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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  
HABEAS CORPUS  
(Doc. 1)  
15 FERNANDO GONZALEZ, Warden, } FINDINGS AND RECOMMENDATION  
16 Respondent. } REGARDING PETITIONER'S MOTION  
REQUESTING STAY AND MOTION  
REQUESTING LIFT OF STAY  
(Docs. 9-10)  
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19 Petitioner is a state prisoner proceeding pro se with this October 25, 2010, petition for  
20 writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his Petition, Petitioner asserts that he  
21 was denied the right to be transported to his mother's funeral services on March 9, 2010. (Pet.  
22 at 4, ECF No. 1.) On December 23, 2010, Petitioner filed a motion requesting the action be  
23 stayed while Petitioner filed a civil rights complaint under 42 U.S.C. § 1983. (Motion for Stay,  
24 ECF No. 9.) On February 28, 2011, Petitioner filed a motion requesting the stay be lifted.  
25 (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  
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  
8    for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's  
9    motion to dismiss, or after an answer to the petition has been filed. A petition for habeas  
10   corpus should not be dismissed without leave to amend unless it appears that no tenable  
11   claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14  
(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  
19   court *only on the ground that he is in custody in violation of the  
20   Constitution or laws or treaties of the United States.*

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

25   Petitioner here complains that he was denied the right to be transported to his mother's  
26   funeral services on March 9, 2010. However, a writ of habeas corpus is not a proper vehicle  
27   to challenge conditions of confinement unrelated to the very fact or duration of confinement.  
28   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 to make a constitutional challenge to  
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. Leng*  
20 UNITED STATES MAGISTRATE JUDGE

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