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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES FORDJOUR,)	1:09-cv-00060-OWW-SKO-HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION TO
)	DENY PETITIONER'S MOTION FOR
)	IMMEDIATE RELEASE (DOC. 6)
v.)	
)	FINDINGS AND RECOMMENDATION TO
KINGS COUNTY SHERIFF CHRIS)	DENY PETITIONER'S EMERGENCY
JORDAN, et al.,)	MOTION FOR ISSUANCE OF AN ORDER
)	TO SHOW CAUSE, IMMEDIATE RELEASE,
Respondents.)	AND INJUNCTIVE RELIEF (Doc. 7)
)	
)	OBJECTIONS DEADLINE: 30 days

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus ostensibly pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court are Petitioner's motion for immediate release on his own recognizance, filed on January 29, 2009, and Petitioner's emergency motion for immediate release, injunctive relief, and for issuance of an order to show cause, filed on March 2, 2009.

I. Background

On June 8, 2009, the Court issued findings and

1 recommendations to deny Petitioner's motions for release and for
2 injunctive relief. (Doc. 10.) In the same document, the Court
3 also recommended dismissal of the petition because Petitioner,
4 who complained of his pretrial detention with respect to state
5 criminal charges, purported to proceed pursuant to 28 U.S.C. §
6 2254, which authorizes habeas relief for persons in custody
7 pursuant to the judgment of a state court; however, there was no
8 state court judgment due to the pretrial status of the relevant
9 state court criminal proceedings.¹

10 The Court adopted the findings and recommendation of the
11 Magistrate Judge to dismiss the action, and the action was
12 dismissed. Petitioner appealed the judgment. By order of the
13 United States Court of Appeals for the Ninth Circuit, filed on
14 December 10, 2009, the judgment of dismissal was summarily
15 vacated, and the case was remanded to allow the Court to consider
16 Petitioner's previously filed objections to the findings and
17 recommendations and to enter a new order. On April 1, 2010, the
18 Magistrate Judge vacated the findings and recommendations. (Doc.
19 21.)² On April 14, the action was reassigned to the undersigned
20 Magistrate Judge.

21 Because the findings and recommendations were vacated
22 without exception, the Court concludes that Petitioner's two
23

24 ¹ If a petitioner is a pretrial detainee facing state criminal charges
25 and thus is not in custody "pursuant to the judgment of a State court" at the
26 time the petition is filed, then the petition should proceed pursuant to 28
27 U.S.C. § 2241. 28 U.S.C. §§ 2254, 2241; Stow v. Murashige, 389 F.3d 880, 885
28 (9th Cir. 2004).

² By separate order, the Court has considered the vacated findings and
recommendations and Petitioner's objections.

1 motions concerning release remain pending.

2 II. Petitioner's Motion for Immediate Release

3 On January 28, 2009, Petitioner filed a motion for immediate
4 release on his own recognizance, arguing that he was entitled to
5 release pursuant to state law. (Doc. 6.)

6 In habeas corpus proceedings, a district court has inherent
7 power, derived from the power to issue the writ of habeas corpus
8 itself and the habeas corpus statutes (28 U.S.C. §§ 2241-2255),
9 to direct the release of a state prisoner on his or her own
10 recognizance or on a surety. Marino v. Vasquez, 812 F.2d 499,
11 507 (9th Cir. 1987). Fed. R. App. P. 23 governs release on bail.
12 The decision is made as appears fitting to the Court; relevant
13 factors include the risk of flight, risk of danger to the
14 community, the availability of alternative remedies to the
15 petitioner. 812 F.2d at 508-09.

16 However, federal courts reserve bail pending resolution of a
17 habeas corpus petition to "extraordinary cases involving special
18 circumstances" and where there is a high probability of the
19 petitioner's success on the merits. United States v. Mett, 41
20 F.3d 1281, 1282 (9th Cir. 1994), quoting, Land v. Deeds, 878 F.2d
21 318, 318-319 (9th Cir. 1989). Further, the petitioner must show
22 circumstances that make him exceptional and especially deserving
23 of special treatment in the interests of justice. Benson v.
24 California, 328 F.2d 159, 162 (9th Cir. 1964). The Court must
25 also consider the petitioner's risk of flight and the danger to
26 the community should the petitioner be released. Marino v.
27 Vasquez, 812 F.2d 499, 508-09 (9th Cir. 1987).

28 In the present case, Petitioner has not alleged specific

1 facts demonstrating that he is entitled to release.

2 Accordingly, it will be recommended that Petitioner's motion
3 for immediate release be denied.

4 III. Petitioner's Motion for Issuance of an Order to
5 Show Cause, Immediate Release, and Injunctive Relief

6 On March 2, 2009, Petitioner filed a motion for issuance of
7 an order to show cause, immediate release, and for injunctive
8 relief. (Doc. 7.) Petitioner asserts in the motion generally
9 that he was subjected to torture and experimentation by
10 Respondents, custodians at the Kings County Jail, involving x-
11 rays, lasers, radiation, microwaves, and other electronic means.
12 He states that he suffered permanent injuries to his genitals as
13 a result. He also asserts that he was subject to illegal seizure
14 and kidnaping. (Mot. 2, 4.) However, Petitioner does not state
15 any specific facts concerning the identity of the persons
16 engaging in such conduct, the particular injuries sustained, or
17 the dates, times, and precise conduct or events involved.

18 Insofar as Petitioner seeks an order to show cause to be
19 issued to Respondent to show why relief on the petition should
20 not be granted, Petitioner's motion is premature. The Court's
21 initial screening of the petition has not been completed, and the
22 action is not ready for disposition on the merits. Thus, it will
23 be recommended that Petitioner's motion for issuance of an
24 immediate order to show cause be denied.

25 To the extent that Petitioner seeks immediate release,
26 Petitioner has not shown that he is entitled to release on his
27 own recognizance or on bail.

28 With respect to Petitioner's motion for injunctive relief,

1 after reading the motion in its entirety, it is clear that
2 Petitioner is challenging the conditions of his confinement, not
3 the fact or duration of that confinement.

4 It is established that relief by way of a writ of habeas
5 corpus pursuant to 28 U.S.C. § 2241 extends to a prisoner who
6 shows that the custody violates the Constitution, laws, or
7 treaties of the United States. 28 U.S.C. § 2241(c)(3).

8 A habeas corpus petition is the correct method for a
9 prisoner to challenge the legality or duration of his
10 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)
11 (quoting Preiser v. Rodriguez, 411 U.S. 475, 485 (1973));
12 advisory committee note to Rule 1 of the Rules Governing Section
13 2254 Cases (Habeas Rules), 1976 adoption.

14 In contrast, a civil rights action pursuant to 42 U.S.C. §
15 1983 is the proper method for a prisoner to challenge the
16 conditions of that confinement. McCarthy v. Bronson, 500 U.S.
17 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
18 574; advisory committee note to Habeas Rule 1, 1976 adoption.

19 Because in the motions Petitioner seeks to challenge the
20 conditions of his confinement, and not the legality or duration
21 of his confinement, these particular claims are cognizable in a
22 civil rights action rather than a petition for writ of habeas
23 corpus.

24 Accordingly, it will be recommended that the motion for
25 injunctive relief be denied.

26 IV. Recommendation

27 In accordance with the foregoing, it is RECOMMENDED that:

28 1) Petitioner's motion for immediate release on his own

1 recognizance be DENIED; and

2 2) Petitioner's emergency motion for issuance of an order to
3 show cause, immediate release, and injunctive relief be DENIED.

4 These findings and recommendations are submitted to the
5 United States District Court Judge assigned to the case, pursuant
6 to the provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of
7 the Local Rules of Practice for the United States District Court,
8 Eastern District of California. Within thirty (30) days after
9 being served with a copy, any party may file written objections
10 with the Court and serve a copy on all parties. Such a document
11 should be captioned "Objections to Magistrate Judge's Findings
12 and Recommendations." Replies to the objections shall be served
13 and filed within fourteen (14) days (plus three (3) days if
14 served by mail) after service of the objections. The Court will
15 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
16 636 (b) (1) (C). The parties are advised that failure to file
17 objections within the specified time may waive the right to
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
19 1153 (9th Cir. 1991).

20
21
22 IT IS SO ORDERED.

23 **Dated: June 28, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE