

1 from the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules
2 Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990).

3 **B. Failure to State Cognizable Claim**

4 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show
5 that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus
6 petition is the correct method for a prisoner to challenge the "legality or duration" of his confinement.
7 Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485
8 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. In contrast,
9 a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the
10 conditions of that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S.
11 at 499; Badea, 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section
12 2254 Cases.

13 In the instant petition, Petitioner contends that staff at Coalinga State Hospital are attempting
14 to prevent him from litigating his 1983 civil right action pending in this Court in case number 1:13-cv-
15 00210-GSA (HC). More specifically, Petitioner contends that on March 14, 2013, a unit inspection
16 was conducted in which Petitioner was advised that he could not participate in certain activities unless
17 he dropped his civil rights action. (Pet. at 3.) Petitioner also contends that after he filed his 1983
18 action, he was forced to share a dorm with another mentally disabled individual who engaged in
19 offensive behavior. (Pet. at 4.) Petitioner requests that certain staff be restrained from working in his
20 unit.

21 Petitioner's claims challenge the conditions of his confinement not the execution or validity of
22 his confinement. Accordingly, Petitioner cannot proceed by way of § 2254, and the instant petition for
23 writ of habeas corpus must be dismissed. If Petitioner wishes to proceed on these claims, he must do
24 so by way of some other legal avenue.

25 **C. Certificate of Appealability**

26 Rule 11(a) of the Rules Governing Section 2254 cases requires the district court to issue or
27 deny a certificate of appealability when it enters a final order adverse to the petitioner. The
28 requirement that a petitioner seek a certificate of appealability is a gate-keeping mechanism that

1 protects the Court of Appeals from having to devote resources to frivolous issues, while at the same
2 time affording petitioners an opportunity to persuade the Court that, through full briefing and
3 argument, the potential merit of claims may appear. Lambright v. Stewart, 220 F.3d 1022, 1025 (9th
4 Cir. 2000). However, a state prisoner seeking a writ of habeas corpus has no absolute entitlement to
5 appeal a district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
6 Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003). The controlling statute, 28 U.S.C. § 2253,
7 provides as follows:

8 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,
9 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in
10 which the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a
12 warrant to remove to another district or place for commitment or trial a person charged with a
13 criminal offense against the United States, or to test the validity of such person's detention
14 pending removal proceedings.

15 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
16 be taken to the court of appeals from—

17 (A) the final order in a habeas corpus proceeding in which the detention
18 complained of arises out of process issued by a State court; or

19 (B) the final order in a proceeding under section 2255.

20 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made
21 a substantial showing of the denial of a constitutional right.

22 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or
23 issues satisfy the showing required by paragraph (2).

24 This Court will issue a certificate of appealability when a petitioner makes a substantial
25 showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial
26 showing, the petitioner must establish that “reasonable jurists could debate whether (or, for that
27 matter, agree that) the petition should have been resolved in a different manner or that the issues
28 presented were ‘adequate to deserve encouragement to proceed further’.” Slack v. McDaniel, 529
U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

1 In the present case, the Court finds that Petitioner has not made the required substantial
2 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.
3 Reasonable jurists would not find it debatable that Petitioner has failed to show an entitlement to
4 federal habeas corpus relief. Accordingly, the Court declines to issue a certificate of appealability.

5 **II.**

6 **ORDER**

7 Based on the foregoing,

8 IT IS HEREBY ORDERED that:

- 9 1. The instant petition for writ of habeas corpus is DISMISSED;
- 10 2. The Clerk of Court shall terminate this action; and
- 11 3. The Court declines to issue a certificate of appealability.

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14 IT IS SO ORDERED.

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16 Dated: June 6, 2013

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19 UNITED STATES MAGISTRATE JUDGE
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