

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUCILA CRUZ,
Plaintiff,
v.
W. JENKINS,
Defendant.

Case No. 20-CV-03891-LHK

**ORDER OF DISMISSAL WITH
PREJUDICE IN PART AND WITHOUT
PREJUDICE IN PART**

Petitioner, a federal prisoner incarcerated at the Federal Correctional Institution in Dublin, California, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (“Petition”). Dkt. No. 5.¹

For the reasons stated below, the Petition is dismissed with prejudice in part and without prejudice in part as follows:

- Claim 1, in part, seeks relief under the First Step Act and CARES Act. These forms of relief cannot be sought in a habeas petition. To this extent, Claim 1 is dismissed with prejudice.

¹ Unless otherwise indicated, citations to the docket refer to filings in the instant action.

- 1 • Claim 1, in part, seeks compassionate release. This request must be directed to the
- 2 sentencing court. To this extent, Claim 1 is dismissed without prejudice to refile in
- 3 Case No. 17-cr-0094-D-BR(2) in the Northern District of Texas (“Texas District
- 4 Court”) as a motion for compassionate release under 18 U.S.C. § 3582 (“Section 3582
- 5 motion”).
- 6 • Claims 2 through 4 attack the validity of petitioner’s sentence and must be brought in
- 7 the sentencing court as a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct
- 8 the sentence (“Section 2255 motion”). These claims are dismissed without prejudice to
- 9 refile as a Section 2255 motion in Case No. 17-cr-0094-D-BR(2) in the Texas
- 10 District Court.

11 **I. BACKGROUND**

12 **A. Proceedings in Other Courts**

13 In the United States District Court for the Northern District of Texas (“Texas District
14 Court”), petitioner pleaded guilty to interstate travel in aid of racketeering. See Dkt. No. 56,
15 United States v. Cruz, Case No. 17-cr-0094-D-BR(2) (N.D. Tex. March 27, 2018) (minute entry
16 noting that court accepted guilty plea)²; see also Dkt. No. 27, United States v. Cruz, Case No. 17-
17 cr-0094-D-BR(2) (N.D. Tex. Oct. 11, 2017) (indictment). On July 10, 2018, petitioner was
18 sentenced to 60 months imprisonment. See Dkt. No 68, United States v. Cruz, Case No. 17-cr-
19 0094-D-BR(2) (N.D. Tex. July 10, 2018) (minute entry).

20 **B. Proceedings in This District**

21 On June 12, 2020, petitioner filed a document entitled “Dublin FCI prisoners’ Covid-19
22 emergency petition for an immediate writ of habeas corpus.” See Dkt. No. 1. Petitioner did not
23 identify the grounds on which she sought relief; rather, the filed document revealed only that
24 petitioner was a federal prisoner, and sought release. See *id.* Based on this limited information,

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26 ² Courts “may take notice of proceedings in other courts, both within and without the federal
27 judicial system, if those proceedings have a direct relation to matters at issue.” *United States v.*
28 *Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). See also *Doe v. SuccessfulMatch.com*, 70 F. Supp. 3d
1066, 1073 n.2 (N.D. Cal. 2014) (same).

1 the Clerk of the Court notified petitioner that she needed to use a Petition for a Writ of Habeas
 2 Corpus form (“Form”). See Dkt. No. 3 at 1. The Clerk of the Court sent petitioner copies of the
 3 Form, as well as instructions that the Administrative Office of the United States Courts has issued
 4 for use of the Form.³ See id. at 2. The instructions stated that the Form should be used by federal
 5 prisoners who “wish to challenge the way [the] sentence is being carried out,” but should not be
 6 used by federal prisoners who “are challenging the validity of a federal judgment of conviction
 7 and sentence.” Id. Petitioner subsequently filed the Petition using the Form. See Dkt. No. 5.

8 This action was reassigned from United States Magistrate Judge Jacqueline Corley to the
 9 undersigned. See Dkt. No. 9.

10 **II. STANDARD OF REVIEW**

11 Section 2241 allows “the Supreme Court, any justice thereof, the district courts and any
 12 circuit judge” to grant writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C.
 13 § 2241(a). A district court shall “award the writ or issue an order directing the respondent to
 14 show cause why the writ should not be granted, unless it appears from the application that the
 15 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is
 16 appropriate only where the allegations in the petition are vague or conclusory, palpably incredible,
 17 or patently frivolous or false. See *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990)
 18 (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

19 **III. DISCUSSION**

20 The Petition is filed pursuant to 28 U.S.C. § 2241. Pet. at 1. Petitioner raises four claims
 21 in the Petition: (1) that she is in danger from Covid-19 while incarcerated, (2) “duration of
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23 ³ The Administrative Office of the United States Courts publishes “[n]ational court forms [that]
 24 can be used in all federal courts.” Forms, Administrative Office of the United States Courts,
 25 <https://www.uscourts.gov/services-forms> (last visited Nov. 19, 2020). As one example, the form
 26 to be used in Section 2255 motions, and instructions for use of that form, appears in the “Civil
 27 Forms” category. See Civil Forms, Administrative Office of the United States Courts,
 28 <https://www.uscourts.gov/forms/civil-forms> (last visited Nov. 19, 2020). As another example, the
 form to be used in Section 3582 motions appears in the “Criminal Forms” category. See Criminal
 Forms, Administrative Office of the United States Courts, [https://www.uscourts.gov/forms/
 criminal-forms](https://www.uscourts.gov/forms/criminal-forms) (last visited Nov. 19, 2020).

1 confinement,” (3) “conclusion of confinement,” and (4) that she is being held in custody in
 2 violation of the laws and Constitution of the United States. Pet. at 3. To support her claims,
 3 petitioner explains that she has pre-existing conditions that render her vulnerable to Covid-19, see
 4 id. at 7-9, and that the warden of FCI Dublin has been non-responsive to requests to release
 5 prisoners under the compassionate release statute, the First Step Act, and the Coronavirus Aid,
 6 Relief, and Economic Security Act (“CARES Act”), see id. at 4.

7 Although petitioner was sentenced in Texas, because she is incarcerated within the
 8 Northern District of California, venue would be proper here in the first instance if any of
 9 petitioner’s claims were properly brought under Section 2241. See *Dunne v. Henman*, 875 F.2d
 10 244, 249-50 (9th Cir. 1989). However, as explained below, petitioner’s claims are not properly
 11 brought under Section 2241 and thus the Petition must be dismissed. Instead, petitioner may seek
 12 relief pursuant to a Section 3582 motion for compassionate release and/or a Section 2255 motion
 13 to vacate, set aside, or correct sentence in the Texas District Court. The Court will address Claim
 14 1 then Claims 2 through 4.

15 **A. Claim 1 is dismissed with prejudice in part and without prejudice in part.**

16 Petitioner appears to ask this Court to order her transferred to home confinement under the
 17 First Step Act, the CARES Act, or the compassionate release statute. See Pet. at 3 (arguing that
 18 petitioner is in danger from Covid-19), 4 (arguing the warden has been non-responsive to requests
 19 made under these authorities). As explained more fully below, Claim 1 fails because these forms
 20 of relief cannot be sought in a habeas petition.

21 First, the Court notes that a habeas petition is not the proper avenue to seek a transfer from
 22 confinement in a prison to home confinement under the First Step Act. The First Step Act directs
 23 the Bureau of Prisons (“BOP”):

24 to the extent practicable, [to] ensure that a prisoner serving a term of
 25 imprisonment spends a portion of the final months of that term . . .
 26 under conditions that will afford that prisoner a reasonable
 opportunity to adjust to and prepare for the reentry of that prisoner
 into the community

27 18 U.S.C. § 3624(c)(1). This authority “may be used to place a prisoner in home confinement,”

1 “to the extent practicable.” *Id.* at § 3624(c)(2) (emphasis added). This section gives the BOP
 2 discretion over the location of confinement, and the Ninth Circuit has repeatedly held that this
 3 discretion may not be challenged via a Section 2241 petition. See *Reeb v. Thomas*, 636 F.3d 1224,
 4 1227 (9th Cir. 2011) (“To find that prisoners can bring habeas petitions under 28 U.S.C. § 2241 to
 5 challenge the BOP’s discretionary determinations made pursuant to 18 U.S.C. § 3621 would be
 6 inconsistent with the language of 18 U.S.C. § 3625.”); see also *Mohsen v. Graber*, 583 F. App’x
 7 841, 842 (9th Cir. 2014) (holding a district court lacked jurisdiction to consider a First Step Act
 8 claim in a Section 2241 petition) (applying *Reeb*, 636 F.3d at 1227–29); *Slice v. Tews*, No. C-10-
 9 0838 LHK PR, 2011 WL 6091089, at *2 (N.D. Cal. Dec. 6, 2011) (same).⁴ Accordingly,
 10 petitioner may not base a claim for release on the First Step Act.

11 For the same reason, petitioner cannot base a federal habeas petition on the CARES Act.
 12 The CARES Act allows the Director of the BOP to “lengthen the maximum amount of time for
 13 which the Director is authorized to place a prisoner in home confinement under the first sentence
 14 of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.”
 15 CARES Act, Pub. L. No. 116-136, § 12003(b)(2) (2020) (emphasis added). Thus, the BOP’s
 16 determination remains discretionary and outside the scope of a Section 2241 petition even if the
 17 petition purports to rely on the CARES Act. As the United States Court of Appeals for the
 18 Seventh Circuit recently explained, “The [CARES] act expanded the [BOP]’s power to ‘place a
 19 prisoner in home confinement’ . . . but reserved the determination of ‘suitable candidates’ for
 20 home confinement to the Bureau. . . The act carved out no role for the courts in making such
 21 determinations.” *United States v. Williams*, Appeal No. 20-1947, 2020 WL 6604791, at *1 (7th
 22 Cir. Nov. 12, 2020) (citation omitted); accord *United States v. Brummett*, Appeal No. 20-5626,
 23 2020 WL 5525871, at *2 (6th Cir. Aug. 19, 2020) (“[T]o the extent that Brummett sought relief
 24 under the CARES Act, the district court correctly held that the authority to grant home
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26 ⁴ See also *Johnson v. Thompson*, No. 2:19-CV-2431-EFB P, 2020 WL 2106345, at *1 (E.D. Cal.
 27 Mar. 19, 2020) (“assignment to home confinement [under the First Step Act] is discretionary and
 28 thus affords petitioner no habeas relief”); *Ioane v. Merlak*, 1:19-cv-1251 JLT (HC), 2019 WL
 5699098, at *2 (E.D. Cal., Sept. 27, 2019) (same).

1 confinement remains solely with the Attorney General and the BOP.”). To the extent petitioner
2 seeks release under the First Step Act or CARES Act, Claim 1 is dismissed with prejudice.

3 Petitioner’s request for compassionate release is a more procedurally appropriate
4 mechanism to request transfer to home confinement. However, such a request is not proper before
5 this Court because any relief available under 18 U.S.C. § 3582 must be sought in petitioner’s
6 criminal case. It is the sentencing court that would make any modification to a term of
7 imprisonment under that section. See 18 U.S.C. § 3582(c) (providing that a sentencing court “may
8 not modify a term of imprisonment once it has been imposed except . . . upon motion of the
9 Director of the Bureau of Prisons, or upon motion of the defendant”). As the Third Circuit
10 recently stated: “Section 3582’s text requires those motions to be addressed to the sentencing
11 court.” *United States v. Raia*, 954 F.3d 594, 596 (3rd Cir. 2020). Other circuit courts agree. See
12 *Rodriguez-Aguirre v. Hudgins*, 739 F. App’x 489, 491 n.2 (10th Cir. 2018) (holding that a district
13 court “lacked authority to entertain” a compassionate release motion, where it was not the
14 sentencing court); see also *United States v. Alexander*, 951 F.3d 706, 708 (6th Cir. 2019) (“The
15 authority granted by the First Step Act is limited: ‘A court that imposed a sentence for a covered
16 offense may . . . impose a reduced sentence’”) (quoting *The First Step Act*, Pub. L. No. 115-
17 391, § 404(b), 132 Stat. 5194 (Dec. 21, 2018)); *United States v. Richardson*, 948 F.3d 733,749
18 (6th Cir. 2020) (“[A] sentencing court ‘may not modify a term of imprisonment once it has been
19 imposed’ except under certain circumstances.”); *United States v. Smith*, 896 F.3d 466, 473 (D.C.
20 Cir. 2018) (noting that “a sentencing court” must decide “whether to grant a sentence reduction”).

21 Accordingly, to the extent Claim 1 seeks relief under the First Step Act and CARES Act,
22 Claim 1 is dismissed with prejudice. To the extent Claim 1 seeks compassionate release, Claim 1
23 is dismissed without prejudice to refile as a Section 3582 motion for compassionate release in
24 Case No. 17-cr-0094-D-BR(2) in the Texas District Court.

25 **B. Claims 2 through 4 are dismissed without prejudice.**

26 The Court next considers claims 2 through 4. As explained more fully below, Claims 2
27 through 4 cannot be brought in this Court in a petition filed under Section 2241.

1 Petitioner represents that she is not challenging the validity of her sentence. See Pet. at 5.
2 However, petitioner’s conclusory challenges to “duration of confinement” and “conclusion of
3 confinement,” and argument that she is being held in custody in violation of the laws and
4 Constitution of the United States, plainly challenge the validity of her sentence rather than the
5 execution of her sentence. See id. at 3.

6 A prisoner in custody under sentence of a federal court who wishes to attack collaterally
7 the validity of her conviction or sentence must do so by way of a motion to vacate, set aside, or
8 correct the sentence pursuant to 28 U.S.C. § 2255 in the court that imposed the sentence (“Section
9 2255 motion”). See *Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir. 1988). Only the sentencing
10 court has jurisdiction to hear the Section 2255 motion. See id. at 1163. A prisoner generally may
11 not attack collaterally a federal conviction or sentence by way of a petition for a writ of habeas
12 corpus pursuant to 28 U.S.C. § 2241. See *Grady v. United States*, 929 F.2d 468, 470 (9th Cir.
13 1991) (challenge to sentence following probation or parole revocation must be brought in
14 sentencing court via Section 2255 motion); *Tripati*, 843 F.2d at 1162 (challenge to legality of
15 conviction must be brought in sentencing court via Section 2255 motion); see also *United States v.*
16 *Flores*, 616 F.2d 840, 842 (5th Cir. 1980) (where alleged errors at or prior to sentencing are
17 challenged, remedy is Section 2255 motion). Here, because claims 2 through 4 attack the validity
18 of petitioner’s sentence, they must be brought in a Section 2255 motion in the Texas District
19 Court.

20 There is an exception to the general bar against using Section 2241 to collaterally attack a
21 conviction or sentence: a federal prisoner authorized to seek relief under Section 2255 may seek
22 relief under Section 2241 if she can show that the remedy available under Section 2255 is
23 “inadequate or ineffective to test the legality of [his/her] detention.” *United States v. Pirro*, 104
24 F.3d 297, 299 (9th Cir. 1997) (quoting 28 U.S.C. § 2255). Although there is little guidance from
25 any court on when Section 2255 is an inadequate or ineffective remedy, the Ninth Circuit has
26 recognized that it is a very narrow exception. See id. For example, courts have repeatedly held
27 that the mere fact that a previous Section 2255 motion was denied does not render the Section

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1 2255 remedy inadequate. See *Aronson v. May*, ___ U.S. ___, 85 S. Ct. 3, 5 (1964).

2 Here, petitioner fails to show that a Section 2255 motion is inadequate or ineffective to test
3 the legality of her detention, and thus she does not show that this Court has authority to entertain
4 claims 2 through 4. When asked to explain why a Section 2255 motion would be inadequate,
5 petitioner simply writes, “N/A.” Pet. at 6. Petitioner thus fails to show why this Court, rather than
6 the sentencing court, should entertain her claims.

7 Accordingly, Claims 2 through 4 are dismissed without prejudice to refile as a Section
8 2255 motion in Case No. 17-cr-0094-D-BR(2) in the Texas District Court

9 **IV. CONCLUSION**

10 For the reasons stated above, the Court rules as follows:

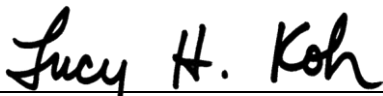
- 11 • To the extent that Claim 1 seeks relief under the First Step Act and CARES Act, Claim
- 12 1 is dismissed with prejudice.
- 13 • To the extent that Claim 1 seeks compassionate release, Claim 1 is dismissed without
- 14 prejudice to refile as a Section 3582 motion for compassionate release in Case No.
- 15 17-cr-0094-D-BR(2) in the Texas District Court.
- 16 • Claims 2 through 4 are dismissed without prejudice to refile as a Section 2255
- 17 motion in Case No. 17-cr-0094-D-BR(2) in the Texas District Court.

18 The Court need not address whether petitioner is entitled to a certificate of appealability.
19 See *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (“Although state prisoners proceeding
20 under § 2241 must obtain a COA, there is no parallel requirement for federal prisoners.”) (internal
21 citations omitted).

22 The Clerk shall terminate all pending motions and close the file.

23 **IT IS SO ORDERED.**

24
25 DATED: November 20, 2020



LUCY H. KOH
UNITED STATES DISTRICT JUDGE