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

WILLIAM ROUSER,  
Petitioner,  
v.  
W.J. SULLIVAN,  
Respondent.

Case No. 1:17-cv-01608-DAD-SAB-HC  
FINDINGS AND RECOMMENDATION TO  
DISMISS PETITION FOR WRIT OF  
HABEAS CORPUS

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

**I.**  
**DISCUSSION**

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

By statute, federal courts “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). “[T]he second use of ‘in custody’ in the statute requires literally that the person

1 applying for the writ is contending that he is ‘in custody’ in violation of the Constitution or other  
2 federal laws.” Bailey v. Hill, 599 F.3d 976, 979 (9th Cir. 2010). See Dickerson v. United States,  
3 530 U.S. 428, 439 n.3 (2000) (“Habeas corpus proceedings are available only for claims that a  
4 person ‘is in custody in violation of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. § 2254(a)). A claim is cognizable in habeas when a prisoner challenges “the  
5 fact or duration of his confinement” and “seeks either immediate release from that confinement  
6 or the shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). In contrast, a  
7 civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge  
8 the conditions of confinement. McCarthy v. Bronson, 500 U.S. 136, 141–42 (1991); Preiser, 411  
9 U.S. at 499.

11 In the instant petition, Petitioner claims that prison officials denied him access to the law  
12 library and withheld his legal property. Petitioner also appears to challenge the prison grievance  
13 process on equal protection and due process grounds. (ECF No. 1 at 4).<sup>1</sup> Petitioner does not  
14 challenge any aspect of his conviction or sentence or the fact or duration of his confinement. As  
15 Petitioner does not assert that he is in custody in violation of the Constitution in the instant  
16 petition, he is not entitled to habeas corpus relief, and this petition should be dismissed.<sup>2</sup>

## 17 II.

### 18 RECOMMENDATION

19 Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas  
20 corpus be DISMISSED.

21 This Findings and Recommendation is submitted to the assigned United States District  
22 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
23 Rules of Practice for the United States District Court, Eastern District of California. Within  
24 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
25 written objections with the court and serve a copy on all parties. Such a document should be  
26 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned

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27 <sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

28 <sup>2</sup> This conclusion does not preclude Petitioner from pursuing his claims in a properly filed civil action brought pursuant to 42 U.S.C. § 1983.

1 United States District Court Judge will then review the Magistrate Judge’s ruling pursuant to 28  
2 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified  
3 time may waive the right to appeal the District Court’s order. Wilkerson v. Wheeler, 772 F.3d  
4 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: January 3, 2018

  
UNITED STATES MAGISTRATE JUDGE

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