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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHNNIE TIRRELL WARREN,

1:09-cv-00293-OWW-DLB (HC)

Petitioner,

FINDINGS AND RECOMMENDATION  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS

v.

[Doc. 1]

HECTOR ALFONZO 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 7, 2007, Petitioner filed a petition for writ of habeas corpus in this Court. In this petition, Petitioner contends that he was improperly placed in the Security Housing Unit for threatening another individual with bodily harm, resulting in his property being confiscated. He also claims that prison officials have retaliated against him. Petitioner requests a determination that his constitutional rights were violated and compensatory damages.

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 (1971), provides petitioners with a remedy for violation of

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

4 In this case, Petitioner’s complaints involve the conditions of his confinement, not the  
5 fact or duration of that confinement. Thus, Petitioner is not entitled to habeas corpus relief, and  
6 this petition must be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do  
7 so by way of a civil rights complaint pursuant to Bivens, 403 U.S. 388 (1971) and 42 U.S.C.  
8 § 1983.

9 **RECOMMENDATION**

10 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be  
11 DISMISSED because the petition does not allege grounds that would entitle Petitioner to habeas  
12 corpus relief. The Court further RECOMMENDS that the Clerk of Court be DIRECTED to send  
13 Petitioner the standard form for claims pursuant to Bivens, 403 U.S. 388 (1971) and 42 U.S.C.  
14 § 1983.

15 These Findings and Recommendations are submitted to the Honorable Oliver W.  
16 Wanger, United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636  
17 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court,  
18 Eastern District of California. Within twenty (20) days after being served with a copy, any party  
19 may file written objections with the court and serve a copy on all parties. Such a document  
20 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”  
21 Replies to the objections shall be served and filed within ten (10) court days (plus three days if  
22 served by mail) after service of the objections. The Court will then review the Magistrate  
23 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file  
24 objections within the specified time may waive the right to appeal the District Court’s order.  
25 Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: February 20, 2009**

28 **/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE