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6	UNITED STATES DISTRICT COURT
7	EASTERN DISTRICT OF CALIFORNIA
8	DONALD E. WISHART,) 1:09-cv-01118 LJO YNP [DLB] (HC)
9) Petitioner,) FINDINGS AND RECOMMENDATION
10	v.) REGARDING PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER
11)) [Doc. #3]
12	NEIL H. ADLER,
13	Respondent.)
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15	Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
16	pursuant to 28 U.S.C. § 22541.
17	On July 16, 2009, Petitioner filed a motion requesting temporary restraining order directing
18	the warden of his institution to relinquish his legal property. (Doc. #3.)
19	DISCUSSION
20	Petitioner is informed that claims concerning the conditions of one's confinement are properly
21	raised in a civil rights complaint filed pursuant to Bivens v. Six Unknown Named Agents of Federal
22	Bureau of Narcotics, 403 U.S. 388 (1971). A Bivens action provides petitioners with a remedy for
23	violation of civil rights by federal actors. C.f., Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)
24	(challenges to conditions of confinement by state prisoners should be presented in a 42 U.S.C. § 1983
25	civil rights action rather than a habeas corpus petition).
26	In this case, Petitioner seeks injunctive relief compelling prison officials to relinquish property.
27	This claim is not properly brought in a petition for writ of habeas corpus. Petitioner's complaint
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1	clearly concerns the conditions of his confinement and thus is appropriately raised in a civil rights
2	action. Accordingly, the Court will recommend that Petitioner's motion be dismissed.
3	RECOMMENDATION
4	Accordingly, the Court RECOMMENDS that Petitioner's motion for an order directing the
5	warden to relinquish stored property be DISMISSED.
6	This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill,
7	United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule
8	72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
9	California. Within thirty (30) days after being served with a copy of this Findings and
10	Recommendation, any party may file written objections with the Court and serve a copy on all parties.
11	Such a document should be captioned "Objections to Magistrate Judge's Findings and
12	Recommendation." Replies to the Objections shall be served and filed within ten (10) <u>court</u> days
13	(plus three days if served by mail) after service of the Objections. The Court will then review the
14	Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure
15	to file objections within the specified time may waive the right to appeal the Order of the District
16	Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
17	IT IS SO ORDERED.
18	Dated:February 17, 2010/s/ Dennis L. BeckUNITED STATES MAGISTRATE JUDGE
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