Doc. 39 (HC) Olic v. Lizaraga 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MILORAD OLIC, No. 2:14-cv-2120 KJM GGH P 12 Petitioner. 13 **ORDER** v. 14 WARDEN JOE A. LIZARRAGA, 15 Respondent. 16 17 Petitioner, a state prisoner proceeding pro se, has filed an "emergency motion to prevent murder by CDCR Director Jeffrey Beard." He claims that his transfer to High Desert State Prison 18 19 is imminent and he wants to prevent it. He asserts that last time he was transferred to that prison, 20 an officer smashed his head into a concrete wall, causing him to lose consciousness. He fears he 21 will be killed if he is transferred. He describes some other suspicious incidents which he claims 22 are in retaliation for his having received an extension of time to file an opposition to respondent's 23 motion to dismiss in this habeas action, and for court orders in this action which have allowed 24 him to retrieve his legal property stolen by the CDCR. Petitioner states that he is separately filing 25 a section 1983 action. The court notes that petitioner did in fact file a civil rights action on 26 /// 27 /// /// 28 1

1	September 8, 2015 which sets forth the claims at issue in his emergency motion. See Olic v.
2	Beard, Civ. S. No. 2:15-cv-1892 CMK. <sup>1</sup>
3	Federal law opens two main avenues to relief on complaints related
4	to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat.
5	1979, as amended, 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the
6	province of habeas corpus, <u>Preiser v. Rodriguez</u> , 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); requests for relief turning on
7	circumstances of confinement may be presented in a 1983 action.
8	Muhammad v. Close, 540 U.S.749, 750, 124 S.Ct. 1303, 1304 (2004) (per curiam).
9	Here, the motion does not pertain to the validity or duration of petitioner's confinement
10	which is the subject of his pending habeas petition, but to the conditions of his confinement. It is
11	clear that by this filing petitioner makes new civil rights claims which are appropriate for his
12	recently opened civil rights action, but are not pertinent to this habeas petition. Furthermore, the
13	motion does not present enough support to warrant independent consideration of it in this case.
14	Accordingly, IT IS ORDERED that: Petitioner's "emergency motion to prevent murder by
15	CDCR Director Jeffrey Beard" filed September 8, 2015, (ECF No. 37), is denied without
16	prejudice to petitioner filing the same motion in his civil rights action.
17	Dated: September 11, 2011
18	/s/ Gregory G. Hollows
19	UNITED STATES MAGISTRATE JUDGE
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23	GGH:076/Olic2120.mtn
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27 28	<sup>1</sup> Judicial notice may be taken of court records. <u>Valerio v. Boise Cascade Corp.</u> , 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), aff'd, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126, 102 S.Ct. 976 (1981).
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