



1 In addition, the court has reviewed the motion to dismiss for failure to state a claim for  
2 habeas relief. The court finds that on the face of it, the motion has merit. Petitioner’s claim is  
3 that his Fourth Amendment rights were violated by random urinalysis testing as part of a  
4 mandatory standardized drug testing program, resulting in thirty days loss of credits. Because  
5 petitioner is serving an indeterminate sentence of thirteen years to life, under Nettles v. Grounds,  
6 788 F.3d 992, 1000 (9th Cir. 2015), an order restoring thirty days of behavior credits is too  
7 speculative to meet the standard set forth in Skinner v. Switzer, 562 U.S. 521, 131 S.Ct. 1289  
8 (2011). After examining the Supreme Court's decision in Skinner, the Ninth Circuit clarified that  
9 “in cases involving challenges to prison disciplinary proceedings, the writ of habeas corpus  
10 extends only to claims that, if successful, will ‘necessarily spell speedier release.’” Nettles, 788  
11 F.3d at 1001 (quoting Skinner, 562 U.S. at 535). As in Nettles, petitioner's indeterminate  
12 sentence bears on this finding: this court could only speculate what effect, if any, a prison rules  
13 violation conviction suffered in 2014, with petitioner only three years into an indeterminate  
14 sentence of thirteen years to life imprisonment, will have on his possible parole eligibility in the  
15 distant future.

16 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must  
17 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A  
18 certificate of appealability may issue only “if the applicant has made a substantial showing of the  
19 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in these  
20 findings and recommendations, a substantial showing of the denial of a constitutional right has  
21 not been made in this case.

22 Accordingly, IT IS HEREBY RECOMMENDED that:

- 23 1. Respondent’s motion to dismiss, filed July 17, 2015 (ECF No. 32), be granted; and
- 24 2. The District Court decline to issue a certificate of appealability.

25 These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
27 (14) days after being served with these findings and recommendations, any party may file written  
28 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
2 shall be served and filed within seven (7) days after service of the objections. The parties are  
3 advised that failure to file objections within the specified time may waive the right to appeal the  
4 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 199

5 DATED: November 27, 2015

6 /s/ Gregory G. Hollows

7 UNITED STATES MAGISTRATE JUDGE

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