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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVE FEGAN,

Petitioner,

v.

ARNOLD,

Respondent.

Case No. 1:17-cv-00519-SAB-HC

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

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

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has consented to the jurisdiction of the United States Magistrate Judge. (ECF No. 4).

I.

BACKGROUND

Petitioner is currently in the custody of the California Department of Corrections and Rehabilitation (“CDCR”) serving an imprisonment term of life without the possibility of parole. (ECF No. 1 at 1).¹ In the instant petition, Petitioner seeks a parole hearing date and asserts that the CDCR erroneously dismissed as untimely his request for a parole hearing. Petitioner also seeks guidance from the Court in light of the CDCR’s new regulations regarding parole eligibility after the passage of Proposition 57. (ECF No. 1 at 4).

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 **II.**

2 **DISCUSSION**

3 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
4 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
5 to file a response if it “plainly appears from the petition and any attached exhibits that the
6 petitioner is not entitled to relief in the district court.”

7 **A. Federal Habeas Jurisdiction**

8 By statute, federal courts “shall entertain an application for a writ of habeas corpus in
9 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he
10 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
11 § 2254(a). A claim falls within the “core of habeas corpus” when a prisoner challenges “the fact
12 or duration of his confinement” and “seeks either immediate release from that confinement or the
13 shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). The Ninth Circuit
14 has adopted a rule that a “state prisoner’s claim [that] does not lie at ‘the core of habeas corpus’
15 . . . must be brought, ‘if at all,’ under § 1983.” Nettles v. Grounds, 830 F.3d 922, 934 (9th Cir.
16 2016) (en banc) (quoting Preiser, 411 U.S. at 487; Skinner v. Switzer, 562 U.S. 521, 535 n.13
17 (2011)). Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his
18 immediate or earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core
19 of habeas corpus,’ and he must instead bring his claim under § 1983.” Nettles, 830 F.3d at 935
20 (quoting Skinner, 562 U.S at 535 n.13).

21 Here, Petitioner seeks a parole hearing date and asserts that the CDCR erroneously
22 dismissed as untimely his request for a parole hearing. Success on Petitioner’s claim would not
23 necessarily lead to his immediate or earlier release from confinement. Petitioner also seeks
24 guidance from the Court in light of the CDCR’s new regulations after the passage of Proposition
25 57. However, the Court cannot provide legal advice to litigants, even when they are pro se
26 litigants who lack legal training. Based on the foregoing, Petitioner’s claim is not cognizable in
27 federal habeas, and the petition should be dismissed.

28 ///

1 appropriate relief; OR

2 b. voluntarily dismiss the instant action without prejudice to refiling his claims in a
3 § 1983 action.

4 3. If Petitioner fails to submit a civil rights complaint, the Court will dismiss the instant
5 action without prejudice to Petitioner refiling his claims in a § 1983 action.

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7 IT IS SO ORDERED.

8 Dated: May 4, 2017


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UNITED STATES MAGISTRATE JUDGE