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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HORACE BELL,

 Petitioner,

 v.

DIRECTOR OF CDCR, et al.,

 Respondents.

1:10-cv-00771 OWW MJS HC

FINDINGS AND RECOMMENDATION
TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner’s claims arise from alleged violations of the Americans with Disability Act by refusing to provide Petitioner with daily medical showers and refusing to allow Petitioner to work in the inmate dining hall. (Second Am. Pet. at 11, ECF No. 11.) On April 22, 2010, Petitioner filed the instant petition for writ of habeas corpus with this Court regarding the alleged violation of the Americans with Disability Act . (Pet., ECF No. 1.) On May 27, 2010 Petitioner filed a second amended petition also alleging violations of the Americans with Disability Act . (Second Am. Pet.)

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1 **I. DISCUSSION**

2 **A. Procedural Grounds for Summary Dismissal**

3 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

4 If it plainly appears from the petition and any attached exhibits that
5 the petitioner is not entitled to relief in the district court, the judge
6 must dismiss the petition and direct the clerk to notify the petitioner.

7 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ
8 of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion
9 to dismiss, or after an answer to the petition has been filed. A petition for habeas corpus
10 should not be dismissed without leave to amend unless it appears that no tenable claim for
11 relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir.
12 1971).

13 **B. Failure to State a Cognizable Federal Claim**

14 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section
15 2241 of Title 28 of the United States Code provides that habeas corpus shall not extend to a
16 prisoner unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:

17 The Supreme Court, a Justice thereof, a circuit judge, or a district
18 court shall entertain an application for a writ of habeas corpus in
19 behalf of a person in custody pursuant to a judgment of a State
20 court *only on the ground that he is in custody in violation of the
21 Constitution or laws or treaties of the United States.*

22 (emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United
23 States District Court. The Supreme Court has held that "the essence of habeas corpus is an
24 attack by a person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411
25 U.S. 475, 484 (1973).

26 Petitioner alleges that he has not been provided daily medical showers as required by
27 the Americans with Disability Act. (Second Am. Pet. at 11.) A writ of habeas corpus is not a
28 proper vehicle to challenge conditions of confinement unrelated to the very fact or duration of
confinement. See Ramirez v. Galaza, 334 F.3d 850, 855 (9th Cir. 2003) (quoting Preiser, 411
U.S. at 500). A § 1983 action is a proper remedy for a state prisoner who is making a

1 constitutional challenge to the conditions of his prison life, but not to the fact or length of his
2 custody." Ramirez, 334 F.3d at 855 (quoting Preiser, 411 U.S. at 499).

3 In the present case, Petitioner is not challenging the fact or duration of his confinement;
4 the denial of the asserted right to daily medical showers challenges a condition of
5 confinement, not the fact or duration of that confinement. Where a Petitioner seeks to
6 challenge the conditions of his confinement, his claims are cognizable in a civil rights action
7 rather than a habeas corpus action. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)
8 (challenges to conditions of confinement by state prisoners should be presented in a 42 U.S.C.
9 § 1983 civil rights action rather than a habeas corpus petition).

10 Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed.
11 Should Petitioner wish to pursue his claims, he may undertake to do so by way of a civil rights
12 complaint.

13 **II. RECOMMENDATION**

14 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be
15 DISMISSED and the Clerk of Court be DIRECTED to enter judgment and close the case.

16 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger
17 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and
18 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District
19 of California. Within thirty (30) days after the date of service of this Findings and
20 Recommendation, any party may file written objections with the Court and serve a copy on all
21 parties. Such a document should be captioned "Objections to Magistrate Judge's Findings
22 and Recommendation." Replies to the Objections shall be served and filed within fourteen
23 (14) days after service of the Objections. The Finding and Recommendation will then be
24 submitted to the District Court for review of the Magistrate Judge's ruling pursuant to 28 U.S.C.
25 § 636 (b)(1)(c). The parties are advised that failure to file objections within the specified time

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1 may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: August 26, 2010

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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