

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURTIS DANE SANDERS,
Plaintiff,
v.
ANDRE MATEVOUSIAN, et al.,
Defendants.

Case No. 1:17-cv-1554-AWI-MJS (HC)
**ORDER GRANTING MOTION TO RE-
CONSTRUE CASE AS HABEAS**
(ECF No. 15)
**FINDINGS AND RECOMMENDATIONS
TO DISMISS FOR LACK OF
JURISDICTION**
**THIRTY (30) DAY OBJECTION
DEADLINE**

Petitioner is a state prisoner proceeding pro se in this action filed on November 13, 2017. (ECF No. 1.) Petitioner filed this case as a habeas corpus action in the Sacramento Division of the United States District Court for the Eastern District of California. However, the Magistrate Judge assigned there construed and re-designated the case as a Bivens¹ action because Petitioner is challenging the conditions of confinement. (ECF No. 3.) As the alleged violations took place in Merced County, which is part of the Fresno Division of the Eastern District of California, the case was then transferred to the undersigned. See Local Rule 120(d).

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

1 When Petitioner filed this case as a habeas corpus action, he paid the requisite
2 \$5.00 filing fee for such actions. However, as the Magistrate Judge in the Sacramento
3 Division re-designated this as a Bivens action, this Court ordered Petitioner to pay the
4 filing fee of \$400.00 for a civil case or to file a motion to proceed in forma pauperis.
5 (ECF No. 11.)

6 However, on December 6, 2017, Petitioner filed “objections” to the designation of
7 his case as a Bivens action and moved for the Court to re-construe his case as a
8 habeas action filed under 28 U.S.C. § 2241. (ECF No. 15.) At Petitioner’s request, made
9 despite one judge’s notice that he did not believe Plaintiff stated a cognizable habeas
10 claim, the Court will grant this motion and re-construe this as a habeas case.
11 Accordingly, the Court vacates the Order (ECF No. 11) requiring Petitioner to pay the
12 civil case filing fee or file a motion to proceed in forma pauperis.

13 As the case is now re-construed as a habeas action filed under Section 2241,
14 Habeas Rule 4 requires the Court to make a preliminary review of the petition.
15 Preliminary review of this action requires summary dismissal of the case without
16 prejudice.

17 **I. Procedural Grounds for Summary Dismissal**

18 The Rules Governing Section 2254 Cases in the United States District Courts are
19 appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241. Rule
20 1(b). Habeas Rule 4 requires the Court to make a preliminary review of each petition for
21 writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly
22 appears from the petition and any attached exhibits that the petitioner is not entitled to
23 relief in the district court[.]” Rule 4.

24 The Court may dismiss a petition for writ of habeas corpus either on its own
25 motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an answer
26 to the petition has been filed. Advisory Committee Notes to Rule 8, 1976 Adoption; see
27 Herbst v. Cook, 260 F.3d 1039, 1042–43 (9th Cir. 2001). A petition for habeas corpus
28 should not be dismissed without leave to amend unless it appears that no tenable claim

1 for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14
2 (9th Cir. 1971).

3 **II. Discussion**

4 Writ of habeas corpus relief extends to a person in custody under the authority of
5 the United States. See 28 U.S.C. § 2241. A federal prisoner who wishes to challenge
6 the validity or constitutionality of his conviction must bring a petition for writ of habeas
7 corpus under 28 U.S.C. § 2255. A petitioner challenging the manner, location, or
8 conditions of that sentence's execution must bring a petition for writ of habeas corpus
9 under 28 U.S.C. § 2241. See, e.g., United States v. Giddings, 740 F.2d 770, 772 (9th
10 Cir. 1984); Brown v. United States, 610 F.2d 672, 677 (9th Cir. 1990). Writ of habeas
11 corpus relief is available under § 2241 if a federal prisoner can show he is “in custody in
12 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §
13 2241(c)(3). However, where a Petitioner seeks to challenge the conditions of his
14 confinement, his claims are cognizable in a civil rights action rather than a habeas
15 corpus action. In the federal context, Bivens v. Six Unknown Named Agents of Federal
16 Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), provides
17 petitioners with a remedy for violation of civil rights by federal actors. C.f., Badea v. Cox,
18 931 F.2d 573, 574 (9th Cir.1991) (challenges to conditions of confinement by state
19 prisoners should be presented in a 42 U.S.C. § 1983 civil rights action rather than a
20 habeas corpus petition).

21 In this case, Petitioner's complaints involve the conditions of his confinement, not
22 the execution of his sentence. He seeks injunctive relief requiring the institution to
23 remove restrictions on his general correspondences; to restore phone numbers and
24 addresses that have been deleted by officials; to cease restrictions on his incoming
25 mail; and to cease restrictions on books sent to him. (ECF No. 1 at 8.) These claims are
26 not cognizable in habeas corpus and should be dismissed. It does not appear that any
27 tenable claim for relief could be pleaded, even if leave to amend were granted. Jarvis,
28 440 F.2d at 14. Should Petitioner wish to pursue his claims, Petitioner must do so by

1 way of a civil rights complaint pursuant to Bivens.

2 Petitioner argues in his motion to re-construe that challenges to these conditions
3 are properly raised under Section 2241 as the claims arise from the execution of his
4 sentence. (ECF No. 15.) Petitioner cites several cases to support this argument;
5 however, they are inapposite. Specifically, the cases that Plaintiff cites to describe the
6 use of Section 2241 in broad strokes, noting that petitions under Section 2241 are those
7 “that challenge the manner, location, or conditions of a sentence's execution.” See
8 Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000). However, Hernandez dealt
9 with the savings clause of 28 U.S.C. § 2255, which allows a Section 2241 petition when
10 a Section 2255 motion is inadequate or ineffective to test the legality of a detention. See
11 id. at 864-66. The cases that the Hernandez court cited in support of its proposition,
12 Doganieri v. United States, 914 F.2d 165, 169-70 (9th Cir. 1990), and Brown v. United
13 States, 610 F.2d 672, 677 (9th Cir. 1980)², both related to parole decisions. The
14 restrictions purportedly imposed on Petitioner by prison authorities are far removed from
15 a determination about the length of a sentence.

16 Numerous federal courts have noted that Section 2241 is the appropriate vehicle
17 for challenges to the “execution” or “manner” of a prisoner's sentence, by contrast with
18 Section 2255's attack on the fact or duration of the confinement. See e.g., Pack v.
19 Yusuff, 218 F.3d 448, 451 (5th Cir. 2000); Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir.
20 2001); Gonzalez v. United States, 150 F. Supp. 2d 236 (D. Mass. 2001). As they are
21 described in Jiminian, these challenges primarily concern “administration of parole,
22 computation of sentences by prison officials, prison disciplinary actions, prison
23 transfers, type of detention and prison conditions”. 245 F.3d at 146. Notwithstanding the
24 possible overlap of remedies, challenges to the imposition of restrictions on a prisoner's
25 communications remain most squarely in the realm of civil rights litigation under Bivens
26 rather than habeas corpus. See Badea, 931 F.2d at 574.

27 _____
28 ² Petitioner also cites to Brown to support his objections to the Court construing his case
as a civil action. (ECF No. 15 at 2.)

1 **III. Conversion to Civil Rights Action**

2 In an appropriate case a habeas petition may be construed as a civil rights
3 complaint. Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2d 418
4 (1971). Although the Court may construe a habeas petition as a civil rights action, it is
5 not required to do so. Here, the Court initially converted this to a civil rights action, but,
6 as described above, Plaintiff objected and moved to re-construe the case as a habeas
7 proceeding.

8 In light of Petitioner’s clear objections to construing this as a civil rights
9 complaint, the Court will recommend the case be dismissed for lack of jurisdiction.
10 However, this dismissal will be without prejudice to Petitioner presenting the claims in a
11 civil rights complaint pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388
12 (1971), rather than a habeas petition. Any such complaint will be assigned a separate
13 civil number.

14 **IV. Conclusion**

15 Accordingly, IT IS HEREBY ORDERED that Petitioner’s motion to reconstrue this
16 case as a habeas action under Section 2241 is GRANTED and the Order requiring
17 Petitioner to pay the civil case filing fee or file a motion to proceed in forma pauperis
18 (ECF No. 11) is VACATED.

19 Based on the foregoing, it is HEREBY RECOMMENDED that the habeas petition
20 be dismissed without prejudice to Petitioner's right to file a civil rights action pursuant to
21 Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

22 The findings and recommendation are submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
24 **thirty** (30) days after being served with the findings and recommendations, Petitioner
25 may file written objections with the Court and serve a copy on all parties. Such a
26 document should be captioned “Objections to Magistrate Judge’s Findings and
27 Recommendations.” Petitioner is advised that failure to file objections within the
28 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772

1 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
2 1991)).

3
4 IT IS SO ORDERED.

5 Dated: December 8, 2017

/s/ Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28