



Not Reported in F.Supp.2d, 2011 WL 2470122 (C.D.Cal.)

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United States District Court,

C.D. California.

Benjamin SCHWARZ, Petitioner,

v.

Erwin MEINBERG, Warden, Respondent.

No. ED CV 10–1728 MMM (FMO).

May 31, 2011.

Benjamin Schwarz, Youngstown, OH, pro se.

Daniel Ackerman, United States Attorney's Office  
Riverside Branch Office, Riverside, CA, for Respondent.

### ORDER DISMISSING ACTION WITHOUT PREJUDICE

MARGARET M. MORROW, District Judge.

\*1 On June 23, 2010, Benjamin Schwarz (“petitioner”) received a 90-month federal sentence, followed by five years of supervised release, for possessing cocaine with the intent to distribute, in violation of 21 U.S.C. § 841. (See Declaration of Sarah Schuh (“Schuh Decl.”) at ¶ 4 & Exh. A). At the time he commenced this action, petitioner was a federal prisoner incarcerated at the Metropolitan Detention Center in Los Angeles, California (“MDC”).<sup>FN1</sup> (See Petition at 1–2).

<sup>FN1</sup> Petitioner was incarcerated at the MDC from August 11, 2009, to October 20, 2010. (See Schuh Decl. at ¶ 5). Petitioner is currently incarcerated at the Northeast Ohio Correctional Center in Youngstown, Ohio. (See Notice of Change of Address, filed on March 14, 2011).

On September 1, 2010, petitioner, proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody pursuant to 28 U.S.C. § 2241 (“Prior Petition”), in this Court, *Benjamin Schwarz v. Erwin Meinberg, Warden*, Case No. ED CV 10–1320 MMM (FMO), raising the following claims for federal habeas

relief: (1) the federal Bureau of Prisons (“BOP”) discriminated against petitioner because of his nationality by refusing to designate him to a “prison camp[;]” and (2) the conditions at the MDC are unsanitary and inhumane, in violation of the Eighth Amendment.<sup>FN2</sup> (See Court's Order of October 6, 2010, at 1, *Benjamin Schwarz v. Erwin Meinberg, Warden*, Case No. ED CV 10–1320 MMM (FMO)). On October 6, 2010, the Court dismissed the Prior Petition without prejudice to allow petitioner to file a new action after he exhausted his administrative remedies. (See *id.* at 1 & 4; Judgment, *Benjamin Schwarz v. Erwin Meinberg, Warden*, Case No. ED CV 10–1320 MMM (FMO)).

<sup>FN2</sup> The Court takes judicial notice of the files and records in *Benjamin Schwarz v. Erwin Meinberg, Warden*, Case No. ED CV 10–1320 MMM (FMO). See *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir.1980) (“In particular, a court may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases.”); accord *United States v. Howard*, 381 F.3d 873, 876 n. 1 (9th Cir.2004).

On November 8, 2010, petitioner, proceeding *pro se*, filed the instant Petition for Writ of Habeas Corpus by a Person in Federal Custody (“Petition”) pursuant to 28 U.S.C. § 2241. Respondent filed a Motion to Dismiss the Petition on December 4, 2010 (“Motion”). Petitioner filed an Opposition to the Motion (“Opposition”) on March 10, 2011. Respondent filed a Reply to the Opposition on March 21, 2011. On May 13, 2011, petitioner filed a “Declaration and Memorandum of Points and Authorities in Response to Respondent's Reply on Respondent's Motion to Dismiss, Based on Failure of Prudential Exhaustion; Request for Permission to File this Response” (“Sur-Reply”).

### DISCUSSION

The instant Petition raises, in essence, the same claims that petitioner raised in the Prior Petition: (1) the

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BOP refuses to designate petitioner to a “BOP camp” because of his Canadian citizenship; and (2) the conditions of the cells at the MDC, specifically with respect to the toilets, are unsanitary, in violation of the Eighth Amendment. (See Petition at 3).

Respondent contends that the Petition should be dismissed because petitioner has not fully exhausted his administrative remedies and the Petition fails to state a cognizable habeas claim. (See Motion at 3 & 4–8). Under the circumstances, the Court does not need to determine whether petitioner properly exhausted his federal administrative remedies with respect to the two claims raised in the instant Petition because, even assuming petitioner had exhausted his administrative remedies, the Petition fails to state cognizable habeas claims.<sup>FN3</sup>

<sup>FN3</sup>. Notably, petitioner does not address respondent's argument regarding his failure to raise cognizable federal habeas claims. (See, generally, Opposition at 1–19; Sur–Reply at 1–8).

**\*2** It is well-settled that claims relating to the conditions of a prisoner's confinement are not cognizable on federal habeas review. See, e.g., Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir.2003), cert. denied, 541 U.S. 1063, 124 S.Ct. 2388, 158 L.Ed.2d 963 (2004) (“[H]abeas jurisdiction is proper where a challenge to prison conditions would, if successful, necessarily accelerate the prisoner's release .... [H]abeas jurisdiction is absent ... where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence.”); Early v. Quintana, 2010 WL 5829211, at \*3 n. 1 (C.D.Cal.2010), report and recommendation adopted by 2011 WL 662710 (C.D.Cal.2011) (“To the extent that petitioner ... is attempting to raise conditions of confinement claims ..., the Court is unable to consider such claims because they are not cognizable on habeas review.”). Similarly, claims relating to an inmate's custody classification and/or designation to prison camp are also not cognizable. See, e.g., Levi v. Ebbert, 2009 WL 2169171, at \*8 (M.D.Pa.), aff'd, 353 F.App'x 681 (3d Cir.2009) (district court lacked subject matter jurisdiction over the petitioner's habeas claims regarding his custody classification and federal camp or low security prison eligibility because “they are not cognizable in a § 2241 habeas petition[.]” i.e., “they

do not affect the length of his sentence and will not result in a quicker release of Petitioner from prison than his [projected] release date [.]”); Estrada v. Chavez, 2009 WL 1383328, at \*4–5 (D.Ariz.2009) (finding that petitioner did not challenge the execution of his sentence where petitioner argued that “the application of Program Statement 5100.08 to classify [him] as a Medium Security inmate violate[d] the Due Process Clause [.]” and sought an order directing the BOP to reclassify him as a low security inmate and determine if he qualified for a transfer to a lower-security institution, because “[e]ven if th[e] court concluded that Petitioner's disciplinary infractions were erroneous or that his custody level was inaccurately calculated, at most, that would impact the security level of the institution at which [he] would be eligible to serve his term of imprisonment and to which he could be transferred. The length of his sentence would not change[.]”).<sup>FN4</sup> In short, petitioner's claims relating to the conditions of his confinement at the MDC and the BOP's refusal to designate him to a prison camp, (see Petition at 3), are not cognizable on federal habeas review as they do not challenge the duration of his confinement.

<sup>FN4</sup>. In denying petitioner's Administrative Remedy Request for designation to a “BOP Camp,” the Warden of the MDC stated:

[A]s a citizen of Canada, the Designations and Sentence Computation Center (DSCC), Grand Prairie, Texas, designated you to the Northeast Ohio Correctional Center, based on your Public Safety Factor of Alien. In accordance with Program Statement 5100.08, Inmate Security Designation and Custody Classification Manual, “A male or female inmate who is not a citizen of the United States will have the PSF of Alien applied. When applied, the inmate or the long-term detainee shall be housed in at least a Low security level institution.” As you are not a citizen of the United States, the PSF of Alien is appropriate, as is your designation to the Northeast Ohio Correctional Center.

(Schuh Decl., Exh. E at 23; see also *id.*, Exh. E at 22 & 24–25).

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Based on the foregoing, IT IS ORDERED that:

1. Respondent's Motion to Dismiss (**Document No.**  
**6** ) i s  
**granted.**

2. Judgment shall be entered dismissing this action without  
prejudice.

C.D.Cal.,2011.

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