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7 IN THE UNITED STATES DISTRICT COURT
8
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 JOSE BARRERAS,

12 Petitioner,

13 vs.

14 FRANCISCO JACQUEZ,

15 Respondent.

) No. C 11-1895 JSW (PR)

) **ORDER OF DISMISSAL; GRANTING**
) **LEAVE TO PROCEED IN FORMA**
) **PAUPERIS**

) (Docket Nos. 2 & 4)
)
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17 **INTRODUCTION**

18 Petitioner, a prisoner of the State of California proceeding pro se, has filed a
19 habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his continued retention
20 in the Secured Housing Unit (“SHU”) of his prison based upon prison officials’ findings
21 that he is involved in gang activities. After reviewing the petition, the Court dismisses it
22 without prejudice to filing his claims in a civil rights action under 42 U.S.C. § 1983. The
23 applications for leave to proceed in forma pauperis are also granted.

24 **DISCUSSION**

25 This Court may entertain a petition for a writ of habeas corpus “in behalf of a
26 person in custody pursuant to the judgment of a State court only on the ground that he is
27 in custody in violation of the Constitution or laws or treaties of the United States.” 28
28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to

1 show cause why the writ should not be granted, unless it appears from the application
2 that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

3 In his petition, Petitioner claims that he has been denied due process in
4 connection with prison officials’ decision to retain him in the SHU based upon gang
5 activity. Challenges to prison conditions have traditionally been cognizable only in a
6 civil rights action under 42 U.S.C. § 1983, while challenges implicating the fact or
7 duration of confinement in prison must be brought through a habeas petition. *Docken v.*
8 *Chase*, 393 F.3d 1024, 1026 (9th Cir. 2004). Indeed, “habeas jurisdiction is absent, and
9 a § 1983 action proper, where a successful challenge to a prison condition will not
10 necessarily shorten the prisoner’s sentence.” *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th
11 Cir. 2003). Petitioner’s claims must be brought in a civil rights complaint, not a habeas
12 petition, because his challenge to his placement in the SHU will not, if successful,
13 shorten the duration of his custody in prison. Accordingly, this case will be dismissed
14 without prejudice to Petitioner refileing his claims in a civil rights complaint under 42
15 U.S.C. 1983. *See Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979)
16 (affirming dismissal of habeas petition on basis that challenges to terms and conditions
17 of confinement must be brought in civil rights complaint).

18 CONCLUSION

19 For the foregoing reasons, this case is DISMISSED without prejudice to filing his
20 claims in a civil rights complaint under 42 U.S.C. § 1983. In light of Petitioner’s lack of
21 funds, the applications for leave to proceed in forma pauperis (docket numbers 2 and 4)
22 are GRANTED.

23 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
24 court to rule on whether a Petitioner is entitled to a certificate of appealability in the
25 same order in which the petition is decided. Petitioner has failed to make a substantial
26 showing that his claims amounted to a denial of his constitutional rights or demonstrate
27 that a reasonable jurist would find this Court’s denial of his claim debatable or wrong.
28 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of

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1 appealability is warranted in this case.

2 The Clerk shall enter judgment and close the file.

3 IT IS SO ORDERED.

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5 DATED: May 13, 2011

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JEFFREY S. WHITE
United States District Judge