

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ISSA SANAD BEIRUTI,	)	1:09-cv-00360-TAG HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION FOR WRIT
	)	OF HABEAS CORPUS AND DIRECTING
v.	)	CLERK OF COURT TO TERMINATE THE
	)	ACTION (Doc. 1)
J. E. SUGRUE,	)	
	)	ORDER DIRECTING CLERK OF COURT TO
Respondent.	)	SEND BLANK FORMS TO PETITIONER

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c), Petitioner consented to the jurisdiction of the United States Magistrate Judge. (Doc. 3).

Petitioner filed the instant federal petition for writ of habeas corpus on February 27, 2009, alleging the United States Bureau of Prisons' ("BOP's") failure to provide Petitioner, a Muslim, with food and bathroom facilities consistent with his religious beliefs. (Doc. 1).

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each Petition for Writ of Habeas Corpus. The Court must dismiss a Petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; see, also, Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990).

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

1 prisoner can show he is “in custody in violation of the Constitution or laws or treaties of the  
2 United States.” 28 U.S.C. § 2241(c)(3). However, where a Petitioner seeks to challenge the  
3 conditions of his confinement, his claims are cognizable in a civil rights action rather than a  
4 habeas corpus action. In the federal context, Bivens v. Six Unknown Named Agents of Federal  
5 Bureau of Narcotics, 403 U.S. 388 (1971), provides Petitioners with a remedy for violation of  
6 civil rights by federal actors. C.f., Badea v. Cox, 931 F.2d 573, 574 (9<sup>th</sup> Cir. 1991) (challenges to  
7 conditions of confinement by state prisoners should be presented in a 42 U.S.C. § 1983 civil  
8 rights action rather than a habeas corpus petition).

9 In this case, Petitioner’s assertions that his federal constitutional rights are being violated  
10 by the prison’s having failed to provide Petitioner with Muslim meals and bathroom facilities  
11 concern the conditions of Petitioner’s confinement and are claims more appropriately heard in a  
12 civil rights action. Accordingly, the instant action should be dismissed and Petitioner directed to  
13 submit a civil rights complaint for federal prisoners challenging the conditions of their  
14 confinement.

### 15 ORDER

16 Accordingly, the Court HEREBY ORDERS as follows:

- 17 1. The instant Petition for Writ of Habeas Corpus (Court Doc. 1) is DISMISSED for  
18 failure to state a claim for which habeas relief can be granted;
- 19 2. The Clerk of Court is DIRECTED to terminate this action in its entirety; and
- 20 3. The Clerk of Court is FURTHER DIRECTED to send Petitioner a civil rights  
21 complaint for federal prisoners seeking to challenge the conditions of their confinement.

22  
23 IT IS SO ORDERED.

24 Dated: April 1, 2009

25 /s/ Theresa A. Goldner  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28