

1 his part.” Given the entirety of petitioner’s claim, it is clear that petitioner
2 seeks damages for injuries she claims were caused due to the negligence of
the named respondent, G-4-S Security.

3 A cognizable habeas corpus claim under 28 U.S.C. § 2254
4 arises when a state prisoner challenges the legality of his custody – either
the fact of confinement or the duration of confinement – and the relief he
5 seeks is a determination that he is entitled to an earlier or immediate
6 release. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal
7 v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa
8 Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam). In the instant case,
petitioner alleges facts consistent with a state law tort claim based on
negligence. Because the facts alleged in this case do not relate to the fact
or duration of petitioner’s confinement, the matter is not the proper subject
of a petition under § 2254.

9 Petitioner was warned pursuant to Eastern District of California Local Rule 110 that failure to
10 respond to the court’s order could result in dismissal of the action for lack of prosecution as well
11 as the reasons outlined above. To date, petitioner has not responded to the court’s order to show
12 cause.

13 Therefore, given petitioner’s lack of prosecution in addition to the reasons
14 outlined in the court’s order to show cause, the court finds that summary dismissal of this
15 petition is appropriate.

16 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the
17 court has considered whether to issue a certificate of appealability. Before petitioner can appeal
18 this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.
19 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under
20 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
21 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
22 appealability indicating which issues satisfy the required showing or must state the reasons why
23 such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed
24 on procedural grounds, a certificate of appealability “should issue if the prisoner can show:
25 (1) ‘that jurists of reason would find it debatable whether the district court was correct in its
26 procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition

1 states a valid claim of the denial of a constitutional right.” Morris v. Woodford, 229 F.3d 775,
2 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).
3 For the reasons set forth in the court’s October 14, 2014, order to show cause, the court finds that
4 issuance of a certificate of appealability is not warranted in this case.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. This action is summarily dismissed;
- 7 2. The court declines to issue a certificate of appealability; and
- 8 3. The Clerk of the Court is directed to enter judgment and close this file.

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10 DATED: May 21, 2015

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12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE
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