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

ROBERT EDWARD DAHL, JR.,

No. 2:13-CV-2313-CMK-P

Petitioner,

vs.

ORDER

TIMOTHY VIRGA, et al.,

Respondents.

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Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action.

On February 24, 2014, the court directed petitioner to show cause why this action should not be summarily dismissed. The court stated:

Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f 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.” In the instant case, it is plain that petitioner is not entitled to federal habeas relief. Specifically, because petitioner seeks a court order enjoining any prison transfers the petition challenges the conditions of confinement and not the

1 fact or duration of his custody.

2 When a state prisoner challenges the legality of his custody  
3 – either the fact of confinement or the duration of confinement – and the  
4 relief he seeks is a determination that he is entitled to an earlier or  
5 immediate release, such a challenge is cognizable in a petition for a writ of  
6 habeas corpus under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S.  
7 475, 500 (1973); see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir.  
8 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995)  
9 (per curiam). Where a prisoner challenges the conditions of confinement,  
10 as opposed to the fact or duration of confinement, his remedy lies in a civil  
11 rights action under 42 U.S.C. § 1983. See Rizzo v. Dawson, 778 F.2d  
12 527, 531-32 (9th Cir. 1985). Thus, 28 U.S.C. § 2254 cannot be used to  
13 challenge the conditions of confinement, and 42 U.S.C. § 1983 cannot be  
14 used to challenge the fact or duration of confinement.

15 In his response to the order to show cause, petitioner continues to raise issues related to the  
16 conditions of his confinement. Because petitioner does not challenge the fact or duration of his  
17 confinement, this action under § 2254 is summarily dismissed.

18 IT IS SO ORDERED.

19 DATED: June 26, 2014

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27 **CRAIG M. KELLISON**  
28 UNITED STATES MAGISTRATE JUDGE