without prejudice.

5
6 DATED: November 14, 2008.

7
8 _____/S/_____
9 CHARLES F. EICK
10 UNITED STATES MAGISTRATE JUDGE
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1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

XAVIER MONIQUE FIELDS,)	NO. ED CV 08-426-VAP(E)
)	
Petitioner,)	
)	
v.)	ORDER ADOPTING FINDINGS,
)	
JOSEPH WOODRING, Warden,)	CONCLUSIONS AND RECOMMENDATIONS
)	
Respondent.)	OF UNITED STATES MAGISTRATE JUDGE
)	
_____)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the
Petition, all of the records herein and the attached Report and
Recommendation of United States Magistrate Judge. The Court approves
and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Judgment be entered denying and dismissing
the Petition without prejudice.

///
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///
///

1 IT IS FURTHER ORDERED that the Clerk serve copies of this
2 Order, the Magistrate Judge's Report and Recommendation and the
3 Judgment herein by United States mail on Petitioner and counsel for
4 Respondent.

5
6 LET JUDGMENT BE ENTERED ACCORDINGLY.

7
8 DATED: _____, 2008.

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11 _____
12 VIRGINIA A. PHILLIPS
13 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

XAVIER MONIQUE FIELDS,) NO. ED CV 08-426-VAP(E)
)
) Petitioner,)
)
) v.) JUDGMENT
)
) JOSEPH WOODRING, Warden,)
)
) Respondent.)
 _____)

Pursuant to the Order Adopting Findings, Conclusions and
Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition is denied and dismissed
without prejudice.

DATED: _____, 2008.

VIRGINA A. PHILLIPS
UNITED STATES DISTRICT JUDGE