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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ERNESTO GARCIA,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>LINDA SANDERS, Warden,</p> <p>Respondent - Appellee.</p>
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No. 09-56682

D.C. No. 2:09-cv-04188-ODW-RNB

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Otis D. Wright, II, District Judge, Presiding

Submitted May 24, 2011 \*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Federal prisoner Jose Ernesto Garcia appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas petition without prejudice. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Garcia contends that the Federal Bureau of Prisons unlawfully refused his request for a transfer to a Residential Re-entry Center in contravention of 18 U.S.C. § 3621(b).

A federal prisoner is required to exhaust his administrative remedies before filing a habeas petition. *See Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986) (per curiam). Garcia has not exhausted his administrative remedies, nor has he shown that exhaustion of his administrative remedies would be futile. *See Terrell v. Brewer*, 935 F.2d 1015, 1019 (9th Cir. 1991). Thus, the district court properly dismissed his petition without prejudice. *See id.*

**AFFIRMED.**