

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIFFANY SYLVESTER,	§	
	§	
<i>Petitioner,</i>	§	
v.	§	CIVIL ACTION: H-05-3603
	§	
DOUGLAS DRETKE,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division	§	
	§	
<i>Respondent.</i>	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Tiffany Sylvester, a federal inmate proceeding *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241.¹ Sylvester challenges the Federal Bureau of Prison's policy limiting her eligibility for placement in a community confinement center to the last ten percent of her sentence.

Sylvester's prior petition, Civil Action No. 05-2891 was dismissed without prejudice because she did not exhaust her administrative remedies. Sylvester then filed the instant petition asserting the same legal challenge and seeking the identical relief. Sylvester contends that she should be excused from the exhaustion requirement because her children were left homeless by Hurricane Katrina.

¹ The district court referred the petition to this Magistrate for report and recommendation (Dkt. 3).

Exceptions to the exhaustion requirement are appropriate only where administrative remedies are unavailable or inappropriate, or where it would be patently futile to attempt administrative remedies. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). These exceptions apply only in extraordinary circumstances. *Id.*

The district court rejected Sylvester's futility argument in Civil Action No. 05-2891. While unfortunate, the plight of Sylvester's children is not grounds for reconsideration of that decision. There is no recognized exception to the exhaustion requirement for family hardship. In any event, Sylvester seeks assignment to a community confinement center, not release from custody, and therefore the relief, even if granted expeditiously, would do little or nothing to relieve the alleged hardship.

Sylvester has not exhausted her administrative remedies with the Bureau of Prisons. The court therefore recommends that Sylvester's petition be dismissed without prejudice.

The parties have ten days to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on December 6, 2005.


Stephen Wm Smith
United States Magistrate Judge