

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**MATTHEW ROWAN DAVIES,**  
Petitioner,  
  
v.  
**MICHAEL L. BENOVA, Warden,**  
Respondent.

**Case No. 1:15-cv-00275 MJS (HC)**  
**ORDER DENYING PETITION FOR WRIT**  
**OF HABEAS CORPUS**

Petitioner is a federal prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is represented by Cody Harris, Phillip Tassin, and Steven Ragland of Kecker & Van Nest, LLP. Respondent, Michael Benov, warden of Federal Correctional Institution, Taft is represented by Assistant United States Attorney Gregory Broderick. Both parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c). (ECF Nos. 10, 22.)

In July 2012, Petitioner was indicted on multiple counts of manufacturing, distributing, and conspiring to manufacture and distribute marijuana, a Schedule I controlled substance. (See United States v. Davies, E.D. Cal. Case No. 2:12-cr-0255 GEB.) On May 31, 2013, Petitioner plead guilty to ten of the above-referenced counts, and was sentenced to sixty (60) months in federal prison. (Id. at ECF Nos. 64, 98.) Petitioner's sole claim in the present petition is that the Rohrabacher-Farr Amendment to

1 the Consolidated and Further Continuing Appropriations Act of 2015 prohibits the Justice  
2 Department and the Bureau of Prisons from expending any funds with respect to the  
3 execution of Petitioner's sentence. 128 Stat. 2130, 2217, § 538 ("The Rohrabacher-Farr  
4 Amendment".)<sup>1</sup> Petitioner contends that the Rohrabacher-Farr Amendment forbids the  
5 Department of Justice, including the Bureau of Prisons, from expending appropriated  
6 funds to investigate, prosecute, or incarcerate individuals complying with state medical  
7 marijuana laws. Based on this interpretation of the Amendment, Petitioner argues that  
8 further funds should not be spent on his incarceration, and that he be released from  
9 custody.

10 Petitioner filed his petition on February 20, 2015. (Pet., ECF No. 1.) Respondent  
11 filed an answer to the petition on May 18, 2015. (Answer, ECF No. 14.) Petitioner filed a  
12 traverse on June 17, 2015.<sup>2</sup> (Traverse, ECF No. 15.) The matter stands ready for  
13 adjudication.

#### 14 **I. STANDARD OF REVIEW**

15 Writ of habeas corpus relief extends to a person in custody under the authority of  
16 the United States. See 28 U.S.C. § 2241. Writ of habeas corpus relief is available if a  
17 federal prisoner can show he is "in custody in violation of the Constitution or laws or  
18 treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner's claims are proper  
19 under 28 U.S.C. § 2241 and not 28 U.S.C. § 2255 because they concern the manner,  
20 location, or conditions of the execution of Petitioner's sentence and not the fact of  
21 Petitioner's conviction or sentence. Tucker v. Carlson, 925 F.2d 330, 331 (9th Cir. 1990)  
22 (stating that a challenge to the execution of a sentence is "maintainable only in a petition

---

23 <sup>1</sup> The language of the Rohrabacher-Farr Amendment contained in § 538 reads as follows: "None  
24 of the funds made available in this Act to the Department of Justice may be used, with respect to the  
25 States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia,  
26 Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota,  
27 Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode  
28 Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States  
from implementing their own State laws that authorize the use, distribution, possession, or cultivation of  
medical marijuana."

<sup>2</sup> Additionally, on June 24, 2015, United States Senator Mark Leno filed a motion for leave to file  
an amicus curiae brief in support of Petitioner. (ECF No. 18.) The motion is granted.

1 for habeas corpus filed pursuant to 28 U.S.C. § 2241"); Montano-Figueroa v. Crabtree,  
2 162 F.3d 548, 549 (9th Cir. 1998).

3 Further, Petitioner is challenging the execution of his sentence at Federal  
4 Correctional Institution in Taft, California. Petitioner is confined within the Fresno Division  
5 of the Eastern District of California, and the Court has jurisdiction over this petition. See  
6 Brown v. United States, 610 F.2d 672, 677 (9th Cir. 1990).

## 7 **II. REVIEW OF THE PETITION**

8 Before addressing the substantive merits of Petitioner's claim, the Court must  
9 determine whether Petitioner waived his rights to challenge his sentence through this  
10 habeas petition. Petitioner concedes that in entering the plea agreement, he waived the  
11 right to file a motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or  
12 sentence. (See Pet. at 13.) While Petitioner acknowledges that he waived his right to  
13 attack the legality of his conviction or imposed sentence, he asserts that he remains free  
14 to challenge the conditions of his confinement and that is what he undertakes to do here.  
15 (Id. at 13-14.) Petitioner argues that the Rohrabacher-Farr Amendment defunds  
16 Respondent's continued effort to confine Petitioner and thus that his challenge here goes  
17 to the conditions of his confinement, not his conviction or sentence. (Id.) Finally,  
18 attempting to clarify the argument in his traverse, Petitioner states that the waiver only  
19 limited his ability to attack the legality of his sentence, but did not affect his ability to  
20 attack the execution of his sentence, as he is doing here. (Traverse at 16.)

21 Respondent counters that the waiver was not so limited and applies to the present  
22 challenge to the execution of Petitioner's sentence. (Answer at 3-4.) Respondent further  
23 alleges that the present challenge is not jurisdictionally proper under 28 U.S.C. § 2241  
24 as it is a veiled attempt to collaterally attack Petitioner's sentence. (Id. at 4.) As  
25 previously stated in the order requiring Respondent to answer the petition, challenges to  
26 the execution of a sentence are proper under § 2241. See U.S. v. Giddings, 740 F.2d  
27 770, 772 (9th Cir. 1984); Porter v. Adams, 244 F.3d 1006, 1007 (9th Cir. 2001); Zavala  
28 v. Ives, 785 F.3d 367, 370 n.3 (9th Cir. 2015). Regardless, whether the present

1 challenge is appropriate under § 2241 is a separate and distinct inquiry as to whether  
2 Petitioner waived his right to challenge his sentence.

3 The Ninth Circuit has held that "[a] defendant's waiver of his appellate rights is  
4 enforceable if (1) the language of the waiver encompasses his right to appeal on the  
5 grounds raised, and (2) the waiver is knowingly and voluntarily made." United States v.  
6 Leniear, 574 F.3d 668, 672 (9th Cir. 2009) (quoting United States v. Anglin, 215 F.3d  
7 1064, 1066 (9th Cir. 2000)). Waivers may also encompass collateral attacks to the  
8 conviction or sentence. Id. at 672 n.3; United States v. Abarca, 985 F.2d 1012, 1014 (9th  
9 Cir. 1993).

10 The scope of a knowing and voluntary waiver is demonstrated by the express  
11 language of the plea agreement. Leniear, 574 F.3d at 672; Anglin, 215 F.3d at 1066.  
12 "Plea agreements are generally construed according to the principles of contract law,  
13 and the government, as drafter, must be held to an agreement's literal terms." Leniear,  
14 574 F.3d at 672; Anglin, 215 F.3d at 1067; United States v. Cannel, 517 F.3d 1172,  
15 1176 (9th Cir. 2008) ("Plea agreements are contracts and are enforced as such."). Any  
16 ambiguity in a plea agreement is construed against the drafter. See Lemke v. Ryan, 719  
17 F.3d 1093, 1098 (9th Cir. 2013); United States v. Transfiguracion, 442 F.3d 1222, 1228  
18 (9th Cir. 2006).

19 Petitioner does not argue that the waiver was made without his knowledge or  
20 consent. Accordingly, the only issue is that of whether his collateral challenge is  
21 encompassed within the waiver's scope. Petitioner argues that the waiver does not limit  
22 challenges to the conditions of his confinement or the execution of his sentence. The  
23 Court is not persuaded that the waiver can be construed so narrowly. The waiver stated  
24 that Petitioner gave up "the right to appeal the conviction and the right to appeal any  
25 aspect of the sentence imposed," and that he gave up the right to bring a post-appeal  
26 attack on his conviction or sentence under § 2241. United States v. Davies, E.D. Cal.

1 Case No. 2:12-cr-0255 GEB, ECF No. 64 at 10. (emphasis in original).<sup>3</sup> Under the plain  
2 language of the agreement, there was no limitation to Petitioner's waiver of the type of  
3 challenge he could present to his sentence. While any ambiguities in the plea agreement  
4 should be construed against the drafter, in this case, the government, the Court finds no  
5 ambiguity with regard to the scope of the waiver. The waiver was to any right to attack  
6 his sentence; that would include all challenges, including challenges to the execution of  
7 his sentence, such as the one presented here. Further, the language of the waiver  
8 specifically mentions that Petitioner waived his right to bring post-appeal attacks by way  
9 of a motion under 28 U.S.C. § 2241.

10 There is no ambiguity with respect to the scope of the waiver with respect to what  
11 subject matter was covered (challenges to the conviction or sentence) or the methods by  
12 which Petitioner could present a challenge (waiving the right to file motions under 28  
13 U.S.C. § 2255 and § 2241).

14 Petitioner could not have known that the Rohrabacher-Farr Amendment would be  
15 enacted after he entered into the plea agreement. However, the waiver of his right to  
16 challenge his conviction or sentence included waiver of prospective relief. "The waiver of  
17 an appeal will not be invalidated merely because unanticipated events occur in the  
18 future. The prospective nature of waivers has 'never been thought to place [waivers] off  
19

---

20 <sup>3</sup> As requested by Respondent, the Court takes judicial notice of the plea agreement in Petitioner's  
21 criminal case. See Harris v. County of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012). The relevant section  
to the plea agreement, relating to Petitioner's waiver of his right to appeal reads as follows:

22 **Waiver of Appeal and Collateral Attack:** The defendant understands that the  
23 law gives him a right to appeal his conviction and sentence. He agrees as part of his  
24 plea, however, to give up the right to appeal the conviction and the right to appeal any  
aspect of the sentence imposed in this case so long as his prison sentence is no longer  
than 5 years.

25 Regardless of the sentence he receives, the defendant also gives up any right he  
26 may have to bring a post-appeal attack on his conviction or his sentence. He specifically  
agrees not to file a motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or  
sentence.

27 United States v. Davies, E.D. Cal. Case No. 2:12-cr-0255 GEB, ECF No. 64. (emphasis in original).  
28

1 limits or to render a defendant's act 'unknowing.'" United States v. Lockett, 406 F.3d  
2 207, 213 (3d Cir. 2005) (citing United States v. Khattak, 273 F.3d 557, 561 (3d Cir.  
3 2001)); United States v. Teeter, 257 F.3d 14, 21 (1st Cir. 2001). The possibility of a  
4 favorable change in the law occurring after a plea agreement is merely one of the risks  
5 that accompanies a guilty plea. See United States v. Sahlin, 399 F.3d 27 (1st Cir. 2005);  
6 United States v. Cortez-Arias, 425 F.3d 547, 548 n.8 (9th Cir. 2005).

7 By waiving any right to bring a post-appeal attack to his sentence, the Court finds  
8 Petitioner's assertion that he only waived challenges to the legality of his sentence, as  
9 opposed to challenges to the execution of his sentence, without merit. Petitioner's  
10 alternative contention that this challenge is only to the conditions of his confinement is  
11 likewise without merit. Petitioner seeks release from custody, and while the exact  
12 contours of what qualifies as a conditions of confinement claim remain open, claims  
13 seeking release from custody fall outside the scope of such claims. Nettles v. Grounds,  
14 788 F.3d 992, 1005 (9th Cir. 2015) ("[The Supreme Court] has not directly addressed the  
15 question whether a challenge to the degree of constraints in prison (such as a release  
16 from administrative or disciplinary segregation) is a claim seeking release from custody,  
17 or merely a challenge to conditions of confinement.").

18 Petitioner has voluntarily waived his right to present post-appeal attacks to his  
19 conviction or sentence. The waiver is not ambiguous and Petitioner is bound to the terms  
20 of the waiver. Petitioner may not proceed with this petition for writ of habeas corpus  
21 under 28 U.S.C. § 2241. As Petitioner has waived his right to collaterally attack his  
22 sentence, the Court need not address the remaining arguments presented in the  
23 petition.

### 24 **III. CERTIFICATE OF APPEALABILITY**

25 "The plain language of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to  
26 obtain a [certificate of appealability] in order to appeal the denial of a § 2241 petition."  
27 Harrison v. Ollison, 519 F.3d 952, 958 (9th Cir. 2008). "Nor is there any other statutory  
28 basis for imposing a [certificate of appealability] requirement on legitimate § 2241

1 petitions. Although state prisoners proceeding under § 2241 must obtain a [certificate of  
2 appealability], see § 2253(c)(1)(A), there is no parallel requirement for federal prisoners."  
3 Id.

4 As Petitioner is a federal prisoner bringing a legitimate § 2241 petition, a  
5 certificate of appealability is not required.

6 **IV. ORDER**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The motion for leave to file amicus curiae brief is GRANTED (ECF No. 18);
- 9 2. The Petition for Writ of Habeas Corpus is DENIED; and
- 10 3. The Clerk of Court is ORDERED to enter judgment and close the case.

11  
12  
13 IT IS SO ORDERED.

14 Dated: September 29, 2015

/s/ Michael J. Seng  
15 UNITED STATES MAGISTRATE JUDGE