



1 **DISCUSSION**

2 In this action, Petitioner raises numerous complaints concerning his detention: 1) He  
3 claims he was sexually assaulted by staff; 2) He claims staff members retaliated against him by  
4 placing him in the SHU for threatening staff; 3) He claims staff destroyed his paperwork and  
5 refused to properly process his administrative appeals concerning an incident in which he was  
6 attacked by another inmate; 4) He contends that staff are failing to comply with policy deadlines;  
7 and 5) He claims that prison officials have placed him in the wrong custody level.

8 Petitioner is advised that a civil rights action, not a habeas corpus proceeding, is the  
9 proper mechanism for a prisoner seeking to challenge the conditions of his confinement. See  
10 Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971);  
11 Crawford v. Bell, 599 F.2d 890, 891-892 (9th Cir. 1979) (upholding dismissal of petition  
12 challenging conditions of confinement, the Ninth Circuit noted that “the writ of habeas corpus is  
13 limited to attacks upon the legality or duration of confinement.”); see, e.g., Blow v. Bureau of  
14 Prisons, 2007 WL 2403561 at \*1 (E.D.Cal. Aug. 20, 2007) (habeas relief under § 2241 does not  
15 extend to petitioner’s request for access to law library because it concerns conditions of his  
16 confinement); Boyce v. Ashcroft, 251 F.3d 911, 914 (10th Cir. 2001), *vacated on other grounds*  
17 *by Boyce v. Ashcroft*, 268 F.3d 953 (10th Cir. 2001)(“[P]risoners . . . who raise constitutional  
18 challenges to other prison decisions-including transfers to administrative segregation, exclusion  
19 from prison programs, or suspension of privileges, e.g., conditions of confinement, must proceed  
20 under Section 1983 or Bivens.”). Accordingly, Petitioner is not entitled to habeas corpus relief  
21 under § 2241 and this action should be dismissed without prejudice to his filing a Bivens civil  
22 rights action.

23 In Nettles v. Grounds, the Ninth Circuit held that a district court has the discretion to  
24 construe a habeas petition by a state prisoner as a civil rights action under § 1983. Nettles v.  
25 Grounds, 830 F.3d 922, 936 (9th Cir. 2016). Recharacterization is appropriate only if it is  
26 “amenable to conversion on its face, meaning that it names the correct defendants and seeks the  
27 correct relief,” and only after the petitioner is warned of the consequences of conversion and is  
28 provided an opportunity to withdraw or amend the petition. Id. However, the Ninth Circuit

1 ruling in Nettles concerned state prisoners and was not extended to federal prisoners. But even  
2 assuming Nettles can be extended to federal prisoners, the Court does not find recharacterization  
3 to be appropriate because the instant petition is not amenable to conversion on its face.  
4 Accordingly, the Court should not exercise its discretion to recharacterize the action. The Court  
5 will recommend that the Clerk of Court provide blank forms for filing a Bivens action.

6 **ORDER**

7 IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a district judge  
8 to this case.

9 **RECOMMENDATION**

10 For the foregoing reasons, the Court RECOMMENDS that the Petition for Writ of Habeas  
11 Corpus be DISMISSED, and the Clerk of Court be DIRECTED to provide Petitioner with blank  
12 forms for filing a Bivens action.

13 This Findings and Recommendations is submitted to the United States District Court  
14 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304  
15 of the Local Rules of Practice for the United States District Court, Eastern District of California.  
16 Within twenty-one (21) days after being served with a copy of this Findings and  
17 Recommendations, Petitioner may file written objections with the Court. Such a document  
18 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations. The  
19 Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).  
20 Petitioner is advised that failure to file objections within the specified time may waive the right to  
21 appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22  
23 IT IS SO ORDERED.

24 Dated: November 16, 2020

/s/ Sheila K. Oberto  
25 UNITED STATES MAGISTRATE JUDGE