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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEMETRIOUS A. MOORE,)	Case No.: 1:20-cv-00451-NONE-SAB (PC)
)	
Plaintiff,)	
)	<u>ORDER ADOPTING FINDINGS AND</u>
v.)	<u>RECOMMENDATIONS, AND DISMISSING</u>
)	<u>ACTION</u>
UNITED STATES OF AMERICA, et.al.,)	
)	(Doc. No. 17)
Defendants.)	
)	

Plaintiff Demetrious A. Moore is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff brings a claim for denial of access to the courts in violation of his rights under the First Amendment. (Doc. No. 1.) He contends that certain prison officials failed to obtain and provide him with access to, a second presentence report (“PSR”) prepared for his 2011 resentencing after his direct appeal. (*Id.* at 5.) Plaintiff avers that the prison officials’ failure hindered his access to the courts as he prepared a petition under 28 U.S.C. § 2255. (*Id.*) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 17, 2020, findings and recommendations were entered, recommending that this case be dismissed in light of the decision in *Ziglar v. Abbasi*, ___U.S.___, 137 S. Ct. 1843, 1857 (2017) (noting

1 that “expanding the *Bivens* remedy is now a disfavored judicial activity”). (Doc. No. 17.) The findings
2 and recommendations were served on plaintiff and contained notice that objections were due within
3 twenty-one days. (*Id.*) Plaintiff filed objections on July 20, 2020. (Doc. No. 18.)

4 In his objections, plaintiff contends that what the magistrate judge characterized as “alternative
5 remedies” in plaintiff’s case were, in fact, “mandatory precursors” to fulfill exhaustion requirements in
6 order to reach the district court and request relief under *Bivens*. (Doc. No. 18 at 1–2.) Plaintiff further
7 avers that he suffered actual injury because he discovered a § 2255 claim after gaining access to his
8 2011 PSR but his discovery came too late to receive a decision on the merits of that claim from the
9 court. (*Id.* at 2, 3–4.) Plaintiff also argues that this is exactly the type of injury *Bivens* was intended to
10 remedy. (*Id.* at 2–3, 4–5.)

11 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this court
12 has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including
13 plaintiff’s objections, the court finds the findings and recommendations to be supported by the record
14 and proper analysis. Under the Supreme Court’s decision in *Abbasi* and the Ninth Circuit’s decision
15 in *Vega v. United States*, 881 F.3d 1146 (9th Cir. 2018), the court concludes that plaintiff has failed to
16 allege a cognizable *Bivens* claim.

17 Accordingly:

- 18 1. The findings and recommendations issued on June 17, 2020 (Doc. No. 17), are adopted
19 in full;
- 20 2. This action is dismissed; and
- 21 3. The Clerk of Court is directed to close this case.

22 IT IS SO ORDERED.

23
24 Dated: October 14, 2020

25 
26 _____
27 UNITED STATES DISTRICT JUDGE
28