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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

RAYMOND WRIGHT,)	CV F 05- 1472 OWW WMW HC
)	
Petitioner,)	
)	FINDINGS AND
v.)	RECOMMENDATIONS RE
)	DISMISSAL OF PETITION
)	
JAMES A. YATES,)	
)	
Respondent.)	
)	

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

Rule 4 of the Rules Governing § 2254 Cases requires the court to make a preliminary review of each petition for writ of habeas corpus. The court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; see, also, Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990).

A federal court may only grant a petition for writ of habeas corpus if the petitioner

1 can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a).
2 "According to traditional interpretation, the writ of habeas corpus is limited to attacks upon
3 the legality or duration of confinement." Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979)
4 *citing*, Preiser v. Rodriguez, 411 U.S. 475, 484-86 (1973); Advisory Committee Notes to
5 Rule 1 of the Rules Governing Section 2254 Cases. Petitioner's allegations, however, do not
6 make such attacks. Petitioner's claims challenge the conditions of his confinement, not the
7 fact or duration of that confinement. Thus, his claims are not appropriate for habeas corpus
8 relief. Challenges to the conditions of confinement are more appropriately raised in civil
9 rights action filed pursuant to 42 U.S.C. § 1983. Badea v. Cox, 931 F.2d 573, 574 (9th Cir.
10 1991); Crawford v. Bell, 599 F.2d at 891-92 (9th Cir. 1979).

11 Accordingly, the court hereby RECOMMENDS that this petition be DISMISSED
12 WITHOUT PREJUDICE to Petitioner's right to file an action pursuant to 42 U.S.C. § 1983
13 raising the same claims.

14 These Findings and Recommendation are submitted to the assigned United States
15 District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule
16 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
17 California. Within thirty (30) days after being served with a copy, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be
19 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the
20 objections shall be served and filed within ten (10) court days (plus three days if served by
21 mail) after service of the objections. The court will then review the Magistrate Judge's
22 ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
23 objections within the specified time may waive the right to appeal the District Court's order.
24 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: February 2, 2006
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE