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

ROBEY HAIRSTON,)	Case No.: 1:15-cv-01523-JLT
Petitioner,)	
v.)	FINDINGS AND RECOMMENDATIONS TO
)	DISMISS PETITION FOR LACK OF HABEAS
JOHN ODGLESBY, Kern County Judge,)	JURISDICTION (Doc. 1)
Respondent.)	ORDER DIRECTING OBJECTIONS TO BE FILED
)	WITHIN TWENTY-ONE DAYS
)	
)	ORDERING DIRECTING CLERK OF THE
)	COURT TO ASSIGN DISTRICT JUDGE TO CASE

In this action in which Petitioner seeks a writ of habeas corpus, it appears that Petitioner was already in custody when he was charged with assault. (Doc. 1, p. 1). He was convicted of the offense on June 9, 2015 and sentenced to a term of seven years incarceration. Related to the prosecution, Petitioner seems to allege entrapment, use of excessive force, use of mace, retaliation, and beating at the hands of law enforcement personnel.¹ (Doc. 1, p. 6). Because Petitioner fails to demonstrate this Court has habeas jurisdiction, the recommends the petition be **DISMISSED**.

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of

¹ Petitioner indicates that he has a pending lawsuit in which he seeks \$600 billion in damages. (Id.) The petition contains a document from this Court dismissing his civil rights claim in case no. 2:15-cv-00581-KJM-CKD. (Id., p. 13).

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

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

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

21 In this case, as mentioned, Petitioner alleges that he is the victim of excessive force by police
22 or prison personnel and at least one inmate. At no point in the petition does Petitioner challenge the
23 fact or duration of his conviction or sentence. Petitioner is thus challenging the conditions of his
24 confinement, not the fact or duration of that confinement. No relief requested by Petitioner in his
25 petition would affect the fact or duration of Petitioner's sentence. Therefore, Petitioner is not entitled
26 to habeas corpus relief, and this petition must be dismissed.

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ORDER

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

RECOMMENDATION

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

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

IT IS SO ORDERED.

Dated: October 29, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE