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

MICHAEL LUCAS,

Petitioner,

vs.

JAMES HARTLEY,

Respondent.

1:08-CV-1806 WMW HC

**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 2254. This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge “the very fact or duration of his confinement,” and where “the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). In contrast, a civil rights

1 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the
2 conditions of that confinement. In this case, Petitioner is not challenging his conviction, but
3 rather is challenging prison conditions regarding his ability to practice his religion.
4 Accordingly, the proper vehicle for Petitioner to pursue his claims is through a civil rights
5 action pursuant to 42 U.S.C. § 1983.

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

- 7 1) The petition for writ of habeas corpus is DISMISSED without prejudice to
8 Petitioner's right to file an appropriate civil rights action; and
- 9 2) The Clerk of the Court is directed to enter judgment for Respondent and to close this
10 case.

11 IT IS SO ORDERED.

12 **Dated: February 2, 2009**

13 **/s/ William M. Wunderlich**
14 **UNITED STATES MAGISTRATE JUDGE**