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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

HORACE A. BELL,	)	1:10-cv-00695-LJO-JLT HC
	)	
Petitioner,	)	FINDINGS AND RECOMMENDATIONS
	)	TO DISMISS PETITION FOR WRIT OF
v.	)	HABEAS CORPUS (Doc. 1)
	)	
A. HEDGPETH, Warden,	)	ORDER DIRECTING THAT OBJECTIONS BE
	)	FILED WITHIN TWENTY DAYS
Respondent.	)	
	)	

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Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 6, 2008, Petitioner initiated this case by filing a petition for writ of mandate in the United States District Court for the Northern District of California. (Doc. 1). The Northern District ordered Petitioner to file an amended petition and, on January 14, 2010, Petitioner complied. (Doc. 8). On April 19, 2010, the Northern District ordered the case transferred to this Court, concluding that Petitioner was challenging the conditions of his confinement and, because he was confined within the jurisdiction of this Court, transfer was appropriate. (Doc. 11).

In his amended petition, Petitioner raises three grounds for relief in his petition: (1) cruel and unusual punishment; (2) inhumane oppressive treatment; and (3) discrimination under the Americans With Disabilities Act (“ADA”). (Doc. 8, p. 6). The amended petition does not

1 provide any additional factual details regarding these sparse allegations. Rather, Petitioner  
2 indicates that the Court should reference the “documents attached to original petition.” (Id.).  
3 Petitioner does not challenge either his conviction or sentence or sentence.

#### 4 DISCUSSION

5 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary  
6 review of each petition for writ of habeas corpus. The Court must dismiss a petition “[i]f it  
7 plainly appears from the face of the petition . . . that the petitioner is not entitled to relief.” Rule  
8 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490  
9 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the  
10 petitioner can show that “he is in custody in violation of the Constitution . . . .” 28 U.S.C. §  
11 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the “legality  
12 or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,  
13 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the  
14 Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. §  
15 1983 is the proper method for a prisoner to challenge the conditions of that confinement.  
16 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at  
17 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

18 In this case, as discussed above, and referencing the documents attached to the original  
19 petition, it appears that Petitioner is complaining that he is being discriminated against because  
20 he is being denied participation in an advertised program for back or neck pain at the self-  
21 identified Institute of Neurological Research, located at the UCLA Medical Plaza. (Doc. 1, pp.  
22 30; 32). Petitioner apparently has also contended that prison staff harassed him and conspired to  
23 deny him medical treatment. (Id., p. 36). Petitioner has also complained of being denied a daily  
24 shower and that, as someone suffering from incontinence, he is living in unsanitary conditions.  
25 (Id., pp. 43-47).

26 From the foregoing, it is obvious that Petitioner is challenging the conditions of his  
27 confinement, not the fact or duration of that confinement. Therefore, Petitioner is not entitled to  
28 habeas corpus relief, and this habeas corpus petition must be dismissed. Should Petitioner wish

1 to pursue his claims, Petitioner must do so by way of a civil rights complaint pursuant to 42  
2 U.S.C. § 1983.

3 **RECOMMENDATION**

4 Accordingly, the Court RECOMMENDS as follows:

- 5 1. That the amended petition for writ of habeas corpus (Doc. 8), be DISMISSED because  
6 the petition does not allege grounds that would entitle Petitioner to habeas corpus relief;  
7 2. That the Clerk of Court be DIRECTED to send Petitioner the standard form for claims  
8 pursuant to 42 U.S.C. § 1983.

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

18  
19 IT IS SO ORDERED.

20 Dated: May 10, 2010

21 /s/ Jennifer L. Thurston  
22 UNITED STATES MAGISTRATE JUDGE  
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