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

ISRAEL MALDONADO,)	Case No.: 1:12-cv-01898-JLT
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS RE:
)	RESPONDENT’S MOTION TO DISMISS
v.)	
)	ORDER DIRECTING OBJECTIONS TO BE FILED
DIRECTOR,)	WITHIN TWENTY DAYS
)	
Respondent.)	

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The instant petition was filed on November 6, 2012 in the United States District Court for the Central District of California and transferred to this Court on November 19, 2012. (Docs. 1 & 5). Petitioner alleges that he is in Respondent’s custody, serving a prison sentence resulting from a criminal conviction for which Petitioner has not provided any information or details. However, Petitioner does not challenge either his conviction or sentence. Instead, Petitioner raises three related grounds for relief in his petition: (1) prison staff have impeded Petitioner’s ability to receive visitors and have sexually assaulted Petitioner’s mother when she has visited him in prison; (2) prison staff have apparently confiscated a “purple heart” belonging to Petitioner and have coerced Petitioner’s

1 mother into making statements that exonerate staff misconduct; and (3) prison staff have detained
2 Petitioner's mother for lengthy periods of time without reason. (Doc. 1, pp. 5-8).

3 DISCUSSION

4 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review
5 of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears
6 from the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules
7 Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court
8 may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in
9 violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is the correct
10 method for a prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931
11 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827
12 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)("[H]abeas jurisdiction is absent, and a §
13 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the
14 prisoner's sentence."); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254
15 Cases.

16 The Ninth Circuit has also held that "[h]abeas corpus jurisdiction also exists when a petitioner
17 seeks expungement of a disciplinary finding from his record if expungement is likely to accelerate the
18 prisoner's eligibility for parole." Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989); see also
19 Docken v. Chase, 393 F. 3d 1024, 1031 (9th Cir. 2004)("[W]e understand Bostic's use of the term
20 'likely' to identify claims with a sufficient nexus to the length of imprisonment so as to implicate, but
21 not fall squarely within, the 'core' challenges identified by the Preiser Court.")

22 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
23 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
24 that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499;
25 Badea, 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254
26 Cases.

1 In this case, as mentioned, Petitioner alleges that prison staff have impeded the ability of
2 family members to visit Petitioner in prison, they have sexually assaulted Petitioner's mother when
3 she has visited him and unlawfully detained her, they have confiscated personal property of Petitioner
4 without his consent, and have coerced Petitioner's mother into making statements that absolve them of
5 any misconduct. Petitioner is thus challenging the conditions of his confinement, not the fact or
6 duration of that confinement. No relief that Petitioner could request vis-à-vis the instant three claims
7 either could or would affect the fact or duration of Petitioner's sentence. Therefore, Petitioner is not
8 entitled to habeas corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue
9 his claims, Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.¹

10 **RECOMMENDATION**

11 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be
12 DISMISSED for Petitioner's failure to state any cognizable federal habeas claims.

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

16 Within twenty (20) days after being served with a copy, any party may file written objections with the
17 court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate
18 Judge's Findings and Recommendation." Replies to the objections shall be served and filed within ten
19 (10) court days (plus three days if served by mail) after service of the objections. The Court will then
20 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).

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28 ¹ Plaintiff is advised that if he chooses to pursue a complaint under 42 U.S.C. § 1983, he may assert claims based only upon injuries he suffered rather than injuries suffered by others, i.e., injuries suffered by Plaintiff's mother.

