

1 agreement, he was to serve six months in a halfway house. Id. Petitioner does not provide the
2 court with a copy of the plea agreement. He appears to claim that he has not been placed in a
3 halfway house, or that he has been denied consideration “for placement into residential re-entry,
4 home detention program or early release for the six-months of his thirty month sentence.” Id. at
5 2; see also id. at 6, 10.

6 Petitioner also appears to allege that the Bureau of Prisons (“BOP”) has incorrectly
7 calculated his good-time credits, or that they have incorrectly withheld credits from him, or that
8 petitioner’s good-time credits were forfeited wrongfully after a disciplinary infraction. Id. at 4.

9 Petitioner also advises the court that he previously filed a motion to vacate his sentence
10 under 28 U.S.C. § 2255, in the Southern District of Florida. Id. The prior petition was apparently
11 denied after counsel was appointed for petitioner, though petitioner does not say when. Id.
12 Petitioner claims that his motions to reopen, and for a certificate of appealability, have been
13 denied, but again does not say when. Id.

14 **Successive Claims are Barred under 28 U.S.C. § 2244**

15 Petitioner claims that he filed a prior motion to vacate his conviction and sentence in his
16 sentencing court. To the extent petitioner seeks relief from this court of the sentencing court’s
17 decision on his § 2255 motion, this court should decline to exercise jurisdiction over the
18 application. See, e.g., Treadway v. Academy of Motion Picture Arts and Sciences, 783 F.2d
19 1418, 1422 (9th Cir. 1986). Moreover, all claims that were raised, or that could have been raised,
20 before the sentencing court in the prior petition, should be barred as successive. See 28 U.S.C. §
21 2244(b).

22 Accordingly, the undersigned recommends that Grounds One, Four, and Eight be
23 dismissed without prejudice to renewal after petitioner complies with 28 U.S.C. § 2244(b)(3).

24 **Petitioner’s Remaining Claims are Not Exhausted, and are Vague**

25 Section 2241 does not specifically require petitioners to exhaust administrative remedies
26 before filing petitions for writ of habeas corpus; however, the Court of Appeals for the Ninth
27 Circuit, in which this district is located, requires “as a prudential matter, that habeas petitioners
28 exhaust available judicial and administrative remedies before seeking relief under § 2241.”

1 Castro-Cortez v. INS, 239 F.3d 1037, 1047 (9th Cir. 2001).

2 Petitioner admits that he has failed to exhaust his available administrative remedies, and
3 claims that because his time is short, he should be excused from doing so. He also claims that he
4 has been advised not to file further paperwork with the BOP. Petition, ECF No. 1 at 1 (“due to
5 facts, based on the ‘time’ petition has remaining is short, and because of being advised not to file
6 any more (BOP) forms or administrative requests, (Nature to be fully disclosed at latter [sic] time
7 in court!)”); see also id. at 7.

8 The difficulty with this petition is that petitioner fails to advise the court of the relevant
9 details surrounding the denial of his housing request. For example, the court cannot determine
10 from petitioner’s conclusory statements how petitioner requested a change in housing, when the
11 request was denied (and by whom), and the reasons for the denial. Petitioner also fails to include
12 any details about his good time credit calculations, or the disciplinary which he argues resulted in
13 loss of credits.

14 The court in this case is unable to determine the reasons for petitioner’s allegedly
15 unconstitutional detention. Even if petitioner’s claims were exhausted, the court would be
16 constrained to dismiss them as vague. Accordingly, the undersigned recommends that Grounds
17 Two, Three, Five, and Six be dismissed without prejudice to renewal after petitioner has
18 exhausted his available administrative remedies.

19 **Petitioner’s “Judicial Notice” Claim**

20 Ground Seven, entitled “Judicial Notice,” generally reads that the constitutional rights and
21 welfare of prisoners at Herlong are being violated. Petitioner fails to specify if he is among the
22 prisoners whose rights are being violated.

23 Petitioner is advised that, if he wishes to pursue a claim that his constitutional rights have
24 been violated by a federal employee, he must do so in a civil rights complaint filed pursuant to
25 Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

26 Petitioner does not have standing to raise these claims because he has alleged no injury to
27 his own rights or person. See Valley Forge Christian College v. Americans United for Separation
28 of Church and State, 454 U.S. 464, 472 (1982) (party who invokes court’s authority must “show

1 that he personally has suffered some actual or threatened injury as a result of the putatively illegal
2 conduct of the defendant...”); Johns v. County of San Diego, 114 F.3d 874, 876 (9th Cir. 1997)
3 (“[C]onstitutional claims are personal and cannot be asserted vicariously.”), citing U.S. v.
4 Mitchell, 915 F.2d 521, 526 n.8 (in asserting outrageous conduct of government as defense,
5 defendant has no standing “to raise the rights of others whose rights may have been violated....”).

6 In addition, petitioner may not bring a civil rights action on behalf of other inmates. As a
7 non-attorney, plaintiff may appear pro se on his own behalf, but that privilege is personal to him.
8 C.E. Pope Equity Trust v. U.S., 818 F.2d 696, 697 (9th Cir.1987).


9 The undersigned recommends that Ground Seven be dismissed without prejudice to the
10 filing of an appropriate civil complaint.

11 Accordingly, IT IS HEREBY ORDERED that a district judge be assigned to this action,
12 and

13 IT IS HEREBY RECOMMENDED that the petition be summarily dismissed, pursuant to
14 Habeas Rule 4, without prejudice, for the reasons outlined above.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-eight
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
20 shall be served and filed within twenty-eight days after service of the objections. The parties are
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: June 3, 2013

24  _____
25 ALLISON CLAIKE
26 UNITED STATES MAGISTRATE JUDGE

27
28 AC:rb/mell1037.114