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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DAMIEN ANTHONY ANDREWS,

1:10-cv-00895-DLB (HC)

Petitioner,

ORDER REQUIRING RESPONDENT TO  
SUBMIT ANSWER ADDRESSING MERITS  
OF PETITION

v.

NEIL H. ADLER, et.al.,

ORDER REQUIRING RESPONDENT TO  
SUBMIT NOTICE OF APPEARANCE

Respondents.

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 (6<sup>th</sup> Cir. 1998); United States v. Tubwell, 37 F.3d 175, 177 (5<sup>th</sup> Cir. 1994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2<sup>nd</sup> Cir. 1991); United States v. Jalili, 925 F.2d 889, 893-94 (6<sup>th</sup> Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3<sup>rd</sup> Cir. 1991); United States v. Hutchings, 835 F.2d 185, 186-87 (8<sup>th</sup> Cir. 1987); Brown v. United States, 610 F.2d 672, 677 (9<sup>th</sup> 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

1 petitioner's custodian. Brown, 610 F.2d at 677.

2 In this case, Petitioner contends that the Bureau of Prisons (BOP) has wrongfully denied  
3 him a sentencing reduction for completion of the BOP's Residential Drug Treatment Program.  
4 Petitioner is challenging the execution of his sentence rather than the imposition of that sentence.  
5 Thus, his petition is proper under 28 U.S.C. § 2241. In addition, because Petitioner is currently  
6 incarcerated at Taft Correctional Institute ("TCI"), and TCI is within the Eastern District of  
7 California, this Court has jurisdiction to proceed to the merits of the petition. See U.S. v.  
8 Giddings, 740 F.2d 770, 772 (9th Cir.1984).

9 **ORDER**

10 Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases,<sup>1</sup> the Court  
11 HEREBY ORDERS:

- 12 1. Respondent SHALL FILE an ANSWER addressing the merits of the Petition  
13 within **SIXTY (60)** days of the date of service of this order. Respondent shall  
14 include with the response any and all transcripts or other documents relevant to  
15 the resolution of the issues presented in the petition, including copies of appeals  
16 taken by a prisoner within the prison and before the Bureau of Prisons.<sup>2</sup> Rule 5 of  
17 the Rules Governing Section 2254 Cases. The Court recognizes that Counsel on  
18 behalf of the Government and/or the Institution<sup>3</sup> may wish to respond on separate  
19 issues raised in the Petition. However, the Court will accept only one (1)

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21 <sup>1</sup> The 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(b) of the Rules Governing Section 2254 Cases.  
23 Civil Rule 81(a)(4) provides that the rules "apply to proceedings for habeas corpus . . . to the extent that the practice  
in such proceedings is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules  
Governing 2255 Cases; and has previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4).

24 <sup>2</sup>In 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 <sup>3</sup>Counsel for the "Institution" means private Counsel representing contracted facilities such as Taft  
28 Correctional Institution, (Management & Training Corporation), or California City Correctional Center (Corrections  
Corporation of America).

1 “Answer.” Such Answer SHALL CONTAIN all argument with respect to all of  
2 the issues raised in the Petition, whether formulated by Counsel for the  
3 Government or the Institution.

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

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

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

16 All motions shall be submitted on the record and briefs filed without oral argument unless  
17 otherwise ordered by the Court. Local Rule 230(1). All provisions of Local Rule 110 are  
18 applicable to this order.

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20 IT IS SO ORDERED.

21 **Dated: June 4, 2010**

22 /s/ Dennis L. Beck  
23 UNITED STATES MAGISTRATE JUDGE  
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