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

ZANE HUBBARD,) Case No.: 1:15-cv-00269-JLT
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)) Petitioner,) FINDINGS AND RECOMMENDATIONS TO
)) DISMISS PETITION FOR LACK OF HABEAS
)) JURISDICTION (Doc. 1)
))
))
)) ORDER DIRECTING OBJECTIONS TO BE FILED
)) WITHIN TWENTY-ONE DAYS
))
))
)) ORDERING DIRECTING CLERK OF THE
)) COURT TO ASSIGN DISTRICT JUDGE TO CASE

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 February 19, 2015.

As best the Court can determine, Petitioner challenges various actions or inactions by state courts and agencies, including, inter alia, (1) the failure of the Superior Court of Kings County to address and decide his state habeas petition filed on July 27, 2014, (2) conditions of confinement that Petitioner characterizes variously as “genocide,” “discrimination,” and “unreasonable,” and include allegations of unreasonable surveillance and interrogation of Petitioner, (3) wrongful validation, presumably as a gang member, and (4) factual innocence. (Doc. 1, p. 14). As relief, Petitioner seeks (1) a \$1,000 fine against the California courts for each instance of the “suspension” of Petitioner’s habeas rights, amounting to \$4,000; (2) issuance of a writ of mandate compelling the Supreme Court to afford Petitioner relief against the Clerk of the Kings County Superior Court. (Id., p. 9).

1 **DISCUSSION**

2 A. Habeas Jurisdiction.

3 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of
4 each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from
5 the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing
6 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only
7 grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of
8 the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a
9 prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574
10 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v.
11 Galaza, 334 F.3d 850, 859 (9th Cir. 2003)("[H]abeas jurisdiction is absent, and a § 1983 action proper,
12 where a successful challenge to a prison condition will not necessarily shorten the prisoner's
13 sentence"); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

20 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
21 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
22 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
23 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

24 In this case, as mentioned, Petitioner alleges various claims regarding the conditions of his
25 confinement, including placement in solitary confinement, surveillance of Petitioner, interrogation of
26 Petitioner, harassment, and the failure of the Superior Court to properly address the grievances
27 contained in his state habeas case. As mentioned, Petitioner requests monetary sanctions against those
28 state agents as well as issuance of a writ of mandate to require the United States Supreme Court to

1 admonish the state court and direct it to provide Petitioner with a remedy. Petitioner is thus clearly
2 challenging the conditions of his confinement, not the fact or duration of that confinement. No relief
3 requested by Petitioner in his petition would affect the fact or duration of Petitioner's sentence.
4 Therefore, Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed.
5 Should Petitioner wish to pursue his claims, Petitioner must do so by way of a civil rights complaint
6 pursuant to 42 U.S.C. § 1983.

7 B. Mandamus Relief.

8 The federal mandamus statute provides: "the district courts shall have original jurisdiction of
9 any action in the nature of mandamus to compel an officer or employee of the United States or any
10 agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. A writ of mandamus is an
11 extraordinary writ, and is issued only when (1) the plaintiff's claim is "clear and certain;" (2) the
12 defendant official's duty to act is ministerial and "so plainly prescribed as to be free from doubt; and
13 (3) no other adequate remedy is available. Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir. 1994)
14 (citations omitted).

15 In Silveyra v. Moschorak, the Ninth Circuit held that the Mandamus Act may be invoked to
16 compel a federal official to perform a duty owed to a plaintiff who "falls within the 'zone of interests'
17 protected by the underlying statute." 989 F.2d 1012, 1014 n. 1 (9th Cir. 1993) (*citing* Jarecki v. United
18 States, 590 F.2d 670, 675 (7th Cir. 1979)). Mandamus is appropriate when the official's duty to act is
19 ministerial in nature and so plain as to be free from doubt. Id. Even where an official's responsibilities
20 are in some respects discretionary, mandamus is appropriate if "statutory or regulatory standards
21 delimiting the scope or manner in which such discretion can be exercised . . . have been ignored or
22 violated." Carpet, Linoleum & Resilient Tile Layers, Local Union No. 419 v. Brown, 656 F.2d 564,
23 566 (10th Cir. 1981)(citation omitted); see also, Work v. United Staes ex rel Rives, 267 U.S. 175, 177,
24 45 S.Ct. 252, 253 (1925)(mandamus is appropriate if an official transgresses the limits of her
25 discretion).

26 Mandamus relief is only available to compel an officer of the United States to perform a duty;
27 federal courts are without the power to issue mandamus to direct state courts or their judicial officers in
28 the performance of their duties. A petition for mandamus to compel a state court to take or refrain from

1 some action is frivolous as a matter of law. Demos v. U.S. Dist. Court, 925 F.2d 1160, 1161-72 (9th
2 Cir.) (imposing no filing in forma pauperis order), *cert. denied*, 111 S.Ct. 1082 (1991); Clark v.
3 Washington, 366 F.2d 678, 681 (9th Cir. 1966) (attorney contested disbarment and sought
4 reinstatement); Dunlap v. Corbin, 532 F.Supp. 183, 187 (D. Ariz. 1981) (plaintiff sought order from
5 federal court directing state court to provide speedy trial), *aff'd without opinion*, 673 F.2d 1337 (9th Cir.
6 1982).

7 In light of the foregoing, this Court has no authority to issue a writ of mandate directed at state
8 courts or agencies. Moreover, to the extent that Petitioner is requesting issuance of a writ of mandate
9 from this Court against the United States Supreme Court, this Court is an inferior court to the Supreme
10 Court and has no authority to require or direct a higher court to do anything. Petitioner does not cite,
11 and this Court is not aware of, any authority that would authorize this Court to direct the Supreme
12 Court to act against a state court.

13 **ORDER**

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

16 **RECOMMENDATION**

17 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be
18 DISMISSED for lack of jurisdiction.

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

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1 The parties are advised that failure to file objections within the specified time may waive the
2 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: February 26, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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