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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AARON WALKER,

 Petitioner,

 v.

HUNTER ANGLEA,

 Respondents.

Case No. 1:18-cv-00287-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.
BACKGROUND

On February 28, 2018, Petitioner filed the instant federal petition for writ of habeas corpus wherein Petitioner challenges his loss of contact visitation privileges on due process grounds. Petitioner alleges that although his disciplinary violation was dismissed, he was still penalized with loss of visitation. (ECF No. 1 at 4).¹ On March 12, 2018, the undersigned ordered Petitioner to: (1) show cause why the petition should not be dismissed for lack of habeas jurisdiction pursuant to Nettles v. Grounds, 830 F.3d 922 (9th Cir. 2016) (en banc); (2) notify the Court that he chooses to convert his habeas petition into a § 1983 action; or (3) voluntarily

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

1 dismiss the petition without prejudice to refiling his claims in a § 1983 action. (ECF No. 5). To
2 date, Petitioner has failed to file a response to the order, and the time for doing so has passed.

3 **II.**

4 **DISCUSSION**

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

9 **A. Habeas Jurisdiction**

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

22 Here, Petitioner challenges his loss of contact visitation privileges on due process
23 grounds, alleging that he was still penalized with loss of visitation despite his disciplinary
24 violation being dismissed. (ECF No. 1 at 4). However, Petitioner does not allege that he was
25 penalized with any credit loss or a term in the Security Housing Unit. Thus, success on
26 Petitioner’s claim would not necessarily lead to immediate or earlier release from custody. Based
27 on the foregoing, Petitioner’s claim is not cognizable in federal habeas corpus.

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1 This Findings and Recommendation is submitted to the United States District Court
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
3 of the Local Rules of Practice for the United States District Court, Eastern District of California.
4 Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may
5 file written objections with the Court and serve a copy on all parties. Such a document should be
6 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned
7 District Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
8 § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
9 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
10 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

12 Dated: May 9, 2018

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15 UNITED STATES MAGISTRATE JUDGE
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