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8   **UNITED STATES DISTRICT COURT**

9   EASTERN DISTRICT OF CALIFORNIA

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11   INOCENCIO BANALES,   )   1:11-cv-01432-JLT HC
)
12   Petitioner,   )   FINDINGS AND RECOMMENDATIONS TO
)   DISMISS PETITION FOR WRIT OF HABEAS
13   v.   )   CORPUS; ORDER DIRECTING OBJECTIONS
)   TO BE FILED WITHIN TWENTY DAYS
14   J. TIM OCHOA, Warden,   )
)   ORDER DIRECTING CLERK OF THE COURT
15   Respondent.   )   TO ASSIGN CASE TO U. S. DISTRICT
)   JUDGE
16   _____   )

17   Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus

18   pursuant to 28 U.S.C. § 2254. On August 15, 2011, Petitioner filed his petition for writ of

19   habeas corpus in the United States District Court for the Southern District of California. (Doc.

20   1). On August 26, 2011, the case was transferred to this Court. (Doc. 3).

21   Petitioner contends that his constitutional rights were violated when Respondent

22   "validated" Petitioner as a member of the Mexican Mafia, a prison gang, based solely, according

23   to Petitioner, on information derived from an envelope found in the possession of another

24   inmate. Respondent's actions did not result in the loss of any credits that would directly affect

25   the length of Petitioner's sentence. However, without any statutory basis for such an allegation,

26   Petitioner alleges that once he has been validated he must serve his entire sentence.

27   **DISCUSSION**

28   Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary

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1 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it

2 plainly appears from the face of the petition . . . that the petitioner is not entitled to relief." Rule

3 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490

4 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the

5 petitioner can show that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. §

6 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality

7 or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,

8 Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v. Galaza, 334 F.3d

9 850, 859 (9th Cir. 2003)("[H]abeas jurisdiction is absent, and a § 1983 action proper, where a

10 successful challenge to a prison condition will not necessarily shorten the prisoner's sentence.");

11 Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

12   The Ninth Circuit has also held that "[h]abeas corpus jurisdiction also exists when a

13 petitioner seeks expungement of a disciplinary finding from his record if expungement is likely

14 to accelerate the prisoner's eligibility for parole." Bostic v. Carlson, 884 F.2d 1267, 1269 (9th

15 Cir. 1989); see also Docken v. Chase, 393 F. 3d 1024, 1031 (9th Cir. 2004)("[W]e understand

16 Bostic's use of the term 'likely' to identify claims with a sufficient nexus to the length of

17 imprisonment so as to implicate, but not fall squarely within, the 'core' challenges identified by

18 the Preiser Court.")

19   In contrast to a habeas corpus challenge to the length or duration of confinement, a civil

20 rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the

21 conditions of that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser,

22 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules

23 Governing Section 2254 Cases.

24   In this case, Petitioner complains that Respondent violated his constitutional rights by

25 improperly "validating" Petitioner as a member of a prison gang. Petitioner does not challenge

26 either his underlying conviction or his sentence. Moreover, the process Petitioner has

27 challenged, i.e., the prison gang validation process, did not result in the loss of any credits by

28 Petitioner, nor, apparently, placement in a restrictive setting such as the Secure Housing Unit.

1 The Ninth Circuit, ruling on a case appealed from this Court, has held that such a claim fails to

2 invoke this Court's habeas jurisdiction, citing Preiser and Ramirez. Burton v. Adams, 415 Fed.

3 Appx. 816, 817 (9th Cir. 2011)(not selected for official publication).

4   Petitioner is thus challenging the conditions of his confinement, not the fact or duration of

5 that confinement. Hence, Petitioner is not entitled to habeas corpus relief, and this petition must

6 be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way of a

7 civil rights complaint pursuant to 42 U.S.C. § 1983.

ORDER

9   For the foregoing reasons, it is HEREBY ORDERED that the Clerk of the Court assign

10 this case to a United States District Judge.

RECOMMENDATIONS

12   For the foregoing reasons, the Court HEREBY RECOMMENDS that the petition for writ

13 of habeas corpus (Doc. 1), be DISMISSED for failure to state a claim upon which habeas corpus

14 relief can be granted.

15   This Findings and Recommendation is submitted to the United States District Court

16 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and

17 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of

18 California. Within twenty (20) days after being served with a copy, any party may file written

19 objections with the court and serve a copy on all parties. Such a document should be captioned

20 "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections

21 shall be served and filed within ten (10) court days (plus three days if served by mail) after

22 service of the objections. The Court will then review the Magistrate Judge's ruling pursuant to

23 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the

24 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951

25 F.2d 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 Dated: **September 8, 2011**   **/s/ Jennifer L. Thurston**
                                            UNITED STATES MAGISTRATE JUDGE

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