

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOHN FLUELLEN HEARD, JR.,)
)
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 Plaintiff,)
)
)
 vs.) No. 2:17-cv-00148-WTL-MJD
)
)
)
S. JULIAN Warden,)
BUREAU OF PRISONS,)
)
)
 Defendants.)

Entry Discussing Filing Fee and Complaint and Directing Service of Process

I. Background

Plaintiff John Fluellen Heard, Jr., is an inmate confined at the Federal Correctional Institution in Terre Haute, Indiana. He brings this action pursuant to the Administrative Procedures Act (“APA”), 5 U.S.C. §§ 702, 706. He names Warden S. Julian of the Bureau of Prisons as the defendant.

II. Filing Fee

The plaintiff shall have **through May 15, 2017**, in which to either pay the \$400.00 filing fee for this action or demonstrate that he lacks the financial ability to do so. If he seeks leave to proceed *in forma pauperis*, his request must be accompanied by a copy of the transactions associated with his institution trust account for the 6-month period preceding the filing of this action on April 3, 2017. Failure to do so may result in the dismissal of the action for failure to prosecute.

III. Screening

The complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). This statute directs that the court dismiss a complaint or any claim within a complaint which “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.*

Plaintiff alleges that the Bureau of Prisons (“BOP”) has denied him placement into a halfway house, home confinement, or RRC to which he alleges he is entitled, 18 U.S.C. § 3621(b), and that he has been denied individual review in violation of 18 U.S.C. § 3624(c) (the “Second Chance Act”). He seeks injunctive relief in the form of the Court ordering the BOP to evaluate his circumstances in accordance with these statutes and applicable guidelines and that he be granted the maximum amount of time in this type of confinement. *See Richmond v. Scibana*, 387 F.3d 602 (7th Cir. 2004) (“challenges to rules that affect placement in community confinement” are properly brought under the APA after administrative remedies have been exhausted).

The Director of the BOP in his official capacity appears to be the appropriate defendant to pursue this claim under the APA. See 18 U.S.C. § 3624(c). Accordingly, **the clerk is directed** to update the docket to substitute Thomas R. Kane, Acting Director Federal Bureau of Prisons, as the sole defendant.

The plaintiff’s APA claim against the Acting Director of the Bureau of Prisons shall proceed as presented. This is the only viable claim identified by the Court. Any other claims thought to be brought are dismissed. If the plaintiff believes that additional viable claims were alleged in the complaint, but not identified by the Court he shall have **through May 15, 2017**, in which to identify those claims.

IV. Service of Process

The **clerk is designated**, pursuant to *Fed. R. Civ. P.* 4(c)(2), to issue process to Thomas R. Kane, Acting Director Federal Bureau of Prisons. The Marshal for this District or his Deputy shall serve the summons, together with a copy of the complaint (without exhibits), filed on April 4, 2017 (docket 1), and a copy of this Entry, on the defendant and on the officials designated pursuant to *Fed. R. Civ. P.* 4(i)(2), at the expense of the United States.

IT IS SO ORDERED.

Date: 4/17/17



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Distribution:

JOHN FLUELLEN HEARD, JR.
98677-179
TERRE HAUTE - FCI
TERRE HAUTE FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 33
TERRE HAUTE, IN 47808

United States Marshal
46 East Ohio Street
179 U.S. Courthouse
Indianapolis, IN 46204

NOTE TO CLERK: PROCESSING THIS DOCUMENT REQUIRES ACTIONS IN ADDITION TO DOCKETING AND DISTRIBUTION.