



1 accounts, based on United States Supreme Court case law. (Doc. 1, p. 4).

## 2 DISCUSSION

3 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary  
4 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
5 plainly appears from the face of the petition . . . that the petitioner is not entitled to relief." Rule  
6 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490  
7 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the  
8 petitioner can show that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. §  
9 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality  
10 or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,  
11 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9<sup>th</sup> Cir.  
12 2003)("[H]abeas jurisdiction is absent...where a successful challenge to a prison condition will  
13 not necessarily shorten the prisoner's sentence."); 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 mentioned, Petitioner alleges that Respondent is wrongfully taking monies  
19 from the prisoners' hospital trust accounts to pay for the prisoners' medical services and that  
20 prisoners' are entitled to interest on the money in their hospital trust accounts. As relief,  
21 Petitioner requests, inter alia, that this Court certify the matter as a class action suit, that it issue  
22 temporary and permanent injunctions enjoining Respondent from engaging in the challenged  
23 policies, that it issue an order requiring Respondent to cease enforcement of the challenged  
24 policies, and that the Court award costs and attorney's fees to Petitioner and other class members.  
25 (Doc. 1, p. 16).

26 Petitioner is thus challenging the *conditions* of his confinement, not the *fact or duration*  
27 of that confinement. Therefore, Petitioner is not entitled to habeas corpus relief, and this petition  
28 should be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way

1 of a civil rights complaint pursuant to 42 U.S.C. § 1983.

2 **RECOMMENDATION**

3 Accordingly, the Court RECOMMENDS:

- 4 1. That the petition for writ of habeas corpus (Doc. 1), be DISMISSED because the  
5 petition does not allege grounds that would entitle Petitioner to habeas corpus relief;  
6 2. That Petitioner’s motion for a temporary and/or permanent injunction be DENIED as  
7 MOOT; and,  
8 3. That the Clerk of Court be DIRECTED to send Petitioner the standard form for claims  
9 pursuant to 42 U.S.C. § 1983.

10 This Findings and Recommendation is submitted to the United States District Judge  
11 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
12 Local Rules of Practice for the United States District Court, Eastern District of California.

13 Within twenty days after being served with a copy, any party may file written objections with the  
14 court and serve a copy on all parties. Such a document should be captioned “Objections to  
15 Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate  
16 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file  
17 objections within the specified time may waive the right to appeal the District Court’s order.

18 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: February 16, 2011

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