

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS DANE SANDERS,
Petitioner,
v.
PONCE, et al.,
Respondents.

No. 2:15-cv-1619 TLN CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a federal prisoner, seeks a writ of habeas corpus under 28 U.S.C. § 2241. On September 2, 2015, petitioner’s original § 2241 petition was dismissed with leave to amend. Petitioner has now filed an amended petition. Generally speaking, the court must order respondent to file a response to a § 2241 petition unless it appears from the petition that the petitioner is not entitled to relief. 28 U.S.C. § 2243. The court reviews petitioner’s amended petition to determine if ordering respondent to file a response is warranted.

Pursuant to 18 U.S.C. § 3621(b), the Federal Bureau of Prisons (BOP) has created a comprehensive scoring system to determine the level of custody appropriate for each particular inmate. This system is set forth in BOP Program Statement 5100.8. Petitioner alleges the score assigned to him is too low because he has been given incorrect scores for “program participation” and “living skills.” He asks that the court order the score raised and order that petitioner be

////

1 transferred to a low security prison. Petitioner also asks that the court order respondents to
2 process petitioner's complaints of staff misconduct.

3 Good cause appearing, the court will order respondent to file a response with respect to
4 petitioner's claim regarding his classification score. As for petitioner's claims regarding the
5 processing of complaints, claims concerning conditions of confinement generally must be brought
6 in an action for violation of civil rights. See Badea v. Cox, 931 F.2d 573, 574 (1991). Since
7 petitioner is a federal prisoner, an action brought pursuant to Bivens v. Six Unknown Fed.
8 Narcotics Agents, 403 U.S. 388 (1999) would be the appropriate civil rights action.

9 In accordance with the above, IT IS HEREBY ORDERED that

10 1. Respondent is directed to file an answer within sixty days regarding petitioner's claim
11 that the classification score assigned to him under Federal Bureau of Prisons Program Statement
12 5100.8 is too low.

13 2. Respondent shall include with the answer any and all transcripts or other documents
14 relevant to the determination of the issues presented.

15 3. Petitioner's traverse, if any, is due on or before thirty days from the date respondent's
16 answer is filed.

17 IT IS HERBY RECOMMENDED that petitioner's claims concerning the processing of
18 inmate grievances, complaints, etc., be summarily dismissed.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned "Objections to Magistrate Judge's
23 Findings and Recommendations." Petitioner is advised that failure to file objections within the

24 ////

25 ////

26 ////

27 ////

28 ////

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 Dated: March 29, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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

1
sand1619.dis