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

ANTHONY R. TURNER,

Petitioner,

No. 2:12-cv-0609 JFM (HC)

vs.

MATTHEW CATES,

Respondent.

ORDER AND
FINDINGS & RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court are petitioner’s motion for preliminary injunction and motion for temporary restraining order. The court has reviewed both motions and finds them to be largely unintelligible. To the extent the motions can be construed as requests for an order directing certain individuals to refrain from harming petitioner, petitioner is informed that in this action brought pursuant to 28 U.S.C. § 2254, this court’s jurisdiction is limited to the fact or duration of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). In contrast, claims concerning the conditions of petitioner’s confinement are properly raised in a civil rights complaint. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Nelson v. Campbell, 541 U.S. 637, 643 (2004) (“[C]onstitutional claims that ... challenge the conditions of a prisoner’s confinement, whether

1 the inmate seeks monetary or injunctive relief, fall outside of the [habeas] core and may be
2 brought pursuant to a [42 U.S.C.] § 1983 [action] in the first instance.”); Badea, 931 F.2d at 574
3 (9th Cir. 1991) (challenges to conditions of confinement by state prisoners should be presented
4 in a 42 U.S.C. § 1983 civil rights action rather than a habeas corpus petition).

5 Accordingly, IT IS HEREBY ORDERED that a district judge be assigned to this
6 case; and

7 IT IS HEREBY RECOMMENDED that:

- 8 1. Plaintiff’s motion for temporary restraining order (Doc. No. 5) be denied; and
- 9 2. Petitioner’s motion for preliminary injunction (Doc. No. 6) be denied.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised
15 that failure to file objections within the specified time may waive the right to appeal the District
16 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: August 30, 2012.

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20 UNITED STATES MAGISTRATE JUDGE

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