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

<p>CARMELO SOTO,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 80px;">v.</p> <p>FRESNO COUNTY JAIL, et al.,</p> <p style="padding-left: 40px;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 1:15-cv-01755-JLT</p> <p>FINDINGS AND RECOMMENDATIONS TO DISMISS PETITION FOR LACK OF HABEAS JURISDICTION (Doc. 1)</p> <p>ORDER DIRECTING OBJECTIONS TO BE FILED WITHIN TWENTY-ONE DAYS</p> <p>ORDERING DIRECTING CLERK OF THE COURT TO ASSIGN DISTRICT JUDGE TO CASE</p>
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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, which was filed on November 19, 2015. Petitioner alleges that he is in custody of Fresno County Jail, serving a sentence of ninety days, because of an October 6, 2015 conviction for undisclosed crimes in the Fresno County Superior Court. (Doc. 1, p. 1). However, Petitioner does not challenge either his conviction or sentence. Instead, as grounds for relief, Petitioner alleges that the Fresno County Jail has failed to provide needed medical services, i.e., an MRI or other test to determine if Petitioner has spinal damage. (Doc. 1, p. 4).

I. 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 the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing

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 (9th 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 (9th Cir. 1989); see also
12 Docken v. Chase, 393 F. 3d 1024, 1031 (9th 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 that because of a prior fall from a truck, he suffers
20 from pain and lack of mobility in his back. Petitioner requests an MRI and other medical treatment for
21 his injuries. 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** (plus
10 three days if served by mail) after service of the objections. The Court will then review the Magistrate
11 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
12 objections within the specified time may waive the right to appeal the District Court’s order. Martinez
13 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 Dated: December 2, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE