

1 nor does he allege that he has exhausted this claim in state court.

2 DISCUSSION

3 Initially, the Court notes that, pursuant to Federal Rule of Civil Procedure 15(a), as applied to
4 habeas corpus actions pursuant to 28 U.S.C. § 2242 and Rule 11 of the Rules Governing Section 2254
5 Cases, a petitioner may amend a petition for writ of habeas corpus once “as a matter of course,” and
6 without leave of Court, before a response has been filed under. Calderon v. United States District
7 Court (Thomas), 144 F.3d 618, 620 (9th Cir. 1998); Bonn v. Calderon, 59 F.3d 815, 845 (9th Cir.
8 1995). Leave of Court is required for all other amendments. Rule Civ. P. 15(a). Here, Respondent
9 had not filed a response when Petitioner filed his First Amended Petition. Thus, leave of Court was
10 not required for the filing of that pleading. Accordingly, the First Amended Petition is the operative
11 pleading.

12 Turning to the First Amended Petition, Rule 4 of the Rules Governing § 2254 Cases requires the
13 Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss
14 a petition “[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to
15 relief.” Rule 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490
16 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the petitioner can
17 show that “he is in custody in violation of the Constitution” 28 U.S.C. § 2254(a). A habeas
18 corpus petition is the correct method for a prisoner to challenge the “legality or duration” of his
19 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S.
20 475, 485, 93 S. Ct. 1827 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)(“[H]abeas
21 jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition
22 will not necessarily shorten the prisoner’s sentence”); Advisory Committee Notes to Rule 1 of the
23 Rules Governing Section 2254 Cases.

24 The Ninth Circuit has also held that “[h]abeas corpus jurisdiction also exists when a petitioner
25 seeks expungement of a disciplinary finding from his record if expungement is likely to accelerate the
26 prisoner’s eligibility for parole.” Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989); see also
27 Docken v. Chase, 393 F. 3d 1024, 1031 (9th Cir. 2004)(“[W]e understand Bostic’s use of the term
28 ‘likely’ to identify claims with a sufficient nexus to the length of imprisonment so as to implicate, but

1 not fall squarely within, the ‘core’ challenges identified by the Preiser Court.”)

2 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
3 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
4 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
5 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

6 In the First Amended Petition, as mentioned, Petitioner challenges his placement in a jail cell
7 containing his “sworn enemies.” At no point in the petition, however, does Petitioner challenge either
8 the fact or duration of his incarceration as he awaits trial on state criminal charges.

9 Petitioner is thus challenging the conditions of his confinement, not the fact or duration of that
10 confinement. No relief requested by Petitioner in his petition would affect the fact or duration of
11 Petitioner’s sentence, which has yet to be imposed. Therefore, Petitioner is not entitled to habeas
12 corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue his claims,
13 Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983. Thus, the Court
14 must dismiss this petition for lack of jurisdiction.

15 **RECOMMENDATION**

16 For the foregoing reasons, the Court HEREBY RECOMMENDS that the first amended
17 petition for writ of habeas corpus (Doc. 5), be DISMISSED for lack of habeas jurisdiction.

18 This Findings and Recommendation is submitted to the United States District Court Judge
19 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
20 Rules of Practice for the United States District Court, Eastern District of California. Within 21 days
21 after being served with a copy of this Findings and Recommendation, any party may file written
22 objections with the Court and serve a copy on all parties. Such a document should be captioned
23 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the Objections shall be
24 served and filed within 10 days (plus three days if served by mail) after service of the Objections. The
25 Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).

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