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

**CION ADONIS PERALTA,**

**Petitioner,**

**vs.**

**D. HERMANS,**

**Respondent.**

**1:06-cv-01082 AWI WMW HC**

**MEMORANDUM OPINION  
AND ORDER GRANTING  
RESPONDENT’S MOTION TO  
DISMISS PETITION FOR  
WRIT OF HABEAS CORPUS  
AND DENYING  
PETITIONER’S MOTION FOR  
A STAY**

**[Doc. [10](#), [12](#)]**

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is Respondent’s motion to dismiss.

**BACKGROUND**

In this habeas corpus petition, Petitioner contends that his due process rights have been violated because his prison classification score was improperly calculated by the California Department of Corrections and Rehabilitation (“CDCR”).

**LEGAL STANDARDS**



1 law, as determined by the Supreme Court of the United States;” or “resulted in a decision that  
2 was based on an unreasonable determination of the facts in light of the evidence presented in  
3 the State Court proceeding.” 28 U.S.C. § 2254(d); Lockyer v. Andrade, 123 S.Ct. 1166, 1173  
4 (2003) (disapproving of the Ninth Circuit’s approach in Van Tran v. Lindsey, 212 F.3d 1143  
5 (9<sup>th</sup> Cir. 2000)); Williams v. Taylor, 120 S.Ct. 1495, 1523 (2000). “A federal habeas court  
6 may not issue the writ simply because that court concludes in its independent judgment that  
7 the relevant state-court decision applied clearly established federal law erroneously or  
8 incorrectly.” Lockyer, at 1174 (citations omitted). “Rather, that application must be  
9 objectively unreasonable.” Id. (citations omitted).

10 While habeas corpus relief is an important instrument to assure that individuals are  
11 constitutionally protected, Barefoot v. Estelle, 463 U.S. 880, 887, 103 S.Ct. 3383, 3391-3392  
12 (1983); Harris v. Nelson, 394 U.S. 286, 290, 89 S.Ct. 1082, 1086 (1969), direct review of a  
13 criminal conviction is the primary method for a petitioner to challenge that conviction.  
14 Brecht v. Abrahamson, 507 U.S. 619, 633, 113 S.Ct. 1710, 1719 (1993). In addition, the  
15 state court’s factual determinations must be presumed correct, and the federal court must  
16 accept all factual findings made by the state court unless the petitioner can rebut “the  
17 presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1);  
18 Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769 (1995); Thompson v. Keohane, 516 U.S. 99,  
19 116 S.Ct. 457 (1995); Langford v. Day, 110 F.3d 1380, 1388 (9<sup>th</sup> Cir. 1997).

## 20 DISCUSSION

21 Respondent moves to dismiss this petition on the grounds that Petitioner has failed to  
22 state a claim warranting federal habeas corpus relief and that the case is barred by the statute  
23 of limitations. Petitioner opposes the motion. Because the court finds Respondent’s first  
24 ground to be meritorious, it finds it unnecessary to address the second.

25 Respondent contends that this petition should be dismissed because federal habeas  
26 corpus relief is not available to address Petitioner’s allegation that the calculation of his  
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1 classification score violated his right to due process. This court must agree.

2 A federal court may only grant a petition for writ of habeas corpus if the petitioner  
3 can show that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. § 2254(a).  
4 "According to traditional interpretation, the writ of habeas corpus is limited to attacks upon  
5 the legality or duration of confinement." Crawford v. Bell, 599 F.2d 890, 891 (9<sup>th</sup> Cir. 1979)  
6 *citing*, Preiser v. Rodriguez, 411 U.S. 475, 484-86 (1973); Advisory Committee Notes to  
7 Rule 1 of the Rules Governing Section 2254 Cases. Petitioner's allegations, however, do not  
8 make such attacks. Petitioner's claims challenge the conditions of his confinement, not the  
9 fact or duration of that confinement. Specifically, Petitioner alleges that if his classification  
10 score were lower, he could be housed at a level two prison. This change in housing would  
11 not alter the fact or duration of Petitioner's confinement. Thus, his claims are not appropriate  
12 for habeas corpus relief. Challenges to the conditions of confinement are more appropriately  
13 raised in civil rights action filed pursuant to 42 U.S.C. § 1983. Badea v. Cox, 931 F.2d 573,  
14 574 (9<sup>th</sup> Cir. 1991); Crawford v. Bell, 599 F.2d at 891-92 (9<sup>th</sup> Cir. 1979). Examination of  
15 Exhibit B to the petition reveals that this was previously explained to Petitioner by the  
16 Honorable James V. Selna, in the order of July 14, 2006, dismissing Petitioner's petition filed  
17 in the Central District.

18 On January 8, 2008, Petitioner filed a motion seeking a temporary stay of his action  
19 while he is away from his legal materials while testifying at a trial. The court finds no need  
20 for such a stay. Petitioner has opposed Respondent's motion to dismiss, and no further  
21 briefing is now possible on the motion. Should Petitioner wish to file a notice of appeal from  
22 the judgment in this case, the court will grant him any need extension of time to do so upon a  
23 showing of good cause.

24 Petitioner cannot pursue an appeal in this case without a certificate of appealability.  
25 The controlling statute, 28 U.S.C. § 2253, provides as follows:

26 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district  
27 judge, the final order shall be subject to review, on appeal, by the court of appeals for

1 the circuit in which the proceeding is held.

2 (b) There shall be no right of appeal from a final order in a proceeding to test the  
3 validity of a warrant to remove to another district or place for commitment or trial a  
4 person charged with a criminal offense against the United States, or to test the validity  
5 of such person's detention pending removal proceedings.

6 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal  
7 may not be taken to the court of appeals from--

8 (A) the final order in a habeas corpus proceeding in which the detention complained  
9 of arises out of process issued by a State court; or

10 (B) the final order in a proceeding under section 2255.

11 (2) A certificate of appealability may issue under paragraph (1) only if the applicant  
12 has made a substantial showing of the denial of a constitutional right.

13 (3) The certificate of appealability under paragraph (1) shall indicate which specific  
14 issue or issues satisfy the showing required by paragraph (2).

15 In the present case, the court finds no denial of a constitutional right. Accordingly, the court  
16 will deny a certificate of appealability.

17 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 18 1) Respondent's motion to dismiss is GRANTED;
- 19 2) Petitioner's motion for a stay is DENIED;
- 20 3) This case is DISMISSED for failure to state a claim upon which relief can be granted  
21 pursuant to 28 U.S.C. § 2254;
- 22 4) A certificate of appealability is DENIED;
- 23 5) The Clerk of the Court is directed to enter judgment for Respondent and to close this  
24 case.

25 IT IS SO ORDERED.

26 **Dated: February 5, 2008**

27 /s/ Lawrence J. O'Neill  
28 UNITED STATES DISTRICT JUDGE