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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS MICHAEL ORTIZ,  
Petitioner,  
v.  
CALIFORNIA ATTORNEY GENERAL,  
Respondent.

No. 2:18-cv-1563 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has additionally filed a number of other motions, notices, and requests. (ECF Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17.) For the reasons set forth below, the court will dismiss the petitioner without prejudice.

**I. The Petition**

Petitioner states the basis for relief is his 2012 conviction and sentence in the Butte County Superior Court. (ECF No. 1 at 1.) The court’s records reveal that petitioner previously filed a petition for writ of habeas corpus attacking the same conviction and sentence challenged in the instant case.<sup>1</sup> The previous petition was filed on March 30, 2016, and denied on the merits on

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<sup>1</sup> A court may take judicial notice of its own records and the records of other courts. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 March 20, 2018. See Ortiz v. Baughman, Case No. 2:16-cv-0659 KJM CKD P. Before petitioner  
2 can proceed with the instant petition, he must move in, and obtain from, the Ninth Circuit Court  
3 of Appeals, an order authorizing the district court to consider the merits of his successive petition.  
4 See 28 U.S.C. § 2244(b)(3). Absent such authorization, the instant petition must be dismissed  
5 without prejudice. Id.

6 Because petitioner previously filed a petition for writ of habeas corpus attacking the same  
7 conviction and sentence challenged in this case, his petition must be dismissed without prejudice  
8 to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals.  
9 Additionally, petitioner's motion requesting a hearing (ECF No. 9) and motion for emergency  
10 action (ECF No. 17) should also be denied.

## 11 **II. Petitioner's Other Filings**

12 In addition to the petition, petitioner has also filed numerous motions, notices, and  
13 requests. (ECF Nos. 8, 9, 10, 11, 13, 14, 15, 16, 17.) These filings largely reiterate the claims  
14 and requests contained in the petition as well as allegations that petitioner is not receiving  
15 adequate medical care and all of his prison administrative grievances have been denied. The  
16 court will deny petitioner's motion for medical treatment (ECF No. 10) because conditions of  
17 confinement claims cannot be redressed through a habeas petition

18 A petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is not the proper vehicle  
19 for petitioner to challenge the conditions of his confinement.

20 "Federal law opens two main avenues to relief on complaints related  
21 to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and  
22 a complaint under the Civil Rights Act . . . , 42 U.S.C. § 1983.  
23 Challenges to the validity of any confinement or to particulars  
affecting its duration are the province of habeas corpus." An  
inmate's challenge to the circumstances of his confinement,  
however, may be brought under § 1983.

24 Hill v. McDonough, 547 U.S. 573, 579 (2006) (internal citations omitted) (quoting Muhammad v.  
25 Close, 540 U.S. 749, 750 (2004)). Claims regarding the conditions of petitioner's confinement,  
26 as opposed to the validity or duration of his confinement, must be brought in a civil rights action.  
27 Crawford v. Bell, 599 F.2d 890, 891-92 (9th Cir. 1979).

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1 If petitioner would like to bring a claim challenging the conditions of his confinement  
2 under 42 U.S.C. § 1983, including the quality of his medical care, plaintiff must commence a  
3 separate civil rights action by filing a complaint together with an application to proceed in forma  
4 pauperis or payment of the filing fee.

5 Accordingly, IT IS HEREBY ORDERED that:


- 6 1. The Clerk of the Court is directed to randomly assign a district judge to this action;  
7 and  
8 2. The Clerk of the Court is directed to send plaintiff, together with a copy of this order,  
9 a blank civil rights complaint and a blank application to proceed in forma pauperis used by  
10 prisoners in this district. Plaintiff may complete and file these documents to commence a new  
11 civil rights action.

12 Further, IT IS HEREBY RECOMMENDED that:

- 13 1. This action be dismissed without prejudice because it is premised on an unauthorized  
14 successive petition for writ of habeas corpus under 28 U.S.C. § 2254;  
15 2. Petitioner's motion for a hearing (ECF No. 9) be denied; and  
16 3. Petitioner's motion for an emergency hearing (ECF No. 17) be denied.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, petitioner may file written  
20 objections with the court. The documents should be captioned "Objections to Magistrate Judge's  
21 Findings and Recommendations." Petitioner is advised that failure to file objections within the  
22 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
23 F.2d 1153 (9th Cir. 1991).

24 Dated: September 14, 2018

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26  
  
27 DEBORAH BARNES  
28 UNITED STATES MAGISTRATE JUDGE

DLB:12  
DLB:1/Orders/Prisoner-Habeas/orti1563.scm