

United States District Court
For the Northern District of California

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

JOHN H. STEWART,

Petitioner,

v.

MICHAEL DOWNEY,

Respondent.

No. C 13-2901 CW

ORDER DISMISSING
PETITION FOR WRIT
OF HABEAS CORPUS

John H. Stewart has filed a petition for writ of habeas corpus. Federal courts may grant habeas relief under 28 U.S.C. §§ 2241(c)(3), 2254(a), or 2255(a) only if the petitioner is "in custody" in violation of the Constitution or laws or treaties of the United States. The term "custody" refers to individuals who, as a result of a criminal conviction, are subject to "substantial restraints not shared by the public generally." Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502, 510 (1982). The requirement that an individual be in custody to be afforded habeas relief is jurisdictional. Williamson v. Gregoire, 151 F.3d 1180, 1182 (9th Cir. 1998) (citing Maleng v. Cook, 490 I.S. 488, 490 (1989) (per curiam)). Petitioner in this case is not in custody. Accordingly, the Court DISMISSES the petition for lack of jurisdiction.

IT IS SO ORDERED.

Dated: 7/2/2013



CLAUDIA WILKEN
United States District Judge