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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 HEATH TYLER WISDOM,
12 Plaintiff,
13 v.
14 BUREAU OF PRISONS, et al.
15 Defendants.
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No. 2:15-cv-0218 AC P (TEMP)

ORDER

17 Plaintiff is a federal prisoner proceeding pro se with a complaint challenging his custody
18 classification with the Bureau of Prisons (BOP). He alleges that the BOP erroneously increased
19 his score for a history of violence – a factor statutorily included in calculating custody
20 classifications – by 3 points and that he should have a total custody score of 18 instead of 21.
21 Plaintiff asks the court to order BOP to lower his total custody score to 18, an action that
22 presumably would open more desirable security housing assignments within the federal prison
23 system. (Complaint (ECF No. 1) at 12.)

24 The complaint invokes this court’s jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. §
25 702. The latter statute, a section of the Administrative Procedure Act (APA), authorizes judicial
26 review of a complaint filed by a plaintiff who allegedly “suffer[ed] a legal wrong” or has been
27 “adversely affected or aggrieved” by federal agency action. The plaintiff has consented to the
28 magistrate judge’s jurisdiction under 28 U.S.C. § 636(c).

1 I. Screening standards

2 The court is required to screen all actions brought by prisoners who seek any form of
3 relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §
4 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner raises claims that
5 are legally “frivolous or malicious” or fail to state a basis on which habeas relief may be granted.
6 28 U.S.C. § 1915A(b)(1),(2).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
9 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
12 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
13 Cir. 1989); Franklin, 745 F.2d at 1227.

14 When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and
16 construe the complaint in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416
17 U.S. 232, 236 (1974). Pro se pleadings are held to a less stringent standard than those drafted by
18 lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Still, to survive dismissal for failure to
19 state a claim, a pro se complaint must contain more than “naked assertions,” “labels and
20 conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp.
21 v. Twombly, 550 U.S. 544, 555-57 (2007). In other words, “[t]hreadbare recitals of the elements
22 of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal,
23 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief must have
24 facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff
25 pleads factual content that allows the court to draw the reasonable inference that the defendant is
26 liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. Attachments to a complaint are
27 considered to be part of the complaint for purposes of a motion to dismiss for failure to state a
28 claim. Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir.1990).

1 II. Screening analysis

2 The court has “an independent obligation to address sua sponte whether it has subject-
3 matter jurisdiction.” U.S. v. Southern California Edison Co., 300 F.Supp.2d 964, 972
4 (E.D.Cal.2004) (citing Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). In this case,
5 when plaintiff asks this court to order BOP to change his custody classification under the APA or
6 any other federal statute, he asks the court to do something it has no jurisdiction to do.

7 Although 5 U.S.C. § 702 does generally allow for judicial review of a federal agency
8 decision that “adversely affects” a person who challenges that decision,¹ “Congress specified in
9 18 U.S.C. § 3625, entitled Inapplicability of Administrative Procedure Act, that ‘[t]he provisions
10 of sections ... 701 through 706 of [the APA] do not apply to the making of any determination,
11 decision or under [18 U.S.C. §§ 3621-3625].’” Reeb v. Thomas, 636 F.3d 1224, 1226 (9th
12 Cir.2011) (quoting 18 U.S.C. § 3625). The statutes that Congress expressly excepted from the
13 APA – §§ 3621 through 3625 – define the BOP’s authority and discretion to make custody
14 decisions, including custody classifications of individual inmates. Of particular relevance to this
15 action is § 3621(b)(3), which enumerates a prisoner’s “history and characteristics” as a factor for
16 the BOP to consider in assigning him to a certain facility. See Miller v. Federal Bureau of
17 Prisons, 703 F.Supp.2d 8, 16 (D.D.C.2010) (“An inmate’s [history of violence] score is one of the
18 components used to calculate his custody classification, and therefore, it may affect his place of
19 imprisonment.”)

20 As another district court has explained, § 3625 “expressly strips this court of jurisdiction
21 to review certain decisions made by BOP officials.... It is well settled that this exclusion applies
22 to cases in which federal inmates are challenging their security classifications and facility
23 designations.” Brown v. Holder, 770 F.Supp.2d 363, 365 (D.D.C. 2011) (collecting cases). That
24 same court has also stated, in a case squarely on point with this one, that a federal inmate “has no
25 right of action under the APA arising from the recalculation of his [history of violence] score

26 ¹ Authorizing federal judicial review is not necessarily the same as conferring federal
27 jurisdiction. In fact, the Supreme Court has held that “the better view is that the APA is not to be
28 interpreted as an implied grant of subject-matter jurisdiction to review agency actions.” Califano
v. Sanders, 430 U.S. 99, 105 (1977).

1 because BOP decisions involving custody classification ... are expressly exempt by statute from
2 judicial review under the APA.” Miller, 703 F.Supp.2d at 16 (citing 18 U.S.C. § 3625). These
3 authorities make it clear that the APA is not an open avenue for this court to review the BOP’s
4 custody classification decisions. Therefore the court does not have jurisdiction to hear plaintiff’s
5 claim.

6 Although this court has discretion, in some circumstances, to construe a pro se complaint
7 filed under one statute as an action proceeding under another, or to allow a pro se plaintiff an
8 opportunity to amend his complaint to aver the necessary legal elements of a potentially viable
9 claim, in this case the court does not have that option: the futility of any viable cause of action,
10 based on these allegations, is complete under the jurisdiction-stripping effect of 18 U.S.C. § 3625.
11 No habeas action can lie here because “[t]o find that prisoners can bring habeas petitions ... to
12 challenge the BOP’s discretionary determinations made pursuant to 18 U.S.C. § 3621 would be
13 inconsistent with the language of 18 U.S.C. § 3625.” Reeb, 636 F.3d at 1227. Nor can plaintiff
14 assert any civil rights claim pursuant to Bivens v. Six Unknown Named Agents of the Federal
15 Bureau of Narcotics, 403 U.S. 388 (1971), because under the BOP’s virtually unlimited authority²
16 to control prisoner classifications and housing assignments, an inmate “has no legitimate statutory
17 or constitutional entitlement sufficient to invoke due process” and thereby contest “prisoner
18 classification ... in the federal system.” Moody v. Daggett, 429 U.S. 78, 88 n. 9 (1976). See also
19 Miller, 703 F.Supp.2d at 16 (stating “it is settled law that a prisoner does not have a liberty
20 interest in his place of confinement or custody classification that can be redressed by the due
21 process clause of the constitution”); Medina-Alvarez v. United States, No. CV 13-0783 ODW
22 (JC), 2013 WL 799620 at *2 (C.D.Cal. March 4, 2013) (stating that “[t]he exemption of the
23 BOP’s individualized housing determinations from judicial review is consistent with the

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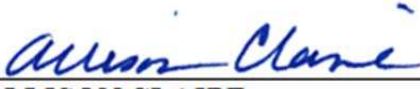
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26 ² “[J]udicial review remains available for allegations that BOP action is contrary to established
27 federal law, violates the United States Constitution, or exceeds its statutory authority[.]” Reeb,
28 636 F.3d at 1228. In cases such as this one, however, in which the inmate alleges simply that
BOP erred or was not justified in assigning him a particular classification score, none of those
exceptions applies.

1 recognition that inmates do not have a due process liberty interest in their placement and
2 classification while incarcerated”).

3 In sum, Congress has foreclosed this court’s authority to hear plaintiff’s challenge to his
4 custody classification with the BOP.³ Because it lacks jurisdiction to adjudicate plaintiff’s claim,
5 the court must dismiss it without leave to amend.

6 Accordingly, IT IS HEREBY ORDERED that this case is dismissed for lack of subject
7 matter jurisdiction, and this case is closed.

8 DATED: January 8, 2016

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10 ALLISON CLAIRE
11 UNITED STATES MAGISTRATE JUDGE
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24 ³ The cases plaintiff cites in paragraph 9 of his memorandum of law and authorities are
25 distinguishable and do not contradict the broad jurisdictional exception for BOP decisions that 18
26 U.S.C. § 3265 has carved out of the APA. (See ECF No. 1 at 11.) Those cases review or explain
27 sentences rendered by a federal district court upon a judgment of guilt in a criminal case. Simply
28 put, a district court imposes sentences, while the BOP carries them out. Here, plaintiff does not
contest the length of his sentence; rather he contests the BOP’s execution of his sentence via its
classification of his custody status – a decision clearly outside this court’s limited jurisdiction.