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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNY FLETCHER, JR.,  
  
                                    Petitioner,  
  
                                    v.  
  
WARDEN, USP ATWATER,  
  
                                    Respondent.

No. 1:22-cv-00111-BAK-SKO (HC)  
  
**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**  
  
**FINDINGS AND RECOMMENDATIONS  
TO DENY PETITIONER’S MOTION FOR  
TEMPORARY RESTRAINING ORDER,  
GRANT RESPONDENT’S MOTION TO  
DISMISS PETITION, AND DISMISS  
PETITION**  
  
**[TWENTY-ONE DAY DEADLINE]**

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner filed the instant petition on January 26, 2022, along with a motion for temporary restraining order. (Docs. 1, 2.) On March 1, 2022, Respondent filed a motion to dismiss the petition. (Doc. 10.) On March 18, 2022, Petitioner filed a reply to the motion. (Doc. 11.) Petitioner also filed a motion for hearing on April 21, 2022. (Doc. 11.) Upon review of the pleadings, the Court finds that Petitioner fails to establish grounds for habeas corpus relief, and that the proper avenue for his complaints is a Bivens action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Accordingly, the Court will recommend that Respondent’s motion to dismiss the petition be GRANTED and the petition be DISMISSED without prejudice to filing a Bivens action.

**DISCUSSION.**

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2 In this action, Petitioner complains he is at risk of contracting COVID-19. He claims that  
3 such risk of exposure constitutes cruel and unusual punishment in violation of the Constitution.  
4 Petitioner requests he be released from custody in light of the pandemic. He claims he is at risk  
5 of imminent and irreparable harm if he is not released immediately. His motion for injunctive  
6 relief also requests the same. Petitioner is challenging the conditions of his confinement.

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

22 In Nettles v. Grounds, the Ninth Circuit held that a district court has the discretion to  
23 construe a habeas petition by a state prisoner as a civil rights action under § 1983. Nettles v.  
24 Grounds, 830 F.3d 922, 936 (9th Cir. 2016). Recharacterization is appropriate only if it is  
25 “amenable to conversion on its face, meaning that it names the correct defendants and seeks the  
26 correct relief,” and only after the petitioner is warned of the consequences of conversion and is  
27 provided an opportunity to withdraw or amend the petition. Id. However, the Ninth Circuit  
28 ruling in Nettles concerned state prisoners and was not extended to federal prisoners. Even

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

5 **ORDER**

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

8 **RECOMMENDATION**

9 Accordingly, the Court RECOMMENDS that Respondent's motion to dismiss be  
10 GRANTED, Petitioner's motion for injunctive relief be DENIED, the Petition for Writ of Habeas  
11 Corpus be DISMISSED without prejudice to Petitioner commencing a Bivens action, and the  
12 Clerk of Court be DIRECTED to provide Petitioner with blank 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, any party may file written objections with the Court. Such a document should  
18 be captioned "Objections to Magistrate Judge's Findings and Recommendations. Replies to  
19 objections shall be filed within ten (10) court days of the date of service of the objections. The  
20 Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The  
21 parties are advised that failure to file objections within the specified time may waive the right to  
22 appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23  
24 IT IS SO ORDERED.

25 Dated: September 26, 2022

Is/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE