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

LATONIA JONES,

Petitioner,

vs.

FRESNO COUNTY JAIL,

Respondent.

1:08-CV-1702-WMW

**ORDER DISMISSING
PETITION WITHOUT
PREJUDICE**

Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2241.

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).

Although Petitioner is a state prisoner, Petitioner has brought this petition pursuant to

1 28 U.S.C. § 2241. This statute provides relief to a federal prisoner if he can show he is “in
2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §
3 2241(c)(3). This court may entertain a petition for writ of habeas corpus “in behalf of a
4 person in custody pursuant to the judgment of a State court only on the ground that he is in
5 custody in violation of the Constitution or laws or treaties of the United States,” under 28
6 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge
7 “the very fact or duration of his confinement,” and where “the relief he seeks is a
8 determination that he is entitled to immediate release or a speedier release from that
9 imprisonment.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973).

10 Where a petitioner seeks to challenge the conditions of his confinement rather than
11 the legality of the confinement itself, the proper method is through a civil rights action
12 pursuant to 42 U.S.C. § 1983. In this case, Petitioner expressly states that Petitioner is
13 challenging conditions at the Fresno County Jail. Accordingly, the proper vehicle for
14 Petitioner to pursue Petitioner’s claims is through a civil rights action pursuant to 42 U.S.C.
15 § 1983.

16 Based on the above, IT IS HEREBY ORDERED as follows:

- 17 1) The petition for writ of habeas corpus is DISMISSED without prejudice to
18 Petitioner’s right to file an appropriate civil rights action; and
19 2) The Clerk of the Court is directed to enter judgment for Respondent and to close this
20 case.

21 IT IS SO ORDERED.

22 **Dated:** January 13, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE