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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SHAWN A. STEWART,

CASE NO. 1:09-cv-02011-AWI-GBC PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION  
FOR FAILURE TO STATE A CLAIM

v.

H. A. RIOS, JR., et al.,

(ECF No. 1)

Defendants.

THIRTY-DAY DEADLINE

**I. Screening Requirement**

Plaintiff Shawn A. Stewart (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. Currently pending before the Court is Plaintiff’s complaint filed on November 9, 2009. (Doc. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C § 1915(e)(2)(B).

In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and

1 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).  
2 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it  
3 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.  
4 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555  
5 (2007)). “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
6 relief that is plausible on its face.’” Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 570).

## 7 **II. Summary of Complaint**

8 Plaintiff is a federal prisoner presently incarcerated at the Williamsburg Federal Correctional  
9 Institution. At the time the complaint was filed Plaintiff was housed at the United States Penitentiary  
10 in Atwater, California. The complaint names Defendants H. A. Rios, Jr. (Warden), J. McFadden  
11 (Regional Director), Harley Lappin (Director), and the Federal Bureau of Prisons. Plaintiff alleges  
12 that he should receive time credits toward his federal sentence from the date that a federal detainer  
13 was placed upon him. (Doc. 1 at 3.) Plaintiff is requesting an order stating that, pursuant to 18  
14 U.S.C. § 3585(a), “at the time a federal detainer is placed on [an inmate, he] is formally and legally  
15 in federal custody for purposes of accruing credit for time incarcerated to be applied toward [his]  
16 federal sentence.” (Id. at 4.)

## 17 **III. Habeas Corpus**

18 When a prisoner is challenging the legality or duration of his custody and the relief he seeks  
19 is immediate or speedier release, his sole federal remedy is habeas corpus. Preiser v. Rodriguez, 411  
20 U.S. 475, 500 (1973). Where the action is brought to restore time credits, the effect is to shorten the  
21 term of confinement and the action would need to be brought by habeas corpus. Wilkinson v.  
22 Dotson, 544 U.S. 74, 79 (2005). A “prisoner’s [civil rights] action is barred (absent prior  
23 invalidation)-no matter the relief sought (damages or equitable relief), no matter the target of the  
24 prisoner’s suit ([government] conduct leading to conviction or internal prison proceedings)-if success  
25 in that action would necessarily demonstrate the invalidity of confinement or its duration.” Id. at 81-  
26 82.

27 Plaintiff is clearly challenging the legality or duration of his federal custody. Plaintiff alleges  
28 he should be given time credit toward his federal sentence from the date that the federal detainer was

1 placed on him. The relief requested is an order by the Court that, under 18 U.S.C. § 3585(a), time  
2 credit toward a prisoner's federal sentence is to be given from the date a federal detainer is placed  
3 on the inmate, which would shorten Plaintiff's term of confinement. Since the success in this action  
4 would necessarily demonstrate the invalidity of his confinement or its duration, the sole remedy  
5 available to Plaintiff is a writ of habeas corpus. The Court should dismiss the complaint without  
6 prejudice.

7 **IV. Conclusion and Recommendation**

8 Based on the foregoing, the Court finds that Plaintiff has failed to state a claim for relief  
9 under Bivens. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend 'shall be  
10 freely given when justice so requires,'" Fed. R. Civ. P. 15(a), and "[l]eave to amend should be  
11 granted if it appears at all possible that the plaintiff can correct the defect," Lopez v. Smith, 203  
12 F.3d 1122, 1130 (9th Cir. 2000) (internal citations omitted). However, the Court finds that the  
13 deficiencies outlined above are not capable of being cured by amendment, and therefore leave to  
14 amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F. 2d 1446,  
15 1448-49 (9th Cir. 1987). Accordingly, based on the foregoing, the Court HEREBY  
16 RECOMMENDS that this action be dismissed in its entirety, without prejudice, for failure to state  
17 a claim upon which relief can be granted.

18 These findings and recommendations will be submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
20 days after being served with these findings and recommendations, Plaintiff may file written  
21 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
22 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
23 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
24 1153 (9th Cir. 1991).

25 IT IS SO ORDERED.

26 Dated: February 7, 2011

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28 UNITED STATES MAGISTRATE JUDGE