

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Marlon Jermaine Johnson v. E. Ricolcol, Warden

Johnson v. Ricolcol · No. EDCV 24-1711 CAS (AGR) · Decided December 16, 2025

OPINION

1 O 2 3 4 5 6 7 IN THE UNITED STATES DISTRICT COURT 8 FOR THE CENTRAL
DISTRICT OF CALIFORNIA 9 10 11 MARLON JERMAINE JOHNSON, NO. EDCV 24-1711
CAS (AGR) 12 Petitioner, ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
13 v. MAGISTRATE JUDGE 14 E. RICOLCOL, Warden, 15 Respondent. 16 17 18 Pursuant to
28 U.S.C. § 636, the Court has reviewed the Petition for Writ of 19 Habeas Corpus (“Petition”),
the other records on file herein, the Report and 20 Recommendation of the United States
Magistrate Judge (“Report”), the 21 Objections and the Response.

Further, the Court has engaged in a de novo 22 review of those portions of the Report and
Recommendation to which objections 23 have been made. The Court accepts the findings and
recommendation of the Report. 24 In the Objections, Petitioner discloses for the first time that he
submitted a 25 BP-11 form at the final level on June 5, 2025, after Respondent filed the motion to
26 dismiss the Petition for failure to exhaust administrative remedies on April 21, 27 28 1 2025.

(Obj., Dkt. No. 13 at 3.)1 On June 11, 2025, the BP-11 was rejected and 2 returned to Petitioner
because there was no record of Petitioner submitting a BP- 3 10 at the third level. (Id.) A rejection
on procedural grounds “‘is not the same as 4 a denial, which is a decision on the merits.’” Smith v.
Lepe, 2025 U.S. Dist. 5 LEXIS 195655, *8 (C.D. Cal. Aug. 25, 2025) (citation omitted).

Unlike a denial, a rejection on procedural grounds does not exhaust administrative remedies. Id. at
6 *8. Therefore, Petitioner did not exhaust his administrative remedies. 7 Petitioner claims that he
submitted a BP-10 but after “transferring to a 8 different facility, the Petitioner’s paperwork was
lost by the BOP.” (Obj. at 1.)

The 9 records indicate Petitioner submitted the BP-9 at the second level on March 20, 10 2024
with the Warden’s response due by April 9, 2024. (Exh. D to Lam Decl., 11 Dkt. No. 6-1 at 78.)
The BP-10 had to be filed within 20 calendar days of the 12 Warden’s response to the BP-9 or the
time for response had lapsed. 28 C.F.R. § 13 542.15(a). Assuming Petitioner actually submitted a
timely BP-10 by April 29, 14 2024, the Regional Director’s response would have been due within
30 calendar 15 days (May 29, 2024) plus a possible 30-day extension of time (June 28, 2024).

16 28 C.F.R. § 542.18. Petitioner’s BP-11 would have been due within 30 calendar 17 days, or no
later than July 29, 2024. 28 C.F.R. § 542.15(a). According to the 18 attachment to the Objections,

Petitioner submitted a BP-11 on June 5, 2025, over 19 10 months late. Petitioner does not provide any explanation for this lengthy 20 delay.

The court declines to waive the exhaustion requirement under these 21 circumstances. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) 22 (holding courts have discretion to waive exhaustion requirement when 23 administrative remedies would be inadequate, not efficacious, futile, cause irreparable injury, or void). 24 Alternatively, Respondent is correct that Petitioner's challenge to the loss of 25 commissary privileges during March 3 – April 1, 2024, which has long since 26 expired, does not state a cognizable claim for habeas relief under 28 U.S.C. § 27 1 Page citations are to the page numbers assigned by CM/ECF in the header of 28 the document.

1 | 2241. See *Hernandez v. Lepe*, 2025 U.S. Dist. LEXIS 197721, *8 (C.D. Cal. Aug. 2 | 18, 2025) (noting moot challenges to loss of commissary and email privileges do 3 | not provide basis for habeas jurisdiction under § 2241), accepted by. 2025 U.S. 5 IT THEREFORE IS ORDERED that Respondent's motion to dismiss the 6 Petition for Writ of Habeas Corpus is GRANTED.

7 IT IS FURTHER ORDERED that judgment be entered denying the Petition g for Writ of Habeas Corpus and dismissing this action without prejudice. 5 Maire be dayh_ DATED: December 16, 2025 _ 10 HONORABLE CHRISTINA A. SNYDER 11 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28