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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY GRAY,

Petitioner,

No. CIV S-10-0066 DAD P

vs.

MATTHEW CATE, Warden,

ORDER AND

Respondent.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

**PRELIMINARY SCREENING**

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court. . . .” Rule 4, Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may

1 dismiss a petition for writ of habeas corpus at several stages of a case, including “summary  
2 dismissal under Rule 4; a dismissal pursuant to a motion by the respondent; a dismissal after the  
3 answer and petition are considered; or a dismissal after consideration of the pleadings and an  
4 expanded record.”

### 5 **BACKGROUND**

6 On January 8, 2010, petitioner commenced this action by filing a petition for writ  
7 of habeas corpus. Therein, he alleges that on February 9, 2006, prison officials validated him as  
8 a gang member and assessed him to an indeterminate security housing unit term. Petitioner  
9 contends that he filed numerous inmate appeals challenging his gang validation, but prison  
10 officials have interfered with his right to use the administrative grievance process. In this regard,  
11 petitioner claims that prison officials have prevented him from exhausting his claims in violation  
12 of the First Amendment and Fourteenth Amendment. (Pet. at 5-6 & Attachs.)

### 13 **ANALYSIS**

14 The instant petition should be dismissed because petitioner has failed to state a  
15 cognizable claim for federal habeas relief. Petitioner is advised that habeas corpus proceedings  
16 are the proper mechanism for a prisoner seeking to challenge the fact or duration of his  
17 confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, petitioner does not  
18 challenge the legality of his conviction, a parole proceeding, or other adjudication that has led to  
19 his current incarceration. Rather, petitioner challenges the conditions of his confinement.  
20 Petitioner is advised that a civil rights action, not a habeas corpus proceeding, is the proper  
21 mechanism for a prisoner seeking to challenge the conditions of his confinement. 42 U.S.C.  
22 § 1983; Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). Accordingly, petitioner is not entitled  
23 to habeas corpus relief, and this habeas action should be dismissed without prejudice to filing a  
24 civil rights action.<sup>1</sup>

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25  
26 <sup>1</sup> Because petitioner is currently confined at Corcoran State Prison, he should file any  
civil rights action which he wishes to pursue in the Fresno Division of this court.

1 **CONCLUSION**

2 IT IS HEREBY ORDERED:

3 1. Petitioner’s January 8, 2010 application to proceed in forma pauperis (Doc.  
4 No. 2) is granted; and

5 2. The Clerk of the Court is directed to randomly assign a United States District  
6 Judge to this action.

7 IT IS HEREBY RECOMMENDED that:

8 1. Petitioner’s January 8, 2010 application for writ of habeas corpus (Doc. No. 1)  
9 be dismissed without prejudice to filing a civil rights action in the Fresno Division of this court;  
10 and

11 2. This action be closed.

12 These findings and recommendations are submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
14 one days after being served with these findings and recommendations, petitioner may file written  
15 objections with the court. The document should be captioned “Objections to Magistrate Judge's  
16 Findings and Recommendations.” Petitioner is advised that failure to file objections within the  
17 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
18 F.2d 1153 (9th Cir. 1991).

19 DATED: January 26, 2010.

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23 DALE A. DROZD  
24 UNITED STATES MAGISTRATE JUDGE