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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COREY BURGESS,)	1:12-cv-00777-AWI-SKO-HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS TO
)	DENY PETITIONER’S MOTIONS FOR AN
v.)	ORDER TO SHOW CAUSE RE: TRANSFER
)	(DOCS. 35, 36)
)	
HECTOR ALFONZO RIOS,)	<u>OBJECTIONS DEADLINE:</u>
)	<u>THIRTY (30) DAYS</u>
Respondents.)	
)	
)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court are Petitioner’s motions to direct Respondent to show cause why it was necessary to transfer Petitioner, which were filed on October 29, 2012, and November 6, 2012. The two motions are substantively identical in all respects. Petitioner served his second motion on the Respondent. (Doc. 36, 2.) Respondent did not file any opposition.

I. Background

Petitioner’s petition was filed on May 11, 2012. On May 30,

1 2012, the Court directed Respondent to file an answer. On August
2 30, 2012, Respondent answered the petition. Petitioner filed a
3 traverse on September 24, 2012. In the instant motions,
4 Petitioner seeks this Court to direct Respondent to show cause
5 why it is necessary to transfer Petitioner. After the filing of
6 the instant motions, Petitioner filed notices of two changes of
7 address which indicated that he had ultimately been transferred
8 to a federal correctional institution in Florence, Colorado.

9 II. Petitioner's Motion for Injunctive Relief

10 Petitioner's petition addresses his sentence computation
11 and security classification. (Ans., doc. 28, 1.) His motions
12 address the necessity of transferring Petitioner and seek an
13 order directing the Respondent to show cause why any such
14 transfer is necessary. It thus appears that Petitioner is
15 seeking injunctive relief against the warden of his previous
16 institution of confinement in connection with the choice of
17 Petitioner's custodial institution. It appears that Petitioner
18 is challenging the conditions of his confinement, and not the
19 fact or duration of that confinement.

20 A federal court may not entertain an action over which it
21 has no jurisdiction. Hernandez v. Campbell, 204 F.3d 861, 865
22 (9th Cir. 2000). Relief by way of a writ of habeas corpus
23 extends to a person in custody under the authority of the United
24 States if the petitioner can show that he is "in custody in
25 violation of the Constitution or laws or treaties of the United
26 States." 28 U.S.C. § 2241(c)(1) & (3). Specifically, a habeas
27 corpus action is the proper mechanism for a prisoner to challenge
28 the fact or duration of his confinement. Preiser v. Rodriguez,

1 411 U.S. 475, 485 (1973); Badea v. Cox, 931 F.2d 573, 574 (9th
2 Cir. 1991); Tucker v. Carlson, 925 F.2d 330, 332 (9th Cir. 1990).
3 However, to the extent that the prisoner seeks damages or
4 injunctive relief for civil rights violations, the prisoner's
5 claim or claims are properly brought in an action pursuant to
6 Bivens v. Six Unknown Named Narcotics Agents, 403 U.S. 388
7 (1971). See, Tucker v. Carlson, 925 F.2d at 332.

8 Petitioner seeks to challenge the conditions of his
9 confinement, and not the legality or duration of his confinement.
10 These particular claims are cognizable in a Bivens action rather
11 than in a petition for writ of habeas corpus. Further, the Court
12 notes that Petitioner's own submissions in this case reflect that
13 Petitioner has already been transferred. Thus, the Court can no
14 longer give any effective relief with respect to the transfer
15 anticipated by Petitioner because the transfer has already been
16 effected.

17 Petitioner's motions are thus essentially moot. A petition
18 for writ of habeas corpus is moot where a petitioner's claim for
19 relief cannot be redressed by a favorable decision of the court
20 issuing a writ of habeas corpus. Burnett v. Lampert, 432 F.3d
21 996, 1000-01 (9th Cir. 2005) (quoting Spencer v. Kemna, 523 U.S.
22 1, 7 (1998)). Mootness is jurisdictional. See, Cole v. Oroville
23 Union High School District, 228 F.3d 1092, 1098-99 (9th Cir.
24 2000). Thus, a moot petition must be dismissed because nothing
25 remains before the Court to be remedied. Spencer v. Kemna, 523
26 U.S. 1, 18 (1998).

27 To the extent that Petitioner seeks relief in the form of
28 orders to his previous custodian concerning transfer,

1 Petitioner's claim is moot and should be dismissed. Accordingly,
2 it will be recommended that the motion for injunctive relief be
3 denied.

4 III. Recommendation

5 In accordance with the foregoing, it is RECOMMENDED that
6 Petitioner's motion for injunctive relief be DENIED.

7 These findings and recommendations are submitted to the
8 United States District Court Judge assigned to the case, pursuant
9 to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of
10 the Local Rules of Practice for the United States District Court,
11 Eastern District of California. Within thirty (30) days after
12 being served with a copy, any party may file written objections
13 with the Court and serve a copy on all parties. Such a document
14 should be captioned "Objections to Magistrate Judge's Findings
15 and Recommendations." Replies to the objections shall be served
16 and filed within fourteen (14) days (plus three (3) days if
17 served by mail) after service of the objections. The Court will
18 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
19 636 (b)(1)(C). The parties are advised that failure to file
20 objections within the specified time may waive the right to
21 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
22 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 **Dated: January 8, 2013**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE