

1 A civil rights action is the proper mechanism for a prisoner seeking to challenge the
2 conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). By contrast,
3 habeas corpus proceedings are the proper mechanism for a prisoner seeking to challenge the fact
4 or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

5 Therefore, unless petitioner is challenging the fact or duration of his confinement, he may
6 not pursue relief through a petition for writ of habeas corpus. Moreover, it does not appear that
7 petitioner is challenging the conditions of his confinement in Mule Creek State Prison. Rather, it
8 appears that petitioner raises claims about events that took place outside the prison.

9 Petitioner is required to establish standing for each claim he asserts. DaimlerChrysler
10 Corp. v. Cuno, 547 U.S. 332, 352 (2006). If petitioner has no standing, the court has no subject
11 matter jurisdiction. Nat'l Wildlife Fed'n v. Adams, 629 F.2d 587, 593 n.11 (9th Cir. 1980)
12 (“[B]efore reaching a decision on the merits, we [are required to] address the standing issue to
13 determine if we have jurisdiction.”). There are three requirements that must be met for petitioner
14 to have standing: (1) he must have suffered an “injury in fact” -- an invasion of a legally
15 protected interest which is both concrete and particularized and actual or imminent; (2) there must
16 be a causal connection between the injury and the conduct complained of; and (3) it must be
17 likely that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife,
18 504 U.S. 555, 560-61 (1992); Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835, 847
19 (9th Cir. 2001) (en banc).

20 Here, it appears that petitioner seeks an order requiring the FBI to investigate. Petitioner
21 fails to demonstrate he has standing to bring the instant action in federal court because he fails to
22 allege facts meeting all three requirements under Lujan. Moreover, because the named
23 respondent is a federal agency, petitioner’s claims arise under Bivens v. Six Unknown Named
24 Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). However,

25 Bivens does not provide a cause of action against a federal agency.
26 See FDIC v. Meyer, 510 U.S. 471, 484-85, 114 S.Ct. 996, 127
27 L.Ed.2d 308 (1994); cf. Balser v. Department of Justice Office of
28 U.S. Trustee, 327 F.3d 903, 909 (9th Cir. 2003) (“The basis of a
Bivens action is some illegal or inappropriate conduct on the part of
a federal official or agent that violates a clearly established
constitutional right.”).

1 Murphy v. Gordwin, 262 F. App'x 776, 777 (9th Cir. 2007). Thus, because it appears
2 that amendment would be futile, the undersigned recommends that this action be dismissed
3 without leave to amend.

4 If petitioner seeks to challenge his underlying criminal conviction, he must file a petition
5 for writ of habeas corpus in the Central District of California because he was convicted in Los
6 Angeles County. Because it is clear that the instant petition does not challenge his conviction, the
7 court will not transfer this action to the Central District.

8 Accordingly, IT IS HEREBY ORDERED that:


9 1. The undersigned declines to grant petitioner leave to proceed in forma pauperis at this
10 time; and

11 2. The Clerk of the Court is directed to assign a district judge to this case; and

12 IT IS RECOMMENDED that the petition be dismissed without prejudice, and this case
13 closed.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, petitioner may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files objections,
19 he shall also address whether a certificate of appealability should issue and, if so, why and as to
20 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
22 § 2253(c)(3). Petitioner is advised that failure to file objections within the specified time may
23 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
24 1991).

25 Dated: November 9, 2016

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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