

disposition as law and justice require. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

In his petition, Reyes asserts that the Bureau of Prisons has improperly denied his request to be transferred to a federal prison in California, closer to his family. Reyes characterizes this error as based upon a misapplication of the “nearer release” provisions of BOP Program Statement 5100.08, and a violation of his right to equal protection guaranteed by the Fifth Amendment. [R. 2-1 at 2] Specifically, while PS 5100.08, Ch. 7 at pg. 4 precludes transfers for “inmates with an Order for Deportation, an Order of Removal, [or] an ICE detainer,” Reyes alleges that, while he is subject to deportation, no such formal order or detainer exists against him yet. In its responses to his administrative remedies, BOP officials stated that because Reyes was a citizen of Mexico and hence a “Deportable Alien,” he could not be transferred.

The Court will deny the petition for lack of subject matter jurisdiction, as Reyes may not assert his claims in a habeas corpus petition pursuant to 28 U.S.C. § 2241. A Section 2241 petition can be used to challenge the fact or duration of a prisoner’s confinement. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). But a challenge to the BOP’s determination of whether to transfer an inmate to another institution is a quintessential “conditions of confinement” claim which must be asserted under the civil rights laws. *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004); *Ganim v. Fed. Bureau of Prisons*, 235 F. App’x 882, 883-84 (3d Cir. 2007) (challenge to BOP’s refusal to transfer petitioner to facility closer to family may not be pursued under Section 2241); *Daniel v. Craig*, Nos. 5: 07-CV00465, 00577, 2008 WL 644883, at *2 (S.D. W.Va. Mar. 7, 2008) (*Bivens* action, not habeas petition, is proper

avenue to seek transfer to a different facility); *Pischke v. Litscher*, 178 F.3d 497 (7th Cir. 1999) (“habeas corpus cannot be used to challenge a transfer between prisons.”)

When a prisoner files a habeas petition asserting claims which must be raised in a civil rights action, the district court should deny the petition without prejudice to allow the prisoner to assert the claims under the proper method. *Martin*, 391 F.3d at 714; *Richmond v. Scibana*, 387 F.3d 602, 605-06 (7th Cir. 2004). The denial of this petition will therefore be without prejudice. Reyes may re-assert his claims by the proper means by filing a new civil action under the doctrine announced in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

Accordingly, **IT IS ORDERED** that:

1. Alfonso C. Reyes’s petition for a writ of habeas corpus [R.2] is **DENIED**.
2. The Court will enter an appropriate judgment.

This 16th day of August, 2011.



Signed By
Henry R. Wilhoit, Jr.
United States District Judge