

1 **DISCUSSION**

2 Standard for Dismissal

3 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part that “[i]f it
4 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
5 the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.”The
6 Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas
7 corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or
8 after an answer to the petition has been filed. In this case the Court dismisses the petition on its own
9 motion.

10 Rule 4 is appropriately applied to petitions brought under § 2241. Although Rule 4 and the
11 other Rules Governing Section 2254 Cases were adopted for petitions for writs of habeas corpus
12 pursuant to 28 U.S.C. § 2254, Rule 1 of the Rules Governing Section 2254 provides that “[t]he
13 district court may apply any or all of these rules to a habeas corpus petition” where the petitioner is
14 not in custody under a state-court judgment. Fed. R. Civ. P. 81(a)(2) provides that the civil rules are
15 “applicable to proceedings for. . . habeas corpus. . . to the extent that the practice in such
16 proceedings is not set forth in the statutes of the United States and has heretofore conformed to the
17 practice of civil actions.” Further, Rule 11 of the Rules Governing Section 2254 Cases states, “The
18 Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be
19 applied, when appropriate, to petitions filed under these rules.” The Court has customarily applied
20 Rule 4 in habeas proceedings brought pursuant to both §§ 2254 and 2241.

21 Failure to State a Cognizable Federal Claim

22 The basic scope of habeas corpus is prescribed by statute. § 2241(c)(3) provides that habeas
23 corpus shall not extend to a prisoner unless he is “in custody in violation of the Constitution or laws
24 or treaties of the United States.”

25 Petitioner’s claim arises under California law. He claims that he was not provided a thorough
26 mental examination as proscribed by the California Welfare and Institution Code § 7250. Such claims
27 involve questions of purely state law and are not cognizable in the federal habeas court. Estelle v.
28 McGuire, 502 U.S. 62, 67 (1991) (“we have stated many times that ‘federal habeas corpus relief does

1 not lie for errors of state”) quoting Lewis v. Jeffers, 497 U.S. 764, 780 (1990). “[T]he availability of
2 a claim under state law does not of itself establish that a claim was available under the United States
3 Constitution.” Sawyer v. Smith, 497 U.S. 227, 239 (1990) quoting Dugger v. Adams, 489 U.S. 401,
4 409 (1989). Petitioner’s claim that he is being detained in violation fo the California Welfare and
5 Institution Code is not cognizable under § 2241.

6 Petitioner also contends that he has been detained in violation of federal law, namely the
7 mental health patients bill of rights, 42 U.S.C. § 9501. The statute reads in pertinent part:

8 It is the sense of the Congress that each State should review and revise,
9 if necessary, its laws to ensure that mental health patients receive the
10 protection and services they require; and in making such review and
11 revision should take into account the recommendations of the
12 President’s Commission on Mental Health and the following. . . .the
13 right to an individualizes, written, treatment or service plan (such plan
14 to be developed promptly after admission of such person). the right to
15 treatment based on such plan, the right to periodic review and
16 reassessment of treatment and related services needs, and the right to
17 appropriate revision of such plan, including any revision necessary to
18 provide a description of mental health services that may be needed after
19 such person is discharged from such program or facility.

42 U.S.C. § 9501(B); see also Pet., 4-5.

20 This Court’s reading of the federal statute finds no rights conferred therein to a petitioner who
21 is civilly detained under California’s Sexually Violent Predator Act—it is merely a list of suggestions
22 which the states are urged to consider when making their own laws pertaining to mental health
23 patients. The statute does not confer any right which can be challenged through a petition for writ of
24 habeas corpus, nor does it provide for any relief available via §2241.

25 **CONCLUSION**

26 Petitioner has failed to state a cognizable federal claim and his petition for writ of habeas
27 corpus must be DISMISSED.

28 **ORDER**

Accordingly, the petition for writ of habeas corpus is hereby DISMISSED with prejudice.
IT IS SO ORDERED.

Dated: March 2, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE