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5	UNITED STATES DISTRICT COURT
6	EASTERN DISTRICT OF CALIFORNIA
7	RAYMOND AMADEO,) 1:08-cv-01439 YNP [DLB] (HC)
8	Petitioner,) ORDER DISMISSING PETITION FOR
9) WRIT OF HABEAS CORPUS
10	V.)
11	STEPHEN MAYBERG,) Director of Dept. of Department of Mental)
12	Health
13	Respondent.
14	/
15	Petitioner is civilly detained at Coalinga State Hospital pursuant to California's Sexually
16	Violent Predator Act. He is proceeding pro se with a petition for writ of habeas corpus pursuant to
17	28 U.S.C. § 2241.
18	BACKGROUND
19	On September 15, 2008, Petitioner filed the instant petition in federal court claiming that the
20	California Department of Mental Health violated his Fourteenth Amendment due process and equal
21	protection rights by denying Petitioner his statutory right to a psychological evaluation under
22	California's Welfare and Institutions Code § 7250 and the federal mental health patient bill of rights
23	codified in 42 U.S.C. § 9501 (2008). Petitioner claims that, as of the date of the petition, he had been
24	in the State hospital for two and a half years but had yet to be given a "thorough" mental examination
25	for the purpose of ascertaining whether he currently suffers from a mental disorder over which
26	Petitioner has no volitional control to the extent that he is predisposed to commit future sexually
27	violent acts should Petitioner be released. (Pet., 5.)
28	Respondent has yet been ordered to appear in this case.

DISCUSSION

2 Standard for Dismissal

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Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part that "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an answer to the petition has been filed. In this case the Court dismisses the petition on its own 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 not in custody under a state-court judgment. Fed. R. Civ. P. 81(a)(2) provides that the civil rules are 14 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

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

Petitioner's claim arises under California law. He claims that he was not provided a thorough
mental examination as proscribed by the California Welfare and Institution Code § 7250. Such claims
involve questions of purely state law and are not cognizable in the federal habeas court. <u>Estelle v.</u>
<u>McGuire</u>, 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, if necessary, its laws to ensure that mental health patients receive the
9	protection and services they require; and in making such review and
10	revision should take into account the recommendations of the President's Commission on Mental Health and the followingthe
11	right to an individualizes, written, treatment or service plan (such plan to be developed promptly after admission of such person). the right to
12	treatment based on such plan, the right to periodic review and reassessment of treatment and related services needs, and the right to
13	appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after
14	such person is discharged from such program or facility. 42 U.S.C. § 9501(B); see also Pet., 4-5.
15	This Court's reading of the federal statute finds no rights conferred therein to a petitioner who
16	is civilly detained under California's Sexually Violent Predator Act-it is merely a list of suggestions
17	which the states are urged to consider when making their own laws pertaining to mental health
18	patients. The statute does not confer any right which can be challenged through a petition for writ of
19	habeas corpus, nor does it provide for any relief available via §2241.
20	CONCLUSION
21	Petitioner has failed to state a cognizable federal claim and his petition for writ of habeas
22	corpus must be DISMISSED.
23	ORDER
24	Accordingly, the petition for writ of habeas corpus is hereby DISMISSED with prejudice.
25	IT IS SO ORDERED.
26	Dated: March 2, 2010 /s/ Dennis L. Beck UNITED STATES MAGISTRATE JUDGE
27	UNITED STATES MAGISTRATE JUDGE
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