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

CARLOS ESPARZA PONCE,

No. 2:17-cv-0450-KJM-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATION

D. BAUGHMAN,

Respondent.

_____/

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s petition for a writ of habeas corpus (Doc. 1).

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.

When a state prisoner challenges the legality of his custody – either the fact of confinement or the duration of confinement – and the relief he seeks is a determination that he is entitled to an earlier or immediate release, such a challenge is cognizable in a petition for a writ

1 of habeas corpus under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973);
2 see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49
3 F.3d 583, 586 (9th Cir. 1995) (per curiam). Where a prisoner challenges the conditions of
4 confinement, as opposed to the fact or duration of confinement, his remedy lies in a civil rights
5 action under 42 U.S.C. § 1983. See Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985); see
6 also Skinner v. Switzer, 131 S.Ct. 1289, 1298-99 n.13 (2011) (stating that “when a prisoner’s
7 claim would not ‘necessarily spell speedier release,’ that claim does not lie at ‘the core of habeas
8 corpus’ and may be brought, if at all, under § 1983”). Any claim that does not necessarily
9 shorten an inmate’s incarceration, if successful, falls outside the scope of habeas jurisdiction.
10 See Blair v. Martel, 645 F.3d 1151, 1157-58 (9th Cir. 2011); see also Wilkerson v. Wheeler, 772
11 F.3d 834 (9th Cir. 2014) (discussing loss of good-time credits); Nettles v. Grounds, 830 F.3d
12 922, 934-35 (9th Cir. 2016) (discussing the impact of a prison disciplinary violations in
13 determining suitability for parole). Thus, 28 U.S.C. § 2254 cannot be used to challenge the
14 conditions of confinement, and 42 U.S.C. § 1983 cannot be used to challenge the fact or duration
15 of confinement.

16 Here, petitioner is challenging his gang validation and placement in administrative
17 segregation based thereon. The claim, therefore, is a challenge to the conditions of confinement,
18 and would necessarily be raised, if at all, in an action brought pursuant to 42 U.S.C. § 1983.
19 There may be times where it is possible to construe a petition for habeas corpus to plead a cause
20 of action under § 1983, but this is not the case. See Nettles, 830 F.3d 922, 936 (9th Cir. 2016).
21 Given the respondent named, the claims raised, and the different exhaustion requirements under
22 the Prison Litigation Reform Act (PLRA), the undersigned does not find this case amenable to
23 such conversion.

24 Based on the foregoing, the undersigned recommends that petitioner’s petition for
25 a writ of habeas corpus (Doc. 1) be summarily dismissed.

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1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court. Responses to objections shall be filed within 14 days after service of
5 objections. Failure to file objections within the specified time may waive the right to appeal.
6 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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8 DATED: May 29, 2018

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10 **CRAIG M. KELLISON**
11 UNITED STATES MAGISTRATE JUDGE
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