

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11	DAN PIZARRO,	)	1:06-CV-01820 OWW NEW (DLB) HC
12	Petitioner,	)	
13	v.	)	ORDER TO ENTER JUDGMENT AND
14	DENNIS SMITH,	)	CLOSE CASE
15	Respondent.	)	

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On January 22, 2007, this Court granted the petition for writ of habeas corpus. Respondent was ordered to consider the appropriateness of transferring Petitioner to a residential re-entry center ("RRC") in light of the factors set forth in 18 U.S.C. §§ 3621(b), not excluding any other factors deemed appropriate by the BOP, without reference to the BOP policy promulgated in December 2002 and without reference to the BOP's February 14, 2005, amendment to 28 C.F.R. § 570.21. Respondent was directed to make this determination within six months of the order.

On May 24, 2007. Respondent filed a verification of compliance and request for entry of judgment. Respondent has submitted a copy of the form "Institutional Referral for CCC Placement" which shows Petitioner was considered for transfer to an RRC. According to the form, it was determined on May 16, 2007, that Petitioner would spend between 150-180 days in an RRC.

1 On June 6, 2007, Petitioner filed an opposition to Respondent's notice. Petitioner complains  
2 an evaluation was not completed by Respondent in compliance with the Court's order, and his  
3 argument appears to have merit. As Petitioner points out, the language "too soon to evaluate"  
4 appears on the form where the "CMC" determined whether or not he/she "recommend[s] the inmate  
5 be considered for CCC placement and clearance be granted by the Warden." Based on this language,  
6 it seems the evaluation was not conducted in compliance with the Court's order. The substance of  
7 the entire order granting the petition was that BOP policy changes and regulations ran contrary to and  
8 were an impermissible construction of 18 U.S.C. § 3621. The Court ruled that the BOP retained  
9 discretion under 18 U.S.C. § 3621 to transfer an inmate to an RRC *at any time*. If the evaluator  
10 considered Petitioner's case to be "too soon to evaluate," then obviously the evaluator did not  
11 understand he/she had the discretion to consider Petitioner for an immediate transfer to an RRC.

12 **ORDER**

13 Accordingly, IT IS HEREBY ORDERED that Respondent RECONSIDER within fourteen  
14 (14) days of this Order whether Petitioner should be transferred to an RRC. In conducting this  
15 reconsideration, Respondent is DIRECTED to comply with the Order Granting the Petition of  
16 January 22, 2007. Respondent is advised that failure to comply with the Court's Order may result in  
17 sanctions pursuant to Local Rule 11-110 and Fed. R. Civ. P. § 11.

18 IT IS SO ORDERED.

19 **Dated: June 13, 2007**

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE