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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 CESARIO MEDINA,  
10 Petitioner,

11 v.

12 TAMMY CAMPBELL,  
13 Respondent.

Case No. 1:23-cv-00381-EPG-HC

FINDINGS AND RECOMMENDATION TO  
DISMISS FIRST AMENDED PETITION  
FOR WRIT OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE

14  
15 Petitioner Cesario Medina is a state prisoner proceeding *pro se* with a first amended  
16 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Given that the instant petition  
17 challenges conditions of confinement and thus, is not cognizable in federal habeas corpus, the  
18 undersigned recommends that the petition be dismissed.

19 **I.**

20 **DISCUSSION**

21 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a  
22 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
23 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
24 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254  
25 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

26 **A. Federal Habeas Corpus Jurisdiction**

27 By statute, federal courts “shall entertain an application for a writ of habeas corpus in  
28 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he

1 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
2 § 2254(a). A claim is cognizable in habeas when a prisoner challenges “the fact or duration of his  
3 confinement” and “seeks either immediate release from that confinement or the shortening of its  
4 duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). In contrast, a civil rights action  
5 pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of  
6 confinement. McCarthy v. Bronson, 500 U.S. 136, 141–42 (1991); Preiser, 411 U.S. at 499.

7 In the instant petition, Petitioner alleges that the California Department of Corrections  
8 and Rehabilitation (“CDCR”) and Corcoran State Prison are not allowing Petitioner to have in-  
9 person contact visits with his minor children and grandchild. (ECF No. 1 at 3).<sup>1</sup> Petitioner does  
10 not challenge his underlying criminal conviction or sentence or the fact or duration of his  
11 confinement in the instant petition. Rather, the instant petition only challenges the denial of in-  
12 person contact visits. The Ninth Circuit has “long held that prisoners may not challenge mere  
13 conditions of confinement in habeas corpus.” Nettles v. Grounds, 830 F.3d 922, 933 (9th Cir.  
14 2016) (en banc) (citing Crawford v. Bell, 599 F.2d 890, 891–92 (9th Cir. 1979)). As Petitioner’s  
15 claims do not fall within “the core of habeas corpus,” Preiser, 411 U.S. at 487, they must be  
16 brought under 42 U.S.C. § 1983, Nettles, 830 F.3d at 931. Accordingly, Petitioner has failed to  
17 state a cognizable claim for federal habeas corpus relief.

#### 18 **B. Conversion to § 1983 Civil Rights Action**

19 “If the complaint is amenable to conversion on its face, meaning that it names the correct  
20 defendants and seeks the correct relief, the court may recharacterize the petition so long as it  
21 warns the *pro se* litigant of the consequences of the conversion and provides an opportunity for  
22 the litigant to withdraw or amend his or her complaint.” Nettles, 830 F.3d at 936 (quoting Glaus  
23 v. Anderson, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes that habeas corpus and  
24 prisoner civil rights actions differ in a variety of respects, such as the proper defendants, filing  
25 fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation  
26 Reform Act’s three-strikes rule). Nettles, 830 F.3d at 936 (citing Robinson v. Sherrod, 631 F.3d  
27 839, 841 (7th Cir. 2011); Glaus, 408 F.3d at 388).

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

1 Due to these differences and the disadvantages that recharacterization may have on  
2 Petitioner’s claims, the undersigned finds that it would be inappropriate to construe the habeas  
3 petition as a civil rights complaint under 42 U.S.C. § 1983. The Court notes that the filing fee for  
4 § 1983 civil rights cases is \$350, and Petitioner is required to pay the full amount by way of  
5 deductions from income to Petitioner’s trust account, even if granted *in forma pauperis* status.  
6 See 28 U.S.C. § 1915(b)(1).

7 **II.**

8 **RECOMMENDATION & ORDER**

9 Accordingly, the undersigned HEREBY RECOMMENDS that that the petition for writ  
10 of habeas corpus be dismissed.

11 Further, the Clerk of Court is DIRECTED to randomly assign a District Court Judge to  
12 the present matter.

13 This Findings and Recommendation is submitted to the assigned United States District  
14 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
15 Rules of Practice for the United States District Court, Eastern District of California. Within  
16 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
17 written objections with the court and serve a copy on all parties. Such a document should be  
18 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned  
19 United States District Court Judge will then review the Magistrate Judge’s ruling pursuant to 28  
20 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified  
21 time may waive the right to appeal the District Court’s order. Wilkerson v. Wheeler, 772 F.3d  
22 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24  
25 Dated: May 4, 2023

26 /s/ Eric P. Gray  
27 UNITED STATES MAGISTRATE JUDGE  
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