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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LORCHUE THAO,
Petitioner,
v.
RONALD RACKLEY,
Respondent.

No. 2:15-cv-1812-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court has reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Proceedings, and finds that it must be summarily dismissed. *See* Rule 4, Rules Governing § 2254 Cases (requiring summary dismissal of habeas petition if, upon initial review by a judge, it plainly appears “that the petitioner is not entitled to relief in the district court”).

Federal courts offer two main avenues to relief on complaints related to one’s imprisonment – a petition for habeas corpus pursuant to 28 U.S.C. § 2254, and a civil rights complaint pursuant to 42 U.S.C. § 1983. Challenges to the validity of one’s confinement or the duration of one’s confinement are properly brought in a habeas action, whereas requests for relief turning on the circumstances of one’s confinement are properly brought in a § 1983 action. *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500

1 (1973)); *see also* 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ
2 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only
3 on the ground that he is in custody in violation of the Constitution or laws or treaties of the United
4 States.”); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases.

5 In this case, petitioner alleges that the Unit Classification Committee misapplied
6 regulations to deny him participation in the overnight family visitation program. ECF No. 1.
7 This claim concerns only the conditions of his confinement. It does not sound in habeas because
8 it does not concern the validity or duration of his confinement.

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
15 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
17 his objections petitioner may address whether a certificate of appealability should issue in the
18 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
19 § 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a
20 final order adverse to the applicant).

21 Dated: December 1, 2015.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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