

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NARCIJO GALLEGOS MORALES,

1:10-cv-00439-DLB (HC)

Petitioner,

ORDER DENYING RESPONDENT’S  
MOTION TO DISMISS; DIRECTING CLERK  
OF COURT TO CHANGE NAME OF  
RESPONDENT, AND DIRECTING  
RESPONDENT TO ANSWER TO PETITION  
WITHIN THIRTY DAYS FROM THE DATE  
OF SERVICE

v.

B. WAGNER,

Respondent.

\_\_\_\_\_ /

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge. Local Rule 305(b).

BACKGROUND

Petitioner is serving a 70-month sentence for convictions imposed by the United States District Court for the Eastern District of California, Sacramento Division. In the instant petition, Petitioner does not challenge his underlying conviction or sentence; rather, he is challenging a disciplinary sanction imposed in September of 2009 which resulted in the loss of good time credits.

On May 20, 2010, Respondent filed a motion to dismiss for lack of personal jurisdiction. Petitioner did not file an opposition.

///

///



1 whether petitioner could receive credit for time spent in state custody); Brown, 610 F.2d at 677  
2 (challenging content of inaccurate pre-sentence report used to deny parole). A petitioner filing a  
3 petition for writ of habeas corpus under 28 U.S.C. § 2241 must file the petition in the judicial  
4 district of the petitioner's custodian. Brown, 610 F.2d at 677. At the time the instant petition  
5 was filed, Petitioner was in the custody of the California Correctional Institution in Taft,  
6 California, which is located within the jurisdiction of this Court. 28 U.S.C. §§ 2254(a); 2241(d).

7 III. Personal Jurisdiction

8 There is not dispute that at the time Petitioner filed the instant petition for writ of habeas  
9 corpus he was incarcerated at California Correctional Institution in California City, which is  
10 within the jurisdiction of this Court. However, on April 22, 2010, Petitioner was transferred to  
11 Gilmer Federal Correctional Institution in Glenville, West Virginia.

12 Under clearly established law, jurisdiction attaches at the time of the initial filing of a  
13 habeas corpus petition, and it is not destroyed by a transfer of the petitioner to another custodial  
14 location. Ahrens v. Clark, 335 U.S. 188, 193 (1948), overruled on other grounds in Braden v.  
15 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 (1973), citing Ex parte Mitsuye  
16 Endo, 323 U.S. 283, 305 (1944); Francis v. Rison, 894 F.2d 353, 354 (9<sup>th</sup> Cir. 1990); Thus, at  
17 the time Petitioner filed the instant petition, this Court had jurisdiction over this petition, and  
18 such jurisdiction is not defeated by Petitioner's subsequent transfer. Respondent relies primarily  
19 on Rumsfeld v. Padilla, 542 U.S. 426 (2004), to argue that "the proper respondent to a habeas  
20 petition is the person who has custody over the petitioner." Id. at 434.<sup>1</sup> However, Rumsfeld v.  
21 Padilla, dealt with a challenge to the petitioner's present physical custody within the United  
22 States, not as here, a challenge to the execution of a federal sentence by way of forfeiture of  
23 good-time credits.

24 ///

25 ///

---

27 <sup>1</sup> To the extent Respondent cites to decisions of this Court, such decisions are not binding. In any event, the  
28 Findings and Recommendation in Case Nos. 1:07-cv-01563-AWI-TAG HC; 1:07-cv-00966-AWI-TAG HC were  
both withdrawn.

1 Respondent submits that California City Correctional Center is operated by Corrections  
2 Corporation of America under a contract with the federal government to house criminal  
3 prisoners. However, this contract has not been renewed by the government and is set to expire  
4 on September 30, 2010. In this instance, Petitioner was transferred to Gilmer Federal  
5 Correctional Institution because his release date is not until December 7, 2010, which is after the  
6 time that the contract between the Bureau of Prisons and the Corrections Corporation of America  
7 is set to expire. Because the disposition of the instant petition may not be resolved prior to the  
8 expiration of the contract between CCCC and the Bureau of Prisons, under Rule 25(d) of the  
9 Federal Rules of Civil Procedure, the Court will substitute the Director of the Bureau of Prisons-  
10 Harley G. Lappin, who is responsible for the oversight and management of all BOP institutions,  
11 as Respondent. See [www.bop.gov/about/co.director bio.jsp](http://www.bop.gov/about/co.director_bio.jsp).<sup>2</sup>

12 ORDER

13 Based on the foregoing, it is HEREBY ORDERED that:

- 14 1. Respondent's motion to dismiss is DENIED; and
- 15 2. The Clerk of Court DIRECTED to substitute the Director of the Bureau of  
16 Prisons, Harley G. Lappin, as the Respondent in this action;
- 17 3. Within thirty (30) days from the date of service of this order Respondent shall file  
18 an answer to the petition;
- 19 4. Within thirty (30) days after Respondent files an answer, Petitioner may file a  
20 traverse; and
- 21 5. All other provisions of the Court's March 18, 2010, order to respond remain in  
22 full force and effect.

23 IT IS SO ORDERED.

24 **Dated: June 28, 2010**

**/s/ Dennis L. Beck**  
25 UNITED STATES MAGISTRATE JUDGE

26 <sup>2</sup> The Court takes judicial notice of the Federal Bureau of Prisons website at [www.bop.gov/about/index.jsp](http://www.bop.gov/about/index.jsp).  
27 O'Toole v. Northrop Grumman Corp., 499 F.3d 1218, 1225 (10th Cir. 2007) ("It is not uncommon for courts to take  
28 judicial notice of factual information found on the world wide web."); Kitty Hawk Aircargo, Inc. v. Chao, 418 F.3d  
435, 457 (5th Cir. 2005) (information on government agency websites often found to be proper subjects for judicial  
notice). Gilmer Federal Institution is listed as one of the 115 federal institution under Director Lappin's control.