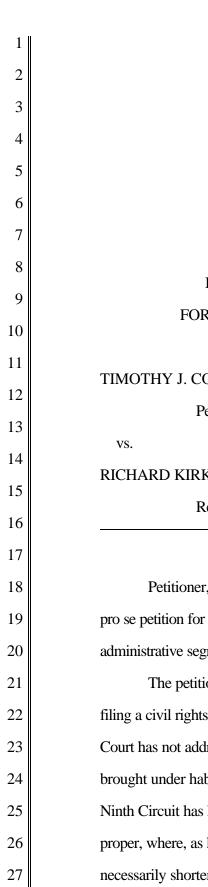
Doc. 5



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## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY J. COOK,

Petitioner,

Vs.

No. C 05-4321 CRB (PR)

ORDER OF DISMISSAL

ORDER OF DISMISSAL

(Doc # 2)

Respondent(s).

Petitioner, a state prisoner at Pelican Bay State Prison ("PBSP"), has filed a pro se petition for a writ of habeas corpus challenging his indefinite placement in administrative segregation on the basis of being a prison gang affiliate.

The petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 U.S.C. § 1983. Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979), the Ninth Circuit has held that habeas jurisdiction is absent, and a § 1983 action proper, where, as here, a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence. Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In addition, the preferred practice in the Ninth Circuit has been

that challenges to conditions of confinement be brought in a civil rights complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint). The clerk shall enter judgment in accordance with this order, terminate all pending motions (see, e.g., doc # 2) as moot, and close the file. No fee is due. SO ORDERED. DATED: November 02, 2005 United States District Judge