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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EMILIO CASTANEDA TIRADO,  
Petitioner,  
v.  
DAVID SHINN, Warden,  
Respondent.

Case No. EDCV-17-00125-SVW (KES)  
  
ORDER SUMMARILY DISMISSING  
HABEAS PETITION

On January 25, 2017, Emilio Castaneda Tirado (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody pursuant to 28 U.S.C. § 2241 (“Petition”). (Dkt. 1.) As more fully explained below, the present Petition must be summarily dismissed because Petitioner is not challenging the legality of his confinement.

Initially, the Court notes that, although Petitioner has utilized the form for filing a habeas petition under 28 U.S.C. § 2241, the Petition would actually be subject to 28 U.S.C. § 2255 because Petitioner is a “prisoner in custody under sentence of a court established by Act of Congress....” 28 U.S.C. § 2255(a), if he were seeking habeas relief. Petitioner pled guilty to attempted reentry of a removed alien under 8 U.S.C. § 1326 and was sentenced to a term of 27 months followed by

1 2 years of supervised release. (Dkt. 1 at 2 ¶ 3.) See also United States v.  
2 Castaneda-Tirado, CR-14-3619-DMS-1 (S.D. Cal. Apr. 10, 2015). Under Rule 4  
3 of the Rules Governing Section 2255 Cases in the United States District Courts the  
4 Court “must” dismiss the petition “[i]f it plainly appears from the petition and any  
5 attached exhibits that the petitioner is not entitled to relief...”

6 The Petition alleges that prison authorities have refused to provide Petitioner  
7 with a prosthetic leg, thereby inflicting “willful and malicious injury” on him and  
8 committing “gross negligence.” (Dkt. 1 at 3-4.) He points to language in his  
9 criminal judgment, wherein the sentencing court stated: “The Court STRONGLY  
10 recommends that the defendant be placed in a Federal Medical Center and that he  
11 be treated for his mental and physical condition. In ADDITION that the defendant  
12 be fitted with a prosthetic leg.” (Id. at 8.) See also Castaneda-Tirado, CR-14-3619-  
13 DMS-1, Dkt. 23 at 2.

14 “Habeas corpus proceedings are the proper mechanism for a prisoner to  
15 challenge the ‘legality or duration’ of confinement.” Badea v. Cox, 931 F.2d 573,  
16 574 (9th Cir. 1991) (citing Preiser v. Rodriguez, 411 U.S. 475, 484 (1973)). “A  
17 civil rights action, in contrast, is the proper method of challenging ‘conditions of ...  
18 confinement.’” Id. (citing Preiser, 411 U.S. at 498-99).

19 The gravamen of Petitioner’s claims is that he has received inadequate  
20 medical care in prison. This concerns the conditions of his confinement, rather than  
21 the legality or duration of his confinement. In other words, if Petitioner ultimately  
22 proved that he had received inadequate medical care, he might be entitled to  
23 damages or injunctive relief, but such a finding would not affect the length of his  
24 sentence. See Crawford v. Bell, 599 F.2d 890, 892 (9th Cir. 1979) (affirming  
25 dismissal of habeas petition where “[t]he appropriate remedy for [the alleged]  
26 constitutional violations, if proven, would be a judicially mandated change in the  
27 conditions and/or an award of damages, but not release from confinement”). Thus,  
28 he is not seeking relief that he could obtain in a habeas action.

1 He might be able seek relief by filing a civil lawsuit under Bivens v. Six  
2 Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971),  
3 which “established that the victims of a constitutional violation by a federal agent  
4 have a right to recover damages against the official in federal court....” Carlson v.  
5 Green, 446 U.S. 14, 18 (1980); see, e.g., Farmer v. Brennan, 511 U.S. 825 (1994)  
6 (analyzing Bivens suit against federal prison officials alleging inadequate medical  
7 care). Claims that a prisoner has received inadequate medical care are governed by  
8 the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). To prevail, a  
9 prisoner must show that prison officials were “deliberately indifferent” to his  
10 medical needs, that the deprivation of medical care was objectively serious, and that  
11 the defendant knew of and disregarded a substantial risk of serious harm to the  
12 prisoner’s health or safety. See Farmer, 511 U.S. at 835-37 (1994); Johnson v.  
13 Meltzer, 134 F.3d 1393, 1398 (9th Cir. 1998). However, to the extent Petitioner is  
14 able to seek such relief, he must do so in a new civil action.

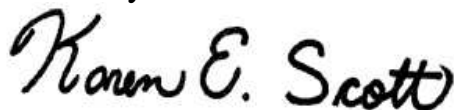
15 IT IS THEREFORE ORDERED that this action be summarily dismissed  
16 without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 and  
17 2255 Cases in the United States District Courts. This dismissal is without prejudice  
18 to Petitioner filing a new civil rights action based on the same factual allegations.  
19 If Petitioner wishes to do so, he should utilize the form attached to this Order as  
20 Exhibit A and review the form instructions attached as Exhibit B.

21 DATED: February 2, 2017



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23  
24 STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE

25 Presented by:



26  
27 KAREN E. SCOTT  
28 United States Magistrate Judge