

1 Although on August 20, 2013, Petitioner was given an extension of
2 time to file objections, Petitioner did not thereafter file timely
3 objections; rather, Petitioner filed a motion for an order to show
4 cause and a motion for a preliminary injunction on October 9, 2013.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C),
6 this Court has conducted a de novo review of the case. The Court
7 has considered the entire file. Further, although they are not
8 submitted as objections, Petitioner's order to show cause and motion
9 for a preliminary injunction, which are addressed more fully herein,
10 were considered; however, the Court concludes that they did not
11 require modification of the findings and recommendations. The Court
12 finds that the report and recommendations are supported by the
13 record and proper analysis.

14 Accordingly, the findings and recommendations will be adopted
15 in full.

16
17 II. Order to Show Cause and Motion for a Preliminary
18 Injunction

19 Because Petitioner sought an extension of time to file
20 objections and may have intended his filings regarding the
21 preliminary injunction to constitute objections, the Court has
22 reviewed the filings. Petitioner's order to show cause (doc. 10)
23 appears to be a form for scheduling a hearing on an application for
24 injunctive relief; Petitioner appears to ask that the Respondent
25 Warden Gipson be directed to show cause why Respondent should not be
26 restrained from harassing, punishing, and retaliating in any way
27 against "Defendant" for filing "this complaint." (Doc. 10.) The
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1 declaration or affidavit submitted with the request appears to be
2 entirely in the Spanish language. Petitioner appends to the
3 document a copy of 28 U.S.C. § 1828, part of the Court Interpreters
4 Act, which provides for the provision of interpreters "in criminal
5 actions and in civil actions initiated by the United States
6 (including petitions for writs of habeas corpus initiated in the
7 name of the United States by relators) in a United States district
8 court." 28 U.S.C. § 1828(a).

10 Here, Petitioner is not a party to a case that was initiated by
11 the United States, whether by relators or otherwise; thus, it does
12 not appear that Petitioner comes within the express terms of 28
13 U.S.C. §§ 1827 and 1828, which limit the circumstances in which
14 interpreters are to be provided by statute to judicial proceedings
15 instituted by the United States; the only exception is with respect
16 to a party, witness, or other participant in a judicial proceeding,
17 whether or not the proceeding is instituted by the United States,
18 where there is a finding that the person suffers from a hearing
19 impairment and needs a sign language interpreter. 28 U.S.C. §
20 1827(j), (l). There is no suggestion that this exception applies to
21 Petitioner.

24 The United States Supreme Court has not held that there is a
25 freestanding, constitutional right to the assistance of an
26 interpreter; rather, provision of an interpreter is generally within
27 the trial court's discretion. United States v. Si, 333 F.3d 1041,
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1 1043 n.3 (9th Cir. 2003) (citing Perovich v. United States, 205 U.S.
2 86, 91 (1907)). In this circuit, it has been recognized that in
3 some circumstances an interpreter may be essential to a fair trial
4 and constitutionally required for a criminal defendant in trial
5 proceedings, such as where an interpreter's services are necessary
6 to permit understanding of the proceedings, communication with
7 counsel, or preservation of a defendant's rights to confrontation,
8 cross-examination, or to testify in one's own behalf. See, Chacon
9 v. Wood, 36 F.3d 1459, 1464 (9th Cir. 1994), overruled on other
10 grounds by 28 U.S.C. § 2254 (need for interpreter to facilitate the
11 effective assistance of counsel); United States v. Si, 3233 F.3d at
12 1043 (collecting cases).

15 Here, Petitioner is not a criminal defendant, but rather is an
16 initiating party who is proceeding with a petition for writ of
17 habeas corpus. A substantial portion of the habeas petition pending
18 in this action is in the English language. Petitioner has not
19 established a factual or legal basis for an entitlement to an
20 interpreter in the present proceeding.

22 Accordingly, to the extent that Petitioner is requesting an
23 interpreter in order for him to proceed in this action, Petitioner's
24 request will be denied.

26 Further, although the document supporting Petitioner's motion
27 for a preliminary injunction is not in the English language and thus
28 is not comprehended by the Court, insofar as the motion is in

1 English, it appears to seek an order directing the warden and prison
2 staff not to retaliate or harass Petitioner. It thus appears that
3 the motion for an injunction challenges the conditions of
4 Petitioner's confinement, and not the fact or duration of that
5 confinement.
6

7 It is established that a federal court may only grant a
8 petition for writ of habeas corpus if the petitioner can show that
9 "he is in custody in violation of the Constitution or laws or
10 treaties of the United States." 28 U.S.C. § 2254(a). A habeas
11 corpus petition is the correct method for a prisoner to challenge
12 the legality or duration of his confinement. Badea v. Cox, 931 F.2d
13 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475,
14 485 (1973)); Advisory Committee Notes to Rule 1 of the Rules
15 Governing Section 2254 Cases, 1976 Adoption.
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17 In contrast, a civil rights action pursuant to 42 U.S.C. § 1983
18 is the proper method for a prisoner to challenge the conditions of
19 that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991);
20 Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee
21 Notes to Rule 1 of the Rules Governing Section 2254 Cases, 1976
22 Adoption.
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24 Because in the motion Petitioner seeks to challenge the
25 conditions of his confinement, and not the legality or duration of
26 his confinement, his claim or claims concerning entitlement to
27 injunctive relief are cognizable in a civil rights action rather
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1 than a petition for writ of habeas corpus.

2 Accordingly, Petitioner's motion for injunctive relief will be
3 dismissed.

4 III. Disposition

5 Accordingly, it is ORDERED that:

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7 1) The findings and recommendations filed on July 16, 2013, are
8 ADOPTED in full; and

9 2) Petitioner's first through fourth claims are DISMISSED
10 without leave to amend because they are not cognizable in a
11 proceeding pursuant to 28 U.S.C. § 2254; and
12

13 3) Petitioner's request for an order to show cause and motion
14 for a preliminary injunction are DISMISSED because they are not
15 cognizable in this proceeding; and

16 4) The matter is REFERRED back to the Magistrate Judge for
17 further proceedings on the remaining due process claim or claims in
18 the petition, including preparation of an order directed to the
19 Respondent to respond to the remaining due process claim or claims
20 in the petition.
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22 IT IS SO ORDERED.

23 Dated: November 8, 2013

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25 SENIOR DISTRICT JUDGE
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