

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TONY EDWARD POWELL,

Plaintiff,

vs.

MADDEN, *et al.*,

Defendants.

Case No. 1:13-cv-00057-RRB

ORDER REGARDING
MOTION AT DOCKET 13

At Docket 13 Plaintiff Tony Edward Powell, a federal prisoner appearing *pro se*, filed a document entitled “Petition for ‘Emergency’ Preliminary Injunction.” Powell’s underlying Complaint arises out of acts that occurred while incarcerated at the United States Prison, Atwater, California. Powell is currently incarcerated at the Federal Correctional Institution, Tucson, Arizona. The instant matter pending before this Court arose out of Powell’s subsequent transfer from Atwater to Tucson. Although the time for responding thereto has lapsed, Defendants have not opposed Powell’s motion. Accordingly, the matter is submitted for decision on the moving papers.

Powell’s request to this Court is in two parts: (1) requesting that this Court order the Bureau of Prisons (“BOP”) to transfer him to a prison within an 100-mile radius of his home; and (2) BOP return to him his legal materials that were not transferred from Atwater to Tucson. The Court addresses these matters *in seriatim*.

1. Request for Transfer

Congress has delegated to the Bureau of Prisons the authority to determine the place where a federal prisoner will serve his or her sentence.¹ Where, as here, the action of the BOP is challenged on the basis that it violates BOP regulations, not a constitutional or statutory requirement, this Court lacks jurisdiction to review the decision of the BOP.²

Accordingly, Powell's request to order the BOP to transfer him to another prison facility is **DENIED**.

2. Return of Legal Materials

Powell alleges that at the time he was transferred from Atwater to Tucson, he packed his personal belongings, including his legal materials related to this lawsuit, and delivered them to responsible BOP employees at Atwater. According to Powell, he has not received these materials since his arrival at Tucson. It is not entirely clear from Powell's motion whether he has been advised by BOP that his personal property was improperly disposed of or whether his inquiries regarding the disposition of his personal property have gone without response. If improperly disposed of, there is no effective relief this Court may grant in this proceeding. On the other hand, if Powell has not been provided an appropriate, official response to his inquiry regarding the disposition of his personal property upon his transfer from Atwater to Tucson, this Court may order that BOP investigate and report on the disposition of Powell's personal property upon his transfer.

¹ 18 U.S.C. § 3621(b).

² *Reeb v. Thomas*, 636 F.3d 1224, 1228 (9th Cir. 2011).

Accordingly, Powell's request is **GRANTED** in part. The appropriate officials of the Bureau of Prisons are hereby directed to investigate the disposition of Powell's personal property upon his transfer from the United States Prison, Atwater, California, to the Federal Correctional Institution, Tucson, Arizona, and to report the results of that investigation to this Court, with a copy to Powell, not later than **March 7, 2014**.

IT IS SO ORDERED this 29th day of January, 2014.

S/ RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE