

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GENNARO BRUNO,

Case No. CV 20-6390 JFW (PVC)

Petitioner,

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

WARDEN,

Respondent.

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge and Petitioner’s Objections. After having made a *de novo* determination of the portions of the Report and Recommendation to which Objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

In the Objections, Petitioner requests that his habeas petition be re-filed as a civil rights complaint under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). However, for the reasons stated in the Magistrate Judge's Report and Recommendation, it is not appropriate to do so here because Petitioner has not satisfied the pre-filing requirements for civil rights actions, and the Petition itself is not on its face readily construable as a civil rights complaint. Petitioner does not appear to have

1 exhausted his administrative remedies, and did not pay the \$350 filing fee applying to
2 prisoner civil rights actions or request to proceed without prepayment of the full filing fee.
3 Moreover, the Warden of FCI Victorville is the sole named Respondent, but the Petition
4 does not contain any allegations explaining what the Warden did or did not do, or why the
5 Warden's actions or inaction violated Petitioner's constitutional rights. However, because
6 dismissal of this action is without prejudice, Petitioner may refile his claims as a civil
7 rights action following exhaustion of his claims, in a civil rights complaint naming as
8 defendant(s) the individual(s) who directly violated his constitutional rights, and
9 supported by a request to proceed *in forma pauperis* or payment of the full filing fee for
10 civil actions.

12 IT IS ORDERED that Judgment shall be entered dismissing this action without
13 prejudice.

15 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the
16 Judgment herein on Petitioner at his address of record and on counsel for Respondent.

18 || LET JUDGMENT BE ENTERED ACCORDINGLY.

20 | DATED: June 7, 2021

**JOHN F. WALTER
UNITED STATES DISTRICT JUDGE**