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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH ANTHONY BROWN,)	1:12-cv-00146-SKO-HC
)	
Petitioner,)	ORDER DISMISSING THE PETITION
)	WITHOUT PREJUDICE (DOC. 1)
)	
v.)	ORDER DIRECTING THE CLERK TO
)	CLOSE THE CASE
LINDA SANDERS,)	
)	
Respondent.)	
)	
)	

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)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on February 13, 2012 (doc. 3). Pending before the Court is the petition, which was filed on January 31, 2012.

I. Screening the Petition

The Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) are appropriately applied to

1 proceedings undertaken pursuant to 28 U.S.C. § 2241. Habeas Rule
2 1(b). Habeas Rule 4 requires the Court to make a preliminary
3 review of each petition for writ of habeas corpus. The Court
4 must summarily dismiss a petition "[i]f it plainly appears from
5 the petition and any attached exhibits that the petitioner is not
6 entitled to relief in the district court...." Habeas Rule 4;
7 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
8 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
9 2(c) requires that a petition 1) specify all grounds of relief
10 available to the Petitioner; 2) state the facts supporting each
11 ground; and 3) state the relief requested. Notice pleading is
12 not sufficient; rather, the petition must state facts that point
13 to a real possibility of constitutional error. Rule 4, Advisory
14 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at
15 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)).
16 Allegations in a petition that are vague, conclusory, or palpably
17 incredible are subject to summary dismissal. Hendricks v.
18 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

19 Further, the Court may dismiss a petition for writ of habeas
20 corpus either on its own motion under Habeas Rule 4, pursuant to
21 the respondent's motion to dismiss, or after an answer to the
22 petition has been filed. Advisory Committee Notes to Habeas Rule
23 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
24 (9th Cir. 2001).

25 A petition for habeas corpus should not be dismissed without
26 leave to amend unless it appears that no tenable claim for relief
27 can be pleaded were such leave granted. Jarvis v. Nelson, 440
28 F.2d 13, 14 (9th Cir. 1971).

1 Here, Petitioner alleges that he is an inmate of the United
2 States Prison at Lompoc, California (USP Lompoc), serving a
3 sentence imposed in the District of Columbia. Petitioner
4 complains of various conditions of confinement that he alleges he
5 experienced while incarcerated at the United States Prison at
6 Atwater, California, as well as at USP Lompoc, including threats
7 and verbal abuse, food poisoning, undue exposure to other
8 inmates, failure to be served breakfast, denial of psychiatric
9 services, and denial of access to recreation and law library
10 services. (Pet. 3, 6-8.) Petitioner alleges that these
11 conditions were retaliatory. He seeks transfer to a contracted
12 prison outside of the Bureau of Prisons to avoid further
13 retaliation. (Pet. 1-3, 6-8.)

14 Petitioner also complains of procedures and delay relating
15 to a "DHO" hearing, with uncertain references to placement in a
16 locked down facility. (Id.)

17 II. Conditions of Confinement

18 A federal court may not entertain an action over which it
19 has no jurisdiction. Hernandez v. Campbell, 204 F.3d 861, 865
20 (9th Cir. 2000).

21 Relief by way of a writ of habeas corpus extends to a person
22 in custody under the authority of the United States if the
23 petitioner can show that he is "in custody in violation of the
24 Constitution or laws or treaties of the United States." 28
25 U.S.C. § 2241(c)(1) & (3). A habeas corpus action is the proper
26 mechanism for a prisoner to challenge the fact or duration of his
27 confinement. Preiser v. Rodriguez, 411 U.S. 475, 485 (1973);
28 Tucker v. Carlson, 925 F.2d 330, 332 (9th Cir. 1990) (holding in

1 a Bivens¹ action that a claim that time spent serving a state
2 sentence should have been credited against a federal sentence
3 concerned the fact or duration of confinement and thus should
4 have been construed as a petition for writ of habeas corpus
5 pursuant to § 28 U.S.C. § 2241, but that to the extent that the
6 complaint sought damages for civil rights violations, it should
7 be construed as a Bivens action); Crawford v. Bell, 599 F.2d 890,
8 891-892 (9th Cir. 1979) (upholding dismissal of a petition
9 challenging conditions of confinement and noting that the writ of
10 habeas corpus has traditionally been limited to attacks upon the
11 legality or duration of confinement); see, Greenhill v. Lappin,
12 376 Fed. Appx. 757, 757-58 (9th Cir. 2010) (holding that the
13 appropriate remedy for a federal prisoner's claim that relates to
14 the conditions of his confinement is a civil rights action under
15 Bivens; and see, e.g., Cardenas v. Adler, 2010 WL 2180378
16 (No.1:09-cv-00831-AWI-JLT-HC, May 28, 2010) (holding that a
17 petitioner's challenge to the constitutionality of the sanction
18 of disciplinary segregation and his claim that the disciplinary
19 proceedings were the product of retaliation by prison staff were
20 cognizable in a habeas proceeding pursuant to § 2241).

21 Claims concerning various prison conditions that have been
22 brought pursuant to § 2241 have been dismissed in this district
23 for lack of subject matter jurisdiction with indications that an
24 action pursuant to Bivens is appropriate. See, e.g., Dyson v.
25 Rios, 2010 WL 3516358, *3 (No. 1:10-cv-00382-DLB (HC), E.D.Cal.
26 Sept. 2, 2010) (a claim challenging placement in a special
27

28 ¹ The reference is to Bivens v. Six Unknown Named Agents of Federal
Bureau of Narcotics, 403 U.S. 388 (1971).

1 management housing unit in connection with a disciplinary
2 violation); Burnette v. Smith, 2009 WL 667199 at *1 (E.D.Cal.
3 Mar. 13, 2009) (a petition seeking a transfer and prevention of
4 retaliation by prison staff); Evans v. U.S. Penitentiary, 2007
5 WL 4212339 at *1 (E.D.Cal. Nov. 27, 2007) (claims brought
6 pursuant to § 2241 regarding a transfer and inadequate medical
7 care).

8 Here, Petitioner seeks an order directing his transfer so he
9 may avoid conditions of confinement he alleges are discriminatory
10 and retaliatory. In this respect, his claims concern conditions
11 of confinement that do not bear a relationship to the legality or
12 duration of his confinement. Because these claims relate solely
13 to the conditions of his confinement, it is concluded that the
14 Court lacks habeas corpus jurisdiction over the claims pursuant
15 to § 2241.

16 III. Absence of Habeas Corpus Jurisdiction over the Person

17 Petitioner's allegations concerning a hearing and sanctions
18 are uncertain. Nevertheless, it is possible that Petitioner is
19 seeking to allege facts concerning a disciplinary proceeding that
20 affected the legality or duration of his confinement, and he is
21 raising a claim that would otherwise be within the scope of the
22 Court's habeas corpus jurisdiction pursuant to § 2241. Insofar
23 as Petitioner complains of disciplinary proceedings resulting in
24 sanctions affecting the legality or duration of his confinement,
25 this Court lacks jurisdiction over the person of Petitioner's
26 custodian.

27 Title 28 U.S.C. § 2241(a) provides that writs of habeas
28 corpus may be granted by the district courts "within their

1 respective jurisdictions." A writ of habeas corpus operates not
2 upon the prisoner, but upon the prisoner's custodian. Braden v.
3 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 494-495
4 (1973). A petitioner filing a petition for writ of habeas corpus
5 under 28 U.S.C. § 2241 must file the petition in the judicial
6 district of the petitioner's custodian. Brown v. United States,
7 610 F.2d 672, 677 (9th Cir. 1990). The warden of the
8 penitentiary where a prisoner is confined constitutes the
9 custodian who must be named in the petition, and the petition
10 must be filed in the district of confinement. Id.; Rumsfeld v.
11 Padilla, 542 U.S. 426, 446-47 (2004). A failure to name and
12 serve the custodian deprives the Court of personal jurisdiction.
13 Johnson v. Reilly, 349 F.3d 1149, 1153 (9th Cir. 2003).

14 Petitioner is confined at USP Lompoc, which is located
15 within the Central District of California. Thus, if Petitioner
16 intends to file a petition pursuant to § 2241 with respect to a
17 claim concerning a disciplinary proceeding that affected the
18 legality or duration of his confinement, Petitioner must file his
19 claim in the Central District because the Eastern District lacks
20 jurisdiction over the person of Petitioner's custodian.
21 Accordingly, any such claim raised in the petition should be
22 dismissed.

23 IV. Disposition

24 Although the Court lacks habeas corpus jurisdiction over the
25 claims concerning conditions of confinement, the Court could
26 construe Petitioner's claims as a civil rights complaint brought
27 pursuant to Bivens. See, Wilwording v. Swenson, 404 U.S. 249,
28 251 (1971).

1 However, the Court declines to construe the petition as a
2 civil rights complaint because of various differences in the
3 procedures undertaken in habeas proceedings on the one hand, and
4 civil rights actions on the other.

5 First, if the petition were converted to a civil rights
6 complaint, Petitioner would be obligated to pay the \$350 filing
7 fee for a civil action, whether in full or through withdrawals
8 from his prison trust account in accordance with the availability
9 of funds. 28 U.S.C. §§ 1914, 1915(b). The dismissal of this
10 action at the pleading stage would not terminate Petitioner's
11 duty to pay the \$350 filing fee. Here, the petition was not
12 accompanied by the \$350 filing fee or an authorization by
13 Petitioner to have the \$350 filing fee deducted from his trust
14 account pursuant to 28 U.S.C. § 1915(b).

15 Further, 42 U.S.C. § 1997e(a) provides, "No action shall be
16 brought with respect to prison conditions under section 1983 of
17 this title, or any other Federal law, by a prisoner confined in
18 any jail, prison, or other correctional facility until such
19 administrative remedies as are available are exhausted." It is
20 established that § 1997e(a) requires exhaustion "irrespective of
21 the forms of relief sought and offered through administrative
22 avenues." Booth v. Churner, 532 U.S. 731, 741 n.6 (2001). Here,
23 Petitioner indicates that at the second level of review,
24 investigation by internal affairs is proceeding, and there is no
25 response date. (Pet. 3.)

26 Another omission from the petition that affects the Court's
27 decision not to consider it as a civil rights complaint is the
28 Petitioner's failure to identify the capacity in which the named

1 respondent would be sued for purposes of a civil rights claim,
2 which is critical to the issue of sovereign immunity.

3 In addition, if the petition were converted to a civil
4 rights complaint, the Court would be obligated to screen it
5 pursuant to the screening provisions of the Prisoner Litigation
6 Reform Act of 1995. 28 U.S.C. § 1915A(b); 42 U.S.C.
7 § 1997e(c)(1). It is not clear that all of Petitioner's
8 disparate allegations state civil rights claims. If the pleading
9 ultimately were dismissed for failure to state a claim upon which
10 relief may be granted, such a dismissal could count as a "strike"
11 against Petitioner for purposes of 28 U.S.C. § 1915(g) and any
12 future civil rights action he might bring.

13 Based on the foregoing, the Court concludes that the
14 petition should be dismissed without prejudice so that Petitioner
15 himself may determine whether or not he wishes to raise his
16 present claims through a properly submitted civil rights
17 complaint.

18 Accordingly, it is ORDERED that:

19 1) The petition for writ of habeas corpus is DISMISSED
20 without prejudice for lack of subject matter jurisdiction and
21 lack of personal jurisdiction over the named Respondent; and

22 2) The Clerk is DIRECTED to close the action because the
23 dismissal terminates it in its entirety.

24
25 IT IS SO ORDERED.

26 **Dated: February 20, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE