

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

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

16 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
17 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
18 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
19 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.
20 In this case, as mentioned, Petitioner challenges Respondent's regulations regarding family visitation.
21 As relief, Petitioner requests a change in Respondent's policies to permit Petitioner the family
22 visitations he has requested. (Doc. 1, p. 15). Petitioner is thus challenging the conditions of his
23 confinement, not the fact or duration of that confinement. No relief requested by Petitioner in his
24 petition would affect the fact or duration of Petitioner's sentence. Therefore, Petitioner is not entitled
25 to habeas corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue his
26 claims, Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

27 **ORDER**

28 Accordingly, the Clerk of the Court is **DIRECTED** to assign a United States District Judge to

1 this case.

2 **RECOMMENDATION**

3 Accordingly, the Court RECOMMENDS that the habeas corpus petition be **DISMISSED** for
4 Petitioner's failure to state any cognizable federal habeas claims.

5 This Findings and Recommendation is submitted to the United States District Court Judge
6 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
7 Local Rules of Practice for the United States District Court, Eastern District of California. **Within 21**
8 **days** after being served with a copy, any party may file written objections with the court and serve a
9 copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings
10 and Recommendation." Replies to the objections shall be served and **filed within 10 days** (plus three
11 days if served by mail) after service of the objections. The Court will then review the Magistrate
12 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
13 objections within the specified time may waive the right to appeal the District Court's order. Martinez
14 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15
16 IT IS SO ORDERED.

17 Dated: March 11, 2016

18 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE