

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONTE ROLANDO HARRIS,)	1:10-CV-02208 AWI SMS HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION
)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS
v.)	
)	
HECTOR A. RIOS, JR.,)	
)	
Respondent.)	

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

DISCUSSION

On November 29, 2010, Petitioner filed the instant petition for writ of habeas corpus. Petitioner complains that he is being assigned to a prison program for which he is not eligible. He requests a stay of the transfer to the new program.

Writ of habeas corpus relief extends to a person in custody under the authority of the United States. See 28 U.S.C. § 2241. Writ of habeas corpus relief is available if a federal prisoner can show he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). However, where a Petitioner seeks to challenge the conditions of his confinement, his claims are cognizable in a civil rights action rather than a habeas corpus action. In the federal context, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388

1 (1971), provides petitioners with a remedy for violation of civil rights by federal actors. C.f., Badea
2 v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (challenges to conditions of confinement by state prisoners
3 should be presented in a 42 U.S.C. § 1983 civil rights action rather than a habeas corpus petition).

4 In this case, Petitioner’s complaints involve the conditions of his confinement, not the fact or
5 duration of that confinement. Thus, Petitioner is not entitled to habeas corpus relief and this petition
6 must be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way of a
7 civil rights complaint pursuant to Bivens, 403 U.S. 388 (1971) and 42 U.S.C. § 1983.

8 **RECOMMENDATION**

9 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
10 DISMISSED because the petition does not allege grounds that would entitle Petitioner to habeas
11 corpus relief. The Court further RECOMMENDS that the Clerk of Court be DIRECTED to send
12 Petitioner blank forms for filing a civil rights action.

13 This Findings and Recommendation is submitted to the Honorable Anthony W. Ishii, United
14 States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of
15 the Local Rules of Practice for the United States District Court, Eastern District of California.
16 Within thirty (30) days after service of the Findings and Recommendation, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall
19 be served and filed within fourteen (14) days after service of the objections. The Court will then
20 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised
21 that failure to file objections within the specified time may waive the right to appeal the District
22 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 **Dated: February 16, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE