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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDRICK JONES JR.,)	1:10-cv-00068-AWI-SKO-HC
)	
Petitioner,	)	ORDER GRANTING PETITIONER'S
	)	REQUEST FOR AN EXTENSION OF TIME
	)	TO FILE OPPOSITION TO
v.	)	RESPONDENT'S MOTION TO DISMISS
	)	(Docs. 20, 18)
DIRECTOR OF CORRECTIONS)	
MATTHEW TATE,	)	DEADLINE FOR OPPOSITION:
	)	THIRTY (30) DAYS AFTER THE DATE
Respondent.	)	OF SERVICE OF THIS ORDER
)	
	)	ORDER DEEMING PETITIONER'S MOTION
	)	FOR EXTENSION OF TIME TO BE IN
	)	PART A REQUEST FOR AN INJUNCTION
	)	(Doc. 20)

FINDINGS AND RECOMMENDATION TO
DENY PETITIONER'S REQUEST FOR AN
INJUNCTION (Doc. 20)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is Petitioner's request for an extension of time filed on November 8, 2010.

I. Request for Extension of Time

Petitioner requests a sixty-day extension of time within

1 which to respond to Respondent's motion to dismiss the
2 proceeding. Although Petitioner has shown that an extension is
3 necessary, Petitioner has not shown that a sixty-day period is
4 presently necessary in order to prepare a response.

5 Good cause appearing, Petitioner is GRANTED thirty days from
6 the date of service of this order in which to respond to
7 Respondent's motion to dismiss.

8 II. Deeming the Request for an Extension to Be
9 in Part a Request for an Injunction

10 In the request for an extension of time, Petitioner requests
11 affirmative relief against the prison litigation department. The
12 Court thus DEEMS the request for an extension of time to be in
13 part a request for an injunction.

14 III. Request for an Injunction

15 Petitioner states that he was charged with murder and placed
16 in administrative segregation at High Desert State Prison as a
17 result of a fight in September. Further, he has been separated
18 from his legal property, and he is given less than two hours per
19 week of access to the prison's law library. Petitioner asks that
20 this Court inquire about the matter, and he requests that the
21 Court order the prison's litigation department to give him access
22 to his legal materials.

23 After reading the request in its entirety, the Court
24 concludes that Petitioner is challenging the conditions of his
25 confinement, not the fact or duration of that confinement.

26 It is established that relief by way of a writ of habeas
27 corpus pursuant to 28 U.S.C. § 2241 extends to a prisoner who
28 shows that the custody violates the Constitution, laws, or

1 treaties of the United States. 28 U.S.C. § 2241(c)(3).

2 A habeas corpus petition is the correct method for a
3 prisoner to challenge the legality or duration of his
4 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)
5 (quoting Preiser v. Rodriguez, 411 U.S. 475, 485 (1973));
6 Advisory Committee Note to Rule 1 of the Rules Governing Section
7 2254 Cases (Habeas Rules), 1976 Adoption.

8 In contrast, a civil rights action pursuant to 42 U.S.C.
9 § 1983 is the proper method for a prisoner to challenge the
10 conditions of that confinement. McCarthy v. Bronson, 500 U.S.
11 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
12 574; Advisory Committee Note to Habeas Rule 1, 1976 adoption.

13 Because in the request Petitioner seeks to challenge the
14 conditions of his confinement, and not the legality or duration
15 of his confinement, these particular claims are cognizable in a
16 civil rights action rather than a petition for writ of habeas
17 corpus.

18 Accordingly, it will be recommended that the request for
19 injunctive relief be denied.

20 IV. Recommendation

21 In accordance with the foregoing, it is RECOMMENDED that:

22 1) Petitioner's request for injunctive relief be DENIED.

23 These findings and recommendations are submitted to the
24 United States District Court Judge assigned to the case, pursuant
25 to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of
26 the Local Rules of Practice for the United States District Court,
27 Eastern District of California. Within thirty (30) days after
28 being served with a copy, any party may file written objections

1 with the Court and serve a copy on all parties. Such a document
2 should be captioned "Objections to Magistrate Judge's Findings
3 and Recommendations." Replies to the objections shall be served
4 and filed within fourteen (14) days (plus three (3) days if
5 served by mail) after service of the objections. The Court will
6 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
7 636 (b) (1) (C). The parties are advised that failure to file
8 objections within the specified time may waive the right to
9 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
10 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: November 15, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE