

1 certain;” (2) the defendant official’s duty to act is ministerial and “so plainly prescribed as to be
2 free from doubt;” and (3) no other adequate remedy is available. Barron v. Reich, 13 F.3d 1370,
3 1374 (9th Cir. 1994) (citations omitted).

4 In this case, Petitioner claims that the Warden has interfered with his mail delivery. In
5 addition, he complains that the Warden sanctioned Petitioner for violating correspondence
6 regulations, but the sanctions imposed were beyond his authority. It is clear that Petitioner
7 challenges the conditions of his confinement. Petitioner is advised that a civil rights action is the
8 proper mechanism for a prisoner seeking to challenge the conditions of his confinement. See
9 Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct.
10 1999 (1971); see also, e.g., Boyce v. Ashcroft, 251 F.3d 911, 914 (10th Cir. 2001), *vacated on*
11 *other grounds by Boyce v. Ashcroft*, 268 F.3d 953 (10th Cir. 2001)(“[P]risoners . . . who raise
12 constitutional challenges to other prison decisions-including transfers to administrative
13 segregation, exclusion from prison programs, or suspension of privileges, e.g., conditions of
14 confinement, must proceed under Section 1983 or Bivens.”); Greenhill v. Lappin, 326 Fed. Appx.
15 757 (9th Cir. 2010) (claim of mishandling of mail should be brought as civil rights claim under
16 Bivens, not habeas corpus). Thus, the Court finds that adequate remedies outside of a writ of
17 mandamus are available, and the petition for writ of mandamus should be dismissed.

18 Petitioner also complains that he was sanctioned for violating correspondence regulations.
19 He states he was initially sanctioned with a 30-day loss of phone privileges; however the Warden
20 extended the sanction to 11 months loss of email/correspondence/phone privileges, along with a
21 monetary sanction. Again, the Court finds the extraordinary writ of mandamus to be unwarranted
22 since there is a proper and available avenue for Petitioner’s claims, which is a civil rights action
23 under Bivens. Petitioner is also not entitled to habeas corpus relief, since the sanctions do not
24 affect the length or duration of confinement. See Bivens, 403 U.S. 388; Preiser v. Rodriguez, 411
25 U.S. 475, 484 (1973) (“the essence of habeas corpus is an attack by a person in custody upon the
26 legality of that custody . . .”).

27 In Nettles¹, the Ninth Circuit held that a district court has the discretion to construe a

28 ¹ In conducting the Nettles analysis, the Court does not concede that Petitioner is entitled to this consideration, given

1 habeas petition as a civil rights action under § 1983. Nettles v. Grounds, 830 F.3d 922, 936 (9th
2 Cir. 2016). However, recharacterization is appropriate only if it is “amenable to conversion on its
3 face, meaning that it names the correct defendants and seeks the correct relief,” and only after the
4 petitioner is warned of the consequences of conversion and is provided an opportunity to
5 withdraw or amend the petition. Id. Here, the Court does not find recharacterization to be
6 appropriate. The instant petition is a petition for writ of mandamus, and the claims are not
7 amenable to conversion on their face. Accordingly, the Court should not exercise its discretion to
8 recharacterize the action. The Court will recommend that the Clerk of Court provide blank forms
9 for filing a Bivens action.

10 Accordingly, Petitioner is not entitled to the extraordinary writ of mandamus or to habeas
11 corpus relief under § 2241, and this action should be dismissed.

12 **RECOMMENDATION**

13 Accordingly, the Court RECOMMENDS that the Petition for Writ of Mandamus be
14 DISMISSED, and the Clerk of Court be DIRECTED to provide Petitioner with blank forms for
15 filing a Bivens action.

16 This Findings and Recommendations is submitted to the United States District Court
17 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
18 of the Local Rules of Practice for the United States District Court, Eastern District of California.
19 Within twenty-one days after being served with a copy of this Findings and Recommendations,
20 any party may file written objections with the Court and serve a copy on all parties. Such a
21 document should be captioned “Objections to Magistrate Judge’s Findings and
22 Recommendations.” Replies to the Objections shall be served and filed within ten court days
23 (plus three days if served by mail) after service of the Objections. The Court will then review the
24 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).

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28 the relief he sought was a writ of mandamus. However, the analysis is provided in an abundance of caution.

1 The parties are advised that failure to file objections within the specified time may waive
2 the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
3 1991).

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5 IT IS SO ORDERED.

6 Dated: January 24, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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