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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
9

10 DALE OWEN DUSTIN,

Case No. 1:16-cv-01708-SAB-HC

11 Petitioner,

ORDER GRANTING PETITIONER LEAVE
TO ASSERT CLAIMS UNDER 42 U.S.C.
§ 1983

12 v.

13 PFFEIFFER,

ORDER DIRECTING CLERK'S OFFICE TO
SEND PETITIONER CIVIL RIGHTS
COMPLAINT FORM

14 Respondent.

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16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254.

18 On November 30, 2016, the Court ordered Petitioner to either: (1) show cause why the
19 petition should not be dismissed for lack of jurisdiction pursuant to Nettles v. Grounds, 830 F.3d
20 922 (9th Cir. 2016) (en banc), and for nonexhaustion; (2) notify the Court that he chooses to
21 convert the habeas petition into a § 1983 action; or (3) voluntarily dismiss the petition without
22 prejudice to refiling his claims in a § 1983 action. (ECF No. 11). On December 20, 2016, the
23 Court received a “Memorandum of Understanding” in response to its order. (ECF No. 13).
24 Therein, Petitioner appears to contend that he has established habeas jurisdiction under Nettles
25 and that the appropriate venue for a § 1983 action is the Northern District of California. (ECF
26 No. 13 at 2).

27 As discussed in the Court’s previous order, a “state prisoner’s claim [that] does not lie at
28 ‘the core of habeas corpus’ . . . must be brought, ‘if at all,’ under § 1983.” Nettles, 830 F.3d at

1 934 (quoting Preiser v. Rodriguez, 411 U.S. 475, 487 (1973); Skinner v. Switzer, 562 U.S. 521,
2 535 n.13 (2011)). Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his
3 immediate or earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core
4 of habeas corpus,’ and he must instead bring his claim under § 1983.” Nettles, 830 F.3d at 935
5 (quoting Skinner, 562 U.S. at 535 n.13). In the instant petition, Petitioner challenges a prison
6 disciplinary proceeding (Log No. ASU1-15-08-001) for which he was not penalized with any
7 credit loss or a term in the Security Housing Unit. (ECF No. 1 at 1). Thus, success on Petitioner’s
8 challenge to the disciplinary proceeding would not necessarily lead to immediate or earlier
9 release from custody or a reduction of the level of custody. Accordingly, Petitioner has failed to
10 establish that the Court has habeas jurisdiction over this matter under Nettles.

11 If Petitioner elects to proceed with a § 1983 action, venue is proper in the Eastern District
12 of California because the events at issue occurred at Kern Valley State Prison, which is located
13 in Kern County and within the jurisdictional boundaries of the Eastern District of California. See
14 28 U.S.C. § 1391(b).

15 Accordingly, the Court HEREBY ORDERS that:

- 16 1. The Clerk’s Office is DIRECTED to send Petitioner a civil rights complaint form;
- 17 2. Within **THIRTY (30) days** from the date of service of this order, Petitioner may submit
18 a civil rights complaint that names the proper defendants and seeks appropriate relief;¹
19 and
- 20 3. If Petitioner fails to submit a civil rights complaint, the Court will dismiss the instant
21 action without prejudice to Petitioner refiling his claims in a § 1983 action.

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24 IT IS SO ORDERED.

25 Dated: January 11, 2017



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UNITED STATES MAGISTRATE JUDGE

¹ The complaint should refer to case number 1:16-cv-01708-SAB.