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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUNG DUONG NGUON,
Petitioner,

v.
DAVID BAUGHMAN,
Respondent.

No. 2:19-cv-00267 GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner alleges the following in his petition: “my medical doctor at the California State Prison-Sacramento has acted with deliberate indifference to my serious medical needs which denied me adequate medical care, and causing further unnecessary pain, sufferings, and injuries.” ECF No. 1 at 3. Petitioner is currently housed at California State Prison-Sacramento.

When a prisoner challenges the fact or duration of his custody and a determination of his action may result in plaintiff's entitlement to an earlier release, his sole federal remedy is a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir.1990). However, the proper mechanism for raising a federal challenge to conditions of confinement is through a civil rights action pursuant to 42 U.S.C. § 1983. Badea v. Cox, 931

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1 F.2d 573, 574 (9th Cir.1991). Here, petitioner is clearly challenging the conditions of his
2 confinement rather than the fact or duration of his custody.

3 Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for
4 summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and
5 any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the
6 instant case, it is plain from the petition and appended exhibits that petitioner is not entitled to
7 federal habeas relief. Therefore, the court will recommend that the petition be summarily
8 dismissed.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The Clerk of the Court shall assign a district judge to this case; and
- 11 2. The Clerk of the Court is directed to provide petitioner with the court’s form
12 complaint for a civil rights action and an application for requesting leave to proceed in forma
13 pauperis by a prisoner.

14 IT IS HEREBY RECOMMENDED that petitioner’s action be dismissed and this case
15 closed.

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

23 Dated: February 22, 2019

24 /s/ Gregory G. Hollows
25 UNITED STATES MAGISTRATE JUDGE
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