



1 Petitioner is serving a sentence of life without the possibility of parole ("LWOP"), he forfeited no  
2 time credits as a result of this guilty finding. (Resp't Ex. 2.)

3 Petitioner filed the instant federal habeas petition on February 13, 2012.

#### 4 DISCUSSION

5 Respondent now moves to dismiss the petition for failure to state a claim for relief because  
6 Petitioner's claims do not implicate the fact or duration of his confinement. Respondent argues that  
7 Petitioner challenges a prison disciplinary finding which did not result in forfeiture of any time  
8 credit and thus his dispute cannot impact the duration of his confinement. (MTD at 2-3 (citing  
9 *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003) (no federal habeas jurisdiction where  
10 successful challenge to disciplinary proceeding would not necessarily shorten inmate's sentence).)

11 Petitioner alleges that his claims are properly brought in habeas. While he concedes that he  
12 was not assessed any credit loss as a result of the guilty finding, Petitioner claims that he was housed  
13 at the Security Housing Unit ("SHU") at SVSP for an unspecified term. (Opp'n at 3.) He also  
14 argues that "prison officials will use his prior RVR conviction to give him an 'indeterminate SHU  
15 sentence['] should [he] receive another SHU term for her will be classified as a disruptive inmate."  
16 (*Id.*)

17 Interests that are procedurally protected by the Due Process Clause may arise from two  
18 sources -- the Due Process Clause itself and laws of the states. *See Meachum v. Fano*, 427 U.S. 215,  
19 223-27 (1976). In the prison context, these interests are generally ones pertaining to liberty.  
20 Changes in conditions so severe as to affect the sentence imposed in an unexpected manner  
21 implicate the Due Process Clause itself, whether or not they are authorized by state law. *See Sandin*  
22 *v. Conner*, 515 U.S. 472, 484 (1995) (citing *Vitek v. Jones*, 445 U.S. 480, 493 (1980) (transfer to  
23 mental hospital), and *Washington v. Harper*, 494 U.S. 210, 221-22 (1990) (involuntary  
24 administration of psychotropic drugs)). Here, Respondent argues that Petitioner's 2009 disciplinary  
25 violation did not involve a change so severe as to implicate the Due Process Clause itself.

26 Deprivations that are less severe or more closely related to the expected terms of  
27 confinement may also amount to deprivations of a procedurally protected liberty interest, provided  
28 that state statutes or regulations narrowly restrict the power of prison officials to impose the

1 deprivation and that the liberty in question is one of "real substance." *See Sandin*, 515 U.S. at 477-  
2 87. An interest of "real substance" will generally be limited to freedom from restraint that imposes  
3 "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" or  
4 "will inevitably affect the duration of [a] sentence." *Sandin*, 515 U.S. at 484, 487.

5 In *Sandin*, the United States Supreme Court explained what does not qualify as an interest of  
6 "real substance." *Sandin* determined that the possible effect of a disciplinary decision on parole  
7 consideration did not show that the disciplinary decision would inevitably affect the duration of the  
8 inmate's sentence. *See id.* at 487. State law did not require "the parole board to deny parole in the  
9 face of a misconduct record or to grant parole in its absence, . . . even though misconduct is by  
10 regulation a relevant consideration . . . . The decision to release a prisoner rests on a myriad of  
11 considerations . . . . The chance that a finding of misconduct will alter the balance is simply too  
12 attenuated to invoke the procedural guarantees of the Due Process Clause." *Id.* In sum, habeas  
13 relief is available only if the challenged state action exceeds the sentence in such an unexpected  
14 manner as to give rise to protection by the Due Process Clause of its own force, imposes an atypical  
15 and significant hardship on the inmate in relation to the ordinary incidents of prison life, or will  
16 inevitably affect the duration of the inmate's sentence. *Id.* at 484, 487.

17 As mentioned above, upon being found guilty of the disciplinary violation, Petitioner claims  
18 he was placed in the SHU for an unspecified term.<sup>1</sup> As will be discussed below, under *Sandin*  
19 habeas relief is unavailable to Petitioner unless the aforementioned punishment: (1) exceeds the  
20 sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its  
21 own force; (2) imposes an atypical and significant hardship on Petitioner in relation to the ordinary  
22 incidents of prison life; or (3) will inevitably affect the duration of Petitioner's sentence. *See id.*

23 **I. Implicates Due Process Clause of its Own Force**

24 Petitioner's punishment of being placed in SHU for an unspecified period is not so severe a  
25 consequence to implicate the Due Process Clause of its own force. Only those changes in condition  
26 so severe as to affect the sentence imposed in an "unexpected manner" implicate the Due Process  
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28 <sup>1</sup> Because it is undisputed that Petitioner did not forfeit any good time credit, the Court will focus on his allegation that he was placed in the SHU for an unspecified term.

1 Clause itself. *Id.* at 484. Here, Petitioner's temporary placement in the SHU is a consequence far  
2 removed from more severe disciplinary actions, such as the administration of psychotropic drugs or  
3 being transferred to a mental hospital. *Id.* (citing *Washington*, 494 U.S. at 221-22 and *Vitek*, 445  
4 U.S. at 493). The mere curtailment of an inmate's privileges while in the SHU does not rise to the  
5 level of becoming a change in condition so severe -- like those in *Washington* and *Vitek* -- that it  
6 affects Petitioner's sentence in an unexpected manner. Because Petitioner cannot demonstrate that  
7 the finding of guilt at his disciplinary hearing affected his sentence in an "unexpected manner," the  
8 2009 disciplinary violation and the consequence of being placed in the SHU do not give rise to a due  
9 process claim.

10 **II. Atypical and Significant Hardship**

11 Petitioner's SHU term stemming from the 2009 disciplinary violation also fails to give rise to  
12 a due process claim because it did not result in an "atypical and significant hardship." While States  
13 "may under certain circumstances create liberty interests which are protected by the Due Process  
14 Clause . . . these interests will be generally limited to freedom from restraint which, while not  
15 exceeding the sentence in such an unexpected manner as to give rise to protection by the Due  
16 Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate  
17 in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484 (internal citations  
18 omitted). In *Sandin*, the Supreme Court concluded that a prison disciplinary decision which resulted  
19 in one month of solitary confinement did not give rise to a due process claim because "discipline in  
20 segregated confinement did not present the type of atypical, significant deprivation in which a state  
21 might conceivably create a liberty interest." *Id.* at 476, 486. The prisoner in *Sandin* was confined to  
22 solitary confinement for twenty-three hours per day, without any opportunity to interact with other  
23 inmates. *See id.* at 494 (Brennan, J., dissenting). The Supreme Court found that this period of  
24 solitary confinement "did not exceed similar, but totally discretionary, confinement in either  
25 duration or degree of restriction," and "did not work a major disruption in [the prisoner's]  
26 environment." *Id.* at 486.

27 In the present case, the guilty finding at issue against Petitioner did not lead to solitary  
28 confinement as in *Sandin*, instead, it resulted in a less-extreme SHU term, during which the Court

1 assumes that Petitioner's privileges were limited for an unspecified amount of time. These  
2 consequences, while inconvenient, do not significantly changed his confinement. Nor do they create  
3 an atypical and significant hardship in Petitioner's daily prison life. Because significantly more  
4 restrictive disciplinary actions -- like those in *Sandin* -- failed to qualify as an atypical and  
5 significant deprivation of a conceivable liberty interest, Petitioner fails to establish that he suffered  
6 such a deprivation.

7 **III. Inevitably Affects Duration of Sentence**

8 As mentioned above, it is undisputed that Petitioner challenges a prison disciplinary finding  
9 which did not result in forfeiture of any time credit and, thus, such a claim cannot impact the  
10 duration of his sentence. Instead, Petitioner argues that prison officials will rely on his 2009  
11 disciplinary violation to give him an "indeterminate SHU sentence" and classify him as a "disruptive  
12 inmate." (Opp'n at 3, 7.) However, the presumption of collateral consequences does not apply to  
13 prison disciplinary proceedings. *See Wilson v. Terhune*, 319 F.3d 477, 482-83 (9th Cir. 2003). Nor  
14 is this a case where the petitioner claims that the administrative detentions may potentially affect the  
15 length of his or her confinement due to the increased likelihood of a denial at the next parole  
16 suitability hearing. *Contra Docken v. Chase*, 393 F.3d 1024, 1031 (9th Cir. 2004) (holding habeas  
17 jurisdiction is available "when prison inmates seek only equitable relief in *challenging aspects of*  
18 *their parole review* that, so long as they prevail, could potentially affect the duration of their  
19 confinement").

20 Petitioner's claim that he will be subject to an indeterminate SHU term upon at being  
21 classified as a "disruptive inmate" in the future -- possibly as a result of disciplinary violation, which  
22 he has not yet received -- is speculative. Moreover, such a claim is not yet ripe for adjudication.  
23 *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 732-33 (1998). Finally, as explained above,  
24 the temporary SHU term at issue -- that, incidentally, Petitioner has already completed -- is not the  
25 type of atypical or significant deprivation that triggers due process protections. *See Sandin*, 515  
26 U.S. at 476, 486.

1 In sum, under the reasoning of *Sandin*, Petitioner has no protected liberty interest and no  
2 federal right to due process based on his challenge to the 2009 disciplinary violation. Without a  
3 federal right to due process, Petitioner cannot state a claim for a due process violation. Accordingly,  
4 Respondent's motion to dismiss is GRANTED.

5 **CONCLUSION**

6 For the foregoing reasons, the Court GRANTS Respondent's motion to dismiss (Docket No.  
7 8). This action is DISMISSED for failure to state a claim upon which relief may be granted.

8 Further, a certificate of appealability is DENIED. Petitioner has not shown "that jurists of  
9 reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*  
10 *v. McDaniel*, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the  
11 Ninth Circuit Court of Appeals.

12 The Clerk of the Court shall enter judgment, terminate all pending motions and close the file.

13 This Order terminates Docket No. 8.

14 IT IS SO ORDERED.

15 DATED: March 28, 2013

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

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