

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

EASTERN DISTRICT OF CALIFORNIA

10

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.)

16

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

19 On January 22, 2007, this Court granted the petition for writ of habeas corpus. Respondent
20 was ordered to consider the appropriateness of transferring Petitioner to a residential re-entry center
21 (“RRC”) in light of the factors set forth in 18 U.S.C. §§ 3621(b), not excluding any other factors
22 deemed appropriate by the BOP, without reference to the BOP policy promulgated in December
23 2002 and without reference to the BOP’s February 14, 2005, amendment to 28 C.F.R. § 570.21.
24 Respondent was directed to make this determination within six months of the order.

25 On May 24, 2007. Respondent filed a verification of compliance and request for entry of
26 judgment. Respondent has submitted a copy of the form “Institutional Referral for CCC Placement”
27 which shows Petitioner was considered for transfer to an RRC. According to the form, it was
28 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.

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.

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE