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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Apr 01, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EMMANUEL ROY,  
  
Petitioner,  
  
v.  
  
UNITED STATES BUREAU OF  
PRISONS,  
  
Respondent.

NO: 2:19-CV-59-RMP

ORDER DENYING PETITIONER’S 28  
U.S.C. § 2241 AND MOTION FOR  
PRELIMINARY INJUNCTIVE  
RELIEF

BEFORE THE COURT are a petition for habeas corpus pursuant to 21 U.S.C. § 2241, ECF No. 1, and an “emergency request” that the Court interprets as a motion for preliminary injunctive relief, ECF No. 5, both from Petitioner Emmanuel Roy, who represents himself in this matter. The Court has reviewed Mr. Roy’s submissions, ECF Nos. 1, 2, 5, and 8, as well as the response filed by the United States, ECF No. 7; has researched the relevant law; and is fully informed.

**BACKGROUND**

Mr. Roy was sentenced in the Southern District of New York on December 10, 2013, to 87 months on each of five counts of wire fraud or conspiracy to commit

1 wire fraud, to run concurrently, to be followed by three years of supervised release.  
2 ECF No. 1 at 5–7. While in BOP custody, Mr. Roy was transferred to a reentry  
3 center (“RRC”) in Spokane, Washington, overseen by BOP’s Seattle Residential  
4 Reentry Management field office. *See* ECF Nos. 1, 2, and 7. BOP then permitted  
5 Mr. Roy to transfer to home confinement to continue serving his term of  
6 incarceration. *Id.* Since the filing of the habeas petition, Mr. Roy has been  
7 transferred back to the RRC and then to the Spokane County Jail for an alleged  
8 infraction at the RRC. *See* ECF No. 7 at 2, n. 1. Mr. Roy’s current release date  
9 from BOP custody is May 29, 2019. ECF No. 1 at 10.

10 Mr. Roy seeks relief through a § 2241 petition from the Bureau of Prisons’  
11 (“BOP’s”) administration of his sentence.

12 ***§ 2241 petition based on good-time credits***

13 Section 2241 extends habeas jurisdiction to a petitioner who is: (1) “in  
14 custody”; and (2) the custody is “in violation of the Constitution or laws or treaties  
15 of the United States.” 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490  
16 (1989).

17 Mr. Roy asserts that his good-time calculation should be changed to comply  
18 with the First Step Act, Public Law 115-391, 132 Stat. 5194, and that with the extra  
19 good-time that he should receive, he was eligible for release from BOP custody on  
20 January 10, 2019. ECF No. 1.

1           However, the First Step Act does not yet authorize the relief that Mr. Roy  
2 seeks. The good-time provisions of the First Step Act (“Act”) did not become  
3 effective when the Act took effect on December 21, 2018. The Act amended 18  
4 U.S.C. § 3624(b) to allow a prisoner to earn a maximum of 54 days for each year of  
5 the sentence imposed. *See* Public Law 115-391, 132 Stat. 5194, § 102. However,  
6 the change will not take effect until the Attorney General completes the “risk and  
7 needs assessment system” required to be completed by 210 days after the Act’s  
8 enactment. *Id.* at §§101, 102. Therefore, the change in calculation of good-time  
9 credit will not take effect until approximately July 2019. *See id.*

10           Federal courts are limited under Article III of the United States Constitution to  
11 deciding “cases” and “controversies.” One of the rules that ensures that a district  
12 court adheres to this requirement is that a claim must be “ripe,” meaning in this  
13 context that an administrative decision must be formalized and its effects must be  
14 felt in a concrete way by the challenging party. *Abbott Laboratories v. Gardner*,  
15 387 U.S. 136, 148–49 (1967), *overruled on other grounds by Califano v. Sanders*,  
16 430 U.S. 99, 105 (1977). “A claim is not ripe for adjudication if it rests upon  
17 contingent future events that may not occur as anticipated, or indeed may not occur  
18 at all.” *Texas v. United States*, 423 U.S. 296, 300 (1998) (internal citations omitted).

19           Because the BOP has no authority to recalculate Mr. Roy’s good-time credit  
20 according to the First Step Act until the relevant provisions take effect in  
21 approximately July 2019, the question of whether the BOP erred in administering

1 Mr. Roy's sentence on that basis is premature. *Accord Nichols v. Burch*, 2019 U.S.  
2 Dist. LEXIS 41595, at \*4 (D. Ariz. Mar. 12, 2019) (dismissing section 2241 petition  
3 for recalculation of good-time credit as premature because BOP cannot apply good-  
4 time calculations of the First Step Act until approximately July 2019); *Shorter v.*  
5 *Dobbs*, 2019 U.S. Dist. LEXIS 13235 at \*4 (S.D. Fla. Jan. 25, 2019) (finding  
6 premature a prisoner's claim of deprivation of good-time credits under the First Step  
7 Act).

8         There is a further question of whether this Court had jurisdiction over Mr.  
9 Roy's § 2241 petition at the time that it was filed. To invoke a court's jurisdiction in  
10 a § 2241 case, the petitioner must name the proper respondent, and the district court  
11 must have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426  
12 (2004). In a "core" habeas case, meaning one challenging "present physical  
13 confinement," the proper respondent is the "immediate custodian," the individual  
14 with the ability to produce the petitioner pursuant to a writ of habeas corpus. *Id.* at  
15 437–39, 443. As a general rule, jurisdiction "lies in only one district: the district of  
16 confinement." *Id.* at 443.

17         Although Mr. Roy was in BOP custody at the Spokane County Jail as of  
18 March 19, 2019, *see* ECF No. 7 at 2, n. 1, he was in BOP custody through the Seattle  
19 Residential Reentry Management field office up until March 8, 2019, while he was  
20 serving his term either in home confinement or at the reentry center ("RRC") in  
21 Spokane. The Court does not find it to be clear in the record before it whether Mr.

1 Roy is confined pursuant to authority in the Eastern or Western District of  
2 Washington while he has been in BOP custody through the Seattle Residential  
3 Reentry Management field office.

4 ***Preliminary Injunctive Relief***

5 In addition, on March 7, 2019, Petitioner filed a motion for a temporary or  
6 preliminary injunction “directing the BOP to keep the status quo with regards to  
7 [his] home confinement.” ECF No. 5. Petitioner asserted in his motion that he had  
8 been returned to RRC and greatly restricted in his allowable activities in “unfair,  
9 illegal, and discriminatory . . . retaliation for filing a 2241 Petition.” *Id.* By the time  
10 that the United States responded on March 19, 2019, Mr. Roy was in the Spokane  
11 County Jail pending resolution of an alleged violation of the RRC rules. *See* ECF  
12 No. 7 at 2, n. 1.

13 The standard for issuing either a preliminary injunction or a temporary  
14 restraining order requires that the moving party establish: “[1] that he is likely to  
15 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence  
16 of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an  
17 injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).  
18 Preliminary injunctive relief is an “extraordinary remedy” that may be awarded only  
19 upon a “clear showing” that the movant is entitled to such relief. *Id.* at 22.

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1 Here, as discussed above, Petitioner has not established the first requisite, that  
2 he is likely to succeed on the merits. Petitioner seeks a recalculation of his good-  
3 time credit and release date based upon a provision that is not yet in effect. In  
4 addition, Petitioner seeks injunctive relief that is different in nature from the section  
5 2241 action seeking to invoke a sentence-shortening procedure. A prisoner who  
6 seeks to challenge the constitutionality of decisions such as suspension of privileges  
7 must proceed through a civil rights claim under Section 1983 or *Bivens v. Six*  
8 *Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *See*  
9 *Perez v. Matavousian*, 2018 U.S. Dist. LEXIS 11750 at \*2–3 (E.D. Cal. Jan. 24,  
10 2018) (citing *Boyce v. Ashcroft*, 251 F.3d 911, 914 (10th Cir. 2001), *vacated on*  
11 *other grounds by Boyce v. Ashcroft*, 268 F.3d 953 (10th Cir. 2001)).

12 Finally, and dispositively, Petitioner’s motion is moot because the Court lacks  
13 jurisdiction until Petitioner’s petition for habeas relief is ripe, as discussed above.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Petitioner’s 18 U.S.C. § 2241 petition, **ECF No. 1**, is **DISMISSED**  
16 **without prejudice**, for lack of jurisdiction, as unripe.

17 2. Petitioner’s motion for a preliminary injunction, **ECF No. 5**, is **DENIED**  
18 **AS MOOT.**

19 3. At this time, Petitioner has not made a substantial showing of the denial of  
20 a constitutional right, *see* 28 U.S.C. § 2253(c)(2), and, therefore, the Court  
21 declines to issue a certificate of appealability.

