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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ARCHIE CRANFORD, Petitioner, v. SAMANTHA PERRYMAN, et al., Respondents.))))))))))	Case No.: 1:13-cv-01308-JLT FINDINGS AND RECOMMENDATIONS RE: RESPONDENT’S MOTION TO DISMISS ORDER DIRECTING OBJECTIONS TO BE FILED WITHIN TWENTY-ONE DAYS ORDERING DIRECTING CLERK OF THE COURT TO ASSIGN DISTRICT JUDGE TO CASE
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Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The instant petition was filed on August 21, 2013. (Doc. 1). The petition alleges that, while Petitioner was housed in the Coalinga State Hospital, Coalinga, California, Petitioner was placed in a housing unit wherein he was assaulted by another inmate. Petitioner contends that Respondents Perryman and Havder placed Petitioner in that housing unit despite being aware that the presence of Petitioner’s assailant made an assault on Petitioner more likely. However, nowhere in the petition does Petitioner challenge either his conviction or sentence.

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

1 the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing
2 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only
3 grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of
4 the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a
5 prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574
6 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v.
7 Galaza, 334 F.3d 850, 859 (9th Cir. 2003)("[H]abeas jurisdiction is absent, and a § 1983 action proper,
8 where a successful challenge to a prison condition will not necessarily shorten the prisoner's
9 sentence"); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

16 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
17 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
18 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
19 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

20 In this case, as mentioned, Petitioner alleges that staff employees of the Coalinga State
21 Hospital placed Petitioner in a housing unit where he was assaulted by an employee he had sued
22 previously. Petitioner claims that Respondents failed to take adequate measures to protect Petitioner
23 or to heed the known risks to Petitioner's safety when placing him in the housing unit with his
24 assailant. Based on these allegations, Petitioner is challenging the conditions of his confinement, not
25 the fact or duration of that confinement. Petitioner does not specify what relief he is seeking;
26 however, the only relief this Court can provide within its habeas jurisdiction relates to the fact or
27 duration of Petitioner's sentence, neither of which Petitioner is challenging in his petition. Therefore,
28 Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed. The Court is

1 aware that Petitioner is *currently* pursuing a lawsuit on these **exact same facts** and the **exact same**
2 **defendants** in Cranford v. Perryman, Case No. 1:13-cv-00906 JLT.

3 **ORDER**

4 Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a United States District
5 Judge to this case.

6 **RECOMMENDATION**

7 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be
8 DISMISSED for Petitioner's failure to state any cognizable federal habeas claims.

9 This Findings and Recommendation is submitted to the United States District Court Judge
10 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
11 Local Rules of Practice for the United States District Court, Eastern District of California. Within 21
12 days after being served with a copy, any party may file written objections with the court and serve a
13 copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings
14 and Recommendation." Replies to the objections shall be served and filed within 10 court days (plus
15 three days if served by mail) after service of the objections. The Court will then review the Magistrate
16 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
17 objections within the specified time may waive the right to appeal the District Court's order. Martinez
18 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19
20 IT IS SO ORDERED.

21 Dated: September 16, 2013

22 /s/ Jennifer L. Thurston
23 UNITED STATES MAGISTRATE JUDGE
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