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

JERRY A. BURTON, E-85733,	)	
	)	
Petitioner,	)	No. C 13-2803 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
G. D. LEWIS, Warden,	)	(Docket #3)
	)	
Respondent(s).	)	
_____	)	

I.

Jerry A. Burton, a state prisoner currently incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his placement and retention in administrative segregation in PBSP’s Secure Housing Unit (SHU) on the basis of association with the Black Guerilla Family (BGF) prison gang. Burton claims that his validation as a BGF member is based on erroneous and unreliable evidence.

Burton also seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915. Based solely on Burton’s affidavit of poverty, his request to proceed in forma pauperis (docket #3) is granted.

1 II.

2 The Ninth Circuit has made clear that habeas jurisdiction is absent, and a  
3 42 U.S.C. § 1983 action proper, where, as here, a successful challenge will not  
4 necessarily shorten the prisoner's sentence. See Ramirez v. Galaza, 334 F.3d  
5 850, 859 (9th Cir. 2003). The effect of Burton's validation as an BGF member,  
6 and placement and retention in the SHU, on his possible release on parole is too  
7 attenuated to compel a different result. Cf. Burnsworth v. Gunderson, 179 F.3d  
8 771, 774 n.3 (9th Cir. 1999) (possibility that prisoner having conviction/  
9 disciplinary finding on record may result in denial of parole eligibility at some  
10 later date too attenuated to amount to denial of a protected liberty interest).

11 III.

12 For the foregoing reasons, the petition for a writ of habeas corpus is  
13 DISMISSED without prejudice to Burton filing a civil rights complaint under 42  
14 U.S.C. § 1983.<sup>1</sup>

15 The clerk is instructed to enter judgment in accordance with this order and  
16 close the file.

17 SO ORDERED.

18 DATED: July 17, 2013

19   
20 CHARLES R. BREYER  
21 United States District Judge

22  
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25 \_\_\_\_\_  
26 <sup>1</sup>It appears that Burton already may have filed a civil rights complaint under 42  
27 U.S.C. § 1983 challenging his validation as a BGF member. See Burton v. Lewis, No.  
28 C 12-3158 JST (PR) (N.D. Cal. filed June 19, 2012).