1		
2		
3		
4		
5		
6	UNITED STATES DIS	TRICT COURT
7	EASTERN DISTRICT OF CALIFORNIA	
8		
9		
10		
11	LEROY E. KENDALL,) Case No.: 1:13-cv-00209-LJO-JLT
12	Petitioner,) ORDER DENYING CIVIL RIGHTS CLAIM FOR
13	v.) LACK OF JURISDICTION (Doc. 19)
14	CYNTHIA TAMPKINS,)
15	Respondent.))
16))
17	Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas	
18	corpus pursuant to 28 U.S.C. § 2254.	
19	The instant petition was filed on February 8, 2013, challenging Petitioner's 2010 conviction in	
20	the Kern County Superior Court for, inter alia, attempted second degree murder with great bodily	
21	injury, and his subsequent thirteen year sentence. (Doc. 1). On March 6, 2013, the Court ordered	
22	Respondent to file a response and, on May 7, 2	013, Respondent filed an answer. (Doc. 15). On May
23	28, 2013, Petitioner filed a document entitled "Judicial Notice To The Court," which the Clerk of	
24	Court docketed as a motion for an emergency injunction against Respondent. (Doc. 19).	
25	After careful review of this document, the Court has concluded that it should be construed as a	
26	request to raise a claim regarding a civil rights violation pursuant to 42 U.S.C. § 1983. Although the	
27	body of the document refers to a request for an "emergency injunction," the gravamen of the	
28	document is that Petitioner is being harassed by prison authorities who have frozen his prison trust	
		1

1

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

DISCUSSION

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

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

In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
confinement. <u>McCarthy v. Bronson</u>, 500 U.S. 136, 141-42 (1991); <u>Preiser</u>, 411 U.S. at 499; <u>Badea</u>,
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 <i>conditions</i> of his	
6	confinement, not the <i>fact or duration</i> 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	
22		
23		
24		
25		
26		
27		
28		
	3	