



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       Petitioner alleges that Kings County is violating the constitutional rights of its citizens who are  
10 accused of crimes by failing to comply with California statutes and regulations requiring all counties  
11 in California to establish a public defender's office.<sup>1</sup> As relief, Petitioner requests, inter alia, an order  
12 from this Court requiring Kings County to immediately come into compliance with state regulations  
13 regarding establishment of a public defender's office; that the Court issue an injunction against all  
14 criminal proceedings in that county until compliance is accomplished; and that the Court declare all  
15 criminal convictions within the last fifteen years that involved court-appointed counsel be declared  
16 illegal and unconstitutional. (Doc. 1, pp. 3-4).

17       Assuming, for purposes of argument, that Petitioner is presently confined by Respondent,  
18 Petitioner is not challenging the fact or duration of that confinement. No relief requested by Petitioner  
19 in his petition would affect the fact or duration of Petitioner's sentence, if indeed Petitioner is  
20 presently serving a sentence. Therefore, Petitioner is not entitled to habeas corpus relief, and this  
21 petition must be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way  
22 of some other legal avenue, e.g., a civil rights compliant pursuant to 42 U.S.C. § 1983 or a class action  
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25 <sup>1</sup> It is important to note that Petitioner is not contending that Kings County has deprived *any* of its criminal defendants of  
26 the right to appointed counsel in criminal cases, as required by the federal constitution. Indeed, it appears that Petitioner  
27 himself was appointed counsel due to his indigence. However, Petitioner contends California law requires the appointment  
28 of counsel through a duly established public defender's office. Even were that true, it raises no cognizable federal habeas  
claim. Violations of state law are not cognizable in federal habeas proceedings. Estelle v. McGuire, 502 U.S. 62, 67  
(1991)("We have stated many times that 'federal habeas corpus relief does not lie for errors of state law.'"), *quoting* Lewis  
v. Jeffers, 497 U.S. 764, 780 (1990); Gilmore v. Taylor, 508 U.S. 333, 348-349 (1993)(O'Connor, J., concurring) ("mere  
error of state law, one that does not rise to the level of a constitutional violation, may not be corrected on federal habeas").

1 suit against Kings County for failing to follow California law.<sup>2</sup>

2 **ORDER**

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

5 **RECOMMENDATION**

6 Accordingly, the Court RECOMMENDS that the habeas corpus petition be **DISMISSED** for  
7 Petitioner's failure to state a cognizable federal habeas claims.

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

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19 IT IS SO ORDERED.

20 Dated: July 25, 2016

20 /s/ Jennifer L. Thurston  
21 UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup> Under normal circumstances, when a petitioner has failed to state a cognizable federal habeas claim, the Court would  
28 grant the petitioner leave to file a first amended petition. However, in this case, it appears that the nature of the claim, i.e.,  
a failure of Kings County to follow California law regarding the manner in which appointed counsel is chosen, cannot be  
amended in such a manner as to articulate a cognizable federal habeas claim. Accordingly, the Court is recommending  
dismissal without leave to amend.