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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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|-----------------|---|------------------------------------|
| GREGORY EDISON, |) | 1:08-cv-01919-JMD-HC |
| |) | |
| Petitioner, |) | |
| |) | ORDER DISMISSING PETITION FOR WRIT |
| v. |) | OF HABEAS CORPUS WITHOUT |
| |) | PREJUDICE |
| NEIL ADLER, |) | |
| |) | ORDER DIRECTING CLERK TO ENTER |
| Respondent. |) | JUDGEMENT |

Petitioner Gregory Edison (“Petitioner”) is a federal prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Procedural History

Petitioner was convicted of various offenses and sentenced to one-hundred ninety-eight months incarceration on September 12, 2005. (Answer, Ex. 1). Petitioner was received into the custody of the Federal Bureau of Prisons (BOP) on October 20, 2005. (Id.).

Petitioner filed the instant petition for writ of habeas corpus on December 15, 2008. (Doc. 1). Respondent filed an answer to the petition on June 8, 2009. (Doc. 11). Petitioner filed a traverse on June 16, 2009. (Doc. 12).

Both Petitioner and Respondent have consented to Magistrate jurisdiction pursuant to 28 U.S.C. § 636(c)(1). (Docs. 2, 9).

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1 **Factual History**

2 The instant petition does not challenge Petitioner’s conviction or sentence. Rather, Petitioner
3 contends that the Bureau of Prisons (BOP) is executing Petitioner’s sentence in a way that violates
4 federal law because the BOP refuses to consider Petitioner for twelve-month placement in a halfway
5 house (“RRC”).¹ Accordingly, the factual background relevant to Petitioner’s claim concerns the
6 BOP’s response to Petitioner’s request for placement in an RRC.

7 Petitioner contends that “due to BOP regulation [sic], Petitioner has not received
8 consideration for placement in a [RRC] even though an assessment under 18 U.S.C. 3621(b) allows
9 BOP to designate inmates to [RRC] facilities at any time.” (Pet. at 2). Petitioner references
10 “Attachment A” in support of his allegation that the BOP “refuses” to assess him for placement in an
11 RRC. (Pet. at 2). The only documents appended to the petition are a proof of service and a proposed
12 order. It appears Petitioner has not requested that the BOP assess him for RRC placement. (*See id.*)
13 Petitioner contends that pursuing his claim with prison administrators would be futile. (Traverse at
14 4).

15 **Discussion**

16 **I. Jurisdiction and Venue**

17 Writ of habeas corpus relief extends to a person in custody under the authority of the United
18 States. *See* 28 U.S.C. § 2241. While a federal prisoner who wishes to challenge the validity or
19 constitutionality of his conviction must bring a petition for writ of habeas corpus pursuant to 28
20 U.S.C. § 2255, a petitioner challenging the manner, location, or conditions of that sentence’s
21 execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241. *See, e.g., Porter v.*
22 *Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001) (discussing distinction between sections 2255 and
23 2241). Unlike section 2255, section 2241 does not contain language limiting jurisdiction under
24 section 2241 to petitioners who are “claiming the right to be released.” 28 U.S.C. § 2255; *compare*
25 *United States v. Thiele*, 314 F.3d 399, 401 (9th Cir. 2002) (challenge to restitution order not
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27 ¹ Residential re-entry centers (“RRC’s”), colloquially known as “half-way houses,” were formerly referred to as “CCC’s”
28 under BOP regulations. *See, e.g., Rodriguez v. Smith*, 541 F.3d 1180, 1181 n.1 (9th Cir. 2008). Petitioner employs the
acronym CCC throughout the petition.

1 cognizable under section 2255 because petitioner was not claiming right to be released) *with*
2 *Montano-Figueroa v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (challenge to timing and amount
3 of fine payments cognizable under section 2241’s execution clause). Accordingly, section 2241 may
4 be used to challenge the execution of a prisoner’s sentence even where the prisoner does not seek
5 release or to shorten the duration of his confinement. *See, e.g., Rodriguez*, 541 F.3d at 1182; *Montez*
6 *v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000) (entertaining petitioner’s challenge to his transfer to
7 a private prison as a challenge to the execution of his sentence pursuant to section 2241); *see also*
8 *Montano-Figueroa*, 162 F.3d at 549 (reaching the merits of petitioner’s section 2241 challenge to
9 amount and timing of fine payments); *United States v. Lemoine*, 546 F.3d 1042, 1046 (9th Cir. 2008)
10 (entertaining section 2241 challenge to restitution schedule). Federal courts have jurisdiction to
11 entertain challenges to the BOP’s refusal to transfer a prisoner to an RRC facility pursuant to section
12 2241. *See Rodriguez*, 541 F.3d at 1182 (affirming district court’s grant of habeas relief under section
13 2241 to prisoner challenging BOP’s refusal to consider prisoner for transfer to RRC facility).²

14 Petitioner is currently incarcerated at Taft Correctional Institution, which is within the
15 territorial jurisdiction of the Eastern District of California. 28 U.S.C. § 84. Accordingly, the Eastern
16 District is the appropriate venue for Petitioner’s action. 28 U.S.C. § 2241(c)(3).

17 **II. Exhaustion**

18 Respondent affirmatively asserts exhaustion as a grounds for dismissal. (Answer at 12-16).

19 Respondent proffers a sworn declaration from a Correctional Programs Secretary with the BOP
20 stating that Petitioner has not exhausted his administrative remedies. (Answer, Ex. 5).

21 Petitioner does not allege that he has ever requested an assessment for placement in an RRC, and
22 Petitioner apparently concedes he has never done so. (*See* Traverse at 4) (raising futility exception in
23 response to Respondent’s exhaustion defense).

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25 ² Respondent’s contention that the Court lacks subject matter jurisdiction over Petitioner’s claim is erroneous. None of the
26 cases Respondent cites in support of its jurisdictional argument states that a habeas petition must challenge the fact or duration
27 of confinement in order for federal courts to have jurisdiction over the cause; in fact, several of the cases cited by Respondent
28 throughout its brief foreclose Respondent’s erroneous contention. *See Rodriguez*, 541 F.3d at 1182 (affirming grant of relief
in action challenging BOP’s refusal to transfer inmate to an RRC); *see also Preiser v. Rodriguez*, 411 U.S. 475, 486 (1973)
(acknowledging appropriateness of habeas actions for cases in which prisoners are “unlawfully confined in the wrong
institution”) (citing *In re Bonner*, 151 U.S. 242 (1894)).

1 Federal prisoners must exhaust their administrative remedies before bringing a habeas
2 petition pursuant to section 2241.³ *E.g., Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004);
3 *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986). Under the doctrine of exhaustion, “no one is
4 entitled to judicial relief for a supposed or threatened injury until the prescribed remedy has been
5 exhausted.” *Laing*, 370 F.3d at 998 (quoting *McKart v. United States*, 395 U.S. 185, 193 (1969)). If
6 a petitioner has not properly exhausted his claims, the district court, in its discretion, may either
7 “excuse the faulty exhaustion and reach the merits, or require the petitioner to exhaust his
8 administrative remedies before proceeding in court.” *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir.
9 1990). Exhaustion is not required if pursuing those remedies would be futile. *Terrell v. Brewer*, 935
10 F.2d 1015, 1019 (9th Cir. 1991).

11 Petitioner’s conclusory allegation that exhaustion would be futile in his case is insufficient to
12 justify excusing the exhaustion requirement. (Traverse at 4). Respondent correctly notes that
13 pursuant to current BOP policy an inmate may request an assessment for RRC placement at any time.
14 (Answer, Ex. 4). To the extent Petitioner is entitled to relief, the appropriate form of relief would be
15 an order directing the BOP to assess Petitioner for RRC placement consistent with its policies and
16 governing statutes. Petitioner may obtain the same relief this Court could afford by simply
17 requesting consideration for RRC placement, and, in the event his request is denied, by pursuing the
18 administrative remedies set forth in the Code of Federal Regulations. *See* 28 C.F.R. §§ 542 *et seq.*
19 The Court must presume that, if Petitioner pursues his administrative remedies, the BOP will
20 consider his request consistent with its policies and governing statutes. *See, e.g., Garner v. Jones*,
21 529 U.S. 244, 256 (2000) (“Absent a demonstration to the contrary, we presume the Board follows

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25 ³ Respondent contends that the Prisoner Litigation Reform Act (PLRA) applies to Petitioner’s claim. The Court need not
26 decide whether the PLRA applies to the instant petition, as the Court finds that the well-settled exhaustion requirement
27 applicable to habeas corpus petitions under section 2241 provides an adequate basis for dismissing this action. The Court
28 notes that Respondent’s position appears untenable, as section 1997e applies only to actions “brought with respect to prison
conditions.” 42 U.S.C. § 1997e(a). Despite Respondent’s characterization of Petitioner’s claim as a challenge to “conditions
of confinement,” Petitioner’s claim is best understood as a challenge to the execution of his sentence. *See Montez*, 208 F.3d
at 865 (characterizing petitioner’s challenge to his transfer to a private prison as a challenge to the execution of his sentence).
Petitioner challenges the application of BOP regulations to him, not the conditions of his place of incarceration.

1 its statutory commands and internal policies in fulfilling its obligations”).⁴ Because Petitioner has an
2 adequate administrative remedy that has not been exhausted, the Court, in its discretion, finds that
3 the petition should be dismissed and that Petitioner should seek to exhaust his administrative
4 remedies before proceeding in federal court. *See Rison*, 895 F.2d at 535.

5 **Order**

6 For the foregoing reasons, IT IS ORDERED that:

- 7 1) The petition for writ of habeas corpus is DISMISSED, without prejudice; and
8 2) The Clerk of Court is DIRECTED to enter judgment.

9 IT IS SO ORDERED.

10 **Dated: December 16, 2009** /s/ John M. Dixon
11 UNITED STATES MAGISTRATE JUDGE

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⁴ In *Garner*, the Supreme Court applied this presumption to a state’s parole board, citing *United States ex rel. Accardi v.*
28 *Shaughnessy*, 347 U.S. 260, 266-268 (1954), an immigration case, as authority for the presumption. Accordingly, the Court
reads *Garner* as stating a general presumption that an agency is presumed to act consistent with its governing regulations.