

1 failed to raise a cognizable habeas claim. (Doc. 11). On May 13, 2011, Petitioner filed his
2 opposition to the motion to dismiss. (Doc. 17).

3 DISCUSSION

4 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary
5 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it
6 plainly appears from the face of the petition . . . that the petitioner is not entitled to relief." Rule
7 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490
8 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the
9 petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. §
10 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality
11 or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,
12 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir.
13 2003)("[H]abeas jurisdiction is absent...where a successful challenge to a prison condition will
14 not necessarily shorten the prisoner's sentence."); Advisory Committee Notes to Rule 1 of the
15 Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. §
16 1983 is the proper method for a prisoner to challenge the conditions of that confinement.
17 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
18 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

19 In this case, as mentioned, Petitioner alleges that the Unit Classification Committee at his
20 prison facility unlawfully re-classified Petitioner despite the fact that Petitioner had been
21 discipline free for twelve years. As a result of this re-classification, Petitioner alleges that he
22 lost his work assignment as a cook, along with the pay associated with that position. As relief,
23 Petitioner requests that he be re-installed into his cook's job and to be reimbursed for any pay he
24 would have earned during the period of erroneous re-classification. (Doc. 1, p. 16).

25 Respondent correctly argues in the motion to dismiss that Petitioner is challenging the
26 conditions of his confinement, not the fact or duration of that confinement. Therefore, Petitioner
27 is not entitled to habeas corpus relief; thus, Respondent's motion to dismiss should be granted
28 and this petition should be dismissed. Should Petitioner wish to pursue his claims, Petitioner

1 may do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983, if he can establish
2 that the change in his classification rises to the level of a constitutional injury. Otherwise,
3 Petitioner may seek relief in state court based upon alleged violations of state law.

4 **RECOMMENDATION**

5 Accordingly, the Court RECOMMENDS that Respondent’s motion to dismiss the
6 petition for writ of habeas corpus (Doc. 11), be GRANTED because the petition does not allege
7 grounds that would entitle Petitioner to habeas corpus relief.

8 This Findings and Recommendation is submitted to the United States District Judge
9 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
10 Local Rules of Practice for the United States District Court, Eastern District of California.

11 Within twenty days after being served with a copy, any party may file written objections with the
12 court and serve a copy on all parties. Such a document should be captioned “Objections to
13 Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate
14 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
15 objections within the specified time may waive the right to appeal the District Court’s order.

16 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 IT IS SO ORDERED.

19 Dated: May 18, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE