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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MYRON A. PAYNE,
Plaintiff,
v.
MATTHEW CATE, et al.,
Defendants.

No. 2:12-cv-0243 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action. In his complaint, plaintiff challenges his validation by prison officials as a member of the Black Guerilla Family and claims that defendants have violated his right to due process under the Fourteenth Amendment. Plaintiff requests the award of damages, release from the Security Housing Unit (the “SHU”) at his institution of confinement, and expungement of any reference to gang association from his prison file.

The Ninth Circuit Court of Appeals recently held that a state prisoner properly challenged his gang validation in a habeas corpus action. See Nettles v. Grounds, __ F.3d __, 2015 WL 3406160 (9th Cir. May 28, 2015). In Nettles, prison officials validated inmate Santos as a member of the Mexican Mafia, removed him from the general prison population, and confined him in the SHU indefinitely. Id. at *3. Santos unsuccessfully administratively appealed his gang validation and then sought habeas corpus relief in state court to no avail. Id. Santos then filed a

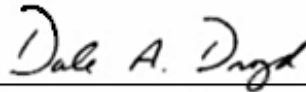
1 federal habeas corpus petition challenging his gang validation as a violation of his right to due
2 process. Id. The district court dismissed the petition on the grounds that Santos's claims
3 concerned his conditions of confinement rather than the fact or duration of his confinement. Id.
4 Reversing, the Ninth Circuit Court of Appeals explained:

5 The remedy Santos seeks of expungement of the gang validation
6 from his record and release from the SHU to the general prison
7 population, "can fairly be described as a quantum change in the
8 level of custody." Additionally, success on his claim would result
9 in his immediate release from the SHU to the general population.
His claim that he was been subjected to greater restrictions of his
liberty without due process of law is therefore properly brought as a
petition for a writ of habeas corpus.

10 Id. at *10.

11 Good cause appearing, IT IS HEREBY ORDERED that within thirty days of the date of
12 this order, both parties shall file a supplemental brief on the issue of whether this action may
13 proceed as a civil rights action, should be administratively stayed pending further proceedings – if
14 any – in Nettles, or must be dismissed without prejudice to allow plaintiff to pursue habeas corpus
15 relief.

16 Dated: June 8, 2015

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18 _____
DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

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