

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 GILBERT MENDEZ CARABELLO, by
12 Assignee¹ Mumina Rahman,
13
14 Plaintiff,

v.

15 CORRECTIONS CORPORATION OF
16 AMERICA,
17 Defendant.

Case No.: 3:17-cv-00999-H-AGS

ORDER:

**(1) DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS
FOR LACK OF
JURISDICTION, and
(2) DENYING AS MOOT MOTION
TO PROCEED IN FORMA
PAUPERIS**

[Doc. Nos. 1, 2]

18
19
20 Petitioner Gilbert Mendez Caraballo is a pretrial detainee in Cleveland Ohio. (Doc.
21 No. 1 at 1.) On May 16, 2017, Petitioner filed a petition for a writ of habeas corpus pursuant
22 to 28 U.S.C. § 2241. Along with his petition, Petitioner paid the required \$5 filing fee. On
23 May 26, 2017, Petitioner filed a motion for leave to proceed in forma pauperis (“IFP”).
24

25
26 ¹ The case is brought by an assignee instead of by the Petitioner personally. (Doc. No. 1 at 1.) It does not
27 appear that the assignee is an attorney. The petition and the motion are both signed by the assignee and
28 not by the Petitioner himself. (Doc. No. 1 at 8, Doc. No. 2 at 2.) All motions and pleadings must be
signed by either an attorney of record or the party personally. FED. R. CIV. P. 11. Thus, while the Court
does not reach the issue, the Court would likely be required to strike the petition and the motion if the
Court had jurisdiction over this matter. See id.; Ashker v. Rowland, 955 F.2d 47 (9th Cir. 1992).

1 (Doc. No. 2.) For the reasons below, the Court dismisses the habeas petition for lack of
2 jurisdiction and denies the IFP motion as moot.

3 **Background**

4 Petitioner Gilbert Mendez Caraballo is a pretrial detainee in Cleveland Ohio. (Doc.
5 No. 1 at 1.) On February 11, 2015, an arrest warrant was issued for Petitioner in the
6 Northern District of Ohio. (3:16-mj-00791-NLS, Doc. No. 1 at 2.) Petitioner was indicted
7 for conspiracy to possess with intent to distribute and to distribute cocaine in violation of
8 21 USC §§ 846, 841 (a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C), and use of a telephone to
9 facilitate drug trafficking in violation of 21 USC § 843(b). (Id.) Petitioner was arrested in
10 March 2016, and he made an initial appearance before a magistrate judge in the Southern
11 District of California. (3:16-mj-00791-NLS, Doc. No. 3.)

12 While in the Southern District of California, Petitioner signed a waiver of his right
13 to an identity hearing and production of the warrant pursuant to Rule 5 and 5.1 of the
14 Federal Rules of Criminal Procedure. (3:16-mj-00791-NLS-1, Doc. No. 9.) Petitioner also
15 waived his right to a detention hearing. (Id.) Petitioner’s attorney also signed the waiver.
16 (Id.) Based on the waiver, the magistrate judge ordered Petitioner detained without
17 prejudice. (3:16-mj-00791-NLS-1, Doc. No. 7.) The magistrate then signed a warrant of
18 removal, commanding the United States Marshal to deliver Petitioner to the Northern
19 District of Ohio. (3:16-mj-00791-NLS-1, Doc. No. 10.)

20 Petitioner now challenges the magistrate judge’s order detaining petitioner without
21 prejudice. (Doc. No. 1 at 2.)

22 **Discussion**

23 **I. Jurisdiction**

24 Generally, a prisoner files a petition for writ of habeas corpus pursuant to § 2241 in
25 order to “challenge the manner, location, or conditions of a sentence’s execution.”
26 Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000). Therefore, a prisoner “may
27 bring a § 2241 habeas petition only in the district court that has personal jurisdiction over
28 his current custodian.” Dohrmann, 36 F. App’x at 881; see also Hernandez v. Campbell,

1 204 F.3d 861, 865 (9th Cir. 2000) (“a habeas petition filed pursuant to § 2241 must be
2 heard in the custodial court”). “A custodian ‘is the person having a day-to-day control over
3 the prisoner. That person is the only one who can produce ‘the body’ of the petitioner.”
4 Brittingham, 982 F.2d at 379 (internal citation omitted).

5 Here, Petitioner was already in custody in the Northern District of Ohio when he
6 filed his petition. (Doc. No. 1 at 1; see also 3:16-mj-00791-NLS-1, Doc. No.10.) Thus, the
7 Northern District of Ohio is the district that has personal jurisdiction over Petitioner’s
8 “current custodian.” See Dohrman, 36 F. App’x at 881-82. It does not matter that Petitioner
9 was previously in custody in the Southern District of California. What matters is which
10 district had custody of Petitioner when he filed his petition. For example, in Dohrman a
11 petitioner filed a § 2241 petition while on supervised release. Id. The Ninth Circuit
12 explained that the relevant custodian would be the petitioner’s supervised release
13 administrator for the district in which the petitioner resided when the petition was filed. Id.
14 The court explained that if the petitioner were to move to a different district, then the new
15 district would obtain jurisdiction over any petition filed while the petitioner was living in
16 the new district. Id.

17 Because this Court is not Petitioner’s custodial court for purposes of his petition, this
18 Court does not have jurisdiction over the petition. See Davis v. Quintana, No. 10-CV-1419
19 MMA AJB, 2011 WL 181740 (S.D. Cal. Jan. 18, 2011) (dismissing § 2241 petition because
20 it was filed with a court that was not in the custodial district).

21 When a “court finds that there is a want of jurisdiction, the court shall, if it is in the
22 interest of justice, transfer such action . . . to any other such court in which the action . . .
23 could have been brought at the time it was filed or noticed.” 28 U.S.C. § 1631. Thus, the
24 Court is obligated to transfer this action to the custodial district if it is in the interest of
25 justice to do so. But transfer is “improper where the plaintiff fails to make a prima facie
26 showing of a right to relief, because the interests of justice would not be served by transfer
27 of such a case.” Clark v. Busey, 959 F.2d 808, 812 (9th Cir. 1992) (citing Ferris v.
28 Department of the Navy, 810 F.2d 1121, 1123 (Fed. Cir.1987).

1 The petition challenges an order by a magistrate judge. (Doc. No. 1 at 2.) The order
2 states that Petitioner agreed to waive his right to a detention hearing, stipulating to his
3 detention. (3:16-mj-00791-NLS-1, Doc. No. 7.) The record supports the order—Petitioner
4 and his attorney both signed a form by which Petitioner waived his right to a detention
5 hearing. (Id., Doc. No. 9.) Based on this waiver, the magistrate judge ordered Petitioner
6 detained without prejudice. (Id., Doc. No. 7.) But because Petitioner’s detention is without
7 prejudice, his habeas petition is premature. He is free to raise the issue of his detention in
8 his current custodial court. Petitioner’s habeas petition therefore fails to make a prima facie
9 showing of a right to relief. Accordingly, the Court declines to transfer the petition and
10 instead dismisses it for lack of jurisdiction.

11 **II. Motion to Proceed In Forma Pauperis**

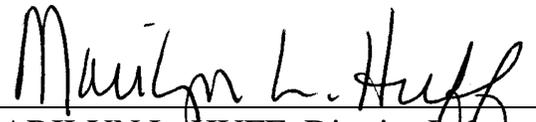
12 Petitioner filed a motion to proceed IFP. (Doc. No. 2.) Pursuant to 28 U.S.C.
13 § 1915(a), a court may authorize the commencement of a suit without prepayment of fees
14 if the plaintiff submits an affidavit, including a statement of all his assets, showing that he
15 is unable to pay filing fees. 28 U.S.C. § 1915(a). However, given that the Court does not
16 have jurisdiction over this action, the Court denies the motion to proceed IFP as moot.²

17 **Conclusion**

18 For the reasons above, the Court dismisses the petition for a writ of habeas corpus
19 for lack of jurisdiction and denies the motion to proceed IFP as moot.

20 **IT IS SO ORDERED.**

21 DATED: May 31, 2017

22 
23 _____
24 MARILYN L. HUFF, District Judge
25 UNITED STATES DISTRICT COURT
26

27 _____
28 ² The Court would deny the motion to proceed IFP even if it was not moot. Petitioner submitted a statement
of his assets that included a number of bonds. (Doc. No. 2 at 2.) Petitioner failed to state the value of
those bonds; therefore, he has not demonstrated an inability to pay a \$5 filing fee.