



1 account so that Petitioner is unable to shop in the prison commissary for necessary items. (Doc. 19, p.  
2 2). Petitioner also contends that he was given an “unjust...write-up” as retaliation for unspecified acts  
3 by Petitioner. (Id.). Since Petitioner is alleging civil rights violations that have nothing to do with his  
4 challenge to his 2010 Kern County Superior Court conviction, his claims in this document are not  
5 cognizable in these proceedings and will be dismissed.

## 6 DISCUSSION

7 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of  
8 each petition for writ of habeas corpus. The Court must dismiss a petition “[i]f it plainly appears from  
9 the face of the petition . . . that the petitioner is not entitled to relief.” Rule 4 of the Rules Governing  
10 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only  
11 grant a petition for writ of habeas corpus if the petitioner can show that “he is in custody in violation of  
12 the Constitution . . . .” 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a  
13 prisoner to challenge the “legality or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574  
14 (9th Cir. 1991), quoting Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v.  
15 Galaza, 334 F.3d 850, 859 (9<sup>th</sup> Cir. 2003)(“[H]abeas jurisdiction is absent, and a § 1983 action proper,  
16 where a successful challenge to a prison condition will not necessarily shorten the prisoner’s  
17 sentence”); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

18 The Ninth Circuit has also held that “[h]abeas corpus jurisdiction also exists when a petitioner  
19 seeks expungement of a disciplinary finding from his record if expungement is likely to accelerate the  
20 prisoner’s eligibility for parole.” Bostic v. Carlson, 884 F.2d 1267, 1269 (9<sup>th</sup> Cir. 1989); see also  
21 Docken v. Chase, 393 F. 3d 1024, 1031 (9<sup>th</sup> Cir. 2004)(“[W]e understand Bostic’s use of the term  
22 ‘likely’ to identify claims with a sufficient nexus to the length of imprisonment so as to implicate, but  
23 not fall squarely within, the ‘core’ challenges identified by the Preiser Court.”)

24 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights  
25 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of  
26 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,  
27 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

1 In this case, as mentioned, Petitioner alleges that prison staff are harassing him and retaliating  
2 against him for unspecified conduct on Petitioner's part, that staff have frozen his prison trust account,  
3 thus preventing him from using the commissary, and that he has been wrongfully written up by prison  
4 staff. Petitioner does not specify what type of relief he is seeking other than an injunction to stop this  
5 retaliation. It thus appears that, in this motion, Petitioner is challenging the *conditions* of his  
6 confinement, not the *fact or duration* of that confinement, which is the basis for habeas jurisdiction.  
7 No relief requested, either implicitly or explicitly, by Petitioner in this motion would affect the fact or  
8 duration of Petitioner's sentence. This Court's habeas jurisdiction does not extend to such claims  
9 regarding the conditions of confinement. The mere fact that Petitioner has once invoked the Court's  
10 habeas jurisdiction to challenge his 2010 conviction and sentence does not open the door to any and all  
11 types of complaints Petitioner might have while confined. If Petitioner wishes to pursue such claims,  
12 Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

13 **ORDER**

14 For the foregoing reasons, it is HEREBY ORDERED as follows:

- 15 1. Petitioner's motion for an emergency injunction (Doc. 19), which the Court construes as a  
16 claim for a civil rights violation pursuant to 42 U.S.C. § 1983, is DENIED for lack of  
17 habeas jurisdiction.

18  
19 IT IS SO ORDERED.

20 Dated: June 14, 2013

/s/ Jennifer L. Thurston  
21 UNITED STATES MAGISTRATE JUDGE