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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN ROBERT CERNIGLIA,)	1:06-CV-01767 OWW JMD HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
STEVEN MAYBERG,)	
)	
Respondent.)	OBJECTIONS DUE WITHIN THIRTY (30)
)	DAYS

Petitioners are civilly committed detainees proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

PROCEDURAL HISTORY

Petitioners¹ are civil detainees involuntarily committed to Coalinga State Hospital, pursuant to California's Sexually Violent Predator Act, California Welfare & Institution Code § 6600 ("SVPA"). (Pet. Mem. P. & A. at 2.)

On April 4, 2006, Petitioners filed a petition for writ of habeas corpus with the Fresno County Superior Court. (Pet. Mem. P. & A. at 3). The Superior Court issued a reasoned decision denying the petition on April 21, 2006. (Pet. Ex. A.)

On July 10, 2006, Petitioners filed a petition for writ of habeas corpus to the California Court

¹While the Court denied class action certification, as discussed *infra*, the Court permitted the petition to proceed with the identified Petitioners in the class action application. Thus, the petition concerns multiple petitioners.

1 of Appeal, Fifth Appellate District. (Pet. Mem. P. & A. at 4.) The California Court of Appeal
2 denied the petition on August 3, 2006. (Pet. Ex. B.)

3 On August 21, 2006, Petitioners filed a petition for writ of habeas corpus with the California
4 Supreme Court, which the State's high court summarily denied on October 11, 2006. (Pet. Mem. P.
5 & A. at 4; Pet. Ex. C.)

6 On November 15, 2006, Petitioners filed the instant federal petition for writ of habeas corpus.

7 On July 26, 2007, Respondent filed an answer to the petition, alleging that the named
8 Petitioner had failed to allege sufficient facts to establish that he had suffered any violations of his
9 constitutional rights.

10 On August 24, 2007, Petitioner filed a reply to the answer, arguing that Respondent's answer
11 was erroneous as the Court had yet to rule on Petitioners' application for class action status.

12 On October 1, 2008, the Court found that while Petitioner had mentioned an application for
13 class action status, Petitioners had not in fact submitted such an application to the Court. (Court
14 Doc. 20.) The Court thus ordered Petitioners to submit the application for class action status, an
15 order which Petitioners complied with on October 20, 2008. (Court. Docs. 20, 21.) After having
16 reviewed the merits of the application, the Court denied class action status on October 30, 2008, and
17 ordered Respondent to submit a supplemental answer addressing the substantive merits of the
18 petition as they pertained to the particular Petitioners identified in the petition. (Court. Doc. 24.)

19 Respondent submitted a supplemental answer on December 22, 2008, (Court. Doc. 30), to
20 which Petitioner submitted a reply on January 16, 2009 (Court. Doc. 32.)

21 **FACTUAL BACKGROUND**

22 The various Petitioners allege that CDCR officers were used to transport them to and from
23 medical appointments and that CDCR officers operate the visitor registration desk. Petitioners
24 Elijah Lopez, Robert Clark, Terry Troglin and Ruben Seja complain of the use of the CDCR to
25 transport them to and from medical appointments. Petitioners Steven Cerniglia, Khanh Nguyen,
26 Douglas Gaines, Harold Derry, and Randy Daniels allege that the CDCR operation of the visitor

1 registration desk resulted in either delays or denials of visitations by family and friends.²

2 **DISCUSSION**

3 **I. Jurisdiction**

4 A person in custody pursuant to the judgment of a state court may petition a district court for
5 relief by way of a writ of habeas corpus if the custody is in violation of the Constitution, laws, or
6 treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); *Williams v. Taylor*, 529
7 U.S. 362, 375 n.7 (2000). Petitioners asserts that they suffered violations of their rights as
8 guaranteed by the United States Constitution during their civil detainment at Coalinga State Hospital,
9 which is located in Fresno County. As Fresno County falls within this judicial district, 28 U.S.C. §
10 84(b), the Court has jurisdiction over Petitioners’ application for writ of habeas corpus. *See* 28
11 U.S.C. § 2241(d) (vesting concurrent jurisdiction over application for writ of habeas corpus to the
12 district court where the petitioner is currently in custody or the district court in which a State court
13 convicted and sentenced Petitioner if the State “contains two or more Federal judicial districts”).

14 **II. ADEPA Standard of Review**

15 On April 24, 1996, Congress enacted the Anti-terrorism and Effective Death Penalty Act of
16 1996 (“AEDPA”), which applies to all petitions for a writ of habeas corpus filed after the statute’s
17 enactment. *Lindh v. Murphy*, 521 U.S. 320, 326-327 (1997); *Jeffries v. Wood*, 114 F.3d 1484, 1499
18 (9th Cir. 1997) (quoting *Drinkard v. Johnson*, 97 F.3d 751, 769 (5th Cir. 1996), *overruled on other*
19 *grounds by Lindh*, 521 U.S. 320 (holding AEDPA only applicable to cases filed after statute’s
20 enactment)). The instant petition was filed in 2008 and is consequently governed by the provisions
21 of the AEDPA. *See Lockyer v. Andrade*, 538 U.S. 63, 70 (2003). Thus, the petition “may be granted
22 only if [Petitioner] demonstrates that the state court decision denying relief was ‘contrary to, or
23 involved an unreasonable application of, clearly established Federal law, as determined by the
24 Supreme Court of the United States.’” *Irons v. Carey*, 505 F.3d 846, 850 (9th Cir. 2007) (quoting 28

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26 ²Declarations relating to claims by David Harney, James Wright, Thomas Hughes, Cornelius Boyle, and John
27 Semeneck were lodged with this Court by Petitioner and the declarants. However, neither Mr. Harney, Mr. Wright, Mr.
28 Hughes, Mr. Boyle, nor Mr. Semeneck are listed among the applicants who declared themselves as petitioners in this case.
(Court Doc. 21). As the Court denied class certification, the Court will not accept additional petitioners for this case.
Consequently, the Court does not find their declaration to be relevant to its adjudication of Petitioners’ claims.

1 U.S.C. § 2254(d)(1)), *overruled in part on other grounds, Hayward v. Marshall*, 603 F.3d 546, 555
2 (9th Cir. 2010) (en banc); *see Lockyer*, 538 U.S. at 70-71.

3 Title 28 of the United States Code, section 2254 remains the exclusive vehicle for
4 Petitioner’s habeas petition as Petitioner is in custody of the California Department of Corrections
5 and Rehabilitation pursuant to a state court judgment. *See Sass v. California Board of Prison Terms*,
6 461 F.3d 1123, 1126-1127 (9th Cir. 2006) *overruled in part on other grounds, Hayward*, 603 F.3d at
7 555. As a threshold matter, this Court must “first decide what constitutes ‘clearly established
8 Federal law, as determined by the Supreme Court of the United States.’” *Lockyer*, 538 U.S. at 71
9 (quoting 28 U.S.C. § 2254(d)(1)). In ascertaining what is “clearly established Federal law,” this
10 Court must look to the “holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of
11 the time of the relevant state-court decision.” *Id.* (quoting *Williams*, 592 U.S. at 412). “In other
12 words, ‘clearly established Federal law’ under § 2254(d)(1) is the governing legal principle or
13 principles set forth by the Supreme Court at the time the state court renders its decision.” *Id.*
14 Finally, this Court must consider whether the state court’s decision was “contrary to, or involved an
15 unreasonable application of, clearly established Federal law.” *Lockyer*, 538 U.S. at 72, (quoting 28
16 U.S.C. § 2254(d)(1)). “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if
17 the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question
18 of law or if the state court decides a case differently than [the] Court has on a set of materially
19 indistinguishable facts.” *Williams*, 529 U.S. at 413; *see also Lockyer*, 538 U.S. at 72. “Under the
20 ‘unreasonable application clause,’ a federal habeas court may grant the writ if the state court
21 identifies the correct governing legal principle from [the] Court's decisions but unreasonably applies
22 that principle to the facts of the prisoner’s case.” *Williams*, 529 U.S. at 413. “[A] federal court may
23 not issue the writ simply because the court concludes in its independent judgment that the relevant
24 state court decision applied clearly established federal law erroneously or incorrectly. Rather, that
25 application must also be unreasonable.” *Id.* at 411. A federal habeas court making the “unreasonable
26 application” inquiry should ask whether the State court's application of clearly established federal
27 law was “objectively unreasonable.” *Id.* at 409.

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1 Petitioner bears the burden of establishing that the state court’s decision is contrary to or
2 involved an unreasonable application of United States Supreme Court precedent. *Baylor v. Estelle*,
3 94 F.3d 1321, 1325 (9th Cir. 1996). Although only Supreme Court law is binding on the states,
4 Ninth Circuit precedent remains relevant persuasive authority in determining whether a state court
5 decision is objectively unreasonable. *Clark v. Murphy*, 331 F.3d 1062, 1072 (9th Cir. 2003) (“While
6 *only* the Supreme Court’s precedents are binding on the Arizona court, and only those precedents
7 need be reasonably applied, we may look for guidance to circuit precedents”); *Duhaime v.*
8 *Ducharme*, 200 F.3d 597, 600-601 (9th Cir. 1999) (“because of the 1996 AEDPA amendments, it
9 can no longer reverse a state court decision merely because that decision conflicts with Ninth Circuit
10 precedent on a federal Constitutional issue....This does not mean that Ninth Circuit caselaw is never
11 relevant to a habeas case after AEDPA. Our cases may be persuasive authority for purposes of
12 determining whether a particular state court decision is an ‘unreasonable application’ of Supreme
13 Court law, and also may help us determine what law is ‘clearly established’”). Furthermore, the
14 AEDPA requires that the Court give considerable deference to state court decisions. The state
15 court's factual findings are presumed correct. 28 U.S.C. § 2254(e)(1). A federal habeas court is
16 bound by a state's interpretation of its own laws. *Souch v. Schaivo*, 289 F.3d 616, 621 (9th Cir.
17 2002).

18 The initial step in applying AEDPA’s standards is to “identify the state court decision that is
19 appropriate for our review.” *Barker v. Fleming*, 423 F.3d 1085, 1091 (9th Cir. 2005). Where more
20 than one State court has adjudicated Petitioner’s claims, a federal habeas court analyzes the last
21 reasoned decision. *Id.* (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991) for the presumption that
22 later unexplained orders, upholding a judgment or rejecting the same claim, rests upon the same
23 ground as the prior order). Thus, a federal habeas court looks through ambiguous or unexplained
24 state court decisions to the last reasoned decision to determine whether that decision was contrary to
25 or an unreasonable application of clearly established federal law. *Bailey v. Rae*, 339 F.3d 1107,
26 1112-1113 (9th Cir. 2003). Here, the Fresno County Superior Court, the California Court of Appeal,
27 and the California Supreme Court all adjudicated Petitioners’ claims submitted to the State court
28 through petitions for writ of habeas corpus. As the California Court of Appeal and the California

1 Supreme Court summarily denied Petitioners' claims,³ the Court looks through those decisions to the
2 last reasoned decision; namely, that of the Fresno County Superior Court. *See Ylst v. Nunnemaker*,
3 501 U.S. at 804.

4 **III. Review of Petitioner's Claims**

5 The petition for writ of habeas corpus contains two grounds for relief, contending that
6 Petitioners' constitutional rights, under the Fourth Amendment and the Equal Protection Clause,
7 were violated by the use of CDCR officers to transport Petitioners to and from medical appointments
8 outside Coalinga State Hospital to staff the visitor registration desk.

9 ***A. Fourth Amendment Claim***

10 Petitioners contends that their placement into the custody of the CDCR for transport to and
11 from medical appointments violates their Fourth and Fourteenth Amendment Rights.⁴ (Pet. Mem. P.
12 & A. at 8-10.)

13 The Fresno County Superior Court rejected this argument finding that the evidence did not
14 establish any unconstitutional conduct that warranted habeas relief. The court explicitly rejected the
15 argument that the use of the CDCR to transport and operate the visitor registration desk made
16 Petitioners' civil commitment punitive as there was no evidence to suggest that the purpose of such
17 activities were punitive. (Pet. Ex. A at 1-2.) The Superior Court noted that the use of CDCR
18 officers to transport civil detainees was reasonably necessary considering the dangerous nature of
19 those civilly committed as a sexually dangerous predator. (Id. at 2.) Additionally, the Superior
20 Court found that nothing in the statute expressly forbids the CDCR from transporting such
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22 ³The California Court of Appeal merely stated that, "The petition for writ of habeas corpus filed in this court on July
23 10, 2006, is denied. To the extent the petition purports to raise claims of physical abuse by California Department of
24 Corrections and Rehabilitation employees, those detainees who are subject to the alleged abuse have the legal remedy of filing
25 their own administrative grievances and, if unsuccessful, filing their own petition for writ of habeas corpus." (Pet. Ex. B).
The Court finds the decision to be ambiguous as to the reasons for denying the writ and therefore looks through the opinion.

26 ⁴Petitioners' contention that their Fourteenth Amendment rights have been violated does not contain any specific
27 allegation related to the Fourteenth Amendment. Rather, the only allegation is that Petitioners have been subjected to
28 unreasonable search and seizure. Thus, the Court presumes that Petitioners' mention of the Fourteenth Amendment is due
exclusively to the incorporation of the Fourth Amendment to the states via the Fourteenth Amendment. *See Stoot v. City of
Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (citing *Baker v. McCollan*, 443 U.S. 137, 142 (1979) in noting that the Fourth
Amendment, by virtue of its incorporation into the Fourteenth Amendment, requires the States to provide certain
constitutional safeguards for pretrial restraint of liberty).

1 individuals or from staffing the visitor registration desk. The Superior Court concluded that such
2 conduct does not materially alter the Petitioners' treatment or transform the civil commitment into
3 punishment. (Id. at 3.)

4 The Court does not find this to be an objectively unreasonable application of clearly
5 established federal law. The majority of Petitioners' argument is devoted to discussing California
6 statutes authorizing the Department of Mental Health to run Coalinga State Hospital. Petitioner
7 contends that these statutes vesting authoring with the Department of Mental Health do not authorize
8 the involvement of the CDCR. Alleged errors in the application of state law are not cognizable in
9 federal habeas corpus. *See Hubbart v. Knapp*, 379 F.3d 773, 779-80 (9th Cir. 2004); *see also*
10 *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996) (holding that a petitioner may not "transform a
11 state-law issue into a federal one merely by asserting a violation of due process"). More importantly,
12 a federal habeas court is bound by a state court's interpretation of its law; thus, the Court must accept
13 the Superior Court's finding that California's statutes do not expressly prohibit the involvement of
14 the CDCR in transporting civil detainees and staffing the visitor registration desk. *See Bradshaw v.*
15 *Richey*, 546 U.S. 74, 76 (2005) (per curiam) (stating that "a state court's interpretation of state law,
16 including one announced on direct appeal of the challenged conviction, binds a federal court sitting
17 in habeas corpus"); *see also Musladin v. Lamarque*, 555 F.3d 830, 838 n.6 (9th Cir.2009) (finding
18 that habeas court must presume that state courts know and follow the law and that state-court
19 decisions be given the benefit of the doubt under AEDPA's deferential standards).

20 Petitioners's argument regarding the Fourth Amendment fails as Petitioners do not complain
21 about being in custody; rather, Petitioners' complaint lies in the identity of their custodian.
22 Petitioners' citation to *Youngberg v. Romero*, 457 U.S. 307 (1982) and *Greenholtz v. Nebraska*
23 *Penal Inmates*, 442 U.S. 1 (1979), is erroneous as *Youngberg* and *Greenholtz* both challenged their
24 liberty interest to be free from bodily restraint. (Pet. Mem. P. & A. at 15.) Here, Petitioners do not
25 contend they should be free from bodily restraint, but rather complain that the wrong state agency
26 holds them in restraint. Petitioner fails to cite any clearly established Supreme Court precedent that
27 would support the proposition that a temporary change in custodians violates a person's Fourth
28 Amendment rights. Contrary to Petitioners' assertions otherwise, the use of the CDCR to implement

1 the statute in a limited function does not alter their civil commitment status as the Supreme Court
2 has noted that “[t]he particular features of confinement may affect how a confinement scheme is
3 evaluated to determine whether it is civil rather than punitive, but it remains no less true that the
4 query must be answered definitively. The civil nature of a confinement scheme cannot be altered
5 based merely on vagaries in the implementation of the authorizing statute.” *Seling v. Young*, 531
6 U.S. 250, 263 (2001). Petitioners do not contend that the SVPA is not civil in nature; thus, the mere
7 fact that the CDCR officers are used to transport Petitioners to and from medical appointments does
8 not transform Petitioners’ civil commitment into punishment. The Court finds the same analysis
9 applicable to Petitioners’ claim that the CDCR staffing of the visitor registration desk constitutes a
10 violation of their Fourth Amendment rights. Consequently, Petitioners are not entitled to habeas
11 corpus relief on this ground.⁵

12 ***B. Equal Protection Claim***

13 Petitioners contends that the use of CDCR officers to transport them and to staff the visitor
14 registration desk constitutes a violation of their Equal Protection rights as similarly situated civil
15 detainees at Atascadero State Hospital are not subject to the same conditions.

16 The Court initially notes that none of the State courts provided a reasoned decision for
17 denying Petitioners’ Equal Protection claims. As the Court has “no basis other than the record for
18 knowing whether the state court correctly identified the governing legal principle or was extending
19 the principle into a new context,” an independent review of the record is required to ascertain
20 whether the state court decision was objectively unreasonable. *Delgado v. Lewis*, 223 F.3d 976,
21 981-82 (9th Cir. 2000).

22 Petitioners do not allege a denial of equal protection based on membership in a suspect class
23 and as the Court has previously found that Petitioner’s Fourth Amendment rights are not implicated
24 by the use of the CDCR officers, Petitioners’ equal protection claim is not entitled to strict scrutiny.
25 *See United States v. Hancock*, 231 F.3d 557, 565 (9th Cir. 2000) (noting that strict scrutiny standard
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27 ⁵Petitioner’s citation to *Hydrick v. Hunter*, 500 F.3d 978, 992-993 (9th Cir. 2007), *judgement vacated*, 129 S.Ct.
28 2431 (2009), *Jones v. Blanas*, 393 F.3d 918, 931-935 (9th Cir. 2004) is unavailing as both cases pertain to civil rights actions
and did not concern the substantive merits of those plaintiff’s constitutional claims.

1 is only used for suspect classes or burdens on fundamental rights). Thus, Petitioners' claim that they
2 are being treated differently than civil detainees housed at Atascadero State Hospital is subject only
3 to a rational basis test. *See Rodriguez v. Cook*, 169 F.3d 1176, 1179-80 (9th Cir.1999) (applying
4 rational basis test to equal protection challenge where there was no suspect class or fundamental
5 interest at stake); *Vacco v. Quill*, 521 U.S. 793, 799 (1997) (quoting *Romer v. Evans*, 517 U.S. 620,
6 631 (1996), in stating that, "[i]f a legislative classification or distinction 'neither burdens a
7 fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation
8 to some legitimate end"). Analyzing the claim through a rational basis test, the Court finds that
9 Petitioners' Equal Protection claim must be dismissed as there exists a rational basis for the State's
10 actions.

11 While the Superior Court did not directly address Petitioners' Equal Protection Claim, the
12 Superior Court did articulate a rational basis for using CDCR officers to transport civil detainees
13 involuntarily committed under the Sexual Violent Predator Act, noting that:

14 The Sexual Violent Predator Act "is aimed at protecting society from, and
15 providing treatment for, that 'small but extremely dangerous group of sexually violent
16 predators' who have diagnosable mental disorders identified while they are
17 incarcerated for designated violent sex crimes, and who are determined to be unsafe
18 and, if released, to represent a danger to others through acts of sexual violence."
19 *Garcetti v. Superior Court*, (2000) 85 Cal.App.4th 1113.

20 Petitioner does not contest the dangerous nature of one committed as a
21 sexually dangerous predator. Considering the danger such individuals pose to society
22 in general, transporting such individuals within the custody of the California
23 Department of Corrections (CDC) would appear reasonably necessary to protect the
24 public in general.

25 (Pet. Ex. A at 2-3.)

26 The Court finds the above explanation to be a rational basis for the use of CDCR officers to
27 transport civil detainees to and from their medical appointment at Coalinga State Hospital. More
28 importantly, Petitioners have failed to establish that there does not exist a rational basis for the use of
CDCR officers in the complained of functions. Additionally, the Court can discern several
additional reasons for the use of CDCR officers at Coalinga as opposed to Atascadero, including the
the proximity of Coalinga State Hospital to Pleasant Valley State Prison. Such proximity would
make the use of CDCR officers more readily available to help transport and staff Coalinga State
Hospital as opposed to Atascadero.

1 court and serve a copy on all parties. Such a document should be captioned “Objections to
2 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
3 filed within ten (10) *court* days (plus three days if served by mail) after service of the objections.
4 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The
5 parties are advised that failure to file objections within the specified time may waive the right to
6 appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: June 14, 2010

/s/ John M. Dixon
UNITED STATES MAGISTRATE JUDGE