

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

12	TRINIDAD GOMEZ,	)	1:10-cv-02005 AWI MJS HC
13	Petitioner,	)	FINDINGS AND RECOMMENDATION
14	v.	)	TO DISMISS PETITION FOR WRIT OF
15		)	HABEAS CORPUS
16	FERNANDO GONZALEZ, Warden,	)	(Doc. 1)
17	Respondent.	)	FINDINGS AND RECOMMENDATION
18		)	REGARDING PETITIONER'S MOTION
		)	REQUESTING STAY AND MOTION
		)	REQUESTING LIFT OF STAY
		)	(Docs. 9-10)

Petitioner is a state prisoner proceeding pro se with this October 25, 2010, petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his Petition, Petitioner asserts that he was denied the right to be transported to his mother's funeral services on March 9, 2010. (Pet. at 4, ECF No. 1.) On December 23, 2010, Petitioner filed a motion requesting the action be stayed while Petitioner filed a civil rights complaint under 42 U.S.C. § 1983. (Motion for Stay, ECF No. 9.) On February 28, 2011, Petitioner filed a motion requesting the stay be lifted. (Motion to Lift Stay, ECF No. 10.)

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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
must dismiss the petition and direct the clerk to notify the petitioner.

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

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

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

16 The Supreme Court, a Justice thereof, a circuit judge, or a district
17 court shall entertain an application for a writ of habeas corpus in
18 behalf of a person in custody pursuant to a 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.*

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

23 Petitioner here complains that he was denied the right to be transported to his mother's
24 funeral services on March 9, 2010. However, a writ of habeas corpus is not a proper vehicle
25 to challenge conditions of confinement unrelated to the very fact or duration of confinement.
26 See Ramirez v. Galaza, 334 F.3d 850, 855 (9th Cir. 2003) (quoting Preiser, 411 U.S. at 500).
27 A § 1983 action is a proper remedy for a state prisoner to make a constitutional challenge to
28 the conditions of his prison life. Ramirez, 334 F.3d at 855 (quoting Preiser, 411 U.S. at 499).

1 In the present case, Petitioner is not challenging the fact or duration of his confinement; he
2 challenges the denial of a temporary leave. The challenge would have no effect on the
3 overall duration of his sentence. In Kentucky Dept. of Corr. v. Thompson, the Supreme Court
4 issued an analogous ruling in the converse situation. 490 U.S. 454, 460-461, 109 S. Ct. 1904,
5 36 L. Ed. 2d 506 (1989) ("The denial of prison access to a particular visitor is well within the
6 terms of confinement ordinarily contemplated in a prison sentence, and therefore is not
7 independently protected by the Due Process Clause." (citation omitted.)).

8 In this case, Petitioner's claim involves the conditions of his confinement, not the fact
9 or duration of that confinement. Where a Petitioner seeks to challenge the conditions of his
10 confinement, his claims are cognizable in a civil rights action rather than a habeas corpus
11 action. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (challenges to conditions of
12 confinement by state prisoners should be presented in a 42 U.S.C. § 1983 civil rights action
13 rather than a habeas corpus petition).

14 Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed.
15 If Petitioner wishes to pursue his claims, he may undertake to do so by way of a civil rights
16 complaint.

17 **C. Motion to Stay Proceeding**

18 _____Petitioner filed a motion to stay the proceeding on December 23, 2010. Petitioner then
19 filed a motion requesting the stay be lifted. The Court has yet to rule on Petitioner's motion to
20 stay the proceeding, and therefore no stay is currently in place. The Court cannot lift a stay
21 that is not in place. However, the Court will consider the motion to lift the stay as a request
22 to withdraw Petitioner's motion to stay. (The federal courts have duty to construe pro se
23 pleadings liberally. Hamilton v. United States, 67 F.3d 761, 764 (9th Cir.1995) (citing Hughes
24 v. Rowe, 449 U.S. 5, 9 (1980) (quotation omitted)). Accordingly, the Court recommends that
25 the request to withdraw the motion to stay be granted.

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28 **II. RECOMMENDATION**

1 Accordingly, the Court HEREBY RECOMMENDS that:

2 1.) Petitioner's motion to withdraw the motion to stay be GRANTED and the motion to
3 stay be stricken (Docs. 9, 10.);

4 2.) The habeas corpus petition be DISMISSED; and

5 3.) The Clerk of Court be DIRECTED to enter judgment and close the case.

6 This Findings and Recommendation is submitted to the assigned United States District
7 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
8 Rules of Practice for the United States District Court, Eastern District of California. Within thirty
9 (30) days after the date of service of this Findings and Recommendation, any party may file
10 written objections with the Court and serve a copy on all parties. Such a document should be
11 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the
12 Objections shall be served and filed within fourteen (14) days after service of the Objections.
13 The Finding and Recommendation will then be submitted to the District Court for review of the
14 Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(c). The parties are advised that
15 failure to file objections within the specified time may waive the right to appeal the Order of the
16 District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: March 15, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE