



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

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

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

19 In this case, as mentioned, Petitioner alleges the his medical treatment while in Respondent's  
20 custody—specifically, receiving an injection in his legs--paralyzed him and he is now unable to walk  
21 on his own. Petitioner is thus challenging the conditions of his confinement, not the fact or duration of  
22 that confinement. No relief requested by Petitioner in his petition would affect the fact or duration of  
23 Petitioner's sentence. Therefore, Petitioner is not entitled to habeas corpus relief, and this petition  
24 must be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way of a  
25 civil rights complaint pursuant to 42 U.S.C. § 1983.

26 **ORDER**

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

1 **RECOMMENDATION**

2 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be  
3 DISMISSED for Petitioner’s failure to state any cognizable federal habeas claims.

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

14  
15 IT IS SO ORDERED.

16 Dated: September 30, 2014

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