

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN CARANCHINI,	)	1:10-CV-02127 SMS HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION WITH
	)	LEAVE TO FILE AMENDED PETITION
v.	)	
	)	ORDER DIRECTING CLERK OF COURT
	)	TO SEND PETITIONER BLANK PETITION
SECRETARY, C.D.C.R.,	)	FOR WRIT OF HABEAS CORPUS
	)	
Respondent.	)	
_____)	)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c).

On November 8, 2010, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of California, Sacramento Division. By order of the Court, the case was transferred to the Fresno Division.

**DISCUSSION**

A. Procedural Grounds for Summary Dismissal

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:  
If it plainly appears from the petition and any attached exhibits that the petitioner is not

1 entitled to relief in the district court, the judge must dismiss the petition and direct the clerk  
2 to notify the petitioner.

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

8 B. Failure to State a Cognizable Claim

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

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

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

20 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must  
21 demonstrate that the adjudication of his claim in state court

22 resulted in a decision that was contrary to, or involved an unreasonable application  
23 of, clearly established Federal law, as determined by the Supreme Court of the  
24 United States; or resulted in a decision that was based on an unreasonable  
25 determination of the facts in light of the evidence presented in the State court  
26 proceeding.

27 28 U.S.C. § 2254(d)(1),(2).

28 In the instant case, Petitioner fails to state a cognizable federal claim. He complains that  
validated associates of prison gang members are denied privileges afforded to those in general  
population even though those associates have not committed any acts of violence. He further claims  
that Senate Bill "SBX3-18" violates the ex post facto clause because it increases sentences for those  
validated associates who have been placed in the secured housing unit. Last, he contends all

1 validated associates housed in the secured housing unit are denied certain privileges such as altar  
2 cloths, vegan diets, and the right to full religious practice. None of these claims present a basis for  
3 habeas relief. With respect to the first and third claims that prisoners are denied privileges,  
4 Petitioner is challenging the conditions of his confinement, not the lawfulness or duration of his  
5 confinement. Therefore, those claims are not cognizable in a habeas action but must be raised in a  
6 civil rights complaint pursuant to 42 U.S.C. § 1983. As to his second claim that Senate Bill “SBX3-  
7 18” lengthens sentences in violation of the ex post facto clause, Petitioner makes this claim in  
8 general terms as affecting those inmates who are validated associates of gang members. He fails to  
9 state whether he himself is affected. He fails to state if and how his own sentence has been  
10 lengthened. Therefore, Petitioner fails to establish standing to raise this claim. Nevertheless,  
11 because it is possible that Petitioner may be directly affected and he may be able to present a  
12 cognizable claim, the Court will dismiss the petition with leave to file a first amended petition.

13 **ORDER**

14 Accordingly, the petition for writ of habeas corpus is hereby DISMISSED with leave to  
15 amend. Petitioner is GRANTED thirty (30) days from the date of service of this order to file an  
16 amended petition in compliance with this Order. Failure to file an amended petition in compliance  
17 with this Order will result in dismissal of the petition and termination of the case. The Clerk of  
18 Court is DIRECTED to send Petitioner a form petition pursuant to 28 U.S.C. § 2254.

19

20 IT IS SO ORDERED.

21 **Dated: December 8, 2010**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

22

23

24

25

26

27

28