

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SAM PEREZ,  
Petitioner,  
v.

Case No. 1:14-cv-02052-LJO-SKO-HC  
ORDER TRANSFERRING CASE TO THE  
NORTHERN DISTRICT OF CALIFORNIA

MARION E. SPEARMAN, Warden,  
Respondent.

Petitioner is a state prisoner proceeding pro se and in forma pauperia with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. 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 is the petition, which was filed in the United States District Court for the Northern District of California on September 23, 2014, and was transferred to this Court on December 19, 2014.

The petition reflects that Petitioner is serving a six-year sentence imposed in the Fresno County Superior Court in June 2010. Petitioner is incarcerated at the Correctional Training Facility

1 (CTF) at Soledad, California, which is located in Monterey County.  
2 (Pet., doc. 1 at 1-2.) Thus, Petitioner is incarcerated within the  
3 Northern District of California. 28 U.S.C. § 84(a).

4 Petitioner challenges findings resulting from a prison  
5 disciplinary proceeding concerning Petitioner's possession of  
6 contraband (a wig) that occurred while Petitioner was incarcerated  
7 at the CTF. (Doc. 1-3 at 18-29.) Thus, the disciplinary violation  
8 and proceeding that form the basis of the instant petition occurred  
9 at the CTF in the Northern District.

10 Title 28 U.S.C. § 2241(d) provides as follows which respect to  
11 venue, jurisdiction, and transfer in a habeas proceeding pursuant to  
12 28 U.S.C. § 2254:

13 Where an application for a writ of habeas corpus  
14 is made by a person in custody under the judgment  
15 and sentence of a State court of a State which  
16 contains two or more Federal judicial districts,  
17 the application may be filed in the district court  
18 for the district wherein such person is in custody  
19 or in the district court for the district  
20 within which the State court was held which  
21 convicted and sentenced him and each of such  
district courts shall have concurrent jurisdiction  
to entertain the application. The district court  
for the district wherein such application is filed  
in the exercise of its discretion and in furtherance  
of justice may transfer the application to the  
other district court for hearing and determination.

22 Although venue is generally proper in either the district of  
23 the prisoner's confinement or the district of the convicting court's  
24 location, the preferred venue is the district of confinement where a  
25 petition challenges a disciplinary decision made in the district of  
26 the prisoner's confinement:

1       Venue in a habeas action is proper in either the district  
2       of confinement or the district of conviction. See 28  
3       U.S.C. § 2241(d). Federal courts in California  
4       traditionally have chosen to hear petitions challenging a  
5       conviction or sentence in the district of conviction. See  
6       Dannenberg v. Ingle, 831 F.Supp. 767, 768 (N.D.Cal. 1993);  
7       Laue v. Nelson, 279 F.Supp. 265, 266 (N.D.Cal. 1968).  
8       However, if the petition is directed to the manner in  
9       which a sentence is being executed, e.g., if it involves  
10      parole or time credit claims, the district of confinement  
11      is the preferable forum. See Habeas L.R. 2254-3(b)(2);  
12      Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989).  
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14      Brown v. Court of Appeals-Third District, No. C-11-3464 TEH (PR),  
15      2012 WL 368376, at \*1 (N.D.Cal. Feb. 3, 2012) (unpublished). A  
16      court should also consider traditional considerations of venue, such  
17      as the convenience of parties and witnesses and the interests of  
18      justice. Braden v. 30th Judicial Circuit Court of Kentucky, 410  
19      U.S. 484, 495 (1973).

20      Title 28 U.S.C. § 1406(a) provides that if venue is improper,  
21      the district court in which the case is filed shall dismiss the  
22      case, or if it is in the interest of justice, transfer the case to  
23      any district or division in which it could have been brought. Title  
24      28 U.S.C. § 1631 provides that if a civil action is filed in a court  
25      that lacks jurisdiction, the court shall, if it is in the interest  
26      of justice, transfer the action to any other court in which the  
27      action could have been brought when it was filed, and the action  
28      shall proceed as if it had been filed in the court to which it is  
transferred on the date on which it was actually filed in the  
transferring court.

29      The petition concerns not the propriety of Petitioner's  
30      conviction or sentence on his commitment offense, but rather the  
31      execution of his sentence. Even if this Court has jurisdiction, the

1 petition concerns execution of Petitioner's sentence. The Northern  
2 District, as the district in which the Petitioner is confined, would  
3 be the appropriate venue for the action to proceed. The Court finds  
4 that the interests of justice would be served by transferring the  
5 petition to the district of Petitioner's confinement pursuant to 28  
6 U.S.C. § 1406(a) and 2241(d).  
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8 Accordingly, it is ORDERED that the petition be transferred to  
9 the United States District Court for the Northern District of  
California.  
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12 IT IS SO ORDERED.  
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14 Dated: January 7, 2015

/s/ Sheila K. Oberto  
15 UNITED STATES MAGISTRATE JUDGE  
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