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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Paul W. Driggers,)	
Petitioner,)	CV-10-317-TUC-DCB
vs.)	ORDER
Lewis Winn, Warden, et al.,)	
Respondents.)	

Magistrate Judge Marshall issued her Report and Recommendation on April 15, 2011, recommending that the District Court construe the habeas petition as a civil rights action pursuant to *Bivens* and dismiss the action without prejudice with leave to file on the proper court-approved form. A copy was sent to all parties on April 15, 2011, notifying all parties that written objections must be filed within fourteen days of service. 28 U.S.C. §636(b). Petitioner filed an Objection on April 29, 2011.

After a de novo review of the record and the objection, the Court finds the objection meritless. Whether or not Petitioner has previously filed a similar action, but did not obtain the relief requested has no bearing on the proper form to obtain judicial review in this action. A viable action filed pursuant to 28 U.S.C. §2241 must challenge the manner, location or conditions of the execution of the sentence.

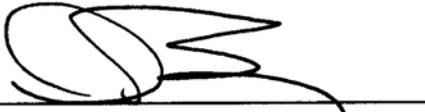
The Court, having made an independent review of the record, orders as follows:

IT IS ORDERED that Magistrate Judge Marshall’s Report and Recommendation (Doc. 22) is ACCEPTED and ADOPTED by this Court as the findings of fact and conclusions of law. The motion for summary judgment (Doc. 21) is denied.

IT IS ORDERED that this habeas petition is DISMISSED without prejudice to refile as improvidently styled as a habeas action rather than a *Bivens* civil rights action. If

1 Petitioner fails to file an amended complaint on or before **June 3, 2011**, this action shall be
2 dismissed with prejudice without further notice to Petitioner for willful noncompliance with
3 Court directives.

4 DATED this 4th day of May, 2011.

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7 David C. Bury
8 United States District Judge
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