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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS MENDOZA,
Petitioner,
v.
FELICIA PONCE,¹
Respondent.

No. 2:15-cv-0131 WBS CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a federal prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2241. He asserts that officials at FCI Herlong assigned him an incorrect “security classification score” in violation of Bureau of Prisons (BOP) “program statements” while petitioner was housed there.² Respondent moves to dismiss citing Reeb v. Thomas, 636 F.3d 1224, 1227 (9th Cir. 2011). In that case, the Ninth Circuit found “[a] habeas claim cannot be sustained based solely upon the BOP’s purported violation of its own program

¹ Warden Ponce is hereby substituted as the respondent in this action pursuant to Federal Rule of Civil Procedure 25(a).

² Petitioner fails to indicate in his petition, or his opposition to respondent’s motion to dismiss, how the change in his “security classification score” he seeks would affect his conditions of confinement. Respondent suggests that when the petition was filed, petitioner sought transfer from FCI Herlong, a medium security prison, to a lower security prison. Petitioner is now housed at FCI Beaumont, a low security prison.

1 statement because noncompliance with a BOP program statement is not a violation of federal
2 law.”

3 Because petitioner fails to allege a violation of federal law simply by asserting respondent
4 did not adhere to BOP “program statements” and because petitioner fails to allege facts
5 suggesting any violation of federal law occurred,³ respondent’s motion to dismiss petitioner’s
6 application for writ of habeas corpus should be granted and this case be closed.

7 Accordingly, IT IS HEREBY RECOMMENDED that:

- 8 1. Respondent’s motion to dismiss (ECF No. 17) be granted;
- 9 2. Petitioner’s application for a writ of habeas corpus be dismissed; and
- 10 3. This case be closed.

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

18 Dated: October 28, 2015

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20 _____
21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE

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28 ³ Petitioner has no liberty interest entitled to due process protection in his custody classification score. Moody v. Dagget, 429 U.S. 78, 88 n. 9 (1976).