

APPENDIX A = 9th CIRCUIT DECISION,
ISSUES ON WHICH CERTIFICATE OF APPEALABILITY
IS SOUGHT

APPENDIX B U.S.D.C. EASTERN DISTRICT COURT
OF CALIFORNIA

APPENDIX C USDC EASTERN DISTRICT
MAGISTRATES ORDER AND FINDINGS &
RECOMMENDATIONS

APPENDIX D CALIFORNIA SUPREME COURT DENIAL
IN RE PHILIPPI, 2023 Cal. Lexis 4178

APPENDIX E

APPENDIX F

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 29 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRUCE PHILLIPI, AKA Robert M.
Ray, AKA Bruce Phillippi,

Petitioner - Appellant,

v.

CHRISTIAN PFEIFFER,

Respondent - Appellee.

No. 25-340

D.C. No. 2:24-cv-02429-TLN-SCR
Eastern District of California,
Sacramento

ORDER

Before: CALLAHAN and FORREST, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Hayward v. Marshall*, 603 F.3d 546, 552-54 (9th Cir. 2010) (en banc) (habeas challenge to a state administrative decision requires a certificate of appealability when underlying conviction and sentence issued from a state court), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011).


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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (ECF No. 19) are ADOPTED IN FULL;
2. Respondent's motion to dismiss (ECF No. 10) is GRANTED;
3. The petition for writ of habeas corpus is DISMISSED;
4. The Court declines to issue a certificate of appealability; and
5. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Date: December 13, 2024



TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE

Any pending motions are denied as moot.

DENIED.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE PHILLIPI,
Petitioner,
v.
CHRISTIAN PFEIFFER,
Respondent.

No. 2:24-cv-02429-SCR P
ORDER AND
FINDINGS & RECOMMENDATIONS

Petitioner, Bruce Phillippi,¹ is a state prisoner proceeding pro se. On August 23, 2023, he filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the Northern District of California. (ECF No. 1.) The action was transferred to this court on September 4, 2024, and is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c). Respondent’s motion to dismiss (ECF No. 10) is before the court. For the reasons set forth below, the motion to dismiss should be granted.

I. Background

Petitioner is serving an indeterminate prison term of 15 years to life, with the possibility of parole, following a conviction for second degree murder.² (ECF No. 10 at 14.) Through the

¹ Petitioner’s name was incorrectly entered into the docket as “Bruce Phillipi.” The correct spelling is “Bruce Phillippi.”
² The court takes judicial notice of the abstract of judgment. See Fed. R. Evid. 201; U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (a court

1 present action, petitioner seeks habeas relief relating to a prison disciplinary proceeding for
2 attempted murder of another inmate. (ECF No. 1 at 1.) As a result of being found guilty at the
3 prison disciplinary hearing, petitioner was subjected to 35 months of solitary confinement and “an
4 alteration of good time credits accrued[.]” (Id. at 5.) The discipline is also part of petitioner’s
5 prison file and has been used to deny petitioner a “low risk label” for parole. (Id.)

6 Petitioner alleges he was not afforded constitutionally required due process protections at
7 the hearing. (ECF No. 1 at 4.) Specifically, he alleges (1) he was not given the evidence or staff
8 statements; (2) he was denied video evidence; (3) he was not allowed to submit evidence or
9 questions for witnesses; (4) the hearing officer was not impartial, stating petitioner was guilty at
10 the outset; and (5) the hearing officer filed false statements in the disposition. (Id.) Petitioner
11 raised these issues to the state courts and alleges the last reasoned state court decision
12 adjudicating the claims was contrary to clearly established federal law.

13 II. Habeas Jurisdiction

14 The federal habeas corpus statute, 28 U.S.C. § 2254, provides that the federal courts “shall
15 entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to
16 the judgment of a State court only on the ground that he is in custody in violation of the
17 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). In general, the courts
18 have interpreted this statute to provide relief only where a successful challenge will shorten an
19 inmate’s sentence. Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). The Ninth Circuit has
20 held that federal courts generally lack habeas jurisdiction over claims for constitutional violations
21 that do not challenge the validity of the conviction or do not necessarily spell speedier release.
22 Blair v. Martel, 645 F.3d 1151, 1157-58 (9th Cir. 2011). Instead, such claims must be brought, if
23 at all, in a civil rights complaint under 42 U.S.C. § 1983. Id. With respect to disciplinary
24 proceedings, specifically, habeas relief cannot be granted unless those proceedings necessarily
25 affect the fact or duration of time to be served. Muhammed v. Close, 540 U.S. 749, 754-55
26 (2004); Nettles v. Grounds (“Nettles”), 830 F.3d. 922, 934-35 (9th Cir. 2016) (en banc).

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28 “may take notice of proceedings in other courts, both within and without the federal judicial
system, if those proceedings have a direct relation to matters at issue” (citation omitted)).

1 However, courts have also found habeas relief may be available “[w]hen a prisoner is put
2 under additional and unconstitutional restraints during his lawful custody.” Preiser v. Rodriguez,
3 411 U.S. 475, 499 (1973). For example, the Seventh Circuit has held that if a prisoner is seeking a
4 “quantum change in the level of custody” then habeas corpus is the appropriate remedy. Graham
5 v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991) (“if a prisoner claims to be entitled to probation or
6 bond or parole, his proper route is habeas corpus, even though he is seeking something less than
7 complete freedom”). Similarly, the Ninth Circuit has permitted prisoners to request habeas corpus
8 relief where the prisoner was placed in disciplinary segregation due to validation as a gang
9 member and would obtain immediate release from segregation if he successfully challenged that
10 validation. Nettles v. Grounds (“Santos”), 788 F.3d 992, 1004-05 (9th Cir. 2015).³

11 **III. Discussion**

12 Petitioner’s claims in the present petition are barred because of his indeterminate sentence
13 status. In Nettles, 830 F.3d 922, the Ninth Circuit held that for indeterminately sentenced
14 prisoners, neither restoration of credits nor expungement of a disciplinary conviction are
15 sufficiently related to duration of confinement so as to be cognizable on habeas corpus. Id. at 935.
16 In Nettles, the indeterminately sentenced prisoner argued that his claims affected the duration of
17 his sentence because if he succeeded in expunging his rules violation report, he would be more
18 likely to receive an earlier parole hearing and would be more likely to receive a favorable parole
19 ruling. Id. at 934. Sitting en banc, the Ninth Circuit disagreed and held “[s]uccess on the merits of
20 [the] claim would not necessarily lead to immediate or speedier release because the expungement
21 of the challenged disciplinary violation would not necessarily lead to a grant of parole.” Id. at
22 934-35.

23 In the present case, petitioner argues in opposition to dismissal that the Supreme Court has
24 left open the possibility of habeas relief in this situation. (ECF No. 12 at 5.) It is true that the

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26 ³ The 2015 Ninth Circuit panel decision in Nettles involved two petitioners: Damous Nettles and
27 Matta Santos, both prisoners in California state prisons. The panel’s discussion and opinion
28 regarding a change of custody level was limited to Santos’ case. The 2016 decision was a
rehearing en banc that only involved the panel’s holding regarding Nettles. The panel’s opinion
regarding Santos’ claim about change in level of custody was not re-heard.

1 Supreme Court, in Ziglar v. Abbasi, 582 U.S. 120, 144 (2017), “left open the question whether
2 they might be able to challenge their confinement conditions via a petition for a writ of habeas
3 corpus.” However, leaving a question open is different than issuing a precedential decision that
4 would overrule contrary lower court decisions, and this court remains bound by Ninth Circuit
5 precedent. Zuniga v. United Can Co., 812 F.2d 443, 450 (9th Cir. 1987).

6 Petitioner also argues the court has jurisdiction over the petition because he brings a “level
7 of custody” argument. (ECF No. 12 at 4-5.) Specifically, petitioner argues that due to the current
8 disciplinary infraction, he is housed in the highest security level other than the SHU, level four.
9 (Id. at 4.) In reply, respondent argues the Nettles (Santos) panel decision held that challenges to
10 continued placement in segregated or disciplinary housing are within habeas jurisdiction, but that
11 such relief is unavailable for prisoners who are merely seeking a different program or location or
12 environment, even if the program or location or environment challenged is more restrictive than
13 the alternative sought. (ECF No. 13 at 3.) See Nettles (Santos), 788 F.3d at 1004.

14 The petition itself does not explicitly seek relief in the form of a quantum change, or any
15 change, in the level of petitioner’s custody. Based on the petition’s exhibits, it does not appear
16 petitioner sought such relief in his administrative appeals (see ECF No. 1 at 49-52, appeal of
17 grievance and office of appeals decision) or in the state courts (see id. at 21, asking state court to
18 grant petitioner’s habeas by requiring the prison to withdraw the guilty finding of attempted
19 murder and order a new hearing for only battery of an inmate). Moreover, and in any event,
20 although petitioner now argues he is seeking to reduce his level of custody, the change he argues
21 would result—downward from level four custody—does not constitute a “quantum change” in
22 custody similar to release to parole or probation or release from administrative segregation to
23 general population. See Nettles (Santos), 788 F.3d at 1004; Graham, 922 F.2d at 381 (“if [a
24 petitioner] is seeking a different program or location or environment, then he is challenging the
25 conditions rather than the fact of his confinement and his remedy is under civil rights law, even if,
26 as will usually be the case, the program or location or environment that he is challenging is more
27 restrictive than the alternative that he seeks”).

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1 Petitioner's claims are not cognizable on habeas corpus and may be brought, if at all, only
2 under 42 U.S.C. § 1983. See Nettles, 830 F.3d at 935. Thus, the court considers whether to
3 convert the habeas petition to a civil rights action. See id. at 936 ("a district court may construe a
4 petition for habeas corpus to plead a cause of action under [42 U.S.C.] § 1983 after notifying and
5 obtaining informed consent from the prisoner"). "If the complaint is amenable to conversion on
6 its face, meaning it names the correct defendants and seeks the correct relief, the court may re-
7 characterize the petition so long as it warns the pro se litigant of the consequences of the
8 conversion and provides an opportunity for the litigant to withdraw or amend his or her
9 complaint." Id.

10 The undersigned will not recommend the court convert the present petition to a civil rights
11 action. The petition contains no specific allegations against the named respondent, and it is
12 unclear who petitioner seeks to hold personally responsible for the alleged denial of his federal
13 rights. See Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) ("The inquiry into causation must
14 be individualized and focus on the duties and responsibilities of each individual defendant whose
15 acts or omissions are alleged to have caused a constitutional deprivation."). The exhaustion
16 requirements for petitioner to file a civil rights complaint also differ from those required for this
17 federal habeas action, and it is unclear whether petitioner has satisfied the exhaustion requirement
18 for a civil rights complaint.

19 Moreover, provisions of the PLRA would subject petitioner to filing fee requirements, sua
20 sponte review of his complaint by the court, and limits on the number of actions a prisoner may
21 be permitted to file in forma pauperis. See 28 U.S.C. §§ 1915 & 1915A; 42 U.S.C. § 1997e. The
22 filing fee for a habeas petition is five dollars, and if leave to proceed in forma pauperis is granted,
23 the fee is forgiven. However, prisoners proceeding in forma pauperis in civil rights cases are
24 required to pay the \$350 filing fee by way of periodic deductions from the prisoner's trust
25 account, see 28 U.S.C. 1915(b)(1), regardless of whether the action is ultimately dismissed. Bruce
26 v. Samuels, 577 U.S. 82, 86 (2016). Also, a civil rights complaint which is dismissed as
27 malicious, frivolous, or for failure to state a claim would count as a "strike" under 28 U.S.C. §

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1 1915(g), which is not the case for habeas petitions.⁴

2 Because the instant petition is not amenable to conversion, and due to the differences and
3 disadvantages that re-characterization may have on petitioner's claims, the undersigned will not
4 recommend that the present petition be re-characterized as a civil rights complaint. However,
5 petitioner may file a new complaint pursuant to 42 U.S.C. § 1983 if he wishes to do so.

6 **IV. Conclusion**

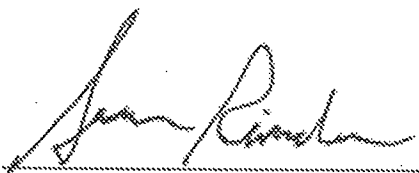
7 In accordance with the above, IT IS ORDERED that the Clerk of the Court shall assign a
8 district judge to this case.

9 In addition, IT IS RECOMMENDED as follows:

- 10 1. Respondent's motion to dismiss (ECF No. 10) be granted.
11 2. The petition for writ of habeas corpus be dismissed.
12 3. The court decline to issue a certificate of appealability.
13 4. The Clerk of the Court be directed to close this case.

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 21 days after
16 being served with these findings and recommendations, any party may file written objections with
17 the court and serve a copy on all parties. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be
19 filed and served within fourteen days after service of the objections. The parties are advised that
20 failure to file objections within the specified time may waive the right to appeal the District
21 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: November 5, 2024

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25 SEAN C. RIORDAN
26 UNITED STATES MAGISTRATE JUDGE

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28 ⁴ The undersigned expresses no opinion as to the merits of the present claims if presented in a
civil rights complaint.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRUCE PHILLIPPI,
Petitioner,

v.

ROB ST. ANDRE, Warden,¹
Respondent.

Case No. 23-cv-04403-YGR (PR)

ORDER OF TRANSFER

United States District Court
Northern District of California

Petitioner, a state prisoner, has filed a *pro se* petition for a writ of habeas corpus, challenging the constitutionality of disciplinary proceedings against him. Dkt. 1. On November 8, 2023, this Court issued an Order to Show Cause and granted petitioner leave to proceed *in forma pauperis*. Dkt. 8.

Before the Court is respondent's Motion For Change of Venue, which states that the petition must be transferred to the Eastern District of California. Dkt. 11. Also before the Court is respondent's motion to dismiss, which petitioner opposes. *See* Dkts. 10, 12.

Federal statute allows "the Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court is properly filed in either the district of confinement or the district of conviction. *Id.* § 2241(d). Where a case is filed in the wrong venue, the district court has the discretion to transfer it to the proper federal court "in the interest of justice." *See* 28 U.S.C. § 1406(a).

Under Northern District Habeas Local Rule 2254-3(a), venue is proper for those

¹ Rob St. Andre, the current warden of the prison where petitioner is incarcerated, has been substituted as respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

United States District Court
Northern District of California

1 petitioners, who are confined in the counties of Alameda, Contra Costa, Del Norte, Humboldt,
2 Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco,
3 San Mateo, and Sonoma, when the petition for a writ of habeas corpus challenges “the manner in
4 which the sentence is being executed, such as loss of good time credits.” Habeas L.R. 2254-3(a).
5 “If a petition is filed in this District which does not conform to Habeas L.R. 2254-3(a), venue *shall*
6 be transferred to . . . [t]he district of confinement if the petition is challenging the manner in which
7 the sentence is being executed.” *Id.* at 2254-3(b)(2) (emphasis added).

8 Here, petitioner is currently confined at High Desert State Prison in Lassen County, *see*
9 Dkt. 9, which is located in the Eastern District of California, *see* 28 U.S.C. § 84(b). Petitioner also
10 challenges the manner in which his sentence is being executed. *See* Dkt. 1. Thus, venue is
11 improper in the Northern District, and his petition must be transferred to the Eastern District. *See*
12 Habeas L.R. 2254-3. Accordingly, that is the proper venue for this action. Therefore,
13 respondent’s motion is GRANTED. Dkt. 11.

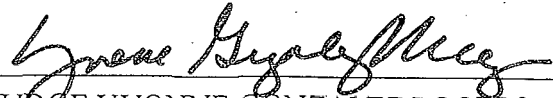
14 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice,
15 the Clerk of the Court is ordered to TRANSFER this action forthwith to the United States District
16 Court for the Eastern District of California.

17 All other remaining motions, including the pending motion to dismiss (Dkt. 10), are
18 TERMINATED on this Court’s docket as no longer pending in this district.

19 This Order terminates Docket Nos. 10 and 11.

20 IT IS SO ORDERED.

21 Dated: September 4, 2024

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24 JUDGE YVONNE GONZALEZ ROGERS
25 United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRUCE PHILLIPI,
Petitioner,
v.
CHRISTIAN PFEIFFER,
Respondent.

No. 2:24-cv-02429-TLN-SCR

ORDER

Petitioner, a state prisoner proceeding pro se, filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. 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 November 6, 2024, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Petitioner filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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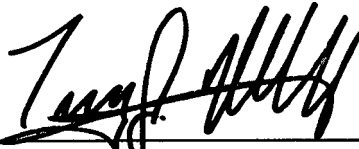
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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (ECF No. 19) are ADOPTED IN FULL;
2. Respondent's motion to dismiss (ECF No. 10) is GRANTED;
3. The petition for writ of habeas corpus is DISMISSED;
4. The Court declines to issue a certificate of appealability; and
5. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Date: December 13, 2024



TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE