

United States District Court
For the Northern District of California

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

PAUL MATTHEW ZAPATA,
Petitioner,
v.
RODOLFO VASQUEZ, Warden,
Respondent.

No. C-11-0032 TEH (PR)

ORDER OF DISMISSAL

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison in Crescent City, California, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging the process by which he was placed in administrative segregation. Doc. #1. He has paid the \$5.00 filing fee.

Petitioner's writ challenging the process by which he was placed in administrative segregation 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

1 that habeas jurisdiction is absent, and a 42 U.S.C. § 1983 action
2 proper, where, as here, a successful challenge to a prison condition
3 will not necessarily shorten the prisoner's sentence. See Ramirez
4 v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003); see also Badea v. Cox,
5 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper
6 method of challenging conditions of confinement); Crawford v. Bell,
7 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of
8 habeas petition on basis that challenges to terms and conditions of
9 confinement must be brought in civil rights complaint).

10 The Clerk shall terminate any pending motions as moot,
11 enter judgment in accordance with this order and close the file.

12 IT IS SO ORDERED.

13
14 DATED 10/05/2011



THELTON E. HENDERSON
United States District Judge