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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID LEE KENNEDY,

CV F 07-1055 OWW SMS HC

Petitioner,

ORDER REQUIRING RESPONDENT TO
SUBMIT ANSWER ADDRESSING MERITS
OF PETITION

v.

ORDER REQUIRING RESPONDENT TO
SUBMIT NOTICE OF APPEARANCE

ALBERTO GONZALES,

Respondent.

ORDER DIRECTING CLERK OF COURT TO
SERVE DOCUMENTS

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

Writ of habeas corpus relief extends to a person in custody under the authority of the United States. See 28 U.S.C. § 2241. While a federal prisoner who wishes to challenge the validity or constitutionality of his conviction must bring a petition for writ of habeas corpus under 28 U.S.C. § 2255, a petitioner challenging the manner, location, or conditions of that sentence's execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241. See, e.g., Capaldi v. Pontesso, 135 F.3d 1122, 1123 (6th Cir. 1998); United States v. Tubwell, 37 F.3d 175, 177 (5th Cir. 1994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2nd Cir. 1991); United States v. Jalili, 925 F.2d 889, 893-94 (6th Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3rd Cir. 1991); United States v. Hutchings, 835 F.2d 185, 186-87 (8th Cir. 1987); Brown v. United States, 610 F.2d 672, 677 (9th Cir. 1990). A petitioner filing a petition for writ of habeas corpus under 28 U.S.C. § 2241 must file the petition in the judicial district of the petitioner's custodian. Brown, 610 F.2d at 677.

1 In this case, Petitioner contends that he has served the full sentence on both Counts 1 and
2 2 in federal custody, and the U.S. Parole Commission failed to have a revocation hearing within
3 ninety days. Petitioner is challenging the execution of his sentence rather than the imposition of
4 that sentence. Thus, his petition is proper under 28 U.S.C. § 2241. In addition, because
5 Petitioner is currently incarcerated at Kern County Jail, in Bakersfield, California, which is
6 within the Eastern District of California, this Court has jurisdiction to proceed to the merits of the
7 petition. See U.S. v. Giddings, 740 F.2d 770, 772 (9th Cir.1984).

8 **ORDER**

9 Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases,¹ the Court
10 **HEREBY ORDERS:**

- 11 1. Respondent SHALL FILE an ANSWER addressing the merits of the Petition
12 within **SIXTY (60)** days of the date of service of this order. Respondent shall
13 include with the response any and all transcripts or other documents relevant to
14 the resolution of the issues presented in the petition, including copies of appeals
15 taken by a prisoner within the prison and before the Bureau of Prisons.² Rule 5 of
16 the Rules Governing Section 2254 Cases. The Court recognizes that Counsel on
17 behalf of the Government and/or the Institution³ may wish to respond on separate
18 issues raised in the Petition. However, the Court will accept only one (1)
19 “Answer.” Such Answer SHALL CONTAIN all argument with respect to all of
20

21 ¹The Rules Governing Section 2254 Cases may be applied to petitions for writ of habeas corpus other than
22 those brought under § 2254 at the Court’s discretion. See, Rule 1 of the Rules Governing Section 2254 Cases. Civil
23 Rule 81(a)(2) provides that the rules are “applicable to proceedings for . . . habeas corpus . . . to the extent that the
practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the
practice of civil actions.” Fed. R. Civ. P 81(a)(2).

24 ²In the event Respondent is unable to obtain a photocopy of prisoner appeals and intends to file a
25 computerized printout of the disposition, Respondent must also provide the Court with translation of the internal
26 codes used in the printout. To the extent the claims concern prison policy and procedure not accessible to the Court
by electronic means (Westlaw/Lexis), Respondent must provide the Court with a photocopy of all prison policies
and/or procedures at issue in the case. This includes any *internal* prison policies of which a prisoner complains and
is subject to.

27 ³Counsel for the “Institution” means private Counsel representing contracted facilities such as Taft
28 Correctional Institution, (Wackenhut Corrections Corporation), or California City Correctional Center (Corrections
Corporation of America).

1 the issues raised in the Petition, whether formulated by Counsel for the
2 Government or the Institution.

3 2. Respondent SHALL FILE a Notice of Appearance within **TWENTY (20)** days of
4 the date of service of this Order. The Notice SHALL indicate the name of the
5 individual(s) who will be representing the Government and/or the Institution. The
6 Notice is necessary to ensure that the appropriate counsel for Respondent is being
7 served by the Court. The submission of the Notice of Appearance will terminate
8 Court service on those listed in paragraph 4.

9 3. Petitioner's TRAVERSE, if any, is due on or before **THIRTY (30)** days from the
10 date Respondent's Answer is filed.

11 4. The Clerk of the Court SHALL serve a copy of this Order along with a copy of
12 Petitioner's Petition and all exhibits on the Office of the United States Attorney
13 for the Eastern District of California, an agent for the appropriate Correctional
14 Institution if applicable, and the United States Bureau of Prisons.⁴

15 All motions shall be submitted on the record and briefs filed without oral argument unless
16 otherwise ordered by the Court. Local Rule 78-230(h). All provisions of Local Rule 11-110 are
17 applicable to this order.

18 IT IS SO ORDERED.

19 **Dated: July 31, 2007**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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⁴ Respondent is advised that a scanned copy of the petition for writ of habeas corpus is available through the Court's Electronic Case Filing System ("CM/ECF").