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| 8  | IN THE UNITED STATES DISTRICT COURT   |
| 9  | FOR THE EASTERN DISTRICT OF CALIFORNIA  |
| 10 |   |
| 11 | ROBERT EDWARD DAHL, JR., No. 2:13-CV-2313-CMK-P   |
| 12 | Petitioner,   |
| 13 | vs. <u>ORDER</u>  |
| 14 | TIMOTHY VIRGA, et al.,  |
| 15 | Respondents.  |
| 16 | /   |
| 17 | Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of                  |
| 18 | habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's petition for   |
| 19 | a writ of habeas corpus (Doc. 1).   |
| 20 | Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary                       |
| 21 | dismissal of a habeas petition "[i]f it plainly appears from the face of the petition and any       |
| 22 | exhibits annexed to it that the petitioner is not entitled to relief in the district court." In the |
| 23 | instant case, it is plain that petitioner is not entitled to federal habeas relief. Specifically,   |
| 24 | because petitioner seeks a court order enjoining any prison transfers the petition challenges the   |
| 25 | conditions of confinement and not the fact or duration of his custody.                              |
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1 When a state prisoner challenges the legality of his custody – either the fact of 2 confinement or the duration of confinement – and the relief he seeks is a determination that he is 3 entitled to an earlier or immediate release, such a challenge is cognizable in a petition for a writ of habeas corpus under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); 4 5 see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 6 F.3d 583, 586 (9th Cir. 1995) (per curiam). Where a prisoner challenges the conditions of 7 confinement, as opposed to the fact or duration of confinement, his remedy lies in a civil rights action under 42 U.S.C. § 1983. See Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985). 8 9 Thus, 28 U.S.C. § 2254 cannot be used to challenge the conditions of confinement, and 42 10 U.S.C. § 1983 cannot be used to challenge the fact or duration of confinement. 11 Based on the foregoing, petitioner is required to show cause in writing, within 30 days of the date of this order, why his petition for a writ of habeas corpus should not be 12 13 summarily dismissed. Petitioner is warned that failure to respond to this order may result in

14 dismissal of the petition the reasons outlined above, as well as for failure to prosecute and
15 comply with court rules and orders. <u>See</u> Local Rule 110.

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IT IS SO ORDERED.

DATED: February 24, 2014

CRAIG M. KELLISON UNITED STATES MAGISTRATE JUDGE